SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date: 2/28/2024 Case # 2024-01134, 2024-01135

Title of Matter: People v. Donald J. Trump, et al. Index/Indict/Docket # 452564/2022

Appeal by Defendants from Order ☐ Judgment ☑ of Decree ☐ Supreme ☑ Surrogate's ☐ Family ☐ County New York

Court entered on February 23, 2024

Name of Judge Hon. Arthur F. Engoron, J.S.C.

Notice of Appeal filed on February 26, 2024

If from administrative determination, state agency _____

Nature of action or proceeding Executive Law 63(12) action.

Provisions of ☐ order ☑ judgment ☐ decree appealed from provisions finding Appellants liable on the second through seventh causes of action, ordering disgorgement in favor of Plaintiff in the principal sum $363,894,816.00, and ordering permanent injunctive relief.

This application by appellant ~~respondent~~ is for an interim stay of Supreme Court's judgment pending appeal.

If applying for a stay, state reason why requested The judgment orders unprecedented and punitive disgorgement of nearly $460 million and overbroad permanent injunctive relief against Appellants in the absence of legal authority or factual support.

Has any undertaking been posted No If "yes", state amount and type _____

Has application been made to court below for this relief Yes

If "yes", state Disposition Letter application denied by email.

Has there been any prior application here in this court No

If "yes", state dates and nature _____

Has adversary been advised of this application Yes

Does he/she consent _____

Attorney for Movant	Attorney for Opposition
Name Clifford S. Robert, Esq. and Michael Madaio, Esq.	Kevin Wallace, Esq. and Colleen Faherty, Esq.
Address Robert & Robert PLLC, 526 RXR Plaza, Uniondale	People of the State of New York, by Letitia James
NY 1566/Habba Madaio & Associates LLP, 112 West	Attorney General of the State of New York
34th Street, 17th and 17th Floors, New York, NY 10120	28 Liberty Street, New York, New York 10005
Tel. No. (516) 832-7000/(908) 869-1188	(212) 416-6376
Appearing by crobert@robertlaw.com/mmadaio@habbalaw.com	kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov

---

(Do not write below this line)

DISPOSITION

_____ Justice

_____ Date

Motion Date _____ Opposition _____ Reply _____

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY.

_____ Court Attorney

"Revised 10/19"

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants-Appellants, IVANKA TRUMP, Defendant.	Appeal Nos: 2024-01134 2024-01135 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.) **ORDER TO SHOW CAUSE**

UPON reading and filing the annexed Affirmation of Urgency of Clifford Robert, dated February 28, 2024, and the exhibits annexed thereto; and the Memorandum of Law in Support of a Stay Pending Appeal dated February 28, 2024; and upon all the pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

LET Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York, by her attorneys, show cause before this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, New York 10010, on the ____

day of March, 2024, at _____, or as soon thereafter as counsel may be heard, why an order should not be made and entered:

(a) granting a stay of enforcement pursuant to CPLR § 5519 and/or this Court's inherent discretionary power of the Judgment of the Honorable Arthur F. Engoron, J.S.C., dated February 22, 2024, and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on February 23, 2024, in the action captioned *People v. Trump, et al*., Index No. 452564/2022;

(b) granting such other and further relief as this Court deems just and proper.

Sufficient cause therefore appearing, it is

ORDERED that enforcement of the Judgment after bench trial dated February 22, 2024, and duly entered on February 23, 2024, in the action captioned *People v. Trump, et al*., Index No. 452564/2022 is stayed pending the resolution of this proceeding; and it is further

ORDERED that opposition papers, if any, are to be served on Defendants-Appellants' counsel via e-filing on or before the ___ day of March 2024; and it is further

ORDERED that reply papers, if any, are to be served on Plaintiff-Respondent's counsel via e-filing on or before the ___ day of March 2024; and it is further

ORDERED that service of a copy of this Order to Show Cause and the papers upon which it is based, be made on or before February ____, 2024, by e-filing same shall be deemed good and sufficient service thereof.

_____

Associate Justice
Appellate Division: First Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants-Appellants, IVANKA TRUMP, Defendant.	Appeal Nos: 2024-01134 2024-01135 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.)

CLIFFORD S. ROBERT, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury:

1. I am the principal of the law firm of Robert & Robert PLLC, attorneys for Defendants-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC,

Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. I am fully familiar with the facts and circumstances set forth herein based on the files and materials maintained by my firm.

2. This Affirmation of Urgency is submitted in support of the joint application of Defendants-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Appellants") brought by Order to Show Cause pursuant to CPLR § 5519(c) for a stay pending appeal of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron"), dated February 16, 2024, duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on February 16, 2024, and reduced to Judgment on February 23, 2024 (the "Judgment"). Annexed hereto as **Exhibit A** is a true and correct copy of the Judgment.

3. The Judgment (1) granted Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York (the "Attorney General") judgment on the second, third, fourth, fifth and seventh causes of action against all Appellants, (2) granted the Attorney General judgment on the sixth cause of action against Appellants Allen Weisselberg and Jeffrey McConney, (3) awarded the Attorney General disgorgement in the principal sum of $363,894,816.00, exclusive of pre-judgment interest,[1] (4) permanently barred Appellants Allen

[1] Appellants Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC are jointly and severally liable for $168,040,168.00, with prejudgment interest from March 4, 2019; Appellants Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and Trump Old Post Office LLC

Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State, (5) barred Appellant Donald J. Trump ("President Trump"), Weisselberg, and McConney from serving as an officer or director of any New York corporation or other legal entity in New York for three years; (6) barred President Trump and Appellants the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for three years; (7) barred Appellants Donald Trump, Jr., and Eric Trump from serving as an officer or director of any New York corporation or other legal entity in New York for two years; (8) vacated Supreme Court's September 26, 2023, order cancelling Appellants' and affiliated entities' business certificates[2]; (9) extended and enhanced the monitorship of Hon. Barbara Jones (ret.) for a period of no less than three years; and (10) installed an Independent Director of Compliance at the Trump Organization.

4. As set forth more fully below and in Appellants' accompanying memorandum of law, the extraordinary relief Supreme Court has granted is punitive, patently improper,

---

are jointly and severally liable for $126,828,600.00, with prejudgment interest from May 11, 2022; Appellants Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for $60,000,000.00, with prejudgment interest from June 26, 2023; Appellant Eric Trump is liable in the amount of $4,013,024.00, with prejudgment interest from May 11, 2022; Appellant Donald Trump, Jr. is liable in the amount of $4,013,024.00, with prejudgment interest from May 11, 2022, and Appellant Allen Weisselberg is liable in the amount of $1,000,000.00, with prejudgment interest from January 9, 2023.

[2] Supreme Court vacated that directive "without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence." Ex. A at 5.

unsupported by the evidence, and/or unavailable under the Executive Law, and is premised upon claims this Court ruled are time-barred.

5. The Judgment evinces Supreme Court's continued unwillingness to comply with the directive in this Court's June 27, 2023, decision that all untimely claims be dismissed and confirms that Supreme Court considered time-barred claims in awarding the Attorney General sweeping injunctive relief.

6. The urgency of this application is evident in light of the punitive and exorbitant disgorgement awarded against Appellants, the impact of the injunctive relief upon lawful businesses, the uncertainty created by the vague and overbroad directives Supreme Court issued, and the Attorney General's public threats that she will seize Appellants' real property forthwith to satisfy the Judgment.

STATEMENT OF FACTS

The Complaint

7. On September 21, 2022, the Attorney General initiated the underlying action captioned *People v. Trump, et al.*, Index No. 452564/2022, in Supreme Court, New York County by filing of a summons and complaint following a three-year investigation.

8. The complaint alleges seven causes of action pursuant to Executive Law § 63(12). At base, the Attorney General contends that Appellants engaged in fraudulent and deceptive conduct by submitting allegedly false Statements of Financial Condition ("SFCs") to induce banks to grant favorable interest rates to certain Appellant entities. It is undisputed that those transactions were private, complex commercial transactions fully governed by bilateral agreements negotiated by commercially savvy parties. Annexed hereto as **Exhibit B** is a true and correct copy of the Complaint.

9. The Attorney General also sought injunctive relief, including, as relevant here, (1) "[r]eplacing the current trustees of the Donald J. Trump Revocable Trust ('Revocable Trust') with new independent trustees, and requiring similar independent governance in any newly-formed trust should the Revocable Trust be revoked and replaced with another trust structure," (2) "[r]equiring the Trump Organization to prepare on an annual basis for the next five years a GAAP-compliant, audited statement of financial condition showing [President] Trump's net worth, to be distributed to all recipients of his prior Statements of Financial Condition," (3) "[b]arring [President] Trump and the Trump Organization from entering into any New York State commercial real estate acquisitions for a period of five years," (4) "[b]arring [President] Trump and the Trump Organization from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of five years," (5) "[p]ermanently barring [President] Trump, Donald Trump, Jr., Ivanka Trump , and Eric Trump from serving as an officer or director in any New York corporation or similar business entity registered and/or licensed in New York State," (6) "[p]ermanently barring Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State," and (7) "[a]warding disgorgement of all financial benefits obtained by each Defendant from the fraudulent scheme, including all financial benefits from lenders and insurers through repeated and persistent fraudulent practices of an amount to be determined at trial but estimated to be $250,000,000, plus prejudgment interest." *See* Ex. B.

10. The Complaint named the following defendants: individuals President Trump, Donald Trump, Jr., Ivanka Trump, Eric Trump, Allen Weisselberg, and Jeffrey McConney; corporate entities the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump

Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member; and single-purpose entities Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC.[3] *See* Ex. B.

The Attorney General's Motion for a Preliminary Injunction

11. On October 13, 2022, the Attorney General moved by order to show cause for a preliminary injunction and the appointment of an independent monitor to oversee Appellants' submission of financial information pending disposition of the case. Annexed hereto as **Exhibit C** is a true and correct copy of the Attorney General's memorandum of law in support of her request for a preliminary injunction.

12. On November 3, 2022, Supreme Court issued a decision granting the Attorney General's requests for (1) a preliminary injunction enjoining Appellants from selling, transferring or otherwise disposing of any non-cash assets listed on the 2021 Statement of Financial Condition of Donald J. Trump without first providing the Attorney General with 14 days' written notice; and (2) appointing an independent monitor to oversee Appellants' financial statements and significant asset transfers (the "November 3 Decision"). Annexed hereto as **Exhibit D** is a true and correct copy of the November 3 Decision.

13. In supplemental orders dated November 14 and 17, 2022, Justice Engoron appointed Hon. Barbara Jones (ret.) as independent monitor ("Monitor") and outlined her responsibilities, which include reviewing "(1) the submission of financial information to any accounting firm compiling a 2022 Statement of Financial Condition ('SFC') for Donald J. Trump; (2) the submission of all financial disclosures to any persons or entities, including, without

[3] This Court, in its June 27, 2023, decision, modified the caption to reflect that Donald Trump, Jr., is sued both personally and in his capacity as Trustee for the Donald J. Trump Revocable Trust. *See* Ex. I, *infra.*

limitation, lenders, insurers, and taxing authorities; and (3) any corporate restructuring, disposition or dissipation of any significant assets." Annexed hereto as **Exhibit E** are true and correct copies of those supplemental orders.

14. The Monitor subsequently submitted letter status reports to Supreme Court dated December 19, 2022; February 3, 2023; April 11, 2023; August 3, 2023; November 29, 2023; and January 26, 2024. Annexed hereto as **Exhibit F** are true and correct copies of those letter reports.

Appellants' Motion to Dismiss

15. On November 21, 2022, Appellants and Defendant Ivanka Trump filed motions to dismiss the complaint arguing, *inter alia*, that certain allegations in the Attorney General's complaint were time-barred based on the statute of limitations. Annexed hereto as **Exhibit G** are true and correct copies of Appellants' memoranda of law in support of their motions to dismiss.

16. In a decision and order dated January 6, 2023, Supreme Court denied the motion in its entirety (the "January 6 Decision"). Annexed hereto as **Exhibit H** is a true and correct copy of the January 6 Decision.

17. On February 3, 2023, Appellants filed notices of appeal of the January 6 Decision. In a decision entered on June 27, 2023, this Court modified Supreme Court's January 6 Decision by "dismiss[ing], as time-barred, the claims against defendant Ivanka Trump and the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)" (the "June 27 Decision"). Annexed hereto as **Exhibit I** is a true and correct copy of this Court's June 27 Decision.

18. This Court also held as follows:

> Applying the proper statute of limitations and the appropriate tolling, claims are time barred if they accrued - that is, the transactions were completed - before February 6, 2016 (*see Boesky v Levine*, 193 AD3d 403, 405 [lst Dept 2021); *Rogal v Wechsler*, 135 AD2d 384, 385 [1st Dept 1987]). For defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014. The continuing wrong doctrine does not delay or extend these periods (*see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v Bank of Am.*,147 AD3d 599, 601-602 [1st Dept 2017]). We leave Supreme Court to determine, if necessary, the full range of defendants bound by the tolling agreement. *Id.*

The Parties' Motions for Summary Judgment

19. On August 30, 2023, Appellants moved for summary judgment seeking dismissal of the Attorney General's Complaint in its entirety. Annexed hereto as **Exhibit J** is a true and correct copy of all briefing on Appellants' motion for summary judgment. That same day, the Attorney General filed a motion for partial summary judgment requesting that Supreme Court determine as a matter of law that she had prevailed on her first cause of action. Annexed hereto as **Exhibit K** is a true and correct copy of all briefing on the Attorney General's motion for partial summary judgment.

20. On September 26, 2023, Supreme Court issued a decision and order (the "MSJ Decision") denying Appellants' summary judgment motion in its entirety and granting the Attorney General's motion for partial summary judgment and motion for sanctions. Annexed hereto as **Exhibit L** is a true and correct copy of that decision and order.

21. The MSJ Decision also cancelled any certificates filed under and by virtue of GBL § 130 by any of the entity Appellants or any other non-party entity controlled or beneficially owned by any of the individual Appellants and directed that the parties recommend the names of

no more than three independent receivers to manage the dissolution of the cancelled LLCs. *See* Ex. L at 35.

22. The MSJ Decision expressly reserved for trial "determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint." Ex. L at 34. Specifically, Supreme Court held that "the second through seventh causes of action require [the Attorney General to] demonstrat[e] some component of intent and materiality." *Id.* at 20.

23. On October 6, 2023, Appellants moved for an interim stay of the MSJ Decision pending appeal. Annexed hereto as **Exhibit M** is a true and correct copy of that application, without exhibits.

24. That same day, Justice Moulton of this Court granted an interim stay of the portions of the MSJ Decision directing the cancellation of business certificates. Annexed hereto as **Exhibit N** is a true and correct copy of that order.

25. On December 7, 2023, a full panel of this Court granted the motion for a stay "to the extent of continuing, pending hearing and determination of the appeals, the interim relief granted by a Justice of this Court on October 06, 2023." Annexed hereto as **Exhibit O** is a true and correct copy of that order.

The Trial

26. On October 2, 2023, the parties commenced a highly publicized, three-month non-jury trial.

27. On November 19, 2023, Appellants moved for a directed verdict on the second through seventh causes of action, as well as the issue of disgorgement, at the close of the Attorney

General's case. *See People v. Trump, et al.*, Sup. Ct., N.Y. Cty. Index No. 452564/2022 ("Sup. Ct."), NYSCEF Doc. No. 1637 at 3851:14-3918:17. Supreme Court took the motion under advisement but ultimately denied it. *Id.* at 3934:1-4.

28. Appellants renewed their motion for directed verdict at the close of their case. *See* Sup. Ct. NYSCEF Doc. Nos. 1652-1653.

29. Testimony concluded on December 13, 2023.

30. On January 5, 2024, the parties simultaneously filed their statements of fact and conclusions of law. Copies of those submissions are annexed hereto as Exhibits **P** and **Q.**

31. On January 11, 2024, the parties gave their closing arguments. *See* Sup. Ct. NYSCEF Doc. Nos. 1669, 1675-1676.

The Judgment

32. On February 16, 2024, Supreme Court issued a Decision and Order After Non-Jury Trial, by which it found all Appellants liable on the second, third, fourth, fifth, and seventh causes of action and Appellants Allen Weisselberg and Jeffrey McConney liable on the sixth cause of action; awarded the Attorney General disgorgement in the principal sum of $363,894,816.00; ordered sweeping injunctive relief; and directed the Clerk to enter judgment accordingly. Annexed hereto as **Exhibit R** is a true and correct copy of that decision and order with notice of entry.

33. On February 20, 2024, the Attorney General submitted a proposed judgment in contravention of that directive. Annexed hereto as **Exhibit S** is a true and correct copy of that proposed judgment.

34. The following day, Appellants wrote to the Court, emphasizing the procedural irregularities and substantive errors in the proposed judgment. Annexed hereto as **Exhibit T** is a true and correct copy of that correspondence.

35. The Court responded via email that the language of the proposed judgment "exactly track[ed]" the February 16, 2024, decision and order and requested Appellants "let [the Court] know, by 5pm today, if [Appellants] object[ed] in any specific ways, and how [their] counter judgment would differ." Annexed hereto as **Exhibit U** is a true and correct copy of the Court's email and subsequent correspondence.

36. Appellants responded via letter requesting, *inter alia*, a return date for a proposed judgment to allow Appellants to submit a proposed counter-judgment and a 30-day stay of enforcement of the judgment. Annexed hereto as **Exhibit V** is a true and correct copy of that letter correspondence.

37. The Attorney General submitted a "slightly revised" proposed judgment that same day. Annexed hereto as **Exhibit W** is a true and correct copy of that proposed judgment.

38. On February 22, 2024, Supreme Court, via email, advised Appellants that, in his estimation, they had "<u>again</u> asked for time to file a proposed counter-judgment <u>again</u> without explaining in what way the Attorney General's proposed judgment is incorrect (except as dealt with above) and <u>again</u> without specifying how your proposed judgment would differ" and advised that he "intend[ed] to sign the proposed judgment th[at] morning and to send it to the Clerk for further processing." Ex. U.

39. Appellants responded that the Court had not addressed their request for a temporary stay of enforcement, noting that "there is no exigency or potential prejudice to the

attorney general from a brief stay of enforcement" given that the court-appointed monitor "remains in place." Ex. U.

40. The Court responded that Appellants "ha[d] failed to explain, much less justify, any basis for a stay," but that he was "confident that the Appellate Division will protect your appellate rights." Ex. U.

41. The Court signed the judgment, as written by the Attorney General, that same day. *See* Sup. Ct. NYSCEF Doc. No. 1696.

42. The Clerk entered the judgment on February 23, 2024. *See* Ex. A. The Attorney General filed notice of entry of the judgment that same day. *See id.*

43. Among the Judgment's myriad errors, more than $350 million of the nearly $465 million awarded in disgorgement is barred by the statute of limitations. Annexed hereto as **Exhibit X** is a demonstrative breakdown of the disgorgement profits and pre-judgment interest thereon by closing date.

44. The Judgment and its effects on commerce in the State have also been the subject of widespread public criticism. Annexed hereto as **Exhibit Y** is a sampling of news articles on that topic.

45. On February 26, 2024, Appellants filed notice of appeal of the decision and order and the Judgment. Annexed hereto as **Exhibit Z** is a true and correct copy of those notices of appeal.

46. An appeal bond would include the amount of the underlying judgment, as well as costs and interest during the pendency of the appeal.

47. To account for post-judgment interest and appeal cost, a surety will often set the bond amount at 120% of the judgment or more.

48. On February 27, 2024, pursuant to 22 N.Y.C.R.R. § 1250.4(b)(2), my partner Michael Farina notified the Attorney General, via e-mail, of Appellants' request for a stay. Annexed hereto as **Exhibit AA** is a true and correct copy of that email notification.

Dated: Uniondale, New York
February 28, 2024

CLIFFORD S. ROBERT

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 Hon. Arthur Engoron NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed as Exhibit A is a true copy of the Judgment dated February 22, 2024 that was entered in the Supreme Court, New York County Clerk's Office on February 23, 2024.

Dated: New York, New York
February 23, 2024

By: */s/ Colleen K. Faherty*
Colleen K. Faherty

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
Colleen.Faherty@ag.ny.gov

Attorneys for the People of the State of New York

EXHIBIT A

At an IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the New York County Court House, 60 Centre Street, New York, New York, on the 22 day of February 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

JUDGMENT

WHEREAS this matter came on for a bench trial before Hon. Arthur F. Engoron, Justice of the Supreme Court of the State of New York, at the courthouse at 60 Centre Street, New York, New York, that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024; and

WHEREAS this Court rendered a DECISION AND ORDER dated September 26, 2023 (NYSCEF Doc. No. 1531), which determined, inter alia, that defendants Donald J. Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings

Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the first cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

WHEREAS this Court rendered a DECISION AND ORDER AFTER NON-JURY TRIAL dated February 16, 2024 (NYSCEF Doc. No. 1688) which found, inter alia, that:

(1) defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the second, third, fourth, fifth, and seventh causes of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

(2) defendants Allen Weisselberg and Jeffrey McConney are liable on the sixth cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1),

NOW, on application of Letitia James, Attorney General of the State of New York, counsel for plaintiff the People of the State of New York, whose address is 28 Liberty Street, 16th floor, New York, New York 10005, it is

ADJUDGED, as follows:

1. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings LLC, whose last known place of business is at 725 5th Ave, New

York, NY 10022, DJT Holdings Managing Member, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Endeavor 12 LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, 401 North Wabash Venture LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and 40 Wall Street LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$168,040,168**, with 9% interest thereon from March 4, 2019 in the amount of $75,286,599.10 amounting to the sum of $243,326,767.10 and that the Plaintiff have execution therefor; X

2. Plaintiff have judgment and do recover from defendants Donald J. Trump who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and the Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$126,828,600**, with 9% interest thereon from May 11, 2022 in the amount of $20,421,141.98 amounting to the sum of $147,249,741.98 and that the Plaintiff have execution therefor; X

3. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, and Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$60,000,000**, with 9% interest thereon

from June 26, 2023 in the amount of $3,580,273.97 amounting to the sum of $ 63,580,273.97, and that the Plaintiff have execution therefor; X

4. Plaintiff have judgment and do recover from defendant Eric Trump, who resides at 502 Bald Eagle Drive, Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $4,659,175.84 and that the Plaintiff have execution therefor; X

5. Plaintiff have judgment and do recover from defendant Donald Trump, Jr., who resides at 494 Mariner Dr., Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $ 4,659,175.84 , and that the Plaintiff have execution therefor; and X

6. Plaintiff have judgment and do recover from defendant Allen Weisselberg, who resides at 6554 Piemonte Dr, Boynton Beach, FL 33472, in the amount of **$1,000,000**, with 9% interest thereon from January 9, 2023 in the amount of $101,095.89 amounting to the sum of $1,101,095.89 and that the Plaintiff have execution therefor; X

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

7. defendants Allen Weisselberg and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

8. defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years;

4 of 7

9. defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC, as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years;

10. defendants Eric Trump and Donald Trump, Jr., as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years;

11. the Court's September 26, 2023 Decision and Order (NYSCEF Doc. No. 1531) is modified as of the date of the Court's Decision and Order After Non-Jury Trial, solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence;

12. the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years;

13. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, the Independent Monitor shall submit to the Court a proposed order outlining the specific authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward;

14. an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and

15. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance.

ADJUDGED that this Judgment shall bear interest from the date of its entry at the statutory rate of 9% per annum.

ORDERED that the Clerk is directed to calculate the interest and enter judgment in accordance with the above in favor of the Plaintiff.

ENTER

Dated: New York, New York
February 22, 2024

Justice of the Supreme Court

HON. ARTHUR F. ENGORON, J.S.C.

FEB 22 2024

FILED
Feb 23 2024
NEW YORK
COUNTY CLERK'S OFFICE

Milton Adair Tingling
Clerk

Judgment Creditor
People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York
28 Liberty St, New York, NY 10005
(212) 416-8222

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff,* *-against-* DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC, *Defendants.*	Index No. 452564/2022

JUDGMENT

Letitia James,
Attorney General of the State of New York
Attorney for Plaintiff
28 Liberty Street, 16th Floor
New York, New York 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre
Of Counsel

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. _____

SUMMONS

Date Index No. Purchased:
_____

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue pursuant to CPLR § 503(a) is that Plaintiff is located in New York County, with its address at 28 Liberty Street, New York, New York 10005, and because a substantial part of the events and omissions giving to the claims occurred in New York County.

Dated: New York, New York
September 21, 2022

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin Wallace

Kevin Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Wil Handley
Eric R. Haren
Louis M. Solomon
Austin Thompson
Stephanie Torre

Office of the New York State
Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6376
kevin.wallace@ag.ny.gov

Attorneys for the People of the State of New York

To:

DONALD J. TRUMP
Habba Maddaio & Associates LLP
112 West 34th Street,New York, New York 10120
Fischetti Malgieri
565 Fifth Ave., 7th Fl, New York, NY 10017

DONALD TRUMP, JR.
Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Fl, New York, NY 10017

ERIC TRUMP
Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Fl, New York, NY 10017

IVANKA TRUMP
Law Offices of Alan S. Futerfas
565 Fifth Ave., 7th Fl, New York, NY 10017

ALLEN WEISSELBERG
Friedman Kaplan Seiler Adelman
7 Times Sq., New York, NY 10036

JEFFREY MCCONNEY
ArentFox Schiff
1301 Avenue of the Americas, 42nd floor, New York, NY 10019

THE DONALD J. TRUMP REVOCABLE TRUST
c/o The Trump Organization – 725 Fifth Avenue, New York, NY 10022
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

THE TRUMP ORGANIZATION, INC.
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

TRUMP ORGANIZATION LLC
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

DJT HOLDINGS LLC
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

DJT HOLDINGS MANAGING MEMBER
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

TRUMP ENDEAVOR 12 LLC
c/o The Trump Organization – 725 Fifth Avenue, New York, NY 10022
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

401 NORTH WABASH VENTURE LLC
c/o The Trump Organization – 725 Fifth Avenue, New York, NY 10022
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

TRUMP OLD POST OFFICE LLC
c/o The Trump Organization – 725 Fifth Avenue, New York, NY 10022
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

40 WALL STREET LLC
c/o The Trump Organization – 725 Fifth Avenue, New York, NY 10022
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

SEVEN SPRINGS LLC
LaRocca Hornik Rosen & Greenberg LLP
40 Wall Street, 32nd Floor, New York, NY 10005
Habba Maddaio & Associates LLP
112 West 34th Street, 17th & 18th Floors, New York, NY 10120

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. _____

VERIFIED COMPLAINT

TABLE OF CONTENTS

I. NATURE OF THE ACTION 1
A. The Fraudulent Statements of Financial Condition 3
B. Relief Sought 11
II. THE PARTIES 12
III. JURISDICTION, APPLICABLE LAW, AND VENUE 16
IV. FACTUAL ALLEGATIONS 19
A. Overview of Trump Organization Assets 20
B. Overview of the Statements of Financial Condition 23
C. The Asset Values and Associated Descriptions Presented in the Statements Were Fraudulent, Misleading, and Not Presented in Accordance with GAAP 26
1. Cash and Cash Equivalents/Marketable Securities 26
2. Escrow and Reserve Deposits and Prepaid Expenses 29
3. Trump Park Avenue 31
4. 40 Wall Street 38
5. Niketown 47
a. June 30, 2011 and June 30, 2012 valuations of Niketown 48
b. Valuations of Niketown from 2013 through 2018 50
c. June 30, 2019 valuation of Niketown 55
d. June 30, 2020 valuation of Niketown 56
6. Trump Tower 58
a. Valuation of Trump Tower from 2011 to 2014 and 2016 to 2019 59
b. 2015 valuation of Trump Tower 65
7. Seven Springs 67
8. Mr. Trump's Triplex Apartment 75
9. 1290 Avenue of the Americas and 555 California (Vornado Partnerships) 84
a. The Restricted Nature of Mr. Trump's Limited Partnership Interest 85
b. The False and Misleading Valuations of the Buildings 87
10. Las Vegas (Ruffin Joint Venture) 92
11. Club Facilities and Related Real Estate 98
a. Mar-a-Lago 101
b. Trump Aberdeen 110
i. The Golf Course Valuations 111
ii. The Undeveloped Land Valuations 114

c. Trump Turnberry 119
d. TNGC Jupiter 120
e. TNGC Briarcliff 122
i. The Golf Course Valuations 123
ii. The Undeveloped Land Valuations 125
f. TNGC LA 126
i. The Golf Course Valuations 127
ii. The Undeveloped Land Valuations 128
g. TNGC Colts Neck 137
h. TNGC Philadelphia 139
i. TNGC DC 140
j. TNGC Charlotte 142
k. TNGC Hudson Valley 143
12. Real Estate Licensing Developments 144
D. The False and Misleading Statements of Financial Condition Were Used to Secure and Maintain Financial Benefits, Including Financing and Insurance, on Favorable Terms 147
1. Deutsche Bank Loan Facilities 148
2. Deutsche Bank Loan Issued in Connection with Trump National Doral Golf Club (Florida) 151
3. Deutsche Bank Loan Issued in Connection with Trump Chicago (2012) 159
4. Deutsche Bank Loan Issued in Connection with Trump Old Post Office Hotel in Washington, D.C. 165
5. 40 Wall Street Loan Issued by Ladder Capital 171
6. Seven Springs Loan Issued by Royal Bank America / Bryn Mawr Bank 174
7. Other Efforts To Use The False And Misleading Statements In Commercial Transactions 176
E. Insurance-Related Benefits 178
1. Insurance Fraud Against Surety Underwriters 179
2. Insurance Fraud Against Directors & Officers Liability Underwriters 183
F. Ongoing Scheme and Conspiracy 189
V. CAUSES OF ACTION 198
VI. PRAYER FOR RELIEF 213

Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, as and for their Verified Complaint, respectfully allege:

I. NATURE OF THE ACTION

1. Following a comprehensive three-year investigation by the Office of the Attorney General ("OAG"), involving interviews with more than 65 witnesses and review of millions of pages of documents produced by Defendants and others, OAG has determined that Defendants Donald J. Trump ("Mr. Trump"), Trump Organization LLC and the Trump Organization, Inc. (collectively with the other named entities, the "Trump Organization"), Allen Weisselberg, and the other individuals and entities affiliated with Mr. Trump and his companies named as Defendants, engaged in numerous acts of fraud and misrepresentation in the preparation of Mr. Trump's annual statements of financial condition ("Statements of Financial Condition" or "Statements") covering at least the years 2011 through 2021.

2. These acts of fraud and misrepresentation were similar in nature, were committed by upper management at the Trump Organization as part of a common endeavor for each annual Statement, and were approved at the highest levels of the Trump Organization—including by Mr. Trump himself. Indeed, Mr. Trump made known through Mr. Weisselberg that he wanted his net worth on the Statements to increase—a desire Mr. Weisselberg and others carried out year after year in their fraudulent preparation of the Statements.

3. These acts of fraud and misrepresentation grossly inflated Mr. Trump's personal net worth as reported in the Statements by billions of dollars and conveyed false and misleading impressions to financial counterparties about how the Statements were prepared. Mr. Trump and the Trump Organization used these false and misleading Statements repeatedly and persistently to induce banks to lend money to the Trump Organization on more favorable terms than would

otherwise have been available to the company, to satisfy continuing loan covenants, and to induce insurers to provide insurance coverage for higher limits and at lower premiums.

4. All of this conduct was in violation of New York Executive Law § 63(12)'s prohibition of persistent and repeated business fraud, which embraces any conduct that "has the capacity or tendency to deceive, or creates an atmosphere conductive to fraud." *People v. Northern Leasing Systems, Inc*., 193 A.D.3d 67, 75 (1st Dep't 2021).

5. These misrepresentations also violated a host of state criminal laws, constituting repeated and persistent illegality in violation of Executive Law § 63(12). Among other laws, Defendants repeatedly and persistently violated the following: New York Penal Law § 175.10 (Falsifying Business Records); Penal Law § 175.45 (Issuing a False Financial Statement); and Penal Law § 176.05 (Insurance Fraud).[1]

6. Each Statement from 2011 to 2021 provides Mr. Trump's personal net worth as of June 30 of the year it covers, was compiled by Trump Organization executives, and was issued as a compilation report by Mr. Trump's accounting firm. Each Statement provides on its face that its preparation was the responsibility of Mr. Trump, or starting in 2016, the trustees of his revocable trust, Donald Trump, Jr. and Allen Weisselberg.[2] Each Statement was personally

[1] While not a basis for recovery in this action, the conduct alleged in this action also plausibly violates federal criminal law, including 18 U.S.C. § 1014 (False Statements to Financial Institutions) and 18 U.S.C. § 1344 (Bank Fraud). Under those provisions, a defendant violates federal law by knowingly submitting a false document or statement in order to influence the decision of a federally-insured bank or to obtain money from a bank by means of false representations or pretenses. There is no requirement of loss or reliance. OAG is making a referral of its factual findings to the Office of the United States Attorney for the Southern District of New York.

[2] Mr. Weisselberg was removed as a trustee as of July 2021, after having been indicted by the New York District Attorney on charges of tax fraud. Mr. Weisselberg pleaded guilty to those charges on August 18, 2022.

certified as accurate by Mr. Trump, by one of his trustees, or in 2021 by Eric Trump, when submitting the Statement to financial institutions with the purpose and intent that the information contained in the Statement would be relied upon by those institutions.

7. Each year from 2011 to 2016, Mr. Trump and Mr. Weisselberg would meet to review and approve the final Statement. When asked questions about those meetings under oath, both men invoked their Fifth Amendment privilege against self-incrimination and refused to answer. When asked under oath if he continued to review and approve the Statements after becoming President of the United States in 2017, Mr. Trump invoked his Fifth Amendment privilege and refused to answer.

8. As further evidence of their scheme to inflate the value of Mr. Trump's assets when beneficial to his financial interests, Mr. Trump and the Trump Organization procured inflated appraisals through fraud and misrepresentations in 2014 and 2015 for the purpose of granting conservation easements over two of Mr. Trump's properties. Through these conservation easements, Mr. Trump and the Trump Organization agreed to forgo their purported rights to develop areas of the two properties that are the subjects of the easements, which enabled them to treat as a charitable donation the difference in the value of each property with and without the relinquished development rights as determined in the appraisals. In the same way that Mr. Trump and the Trump Organization inflated the valuations of Mr. Trump's assets for the Statements, they manipulated the appraisals to inflate the value of the donated development rights with respect to both conservation easements.

A. The Fraudulent Statements of Financial Condition

9. Each Statement of Financial Condition lists Mr. Trump's assets and liabilities, and then presents his "net worth" as the difference between the two. On the asset side, each Statement includes five basic categories: (i) "cash and cash equivalents;" (ii) monies held in

"escrow" and "reserve deposits;" (iii) interests in "partnerships and joint ventures;" (iv) real estate licensing fees; and (v) by far the largest category – real estate holdings. On the liability side, each Statement lists "accounts payable and accrued expenses," loans on "real and operating properties," and other mortgages and loans.

10. Mr. Trump's Statements of Financial Condition for the period 2011 through 2021 were fraudulent and misleading in both their composition and presentation. The number of grossly inflated asset values is staggering, affecting most if not all of the real estate holdings in any given year. All told, Mr. Trump, the Trump Organization, and the other Defendants, as part of a repeated pattern and common scheme, derived *more than 200 false and misleading valuations* of assets included in the 11 Statements covering 2011 through 2021.

11. Nearly every one of the Statements represented that the values were prepared by Mr. Trump and others at the Trump Organization in "evaluation[s]" done with "outside professionals," but that was false and misleading; no outside professionals were retained to prepare any of the asset valuations presented in the Statements. To the extent Mr. Trump and the Trump Organization received any advice from outside professionals that had any bearing on how to approach valuing the assets, they routinely ignored or contradicted such advice. For example, they received a series of bank-ordered appraisals for the commercial property at 40 Wall Street that calculated a value for the property at $200 million as of August 1, 2010 and $220 million as of November 1, 2012. Yet in the 2011 Statement, they listed 40 Wall Street with a value $524 million and increased the valuation to $527 million in the 2012 Statement, and to $530 million in 2013—more than twice the value calculated by the "professionals." Even more egregiously the valuation of more than $500 million was attributed to information obtained from the same

professional appraiser who prepared both valuations putting the building's value at or just over $200 million.

12. The inflated asset valuations in the Statements cannot be brushed aside or excused as merely the result of exaggeration or good faith estimation about which reasonable real estate professionals may differ. Rather, they are the result of the Defendants utilizing objectively false assumptions and blatantly improper methodologies with the intent and purpose of falsely and fraudulently inflating Mr. Trump's net worth to obtain beneficial financial terms from lenders and insurers.

13. Nor can the false and fraudulent asset values in the Statements be defended based on boilerplate disclaimers in the accountant's compilation report accompanying each Statement. While the accountants gave notice in the reports that they did not audit or review the Statements to verify the accuracy or completeness of the information provided by Mr. Trump or the Trump Organization, they confirmed that their clients were responsible for preparing the Statements in accordance with generally accepted accounting principles in the United States ("GAAP"). The disclaimers may relieve the accountants of certain obligations that would otherwise adhere to their work on a more rigorous audit engagement, but they do not give license to Mr. Trump or the Trump Organization to submit to their accountants fraudulent and misleading asset valuations for inclusion in the Statements.

14. Moreover, Mr. Trump and the Trump Organization have no excuse for issuing Statements of Financial Condition that repeatedly violated GAAP rules in multiple ways despite expressly representing in the Statements that they were prepared in accordance with GAAP. Among the many GAAP rules they violated are: (i) including as "cash" funds that Mr. Trump could not immediately liquidate because they did not belong to him and may never be distributed

to him; (ii) failing to determine the present value of projected future income when including the income as part of an asset valuation; (iii) failing to disclose a substantial change in methodology from the prior year's statement for how an asset value was derived; (iv) failing to value the entirety of Mr. Trump's interest in a partnership, including all limitations and restrictions on his interest; and (v) including intangibles such as internally-generated brand premiums when calculating an asset's value.

15. As discussed in greater detail in the sections that follow, Mr. Trump and others affiliated with the Trump Organization who are named as Defendants employed a number of deceptive strategies as part of the overall scheme to fraudulently and falsely inflate Mr. Trump's assets in order to comply with Mr. Trump's instruction to increase his net worth. A chart showing many of the deceptive strategies employed by Mr. Trump and other Defendants by asset and year is attached as Exhibit 1, and includes the following, to list just a few:

a. Relying on objectively false numbers to calculate property values. For example, Mr. Trump's own triplex apartment in Trump Tower was valued as being 30,000 square feet when it was 10,996 square feet. As a result, in 2015 the apartment was valued at $327 million in total, or $29,738 per square foot. That price was absurd given the fact that at that point only one apartment in New York City had ever sold for even $100 million, at a price per square foot of less than $10,000. And that sale was in a newly built, ultra-tall tower. In 30 year-old Trump Tower, the record sale as of 2015 was a mere $16.5 million at a price of less than $4,500 per square foot.

b. Ignoring legal restrictions on development rights and marketability that would materially decrease property values. For example:

   i. In the 2012 Statement, rent stabilized apartments at Trump Park Avenue were valued as if they were unrestricted, leading to a nearly $50 million valuation for those units—but an appraisal accounting for those units' stabilized status valued them collectively at just $750,000;

   ii. The Mar-a-Lago club was valued as high as $739 million based on the false premise that it was unrestricted property and could be developed and sold for residential use, even though Mr. Trump himself signed deeds donating his residential development rights and sharply restricting changes to the

property – in reality, the club generated annual revenues of less than $25 million and should have been valued at closer to $75 million; and

iii. For his golf course in Aberdeen, Scotland, the valuation assumed 2,500 homes could be developed when the Trump Organization had obtained zoning approval to develop less than 1,500 cottages and apartments, many of which were expressly identified as being only for short-term rental. The $267 million value attributed to those 2,500 homes accounted for more than 80% of the total $327 million valuation for the Aberdeen property on the 2014 Statement.

c. Failing to use basic rules of valuation to ensure reliable and accurate results—such as discounting revenue or cash flow that might be obtained from a speculative development far into the future to its present value. For example, a series of high-value properties estimated the profits from developing and selling homes without accounting for the years it would take to plan, build, and sell the homes and instead operated under the impossible and thus false premise that the homes could be planned, built, and sold instantaneously.

d. Using an inappropriate valuation method for a given category of assets. For example, for the period 2013 to 2020, Mr. Trump's golf course in Jupiter, Florida was valued using a fixed-asset approach even though that was not an acceptable method for valuing an operating golf course. And the bulk of the value in that fixed-asset approach was based on the use of an inflated purchase price from the purported assumption of "refundable" membership liabilities. Mr. Trump claimed to have paid $46 million for the club, consisting of $5 million in cash he actually paid and $41 million in assumed membership liabilities. In the Statement Mr. Trump did not disclose the inclusion of those inflated liabilities in the price of the club and in fact took the opposite position, stating that his potential liability for those membership deposits was zero.

e. Increasing the value of golf clubs to incorporate a "brand premium" despite expressly advising in the Statements that brand value was not included in the figures and despite GAAP rules prohibiting inclusion of internally-generated intangible brand premiums. For example, in the 2013 Statement, the value of Mr. Trump's golf course in Jupiter, Florida was further inflated by fraudulently adding 30% for the Trump "brand." Combining the inflation from using the fixed-asset approach with the 30% brand premium, Mr. Trump claimed that a club he purchased for $5 million in 2012 was worth more than $62 million in 2013. The 2013 Statement included the same fraudulent 30% brand premium for six other golf clubs.

f. Using inflated net operating income ("NOI") figures and arbitrarily low capitalization rates to calculate valuations using the income capitalization method, where value is derived by dividing NOI by a capitalization rate. For example, in some instances the NOI for Trump Tower relied on favorable numbers by mixing time periods, using future income that exceeded the Trump

Organization's internal budget projections while also using expense figures that were lower than past expenses in audited financials. Capitalization rates were derived by cherry-picking an unsupported figure from, or averaging the lowest two or three capitalization rates listed in, generic marketing reports and ignoring rates in those same reports for buildings that were closer and more comparable to Trump Tower.

g. Claiming as Mr. Trump's own "cash" monies belonging not to Mr. Trump but to partnerships in which Mr. Trump had only a limited partnership interest with no control over making disbursements. For example, one-third of the amount under "cash and cash equivalents" listed in the 2018 Statement belonged to Vornado Partnerships, not Mr. Trump. Those are partnerships in which he owns a minority 30% stake with no right to control distributions. Mr. Trump did the same thing in counting funds held in escrow. For example, one-half of the amount under "escrow" in the 2014 Statement belonged to the Vornado Partnership.

h. Including in the value of golf clubs anticipated income from inflated membership initiation fees. For example, at Mr. Trump's golf course in Westchester, the valuation for 2011 assumed new members would pay an initiation fee of nearly $200,000 for each of the 67 unsold memberships, even though many new members in that year paid no initiation fee at all. In some instances, Mr. Trump specifically directed club employees to reduce or eliminate the initiation fees to boost membership numbers.

16. Mr. Trump and the other Defendants also engaged in conduct intended to mislead Mazars in connection with its work compiling the Statements, including by concealing important information. Because Mazars was not conducting any review or audit procedures, but rather issuing a compilation in which Mr. Trump's and the Trustees' assertions were being *compiled* into financial-statement format, many of their fraudulent statements and strategies remained concealed from, or undetected by, Mazars.

17. As a result, shortly after some of the findings uncovered by OAG's investigation came to light in public filings to enforce OAG's investigative subpoenas, Mazars concluded that it had to end its long-term business relationship with Mr. Trump and the Trump Organization and withdraw the Statements it had compiled from 2011 to 2020. In a letter to the Trump Organization dated February 9, 2022, Mazars explained that it had "come to this conclusion based, in part, upon the filings made by the New York Attorney General on January 18, 2022,

our own investigation, and information received from internal and external sources," and advised "that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011—June 30, 2020, should no longer be relied upon." Mazars further instructed the Trump Organization to "inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon."

18. Mr. Trump's Statements of Financial Condition were repeatedly and persistently submitted to banks insured by the Federal Deposit Insurance Corporation for the purpose of influencing the actions of those institutions. The Statements were used to obtain and maintain favorable loans over at least an eleven-year period, including: (a) Deutsche Bank's extension of a $125 million loan (or combination of loans) in connection with the Trump Organization's purchase of the property known as Trump National Doral; (b) Deutsche Bank's financing of up to $107 million in debt in connection with the Trump International Hotel and Tower, Chicago, in 2012, as well as a $54 million expansion of that loan in 2014; and (c) Deutsche Bank's financing of up to $170 million in funds in connection with the Trump Organization's purchase and renovation of the Old Post Office property in Washington, DC.

19. As to each of those loans, the truthfulness and accuracy of the pertinent Statement, as certified by Mr. Trump, was a precondition to lending. Moreover, pursuant to the covenants of those loans, each year Mr. Trump or the trustees would submit a new Statement and certify its accuracy. Material misrepresentations on any loan document, including the Statements or the certifications as to their accuracy, would constitute an event of default under the terms of the loan agreements.

20. The Statements, along with other false representations, were also used repeatedly and persistently to obtain beneficial terms on insurance policies from insurers participating on the Trump Organization's surety program and directors and officers liability policies.[3]

21. The magnitude of financial benefit derived by Mr. Trump and the Trump Organization by means of these fraudulent and misleading submissions was considerable. Following the initiation of subpoena-enforcement litigation against Mr. Trump, and Mazars's withdrawal of ten years' worth of Mr. Trump's Statements of Financial Condition, Mr. Trump and the Trump Organization decided to repay hundreds of millions of dollars in debt early. But even that step, the equivalent of partial disgorgement, fails to account for substantial additional financial benefit obtained by Mr. Trump and the Trump Organization by means of the false and fraudulent Statements of Financial Condition. Mr. Trump and his operating companies obtained additional benefits from banks other than loan proceeds in the form of favorable interest rates that likely saved them more than $150 million over the prior ten-year period.

[3] Under the surety program, insurers underwrote surety bonds on behalf of the Trump Organization required for the company's business activities, primarily to secure judgments and mechanics liens and as needed on construction projects and for liquor licenses. Ordinarily, a surety underwriter requires the insured to put up collateral to secure the obligations assumed under the bonds, but here the underwriters waived the collateral requirements and accepted instead a personal indemnity from Mr. Trump coupled with the opportunity to review his Statement of Financial Condition. Under the directors and officers liability program, underwriters agreed to defend and indemnify the officers and directors of the Trump Organization in connection with any claims and investigations asserted against them arising out of their work for the company. As part of the underwriting negotiations, the insurers reviewed Mr. Trump's Statement of Financial Condition and questioned company executives about any pending or threatened claims and investigations.

22. The Statements were also critical to the overall success of the investment in the Old Post Office property in Washington, D.C. Based on its own statement, the Trump Organization won the bidding as part of "one of the most competitive selection processes in the history of" the General Services Administration. Critical to the success of that bid was a demonstration of the "financial wherewithal" of the Trump Organization through the submission of his Statement of Financial Condition. The favorable interest rates obtained from Deutsche Bank were instrumental in the financial performance of the investment, which ultimately led to "the record breaking sale of the Trump International Hotel, Washington, D.C.," and a financial benefit to the Trump Organization of more than $100 million in May 2022.

23. All of those benefits were derived from the improper, repeated, and persistent use of fraudulent and misleading financial statements and are, therefore, subject to disgorgement in this action under Executive Law § 63(12).

24. It is no defense to claims for disgorgement under § 63(12) that the Trump Organization may have made all payments due under the loans and insurance policies. The remedy of disgorgement is available to deprive a wrongdoer of illegal benefit regardless of whether any entity suffered a financial loss.

B. Relief Sought

25. In this proceeding, the People seek an order and judgment granting the following relief to remedy the substantial, persistent, and repeated fraudulent and misleading conduct occurring since 2011:

a. Cancelling any certificate filed under and by virtue of the provisions of section one hundred thirty of the New York General Business Law for the corporate entities named as defendants and any other entity controlled by or beneficially owned by Donald J. Trump which participated in or benefitted from the foregoing fraudulent scheme;

b. Appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and governmental authorities, at the Trump Organization, for a period of no less than five years;

c. Replacing the current trustees of the Donald J. Trump Revocable Trust with new independent trustees, and requiring similar independent governance in any newly-formed trust should the Revocable Trust be revoked and replaced with another trust structure;

d. Requiring the Trump Organization to prepare a GAAP-compliant, audited statement of financial condition audited by an independent auditing firm empowered to retain independent valuation personnel showing Mr. Trump's net worth, to be distributed to all recipients of his prior Statements of Financial Condition, with any statements of financial condition prepared for the next five years to also be subject to a GAAP-compliant audit;

e. Barring Mr. Trump and the Trump Organization from entering into any New York State commercial real estate acquisitions for a period of five years;

f. Barring Mr. Trump and the Trump Organization from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of five years;

g. Permanently barring Mr. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump from serving as an officer or director in any New York corporation or similar business entity registered and/or licensed in New York State;

h. Permanently barring Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

i. Awarding disgorgement of all financial benefits obtained by each Defendant from the fraudulent scheme, including all financial benefits from lenders and insurers through repeated and persistent fraudulent practices of an amount to be determined at trial but estimated to be $250,000,000, plus prejudgment interest; and

j. Granting any additional relief the Court deems appropriate.

II. THE PARTIES

26. The Attorney General is responsible for overseeing the activities of New York businesses and the conduct of their officers and directors, in accordance with the New York Executive Law and other applicable laws. She is expressly tasked by the Legislature with

policing any persistent or repeated fraud and illegal conduct in business. *See, e.g.*, Executive Law § 63(12).

27. Defendant Donald J. Trump is the beneficial owner of the collection of entities he styles the "Trump Organization." Approximately 500 separate entities collectively do business as the Trump Organization and operate for the benefit, and under the control, of Donald J. Trump. Among the entities that comprise the Trump Organization are:

a. Defendant Trump Organization, Inc. From May 1, 1981 to January 19, 2017, Mr. Trump was Director, President, and Chairman of the Trump Organization, Inc. From at least July 15, 2015 until May 16, 2016, Mr. Trump was the sole owner of the Trump Organization, Inc.

b. Defendant Trump Organization LLC, a limited liability company doing business in the State of New York with a principal place of business in New York, NY.

c. Defendant DJT Holdings LLC, a Delaware limited liability company with a principal place of business in New York, NY.

d. Defendant DJT Holdings Managing Member, a Delaware limited liability company registered to do business in New York, NY.

28. In addition, the Trump Organization incorporates a host of entities that either own property at issue in this action or received loans at issue in this action. Included among those entities are:

a. Defendant Trump Endeavor 12 LLC, a Delaware limited liability company registered to do business in New York, NY. Trump Endeavor 12 LLC owns the resort property doing business as Trump National Doral.

b. Defendant 401 North Wabash Venture LLC, a Delaware limited liability company that operates out of the Trump Organization offices in New York, NY. 401 North Wabash Venture LLC owns the building doing business as Trump International Hotel & Tower, Chicago.

c. Defendant Trump Old Post Office LLC, a Delaware limited liability company with its principal place of business in New York, NY. Trump Old Post Office LLC held a ground lease from the federal government to operate the property doing business as the Trump International Hotel, Washington, DC.

d. Defendant 40 Wall Street LLC, a New York Limited Liability Corporation, which holds a ground lease for an office building located at 40 Wall Street, New York, NY.

e. Respondent Seven Springs LLC is a New York limited liability company that owns the Seven Springs estate, consisting of 212 acres of property within the towns of Bedford, New Castle, and North Castle in Westchester County, NY.

29. Donald J. Trump served as the President and Chairman of the Trump Organization from May 1, 1981 to January 19, 2017. While serving as President of the United States, Mr. Trump remained the inactive president of the Trump Organization. After leaving office, Mr. Trump resumed his position as the president of the Trump Organization.

30. Defendant Donald J. Trump Revocable Trust is a trust created under the laws of New York that is the legal owner of the entities constituting the Trump Organization. The Donald J. Trump Revocable Trust was created on April 7, 2014 and amended by Second Amendment to the Trust dated January 17, 2017. The purpose of the trust is to hold assets for the exclusive benefit of Donald J. Trump. Mr. Trump is the sole beneficiary of The Donald J. Trump Revocable Trust.

31. A complete organizational chart of the entities held by the Donald J. Trump Revocable Trust, that was prepared by the Trump Organization in 2017 for the purposes of obtaining insurance coverage, is attached as Exhibit 2.

32. Defendant Donald Trump, Jr. is an Executive Vice President of the Trump Organization. He maintains a business office at 725 Fifth Avenue, New York, NY. Donald Trump, Jr. oversees the Trump Organization's property portfolio and is involved in all aspects of the company's property development, from deal evaluation, analysis and pre-development planning to construction, branding, marketing, operations, sales and leasing. Donald Trump Jr. is also responsible for all of the commercial leasing for the Trump Organization which includes Trump Tower and 40 Wall Street.

33. Defendant Ivanka Trump was an Executive Vice President for Development and Acquisitions of the Trump Organization through early January 2017. Among other responsibilities, Ms. Trump negotiated and secured financing for Trump Organization properties. While at the Trump Organization she directed all areas of the company's real estate and hotel management platforms. This included active participation in all aspects of projects, including deal evaluation, pre-development planning, financing, design, construction, sales and marketing, as well as involvement in all decisions relating to those activities—large and small. Among other duties, she negotiated the lease with the government and a loan related to the Old Post Office property. Ms. Trump also negotiated loans on Trump Organization properties at Doral and Chicago. On each of those transactions with Deutsche Bank, Ms. Trump was aware that the transactions included a personal guaranty from Mr. Trump that required him to provide annual Statements of Financial Condition and certifications.

34. After leaving the Trump Organization, Ms. Trump retained a financial interest in the operations of the Trump Organization through a number of vehicles, including an interest in the Old Post Office property through Ivanka OPO LLC. In a 2021 federal filing, Ms. Trump reported total income from Trump Organization entities of $2,588,449, including income from Ivanka OPO LLC, TTT Consulting, LLC, TTTT Venture LLC and Trump International Realty.

35. Defendant Eric Trump is an Executive Vice President of the Trump Organization, and Chairman of the Advisory Board of the Donald J. Trump Revocable Trust. He maintains a business office at 725 Fifth Avenue, New York, NY. Eric Trump is responsible for all aspects of management and operation of the Trump Organization including new project acquisition, development and construction. Eric Trump actively spearheaded the growth of Trump Golf including the addition of 13 golf properties since 2006.

36. Defendants Donald Trump, Jr. and Eric Trump took over management of the Trump Organization from Mr. Trump in 2017.

37. Defendant Allen Weisselberg was the Chief Financial Officer of the Trump Organization from 2003 until July 2021. During that time he maintained a business office at 725 Fifth Avenue, New York, NY. Among his responsibilities as CFO, from at least 2011 until 2020, Mr. Weisselberg supervised and approved the preparation of the valuations contained in the Statements of Financial Condition.

38. Defendants Donald Trump, Jr. and Allen Weisselberg were trustees of the Donald J. Trump Revocable Trust until Mr. Weisselberg resigned in June 2021. On information and belief, Donald Trump, Jr. is now the sole Trustee of the Donald J. Trump Revocable Trust. Donald Trump Jr. is named in both his personal capacity and as the Trustee of the Donald J. Trump Revocable Trust.

39. Defendant Jeffrey McConney is the Controller of the Trump Organization. He maintains a business office at 725 Fifth Avenue, New York, NY. Among his responsibilities as Controller, from 2011 to 2016, Mr. McConney prepared the valuations contained in the Statements of Financial Condition. From 2016 to the present, Mr. McConney supervised and approved the preparation of the valuations contained in the Statements of Financial Condition.

III. JURISDICTION, APPLICABLE LAW, AND VENUE

40. This enforcement action is brought on behalf of the People of the State of New York pursuant to the New York Executive Law.

41. Executive Law § 63(12) allows the Attorney General to bring a proceeding "[w]henever any person shall engage in repeated fraudulent or illegal acts or otherwise

demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business."

42. Fraudulent conduct as used in § 63(12) includes acts that have the "capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 107 (3d Dep't 2005), *aff'd on other grounds*, 11 N.Y.3d 105 (2008); *see also People v. Northern Leasing Systems, Inc*., 193 A.D.3d 67, 75 (1st Dep't 2021). The terms "fraud" and "fraudulent" are "given a wide meaning so as to embrace all deceitful practices contrary to the plain rules of common honesty, including all acts, even though not originating in any actual evil design to perpetrate fraud or injury upon others, which do tend to deceive or mislead." *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep't 2012). By its plain terms, Executive Law § 63(12) covers frauds committed by overtly false or fraudulent statements, by omission, or as part of a scheme to defraud. *See* Executive Law § 63(12) (defining the words "fraud" and "fraudulent" to include "*any* . . . misrepresentation, concealment, [or] suppression . . . .").

43. A violation of any federal, state, or local law or regulation constitutes "illegality" within the meaning of Executive Law § 63(12). *See, e.g.*, *Applied Card Sys.*, 27 A.D.3d at 106, 109; *Oncor Commc'ns, Inc. v. State,* 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995), *aff'd*, 218 A.D.2d 60 (3d Dep't 1996); *People v. Am. Motor Club, Inc.*, 179 A.D.2d 277 (1st Dep't 1992), *appeal dismissed*, 80 N.Y.2d 893; *State v. Winter*, 121 A.D.2d 287 (1st Dep't 1986). "It long has been recognized that the statute affords the Attorney General broad authority to enforce federal as well as state law, unless state action in the area of federal concern has been precluded utterly or federal courts have exclusive jurisdiction of the matter." *Oncor Commc'ns, Inc. v. State,* 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995), *aff'd*, 218 A.D.2d 60 (3d Dep't 1996).

Thus, if conduct violates a provision of New York's Penal Law . . . it may be the subject of an action for equitable relief on the basis of "illegality" under Executive Law § 63(12).

44. State laws other than Executive Law § 63(12) render unlawful certain fraudulent actions with respect to financial statements and their use. Falsification of business records is unlawful under the Penal Law—and is a felony when committed to aid or conceal the commission of another offense. *See, e.g.*, Penal Law § 175.10. The issuance of a false financial statement is likewise an offense under the Penal Law. *See, e.g.*, Penal Law § 175.45. A conspiracy—essentially, an agreement to commit an offense by a group of persons, and one overt act by one of the conspirators—is unlawful under the Penal Law as well. *See generally* Penal Law § 105.

45. Fraud or illegality, within the meaning of Executive Law § 63(12), may be the subject of an enforcement action if it is either "repeated" or "persistent." Such conduct is "repeated," § 63(12) instructs, if it involves either "any separate and distinct fraudulent or illegal act, or conduct which affects more than one person." Executive Law § 63(12). Thus, under the statute, "the Attorney-General [may] bring a proceeding when the respondent was guilty of only one act of alleged misconduct, providing it affected more than one person." *State of New York v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep't 1983).

46. The statute instructs that the term "persistent" includes the "continuance or carrying on of any fraudulent or illegal act or conduct." Executive Law § 63(12).

47. Among the equitable remedies available to the Attorney General under Executive Law § 63(12) is disgorgement, which is designed to deprive the wrongdoer of illegal benefit regardless of whether any entity suffered a financial loss. *See People v. Ernst & Young, LLP*, 114 A.D.3d 569, 569-70 (1st Dep't 2014) ("Thus, disgorgement aims to deter wrongdoing by

preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is 'immaterial'"). Multiple defendants may be jointly and severally liable for disgorgement under § 63(12) when they have participated in a common scheme. *See Fed. Trade Comm'n v. Shkreli*, No. 20 Civ. 706, 2022 WL 135026 (S.D.N.Y. Jan. 14, 2022). Disgorgement can also include salary and bonuses that are a result of fraudulent activity. *See, e.g., SEC v. Razmilovic*, 738 F.3d 14, 32 (2d Cir. 2013).

48. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants, and authority to grant the relief requested pursuant to Executive Law § 63(12).

49. Pursuant to C.P.L.R. § 503, venue is proper in New York County, because Plaintiff resides in that county, and because a substantial part of the events and omissions giving rise to the claims occurred in that county.

IV. FACTUAL ALLEGATIONS

50. The breadth of material presented here is considerable, necessitating a roadmap for the Court. This complaint presents verified allegations regarding scores of fraudulent, false, and misleading representations by Mr. Trump, the Trump Organization, and the other Defendants. The financial statements in question were issued annually; each contained a significant number of fraudulent, false, and misleading representations about a great many of the Trump Organization's assets; and most played a role in particular transactions with financial institutions. The substantial information presented in the complaint is organized in the following manner:

a. an overview of the relevant assets of Mr. Trump presented in the Statement (¶¶ 51(a) – 51(n));

b. a general description of the Statements for the relevant years, 2011 through 2021 (¶¶ 52 – 65);

c. a detailed discussion of the inflated valuations contained in the Statements for each relevant asset (¶¶ 66 – 558);

d. a detailed discussion of the loans procured and maintained by Mr. Trump and the Trump Organization using the false and misleading Statements ((¶¶ 559 – 675);

e. a detailed discussion of the insurance procured by Mr. Trump and the Trump Organization procured through the use of the false and misleading Statements and other material misrepresentations and omissions (¶¶ 676 – 714); and

f. a detailed discussion of the ongoing nature of the fraudulent scheme and conspiracy among the defendants (¶¶ 715 – 747).

A. Overview of Trump Organization Assets

51. In an effort to familiarize the Court with the pertinent assets reflected in the Statements of Financial Condition, OAG provides the following brief descriptions below:

a. **Cash, marketable securities, and cash equivalents.** This category of asset reflects cash controlled by Mr. Trump, or securities (such as publicly traded stocks) that are readily convertible to cash. Under GAAP, cash equivalents constitute short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates (such as a money market fund).

b. **Escrow and Reserve Deposits and Prepaid Expenses.** This category purports to include funds that belong to Mr. Trump but have been escrowed or subjected to some other restriction pursuant to a legal document such as a loan agreement.

c. **Trump Tower (commercial space) ("Trump Tower")**. Mr. Trump owns commercial space (office and retail) in a building at 725 Fifth Avenue in midtown Manhattan.

d. **Mr. Trump's triplex apartment ("Triplex").** Separately Mr. Trump owns an apartment in Trump Tower. This apartment is grouped with other assets in a category entitled "other assets" on the Statements of Financial Condition.

e. **4-6 East 57th Street ("Niketown").** Mr. Trump owns two ground leases that comprise a space adjoining Trump Tower. Mr. Trump pays rent on those ground leases to the landowners, and those ground leases are subject to long-

term rent schedules and adjustments. The retail space for many years was leased to Nike and is known as "Niketown."

f. **40 Wall Street ("40 Wall Street").** 40 Wall Street is a building located in lower Manhattan. Mr. Trump purchased a ground lease pertaining to the building in 1995 for $1.3 million. The building was completed in 1930 and contains a mix of office and retail space.

g. **Trump Park Avenue ("Trump Park Avenue").** This building, located at 502 Park Avenue in midtown Manhattan is a condominium that contains residential and retail units owned by Mr. Trump.

h. **Seven Springs ("Seven Springs").** Mr. Trump purchased this estate traversing the towns of Bedford, North Castle, and New Castle in Westchester County, New York in 1995 for $7.5 million. The estate consists of two large homes, undeveloped land, and a few other buildings.

i. **Trump International Hotel & Tower, Chicago ("Trump Chicago").** This condominium-hotel building is, or has been, comprised of a residential component and a hotel component. The building is located in Chicago, Illinois. Since 2009, its value has been excluded from the Statements of Financial Condition because, according to sworn testimony, Mr. Trump did not want to take a position on the Statements that would conflict with a position about the property's value he has represented to tax authorities. Investigation revealed that the tax position taken was that the property had become worthless according to Mr. Trump, and thus formed the basis of a substantial loss under the federal tax code. This building is relevant to this action because Mr. Trump and the Trump Organization obtained bank loans on the building or its components as collateral, and the Statements were part of that loan transaction.

j. **Trump Old Post Office, Washington, DC ("OPO").** This property refers to the "Old Post Office" on Pennsylvania Avenue in Washington, D.C. The Trump Organization obtained a ground lease from a federal agency (the General Services Administration) to redevelop this property into a luxury hotel doing business as Trump International Hotel, Washington, DC.

k. **Club Facilities and Related Real Estate.** The "Clubs" category of assets—for which no itemized value for any individual asset was ever disclosed—is comprised of the following golf and social clubs in the United States and abroad (among others) that are owned or leased by Mr. Trump, and collectively represent the single largest itemized asset on the Statement in each year:

    i. **Mar-a-Lago Social Club** ("**Mar-a-Lago**") in Palm Beach County, Florida;

    ii. **Trump National Golf Club in Briarcliff Manor ("TNGC Briarcliff")**, in Westchester County, New York;

iii. **Trump National Golf Club in Hudson Valley** ("**TNGC Hudson Valley**"), located in Dutchess County, New York, a property held via a ground lease;

iv. **Trump National Golf Club, Jupiter ("TNGC Jupiter")**, located in Palm Beach County, Florida;

v. **Trump National Golf Club, Los Angeles** ("**TNGC LA**"), in southern Los Angeles County, California;

vi. **Trump National Golf Club, Bedminster**, in Bedminster, New Jersey;

vii. **Trump National Golf Club, Washington, DC ("TNGC DC")**, located in Loudoun County, Virginia;

viii. **Trump National Golf Club – Philadelphia ("TNGC Philadelphia")**, located in Camden County, New Jersey;

ix. **Trump National Golf Club, Charlotte** ("**TNGC Charlotte**"), located in Iredell County, North Carolina;

x. **Trump National Doral** ("**Doral**"), located in western Miami-Dade County, Florida;

xi. **Trump International Golf Club in Scotland, Aberdeen ("Trump Aberdeen")**, located in Balmedie, Scotland; and

xii. **Trump International Golf Club in Scotland, Turnberry ("Trump Turnberry")**, located in Ayrshire, Scotland.

l. **Partnerships and Joint Ventures.** Mr. Trump's Statements of Financial Condition incorporate values for the following two assets classified as partnerships and joint ventures:

i. **1290 Avenue of the Americas in New York, New York ("1290 Avenue of the Americas")** and **555 California Street in San Francisco, California ("555 California") (collectively, "Vornado Partnership Interests")**. This asset category, in general terms, refers to Mr. Trump's 30%, limited partnership interests in entities that own the two buildings. The Vornado Realty Trust, controlled by others and not by Mr. Trump, owns the remaining 70% stake and functions as the general partner that is empowered to make business decisions for the partnership.

ii. **Trump International Hotel and Tower – Las Vegas, Nevada ("Las Vegas").** This asset refers to Mr. Trump's 50% interest in a joint venture, with Philip Ruffin, in a hotel condominium tower in Las Vegas, Nevada.

m. **Real Estate Licensing Developments ("Licensing Value").** This category of assets claims to value potential future revenue that might be earned from purported licensing agreements with third parties.

n. **Other Assets.** This catch-all category includes a range of assets not valued elsewhere on the Statements of Financial Condition. All of the asset values contained in this category are summed to generate an overall figure for the category; individual asset values are not disclosed. Assets in this category include, depending on the year, the Triplex, Seven Springs, aircraft, a management company, loans to Mr. Trump's family members, and various homes (such as in Palm Beach, Florida; Beverly Hills, California; and the island of St. Martin).

B. Overview of the Statements of Financial Condition

52. Since no later than 2004, Mr. Trump and the Trump Organization have prepared an annual "Statement of Financial Condition of Donald J. Trump." Since 2017, commencing with the Statement for the year ending June 30, 2016, the Statements have been issued by the Trustees of the Donald J. Trump Revocable Trust. These Statements contain Mr. Trump's or the Trustees' assertions of Mr. Trump's net worth, based principally on asserted values of particular assets that Mr. Trump or the Trustees evaluated, minus outstanding liabilities.

53. From 2004 until 2020, Mr. Trump's Statements of Financial Condition were compiled by accounting firm Mazars. Mazars ceased work on the Statements after issuing the Statement reflecting Mr. Trump's financial condition as of June 30, 2020.

54. As alleged in greater detail below, the process for preparing the annual Statement of Financial Condition remained the same throughout the period 2011 through 2021. The valuations for the Statements would be prepared by staff at the Trump Organization, working at the direction of Donald J. Trump or his trustees, Allen Weisselberg, and Jeffrey McConney. Those valuations, which were reflected in an Excel spreadsheet, and the supporting documents would be forwarded to Mazars, which would generate a compilation report of those valuations. In other words, Mazars would generate the document that became the Statements. A draft was

sent back to the Trump Organization; while Mazars might ask questions of the Trump Organization, it did not conduct an audit or review of the Statements. The responsibility for insuring that the Statements were prepared in accordance with GAAP lay with the Trump Organization. Mr. Trump and his trustees were responsible for providing full and complete information to Mazars.

55. As the engagement letters entered into between the Trump Organization and Mazars made clear, other than expressly enumerated exceptions, the Statements of Financial Condition were to be prepared in accordance with GAAP. For example, as the 2015 engagement letter reads, "You"—referring to Allen Weisselberg as Chief Financial Officer of the Trump Organization—"are responsible for . . . the preparation and fair presentation of the financial statements in accordance with" GAAP; for "designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements"; and for "preventing and detecting fraud."

56. Similarly, the engagement letters specifically obligated the Trump Organization to provide Mazars with "access to all information of which you are aware [that] is relevant to the preparation and fair presentation of the financial statement, such as records, documentation, and other matters," and made clear that Mr. Weisselberg, as the Trump Organization's CFO, was responsible for "the selection and application of accounting principles," and for "establishing and maintaining internal controls." The engagement letters similarly obligated the Trump Organization to "mak[e] all financial records and related information available to [Mazars] and for the accuracy and completeness of that information."

57. In addition to the engagement letters, for each year from 2011 to 2020, Mr. Weisselberg as CFO of the Trump Organization signed a representation letter submitted by the

Trump Organization to Mazars in connection with Mazars's actual issuance of the completed Statement of Financial Condition. In the letter, Mr. Weisselberg represented that the Trump Organization was "responsible for the information provided to Mazars for each annual compilation," and that the information was "presented fairly and accurately in all material respects."

58. In February 2022, Mazars advised the Trump Organization by letter that it was ending its long-term relationship with Mr. Trump and the Trump Organization, and that the Statements for the years ending June 30, 2011 through June 30, 2020 should not be relied upon.

59. After Mazars ended the relationship, another accounting firm, Whitley Penn LLP, compiled the June 30, 2021 Statement.

60. The relevant Statements of Financial Condition covering the period from 2011 to 2021 are attached as Exhibits 3 – 13.

61. As noted, Mr. Trump or the Trustees would prepare valuations and data for the Statement, which Mazars (or for 2021, Whitley Penn) would then compile. Each year the Trump Organization personnel (including Mr. Weisselberg and Mr. McConney) would prepare a supporting data spreadsheet containing the valuations for the Statement and backup material supporting those valuations. Mazars (or for 2021, Whitley Penn) then compiled that information into financial-statement format.

62. Until 2016, those supporting data spreadsheets were prepared by Trump Organization Senior Vice President and Controller, Defendant Jeffrey McConney, and were known as "Jeff Supporting Data," with "Jeff" referring to Mr. McConney. Defendant Allen Weisselberg, the Trump Organization's Chief Financial Officer, reviewed Mr. McConney's work on the spreadsheets.

63. For the 2016 Statement forward, and beginning on or about November 16, 2016, Mr. Weisselberg and Mr. McConney enlisted a junior employee, only a few years out of college and with no professional accounting training or knowledge of GAAP, to be in charge of preparing the valuations that would feed into the annual Statement—subject to their direction and control.

64. All of the supporting data spreadsheets, whether prepared by Mr. McConney or the junior employee under his direction, are a principal locus of Defendants' repeated and persistent fraudulent conduct. The relevant supporting data spreadsheets from 2011 to 2021 are attached as Exhibits 14 – 24.

65. The Trump Organization and its affiliates used the Statements to induce counterparties to provide funding or insurance on favorable terms or to comply with the terms of ongoing covenants with respect to transactions in which the parties were already engaged. In particular, the Trump Organization and its affiliates and senior executives, including Mr. Trump and the other company employees named as Defendants, submitted the Statements or arranged for their submission to counterparties, including financial institutions, other lenders, and insurers, as more fully described below.

C. The Asset Values and Associated Descriptions Presented in the Statements Were Fraudulent, Misleading, and Not Presented in Accordance with GAAP.

1. Cash and Cash Equivalents/Marketable Securities

66. As a general matter, when a GAAP-compliant financial statement reports "cash," it is referring to an amount of liquid currency or demand deposits available to the person or entity whose finances are described in the statement. *See* Financial Accounting Standards Board ("FASB"), Master Glossary - Cash. Similarly, when a financial statement reports "cash equivalents," it is reporting "short-term, highly liquid investments" that both can be "readily

converted to known amounts of cash" and is "so near their maturity that they present insignificant risk of changes in value because of changes in interest rates." *See* FASB, Master Glossary – Cash Equivalents. When a financial statement refers to "marketable securities," it refers to debt or equity securities for which market quotations are available, and such assets are valued at "their quoted market prices." *See, e.g.*, FASB, Accounting Standards Codification ("ASC") 274-10-35-5.

67. Mr. Trump's Statements of Financial Condition misrepresented his holdings of cash, cash equivalent and marketable securities. Most notably, for several years included in his "cash" were the amounts in the Vornado Partnership Interests in which Mr. Trump had a minority stake and did not control. In some years these restricted funds accounted for almost one-third of all the cash reported by Mr. Trump (for example, they accounted for $24 million of the total $76 million in cash reported for 2018).

68. Mr. Trump has a 30% limited partnership stake in the Vornado Partnership Interests. Vornado Realty Trust ("Vornado"), in which Mr. Trump has no ownership interest, holds the other 70% stake in the Vornado Partnership Interests and functions as the General Partner.

69. Under the partnership agreements governing the Vornado Partnership Interests, the General Partner has "full control over the management, operation and activities of, and dealings with, the Partnership Assets and the Partnership's properties, business and affairs," and "the Limited Partners shall not take part in the management of the business or affairs of the Partnership or control the Partnership business." Moreover, "[t]he Limited Partners may under no circumstances sign for or bind the Partnership." The partnership agreements provide for cash

distributions in an amount, if any, that is "determined by the General Partner in its sole discretion."

70. Mr. Trump was well aware of the restricted and limited nature of his 30% interest because he personally took part in extensive, contentious litigation regarding these partnerships in which control over partnership-held cash and partnership business choices was expressly addressed. *See, e.g.*, *Trump v. Cheng*, 9 Misc. 3d 1120(A), at *7 (Sup. Ct. N.Y. Cty. Sept. 14, 2005) (quoting definition of "Cash Available for Distribution").

71. As the court explained in that litigation, "[t]he Agreements do not obligate the general partners to distribute partnership assets or sale proceeds to the limited partners prior to [the partnerships' dissolution date in 2044]," and instead during the partnerships' existence provide for distributions of cash in the general partner's "sole discretion." *Id.* at *7.

72. Internal Trump Organization records acknowledge that cash residing in the Vornado Partnership Interests was not Mr. Trump's to access at his whim. Rather, as those records show, Trump Organization accounting personnel knew such funds could be distributed at Vornado's discretion only and that the prospect of a distribution was unknown: "Although there could be operating profits, distributions are at the discretion of Vornado at a rate of 30% to Trump. At this point we do not have all of the data that goes into Vornado's decision making, thus we are attributing no distribution for these properties."

73. In a memo dated March 23, 2016, from Allen Weisselberg to Donald Trump, Jr., Ivanka Trump and Eric Trump, entitled "2015 Corporate Operating Financial Summary," Mr. Weisselberg noted that "Included in the Net Operating Cash Flow/Operating Profit above are 30% of the operating profits for 1290 Avenue of the Americas and 555 California Street. However, distributions are at the discretion of Vornado."

74. Contrary to what is reflected in these internal records (which are consistent with the terms of the governing partnership documents and previous court rulings of which Mr. Trump was aware), Mr. Trump's Statement of Financial Condition from at least 2013 through 2021 included cash held by the Vornado Partnership Interests as Mr. Trump's own "cash" or similarly identified liquid assets (referred to in the Statements as either "cash equivalents" or "marketable securities"), often constituting a considerable portion of Mr. Trump's reported liquidity.

75. The chart below shows the amount of cash attributable to Mr. Trump's 30% stake in the Vornado Partnership Interests over which he exercised no control and should have been excluded under GAAP:

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests
2013	$14.2 million
2014	$24.7 million
2015	$32.7 million
2016	$19.6 million
2017	$16.5 million
2018	$24.4 million
2019	$24.7 million
2020	$28.3 million
2021	$93.1 million

76. The decision to include cash in the Vornado Partnership Interests, as if it were Mr. Trump's own cash as reflected in the Statements and contrary to GAAP, was made by Mr. McConney and/or Mr. Weisselberg and was approved by Mr. Trump or his attorney-in-fact Donald Trump Jr.

2. Escrow and Reserve Deposits and Prepaid Expenses

77. Mr. Trump's Statements of Financial Condition, beginning with the June 30, 2014 Statement of Financial Condition, also included in the total for the "escrow and reserve deposits

and prepaid expenses" category of assets, 30% of the escrow deposits or restricted cash held on the balance sheets of the Vornado Partnership Interests.

78. With respect to the "escrow and reserve deposits and prepaid expenses" category of assets, the Statements of Financial Condition generally identify when, for one of Mr. Trump's wholly owned properties, "[f]unds in the amount of [X] have been escrowed pursuant to" a legal document, such as a loan. The implication is that Mr. Trump is valuing escrowed funds that are his own but that are merely held in escrow or otherwise subject to restriction.

79. That description was false and misleading with respect to escrowed or restricted cash held by the Vornado Partnership Interests but included within the total amount listed for "escrow and reserve deposits and prepaid expenses" as if they were Mr. Trump's escrowed funds.

80. The chart below shows the total "escrow and reserve deposits and prepaid expenses" attributable to Mr. Trump's 30% stake in the Vornado Partnership Interests over which he exercised no control and should have been excluded under GAAP:

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests
2014	$20.8 million
2015	$15.98 million
2016	$14.47 million
2017	$8.75 million
2018	$8.18 million
2019	$11.2 million
2020	$7.11 million
2021	$12.7 million

81. As with assertions regarding funds held by Vornado Partnership Interests and listed as Mr. Trump's "cash" identified above, these escrowed funds held by Vornado

Partnership Interests were not Mr. Trump's own funds, and their inclusion as Mr. Trump's own escrowed or restricted funds in each Statement was false and misleading.

3. Trump Park Avenue

82. Trump Park Avenue is included as an asset on Mr. Trump's Statement of Financial Condition for the years 2011 through 2021 with values ranging between $90.9 million and $350 million.

83. The valuation of the building was based on estimates of both the valuation of the commercial space and unsold residential condominium units in the building. The unsold residential condominium units owned by Mr. Trump or the Trump Organization represented the lion's share of reported value for this property (in excess of 95% in some years). For example, in 2011, the commercial space was valued at $15 million based on an estimate prepared by Donald Trump, Jr. The unsold residential condominium units were valued at $293 million.

84. Based on an outside appraisal and internal (but undisclosed) estimates of market value prepared by the Trump Organization, the values for the unsold residential units at Trump Park Avenue asserted in the Statements were false and misleading.

85. An appraisal was performed in 2010 by the Oxford Group in connection with a $23 million loan from Investors Bank. As the appraisal identified, the collateral consisted of residential units (12 of which were rent stabilized), two commercial spaces, and six storage spaces. The appraisal valued the collateral at $72.5 million, of which approximately $55.1 million was derived from the residential units and storage spaces. The appraisal valued the 12 rent-stabilized units at $750,000 total, noting that the rent-stabilized units "cannot be marketed as individual units" for sale because the "current tenants cannot be forced to leave." The Trump Organization was well aware of the rent-stabilized nature of many units at the property, as any landlord would be. Indeed, Donald Trump, Jr. testified that the rent-stabilized tenants at the

building were, "the bane of [his] existence for quite some time." The Trump Organization also engaged in litigation regarding rent-stabilization at the property and obtained particular types of insurance for the rent-stabilized units.

86. The Trump Organization had a copy of the Oxford Group appraisal in its own files, and it was integral to the company's loan from Investors Bank, including to the release of the collateral as unsold units were sold.

87. Notwithstanding this 2010 appraisal, and the Trump Organization's knowledge that numerous units at the property were rent-stabilized, Mr. Trump's Statements of Financial Condition in 2011 and 2012 valued the unsold residential units in Trump Park Avenue without regard for those restrictions or the appraisal's conclusion. The result was a valuation of more than $292 million, or roughly six times the 2010 appraised value attributable to the residential units and storage spaces.

88. In July 2020, the Trump Organization received an appraisal with a value of $84.5 million but on the 2020 Statement the Trump Organization valued Trump Park Avenue at $135.8 million.

89. The Trump Organization did not disclose to Mazars either the 2010 appraisal, the 2020 appraisal, or that several of the unsold units were subject to rent stabilization in connection with the Statement of Financial Condition engagements from 2011 to 2020.

90. The lead accountant for the compilation engagement, Donald Bender, testified that he was "shocked by the size of the discrepancy" between the value for the rent stabilized units in the 2010 appraisal and the Trump Organization valuation figures provided for the rent stabilized units in the Statements of Financial Condition. He also stated that he would not have issued the Statements with the values the client provided for Trump Park Avenue if he had been

aware of the 2010 appraisal, the 2020 appraisal, or the fact that several units were rent stabilized and that he found the failure to disclose this information.

91. Additionally, the Trump Organization routinely prepared estimates of current market value for unsold residential units at Trump Park Avenue that were far lower than the values reported on Mr. Trump's Statements of Financial Condition.

92. In the Statements of Financial Condition for 2011 through 2015 (the last of which was finalized in March 2016), the Trump Organization used offering plan prices to value unsold residential condominium units at Trump Park Avenue—not estimates of current market value.

93. But as far back as 2012 (and perhaps earlier), the Trump Organization's in-house real estate brokerage arm (Trump International Realty) prepared Sponsor Unit Inventory Valuation spreadsheets reflecting *both* offering plan prices and *current market values* based on actual market data that included unsold units at Trump Park Avenue.

94. Trump Organization employees used these "Sponsor Unit Valuation Spreadsheets"—reflecting internal estimates of market value and offering plan prices—for day-to-day operations and business planning purposes. But when they wanted to present a higher value for Mr. Trump's Statement, they disregarded the company's actual internal market valuations and instead reported offering plan prices that bore no necessary connection at the time to any market estimate.

95. The result was a classic "two sets of books" situation: one internal set of records reached one conclusion regarding market value, but the figure presented on Mr. Trump's Statement was considerably higher:

Year	Total Offering Plan Price used for Statement of Financial Condition	Total Current Market Value Prepared by Trump	Difference in Value
2012	$293,122,750	$236,425,000	$56,697,750
2013	$326,854,500	$285,795,000	$41,059,000
2014	$283,051,500	$246,265,000	$36,786,500

96. What is more, in nearly every instance in which this conduct occurred, the Trump Organization concealed its actual market value estimates from Mazars—sending the accounting firm only the portion of the "Sponsor Unit Valuation Spreadsheet" containing the offering plan prices and omitting the actual market value estimates. In one year, the Trump Organization did send both portions of the spreadsheet—but later deleted the actual market value estimates and directed the use of the offering plan prices.

97. Mr. Bender stated that the failure of the Trump Organization to provide the current market value estimates in connection with the Statement of Financial Condition engagements, where offering prices were used to value Trump Park Avenue, was inconsistent with their obligation to provide complete and accurate information and that it was misleading.

98. The Trump Organization's own conduct beginning in late 2016 or early 2017 reflects an understanding that reporting offering plan prices as the estimated current values of unsold Trump Park Avenue units—rather than its own, lower assessment of these units' actual current market values (albeit still inflated due to ignoring the impact of rent stabilization)—was incorrect and misleading. Beginning with the June 30, 2016 Statement of Financial Condition—finalized in March 2017—the Trump Organization changed its practice and began reporting its current market value estimates for purposes of that Statement.

99. But even the "Sponsor Unit Valuation Spreadsheets" were grossly inflated because they did not include any reductions to account for the rent-stabilized units. If they had, the valuation of Trump Park Avenue would have been significantly lower based on the information available to the Trump Organization from the 2010 appraisal. For instance, in 2011 and 2012 the 12 rent stabilized units were valued collectively at $49,596,000—a rate over 65 times higher than the $750,000 valuation for those units in the 2010 appraisal, which was based on their rent-stabilized status.

100. Valuations in 2013 through 2021 similarly ignored the restrictions imposed by rent-stabilization laws on the rent-stabilized units owned by Mr. Trump or the Trump Organization.

101. The junior employee tasked with preparing the Statements of Financial Condition beginning in November 2016 was aware that some of the unsold apartments at Trump Park Avenue were rent stabilized, but did not consider or discuss with anybody whether to factor rent stabilization into the valuations, which did not account for rent stabilization at all.

102. In addition to the grossly inflated values for the unsold apartments, the descriptions on Mr. Trump's Statements of Financial Condition reflecting the manner in which those valuations were reached are inaccurate and misleading. In particular, the Statements of Financial Condition from at least 2011 through 2019 reflect, in sum and substance, that the reported values were **"**based upon an evaluation made by Mr. Trump in conjunction with his associates *and outside professionals*," thereby leading the reader to believe that the manner of valuation included consultation with outside professionals.

103. But there was no consultation with any outside professional in connection with reporting the value of unsold residential condominium units at Trump Park Avenue for the Statement of Financial Condition in those years.

104. In 2020, Mr. McConney was interviewed by OAG as part of its investigation and asked about various references to "outside professionals" on the Statements of Financial Condition. After that interview, the Trump Organization changed the wording for the 2020 Statement, omitting any representation that any particular valuation was reached in consultation with "outside professionals" and instead listing outside professionals as merely one factor that may have been "applicable" in some unspecified manner.

105. The Trump Organization's abrupt removal of any specific references to consultation with outside professionals in connection with specific valuations is a tacit admission that such references in prior years were inaccurate and misleading.

106. Additionally, some of the unsold units were reported at values that were several times the prices Mr. Trump had agreed to sell them. For one of the unsold residential units, a penthouse apartment ("Penthouse A") rented by Ivanka Trump starting in 2011, Mr. Trump's Statement of Financial Condition reported a value much higher than the price at which Ms. Trump had been granted an option to purchase the unit in a lease that also granted her a rental payment substantially below the market rent for similar units in the building.

107. Ms. Trump's rental agreement for Penthouse A in Trump Park Avenue included an option to purchase the unit for $8,500,000. But in the 2011 and 2012 Statements of Financial Condition, this unit was valued at $20,820,000—approximately two and a half times as much as the option price, with no disclosure of the existence of the option. For the 2013 Statement of

Financial Condition, the unit was valued at $25,000,000—more than three times the option price, again, with no disclosure of the existence of the option.

108. In June 2014, Ms. Trump was given an option (which automatically vested the next year) to purchase a different, larger penthouse unit ("Penthouse B") at Trump Park Avenue for $14,264,000. That unit was valued at more than three times as much on the 2014 Statement—the unit's $45 million offering plan price on the 2014 Statement of Financial Condition. In that year, Ms. Trump's option to purchase the unit at a steep discount was included in a lease in which she was charged a rental payment substantially below the market rent for similar units in the same building.

109. The Statement of Financial Condition for Trump Park Avenue in 2015 reflected the option price ($14,264,000) as the value for the unit instead of the much higher offering plan price ($45,000,000) that had been used in the 2014 Statement.

110. From 2016 to 2020 the value of Penthouse B was listed at the price of $14,264,000 with a notation appearing in 2018 and forward that this price was "per rental agreement."

111. Mr. Bender told the Trump Organization that reporting an offering plan price for a unit instead of the option price at which the Trump Organization already had agreed to sell the unit was inappropriate and urged that the option price be reported instead. He repeatedly over several years had to tell the Trump Organization to revise their valuations downward to account for the option.

112. However, even the option price reported by the Trump Organization was inaccurate. In December 2016, Donald J. Trump, Ivanka Trump, and Jared Kushner signed a second amendment to the lease which lowered the option price to $12,264,000.

4. 40 Wall Street

113. The Trump Organization, through the entity 40 Wall Street LLC, a New York Limited Liability Company, owns a "ground lease" pertaining to 40 Wall Street. In other words, it holds a leasehold interest in the land and buildings on the land, but pays rent (known as ground rent) to the landowner.

114. By the terms of the ground lease, the rent on 40 Wall Street gradually increases over a series of years, with a reset to a percentage of market value in 2032 based on the overall value of the building. A "reset" is typically a significant event in a ground lease, because it can result in the holder of the lease paying substantially more rent to the landowner.

115. As indicated in the chart below, the values derived by Mr. Trump and the Trump Organization for this leasehold interest far exceeded the values determined by professionals in lender-ordered appraisals for the same property, including an unreasonably inflated lender appraisal prepared in 2015 that the Trump Organization sought to unduly influence:

Statement Year	Statement Valuation	Lender-Ordered Appraisal
2011	$524,700,000	$200,000,000
2012	$527,200,000	$220,000,000
2013	$530,700,000	
2014	$550,100,000	
2015	$735,400,000	$540,000,000
2016	$796,400,000	
2017	$702,100,000	
2018	$720,300,000	
2019	$724,100,000	
2020	$663,600,000	
2021	$663,600,000	

116. From 2011 through 2015, the supporting data for Mr. Trump's Statement of Financial Condition reported a valuation for 40 Wall Street that was calculated using an "income capitalization approach," a method for estimating the value of real property based on the net operating income, or NOI, the property generates. Under this valuation method, a property's NOI is divided by a capitalization rate to arrive at an estimate of market value. (Because the value is directly proportional to NOI and inversely proportional to the capitalization rate, the *higher* the NOI or *lower* the capitalization rate, the higher the value.)

117. Net operating income is typically defined as "[t]he actual or anticipated net income that remains after all operating expenses are deducted from the effective gross income but before mortgage debt service and book depreciation are deducted." Appraisal Institute, The Dictionary of Real Estate Appraisal 158 (6th ed. 2015).

118. For the Statements from 2011 through 2015, the Trump Organization routinely inflated the leasehold's value on the Statements of Financial Condition by inflating the NOI for the building and utilizing unrealistically low capitalization rates.

119. Capital One (which held a $160 million mortgage on the property at the time) raised substantial concerns about cash flow at the property as far back as August and September 2009, leading to in-person meetings with Mr. Trump, Mr. Weisselberg, and others. At one of those meetings, Mr. Trump said that if the bank tried to restructure the loan because of a low loan-to-value based on a bank appraisal, he would counter a low appraisal by creating a Trump University lease for the vacant space and then order his own appraisal. According to Mr. Trump, the lease would "pump up" the value and the net result would be either a third appraisal or some sort of arbitration or litigation.

120. Those discussions led to a loan modification executed in 2010 that attached the Trump Organization's own 2010 budget for the property. That 2010 budget projected for 2011 an NOI of just over $4.4 million.

121. Yet for the 2011 Statement, Mr. Trump used an NOI figure of $26.2 million—nearly six times the budget projection—to derive a grossly inflated value for the property of $524.7 million.

122. Outside appraisals further demonstrate that Mr. Trump's valuation of 40 Wall Street was false and misleading. In connection with the 2010 Capital One loan modification, an appraisal was performed by Cushman & Wakefield, Inc. ("Cushman") valuing the Trump Organization's interest at $200 million as of August 1, 2010. Cushman performed similar appraisals for the bank in 2011 and 2012 reaching valuations in that same range.

123. A key component of valuing Mr. Trump's interest in 40 Wall Street in the 2012 appraisal was the reset of the ground lease in 2032. As noted above, a ground lease reset is a significant event because it can substantially increase the rent the leaseholder will have to pay. Any purchaser of Mr. Trump's interest in the ground lease at 40 Wall Street would have been keenly focused on the terms of the ground lease and of any rent reset. The 2012 appraisal concluded that the ground lease would reset from $2.8 million in rental expenses to more than $15.5 million beginning on January 1, 2033. Unlike professional appraisals of the ground lease, the Trump Organization's valuations ignored the reset entirely in the 2011 to 2015 valuations.

124. The Trump Organization had the 2010 appraisal in its possession when it prepared the 2011 Statement. In addition, Mr. Weisselberg was aware that an appraisal of 40 Wall Street from the 2010 to 2012 time period had valued the property in the $200 million range prior to finalizing and issuing the 2012 Statement, but he nevertheless determined, along with Mr.

Trump, to assign the property a much higher value for purposes of the Statements of Financial Condition. The value for 40 Wall Street listed on the Statements of Financial Condition was $524.7 million in 2011, $527.2 million in 2012, and $530.7 million in 2013. These values are more than twice the value reached by the professional appraisals noted above.

125. In 2015, the Trump Organization was able to negotiate favorable terms for a new loan working through Allen Weisselberg's son, then an employee at Ladder Capital Finance ("Ladder Capital"), an originator of securitized loans. The Ladder Capital loan would replace the Capital One loan based on an inflated appraisal prepared by Cushman. The 2015 appraisal did not reflect a good faith assessment of value; rather, it used false and misleading information and assumptions to arrive at a pre-determined value under pressure from the Trump Organization and Ladder Capital.

126. Internal worksheets prepared by Cushman showed consideration of a Ladder Capital valuation of $600 million and a Trump valuation of $533 million, which was calculated by dividing $160 million (the amount of the loan the Trump Organization was seeking) by .30 (which would generate a loan-to-value for the transaction of 30 percent.)

127. In preparing the 2015 appraisal, Cushman used unreasonably aggressive assumptions involving the discount rate and capitalization rate that contradicted the assumptions used in its earlier appraisals, and included a number of demonstrably false assumptions and representations. Among other things:

a. The appraisal assumed market rents for the building that were well in excess of any lease signed by the Trump Organization in the recent past. In fact, the appraisal used those inflated market rents despite including six leases effective as-of June 2015 – the same month as the appraisal – that were 10-17% below the market rents used by Cushman.

b. Cushman was well aware that rents in the building were not increasing commensurate with the assumptions in the appraisal. On June 18, 2015, Robert Nardella, the senior appraiser on the project and a Cushman Executive Managing

Director, emailed the other appraisers on the project as an "fyi" a piece from the "Real Deal" about a Wall Street Journal article in 2012 describing the "aggressive leasing deals" Mr. Trump was offering on 40 Wall Street and how rents "are essentially unchanged" from 15 years ago.

c. The appraisal included as part of the rent roll a $1.4 million dollar lease with Dean & Deluca, even though the lease was still under negotiation and had not yet been signed. While Dean & Deluca did eventually sign a lease for the space, it never commenced operations in the building, it declared bankruptcy, and the Trump Organization sued in federal court for unpaid rent.

d. The appraisal understated certain expenses for the building. For example, the appraisal recited management fees and expenses of $100,000 per year for 2012, 2013 and 2014, despite audited financials for the building showing management fees of $894,959 in 2012, $1,007,988 in 2013 and $939,689 in 2014. The appraisal assumed future management fees and expenses of $349,562, when actual management fees, per the audited financials for 40 Wall Street, were $1,211,909.

128. Initially, Cushman's efforts were not enough to reach the $533 million value the Trump Organization urged as the target. The initial draft of the appraisal came in at a valuation of $500 million on June 18, 2015.

129. Over the next week, Ladder Capital and the Trump Organization worked to manipulate the appraisal figure by unreasonably lowering expenses (thus increasing net income), in some instances by revising the building's budget to reclassify repeated annual costs as "one time expenses."

130. Ultimately, the final appraisal came to a valuation of $540 million through a number of unreasonable adjustments, including reducing costs and changing the assumptions concerning the ground lease.

131. Under the terms of the ground lease for 40 Wall Street – as outlined in the 2015 appraisal – in "2033 the lease payments are revalued to the greater of either: (a) 6.0% of [the] then value of the land considered as vacant and unimproved but with the right to construct a 900,000 square foot office building with grade retail; or, (b) 85.0% of the then lease payments."

Cushman applied those terms in each of its earlier 2011 and 2012 appraisals and in its June 18, 2015 draft appraisal. But in the final 2015 appraisal, Cushman assumed, for the first time, that there would be a 10% reduction in the square footage to account for "zoning floor area" based on mechanical space in the building. By applying this reduction for the first time, the ground lease reset was reduced from more than $16 million to $9.6 million. Incongruously then, while the value of the building purportedly more than doubled from 2012 to 2015, the ground lease reset, based on the value of the building, purportedly dropped.

132. But for the purposes of the 2015 Statement of Financial Condition, even this increase was not enough for Mr. Trump and the Trump Organization. The Statement of Financial Condition as of June 30, 2015 valued the building at $735.4 million—more than a 35% increase over the already inflated $540 million Cushman appraisal of that same date.

133. The Trump Organization arrived at a $735.4 million valuation for Mr. Trump's 2015 Statement using tactics similar to those employed on other assets previously. In particular, the Trump Organization provided only a 13-page summary of the already-inflated $540 million appraisal to Mazars—withholding the remainder of the document, including the comparable sales utilized and capitalization rate information, such as that the appraiser concluded a 4.25% capitalization rate was appropriate using the direct income capitalization method. To reach a $735.4 million value, the Trump Organization then falsely and misleadingly attributed to the *very same appraiser* who performed that appraisal a capitalization rate of 3.29% based upon a particular comparable sale, even though the appraiser had considered that same sale and concluded in the appraisal that 4.25% was the appropriate rate. The Trump Organization then further misleadingly described this approach, in which it had inflated the appraiser's conclusion, as "conservative."

134. The degree to which the Statements overvalued 40 Wall Street was evident when the financial details for the building were disclosed as part of the securitization of the loan issued by Ladder Capital. For example, the ratings agency Morningstar made adjustments to the rental rates, NOI, and capitalization rates utilized by Cushman and Ladder Capital and calculated a value of $262.3 million. That valuation was consistent with a $260 million "projected market value" as of November 2015 that was included in the 2012 Cushman appraisal and an internal valuation of $257 million prepared by Capital One in November 2014.

135. Thus, the 2015 Statement of Financial Condition overstated the value of 40 Wall Street by at least $195.4 million when compared to the inflated 2015 Cushman appraisal and $473.9 million when compared with the independent Morningstar analysis.

136. By August 2016, the ratio of 40 Wall Street's income to its debt service expenses had dropped to the point that the Ladder Capital loan was added to a watchlist. In the ensuing 2016 Statement, the Trump Organization stopped using the "income capitalization approach" to value 40 Wall Street in favor of a "sales comparison approach," which multiplied the total square footage of the building by the price per square foot of a recent "comparable" sale. Although GAAP required the Trump Organization to disclose this change in methodology, the 2016 Statement contained no such disclosure.

137. Under the new valuation methodology, using the sales comparison approach, from 2016 through 2021, the Statements of Financial Condition continuously overstated the value of 40 Wall Street by using inflated comparable prices, by not accounting for the full cost of the rising ground lease rent (or not accounting for ground rent expenses at all), and eventually by inflating the square footage of the building.

138. For example, in 2016, the Trump Organization valued 40 Wall Street at $796.4 million by multiplying the total square footage of the building (1,164,286 square feet) by a price per square foot of $684. This price reflected a massive premium over the $464 price per square foot used a year earlier by Cushman in the 2015 appraisal for Ladder Capital and the $225 price per square foot used by Morningstar.

139. The 2016 Statement of Financial Condition also used two other misleading assertions to reach the inflated $796.4 million valuation.

140. First, the Trump Organization used the sale price of 60 Wall Street as its "comparable" sale. But the two buildings were in no way comparable. 60 Wall Street is a modern office building, completed in 1989, six decades after 40 Wall Street. The building was occupied by an institutional anchor tenant, Deutsche Bank. Indeed, the 2015 Cushman appraisal distinguishes between pre-war buildings like 40 Wall Street and modern office buildings "constructed since 1980" like 60 Wall Street, which the appraisal specifically identifies as being in this separate category. Notably, Cushman did not identify 60 Wall Street as comparable to 40 Wall Street.

141. Second, the 2016 valuation did not account for the obvious economic impact of the ground lease or the reset in 2032.

142. In 2017, the Statement of Financial Condition utilized the same techniques to reach an inflated valuation of $702.1 million. Once again, the supporting documentation cites a price of "$603 per sq ft from recent sales comps" that is well in excess of earlier valuations of the property. The supporting spreadsheets do not cite a specific comparable sale, but $603 per square foot is the average of the two highest sales on a spreadsheet provided by Cushman to the Trump Organization via email on August 21, 2017. Those properties were 60 Wall Street, which

was valued at $624 per square foot (not the $684 per square foot cited in 2016), and 85 Broad Street, a building built in 1983. Once again, the 2017 valuation did not account for the economic impact of the ground lease or the reset in 2032.

143. In 2018, the Statement of Financial Condition utilized similar techniques to reach an inflated valuation of $720.3 million. The supporting documentation cites a price of "$647 per sq ft from recent sales comps." The source for that price is described as "Sales price per sf comps provided by Michael Papagianopoulos of Cushman on 9/11/18." That communication from Mr. Papagianopoulos, however, has no specific discussion of appropriate comparable properties for 40 Wall Street. Instead, Mr. Papagianopoulos sent a list of 15 properties entitled "Summary of Downtown Office Improved Sales." The $647 per square foot valuation appears to reflect the second highest valuation on the list, 222 Broadway, a building built in 1961 and renovated in 2013 with the building 78% occupied by an institutional anchor tenant, Bank of America, and long-term leases in place with Conde Nast and We Work. Cushman had considered the sale of 222 Broadway in its 2015 appraisal and adjusted the price per square foot down to $454 to account for differences between the two buildings. The Trump Organization had a copy of that appraisal, which Mr. McConney sent to the junior employee responsible for preparing the 2018 Statement of Financial Condition in October 2015.

144. While the 2018 valuation does account for the ground lease, it fails to account for the present value impact of the ground lease reset in 2032.

145. In 2019, the Statement of Financial Condition utilized similar techniques to reach an inflated valuation of $724.1 million. The supporting documentation cites a price of "$630 per sq ft from recent sales comps." The source for that price is described as "Sales price per sf comps provided by Douglas Larson of Newmark on 7/8/19." That communication from Mr. Larson,

however, has no specific discussion of appropriate comparable properties for 40 Wall Street. Instead, Mr. Larson included a series of attachments, including one entitled "Downtown Class A Sales." The $630 per square foot valuation does not match any specific sale on the list, but it is within $10 per square foot of the second highest sale on the list, 60 Wall Street. And once again, while the 2019 valuation does account for the ground lease, it fails to account for the present value impact of the ground lease reset in 2032.

146. In 2020 and 2021, the Statements of Financial Condition utilized similar techniques to reach an inflated valuation of approximately $664 million. The supporting documentation cites as a comparable sale a price of "$692 per sq ft from 44 Wall Street sold March 2020 (per NYC)." The Trump Organization then adds a "15% ppsf discount to account for the difference in size of the building and covid." There are no sources cited for the adjustment. Among other issues, the analysis appears to miscalculate the price per square foot of the sale of 44 Wall Street, which came to $564 per square foot, not $692. That error alone added $130 million to the value of 40 Wall Street. And once again, while the 2020 valuation does account for the ground lease, it fails to account for the present value impact of the ground lease reset in 2032.

5. Niketown

147. The property identified as "Niketown" consists of two long-term ground leases held by The Trump Organization, pertaining to land and buildings located between Fifth and Madison Avenues on 57th Street in Manhattan.

148. One of the ground leases, dated January 31, 1995, contained a rent schedule for years 1995 through 2044 and has a provision that resets the rent in 2037 to the greater of a series of figures, with one being "the annual fair market rental value of the demised premises," as

determined by an independent appraiser if the parties fail to agree. The lease was modified in 1996 to extend the term to 2094 and require a second reset of the rent in 2044.

149. The second ground lease, dated October 23, 1995, contains a rent schedule of $400,000 per year from 2012 through 2015 and $450,000 from 2016 through 2020, with a reset in 2021 based on "7% of the fair market value of" the leased property. Similar resets would occur in 2041 and 2061, and the lease would expire in 2079.

a. June 30, 2011 and June 30, 2012 valuations of Niketown

150. The June 30, 2011 Statement of Financial Condition stated a value of $263,700,000 for the Trump Organization's interests in Niketown. The Statement represents that "[t]he current value of $263,700,000 reflects the net proceeds which Mr. Trump in conjunction with his associates and outside professionals expect to be derived from rental activities pursuant to the lease described above, as well as the residual value of the property."

151. That representation regarding how the value of Niketown was computed was false and misleading. In reality, as stated in the supporting data, the valuation was "based on the par value of" certain bonds issued in November 1995. Under the actual valuation method, "the par value of the bonds is deemed to be 75% of the value of the asset. This amount has been increased 6% per year since the bonds were issued."

152. Consistent with this description in the supporting data, the Trump Organization identified the value of bonds issued on the property in 1995 as $92,739,590, and then applied a loan to value ratio of 75% to derive a 1995 value for the Niketown property of $123,652,787. Then, the Trump Organization merely adjusted that figure upwards by 6% in each year—regardless of the property's actual performance or market conditions—to derive the values reported in the Statements, at least from 2007 forward.

153. The net proceeds expected to be derived from rental activity played no role in the valuation. Indeed, such net proceeds do not appear in Mr. McConney's supporting data for the Statement and no calculation was done to compute the net proceeds, by taking gross revenue and subtracting expenses. Nothing in Mr. Trump's 2011 Statement of Financial Condition informed the reader that the amount of bonds issued in 1995 was the key determinative factor in deriving the value for the Niketown property 16 years later in 2011, without giving any consideration to the net operating proceeds.

154. Nor did any "outside professional" provide any information as to the net proceeds to be derived from rental activities, contrary to the assertion in the 2011 Statement.

155. The June 30, 2012 Statement of Financial Condition stated a value of $279,500,000 for the Trump Organization's interests in the Niketown property based on this same approach, applying a 6% increase over the value in the 2011 Statement.

156. As with the 2011 Statement, the 2012 Statement contains the identical false and misleading description of how the value of Niketown was computed based on net operating proceeds.

157. And just like with the 2011 Statement, the net proceeds expected to be derived from rental activity played no role in the 2012 valuation of Niketown. Such net proceeds do not appear in Mr. McConney's supporting data for the Statement and no calculation was done to compute the net proceeds by taking gross revenue and subtracting expenses.

158. Nothing in Mr. Trump's 2012 Statement informed the reader that the amount of bonds issued in 1995 was the key determinative factor in deriving the value for the Niketown property in 2012, without giving any consideration to the net operating proceeds.

159. Nor did any "outside professional" provide any information as to the net proceeds to be derived from rental activities, contrary to the assertion in the 2012 Statement.

160. Mr. Weisselberg was involved in the decision to "use the par value of the bonds" as the basis for the 2011 and 2012 valuations of Niketown.

b. Valuations of Niketown from 2013 through 2018

161. The Niketown valuations from 2013 through 2018 ranged from a low of $287.6 million to a high of $466.5 million, as indicated in the chart below, employing essentially the same methodology:

Statement Year	Niketown Valuation
2013	$287,600,000
2014	$348,800,000
2015	$466,500,000
2016	$389,600,000
2017	$432,600,000
2018	$422,400,000

162. In 2013, the Statement represented that the valuation "reflects the net proceeds which Mr. Trump in conjunction with his associates and outside professionals expect to be derived from rental activities pursuant to the lease described above, as well as the residual value of the property."

163. This language was false and misleading, and failed to disclose a substantial change from the prior two years in the underlying valuation methodology for Niketown starting in 2013, as required by GAAP.

164. In actuality, at no point in preparing the 2013 valuations were any "outside professionals" engaged to determine or forecast the "net proceeds" that the Trump Organization would derive from rental activities, or otherwise to evaluate the "residual value of the property."

165. In each of the years from 2014 through 2018, the Statement represented that the valuation "is based on an evaluation by Mr. Trump" (for the years 2014 and 2015) or by the Trustees (for 2016 through 2018) "in conjunction with [his/their] associates and outside professionals, applying a capitalization rate to" either "the net operating income" or "the cash flow to be derived pursuant to the buildings net rental stream."

166. This language was false or misleading. In actuality, from 2014 to 2018, no "outside professional" participated in any evaluation by Mr. Trump or the Trustees of the property's net operating income or cash flow or of the appropriate capitalization rate to apply to those figures for purposes of the Statements.

167. The method employed for the valuations from 2013 to 2018, except for the 2015 valuation, used two variables: (1) a one-year figure for NOI that was purely a function of income from the lease to Nike, minus the ground rent; and (2) a capitalization rate applied to that NOI.

168. Both figures employed to derive the Niketown valuation in these years omit several key variables known to the Trump Organization.

169. For the NOI figure, the choice to use only a single year's rental income and ground rent omitted consideration of key facts respecting ground rent: the certainty of substantially escalating rental expenses on a particular schedule, and resets in specific years in which ground rent would likely increase substantially.

170. The impact of scheduled escalations under the terms of the ground leases on the valuations is substantial, as confirmed by the information contained in the Trump Organization's GAAP-compliant, audited financial statements. For example, the year-ending 2012 audited financial statements—also prepared by Mazars—reflect a ground lease rent expense of $3,608,385—approximately $1.72 million more than the expense figure used by the Trump

Organization for the valuation on the 2013 Statement. The reason the expense figure was higher in the GAAP-compliant statement is that, pursuant to GAAP, such statements factor in scheduled expense increases. Using the ground lease rent expense from the GAAP-compliant financials would have reduced the reported valuation, holding all else constant, by $58.5 million.

171. By contrast, the 2020 and 2021 valuations of Niketown did account for escalating scheduled rent expenses—an approach that, despite increased revenue assumptions, dropped the reported value from the mid-$400 million range to the $225-$250 million range.

172. The Trump Organization was aware from bank-ordered appraisals prepared by Cushman for 40 Wall Street that resets on a ground lease interest are important factors in valuing such an interest. That is because they are important variables in determining how much value is retained by the landowner. Despite that awareness, the Trump Organization did not factor expected ground rent resets into its valuations of Niketown from 2013 through 2018.

173. The capitalization rate applied in the Niketown valuations for the Statements from 2013 to 2018 similarly lacked support and appropriate disclosures.

174. First, the Statements in 2013 did not disclose the use of any capitalization rate at all to determine the value of Niketown.

175. Second, the sole justification offered for the capitalization rate chosen in 2013, 2014, and 2016 through 2018 was identified in supporting data as a telephone conversation with appraiser Doug Larson, in which he purportedly advised that "cap rates for retail properties in upscale areas like Times Square and the Fifth Avenue area are usually almost 60 basis points lower than office space." Based on that purported advice, and "[t]o be conservative," the Trump Organization in each of these years "reduced the cap rate used on Trump Tower by 50 basis points to arrive at the cap rate used for NIKETOWN."

176. But Mr. Larson denies the conversation ever happened and insists it is not advice he would have ever given. In particular, Mr. Larson testified that the method used by the Trump Organization "doesn't make any sense," that it was "very unlikely" he ever conveyed such advice, that an assertion that he provided such advice in a conversation was inaccurate. Mr. Larson also testified it would be a misstatement if the Trump Organization said it reached the 2013 valuation of Niketown (the first year the purported conversation was referenced) in conjunction with him and that there was no valuation of Niketown done by him.

177. Additionally, the date of the purported conversation shifted over time, casting further doubt on the Trump Organization's contention it received such advice from Mr. Larson. The supporting data for the 2013 and 2014 Statement represent that the purported conversation with Mr. Larson occurred on September 17, 2013. The supporting data for the 2016 Statement makes no mention of a conversation in 2013, and instead describes an identical telephone conversation with Mr. Larson on September 17, 2016 – three years to the day from the purported call in 2013. The supporting data for the 2017 Statement does not mention any conversation with Mr. Larson in 2016, and instead reverts back to September 17, 2013, as the purported date for the discussion. And the supporting data for the 2018 Statement describes in identical language a telephone conversation with Mr. Larson purportedly on September 14, 2018.

178. But regardless of whether there was any conversation with Mr. Larson either in 2013, 2016, or 2018, it was neither reasonable nor appropriate for the Trump Organization to rely on such a purported conversation for valuations of a retail space. Simply reducing an office-space capitalization rate by fifty basis points to determine a capitalization rate for a retail space is inappropriate, as Mr. Larson confirmed to OAG. A determination of an appropriate capitalization rate should involve considering market information, the spreads between capitalization rates on

different properties, rent rolls, and expenses, among other variables, as Mr. Larson himself confirmed to OAG.

179. For the 2015 Statement, the Trump Organization took a different approach to calculate the capitalization rate based on advice from a different Cushman employee. The supporting data for the 2015 valuation of Niketown identifies as the basis for the capitalization rate a "10/26/15 email from Kurt Clauss of Cushman" that "reflects a cap rate on the sale of the Crown Building of 1.56%." Explaining that "[s]ince this cap rate is for a property on Fifth Avenue, and there weren't any other comps in the area," the Trump Organization used the "average of this cap rate (1.56%) and the cap rate we used last year of 2.63%."

180. Contrary to this stated explanation, Mr. Clauss simply provided Mr. McConney by email with a generic list of sales on October 26, 2015—without providing an opinion regarding whether or how such information could be used to derive an appropriate capitalization rate for the Niketown property.

181. Thus, the capitalization rate applied to Niketown for the 2015 Statement of Financial Condition was a function of: (a) the capitalization rate applied in 2014, which suffered from a number of problems, including the false and misleading claim that Mr. Larson participated in an evaluation that determined that rate; and (b) the Trump Organization's selection of a single rate from a generic market report provided by Mr. Clauss, who did not participate in the 2015 valuation.

182. Because the capitalization rate applied to calculate the value of Niketown for the years 2013 through 2018 was a function of the chosen capitalization rate for Trump Tower (albeit through a different approach in 2015), the method for determining the Trump Tower

capitalization rate inflated not only the reported Trump Tower value but also the reported value of Niketown.

c. June 30, 2019 valuation of Niketown

183. The June 30, 2019 Statement of Financial Condition stated a value of $445,000,000 for the Trump Organization's interests in the Niketown property.

184. The June 30, 2019 Statement of Financial Condition's supporting data for the Niketown valuation (like the supporting data for the six prior years) omitted any consideration of escalating ground rent expenses that were accounted for in the Trump Organization's GAAP-compliant, audited financial statements for years up to the year ending December 31, 2016.

185. The supporting data (like the supporting data for the prior six years) also omitted any consideration of ground rent resets and their impact on prospective net income that a buyer would consider.

186. The NOI used to prepare the Niketown valuation in 2019 was false and misleading in another respect: it mismatched income and expense periods in a manner that inflated the result by using a forward-looking (higher) income figure and a backward-looking (lower) expense figure to derive the NOI. Had the Trump Organization used income and expense figures from the same time period, the NOI would have been lower because either the income would have been lower or the expenses would have been higher. The result of this mismatched approach was to overstate the value by approximately $37.3 million.

187. The calculation of the capitalization rate used (2.4%) similarly reduced the Trump Tower rate by a fixed number of basis points, though fewer than in prior years. The supporting data for the 2019 Niketown valuation purportedly reflects a different conversation with Mr. Larson—this time, undated—in which Mr. Larson supposedly advised, "the 50 to 60 basis point reduction used in previous years probably does not stand in the market as of 6/30/19." Based on

this advice, and "to be conservative," the Trump Organization "reduced the cap rate used on Trump Tower by 25 basis points to arrive at the cap rate used for NIKETOWN."

188. Just before the 2019 Statement was finalized, Mr. Larson testified before OAG. Speaking at that time about the 2018 Niketown valuation, Mr. Larson stated: "I didn't generate a valuation. I wasn't engaged to generate a valuation and I would never have put a value on the property." Mr. Larson was then asked whether it was fair to say that Mr. Trump's trustees, in conjunction with him, had applied a capitalization rate to Niketown's net operating income—and he responded, "Absolutely not." Given that testimony, the undated purported conversation with Mr. Larson to support the 2019 Niketown valuation did not occur.

189. As with the prior year valuations, because the capitalization rate applied to Niketown for the 2019 Statement was a function of the chosen capitalization rate for Trump Tower, the Trump Tower capitalization rate inflated not only the reported Trump Tower value but also the reported value of Niketown.

d. June 30, 2020 valuation of Niketown

190. For the 2020 Statement, the Trump Organization discontinued use of the prior method employed—namely, a direct-capitalization approach with a single year's net operating income divided by a capitalization rate.

191. The new method for 2020, as described in the Statement, was as follows: "The estimated current value of $252,800,000 was derived by using a 20 year discounted cash flow based on a future prospective single tenant user." The 2020 Statement—unlike prior statements—disclosed this change in method, confirming the Trump Organization's awareness that such a disclosure was required under GAAP.

192. Unlike the valuations of Niketown in any of the prior years, the cash flow analysis used for the 2020 valuation does reflect consideration of escalating ground rent under at least one

of the ground leases. That lowered the reported value for Niketown by nearly half in a single year ($252,800,000 in 2020 versus $445,000,000 in 2019)--confirming the huge inflating effect of the Trump Organization's prior decision to ignore those escalating rent expenses.

193. Despite using a discounted cash flow analysis that factored in the escalating ground rent, the Trump Organization's computation still included unwarranted, favorable assumptions that inflated the reported value.

194. First, on the expense side, the discounted cash flow analysis erroneously assumed that the rent under the second of the two ground leases would remain at $450,000 per year (as it had been for several years) for the ensuing *20 years.* That assumption was known to the Trump Organization to be false or unsupported because the lease was subject to an imminent rent reset through an appraisal process. That process resulted in an agreement in March 2021 between the Trump Organization and the landowner to increase the ground rent from $450,000 to $892,500.

195. Based on the time required for the Trump Organization and the landowner to retain appraisers and negotiate to conclusion this agreement by March 2021, the Trump Organization had to have known that the rent reset was likely to result in significant increased rent at the time it issued the 2020 Statement of Financial Condition in January 2021, which instead falsely assumed no increase in rent under the second lease for the next 20 years.

196. Second, on the revenue side, the Trump Organization's discounted cash flow analysis assumed rental revenue in the first five years of more than $28 million per year and increasing by ten percent every five years. These revenue figures were far in excess (by a factor of more than two) of rental income ever obtained from the property by the Trump Organization.

197. Moreover, the Trump Organization's assumption that the rental income for the Niketown space would nearly triple conflicted with market data in the Trump Organization's

possession. In Fall 2020, the Real Estate Board of New York ("REBNY") produced a "Manhattan Retail Report" – which the Trump Organization had in its files -- that showed rents had *declined* in the retail markets for Manhattan retail space.

198. The 2021 Niketown valuation further indicates the 2020 valuation had been inappropriately inflated. In the 2020 valuation, the Trump Organization used a square footage over 93,000 in its discounted cash flow analysis. In the 2021 valuation, the Trump Organization used a different figure—approximately 66,000 "usable" square feet—to reach a valuation $27 million lower. There is no indication the square footage of the space changed during that time.

6. Trump Tower

199. The valuations of Trump Tower from 2011 through 2019, with the exception of 2015, were derived by the Trump Organization by dividing NOI by a capitalization rate. For 2015, and only for that year, the Trump Organization—without disclosing the change as required by GAAP—used a different methodology, basing its valuation on the sale of a single nearby building described in the press as setting a new world record; doing so generated a value in 2015 that was nearly more than $170 million higher than the previous year's value, nearly $250 million higher than the following year's value, and $75 million higher than the value derived in any other year using the NOI/capitalization rate method.

200. The valuations from 2011 through 2019 ranged from a low of $490 million to a high of $880.9 million (in 2015), as indicated in the chart below:

Statement Year	Trump Tower Valuation
2011	$490,000,000
2012	$501,100,000
2013	$526,800,000
2014	$707,000,000
2015	$880,900,000
2016	$631,000,000
2017	$639,400,000
2018	$732,300,000
2019	$806,700,000

201. The valuation in all years from 2011 through 2019 is described in each Statement as being "based on an evaluation" by Mr. Trump (from 2011 through 2015) or the Trustees (from 2017 through 2019) "in conjunction with [his/their] associates and outside professionals."

202. The representation in each year that an "outside professional" took part in "an evaluation" of the value of Trump Tower for purposes of the Statements of Financial Condition is false and misleading. There is no evidence that any "outside professional" performed or participated in an evaluation of the value of Trump Tower for purposes of the Statements of Financial Condition. Rather, as discussed below, the Trump Organization simply relied on information in generic market reports circulated by individuals at appraisal firms including Cushman.

a. Valuation of Trump Tower from 2011 to 2014 and 2016 to 2019

203. The valuation of Trump Tower for each year's Statement from 2011 through 2019, except for the 2015 Statement, was calculated based on dividing an NOI figure by a capitalization rate.

204. The Trump Organization's conduct in valuing Trump Tower in these involved a series of coordinated actions designed to artificially push the value higher, rather than reach a

reasonable value for the property based on market information. Those actions ranged from recording objectively false justifications for using a certain capitalization rate; to pairing an inflated NOI with cherry-picked, low capitalization rates; to misrepresenting the valuations performed.

205. With respect to the capitalization rate, the supporting data for each year from 2011 to 2019 (except for 2015) relies on data cherry-picked by the Trump Organization from generic market reports provided by various individuals at appraisal firms including Cushman, rather than on any evaluation done specifically for Trump Tower or the Trump Organization. Indeed, no one at any appraisal firm evaluated Trump Tower for purposes of determining a capitalization rate or otherwise participated in calculating a valuation for that property for the Statement of Financial Condition. It was false and misleading for the Trump Organization to suggest that receipt of the generic market reports constituted an evaluation done in conjunction with an "outside professional" on the valuations.

206. In each year from 2011 to 2019, except in 2015, the Trump Organization appears to have cherry-picked a few low capitalization rates from a range of rates provided in a generic market report and then used the average of those selected low rates as the rate for Trump Tower. And when providing the valuation to Mazars, the company in some instances misleadingly included only excerpted favorable portions of those generic market reports that excluded higher capitalization rates that would have produced lower values.

207. The supporting data frequently provided no rationale for why the Trump Organization selected only from the low end of the range of capitalization rates in each generic market report to value Trump Tower, or why the company ignored higher capitalization rates for buildings that were comparable to Trump Tower. For example, the 2013 supporting data

provides no rationale for rejecting the 4.86% capitalization rate associated with a sale in March 2013 of nearby 767 Fifth Avenue (only two blocks north of Trump Tower on Fifth Avenue)—described in the generic market report to be "in excellent condition" and "a trophy Class A office tower . . . which is considered in the marketplace to be one of the best buildings in Manhattan due to its construction quality and location which provides some the best views in the City of Central Park." Nor does the Trump Organization provide a rationale for rejecting the 5.80% capitalization rate associated with a property sale in April 2013 in the "Plaza office submarket" on West 55th Street between Sixth and Seventh Avenues. The Trump Organization ignored these unfavorable rates and instead selected rates that were much lower to derive a rate of 3.44% for Trump Tower in 2013.

208. Even if small numerically, the differences in rates have an enormous impact on the reported value based on the formulas used. And the Trump Organization was well aware of this impact. The method used was pure division: NOI divided by capitalization rate. A 3.44% capitalization rate means the value equals about 29 times NOI (1/.0344). But a 5.80% capitalization means the value equals about 17.2 times NOI (1/.058). In other words, just choosing a 3.44% rate over a 5.8% rate raises the value by almost 70% (29 is 68.6% greater than 17.2).

209. In 2019, moreover, the Trump Organization went to great lengths to generate a valuation over $800 million by, among other things, using an extremely low capitalization rate and recording a false justification for doing so. Indeed, a junior employee wrote down the purported basis for these decisions, which he later acknowledged was false.

210. In particular, in 2019, the Trump Organization used only a 2.67% capitalization rate to value Trump Tower and generated a valuation of $806.7 million. That capitalization rate

was derived from a generic market report reflecting a sale of 666 Fifth Avenue, which had been sold by the Kushner Companies back in 2018. The handwritten basis recorded in the backup materials provided to Mazars for using that sale—and *only* that sale—among all of the others in the generic market report was that it was the "only Plaza District sale in the last two years on Fifth Avenue (non-allocated)." The decision to use that sale for that stated reason was made by Allen Weisselberg.

211. That justification was false (or, at a minimum, misleading). As the full market report revealed, a building one block away from Trump Tower on Fifth Avenue (at 711 Fifth Avenue) and identified as in the "Plaza District" was in contract to sell at a capitalization rate of 5.36%. And that other property in fact sold at a capitalization rate in that range well in the months *before* the 2019 Statement was completed, as information in the Trump Organization's possession made clear and as public records made otherwise easily available. The statement that the 666 Fifth Avenue transaction was "only sale in the last two years in the Plaza District on Fifth Avenue (non-allocated)" was false.

212. What is more, during the course of the 2019 valuation of Trump Tower, Mr. Weisselberg systematically rejected numerous valuations that would have reached values between $161 million and $224 million less than the prior year's $732 million valuation. Multiple draft valuations were prepared by the junior employee charged with preparing the Statement using other, more recent Plaza District transactions with much higher capitalization rates of 4.65% and higher--but Mr. Weisselberg systematically rejected all of those market data points and decided to use a less recent, but much more favorable, 2.67% rate from the 666 Fifth Avenue sale to push the value north of $800 million. The justifications recorded by the junior employee for Mr. Weisselberg's decisions rejecting those other capitalization rates were,

alternatively, false or so cursory that they appear to have been crafted to justify a decision Mr. Weisselberg had already reached.

213. Even the use of the 666 Fifth Avenue rate of 2.67% was misleading because the market data relied upon dictated using 4.45% as a capitalization rate when using "stabilized" NOI. The underlying market report, for the 666 Fifth Avenue transaction used by the Trump Organization for this valuation, provided a capitalization rate "*upon stabilization*" of 4.45%. The 2019 Trump Tower valuation expressly states that it is based on, "applying a capitalization rate to the *stabilized* net operating income." It was thus false or misleading to imply that the backup material for the valuation supported using a 2.67% capitalization rate when, on its face, it stated a capitalization rate nearly two full percentage points higher was appropriate "upon stabilization" and the Trump Organization's valuation purported to be upon stabilization.

214. Furthermore, the NOI figures used by the Trump Organization were generally one-off figures prepared solely for purposes of the Statements, allowing for manipulation. In some instances, for example, the figures were inflated from the Trump Organization's actual or projected results for the property because expenses were taken from historical audited results for the property from a prior year, but revenues were taken from budgets from the current year, creating a mismatch in time periods. The result was an inflated NOI. Neither the Statements nor the supporting data explains why, for purposes of calculating an NOI for valuation purposes, it would be appropriate to use a revenue figure from one year and an expense figure from another year.

215. Moreover, the NOI figures used in the valuations often were misrepresented in the Statements. The Statements in many instances describe the valuation method as being based on the "cash flow to be derived from the building's operations." When that representation was

made, it was false or misleading. In reality, even apart from the time period mismatches identified above, the Trump Organization padded its NOI for Trump Tower by adding in millions of dollars in "cash flow" it knew it would *not* "derive from the building's operations"—including revenue from space the Trump Organization had itself occupied for many years. The Statements until 2017 did not disclose that the NOI figures used by the Trump Organization to value Trump Tower were not actual or truly expected NOI results for the property.

216. In other instances, expenses were artificially reduced; in particular, approximately $1 million in management fees for the property were stricken from the expense rolls—even though those management expenses were paid (according to the audited financials) and typical appraisal practice does factor in management fees as a property expense (as appraisals in the Trump Organization's possession made clear).

217. Given the low capitalization rates used by the Trump Organization to calculate the valuations, even a relatively small increase in NOI results in a significantly inflated value. For example, a $1 million difference in NOI would result in an increase in value of $34.4 million at the 2.90% capitalization rate used in 2017.

218. Additionally, for the years 2017 to 2019, the Trump Organization purported to use the "stabilized NOI," and in those years included the sort of padded revenue figures generated by inclusion of millions of dollars of revenue from space the Trump Organization did not expect to earn revenue from.

219. No definition of the term "stabilized" was given in the Statements for these years. In the real estate industry, the term "stabilized" typically means that a building is at its average or typical occupancy that would be expected over a specified projection period or over its economic life.

220. There is no indication that any analysis was done to conclude that all of the additions to NOI were done to reflect the typical or average occupancy (or vacancy) and financial performance Trump Tower would experience over any period of time—as distinct from generating a one-off figure that inflated NOI to be used solely for a valuation on Mr. Trump's Statement of Financial Condition.

221. The representation that the NOI figure used to value Trump Tower was "stabilized" in these years was false and misleading.

222. Moreover, for all years in which the Trump Organization padded its Trump Tower NOI by inclusion of millions of dollars in revenue it did not expect to earn, combining that tactic with the selection of the lowest or near-lowest capitalization it could pull from generic reports was misleading. To the extent either approach could be justified on the basis of "upside" in the property, using *both* tactics at the same time effectively double-counted such potential upside and thus was a wholly improper valuation approach. The Trump Organization either knew, or should have known, that approach was improper.

b. 2015 valuation of Trump Tower

223. The 2015 Statement of Financial Condition finalized in mid-2016 valued Trump Tower at $880,900,000—a 24.6% increase over the 2014 value, which already had increased 34.2% over the 2013 value.

224. The 2015 valuation was purportedly "based on an evaluation by Mr. Trump in conjunction with his associates and outside professionals, based on comparable sales." Although the use of "comparable sales" represented a significant change in methodology from the company's use in the prior four years of NOI divided by a capitalization rate, there was no disclosure on the 2015 Statement of Financial Condition, as required by GAAP, that the Trump Organization had *changed* valuation methods.

225. In any event, the representation that the valuation was "based on comparable sales" (plural) was false and misleading. Rather, the Trump Organization used only a single, highly favorable sale as the sole data point to derive a value for Trump Tower in 2015.

226. The decision to use a single sale as the sole basis for deriving the value in 2015, to the exclusion of all other sales of comparable office buildings in the same period, was made by Mr. McConney and Mr. Weisselberg.

227. The single sale involved the Crown Building at 730 Fifth Avenue, which sold for "a new world record for the price of an entire office building," according to press reports describing the sale.

228. The 2015 supporting data provides no rationale for why the company considered Trump Tower to be comparable to a building that sold for a world record price per square foot, and not comparable to other office buildings sold during the same period. Nor does the Statement disclose that the that single, world record sale was the only sale used to value Trump Tower.

229. In selecting the Crown Building sale as the sole data point for deriving the 2015 valuation for Trump Tower, Mr. McConney and Mr. Weisselberg ignored a host of unique factors about the sale that differentiated the Crown Building from Trump Tower. These factors included development and reconfiguration of retail space, conversion of a huge swath of floors into a hotel, and utilization of "existing, unused development air rights," among other things.

230. The 2015 supporting data indicates that the information about the Crown Building sale came from a generic market report forwarded by Kurt Clauss at Cushman.

231. But the 2015 Statement's representation that Mr. Clauss (the only "outside professional" identified in the supporting data) took part in "an evaluation made by Mr. Trump in conjunction with his associates and outside professionals" was false or misleading. Mr. Clauss

did not, by providing a generic market report, evaluate the value of Trump Tower along with Mr. Trump, Mr. McConney, or Mr. Weisselberg, let alone advise the company that it would be appropriate to use a single sale at a world record price, to the exclusion of other market data, to derive a value for Trump Tower.

232. The effort by the Trump Organization to exploit the Crown Building sale to generate an unjustifiably high value for Trump Tower in 2015 became readily apparent when the company reverted to its prior "NOI/capitalization rate" method in 2016, again making a change in method without the necessary disclosure required by GAAP. After reverting to the earlier method, the value of the property precipitously dropped by 28.4% or approximately $250 million.

7. Seven Springs

233. Seven Springs is a parcel of real property that consists of approximately 212 acres within the towns of Bedford, New Castle, and North Castle in Westchester County. Seven Springs LLC, a Trump Organization subsidiary, purchased the property in December 1995 for $7.5 million.

234. A 2000 appraisal prepared for the Royal Bank of Pennsylvania and sent to the Trump Organization estimated that Seven Springs had an "as-is" market value of $25 million for residential development.

235. The same bank's records further indicate that a 2006 appraisal showed an "as-is" market value of $30 million.

236. In sharp contrast to these bank-appraised market values, the Statements of Financial Condition from 2011 to 2021 include far higher valuations of Seven Springs, ranging between $261 million to $291 million.

237. The 2011 Statement included under the category "Properties under Development" a value for Seven Springs of $261 million and the 2012, 2013, and 2014 Statements reported a value separately itemized for Seven Springs of $291 million. In each of these years, the Statement asserted that "[t]his property is zoned for 9 luxurious homes" and that the valuation was "based on an assessment made by Mr. Trump in conjunction with his associates of the projected net cash flow which he would derive as those units are constructed and sold, and the estimated fair value of the existing mansion and other buildings."

238. According the supporting spreadsheets, the $261 million and $291 million valuations were "based on the sale of luxury homes net of cost." Specifically, the Trump Organization calculated that it had "7 mansions approved" that would each cost $12 million to develop and sell for $35 million, for a total profit of $161 million plus a residual value of $70 million for the "main mansion" in 2011, which increased to $100 million in 2012, 2013, and 2014 (without any explanation for the $30 million increase in value), plus another $30 million for the remaining land. All of these values were a fiction, totally unsupported by the development history of the property and contradicted by every professional valuation of the property.

239. Beyond using these inflated numbers, the Statements from 2011 to 2014 stated that a "fair value" estimate of the "existing mansion and other buildings" was performed. But "fair value" is an accounting term of art, and no such analysis was done. The claim that it was done was false and misleading.

240. Instead of including a proper "fair value" analysis, the supporting spreadsheets that the Trump Organization provided to Mazars for the purpose of compiling the 2012 Statement reported a "telephone conversation with Eric Trump (9/24/2012)" as one basis of the

valuation derived from the projected development, and also noted that portions of the Seven Springs property were "land to be donated." The supporting data for 2013 and 2014 cited to similar conversations with Eric Trump on later dates.

241. Those projections for developing mansions from Eric Trump were false in almost every particular. For example, even if the Trump Organization had approvals to build seven homes that would sell at $35 million each, it would be inappropriate to include that full amount without performing a discounted cash flow analysis to account for the years it would take to construct infrastructure, build homes, obtain additional approvals, and sell the number of homes identified in the supporting data, or to consider the business risk inherent in an uncertain residential development of previously undeveloped land. The implication of such a valuation is that the lots or homes were ready to sell, and would do so, instantaneously—a false and misleading (and, indeed, impossible) assumption.

242. Eric Trump and the Trump Organization knew that the development projections were not feasible and that they did not have the approvals necessary to support such a development. By the time Eric Trump was cited as a source for the 2012 valuation, he was already working with the Trump Organization's outside land-use counsel Charles Martabano and its engineer to gain development approvals just for the Bedford portion of the Seven Springs property's development (but not for portions in New Castle or North Castle).

243. Indeed, from 2011 through 2016, Eric Trump not only led the Trump Organization's efforts to develop the property, but also worked with outside tax counsel Sheri Dillon to plan for and complete a conservation easement donation over parts of the property to get a federal tax deduction. The easement donation was a recognition that the Trump

Organization would never be able to develop the property for anything approaching a $161 million return.

244. In the process of evaluating the potential easement donation in 2012 over just the New Castle portion of Seven Springs, the Trump Organization retained a licensed appraiser who valued six potential lots at about $700,000 each in December 2012. Despite knowledge of this appraisal from a licensed appraiser, the Trump Organization ascribed a value of $23 million each for similarly sized lots in the adjacent Town of Bedford for the 2013 valuation.

245. Asked to explain various aspects of the 2012 and 2013 valuations, Eric Trump repeatedly invoked his Fifth Amendment privilege.

246. As the approval process bogged down further, from 2014 through 2016 the company, acting through Eric Trump and tax counsel Sheri Dillion, sought to value and then donate an easement over parts of the Seven Springs Estate in all three Westchester towns (North Castle, New Castle, and Bedford).

247. Eric Trump was deeply involved in this process, taking the lead on the Seven Springs property within his family and the Trump Organization. At various times from 2011 to 2016, Eric Trump spent time living at the property and repeatedly met with town officials for Bedford and North Castle to discuss potential development of the site. As a result of those meetings, and as reflected in other correspondence, Eric Trump was aware that the Town of Bedford had imposed limitations on the ability of the Trump Organization to develop the Seven Springs property. Eric Trump was also aware that there was effectively no way to ameliorate the impact of these limitations because the Nature Conservancy, which held rights to a neighboring site, imposed significant restrictions on development of the property – restrictions that the Trump Organization sought to challenge unsuccessfully in litigation. Eric Trump concealed those

limitations from appraisers in order to inflate the value of the Seven Springs estate and fraudulently increase the value of the tax deduction from the resulting easement donation.

248. Specifically, in July 2014, acting as an agent of the Trump Organization, Sheri Dillon engaged Cushman to "provide consulting services related to an analysis of the estimated value of a potential conservation easement on all or part of the Seven Springs Estate." David McArdle, an appraiser at Cushman, performed this engagement, which was to provide, only verbally, a "range of value" of the Seven Springs property.

249. Mr. McArdle valued the sale of eight lots in the Town of Bedford, six lots in New Castle, and ten lots in North Castle. He used two different techniques to reach his range of values.

250. In one spreadsheet, which he called "a sellout analysis," Mr. McArdle reached an average per-lot sales value of $2 million for the New Castle and North Castle lots, and $2.25 million for the Bedford lots. After preparing a cashflow analysis anticipating the timing for the sale of the lots and 10% rounded costs over five years, Mr. McArdle reached a rounded present value for all 24 lots of $29,950,000. In other words, Mr. McArdle—accounting for the time it would take to develop the property and discounting revenues and expenses to their present value—computed a value of just under $30 million for 24 lots, in sharp contrast to the 2013 and 2014 Statement valuations by the Trump Organization that used $23 million for *each* of the lots in Bedford.

251. Using another valuation technique, Mr. McArdle also reached values "Before" and "After" an easement donation. He noted the eight Bedford lots were presently worth $1.5 million to $2.5 million each, for a range of $12 million to $18 million total. He noted six lots in New Castle at an estimated range of $1.5 million to $2 million for a total of $9 million to $12

million. Likewise, he noted ten lots in North Castle at an estimated range of $1.5 million to $2 million, for a total of $15 million to $20 million. Mr. McArdle provided these individual ranges of value to the Trump Organization verbally in late August or September 2014, which put the total value at between $29.5 million to $50 million.

252. The Trump Organization, including Eric Trump and Allen Weisselberg, was thus in possession of Mr. McArdle's verbal appraisal conclusions of the lots at Seven Springs well before the finalization of the 2014 Statement of Financial Condition on November 7, 2014.

253. Despite the Trump Organization's receipt of two valuations by a professional appraiser of 24 lots across three Westchester townships reflecting a value for the 24 lots under a "sellout analysis" of just under $30 million and under a "before/after" analysis between $29.5 million and $50 million, the 2014 Statement of Financial Condition valued seven non-existent mansions in just one of those townships (Bedford) at $161 million—without factoring in the time it would take to build and sell such homes, a factor McArdle had considered. The $161 million value placed on those Bedford lots was false and misleading.

254. After receiving the 2014 valuation from McArdle, the Trump Organization declined to proceed with an easement donation in 2014.

255. The Trump Organization did ultimately decide to make the easement donation for tax year 2015. In connection with that donation, in March 2016, two Cushman appraisers retained by the Trump Organization completed another appraisal of Seven Springs and concluded that the entire property (including undeveloped land and existing buildings) as of December 1, 2015 was worth $56.5 million. Like Mr. McArdle's verbal consultation, this March 2016 appraisal substantially undermined the much higher valuations of Seven Springs in the

Statements of Financial Condition from 2011 through 2014, which reflect valuations that range from $261 million to $291 million.

256. But even the 2016 appraisal is overstated and fraudulent. Among other things, the March 2016 appraisal omits consideration of central facts known to (and indeed negotiated by) the Trump Organization regarding the number of lots that could be developed and sold based on the restrictions imposed by local authorities, and relies on other false assumptions, like an impossibly accelerated pace of planning and obtaining environmental approvals.

257. More specifically, the Trump Organization:

a. Failed to inform the appraisers of restrictions imposed by the Town of Bedford that (i) limited the total number of lots that could be developed, and (ii) required the lots to be developed sequentially, extending the development timeframe by years.

b. Failed to inform the appraisers of restrictions arising from the litigation against the neighboring Nature Conservancy, which had been pending for years and had exhausted appeals.

c. Pushed the appraisers to otherwise use an accelerated development timeline that ignored the prior nine years of unsuccessful development efforts. Counsel for the Trump Organization even went so far as to push the appraisers to cut the development "sellout" timeline from an already unrealistic year to a mere three to six months, telling them: "the Bedford subdivision area already has preliminary approvals; as a result, we understand from our client that final approvals would likely take another that 3-6 months, as opposed to one year. We would like you to consider whether this fact results in 6 or so lots being sold earlier in the sellout analysis."

d. Falsely informed the appraisers that a report by Insite Engineering indicated that "the property was very long, very well down the road toward getting approvals." In reality, Insite Engineering never drafted any such report.

258. Each of these facts would have significantly lowered the valuation of the Seven Springs property. Because the Trump Organization concealed this information, the Cushman appraisal materially overstated the value of the Seven Springs property by tens of millions of dollars.

259. That Cushman appraisal was submitted to the Internal Revenue Service as part of an easement tax donation that ultimately, and fraudulently, reduced Mr. Trump's tax liability by more than $3.5 million.

260. To cover up this scheme, Mr. Trump and his agents sought to avoid creating a documentary record. Mr. Trump advised his employee handling his real estate affairs in the Lower Hudson Valley, which included Seven Springs, that he did not want communications between them put in writing. Likewise, on June 18, 2015, his tax attorney, Ms. Dillon, instructed her associate to "call [Cushman appraiser] Tim [Barnes] and advise him to limit substantive emails with Scott Blakely (engineer) and instead use the phone to the extent possible (want to avoid creating discovery unnecessarily)." On September 28, 2015, Ms. Dillon sent an email to another associate at her firm, "Please use a fresh email when communicating with appraisers so that we avoid to the extent possible, email chains." The Cushman appraisers acceded to Ms. Dillon's request. As Mr. Barnes, the senior appraiser, wrote to the junior appraiser, "Bedford conversations with engineer, broker, or attorney should be phone calls, not email whenever possible."

261. But even this inflated appraisal reflected a massive drop of more than 80% from the $291 million valuation of the Seven Springs estate in 2012, 2013, and 2014. To cover up that drop, which would have had a material effect on Mr. Trump's overall net worth, the Trump Organization, through Allen Weisselberg and Jeffrey McConney, altered the way the estate was reported on the Statement of Financial Condition.

262. For the years 2011 through 2014, the asserted value for Seven Springs was listed individually on the summary page or property description for each Statement. But the Statement dated as of June 30, 2015 (which was not issued until after receipt of the March 2016 appraisal),

does not identify any value for the Seven Springs property. Instead, the property was moved into a catch-all category entitled "other assets," where its value was part of that category's total but not separately itemized.

263. Between the 2014 and 2015 Statements, the "other assets" category was reported to have increased in value by $219.6 million, with the Seven Springs property representing a significant asset transferred to this category. To a reader, that increase would appear to be the result of the addition of the Seven Springs estate. But in reality, the increase was largely attributable to a massive, and fraudulent, increase in the value of Mr. Trump's penthouse Triplex apartment in Trump Tower.

264. In other words, the Trump Organization concealed the precipitous drop in the value of the Seven Springs property based on the March 2016 appraisal by two misleading maneuvers – the property was moved into the "other assets" bucket without being itemized, and it was lumped together with the value of Mr. Trump's Triplex apartment, which had suddenly jumped by $127 million.

265. But as discussed in the next section, the $127 million increase in the value of the Triplex for the 2015 Statement was only one example of how the value of Mr. Trump's personal residence was manipulated to fraudulently inflate his net worth.

8. Mr. Trump's Triplex Apartment

266. Between 2011 and 2015, the value of Mr. Trump's Triplex incorporated into the Statements of Financial Condition increased more than 400% – from $80 million to $327 million. The value of the apartment as included in the Statement each year from 2011 to 2021 is reflected in the table below:

Statement Year	Trump Triplex Valuation
2011	$80,000,000
2012	$180,000,000
2013	$200,000,000
2014	$200,000,000
2015	$327,000,000
2016	$327,000,000
2017	$116,800,000
2018	$116,800,000
2019	$113,800,000
2020	$105,946,460
2021	$131,281,244

267. The bulk of this fraudulently inflated value came from the misrepresentation in the years 2012 through 2016 that the apartment was 30,000 square feet, when in reality the apartment was only 10,996 square feet. That wildly overstated size was then multiplied by an unreasonable price per square foot.

268. The result was an implausible valuation that was obscured by including the Triplex in the "Other Assets" category, which could include more than a dozen different properties and assets.

269. Tripling the size of the apartment for purposes of the valuation was intentional and deliberate fraud, not an honest mistake. Documents demonstrating the true size of Mr. Trump's Triplex (most notably the condominium offering plan and associated amendments for Trump Tower) were easily accessible inside the Trump Organization, were signed by Mr. Trump, and were sent to Mr. Weisselberg in 2012. And Mr. Trump was of course intimately familiar with the layout of both the building and the apartment, having personally overseen the construction of both.

270. Indeed, Mr. Trump told one biographer: "This is a very complex unit. Building this unit, if you look at the columns and the carvings, this building, this unit was harder than building the building itself." Mr. Trump lived in the apartment for more than two decades, using it for interviews, photo spreads, as a filming location in "The Apprentice," and even to host foreign heads of state.

271. Yet when discussing the use of the 30,000 square foot estimate, Mr. Weisselberg guessed that it might have been the work of a broker who worked for Trump International Realty for a year between 2012 and 2013.

272. But Mr. Trump has been misrepresenting the size of the apartment for years and did so before 2012. In 2010, for example, as part of the underwriting for a homeowner's insurance policy with Chubb, Mr. Trump personally conducted a tour of the apartment with a Chubb appraiser and misrepresented the size of the apartment as between 25,000 and 30,000 square feet. As the appraiser wrote:

> This was a unique appraisal appointment, before the site visit I was told there would only be 15 minutes to see the apartment, Mr. Trump was home at the time of the appraisal and wanted to do the walk through himself, I was unable to see the master bedroom and Mrs. Trump's dressing room per request of Mr. Trump (Mrs. Trump was sleeping).
>
> Although I was able to spend slightly longer the 15 minutes in the house, the appointment was conducted at a speed directed by Mr. Trump and there was not ample time to take measurement while on site. Square footage was also not noted in the prior appraisal. When Mr. Trump was asked the square footage he said he was not sure but thought it was between 25,000-30,000 square feet. This seems high based on the walk through, due to this confusion the square footage used (11,194 which was found on propertyshark.com for the penthouse units which were combined in 1986-1989 by Mr. Trump).
>
> The square footage was removed from the agent/client report copies due to the confusion noted above. Due to the multiple methods used to analyze the replacement cost noted above I feel confident in the total replacement value.

273. In 2015, Mr. Trump took journalists from Forbes on a tour of the Triplex—to persuade them to increase the magazine's $100 million valuation—and represented the size as 33,000 square feet. Describing the tour two years later, Forbes wrote: "During the presidential race, Donald Trump left the campaign trail to give Forbes a guided tour of his three-story Trump Tower penthouse—part of his decades-long crusade for a higher spot on our billionaire rankings. . . . [Mr. Trump] bragged that people have called his Manhattan aerie the 'best apartment ever built' and emphasized its immense size (33,000 square feet) and value (at least $200 million). 'I own the top three floors—the whole floor, times three!'"

274. Mr. Trump's grossly inflated estimate of the apartment's size was incorporated into the Statement of Financial Condition from at least 2012 through 2016.

275. In 2011 the Statement incorporated a value for the apartment of $80 million, though the supporting data spreadsheet offered no specific rationale for that number. But an $80 million valuation would have valued the apartment at more than $7,200 per square foot, when the highest price for an apartment in the building that year was $3,027 per square foot.

276. In 2012, the value of the Triplex was increased by $100 million in the Statement to $180 million. Allen Weisselberg asked an employee at Trump International Reality to value the apartment based on the assumption that the apartment was 30,000 square feet. That employee then told Weisselberg, and later McConney, that: "At 30,000 sq ft. DJT's triplex is worth between 4K to 6K per ft – or 120MM to 180MM." McConney incorporated the top number into the Statement. No apartment sold in New York City had ever approached that price, with the highest overall sale that year occurring at 15 Central Park West, a building completed just five years earlier. That sale, a penthouse for $88 million, was a record high price in New York City at the time. The *increase* in valuation of Mr. Trump's Triplex between 2011 and 2012 therefore put

the value at an amount that was higher than the highest price ever paid for an apartment in the city's history to that point.

277. The next year, the value of the Triplex on the Statement increased to $200 million. This time McConney asked another employee at Trump International Realty to estimate a listing price – not a selling price – for the apartment, which she did using $8,000 per square foot and the inflated 30,000 square foot figure. Specifically she wrote:

> Doing the list now. As far as DJT's. One unit just sold for over 5000 a foot. However, another just came on the market at over 11K /sq ft.
> Which is not necessarily indicative of the market.
> Based on the activity in the luxury market and given how unique the apartment is , as well a tied to celebrity, I don't see how one would list below 8K per sq ft at this point. which brings us to @240,000M.. 200,000M is a safe estimate

278. But a $200 million selling price would have translated to more than $18,000 per square foot for the Triplex based on its actual size. Executives in the Trump Organization were well aware of the true selling price for apartments in the building. For example, in October 2013, Allen Weisselberg's son sent him an article reporting on the highest priced sale in the history of Trump Tower, $16.5 million for a 3,700 square foot unit, reflecting a price of $4,459 per square foot.

279. In the 2015 Statement the value of the Triplex jumped up again. The supporting data for Mr. Trump's 2015 Statement reported the value of Mr. Trump's Triplex as $327 million, based on a price per square foot of $10,900 multiplied by the inflated 30,000 square foot figure. (In reality, based on the actual size of the apartment, the true price per square foot reflected in this value was an incredible $29,738.) As support for this assertion, McConney cited an email from yet another Trump International Realty employee, who reported her review of sales at buildings "most likely to be the highest: 15 CPW, One57, 432 Park Ave."

280. The $10,900 price that McConney used in preparing the Statement was inappropriate for two reasons. First Mr. McConney pulled the number from a penthouse sale at One57 that the New York Times reported as marking the first sale above $100 million in Manhattan and "shattering the record for the highest price ever paid for a single residence in New York City."

281. Second, Mr. McConney used an erroneously high price per square foot for the penthouse at One57. The sale price for the penthouse was actually $9,198 per square foot. As shown below, because the email contained a stray dollar sign in front of the square footage for the apartment at issue, Mr. McConney simply grabbed the highest number he could find (10,923), rounded it off to 10,900, and used it as the price per square foot even though it was actually the square footage of the apartment and the price per square foot was clearly shown as "$9,198 PPSQFT":

Highest was $9,390 PPSQT at 15 CPW only 2,761 sqft for $29,995,000
Highest among the larger unit was $9,198 PPSQT at One57 unit 90, $10,923 sqft for $100,471,453. Closed on 12/23/14.
The rumored in contract at 432 Park Ave, PH at 95 mil for 8,255 sqft comes to $11,508 PPSQFT. Unit 91A is currently on the market for $40,250,000, only 8,255 sqft comes to $11,308 PPSQFT. We heard few combined PH with 10,000 to 15,000 sqft fetched over $11,000 to $15,000 PPSQFT but no confirmation.

282. In short, Mr. McConney, with the approval of Mr. Weisselberg, not only used the fraudulently inflated apartment size, but used a price per square foot 15% higher than a record-setting sale in a brand new building. And based on the actual smaller size of Mr. Trump's apartment, the value of $327 million for the apartment translated to a price per square foot that was more than *triple* the record-setting price per square foot paid for the penthouse at One57.

283. As the New York Times reported in 2018, Trump buildings were no longer competitive with such newly built luxury buildings. "Even at Trump Tower, where Mr. Trump

has a triplex, sales peaked in 2013, with average prices at $3,000 per square foot, and have fallen since then, according to . . . a real estate marketing consultant. Sales are now running about $2,000 a square foot."

284. That same article explicitly called out the difference with the buildings used as a comparison in the Statement. "And when compared with the new generation of ultraluxury buildings along Billionaire's Row, a stretch of 57th Street that includes Trump Tower, the average Trump apartment is worth far less. The sales average, for instance, at 432 Park Avenue was $5,564; $4,051 at Time Warner Center; and $3,812 at One 57, the skyscraper at 157 57th Street, according to CityRealty."

285. The Trump Organization used the fraudulent square footage again in the 2016 Statement of Financial Condition, despite being directly informed by Forbes Magazine that the measurement was false. On March 3, 2017, just a week before the 2016 Statement was published, Forbes emailed Alan Garten, General Counsel of the Trump Organization, a series of questions about "President Trump and his business connections around the world." The email included this question:

TRUMP TOWER PENTHOUSE

1) President Trump has told Forbes in the past that his penthouse occupies 33,000 square feet, comprising the entirety of floors 66-68 of Trump Tower. Property records (notably the latest amended condo declaration, dated October 11, 1994). Is the 1994 declaration accurate and up-to-date? It shows President Trump's apartment is 10,996.39 square feet.

286. Mr. Garten forwarded the email to others in the Trump Organization, including Donald Trump, Jr., Eric Trump and Allen Weisselberg. Donald Trump, Jr. responded, "Insane amount of stuff there."

287. Three days later, Mr. Garten wrote to Amanda Miller, a Vice President of Marketing for the Trump Organization, that "I handled everything except Trump World Tower

and Trump Tower." Ms. Miller responded, "Thank you Alan – I spoke to Allen W. re: TWT and TT – we are going to leave those alone."

288. On March 10, 2017, Donald Trump, Jr. and Allen Weisselberg represented to Mazars that the information in the Statement was accurate and complied with GAAP. They further certified that:

14) No events have occurred subsequent to the date of the statement of financial condition and through the date of this letter that would require adjustments to, or disclosure in, the personal financial statement.

15) We have responded fully and truthfully to all inquiries made to us by you during your compilation.

16) In regards to the financial statement preparation services performed by you, we have:
a) Assumed all management responsibilities.
b) Overseen the services by designating an individual who possesses suitable skill, knowledge, and/or experience.
c) Evaluated the adequacy and results of the services performed.
d) Accepted responsibility for the results of the services.

Very truly yours,

Allen Weisselberg
Chief Financial Officer
Trustee, The Donald J. Trump Revocable Trust dated April 7, 2014, as amended

Donald J. Trump, Jr.
Executive Vice President
Trustee, The Donald J. Trump Revocable Trust dated April 7, 2014, as amended

289. That same day Mazars published the 2016 Statement, which incorporated the false 30,000 square foot measurement that translated into a $327 million valuation of the Triplex.

290. Three days later, the Trump Organization sent the 2016 Statement to Deutsche Bank as required by the terms of its loans, and Donald Trump, Jr. certified that the Statement "presents fairly in all material respects the financial condition of the Guarantor at the period presented."

291. During his sworn testimony, before invoking his Fifth Amendment privilege, Mr. Weisselberg conceded that using the false square footage had the effect of improperly inflating the value of the apartment almost threefold. Mr. Weisselberg admitted that this amounted to an overstatement of "give or take" $200 million, testifying in the following exchange: "Q: In fact, [the value was] overstated by a factor of 3, is that correct? A: I didn't do the math, but it should be one third, yes, I would agree with that. Q: So, it's on the order of a $200 million overstatement, give or take? A: Give or take."

292. Each year, from 2012 to 2016, the practice of fraudulently inflating the value of the Triplex was carried out by McConney and Weisselberg, at the express direction of Donald J. Trump. When asked about the scheme during his sworn testimony, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination by stating "same answer," which incorporated by reference his initial invocation of the privilege at the beginning of his interview:

> Q. You are aware that from 2012 through 2016, the value of your triplex apartment in Trump Tower was calculated by multiplying 30,000 square feet times a price per square foot; is that correct?
>
> A. Same answer.
>
> Q. And you personally directed the use of the 30,000-square-foot figure in valuing your apartment for the Statement of Financial Condition in those years; is that correct?
>
> A. Same answer.
>
> Q. The 30,000-square-foot figure is false; is that correct?
>
> A. Same answer.
>
> Q. When you directed the use of that square footage to value your triplex, you knew that the 30,000-square-foot figure was false; correct?
>
> A. Same answer.

293. Only after Forbes published an article in May 2017 entitled "Donald Trump has Been Lying About the Size of His Penthouse" did the Trump Organization stop inflating the square footage for the apartment. For the 2017 Statement the valuation of the apartment dropped to $116,800,000. The reported value continued to drop to a low of $105,946,460 in the 2020 Statement before rising to $131,281,244 in 2021. And even those numbers inflated the true value of the Triplex based on a still-unreasonably high price per square foot based on sales of apartments in buildings that were not comparable to Trump Tower.

9. 1290 Avenue of the Americas and 555 California (Vornado Partnerships)

294. Mr. Trump's Vornado Partnership Interests consist of 30% limited partnership interests in entities that own two commercial properties: 1290 Avenue of the Americas in New York City and 555 California Street in San Francisco.

295. For the Statements of Financial Conditions from 2011 through 2021, Mr. Trump and the Trump Organization calculated the value of Mr. Trump's interest in the Vornado Partnership Interests by taking 30% of the values they calculated for the 1290 Avenue of the Americas and 555 California buildings, net of debt, without considering the nature of Mr. Trump's limited partnership interest, to derive the following amounts:

Statement Year	Value of Limited Partnership Interest
2011	$729,900,000
2012	$823,300,000
2013	$745,800,000
2014	$816,900,000
2015	$946,000,000
2016	$979,500,000
2017	$1,195,800,000
2018	$1,211,900,000

Statement Year	Value of Limited Partnership Interest
2019	$1,307,900,000
2020	$883,300,000
2021	$645,600,000

296. These values for Mr. Trump's interest in 1290 Avenue of the Americas and 555 California are false and misleading for many reasons, as discussed below.

a. The Restricted Nature of Mr. Trump's Limited Partnership Interest

297. As set forth more fully *supra* at ¶¶ 68 – 71, the pertinent partnership agreements place the General Partner (*i.e.*, Vornado) in control of those partnerships, including with respect to the amount of any cash distributions (if any) or reinvestment decisions.

298. Moreover, the pertinent partnership agreements sharply limit Mr. Trump's ability to exit the partnerships. In particular, the agreements provide: "The term of the Partnership *shall continue* until December 31, 2044, on which date the Partnership shall dissolve, unless sooner dissolved upon the occurrence of any of the events specified in Section 17.1." The few exceptions to that rule are outside of Mr. Trump's sole control.

299. The pertinent partnership agreements also sharply limit withdrawal by any partner, or sale or transfer of a partner's interest in the partnership. "No partner may withdraw from the Partnership or assign or transfer its Partnership Interest in whole or in part, except as provided in Articles 10 and 11 hereof." Article 10 of the pertinent partnership agreements provides, among other things, that "a Partner may not, directly or indirectly, sell, assign, transfer or otherwise dispose of (collectively, "*Transfer*") all or any part of its Partnership Interest (including, without limitation, the right to receive allocations of income, profits and losses and/or distributions of cash flow) . . . without the prior written consent of the General Partner, which

consent may be granted or withheld in the sole discretion of the General Partner." Article 11 refers to the "dissolution, resignation or bankruptcy of the General Partner."

300. Additionally, the partnership agreements bar Mr. Trump from pledging his Vornado Partnership Interests to a bank to secure a loan except under limited circumstances that do not apply.

301. GAAP requires, when presenting the value of an interest owned in a partnership or joint venture, that the specific interest that is owned be valued in its entirety—and that the value of that interest be presented as one line item rather than broken apart and buried within multiple line items in multiple categories of assets.

302. All of the valuations of Mr. Trump's limited interest in the Vornado Partnership Interests from 2011 to 2021 violate this standard. Indeed, they do not compute a value for Mr. Trump's interest in these specific partnerships, with their associated restrictions on sale and cash distributions. None of the valuations even attempts to ascertain what the value of Mr. Trump's restricted interest would be on the open market, assuming he even were permitted to sell it. Instead, the valuations are false and misleading because they are based on the fiction that by virtue of his limited partnership interest, Mr. Trump owns 30% of two buildings, with Mr. Trump's interest calculated by simply taking 30% of the value net of debt of each building the partnerships owned.

303. Any hypothetical buyer of Mr. Trump's limited stake in the Vornado partnerships would consider the restrictions on sale and cash distributions when valuing such interest. Any such buyer would appreciate the possibility (at Vornado's discretion) of receiving *no* cash or profit distribution from the properties over an extended period of time—and factor that potential limitation on the return on investment into its assessment. Similarly, any such hypothetical buyer

would understand that the partnership agreements, by their plain terms, limit exit from the investment for *decades*—another factor a reasonable buyer would consider in deciding whether to purchase Mr. Trump's interest and at what price. Nor was any discount applied reflecting the fact that Mr. Trump's limited minority stake entailed essentially no control over business operations.

304. The Trump Organization's written descriptions of these valuations were misleading. From 2012 through 2018, for example, the Statements misleadingly asserted: "Mr. Trump owns 30% of *these properties*," as opposed to holding minority, restricted stakes in particular partnerships. In 2019 and 2020, the SOFC added that he owned "30% of these properties *as a limited partner*," but continued employing the same valuation method of reporting what Mr. Trump owned as simply 30% of the calculated buildings' value net of debt.

305. Mr. Trump and the Trump Organization were well aware of restrictions on Mr. Trump's limited partnership interest—having engaged in extensive litigation regarding the Vornado partnership agreements. But nowhere do the Statements of Financial Condition or the supporting data consider the restricted nature of what Mr. Trump owns through his limited partnership interests (despite the Statements' representations that the valuations "reflect[ed]" his "interest"). Indeed, the first time the junior employee charged with preparing the Statement from 2016 forward saw one of the pertinent partnership agreements was during the course of OAG's investigation.

b. The False and Misleading Valuations of the Buildings

306. As noted, in each year from 2011 to 2021, the Statement's valuations of the Vornado Partnership Interests were a function of simply apportioning at a 30% rate valuations of 1290 Avenue of the Americas and 555 California, net of debt.

307. Those valuations were calculated based on dividing an NOI by a capitalization rate. During the period 2011 through 2021, evidence reveals that the Trump Organization in repeated instances manipulated components of that formula to inflate the value of the Vornado Partnership Interests.

308. As with other properties, the Trump Organization misleadingly represented that "outside professionals" had done "an evaluation" with Mr. Trump or his trustees. In reality, the company's typical practice was to cherry-pick favorable capitalization rates from generic reports and then misleadingly represent the valuation was the result of "an evaluation" done with an outside professional.

309. The supporting data often provided no rationale for why the Trump Organization selected only from the low end of the range of capitalization rates in the source materials to value the properties, or why the company ignored higher capitalization rates listed in the source material for buildings that were comparable to the Vornado properties. And, in several instances, the Trump Organization only provided to Mazars excerpts of the market data relied upon.

310. For example, in the 2012 Statement, the Trump Organization relied on market reports circulated by Doug Larson of Cushman reflecting rates between 3.12% and 3.95% for office buildings on Lexington Avenue and Fifth Avenue between 51st and 53rd Streets to derive an "average" rate of 3.4% for 1290 Avenue of the Americas. Yet Mr. Larson had authored an appraisal for another entity in October 2012 that concluded an appropriate capitalization rate for 1290 Avenue of the Americas was 4.59%, producing a value ($2.0 billion) that was $800 million less than the Trump Organization's calculation.

311. It was false and misleading for the Trump Organization to suggest that the valuation that derived a capitalization rate of 3.4% for 1290 Avenue of the Americas was done

"in conjunction" with Mr. Larson when he had not opined to the Trump Organization on the capitalization rate but instead determined in an essentially contemporaneous appraisal report for the same property that the appropriate rate was 4.59%.

312. The Trump Organization purported to rely on "an evaluation" done with Mr. Larson again in 2013 to use a capitalization rate of 3.12% for 1290 Avenue of the Americas—generating a value of $2.989 billion, $989 million higher than Mr. Larson actually had reached in an appraisal completed only months earlier. The Trump Organization even misleadingly relied on the "investment grade" nature of the property in that year, despite public investment reports providing the appraised value of $2.0 billion.

313. Indeed, in four instances – for 1290 Avenue of the Americas in 2016 through 2019 – the Trump Organization selected a low capitalization rate based on just the single sale of one property listed in generic market reports.

314. In 2016, the Trump Organization misleadingly attributed to Mr. Larson a capitalization rate of 2.90%, which was cherry-picked from a generic market report. Indeed, until a last-minute change, the Trump Organization used other figures that even it identified as coming from comparable buildings—but then opted to lower the cap rate and use a value $400 million higher. Mr. Larson testified that the supporting data's reference to him in connection with this valuation was inaccurate. In 2017, the Trump Organization continued to use that 2.90% figure, attributing it to a different appraiser who also testified he did not provide the Trump Organization with any indication of what particular capitalization rate to use.

315. Similarly, in 2017, for 555 California, the Trump Organization only received a generic market report and selected two sales to derive a 3.8% capitalization rate for the property.

Only an excerpt of that report was provided to Mazars. The full report contained a series of much higher rates for Class A office buildings.

316. The 2018 and 2019 valuations of 1290 Avenue of the Americas placed the value of the building over $4 billion, based on a misleading, cherry-picked choice of the same 2.67% capitalization rate used for Trump Tower in 2019.

317. The Trump Organization stated that it performed "an evaluation" with an outside professional, and the supporting data attributes the capitalization rate to information provided by an appraiser. But the Trump Organization knew the numbers chosen were flatly inconsistent with that appraiser's conclusion—because they actually asked him in May 2018 to confirm his statement that a capitalization rate in the 4-4.5% range was appropriate for 1290 Avenue of the Americas; and then the Trump Organization appears to have used what it understood to be the appraiser's view to push back on a valuation by a news organization.

318. As with the Trump Tower valuation in 2019, the use of the 2.67% figure in 2018 and 2019 for 1290 Avenue of the Americas was misleading. The market data point relied upon dictated using 4.45% –not 2.67%—as a capitalization rate when applied to "stabilized" NOI. The 2018 and 2019 valuations of 1290 Avenue of the Americas were, according to the Statements, based upon a "stabilized" NOI. Using 4.45% rather than 2.67% would have decreased the value of 1290 Avenue of the Americas by more than $1.5 billion in 2018 and 2019.

319. With respect to the NOI, the Trump Organization in many years misleadingly described such income as "the net operating income," suggesting this was the net cash *the Trump Organization would derive* from the buildings' operations. But the cash flow to Mr. Trump and the Trump Organization was limited by the terms of the partnership agreements and could be

zero in the exercise of the general partner's discretion. The Trump Organization instead computed the values of his Vornado Partnership Interests based on cash flow the *partnerships* would derive from the buildings' operations—not the cash flow Mr. Trump would derive (at Vornado's discretion).

320. For the years 2017 to 2021, the Trump Organization purported to use the "stabilized net operating income" and claimed in supporting spreadsheets that the NOI figures to derive the values for the properties came from audited financial statements. Those statements were false and misleading. In reality, the Trump Organization, at the direction of Allen Weisselberg, frequently used unaudited reports and then adjusted them to suit its own purposes by adding millions of dollars in net operating income to the figures.

321. In the real estate industry, the term "stabilized" typically means that a building is at its average or typical occupancy that would be expected over a specified projection period or over its economic life. No definition of the term "stabilized" was given in the Statements for these years. There is no indication that any analysis was done to conclude that the unaudited figures used, or the adjustments to them, reflected the typical or average occupancy and financial performance the properties would experience over any period of time – as distinct from generating a one-off figure that inflated NOI to be used solely for a valuation on Mr. Trump's Statement of Financial Condition.

322. Moreover, for all years in which the Trump Organization padded the 1290 Avenue of the Americas NOI by inclusion of millions of dollars in revenue to achieve a purportedly "stabilized" figure, combining that tactic with the selection of the lowest or near-lowest capitalization it could pull from generic reports was misleading. To the extent either approach could be justified on the basis of "upside" in the property, using *both* tactics at the

same time effectively double-counted such potential upside and thus was a wholly improper valuation approach. The Trump Organization either knew, or should have known, that approach was improper.

10. Las Vegas (Ruffin Joint Venture)

323. The Trump International Hotel and Tower – Las Vegas ("Trump Vegas") is a hotel condominium property in Las Vegas, Nevada. Mr. Trump and Philip Ruffin each own half of a joint venture that built the property and continues to own the hotel and all of the unsold condominium units.

324. Prior to 2013, the Statements omitted Mr. Trump's 50% interest in the property.

325. From 2013 through 2021, the Statements listed an inflated value for the property using some of the same deceptive techniques Mr. Trump and the Trump Organization used to fraudulently inflate valuations of Mr. Trump's other properties, including failing to discount future cash flows and projecting future income from the sale of residential units that assumed prices well in excess of what the units were actually selling for in the marketplace, while ignoring the values derived and methods used in earlier appraisals that were never disclosed.

326. In 2011 and 2012, the Trump Organization hired an appraiser to contest property taxes assessed on Trump Vegas before the Clark County and Nevada tax authorities. The 2011 appraisal used a discounted cashflow analysis to appraise 932 unsold condominium units and the separate hotel unit, applying a discount rate of 12% to the units and 12.5% to the hotel. Eric Trump sent this appraisal—which valued the units and hotel at $115,689,000 and $12,690,000, respectively—to Allen Weisselberg, writing: "The tax appeal for the hotel component is happening today and appeal on the units themselves in scheduled for March 11th. I'll let you know how we make out later this afternoon…."

327. The Trump Organization ordered another appraisal of the condominium units using the same approach from the same appraiser in 2012. Based on a conclusion that the units would need 10 years to be fully sold—with the majority sold more than five years in the future—and applying a discount rate of 10% to these cashflows to calculate the present value of the income, the appraiser determined that the value of the unsold residential units was $111,500,000. This was far less than the roughly $178 million in outstanding loans payable on the property at the time—but that made the appraised value a favorable result for the Trump Organization, because a lower value would result in a lower tax bill.

328. After receiving this appraisal from outside tax counsel, Eric Trump wrote, "I take it you are happy with the work?" The attorney replied, "I am happy with the work and think the [Clark County Board of Equalization and the Nevada State Board of Equalization] will buy the value . . . . I am optimistic."

329. Thus, the Trump Organization and its executives, including Eric Trump and Allen Weisselberg, understood any analysis of the value of the property's future cash flows required the application of a discount rate—and they had expressly adopted that position in their submissions to the county and state government tax authorities.

330. Despite having submitted the 2011 and 2012 appraisals to government taxing authorities, the Trump Organization ignored those appraisals when valuing Trump Vegas for the 2013 Statement.

331. Instead, at Eric Trump's request, a Trump Organization employee provided an approach that discarded both the assumptions and methodology used by the appraiser and incorporated misleading figures from Mr. Weisselberg into a document that purported to illustrate cashflows to the Trump Organization from the sale of Trump Vegas condominium

units. Mr. McConney later sent a version of this approach to Mazars to include in the 2013 Statement.

332. Where the appraiser had concluded it would take a decade to sell the remaining units, the Trump Organization assumed all units would be sold in half that time, by 2018. Where the appraiser had projected a sales price for the condominiums of roughly $369 per square foot and the Trump Organization had sold in bulk a number of units to Hilton for $400 per square foot, the Trump Organization—just a year later—used a range of projected sale prices starting with $528 per square foot in 2013 and topping out at $724 per square foot in 2018.

333. And where the appraiser had used a 10% discount rate, the Trump Organization used none at all, instead treating the future revenue from condominium sales (calculated to be $123 million) as if it represented the present value of the property—in violation of GAAP.

334. The failure to include a discount rate inflated the Trump Organization's valuation significantly. For example, $8,749,295 of projected Trump income from 2018—which, applying the appraiser's discount rate of 10%, should have been valued at about 62.5 cents on the dollar or $5.5 million—was valued at $8,749,925 in 2013.

335. Notably, the $123 million valuation was a 10% increase over the tax appraisal's $111.5 valuation from January 2012—and this despite the facts that (1) the tax appraisal did not appraise Mr. Trump's 50% interest; (2) the tax appraisal's value did not subtract debt; and (3) between January 1, 2012 (the appraisal date) and June 30, 2013, more than one hundred condo units had sold, reducing the amount of property held by the Vegas joint venture.

336. Examining additional appraisals obtained by the Trump Organization for tax purposes in 2015 and 2016 next to the valuations provided in the Statements for those same years highlights the fraudulent intent—and duplicity—of the Trump Organization's approach.

337. In 2015, the Trump Organization obtained an appraisal to contest the tax assessments for the hotel portion of Trump Vegas that reached a value of $24,950,000 after identifying numerous risks factors that would decrease the property's value, including that the property was a "first venture in the Las Vegas market of a stand-alone tower that is not directly located along Las Vegas Boulevard South and contains no gaming."

338. Outside tax counsel James Susa emailed the appraisal to Eric Trump. Emphasizing that the goal of the appraisal was to reach a lower value, Mr. Susa wrote: "Here is the appraisal of the hotel unit at just under $25 million. I had asked [the appraiser] to come in around $20 million but you were making too much money for him to get that low."

339. The appraisal had its intended effect; while it was initially rejected as too low by the Clark County Assessor and the Clark County Board of Equalization, the Nevada State Board of Equalization overturned those conclusions on appeal. As Mr. Susa described the State hearing to Eric Trump, "We cleaned their clock . . . . First comment from the Board was 'this is a complex appraisal assignment, the taxpayer brought us an appraisal, that does it.' Second comment from the Board was 'move to approve the appraised number, second, all in favor, unanimous, thanks for coming.'" The Trump Vegas tax assessment was lowered accordingly.

340. By contrast, the Trump Organization's valuation of Trump Vegas that year for purposes of the Statement was again designed to falsely inflate the value of Mr. Trump's stake in the venture and disregarded the appraisal. Mr. McConney provided a valuation of $107,732,646 to Mazars. The valuation assumed a price per square foot for sales in 2016 of $506 and that all units would be sold by 2020 with a price per square foot of $673 in that final year, without any discount of these projected future revenues at all, again in violation of GAAP.

341. In 2016, however, when the Trump Organization retained its appraiser to prepare another appraisal for tax purposes—to argue this time that the remaining unsold condo units were worth less—the appraiser reached a much different set of conclusions. He argued that the appropriate price per square foot for sales in 2016 was $450 (11% less than the Trump Organization's 2015 analysis) and that it would take nine more years to sell the remaining units. He applied a 12.5% discount rate to future cashflows, meaning that, for instance, revenues from 2020 sales would be valued at 55.5 cents on the dollar in the present day. Using these methods, he reached a valuation of $95,500,000 as of July 1, 2016.

342. Trump Organization outside counsel, Mr. Susa, asked Eric Trump to carefully consider whether to submit this appraisal to taxing authorities: "I need you, in ALL your free time (kidding you a little), to tell me if there is anything in the appraisal that gives you heartburn from giving it to the Assessor's office."

343. There was good reason for the Trump Organization to be concerned about disseminating the appraisal: just as in 2015, the valuation of Trump Vegas in the 2016 Statement—which was made as of June 30, 2016, just one day prior to the date of the 2016 appraisal—adopted much more aggressive assumptions to reach a much higher valuation of Mr. Trump's 50% stake in the remaining condo units of $107,508,863.

344. Reflecting disappointing sales that year, the 2016 Statement valuation used about the same price per square foot as the appraiser had, $441. But it projected significant increases in the sales price every subsequent year, with units selling for $704 per square foot by 2019. By contrast, the 2016 appraisal had assumed units would sell at only $476 per square foot in 2019.

345. These increased projections drove the value even higher because the 2016 Statement valuation—like every other since 2013—ignored the time value of money and failed

to discount future revenues. So, for instance, $34,047,415 in 2020 cashflows were valued as money in hand for the Trump Organization's Statement valuation. If the Trump Organization had used the 12.5% discount rate the appraiser had applied, that money would have been valued at 62.5 cents on the dollar, or about $21.3 million in 2016.

346. By using the fraudulent valuation methods and assumptions described above, the Trump Organization was able to inflate the value of Trump Vegas in each of the years from 2013 to 2016. Eric Trump, invoking his Fifth Amendment right against self-incrimination, refused to answer questions related to his participation in the drafting of each of the 2013 through 2016 Statements.

347. For the 2017 and 2018 Statements, the Trump Organization changed its approach to an even more blatantly fraudulent method to value the then-remaining Trump Vegas condominium units, which was done at the direction of Mr. Weisselberg or Mr. McConney. Instead of purporting to estimate revenue from the anticipated sale of the units over time, the Trump Organization simply added together "list" prices of the remaining units and treated this sum as the present value of the property (with certain adjustments to acknowledge expenses and the debt service on the loan secured by the property).

348. The Trump Organization's use of "list" prices for the units to generate the 2017 and 2018 valuations was false and misleading in two respects. First, like earlier valuations, it ignored the requirement under GAAP to discount future cash flow to derive present value. Second, by using "list" prices, the valuation employed per-square-foot prices that were more than 50% greater than actual recent closed sales at the Trump Vegas property—as reflected on the backup material itself.

349. In 2019, the Trump Organization modified its approach to include a 14% discount for "Sale Price vs List Price" and deductions for closing costs in connection with condominium sales, effectively conceding that its approach in the prior two years of using the "list" price without adjustment was false and misleading. But—despite performing a present-value analysis in connection with the hotel portion of the same property —the Trump Organization continued its misleading practice of valuing cash flow from condominium sales without discounting to present value.

350. The Trump Organization continued to use this same approach in 2020 and 2021—again failing to discount to present value cash flow from future condominium sales—but acknowledging that the "list" prices needed to be adjusted downward.

351. The records related to the 2021 valuation demonstrate how unrealistically aggressive the Trump Organization's previous projections had been with respect to how long it would take to sell all of the condominium units. For the 2013 valuation, the Trump Organization had assumed that all units would be sold by 2018, but in 2021 there were still 288 unsold units.

352. And where the 2013 projections assumed a price per square foot reaching $724 by 2018, the most recent offer the Trump Organization had received in 2021 for a condominium was $462 per square foot. The Trump realtor who had received this offer—which was substantially below the Trump Organization's projected future price per square foot used in every Statement valuation since 2013—described it as "not bad."

11. Club Facilities and Related Real Estate

353. The Statements of Financial Condition do not list separate values for each of Mr. Trump's club facilities. Instead, the values for those properties are lumped together into a single figure under the heading "Club Facilities and Related Real Estate." That figure represents far and away the single largest source of value in each year as reflected below:

Statement Year	Total Club Value	% of Total Asset Value
2011	$1,314,600,000	28.6%
2012	$1,570,300,000	31.3%
2013	$1,656,200,000	30.1%
2014	$2,009,300,000	31.9%
2015	$1,873,300,000	28.5%
2016	$2,107,800,000	33.0%
2017	$2,159,700,000	34.1%
2018	$2,349,900,000	35.7%
2019	$2,182,200,000	33.2%
2020	$1,880,700,000	36.5%
2021	$1,758,000,000	35.3%

354. The result of using an aggregated figure is that a reader of the Statements receives only the total value ascribed to the clubs and related properties and cannot discern from the Statements the value assigned to any particular club in that category or the method of valuation used for any particular club.

355. That practice by design allowed Mr. Trump and the Trump Organization to conceal significant swings in the value attributed to individual clubs and changes to the individual methods employed to arrive at those values. Those fluctuations were necessary to perpetuate the scheme of inflating Mr. Trump's net worth during the period 2011 to 2021.

356. The Statements of Financial Condition for the years 2011 through 2019 claim, among other things, that the valuations for each property comprising the category "Club Facilities and Related Real Estate" were reached through an assessment or evaluation prepared by Mr. Trump working in conjunction with his associates and outside professionals.

357. As with all other valuations prepared for these Statements, this asserted work with "outside professionals" when preparing the valuations for the club facilities was false.

358. Outside professionals were not retained to prepare any of the valuations for any of "Club Facilities and Related Real Estate" properties for purposes of Mr. Trump's Statements of Financial Condition. The veneer of participation by independent professionals in the preparation of the valuations comprising this category was false and misleading.

359. In 2020, employees of the Trump Organization were asked about the various references to "outside professionals" on the Statements of Financial Condition in sworn testimony before OAG. Thereafter, the Trump Organization changed the wording for the 2020 Statement, omitting any representation that any particular valuation was reached in consultation with "outside professionals" and instead listing outside professionals as merely one factor that may have been "applicable" in some unspecified manner.

360. The Trump Organization's abrupt removal of any specific references to consultation with outside professionals in connection with specific club valuations is a tacit admission that such references in prior years were inaccurate and misleading.

361. As detailed in the sections below discussing individual clubs, Mr. Trump and the Trump Organization employed various deceptive schemes at particular clubs in particular years to inflate the club values. These schemes included: (i) valuing the clubs based on the "fixed assets" of the clubs – in other words the money spent to acquire and maintain them – despite being informed by valuation professionals that this practice was inappropriate for a club operating as an on-going business; (ii) adding a "brand premium" despite the fact that including an internally developed intangible brand premiums is prohibited by GAAP and the Statements expressly claim to exclude brand value; (iii) estimating the anticipated income from developing and selling residential units on club property based on assuming sale prices that far exceed what the market will bear, ignoring zoning requirements, and failing to include any present value

calculation to account for the time required to build and sell the units; (iv) inflating the purchase price of the clubs by claiming to have assumed debt for refundable membership deposits, despite express disclosures in the Statements that Mr. Trump attributed no value to those liabilities; and (v) inflating the value of unsold memberships, often by over one hundred thousand dollars per membership, even in situations where such memberships were being given away for free at Mr. Trump's direction to boost membership numbers.

a. Mar-a-Lago

362. The Trump Organization and Mr. Trump knew that Mar-a-Lago was subject to a host of onerous restrictions and limitations—*agreed to and signed by Mr. Trump*—that precluded any usage of the property as anything other than a club, precluded the property's residential subdivision, and required considerable preservation expenses, among other limitations. Despite full knowledge and awareness of those facts, the Trump Organization valued Mar-a-Lago in each year from 2011 to 2021 based on the false premise that those restrictions did not exist. For these and a host of other reasons, all of the valuations of this property were false and misleading.

363. As Mr. Trump's submission to the locality stated, the property was too expensive to be used and preserved as a private residence, that it was a "white elephant" that "was almost impossible to sell" in that form, and that it therefore needed to be converted to club usage so that its preservation could be "at the expense of a limited group of members, most of whom will be Palm Beach residents." As Mr. Trump has previously recognized, "both the U.S. Government and State of Florida deemed Mar-a-Lago unsuitable and too expensive for a retreat by government officials."

364. In the course of urging approval for usage of Mar-a-Lago as a club, Mr. Trump and his agents disparaged residential development as an option and acknowledged that local authorities had rejected a residential subdivision on the property.

365. Moreover, Mr. Trump and his agents, when seeking local approval to use Mar-a-Lago as a club, recorded an agreement with the Town of Palm Beach providing, among other things, that "[t]he use of the Land shall be for a private social club" and that "[t]he Land, as described herein, shall be considered as one (1) parcel and no portion thereof may be sold, transferred, devised or assigned except in its entirety, either voluntarily or involuntarily, by operation of law or otherwise." The agreement likewise contained onerous preservation restrictions covering "critical features" of Mar-a-Lago, a term that covered gates, walls, windows, the main house, open vistas, and even the topographical flow of the land.

366. In 1995, Mr. Trump sought to obtain an income tax benefit from donating through a conservation easement—in a document entitled Deed of Conservation and Preservation—rights similar to what he already had stated he would forego in order to gain approval to use Mar-a-Lago as a club.

367. This document, entitled "Deed of Conservation and Preservation Easement from Donald J. Trump to National Trust for Historic Preservation in the United States," was recorded with the County of Palm Beach in April 1995 and is signed by Mr. Trump as Grantor.

368. The Mar-a-Lago Conservation Deed articulated that "many features of Mar-a-Lago, hereinafter collectively the 'Critical Features,'" including "vistas from the Mansion," possessed "significant architectural, historic, scenic and open space values of great importance" to Mr. Trump, Palm Beach, Florida, and the United States. "Critical Features" were defined, as

in the use agreement, to include gates, walls, driveways, doors, and, among other things, "open vistas" toward the ocean and Lake Worth and the "topographical flow of the land."

369. Under the Mar-a-Lago Conservation Deed, Mr. Trump was bound "at all times to maintain the Critical Features in substantially the form and condition" then-existing. The Mar-a-Lago Conservation Deed articulated that "additional structures on those portions of the Property not included within the Critical Features may adversely impact the architectural, historic, scenic, and open space values of the Critical Features." Among other restrictions, the Mar-a-Lago Conservation Deed forbade destroying critical features, or constructing or erecting new buildings, within and upon such areas defined as Critical Features.

370. The Mar-a-Lago Conservation Deed also barred many actions without the approval of the National Trust for Historic Preservation. These included "the right to replace, alter, remodel, rehabilitate, enlarge, or remove, and change the appearance, materials, topography, and colors of, any of the Critical Features," "the right to construct new permanent structures on those portions of the Property that are not attached to, a part of, or contained within the Critical Features, including but not limited to appurtenant docs or wharves, and additions thereto," and "the right to divide or subdivide the property." No amendment to the conservation deed was permitted that would "adversely impact the overall architectural, historic, scenic, and open space values protected by this Easement."

371. The Conservation Deed allocated approximately 23.5% of Mar-a-Lago's value to the National Trust for Historic Preservation.

372. In an apparent effort to further solidify the expansive reach of the Mar-a-Lago Conservation Deed, and to lower property taxes on the property, Mr. Trump signed a deed of development rights in 2002. In this deed, also publicly recorded, Mr. Trump and his affiliates

conveyed (to the extent not already conveyed) to the National Trust for Historic Preservation "any and all of their rights to develop the Property for any usage other than club usage."

373. In this 2002 deed, Mr. Trump recognized that the 1995 Mar-a-Lago Conservation Deed "limits changes to the Property including, without limitation, division or subdivision" of Mar-a-Lago "for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." The deed likewise expresses Mr. Trump's understanding that the Mar-a-Lago Conservation Deed "requires the approval of changes that would be necessary for any change in use and therefore confines the usage of the Property to club usage without the express written approval of the National Trust." The 2002 deed articulated that "the Club and Trump intend to establish as explicitly as possible that the Preservation Easement perpetuates the club usage of the Property, consistent with the other limitations set forth in that Easement."

374. Among other things, the net results of all these documents executed by Mr. Trump are: (1) to obtain permission to use Mar-a-Lago as a club, rather than as a "white elephant" private estate that was too expensive to maintain, he agreed to confine its usage to club usage and not to subdivide the property; (2) to obtain a tax benefit, he granted to the National Trust the right to control even minuscule changes to Mar-a-Lago; and (3) he executed and recorded deeds making unambiguous that he had signed away any right to use the property for "any usage other than club usage."

375. Despite those restrictions—obviously known to Mr. Trump and his agents and made "as explicitly as possible" by them in the 2002 deed—the Statements of Financial Condition from 2011 to 2021 valued the property based on the false and misleading premise that

it was an unrestricted residential plot of land approaching or exceeding eighteen acres in size that could be sold and used as a private home.

376. Moreover, despite restricting the property's usage to club usage, and securing lower property tax valuations based on that restricted usage, the Trump Organization on Mr. Trump's Statements did not value Mar-a-Lago as the operating business it was restricted to be—a social club—based on its financial performance. The Trump Organization never applied methods to value the property that it understood applied to other operating business, such as using NOI and capitalization rate to derive value.

377. The Trump Organization was aware such methods would have led to valuations substantially below (and nowhere close to) the false and misleading valuations the Trump Organization generated by assuming the property could be developed without regard to any of the existing onerous restrictions.

378. The Trump Organization accounting department employee who was responsible for preparing the supporting data spreadsheet for the Statements of Financial Condition from 2016 through 2021 determined that he was unable to get to the values listed by the Trump Organization in the Statements by using a valuation method based on Mar-a-Lago's financial performance.

379. In other words, valuing Mar-a-Lago as an operating business would not have supported the sky-high numbers the Trump Organization had generated using a valuation method based on a hypothetical residential development without Mar-a-Lago's restrictions—so the Trump Organization simply chose not to value the property as the operating business it was.

380. Rather than value Mar-a-Lago as a property subject to the restrictions to which Mr. Trump had personally agreed, Mr. Trump's Statements of Financial Condition from 2011

through 2021 ignore those restrictions entirely. Nowhere in the backup material are those restrictions referenced or accounted for; indeed, even the preservation obligations and expenditures are ignored.

381. Instead of accounting for those limitations, the valuations from 2011 through 2021 proceed from the false premise they do not exist. Mr. Trump's Statements of Financial Condition from 2011 through 2021 purport to value Mar-a-Lago as if it were an unrestricted home to be "sold to an individual," rather than the heavily encumbered historical landmark restricted to club usage that it was. This premise, repeated in the valuations year after year from 2011 through 2021, is false and misleading in light of the legal restrictions of which the Trump Organization and Mr. Trump himself were aware—binding the property owner to continued club usage, and to undertake expensive preservation efforts, absent approval of the National Trust for Historic Preservation overriding such obligations.

382. The valuation method, too, proceeds from another false premise: that Mar-a-Lago is a large, unrestricted residential plot of land that could be valued on a per-acre basis and sold off in that fashion, as if it could be subdivided. Reflecting that premise, the Trump Organization often used comparatively tiny (often one acre or less) residential properties and then extrapolated across all of Mar-a-Lago's acreage. But the premise that Mar-a-Lago could be valued that way conflicts with (1) the restrictions on Mar-a-Lago's usage to club usage and (2) the prohibitions on subdividing or condominiumizing Mar-a-Lago.

383. In addition, the Trump Organization's valuations never accounted for the fact that the 1995 conservation easement entailed the donation of approximately 23.5% of Mar-a-Lago's value to the National Trust for Historic Preservation. In other words, assuming away all of the other problems described above, the Trump Organization still failed to inform a reader of the

Statement that Mr. Trump's ownership interest had been restricted. Nor did the final valuation reflect the reduction in value attributed to that donation.

384. Indeed, the Trump Organization accounting department employee who was responsible for preparing the supporting data spreadsheets for the Statements of Financial Condition from 2016 through 2021 did not take into account the conservation and preservation easement at Mar-a-Lago or the 2002 deed signed by Mr. Trump, which he was not even aware existed at the time he was preparing the supporting data spreadsheets.

385. The Trump Organization took other steps within the inappropriate valuation method it applied to inflate the valuations even further.

386. In most years, the Trump Organization added a 30% club-based premium to the final result. In other words, despite purporting to value the property *as a home to be sold to one individual*, the Trump Organization tacked on another 30% because the property was a completed club operated under the "Trump" brand – hereafter referred to as the "Brand Premium Scheme." The company did not end this undisclosed scheme for Mar-a-Lago until the 2016 Statement (issued in February 2017).

387. The Trump Organization also used a price-per-acre figure based on sales of purportedly "comparable" properties as a key component in deriving the valuations; the company would calculate an average price-per-acre based on such sales and then use that average as the figure to be multiplied by Mar-a-Lago's acreage. This price-per-acre figure also was inflated in all years from 2011 to 2021 in one or more ways.

388. In particular, the Trump Organization inflated Mar-a-Lago's reported value by falsely reducing acreage of properties compared to Mar-a-Lago. Reducing the acreage of the properties it compared to Mar-a-Lago drove the price-per-acre variable higher, and thus the

reported value of Mar-a-Lago higher. For example, the 2016 Mar-a-Lago valuation relied upon a price-per-acre figure that was ***120% greater*** than the prior year's figure. This was based on, among other things, a purportedly "comparable" property the Trump Organization described as selling for $49.9 million on 1.61 acres. But the Trump Organization's own backup (a Zillow printout) described the property in the transaction as 2.61 acres—and the Trump Organization had used that same property, with its correct acreage, years earlier. Using the false and lower 1.61 figure as the acreage instead of the actual 2.61 acreage increased the price-per-acre input from that property by more than 50%—from $19.1 million to more than $30 million. That same manipulation of the price-per-acreage figure was also repeated in the data supporting the 2017 Statement.

389. Similarly, the Trump Organization inflated the price-per-acre derived from another purportedly "comparable" property at 1695 North Ocean Way in Palm Beach for the 2016 and 2017 Statements. In both Statements, the Trump Organization computed a price-per-acre of more than $51 million—a major driver of the valuations in both years because it was far-and-away the highest price-per-acre used in the average. The $51 million figure was computed by dividing a selling price of $43.7 million by an acreage figure of 0.85. The acreage, though, was understated for both the 2016 and 2017 Mar-a-Lago valuations. Public records and press reports reflect—several months before the 2016 Statement was finalized—that the land actually transferred was approximately 2.5 acres, not 0.85 acres.

390. The 2017 Statement, too, ignored that a neighboring property at 1565 North Ocean Way was purchased and combined with 1695 North Ocean Way under common ownership before the 2017 Statement was finalized. Through that transaction, recorded on June 29, 2017, the combined properties sold for approximately $11 million per acre—$67.4 million

for 6.1382 acres. Yet, for the 2017 Statement, the Trump Organization used a price-per-acre figure ($51 million) nearly five times as high to value Mar-a-Lago.

391. The Trump Organization similarly inflated price-per-acre figures in the 2018, 2019, and 2020 Mar-a-Lago valuations. The Trump Organization included as a "comparable" for the 2018 and 2019 valuations a property at 1485 S. Ocean Boulevard that sold for $41,257,000 and that the company described as 1.0 acre. But the property is approximately 2.3 acres.

392. The Trump Organization similarly falsified the price-per-acreage figure used for the 2019 and 2020 valuations involving on a property at 1295 S. Ocean Boulevard that was part of a transaction involving 4.7178 acres of oceanfront and lakefront land that sold for a total of $104.99 million (approximately $22 million per acre). Despite Mar-a-Lago consisting of lakefront, interior, and some oceanfront land, the Trump Organization segmented the more valuable 2.61-acre oceanfront component of that $104.99 million sale to generate an inflated $30 million price-per-acre figure.

393. The Trump Organization also otherwise cherrypicked sales to use as "comparables" from available data. For example, in 2019 and 2020, the Trump Organization used 60 Blossom Way—a $99.1 million, 3.5-acre sale to a buyer, who was assembling an ocean-to-lake compound. But the company ignored recent sales to the same buyer as part of the same compound with much lower price-per-acre figures. Documents confirm the Trump Organization (at least in 2020) knew that same buyer was assembling a compound, but nevertheless isolated the single sale at 60 Blossom Way to value Mar-a-Lago.

394. Another way the Trump Organization inflated Mar-a-Lago's value was by using "asking prices" for properties rather than the much lower actual sales prices reflected in public records. For example, among the properties relied upon in 2012 were 1220 S. Ocean Boulevard

and 1275 S. Ocean Boulevard. Both sold well below the asking prices used by the Trump Organization to value Mar-a-Lago in that year.

395. Sales data for properties in Palm Beach, and the acreage and square footage of those properties, is easily accessible from local authorities. The Trump Organization was aware of that fact throughout most, if not all, of the relevant time period. Despite that ready availability, no documentation reflects any consideration by the Trump Organization of sales of properties in Palm Beach other than the ones the company cherrypicked to generate high price-per-acre figures.

396. In most years, the Trump Organization also added tens of millions of dollars' worth of club-related construction and other club-related property to the Mar-a-Lago value. For example, through 2021, the Trump Organization added between $15 million and $25 million for the construction costs of the club's Grand Ballroom, beach cabanas, and a tennis pavilion and teahouse (in some cases applying a 30% premium to them). The company did so despite the property purportedly being valued as a *home* to be sold to an individual, based on price-per-acre figures of residential sales. And, after adding $16.8 million to the valuation for "furniture, fixtures, and equipment" ("FF&E") in 2013, with the stated reason that the single sale used to value Mar-a-Lago was a "spec house and sold without FF&E," the Trump Organization continued adding that amount (or at least more than $14 million) for FF&E after its initial reason for doing so no longer applied.

b. Trump Aberdeen

397. The value assigned to Trump Aberdeen in each year is comprised of two components: one value for the golf course and another value for the development of the non-golf course property, *i.e.*, the "undeveloped land."

398. These components and the total value of the property in each year are set forth in the chart below:

Statement Year	Value of Golf Course	Value of Undeveloped Land	Total Value
2011	$41,000,000	$119,000,000	$160,000,000
2012	$64,703,600	$117,600,000	$182,303,600
2013	$76,715,600	$114,450,000	$191,165,600
2014	$74,169,082	$361,393,344	$435,562,426
2015	$60,570,463	$267,016,090	$327,586,553
2016	$50,679,806	$226,043,750	$276,723,556
2017	$49,691,890	$221,155,584	$270,847,474
2018	$50,832,046	$223,217,779	$274,049,825
2019	$49,460,737	$220,989,724	$270,450,461
2020	$38,355,969	$101,272,826	$139,628,795
2021	$21,012,667	$114,317,896	$135,330,563

399. Both components were derived each year using improper methods and based on facts and assumptions that were materially false and misleading, were known by Mr. Trump and others within the Trump Organization to be materially false and misleading, and which substantially inflated the valuations as described more fully below.

i. The Golf Course Valuations

400. In each year, Mr. Trump derived the value of the golf course based on his capital contributions since the inception of his ownership adjusted by a "multiplier,"[4] which is a fixed-assets approach, and without factoring in any depreciation – hereafter referred to as the "Fixed-Assets Scheme." But using fixed assets to derive the market value of a golf course is contrary to industry custom and practice, as Mr. Trump himself acknowledged to the IRS in 2012 when

[4] The capital contributions were multiplied by a 30% premium for the assembly of land parcels.

seeking to maximize the value of a conservation easement related to another one of his golf courses in Bedminster, New Jersey.

401. In pushing back against the IRS's planned reduction to the amount of the Bedminster conservation easement, Mr. Trump's attorney argued on his behalf that the income producing capacity of the golf course – *i.e.*, an income-based approach – was the relevant metric for a potential purchaser. As his lawyer advised the IRS: "The price at which a golf course will trade depends on the revenues that it can produce."

402. Similarly, in an appraisal that the Trump Organization submitted to the IRS in connection with the same dispute, the appraisal firm stated that an income-based approach, or secondarily a sales-comparison approach, are the acceptable methods for valuing a golf course. The appraisal firm did not propose using a fixed-assets approach.

403. Indeed, throughout (and even before) the relevant time period, the Trump Organization was in possession of numerous appraisals of golf course properties that squarely rejected the only appraisal approach bearing any resemblance to the fixed-asset method the Trump Organization used. These appraisals, some of which the Trump Organization itself commissioned, rejected the use of a "cost approach"[5] as simply not what a prospective purchaser of a golf course would consider. These appraisals instead performed valuations based on the clubs' financial performance (the income approach) and sales of comparable properties (the comparable sales approach). As a Trump Organization-commissioned appraisal articulated: "The Cost Approach has no bearing on what investors would pay for a golf course in today's

[5] The "cost approach" factors into a value "the cost to construct the existing structure and site improvements" and "then deducts all accrued depreciation in the property being appraised from the cost of the new structure." The Appraisal of Real Estate 335 (11th Ed. 1996). When using the "fixed assets" approach, the Trump Organization did not deduct accumulated depreciation from the fixed-asset figures that were used.

environment," "we find major deficiencies in its application," and "[w]e have found examples of golf courses that sold for a fraction of what they cost to build."[6] The Trump Organization withheld from Mazars the fact that it possessed numerous appraisals rejecting the cost approach to value a golf course and instead using income and sales-comparison approaches, even though it was required to provide that information consistent with its obligation to provide complete and accurate information to Mazars.

404. The Trump Organization even contacted an outside consultant to advise the company on how to value golf courses and he advised that an income-based approach – using gross revenue adjusted by an appropriate multiplier – was the relevant metric for the valuation of a golf course. The Trump Organization ignored this consultant's advice and never shared this advice with Mazars, even though it was required to do so consistent with its obligation to provide Mazars with complete and accurate information.

405. Finally, the Trump Organization has consistently relied on an income-based approach when assessing golf courses for property tax assessment purposes. For example, the Trump Organization has repeatedly relied on income figures when arguing for lower tax assessments, noting that using fixed assets "often results in a higher valuation then [sic] the income approach."

406. Employing the Fixed-Assets Scheme rather than using an income-based approach improperly and materially inflated the value of the golf course at Trump Aberdeen.

407. The golf course opened in 2012 and the business has operated *at a loss* each year since then, even without considering depreciation. Because the golf course has operated at a loss

[6] The appraisal went on to enumerate courses that had sold for between 50 and 74% lower than their "cost to build."

each year, using values for the golf course ranging between $21 million to $76 million in the Statements from 2011 to 2021 based on employing the Fixed-Assets Scheme is materially false and misleading; the golf course should have been valued at a much lower figure.

ii. The Undeveloped Land Valuations

408. In each year from 2011 to 2021, the larger component of the valuation – and for many years by a factor of four or more – was the estimated value of developing the undeveloped land portion of Trump Aberdeen. The valuation of the undeveloped land was grossly inflated for several reasons.

409. In 2011, the valuation for Trump Aberdeen in the supporting data provided to Mazars included an estimate of the value for the undeveloped land of £75 million, or $119 million based on the then-current exchange rate, citing as the sole basis a "George Sorial email [dated] 9/6/2011."

410. The referenced email from Mr. Sorial, Executive Vice President and Counsel at the Trump Organization, had the subject line "Forbes Magazine" and contained a quote Mr. Sorial provided to an accountant in Scotland who was then expected to pass the information on to *Forbes* Magazine. The quote stated: "Although a formal appraisal has not been prepared at this point, after speaking with specialists in the field and having closely watched this development transform itself over the last five years, we are informed that the value for the residential/hotel land parcels could achieve a value in excess of 75 million [British pounds sterling]."

411. Accordingly, the value of the undeveloped land at the property used for Mr. Trump's 2011 Statement was based on nothing more than an unsubstantiated quote prepared by a Trump Organization employee for *Forbes* Magazine.

412. Mr. Sorial's 2011 *Forbes* Magazine quote also served as the sole basis for the Trump Organization's 2012 and 2013 valuations for the undeveloped land at Trump Aberdeen of $117.6 million and $114.45 million, respectively, based on valuing £75 million at the then-current exchange rate.

413. For the 2014 Statement, the Trump Organization no longer relied on Mr. Sorial's *Forbes* Magazine quote and instead assumed that 2,500 homes could be built on the property and sold at £83,000 pounds per home. This more than *tripled* the value of the undeveloped land from the prior year, to approximately $361.4 million.

414. The price per home of £83,000 was taken from an email with an appraiser at the firm Ryden LLP, who provided a list of land sales that he stated "may not be particularly comparable for your site." The Trump valuation does not make any adjustment to the list of sales to account for site differences and does not include an allowance for affordable housing or affordable housing payments as required by the Scottish Government. Nor did the valuation account for the time it would take to secure any needed approvals, develop the property, and market the property.

415. In addition to these misleading elements, there was no factual basis for assuming that 2,500 homes could be built and sold.

416. The 2014 Statement of Financial Condition reports that the Trump Organization "received outline planning permission in December 2008 for . . . a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." This is a total of 1,486 homes, not 2,500 homes.

417. Moreover, in deriving the value for the 2014 Statement, the Trump Organization assumed all of the homes would have the same value. This ignores the fact that, as the Statement

notes, 950 of the homes were to be "holiday homes" and 36 were to be "golf villas." Such properties—under the terms governing Trump Aberdeen—would be rental properties that could be rented for no more than six weeks at a time, a restriction that would significantly lower their value.

418. Indeed, according to material the Trump Organization submitted to the Scottish Government, the holiday homes and golf villas would not be profitable and therefore would not add value to the project. At the inception of the project in 2007, economic impact assessments commissioned by the Trump Organization found that for the holiday homes alone, without the private residential component, the net present value of the project ranged from negative £34 million to positive £21 million. So in addition to calculating a value for the undeveloped land based on 2,500 homes rather than the 1,486 homes actually approved, the Trump Organization falsely valued the 986 rental properties (holiday homes and golf villas) as if they were private residences to be sold.

419. This strategy of using unrealistically high prices to estimate the profit from a future residential development that ignored zoning requirements and failed to include any cash flow analysis to compute the present value of future income – hereafter referred to as the "Inflated Home Sale Scheme" –vastly overstated the value of the undeveloped land at Trump Aberdeen.

420. From 2015 through 2018, the valuation of the undeveloped land at Trump Aberdeen relied on the same Inflated Home Sale Scheme as 2014.

421. As a result, the Statements of Financial Condition in years 2014 to 2018 inflated the value of the undeveloped property in a material way. Indeed, simply adjusting the valuations to correct for using 2,500 private homes rather than the 500 private homes actually approved,

keeping all other variables constant, results in a reduction in the valuation of the undeveloped land component of Trump Aberdeen of more than $175 million in each year.

422. In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings. The new proposal was to build 500 private residences, 50 cottages, and no holiday homes because the company determined the holiday homes were not economically viable.

423. In September 2019, the Aberdeen City Council approved the Trump Organization's reduced proposal to build only 550 dwellings, consisting of 500 private residences and 50 cottages.

424. Nevertheless, the 2019 Statement, finalized a month later in October 2019, continued to employ the Inflated Home Sale Scheme, deriving a value of just under $221 million for the undeveloped land based on *2,035 private homes*, so fewer than the 2,500 homes assumed in prior years but still far more than the number of homes the City Council had just approved.

425. The 2020 and 2021 Statements derived much lower values of $101 million and $114 million, respectively, for the undeveloped land based on 1,200 homes, still more than twice the number of homes the City Council had approved in 2019.

426. As in prior years, the 2019 to 2021 valuations employed the Inflated Home Sale Scheme.

427. Moreover, the Trump Organization's decision to employ the Inflated Home Sale Scheme during the period 2011 through 2017, and more specifically to fail to conduct any cash flow analysis, was particularly egregious in light of Mr. Trump's decision during this entire period to *indefinitely postpone all development plans* on the property due to the Scottish Government's approval of a proposed wind farm in Aberdeen Bay that would be visible from the

property. As he confirmed in testimony to the Scottish Government in April 2012, Mr. Trump determined that he "cannot proceed with [the development] if the hotel is going to be looking at industrial turbines, and no one here would do so if they were in my position."

428. The Trump Organization confirmed in a public, audited financial statement shortly before finalizing Mr. Trump's 2014 Statement that it did not intend any residential development on the property *for the foreseeable future*. Specifically, in the audited "Director's report and financial statements for the year ended 31 December 2013," submitted to a UK regulator and signed by Mr. Weisselberg on September 29, 2014, the Trump Organization wrote: "the hotel, second golf course, and future phases of the project have been postponed until such time that the Scottish Government and regional Councils have reversed their stance on supporting the wind farm development being considered for Aberdeen Bay."

429. The Trump Organization also sought to challenge the Scottish Government's approval of the wind farm through litigation. Shortly after the Scottish Government approved the Aberdeen Bay wind farm in March 2013, the Trump Organization commenced a lawsuit against the Scottish Government to halt the project. The lower court rejected the suit in February 2014, which was upheld on appeal to the Scottish Court of Session (2015 CSIH 46) and, in December 2015, by the UK Supreme Court (2015 UKSC 74).

430. The wind farm was completed and began producing electricity by mid-2018.

431. After losing the court battle in 2015 to halt the wind farm, and without reversing his position that development would be indefinitely postponed because of the wind farm, Mr. Trump continued to attribute an inflated value ranging between $267 million and $221 million to the undeveloped land for the years 2015 through 2017.

432. Between 2011, when Mr. Trump decided to indefinitely postpone development due to the planned wind farm, and 2018, when he apparently reversed his position and applied for a reduced development of only 550 homes, neither Mr. Trump nor the Trump Organization factored into the valuation the indefinite postponement of any development plans, whether to account for the potential lack of any development at all or at least the delay in when homes could be built and sold should the "indefinite postponement" be lifted.

c. Trump Turnberry

433. In 2014, through the entity Golf Recreation Scotland Ltd, the Trump Organization purchased the hotel and golf course known as Trump Turnberry for approximately $60 million. The golf club had its first full year of operations in 2017.

434. From 2017 through 2021, the Trump Organization employed the Fixed-Assets Scheme to value the club, combining its "initial investment" of £41,667,000 with various "additions" over time to derive values ranging between $123 million to $126.8 million.

435. Consistent with the improper use of the Fixed-Assets Scheme for other clubs, the Trump Organization did not factor in any depreciation of the assets, with the exception of the 2021 Statement; in that year, for the first time, the Trump Organization included "Estimated depreciation from 1/1/15 to 6/30/21" of $16,309,538 – an implicit acknowledgement that ignoring depreciation in prior years was improper.

436. Since opening in 2017, the golf course has operated at a loss each year. As a result using values for the golf course ranging between $123 million and $126.8 million based on employing the Fixed Asset Scheme is materially false and misleading; the golf course should have been valued at a much lower figure.

d. TNGC Jupiter

437. In November 2012, the Trump Organization, through the entity Jupiter Golf Club LLC, purchased TNGC Jupiter for $5 million in cash. Less than a year later, Mr. Trump valued the same property at $62 million on the 2013 Statement of Financial Condition. That inflation represented a markup of 1,100%. Indeed, for every year from 2013 to 2020, virtually all of the value attributed to Jupiter was fraudulently overstated due to several deceptive methods and assumptions.

438. The primary means of overstating the value of TNGC Jupiter was to fraudulently inflate the acquisition cost of the club and use that inflated figure as the key component in the valuation when employing the Fixed-Assets Scheme. But anyone reading the disclosures in the Statements through 2019 would not know that the club was valued using fixed assets because there was no mention in the Statement disclosures about factoring in the purchase price of the club.

439. As part of the purchase of the club, the Trump Organization assumed liability for the refundable membership deposits of the club's members. Those deposits had a face value of $41 million. The Trump Organization treated that $41 million as if it was debt that it purchased with the club, which it then deemed to increase the total purchase price to more than $46 million – hereafter referred to as the "Membership Deposit Scheme."

440. But the Trump Organization was not assuming an immediate $41 million of liability. The terms of the "refundable" membership agreements for the club provided that only those members who remain in good standing for *30 years* are eligible to obtain a full refund of their membership deposits. Therefore, the liabilities for "refundable" memberships would need to be paid out only decades in the future, if at all.

441. Under the applicable GAAP rules, the Trump Organization was required to determine the present value of the liabilities it assumed, not just the total cash value of payouts decades into the future.

442. While the Trump Organization did not prepare such a present value assessment, the seller of the property, Ritz-Carlton, did. The seller retained the National Golf and Resort Properties Group of Marcus & Millichap, a leading real estate advisory and valuation firm, to prepare a "Market Positioning and Price Analysis" for the club as-of June 15, 2012 – five months before the sale closed. That analysis included a calculation of the present value of the membership liabilities, which reached a "conservative" assessment valuing them at $2,158,341 – far below the $41 million value used by the Trump Organization to inflate the purchase price of the club under the Fixed-Assets Scheme.

443. The Trump Organization obtained and utilized a copy of Ritz-Carlton's analysis in seeking a potential reduction in its local property taxes. However, the Trump Organization ignored the analysis and chose for each year from 2013 through 2020 not to utilize the net present value of the membership liabilities in calculating the purchase price of the club for purposes of the Statements. Instead, the Trump Organization employed the Membership Deposit Scheme, falsely assuming the full cash value of the refundable memberships was a liability acquired as part of the sale that should be included in the purchase price.

444. And remarkably, the company did this even though Mr. Trump valued his liability for the membership deposits to be zero. For example, the 2013 Statement explains: "The fact that Mr. Trump will have the use of these [membership deposit] funds . . . without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero."

445. Additionally, the Trump Organization overstated the value of TNGC Jupiter by employing the Brand Premium Scheme, adding for the "Trump brand" an additional 30% from 2011 through 2014 and 15% from 2015 through 2020—even though the Statements disclaimed that any of the valuations included a brand premium.

446. Finally, the Trump Organization included in the value in nearly all years the outstanding receivables from members for food and dues. This is not consistent with any recognized valuation technique, much less a calculation based on a fixed-asset approach.

e. TNGC Briarcliff

447. Based on the supporting data, the value for TNGC Briarcliff in each year is comprised of two components: the value for the golf course and the value for the development of the undeveloped land.

448. These components and the total value of the property in each year are set forth in the chart below:

Statement Year	Value of Golf Course	Value of Undeveloped Land	Total Value
2011	$43,603,300	$25,100,000	$68,703,300
2012	$74,407,000	$25,100,000	$99,507,000
2013	$74,514,000	$101,748,600	$176,262,600
2014	$75,132,941	$101,748,600	$176,881,541
2015	$74,745,190	$101,748,600	$176,493,790
2016	$75,949,132	$101,748,600	$177,697,732
2017	$77,435,891	$101,748,600	$179,184,491
2018	$78,310,201	$101,748,600	$180,058,801
2019	$78,104,818	$105,561,050	$183,665,868
2020	$78,104,818	$90,311,250	$168,416,068
2021	$37,058,718	$86,498,800	$123,557,518

449. Both components were derived each year using improper methods and based on facts and assumptions that were materially false and misleading, and known by Mr. Trump and others within the Trump Organization to be materially false and misleading, and which substantially inflated the valuations as described more fully below.

i. The Golf Course Valuations

450. In each year, except 2011, Mr. Trump derived the value of the golf course based on employing the Fixed-Assets Scheme.

451. In 2011, the supporting data reflects that the golf course was valued at $43,603,300. That amount included estimated initiation fees for 67 unsold memberships totaling $12,775,000. Although the supporting data spreadsheet states that the club was currently "getting $150,000" in initiation fees per membership, the Trump Organization derived the $12,775,000 figure by assigning a much higher value for the initiation fees of 47 of the 67 unsold memberships, in many instances as high as $250,000. Instances in which the Trump Organization used unsold memberships at prices far higher than their own internal records reflect, without performing a discounted cash flow analysis on future revenue, is hereinafter referred to as the "Unsold Memberships Scheme."

452. Valuing more than two-thirds of the unsold memberships as worth materially more than $150,000 each was without any basis and improperly inflated the amount of the golf course value. Indeed, according to membership records, even the representation that the club was "getting $150,000" per membership for initiation fees in 2011 was false; records indicate that many members paid no initiation fee for their memberships at all in 2011 and 2010.

453. In addition, as part of the Unsold Membership Scheme, the Trump Organization failed to take into account how long it would take to sell the memberships at the inflated prices reflected in the supporting data. Mr. Trump knew this was improper because when he filed a

protest with the IRS regarding a conservation easement for his golf course in Bedminster, New Jersey, his attorney argued on his behalf that golf course revenue in a valuation should be subject to a discounted cash flow analysis.

454. In March 2012, Mr. Trump instructed his staff to waive the initiation fee for new members at TNGC Briarcliff as part of a new strategy to bring in 75 new members in order to increase revenue for the club. As a result of this instruction, and as confirmed by membership records, no new members paid an initiation fee in 2012.

455. But Mr. Trump's decision to waive initiation fees in order to increase membership would have resulted in a sharp reduction in the valuation of the club based on the prior year's approach of valuing the unsold memberships based on collecting hefty initiation fees. To avoid this result, Mr. Trump and the Trump Organization abandoned the Unsold Membership Scheme, ignored the unsold memberships, and instead employed the Fixed-Assets Scheme to value the golf course – a change in method that was not disclosed in violation of GAAP rules.

456. Under the Fixed-Assets Scheme, the golf course was valued at $71,200,000 in the 2012 Statement, an increase of approximately $30 million in the total valuation of TNGC Briarcliff from 2011 to 2012.

457. Mr. Trump and the Trump Organization continued to employ the Fixed-Assets Scheme for the 2013 to 2020 Statements, which resulted in values ranging from $74.5 million to $79 million for the club component of the valuation.

458. In 2021, The Trump Organization made a slight modification to the Fixed-Assets Scheme by averaging the fixed assets figure with the gross revenue times a multiplier, purportedly based on the advice of the same outside consultant whose advice the company had previously ignored and who said nothing about averaging gross revenue and fixed assets.

459. This modification to the Fixed-Assets Scheme resulted in an increase in value of about $12 million.

460. Finally, Mr. Trump and the Trump Organization knew that employing the Fixed-Assets Scheme specifically for TNGC Briarcliff was improper and derived grossly inflated valuations based on the appraisal the Trump Organization had Cushman prepare for purposes of valuing a conversation easement for TNGC Briarcliff to obtain a tax deduction. In the appraisal report, issued in April 2014, Cushman used two approaches to value the golf course – looking at comparable sales and the property's income-producing capabilities. Cushman did not use a fixed-asset approach.

461. Under both approaches, the report determined the value of the golf club as of April 2014 was $16.5 million, less than one-fourth the golf club value used for the Statements from 2012 through 2020 and less than half the golf club value used for the Statements in 2011 and 2021.

ii. The Undeveloped Land Valuations

462. In each year from 2011 to 2021, Mr. Trump and the Trump Organization separately derived a value for the undeveloped land at TNGC Briarcliff by employing the Inflated Home Sale Scheme based on estimating the value of building and selling mid-rise apartment units. For 2013 to 2021, the estimates for the undeveloped land comprised the larger component of the valuation of the entire property.

463. In 2011 and 2012, Mr. Trump and the Trump Organization derived a value of $25,100,000 for the expected profit from the sale of 31 mid-rise units, or $809,677 per unit. The supporting data fails to provide any detail on basis for this estimate.

464. From 2013 to 2018, the value of the undeveloped land *quadrupled*, to $101,748,600. This dramatic increase was accomplished by adding 40 more units to the estimate (for a total of 71 units) and increasing the profit per unit by 76%, to $1.433 million.

465. Based on the supporting data, the only source for the increase in the number of units and profit per unit were telephone conversations with Eric Trump.

466. From 2019 to 2021, the value of the undeveloped land fluctuated between $105.5 million and $86.5 million while still estimating the expected profit from the sale of 71 units.

467. Moreover, the supporting data confirms that during the entire period, from 2011 to 2021, the development plans remained "on hold," yet there is no indication in any of the supporting data that Mr. Trump or the Trump Organization performed a discounted cash flow analysis to account for the delay due to putting the development plans "on hold."

468. Finally, Mr. Trump and the Trump Organization knew the estimated profits from the sale of the mid-rise units they were using for the Statements were wildly inflated based on a 2013 preliminary valuation of about $45 million and an April 2014 Cushman appraisal. That appraisal valued the undeveloped land at $43.3 million, about $58 million less than the value they used for the undeveloped land in the 2013 to 2018 Statements. Eric Trump, the specific source of the valuation during this period had access to the lower appraisal number from Cushman prior to the issuance of each Statement from 2013 to 2018.

f. TNGC LA

469. The value assigned to TNGC LA in each year is comprised of two components: one value for the golf course and another value for the development of the undeveloped land.

470. These components and the total value of the property in each year are set forth in the chart below:

Year	Value of Golf Course	Value of Undeveloped Land	Total Value
2011	$23,800,000	$310,300,000	$334,100,000
2012	$23,800,000	$283,250,000	$307,050,000
2013	$73,505,900	$152,000,000	$225,505,900
2014	$74,300,642	$139,390,000	$213,690,642
2015	$56,615,895	$84,095,000	$140,710,895
2016	$52,426,829	$82,485,000	$134,911,829
2017	$52,670,127	$69,200,000	$121,870,127
2018	$51,322,079	$62,075,000	$113,397,079
2019	$54,734,733	$62,260,000	$116,994,733
2020	$54,734,733	$52,975,655	$107,710,388
2021	$28,446,251	$63,663,391	$92,109,642

471. Both components were derived each year using improper methods and based on facts and assumptions that were materially false and misleading, were known by Mr. Trump and others within the Trump Organization to be materially false and misleading, and which substantially inflated the valuations as described more fully below.

i. The Golf Course Valuations

472. In 2011 and 2012, the Trump Organization valued the golf course at TNGC LA at $23.8 million based on the original loan and improvements.

473. Starting in 2013 and continuing through 2020, and without any disclosure of the change in methodology in violation of GAAP rules, the Trump Organization employed the Fixed-Assets Scheme to value the golf club component of TNGC LA. During this period, the company also added 30% to the value in 2013 and 2014 and 15% to the value in 2015 through 2020 under the Brand Premium Scheme.

474. In 2021, the company modified its fixed-assets approach, again without the required disclosure of a change in metodology, and derived the golf course value by averaging gross revenue times a multiplier and the value derived by the Fixed-Assets Scheme (but using "Net Fixed Assets" which factored in depreciation rather than just "Fixed Assets" without any depreciation as in prior years); this modification was purportedly based on advice of "golf course industry experts" Marcus & Millichap, despite receiving prior advice from that firm that using a fixed-assets approach for an operating golf course was improper. The use of a net figure for fixed assets that factors in depreciation is an implicit acknowledgement that ignoring depreciation in prior years was improper.

475. In every year from 2011 to 2020, the golf course has operated with a net income that barely reached the low seven figures, often at $1.5 million or lower, and in some cases lower than $1 million. As a result, using values for the golf course ranging between $23.8 million to $74.3 million in the Statements from 2011 to 2021 based on employing the Fixed-Assets Scheme, coupled with the Brand Premium Scheme starting in 2013 that tacked on an additional 30% or 15% in all years except 2021, is materially false and misleading; the golf course should have been valued at a much lower figure.

ii. The Undeveloped Land Valuations

476. Throughout the period 2011 to 2021, the TNGC LA valuation incorporated an inflated value for a substantial number of potential lots for sale in the areas around the golf course using the Inflated Home Sale Scheme.

477. TNGC LA was originally known as Ocean Trails Golf Club. Construction on the course started in 1997 and by June 1999, the golf course was almost complete—until a landslide dropped 300 yards of the 18th hole fairway into the Pacific Ocean. The landslide also caused most of the 18th hole to slide 50 feet toward the ocean, including the fairway and green.

Development on the property ceased after the landslide and the Ocean Trails Golf Course construction project went into bankruptcy. VH Property Corp., a Trump Organization subsidiary, acquired the property out of bankruptcy in November 2002 for a reported price of $27 million.

478. Given the site's instability, the landslide, and the site's proximity to the Pacific Coast, the Trump Organization needed approval from the City of Rancho Palos Verdes to develop the site. The Trump Organization's geologist worked with a Rancho Palos Verdes geologist to develop a geologic model and reach an understanding of any improvements necessary before the site could be further developed. This presented a particular hurdle for 16 planned lots on the driving range and putting green. In June 2011, the Trump Organization's geologist produced a report stating that 104 "shear pins," stabilizing implements drilled into the ground to provide engineering stability, would be required to develop the lots safely.

479. Given these difficulties in developing the lots, the Trump Organization began to consider another option: donating a conservation easement over the 16 proposed lots that would preclude any development but allow continued use of the area as a driving range and putting green.

480. Nevertheless, for the purposes of the Statement of Financial Condition, the Trump Organization valued the property as if there were no practical limitations on the development of the lots, in addition to assigning inflated values to each of those lots. For example, the 2011 valuation of $334 million had two components: the $23.8 million valuation of the clubhouse (which the valuation attributed to the value of a loan plus improvements) and the putative sales price of 70 housing lots valued at $310.3 million, which incorporated two lots that had been "priced out" at $8.8 million together, another $7.15 million lot under contract, and 67 remaining lots priced at an "average price" of $4.5 million. The valuation, which provides no source for this

average price, noted that "[a]lthough 17 lots have been used for a driving range, we can still convert the lots back to housing." The driving range lots would later be the subject of the Trump Organization's conservation easement in 2014.

481. The 2012 valuation of $307 million took a similar approach. For this year, 12 lots were listed as priced out at a total of $35,750,000 at an average of roughly $3 million per lot. These included two of the lots that had been previously listed as "priced out" at an average of $4.4 million per lot in 2011. Despite the lower lot prices for these two lots, the 2012 valuation retained the $4.5 million average price per lot for the remaining 55 lots, and the clubhouse remained valued at $23.8 million.

482. But this valuation was contradicted by advice the Trump Organization received from "outside professionals," specifically appraisers from Cushman asked to conduct a preliminary valuation to aid consideration of a potential easement donation over the driving range property.

483. After the issuance of the 2012 Statement, Trump Organization outside tax counsel Sheri Dillon engaged Cushman appraisers Richard Zbranek and Brian Curry to put a value on the potential easement donation. Ms. Dillon also hired an engineer to work on the project. The Cushman appraisers were to provide "initial valuation conclusions" for 16 lots on the TNGC LA driving range. This initial evaluation would not involve a formal written report or assess value enhancement for the full Trump-owned parcel. If this valuation met with the Trump Organization's approval, the appraisers would then move on to provide a valuation suitable for supporting a charitable donation.

484. The Trump Organization, through Bingham McCutchen LLP (Ms. Dillon's law firm at the time), conveyed to the appraisers that it believed the lots might be worth a total of $40 or $50 million.

485. In December 2012, Cushman, relying on costs and other information prepared by an engineer (also retained by Dillon and Bingham), reached a preliminary value conclusion for the development potential of the lots of only $17,725,000. As Mr. Curry described it to Mr. Zbranek, "They did paper napkin analysis and suggested 40 to 50 million dollars. I sent them my analyses, we walked through the whole thing, and they couldn't argue with it. More like. 'Oh'."

486. After this preliminary valuation, the Trump Organization put the conservation easement project on hold and did not pursue it further in 2012 or 2013.

487. While the 2013 Statement did not adopt the Cushman price estimate, it nevertheless reflected a decrease in the valuation of the development of the lots from $247.5 million in 2012 to $152 million in 2013. The drop was due to lower average sales prices: for the 11 lots priced out in 2013, the sales price was a mere $22 million, or an average of $2 million a lot. Three additional lots were under contract for a total of $4.65 million, or $1.55 million each. Given these lower prices, the company based the estimate for the remaining lots on an average sales price of $2.5 million—instead of $4.5 million—significantly reducing the calculated value of those 52 lots. But this valuation was still massively inflated over the price assessment the Trump Organization received from Cushman, which valued the 16 lots on the driving range at only $17,725,000 (or roughly $1.1 million per lot after accounting for development time).

488. To reach a total valuation of $225 million in 2013, the Trump Organization had to change its approach to valuing the golf club by utilizing the Brand Premium Scheme, without disclosing the change in the Statement in violation of GAAP rules. Instead of imputing a value

from the amount of a loan plus improvements as it had in previous years, in 2013 the Trump Organization identified the book value of the club as $56,543,000 and added a "Premium for fully operational branded facility @ 30%" of $16,962,900, to reach a $73.5 million valuation—creating an almost a $50 million increase in the valuation of the golf club. This significant increase in the golf club valuation masked the decrease in the value of the housing lots.

489. The 2014 valuation of $213 million continued this approach. The club "appreciated" slightly to $74,300,642 with the 30% brand premium, 24 units were "priced out" at $41,890,000 (an average of about $1.75 million), and the 39 remaining lots were listed at an estimated $2.5 million ($97,500,000 total).

490. This valuation, however, was undermined when the Trump Organization also decided to pursue the easement donation over the driving range property after all and began the process of obtaining the necessary formal appraisal to support the donation. By August 2014, Trump tax counsel Sheri Dillon had engaged Cushman appraisers Brian Curry and Richard Zbranek to value the TNGC LA property in 2014 for purposes of donating a conservation easement over 16 lots that comprised the driving range. On October 16, 2014, Mr. Curry reached a preliminary valuation for the property of "around $27 to $28MM for the driving range property." Given the 16 lots at issue in this valuation, Mr. Curry's estimate put the value of each lot at $1,687,500 to $1,750,000—much lower than the $2.5 million used by the Trump Organization. The next day, Eric Trump authorized Ms. Dillion to obtain a formal appraisal of the driving range property.

491. During the process of preparing that appraisal, Mr. Trump personally pushed to increase the value of the parcel, arguing that lots were in a "more prestigious" zip code than other lots on the property and could thus command a "'zip code' premium." Mr. Curry asked Ms.

Dillon to confirm whether the lots were in a different zip code. Trump Organization in-house counsel concluded they were not.

492. But even those preliminary numbers were significantly inflated. Indeed, when Cushman appraisers began to prepare a formal appraisal, they lowered the value of the driving range property down to as little as $20.5 million. They then realized that the engineer concluded that costs associated with developing the lots had been "underestimated," which would have lowered the value even further. The engineer in fact subsequently submitted substantially increased cost estimates on December 10. But during in the process of finalizing the appraisal, Ms. Dillion and the Trump Organization pushed Cushman to increase the appraised value of the driving range parcel, which in turn would increase the value of the easement donation. At one point Mr. Curry wrote to Mr. Zbranek that "Trump is fighting for every $1."

493. Ultimately the appraisal submitted to the Internal Revenue Service valued the donation at $25 million. But the appraisers only reached this valuation by fraudulently manipulating the valuation. Among other things, the appraisers:

a. Failed to use the final engineering report prepared by the engineer retained to assess the costs of developing the lot. Instead of using the final report which would have raised the cost of developing the lot and hence decreased the value of the donation, the appraisers used a draft report with lower costs and incorporated an unsupported development timeline.

b. Failed to account for a cost savings to the Trump Organization from the donation. By giving away development rights for the driving range property, the Trump Organization avoided an obligation to build two affordable housing units.

c. At the last moment, cut by one-third the value to the golf course of having a driving range available to golfers. By dropping the benefit of retaining the driving range from $1.5 million to $1 million, the appraisers inflated the value of the donation by $500,000.

494. In January 2015, the donation of the easement to the Palos Verdes Peninsula Land Conservancy was publicly disclosed. Ms. Dillion advised against the press conference for a host

of reasons, including a desire to avoid drawing undue scrutiny to the transaction. On January 14, 2015, she wrote to an in-house lawyer at the Trump Organization: "Remind him that the larger the value and the more he makes of it, then he is telling the world how large a tax deduction he is taking for it. In this case, this is tantamount to the US taxpayers paying Donald Trump to keep his driving range and use it for exactly what he is already using it for - and some could argue that as long as he is operating the golf course, he would continue to keep the driving range - effectively, the US taxpayers are paying him to do what he would already do anyway, and perhaps this isn't the best use of taxpayer dollars. Bottom line - the more publicity this gets, the more we invite scrutiny. This may cause renewed interest in the issue."

495. Mr. Trump nevertheless decided to hold a press conference at TNGC LA to announce the donation. Mr. Trump explained: "It's something I've been thinking about for a year, maybe a little longer than a year, and I decided to pull the trigger and do it," adding that giving up entitlements to develop the land "was not an easy thing to do" because it is valued at "much more than $25 million."

496. Having publicly disclosed the donation, in 2015, the Trump Organization adjusted its valuation—partially—to conform to the appraisal that Cushman prepared in connection with Mr. Trump's donation of a conservation easement over the driving range. The valuation acknowledged that 16 donated lots could no longer be built after the donation. It purported to value 23 remaining lots at a value reached in the appraisal, $50,450,000 (about $2.2 million per lot). Unlike the appraisal, however, the Trump Organization failed to discount that value back to present value.

497. Adopting some of the figures from the appraisal superficially conformed with the valuation provided by Cushman. However, the Trump valuation assumed that the lots would be

developed promptly even though the Trump Organization had no intent to develop the lots, and disregarded the discounted cash flow analysis Cushman performed. And, in fact, as depicted below, the lots remain cleared of vegetation but bare of development today.

498. As for the golf course component of the TNGC LA valuation, in 2015, after a shift from the previous 30% brand premium to a 15% brand premium—in accordance with the Trump Organization's change in valuation for the other clubs that year but contrary to the disclosure in the Statement that no brand value was included—the value was reduced to $56,615,895.

499. But even this reduced valuation was still higher than the (inflated) valuation reached by the Cushman appraisers for purposes of the tax deduction. The appraisal prepared by

Mr. Zbranek and Mr. Curry reached a valuation of the golf club using "direct capitalization" and sales comparison approaches. Their analysis placed the property's value at a mere $16 million—less than 30% of the value on Mr. Trump's Statement.

500. From 2016 through 2018, the Trump Organization continued the same approach to valuation it used in 2015: superficially purporting to use the valuation reached by Cushman to value the 23 lots it never developed, adopting inflated estimates for other unsold lots, failing to use the Cushman appraisal's valuation of the golf course itself, and applying an undisclosed brand premium that inflated the value of the golf club.

501. For 2019 and 2020, the Trump Organization used a similar approach. In 2019 and 2020, the Trump Organization adopted values purportedly "from a 3rd party real estate agent" rather than the Cushman appraisal or their internal sales records regarding sales prices at the site. And the Trump Organization did not do a discounted cash flow analysis that would have accounted for the time it would take to develop the site and sell the lots. Moreover, far from receiving updated pricing "from a 3rd party real estate agent," as the supporting data spreadsheets indicate, 2020 backup information indicates the "pricing" came from within the Trump Organization, from a person at Trump International Realty with a trumporg.com email address.

502. In 2021, the Trump Organization continued the same approach of adopting inflated estimates for unsold lots, relying this time on "2021 pricing from [Trump International Realty] and updated internal costs" to reach a higher value still of $63,663,391, or about $2.77 million per lot – again without performing a discounted cash flow analysis to account for development and sales time. The 2021 pricing schedule appears to be in the same form as the

2019 and 2020 schedules, indicating had been false to state that those schedules ever came from a third party agent.

g. TNGC Colts Neck

503. In July 2008, the Trump Organization, through the entity Trump National Golf Club Colts Neck LLC, purchased TNGC Colts Neck for $28 million.

504. The valuations of TNGC Colts Neck on the Statements of Financial Condition from 2011 to 2020 were false and misleading in ways that mirror the valuations of other club facilities.

505. The 2011 Statement of Financial Condition valuation of TNGC Colts Neck was infected by false and misleading statements in the supporting data and the Statement itself.

506. The valuation in this year had two essential components: (1) purchase price and improvements of the clubhouse, and (2) the purported value of unsold memberships. These figures were both false and misleading in important respects.

507. As for the purchase price of the clubhouse and improvements, those figures were inflated by employing the Membership Deposit Scheme.

508. As for the unsold memberships, the Trump Organization employed the Unsold Membership Scheme, pricing the vast majority of unsold membership at two to more than three times the then-current $50,000 price of a membership and failing to account for the considerable time it would take to sell those memberships, which would require a cash flow analysis applying a discount rate to bring the projected income to present value.

509. Nor is there any evidence to suggest that the membership prices and figures reflected in the supporting data were bona fide projections of membership revenue. Indeed, in the entire 2010 calendar year, the Trump Organization collected $419,667 in initiation fees at TNGC Colts Neck. At the price listed in the supporting data that would mean about 8 members joined

the club—not the 25 stated to pay $50,000 or the 177 stated to pay higher amounts. And, in July 2011, the Trump Organization established a promotional program where they waived initiation fees for any member who joined for a minimum of three years. In 2011, the Trump Organization collected less than $300,000 in initiation fees from TNGC Colts Neck.

510. Beginning in 2012, the Trump Organization shifted to employing the Fixed-Assets Scheme, the Membership Deposit Scheme, and starting in 2013, the Brand Premium Scheme to inflate the valuation, without disclosing the change in violation of GAAP rules.

511. Specifically for the membership deposits, despite advising recipients of the Statements that these were worthless liabilities, the Trump Organization included their full face value ($11.7 million) to inflate the purchase price of the club to approximately $40 million from 2012 to 2021.

512. On top of that inflated purchase price, the Trump Organization from 2013 to 2020 added a brand premium, even though the Statements represented that no amount was included for the Trump brand. Adding a brand premium not only conflicted with the description in the Statements, but violated the GAAP rule requiring that brand premium be excluded.

513. In 2021 the Trump Organization switched to valuing the club based on 10 times earnings before interest, taxes, depreciation, and amortization or "EBITDA," per the advice of the outside golf consultant they had ignored in earlier years. The resulting valuation of $27,583, 948 is about half of the valuation from 2020 of $55,191,322.

514. Therefore, when valued based on an income approach after thirteen years of ownership and capital expenditures by Mr. Trump, TNGC Colts Neck is worth less than the original $28 million purchase price absent membership deposits paid in 2008.

h. TNGC Philadelphia

515. Through an entity called TNGC Pine Hill LLC, Mr. Trump purchased a ground lease interest in TNGC Philadelphia located in Pine Hill, NJ, for a purchase price of $4,750,000 in 2009.

516. The Statements of Financial Condition from 2011 to 2021 do not disclose that Mr. Trump owns a leasehold interest for TNGC Philadelphia. Instead, the Statements misleadingly suggest that Mr. Trump holds a fee simple interest, and value the club either by employing the Unsold Memberships Scheme or by employing the Fixed-Assets Scheme. This was false and misleading for a number of reasons.

517. First, each of the Statements from 2011 to 2013 indicated that TNGC Philadelphia was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

518. Second, the supporting data for the years 2011 through 2020 confirms that the Trump Organization did not account for ground lease expenses when computing valuations of the property. The valuations failed to include rent payments required under the terms of the ground lease or account for the fact that the ground lease agreement requires consent of the landlord in order for Mr. Trump to transfer his leasehold interest to non-related parties.

519. Third, the Trump Organization employed the Unsold Membership Scheme in 2011 and 2012. For example, in 2011 the listed initiation fee was only $10,000, but the company valued all of the unsold memberships at prices ranging between $15,000 and $35,000. And in 2012 the unsold memberships were valued at prices ranging between $15,000 to $30,000. In reality, Trump Organization records showed that most initiation fees were waived for new members of TNGC Philadelphia from 2010 to 2013.

520. Fourth, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price the full face value of refundable membership deposits of $953,237 despite declaring in the Statements that the liability for the membership deposits was zero dollars.

521. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC Philadelphia was not expected until 2027 and the present value of the obligations would be less than one-third of the "actual" or nominal dollar value.

522. Fifth, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, even though the Statements disclaimed adding brand value and GAAP rules prohibit such premiums.

523. In 2021 the club was valued using the average of net fixed assets and gross revenue times a multiplier. This led to a reduction in value of almost $10 million from 2020.

i. TNGC DC

524. The valuations of TNGC DC on the Statements of Financial Condition from at least 2011 to 2021 were false and misleading in ways that mirror the valuations of other club facilities.

525. The valuations of TNGC DC in the 2011 and 2012 Statements of Financial Condition had two essential components: (1) purchase price plus improvements; and (2) the purported value of unsold memberships.

526. For 2011 and 2012, the cost of a full individual golf membership was $25,000 and the cost of a corporate membership was $125,000. Nevertheless, employing the Unsold Membership Scheme for the valuations in those years, the company valued nearly all of the

unsold memberships well above those prices—mostly in a range between $75,000 and $225,000—without any cash flow analysis..

527. Beginning in 2013 and continuing through 2021, the Trump Organization employed the Fixed-Assets Scheme—without disclosing the change in violation of GAAP rules–which produced valuations that were false and misleading in numerous respects.

528. First, each of the Statements from 2011 to 2013 indicated that TNGC DC was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

529. Second, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price from 2013 to 2020 the full face value of refundable membership deposits of $16,131,075 despite declaring in the Statements that the liability for the membership deposits was zero dollars.

530. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC DC was not expected until 2022 and the present value of the obligations would be a small fraction of the "actual" or nominal dollar value.

531. Third, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, adding either 30% or 15% (depending on the year) to fixed assets, even though the Statements represented that no brand value was included and GAAP rules prohibit adding any such internally developed intangible brand premiums.

532. In 2021, when the club switched to using an EBITDA multiplier, the valuation fell by $17 million from the 2020 figure.

j. TNGC Charlotte

533. The valuations of TNGC Charlotte on the Statements of Financial Condition from 2012 to 2020 were false and misleading in ways that mirror the valuations of other club facilities.

534. For the 2012 Statement of Financial Condition valuation of TNGC Charlotte, the Trump Organization employed the Membership Deposit Scheme -- including the full face value of refundable membership deposits of $4,080,550 despite declaring in the Statements that the liability for the membership deposits was zero dollars – and the Unsold Membership Scheme, and also included a value for the "club improvement fund."

535. With respect to the membership deposits, at the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC Charlotte was not expected until 2028 and the present value of the obligations would be a small fraction of the "actual" or nominal dollar value.

536. For 2013 and continuing through 2020, the Trump Organization continued to employ the Membership Deposit Scheme, adding to the purchase price the full face value of refundable membership deposits of $4,080,550.

537. Also during these years, the Trump Organization employed the Brand Premium Scheme, adding either 30% or 15% (depending on the year) to fixed assets, even though the Statements represented that no brand value was included and GAAP rules prohibit adding any such internally developed intangible brand premiums.

k. TNGC Hudson Valley

538. Mr. Trump purchased a ground lease interest in TNGC Hudson Valley through an entity called TNGC Dutchess County LLC for a stated purchase price of $3 million in 2009.

539. The Statements of Financial Condition from 2011 to 2021 do not disclose that Mr. Trump owns a leasehold interest for TNGC Hudson Valley. Instead, the Statements misleadingly suggest that Mr. Trump holds a fee simple interest, and value the club either by employing the Unsold Memberships Scheme or by employing the Fixed-Assets Scheme. This was false and misleading for a number of reasons.

540. First, each of the Statements from 2011 to 2013 indicated that TNGC Hudson Valley was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

541. Second, the supporting data for the years 2011 through 2021 confirms that the Trump Organization did not account for ground lease expenses when computing valuations of the property. The valuations failed to include rent payments required under the terms of the ground lease or account for the fact that the ground lease agreement requires consent of the landlord in order for Mr. Trump to transfer his leasehold interest to non-related parties.

542. Third, the Trump Organization employed for the valuations in 2011 and 2012 the Unsold Membership Scheme. For example, in 2011 and 2012 the listed initiation fee was only $10,000, but in 2011 the company valued more than 93% of 161 unsold memberships at prices between $15,000 and $25,000, and in and 2012 the company valued 78% of the 254 unsold memberships at prices ranging between $15,000 and $30,000; meanwhile, Trump Organization records showed that most initiation fees were waived for new members of TNGC Hudson Valley from 2010 to 2012.

543. Fourth, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price the full face value of refundable membership deposits of $1,235,619 despite declaring in the Statements that liability for the membership deposits was zero dollars. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the present value of the obligations would be a fraction of the "actual" or nominal dollar value.

544. Fifth, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, even though the Statements disclaimed adding brand value and GAAP rules prohibit such premiums.

545. In 2021 the club was valued using a combination of fixed assets and income, and the valuation fell by almost $4 million – roughly 25% – from the 2020 figure.

12. Real Estate Licensing Developments

546. From 2011 to present, Mr. Trump's Statement has included a category entitled Real Estate Licensing Developments.

547. This category is represented to value "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived . . . from these associations as their potential is realized."

548. The value assessment included in the Statements was represented to include "only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which will be earned are reasonably quantifiable."

549. Mr. Trump and the Trump Organization fraudulently inflated the valuation of the Real Estate Licensing Developments category in a number of ways.

550. One means of inflation was by including from 2015 to 2018 speculative and non-existent deals as components of the value—deals expressly identified on financial records supporting the valuation as "TBD," i.e. to be determined. These TBD deals included arrangements in Asia and the Middle East, were described in a list of purported "new openings," and were based on purely speculative projections that included thousands of new hotel rooms and millions of dollars in additional revenue. The inclusion of these TBD deals conflicted with the express representation in the Statements that only deals that "exist" and for which compensation was "reasonably quantifiable" were included.

551. And including the TBD deals in the 2016 and 2017 Statements was misleading for an additional reason. Both of these Statements were issued after January 20, 2017 – the date of the inauguration – when the Trump Organization purportedly ceased pursuing foreign deals consistent with public representations by Mr. Trump and his company and express restrictions incorporated into Mr. Trump's revocable trust, as confirmed by Donald Trump, Jr., a trustee under that trust, that precluded any Trump Organization entity from entering into any new management agreement in any foreign jurisdiction that uses the Trump brand. But the valuation on these two Statements still included prospective new foreign deals. Assuming the Trump Organization adhered to the ban on foreign deals put in place as of January 20, 2017, it was false and misleading to include such prohibited foreign deals in the 2016 and 2017 Statement valuations.

552. The impact of including the TBD deals was substantial. As shown in the chart below, the TBD deals accounted for between 20-30% of the total Real Estate Licensing Development valuations from 2015 to 2018:

Year	Total (only figure on the Statement)	Future Management Portfolio – TBD Deals	% of Total
2015	$339,000,000	$103,536,391	30.5%
2016	$227,400,000	$46,312,797	20.4%
2017	$246,000,000	$52,731,562	21.4%
2018	$202,900,000	$45,198,994	22.3%

553. According to Allen Weisselberg: "Licensing generally was handled by Ivanka in that I'll call it twenty-fifth floor, that's where they're located, it was a whole licensing department down there and they worked on those deals."

554. Ms. Trump and her brothers Donald Trump, Jr. and Eric Trump were also well aware of the actual revenue derived from licensing in general, and international licensing in particular given their financial interest in those projects. Each of them were paid a "consulting fee" on international licensing deals through an entity called TTT Consulting, LLC, which was jointly owned by the three children. Each child owned 33.3% of the company and they received regular distributions, including Ivanka Trump after she left the company in January 2017.

555. Another means of inflation was including in this category a number of deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, and Trump Chicago—deals in accounting parlance that are known as "related party transactions" because they are not arms-length deals in the marketplace but rather deals between affiliates. Including these related party transactions was contrary to the representation in the Statements that this category included only the value derived from "associations with others" that materialized into actual, signed agreements when in fact the value was substantially inflated through the inclusion of self-dealing agreements among and between Trump Organization affiliates.

556. Including the value of related party transactions also constituted a substantial, undisclosed departure from GAAP, which generally requires disclosure of details of related party transactions because, among other reasons, such self-dealing transactions are not arms-length transactions in the marketplace. See, e.g., Accounting Standards Codification (ASC) No. 850. Here, if properly disclosed, a reader would have understood that the Trump Organization was valuing its own intracompany deals—not deals negotiated at arms-length in the marketplace.

557. Finally, the Trump Organization inflated the valuations in this category from 2011 to 2018 by including so-called incentive licensing fees in a fraudulent and misleading manner. These are fees that are anticipated to be earned over the life of a project typically expected to last several years but were treated for purposes of the valuations as if the revenue would be received over a much shorter period of one or two years. As with other valuations, the Trump Organization's treatment of incentive licensing fees failed to include a cash flow analysis and ignored the speculative nature of the anticipated future income.

558. Starting with the 2019 Statement (issued after the commencement of OAG's investigation), the Trump Organization applied a discount factor to the valuation of the incentive licensing fees, and in their calculations indicated that a majority of the deals would be paid out over a period as long as seven to ten years.

D. The False and Misleading Statements of Financial Condition Were Used to Secure and Maintain Financial Benefits, Including Financing and Insurance, on Favorable Terms.

559. Mr. Trump and the Trump Organization utilized the false and misleading Statements of Financial Condition in an array of financial transactions, most prominently in obtaining real estate loans and insurance coverage.

560. Between 2011 and the present, the Trump Organization has obtained hundreds of millions of dollars in real estate loans in reliance on, among other things, Mr. Trump's net worth

as reported in his Statements of Financial Condition. The Statements were critical to these loans because in addition to being secured by real property or an "interest in" real property, they were backed by Mr. Trump's personal guaranty—either for the full amount of the loan, for a partial amount of the loan, or for the full amount of the loan in a manner that would "step down" to a partial or zero guaranty depending on the ratio of the loan amount to the value of the underlying real property interest.

561. The Statements were also a key component of the Trump Organization's insurance submissions to underwriters. For purposes of soliciting and binding one of its insurance programs, the Trump Organization used Mr. Trump's Statements of Financial Condition to satisfy requirements for financial disclosure for Mr. Trump's personal guaranty in lieu of collateral, and specifically misrepresented to underwriters that the valuations of the properties listed in two of the Statements were prepared by outside appraisers. In connection with renewing its directors and officers liability insurance, the Trump Organization also relied on the Statements to satisfy financial disclosure obligations and concealed the existence of at least one governmental investigation involving Mr. Trump and other company employees despite the company's intent and later efforts to seek coverage for defense costs associated with that investigation.

1. Deutsche Bank Loan Facilities

562. The financial relationship between Deutsche Bank and the Trump Organization dates back to the late 1990's and involved multiple loans for hundreds of millions of dollars in total. But at the start of 2011, the Trump Organization had a single outstanding loan held by Deutsche Bank on Trump Chicago with just over $140 million outstanding. The Trump Chicago loan was originated by the Commercial Real Estate ("CRE") lending group in Deutsche Bank.

563. Starting in 2011 the relationship with Deutsche Bank was revitalized when Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank, which enabled them to obtain more favorable terms than they could have received through the CRE division by having Mr. Trump personally guarantee the loans based on his net worth as reflected in his Statements of Financial Condition.

564. In essence, rather than obtain credit facilities through the wing of Deutsche Bank with an expertise in commercial real estate, Mr. Trump began to seek funds from a wing of Deutsche Bank focused on servicing ultrawealthy clients. Hence, Mr. Trump's personal guaranty, and his representations regarding his finances that backed up that guaranty, featured prominently in Mr. Trump's loan transactions through the PWM wing of Deutsche Bank.

565. Between 2011 and May 2022, Deutsche Bank served as the largest single lender to the Trump Organization and Mr. Trump. At the beginning of May 2022, the Trump Organization owed the bank approximately $340 million in principal and was spending tens of millions of dollars annually to service the debt. These loans, each originated by the PWM division, consisted of: (1) a $170 million facility covering OPO; (2) a $125 million facility covering Doral; and (3) a $45 million facility covering Trump Chicago. By the end of May 2022, the Trump Organization had repaid to the bank approximately $295 million of the debt. The Trump Organization repaid the $170 million OPO loan upon the sale of that property and repaid the Doral loan by refinancing with another financial institution.

566. The initial introduction to the PWM division at Deutsche Bank came in September 2011, when Jared Kushner, the husband of Ivanka Trump, introduced his brother-in-law Donald Trump, Jr. to Rosemary Vrablic, a Managing Director at the bank in the PWM division. Kushner told Donald Trump, Jr. that while "Rosemary only lends with recourse,"

meaning with a personal guaranty from the borrower, "the flexibility, rate and service you get is unparalleled." As part of this initial exchange, Vrablic confirmed the need for recourse in PWM loans telling Donald Trump, Jr. "Sorry about the recourse issue - a dirty word, I know - but it is a requirement in private banking."

567. Kushner was correct that PWM did provide Donald Trump, Jr. – and eventually his father Donald J. Trump and the Trump Organization – unparalleled rates on loans. Each of the three loans outstanding as of May 2022 were shopped to other banks as well as the CRE division within Deutsche Bank. The interest rates offered by PWM were significantly lower than any other offers. As Ivanka Trump wrote after receiving one term sheet from the PWM division: "It doesn't get better than this." And a personal guarantee of each loan by Donald J. Trump was necessary to meet the "recourse" requirement in order to obtain those preferential rates.

568. As a result of the personal guarantee, the annual Statement of Financial Condition was central to each of those loans. By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his Statements, Mr. Trump obtained for his company a significant improvement in the interest rates on the loans.

569. The personal guaranty and other loan documents entailed a certification by Mr. Trump of his Statement of Financial Condition as a requirement before any funds would be lent. The regular submission of the Statements of Financial Condition also helped the Trump Organization and Mr. Trump avoid having the loans placed into default, because annual certifications of the accuracy of Mr. Trump's Statements were required. All told, the interest rate savings from the issuance of the false and misleading Statements of Financial Condition totaled between $85 million and $150 million.

570. In 2020 when Deutsche Bank learned of the alleged misrepresentations in the Statements from the pendency of the action by OAG to enforce its investigative subpoenas against the Trump Organization and related parties, it asked the Trump Organization a series of questions about those Statements. The Trump Organization refused to respond. Thereafter, Deutsche Bank decided, given the Trump Organization's failure even to answer simple questions concerning the Statements, to exit its relationship with the company. Given the then-outstanding credit facilities totaling hundreds of millions of dollars, that exit would take some time, as each facility had an expiration a few years away.

2. Deutsche Bank Loan Issued in Connection with Trump National Doral Golf Club (Florida)

571. In November 2011, the Trump Organization executed a $150 million purchase and sale agreement for the Doral Golf Resort and Spa as part of a bankruptcy proceeding. The Trump Organization was to serve as a stalking horse bidder in a bankruptcy auction, with an eye toward closing the transaction in June 2012.

572. The formal process for soliciting the Doral loan began in late October 2011, when Ivanka Trump sent an "Investment Memo" and financial projections for the Doral property to two Deutsche Bank employees.

573. In November 2011, Mr. Trump began personally contacting banks to secure a loan to purchase Doral. On November 13, 2011, Mr. Trump spoke with Richard Byrne, the CEO of Deutsche Bank Securities to ask if the bank was interested in working with him on financing for the purchase of Doral. Mr. Byrne in turn forwarded the request to the Global Head of the CRE division at the bank who wrote that Doral was "a tough asset and our initial reaction was not enthusiastic."

574. Nevertheless, on November 14, 2011, the two bankers spoke with Mr. Trump and Ivanka Trump about the loan. The next day, Mr. Trump sent Mr. Byrne a letter, copying Ivanka Trump, enclosing his Statement of Financial Condition and writing, "As per our conversation, I am pleased to enclose the recently completed financial statement of Donald J. Trump (hopefully you will be impressed!)" The letter continued, "I am also enclosing a letter that establishes my brand value, which is not included in my net worth statement."

575. On November 21, 2011 the CRE division offered the Trump Organization a $130 million loan at LIBOR + 800 basis points, with a LIBOR floor of 2 percent – a minimum 10% interest rate.

576. The Trump Organization did not accept those terms and continued to look for financing for Doral. In December 2011, Mr. Trump and Ivanka Trump met with Rosemary Vrablic to discuss a potential loan through the PWM division. On December 6, 2011, Ms. Trump emailed Ms. Vrablic that, "My father and I are very much looking forward to meeting with you tomorrow to discuss Doral. I have attached our investment memo as well as some basic information on our golf and hotel portfolios." Ms. Trump copied her husband, Mr. Kushner, on the email who then wrote back just to her saying, "Also – push the relationship AND doral [sic]. Not Doral and the relationship . . . ."

577. The two sides began negotiating terms and on December 15, 2011, Ms. Vrablic sent Ms. Trump a term sheet proposing a $125 million loan with an interest rate of LIBOR + 225 basis points during a renovation period for the resort and LIBOR + 200 basis points during an amortization period for the resort. The terms of the loan included recourse through a personal guarantee by Mr. Trump of all principal and interest due on the loan and the operating expenses

of the resort. The proposal also included a number of covenants including requirements that Mr. Trump maintain a minimum net worth of $3 billion and unencumbered liquidity of $50 million.

578. Ivanka Trump forwarded the proposal to Allen Weisselberg, Jason Greenblatt (Executive Vice President and Chief Legal Officer), and Dave Orowitz (Senior Vice President, Acquisitions and Development) writing: "It doesn't get better than this . . . . I am tempted not to negotiate this though."

579. Mr. Greenblatt wrote back: "I will review, but [note] immediately that this is a FULL principal and interest and operating expense personal guaranty. Is DJT willing to do that? Also, the net worth covenants and DJT indebtedness limitations would seem to be a problem?"

580. Ms. Trump then responded: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal. As the market has illustrated getting leverage on resorts right now is not easy (ie 125 plus an equity kicker for 25 percent or Beal with full cash flow sweeps and steep prepayment penalties.)"[7]

581. Mr. Greenblatt again responded writing: "Obviously this is not my decision, but this is completely inconsistent with what he told me he would ever do again when we had the Chi and vegas issues and the magnitude of this is much bigger. He was so angry that he got himself 'into the chi/vegas mess' and told me he NEVER wanted to do this again." Mr. Greenblatt closed by noting "While none of this is my call, this is a highly risky proposition."

582. On December 18, 2011, Ivanka Trump sent a revised term sheet back to Ms. Vrablic, copying Allen Weisselberg, seeking to reduce Mr. Trump's net worth covenant from $3

[7] "Beal" is a reference to Beal Bank, another financial institution the Trump Organization contacted about a loan for Doral.

billion to $2 billion, and to reduce loan payments by making the full term of the loan interest-only (as opposed to having a period when payments would be principal plus interest).

583. In an internal credit report dated December 20, 2011, Deutsche Bank employees from the PWM division sought the approval of a $125 million term commitment for the Doral property. This report noted "[t]he Facility will also be supported by a full and unconditional guarantee provided by DJT of (i) Principal and Interest due under the Facility, and (ii) operating shortfalls of the Resort . . . ."

584. The credit memo listed this guaranty as a source of repayment, and recommended approval of the loan. The memo stated that "[t]he Facility is being recommended for approval based on" a series of factors, the first of which was "Financial Strength of the Guarantor" and another of which was the nature of the personal guaranty. In connection with that recommendation, the credit memo evaluated assets reported on Mr. Trump's Statement of Financial Condition for the year ending June 30, 2011. For many of the assets listed on Mr. Trump's Statement, the credit memo identified Mr. Trump's valuation and then a "DB Valuation." The DB Valuation included reductions to asset values based on applying "haircuts" to account for the risk that an asset's value might change in the future and the risk that the borrower's valuation might be overly optimistic. These reductions were not intended to account for fraud or knowing misrepresentations by a borrower. The result of those "DB Valuations" was to derive a "DB Adjusted" net worth for Mr. Trump for purposes of the bank's evaluation.

585. In support of the loan application, the Trump Organization submitted an appraisal of the Doral property prepared by CBRE for a different financial institution (Beal Bank based in Texas). When this appraisal was received, one of Deutsche Bank's appraisal reviewers was asked to "drop everything" and review it. That reviewer identified numerous problems with the

appraisal, and understood (as reflected in contemporaneous emails) that the matter would escalate internally once he raised those problems: "PWM wants to do the deal and I am rejecting the appraisal. [PWM Banker] said this is a very high profile deal and that her bosses will be elevating this . . . ."

586. In response to those concerns, Deutsche Bank personnel in February 2012 submitted a new credit memo to alter the terms of their prior credit memo. As a result of those changes, one tranche of the loan – amounting to $19 million – became an unsecured personal loan.

587. The Doral loan closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC personally guaranteed by Mr. Trump. Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter.

588. The loan agreement, signed by Mr. Trump, required that Mr. Trump's June 30, 2011 Statement of Financial Condition have been provided to the bank as a precondition of lending.

589. In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of that statement. In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of a material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, issuance of the loan was noted to be subject to several conditions precedent, including that "[t]he representations and warranties of

Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date."

590. The loan required submission of annual financial statements by the Doral operating entity on an unaudited basis but certified as presenting fairly that entity's financial condition and results in all material respects. The loan further included a debt service coverage ratio ("DSCR") covenant and a loan-to-value ("LTV") ratio covenant.

591. Mr. Trump's personal guaranty, which he signed, included various financial representations. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guaranty—reliance on which Mr. Trump agreed the loan itself was granted. As the guaranty spells out, "In order to induce Lender to accept this Guaranty and to enter into the Credit Agreement and the transactions thereunder, Guarantor hereby makes the following representations and warranties as of the date hereof." One of those representations was: "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2011." Further, the guaranty stated: "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Credit Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect." The guaranty further stated that "all the Guaranteed Obligations," referring to the entirety of the loan and other obligations Mr. Trump guaranteed, "shall be conclusively presumed to have been created in reliance hereon."

592. Pursuant to the guaranty, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." That language means the bank would determine Mr. Trump's compliance with his net worth covenant by reference solely to the net worth Mr. Trump *reported* and certified to the bank.

593. Mr. Trump was also required to "keep and maintain complete and accurate books and records" and periodically to "deliver to Lender or permit Lender to review," a series of documents under the guaranty's financial reporting requirements. One of those submissions was a statement of financial condition, which was to be delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented."

594. False certifications of such financial statements were expressly identified as events of default under the loan agreement. Under the loan, "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective" was one of several "events of default." The term "Loan Documents" includes the loan agreement, guaranty, and, *inter alia*, "any other document, agreement, consent, or instrument which has been or will be executed in connection with" the agreement and guaranty, and thus would include annual signed certifications, which provide they would be executed by Mr. Trump.

595. Mr. Trump submitted Statements of Financial Condition to Deutsche Bank accompanied by certifications required as described above for the years 2014 through 2021

(executed either personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as attorney-in-fact for Mr. Trump). When combined with certifications related to other loans, Mr. Trump (or his attorney-in-fact) certified the accuracy of his Statement of Financial Condition to Deutsche Bank for every year from 2011 through 2021.

596. Subsequent to the loan's origination, Deutsche Bank in a credit memo in July 2013 approved a modified version of the guaranty that enabled Mr. Trump's guaranteed obligation to step down, on a percentage basis, as the LTV ratio of the loan improved. This step-down scale kept Mr. Trump's guaranty at 100% of the guaranteed obligations if the LTV ratio fell between 66% and 85%, stepping down to 40% (LTV 56-65%), 20% (LTV 46-55%), 10% (LTV 36-45%), and 0% (LTV 35% and below). Mr. Trump's net worth covenant under this loan would also step down, based on the percentage of the guaranty that applied (in other words, if the guaranty had stepped down to 40%, then the governing net worth covenant would be 40% of $2.5 billion). The step-down in the guaranty would correlate with an increase in the loan's DSCR covenant amount (in essence, corroborating that the property's cash flow increased to balance the bank's risk in reducing the guaranty level). This credit memo document, which also was part of the annual review of the Trump Doral loan, evaluated Mr. Trump's 2011 and 2012 Statements of Financial Condition. An amended Doral guaranty dated August 12, 2013 indicates the guaranty would be "terminated" upon the reduction of the step-down percentage to 0%.

597. Incorporating figures from Mr. Trump's Statements of Financial Condition submitted in conjunction with compliance certificates, Deutsche Bank conducted annual reviews of the Doral loan in July 2013, May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021.

598. Pursuant to an appraisal provided by the Trump Organization in 2015, the loan-to-value ratio dropped to 34%--sufficient to eliminate Mr. Trump's personal guaranty. But, according to a bank credit memo, "Trump has requested to maintain a 10% guarantee on the combined loan amount of both tranches resulting in the facility being priced at L+1.75%"—in other words, the Trump Organization maintained a personal guaranty to keep the interest rate at a preferred level.

599. The loan remained outstanding until May 2022. As a result, Deutsche Bank received Mr. Trump's Statements of Financial Condition as of June 30, 2019, June 30, 2020 and June 30, 2021.

600. On May 26, 2022, the Trump Organization refinanced the loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank.

3. Deutsche Bank Loan Issued in Connection with Trump Chicago (2012)

601. Roughly contemporaneously with the Doral loan's closing in June 2012, the Trump Organization sought another loan from the PWM group at Deutsche Bank in connection with the Trump Chicago property—in essence, a refinancing of an existing $130 million from the CRE group at Deutsche Bank on that property.

602. Dueling proposals within Deutsche Bank were under discussion in or about March 2012. A memo drafted by the credit risk management group articulated the differences between them. One proposal from the CRE group was for a non-recourse (meaning, no personal guaranty) loan facility with an interest rate of LIBOR plus 800 basis points. The other proposal from the PWM group was for a loan facility *with* a personal guaranty at LIBOR plus 400 basis points—so, four percentage points lower, in terms of the interest rate. Both proposals were for two-year terms, though they may have had other differences. The difference between these two proposals indicates that Mr. Trump's personal guaranty, which was to be procured by means of

his Statement of Financial Condition, accounted for a difference in interest rate of approximately four percentage points on the loan. The memo notes as "Credit Support" that "Donald Trump has reported Net Worth of $4.0 billion with liquidity of approximately $250 million."

603. In October 2012, PWM recommended approval of a loan of up to $107 million to 401 North Wabash Venture LLC, guaranteed personally by Donald J. Trump. Given the mixed nature of the hotel-condo property, the loan was broken down into two facilities. One facility (Facility A) concerned the residential component—unsold residential condominium units, deeded parking spaces, storage spaces, and the like. The second facility (Facility B) concerned the commercial component—"a full service hotel, including 339 condo-hotel rooms, of which 175 are Borrower owned," and various other commercial operations at the property. Facility A was to be for up to $62 million, for a 4-year term, at a rate of LIBOR plus 3.35%; Facility B was to be for up to $45 million, for a 5-year term, at a rate of LIBOR plus 2.25%. For Facility A, the bank listed the primary source of repayment as the sale of the remaining un-sold condo units, and for facility B the cash flow generated by commercial components.

604. For both facilities, a source of repayment was "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the Collateral." In addition, the memo noted its "recommendation" was based in part on "Financial Strength of the Guarantor," the "Nature of the Guarantee," and a developing relationship between the bank and Mr. Trump and his family.

605. As with the Doral credit memo from 2011, this credit memo assessed Mr. Trump's Statements of Financial Condition. In connection with that assessment, the credit memo stated: "Although Facilities are secured by the Collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the Guarantor." The memo

assessed Mr. Trump's 2011 and 2012 Statements. The bank in this memo derived a "DB Adjusted" net worth for Mr. Trump by starting with Mr. Trump's reported values, reducing them to adjusted values to account for the risk that an asset's value might change in the future and that the borrower's valuation might be overly optimistic, and then totaling assets and subtracting liabilities.

606. The loans under the two facilities closed on November 9, 2012. As with the Doral loan, Mr. Trump personally guaranteed both Trump Chicago loan facilities.

607. The loan agreements, signed by Mr. Trump, required that Mr. Trump's June 30, 2012 Statement of Financial Condition or his then-most-recent Statement of Financial Condition have been provided to the bank as a precondition of lending. Mr. Trump's June 30, 2012 Statement of Financial Condition was provided to the bank in October 2012 and figures from that statement are reflected in the bank's internal consideration of the loans.

608. In multiple instances, the loan agreements required that Mr. Trump certify the accuracy of that Statement of Financial Condition. In particular, the agreements contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, both loan documents contained conditions precedent to lending, including that "[t]he representations and warranties of Borrower contained in this agreement and in all certificates, documents and instruments

delivered pursuant to this Agreement and the Loan documents shall be true and correct on and as of the Closing Date."

609. The 2012 Trump Chicago loans each entailed a personal guaranty signed by Mr. Trump. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guarantees—reliance on which Mr. Trump agreed the loans themselves were granted. The terms of each 2012 Trump Chicago loan's guarantees were materially identical to the Doral guaranty: Mr. Trump was required to maintain a minimum net worth, based upon his statement of financial condition, of $2.5 billion, and he was required to provide an annual statement of financial condition to the bank accompanied by an executed compliance certificate certifying that the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." In addition, both loans "shall be conclusively presumed to have been created in reliance" on their respective guarantees.

610. Each guaranty similarly provided that "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2012."

611. Each guaranty similarly provided that "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Credit Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect."

612. False certifications of such financial statements were expressly identified as events of default under the loan agreements, with the same or similar language as had been used in the Doral agreement.

613. Annual reviews including Trump Chicago facilities were conducted in May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021.

614. During the period between the Trump Chicago closing and the first annual review in May 2014 (with extensions in the interim to align the Trump Chicago annual review with other reviews), the Trump Organization paid down the Trump Chicago loan from an overall balance of $98 million to $19 million from the proceeds of condominium sales.

615. Based upon the purported strength of Mr. Trump's financial profile, the Trump Organization requested an additional $54 million in loan funds from Deutsche Bank to be fully guaranteed by Mr. Trump. According to the Trump Chicago annual review from 2014, "The Borrower has requested a $54 million increase to the current outstanding balance of $19 million for a total loan amount of $73 million." This credit memo states: "The proceeds will be used for business purposes including further real estate acquisitions and working capital." Collateral for the loan would be the seven remaining unsold condominium units and the Trump International Hotel Chicago, and the loan would be "fully guaranteed by Mr. Trump for all principal, interest and operating shortfalls until the balance of the facility is less than $45 million (34% LTV)." Specifically, as set forth in this memo, the modified Trump Chicago loan would include a step-down guarantee like the one for the Doral loan--with the guarantee percentage stepping down based on the LTV ratio, and the DSCR stepping up as the guarantee level dropped. The net worth covenant would also drop on a percentage basis with the guarantee.

616. The credit memo recommending approval did so based on the "Financial Strength of the Guarantor," the "DB Relationship" with Mr. Trump and his family, the "quality of the collateral and LTV," an accelerated repayment schedule, the property's cash flow, and potential refinancing in the future. Amended loan documents implementing the above covenants and financial reporting terms closed on June 2, 2014.

617. As with earlier credit memos, this 2014 credit memo (which also recommended approval for the $170 million loan in connection with the Old Post Office discussed below) evaluated Mr. Trump's Statements of Financial Condition. In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 Statements. In connection with that assessment, the credit memo stated: "Although Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." The bank in this memo derived a "DB Adjusted" net worth for Mr. Trump as of June 30, 2013 by starting with Mr. Trump's reported values, reducing them to adjusted values to account for the risk that an asset's value might change in the future and that the borrower's valuation might be overly optimistic, and then totaling assets and subtracting liabilities.

618. Amended Trump Chicago loan documents—including an agreement and a personal guaranty—were executed by Mr. Trump in May 2014. These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's Statements of Financial Condition that were substantially similar to those describe above for the Doral and 2012 Trump Chicago loans. In the amended Trump Chicago guaranty, Mr. Trump certified that his June 30, 2013 Statement of Financial Condition was true and correct

in all material respects and that the Statement "presents fairly Guarantor's financial condition as of June 30, 2013."

619. By the time of the annual review in July 2015, the Trump Organization had paid down the Trump Chicago loan to an overall balance of $45 million. Since the property had been appraised at $133 million, Mr. Trump's personal guarantee was eliminated because the LTV ratio was 34%--below the 35% threshold in the stepdown provision. A subsequent credit report states: "the loan documentation identifies the Guaranty reduction as a permanent event, meaning appraisals that are completed going forward will not change the Guaranty level, regardless of their value."

620. Either Mr. Trump, Eric Trump or his trustees certified the accuracy of the Statement of Financial Condition in connection with the Trump Chicago loans discussed herein for every year from 2013 through 2021, either through the execution of an amended guaranty or through the submission of a compliance certificate.

4. Deutsche Bank Loan Issued in Connection with Trump Old Post Office Hotel in Washington, D.C.

621. In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of OPO in Washington, DC.

622. The Trump Organization had obtained the right to redevelop the property as the result of a bidding process by the U.S. General Services Administration that company described as "one of the most competitive selection processes in the history of the agency." According to the Trump Organization:

> Over twenty of the top hotel companies in the world bid on the project, and The Trump Organization was awarded the job based on the strength of Trump development capabilities, financial wherewithal, vision for the property, and dedication to the preservation of the historic structure.

623. The Statement of Financial Condition was central to that successful effort, captained by Ivanka Trump. The GSA's request for proposals provided that a bidder's "Financial Capacity and Capability" was to be a factor in the government's decision, and required submission of the most recent three years of financial statements.

624. Mr. Trump's Statements, prepared in the same process described above, were submitted as part of Mr. Trump's July 2011 bid.

625. Mr. Trump and Ivanka Trump participated personally in the bidding process in 2011. In particular, Ivanka Trump was involved in crafting communications to the GSA in connection with the bid and in responding to deficiency comments raised by the GSA. Those communications concerned, among other topics, Mr. Trump's Statements of Financial Condition, including their departures from GAAP and contained detailed information about Mr. Trump's financial capabilities as well as his ability to perform the obligations under the lease at issue. The GSA questioned the use of Mr. Trump's Statements, and Mr. Trump and Ms. Trump participated in an in-person presentation to address GSA's concerns about those topics and others.

626. After addressing those issues, the Trump Organization was ultimately selected by GSA in February 2012 to redevelop the property and signed a lease for that purpose on August 5, 2013.

627. In advance of executing the lease, the Trump Organization reached out to the CRE group at Deutsche Bank about potential financing for the project. Despite the request coming into the CRE group, Rosemary Vrablic from the PWM group of the bank—at the urging of Ivanka Trump—kept close tabs on the bank's consideration of the request.

628. By October 2013, the CRE group had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points.

629. The next month, in November 2013, employees at the Trump Organization took that offer to the PWM group to see what terms that group could provide on an OPO loan.

630. By Monday, December 2, 2013 (the Monday after the Thanksgiving holiday), the bank's PWM group provided a draft term sheet directly to the Trump Organization. In an email to Ivanka Trump and Dave Orowitz, Deutsche Bank attached the term sheet and noted that, although the term sheet reflected a $160mm commitment, "[w]e understand the request is for $170 million and are working on getting the step-up approved."

631. The PWM term sheet was different in a number of respects from the CRE term sheet. For example:

- Mr. Trump would personally guaranty the full loan amount in the PWM term sheet (whereas the CRE proposal was unresolved as to whether there would be a 10% guaranty);
- The PWM term sheet had a loan term of ten years, versus a CRE term of approximately 42 months;
- The PWM term sheet had a loan amount, initially, of up to $160 million (and up to $170 million would ultimately be approved), whereas the CRE term sheet had a maximum loan amount of $140 million;
- Interest rates in the PWM term sheet were about half of what they were in the CRE term sheet: PWM's proposal was LIBOR + 2% during the "redevelopment period," and LIBOR + 1.75% during the "post-redevelopment period"; and
- The PWM term sheet required a $2.5 billion net worth (higher than any of net worth covenants proposed by CRE, which topped out at $500 million).

632. Ultimately the Trump Organization and the PWM group agreed on a term sheet that was executed on January 13 and 14, 2014. The executed term sheet's terms largely mirror those above: $170 million loan amount; a 10-year term; 100% personal guaranty; interest rates of LIBOR + 2% or 1.75% (depending on the period); and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500

million. Mr. Trump, as guarantor, would be required to provide his annual statement of financial condition to the bank; there were other financial reporting requirements as well.

633. A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 Statements of Financial Condition.

634. Mr. Trump's net worth and his Statements of Financial Condition were critical to the final terms of the loan, executed on August 12, 2014. As with the Doral and Trump Chicago loans described above, the loan agreement for the OPO project required that Mr. Trump's Statement of Financial Condition be provided to the bank. The Statement required to be submitted was as of June 30, 2013.

635. In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of that Statement. In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, issuance of the loan was noted to be subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date."

636. In addition, because the OPO loan was a construction loan to be disbursed over a long series of tranches, the loan agreement made clear that the bank was not obligated to make

such disbursements unless representations by the borrowing entity and the guarantor (Mr. Trump) were true and accurate at the time of the requested disbursement. One "condition" of such disbursements was that, "The representations and warranties made by Borrower and Guarantor in the Loan Documents" (including the guaranty and subsequent certifications) "shall be true and accurate in all material respects on and of the date of the requested Disbursement with the same effect as if made on such date."[8]

637. As with the Doral and Trump Chicago loan documents, an "Event of Default" in the OPO loan document was defined to include when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective."

638. Mr. Trump's personal guaranty on the OPO loan, which he signed, is dated August 12, 2014.

639. Mr. Trump's personal guaranty also included various financial representations. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guarantees—reliance on which Mr. Trump acknowledged when the loans themselves were granted. As the guaranty states, "In order to induce Lender to accept this Guaranty and to enter into the Loan Agreement and the transactions thereunder, Guarantor hereby makes the following representations and warranties as of the date hereof." One such representation and warranty was: "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects

[8] The agreement spelled out an exception for such representations that were "no longer true and correct in all material respects solely as a result of" the passage of time, but a statement that was inaccurate when made would not have satisfied that exception.

and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2013[.]"

640. Further, the guaranty stated: "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Loan Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect."

641. Pursuant to the guaranty, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." That language means the bank would determine Mr. Trump's compliance with his net worth covenant by reference to the net worth Mr. Trump reported and certified to the bank.

642. Mr. Trump was also required to "keep and maintain complete and accurate books and records" and periodically to "deliver to Lender or permit Lender to review," a series of documents under the guaranty's financial reporting requirements. One of those submissions was a statement of financial condition, which was to be delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented."

643. False certifications of such financial statements were expressly contemplated as events of default under the loan agreement. Under the loan, "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective" was one of several "events of default." The term "Loan Documents"

includes the loan agreement, guaranty, and, inter alia, "any other document, agreement, consent, or instrument which has been or will be executed in connection with" the agreement and guaranty, and thus would include annual signed certifications, which provide they would be executed by Mr. Trump.

644. The bank conducted annual reviews of the OPO loan in July 2015, July 2016, July 2017, July 2018, September 2019, July 2020 , and July 2021.

645. Because the OPO loan was a construction loan, the $170 million loan amount was not disbursed on or about the closing date; instead, the loan was disbursed in a series of "draws" or disbursements over time. The first was on or about June 22, 2015 in a "Request for Disbursement" signed by Mr. Trump. Draws continued throughout 2015 and 2016; generally, requests for those draws were signed by Mr. Trump personally. However, on December 21, 2016, Ivanka Trump signed a draw request in the amount of $4,334,772.83. On February 22, 2017, Eric Trump signed a final draw request in the amount of $2,757,897.30, bringing the total amount dispersed up to $170 million.

646. On or about May 11, 2022 the Trump Organization sold the OPO property for $375 million. Of those proceeds, $170 million were used to repay the loan to Deutsche Bank.

5. 40 Wall Street Loan Issued by Ladder Capital

647. In approximately November 2015, the Trump Organization (through 40 Wall Street LLC) refinanced an existing $160 million mortgage from Capital One Bank on the office building property at 40 Wall Street, New York, NY.

648. The loan from Capital One had an interest rate of 5.7% and required a principal payment of $5 million in November 2015. In January 2015, after consulting with Eric Trump, Allen Weisselberg wrote to Capital One asking the bank to waive the principal payment, explicitly citing the $550 million valuation in the Statement of Financial Condition:

> Mr. Trump's latest financial statement dated June 30, 2014 shows a valuation of $550,000,000 for the building based upon NOI & CAP rates on that date This would put your loan at a 30% loan to value.
>
> In light of the aforementioned valuation and considerable capital investment, along with a much improved cash flow (which will continue to grow as new tenant free rent continues to burn off) and an occupancy rate of 91%, which will be 96% after pending leases totaling 34,862 square feet ate signed, we respectfully request that the required $5 million principal payment due in November 2015 be waived.

649. Capital One, which internally valued the building at roughly $260 million, declined to waive the principal payment. Mr. Weisselberg then began working with his son, a Director at Ladder Capital Finance, to refinance the $160 million mortgage at a rate that would be advantageous to the Trump Organization.

650. This new mortgage was issued by Ladder Capital Finance, and subsequently securitized pursuant to agreements between Ladder Capital and a number of banks. The loan required Mr. Trump to maintain a net worth of at least $160 million and liquidity of at least $15 million. In connection with those covenants, Mr. Trump was required to provide his annual financial statements "prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender (Lender agreeing that WeiserMazars LLP is an acceptable firm) and prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor."

651. In connection with this refinancing loan, Cushman performed an appraisal of the Trump Organization's leasehold interest in 40 Wall Street, concluding that this interest had an "as is" market value of $540 million on June 1, 2015. The appraisal reached this conclusion both through a discounted cash flow approach and a direct capitalization approach. The latter, a direct

function of NOI divided by a capitalization rate, used the figure of $23,203,919 as the property's NOI—noting that this figure was "Plus Year 1 Free Rent." The free rent figure is noted as $7,776,980—suggesting that NOI *without* counting free rent was, instead, $15,432,939. That figure dovetails with the results presented in an income-and-expense table, similar to that contained in the 2010, 2011, and 2012 Cushman appraisal of 40 Wall Street. This table showed, for example, an NOI for 2012 of $6.5 million; for 2013, of $15.4 million; for 2014, $10.6 million; a budgeted NOI for 2015 (the year in question) of $14.2 million; and a Cushman forecast for the same year of $15.43 million.

652. Internal Ladder Capital documents indicate that Ladder underwrote the $160 million loan based on the $23 million NOI figure—and note that Mr. Trump had personally guaranteed tenants' free rent in the first year in the loan documents. A presentation to Ladder's Risk and Underwriting Committee contained an executive summary stating that the loan's underwriting net cash flow DSCR was 2.10x, meaning that net cash flow was more than twice debt service payments according to Ladder's underwriting team.

653. Other listed strengths included Mr. Trump's reported net worth of $5.8 billion as of June 30, 2014, and the property's strong recent leasing activity and below-market rents (which could roll into higher-paying tenants). The presentation also noted that the property's NOI, per the Cushman appraisal, was "$23,203,919," with a footnote stating: "The Appraisal NOI reported above excludes free rent due to tenants during the first year of the Loan. Under the terms of the Loan Documents, Donald Trump will guarantee all outstanding Free Rent at closing of the Loan."

6. Seven Springs Loan Issued by Royal Bank America / Bryn Mawr Bank

654. In 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America ("RBA"), later acquired by Bryn Mawr Bank in 2017. Donald J. Trump personally guaranteed the mortgage.

655. Mr. Trump's Statements of Financial Condition were submitted to RBA and Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. A 2011 credit memo records that the financial statement was "compiled annually with a 6-30 date" and that the bank "typically receives the information in October." A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 Statements.

656. The memo states that because of the "personal financial strength of Mr. Trump, as evidenced by liquid assets of $339 million (cash and marketables) and net worth of $5 billion, Royal Bank America previously waived the requirement of personal tax returns." Another 2014 credit review document notes that the "primary shortfall" in the loan was the lack of cash flow at the property, because the annual loan payments (more than $1 million) is "a large number to cover," and notes figures from Mr. Trump's 2012 Statement.

657. Indeed, Bryn Mawr retained in its files Mr. Trump's Statements of Financial Condition for 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Typically the Statements were sent under the cover of a letter from Jeffrey McConney at the Trump Organization, stating that Mr. Trump's Statement was being provided pursuant to the mortgage.

658. The Statement of Financial Condition was material to not only the origination of the mortgage, but also to the regular maintenance of the loan and a series of extensions. For example, the Trump Organization obtained a series of extensions of the maturity date in 2001, 2002, 2003, 2006, 2009, 2011, 2014, and 2019. In connection with at least some of these modifications, the bank relied upon Mr. Trump's Statements. In particular, the modification

documents in 2011, 2014, and 2019 reiterate various representations and warranties made by the Borrower (Seven Springs LLC) in the original loan documents. Mr. Trump re-affirmed his personal guaranty prior to becoming President, and the 2019 modification was signed by Eric Trump "as attorney in fact" for Donald J. Trump.

659. The personal guaranty for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. For example, one 2011 memo stated, under the heading "pro" (vs. con), "Experienced and financially strong guarantor, with a reported $3.9 Billion net worth." A 2014 memo similarly noted that renewal of the loan was recommended based on, among other factors, "Strong Guarantor Support" and "Personal financial strength of Mr. Trump evidenced by a reported net worth of $5 Billion and liquid assets of $354MM."

660. During the 2019 loan modification Jeffrey McConney originally asked for a quote on the price of extending the loan without the personal guaranty of Donald J. Trump. He was told that he would be required to place about $700,000 in escrow at closing and was quoted an interest rate about half a percentage point higher per annum than if there was a guaranty. After receiving these terms, he and Eric Trump decided to extend the loan with the personal guaranty of Donald J. Trump in place.

661. Bryn Mawr personnel relied on Mr. Trump's Statements for purposes of extending and maintaining the mortgage and accepted that they were complete and accurate as represented to the bank.

7. Other Efforts To Use The False And Misleading Statements In Commercial Transactions

662. In or about February 11, 2016, the Trump Organization—via a communication from Ivanka Trump to Rosemary Vrablic—sought an additional $50 million loan secured by the Doral property.

663. Ms. Vrablic further explained two "things to note" with respect to "the $50mm request" in a response email. First, Ms. Vrablic explained that a new appraisal would be required because the Financial Institutions Reform, Recovery, and Enforcement Act would not allow the bank to use the Trump Organization-ordered appraisal from the prior year.

664. Second, the "[u]se of proceeds must be clearly detailed so as not to be involved in any political or campaign uses of events." "Dave O" (referring to Dave Orowitz) "had mentioned to Josh Frank in Lending that it would be used for Trump Turnberry improvements," referring to a Trump golf course in Turnberry, Scotland, "and we would need to see the budgets etc…. To confirm this so we are both covered should the files be picked up by the regulators."

665. On Monday, February 15, 2016, Ms. Vrablic wrote to a colleague at Deutsche Bank relaying the request from the Trump Organization that the bank either (a) agree to extend additional credit secured by the Doral property, with a full personal guaranty for the additional credit by Mr. Trump, or (b) agree to a wholly unsecured line of credit that, in "one year," could be "[pa]id off" with an increased mortgage after a new appraisal would be ordered.

666. Ultimately, Deutsche Bank declined the request to extend further credit to Mr. Trump, then a presidential candidate, because it "could lead to the perception that DB was not politically neutral which posed an unacceptable level of reputational risk."

667. Earlier, in July 2014, Donald J. Trump and the Trump Organization made a $1 billion bid to purchase the Buffalo Bills football team. Up to $800 million of that $1 billion bid

could have been financed. As part of that bid, DJT and the Trump Organization needed a confidence letter from a financial institution to submit with his bid package. Mr. Trump asked Deutsche Bank (through Rosemary Vrablic) for that letter.

668. Mr. Trump, Mr. Weisselbnerg, and Mr. McConney met with Deutsche Bank personnel in connection with the request in July 2014. Mr. McConney then certified as to Mr. Trump's liquidity as of June 30, 2014, and that there had been "no material decrease" from the 2013 Statement of Financial Condition figures previously certified by Mr. Trump. Mr. Weisselberg would typically have executed the certification, but Mr. McConney executed it instead because Mr. Weisselberg was not in the office.

669. Mr. Trump's bid package—which was partially successful, in that Mr. Trump did advance further into the bid process—included a letter signed by Ms. Vrablic indicating that based upon the bank's review of Mr. Trump's financial information he would have the "financial wherewithal" to fund his bid to purchase the Bills football team.

670. Although Mr. Trump's 2013 Statement of Financial Condition (inflated pursuant to the deceptive strategies described above) reported a net worth of approximately $5.1 billion, Mr. Trump sent a separate letter, under his own signature, using an even higher figure in an effort to win the bidding: "I have a net worth in excess of Eight Billion Dollars (financial statements to be provided upon request) . . . ."

671. Finally, in 2010 the Trump Organization, through Allen Weisselberg, submitted an offer to the City of New York for a concession to operate, maintain, and manage an 18-hole golf course and related facilitates at Ferry Point Park, Bronx, NY.

672. Mr. Trump's Statements of Financial Condition featured in the process of obtaining the contract, as well as the Trump Organization's maintaining its obligations under the contract.

673. In particular, the Trump Organization's bid enclosed a letter from Weiser LLP (Mazars' predecessor) incorporating Mr. Trump's Statement of Financial Condition, referencing his net worth and cash position. A similar December 2011 letter was also submitted to the City.

674. The award granting the Trump Organization the concession cites Mr. Trump's wealth as one basis for award, and the contract documents include a personal guaranty by Mr. Trump. The guaranty stated that the full 2010 Statement of Financial Condition had been furnished to the City.

675. After 2012, when the Trump Organization won the contract, it was required (as part of Mr. Trump's personal guaranty on the contract) to represent periodically that there had been no material change in Mr. Trump's financial position. It did so by letters from Mazars that were expressly based on the then-most-recent Statement of Financial Condition. The Trump Organization submitted "no material change letters" to the City in 2010, 2011, 2013, 2016, 2017, 2018, and 2021.

E. Insurance-Related Benefits

676. Under New York Penal Law § 176.05, the submission of false information in a written statement submitted as part of an application for commercial insurance or to claim a benefit under an insurance policy is insurance fraud.

677. The Trump Organization and other Defendants committed insurance fraud by submitting Mr. Trump's false and misleading Statements, along with making other false representations, to obtain financial benefits under insurance policies from insurers participating

on the Trump Organization's surety program and directors and officers liability program, as more fully described below.

1. Insurance Fraud Against Surety Underwriters

678. The Trump Organization submitted Mr. Trump's Statements of Financial Condition to insurers and its insurance broker by allowing underwriters only to review a copy of the Statements at the Trump Organization's offices. One of those insurers was Zurich North American ("Zurich").

679. From 2007 through 2021, Zurich underwrote a surety bond program (the "Surety Program") for the Trump Organization through insurance broker AON Risk Solutions ("AON"). Under the Surety Program, Zurich issued surety bonds on behalf of the Trump Organization within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. Most of the bonds were statutorily required for the Trump Organization's real estate business, such as liquor license bonds for golf courses or release of lien bonds for construction projects.

680. Over the course of the Surety Program, based on the financial disclosures made by the Trump Organization, Zurich agreed to increasingly more favorable terms—periodically increasing the limits and decreasing the rate. For example, in 2011, the Surety Program had a single bond limit of $500,000, an aggregate limit for all bonds of $2,000,000, and a rate of $20 per thousand. When the Surety Program was canceled in 2021, the single bond limit was $6,000,000, the aggregate limit was $20,000,000, and the rate was $10 per thousand. Over the course of the relationship, in accordance with its standard underwriting guidelines for surety business, Zurich required the Trump Organization to provide an indemnification against any loss should Zurich be required to pay under a bond.

681. From the inception of the Surety Program, the Trump Organization met this indemnification requirement through a General Indemnity Agreement ("GIA") executed by Donald J. Trump, pursuant to which (similar to a personal guaranty on a loan) he personally agreed to indemnify Zurich for claims under the Surety Program. The GIA also included an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements. This annual financial disclosure requirement permitted Zurich to ensure that the indemnification from Mr. Trump was sufficient to support the continued renewal of the Surety Program.

682. Indeed, on multiple occasions when AON was unable to secure in a timely manner the required financial disclosure—which took the form of an on-site review of the Statements in a conference room at the Trump Organization's offices—Zurich put the Surety Program into "cut-off" status, which means Zurich ceased writing new bonds and would cancel existing bonds on expiration, until Mr. Trump's Statements were made available for review.

683. The indemnity was such a critical aspect of the Surety Program, that in early January 2017, with Mr. Trump's inauguration fast approaching, Zurich insisted as a condition to renewing the Surety Program that the indemnification be modified to address the potential difficulty Zurich might have in seeking to enforce the GIA against a sitting president. After some negotiation, during which the Trump Organization's lawyers sought to persuade Zurich that there was no legal impediment to suing a sitting president, Zurich and the Trump Organization agreed to resolve the issue by adding DJT Holdings LLC as an additional indemnitor on the GIA effective January 17, 2017.

684. The Trump Organization obtained Zurich's approval to renew the Surety Program on at least two occasions through intentional misrepresentations concerning Mr. Trump's

Statements. During the on-site review that occurred on November 20, 2018 for the 2019 renewal, Zurich's underwriter was shown the June 30, 2018 Statement. The Statement listed as assets the Trump Organization's real estate holdings with valuations that Allen Weisselberg represented to Zurich's underwriter were determined each year by a professional appraisal firm "such as Cushman" "using cap rates and NOI as factors."

685. Zurich's underwriter considered the valuations to be reliable based on Weisselberg's representation that they were prepared by a professional appraisal firm and recorded such information in her underwriting file. Also, based on her interactions with Weisselberg during the review, Zurich's underwriter found him to be "highly professional, well educated, and conscientious about" his work. Weisselberg's representations about how the valuations were determined and the underwriter's impressions of Weisselberg factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program for 2019 on the existing terms, which it did.

686. During the on-site review for the next renewal, the Trump Organization disclosed to Zurich's underwriter Mr. Trump's 2019 Statement. Weisselberg again represented to Zurich's underwriter that the valuations for the real estate holdings listed in the Statements were derived annually by a professional appraisal firm. Further, he specified that the appraisals for the current Statement were performed by Newmark Group and had previously been prepared by Cushman, explaining that "[t]he reason for the change is the individual at Cushman with whom [the Trump Organization] had a longstanding relationship with moved to work at Newmark."

687. Again, Zurich's underwriter considered the valuations to be reliable based on Weisselberg's representation that they were prepared by the professional appraisal firm Newmark Group, and specifically by the same individual (Larson) who had purportedly derived

the previous valuations when he was an employee of Cushman. The underwriter again assessed Weisselberg to be "highly professional, well educated, and conscientious about the operations" of the Trump Organization. Her impressions of Weisselberg and the representation that Newmark prepared the valuations all factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program in 2020 on the existing terms, which it did.

688. Weisselberg's representations to Zurich's underwriter that the valuations listed in Mr. Trump's Statements were prepared annually by professional appraisal firms were false. As discussed in detail above, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the Statements; instead, the valuations were prepared by Trump Organization personnel, contrary to what Zurich's underwriter was expressly told and believed, and in almost all instances in a false and misleading manner.

689. Had Weisselberg told Zurich's underwriter the truth about how the valuations for the Statements she reviewed had actually been prepared, she would have accorded them less weight and it would have negatively impacted her underwriting analysis. Moreover, had Zurich's underwriter discovered during the renewal process that Weisselberg had misrepresented to her how the valuations were prepared, it would have caused her to doubt the veracity of the rest of the information disclosed by the Trump Organization during the renewal and would have called into serious question whether Zurich should continue its insurance relationship with the Trump Organization, or renew on terms less favorable to the Trump Organization.

690. The Trump Organization also failed to disclose that the valuation for the golf courses listed on Mr. Trump's Statements within the "Clubs" category, which was approximately $2.2 billion in the 2019 Statement, included a substantial brand premium baked into the reported

valuation. Under Zurich's underwriting guidelines, intangible assets such as brand value are to be excluded.

691. Had Weisselberg disclosed to Zurich's underwriter that the valuation listed for "Clubs" included the Trump brand premium, she would have been required under the guidelines to reduce that valuation to exclude the premium.

2. Insurance Fraud Against Directors & Officers Liability Underwriters

692. As of December 2016, the Trump Organization had in place Directors & Officers ("D&O) liability coverage consisting of a single primary policy providing a limit of $5,000,000 from Everest National Insurance Company ("Everest") at a premium of $125,000.

693. Everest had provided D&O liability coverage to the Trump Organization in 2013 and 2014 as well.

694. For purposes of that coverage, similar to the process described above with Zurich, the Trump Organization provided underwriters no more than fleeting access to Mr. Trump's Statements, through a monitored in-person review at Trump Tower. Pursuant to a non-disclosure agreement ("NDA"), the Everest underwriter would incorporate information from Mr. Trump's annual Statement provided by Allen Weisselberg for purposes of the annual renewal. At no point during such financial reviews were the underwriters informed about the false and misleading valuations contained within the Statement.

695. On December 6, 2016, AON reached out to an underwriter in the D&O Group of Tokio Marine HCC ("HCC") seeking a quote for additional limits of $5,000,000 to sit above the Everest policy. In presenting the opportunity to his supervisor, the HCC underwriter noted "[t]here are no financials to look at. Everest saw them for 30 minutes, under NDA at renewal but AON has never seen them."

696. The HCC underwriter received authority to quote a policy for the requested limits above the Everest policy through the expiration date of February 17, 2017 for a flat premium of $40,000 subject to reviewing the financials at renewal, which the underwriter conveyed in a formal quote to AON later in the day on December 6 and which the Trump Organization accepted.

697. In advance of the policy expiration, AON scheduled a "D&O Underwriting Meeting" at the Trump Organization's offices on January 10, 2017 between Trump Organization personnel (including Weisselberg) and various underwriters, including HCC's underwriter. Among the agenda items for discussion was Mr. Trump's financial condition. According to the HCC underwriter's email to his supervisor written the same day as the meeting, the Trump Organization was looking to cancel the existing policies and rewrite the program on the day of Mr. Trump's presidential inauguration with significantly higher limits of $50,000,000 – a tenfold increase in the D&O coverage that existed under the Everest policy. AON advised HCC's underwriter that HCC would be "in play" to take over the primary layer from Everest.

698. The underwriters at the meeting were provided very few financials but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion, cash of $192 million and total debt of $519 million with no single debt larger than $160 million and no concentration of maturities – all as reported in the 2015 Statement. The Trump Organization representatives assured the underwriters that the balance sheet for year-end 2016 that would be completed in a few weeks would be even better than the year-end 2015 balance sheet.

699. In response to specific questioning from the underwriters, the Trump Organization personnel represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. The HCC underwriter relied on

this representation in concluding that there were no investigations by law enforcement agencies that could potentially trigger coverage under the D&O policies.

700. On January 20, 2017, after considering the information conveyed during the January 10 meeting, HCC offered terms for a primary $10,000,000 policy with a $2,500,000 retention for a premium of $295,000 subject to certain conditions. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018.

701. Despite the representations made to underwriters by the Trump Organization personnel during the January 10 meeting that there was no material litigation or inquiry from anyone that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization.

702. In September 2016, four months before the January 10 meeting, OAG had sent a notice of violation to the Trump Foundation and a letter to Trump Organization outside counsel Sheri Dillon requesting documents, to which Ms. Dillon replied on October 16, 2016. In October 2016, OAG had also issued third-party subpoenas in connection with its investigation and examined Allen Weisselberg, one of the attendees at the January 10 meeting.

703. Neither Mr. Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the January 30 renewal of the D&O policies the existence of OAG's investigation into the Trump Foundation and Trump family members who were directors and officers of the Trump Organization. They withheld this information despite their understanding and belief that the OAG investigation could potentially lead to a claim under the D&O coverage, as evidenced by the notice of claim they

submitted to the D&O insurers HCC, Starpoint, Swiss Re, Argo, and Allianz through AON on January 17, 2019 seeking coverage in connection with OAG's enforcement action resulting from the investigation.

704. Other notices of claims and circumstances from AON tendered under the D&O policies soon followed.

705. In June 2017, the Donald J. Trump Revocable Trust, a named insured under the D&O policies, provided notice of claim on behalf of Michael Cohen in connection with a subpoena issued to him by the House of Representatives Permanent Select Committee on Intelligence ("House Intelligence Committee") seeking documents and testimony in connection with the House Intelligence Committee's investigation into Russian interference in the 2016 presidential election.

706. On January 12, 2018, just prior to the next renewal on January 30, 2018, AON provided notice of claim on behalf of Donald Trump, Jr., in connection with his involvement in the investigations by the Senate Committee on the Judiciary, the Senate Select Committee on Intelligence, the House Intelligence Committee, and Special Counsel Robert Mueller into Russian interference in the 2016 presidential election.

707. These claim notices raised issues for HCC's underwriter. Specially, on January 26, 2018, HCC's underwriter asked AON to obtain a response to the question: "Is the Trump Organization aware of any other individuals (other than Cohen and Don Jr) in the Trump Organization who are involved or could reasonably expect to be involved in the current investigation?" HCC's underwriter agreed to extend the policy expiration date to February 10, 2018 to provide time to obtain a response.

708. AON provided the response from Trump Organization's General Counsel Alan Garten on February 1, 2018, identifying four individuals who had been requested to testify in addition to Michael Cohen and Donald Trump, Jr. No other individuals were identified in response to the HCC underwriter's inquiry about others who are involved or could reasonably be expected to be involved in the investigations that were the subject of the two claim notices.

709. Nor did anyone from the Trump Organization disclose during the renewal negotiations in early 2018 the existence of any other investigations or inquiries that could potentially lead to a claim under the D&O policies.

710. On February 5, 2018, based on the information provided during the renewal negotiations, HCC agreed to extend its $10,000,000 policy with a $2,5000,000 retention for the expiring premium of $295,000 for another 12 months, ending February 10, 2019.

711. Based on further correspondence exchanged in 2018 between AON on behalf of the insureds and HCC's coverage counsel disputing whether coverage existed for the tendered claims on behalf of Michael Cohen and Donald Trump, Jr., HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. As a result, on January 24, 2019, HCC offered to renew the $10,000,000 policy for a substantially increased premium of $1,600,000, more than five times the expiring premium. The Trump Organization declined to accept the renewal terms.

712. On February 8, 2019, two days before the expiration of the policy term, AON provided notice to the D&O underwriters of the following "claims and/or circumstances which may reasonably be expected to give rise to Claims (as defined in the Policies) against the insureds under the Policies":

- 1etters from Congressional members or committees seeking information regarding a June 2016 meeting with Natalia Veselnitskaya at Trump Tower, other

campaign-related communications with Russian persons or entities relating to Hillary Clinton and/or the 2016 presidential election, and/or efforts by the Trump Organization or its affiliates to develop or partner with a developer to build a Trump-branded property in Moscow;

- letters from Congressional members or committees seeking information regarding Mr. Trump's compliance with the Emoluments Clause in the U.S. Constitution and/or conflicts of interest arising from Trump or Kushner-affiliated entities' business with foreign entities;

- a letter from a member of Congress seeking information regarding the use of a private email server by Ivanka Trump and Jared Kushner;

- two letters from Congressional members or committees seeking information regarding (a) payments made to Stephanie Clifford and Karen McDougal in violation of campaign finance laws, and/or (b) payments that the Trump Organization made to Michael Cohen relating to his payment of Ms. Clifford;

- an investigation by the U.S. Attorney's Office for the Southern District of New York regarding the payments to Ms. Clifford, Ms. McDougal, and Mr. Cohen;

- the investigation by Special Counsel Mueller;

- an investigation by the U.S. Attorney's Office for the Southern District of New York regarding the Presidential Inaugural Committee;

- "possible investigations" by multiple jurisdictions and investigative authorities (ICE, Dept. of Labor, State Attorneys General); and

- "possible investigations" by multiple investigative authorities (IRS, NYS Dept. of Taxation and Finance) regarding employer-provided housing and vehicles.

713. Trump Organization personnel made no disclosure at the January 10, 2017 meeting with underwriters or at any time prior to binding the policies that incepted on January 30, 2017 about any circumstances involving Russia and the 2016 presidential election, including the June 2016 meeting at Trump Tower with Ms. Veselnitskaya, or the effort to develop a Trump-branded property in Moscow.

714. With the exception of the House Intelligence Committee investigation and Mueller investigation into Russian interference in the 2016 presidential election, none of the investigations and inquiries referenced in AON's February 8, 2019 claim notice, or the

circumstances giving rise to those investigations and inquiries, had previously been disclosed by Trump Organization personnel to underwriters during renewal negotiations.

F. Ongoing Scheme and Conspiracy

715. The foregoing allegations constitute a continuous, integrated scheme to inflate Mr. Trump's net worth in order to obtain financial benefits.

716. Specifically, Defendants each agreed to participate in a scheme to use false and misleading information to increase Mr. Trump's stated net worth on the Statement of Financial Condition for each year from 2011 through the present. Defendants further agreed to use those inflated Statements to obtain economic and financial benefits from 2011 through the present day.

717. When asked if he had an ongoing agreement from at least 2005 through the present with Mr. Weisselberg, Mr. McConney, and others to prepare the Statement of Financial Condition in a manner that included intentional overvaluations, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer.

718. When asked if he had an ongoing agreement from at least 2005 to the present with Mr. Weisselberg, Mr. McConney and others to prepare the Statement of Financial Condition in a manner that included false and misleading valuation statements, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer.

719. Mr. Weisselberg and Mr. McConney directed other employees to prepare the Statements in a fraudulent manner and in a way that insured that Mr. Trump's wealth increased each year.

720. As Executive Vice Presidents of the Trump Organization, Donald Trump Jr., Ivanka Trump and Eric Trump were also aware of, and knowingly participated in, the scheme. Indeed, the fraudulent scheme was integral to the business of the Trump Organization and required the participation of Mr. Trump and his children.

721. As Executive Vice Presidents, the three children were intimately involved in the operation of the Trump Organization's business. They were aware of the true financial performance of the company, whether through Donald Trump Jr.'s work on commercial leasing, Ivanka Trump's work on Doral, Trump Chicago and OPO, or Eric Trump's work on the golf course portfolio.

722. Indeed, the Trump Organization took extensive steps to keep them all up to date on the company's operations. For example, the Trump Organization maintained a "Master Office Calendar" for Mr. Trump, Donald Trump, Jr., Ivanka Trump and Eric Trump.

Master Office Calendar* - 5/7/15

Distribution List#
Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump

723. While the calendar would also be distributed to lower level employees, it allowed the four executives to track key obligations of the business. Those included submission of "DJT June 30 Statement of Financial Condition" in connection with Doral, Trump Chicago and OPO. The master office calendar also reflected detail about financing, payment due dates, financial statements on individual properties and partnerships; in sum, all of the information that allowed Donald Trump, Jr., Ivanka Trump and Eric Trump to understand the true valuation of the properties contained in the Statement of Financial Condition.

724. Donald Trump, Jr., Ivanka Trump and Eric Trump were also familiar with the true performance of the properties compiled in the Statements of Financial through financial

reporting from Allen Weisselberg and others. For example, in February 2016, Mr. Weisselberg prepared a detailed report on the Trump Organization's performance in 2015, with a cover memo headed:

To: Don Jr., Ivanka & Eric
From: Allen Weisselberg
Date: February 24, 2016

Re: 2015 Corporate Operating Financial Summary

As per your request enclosed please find a detailed analysis setting forth our various business segments and their resulting operations for calendar year 2015.

725. The enclosed report included individualized breakdowns on golf courses, hotels, Trump Tower, Niketown, 40 Wall Street, and virtually every component of the Statement of Financial Condition.

726. And in their roles as Executive Vice Presidents, each of the three Trump children had familiarity with, responsibility for, and made use of, the Statements of Financial Condition in commercial transactions.

727. Donald Trump, Jr., a graduate of the Wharton School of Business at the University of Pennsylvania, was a source of valuations in the Statement of Financial Condition for properties like Trump Park Avenue. He was familiar with the financial performance of the properties incorporated in the Statement, including through his responsibility for commercial leasing in buildings like 40 Wall Street and Trump Tower. As a Trustee of the Donald J. Trump Revocable Trust, Donald Trump, Jr. was responsible for the preparation of the Statement for every year from 2016 to the present. Donald Trump, Jr. certified to the accuracy of the Statement in 2017, 2018 and 2019.

728. Ivanka Trump, an honors graduate of the Wharton School of Business at the University of Pennsylvania, was familiar with the Statements of Financial Condition, making presentations on them to the GSA in 2011, and using them to facilitate loans from Deutsche Bank in 2012 and 2013. Ms. Trump maintained responsibility for those loans, which required annual submission of the Statements and confirmation that there had been no material changes in Mr. Trump's net worth. Ms. Trump was familiar with the financial performance of the properties incorporated in the Statement, including through her responsibility for Trump International Realty.

729. Eric Trump, an honors graduate of Georgetown University with a degree in Finance and Management, was a source of valuations in the Statement of Financial Condition for properties like Seven Springs. Eric Trump certified to the accuracy of the Statement in 2020 and 2021. When asked if he ever assisted in the preparation of the Statement of Financial Condition, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. Eric Trump was familiar with the financial performance of the properties incorporated in the Statement, including through his responsibility for the Trump Golf properties.

730. The corporate Defendants each participated in the scheme through the actions of their high managerial agents – including Mr. Trump, Donald Trump, Jr., Ivanka Trump, Eric Trump, Allen Weisselberg and Jeffrey McConney – acting within the scope of the agent's employment.

731. Some aspects of the scheme were well known publicly. For example, Mr. Trump's desire to keep his reported net worth high was widely reported. In a 2015 article, Forbes wrote that of all the individuals who have appeared on its list of the 400 wealthiest Americans, "not one has been more fixated with his or her net worth estimate on a year-in, year-out basis

than Donald J. Trump." The article described Mr. Trump's net worth as a "subject that he cares about to the depths of his soul."

732. That same article quotes Mr. Trump on his motivation for inflating his net worth: "It was good for financing."

733. This public desire to inflate his net worth was well known amongst his children and employees. As far back as March 2007, the European Bureau Chief of Forbes wrote to Donald Trump, Jr. and Ivanka Trump with the subject matter "Still awfully rich . . . ." In that email, the bureau chief wrote that: "Your dad called. He's always good to me. He mentioned that he'd seen his wealth quoted at $2.6 billion in the local paper. That didn't sound right to me. I just checked: We've still got him at $2.9 billion, same as September. I told Kelly already but if you talk to him, mention it."

734. The scheme to inflate Mr. Trump's net worth also remained consistent year after year. The supporting data spreadsheet for each annual Statement incorporated the prior year's valuations and tracked changes to insure the total valuation increased as directed by Mr. Trump and Mr. Weisselberg. Starting in 2014, the supporting spreadsheets included a column entitled "change in clubs" that tracked the overall rise or fall in the value of the clubs individually and as a group. Properties were grouped together in broad buckets to disguise annual fluctuations in value of individual properties. Properties would move from one group to another to disguise significant declines. Single conversations with "professionals" and others would serve as the basis to inflate values over multiple years. For example, a single 2013 conversation with an executive at ClubCorp, a large, privately owned golf management company, served as the basis for adding a premium to the value of Trump golf clubs through 2018.

735. The loans obtained through the use of the inflated Statements likewise required performance and confirmation year after year. Each of the Deutsche Bank loans, for example had terms extending past 2022 and each had continuing obligations to maintain a net worth of at least $2.5 billion and unencumbered liquidity of $50 million. Each of the loans required the annual submission of the Statement of Financial Condition to meet these covenants as well as a certification that the Statements were true and accurate and there had been no material changes to either Mr. Trump's net worth or his liquidity.

736. Defendants also went to great lengths to conceal their fraud. In submitting information to Mazars, Defendants would exclude key information, like lender-ordered appraisals on a given property or limitations on development like the easements on Mar-a-Lago. In presenting the Statements, Defendants hid the precise valuation of individual properties by grouping them together into categories like "Club facilities and related real estate." When properties dropped in value, the change was covered up by increasing the valuation of other properties in the same category, or moving them into different categories, the way Seven Springs was moved into "other assets" following receipt of the appraisal for the easement donation.

737. The Trump Organization also sought to limit the ability of counter-parties to review the Statements of Financial Condition or disseminate them more broadly. Some insurers would only be able to sit in a room to review the Statements. Often the Trump Organization would only send hard copies of the Statements to lenders.

738. The Trump Organization also took steps to conceal Defendants' fraud in response to direct inquiries from Deutsche Bank. Specifically, on October 29, 2020, Deutsche Bank wrote to Donald Trump, Jr.:

> Deutsche Bank Trust Company Americas ("DBTCA") has recently become aware of certain public factual allegations concerning the accuracy of financial information and representations submitted to DBTCA in connection with various loan facilities extended to affiliates of the Trump Organization and subject to the personal financial guaranty of Donald J. Trump. These allegations have been raised, among other places, in public court filings by the Office of the New York Attorney General ("OAG"), as well as in public reporting by the *New York Times* related to certain tax return information reportedly obtained by that organization.
>
> The factual allegations appear to directly relate to the accuracy of certain Statements of Financial Condition submitted to DBTCA in Donald J. Trump's capacity as guarantor to the relevant loan facilities. The allegations pertain to, among other things, the value and other attributes of certain assets referenced in such Statements of Financial Condition, including but not limited to the Mansion at Seven Springs and the Trump National Golf Club in Los Angeles.

739. The bank asked a series of specific questions about the easement donations and an article in the New York Times discussing an inquiry by the IRS into a $72.9 million tax refund claimed in 2009.

740. The Trump Organization offered no response until December 7, 2020, when Alan Garten, Chief Legal Officer, emailed Deutsche Bank to say that the letter had only just come to the company's attention.

741. Deutsche Bank wrote back on December 14, 2020, requesting a response and providing additional detail:

As you know, Donald J. Trump is required under the terms of his loan guaranties to provide annual financial statements to Deutsche Bank and to ensure that those statements "are true and correct in all material respects." *See, e.g.*, Old Post Office ("OPO") Guaranty Agreement, § 9(ix). This information is used by the Bank to assess the borrowers' and Mr. Trump's compliance with loan and guaranty covenants, as non-compliance with such covenants may result in an event of default. *See, e.g.*, OPO Loan Agreement, § 7.1(b). Failure to provide accurate valuations of financial assets may fundamentally impact the Bank's view of borrowers' and Mr. Trump's compliance with such covenants. Additionally, Mr. Trump must submit annually a signed certificate certifying, among other things, his compliance with covenants relating to his net worth, debt, and unencumbered liquid assets, and further certifying that his Statement of Financial Condition "presents fairly in all material aspects" his financial condition. *See, e.g.*, Old Post Office Guaranty Agreement, Section 11(i)(D). The loan agreements and guaranties provide that an event of default occurs when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false or misleading in any material respect at the time made or intended to be effective." *See, e.g.*, OPO Loan Agreement, § 7.1(d).

742. On December 16, 2020, Mr. Garten said he hoped to have a response "within the next few days." Deutsche Bank wrote back on January 8, 2020 asking for a response. Ultimately none was forthcoming.

743. Defendants did try to limit their exposure on the Deutsche Bank loans in 2022 by selling the OPO property, paying off the loan to Deutsche Bank, and recovering their capital investment and any accrued profits. Shortly thereafter, Defendants exited the Doral loan by refinancing with Axos Bank.

744. During the negotiations with Axos Bank in February 2022, the Trump Organization sought to avoid submitting a Statement of Financial Condition or making representations about Mr. Trump's net worth. Instead, the Trump Organization pushed to provide a schedule of material real estate assets and liabilities and leave it to the lender to calculate net worth. As counsel for the Trump Organization wrote on February 11, 2022:

Subject: RE: Trump Tower/Axos - Loan Documents (Remaining Comments)

David,

In the Partial Payment Guaranty, can you please add the "material" as you did in the other Guaranty, and in each Guaranty add a reasonableness standard for Lender's determination of New Worth (see below). Other than that, no further comments. Thanks.

(a) Financial Reporting. Within forty-five (45) days after the end of each calendar quarter, Guarantor shall furnish to Lender a schedule of material real estate assets and all related material liabilities, including material contingent liabilities, and a calculation of ~~Net Worth and~~ Liquidity (as ~~such terms are~~ defined below), all in form and content acceptable

Net Worth shall be determined by Lender **in its reasonable direction**, taking into consideration the financial information delivered to Lender in accordance with Section [4/5] of this Agreement, together with Lender's **reasonable** determination of the value of the real estate assets identified therein.

745. The Trump Organization also sought to limit the liability of Donald Trump, Jr. as trustee, with the bank eventually drawing the line at exculpating him for fraud. As counsel for Axos Bank wrote:

2. With respect to the request to exculpate Donald J. Trump, Jr. in his role as trustee, we are generally ok with the language proposed by your trust counsel, provided that we do not believe the exculpation should eliminate liability for fraud or for a misrepresentation by trustee (1) in the certifications made in the Trust Certificate (in particular as it relates to authority to bind the trust) or (2) with respect to ongoing deliverables provided by the Guarantor under the Loan Documents. We will provide proposed language tomorrow and can discuss any concerns that you may have.

746. Finally, Defendants sought to conceal their fraud through repeated failures to provide documents in response to subpoenas from OAG. As reflected over the course of extensive litigation in the matter *People v. The Trump Organization*, No. 451685/2020, pending in this Court:

a. The Trump Organization failed to do a thorough search for electronic documents in response to an initial subpoena in December 2019, including failing to identify the fact that certain responsive documents had not been collected because of errors in a data migration. That issue was only identified and addressed upon inquiry by OAG. As a result, the Trump Organization hired a third-party vendor to review the collection process pursuant to a stipulated order. The Trump Organization did not certify that its production was complete until April 2022.

b. Even that production failed to include all responsive documents for Donald J. Trump, which were only obtained after a follow-up subpoena from OAG and Mr. Trump was held in contempt by this Court for failure to properly certify a response to that subpoena. The contempt was not purged until June 29, 2022.

747. But even after almost two years of litigation it appears that it may still be the case that not all responsive documents were produced. Among other things, in litigation over a search warrant executed at Mar-a-Lago on August 8, 2022, the United States District Court for the Middle District of Florida noted that "the seized materials include . . . correspondence related to taxes, and accounting information." *Trump v. United States*, 22 Civ. 81294, Order, Docket 64 (S.D. Fla. Sept. 5, 2022). Documents concerning taxes and accounting information would appear to be responsive to OAG's subpoenas, but no such documents for Mr. Trump were produced by counsel for Mr. Trump despite a representation by that counsel that: I "diligently searched each and every room of Respondent's private residence located at Mar-a-Lago, including all desks, drawers, nightstands, dressers, closets, etc. I was unable to locate any documents responsive to the Subpoena that have not already been produced to the OAG by the Trump Organization."

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Executive Law § 63(12) – Persistent and Repeated Fraud
(Against All Defendants)

748. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

749. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

750. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

751. Fraud under Executive Law § 63(12) is broadly defined to include "any device, scheme, or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

752. Fraudulent conduct as used in § 63(12) includes acts that have the "capacity or tendency to deceive, or create[ ] an atmosphere conducive to fraud." *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 107 (3d Dep't 2005), *aff'd on other grounds*, 11 N.Y.3d 105 (2008); *see also People v. Northern Leasing Systems, Inc*., 193 A.D.3d 67, 73 (1st Dep't 2021). The terms "fraud" and "fraudulent" are "given a wide meaning so as to embrace all deceitful practices contrary to the plain rules of common honesty, including all acts, even though not originating in any actual evil design to perpetrate fraud or injury upon others, which do tend to deceive or mislead." *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep't 2012).

753. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

754. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

755. Defendants' acts and practices alleged herein constitute conduct proscribed by Executive Law § 63(12) in that Defendants engaged in persistent and repeated fraudulent acts. As set forth in the allegations above, Defendants made or caused to be made misrepresentations, false or misleading statements, and statements that were misleading by omission, concealment, or suppression of information. All of this conduct, moreover, occurred in an atmosphere conducive to fraud—in which the goal of increasing Mr. Trump's reported net worth on the Statements was well known and carried out by his agents and subordinates. Further, all of that

conduct was directed toward presenting misleading statements to others—including lenders, insurance companies, and governmental entities.

756. The acts of fraud alleged here were repeated—entailing, among other things, dozens of specific numerical entries in financial spreadsheets; dozens of verbal representations in financial statements; and other fraudulent and misleading conduct by the Defendants.

757. The acts of fraud alleged here also were repeated, in the sense that they affected more than one person under Executive Law § 63(12). In particular, the acts of fraud alleged herein affected lenders, employees who worked for those lenders and insurers, the accounting firm that compiled the Statements, and personnel of that firm.

758. The acts of fraud alleged herein were also persistent, which connotes the "continuance" or "carrying on" of fraudulent conduct. Here, the key individual players remained the same over the course of several years: Jeffrey McConney (prepared or supervised preparation of supporting spreadsheets); Allen Weisselberg (reviewed and approved spreadsheets, and, as trustee, certified Statements' accuracy); Donald J. Trump (reviewed and approved Statements and certified their accuracy), Donald Trump, Jr. (as trustee, certified the Statements' accuracy). Moreover, these Defendants engaged in the same or similar conduct consistently over the course of several years—relying on prior years' information to prepare new valuations, continuing the use of deceptive wording to describe valuations performed, and continuing deceptive strategies used on the prior year's Statements.

759. Executive Law § 63(12) also proscribes, as one type of fraud, "any . . . scheme or artifice to defraud." Defendants' conduct constituted one or more schemes to defraud under § 63(12). In particular, Defendants' conduct was committed to obtain property (including bank funds and insurance proceeds) by means of false or fraudulent pretenses or representations;

involved common and closely related techniques, misrepresentations, omissions and concealments of material facts over a period of years; and involved a common nucleus of actors, namely the Trump Organization, its constituent entities, its executives, and its other agents. *See, e.g.*, *People v. First Meridian Corp.*, 80 N.Y.2d 608, 616-17 (1995) (holding that it was appropriate to infer the existence of a "unitary scheme to defraud" under Penal Law using similar factors).

760. Defendants are also liable for persistent and repeated fraud under Executive Law § 63(12) as participants in a long-running conspiracy. Although not an independent cause of action in New York, a civil conspiracy, if it exists, may "connect the actions of separate defendants with an otherwise actionable tort." *Abacus Federal Savings Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010). Here, the actions of the Defendants—including making numerous false and misleading entries and omissions in financial statements and supporting materials in a similar manner over the course of more than a decade, and then submitting them to financial institutions as certified by Mr. Trump or his trustees—reflect the existence of an agreement to commit fraud within the meaning of § 63(12). *Cf. People v. Flanagan*, 28 N.Y.3d 644 (2017) (unlawful agreement often shown by circumstantial evidence). Indeed, when asked if he, Mr. Weisselberg, and Mr. McConney, since at least as far back as 2005, had an ongoing agreement to generate false or misleading financial statements, Mr. Trump invoked his Fifth Amendment privilege. Each Defendant knowingly participated in the conspiracy and engaged in overt acts in furtherance of it: helping craft the Statements, using them to secure favorable financial terms, or certifying their accuracy to third parties. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

SECOND CAUSE OF ACTION

Pursuant to Executive Law § 63(12), Repeated and Persistent Illegality: Falsifying Business Records under New York Penal Law

(Against All Defendants)

761. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

762. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

763. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

764. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

765. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

766. Falsifying business records in the second degree, New York Penal Law § 175.05, is committed when, with intent to defraud, a person:

a. Makes or causes a false entry in the business records of an enterprise; or

b. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

c. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

d. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

767. The elements of falsifying business records in the first degree are met when a person commits falsifying business records in the second degree, and when the intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof. *People v. Reyes*, 69 A.D.3d 537 (1st Dep't 2010).

768. Defendants, through their conduct described above, have made or caused to be made false entries and/or made or caused to be made the omission of true entries in the business records of an enterprise. Examples of falsified business records or portions thereof identified in the allegations above include false figures used to value properties, false claims that liquid assets belonged to Mr. Trump when they did not, false verbiage about how underlying valuations were prepared, and financial statements and supporting documents that omit true facts.

769. In addition, through their conduct described above, Defendants have made or caused to be made false entries and or made or caused to be made the omission of true entries in the business records of an enterprise with the intent to commit another crime or aid or conceal the omission thereof—including the issuance of a false financial statement under Penal Law § 175.45 and insurance-fraud violations below.

770. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

771. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

772. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful falsification of records was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

773. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by falsifying business records.

THIRD CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent Illegality: Conspiracy to Falsify Business Records under New York Penal Law
(Against All Defendants)

774. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

775. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

776. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

777. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

778. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

779. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

780. Defendants' acts and practices, such as making or causing to be made false entries in the business records of an enterprise, reflect the existence of an agreement to falsify the

Statements of Financial Condition, supporting data spreadsheets, and other business records with requisite intent for that conduct to violate the Penal Law.

781. At least one of the Defendant co-conspirators engaged in an overt act in furtherance of the conspiracy. Those acts included entering or causing to be entered false entries in the business records of an enterprise, or knowingly omitting to make true entries in those business records, or using the Statements of Financial Condition for purposes of obtaining financial benefits.

782. Thus, Defendants engaged in a conspiracy to falsify business records as defined by New York Penal Law.

783. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times or affected more than one person.

784. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

785. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

786. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful conspiracy to falsify business records was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

787. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by conspiring to falsify business records.

FOURTH CAUSE OF ACTION

Pursuant to Executive Law § 63(12) Persistent Illegality: Issuing False Financial Statements under New York Penal Law § 175.45

(Against All Defendants)

788. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

789. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

790. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

791. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

792. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

793. Pursuant to Executive Law § 63(12), Defendants' acts and practices constitute issuing false financial statements under the New York State Penal Code.

794. A person issues a false financial statement, under New York Penal Law § 175.45, when the person, with intent to defraud, (1) knowingly makes or utters a written instrument which purports to describe the financial condition of some person and which is inaccurate in some material respect, or (2) represents in writing that a written instrument purporting to describe a person's financial condition as of a particular date is accurate with respect to such person's current financial condition, knowing it is materially inaccurate in that respect.

795. Defendants, through their conduct described above, have, with intent to defraud, knowingly made or uttered materially inaccurate written instruments purporting to describe Donald Trump's financial condition.

796. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

797. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

798. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful issuance of a false financial statement was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

799. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by issuing false financial statements.

FIFTH CAUSE OF ACTION

Pursuant to Executive Law § 63(12) Repeated and Persistent Illegality: Conspiracy to Falsify False Financial Statements under New York Penal Law

(Against All Defendants)

800. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

801. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

802. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

803. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

804. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

805. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

806. Defendants' acts and practices, such as making or causing to be made materially inaccurate written instruments purporting to describe Donald Trump's financial condition, reflect the existence of an agreement to issue false financial statements as defined under the New York Penal Law.

807. At least one of the Defendant co-conspirators engaged in an overt act, such as preparing the Statements, certifying the Statements' accuracy, signing letters necessary to the Statements' issuances, preparing supporting information, contributing supporting information, or conveying such information to third parties, in furtherance of the agreement.

808. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

809. Thus, Defendants engaged in a conspiracy to issue false financial statements as defined by New York Penal Law.

810. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times or affected more than one person.

811. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

812. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful conspiracy to issue false financial statements was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

813. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by conspiring to issue false financial statements.

SIXTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent
Illegality: Insurance Fraud under New York Penal Law § 176.05
(Against All Defendants)

814. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

815. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

816. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

817. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

818. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

819. Pursuant to Executive Law § 63(12), Defendants' acts and practices constitute insurance fraud under the New York State Penal Code.

820. Under New York State Penal Law §176.05, "[a] fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer . . . or any agent thereof: 1. any written statement as part of, or in support of, an application for the issuance of . . . a commercial insurance policy, . . . or a claim for payment or other benefit pursuant to an insurance policy . . . for commercial or personal insurance that he or she knows to: (a) contain materially false information concerning any fact material thereto; or (b) conceal, for the purpose of misleading, information concerning any fact material thereto."

821. Defendants, through their conduct described above, knowingly and with the intent to defraud presented, caused to present, or prepared, written statements in support of applications for insurance knowing they contained materially false information concerning facts material to those applications, and/or concealed, for the purpose of misleading insurers, information concerning facts material to those written statements.

822. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

823. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

824. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the insurance fraud was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

825. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by committing insurance fraud.

SEVENTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent Fraud or Illegality: Conspiracy to Commit Insurance Fraud under New York Penal Law
(Against All Defendants)

826. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

827. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

828. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

829. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

830. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

831. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

832. Defendants' acts and practices, such as causing to present, or preparing, written statements in support of insurance applications, knowing such statements to contain materially

false information concerning facts material to those applications, and/or concealing information concerning facts material to those written statements, reflect the existence of an agreement to commit insurance fraud as defined under the New York Penal Law.

833. At least one of the Defendant co-conspirators engaged in an overt act, causing to present, or preparing, written statements in support of insurance applications, knowing such statements to contain materially false information concerning facts material to those applications, and/or concealing information concerning facts material to those written statements, in furtherance of the agreement.

834. Thus, Defendants engaged in a conspiracy to commit insurance fraud as defined by New York Penal Law.

835. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

836. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

837. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the conspiracy to engage in insurance fraud was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

838. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by conspiring to commit insurance fraud.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order and judgment granting the following relief to remedy the substantial, persistent, and repeated fraudulent and misleading conduct in the business of the Trump Organization occurring since 2011:

A. Cancelling any certificate filed under and by virtue of the provisions of section one hundred thirty of the General Business Law for the corporate entities named as defendants and any other entity controlled by or beneficially owned by Donald J. Trump which participated in or benefitted from the foregoing fraudulent scheme;

B. Appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities, at the Trump Organization, for a period of no less than five years;

C. Replacing the current trustees of the Donald J. Trump Revocable Trust ("Revocable Trust") with new independent trustees, and requiring similar independent governance in any newly-formed trust should the Revocable Trust be revoked and replaced with another trust structure;

D. Requiring the Trump Organization to prepare on an annual basis for the next five years a GAAP-compliant, audited statement of financial condition showing Mr. Trump's net worth, to be distributed to all recipients of his prior Statements of Financial Condition;

E. Barring Mr. Trump and the Trump Organization from entering into any New York State commercial real estate acquisitions for a period of five years;

F. Barring Mr. Trump and the Trump Organization from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of five years;

G. Permanently barring Mr. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump from serving as an officer or director in any New York corporation or similar business entity registered and/or licensed in New York State;

I. Permanently barring Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

J. Awarding disgorgement of all financial benefits obtained by each Defendant from the fraudulent scheme, including all financial benefits from lenders and insurers through repeated and persistent fraudulent practices of an amount to be determined at trial but estimated to be $250,000,000, plus prejudgment interest; and

K. Granting any additional relief the Court deems appropriate.

Dated: New York, New York
September 21, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin Wallace

Kevin Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Wil Handley
Eric R. Haren
Louis M. Solomon
Austin Thompson
Stephanie Torre

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6376
kevin.wallace@ag.ny.gov

Attorneys for the People of the State of New York

VERIFICATION

Kevin Wallace, an Attorney admitted to the Bar of this State, hereby affirms and certifies that:

1. I am an attorney in the Office of Letitia James, Attorney General of the State of New York, who appears on behalf of the People of the State of New York as Plaintiff in this proceeding. I am duly authorized to make this verification and am acquainted with the facts in this matter.

2. I have read the annexed verified complaint, know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
September 21, 2022

Kevin Wallace

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al*., Defendants.	Index No. 452564/2022 Hon. Arthur Engoron

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Of Counsel

TABLE OF CONTENTS

BACKGROUND 1

ARGUMENT 5

I. THE PEOPLE ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR § 63(12) FRAUD CLAIMS AGAINST THE TRUMP ORGANIZATION 7

II. THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF GRANTING OAG'S REQUESTED PRELIMINARY RELIEF 13

III. THE RELIEF SOUGHT HERE IS APPROPRIATELY TAILORED TO CURBING UNLAWFUL CONDUCT AND ENSURING FUNDS ARE AVAILABLE FOR ANY DISGORGEMENT AWARD AT THE TERMINATION OF THIS ACTION 17

CONCLUSION 21

TABLE OF AUTHORITIES

CASES

Adirondack Park Agency v. Hunt Bros. Contrs., 234 A.D.2d 737 (3d Dep't 1996)..... 14

Arcamone–Makinano v. Britton Prop., Inc., 83 A.D.3d 623 (2d Dep't 2011) 5

Chase Manhattan Bank, National Ass'n v. Federal Chandros, Inc., 148 A.D.2d 567 (2d Dep't 1989) 10

City of New York v. Beam Bike Corp., 206 A.D.3d 447 (1st Dep't 2022)..... 6

City of New York v. Golden Feather Smoke Shop, Inc., No. 08-cv-3966, 2009 WL 2612345 (E.D.N.Y. Aug. 25, 2009)..... 15

Employees' Retirement System of Government of Virgin Islands v. Blanford, 794 F.3d 297 (2d Cir. 2015)..... 10

Flandera v. AFA Am. Inc., 78 A.D.3d 1639 (4th Dep't 2010) 11

FTC v. World Wide Factors, 882 F.2d 344 (9th Cir. 1989)..... 14

Hynes v. Iadarola, 221 A.D.2d 131 (2d Dep't 1996) 19

Icy Splash Food & Beverage, Inc. v. Henckel, 14 A.D.3d 595 (2d Dep't 2005)..... 5

In re Atlas Air Worldwide Holdings, Inc. Securities Litigation, 324 F. Supp. 2d 474 (S.D.N.Y. 2004)..... 9

In re BISYS Securities Litigation, 397 F. Supp.2d 430 (S.D.N.Y. 2005) 9

Lowry v. RTI Surgical Holdings, 532 F. Supp. 3d 652 (N.D. Ill. 2021)..... 9

Marine Midland Bank v. John E. Russo Produce Co., Inc., 50 N.Y.2d 31 (1980)..... 10

New York v. Abortion Info. Agency, 323 N.Y.S.2d 597 (Sup. Ct. N.Y. Cnty. 1971), *aff'd*, 37 A.D.2d 142 (1st Dep't 1971) 6

New York v. Smart Apts. LLC, 959 N.Y.S.2d 890 (Sup. Ct. N.Y. Cnty. 2013) 14

Omnicare, Inc. v. Laborers District Council, 575 U.S. 175 (2015) 12

People v. 21st Century Leisure Spa, Int'l, 153 Misc. 2d 938 (Sup. Ct. N.Y. Cnty. 1991) 6

People v. Allen, 198 A.D.3d 531 (1st Dep't 2021), *leave to appeal granted*, 38 N.Y.3d 996 (2022)..... 8

People v. Allen, 2020 N.Y. Misc. LEXIS 443, 2020 NY Slip Op 30292(U) (Sup. Ct. N.Y. Cnty., Feb. 4, 2020) 6

People v. Apple Health & Sports Club, Ltd., 80 N.Y.2d 803 (1992) 6

People v. Apple Health & Sports Clubs, Ltd. Inc., 174 A.D.2d 438 (1st Dep't 1991), *aff'd*, 80 N.Y.2d 803 (1992) 6

People v. Apple Health and Sports Clubs, Ltd., 206 A.D.2d 266 (1st Dep't 1994), *dismissed in part, denied in part,* 84 N.Y.2d 1004 (1994) 7, 8

People v. Coventry First LLC, 52 A.D.3d 345 (1st Dep't 2008) 8

People v. Greenberg, 27 N.Y.3d 490 (2016) 13, 14, 19

People v. Leasing Expenses Company, LLC, Index No. 452357/2020 (Sup. Ct. N.Y. Cnty.) 6

People v. Lexington Sixty-First Assoc., 38 N.Y.2d 588 (1976) 13

People v. Northern Leasing Systems, Inc., 193 A.D.3d 67 (1st Dep't 2021) 7

People v. Trump Entrepreneur Initiative, 137 A.D.3d 409 (1st Dep't 2016) 8

Polish & Slavic Federal Credit Union v. Saar, 39 Misc.3d 850 (Sup. Ct. Kings Cnty. Apr. 3, 2013) 11

Porter v. Warner Holding Co., 328 U.S. 395 (1946) 6

S.E.C. v. First Jersey Securities, Inc., 101 F.3d 1450 (2d Cir. 1996) 19

SEC v. Management Dynamics, Inc., 515 F.2d 801 (2d Cir. 1975) 13, 15

SEC v. Trabulse, 526 F. Supp. 2d 1008 (N.D. Cal. 2007) 18

State of New York v. First Investors Corp., 156 Misc. 2d 209 (Sup. Ct. N.Y. Cnty.) 6, 14, 20

State of New York v. Wolowitz, 96 A.D.2d 47 (2d Dep't 1983) 8

State v. Gen. Elect. Co., 302 A.D.2d 314 (1st Dep't 2003) 7, 8

State v. Kozak, 91 Misc. 2d 394 (Sup. Ct. N.Y. Cty. 1977) 20

State v. Terry Buick, Inc., 137 Misc. 2d 290 (Sup. Ct. Dutchess Cnty. 1987) 6

United States v. Diapulse Corp. of America, 457 F.2d 25 (2d Cir. 1972) 14

Village of Pelham Manor v. Crea, 112 A.D.2d 415 (2d Dep't 1985) 6

West Side Fed. Sav. & Loan Ass'n of New York City v. Hirschfeld, 101 A.D.2d 380 (1st Dept 1984) 12

STATUTES

N.Y. Exec. Law § 63(12) 7, 8

The People of the State of New York, by Letitia James, Attorney General of the State of New York ("OAG"), respectfully submit this memorandum of law and the accompanying Affirmation of Colleen K. Faherty, dated October 13, 2022 ("Faherty Aff."), in support of their motion by order to show cause for a preliminary injunction and appointment of a monitor. The order to show cause also seeks as additional relief permission to serve certain individual Defendants electronically and the scheduling of a preliminary conference to set a trial date for early October 2023. Specifically, OAG seeks: (i) the appointment of an independent monitor to oversee the submission of certain financial information to third parties, including accountants, lenders, and insurers, by Defendants the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member LLC (collectively, the "Trump Organization"); (ii) to enjoin Defendants from transferring to non-party affiliates or otherwise disposing of assets without Court approval in order to prevent further violations of Executive Law § 63(12) and maintain the status quo during the pendency of this action; (iii) permission to serve electronically Defendants Donald J. Trump and Eric Trump; and (iv) holding a preliminary conference in order to set an expedited trial schedule.

BACKGROUND

As demonstrated in exacting detail in OAG's 214-page verified complaint (NYSCEF No. 1) (the "Complaint"), Donald J. Trump and the Trump Organization, along with the other individuals named as Defendants, engaged in persistent and repeated fraud and illegality on a staggering scale in the preparation and distribution of Mr. Trump's Statements of Financial Condition ("Statements") over an 11-year period from 2011 through 2021. The fact that those Statements were false and misleading is beyond debate. The accounting firm that compiled the Statements informed the Trump Organization that the Statements for the years 2011 to 2020 "should no longer be relied upon" and withdrew from its decades-long accounting and auditing

relationship with Mr. Trump and the Trump Organization. Faherty Aff. ¶ 8. Moreover, disclosures about the misrepresentations in the Statements, and a refusal by the Trump Organization to answer basic inquiries about those disclosures, led their largest lender to execute a "managed exit" of the relationship. Faherty Aff. ¶¶ 50-55.

Even more tellingly, as OAG identified and questioned Defendants about specific fraudulent practices during the pendency of its investigation, the Trump Organization began quietly backing away from such practices, effectively acknowledging they were false and misleading. For example, when Trump Organization employees were challenged about references to consultations with "outside professionals" in the Statements during sworn testimony before OAG in 2020, that language was subsequently changed in the 2020 Statement. Compl. ¶¶ 104-05. The Trump Organization also began to pay off loans early, specifically those with personal guarantees that required the submission – and certification – of annual Statements. Faherty Aff. ¶ 76. When negotiating new loans, the Trump Organization sought to avoid the submission of the Statements or even a calculation of net worth, and instead submitted a list of real estate assets and liabilities without a representation as to value. *Id*.

But these steps merely seek to avoid the impact of the past fraudulent behavior identified over the course of the investigation and laid out in the Complaint. They do not reflect a change in the fundamental business practices of the Trump Organization to use fraud and misrepresentation to secure financial benefits it could not otherwise obtain, including through the false and misleading inflation of Mr. Trump's net worth. Indeed, in many areas, the Trump Organization has continued using practices they knew to be improper or fraudulent. For example, the 2021 Statement continues to value golf clubs using the improper "fixed assets" method, the valuation for Mar-a-Lago still does not account for restrictions on use of the property, and Mr. Trump

continues to treat $93 million held in a Vornado partnership as his own cash. Compl. ¶¶ 407, 434, 450, 458, 474 (fixed assets), ¶¶ 375-383, (Mar-a-Lago), ¶¶ 74-75 (cash). The Trump Organization is still required to submit a Statement for 2022 under the terms of a number of loans, including the Deutsche Bank loan on Trump Chicago.

Beyond just the continuation of its prior fraud, the Trump Organization now appears to be taking steps to restructure its business to avoid existing responsibilities under New York law. On September 21, 2022, the same day OAG filed this action, the Trump Organization registered a new entity with the New York Secretary of State: Trump Organization II LLC. Faherty Aff. ¶ 81. That entity is a foreign corporation, incorporated in Delaware on September 15, 2022 with the name "Trump Organization LLC." *Id*. When OAG raised its "concern that the Trump Organization may be seeking to move assets out of state," and asked counsel for "some assurance that there will be no change to the status quo ante over the coming months (or that [OAG] will at least have reasonable advance notice of asset transfers)," the Trump Organization offered no assurances.[1] Faherty Aff. ¶¶ 83-84. Counsel simply stated, "The Trump Organization has not 'taken steps to avoid the jurisdiction of the court or make it difficult to obtain relief against the corporate entities.'" Faherty Aff., Ex. 78. On the eve of this filing, counsel did offer to provide assurances and advance notice to address what were described as "purported concerns," but again offered no concrete mechanism to either effectuate or enforce that offer. Faherty Aff. ¶ 85.

By this order to show cause, OAG seeks a preliminary injunction to prevent the continuation of the fraudulent valuation scheme and preserve the status quo ante pending trial,

[1] OAG raised these concerns as part of an exchange concerning service and time to respond to the Complaint. Those conversations did not resolve the issues. For the reasons set forth in the Faherty Affirmation, OAG requests that the order to show cause allow for electronic service of the summons and complaint on Donald J. Trump and Eric Trump. Faherty Aff. ¶ 88

which should be scheduled as soon as practicable. Specifically, OAG is seeking an order that (i) prohibits the Trump Organization from issuing a statement of financial condition or other asset disclosure for Mr. Trump that fails to adequately disclose the assumptions and techniques used for valuing his assets and (ii) prohibits the Trump Organization from transferring any material asset to a non-party affiliate or otherwise disposing of a material asset without Court approval. To oversee compliance with this injunction, the order to show cause also seeks the appointment of an independent monitor during the pendency of this action. That monitor would oversee: (i) the submission of financial information to any accounting firm that compiles the 2022 Statement; (ii) appropriate financial disclosures to lenders and insurers necessary to satisfy continuing obligations under loan covenants and insurance programs or to obtain new financing and insurance; and (iii) any corporate restructuring or disposition of significant assets. The order to show cause seeks to impose these restrictions in advance of a trial date to be set for early October 2023.

The People are entitled to this preliminary relief because they have a strong likelihood of success on the merits and the balance of equities and public interest weigh sharply in their favor. As detailed in the Complaint and shown in the Faherty Affirmation, over the course of at least the past 11 years, Defendants employed multiple deceptive strategies to inflate by billions of dollars the aggregate value of more than 20 assets that make up Mr. Trump's net worth reflected on his Statements. Those deceptive strategies included the following: ignoring generally accepted accounting principles ("GAAP"); ignoring legal restrictions that apply to limit property development and marketability such as rent stabilization laws and local building rules and regulations; using objectively false factual assumptions like inflated square footage; ignoring and concealing from accountants and financial institutions appraisals prepared by outside professionals; using figures for operating income that conflict with internal budget projections;

and using inappropriate valuation methods. The Trump Organization then submitted these false and fraudulent Statements to financial institutions to: (i) obtain financial benefits it would otherwise not be entitled to receive; (ii) satisfy continuing obligations under loan agreements; and (iii) obtain insurance at higher limits for lower premiums.

The balance of equities and public interest weigh decisively in favor of preventing further fraudulent and illegal conduct by the Trump Organization. As the Complaint articulates, the fraudulent and illegal conduct by the Trump Organization persisted for more than a decade—even while the Statements were under active law enforcement scrutiny. Even to this day, Mr. Trump and other Trump Organization principals extol these very Statements and the information they contain. In short, there is every reason to believe that the Defendants will continue to engage in similar fraudulent conduct right up to trial unless checked by order of this Court. The requested targeted relief is designed to mitigate further fraud and illegality during the pendency of this action because the company has present and continuing obligations under existing loan agreements to prepare and disclose Mr. Trump's Statement of Financial Condition as of June 30, 2022 and may also seek additional financing from lenders and renewal of insurance programs on the basis of that Statement.

ARGUMENT

In an action pursuant to Executive Law § 63(12) to redress persistent fraud and illegality in the conduct of business, this Court has broad power to grant, and discretion to fashion, both preliminary and permanent injunctive relief.[2] *See, e.g.*, *People v. Apple Health & Sports Club,*

[2] In general, "[t]he purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits." *Icy Splash Food & Beverage, Inc. v. Henckel*, 14 A.D.3d 595, 596 (2d Dep't 2005). The decision of whether to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court. *Arcamone–Makinano v. Britton Prop., Inc*., 83 A.D.3d 623, 625 (2d Dep't 2011).

Ltd., 80 N.Y.2d 803, 806-07 (1992). For example, this Court in a § 63(12) action may preliminarily enjoin continued unlawful conduct, halt transfers of assets, freeze bank accounts, require posting of a bond, or take similar measures in its equitable discretion. *See id.*[3] In general, a court sitting in equity in a public-interest enforcement action such as this one may fashion appropriate equitable relief under the circumstances. *Porter v. Warner Holding Co.*, 328 U.S. 395, 397-98 (1946).

In seeking a preliminary injunction in an action under § 63(12), OAG need demonstrate only a likelihood of success on the merits and that the equities weigh in its favor. *City of New York v. Beam Bike Corp*., 206 A.D.3d 447, 448 (1st Dep't 2022); *People v. Apple Health & Sports Clubs, Ltd. Inc*., 174 A.D.2d 438, 438–39 (1st Dep't 1991), *aff'd*, 80 N.Y.2d 803 (1992). OAG "is not required to show proof of irreparable harm" to obtain preliminary injunctive relief under § 63(12). *See Beam Bike Corp*., 206 A.D.3d at 448 (citing *Apple Health*, 174 A.D.2d at 438-39); *see also Apple Health*, 174 A.D.2d at 438-39 (expressly rejecting any requirement to show irreparable injury in awarding preliminary injunction in § 63(12) action). [4]

---

[3] *See also People v. 21st Century Leisure Spa*, Int'l, 153 Misc. 2d 938, 942 (Sup. Ct. N.Y. Cnty. 1991) (enjoining owner of company through a temporary restraining order from transferring, withdrawing, or otherwise disposing of funds in bank accounts); *New York v. Abortion Info. Agency*, 323 N.Y.S.2d 597, 603 (Sup. Ct. N.Y. Cnty. 1971), *aff'd*, 37 A.D.2d 142 (1st Dep't 1971) (enjoining defendants "from transferring or otherwise disposing of corporate assets or property" and appointing receiver to preserve assets); *State of New York v. First Investors Corp.*, 156 Misc. 2d 209, 213 (Sup. Ct. N.Y. Cnty.) (imposing an asset freeze injunction on the defendants); *People v. Allen*, 2020 N.Y. Misc. LEXIS 443, *7-8, 2020 NY Slip Op 30292(U) (Sup. Ct. N.Y. Cnty., Feb. 4, 2020) (granting preliminary injunction against fund, halting distributions and freezing fund assets).

[4] *See also Village of Pelham Manor v. Crea*, 112 A.D.2d 415, 416 (2d Dep't 1985) (noting that because the ordinance sued under authorizes injunctive relief against violations, "plaintiff was not required to come forward with proof of irreparable injury" to obtain a preliminary injunction); *People v. Leasing Expenses Company, LLC*, Index No. 452357/2020 (Sup. Ct. N.Y. Cnty.), slip op. at 3 (holding in a proceeding under Executive Law 63(12), unlike in private litigation, the attorney general "need not show irreparable injury, and the 'equity' to be served is primarily the public interest"); *State v. Terry Buick, Inc*., 137 Misc. 2d 290, 294 (Sup. Ct. Dutchess Cnty. 1987) ("Traditional concepts of irreparable damage which apply to private parties do not govern this public interest field.").

I. THE PEOPLE ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR § 63(12) FRAUD CLAIMS AGAINST THE TRUMP ORGANIZATION

As established herein, and in OAG's Complaint and associated exhibits, the People have an overwhelming likelihood of success on the merits in this § 63(12) action. The Trump Organization engaged in numerous instances of fraudulent and illegal conduct in the preparation and dissemination of over a decade's worth of Mr. Trump's Statements. Moreover, the Trump Organization (along with the other Defendants) repeatedly inflated the value of Mr. Trump's assets on his Statements through fraud and misrepresentation, and then submitted those Statements to financial institutions to receive benefits that the company would not otherwise have obtained.

Executive Law § 63(12) gives OAG the power to bring an action against any person or entity that engages in "repeated fraudulent or illegal acts" or "otherwise demonstrate[s] persistent fraud or illegality in the carrying on . . . or transaction of business." N.Y. Exec. Law § 63(12). There are thus two categories of conduct that can subject a party to liability under § 63(12): acts that are "fraudulent" and acts that are "illegal." *Id.*

As to "fraud," § 63(12) broadly construes fraud "to include acts characterized as dishonest or misleading." *People v. Apple Health and Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994), *dismissed in part, denied in part,* 84 N.Y.2d 1004 (1994). The statute proscribes any acts committed in the conduct of business that have "the capacity or tendency to deceive," or that "create[] an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021); *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (1st Dep't 2003). Such acts, by the plain language of the statute, include those committed through any scheme to defraud and also through "misrepresentation, concealment, suppression," or "false pretense." N.Y. Exec. Law § 63(12). Moreover, when a failure to effectively supervise creates "an enterprise conducive to fraud," a § 63(12) violation has been established. *Northern Leasing*, 193 A.D.3d at

75-76. Neither an intent to defraud nor reliance need be shown. *Apple Health*, 206 A.D.2d at 267; *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008); *see also People v. Trump Entrepreneur Initiative,* 137 A.D.3d 409, 417 (1st Dep't 2016) (recognizing prior First Department precedent establishing that "fraud under § 63(12) may be established without proof of scienter or reliance"). In assessing whether this broad standard for fraud has been satisfied, the Court looks not only to the average recipient of fraudulent conduct, "but also the ignorant, the unthinking and the credulous." *Gen. Electric*, 302 A.D.2d at 314; *see also People v. Allen*, 198 A.D.3d 531, 533 (1st Dep't 2021) (upholding finding of fraud under § 63(12) based on fraudulent representations to investors), *leave to appeal granted*, 38 N.Y.3d 996 (2022).

As to illegality, an "illegal act" under § 63(12) includes any violation of a federal, state, or local law, including as relevant here, the falsification of business records, issuance of a false financial statement, and insurance fraud.[5]

Under § 63(12), conduct may be the subject of an enforcement action if it is either "repeated" or "persistent." Such conduct is "repeated" if it involves either "any separate and distinct fraudulent or illegal act, or conduct which affects more than one person." N.Y. Exec. Law § 63(12). Thus, "the Attorney-General [may] bring a proceeding when the respondent was guilty of only one act of alleged misconduct, providing it affected more than one person." *State of New York v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep't 1983). The term "persistent" includes the "continuance or carrying on of any fraudulent or illegal act or conduct." N.Y. Exec. Law § 63(12)

[5] Because the likelihood of success on OAG's Executive Law § 63(12) fraud claim is substantial, and plainly sufficient to grant preliminary relief, OAG has not here separately briefed OAG's likelihood of success on OAG's Executive Law § 63(12) illegality claims. Suffice it to say, however, OAG has demonstrated through verified allegations numerous instances of falsified business records, false financial statements, and acts of insurance fraud in violation of the Penal Law provisions cited in the Complaint to establish a clear likelihood of success on its illegality claims as well. *See* Compl. ¶¶ 761-838.

The evidence of the Trump Organization's fraud in deriving and presenting the asset valuations reflected in the Statements over the course of a decade-plus is overwhelming. An array of fraudulent schemes, representations, misleading conduct, and omissions are detailed herein, in the Complaint and its associated exhibits, and in the accompanying Faherty Affirmation and exhibits. OAG's verified allegations amply demonstrate the clear likelihood of success on the merits of all of OAG's claims, and a few examples are highlighted below.

First, the Trump Organization's long-term accounting firm has acknowledged that the Statements it compiled from 2011 to 2020—ten years' worth of Statements including dozens upon dozens of valuations—can no longer be relied upon. Faherty Aff. ¶ 8. That fact alone indicates that OAG is likely to succeed on the merits of its claims—particularly under § 63(12), which does not require a showing of scienter or reliance for OAG to prevail. *Cf. In re BISYS Securities Litigation*, 397 F. Supp.2d 430, 437 (S.D.N.Y. 2005) (noting that "mere fact" of financial restatement is sufficient to plead falsity); *In re Atlas Air Worldwide Holdings, Inc. Securities Litigation*, 324 F. Supp. 2d 474, 487 (S.D.N.Y. 2004) (same); *Lowry v. RTI Surgical Holdings*, 532 F. Supp. 3d 652, 660 (N.D. Ill. 2021) (five years' worth of inaccurate financial results, combined with GAAP violations and accounting restatements, held to be "likely enough by itself to show materiality" of misstatements). Indeed, this Court emphasized the significance of the accounting firm's "red flag" retraction in its February 17, 2022 Order compelling Mr. Trump and other Defendants to testify. Moreover, Mr. Trump's lead accountant testified that his firm was misled by the Trump Organization's concealment of information pertinent to the Statements. Faherty Aff. ¶ 9.

Second, the fact that Mr. Trump, Eric Trump and the former Chief Financial Officer of the Trump Organization, Allen Weisselberg, all invoked their privilege against self-incrimination when questioned about the Statements similarly supports OAG's likelihood of success on the

merits of its claims. Faherty Aff. ¶¶ 10-27. The privilege may only be invoked "when there is reasonable cause to apprehend danger" in the form of self-incrimination "from a direct answer." *Chase Manhattan Bank, National Ass'n v. Federal Chandros, Inc.*, 148 A.D.2d 567, 568 (2d Dep't 1989). And, as the Court of Appeals has explained, such an invocation may be considered "in assessing the strength of evidence offered by the opposite party." *Marine Midland Bank v. John E. Russo Produce Co., Inc.*, 50 N.Y.2d 31, 42-43 (1980) (analogizing invocation of privilege in civil case to failure to produce material witness).

Third, Donald Trump, Jr.—although he did not assert his Fifth Amendment protection—incredibly disclaimed all responsibility for the Statements and their contents in sworn testimony. Faherty Aff. ¶ 28. Donald Trump, Jr. was a senior executive at the Trump Organization. He was *the trustee* of the Donald J. Trump Revocable Trust, was responsible for certifying the Statements' accuracy to banks, and in fact signed such certifications. He personally signed representation letters to Mazars on each Statement engagement when he was a trustee, and those letters outlined his duties as trustee. Faherty Aff. ¶ 32. The Statements themselves repeatedly credit him, as trustee, with the information they contain. *See, e.g.,* NYSCEF No. 17 at 1. That he testified he has no knowledge of GAAP accounting (with which the Statements expressly state they comply) and had nothing to do with the preparation of the Statements lends strong support to OAG's position that the Statements were fraudulent. Faherty Aff. ¶¶ 30-35; *See Employees' Retirement System of Government of Virgin Islands v. Blanford*, 794 F.3d 297, 306 (2d Cir. 2015) (factors supporting scienter in securities fraud action include that defendant "failed to check information they had a duty to monitor").

Fourth, there is abundant evidence of objective falsity repeated year after year on the Statements and in the data supporting them. *See, e.g.*, *Flandera v. AFA Am. Inc.*, 78 A.D.3d 1639,

1640 (4th Dep't 2010) ("An assessment of market value that is based upon misrepresentations concerning existing facts" supports common law fraud action); *Polish & Slavic Federal Credit Union v. Saar*, 39 Misc.3d 850 (Sup. Ct. Kings Cnty. Apr. 3, 2013). Indeed, Mr. Weisselberg admitted that the Statements overvalued Mr. Trump's apartment by "give or take" $200 million—and evidence later revealed he was provided with the true facts regarding the apartment's square footage *before* certifying as accurate the inflated apartment value based on false information. Faherty Aff. ¶ 36. Similarly, the Statements included as cash belonging to Mr. Trump cash that was *not* Mr. Trump's—even to the tune of more than $90 million in the 2021 Statement. Faherty Aff. ¶ 49. There were instances in which the Trump Organization had copies of professional appraisals in its files that contradicted the stated value of 40 Wall Street by $200 to $300 million—even though the Trump Organization professed to rely on the very same appraiser for its inflated values. Faherty Aff. ¶¶ 38-40.

Fifth, there were instances in which the valuation techniques actually used to prepare the Statements were directly (and falsely) contradicted by the descriptions in the Statements. Those examples included the fact that the valuation of golf clubs padded an additional 15-30% for the value of the Trump brand despite (a) an express claim in the Statements that they do not include "the goodwill attached to the Trump name" and (b) an express representation of compliance with GAAP, even though GAAP prohibits inclusion of an internally generated intangible brand premium. Faherty Aff. ¶ 45. Moreover, those examples include the fact that Mr. Trump valued certain membership deposit liabilities at full face value to increase the purchase price of golf clubs, thereby increasing valuations in the Statements, despite an express claim in the Statements that Mr. Trump and his trustees "value this liability at zero." Faherty Aff. ¶ 47.

Sixth, there were repeated instances of the Trump Organization both failing to disclose, and omitting from their valuation methods, legal restrictions on properties known to Mr. Trump and his agents. Faherty Aff. ¶¶ 41-44. There were restrictive documents that Mr. Trump himself signed—but which were then ignored when valuing the properties and not disclosed in the Statements. Faherty Aff. ¶ 43. Particularly in the context of a formal financial statement prepared by the Trump Organization but then compiled and presented by an independent public accounting firm, it was false or misleading to wholly ignore contradictory facts known to the Trump Organization but withheld from its own accountants and recipients of the Statements. *See West Side Fed. Sav. & Loan Ass'n of New York City v. Hirschfeld*, 101 A.D.2d 380, 385 (1st Dept 1984) (statement of market value by party with superior knowledge implies that the "declarant knows facts which support that opinion and that he knows nothing which contradicts the statement"); *see also Omnicare, Inc. v. Laborers District Council*, 575 U.S. 175, 191 (2015) ("[I]f the real facts are otherwise, but not provided, the opinion statement will mislead its audience.").

Seventh, further supporting OAG's likelihood of success on the merits is the fact that Deutsche Bank—the Trump Organization's principal lender for nearly all of the last ten years—decided to exit its relationship with the Trump Organization. Faherty Aff. ¶¶ 50-55. The accuracy of the Statements as certified by Mr. Trump, one of his trustees, or Eric Trump was an important component of loans obtained and maintained by the Trump Organization over the last ten years. Faherty Aff. ¶¶ 50, 53. But when Deutsche Bank learned in 2020 of OAG's allegations of misrepresentations in the Statements from the pendency of OAG's subpoena enforcement action, it asked the Trump Organization a series of questions about those Statements. Faherty Aff. ¶ 51. The Trump Organization refused to respond. Faherty Aff. ¶¶ 52, 54. As a result, Deutsche Bank decided – just like Mazars – to exit its relationship with the company. Faherty Aff. ¶ 55. The bank's

communications to the Trump Organization respecting the Statements in that context stressed that material misrepresentations on the Statements could be events of default. Faherty Aff. ¶ 53.

Eighth, the insurance-related fraud committed in connection with the Statements further confirms OAG's likelihood of success here. The Trump Organization only permitted a particular insurer to review the Statements in hard copy at the Trump Organization's offices in on-site reviews; and then, in years when he was a trustee, Mr. Weisselberg made additional, affirmative misrepresentations about the Statements' contents—namely that the valuations contained in the Statements were derived by a professional appraisal firm rather than by the Trump Organization itself. Faherty Aff. ¶¶ 56-68.

To the extent any further evidence of the repeated or persistent nature of the Trump Organization's fraudulent use of the Statements were required, the Complaint likewise alleges through verified allegations that Mr. Trump's Statements were employed in a variety of other transactions, attempted transactions, and public contracts. *See* Compl. ¶¶ 647-675.

II. THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF GRANTING OAG'S REQUESTED PRELIMINARY RELIEF

The balance of equities, including the substantial public interest in curbing fraudulent and unlawful conduct, strongly favors the issuance of the requested preliminary relief.

A § 63(12) action is "not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation." *People v. Greenberg*, 27 N.Y.3d 490, 496-97 (2016) (quoting *People v. Lexington Sixty-First Assoc.*, 38 N.Y.2d 588, 598 (1976)). In such an action, "the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief." *Id.* at 497 (citing *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975)). Moreover, where, as here, an

agency is granted by the Legislature the power to seek injunctive relief to curb unlawful conduct, those "formidable powers" weigh heavily in favor of injunctive relief. *Adirondack Park Agency v. Hunt Bros. Contrs.*, 234 A.D.2d 737, 738 (3d Dep't 1996) (reversing for abuse of discretion denial of preliminary injunction); *see also FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989) (public interest receives "greater weight" in equities analysis).

Here, the equities strongly favor preliminary relief. Indeed, Defendants here can have no possible interest in continued issuance of financial statements containing fraudulent and misleading valuations and verbiage. There is "no vested interest in a business activity found to be illegal." *United States v. Diapulse Corp. of America*, 457 F.2d 25, 29 (2d Cir. 1972). As New York courts similarly have articulated, for example, when a business operation is illegal, "the equities lie in favor of shutting [it] down," "rather than in allowing said business to continue to operate (to defendants' presumed financial advantage)." *New York v. Smart Apts. LLC*, 959 N.Y.S.2d 890, 898 (Sup. Ct. N.Y. Cnty. 2013); *see also First Investors Corp.,* 156 Misc. 2d at 214-215 (granting preliminary injunction and finding that the equities balance in favor of plaintiff, where it appears likely that defendants violated the Martin Act, and plaintiff is attempting to protect public interest). Indeed, given the wide range of market participants and governmental entities to which Defendants have disseminated the fraudulent information, there is a strong market-protective interest in ensuring such conduct is curbed.

Moreover, to the extent likelihood of recurrence is a pertinent factor, it plainly supports granting preliminary relief here. *See, e.g., Greenberg*, 27 N.Y.3d at 496-97 (likelihood of continuing violation sufficient to support permanent injunction). The conduct at issue was repeated, and persisted, for a decade or more under the direction and control of the same insular group of top executives, including Mr. Trump before January 2017. That same group (except for

Mr. Weisselberg, perhaps, due to his indictment) controls the Trump Organization today. The conduct persisted even under an ostensible change in management from January 2017 through January 2021 pursuant to a revocable trust regime in which Donald Trump, Jr. and Mr. Weisselberg served as trustees; today, Donald Trump, Jr. continues to serve as the only trustee. In light of the longtime misconduct at issue here by this group of executives running a closely held company, the likelihood that the same or similar conduct will continue is substantial. "[T]he commission of past illegal conduct is highly suggestive of the likelihood of future violations." *Management Dynamics*, 515 F.2d at 807; *see also City of New York v. Golden Feather Smoke Shop, Inc.*, Civ. No. 08-3966, 2009 WL 2612345, at *41-42 (E.D.N.Y. Aug. 25, 2009) ("long history" of unlawful conduct supports award of injunctive relief).[6]

That logic is particularly compelling here, because the Trump Organization has repeatedly pursued its fraudulent practices despite possessing (and even commissioning the creation of) information that should have led it to change course. For example, when presented with true facts regarding Mr. Trump's triplex, Mr. Weisselberg opted to "leave" it "alone" and within days falsely certify a financial statement contrary to those true facts. Faherty Aff. ¶ 73. Similarly, the Trump Organization repeatedly commissioned or otherwise obtained valuation work using legitimate methods—but then disregarded it when preparing numbers for the Statements. *Id*.

[6] Although there is no need to show irreparable harm when seeking a preliminary injunction to prevent further acts of fraud or illegality *pendent lite* pursuant to § 63(12), clearly such harm will occur absent the requested injunction because lenders and insurers will continue to make business decisions in reliance upon Defendants' continued false and misleading asset valuations that cannot be retroactively undone. Lenders will continue to rely on the Trump Organization's assertions concerning Mr. Trump's assets and net worth in determining whether loan covenants have been met and whether additional credit should be extended, and if so, on what terms; insurers will similarly continue to rely on the Trump Organization's assertions concerning Mr. Trump's assets and net worth in determining whether policies should be renewed, and if so, on what terms. *See, infra*, at 2-3, 5.

Even when the Trump Organization was aware of OAG's investigation relating to the Statements, it persisted in its unlawful conduct. For example, in March and June of 2020, as part of its investigation, OAG conducted lengthy examinations of Mr. McConney regarding issues with the valuation approaches taken in the Statements. Faherty Aff. ¶ 74. Similarly, in July and September 2020, OAG interviewed Mr. Weisselberg and asked him about the strategies used to inflate valuations on numerous properties. *Id.* Indeed, by the start of October 2021, OAG had taken 14 days of testimony from 9 employees at the Trump Organization. *Id.* Nevertheless, the Trump Organization continued to engage in fraudulent conduct by inflating asset valuations even on the 2021 Statement issued on October 29, 2021. Faherty Aff. ¶ 75.

Mr. Trump's public statements quell any doubt about whether the challenged conduct at Mr. Trump's "namesake" company is likely to continue. In a press release on February 15, 2022 – more than a month after OAG filed a supplemental petition in its enforcement proceeding – Mr. Trump praised the Statements and issued the 2014 Statement publicly. He insisted that the Trump Organization's assets were "in many cases, far more valuable than what was listed in" the Statements. Faherty Aff. ¶ 78. He further stated that the asset values do not include "estimated brand value," which he professed would increase his net worth to "approximately $8 to $9 billion," *id*., even though the valuations for many of his golf clubs did include a premium for brand value, *see supra* at 11. Since the filing of the Complaint, too, Mr. Trump has stood by the Statements despite invoking the Fifth Amendment when placed under oath and asked about them. Publicly, he has insisted he made no misrepresentations to banks, but instead had warned them that his Statements were unreliable, and has relied upon the "very big" "very powerful" disclaimer accompanying his Statements, suggesting he and his namesake company feel perfectly entitled to

commit fraud in a formal financial statement as long as they include a large disclaimer (which they actually do not include). Faherty Aff. ¶ 79

Lastly, the Trump Organization continues to have financial disclosure obligations on existing loans. In particular, the Trump Organization has obligations that will require the company to submit to lenders Mr. Trump's Statement of Financial Condition as of June 30, 2022, which is likely to be issued soon.[7] Relatedly, the Trump Organization also has obligations on other new loans to provide banks with information regarding Mr. Trump's assets, though perhaps not in the same form as the Statement of Financial Condition. For example, two new loans require "a schedule of material real estate assets and material related liabilities, including material contingent liabilities, and a calculation of Liquidity."[8] Faherty Aff. ¶ 71. Regardless of the form of the disclosure, though, the Trump Organization's long history of misconduct warrants the imposition of an injunction.

III. THE RELIEF SOUGHT HERE IS APPROPRIATELY TAILORED TO CURBING UNLAWFUL CONDUCT AND ENSURING FUNDS ARE AVAILABLE FOR ANY DISGORGEMENT AWARD AT THE TERMINATION OF THIS ACTION

The preliminary relief sought by OAG has two principal components: (i) the appointment of an independent monitor with targeted duties, and (ii) an injunction prohibiting transfer of funds or assets without Court approval, for the purpose of ensuring the ability of OAG to obtain satisfaction of the large sum OAG will seek as disgorgement at this conclusion of this action. The relief sought here is tailored directly to curbing the long history of persistent and repeated

[7] Typically, each Statement is issued sometime on or after October of the year it covers, so the 2022 Statement is likely to be issued soon. *See, e.g.*, NYSCEF Nos. 15 (2021 Statement issued October 29, 2021) 14 (2020 Statement issued January 11, 2021), and 13 (2019 Statement issued October 31, 2019).

[8] The Trump Organization attempted unsuccessfully to water down these disclosure requirements during negotiations. Compl. at ¶¶ 744-45.

fraudulent conduct by the Trump Organization and is an appropriate exercise of the Court's broad general equitable jurisdiction.

The appointment of an independent monitor is especially appropriate here. *See, e.g., SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1019 (N.D. Cal. 2007) (appointing monitor due to "need for an objective party to oversee [defendant's] conduct as he continues to manage funds"). Given the centrality of a particular cast of characters in the fraudulent conduct—including Mr. Trump, Mr. Weisselberg, Mr. McConney, Donald Trump, Jr. (as trustee), and Eric Trump—and the continued role of many of them in the closely held Trump Organization, the company's leadership cannot be relied upon to ensure that financial submissions regarding Mr. Trump's assets and net worth are truthful, are not misleading (including by omission of important facts), and are compliant with applicable accounting principles. That Mr. Trump—the person with beneficial ownership of the Trump Organization's assets and effective control over them—continues to extol the Statements is confirmation that appointment of an independent monitor is warranted and appropriate.

In terms of the monitor's duties, OAG urges the Court to ensure the monitor oversees any material submitted by the Trump Organization to any accounting firm compiling the 2022 Statement and any lenders and insurers that will receive the 2022 Statement in satisfaction of Mr. Trump's continuing financial disclosure obligations to insure full and complete disclosure of all relevant information. The monitor should similarly oversee the contents of any submissions regarding Mr. Trump's assets or net worth to any financial counterparty of the Trump Organization—including any schedule of assets and liabilities, any statement of net worth, or any similar submission. The purpose of such supervision would be to mitigate any further fraud and illegality in violation of § 63(12).

First, the oversight by the independent monitor should focus on ensuring that the accountants, lenders, and insurers[9] receive from the Trump Organization all of the necessary and relevant information relating to the valuations in the Statement or similar submission – which, at a minimum, should include: (i) the company's supporting data spreadsheet: (ii) any documents (including emails, articles, and market reports) cited in the supporting data spreadsheet; (iii) appraisals of any of the valued properties done in the past five years in the company's possession; (iv) any filing made by or on behalf of any Defendant or affiliated entity with a government authority in the past five years that takes a position on the value of any property included in the Statement or similar submission, whether for tax purposes or otherwise; and (v) any and all documentation indicating the precise property interest owned, and any development limitations known or agreed to by the Trump Organization (including Mr. Trump and his trustees).

Second, the Court should use its equitable powers to ensure that the Trump Organization does not remove assets from the Court's power during the pendency of this action. The Court's broad equitable power in a § 63(12) action entails the authority to award disgorgement—based on the principle that no wrongdoer should retain ill-gotten gains. *Greenberg*, 27 N.Y.3d at 497-98. Indeed, disgorgement in civil fraud actions often includes an award of prejudgment interest as well—since a wrongdoer similarly ought not be permitted to retain the time-value of the funds she retained during the course of misconduct. *See, e.g.*, *S.E.C. v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1477 (2d Cir. 1996); *Hynes v. Iadarola*, 221 A.D.2d 131, 135 (2d Dep't 1996) (reversing

[9] Unlike with lenders, the Trump Organization provided insurers with only a relatively fleeting glance at the Statements in a conference room at Trump Tower during annual renewal meetings. Faherty Aff. ¶ 64. The monitor can make certain that insurers receive for their files not only copies of the 2022 Statement if presented, but also the supporting material.

denial of prejudgment interest in civil forfeiture action, noting that "fundamental fairness" accords with awarding prejudgment interest to deprive wrongdoer of ill-gotten gains).

The sums involved here are substantial because they are principally derived from substantial differences in interest rates on loans totaling in the hundreds of millions of dollars over a lengthy period of time (as well as profits earned on disposition of significant properties funded by such debt). *See* Compl. ¶¶ 21-22.

Given "the large sums of money involved" in OAG's request for disgorgement, *First Investors Corp.*, 156 Misc. 2d at 220, and the very recent creation of "Trump Organization II LLC," the Court should enjoin the Trump Organization from transferring assets to any non-party affiliates or disposing of any assets without review by the monitor and approval by the Court during the pendency of this action to maintain the status quo. *State v. Kozak*, 91 Misc. 2d 394, 396 (Sup. Ct. N.Y. Cty. 1977) (granting Attorney General's motion for preliminary injunction barring defendants from transferring or disposing of assets or property under their control, derived from the practices alleged in the verified complaint to be fraudulent).

For purposes of appointing an independent monitor, if the Court grants that relief, OAG will vet and propose two to three candidates for final selection by the Court. OAG will then work with the monitor and the Trump Organization to prepare a proposed order formally appointing the monitor and setting the terms of the monitor's retention.

CONCLUSION

Based on the foregoing, OAG respectfully requests that the Court grant Plaintiff's request for a preliminary injunction in its entirety, along with such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
October 13, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6376
kevin.wallace@ag.ny.gov

Attorney for the People of the State of New York

Word Count: 6,714

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

MOTION DATE 10/13/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 138, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 182

were read on this motion for a PRELIMINARY INJUNCTION AND APPOINTMENT OF AN INDEPENDENT MONITOR.

Upon the foregoing documents, and after oral argument held on November 3, 2022, it is hereby ordered that plaintiff's motion for a preliminary injunction and appointment of an independent monitor is granted as detailed herein.

Background

This action arises out of a three-year investigation conducted by plaintiff, the Office of the Attorney General of the State of New York ("OAG"), into the business practices of defendants from 2011 through 2021. OAG alleges that defendant Donald J. Trump ("Mr. Trump") and the other named defendants engaged in ongoing and extensive acts of fraud in the preparation and

submission of Mr. Trump's annual Statements of Financial Condition (the "SFCs"), violating New York Executive Law § 63(12) and a multitude of state criminal laws.[1]

OAG commenced this action on September 21, 2022, and service was thereafter effectuated on all parties. OAG now moves for a preliminary injunction and the appointment of an independent monitor to oversee the submission of certain financial information by defendants pending the final disposition of this case. Defendants have not yet answered the complaint, although they vigorously oppose OAG's motion.

New York Executive Law § 63(12)

New York Executive Law § 63, under which OAG brings this action, was enacted specifically to outline the "General Duties" of the New York Attorney General. Executive Law § 63(12) reads as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.
>
> In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant

[1] OAG brings this action exclusively under New York Executive Law § 63(12) but alleges violations of New York Penal Law § 175.10 (Falsifying Business Records), New York Penal Law 175.45 (Issuing a False Financial Statement), and New York Penal Law § 176.05 (Insurance Fraud) to demonstrate defendants' propensity to commit fraud.

> facts and to issue subpoenas in accordance with the civil practice law and rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this section.

Legal Standing and Capacity to Sue

Defendants assert that OAG has neither standing nor legal capacity to bring this action. Defendants argue that OAG cannot demonstrate standing because it cannot establish an "injury in fact—an actual legal stake in the matter being adjudicated." Defendants further argue that OAG cannot meet the elements required to bring a *parens patriae* action to sue in the public interest. NYSCEF Doc. No. 126, pg. 9.

Defendants are mistaken. The Court of Appeals has made clear that "Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts." State by Abrams v Ford Motor Co., 74 NY2d 495, 502 (1989).

The *parens patriae* doctrine provides a basis for a State to bring an action against a defendant whose conduct has or will impact the health or well-being of the State's citizens. See e.g., Alfred L. Snapp & Son, Inc. v Puerto Rico, ex rel., Barez, 458 US 592, 593 (1982) (to bring *parens patriae* action, Attorney General must identify quasi-sovereign interest in public's well-being, that touches substantial segment of population, and articulate "an interest apart from the interests of particular private parties"). Although to maintain an action in Federal Court, a state Attorney General must demonstrate the prima facie requirements of the *parens patrie* doctrine, such a demonstration is unnecessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action in a New York state court. People by Schneiderman v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies").

However, in any event, OAG satisfies the *parens patrie* doctrine by sufficiently articulating a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties. State of N.Y. by Abrams v Gen. Motors Corp., 547 F Supp 703, 705 (SDNY 1982) ("[t]he State's goal of securing an honest marketplace in which to transact a business is a quasi-sovereign interest"); People ex rel. Cuomo v Coventry First LLC, 52 AD3d 345, 346 (1st Dep't 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); New York by James v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SDNY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness…").

Defendants' argument that OAG's complaint is improperly lodged because it is not aimed at actions surrounding "consumer protection" is wholly without merit. New York v Feldman, 210 F Supp 2d 294, 299-300 (SDNY 2002) ("[D]efendants' claim that section 63(12) is limited to

consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions") (internal citations omitted).

Similarly, defendants' contention that OAG does not have capacity to sue because "Executive Law § 63(12) does not authorize Plaintiff to commence this type of proceeding" (NYSCEF Doc. No. 126, pgs. 19-20) is belied by the plain language of the statute and by prevailing authority. Matter of People by Schneiderman v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dep't 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

The Purported Disclaimers

The defendants further argue that the allegations contained in the complaint are unsustainable based on documentary evidence, citing to language that appears at the beginning of each of the SFCs. The relevant language was included by Mr. Trump's former accounting firm, Mazars[2], and states, as here pertinent:

> We have compiled the accompanying statement of financial condition of Donald J. Trump as of June 20, 2012. We have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America.
>
> Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement.

NYSCEF Doc. No. 6. Contrary to defendants' assertions, the Mazars disclaimer does not avail Mr. Trump at all. First, the disclaimer was issued by Mazars, not by Mr. Trump or any of the other named defendants. Second, the Mazars disclaimer makes abundantly clear that Mr. Trump was fully responsible for the information contained within the SFCs. SFCs serve an important function in the real world; allowing blanket disclaimers to insulate liars from liability would completely undercut that function.

---

[2] Although Mazars provided the cover letter for Mr. Trump's SFCs for 2011 through 2020 (NYSCEF Doc. Nos. 5-14), accountant Whitley Penn LLP provided the cover letter for Mr. Trump's 2021 SFC, which contains similar language indicating that it "did not audit or review the financial statement" nor did it "perform any procedures to verify the accuracy or completeness of the information provided by the Trustee of Donald J. Trump Revocable Trust..." NYSCEF Doc. No. 15.

Further, the case law cited by defendants arises out of causes of action for justifiable reliance, not Executive Law § 63(12). Nonetheless, "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 136 (1st Dep't 2014) (holding "a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"). As the SFCs were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

Moreover, the Mazars' language to which defendants refer does nothing to alert its recipients that Mr. Trump himself cautions them not to rely on its contents. Joel v Weber, 166 AD2d 130, 137 (1st Dep't 1991) (denying motion to dismiss based on disclaimer and finding language "cannot be classified as a disclaimer, since the wording of the note does not in any manner caution [recipient] not to rely upon the financial statement of which it was a part" and "[i]n fact, rather than being a disclaimer, we further find that this note conveys the unequivocal impression that it is a good faith attempt to approximate current market value").

Preliminary Injunction

"A municipality seeking a preliminary injunction to enforce compliance with its ordinances or regulations in order to protect the public interest… need only demonstrate a likelihood of success on the merits and that the equities weigh in its favor." City of New York v Beam Bike Corp., 206 AD3d 447, 447-448 (1st Dep't 2022).

Defendants strenuously argue that OAG's motion should be denied because OAG has failed to demonstrate that "the Trump Parties have ever even been late on so much as one loan payment over the past decade" such that they could not possibly have engaged in fraud. NYSCEF Doc. No. 126, pg. 9. This argument fails, as OAG need not demonstrate irreparable harm when seeking a preliminary injunction under Executive Law § 63(12)—OAG must only demonstrate a likelihood of success on the merits and that the balance of equities weighs in its favor. Beam Bike Corp., 206 AD3d at 447-448.

Moreover, as discussed *supra*, the State's "statutory interest under § 63(12)" is to protect "the government's interests in guaranteeing a marketplace that adheres to standards of fairness." Amazon, 550 F Supp 3d at 130. Additionally:

> Where, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct

> losses to consumers or the public; the source of the ill-gotten games is "immaterial."

People v Ernst & Young, LLP, 114 AD3d 569, 569-70 (1st Dep't 2014).

Likelihood of Success on the Merits

Contrary to defendants' allegations, OAG's motion is not based solely on the "verified allegations" set forth in its 222-page complaint. Rather, OAG attaches dozens of exhibits that contain documentary evidence not subject to interpretation (i.e., the SFCs speak for themselves) that support OAG's contention that it is likely to succeed on the merits. Conversely, defendants have failed to submit an iota of evidence, or an affidavit from anyone with personal knowledge, rebutting OAG's comprehensive demonstration of persistent fraud.

Although, for present purposes, the Court need not detail every instance of fraud found in the record, the following examples are particularly compelling:

Trump Tower Triplex

Mr. Trump formerly resided in a triplex apartment (the "Triplex") in Manhattan located within Trump Tower. It is undisputed that the square footage of the Triplex is 10,996 square feet. NYSCEF Doc. No. 49. However, from 2012 until at least 2016, Mr. Trump represented that the Triplex was 30,000 square feet. Mr. Trump further used this extreme exaggeration to inflate wildly the value of the Triplex on his SFCs for those years. In 2011, Mr. Trump represented that the Triplex's value was $80 million, which would have valued the apartment at more than $7,200 per square foot, when the highest price paid for an apartment in that building was $3,027 per square foot. In 2012, Mr. Trump's SFC represented the value of the same apartment as $180 million.[3]

Over the next four years, Mr. Trump reported massive increases in the value of the Triplex on his SFCs, reporting the value of the Triplex as $200 million in 2013 and 2014 and $327 million in 2015 and 2016. Defendant Allen Weisselberg ("Mr. Weisselberg"), the Trump Organization's former Chief Financial Officer, testified under oath that the valuation overstated the apartment's value by "give or take" $200 million. NYSCEF Doc. No. 53, pg. 4.

To the extent that defendants assert that the over-valuation of approximately $200 million was not intentional but an inadvertent mistake[4], such argument is irrelevant under Executive Law § 63(12).

> Good faith or lack of fraudulent intent is not an issue. The definition of 'fraud' as contained in Section 63, subd.12 of the

---

[3] As of 2012, the highest price ever paid for an apartment in New York City was $88 million, nearly $100 million less than Mr. Trump's valuation of his Triplex. NYSCEF Doc. No. 1, pg. 85.

[4] Although intent is not relevant under Executive Law § 63(12), it belies all common sense to assert that Mr. Trump, who resided in the Triplex for over 35 years and who purports to be "one of the top businesspeople" was not aware that he was over-representing the size of his home by nearly 200%. See Jill Colvin, Associated Press, https://apnews.com/article/north-america-donald-trump-ap-top-news-cabinets-maryland-2bb960fda0264c488d454632628cb193 [last accessed Nov. 3, 2022].

> Executive Law is equivalent to that contained in Section 352 of the General Business Law… which has been construed to include acts which tend to deceive or mislead the public, whether or not they are the product of scienter or an intent to defraud.

State by Lefkowtiz v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct 1971).

Trump Park Avenue Rent-Stabilized Apartments

Mr. Trump included Trump Park Avenue as an asset on his SFCs for the years 2011 through 2021. In 2012 the Oxford Group performed an appraisal that identified 12 rent-stabilized apartments in the building and assessed their collective value at $750,000, noting that the rent-stabilized units "cannot be marketed as individual units" for sale because the "current tenants cannot be forced to leave." NYSCEF Doc. No. 61. Notwithstanding[5], Mr. Trump's 2011 and 2012 SFCs valued the 12 unsold residential units without taking into account the rent-stabilization restrictions, reporting their collective value at a staggering $50 million. Mr. Trump's own accountant, Donald Bender, testified that he was "shocked by the size of the discrepancy" between the appraised value of $750,000 and the self-reported value of $50 million. NYSCEF Doc. No. 41, pg. 8.

40 Wall Street

The Trump Organization, through the entity 40 Wall Street LLC, owns a "ground lease" at 40 Wall Street. In 2010, non-party Cushman & Wakefield ("C&W") appraised the Trump Organization's interest in that ground lease at $200 million.[6] NYSCEF Doc. No. 55, pg. 3.

Notwithstanding, Mr. Trump listed the value of his interest in 40 Wall Street as $524.7 million on his 2011 SFC, $527.2 million on his 2012 SFC, and $530.7 million on his 2013 SFC, more than twice the value that C&W reached. Mr. Trump's longtime accountant, Donald Bender, testified that it was "misleading" for Mr. Trump not to provide the C&W appraisal to Mazars to consider in issuing its SFC, and that if he had been aware of it, that could have led to the SFC not being issued. NYSCEF Doc. No. 41, pg. 4.

Donald Trump Jr.'s Disclaimer of Responsibility for SFCs' Accuracy

Defendant Donald Trump Jr. is a senior executive at the Trump Organization and a trustee of the Donald J. Trump Revocable Trust, which was responsible for certifying the SFCs accuracy to banks and other institutions. He personally signed representation letters to Mazars on each Statement Engagement while serving as a trustee, and those letters included the representation that "[w]e acknowledge our responsibility and have fulfilled our responsibilities for the preparation and fair presentation of the personal financial statement in accordance with accounting principles generally accepted in the United States of America." NYSCEF Doc. No.

---

[5] Although OAG need not prove intent, there is no doubt that defendants were aware the apartments were rent-stabilized, as defendant Donald Trump Jr. testified that the rent-stabilized tenants were "the bane of my existence for quite some time." NYSCEF Doc. No. 45, pg. 7.

[6] OAG alleges many more instances of fraud arising out of defendants' valuation of their interest in 40 Wall Street. However, for present purposes, the Court need not address each and every one.

48. The statement further said that "[w]e have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation." Id.

Notwithstanding such representations, Donald Trump Jr. testified at his deposition that he had no knowledge of Generally Accepted Accounting Principles ("GAAP") outside of "Accounting 101 at Wharton," and that he "had no knowledge as [GAAP] relates to what it was for, for the Statement of Financial Condition or not." NYSCEF Doc. No. 45, pg. 10-11. He further testified that despite personally vouching for their accuracy, he "had no real involvement in the preparation of the Statement of Financial Condition[s] and don't really remember ever working on it with anyone." Id.

Accordingly, at a minimum, Donald Trump Jr. signed off on representations to Mazars without performing the due diligence necessary to ensure their accuracy or compliance with GAAP, raising serious doubt as to the reliability of future SFCs for which Donald Trump Jr. may be responsible. Furthermore, the record is replete with evidence that Donald Trump Jr.'s statement that "we" have not knowingly withheld pertinent information is blatantly false.

Mar-a-Lago

In 1995, Mr. Trump signed a Deed of Conservation and Preservation that gave up his rights to use the property for any purpose other than as a social club. NYSCEF Doc. No. 64. Additionally, in 2002, Mr. Trump signed a Deed of Development Rights conveying to the National Trust for Historic Preservation "any and all of [his] rights to develop the Property for any usage other than club usage." NYSCEF Doc. No. 65. Despite these prohibitive legal restrictions, Mr. Trump signed SFCs between 2011 and 2021 valuing the property at between $347 million and $739 million, based on the false premise that it was an unrestricted plot of land that could be sold and used as a private home, rather than the heavily encumbered historical landmark that it was. NSYCEF Doc. Nos. 16-26.

Zurich Insurance Fraud

The only method by which defendants disclosed Mr. Trump's SFCs to insurance company Zurich North American ("Zurich") was to permit its underwriters to review a copy of the SFCs at the Trump Organization's offices, under the watchful gaze of Mr. Weisselberg. While a Zurich underwriter was at the Trump offices reviewing such SFCs, Mr. Weisselberg represented to the Zurich underwriter that the fair values of the properties within the SFCs were determined by outside professional firms such as C&W, when, in fact, the Trump Organization itself concocted them out of whole cloth. NYSCEF Doc. Nos. 90-92. Zurich's underwriter testified that Mr. Weisselberg's representations "weighed favorably" into her recommending that Zurich renew the Surety Program. NYSCEF Doc. No. 90, pg. 7.

Invocation of the Fifth Amendment

Although not dispositive on any single issue, this Court is permitted, and is here persuaded, to draw a negative inference from Mr. Trump's invocation of his Fifth Amendment right against self-incrimination more than 400 times in response to questions posed to him during his deposition. See El-Dehdan v El-Dehdan, 26 NY3d 19, 37 (2015) ("a negative inference may be drawn in the civil context when a party invokes the right against self-incrimination").

For example, when asked if he knew that each SFC from 2011 through 2021 contained false and misleading valuations and statements, Mr. Trump invoked his right against self-incrimination. NYSCEF Doc. No. 42, pgs. 10-12. When asked if Mr. Weissselberg, Mr. McConney and others worked at his direction and followed his instructions to inflate the asset valuations in the SFCs between 2011 and 2021, Mr. Trump invoked his right against self-incrimination. Id.

Similarly, when Mr. Weisselberg was asked whether Mr. Trump directed him to make any changes to the SFCs between 2011 and 2015, Mr. Weisselberg invoked his right against self-incrimination. NYSCEF Doc. No. 44, pgs. 4-8.

Although the above examples are by no means exhaustive, they are more than sufficient to demonstrate OAG's likelihood of success on the merits.

Balancing of the Equities

"The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." Barbes Rest. Inc. v ASRR Suzer 218, LLC, 140 AD3d 430, 432 (1st Dep't 2016).

Here, the balancing of the equities tips, strongly, if not completely, in favor of granting a preliminary injunction, particularly to ensure that defendants do not dissipate their assets or transfer them out of this jurisdiction. OAG seeks to enjoin defendants from transferring any material asset to a non-party affiliate or otherwise disposing of material assets absent approval of this Court. In the event that defendants believe they have a legitimate reason to do so, they may apply to this Court for permission.

In the absence of an injunction, and given defendants' demonstrated propensity to engage in persistent fraud, failure to grant such an injunction could result in extreme prejudice to the people of New York. Further, the relief sought is appropriately tailored to curbing unlawful conduct and ensuring that funds are available for potential disgorgement at the conclusion of this case.

Notably, New York City is the epicenter of global finance. To take an example close to home, Deutsche Bank, headquartered in Germany, lent hundreds of millions of dollars to a New York real estate conglomerate that owns properties all over the world. New Yorkers derive enormous economic and other benefits from all the money coursing through the veins of Wall Street and real estate. Our executive, legislative, and judicial institutions are obligated to ensure that financial transactions are conducted truthfully, not fraudulently.

Appointment of an Independent Monitor

Defendants' opposition conflates the appointment of an "independent monitor" with that of a "receiver," when, in fact, they perform two very different functions: the former oversees, the latter controls.

In its motion, OAG asks for the appointment of an independent monitor to oversee the: (1) submission of financial information provided to any accounting firm compiling a 2022 SFC for Mr. Trump; (2) submission of all financial disclosures to lenders and insurers; and (3) corporate

restructuring or disposition of significant assets. This limited function is entirely different from the functions of a receiver, who would, in effect, take control of the entire organization. CPLR 5228. Accordingly, defendants' claims that this amounts to a "nationalization" of the Trump Organization are entirely without merit.

Furthermore, given the persistent misrepresentations throughout every one of Mr. Trump's SFCs between 2011 and 2021, this Court finds that the appointment of an independent monitor is the most prudent and narrowly tailored mechanism to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action.

The Court has considered defendants' other arguments and finds them unavailing and/or non-dispositive.

Conclusion

Thus, for the reasons set forth herein, OAG's motion for a preliminary injunction and appointment of an independent monitor is granted; and

Defendants are hereby preliminary enjoined from selling, transferring, or otherwise disposing of any non-cash asset listed on the 2021 Statement of Financial Condition of Donald J. Trump, without first providing 14 days written notice to OAG and this Court; and

This Court will appoint an independent monitor, to be paid by defendants, for the purpose of ensuring compliance with this order. If the monitor reasonably determines that defendants have violated this order, the monitor shall immediately report that matter to OAG, defendants, and this Court; and

Defendants are hereby ordered to provide the monitor any financial statement, statement of financial condition, other asset valuation disclosure, or other financial disclosure to a lender, insurer, or other financial institution, any non-privileged document, book, record, or other information bearing on any of the foregoing or reasonably necessary to assess the accuracy of any representation, and to comply with all reasonable requests by the monitor for such information; and

Defendants are hereby ordered to provide the monitor with a full and accurate description of the structure and liquid and illiquid holdings and assets of the Trump Organization, its subsidiaries, and all other affiliates, no later than two weeks after the monitor's appointment; and

Defendants are hereby ordered to provide the monitor, at least 30 days in advance, information regarding any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, or of any plans for disposing or refinancing of significant Trump Organization assets, or disposing significant liquidity; and

This Court will appoint an independent monitor from names recommended by OAG and defendants, who shall have until November 10, 2022 to identify no more than three potential monitors for the Court's consideration. The parties shall have until November 15, 2022 to

comment, if they so choose, on their adversaries' selections. Once a monitor is appointed by this Court, the monitor shall remain in place until further order of this Court; and

This order binds defendants and all other persons or entities acting in concert with them, or under their direction or control, directly or indirectly, including defendants' officers, employees, representatives, servants, or other agents, and including the Donald J. Trump Revocable Trust through any of its trustees; and

The parties are hereby ordered to appear in person for a preliminary conference on November 22, 2022 at 10:00 am at 60 Centre Street, New York, New York, Courtroom 418.

11/3/2022
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

INDEX NO. 452564/2022

MOTION DATE 10/13/2022

MOTION SEQ. NO. 001

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

SUPPLEMENTAL DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 138, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 182, 183, 185, 191

were read on this motion for INDEPENDENT MONITOR.

Pursuant to this Court's Decision and Order dated November 3, 2022, holding, in part, that this Court will appoint an Independent Monitor of the defendants, and after considering the persons that both sides nominated, and as all counsel have nominated Hon. Barbara S. Jones (Ret.) for the position, and she having confirmed in a telephone call of today's date that she will accept the appointment, this Court hereby appoints Hon. Barbara S. Jones to be the Independent Monitor that said Decision and Order directed. An order describing in detail the duties, powers, and fees of Hon. Barbara S. Jones as Independent Monitor will be forthcoming shortly.

11/14/2022
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**		**GRANTED IN PART**	X **OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

INDEX NO. 452564/2022

MOTION DATE 10/13/2022

MOTION SEQ. NO. 001

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

SUPPLEMENTAL MONITORSHIP ORDER

On November 3, 2022, this Court, upon motion of the Office of the Attorney General of the State of New York, issued a preliminary injunction and ordered appointment of an independent monitor (the "Monitor") in this matter (the "November 3 Order"). On November 14, 2022, this Court appointed Hon. Barbara S. Jones (retired) as the Monitor.

As set forth in the November 3 Order, which this order supplements, the duties of the Monitor shall include, but not be limited to, monitoring of: (1) the submission of financial information to any accounting firm compiling a 2022 Statement of Financial Condition ("SFC") for Donald J. Trump; (2) the submission of all financial disclosures to any persons or entities, including, without limitation, lenders, insurers, and taxing authorities; and (3) any corporate restructuring, disposition or dissipation of any significant assets. The Monitor's duties shall not include monitoring Defendants' normal, day-to-day business operations.

The parties shall promptly meet with the Monitor and shall cooperate with the Monitor to design processes and procedures that provide the Monitor with access to all information necessary to effectuate the Monitor's responsibilities herein.

Defendants shall provide to the Monitor, no more than five business days after her request: (1) any financial statement, including any statement of financial condition, other asset valuation disclosure, or other financial disclosure to any persons or entities, including, without limitation, lenders, insurers, other financial institutions, or taxing authorities; and (2) any non-privileged document, book, record, or other information bearing on any of the foregoing, or reasonably necessary to assess the accuracy of any representation, and Defendants shall comply with all

reasonable requests by the Monitor for such information. In the event that Defendants believe they reasonably need more time to comply with such requests, they may apply to the Monitor for an extension.

On or before November 30, 2022, Defendants shall provide the Monitor with a full and accurate description of the corporate structure of the Trump Organization, its subsidiaries and all other affiliates, including all trusts, and of their significant liquid and illiquid assets.

Defendants are hereby ordered to provide the Monitor, at least 30 days in advance, information about any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or of any plans for disposing, refinancing, or dissipating any significant Trump Organization assets. In the absence of any such activity, Defendants shall provide the Monitor with a sworn statement on a monthly basis that no such activities have been undertaken.

The Monitor is authorized to engage in ex parte communications with the Court and any party.

The Monitor shall report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order.

The Monitor shall immediately report to this Court and the parties any unusual and/or suspicious and/or suspected or actual fraudulent activity.

The Monitor is authorized to utilize other professionals within her law firm, as well as outside accountants or other professionals, as reasonably necessary. As set forth in the November 3 Order, Defendants shall be responsible for and shall pay all fees, including, without limitation, attorney's fees, and costs associated with the monitorship, and shall remit payment to the Monitor or outside professionals within 30 days of the Monitor's submission of invoices to Defendants, with copies to this Court.

ARTHUR F. ENGORON, J.S.C.

Date 11/17/2022

EXHIBIT F

BRACEWELL

December 19, 2022

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my first report to the Court.

Since my appointment, I have held in-person and virtual conferences with the parties, with additional conferences scheduled this week. Defendants have begun to provide me with information pertaining to their corporate structure, including specific details of each corporate entity within The Trump Organization. Defendants have also kept me apprised of various financial statements prepared for dissemination to third parties, and have provided me with supporting documentation and materials. In addition, Defendants have alerted me to contemplated corporate transactions implicated by the Supplemental Order of Appointment.

I am reviewing these materials with the assistance of outside accounting professionals whom I have retained. Defendants are complying with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

Barbara S. Jones
Partner
T:+1.212.508.6105 F: +1.800.404.3970
31 W 52nd Street, Suite 1900, New York,New York 10019-6118
barbara.jones@bracewell.com bracewell.com

Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

BRACEWELL

February 3, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al*., Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my second report to the Court.

Since my last report, dated December 17, 2022, my team and I have held additional conferences with the parties, and Defendants have continued to proactively provide me with information required by the Supplemental Order of Appointment. I have also made a total of 13 written requests—eight since my last report—for additional and clarifying information from Defendants concerning their corporate structure, various corporate transactions implicated by the Supplemental Order of Appointment, and their planned and anticipated dissemination of financial statements to third parties. With respect to financial statements to third parties, I note that, as previously represented to the Court, defendants have not provided a 2022 Statement of Financial Condition to any third parties, and do not intend to do so.

With respect to Defendants' corporate structure, my team and I have spent considerable time reconciling and ensuring the accuracy of the extensive list of entities that fall under the Trump Organization umbrella. That work is ongoing. Further, Defendants informed me at the end of last year that they wished to dissolve certain dormant entities, and part of my work has involved reviewing those entities' business purpose, assets, and past activities. The outside accountants I

Barbara S. Jones
Partner
T:+1.212.508.6105 F: +1.800.404.3970
31 W 52nd Street, Suite 1900, New York,New York 10019-6118
barbara.jones@bracewell.com bracewell.com

retained have been instrumental in helping to carefully assess issues regarding Trump Organization entities, as well as analyzing other materials provided by Defendants thus far.

Additionally, the Supplemental Order of Appointment requires that Defendants provide me with a sworn statement each month confirming that, except as otherwise disclosed to me, there have been no "planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or . . . any plans for disposing, refinancing, or dissipating any significant Trump Organization assets." While I have no reason to believe that any undisclosed transactions have occurred, I am currently working with Defendants on language for these sworn statements that is acceptable to me and which complies with the Court's order. I expect to have the first monthly sworn statement from Defendants soon.

In sum, Defendants are continuing to comply with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

Should you have any questions, please feel free to contact me.

Sincerely,

/s/ Barbara S. Jones

Hon. Barbara S. Jones (Ret.)

cc: Counsel of record

BRACEWELL

April 11, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al*., Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my third report to the Court.

Since my last report, dated February 3, 2023, my team and I have held additional conferences with the parties and the Court, and Defendants have continued to provide me with information required by the Supplemental Order of Appointment.

Additionally, as I have previously reported, the Supplemental Order of Appointment also requires that Defendants provide me with a sworn statement each month confirming that, except as otherwise disclosed to me, there have been no "planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or . . . any plans for disposing, refinancing, or dissipating any significant Trump Organization assets." To provide further guidance to Defendants regarding compliance with these terms, I have established a Materiality Threshold and Review Protocol that has been accepted by the parties and is being submitted for the Court's review. *See* Attached Materiality Threshold and Review Protocol.

The Defendants are continuing to comply with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

Barbara S. Jones
Partner
T:+1.212.508.6105 F: +1.800.404.3970
31 W 52nd Street, Suite 1900, New York,New York 10019-6118
barbara.jones@bracewell.com bracewell.com

Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

BRACEWELL

August 3, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my fourth report to the Court.

Since my last report, my team and I have held additional conferences with the parties and the Court. The parties have provided access to information necessary to effectuate my duties. To date, my team and I have reviewed nine loan agreements with third-party lenders, more than 75 financial disclosures, and several thousand supporting documents related to those disclosures.

Pursuant to the Court's Orders, I have also completed the review of the corporate structure of the Trump Organization, which is comprised of assets held by the Donald J. Trump Revocable Trust (the "Trust"). The Trust acts as a guarantor for certain loans and is comprised of more than 400 distinct entities that, among other things, own or operate commercial and residential real estate, hotels, golf courses and licensing ventures. As part of this analysis, I have reviewed relevant financial information for each entity. I have also approved, at the request of the Trump Organization, the dissolution of 109 entities that were dormant, did not generate revenue, and/or did not own any material assets or real property. In addition, based upon representations made to me by the Defendants, they have kept me apprised of any proposed corporate restructurings or dispositions of significant assets.

Barbara S. Jones
Partner
T:+1.212.508.6105 F:+1.800.404.3970
31 W 52nd Street, Suite 1900, New York, New York 10019-6118
barbara.jones@bracewell.com bracewell.com

As noted above, since my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders —such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

The Defendants maintain that its practices related to these items are adequate. However, in the interest of cooperation and transparency, Defendants have agreed to address in future disclosures to lenders the items I have identified and otherwise adjust their practices based upon my observations. The Trump Organization will continue to inform the Monitor regarding the form and substance of these disclosures.

Based upon the foregoing, and having carefully reviewed the information provided to me, it appears that the Defendants continue to cooperate with me and the requirements of the Court's Orders. My review of the Defendants' submissions of financial information is ongoing and I appreciate the parties' cooperation. Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

BRACEWELL

November 29, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron:

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No. 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my fifth report to the Court.

Since my last report, my team and I have held additional conferences with the parties and the Court. The parties have provided access to information necessary to effectuate my duties. Additionally, between my last report and now, my team and I have reviewed quarterly financial disclosures provided to third parties, tax information, general ledger data, entity trial balances, securities and bank account details for 12 separate accounts maintained by the Donald J. Trump Revocable Trust ("Trust"), and other information. We have also requested and, to the extent available, reviewed specific financial information in connection with the following:

- The sale of the Trump Organization's license to operate Trump Golf Links at Ferry Point;
- The loan payoff for the property owned by 401 North Wabash, LLC (the "Chicago Tower");
- The Conservation Easement tax filing for the Trump National Doral Miami ("Doral"); and

Hon. Barbara S. Jones, (ret.) T:+1.212.508.6105 F: +1.800.404.3970
31 W. 52nd Street, Suite 1900, New York,New York 10019-6118
Partner barbara.jones@bracewell.com bracewell.com

- Trump Media and Technology Group Corporation (Truth Social).

Observations Since Last Report

In my previous report, dated August 3, 2023 ("August Report"), I notified the Court that certain of the Defendants' financial disclosures provided to third parties were either incomplete or inconsistent. *See* Dkt. No. 647. I have since observed that Defendants have taken steps to disclose intercompany loans omitted from prior disclosures, modified footnote disclosures regarding contingent liabilities, and have also provided all recent annual and quarterly certifications attesting to the accuracy of various financial statements, as required by certain loan agreements. The Trump Organization also plans to add a clarifying note to internally prepared financial statements issued to third-parties, stating that results will be reported as net income before depreciation (in instances where depreciation is not otherwise reflected in the financial statement). By taking these steps I believe Defendants have resolved the issues identified in the August Report, subject to ongoing monitoring.

Recent Observations

1. *Tax Reporting and Other Disclosures*

On April 11, 2023, I reported that a Materiality Threshold and Review Protocol (the "Materiality Threshold") had been established to provide the parties with clarity as to their compliance with the terms of the Supplemental Order of Appointment. *See* Dkt. No 617. Among other things, the Materiality Threshold requires Defendants to provide the Monitor with financial information reported to third parties, including select tax returns for certain Trust entities. During this reporting period, relevant tax returns for six Trust entities were not promptly disclosed to the Monitor pursuant to the terms of the Materiality Threshold. Upon my request, Defendants provided the tax returns and acknowledged that their exclusion was an oversight.

2. *Review of Cash Transfers*

The Materiality Threshold also requires that Defendants "provide notice when entities within the Trust make transfers outside of the Trust with an aggregate value in excess of $5 million." As mentioned above, during this reporting period, my team requested and conducted a review of bank statements for 12 bank accounts maintained by the Trust from January 2023 through October 2023. Upon review of these bank statements, we observed three cash transfers exceeding $5 million each, totaling approximately $40 million. These transactions included a cash transfer of $29 million to Donald J. Trump, which I have confirmed was used for tax payments. Based upon Defendants explanations I have also confirmed that the other transfers were for

insurance premiums and to an attorney escrow account.[1] We have discussed with Defendants why these transactions were not previously disclosed and I have now clarified (and Defendants have agreed) that *all* transfers of assets out of the Trust exceeding $5 million must be reported.

3. *Chicago Tower Loan Reporting*

As described above, the loan for the Chicago Tower has been satisfied. However, I have also reviewed information regarding the existence of an intercompany loan related to the property. Defendants are continuing to investigate this issue and any reporting requirements or documentation that may be required. I will report any additional developments on this issue to the Court.

* * *

Defendants have agreed to enhanced monitoring given the matters described in this report. Defendants continue to cooperate with me and are generally in compliance with the Court's orders, and have committed to ensure that all required information, including tax information and cash transfers, are promptly disclosed to the Monitor. My review of the Defendants' submissions of financial information is ongoing and I appreciate the parties' cooperation.

Should you have any questions, please feel free to contact me.

Sincerely,

Barbara S. Jones

Barbara S. Jones

[1] *See Carroll v. Trump*, No. 1:22-cv-10016 (LAK), Dkt. No. 210 (describing cash payment in lieu of supersedeas bond).

BRACEWELL

January 26, 2024

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment" or "Monitorship Order"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the Monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order."

The Court has requested a report of the work my team has done over the past 14 months, including an assessment of financial disclosures made by The Trump Organization ("Trump Organization") during the course of the Monitorship. While certain observations discussed below have been addressed in my prior reports, this report also provides a review and overall assessment of the Defendants' compliance with the requirements of the Monitorship Order.

I. Introduction

To date, my team has reviewed more than 3,000 documents related to the Trump Organization's disclosure of financial information to third parties. These include:

- Financial disclosures to third parties, including lenders and insurers;
- Agreements related to loans and other transactions (leases, sales, etc.);
- Documents related to the Trump Organization structure and entity dissolutions;
- Bank statements provided by the Trump Organization;
- Documents provided to tax authorities;
- Documents related to transactions;

Barbara S. Jones
Partner
T:+1.212.508.6105 F: +1.800.404.3970
31 W 52nd Street, Suite 1900, New York,New York 10019-6118
barbara.jones@bracewell.com bracewell.com

- License agreements; and
- Select documents exchanged between the parties or submitted during the course of the trial.

More specifically, my team has reviewed over 422 documents related to financial disclosures submitted to third parties, 179 documents related to information provided to taxing authorities, 384 documents related to loan agreements and other transactions, 192 documents related to the dissolution of certain entities, and over 200 bank statements.

While the Trump Organization did not enter into any material loans, make significant purchases of real property, or submit valuations of its properties to lenders during the course of the Monitorship, it submitted numerous financial statements, financial reports, and related information to third parties.

As discussed more fully below, I have identified certain deficiencies in the financial information that I have reviewed, including disclosures that are either incomplete, present results inconsistently, and/or contain errors. In addition, while Defendants have been cooperative, information required to be submitted to me pursuant to the terms of the Monitorship Order and review protocol has, at times, been lacking in completeness and timeliness. I have previously reviewed these items with the Trump Organization, which has often agreed to modify the disclosures or implement processes that improve accuracy, transparency, and the timeliness of their disclosures.

II. The Monitor's Duties and Responsibilities

My duties include "the monitoring of (1) the submission of financial information to any accounting firm compiling a 2022 "Statement of Financial Condition" ("SFC") for Donald J. Trump; (2) the submission of all financial disclosures to any persons or entities, including, without limitation, lenders, insurers and taxing authorities; and (3) any corporate restructuring, disposition or dissipation of any significant assets." Monitorship Order at 1.

To comply with the Court's orders, Defendants are required to "provide the Monitor…(1) any financial statement, including any statement of financial condition, other asset valuation disclosure, or other financial disclosure to any persons or entities, including, without limitation, lenders, insurers, other financial institutions, or taxing authorities; and (2) any non-privileged document, book or record, or other information bearing on any of the foregoing, or reasonably necessary to assess the accuracy of any representation, and Defendants shall comply with all reasonable requests by the Monitor for such information." *Id.* at 1-2.

In addition, Defendants are obligated to provide the Monitor "with a full and accurate description of the corporate structure of the Trump Organization, its subsidiaries, and all other

affiliates, including all trusts, and of their significant liquid and illiquid assets." *Id.* at 2. Defendants are also required to provide the Monitor with at least 30 days advance notice of "any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or of any plans for disposing, refinancing, or dissipating any significant Trump Organization assets. In the absence of any such activity, Defendants are also responsible for providing the Monitor with a sworn statement that no such activities have been undertaken." *Id.*

My duties also include "reporting any unusual and/or suspicious and/or suspected or actual fraudulent activity." *Id.* Under the Supplemental Order of Appointment, however, my duties "do not include monitoring Defendants' normal, day-to-day business operations." *Id.* at 1. Nor do they include conducting proactive independent investigations or validations of the Trump Organization's operations or accounting functions beyond the Supplemental Order of Appointment's disclosure obligations. In addition, while I am to receive advance notice of restructuring or sales, my appointment does not require or permit advanced approval of the Trump Organization's preparation or submission of financial information to third parties. Thus, I am not in a position to conclude whether fraudulent activity occurred.

III. The Monitor's Review Process

After my appointment, I met with the parties and entered into an approved process and protocol for carrying out my duties under the Monitorship Order, including obtaining and reviewing information subject to my review. Both Plaintiff and Defendants were cooperative in this process. Pursuant to this protocol, the Trump Organization provides me with regular status updates and ad hoc notifications of disclosures and transactions. I also make independent inquiries based upon my review of publicly available information, as well as witness and expert testimony, discovery, and related evidence submitted by the parties.

Once I receive the disclosures and financial information, my team analyzes these materials by comparing them, where applicable, to prior submissions and related information. We then verify, to the extent possible, that the information is accurate and whether it contains inconsistencies, incomplete information, and errors. If any issues or concerns are identified, we make inquiries and request additional information from the Trump Organization. We also hold in-person or virtual meetings for further discussion and elaboration if necessary.

As a result of this process, I have provided the Court with written reports of my findings and observations.[1] As mentioned above, I have also met with the Court to provide periodic updates.

[1] See Report dated December 19, 2022; Report dated February 3, 2023; report dated April 11, 2023; Report dated August 3, 2023; Report dated November 29, 2023.

IV. The Structure of the Trump Organization

As noted above, Defendants are required to provide the Monitor with a full and accurate description of the corporate structure of the Trump Organization, its subsidiaries, and all other affiliates, including all trusts, and of their significant liquid and illiquid assets. *Id.* at 2. I was informed that this information had not previously been compiled by the Trump Organization and was not readily available at the outset of the Monitorship.

To obtain a comprehensive understanding of the corporate structure, we requested the following information for each Trump Organization entity: (1) its purpose and function; (2) the ownership structure; (3) whether it maintains a general ledger; (3) revenue information; (4) whether it submits financial information to third parties; (5) whether it has any debt or credit obligations; (6) total assets; (7) whether it files tax returns; and (8) whether it owns real property. In the various iterations of this information provided by Defendants, we identified errors, including missing entities, incomplete data, and inconsistent information about the entities themselves.

Following several requests for information, meetings, and disclosures to address these issues, we have been able to confirm that the Trump Organization was, at the outset of the Monitorship, comprised of 521 distinct business entities, all held within the Donald J. Trump Revocable Trust (the "DJT Revocable Trust" or the "Trust"), a trust formed under the laws of Florida.

Of these 521 entities, 51 were dissolved by the Trump Organization during the Monitorship in late 2022 and early 2023. An additional 55 entities were dissolved in September and October 2023. There are now 415 entities, which generally fall into the following categories:

- Operating entities that generate revenue (excluding for purposes of license and management agreements), such as 40 Wall Street, Trump National Doral Miami, and Trump Tower (70)
- Active entities for purposes other than license, management, or technical services agreements and which do not have a general ledger or file tax returns (5)
- Active entities for purposes other than license, management, or technical services agreements, which have a general ledger or file tax returns (55)
- Entities formed to enter license agreements (71)
- Entities formed to enter into management agreements (11)
- Entities formed to enter into technical services agreements (4)
- Vornado entities (11)
- Fred Trump entities (21)
- Entities that appear dormant or no longer active based on their business purpose (94)
- Other entities (73; 62 of which did not have reported revenue)

With respect to cash management and flow of funds within the organization, generally, operating entities like commercial properties, resorts, and golf clubs, transfer their income to centralized accounts or entities that hold and distribute the Trust's consolidated cash. Management determines the cash needs of each entity on a going forward basis and distributes funds as necessary.

Based on our review of information, and through ongoing dialogue with the Trump Organization, the Monitor imposed a Materiality Threshold and Review Protocol requiring Defendants to provide specific financial information regarding these entities, as well as any transfers of assets outside the Trust exceeding an aggregate value of $5 million.

V. Financial Reports and Statements Issued to Third Parties

As described above, my duties also include monitoring financial information submitted by Defendants—including any SFCs—to third parties. The Trump Organization is required to disclose certain financial information to third parties based upon several requirements contained in loan agreements with its lenders.

Four loan agreements in effect during the Monitorship require the submission of financial statements fairly presenting the financial condition and results of the guarantor, Donald J. Trump, who guarantees the loans with both personal and Trust assets.[2] Historically, the Trump Organization chose to submit SFCs to comply with this loan requirement, but elected not to submit SFCs to lenders during the Monitorship.[3]

In lieu of an SFC, beginning in 2022, Defendants instead prepared and submitted a list of the Trust's Material Assets and Material Liabilities ("MAML"). The MAML contains a listing of certain significant properties owned by the Trust and a description of any loans associated with those properties. The MAML does not include estimated values of the properties listed, nor does it include a balance sheet of the guarantor or any representations regarding its financial condition. Further, and with limited exception described below, we are not aware of the Trump Organization having conducted any entity valuations or property appraisals during the Monitorship.

---

[2] One of these loans was fully repaid and satisfied during the Monitorship. For the remaining three loans, the applicable provision states: "…Guarantor shall deliver to Lender not later than September 30th of each calendar year, Guarantor's annual financial statements prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender… and prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor."

[3] We understand this practice began after the litigation was commenced by the Plaintiff.

It should be noted that, for three loan agreements that require the submission of SFCs, we are not aware of any lender providing notice to the Trump Organization that the substitution of the MAML constituted an event of default or was otherwise improper.[4] For the fourth loan that required the submission of an SFC, which was satisfied during the Monitorship, the Trump Organization did not believe it had an obligation to continue to do so under the terms of its loan.

However, as described in Section VII (1) below, we identified certain disclosure deficiencies with respect to the MAML.

Apart from the SFCs and MAMLs, the Trump Organization's loan reporting requirements also include annual and quarterly financial statements, annual and quarterly certifications, annual budgets, rent rolls, liquidity calculations, and debt service coverage ratio calculations.

In addition, the Trump Organization submits a variety of financial information to other third parties, which we have also reviewed. This includes financial information provided to finance companies, insurance brokers, the United States Office of Government Ethics ("OGE"), and taxing authorities. Disclosures have also been made to transaction counterparties, such as in connection with the Trump Organization's September 2023 sale to Bally's Corporation of its right to operate the golf course known as Trump Golf Links Ferry Point ("Ferry Point").

VI. Restructuring and Disposition of Assets

One of my duties is to monitor any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or of any plans for disposing, refinancing, or dissipating any significant Trump Organization assets. Provided below is a listing of instances of restructuring or disposition of assets I observed and reported during the Monitorship:

- Defendants provided notice of the dissolution of certain entities. Specifically, through two rounds of dissolutions (late 2022 / early 2023 and September / October 2023) Defendants dissolved 106 entities that no longer had a business purpose and had no material assets or holdings.

- Bank statements I reviewed showed transfers of funds outside the Trust during the course of the Monitorship, and that certain of these transfers have had an aggregate value of more than $5 million.

[4] Submission of the MAML is specifically required by other loan agreements for different properties.

- As briefly mentioned above, in September 2023, the Trump Organization sold its interest in a licensing agreement to operate Ferry Point in the Bronx, New York.

- In addition, in October 2023, the Trump Organization fully paid off its existing loan for the Chicago Tower property, and there is no longer any loan with third party lenders associated with that property.

We have also received information pertaining to estate planning and monitored other assets listed for sale (such as a private home and aircraft), the creation of a new entity, the application for a conservation easement at the Doral property, and the termination of license and management agreements.

VII. The Monitor's Observations

As stated above, my role has been limited to assessing the accuracy of the information provided to me by the Trump Organization. During my review, however, I have identified certain disclosure deficiencies that, from the recipient's perspective, could be considered material inaccuracies in the presentation of financial information.

In general, my observations fall into three categories: (1) incomplete disclosures; (2) inconsistent disclosures; and (3) errors in disclosures. In addition, I am also providing the Court with my observations regarding Defendants' compliance with the terms of the Monitorship Order. Examples of each are provided below.

1. Incomplete Disclosures

I have identified instances where certain disclosures are either incomplete or demonstrate a lack of transparency. For example:

- As described above, certain loans still require that Defendants submit financial information fairly representing the financial condition of the guarantor in a manner consistent with the documents previously provided. Instead, in 2022, Defendants elected to provide the MAML, which does not present the financial condition of the guarantor or other financial information about the listed assets.[5]

- Certain loan agreements require the Trump Organization to provide annual and quarterly certifications attesting to the accuracy and completeness of financial

[5] The Trump Organization has not yet submitted information to the Monitor regarding what it provided to satisfy the 2023 SFC requirement.

information submitted to lenders. As described in previous reports, the Trump Organization has not consistently provided these certifications. We identified 10 instances where certifications attesting to the accuracy and completeness of financial information was required by the lender but was either incomplete or not provided in the past 14 months. Since raising this issue, we have observed the Trump Organization submitting these certifications when required.

- We observed five intercompany loans, each totaling more than $5 million, between and among Donald J. Trump, individually, and certain Trust properties. We also observed intercompany loans listed as liabilities in internally prepared balance sheets provided to a finance company, as liabilities on audited or other financial statements prepared by external accountants, or as listings of assets and liabilities provided to the OGE.[6] These loans do not appear to have documents establishing their terms and conditions and range in amounts between $9 million to more than $100 million. Despite their inclusion on these financial statements, the intercompany loans were not listed as liabilities on the MAML submitted to lenders. In June 2023, I asked the Trump Organization to consider including relevant intercompany loans on the MAML, and the Trump Organization agreed to do so in subsequent versions.

- Certain loan agreements require the disclosure of contingent liabilities. We have observed that contingent liabilities have not been included on the MAML. Until June 2023, the MAML included a footnote informing the recipient that it "Does not include contingent liabilities." Beginning in June 2023, after discussions with the Monitorship team and my report to the Court, this footnote was changed to read "Does not include certain material contingent liabilities that exist."

- The loan agreement for Trump Plaza requires the Trump Organization to provide annual audited financial statements in accordance with GAAP. The 2022 audited financial statement we reviewed states it was not prepared in conformity with GAAP with respect to depreciation, rental income, rent expense, bad debts, reserves for losses up to certain insurance deductibles, and debt issuance costs. I note, however, that non-GAAP statements appear to have been consistently provided to the lender prior to the Monitorship.

[6] Of particular note, I discussed the springing loan previously disclosed as being between Donald J. Trump individually and Chicago Unit Acquisition (an entity related to the Trump Chicago Tower) with the Trump Organization several times. When I inquired about this loan, I was informed that there are no loan agreements that memorialize the loan, but that it was a loan that was believed to be between Donald J. Trump, individually, and Chicago Unit Acquisition for $48 million. However, in recent discussions with the Trump Organization, it indicated that it has determined that this loan never existed – and thus that it would be removed from any upcoming forms submitted to the Office of Government Ethics and would also be removed from subsequent versions of the MAML.

- Certain loan agreements require the Trump Organization to submit annual budgets describing projected performance for the properties. In the annual budget prepared for 40 Wall Street for 2023, the estimated annual income and expenses were, in some instances, materially different than the actual results from the prior year. My team raised these issues with the Trump Organization, and I have observed that the 2024 budget was more consistent with prior years' actual results.

- In 2022 and 2023, income statements provided to a finance company for certain golf course properties with material fixed assets did not include depreciation or presented depreciation as $0. In my discussions with the Trump Organization, it acknowledged that such disclosures could be relevant to the recipient and that it would consider including such information on subsequently prepared internal financial statements.

2. Inconsistent Disclosures

Some financial disclosures reviewed by the Monitorship team have also been inconsistent. We observed that information contained in certain statements was prepared or presented differently when compared to other disclosures that required the same information. For example:

- Expenses related to management fees for 40 Wall Street were inconsistently presented within annual budgets prepared for and submitted to the lender when compared to the management fee recorded in audited financial statements. For example, management fees in the annual budgets submitted to the lender were stated as $100,000, whereas the management fees in audited financial statements were more than $1 million. In the annual budgets I recently reviewed, the Trump Organization addressed this issue by including a reasonable expectation of management fees consistent with prior years.

- In certain documents, the Trump Organization calculates Earnings Before Income Tax, Depreciation and Amortization (EBITDA) differently. For example, in the Trump Turnberry 2021 Financial Statements, EBITDA is calculated as earnings after taxes, but before depreciation. Also, in financial documents related to the Chicago Tower, one document included management fees in EBITDA, and one did not.

- The February and March 2022 monthly unaudited trial balances provided to Bally's prior to the sale of the Trump Organization's right to operate Ferry Point reflected presentation and accounting differences compared to all other months provided to Bally's. When asked about this issue, the Trump Organization informed me that these two trial balances were improperly prepared.

3. Errors

Our review also revealed errors in the Trump Organization's preparation of financial disclosures, including:

- Management fees were erroneously excluded from the calculation of "(Loss) After Management Fee Expense/Capex/Ti/Leasing/Mortg Payable" in the 2024 Final 40 Wall Street Budget, causing income to be overstated by the amount of the budgeted management fee (approximately $1.16 million). After I identified this discrepancy, the Trump Organization confirmed that there was an error and indicated that it would correct and resubmit the budget to the lender.

- In a Chicago Tower 2022 Forecast provided to a prospective lender, the calculated amount of EBITDA (using the values presented in the report) differs from the amount of EBITDA shown on the report. I was informed this error was the result of interest expense being omitted from the printed report, despite this expense being included in the Excel formula calculation of EBITDA, resulting in a difference of $1,538,333.

- There was an apparent math error in the calculation of "Operating profit before depreciation and exceptional items" for both the 2022 and 2021 values in the 2022 Audited Financial Statements for Trump Turnberry. For 2022, "Operating profit before depreciation and exceptional items" is reported in the audited financial statement as one value. However, when independently performing a calculation of this amount using the values reported in the financial statement, the result is a different value, resulting in an understatement of £130,552 (the understatement is £82,728 for the values reported for 2021). The Trump Organization has not yet responded to my request for clarification regarding this error.

- In the first quarter 2023 Trump Tower Commercial LLC Quarterly Reporting Cash Flow Statement, the subtotal for "Repairs and Maintenance" disbursements includes a mathematical error that also impacts the calculation of operating cash flow. The result is an overstatement to repairs and maintenance expense and, thus, an understatement to operating cash flow of $14,821.21. The Trump Organization has not yet responded to my request for clarification regarding this apparent error.

- In the 2022 Doral Audited Financial Statement, the notes to the financial statements indicate that "various members of the Trump family" own Trump Endeavor 12, which is incorrect. Trump Endeavor 12 and its members are owned by the Trust. The Trump Organization acknowledged this was an error but did not provide a revised version to its lender.

While I recognize that certain of these errors are relatively minor amounts compared to the overall revenues of the organization, the erroneous documents were sent to a third-party lender, finance company or counterparty. In several instances, errors were the result of formulas within spreadsheets that failed to properly calculate or capture relevant information.

4. Interactions with the Monitor

The Trump Organization has been cooperative in providing information to the Monitor. However, at times, compliance with the requirements of the Monitorship Order and subsequent Materiality Threshold has been lacking in completeness and timeliness. These instances include:

- As described in my prior report, dated November 29, 2023, the Trump Organization failed to inform me of tax returns that had been filed for certain Trust entities, including in connection with a significant tax benefit associated with a conservation easement at Doral. I frequently requested updates regarding that conservation easement. However, I was only notified in December 2023 that the easement appraisal and tax filing was finalized and submitted in September 2023.[7]

- I was not informed of cash transfers from the Trust and sent to Donald J. Trump, each exceeding $5 million and totaling more than $40 million, until my team conducted a review of Trust account bank statements.

- The Trump Organization did not inform me of financial disclosures provided to an insurance broker. I learned of these disclosures after reviewing bank statements showing a significant premium payment.

- As mentioned above, the Trump Organization sold its right to operate Ferry Point to Bally's in September 2023. In connection with that transaction, certain financial information was provided to Bally's between June and August 2023. I did not receive this information until August 28, 2023.

- While I was informed of planned dissolutions in April 2023, the Trump Organization was not prepared to effectuate the dissolutions at that time. I requested that the Trump Organization advise me immediately when the entities were dissolved. It was not until I inquired in December 2023 that I learned that many, but not all, of the entities had been dissolved in September and October 2023.

[7] The conservation easement tax filing filed with the IRS included an appraisal of the property prepared by an external consultant.

5. Observations Regarding Internal Controls Over Financial Reporting

Although I have not conducted a comprehensive compliance assessment, the issues identified above may reflect a lack of adequate internal controls and could be remediated with effective processes for review and validation combined with oversight and training. For example, based on the inconsistencies described above, it does not appear that there are adequate accounting and presentation standards, procedures, or training associated with the preparation of financial disclosures. To the extent adequate standards and procedures do exist, they do not appear to have been followed across the organization.

Similarly, certain issues identified above could reflect a lack of effective governance. It is my understanding that the Trump Organization does not have a formal compliance department. Further, the Trump Organization relies, appropriately, on its external auditors to review financial records in the preparation and disclosure of annual audited or compiled financial statements and tax returns. However, the Trump Organization also issues interim, internally prepared financial statements, budgets, trial balances, and other information to third parties that have not had the benefit of review and validation by external accountants.

VIII. Conclusion

Following the work my team has completed over the last 14 months, the above sets forth my findings and observations in accordance with my duties under the Monitorship Order. It is important to note that the Trump Organization acknowledged the disclosure issues described after I brought them to its attention and has been open to recommendations to improve accuracy and transparency. Indeed, during the Monitorship, the Trump Organization has implemented changes to disclosures or processes, several of which are discussed above. In addition, with respect to the instances where required disclosures were not provided to the Monitor, the Trump Organization submitted the information for review when it was made aware of the omissions.

Absent steps to address the items above, my observations suggest misstatements and errors may continue to occur, which could result in incorrect or inaccurate reporting of financial information to third parties. The parties continue to cooperate with me under the requirements of the orders. Should you have any questions, please feel free to contact me.

Sincerely,

Barbara S. Jones

Hon. Barbara S. Jones (Ret.)

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No.: 452564/2022

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, AND DONALD J. TRUMP

ALINA HABBA
MICHAEL T. MADAIO
HABBA MADAIO & ASSOCIATES LLP
1430 U.S. Highway 206, Suite 240
Bedminster, New Jersey 07921
-and-
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 3

ARGUMENT 3

I. THE NYAG LACKS STANDING TO BRING THIS ACTION 3

A. The NYAG Must Demonstrate That It Has Standing Under the *Parens Patriae* Doctrine 3

B. The NYAG Cannot Establish *Parens Patriae* Standing 5

i. The Complaint Does Not Identify a Quasi-Sovereign Interest 6

ii. The Subject Matter of this Action Does Not Affect a Substantial Segment of the State's Population 8

iii. The NYAG Seeks to Vindicate the Rights of Private Parties Who Have Their Own Adequate Remedy at Law 9

II. THE NYAG IS WITHOUT LEGAL CAPACITY TO BRING THE SUIT 11

III. THE NYAG HAS VIOLATED THE DEFENDANTS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS 13

A. The NYAG is Selectively Enforcing Executive Law § 63(12) Against Defendants 14

i. Defendants Have Been Singled Out and Subject to Selective Treatment by the NYAG 15

ii. The NYAG's Selective Treatment of Defendants is a Byproduct of AG James's Personal and Political Animus Towards Them 17

B. The NYAG is Improperly Targeting Defendants as a "Class of One" 20

IV. PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS 21

V. PLAINTIFF'S FRAUD CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE AND FAIL TO STATE A CLAIM 21

CONCLUSION 23

TABLE OF AUTHORITIES

Cases Page(s)

303 West 42nd v. Klein,

46 N.Y.2d 686, 694 (N.Y. 1979) 14

Alfred L. Snapp & Son. v. Puerto Rico,

458 U.S. 592, 607 (1982).....4, 5, 6

AYDM Assocs. v. Town of Pamelia,

205 F. Supp. 3d 252, 265 (N.D.N.Y. 2016) 14, 15

Bizzarro v. Miranda,

394 F.3d 82, 86 (2d Cir. 2005).....18

Bower Assoc. v. Town of Pleasant Val.,

2 N.Y.3d 617, 631 (2004 .....15, 18

Caprer v. Nussbaum,

36 A.D.3d, 176, 182 (2006). 3

City of Cleburne v. Cleburne,

473 U.S. 432, 439 (1985).....14

Community Bd. 7 v. Schaffer,

84 N.Y.2d 148, 155 (1994). 11

Gerschel v. Christensen,

128 A.D.3d 455 (1st Dep't 2015). 21

Gladstone Realtors v. Village of Bellwood,

441 U.S. 91, 100 (1979).....4, 5

Guggenheimer v. Ginzburg,

43 N.Y.2d 268, 273 (1977). 2, 8

Harlen Associates v. Village of Mineola,

273 F.3d 494, 499 (2d Cir. 2001).....14

HSH Nordbank v. UBS,

95 A.D.3d 185 (1st Dep't 2012) 22

Hu v. City of New York,

927 F.3d 81, 91 (2d Cir. 2019).....15, 21

In re Cardizem CD Antitrust Litig.,

218 F.R.D. 508, 521 (E.D. Mich. 2003) 5

In re Lorazepam & Clorazepate Antitrust Litig.,

205 F.R.D. 369, 386 (D.D.C. 2002 5

In re World Trade Ctr.,

30 N.Y.3d 377, 384 (2017). 11

Marshall v. Jericho,

446 U.S. 238, 249-250 (1980), ...19

Matter of Regina Metro. v. N.Y. State Div.,

35 N.Y.3d 332 (2020) 21

Natoli v. NYC Partnership Hous.,

103 A.D.3d 611 (2d Dep't 2013) 22

New York v. Amazon.com,

550 F.Supp. 122 (S.D.N.Y. 2021) 16

New York ex rel. Schneiderman v. Intel Corp.,

CIV. 09-827-LPS, 2011 WL 6100446, at *6 (D. Del. Dec. 7, 2011) 5

NRP Holdings v. City of Buffalo,

916 F.3d 177 (2d Cir. 2019).....20

People v. 11 Cornwel,

695 F.2d 34, 40 (2d Cir. 1982).....11

People v. Abram,

178 Misc.2d 120, 125 (N.Y. City Ct. 1998). 18

People v. Coventry First,

52 A.D.3d 345 (1st Dep't 2008) 16

People v. Credit Suisse Securities, LLC,

31 N.Y.3d 622, 654-55 (2018).....4, 17

People v. Domino's Pizza,

2021 WL 39592, at *1 (Sup. Ct. N.Y. County. 2021) 9, 10

People v. Grasso,

54 A.D.3d 180, 198 (1st Dep't 2008). 4, 5, 7, 11

People v. H&R Block, *Inc.*,

847 N.Y.S.2d 903, 907 (Sup. Ct. N.Y. Cnty. 2007) 6

People v. Ingersoll,

Id. at 30 8

People v. Litto,

8 N.Y.3d 692, 705 (2007) 11

People v. N. Leasing Sys.,

133 N.Y.S.3d 389 (Sup. Ct. 2020).....16

People v. Quality King Distribs.,

209 A.D.3d 62 (1st Dep't 2022) 16

People v. Seneci,

817 F.2d 1015, 1017 (2d Cir. 1987).....9

People v. Singer,

193 Misc.976, 980 (Sup. Ct. 1949).....6, 7

Raines v. Byrd,

521 U.S. 811, 820 (1997).....4, 5

Riverhead v. Real Prop. Servs.,

5 N.Y.3d 36, 41 (2005). 11

Security Pacific v. Evans,

31 A.D.3d 278, 279 (1st Dep't 2006). 3

Sioux City Bridge v. Dakota County,

260 U.S. 441, 445 (1923).....14

Socy. Of Plastics v. Suffolk,

77 N.Y.2d 761, 772 (1991) 4, 11

Sonne v. Board of Trustees,

67 A.D.3d 192, 203-204 (2d Dep't 2009).....18

South Carolina v. North Carolina,

558 U.S. 256, 266 (2010).....4

State by Abrams v. N.Y.C. Conciliation & Appeals Bd.,

472 N.Y.S.2d 839, 841 (Sup. Ct. 1984).....6, 11

State v. Gen. Motors Corp.,

547 F.Supp. 703 (S.D.N.Y. 1982) 16

State v. McLeod,

2006 WL 1374014, at *7 9

State of N.J. v State of N.Y.,

345 U.S. 369, 372-73 (1953). 4

Village of Willowbrook v. Olech,

528 U.S. 562, 564 (2000).....20

Rules and Statues

CPLR 1301.....5

CPLR 213(9).....12, 21

CPLR § 3211(3).....13, 23

NYCRR 202.70.17 24

N.Y. Executive Law § 63(12).....1, 2, 4, 5, 8, 10, 12, 13, 14, 15, 16, 17, 21, 22

U.S. Const. Amend. XIV 14

N.Y. Const art. I, § 11 14

The defendants, Trump Organization, Inc., Trump Organization LLC and Donald J. Trump, hereby move to dismiss the verified complaint (the "Complaint") filed by the Office of the New York Attorney General (the "NYAG"), expressly incorporate the arguments set forth in the memorandums of law submitted by Allen Weiselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC , 40 Wall Street LLC, Seven Springs LLC, Eric Trump, Donald Trump Jr., and Ivanka Trump (collectively, all defendants are referred to as the "Defendants"), respectively, and submit this memorandum of law in support.

PRELIMINARY STATEMENT

This lawsuit is fatally flawed as a matter of law and lacks a legitimate factual basis. More than that, it is the culmination of a pretextual and politically-motivated prosecution which threatens to contravene statutory predicate, indelibly alter the NYAG's enforcement authority, and violate the Defendants' constitutional rights.

Contrary to the NYAG's insistence, private dealings between sophisticated parties are simply not within the purview of its regulatory power, nor does the NYAG have the standing or capacity to intervene in such transactions. As the legislature made clear when passing Executive Law § 63(12), and as the judiciary has since confirmed, the law is meant to serve the *public interest* and to protect vulnerable segments of the population from predatory and deceitful business practices. The NYAG, acting in its *parens patriae* capacity on behalf of the 'People of the State of New York,' purports to allege an ongoing pattern of "fraud" and "illegality" engaged in by the Trump Organization, but noticeably absent from the Complaint is any reference to how the Trump Organization's alleged conduct imperiled, endangered, or otherwise affected the public at large. This omission speaks volumes – it lays bare the NYAG's intent to utilize Exec. Law § 63(12) as

its proverbial 'square peg in a round hole' in the hopes of fulfilling a years-long promise to prosecute the Trump Organization and, more pointedly, Donald J. Trump.

Indeed, Letitia James conceived of this action in her mind's eye long before it was ever filed by the NYAG. Her promise to "get Trump" was a central theme of her campaign for Attorney General and the destruction of the Trump Organization has been her avowed goal since the moment she took office. Her public statements betray her motive and make it resoundingly clear that she is guided solely by animus, not the pursuit of justice. Her attempt to wield Exec. Law § 63(12) in such an unprecedented manner—to reach the private business dealings of a political opponent—is merely a means of fulfilling her agenda. Thus, by virtue of this selective enforcement of the laws, the Defendants' constitutional rights are being senselessly and unduly violated, at great cost.

The law, however, does not countenance such abuses of power. Like a river that threatens to break the banks and take the village under, the prosecutorial power of the state must be constrained. Exec. Law § 63(12) was never intended to serve as a warrant for the NYAG to interject in private commercial transactions. This is especially true in the context of deals between well represented corporations—each with innumerable resources at their disposal and highly-qualified experts in their employ—which are subject to extensive due diligence processes. These corporate titans are the antithesis of "the ignorant, the unthinking and the credulous" members of the public that Exec. Law § 63(12) is intended to protect. *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 273 (1977).

Simply put, by commencing the instant action, the NYAG has overstepped its authority and put its selective treatment of Defendants on full display. The Complaint fails to plead any connection between the predicate conduct and the broader marketplace or to otherwise explain how the public has been harmed. In fact, the NYAG fails to allege *any harm at all*, apart from a

bevy of speculative theories and overwrought academic hypothesis. None of the parties whose rights the NYAG purports to enforce by pursuing this action have ever commenced a legal action against the Trump Organization or, for that matter, any of the defendants. What rights, then, are being vindicated? And who stands to gain from this highly-politicized farse, aside from the politically-compromised Attorney General of the State of New York?

STATEMENT OF FACTS

The factual and procedural history is recited at length in the Affirmation of Alina Habba (the "Habba Aff."), annexed hereto.

ARGUMENT

POINT I

THE NYAG LACKS STANDING TO BRING THIS ACTION

A party "generally has standing only to assert claims on behalf of himself or herself... [and] one does not, as a general rule, have standing to assert claims on behalf of another." *Caprer v. Nussbaum,* 36 A.D.3d, 176, 182 (2006). Standing is a "threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria." *Id*. "The most critical requirement of standing…is the presence of "injury in fact—an actual legal stake in the matter being adjudicated." *Security Pacific v. Evans*, 31 A.D.3d 278, 279 (1st Dep't 2006).

A. The NYAG Must Demonstrate That It Has Standing Under the *Parens Patriae* Doctrine

Since the NYAG purports to bring this suit "on behalf of the People of the State of New York," its standing to maintain this action must be derived from its *parens patriae* authority. Compl. ¶40

"[W]hen a State is "a party to a suit involving a matter of sovereign interest, it is *parens patriae* and must be deemed to represent all [of] its citizens." *South Carolina v. North Carolina*,

558 U.S. 256, 266 (2010) (quotations omitted). *Parens patriae* is a "common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." *People v. Credit Suisse Securities*, 31 N.Y.3d 622, 654-55 (2018) (citing *Alfred L. Snapp & Son. v. Puerto Rico,* 458 U.S. 592, 607 (1982)). The doctrine is "a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens.'" *State of N.J. v State of N.Y.*, 345 U.S. 369, 372-73 (1953).

The NYAG may contend that it is not required to establish *parens patriae* standing since it is acting with express statutory authority under Executive Law § 63(12). However, this is simply not the case. While it is true that the Attorney General is a creature of statute, even express statutory authorization from the legislature cannot override the basic legal tenet that a party must have standing to maintain an action. *See*, *e.g.*, *Socy. Of Plastics v. Suffolk*, 77 N.Y.2d 761, 772 (1991) ("[T]he principle that only proper parties will be allowed to maintain claims is an ancient one, long predating the Federal Constitution."). Indeed, there is "little doubt that a 'court has no inherent power to right a wrong unless thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected.'" *Id.* at 773. This holds true with respect to the Attorney General, who, "like all other parties to actions, must show an interest in the subject-matter of the litigation to entitle [her] to prosecute a suit and demand relief." *People v. Grasso*, 54 A.D.3d 180, 198 (1st Dep't 2008). Thus, the "[t]he legislature, consistent with the principles of separation of powers underlying the requirement of standing…cannot grant the right to sue to a plaintiff who does not have standing," including the Attorney General. *Grasso*, 54 A.D.3d at 198 (1st Dep't 2008) (citing *Raines v. Byrd*, 521 U.S. 811, 820 (1997)); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979) ("In no event…may Congress abrogate the Art. III minima:

a plaintiff must always have suffered a distinct and palpable injury to himself' that is likely to be redressed if the requested relief is granted.").

Nonetheless, the question is academic here since Executive Law § 63(12) does not authorize the NYAG to bring suit unless it does so "in the name of the people of the state of New York[.]." Exec. Law § 63(12); *see also* CPLR 1301 ("an action brought in behalf of the people…shall be brought in the name of the state."). Courts have consistently interpreted this language as providing the NYAG with the "functional equivalent of *parens patriae* authority," *see*, *e.g.*, *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 521 (E.D. Mich. 2003) (stating that Exec. Law § 63(12) grants the NYAG with the "functional equivalent of *parens patriae* authority"); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 386 (D.D.C. 2002) (same); *New York v. Intel Corp.*, CIV. 09-827-LPS, 2011 WL 6100446, at *6 (D. Del. Dec. 7, 2011) (same), a position which has been expressly adopted by the NYAG, *see id.* ("[The Attorney General] submits that courts have determined that [Executive Law 63(12)] constitute[s]…the functional equivalent of *parens patriae* authority."). Thus, even pursuant to the NYAG's grant of authority under Exec. Law 63(12), the doctrine of *parens patriae* governs.

Therefore, in accordance with the traditional precepts of common law standing, as well as the express statutory language of Executive § Law 63(12), the NYAG must demonstrate that it has *parens patriae* standing to proceed with the instant action.

B. <u>The NYAG Cannot Establish *Parens Patriae* Standing</u>

To establish *parens patriae* standing, the "State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party…[it] must express a quasi-sovereign interest." *Grasso*, 54 A.D.3d at 198 (citing *Snapp*, 458 U.S. 607). The relevant inquiry is as follows: "[t]o bring a *parens patriae* action to sue in the public interest, the

Attorney General must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties[.]'" *People v. H&R Block*, 847 N.Y.S.2d 903, 907 (Sup. Ct. N.Y. Cnty. 2007) (citing *Snapp,* 458 U.S. at 607).

Here, the NYAG has failed to plead any of the requisite elements of *parens patriae* standing. The Complaint fails to identify *any* quasi-sovereign interest in the public's well-being, much less one that touches a substantial segment of the population, and neglects to vindicate any right that is separate and apart from the interests of private parties. Therefore, for the reasons set forth below, the NYAG lacks *parens patriae* standing.

i. <u>The Complaint Does Not Identify a Quasi-Sovereign Interest</u>

It is axiomatic that the "interest of the state in the proper enforcement and administration of its laws is purely a sovereign one and cannot be the predicate for standing to protect a quasi-sovereign interest." *State by Abrams v. N.Y.C. Conciliation & Appeals Bd.*, 123 Misc.2d 47, 50 (Sup. Ct. 1984) (citing *Snapp,* 458 U.S. at 599).

"A quasi-sovereign interest must be sufficiently concrete to create an actual controversy between the State and the defendant." *Snapp,* 458 U.S. at 602. "The injury complained of cannot be to any purely sovereign or proprietary interest of the state, nor can the state assert the purely private claims of individual citizens." *Abrams*, 123 Misc.2d at 49. In short, "it is ***not sufficient for the people to show that wrong has been done to some one; the wrong must appear to be done to the people, in order to support an action by the people for its redress***." *Singer*, 193 Misc.976, 980 (Sup. Ct. 1949) (emphasis added).

In *People v. Singer*, the Attorney General commenced an action against several directors of a New York membership corporation, alleging, among other things, that the directors were

charging excessive and unreasonable rates to its members. *Singer*, 193 Misc. 976. The Attorney General argued that it had standing "on the premise that the matters alleged in the complaint involve and affect the safety, health, and welfare of the people of the State." *Id.* at 979. The court flatly rejected this argument and dismissed the complaint for lack of standing, finding that "what is complained of by the [Attorney General] are matters in which the State has no public interest or right to intervene [since] they concern the internal affairs and management of the corporation[.]" The court noted that these were *"*wrongs to individual citizens and not to the State and are remediable at the suit of the parties injured only" because "[t]*he people of this State have no general power to invoke the action of the courts of justice, by suits in their name of sovereignty for the redress of civil wrongs, sustained by some citizens at the hands of others*." *Id.* at 979-980 (emphasis added).

Similarly, in *Grasso*, the NYAG commenced an enforcement action against a not-for-profit corporation when, during the course of the action, the corporation was converted into a for-profit entity. In determining that the NYAG lacked *parens patriae* standing, the Appellate Division found that the continuation of the action "would vindicate only the interests of private parties, not any public interest." *Grasso*, 54 A.D.3d at 195. In so finding, the Appellate Division noted that, while "there is a substantial public interest in the management and affairs of a … not-for-profit corporation," there is "***no substantial public interest in most if not all private corporations***." *Id.* at 209 (emphasis added). In other words, due to the corporation's conversion from not-for-profit to for-profit, the action no longer "vindicate[d] [a] public purpose," and the NYAG could not proceed forward. *Id.* at 196.

Here, in that same vein, the NYAG is not seeking to serve any public interest or vindicate any public rights. No harm is alleged to have been sustained by anyone other than Deutsche Bank,

Zurich, or Mazars. The NYAG has not alleged that Defendants' conduct was aimed at the public at large, nor that it affected any segment of the state's population. Instead, the NYAG merely seeks to vindicate the rights of corporate titans who were fully capable of negotiating the complex agreements at the core of the Complaint, as well as exercising their considerable rights thereunder. It is plainly not within the purview of the NYAG to prosecute the claim at bar because the conduct complained of did not have any tendency to harm the public at large or implicate any public interest. Therefore, the NYAG has failed to identify a quasi-sovereign interest.

ii. The Subject Matter of this Action Does Not Affect a Substantial Segment of the State's Population

The alleged activity that the NYAG seeks to enjoin does not touch a 'substantial segment' of New York's population, but, rather, only a handful of private, sophisticated parties.

In *People v. Ingersoll*, the NYAG sued private parties to recover funds that belonged to a county, received by the defendants through fraud. In finding that the NYAG lacked *parens patriae* standing, the Court stated that "[i]t is not in terms averred that the money, in any legal sense or in equity and good conscience, belonged to the [State]…or that the wrong was perpetrated directly against the State or the people of the State, that is, the whole State as a legal entity, and the whole body of the people." *Id*. at 12. The Court further noted that "a [c]orporation with full power to acquire and hold property, create debts, levy taxes, and sue and be sued, with a competent board of governors, is not within the class of incompetence in need of the exercise of this nursing quality of the State government." *Id.* at 30.

Here, similarly, the NYAG is seeking to employ Executive Law § 63(12) in a manner that flies in the face of the "nursing quality" of the statute. *Id.* Exec. Law § 63(12) was designed to protect the public at large, and, more pointedly, the "ignorant, the unthinking and the credulous." *Guggenheimer*, 43 N.Y.2d at 273. It certainly is not intended to protect industry-leading

conglomerates, such as banks, insurers, and accounting firms, with the vast resources and expertise to effectively carry out their business. Yet, that is exactly what the NYAG is attempting to do: the Complaint only purported to enjoin conduct aimed a narrow group of a select few parties, namely "lenders, employees who worked for those lenders and insurers, and the accounting firm that compiled the Statements, and personnel of that firm." Compl. at 200. This is simply not a "substantial segment of the population," nor can any alleged wrongdoing against a limited subset of sophisticated private parties to complex commercial agreements possibly implicate a public interest. Thus, the alleged fraudulent activity that the NYAG seeks to enjoin does not touch any portion of New York's general population, but, rather, only a handful of private parties.

iii. The NYAG Seeks to Vindicate the Rights of Private Parties Who Have Their Own Adequate Remedy at Law

New York courts have consistently recognized that the Attorney General lacks *parens patriae* standing where, as here, the "aggrieved individual[s] ha[ve] an adequate remedy at law" because "then the state is merely a nominal party with no real interest of its own." *State v. McLeod*, 2006 WL 1374014, at *7 (Sup. Ct. 2006). "The state cannot merely litigate as a volunteer the personal claims of its competent citizens." *People v. Seneci*, 817 F.2d 1015, 1017 (2d Cir. 1987).

The NYAG attempted to stretch its *parens patriae* authority in a similar manner in *People v. Seneci*, where the relief sought by the Attorney General flowed only to the benefit of certain private corporate and individual parties. *Id*. at 1017. The Second Circuit found that the NYAG lacked *parens patriae* standing, holding that "[w]here the complaint only seeks to recover money damages for injuries suffered by individuals, the award of money damages will not compensate the state for any harm done to its quasi-sovereign interests…the state as *parens patriae* lacks standing to prosecute such a suit." *Id*. at 1017.

Moreover, the recent holding in *People v. Domino's Pizza*, 2021 WL 39592, at *1 (Sup.

Ct. N.Y. County. 2021) is particularly instructive here. In *Domino's*, the NYAG alleged that the defendants had misled their New York franchisees and sought to hold Defendants liable under Executive Law § 63(12). In dismissing the claim, the court noted that the cause of action fell well outside of the common fact pattern of § 63(12) cases that seek to redress "widespread consumer fraud." *Id*. at *11. In doing so, the court pointed to a series of § 63(12) cases to draw the distinction between the typical types of widespread fraud affecting large segments of the public that the statute was designed to address, as compared to private contract disputes that were at issue in that case. *Id.*

The court in *Domino's* recognized that the "quite different" conduct in question in that case consisted of "bilateral business transactions between Domino's and its individual franchisees, many of whom own multiple franchises." *Id.* at *12. Moreover, the court found compelling Domino's argument that "***that any disputes…should be in the nature of private contract litigation between Domino's and its franchisees, not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception***." *Id*. at *12. (emphasis added).

The *Domino's* decision perfectly illustrates everything that is wrong with the NYAG's Complaint in this case, where the NYAG is seeking to vindicate the rights of a select few private parties. The Complaint identifies the purported "victims" of the alleged fraud as consisting only of Deutsche Bank, Zurich, and Mazars, entities that have signed extensive agreements with Defendants, are well-represented by counsel, and have the ability to bring an action in their own right. In fact, the NYAG admits as much in the Complaint, acknowledging that "[m]aterial misrepresentations on any loan document, including the Statements [of Financial Condition] or the certifications as to their accuracy, would constitute an event of default under the terms of the loan

agreement." Compl. at 9. Certainly, if Deutsche Bank, Zurich or Mazars had concluded that Defendants had breached any loan covenant (let alone made a material misrepresentation or omission that put a loan at risk), it would have pursued such a claim on its own initiative. Thus, the NYAG simply does not have standing to vindicate the interests these private parties on behalf of the People of the State of New York. *See Abrams*, 123 Misc.2d at 39 ("If the aggrieved individual has an adequate remedy at law, then the state is merely a nominal party with no real interest of its own."); *People v. 11 Cornwel*, 695 F.2d 34, 40 (2d Cir. 1982) (state lacks standing unless it can show "that individuals could not obtain complete relief through a private suit.").

POINT II
THE NYAG IS WITHOUT LEGAL CAPACITY TO BRING THIS SUIT

"Although courts often use the terms interchangeably, the concepts of capacity to sue and standing are distinct." *Community Bd. v. Schaffer*, 84 N.Y.2d 148, 155 (1994). While standing is "designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome," *Society of Plastics*, 77 N.Y.2d at 772, capacity is "a threshold question involving the authority of a litigant to present a grievance for judicial review," *Riverhead v. Real Prop*, 5 N.Y.3d 36, 41 (2005).

For a governmental entity, the "right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate." *In re World Trade Ctr.*, 30 N.Y.3d 377, 384 (2017). Further, it is well-established that "a private right of action may not be implied from a statute where it is incompatible with the enforcement mechanism chosen by the Legislature." *Grasso*, 11 N.Y.3d at 70. This concern is "heightened" with respect to Attorney General, who is responsible for enforcing statutes "while maintaining the integrity of calculated legislative policy judgments." *Id.* (citations omitted) (cleaned up).

Here, based on the legislative history of Exec. Law § 63(12), and the manner in which it has historically been employed, it is clear that § 63(12) does not authorize the NYAG to commence the instant proceeding.

New York courts have consistently recognized that Exec. Law § 63(12) is designed to protect vulnerable members of the public from predatory acts of fraud, not to regulate the business dealings between private, sophisticated parties. The historical context surrounding the passing of the law further cements this point. As the 1950s ushered in a boom in the purchasing power of consumer families, New York saw an increase in predatory and fraudulent marketing tactics by consumer-facing businesses, prompting then-Attorney General Jacob Javits to urge the Legislature to enact the 1956 bill that later became § 63(12). *State Dept. of Law Mem, Bill Jacket*, *L 1956, ch.* 592 at 94. In his memorandum supporting the bill, Javits spoke of the need to "to protect consumers against frauds in the sale of articles, appliances and services and against fraudulent practices such as 'bait advertising.'" *Id.* at 92. Javits listed specific instances of successful actions taken by his office to protect consumers from false advertising in the sale of food freezers, storm windows, chinchillas, and door-to-door sale of dishes. *Id.* at 93.

The Better Business Bureau submitted a similar memorandum, stating that the law would be "helpful in combating fraudulent advertising and selling practices on the part of certain corporations which have deceived or defrauded the *consumers* of this state." *Letter from BBB, 4/3/1956, Bill Jacket, L 1956, ch. 592* at 5 (emphasis added). The NYS Department of Law also submitted a memorandum of support stating its support to "strengthen the hand of his office in protecting the public against consumer frauds." *State Dept. of Law Mem, L 1956, ch.* 592 at 92.

As recently as August 2019, when the legislature enacted CPLR 213(9), the legislature's sponsoring memorandum described Executive Law 63(12) as "the cornerstone of the state's

consumer protection laws," and referred to the NYAG as "a preeminent enforcer of consumer protection and securities law in New York State." Sponsors Memorandum, 2019 S.B. 6536. In describing the law, which prospectively created a new six-year statute of limitations for future § 63(12) claims, the memorandum stated that it would assist the NYAG in "achiev[ing] better results for New York State and its residents." *Id.*

As amply shown by both the legislative history and body of case law, the driving force behind the original enactment of Executive Law § 63(12) was the need to protect vulnerable citizens of the state and the public at large, not sophisticated financial institutions fully capable of discerning for themselves whether and to what extent a particular statement may be reliable. The NYAG's proposed use of Exec. Law 63(12) in the instant matter not only exceeds this legislative intent, it goes far beyond it. Should the NYAG be allowed to employ the Executive Law in this way—unbound in both its use and application—it would vastly surpass the prosecutorial authority that the legislature intended to bestow upon the NYAG and leave it with an unchecked power that it was never intended to wield.

In short, Executive Law § 63(12), considered within the context of its legislative history, does not provide a basis for the NYAG to proceed with this action because the conduct complained of did not have any tendency to harm the public at large. Thus, the NYAG's Complaint must be dismissed pursuant to CPLR § 3211(3).

POINT III

THE NYAG HAS VIOLATED THE DEFENDANTS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS

The Equal Protection Clause—which is contained in the Fourteenth Amendment of the United States Constitution and mirrored in Article I, § 11 of the New York State Constitution—

guarantees that "no state shall deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV; N.Y. Const art. I, § 11.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sioux City v. Dakota County*, 260 U.S. 441, 445 (1923). In other words, the Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne,* 473 U.S. 432, 439 (1985).[1]

"Although the prototypical equal protection claim involves discrimination against people based on their membership in a vulnerable class, [courts] have long recognized that the equal protection guarantee also extends to individuals who allege no specific class membership but are nonetheless subjected to invidious discrimination at the hands of government officials." *Harlen Associates v. Village of Mineola*, 273 F.3d 494, 499 (2d Cir. 2001). In this context, a party who is not a member of a constitutionally protected class, "may bring an equal protection claim pursuant to one of two theories: (1) selective enforcement, or (2) 'class of one.'" *AYDM Assocs. v. Town of Pamelia,* 205 F. Supp. 3d 252, 265 (N.D.N.Y. 2016) (quotation omitted). Here, for the reasons outlined below, both theories are viable.

A. The NYAG is Selectively Enforcing Executive Law § 63(12) Against Defendants

"The Equal Protection Clause prohibits the selective enforcement or prosecution by a state official pursuant to a lawful regulation." *Id.* at 265.

[1] New York courts have recognized that an equal protection violation warrants the dismissal of an enforcement action "[e]ven though the party raising the unequal protection claim may well have been guilty of violating the law." *303 West 42nd v. Klein*, 46 N.Y.2d 686, 694 (N.Y. 1979)

To prevail on an equal protection claim based on selective enforcement of the law, a defendant must prove that: "'(i) the person, compared with others similarly situated, was selectively treated, and (ii) the selective treatment was motivated by an intention…to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person.'" *Hu v. City of N.Y.,* 927 F.3d 81, 91 (2d Cir. 2019). Stated differently, the defendant must prove that he has been "singled out with an "evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances." *Bower Assoc. v. Town of Pleasant Val.*, 2 N.Y.3d 617, 631 (2004) (citations omitted).

i. Defendants Have Been Singled Out and Subject to Selective Treatment by the NYAG

To satisfy the first prong—the 'uneven hand'—a defendant must "identify comparators whom a prudent person would think roughly equivalent." *AYDM Associates*, 205 F.Supp.3d at 265.

There is no question that, when compared to others similarly situated, Defendants have been singled out and subject to selective treatment by the NYAG. Indeed, as detailed above, with the commencement of the instant action, the NYAG is disavowing its historical use of Exec. Law § 63(12) and attempting to wield it in a novel fashion that is entirely inconsistent with its prior enforcement history against those similarly situated to Defendants, or, for that matter, *any* person or company. The reason for this gross departure is readily apparent – the NYAG's use of Executive Law § 63(12) is not based in the law, legislative intent, or historical use, nor is it borne out of legitimate investigative findings; rather, in commencing the instant action, the NYAG has knowingly advanced claims that are unwarranted under existing law as a means of selectively and maliciously targeting Defendants.

Indeed, the anomalous nature of this case is proof, in and of itself, that the NYAG has singled out Defendants for disparate treatment. Despite extensive research, Defendants have been unable to locate any New York cases where the NYAG has commenced a claim under Executive Law § 63(12) to intervene in private transaction to enforce the contract rights of sophisticated financial institutions. Although the NYAG may attempt to point to several cases as constituting precedent for this type of claim, there is simply no on-point comparison. *See State v. Gen. Motors*, 547 F.Supp. 703 (S.D.N.Y. 1982) (involving fraudulent practices affecting a vast number of consumers in the automobile industry); *People v. Coventry First*, 52 A.D.3d 345 (1st Dep't 2008) (involving bid-rigging and other anti-competitive schemes that were used to defraud policyholders at large); *New York v. Amazon.com.*, 550 F.Supp. 122 (S.D.N.Y. 2021) (Lawsuit alleging that Amazon failed to protect *thousands* of workers through inadequate disinfection and contract-tracing protocols; the court found standing based on "the government's interest in guaranteeing a marketplace that adheres to standards of fairness, as well [as] ensuring that business transactions in the state *do not injure public health*.") (emphasis added); *People v. N. Leasing Sys.*, 133 N.Y.S.3d 389 (Sup. Ct. 2020) (lawsuit where NYAG submitted "873 affidavits by equipment lessees or their guarantors" to allege that company was engaged in fraudulent leasing strategies.); *People v. Quality King Distribs.*, 209 A.D.3d 62 (1st Dep't 2022) (lawsuit brought on behalf of injured consumers alleging that company gouged prices on disinfectant prices during the Covid-19 pandemic.). Given the stark contrast in how NYAG has historically enforced Executive Law § 63(12), and how it seeks to enforce it against Defendants, it is overwhelmingly apparent that Defendants are being subject to differential treatment.

Another telling takeaway from the NYAG's prior enforcement history is that it has previously advanced the exact *opposite* position than that which it asserts against Defendants

today. In *People v. Credit Suisse*, the NYAG brought an action against Credit Suisse, alleging that the investment bank had "systematically failed to adequately evaluate [] loans" and misrepresented the quality of the mortgage loans and the due diligence review process to its investors. *See* Complaint, *People v. Credit Suisse Sec.*, New York County, Index No. 451802/2022 (NYSCEF Doc. No. 2 at 2). In its complaint, the NYAG stressed the importance of the due diligence process and emphasized that the lender is "uniquely positioned through the due diligence process to obtain material information regarding the quality of [] loans" and has "unique access to critical information that enable[s] them to root out discernible problems and risks." *Id.* at 13. This position is entirely contradictory to the NYAG's stance as it relates to the instant action, wherein the NYAG has alleged that Deutsche Bank justifiably "relied" upon misleading statements contained in the Statements of Financial Condition, Compl. at 174, despite the fact that, as alleged by the NYAG, President Trump's "desire to keep his net worth high" was "well known publicly," *id.* at 192. The disparity between these two positions simply cannot be reconciled and is further proof that AG James is selectively advancing a baseless case against Defendants that is has never, and would never, assert against similarly situated competitors.

Therefore, the NYAG's anomalous use of Executive Law § 63(12) in the instant action conclusively shows that Defendants are being selectively treated in comparison to their competitors writ large.

ii. <u>The NYAG's Selective Treatment of Defendants is a Byproduct of AG James's Personal and Political Animus Towards Them</u>

With respect to the second prong—the 'evil eye'—the relevant inquiry is whether the defendant has been "singled out for an impermissible motive not related to legitimate governmental objectives, which could include personal or political gain, or retaliation for the

exercise of constitutional rights." *Sonne v. Board of Trustees*, 67 A.D.3d 192, 203-204 (2d Dep't 2009).

New York courts have recognized that "cases predicating constitutional violations on selective treatment motivated by ill-will, rather than by protected-class status or an intent to inhibit the exercise of constitutional rights, are 'lodged in a murky corner of equal protection law in which there are surprisingly few cases and no clearly delineated rules to apply.'" *Bizzarro v. Miranda,* 394 F.3d 82, 86 (2d Cir. 2005). This is because "admission of intentional discrimination is likely to be rare" since "law enforcement officials are unlikely to avow that their intent was to practice constitutionally proscribed discrimination." *People v. Abram*, 178 Misc.2d 120, 125 (N.Y. City Ct. 1998).

In the instant matter, there is no murkiness or lack of clarity as to AG James's feelings towards Defendants. This is one of the rare circumstances in which a high-ranking law enforcement official has openly, publicly, and repeatedly made known her desire to selectively target Defendants. The many public statements made by AG James serve as compelling evidence that the instant action was commenced out of AG James's "malicious[,] bad faith intent" to prosecute the Defendants, *Bower*, 2 N.Y.3d at 631, and for the purpose of achieving a "personal or political gain," *Sonne*, *supra.*

Upon examination of AG James's statements, it cannot be reasonably disputed that she has displayed a wanton desire to harass, intimidate, and retaliate against Defendants. Before she even took office, her entire campaign for Attorney General was centered around her promise to "take on [Trump] and his business" if elected. Habba Aff. ¶17. She even pledged, during a campaign speech, that she would employ her power as Attorney General as a "sword" against Donald J. Trump and that she "looked forward to going into the office of Attorney General every day, suing

him…and then going home." *Id.* ¶11. Her stated objective was to "vigorously fight" against him by "us[ing] every area of the law to investigate President Trump and his business transactions," going so far as promising to prosecute "anyone in [Trump's] orbit." *Id.* ¶22. In what can only be described as an overt threat, she warned that President Trump "should be scared," about her run for Attorney General and threated that "[t]he president of the United States has to worry about three things: [Robert] Mueller, [Michael] Cohen, and Tish James. We're all closing in on him." *Id.* ¶12.

AG James's animus Defendants is perhaps best encapsulated with the following statement, which she made in a video promoted by her campaign:

> I believe that this president…is an embarrassment to all that we stand for. He should be charged with obstructing justice. I believe that the President…can be indicted for criminal offenses and we would join with law enforcement and other attorneys general across this nation in removing this President from office. [T]he office of attorney general will continue to follow the money because we believe he's engaged in a pattern and practice of money laundering. Laundering the money from foreign governments here in New York State, and particularly related to his real estate holdings. It's important that everyone understand, the days of Donald Trump are coming to an end.

Id. ¶18. These unsavory comments—which were made even *before* AG James was in office and had any reason to suspect that Defendants were involved in any wrongdoing—expose this action as being a political persecution intended to harass Defendants and fulfill the pre-campaign promises of AG James, and nothing more.

AG James not only staked her election for Attorney General on her pursuit of President Trump, but since becoming Attorney General, she has unrelentingly continued to target him, his family, and his business. Despite the prohibition against a prosecutor "injecting a personal interest, financial or otherwise, into the enforcement process," *Marshall v. Jericho*, 446 U.S. 238, 249-250 (1980), AG James, shortly after swearing in as Attorney General, stated that she was "definitely

going to sue" President Trump and proclaimed that she was "*going to be a real pain in the ass…[h]e's going to know my name personally*." Habba Aff. ¶22 (emphasis added). In other words, she has proceeded to double down on the threats made during her campaign and has employed the vast array of her office's resources to investigating and, ultimately, prosecuting, Defendants. All the while, she has continued to attack them publicly and malign their character, exposing the true purpose of this enforcement action.

In sum, AG James's endless public promises to investigate Defendants, her open disparagement of President Trump, his family, and his business, and her unfounded accusations that Defendants are guilty of wrongdoing despite admittedly lacking evidence to substantiate those claims, all lead to only one plausible conclusion: AG James has selectively targeted Defendants and is weaponizing her office against them as a means of fulfilling a personal and political vendetta.

B. <u>The NYAG is Improperly Targeting Defendants as a "Class of One"</u>

"[T]he Supreme Court has….endorsed a class-of-one theory for equal protection claims…based on arbitrary disparate treatment." *NRP Holdings v. City of Buffalo,* 916 F.3d 177 (2d Cir. 2019).

To succeed on a 'class-of-one' theory, a party must demonstrate that he was "intentionally treated differently from others similarly situated and 'there is no rational basis for the difference in treatment.'" *Village of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000). To prevail on similarity alone, a plaintiff must prove as follows: "'(i) no rational person could regard the circumstances of the plaintiff to differ from those of a comparator to a degree that would justify the differential treatment on the basis of a legitimate government policy; and (ii) the similarity in circumstances

and difference in treatment are sufficient to exclude the possibility that the defendant acted on the basis of a mistake.'" *Hu,* 927 F.3d at 94.

For the same reasons outlined above, the NYAG's grossly divergent use of Executive Law § 63(12), coupled with the litany of malicious statements levied by AG James, establish that the NYAG has targeted Defendants, without any rational basis, for differential treatment.

POINT IV

PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

Defendants adopt and incorporate the arguments contained in the Memorandum of Law filed by Defendants McConney and Weisselberg regarding statute of limitations. (NYSCEF No. 199). As detailed at length therein, the recent amendment to CPLR 213(9) cannot be applied retroactively, nor can it revive time-barred claims. *See, e.g., Matter of Regina Metro. v. N.Y. State,* 35 N.Y.3d 332 (2020). Thus, the Defendants cannot be held liable for any claims that arose on or before August 26, 2019, and even if the statute does apply retroactively, all claims accruing more than six years prior to this lawsuit cannot be maintained.[2]

POINT V

PLAINTIFF'S FRAUD CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE AND FAIL TO STATE A CLAIM

Defendants adopt and incorporate the arguments set forth by Defendants McConney and Weisselberg in their Memorandum of Law regarding documentary evidence and failure to state a claim (NYSCEF No. 199).

The documentary evidence of the SoFc's, *see* Compl. Ex. 3-12, and the disclaimers explicitly set forth therein, conclusively establish a defense as a matter of law to the Executive

[2] A tolling agreement was entered into between the NYAG and Trump Organization, but President Trump was not a signatory thereto and therefore is not bound by its terms.

Law § 63(12) fraud claim alleged in the Complaint. *See, e.g., Natoli v. NYC Partnership*, 103 A.D.3d 611 (2d Dep't 2013) (agreement contained specific disclaimer provisions which conclusively establishing defense to claims). The unequivocal disclaimer language precludes Plaintiff from asserting that any corporate counter party reasonably relied upon the information contains in the SoFCs. *See HSH Nordbank v. UBS,* 95 A.D.3d 185 (1st Dep't 2012) (sophisticated bank could have justifiable reliance due to disclaimer in extensively negotiated agreement).

Additionally, the SoFC's constitute "compilation report[s]" which means they are unaudited statements that rely on information presented by Defendants themselves without any assurance from any professional regarding the accuracy of the financial statements or their conformity with generally accepted accounting principles. Similarly, the NYAG has failed to provide expert testimony supporting their fraud claim, which is based upon valuation of assets. Accordingly, the NYAG's Executive Law § 63(12) claim fails as a matter of law.

CONCLUSION

Therefore, the Complaint must be dismissed, with prejudice, pursuant to CPLR 3211(a)(1),(2),(3),(5),(7) and/or (8), and such further relief as the Court deems just and proper.

ALINA HABBA, ESQ.
MICHAEL T. MADAIO, ESQ.
HABBA MADAIO & ASSOCIATES LLP
1430 U.S. Highway 206, Suite 240
Bedminster, New Jersey 07921
-and-
112 West 34th Street, 17th and 18th Floors
New York, NY 10120
Phone: (908) 869-1188
E-mail: ahabba@habbalaw.com

Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION OF COUNSEL

I hereby state, pursuant to pursuant to NYCRR 202.70.17, that the foregoing Memorandum of Law was prepared with Microsoft Word. Pursuant to Microsoft Word's word count feature, the total number of words in the foregoing brief (excluding the caption, table of contents, table of authorities, signature block, and this certification) is 7,000.

Dated: November 21, 2022
New York, New York

Alina Habba, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No.: 452564/2022

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS, ALLEN WEISSELBERG AND JEFFREY MCCONNEY

ALINA HABBA
MICHAEL T. MADAIO
HABBA MADAIO & ASSOCIATES, LLP
1430 U.S. Highway 206, Suite 240
Bedminster, New Jersey 07921
-and-
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

ARGUMENT 1

I. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS 1

A. CPLR 213(9) Should Not Be Applied Retroactively 2

B. The Heightened Standard for Claim Revival Has Not Been Satisfied 4

II. THE NYAG FAILS TO STATE A CAUSE OF ACTION UNDER EXECUTIVE LAW § 63(12) 6

A. Under the unique circumstances at bar, the NYAG should be required to plead the heightened elements of common law fraud, including reasonable reliance and scienter 6

B. As a Matter Of Law, Sophisticated Financial Institutions had an Affirmative Obligation to Obtain and Review a "Total Mix" of Information Before Relying on the SoFCs 8

C. The NYAG Cannot Assert a Claim For Fraud With Respect to the Submission of an Appraisal Without A Statement From a Qualified Expert That The Values Were Improperly Inflated 10

III. THE NYAG'S § 63(12) FRAUD CLAIM IS BARRED BY THE DOCUMENATRY EVIDENCE OF THE STATEMENT OF FINANCIAL CONDITION 13

A. The SoFCs are "Compilation Reports" Which Contain Clear Disclaimers 14

B. Documentary Evidence Establishes That Any Alleged Breach Was Immaterial 18

IV. THE NYAG LACKS STANDING TO MAINTAIN THE INSTANT ACTION 19

V. THE NYAG DOES NOT HAVE THE CAPACITY TO BRING THIS SUIT 20

VI. THE NYAG HAS VIOLATED DEFENDATS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS 21

CONCLUSION 22

TABLE OF AUTHORITIES

Cases Page(s)

35 Park Ave Corp.,

8 N.Y.2d at 815 3

Abrahami v. UPC Construction,

224 A.D.2d 231 (1st Dep't 1996) 17

Adirondack Mountain Reserve v. Board of Assessors,

99 A.D.2d 600 (3d Dep't 1984) 11

Aguaiza v. Vantage Properties,

69 A.D.3d 422, 423 (1st Dep't 2010) 2, 3

Alfred L. Snapp & Son. v. Puerto Rico,

458 U.S. 592, 607 (1982) 20

Matter of the People of the State of N.Y., by Eliot Spitzer v. Applied Card Sys., Inc.,

27 A.D.3d 104, 106, (3d Dep't 2005) *aff'd* 11 N.Y.3d 105 (2008) 8

Bank of New York v. Cherico,

209 A.D.2d 914, 915 (3d Dep't 1994) 13

Bower Assoc. v. Town of Pleasant Val.,

2 N.Y.3d 617, 631 (2004 21

Denkensohn v. Ridgway Apartments,

13 Misc.2d 389, 392 (App. Term. 1958). 4

Employees' Ret. Sys. v. J.P. Morgan,

804 F.Supp.2d 141, 153 (S.D.N.Y.2011) 7

Evans v. Israeloff,

208 A.D.2d 891, 892 (2d Dep't 1994) 17, 18

Farro v. Schochet,

190 A.D.3d 698 (2d Dep't 2021) 1

Gibson v. Gleason,

20 A.D.3d 623, 625 (3d Dep't 2005) 11

Goshen v Mutual Life,

98 N.Y.2d 314, 326 (2002) 13

Graham Packaging, v. Owens-Illinois,

67 A.D.3d 465 (1st Dep't 2009) 9

HSH Nordbank v. UBS,

95 A.D.3d 185 (1st Dep't 2012)) 14

In re City of New York,

21 Misc. 3d 1127(A), *6 (Sup. Ct. Kings Cty. 2008) 11

In re Lehman Bros. Securities and ERISA Litigation,

799 F. Supp. 2d 258 (S.D.N.Y. 2011) 12

In re World Trade Ctr. Lower Manhattan Disaster Site Litig.,

30 N.Y.3d 377, 399-400 (N.Y. 2017) 5, 20, 21

James Square v. Mullen,

21 N.Y.3d 233, 246 (2013) 5

Krantz v. Chateau,

256 A.D.2d 186, 187 (1st Dep't 1998) 19

Lampert v. Mahoney,

218 A.D.2d 580, 582 (1st Dep't 1995) 8

Landgraf v USI Film Products,

511 U.S. 244, 272-73 (1994) 2

Lehman Bros. Holdings v. Wall Street Mortg. Bankers,

2012 WL 5842889 (Sup. Ct. N.Y. Cnty. Nov. 15, 2012), ...12

MAFG Art Fund, v. Gagosian,

123 A.D.3d 458, 459 (1st Dep't 2014) 9

Matter of Allstate v. Foschio,

93 A.D.2d 328, 333 (2d Dep't 1983) 6

Matter of Gleason,

96 N.Y.2d 117, 122-23 (2001). 3

Matter of Regina Metro v. N.Y. State Div. of Hous.,

35 N.Y.3d 332, 371 (2020) 2, 3, 4, 5

MBIA v. Countrywide,,

27 Misc.3d 1061, 1077 (Sup. Ct. 2010) 8

MBIA Ins. Corp. v. Merrill Lynch,

81 A.D.3d 419, 419 (1st Dep't 2011) 14

MBW Advertising Network v. Century Business,,

173 A.D.2d 306 (1st Dep't 1991) 19

Natoli v. NYC Partnership Housing,

103 A.D.3d 611 (2d Dep't 2013) 13

Niagara Mohawk Power v. City of Cohoes,

280 A.D.2d 724, 726-27 (3d Dep't 2001) 11

Otto v. Pennsylvania,

330 F.3d 125, 133 (3d Cir. 2003) 15

People v. Allen,

198 A.D.3d at 532 .....2, 3, 4

People v. Credit Suisse,

31 N.Y.3d 622, 627 (2018 2

People v. Grasso,

54 A.D.3d 180, 198 (1st Dep't 2008). 20

Potente v. Citibank,

282 F.Supp.3d 538, 545 (E.D.N.Y. 2017). 7

Remora Capital v. Dukan,

175 A.D.3d 1219, 1120–1121 (1st Dep't 2019) 19

Ris v. Finkle,

148 Misc.2d 773 (Sup. Ct. N.Y. Cnty 1989.....16, 17

Roland v. McGraime,

22 A.D.3d 824 (2d Dep't 2005) 14

Rotterdam Ventures. v. Ernst & Young,

300 A.D.2d 963, 964, (3d Dep't 2002) 8

Ryan v. Pascale,

58 A.D.3d 711 (2d Dep't 2009) 14

Schechter v. 3320 Holding,

64 A.D.3d 446, 449 (2009 10

State v. Bevis Industries,

63 Misc.2d 1088, 1090 (Sup. Ct. 1970) 6

Thomas v. Bethlehem Steel,

63 N.Y.2d 150, 154 (1984) 5

Trump v. Cheng,

2006 WL 6484047 (Sup. Ct. N.Y. Cty. July 24, 2006) 13

UST Private Equity Investors v. Salomon Smith Barney,

288 A.D.2d 87, 88 (1st Dep't 2001) 8, 17

Rules and Statues

CPLR 213(9).....1, 2, 3, 4, 5, 6

CPLR 3101(d)(1) 11

CPLR § 3211(a)(5) 1, 13, 14, 21, 22

Executive Law 63(12).....1, 2, 4, 5, 6, 7, 8, 9, 13, 18, 21

NYCRR 202.70.17.....23

The defendants, Allen Weisselberg and Jeffrey McConney, ("Defendants") hereby move to dismiss the verified complaint (the "Complaint") filed by the Office of the New York Attorney General (the "NYAG"), expressly incorporate the arguments set forth in the memorandums of law submitted by Trump Organization, Inc., Trump Organization LLC, Donald J. Trump, the Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC , 40 Wall Street LLC, Seven Springs LLC, Eric Trump, Donald Trump Jr., and Ivanka Trump (collectively, all defendants are referred to as the "Defendants"), respectively, and submit this memorandum of law in support, stating as follows:

STATEMENT OF FACTS

The factual and procedural history is recited at length in the Affirmation of Alina Habba (the "Habba Aff."), annexed hereto.

ARGUMENT

POINT I

THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

To dismiss a cause of action pursuant to CPLR § 3211(a)(5) on the grounds that it is time-barred, "the party seeking dismissal bears the initial burden of establishing, prima facie, that the time in which to sue has expired." *Farro v. Schochet*, 190 A.D.3d 698 (2d Dep't 2021).

Here, the recent amendment to CPLR 213(9) cannot be applied retroactively and, more pointedly, cannot be utilized as a means of reviving the NYAG's claims against Defendants that had already expired. Therefore, for the reasons set forth herein, the claims raised in the Complaint are barred by the statute of limitations.

A. CPLR 213(9) Should Not Be Applied Retroactively

In 2018, the New York Court of Appeals confirmed that the statute of limitations for fraud claims arising solely under § 63(12) was three years. *See People v. Credit Suisse*, 31 N.Y.3d 622, 627 (2018). Subsequently, on August 26, 2019, the legislature created a new subsection of CPLR 213, subsection nine, which prospectively extended the statute of limitations for new § 63(12) claims to six years. *See* CPLR 213(9).

While few cases have addressed the specific issue of whether CPLR 213(9)'s six-year statute of limitations should be applied retroactively, the topic of retroactive application of newly-amended statutes of limitation has been thoroughly examined by New York courts. Indeed, it has been long settled that statutes must only be applied prospectively unless the language of the statute explicitly calls for retroactive application. *See, e.g., Matter of Regina Metro v. N.Y. State Div. of Hous.,* 35 N.Y.3d 332, 371 (2020) ("it is a bedrock rule of law that, absent an unambiguous statement of legislative intent, statutes that revive time-barred claims if applied retroactively will not be construed to have that effect.").

Notably, when passing CPLR 213(9), the legislature did include language regarding the timing of CPLR § 213(9)'s applicability—that it should become effective "immediately"—which only further emphasizes that it chose to not state any retroactive intent. *See People v. Allen*, 198 A.D.3d at 532 (noting that the legislature "instructed that [CPLR 213(9)] take effect immediately."); *see also Aguaiza v. Vantage Properties*, 69 A.D.3d 422, 423 (1st Dep't 2010) (holding that "where a statute by its terms directs that it is to take effect immediately," such language evidences a ***lack*** of intent for retroactive intent)[1].

[1] Courts have repeatedly noted that the legislature can be trusted to understand how the judiciary will interpret its language on timing and to draft legislation that triggers the intended interpretation. *See, e.g., Landgraf v USI Film Products*, 511 U.S. 244, 272-73 (1994) ("Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.).

To date, *People v. Allen* is the only appellate case to have discussed whether CPLR 213(9) should be applied retroactively; in incorrect dictum (and on distinguishable facts), it suggested that § 213(9) applies retroactively. But it fails to apply the on-point and binding precedent in *Regina* and *Aguaiza* by (1) ignoring that statutes reviving stale claims are subject to a different, and more stringent, test than the default standard for retroactive application in general,[2] and (2) misreading the nature of the concerns raised in those cases.

The *Allen* panel failed to articulate any reasoning for its dictum; though it did briefly cite *Matter of Gleason*, 96 N.Y.2d 117, 122-23 (2001). *Allen*, 198 A.D.3d at 532. However, *Gleason* did not involve the heightened presumption against reviving stale claims, or even the general presumption against retroactivity for statutes with substantive affect, but only the limited exception for "remedial" statutes impacting no substantive rights (in that case amending the procedure for bringing post-judgment applications). *Id.* at 122. *Gleason* therefore provides no basis to ignore the more recent—and more on point—holding in *Regina* that explicit proof of retroactive intent is necessary to overcome the strong presumption against retroactivity, and that the heightened presumption against claim-revival "may only be overcome by the legislature's unequivocal textual expression." *Regina Metro*, 35 N.Y.3d at 373. This was the rule before *Gleason* was decided (2001) and CPLR 213(9) was enacted and has since remained the rule. *See, e.g., Id.; 35 Park Ave. Corp.*, 48 N.Y.2d at 815.

Because CPLR § 213(9) implicates claim-revival—as do all amendments extending statutes of limitation—it requires unequivocal proof (through statutory text) that the legislature intended retroactive application. There is none. Nor is there *any* other proof beyond the text.

[2] In *Allen*, the claims at issue were timely—*even under* a three-year limitations period; thus, the decision's discussion of retroactivity was nonbinding dictum, and the case did not involve claim-revival concerns, rendering it inapplicable to the facts here. *See People v. Allen*, 2021 WL 394821, at *5 (Sup. Ct. Feb. 4, 2021). *Allen*'s incorrect dictum thus should have no bearing here.

Retroactivity is improper under *Regina*, and *Allen* simply ignores *Regina*. Thus, given the flawed reasoning in *Allen*'s nonbinding dictum, this Court should not apply CPLR 213(9) retroactively and should apply the three-year statute of limitations for Executive Law 63(12) claims that accruing prior to the August 2019 amendment.

B. <u>The Heightened Standard for Claim Revival Has Not Been Satisfied</u>

Further counseling against retroactive application of CPLR 213(9) in the instant matter is the heightened standard that comes into play when retroactive application of a statute would have the effect of reviving previously time-barred claims—a standard applicable to any amendment extending a statute of limitations (which would always risk claim-revival if applied retroactively).

"[R]evival of extinguished rights is 'an extreme exercise of legislative power' which is not to be deduced from words of doubtful meaning and any uncertainties in this regard must be resolved 'against consequences so drastic.'" *Denkensohn v. Ridgway Apartments,* 13 Misc.2d 389, 392 (App. Term. 1958). "If retroactive application would not only impose new liability on past conduct but also revive claims that were time-barred at the time of the new legislation, we require an even clearer expression of legislative intent than that needed to effect other retroactive statutes—the statute's text must unequivocally convey the aim of reviving claims. *Regina Metro.*, 35 NY3d at 371; *see also 35 Park Ave. Corp.*, 48 N.Y.2d at 814-15 ("That section…does not revive a claim already time barred. An intent on the part of the Legislature to effect so drastic a consequence must be expressed clearly and unequivocally").

The issue of claim revival was most recently addressed by the Court of Appeals in *Regina*, which unambiguously stated that while "the general presumption against retroactive effect" may be overcome by implicit evidence of legislative intent, "the presumption against claim revival effect ***may only be overcome by the legislature's unequivocal textual expression*** that the statute

was intended not only to apply to past conduct, but specifically to revive time-barred claims." *Regina Metro.*, 35 N.Y.3d at 373 (emphasis added); *Thomas v. Bethlehem Steel*, 63 N.Y.2d 150, 154 (1984) (holding that absent clear intent, an amendment must not be read to revive stale actions).

The strong presumption against retroactively reviving stale claims is not simply an unintentional quirk of statutory interpretation but, in fact, rooted in principles of fairness and equity. "For centuries our law has harbored a singular distrust of retroactive statutes" because the "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *James Square v. Mullen*, 21 N.Y.3d 233, 246 (2013).

And under New York's Due Process Clause, claim-revival statutes are unconstitutional unless they represent a limited, reasonable response to a specific injustice. *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 399-400 (N.Y. 2017) (listing examples—all extreme and exceptional—of the sorts of specific injustices that suffice). .

In the instant case, the legislature has not identified any particular injustice against any particular victim or class of victims. Rather, if CPLR § 213(9) were to be read retroactively it would broadly apply to any possible claim under Executive Law § 63(12), regardless of its nature, and would not serve to protect any individual plaintiff from injustice but simply allow the state to bring otherwise time-barred enforcement proceedings. It is therefore inescapable that *Regina* requires the CPLR 213(9) be interpreted to, at a minimum, not revive any claim that was time-barred as of the date of its enactment. Any other interpretation creates constitutional problems and does so without any evidence (textually or otherwise) the legislature intended retroactivity.

Based on the foregoing, should this Court properly conclude that CPLR 213(9) does not apply retroactively, then the Defendants cannot be held liable for any claims that arose on or before August 26, 2019.[3] And even if the statute does apply retroactively, all claims accruing more than six years prior to this lawsuit cannot be maintained.

POINT II

THE NYAG FAILS TO STATE A CAUSE OF ACTION UNDER EXECUTIVE LAW § 63(12)

A. Under the unique circumstances at bar, the NYAG should be required to plead the heightened elements of common law fraud, including reasonable reliance and scienter.

Given the novel manner in which the NYAG is invoking Exec. Law § 63(12) in the instant action, practical application of the law dictates that both reliance and scienter must be shown for the NYAG to maintain a valid cause of action against the Defendants.

First, the underlying premise upon which New York courts have reasoned that reliance need not be shown—that § 63(12) claims involve practices impacting the public at large and not specific private transactions involving particular individuals or entities—is not present in the proceeding at bar. *See*, *e.g.*, *State v. Bevis Industries*, 63 Misc.2d 1088, 1090 (Sup. Ct. 1970) ("[t]o limit the ambit of section 63(12) solely to instances of intentional fraud in the strict traditional sense would be to ignore the realities of modern mass merchandising methods which extensively and impersonally utilize the communications media and mails to effect sales[.]"); *Matter of Allstate v. Foschio*, 93 A.D.2d 328, 333 (2d Dep't 1983) ("Since the purpose of [Exec. Law § 63(12)'s] restrictions on commercial activity is to afford the consuming public expanded protection from deceptive and misleading fraud, the application is ordinarily not limited to

[3] A tolling agreement was entered into between the NYAG and the Trump Organization, but none of the other Defendants were signatories thereto and, therefore, are not bound by its terms.

instances of intentional fraud in the traditional sense."). Here, where there is no consumer to protect, the NYAG cannot argue that some policy objective under Executive Law § 63(12) ought to relieve the NYAG of the requirement for pleading reasonable reliance on the part of the specific sophisticated financial institutions that received the SoCFs.

Further, given the nature of the conduct that the NYAG seeks to deem as 'fraudulent' under Exec. Law 63(12) is centered, in large part, on the Defendant's valuation practices, the principles of New York common law dictate that the NYAG must prove scienter as to each Defendant. Indeed, "[t]he long-established rule in New York is that statements concerning the value of real property are generally not actionable under a theory of fraud or fraudulent inducement." *Potente v. Citibank*, 282 F.Supp.3d 538, 545 (E.D.N.Y. 2017). This is largely because "representations as to value alone are generally matters of opinion upon which no detrimental reliance can occur." *Id.* Appraisals concerning the estimated valuation of real estate properties, in particular, have consistently been found by New York courts to constitute statements of opinion. *See, e.g., Employees' Ret. Sys. v. J.P. Morgan,* 804 F.Supp.2d 141, 153 (S.D.N.Y.2011) ("An appraisal is a subjective opinion based on the particular methods and assumptions the appraiser uses.").

Thus, even though the NYAG is not required to prove scienter under Exec. Law 63(12) as a general proposition, it must necessarily be alleged with respect to each alleged fraudulent act that arises from the purported misuse of improper and/or inflated valuations. Without this subjective element, the NYAG is simply unable to prove that representation made by the Defendants concerning the valuation of any asset could rise to the level of fraud, since estimating a value of any asset is an inherently subjective endeavor.

Based on the foregoing, in order to state a cause of action, the NYAG should be required to plead with particularity facts establishing that each Defendant made a material misstatement or

omission of fact, that it knew to be false, with the intent to deceive, and that the alleged misrepresentation was reasonably relied upon and as a result damages were sustained. *See, e.g., Rotterdam Ventures. v. Ernst & Young*, 300 A.D.2d 963, 964, (3d Dep't 2002); *see also Lampert v. Mahoney*, 218 A.D.2d 580, 582 (1st Dep't 1995) (fraud claim based on alleged misrepresentations in a financial statement must "identify the particular manner in which an item included in the financial statement relied upon has been intentionally or recklessly misrepresented.").

B. <u>As a Matter of Law, Sophisticated Financial Institutions had an Affirmative Obligation to Obtain and Review a "Total Mix" of Information Before Relying on the SoFCs</u>.

New York law has long recognized that when evaluating reasonable reliance under common law fraud, sophisticated individuals and entities are held to a higher standard. *MBIA v. Countrywide*, 27 Misc.3d 1061, 1077 (Sup. Ct. 2010). The courts impose on sophisticated business parties, such as the financial institutions here, a duty to use their available resources to verify the truth of the documents and information upon which they rely and to use their expertise to conduct due diligence. This heightened standard of reasonableness should be equally applicable here, where the NYAG is using Executive Law § 63(12) to protect sophisticated multinational commercial enterprises and not the intended beneficiaries of the statute, "the ignorant, the unthinking, and the credulous." *See, e.g.*, *Matter of the People of the State of N.Y., by Eliot Spitzer v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 106, (3d Dep't 2005) *aff'd* 11 N.Y.3d 105 (2008).

In *UST Private Equity Investors v. Salomon Smith Barney*, 288 A.D.2d 87, 88 (1st Dep't 2001), sophisticated investors asserted fraud and negligent misrepresentation claims against the investment banking firm that prepared an offering memorandum allegedly containing inaccurate statements. The offering memorandum, however, explicitly warned that the investment bankers

"could not guarantee the accuracy or completeness of the information set forth therein, and specifically directed plaintiffs to 'rely upon their own examination' of [the corporation] and to request from [the corporation] whatever additional information or documents they deemed necessary to make an informed investment decision." *Id.* After the trial court dismissed the investors' complaint, the First Department affirmed, holding "[a]s a matter of law, a sophisticated plaintiff cannot establish that it entered into an arm's length transaction in justifiable reliance on alleged misrepresentations if that plaintiff failed to make use of the means of verification that were available to it, such as reviewing the files of the other parties." *Id.* at 88; *see also MAFG Art Fund, v. Gagosian*, 123 A.D.3d 458, 459 (1st Dep't 2014) (reversing order of trial court that denied defendants' motion to dismiss fraud claim where the sophisticated plaintiffs could not demonstrate justifiable reliance because they failed to engage in any due diligence); *Graham Packaging, v. Owens-Illinois.*, 67 A.D.3d 465 (1st Dep't 2009) (affirming dismissal of fraudulent concealment claim where defendants, who were sophisticated entities represented by counsel, should have inquired as to the value of their anticipated claims against the defendants).

Here, the NYAG has failed to plead that Defendants made any material misrepresentations in, or omissions to, the SoFCs that any reasonable highly sophisticated financial institution would have considered important in light of the "total mix of information" available to such institutions. Unlike the consumers and other vulnerable populations that the NYAG has traditionally used Executive Law § 63(12) to protect, the financial institutions transacting business with Defendants had the ability to employ vast resources and wield superior bargaining power investigating the weight, if any to be given to the SoFCs. The unambiguous language of the SoFCs makes it clear to any recipient that it is a compilation report based on information provided by the Trump Organization that was not independently verified by Mazars. In fact, Mazars states in the preface

to the SoFC that the objective of the compilation report is simply to "assist Donald J. Trump in presenting financial information in the form of a financial statement ***without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement***." (emphasis added).

Thus, as a matter of law the NYAG has not pled, and cannot prove, that Defendants' conduct had the capacity or tendency to deceive sophisticated financial institutions because each and every institution had a duty to investigate the "total mix" of available information relating to President Trump's financial condition.

C. **The NYAG Cannot Assert a Claim For Fraud With Respect to the Submission of an Appraisal Without A Statement From a Qualified Expert That The Values Were Improperly Inflated**

As the NYAG acknowledges in its own Complaint, in valuing the Seven Springs conservation easement, the Trump Organization relied on expert appraisals conducted by Cushman & Wakefield, a large, well-respected global commercial real estate services firm. The Complaint gives no indication that Cushman & Wakefield had any interest in either the subject properties or the Trump Organization, or that Cushman & Wakefield had any incentive to skew its appraisals in order to favor the Trump Organization. Nor is there any allegation that Cushman & Wakefield lacked the requisite expertise or that it did not exercise independent professional judgment in formulating its appraisals.

Given the complex nature of the transactions at issue herein, to support a claim of fraud, the NYAG must come forward with facts supported by a ***qualified expert***, who "should possess the requisite skill, training, education knowledge or experience from which it can be assumed that the opinion rendered is reliable." *Schechter v. 3320 Holding*, 64 A.D.3d 446, 449 (2009). In the real estate context, such qualifications should include, at a minimum, that the expert is "licensed

as an appraiser in New York, … a member of a recognized appraisal organization, and … trained under the supervision of a qualified appraiser." *See Niagara Mohawk Power v. City of Cohoes,* 280 A.D.2d 724, 726-27 (3d Dep't 2001) (upholding lower court's finding that town engineer who lacked the above qualifications was not qualified to testify as an appraiser with respect to a property assessment).[4]

The NYAG's claim that Cushman & Wakefield's appraisals or Defendants' valuations are inflated is based solely on the lay opinion of the attorneys at NYAG assigned to this case. However experienced those attorneys may be in the field of law in which they practice, they are not licensed appraisers per the Department of State, Division of Licensing Services.[5] Nor has the NYAG provided a CV to establish the education, training, or other credentials of an expert to opine that the appraisals were inflated, as required by CPLR 3101(d)(1). The speculative opinion of an attorney who is not a certified real estate appraiser has no probative value. *See, e.g., In re City of New York*, 21 Misc. 3d 1127(A), *6 (Sup. Ct. Kings Cty. 2008) (finding that city's reliance upon an affirmation by counsel alleging that appraisal report did not properly value property in eminent domain proceeding was unavailing because the city made no showing that counsel was an expert qualified to offer such an opinion).

Simply put, a professional appraisal of a 212-acre parcel comprising dozens of potentially developable lots spread out over three townships is beyond the ken of a layperson, such that any claim as to inflated value requires support from an expert in the field of appraisals. Cushman & Wakefield's 2015 appraisal of the Seven Springs property, at over 50 pages (plus 50 pages of

[4] Other cases in the tax assessment context support the need for testimony from an expert appraiser. *See, e.g., Gibson v. Gleason*, 20 A.D.3d 623, 625 (3d Dep't 2005) (considering both parties' expert appraisal reports in finding value of property in question was reduced by conservation easement); *Adirondack Mountain Reserve v. Board of Assessors*, 99 A.D.2d 600 (3d Dep't 1984) (affirming denial of petition for tax reassessment where town's assessment was more than amply substantiated and supported by a detailed appraisal report and expert testimony which fully considered impact conservation easement had on market value of parcels in question).

[5] https://www.dos.ny.gov/licensing/re_appraiser/re_appraiser.html

addenda), employs a detailed and highly sophisticated analysis of the property itself, the local area, comparable sales, development potential, and the effect of the easement on the value of the property. After aggregating the date, Cushman & Wakefield employs a sales comparison approach combined with a "sellout analysis" to arrive at valuations before and after placement of the easement, from which the overall value of the easement can be calculated. Given this complexity, whether and to what extent the valuations in the appraisal were in any sense "inflated" cannot be determined without a qualified expert capable of evaluating the data and methods employed by Cushman & Wakefield.

The court in *Lehman Bros. Holdings v. Wall Street Mortg. Bankers*, 2012 WL 5842889 (Sup. Ct. N.Y. Cnty. Nov. 15, 2012), rejected an attempt by the defendant to create a fact issue with respect to the appraisal of property without supplying expert affidavits. In support of its motion for summary judgment, the plaintiff presented two expert affidavits, which concluded that the appraisal had overstated the value of the Southampton property by $6 million. The defendant submitted no expert testimony evidence rebutting the expert affidavits, so the Court granted summary judgment to the plaintiff.

Likewise, in *In re Lehman Bros. Securities and ERISA Litigation*, 799 F. Supp. 2d 258 (S.D.N.Y. 2011) the court held that "to make out loss causation, a plaintiff must allege . . . that the subject of the fraudulent statement or omission was the cause of the actual loss suffered." *Id*. In so holding, the Court recognized that the allegations that Lehman's valuation models were based on assumptions or inputs different than those used by third parties, or those plaintiffs would have used, is not sufficient to state a claim that Lehman's valuation methods did not comply with Standards Board of the United States issued Statement of Financial Accounting Standards 157's fair value requirement or that the valuation statements based on those models otherwise were

misleading. *Id*.; *see also Trump v. Cheng*, 2006 WL 6484047 (Sup. Ct. N.Y. Cty. July 24, 2006) (noting that plaintiff failed to satisfy his claim without appraisals to contradict defendants' position that the properties were sold at or above fair market value).

Here, similarly, the NYAG here cannot proceed with its claim that the appraisal relied by Defendants used "inflated" values without support from an expert witness knowledgeable in the field of appraising commercial real estate to contradict the professional appraisal submitted by Cushman & Wakefield and appended to NYAG's Complaint. *See Bank of New York v. Cherico*, 209 A.D.2d 914, 915 (3d Dep't 1994) (granting summary judgment to plaintiff where defendants failed to submit an appraisal of the property to refute the market value determined by plaintiff's appraisal).

POINT III

THE NYAG'S § 63(12) FRAUD CLAIM IS BARRED BY THE DOCUMENATRY EVIDENCE OF THE STATEMENT OF FINANCIAL CONDITION

Under CPLR 3211(a)(1), courts are required to dismiss an action or proceeding "where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Goshen v Mutual Life*, 98 N.Y.2d 314, 326 (2002).

Here, the documentary evidence of the Statements of Financial Condition (the "SoFCs") and the disclaimers explicitly set forth therein, utterly refute and conclusively establish a defense as a matter of law to the Executive Law § 63(12) fraud claim alleged in the Complaint. *See, e.g.*, *Natoli v. NYC Partnership Housing*, 103 A.D.3d 611 (2d Dep't 2013) (dismissing fraud and negligent misrepresentation claims pursuant to CPLR 3211(a)(1) where purchase agreement contained specific disclaimer provisions by which plaintiff disavowed reliance conclusively establishing defense to claims); *Ryan v. Pascale*, 58 A.D.3d 711 (2d Dep't 2009) (granting

defendants' motion to dismiss plaintiff's fraudulent inducement action pursuant to CPLR 3211(a)(1) and (7) where causes of action were barred by specific disclaimer provisions in contract of sale); *Roland v. McGraime*, 22 A.D.3d 824 (2d Dep't 2005) (dismissing plaintiffs' fraud cause of action to the extent it was predicated on alleged oral representations made by defendant as such cause of action was barred by the specific disclaimer provisions contained in contract of sale).

A. The SoFCs are "Compilation Reports" Which Contain Clear Disclaimers.

As a threshold matter, the explicit disclaimer language set forth in the SoFCs forecloses the NYAG from claiming that the financial institutions reasonably relied in any material way on the information contained in the SoFCs. *See e.g., HSH Nordbank v. UBS,* 95 A.D.3d 185 (1st Dep't 2012) (sophisticated bank failed to state fraud related claims as it could not have justifiably relied on the recommendation by defendant investment bank in light of a disclaimer in the extensively negotiated governing documents and because it had a duty, as a sophisticated party, to exercise ordinary diligence and to conduct an independent appraisal of risk); *MBIA Ins. Corp. v. Merrill Lynch*, 81 A..D.3d 419, 419 (1st Dep't 2011) ("Plaintiffs' fraud-related claims failed to state a cause of action in light of the specific disclaimers in the contracts, executed following negotiations between the parties, all sophisticated business entities, providing that plaintiff … would not rely on defendants' advice, that it had the capacity to evaluate the transactions, and that it understood and accepted the risks").

The plain language of the SoFCs makes it crystal clear to any recipient, let alone sophisticated loan officers, loan committees, underwriters, and their financially astute expert advisors, that the SoFCs are not audited reports, and as such the support for the valuations set forth therein have not been independently verified. Specifically, each SoFC is prominently identified as a "compilation report," which, under standard accounting practice means that it is an unaudited

statement that relies on information presented by Defendants without any assurance from Mazars regarding the accuracy of the financial statements or their conformity with generally accepted accounting principles.

As courts have noted, there is a marked difference between a compilation report, a review, and an audited financial statement, in ascending order of reliability. *See e.g., Otto v. Pennsylvania*. 330 F.3d 125, 133 (3d Cir. 2003) ("A compilation is the lowest level of assurance regarding an entity's financial statements."). A review provides a higher level of assurance, while an audit entails "obtaining an understanding of the internal control structure or assessing control risk; tests of accounting records and of responses to inquiries by obtaining corroborating evidential matter through inspection, observation or confirmation; and certain other procedures." *Id.* at 134.

Indeed, by way of example, Mazars unequivocally states in the preface of the 2015 SoFC, "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America." Mazars then sets forth a multitude of generally accepted accounting principles that would typically apply when preparing a financial statement (including the tax consequences on President Trump's holdings), before going on to warn, "[t]he accompanying statement of financial condition does not reflect the above noted items. The effects of these departures from accounting principles generally accepted in the United States of America have not been determined." Mazars then concludes with a final disclaimer, stating "Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the statement of financial condition, ***users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial***

condition prepared in conformity with accounting principles generally accepted in the United States." (emphasis added).

The court's decision in *Ris v. Finkle*, 148 Misc.2d 773 (Sup. Ct. N.Y. Cnty 1989) is instructive on the issue of whether compilation reports containing clear disclaimers can be justifiably relied upon as a matter of law. In *Ris*, a trustee in bankruptcy of a pension investment management company asserted fraud and breach of contract claims against an accounting firm. The trustee alleged that the accounting firm made fraudulent misrepresentations overvaluing real estate assets in their client's financial statements, which the pension investment management company then relied upon in deciding to extend credit to the client. The accounting firm moved move for summary judgment on the grounds that the reports were mere "compilations," rather than formal audited statements, and as such could not be reasonably relied on without undertaking further due diligence.

Using disclaimer language which, in sum, is strikingly similar to the disclaimer language set forth in the SoFCs at issue in the proceeding at bar, the cover letter that accompanied the financial statements in *Ris v. Finkle* stated:

> A compilation is limited to presenting in the form of financial statements information that is the representation of management […] Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Id. at 776.

The court granted summary judgment to the accounting firm, finding that the pension investment management company could not have justifiably relied on the compilation report so as to support a claim of fraud, stating:

> In view of the express language of the last paragraph, [the pension investment management company] ***cannot have justifiably relied on any representations by [the accounting firm] (and its members) on the financial condition of [the accounting firm's client]***. Moreover, in view of the express statement therein that the information contained in the financial statements "is the representation of management", and that [the accounting firm] and its members "do not express an opinion or any other form of assurance on them", ***plaintiff cannot even demonstrate that the compilation was a representation of material existing fact made by [the accounting firm] (and its members)***.

Id. (emphasis added).

As in *Ris*, the SoFCs here, which include prominent and clear disclaimer language, cannot serve as the basis for a fraud claim among sophisticated parties. The documents and allegations relied on by the NYAG in its Complaint amply show that the financial institutions were fully capable of evaluating the accuracy and the weight to be given to the SoFCs, and whether it was in their business interests to enter into, or extend their business relationships with the Trump Organization. Indeed, "[w]here a party has means available to him for discovery by the exercise of ordinary intelligence, the true nature of a transaction he is about to enter into, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations." *Abrahami v. UPC Construction*, 224 A.D.2d 231 (1st Dep't 1996); *Salomon Smith Barney,* 288 A.D.2d at 87 (holding that sophisticated investors could not justifiably rely on alleged misrepresentations in offering memorandum that advised investors to do their own due diligence); *Evans v. Israeloff*, 208 A.D.2d 891, 892 (2d Dep't 1994) (investor in corporation could not establish justifiable reliance upon compilations which contained disclaimer language indicating that accountants were simply passing on financial information provided by corporation, without doing any auditing, and investor did not request certified financial report or copy of tax returns).

Accordingly, based on the documentary evidence of the clear and unequivocal disclaimers set forth in the SoFCs, the NYAG's § 63(12) fraud claim must be dismissed as a matter of law.

B. Documentary Evidence Establishes That Any Alleged Breach Was Immaterial

The NYAG's entire fraud theory is based on conduct that at best, amounts to nothing more than a non-material breach of financial reporting obligations under the ***limited guarantees*** executed in connection with the subject Loan Agreements. At the outset, it is paramount to understand that the subject Loans were mortgage loans and were secured—and, in fact, greatly ***oversecured***—by the value of the property underlying each of the individual Loans. These guarantees merely provided the lender with limited rights against the guarantor under limited circumstances, which rights were virtually meaningless in terms of the security and value of the loan given the underlying LTV of each of the subject loans.

By way of example, the 40 Wall Loan in the amount of $160 million was secured by the underlying 40 Wall Property, which the lender's own appraisers, Cushman & Wakefield, valued at $200 million, i.e. 1.25 times the amount of the 40 Wall Loan with a LTV at origination of approximately 125% (i.e. loan amount of $160 million divided by the property value of $200 million).[6] Suffice it to say, the 40 Wall Loan was exceptionally oversecured.[7] In this light, the financial reporting required under the 40 Wall Recourse Guaranty was nothing more than a *pro forma* requirement. The 40 Wall Property was the security and the lender—being a sophisticated party—had loaned only a fraction of the value of the 40 Wall Property and, thus, did not need or require any unconditional guaranty on the part of the guarantor for the 40 Wall Loan. Needless to say, while the lender prudently had reporting requirements for the guarantor, it did not treat these

[6] The 40 Wall Loan was even further secured by the 40 Wall Assignment Agreement entitling the lender to lease and rental income from the property in the event of a loan default.
[7] The other subject loans and properties were similarly oversecured with virtually identical guarantees, as further described for the 40 Wall Loan as well.

requirements as material to ensuring the security of the loan.

The documentary evidence further establishes that the financial reporting requirements called for nothing more than "compilations," which, as a matter of law, cannot be relied upon by sophisticated parties. *See Evans*, 208 A.D.2d at 892. More fundamentally, however, the lender ***never*** demanded the compilations themselves. The reason for this is simple: the 40 Wall Loan was secured by property worth hundreds of million dollars over and above the loan amounts, and the lender was being fully paid on the loan and was receiving the full benefit of its bargain.

Ultimately, the only purported "wrongdoing" here was, at best, a simple breach of failing to provide the required financial statements, which were not even material to the value and security of the loans (and, in any event, could not be reasonably relied upon by any sophisticated lender as a matter of law as discussed below in Point III(D)). Such a non-material breach cannot form the basis of a viable fraud claim. *See e.g. Krantz v. Chateau*, 256 A.D.2d 186, 187 (1st Dep't 1998) (cannot assert fraud claim where "the only fraud charged relates to a breach of contract"); *MBW Advertising Network v. Century Business*, 173 A.D.2d 306 (1st Dep't 1991) ("a cause of action for fraud will not arise if the alleged fraud merely relates to the breach of contract"); *Remora Capital v. Dukan*, 175 A.D.3d 1219, 1120–1121 (1st Dep't 2019) (affirming dismissal of fraud claims that "rest[ed] on allegations that the family defendants did not intend to meet their contractual obligations").

POINT IV

THE NYAG LACKS STANDING TO MAINTAIN THE INSTANT ACTION

Defendants adopts and incorporates the arguments set forth in the memorandum of law filed by Defendants Trump and Trump Organization (*See* NYSCEF No. 197) as they relate to the NYAG's lack of standing.

Where, as here, the NYAG brings suit on behalf of the People of the State New York, standing must be properly derived from its *parens patriae* authority. *See People v. Grasso*, 54 A.D.3d 180, 198 (1st Dep't 2008). "To bring a *parens patriae* action to sue in the public interest, the Attorney General must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties[.]'" *Alfred L. Snapp & Son. v. Puerto Rico,* 458 U.S. 592, 607 (1982).

Here, the Complaint fails to articulate a quasi-sovereign interest affecting a substantial segment of the population involving interests separate from those of the private sophisticated parties involved. The claims set forth by the NYAG do not affect the public interest or touch upon any segment of the public but, rather, solely involve *private* contractual rights between Defendants and a few select corporate counter-parties. Therefore, the NYAG lack standing under the *parens patriae* doctrine.

POINT V

THE NYAG DOES NOT HAVE THE CAPACITY TO BRING THIS SUIT

Defendants adopt and incorporate the arguments set forth in the memorandum of law filed by Defendants Trump and Trump Organization (*See* NYSCEF No. 196) as they relate to the NYAG's lack of capacity.

For governmental entities, such as the NYAG, the "right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate." *In re World Trade Ctr.*, 30 N.Y.3d 377, 384 (2017). Here, based on the plain language of Executive Law 63(12), its legislative history, and the manner in which it has historically been utilized, it is clear that Executive Law § 63(12) does not authorize Plaintiff to commence this type of

proceeding, which involves only the contractual rights of sophisticated private parties. Plaintiff is therefore acting without statutory authority and lacks the legal capacity to maintain this action pursuant to CPLR § 3211(3).

POINT VI

THE NYAG HAS VIOLATED DEFENDANTS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS

Defendants adopt and incorporate the arguments set forth in the memorandum of law filed by Defendants Trump and Trump Organization (*See* NYSCEF No. 196) as they relate to the violation of Defendants' constitutional right to equal protection of the laws.

To establish an Equal Protection violation, a defendant must prove that he has been "singled out with an "evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances." *Bower,* 2 N.Y.3d at 631.

Here, the multitude of statements issued by Letitia James make clear that both the prior investigation and the instant action are fueled solely by her personal and political animus in direct violation of the Equal Protection Clause, satisfying the 'evil eye' prong. *See generally,* Habba Aff. Further, the NYAG's anomalous use of Executive Law 63(12) unequivocally demonstrates that Defendants are being singled out and treated differently than those similarly situated, satisfying the 'unequal hand' prong. Therefore, Defendants have been subject to selective enforcement and/or 'class of one' discrimination in violation of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the Complaint must be dismissed, with prejudice, pursuant to CPLR 3211(a)(1),(2),(3),(5),(7) and/or (8), and such further relief as the Court deems just and proper.

ALINA HABBA, ESQ.
MICHAEL T. MADAIO, ESQ.
HABBA MADAIO & ASSOCIATES LLP
1430 U.S. Highway 206, Suite 240
Bedminster, New Jersey 07921
-and-
112 West 34th Street, 17th and 18th Floors
New York, NY 10120
Phone: (908) 869-1188
E-mail: ahabba@habbalaw.com

Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION OF COUNSEL

I hereby state, pursuant to NYCRR 202.70.17, that the foregoing Memorandum of Law was prepared with Microsoft Word. Pursuant to Microsoft Word's word count feature, the total number of words in the foregoing brief (excluding the caption, table of contents, table of authorities, signature block, and this certification) is 6,967.

Dated: November 21, 2022
New York, New York

Alina Habba, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

MEMORANDUM OF LAW OF NY ENTITY DEFENDANTS (I) DJT HOLDINGS LLC; (II) TRUMP OLD POST OFFICE LLC; (III) 40 WALL STREET LLC; AND (IV) SEVEN SPRINGS LLC IN SUPPORT OF MOTION TO DISMISS COMPLAINT

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120

CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTRODUCTION 1
STATEMENT OF FACTS 4
ARGUMENT 4
I. THE NYAG LACKS STANDING TO BRING THIS ACTION. 4
A. The Complaint Fails to Identify a Quasi-sovereign Interest. 6
B. The Complaint Fails to Identify Any Effect on a Substantial Segment of Population. 8
C. The Complaint Fails to Identify an Interest of the People. 9
II. THE NYAG LACKS CAPACITY TO BRING THIS ACTION. 10
III. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS. 12
IV. THE NYAG FAILS TO STATE A CAUSE OF ACTION. 13
A. The Complaint Fails to Give Notice to Each Defendant of the Claims Against It. 14
V. THE NYAG'S CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE. 15
A. Loan and Guaranty Agreements Establish Lack of Benefit to Entity Defendants. 16
B. The Documentary Evidence Refutes the NYAG's Claim for Damages... 17
C. SoFCs Disclaimers Utterly Refute Possibility of Reliance by the Sophisticated Lenders. 19
VI. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS. 20
CONCLUSION 22

TABLE OF AUTHORITIES

Cases

Abdale v. N. Shore Long Island Jewish Health Sys., Inc.,
49 Misc.3d 1027 (N.Y. Sup. Ct. 2015) 15
Abrams v. N.Y.C. Conciliation & Appeals Bd.,
123 Misc.2d 47, 49 (Sup. Ct. New York County 1984) 11
Adelaide Productions, Inc. v. BKN Intern. AG,
38 A.D.3d 221 (1st Dep't 2007) 20
Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.,
84 A.D.2d 736 (1st Dep't 1981) 15
Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez,
458 U.S. 592, 607 (1982) 6
Chamberlain v. City of White Plains,
986 F. Supp. 2d 363, 388 (S.D.N.Y. 2013) 23
City of New York v. State of New York,
86 N.Y.2d 286, 297 (1995) 12
Com. of Kentucky v. State of Indiana,
281 U.S. 163,173-74 (1930) 5
Community Bd. 7 of Borough of Manhattan v. Schaffer,
84 N.Y.2d 148, 155 (1994) 12
Connecticut v. Physicians Health Servs. Of Connecticut, Inc.,
287 F.3d 110, 119 (2d Cir. 2002) 5
Golia v. Vieira,
162 A.D.3d 865, 867 (2d Dep't 2018) 17
Guggenheimer v. Ginzburg,
43 N.Y.2d 268, 273 (1977) 9
High Tides, LLC v. DeMichele,
88 A.D.3d 954, 957 (2d Dept. 2011) 14, 16
HSH Nordbank AG v. UBS AG,
95 A.D.3d 185 (1st Dep't 2012) 21
IDT Corp. v. Morgan Stanley Dean Witter & Co.,
12 N.Y.3d 132, 142, 907 N.E.2d 268, 274 (2009) 20
Lefkowitz v. Lebensfeld,
68 A.D.2d 488, 497 (1st Dep't 1979) 4
Lilley v. Green Cent. Sch. Dist.,
187 A.D.3d 1384, 1389 (2d Dep't 2020) 23

Manti's Transp., Inc. v. C.T. Lines, Inc.,
68 A.D.3d 937, 940 (2d Dept. 2009) 16
Matter 303 West 42nd v. Klein,
46 N.Y.2d 686, 694 (N.Y. 1979) 21
Matter of People v. Applied Card Sys., Inc.,
27 A.D.3d 104 (3d Dept 2005) 7
Matter of People v. Orbitual Publ. Group, Inc.,
169 A.D.3d 564, 565 (1st Dep't 2019) 7
Matter of State by Abrams v. New York City Conciliation and Appeals Bd.,
123 Misc.2d 47, 49 (Sup. Ct. New York County 1984) 5
Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.,
5 N.Y.3d 36, 41 (2005) 12
Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.,
30 N.Y.3d 377, 384 (2017) 12
Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC,
155 A.D.3d 1218, 1220 (3d Dep't 2017) 15
Moore v. Liberty Power Corp., LLC,
72 A.D.3d 660, 661, 897 N.Y.S.2d 723 (2d Dept. 2010) 16
Nager Electric Co., Inc. v. E.J. Electric Installation Co., Inc.,
128 A.D.2d 846, 847(2d Dep't 1987) 20
New York by James v. Amazon.com, Inc.,
550 F. Supp. 122 (S.D.N.Y. 2021) 7
New York City Conciliation and Appeals Bd.,
123 Misc. 2d at 50 11
New York v. Griepp,
991 F.3d 81, 130 (2d Cir. 2021) 5
Pennsylvania v. New Jersey,
426 U.S. 660, 665 (1976) 6
People by Cuomo v. Wells Fargo Ins Servs.,
62 A.D.3d 404 (1st Dep't 2009) 13
People ex rel. Cuomo v. Coventry First LLC,
52 A.D.3d 345 (1st Dep't 2008) 7
People ex rel. Spitzer v. Applied Card Sys., Inc.,
11 N.Y.3d 105, 125 (2008) 20
People ex rel. Spitzer v. Grasso,
54 A.D.3d 180, 198 (1st Dep't 2008) 4, 7, 8, 11
People ex rel. Spitzer v. H & R Block, Inc.,
847 N.Y.S.2d 903, 907 (Sup. Ct. New York County 2007) 6
People of State of N.Y. by Vacco v. Operation Rescue Nat.,
80 F.3d 64, 71-72 (2d Cir. 1996) 6
People v. 11 Cornwell Co.,
695 F.2d 34, 40 (2d Cir. 1982) 11
People v. Credit Suisse,
31 N.Y. 3d 622, 633 (2018) 13
People v. Domino's Pizza, Inc, et al,
NYSCEF No. 505 at 24 (Sup. Ct. New York County Jan. 5, 2021) 7, 8, 11

People v. Exxon Mobil Corp.,
65 Misc.3d 1233(A) at *31 8
People v. General Elec. Co.,
302 A.D.2d 314 (1st Dep't 2003) 7
People v. Lowe,
117 N.Y. 175, 191 (1889) 4, 6, 8, 11
People v. Singer,
193 Misc. 976, 979 (Sup. Ct. New York County 1949) 5, 9
Raines v. Byrd,
521 U.S. 811, 820 (1997) 4
Schechter v. 3320 Holding LLC,
64 A.D.3d 446, 449 22
Society of Plastics Indus. v County of Suffolk,
77 N.Y.2d 761, 772 (1991) 12
Starr Foundation v. AIG,
76 A.D.3d 25(1st Dept. 2010) 20
State by Lefkowitz v. Parkchester Apts. Co.,
61 Misc. 2d 1020 (Sup. Ct. N.Y. Cnty 1970) 13
State Dept. of Law Mem, Bill Jacket,
L 1956, ch. 592 at 92-94 9
State of N.J. v. State of N.Y.,
345 U.S. 369, 372-73 (1953) 5
State of N.Y. v. Gen. Motors Corp.,
547 F.Supp. 703 (S.D.N.Y. 1982) 7
State v. Skanska,
72 Misc. 3d 935 (Sup 2021) 15
State v. Daicel Chem. Indus., Ltd.,
42 A.D.3d 301, 302 (1st Dep't 2007) 14
State v. Wal-Mart Stores Inc.,
1993 WL 649275 (Sup. Ct. Fulton Cnty. Dec. 16, 1993) 13

Other Authorities

60A N.Y. Jur. 2d Fraud and Deceit § 173 20

Rules

CPLR § 213 ..... 13, 15
CPLR § 213(9) 14, 15
CPLR § 3016(b) 16
Executive Law § 63(12) 2,3, 4, 6, 11, 14, 15, 16, 20, 21, 23, 24, 25, 26

Defendants the DJT Holdings LLC ("Holdings") Trump Old Post Office LLC ("OPO") , 40 Wall Street LLC ("40 Wall"), and Seven Springs LLC ("Seven Springs") (collectively, the "NY Entities") hereby move to dismiss the New York Attorney General's ("NYAG") Verified Complaint ("Complaint" or "Compl.") and expressly incorporate all arguments set forth in the memorandums of law submitted by (i) Allen Weiselberg and Jeffrey McConney; (ii) Eric Trump and Donald Trump Jr.; (iii) Trump Organization, Inc., Trump Organization LLC and Donald J. Trump ("President Trump"); (iv) Ivanka Trump; and (v) The Donald J. Trump Revocable Trust (the "Trust"), DJT Holdings Managing Member ("HMM"), Trump Endeavor 12 LLC ("TE12"), 401 North Wabash Venture LLC ("401 Wabash") (collectively, the "Foreign Entities"), and submit this Memorandum of Law in support.

INTRODUCTION

The NYAG's complaint spends over 600 paragraphs clumsily attempting to recharacterize decades of business transactions between highly sophisticated parties, only to succeed in establishing that she cannot plead a claim. The Complaint establishes the Trump Organization operates a wildly successful multinational real estate and licensing empire. The Complaint also establishes the Trump Organization has not defaulted on a loan or even been late on a loan payment during the sweeping 15+ years that the NYAG has attempted to scrutinize. The Complaint also reveals the Trump Organization is fiscally conservative, does not carry much debt, and is able to borrow at competitive market rates because of the enviable quality of its trophy assets.

The NYAG's alleged claims against the NY Entities arise from a series of discrete loan transactions[1]:

[1] The NYAG also relies on two other transactions that are addressed in the Foreign Entities' Brief: (i) 2012 Doral Transaction; and (ii) 2012 Chicago Transaction). Each is described in the NY Entities' Motion to Dismiss. The NY Entities adopt and incorporate their arguments by reference.

1. **The Seven Springs Loan:** On June 22, 2000, Royal Bank of Pennsylvania – Bryn Mawr made a $8 million loan to Defendant Seven Springs, collateralized by a private estate in Westchester County, New York. Compl. ¶654. (¶¶654-661). The loan is associated with a Guaranty Agreement dated June 22, 2000. A copy of the Seven Springs Loan Agreement and related Guaranty are attached as Exhibit 1 (the "2000 Seven Springs Transaction") of the Affirmation of Alina Habba (the "Habba Aff.").

2. **The Park Avenue Loan**: On July 23, 2010, Investors Bank made a $23 million loan to Trump Park Avenue, LLC, collateralized by the Trump Park Avenue, an asset of DJT Trust. *See* Compl. ¶85 (¶¶ 82-112). A copy of the Park Avenue Consolidated Note is attached as Habba Aff., **Ex. 2** (the "2010 Park Avenue Transaction").

3. **The Old Post Office Loan:** On August 12, 2014, DeutscheBank made a $170 million loan to Defendant OPO, collateralized by its interest in the landmark Old Post Office in Washington D.C. *See* Compl. ¶633 (¶¶ 621-646). The loan is associated with a Guaranty dated August 12, 2014. A copy of the OPO Loan Agreement and the Guaranty are attached as Habba Aff., **Ex. 5** (the "2013 OPO Transaction").

4. **The 40 Wall Street Loan:** On July 2, 2015, Ladder Capital made a $160 million loan to Defendant 40 Wall, collateralized by its interests in 40 Wall Street, an iconic office tower in lower Manhattan. *See* Compl. ¶652 (¶¶ 647-653). The loan is associated with a Guaranty of Recourse Obligations dated July 2, 2015. A copy of the 40 Wall Street Loan Agreement and the Guaranty are attached as Habba Aff., **Ex. 6** (the "2015 40 Wall Transaction").

Five counts alleged in the Complaint pursuant to Executive Law § 63(12) are predicated on the participation by each Entity Defendant in the discrete transactions described above, plus vaguely described insurance applications (Compl. ¶ 678-691, describes an application to "one of those insurers", Zurich North America) and a renewal of a Directors & Officers insurance policy (Compl. ¶¶ 692-714). Not a single claim survives dismissal for numerous reasons.

First, the NYAG lacks standing to plead a claim.

Second, the NYAG lacks capacity to plead a claim.

Third, the NYAG's claims against the NY Entities are time barred.

Fourth, the Complaint must be dismissed for failure to state a claim. The NYAG attempts to lump together the alleged conduct of "all defendants" with a generic use of the term "Trump Organization" over 590 times and "defendants" over 90 times.

Fifth, documentary evidence appended to this Motion and the Complaint plainly establishes that a merger clause in the Loan Agreements[2] renders parol evidence and extraneous communications immaterial to the transactions between two private parties. Additionally, the Loan Agreements make plain the NY Entities were not responsible for submitting guarantors' Statements of Financial Condition ("SoFC") to their respective lenders. Even more, the guaranties themselves confirm the guarantor was not in any way induced or conferred any benefit in exchange for providing a guaranty.

Sixth, the Complaint must be dismissed for a number of additional reasons, including (i) a violation of the NY Entities' constitutional right to equal protection under the laws; (ii) failure to adequately plead that the NY Entities' conduct tended to deceive, or created an atmosphere conducive to fraud under Executive Law § 63(12); (iii) failure to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the appraisals were improperly inflated; and (iv) failure to state a civil-conspiracy claim under the intracorporate conspiracy doctrine.

Despite the NYAG's expansive Complaint, she fails to identify a single party or interest that has been harmed by any alleged conduct. She also fails to articulate a theory of liability against any Entity Defendant or how any specific Entity Defendant has benefitted from its own alleged wrongful conduct. The Complaint therefore must be dismissed.

[2] The term "Loan Agreements" generally refers to the loan documents attached to this Memorandum with respect to each of the NY Entities.

STATEMENT OF FACTS

In the interest of brevity, the relevant facts and procedural history are recited at length in the Affirmation of Alina Habba (the "Habba Aff."), annexed hereto.

ARGUMENT

I. THE NYAG LACKS STANDING TO BRING THIS ACTION.

Executive Law § 63(12) does not automatically confer the requisite standing to maintain this action. Statutes authorize particular causes of action, they do not and cannot confer the requisite standing. The NYAG, "like all other parties to actions, must show an interest in the subject-matter of the litigation to entitle [her] to prosecute a suit and demand relief." *People ex rel. Spitzer v. Grasso*, 54 A.D.3d 180, 198 (1st Dep't 2008) (citing *People v. Lowe*, 117 N.Y. 175, 191 (1889)). Construction of Executive Law § 63(12) as permitting the NYAG to maintain *any* action against *any* party—without any consideration of the NYAG's standing as a party-in-interest—is constitutionally infirm since "[t]he legislature, consistent with the principles of separation of powers underlying the requirement of standing . . . cannot grant the right to sue to a plaintiff who does not have standing." *Grasso*, 54 A.D.3d at 198 (citing *Raines v. Byrd*, 521 U.S. 811, 820 (1997)); *see also Lefkowitz v. Lebensfeld,* 68 A.D.2d 488, 497 (1st Dep't 1979), *affd* 51 N.Y.2d 442 (1980) (The Attorney General's "[s]tanding to sue and supervisory powers are entirely separate legal principles."). The Complaint also contravenes New York common law and the well-developed doctrine of *parens patriae*, which applies anytime the state is acting in furtherance of a sovereign or quasi-sovereign interest. *See People v. Singer*, 193 Misc. 976, 979 (Sup. Ct. New York County 1949) (citations omitted) ("Unless [] it appears that the matters alleged affect the public interest in the true and proper sense, rather than affecting individual private rights and interests," then an action brought by the State fails as a matter of law); *Matter of State by Abrams*

v. New York City Conciliation and Appeals Bd., 123 Misc.2d 47, 49 (Sup. Ct. New York County 1984) (When suing *parens patriae*, the state must seek to redress "wrongs done to the interests of the people as a whole and not merely to vindicate the individual or private interests of certain citizens.").

Here, the plain language of Executive Law § 63(12) confirms the NYAG must act pursuant to its *parens patriae* authority in enforcing the statute. Executive Law § 63(12) states that "the attorney general may apply, ***in the name of the people of the state of New York***" for the sought-after relief. Exec. Law § 63(12) (emphasis added). Thus, any action commenced thereunder must be brought on behalf of the people of the State of New York, and standing must be properly derived from the NYAG's *parens patriae* authority. *See New York v. Griepp*, 991 F.3d 81, 130 (2d Cir. 2021) (quoting *Connecticut v. Physicians Health Servs. Of Connecticut, Inc.*, 287 F.3d 110, 119 (2d Cir. 2002)) ("*parens patriae* [doctrine] allows states to bring suit on behalf of their citizens . . . by asserting a quasi-sovereign interest."). *See also State of N.J. v. State of N.Y.*, 345 U.S. 369, 372-73 (1953) (quoting *Com. of Kentucky v. State of Indiana*, 281 U.S. 163,173-74 (1930) (Noting that *parens pariae* is "a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens.'")). Indeed, this is precisely the manner in which NYAG filed the instant action. *See* Compl. ¶ 40 ("This enforcement action is brought *on behalf of the People of the State of New York* pursuant to the New York Executive Law.") (emphasis added). Accordingly, the NYAG must establish *parens patriae* standing.

"To bring a *parens patriae* action, the NYAG must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties …'" *People ex rel.*

Spitzer v. H & R Block, Inc., 847 N.Y.S.2d 903, 907 (Sup. Ct. New York County 2007) (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592, 607 (1982)). Moreover, a state has *parens patriae* standing "only when its sovereign or quasi-sovereign interests are implicated, and it is not merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976). *Parens patriae* standing "does not extend to the vindication of the private interests of third parties." *People of State of N.Y. by Vacco v. Operation Rescue Nat.*, 80 F.3d 64, 71-72 (2d Cir. 1996). In other words, "[i]t is not sufficient for the People to show that wrong has been done to someone; the wrong must appear to be done to the People in order to support an action by the People for its redress." *People v. Lowe*, 117 N.Y. 175 (1889). Thus, the "State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party … [it] must express a quasi-sovereign interest." *Grasso*, 54 A.D.3d at 198.

A. <u>The Complaint Fails to Identify a Quasi-Sovereign Interest.</u>

The Complaint fails to identify any quasi-sovereign interest it seeks to vindicate on behalf of the People. All the alleged activities concern the internal affairs and management of the NY Entities and their owners/operators, and private contractual matters between the NY Entities and sophisticated corporate counter parties. Thus, even if the NY Entities had engaged in the activities alleged by the NYAG (which they did not), those would not be matters of public interest. *See e.g.*, *Domino's*, NYSCEF No. 505 at 26 (finding such commercial disputes "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception.").

Indeed, all prior §63(12) cases have dealt with fraudulent activity impacting the People, not private commercial transactions between corporate titans. *See State of N.Y. v. Gen. Motors*

Corp., 547 F.Supp. 703 (S.D.N.Y. 1982) (involving fraudulent practices affecting a vast number of consumers in the automobile industry); *People ex rel. Cuomo v. Coventry First LLC*, 52 A.D.3d 345 (1st Dep't 2008) (involving bid-rigging and other anti-competitive schemes that were used to deprive policy holders of a fair marketplace in which to sell); *New York by James v. Amazon.com, Inc.*, 550 F. Supp. 122 (S.D.N.Y. 2021) (alleging that Amazon failed to protect *thousands* of workers through inadequate disinfection and contract-tracing protocols; the court found standing based on "the government's interest in guaranteeing a marketplace that adheres to standards of fairness, as well [as] ensuring that business transactions in the state *do not injure public health*.") (emphasis added).

The Complaint's allegations differ markedly from prior cases filed on behalf of the People. *See, e.g.*, *People v. General Elec. Co.*, 302 A.D.2d 314 (1st Dep't 2003) (NYAG challenging GE's widespread misrepresentations regarding consumer dishwashers); *Matter of People v. Orbitual Publ. Group, Inc.*, 169 A.D.3d 564, 565 (1st Dep't 2019) (NYAG challenging materially misleading consumer solicitations for newspaper and magazine subscriptions); *Matter of People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dept 2005) (NYAG challenging misleading consumer credit card offers). Here by contrast, the Complaint details complex, "bilateral business transactions between [the Entity Defendants] and [highly-sophisticated financial and insurance institutions]." *Domino's*, NYSCEF No. 505 at 26; *see also People v. Exxon Mobil Corp.*, 65 Misc.3d 1233(A) at *31 (finding NYAG failed to prove ExxonMobil "made any material misstatements or omissions about its practices and procedures that misled any reasonable investor").

In *Domino's*, the court was unpersuaded that the NYAG's police power extended to disputes over "bilateral business transactions" between Domino's and its individual franchisees regarding a store management software program. *Domino's*, NYSCEF No. 505 at 26. "Domino's

makes a compelling argument that any disputes regarding the performance of [the store management software program] should be in the nature of private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *Id*. Likewise, here, the NYAG cannot demonstrate the requisite quasi-sovereign interest in the complex business transactions at issue between sophisticated commercial parties represented by skilled legal counsel. These private matters are not the proper subject of "a law enforcement action under a statute designed to address public harm." *Id.* Indeed, had any of the highly sophisticated financial and insurance institutions purportedly represented by the NYAG been financially harmed or deceived in any way, they would have long ago exercised their substantial legal rights under the operative agreements to seek redress. However, to date, no such action has been taken and there exists nothing in the record to suggest the Trump entities have ever even missed a single loan payment over the past decade. The NYAG cannot therefore declare a legitimate public interest in riding to the rescue of major corporations which have not themselves even been harmed. *See also Lowe*, 117 N.Y. at 195 ("[I]t could not have been intended . . . that [the Attorney General] could in [her] absolute discretion, by a suit in the name of the people and at their expense and risk, intrude into a mere private quarrel, and carry on a litigation for purely private ends, in which the people in no proper sense have a shadow of right or interest.").

B. The Complaint Fails to Identify Any Effect on a Substantial Segment of Population.

Next, the Complaint makes clear the only purported "victims" are a select few major corporations who engaged in a discrete number of complex transactions with certain of the Trump business entities. This is simply not a "substantial segment of the population," nor can any alleged wrongdoing against a limited subset of sophisticated private parties to complex commercial agreements possibly implicate the public interest. *See, e.g.*, *People v. Singer*, 193 Misc. at 979.

Executive Law § 63(12), at its core, is a consumer-protection statute designed to protect the public at large, and more pointedly, the "ignorant, the unthinking and the credulous." *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 273 (1977). New York courts have consistently recognized that Executive Law § 63(12) functions as a consumer protection statute. *See State v. ITM*, 52 Misc. 2d 39, 52 (Sup. Ct. 1966) (Exec. Law § 63(12) is "designed to protect the consuming public against persistent fraud and illegality.").[3]

Here only narrow private interests of "lenders, employees who worked for those lenders and insurers, and the accounting firm that compiled the Statements, and personnel of that firm" (Compl. ¶ 757) are at issue.[4] This is simply not a "substantial segment" of the population.

C. The Complaint Fails to Identify an Interest of the People.

Finally, there are no interests here distinct from those of the involved private corporations. These corporate titans were fully capable of negotiating the complex agreements at the core of the issues presented by the Complaint. They are also fully capable of exercising their considerable rights under those complex agreements and, if they "feel aggrieved in such cases [they] have ample remedies to redress their wrongs by proceedings in their own names . . . ." *Lowe*, 117 N.Y. at 195. That they have chosen not to avail themselves of those rights demonstrates the NYAG is truly out

[3] The driving force behind the original enactment of Executive Law § 63(12) was the need to protect consumers and other vulnerable persons. *State Dept. of Law Mem, Bill Jacket*, *L 1956, ch.* 592 at 92-94.

[4] Additionally, and importantly, the Complaint fails to allege that even these private parties were actually damaged. Indeed, the Complaint does not, because it cannot, seek damages at all on behalf of anyone, most notably the People upon whose behalf the NYAG purports to have commenced this action. The NYAG merely asserts, without any foundation whatsoever in the Complaint, entitlement to the equitable remedy of disgorgement.

of place in this context.[5] The NYAG simply does not have standing to vindicate these private interests. *See New York City Conciliation and Appeals Bd.*, 123 Misc. 2d at 50 ("[A]rguments for standing become less compelling when private suits by the aggrieved parties are feasible and would provide complete relief") (citation omitted); *People v. 11 Cornwell Co*., 695 F.2d 34, 40 (2d Cir. 1982) (A state lacks standing unless it can show "that individuals could not obtain complete relief through a private suit"), vacated, in part, on other grounds, 718 F.2d 22 (2d Cir. 1983); *State by Abrams v. N.Y.C. Conciliation & Appeals Bd.*, 123 Misc.2d 47, 49 (Sup. Ct. New York County 1984) ("If the aggrieved individual has an adequate remedy at law, then the state is merely a nominal party with no real interest of its own. As a nominal party the state would not have capacity to sue as *parens patriae*.").

II. THE NYAG LACKS CAPACITY TO BRING THIS ACTION.

Since the Complaint fails to articulate a quasi-sovereign interest affecting a substantial segment of the population involving interests separate from those of the involved corporate titans, the NYAG simply lacks the requisite standing to maintain this action. The NYAG also lacks the requisite capacity to maintain this action. "Although courts often use the terms interchangeably, the concepts of capacity to sue and standing are distinct." *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 155 (1994). Standing is "designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome" so as to cast the controversy "in

[5] That these corporate titans have never chosen to exercise their private rights demonstrates there is simply no real-world impact of the conduct at issue and no basis for the NYAG to proceed. The NYAG asserts she need not prove any actual fraud or reliance. However, the NYAG may not just ignore the realities of these transactions because "[i]n determining whether certain conduct was deceptive, surely it is relevant whether members of the target audience . . . were actually deceived." *People v. Domino's Pizza, Inc, et al*, Index No. 450627/2016, NYSCEF No. 505 at 24 (Sup. Ct. New York County Jan. 5, 2021). If the alleged misconduct "had no real-world impact (that is, no reliance or causation)" it would "speak to the question of whether the challenged conduct was unlawfully deceptive or fraudulent." *Id*.

a form traditionally capable of judicial resolution." *Id.* (quoting *Society of Plastics Indus. v County of Suffolk*, 77 N.Y.2d 761, 772 (1991)). Capacity to sue is a "a threshold question involving the authority of a litigant to present a grievance for judicial review." *Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.*, 5 N.Y.3d 36, 41 (2005).

"The question of capacity to sue often arises when governmental entities, which are creatures of statute, attempt to sue." *City of New York v. State of New York*, 86 N.Y.2d 286, 297 (1995) (citation omitted). This is because entities created by legislative enactment, such as the OAG, "have neither an inherent nor a common-law right to sue." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 384 (2017) (citing *Community Bd. 7 of Borough of Manhattan,* 84 N.Y.2d at 155). "[T]heir right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate." *Id.* The NYAG brings this action pursuant to Executive Law § 63(12). To have the requisite capacity to sue, the NYAG must be acting with express authorization to bring an action under that statute. Yet, based on the plain language of the statute, its legislative history, and the manner in which it has historically been utilized, it is clear that Executive Law § 63(12) does not authorize the NYAG to commence this type of proceeding, which involves only the contractual rights of sophisticated private parties.

Although expansive, the NYAG's powers under Executive Law § 63(12) are not unfettered, and courts historically have not been reluctant to dismiss claims, or deny remedies, that would exceed the NYAG's regulatory authority. *See State by Lefkowitz v. Parkchester Apts. Co.*, 61 Misc. 2d 1020 (Sup. Ct. N.Y. Cnty 1970) (dismissing action brought under Executive Law § 63(12) where the NYAG based its action on breach of contract); *People by Cuomo v. Wells Fargo Ins Servs.*, 62 A.D.3d 404 (1st Dep't 2009) (dismissing action brought under Executive Law §

63(12) based on alleged breaches of fiduciary duty and fraud); *State v. Wal-Mart Stores Inc*., 1993 WL 649275 (Sup. Ct. Fulton Cnty. Dec. 16, 1993) (dismissing certain causes of action brought under Executive Law § 63(12) based on the defendant's dating policies that the attorney general claimed violated the Labor Law). Similarly, here, the Complaint is founded on conduct between private parties. Executive Law § 63(12) does not authorize action by the NYAG for the conduct between contracting parties described in this Complaint. The NYAG is therefore acting without statutory authority and lacks the legal capacity to maintain this action pursuant to CPLR 3211(3).

III. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Claims outside the statute of limitations should be dismissed. For years, the statute of limitations on fraud claims arising under § 63 (12) was three years. The court in *People v. Credit Suisse* explained that the statute of limitations for an action under § 63(12) could potentially reach six years for claims based on common law fraud, but not for claims based on statutory fraud. 31 N.Y. 3d 622, 633 (2018). In August 2019, the legislature amended CPLR 213—adding a new subsection, 213(9)—In 2018, the Court of Appeals confirmed that where, as here, a §63(12) fraud claim does not allege every element of common-law fraud, a three-year statute of limitations applies. *Credit Suisse*, 31 N.Y.3d at 632-33. In August 2019, the legislature amended CPLR 213—adding a new subsection, 213(9)—to create a new six-year period for § 63(12) claims. *See* S.B. S6536, 2019-2020 Leg. Sess.

Here it is undisputable the NYAG's claims are not at all based on common law fraud elements, as no such elements are pled in the Complaint. "The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages.'" *High Tides, LLC v. DeMichele*, 88 A.D.3d 954, 957 (2d Dept. 2011). None of these elements are pled in the Complaint. *See* NYSCEF No. 38 at 13 ("Neither an intent to defraud nor

reliance need be shown."); NYSCEF No. 183 at 6-7 ("Good faith or lack of fraudulent intent is not an issue.").

CPLR § 213(9) does not apply retroactively. Nothing in the August 2019 amendment's text "unequivocally convey[s] the aim of reviving claims." *Id.* The legislature provided that the amendment was to "take effect immediately," S.B. S6536 § 2, and courts routinely recognize that this precatory language does not support retroactivity. *See*, *e.g.*, *State v. Daicel Chem. Indus., Ltd.*, 42 A.D.3d 301, 302 (1st Dep't 2007) ("Language in [a] statute that it shall 'take effect immediately' does not support retroactive application."). Construing CPLR 213(9) to apply retroactively to the Defendants would violate federal and state Due Process Clauses. Therefore, the three-year statute of limitations applies to non-common law claims that accrued before enactment of CPLR 213(9).

The Complaint, with respect to the NY Entities, is premised on transactions that are thus time barred because they took place between 2000 and 2015, and the applicable limitations period expired well before the adoption of CPLR § 213(9) in 2019. *See* Compl. ¶¶ 654-661 (the 2000 Seven Springs Transaction); ¶¶ 82-112 (the 2010 Park Avenue Transaction); ¶¶ 621-646 (the 2013 OPO Transaction); ¶¶ 647-653 (the 2015 40 Wall Transaction).

IV. THE NYAG FAILS TO STATE A CAUSE OF ACTION.

Where a complaint fails to give notice of the "material elements of [a] cause of action" supported by statements that are "sufficiently particular to give the court and the parties notice," it should be dismissed. *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 155 A.D.3d 1218, 1220 (3d Dep't 2017).

A. The Complaint Fails to Give Notice to Each Defendant of the Claims Against It.

A complaint fails when it names multiple defendants without alleging "the precise" conduct charged to a particular defendant and pleads all of its "causes of action . . . against all defendants collectively." *Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co*., 84 A.D.2d 736 (1st Dep't 1981).

When a plaintiff's fraud allegations are asserted collectively as to all defendants, such as here, New York courts have found this to be impermissible group pleading. *Abdale v. N. Shore Long Island Jewish Health Sys., Inc*., 49 Misc.3d 1027 (N.Y. Sup. Ct. 2015). Where multiple defendants are involved, the complaint must specify which allegations relate to which defendants, if necessary to avoid confusion. *Aetna Cas. & Sur. Co*., 84 A.D.2d 736 (rejecting fraud claim where "pleaded against all defendants collectively without any specification as to the precise tortious conduct charged to a particular defendant."). At a minimum, the NYAG must be required to amend her complaint and identify the specific conduct applying to each Defendant.

Given the particularity requirement for pleading fraud under rules of civil procedure, a plaintiff may not merely assert, in general terms, that all defendants engaged in all of the alleged conduct. *State v. Skanska*, 72 Misc. 3d 935 (Sup 2021). "The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages.'" *High Tides, LLC v. DeMichele*, 88 A.D.3d 954, 957, 931 N.Y.S.2d 377 (2d Dept.2011).

CPLR 3016(b) requires that the circumstances of the fraud must be "stated in detail," including specific dates and items. *See Moore v. Liberty Power Corp., LLC*, 72 A.D.3d 660, 661, 897 N.Y.S.2d 723 (2d Dept. 2010). In addition, a cause of action to recover damages for fraudulent concealment requires, in addition to allegations of scienter, reliance, and damages, an allegation

that the defendant had a duty to disclose material information and that it failed to do so. *Manti's Transp., Inc. v. C.T. Lines, Inc*., 68 A.D.3d 937, 940 (2d Dept. 2009). The NYAG's failure to adhere to the pleading requirements in circumstances such as these requires dismissal.

The Complaint makes no effort to differentiate between the sixteen defendants in the Complaint, leaving each defendant incapable of responding to its allegations. By way of example, the Complaint pleads the generic term "Defendants" over 90 times. Each of the Complaint's seven counts are directed to "All Defendants." Perhaps most troubling – the Complaint makes over 593 references to "Trump Organization," which the NYAG defines to include President Trump, Trump Organization LLC and the Trump Organization, Inc. and "other named entities." Compl. ¶ 1. Notably, Holdings is identified once in the Complaint (¶ 27) as a defendant and appears only once more (¶ 683).

This is exactly the type of trial-by-ambush that is simply not permitted, even under New York's liberal pleading standards. Here, the Complaint asserts seven counts each pleading some version of "repeated fraud and illegality" by the collective "Defendants." Compl. ¶¶ 755, 756, 760, 770, 773, 783, 787, 796, 799, 810, 813, 822, 825, 835, 838. However, the Complaint makes no effort to differentiate what conduct each individual defendant is alleged to have committed, what theory of liability applies to the alleged conduct, or how the elements of each claim apply to the alleged conduct.

V. THE NYAG'S CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE.

The Court should dismiss the complaint where, as here, the documentary evidence "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." S*ee Golia v. Vieira,* 162 A.D.3d 865, 867 (2d Dep't 2018). Dismissal is appropriate when, as here, documentary evidence "utterly refutes" the allegations in plaintiff's complaint, "conclusively

establishing a defense as a matter of law." *Himmelstein, et al. v. Matthew Bender & Co., Inc.*, 34 N.Y.3d 908(2021).

The Loan Agreements and related Guaranties are unambiguous, of undisputed authenticity, and are an undeniable record of the transactions at the center of this case, and the Court should accept these documents as documentary evidence.

A. Loan and Guaranty Agreements Establish Lack of Benefit to NY Entities.

The Loan Agreements show Holdings, OPO, 40 Wall and Seven Springs did not author any SoFC nor guarantee any obligation. The NYAG alleges – at most – that OPO, 40 Wall, and Seven Springs were borrowers in the 2013 OPO, 2015 40 Wall, and 2000 Seven Springs Transactions. The Loan Agreements conclusively demonstrate that the NY Entities did not provide SoFCs in connection with the loans. As such, documentary evidence utterly refutes any allegation by the NYAG that the NY Entities' conduct could give rise to liability under Executive Law § 63(12).

Documentary evidence appended to this Motion and the Complaint plainly establishes that a merger clause in the Loan Agreements renders parol evidence and extraneous communications immaterial to the transactions between two private parties. OPO Loan Agreement, Page 91 § 8.2; 40 Wall Loan Agreement Page 114 § 11.23; Seven Springs Loan Agreement, Page 17 § 8.16. Each lending transaction was made based on due diligence conducted by the lenders and professional appraisals ordered by each lender prior to making the loans. As a result, a claim against the NY Entities simply does not exist because they could not have made representations to the lender *after* entering their respective loan transactions that would have resulted in a "better interest rate" or below market terms. Further, the hundreds of pages describing alleged communications regarding

the loans, are merely parol evidence, and even if any are true, they are of no consequence to the loan agreements as finalized.

Additionally, the Loan Agreements make plain the NY Entities were not responsible for submitting guarantors' SoFCs to their lenders. The Guaranty associated with each loan has a no-inducement clause which states flatly and conclusively that it "is not relying upon" on the respective borrowers, Defendants OPO, 40 Wall and Seven Springs, for any "representation, warranty, agreement or condition, whether express or implied or written or oral." OPO Guaranty Page 9, ¶ 8; 40 Wall Guaranty Page 12 § 3.2. Seven Springs Guaranty Agreement, Page 1, ¶5. As such, The NYAG cannot plead or prove any conduct by OPO, 40 Wall, or Seven Springs could give rise to liability under Executive Law § 63(12).

Each Loan Agreement and the associated Guaranty make no mention of any "better interest rate" or other favorable terms. Since the transactions at issue are governed exclusively by these documents, it is not possible for the NYAG to proceed forward as her claims are contravened directly by their express terms.

B. <u>The Documentary Evidence Refutes NYAG'S Claim for Damages.</u>

The NYAG, in perhaps her most egregious pleading hyperbole, seeks damages by way of disgorgement of "all financial benefits obtained by each Defendant," which she estimates to be "$250,000,000." Compl. ¶ 25(i). Although the NYAG does not explain how she reaches this headline-grabbing sum, the Complaint does summarily posit that (i) "Mr. Trump and his operating companies obtained additional benefits from banks other than loan proceeds in the form of favorable interest rates that likely saved them more than $150 million;" and (ii) that the "Trump Organization" benefitted from the sale of its interests in the Old Post Office Hotel (Washington D.C.) in the amount of $100 million. Compl. ¶¶ 21-22.

This theory of damages is fatally flawed for two independent reasons. First, the documentary evidence plainly establishes that a benefit was not derived from the submission of the SoFCs. The Loan Agreements themselves do not require the submission of a SoFC as a condition precedent to the loan, and each contains a merger provision that vitiates the consideration of any considerations not encapsulated within the loan itself. OPO Loan Agreement, Page 91 § 8.2; 40 Wall Loan Agreement Page 114 § 11.23; Seven Springs Loan Agreement, Page 17 § 8.16.

The loan transactions were independently underwritten by each bank and based on appraisals commissioned by each lender. The guaranties, which themselves are in certain instances conditions precedent to the execution of each respective loan transaction, in turn disclaim that any benefit was received by the guarantor in exchange for executing the guaranty. OPO Guaranty Page 9, ¶ 8; 40 Wall Guaranty Page 12 § 3.2; Seven Springs Guaranty Agreement, Page 1, ¶5.

Nothing in the operative documents provides for a reduction in the interest rate or extension of "more favorable" loan terms because the guarantor subsequently provided a SoFC. Simply stated, the SoFCs were not part of the negotiated loan terms and do not form the basis for any benefit conferred on any of the NY Entities. As a result, documentary evidence plainly refutes the NYAG's sole basis for seeking disgorgement from any defendant.

Moreover, the NYAG's claim for damages fails to meet the most elementary pleading standard for giving notice to a defendant for the damages sought against them. Since the NYAG's claims under Executive Law §63 (12) are all based on fraud or deceit, she is required to plead her claim for damage independently against each defendant. The NYAG does not even attempt to plead her alleged disgorgement damages in any discernable manner. Under New York Law, "an action in deceit is based on fraud and damage, and both must concur for the action to lie, a classic statement of the rule being that neither fraud without damage nor damage without fraud is

sufficient to support such an action." See 60A N.Y. Jur. 2d Fraud and Deceit § 173; *see also Adelaide Productions, Inc. v. BKN Intern. AG*, 38 A.D.3d 221 (1st Dep't 2007) (finding plaintiff would be unable to prove damages in part because fraud allegations were too vague).

Accordingly, damage is an essential element of a cause of action pleaded based on fraud or deceit. *Starr Foundation v. AIG*, 76 A.D.3d 25(1st Dept. 2010). An action for "fraud must set forth the actual, out of pocket, pecuniary loss allegedly sustained because of its justifiable reliance on the defendants' purported misrepresentations." *Nager Electric Co., Inc. v. E.J. Electric Installation Co., Inc.*, 128 A.D.2d 846, 847(2d Dep't 1987)

Additionally, where a valid contract exists between the parties, equitable remedies such as disgorgement are not permitted. *See, e.g., IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142, 907 N.E.2d 268, 274 (2009) (barring disgorgement based on unjust enrichment "where the parties executed a valid and enforceable written contract governing a particular subject matter"); *People ex rel. Spitzer v. Applied Card Sys., Inc.,* 11 N.Y.3d 105, 125 (2008) (only suggesting Attorney General might seek disgorgement where ill-gotten gains had been derived from "all New York consumers"). Here, the underlying relationships giving rise to the alleged claim for disgorgement are all governed by complex, detailed agreements *(i.e.*, Loan Agreements). The NYAG cannot possibly recover equitable damages under this circumstance.

C. Explicit Disclaimers in the SOFCs Utterly Refute Possibility of Reliance by the Sophisticated Lenders.

The explicit disclaimer language set forth in the SoFCs forecloses the NYAG from claiming that the financial institutions reasonably relied in any material way on the information contained in the SoFCs. *See e.g., HSH Nordbank AG v. UBS AG,* 95 A.D.3d 185 (1st Dep't 2012).

The plain language of the SoFCs makes it clear to any recipient, especially sophisticated loan officers, loan committees, underwriters, and their financially astute expert advisors, that the

SoFCs are not audited reports, and as such the support for the valuations set forth therein have not been independently verified. Specifically, each SoFC is prominently identified as a "compilation report," which, under standard accounting practice means that it is an unaudited statement that relies on information presented by Defendants without any assurance from Mazars regarding the accuracy of the financial statements or their conformity with generally accepted accounting principles.

VI. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS.

First, the NYAG has violated the NY Entities' constitutional right to equal protection of the laws. Defendants have been singled out and subject to selective treatment by the NYAG, and the NYAG's selective treatment of the NY Entities is a byproduct of her personal and political animus towards them. The NYAG's violation of the Equal Protection Clause is so pervasive that it warrants the dismissal of an enforcement action "[e]ven though the party raising the unequal protection claim may well have been guilty of violating the law." *Matter 303 West 42nd v. Klein*, 46 N.Y.2d 686, 694 (N.Y. 1979) (citations omitted).

Second, the NYAG has failed to adequately plead that NY Entities' conduct tended to deceive or created an atmosphere conducive to fraud under Executive Law § 63(12). Given the novel way the NYAG is invoking Exec. Law § 63(12) in the instant action, practical application of the law dictates that both reliance and scienter must be shown for the NYAG to maintain a valid cause of action against the NY Entities. The NYAG cannot plead and prove that NY Entities' conduct had the capacity or tendency to deceive sophisticated financial institutions because each and every institution had a duty to investigate the "total mix" of available information relative to the transactions at issue.

Third, the NYAG has failed to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the SoFCs were improperly inflated. To adequately plead a claim, the NYAG must come forward with facts supported by a qualified expert, who "should possess the requisite skill, training, education knowledge or experience from which it can be assumed that the opinion rendered is reliable." *Schechter v. 3320 Holding LLC*, 64 A.D.3d 446, 449 (citation omitted).

Fourth, even if the Court determines the NYAG is empowered to intervene in private transactions, documentary evidence shows that the Executive Law § 63(12) fraud claim is precluded. The NYAG's entire fraud theory is based on conduct that at best, amounts to nothing more than a non-material breach of financial reporting obligations under the limited guaranties executed in connection with the subject Loan Agreements. At the outset, it is paramount to understand that the subject Loans were mortgage loans and were secured—and, in fact, greatly over-secured—by the value of the property underlying each of the individual Loans. These guaranties merely provided the lender with limited rights against the guarantor under limited circumstances, which rights were virtually meaningless in terms of the security and value of the loan given the underlying LTV (loan-to-value ratio) of each of the subject loans. Such a non-material breach cannot form the basis of a viable fraud claim.

Fifth, the Complaint also fails to state a civil-conspiracy claim under the intracorporate conspiracy doctrine. The Foreign Entities cannot be a member of a conspiracy comprised solely of the Trump Organization and its officers, directors, and employees. Under the intracorporate conspiracy doctrine, "officers, agents and employees of a single corporate entity are legally incapable of conspiring together." *Chamberlain v. City of White Plains*, 986 F. Supp. 2d 363, 388 (S.D.N.Y. 2013). New York recognizes the intracorporate conspiracy doctrine. *See Lilley v.*

Green Cent. Sch. Dist., 187 A.D.3d 1384, 1389 (2d Dep't 2020) (invoking doctrine to dismiss conspiracy claims against employees of same entity).

CONCLUSION

For the reasons set forth above, the NYAG's Complaint should be dismissed in its entirety.

Dated: November 21, 2022
New York, New York

/s/ Christopher M. Kise
CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for DJT Holdings LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
(908) 869-1188
Counsel for DJT Holdings LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 6,887 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: November 21, 2022
New York, New York

/s/ Christopher M. Kise
CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for DJT Holdings LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

MEMORANDUM OF LAW OF FOREIGN ENTITY DEFENDANTS (I) THE DONALD J. TRUMP REVOCABLE TRUST; (II) DJT HOLDINGS MANAGING MEMBER; (III) TRUMP ENDEAVOR 12 LLC; AND (IV) 401 NORTH WABASH VENTURE LLC IN SUPPORT OF MOTION TO DISMISS COMPLAINT

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120

CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTRODUCTION 1
STATEMENT OF FACTS 3
ARGUMENT 4
I. THE COURT LACKS PERSONAL JURISDICTION OVER THE DONALD J. TRUMP REVOCABLE TRUST, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, AND 401 NORTH WABASH VENTURE LLC. 4
A. The Court Lacks General Personal Jurisdiction 4
B. The Court Lacks Specific Personal Jurisdiction 8
1. CPLR 302(a)(1) – Transacting Business 8
2. CPLR 302(a)(2) and (a)(3) – Tortious Act(s) 9
3. CPLR 302(a)(4) – Real Property in New York 10
C. Due Process Clause of the Fourteenth Amendment 11
II. THE NYAG LACKS STANDING TO BRING THIS ACTION. 11
III. THE NYAG LACKS CAPACITY TO BRING THIS ACTION. 12
IV. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS. 13
V. THE NYAG FAILS TO PLEAD A CAUSE OF ACTION 14
A. The Complaint Fails to Give Notice to Each Defendant of the Claims Against It. 14
VI. THE NYAG CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE. 15
A. The Loan Agreements Establish the Foreign Entities Were Not Required to Submit SoFC. 16
B. The Documentary Evidence Refutes the NYAG's Claim for Damages 17
C. Explicit Disclaimer Language in the SoFC are Documentary Evidence that Foreclose Plaintiff's Claims. 19
VII. THE TRUST IS AN IMPROPER PARTY AND MUST BE DISMISSED 20
VIII. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS. 20
CONCLUSION 22

TABLE OF AUTHORITIES

Cases

Adelaide Productions, Inc. v. BKN Intern. AG,
38 A.D.3d 221 (1st Dep't 2007) 19
Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.,
84 A.D.2d 736 (1st Dep't 1981) 14
Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez,
458 U.S. 592, 607 (1982) 12
Aybar v. Aybar,
37 N.Y.3d 274, 288–289 (2021) 4, 5, 6
BAC Home Loan Servicing, L.P. v. Berardi,
46 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2015) 20
Blockchain Luxembourg S.A. v. Paymium, SAS,
2019 WL 4199902 11
Brown v. Lockheed Martin Corp.,
814 F.3d 619 (2d Cir. 2016) (citing *Daimler*, 571 U.S. at 139 n.19) 5
Chamberlain v. City of White Plains,
986 F. Supp. 2d 363, 388 (S.D.N.Y. 2013) 22
Charleston Homeowners Ass'n, Inc. v. Masucci,
No. 151743/2017, 2018 WL 3396691 20
Community Bd. 7 of Borough of Manhattan v. Schaffer,
84 N.Y.2d 148, 155 (1994) 12
Courtroom Tel. Network v. Focus Media,
264 A.D.2d 351, 353 (1st Dept. 1999) 9
Daimler AG v. Bauman,
571 U.S. 117, 139 n.20 (2014) 5
Ehrenfeld v. Bin Mahfouz,
9 N.Y.3d 501, 511 (2007) 9
Fernandez v. Daimler-Chrysler,
A.G., 143 A.D.3d 765, 766 (2d Dept. 2016) 5
Golia v. Vieira,
162 A.D.3d 865, 867 (2d Dep't 2018) 16

High Tides, LLC v. DeMichele,
88 A.D.3d 954, 957 (2d Dept. 2011) 13
Himmelstein, et al. v. Matthew Bender & Co., Inc.,
34 N.Y.3d 908(2021) 16
HSH Nordbank AG v. UBS AG,
95 A.D.3d 185 (1st Dep't 2012) 20
IDT Corp. v. Morgan Stanley Dean Witter & Co.,
12 N.Y.3d 132, 142, 907 N.E.2d 268, 274 (2009) 19
Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement,
326 U.S. 310 (1945) 4
Jiang v. Z & D Tour, Inc.,
75 Misc. 3d 583, 591 (N.Y. Sup. Ct. 2022) 5, 7, 11
Lancaster v. Colonial Motor Freight Line, Inc.,
177 A.D.2d 152, 159 (1st Dep't 1992) 10
Lilley v. Green Cent. Sch. Dist.,
187 A.D.3d 1384, 1389 (2d Dep't 2020) 22
Liveo v. Hausman,
61 Misc. 3d 1043, 1044 (N.Y. Sup. Ct. 2018) 20
Matter 303 West 42nd v. Klein,
46 N.Y.2d 686, 694 (N.Y. 1979) 21
Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.,
5 N.Y.3d 36, 41 (2005) 13
McGowan v. Smith,
52 NY2d, 268, 272 (1981) 7
MDG Real Est. Glob. Ltd. v. Berkshire Place Assocs., LP,
513 F. Supp. 3d 301, 307 (E.D.N.Y. 2021) 9
Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC,
155 A.D.3d 1218, 1220 (3d Dep't 2017) 14

Minholz v. Lockheed Martin Corp.,
227 F. Supp. 3d 249, 259 (N.D.N.Y. 2016) 6
Motorola Credit Corp. v. Standard Chartered Bank,
24 N.Y.3d 149, 160 (2014) 5, 6
Nager Electric Co., Inc. v. E.J. Electric Installation Co., Inc.,
128 A.D.2d 846, 847(2d Dep't 1987) 19
Natixis Real Estate Capital Tr. 2007-HE2 v. Natixis Real Estate Holdings, LLC,
149 A.D.3d 127, 132 (1st Dep't 2017) 20
People ex rel. Spitzer v. Grasso,
54 A.D.3d 180, 198 (1st Dep't 2008) 12
People v. Domino's Pizza, Inc, et al,
Index No. 450627/2016, NYSCEF No. 505 (Sup. Ct. New York County Jan. 5, 2021).. 12
Pichardo v. Zayas,
122 A.D.3d 699 (2d Dept. 2014) 5
Powers v. Centr. Therapeutics Mgmt., LLLP,
Index No. 652844/2016 (N.Y. Sup. Ct. 2018) 8
Roth v. El Al Israel Airlines, Ltd.,
709 F. Supp. 487, 490 (S.D.N.Y. 1989) 9
Schechter v. 3320 Holding LLC,
64 A.D.3d 446, 449 21
Silver v. Pataki,
96 N.Y.2d 532, 537 (2001) 12
Society of Plastics Indus. v County of Suffolk,
77 N.Y.2d 761, 772 (1991) 12
Starr Foundation v. AIG,
76 A.D.3d 25(1st Dept. 2010) 19
State v. Daicel Chem. Indus., Ltd.,
42 A.D.3d 301, 302 (1st Dep't 2007) 14

State v. First Abu Dhabi Bank PJSC,
75 Misc. 3d 462, 465–66 (N.Y. Sup. Ct. 2022) 11
Stewart v. Volkswagen of Am., Inc.,
81 N.Y.2d 203 (1993) 4
Stewart, 81 N.Y.2d at 203; *see also Eng. v. Avon Prod., Inc.*,
206 A.D.3d 404, 405 (2022) 7
Taxi Medallion Loan Tr. III v. Brown Eyes Cab Corp.,
206 A.D.3d 486, 487 (2022) 9
VXI Lux Holdco S.A.R.L. v. SIC Holdings, LLC,
171 A.D.3d 189, 193(2019) 16
Whitcraft v. Runyon,
123 A.D.3d 811, 812 (2014) 8
Williams v. Beemiller, Inc.
33 N.Y.3d 523, 528 (2019) 8, 11
Yousef v. Al Jazeera Media Network,
2018 WL 1665239 7

Other Authorities

60A N.Y. Jur. 2d Fraud and Deceit § 173 19

Rules and Statutes

CPLR § 213(9), ... 13
CPLR § 301 4
CPLR § 302 8
CPLR § 302(a)(1) 8
CPLR § 302(a)(2) 10
CPLR § 302(a)(1)-(3) 8
CPLR § 302(a)(2) and (a)(3) 9
CPLR § 302(a)(4) 10
Executive Law § 63(12) 2, 11, 16, 21

Defendants The Donald J. Trump Revocable Trust (the "Trust"), DJT Holdings Managing Member ("HMM"), Trump Endeavor 12 LLC ("TE12"), 401 North Wabash Venture LLC ("401 Wabash")(collectively, the "Foreign Entities") hereby move to dismiss the New York Attorney General's ("NYAG") Verified Complaint ("Complaint" or "Compl.") and expressly incorporate all arguments set forth in the memorandums of law submitted by (i) Allen Weiselberg and Jeffrey McConney; (ii) Eric Trump and Donald Trump Jr.; (iii) Trump Organization, Inc., Trump Organization LLC and Donald J. Trump ("President Trump"); (iv) Ivanka Trump; (v) DJT Holdings LLC ("Holdings"), Trump Old Post Office LLC ("OPO") , 40 Wall Street LLC ("40 Wall"), and Seven Springs LLC ("Seven Springs")(the "NY Entities"), and submit this Memorandum of Law in support.

INTRODUCTION

The NYAG's complaint spends over 600 paragraphs clumsily attempting to recharacterize decades of business transactions between highly sophisticated parties, only to succeed in establishing that she cannot plead a claim. The Complaint establishes the Trump Organization operates a wildly successful multinational real estate and licensing empire. The Complaint also establishes the Trump Organization has not defaulted on a loan or even been late on a loan payment during the sweeping 15+ years that the NYAG has attempted to scrutinize. The Complaint also reveals the Trump Organization is fiscally conservative, does not carry much debt, and is able to borrow at competitive market rates because of the enviable quality of its trophy assets.

The NYAG's alleged claims against the Foreign Entities arise from a series of discrete loan transactions:

1. **The Doral Loan:** On June 11, 2012, DeutscheBank made a $125 million loan to Defendant TE12, collateralized by its interests in the Trump National Golf Club Doral, a luxury resort and golf club in Doral, Florida. *See* Compl. ¶587. (¶¶ 571-600). The loan is associated with a Guaranty dated June 11, 2012. A copy of the

Doral Loan Agreement and related Guaranty are attached as **Exhibit 3** (the "2012 Doral Transaction") of the Affirmation of Alina Habba (the "Habba Aff.").

2. **The Chicago Loan:** On November 9, 2012, DeutscheBank made a $98 million loan to Defendant 401 Wabash, collateralized by certain hotel, retail and condominium units that formed part of the Trump Chicago. *See* Compl. ¶¶601, 614 (¶¶601-620). The loan is associated with an Amended and Restated Guaranty dated June 2, 2014. A copy of the Chicago Loan Agreement and related Guaranty are attached as Habba Aff., **Ex. 4** (the "2012 Chicago Transaction").

Five counts alleged in the Complaint pursuant to Executive Law § 63(12) are predicated on the participation by each Foreign Entity in the discrete transactions described above, plus vaguely described insurance applications (Compl. ¶ 678-691, describes an application to "one of those insurers", Zurich North America) and a renewal of a Directors & Officers insurance policy (Compl. ¶¶ 692-714) [1]. Not a single claim survives dismissal for numerous reasons.

First, the Court lacks personal jurisdiction over the Trist. HMM, TE12 and 401 Wabash.

Second, the NYAG lacks standing to plead a claim.

Third, the NYAG lacks capacity to plead a claim.

Fourth, the NYAG's claims against the Foreign Entities are time barred.

Fifth, the Complaint must be dismissed for failure to state a claim. The NYAG attempts to lump together the alleged conduct of "all defendants" with a generic use of the term "Trump Organization" over 590 times and "defendants" over 90 times.

Sixth, documentary evidence appended to this Motion and the Complaint plainly establishes that a merger clause in the Loan Agreements[2] renders parol evidence and extraneous

[1] The NYAG also relies on four other transactions that are addressed in the NY Entities' Memorandum in Support of their Motion to Dismiss: (i) 2000 Seven Springs Transaction (Habba Aff., **Ex. 1**); (ii) 2010 Park Avenue Transaction (Habba Aff., **Ex. 2**); (iii) 2013 OPO Transaction (Habba Aff., **Ex. 5**); and (iv) 2015 40 Wall Transaction (Habba Aff., **Ex. 6**). The Foreign Entities adopt and incorporate their arguments by reference.

[2] The term "Loan Agreements" generally refer to the loan documents attached to this Memorandum with respect to each of the Foreign Entities.

communications immaterial to the transactions between two private parties. Additionally, the Loan Agreements make plain the Foreign Entities were not responsible for submitting guarantors' Statements of Financial Condition ("SoFC") to their lenders. Even more, the guaranties themselves confirm that the guarantor was not in any way induced or conferred any benefit in exchange for providing the guaranty.

Seventh, even if the Court had jurisdiction over the Trust, NYAG has improperly named the Trust as a Defendant because any action against the Trust must be through its Trustee.

Eighth, the Complaint must be dismissed for a number of other reasons, including (i) a violation of the Foreign Entities' constitutional right to equal protection under the laws; (ii) failure to adequately plead that the Foreign Entities' conduct tended to deceive, or created an atmosphere conducive to fraud under Executive Law § 63(12); (iii) failure to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the appraisals were improperly inflated; and (iv) failure to state a civil-conspiracy claim under the intracorporate conspiracy doctrine

Despite the NYAG's expansive Complaint, she fails to identify a single party or interest that has been harmed by any alleged conduct. She also fails to articulate a theory of liability against any Foreign Entity or how any specific Foreign Entity has benefitted from its own alleged wrongful conduct. The Complaint therefore must be dismissed.

STATEMENT OF FACTS

In the interest of brevity, the relevant facts and procedural history are recited at length in the Affirmation of Alina Habba (the "Habba Aff."), annexed hereto.

ARGUMENT

I. THE COURT LACKS PERSONAL JURISDICTION OVER THE DONALD J. TRUMP REVOCABLE TRUST,[3] DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, AND 401 NORTH WABASH VENTURE LLC.

The Supreme Court's decision in *Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement* crystallized the two categories of personal jurisdiction: general or all-purpose jurisdiction, and specific or case-linked jurisdiction. 326 U.S. 310 (1945). "The former permits a court to exercise jurisdiction over a defendant in connection with a suit arising from events occurring anywhere in the world, whereas the latter permits a court to exercise jurisdiction only where the suit arises out of or relates to the defendant's contacts with the forum state." *Aybar v. Aybar,* 37 N.Y.3d 274, 288–289 (2021).

A. The Court Lacks General Personal Jurisdiction.

The Court lacks general personal jurisdiction over the Trust, TE12, HMM, and 401 Wabash because the Complaint fails to allege general personal jurisdiction, and in any event, the entities are settled or maintain their principal places of business and are incorporated outside of New York. Plaintiff bears the ultimate burden of demonstrating "satisfaction of statutory and due process prerequisites" to the exercise of general personal jurisdiction over defendants. *Stewart v. Volkswagen of Am., Inc.,* 81 N.Y.2d 203 (1993). Under CPLR § 301, "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." This section preserves the power of the New York courts to exercise general personal jurisdiction. *See Pichardo v. Zayas*, 122 A.D.3d 699 (2d Dept. 2014). However, any exercise of such jurisdiction

[3] Although the Trust also moves to dismiss on the basis that it was improperly named a defendant in this action, the Trust also moves to dismiss for lack of personal jurisdiction because it is settled under Florida law, its Trustee is a Florida resident, and it is not otherwise subject to the jurisdiction of the Court.

over a foreign corporation under CPLR 301 must comport with due process requirements. *Fernandez v. Daimler-Chrysler, A.G.*, 143 A.D.3d 765, 766 (2d Dept. 2016). "[G]eneral personal jurisdiction over a foreign corporation exists only if the corporation is essentially 'at home' in the forum state typified by the place of incorporation and principal place of business." *Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149, 160 (2014).

General personal jurisdiction may not be exercised solely by virtue of a company registering to do business and appointing an agent for service of process in New York. *See Aybar*, 169 A.D.3d at 152 ("asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, would be 'unacceptably grasping' under *Daimler*."); *Jiang v. Z & D Tour, Inc.*, 75 Misc. 3d 583, 591 (N.Y. Sup. Ct. 2022) (same). "A corporation that operates in many places can scarcely be deemed at home in all of them." *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.20 (2014).

Following *Daimler*, "when a corporation is neither incorporated nor maintains its principal place of business in a state, mere contacts, no matter how 'systematic and continuous,' are extraordinarily unlikely to add up to an 'exceptional case.'" *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016) (citing *Daimler*, 571 U.S. at 139 n.19). Thus, despite New York's long-arm statute, which will be addressed below, "[f]rom *Daimler*, the proposition emerged that it would be inconsistent with due process to exercise general jurisdiction where a plaintiff has not alleged that [the defendant] is headquartered or incorporated in New York, nor has it alleged facts sufficient to show that [the defendant] is otherwise at home in New York." *Minholz v. Lockheed Martin Corp.*, 227 F. Supp. 3d 249, 259 (N.D.N.Y. 2016) (quotation omitted).

Here, the NYAG's allegations illustrate why its feeble attempt to plead personal jurisdiction as to the Trust, HMM, TE12, and 401 Wabash should fail. The NYAG has not alleged facts sufficient to show they are otherwise "at home" in New York. *Motorola Credit Corp.*, 24 N.Y.3d at 160. Indeed, the NYAG properly alleges general personal jurisdiction for several of the Defendants. *See, e.g.*, Compl. ¶ 27(b) ("Defendant Trump Organization LLC, a limited liability company doing business in the State of New York with a principal place of business in New York, NY."); ¶ 27(c) ("Defendant DJT Holdings LLC, a Delaware limited liability company with a principal place of business in New York, NY."); ¶ 28(c) ("Defendant Trump Old Post Office LLC, a Delaware limited liability company with its principal place of business in New York, NY."); 28(d) ("Defendant 40 Wall Street LLC, a New York Limited Liability Corporation . . . ."); ¶ 28(e) ("Respondent Seven Springs LLC is a New York limited liability company . . . ."). But it fails to do so for HMM, TE 12 and 401 Wabash. *See, e.g.*, Compl. ¶ 27(d) ("Defendant DJT Holdings Managing Member, a Delaware limited liability company registered to do business in New York, NY"); ¶ 28(a) ("Defendant Trump Endeavor 12 LLC, a Delaware limited liability company registered to do business in New York, NY."); ¶ 28(b) ("Defendant 401 North Wabash Venture LLC, a Delaware limited liability company that operates out of the Trump Organization offices in New York, NY.").

A corporation is not subject to personal jurisdiction solely by virtue of being registered to do business in New York. *See Aybar*, 169 A.D.3d at 152. Moreover, the allegation that 401 Wabash "operates out of the Trump Organization offices in New York" does not overcome the plaintiff's burden to plead personal jurisdiction, because it lacks the "satisfaction of statutory and due process prerequisites" to the exercise of general personal jurisdiction over defendants. *Stewart,* 81 N.Y.2d at 203; *see also Eng. v. Avon Prod., Inc.*, 206 A.D.3d 404, 405 (2022) (no

general personal jurisdiction alleged where defendant "maintained a New York office from which it conducted its marketing activities," which was also its "headquarters for its International Division," despite its principal place of business being in New Jersey); *cf*. *Jiang*, 75 Misc. 3d at 589 (New Jersey corporation with brick-and-mortar office in New York subject to general personal jurisdiction because it had "entrenched itself so deeply" in New York that it engaged with the local municipality to obtain rights and privileges like advertising and it maintained a "major hub" for bus transport). The analysis is no different if viewed through the lens of a parent-subsidiary relationship. *See, e.g.*, *Yousef v. Al Jazeera Media Network*, 2018 WL 1665239, at *6 (S.D.N.Y. Mar. 22, 2018) (holding foreign parent corporation of New York subsidiary was not "at home"). The Trust, HMM, TE12, and 401 Wabash are thus not "engaged in such a continuous and systematic course of doing business [] as to warrant a finding of [their] presence in this jurisdiction." *McGowan v. Smith*, 52 NY2d, 268, 272 (1981) (quotations omitted).

Specific to the Trust, the NYAG alleges it is a "trust created under the laws of New York." Compl. ¶ 30. Exhibit 2 to the Complaint further identifies the Trust as a "New York grantor trust." *See* Compl. at Ex. 2. The Complaint, however, conveniently fails to note the Trust was re-settled in Florida in 2017. *See* Certificate of Trust attached as Habba Aff., **Ex. 7**. Moreover, its sole Trustee, Donald Trump, Jr., is a Florida resident and is thus, not "at home" in New York, despite the Complaint not alleging where the Trustee is domiciled. Thus, the Complaint fails to properly allege a *prima facie* case of general personal jurisdiction over the Trust. Indeed, the Complaint's allegations vis-à-vis the Trust lack any nexus to the state of New York. Accordingly, the Court lacks general jurisdiction over the Trust, HMM, TE12, and 401 Wabash.

B. The Court Lacks Specific Personal Jurisdiction.

The Court lacks specific personal jurisdiction over the Trust, HMM, TE12, and 401 Wabash because they have not transacted business in New York or committed a tortious act affecting New York; indeed, the Complaint does not allege a tort was committed. "[A] New York court may not exercise personal jurisdiction over a non-domiciliary unless two requirements are satisfied: the action is permissible under the long-arm statute (CPLR 302) and the exercise of jurisdiction comports with due process." *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 528 (2019). "If either the statutory or constitutional prerequisite is lacking, the action may not proceed." *Id*. To satisfy the New York long-arm statute, one of three criteria pursuant to CPLR 302 must be met. *See* CPLR 302(a)(1)-(3).

1. CPLR 302(a)(1) – Transacting Business

Under CPLR 302(a)(1), New York courts can exercise personal jurisdiction over any non-domiciliary who in person or through his agent "transacts any business within the state or contracts anywhere to supply goods or services in the state." "Purposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Whitcraft v. Runyon*, 123 A.D.3d 811, 812 (2014) (quotations omitted) (finding no personal jurisdiction because Colorado defendant did not purposefully transact business in New York by e-mailing with New York plaintiff). Notably, "Mere relatedness and common ownership i[s] not sufficient for finding agency for jurisdictional purposes." *Powers v. Centr. Therapeutics Mgmt., LLLP*, Index No. 652844/2016 (N.Y. Sup. Ct. 2018), NYSCEF No. 163 at 19.

Specific to contracts under CPLR 302(a)(1), the Complaint does not allege any of the agreements were negotiated, executed, or delivered in New York. *Cf. Taxi Medallion Loan Tr. III*

v. Brown Eyes Cab Corp., 206 A.D.3d 486, 487 (2022). Moreover, if any contract(s) were negotiated outside New York, to base jurisdiction on such a contract would require that the contract "send goods [or services] specifically into New York." *MDG Real Est. Glob. Ltd. v. Berkshire Place Assocs., LP*, 513 F. Supp. 3d 301, 307 (E.D.N.Y. 2021). The Complaint is devoid of any such allegation.

Further, the Complaint does not allege the Trust, HMM, TE12, or 401 Wabash transacted business in New York. *See* Compl. ¶¶ 571-601 (TE12); ¶¶ 601-620 (401 Wabash). Indeed, there are no substantive allegations against HMM. TE12 and 401 Wabash should not be subject to personal jurisdiction in this Court solely because they "received loans at issue in this action," Compl. ¶ 27(d), especially given there is no allegation the loans have any relation to the state of New York. In any event, "[t]he mere receipt by a nonresident of a benefit or profit from a contract performed by others in New York is clearly not an act by the recipient in this State sufficient to confer jurisdiction under our long-arm statute." *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 511 (2007); *Courtroom Tel. Network v. Focus Media,* 264 A.D.2d 351, 353 (1st Dept. 1999) ("[A] passive buyer of a New York . . . service" would not be subject to this State's jurisdiction). As far as the Trust, as the Complaint recognizes, it merely owns an interest in entities that own property all over the world. *See* Compl. ¶ 30.

The NYAG asks the Court to make a litany of assumptions in its favor to establish personal jurisdiction. Accordingly, personal jurisdiction under CPLR 302(a)(1) is inappropriate.

2. <u>CPLR 302(a)(2) and (a)(3) – Tortious Act(s)</u>

"Section 302(a)(2) requires that the tort be committed in New York and defendant must actually be in New York when the tort is committed." *Roth v. El Al Israel Airlines, Ltd.*, 709 F. Supp. 487, 490 (S.D.N.Y. 1989). Because there is no allegation the Trust, HMM, TE12, or 401

Wabash were physically present in New York when a tort was committed, specific personal jurisdiction under 302(a)(2) fails. Regarding tortious acts committed outside New York under CPLR 302(a)(3), a court can exercise personal jurisdiction over a nondomiciliary when the nondomiciliary commits a tortious act outside of New York which causes injury to person or property in New York.

The Trust (settled in Florida), HMM, TE12, and 401 Wabash do not regularly do business in New York; indeed, the Trust owns an interest in entities that own property all over the world; TE12 and 401 Wabash operate resorts *outside* New York; and there are no substantive allegations against HMM. Moreover, there is no allegation that any of these entities committed a tortious act at all, much less one that touched and concerned New York.

3. CPLR § 302(a)(4) – Real Property in New York

CPLR 302(a)(4) provides for jurisdiction where a defendant owns, uses, or possesses real property within New York. There must also be "a relationship between the property and the cause of action sued upon." *Lancaster v. Colonial Motor Freight Line, Inc.*, 177 A.D.2d 152, 159 (1st Dep't 1992). Here, there is no allegation HMM, TE12, or 401 Wabash owned, used, or possessed real property in New York. Indeed, the real properly owned by these entities is in Florida (TE12) and Illinois (401 Wabash). *See* Compl. ¶ 587 (TE12 obtained loan for purchase of Doral, FL property); ¶ 606 (401 Wabash obtained loan for purchase of Chicago, IL property). There is no allegation that HMM owns any real property whatsoever.

As to the Trust, the Complaint is entirely devoid of any allegation that any of it or its Trustees' actions occurred in or had any effect on the state of New York. For instance, the Complaint alleges the trustees "certified the accuracy of the Statement of Financial Condition in connection with the Trump Chicago loans . . . ." Compl. ¶ 620. It further describes purported

insurance fraud in connection with political undertakings in Washington, D.C. *See* Compl. ¶ 705. None of these allegations are tied to actions in New York.

C. Due Process Clause of the Fourteenth Amendment

Due process requires "that the maintenance of the suit not offend traditional notions of fair play and substantial justice," *Williams,* 33 N.Y.3d at 528, and the exercise of jurisdiction must be "reasonable under the particular circumstances of the case." *Blockchain Luxembourg S.A. v. Paymium, SAS*, 2019 WL 4199902, *4 (S.D.N.Y. 2019); *State v. First Abu Dhabi Bank PJSC, 75 Misc*. 3d 462, 465–66 (N.Y. Sup. Ct. 2022) (finding that due process was violated where defendant corporation did not conduct business in New York, operate offices in New York, or have any employees in New York).

The Trust, HMM, TE12, and 401 Wabash have not availed themselves of New York law for any purpose. Indeed, the allegations against them do not reflect a "continuous and systematic nature of . . . conduct within the state." *Jiang*, 75 Misc. 3d 583, 590. Unlike the bus operator that held itself out as a New York corporation in *Jiang*, the Trust, HMM, TE12, and 401 Wabash do not conduct business in New York. TE12 and 401 Wabash are responsible for the management of real property in states *other than* New York. *See* Compl. ¶ 28(a) (TE12 owns resort property in Doral, FL); ¶ 28(b) (401 Wabash owns Trump International Hotel and Tower in Chicago, IL). TE12 and 401 Wabash lack any contact—let alone minimum contacts—with the state of New York.

II. THE NYAG LACKS STANDING TO BRING THIS ACTION.

Executive Law § 63(12) does not automatically confer the requisite standing to maintain this action. Statutes authorize particular causes of action, they do not and cannot confer the requisite standing. The NYAG, "like all other parties to actions, must show an interest in the subject-matter of the litigation to entitle [her] to prosecute a suit and demand relief." *People ex rel.*

Spitzer v. Grasso, 54 A.D.3d 180, 198 (1st Dep't 2008). Accordingly, the NYAG must establish *parens patriae* standing.

"To bring a *parens patriae* action, the NYAG must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties …'" *People ex rel. Spitzer v. H & R Block, Inc.*, 847 N.Y.S.2d 903, 907 (Sup. Ct. New York County 2007) (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592, 607 (1982)).

The Complaint fails to identify any quasi-sovereign interest it seeks to vindicate on behalf of the People. All of the alleged activities concern the internal affairs and management of the Foreign Entities and their owners/operators, and private contractual matters between the Foreign Entities and sophisticated corporate counter parties. Thus, even if the Foreign Entities had engaged in the activities alleged by the NYAG (which they did not), those would not be matters of public interest. *See e.g.*, *People v. Domino's Pizza, Inc, et al*, Index No. 450627/2016, NYSCEF No. 505 at 26 (Sup. Ct. New York County Jan. 5, 2021)(finding such commercial disputes "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception.").

III. THE NYAG LACKS CAPACITY TO BRING THIS ACTION.

The NYAG also lacks the requisite capacity to maintain this action. "Although courts often use the terms interchangeably, the concepts of capacity to sue and standing are distinct." *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 155 (1994); *see also Silver v. Pataki*, 96 N.Y.2d 532, 537 (2001) ("Standing and capacity to sue are related, but distinguishable, legal concepts."). Standing is "designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome" so as to cast the controversy "in a form traditionally capable of judicial resolution." *Id.* (quoting *Society of Plastics Indus. v County of Suffolk*, 77

N.Y.2d 761, 772 (1991)). Capacity to sue is a "a threshold question involving the authority of a litigant to present a grievance for judicial review." *Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.*, 5 N.Y.3d 36, 41 (2005).

IV. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Claims outside the statute of limitations should be dismissed. For years, the statute of limitations on fraud claims arising under § 63 (12) was three years. The court in *People v. Credit Suisse* explained that the statute of limitations for an action under § 63(12) could potentially reach six years for claims based on common law fraud, but not for claims based on statutory fraud. 31 N.Y. 3d 622, 633 (2018). In August 2019, the legislature amended CPLR 213—adding a new subsection, 213(9)—In 2018, the Court of Appeals confirmed that where, as here, a §63(12) fraud claim does not allege every element of common-law fraud, a three-year statute of limitations applies. *Credit Suisse*, 31 N.Y.3d at 632-33. In August 2019, the legislature amended CPLR 213—adding a new subsection, 213(9)—to create a new six-year period for § 63(12) claims. *See* S.B. S6536, 2019-2020 Leg. Sess.

Here it is undisputable the NYAG's claims are not at all based on common law fraud elements, as no such elements are pled in the Complaint. "The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages.'" *High Tides, LLC v. DeMichele*, 88 A.D.3d 954, 957 (2d Dept. 2011). None of these elements are pled in the Complaint. *See* NYSCEF No. 38 at 13 ("Neither an intent to defraud nor reliance need be shown."); NYSCEF No. 183 at 6-7 ("Good faith or lack of fraudulent intent is not an issue.").

CPLR § 213(9) does not apply retroactively. Nothing in the August 2019 amendment's text "unequivocally convey[s] the aim of reviving claims." *Id.* The legislature provided that the

amendment was to "take effect immediately," S.B. S6536 § 2, and courts routinely recognize that this precatory language does not support retroactivity. *See*, *e.g.*, *State v. Daicel Chem. Indus., Ltd.*, 42 A.D.3d 301, 302 (1st Dep't 2007) ("Language in [a] statute that it shall 'take effect immediately' does not support retroactive application."). Construing CPLR 213(9) to apply retroactively to the Defendants would violate federal and state Due Process Clauses. Therefore, the three-year statute of limitations applies to non-common law claims that accrued before enactment of CPLR 213(9).

The Complaint, with respect to the NY Entities, is premised on transactions that are thus time barred because they took place between 2000 and 2015, and the applicable limitations period expired well before the adoption of CPLR § 213(9) in 2019. *See* Compl. ¶¶ 654-661 (the 2000 Seven Springs Transaction); ¶¶ 82-112 (the 2010 Park Avenue Transaction); ¶¶ 621-646 (the 2013 OPO Transaction); ¶¶ 647-653 (the 2015 40 Wall Transaction).

V. THE NYAG FAILS TO PLEAD A CAUSE OF ACTION.

Where a complaint fails to give notice of the "material elements of [a] cause of action" supported by statements that are "sufficiently particular to give the court and the parties notice," it should be dismissed. *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 155 A.D.3d 1218, 1220 (3d Dep't 2017). This applies with even greater force where a complaint names multiple defendants without alleging "the precise" conduct charged to a particular defendant and pleads all of its "causes of action . . . against all defendants collectively." *Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co*., 84 A.D.2d 736 (1st Dep't 1981).

A. The Complaint Fails to Give Notice to Each Defendant of the Claims Against It.

The Complaint makes no effort to differentiate between the sixteen defendants in the Complaint, leaving each defendant incapable of responding to its allegations. By way of example,

the Complaint pleads the generic term "Defendants" over 90 times. Each of the Complaint's seven counts are directed to "All Defendants." Perhaps most troubling – the Complaint makes over 593 references to "Trump Organization," which Plaintiff defines to include President Trump, Trump Organization LLC and the Trump Organization, Inc. and "other named entities." Compl. ¶ 1. Notably, HMM is identified only once in the Complaint (¶ 27) as a defendant.

VI. PLAINTIFF'S CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE.

Documentary evidence appended to this Motion and the Complaint plainly establishes that a merger clause in the Loan Agreements renders parol evidence and extraneous communications immaterial to the transactions between two private parties. Each lending transaction was made based on due diligence conducted by the lender and professional appraisals ordered by each lender prior to making the loan. As a result, a claim against the Foreign Entities simply does not exist because they could not have made representations to the lender *after* entering their respective loan transactions that would have resulted in a "better interest rate" or below market terms. Additionally, the Loan Agreements make plain the Foreign Entities were not responsible for submitting a guarantor's SoFC to their lender. Even more, the guaranties themselves confirm that the guarantor was not in any way induced or conferred any benefit in exchange for providing the guaranty. Pursuant to CPLR 3211(a)(1) "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that a defense is founded upon documentary evidence." The court may grant a dismissal pursuant to CPLR 3211(a)(1) when the defendant introduces documentary evidence that flatly contradicts the allegations in the complaint.

The Court should dismiss the complaint where, as here, the documentary evidence "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." S*ee Golia v. Vieira,* 162 A.D.3d 865, 867 (2d Dep't 2018). Dismissal is appropriate when, as here, documentary evidence "utterly refutes" the allegations in plaintiff's complaint, "conclusively

establishing a defense as a matter of law." *Himmelstein, et al. v. Matthew Bender & Co., Inc.*, 34 N.Y.3d 908(2021).

To qualify as documentary evidence, the evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable. *VXI Lux Holdco S.A.R.L. v. SIC Holdings, LLC*, 171 A.D.3d 189, 193(2019).

A. <u>The Loan Agreements Establish the Foreign Entities Were Not Required to Submit SoFC.</u>

The NYAG's claims against the Foreign Entities are premised on their role as borrowers in the 2012 Doral Transaction and the 2012 Chicago Transaction (*See* Loan Agreements at Habba Aff., **Exs. 3 & 4**). The Loan Agreements are unambiguous, of undisputed authenticity, and are an undeniable record of the transactions at the center of this case. The Court should accept the attached Loan Agreements as documentary evidence which show:

First, Defendants Trust, Holdings and HMM are not a party to any of the Loan Agreements, either as borrower or guarantor. The Trust, Holdings and HMM did not author any SoFC, nor does Plaintiff allege that they submitted any financial information themselves to any insurance carrier or bonding company. As such, Plaintiff cannot plead or prove any conduct by the Trust, Holdings or HMM that could give rise to liability under Executive Law §63(12).

Second, TE12 and 401 Wabash were not the authors of any SoFC nor guarantor of any obligation. Plaintiff alleges – at most –TE 12 was the borrower in the 2012 Doral Transaction and 401 Wabash in 2012 Chicago Transaction. Each Loan Agreement conclusively demonstrates that TE12 and 401 Wasbash did not provide a SoFC in connection with the loan. Each Loan Agreement loan has a merger clause. Doral Loan Agreement Page 63 § 8.2. ("This Agreement and the other Loan Documents or other documents referred to herein constitute the entire agreement ... and shall supersede any prior expressions of intent or understandings with respect to this transaction.");

Chicago Loan Page 79 § 8.2 ("This Agreement and the other Loan Documents or other documents referred to herein constitute the entire agreement ... and shall supersede any prior expressions of intent or understandings with respect to this transaction.").

The Guaranty associated with each loan has a no-inducement clause which states flatly and conclusively that it "is not relying upon" borrower for any "representation, warranty, agreement or condition, whether express or implied or written or oral." Doral Guaranty Page 5, ¶ 8; Chicago Guaranty Page 11, ¶ 8.. As such, Plaintiff cannot plead or prove any conduct by TE12 or 401 Wabash that could give rise to liability under Executive Law § 63(12).

Each Loan Agreement and the associated Guaranty make no mention of any "better interest rate" or other favorable terms. Since the transactions at issue are governed exclusively by these documents, it is not possible for the NYAG to proceed forward as her claims are contravened directly by their express terms.

B. <u>The Documentary Evidence Refutes Plaintiff's Claim for Damages.</u>

The NYAG, in perhaps her most egregious pleading hyperbole, seeks damages by way of disgorgement of "all financial benefits obtained by each Defendant," which she estimates to be "$250,000,000." Compl. ¶ 25(i). Although the NYAG does not explain how she reaches this headline-grabbing sum, the Complaint does summarily posit that (i) "Mr. Trump and his operating companies obtained additional benefits from banks other than loan proceeds in the form of favorable interest rates that likely saved them more than $150 million;" and (ii) that the "Trump Organization" benefitted from the sale of its interests in the Old Post Office Hotel (Washington D.C.) in the amount of $100 million. Compl. ¶¶ 21-22.

This theory of damages is fatally flawed for two independent reasons. First, the documentary evidence plainly establishes that a benefit was not derived from the submission of the SoFCs. The Loan Agreements themselves do not require the submission of a SoFC as a

condition precedent to the loan, and each contains a merger provision that vitiates the consideration of any considerations not encapsulated within the loan itself. Doral Loan Agreement Page 63 § 8.2; Chicago Loan Page 79 § 8.2.

The loan transactions were independently underwritten by each bank and based on appraisals commissioned by each lender. The guaranties, which themselves are in certain instances conditions precedent to the execution of each respective loan transaction, in turn disclaim that any benefit was received by the guarantor in exchange for executing the guaranty. Doral Guaranty Page 5, ¶ 8; Chicago Guaranty Page 11, ¶ 8.

Nothing in the operative documents provides for a reduction in the interest rate or extension of "more favorable" loan terms because the guarantor subsequently provided a SoFC. Simply stated, the SoFCs were not part of the negotiated loan terms and do not form the basis for any benefit conferred on any of the Foreign Entities. As a result, documentary evidence plainly refutes Plaintiff's sole basis for seeking disgorgement from any defendant.

Moreover, the NYAG's claim for damages fails to meet the most elementary pleading standard for giving notice to a defendant for the damages sought against them. Since Plaintiff's claims under Executive Law §63 (12) are all based on fraud or deceit, she is required to plead her claim for damage independently against each defendant. The NYAG does not even attempt to plead her alleged disgorgement damages in any discernable manner. Under New York Law, "an action in deceit is based on fraud and damage, and both must concur for the action to lie, a classic statement of the rule being that neither fraud without damage nor damage without fraud is sufficient to support such an action." See 60A N.Y. Jur. 2d Fraud and Deceit § 173; *see also Adelaide Productions, Inc. v. BKN Intern. AG*, 38 A.D.3d 221 (1st Dep't 2007) (finding plaintiff would be unable to prove damages in part because fraud allegations were too vague).

Accordingly, damage is an essential element of a cause of action pleaded based on fraud or deceit. *Starr Foundation v. AIG*, 76 A.D.3d 25(1st Dept. 2010). An action for "fraud must set forth the actual, out of pocket, pecuniary loss allegedly sustained because of its justifiable reliance on the defendants' purported misrepresentations." *Nager Electric Co., Inc. v. E.J. Electric Installation Co., Inc.*, 128 A.D.2d 846, 847(2d Dep't 1987)

Additionally, where a valid contract exists between the parties, equitable remedies such as disgorgement are not permitted. *See, e.g., IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142, 907 N.E.2d 268, 274 (2009) (barring disgorgement based on unjust enrichment "where the parties executed a valid and enforceable written contract governing a particular subject matter"). Here, the underlying relationships giving rise to the alleged claim for disgorgement are all governed by complex, detailed agreements *(i.e.*, Loan Agreements). The NYAG cannot possibly recover equitable damages under this circumstance.

C. Explicit Disclaimer Language in the SoFC are Documentary Evidence that Foreclose Plaintiff's Claims.

As a threshold matter, the explicit disclaimer language set forth in the SoFCs forecloses the NYAG from claiming that the financial institutions reasonably relied in any material way on the information contained in the SoFCs. *See e.g., HSH Nordbank AG v. UBS AG,* 95 A.D.3d 185 (1st Dep't 2012).

The plain language of the SoFCs makes it clear to any recipient, especially sophisticated loan officers, loan committees, underwriters, and their financially astute expert advisors, that the SoFCs are not audited reports, and as such the support for the valuations set forth therein have not been independently verified. Specifically, each SoFC is prominently identified as a "compilation report," which, under standard accounting practice means that it is an unaudited statement that relies on information presented by Defendants without any assurance from Mazars regarding the

accuracy of the financial statements or their conformity with generally accepted accounting principles.

VII. THE TRUST IS AN IMPROPER PARTY AND MUST BE DISMISSED.

In addition to the personal jurisdiction arguments made above, all claims against the Trust must be dismissed because the Trust itself was incorrectly named as a defendant in the Complaint. Under New York law, "a trust may not sue or be sued in its own name, but instead, must act and appear only by its duly qualified trustees." *BAC Home Loan Servicing, L.P. v. Berardi*, 46 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2015); *see also Liveo v. Hausman*, 61 Misc. 3d 1043, 1044 (N.Y. Sup. Ct. 2018) (citing *Natixis Real Estate Capital Tr. 2007-HE2 v. Natixis Real Estate Holdings, LLC*, 149 A.D.3d 127, 132 (1st Dep't 2017) ("A trust, however, is a legal fiction, and cannot sue or be sued itself . . . [i]nstead, trustees, as representatives of the trust, act on behalf of the trust to bring legal action."); *The Tides at Charleston Homeowners Ass'n, Inc. v. Masucci*, No. 151743/2017, 2018 WL 3396691, at * 1 (Sup. Ct. Richmond County Jun. 18, 2018) (granting motion to dismiss without prejudice to renew naming the proper parties as defendants; "Litigation including a trust as a party must be brought by or against the trustee in his capacity as such."). Accordingly, the Trust should be dismissed as a defendant.

VIII. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS.

First, the NYAG has violated the Foreign Entities' constitutional right to equal protection of the laws. Defendants have been singled out and subject to selective treatment by the NYAG, and the NYAG's selective treatment of the Foreign Entities is a byproduct of her personal and political animus towards them. The NYAG's violation of the Equal Protection Clause is so pervasive that it warrants the dismissal of an enforcement action "[e]ven though the party raising

the unequal protection claim may well have been guilty of violating the law." *Matter 303 West 42nd v. Klein*, 46 N.Y.2d 686, 694 (N.Y. 1979) (citations omitted).

Second, the NYAG has failed to adequately plead that Foreign Entities' conduct tended to deceive or created an atmosphere conducive to fraud under Executive Law § 63(12). Given the novel way the NYAG is invoking Exec. Law § 63(12) in the instant action, practical application of the law dictates that both reliance and scienter must be shown for the NYAG to maintain a valid cause of action against the Foreign Entities. The NYAG cannot plead and prove that Foreign Entities' conduct had the capacity or tendency to deceive sophisticated financial institutions because each and every institution had a duty to investigate the "total mix" of available information relative to the transactions at issue.

Third, the NYAG has failed to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the SoFCs were improperly inflated. To adequately plead a claim, the NYAG must come forward with facts supported by a qualified expert, who "should possess the requisite skill, training, education knowledge or experience from which it can be assumed that the opinion rendered is reliable." *Schechter v. 3320 Holding LLC*, 64 A.D.3d 446, 449 (citation omitted).

Fourth, even if the Court determines the NYAG is empowered to intervene in private transactions, documentary evidence shows that the Executive Law § 63(12) fraud claim is precluded. The NYAG's entire fraud theory is based on conduct that at best, amounts to nothing more than a non-material breach of financial reporting obligations under the limited guaranties executed in connection with the subject Loan Agreements. At the outset, it is paramount to understand that the subject Loans were mortgage loans and were secured—and, in fact, greatly over-secured—by the value of the property underlying each of the individual Loans. These

guaranties merely provided the lender with limited rights against the guarantor under limited circumstances, which rights were virtually meaningless in terms of the security and value of the loan given the underlying LTV (loan-to-value ratio) of each of the subject loans. Such a non-material breach cannot form the basis of a viable fraud claim.

Fifth, the Complaint also fails to state a civil-conspiracy claim under the intracorporate conspiracy doctrine. The Foreign Entities cannot be a member of a conspiracy comprised solely of the Trump Organization and its officers, directors, and employees. Under the intracorporate conspiracy doctrine, "officers, agents and employees of a single corporate entity are legally incapable of conspiring together." *Chamberlain v. City of White Plains*, 986 F. Supp. 2d 363, 388 (S.D.N.Y. 2013). New York recognizes the intracorporate conspiracy doctrine. *See Lilley v. Green Cent. Sch. Dist.*, 187 A.D.3d 1384, 1389 (2d Dep't 2020) (invoking doctrine to dismiss conspiracy claims against employees of same entity).

CONCLUSION

For the reasons set forth above, Plaintiff's Complaint should be dismissed in its entirety.

Dated: November 21, 2022
New York, New York

__/s/ Christopher M. Kise__
CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for The Donald J. Trump Revocable Trust, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC and 401 North Wabash Venture LLC,

-and-

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
(908) 869-1188
Counsel for The Donald J. Trump Revocable Trust, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC and 401 North Wabash Venture LLC

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 6,949 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: November 21, 2022
New York, New York

__/s/ Christopher M. Kise __
CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for The Donald J. Trump Revocable Trust, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC and 401 North Wabash Venture LLC,

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

MEMORANDUM OF LAW OF DEFENDANTS DONALD J. TRUMP, JR. AND ERIC TRUMP IN SUPPORT OF MOTION TO DISMISS COMPLAINT

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants Donald Trump, Jr. and Eric Trump

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

LEGAL STANDARD 3

ARGUMENT 5

I. THE NYAG LACKS STANDING TO BRING THIS ACTION. 5

II. THE NYAG LACKS CAPACITY TO BRING THIS ACTION. 10

III. THE NYAG FAILS TO PLEAD A CAUSE OF ACTION. 11

IV. THE NYAG'S CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE. 14

V. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS. 16

VI. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS. 19

CONCLUSION 22

TABLE OF AUTHORITIES

Cases

Abdale v. N. Shore-Long Is. Jewish Health Sys., Inc.,
49 Misc.3d 1027 (Sup. Ct. Queens County 2015) 12

Abrahami v. UPC Constr. Co., Inc.,
224 A.D.2d 231 (1st Dep't 1996) 16

Adelaide Prods., Inc. v. BKN Intl. AG,
38 A.D.3d 221 (1st Dep't 2007) 13

Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.,
84 A.D.2d 736 (1st Dep't 1981) 12, 13

Aguaiza v Vantage Props., LLC,
69 A.D.3d 422 (1st Dep't 2010) 18, 19

Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez,
458 U.S. 592 (1982) 6

Carrier v. Salvation Army,
88 N.Y.2d 298 (1996) 4

City of New York v. State of New York,
86 N.Y.2d 286 (1995) 10

Community Bd. 7 of Borough of Manhattan v. Schaffer,
84 N.Y.2d 148 (1994) 10, 11

Evans v. Israeloff, Trattner & Co.,
208 A.D.2d 891 (2d Dept. 1994) 16

HSH Nordbank AG v. UBS AG,
95 A.D.3d 185 (1st Dep't 2012) 14

Jacobus v. Colgate,
217 N.Y. 235 (1916) 17

Lefkowitz v. Lebensfeld,
68 A.D.2d 488 (1st Dep't 1979), affd 51 N.Y.2d 442 (1980) 5

Matott v. Ward,
48 N.Y.2d 455 (1979) 21

Matter 303 W. 42nd St. Corp. v. Klein,
46 N.Y.2d 686 (1979) 19

Matter of People v. Applied Card Sys., Inc.,
27 A.D.3d 104 (3d Dep't 2005) 7

Matter of People v. Orbitual Publ. Group, Inc.,
169 A.D.3d 564 (1st Dep't 2019) 7

Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal,
35 N.Y.3d 332 (2020) 17, 18, 19

Matter of State of New York v. ITM, Inc.,
52 Misc.2d 39 (Sup. Ct. N.Y. County 1966) 9

Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.,
5 N.Y.3d 36 (2005) 10

Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.,
30 N.Y.3d 377 (2017) 10

MBIA Ins. Corp. v. Merrill Lynch,
81 A.D.3d 419 (1st Dep't 2011) 14

Mid-Hudson Val. Fed. Credit Union v. Quartararo & Lois, PLLC,
155 A.D.3d 1218 (3d Dep't 2017), aff'd, 31 N.Y.3d 1090 (2018).....12

Nager Elec. Co. v. E. J. Elec. Installation Co.,
128 A.D.2d 846 (2d Dep't 1987) 13

Nemenyi v. Raymond Intl.,
22 A.D.2d 657 (1st Dep't 1964) 13

New York v. Griepp,
991 F.3d 81 (2d Cir. 2021).....5

New York by James v. Amazon.com, Inc.,
550 F.Supp.3d 122 (S.D.N.Y. 2021).....7

Otto v. Pennsylvania State Educ. Association-NEA,
330 F.3d 125 (3d Cir. 2003).....14

Pennsylvania v. New Jersey,
426 U.S. 660 (1976).....6

People v. Allen,
198 A.D.3d 531 (1st Dep't 2021) 17, 18, 19

People v. Ashil Hyde Park, LLC,
298 A.D.2d 393 (2d Dep't 2002) 4

People v. Coventry First LLC,
52 A.D.3d 345 (1st Dep't 2008) 7

People v. Credit Suisse Sec. (USA) LLC,
31 N.Y.3d 622 (2018) 3, 17, 20

People v. Credit Suisse Sec. (USA) LLC,
Index No. 451802/2012 (Sup. Ct. N.Y. County 2018) 20

People v. Domino's Pizza, Inc. et. al.,
Index No. 450627/2016 (Sup. Ct. N.Y. County 2016) 6, 7, 8

People v. Exxon Mobil Corp.,
65 Misc.3d 1233(A) (Sup. Ct. N.Y. County 2019) 7, 11

People v. General Elec. Co.,
302 A.D.2d 314 (1st Dep't 2003) 7

People v. Grasso,
54 A.D.3d 180 (1st Dep't 2008) 5, 6

People v. Lowe,
117 N.Y. 175 (1889) 5, 6, 8, 10

People v. North Riv. Sugar Ref. Co.,
121 N.Y. 582 (1890) 11

People v. Singer,
193 Misc. 976 (Sup. Ct. N.Y. County 1949) 9

People by James v. National Rifle Ass'n of America, Inc.,
74 Misc.3d 998 (Sup. Ct. N.Y. County 2022) 11

People ex rel. Spitzer v. H & R Block, Inc.,
847 N.Y.S.2d 903 (Sup. Ct. N.Y. County 2007) 6

People of State of N.Y. by Vacco v. Operation Rescue Nat.,
80 F.3d 64 (2d Cir. 1996) 6

Raines v. Byrd,
521 U.S. 811 (1997) 5

Roberts v. Pollack,
92 A.D.2d 440 (1st Dep't 1983) 11

Robinson v. Robinson,
303 A.D.2d 234 1st Dep't 2003) 4

Schechter v. 3320 Holding LLC,
64 A.D.3d 446 (1st Dep't 2009) 21

Sibersky v. New York City,
270 A.D.2d 209 (1st Dep't 2000) 4

Silver v. Pataki,
96 N.Y.2d 532 (2001) 10

Skillgames, LLC v. Brody,
1 A.D.3d 247 (1st Dep't 2003) 4

Society of Plastics Indus. v County of Suffolk,
77 N.Y.2d 761 (1991) 10

Starr Foundation v. American Intl. Group, Inc.,
76 A.D.3d 25 (1st Dep't 2010) 13

State by Abrams v. Magley,
105 A.D.2d 208 (3d Dep't 1984) 4

State of N.Y. by Abrams v. General Motors Corp.,
547 F.Supp. 703 (S.D.N.Y. 1982) 7

State N.Y. ex rel. Aryai v. Skanska,
72 Misc.3d 935 (Sup. Ct. N.Y. County 2021) 13

Stuart Silver Assoc. v. Baco Dev. Corp.,
245 A.D.2d 96 (1st Dep't 1997) 16

UST Private Equity Invs. Fund, Inc. v. Salomon Smith Barney,
288 A.D.2d 87 (1st Dep't 2001) 16

Statutes

CPLR § 213(9) 17, 18, 19

CPLR § 3013 4

CPLR 3211 (a)(1) 1, 3

CPLR 3211 (a)(2) 1, 3

CPLR 3211 (a)(3) 1, 3, 11

CPLR 3211 (a)(5) 1, 3

CPLR 3211 (a)(7) 1, 3

Executive Law § 63(12) ..... *passim*

Treatises

60A N.Y. Jur. 2d Fraud and Deceit § 173 13

Other Authorities

Christian Tregillis, Overview of Services Provided by CPAs, in Basics of Accounting & Finance: What Every Practicing Lawyer Needs to Know 88 (PLI Corp. Law & Practice Course, Handbook Series No. B–1064, 1998) 15

Letter from Better Business Bureau, April 3, 1956, Bill Jacket, L 1956, ch. 592 9

State Dept. of Law Mem, Bill Jacket, L 1956, ch. 592 9

Defendants Donald Trump, Jr. and Eric Trump (collectively, "Moving Defendants") hereby submit this Memorandum of Law in support of their Motion seeking an order, pursuant to CPLR 3211 (a)(1), (2), (3), (5) and (7), dismissing the Complaint of plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York ("Plaintiff" or "NYAG") (NYSCEF No. 1) ("Complaint" or "Compl."), in its entirety and with prejudice; and (ii) granting such other and further relief as this Court may deem just, equitable, and proper (the "Motion"). The Moving Defendants expressly incorporate all arguments set forth in the Memoranda of Law submitted by defendants (i) Trump Organization, Inc., Trump Organization LLC, and Donald J. Trump, (ii) the Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC, (iii) Allen Weisselberg, and Jeffrey McConney; and (iv) Ivanka Trump (collectively, the "Other Defendants") (the "Other Defendants and the Moving Defendants shall collectively be referred to as the "Defendants").

PRELIMINARY STATEMENT

This action filed by the NYAG is fatally flawed as a matter of law and lacks any legitimate factual basis. The NYAG's Complaint is the textbook example of throwing everything at the wall to see what sticks. Nothing stuck. The Complaint must be dismissed. The NYAG spends over 600 paragraphs clumsily attempting to recharacterize decades of business transactions between highly-sophisticated parties, only to succeed in establishing that she cannot plead a claim. The only thing that the Complaint establishes is that the "Trump Organization" operates a wildly successful multinational real estate and licensing empire. Buried in the morass of the NYAG's sloppy shotgun pleading, is the reality that she simply cannot plead a claim against any of the

Defendants, including the Moving Defendants, as a matter of law or fact. The Court should dismiss the Complaint for at least six reasons.

First, the NYAG lacks standing to plead a claim. Just like any other plaintiff, the NYAG must allege facts that set forth her standing to bring claims and she fails to do so. The Complaint fails to identify any quasi-sovereign interest it seeks to vindicate on behalf of the People. All of the alleged activities concern the internal affairs and management of the Trump entities, and private contractual matters between the Trump entities and sophisticated corporate counter parties. Thus, even if the Moving Defendants did engage in the activities alleged by the NYAG (which they did not), those are not matters of public interest.

Second, the NYAG lacks capacity to plead a claim. The NYAG's powers under Executive Law § 63(12) are not unfettered, and courts historically have not been reluctant to dismiss claims, or deny remedies, that would serve to exceed the NYAG's regulatory authority. In this case, the NYAG has exceeded the bounds of any authority granted to her by Executive Law § 63(12) and reaches far beyond any interpretation of the statute ever afforded by any court.

Third, the Complaint fails to state a claim against the Moving Defendants. The NYAG attempts to lump together the alleged conduct of "all defendants" over 90 times and incorporates "all prior allegations" into each of her seven counts. That is improper because it denies each discrete Defendant the opportunity to respond to each allegation made against such Defendant, and to be made aware of the elements of each claim as it applies specifically to each Defendant.

Fourth, the documentary evidence of the Statements of Financial Condition ("SoFCs") (Compl. Ex. 3-12) and the disclaimers explicitly set forth therein, conclusively establish a defense as a matter of law to the Executive Law § 63(12) fraud claim alleged in the Complaint.

Fifth, the NYAG's claims against the Moving Defendants are time barred. The Court of Appeal's decision in *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 634 (2018), confirmed that the statute of limitations for fraud claims cognizable solely under Executive Law § 63(12) is three years. Although the legislature subsequently created a new six-year statute of limitations for future Executive Law § 63(12) claims, it did not revive barred claims; the applicable lookback period in this case is therefore three years.

Sixth, the Complaint must be dismissed for a number of other reasons, including violation of the Moving Defendants' constitutional right to equal protection under the laws, failure to adequately plead that the Moving Defendants' conduct tended to deceive, or created an atmosphere conducive to fraud under Executive Law § 63(12), failure to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the appraisals were improperly inflated, the existence of documentary evidence demonstrating that any fraud claim is precluded, and failure to properly name the Donald J. Trump Revocable Trust (the "Trust") as a defendant herein.

LEGAL STANDARD

CPLR 3211(a) provides that a "party may move for judgment dismissing one or more causes of action asserted against him" on one or more of several enumerated grounds, including the grounds that "a defense is founded upon documentary evidence" (CPLR 3211(a)(1)), "the court has not jurisdiction of the subject matter of the cause of action" (CPLR 3211(a)(2)), "the party asserting the cause of action has not legal capacity to sue" (CPLR (3211(a)(3)), "the cause of action may not be maintained because of … statute of limitations" (CPLR 3211(a)(5)), and "the pleading fails to state a cause of action" (CPLR 3211(a)(7)). Although the court must accept the alleged facts as true on a motion to dismiss, "factual allegations that do not state a viable cause of action,

that consist of bare legal conclusions, or that are inherently incredible" are not entitled to such consideration. *Skillgames, LLC v. Brody*, 1 A.D.3d 247, 250 (1st Dep't 2003). "While a complaint is to be liberally construed in favor of plaintiff on a CPLR 3211 motion to dismiss, the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts." *Robinson v. Robinson*, 303 A.D.2d 234, 235 (1st Dep't 2003).

In the context of a motion to dismiss, courts scrutinize statutes to determine whether a cause of action is consistent with both the "enforcement means" chosen by the legislature and the "basic purposes underlying" them. *Carrier v. Salvation Army*, 88 N.Y.2d 298, 302 (1996). Dismissal of claims brought under Executive Law § 63(12) is proper where, as here, the NYAG cannot establish any "fraudulent or illegal acts," which are necessary under that statute to warrant any relief. *See, e.g., People v. Ashil Hyde Park, LLC*, 298 A.D.2d 393, 395 (2d Dep't 2002); *State by Abrams v. Magley*, 105 A.D.2d 208, 210 (3d Dep't 1984). Dismissal is also proper where the Complaint fails to give notice to each individual defendant of the "transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense" (CPLR § 3013); *see also Sibersky v. New York City*, 270 A.D.2d 209, 209 (1st Dep't 2000) ("[F]or a plaintiff to satisfy the requirements of CPLR 3013, the plaintiff cannot rely upon mere 'buzz words' or vague or conclusory allegations, but must instead set forth facts that truly address the underlying transactions and occurrences and the material elements of the claim").

ARGUMENT

I. THE NYAG LACKS STANDING TO BRING THIS ACTION.

Executive Law § 63(12) does not automatically confer the requisite standing to maintain this action. Statutes authorize particular causes of action, they do not and cannot confer the requisite standing. The NYAG, "like all other parties to actions, must show an interest in the subject-matter of the litigation to entitle [her] to prosecute a suit and demand relief." *People v. Grasso*, 54 A.D.3d 180, 198 (1st Dep't 2008) (citing *People v. Lowe*, 117 N.Y. 175, 191 (1889)). Construction of Executive Law § 63(12) as permitting the NYAG to maintain *any* action against *any* party – without any consideration of the NYAG's standing as a party-in-interest – is constitutionally infirm since "[t]he legislature, consistent with the principles of separation of powers underlying the requirement of standing . . . cannot grant the right to sue to a plaintiff who does not have standing." *Grasso*, 54 A.D.3d at 198 (citing *Raines v. Byrd*, 521 U.S. 811, 820 (1997)); *see also Lefkowitz v. Lebensfeld,* 68 A.D.2d 488, 497 (1st Dep't 1979), *affd* 51 N.Y.2d 442 (1980) (The Attorney General's "[s]tanding to sue and supervisory powers are entirely separate legal principles.").

Here, the plain language of Executive Law § 63(12) confirms the NYAG must act pursuant to its *parens patriae* authority in enforcing the statute. *See* Executive Law § 63(12) (stating, "the attorney general may apply, ***in the name of the people of the state of New York***" for the sought-after relief). (Emphasis added). Thus, any action commenced thereunder must be brought on behalf of the people of the State of New York and standing must be properly derived from the NYAG's *parens patriae* authority. *See New York v. Griepp*, 991 F.3d 81, 130 (2d Cir. 2021). Indeed, this is precisely the manner in which NYAG filed the instant action (*see* Compl. at ¶ 40); the NYAG must therefore establish *parens patriae* standing.

"To bring a *parens patriae* action, the NYAG must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties …'" *People ex rel. Spitzer v. H & R Block, Inc.*, 847 N.Y.S.2d 903, 907 (Sup. Ct. N.Y, 2007) (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592, 607 (1982)). Moreover, a state has *parens patriae* standing "only when its sovereign or quasi-sovereign interests are implicated, and it is not merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976). *Parens patriae* standing "does not extend to the vindication of the private interests of third parties." *People of State of N.Y. by Vacco v. Operation Rescue Nat.*, 80 F.3d 64, 71-72 (2d Cir. 1996). In other words, "[i]t is not sufficient for the People to show that wrong has been done to someone; the wrong must appear to be done to the People in order to support an action by the People for its redress." *Lowe*, 117 N.Y. at 175 (1889). Thus, the "State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party … [it] must express a quasi-sovereign interest." *Grasso*, 54 A.D.3d at 198. The NYAG fails to satisfy any of the requisite elements necessary to establish *parens patriae* standing.

First, the Complaint fails to identify any quasi-sovereign interest it seeks to vindicate on behalf of the People. All of the alleged activities concern the internal affairs and management of the Trump entities, and private contractual matters between the Trump entities and sophisticated corporate counter parties. Thus, even if the Moving Defendants did engage in the activities alleged by the NYAG (which they did not), those are not matters of public interest. *See e.g.*, *People v. Domino's Pizza, Inc. et. al.*, Index No. 450627/2016 (Sup. Ct. N.Y. County 2016), NYSCEF No. 505 at 26 (finding such commercial disputes "should be in the nature of private *contract* litigation

. . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception.").

Indeed, all prior Executive Law § 63(12) cases have dealt with fraudulent activity impacting the People, not private commercial transactions between corporate titans. *See State of N.Y. by Abrams v. General Motors Corp.*, 547 F.Supp. 703 (S.D.N.Y. 1982) (involving fraudulent practices affecting a vast number of consumers in the automobile industry); *People v. Coventry First LLC*, 52 A.D.3d 345 (1st Dep't 2008) (involving bid-rigging and other anti-competitive schemes that were used to deprive policy holders of a fair marketplace in which to sell); *New York by James v. Amazon.com, Inc.*, 550 F.Supp.3d 122 (S.D.N.Y. 2021) (lawsuit alleging that Amazon failed to protect *thousands* of workers through inadequate disinfection and contract-tracing protocols; the court found standing based on "the government's interest in guaranteeing a marketplace that adheres to standards of fairness, as well [as] ensuring that business transactions in the state *do not injure public health*.") (Emphasis added). The Complaint's allegations differ markedly from prior cases filed on behalf of the People. *See, e.g.*, *People v. General Elec. Co.*, 302 A.D.2d 314 (1st Dep't 2003) (NYAG challenging GE's widespread misrepresentations regarding consumer dishwashers); *Matter of People v. Orbitual Publ. Group, Inc.*, 169 A.D.3d 564, 565 (1st Dep't 2019) (NYAG challenging materially misleading consumer solicitations for newspaper and magazine subscriptions); *Matter of People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005) (NYAG challenging misleading consumer credit card offers). Here by contrast, the Complaint details complex, "bilateral business transactions between [the Trump entities] and [highly-sophisticated financial and insurance institutions]." *Domino's*, NYSCEF No. 505 at 26; *see also People v. Exxon Mobil Corp.*, 65 Misc.3d 1233(A) at *31 (Sup. Ct. N.Y. County

2019) (finding NYAG failed to prove ExxonMobil "made any material misstatements or omissions about its practices and procedures that misled any reasonable investor").

In *Domino's*, the court was unpersuaded that the NYAG's police power extended to "bilateral business transactions" between Domino's and its individual franchisees over disputes regarding a store management software program. *Domino's*, NYSCEF No. 505 at 26. "Domino's makes a compelling argument that any disputes regarding the performance of [the store management software program] should be in the nature of private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *Id*. Likewise, here, the NYAG cannot demonstrate the requisite quasi-sovereign interest in the complex business transactions at issue between sophisticated commercial parties represented by skilled legal counsel. These private matters are not the proper subject of "a law enforcement action under a statute designed to address public harm." *Id.* Indeed, had any of the highly sophisticated financial and insurance institutions purportedly represented by the NYAG been financially harmed or deceived in any way, they would have long ago exercised their substantial legal rights under the operative agreements to seek redress. However, to date, no such action has been taken and there exists nothing in the record to suggest the Trump entities have ever even missed a single loan payment over the past decade. The NYAG cannot therefore declare a legitimate public interest in riding to the rescue of major corporations which have not themselves even been harmed. *See also Lowe*, 117 N.Y. at 195 ("[I]t could not have been intended . . . that [the Attorney General] could in [her] absolute discretion, by a suit in the name of the people and at their expense and risk, intrude into a mere private quarrel, and carry on a litigation for purely private ends, in which the people in no proper sense have a shadow of right or interest.").

Second, the Complaint makes clear the only purported "victims" are a select few major corporations who engaged in a discrete number of complex transactions with certain of the Trump business entities. This is simply not a "substantial segment of the population," nor can any alleged wrongdoing against a limited subset of sophisticated private parties to complex commercial agreements possibly implicate the public interest. *See, e.g.*, *People v. Singer*, 193 Misc. 976, 979 (Sup. Ct. N.Y. County 1949) ("Unless [] it appears that the matters alleged affect the public interest in the true and proper sense, rather than affecting individual private rights and interests, then an action brought by the State fails as a matter of law") (citations omitted). New York courts have consistently recognized Executive Law § 63(12) functions as a consumer protection statute. *See Matter of State of New York v. ITM, Inc.*, 52 Misc.2d 39, 52 (Sup. Ct. N.Y. County 1966) (Exec. Law § 63(12) is "designed to protect the consuming public against persistent fraud and illegality.").[1] The narrow private interests of "lenders, employees who worked for those lenders and insurers, and the accounting firm that compiled the Statements, and personnel of that firm" (Compl. ¶ 757),[2] are simply not a "substantial segment" of the population.

Lastly, there are no interests here distinct from that of the involved private corporations. These corporate titans were fully capable of negotiating the complex agreements at the core of the issues presented by the Complaint. They are also fully capable of exercising their considerable rights under those complex agreements and, if they "feel aggrieved in such cases [they] have ample

[1] The driving force behind the original enactment of Executive Law § 63(12) was the need to protect consumers and other vulnerable persons, not sophisticated financial institutions fully capable of discerning for themselves whether and to what extent a particular statement may be reliable. *See State Dept. of Law Mem, Bill Jacket, L 1956, ch.* 592 at 92-94; *see also Letter from Better Business Bureau, April 3, 1956, Bill Jacket, L 1956, ch. 592* at 5 and *State Dept. of Law Mem, Bill Jacket, L 1956, ch.* 592 at 92.

[2] Additionally, and importantly, the Complaint fails to allege that even these private parties were actually damaged. Indeed, the Complaint does not, because it cannot, seek damages at all on behalf of anyone, most notably the People upon whose behalf the NYAG purports to have commenced this action. The NYAG merely asserts, without any foundation whatsoever in the Complaint, entitlement to the equitable remedy of disgorgement.

remedies to redress their wrongs by proceedings in their own names . . . ." *Lowe*, 117 N.Y. at 195. That they have chosen not to avail themselves of those rights demonstrates that the NYAG is truly out of place in this context. The NYAG simply does not have standing to vindicate these private interests.

In sum, Executive Law § 63(12) does not override established standing requirements. Since the Complaint fails to articulate a quasi-sovereign interest affecting a substantial segment of the population involving interests separate from those of the involved corporate titans, the NYAG lacks the requisite standing to maintain this action.

II. THE NYAG LACKS CAPACITY TO BRING THIS ACTION.

The NYAG also lacks the requisite capacity to maintain this action. "Although courts often use the terms interchangeably, the concepts of capacity to sue and standing are distinct." *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148, 155 (1994); *see also Silver v. Pataki*, 96 N.Y.2d 532, 537 (2001) ("Standing and capacity to sue are related, but distinguishable, legal concepts."). Standing is "designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome" so as to cast the controversy "in a form traditionally capable of judicial resolution." *Id.* (quoting *Society of Plastics Indus. v County of Suffolk*, 77 N.Y.2d 761, 772 (1991)). Capacity to sue is a "a threshold question involving the authority of a litigant to present a grievance for judicial review." *Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.*, 5 N.Y.3d 36, 41 (2005).

"The question of capacity to sue often arises when governmental entities, which are creatures of statute, attempt to sue." *City of New York v. State of New York*, 86 N.Y.2d 286, 297 (1995) (citation omitted). This is because entities created by legislative enactment, such as the NYAG, "have neither an inherent nor a common-law right to sue." *Matter of World Trade Ctr.*

Lower Manhattan Disaster Site Litig., 30 N.Y.3d 377, 384 (2017) (citing *Community Bd. 7 of Borough of Manhattan,* 84 N.Y.2d at 155). "[T]heir right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate." *Id.* The NYAG brings this action pursuant to Executive Law § 63(12). To have the requisite capacity to sue, the NYAG must be acting with express authorization to bring an action under that statute. Yet, based on the plain language of the statute, its legislative history, and the manner in which it has historically been utilized, it is clear that Executive Law § 63(12) does not authorize the NYAG to commence this type of proceeding, which involves only the contractual rights of sophisticated private parties.

Although expansive, the NYAG's powers under Executive Law § 63(12) are not unfettered, and courts historically have not been reluctant to dismiss claims, or deny remedies, that would serve to exceed the NYAG's regulatory authority. *See People by James v. National Rifle Ass'n of America, Inc.*, 74 Misc.3d 998, 1019 (Sup. Ct. N.Y. County 2022) *(citing People v. North Riv. Sugar Ref. Co.*, 121 N.Y. 582, 608 (1890)); *Exxon Mobil Corp*., 65 Misc.3d 1233(A) (dismissing all claims brought under the Martin Act and Executive Law § 63(12) based on allegations that filings made by the defendant were fraudulent). The NYAG is therefore acting without statutory authority and lacks the legal capacity to maintain this action pursuant to CPLR 3211(a)(3).

III. THE NYAG FAILS TO PLEAD A CAUSE OF ACTION.

On a motion addressed to sufficiency of a complaint, "allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration," *Roberts v. Pollack,* 92 A.D.2d 440,

444 (1st Dep't 1983). As discussed below, the Complaint fails to give notice to each defendant of the claims against such defendant, and pleads speculative and conclusory damages.

First, where a complaint fails to give notice of the "material elements of [a] cause of action" supported by statements that are "sufficiently particular to give the court and the parties notice," it should be dismissed. *Mid-Hudson Val. Fed. Credit Union v. Quartararo & Lois, PLLC*, 155 A.D.3d 1218, 1220 (3d Dep't 2017), *aff'd*, 31 N.Y.3d 1090, 1091 (2018). This applies with even greater force where a complaint names multiple defendants without alleging "the precise" conduct charged to a particular defendant and cannot plead all of its "causes of action . . . against all defendants collectively." *Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co*., 84 A.D.2d 736 (1st Dep't 1981) ("Defendants cannot reasonably be required to frame a response to the complaint in its present state.").

Here, the Complaint makes no effort to differentiate between the sixteen Defendants in the Complaint, leaving each individual defendant incapable of responding to its allegations. By way of example, the Complaint pleads the generic term "Defendants" at least 93 times. Each of the Complaint's seven counts are directed to "All Defendants" and the Complaint makes no effort to differentiate what conduct each individual defendant is alleged to have committed, what theory of liability applies to the alleged conduct, or how the elements of each claim apply to the alleged conduct. *See* Compl. at ¶¶ 755, 756, 760, 770, 773, 783, 787, 796, 799, 810, 813, 822, 825, 835, and 838). This is exactly the type of trial-by-ambush that is simply not permitted under New York's pleading standards.

When a plaintiff's fraud allegations asserted collectively as to all defendants, New York courts have found this as impermissible group pleading.[3] *Abdale v. N. Shore-Long Is. Jewish*

[3] Given the particularity requirement for pleading fraud under rules of civil procedure, a plaintiff may not merely
(Footnote continued on next page)

Health Sys., Inc., 49 Misc.3d 1027 (Sup. Ct. Queens County 2015) (granting motion to dismiss for impermissible group pleading of fraud allegations against multiple defendants). Where multiple defendants are involved, the complaint must specify which allegations relate to which defendants to avoid confusion. *Aetna Cas. & Sur. Co*., 84 A.D.2d at 736 (rejecting fraud claim where "pleaded against all defendants collectively without any specification as to the precise tortious conduct charged to a particular defendant.").

Second, under New York Law, "an action in deceit is based on fraud and damage, and both must concur for the action to lie, a classic statement of the rule being that neither fraud without damage nor damage without fraud is sufficient to support such an action." See 60A N.Y. Jur. 2d Fraud and Deceit § 173; *see also Adelaide Prods., Inc. v. BKN Intl. AG*, 38 A.D.3d 221 (1st Dep't 2007) (finding plaintiff would be unable to prove damages in part because fraud allegations were too vague). Accordingly, damage is an essential element of a cause of action pleaded based on fraud or deceit. *Starr Foundation v. American Intl. Group, Inc.*, 76 A.D.3d 25 (1st Dep't 2010). An action for "fraud must set forth the actual, out of pocket, pecuniary loss allegedly sustained because of its justifiable reliance on the defendants' purported misrepresentations." *Nager Elec. Co. v. E. J. Elec. Installation Co.*, 128 A.D.2d 846, 847 (2d Dep't 1987) (finding amended complaint failed to properly allege damages for fraud).

"Failure adequately [...] to plead the facts showing damage to plaintiffs as a consequence of defendants' alleged conduct makes the complaint fatally defective." *Nemenyi v. Raymond Intl.*, 22 A.D.2d 657 (1st Dep't 1964) (stating the general rule and dismissing complaint). Additionally, where a valid contract exists between the parties, equitable remedies such as disgorgement are not

assert, in general terms, that all defendants engaged in all of the alleged conduct. *State of N.Y. ex rel. Aryai v. Skanska*, 72 Misc.3d 935 (Sup. Ct. N.Y. County 2021).

permitted. Here, the underlying relationships giving rise to the alleged claim for disgorgement are all governed by complex, detailed agreements (i.e., Loan Agreements). The NYAG cannot possibly recover equitable damages under this circumstance.

IV. THE NYAG'S CLAIMS ARE BARRED BY DOCUMENTARY EVIDENCE.

The explicit disclaimer language set forth in the SoFCs forecloses the NYAG from claiming that the financial institutions reasonably relied in any material way on the information contained in the SoFCs. *See e.g., HSH Nordbank AG v. UBS AG,* 95 A.D.3d 185 (1st Dep't 2012) (sophisticated bank failed to state fraud related claims as it could not have justifiably relied on the recommendation by defendant investment bank in light of a disclaimer in the extensively negotiated governing documents and because it had a duty, as a sophisticated party, to exercise ordinary diligence and to conduct an independent appraisal of risk); *MBIA Ins. Corp. v. Merrill Lynch*, 81 A.D.3d 419, 419 (1st Dep't 2011) ("Plaintiffs' fraud-related claims failed to state a cause of action in light of the specific disclaimers in the contracts, executed following negotiations between the parties, all sophisticated business entities, providing that plaintiff … would not rely on defendants' advice, that it had the capacity to evaluate the transactions, and that it understood and accepted the risks").

The plain language of the SoFCs makes it crystal clear to any recipient, let alone sophisticated loan officers, loan committees, underwriters, and their financially astute expert advisors, that the SoFCs are not audited reports, and as such the support for the valuations set forth therein have not been independently verified. Specifically, each SoFC is prominently identified as a "compilation report," which, under standard accounting practice means that it is an unaudited statement. As courts have noted, there is a marked difference between a compilation report, a review, and an audited financial statement, in ascending order of reliability. *See e.g., Otto v.*

Pennsylvania State Educ. Association-NEA, 330 F.3d 125, 133 (3d Cir. 2003) ("A compilation is the lowest level of assurance regarding an entity's financial statements") (quoting *Christian Tregillis, Overview of Services Provided by CPAs, in Basics of Accounting & Finance: What Every Practicing Lawyer Needs to Know 88* (PLI Corp. Law & Practice Course, Handbook Series No. B–1064, 1998)).

Indeed, by way of example, Mazars unequivocally states in the preface of the 2015 SoFC, "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide assurance about whether the financial statement is in accordance with accounting principles generally accepted in the United States of America." Mazars then sets forth a multitude of generally accepted accounting principles that would typically apply when preparing a financial statement (including the tax consequences on President Trump's holdings), before going on to warn, "[t]he accompanying statement of financial condition does not reflect the above noted items. The effects of these departures from accounting principles generally accepted in the United States of America have not been determined." Mazars then concludes with a final disclaimer, stating "Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the statement of financial condition, ***users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial condition prepared in conformity with accounting principles generally accepted in the United States***." (Emphasis added).

The SoFCs include prominent and clear disclaimer language, which cannot serve as the basis for a fraud claim among sophisticated parties. The documents and allegations relied on by the NYAG in its Complaint amply show that the financial institutions were fully capable of

evaluating the accuracy and the weight to be given to the SoFCs, and whether it was in their business interests to enter into, or extend their business relationships with the Trump entities. Indeed, "[w]here a party has means available to him for discovery by the exercise of ordinary intelligence, the true nature of a transaction he is about to enter into, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations." *Abrahami v. UPC Constr. Co., Inc.*, 224 A.D.2d 231 (1st Dep't 1996) (citations omitted). *See also UST Private Equity Invs. Fund, Inc. v. Salomon Smith Barney,* 288 A.D.2d 87 (1st Dep't 2001) (holding that sophisticated investors could not justifiably rely on alleged misrepresentations in offering memorandum that advised investors to do their own due diligence); *Stuart Silver Assoc. v. Baco Dev. Corp.*, 245 A.D.2d 96 (1st Dep't 1997) (sophisticated investors failed to undertake due diligence investigation or consult attorneys or accountants); *Evans v. Israeloff, Trattner & Co.*, 208 A.D.2d 891, 892 (2d Dept. 1994) (investor in corporation could not establish justifiable reliance upon compilations which contained disclaimer language indicating that accountants were simply passing on financial information provided by corporation, without doing any auditing, and investor did not request certified financial report or copy of tax returns).

Accordingly, based on the documentary evidence of the clear and unequivocal disclaimers set forth in the SoFCs, the NYAG's § 63(12) fraud claim must be dismissed as a matter of law.

V. THE NYAG'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Claims outside the three-year statute of limitations should be dismissed.[4] Prior to 2018, most courts to address the issue held that the statute of limitations for fraud claims arising solely

[4] Should the Court find that a three-year statute of limitations applies pursuant to *Credit Suisse*, then any claims for conduct prior to February 5, 2019, should be dismissed. Further, the Moving Defendants were not signatories to any tolling agreement, and therefore, are not bound by the terms thereof.

under Executive Law § 63(12) (i.e., those not alleging all elements of common-law fraud) was three years. *E.g., State v. Daicel Chem. Indus., Ltd.*, 42 A.D.3d 301, .303 (1st Dep't 2007); *People v. Pharmacia Corp.*, 895 N.Y.S.2d 682, 686 (Sup. Ct. 2010). The Court of Appeals confirmed that view in *Credit Suisse,* 31 N.Y.3d at 633. In enacting CPLR § 213(9) in 2019, the legislature changed the statute of limitations to six years for prospective § 63(12) claims. The legislature gave no indication that the change was retroactive.

While only a handful of cases have addressed the issue of whether CPLR § 213(9)'s six-year statute of limitations should be applied retroactively, the topic of retroactive application of newly amended statutes of limitation has been thoroughly examined by New York courts. The most recent analysis of this issue was performed by the Court of Appeals in *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 N.Y.3d 332, 333 (2020) wherein the Court of Appeals restated New York's strong public policy against claim-revival statutes and the right of potential litigants to rely on the "finality" and "repose" offered by the expiration of statutes of limitations; discussed the heightened requirement for a clear expression of legislative intent required in order to apply such statutes retroactively; and analyzed when claim-revival statutes violate the Due Process clause of the New York Constitution. Further, the only appellate opinion to discuss retroactive application of CPLR § 213(9), *People v. Allen*, 198 A.D.3d 531, 532 (1st Dep't 2021) – which discussed retroactivity in dicta, on distinguishable facts, *see infra* at 18 n.6 – failed to abide by the binding precedent established in *Regina* and, more importantly, involved facts that are wholly distinguishable from the instant action.

It has been long settled that statutes must only be applied prospectively unless the language of the statute explicitly calls for retroactive application. *See, e.g., Jacobus v. Colgate*, 217 N.Y. 235, 240 (1916) ("It takes a clear expression of the legislative purpose to justify a retroactive

application."); *Matter of Regina Metro. Co., LLC*, 35 N.Y.3d at 371 ("[I]t is a bedrock rule of law that, absent an unambiguous statement of legislative intent, statutes that revive time-barred claims if applied retroactively will not be construed to have that effect."). Notably, in the instant case the legislature did include language regarding the timing of CPLR § 213(9)'s applicability, which only further emphasizes that it chose to not state any retroactive intent. *Allen*, 198 A.D.3d at 532 ("In the instant matter, the legislature "instructed that [CPLR § 213(9)] take effect immediately"); *see also Aguaiza v Vantage Props., LLC*, 69 A.D.3d 422, 423 (1st Dep't 2010) (holding that "where a statute by its terms directs that it is to take effect immediately," such language evidences a ***lack*** of intent for retroactive intent).

Further counseling against retroactive application of CPLR § 213(9) is the heightened standard that comes into play when retroactive application of a statute would have the effect of reviving previously time-barred claims. The issue of claim revival was most recently addressed by the Court of Appeals in *Regina*, which unambiguously stated that while "the general presumption against retroactive effect" may be overcome by implicit evidence of legislative intent, "the presumption against claim revival effect ***may only be overcome by the legislature's unequivocal textual expression*** that the statute was intended not only to apply to past conduct, but specifically to revive time-barred claims." *Matter of Regina Metro. Co., LLC*, 35 N.Y.3d at 373 (emphasis added). In the instant case, the legislature has not identified any particular injustice against any particular victim or class of victims. Rather, if CPLR § 213(9) were to be read retroactively it would broadly apply to any possible claim under either the Martin Act or Executive Law article 63, regardless of the nature of such claims, and would not serve to protect any individual plaintiff from injustice but simply allow the state to bring otherwise time-barred enforcement proceedings.

Based on the foregoing, it is undeniable that *Regina* remains valid, binding precedent applicable to the question before this Court, and that CPLR 213(9) does not contain any "unequivocal textual expression" of retroactive or claim-revival application. It is therefore inescapable that under *Regina*, CPLR § 213(9) does not apply retroactively. To date, *People v. Allen* is the only appellate case to have analyzed whether CPLR § 213(9) should be applied retroactively, and it fails to apply the on-point and binding precedent in *Regina* and *Aguaiza* by (1) ignoring that statutes reviving stale claims are subject to a different, and more stringent, test than the default standard for retroactive application in general,[5] and (2) misreading the nature of the concerns raised in those cases. *See* 198 A.D.3d at 532; *see also Matter of Regina Metro. Co., LLC*, 35 N.Y.3d at 332; *Aguaiza*, 69 A.D.3d at 423.

VI. THE COMPLAINT MUST BE DISMISSED FOR A NUMBER OF OTHER REASONS.

First, the NYAG has violated the Moving Defendants' constitutional right to equal protection of the laws. The Moving Defendants have been singled out and subject to selective treatment by the NYAG, and the NYAG's selective treatment of the Moving Defendants is a byproduct of her personal and political animus towards them. The NYAG's violation of the Equal Protection Clause is so pervasive that it warrants the dismissal of an enforcement action "[e]ven though the party raising the unequal protection claim may well have been guilty of violating the law." *Matter 303 W. 42nd St. Corp. v. Klein*, 46 N.Y.2d 686, 694 (1979) (citations omitted). Another telling takeaway from the NYAG's prior enforcement history is that it has previously advanced the exact *opposite* position than that which it takes against the Moving Defendants today.

[5] Claim-revival was not relevant to the facts before the court in. *Allen* because the claims in that case were still timely at the time the lawsuit was filed – under either the three-year pre-*Credit Suisse* standard or the new six-year period. *See People v. Allen*, 2021 WL 394821, at *5 (Sup. Ct. Feb. 4, 2021) (recognizing that claims were timely under either period). Thus, the discussion of retroactivity was dictum, and the case's facts did not implicate claim-revival. It is therefore not binding on the facts here.

For instances, in *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d at 627, the NYAG brought an action against Credit Suisse, alleging that the investment bank had "systematically failed to adequately evaluate [] loans" and misrepresented the quality of the mortgage loans and the due diligence review process that was conducted for approximately $11.2 billion dollars' worth of residential mortgage-backed securities. *See People v. Credit Suisse Sec. (USA) LLC*, Index No. 451802/2012 (Sup. Ct. N.Y. County 2018) (NYSCEF Doc. No. 2 at 2). In its complaint, the NYAG stressed the importance of the due diligence process and emphasized that the lender is "uniquely positioned through the due diligence process to obtain material information regarding the quality of [] loans" and has "unique access to critical information that enable[s] them to root out discernible problems and risks." *Id.* at 13. This position is entirely contradictory to the NYAG's stance as it relates to the instant action, wherein the NYAG has alleged that Deutsche Bank justifiably "relied" upon misleading statements contained in the Statements of Financial condition (Compl. at 174), despite the fact that, as alleged by the NYAG, President Trump's "desire to keep his net worth high" was "well known publicly." *Id.* at 192. The disparity between these two positions simply cannot be reconciled and is further proof that AG James is selectively advancing a baseless case against the Moving Defendants that is has never, and would never, assert against similarly situated competitors.

Second, the NYAG has failed to adequately plead that the Moving Defendants' conduct tended to deceive, or created an atmosphere conducive to fraud under Executive Law § 63(12). Courts have held that allegations of reliance and scienter, which are standard elements of a common-law fraud claim, are not required to be plead in a cause of action based on Executive Law § 63(12). However, given the novel manner in which the NYAG is invoking Exec. Law § 63(12) in the instant action, practical application of the law dictates that both reliance and scienter must

be shown for the NYAG to maintain a valid cause of action against the Moving Defendants. The NYAG cannot plead and prove that the Moving Defendants' conduct had the capacity or tendency to deceive sophisticated financial institutions because each and every institution had a duty to investigate the "total mix" of available information relating to President Trump's financial condition.

Third, the NYAG has failed to adequately plead a claim for fraud without having submitted a statement from a qualified expert that the values on the SoFC were improperly inflated. To adequately plead a claim, the NYAG must come forward with facts supported by a ***qualified expert***, who "should possess the requisite skill, training, education knowledge or experience from which it can be assumed that the opinion rendered is reliable." *Schechter v. 3320 Holding LLC*, 64 A.D.3d 446, 449 (1st Dep't 2009) (citing *Matott v. Ward*, 48 N.Y.2d 455, 459 (1979)).

Fourth, even if the Court determines that the NYAG is empowered to intervene in private transactions, documentary evidence shows that the Executive Law § 63(12) fraud claim is precluded. The NYAG's entire fraud theory is based on conduct that at best, amounts to nothing more than a non-material breach of financial reporting obligations under the ***limited guarantees*** executed in connection with the subject Loan Agreements. At the outset, it is paramount to understand that the subject loans were mortgage loans and were secured—and, in fact, greatly ***over-secured***—by the value of the property underlying each of the individual Loans. These guarantees merely provided the lender with limited rights against the guarantor under limited circumstances, which rights were virtually meaningless in terms of the security and value of the loan given the underlying LTV of each of the subject loans. Such a non-material breach cannot form the basis of a viable fraud claim.

Lastly, the NYAG only named defendant Donald Trump, Jr. in this action in his individual capacity; the Donald J. Trump Revocable Trump was incorrectly named as a defendant in the Complaint. A trust is not a legal entity. A motion to dismiss is therefore simultaneously being made on the Trust's behalf.

CONCLUSION

Based on the foregoing, the Court should dismiss the Complaint in its entirety and with prejudice.

Dated: Uniondale, New York
November 21, 2022

Respectfully submitted,

Clifford S. Robert

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants Donald Trump, Jr. and Eric Trump

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 6,935 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
November 21, 2022

Respectfully submitted,

Clifford S. Robert

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants Donald Trump, Jr. and Eric Trump

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, *Plaintiff*, v. DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12 LLC; 401 NORTH WABASH VENTURE LLC; TRUMP OLD POST OFFICE LLC; 40 WALL STREET LLC; and SEVEN SPRINGS LLC, *Defendants*.	Index No. 452564/2022

MEMORANDUM OF LAW OF IVANKA TRUMP
IN SUPPORT OF MOTION TO DISMISS

Clifford S. Robert
Michael Farina
Robert & Robert, PLLC
526 RXR Plaza
Uniondale, New York 11556
Telephone: (516) 832-7000

Reid M. Figel (*admitted pro hac vice*)
Michael K. Kellogg (*pro hac vice pending*)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900

Counsel for Defendant Ivanka Trump

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

PRELIMINARY STATEMENT 1

ALLEGATIONS IN THE COMPLAINT 2

A. Ivanka Trump's Responsibilities at the Trump Organization 2

B. Doral 2

C. The Old Post Office 4

D. Penthouses A and B 5

ARGUMENT 5

I. The Complaint Fails To Allege Ms. Trump Engaged in Any Fraud Under § 63(12) 5

A. The Complaint Fails To Allege That Ms. Trump Made Any Misrepresentation 6

B. The Complaint Fails To Plead Ms. Trump Participated in or Knew of Any Alleged Misrepresentation 8

C. The Complaint Fails To Allege a Civil Conspiracy for Fraud Under § 63(12) 11

1. The Complaint Fails To Allege That Ms. Trump Participated in a Civil Conspiracy 11

2. The Intracorporate Conspiracy Doctrine Bars Any Civil-Conspiracy Claim 13

II. The Court Should Dismiss the Second Through Seventh Causes of Action Because They Fail To Allege Ms. Trump Engaged in Any Unlawful Conduct 14

III. The Complaint's § 63(12) Claims Are Time-Barred 16

A. All Claims Are Untimely 17

B. There Are No Claims Against Ms. Trump Accruing Within the Six Years Preceding This Lawsuit 18

IV. There Are No Allegations Sufficient for the Equitable Relief of Disgorgement or a Permanent Officer-and-Director Bar Against Ms. Trump.....21

CONCLUSION.....23

TABLE OF AUTHORITIES

Page

CASES

Abacus Fed. Sav. Bank v. Lim,
75 A.D.3d 472 (1st Dep't 2010) 11

Abrahami v. UPC Constr. Co.,
176 A.D.2d 180 (1st Dep't 1991) 6

Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co.,
84 A.D.2d 736 (1st Dep't 1981) 2

All. Network LLC v. Sidley Austin LLP,
43 Misc. 3d 848 (Sup. Ct. 2014) 18

Boesky v. Levine,
193 A.D.3d 403 (1st Dep't 2021) 17

Bond v. Bd. of Educ. of City of N.Y.,
1999 WL 151702 (E.D.N.Y. Mar. 17, 1999) 13

Chamberlain v. City of White Plains,
986 F. Supp. 2d 363 (S.D.N.Y. 2013) 13

CIFG Assur. N. Am., Inc. v. J.P. Morgan Sec. LLC,
146 A.D.3d 60 (1st Dep't 2016) 6

Connaughton v. Chipotle Mexican Grill, Inc.,
29 N.Y.3d 137 (2017) 12

Deep v. Urbach, Kahn & Werlin LLP,
19 Misc. 3d 1142(A), 2008 WL 2312754 (Sup. Ct. June 5, 2008) 2

DuBuisson v. Nat'l Union Fire Ins. of Pittsburgh,
2021 WL 3141672 (S.D.N.Y. July 26, 2021) 19

Electron Trading, LLC v. Morgan Stanley & Co.,
157 A.D.3d 579 (1st Dep't 2018) 6

Eurycleia Partners, LP v. Seward & Kissel, LLP,
12 N.Y.3d 553 (2009) 22

Gabelli v. SEC,
568 U.S. 442 (2013) 18

Gallewski v. H. Hentz & Co.,
301 N.Y. 164 (1950) 21

Gleason, *In re*,
96 N.Y.2d 117 (2001) 20

Henry v. Bank of Am.,
147 A.D.3d 599 (1st Dep't 2017) 18, 19

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
37 N.Y.3d 552 (2021) 22

Kumiva Grp., LLC v. Garda USA Inc.,
146 A.D.3d 504 (1st Dep't 2017) 12

Landgraf v. USI Film Prods.,
511 U.S. 244 (1994) 19, 20, 21

Leon v. Martinez,
84 N.Y.2d 83 (1994) 2

Lilley v. Greene Cent. Sch. Dist.,
187 A.D.3d 1384 (3d Dep't 2020) 13

Loretto v. Teleprompter Manhattan CATV Corp.,
58 N.Y.2d 143 (1983) 20

Marine Midland Bank v. John E. Russo Produce Co.,
50 N.Y.2d 31 (1980) 8, 9

Mastro Indus., Inc. v. CBS Records,
50 A.D.2d 783 (1st Dep't 1975) 13

Meeker v. McLaughlin,
2018 WL 3410014 (S.D.N.Y. July 13, 2018) 9

Nat'l Westminster Bank v. Weksel,
124 A.D.2d 144 (1st Dep't 1987) 8

People v. Allen,
2021 WL 394821 (N.Y. Sup. Ct. Feb. 4, 2021) 21

People v. Allen,
198 A.D.3d 531 (1st Dep't 2021) 21

People v. Apple Health & Sports Clubs, Ltd.,
80 N.Y.2d 803 (1992) 8

People v. Boothe,
16 N.Y.3d 195 (2011) 16

People v. Briggins,
50 N.Y.2d 302 (1980) 15

People v. Credit Suisse Sec. (USA) LLC,
31 N.Y.3d 622 (2018) 6, 17

People v. Essner,
124 Misc. 2d 830 (Sup. Ct. 1984) 15, 16

People v. Federated Radio Corp.,
244 N.Y. 33 (1926) 6

People v. Greenberg,
27 N.Y.3d 490 (2016) 22

People v. Hankin,
175 Misc. 2d 83 (Crim. Ct. 1997) 14, 15

People v. Katz,
84 A.D.2d 381 (1st Dep't 1982) 2

People v. Taveras,
12 N.Y.3d 21 (2009) 14

Pike v. N.Y. Life Ins. Co.,
72 A.D.3d 1043 (2d Dep't 2010) 19

Prudential-Bache Metal Co. v. Binder,
121 A.D.2d 923 (1st Dep't 1986) 10-11

Regina Metro. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal,
35 N.Y.3d 332 (2020) 20

RKA Film Fin., LLC v. Kavanaugh,
56 Misc. 3d 1203(A), 2017 WL 2784999 (Sup. Ct. June 27, 2017) 9

RKA Film Fin., LLC v. Kavanaugh,
162 A.D.3d 418 (1st Dep't 2018) 10

Robinson v. Snyder,
259 A.D.2d 280 (1st Dep't 1999) 14

Rogal v. Wechsler,
135 A.D.2d 384 (1st Dep't 1987) 17

Rosen v. Brown & Williamson Tobacco Corp.,
11 A.D.3d 524 (2d Dep't 2004) 12

Schwartz v. Soc'y of N.Y. Hosp.,
199 A.D.2d 129 (1st Dep't 1993) 12

SEC v. Am. Bd. of Trade, Inc.,
751 F.2d 529 (2d Cir. 1984).....23

State v. Cortelle Corp.,
38 N.Y.2d 83 (1975) 17

State v. Daicel Chem. Indus., Ltd.,
42 A.D.3d 301 (1st Dep't 2007) 20

Summit Solomon & Feldesman v. Lacher,
212 A.D.2d 487 (1st Dep't 1995) 2, 10

Vigoda v. DCA Prods. Plus Inc.,
293 A.D.2d 265 (1st Dep't 2002) 22

World Trade Ctr. Lower Manhattan Disaster Site Litig., *In re*,
30 N.Y.3d 377 (2017) 21

STATUTES AND LEGISLATIVE MATERIALS

N.Y. Exec. Law § 63(12) ..... *passim*

N.Y. Penal Law § 175.05 .....14, 15

N.Y. Penal Law § 175.45 .....14, 15

N.Y. Penal Law § 176.05 .....14, 16

S.B. S6536, 2019-2020 Leg. Sess. 17

§ 2.....20

RULES

CPLR 203(a) 17

CPLR 203(g)(1) 18

CPLR 213 17

CPLR 213(9) 17, 20, 21

CPLR 214(2) 17

CPLR 3016(b) 2, 6, 8

CPLR 3211(a)(5) 16

OTHER MATERIALS

Restatement (Third) of Restitution and Unjust Enrichment (2011) 22

Verified Pet., *People v. Trump Org., Inc.*, Index No. 451685/2020, NYSCEF 181 (N.Y. Sup. Ct. Aug. 24, 2020) 18

PRELIMINARY STATEMENT

The Complaint fails to set forth sufficient allegations to state a claim against Ivanka Trump ("Ms. Trump") for violating New York Executive Law § 63(12). Ms. Trump left the Trump Organization in January 2017; and there is no allegation she had any responsibilities at the company thereafter. The Complaint describes Ms. Trump's efforts in 2012 and 2014 to develop the Doral and Old Post Office properties, but fails to allege facts to establish she engaged in any fraudulent or unlawful conduct in connection with those projects, or otherwise.

The Complaint does not allege that Ms. Trump made any affirmative misrepresentation to anyone. There is no allegation that she ever prepared, reviewed, approved, signed, or submitted any of her father's statements of financial condition ("SFCs") to anyone. There is no allegation she knew about the alleged use of improper methodologies to value the assets included in any SFC. There is no allegation she falsified any business record. There is no allegation she communicated with any insurer or auditor.

As a result, each of the seven Causes of Action alleging violations of § 63(12) against her must be dismissed. The First, alleging a violation of § 63(12)'s fraud prong, fails because the Complaint does not identify any specific misrepresentation she made, nor does it allege she knew about, or actively participated in, a fraudulent scheme. The Second through Seventh, alleging violations of § 63(12)'s unlawfulness prong, fail because the Complaint does not include facts sufficient to plead that she violated the New York Penal Law. And, because the loan facilities that Deutsche Bank provided to develop the Doral and Old Post Office properties closed in 2012 and 2014—more than eight years before the Complaint was filed—each § 63(12) cause of action is barred by the applicable three-year statute of limitations.

ALLEGATIONS IN THE COMPLAINT

On a motion to dismiss, the court "accept[s] the facts as alleged in the complaint as true," *Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994), but does not credit "bare legal conclusions," *Summit Solomon & Feldesman v. Lacher*, 212 A.D.2d 487, 487 (1st Dep't 1995). A heightened pleading standard applies to fraud claims brought under Executive Law § 63(12)—under CPLR 3016(b), the "circumstances constituting the wrong" must be "stated in detail." *People v. Katz*, 84 A.D.2d 381, 384-85 (1st Dep't 1982). The Complaint must specify "the precise tortious conduct charged to a particular defendant." *Aetna Cas. & Sur. Co. v. Merchants Mut. Ins. Co*., 84 A.D.2d 736, 736 (1st Dep't 1981) (dismissing claims pled collectively against all defendants); *see also Deep v. Urbach, Kahn & Werlin LLP*, 19 Misc. 3d 1142(A), 2008 WL 2312754, at *3 (Sup. Ct. June 5, 2008).

A. Ivanka Trump's Responsibilities at the Trump Organization

Ms. Trump was the Executive Vice President for Development and Acquisitions of the Trump Organization, "direct[ing] all areas of the company's real estate and hotel management platforms," Compl. ¶ 33, including negotiating and securing financing for company properties, as well as licensing, *id.* ¶¶ 33, 553, 554. She has had no role in the Trump Organization since January 2017. *Id.* ¶ 33.

B. Doral

In November 2011, the Trump Organization executed a $150 million agreement to purchase the Doral Golf Resort and Spa ("Doral"). Compl. ¶ 571. In October 2011, Ms. Trump sent Deutsche Bank an "Investment Memo" and financial projections describing the development projections for the Doral property. *Id.* ¶ 572. On November 14, 2011, Richard Byrne, head of Deutsche Bank's Commercial Real Estate ("CRE") division, "spoke to

Mr. Trump and Ivanka Trump about the loan." *Id.* ¶ 574. The next day, "Mr. Trump sent Mr. Byrne a letter, copying" Ms. Trump and attaching his SFC. *Id.* Shortly thereafter, CRE proposed interest-rate terms that the Trump Organization rejected. *Id.* ¶¶ 575-576.

In December 2011, Ms. Trump had discussions with Rosemary Vrablic about financing for the Doral project from Deutsche Bank's Private Wealth Management ("PWM") division. *Id.* ¶ 576. Ms. Trump and her father met with Vrablic, prior to which Ms. Trump sent Vrablic an Investment Memo for the Doral project "as well as some basic information on [the Trump Organization's] golf and hotel portfolios." *Id.* On December 15, 2011, Vrablic sent Ms. Trump a term sheet for a proposed $125 million construction loan that included a personal guaranty from her father. *Id.* ¶ 577. The term sheet set out proposed interest rates, and included covenants that required him to maintain a $3 billion minimum net worth and $50 million of unencumbered liquidity. *Id.*

Ms. Trump forwarded the term sheet to other Trump Organization executives, observing: "It doesn't get better than this . . . I am tempted not to negotiate this though." *Id.* ¶ 578. Jason Greenblatt (the Trump Organization's Chief Legal Officer) responded, expressing concern about the risks to her father from guaranteeing the financing with his personal assets. *Id.* ¶ 579. As alleged in the Complaint (¶ 580), Ms. Trump responded that "the only way to get proceeds/term and principle where we want them is to guarantee the deal." Three days later, on December 18, 2011, Ms. Trump sent a revised term sheet to Vrablic on behalf of the Trump Organization, proposing to reduce the net-worth covenant to $2 billion and limiting term payments to interest-only. *Id.* ¶ 582.

The Complaint does not identify any further actions by Ms. Trump in connection with this transaction, which closed six months later on June 11, 2012. *Id.* ¶¶ 587-588. Nor does it allege that she ever signed or submitted any SFCs—for this transaction or otherwise.

C. The Old Post Office

In July 2011, the Trump Organization submitted a bid to the General Services Administration ("GSA") for the right to lease and redevelop the Old Post Office ("OPO") in Washington, D.C. Compl. ¶¶ 623-625. Ms. Trump participated in that effort, working with her father "in crafting communications to the GSA . . . and in responding to deficiency comments raised by the GSA." *Id.* ¶ 625. Those communications "concerned, among other topics, Mr. Trump's" prior SFCs, "including their departures from" Generally Accepted Accounting Principles ("GAAP"), and "Mr. Trump's financial capabilities as well as his ability to perform the obligations under the lease at issue." *Id.* The Complaint does not allege that any of the SFCs submitted at that time were false or misleading. Its allegations claiming that the SFCs contained false statements begin with the 2011 SFC, *see*, *e.g.*, *id.* ¶ 1, which was not submitted to the GSA as part of the July 2011 bid, *see id.* ¶¶ 623-624 & Ex. 3 at 20. "Mr. Trump and Ivanka Trump participated in an in-person presentation to address GSA's concerns about those topics and others." *Id.* ¶ 625. In February 2012, the GSA selected the Trump Organization to develop the property. *Id.* ¶ 626. On August 5, 2013, the GSA leased the property to the Trump Organization. *Id.*

For this development project, the Trump Organization engaged in preliminary discussions with the CRE and PWM divisions of Deutsche Bank. *Id.* ¶¶ 627, 629-630. Vrablic of PWM "kept close tabs on the bank's consideration of the request . . . at the urging of Ivanka Trump." *Id.* ¶ 627. On December 2, 2013, PWM provided Ms. Trump with a draft term sheet

for a $170 million loan facility to the Trump Organization. *Id.* ¶ 630. That term sheet required that her father personally guarantee the proposed loan, and that he maintain a personal net worth of at least $2.5 billion. *Id.* ¶ 631. The Complaint does not allege that Ms. Trump had any involvement in the OPO negotiations after December 2, 2013. *See id.* ¶¶ 631-644. The Trump Organization and PWM executed a term sheet on January 13 and 14, 2014, *id.* ¶ 632, and the construction financing for $170 million closed on August 12, 2014. *Id.* ¶ 634. Ms. Trump is not alleged to have signed those loan documents. Several years later, on December 21, 2016, Ms. Trump signed a draw request for a $4,334,772.83 disbursement from that loan facility. *Id.* ¶ 645.

D. Penthouses A and B

Beginning in 2011, Ms. Trump rented a penthouse apartment ("Penthouse A") at Trump Park Avenue. Compl. ¶ 106. Her rental agreement included an option to purchase Penthouse A for $8,500,000. *Id.* ¶ 107. The 2011-2013 SFCs included a valuation of Penthouse A at a value higher than Ms. Trump's option purchase price. In June 2014, Ms. Trump was given an option to purchase another penthouse ("Penthouse B") in the same building for $14,264,000. *Id.* ¶ 108. The 2014 SFC included a valuation of Penthouse B at a value higher than Ms. Trump's option purchase price. *Id.* The Complaint does not allege that Ms. Trump knew about those valuations. It alleges that the options reduced the fair-market value of Trump Park Avenue under GAAP, *see id.* ¶ 111, but does not allege that Ms. Trump knew of or understood any such effect.

ARGUMENT

I. The Complaint Fails To Allege Ms. Trump Engaged in Any Fraud Under § 63(12).

The Complaint fails to identify any misrepresentation made by Ms. Trump. It describes Ms. Trump's communications with Deutsche Bank to discuss financing for the Doral and OPO

projects.[1] But nowhere does it allege that Ms. Trump made any misrepresentation—about the SFCs or otherwise—in connection with either transaction, much less identify any such misrepresentation with specificity (Part I.A). The Complaint also lacks allegations sufficient to state a § 63(12) claim against Ms. Trump based on any alleged misrepresentations made by others (Part I.B). Nor do the civil-conspiracy allegations state a § 63(12) claim against Ms. Trump (Part I.C). These pleading deficiencies require dismissal of the First Cause of Action.

A. The Complaint Fails To Allege That Ms. Trump Made Any Misrepresentation.

A complaint that asserts a fraud-based violation of § 63(12) must identify a fraudulent misrepresentation. *See People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 633 (2018) (§ 63(12)'s definition of "fraud" identical to that in Martin Act); *People v. Federated Radio Corp.*, 244 N.Y. 33, 41 (1926) (Martin Act fraud requires identifying misrepresentation). Because § 63(12) fraud claims are subject to the "stringent" pleading standard of CPLR 3016(b), they must be "pleaded with particularity," and "conclusory allegations are insufficient." *CIFG Assur. N. Am., Inc. v. J.P. Morgan Sec. LLC*, 146 A.D.3d 60, 63 (1st Dep't 2016). Failure to identify a specific misrepresentation made by an individual defendant requires dismissal as to that defendant. *See*, *e.g.*, *Abrahami v. UPC Constr. Co.*, 176 A.D.2d 180, 180 (1st Dep't 1991) (dismissing fraud claims based on inflated financial statements for failure to allege individual directors themselves made any false representations).

The Complaint identifies only two transactions in which Ms. Trump allegedly made statements to a third party: the purchase and development of Doral, and the lease and financing

[1] The Complaint includes a threadbare allegation that Ms. Trump "negotiated loans on Trump Organization properties" at Trump Chicago, Compl. ¶¶ 33, 721, but no additional allegations about these negotiations. An allegation "devoid of specific factual instances of fraud" does not satisfy the CPLR 3016(b) pleading requirement. *Electron Trading, LLC v. Morgan Stanley & Co.*, 157 A.D.3d 579, 581 (1st Dep't 2018).

of OPO. The Complaint does not allege that she made a misrepresentation to anyone in either transaction, much less with the requisite specificity necessary to allege fraud. That basic pleading failure requires dismissal as to Ms. Trump.

Doral. The Complaint describes Ms. Trump's communications with Deutsche Bank in November and December 2011 to obtain financing to develop the Doral property. *See* Compl. ¶¶ 572, 574, 576, 582. During those two months, the Complaint alleges that Ms. Trump sent Deutsche Bank an "Investment Memo" with "financial projections for the Doral property." *Id.* ¶¶ 572, 576. It does not allege that the "Investment Memo" was an SFC or false or misleading in any respect. The remaining allegations about the Doral negotiations do not allege that Ms. Trump made any relevant representation, let alone allege a false representation with particularity. *Id.* ¶¶ 574 (alleging a conversation "about the loan," with no further details); 576 (same). Those communications occurred six months before the loan closed in June 2012. Ms. Trump did not sign the final loan documentation. The Complaint does not allege the valuation for the Doral property was inflated on any SFC.

OPO. The Complaint does not allege that Ms. Trump made any misrepresentation regarding the OPO lease, the proposed financing, or any SFC submitted in connection with this project. Indeed, the Complaint fails to identify *any* specific representation Ms. Trump made regarding the OPO project. It alleges that on December 21, 2016, two years after the OPO financing closed, Ms. Trump "signed a draw request" to Deutsche Bank. *Id.* ¶ 645. Signing a "draw request"—requesting project-specific disbursement on a prior credit facility—is not fraudulent. Paragraph 645 (the only allegation about Ms. Trump's draw request) does not identify a specific misrepresentation.

B. The Complaint Fails To Plead Ms. Trump Participated in or Knew of Any Alleged Misrepresentation.

As explained, there is no allegation that Ms. Trump made a misrepresentation to anyone. "Where liability for fraud is to be extended beyond the principal actors" to one who "has not made any fraudulent misrepresentation," "it is especially important that the command of CPLR 3016(b) be strictly adhered to." *Nat'l Westminster Bank v. Weksel*, 124 A.D.2d 144, 149 (1st Dep't 1987) (the circumstances of one defendant's connection to another's fraudulent misrepresentation must "be alleged in detail from the outset"). As a non-speaker, Ms. Trump has no § 63(12) liability unless she "personally participate[d] in the misrepresentation or [had] actual knowledge of it." *Marine Midland Bank v. John E. Russo Produce Co.*, 50 N.Y.2d 31, 44 (1980) ("[m]ere negligent failure to acquire knowledge" is insufficient); *People v. Apple Health & Sports Clubs, Ltd.*, 80 N.Y.2d 803, 807 (1992) (applying *Midland* test to § 63(12) fraud case). The Complaint lacks allegations sufficient to state a § 63(12) claim against Ms. Trump based on any alleged misrepresentations made by others.

First, there is no allegation that Ms. Trump personally participated in the alleged fraudulent scheme. She did not directly or indirectly prepare, review, or approve the SFCs. The Complaint in fact alleges the opposite. Ms. Trump is not among the individuals identified in the Complaint who (i) were named as responsible parties on the SFCs, Compl. ¶ 6; (ii) directed Trump Organization staff to prepare valuations for the SFCs, *id.* ¶ 54; (iii) prepared supporting spreadsheets for the SFCs, *id.* ¶ 62; (iv) "certified the accuracy" of the SFCs submitted to Deutsche Bank, *id.* ¶ 595; or (v) were "key individual players" in the alleged fraud, *id.* ¶ 758. The allegations necessary to plead that Ms. Trump, as a non-speaker, could be liable for the alleged fraudulent scheme are non-existent. The Complaint thus fails to state a sufficient claim under CPLR 3016(b). *See Weksel*, 124 A.D.2d at 149.

The Complaint (¶¶ 577, 627) describes Ms. Trump's initial discussions with Deutsche Bank to finance the Trump Organization's development of Doral and OPO. It does not allege that Ms. Trump was involved in the negotiations over the final loan documentation, executed those documents, monitored compliance with representations and warranties, or confirmed the accuracy of any SFC. Accordingly, it does not sufficiently allege that she personally participated in any fraudulent scheme. *See*, *e.g.*, *RKA Film Fin., LLC v. Kavanaugh*, 56 Misc. 3d 1203(A), 2017 WL 2784999, at *4 (Sup. Ct. June 27, 2017) (allegation that director conducted diligence on a financial transaction is insufficient to support an inference that director personally participated in alleged fraud). Similarly, the allegation (¶ 574) that her father sent his SFC to Deutsche Bank in 2011, "copying Ivanka Trump," does not allege that Ms. Trump personally participated in a fraudulent scheme. *Cf. Meeker v. McLaughlin*, 2018 WL 3410014, at *8-9 (S.D.N.Y. July 13, 2018) (following *Midland* and dismissing fraud claim against director who was only "copied on email communications regarding" the misrepresentation).

Second, the Complaint fails adequately to allege that Ms. Trump actually knew of any misrepresentation. Although the Complaint alleges that the SFCs were inflated because they used improper or undisclosed valuation methodologies and relied on inaccurate data, *see*, *e.g.*, Compl. ¶¶ 136, 175, it does not allege that Ms. Trump knew they were inflated, by how much, or why. Nor does it allege that she knew her father's net worth; the extent of his control over specific assets under the complicated organizational structure identified in the Complaint, *see id.* Ex. 2; or how any SFC valued those assets.

Some allegations in the Complaint suggest that Ms. Trump had information about the value or potential value of three out of the more than 22 real estate assets included in the SFCs. *Id.* ¶¶ 106, 572, 627. But Ms. Trump's alleged knowledge about only three assets in the SFCs

does not constitute an allegation that she actually knew that any particular SFC was inflated. There is no allegation that she actually knew (i) which valuation methodology should be applied to specific assets under GAAP; (ii) that the valuation methodology was not being properly applied; or (iii) that the resulting valuations, in the aggregate, violated the representations and warranties in any loan documentation. *Cf. RKA Film. Fin., LLC v. Kavanaugh*, 162 A.D.3d 418, 419 (1st Dep't 2018) (allegation that officer knew about funds' usage was insufficient to show that he was "aware that misrepresentations had been made" about funds).

For example, the Complaint alleges that the valuation of the Trump Tower building was inflated on the 2011-2014 SFCs because (i) the building was valued "by dividing NOI by a capitalization rate," Compl. ¶ 199; (ii) the Trump Organization had excluded several "higher capitalization rates," when selecting a capitalization rate; and (iii) the NOI figures were calculated using expenses and revenues from an inappropriate "mismatch in time periods," *id.* ¶ 214. Further, the value was allegedly inflated on the 2015 SFC because it used a different valuation methodology based on "comparable sales," *id.* ¶ 224; but the comparison used was inappropriate, *id.* ¶ 232. What the Complaint does not allege, however, is that Ms. Trump actually knew any of these things with respect to Trump Tower. It similarly fails to allege that she actually knew of valuation errors with respect to any asset on the SFCs. Without such allegations, the Complaint fails to allege that she had actual knowledge of the alleged misrepresentations.

The Complaint's conclusory allegations that Ms. Trump was "aware of the true financial performance" of the entire Trump Organization, *id.* ¶ 721, and was "familiar" with the SFCs, *id.* ¶¶ 726, 728, are also insufficient to allege that she actually knew the SFCs were inflated. *See Summit*, 212 A.D.2d at 487; *Prudential-Bache Metal Co. v. Binder*, 121 A.D.2d 923, 926 (1st

Dep't 1986) (dismissing claim for lack of "substantive allegations" that an officer had "actual knowledge of the [company's] issuance of bad checks").

C. The Complaint Fails To Allege a Civil Conspiracy for Fraud Under § 63(12).

The Complaint also fails to state a claim that Ms. Trump participated in a "civil conspiracy" to defraud financial institutions by creating and submitting false SFCs. Compl. ¶ 760. It never alleges that Ms. Trump intentionally participated in any conspiracy to commit fraud, or that the alleged conspiracy caused any legally cognizable damages to any party. It also fails to allege a civil-conspiracy claim under the intracorporate conspiracy doctrine because the only alleged co-conspirators were other members of the Trump Organization.

1. The Complaint Fails To Allege That Ms. Trump Participated in a Civil Conspiracy.

The Complaint advances an untested theory of § 63(12) liability—one never endorsed by any court—based on a novel argument that § 63(12) fraud can serve as a tort underlying a claim of civil conspiracy. That theory fails because, as the Complaint concedes (¶ 760), "New York does not recognize an independent cause of action for [civil] conspiracy." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010). Rather, civil-conspiracy allegations can be used "only to connect the actions of separate defendants with an otherwise actionable tort." *Id.* To plead a civil conspiracy, a plaintiff "must demonstrate the primary tort, plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." *Id.*

Whether or not the Complaint alleges the "primary tort" of fraudulently producing and using (purportedly) inflated SFCs, it fails to allege that Ms. Trump intentionally participated in a conspiracy to further any primary tort, or that the conspiracy harmed any person.

No Intentional Participation. "[A] civil conspiracy cause of action requires a showing of intentional conduct." *Rosen v. Brown & Williamson Tobacco Corp.*, 11 A.D.3d 524, 525 (2d Dep't 2004). But the Complaint contains no specific allegations that Ms. Trump intentionally engaged in "independent culpable behavior," *Schwartz v. Soc'y of N.Y. Hosp.*, 199 A.D.2d 129, 130 (1st Dep't 1993), to further any fraud. As explained (Part I.B), the Complaint nowhere pleads that Ms. Trump had any involvement in creating or disseminating SFCs, or ever intentionally misled anyone. It therefore fails to plead "any . . . independent culpable behavior" by Ms. Trump, a fatal flaw. *See id.* ("more than a conclusory allegation of conspiracy or common purpose is required" to allege civil-conspiracy liability "against [a] nonactor").

No Damages. Pleading a civil conspiracy to engage in fraud requires allegations that the primary tort caused an "out of pocket" loss to another. The primary tort alleged in the Complaint is, in essence, that the Trump Organization fraudulently induced Deutsche Bank to enter into a financing agreement on unfavorable terms. In fraudulent inducement claims, only out of pocket damages are cognizable. *See Kumiva Grp., LLC v. Garda USA Inc.*, 146 A.D.3d 504, 506 (1st Dep't 2017) ("[A] plaintiff alleging fraudulent inducement is limited to 'out of pocket' damages, which consist solely of the actual pecuniary loss directly caused by the fraudulent inducement.").

The Complaint fails to plead civil conspiracy because there are no allegations that the conspiracy caused "damages or injury" to anyone. At most, the Complaint alleges the Trump Organization submitted SFCs with inflated asset valuations and, as a result, Deutsche Bank financed Trump Organization projects "on more favorable terms than would otherwise have been available." Compl. ¶ 3. This describes only lost business opportunities, which are not "out of pocket" damages (and thus are not cognizable) in the fraudulent-inducement context. *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 143 (2017). An alleged difference

in contract terms cannot establish damages from fraud. *See Mastro Indus., Inc. v. CBS Records*, 50 A.D.2d 783 (1st Dep't 1975) (refusing to allow such damages in fraudulent-inducement action).

2. The Intracorporate Conspiracy Doctrine Bars Any Civil-Conspiracy Claim.

The Complaint also fails to state a civil-conspiracy claim under the intracorporate conspiracy doctrine. Under that doctrine, "officers, agents and employees of a single corporate entity are legally incapable of conspiring together." *Chamberlain v. City of White Plains*, 986 F. Supp. 2d 363, 388 (S.D.N.Y. 2013). New York recognizes the intracorporate conspiracy doctrine. *See Lilley v. Greene Cent. Sch. Dist.*, 187 A.D.3d 1384, 1389-90 (3d Dep't 2020) (invoking doctrine to dismiss conspiracy claims against employees of same entity). Ms. Trump thus cannot be a member of a conspiracy comprised solely of the Trump Organization and its officers, directors, and employees.

All allegations against Ms. Trump date from the pre-2017 period when she was an officer of the Trump Organization. The Complaint does not allege that she conspired with any person unaffiliated with the Trump Organization, or that any alleged conspirator acted outside the scope of employment. Compl. ¶ 730; *see Bond v. Bd. of Educ. of City of N.Y.*, 1999 WL 151702, at *2 (E.D.N.Y. Mar. 17, 1999) (intracorporate conspiracy doctrine applies where defendants are not "pursuing personal interests wholly separate and apart from the entity"). The Complaint also does not allege that Ms. Trump (or any other defendant) agreed with any unaffiliated party to further the alleged primary tort. The Complaint therefore fails to allege a conspiracy under the intracorporate conspiracy doctrine.

II. The Court Should Dismiss the Second Through Seventh Causes of Action Because They Fail To Allege Ms. Trump Engaged in Any Unlawful Conduct.

To obtain equitable relief under § 63(12) on an illegal-act theory, the Complaint must plead persistent and repeated illegal acts. The illegal acts alleged in the Second through Seventh Causes of Action are violations of New York criminal law: falsifying business records in violation of Penal Law § 175.05; issuing false financial statements in violation of Penal Law § 175.45; and committing insurance fraud in violation of Penal Law § 176.05. The Complaint pleads these violations against Ms. Trump without alleging that she (i) falsified any business record; (ii) issued any financial statement; (iii) interacted with any insurer; or (iv) had the specific intent to commit any crime.

No Falsification or Conspiracy to Falsify Business Records. The Second and Third Causes of Action assert that Ms. Trump violated, and conspired to violate, Penal Law § 175.05. The elements of that statute include making or causing a false entry in the business records of an enterprise with an intent to defraud, which is "commonly understood to mean to cheat someone out of money, other property or something of value." *People v. Hankin*, 175 Misc. 2d 83, 89 (Crim. Ct. 1997). But the Complaint does not allege that Ms. Trump falsified any document related to any SFC. Nor does it allege that she falsified any other business record. Dismissal is required as to Ms. Trump. *See People v. Taveras*, 12 N.Y.3d 21, 22 (2009).

Similarly, the Court should dismiss the Third Cause of Action for lack of any factual allegations that Ms. Trump conspired with anyone to post any false entry in the books and records of any specific enterprise. "The essence of the offense [of conspiracy] is an agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999). The Complaint makes the conclusory allegation that the "Defendants each

agreed to participate in a scheme to use false and misleading information to increase Mr. Trump's stated net worth." Compl. ¶ 716. That bare legal conclusion is insufficient to plead that Ms. Trump agreed to create and submit false records.

In addition, as to both the Second and Third Causes of Action, the Complaint does not include allegations that Ms. Trump acted with specific intent to violate Penal Law § 175.05—that is, to mislead "another into error or to disadvantage." *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring); *see Hankin*, 175 Misc. 2d at 89 (dismissing criminal information that lacked "even a suggestion . . . that there was an intent . . . to defraud any person, group or institution"). The Complaint alleges only that Ms. Trump "was aware" that financing from PWM for the Doral and Old Post Office projects would "include[ ] a personal guaranty from Mr. Trump." Compl. ¶ 33. Ms. Trump's awareness that the loan agreements included a personal guaranty does not show that she intended to mislead Deutsche Bank by submitting a false business record.

No Issuance of a False Financial Statement. The Court also must dismiss the Fourth and Fifth Causes of Action, which allege a violation of, and conspiracy to violate, Penal Law § 175.45. The elements of § 175.45 include "the act of issuing a false financial statement" with "the requisite intent to defraud." *People v. Essner*, 124 Misc. 2d 830, 833 (Sup. Ct. 1984). But again, the Complaint fails to allege Ms. Trump had any involvement in preparing the SFCs. *See supra* Part I.B. Nor does it allege that she ever knew which assets were included on a particular SFC or that SFCs allegedly used improper valuation methodologies to inflate the value of those assets. *Id*.

The Complaint alleges only that "Ms. Trump was familiar with the financial performance of the properties incorporated in the [SFC]." Compl. ¶ 728. Alleged knowledge of the *financial*

performance of an underlying real estate asset does not show that Ms. Trump knew its value was overstated on an SFC. Indeed, the Complaint fails to allege that Ms. Trump "inten[ded] to defraud" anyone. *Essner*, 124 Misc. 2d at 833. In addition, the Court also should dismiss the Fifth Cause of Action because the Complaint does not allege that Ms. Trump conspired with anyone to issue a false SFC.

No Insurance Fraud. The Court should dismiss the Sixth and Seventh Causes of Action because the Complaint fails to allege that Ms. Trump violated, or conspired to violate, Penal Law § 176.05. The elements of a § 176.05 violation require that Ms. Trump "knowingly and with intent to defraud" presented or prepared a written statement to mislead an insurance company. In New York, every degree of insurance fraud contains "the core requirement that the defendant 'commit a fraudulent insurance act.'" *People v. Boothe*, 16 N.Y.3d 195, 198 (2011).

The Complaint never alleges that Ms. Trump communicated with any insurer, much less that she intentionally submitted a false financial statement to obtain anything from any insurer. *See* Compl. ¶¶ 676-714. Accordingly, the Sixth Cause of Action must be dismissed. And because it likewise fails to allege that she agreed with anyone to interact with any insurer, the Seventh Cause of Action fails as well.

III. The Complaint's § 63(12) Claims Are Time-Barred.

Each of the seven § 63(12) claims alleged against Ms. Trump is subject to a three-year statute of limitations. The Complaint was filed in September 2022. The Doral loan closed in June 2012, the OPO loan closed in August 2014, and the last act Ms. Trump is alleged to have taken before leaving the Trump Organization occurred in December 2016. All seven claims are therefore untimely and should be dismissed under CPLR 3211(a)(5). Further, nothing in the legislature's August 2019 amendment—creating a new six-year limitations period for future § 63(12) claims—changes this result.

A. All Claims Are Untimely.

In 2018, the Court of Appeals confirmed that where, as here, a § 63(12) fraud claim does not allege every element of common-law fraud, a three-year statute of limitations applies. *Credit Suisse*, 31 N.Y.3d at 632-33. In August 2019, the legislature amended CPLR 213—adding a new subsection, 213(9)—to create a new six-year period for § 63(12) claims. *See* S.B. S6536, 2019-2020 Leg. Sess. CPLR 213(9) does not apply retroactively, as explained *infra* Part III.B. All seven claims against Ms. Trump are barred under that three-year limitations period. But even if a six-year period applied, the claims still would be untimely.

A limitations period runs from the date on which a claim "accrues." CPLR 203(a). Where, as here, a claim rests on allegations that a transaction was fraudulently induced, the claim accrues when the transaction closes. *See Rogal v. Wechsler*, 135 A.D.2d 384, 385 (1st Dep't 1987) (claim based on fraudulent inducement "accrue[d]" "at the time of the execution of the contract"); *Boesky v. Levine*, 193 A.D.3d 403, 405 (1st Dep't 2021) (claim accrued when plaintiffs "entered into" "allegedly fraudulent transactions"); *see also State v. Cortelle Corp.*, 38 N.Y.2d 83, 86-87 (1975) (courts must look to "essence of" underlying claim when assessing § 63(12) limitations issues). The Doral financing closed on June 12, 2012; the OPO financing on August 12, 2014. Compl. ¶¶ 587, 634. Both closed more than six years before this case was filed on September 21, 2022. Therefore, § 63(12) fraud claims based on Ms. Trump's involvement in those financings are time-barred.

The analysis is no different for the six claims asserting violations of New York Penal Law. These claims are based on liabilities or "penalt[ies]" "created or imposed by statute," and thus are subject to a three-year limitations period under *Credit Suisse* and CPLR 214(2). And even if CPLR 213(9)'s six-year period applied retroactively, those claims would remain untimely

because, as to Ms. Trump, they are based on conduct that occurred (at the latest) in August 2014—far more than six years before this lawsuit was filed.

Plaintiff cannot invoke the "discovery" rule to save these claims because that rule does not apply to government enforcement agencies. *See*, *e.g.*, *Gabelli v. SEC*, 568 U.S. 442, 449-52 (2013). Even if it applied, the claims would remain untimely. The discovery rule opens a two-year window from the date an individual reasonably could have discovered the alleged fraud. CPLR 203(g)(1). The NYAG admitted in a verified judicial pleading that it had notice of the alleged fraud by February 27, 2019, when Michael Cohen testified before Congress that the asset values in the SFCs were inflated and produced copies of the 2011-2013 SFCs. Verified Pet. at 11, ¶ 52, *People v. Trump Org., Inc.*, Index No. 451685/2020, NYSCEF 181 (N.Y. Sup. Ct. Aug. 24, 2020); *cf. All. Network LLC v. Sidley Austin LLP*, 43 Misc. 3d 848, 852 n.1 (Sup. Ct. 2014) (courts can take notice of judicial filings). Two years from February 27, 2019 is February 27, 2021—more than one year before this lawsuit was filed. Under any conceivable limitations period, the claims against Ms. Trump are untimely.

B. There Are No Claims Against Ms. Trump Accruing Within the Six Years Preceding This Lawsuit.

After three years of "comprehensive" investigation, the 838-paragraph Complaint includes only *one* paragraph describing any action Ms. Trump took after September 21, 2016—in the six years before filing. Paragraph 645 alleges that Ms. Trump signed a disbursement request under the OPO loan on December 21, 2016. This allegation does not save the § 63(12) claims from a statute of limitations dismissal, for two reasons.

First, the OPO draw does not trigger a new limitations period. The statute of limitations generally runs from when the initial "wrong" accrues. *Henry v. Bank of Am.*, 147 A.D.3d 599, 601 (1st Dep't 2017). An exception exists for a series of "independent, distinct" wrongs that

occur after an initial tort; but only if the subsequent conduct is a distinct, actionable wrong—capable (standing alone) of giving rise to a separate cause of action. *Id.* In such circumstances, a new limitations period starts when this later wrong "accrues." *Id.* But where the later wrong is a "continuing effect[ ] of earlier [allegedly] unlawful conduct," the limitations period begins at the time of the initial wrongful act. *Id.*

Paragraph 645 does not allege a distinct, actionable violation of § 63(12). The Complaint does not identify any misrepresentation that Ms. Trump made in connection with the OPO draw request. The draw request seeks a disbursement from a prior credit facility. Fraud claims based on fraudulently induced agreements accrue when the agreement closes. *See supra* Part III.A (citing cases). Subsequent payments under those agreements are not new "wrongs"; they are "continuing effects" of the initial wrong (the alleged fraudulently induced agreement). *See*, *e.g.*, *Henry*, 147 A.D.3d at 601 (claim accrued when plaintiff signed fraudulently induced agreement; defendant's subsequent monthly requests for payment were not separately accruable "wrongs," but continuing effects); *Pike v. N.Y. Life Ins. Co.*, 72 A.D.3d 1043, 1048 (2d Dep't 2010) (new wrong did not accrue for each payment under fraudulently induced insurance contract; instead, "any wrong accrued at the time of purchase of the policies"); *DuBuisson v. Nat'l Union Fire Ins. of Pittsburgh*, 2021 WL 3141672, at *8-9 (S.D.N.Y. July 26, 2021) (applying New York law; collecting cases).

Second, even if the draw request could give rise to a new claim that accrued in December 2016, that claim would remain untimely under a three-year statute of limitations, because the August 2019 amendment does not apply retroactively.

Retroactive application of statutes implicates important state and federal constitutional rights, including due process rights. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 266-67

(1994); *Regina Metro. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 370-71 (2020). "Retroactive legislation is viewed with 'great suspicion,'" and thus courts require an unambiguous statement that the legislature expressly "contemplated" and intended "th[e] extraordinary result" of retroactivity. *Regina*, 35 N.Y.3d at 370-71. When a law's retroactive application could revive time-barred claims—as with any limitations extension—the "statute's text must unequivocally convey the aim of reviving claims." *Id.* at 371.[2]

Nothing in the August 2019 amendment's text "unequivocally convey[s] the aim of reviving claims." *Id.* The amendment is silent on retroactivity. The statute provides only that the amendment will "take effect immediately," S.B. S6536 § 2, and courts routinely recognize that this precatory language does not support retroactivity. *See*, *e.g.*, *State v. Daicel Chem. Indus., Ltd.*, 42 A.D.3d 301, 302 (1st Dep't 2007) ("Language in [a] statute that it shall 'take effect immediately' does not support retroactive application."); *Landgraf*, 511 U.S. at 257-58 (phrase "shall take effect upon enactment" "does not even arguably suggest that it has any application to conduct that occurred at an earlier date"). Further, when the legislature seeks to revive time-barred claims, "it has typically said so unambiguously, providing a limited window when stale claims may be pursued." *Regina*, 35 N.Y.3d at 371 (collecting examples). The August 2019 amendment makes no such statement and therefore provides no basis to impose retroactive application.

Construing CPLR 213(9) to apply retroactively to Ms. Trump would violate the Due Process Clauses of the New York Constitution and the U.S. Constitution. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 58 N.Y.2d 143, 149 (1983) (statutes must be "construed

[2] In cases lacking claim-revival concerns, courts sometimes invoke a separate canon—that so-called "remedial" statutes should apply retroactively, *see*, *e.g.*, *In re Gleason*, 96 N.Y.2d 117, 122 (2001). The Court of Appeals, however, has recognized that *Landgraf* "limit[ed] the continued utility of [this] tenet." *Regina*, 35 N.Y.3d at 365. The canon (and *Gleason*) thus do not apply here.

so as to sustain [their] constitutionality"). Under the New York Constitution, the legislature may "constitutionally revive . . . cause[s] of action"—as any retroactive limitations extension would—only "where the circumstances are exceptional." *Gallewski v. H. Hentz & Co.*, 301 N.Y. 164, 175 (1950). The legislature must reasonably respond to an "identifiable injustice," and its response must be tailored to "reviving claims . . . for a limited period of time." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 399-400 (2017) (listing examples of sufficient "identifiable injustices"). The August 2019 amendment did not respond to any "identifiable injustice"; nor is there a "limited period of time" for revived claims. Retroactive application of the August 2019 amendment would also violate federal due process. *See Landgraf*, 511 U.S. at 266 ("[A] justification sufficient to validate a statute's prospective application under the [federal Due Process] Clause 'may not suffice' to warrant its retroactive application.").

In sum, CPLR 213(9) does not apply retroactively. Thus, *even if* conduct from December 2016 could give rise to a new claim, any such claim would remain time-barred under the three-year limitations period.[3]

IV. There Are No Allegations Sufficient for the Equitable Relief of Disgorgement or a Permanent Officer-and-Director Bar Against Ms. Trump.

The Complaint (¶ 25(i), (g)) seeks an order for the "disgorgement of all financial benefits" Ms. Trump obtained from the allegedly fraudulent scheme, as well as a lifetime officer-and-director bar, but fails to allege facts to support an order for such relief. A complaint "must allege the basic facts to establish the elements of the cause of action," including the relief sought.

[3] *People v. Allen*, 198 A.D.3d 531, 532 (1st Dep't 2021), does not compel a contrary result. *Allen* suggested, in dicta, that CPLR 213(9) may have retroactive application to Martin Act claims. But the claims in *Allen*—unlike those against Ms. Trump—would have been timely *even under a three-year* limitations period. *See People v. Allen*, 2021 WL 394821, at *5 (N.Y. Sup. Ct. Feb. 4, 2021); *Allen*, 198 A.D.3d at 532 (same). *Allen*'s discussion of the retroactivity of CPLR 213(9) was unnecessary to the outcome and is therefore nonbinding dictum.

Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 N.Y.3d 553, 559 (2009) (cleaned up) (affirming dismissal of fraud claim); *Vigoda v. DCA Prods. Plus Inc.*, 293 A.D.2d 265, 266 (1st Dep't 2002) ("insufficient allegation of damages to support cause of action" requires dismissal). The Complaint alleges no facts to support the specific equitable relief sought against Ms. Trump.

First, the Complaint alleges no facts to support the requested order of disgorgement against Ms. Trump. "[I]n New York, the term 'disgorgement' typically refers only to 'the return of wrongfully obtained profits.'" *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 37 N.Y.3d 552, 567 (2021). And "[i]f a well-pleaded complaint alleges unjust enrichment, it must be a proper answer (and not an affirmative defense) to plead 'no unjust enrichment.'" Restatement (Third) of Restitution and Unjust Enrichment § 62 cmt. a (2011). Here, the Complaint includes no allegations identifying what, if any, "wrongfully obtained profits" Ms. Trump obtained. The Complaint alleges that Ms. Trump has "a financial interest" in several Trump Organization projects. Compl. ¶ 34. But holding an unspecified "financial interest" in various businesses is not sufficient to allege Ms. Trump directly obtained "profits" from the alleged fraudulent scheme. Without allegations that Ms. Trump personally received unlawful profits, the Complaint fails at the threshold—there is no basis for disgorgement.

Second, the Complaint alleges no facts to support the requested bar that would prevent Ms. Trump permanently from "serving as an officer or director in any New York Corporation." *Id.* ¶ 25(g). In New York, a court may not order permanent equitable relief absent sufficient showing of "a reasonable likelihood of a continuing violation." *People v. Greenberg*, 27 N.Y.3d 490, 496-97 (2016). Ms. Trump is not alleged to have drafted, reviewed, approved, or signed any fraudulent SFC; she has not worked at the Trump Organization for nearly six years; Compl. ¶ 33; and there is no allegation she has engaged in any misconduct since then. There are thus no

allegations that Ms. Trump is "engaged in an ongoing violation," nor are there allegations of any "reasonable likelihood that [any] wrong will be repeated." *SEC v. Am. Bd. of Trade, Inc.*, 751 F.2d 529, 537 (2d Cir. 1984). Absent such allegations, the Complaint does not support a permanent officer-and-director bar.

CONCLUSION

The Court should dismiss all claims against Ms. Trump and include her in any relief awarded to other Defendants to the extent applicable to her.

Dated: Uniondale, New York
November 21, 2022

Respectfully submitted,

Clifford S. Robert
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
crobert@robertlaw.com
mfarina@robertlaw.com
(516) 832-7000

-and-

KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
Reid M. Figel
(*admitted pro hac vice*)
Michael K. Kellogg
(*pro hac vice pending*)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
rfigel@kellogghansen.com
(202) 326-7900

Attorneys for Defendant
Ivanka Trump

To: Kevin C. Wallace, Esq.
Andrew Amer, Esq.
Colleen K. Faherty, Esq.
Alex Finkelstein, Esq.
Wil Handley, Esq.
Eric R. Haren, Esq.
Louis M. Solomon, Esq.
Stephanie Torre, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 6961 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
November 21, 2022

Clifford S. Robert

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
crobert@robertlaw.com
mfarina@robertlaw.com
(516) 832-7000

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

MOTION DATE 11/21/2022, 11/21/2022, 11/21/2022, 11/21/2022, 11/21/2022

MOTION SEQ. NO. 007, 008, 009, 010, 011, 012

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 195, 196, 197, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 410, 411, 412, 413, 414, 415

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 198, 199, 200, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 416, 417, 418, 419, 420, 421

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 201, 202, 203, 204, 205, 206, 207, 208, 209, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 422, 423, 424, 425, 426, 427

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 428, 429, 430, 431, 432, 433

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 220, 221, 222, 223, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 434, 435, 436, 437, 438, 439

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 224, 225, 226, 227, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 440

were read on this motion to DISMISS.

Upon the foregoing documents, it is hereby ordered that defendants' motions to dismiss are denied.

Background

This action arises out of a three-year investigation conducted by plaintiff, the Office of the Attorney General of the State of New York ("OAG"), into the business practices of defendants from 2011 through 2021. OAG alleges that the individual and entity defendants engaged in repeated and persistent fraud by preparing and certifying false and misleading valuations made in financial statements presented to lenders and insurers in the conduct of defendants' business operations in New York, violating New York Executive Law § 63(12).

The instant action was preceded by a special proceeding that OAG commenced in 2020, seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over the special proceeding, which resulted in several orders compelling compliance with OAG's subpoenas. In a Decision and Order dated February 17, 2022, this Court rejected defendants' arguments that the special proceeding was solely the result of personal and/or political animus and discrimination.

OAG filed the instant verified complaint on September 21, 2022, and service was thereafter effectuated on all defendants. OAG moved for a preliminary injunction and the appointment of an independent monitor to oversee the submission of certain financial information by defendants to financial entities and other businesses, pending the final disposition of this action. On November 3, 2022, this Court granted a preliminary injunction and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor. In so doing, this Court held that OAG had demonstrated defendants' propensity to engage in persistent fraud arising out of the submission of annual Statements of Financial Condition ("SFCs") for defendant Donald J. Trump ("Mr. Trump"). This Court rejected defendants' arguments, *inter alia*, that OAG did not have standing or the legal capacity to sue, and that the purported disclaimers provided by non-party Mazars insulated defendants from liability. This Court also scheduled the trial to commence on October 2, 2023.

In lieu of submitting answers, defendants now move, pursuant to CPLR 3211, to dismiss the verified complaint.

Sanctionable Conduct

Pursuant to 22 NYCRR § 130-1.1, New York Courts may sanction attorneys for frivolous litigation.

Scattered throughout defendants five motions to dismiss are arguments that (1) plaintiff does not have capacity to sue, (2) plaintiff does not have standing to sue, (3) the Mazars disclaimers insulate defendants; and the instant case is a "witch hunt."

The first three arguments were borderline frivolous even the first time defendants made them. Executive Law § 63(12) is tailor-made for Attorney General Enforcement actions such as the instant one, foreclosing any rational arguments against capacity and standing. The Mazars disclaimers were made by a non-party and shifted responsibility directly on to certain defendants. Finally, this Court (and at least 2 others)[1] has soundly rejected the "witch hunt" argument.

The first time defendants interposed the capacity and standing arguments was in opposition to plaintiff's motion for a preliminary injunction. Defendants made these arguments exhaustively; their repetition in the instant briefs adds nothing new. OAG's legal standing and capacity to sue are threshold litigation questions of justiciability; they do not change whether in the context of a motion for a preliminary injunction or to dismiss pursuant. The Court rejected such arguments as a matter of law, and defendants' reiteration of them, scattered across five different motions to dismiss, was frivolous.[2]

In opposition to sanctions, defendants primarily argue (1) the preliminary injunction decision was just that, "preliminary," "not a finding on the merits," and thus has no preclusive effect (claim preclusion and/or issue preclusion); (2) not raising the arguments could constitute waiver, precluding appellate review and (3) something about "acknowledging precedent" and "record preservation," which sounds an awful lot like point (2). Defendants do not claim, nor could they, that their capacity and standing arguments now are any different from their capacity and standing arguments then; indeed, they acknowledge, in a letter to the Court (NYSCEF Doc. No. 449) that the subject arguments were "re-presented" (emphasis added), which on its face strongly suggests frivolity. Reading these arguments was, to quote the baseball sage Lawrence Peter ("Yogi") Berra, "Deja vu all over again."

Merits

Defendants cite to Univ. of Texas v Camenisch, 451 US 390, 395 (1981), for the proposition that "a preliminary injunction merely grants preliminary relief and does not serve to conclusively determine the rights of the parties in a litigation." True, but totally irrelevant. Defendants claim that "the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." That makes sense if, and only if, the conclusions of law are based on the aforesaid findings of fact. That is how our system of adjudication works; facts are "found," and the law is applied in a "conclusion of law." However, an abstract principle of law does not depend on particular facts; and a "conclusion of law" that

---

[1] Trump v James, No. 21-cv-1352, 2022 WL 178951 (NDNY 2022); People by James v Trump Org, Inc., 205 AD3d 625 (1st Dep't 2022).

[2] Six motions to dismiss were made before this Court. Five of them contained duplicative frivolous arguments that this Court previously rejected. The only defendant whose motion to dismiss did not contain duplicative arguments was Ivanka Trump.

does rely on facts is case-specific, not a "principle of law." A "conclusion of law" is distinct from a "principle of law."

Defendants cite 21 or so cases (as a simple rule of thumb, three is enough for most purposes) for the proposition that a preliminary injunction decision is not an adjudication on the merits. The first case cited is representative of the others: Town of Concord v Duwe, 4 NY3d 870, 875 (2005) ("mere denial of the motion for a preliminary injunction did not constitute the law of the case or an adjudication on the merits"). But the second case undercuts their point. J.A. Preston Corp. v Fabrication Enters., Inc., 68 NY2d 397, 402 (1986) ("The granting or refusal of a temporary injunction does not constitute the law of the case or an adjudication on the merits, and the issues must be tried to the same extent as though no temporary injunction had been applied for.") Exactly. If issues must be tried, a preliminary injunction is not preclusive. Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried.

Defendants do not claim, nor could they, that they have found a single case in which a determination of capacity and/or standing in a preliminary injunction decision was not given preclusive effect; indeed, every quote from the cases they cite seems to use the words "merits" or "facts," neither of which is relevant to the instant capacity and standing issues.

Waiver

Defendants' "waiver" argument is wholly unconvincing. They are entitled to, and indeed have, appealed the preliminary injunction decision, including its capacity and standing arguments. If the appeal is successful on the grounds of capacity and/or standing, this case is over. Furthermore, if defendants were genuinely worried about waiver they could have, as suggested by plaintiff (NYSCEF Doc. 448), availed themselves of the simple expedient of stating in their motion papers that they were not waiving the standing and waiver arguments that they included (at length) in their opposition to the preliminary injunction motion. Alternatively, defendants could simply have incorporated by reference. See, e.g., People v Finch, 23 NY3d 408, 413 (2014) ("As a general matter, a lawyer is not required, in order to preserve a point, to repeat an argument that the court has definitively rejected."). The one course of action that was not necessary was "re-presenting" the subject arguments at length.

Defendants state that "[t]he record in this action must nonetheless be properly made and preserved." It is, copiously, as if in amber, on the New York State Courts Electronic Filing System, providing an easy means to appeal any decision.

Defendants cite to GMAC Mtge., LLC v Winsome Coombs, 191 AD3d 37 (2d Dep't 2020), for the proposition that any objection or defense based on legal capacity or standing is waived unless raised by motion or responsive pleading. But defendants did raise it in the context of the preliminary injunction "motion." Had they not done so, that might have constituted waiver. Squarely raising an issue is the antithesis of "waiver."

"Witch Hunt"

The "witch hunt" argument is claim-precluded because this Court already rejected it in its February 17, 2002 Decision and Order enforcing certain subpoenas in the special proceeding,

which the Appellate Division, First Department affirmed. People by James v Trump Org, Inc., 205 AD3d 625 (1st Dep't 2022). Indeed, Judge Brenda K. Sannes also recognized this preclusive effect in Trump v James, Civ. No. 21-1352, 2022 WL 1718951 at 16-19 (NDNY May 27, 2022) (holding that res judicata barred the action based on the preclusive effect of this Court's February 17, 2022 order because Mr. Trump and the Trump Organization already had raised or "could have raised the claims and requested the relief they seek in the federal action" in the subpoena enforcement action); accord, Trump v James, Civ. No. 22-81780, 2022 WL 17835158, at 4 (SD Fla 2022) (denying plaintiff a preliminary injunction because of lack of likelihood of success on the merits).

Frivolous Litigation

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2nd Dep't 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dep't 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel."). Here, sophisticated defense counsel should have known better.

Discretion

Notwithstanding the above, in its discretion this Court will not impose sanctions, which the Court believes are unnecessary, having made its point.

Discussion

Defendants bring their motions pursuant to CPLR 3211. "On a CPLR 3211 motion to dismiss, the court will 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.'" Nonnon v City of New York, 9 NY3d 825, 827 (2007).

Executive Law § 63(12) broadly empowers the Attorney General of the State of New York to seek to remedy the deleterious effects, in both the public's perception and in reality, on truth and fairness in commercial marketplaces and the business community, of material fraudulent misstatements issued to obtain financial benefits.

Statute of Limitations

Defendants argue that all the allegations in the verified complaint are time-barred, asserting that a three-year statute of limitations for fraud is applicable. Defendants are mistaken. As the First Department made unambiguously clear in a case involving some of the very same parties that are now before this Court, a "fraud claim under section 63(12) is not subject to the three-year statute of limitations imposed by CPLR 214(2), but rather, is subject to the residual six-year statute of limitations in CPLR 213(1)." Matter of People by Schneiderman v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 418 (1st Dep't 2016).

Moreover, OAG has demonstrated the potential applicability of the "continuing wrong" doctrine, in which a series of wrongs is "deemed to have accrued on the date of the last wrongful act." Palmeri v Willkie Farr & Gallagher LLP, 156 AD3d 564, 568 (1st Dep't 2017). "[T]he continuing wrong doctrine 'is usually employed where there is a series of continuing wrongs and

serves to toll the running of a period of limitations to the date of the commission of the last wrongful act." People by Underwood v Trump, 62 Misc 3d 500 (Sup Ct, NY County 2018).[3] As the verified complaint alleges an ongoing scheme by defendants that extends up until at least 2021, dismissal pursuant to the statute of limitations must be denied.

Sufficiency of Pleadings

Defendants argue, without citing any authority in support thereof, that OAG's claims should be subject to the heightened pleading requirement for common law fraud. This argument is without merit, as Executive Law § 63(12) is "not subject to this heightened pleading standard because the underlying conduct is premised on deceptive acts or practices that do not include intent or reliance as an element of those claims." Consumer Fin. Protection Bur. v RD Legal Funding, LLC, 332 F Supp 3d 729, 769 (SDNY 2018).

Similarly, contrary to defendants' argument, and as stated by this Court in its November 3, 2022 Decision and Order, OAG need not prove scienter or intent to prevail on a claim brought pursuant to Executive Law § 63(12). State by Lefkowitz v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding that "fraud" under § 63(12) "has been construed to include acts which tend to deceive or mislead the public, whether or not they are the product of scienter or an intent to defraud"); People by Abrams v Am. Motor Club, Inc., 179 AD2d 277, 283 (1st Dep't 1992) (holding "scienter is not required" under § 63(12)); Matter of State v Ford Motor Co., 136 AD2d 154, 158 (3rd Dep't 1988) ("we note that proof of fraud, scienter or bad faith is not required for an award of restitution [pursuant to § 63(12)]").

Moreover, defendants' assertion that OAG "must come forward with facts supported by a qualified expert" to support a fraud claim under § 63(12) at the pleadings stage is entirely baseless and would overturn many decades of well-settled law (indeed, such a requirement would turn the law on its head). Defendants do not, and cannot, offer any legal authority in support of this, instead presenting the Court with cases that discussed the need for experts at the summary judgment or trial stage.

Intracorporate Conspiracy Doctrine

Defendants argue that they cannot be held liable for conspiracy pursuant to the intracorporate conspiracy doctrine which provides that "officers, agents and employees of a single corporate entity are legally incapable of conspiring together." Chamberlain v City of White Plains, 986 F Supp 2d 363, 388 (SDNY 2013). This argument is irrelevant, as OAG has not pleaded a cause of action for conspiracy (and, in fact, no such cause of action exists under New York state law), and the cases cited by defendants in support of this argument all arise out of federal conspiracy claims.

Disgorgement of Profits

Defendants argue that OAG's claim for disgorgement should be dismissed because OAG "does not explain" how it calculates the $250 million it seeks. This argument fails, as disgorgement of profits is a form of damages, and the law is well-settled that "there is no requirement of law that

[3] There are other tolls that may apply here. On April 27, 2021, OAG and some of the named defendants entered into a tolling agreement. Additionally, a series of Executive Orders that the Governor issued in response to the COVID-19 pandemic tolled the statute of limitations for another 228 days.

the measure of damages alleged to have been sustained shall be stated in the complaint." Winter v Am. Aniline Products, 236 NY 199, 204 (1923).

Allegations Against Ivanka Trump

Ivanka Trump ("Ms. Trump") separately moves to dismiss the verified complaint as against her, asserting that the pleadings fail to articulate sufficiently allegations against Ms. Trump, and, in particular, do not allege that she personally falsified any business record, or that she was aware of the alleged use of improper methodologies to value the assets included in any SFC. Ms. Trump additionally asserts that she left the Trump Organization in 2017, and, thus, the statute of limitations has run.

As detailed *supra*, on a motion to dismiss pursuant to CPLR 3211, plaintiff is afforded the benefit of every possible inference. DaPuzzo v Reznick Fedder & Silverman, 14 AD3d 302, 303 (1st Dep't 2005) ("To require plaintiffs, at this stage of the proceeding, to establish what defendant knew or intended would present an undue burden, considering that these would be matters particularly within defendant's knowledge").

The verified complaint alleges that the formal process for soliciting the Doral loan began in October 2011, when Ms. Trump sent an "Investment Memo" and financial projections for the Doral property to two Deutsche Bank employees. The verified complaint also alleges that, in the Doral acquisition, Ms. Trump served as the primary point of contact for Deutsche Bank, and that she was responsible for negotiating the terms of the loan, including reducing the net worth covenant from $3 billion to $2 billion. Ms. Trump also advocated for a guaranteed transaction over the objections of Trump Organization in-house counsel, who described the net worth guarantee as "problematic." NYSCEF Doc. No. 1, ¶¶ 571-582.

As OAG persuasively argues, the nature of the loan contracts at issue renders the application of the continuing wrong doctrine particularly compelling in this action. The loans, obtained through the use of allegedly inflated SFCs, continued in effect for many years after the loan was issued and required annual performance by defendants. For example, each of the Deutsche Bank loans had terms extending past 2022, and each had continuing obligations to maintain a net worth of at least $2.5 billion and unencumbered liquidity of $50 million. Each of the loans required annual submissions of Mr. Trump's SFC and a certification that the Statements were true and accurate and that there had been no material change in Mr. Trump's net worth or his liquidity. NYSCEF Doc. No. 1, ¶ 735. Ms. Trump's own biography from 2014 indicated that she "spearheaded the acquisition of [Trump National Doral] and was responsible for overseeing the 250 million dollar renovation of the 800 acre property." NYSCEF Doc. No. 276.

Further, there are emails in evidence that indicate Ms. Trump's repeated interaction with employees from Deutsch Bank arising out of the financial requirements imposed on defendants. In an email from Rosemary Vrablic of Deutsch Bank to Ms. Trump, dated December 15, 2011, Ms. Vrablic informs Ms. Trump of the financial covenants required by Deutsche Bank in order to proceed with the loan necessary to acquire Doral, including ensuring that "Borrower shall maintain a Debt Service Coverage ratio (DSC) defined as Net Operating Income divided by Debt Service of no less than 1.15x" and "Guarantor shall maintain a Minimum Net Worth of $3.0 billion excluding any value related to the Guarantor's brand value." NYSCEF Doc. No. 280.

Further, the email attached a document entitled "Donald J. Trump Doral Golf and Spa Resort Due Diligence Items" that included a list of items to be provided to Deutsche Bank which consisted of many of the same items found on Mr. Trump's SFCs for the corresponding years. NYSCEF Doc. No. 280.

Accordingly, as the verified complaint sufficiently alleges Ms. Trump's participation in continuing wrongs, and given the tolling pursuant to the COVID-19 Executive Orders, Ms. Trump is not entitled to dismissal pursuant to the statute of limitations.

The verified complaint also alleges that Ms. Trump participated in the initial bidding for and negotiations over the Old Post Office renovation project in Washington D.C., including presenting to the General Services Administration ("GSA") information about the substance of the SFCs. NYSCEF Doc. No. 1, ¶¶ 625-636. Indeed, Ms. Trump's own biography states that she "led the charge on this incredibly competitive RFP process." NYSCEF Doc. No. 276.

Furthermore, in an email dated December 16, 2011, David Orowitz, Vice President of Acquisitions and Development for the Trump Organization, wrote to Allen Weisselberg that "Ivanka wanted me to change the language in the GAAP section." NYSCEF Doc. No. 288.

Ms. Trump correctly asserts that just being copied on the transmittal of the SFCs is not sufficient to establish fraud. However, such argument is unavailing here, as the record establishes that Ms. Trump participated far more in securing the loans than just passively receiving emails. Regardless, the Court of Appeals has made clear that pleading requirements for an individual defendant's conduct are meant to be interpreted very liberally, stating:

> Although plaintiffs have not alleged specific details of each individual defendant's conduct, we have never required talismanic, unbending allegations. Simply put, sometimes such facts are unavailable prior to discovery. Lest we willfully ignore the obvious—or the strong suspicion of a fraud—we have always acknowledged that, in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud.

Pludeman v N. Leasing Sys., Inc., 10 NY3d 486, 493 (2008).

In her deposition Ms. Trump testified that she does not understand statements of financial condition and that she does not even know if they would include all assets and liabilities. NYSCEF Doc. No. 290. This is despite her communications with Deutsche Bank about SFCs. It is well-settled that triers of fact determine the credibility of witnesses. People ex rel. Schneiderman v One Source Networking, Inc., 125 AD3d 1354, 1357-58 (4th Dep't 2015) (the Court has "superior ability to assess the credibility of witnesses" in action pursuant to Executive Law § 63(12).) However, such a credibility determination is premature on a motion to dismiss pursuant to CPLR 3211.

Additionally, it not necessary for a defendant to personally draft a fraudulent business record for liability to attach; rather, it is sufficient for that individual to "cause" submission of a false entry. People v Murray, 185 AD3d 1507, 1509 (4th Dep't 2020) (upholding insurance fraud liability where defendant met with insurance company representative and submitted forms even though defendant did not draft them).

Furthermore, the record demonstrates that Ms. Trump received over $10 million in profits from the sale of the Old Post Office. If the RFP for the old Post Office was based on fraudulent submissions, the profits of any such sale may be ripe for disgorgement under Executive Law § 63(12).

Thus, OAG has alleged liability on behalf of Ms. Trump sufficiently to survive a motion to dismiss pursuant to CPLR 3211.

The Court has considered defendants' other arguments, including, incredibly, that the revocable trust of Donald J. Trump was denied equal protection under the law, and finds them to be unavailing and/or non-dispositive.

Conclusion

For the reasons stated herein, the defendants' motions to dismiss are denied in their entirety.

1/6/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

EXHIBIT I

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Webber, J.P., Singh, Kennedy, Scarpulla, Pitt-Burke, JJ.

553 PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
Plaintiff-Respondent,

-against-

DONALD J. TRUMP et al.,
Defendants-Appellants.

Index No. 452564/22
Case No. 2023-00717

Habba Madaio & Associates, New York (Alina Habba of counsel), and Continental PLLC, Tallahassee, FL (Christopher M. Kise of the bar of the State of Florida, admitted pro hac vice, of counsel), for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, Donald Trump, Jr., Eric Trump, The Trump Organization, Inc., Trump Organization LLC, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavour 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC, appellants.

Troutman Pepper Hamilton Sanders LLP, New York (Bennet J. Moskowitz of counsel), for Ivanka Trump, appellant.

Letitia James, Attorney General, New York (Judith N. Vale of counsel), for respondent.

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered January 9, 2023, which denied defendants' respective motions to dismiss the complaint, unanimously modified, on the law, to dismiss, as time-barred, the claims against defendant Ivanka Trump and the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement), and to modify the caption to reflect that

Donald J. Trump, Jr., is sued both personally and in his capacity as trustee for the Donald J. Trump Revocable Trust, and otherwise affirmed, without costs.

The New York Legislature enacted Executive Law § 63(12) to combat fraudulent and illegal commercial conduct in New York. Under this provision, "[w]henever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York" for disgorgement and other equitable relief (Executive Law § 63[12]). The Attorney General is not suing on behalf of a private individual, but is vindicating the state's sovereign interest in enforcing its legal code – including its civil legal code – within its jurisdiction (*see Alfred L. Snapp & Son, Inc. v Puerto Rico ex rel. Barez*, 458 US 592, 601 [1982]; *see also People v Coventry First LLC*, 52 AD3d 345, 346 [1st Dept 2008] [finding that claims including a claim under Executive Law § 63(12) "constituted proper exercises of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"], *affd* 13 NY3d 108 [2009]). We have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12) (*see People v Ernst & Young LLP*, 114 AD3d 569, 569-570 [1st Dept 2014]). Finally, in authorizing the Attorney General to sue for any repeated or persistent fraud or illegality, the Legislature necessarily "invested that party with authority to seek relief in court" (*Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig*, 30 NY3d 377, 384 [2017]; *see Silver v Pataki*, 96 NY2d 532, 537-538 [2001]).

Defendants' arguments that the Executive Law § 63(12) claims are governed by a three-year limitations period are unavailing (*see* CPLR 213[9]). We have already found

that CPLR 213(9) applies retroactively (*Matter of People v JUUL Labs, Inc.*, 212 AD3d 414, 416-417 [1st Dept 2023]). We reject defendants' invitation to reconsider our decision that retroactive application is inconsistent with certain decisions of the Court of Appeals (*see id.* at 416; *People v Allen*, 198 AD3d 531, 532 [1st Dept 2021], *lv dismissed* 38 NY3d 996 [2022], *lv denied, appeal dismissed* 39 NY3d 928 [2022]). We also find that retroactive application of CPLR 213(9) – enabling the Attorney General to continue lengthy and complex investigations, which often cannot begin until years after the conduct at issue, and which may have been extended in reliance on the six-year statute of limitations – was a reasonable measure to address an injustice (*see World Trade Ctr.*, 30 NY3d at 399-400; *PB-36 Doe v Niagara Falls City Sch. Dist.*, 213 AD3d 82, 84-85 [4th Dept 2023]; *cf. Brothers v Florence*, 95 NY2d 290, 299-300 [2000] [describing necessity of retroactive application of legislation shortening statute of limitations in response to judicial decision]).

Similarly, we decline to reconsider our decisions finding that certain executive orders tolled statutes of limitations during the pandemic (*see Murphy v Harris*, 210 AD3d 410, 411 [1st Dept 2022]), and that this toll was properly authorized (*Brash v Richards*, 195 AD3d 582, 584-585 [1st Dept 2021]).

Applying the proper statute of limitations and the appropriate tolling, claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016 (*see Boesky v Levine*, 193 AD3d 403, 405 [1st Dept 2021]; *Rogal v Wechsler*, 135 AD2d 384, 385 [1st Dept 1987]). For defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014. The continuing wrong doctrine does not delay or extend these periods (*see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v Bank of Am.*, 147 AD3d 599,

601-602 [1st Dept 2017]). We leave Supreme Court to determine, if necessary, the full range of defendants bound by the tolling agreement. The record before us, however, indicates that defendant Ivanka Trump was no longer within the agreement's definition of "Trump Organization" by the date the tolling agreement was executed (*see Johnson v Proskauer Rose, LLP*, 2014 NY Slip Op 30262[U], *19-22 [Sup Ct, NY County 2014], *affd* 129 AD3d 59 [1st Dept 2015]). The allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016. Thus, all claims against her should have been dismissed as untimely.

Plaintiff has provided evidence that defendants Donald J. Trump Revocable Trust, DJT Holding, Managing Member, Trump Endeavor 12 LLC, and 401 North Wabash Venture LLC have their principal place of business in New York (*see Cruz v City of New York*, 210 AD3d 523, 524 [1st Dept 2022] ["General jurisdiction exists over a corporate entity only in the state(s) in which it is incorporated and has its principal place of business"]; *see also Ford Motor Co. v Montana Eighth Jud. Dist. Ct.*, 141 S Ct 1017, 1024 [2021]; *compare Chufen Chen v Dunkin' Brands, Inc.*, 954 F3d 492, 500 [2d Cir 2020]). Thus, plaintiff has made a "sufficient start" in demonstrating personal jurisdiction over these defendants (*see Matter of James v iFinex Inc.*, 185 AD3d 22, 30 [1st Dept 2020]). Although the Trust should have been sued through its trustees (*see e.g. Liveo v Hausman*, 61 Misc 3d 1043, 1044-1045 [Sup Ct, Kings County 2018]), the record indicates that the sole trustee is a defendant in this case and has been fully able to represent the Trust's interests. Thus, relief for this error should be limited to amending the caption (*see Harlem 2201 Group LLC v Ahmad*, 2018 NY Slip Op 30588[U], *44 [Sup Ct, New York County 2018]; *see also Matter of People v Leasing Expenses Co. LLC*, 199 AD3d 521, 522 [1st Dept 2021] [affirming relief under Executive

Law § 63(12) against family trusts and trustees, where the defendants were trustees in their capacity as such]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 27, 2023

Susanna Molina Rojas
Clerk of the Court

EXHIBIT J

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

PROCEDURAL BACKGROUND 4

LEGAL STANDARD 5

ARGUMENT 5

I. Defendants Are Entitled To Summary Judgment On All Causes Of Action To The Extent That They Are Time-Barred Under The Applicable Statute Of Limitations And Proper Application Of The Tolling Agreement 5

A. Many Of The NYAG's Allegations Must Be Dismissed Because They Are Based On Transactions Completed Outside Of The Applicable Limitations Period 6

B. The Tolling Agreement Does Not Bind Any Individual Defendant or the Trust 13

1. The Tolling Agreement Cannot Bind The Unnamed, Non-Signatory Individuals 14

a. The NYAG Is Judicially Estopped From Arguing The Tolling Agreement Applies To Any Unnamed Individual Defendant or Has Made a Judicial Admission. 16

b. Record Evidence Surrounding the Agreement Shows The Parties Did Not Intend to Bind the Unnamed Individuals. 19

2. The Tolling Agreement Does Not Bind The Trust 19

II. There Is Insufficient Record Evidence To Establish The Elements Of Each Alleged Cause Of Action 21

A. Defendants Are Entitled to Summary Judgment On The First Cause of Action 21

1. The Record Is Devoid of Any Evidence of Harm 21

2. The Record Cannot Support Findings On Elements Of The First Cause of Action 30

a. The Record Shows That The SOFCs Were Not Materially Misleading 31

b. The First Cause of Action Fails As To Most Defendants For The Additional Reason That They Neither Participated In The Alleged Fraud Nor Had Actual Knowledge Of It 43

B. Defendants Are Entitled To Summary Judgment On The Second, Fourth, And Sixth Causes Of Action 48

1. The Fourth And Sixth Causes Of Action Fail Because The Record Shows There Were No Material Misrepresentations 51

2. The Second, Fourth and Sixth Causes of Action Also Fail Because the Record Does Not Support A Contention That Defendants Intended To Defraud Anyone 52

C. The Defendants Are Entitled to Summary Judgment On The Third, Fifth, And Seventh Causes of Action 56

III. Disgorgement Is Unavailable As A Matter of Law 58

A. Disgorgement Is Unavailable, As It Is Not Provided As A Remedy Under § 63(12), Nor The Penal Laws Serving As Predicates For The Second Through Seventh Causes Of Action 58

B. Disgorgement Is Unavailable Because There Is No Causal Link 62

CONCLUSION 64

TABLE OF AUTHORITIES

Page(s)

Cases

12 New St., LLC v. Nat'l Wine & Spirits, Inc.,
151 N.Y.S.3d 515 (3d Dep't 2021).....17

236 Cannon Realty, LLC v. Ziss,
No. 02 CIV.6683(WHP), 2005 WL 289752 (S.D.N.Y. Feb. 8, 2005) 49, 50

Abacus Fed. Sav. Bank v. Lim,
75 A.D.3d 472 (1st Dep't 2010) 56

Abrahami v. UPC Constr. Co.,
224 A.D.2d 231 (1st Dep't 1996) 43, 53

Ahrenberg v. Liotard-Vogt,
No. 653687/2015, 2017 WL 1281818 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 29, 2017) 57

All Terrain Props. v. Hoy,
265 A.D.2d 87 (1st Dep't 2000) 44

Allstate Ins. Co. v. Foschio,
462 N.Y.S.2d 44 (2d Dep't 1983).....24

Alvarez v. Prospect Hosp.,
68 N.Y.2d 320 (1986) 5

Attorney Gen. v. Utica Ins. Co.,
2 Johns. Ch. 371 (N.Y. Ch. 1817).....23

Ayotte v Gervasio,
81 N.Y.2d 1062 (1993) 5

Baje Realty Corp. v. Cutler,
820 N.Y.S.2d 57 (1st Dep't 2006).....18

Belzberg v. Verus Invs. Holdings Inc.,
21 N.Y.3d 626 (2013) 15

Bereswill v. Yablon,
6 N.Y.2d 301 (1959) 57

Capricorn Invs. III, L.P. v. Coolbrands Int'l, Inc.,
No. 603795/06, 2009 WL 2208339 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2009), *aff'd*, 886 N.Y.S.2d 158 (1st Dep't 2009).....15

City Dental Servs., P.C. v. N.Y. Cent. Mut.,
No. 2010-2225, 2011 WL 6440755 (2d Dep't Dec. 16, 2011) 50

City of New York v. The Black Garter,
709 N.Y.S.2d 110 (2d Dep't 2000) 16

City of New York v. FedEx Ground Package Sys., Inc.,
314 F.R.D. 348 (S.D.N.Y. 2016) 59, 60, 62

City Trading Fund v. Nye,
72 N.Y.S.3d 371 (N.Y. Sup. Ct. N.Y. Cnty. 2018) 31

CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.,
No. 601951/08, 2009 WL 5102795 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009) 15

People ex rel. Cuomo v. Greenberg,
946 N.Y.S.2d 1 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439 (2013) 31

Di Sabato v. Soffes,
193 N.Y.S.2d 184 (1st Dep't 1959) 5, 59

Duguid v. B.K.,
175 N.Y.S.3d 853 (N.Y. Sup. Ct. 2022) 23

Exxon Mobil Corp. v. Healey,
28 F.4th 383 (2d Cir. 2022) 32

Fletcher v. Dakota, Inc.,
99 A.D.3d 43 (1st Dep't 2012) 43

Frawley v. Dawson,
No. 6697/07, 2011 WL 2586369 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2011) 43

FTC v. Shkreli,
581 F. Supp. 3d 579 (S.D.N.Y. 2022) 62

FTC v. Vyera Pharm., LLC,
No. 20-cv-00796 (DLC), 2021 WL 4392481 (S.D.N.Y. Sept. 24, 2021) 62

Gallagher v. Ruzzine,
46 N.Y.S.3d 323 (4th Dep't 2017) 44

Georgia Malone & Co. v. Ralph Rieder,
926 N.Y.S.2d 494 (1st Dep't 2011), *aff'd*, 19 N.Y.3d 511 (2012) 15

Gerschel v. Christensen,
9 N.Y.S.3d 216 (1st Dep't 2015) 15

Golden State Transit Corp. v. City of Los Angeles,
493 U.S. 103 (1989).....49

Grochowski v. Phx. Const.,
318 F.3d 80 (2d Cir. 2003).....59

Hartsdale Fire Dist. v. Eastland Const., Inc.,
886 N.Y.S.2d 454 (2d Dep't 2009).....16, 17

Herman v. 36 Gramercy Park Realty Assocs., LLC,
165 A.D.3d 405 (1st Dep't 2018).....16

Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.,
124 N.Y.S.3d 346 (1st Dep't 2020).....15

IPA Asset Mgmt., LLC v. Certain Underwriters at Lloyd's London,
39 N.Y.S.3d 198 (2d Dep't 2016).....52

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
91 A.D.3d 226 (1st Dep't 2011).....63

Jim Bean Brands Co. v. Tequila Cuervo La Rojenas S.A. de C.V.,
No. 600122/208, 2011 WL 12711463 (N.Y. Sup. Ct. N.Y. Cnty. July 12, 2011).....63

JP Morgan Chase Bank v. Winnick,
350 F. Supp. 2d 393 (S.D.N.Y. 2004).....32

Korn v. Korn,
172 N.Y.S.3d 4 (1st Dep't 2022).....20

Legal Aid Soc'y v. City of New York,
242 A.D.2d 423 (1st Dep't 1997).....49

Lema v. Tower Ins. Co. of New York,
990 N.Y.S.2d 231 (2d Dep't 2014).....52

Leonia Bank v. Kouri,
3 A.D.3d 213 (1st Dep't 2004).....16

Lilley v. Greene Cent. Sch. Dist.,
187 A.D.3d 1384 (3d Dep't 2020).....57

Matter of Liquidation of Union Indem. Ins. Co. of N.Y.,
89 N.Y.2d 94 (1996).....18

Maine v. Thiboutot,
448 U.S. 1 (1980) 49

Marine Midland Bank v. Russo Produce Co.,
50 N.Y.2d 31 (1980) 43

MLRN LLC v. U.S. Bank, Nat'l Assoc.,
217 A.D.3d 576 (1st Dep't 2023) 6

Moskowitz v. Herrmann,
No. SC 731/2018, 2018 WL 4291557 (N.Y. Sup. Ct. Orange Cnty. Sept. 6, 2018) 15

Nabatov v. Union Mut. Fire Ins. Co.,
164 N.Y.S.3d 667 (2d Dep't 2022) 52

New Hampshire v. Maine,
532 U.S. 742 (2001) 16

New York v. Feldman,
210 F. Supp. 2d 294 (S.D.N.Y. 2002) 24

New York. v. Gen. Motors Corp.,
547 F. Supp. 703 (S.D.N.Y. 1982) 26

New York v. Intel Corp.,
No. CIV. 09-827-LPS, 2011 WL 6100446 (D. Del. Dec. 7, 2011) 22

People v. 21st Century Leisure Spa Int'l Ltd.,
583 N.Y.S.2d 726 (N.Y. Sup. Ct. N.Y. Cnty. 1991) 24

People v Albany & S.R. Co.,
57 N.Y. 161 (1874) 23

People v. Amazon.com, Inc.,
550 F. Supp. 3d 122 (S.D.N.Y. 2021) 26, 62

People v. Apple Health & Sports Clubs, Ltd., Inc.,
80 N.Y.2d 803 (1992) 24

People v. Applied Card Sys., Inc.,
27 A.D.3d 104 (3d Dep't 2005) 26

People v. Booth,
32 N.Y. 397 (1865) 23

People v. Briggins,
50 N.Y.2d 302 (1980) 53

People v. Brooklyn, Flatbush & Coney. Island Ry. Co.,
89 N.Y. 75 (1882) 23

People v. Coventry First LLC,
13 N.Y.3d 108 (2009) 24, 26, 34

People v. Credit Suisse Sec. (USA) LLC,
31 N.Y.3d 622 (2018) 25

People v. Dillard,
271 N.Y. 403 (1936) 53

People v. Direct Revenue, LLC,
No. 401325/06, 2008 WL 1849855 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008).....60

People v. Domino's Pizza,
No. 450627/2016, 2021 WL 39592 (Sup. Ct. N.Y. Cnty. Jan. 5, 2021)..... *passim*

People v. Donald J. Trump,
213 A.D.3d 503 (1st Dep't 2023) 18

People v. Ernst & Young LLP,
980 N.Y.S.2d 456 (1st Dep't 2014) 25, 61, 62

People v. Essner,
124 Misc. 2d 830 (N.Y. Sup. Ct., N.Y. Cnty. 1984).....51

People v. Exxon Mobil Corp.,
No. 452044/2018, 2019 WL 6795771 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10,
2019) 27, 31, 32

People v. Federated Radio Corp.,
244 NY 33 (1926) 33

People v. Frink Am., Inc.,
770 N.Y.S.2d 225 (4th Dep't 2003).....62

People v. Gen. Elec. Co.,
302 A.D.2d 314 (1st Dep't 2003) 26

People v. Grasso,
11 N.Y.3d 64 (2008) 22, 48

People v. Greenberg,
21 N.Y.3d 439 (2013) 26

People v. Greenberg,
27 N.Y.3d 490 (2016) 62

People v. Greenberg,
No. 401720/20005, 2010 WL 4732745 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 21, 2010) 25, 30

People v. Gross,
169 A.D.3d 159 (2d Dep't 2019) 44

People v. H & R Block, Inc.,
870 N.Y.S.2d 315 (1st Dep't 2009) 26

People v. H&R Block,
No. 401110/2006, 2007 WL 2330924 (N.Y. Sup. Ct. N.Y. Cnty. 2007) 22

People v. Hankin,
175 Misc. 2d 83 (N.Y. Crim. Ct. Kings Cnty. 1997) 53, 54

People v. Ingersoll,
58 N.Y. 1 (1874) 23

People v. Liberty Mut. Ins. Co.,
52 A.D.3d 378 (1st Dep't 2008) 26

People v. Lowe,
117 N.Y. 175 (1889) 23

People v. MacDonald,
330 N.Y.S.2d 85 (Sup. Ct. 1972) 24

People v. N. Leasing Sys., Inc.,
193 A.D.3d 67 (1st Dep't 2021) 25, 30, 31, 43

People v. O'Brien,
111 N.Y. 1 (1888) 23

People v. Orbitual Publ. Grp., Inc.,
169 A.D.3d 564 (1st Dep't 2019) 26

People v. Reyes,
69 A.D.3d 537 (1st Dep't 2010) 48

People v. Romero,
91 N.Y.2d 750 (1998) 60

People v. Singer,
85 N.Y.S. 2d 727 (N.Y. Sup. Ct. N.Y. Cnty. 1949) 23

People v. Trump Entrepreneur Initiative LLC,
137 A.D.3d 409 (1st Dep't 2016) 25

People v. World Interactive Gaming Corp.,
185 Misc. 2d. 852 (N.Y. Sup. Ct., N.Y. Cnty. 1999).....48

In re Residential Cap., LLC,
No. 12-12020 (MG), 2022 WL 17836560 (Bankr. S.D.N.Y. Dec. 21, 2022) 32

Reyes v. Sligo Constr. Corp.,
186 N.Y.S.3d 321 (2d Dep't 2023).....50

Roberts Real Est., Inc. v. N.Y. State Dep't of State, Div. of Licensing Servs.,
80 N.Y.2d 116 (1992) 44, 45

RXR WWP Owner LLC v. WWP Sponsor, LLC,
No. 653553/2013, 2014 WL 3970295 (N.Y. Sup. Ct. N.Y. Cnty. Aug. 12,
2014) 63

S. Indus. v. Jeremias,
66 A.D.2d 178 (2d Dep't 1978).....53

S.E.C. v. Razmilovic,
738 F.3d 14 (2d Cir. 2013).....63

S.S.I Invs. Ltd. v. Korea Tungsten Mining Co.,
438 N.Y.S.2d 96 (1st Dep't 1981).....12

Saltz v. First Frontier, LP,
782 F. Supp. 2d 61 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012).....43

Schwartz v. Soc'y of N.Y. Hosp.,
199 A.D.2d 129 (1st Dep't 1993) 57

Smith v. City of New York,
733 N.Y.S.2d 474 (2d Dep't 2001).....50

Snyder v. Puente De Brooklyn Realty Corp.,
297 A.D.2d 432 (3d Dep't 2002).....57

Societe Generale v. U.S. Bank Nat'l Ass'n,
325 F. Supp. 2d 435 (S.D.N.Y. 2004), *aff'd sub nom.*, 144 F. App'x 191 (2d
Cir. 2005) 20

Solutia Inc. v. FMC Corp.,
456 F. Supp. 2d 429 (S.D.N.Y. 2006).....32

St. Paul Mercury Ins. Co. v. M&T Bank Corp.,
No. 12 Civ. 6322(JFK), 2014 WL 641438 (S.D.N.Y. Feb. 19, 2014).....32

State v. Bevis Indus., Inc.,
314 N.Y.S.2d 60 (N.Y. Sup. Ct. N.Y. Cnty. 1970).....24

State v. Cortelle Corp.,
38 N.Y.2d 83 (N.Y. 1975).....24

State v. Ford Motor Co.,
74 N.Y.2d 495 (1989).....25

State v. ITM,
275 N.Y.S.2d 303 (N.Y. Sup. Ct. N.Y. Cnty. 1966).....24

State v. Parkchester Apts. Co.,
307 N.Y.S. 2d 741 (N.Y. Sup. Ct. N.Y. Cnty. 1970).....27

State v. Rachmani Corp.,
71 N.Y.2d 718 (1988).....32, 33

State v. Solil Mgmt. Corp.,
491 N.Y.S.2d 243 (N.Y. Sup. Ct. N.Y. Cnty. 1985).....24

State v. United Parcel Serv., Inc.,
253 F. Supp. 3d 583 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019).....44

State v. Wolowitz,
468 N.Y.S. 2d 131 (2d Dep't 1983).....25

Tesciuba v. Shapiro,
166 A.D.2d 281 (1st Dep't 1990).....6

Topps Co. v. Cadbury Stani S.A.I.C.,
380 F. Supp. 2d 250 (S.D.N.Y. 2005).....60

Town of Caroga v. Herms,
878 N.Y.S.2d 834 (3d Dep't 2009).....16

U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.,
949 F.2d 569 (2d Cir. 1991).....32

U.S. v. Sabin Metal Corp.,
151 F. Supp. 683 (S.D.N.Y. 1957), *aff'd*, 253 F.2d 956 (2d Cir. 1958).....11, 12

Worldwide Directories, S.A. De C.V. v. Yahoo! Inc.,
No. 14-cv-7349(AJN), 2016 WL 1298987 (S.D.N.Y. Mar. 31, 2016).....49

Zuckerman v. City of N.Y.,
49 N.Y.2d 557 (1980).....5, 50

Statutes

Fla Stat. § 736.0816(24) 19

Martin Act [General Business Law § 353] 62

N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17) 19

N.Y. Executive Law § 63(1) 23

N.Y. Executive Law § 63(12) ..... *passim*

N.Y. General Municipal Law § 205–a 50

N.Y. Labor Law § 241(6) 50

N.Y. Penal Law § 175.05 ..... 22, 48

N.Y. Penal Law § 175.10 ..... 48, 61

N.Y. Penal Law § 175.45 ..... *passim*

N.Y. Penal Law § 176.05 ..... *passim*

Other Authorities

12 NYCRR 23-1.7(a)(1) 50

12 NYCRR 23-3.3(b)(3) 50

12 NYCRR 23.3(c) 50

Deborah A. DeMott, *Causation in the Fiduciary Realm*, 91 B.U. L. Rev. 851 (2011) 63

Lisa M. Phelps, *Calling Off the Bounty Hunters: Discrediting the Use of Alleged Anti-Kickback Violations to Support Civil False Claims Actions*, 51 Vand. L. Rev. 1003 (1998) 50

57 N.Y. Jur. 2d Estoppel, Etc. § 63 ..... 18, 23

57 N.Y. Jur. 2d Estoppel, Etc. § 67 16

106 N.Y. Jur. 2d Trusts § 356 20

Robert L. Haig, *Imputed Knowledge*, 4D N.Y. Prac., Com. Litig. in N.Y. State Courts § 102:46 (5th ed., 2022) 44

Defendants President Donald J. Trump ("President Trump"), Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust (the "Trust"), The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Defendants")[1] hereby submit this memorandum of law in support of Defendants' Motion for Summary Judgment.

PRELIMINARY STATEMENT

The undisputed record in this case establishes President Trump is a multi-billionaire who has for decades presided over a wildly successful international real estate and licensing empire. The undisputed record further establishes his companies timely paid hundreds of millions of dollars in interest to their lenders and never defaulted on a loan or even been late on a loan payment during the entire 15+ year time period the NYAG has sought to scrutinize in this action. Moreover, the undisputed record establishes this expansive corporate empire is fiscally conservative, carries little debt and is able to borrow at competitive market rates because of the enviable quality of its trophy assets and its proven track record of success.

Yet despite these undisputed facts, and despite herself admitting herein President Trump is a successful billionaire even by her own manipulated standards, the NYAG has spent considerable time and taxpayer dollars chasing after President Trump by wading into wholly private, and successfully consummated, commercial agreements—the provisions of which have been fully satisfied—between highly sophisticated parties. Under the guise of protecting the "public," the NYAG has sought to reach the elite and insular marketplace of complex and profitable transactions

[1] The First Department dismissed Ivanka Trump from this action, and this Court's ruling on this Motion should reflect such dismissal. (NYSCEF No. 640).

between billionaire developers and major international banks and insurers without any evidence that the purported fraud had any negative impact on anyone, public or private.

As this Court is aware, the specific conduct targeted herein by the NYAG involves the submission of financial statements by certain Defendants in connection with private, complex commercial transactions governed fully by the specific terms of extensive, bi-lateral agreements negotiated with the advice and assistance of white-shoe counsel. The undisputed evidence shows those bi-lateral agreements were never breached, and the respective private, sophisticated counterparties were never harmed. Through this action, the Attorney General seeks to supplant the role of the involved corporate titans, who themselves have not averred any breach or injury, and to conduct a *post hoc* analysis effectively rewriting the specific terms of those bi-lateral agreements according to her own commercial judgment.

The Appellate Division has now limited the reach of the NYAG's crusade against President Trump and his family, defining clearly the bar dates applicable to her various claims. As developed herein, the undisputed record establishes that ***all claims*** against the individual defendants and the Trust are time barred if they accrued before February 6, 2016. The undisputed record further establishes that all other claims are time barred if they accrued before July 13, 2014. Application of these bar dates streamlines substantially the matters at issue (if any) for trial. Indeed, ***all claims*** relative to, *inter alia*, the Doral Loan, the Chicago Loan, the General Services Administration contract award to OPO and the subsequent lease with OPO, the Trump Park Avenue Loan, the Seven Springs Loan and the Ferry Point Contract are time barred. Moreover, any claims relative to the OPO loan and/or the 40 Wall Street loan survive (if at all) only as against certain corporate defendants, and not at all as to any of the individual Defendants or the Trust.

Additionally, now that the record is developed fully, the undisputed evidence establishes the NYAG has no valid authority to maintain this action. Given that the various counterparties to the transactions at issue have never complained, and indeed have profited from their business dealings with President Trump and his corporate empire, and given further that the NYAG has failed to demonstrate any even theoretical harm to anyone, public or private, there is no longer any viable basis to maintain an Executive Law § 63(12) action. Executive Law § 63(12) cases invariably involve some actual public interest that the NYAG seeks to vindicate, which is a stark contrast to what she seeks to do here in attempting to become the *post hoc* arbiter of the marketplace by interjecting her own judgment into strictly private, profitable transactions. Unlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims.[2] Indeed, that evidence establishes this is simply not the type of case § 63(12) was designed to reach. To the extent any claims exist relative to the private commercial transactions herein at issue (which they do not, as actual parties to those transactions never even attempted to allege), courts recognize § 63(12) claims involving the rights of private business entities "should be [adjudicated by] private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *See, e.g.*, *People v. Domino's Pizza*, No. 450627/2016, 2021 WL 39592, at *12 (Sup. Ct. N.Y. Cnty. Jan. 5, 2021).

Moreover, even as to those few claims which survive the bar date, the undisputed evidence establishes the NYAG has not established the requisite elements of her alleged causes of action.

[2] To be clear, the Defendants advance this argument based on the developed record, as opposed to similar arguments made at the dismissal stage. The distinction is meaningful since, as noted, the NYAG no longer enjoys the presumption of correctness as to her allegations, and the record evidence controls.

The SOFCs at issue were simply not misleading. Therefore, the Defendants are entitled to summary judgment as a matter of law.

Finally, summary judgment is proper as a matter of law on the NYAG's claim for disgorgement because that remedy is not available under § 63(12) or the underlying statutory claims.

PROCEDURAL BACKGROUND

In 2019, the NYAG commenced an investigation under Executive Law § 63(12). Over three years, the NYAG collected more than 1.7 million documents from Defendants and third parties, and conducted more than 50 depositions. The investigation concluded when the NYAG filed this lawsuit on September 21, 2022, alleging seven causes of action against Defendants. On October 31, 2022, the NYAG filed a motion for preliminary injunction (NYSCEF No. 37), which this Court granted on November 3, 2022. (NYSCEF Nos. 183, 238.)

On November 21, 2022, Defendants moved to dismiss the Complaint. (NYSCEF Nos. 195, 198, 201, 210, 220, 224.) This Court denied all Defendants' motions. (NYSCEF Nos. 459–64.) Defendants appealed, (NYSCEF Nos. 486–88), and on June 27, 2023, the First Department reversed on certain issues related to the statute of limitations (NYSCEF No. 640). The First Department held that the NYAG's claims are "time barred if they accrued – that is, the transactions were completed – before February 6, 2016" and that for those Defendants bound by the tolling agreement, "claims are untimely if they accrued before July 13, 2014." (NYSCEF No. 640 at 3.) Finding that the allegations against Ivanka Trump did not support any claim that accrued after February 6, 2016, the First Department dismissed Ms. Trump from the suit but left it to this Court to determine "the full range of defendants bound by the tolling agreement." (NYSCEF No. 640 at 4.) Finally, the First Department held that "[t]he continuing wrong doctrine does not delay or extend" the statute of limitations periods. (NYSCEF No. 640 at 3.)

All discovery concluded in this case on July 28, 2023. On July 31, 2023, the NYAG filed a note of issue with the Court confirming discovery has been "completed" and stating that "[t]he case is ready for trial." (NYSCEF No. 644 at 3.)

LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact, and the moving party has made a *prima facie* showing of entitlement to judgment as a matter of law. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Ayotte v Gervasio*, 81 N.Y.2d 1062 (1993). Once the moving party meets its burden of tendering sufficient evidence to demonstrate the absence of any material issue of fact, the burden then shifts to the party opposing the motion to submit evidentiary proof sufficient to create material issues of fact requiring a trial. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). "*[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient*." *Id.* (emphasis added) (collecting cases). Thus, "[i]t is incumbent upon [the party] who opposes a motion for summary judgment to assemble, lay bare and reveal his proofs, in order to show that the matters set up in his [pleading] are real and are capable of being established upon a trial." *Di Sabato v. Soffes*, 193 N.Y.S.2d 184, 188 (1st Dep't 1959) (citing *Dodwell & Co. v. Silverman*, 234 A.D. 362 (1st Dep't 1932)).

ARGUMENT

I. Defendants Are Entitled To Summary Judgment On All Causes Of Action To The Extent That They Are Time-Barred Under The Applicable Statute Of Limitations And Proper Application Of The Tolling Agreement

On June 27, 2023, the First Department issued a Decision and Order holding that "claims are time barred" as against (1) all Defendants not subject to the tolling agreement dated August 27, 2021 (the "Tolling Agreement"), "if they accrued – that is, the transactions were completed – before February 6, 2016," and (2) "for defendants bound by" the Tolling Agreement, "if they

accrued before July 13, 2014." (NYSCEF No. 640 at 3.). The following table[3] provides a visual aid to outline the latest accrual dates that a transaction could have been completed for the NYAG's claim to remain viable under the limitations period:

Claims Time-Barred If Accrued On Or Before	Defendants For Which Accrual Date Applies
July 13, 2014	Defendants Bound by the Tolling Agreement
February 6, 2016	Defendants Not Bound by the Tolling Agreement

The First Department also ruled that "the continuing wrong doctrine does not delay or extend these periods." *Id.* The panel left it to this Court to "determine, if necessary, the full range of defendants bound by the tolling agreement." *Id.* Making this determination is both necessary and appropriate on this Motion as there are no disputed material facts concerning these issues. *See, e.g.*, *MLRN LLC v. U.S. Bank, Nat'l Assoc.*, 217 A.D.3d 576 (1st Dep't 2023) (affirming partial grant of summary judgment on statute of limitations grounds); *Tesciuba v. Shapiro*, 166 A.D.2d 281, 282 (1st Dep't 1990) (proper to address "the purely legal [s]tatute of [l]imitations issue" on summary judgment).

A. Many Of The NYAG's Allegations Must Be Dismissed Because They Are Based On Transactions Completed Outside Of The Applicable Limitations Period

The NYAG's causes of action in this lawsuit are based on several financial transactions in which the NYAG alleges that Defendants "utilized the false and misleading Statements of Financial Condition" to "obtain[] real estate loans and insurance coverage" from various third parties, including lenders, banks, and insurers. (*See generally* NYSCEF No. 1 ¶¶ 559–61.) Many of these transactions fall outside the scope of the statutory period—regardless of the Tolling

[3] Exhibit AAF is a composite exhibit of the three tables referenced throughout the Memorandum of Law.

Agreement's applicability—because there is no dispute that they were completed before July 13, 2014:

- the Deutsche Bank ("DB") Loan Issued in Connection with Trump National Doral Golf Club ("Doral Loan") – June 11, 2012;
- the DB Loan Issued in Connection with Trump Chicago ("Chicago Loan") – November 9, 2012;
- the U.S. General Services Administration's ("GSA") award of a contract to Trump Old Post Office LLC to redevelop the Old Post Office in Washington, D.C. – February 2012;
- the GSA lease with OPO – August 5, 2013;
- the Seven Springs Loan Issued by Royal Bank America / Bryn Mawr Bank to Seven Springs LLC ("Seven Springs Loan") – July 17, 2000;
- the City of New York's award to operate a golf course and related facilities at Ferry Point Park, Bronx, New York ("Ferry Point Contract") – 2012;[4] and
- the Investor's Bank $23 million loan secured by Trump Park Avenue – July 23, 2010 ("Trump Park Avenue Loan").

See generally id. at ¶¶ 85–86, 562–675; NYSCEF No. 205.

Summary judgment is also proper for Defendants who are not subject to the Tolling Agreement, to the extent the NYAG's allegations are based on transactions completed by February 6, 2016:

- the DB Loan Issued in Connection with Trump Old Post Office Hotel in Washington, D.C. ("OPO Loan") – August 12, 2014;
- the 40 Wall Street Loan Issued by Ladder Capital ("40 Wall Street Loan") – November 2015; and
- Defendants President Trump and the "Trump Organization's" bid to purchase the Buffalo Bills football team ("Buffalo Bills Bid") – no date as no transaction was consummated.[5]

[4] Other than by improperly lumping all Defendants together as the "Trump Organization," the NYAG failed to allege or establish what legal entity obtained the Ferry Point Contract. (NYSCEF No. 1 ¶ 671.)

[5] Defendants submit that President Trump's bid did not constitute a "completed transaction," and therefore, the NYAG's cause of action based on this transaction fails regardless of the applicable statute of limitations. Indeed, the Complaint does not allege this transaction was completed, nor does it allege what legal entity submitted the bid other than by improperly lumping all Defendants together as the "Trump Organization." (*See* NYSCEF ¶¶ 667–70.)

(*See* NYSCEF No. 1 ¶¶ 647–53, 667–70.)

The following table provides a visual aid of each transaction, its closing/accrual date, and to which Defendants (if any) claims relative to these transactions remain viable under the limitations period:

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG'S Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None
GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by The Tolling Agreement.
Buffalo Bills Bid	Transaction never consummated.	None
40 Wall Street Loan	November 2015	Only Defendants Bound by The Tolling Agreement.

Each of the transactions mentioned above is addressed below:

Doral Loan. DB extended a $125 million loan in connection with Trump Endeavor 12, LLC's purchase of the property known as Trump National Doral. (Defs. SOF ¶ 103.) This transaction was completed when the "loan closed on June 11, 2012." (Defs. SOF ¶ 115.) As the First Department held, the NYAG's claims accrued when "the transactions were completed," and

Defendants' argument related to the statute of limitations for the Buffalo Bills Bid is made solely in an abundance of caution.

even "[f]or defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014." (NYSCEF No. 640 at 3.) Thus, allegations based on the Doral Loan are time-barred as to all Defendants under the First Department's application of the proper statute of limitations and the appropriate tolling. *Id*. Accordingly, this Court should grant summary judgment in favor of all Defendants on each of the NYAG's causes of action to the extent that they are based on the Doral Loan.

Chicago Loan. DB financed up to $107 million in debt in connection with the Trump International Hotel and Tower, Chicago, in 2012 and a $54 million loan expansion in 2014. (*See* Defs. SOF ¶¶ 124, 137.) It is undisputed that the "Trump Chicago loan facilities" were "closed on November 9, 2012." (Defs. SOF ¶ 131.) It is further undisputed that the amended loan documents implementing the expansion were executed in May 2014. (Defs. SOF ¶ 138.) Thus, the Chicago Loan transaction was "completed," and claims based on this transaction began to accrue on November 9, 2012. The First Department expressly held that the continuing wrong doctrine does not delay or extend the applicable statute of limitations, and, accordingly, the loan expansion does not constitute a separate transaction that would extend the limitations period. Moreover, and in any event, any claims based on the loan expansion began to accrue in May 2014. Both dates are before the July 13, 2014, statute of limitations cutoff, even for Defendants subject to the Tolling Agreement. Accordingly, the NYAG's allegations based on the Chicago Loan are time-barred for all Defendants. This Court should therefore grant summary judgment in favor of all Defendants on each of the NYAG's causes of action to the extent that they are based on the Chicago Loan.

GSA's OPO Contract and Lease. It is undisputed that the GSA awarded Trump Old Post Office, LLC the contract to redevelop the OPO property in February 2012. (Defs. SOF ¶ 146.) It is further undisputed that the GSA signed the associated OPO lease with Trump Old Post Office,

LLC on August 5, 2013. (Defs. SOF ¶ 146.) Thus, the OPO Contract and Lease transactions were both completed before July 13, 2014, and any claims based on these transactions are time-barred for all Defendants. Accordingly, this Court should grant summary judgment in favor of all Defendants on each of the NYAG's causes of action to the extent that they are based on the OPO Contract & Lease.[6]

Deutsche Bank's OPO Loan. DB financed up to $170 million in funds in connection with Trump Old Post Office LLC's purchase and renovation of the OPO. (Defs. SOF ¶ 148.) The NYAG's claims based on the OPO Loan are time-barred for all Defendants who are not subject to the Tolling Agreement. "In approximately July 2013, DB began considering whether to extend credit for the Trump Organization's redevelopment of OPO in Washington, DC," and DB and Trump Old Post Office, LLC "[u]ltimately . . . agreed on a term sheet that was executed on January 13 and 14, 2014." (Defs. SOF ¶ 152.) The OPO Loan was closed "on August 12, 2014." (Defs. SOF ¶ 152.) Accordingly, the NYAG's purported claims based on this transaction are only timely for Defendants subject to the Tolling Agreement. Accordingly, this Court should grant summary judgment in favor of all Defendants not subject to the Tolling Agreement on each of the NYAG's causes of action to the extent that they are based on the OPO Loan.

Seven Springs Loan. "[I]n 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America" (later acquired by Bryn Mawr), which was "personally guaranteed" by President Trump. (Defs. SOF ¶ 161.) Seven Springs LLC allegedly made fraudulent representations regarding President Trump's Statements of Financial Condition to

[6] The NYAG bases $100 million of its $250 million disgorgement demand on the "asserted profit on the subsequent sale of [the OPO] property." *See* NYSCEF No. 245 at 53. As explained below *see infra,* Part III, disgorgement is unavailable to the NYAG as a matter of law. Yet, even if disgorgement were available to the NYAG, any award for disgorgement would have to be reduced by at least $100 million to account for the fact that the NYAG's claims based on the OPO contract and lease transactions are time-barred. The NYAG's claim for disgorgement, even if permissible—which it is not—must be further reduced to account for the numerous other time-barred claims.

"obtain[] a series of extensions of the maturity date" of the loan from Royal Bank America and Bryn Mawr Bank in 2001, 2002, 2003, 2006, 2009, 2011, 2014, and 2019. (Compl. ¶ 658.) Specifically, the NYAG claims that President Trump, Eric Trump, Allen Weisselberg, and Jeff McConney were involved in "decid[ing] to extend the loan" in 2019. (Compl. ¶ 660.) However, the First Department expressly held that the continuing wrong doctrine does delay or extend the applicable statute of limitations, and, accordingly, these loan extensions do not constitute separate transactions that would extend the limitations period. Therefore, the Seven Springs loan transaction was completed—and the statute of limitations began to run—in 2000, upon the origination of the mortgage. Accordingly, this Court should grant summary judgment in favor of Defendants on each of the NYAG's causes of action to the extent that they are based on the Seven Springs Loan.

Ferry Point Contract. It is undisputed that an entity affiliated with President Trump's businesses submitted an offer "in 2010" to the City of New York to operate an 18-hole golf course and related facilities at Ferry Point Park, Bronx, NY. (Defs. SOF ¶ 211.) Because the City "grant[ed] . . . the concession" and President Trump "won the contract" in "2012," (Defs. SOF ¶ 213), this transaction was completed and the statute of limitations began to run that year. *See U.S. v. Sabin Metal Corp.*, 151 F. Supp. 683, 687 (S.D.N.Y. 1957), *aff'd*, 253 F.2d 956 (2d Cir. 1958) ("The defendant's bid constituted the offer and the government's acceptance completed the contract.") (citations omitted). Thus, claims based on the Ferry Point Contract are time-barred for all Defendants. (*See* NYSCEF No. 640 at 3.). Accordingly, this Court should grant summary judgment in favor of Defendants on each of the NYAG's causes of action to the extent that they are based on the Ferry Point Contract.

40 Wall Street Loan. It is undisputed that 40 Wall Street LLC refinanced a $160 million mortgage from Capital One Bank, on the office building at 40 Wall Street in New York, with Ladder Capital Finance "[i]n approximately November 2015." (Defs. SOF ¶ 157); *See* Br. for Respondent at 10, No. 2023-00717 (Doc. No. 24) (filed Apr. 26, 2023). Therefore, the NYAG's causes of action based on the 40 Wall Street Loan are untimely as to all Defendants not subject to the Tolling Agreement. (*See* NYSCEF No. 640 at 3.). Accordingly, this Court should grant summary judgment in favor of all Defendants not subject to the Tolling Agreement on each of the NYAG's causes of action to the extent that they are based on the 40 Wall Street Loan.

Buffalo Bills Bid. Defendants allegedly made misleading statements regarding President Trump's 2013 SOFC figures and personal liquidity as of June 30, 2014, in connection with President Trump's bid package to purchase the Buffalo Bills football team. (Compl. ¶ 670.) It is undisputed that President Trump's initial bid was submitted "in July 2014." (Defs. SOF ¶ 208.) The NYAG claims the bid was "partially successful, in that [President] Trump did advance further in the bid process." (Compl. ¶ 669.) However, it is also undisputed that President Trump never entered into a contract or completed a transaction to purchase the Bills such that there is no transaction upon which the NYAG can base its claim. *See S.S.I Invs. Ltd. v. Korea Tungsten Mining Co.*, 438 N.Y.S.2d 96, 101 (1st Dep't 1981) ("[A] bid is nothing more than an offer. No legal rights are created until the offer has been accepted."); *Sabin Metal Corp.*, 151 F. Supp. at 687 (noting that an "invitation to bid [is] merely a request for offers and . . . not an operative offer" while "acceptance [of the bid] complete[s] the contract").

Further, the NYAG failed to allege the specific day in July on which President Trump submitted his bid. Even assuming an unsuccessful bid can constitute a transaction on which the NYAG can base its allegations of fraud *and* that the bid was submitted after July 13, 2014—and

the NYAG has not substantiated either of these contentions—such allegations would only be timely as to those Defendants bound by the Tolling Agreement.

Because the bid did not constitute a completed transaction as a matter of law, summary judgment is proper for all Defendants to the extent that the NYAG's causes of action are based on the Buffalo Bills Bid. If the Court finds that the NYAG may properly base claims on this bid, summary judgment is still proper for all Defendants based on the NYAG's failure to substantiate the submission date.

Trump Park Avenue Loan. It is undisputed that Investors Bank financed a $23 million loan collateralized by Trump Park Avenue on July 23, 2010. (Defs. SOF ¶ 165.) Given the July 23, 2010 closing date relative to the Trump Park Avenue Loan, any claims related to that financing agreement are time barred against all Defendants, even Defendants subject to the Tolling Agreement, because the closing occurred before the July 13, 2014 statute of limitations cutoff. Accordingly, this Court should grant summary judgment in favor of Defendants on each of the NYAG's causes of action to the extent that they are based on the Trump Park Avenue Loan.

B. The Tolling Agreement Does Not Bind Any Individual Defendant or the Trust

As explained above in Section IA, the NYAG's causes of action based on transactions that were completed after July 13, 2014 are timely only as to Defendants whom this Court determines are bound by the Tolling Agreement. The Tolling Agreement, which was entered into between "The Trump Organization" and the NYAG, only binds certain Defendant corporate entities.

The following table provides a visual aid as to which Defendants are, and which Defendants are not, bound by the Tolling Agreement:

Parties Not Bound by the Tolling Agreement	Parties Bound by the Tolling Agreement
• President Trump • Donald J. Trump Jr. • Eric Trump • Ivanka Trump • Allen Weisselberg • Jeffrey McConney • The Donald J. Trump Revocable Trust	• The Trump Organization Inc. • DJT Holdings LLC • DJT Holdings Managing Member LLC • Trump Organization LLC • DJT Holdings Managing Member • Trump Endeavor 12 LLC • 401 North Wabash Venture LLC • Trump Old Post Office LLC • 40 Wall Street LLC • Seven Springs LLC

It is undisputed that, on August 27, 2021, the NYAG and "the Trump Organization" entered into the Tolling Agreement, thereby tolling the limitations period for any Executive Law § 63(12) claim "in connection with statements regarding Donald J. Trump's financial condition, representations regarding the value of assets, and potential underpayment of federal, state, and local taxes." (Defs. SOF ¶ 265.) The agreement, signed by Alan Garten, the EVP/Chief Legal Officer of the "Trump Organization," states that "the undersigned representatives of the Parties certifies that he or she is fully authorized . . . to bind such Party to this document." *Id.* The agreement also states that its execution "shall not prejudice any party's position with respect to any other defense, response, or claim" and that its "terms, meaning, and legal effect" should be "interpreted under the laws of New York State." *Id.* New York law and the record in this action demonstrate that the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, (collectively, the "Unnamed Individuals") and/or The Donald J. Trump Revocable Trust ("Trust").

1. The Tolling Agreement Cannot Bind The Unnamed, Non-Signatory Individuals

A valid tolling agreement constitutes an enforceable contract subject to normal rules of interpretation. *See CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.*, No.

601951/08, 2009 WL 5102795, at *3 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009). "It is a general principle that only the parties to a contract are bound by its terms." *Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352 (1st Dep't 2020); *see Capricorn Invs. III, L.P. v. Coolbrands Int'l, Inc.*, No. 603795/06, 2009 WL 2208339, at *8 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2009) ("Generally, a party that is not a signatory to an executed agreement is not bound to the agreement."), *aff'd*, 886 N.Y.S.2d 158 (1st Dep't 2009); *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 630 (2013) (noting "the general rule against binding nonsignatories").

To bind an individual to an agreement, the individual must be a direct signatory to the agreement, absent exceptions inapplicable here. *Gerschel v. Christensen*, 9 N.Y.S.3d 216, 217 (1st Dep't 2015) ("Christensen & Barrus was not a party to either tolling agreement. Therefore, its addition as a defendant was untimely, and personal jurisdiction over it was not obtained."); *Georgia Malone & Co. v. Ralph Rieder*, 926 N.Y.S.2d 494, 496–97 (1st Dep't 2011) ("It is well established that officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually."), *aff'd*, 19 N.Y.3d 511 (2012); *Moskowitz v. Herrmann*, No. SC 731/2018, 2018 WL 4291557, at *11 (N.Y. Sup. Ct. Orange Cnty. Sept. 6, 2018) ("The party seeking to enforce the unsigned writing must prove the [other party] intended to be bound by the terms of that writing.").

Mr. Garten signed the tolling agreement in his capacity as "EVP/Chief Legal Officer" of the "Trump Organization." (NYSCEF No. 272.) The Unnamed Individuals are neither named in the agreement nor executed it. Thus, as a matter of law, under the plain language of the contract, the Tolling Agreement does not bind the Unnamed Individuals.

a. The NYAG Is Judicially Estopped From Arguing The Tolling Agreement Applies To Any Unnamed Individual Defendant or Has Made a Judicial Admission.

The NYAG has admitted that the "Trump Organization" is the only party bound by the Tolling Agreement. Since the NYAG obtained a favorable ruling in connection with this argument, it is precluded from now taking the contrary position in the instant action that the agreement binds the Unnamed Individuals.

The doctrine of judicial estoppel "prevents a party who assumed a certain position in a prior proceeding and secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed." *Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018) (citations omitted); *see also New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position . . . ." (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895))). The doctrine "rests upon the principle that a litigant 'should not be permitted . . . to lead a court to find a fact one way and then contend in another judicial proceeding that the same fact should be found otherwise.'" *Leonia Bank v. Kouri*, 3 A.D.3d 213, 219 (1st Dep't 2004) (quoting *All Terrain Props. v. Hoy*, 265 A.D.2d 87, 93 (1st Dep't 2000)). Moreover, "[j]udicial estoppel . . . may be imposed against the government." 57 N.Y. Jur. 2d Estoppel, Etc. § 67; *see, e.g.*, *Hartsdale Fire Dist. v. Eastland Const., Inc.*, 886 N.Y.S.2d 454, 456 (2d Dep't 2009); *Town of Caroga v. Herms*, 878 N.Y.S.2d 834 (3d Dep't 2009); *City of New York v. The Black Garter*, 709 N.Y.S.2d 110 (2d Dep't 2000). Notably, the "application of the doctrine of judicial estoppel does not require entry of a judgment." *Hartsdale Fire Dist.,* 886 N.Y.S.2d at 456. Rather, for the doctrine to apply, there need be only "a showing that the party taking the inconsistent position had benefitted from the determination in the prior action or proceeding based upon the position it

advanced there." *12 New St., LLC v. Nat'l Wine & Spirits, Inc.,* 151 N.Y.S.3d 515, 518 (3d Dep't 2021).

Here, the NYAG previously filed an application in *People v. The Trump Organization, et al.*, No. 451685/2020, N.Y. Sup. Ct. (the "Special Proceeding"), seeking to hold President Trump in contempt for his purported failure to comply with a court order relating to subpoena compliance. *See generally,* Special Proceeding, (NYSCEF Nos. 668–75). At oral argument, the NYAG argued that President Trump's failure to comply with the court's directive had caused it to sustain prejudice—one of the necessary elements for a finding of civil contempt—because it inhibited the NYAG's ability to bring their claims within the relevant statute of limitations period. In so arguing, counsel for the NYAG stated: "[t]here is hard prejudice because Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization*." (*See* Defs. SOF ¶ 273 (emphasis added).) Ultimately, the court granted the NYAG's application to hold President Trump in civil contempt and specifically noted that "[the NYAG] correctly states that any delay causes prejudice to the 'rights or the remedies of the State acting in the public interest.' Moreover, each day that passes without compliance further prejudices [the NYAG], as the statute of limitations continues to run and may result in [the NYAG] being unable to pursue certain causes of action that it otherwise would." Special Proceeding, (NYSCEF No. 758).

Thereafter, the NYAG advanced the same position in writing before the First Department, arguing "Mr. Trump's noncompliance and efforts at delay . . . prejudiced [the NYAG] given that the limitations period was continuing to run on potential enforcement claims." In putting forth this argument, the NYAG stated unequivocally that "[the NYAG] and the Trump Organization entered a six-month tolling agreement, *to which Mr. Trump was not a party*." (*See* Defs. SOF ¶ 274) (emphasis added); (Robert Aff., Ex. AY at 39 n.13). The First Department ruled in favor of the

NYAG and affirmed the lower court's finding of contempt. *See generally People v. Donald J. Trump, et al.*, 213 A.D.3d 503 (1st Dep't 2023).

Therefore, given that the NYAG has twice advanced the position that the "Trump Organization" is the only party bound by the Tolling Agreement, she is judicially estopped from taking a contrary position in the instant proceeding.

Additionally, the NYAG's prior statements constitute a judicial admission. "As a general rule, facts admitted by the pleadings are binding on the parties throughout the entire litigation." 57 N.Y. Jur. 2d Estoppel, Etc. § 63 (collecting cases). While "not conclusive," judicial admissions "are 'evidence' of the facts or facts admitted." *Matter of Liquidation of Union Indem. Ins. Co. of N.Y.*, 89 N.Y.2d 94, 103 (1996) (citation omitted); *see Baje Realty Corp. v. Cutler*, 820 N.Y.S.2d 57, 59 (1st Dep't 2006). Thus, an admission by a party "in a pleading in one action is admissible against the pleader in another suit, provided it is shown 'by the signature of the party, or otherwise, that the facts were inserted with his knowledge, or under his direction, and with his sanction.'" *Liquidation of Union Indem.*, 89 N.Y.2d at 103. And as the Court of Appeals has noted, "it is irrelevant that the admissions were made in part by counsel . . . and that they were contained in affidavits or briefs." *Id.* (collecting cases).

Here, it is undisputed that the NYAG filed a signed appellate brief in the contempt proceeding containing the factual statement that "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." (Defs. SOF ¶ 274); (Robert Aff., Ex. AY at 39 n.13, 57). This constitutes a judicial admission that none of the Unnamed Individuals are bound by the Tolling Agreement.

b. Record Evidence Surrounding the Agreement Shows The Parties Did Not Intend to Bind the Unnamed Individuals.

Communications between the "Trump Organization" and the NYAG surrounding the agreement confirm the parties did not intend to bind the Unnamed Individuals. Previous drafts of the Tolling Agreement explicitly named the Unnamed Individuals and included separate signature blocks for each individual. (Defs. SOF ¶ 269.) The final, executed version of the Tolling Agreement contained no such references nor separate signature blocks. The removal of the Unnamed Individuals from the final Tolling Agreement itself confirms the parties' mutual understanding that it would not apply to them. Therefore, the NYAG's causes of action involving the Unnamed Individuals are time-barred to the extent that they are based on transactions completed before February 6, 2016.

2. The Tolling Agreement Does Not Bind The Trust

Under New York law,[7] *only* a "trustee" as the "fiduciary" of the trust is "authorized . . . [t]o execute and deliver agreements . . . contracts . . . and any other instrument necessary or appropriate for the administration of the estate or trust." N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17). And the trustee may only do so if authorized by law or trust agreement; otherwise, his actions are "void." *Id.* § 7-2.4. Thus, an individual other than a duly authorized trustee "ha[s] neither the right nor the duty to negotiate on behalf of the estate." *Korn v. Korn*, 172 N.Y.S.3d 4, 6 (1st Dep't 2022).

[7] It is undisputed that "The Trust is a Florida trust that was created under the laws of the state of New York." (Defs. SOF ¶ 6.) Defendants do not concede that New York law—rather than Florida law—governs whether the Trust is bound by the Tolling Agreement. However, the Tolling Agreement itself is governed by New York law, and it is clear that application of either State's law would result in the same conclusion—that the Trust is not subject to the agreement. *See* Fla Stat. § 736.0816(24) (only a "trustee" may "[s]ign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's power"); *id.* § 736.0802(2) (stating that a "transaction . . . entered into by the trustee" is "voidable" if not "authorized by the terms of the trust" or otherwise "approved by the court . . . the beneficiary . . . [or] a settlor"). Thus, for purposes of this Motion only, Defendants rely on the provisions of New York law.

It is also a "long-standing rule" of New York law "that a trustee cannot, through contract, *directly* bind the trust estate or its beneficiary." *Societe Generale v. U.S. Bank Nat'l Ass'n*, 325 F. Supp. 2d 435, 437 (S.D.N.Y. 2004) (emphasis added), *aff'd sub nom.*, 144 F. App'x 191 (2d Cir. 2005). Rather, the "general rule" is "that the trustee personally, and not the trust estate, is bound by and liable upon obligations incurred and contracts made by it in the course of administration of the trust." 106 N.Y. Jur. 2d Trusts § 356. Thus, a trustee may only "contract as an agent . . . and directly bind the trust estate or the beneficiary" where he is specifically "authoriz[ed] by statute or by the trust instrument" to do so. *Id.*

Here, it is undisputed that the only Defendants who have served as trustees of the Trust are President Trump; Donald Trump, Jr.; and Allen Weisselberg. (SOF ¶¶ 1–2, 4.) It is further undisputed that *no* trustee signed the Tolling Agreement—either individually or as a Trustee with authority to bind the Trust. (Defs. SOF ¶ 267.) Moreover, even if one of the Trustees had signed the Tolling Agreement, that would have only bound that trustee personally rather than the Trust itself. *See Societe Generale*, 325 F. Supp. 2d at 437.

Here, only Mr. Garten signed the Tolling Agreement on behalf of the Trump Organization. He is neither a Trustee nor a beneficiary of the Trust. (*See* Defs. SOF ¶ 267.) The Complaint's allegations and other evidence confirm that the various Defendant entities, including "Trump Organization" and the Trust, are "separate entities." (Defs. SOF ¶ 16.) Additionally, there is no evidence showing that the "Trump Organization" or Mr. Garten had the authority to bind the Trust. Therefore, the Tolling Agreement is not binding upon the Trust. The NYAG's causes of action involving the Trust are thus time-barred to the extent that they are based on transactions completed before February 6, 2016.

II. There Is Insufficient Record Evidence To Establish The Elements Of Each Alleged Cause Of Action

The NYAG alleges all seven of its causes of action pursuant to Executive Law § 63(12), which provides that the NYAG may apply to the Supreme Court for injunctive relief, restitution, or damages against persons who "engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." For the reasons stated in detail below, the evidence either directly refutes or is simply insufficient to support the NYAG's claims.

A. Defendants Are Entitled to Summary Judgment On The First Cause of Action[8]

The NYAG's First Cause of Action is brought under the persistent fraud prong of § 63(12). All Defendants are entitled to summary judgment dismissing the First Cause of Action because (1) the NYAG cannot properly maintain a § 63(12) action under the circumstances herein presented by the record evidence and (2) the NYAG fails to satisfy the elements of its § 63(12) persistent fraud claim.

1. The Record Is Devoid of Any Evidence of Harm

The NYAG seeks herein to advance her own *post hoc* evaluation of the SOFC and then apply her own standards of compliance, quite different from those already spelled out in complex, private, bi-lateral agreements. This unprecedented intervention into private commercial transactions is simply not supported by established law defining the scope and limits of the NYAG's authority under Executive Law § 63(12).[9] Indeed, whether pursuant to a statutory grant

[8] Defendants continue to dispute that the NYAG has met its burden on the first element of a cause of action brought under Executive § 63(12) (*i.e.*, there was an act that tends to deceive or creates an environment conducive to fraud, meaning the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances).

[9] The NYAG also seeks to backdoor several counts involving alleged violations of the Penal Law (*i.e.*, alleged insurance fraud, business records fraud, and financial statements fraud), each of which require an intent to defraud. New York Penal Law §§ 175.05, 175.45, 176.05. However, in alleging underlying criminal violations sounding in fraud, the NYAG cannot simply use § 63(12) to circumvent proving the underlying alleged illegal acts. "The

under § 63(12) or otherwise, and whether framed as an issue of standing or capacity, the scope of the NYAG's authority depends upon a public interest nexus fully lacking in this case.[10]

The record is devoid of any evidence establishing any impact on anyone, not the counterparties to the various transactions at issue and not the public marketplace. There is simply no role or authorization for the Attorney General to second-guess the considered business judgment of private parties engaged in successfully consummated and profitable commercial transactions. Executive Law § 63(12) authorizes the NYAG to apply for relief "in the name of the people of the state of New York." The authority to recover on behalf of the People depends necessarily upon a connection between the conduct the Attorney General seeks to enjoin, and some harm (or threat of harm) suffered by the People (*i.e.*, the public at large). The plain language of Executive Law § 63(12) is at once a conferral of authority and a limitation on the exercise of that authority.[11]

Legislature [] enacted a statute requiring more. The Attorney General may not circumvent that scheme, [because t]o do so would tread on the Legislature's policy-making authority." *People v. Grasso*, 11 N.Y.3d 64, 72 (2008). *Grasso* held the NYAG cannot exercise authority outside of an enforcement scheme set out by the legislature by bringing common law claims, where the common law application of causes of action sought by the NYAG are less stringent than what is required by the legislature. *See id.* at 71. This analysis applies with equal force here where the NYAG seeks to apply criminal statutes requiring an intent to defraud as a basis for § 63(12) liability without alleging and proving the requisite intent or other elements.

[10] This concept is reinforced by the doctrine of *parens patriae*, which is fully applicable to actions brought under § 63(12). The elements of the *parens patriae* analysis effectively frame the outer limits of the NYAG's authority even where, as here, she has been granted statutory powers. Indeed, the proposition that § 63(12) vests the NYAG with the "functional equivalent of *parens patriae* authority" has been expressly adopted by the NYAG. *See New York v. Intel Corp.*, No. CIV. 09-827-LPS, 2011 WL 6100446, at *6 (D. Del. Dec. 7, 2011) ("[The NYAG] submits that courts have determined that [Executive Law 63(12)] constitute[s] 'express state statutory authority [allowing the NYAG] to represent consumers in a capacity that is the functional equivalent of *parens patriae* authority.") (citation omitted). "To bring a *parens patriae* action to sue in the public interest, the Attorney General must: (1) identify a quasi-sovereign interest in the public's well-being; (2) that touches a 'substantial segment' of the population; and (3) articulate 'an interest apart from the interests of the particular private parties[.]'" *People v. H&R Block*, No. 401110/2006, 2007 WL 2330924 (N.Y. Sup. Ct. N.Y. Cnty. 2007).

[11] The plain language of § 63 itself further establishes the NYAG's power is by no means unfettered. The NYAG's authority to prosecute and defend suits applies only to "all actions and proceedings in which the state is interested" and for the purposes of "protect[ing] the interest of the state." Exec. Law § 63(1). This concept is unquestionably embedded in § 63(12). *Cf. Duguid v. B.K.*, 175 N.Y.S.3d 853 (N.Y. Sup. Ct. 2022) (explaining that when a state

The Court of Appeals has articulated that limitation in cases interpreting statutory grants of authority to sue "in the name of the People" substantially identical to that in § 63(12), going back more than two centuries. *See People v. Lowe*, 117 N.Y. 175 (1889); *People v. Brooklyn, Flatbush & Coney. Island Ry. Co.*, 89 N.Y. 75 (1882); *People v. Ingersoll*, 58 N.Y. 1 (1874); *People v Albany & S.R. Co.*, 57 N.Y. 161 (1874); *People v. Booth*, 32 N.Y. 397 (1865); *Attorney Gen. v. Utica Ins. Co.*, 2 Johns. Ch. 371 (N.Y. Ch. 1817). "While [a statute may] authorize[ ] the Attorney General, in [her] discretion, to institute suit where [she] believes the public interests require such action to be brought, [her] determination is not final for all purposes, and whether the action brought is permissible and maintainable is a matter subject to judicial review." *People v. Singer*, 85 N.Y.S. 2d 727, 731 (N.Y. Sup. Ct. N.Y. Cnty. 1949) (citing *Lowe*, 117 N.Y. at 194–95). Upon such review, "[u]nless … it appears that the matters alleged affect the public interest in the true and proper sense, rather than affecting individual private rights and interests, then the State is without legal capacity to sue." *Singer*, 85 N.Y.S.2d at 730 (citing *People v. Albany & Susquehanna R. Co.*, 57 N.Y. 161, 167 (1874); *People v. O'Brien*, 111 N.Y. 1, 33 (1888); *Lowe*, 117 N.Y. at 191. "It is not sufficient for the people to show that wrong has been done to some one; the wrong must appear to be done to the people, in order to support an action by the people for its redress." *Albany*, 57 N.Y. at 168.

Thus, whether through application of *Lowe*, 117 N.Y. at 194–95, or the elements of the *parens patriae* doctrine, the *sine qua non* for the Attorney General is to establish an interest within the public purpose of her office beyond that of the private litigants. To hold otherwise is to remove all limits on the exercise by the Attorney General of her authority under § 63(12), eliminating any,

official acts "in [her] official capacity [she is] representing the larger interests of the State to promote the health, safety, and welfare of the public").

even theoretical, possibility of judicial oversight over the initiation of actions under the statute. Such result is inconsistent with the plain language of § 63(12) and established precedent and was not (and could not have been) contemplated by the Legislature.[12]

Executive Law § 63(12) cases invariably involve some actual public interest that the NYAG seeks to vindicate, which is a stark contrast to what she seeks to do here in attempting to become the *post hoc* arbiter of the marketplace by interjecting her own judgment into strictly private transactions—thereby ignoring the public protection purpose of § 63(12). *See New York v. Feldman*, 210 F. Supp. 2d 294, 302 (S.D.N.Y. 2002) ("defendants engaged in a scheme to manipulate public stamp auctions" and "repeated acts of deception [were] directed at a broad group of individuals" including "unsophisticated individual sellers, such as the elderly and one-time participants"); *People v. MacDonald*, 330 N.Y.S.2d 85, 88–89 (Sup. Ct. 1972) (ensuring public safety via enforcement of vessel navigation laws); *State v. Cortelle Corp.*, 38 N.Y.2d 83, 85, (N.Y. 1975) ("distressed owners of residences" who "relied upon oral representations that [their] deeds were merely collateral"); *People v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803, 806, (1992) (health club members not receiving contractual services they paid for); *People v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009) (defrauded owners of life insurance policies); *People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409 (1st Dep't 2016) (programs offered to consumers such as small business owners and individual entrepreneurs); *People v. Credit Suisse*

[12] The undisputed legislative purpose behind § 63(12) is to "afford *the public and consumers* expanded protection from deceptive and misleading business practices[.]" *State v. Bevis Indus., Inc.*, 314 N.Y.S.2d 60, 64 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (emphasis added); *People v. 21st Century Leisure Spa Int'l Ltd.*, 583 N.Y.S.2d 726, 729 (N.Y. Sup. Ct. N.Y. Cnty. 1991) (Section 63(12)'s purpose "is to afford *the consumer* protection from deceptive and misleading practices") (emphasis added); *Allstate Ins. Co. v. Foschio*, 462 N.Y.S.2d 44, 46–47 (2d Dep't 1983) ("the purpose of such restrictions on commercial activity is to afford the *consuming public* expanded protection from deceptive and misleading fraud") (emphasis added); *State v. Solil Mgmt. Corp.*, 491 N.Y.S.2d 243, 249 (N.Y. Sup. Ct. N.Y. Cnty. 1985) (same); *State v. ITM*, 275 N.Y.S.2d 303, 320 (N.Y. Sup. Ct. N.Y. Cnty. 1966) (Section 63(12) is "designed to protect the *consuming public* against persistent fraud and illegality") (emphasis added).

Sec. (USA) LLC, 31 N.Y.3d 622, 627 (2018) (deceit in sale and marketing of mortgage-backed securities to the investing public); *People v. Greenberg*, No. 401720/20005, 2010 WL 4732745, at *11 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 21, 2010) (transactions "structured in such a manner as to deceive the investing public"); *State v. Ford Motor Co.*, 74 N.Y.2d 495 (1989) (consumers charged for repairs covered by extended warranties of automobiles); *People v. N. Leasing Sys., Inc.*, 193 A.D.3d 67, 70 (1st Dep't 2021) (hundreds of small business owners including seniors, disabled, and immigrants executing unconscionable equipment leases); *State v. Wolowitz*, 468 N.Y.S. 2d 131, 135 (2d Dep't 1983) (unlawful rent surcharge on residential tenants); *People v. Ernst & Young, LLP*, 980 N.Y.S.2d 456 (1st Dep't 2014) (complaint containing allegations of defendants "defrauding the investing public" (*see People v. Ernst & Young LLP*, No. 451586/2010, 2013 WL 6989308, NYSCEF No. 1, at 1, 5 (N.Y. Sup. Ct. N.Y. Cnty. 2013)).

Unlike any other case brought under § 63(12) since its inception, the record evidence establishes this case centers around a few discrete complex transactions involving only sophisticated counterparties that were represented by equally sophisticated legal counsel. This case involves specific loan transactions with Deutsche Bank (Defs. SOF ¶¶ 72–156), one loan refinance with Ladder Capital (Defs. SOF ¶¶ 157–60), one loan refinance with Bryn Mawr bank (Defs. SOF ¶¶ 161–64), and the award by the GSA of a contract to rehabilitate a historic U.S. Government property (Defs. SOF ¶¶ 143–46). Each transaction was governed by extensively negotiated agreements fully defining the parties' respective obligations, what conduct constituted any breach, and, importantly, the consequences of any breach. The parties' relationships were therefore fully defined and self-contained. Each transaction was extraordinarily profitable for the counterparties and none of the contracts were ever breached. (SOF ¶¶ 96, 142, 154). None of the parties to any of the transactions ever lodged any complaint with the NYAG or otherwise claimed any fraud,

misrepresentation, or breach. The only parties impacted by the indisputably successful transactions were the specific private parties to those transactions.

The record does not contain a scintilla of evidence of any public harm (or for that matter, private harm)—any impact on public share prices, *e.g., People v. Greenberg*, 21 N.Y.3d 439 (2013), the public financial markets, *e.g., Coventry First*, 13 N.Y.3d at 114, the public credit markets, *e.g.*, *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005), or members of the public at large, *e.g.*, *New York. v. Gen. Motors Corp.*, 547 F. Supp. 703, 703–704 (S.D.N.Y. 1982); *People v. Gen. Elec. Co.*, 302 A.D.2d 314 (1st Dep't 2003). Thus, the NYAG lacks the authority and capacity to now maintain this action for a lack of public impact.[13]

Unlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims. Indeed, that evidence establishes this is simply not the type of case § 63(12) was designed to reach. To the extent any claims exist relative to the private commercial transactions herein at issue (which they do not as actual parties to those transactions never even attempted to allege), courts recognize § 63(12) claims involving the rights of private business entities "should be [adjudicated by] private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *See, e.g., People v. Domino's Pizza*, No. 450627/2016, 2021 WL 39592, at *12 (Sup. Ct. N.Y. Cnty. Jan. 5, 2021).

[13] Even the § 63(12) claims that have been brought to secure an "honest marketplace," deal with protecting the public at large. *See, e.g.*, *People v. Amazon.com, Inc.*, 550 F. Supp. 3d 122 (S.D.N.Y. 2021) (company acted inadequately to protect thousands of workers during the Covid-19 pandemic and AG's standing based on "the government's interest in guaranteeing a marketplace that adheres to standards of fairness, as well [as] ensuring that business transactions in the state do not injure public health"); *Gen. Motors Corp.*, 547 F. Supp. at 703–04 (action brought in reaction to "numerous complaints" by consumers alleging fraud in the "sale, warranting, and repair of automobiles" containing certain equipment); *People v. H & R Block, Inc.*, 870 N.Y.S.2d 315, 316 (1st Dep't 2009); *People v. Liberty Mut. Ins. Co.*, 52 A.D.3d 378, 379 (1st Dep't 2008) (bid rigging); *Gen. Elec. Co.*, 302 A.D.2d 314 (misrepresentations to consumers regarding dishwashers); *People v. Orbitual Publ. Grp., Inc.*, 169 A.D.3d 564, 565 (1st Dep't 2019) (materially misleading consumer solicitations); *Applied Card Sys.*, 27 A.D.3d 104 (misleading credit card offers to consumers).

As the record demonstrates, the transactions before the Court are complex, bilateral business transactions, none of which involve an impact on the public or implicate the public market in any way. Therefore, § 63(12) simply does not extend to these transactions. *See id.*; *People v. Exxon Mobil Corp.*, No. 452044/2018, 2019 WL 6795771, at *30 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019) (finding NYAG failed to prove Exxon Mobil "made any material misstatements or omissions about its practices and procedures that misled any reasonable investor"); *State v. Parkchester Apts. Co.*, 307 N.Y.S. 2d 741, 748 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (dismissing claims brought by the NYAG in relation to a "private dispute" when the only basis for the Executive Law claim was a breach of contract demonstrating that claims that can be pursued by individual citizens are not actionable by the state).

In *Domino's*, the court declined to extend the NYAG's police power to disputes over "bilateral business transactions" between Domino's and its individual franchisees regarding a store management software program. *Domino's*, 2021 WL 39592, at *12. "Domino's makes a compelling argument that any disputes regarding the performance of [the store management software program] should be in the nature of private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *Id.* Likewise, here, the private, complex, bi-lateral transactions at issue are simply not the proper subject of "a law enforcement action under a statute designed to address public harm." *Id.* Indeed, had any of the sophisticated banks and insurers been financially harmed or deceived in any way, they would have long ago exercised their substantial legal rights under the operative agreements to seek redress. The NYAG cannot now stand in those sophisticated counterparties' shoes to vindicate a wrong that the counterparties never complained of and that the Defendants never perpetrated.

Moreover, the record here goes even further than in *Domino's*, establishing the respective counterparties suffered no harm or injury, and never asserted any default or breach. Indeed, at least in *Domino's*, there was at least some complaint or allegation of harm made by the actual parties to the transactions at issue. Yet here, the record is devoid of any evidence of default, breach, late payment, or any complaint of harm by anyone other than the NYAG. To the contrary, the sophisticated private parties all profited considerably from successfully consummated transactions. Thus, "fraud" cannot exist in the abstract or solely in the mind of the NYAG. Rather, under 63(12) there must be some tangible proof of conduct which has at least the capacity or tendency to deceive.[14]

Here, by way of example, DB Managing Director David Williams, a key corporate officer involved directly in the decisions relative to the DB loans at issue, testified that President Trump "had a verifiable net worth in a top tier of the regional market." (Defs. SOF ¶ 80.) Even if President Trump had a net worth of $1 billion, the pricing on the loans would have remained the same because a net worth in excess of $1 billion constitutes a strong guarantor. (Defs. SOF ¶¶ 79.) Additionally, numerous DB representatives, including Mr. Williams, Ms. Vrablic, and Mr. Sullivan, testified they did not believe there were any material misrepresentations made to the PWM division on these loans. (Defs. SOF ¶ 97.) For example, Ms. Vrablic explicitly testified under oath that she did not believe that either President Trump, Eric Trump or Donald Trump, Jr. made any materially misleading statements to Deutsche Bank. (Defs. SOF ¶ 97, Vrablic Dep.

[14] Nor is it sufficient for the Attorney General to simply invoke "honesty of the marketplace" as a predicate to satisfy the public purpose requirement. In the end, "honesty of the marketplace" is a dictum not a rule of law and its talismanic invocation cannot make up for an absence, here total, of the critical and indispensable element to the Attorney General's ability to bring claims under Executive Law §63(12) or any similar statute: public-directed conduct or public harm that is not abstract, conceptual, or theoretical, but sufficiently choate so as to have a discernable causal relationship to the conduct alleged. Bare assertions of harm to the marketplace that are abstract, conceptual, and theoretical cannot substitute for such a factual causal connection as a justification for the invocation of the Attorney General's power.

229:16-23 ("Q: And as you sit here today, do you have any reason to believe that at any time between January 1, 2011, and the time that you left Deutsche Bank, Eric Trump submitted any materially misleading statements to Deutsche Bank? A: To the best of my knowledge, no."), 229:25-230:7 ("Q: And as you sit here today, do you have any reason to believe that at any time between January 1, 2011 and the time that you left Deutsche Bank, Donald Trump, Jr. submitted any materially misleading statement to Deutsche Bank? A: To the best of my knowledge, no."), 234:17-20 ("Q. Are you aware of any false oral statements that President Trump ever made to anyone at Deutsche Bank? A. Not to the best of my knowledge.") 235:8-16 ("Q. Are you aware of any false written statements that President Trump ever made to anyone at Deutsche Bank? A. To the best of my knowledge, no. Q. Are you aware of any false information that Donald Trump, President Trump, ever provided to anyone at Deutsche Bank? A. To the best of my knowledge, no.").

Mr. Williams explicitly informed the NYAG when he was interviewed previously that he was not concerned about whether any of the SOFCs were misleading. (Defs. SOF ¶ 98.) Even now, Mr. Williams has no concern that the SOFCs were misleading. (*Id.*) DB believed President Trump had a "proven successful track record in the United States commercial real estate market" and based its loan decision on President Trump's financial profile, the client's "historical successes," the banks' due diligence, and the adjustments to President Trump's reported values. (Defs. SOF ¶ 114.) This testimony squarely refutes any notion the SOFCs had any capacity or tendency to deceive. The record demonstrates these are sophisticated counterparties that conducted their own analysis and made valid, and profitable, business risk decisions.

Additionally, there has never been any default associated with any loan associated with President Trump with the PWM division. (Defs. SOF ¶ 96.) Nor was there ever a recommendation

at any time that there was a basis to declare default based on President Trump's failure to maintain a net worth of at least $2.5 billion. (Defs. SOF ¶ 97.) Simply put, the NYAG has not established that the transactions at issue herein are (or should be) the proper subject of "a law enforcement action under a statute designed to address public harm." *Domino's Pizza*, 2022 WL 39592, at *26. Rather, as in *Domino's*, any disputes under the bi-lateral agreements at issue (there are none) must and should be resolved through private contract litigation. There is simply no role for the NYAG on this record and the Defendants are entitled to summary judgment as a matter of law.

2. The Record Cannot Support Findings On Elements Of The First Cause of Action

There are four elements of a general § 63(12) fraud claim:

(1) there was an act that tends to deceive or creates an environment conducive to fraud, meaning the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances;
(2) the act was misleading in a material way;
(3) the defendant participated in the act or had actual knowledge of it; and
(4) the act was persistent and/or repeated.

See N. Leasing Sys., Inc., 70 Misc. 3d at 267 (collecting cases). Although New York courts have held that a claim for fraud under § 63(12)—like one under the Martin Act—does not require a showing of scienter or reliance, *Greenberg*, 95 A.D.3d at 483, "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's Pizza*, 2021 WL 39592, at *11 (emphasis in original) (citing *State v. Rachmani Corp.*, 71 N.Y.2d 718, 726 (1988), *People v. Tempur-Pedic Int'l, Inc.,* 916 N.Y.S.2d 900, 906 (Sup. Ct. 2011), and *People v. Exxon Mobil Corp.,* 65 Misc. 3d 1233(A) (Sup. Ct., N.Y. Cnty. Dec. 10, 2019)).

a. The Record Shows That The SOFCs Were Not Materially Misleading

One of the four elements of a general fraud claim is that the alleged misrepresentation be misleading in a material way. *See N. Leasing Sys.,* 70 Misc. 3d at 267. New York courts' "longstanding understanding of materiality tracks that of . . . the federal courts." *City Trading Fund v. Nye*, 72 N.Y.S.3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018).

For example, in *People v. Exxon Mobil Corp.*, the NYAG sued ExxonMobil alleging the company violated the Martin Act and Executive Law § 63(12) in connection with its public disclosures concerning how ExxonMobil accounted for past, present, and future climate change risks. (No. 452044/2018, 2019 WL 6795771 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019). There, the court turned to federal securities law for its materiality standard: the operative question was whether the alleged misrepresentation "would have been viewed by a reasonable investor as having significantly altered the 'total mix' of information made available.'" *Id.* at *2 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976)). As the court further explained, the "reasonable investor" standard is "an objective one," such that "a material misstatement must assume 'actual significance in the deliberations'" of the shareholders. *Id.* at *3–4 (quoting *United States v. Litvak*, 889 F.3d 56, 64 (2d Cir. 2009) and *State v. Rachmani Corp.*, 71 N.Y.2d 718, 726 (1988)). Thus, to avoid summary judgment, the plaintiff must create a "triable issue[] of fact" by presenting "competing evidentiary submissions" showing that "a reasonable investor would have found that the information about a quantitative and qualitative impact of the transaction significantly altered the total mix of information available." *People ex rel. Cuomo v. Greenberg*, 946 N.Y.S.2d 1, 10 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439 (2013) (citation omitted). In *Exxon Mobil,* the court found that the NYAG had "failed to prove" its case where it had not "produced . . . testimony . . . from

any investor who claimed to have been misled by any [of Exxon's] disclosure[s].'" 2019 WL 6795771, at *29.[15]

Notably, in evaluating the allegations of a fraudulent misrepresentation claim, "New York takes a contextual view, focusing on the level of sophistication of the parties, the relationship between them, and the information available at the time of the operative decision." *JP Morgan Chase Bank v. Winnick*, 350 F. Supp. 2d 393, 406 (S.D.N.Y. 2004). The "reasonable investor is presumed to have knowledge of information that has already been disclosed or is readily available," and "there is no requirement that information already disclosed be spoonfed to them." *Rachmani Corp*., 71 N.Y.2d at 728. Further, "[s]ophisticated business entities are held to a higher standard." *JP Morgan Chase Bank*, 350 F. Supp. 2d at 406. Such entities "have a duty to protect [themselves] from misrepresentations," which "may apply even in circumstances where the defendant had peculiar knowledge of the relevant facts." *Solutia Inc. v. FMC Corp*., 456 F. Supp. 2d 429, 450–51 (S.D.N.Y. 2006).

As relevant here, New York courts typically deem large banks, insurance companies, and multinational corporations "sophisticated parties," especially when they are engaged in "transactions concern[ing] significant amounts of money." *See St. Paul Mercury Ins. Co. v. M&T Bank Corp.,* No. 12 Civ. 6322(JFK), 2014 WL 641438, at *6 (S.D.N.Y. Feb. 19, 2014); *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.,* 949 F.2d 569, 574 (2d Cir. 1991) (designating "insurance companies" as "sophisticated business entities"); *In re Residential Cap., LLC*, No. 12-12020 (MG), 2022 WL 17836560, at *31 (Bankr. S.D.N.Y. Dec. 21, 2022) (designating "multinational corporation" as "a sophisticated party").

[15] Tellingly, the NYAG "represented she would not appeal Justice Ostrager's ruling" in the *Exxon* case. *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 391 (2d Cir. 2022) (citing *Exxon Mobil Corp.*, 2019 WL 6795771).

The NYAG has cited *People v. Domino's Pizza, Inc.,* No. 450627/2016, 2021 WL 39592, at *10 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 5, 2021) for "the proposition that the Attorney General need not prove materiality," (NYSCEF No. 380 at 17, n.5). This flatly misstates the law. Materiality has always been an element of a Martin Act claim, see *People v. Federated Radio Corp*., 244 NY 33, 37 (1926), and also of a claim under the "virtually identical" standard of fraud embodied in § 63(12), see *State v. Rachmani Corp.*, 71 N.Y.2d 718, 726 (1988). The NYAG's assertion also directly contradicts what Justice Cohen expressly stated in *Domino's Pizza*: "evidence regarding . . . materiality . . . ***plainly is relevant*** to determining whether the Attorney General has established" a § 63(12) claim. *Domino's Pizza,* 2021 WL 39592, at *11 (emphasis in original). Indeed, in *Domino's Pizza*, Justice Cohen cited no fewer than three New York cases dismissing § 63(12) claims, at least in part because of a failure to show materiality. *See id.* (citing *Rachmani Corp.*, 71 N.Y.2d at 726, and *Tempur-Pedic Int'l., Inc.,* 916 N.Y.S.2d at 906, and *Exxon Mobil,* 2019 WL 6795771). The NYAG cannot escape the gravity of that well-established authority by its misinterpretation of *Domino's Pizza*.

The record in this case, consisting of documentary evidence and expert and fact witness testimony, including the testimony of the very people whom the NYAG claims were the targets of Defendants' alleged fraud, establishes that the SOFCs were not materially misleading. No bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own diligence, and none did.

First, representatives of the actual banks and insurance companies working with the relevant Defendants in this case testified that they did not consider the alleged misrepresentations to be material.

President Trump was a customer of the Private Wealth Management ("PWM") program at DB, which allowed him to personally guarantee loans for business purposes. (Defs. SOF ¶¶ 72, 116.) As Tom Sullivan, Managing Director of DB, testified, to qualify as a customer of the PWM program at DB, an individual needs to have a minimum total net worth of about $50 million. (Defs. SOF ¶ 73.) It is undisputed that President Trump's personal net worth far exceeded that amount. For each of the three loans from DB that President Trump personally guaranteed, DB's own employees testified that they were "[c]omfortable with the level of assets" that President Trump held and as well as the "recordation of that amount of liquid assets." (Defs. SOF ¶ 85.)

DB also applied discounts to the amounts listed in President Trump's SOFCs submitted to them as a part of the three loan transactions. In other words, DB, as a highly sophisticated entity, was comfortable conducting its own analyses and making the loans at issue based on its routine application of "haircuts" to the values listed on SOFCs, discounting the clients' stated value in order to prepare for any "adverse scenario" where "the client's financial position is under stress." (Defs. SOF ¶ 86.) For example, when DB received a copy of the 2011 SOFC to secure the Trump Endeavor 12 LLC loan described in the Complaint, DB calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC and used its own independent judgment "in setting the appropriate adjustments to achieve conservative valuations of concentrated assets." (Defs. SOF ¶¶ 87, 107.) DB "was focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed." (Defs. SOF ¶ 89.)

The bank's relationship with President Trump was a profitable one for DB with Deutsche Bank earning millions of dollars in revenue from its dealings with President Trump. (Defs. SOF ¶¶ 95, 101–102.) Between 2012 and 2016, DB received over $75 million in interest on these loans. (Robert Aff., Ex. AAQ ¶ 5.) Indeed, simply by closing on these transactions, Deutsche Bank generated fees totaling approximately $3 million. (Defs. SOF ¶¶ 119, 136, 154.) Indeed, the Doral loan had "performed quite well, enough to warrant considering increasing the loan amount secured by the property." (SOF ¶ 121.) And the Chicago Loan was a "superb deal" to the bank that was "structured properly" with pricing that was "appropriate" making it a "very, very good safe deal for the bank" based on the "loan-to-values-and the guarantees involved." (Defs. SOF ¶ 133.) The Old Post Office loan was also a successful credit transaction for Deutsche Bank, as the property was "redeveloped and opened and was operating successfully" and the loan was performing such that "all interest payments and covenants were being met." (Defs. SOF ¶ 154.) At no point in the lifecycle of any credit transaction between DB's PWM division and President Trump or any entity affiliated with President Trump did a covenant or payment default ever occur. (Defs. SOF ¶ 96.) Nor did DB ever recommend that there was a basis for declaring a default based on President Trump's failure to maintain a net worth of at least $2.5 billion as required for each transaction.[16] (Defs. SOF ¶ 97.)

With respect to Defendants' dealings with Ladder Capital Finance, it is important to note that the terms of the 40 Wall Street Loan required President Trump to maintain a net worth of only

[16] As noted above, it is simply not possible to maintain a viable § 63(12) action on these facts. The NYAG's allegations regarding DB's decision not to grant President Trump a loan in 2016 are of no import. As the NYAG itself explained in its Complaint, DB declined to extend further credit to President Trump because he was running for president at the time and DB wanted to avoid the perception that DB was not politically neutral, to mitigate reputational risk. (NYSCEF No. 1 ¶ 666). There is no evidence to suggest that DB declined to make additional loans because it was concerned about President Trump's financial condition.

$160 million and liquidity of only $15 million during the term of the loan. (Defs. SOF ¶ 159.) The NYAG has produced no evidence to suggest that President Trump's net worth or liquidity were ever that low, or that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion as the NYAG contends.[17] Additionally, the loan has been successful, as Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan. (Robert Aff., Ex. AAQ ¶ 3).

Testimony of representatives from Zurich further confirms that the SOFCs were not materially misleading. As Joanne Caulfield, a project manager at Zurich, testified, it is common practice for a surety underwriter to require disclosure of financial statements, but Zurich's surety underwriter knew of no legal or contractual provision that required such disclosure from President Trump. (Defs. SOF ¶ 169.) From July 2011 to January 2017, Zurich increased its exposure to Mr. Trump by renewing and expanding the surety program at issue in this case. (Defs. SOF ¶ 172.) In 2013, 2014, and 2015, the sole basis upon which Zurich relied to support its underwriting decisions were estimates of President Trump's net worth published by Forbes. (Defs. SOF ¶ 173-5.) In fact, despite not receiving traditional disclosure of a SOFC from July 2011 to January 2017, Zurich increased its exposure and renewed bonds as an accommodation to the insurance broker. (Defs. SOF ¶ 176.) According to Caulfield, Zurich reduced the rate President Trump's businesses were paying as an accommodation to the broker and to stave off another insurance company seeking to take the surety program from Zurich, and the account rate was lowered despite Zurich not having

[17] Indeed, even at $1.9 billion President Trump's net worth would have been 10 times higher than the required minimum. At all events, all this debate surrounding President Trump's net worth is unnecessary (and pointless in the § 63(12) context) given (1) none of the counterparties to any of the transactions have ever at any time expressed any concerns or claimed any default/breach and (2) it is simply undisputed he was and is an extraordinarily successful multi-billionaire.

reviewed the updated SOFC in approximately four years. (Defs. SOF ¶ 180.) Zurich was simply not concerned with President Trump's financial health. (Defs. SOF ¶ 185.)

Similarly, in December 2016, President Trump's insurance broker reached out to Tokio Marine HCC ("HCC") seeking a quote for additional limits of $5,000,000 to sit above an already-existing Directors & Officers ("D&O") policy. (NYSCEF No. 1 ¶ 695.) *Without reviewing a SOFC*, HCC quoted a policy to sit above the existing policy through the expiration date of February 17, 2017, in exchange for a premium of $40,000, subject to reviewing financials at renewal. (NYSCEF No. 1 ¶¶ 695–96.) If a D&O carrier feels as if they have been provided materially false information by an applicant, the carrier can disclaim coverage and sue for rescission. (Defs. SOF ¶ 197.) Finally, the terms of the HCC policy required that the risk manager or general counsel of President Trump's businesses know of a potential claim before HCC was to be put on notice of said claim. (Defs. SOF ¶ 194.)

Second, in addition to the testimony of the actual individuals involved in the subject transactions, expert testimony establishes that banks and insurance companies would not consider any of the alleged misstatements or omissions in the SOFCs to be material. Robert Unell, the Managing Director at Ankura Consulting Group, provided significant testimony about how DB performed its own analyses when assessing whether to make certain loans and did not rely on SOFCs, highlighting how sophisticated lenders such as the Defendants' counterparties here would not find any misstatements of the type alleged by the NYAG to be material. When asked, "Would it be your opinion that if the allegations in the complaint are true, that DB would have reason to have concerns about the accuracy of the SOFCs," Unell flatly answered "No," explaining that "even if the net worth or any of the other . . . allegations were . . . proven true, the net worth was still sufficient to qualify for inclusion in the private wealth bank" and that "Deutsche Bank had

ample opportunity to investigate anything" it wanted to (Defs. SOF ¶ 91.) He continued, explaining that above all, liquidity was most important or "material" to the bank and that the bank "went and verified it." (Defs. SOF ¶ 92.)

According to Unell, "SOFCs provide ample information . . . for a sophisticated lender to be able to make . . . their own determination," as those documents "provide the actual amounts" and "how they were calculated" such that if any bank had concerns, it "had an opportunity to challenge those assumptions that were utilized in the preparation of the SOFC." (Defs. SOF ¶ 70.) "[L]enders are trained not to rely on" SOFCs, "which is why the independent analysis in the credit memo is done." (Defs. SOF ¶ 67.) Unell further testified that materiality "is in the eye of the beholder, not the eye of a third party, not the eye of a regulator, not the eye of, in this case, the Attorney General" and that DB "did what they were supposed to do and verified" certain items and "anything else would have been immaterial." (Defs. SOF ¶ 93.) SOFCs are not treated as perfect approximations of an individual or business' value—they are treated as a "roadmap" for banks to do their own independent analysis. (Defs. SOF ¶ 68.)

Regarding insurance underwriting, David Miller, a former Senior Vice President/Division Officer at Erie Insurance, opined that Zurich North America Insurance Company ("Zurich"), the underwriters for the surety bond program at issue in this case, "didn't rely on asset valuations at all." (Defs. SOF ¶ 182.) Or as Gary Giulietti, an Account Director at Lockton Northeast, testified, describing surety bond transactions with Zurich, liquidity is "all they're relying on, cash, all the way back in the relationship." (Defs. SOF ¶ 182.) In this case, the total exposure extended to President Trump's businesses in connection with the surety program at issue never exceeded $20 million. (Defs. SOF ¶ 182.)

Third, the NYAG alleges repeatedly that the SOFC violated accounting principles generally accepted in the United States ("GAAP"), suggesting that any departures from these established standards are significant in this Court's determination of liability. *See, e.g.*, (NYSCEF No. 1 ¶¶ 14, 136, 199). But it is well-established that GAAP permits departures from GAAP on SOFCs so long as the departures are properly disclosed. The departures on President Trump's SOFCs were properly disclosed. (Defs. SOF ¶ 51, 53, 59.) Further and critically, GAAP does not apply to immaterial items. (Defs. SOF ¶ 63.) None of the items identified by the NYAG as departures, misstatements, or omissions were material and NYAG fails to offer any proper materiality analysis to contradict this. (Defs. SOF ¶ 65.); (Robert Aff., Ex. AK ¶¶ 26–27.) Under GAAP, immaterial financial statement items do not need to comply with the detailed requirements of GAAP. Specifically, ASC 105, Generally Accepted Accounting Principles, provides, "The provisions of the Codifications need not be applied to immaterial items." GAAP guide that immaterial financial statement items do not need to comply with GAAP, and thus allow preparers a reasonable level of flexibility in applying GAAP. In other words, GAAP recognize that not all accounting errors, violations, or departures from GAAP have a significant impact on the inferences of financial statement users. Thus, GAAP only prohibit material violations. (Defs. SOF ¶ 63.)

The materiality assessment is conducted from the standpoint of the user of the financial statements. For an omission or misstatement to be material through the lens of a user, the user must rely on the information in the financial statement in his/her decision-making process. It follows that if the user is in possession of the correct information, then the financial statements are not materially misstated. (Defs. SOF ¶ 64.)

The FASB ASC 274, Personal Financial Statements, governs the preparation of compilation reports. ASC 274 affords preparers of compilation reports significant latitude to

choose the valuation methods they may use to value assets and liabilities on compilations reports and leaves it to the discretion of the preparer which method and assumptions to use as long as they are reasonably consistent with economic theory. Preparers may rely on methods and assumptions in formulating estimated current values that may be inherently different from those used by appraisers and lenders. (Defs. SOF ¶¶ 53–54.) Thus, GAAP affords preparers of SOFCs significant latitude in the valuation methods they may use to value assets and liabilities on SOFCs and leave it entirely to the discretion of the preparer which method to use. "GAAP does not require a specific method to be used to estimate current value for a particular asset for personal financial statements, nor does GAAP require the same method to be used for all assets in the same group." (Defs. SOF ¶ 54.) The NYAG's allegations that President Trump used inappropriate valuation methods fail to consider this wide latitude in choosing asset valuation methods and the assumptions underlying them, or else misinterpret GAAP. (Defs. SOF ¶¶ 53–55.)

Additionally, SOFCs are not designed to show the value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. Banks know that an estimate put forth in a SOFC, even when written to follow GAAP, is "truly an estimate." (Defs. SOF ¶ 67.)

President Trump's SOFCs for 2011 through 2021 were prepared in a personal financial statement format in accordance with ASC 274. (Defs. SOF ¶ 51.). ASC 274 requires preparers of compilation reports to include sufficient disclosures to make the statements informative in light of all the information available to the user, including information apart from the financial report that the user may require and receive from the preparer (as Deutsche Bank did from President Trump). (Robert Aff., Ex. AK ¶ 16.)

Each of President Trump's SOFCs for 2011 through 2021 contains notes, which are an integral part of the SOFC, that provide information (including potential departures from GAAP) to help the user interpret the numbers reported, along with a sweeping disclaimer expressly stating: "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts." *See, e.g.,* Compl. at Ex. 3 at 1.

In addition, each SOFC was accompanied by an "Independent Accountants' Compilation Report" letter from the accountants who compiled the SOFCs that noted that the SOFCS contained numerous departures from GAAP and provided a litany of those departures along with a description of each departure. These compilation letters also expressly warned users that "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with the accounting principles generally accepted in the United States of America" and stated that "users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial condition without the above referenced exceptions to accounting principles generally accepted in the United States of America." (Defs. SOF ¶ 58.)

These disclaimers together with the notes to the SOFCs identify and describe the numerous departures from GAAP as well as the subjective nature of the property valuations. Thus, they put sophisticated users of the SOFCs, such as Deutsche Bank, for whom the SOFCs were prepared,

on complete notice to perform their own diligence, which a sophisticated user like Deutsche Bank would have performed anyhow even in the absence of such disclaimers. (Defs. SOF ¶ 62, 67–70.)

The compilation letters accompanying each SOFC are incorporated by reference in each SOFC and are thus an integral part of each SOFC. From the standpoint of the user (i.e., Deutsche Bank), both documents must be and are considered together, because both were made available to the user together, and because the SOFCs incorporated the letters by reference. (Robert Aff, Ex. AK ¶ 18.).

These disclaimers read together with the extensive notes in the SOFCs identifying and describing the numerous departures from GAAP, put sophisticated users of the SOFCs for whom the SOFCs were prepared on complete notice not to rely upon them.[18] (Defs. SOF ¶ 61.) Indeed, in its Source Selection Evaluation Report and Recommendation related to the Old Post Office property, the GSA acknowledged that the "[f]inancial statements provided by Mr. Trump were qualified by his accountants as not complying with GAAP." (Defs. SOF ¶ 146.) The SOCFs had little or no effect either on the lenders' decisions to extend loans to the Defendants or to set the terms of those loans, or on the insurers' decisions to write coverage for the Defendants and price the risk. (Defs. SOF ¶¶ 87–90.)

In sum, the record is devoid of evidence demonstrating that any of the alleged GAAP departures, misstatements, or omissions were material, or that the recipients of the SOFCs found the alleged misstatements to be material. Indeed, expert testimony in the record provides that sophisticated banks and underwriters conduct their own independent assessment of whether to make a loan or underwrite a policy, focusing on liquidity and using the SOFC as a roadmap in

[18] Again, no possible capacity or tendency to deceive.

their own evaluation. Accordingly, the NYAG's First Cause of Action fails as a matter of law, and all Defendants are entitled to summary judgment.

b. The First Cause of Action Fails As To Most Defendants For The Additional Reason That They Neither Participated In The Alleged Fraud Nor Had Actual Knowledge Of It

As explained above, to prevail on a claim for persistent and repeated fraud under § 63(12), the NYAG must show that each defendant participated in the act or had actual knowledge of it. *See N. Leasing Sys.*, 70 Misc. 3d at 267; *Abrahami v. UPC Constr. Co*., 224 A.D.2d 231, 233–34 (1st Dep't 1996). The participation element is satisfied where the defendant "directed, controlled, approved, or ratified the decision that led to the plaintiff's injury." *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 49 (1st Dep't 2012). Merely providing copies of purportedly false financial statements is insufficient. *See Abrahami,* 224 A.D.2d at 233–34. Similarly, brokering a loan transaction where others allegedly committed fraud does not by itself create an inference of participation in the fraud. *Frawley v. Dawson*, No. 6697/07, 2011 WL 2586369, at *8 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2011).

If the NYAG cannot show that a particular Defendant participated in a persistent and repeated fraud, she must show that such Defendant had actual knowledge of the fraud. *See N. Leasing Sys.*, 70 Misc. 3d at 267; *Abrahami*, 224 A.D.2d at 233–34. Where, as here, actual knowledge is required under New York law, "[m]ere negligent failure to acquire knowledge of the falsehood is insufficient." *Marine Midland Bank v. Russo Produce Co.*, 50 N.Y.2d 31, 44 (1980). Likewise, showing that a Defendant "had access to the information by which it could have discovered the fraud is not sufficient." *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 75–77 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012) (citations omitted).

Thus, in order to show that a particular Defendant had "actual knowledge", the NYAG must put forth facts sufficient to support a finding of at least grossly negligent conduct on the part

of that Defendant. New York courts define gross negligence as conduct that "smack[s] of intentional wrongdoing or evince[s] a reckless indifference to the rights of others." *Gallagher v. Ruzzine*, 46 N.Y.S.3d 323, 328 (4th Dep't 2017) (citation omitted). An officer may also be deemed grossly negligent if "the totality of the circumstances" show that the officer acted with "willful blindness or conscious avoidance." *State v. United Parcel Serv., Inc*., 253 F. Supp. 3d 583, 666–67 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019) (citations omitted). But "[t]here must be evidence capable of supporting a finding that the defendant was aware of a high probability of the [incriminating] fact in dispute and consciously avoided confirmation of that fact." *Id.* at 667 (citation omitted) (alteration in original).

The NYAG must also show actual knowledge for *all* Defendants, including the corporate entities named in the Complaint. Usually, "[w]hen corporate agents act within the scope of their authority, 'everything they know or do is imputed to their principals.'" *People v. Gross*, 169 A.D.3d 159, 169 (2d Dep't 2019) (citations omitted). However, there are "exception[s] to the rule of imputed knowledge." *Id.* at 170. Notably, "imputation of knowledge may not apply where there is a specific statutory requirement of actual knowledge, and imputing knowledge would effectively negate the purpose of the actual knowledge requirement." Robert L. Haig, *Imputed Knowledge*, 4D N.Y. Prac., Com. Litig. in N.Y. State Courts § 102:46 (5th ed., 2022). As the Court of Appeals has explained, if "knowledge of any [employee] may be imputed to a corporate [ ] employer, then the statutory distinction becomes significantly blurred and uneven. We have noted that strict construction of this statutory scheme is essential to insure that the legislative policy of punishing only those with actual knowledge is properly effectuated." *Roberts Real Est., Inc. v. N.Y. State Dep't of State, Div. of Licensing Servs.*, 80 N.Y.2d 116, 122 (1992). Allowing the NYAG to impute

actual knowledge here, "would contradict that interpretation by arrogating to itself instead an expansive new power not granted by the Legislature." *Id.*

For each transaction at issue in the Complaint, the Defendants have either: (1) put forth undisputed evidence that a given Defendant did not participate in and lacked actual knowledge of the transaction, sufficient to defeat the NYAG's allegation; or (2) shown that the record is devoid of documentary or testimonial evidence that may be available to the NYAG to substantiate its allegation. For the sake of brevity, Defendants focus herein on the transactions executed or conduct arguably performed within the statute of limitations, or for which the Tolling Agreement allows the transaction or conduct to serve as the basis for a claim.

Preparation of the SOFC. The NYAG's entire case revolves around the SOFC. Deposition testimony demonstrates that Eric Trump was not involved in preparing the SOFCs. (Defs. SOF ¶¶ 199, 200.) Eric Trump testified, "I never saw or ever even remotely worked on the Statement of Financial Condition. Th[at] was not my purview. Th[at] was not what I did." (Defs. SOF ¶ 200.) He further testified that he knew "just about nothing about the Statement of Financial Condition" and had "never seen" or "worked on" the SOFCs. (Defs. SOF ¶ 200.) He also had no role in the "valuation process in the company." (Defs. SOF ¶ 200.) Donald Bender, the engagement partner at Mazars, testified that he had no conversations with Eric Trump concerning the preparation of the SOFCs. (Defs. SOF ¶ 200.) Eric Trump also disclaimed any knowledge of the alleged falsities in the SOFC, stating that he relied on the accounting team to prepare the SOFCs. (Defs. SOF ¶ 201.) The record is devoid of any contrary evidence.

Donald Trump, Jr. also did not participate in the preparation of the SOFCs. (Defs. SOF ¶ 199.) Bender testified that in preparing the SOFCs, he did not discuss with Donald Trump, Jr. the

preparation of the SOFCs. (Defs. SOF ¶ 202.) The NYAG has not introduced any evidence that Donald Trump, Jr., participated in the preparation or submission of the SOFCs.

The record is also devoid of any evidence that the following Defendants were involved in the preparation of the SOFC or had actual knowledge of the alleged misrepresentations in the SOFC: Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. While the NYAG alleges that this "host of entities" are incorporated within the "Trump Organization," the Complaint alleges nothing concerning these entities beyond that they owned properties mentioned in the Complaint or received loans at issue in the Complaint. No record evidence establishes these entities were involved in creating or submitting the SOFCs.

Thus, to the extent that the NYAG asserts any claims against Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member based on their participation in the creation of the SOFCs or their actual knowledge of the alleged falsities in the SOFCs under the First Cause of Action, those claims fail. And for these Defendants, the Court's analysis on the First Cause of Action can stop there. Given the SOFCs and their alleged falsity is the backbone of the NYAG's entire case, if the undisputed facts demonstrate these Defendants had no involvement in or knowledge of any alleged falsities in the SOFCs, then there is simply no liability without participation or actual knowledge, and these Defendants are entitled to summary judgment on the First Cause of Action.

Surety Bond Program. The NYAG alleges that from 2007 through 2021, Zurich underwrote a surety bond program for the "Trump Organization" and that the SOFC were used in

this process. (NYSCEF No. 1 ¶¶ 678–91.) Zurich representatives testified that they had no communications with Eric Trump or Donald Trump, Jr. in relation to the surety bond program. (Defs. SOF ¶ 187.) The NYAG has not rebutted this evidence, nor has she offered any evidence to suggest that any of these individuals had any knowledge of the submission of the SOFCs to Zurich. Further, the record lacks any evidence that The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC obtained surety bonds from Zurich. Nor is there any evidence to establish that any actions taken by Mr. Weisselberg were taken in his capacity as trustee on behalf of the Trust. To the extent the NYAG's claims concerning the First Cause of Action are related to transactions with Zurich and the surety bond program, they fail as to Defendants Eric Trump, Donald Trump, Jr., the Trust, The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC.

Directors & Officers Liability Insurance. Finally, the NYAG alleges that in December 2016, the "Trump Organization's" insurance broker reached out to an underwriter at HCC regarding a D&O policy to sit on top of an already-existing $5 million policy with Everest and that the 2015 SOFC was submitted to HCC as a part of this process. (NYSCEF No. 1. ¶¶ 692, 698.) The HCC policy was renewed several times. (Defs. SOF ¶¶ 189, 192.) There is no evidence in the record to suggest that any Defendants other than the Trust and Mr. Weisselberg were involved in or had knowledge of this transaction.

B. Defendants Are Entitled To Summary Judgment On The Second, Fourth, And Sixth Causes Of Action

The NYAG's Second, Fourth, and Sixth Causes of Action are brought under the predicate illegality prong of § 63(12) and allege as predicate illegalities violations of several provisions of the New York Penal Law, *viz*., N.Y. Penal Law §§ 175.05 and 175.10 for falsification of business records in the second and first degree (Second Cause of Action); N.Y. Penal Law § 175.45 for issuance of a false financial statement (Fourth Cause of Action); and N.Y. Penal Law § 176.05 for insurance fraud (Sixth Cause of Action). [19] To prevail on these claims, the NYAG must show the Defendants violated these statutes by proving each element of the underlying crime. *See People v. World Interactive Gaming Corp.*, 185 Misc. 2d. 852, 856 (N.Y. Sup. Ct., N.Y. Cnty. 1999) (explaining that "conduct which violates State or Federal law or regulation is actionable under" § 63(12)).

The elements of a claim for falsification of business records in the second degree include making or causing a false entry in the business records of an enterprise or the making or causing of the omission of true entries in the business records of an enterprise with an "intent to defraud." N.Y. Penal Law § 175.05. Falsification of business records in the first degree requires the additional element that the defendant intends to commit another crime or "to aid or conceal the commission thereof." *Id.* § 175.10; *see also People v. Reyes*, 69 A.D.3d 537, 538 (1st Dep't 2010).

[19] In alleging underlying criminal violations sounding in fraud, the NYAG cannot simply use § 63(12) to circumvent proving the underlying alleged illegal acts. "The Legislature [] enacted a statute requiring more. The Attorney General may not circumvent that scheme, [because t]o do so would tread on the Legislature's policy-making authority." *People v. Grasso*, 11 N.Y.3d 64, 72 (2008). *Grasso* held the NYAG cannot exercise authority outside of an enforcement scheme set out by the legislature by bringing common law claims, where the common law application of causes of action sought by the NYAG are less stringent than what is required by the legislature. *See id.* at 71. This analysis applies with equal force here where the NYAG seeks to apply criminal statutes requiring an intent to defraud as a basis for § 63(12) liability without alleging and proving the requisite intent or other elements.

Issuance of a false financial statement occurs when an individual, with intent to defraud, "knowingly makes or utters a written instrument which purports to describe the financial condition . . . which is inaccurate in some material respect" or "represents in writing that a written instrument purporting to describe a person's financial condition . . . is accurate . . . whereas he knows it is materially inaccurate in that respect." N.Y. Penal Law § 175.45.

An individual is liable for insurance fraud when he "causes to be presented" a "written statement as part of, or in support of, an application for the issuance of" a "commercial insurance policy," which he "knows" to "contain materially false information" with an intent to defraud. *Id.* § 176.05.

A plaintiff bringing an action under one statute predicated on violations of another statute must prove the elements of the predicate offense. For example, 42 U.S.C. § 1983 claims may be "based on purely statutory violations of federal law," *Maine v. Thiboutot*, 448 U.S. 1, 3 (1980). But, in such cases, the plaintiff must prove that the government actor's conduct "violate[d] . . . rights secured by the [statute]," *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 109 (1989); *see Legal Aid Soc'y v. City of New York*, 242 A.D.2d 423, 424 (1st Dep't 1997) (sufficiently alleging violation of NLRA gave rise to action under § 1983). Similarly, a plaintiff bringing a Racketeer Influenced and Corrupt Organizations Act ("RICO") action alleging a violation of a mail or wire fraud statute must prove the "essential element[s] of each of the statutory violations of the mail [or wire] fraud statute underlying plaintiff's RICO action." *236 Cannon Realty, LLC v. Ziss*, No. 02 CIV.6683(WHP), 2005 WL 289752, at *4 (S.D.N.Y. Feb. 8, 2005) (citation omitted); *Worldwide Directories, S.A. De C.V. v. Yahoo! Inc.,* No. 14-cv-7349(AJN), 2016 WL 1298987, at *6–7 (S.D.N.Y. Mar. 31, 2016) (dismissing RICO claims, in part, where plaintiffs failed to adequately allege "violations of the mail fraud statute . . . the wire fraud statute

. . . and the Travel Act"). And if the plaintiff fails to "establish the predicate act[s]," defendants will be "entitled to summary judgment." *Ziss,* 2005 WL 289752, at *6. Additionally, where courts have allowed plaintiffs to use the False Claims Act as a vehicle to assert a violation of the anti-kickback statute, they have required plaintiffs to "prove first that defendant violated the anti-kickback statute." *See* Lisa M. Phelps, *Calling Off the Bounty Hunters: Discrediting the Use of Alleged Anti-Kickback Violations to Support Civil False Claims Actions*, 51 Vand. L. Rev. 1003, 1025 (1998) (collecting cases).

Thus, in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality alleged, "establish[] each element of its case with respect to those causes of action," *City Dental Servs., P.C. v. N.Y. Cent. Mut*., No. 2010-2225, 2011 WL 6440755, at *1 (2d Dep't Dec. 16, 2011), by "producing evidentiary proof in admissible form . . . sufficient to require a trial of material questions of fact," *Zuckerman*, 49 N.Y.2d at 562; *see Smith v. City of New York,* 733 N.Y.S.2d 474, 475 (2d Dep't 2001) (denial of summary judgment proper where "plaintiffs' General Municipal Law § 205–a causes of action were predicated upon numerous statutes, rules, regulations, and ordinances" and movant "fail[ed] to specifically address each separate claim with proof sufficient to meet their burden of establishing their right to judgment as a matter of law"); *Reyes v. Sligo Constr. Corp.,* 186 N.Y.S.3d 321, 325 (2d Dep't 2023) (affirming grant of summary judgment dismissing "so much of [plainitff's] Labor Law § 241(6) cause of action as was predicated on violations of 12 NYCRR 23-1.7(a)(1), 23-3.3(b)(3), and 23.3(c)" because "plaintiff failed to raise a triable issue of fact" regarding the underlying elements of those statutory claims).

1. The Fourth And Sixth Causes Of Action Fail Because The Record Shows There Were No Material Misrepresentations[20]

Materiality is an element of both the NYAG's Fourth Cause of Action for issuance of false financial statements and Sixth Causes of Action for insurance fraud.

The issuance of a false financial statement occurs when an individual, with intent to defraud, "knowingly makes or utters a written instrument which purports to describe the financial condition . . . which is inaccurate in some *material* respect" or "represents in writing that a written instrument purporting to describe a person's financial condition . . . is accurate . . . whereas he knows it is *materially* inaccurate in that respect." N.Y. Penal Law § 175.45 (emphasis added). Thus, materiality is an element of the NYAG's Fourth Cause of Action.

The standard for materiality under a false financial statement claim is the same one that applies to a § 63(12) claim, *viz.*, the familiar one borrowed from federal securities law. See *People v. Essner*, 124 Misc. 2d 830 (N.Y. Sup. Ct., N.Y. Cnty. 1984). "[A] fact is deemed 'material' if its disclosure would have been viewed by a reasonable investor as having significantly altered the 'total mix' of information made available," and that materiality requires a showing "that in all probability the omitted or misrepresented facts would, in view of the circumstances, have assumed actual significance in the deliberations of a reasonable shareholder." *Id.* (quoting *SEC v. Paro*, 468 F. Supp. 635, 646 (N.D.N.Y. 1979)). In making a materiality determination the Court must view the question from the perspective of the victim. *People v. Essner*, 124 Misc. 2d 830. Here, the alleged victims are the insurers to whom the SOFCs were provided, so materiality must be weighed from their perspective.

[20] Again, Defendants do not concede that they made any misrepresentations.

An individual is liable for insurance fraud when he "causes to be presented" a "written statement as part of, or in support of, an application for the issuance of" a "commercial insurance property," which he "knows" to "contain *materially* false information" with an intent to defraud. N.Y. Penal Law § 176.05 (emphasis added). Accordingly, materiality is also an element the NYAG is required to prove in its Sixth Cause of Action.

Under an insurance fraud claim, "[a] misrepresentation is material if the insurer would not have issued the policy had it known the facts misrepresented." *Nabatov v. Union Mut. Fire Ins. Co.*, 164 N.Y.S.3d 667, 669 (2d Dep't 2022) (citation omitted). On summary judgment, "an insurer must present clear and substantially uncontradicted documentation concerning its underwriting practice, such as underwriting manuals, bulletins, or rules pertaining to similar risks, which show that it would not have issued the same policy if the correct information had been disclosed in the application." *Id.* at 670; *see Lema v. Tower Ins. Co. of New York,* 990 N.Y.S.2d 231 (2d Dep't 2014). Thus, "[c]onclusory statements by insurance company employees, unsupported by documentary evidence, are insufficient to establish materiality as a matter of law." *IPA Asset Mgmt., LLC v. Certain Underwriters at Lloyd's London*, 39 N.Y.S.3d 198, 200 (2d Dep't 2016).

As discussed in detail in section II.A *supra*, there is no evidence in the record supporting a finding that the SOFCs as submitted to Deutsche Bank, Ladder Capital, Bryn Mawr Bank, Zurich, or HCC were materially misleading. Thus, Defendants are entitled to summary judgment on the NYAG's Fourth and Sixth Cause of Action.

2. The Second, Fourth and Sixth Causes of Action Also Fail Because the Record Does Not Support A Contention That Defendants Intended To Defraud Anyone

The Second, Fourth, and Sixth Causes of Action also contain a specific intent element: the NYAG must show that the Defendants performed the allegedly improper conduct with an "intent to defraud." The intent to defraud is "commonly understood to mean" to act with intent "to cheat

someone out of money, other property or something of value." *People v. Hankin*, 175 Misc. 2d 83, 89 (N.Y. Crim. Ct. Kings Cnty. 1997) (citing *People v. Saporita*, 132 A.D.2d 713, 715 (2d Dep't 1987)). It involves "frustrat[ing] the legal rights of another," *see S. Indus. v. Jeremias*, 66 A.D.2d 178, 181 (2d Dep't 1978), or misleading with the purpose of "leading another into error or to disadvantage," *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring). Thus, it is more than an intent to deceive. *See Hankin*, 175 Misc. 2d at 89. The end result of the deception must be to dispossess the target of the deception of something of value or frustrate their legal rights.

Moreover, New York courts have held that plaintiffs failed to produce credible evidence of intent to defraud where there was no evidence to suggest that defendants' reliance on accounting professionals "was other than in good faith." *Abrahami*, 224 A.D.2d at233–34; *see also People v. Dillard*, 271 N.Y. 403, 414 (1936) (finding defendant had a "right to rely" on agreement drafted by subordinate employees and the facts disclosed to him and that plaintiff had not shown he "knowingly made a false statement or a statement intended to deceive the public"). This is consistent with New York corporate law, which provides, in relevant part, that "[i]n performing his duties, an officer shall be entitled to rely on information, opinions, reports or statements *including financial statements* and other financial data, in each case prepared or presented by . . . counsel, public accountants or other persons as to matters which the officer believes to be within such person's professional or expert competence, so long as in so relying he shall be acting in good faith." N.Y. Bus. Corp. § 715(h)(2) (emphasis added).

As asserted in Section II.B *supra*, the evidence in the record does not support a finding that any Defendants had the requisite intent. Accordingly, they are entitled to summary judgment on the Second, Fourth, and Sixth Causes of Action.

Indeed, the available evidence does not establish that any Defendants at all involved in any way in the preparation of the SOFC—President Trump, Mr. Weisselberg, and Mr. McConney—had an intent to deceive, let alone to defraud anyone. *See Hankin*, 175 Misc. 2d at 89 (noting difference between intent to deceive and intent to defraud where defendant was untruthful but evidence did not show that he made the misrepresentation in order to deprive another of something of value). As discussed above, GAAP permits departures from GAAP on SOFCs so long as the departures are properly disclosed. The departures on President Trump's SOFCs were properly disclosed. (Defs. SOF ¶ 59.) Further and critically, GAAP does not apply to immaterial items. (Defs. SOF ¶ 63.) None of the items identified by the NYAG as departures, misstatements, or omissions were material and NYAG fails to offer any proper materiality analysis to contradict this. (Defs. SOF ¶ 65.); (Robert Aff., Ex. AK ¶¶ 26–27.) Moreover, GAAP affords preparers of SOFCs significant latitude in the valuation methods they may use to value assets and liabilities on SOFCs and leave it entirely to the discretion of the preparer which method to use. "GAAP does not require a specific method to be used to estimate current value for a particular asset for personal financial statements, nor does GAAP require the same method to be used for all assets in the same group." (Defs. SOF ¶ 54.) The NYAG's allegations that President Trump used inappropriate valuation methods fail to consider this wide latitude in choosing asset valuation methods and the assumptions underlying them, or else misinterpret GAAP. (Defs. SOF ¶¶ 53–55.) Additionally, SOFCs are not designed to show the value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. Banks know that an estimate put forth in SOFCs, even when written to follow GAAP, are "truly an estimate." (Defs. SOF ¶ 67.)

Further, each SOFC also contained numerous, elaborate notes identifying departures in the SOFCs from GAAP along with a sweeping disclaimer expressly stating: "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts." In addition, each SOFC was accompanied by an "Independent Accountants' Compilation Report" letter from the accountants who compiled the SOFCs that noted that the SOFCS contained numerous departures from GAAP and provided a litany of those departures along with a description of each departure.

These compilation letters also expressly warned users that "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with the accounting principles generally accepted in the United States of America" and stated that "users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial condition without the above referenced exceptions to accounting principles generally accepted in the United States of America." (Compl. at Ex. 3, p.1.) The accountant's compilation letters accompanied each SOFC, were incorporated by reference in each SOFC, and were thus an integral part of each SOFC. These disclaimers read together with the extensive notes in the SOFCs identifying and describing the numerous departures from GAAP, put sophisticated users of the SOFCs for whom the SOFCs were prepared on complete notice not to rely upon them. (Defs. SOF ¶¶ 59–62.)

Indeed, in its Source Selection Evaluation Report and Recommendation related to the Old Post Office property, the GSA acknowledged that the "[f]inancial statements provided by Mr. Trump were qualified by his accountants as not complying with GAAP." (Defs. SOF ¶ 146.) Defendants never claimed perfect compliance. (Defs. SOF ¶ 145.) The existence of these disclaimers is undisputed, and undercuts any claim that Defendants intended to defraud anyone. Thus, all Defendants are entitled to summary judgment dismissing the Second, Fourth, and Sixth Causes of Action.

C. The Defendants Are Entitled to Summary Judgment On The Third, Fifth, And Seventh Causes of Action

Finally, the Third, Fifth, and Seventh Causes of Action allege civil conspiracy claims based on these same underlying criminal acts as Second, Fourth, and Sixth Causes of Action. Thus, to succeed on these claims, the NYAG must show not only the elements of each underlying statute but also the basic elements of conspiracy: "(1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010) (quoting *World Wrestling Fed. Ent. v. Bozell*, 142 F. Supp. 2d 514, 532 (S.D.N.Y. 2001)). The NYAG's claims under the Third, Fifth, and Seventh Causes of Action fail for all the reasons discussed in detail in section II.B above, as the NYAG cannot prove all elements of the underlying criminal statutes to prevail on a conspiracy claim. *Id.* Additionally, the record does not support a finding on the part of any of the Defendants, a required element of a conspiracy claim, of "intentional participation".[21]

[21] Further, although this Court previously rejected the application of the intracorporate conspiracy doctrine at an earlier stage of this litigation, Defendants continue to maintain that it prevents liability under New York law and ask the Court to reconsider the issue with a more fully developed record. New York courts have applied some form of the intracorporate conspiracy doctrine in civil cases. *See, e.g.*, *Bereswill v. Yablon*, 6 N.Y.2d 301, 305 (1959) (holding

A "bare allegation" that "two defendants were acting in concert . . . without any allegation of independent culpable behavior on their part" is "clearly insufficient" to establish a conspiracy. *Schwartz v. Soc'y of N.Y. Hosp.*, 199 A.D.2d 129, 130 (1st Dep't 1993). A "plaintiff must establish facts which 'support an inference that defendants knowingly agreed to cooperate in a fraudulent scheme, or shared a perfidious purpose.'" *Snyder v. Puente De Brooklyn Realty Corp.*, 297 A.D.2d 432, 435 (3d Dep't 2002) (quoting *LeFebvre v. N.Y. Life Ins. & Annuit Corp.*, 214 A.D.2d 911, 912–13 (3d Dep't 1995)).

Eric Trump explicitly disclaimed any participation in the creation of the SOFCs and any knowledge of the alleged falsities contained in the SOFCs. (Defs. SOF ¶ 199.) And the NYAG has not provided any evidence that he was involved in the Old Post Office Loan, the 40 Wall Street Loan, Buffalo Bills Bid, and 2016 DB Loan Request. *See supra* § II.A.2. Donald Trump, Jr. also was not involved in the creation of the SOFCs. (Defs. SOF ¶ 202.) Zurich representatives further testified that they did not interact with Eric Trump in relation to the Surety Bond Program (Zurich). (Defs. SOF ¶¶ 187.) Further, the NYAG has not put forth any evidence that he was involved in any of the relevant transactions. *See supra* § II.A. Zurich representatives also stated that they did not interact with Donald Trump, Jr. in dealings related to the insurance policies. (Defs. SOF ¶¶

corporation could not be liable for conspiracy, noting that "[w]hile it is entirely possible for an individual and a corporation to conspire, it is basic that the persons and entities must be separate"); *Lilley v. Greene Cent. Sch. Dist.*, 187 A.D.3d 1384, 1389 (3d Dep't 2020) (holding intracorporate conspiracy doctrine applied to prevent claim for conspiracy between officials, employees, and agents of a school district); *Ahrenberg v. Liotard-Vogt*, No. 653687/2015, 2017 WL 1281818, at *5 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 29, 2017) ("[A] corporation cannot conspire with its wholly owned subsidiary."). And the doctrine may apply even where a subsidiary is "not a wholly owned subsidiary." *Shaw v. Rolex Watch*, U.S.A., Inc., 673 F. Supp. 674, 678 (S.D.N.Y. 1987). According to the law above, none of the individuals and entities operating within the Trump Organization are capable of conspiring with one another. *See* Compl. at Ex. 2 at 1; Plaintiff's Consolidated Mem. In. Opp. to Certain Defs.' Mot. to Dismiss at 49 (Dec. 9, 2022), ("The entity Defendants are all run under the aegis and control of the Trump Organization and its principals, sharing officers and employees, out of Trump Tower, and all of them were publicly linked to the Trump brand as a single enterprise."). And the record is devoid of any evidence that any individual or entity was acting outside his, her, or its normal course of business activities such that an exception to the intracorporate conspiracy rule should apply.

187.) As for the business entities who held property at issue in the various transactions at issue in this case, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC, there is no evidence to establish these entities were aware of any fraudulent conduct related to the SOFC and, but for the transaction in which they were the beneficiaries of the relevant loans, they cannot be said to have participated in any of the relevant conduct. There are also no allegations or evidence that they had any connection to the insurance policies at issue in this case.

In sum, all the Defendants are entitled to summary judgment on the Third, Fifth, and Seventh Causes of Action because, among other reasons, the record establishes that any alleged misstatements in the SOFC were immaterial and the record is devoid of evidence that any Defendant acted with an intent to defraud. The claims in the Third, Fifth, and Seventh Causes of Action also fail as to Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, and DJT Holdings Managing Member for the additional reason that the intentional participation element cannot be met.

III. Disgorgement Is Unavailable As A Matter of Law

A. Disgorgement Is Unavailable, As It Is Not Provided As A Remedy Under § 63(12), Nor The Penal Laws Serving As Predicates For The Second Through Seventh Causes Of Action

Summary judgment is proper as a matter of law on the NYAG's claim for disgorgement because that remedy is not available under § 63(12) or the underlying statutory claims. Eliminating this claim at the summary judgment stage is in accord with New York law and comports with an interest to narrow the issues as it will significantly narrow the issues for trial. *See Di Sabato*, 193 N.Y.S.2d at 188 ("One of the recognized purposes of summary judgment is to expedite the disposition of civil cases where no issue of material fact is presented to justify a trial.").

The NYAG's requested relief includes an award of "disgorgement of all financial benefits obtained by each Defendant from the fraudulent scheme, including all financial benefits from lenders and insurers through repeated and persistent fraudulent practices of an amount to be determined at trial but estimated to be $250,000,000, plus prejudgment interest." (NYSCEF No. 1 ¶ 25(i).) The NYAG seeks "disgorgement in this action under Executive Law § 63(12)." (NYSCEF No. 1 ¶ 23.) In any § 63(12) case, "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced." *City of New York v. FedEx Ground Package Sys., Inc.,* 314 F.R.D. 348, 362 (S.D.N.Y. 2016). But "[i]t is an 'elemental canon' of statutory construction that where a statute expressly provides a remedy, 'courts must be especially reluctant to provide additional remedies.'" *Grochowski v. Phx. Const*., 318 F.3d 80, 85 (2d Cir. 2003) (quoting *Karahalios v. Nat'l Fed'n of Emps., Local 1263,* 489 U.S. 527, 533 (1989)). Unless there is a "strong indicia of contrary [legislative] intent," the courts "are compelled to conclude that [the legislature] provided precisely the remedies it considered appropriate." *Id.* (citing *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n,* 453 U.S. 1, 15 (1981)). Otherwise allowing a plaintiff to pursue an unenumerated remedy would "be inconsistent with the underlying purpose of the legislative scheme" and amount to an "end-run" around the statute. *Id.* at 86 (citing *Davis v. United Air Lines, Inc.,* 575 F. Supp. 677, 680 (E.D.N.Y. 1983) (internal quotations omitted). Neither the NYAG as plaintiff nor § 63(12) itself are exempt from this general rule. *People v. Direct Revenue, LLC,* No. 401325/06, 2008 WL 1849855, *7 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008); *see also People v. Romero,* 91 N.Y.2d 750, 754 (1998) ("Attorney General . . . is without any prosecutorial power except when specifically authorized by statute.") (citations omitted). And the Court may properly grant partial summary judgment as to a disgorgement claim where it is not an appropriate remedy. *See, e.g., Topps Co. v. Cadbury Stani S.A.I.C*., 380 F. Supp. 2d 250, 268

(S.D.N.Y. 2005) ("[I]nsofar as [plaintiff] requests disgorgement for breach of contract, as an independent claim sounding in contract law, disgorgement is not an appropriate remedy and [Defendant's] motion for summary judgment in that regard is granted.").

Regarding § 63(12), "the text . . . makes clear [that] the State is generally limited to the three enumerated remedies when bringing actions under that provision—injunctive relief, restitution, and damages[.]" *FedEx*, 314 F.R.D. at 361. In *Direct Revenue*, the court directly addressed whether disgorgement is available as a remedy to the NYAG in a § 63(12) action and held that it is not. *See* 2008 WL 1849855, at *7. The court found that "while the Executive Law and the GBL permit monetary relief in the form of restitution and damages to consumers, the statutes do no[t] authorize the general disgorgement of profits received from sources other than the public. And even where restitution may be awarded to consumers, it may only be granted in an amount *related to the actual damages caused by the misconduct*." *Id.* (emphasis added). Thus, the court concluded that the NYAG is "strictly limited to recovery as specifically authorized by statute." Because disgorgement is not one of the authorized remedies under § 63(12), allowing "[d]isgorgement of [defendants'] profits to the state would effectively constitute punitive damages not authorized by statute." *Id.* at *8. Similarly, in *Fedex*, the Southern District held that while "the [NY]AG has long had the authority to institute a civil *action* under N.Y. Exec. Law § 63(12) to restrain violations of [another statute]," the NYAG could not be "awarded civil penalties via a § 63(12) action to enforce an underlying statute that does not itself empower the AG to collect civil penalties." *Fedex,* 314 F.R.D. at 361–62. That is because "civil penalties are not included" in the list of "the three enumerated remedies" available under § 63(12). *Id.* at 361. Disgorgement, likewise, is not included in that list. And the availability of "restitution" in § 63(12) does not save the NYAG's disgorgement claim as "[d]isgorgement is distinct from the remedy of restitution

because it focuses on the gain to the wrongdoer as opposed to the loss of the victim." *People v. Ernst & Young LLP,* 980 N.Y.S.2d 456, 456 (1st Dep't 2014). Thus, disgorgement is only available as a remedy to the NYAG if one of the underlying statutes empowers the NYAG to seek that remedy. They do not.

Here, the NYAG alleges violations of the following underlying statutes: "New York Penal Law § 175.10 (Falsifying Business Records); Penal Law § 175.45 (Issuing a False Financial Statement); and Penal Law § 176.05 (Insurance Fraud)." (NYSCEF No. 1 ¶ 5.) None of these statutes provides that disgorgement as an available remedy for a violation. Rather, they provide that a violation constitutes a misdemeanor or felony in varying degrees, thereby subjecting a violator to fines up to certain amounts and jail or prison time. *See* N.Y. Penal Law § 175.10 ("class E felony"); *id.* § 175.45 ("class A misdemeanor"); *id.* § 176.30 ("class B felony" if fraud in the first degree). Therefore, disgorgement is unavailable as a remedy to the NYAG as a matter of law in this case and Defendants are entitled to summary judgment as to the NYAG's claim for disgorgement.

The NYAG cites one case for the proposition that "[a]mong the equitable remedies available to the Attorney General under Executive Law § 63(12) is disgorgement." (NYSCEF No. 1 ¶ 47 (citing *Ernst & Young, LLP,* 980 N.Y.S.2d at 457).) However, in that case, the NYAG brought an action "under New York's Executive Law [§ 63(12)] *and* the Martin Act [General Business Law § 353]." *Ernst & Young, LLP,* 980 N.Y.S.2d at 456 (emphasis added). The First Department held that "the equitable remedy of disgorgement [was] available in [that] action," *id.,* but this is merely consistent with the principle that "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced," *FedEx*, 314 F.R.D. at 362; *see People v. Frink Am., Inc.,* 770 N.Y.S.2d 225, 226 (4th Dep't 2003) ("Section 63(12) does not create any new

causes of action, but does provide the Attorney General with standing to seek redress and additional remedies for recognized wrongs based on the violation of other statutes.") (citation omitted). This is because disgorgement "is an available remedy under the Martin Act" due to its "broad, residual relief clause, providing courts with the authority, in any action brought under the act to 'grant such other and further relief as may be proper.'" *People v. Greenberg,* 27 N.Y.3d 490, 497 (2016) (quoting Gen. Bus. Law § 353-a). The NYAG has not similarly alleged a violation of the Martin Act in this case. New York courts have consistently allowed the Attorney General to obtain disgorgement in § 63(12) actions only where allegedly violated underlying statutes provided for disgorgement as a remedy. *See, e.g., FTC v. Vyera Pharm., LLC,* No. 20-cv-00796 (DLC), 2021 WL 4392481, at *4 (S.D.N.Y. Sept. 24, 2021) ("Accordingly, the New York Attorney General, should it succeed to proving a violation of the Donnelly Act *and* Executive Law . . . may obtain disgorgement[.]") (emphasis added); *New York v. Amazon.com, Inc.,* 550 F. Supp. 3d 122, 126 (S.D.N.Y. 2021) (disgorgement available where AG alleged violations § 63(12) and New York Labor Laws); *FTC v. Shkreli*, 581 F. Supp. 3d 579, 640–41 (S.D.N.Y. 2022) (same available under § 63(12) claim for violations of the FTC Act and the Sherman Act). Because § 63(12) itself and the underlying statutes at issue here do not provide for disgorgement as an available remedy, summary judgment in favor of the Defendants is proper as a matter of law on the NYAG's disgorgement claim.

B. Disgorgement Is Unavailable Because There Is No Causal Link

Even if this Court determines that disgorgement is an available remedy under the statutes at issue here, summary judgment is still proper on the NYAG's claim for disgorgement of profits because the NYAG has not shown any tie between any "gains" to the Defendants and the relevant alleged "fraudulent" conduct. There needs to be "a 'reasonable approximation of profits causally connected to the violation.'" *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 91 A.D.3d 226, 233 (1st

Dep't 2011) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)), *rev'd on other grounds*, 21 N.Y.3d 324 (2013); *S.E.C. v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013) (same); *see also* Deborah A. DeMott, *Causation in the Fiduciary Realm*, 91 B.U. L. Rev. 851, 857 (2011). ("A basic limit to a fiduciary's liability to disgorge ill-gotten gains is causal—the liability does not extend to assets acquired in a manner unrelated to the breach of duty."). For example, in *Jim Bean Brands Co. v. Tequila Cuervo La Rojenas S.A. de C.V.*, No. 600122/208, 2011 WL 12711463 (N.Y. Sup. Ct. N.Y. Cnty. July 12, 2011), the plaintiff alleged breach of contract, and the court found that its disgorgement theory failed "because there [was] no causal link between any increase in profits during the period of the breach." Similarly, in *Estate of Sylvan Lawrence*, 2005 NYLJ LEXIS 1215, at *4 (N.Y. Surr. Ct. N.Y. Cnty. Mar. 30, 2005), the court affirmed the decision of a "referee" who recommended dismissal of a claim for a 20% stake in a company acquired by the defendant "in the absence of proof of a causal link between [the defendant's] alleged bad faith and his acquisition of such stake." And in *RXR WWP Owner LLC v. WWP Sponsor, LLC*, No. 653553/2013, 2014 WL 3970295, at *7 (N.Y. Sup. Ct. N.Y. Cnty. Aug. 12, 2014), the court found a plaintiff's claim for disgorgement of profits was "not legally viable" because the plaintiff could not claim that the defendant was the "legal cause of its loss" of a transaction with another company.

As explained in detail in Section II.A.1 *supra*, there is no dispute of fact regarding the materiality of the alleged misstatements in the SOFC. Testimony from experts as well as representatives of the actual banks and insurance underwriters who executed the financial transactions with the Defendants that are at issue in this case establishes that the banks and insurance companies did not consider the SOFCs and the estimates they contained to be material to their decisions to make certain loans or underwrite particular polices. *See supra* § II.A.1. If the

SOFCs and any alleged misrepresentations made in the SOFCs did not affect these financial institutions in their decision-making, there is no basis to disgorge any "ill-gotten" gains. The NYAG cannot therefore recover disgorgement of profits as a matter of law.

CONCLUSION

Defendants are entitled to summary judgment and dismissal of the Complaint.

Dated: New York, New York
August 4, 2023

s/ *Michael Madaio*
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com
mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

CHRISTOPHER M. KISE
(*Admitted Pro Hac Vice*)
JESUS M. SUAREZ
(*Admitted Pro Hac Vice*)
LAZARO P. FIELDS
(*Admitted Pro Hac Vice*)
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301

Dated: Uniondale, New York
August 4, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald Trump, Jr., and Eric Trump

Phone: (850) 332-0702
Email: ckise@continentalpllc.com
jsuarez@continentalpllc.com
lfields@continentalpllc.com
Counsel for The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
Phone: (212) 787-3300
Email: armenmorian@morianlaw.com
Counsel for Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court and the Order, dated June 21, 2023 (NYSCEF Doc. No. 638), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 21,759 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
August 4, 2023

Respectfully submitted,

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
Counsel for Donald Trump, Jr. and Eric Trump

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- Donald J. Trump, *et al*., Defendants.	Index No. 452564/2022 Hon. Arthur Engoron

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Of Counsel

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 6

A. Preparation of the SFCs 7

B. Inflation of Assets Based On The Undisputed Evidence 8

C. Additional Substantial Inflation of Assets 23

D. Other Violations of GAAP 26

E. Submission of the False SFCs to Banks and Insurers 27

1. Loans From the Deutsche Bank PWM Division 27

a. The Doral Loan 27

b. The Chicago Loan 29

c. The OPO Loan 32

2. 40 Wall Street Loan From Ladder Capital 33

3. Seven Springs Loan from RBA/Bryn Mawr 34

4. Surety Insurance from Zurich 35

5. D&O Insurance from HCC 36

F. Each Defendant was Involved in the Fraudulent Conduct 38

1. Donald J. Trump 38

2. Donald Trump, Jr. 39

3. Eric Trump 39

4. Allen Weisselberg 40

5. Jeffrey McConney 41

6. The Entity Defendants 41

STANDARD OF REVIEW 42

ARGUMENT 43

I. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS 43

II. PLAINTIFF'S CAUSES OF ACTION ARE TIMELY FILED AS AGAINST ALL DEFENDANTS 48

A. Plaintiff's Claims Accrued Within The Limitations Period 49

1. *Claims For Fraud And Illegality Under § 63(12) Accrued With Each Fraudulent Certification or Submission Of A False And Misleading SFC Or Misrepresentation Concerning Mr. Trump's Financial Condition* 51

2. *The Closing Dates Of The Loans Are Not Relevant To Determining Accrual Dates For Post-Closing Fraudulent Transactions* 53

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants 57

1. *JUUL Held That Individual Corporate Officers May Be Bound By A Tolling Agreement Signed By The Corporation* 57

2. *Judicial Estoppel Does Not Apply Here* 59

III. Overwhelming evidence supports each element of plaintiff's first cause of action for fraud 61

A. The SFCs Were False And Misleading 62

B. The SFCs Had The Capacity Or Tendency To Deceive Banks And Insurers 65

C. Each Defendant Participated In Multiple Fraudulent Transactions 71

D. Defendants' "No Harm – No Foul" Defense Is Legally And Factually Without Basis 73

E. The Opinion Testimony of Defendants' Experts Fails To Satisfy Defendants' *Prima Facie* Burden 75

IV. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON INDIVIDUAL PENAL LAW VIOLATIONS 77

V. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON PENAL LAW CONSPIRACY VIOLATIONS 78

VI. DISGORGEMENT IS AVAILABLE BASED ON THE NEXUS BETWEEN THE FAVORABLE LOAN AND INSURANCE TERMS AND DEFENDANTS' FRAUDULENT USE OF THE FALSE AND MISLEADING SFCS 81

CONCLUSION 82

TABLE OF AUTHORITIES

CASES

35 W. Realty Co., LLC v. Booston LLC, 171 A.D.3d 545 (1st Dep't 2019) 60

Aetna Life & Cas. Co. v. Nelson, 67 N.Y.2d 169 (1986) 49

Alvarez v. Prospect Hosp., 68 N.Y.2d 320 (1986) 43

Amaya v. Denihan Ownership Co., LLC, 30 A.D.3d 327 (1st Dep't 2006) 75

Bates v Long Island Railroad, 997 F. 2d 1028 (2d Cir.) 59

Becerril v. City of N.Y. Dept. of Health & Mental Hygiene, 110 A.D.3d 517 (1st Dept. 2013), *lv. denied*, 23 N.Y.3d 905 (2014) 59

Bobby v. Bies, 556 U.S. 825 (2009) 60, 61

CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC, 195 A.D.3d 12 (1st Dep't 2021) 50

Diaz v. New York Downtown Hosp., 99 N.Y.2d 542 (2002) 75

Ehrlich-Bober & Co. v. University of Houston, 49 N.Y.2d 574 (1980) 74

Ezrasons, Inc. v. Rudd, 217 A.D.3d 406 (1st Dep't 2023) 54

Gaidon v. Guardian Life Ins. Co., 96 N.Y.2d 201 (2001) 49

Ghatani v. AGH Realty, LLC, 181 A.D.3d 909 (2nd Dep't 2020) 60

Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977) 65

Herman v. 36 Gramercy Park Realty Assocs., LLC, 165 A.D.3d 405 (1st Dep't 2018) 59

Herrera v. Wyoming, 139 S. Ct. 1686 (2019) 60, 61

Iannelli v. United States, 420 U.S. 770 (1975) 79

In re Enron Creditors Recovery Corp., 422 B.R. 423 (S.D.N.Y. 2009), *aff'd*, 651 F.3d 329 (2d Cir. 2011) 54

J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited, 37 N.Y.2d 220 (1975) 74

Kronos, Inc. v. AVX Corp., 81 N.Y.2d 90 (1993) 55

Manipal Educ. Americas, LLC v. Taufiq, 203 A.D.3d 662 (1st Dep't 2022) 50

Measom v. Greenwich & Perry St. Hous. Corp., 268 A.D.2d 156 (1st Dep't 2000) 75

Multibank, Inc. v. Access Global Capital LLC, 158 A.D.3d 458 (1st Dep't 2018) 57

People of the State of New York v. Trump, No. 452564/2022, 2022 WL 16699216 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) 44, 45

People Pharmacia Corp., 27 Misc. 3d 368 (Sup. Ct., Albany Cty. 2010) 50

People v. Allen, 198 A.D.3d 531 (1st Dep't 2021) 50

People v. Allen, 198 A.D.3d 531 (1st Dep't 2021), *leave to appeal granted*, 38 N.Y.3d 996 (2022) 62

People v. Allen, No. 452378/2019, 2021 WL 394821 (Sup. Ct., N.Y. Cty. 2021) 50

People v. Apple Health and Sports Clubs, Ltd., 206 A.D.2d 266 (1st Dep't 1994), *dismissed in part, denied in part*, 84 N.Y.2d 1004 (1994) 62, 72

People v. Applied Card Systems, 11 N.Y.3d 105 (2008) 81

People v. Boyajian Law Offs., P.C., 17 Misc.3d 1119(A) (Sup. Ct., N.Y. Cty. 2007) 48

People v. Cohen, 214 A.D.3d 421 (1st Dep't 2023) 49, 50

People v. Coventry First LLC, 52 A.D. 3d 345 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009) 44

People v. Coventry First LLC, 52 A.D.3d 345 (1st Dep't 2008) 62, 74

People v. Domino's Pizza, Inc, Index No. 450627/2016, 2021 WL 39592 (Sup. Ct. N.Y. Cty. Jan. 5, 2021) 43, 44, 62

People v. Ernst & Young LLP, 114 A.D.3d 569 (1st Dep't 2014) 73, 74, 81

People v. First Meridian Planning Corp., 86 N.Y.2d 608 (1995) 78

People v. Flanagan, 28 N.Y.3d 644 (2017) 79

People v. Greenberg, 27 N.Y.3d 490 (2016) 46, 81

People v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023) 58, 61

People v. Leisner, 73 N.Y.2d 140 (1989) 56

People v. Northern Leasing Systems, Inc., 193 A.D.3d 67 (1st Dep't 2021) 2, 62

People v. O'Boyle, 136 Misc. 2d 1010 (Sup. Ct. N.Y. Cty 1987) 56

People v. Seely, 253 N.Y. 330 (1930) 79

People v. The Trump Organization, Inc., No. 451685/2020, 2022 WL 1222708 (Sup. Ct. N.Y. Cty. Apr. 26, 2022), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023)..... 60

People v. Trump Entrepreneur Initiative LLC, 137 A.D.3d 409 (1st Dep't 2016)..... 66

People v. Trump Entrepreneur Initiative, 137 A.D.3d 409 (1st Dep't 2016)..... 62

People v. Trump, 217 A.D.3d 609 (1st Dep't 2023)..... passim

People v. Trump, No. 452564/2022, 2023 WL 128271 (N.Y. Sup. Ct. Jan. 06, 2023), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023)..... 46, 47, 80

PL Diamond LLC v. Becker-Paramount LLC, 16 Misc. 3d 1105(A), 2007 WL 1865044 (Sup. Ct. N.Y. Cty 2007) 59

Ray-Roseman v. Lippes Mathias Wexler Friedman, LLP, 197 A.D.3d 944 (4th Dep't 2021) 54

Robinson v. Snyder, 259 A.D.2d 280 (1st Dep't 1999) 56

Roques v. Noble, 73 A.D.3d 204 (1st Dep't 2010) 42, 75, 81

S.E.C. v. First Jersey Securities, Inc., 101 F.3d 1450 (2d Cir. 1996)..... 81

Seneca Nation of Indians v. New York., 26 F. Supp. 2d 555 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999) 59

State v. 7040 Colonial Rd. Assocs. Co., 176 Misc. 2d 367 (Sup. Ct., N.Y. Cty. 1998) 50

State v. Gen. Elect. Co., 302 A.D.2d 314 (1st Dep't 2003) 62, 65, 74

State v. Stalling, 183 A.D.2d 574 (1st Dep't 1992) 60

State v. United Parcel Serv., Inc., 253 F. Supp. 3d 583 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019)..... 72

U.S. Bank Nat'l Ass'n v. KeyBank, Nat'l Ass'n, No. 20-cv-3577, 2023 WL 2745210 (S.D.N.Y. Mar. 31, 2023) 51

United States v. Atehortva, 17 F.3d 546 (2d Cir.1994)..... 79

United States v. Rivera, 971 F.2d 876 (2d Cir.1992)..... 79

United States v. Stavroulakis, 952 F.2d 686 (2d Cir. 1992) 79

Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851 (1985) 42

Zemel v. Horowitz, 11 Misc. 3d 1058(A), 2006 WL 516798 (Sup. Ct. N.Y. Cty 2006) 59

Zuckerman v. City of New York, 49 N.Y.2d 557 (1980) 42, 43

STATUTES

N.Y. Exec. Law § 63(12) ..... passim

N.Y. Penal Law §175.05 55

N.Y. Penal Law §175.45 55

N.Y. Penal Law §176.05 56

TREATISES

1 Weinstein-Korn-Miller, N.Y.Civ.Prac. ¶ 201.02 49

2 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law § 6.4 (1986) 79

6B Carmody-Wait 2d §39:138 ..... 42, 82

Restatement (Second) of Contracts § 306 (1981) 58

Restatement (Second) of Judgments § 28 (1980) 60

The People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submit this memorandum of law with Appendix, the accompanying Affirmation of Colleen K. Faherty in Opposition, dated September 1, 2023 ("Faherty Opp. Aff."), and Response to Defendants' Rule 202.8-g Statement of Material Facts ("202.8-g Response") in opposition to Defendants' motion for summary judgment (NYSCEF No. 834).

PRELIMINARY STATEMENT

Defendants' motion is unmoored from the prior rulings in this case and the evidentiary record.

As if writing on a clean slate, Defendants argue that the Attorney General has no standing or capacity to bring this Executive Law § 63(12) enforcement action absent public harm, that the disclaimer language in Donald J. Trump's Statements of Financial Condition ("SFCs") provides them with a complete defense, and that the People cannot seek disgorgement. But these arguments have been rejected by this Court (twice) and the appellate division; they have no more merit now than they did before. Defendants' conduct in raising them again is frivolous.

Defendants similarly ignore the appellate division's ruling on how the statute of limitations applies. The undisputed evidence establishes that Defendants prepared false and misleading SFCs that they then submitted and certified as true to banks and insurers in business transactions in New York well after the beginning of the limitations period in July of 2014. All of that misconduct is actionable under § 63(12). Defendants argue that claims based on such conduct are nevertheless time-barred if the loan itself closed before the start of the limitations period, even if the SFCs are prepared, submitted, or certified within the limitations period. Defendants' position cannot be squared with the appellate division's holding that Plaintiff has timely claims arising from the preparation, submission, and/or certification of a false and misleading SFC that occurred during the limitations period. Defendants' interpretation leads to the untenable outcome that a borrower

on a long-term loan with annual financial disclosure requirements – like Defendants —is free to prepare, submit, and certify false or misleading financial statements without legal consequence so long as the loan closed before the limitations period began. To the contrary, each time Defendants prepared, submitted, and certified a false or misleading SFC to a bank within the applicable limitations period – *i.e.*, on or after July 13, 2014 – they engaged in a fraudulent business transaction giving rise to a timely claim. The record establishes that each Defendant engaged in multiple fraudulent business transactions during the limitations period, including through 2021; timelines for the five loans showing the numerous fraudulent transactions engaged in by Defendants within the limitations period are attached in the accompanying Appendix to this brief. As a result, all of Plaintiff's causes of action are timely as to all Defendants.

Turning to the merits of the § 63(12) fraud claim, the People are not required to show that the victims of Defendants' fraud were materially misled by the SFCs as Defendants argue, but rather merely that the challenged conduct has "the capacity or tendency to deceive" or "creates an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021). This standard is easily met.

As a threshold matter, Defendants assert facts in their supporting 202.8-g Statement (NYSCEF No. 836) that compel a finding that the SFCs were false and misleading. They acknowledge that assets may be valued on two very different bases, investment value ("as if") and market value or estimated current value ("as is"),[1] and that estimated current value reflects market conditions while investment value does not. They further contend that certain asset values listed

[1] Defendants' expert Dr. Steven Laposa confirmed at his deposition that "market value" is synonymous with "estimated current value." *See* Robert Aff. (NYSCEF No. 837), Ex. AAC at 90:5-91:13.

in the SFCs are stated at their *investment values,* reflecting Mr. Trump's investment requirements and divorced from market conditions. This is a fatal admission because it is undisputed that the SFCs themselves represent to users that all asset values are stated at their "estimated current value," reflecting market conditions. In other words, Defendants concede that the SFCs falsely describe the basis on which the asset values are presented – telling users the assets are "as is" values reflecting market conditions when they are (per Defendants' assertion) "as if" values. Defendants' admission that the SFCs misrepresent the asset values as something they are not is sufficient for the Court to find the SFCs are false and misleading without more.

In addition, as the People's detailed analysis of the *undisputed evidence* presented in their partial summary judgment motion establishes, regardless of the valuation methodology purportedly used, Defendants inflated many asset values by *hundreds of millions of dollars each year*. Defendants simply gloss over the deceptive practices they employed to inflate the values of the Triplex (by tripling the square footage), the Seven Springs Estate, 40 Wall Street, and Mar-a-Lago (by disregarding appraisals), the golf course in Aberdeen (by disregarding development restrictions), Vornado Partnership Properties and Trump Tower (by using the wrong capitalization rate), U.S. golf clubs (by adding an undisclosed "brand premium," including membership deposit liabilities that were represented to be valued at $0, and disregarding appraisals for TNGC LA and Briarcliff), Trump Park Avenue (by ignoring rent stabilization laws, option prices on Ivanka Trump's apartments, and internal Trump Organization current market values), cash and escrow deposits (by including amounts held by partnership interests over which Mr. Trump had no control), and real estate licensing developments (by including inchoate deals yet to be signed and management deals between Trump Organization affiliates that were not arms-length transactions).

These deceptive practices *inflated Mr. Trump's annual net worth by 17-39% at a minimum* – or between $812 million to $2.2 billion – depending on the year.

But the extent of Defendants' deception is far greater than what the People have laid out in their partial summary judgment motion relying just on the undisputed evidence. Based on the analyses of the People's valuation and accounting experts, which factor into Defendants' methodologies what market participants would consider when determining estimated current value, Mr. Trump's net worth is overstated by *billions* more. Among the factors the People's experts take into account to adjust the methodologies used by Defendants are: (i) discounting future income to present value; (ii) correcting for inconsistent methodologies; (iii) failing to account for relative risk and property-specific attributes; (iv) failing to account for development costs, (v) correcting for unsupportable market assumptions; and (vi) using income and expense information, mirroring the behavior of market participants, rather than fixed assets and a brand premium in valuing golf and club properties. After factoring in these and other fundamental considerations that any informed buyer and seller in the marketplace would take into account, Mr. Trump's net worth would be further *substantially reduced by between $1.9 billion to $3.6 billion* per year, which is still a conservative estimate of the extent of the inflation because the analysis by Plaintiff's valuation experts accepted many of the inputs and assumptions used by Defendants to derive the asset values in the SFCs that would otherwise be rejected in a full-blown appraisal review.

Based on this mountain of evidence establishing the extent to which Mr. Trump and his associates grossly and deceptively inflated his assets and net worth in the SFCs each year, and the undeniable fact that they submitted and certified the SFCs as true to banks and insurers, Plaintiff has clearly set forth evidence sufficient to establish at trial that Defendants engaged in fraudulent

business transactions with the capacity or tendency to deceive in violation of § 63(12) (if not as a matter of law based on the undisputed facts presented in Plaintiff's partial summary judgment motion, then certainly based on all of the evidence, including expert testimony, discussed here).

Similarly, Defendants' contention that all of Plaintiff's claims must fail because the counterparty banks and insurance companies were not harmed by, and did not rely upon, the SFCs is without legal support. It is settled law that the Attorney General is not required under § 63(12) to show reliance or harm. That is because the Legislature determined when enacting § 63(12) that the State is entitled to vindicate the public's strong interest in an honest marketplace without the need to show harm to, or reliance by, the victims of fraud.

But even if the People were required to show harm and reliance on a § 63(12) fraud claim (which is not the case), the notion that the banks and insurers here, each of which required financial disclosure of Mr. Trump's net worth as a condition of their continued business relationship with the Trump Organization, did not suffer any harm from, or rely upon, the false and misleading SFCs is easily refuted by the record. The SFCs were integral to the loans because of Mr. Trump's personal guarantee. The banks *required* their annual submission along with a certification as to their accuracy to obtain and maintain the loans. Indeed, Deutsche Bank's credit risk officer confirmed that the annual submission and certification of the SFCs were material to the Trump Organization's satisfaction of its continuing loan obligations. And the insurance underwriters similarly testified that they relied on financial information in the SFCs when assessing the risk presented during policy renewals. The *ipse dixit* testimony of Defendants' experts to the contrary is inadmissible as it lacks evidentiary foundation, and in all events cannot refute testimony from persons involved in the transactions and contemporaneous documents, including the governing agreements that make crystal clear the importance of the SFCs.

Finally, there is ample evidence to support the People's remaining claims under § 63(12) for making false entries in business records, falsifying financial statements, and committing insurance fraud, as well as conspiracy to commit these illegal acts. The evidence establishes beyond doubt that Defendants grossly inflated the value of many assets through deceptive practices, resulting in an overstatement of Mr. Trump's net worth by amounts that would be material to any user of the SFCs. And there is ample evidence to support a finding that Defendants had the requisite intent to defraud based on their numerous overt acts to conceal their deception from their accountants, banks, and insurers. Similarly, substantial evidence – both circumstantial and direct – establishes that each of the individual Defendants, and through their conduct the entity Defendants, engaged in numerous purposeful deceptive acts as part of a plan to (i) create false entries on business records and false financial statements by grossly inflating the value of assets listed on the SFCs in order to reverse engineer Mr. Trump's net worth to hit the target number desired by Mr. Trump, and (ii) submit the inflated SFCs to banks and insurers while attesting to their accuracy.

Copious evidence supports each of Plaintiff's claims. Accordingly, Defendants' motion should be denied.

STATEMENT OF FACTS[2]

Many of the facts material to opposing Defendants' summary judgment motion are already set forth in detail in the Statement of Facts section of the People's memorandum of law submitted

[2] The citations in this section use the following format: (i) cites to "202.8-g Statement ¶__" are to paragraphs in Plaintiff's 202.8-g Statement filed in support of Plaintiff's motion for partial summary judgment (NYSCEF No. 767); (ii) cites to "202.8-g Response ¶__" are to paragraphs in

in support of their motion for partial summary judgment (NYSCEF No. 766) and the accompanying 202.8-g Statement (NYSCEF No. 767). Plaintiff incorporates here by reference those prior filings and provides citations to Plaintiff's 202.8-g Statement rather than the underlying exhibits (unless exhibits are directly quoted) to avoid unnecessary repetition.

A. Preparation of the SFCs

Since at least 2011, Mr. Trump and Trump Organization employees have prepared an annual "Statement of Financial Condition of Donald J. Trump" that provides Mr. Trump's net worth as of June 30 for the year in question. (202.8-g Statement ¶1) The SFCs represent that "[a]ssets are stated at their estimated current values and liabilities at their estimated current amounts," consistent with GAAP. (Ex. 1 at -133; Ex. 2 at -310; Ex. 3 at -036; Ex. 4 at -716; Ex. 5 at -690; Ex. 6 at -1985; Ex. 7 at -1844; Ex. 8 at -2727; Ex. 9 at -792; Ex. 10 at -250; Ex. 11 at -420; 202.8-g Statement ¶29-35) The asset valuations for the SFCs were prepared by staff at the Trump Organization, working at the direction of Mr. Trump or the trustees of the Donald J. Trump Revocable Trust ("Trust"). (202.8-g Statement ¶5) The valuations were calculated in an Excel spreadsheet that was forwarded each year to the accounting firm preparing the SFC along with some supporting documents. (202.8-g Statement ¶6)

On May 18, 2021, Mazars, the accounting firm that had compiled the SFCs for 2011 through 2020, notified the Trump Organization that the firm was "resigning from all engagements with the Trump Organization and related entities." (Ex. 217) Subsequently on February 9, 2022,

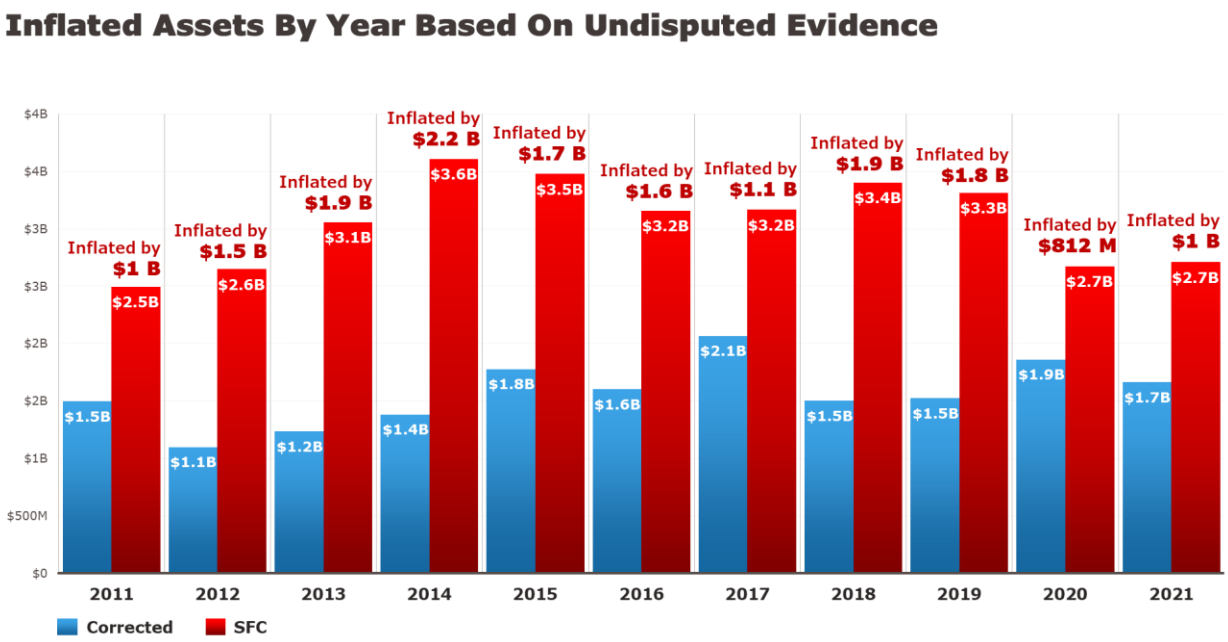
---

Plaintiff's Response to Defendants' 202.8-g Statement being served simultaneously with this brief; (iii) cites to "Ex. __" (from nos. 1 to 421) are to the exhibits listed and attached to the Faherty Affirmation previously filed in support of Plaintiff's motion for partial summary judgment (NYSCEF No. 768); and (iv) cites to "Ex. __" (starting with no. 1001) are to the exhibits listed and attached to the Faherty Opposition Affirmation accompanying this memorandum of law.

Mazars further informed the Trump Organization that the SFCs for the years 2011 to 2020 "should no longer be relied upon." (Ex. 218)

B. Inflation of Assets Based On The Undisputed Evidence

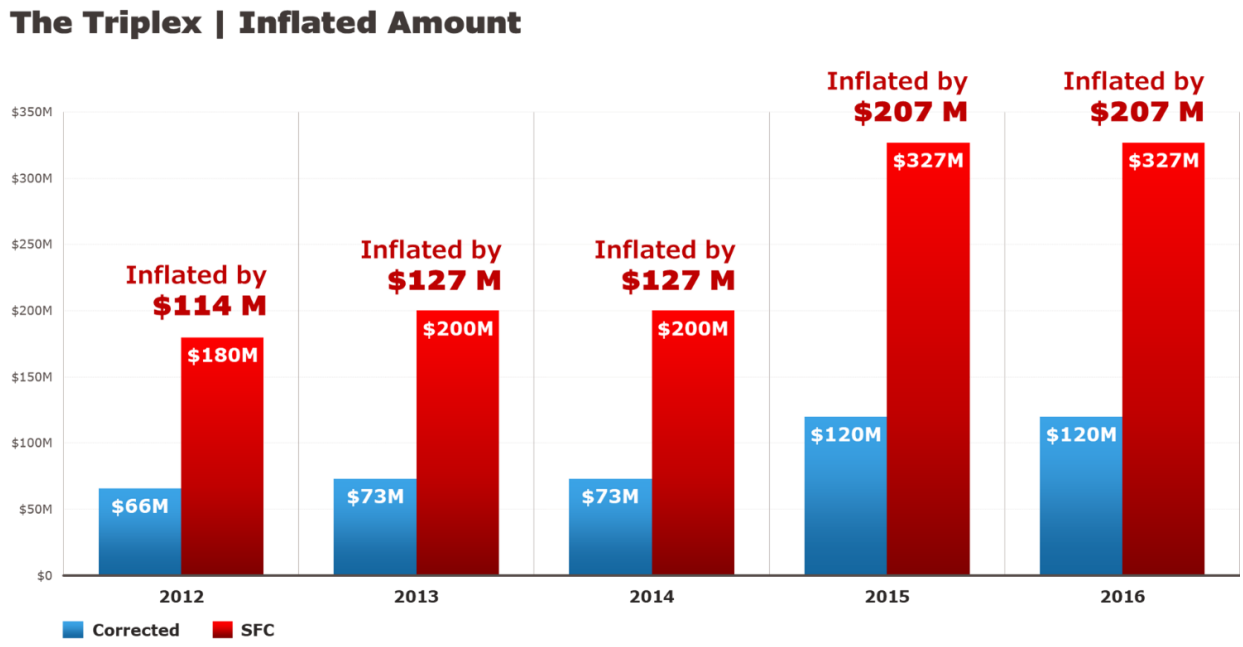
The undisputed evidence the People present in support of their motion for partial summary judgment establishes that many assets were grossly inflated by amounts that were material to any user of the SFCs, resulting in an overstatement of Mr. Trump's annual net worth by between 17-39%, or between $812 million to $2.2 billion, during the period 2011 to 2021, as shown in the graph below.[3]



[3]As discussed, *infra*, at 23-26, the People will present additional evidence at trial beyond the undisputed evidence supporting their partial summary judgment motion demonstrating Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SFCs based on the work done by Plaintiff's valuation experts in adjusting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value."

A description of each asset and the deceptive practices resulting in the inflated values established by the undisputed evidence is provided below.

The Triplex: In the years 2012 through 2016, the Triplex value was calculated based on multiplying a price per square foot as determined by the Trump International Realty Sales Office by an incorrect figure for the size of the Triplex of 30,000 square feet. (202.8-g Statement ¶37) In reality, the Triplex was 10,996 square feet. (202.8-g Statement ¶38) As a result of this error alone, the value of the Triplex reflected on each SFC from 2012 through 2016 was inflated by $114-$207 million as shown in the graph below. (202.8-g Statement ¶39)

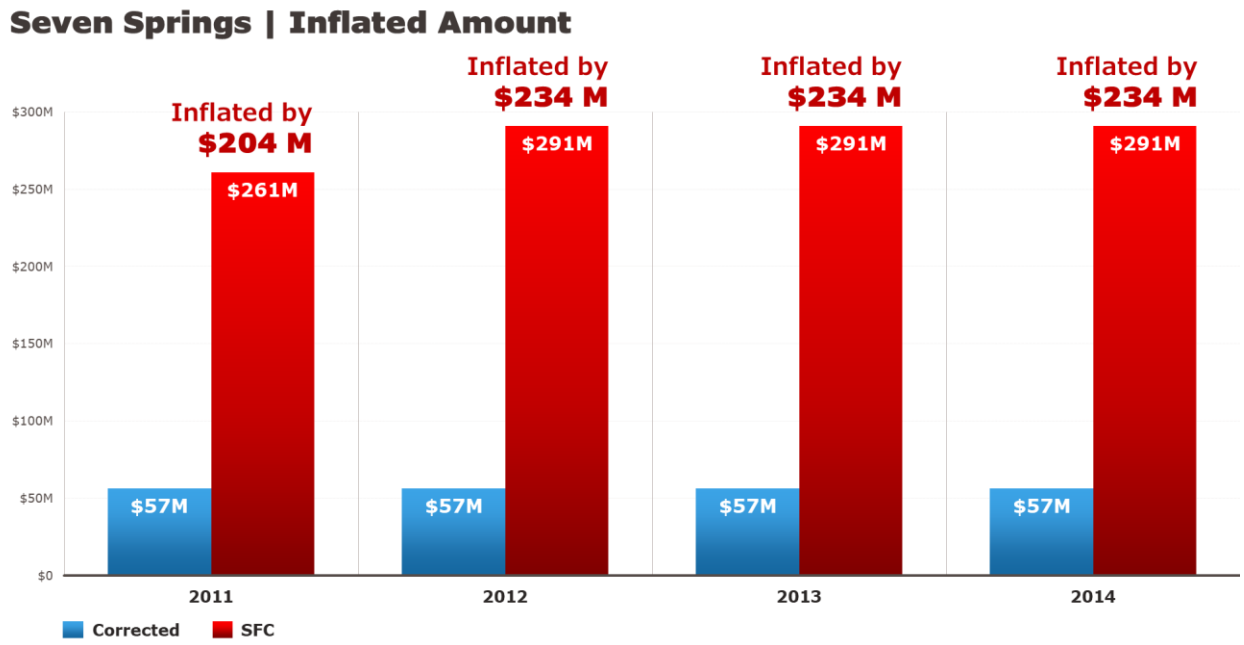


Seven Springs: Multiple appraisals of the property were prepared over the years, all of which were disregarded by the Trump Organization when valuing the property for the SFCs A 2000 appraisal prepared for the Royal Bank of Pennsylvania and sent to the Trump Organization estimated that Seven Springs had an "as-is" market value of $25 million for residential development. (202.8-g Statement ¶50) The same bank's records indicate that a 2006 appraisal showed an "as-is" market value of $30 million. (202.8-g Statement ¶51) Another appraiser retained

by Seven Springs LLC in late 2012 estimated the fair market value of a planned 6-lot subdivision on the portion of the property located in New Castle at around $700,000 per lot. (202.8-g Statement ¶55) In July 2014, an appraiser at Cushman & Wakefield ("Cushman") reached a present value for a 24-lot development plan of approximately $30 million and communicated his range to counsel for Seven Springs LLC in late August or September 2014, who then shared the range with Eric Trump months before Mazars finalized the 2014 SFC on November 7, 2014. (202.8-g Statement ¶59-63) Despite receiving values from professional appraisers in 2000, 2006, 2012, and 2014 putting the value of Seven Springs at or below $30 million, Mr. Trump wildly inflated the value of the property to $261 million in the 2011 SFC and $291 million for the SFCs from 2012 through 2014. (202.8-g Statement ¶73, 75)

In early 2016, the Trump Organization received from Cushman an appraisal of Seven Springs that valued the entire property as of December 1, 2015 at $56.5 million. (202.8-g Statement ¶67) In a concession that the appraised value was the proper amount to use as the value for the property in the SFC, Mr. Trump lowered the value of Seven Springs in the 2015 SFC to $56 million to match the Cushman appraisal. (202.8-g Statement ¶68) His trustees changed the value in subsequent years to $35.4 million for the period 2016 to 2018 and, based on another appraisal obtain by the Trump Organization, to $37.65 million for the period 2019 to 2021. (202.8-g Statement ¶69, 70)

Based on the highest appraised value of $56.5 million determined by Cushman in 2015, the property was vastly overvalued by more than $200 million in each year from 2011 through 2014 as shown in the graph below. (202.8-g Statement ¶75)



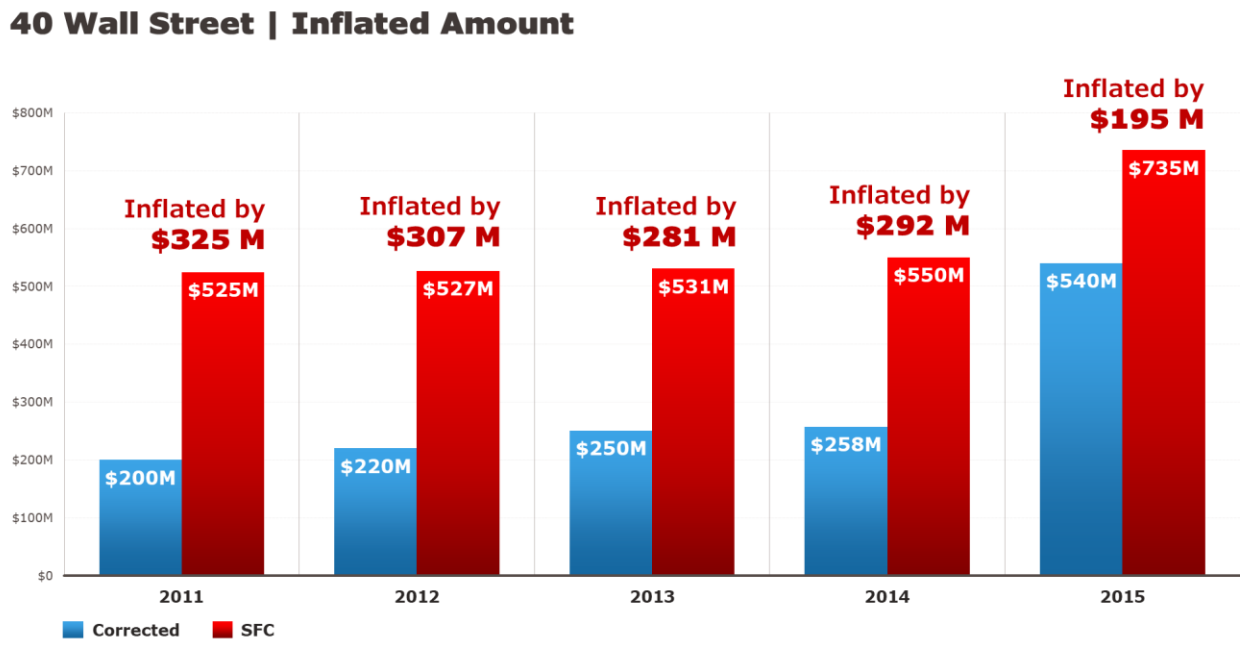
40 Wall Street: In connection with a loan modification, Cushman performed an appraisal in 2010 valuing the Trump Organization's interest in 40 Wall Street at $200 million as of August 1, 2010. (202.8-g Statement ¶78) Cushman performed similar appraisals for the bank in 2011 and 2012 reaching valuations of the Trump Organization's interest in the property of $200 million and $220 million, respectively. (202.8-g Statement ¶84, 85) Despite the values reached for 40 Wall Street in the $200-$220 million range by Cushman in its 2011 and 2012 appraisals, the 2011 SFC valued the property at $524.7 million and the 2012 SFC valued the property at $527.2 million – exceeding the appraised values by more than $300 million each year.[4] (202.8-g Statement ¶80, 88)

Cushman appraised the property again in 2015 for a different lender, reaching a value of

[4] The Trump Organization had the 2010 appraisal in its possession when Jeffrey McConney prepared the 2011 SFC, and Allen Weisselberg was specifically aware that an appraisal of 40 Wall Street from the 2010 to 2012 time period had valued the property in the $200-$220 million range prior to authorizing Mazars to issue the 2012 SFC. (202.8-g Statement ¶86, 87)

$540 million.[5] The Trump Organization was provided with a copy of the 2015 Cushman appraisal at the time it was prepared. Notwithstanding the appraised value of $540 million, the 2015 SFC valued the property at $735.4 million. (202.8-g Statement ¶104-108)

During the period 2011 to 2015, Mr. Trump valued his interest in 40 Wall Street in the SFCs at $195-$325 million more than the appraised values as shown in the graph below. (202.8-g Statement ¶114)

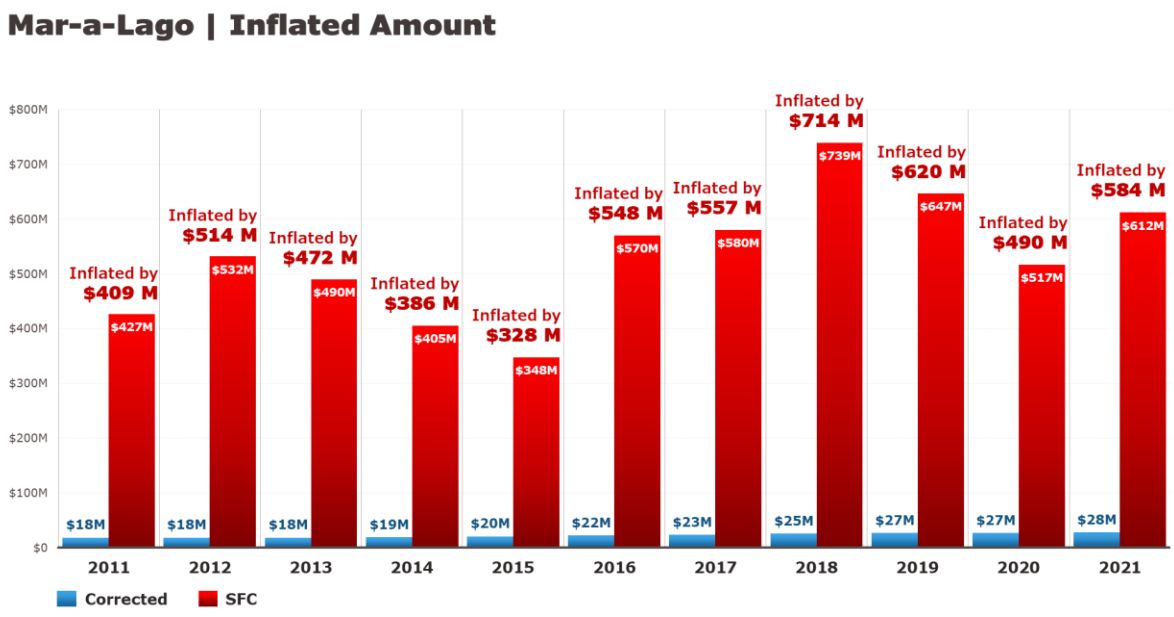


Mar-a-Lago: Mr. Trump won approval from Palm Beach to convert the property to a social club in 1993. (202.8-g Statement ¶146) Two years later he transferred the property to a wholly owned limited liability company and signed a Deed of Conservation and Preservation, giving up his rights to use the property for any purpose other than a social club ("1995 Deed"). (202.8-g

[5] This 2015 appraisal was improperly inflated, but Plaintiff does not dispute the amount of this appraisal for the purposes of this motion. Even taking the inflated value of this 2015 appraisal on its face proves that the value used by Mr. Trump for 40 Wall Street in the 2015 Statement was materially false.

Statement ¶147) Several years later, in 2002, Mr. Trump signed a deed of development rights conveying to the National Trust for Historic Preservation "any and all of [his] rights to develop the Property for any usage other than club usage" (the "2002 Deed"). (Ex. 94) As a result of that restriction, the club was taxed at a significantly lower rate. (202.8-g Statement ¶149)

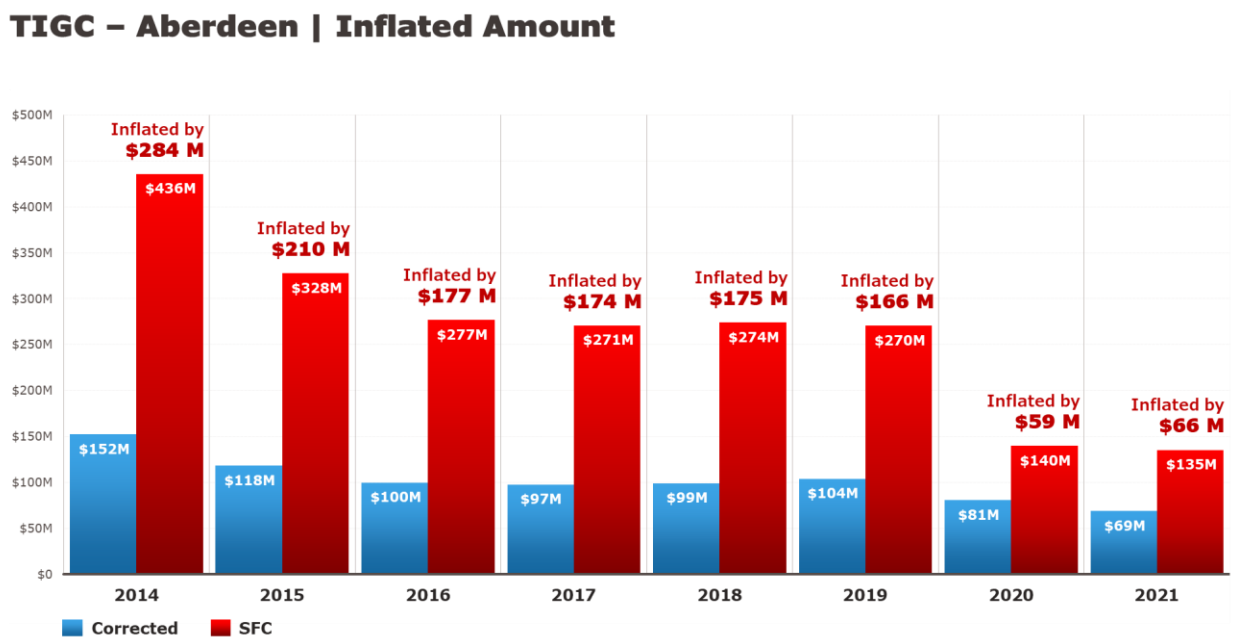
Disregarding these legal restrictions, Mr. Trump and his trustees valued the property during the period 2011 to 2021 between $347-$739 million on the basis that it was an unrestricted residential plot of land that could be sold and used as a private home. (202.8-g Statement ¶155, 159, 163, 167, 171, 175, 179, 183, 187, 191, 195, 200) In stark contrast to the wildly inflated values for Mar-a-Lago, the Palm Beach County Appraiser determined the market value of Mar-a-Lago for purposes of assessing property taxes was between $18-$27.6 million during the period 2011 to 2021. (202.8-g Statement ¶199) Property tax appraisals provide an appropriate basis under GAAP for determining estimated current value, which is the basis on which the SFCs purport to present the value of Mr. Trump's assets. (202.8-g Statement ¶198) The county appraiser's estimates of current value establish that the SFC values for Mar-a-Lago are inflated by $328-$714 million over the period 2011 to 2021 as shown in the graph below. (202.8-g Statement ¶200)



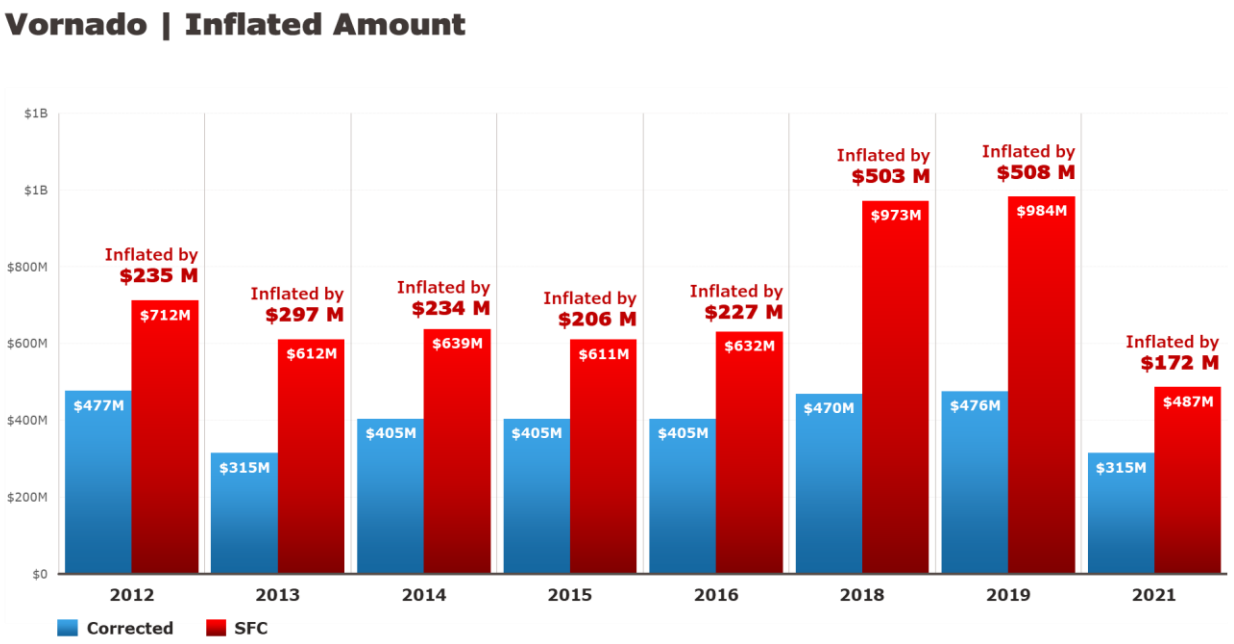
Aberdeen: The value assigned to the Trump International Golf Club in Aberdeen, Scotland in each year from 2011 to 2021 was comprised of two components: a value for the golf course and another value for the development of the non-golf course property, *i.e.*, the "undeveloped land." (202.8-g Statement ¶201) For the SFCs in 2014 through 2018, Jeffrey McConney and Allen Weisselberg valued the undeveloped land based on the assumption that 2,500 homes could be built and sold for £83,164 per home, for a value of £207,910,000. (202.8-g Statement ¶205) But the Trump Organization received planning permission under an initial proposal in December 2008 and a later revised proposal in September 2019 for only 500 unrestricted homes that could be sold. (Ex. 4 at -729; 202.8-g Statement ¶209-211, 214-17) Adjusting the values to correctly reflect the 500 private homes actually approved without restrictions, keeping all other variables constant, results in a reduction in the value of the undeveloped land component of Aberdeen of £166,328,000 in each year from 2014 to 2018, £164,196,704 for 2019, and £48,146,941 for 2020 and 2021. (202.8-g Statement ¶211, 219-20).

Applying the applicable exchange rate and accounting for an "economic downturn" reduction applied by the Trump Organization yields corrected values for Aberdeen that are $210-$284 million lower in 2014 and 2015, $166-$177 million lower in 2016 to 2019, and $59-$66 million lower in 2020 and 2021 as shown in the graph below.[6] (202.8-g Statement ¶222)

[6] For the years 2015 through 2019, the Trump Organization applied a "20% reduction due to economic downturn in the area" to the valuation of the undeveloped land component of Aberdeen. (202.8-g Statement ¶221) This same reduction was applied to the newly-calculated numbers based on using the correct number of approved homes.



Vornado Partnership Properties: Mr. Trump has a 30% limited partnership interest in entities that own office buildings in New York City and San Francisco located at 1290 Avenue of the Americas ("1290 AoA") and 555 California Street ("555 California"), respectively. (202.8-g Statement ¶223-225) For the SFCs from 2011 through 2021, Mr. Trump valued his interest in the properties by taking 30% of the values Messrs. McConney and Weisselberg calculated for 1290 AoA and 555 California that did not take into account existing appraisals for 1290 AoA prepared by outside appraisal firms in 2012 and 2021 and for two years used a cap rate taken from "comparable" buildings listed in their only cited source that was not the "stabilized" cap rate they stated they were using. (202.8-g Statement ¶239-242, 244, 246, 253-54, 258-60, 267, 270, 274, 276; Ex. 8 at -2741; Ex. 9 at -161806) The inflation of Mr. Trump's 30% interest in the properties due to disregarding the appraisals of 1290 AoA and using the wrong cap rate was between $172-508 million as shown in the graph below.



US Golf Clubs: The Clubs category of assets includes golf clubs in the United States and abroad that are owned or leased by Mr. Trump. (202.8-g Statement ¶284) The value for the golf clubs is presented in the SFCs each year from 2011 to 2021 in the aggregate, together with Mar-a-Lago. (202.8-g Statement ¶285) The undisputed evidence establishes that the aggregate value of the golf clubs was inflated as a result of three deceptive practices.

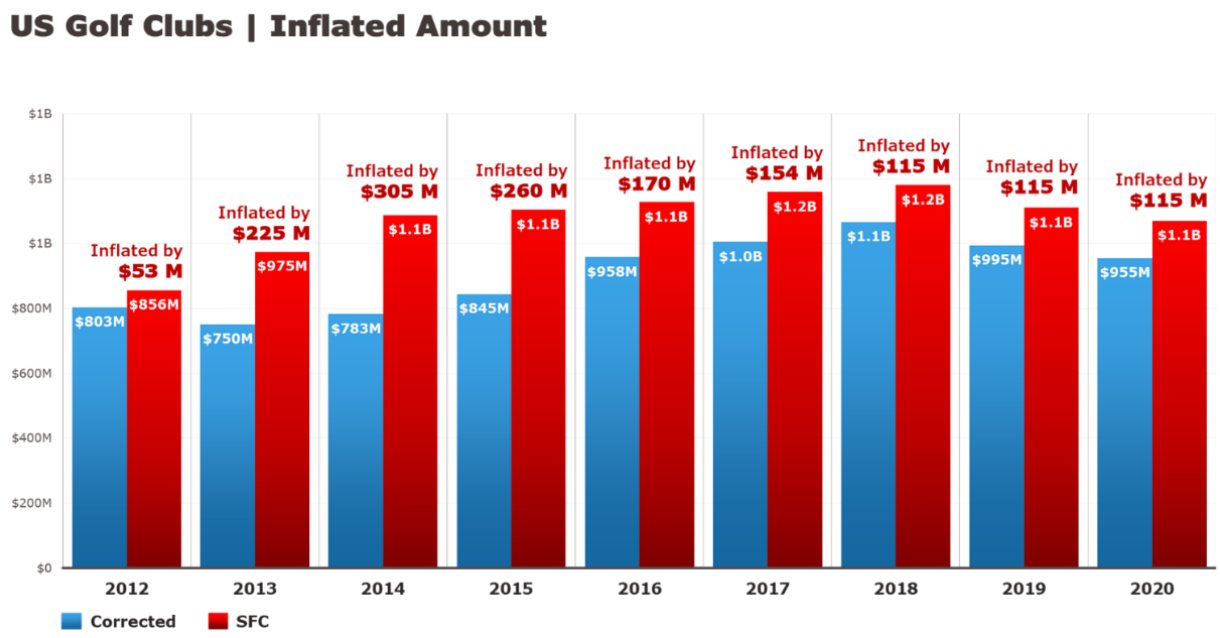
First, for many clubs in certain years, Mr. Trump added a 30% or 15% brand premium to the value – that is, the value of the club was increased by 30% or 15% because the property was completed and operating under the "Trump" brand.[7] (202.8-g Statement ¶305)

[7] Mr. Trump did not disclose in any of the SFCs that certain golf club values included a premium of 30% or 15% for the "Trump" brand. (202.8-g Statement ¶306) Rather, each SFC from 2011 to 2021 contained the following representation: "The goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." (Ex. 1 at -3136; Ex. 2 at -6313; Ex. 3 at -043; Ex. 4 at -723; Ex. 5 at -697; Ex. 6 at -1989; Ex. 7 at -1848; Ex. 8 at -2731; Ex. 9 at 1796; Ex. 10 at -2257; Ex. 11 at -6420)

Second, as part of the purchase of several club properties, Mr. Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits owed to existing club members. (202.8-g Statement ¶310) These liabilities for refundable memberships would need to be paid out only decades in the future, if at all. (202.8-g Statement ¶311) The SFCs represent that the liabilities resulting from these obligations are valued at $0. (202.8-g Statement ¶312) Contrary to this representation, in each year from 2012 to 2021, the Trump Organization included the face amount of the refundable membership deposit liabilities as a component of the value for many clubs. (202.8-g Statement ¶318)

Third, the valuations of TNGC Briarcliff and TNGC LA consisted of a valuation for the golf course and a valuation for the undeveloped land. (202.8-g Statement ¶288) The Trump Organization considered donating a conservation easement over parts of both properties and during that process received values from appraisers that Mr. Trump and his associates disregarded when preparing the SFCs. (202.8-g Statement ¶298, 302) From at least 2012 to 2016, the values assigned to TNGC Briarcliff and TNGC LA far exceeded the values determined by the appraisers.

Based on these deceptive practices, the values of the golf clubs were inflated by $115 million or more in all but one year and over $150 million in five years as shown in the graph below.



Trump Park Avenue: The valuation of the building in each year was based in part on inflated values calculated for unsold residential condominium units in the building using three deceptive practices. (202.8-g Statement ¶335)

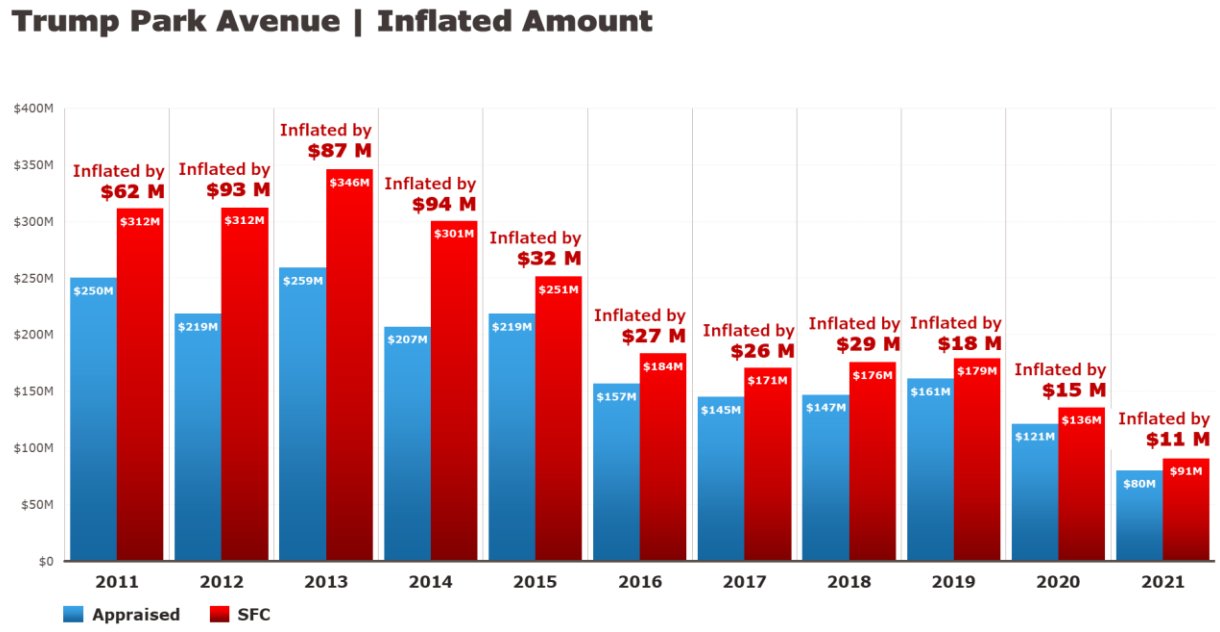
First, Mr. Trump and his trustees valued the unsold rent-stabilized units in the building (there were as many as 12 such units in 2011) as if they were freely marketable and not subject to rent stabilization laws at amounts that vastly exceeded the appraised value of $62,500 per unit. (202.8-g Statement ¶338, 341; Ex. 144 at -22)

Second, at least two of the unsold residential units not subject to rent stabilization laws were leased by Ivanka Trump and were valued at inflated amounts in the SFCs for a number of years over and above option prices agreed to by the Trump Organization in Ms. Trump's leases. (202.8-g Statement ¶364)

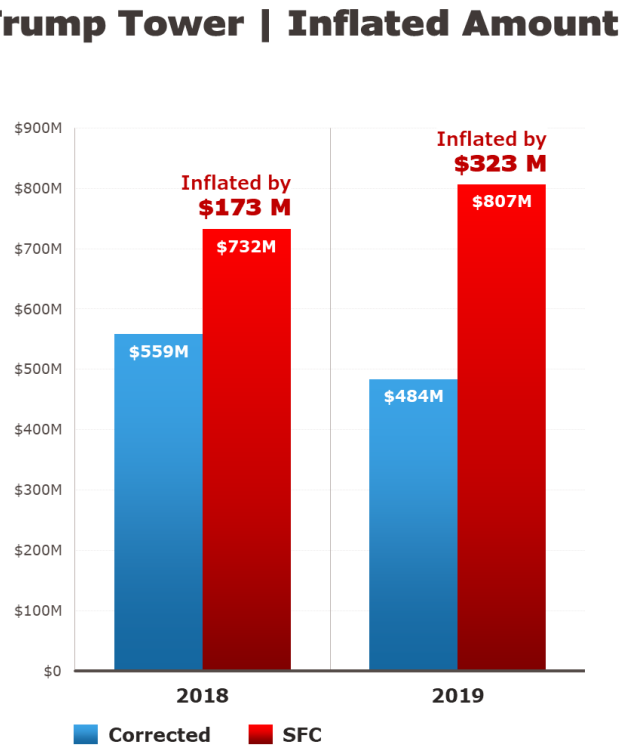
Third, in the SFCs from 2011 through 2015, the Trump Organization used the offering plan prices to value the remaining unsold residential condominium units rather than estimates of current

market value for these units developed by the Trump Organization's in-house real estate brokerage arm (Trump International Realty) for internal business purposes. (202.8-g Statement ¶372-74)

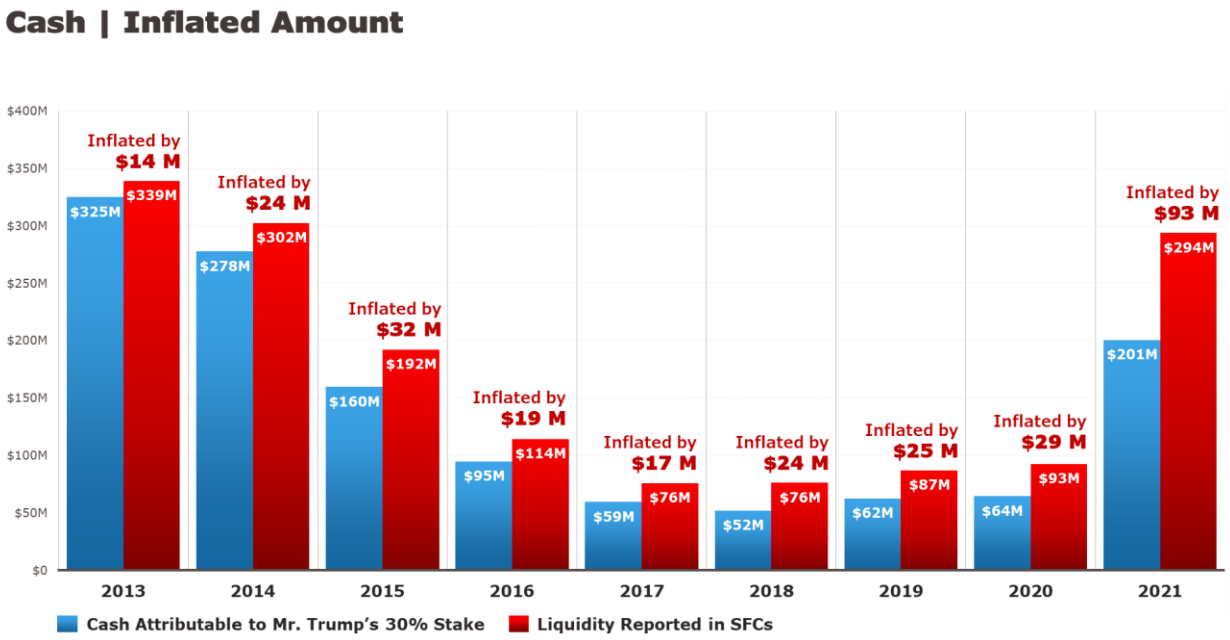
Based on these deceptive practices, the values for Park Avenue were inflated by $26-93 million in most years as shown in the graph below.



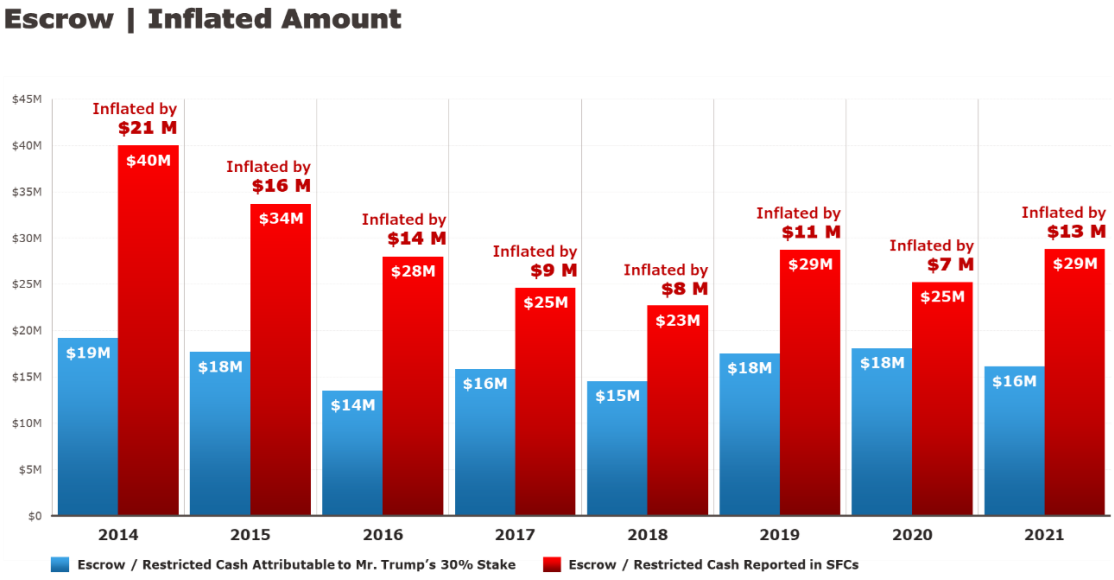
Trump Tower: In the 2018 and 2019 SFCs, the value of Trump Tower was calculated by applying a capitalization rate to the "stabilized net operating income," *i.e.*, by using a stabilized cap rate. (202.8-g Statement ¶266, 269; Ex. 8 at -729; Ex. 9 at -794) The supporting data shows that when calculating the value in both years, the Trump Organization used the wrong figure of 2.67% for the stabilized cap rate for 666 Fifth Avenue instead of the correct figure of 4.45%. (202.8-g Statement ¶260, 267, 270-71) Adjusting for this error reduces the value of Trump Tower by $173 million in 2018 and $323 million in 2019 as shown in the graph below. (202.8-g Statement ¶272)



Cash and Escrow Deposits: As a general matter, when a GAAP-compliant financial statement reports "cash," it is referring to an amount of liquid currency or demand deposits available to the person or entity whose finances are described in the SFC. (202.8-g Statement ¶384, Ex. 181) For the SFCs covering 2011 to 2021, the value of the "cash" reflected in the SFCs included cash amounts held by the Vornado Partnership Interests. (202.8-g Statement ¶386) Mr. Trump has a 30% limited partnership stake in the Vornado Partnership Interests without the right to use or withdraw funds held by the partnership. (202.8-g Statement ¶387) Under GAAP, the cash held by Vornado Partnership Interests should not have been included as Mr. Trump's cash, and falsely inflates the SFCs by $277 million in the aggregate over the period 2013 to 2021 as shown in the graph below. (202.8-g Statement ¶403)



Similarly, the SFCs from 2014 to 2021 included in the total for the "escrow and reserve deposits and prepaid expenses" category of assets 30% of the escrow deposits or restricted cash held on the balance sheets of the Vornado Partnership Interests. (202.8-g Statement ¶407) Under GAAP, the escrow and restricted cash amounts held by Vornado Partnership Interests should not have been included and falsely inflate the SFCs by $99 million in the aggregate over the period 2014 to 2021 as shown in the graph below. (202.8-g Statement ¶417, 418)

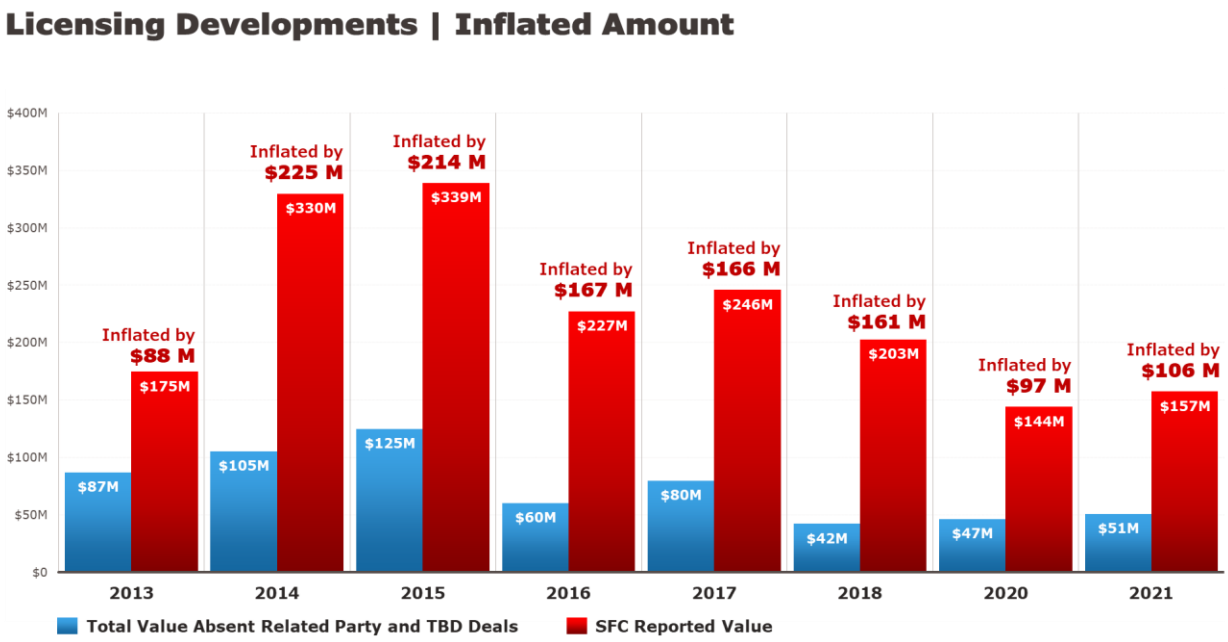


Real Estate Licensing Developments: The asset category entitled "Real Estate Licensing Developments" is represented to value "*associations with others* for the purpose of developing properties" and the cash flow that is expected to be derived from "*these associations* as their potential is realized" and to include "only situations which have evolved to the point *where signed arrangements with the other parties exist* and fees and other compensation which will be earned are reasonably quantifiable." (202.8-g Statement ¶420; *e.g.*, Ex. 1 at -3150 (emphasis added); Exs. 3-13 at n.5 (emphasis added)) However, Mr. Trump and his trustees inflated the value of this asset category employing two deceptive practices.

First, they included in this asset category from 2015 to 2018 speculative, unsigned deals as components of the value—deals expressly identified on internal Trump Organization financial records supporting the valuation as "TBD," *i.e*. to be determined. (202.8-g Statement ¶422) These TBD deals were not signed arrangements that "existed" and for which compensation was "reasonably quantifiable" as the SFCs represented was the case for deals included within this asset category. (202.8-g Statement ¶424)

Second, the Trump Organization included in this category deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, and Trump Chicago—deals in accounting parlance that are known as "related party transactions" because they are not arms-length deals in the marketplace but rather deals between affiliates. (202.8-g Statement ¶426) Including these related party transactions was contrary to the representation in the SFCs that this category included only the value derived from "associations with others," not agreements among and between Trump Organization affiliates. (202.8-g Statement ¶427)

Excluding the TBD deals and internal Trump Organization agreements reduces the value of this asset category by more than $100 million in all but one year as shown on the graph below.



C. Additional Substantial Inflation of Assets

There is far more evidence beyond just what is *undisputed* that the People will present at trial, as necessary, to establish the enormous extent to which Mr. Trump's net worth was overstated in each year from 2011 to 2021. As described below, based on the work done by Plaintiff's valuation experts in adjusting the SFC valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value," Mr. Trump's net worth in any year during the period 2011 and 2021 was inflated by *$1.9-$3.6 billion*.

Plaintiff's valuation expert Constantine Korologos analyzed the valuation methodologies used in the Defendants' "estimated current values" conclusions, and adjusted them giving consideration for inconsistencies, omissions, non-market methodologies applied, and factually incorrect assumptions, for certain real estate properties listed in Mr. Trump's SFCs for each of the years 2011 through 2021. (Ex. 1012 ¶ 1) Mr. Korologos concluded that "[t]he values of certain assets listed in the [SFCs] contain inconsistencies, omissions, and misleading information, and do not utilize methodologies and procedures used by informed buyers and sellers in the marketplace

and are therefore unreliable and misleading." (Ex. 1012 ¶ 15) By taking Defendants' valuations as a starting point and adjusting for discernable factual or methodological errors (such as Defendants' failure to discount cash flows to estimate current value, use of low unsupported cap rates, and use of incorrect square footage values), Mr. Korologos concluded that these adjustments resulted in "significant reduction in value for the assets that [he] assessed." (Ex. 1012 ¶ 15) Mr. Korologos then calculated a range of values reflecting the minimum estimated overstatement of value for each of the properties he considered. (Ex. 1012 ¶¶ 87 (40 Wall Street), 105 (Trump Tower), 119 (Niketown), 135 (Trump Park Avenue), 152 (Vornado Partnerships), 165 (Seven Springs), 177 (Triplex), 188 (TNGC-LA Subdivision), 198 (TNGC-Briarcliff Subdivision), 219 (Aberdeen Residential Development))

Plaintiff's golf course valuation expert Laurence Hirsh similarly identified significant discrepancies between the valuation methods employed by Defendants when valuing golf and club properties on Mr. Trump's SFCs and "generally accepted valuation methodology" used by buyers and sellers of such properties. Specifically, Mr. Hirsh identified that Defendants improperly:

- failed to analyze club income and expenses;
- failed to support their valuations with comparable market data;
- used inappropriate valuation methodologies that would not be used by an informed, willing buyer in the marketplace;
- improperly valued clubs based on "fixed assets" that were inflated by an improper brand premium;
- omitted management and capital reserve expenses;
- failed to acknowledge deferred maintenance or age of club infrastructure or components;
- ignored deed and easement restrictions;
- wrongly treated membership refunds as worth $0 when calculating liabilities (even while including refundable membership liabilities at full

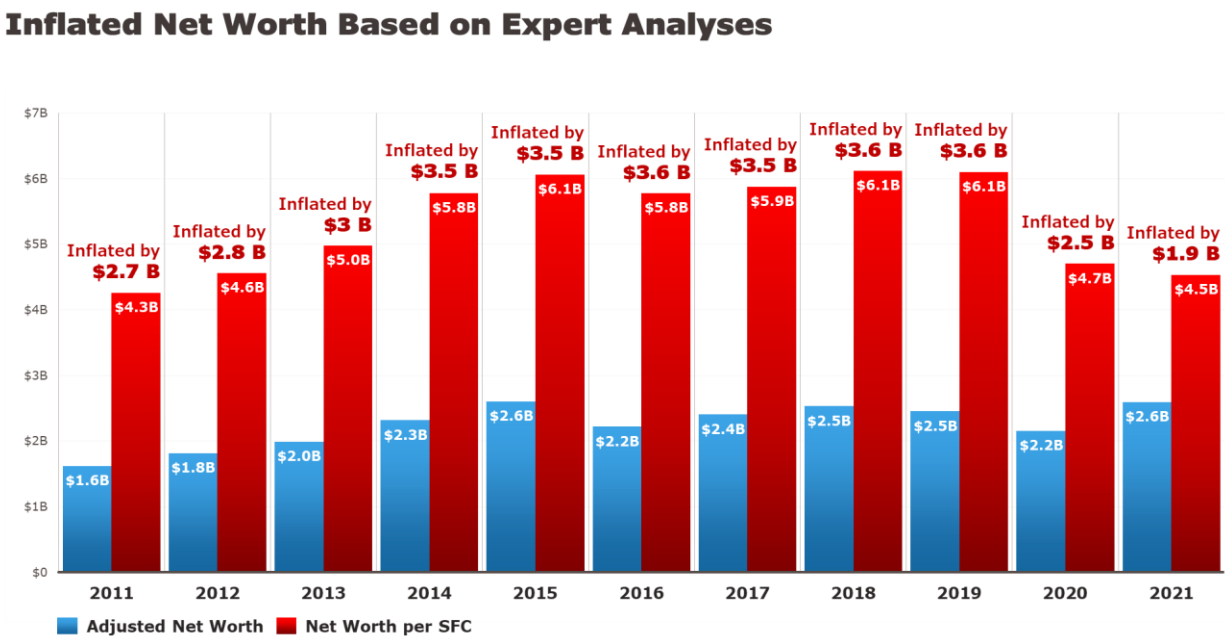
face value as a component of fixed asset value when valuing these properties);

- relied on inflated entrance fees;
- ignored the impact of leasehold values (which are likely to be significantly lower than fee simple values); and
- disregarded contemporaneous appraisals that valued the same properties at much lower values.

(Ex. 1013 at 15-24) Using the SFC valuations as a starting point and adjusting for identifiable errors, Mr. Hirsh concluded that the SFCs "contain gross overstatements of golf club property values, which would likely be greater once an analysis of membership refund liability is completed and once an analysis of deferred maintenance was done." (Ex. 1013 at 43) Mr. Hirsh then estimated a range of potential value overstatements by applying valuation methodologies accepted in the golf property marketplace to Defendants' own data, including the application of a market-based capitalization rate to net operating income for profitable courses and clubs (the Overall Rate or "OAR" method) and the application of a Gross Income Multiplier (or "GIM" method) to revenues for properties, including those with a negative cash flow. (Ex. 1013 at 9-10, 12-13) Mr. Hirsh concluded that "[c]umulative value differences for the properties range from roughly $655.3 million to $1.45 Billion (OAR) and $740.3 million to $1.3 Billion (GIM), depending on the year examined." (Ex. 1013 at 43-48)

* * *

Based on the analyses performed by Plaintiff's valuation experts, the resulting reduction to Mr. Trump's net worth is between $1.9-$3.6 billion per year over the period 2011 to 2021 as shown in the graph below, which is billions less than what Mr. Trump reported in his SFCs. (Ex. 1012 at App. Exs. 1-16; Ex. 1013 at 33-34, 39-40)



D. Other Violations of GAAP

In addition to employing the numerous quantifiable deceptive schemes discussed above that grossly and falsely inflated the value of his assets in the SFCs, Mr. Trump and his associates—notwithstanding the representation that the SFCs were GAAP-compliant—violated GAAP in the preparation of the SFCs in numerous other material ways, as detailed below based on both the undisputed evidence and the analysis performed by Prof. Lewis.

As explained by Prof. Lewis, personal financial statements are required to include sufficient disclosure of GAAP departures to make the statements adequately informative. (Ex. 1014 at ¶¶63-64) Prof. Lewis determined that the following departures from GAAP were not disclosed in the SFCs: (i) the inclusion of an internally generated brand premium in valuing golf course properties; (ii) the failure to properly record cash; (iii) the failure to properly record escrow and reserve deposits; (iii) the failure to properly disclose changes in valuation methodology for certain properties from year to year; (iv) the failure to determine present value of projected future income when including the income in a valuation; and (v) the failure to disclose the details of

related party transactions. (Ex. 1014 at ¶64, 67) The failure to disclose these GAAP deviations had a material impact on the users of the SFCs. (Ex. 1014 at ¶68)

E. Submission of the False SFCs to Banks and Insurers

1. Loans From the Deutsche Bank PWM Division

Starting in 2011, Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank. (202.8-g Statement ¶440). Rosemary Vrablic, a Managing Director at the bank in the PWM division, confirmed the need for recourse in PWM loans in the form of a personal guarantee as part of any loan application. (202.8-g Statement ¶442) By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his SFCs, Mr. Trump was able to apply to the PWM division for, and obtain for the Trump Organization, loans with significantly lower interest rates than would otherwise have been available through the Commercial Real Estate ("CRE") division at Deutsche Bank or from commercial real estate lending groups at other banks. (202.8-g Statement ¶444) Through at least 2021, Defendants used the SFCs to secure loans and satisfy annual loan obligations necessary to maintain the loans through the PWM division as described in summary below, recognizing that these facts are fully set forth in Plaintiff's 202.8-g Statement.

a. The Doral Loan

Mr. Trump first pursued a loan from Deutsche Bank for Doral through the CRE division of Deutsche Bank (202.8-g Statement ¶456-57; Ex. 244) On November 21, 2011, the CRE division offered the Trump Organization a $130 million loan at LIBOR + 800 basis points, with a LIBOR floor of 2 percent—a minimum 10% interest rate. (202.8-g Statement ¶461) The Trump Organization did not accept those terms and continued to look elsewhere for financing for Doral, including the bank's PWM division. (202.8-g Statement ¶462-63)

On December 15, 2011, in response to a request from Ivanka Trump, Ms. Vrablic sent Ms. Trump a term sheet proposing a $125 million loan with recourse through a personal guarantee by Mr. Trump of all principal and interest due on the loan and the operating expenses of the resort. (202.8-g Statement ¶465-66) The proposal also included a number of covenants, including requirements that Mr. Trump maintain a minimum net worth of $3 billion and unencumbered liquidity of $50 million. (202.8-g Statement ¶467) An internal credit report dated December 20, 2011, noted the loan will be "supported by a full and unconditional guarantee provided by DJT of (i) Principal and Interest due under the Facility, and (ii) operating shortfalls of the Resort . . . ." (Ex. 266 at -1691) The credit memo listed this guarantee as a source of repayment, and recommended approval of the loan. (202.8-g Statement ¶475)

The loan was approved through the PWM division and closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC personally guaranteed by Mr. Trump. (202.8-g Statement ¶477) Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter. (202.8-g Statement ¶478) The loan agreement, signed by Mr. Trump, recited that Mr. Trump's June 30, 2011 SFC had to be provided to the bank as a precondition of lending. (202.8-g Statement ¶479) In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of the financial information in his SFC. (202.8-g Statement ¶480) Similarly, issuance of the loan was subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date." (202.8-g Statement ¶482; Ex. 254 at -5911)

Pursuant to the guarantee, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on

an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g Statement ¶486; Ex. 232 at -4180) Mr. Trump was required to deliver to the bank his annual SFC with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶489; Ex. 232 at -4180-81, 4189-90) False certifications were expressly identified as events of default under the loan agreement. (202.8-g Statement ¶490)

In connection with the Doral Loan, Mr. Trump submitted SFCs to Deutsche Bank accompanied by the required certifications for the years 2014 through 2021 (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as attorney-in-fact for Mr. Trump). (202.8-g Statement ¶493) Deutsche Bank conducted annual reviews of the Doral loan in July 2013, May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶494) The loan remained outstanding until May 2022, when the Trump Organization refinanced the loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank. (202.8-g Statement ¶495)

b. The Chicago Loan

Roughly contemporaneously with the Doral loan's closing in June 2012, the Trump Organization sought another loan from the PWM division at Deutsche Bank in connection with the Trump Chicago property—in essence, a refinancing of an existing $130 million from the CRE division at Deutsche Bank on that property. (202.8-g Statement ¶499) Dueling proposals for the Trump Chicago property within Deutsche Bank were under discussion in March 2012. (202.8-g Statement ¶500) One proposal from the CRE division was for a non-recourse (meaning, no personal guarantee) loan facility with a two-year term and an interest rate of LIBOR plus 800 basis points. (202.8-g Statement ¶501) The other proposal from the PWM division was for a loan facility

with a two-year term and *a personal guarantee* at LIBOR plus 400 basis points—so, at an interest rate that was four percentage points lower. (202.8-g Statement ¶502)

In October 2012, the PWM division recommended approval of a loan of up to $107 million to 401 North Wabash Venture LLC, guaranteed personally by Mr. Trump. (202.8-g Statement ¶504) Given the mixed nature of the hotel-condo property, the loan was broken down into two facilities: (i) Facility A for the residential portion was for up to $62 million, for a 4-year term, at a rate of LIBOR plus 3.35%; and (ii) Facility B for the hotel portion was for up to $45 million, for a 5-year term, at a rate of LIBOR plus 2.25%. (202.8-g Statement ¶505) For both facilities, a source of repayment was "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the Collateral." (202.8-g Statement ¶506; Ex. 228 at -68524)

The PWM division credit memo for the loan assessed Mr. Trump's 2011 and 2012 SFCs, stating: "Although Facilities are secured by the Collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g Statement ¶508; Ex. 228 at -68526) The loans under the two facilities closed on November 9, 2012, and both included personal guarantees by Mr. Trump supported by his 2011 and 2012 SFCs. (202.8-g Statement ¶509) The terms of each facility's personal guarantees were materially identical to the Doral guarantee, including the requirement that Mr. Trump maintain a minimum net worth, based upon his SFC, of $2.5 billion, and provide an annual SFC to the bank accompanied by an executed compliance certificate certifying that the SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶515; Ex. 277 at -38880-81; Ex. 276 at -3232-33)

Deutsche Bank conducted annual reviews of the Trump Chicago facilities in May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶520) Based upon the purported strength of Mr. Trump's financial profile, the Trump Organization requested an additional $54 million in loan funds from Deutsche Bank to be "fully guaranteed by Mr. Trump for all principal, interest and operating shortfalls until the balance of the facility is less than $45 million (34% LTV)." (202.8-g Statement ¶522; Ex. 265 at -1741) The credit memo recommending approval of this increase in loan funds did so, in part, based on the "Financial Strength of the Guarantor." (202.8-g Statement ¶523) Amended loan documents advancing the additional requested funds closed on June 2, 2014. (202.8-g Statement ¶524)

As with earlier credit memos, this 2014 credit memo (which also recommended approval for the $170 million loan in connection with the Old Post Office discussed below) evaluated Mr. Trump's SFCs. (202.8-g Statement ¶525) In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 SFCs, stating: "Although Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g Statement ¶526; Ex. 265 at -1752)

These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's SFCs that were substantially similar to those described above for the Doral and 2012 Trump Chicago loan facilities. (202.8-g Statement ¶528) In the amended Trump Chicago guarantee, Mr. Trump certified that his 2013 SFC was true and correct in all material respects and that the SFC "presents fairly Guarantor's financial condition as of June 30, 2013." (202.8-g Statement ¶528; Ex. 281 at -3191) Either Mr. Trump, Eric Trump, or the trustees of the Trust (depending on the year) certified the accuracy of the SFCs submitted in connection with the Trump Chicago loan facilities between 2013 through 2021, either through the

execution of an amended guarantee or through the submission of a compliance certificate. (202.8-g Statement ¶530)

c. The OPO Loan

In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of The Old Post Office in Washington, DC after the Trump Organization was selected by the U.S. General Services Administration in February 2012 to redevelop the property and signed a lease for that purpose on August 5, 2013. (202.8-g Statement ¶533, 534, 542)

In advance of executing the lease, the Trump Organization reached out to the CRE division at Deutsche Bank about potential financing for the project. (202.8-g Statement ¶543) By October 2013, the CRE division had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points. (202.8-g Statement ¶545) The next month, in November 2013, employees at the Trump Organization took that offer to the PWM division to see if that division could offer more favorable terms. (202.8-g Statement ¶546) Ultimately the Trump Organization and the PWM division agreed on a term sheet that was executed on January 13 and 14, 2014 providing for a $170 million loan with a 10-year term, 100% personal guarantee by Mr. Trump, interest rates of LIBOR + 2% or 1.75% (depending on the period), and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500 million. (202.8-g Statement ¶549) Mr. Trump, as guarantor, would be required to provide his annual SFC to the bank. (202.8-g Statement ¶550)

A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. (202.8-g Statement ¶551) This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 SFCs. (202.8-g Statement ¶552) Mr. Trump's net worth and his

SFCs were critical to the bank's approval of the final terms of the loan, which closed on August 12, 2014. (202.8-g Statement ¶553)

As with the Doral and Trump Chicago loans, the loan agreement for the OPO loan required that Mr. Trump's most recent SFC (which was his 2013 SFC) be provided to the bank as a condition of the loan. (202.8-g Statement ¶554) The loan agreement required that Mr. Trump certify to the accuracy of the 2013 SFC and represent that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." (202.8-g Statement ¶555; Ex. 233 at -4991) Mr. Trump's personal guarantee on the OPO loan, which he signed, is dated August 12, 2014 – the same date that the loan closed. (202.8-g Statement ¶559)

Mr. Trump's personal guarantee contained the same financial representations included in the guarantees for the prior PWM loans, including that Mr. Trump's submitted personal financial statement (here the 2013 SFC) "presents fairly Guarantor's financial condition" as of the date indicated, and required Mr. Trump to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g Statement ¶560-61) The bank conducted annual reviews of the OPO loan in July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶565)

2. 40 Wall Street Loan From Ladder Capital

In approximately November 2015, the Trump Organization (through Defendant 40 Wall Street LLC), working with Mr. Weisselberg's son, a Director at Ladder Capital Finance ("Ladder

Capital"), refinanced a $160 million mortgage with Capital One Bank on the office building property at 40 Wall Street. (202.8-g Statement ¶579-80, 583) The Ladder Capital loan required Mr. Trump to maintain a net worth of at least $160 million and liquidity of at least $15 million. (202.8-g Statement ¶593) In connection with those covenants, Mr. Trump was required to provide his annual financial statements "prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." (202.8-g Statement ¶597; Ex. 328 at 3076-77) Internal documents indicate that Ladder Capital underwrote the $160 million loan based in part on Mr. Trump's reported net worth of $5.8 billion as set forth in the 2014 SFC. (202.8-g Statement ¶589-92)

3. Seven Springs Loan from RBA/Bryn Mawr

In 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America ("RBA"), later acquired by Bryn Mawr Bank in 2017. (202.8-g Statement ¶599) Mr. Trump personally guaranteed the mortgage. (202.8-g Statement ¶600) As a result of the personal guarantee, Mr. Trump's SFCs were submitted to RBA/Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. (202.8-g Statement ¶601) A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 SFCs. (202.8-g Statement ¶603) Bryn Mawr retained in its files Mr. Trump's SFCs for 2010 through 2016. (202.8-g Statement ¶605)

Typically, the SFCs were sent under the cover of a letter from Mr. McConney, stating that Mr. Trump's SFC was being provided pursuant to the mortgage. (202.8-g Statement ¶606) Submission of the SFCs was required in order to maintain the loan and to obtain a series of extensions. (202.8-g Statement ¶607) For example, the bank approved extensions of the maturity date of the loan in 2011, 2014, and 2019 in reliance upon Mr. Trump's SFCs submitted pursuant

to Mr. Trump's personal guarantee. (202.8-g Statement ¶608) In connection with seeking these extensions, Mr. Trump re-affirmed his personal guarantee in 2011 and 2014, and in 2019 the guarantee was re-affirmed in a certification signed by Eric Trump "as attorney in fact" for Donald J. Trump. (202.8-g Statement ¶609) The personal guarantee for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. (202.8-g Statement ¶610-12)

4. Surety Insurance from Zurich

From 2007 through 2021, Zurich North America ("Zurich") underwrote a surety bond program (the "Surety Program") for the Trump Organization through insurance broker AON Risk Solutions ("AON"). (202.8-g Statement ¶617) Under the Surety Program, Zurich issued surety bonds on behalf of the Trump Organization within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. (202.8-g Statement ¶618) Over the course of the relationship, in accordance with its standard underwriting guidelines for surety business, Zurich required the Trump Organization to provide an indemnification against any loss should Zurich be required to pay under a bond. (202.8-g Statement ¶621) From the inception of the Surety Program, the Trump Organization met this indemnification requirement through a General Indemnity Agreement ("GIA") executed by Mr. Trump, pursuant to which (similar to a personal guarantee on a loan) he personally agreed to indemnify Zurich for claims under the Surety Program. (202.8-g Statement ¶622, 679) As specified in the term sheet Zurich provided to AON, the indemnity arrangement included as a condition of coverage an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements, which was through an on-site review of the SFC at Trump Tower. (202.8-g Statement ¶623)

During the on-site reviews for the 2019 and 2020 renewals, Zurich's underwriter Claudia Markarian was shown the then-current SFC, which listed as assets real estate holdings with

valuations that Mr. Weisselberg represented to her had been determined each year by a professional appraisal firm. (202.8-g Statement ¶626, 638-39) Ms. Markarian considered the valuations to be reliable based on this representation, which factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program each year on the existing terms, which it did. (202.8-g Statement ¶627-28, 640-41) During her on-site reviews of the SFCs, Ms. Markarian also relied on the amount of cash on hand listed in the SFCs as an indication of Mr. Trump's liquidity, which was important to her underwriting analysis as it represented the funds available to repay Zurich in the event Zurich had to pay on a surety bond issued under the program. (202.8-g Statement ¶631, 644) She also considered favorably Mr. Weisselberg's representations during her on-site reviews that the property values in the SFCs did not significantly vary year over year as that indicated stability. (202.8-g Statement ¶634-35, 647-48)

Contrary to Mr. Weisselberg's representations, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the SFCs, and the property values did vary significantly year over year for certain properties. (202.8-g Statement ¶629, 636, 649) Moreover, unbeknownst to Ms. Markarian, the amount of cash listed in the SFCs was inflated because it included cash held by Vornado Partnership Interests that was not within Mr. Trump's control. (202.8-g Statement ¶403) The Trump Organization also failed to disclose to any of the Zurich underwriters that the valuation for many of the golf courses listed on Mr. Trump's SFCs within the "Clubs" category included a Trump brand premium, which under Zurich's underwriting guidelines would have to be excluded as an intangible asset. (202.8-g Statement ¶651-52)

5. D&O Insurance from HCC

As of December 2016, the Trump Organization had in place Directors & Officers ("D&O") liability coverage consisting of a single primary policy providing a limit of $5,000,000 at a premium of $125,000, expiring on February 17, 2017. (202.8-g Statement ¶653) To obtain that

coverage, similar to the process for obtaining surety coverage from Zurich, the Trump Organization provided D&O underwriters access to Mr. Trump's SFCs through a monitored in-person review at Trump Tower. (202.8-g Statement ¶654)

In advance of the February 2017 policy expiration, the broker scheduled a "D&O Underwriting Meeting" at Trump Tower on January 10, 2017 between Trump Organization personnel (including Mr. Weisselberg) and various insurers, including Tokio Marine HCC ("HCC"). (202.8-g Statement ¶655) The Trump Organization was looking to cancel the existing policies and rewrite the program on the day of Mr. Trump's presidential inauguration with significantly higher limits of $50,000,000—a tenfold increase. (202.8-g Statement ¶656) The underwriters at the meeting, including HCC's underwriter Michael Holl, were provided very few financials but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion, cash of $192 million and total debt of $519 million—all as reported in the 2015 SFC. (202.8-g Statement ¶657) The Trump Organization representatives assured the underwriters that the balance sheet for year-end 2016 that would be completed in a few weeks would be even better than the year-end 2015 balance sheet. (202.8-g Statement ¶658) The representation that Mr. Trump had $192 million in cash was material to Mr. Holl's assessment of Mr. Trump's liquidity because it had bearing on his ability to meet the retention obligation under the HCC policy. (202.8-g Statement ¶659)

In response to specific questioning from the underwriters, the Trump Organization personnel at the meeting, including Mr. Weisselberg, represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. (202.8-g Statement ¶660) This representation was material to Mr. Holl's assessment that there were no investigations by law enforcement agencies that could potentially trigger coverage.

(202.8-g Statement ¶661) On January 20, 2017, after considering the information conveyed during the January 10 meeting, HCC offered terms for a primary $10,000,000 policy with a $2,500,000 retention for an annual premium of $295,000 subject to certain conditions. (202.8-g Statement ¶662) Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (202.8-g Statement ¶663)

Despite the representations made to underwriters during the January 10 meeting that there was no material litigation or inquiry from anyone that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization—an investigation of which Mr. Weisselberg was well aware. (202.8-g Statement ¶664; Ex. 375; Ex. 376; Ex. 377) Moreover, it is evident that the Trump Organization believed the OAG investigation could potentially give rise to a claim because on January 17, 2019, the Trump Organization submitted a claim notice to the D&O insurers, including HCC, seeking coverage for OAG's enforcement action resulting from the investigation. (202.8-g Statement ¶667)

F. Each Defendant was Involved in the Fraudulent Conduct

1. Donald J. Trump

Mr. Trump was the president of the Trump Organization and beneficial owner, including through the Trust, of all the assets listed in the SFCs. (202.8-g Statement ¶673) As expressly represented in the SFCs, Mr. Trump was responsible for the content of the SFCs from 2011 through 2015, the date covered by last SFC issued prior to Mr. Trump assuming public office. (202.8-g Statement ¶672) For the SFCs from 2011 to 2015, Mr. Trump had "final review" over each SFC's contents. (Ex. 54 at 98:5-16) In March 2017, Mr. Trump appointed his sons Donald Trump, Jr. and Eric Trump as his agents to act with power of attorney over banking and real estate transactions,

and exercising that power of attorney they signed guarantor compliance certificates pertaining to the SFCs during the period 2016 to 2021 as his attorney-in-fact, certifying on his behalf that the SFCs present fairly his financial condition in all material respects. (202.8-g Statement ¶674-75)

2. Donald Trump, Jr.

Donald Trump, Jr. is an Executive Vice President of the Trump Organization and has also served as an officer in each of the other entity Defendants named in this action. (202.8-g Statement ¶680-81, 695) He has also served as a trustee of the Trust from January 19, 2017 to the present, except for the seven-month period from January 19-July 7, 2021, during which period Donald J. Trump was the sole trustee of the Trust. (202.8-g Statement ¶681, 755-56) Donald Trump, Jr. signed the representation letters for the SFCs from 2016 through 2019 in his capacity as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g Statement ¶682-85) He signed the representation letters for the 2020 and 2021 SFCs as trustee of the Trust. (202.8-g Statement ¶686-87) He also signed numerous guarantor compliance certificates in connection with loans that are the subject of this action from 2017 through 2019 as attorney-in-fact for Mr. Trump variously certifying that the 2016, 2017, 2018, and 2019 SFCs each "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶688-694)

3. Eric Trump

Eric Trump is an Executive Vice President of the Trump Organization, served as an officer in each of the other entity Defendants named in this action, and from 2016 through at least 2021 was the "chief decision maker" at the company. (202.8-g Statement ¶696, 709; Ex. 391 at 29:10-13, 77:11-21; Ex. 50 at 19:7-17) He participated in the preparation of SFCs by providing values to Mr. McConney for Seven Springs (for 2012 to 2014) and TNGC Briarcliff (for 2013 to 2018) that were used in the SFCs. (202.8-g Statement ¶74, 296)

In his capacity as President of Seven Springs LLC, in June 2019 he signed a loan modification agreement in connection with the loan transaction with the Bryn Mawr restating and reaffirming the representations in all prior loan documents, and on the same date signed an agreement as attorney-in-fact for Mr. Trump reaffirming Mr. Trump's obligation as guarantor on the loan. (202.8-g Statement ¶698-99) Eric Trump also signed multiple guarantor compliance certificates in connection with loans that are the subject of this action in October 2020 as attorney-in-fact for Mr. Trump, certifying that to the best of their knowledge Mr. Trump's net worth was over $2.5 million. (202.8-g Statement ¶700-02)

For the 2021 SFC, Eric Trump signed the engagement letter with Whitley Penn on behalf of the Trump Organization and participated in discussions with others at the company concerning valuation methodologies for the 2021 SFC. (202.8-g Statement ¶703-04) In October 2021, he signed multiple guarantor compliance certificates in connection with loans that are the subject of this action as attorney-in-fact for Mr. Trump certifying that the 2021 SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶706-08)

4. Allen Weisselberg

Allen Weisselberg was Chief Financial Officer of the Trump Organization from at least 2011 until he resigned from that position and became a Senior Advisor to the company in August of 2022 after pleading guilty to charges of tax fraud. (202.8-g Statement ¶710) Prior to Mr. Trump assuming public office, Mr. Weisselberg reported directly to Mr. Trump. (202.8-g Statement ¶711) In his role as CFO, Mr. Weisselberg was in charge of the accounting department at the Trump Organization. (202.8-g Statement ¶712)

Mr. Weisselberg had a primary role in preparing the SFCs together with Mr. McConney and Trump Organization employee Patrick Birney, both of whom reported to him. (202.8-g

Statement ¶713-14) Mr. Weisselberg signed the SFC engagement and representation letters for 2011 through 2015 as an executive officer of the Trump Organization and for 2016 through 2020 as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g Statement ¶716-35) He also certified summaries of the SFCs for 2016 to 2019 as trustee. (Exs. 1041-1045)

5. Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s through at least 2022 and led the process of preparing Mr. Trump's SFCs since the 1990s. (202.8-g Statement ¶736-37) Working under Mr. Weisselberg's supervision, he was responsible for assembling the SFC documentation and sending it to the outside accounting firm along with his supporting data spreadsheets. (202.8-g Statement ¶738) In May 2016, Mr. McConney sent a compliance certificate pertaining to the 2015 SFC to Deutsche Bank, and the following year submitted to the bank another compliance certificate pertaining to the 2016 SFC. (202.8-g Statement ¶741-42) He also sent summaries of the SFCs for 2016 to 2019 to the servicing bank for the 40 Wall Street loan. (Exs. 1041-1045).

6. The Entity Defendants

The Trust was established in April 2014. (202.8-g Statement ¶745) The trustees of the Trust were responsible for the SFCs from 2016 through 2021. (202.8-g Statement ¶743)

DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. (202.8-g Statement ¶760, 762, 764, 766) Trump Organization Inc. is owned 100% by DJT Holdings Managing Member LLC and Trump Organization LLC is owned 100% by DJT Holdings LLC. (202.8-g Statement ¶746)

Trump Endeavor 12 LLC is the owner of the Doral Property and was the borrower on the Doral loan for which Mr. Trump was the guarantor. (202.8-g Statement ¶767-68) 401 North

Wabash Venture LLC is the owner of the Trump International Hotel & Tower in Chicago and was the borrower on the Trump Chicago loan, for which Mr. Trump was the guarantor. (202.8-g Statement ¶777-78) Trump Old Post Office LLC held the ground lease for Trump International Hotel in Washington, D.C. and was the borrower on the OPO loan, for which Mr. Trump was the guarantor. (202.8-g Statement ¶782-83) 40 Wall Street LLC holds the ground lease for the office building located at 40 Wall Street and was the borrower on the loan with Ladder Capital, for which Mr. Trump was the guarantor. (202.8-g Statement ¶785-86) Seven Springs LLC owns the Seven Springs estate and was the borrower on the mortgage from RBS/Bryn Mawr, for which Mr. Trump was the guarantor. (202.8-g Statement ¶787-78)

STANDARD OF REVIEW

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Where the moving party relies on expert opinion evidence to meet this initial burden, it is well settled that such evidence "must be based on facts in the record or personally known to the [expert] witness," and that where the moving party relies on an expert's conclusion that "assum[es] material facts not supported by record evidence," the movant fails to establish a *prima facie* entitlement to summary judgment. *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010); *see also* 6B Carmody-Wait 2d §39:138 (noting that where an expert witness's assertions "are speculative or unsupported by any evidentiary foundation, the expert's opinion should be given no probative force").

Once the moving party makes a *prima facie* showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form

sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman*, 49 N.Y.2d at 562; *Alvarez v. Prospect Hosp*., 68 N.Y.2d 320, 324–25 (1986).

ARGUMENT

I. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS

Defendants contend that, "whether framed as an issue of standing or capacity, the scope of NYAG's authority depends upon a public interest nexus" requiring "some harm (or threat of harm) suffered by the People (*i.e*., the public at large)." *See* Memorandum of Law in Support of Defendants' Motion for Summary Judgement (NYSCEF No. 835) ("Defs. MOL") at 22. They add that this "public interest" concept "is reinforced by the doctrine of *parens patriae*," which they urge "is fully applicable to actions brought under 63(12)." *Id*. at 22 n.10. Defendants further argue that the accountant's letter inserted at the beginning of each SFC has disclaimer language that puts users "on complete notice not to rely upon them," effectively insulating them from any liability for false and misleading statements and values in the SFCs. *Id*. at 42

Defendants have plowed this same field twice before without success.

The first time was in opposing Plaintiff's motion for a preliminary injunction, where Defendants argued that the Attorney General had no standing or capacity to maintain this action under Executive Law § 63(12) because there was no harm, and in particular no harm to the public, relying on cases brought under the *parens patriae* doctrine and the decision in *People v. Domino's Pizza, Inc*, Index No. 450627/2016, 2021 WL 39592 (Sup. Ct. N.Y. Cty. Jan. 5, 2021),[8] a case

[8] Defendants' continued heavy reliance on the trial court's decision in *Domino's* for a "public harm" requirement is misplaced for two reasons. First, the *Domino's* holding was not based on the

Defendants again rely upon heavily here. *See* Memorandum of Law in Opposition to Plaintiffs Application for a Preliminary Injunction and Expedited Preliminary Conference (NYSCEF No. 126) at 8-11 (arguing, in language that parrots their arguments here, that the Attorney General "has no right to intervene" in Defendants' "internal affairs and management . . . and private contractual rights between [Defendants] and corporate counter parties" as "those are private matters between sophisticated commercial parties, not matters of public interest."). They also contended in the same brief that the SFCs, "and the disclaimers explicitly set forth therein, conclusively establish a defense as a matter of law to the Executive Law § 63(12) fraud claim alleged in the Complaint" because it "forecloses Plaintiff from claiming any corporate counter party reasonably relied in any material way on the information contained in the SoFCs." *Id*. at 13.

The Court soundly rejected these arguments in its decision granting Plaintiff's motion for a preliminary injunction. *People of the State of New York v. Trump,* No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) ("*Trump I*"). As the Court explained, there is no need for the Attorney General to show any public harm[9] or the quasi-sovereign interest required

---

absence of public harm but rather on the absence at trial of evidence establishing fraudulent conduct, *see* 2021 WL 39592, at *1, which is not the case here. Second, to the extent *Domino's* can be construed to hold that private business transactions fall outside the scope of § 63(12), that holding cannot be squared with the First Department's decision in this case. *See People v. Trump,* 217 A.D.3d 609, 610–11 (1st Dep't 2023).

[9] Even if there was a "public harm" requirement (which is not the case), as the Court has already held, this case satisfies that requirement because the People have articulated "a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties." *Trump I*, 2022 WL 16699216, at *2 (citing cases); *see also Trump*, 217 A.D.3d at 610 (noting this case "is vindicating the state's sovereign interest in enforcing its legal code – including its civil legal code – within its jurisdiction"); *People v. Coventry First LLC*, 52 A.D. 3d 345, 346 (1st Dep't 2008) (finding claim under § 63(12) "constituted proper exercise[] of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"), *aff'd*, 13 N.Y.3d 108 (2009).

under *parens patriae* because "the New York legislature has specifically empowered the Attorney General to bring [an Executive Law § 63(12)] action in a New York state court," and Defendants' attempt to restrict § 63(12) to consumer fraud cases "is wholly without merit." *Id*. Further, the Court held that the disclaimer language in the SFCs did not provide any defense at all to Defendants because the language "makes abundantly clear that Mr. Trump was fully responsible for the information contained within the SFCs" and that "allowing blanket disclaimers to insulate liars from liability would completely undercut" the "important function" that SFCs serve "in the real world." *Id*. at *3. Indeed, the Court noted that even under the cases Defendants cited, they could not use the disclaimer as a defense because "the SFCs were unquestionably based on information peculiarly within" their knowledge. *Id*.

Undeterred by the Court's decision on Plaintiff's preliminary injunction motion, Defendants raised these same three arguments for a second time in support of their motions to dismiss. *See, e.g.*, Memorandum of Law in Support of the Motion to Dismiss of Defendants, The Trump Organization, Inc., Trump Organization LLC, and Donald J. Trump (NYSCEF No. 197) ("MTD Moving Br.") at 3-11 (Point I – "The NYAG Lacks Standing to Bring This Action"), 11-13 (Point II – "The NYAG Is Without Capacity to Bring the Suit"), at 21-22 (Point III – "Plaintiff's Fraud Claims are Barred by Documentary Evidence and Fail to State a Claim").

The Court rejected these arguments again, noting that they "were borderline frivolous even the first time defendants made them," and that reading Defendants' brief "was, to quote the baseball sage Lawrence Peter ('Yogi') Berra, 'Deja vu all over again.'" *People v. Trump*, No. 452564/2022, 2023 WL 128271, at *2 (N.Y. Sup. Ct. Jan. 06, 2023) ("*Trump II*") (holding that Executive Law § 63(12) "is tailor-made for Attorney General Enforcement actions such as the instant one, foreclosing any rational arguments against capacity and standing" and that the

disclaimers "shifted responsibility directly on to certain defendants"), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023) ("*Trump III*"). The Court went further to admonish Defendants' counsel for raising these arguments again, noting that "sophisticated defense counsel should have known better." *Trump II*, 2023 WL 128271, at *4. After observing that such conduct may warrant an "award [of] costs and financial sanctions against an attorney or party," the Court exercised its discretion and declined to do so, concluding they were unnecessary in light of the Court "having made its point." *Id*. While the point was made, it went unheeded.

Despite the Court's admonition, Defendants are pursuing their standing, capacity, and disclaimer arguments for a *third time* in their summary judgment motion. Defs. MOL at 22, 42. Moreover, Defendants have added to the list of previously-rejected positions yet another argument—that Plaintiff has no valid claim for disgorgement under § 63(12). *Id.* at 58-62. But the Court of Appeals has held that "disgorgement is an available remedy under . . . the Executive Law." *People v. Greenberg*, 27 N.Y.3d 490, 497 (2016). And the Court rejected this argument when Defendants raised it the first time in their motion to dismiss, holding that "disgorgement of profits is a form of damages" available in this § 63(12) action. *See Trump II*, 2023 WL 128271, at *5.

Defendants suggest that their standing and capacity arguments deserve consideration anew because "at the dismissal stage" when these arguments were considered and rejected, Plaintiff "was afforded the presumption of propriety" as to the allegations in the complaint. Defs. MOL at 26. But even this procedural excuse for rehashing previously-rejected arguments was *itself* previously rejected by the Court. When Defendants raised their standing and capacity arguments for a second time on their motion to dismiss, they argued the Court's prior rejection of these arguments was not determinative because it came in the context of deciding a preliminary

injunction motion. *See* Consolidated Reply Memorandum in Support of Defendants' Motions to Dismiss (NYSCEF No. 410) at 3. The Court held otherwise:

> OAG's legal standing and capacity to sue *are threshold litigation questions of justiciability*; they do not change whether in the context of a motion for a preliminary injunction or to dismiss . . . . The Court rejected such arguments as a matter of law, and defendants' reiteration of them, scattered across five different motions to dismiss, was frivolous.

Trump II, 2023 WL 128271, at *2 (emphasis added). Similarly, the arguments are no different now that they are being raised in the context of a summary judgment motion.

To make matters worse, Defendants rehash their standing, capacity, and disgorgement arguments after they have already been *rejected by the First Department in this case*:

> The New York Legislature enacted Executive Law § 63 (12) to combat fraudulent and illegal commercial conduct in New York. Under this provision, "[w]henever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York" *for disgorgement* and other equitable relief. The Attorney General is not suing on behalf of a private individual, but is vindicating the state's sovereign interest in enforcing its legal code—including its civil legal code—within its jurisdiction. We have already held that the failure to allege losses does not require dismissal of a claim *for disgorgement* under Executive Law § 63(12).

Trump III, 217 A.D.3d at 610–11 (internal citations omitted) (emphasis added).

For these reasons, the Court should summarily reject yet again Defendants' threshold justiciability arguments based on lack of standing and capacity, reliance on the "disclaimer" language in the SFCs, and challenge to Plaintiff's entitlement to disgorgement. These positions are meritless, as this Court and the First Department have previously held, and the conduct of Defendants and their counsel in raising them yet again is frivolous.

II. PLAINTIFF'S CAUSES OF ACTION ARE TIMELY FILED AS AGAINST ALL DEFENDANTS

Rejecting Defendants' argument, the First Department recently ruled that Plaintiff's claims under Executive Law § 63(12) are governed by the six-year statute of limitations under CPLR 213(9) and that executive orders issued during the pandemic tolled the limitations period. *Trump III*, 217 A.D.3d at 611. Based on these rulings, the appellate court held that "claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016" for any Defendant not bound by the August 21, 2021, tolling agreement (Ex. 419) ("Tolling Agreement"), and "before July 13, 2014" for any Defendant bound by the Tolling Agreement. *Id*. The court concluded that only Ivanka Trump had engaged in conduct that fell altogether outside of those timeframes, but otherwise rejected the remaining Defendants' arguments for dismissal based on the limitations period. *Id.*

Defendants offer no basis to revisit the First Department's conclusion that Defendants engaged in wrongful conduct within the governing limitations period. This Court therefore does not need to reach any of Defendants' statute-of-limitations arguments, as the People need to demonstrate that only some amount of wrongful conduct occurred within the limitations period and "need not prove all of the [instances] in order to obtain the relief sought." *See People v. Boyajian Law Offs., P.C.*, 17 Misc.3d 1119(A), at *6 (Sup. Ct., N.Y. Cty. 2007). For similar reasons, there is no need to resolve the full scope of the Tolling Agreement on summary judgment—which the First Department instructed this Court to address "as necessary," *Trump III*, 317 A.D.3d at 611—because Defendants concede that the entity Defendants are bound (Defs. MOL at 13-14) and because the individual Defendants participated in multiple fraudulent

transactions on or after February 6, 2016, the date the limitations period begins in the absence of the Tolling Agreement.[10]

In all events, Plaintiff has brought claims that accrued within the limitations period, even if the period began in February 2016. And if this Court decides to reach the issue, all Defendants are bound by the Tolling Agreement, under which the limitations period began in July 2014.

A. Plaintiff's Claims Accrued Within The Limitations Period

Statutory causes of action such as those established under § 63(12) "accrue[] . . . when all of the factual circumstances necessary to establish a right of action have occurred, so that the plaintiff would be entitled to relief," as determined by the elements of any claim in the statute. *Gaidon v. Guardian Life Ins. Co.*, 96 N.Y.2d 201, 210 (2001); *see also Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175 (1986) (holding a claim accrues "when all of the facts necessary to the cause of action have" occurred) (citing 1 Weinstein-Korn-Miller, N.Y.Civ.Prac. ¶ 201.02, at 2-9)). Here, § 63(12) prohibits (1) "repeated" or "persistent" (2) "fraudulent or illegal" acts (3) "in the carrying on, conducting or transaction of business."

As the First Department has confirmed, under CPLR 213(9)'s six-year limitations period, § 63(12) claims accrue with each instance of fraud or illegality violative of the statute that occurs within the period going back six years from the filing of OAG's enforcement complaint (plus any applicable tolling). *See People v. Cohen*, 214 A.D.3d 421, 422 (1st Dep't 2023). As a trial court explained in a case regarding misleadingly inflated price information, the § 63(12) claims accrued each time that the defendant, within the limitations period, caused false and inflated price

[10] The Court can defer ruling on the effect of the Tolling Agreement until trial, when it may be necessary to determine for purposes of disgorgement whether the Tolling Agreement extends the statute-of-limitations period for calculating ill-gotten gains to be disgorged from February 6, 2016 to July 13, 2014 for particular Defendants.

information to be published, and each such inflated price report constituted the accrual of a separate wrong. *People Pharmacia Corp*., 27 Misc. 3d 368, 374 (Sup. Ct., Albany Cty. 2010).

Indeed, the First Department has repeatedly applied these fundamental accrual principles. In *People v. Cohen*, for example, the defendants made repeated, annual misrepresentations to tenants and a state agency relating to the rent-stabilized status of defendants' apartments. 214 A.D.3d at 422-23; *see Cohen*, OAG Br., 2022 WL 19039982, at *34-10 (1st Dep't Aug. 8, 2022). After concluding that a six-year statute of limitations applied, the First Department ruled that OAG's § 63(12) claims were timely as to *all* of these alleged misrepresentations (and illegal conduct) within the limitations period (between 2012 and 2018), *Cohen*, 214 A.D.3d at 422—though the defendants had completed construction and submitted an offering plan far earlier (in 2009), *see Cohen*, OAG Br., 2022 WL 19039982, at *10-13. Similarly, in *People v. Allen*, the First Department affirmed a post-trial judgment concluding that Martin Act and § 63(12) claims accrued and were timely each time that the defendants made misrepresentations or engaged in other fraudulent conduct within the six-year limitation period (between 2013 and 2019)—even though the underlying investments occurred based on investment memoranda issued far earlier (in 2004 and 2005). *See* 198 A.D.3d 531, 532-33 (1st Dep't 2021); *People v. Allen*, No. 452378/2019, 2021 WL 394821, at *4 (Sup. Ct., N.Y. Cty. 2021). And that understanding accords with cases outside of the § 63(12) context, which have repeatedly concluded that each instance of wrongful conduct is a "separate, actionable wrong" that "g[ives] rise to a new claim." *CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021); *see also Manipal Educ. Americas, LLC v. Taufiq*, 203 A.D.3d 662, 663 (1st Dep't 2022) (holding "a separate exercise of judgment, and thus a separate wrong, was committed" with each hiring decision made by defendant); *State v. 7040 Colonial Rd. Assocs. Co.*, 176 Misc. 2d 367, 374 (Sup. Ct., N.Y. Cty. 1998) (holding that

each wrongful act is a separate accrual under the Martin Act, "even if the new act or practice simply repeated the misrepresentations or omissions made previously"); *U.S. Bank Nat'l Ass'n v. KeyBank, Nat'l Ass'n*, No. 20-cv-3577, 2023 WL 2745210, at *11 (S.D.N.Y. Mar. 31, 2023) (holding defendants "continuous failure to act" based on a contract "amounted to separate, actionable wrongs rather than a single breach with new instances of damage").

1. Claims For Fraud And Illegality Under § 63(12) Accrued With Each Fraudulent Certification or Submission Of A False And Misleading SFC Or Misrepresentation Concerning Mr. Trump's Financial Condition

Applying these principles here, Executive Law § 63(12) fraud and illegality claims accrued each time any Defendant submitted a new false and misleading SFC to a bank or insurer or certified the SFC as fairly and accurately representing the financial condition of Mr. Trump or made other misrepresentations about Mr. Trump's financial condition in the course of satisfying loan obligations or renewing insurance policies. And there is no question that such actions were integral to the transaction of business, as they were necessary, continuing obligations imposed on Mr. Trump as guarantor and the borrowing entity Defendant under loan covenants or required by underwriters as part of the policy renewal process.

Overwhelming evidence establishes that each individual Defendant and the Trust (through trustees Donald Trump, Jr. and Allen Weisselberg) participated in multiple acts of fraud and illegality in the transaction of business by submitting and/or certifying false and misleading SFCs to banks and insurers on or after February 6, 2016, and that each entity Defendant (admittedly bound by the Tolling Agreement) did the same on or after July 13, 2014, giving rise to separate and actionable wrongs against them that accrued within the limitations period, as detailed in the timelines provided in the Appendix to this brief and described below:

- Mr. Trump approved the SFC for 2015, which was issued after February 6, 2016, personally submitted and certified his 2015 SFC to Deutsche Bank for the Doral, Chicago, and OPO loans, and submitted and certified through an

"attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans that each of his SFCs for 2016 to 2019 and 2021 fairly presents his financial condition as of June 30 in those years and for 2020 that his net worth was no less than $2.5 billion as of June 30, 2020. *See, supra*, at 38-39; Appendix timelines.

- Donald Trump, Jr. signed the representation letters after February 6, 2016 for the 2016 to 2020 SFCs in his capacity as trustee of the Trust and officer of the Trump Organization and for the 2021 SFC in his capacity as trustee of the Trust, and submitted and certified as Mr. Trump's "attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans after February 2016 that each of the SFCs for 2016 to 2019 fairly presents Mr. Trump's financial condition in those years and Mr. Trump's net worth as of June 30 in each year is not less than $2.5 billion. *See, supra*, at 39; Appendix timelines.

- Eric Trump supervised the preparation of the 2021 SFC, approved the inflated valuation of undeveloped land at TNGC Briarcliff in November 2015 that was used for the 2015 to 2018 SFCs, provided the inflated valuations for Seven Springs used for 2012 to 2014 SFCs, signed a loan modification agreement on behalf of Seven Springs LLC and a related consent and joinder of guarantor as Mr. Trump's "attorney in fact" in 2019, and submitted and certified as Mr. Trump's "attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans that the 2021 SFC fairly presents Mr. Trump's financial condition and in 2020 that Mr. Trump's net worth as of June 30, 2020 is not less than $2.5 billion. *See, supra*, at 39-40; Appendix timelines.

- Allen Weisselberg supervised the preparation of all of the SFCs, including those issued after February 6, 2016, signed the representation letters after February 2016 for the 2016 to 2020 SFCs in his capacity as trustee of the Trust and officer of the Trump Organization, certified a summary of Mr. Trump's net worth to the servicing bank on the 40 Wall Street loan based on the SFCs from 2016 through 2019, submitted and misrepresented the 2018 and 2019 SFCs to Zurich's underwriter for the surety program renewal in 2019 and 2020, and submitted the 2015 SFC to the D&O insurers during the renewal in 2017, while failing to disclose an ongoing investigation into the company's officers that was likely to lead to a claim. *See, supra*, at 40-41; Appendix timelines.

- Jeffrey McConney had primary responsibility for preparing all of the SFCs issued after February 6, 2016 under Mr. Weisselberg's supervision and submitted the certified summary of Mr. Trump's net worth to the servicing bank on the 40 Wall Street loan in 2016 through 2019 based on the SFCs. *See, supra*, at 41; Appendix timelines.

- The Donald J. Trump Revocable Trust participated in the preparation, submission, and certification of the SFCs after February 6, 2016 through the acts of its trustees Allen Weisselberg and Donald Trump Jr. as described above. *See, supra*, at 41; Appendix timelines.

- Each of the borrowing entity Defendants—Trump Endeavor 12 LLC (Doral loan), 401 North Wabash Venture LLC (Chicago loan), Trump Old Post Office LLC (OPO loan), 40 Wall Street LLC (40 Wall Street loan), and Seven Springs LLC (Seven Springs loan)—submitted and certified the SFCs on multiple occasions after July 13, 2014 in compliance with the continuing obligations under their respective loans (including for Seven Springs LLC loan modifications on July 28, 2014 and in 2019) through the acts of the individual Defendants undertaken within the scope of their employment, including those described above that occurred after February 6, 2016. *See, supra*, at 41-42; Appendix timelines.

- The remaining entity Defendants—the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member, and the Donald J. Trump Revocable Trust—each participated in the preparation, submission, and certification of the SFCs after July 13, 2014 through the acts of the individual Defendants described above, as well as Patrick Birney and other Trump Organization employees, undertaken within the scope of their employment. *See, supra*, at 41; Appendix timelines.

Based on these acts by Defendants, each of Plaintiff's seven causes of action are timely even based on a limitations period that begins on February 6, 2016.

2. The Closing Dates Of The Loans Are Not Relevant To Determining Accrual Dates For Post-Closing Fraudulent Transactions

Defendants err in arguing that § 63(12) claims based on fraud or illegality alleged in connection with the Doral, Chicago, and Seven Springs loans are untimely because those loans closed before July 13, 2014, even for the entity Defendants they concede are bound by the Tolling Agreement. Defs. MOL at 6-7. Defendants do not seriously dispute that they participated in the certification or submission of SFCs *within the limitations period* for the Doral, Chicago, and Seven Springs transactions. Each of those false and misleading certifications and submissions are separate, actionable wrongs under § 63(12) that accrued within the limitations period. There is no plausible basis for Defendants' incongruous position they should be immunized from § 63(12) liability for repeated or persistent fraudulent conduct committed within the limitations period on the ground that they also committed separate, earlier wrongful conduct (here closing the loans using fraudulent and misleading SFCs) outside of the limitations period. To state the obvious, prior

to July 2014, OAG could not have enforced § 63(12) claims for fraud or illegality in the transaction of business based on SFCs prepared, certified, and submitted in late 2014 to 2021—which had not yet been prepared, certified, or submitted to any financial institution. And Defendants' argument contravenes the plain language and fundamental purpose of § 63(12), which makes it unlawful to engage in *any* repeated or persistent fraudulent or illegal conduct in the carrying on or transacting of any business—regardless of whether that fraud or illegal conduct happens at the initial stage of a business deal or during subsequent stages based on newly-created documents.

Defendants hinge their argument on the First Department's observation in this case that the § 63(12) fraud claims accrued when "the transactions were completed." 217 A.D.3d at 611. But the First Department did not, by using that language, casually upend longstanding precedents on § 63(12) claims or accrual principles (such as *Cohen* and *Allen*), in which fraudulent or illegal conduct subsequent to an initial business deal or event gives rise to a separate, actionable claim. *See Ezrasons, Inc. v. Rudd*, 217 A.D.3d 406, 407 (1st Dep't 2023) (declining to find that a decision "silently overruled [a] longstanding principle"). Rather, the First Department was merely underscoring that § 63(12) targets fraudulent and illegal conduct in the "transaction of business," Exec. Law § 63(12), and the court's statement is best understood as shorthand for when a claim arising from conduct that violates the statute accrues, namely, when each repeated or persistent fraudulent or illegal act in the conduct of business is completed. Indeed, a "transaction" is not limited to an initial loan closing or a sale, but rather is an "extremely broad" concept. *In re Enron Creditors Recovery Corp.*, 422 B.R. 423, 436 (S.D.N.Y. 2009), *aff'd*, 651 F.3d 329 (2d Cir. 2011); *see also Ray-Roseman v. Lippes Mathias Wexler Friedman, LLP*, 197 A.D.3d 944, 946 (4th Dep't 2021) (describing "loan transaction" to include origination as well as ongoing enforcement of a loan until it "was paid in full and the transaction completed"); Black's Law Dictionary (11th ed.

2019) definition of Transaction ("an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract"). Here, the relevant "transactions" for purposes of § 63(12) include each time Defendants engaged in fraudulent or illegal commercial conduct with another party, including but not limited to certifying or submitting false SFCs to meet obligations under existing loans or renew insurance.

Moreover, the People's § 63(12) claims for illegality based on violations of the Penal Law under the second, fourth, and sixth causes of action require the application of additional accrual principles. As to these claims, each does not accrue until "the claim becomes enforceable," *Kronos, Inc. v. AVX Corp*., 81 N.Y.2d 90, 94 (1993), which does not occur until the necessary elements of the underlying crime have been committed. Illegality based on falsifying business records in violation of New York Penal Law §175.05 (second cause of action) requires the making of a false entry in the business records of an enterprise or preventing the making of a true entry with the intent to defraud. N.Y. Penal Law §175.05. Defendants caused false entries to be made and prevented the making of true entries in the business records of the Trump Organization – the SFCs and certifications – with the requisite intent within the limitations period. *See, supra*, at 7-27. Illegality based on issuing a false financial statement in violation of New York Penal Law §175.45 (fourth cause of action) requires, with the intent to defraud, making a written instrument purporting to describe the financial condition of a person which is inaccurate in some material respect or representing in a writing that a written statement describing a person's financial condition is accurate knowing that it is materially inaccurate. N.Y. Penal Law §175.45. Defendants created false and misleading SFCs describing the financial condition of Mr. Trump and falsely represented in certifications that the SFCs were accurate with the requisite intent within the limitations period. *See, supra*, at 7-27, 38-42. And illegality based on committing insurance fraud in violation of New

York Penal Law §176.05 (sixth cause of action) requires, knowingly and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. N.Y. Penal Law §176.05. Defendants prepared and submitted knowingly false and misleading SFCs to insurers with the requisite intent within the limitations period.[11] *See, supra*, at 35-38.

With respect to Plaintiff's remaining third, fifth, and seventh causes of action under § 63(12) for conspiracy to commit the illegal acts enumerated above, a claim accrues when there is an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999). For each of the illegal acts alleged in the second, fourth, and sixth causes of action, there was an agreement among Defendants to prepare and submit false and misleading SFCs together with participation in the preparation and submission of the SFCs to banks and insurers, all within the limitations period. *See, supra*, at 7-38. Moreover, a defendant is not excused from their wrongdoing simply because some of their conduct occurred prior to a limitations period. Where the conspiracy offense consists of an agreement and a range of overt acts over time, some within and some outside the limitations period, the prosecution is timely if at least one of the overt acts occurs within the limitations period. *See People v. Leisner*, 73 N.Y.2d 140, 146 (1989). It is plain from the record that there are a large number of overt acts in furtherance

[11] Specifically in the context of insurance fraud, the crime is completed upon the submission of the fraudulent application or proof of loss to the insurer. *See People v. O'Boyle*, 136 Misc. 2d 1010, 1013-14 (Sup. Ct. N.Y. Cty 1987).

of the alleged conspiracies that occurred within limitations period, making the illegality counts based on those conspiracies timely.

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants

1. JUUL Held That Individual Corporate Officers May Be Bound By A Tolling Agreement Signed By The Corporation

In the event the Court decides to address the binding effect of the Tolling Agreement at this time, the Court should find that the Tolling Agreement binds all the individual Defendants and the Trust, in addition to the entity Defendants (as Defendants concede), and therefore the lookback period for disgorgement as to all Defendants extends to at least July 13, 2014.

Pursuant to the terms of the Tolling Agreement, the "Parties"—defined to be OAG and the "Trump Organization"—agreed to extend the six-year limitations period for any claim brought by OAG under Executive Law § 63(12). Ex. 419 at pdf 3. The "Trump Organization" is defined to include "The Trump Organization, Inc.; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing." *Id*. at n.1. The Tolling Agreement was executed on behalf of the Trump Organization by its Executive Vice President and Chief Legal Officer, Alan Garten, the company's "duly authorized representative" who represented in writing that he had authority to sign on behalf of the Trump Organization as defined in that manner. *Id*. at pdf 6.

The Court must enforce a tolling agreement according to its plain terms, the same as any other contract. *See Multibank, Inc. v. Access Global Capital LLC*, 158 A.D.3d 458, 459 (1st Dep't 2018). And the extremely broad definition of "The Trump Organization" easily encompasses all

of the individual Defendants (each of whom was a director, officer, employee, and/or person associated with or acting on behalf of the Trump Organization when the Tolling Agreement was executed in August 2021), the Trust (through its binding effect on the trustees, Mr. Weisselberg and Donald Trump, Jr.), and all of the entity Defendants (each of which is either expressly named in the definition or was, and still is, a subsidiary or affiliate of the Trump Organization).

Although Defendants argue that each individual Defendant "must be a direct signatory" to the Tolling Agreement to be bound by its terms, Defs. MOL at 15, that position is contrary to *People v. JUUL*, which is controlling law. In *JUUL*, the First Department held that the *two individual corporate officers*, neither of whom were signatories, "are bound by the tolling agreement into which [the corporation] entered with the People" that specified officers were bound. *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). Indeed, the Tolling Agreement here is not materially distinguishable from the one in *JUUL*, which covered a similar range of individuals and entities, and so the same result should follow. *Id.* (tolling agreement's definition of "JUUL" included JUUL's "parents, subsidiaries, affiliates, predecessors, shareholders, officers, directors . . . and all other persons or entities acting on their behalf or under their control.").[12] Such corporate non-signatories are bound unless they have disclaimed the agreement within a reasonable timeframe, which the non-signatories here did not do. *See* Restatement (Second) of Contracts § 306 (1981).

[12] The JUUL tolling agreement is part of the record on appeal in that case and can be found at NYSCEF Doc. No. 176 (Exhibit QQQ to Popp Affirmation), Index No. 452168/2019 (Sup. Ct. New York Cty).

2. Judicial Estoppel Does Not Apply Here

Defendants' argument based on judicial estoppel is without merit. The doctrine of judicial estoppel "prevents a party who assumed a certain position in a prior proceeding and secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed." *Becerril v. City of N.Y. Dept. of Health & Mental Hygiene*, 110 A.D.3d 517, 519 (1st Dept. 2013), *lv. denied*, 23 N.Y.3d 905 (2014); *see also Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018). Judicial estoppel does not apply for three independent reasons.

First, judicial estoppel applies only to assertions of "*factual issue*[*s*]," not legal positions. *PL Diamond LLC v. Becker-Paramount LLC*, 16 Misc. 3d 1105(A), 2007 WL 1865044, at *10 (Sup. Ct. N.Y. Cty 2007) (emphasis added); *see also Bates v Long Island Railroad*, 997 F. 2d 1028, 1037 (2d Cir.) ("The doctrine of judicial estoppel prevents a party from asserting a *factual position* in a legal proceeding that is contrary to a position previously taken by him in a prior legal proceeding.") (emphasis added), *cert. denied* 510 U.S. 992 (1993)); *Zemel v. Horowitz*, 11 Misc. 3d 1058(A), 2006 WL 516798, at *4 (Sup. Ct. N.Y. Cty 2006) (same). As courts have observed, "[t]here is no legal authority" to support "extend[ing] the doctrine of judicial estoppel to include seemingly inconsistent legal positions." *Seneca Nation of Indians v. New York.*, 26 F. Supp. 2d 555, 565 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999). Here, Plaintiff's prior assertion about the binding effect of the Tolling Agreement on non-signatories is a legal position rather than a factual position, and therefore judicial estoppel does not apply.

Second, even if the doctrine did apply to a legal position (which is not the case), it still does not apply here because the Court's prior determination was not based on Plaintiff's prior assertion. For the doctrine to apply, the party taking the inconsistent position must have benefitted

from the determination in the prior action based on the assertion it advanced in that matter; in other words, the doctrine does not require simply a prior determination rendered in favor of the party against whom estoppel is asserted, it also requires that the prior determination "endors[e] the party's inconsistent position in the prior proceeding." *Ghatani v. AGH Realty, LLC*, 181 A.D.3d 909, 911 (2nd Dep't 2020); *see also 35 W. Realty Co., LLC v. Booston LLC*, 171 A.D.3d 545, 545 (1st Dep't 2019) (declining to apply judicial estoppel because the court in the prior proceeding did not rely on the party's inconsistent position in its determination). In the Court's decision granting the People's contempt motion in the Special Proceeding, the Court did not base its decision on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor did it otherwise "endors[e]" that legal position. *Ghatani*, 181 A.D.3d at 911. Rather, the Court, after noting that Mr. Trump had submitted a "woefully inadequate" compliance affidavit, agreed with Plaintiff's statement that "any delay causes prejudice to 'the rights or remedies of the State acting in the public interest.'" *People v. The Trump Organization, Inc.*, No. 451685/2020, 2022 WL 1222708, at *2 (Sup. Ct. N.Y. Cty. Apr. 26, 2022), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023) (quoting *State v. Stalling*, 183 A.D.2d 574, 575 (1st Dep't 1992)). The Court further noted, without singling out Mr. Trump or holding that he was not bound by the Tolling Agreement, that "the statutes of limitations continue to run and *may result* in OAG being unable to pursue certain causes of action that it otherwise would." 2022 WL 1222708, at *2 (emphasis added). The Court neither based its decision to hold Mr. Trump in contempt on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor endorsed that legal position.

Third, courts do not apply estoppel doctrines where there has been an intervening "'change in [the] applicable legal context.'" *Bobby v. Bies*, 556 U.S. 825, 834 (2009) (quoting Restatement (Second) of Judgments § 28, cmt. c (1980)); *see Herrera v. Wyoming*, 139 S. Ct. 1686, 1697 (2019)

(noting that "lower federal courts have long applied the change-in-law exception in a variety of contexts" in rejecting the application of estoppel doctrines). This change-in-law exception recognizes that applying equitable preclusion doctrines in changed circumstances may not "advance the equitable administration of the law." *Bobby*, 556 U.S. at 836–837; *see Herrera*, 139 S. Ct. at 1697. Such is the case here based on the timing of the First Department's controlling decision in *JUUL*. That decision, definitively establishing that an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the "Trump Organization" definition in the Tolling Agreement here, was issued on January 5, 2023 – more than seven months *after* the hearing before this Court on the contempt motion in the Special Proceeding and nearly one month *after* OAG's appellate brief was filed in the appeal from this Court's contempt order. *Compare JUUL*, 212 AD.3d at 414 *with* Defs. 202.8-g Statement ¶¶273-74. Precluding Plaintiff from relying on the *JUUL* holding, which controls the legal issue of whether Mr. Trump and other individual Defendants are bound by the terms of the Tolling Agreement, would not "advance the equitable administration of the law," and warrants applying the change-in-law exception to judicial estoppel. *Bobby*, 556 U.S. at 836–837.

III. OVERWHELMING EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S FIRST CAUSE OF ACTION FOR FRAUD

Executive Law § 63(12) gives OAG the power to bring an action against any person or entity that engages in "repeated fraudulent or illegal acts" or "otherwise demonstrate[s] persistent fraud or illegality in the carrying on . . . or transaction of business." N.Y. Exec. Law § 63(12). As to "fraud," the basis for Plaintiff's First Cause of Action, the statute broadly construes fraud "to include acts characterized as dishonest or misleading." *People v. Apple Health and Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994), *dismissed in part, denied in part,* 84 N.Y.2d 1004

(1994). The standard requires a showing that the challenged conduct has "the capacity or tendency to deceive," or that "creates an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021); *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (1st Dep't 2003).

Moreover, when a failure to effectively supervise creates "an enterprise conducive to fraud," a § 63(12) violation has been established. *Northern Leasing*, 193 A.D.3d at 75-76. Neither an intent to defraud nor reliance need be shown. *Apple Health*, 206 A.D.2d at 267; *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008); *see also People v. Trump Entrepreneur Initiative*, 137 A.D.3d 409, 417 (1st Dep't 2016) (recognizing prior First Department precedent establishing that "fraud under § 63(12) may be established without proof of scienter or reliance"). In assessing whether this broad standard for fraud has been satisfied, courts look not only to the average recipient of fraudulent conduct, "but also the ignorant, the unthinking and the credulous." *Gen. Electric*, 302 A.D.2d at 314; *see also People v. Allen*, 198 A.D.3d 531, 533 (1st Dep't 2021) (upholding finding of fraud under § 63(12) based on fraudulent representations to investors), *leave to appeal granted*, 38 N.Y.3d 996 (2022). While courts *may* consider evidence of falsity, materiality, reliance, and causation as bearing on the capacity or tendency of the challenged conduct to deceive, *see Domino's*, 2021 WL 39592, at *11, these are not required elements of proof on a § 63(12) fraud claim, *Gen. Elect. Co.*, 302 A.D.2d at 314.

For the reasons discussed below, overwhelming evidence establishes that the SFCs were false and misleading, and therefore had the capacity or tendency to deceive.

A. The SFCs Were False And Misleading

As a threshold matter, Defendants' summary judgment motion effectively concedes that the SFCs are false and misleading. In support of their motion, Defendants assert the following four facts: (1) assets may be appraised on the basis of their market value ("As Is") or investment value

("As If"), *see* Defendants' Statement of Undisputed Material Facts (NYSCEF No. 836) ("Defs. 202.8-g Statement") at ¶ 215; (2) market value reflects the "price a willing buyer and seller would agree upon in an open and competitive market," *id*. at ¶ 216; (3) investment value reflects the value of the property to a particular investor based on "that person's (or entity's) investment requirements rather than market norms" and includes "anticipated future market and property conditions from the vantage point" of the investor, *id*. at ¶¶ 217-18 (emphasis added); and (4) many of the assets listed in the SFCs reflect "As If" investment values based on various "As If" assumptions, as opposed to "As Is" market values, *id*. at ¶¶ 226-27.

These assertions, coupled with the fact that the assets in the SFCs are represented to be "stated at their estimated current values," *see, e.g.*, Ex. 1 at -3136, which Defendants' expert acknowledged is synonymous with "market values,"[13] is tantamount to conceding the SFCs are false and misleading; the SFCs represent to users that the assets are stated at their "estimated current values," or "As Is" market values, reflecting what a willing buyer and seller would pay in an open and competitive market, which is false because according to Defendants they are stated on a completely different basis – at their "As If" investment values reflecting Mr. Trump's "investment requirements rather than market norms." Without more, Defendants' affirmative assertion that the SFCs present "As If" values, when the SFCs represent to users the values are "As Is," is sufficient for the Court to find that the SFCs are false and misleading.

[13] Defendants' expert Steven Laposa agreed that "estimated current value" was the same as "market value," and that estimated current value is what governs personal financial statements. Robert Aff., Ex. AAC at 90:5-91:133; *see also id.* at 136:22-137:3 (stating that well-informed and willing buyers and sellers are a "common theme in market valuation"). Dr. Laposa also confirmed that the concepts of investment value and market value are fundamentally different. *Id*. at 76:9-19, 137:7-138:6; 139:22-140:25.

Beyond the admitted conflict between what Defendants contend the SFC asset values are and what the SFCs themselves expressly represent the asset values to be, the SFCs are false and misleadingly because Defendants inflated asset values by employing multiple deceptive schemes. Based on undisputed evidence, Defendants inflated the value of more than a dozen assets in each year by 17-39%, including the following examples:

- For Mr. Trump's triplex, Defendants used a fictitious number for the square footage of the apartment that was triple the actual size.
- For many properties (Seven Springs, 40 Wall Street, Mar-a-Lago, 1290 AoA, TNGC Briarcliff, TNGC LA, and Trump Tower), Defendants failed to consider existing appraisals, including appraisals that the Trump Organization itself relied on to challenge tax assessments.
- For many of the clubs, Defendants added an undisclosed brand premium and included the value of membership deposit liabilities despite representing that it valued those liabilities at $0.
- For unsold condominium units at Trump Park Avenue, Defendants valued rent stabilized units as if they were unrestricted at 65 times their appraised value, used original offering plan prices instead of option prices and current market values developed by the Trump Organization's real estate brokerage arm for internal business purposes.
- For Mr. Trump's cash—an important measure of his liquidity—and escrow deposits, Defendants included amounts held by separate partnerships over which Mr. Trump exercised no control.
- For real estate licensing developments, Defendants included speculative income from deals yet to be reduced to writing and intercompany agreements despite representing that only income from signed agreements with other developers would be included.

See, *supra*, at 7-23.

But these are just the deceptive schemes that can be quantified based on *undisputed evidence*. Additional evidence that the People will present at trial (as necessary), including expert opinion testimony, will establish Defendants inflated Mr. Trump's assets to a far greater extent by employing other deceptions such as including projected future income expected years out without

any discount to present value, cherry-picking only the most favorable capitalization rates from marketing reports, and ignoring internal budget projections when calculating net operating income, to name just a few. Based on the work performed by Plaintiff's valuation experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value," Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SFCs. *See, supra*, at 23-26.

Accordingly, Plaintiff have presented sufficient evidence to establish that each SFC is false and misleading.

B. The SFCs Had The Capacity Or Tendency To Deceive Banks And Insurers

Defendants argue at length that the SFCs "were not materially misleading" to the banks and insurers involved in the transactions at issue, assuming a "materiality" standard applies here as if this enforcement action was instead an action alleging general common law fraud. Defs. MOL at 33. Their argument misses the mark because materiality is not a required element of a fraud claim under § 63(12). In this regard, § 63(12) stands "[i]n contrast" to statutes that require a showing that a misstatement was material. *Gen. Elec. Co.*, 302 A.D.2d at 314-15. Under § 63(12), the focus is on promoting a fair and functioning marketplace: § 63(12) targets "repeated" or "persistent" misstatements that distort the flow of commerce for "not only the average consumer"—let alone for reasonable counterparties—"but also 'the ignorant, the unthinking and the credulous.'" *Id.* at 314 (quoting *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 273 (1977)).

The relevant inquiry is thus whether the SFCs had "the capacity or tendency to deceive" the banks and insurers. *Northern Leasing*, 193 A.D.3d at 75. The answer is a resounding "yes" given the sheer magnitude of the inflated asset values in the SFCs each year, whether based on the

assessments by Plaintiff's valuation experts or just on the undisputed evidence presented in Plaintiff's partial summary judgment motion. *See, supra,* at Point III.A.

Additionally, beyond the gross inflation of asset values, the nature and extent of the GAAP departures also render the SFCs deceptive. As determined by Plaintiff's accounting expert Prof. Lewis, several departures from GAAP were not disclosed in the SFCs, including the addition of an internally-generated brand premium in valuing golf course properties, the failure to properly record cash, the failure to properly record escrow and reserve deposits, the failure to properly disclose changes in valuation methodology for certain properties from year to year, the failure to determine present value of projected future income when including the income in a valuation, and the failure to disclose the details of related party transactions. *See, supra*, at 26-27.

Moreover, while the People are not required to present proof that any bank or insurance executive was deceived by or relied on the SFCs, the evidence establishes that is what happened. *See People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409, 417 (1st Dep't 2016) (holding that "reliance" is not an element of the statute).

A former Head of Credit Risk Management for Deutsche Bank's PWM Americas division, Nicholas Haigh, whose approval was required for the bank's loans to the Trump Organization, reviewed evidence obtained during OAG's investigation showing that Mr. Trump reported the values for 2011 and 2012 of $525 million and $527 million, respectively, for his interest in 40 Wall Street despite possessing an appraisal showing a valuation of $200 million as of November 1, 2011, and that Mr. Trump had reported a Net Operating Income ("NOI") for 40 Wall Street that was approximately four times the actual NOI used in this same appraisal. (Ex. 1017 at 140:8-143:9, 172:2-177:24) When asked how he would have responded if these discrepancies had come to his attention during the credit review, he testified that he "would have treated [Mr. Trump's] financial

disclosure with – generally with a larger degree of skepticism and specifically [he] would have adjusted the equity value of that specific asset," adding that "if The Trump Organization could not have provided a reasonable explanation then I think I would have recommended declining the transaction." (*Id*. at 177:25-178:19)

Mr. Haigh also testified he was "shocked at the numbers reported on Mr. Trump's financial statement" for 40 Wall Street given the then-existing appraised values of that property, and that had he learned of discrepancies between NOI figures used in appraisals of 40 Wall Street and those used for Mr. Trump's SFCs he would have questioned the accuracy of other information provided and would have asked whether the bank should continue doing business with Mr. Trump. (*Id*. at 177:25-178:19; 194:2-12; 196:13-15, 237:1-241:25; 202.8-g Statement ¶632-33, 637, 646, 650-52, 657-659)

The insurance underwriters were similarly deceived by the SFCs. Zurich's underwriter, Claudia Markarian, testified that she viewed the valuations in the 2018 and 2019 SFCs to be reliable and assessed them favorably based on Allen Weisselberg's misrepresentation that they were prepared by a professional appraisal firm. (202.8-g Statement at ¶627-28, 640-41) She also relied on the cash on hand figure listed under the "cash and cash equivalents" asset category as an indication of Mr. Trump's liquidity—an important consideration in her underwriting analysis and a figure that was inflated in the 2018 and 2019 SFCs by including cash that belonged to the Vornado Partnership Interests over which Mr. Trump had no control. (*Id*. at ¶631-33, 643-45) When pressed at her deposition by Defendants' counsel on why it would have been material to her if the cash on hand was one-third lower than stated in the SFC (after excluding the amount alleged in the complaint to be Vornado cash), given that the maximum exposure on the surety program was $20 million, Ms. Markarian explained: (i) it would be a "major concern" to her if the SFCs

she reviewed were "not actually accurate," which would have "call[ed] into question the whole account," (Ex. 348 at 140:10-25); and (ii) it means there was "materially less liquidity" that may not have been sufficient for approval from management, (*id*. at 142:18-144:2).[14]

HCC's underwriter Michael Holl similarly testified that for the 2017 D&O renewal he relied on the cash on hand figure in the 2015 SFC when considering Mr. Trump's liquidity, which had bearing on Mr. Trump's ability to meet the retention obligation under the HCC policy, as well as the misrepresentation by Trump Organization personnel that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the policy.[15] (202.8-g Statement at ¶659-60)

And if further evidence were needed on whether the grossly inflated SFCs had the capacity or tendency to deceive, such evidence abounds. Where circumstances forced Defendants to abandon schemes that inflated certain asset values, Defendants hid the resulting lower values from SFC users so as not to alert them to the deception that had been going on in prior years. For example:

- When Mr. Trump donated a conservation easement over Seven Springs in 2015 and switched to the appraised value of the easement donation for Seven Springs, lowering the value from the 2014 SOFC by $234 million, he moved Seven Springs into the "Other Assets" category, which showed only an aggregate value for all assets in the category. Simultaneously, Mr. Trump dramatically increased the value of the Triplex in the "Other Assets" category in that year, which effectively masked from the user the decrease due to lowering the Seven Springs value that otherwise would have been

[14] Notably, Defendants ignore entirely the testimony of Ms. Markarian, focusing instead on the Zurich underwriter who handled the account prior to mid-2017, Joanne Caulfield. Defs. MOL at 36-37.

[15] Defendants' observation that HCC agreed in December 2016 to provide a $5 million excess policy to sit above the existing primary policy through February 17, 2017, without reviewing Mr. Trump's SFC, Defs. MOL at 37, is without import. HCC's quote was for a 2-month stub period that was, as Defendants concede, "subject to reviewing financials at renewal." *Id*.

evident.[16] (202.8-g Statement at ¶68-69, 73)

- Mr. Trump concealed the hugely-inflated value of Mar-a-Lago by including it within the "Club Facilities and Related Real Estate" category, which shows values only in the aggregate rather than providing the value of each club individually. (202.8-g Statement at ¶153-196, 285)

- Mr. McConney concealed from Mazars the internally-generated current market values for unsold units at Trump Park Avenue by deleting the column with that information from the supporting material he provided, leaving only offering prices. (202.8-g Statement at ¶92, 382-83)

Even if materiality were a required element of a § 63(12) fraud claim (which is not the case), this Court should reject Defendants' contention that the banks and insurers considered the SFCs to be immaterial. Defs. MOL at 34-38. The loan documents expressly state that the lender is relying upon the guarantee of Mr. Trump and the required certifications, including the representations they contain, to extend credit, and the guaranties require the submission of true and accurate financials. (202.8-g Statement ¶484-85, 514-16, 556, 560) Additionally bank underwriting documents cite the guarantee and the financial strength of the guarantor as support for the loans. (202.8-g Statement ¶475-76, 494, 503, 507-08, 511, 516, 520, 526, 551-53, 565, 587-96) The insurers required disclosure of Mr. Trump's SFC at renewal. (202.8-g Statement ¶623, 654) And testimony from bank and insurance company executives establish they relied on the SFCs when deciding to lend or offer insurance. *See, supra,* at 66-68.

Viewed against the backdrop of this volume of evidence, Defendants' contention has zero factual basis. Defendants cite the testimony of Tom Sullivan of Deutsche Bank stating that he was "[c]omfortable with the level of assets" reflected in Mr. Trump's SFCs. *Id*. at 34. That says nothing about whether he would have remained "comfortable" had he learned at the time that Mr. Trump's

[16] The value of the Triplex in 2014 was $200,000,000 but increased to $327,000,000 in 2015. (202.8-g Statement ¶37-40, 48)

asset values were grossly inflated through deceptive practices. Nor does Deutsche Bank's practice of applying "haircuts" to the values in a personal financial statement suggest that the enormous degree to which Defendants inflated the asset values was not material. As Mr. Haigh confirmed, and Defendants concede, Deutsche Bank applied "haircuts" to asset values as a matter of standard practice to reflect what the assets would be worth *in a liquidation scenario*. *See* Defs. 202.8-g Statement at ¶86; Ex. 1017 at 75:11-77:10; 79:7-24; 148:6-149:21. It was not intended to adjust values to account for deceptive practices by a borrower.

Defendants' reliance on the testimony of bank employees that they are unaware of any misrepresentations in the SFCs as evidence that they were not deceived by the SFCs, *see* Defs. MOL at 28-29, is similarly unavailing. The bank witnesses did not conduct any investigation to determine whether the SFCs contained false information (as OAG has done), never read the People's detailed complaint in this action, *see* Robert Aff. Ex. P at 16:16-22, Ex. AAD at 18:9-25, Ex. S at 14:10-19, and they were responding only "to the best of [their] knowledge," Ex. AAB at 229:16-230:7. The fact that these bank employees were at the time of the challenged transactions, and are now, unaware of any material misrepresentations by Defendants is simply proof that Defendants succeeded in their goal of using the SFCs to deceive.

Additionally, the fact that Deutsche Bank earned fees and interest on the loans, Defs. MOL at 35, is irrelevant to whether the bank was deceived. The undisputed facts surrounding the Doral loan application process illustrates how the bank was defrauded into offering a lower interest rate. When the bank's CRE division considered loaning funds to Trump Endeavor LLC without any personal guarantee from Mr. Trump backed by his SFC, the bank proposed a loan at a higher interest rate than what the PWM division proposed based on Mr. Trump's guarantee that was

supported by his SFC. *See, supra*, at 27-29. Mr. Trump's SFC was obviously material to the bank's consideration of the appropriate interest rate to charge.

Finally, the materiality of the annual submission of Mr. Trump's SFC to Deutsche Bank was confirmed in two exchanges between the Trump Organization and the bank. First, in September 2020, the Trump Organization advised Deutsche Bank that it would not be providing a financial statement for Mr. Trump as required by its loan documents. Following discussions between the bank's legal counsel and the Trump Organization, the bank advised that the request would be "modified to a request for an extension of time, from October 28, 2020 to December 31, 2020." (Ex. 1021 at 5) In other words, the bank insisted that Mr. Trump provide his SFC for 2020, which he did on January 12, 2021. (*Id*.) Second, when the bank became aware of the alleged misrepresentations in Mr. Trump's SFCs from OAG's public court filings and news reporting, the bank sent a letter to the Trump Organization on October 29, 2020 asking a series of questions about the SFCs. (202.8-g Statement ¶447-48) The Trump Organization refused to answer the questions, even after the bank pointed out that the company was required to provide accurate information about Mr. Trump's financial condition pursuant to various loan agreements and guaranties. (202.8-g Statement ¶449-50) As a result, the bank decided to exit its relationship with the Trump Organization once all of its outstanding loans had matured or been repaid "in light of the failure and/or refusal of the covered client organization to respond" to the bank's questions about the SFCs. (Ex. 237) Deutsche Bank would not have made the decision to exit the relationship based on the company's refusal to provide additional information about the SFCs if it did not consider the SFCs to be material.

C. Each Defendant Participated In Multiple Fraudulent Transactions

Defendants' assertion that there is no evidence showing *any* Defendant participated in or had knowledge of the fraudulent transactions here is wrong for multiple reasons. Such individuals

are liable for corporate conduct under § 63(12) if "they personally participated in the misrepresentation or had actual knowledge of the misrepresentation." *People v. Apple Health & Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994).

First, their argument is largely based on their erroneous "loan closing date" theory for applying the six-year statute of limitations. Relying on this theory, Defendants exclude from their analysis "for the sake of brevity" any participation by or knowledge of any Defendant in the preparation and submission of false and misleading SFCs on the Doral, Chicago, and Seven Springs loans. Defs. MOL at 45. That glaring omission, while convenient for Defendants, renders their entire analysis fatally flawed.

Second, Defendants' analysis focuses on the "[p]reparation of the SOFCS" without any mention of the role any Defendant played in submitting and certifying the SFCs to the banks and insurers. Defs. MOL at 45. That is another glaring omission that renders their analysis flawed because each Defendant who submits an SFC to a bank or insurer while representing that the SFC fairly presents Mr. Trump's financial condition in all material respects, even if he had no involvement in preparing the SFC, is nevertheless participating in the fraud because he either knows that the SFC is false or misleading and is affirmatively misrepresenting otherwise, or knows nothing about the veracity of the SFC and is acting with "willful blindness or conscious avoidance," which as Defendants concede establishes knowledge of fraud under the applicable standard. Defs. MOL at 44 (quoting *State v. United Parcel Serv., Inc.*, 253 F. Supp. 3d 583, 666-67 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019)).

Third, the undisputed evidence surrounding all of the fraudulent transactions that occurred within the limitations period, including transactions relating to *all five loans* and the insurance renewals—even using the later date of February 6, 2016 as the start of the limitations period—

establishes beyond any doubt that each Defendant participated in, and/or had actual knowledge of, multiple fraudulent acts that are the focus of Plaintiff's first cause of action. Defendants cannot dispute that Donald Trump, Allen Weisselberg, and Jeffrey McConney participated in the preparation, submission, and/or certification of SFCs or summaries of SFCs to banks, which is undeniable based on their own sworn testimony and the certifications and transmittals themselves. *See, supra*, at 38-41; Appendix timelines. As to the remaining Defendants, their participation in multiple fraudulent acts is similarly established by the undisputed evidence—including signed certifications—reviewed in detail in the fact section above and the timelines. *See, supra*, at 39-42; Appendix timelines.

D. Defendants' "No Harm – No Foul" Defense Is Legally And Factually Without Basis

Defendants argue that fraud under § 63(12) requires a showing that the defrauded banks and insurers suffered "harm or injury." Defs. MOL at 28. And they claim there is no harm or injury here because there was no "default, breach, [or] late payment" under the loans or insurance policies and no "complaint of harm" by the banks or insurers, each of which they claim "profited considerably from successfully consummated transactions." *Id*. These assertions are without merit.

First, § 63(12) does not require any showing of harm to the business counterparties to Defendants' fraudulent and illegal transactions. The First Department held *in this case* that OAG is not required to prove any losses were sustained to obtain disgorgement under § 63(12). *See Trump III*, 217 A.D.3d at 610. Similarly, in *People v. Ernst & Young LLP*, the First Department held that OAG may pursue disgorgement under § 63(12) without "a showing or allegation of direct losses to consumers or the public." 114 A.D.3d 569, 569-70 (1st Dep't 2014). As the court noted in *Ernst & Young*, unlike restitution, disgorgement "focuses on the gain to the wrongdoer as opposed to the loss to the victim," and the "source of the ill-gotten gains" is therefore "immaterial."

Ernst & Young, 114 A.D.3d at 569-70 (quotation marks omitted); *see Gen. Elec.*, 302 A.D.2d at 316-17 (requiring an approximation of "actual damages" for restitution). As the Court succinctly stated during a status conference: "You can't submit false financial statements. Period. That's what the Executive Law is all about and what this case is all about. So all this stuff about what the lenders thought . . . I don't think they're relevant at all." (Ex. 1049 at 44:4-9)

Here, because the People seek disgorgement and not restitution, they similarly need not allege or prove that Defendants' fraudulent and illegal conduct in connection with the transaction of business resulted in "losses" to any banks or insurers. *Trump III*, 217 A.D.3d at 610. Put another way, the Legislature has already decided that persistent fraud or illegality in business harms the public interest and has authorized the Attorney General to redress such harms by bringing civil enforcement actions under § 63(12) without any showing of additional harm suffered by the victims of Defendants' fraudulent and illegal conduct; such actions are a "proper exercise[] of the State's regulation of businesses within its borders in the interest of securing an honest marketplace," *Coventry*, 52 A.D.3d at 346, and vindicate "New York's recognized interest in maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center of the Nation," *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y.2d 574, 581 (1980). *See also J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited*, 37 N.Y.2d 220, 227 (1975) (recognizing New York's "overriding and paramount interest" as "a financial capital of the world, serving as an international clearinghouse and marketplace for a plethora of international transactions").

Second, it is beyond dispute that the banks offered the Trump Organization lower interest rates than the company otherwise would have received because of Mr. Trump's personal guarantee backed by the false and misleading SFCs. (202.8-g Statement ¶ 440-44, 462-70, 499-504, 543-50) As explained by the People's banking expert Michiel McCarty, this means the banks were harmed because they took on more risk with less profit due to Defendants' fraud. Ex. 1015 at . Based on

the differential between the interest rates that the Trump Organization paid on loans that were personally guaranteed by Mr. Trump and the market-based interest rates that would have applied to non-recourse loans secured only by the same commercial properties as collateral, Mr. McCarty calculated that "Mr. Trump obtained an improper benefit" of over $187 million between 2012 and 2022. (Ex. 1015 at ¶¶ 48-61, 79, 87, 98, 102 & App. C, Ex. 2) The insurers were also harmed because, as explained by the People's insurance expert Professor Tom Baker, they took on greater risk for lower premium. (Ex. 1047 at ¶¶ 15-20, 26)

E. The Opinion Testimony of Defendants' Experts Fails To Satisfy Defendants' *Prima Facie* Burden

Defendants offer the testimony and reports of several of their experts in support of their motion. But where the moving party relies on an expert's conclusion that "assum[es] material facts not supported by record evidence," the movant fails to establish a *prima facie* entitlement to summary judgment. *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010); *see also Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 (2002) ("Where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment."); *Amaya v. Denihan Ownership Co., LLC*, 30 A.D.3d 327, 327 (1st Dep't 2006) (finding that expert affidavit has no probative value on summary judgment where it "contained speculative, conclusory assertions" and "cited to various broad or inapt . . . rules, regulations and standards"); *Measom v. Greenwich & Perry St. Hous. Corp.*, 268 A.D.2d 156, 159 (1st Dep't 2000) ("Expert testimony as to a legal conclusion is impermissible."). That is the case here.

The opinion testimony offered by Defendants' expert Robert Unell that Deutsche Bank would not consider the inflated asset values to be material directly conflicts with testimony given by Mr. Haigh. *See, supra*, at 66-67. Indeed, Mr. Unell's testimony that Deutsche Bank would have

no "reason to have concerns about the accuracy of the SOFCs" should OAG prove "the allegations in the complaint are true," Defs. MOL at 37, is exactly the opposite of what Mr. Haigh testified to under oath and conflicts with Deutsche Bank's decision to exit the relationship when the Trump Organization refused to provide additional information to the bank about the SFCs in light of OAG's allegations of fraud, *see, supra,* at 71.

Similarly, Mr. Unell's "opinion" that the SFCs provide "ample information," including how the asset values "were calculated," Defs. MOL at 38, is without record support. (202.8-g Response ¶70) The Court need only review the SFCs to confirm that they provide woefully incomplete and misleading information, shedding almost no light on how the values were calculated. At most, the notes in the SFCs describe a variety of methods that may have been used to calculate the value of assets within a group, but they contain no information about which particular method was used for any specific asset, and the descriptions of the methods are vague, substantially inaccurate, highly misleading, and fail to note the many ways that the calculations violate GAAP. (Ex. 1014 at ¶¶ 61-137)

Likewise, Defendants' insurance expert David Miller offered an "opinion" that Zurich's underwriter "didn't rely on asset valuations at all." Defs. MOL at 38. This directly conflicts with the testimony of Zurich's underwriter, Claudia Markarian, who testified that she relied on the information contained in the SFC when preparing her Underwriters Annual Review and making the recommendation to renew the Surety program. *See, supra,* at 35-36, 67-68. Nor is there any evidentiary support for the opinion offered by Defendants' other insurance expert, Gary Giulietti, that the amount of "cash" listed in the SFCs was immaterial to Zurich's underwriter because the exposure to Zurich never exceeded $20 million. Defs. MOL at 38. As Ms. Markarian testified, the

Vornado cash that was improperly included was absolutely material to her assessment. *See*, *supra*, at 67-68.

IV. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON INDIVIDUAL PENAL LAW VIOLATIONS

Defendants argue they are entitled to summary judgment on Plaintiff's second, fourth, and sixth causes of action predicated on violations of New York's Penal Law proscribing falsification of business records, issuance of false financial statements, and insurance fraud, respectively – the illegality claims – because: (i) there is no evidence to support "a finding that the SOFCs were materially misleading" (Defs. MOL at 52); and (ii) there is no evidence to support "a finding that any Defendants had the requisite intent" to defraud the banks and insurers (Defs. MOL at 53).

The elements of each illegality claim are as follows: (i) falsifying business records requires, with the intent to defraud, the making of a false entry in the business records of an enterprise or preventing the making of a true entry; (ii) making a false financial statement requires, with the intent to defraud, making a written instrument purporting to describe the financial condition of a person which is inaccurate in some material respect or representing in a writing that a written statement describing a person's financial condition is accurate knowing that it is materially inaccurate; and (iii) committing insurance fraud requires, knowingly and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. *See*, *supra*, at 55-56.

As to falsification of business records, there are any number of false entries made out in the undisputed record before the Court--such as the misstated square footage of Mr. Trump's apartment, the inclusion of cash he did not control, the misstatement of golf club liabilities, and

many others—with evidence confirming the false entries were done with the intent to defraud.[17] Moreover, the SFCs are replete with omissions of true entries, such as entries that would describe, disclose, and take account of binding legal restrictions on assets, also with evidence confirming the omissions were done with the intent to defraud.[18] Similarly, there is little doubt that the elements are established for the issuance of false financial statements and committing insurance fraud, including the intent to defraud. These offenses apply to any person who participated in preparing the SFCs, transmitted them to any third party (or an insurer for insurance fraud), or represented their accuracy in writing to a third party (or insurer for insurance fraud). *See People v. First Meridian Planning Corp.*, 86 N.Y.2d 608, 617 (1995) ("common techniques, misrepresentations and omissions of material" and "constant nucleus" of personnel suffices to support scheme to defraud charge). Moreover, Defendants' intent to defraud is further evident from their numerous overt acts to conceal from Mazars critical information (such as appraisals and internal market prices for Trump Park Avenue unsold units) and from SFC users wild swings in asset values as circumstances forced them to abandon certain deceptive practices. *See, supra*, at 68-69.

V. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON PENAL LAW CONSPIRACY VIOLATIONS

In support of their motion for summary judgment as to Plaintiff's illegality causes of action alleging conspiracy to commit each of the illegal acts discussed above—falsification of business

[17] For example, Mr. Weisselberg and Donald Trump, Jr. refused to reduce the value for the Triplex in the 2016 SFC even after learning that the square footage of the apartment was inflated by a factor of three. (202.8-g Statement ¶44-46)

[18] For example, Trump Organization employees were aware at least as of 2010 that many of the unsold units at Trump Park Avenue were subject to rent stabilization laws yet disregarded that fact when valuing those apartments for the SFCs from 2011 to 2021. (202.8-g Statement ¶338-41)

records, issuance of false financial statements, and insurance fraud—Defendants rely on the same contentions they raise as to the illegality claims, namely that there is no evidence to support a finding that the SFCs were materially misleading or that any of Defendants had the requisite intent to defraud. Defs. MOL at 56. Because these contentions have no merit for the reasons discussed above, *see, supra*, at Point IV, they provide no basis for granting Defendants summary judgment on Plaintiff's conspiracy counts.

Defendants argue in the alternative that the illegality counts based on a conspiracy fail as a matter of law because there is no evidence of any Defendant's intentional participation in the furtherance of a plan or purpose to commit any of the illegal acts. Defs. MOL at 56. As the Court of Appeals has recognized, evidence of a conspiracy is often circumstantial and rarely direct. *People v. Flanagan*, 28 N.Y.3d 644, 663 (2017) (noting that "[i]n prosecutions for the crime of conspiracy the People'' case must usually rest upon circumstantial evidence," as defendants "with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts") (quoting *People v. Seely*, 253 N.Y. 330, 339 (1930)); *see also Iannelli v. United States*, 420 U.S. 770, 777 n. 10 (1975) ("The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the case."). A tacit understanding will suffice to show agreement for purposes of a conspiracy conviction. *See* 2 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law § 6.4, at 71 (1986). Furthermore, the participants in a conspiracy need not be fully aware of the details of the venture so long as they agree on the "essential nature of the plan." *United States v. Stavroulakis*, 952 F.2d 686, 690 (2d Cir. 1992). Finally, evidence sufficient to link a particular defendant to a conspiracy "'need not be overwhelming.'" *United States v. Atehortva*, 17 F.3d 546, 550 (2d Cir.1994) (quoting *United States v. Rivera*, 971 F.2d 876, 891 (2d Cir.1992)).

Here, there is both direct and circumstantial evidence of a conspiracy to commit the illegal acts of falsifying business records, issuing false financial statements, and committing insurance fraud. As discussed in detail above, documents and testimony establish that each of the individual Defendants, and through their conduct the entity Defendants, engaged in numerous purposeful deceptive acts as part of a plan to: (i) create false entries on business records and false financial statements by grossly inflating the value of assets listed on the SFCs; and (ii) submit the inflated SFCs to banks and insurers while attesting to their accuracy. Indeed, there is direct evidence that Mr. Weisselberg and Mr. Trump worked together as part of an orchestrated plan year after year to inflate the asset values listed in the SFCs in order to reverse engineer Mr. Trump's net worth to hit the target number desired by Mr. Trump. (Ex. 1048 at 90:9-92:17 ("[S]o Mr. Trump would call Allen [Weisselberg] and I into the office, and let's say it said he was worth $6 billion. Well, he wanted to be higher on the Forbes list, and he then said, 'I'm actually not worth 6 billion. I'm worth 7. In fact, I think it's actually now worth 8 with everything that's going on.' Allen and I were tasked with taking the assets, increasing each of those asset classes in order to accommodate that $8 billion number."), Ex. 1046 at 960:11-963:5 (confirming Mr. Weisselberg told Patrick Birney that between mid-2017 to late-2019 Mr. Trump instructed that he "likes to see [his net worth] go up" on the SFC))

Finally, in a footnote, Defendants ask the Court to reconsider their previously-rejected defense based on the "intra-corporate conspiracy doctrine." Defs. MOL at 56 n.21. They cite no new law or facts that would justify reconsideration of the Court's prior ruling that the doctrine "is irrelevant." *Trump II*, 2023 WL 128271, at *5. The Court properly determined the argument was without merit the first time for all of the reasons set forth in Plaintiff's opposition to Defendants' motions to dismiss. *See* NYSCEF No. 245 at 47-49.

VI. DISGORGEMENT IS AVAILABLE BASED ON THE NEXUS BETWEEN THE FAVORABLE LOAN AND INSURANCE TERMS AND DEFENDANTS' FRAUDULENT USE OF THE FALSE AND MISLEADING SFCs

Disgorgement is meant to deter wrongdoing by denying the wrongdoer all ill-gotten gains from wrongful conduct. *See People v. Greenberg*, 27 N.Y.3d 490, 498 (2016); *People v. Applied Card Systems*, 11 N.Y.3d 105, 125-26 (2008); *People v. Ernst & Young LLP*, 114 A.D.3d 569, 569-70 (1st Dep't 2014); *S.E.C. v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). The amount awarded for disgorgement need only be a "reasonable approximation of profits causally connected to the violation." *First Jersey*, 101 F.3d at 1474-5.

In addition to advancing their frivolous argument that disgorgement is unavailable in a § 63(12) action, *see, supra*, at Point I, Defendants assert that disgorgement is not available here because there is purportedly no causal connection between any financial benefit obtained by them and their use of the SFCs in procuring and maintaining loans and renewing insurance. Defs. MOL at 62. This argument rests entirely on Defendants' meritless contention that there is a total absence in the record of any evidence "regarding the materiality of the alleged misstatements in the SOFC." *Id*. at 63. However, as demonstrated above and in Plaintiff's 202.8-g Statement and 202.8-g Response, copious evidence establishes that the false and misleading SFCs were material to the loan decisions made by the banks' credit risk officers and the renewal decisions made by the insurers' underwriters.

In contrast to this record evidence, expert opinions directly conflicting with what the bank and insurance company decision-makers wrote in contemporaneous communications and testified to under oath are without any probative weight. *Roques*, 73 A.D.3d at 206 (noting it is well settled that expert opinion evidence that "assum[es] material facts not supported by record evidence" fails to establish a *prima facie* entitlement to summary judgment); *see also* 6B Carmody-Wait 2d

§39:138 (noting that where an expert witness's assertions "are speculative or unsupported by any evidentiary foundation, the expert's opinion should be given no probative force").

Accordingly, the Court should reject Defendants' attempt to defeat the People's disgorgement claim on summary judgment.

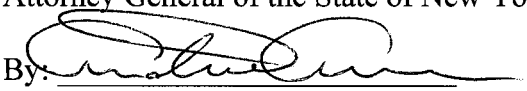
CONCLUSION

Based on the foregoing, the People respectfully request that the Court deny Defendants' motion for summary judgment in its entirety, along with such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
September 1, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

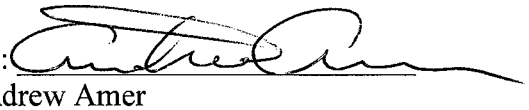
Attorney for the People of the State of New York

CERTIFICATION

With leave of Court entered on June 21, 2023, NYSCEF No. 638, Plaintiff is filing this Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment with an enlarged word count not to exceed 25,000 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 24,668 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
September 1, 2023

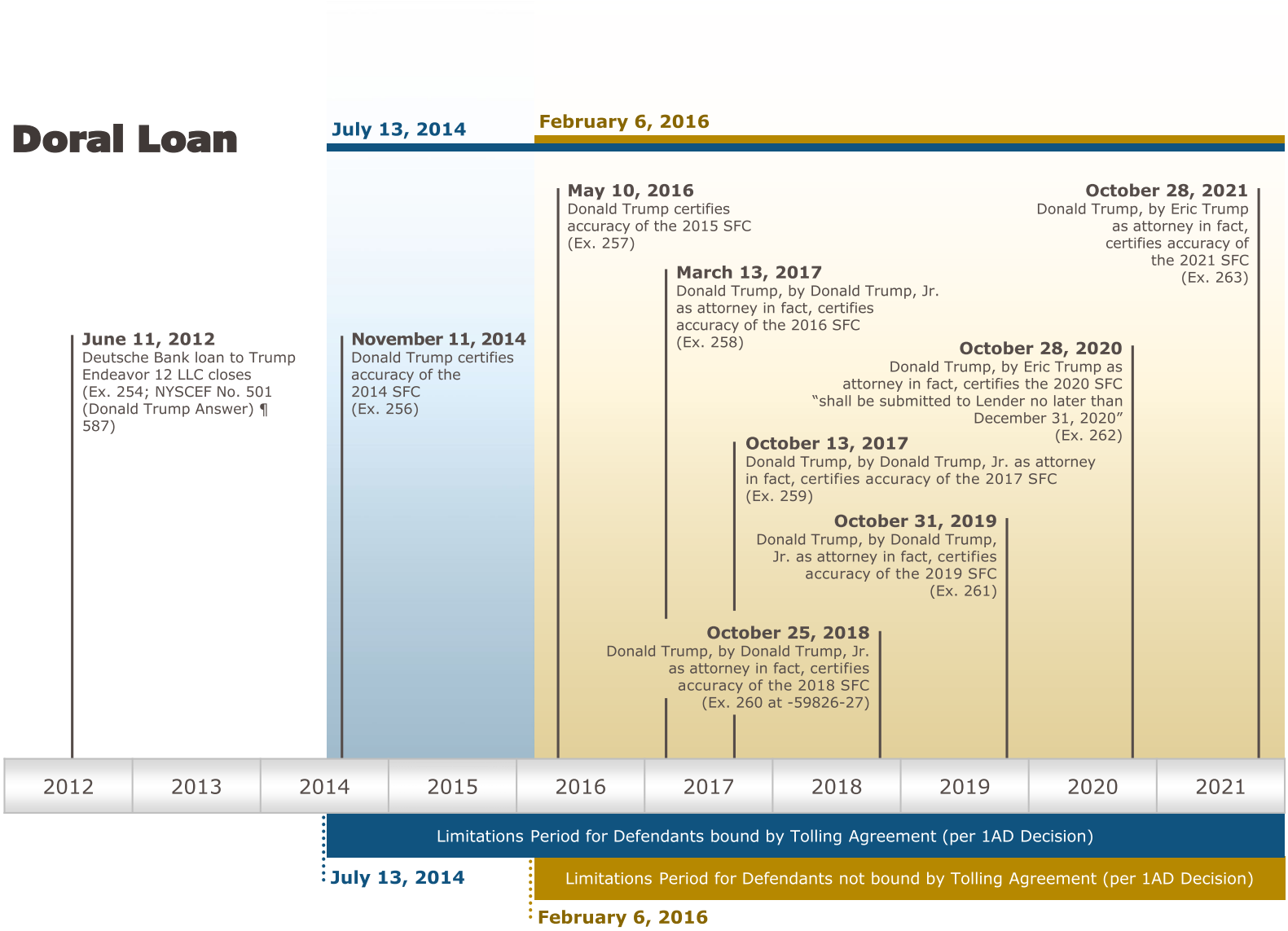
LETITIA JAMES
Attorney General of the State of New York

By: 
Andrew Amer
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

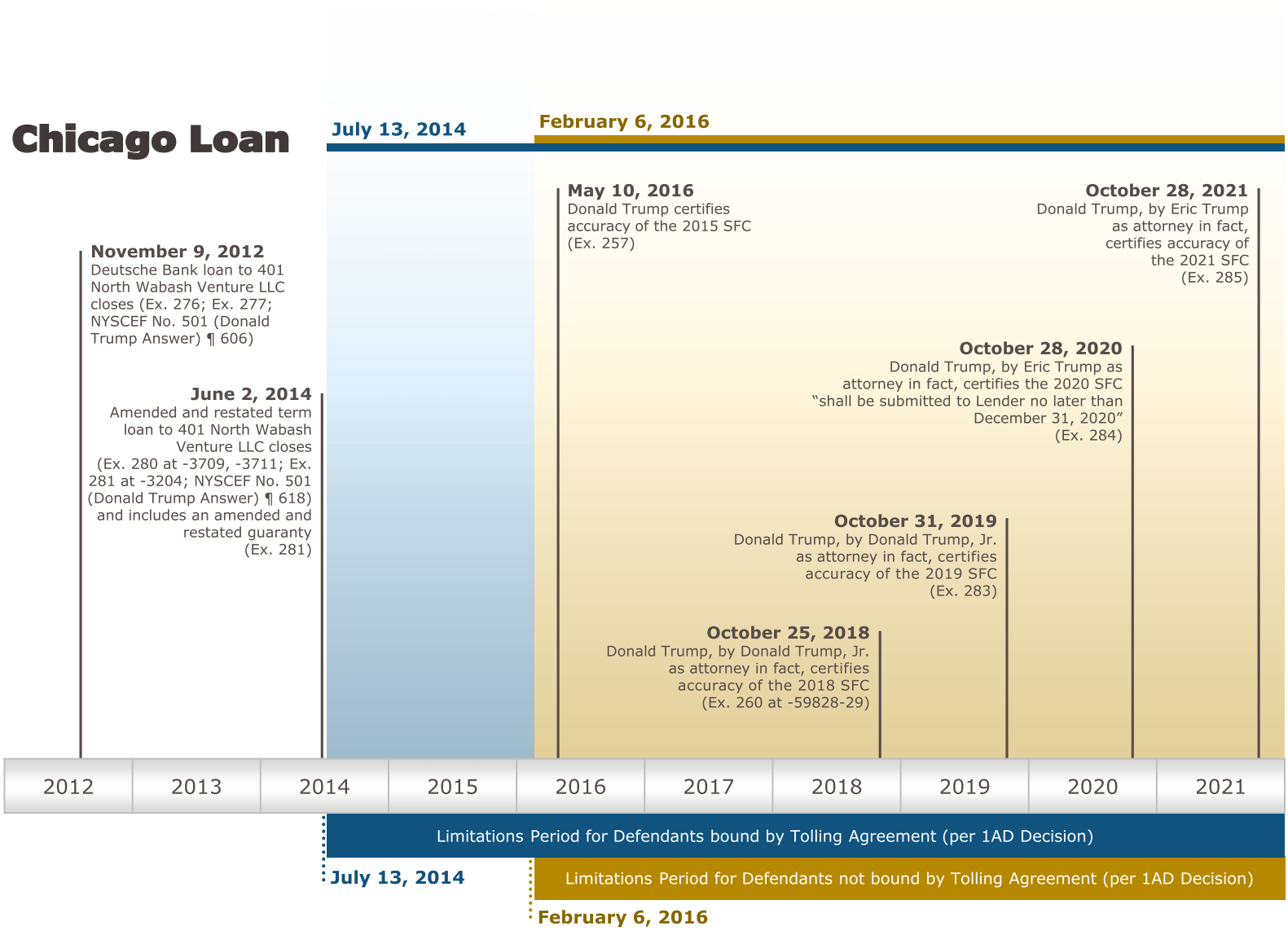
Attorney for the People of the State of New York

Appendix

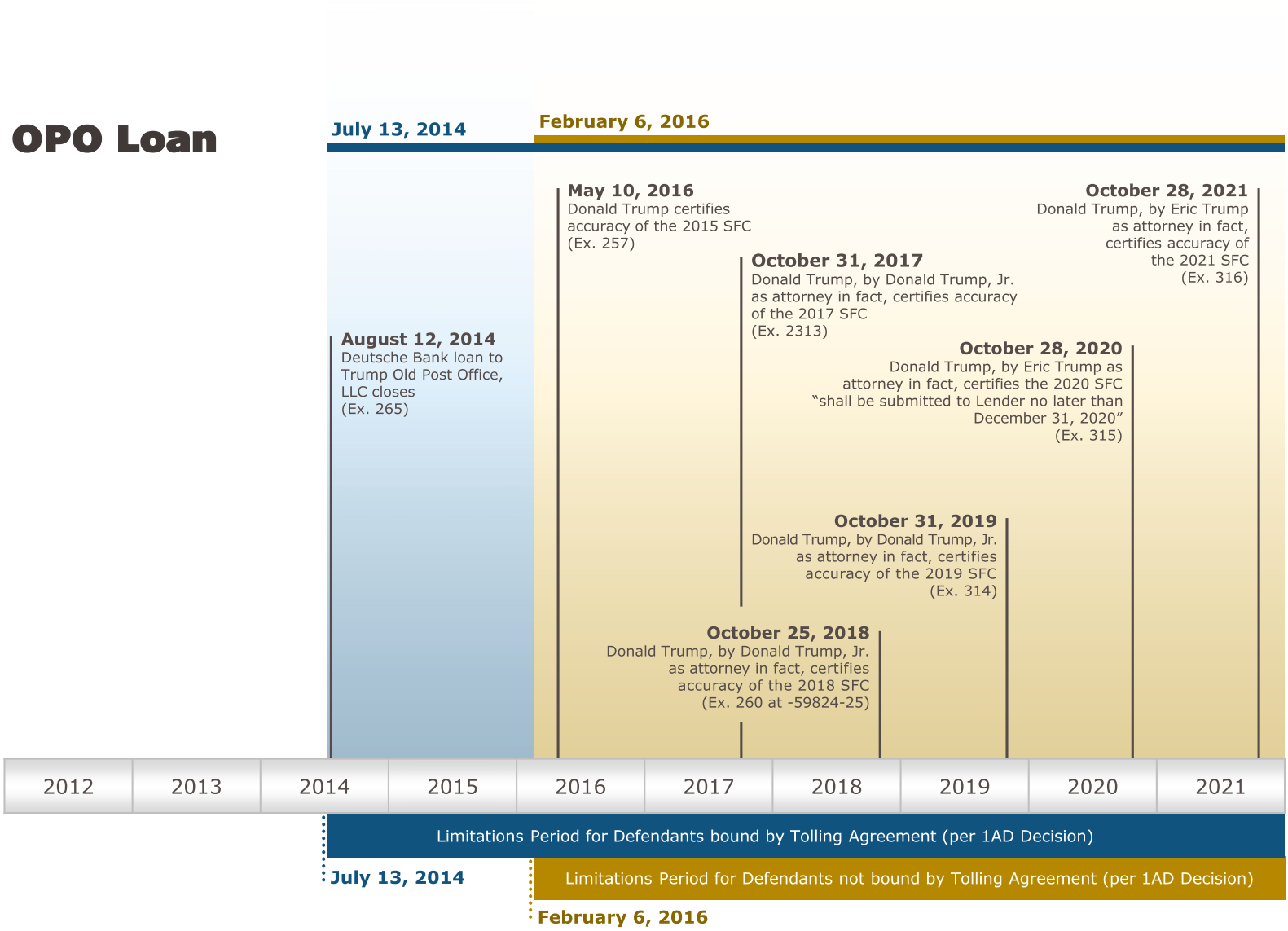
Doral Loan


July 13, 2014
February 6, 2016
June 11, 2012
Deutsche Bank loan to Trump Endeavor 12 LLC closes (Ex. 254; NYSCEF No. 501 (Donald Trump Answer) ¶ 587)
November 11, 2014
Donald Trump certifies accuracy of the 2014 SFC (Ex. 256)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
March 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2016 SFC (Ex. 258)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 262)
October 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 259)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 261)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59826-27)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 263)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

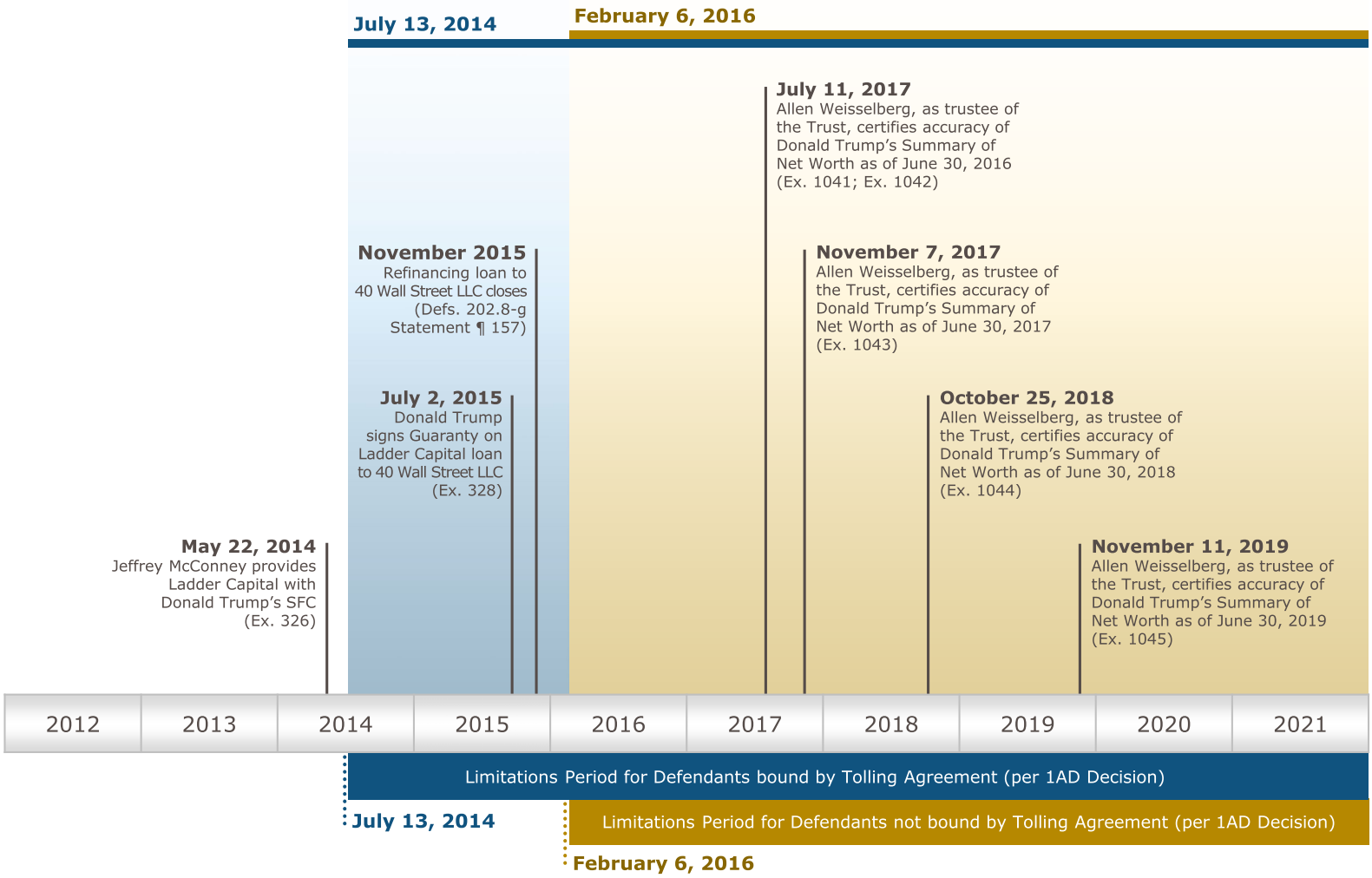
Chicago Loan



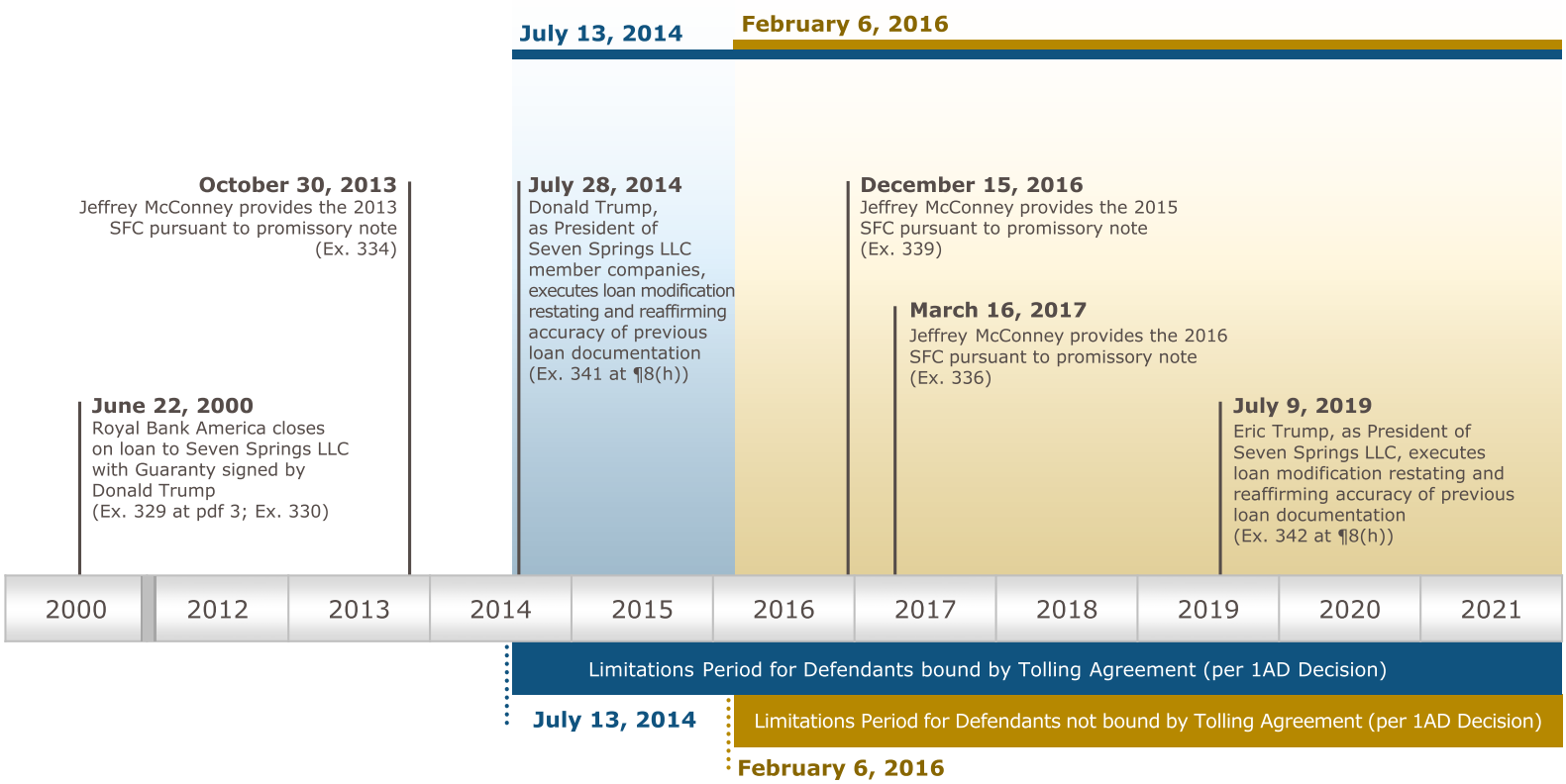
OPO Loan


July 13, 2014
February 6, 2016
August 12, 2014
Deutsche Bank loan to Trump Old Post Office, LLC closes
(Ex. 265)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC
(Ex. 257)
October 31, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC
(Ex. 2313)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC
(Ex. 316)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020"
(Ex. 315)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC
(Ex. 314)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC
(Ex. 260 at -59824-25)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

40 Wall Street Loan



Seven Springs Loan



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES II

ARGUMENT 1
I. Defendants' Authority, Disclaimer, And Disgorgement Arguments Are Supported By Record Evidence 1
A. Basic New York Practice Belies the NYAG's Position 1
B. Record Evidence Establishes Plaintiff No Longer Has The Authority and Capacity To Maintain This § 63(12) Action 5
C. The Disclaimers Establish The SOFCs Were Not Misleading 8
D. Defendants' Disgorgement Argument Has Not Previously Been Addressed And Clearly Shows That The Remedy Is Not Available In This Case In Which There Is No Martin Act Claim 10
II. The First Department's Holding Mandates Dismissal 12
A. All Causes Of Action Are Untimely To The Extent They Are Based On At Least 7 Of The 10 Transactions At Issue 12
B. The First Department Already Rejected The NYAG's New Theory—Improperly Raised for the First Time On Opposition—That Each Certification Of The SOFCs Constitutes An Independently Actionable Wrong 16
C. The Tolling Agreement Plainly Does Not Bind All Defendants 19
III. Defendants Are Entitled To Summary Judgment On The First Cause of Action 24
A. The SOFCs Were Not False Or Misleading 24
B. The SOFCs Were Not Materially Misleading 29
1. Materiality Is An Element of a § 63(12) Claim 29
2. The NYAG Fails To Rebut Defendants' Showing That Any Misstatements In The SOFCs Were Immaterial 31
a. The NYAG Ignores Reality 33
b. The SOFCs Complied With GAAP, Preventing Any Finding That The SOFCs Were Materially Misleading 35
c. NYAG Does Not Submit Competing Expert Testimony On The Materiality Of Any Alleged Misstatements Contained In The SOFCs 35
C. The First Department Already Disposed Of, And The Record Does Not Support, The NYAG's Regurgitated Allegations Regarding Several Defendants' Participation In The Alleged Fraud 36
IV. The NYAG Fails To Meet Her Burden In Response To Defendants' Showing Of Why They Are Entitled to Summary Judgment on Second, Fourth, and Sixth Cause of Action 38
V. The NYAG Also Fails To Meet Her Burden In Response To Defendants Showing Of Why They Are Entitled to Summary Judgment On The Third, Fifth, and Seventh Causes of Action 39

CERTIFICATION 42

TABLE OF AUTHORITIES

Page(s)

Cases

ACE Sec. Corp. v. DB Structured Prods., Inc.,
25 N.Y.3d 581 (2015) 14, 15, 16

Adam v. Cutner & Rathkopf,
238 A.D.2d 234 (1st Dep't 1997) 2, 4

All Boys Music, Ltd. v. DeGroot,
No. 89 CIV. 8258 (LMM), 1992 WL 51502 (S.D.N.Y. Mar. 9, 1992) 21, 38

Bank of N.Y. Mellon v. WMC Mortg., LLC,
151 A.D.3d 72 (1st Dep't 2017) 14

Barnett v. Countrywide Bank, FSB,
60 F. Supp. 3d 379 (E.D.N.Y. 2014) 14

Biondi v. Behrman,
149 A.D.3d 562 (1st Dep't 2017) 17

Bodtman v. Living Manor Love, Inc.,
105 A.D.3d 434 (1st Dep't 2013) 2

Boesky v. Levine,
193 A.D.3d 403 (1st Dep't 2021) 15

Bowne of N.Y., Inc. v. Int'l 800 Telecom Corp.,
178 A.D.2d 138 (1st Dep't 1991) 21

Brodsky v. N.Y. City Campaign Fin. Bd.,
107 A.D.3d 544 (1st Dep't 2013) 16, 19

City of New York v. FedEx Ground Package Sys., Inc.,
314 F.R.D. 348 (S.D.N.Y. 2016) 10, 11

City Trading Fund v. Nye,
72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018) 31

CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.,
No. 15-601951/08, 2009 WL 5102795 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009) 21

Deutsche Bank Nat'l Tr. Co. Tr. for Harborview Mortg. Loan Tr. v. Flagstar Cap. Markets Corp.,
32 N.Y.3d 139 (2018) 14

Deutsche Bank Nat'l Tr. Co. v. Barclays Bank PLC,
34 N.Y.3d 327 (2019) 14

Friedman v. Conn. Gen. Life Ins. Co.,
30 A.D.3d 349 (1st Dep't 2006), *aff'd as modified*, 9 N.Y.3d 105 (2007).....2

Georgia Malone & Co. v. Ralph Rieder,
86 A.D.3d 406 (1st Dep't 2011), *aff'd*, 19 N.Y.3d 511 (2012) 23

Gerschel v. Christensen,
128 A.D.3d 455 (1st Dep't 2015) 23

Grochowski v. Phx. Const.,
318 F.3d 80 (2d Cir. 2003).....11

Herman v. 36 Gramercy Park Realty Assocs., LLC,
165 A.D.3d 405 (1st Dep't 2018) 20, 22

Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.,
124 N.Y.S.3d 346 (1st Dep't 2020) 23

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
91 A.D.3d 226 (1st Dep't 2011) 12

J.P. Morgan Chase Bank v. Winnick,
350 F. Supp. 2d 393 (S.D.N.Y. 2004).....32

Kassis v. Teacher's Ins. & Annuity Ass'n,
258 A.D.2d 271 (1st Dep't 1999) 18

Kenney v. City of New York,
74 A.D.3d 630 (1st Dep't 2010) 19

Korn v. Korn,
206 A.D.3d 529 (1st Dep't 2022) 23

Matter of Liquidation of Union Indem. Ins. Co. of N.Y.,
89 N.Y.2d 94 (1996) 24

Lissak v. Cerabona,
10 A.D.3d 308 (1st Dep't 2004) 18

McGhee v. Odell,
96 A.D.3d 449 (1st Dep't 2012) 30

Mendoza v. Highpoint Assoc., IX, LLC,
83 A.D.3d 1 (1st Dep't 2011) 37

NexBank, SSB v. Soffer,
No. 652072/2013, 2018 WL 2282884 (Sup. Ct. N.Y. Cnty. May 18, 2018).....17

People v. Trump,
No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) (NYSCEF 183), slip op.....15

People v. Trump,
217 A.D.3d 609 (1st Dep't 2023) ..... *passim*

People v. Briggins,
50 N.Y.2d 302 (1980) (Jones, J., concurring).....38

People v. Direct Revenue, LLC,
No. 401325/06, 2008 WL 1849855 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008).....11

People v. Domino's Pizza Inc.,
No. 450627/2016, 2021 WL 39592 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 5, 2021).....3, 6, 31

People v. Ernst & Young, LLP,
114 A.D.3d 569 (1st Dep't 2014) 10, 11

People v. Exxon Mobil Corp.,
No. 452044/2018, 2019 WL 6795771 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019) 3, 6, 30, 31

People v. Greenberg,
27 N.Y.3d 490 (2016) 11

People v. Greenberg,
946 N.Y.S.2d 1 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439 (2013) 31

People v. Hankin,
175 Misc. 2d 83 (N.Y. Crim. Ct. Kings Cnty. 1997).....38

People v. JUUL Labs, Inc.,
212 A.D.3d 414 (1st Dep't 2023) 22

People v. Northern Leasing Sys., Inc.,
70 Misc. 3d 256 (N.Y. Sup. Ct. N.Y. Cnty. 2020) 30

People v. Orbital Publ. Grp., Inc.,
169 A.D.3d 564 (1st Dep't 2019) 30

Perez v. State,
No. 112317, 2011 WL 5528963 (N.Y. Ct. Cl. Aug. 5, 2011).....19

In re Residential Cap., LLC,
No. 12-12020 (MG), 2022 WL 17836560 (Bankr. S.D.N.Y. Dec. 21, 2022) 32

In re Robbins Int'l, Inc.,
275 B.R. 456 (S.D.N.Y. 2002), *aff'd*, 56 F. App'x 55 (2d Cir. 2003) 21

Rogal v. Wechsler,
135 A.D.2d 384 (2d Dep't 1987) 15

SEC v. First Pac. Bancorp,
142 F.3d 1186 (9th Cir. 1998) 20

Shea v. Hambros PLC,
244 A.D.2d 39 (1st Dep't 1998) 37

Solutia Inc. v. FMC Corp.,
456 F. Supp. 2d 429 (S.D.N.Y. 2006) 32, 33

St. Paul Mercury Ins. Co. v. M&T Bank Corp.,
No. 12 Civ. 6322(JFK), 2014 WL 641438 (S.D.N.Y. Feb. 19, 2014) 32

State v. Barclays Bank of N.Y., N.A.,
151 A.D.2d 19 (3d Dep't 1989), *aff'd*, 76 N.Y.2d 533 (1990) 2

State v. Rachmani Corp.,
71 N.Y.2d 718 (1988) 30

Tenzer, Greenblatt, Fallon & Kaplan v. Capri Jewelry, Inc.,
128 A.D.2d 467 (1st Dep't 1987) 1

Trs. of the Mosaic and Terrazzo Welfare, Pension, Annuity, and Vacation Funds v. Elite Terrazzo Flooring, Inc. & Picnic Worldwide,
No. 18CV1471CBACLP, 2019 WL 13414492 (E.D.N.Y. June 5, 2019) 21

U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.,
949 F.2d 569 (2d Cir. 1991) 32

Warden v. Orlandi,
4 A.D.3d 239 (1st Dep't 2004) 18

White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC,
110 A.D.3d 576 (1st Dep't 2013) 29

Winegrad v. N.Y. Univ. Med. Ctr.,
64 N.Y.2d 851 (1985) 37

Statutes

N.Y. Est. Powers & Trusts Law § 11-1.1 23

N.Y. Exec Law § 63(12) ..... *passim*

N.Y. Penal Law § 175.10 11

N.Y. Penal Law § 175.45 11

N.Y. Penal Law § 176.30 11

Other Authorities

Mark Ratterman, MAI, SRA, *Residential Property Appraisal*, Appraisal Institute (2020) 27

57 N.Y. Jur. 2d Estoppel, Etc. § 63 24

Defendants[1] hereby submit this reply in support of Defendants' Summary Judgment.

ARGUMENT

I. Defendants' Authority, Disclaimer, And Disgorgement Arguments Are Supported By Record Evidence

The NYAG claims it is "frivolous" for Defendants to argue on summary judgment that (1) the NYAG has failed to meet her burden to present sufficient evidence establishing her authority to pursue her § 63(12) allegations in this case; (2) the NYAG has failed to rebut Defendants' showing that the SOFCs contained disclaimers that put reasonable users on notice not to rely upon them; and (3) that disgorgement is not an available remedy in this case. (NYSCEF 1277 at 51–55). The NYAG claims that since Defendants "have plowed this same field twice before without success," at the preliminary injunction and motion to dismiss stages (NYSCEF 1277 at 51–53), these arguments are now somehow precluded at the summary judgment stage. However, such arguments ignore basic tenets of civil procedure, misapprehend and mischaracterize the Defendants' position, and deliberately distort the record.

A. Basic New York Practice Belies the NYAG's Position

Any party to a civil action is permitted to raise arguments at the summary judgment stage, when where those arguments proved unsuccessful at an earlier stage of the litigation due to the fundamental differences in the applicable burdens of proof and evidentiary standards. *See, e.g.*, *Tenzer, Greenblatt, Fallon & Kaplan v. Capri Jewelry, Inc.*, 128 A.D.2d 467, 469 (1st Dep't 1987) ("Because the two motions are distinguishable, the denial of a prior motion to dismiss a complaint for failure to state a cause of action does not bar a subsequent motion for summary judgment.") citing *M. Dietrich, Inc., v. Bentwood Television Corp*., 56 A.D.2d 753, 754 (1st Dep't 1977));

[1] The First Department dismissed Ivanka Trump from this action, and this Court's ruling on this Motion should reflect such dismissal. (NYSCEF 640).

Friedman v. Conn. Gen. Life Ins. Co., 30 A.D.3d 349, 349–50 (1st Dep't 2006), *aff'd as modified*, 9 N.Y.3d 105 (2007) ("The doctrine of law of the case is inapplicable where . . . a summary judgment motion follows a motion to dismiss, since the scope of review on the two motions differs; the motion to dismiss examines the sufficiency of the pleadings, whereas summary judgment examines the sufficiency of the evidence underlying the pleadings.") (citations omitted); *Bodtman v. Living Manor Love, Inc*., 105 A.D.3d 434, 434 (1st Dep't 2013) ("[C]ontrary to the motion court's finding that its prior denial of a motion to dismiss pursuant to CPLR 3211 precluded it from considering this issue, the prior ruling did not constitute law of the case, given the difference in procedural posture.") (citation omitted); *State v. Barclays Bank of N.Y., N.A*., 151 A.D.2d 19, 21 (3d Dep't 1989), *aff'd*, 76 N.Y.2d 533 (1990) ("The law of the case doctrine . . . is inapplicable here however, for unlike a motion for summary judgment which searches the record and assesses the sufficiency of the parties' evidence, a motion to dismiss for failure to state a cause of action merely examines the adequacy of the pleadings. The two motions being distinctly different, ***defendant had an unimpaired right*** to resort to summary judgment.") (emphasis added). This well-settled precedent refutes fully the NYAG's position.

This Court's rejection of arguments at the motion to dismiss stage simply does not preclude Defendants from raising these arguments again at the summary judgment stage.[2] The Court must now evaluate them in light of the well-developed evidentiary record and free from the motion to dismiss requirement of presuming Plaintiff's allegations to be true. *See Adam v. Cutner & Rathkopf*, 238 A.D.2d 234, 240–41 (1st Dep't 1997).

[2] The Court's prior rulings made no mention of these arguments in the summary judgment context and could not possibly preclude Defendants from arguing that "[u]nlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims." (NYSCEF 835 at 38).

Indeed, the NYAG has herself pointed to these basic distinctions in burdens of proof and applicable evidentiary standards, arguing previously that the court should not consider certain § 63(12) cases Defendants cited because they were not decided at the dismissal stage, but rather on developed evidentiary records. (*See* NYSCEF 245 at 27) (arguing that the *Domino's* case did not support "Defendants' motion to dismiss *at the pleadings stage*" because the case "suggest[ed] that despite the proof found to be inadequate at trial the action was properly pleaded in the first instance") (emphasis added); (No. 2023-00717, NYSCEF 24 at 32) (arguing that multiple cases, including *Domino's* and *Exxon Mobil*, were "irrelevant because they address whether a particular § 63(12) complaint had plausibly alleged a § 63(12) violation [ ] or whether the facts adduced at a particular trial had proven that the defendants had committed a § 63(12) violation" rather than whether the NYAG's "complaint plausibly alleged conduct that fits squarely within § 63(12)") (citations omitted). The NYAG's sudden claim that Defendants' summary judgment arguments based on the "facts adduced" through discovery are "frivolous" is both untenable and disingenuous.

Nonetheless, the NYAG claims the Court should reject Defendants' authority, disclaimer, and disgorgement arguments because they are "threshold litigation questions of justiciability" that "are no different now that they are being raised in the context of a summary judgment motion." (NYSCEF 1277 at 55.) But, as recognized by an overwhelming line of established law, they ***are different***. Defendants' authority/capacity argument in connection with this motion focuses on the NYAG's failure to introduce sufficient evidence in this record that was obtained through discovery and could not have formed the basis of the arguments supporting the motion to dismiss. The disclaimer argument likewise is based on the actual record evidence. Further, the disgorgement argument had not even been presented previously, thus, there is no good faith basis for arguing

that it is foreclosed by prior rulings because the Court simply could not have considered and rejected arguments that were never before presented.

Defendants have every right to argue on summary judgment that the NYAG failed to prove her claims based on the actual record evidence. The NYAG may disagree with Defendants' legal position, but that does not render Defendants' summary judgment arguments "frivolous."

The NYAG's argument that the First Department rejected Defendants' arguments, thereby precluding any mention on summary judgment is similarly false. The First Department only observed that through § 63(12) the Legislature "authoriz[ed] the Attorney General ***to sue*** for any repeated or persistent fraud or legality." *Id.* (emphasis added). The First Department did not make any determination that such repeated or persistent fraud or legality actually exists *in this case*. Further, the First Department only considered the NYAG's authority at the "dismissal" stage based on what she had "allege[d]" because that was the question before the Court on appeal. *Id.* In that procedural posture, the Court, as it must, accepted the facts alleged as true and did not (and could not) address the now developed evidentiary record. As such, the First Department did not (and could not) relieve the NYAG of her burden *on summary judgment* "to establish a prima facie case" by "produc[ing] admissible evidence to support [her] claims," *Adam*, 238 A.D.2d at 240, including that she has authority to continue to maintain this suit. The First Department similarly did not reject Defendants' disgorgement argument which, as the NYAG concedes, was not made until summary judgment. (NYSCEF 1277 at 54.) Thus, the First Department could not explicitly or implicitly reject a legal argument Defendants never before presented. Instead, it determined only that under § 63(12) the NYAG "*may apply* . . . for disgorgement" and that "the failure to allege losses *does not require dismissal* of a claim for disgorgement." *People v. Trump*, 217 A.D.3d 609, 610 (1st Dep't 2023) (emphasis added). However, as explained *infra* I.D., she may only recover when the

underlying New York statutes that she seeks to vindicate through her § 63(12) action provide for disgorgement as an available remedy. (NYSCEF 835 at 70–74.)

B. Record Evidence Establishes Plaintiff No Longer Has The Authority and Capacity To Maintain This § 63(12) Action

The NYAG fully misapprehends (or deliberately mischaracterizes) Defendants' standing and capacity arguments, labeling them a "rehash" and "frivolous." But such arguments miss the mark by ignoring, willfully or otherwise, the fundamental distinction detailed above between arguments advanced at the injunctive or dismissal stage, and those on summary judgment. Here, Defendants no longer argue relative to threshold legal questions. The prior arguments had their focus on the inability of the NYAG to commence a § 63(12) action based on the facts as alleged, and accepted as true, in her Complaint. The basis of Defendants' argument was that her theory of recovery was flawed as a matter of law, irrespective of the presumption of correctness of the facts plead. Now, however, with the actual record evidence in hand (which was not previously available to Defendants), the summary judgment arguments are based on the fact that there is no legitimate sovereign interest in lawful, private business transactions between sophisticated commercial parties, the NYAG's continued maintenance of a § 63(12) action is improper.

The NYAG's prior opposition to the Defendants' standing and capacity arguments focused on the right and power of her office to commence actions to "enjoin fraudulent and illegal business activity." (NYSCEF 158 at 12.) The NYAG also previously maintained that "§ 63(12) gives OAG the capacity to maintain actions, like this one, alleging that defendants committed repeated or persistent fraud or illegality in conducting business." (No. 2023-00717, NYSCEF 24 at 2.)

But where, as here, the record evidence now establishes there was no misconduct or fraudulent activity, the NYAG ***can no longer maintain*** a 63(12) action, and Defendants are entitled to summary judgment. Indeed, Plaintiff herself acknowledged these limitations on the

scope of her § 63(12) authority, arguing "OAG's authority is circumscribed by the express language of the statute: OAG may sue only those persons who have committed repeated or persistent fraud or illegality in the conduct of business in this State. ***And to obtain relief, OAG must prove its case***." (No. 2023-00717, NYSCEF 24 at 29–30, n.4) (emphasis added). This is precisely the point of Defendants' current summary judgment argument, namely, that ***the NYAG did not "prove its case"*** and is not entitled to proceed further as the conduct at issue is not within the scope of her statutory authority and capacity.

Thus, as in *Exxon*, "here [there is] no evidence adduced" in the record that the certification of the SOFCs "had any market impact at the time they were" submitted, or that those SOFCs had any capacity or tendency to deceive. *People v. Exxon Mobil Corp.*, No. 452044/2018, 2019 WL 6795771, at *5 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019). Likewise, in *Domino's*, the court declined to extend the NYAG's police power to disputes over "bilateral business transactions." *People v. Domino's Pizza Inc.*, No. 450627/2016, 2021 WL 39592, at *12 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 5, 2021). Therein, the court determined that commercial disputes (such as those reflected by the record now before this Court) "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *Id.* at *12 (emphasis in original).

The actual evidence now proves any purported dispute is a strictly private matter between sophisticated commercial parties, and therefore, based, *inter alia*, on *Domino's* and *Exxon*, the NYAG cannot establish a legitimate interest within the proper ambit of the § 63(12) statutory framework. The record evidence establishes that "the transactions before the Court are complex, bilateral business transactions, none of which involve an impact on the public or implicate the public market in any way," meaning that "§ 63(12) simply does not extend to these transactions"

and "the NYAG cannot now stand in those sophisticated counterparties' shoes to vindicate a wrong that the counterparties never complained of and that the Defendants never perpetrated." (*See* NYSCEF 835 at 38–39.) Defendants relied upon loan agreements, contracts, and communications that showed each transaction at issue "was governed by extensively negotiated agreements fully defining the parties' respective obligations, what conduct constituted any breach, and, importantly, the consequences of any breach." (NYSCEF 835 at 37.) This documentary evidence established that the "parties' relationships were fully defined and self-contained" such that the "only parties impacted by the indisputably successful transactions were the specific private parties to those transactions"—leaving no authority for NYAG to intervene. (NYSCEF 835 at 37–38.) Defendants also cited deposition testimony from numerous representatives of the parties to these transactions that established the respective counterparties suffered no harm or injury, and never asserted any default or breach. (*See* NYSCEF 835 at 39–42 (citing deposition testimony of David Williams, Rosemary Vrablic, and Tom Sullivan).) Simply put, the record evidence now properly before this Court on summary judgment establishes that there is no connection between the conduct the NYAG seeks to enjoin, and some harm (or threat of harm) suffered by the People (*i.e.,* the public at large). (NYSCEF 835 at 34.) Thus, based on the actual evidence in this record, the NYAG cannot establish she has any legitimate role in the policing of ***what this record proves are*** private transactions that did not involve any private or public fraud or any impact on the public marketplace. Because the record evidence now proves there is no sovereign interest to vindicate, the action must be dismissed as a matter of law. The ***record here proves*** there is no legitimate sovereign interest in purely private commercial transactions, and thus the NYAG has not made out a case for § 63(12) relief within the appropriate scope of her statutory authority. Simply put, the

record evidence proves the NYAG has no authority to step in a decade later and enforce a private contract provision *post hoc* by providing her own theory of recovery and remedy.

C. The Disclaimers Establish The SOFCs Were Not Misleading

The record evidence now proves the disclaimers formed an integral part of the SOFCs and thus the Defendants are entitled to rely on the validity and impact of those disclaimers.[3] Indeed, the NYAG has not even attempted to introduce any evidence supporting her initial (and untenable) claim that the disclaimers benefit only Mazars. Moreover, those disclaimers, accompanied by the notes to the SOFCs, placed users (like DB and Zurich) on notice they needed to conduct their own analyses with respect to the information contained in the SOFCs when making lending and underwriting decisions.

Each SOFC contained extensive notes and disclosures, and each was accompanied by an Independent Accountants' Compilation Report ("IACR"). (NYSCEF 1029 ("Bartov Aff.") ¶ 19.) The notes, disclosures and IACRs (collectively, the "disclaimers") form one complete, integrated presentation made available to any SOFC user, and thus "must be and are considered together." (Bartov Aff. ¶ 20.) Indeed, consistent with established accounting practices, the SOFC's incorporated the IACRs by reference. *Id*. *See also*, (NYSCEF 872 ("Flemmons Aff.") ¶ 14, Ex. A ¶ 41.) (compilation financial statements are "not relied upon in a vacuum" and must be "reviewed in concert with the accountant's report"). Moreover, while the NYAG "seeks to separate the reporting in the accountants' compilation report from that of the SOFC itself . . . the AICPA standards dictate that they are issued together and mutually dependent." (Flemmons Aff., Ex. A ¶

[3] Although at the preliminary stages of this proceeding this Court held that Defendants were not protected by the SOFC's disclaimers (*See e.g.*, NYSCEF 183, 459), Defendants are entitled to raise disclaimer-related arguments at the summary judgment stage, given that these arguments are now supported by undisputed evidence. Additionally, the NYAG is simply wrong to suggest the First Department rejected Defendants' arguments related to disclaimers in its review of this Court's rulings on the motions to dismiss. (NYSCEF 1277 at 55.) Indeed, the word disclaimer does not appear once in the First Department's decision. *Trump*, 217 A.D.3d 609.

53.) The NYAG has not introduced any evidence to rebut this established accounting practice. Indeed, the NYAG simply "ignores the reality that in all years the accountants' compilation reports and the SOFCs were in fact provided to users together as a unified whole" and that her "own exhibits also confirm that the accountants' report and the SOFCs were issued together, cross-reference each other, and therefore could not reasonably have been viewed by users as separate documents that were not dependent on each other." (Flemmons Aff., Ex. A ¶ 54.) This evidence is unrebutted. The SOFCs also incorporate the IACRs by reference. (Bartov Aff., Ex. A ¶¶ 43, 49 – 50.) Thus, the NYAG's allegation (Complaint ¶13) that "boilerplate disclaimers in the accountant's compilation report accompanying each Statement" should not inure to the Defendants is wholly unsupported by the evidentiary record.

Also, these disclaimers[4] fully and adequately informed users "that the SOFC provided very little assurance and were replete with GAAP departures. . . . ***In other words, user beware***." (Flemmons Aff., Ex. A ¶ 44) (emphasis added.) "[T]he language that . . . Mazars [] put in its accountant's report . . . really served as the highest level of warning to any user of the financial statements." (Robert Aff., Ex. AH at 171:20-25.) "Thus, they put sophisticated users of the SOFCs, such as Deutsche Bank, for whom the SOFCs were prepared, on complete notice to perform their own diligence, which a sophisticated user like Deutsche Bank would have performed anyhow even in the absence of such disclaimers." (Bartov Aff. ¶ 21.)

The inclusion of these disclaimers nullifies any argument the SOFCs had a "capacity or tendency to deceive." Indeed, the SOFCs were not materially misleading, because, *inter alia*, the disclaimers and notes to the SOFCs provided recipients with all the information they needed to

[4] The disclaimers are summarized in the Defendants' motion for summary judgment. (NYSCEF 835 at 41-43, 55-56). The specific language may be found in Robert Aff., Exs. C, D, E, F, G, H, I, J, K, L, M.

make their own informed decisions, including the decision to require additional information from the Defendants and to seek information from other sources.[5] With respect to the loans and insurance policies at issue in this case. These disclaimers identify and describe the numerous departures from GAAP as well as the subjective nature of the SOFC property valuations. (Bartov Aff. ¶ 21.) Thus, the disclaimers "put sophisticated users of the SOFCs, such as Deutsche Bank . . . on complete notice to perform their own diligence. . .." (*Id.*)

D. Defendants' Disgorgement Argument Has Not Previously Been Addressed And Clearly Shows That The Remedy Is Not Available In This Case In Which There Is No Martin Act Claim

As explained above, contrary to the NYAG's suggestion, it is procedurally proper for Defendants to raise on summary judgment, their legal argument that disgorgement is unavailable to the NYAG as a matter of law. *Supra* § I.A.. As presented for the first time[6] in the Defendants' memorandum in support of the motion for summary judgment, disgorgement is *simply not available in this case*. The NYAG labels this argument "frivolous" but fails to offer any substantive rebuttal and/or cite any contrary authority.

While § 63(12) allows the NYAG to recover "restitution," "[d]isgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim." *People v. Ernst & Young, LLP*, 114 A.D.3d 569, 570 (1st Dep't 2014). But there is no basis for disgorgement as a remedy in a § 63(12) case unless there is statutory authorization.

In any § 63(12) case, "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced." *City of New York v. FedEx Ground Package Sys., Inc.,* 314

[5] Robert Unell, an expert on commercial real estate lending, testified that one such disclaimer paragraph amounted to a "worthless clause in the language, [making it so that] no lender relies on these[,]" and that such language was sufficient to "cover the user and their analysis" (Robert Aff., Ex. AL at 183:2-4, 193:17-194:22).

[6] Also as noted above, a legal argument presented for the first time on summary judgment cannot possibly have been rejected previously by either this Court or the First Department. *See supra* at I.

F.R.D. 348, 362 (S.D.N.Y. 2016). However, the NYAG cannot pursue an unenumerated remedy where the Legislature has "provided precisely the remedies it considered appropriate" in the statutes she seeks to enforce. *Grochowski v. Phx. Const.,* 318 F.3d 80, 85 (2d Cir. 2003) (citing *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n,* 453 U.S. 1, 15 (1981)). Disgorgement is simply not an enumerated remedy under § 63(12) alone nor is it available via the statutes underlying the NYAG's Second through Seventh Causes of Action. Section 63(12)'s "text . . . makes clear [that] the State is generally limited to the three enumerated remedies when bringing actions under that provision—injunctive relief, restitution, and damages[.]" *FedEx,* 314 F.R.D. at 361; *see People v. Direct Revenue, LLC,* No. 401325/06, 2008 WL 1849855, at *7–8 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008) ("[W]hile the Executive Law and the GBL permit monetary relief in the form of restitution and damages to consumers, the statutes do no[t] authorize the general disgorgement of profits received from sources other than the public."). Likewise, none of the three penal laws underlying the NYAG's Second through Seventh Causes of Action allow for disgorgement. Rather, they provide that a violation constitutes a misdemeanor or felony in varying degrees, thereby subjecting a violator to limited fines and incarceration. *See* N.Y. Penal Law § 175.10 ("class E felony"); *id.* § 175.45 ("class A misdemeanor"); *id.* § 176.30 ("class B felony" if fraud in the first degree).

The NYAG's continued reliance on the *Greenberg* and *Ernst & Young* cases for the proposition that disgorgement is available here is misplaced. In both cases, the NYAG brought a § 63(12) ***and also alleged a violation of the Martin Act, which does provide for disgorgement as an available remedy***. *Ernst & Young, LLP,* 980 N.Y.S.2d at 456 (noting that the NYAG brought causes of action "under New York's Executive Law [§ 63(12)] *and* the Martin Act [General Business Law § 353]"). (emphasis added); *People v. Greenberg,* 27 N.Y.3d 490, 497 (2016)

(finding that disgorgement is "is an available remedy *under the Martin Act*") (emphasis added)). These cases simply confirm disgorgement is only available in a § 63(12) case where the NYAG seeks to enforce an underlying statute that provides for disgorgement as an available remedy. ***The NYAG has not identified a single New York case where disgorgement was awarded under § 63(12) where the underlying statute did not provide for disgorgement.*** Defendants are therefore entitled to summary judgment on the NYAG's claim for disgorgement.[7]

II. The First Department's Holding Mandates Dismissal

A. All Causes Of Action Are Untimely To The Extent They Are Based On At Least 7 Of The 10 Transactions At Issue

The NYAG ignores the clear mandate of the First Department, claiming in her opposition that Court held "that only Ivanka Trump had engaged in conduct that fell altogether outside of [the statutory periods], but otherwise rejected the remaining Defendants' arguments for dismissal based on the limitations period." (NYSCEF 1277 at 56). Indeed, the NYAG completely ignores that the First Department expressly and affirmatively dismissed the NYAG's claims *as to all Defendants*—not just Ivanka Trump—to the extent those claims are based on transactions that were completed outside of the applicable statutory periods. *Trump*, 217 A.D.3d at 610 (dismissing "as time-barred, the claims against defendant Ivanka Trump ***and the claims against the remaining defendants*** to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August

[7] The NYAG has also failed to produce sufficient evidence of any causal link supporting her disgorgement claim. *See J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 91 A.D.3d 226, 233 (1st Dep't 2011) (requiring "a 'reasonable approximation of profits causally connected to the violation.'" (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)), *rev'd on other grounds*, 21 N.Y.3d 324 (2013). The record is clear, the NYAG has not produced evidentiary proof that any alleged misstatement actually affected a financial institution's decision to issue a loan or insurance policy to Defendants or actually caused the Defendants to make any profits. On the contrary, as explained above and in Defendants opening summary judgment brief, testimony from experts as well as representatives of the actual banks and insurance underwriters who executed the financial transactions with the Defendants that are at issue in this case establishes that the banks and insurance companies did not consider the SOFCs and the estimates they contained to be material to their decisions to make certain loans or underwrite particular polices. *See supra* § III.B. (NYSCEF 835 at 33–42.)

2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)" (emphasis added). The First Department then specifically found that "accrued" means when "the transactions were completed", and further held "the continuing wrong doctrine does not delay or extend these periods." *Id.* at 611.

Thus, the NYAG's causes of action against Defendants bound by the tolling agreement are to be dismissed to the extent they are based on transactions completed prior to July 13, 2014, and her allegations against all other Defendants are to be dismissed to the extent they are based on transactions completed prior to February 6, 2016. The First Department provided a roadmap for the Court to follow in implementing this mandate when it dismissed defendant Ivanka Trump from the case. First, the Court determined that Ivanka Trump "was no longer within the agreement's definition of 'Trump Organization' by the date the tolling agreement was executed" and then the Court determined that "[t]he allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016." *Id.* at 611–12. Thus, the Court dismissed all claims against her "as untimely." *Id.* at 612. Far from rejecting Defendants' arguments for dismissal based on the statute of limitations, the First Department imposed a clear mandate for the NYAG, and this Court, to follow.

Contrary to what the NYAG suggests, the closing dates of the loans at issue necessarily establish when each allegedly fraudulent transaction was "completed" and the statute of limitations began to run. *Id.* at 611. The NYAG's argument that these closing dates are "not relevant" (NYSCEF 1277 at 61) for determining accrual dates contravenes the First Department's decision and the cases cited therein, is unsupported by New York law and is merely an attempt to hide from the undisputed fact that many of the transactions at issue were completed prior to July 13, 2014 making them untimely as to all Defendants—regardless of the tolling agreement's applicability.

See Trump, 217 A.D.3d at 611 (citing *Boesky v. Levine*, 193 A.D.3d 403, 405 (1st Dep't 2021) ("cause of action for fraud accrued . . . when plaintiffs entered into the allegedly fraudulent transactions"), and *Rogal v. Wechsler*, 135 A.D.2d 384, 385 (2d Dep't 1987) ("Statute of Limitations commences to run at the time of the execution of the contract.")).

The First Department's holding that claims based on loan transactions accrue when they are completed—i.e., when the loan closed—accords fully with New York accrual jurisprudence. The Court of Appeals has "repeatedly rejected accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach." *ACE Sec. Corp. v. DB Structured Prods., Inc.,* 25 N.Y.3d 581, 593 (2015) (citations omitted). Thus, claims based on a loan accrue upon "closing" and obligations based on those loans are "breached, if at all, on that date." *Id.* at 595; *see Deutsche Bank Nat'l Tr. Co. Tr. for Harborview Mortg. Loan Tr. v. Flagstar Cap. Markets Corp*., 32 N.Y.3d 139, 148–49 (2018) ("Defendant therefore breached the representations and warranties, 'if at all,' on the closing date for each group of loans, because the representations and warranties with respect to each loan were either true or false on that date.") (citation omitted); *Deutsche Bank Nat'l Tr. Co. v. Barclays Bank PLC*, 34 N.Y.3d 327, 334 n.3 (2019) ("limitations period began to run on the closing date of each transaction") (citations omitted); *Bank of N.Y. Mellon v. WMC Mortg., LLC*, 151 A.D.3d 72, 77 (1st Dep't 2017) (action untimely where plaintiff "commenced the action more than six years after the closing" of the loans at issue); *Barnett v. Countrywide Bank, FSB*, 60 F. Supp. 3d 379, 392–93 (E.D.N.Y. 2014) ("the date of the occurrence of the violation is the date on which the borrower accepts the creditor's extension of credit" and the statutory period runs "from the date of closing of the loan").

The NYAG's positions in this matter show why the accrual period runs from the closing dates of the subject loans. From the outset, the NYAG has made clear that her entire premise of

this action is that Defendants' allegedly "used false and misleading Statements repeatedly and persistently ***to induce banks to lend money*** to the Trump Organization[.]" (NYSCEF 1 ¶ 3) (emphasis added.) In opposition to Defendants' motion to dismiss, the NYAG affirmed her position is that Defendants presented false "[s]tatements to lenders and insurers licensed in New York ***to obtain favorable loan and insurance terms they would otherwise not have been entitled to receive.***" (NYSCEF 245 at 19) (citing *People by James v. Donald J. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) (NYSCEF 183), slip op. at 1-2.) Then at the First Department, the NYAG again asserted Defendants submitted false and misleading financial statements "***to obtain significant financial benefits.***" (No. 2023-00717, NYSCEF 24 at 8.)

Therefore, based on the First Department's clear holding, these transactions were "completed" and the limitations period began to run when the Defendants "obtained" the loans by "closing" them. *See Trump*, 217 A.D.3d at 611; *Boesky*, 193 A.D.3d at 405; *Rogal*, 135 A.D.2d at 385; *see also, ACE Sec. Corp.*, 25 N.Y.3d at 594–95. Yet the NYAG simply refuses to acknowledge this unequivocal holding.

The undisputed record on summary judgment shows that seven of the ten lending transactions identified in the Complaint (viz., the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO Bid Selection and Approval, the Doral Loan, the Chicago Loan, and the OPO Contract & Lease) were all completed before the earliest cutoff date for timely claims, *i.e.,* before July 13, 2014. (NYSCEF 835 at 17–25.) These claims simply must be dismissed.

The NYAG does not dispute these closing dates. Rather, she repackages her continuing wrong doctrine theory, arguing now her allegations are timely because Defendants' "continuing obligations . . . under [the] loan covenants" required them to submit and/or certify SOFCs during

the statutory period, somehow extending the date the transactions were completed. (NYSCEF 1277 at 59.) However, the First Department has already squarely rejected that exact argument in this case. *Trump*, 217 A.D.3d at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Indeed, Defendants addressed the NYAG's continuing wrong doctrine argument specifically in the context of loans in their First Department briefing. (*See, e.g.*, No. 2023-00717, NYSCEF 27 at 8–9) ("N.Y. Exec Law § 63(12) claims alleging a fraudulent transaction accrue for the parties to the subject transaction when it closes.") (citing cases)). The NYAG's repackaged argument is barred by the doctrine of the law of the case, *see, e.g.*, *Brodsky v. N.Y. City Campaign Fin. Bd.*, 107 A.D.3d 544, 545–46 (1st Dep't 2013), and is inconsistent with the Court of Appeals' "repeated[ ] reject[ion] [of] accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach," *ACE Sec. Corp.*, 25 N.Y.3d at 593.

B. The First Department Already Rejected The NYAG's New Theory—Improperly Raised for the First Time On Opposition—That Each Certification Of The SOFCs Constitutes An Independently Actionable Wrong

In her opposition brief, the NYAG advances a novel new legal theory arguing that each certification or submission of the SOFCs underlying the financial transactions at issue somehow constitutes a "separate, actionable wrong[ ]" independent from the actual loan transactions forming the foundation for her claims. (*See* NYSCEF 1277 at 59–61.) The First Department already rejected this argument, which in any event is improperly asserted for the first time in the NYAG's opposition brief.

As explained above, from the outset, the NYAG's theory of her case centered around the Defendants' alleged submission of false and misleading financial statements "***to induce banks to lend money*** to the Trump Organization on more favorable terms than would otherwise have been available to the company." (NYSCEF 1 ¶¶ 1–3) (emphasis added). The specified § 63(12)

violations were the use of false statements to "***obtain[ ]*** hundreds of millions of dollars in real estate ***loans*** in reliance on, among other things, Mr. Trump's net worth as reported in [the SOFCs]." (NYSCEF 1 ¶ 560) (emphasis added). That is, use of the allegedly fraudulent misrepresentations ***to obtain*** the loans constitutes the actionable wrong under § 63(12). The NYAG has never before asserted that submission or certification of the statements alone constituted "separate, actionable wrongs." To the contrary, the NYAG alleged in her Complaint that Defendants annual submission or certification of the statements was relevant merely to demonstrate the existence of an alleged "long-running conspiracy" and thereby avoid application of the statute of limitations under a continuing wrongs theory. (*See, e.g.*, NYSCEF 1 ¶¶ 760).

Now, however, the NYAG has changed her theory of the case, arguing that "each" of the allegedly false and misleading certifications and submissions of the SOFCs "are separate, actionable wrongs" such that a new § 63(12) claim "accrued each time any Defendant submitted . . . or certified" a financial statement "representing the financial condition of Mr. Trump or made other misrepresentations about Mr. Trump's financial condition." (NYSCEF 1277 at 59–61.) Based on this new theory, the NYAG now claims that because some of these SOFCs were submitted or certified on or after February 6, 2016, this "giv[es] rise to separate and actionable wrongs against [Defendants] that accrued within the limitations period." (NYSCEF 1277 at 59.)

However, the NYAG is barred from making this new legal argument for the first time in her opposition papers.[8] *Biondi v. Behrman*, 149 A.D.3d 562, 563–64 (1st Dep't 2017) (citing *Abalola v. Flower Hosp.*, 44 A.D.3d 522, 522 (1st Dep't 2007) ("It is axiomatic that a plaintiff

[8] Summary judgment "***is not, for the unsuccessful movant, an opportunity to reformulate its case***." *NexBank, SSB v. Soffer,* No. 652072/2013, 2018 WL 2282884, at *4 (Sup. Ct. N.Y. Cnty. May 18, 2018) (citing *Genesis Merch. Partners, L.P. v. Gilbride, Tusa, Last & Spellane, LLC,* 157 A.D.3d 479, 481 (1st Dep't 2018) (emphasis added)). Thus, "defendants' summary judgment motion should [be] granted" if "plaintiff's opposition papers [are] insufficient absent [a] new theory." *Biondi*, 149 A.D.3d at 564 (citing *Ostrov v. Rozbruch*, 91 A.D.3d 147, 154 (1st Dep't 2012)).

cannot defeat a summary judgment motion that made out a prima facie case by merely asserting, without more, a new theory of liability for the first time in the opposition papers."). A party may not "rais[e] a new assertion in opposition to summary judgment" when doing so "raises [a] new theory of law" and "prejudice[s] the moving party." *Warden v. Orlandi*, 4 A.D.3d 239, 241 (1st Dep't 2004). The NYAG's "separate, actionable wrongs" argument certainly constitutes a new legal theory not previously raised in this proceeding. Such "newly raised [legal] theories cannot be countenanced . . . mere days before trial, particularly when that new information amount[s] to a material alteration of the theory of the [case]." *Lissak v. Cerabona*, 10 A.D.3d 308, 309 (1st Dep't 2004). Indeed, allowing the NYAG to "materially alter[ ] [her] theory of recovery on the eve of trial" would significantly "prejudic[e] defendants." *Kassis v. Tchr.'s Ins. & Annuity Ass'n*, 258 A.D.2d 271, 272 (1st Dep't 1999).

Moreover, the First Department rejected any argument that actions linked to the annual submission or certification of the SOFCs can constitute independent wrongs, separately actionable from the transaction to which they are tied when the court dismissed the NYAG's causes of action against Defendant Ivanka Trump. *See Trump*, 217 A.D.3d at 611–12. Plaintiff argued on appeal that her causes of action were timely as to Ms. Trump because she had signed and submitted a draw request on the OPO Loan to Deutsche Bank ("DB") in December 2016, which request "relied on the Statements and their purported accuracy." (No. 2023-00717, NYSCEF 27 at 11.) As Ms. Trump explained on appeal, the submission did "not trigger a new limitations period . . . because it does not constitute a newly accruing 'wrong.'" (No. 2023-00717, NYSCEF 16 at 27.) Rather, "[a]t most" this submission constituted "a continuing *effect* of a previous, allegedly fraudulent action (i.e. securing the loan)." (No. 2023-00717, NYSCEF 27 at 23 n.7.) The First Department agreed, dismissing all claims against Ms. Trump "as untimely" because "[t]he allegations against

defendant Ivanka Trump do not support any claims that accrued after February 6, 2016." *Trump*, 217 A.D.3d at 612. Thus, the NYAG's "separate, actionable wrongs" argument impermissibly contradicts the First Department's binding holding in this case. *See Brodsky*, 107 A.D.3d at 545–46 ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted); *Kenney v. City of New York*, 74 A.D.3d 630, 630-31 (1st Dep't 2010) ("An appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court . . . [and] operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law[.]"). The NYAG cannot now "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State,* No. 112317, 2011 WL 5528963, at *5 (N.Y. Ct. Cl. Aug. 5, 2011).

C. The Tolling Agreement Plainly Does Not Bind All Defendants

Plaintiff asserts the Court should "defer ruling on the effect of the Tolling Agreement until trial" (NYSCEF 1277 at 57 n.10), but implementation of the First Department's mandate and determination of the claims to be tried and the range of Defendants bound by the agreement prior to trial is both imperative and mandatory. There is simply no discretion. Here, only two lending transactions alleged in the Complaint, the OPO Loan and the 40 Wall Street Loan, were completed before the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.,* February 6, 2016, but on or after the cutoff date for timely claims against those Defendants subject to the Tolling Agreement, i.e., July 13, 2014. (NYSCEF 835 at 18–20.) Accordingly, the NYAG's causes of action based on these two transactions are only timely as to those Defendants who are bound by the tolling agreement. The Court must therefore determine which Defendants are subject to the agreement prior to trial because the only claims that should

advance to trial are those that are (1) levied against Defendants who are bound by the tolling agreement and (2) based on these two transactions.

New York law and the record clearly establish that the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney (collectively, the "Unnamed Individuals"), and/or The Donald J. Trump Revocable Trust ("Trust"). (NYSCEF 1292 at 25–30.) The only lending based claims that arguably should proceed to trial are the NYAG's claims against the corporate entity Defendants that are based on the OPO Loan and/or the 40 Wall Street Loan.

As an initial matter, as detailed in Defendants' Motion for Summary Judgment (*see* NYSCEF 835 at 28–30), Plaintiff is judicially estopped from arguing that the tolling agreement applies to any of the Unnamed Individuals and/or the Trust. The NYAG stated in open court that "Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization.*" (NYSCEF 837 ("Robert Aff."), Ex. C at 34 (emphasis added).) She then advanced the same position before the First Department stating that the NYAG "and the Trump Organization entered a six-month tolling agreement, *to which Mr. Trump was not a party.*" (*Id.* (emphasis added).) The NYAG went on to obtain favorable rulings in connection with those arguments in prior proceedings in this case. (*See* NYSCEF 835 at 28–30.) This is plainly sufficient to invoke the doctrine of judicial estoppel and prevent the NYAG from "advancing a contrary position in [this] action, simply because [her] interests have changed." *Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018) (citations omitted). The NYAG's three arguments to the contrary are each without merit.

First, the NYAG claims, without authority, that judicial estoppel applies only to "factual" assertions rather than "legal positions" and argues that her "prior assertion about the binding effect

of the Tolling Agreement on non-signatories is a legal position rather than a factual position." (NYSCEF 1277 at 67.) Plaintiff cites no authority for good reason. A valid tolling agreement constitutes an enforceable contract subject to normal rules of interpretation. *See CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.*, No. 15-601951/08, 2009 WL 5102795, at *3 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009). Determining which parties are bound by a contract is indeed a ***factual*** inquiry. *See Bowne of N.Y., Inc. v. Int'l 800 Telecom Corp.*, 178 A.D.2d 138, 139 (1st Dep't 1991) ("Whether the parties' conduct evinces a mutual intent to be bound by a purported agreement . . . [is a] question[ ] of fact[.]"); *All Boys Music, Ltd. v. DeGroot*, No. 89 CIV. 8258 (LMM), 1992 WL 51502, at *5 (S.D.N.Y. Mar. 9, 1992) ("[T]he inquiry into intent to be bound" is "factual [in] nature."); *In re Robbins Int'l, Inc*., 275 B.R. 456, 468 (S.D.N.Y. 2002), *aff'd*, 56 F. App'x 55 (2d Cir. 2003) ("[W]hether the parties intended that a corporation would be bound by [a] contract" is "a factual inquiry"); *Trs. of the Mosaic and Terrazzo Welfare, Pension, Annuity, and Vacation Funds v. Elite Terrazzo Flooring, Inc. & Picnic Worldwide*, No. 18CV1471CBACLP, 2019 WL 13414492, at *5 (E.D.N.Y. June 5, 2019) (calling issues "such as which individuals constituted the 'bargaining unit'" contemplated in an agreement "fact-bound questions"). Therefore, the NYAG's prior statements here were factual assertions regarding who is and who is not a party to the tolling agreement (i.e. the Trump Organization was a party and Donald J. Trump was not). The doctrine of judicial estoppel thus applies.

Second, Plaintiff mischaracterizes or ignores the prior proceedings in this case where she benefitted from advancing her tolling agreement positions before this Court and the First Department. In the Special Proceeding, the NYAG argued she would be prejudiced absent her contempt application being granted because "Donald J. Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." (*See* NYSCEF 836 ¶

273). The Court then granted the NYAG's application to hold President Trump in contempt, specifically noting that "each day that passes without compliance further prejudices [the NYAG], as the statute of limitations continues to run and may result in [the NYAG] being unable to pursue certain causes of action that it otherwise would." (NYSCEF 835 at 29.) The NYAG clearly assumed a certain position in that prior proceeding, benefitted from that position, and now attempts to advance a contrary position. That is all that is necessary for the doctrine to apply. *See Herman*, 165 A.D.3d at 406.

Third, the NYAG's argument that the judicial estoppel doctrine should not apply because the *JUUL* case constituted an intervening change in law is meritless. According to the NYAG, the *JUUL* case stands for the proposition that "an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the 'Trump Organization' definition in the Tolling Agreement here." (NYSCEF 1277 at 69.) But the First Department did not read *JUUL* in this manner. Rather, the First Department cited *JUUL* but then went on to find that Defendant Ivanka Trump was not bound by the agreement and left it to this Court to determine the range of defendants bound by the agreement. *Trump*, 217 A.D.3d at 611–12.

But the single mention in *JUUL* of the tolling agreement at issue: "Regarding the General Business Law §§ 349 and 350 claims, the motion court correctly concluded that defendants are bound by the tolling agreement into which JUUL entered with the People." *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). The *JUUL* Court does not provide any reasoning for why it held that the tolling agreement there applied to the company's two co-founders. Nor did the First Department discuss whether the defendant-officers even contested the point. Indeed, as the NYAG argued in its appellate brief, the individual defendants in *JUUL* had acquiesced to the

agreement because they "participate[d] as co-founders, senior executives, and board members in JUUL's signing of the tolling agreement" and had not, at any point prior to the commencement of litigation, attempted to "disclaim the agreement." Br. of Resp't, *JUUL Labs*, No. 2022-03188, 2022 WL 18355250, at *61–62 (Oct. 21, 2022).

Here, as detailed in Defendants motion for summary judgment, the unnamed, non-signatory individuals were ***expressly deleted*** from the agreement and the trust was never included at any point. (NYSCEF 835 at 31–32.) New York law establishes these individuals are not bound by the agreement because they did not sign it and are not named in it. *See*, *e.g.*, *Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352 (1st Dep't 2020)*; Gerschel v. Christensen*, 128 A.D.3d 455, 456 (1st Dep't 2015). The NYAG has also produced no evidence to dispute Defendants' showing that communications in the record between the "Trump Organization" and the NYAG surrounding the agreement confirm that the parties did not intend to bind the Unnamed Individuals. (NYSCEF 836 ¶ 269); *see, e.g.*, *Georgia Malone & Co. v. Ralph Rieder*, 86 A.D.3d 406, 408 (1st Dep't 2011) ("officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually"), *aff'd*, 19 N.Y.3d 511 (2012). Simply put, the agreement was executed by a company representative with no authority to bind the individuals or the trust.

Moreover, it is black letter law that the trust could only have been bound by a trustee.[9] Only a duly authorized trustee has the authority to enter into agreements on behalf of a trust. *See* N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17); *Korn v. Korn,* 206 A.D.3d 529, 530–31 (1st Dep't 2022).

[9] In response to this settled law, the NYAG advances the absurd and layered position that since the individuals can somehow be bound by a company representative, and since one of those individuals is a trustee, the trust is therefore bound. There is simply no support for this contortion of established trust law.

Further, the NYAG utterly failed to address Defendants' alternative argument that her prior statements constitute a judicial admission. "[F]acts admitted by the pleadings are binding on the parties throughout the entire litigation," 57 N.Y. Jur. 2d Estoppel, Etc. § 63, and while "not conclusive," judicial admissions "are 'evidence' of the facts or facts admitted." *Matter of Liquidation of Union Indem. Ins. Co. of N.Y.*, 89 N.Y.2d 94, 103 (1996) (citation omitted). Here, Plaintiff filed a signed appellate brief in the contempt proceeding containing the factual statement that "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." (NYSCEF 836¶ 274); (Robert Aff., Ex. AY at 39 n.13, 57). Plaintiff has failed to contest this point on summary judgment.

III. Defendants Are Entitled To Summary Judgment On The First Cause of Action

A. The SOFCs Were Not False Or Misleading

Defendants do not, as Plaintiff asserts, "concede[ ] that the SOFCs are false and misleading." (NYSCEF 1277 at 70.) First, Defendants do not concede Estimated Current Values and market values are "synonymous." (NYSCEF 1277 at 79.) The NYAG misconstrues Dr. Laposa's testimony by stating that "Dr. Steven Laposa confirmed at his deposition that 'market value' is synonymous with 'estimated current value.'" (NYSCEF 1277 at 10 n.1.) Dr. Laposa is admittedly "not an expert on the current value as applied to the statements of financial condition." (NYSCEF 1047 at 82:20–21.) Despite this qualification, when asked if he "underst[ood] if there's a difference between estimated current value and market value," Dr. Laposa stated, "I would say, yes." (NYSCEF 1047 at 83:13–19.) Dr. Laposa expounded on his response, explaining that values could vary depending on "who is doing the estimate of the current values and who is doing the estimate of the market values. And what is the methodology that they are based on." (NYSCEF 1047 at 83:20-24.) Further explaining that "[i]f the current value is based upon investment value,

it's probably going to be different than a current value based on market value." (NYSCEF 1047 at 84:4–7.)

Dr. Laposa then reiterated that "[i]f the current value is based on the market value, it's one thing. If the current value is based on the investment value, that's another. They will not be the same." (NYSCEF 1047 at 85:16–19.) Finally, when NYAG confronted Dr. Laposa with the definition of estimated current value under FASB, he unequivocally stated "No" when asked if "estimated current value" was "conceptually the same as market value." (NYSCEF 1047 at 89:8–11.)[10]

Further, FASB ASC 274, Personal Financial Statements, governs the preparation of compilation reports like SOFCs and affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports, and leaves it to the discretion of the preparer which method and assumptions to use.[11] (Bartov Aff. ¶ 15, Ex. A ¶¶ 32 – 41.) ASC 274 introduces a definition of value for investment properties that is unique under GAAP, Estimated Current Value. (*Id.*; NYSCEF 836 ¶¶ 53–54.). There is no single generally accepted procedure for determining Estimated Current Value. The implementation guidance of ASC 274-10-55-4 states that for investments in closely held businesses valuation may be based upon, *inter alia*, "[a] multiple of earnings," "[r]eproduction value," or "[d]iscounted amounts of projected cash receipts and payments." And for investments in real estate, ASC 274-10-55-6 states

[10] Note, the actual accounting experts, Jason Flemmons and Eli Bartov testified that market value has a definition distinct from estimated market value under GAAP, and, therefore, the two definitions cannot coexist. (NYSCEF 873 at 176:14–18 ("the definition of value, market value in ASC 820 contradicts the definition of ASC 274. So obviously they cannot coexist."); NYSCEF 871 at 176:2-10 (testifying that the definition of market value contains "language [that is] different than estimated current value under ASC 274).)

[11] Notably, the NYAG ignores this governing standard and simply injects her own unsupported views as to how SOFC values were to have been derived. Indeed, the NYAG's experts, Korologos and Hirsh, perform analyses based on flawed economic assumptions and principles not based on actual accounting guidance. Thus, whether their valuations are acceptable or not based on economic principles, there is no dispute they ignore GAAP and ASC 274.

that available bases for determining Estimated Current Value include "[t]he discounted amount of projected cash receipts or payments relating to property or net realizable value of the property . . . based on planned courses of action." None of these methods hinge substantially on current market conditions but instead focus on a long-term perspective. Indisputably, "[e]stimated current value is not intended to be a market value model." (NYSCEF 871 at 178:20–22.) Indeed, as Bartov testified, when estimating a current value under ASC 274, "if you have a long-term perspective . . . then you will put very little weight on current market conditions." (NYSCEF 873 at 322:14–18.)

Plaintiff baselessly and improperly insists certain prior appraisals were the only appropriate method by which to value certain investment properties on the SOFCs, (*see, e.g.*, NYSCEF 1277 at 70–72, 74), even though GAAP affords preparers substantial latitude in selecting valuation methods and underlying assumptions that may result in substantially different valuations, (NYSCEF 1377 at 8, 12.) Accordingly, the NYAG has no basis to impose her *post hoc* view about which valuation method the preparer of a SOFC was required to use.

Plaintiff's assertion that "Defendants inflated the value of more than a dozen assets in each year by 17–39%," (NYSCEF 1277 at 72), demonstrates a fundamental misunderstanding (or deliberate contortion) of basic, established accounting and valuation principles. There is no such thing as objective valuation either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff., Ex. B ¶¶ 53–65.) Valuation is an opinion about price and therefore subjective, period. (NYSCEF 1047 at 110:24–111:4.) The valuation of an asset is a highly subjective process that depends upon several factors including the selection of a methodology, assumptions, and benchmarks within a methodology, the discretion surrounding presentation, etc. (Bartov Aff. ¶ 15.) Which valuation methodology to choose and which assumptions to apply depends on GAAP, economic theory, and, perhaps most important on

the perspective of the person performing the valuation, because that person picks the valuation methods and the underlying assumptions. *Id.* In order to manufacture its claims that the valuations in the SOFCs were inflated, the NYAG appears to "reverse engineer" its valuations, by first selecting valuations that are substantially lower than the ones reported on the SOFCs, and then backing into the preselected result by choosing the valuation method and assumptions that produces the desired valuation. While Plaintiff asserts that "[f]or many properties" the Defendants allegedly "failed to consider existing appraisals," (NYSCEF 1277 at 72), GAAP and ASC 274 simply do not require preparers of SOFCs to do so when computing alternative SOFC values.

Moreover, it is evident why certain appraisals or values were not used in preparing the SOFCs for specific properties. For example, the Palm Beach County Property Appraiser used "assessed values" for Mar-A-Lago, which offer "minimal value to appraisers," Mark Ratterman, MAI, SRA, *Residential Property Appraisal,* Appraisal Institute at 41–42 (2020).

The appraisals prepared in 2011 and 2012 by Cushman & Wakefield for the 40 Wall Street property made significant and consequential errors driven by flawed market rental rate assumptions, inappropriate terminal capitalization rate selection, and inconsistent per square foot results. (Robert Aff., Ex. AO ¶¶ 34-36, Ex. A at 22–24)[12] Finally, expert testimony provides that the difference between the SOFC value and the 2015 appraisal for the Seven Springs property was minimal. (See Robert Aff., Ex. AO at Ex. A at 20–23.) Again, in accordance with ASC 274, the

[12] NYAG also claims that it was improper for the SOFCs to value the unsold condominium units at Trump Park Ave as if they were unrestricted, (NYSCEF 1277 at 72). However, despite uncertainties regarding the timing of unit vacancies due to tenant rights, rent-stabilized units offer substantial investment upside potential driven by favorable market dynamics, future rental appreciation prospects, and the ability to capitalize on tenant turnover. As tenants maintain long-term occupancy in rent-stabilized units, the disparity between market rents and contract rents widens. Nonetheless, the value of the condominiums underlying these units continues to increase, benefiting from limited supply, high demand for desirable locations, and the introduction of new inventory at premium prices. The owner's ultimate economic opportunity arises when units become vacant, enabling them to reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices.

record evidence establishes a valid basis for the SOFCs valuations and rejection of certain appraisals.

GAAP also permit the inclusion of the value of internally developed intangible assets, such as brand premiums, in the valuation of (tangible) golf clubs reported on SOFCs. (Bartov Aff., Ex. A ¶¶ 69–87.) Presenting President Trump's brand value as a standalone entry in the SOFCs is distinct from including his brand value when determining the Estimated Current Value of specific (tangible) investment properties. *Id*. The first primarily represents the value arising from President Trump's ability to capitalize on his brand value in future events such as selling his name to global real estate developers, whereas the second refers to the effect of President Trump's brand value on the value of specific, currently owned properties. (Bartov Aff., Ex. A ¶¶ 71–72, 74–75.) The representation that the SOFCs did not include overall brand value as a standalone intangible asset was therefore accurate. (Bartov Aff., Ex. A ¶¶ 76–79.)

The NYAG also argues that the SOFCs improperly included cash amounts held by separate partnerships over which President Trump "exercised no control." (NYSCEF 1277 at 72.) But, again, the NYAG is incorrect. The SOFCs do not say "cash" but rather cash and certain other items, clearly indicating that items other than cash were combined with cash under this entry on the SOFCs. (NYSCEF 771 at -37; NYSCEF 772 at -717; NYSCEF 773 at -691; NYSCEF 774 at -983; NYSCEF 775 at -842; NYSCEF 776 at -725; NYSCEF 777 at -790; NYSCEF 778 at -248; NYSCEF 779 at -418.) Mazars listed as a potential GAAP departure that certain cash positions were reported separately from their related operating entities, further calling to the attention of the reader that the cash from operating entities was reported separately. (NYSCEF 771 at -035; NYSCEF 772 at –715; NYSCEF 773 at -689; NYSCEF 774 at -982; NYSCEF 775 at -841; NYSCEF 776 at -724; NYSCEF 777 at -792–93; NYSCEF 778 at -250; NYSCEF 779 at -420.)

Further, President Trump fully disclosed the components of "cash" in a footnote as including cash in operating entities. (NYSCEF 771–9 at Note 2; Flemmons Aff., Ex. B ¶¶ 44–47.) Even if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the value of total assets or President Trump's net worth on the SOFCs. (Bartov Aff., Ex. B ¶¶ 89–99.)

Finally, NYAG asserts that "[a]dditional evidence that the People will present at trial (if necessary), including expert opinion testimony, will establish Defendants inflated Mr. Trump's assets to a far greater extent by employing other deceptions" and that "[b]ased on work performed by Plaintiff's valuation experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining 'estimates of current value,' Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SOFCs." (NYSCEF 1277 at 64–65.) But (1) the NYAG did not attach these expert opinions and so none of this purported "evidence to come" can be used to defeat summary judgment; and (2) even if they did, they would be insufficient as they fail to satisfy the requisite evidentiary standard.[13]

B. The SOFCs Were Not Materially Misleading

1. Materiality Is An Element of a § 63(12) Claim

The NYAG is entirely incorrect that "the People are not required to show that the victims of Defendants' fraud were *materially* mislead, (NYSCEF 1277 at 10) (emphasis added), and that

[13] While, as noted, under GAAP, there was/is no requirement to support the presentation of Estimated Current Value in the SOFCs with appraisals, if the NYAG wants to challenge the SOFC valuations, she must introduce current, valid expert appraisal data (not just rely on outdated "documents") just to get through the courthouse door, even though same would not necessarily establish the SOFC valuations were false or fraudulent. Estimates of value, rather than a "full appraisal," are "insufficient to raise a triable issue of fact" as to the value of properties. *See White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC*, 110 A.D.3d 576, 577 (1st Dep't 2013) (*citing Trustco Bank v. Gardner*, 274 A.D.2d 873 (3d Dep't 2000)).

"materiality is not a required element of a fraud claim under § 63(12)," (NYSCEF 1277 at 73). First, even the case the NYAG relies on the standard for claims under § 63(12), *People v. Northern Leasing Sys., Inc.*, clearly states that "*[m]aterially* misleading representations violate Executive Law § 63(12)." 70 Misc. 3d 256, 267 (N.Y. Sup. Ct. N.Y. Cnty. 2020) (emphasis added). Second, the definitions of fraud under the Martin Act and § 63(12) are "virtually identical," and caselaw makes it abundantly clear that materiality is an element of Martin Act fraud. *Exxon*, 2019 WL 6795771, at *3. As such, Martin Act and § 63(12) cases alike involve detailed discussions of materiality issues. *See People v. Orbital Publ. Grp., Inc.*, 169 A.D.3d 564, 565 (1st Dep't 2019); *State v. Rachmani Corp.*, 71 N.Y.2d 718, 721 (1988). For example, in *Exxon*, the court found that "there was no proof offered at trial that established *material* misrepresentations or omissions [were] contained in any of" the "public disclosures" at issue in that case. 2019 WL 6795771, at *5 (the court itself emphasizing the word "material"). The court concluded:

> In sum, the Office of the Attorney General failed to prove, by a preponderance of the evidence, that ExxonMobil made any material misstatements or omissions about its practices and procedures that mislead any reasonable investor. The Office of the Attorney General produced no testimony either from any investor who claimed to have been mislead by any disclosure . . . . For all of these reasons, the claims asserted by the Office of the Attorney General under the Martin Act *and Executive Law § 63(12)* are denied, and the action is dismissed with prejudice.

Id. at *30–31 (emphasis added).

The NYAG has not cited any case holding she is exempt from proving materiality. Generally, fraud claims have five elements: (1) a misrepresentation or omission; (2) materiality; (3) scienter; (4) reliance; and (5) damages. *See McGhee v. Odell*, 96 A.D.3d 449, 450 (1st Dep't 2012). According to the NYAG, she need only establish ***one*** of these elements—a misrepresentation or omission. This absurd construct converts § 63(12) into a strict liability statute, where the NYAG need only identify some alleged error or inaccuracy, material or otherwise. Then

all the NYAG need do, as here, is conjure up some competing valuations and claim the Defendants committed "fraud." This flawed interpretation directly contravenes established law. Indeed, if New York intended to eliminate the requirements of materiality in addition to sciwhenter and reliance to establish fraud, they surely would have done so.[14]

Materiality (like reliance) is also certainly relevant in the evaluation of any alleged § 63(12) violation. "[E]vidence regarding falsity, materiality, reliance, and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's Pizza, Inc.*, 2021 WL 39592, at *12.

2. The NYAG Fails To Rebut Defendants' Showing That Any Misstatements In The SOFCs Were Immaterial

The materiality standard under New York law tracks that of the federal courts. *City Trading Fund v. Nye*, 72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018); *see also Exxon*, 2019 WL 6795771 (turning to federal securities law for its materiality standard). To define materiality in the securities law context federal courts utilize a "reasonable investor" standard, asking whether such "reasonable investor would have found that the information about a quantitative and qualitative impact of the transactions significantly altered the total mix of information available," *People v. Greenberg*, 946 N.Y.S.2d 1, 10 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439 (2013) (citation omitted), and when evaluating the allegations of a fraudulent misrepresentation claim, "New York takes a contextual view, focusing on the level of sophistication of the parties, the relationship between

[14] Whether materiality and reliance are formally denominated as "elements" of a 63(12) claim or not, where, as here, the NYAG's theory of fraud is predicated on alleged violations of GAAP, the concepts of materiality and reliance are inalienable from and indispensable to the NYAG's claim. The materiality test under GAAP, which is performed from the perspective of the user, necessarily requires that the user relies on the financial statement in order for the financial statement to be materially misleading. If the user did not rely on the financial statement, then, by the accounting definition of materiality, the financial statement is not materially misstated through the lens of the user. (Bartov Aff. pp. 14, 26 – 27.)

them, and the information available at the time of the operative decision." *JP Morgan Chase Bank v. Winnick*, 350 F. Supp. 2d 393, 406 (S.D.N.Y. 2004). Thus, "[s]ophisticated business entities are held to a higher standard," *id.* at 406, and they are expected "to protect [themselves] from misrepresentations," *Solutia Inc. v. FMC Corp.*, 456 F. Supp. 2d 429, 450–51 (S.D.N.Y. 2006). Sophisticated parties include large banks, insurance companies, and multinational corporations—exactly the types of entities relevant to these proceedings. *See, e.g.*, *St. Paul Mercury Ins. Co. v. M&T Bank Corp.*, No. 12 Civ. 6322(JFK), 2014 WL 641438, at *6 (S.D.N.Y. Feb. 19, 2014); *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 574 (2d Cir. 1991) (designating "insurance companies" as "sophisticated business entities"); *In re Residential Cap., LLC*, No. 12-12020 (MG), 2022 WL 17836560, at *31 (Bankr. S.D.N.Y. Dec. 21, 2022) (designating "multinational corporation" as "a sophisticated party"). Thus, the NYAG's burden in this case is to show that the SOFCs contained misstatements that would have had an impact on sophisticated banks and insurance companies' decision-making process.

The NYAG continuously asserts the SOFCs contained allegedly inflated values for several properties, but never explains *why* that matters. Executive Law § 63(12) is not a strict liability statute. Differences of opinion among various experts over inherently subjective property valuations cannot form the basis for a valid § 63(12) action. SOFCs are not designed to establish the precise value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. (NYSCEF 836 ¶ 67.) Banks and insurers know that an estimate put forth in a SOFC, even when written to follow GAAP, is "truly an estimate." (NYSCEF 836 ¶ 67.) This fact, coupled with the disclaimers and their own due diligence eliminates any "capacity or tendency to deceive" thus nullifying the NYAG's claims. Additionally, the SOFCs were not

materially misleading because they did comply with GAAP and ASC 274. The NYAG has failed to rebut this evidence.

a. The NYAG Ignores Reality

The NYAG asserts the Sullivan testimony that he was "'[c]omfortable with the level of assets' . . . says nothing about whether he would have remained 'comfortable' had he learned at the time that Mr. Trump's asset values were grossly inflated through deceptive practices" and that DB's practice of applying "haircuts" does not prove that the "enormous degree" of alleged inflation was immaterial. (NYSCEF 1277 at 77–78.) But ***there is no record evidence*** supporting this untoward assertion.

To the contrary, the periodic credit reports prepared by the Credit Risk Management Group establish that DB performed its own valuation analyses. In doing so, the Credit Risk Management Group did not mechanically apply a 50% haircut to the SOFC valuations. By way of example, the internal DB email cited in Bartov's affirmative report demonstrates DB performed its own valuation analysis and adjusted a reported net worth of $4.2 billion to $2.4 billion and still concluded the Guarantor had "an exceptionally strong financial profile." (DB-NYAG-001776 (May 2, 2014 Credit Report), at DB-NYAG-001790); (Bartov Aff. ¶¶ 24 – 25.) This and other record testimony establishes how DB used the SOFCs as merely estimates or a starting place and conducted its *own* analysis. This comports with the materiality standard that adjusts based on the sophistication of parties who have a burden to protect themselves. *See Solutia Inc.*, 456 F. Supp. 2d at 450–51.

The simple reality (here ignored by the NYAG) is that SOFCs identify assets and provide estimates as to their value, then DB (and all other banks) perform their own, independent analyses when deciding whether to make certain loans and on what terms. (*See* NYSCEF 836 ¶¶ 87, 107 (when DB received a copy of the 2011 SOFC to secure the Trump Endeavor 12 LLC loan described

in the Complaint, DB calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC and used ***its own independent judgment*** "in setting the appropriate adjustments to achieve conservative valuations of concentrated assets"; (NYSCEF 836 ¶ 89 (DB "was focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed.").)

Similarly, Plaintiff argues that "bank witnesses did not conduct any investigation to determine whether the SOFCs contained false information (as OAG has done)." (NYSCEF 1277 at 78.) This is wholly irrelevant. The record proves these highly sophisticated banks conducted their own due diligence and risk analysis and then made educated business judgments based on that due diligence and analysis. As demonstrated by that undisputed evidence, the SOFCs therefore did not even have theoretical capacity or tendency to deceive.[15] The NYAG cannot now supplant this evidence and the banks' judgment by inserting her own, uneducated, *post hoc* opinions.

Finally, the NYAG does nothing to rebut the Defendants' evidence that:

1. President Trump maintained a net worth of more than $160 million and liquidity above $15 million as required by the Ladder Capital Loan;
2. Zurich renewed and expanded the surety program at issue in this case and from 2013 through 2015 relied solely on estimates of President Trump's net worth published by Forbes; and

[15] The NYAG also claims, without evidence, that the involved banks would have charged a higher interest rate, (NYSCEF 1277 at 82), or the insurers would have sought a higher premium, (NYSCEF 1277 at 83) but for the alleged misstatements in the SOFCs. This argument is pure sophistry. The record evidence is devoid of any actual documentary evidence or testimony supporting the NYAG's position. Indeed, the record evidence proves the contrary, that the banks were satisfied fully with the subject transactions and the insurers often never even looked at the SOFCs. (NYSCEF 836 ¶¶ 67–68, 70, 93, 85–94, 106–11, 126, 129, 150, 172–76, 180, 182, 185, 197.) The NYAG merely speculates what might have happened but offers no proof to counter the record evidence of what did in fact happen.

3. HCC quoted an excess layer D&O policy to sit above an existing policy without reviewing any financials at all.

(*See* NYSCEF 835 at 47–49.)

b. The SOFCs Complied With GAAP, Preventing Any Finding That The SOFCs Were Materially Misleading

As explained above, the SOFCs were not materially misleading for the additional reason that they complied with GAAP. *See supra* § I.C. The disclaimers together with the notes to the SOFCs identified and described the numerous departures from GAAP as well as the subjective nature of the property valuations. Thus, they put sophisticated users of the SOFCs, such as DB, on complete notice to seek additional information from President Trump as they deemed necessary, and to perform their own diligence (which DB in fact did). (NYSCEF 836 ¶¶ 62, 67–70.) From the standpoint of the user (*i.e.*, DB), both documents must be and are considered together, because both were made available to the user together, and because the SOFCs incorporated the letters by reference. (Bartov Aff. ¶¶ 18–21.) As such, the SOFCs had little or no effect either on the lenders' decisions to extend loans to the Defendants or to set the terms of those loans, or on the insurers' decisions to write coverage for the Defendants and price the risk. (NYSCEF 836 ¶¶ 87–90.)

c. NYAG Does Not Submit Competing Expert Testimony On The Materiality Of Any Alleged Misstatements Contained In The SOFCs

The NYAG does not provide any expert testimony of its own to rebut the expert opinions provided by Defendants for the proposition that the SOFCs were not materially misleading. The NYAG substitutes her own subjective opinion, asserting in a conclusory fashion that the SOFCs were "woefully incomplete" and contained "misleading information" without any citation to expert testimony, or any other source. (NYSCEF 1277 at 84.) But the SOFCs cannot be viewed in a vacuum, and subjective valuations are not "fraudulent" simply because the NYAG says so.

Moreover, the NYAG's attempts to discredit Defendants' expert testimony are without merit. The NYAG asserts that Unell's testimony that banks would have no "reason to have concerns about the accuracy of the SOFCs" is contradicted by the fact that DB ended its business relationship with some of the Defendants following the filing of the pending lawsuit. (NYSCEF 1277 at 84.) This is simply a conclusory, self-fulfilling prophecy and cannot plausibly counter the actual record evidence. The fact of the matter is that the NYAG has not even attempted to show how the SOFCs were materially misleading beyond offering conclusory, and inaccurate, statements about the severity of the alleged misrepresentations or the actual reason DB ended its relationship with the Defendants.

C. The First Department Already Disposed Of, And The Record Does Not Support, The NYAG's Regurgitated Allegations Regarding Several Defendants' Participation In The Alleged Fraud

Several Defendants are entitled to summary judgment on the First Cause of Action because the record is devoid of any evidence that they participated in or had knowledge of the alleged fraud. (*See* NYSCEF 835 at 55–59.) The NYAG's response to this argument is essentially two-fold.

First, the NYAG, again, completely ignores the plain language of the First Department's decision, asserting that Defendants' submission or certification of SOFCs within the statute of limitations period is sufficient to meet the participation and/or knowledge requirement. (NYSCEF 1277 at 80–81.) Contrary to NYAG's assertion, it is her theory that is "fatally flawed." (NYSCEF 1277 at 80.) When this case went before the First Department, the NYAG tried the same argument, asserting that Ivanka Trump should remain in the case because she was "familiar with the true financial condition of the value of Mr. Trump's assets," (NYSCEF 1043 at 15); she negotiated a loan with DB that "included the requirement that Statements be annually submitted and certified

as true," (NYSCEF 1043 at 16); "she served as the 'primary point of contact' for Deutsche Bank on numerous loans as subsequent Statements were submitted and certified as true and accurate,'" (NYSCEF 1043 at 22); and she "personally requested a $4.3 million disbursement from one of those loans in December 2016, and her disbursement request was conditioned on the Statements remaining true and accurate," (NYSCEF 1043 at 35). The First Department could not have been clearer when it held: "The allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016" and "all claims against her should have been dismissed as untimely." *Trump*, 217 A.D.3d at 612. The NYAG simply cannot satisfy the participation and/or knowledge requirement of her § 63(12) claim with allegations almost identical to those alleged against Ms. Trump that were flatly rejected by the First Department.

Second, the NYAG ignores the respective burdens at the summary judgment stage. The NYAG needs to prove all elements of her claim to win at summary judgment, *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985), while the Defendants need only show that a single element cannot be established, *Shea v. Hambros PLC*, 244 A.D.2d 39, 46 (1st Dep't 1998), or that the record evidence is insufficient to establish the required elements, *Mendoza v. Highpoint Assoc., IX, LLC*, 83 A.D.3d 1, 8 (1st Dep't 2011). NYAG asserts "Defendants' analysis focuses on the '[p]reparation of the SOFCs' without any mention of the role any Defendant played in submitting and certifying the SOFCs to the banks and insurers." (NYSCEF 1277 at 80.) That is because, for several Defendants, there ***is no*** record evidence showing their involvement beyond the sort of allegations that did not support any claims against Ms. Trump.

Further, the NYAG does not rebut testimony establishing Eric Trump or Donald Trump, Jr.'s lack of involvement in the creation of the SOFCs, (NYSCEF 835 at 57–58), nor even attempt to explain the participation or knowledge of the property-holding Defendants, Trump Endeavor 12

LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC, beyond the fact that they in fact held property at issue in this case. And for The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member there is no individualized evidence to support a claim for of participation or even imputed knowledge. The evidence is simply insufficient to support the participation or knowledge element for Defendants Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member.

IV. The NYAG Fails To Meet Her Burden In Response To Defendants' Showing Of Why They Are Entitled to Summary Judgment on Second, Fourth, and Sixth Cause of Action

The NYAG asserts that there is "evidence confirming the false entries were done with the intent to defraud," mentioning in a footnote that all Defendants must have had an intent to defraud because (1) Mr. Weisselberg and Donald Trump, Jr. knew of a discrepancy in the reported square footage President Trump's apartment and (2) "Trump Organization employees were aware" that unsold units in Trump Park Avenue were subject to rent stabilization. (NYSCEF 1277 at 86 n.17, 18.) Clearly such allegations do not suffice to establish an intent to defraud for *all* Defendants, but more importantly, at most, this evidence suggests that parties could disagree about the proper estimated value of the associated properties—this evidence does not establish that Defendants meant to "lead[ ] another into error or disadvantage," *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring), or "to cheat someone out of money, other property or something of value," *People v. Hankin*, 175 Misc. 2d 83, 89 (N.Y. Crim. Ct. Kings Cnty. 1997). For example, as explained above, *supra* at 28, n.12, it was perfectly proper for the SOFCs to consider the full

value of the apartments without rent stabilization when considering the future use of the apartments.

Further, NYAG asserts that "Defendants' intent to defraud is further evident from their numerous overt acts to conceal from Mazars critical information (such as appraisals and internal market prices for Trump Park Avenue unsold units) and from SOFC users wild swings in asset values as circumstances forced them to abandon certain deceptive practices." (NYSCEF 1277 at 86.) The NYAG is essentially arguing that because the SOFCs were false, Defendants intended them to be. But as explained thoroughly herein and throughout Defendants' pleadings, the SOFCs were not false and complied with GAAP. Moreover, NYAG has not explained how most of the Defendants had anything to do with creation of the SOFCs or even knew of their falsity. Without evidence to establish all Defendants even had knowledge of the alleged falsities in the SOFCs, she cannot show there was any intent to defraud. Defendants are entitled to summary judgment on the Second, Fourth, and Sixth Causes of Action.

V. The NYAG Also Fails To Meet Her Burden In Response To Defendants Showing Of Why They Are Entitled to Summary Judgment On The Third, Fifth, and Seventh Causes of Action

The Defendants remain entitled to summary judgment on the Third, Fifth, and Seventh Causes of Action because the evidence does not support all elements of the penal law claims underlying each of the NYAG's conspiracy claims. (NYSCEF 835 at 68–70.) Additionally, the failure of the evidence to support any conspiracy claim in this case should be evident from only a cursory review of the NYAG opposition brief. The NYAG mentions only two Defendants by name in the entirety of this section, (NYSCEF 1277 at 86), making it abundantly clear that the NYAG has not met her burden to show intentional participation of all 15 Defendants. Further, it was entirely proper for the Defendants to re-assert the argument that Defendants cannot be held liable

for conspiracy under the intra-corporate conspiracy doctrine at the summary judgment stage. *See supra* § I (explaining the propriety of repeating arguments at summary judgment).

The NYAG has not seriously attempted to prove a conspiracy in this case, and the record evidence does not support any such claim.

Dated: New York, New York
September 15, 2023

s/ *Michael Madaio*
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

CHRISTOPHER M. KISE
(*Admitted Pro Hac Vice*)
JESUS M. SUAREZ
(*Admitted Pro Hac Vice*)
LAZARO P. FIELDS
(*Admitted Pro Hac Vice*)
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Phone: (850) 332-0702
Email: ckise@continentalpllc.com
jsuarez@continentalpllc.com
lfields@continentalpllc.com
Counsel for The Donald J. Trump

Dated: Uniondale, New York
September 15, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald Trump, Jr., and Eric Trump

Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
Phone: (212) 787-3300
Email: armenmorian@morianlaw.com
Counsel for Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court and the Order, dated June 21, 2023 (NYSCEF No. 638), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 13,537 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 15, 2023

Respectfully submitted,

Clifford S. Robert

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
Counsel for Donald Trump, Jr. and Eric Trump

EXHIBIT K

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- Donald J. Trump, *et al*., Defendants.	Index No. 452564/2022 Hon. Arthur Engoron

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Of Counsel

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1
STATEMENT OF FACTS 6
A. Preparation of the SFCs 6
B. Gross Inflation of Assets 9
1. Mr. Trump's Triplex 9
2. Seven Springs 10
3. 40 Wall Street 12
4. Mar-a-Lago 13
5. Aberdeen 15
6. Vornado Partnership Properties 17
7. US Golf Clubs 19
a. Brand Premium 19
b. Membership Deposit Liabilities 20
c. TNGC Briarcliff and TNGC LA 20
8. Trump Park Avenue 21
a. Inflated Rent Stabilized Units 21
b. Ivanka Trump's Option Prices Ignored 22
c. Offering Prices Used Instead of Market Prices 22
9. Trump Tower 23
10. Vornado Partnership Cash and Escrow Deposits 24
11. Real Estate Licensing Developments 25
C. Other Violations of GAAP 26
1. Golf Club Valuations Using Fixed Assets 26
2. Undiscounted Future Income 27
3. Misrepresentation of Involvement of Professionals 28
D. Submission of the False SFCs to Banks 29
1. Loans From the Deutsche Bank PWM Division 29
a. The Doral Loan 30
b. The Chicago Loan 34
c. The OPO Loan 38
2. 40 Wall Street Loan From Ladder Capital 41

3. Seven Springs Loan from RBA/Bryn Mawr 42
E. Submission of the False SFCs to Insurers 44
1. Surety Insurance from Zurich 44
2. D&O Insurance from HCC 46
F. Each Defendant was Involved in the Fraudulent Conduct 49
1. Donald J. Trump 49
2. Donald Trump, Jr. 49
3. Eric Trump 50
4. Allen Weisselberg 51
5. Jeffrey McConney 51
6. The Entity Defendants 52
STANDARD OF REVIEW 52
ARGUMENT 53
I. DEFENDANTS VIOLATED §63(12) BY USING FALSE AND MISLEADING FINANCIAL STATEMENTS TO DEFRAUD BANKS AND INSURERS 53
A. Defendants Engaged in Fraud under §63(12) in Preparing and Submitting the SFCs 54
1. The SFCs from 2011 to 2021 were False and Misleading 55
2. Defendants Used the False SFCs to Defraud Banks and Insurers 56
B. Defendants' Conduct in Violation of §63(12) was Repeated and Persistent 58
CONCLUSION 61

TABLE OF AUTHORITIES

CASES

Adam v. Cutner & Rathkopf, 238 A.D.2d 234 (1st Dep't 1997) 53

Alvarez v. Prospect Hosp., 68 N.Y.2d 320 (1986) 53

Flandera v. AFA Am. Inc., 78 A.D.3d 1639 (4th Dep't 2010) 58

In re Atlas Air Worldwide Holdings, Inc. Securities Litigation, 324 F. Supp. 2d 474 (S.D.N.Y. 2004) 8

In re BISYS Securities Litigation, 397 F. Supp.2d 430 (S.D.N.Y. 2005) 8

Lowry v. RTI Surgical Holdings, 532 F. Supp. 3d 652 (N.D. Ill. 2021) 8

Matter of People v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023) 5

Omnicare, Inc. v. Laborers District Council, 575 U.S. 175 (2015) 58

People by James v. Trump, No. 2023-00717, 2023 WL 4187947 (1st Dep't June 27, 2023) 5, 56

People ex rel. Spitzer v. Gen. Elec. Co., 302 A.D.2d 314 (1st Dep't 2003) 56

People v. Allen, 198 A.D.3d 531 (1st Dep't 2021), *leave to appeal granted*, 38 N.Y.3d 996 (2022) 54

People v. Apple Health and Sports Clubs, Ltd., 206 A.D.2d 266 (1st Dep't 1994), *dismissed in part, denied in part*, 84 N.Y.2d 1004 (1994) 54, 55

People v. Coventry First LLC, 52 A.D.3d 345 (1st Dep't 2008) 54

People v. Northern Leasing Systems, Inc., 193 A.D.3d 67 (1st Dep't 2021) 54, 58

People v. Trump Entrepreneur Initiative, 137 A.D.3d 409 (1st Dep't 2016) 54

Rosenberg v. Rockville Centre Soccer Club, Inc., 166 A.D.2d 570 (2d Dep't 1990) 53

State of New York v. Wolowitz, 96 A.D.2d 47 (2d Dep't 1983) 58, 60

State v. Gen. Elect. Co., 302 A.D.2d 314 (1st Dep't 2003) 54, 58

Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851 (1985) 53

Zuckerman v. City of New York, 49 N.Y.2d 557 (1980) 53

STATUTES

N.Y. Exec. Law § 63(12) 53, 54, 58

The People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submit this memorandum of law with attached Appendix and the accompanying Affirmation of Colleen K. Faherty, dated August 4, 2023 ("Faherty Aff."), and Rule 202.8-g Statement of Material Facts ("202.8-g Statement") in support of their motion for partial summary judgment against all Defendants pursuant to CPLR §3212(e) and (g).

PRELIMINARY STATEMENT

Since at least 2011, Defendants and others working on their behalf at the Trump Organization have falsely inflated by billions of dollars the value of many of the assets listed on Donald J. Trump's annual statement of financial condition ("SFC"), and hence his overall net worth for each of these years. Mr. Trump, and in some years the trustees of his revocable trust, submitted these grossly inflated SFCs to banks and insurers to secure and maintain loans and insurance on more favorable terms, reaping hundreds of millions of dollars in ill-gotten savings and profits.

The People move for summary judgment on their First Cause of Action under Executive Law § 63(12) for fraud against all Defendants. To adjudicate this claim, the Court need answer only two simple and straightforward questions: (1) were the SFCs from 2011 to 2021 false or misleading; and (2) did Defendants repeatedly or persistently use the SFCs in the conduct of business transactions? The answer to both questions is a resounding "yes" based on the mountain of undisputed evidence cited in Plaintiff's accompanying 202.8-g Statement.[1]

[1] While the focus of this motion is only on the People's First Cause of Action for the sake of expediency, these same predicate findings – that the SFCs were false and were used repeatedly and persistently by Defendants to commit fraud in connection with business transactions – are equally applicable to the People's remaining causes of action and will necessarily narrow the scope of matters to be addressed at trial, including at a minimum the People's claims for relief in the form of disgorgement, bans, and other equitable remedies.

The basic predicate facts for the Court to find Defendants liable for fraud under § 63(12) are beyond dispute. Defendants followed the same procedure each year to create false and misleading SFCs. The SFCs include amounts for Mr. Trump's assets, mostly real estate holdings, that are represented to be stated "at their estimated current values," a term defined in the applicable accounting rules as the value that a willing buyer and willing seller could agree on, where both are fully informed and neither is acting under duress. The associated liabilities are then subtracted from the "estimated current values" to derive Mr. Trump's net worth. The values were calculated as of June 30 for each year in an Excel spreadsheet by the Trump Organization's Controller Jeffrey McConney and others at the company, all under the supervision of Chief Financial Officer Allen Weisselberg acting at the direction of Mr. Trump. Each year, Messrs. Weisselberg and McConney forwarded the spreadsheet and some backup material to outside accountants who then compiled the information into Mr. Trump's annual SFC to show his net worth. Mr. Trump, directly or through others acting on his behalf in some years, would approve the final version of the SFC, which was then submitted to financial institutions in connection with business transactions.

Based on the undisputed evidence, no trial is required for the Court to determine that Defendants presented grossly and materially inflated asset values in the SFCs and then used those SFCs repeatedly in business transactions to defraud banks and insurers. Notwithstanding Defendants' horde of 13 experts, at the end of the day this is a *documents case*, and the documents leave no shred of doubt that Mr. Trump's SFCs do not even remotely reflect the "estimated current value" of his assets as they would trade between well-informed market participants. Instead, the undisputed evidence establishes that Defendants employed a variety of deceptive schemes to grossly inflated values for many of Mr. Trump's assets, including the following examples:

- Mr. Trump inflated the value of his triplex apartment at Trump Tower by using an incorrect figure for the apartment's square footage that was nearly triple the actual

square footage. This error inflated the apartment's value by approximately $100-$200 million each year from 2012 to 2016.

- Mr. Trump valued a number of his properties at amounts that significantly exceeded professional appraisals of which his employees were aware and chose to ignore. For example, for his leased property at 40 Wall Street, in some years he valued the property at more than twice the appraised value. For his property at Seven Springs, in certain years he valued the property at more than five times the appraised value. For his non-controlling limited partnership interest in properties in New York and San Francisco, he valued them at between 25-40% more than what they were worth based on existing appraisals.

- Mr. Trump valued Mar-a-Lago as if it could be sold as a private single family residence for amounts ranging between $347 million to $739 million over the period 2011 to 2021, ignoring limitations place on the property under multiple restrictive deeds that he executed providing the property could be used only as a social club. During this same period, the property was assessed by Palm Beach County as having a market value based on its restricted use as a social club ranging between $18 million to $27.6 million.

- Mr. Trump valued undeveloped land at his golf course in Aberdeen, Scotland based on an assumption that he could build and sell for profit far more residential homes than the local Scottish governmental authorities had approved. Adjusting for the number of homes actually approved, even using Mr. Trump's wildly inflated estimate of his profit per home, reduces the value by over $150 million in most years.

- Mr. Trump tacked on an extra 15-30% "brand premium" to the value of many of his golf clubs. This undisclosed premium inflated the aggregate value of the clubs by over $350 million in several years.

- Mr. Trump inflated the value of unsold condominium units he owned at Trump Park Avenue by valuing rent stabilized units at vastly inflated amounts as if they were not rent stabilized, valuing other unsold units at the original offering prices rather than the lower estimates of current market value derived for internal use by the Trump Organization's real estate brokerage arm, and valuing two apartments leased by Ivanka Trump at amounts exceeding by two to three times the price at which Ms. Trump had the contractual option to purchase the units.

- Mr. Trump included as "cash" – an indication of his liquidity – and "escrow deposits" sums held with partnerships in which he owned only a 30% minority share and over which he exercised no control. In some years, as much as one-third of the cash and over one-half of the escrow deposits listed on the SFC belonged to the partnerships.

- Mr. Trump included as part of the value of his real estate licensing deals: (i) transactions that had yet to be reduced to a written contract despite representing in

> the SFCs that only signed deals were included; and (ii) estimated profits from transactions between only Trump Organization affiliates despite representing in the SFC that only third-party transactions with other developers were included. In many years these unsigned "deals" and transactions between affiliates accounted for between $45-105 million and $87-$225 million, respectively, of the total value of this asset category.

Correcting for these and other blatant and obvious deceptive practices engaged in by Defendants *reduces Mr. Trump's net worth by between 17-39% in each year*, or *between $812 million to $2.2 billion,* depending on the year (as shown in the chart at Tab 1 of the Appendix).

Moreover, in addition to these quantifiable deceptive practices, Mr. Trump misrepresented that his SFCs complied with generally accepted accounting principles, or "GAAP," when they did not. More specifically, the SFCs violated GAAP in many material ways, including failing to discount projected future income to arrive at a proper present value, using methodologies that do not result in estimated current values that are based on market considerations, and misrepresenting that outside professionals were involved in the evaluation of the assets.

While this is just the tip of a much larger iceberg of deception Plaintiff is prepared to expose at trial – which would result in carving off billions more from Mr. Trump's net worth[2] – it is more than sufficient to permit this Court to rule as a matter of law that each SFC from 2011 to 2021 was false or misleading.

[2] Based on the work done by Plaintiff's valuation and accounting experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value," Mr. Trump's net worth in any year between 2011 and 2021 would be *no more than $2.6 billion*, rather than the stated net worth of up to $6.1 billion, and likely considerably less if his properties were actually valued in full blown professional appraisals.

Nor is there any dispute that the false SFCs from 2011 to 2021 were repeatedly and persistently used by Defendants to commit fraud in the course of transacting business with financial institutions *on or after July 13, 2014*, the cutoff date for timely claims against these Defendants that the First Department approved in its June 27, 2023 decision in this case.[3] *See People by James v. Trump*, No. 2023-00717, 2023 WL 4187947, at *2 (1st Dep't June 27, 2023) (holding in an appeal based on the motion-to-dismiss record that, "[f]or defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014."); *see also Matter of People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023) (affirming corporate tolling agreement applied to corporate affiliates, officers, and directors under language defining the bound parties similar to language in the tolling agreement here).

For five loans where Mr. Trump provided a personal guaranty to obtain more favorable terms, including lower interest rates, Defendants submitted the false SFCs after July 13, 2014 to either obtain the loan or satisfy obligations requiring annual financial disclosures to maintain the loan. Mr. Trump as well as Donald Trump, Jr. and Eric Trump, acting as Mr. Trump's attorneys-in-fact, repeatedly certified to lenders at various points in time after July 13, 2014 that Mr. Trump's SFCs were true and accurate. In addition to banks, the Trump Organization also submitted Mr. Trump's SFCs to insurance companies to renew coverage, including for the 2019 and 2020 renewal of the company's surety coverage and in 2017 to renew the company's directors and officers

[3] Plaintiff reserves the right to argue at trial or in response to Defendants' submissions that an earlier cutoff date for timely claims applies based on tolling doctrines not considered by the Appellate Division or this Court and further reserves the right to challenge the First Department's holding at a later stage of this case. For purposes of this motion, however, Plaintiff takes the position that the cutoff date for timely claims against all Defendants is at latest July 13, 2014, because all of the Defendants are bound by the August 2021 tolling agreement. *See* 202.8-g Statement at ¶793-94.

coverage. In submitting the SFCs to the underwriters for both insurance programs, CFO Allen Weisselberg not only used the inflated values in the SFCs to mislead them, but also made affirmative misrepresentations, telling the surety underwriter that the values in the SFCs were determined by a professional appraisal firm and telling the D&O underwriter that there were no ongoing investigations the company believed would likely give rise to a claim, neither of which was true.

* * *

Based on the overwhelming amount of evidence establishing beyond dispute that Defendants' repeated and persistent fraudulent use of the false and misleading SFCs in connection with business transactions with banks and insurers, the People are entitled to summary judgment in their favor finding Defendants liable as a matter of law on the People's First Cause of Action for fraud under Executive Law § 63(12).

STATEMENT OF FACTS[4]

A. Preparation of the SFCs

Since at least 2011, Mr. Trump and Trump Organization employees have prepared an annual "Statement of Financial Condition of Donald J. Trump" ("SFC"). (202.8-g ¶1) From at least 2011 to 2015, the SFCs were issued by Mr. Trump. (202.8-g ¶9) Starting in 2016, commencing with the SFC for the year ending June 30, 2016, the SFCs have been issued by the Trustees of the Donald J. Trump Revocable Trust ("Trust") on his behalf. (202.8-g ¶10) The SFCs

[4] The citations in this section use the following format: (i) cites to "202.8-g ¶__" are to paragraphs in the 202.8-g Statement; (ii) cites to "Ex. __" are to the exhibits listed and attached to the Faherty Affirmation; and (iii) cites to "App. Tab __" are cites to the tabbed charts in the Appendix attached to this brief. To avoid unnecessary duplication, this fact section cites to the accompanying 202.8-g Statement rather than the exhibits cited within the 202.8-g Statement unless language is quoted directly from an exhibit, in which case the citation is to the exhibit.

contain assertions of Mr. Trump's net worth, based principally on asserted values of particular assets minus outstanding liabilities. (202.8-g ¶2) The SFCs represent that "[a]ssets are stated at their estimated current values and liabilities at their estimated current amounts," consistent with GAAP. (Ex. 1 at -133; Ex. 2 at -310; Ex. 3 at -036; Ex. 4 at -716; Ex. 5 at -690; Ex. 6 at -1985; Ex. 7 at -1844; Ex. 8 at -2727; Ex. 9 at -792; Ex. 10 at -250; Ex. 11 at -420; 202.8-g ¶29-35) From at least 2011 until 2020, Mr. Trump's SFCs were compiled by accounting firm Mazars. Another accounting firm, Whitley Penn LLP, compiled the 2021 SFC. (202.8-g ¶3-4)

The process for preparing each SFC remained essentially the same throughout the period 2011 through 2021. The asset valuations for the SFCs were prepared by staff at the Trump Organization, working at the direction of Mr. Trump or the trustees of the Trust. For the SFCs from 2011 through 2015, Controller Jeffrey McConney was the Trump Organization employee with primary responsibility for the preparation of the SFCs, working under the supervision of Chief Financial Officer Allen Weisselberg. For the 2016 SFC forward, and beginning on or about November 16, 2016, Messrs. Weisselberg and McConney tasked a junior employee, Patrick Birney, with primary responsibility for the preparation of the SFCs, working under their supervision. (202.8-g ¶5) The valuations were calculated in an Excel spreadsheet referred to as "Jeff's Supporting Data" – a reference to Mr. McConney – that was forwarded each year to the accounting firm along with some supporting documents to be compiled by the accounting firm into a report that would become the SFC in each year. (202.8-g ¶6)

From 2011 through 2015, Mr. Trump was the individual "responsible for the preparation and fair presentation" of the SFC "in accordance with accounting principles generally accepted in the United States of America ["GAAP"] and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation" of the SFC. (Ex. 1 at -132; Ex. 2 at -309;

Ex. 3 at -035; Ex. 4 at -715; Ex. 5 at -689) From 2016 through 2021, the trustees of the Trust were the individuals "on behalf of Donald J. Trump" who were "responsible for the accompanying [SFC] . . . and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of America." (Ex. 6 at -1981; Ex. 7 at -1841; Ex. 8 at -2724; Ex. 9 at -789; Ex. 10 at -246; Ex. 11 at -416)

Further, Mr. Trump, or the trustees of the Trust for the SFCs from 2016 through 2021, had responsibility for providing all available records to the accounting firm for the SFC engagement. (202.8-g ¶23-27) Additionally, for each year from 2011 to 2020, Mr. Weisselberg in his capacity as CFO of the Trump Organization signed a representation letter submitted to Mazars, acknowledged that the Trump Organization was "responsible for the information provided to Mazars for each annual compilation," and confirmed that the information was "presented fairly and accurately in all material respects." (Ex. 49 at 160:5 – 161:13)

On May 18, 2021, Mazars notified the Trump Organization that the firm was "resigning from all engagements with the Trump Organization and related entities." (Ex. 217) Subsequently on February 9, 2022, Mazars further informed the Trump Organization that the SFCs for the years 2011 to 2020 "should no longer be relied upon." (Ex. 218)[5]

[5] The Mazars letter advising the Trump Organization that the SFCs from 2011 to 2020 should no longer be relied upon in and of itself supports a finding that the SFCs were false. *Cf. In re BISYS Securities Litigation*, 397 F. Supp.2d 430, 437 (S.D.N.Y. 2005) (noting that "mere fact" of financial restatement is sufficient to plead falsity); *In re Atlas Air Worldwide Holdings, Inc. Securities Litigation*, 324 F. Supp. 2d 474, 487 (S.D.N.Y. 2004) (same); *Lowry v. RTI Surgical Holdings*, 532 F. Supp. 3d 652, 660 (N.D. Ill. 2021) (five years' worth of inaccurate financial results, combined with GAAP violations and accounting restatements, held to be "likely enough by itself to show materiality" of misstatements).

B. Gross Inflation of Assets

The objective evidence establishes beyond dispute that many assets were grossly inflated by amounts that were material to any user of the SFCs, resulting in an overstatement of Mr. Trump's net worth by between 17-39% during the period 2011 to 2021. (App. Tab 1) The inflated sums are presented in the spreadsheets contained in the Appendix accompanying this brief and are discussed in detail below.[6]

1. Mr. Trump's Triplex

Mr. Trump's Triplex at Trump Tower is valued as an asset in the SFCs from 2011 through 2021. In the years 2012 through 2016, the Triplex value was calculated based on multiplying a price per square foot as determined by the Trump International Realty Sales Office by an incorrect figure for the size of the Triplex of 30,000 square feet. (202.8-g ¶37) In reality, the Triplex was 10,996 square feet. (202.8-g ¶38) As a result of this error alone, the value of the Triplex reflected on each SFC from 2012 through 2016 was inflated by roughly $100-$200 million. (202.8-g ¶39; App. Tab 2)

Nearly tripling the size of the Triplex when calculating the value for purposes of the SFCs was far from an honest mistake. Documents containing the correct size of Mr. Trump's Triplex (most notably the condominium offering plan and associated amendments for Trump Tower) were easily accessible inside the Trump Organization prior to 2012, were signed by Mr. Trump, and

[6] The calculations of the downward adjustments to correct for Defendants' deceptive practices that have grossly inflated asset values presented in the SFCs and can be quantified based on the undisputed evidence are contained in the charts in the Appendix that accompanies this brief. The chart at Tab 1 is a summary spreadsheet showing the reductions per year for each of the assets discussed in this section. The remaining Tabs contain the backup calculations for the individual assets that roll up into the summary chart at Tab 1 and include citations to the 202.8-g Statement paragraphs that contain the source material for the numbers in the charts.

were sent to Mr. Weisselberg in 2012. (202.8-g ¶41) Moreover, Mr. Trump was intimately familiar with the layout and square footage of the Triplex, having personally overseen the apartment's renovation prior to 2012 and having lived in the apartment for more than two decades, using it for interviews, photo spreads, as a filming location in "The Apprentice," and even to host foreign heads of state. (202.8-g ¶42)

Even after Mr. Weisselberg and Donald Trump, Jr. were advised by a Forbes Magazine journalist of the correct size of the apartment based on a review of property records, they still confirmed to Mazars that the value for the apartment in the 2016 SFC based on the incorrect square footage was accurate. (202.8-g ¶44-45) Only after Forbes published an article in May 2017 entitled "Donald Trump has Been Lying About the Size of His Penthouse" did they stop engaging in this blatant fraud. (202.8-g ¶47)

2. Seven Springs

Seven Springs is a parcel of real property that consists of over 200 acres within the towns of Bedford, New Castle, and North Castle in Westchester County that is owned by Defendant Seven Springs LLC, a Trump Organization subsidiary. (202.8-g ¶49) As discussed below, multiple appraisals of the property were prepared over the years, all of which were ignored by the Trump Organization when valuing the property for the SFC.

A 2000 appraisal prepared for the Royal Bank of Pennsylvania and sent to the Trump Organization estimated that Seven Springs had an "as-is" market value of $25 million for residential development. (202.8-g ¶50) The same bank's records indicate that a 2006 appraisal showed an "as-is" market value of $30 million. (202.8-g ¶51) Another appraiser retained by Seven Springs LLC in late 2012 estimated the fair market value of a planned 6-lot subdivision on the portion of the property located in New Castle at around $700,000 per lot. (202.8-g ¶55)

In July 2014, David McArdle, an appraiser at Cushman & Wakefield ("Cushman"), was retained by Seven Springs LLC to provide a "range of value" of the Seven Springs property based on developing and selling residential lots on the property for the purpose of the Trump Organization considering a conservation easement donation. (202.8-g ¶57, 58) Mr. McArdle valued the sale of eight lots in the Town of Bedford, six lots in New Castle, and ten lots in North Castle. Mr. McArdle reached a present value for all 24 lots of approximately $30 million and communicated his range to counsel for Seven Springs LLC in late August or September 2014, months before the 2014 SFC was issued on November 7, 2014, who then shared the range with Eric Trump. (202.8-g ¶59-63)

Despite receiving values from professional appraisers in 2000, 2006, 2012, and 2014 putting the value of Seven Springs at or below $30 million, Mr. Trump wildly inflated the value of the property to $261 million in the 2011 SFC and $291 million for the SFCs from 2012 through 2014. (202.8-g ¶73, 75)

In early 2016, the Trump Organization received from Cushman an appraisal of Seven Springs, including the planned development. (202.8-g ¶66) Cushman's appraisal concluded that the entire property as of December 1, 2015 was worth $56.5 million. (202.8-g ¶67) In a concession that the appraised value was the proper amount to use as the value for the property in the SFC, Mr. Trump lowered the value of Seven Springs in the 2015 SFC to $56 million to match the Cushman appraisal. (202.8-g ¶68) The value was changed in subsequent years to $35.4 million from 2016 to 2018 and, based on another appraisal obtain by the Trump Organization, to $37.65 from 2019 to 2021. (202.8-g ¶69, 70)

Based on the highest appraised value of $56.5 million determined by Cushman in 2015, the property was vastly overvalued by more than $200 million in each year from 2011 through 2014. (202.8-g ¶75; App. Tab 3)

3. 40 Wall Street

The Trump Organization, through Defendant 40 Wall Street LLC, a New York Limited Liability Company, owns a "ground lease" pertaining to 40 Wall Street, pursuant to which it holds a leasehold interest in the land and buildings on the land, but pays rent (known as ground rent) to the landowner. (202.8-g ¶77) In connection with a loan modification, an appraisal was performed by Cushman in 2010 valuing the Trump Organization's interest in 40 Wall Street at $200 million as of August 1, 2010. (202.8-g ¶78) Cushman performed similar appraisals for the bank in 2011 and 2012 reaching valuations of the Trump Organization's interest in the property of $200 million and $220 million, respectively. (202.8-g ¶84, 85) The Trump Organization had the 2010 appraisal in its possession when Mr. McConney prepared the 2011 SFC, and Mr. Weisselberg was specifically aware that an appraisal of 40 Wall Street from the 2010 to 2012 time period had valued the property in the $200-$220 million range prior to authorizing Mazars to issue the 2012 SFC. (202.8-g ¶86, 87)

Despite the values reached for 40 Wall Street in the $200-$220 million range by Cushman in its 2011 and 2012 appraisals, the 2011 SFC valued the property at $524.7 million and the 2012 SFC valued the property at $527.2 million – exceeding the appraised values by more than $300 million each year. (202.8-g ¶80, 88)

Cushman appraised the property again in 2015 for a different lender, reaching a value of

$540 million.[7] The Trump Organization was provided with a copy of the 2015 Cushman appraisal at the time it was prepared. Notwithstanding the appraised value of $540 million, the 2015 SFC valued the property at $735.4 million. (202.8-g ¶104-108)

During the period 2011 to 2015, Mr. Trump valued his interest in 40 Wall Street in the SFCs at approximately $200-$325 million more than the appraised values. (202.8-g ¶114; App. Tab 4)

4. Mar-a-Lago

Mar-a-Lago represents the single greatest source of inflated value on the SFCs year after year. Mr. Trump purchased the property in 1985, and by 1993 he was seeking permission to turn the property into a club, recognizing that "it is impractical for a single individual to continuously own Mar-a-Lago as a private estate at his or her sole expense." (202.8-g ¶145, Ex. 92 at 3) Indeed, in his application to transform the property into a club, Mr. Trump noted that "80 qualified buyers," including H. Ross Perot, looked at the property and declined to buy it. (202.8-g ¶145, Ex. 92 at 3)

Mr. Trump won approval from Palm Beach to convert the property to a social club in 1993. (202.8-g ¶146) Two years later he transferred the property to a wholly owned limited liability company and signed a Deed of Conservation and Preservation, giving up his rights to use the property for any purpose other than a social club ("1995 Deed"). (202.8-g ¶147) Several years later, in 2002, Mr. Trump signed a deed of development rights conveying to the National Trust for Historic Preservation "any and all of [his] rights to develop the Property for any usage other than

[7] This 2015 appraisal was improperly inflated, but Plaintiff does not dispute the amount of this appraisal for the purposes of this motion. Even taking the inflated value of this 2015 appraisal on its face proves that the value used by Mr. Trump for 40 Wall Street in the 2015 Statement was materially false.

club usage." (The "2002 Deed"). (Ex. 94) As a result of that restriction, the club was taxed at a significantly lower rate. (202.8-g ¶149)

Ignoring these legal restrictions—known to Mr. Trump and his agents—that any informed buyer would take into consideration, the SFCs during the period 2011 to 2021 valued the property between $347 million and $739 million, making it one of the three most highly valued properties owned by Mr. Trump. (202.8-g ¶200) But no one would know that from reading the SFCs. This is because between 2011 and 2021, the SFCs conceal the value of Mar-a-Lago by lumping it into a group of more than a dozen properties categorized as "Club Facilities and Related Real Estate" with a combined asset value (*See, e.g.*, Ex. 8 at – 2737.) By including the property in a larger group, Mr. Trump hid the grossly inflated value of the property from scrutiny. The SFCs further failed to disclose that the inflated valuations of the club were based on the false and misleading premise that it was an unrestricted residential plot of land that could be sold and used as a private home, which was clearly not the case. (202.8-g ¶155, 159, 163, 167, 171, 175, 179, 183, 187, 191, 195) None of the SFCs discloses any of the limitations on Mr. Trump's rights to the Mar-a-Lago property; to the contrary, by lumping the property in with a series of golf clubs, and not specifying which of several valuation methods was used for any particular property in that category, the SFCs omit all crucial details regarding how Mar-a-Lago was valued. (202.8-g ¶154, 158, 162, 166, 170, 174, 178, 182, 186, 190, 194) The failure to make any meaningful disclosure about the valuation methodology used for one of Mr. Trump's purportedly most valuable properties is self-evident.

In stark contrast to the wildly inflated values for Mar-a-Lago incorporated into the overall club asset values in the SFCs, the Palm Beach County Appraiser determined the market value of Mar-a-Lago for purposes of assessing property taxes to be between $18-$27.6 million during the period 2011 to 2021. (202.8-g ¶199) This is an appropriate basis under GAAP for determining

estimated current value, which is the basis on which the SFCs purport to present the value of Mr. Trump's assets. (202.8-g ¶198) The county appraiser's estimates of current value establish that the SFC values for Mar-a-Lago are inflated by $327-$714 million over the period 2011 to 2021. (202.8-g ¶200; App. Tab 5)

5. Aberdeen

The value assigned to the Trump International Golf Club in Aberdeen, Scotland in each year from 2011 to 2021 was comprised of two components: a value for the golf course and another value for the development of the non-golf course property, *i.e.*, the "undeveloped land." (202.8-g ¶201) In each year from 2011 to 2021, the larger component of the valuation – and for many years by a factor of four or more – was the value for developing the undeveloped land. (202.8-g ¶202)

For the SFCs in 2014 through 2018, Messrs. McConney and Weisselberg assumed that 2,500 homes could be built on the undeveloped land and sold for £83,164 per home, for a value of £207,910,000. (202.8-g ¶205) But the Trump Organization had never received approval from the local Scottish authorities to develop and sell 2,500 homes on the property. (202.8-g ¶207) As reported in the 2014 SFC, the Trump Organization "received outline planning permission in December 2008 for . . . a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas," for a total of 1,486 homes, not 2,500. (Ex. 4 at -729)

The 950 holiday homes and 36 golf villas had restricted use under the terms governing the club and could be used solely as rental properties to be rented for no more than six weeks at a time. (202.8-g ¶209) Based on this restricted use for the 900 holiday homes and 36 golf villas, the Trump Organization represented in material submitted to the local Scottish authorities that these short-term rental properties would not be profitable and therefore would not add any value to Aberdeen. (202.8-g ¶210) In other words, the Trump Organization acknowledged that only the 500 private

homes added value to the property. Adjusting the values to correctly reflect the 500 private homes actually approved that would add value, keeping all other variables constant, results in a reduction in the value of the undeveloped land component of Aberdeen of £166,328,000 in each year from 2014 to 2018. (202.8-g ¶211; App. Tab 6)

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings. (202.8-g ¶214) The new proposal was to build 500 private residences, 50 leisure/resort units (which could be occupied on a holiday letting or fractional basis only and not as a person's sole or main residence). (202.8-g ¶215) In September 2019, the Aberdeen City Council approved the Trump Organization's reduced proposal. (202.8-g ¶216) Nevertheless, the 2019 SFC, finalized a month later in October 2019, derived a value of £217,680,973 for the undeveloped land based on *2,035 private homes*, fewer than the 2,500 homes assumed in prior years but still far more than the number of private residences the City Council had just approved. (202.8-g ¶217) Adjusting the valuation to correctly reflect the 500 private residences actually approved, keeping all other variables constant (and assuming the cottages and homes can be sold for the same price), results in a revised valuation of £53,484,269, or a reduction in the value of the undeveloped land component of Aberdeen for the 2019 SFC of £164,196,704. (202.8-g ¶218)

The 2020 and 2021 SFCs derived a much lower value of £82,537,613 in each year for the undeveloped land based on 1,200 homes, but still more than twice the number of private residences the City Council had approved in 2019. (202.8-g ¶219) Adjusting the valuation to correctly reflect the 500 private residences actually approved, keeping all other variables constant (and assuming the cottages and homes can be sold for the same price), results in a revised valuation of £34,390,672, or a reduction in the valuation of the undeveloped land component of Aberdeen for

the 2020 and 2021 SFCs of £48,146,941 in each year. (202.8-g ¶220)

Applying the applicable exchange rate and accounting for an "economic downturn" reduction applied by the Trump Organization yields corrected values for Aberdeen that are $209-$283 million lower in 2014 and 2015, $166-$177 million lower in 2016 to 2019, and $59-$66 million lower in 2020 and 2021.[8] (202.8-g ¶222; App. Tab 6)

6. Vornado Partnership Properties

Mr. Trump has a 30% limited partnership interest in entities that own office buildings in New York City and San Francisco located at 1290 Avenue of the Americas ("1290 AoA") and 555 California Street ("555 California"), respectively. (202.8-g ¶223-225) For the SFCs from 2011 through 2021, Mr. Trump valued his interest in the properties by taking 30% of the values Messrs. McConney and Weisselberg calculated for 1290 AoA and 555 California that did not take into account existing appraisals for 1290 AoA prepared by outside appraisal firms in 2012 and 2021 and for two years used an incorrect capitalization rate taken from "comparable" buildings.

In an appraisal report by Cushman dated October 18, 2012, 1290 AoA was appraised as of November 1, 2012 to have a market value "as is" of $2 billion. (202.8-g ¶233) This appraised value is significantly lower than the value used for 1290 AoA by Mr. McConney to calculate Mr. Trump's 30% partnership interest in the properties as of June 30, 2012 and June 30, 2013. (202.8-g ¶239-240) The valuation of Mr. Trump's 30% partnership interest in the properties in the 2012 SFC used $2,784,970,588 as the value for 1290 AoA. (202.8-g ¶235) Substituting the appraised value as of November 1, 2012 of $2 billion for the higher value of $2,784,970,588 yields a

[8] For the years 2015 through 2019, the Trump Organization applied a "20% reduction due to economic downturn in the area" to the valuation of the undeveloped land component of Aberdeen. (PP221) This same reduction was applied to the newly calculated numbers based on using the correct number of approved homes.

valuation for Mr. Trump's 30% partnership interest in the properties of $587,847,273 – more than $235 million less than the value listed in the 2012 SFC. (202.8-g ¶236; App. Tab 7) Similarly, the valuation of Mr. Trump's 30% partnership interest in the properties in the 2013 SFC used $2,989,455,128 as the value for 1290 AoA. (202.8-g ¶238) Substituting the appraised value as of November 1, 2012 of $2 billion for the higher value of $2,989,455,128 yields a value for Mr. Trump's 30% partnership interest in the properties of $448,990,909 –nearly $300 million less than the value listed in the 2013 SFC. (202.8-g ¶239; App. Tab 7)

The same Cushman 2012 appraisal also contains a valuation as of November 1, 2016 of $2.3 billion. (202.8-g ¶241) The valuation of Mr. Trump's 30% partnership interest in the properties in the 2014, 2015, and 2016 SFCs used higher values for 1290 AoA of $3,078,338,462, $85,819,936, and $3,055,000,000, respectively. (202.8-g ¶242, 244, 246) Substituting the $2.3 billion value for the higher values used for 1290 AoA to calculate Mr. Trump's 30% interest reduces the reported values by $233.5 million, $205.7 million, and $226.5 million in the 2014, 2015, and 2016 SFCs, respectively. (202.8-g ¶243, 245, 247; App. Tab 7)

In a later appraisal dated October 7, 2021 prepared by CBRE, 1290 AoA was appraised as of August 24, 2021 to have a market value "as is" of $2 billion. (202.8-g ¶253) The valuation of Mr. Trump's 30% partnership interest in the properties in the 2021 SFC used $2,574,813,800 as the value for 1290 AoA. (202.8-g ¶254) Substituting the appraised value as of 2021 of $2 billion for the higher value of $2,574,813,800 yields a value for Mr. Trump's 30% partnership interest in the properties of $473,111,915 – nearly $175 million less than the value listed in the 2021 SFC. (202.8-g ¶255; App. Tab 7)

In addition, for 2018 and 2019 the SFC states that the value of 1290 AoA was based on "applying a capitalization rate to the stabilized net operating income," *i.e.*, using a stabilized cap

rate. (Ex. 8 at -2741; Ex. 9 at -161806) The supporting data shows that the Trump Organization used the cap rate of 2.67% based on the sale of a "comparable office building" as reported in a generic marketing report. (202.8-g ¶267, 270) However, the market report states that the stabilized cap rate for the "comparable office building" was projected to be 4.45%, not 2.67%. (202.8-g ¶258-260) Adjusting for the correct stabilized cap rate based on the Trump Organization's selected comparable sale reduces the value of 1290 AoA by over $500 million in 2018 and 2019. (202.8-g ¶274, 276; App. Tab 7)

7. US Golf Clubs

a. Brand Premium

The Clubs category of assets includes golf clubs in the United States and abroad that are owned or leased by Mr. Trump. (202.8-g ¶284) The value for the golf clubs is presented in the SFCs from 2011 to 2021 in the aggregate, together with Mar-a-Lago, and provides no itemized value for any individual club. (202.8-g ¶285)

For many clubs in certain years, Mr. Trump added a 30% or 15% brand premium to the value – that is, the value of the club was increased by 30% or 15% because the property was completed and operating under the "Trump" brand. (202.8-g ¶305) Mr. Trump did not disclose in any of the SFCs that certain golf club values included a premium of 30% or 15% for the "Trump" brand. (202.8-g ¶306) Rather, each SFC from 2013 through 2020 contained the following representation: "The goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." (202.8-g ¶307)

Backing out this brand premium from the club values reduces the value of this asset category by a total of $366 million over the period 2013 to 2020. (202.8-g ¶309; App. Tab 8 (Chart 1))

b. Membership Deposit Liabilities

As part of the purchase of several club properties, Mr. Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits owed to existing club members. (202.8-g ¶310) These liabilities for refundable memberships would need to be paid out only decades in the future, if at all. (202.8-g ¶311) The SFCs represent that the liabilities resulting from these obligations are valued at $0. (202.8-g ¶312)

Contrary to this representation, in each year from 2012-2021, the Trump Organization included the face amount of the refundable membership deposit liabilities as a component of the value for many clubs. (202.8-g ¶318) Removing the membership deposit liabilities from the valuation calculation for these clubs – consistent with Mr. Trump's representation that the liabilities were valued at $0 – reduces the aggregate value for these clubs by over $75 million each year in all but two years.[9] (202.8-g ¶331; App. Tab 8 (Chart 2))

c. TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA consisted of a valuation for the golf course and a valuation for the undeveloped land. (202.8-g ¶288) From 2013 to 2018, the undeveloped land at TNGC Briarcliff was valued based on a development project. (202.8-g ¶296) The undeveloped land at TNGC LA consisted of potential home lots, 16 of which were on the club's driving range. (202.8-g ¶299) The Trump Organization considered donating a conservation easement over parts of both properties and during that process received values from appraisers that were ignored when preparing the SFCs. (202.8-g ¶298, 302)

[9] This amount does not include the impact of applying a 15% or 30% brand premium to the fixed assets figure which consists of the full value of the membership deposit liability.

From at least 2012 to 2016, the values assigned to TNGC Briarcliff and TNGC LA far exceeded the values determined by the appraisers. Using the appraised values reduces the combined value of these clubs by over $50 million per year from 2012 to 2016. (202.8-g ¶304; App. Tab 8 (Charts 3, 4))

8. Trump Park Avenue

Trump Park Avenue is included as an asset on Mr. Trump's SFC for the years 2011 through 2021 with values ranging between $90.9 million and $350 million. (202.8-g ¶344) The valuation of the building in each year was based in part on the valuation of unsold residential condominium units in the building. (202.8-g ¶335) The value of those units was grossly inflated for three reasons as described below.

a. Inflated Rent Stabilized Units

In 2011, 12 of the unsold residential condominium units were subject to New York City's rent stabilization laws. (202.8-g ¶336) An appraisal of the building was performed in 2010 by the Oxford Group in connection with a $23 million loan from Investors Bank. (202.8-g ¶337) The appraisal valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit, because the rent-stabilized units "cannot be marketed as individual units" for sale as the "current tenants cannot be forced to leave." (202.8-g ¶338, Ex. 144 at -22) The Trump Organization had a copy of the Oxford Group appraisal and, at least as of 2010, Trump Organization employees, including Donald Trump Jr., were aware that many of the unsold units were subject to rent stabilization laws. (202.8-g ¶339)

Nevertheless, the SFCs for 2011 to 2021 valued the unsold rent-stabilized units as if they were freely marketable and not subject to rent stabilization laws. (202.8-g ¶341) For example, in the 2011 and 2012 SFCs, the 12 rent stabilized units were valued collectively at $49,596,000—a

rate over 65 times higher than the $750,000 valuation for those units in the 2010 appraisal. (202.8-g ¶342; App. Tab 9 (Chart 1))

b. Ivanka Trump's Option Prices Ignored

At least two of the unsold residential units not subject to rent stabilization laws were valued at inflated amounts in the SFCs for a number of years over and above option prices agreed to by the Trump Organization. (202.8-g ¶364) The unit known as Penthouse A, which Ivanka Trump started renting in 2011, included in the lease an option to purchase the unit for $8,500,000. (202.8-g ¶365) Despite this option price, for the 2011 and 2012 SFCs this unit was valued at $20,820,000—approximately two and a half times the option price. (202.8-g ¶366; App. Tab 9 (Chart 2)) For the 2013 SFC, the unit was valued at $25,000,000—more than three times the option price. (202.8-g ¶367; App. Tab (Chart 2))

In June 2014, Ms. Trump was given an option (which automatically vested the next year) to purchase a different, larger penthouse unit ("Penthouse B") for $14,264,000. (202.8-g ¶368) That unit was valued at $45 million for the 2014 SFC—more than three times as much as the option price. (202.8-g ¶369; App. Tab 9 (Chart 2)) For the SFCs from 2015 to 2021, the value for Penthouse B was lowered to reflect the option price of $14,264,000, an acknowledgement that the option price was the appropriate measure of value for the unit all along. (202.8-g ¶370)

c. Offering Prices Used Instead of Market Prices

In the SFCs from 2011 through 2015, the Trump Organization used the offering plan prices to value the remaining unsold residential condominium units rather than estimates of current market value. (202.8-g ¶372) At least as early as 2012, the Trump Organization's in-house real estate brokerage arm (Trump International Realty) prepared "Sponsor Unit Inventory Valuation" spreadsheets reflecting *both* offering plan prices and *current market values* based on actual market data that included unsold units at Trump Park Avenue. (202.8-g ¶373) Trump Organization

employees used these spreadsheets for day-to-day operations and business planning purposes, but disregarded them for purposes of deriving the property's valuation for the SFCs. (202.8-g ¶374)

The Trump Organization concealed its actual market value estimates from Mazars, sending the accounting firm only the portion of the spreadsheets containing the offering plan prices and omitting the column containing actual market value estimates. (202.8-g ¶382) In fact in one year, McConney initially did send to Mazars both columns of the spreadsheet—but within minutes sent a revised spreadsheet that omitted the current market value column and directed the firm to use the revised version instead. (202.8-g ¶383) Substituting the current market values from the "Sponsor Unit Inventory Valuation" spreadsheets for the offering plan prices reduces the value of the remaining unsold residential units in all years from 2012 to 2014 by between $24.4 million to $32.6 million depending on the year. (202.8-g ¶381; App. Tab 9 (Chart 3))

9. Trump Tower

Trump Tower is valued as an asset in the SFCs from 2011 through 2021. In the 2018 and 2019 SFCs, the value of Trump Tower was calculated by applying a capitalization rate to the "stabilized net operating income," *i.e.*, by using a stabilized cap rate. (P266, 269; Ex. 8 at -729; Ex. 9 at -794) The supporting data shows that the 2018 SFC used a cap rate of 2.86%, which was an average of the cap rates for "comparable office buildings" at 666 Fifth Avenue and 693 Fifth Avenue of 2.67% and 3.05%, respectively, as reported in a generic marketing report. (202.8-g ¶267) But the stabilized cap rate for 666 Fifth Avenue was projected in the marketing report to be 4.45%, not 2.67%. (202.8-g ¶260) Using the correct stabilized cap rate of 4.45% for 666 Fifth Avenue results in an average stabilized cap rate of 3.75%, which in turn reduces the value of Trump Tower in the 2018 SFC by nearly $175 million. (202.8-g ¶268)

The valuation of Trump Tower in the 2019 Statement was based on using just the cap rate for 666 Fifth Avenue, but again failed to use the stabilized cap rate of 4.45% and instead used a cap rate of 2.67%. (202.8-g ¶270, 271) Adjusting for this error reduces the value of Trump Tower in the 2019 SFC by nearly $323 million. (202.8-g ¶272; App. Tab 10)

10. Vornado Partnership Cash and Escrow Deposits

As a general matter, when a GAAP-compliant financial statement reports "cash," it is referring to an amount of liquid currency or demand deposits available to the person or entity whose finances are described in the SFC. (202.8-g ¶384, Ex. 181) For the SFCs covering 2011 to 2021, the value of the "cash" included in the asset category "cash and marketable securities" in 2011 to 2014, "Cash, marketable securities and hedge funds" in 2015 and 2016, and "cash and cash equivalents" in 2017 through 2021 included cash amounts held by the Vornado Partnership Interests. (202.8-g ¶386) Mr. Trump has a 30% limited partnership stake in the Vornado Partnership Interests without the right to use or withdraw funds held by the partnership. (202.8-g ¶387) Under GAAP, the cash held by Vornado Partnership Interests should not have been included as Mr. Trump's cash, and falsely inflates the SFCs by over $278 million in the aggregate over the period 2013 to 2021. (202.8-g ¶403; App. Tab 11)

The SFCs from 2014 to 2021 included in the total for the "escrow and reserve deposits and prepaid expenses" category of assets 30% of the escrow deposits or restricted cash held on the balance sheets of the Vornado Partnership Interests. (202.8-g ¶407) Under GAAP, the escrow amounts held by Vornado Partnership Interests should not have been included and falsely inflate the SFCs by over $99 million in the aggregate over the period 2014 to 2021. (202.8-g ¶417, 418; App. Tab 12)

11. Real Estate Licensing Developments

From 2011 to 2021, each SFC has included an asset category entitled "Real Estate Licensing Developments." (202.8-g ¶419) This category is represented to value "*associations with others* for the purpose of developing properties" and the cash flow that is expected to be derived from "*these associations* as their potential is realized." (202.8-g ¶420; *e.g.*, Ex. 1 at -3150 (emphasis added)) This asset category was represented to include "only situations which have evolved to the point *where signed arrangements with the other parties exist* and fees and other compensation which will be earned are reasonably quantifiable." (Exs. 3-13 at n.5 (emphasis added))

However, the Trump Organization included in this asset category from 2015 to 2018 speculative, unsigned deals as components of the value—deals expressly identified on internal Trump Organization financial records supporting the valuation as "TBD," *i.e*. to be determined. (202.8-g ¶422) These TBD deals were based on purely speculative projections that included thousands of new hotel rooms and millions of dollars in additional revenue. (202.8-g ¶423) The TBD deals were not signed arrangements that "existed" and for which compensation was "reasonably quantifiable" as the SFCs represented was the case for deals included within this asset category. (202.8-g ¶424) Excluding the TBD deals reduces the value of this asset category by over $247 million in the aggregate over the period 2015 to 2018. (202.8-g ¶425; App. Tab 13 (Chart 2))

The Trump Organization also included in this category a deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, and Trump Chicago—deals in accounting parlance that are known as "related party transactions" because they are not arms-length deals in the marketplace but rather deals between affiliates. (202.8-g ¶426) Including

these related party transactions was contrary to the representation in the SFCs that this category included only the value derived from "associations with others" when in fact the value included intercompany agreements among and between Trump Organization affiliates. (202.8-g ¶427) Excluding the intercompany agreements reduces the value of this asset category by $87 million to $224 million during the period 2013 to 2021 depending on the year. (P429-436; App. Table 13 (Chart 1)).

C. Other Violations of GAAP

In addition to the numerous quantifiable deceptive schemes discussed above that falsely inflated his assets in the SFCs, Mr. Trump and his associates—notwithstanding the representation that the SFCs were GAAP-compliant—violated GAAP in the preparation of the SFCs by failing to include sufficient disclosures to make them adequately informative, as detailed below.

1. Golf Club Valuations Using Fixed Assets

GAAP requires that assets listed in a personal financial statement be presented at their estimated current values. (202.8-g ¶30) Consistent with this requirement, in Note 1, Basis of Presentation, each SFC from 2011 to 2021 represents that "[a]ssets are stated at their estimated current values . . . ." (*See, e.g.*, Ex. 1 at -3136) Contrary to this representation, most of the clubs were not presented at their estimated current values.

Starting in 2012, the supporting data for the SFCs shows that Mr. Trump began to value some club facilities using the fixed assets method, and between 2013 to 2020 used that method to value all of the clubs except for Doral and Mar-a-Lago. (202.8-g ¶317) Under the fixed assets approach, the Trump Organization used as a club's value the total expenditures pertaining to that club taken from the club's balance sheet, including the purchase price (which typically was a large component of the value) and the obligation to assume a liability for refundable membership

deposits. (202.8-g ¶318) Using the fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers.

2. Undiscounted Future Income

When determining the estimated current value of a real estate investment, GAAP requires that any revenue expected to be received from the anticipated future sale of homes and/or condominiums must be discounted to present value in order to account for the amount of time that it would take to develop and sell the real estate asset. (Ex. 46, Topic 274-10-55, paragraphs 1, 6(b)) In violation of this GAAP requirement, Mr. Trump included within the value for many of his properties an amount attributable to the development and sale of residences on undeveloped land without any discount to present value, as if the residences could be immediately planned, developed, and sold.

As an example, for Seven Springs, the SFCs from 2011 to 2014 value the property "based on an assessment made by Mr. Trump in conjunction with his associates of the projected net cash flow which he would derive" from the construction and sale of "9 luxurious homes" and the "estimated fair value of the existing mansion and other buildings." (*See, e.g.*, Ex. 1 at -3148) The calculation of the profit included in the value from the sale of the nine homes does not include any discount to present value to account for the time it would take to construct and sell the homes. (*See, e.g.*, Ex. 13 at Rows 657-677)

For many of the golf clubs, the valuations include the estimated profit from "residential units that [the clubs] will sell." (*See, e.g.*, Ex. 4 at -723) For Trump Aberdeen, the values in the SFCs from 2014 to 2021 include the estimated profit from the construction and sale of 1,200 or more residences on undeveloped land. (202.8-g ¶205, 208) For TNGC Briarcliff, the values in the

SFCs from 2011 to 2021 include the estimated profit from the construction and sale of mid-rise residential units. (*See, e.g.*, Ex. 4 at -724) And for TNGC LA, the values in the SFCs from 2011 to 2021 include the estimated profit from the construction and sale of between 39 to 70 housing lots. (*See, e.g.*, Ex. 4 at -725) The calculation of the profit included in the value from the sale of these housing developments does not include any discount to present value to account for the time it would take to construct and sell the homes. (*See, e.g.*, Ex. 16 at Rows 508-527 (Aberdeen), 277-287 (Briarcliff), 394-408 (LA))

3. Misrepresentation of Involvement of Professionals

All of the SFCs from 2011 to 2021 represented that the values of the assets were prepared by Mr. Trump or the trustees of his Trust (for 2016 to 2021) and others at the Trump Organization in some instances with "outside professionals." (*See, e.g.*, 202.8-g ¶80, 161, 251) In particular, the SFCs from 2011 through 2019 specifically represented that particular valuations or groups of valuations were the result of "evaluations" or "assessments" by Mr. Trump working "in conjunction with . . . outside professionals." (*See, e.g.*, 202.8-g ¶161, 251) Contrary to this representation, no outside professionals were ever retained by the Trump Organization to prepare any of the asset valuations presented in the SFCs. (202.8-g ¶642) Indeed, as discussed above, to the extent Mr. Trump or the trustees received advice from outside professionals in the form of appraisals for various properties that are assets in the SFCs, they routinely ignored the appraisals – even withholding them from Mazars despite the request from the Mazars accountant that all appraisals be provided (202.8-g ¶92) – and used values for the SFCs that greatly exceeded the opinions of the appraisal professionals.

D. Submission of the False SFCs to Banks

1. Loans From the Deutsche Bank PWM Division

At the start of 2011, the Trump Organization had a single outstanding loan held by Deutsche Bank on Trump Chicago with just over $140 million outstanding. (202.8-g ¶438) The Trump Chicago loan was originated by the Commercial Real Estate ("CRE") division of Deutsche Bank. (202.8-g ¶439) Starting in 2011, Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank. (202.8-g ¶440)

The initial introduction to the PWM division at Deutsche Bank came in September 2011, when Jared Kushner, the husband of Ivanka Trump, introduced his brother-in-law Donald Trump, Jr. to Rosemary Vrablic, a Managing Director at the bank in the PWM division. (202.8-g ¶441) As part of this introduction, Ms. Vrablic confirmed the need for recourse in PWM loans in the form of a personal guarantee as part of any loan application. (202.8-g ¶442) As a result of the personal guarantee, the SFCs were central to the PWM division loan application. (202.8-g ¶443)

By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his SFCs, Mr. Trump was able to apply to the PWM division for, and obtain for the Trump Organization, loans with significantly lower interest rates than would otherwise have been available through the CRE division or from commercial real estate lending groups at other banks. (202.8-g ¶444) Through at least 2021, Defendants used the SFCs to secure loans and satisfy annual loan obligations necessary to maintain the loans.

a. The Doral Loan

In November 2011, the Trump Organization executed a $150 million purchase and sale agreement for the Doral Golf Resort and Spa as part of a bankruptcy proceeding. (202.8-g ¶452) The formal process for soliciting the Doral loan began in late October 2011, when Ivanka Trump sent an "Investment Memo" and financial projections for the Doral property to two Deutsche Bank employees. (202.8-g ¶454) On November 13, 2011, Mr. Trump spoke with Richard Byrne, the CEO of Deutsche Bank Securities, to ask if the bank was interested in working with him on financing for the purchase of Doral. (202.8-g ¶456) Mr. Byrne in turn forwarded the request to the Global Head of the CRE division at the bank who wrote that Doral was "a tough asset and our initial reaction was not enthusiastic." (202.8-g ¶457; Ex. 244) On November 14, 2011, the two bankers spoke with Mr. Trump and Ivanka Trump about the loan. (202.8-g ¶458)

The next day, Mr. Trump sent Mr. Byrne a letter, copying Ivanka Trump, enclosing his 2011 SFC and writing, "As per our conversation, I am pleased to enclose the recently completed financial statement of Donald J. Trump (hopefully you will be impressed!)." (202.8-g ¶459; Ex. 245) The letter continued, "I am also enclosing a letter that establishes my brand value, which is not included in my net worth statement." (Ex. 245) On November 21, 2011, the CRE division offered the Trump Organization a $130 million loan at LIBOR + 800 basis points, with a LIBOR floor of 2 percent – a minimum 10% interest rate. (202.8-g ¶461) The Trump Organization did not accept those terms and continued to look elsewhere for financing for Doral. (202.8-g ¶462)

In December 2011, Mr. Trump and Ivanka Trump met with Ms. Vrablic to discuss a potential loan for Doral through the PWM division. (202.8-g ¶463) On December 6, 2011, Ms. Trump emailed Ms. Vrablic that, "My father and I are very much looking forward to meeting with you tomorrow to discuss Doral. I have attached our investment memo as well as some basic information on our golf and hotel portfolios." (Ex. 246) The two sides began negotiating terms and

on December 15, 2011, Vrablic sent Ms. Trump a term sheet proposing a $125 million loan with an interest rate of LIBOR + 225 basis points during a renovation period for the resort and LIBOR + 200 basis points during an amortization period for the resort. (202.8-g ¶465) The terms of the loan included recourse through a personal guarantee by Mr. Trump of all principal and interest due on the loan and the operating expenses of the resort. (202.8-g ¶466) The proposal also included a number of covenants, including requirements that Mr. Trump maintain a minimum net worth of $3 billion and unencumbered liquidity of $50 million. (202.8-g ¶467)

Ms. Trump forwarded the proposal to Mr. Weisselberg, Jason Greenblatt (Executive Vice President and Chief Legal Officer), and Dave Orowitz (Senior Vice President, Acquisitions and Development) writing: "It doesn't get better than this . . . . I am tempted not to negotiate this though." (202.8-g ¶468; Ex. 249) Mr. Greenblatt wrote back: "I will review, but [note] immediately that this is a FULL principal and interest and operating expense personal guaranty. Is DJT willing to do that? Also, the net worth covenants and DJT indebtedness limitations would seem to be a problem?" (Ex. 249) Ms. Trump responded: "That we have known from day one. *We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal*. As the market has illustrated getting leverage on resorts right now is not easy (ie 125 plus an equity kicker for 25 percent or Beal with full cash flow sweeps and steep prepayment penalties)."[10] (Ex. 249 (emphasis added))

In an internal credit report dated December 20, 2011, Deutsche Bank employees from the PWM division sought the approval of a $125 million term commitment for the Doral property.

[10] In Ms. Trump's response, "Beal" is a reference to Beal Bank, another financial institution the Trump Organization contacted about a loan for Doral. (PP471)

(202.8-g ¶473) This report noted "[t]he Facility will also be supported by a full and unconditional guarantee provided by DJT of (i) Principal and Interest due under the Facility, and (ii) operating shortfalls of the Resort . . . ." (Ex. 266 at -1691) The credit memo listed this guarantee as a source of repayment, and recommended approval of the loan. (202.8-g ¶475) The memo stated that "[t]he Facility is being recommended for approval based on" a series of factors, the first of which was "Financial Strength of the Guarantor" and another of which was the nature of the personal guarantee. (Ex. 266 at -1693)

The loan was approved through the PWM division and closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC personally guaranteed by Mr. Trump. (202.8-g ¶477) Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter. (202.8-g ¶478) The loan agreement, signed by Mr. Trump, recited that Mr. Trump's June 30, 2011 SFC had to be provided to the bank as a precondition of lending. (202.8-g ¶479)

In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of the financial information in his SFC. (202.8-g ¶480) In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure," which required Mr. Trump to represent that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of a material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." (202.8-g ¶481; Ex. 254 at -5887)

Similarly, issuance of the loan was subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan

Documents shall be true and correct on and as of the Closing Date." (202.8-g ¶482; Ex. 254 at -5911) The loan agreement included a debt service coverage ratio ("DSCR") covenant and a loan-to-value ("LTV") ratio covenant. Mr. Trump's personal guarantee, which he signed, included various financial representations. (202.8-g ¶483)

Mr. Trump, as guarantor, was required to certify: (i) the truth and accuracy of his SFC as a condition of the guarantee—reliance on which Mr. Trump agreed the loan itself was granted; (ii) that he "has furnished to Lender his Prior Financial SFCs" which are "true and correct in all material respects;" (iii) the SFC "presents fairly Guarantor's financial condition as of June 30, 2011;" and (iv) "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial SFCs, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Credit Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect." (Ex. 232 at -4177-78) The loan documents stated that "all the Guaranteed Obligations," referring to the entirety of the loan and other obligations Mr. Trump guaranteed, "shall be conclusively presumed to have been created in reliance hereon." (Ex. 232 at -4176)

Pursuant to the guarantee, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g ¶486; Ex. 232 at -4180) That language means the bank would determine Mr. Trump's compliance with his net worth covenant by reference solely to the net worth Mr. Trump *reported* and certified to the bank. (202.8-g ¶487) Mr. Trump was also required to "keep and maintain complete and accurate books and records" and periodically to "deliver to Lender or

permit Lender to review," a series of documents under the guarantee's financial reporting requirements. (Ex. 232 at -4180-81)

One of those submissions was a statement of financial condition, which was to be delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g ¶489; Ex. 232 at -4180-81, 4189-90) False certifications of such SFCs were expressly identified as events of default under the loan agreement. (202.8-g ¶490)

In connection with the Doral Loan, Mr. Trump submitted SFCs to Deutsche Bank accompanied by certifications required as described above for the years 2014 through 2021 (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as attorney-in-fact for Mr. Trump). (202.8-g ¶493) Deutsche Bank conducted annual reviews of the Doral loan in July 2013, May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g ¶494) The loan remained outstanding until May 2022, when the Trump Organization refinanced the loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank. (202.8-g ¶495)

b. The Chicago Loan

Roughly contemporaneously with the Doral loan's closing in June 2012, the Trump Organization sought another loan from the PWM division at Deutsche Bank in connection with the Trump Chicago property—in essence, a refinancing of an existing $130 million from the CRE division at Deutsche Bank on that property. (202.8-g ¶499) Dueling proposals for the Trump Chicago property within Deutsche Bank were under discussion in or about March 2012. (202.8-g ¶500) One proposal from the CRE division was for a non-recourse (meaning, no personal guarantee) loan facility with a two-year term and an interest rate of LIBOR plus 800 basis points. (202.8-g ¶501) The other proposal from the PWM division was for a loan facility with a two-year

term and *a personal guarantee* at LIBOR plus 400 basis points—so, four percentage points lower, in terms of the interest rate. (202.8-g ¶502) The PWM division credit memo notes as "Credit Support" that "Donald Trump has reported Net Worth of $4.0 billion with liquidity of approximately $250 million" based on the 2011 SFC. (202.8-g ¶503; Ex. 274)

In October 2012, the PWM division recommended approval of a loan of up to $107 million to 401 North Wabash Venture LLC, guaranteed personally by Mr. Trump. (202.8-g ¶504) Given the mixed nature of the hotel-condo property, the loan was broken down into two facilities: (i) Facility A for the residential portion was for up to $62 million, for a 4-year term, at a rate of LIBOR plus 3.35%; and (ii) Facility B for the hotel portion was for up to $45 million, for a 5-year term, at a rate of LIBOR plus 2.25%. (202.8-g ¶505) For both facilities, a source of repayment was "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the Collateral." (202.8-g ¶506; Ex. 228 at -68524)

In addition, the PWM division credit memo noted its "recommendation" was based in part on "Financial Strength of the Guarantor," the "Nature of the Guarantee," and a developing relationship between the bank and Mr. Trump and his family. (202.8-g ¶507) This credit memo assessed Mr. Trump's 2011 and 2012 SFCs, stating: "Although Facilities are secured by the Collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g ¶508; Ex. 228 at -68526) The loans under the two facilities closed on November 9, 2012, and both included personal guarantees by Mr. Trump supported by his 2011 and 2012 SFCs. (202.8-g ¶509)

The loan agreements, signed by Mr. Trump, recited that Mr. Trump's then-most-recent SFC had to be provided to the bank as a precondition of lending. (202.8-g ¶510) Mr. Trump's 2012 SFC was provided to the bank in October 2012 and figures from that SFC are reflected in the

bank's internal consideration of the loans. (202.8-g ¶511) In multiple instances, the loan agreements required that Mr. Trump certify the accuracy of that SFC, including that he represent that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." (202.8-g ¶512; Ex. 234 at -5992; Ex. 278 at -5282) Similarly, both loan facility agreements contained conditions precedent to lending, including that "[t]he representations and warranties of Borrower contained in this agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan documents shall be true and correct on and as of the Closing Date." (202.8-g ¶513; Ex. 234 at -6020; Ex. 278 at -5308)

The Trump Chicago loan facilities each included a personal guarantee signed by Mr. Trump pursuant to which he, as guarantor, was required to certify to the truth and accuracy of his SFC as a condition of the guarantees—reliance on which Mr. Trump agreed the loans themselves were granted. (202.8-g ¶514) The terms of each facility's personal guarantees were materially identical to the Doral guarantee, including the requirement that Mr. Trump maintain a minimum net worth, based upon his SFC, of $2.5 billion, and provide an annual SFC to the bank accompanied by an executed compliance certificate certifying that the SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g ¶515; Ex. 277 at -38880-81; Ex. 276 at -3232-33)

Deutsche Bank conducted annual reviews of the Trump Chicago facilities in May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g ¶520) During the period between the Trump Chicago loan closing and the first annual review in

May 2014 (with extensions in the interim to align the Trump Chicago annual review with other reviews), the Trump Organization paid down the Trump Chicago loan from an overall balance of $98 million to $19 million from the proceeds of condominium sales. (202.8-g ¶521)

Based upon the purported strength of Mr. Trump's financial profile, the Trump Organization requested an additional $54 million in loan funds from Deutsche Bank to be "fully guaranteed by Mr. Trump for all principal, interest and operating shortfalls until the balance of the facility is less than $45 million (34% LTV)." (202.8-g ¶522; Ex. 265 at -1741) The credit memo recommending approval of this increase in loan funds did so, in part, based on the "Financial Strength of the Guarantor." (202.8-g ¶523) Amended loan documents advancing the additional requested funds closed on June 2, 2014. (202.8-g ¶524)

As with earlier credit memos, this 2014 credit memo (which also recommended approval for the $170 million loan in connection with the Old Post Office discussed below) evaluated Mr. Trump's SFCs. (202.8-g ¶525) In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 SFCs, stating: "Although Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g ¶526; Ex. 265 at -1752) Amended Trump Chicago loan documents—including an agreement and a personal guarantee—were executed by Mr. Trump in May 2014. (202.8-g ¶527)

These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's SFCs that were substantially similar to those described above for the Doral and 2012 Trump Chicago loan facilities. (202.8-g ¶528) In the amended Trump Chicago guarantee, Mr. Trump certified that his 2013 SFC was true and correct in all material respects and that the SFC "presents fairly Guarantor's financial condition as of June

30, 2013." (202.8-g ¶528; Ex. 281 at -3191) By the time of the annual review in July 2015, the Trump Organization had paid down the Trump Chicago loan to an overall balance of $45 million, which by the loan agreement terms eliminated Mr. Trump's personal guarantee based on an LTV ratio below the threshold for requiring the guarantee. (202.8-g ¶529)

Either Mr. Trump, Eric Trump, or the trustees of the Trust (depending on the year) certified the accuracy of the SFCs submitted in connection with the Trump Chicago loan facilities for every year from 2013 through 2021, either through the execution of an amended guarantee or through the submission of a compliance certificate. (202.8-g ¶530)

c. The OPO Loan

In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of The Old Post Office in Washington, DC after the Trump Organization was selected by the U.S. General Services Administration in February 2012 to redevelop the property and signed a lease for that purpose on August 5, 2013. (202.8-g ¶533, 534, 542)

In advance of executing the lease, the Trump Organization reached out to the CRE division at Deutsche Bank about potential financing for the project. (202.8-g ¶543) Despite the request coming into the CRE division, Ms. Vrablic from the PWM division—at the urging of Ms. Trump—kept close tabs on the bank's consideration of the request. (202.8-g ¶544) By October 2013, the CRE division had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points. (202.8-g ¶545) The next month, in November 2013, employees at the Trump Organization took that offer to the PWM division to see if that division could offer more favorable terms. (202.8-g ¶546) By Monday, December 2, 2013, the PWM division provided to Ms. Trump and Dave Orowitz of the Trump Organization a draft term sheet noting that, although

the term sheet reflected a $160mm commitment, "[w]e understand the request is for $170 million and are working on getting the step-up approved." (202.8-g ¶547; Ex. 302; Ex. 303)

The PWM division term sheet differed in the following respects from the CRE term sheet: (i) Mr. Trump would personally guarantee the full loan amount in the PWM term sheet, whereas the CRE proposal was unresolved as to whether there would be a 10% guarantee; (ii) the PWM term sheet had a loan term of ten years, versus a term of approximately 42 months in the CRE term sheet; (iii) the PWM term sheet had a loan amount, initially, of up to $160 million, whereas the CRE term sheet had a maximum loan amount of $140 million; (iv) PWM's proposal was LIBOR + 2% during the "redevelopment period," and LIBOR + 1.75% during the "post-redevelopment period," which was about half the rates in the CRE term sheet; and (v) the PWM term sheet required a $2.5 billion net worth, significantly higher than any of net worth covenants proposed by CRE, which topped out at $500 million. (202.8-g ¶548)

Ultimately the Trump Organization and the PWM division agreed on a term sheet that was executed on January 13 and 14, 2014 providing for a $170 million loan with a 10-year term, 100% personal guarantee by Mr. Trump, interest rates of LIBOR + 2% or 1.75% (depending on the period); and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500 million. (202.8-g ¶549) Mr. Trump, as guarantor, would be required to provide his annual SFC to the bank. (202.8-g ¶550)

A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. (202.8-g ¶551) This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 SFCs. (202.8-g ¶552) Mr. Trump's net worth and his SFCs were critical to the bank's approval of the final terms of the loan, which closed on August 12, 2014. (202.8-g ¶553)

As with the Doral and Trump Chicago loans, the loan agreement for the OPO loan required that Mr. Trump's most recent SFC (which was his 2013 SFC) be provided to the bank as a condition of the loan. (202.8-g ¶554) The loan agreement required that Mr. Trump certify to the accuracy of the 2013 SFC and represent that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." (202.8-g ¶555; Ex. 233 at -4991)

Issuance of the loan was noted to be subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date."(202.8-g ¶556; Ex. 233 at -5025) In addition, because the OPO loan was a construction loan to be disbursed over a long series of tranches, the loan agreement made clear that the bank was not obligated to make such disbursements unless representations by the borrowing entity and the guarantor (Mr. Trump) "shall be true and accurate in all material respects on and of the date of the requested (with the same effect as if made on such date." (202.8-g ¶557; Ex. 233 at -5028) An "Event of Default" in the OPO loan agreement was defined to include when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective." (202.8-g ¶558) Mr. Trump's personal guarantee on the OPO loan, which he signed, is dated August 12, 2014 – the same date that the loan closed. (202.8-g ¶559)

Mr. Trump's personal guaranty contained the same financial representations included in the guaranties for the prior PWM loans, including that Mr. Trump's submitted personal financial statement (here the 2013 SFC) "presents fairly Guarantor's financial condition" as of the date indicated, and required Mr. Trump to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g ¶560-61)

The bank conducted annual reviews of the OPO loan in July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g ¶565) Because the OPO loan was a construction loan, the $170 million loan amount was disbursed in a series of "draws" over time. (202.8-g ¶566) The first draw was on or about June 22, 2015 in a "Request for Disbursement" signed by Mr. Trump. (202.8-g ¶567) Draws continued throughout 2015 and 2016 and with two noted exceptions were made on requests signed by Mr. Trump personally. (202.8-g ¶568) The exceptions were a draw request on December 21, 2016, signed by Ivanka Trump in the amount of $4,334,772.83 and the final draw request on February 22, 2017, signed by Eric Trump in the amount of $2,757,897.30. (202.8-g ¶569)

On or about May 11, 2022, the Trump Organization sold the OPO property for $375 million. (202.8-g ¶570) Of those proceeds, $170 million was used to repay the loan to Deutsche Bank. (202.8-g ¶571)

2. 40 Wall Street Loan From Ladder Capital

In approximately November 2015, the Trump Organization (through Defendant 40 Wall Street LLC) refinanced an existing $160 million mortgage from Capital One Bank on the office building property at 40 Wall Street. (202.8-g ¶583) The loan from Capital One had an interest rate of 5.7% and required a principal payment of $5 million in November 2015. (202.8-g ¶575) In

January 2015, after consulting with Eric Trump, Mr. Weisselberg wrote to Capital One asking the bank to waive the principal payment, explicitly citing the $550 million valuation of 40 Wall Street in the 2014 SFC. (202.8-g ¶576) Capital One declined to waive the principal payment. (202.8-g ¶578) As a result, Mr. Weisselberg began working with his son, a Director at Ladder Capital Finance ("Ladder Capital"), to refinance the $160 million mortgage at a rate that would be advantageous to the Trump Organization. (202.8-g ¶579-80)

The Ladder Capital loan required Mr. Trump to maintain a net worth of at least $160 million and liquidity of at least $15 million. (202.8-g ¶P593) In connection with those covenants, Mr. Trump was required to provide his annual financial statements "prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender (Lender agreeing that WeiserMazars LLP is an acceptable firm) and prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." (202.8-g ¶597; Ex. 328 at 3076-77)

In connection with this refinancing loan, Cushman performed an appraisal of the Trump Organization's leasehold interest in 40 Wall Street, concluding that this interest had an "as is" market value of $540 million on June 1, 2015. (202.8-g ¶104) Internal documents indicate that Ladder Capital underwrote the $160 million loan based in part on Mr. Trump's reported net worth of $5.8 billion as set forth in the 2014 SFC. (202.8-g ¶589-92)

3. Seven Springs Loan from RBA/Bryn Mawr

In 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America ("RBA"), later acquired by Bryn Mawr Bank in 2017. (202.8-g ¶599) Mr. Trump personally guaranteed the mortgage. (202.8-g ¶600) As a result of the personal guarantee, Mr.

Trump's SFCs were submitted to RBA and Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. (202.8-g ¶601)

A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 SFCs. (202.8-g ¶603) The 2014 memo states that because of the "personal financial strength of Mr. Trump, as evidenced by liquid assets of $339 million (cash and marketables) and net worth of $5 billion, Royal Bank America previously waived the requirement of personal tax returns." (202.8-g ¶604; Ex. 338 at pdf 12) Bryn Mawr retained in its files Mr. Trump's SFCs for 2010 through 2016. (202.8-g ¶605)

Typically, the SFCs were sent under the cover of a letter from Mr. McConney, stating that Mr. Trump's SFC was being provided pursuant to the mortgage. (202.8-g ¶606) Submission of the SFCs was required in order to maintain the loan and to obtain a series of extensions. (202.8-g ¶607) For example, the bank approved extensions of the maturity date of the loan in 2011, 2014, and 2019 in reliance upon Mr. Trump's SFCs submitted pursuant to Mr. Trump's personal guarantee. (202.8-g ¶608)

In connection with seeking these extensions, Mr. Trump re-affirmed his personal guaranty in 2011 and 2014, and in 2019 the guarantee was re-affirmed in a certification signed by Eric Trump "as attorney in fact" for Donald J. Trump. (202.8-g ¶609) The personal guaranty for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. (202.8-g ¶610) For example, one 2011 memo stated, under the heading "pro" (vs. con), "Experienced and financially strong guarantor, with a reported $3.9 Billion net worth." (202.8-g ¶611; Ex. 329 at pdf 80) A 2014 memo similarly noted that renewal of the loan was recommended based on, among other factors, "Strong Guarantor Support" and "Personal financial strength of

Mr. Trump evidenced by a reported net worth of $5 Billion and liquid assets of $354MM." (202.8-g ¶612; Ex. 338 at pdf 15)

E. Submission of the False SFCs to Insurers

1. Surety Insurance from Zurich

From 2007 through 2021, Zurich North America ("Zurich") underwrote a surety bond program (the "Surety Program") for the Trump Organization through insurance broker AON Risk Solutions ("AON"). (202.8-g ¶617) Under the Surety Program, Zurich issued surety bonds on behalf of the Trump Organization within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. (202.8-g ¶618) In 2011, the Surety Program had a single bond limit of $500,000, an aggregate limit for all bonds of $2,000,000, and a rate of $20 per thousand. (202.8-g ¶619) When the Surety Program was canceled in 2021, the single bond limit was $6,000,000, the aggregate limit was $20,000,000, and the rate was $10 per thousand. (202.8-g ¶620)

Over the course of the relationship, in accordance with its standard underwriting guidelines for surety business, Zurich required the Trump Organization to provide an indemnification against any loss should Zurich be required to pay under a bond. (202.8-g ¶621) From the inception of the Surety Program, the Trump Organization met this indemnification requirement through a General Indemnity Agreement ("GIA") executed by Mr. Trump, pursuant to which (similar to a personal guaranty on a loan) he personally agreed to indemnify Zurich for claims under the Surety Program. (202.8-g ¶622, 679) As specified in the term sheet Zurich provided to AON, the indemnity arrangement included as a condition of coverage an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements. (202.8-g ¶623) This annual financial disclosure requirement permitted Zurich to ensure that the indemnification from Mr. Trump was

sufficient to support the continued renewal of the Surety Program. (202.8-g ¶624) Indeed, on multiple occasions when AON was unable to secure in a timely manner the required financial disclosure—which took the form of an on-site review of the SFCs in a conference room at the Trump Organization's offices—Zurich put the Surety Program into "cut-off" status, which means Zurich ceased writing new bonds and would cancel existing bonds on expiration, until Mr. Trump's SFCs were made available for review. (202.8-g ¶625)

During the on-site review that occurred on November 20, 2018 for the 2019 renewal, Zurich's underwriter Claudia Markarian was shown the 2018 SFC, which listed as assets real estate holdings with valuations that Mr. Weisselberg represented had been determined each year by a professional appraisal firm "such as Cushman." (202.8-g ¶626) Zurich's underwriter considered the valuations to be reliable based on Mr. Weisselberg's representation that they were prepared by a professional appraisal firm as recorded in her contemporaneous notes placed in her underwriting file. (202.8-g ¶627) Mr. Weisselberg's representations about how the valuations were determined factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program for 2019 on the existing terms, which it did. (202.8-g ¶628)

During the on-site visit for the next renewal, Ms. Markarian reviewed Mr. Trump's 2019 SFC. (202.8-g ¶638) Mr. Weisselberg again represented to her that the valuations for the real estate holdings listed in the 2019 SFC were performed by a professional appraisal firm. (202.8-g ¶639) Again, Ms. Markarian considered the valuations to be reliable based on Mr. Weisselberg's representation that they were prepared by a professional appraiser, which factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program in 2020 on the existing terms, which it did. (202.8-g ¶640-41)

During her on-site reviews of the SFCs, Ms. Markarian also relied on the amount of cash

on hand listed in the SFCs as an indication of Mr. Trump's liquidity, which was important to her underwriting analysis as it represented the funds available to repay Zurich in the event Zurich had to pay on a surety bond issued under the program. (202.8-g ¶631, 644) She also considered favorably Mr. Weisselberg's representations during her visits that the property values in the SFC did not significantly vary year over year as it indicated stability. (202.8-g ¶634-35, 647-48)

Contrary to Mr. Weisselberg's representations, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the SFCs, and the property values did vary significantly year over year for certain properties. (202.8-g ¶629, 636, 649) Moreover, unbeknownst to Ms. Markarian the amount of cash listed in the SFCs was inflated due to the Trump Organization including cash held by Vornado Partnership Interests that was not within Mr. Trump's control. (202.8-g ¶403) The Trump Organization also failed to disclose to any of the Zurich underwriters that the valuation for many of the golf courses listed on Mr. Trump's SFCs within the "Clubs" category included a Trump brand premium in the reported valuation, which under Zurich's underwriting guidelines would have to be excluded as an intangible asset. (202.8-g ¶651-52)

2. D&O Insurance from HCC

As of December 2016, the Trump Organization had in place Directors & Officers ("D&O") liability coverage consisting of a single primary policy providing a limit of $5,000,000 at a premium of $125,000, expiring on February 17, 2017. (202.8-g ¶653) To obtain that coverage, similar to the process for obtaining surety coverage from Zurich, the Trump Organization provided D&O underwriters access to Mr. Trump's SFCs, through a monitored in-person review at Trump Tower. (202.8-g ¶654)

In advance of the February 2017 policy expiration, AON scheduled a "D&O Underwriting

Meeting" at the Trump Organization's offices on January 10, 2017 between Trump Organization personnel (including Mr. Weisselberg) and various insurers, including Tokio Marine HCC ("HCC"). (202.8-g ¶655) The Trump Organization was looking to cancel the existing policies and rewrite the program on the day of Mr. Trump's presidential inauguration with significantly higher limits of $50,000,000 – a tenfold increase in the D&O coverage that existed under the single primary policy in place. (202.8-g ¶656) The underwriters at the meeting, including HCC's underwriter, were provided very few financials but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion, cash of $192 million and total debt of $519 million with no single debt larger than $160 million and no concentration of maturities – all as reported in the 2015 SFC. (202.8-g ¶657) The Trump Organization representatives assured the underwriters that the balance sheet for year-end 2016 that would be completed in a few weeks would be even better than the year-end 2015 balance sheet. (202.8-g ¶658) The representation that Mr. Trump had $192 million in cash was material to the HCC underwriter's assessment of Mr. Trump's liquidity because it has bearing on his ability to meet the retention obligation under the HCC policy. (202.8-g ¶659)

In response to specific questioning from the underwriters, the Trump Organization personnel at the meeting, including Mr. Weisselberg, represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. (202.8-g ¶660) This representation was material to the HCC underwriter's assessment that there were no investigations by law enforcement agencies that could potentially trigger coverage under the D&O policies. (202.8-g ¶661) On January 20, 2017, after considering the information conveyed during the January 10 meeting, HCC offered terms for a primary $10,000,000 policy with a $2,500,000 retention for a premium of $295,000 subject to certain conditions. (202.8-g

¶662) Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (202.8-g ¶663)

Despite the representations made to underwriters during the January 10 meeting that there was no material litigation or inquiry from anyone that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization, an investigation of which Mr. Weisselberg was well aware. (202.8-g ¶664; Ex. 375; Ex. 376; Ex. 377) In September 2016, four months before the January 10 meeting, OAG had sent a notice of violation to the Trump Foundation and a letter to Trump Organization outside counsel Sheri Dillon requesting documents, to which Dillon replied on October 16, 2016. (202.8-g ¶665; Ex. 375; Ex. 376; Ex. 377) Neither Mr. Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the January 30 renewal of the D&O policies the existence of OAG's investigation into the Trump Foundation and Trump family members who were directors and officers of the Trump Organization. (202.8-g ¶666) It is evident that the Trump Organization believed the OAG investigation could potentially give rise to a claim because on January 17, 2019, the Trump Organization submitted a claim notice to the D&O insurers, including HCC, through AON seeking coverage in connection with OAG's enforcement action resulting from the investigation. (202.8-g ¶667)

On February 6, 2018, based on the information provided during the renewal negotiations, HCC agreed to extend its $10,000,000 policy with a $2,5000,000 retention for the expiring premium of $295,000 for another 12 months, ending February 10, 2019. (202.8-g ¶668) Based on further correspondence exchanged in 2018 between AON on behalf of the insureds and HCC's

coverage counsel disputing whether coverage existed for other tendered claims, HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. (202.8-g ¶669) As a result, on January 24, 2019, HCC offered to renew the $10,000,000 policy for a substantially increased premium of $1,600,000, more than five times the expiring premium. (202.8-g ¶670) The Trump Organization declined to accept the renewal terms. (202.8-g ¶671)

F. Each Defendant was Involved in the Fraudulent Conduct

1. Donald J. Trump

Mr. Trump was the president of the Trump Organization and beneficial owner, including through the Trust, of all of the assets listed in the SFCs. (202.8-g ¶673) As expressly represented in the SFCs, Mr. Trump was responsible for the content of the SFCs from 2011 through 2015, the date covered by last SFC issued prior to Mr. Trump assuming public office. (202.8-g ¶672) For the SFCs from 2011 to 2015, Mr. Trump had "final review" over the SFC's contents. (Ex. 54 at 98:5-16) Even after taking public office, each annual SFC would not be issued until it was reviewed and approved by Mr. Trump. (Ex. 363 at 142:4-143:5) In March 2017, Mr. Trump appointed his sons Donald Trump, Jr. and Eric Trump as his agents to act with power of attorney over banking and real estate transactions, and exercising that power of attorney they signed compliance certificates pertaining to the SFCs from 2016 to 2021 as his attorney-in-fact. (202.8-g ¶674-75)

2. Donald Trump, Jr.

Donald Trump, Jr. is an Executive Vice President of the Trump Organization and has also served as an officer in each of the other entity Defendants named in this action. (202.8-g ¶680-81, 695) He has also served as a trustee of the Trust from January 19, 2017 to the present, except for

the seven-month period from January 19 to July 7 of 2021, during which period Donald J. Trump was the sole trustee of the Trust. (202.8-g ¶681, 755-56) Donald Trump, Jr. signed the representation letters for the SFCs from 2016 through 2019 in his capacity as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g ¶682-85) He signed the representation letters for the 2020 and 2021 SFCs as trustee of the Trust. (202.8-g ¶686-87) He also signed numerous guarantor compliance certificates in connection with loans that are the subject of this action from 2017 through 2019 as attorney-in-fact for Mr. Trump variously certifying that the 2016, 2017, 2018, and 2019 SFCs each "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g ¶688-694)

3. Eric Trump

Eric Trump is an Executive Vice President of the Trump Organization, served as an officer in each of the other entity Defendants named in this action, and from 2016 through at least 2021 was the "chief decision maker" at the company. (202.8-g ¶696, 709; Ex. 391 at 29:10-13, 77:11-21; Ex. 50 at 19:7-17) In his capacity as President of Seven Springs LLC, in June 2019 he signed a loan modification agreement in connection with the loan transaction with the Bryn Mawr Trust Company, and on the same date signed an agreement as attorney-in-fact for Mr. Trump reaffirming Mr. Trump's obligation as guarantor on the loan. (202.8-g ¶698-99) Eric Trump also signed multiple guarantor compliance certificates in connection with loans that are the subject of this action in October 2020 as attorney-in-fact for Mr. Trump, certifying that to the best of their knowledge Mr. Trump's net worth was over $2.5 million. (202.8-g ¶700-02) He was the individual who provided the values for Seven Springs and TNGC Briarcliff to Mr. McConney that were used in a number of SFCs. (202.8-g ¶74, 296)

For the 2021 SFC, Eric Trump signed the engagement letter with Whitley Penn on behalf

of the Trump Organization and participated in discussions with others at the company concerning valuation methodologies for the 2021 SFC. (202.8-g ¶703) In October 2021, he signed multiple guarantor compliance certificates in connection with loans that are the subject of this action as attorney-in-fact for Mr. Trump certifying that the 2021 SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g ¶706-08)

4. Allen Weisselberg

Allen Weisselberg was Chief Financial Officer of the Trump Organization from at least 2011 until he resigned from that position and became a Senior Advisor to the organization in August of 2022 after pleading guilty to charges of tax fraud. (202.8-g ¶710) Prior to Mr. Trump assuming public office, Mr. Weisselberg reported directly to Mr. Trump. (202.8-g ¶711) In his role as CFO, Mr. Weisselberg was in charge of the accounting department at the Trump Organization. (202.8-g ¶712)

Mr. Weisselberg had a primary role in preparing the SFCs together with Messrs. McConney and Birney, both of whom reported to him. (202.8-g ¶713-14) Mr. Weisselberg signed the SFC engagement and representation letters for 2011 through 2015 as an executive officer of the Trump Organization and for 2016 through 2020 as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g ¶716-35)

5. Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s through at least 2022 and led the process of preparing Mr. Trump's SFCs since the 1990s. (202.8-g ¶736-37) Working under Mr. Weisselberg's supervision, he was responsible for assembling the SFC documentation and sending it to the accounting firm along with his supporting data spreadsheets. (202.8-g ¶738) In May 2016, Mr. McConney sent a compliance certificate pertaining to the 2015

SFC to Deutsche Bank, and the following year submitted to the bank another compliance certificate pertaining to the 2016 SFC. (202.8-g ¶741-42)

6. The Entity Defendants

The Trust was established in April 2014. (202.8-g ¶745) The trustees of the Trust were responsible for the presentation of the SFCs from 2016 through 2021. (202.8-g ¶743)

DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. (202.8-g ¶760, 762, 764, 766) Trump Organization Inc. is owned 100% by DJT Holdings Managing Member LLC and Trump Organization LLC is owned 100% by DJT Holdings LLC. (202.8-g ¶746)

Trump Endeavor 12 LLC is the owner of the Doral Property and was the borrower on the June 2012 Doral loan for which Mr. Trump was the guarantor. (202.8-g ¶767-68) 401 North Wabash Venture LLC is the owner of the Trump International Hotel & Tower in Chicago and was the borrower on the November 2012 Chicago loan, for which Mr. Trump was the guarantor. (202.8-g ¶777-78) Trump Old Post Office LLC held the ground lease for Trump International Hotel in Washington, D.C. and was the borrower on the August 2014 OPO loan, for which Mr. Trump was the guarantor. (202.8-g ¶782-83) 40 Wall Street LLC holds the ground lease for the office building located at 40 Wall Street and was the borrower on the July 2015 loan with Ladder Capital, for which Mr. Trump was the guarantor. (202.8-g ¶785-86) Seven Springs LLC owns the Seven Springs estate and was the borrower on a June 2000 mortgage on the property, for which Mr. Trump was the guarantor. (202.8-g ¶787-78)

STANDARD OF REVIEW

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the

absence of any material issues of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman*, 49 N.Y.2d at 562; *Alvarez v. Prospect Hosp*., 68 N.Y.2d 320, 324–25 (1986). "General allegations …, merely conclusory and unsupported by competent evidence, are insufficient to defeat a motion for summary judgment." *Rosenberg v. Rockville Centre Soccer Club, Inc.*, 166 A.D.2d 570, 571 (2d Dep't 1990) (citing *Alvarez*). "An attorney's affidavit is of no probative value on a summary judgment motion *unless* accompanied by documentary evidence which constitutes admissible proof." *Adam v. Cutner & Rathkopf*, 238 A.D.2d 234, 239 (1st Dep't 1997) (emphasis in original).

ARGUMENT

I. DEFENDANTS VIOLATED §63(12) BY USING FALSE FINANCIAL STATEMENTS TO DEFRAUD BANKS AND INSURERS

Executive Law § 63(12) gives the Office of the Attorney General ("OAG") the power to bring an action against any person or entity that engages in "repeated fraudulent or illegal acts" or "otherwise demonstrate[s] persistent fraud or illegality in the carrying on . . . or transaction of business." N.Y. Exec. Law § 63(12). There are thus two categories of conduct that can subject a party to liability under § 63(12): acts that are "fraudulent" and acts that are "illegal." *Id.* While Defendants engaged in both fraudulent and illegal acts, the People move for summary judgment only as to their First Cause of Action sounding in fraud.[11]

[11] Plaintiff reserves the right to prove at trial that Defendants engaged in illegal acts and conspiracy to commit illegal and fraudulent acts, all in violation of § 63(12), under Plaintiff's remaining Second through Seventh Causes of Action.

A. Defendants Engaged in Fraud under § 63(12) in Preparing and Submitting the SFCs

Executive Law § 63(12) broadly construes fraud "to include acts characterized as dishonest or misleading." *People v. Apple Health and Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994), *dismissed in part, denied in part,* 84 N.Y.2d 1004 (1994). The statute proscribes any acts committed in the conduct of business that have "the capacity or tendency to deceive," or that "create[] an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021); *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (1st Dep't 2003). Such acts, by the plain language of the statute, include those committed through any scheme to defraud, and also through "misrepresentation, concealment, suppression," or "false pretense." N.Y. Exec. Law § 63(12).

Moreover, individual defendants may be liable for fraud under § 63(12) if they personally participated in it or had actual knowledge of it, as when they create "an enterprise conducive to fraud" through their supervision of the enterprise. *Northern Leasing*, 193 A.D.3d at 75-76. Neither an intent to defraud nor reliance need be shown. *Apple Health*, 206 A.D.2d at 267; *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008); *see also People v. Trump Entrepreneur Initiative,* 137 A.D.3d 409, 417 (1st Dep't 2016) (recognizing prior First Department precedent establishing that "fraud under § 63(12) may be established without proof of scienter or reliance"). In assessing whether this broad standard for fraud has been satisfied, the Court should look not only to the average recipient of fraudulent conduct, "but also the ignorant, the unthinking and the credulous." *Gen. Electric*, 302 A.D.2d at 314; *see also People v. Allen,* 198 A.D.3d 531, 533 (1st Dep't 2021) (upholding finding of fraud under § 63(12) based on fraudulent representations to investors), *leave to appeal granted*, 38 N.Y.3d 996 (2022).

1. The SFCs from 2011 to 2021 were False and Misleading

As detailed above and in the accompanying Appendix, each of the 11 SFCs from 2011 through 2021 is both false and misleading (although a finding of either will suffice under the standard, *see Apple Health*, 206 A.D.2d at 267) because Defendants engaged in multiple deceptive schemes to inflate the value of more than a dozen assets in each year. For Mr. Trump's triplex, Defendants used a fictitious number for the square footage of the apartment that was triple the actual size. For many properties (Seven Springs, 40 Wall Street, Mar-a-Lago, 1290 AoA, TNGC Briarcliff, TNGC LA, Trump Tower, and Trump Vegas), Defendants failed to consider existing appraisals, including appraisals that the Trump Organization itself relied on to challenge tax assessments. For many of the clubs, Defendants added an undisclosed brand premium and included the value of membership deposit liabilities despite representing that it valued those liabilities at $0. For unsold condominium units at Trump Park Avenue, Defendants valued rent stabilized units as if they were unrestricted at 65 times their appraised value, used original offering plan prices instead of option prices and current market values developed by the Trump Organization's real estate brokerage arm for internal business purposes. For Mr. Trump's cash – an important measure of liquidity – and escrow deposits Defendants included amount held by a separate partnership over which Mr. Trump exercised no control. And for real estate licensing developments Defendants included speculative incomes from deals yet to be reduced to writing and intercompany agreements despite representing that only income from signed agreements with other developers would be included.

The cumulative effect of these numerous deceptive schemes to inflate Mr. Trump's assets, and hence his net worth, is staggering. Correcting for Defendants' deceptive practices results in reducing Mr. Trump's net worth by 17-39% per year, which translates to the enormous sum of $1

billion or more in all but one year. And these are reductions to correct just the deceptive schemes that can be easily and directly quantified based on undisputed evidence, without considering reductions for such obvious deceptions as including projected future income expected years out without any discount to present value, cherry-picking only the most favorable capitalization rates from marketing reports, and ignoring internal budget projections when calculating net operating income.

Based on the overwhelming evidence that Defendants grossly inflated more than a dozen assets each year from 2011 to 2021 by 17-39%, the Court should find that each of the 11 SFCs issued during this period was both false and misleading.

2. Defendants Used the False SFCs to Defraud Banks and Insurers

The voluminous contemporaneous record before the Court establishes beyond dispute that Defendants used Mr. Trump's SFCs in and after July 2014 – the cutoff used by the First Department for timely claims, *see People by James v. Trump*, No. 2023-00717, 2023 WL 4187947, at *2 (1st Dep't June 27, 2023) – in connection with business transactions to commit fraud on banks and insurers. Each of these submissions of the SFCs, in addition to other commercial dealings, was conduct that supports liability for fraud under § 63(12). *See People ex rel. Spitzer v. Gen. Elec. Co.*, 302 A.D.2d 314, 315 (1st Dep't 2003) (liability based on false statements to counterparty).

For a loan that closed on August 12, 2014, related to the Trump Organization's purchase of the Old Post Office ("OPO") in Washington, D.C., Mr. Trump submitted as part of the loan application his 2011, 2012, and 2013 SFCs, certifying to Deutsche Bank that the 2013 SFC was true and correct as required by his personal guarantee on the loan. Mr. Trump then submitted annually his subsequent SFCs from 2014 through 2021 for the bank's review as required under his

continuing loan obligations. Similarly, for loans made by Deutsche Bank to the Trump Organization for Doral and Trump Chicago that closed prior to July 2014, Mr. Trump submitted annually after that date his subsequent SFCs from 2014 through 2021 for the bank's review, certifying to their truth and accuracy as required under his continuing obligations as necessary to maintain the loan.

Mr. Trump also used his SFCs after July 2014 in connection with loans from two other banks. In November 2015, the Trump Organization submitted Mr. Trump's 2014 SFC to Ladder Capital as part of its application to refinance an existing $160 million mortgage on 40 Wall Street. And in seeking extensions on a mortgage for Seven Springs, Mr. Trump's trustees submitted his 2014, 2015, and 2016 SFCs to Bryn Mawr Bank.

In addition to banks, the Trump Organization submitted Mr. Trump's SFCs to insurance companies to renew coverage after July 2014. For the 2019 and 2020 renewals of the Trump Organization's surety insurance program, Mr. Weisselberg provided for review to Zurich North America Mr. Trump's 2018 and 2019 SFCs as required under the program's conditions of coverage, misrepresenting that the asset values were determined by an outside professional appraiser and that the property values reflected in the SFCs were stable year over year, neither of which were true but both of which were favorably weighed by the underwriter. In addition, unbeknownst to the Zurich underwriter, the cash listed as an asset on the SFCs, which the underwriter relied upon as an indication of Mr. Trump's liquidity, was significantly overstated because it included cash held by the Vornado Partnership Interests over which he exercised no control.

Similarly, during a January 2017 renewal meeting with insurers for the Trump Organization's directors and officers insurance program, Mr. Weisselberg provided for the

insurers' review Mr. Trump's 2015 SFC as evidence of Mr. Trump's liquidity and overall financial strength, and further misrepresented to underwriters that there were no ongoing legal proceedings or government inquiries that could possibly give rise to a claim, despite the existence of an ongoing government investigation which the Trump Organization later tendered to the carriers for coverage.

Based on these undisputed facts, the Court should find that Defendants used the false SFCs in numerous business transactions to deceive and defraud banks and insurers in violation of § 63(12). *See Northern Leasing*, 193 A.D.3d at 75; *Gen. Elect.*, 302 A.D.2d at 314; *Flandera v. AFA Am. Inc*., 78 A.D.3d 1639, 1640 (4th Dep't 2010) ("An assessment of market value that is based upon misrepresentations concerning existing facts" supports common law fraud action); *see also Omnicare, Inc. v. Laborers District Council*, 575 U.S. 175, 191 (2015) ("[I]f the real facts are otherwise, but not provided, the opinion statement will mislead its audience.").

B. Defendants' Conduct in Violation of § 63(12) was Repeated and Persistent

Under § 63(12), conduct may be the subject of an enforcement action if it is either "repeated" or "persistent." Such conduct is "repeated" if it involves either "any separate and distinct fraudulent or illegal act, or conduct which affects more than one person." N.Y. Exec. Law § 63(12). Thus, "the Attorney-General [may] bring a proceeding when the respondent was guilty of only one act of alleged misconduct, providing it affected more than one person." *State of New York v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep't 1983). The term "persistent" includes the "continuance or carrying on of any fraudulent or illegal act or conduct." N.Y. Exec. Law § 63(12)

Here, the fraud was repeated and persistent. Each of the SFCs issued annually from 2011 through 2021 by or on behalf of Mr. Trump falsely inflated his net worth. And within each SFC, the inflated net worth was the product of *multiple* deceptive schemes that inflated more than a

dozen individual assets by hundreds of millions of dollars and otherwise violated GAAP in numerous ways contrary to the repeated representation in the SFCs that they were GAAP compliant. Each of the SFCs were, in turn, submitted by Defendants in connection with five separate loans over multiple years and to renew insurance policies on three different occasions.

Nor is there any dispute that each of the Defendants participated repeatedly and persistently in the preparation and fraudulent use of the SFCs. Mr. Trump was responsible for the SFCs through 2015 and continued to review and approve the SFCs issued from 2016 through 2021 and he (or in some years others acting as his attorney-in-fact) submitted his SFCs on multiple occasions to banks in support of his personal guaranty on each of the five loans. Donald Trump, Jr. signed the representation letters for the SFC engagement from 2016 through 2021 and signed numerous compliance certificates for loans certifying that the SFCs from 2016 through 2019 were truthful and accurate. Eric Trump provided the values for Seven Springs used in the 2012, 2013, and 2014 SFC, signed the 2019 loan modification on behalf of Seven Springs LLC, reaffirmed Mr. Trump's obligations under the guaranty for that loan, and signed numerous loan compliance certificates certifying to Mr. Trump's net worth. He also signed the engagement letter for the 2021 SFC, participated in discussion about the valuation methodologies for the SFC, and signed numerous compliance certificates for loans certifying that the 2021 SFC was truthful and accurate.

Allen Weisselberg and Jeffrey McConney were also heavily involved in the scheme to inflate Mr. Trump's net worth. Mr. McConney led the process of preparing the SFCs under Mr. Weisselberg's supervision, had primary responsibility for assembling and forwarding the SFC documentation to the accountants, and in 2016 and 2017 sent compliance certificates to Deutsche Bank. Mr. Weisselberg signed all of the SFC engagement and representation letters from 2011 through 2020 and reviewed the SFCs with Mr. Trump to obtain his approval each year.

Each of the entity Defendants also had repeated and persistent involvement in using the false SFCs to commit business fraud. The Trump Organization Inc., the Trump Organization LLC, DJT Holdings LLC and DJT Holdings Managing Member LLC all participated through the conduct of their officers, including Mr. Trump, Donald Trump, Jr., and Eric Trump. And the remaining entity Defendants participated both through their officers, including Mr. Trump, Donald Trump, Jr. and Eric Trump, and as borrowers on the various loans at issue in this action.

There can be no serious doubt on this record that Defendants' fraudulent conduct was both repeated and persistent within the meaning of § 63(12). *See Wolowitz*, 96 A.D.2d at 61.

CONCLUSION

Based on the foregoing, OAG respectfully requests that the Court grant Plaintiff's motion for judgment as a matter of law on Plaintiff's First Cause of Action for fraud under Executive Law § 63(12), along with such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
August 4, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

Attorney for the People of the State of New York

CERTIFICATION

With leave of Court entered on June 21, 2023, NYSCEF No. 638, Plaintiff is filing this Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment with an enlarged word count not to exceed 25,000 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 19,308 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
August 4, 2023

LETITIA JAMES
Attorney General of the State of New York

By: 
Andrew Amer
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

Attorney for the People of the State of New York

Appendix

Tab 1

Reductions to Certain Asset Values in 2011-2021 SOFCs (Tab 1)

		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
	Net Worth Per Statement	**$4,261,590,000**	**$4,558,680,000**	**$4,978,050,000**	**$5,777,540,000**	**$6,061,210,000**	**$5,779,100,000**	**$5,876,310,000**	**$6,121,020,000**	**$6,102,160,000**	**$4,702,240,000**	**$4,534,830,000**
REDUCTIONS	**Triplex** *Tab 2*		$114,024,000	$126,693,333	$126,693,333	$207,143,600	$207,143,600					
	Seven Springs *Tab 3*	$204,500,000	$234,500,000	$234,500,000	$234,500,000							
	40 Wall Street *Tab 4*	$324,700,000	$307,200,000	$280,211,000	$292,371,000	$195,400,000						
	Mar-a-Lago *Tab 5*	$408,529,614	$513,902,903	$472,149,221	$386,710,813	$327,451,915	$549,359,730	$556,928,373	$714,052,519	$620,518,780	$490,404,874	$584,510,496
	Aberdeen *Tab 6*				$283,323,115	$209,333,768	$177,212,504	$173,380,307	$174,997,015	$166,692,494	$59,075,815	$66,685,439
	1290 AoA (Vornado) *Tab 7*		$235,491,176	$296,836,538	$233,501,539	$205,745,981	$226,500,000		$503,097,573	$507,613,155		$172,444,140
	Golf Clubs *Tab 8*		$53,000,000 *Chart 4*	$224,663,281 *Charts 1,2,4*	$304,710,330 *Charts 1,2,3,4*	$259,881,684 *Charts 1,2,3,4*	$170,090,603 *Charts 1,2,4*	$153,585,255 *Charts 1,2*	$114,554,890 *Charts 1,2*	$115,468,026 *Charts 1,2*	$115,468,026 *Charts 1,2*	
	Park Avenue *Tab 9*	$61,165,500 *Charts 1,2*	$93,822,750 *Charts 1,2,3*	$86,792,000 *Charts 1,2,3*	$93,485,000 *Charts 1,2,3*	$32,794,000 *Chart 1*	$26,502,836 *Chart 1*	$25,700,247 *Chart 1*	$28,600,783 *Chart 1*	$18,158,518 *Chart 1*	$14,370,776 *Chart 1*	$10,970,905 *Chart 1*
	Trump Tower *Tab 10*								$173,787,607	$322,696,375		
	Cash *Tab 11*			$14,221,800	$24,756,854	$32,708,696	$19,593,643	$16,536,243	$24,355,588	$24,653,729	$28,251,623	$93,126,589
	Escrow *Tab 12*				$20,800,000	$15,980,000	$14,470,000	$8,750,000	$8,180,000	$11,195,400	$7,108,500	$12,696,600
	Licensing Development *Tab 13*			$87,535,099 *Chart 1*	$224,259,337 *Chart 1*	$214,095,761 *Charts 1,2*	$167,234,554 *Charts 1,2*	$166,260,089 *Charts 1,2*	$160,686,029 *Charts 1,2*		$97,468,692 *Chart 1*	$106,503,627 *Chart 1*
	Total Reduction	$998,895,114	$1,551,940,829	$1,823,602,272	$2,225,111,321	$1,700,535,404	$1,558,107,470	$1,101,140,514	$1,902,312,005	$1,786,996,477	$812,148,306	$1,046,937,796
	% Reduction	23.44%	34.04%	36.63%	38.51%	28.06%	26.96%	18.74%	31.08%	29.28%	17.27%	23.09%

Tab 2

Triplex (Tab 2)

Year	Triplex Value Based on 30,000 SF	Corrected Triplex Value Based on 10,996 SF	Inflated Amount	Source
2012	$180,000,000	$65,976,000	$114,024,000	202.8-g Statement ¶¶ 36-48
2013	$200,000,000	$73,306,667	$126,693,333	202.8-g Statement ¶¶ 36-48
2014	$200,000,000	$73,306,667	$126,693,333	202.8-g Statement ¶¶ 36-48
2015	$327,000,000	$119,856,400	$207,143,600	202.8-g Statement ¶¶ 36-48
2016	$327,000,000	$119,856,400	$207,143,600	202.8-g Statement ¶¶ 36-48

Tab 3

Seven Springs (Tab 3)

Year	Statement Value	Difference Between Statement Value and 2015 Appraisal	Source
2011	$261,000,000	$204,500,000	202.8-g Statement ¶¶ 67, 73, 75
2012	$291,000,000	$234,500,000	202.8-g Statement ¶¶ 67, 73, 75
2013	$291,000,000	$234,500,000	202.8-g Statement ¶¶ 67, 73, 75
2014	$291,000,000	$234,500,000	202.8-g Statement ¶¶ 67, 73, 75

Tab 4

40 Wall Street (Tab 4)

Year	SOFC Value	Independent Value	Reduction	Independent Source	Source
2011	$524,700,000	$200,000,000	$324,700,000	2011 CW Appraisal	202.8-g Statement ¶¶ 78-84, 114
2012	$527,200,000	$220,000,000	$307,200,000	2012 CW Appraisal	202.8-g Statement ¶¶ 85-92, 114
2013	$530,700,000	$250,489,000	$280,211,000	2013 Capital One Internal Valuation	202.8-g Statement ¶¶ 93-97, 114
2014	$550,100,000	$257,729,000	$292,371,000	2014 Capital One Internal Valuation	202.8-g Statement ¶¶ 98-103, 114
2015	$735,400,000	$540,000,000	$195,400,000	2015 CW Appraisal	202.8-g Statement ¶¶ 104-114
Total	**$2,868,100,000**	**$1,468,218,000**	**$1,399,882,000**		

Tab 5

Mar-a-Lago (Tab 5)

Year	SOFC Value	Independent Value	Reduction	Independent Source	Source
2011	$426,529,614	$18,000,000	$408,529,614	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2012	$531,902,903	$18,000,000	$513,902,903	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2013	$490,149,221	$18,000,000	$472,149,221	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2014	$405,362,123	$18,651,310	$386,710,813	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2015	$347,761,431	$20,309,516	$327,451,915	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2016	$570,373,061	$21,013,331	$549,359,730	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2017	$580,028,373	$23,100,000	$556,928,373	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2018	$739,452,519	$25,400,000	$714,052,519	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2019	$647,118,780	$26,600,000	$620,518,780	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2020	$517,004,874	$26,600,000	$490,404,874	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200
2021	$612,110,496	$27,600,000	$584,510,496	Palm Beach County Property Appraiser's Office	202.8-g Statement ¶¶ 198-200

Tab 6

Aberdeen (Tab 6)

Year	Value of Undeveloped Land (GBP)	Number of Homes (SOFC)	Price per Home	Number of Homes (Approved)	Reduction (GBP)	Conversion Rate	Downturn Reduction	Reduction (USD)	Source
2014	£207,910,000.00	2500	£83,164.00	500	£166,328,000.00	1.7034	0%	$283,323,115	202.8-g Statement ¶¶ 205-11, 222
2015	£207,910,000.00	2500	£83,164.00	500	£166,328,000.00	1.5732	20%	$209,333,768	202.8-g Statement ¶¶ 205-11, 222
2016	£207,910,000.00	2500	£83,164.00	500	£166,328,000.00	1.3318	20%	$177,212,504	202.8-g Statement ¶¶ 205-11, 222
2017	£207,910,000.00	2500	£83,164.00	500	£166,328,000.00	1.303	20%	$173,380,307	202.8-g Statement ¶¶ 205-11, 222
2018	£207,910,000.00	2500	£83,164.00	500	£166,328,000.00	1.31515	20%	$174,997,015	202.8-g Statement ¶¶ 205-11, 222
2019	£217,680,973.00	2035	£106,968.54	500	£164,196,704.45	1.269	20%	$166,692,494	202.8-g Statement ¶¶ 214-218, 222
2020	£82,537,613.00	1200	£68,781.34	500	£48,146,940.92	1.22699	0%	$59,075,815	202.8-g Statement ¶¶ 214-220, 222
2021	£82,537,613.00	1200	£68,781.34	500	£48,146,940.92	1.38504	0%	$66,685,439	202.8-g Statement ¶¶ 214-220, 222

Tab 7

1290 AoA (Vornado) (Tab 7)

Year	SOFC Value – 1290	Minus Debt	SOFC Value – DJT Share	Independent Value – 1290	Minus Debt	Independent Value – DJT Share	Reduction	Independent Source	Source
2012	$2,784,970,588	($410,000,000)	$712,491,176	$2,000,000,000	($410,000,000)	$477,000,000	$235,491,176	2012 Cushman Appraisal	202.8-g Statement ¶¶ 233-237, 256
2013	$2,989,455,128	($950,000,000)	$611,836,538	$2,000,000,000	($950,000,000)	$315,000,000	$296,836,538	2012 Cushman Appraisal	202.8-g Statement ¶¶ 233, 238-240, 256
2014	$3,078,338,462	($950,000,000)	$638,501,539	$2,300,000,000	($950,000,000)	$405,000,000	$233,501,539	2012 Cushman Appraisal (Using as-of 2016 Value)	202.8-g Statement ¶¶ 241-243, 256
2015	$2,985,819,936	($950,000,000)	$610,745,981	$2,300,000,000	($950,000,000)	$405,000,000	$205,745,981	2012 Cushman Appraisal (Using as-of 2016 Value)	202.8-g Statement ¶¶ 241, 244-245, 256
2016	$3,055,000,000	($950,000,000)	$631,500,000	$2,300,000,000	($950,000,000)	$405,000,000	$226,500,000	2012 Cushman Appraisal (Using as-of 2016 Value)	202.8-g Statement ¶¶ 241, 246-247, 256
2017									
2018	$4,192,479,775	($950,000,000)	$972,743,933	$2,515,487,865	($950,000,000)	$469,646,360	$503,097,573	Stabilized Cap Rate from Cushman and Wakefield Report	202.8-g Statement ¶¶ 263-64, 274
2019	$4,230,109,625	($950,000,000)	$984,032,888	$2,538,065,775	($950,000,000)	$476,419,733	$507,613,155	Stabilized Cap Rate from Cushman and Wakefield Report	202.8-g Statement ¶¶ 265, 275-76
2020									
2021	$2,574,813,800	($950,000,000)	$487,444,140	$2,000,000,000	($950,000,000)	$315,000,000	$172,444,140	2021 CBRE Appraised Value	202.8-g Statement ¶¶ 253-56

Tab 8

Golf Clubs (Tab 8) – Chart 1

	Jupiter	LA	Colts Neck	Philadelphia	DC	Charlotte	Hudson Valley	Total	Source
2013	$14,131,800	$18,962,900	$14,136,300	$4,188,300	$13,881,000	$3,014,400	$3,499,500	**$71,814,200**	202.8-g Statement ¶ 308
2014	$15,399.04		$14,163,918	$4,914,735	$14,830,755	$3,482,772	$3,822,041	**$41,229,620**	202.8-g Statement ¶ 308
2015	$8,680,598		$7,178,998	$2,548,516	$8,327,010	$1,957,403	$1,993,966	**$30,686,491**	202.8-g Statement ¶ 308
2016	$9,093,500	$6,838,282	$7,027,398	$2,597,752	$8,608,133	$2,236,226	$2,040,231	**$38,441,522**	202.8-g Statement ¶ 308
2017	$9,287,777	$6,870,017	$7,021,299	$2,684,775	$8,859,315	$2,411,581	$2,107,623	**$39,242,387**	202.8-g Statement ¶ 308
2018	$9,435,046	$6,694,184	$7,022,498	$2,711,844	$8,901,001	$2,606,902	$2,082,934	**$39,454,409**	202.8-g Statement ¶ 308
2019	$9,493,561	$7,139,313	$7,097,709	$2,730,185	$9,015,908	$2,758,110	$2,132,759	**$40,367,545**	202.8-g Statement ¶ 308
2020	$9,493,561	$7,139,313	$7,097,709	$2,730,185	$9,015,908	$2,758,110	$2,132,759	**$40,367,545**	202.8-g Statement ¶ 308
Total	**$69,631,242**	**$53,644,009**	**$70,745,829**	**$25,106,292**	**$81,439,030**	**$21,225,504**	**$19,811,813**	**$341,603,719**	202.8-g Statement ¶ 308

Golf Clubs (Tab 8) – Chart 2

Membership Deposit Liability Value Reduction Chart											
Year	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**Source**
Jupiter		$41,000,000	$41,000,000	$41,000,000	$41,000,000	$41,000,000	$41,000,000	$41,000,000	$41,000,000		202.8-g Statement ¶¶ 319-20
Colts Neck	$11,700,000	$11,700,000	$11,700,000	$11,700,000	$11,700,000	$11,700,000	$11,700,000	$11,700,000	$11,700,000		202.8-g Statement ¶¶ 321-22
Philadelphia	$953,237	$953,237	$953,237	$953,237	$953,237	$953,237	$953,237	$953,237	$953,237	$953,237	202.8-g Statement ¶¶ 323-24
DC		$16,131,075	$16,131,075	$16,131,075	$16,131,075	$16,131,075	$16,131,075	$16,131,075	$16,131,075		202.8-g Statement ¶¶ 325-26
Charlotte	$4,080,550	$4,080,550	$4,080,550	$4,080,550	$4,080,550	$4,080,550	$4,080,550	$4,080,550	$4,080,550		202.8-g Statement ¶¶ 327-28
Hudson Valley	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	$1,235,619	202.8-g Statement ¶¶ 329-30
Total	**$17,969,406**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$75,100,481**	**$2,188,856**	202.8-g Statement ¶¶ 331-32

Golf Clubs (Tab 8) – Chart 3

Year	Property	Fixed Assets Value	Appraised Value	Difference in Value	Sources
2014	TNGC Briarcliff	$73,130,987	$16,500,000	$56,630,987	202.8-g Statement ¶¶ 288-89, 291
2014	TNGC LA	$74,300,642	$16,000,000	$58,300,642	202.8-g Statement ¶¶ 292, 294-95
2015	TNGC Briarcliff	$73,430,217	$16,500,000	$56,930,217	202.8-g Statement ¶¶ 288, 290-91
2015	TNGC LA	$56,615,895	$16,000,000	$40,615,895	202.8-g Statement ¶¶ 293-295

Golf Clubs (Tab 8) – Chart 4

Year	Property	SOFC Per Lot	Appraisal per Lot	SOFC Value of Undeveloped (Easement) Land	Difference Between SOFC and Appraisal	Sources
2012	TNGC LA	4,500,000	1,187,500	$72,000,000	$53,000,000	202.8-g Statement ¶¶ 300, 302, 304
2013	TNGC Briarcliff			$101,748,600	$56,748,600	202.8-g Statement ¶¶ 296-297, 304
2013	TNGC LA	$2,500,000	$1,187,500	$40,000,000	$21,000,000	202.8-g Statement ¶¶ 301,302, 304
2014	TNGC Briarcliff			$101,748,600	$58,448,600	202.8-g Statement ¶¶ 296, 298, 304
2014	TNGC LA	$2,500,000	$1,562,500	$40,000,000	$15,000,000	202.8-g Statement ¶¶ 301, 303-304
2015	TNGC Briarcliff			$101,748,600	$56,548,600	202.8-g Statement ¶¶ 296, 298, 304
2016	TNGC Briarcliff			$101,748,600	$56,548,600	202.8-g Statement ¶¶ 296, 298, 304

Tab 9

Park Avenue (Tab 9) – Chart 1

Year \ Apt No.	4A	6B	7A	7B	7D	7E	7G	8E	8H	10E	12E	15AB	Sum Total	Appraised Value	Difference in Value	Source
2011	$4,021,500	$5,733,000	$4,119,500	$4,119,500	$5,411,000	$2,782,500	$5,011,500	$3,051,000	$2,037,000	$2,430,000	$2,451,000	$8,428,000	$49,595,500	$750,000	$48,845,500	202.8-g Statement ¶¶ 336-343, 363
2012	$4,021,500	$5,733,000	$4,119,500	$4,119,500	$5,411,000	$2,782,500	$5,011,500	$3,051,000	$2,037,000	$2,430,000	$2,451,000	$8,428,000	$49,595,500	$750,000	$48,845,500	202.8-g Statement ¶¶ 336-343, 363
2013	$4,021,500	$5,733,000	$4,119,500	$4,119,500	$5,411,000	$2,782,500	$5,011,500	$0	$2,037,000	$2,430,000	$2,451,000	$8,428,000	$46,544,500	$687,500	$45,857,000	202.8-g Statement ¶¶ 336-342, 344-345, 363
2014	$4,021,500	$5,733,000	$0	$0	$5,411,000	$2,782,500	$5,011,500	$0	$2,037,000	$2,430,000	$2,451,000	$8,428,000	$38,305,500	$562,500	$37,743,000	202.8-g Statement ¶¶ 336-342, 346-347, 363
2015	$4,021,500	$5,733,000	$0	$0	$5,411,000	$2,782,500	$0	$0	$2,037,000	$2,430,000	$2,451,000	$8,428,000	$33,294,000	$500,000	$32,794,000	202.8-g Statement ¶¶ 336-342, 348-49, 363
2016	$3,135,065	$4,069,543	$0	$0	$3,840,972	$2,169,171	$0	$0	$1,852,663	$2,210,098	$2,229,198	$7,496,126	$27,002,836	$500,000	$26,502,836	202.8-g Statement ¶¶ 336-342, 350-51, 363
2017	$2,918,083	$4,069,543	$0	$0	$3,840,972	$2,019,039	$0	$0	$1,724,437	$2,057,135	$2,074,912	$7,496,126	$26,200,247	$500,000	$25,700,247	202.8-g Statement ¶¶ 336-342, 352-53, 363
2018	$3,385,726	$4,671,850	$0	$0	$4,409,451	$2,342,604	$0	$0	$2,000,790	$2,386,805	$2,407,431	$7,496,126	$29,100,783	$500,000	$28,600,783	202.8-g Statement ¶¶ 336-342, 354-55, 363
2019	$2,469,722	$3,516,105	$0	$0	$3,318,619	$1,708,815	$0	$0	$0	$1,741,057	$0	$5,779,200	$18,533,518	$375,000	$18,158,518	202.8-g Statement ¶¶ 336-342, 356-57, 363
2020	$2,829,934	$4,034,319	$0	$0	$3,807,727	$1,687,592	$0	$0	$0	$1,719,433	$0	$4,091,786	$18,170,791	$3,800,015	$14,370,776	202.8-g Statement ¶¶ 358-360, 363
2021	$2,154,375	$3,071,250	$0	$0	$2,898,750	$1,265,441	$0	$0	$0	$1,289,318	$0	$4,091,786	$14,770,920	$3,800,015	$10,970,905	202.8-g Statement ¶¶ 358, 361-63

Park Avenue (Tab 9) – Chart 2

Year	SFC Value	Option Price	Difference in Value	Sources
2011	$20,820,000	$8,500,000	$12,320,000	202.8-g Statement ¶¶ 365-66
2012	$20,820,000	$8,500,000	$12,320,000	202.8-g Statement ¶¶ 365-66
2013	$25,000,000	$8,500,000	$16,500,000	202.8-g Statement ¶¶ 365, 367
2014	$45,000,000	$14,264,000	$30,736,000	202.8-g Statement ¶¶ 368-369
Total	**$111,640,000**	**$39,764,000**	**$71,876,000**	

Park Avenue (Tab 9) – Chart 3

	2012		
	Offering Plan Price	Current Value	Difference in Value
3B	$19,358,750	$11,500,000	
4A			
6B			
7A/B			
7D			
7E			
7G			
8E			
8H			
10E			
12E			
12J	$2,079,000	$1,400,000	
15AB			
19A	$14,449,500	$11,500,000	
PH20	$35,000,000	$30,000,000	
PH21	$35,000,000	$30,000,000	
PH23	$33,000,000	$25,000,000	
PH24	$32,000,000	$24,000,000	
PH27	$20,820,000	$16,650,000	
PH28	$0	$0	
PH31/32	$31,000,000	$40,000,000	
Total:	**$222,707,250**	**$190,050,000**	**$32,657,250**
Sources	202.8-g Statement ¶¶ 375-376, 381		

	2013		
	Offering Plan Price	Current Value	Difference in Value
3B	$13,680,000	$12,000,000	
4A			
6B			
7A			
7D			
7E			
7G			
8E	$3,051,000	$2,350,000	
8H			
10E			
12E			
12J	$2,079,000	$1,525,000	
15A			
19A	$10,500,000	$10,000,000	
*PH20	$45,000,000	$42,000,000	
PH21	$40,000,000	$39,000,000	
PH23	$36,000,000	$33,000,000	
PH24	$35,000,000	$32,000,000	
PH27	$25,000,000	$21,000,000	
PH28	$0	$0	
PH31/32	$45,000,000	$38,000,000	
Total:	**$255,310,000**	**$230,875,000**	**$24,435,000**
Sources	202.8-g Statement ¶¶ 377-378, 381		

	2014		
	Offering Plan Price	Current Value	Difference in Value
3B			
4A			
6B			
7A	$6,200,000	$5,895,000	
7D			
7E			
7G			
8E	$3,051,000	$2,350,000	
8H			
10E			
12E			
12J			
15A			
19A	$10,500,000	$10,000,000	
*PH20	$0	$0	
PH21	$37,000,000	$32,000,000	
PH23	$33,000,000	$28,000,000	
PH24	$24,995,000	$24,995,000	
PH27	$25,000,000	$18,000,000	
PH28	$25,000,000	$18,500,000	
PH31/32	$35,000,000	$35,000,000	
Total:	**$199,746,000**	**$174,740,000**	**$25,006,000**
Sources	202.8-g Statement ¶¶ 379-381		

Tab 10

Trump Tower (Tab 10)

	NOI per SFC	Cap Rate Used	Projected Stabilized Cap Rate	SFC Value	Adjusted Value	Adjustment amount	Source
2018	20,942,383	2.86%	3.75%	$732,251,154	$558,463,547	$173,787,607	202.8-g Statement ¶¶ 258-272
2019	21,539,983	2.67%	4.45%	$806,740,936	$484,044,562	$322,696,375	202.8-g Statement ¶¶ 258-272

Tab 11

Cash (Tab 11)

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests	Total Cash / Liquidity Reported	Vornado Property Interests Cash as a Percent of Total Cash	Source
2013	$14,221,800	$339,100,000	4%	202.8-g Statement ¶¶ 394, 403
2014	$24,756,854	$302,300,000	8%	202.8-g Statement ¶¶ 395, 403
2015	$32,708,696	$192,300,000	17%	202.8-g Statement ¶¶ 396, 403
2016	$19,593,643	$114,400,000	17%	202.8-g Statement ¶¶ 397, 403
2017	$16,536,243	$76,000,000	22%	202.8-g Statement ¶¶ 398, 403
2018	$24,355,588	$76,200,000	32%	202.8-g Statement ¶¶ 399, 403
2019	$24,653,729	$87,000,000	28%	202.8-g Statement ¶¶ 400, 403
2020	$28,251,623	$92,700,000	30%	202.8-g Statement ¶¶ 401, 403
2021	$93,126,589	$293,800,000	32%	202.8-g Statement ¶¶ 402, 403
	$278,204,765			

Tab 12

Escrow (Tab 12)

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests	Vornado Property Interests Escrow Deposits or Restricted Cash as a Percent of Total Escrow Category	Source
2014	$20,800,000	52%	202.8-g Statement ¶¶ 409, 417
2015	$15,980,000	47%	202.8-g Statement ¶¶ 410, 417
2016	$14,470,000	52%	202.8-g Statement ¶¶ 411, 417
2017	$8,750,000	36%	202.8-g Statement ¶¶ 412, 417
2018	$8,180,000	36%	202.8-g Statement ¶¶ 413, 417
2019	$11,195,400	39%	202.8-g Statement ¶¶ 414, 417
2020	$7,108,500	28%	202.8-g Statement ¶¶ 415, 417
2021	$12,696,600	44%	202.8-g Statement ¶¶ 416, 417
	$99,180,500		

Tab 13

Licensing Development (Tab 13) – Chart 1

Year	Stated Existing Portfolio Value	Existing Portfolio Value Removing Related Party Transactions	Difference in Value	Source
2013	$128,205,717.00	$40,670,618.00	$87,535,099.00	202.8-g Statement ¶¶ 426-429
2014	$ 291,619,279.00	$67,359,942.00	$224,259,337.00	202.8-g Statement ¶¶ 426-428, 430
2015	$194,201,728.00	$83,642,358.00	$110,559,370.00	202.8-g Statement ¶¶ 426-428, 431
2016	$150,032,908.00	$29,111,151.00	$ 120,921,757.00	202.8-g Statement ¶¶ 426-428, 432
2017	$130,671,505.00	$17,142,978.00	$113,528,527.00	202.8-g Statement ¶¶ 426-428, 433
2018	$ 97,585,238.00	$(17,901,797.00)	$115,487,035.00	202.8-g Statement ¶¶ 426-428, 434
2020	$102,022,557.00	$4,553,865.00	$97,468,692.00	202.8-g Statement ¶¶ 426-428, 435
2021	$118,914,383.00	$12,410,756.00	$106,503,627.00	202.8-g Statement ¶¶ 426-428, 436

Licensing Development (Tab 13) – Chart 2

Statement Year	Total Value	Amount of TBD Deals in Total Value	% of Total	Source
2015	$339,000,000	$103,536,391	30.50%	202.8-g Statement ¶¶ 422-25
2016	$227,400,000	$46,312,797	20.40%	202.8-g Statement ¶¶ 422-25
2017	$246,000,000	$52,731,562	21.40%	202.8-g Statement ¶¶ 422-25
2018	$202,900,000	$45,198,994	22.30%	202.8-g Statement ¶¶ 422-25

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

INTRODUCTION 1

LEGAL STANDARD 5

ARGUMENT 6

I. The First Department Statute of Limitations Decision is Binding Law of the Case 6

A. The NYAG Is Not Entitled To Summary Judgment On Time-Barred Allegations 8

B. "All" Defendants Are Not Bound By The Tolling Agreement 13

II. The NYAG Fails to Present Sufficient Evidence as to the First Cause Of Action 19

A. The NYAG Fails To Show That The SOFCs Were False Or Fraudulent 19

1. The NYAG Misconstrues And Misapplies GAAP 20

a. Misunderstandings of Valuation Concepts and Guidance Under GAAP 20

b. Misunderstandings of the Disclosure Requirements Under GAAP 25

c. Misunderstandings of Other Issues Under GAAP 26

2. The SOFCs Complied With GAAP 28

3. The NYAG Has Not Produced Evidence Sufficient To Support Her Valuation Claims 30

4. Disagreement As To The SOFC Values Does Not Establish Fraud 33

5. The NYAG's Representations As To The Values Of Each Property Are Erroneous 35

a. Mar-A-Lago 35

b. 40 Wall Street 39

c. Trump Tower 43

d. Trump Park Avenue 44

e. Seven Springs 45

f. 1290 Avenue of the Americas 46

g. Doral 48

B. NYAG Fails to Address Materiality, A Key Element Of Her § 63(12) Claim 48

III. Defendants Are Entitled To Summary Judgment On The First Cause Of Action 52

A. The NYAG Lacks Authority To Maintain Suit 52

B. The SOFCs Were Not Materially Misleading 57

1. The SOFCs Present the Guarantor's Valuations 57

2. The Actual Users of The SOFCs Agree Any Mistatements Were Immaterial 59

C. The Record Shows Defendants Neither Participated In Any Alleged Fraud Nor Had Actual Knowledge Of It 64

IV. The NYAG Is Not Entitled To Disgorgement As A Matter Of Law. 69

CONCLUSION 72

CERTIFICATION 75

TABLE OF AUTHORITIES

Page(s)

Cases

12 New St., LLC v. Nat'l Wine & Spirits, Inc.,
196 A.D.3d 883 (3d Dep't 2021) 14

19650 NE 18th Ave. LLC v. Presidential Ests. Homeowners Ass'n, Inc.,
103 So. 3d 191 (Fla. 3d DCA 2012) 36

Abrahami v. UPC Constr. Co.,
224 A.D.2d 231 (1st Dep't 1996) 64, 65

Allstate Ins. Co. v. Foschio,
462 N.Y.S.2d 44 (2d Dep't 1983) 54

Alvarez v. Prospect Hosp.,
68 N.Y.2d 320 (1986) 5

Attorney Gen. v. Utica Ins. Co.,
2 Johns. Ch. 371 (N.Y. Ch. 1817) 53

Ayotte v Gervasio,
81 N.Y.2d 1062 (1993) 5

Belzberg v. Verus Invs. Holdings Inc.,
21 N.Y.3d 626 (2013) 16

Briffel v. County of Nassau,
31 A.D.3d 79 (2d Dep't 2006) 35

Brodsky v. N.Y. City Campaign Fin. Bd.,
107 A.D.3d 544 (1st Dep't 2013) 6

Capricorn Invs. III, L.P. v. Coolbrands Int'l, Inc.,
No. 603795/06, 2009 WL 2208339 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2009),
aff'd, 886 N.Y.S.2d 158 (1st Dep't 2009) 16

City of Miami Beach v. 100 Lincoln Rd., Inc.,
214 So. 2d 39 (Fla. Dist. Ct. App. 1968) 38

City of New York v. FedEx Ground Package Sys., Inc.,
314 F.R.D. 348 (S.D.N.Y. 2016) 70

City Trading Fund v. Nye,
72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018) 49

CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.,
No. 15601951/08, 2009 WL 5102795 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009) 16

Davis v. United Air Lines, Inc.,
575 F. Supp. 677 (E.D.N.Y. 1983) 70

Di Sabato v. Soffes,
9 A.D.2d 297 (1st Dep't 1959) 5

Dodwell & Co. v. Silverman,
234 A.D. 362 (1st Dep't 1932) 5

Duguid v. B.K.,
175 N.Y.S.3d 853 (N.Y. Sup. Ct. Saratoga Cnty. 2022) 53

Ernst & Young LLP,
No. 451586/2010.....54

Fletcher v. Dakota, Inc.,
99 A.D.3d 43 (1st Dep't 2012) 64

Frawley v. Dawson,
No. 6697/07, 2011 WL 2586369 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2011) 64

Freeford Ltd. v. Pendleton,
53 A.D.3d 32 (1st Dep't 2008) 17

Gallagher v. Ruzzine,
46 N.Y.S.3d 323 (4th Dep't 2017).....65

Georgia Malone & Co. v. Ralph Rieder,
86 A.D.3d 406 (1st Dep't 2011), *aff'd*, 19 N.Y.3d 511 (2012) 17

Gerschel v. Christensen,
128 A.D.3d 455 (1st Dep't 2015) 17

Grochowski v. Phx. Const.,
318 F.3d 80 (2d Cir. 2003).....70

Herman v. 36 Gramercy Park Realty Assocs., LLC,
165 A.D.3d 405 (1st Dep't 2018) 14

Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.,
124 N.Y.S.3d 346 (1st Dep't 2020) 16

Holloway v. Cha Cha Laundry, Inc.,
97 A.D.2d 385 (1st Dep't 1983) 6

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
91 A.D.3d 226 (1st Dep't 2011) 72

JP Morgan Chase Bank v. Winnick,
350 F. Supp. 2d 393 (S.D.N.Y. 2004).....49, 57

JPMorgan Chase Bank, N.A. v. Luxor Cap., LLC,
101 A.D.3d 575 (1st Dep't 2012) 5, 11, 12

Karahalios v. Nat'l Fed'n of Emps., Local 1263,
489 U.S. 527 (1989).....70

Korn v. Korn,
206 A.D.3d 529 (1st Dep't 2022) 18

Krasniqi v. Korpenn LLC,
158520/2013, 2018 WL 5309753 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 24, 2018) 5

KTM P'ship-I v. 160 West 86th St. Partners,
169 A.D.2d 462 (1st Dep't 1991) 7

Matter of Liquidation of Union Indem. Ins. Co. of N.Y.,
89 N.Y.2d 94 (1996) 15

Local 345 of Retail Store Employees Union v. Heinrich Motors,
96 A.D.2d 182 (4th Dep't 1983).....7

Lumbermens Mut. Cas. Co. v. Morse Shoe Co.,
218 A.D.2d 624 (1st Dep't 1995) 5

Mandelstam v. City Comm'n of City of S. Miami,
539 So. 2d 1139 (Fla. Dis. Ct. App. 1983) 38

Marine Midland Bank v. Russo Produce Co.,
50 N.Y.2d 31 (1980) 65

MLRN LLC v. U.S. Bank, N.A.,
217 A.D.3d 576 (1st Dep't 2023) 11, 12

Moskowitz v. Herrmann,
No. SC 731/2018, 2018 WL 4291557 (N.Y. Sup. Ct. Orange Cnty. Sept. 6, 2018) 17

New York v. Feldman,
210 F. Supp. 2d 294 (S.D.N.Y. 2002).....34, 54

New York v. Gen. Motors Corp.,
547 F. Supp. 703 (S.D.N.Y. 1982) 34, 55

NexBank, SSB v. Soffer,
652072/2013, 2018 WL 2282884 (N.Y. Sup. Ct. N.Y. Cnty. May 18, 2018).....5, 31

Norwood-Norland Homeowners' Ass'n, Inc. v. Dade County,
511 So. 2d 1009 (Fla. Dist. Ct. App. 1987) 36

O'Sullivan v. O'Sullivan,
206 A.D.2d 960 (4th Dep't 1994).....6, 11, 12

Ometz Realty Corp. v. Vanette Auto Supplies,
262 A.D.2d 539 (2d Dep't 1999).....7

People v. 21st Century Leisure Spa Int'l Ltd.,
583 N.Y.S.2d 726 (N.Y. Sup. Ct. N.Y. Cnty. 1991).....54

People v. Albany & S.R. Co.,
57 N.Y. 161 (1874) 53

People v. Am. Motor Club, Inc.,
179 A.D.2d 277 (1st Dep't 1992) 34

People v. Amazon.com, Inc.,
550 F. Supp. 3d 122 (S.D.N.Y. 2021).....55

People v. Apple Health & Sports Clubs, Ltd., Inc.,
80 N.Y.2d 803 (1992) 34, 54

People v. Applied Card Sys., Inc.,
27 A.D.3d 104 (3d Dep't 2005).....34, 55

People v. Booth,
32 N.Y. 397 (1865) 53

People v. Brooklyn, Flatbush & Coney. Island Ry. Co.,
89 N.Y. 75 (1882) 53

People v. Cohen,
214 A.D.3d 421 (1st Dep't 2023) 34

People v. Coventry First LLC,
13 N.Y.3d 108 (2009) 54, 55

People v. Coventry First LLC,
52 A.D.3d 345 (1st Dep't 2008) 34

People v. Credit Suisse Sec. (USA) LLC,
31 N.Y.3d 622 (2018) 54

People v. Direct Revenue, LLC,
No. 401325/06, 2008 WL 1849855 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008).....70, 71

People v. Domino's Pizza, Inc.,
No. 450627/2016, 2021 WL 39592 at *10 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 5, 2021) 19, 49, 50, 55, 57

People v. Donald J. Trump, et al.,
213 A.D.3d 503 (1st Dep't 2023) 15

People v. Ernst & Young LLP,
114 A.D.3d 569 (1st Dep't 2014) 34, 54, 71

People v. Evans,
94 N.Y.2d 499 (2000) 6

People v. Exxon Mobil Corp.,
No. 452044/2018, 2019 WL 6795771 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019) 19, 49, 50, 56, 57

People v. Gen. Elec. Co., Inc.,
302 A.D.2d 314 (1st Dep't 2003) 19, 34, 55

People v. Greenberg,
21 N.Y.3d 439 (2013) 55

People v. Greenberg,
95 A.D.3d 474 (1st Dep't 2012) 49, 57

People v. Greenberg,
No. 401720/20005, 2010 WL 4732745 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 21, 2010) 54

People v. Gross,
169 A.D.3d 159 (2d Dep't 2019) 65

People v. H & R Block, Inc.,
870 N.Y.S.2d 315 (1st Dep't 2009) 55

People v. Ingersoll,
58 N.Y. 1 (1874) 53

People v. JUUL Labs, Inc.,
212 A.D.3d 414 (1st Dep't 2023) 15, 16

People v. JUUL Labs, Inc.,
No. 452168/2019, 2022 WL 2757512 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2022) 34

People v. Liberty Mut. Ins. Co.,
52 A.D.3d 378 (1st Dep't 2008) 55

People v. Lowe,
117 N.Y. 175 (1889) 53, 54

People v. MacDonald,
330 N.Y.S.2d 85 (Sup. Ct. 1972).....54

People v. N. Leasing Sys., Inc.,
193 A.D.3d 67 (1st Dep't 2021) 54

People v. N. Leasing Sys., Inc.,
70 Misc. 3d 256 (N.Y. Sup. Ct. N.Y. Cnty. 2020).....19, 34, 51, 64, 65

People v. O'Brien,
111 N.Y. 1 (1888) 54

People v. Orbital Publ. Grp., Inc.,
169 A.D.3d 564 (1st Dep't 2019) 34, 55

People v. Romero,
91 N.Y.2d 750 (1998) 70

People v. Singer,
85 N.Y.S. 2d 727 (N.Y. Sup. Ct. N.Y. Cnty. 1949).....53

People v. Tempur-Pedic Intern., Inc.,
30 Misc.3d 986 (N.Y. Sup. Ct. N.Y. Cnty. 2011).....50

People v. Trump,
217 A.D.3d 609 (1st Dep't 2023) 3, 7, 8, 9, 10, 11, 12, 13, 73, 74

People v. Trump Entrepreneur Initiative LLC,
137 A.D.3d 409 (1st Dep't 2016) 54

People v. The Trump Org., et al.,
No. 451685/2020.....14

Perez v. State,
No.112317, 2011 WL 5528963 (N.Y. Ct. Cl. Aug. 5, 2011).....6

In re Residential Cap., LLC,
No. 12-12020 (MG), 2022 WL 17836560 (Bankr. S.D.N.Y. Dec. 21, 2022) 38, 50

Rinker Materials Corp. v. City of N. Miami,
286 So. 2d 552 (Fla. 1973).....38, 39

Roberts Real Est., Inc. v. N.Y. State Dep't of State, Div. of Licensing Servs.,
80 N.Y.2d 116 (1992).....66

S.E.C. v. Razmilovic,
738 F.3d 14 (2d Cir. 2013).....72

S.S.I. Invs. Ltd. v. Korea Tungsten Mining Co.,
80 A.D.2d 155 (1st Dep't 1981).....11

Saltz v. First Frontier, LP,
782 F. Supp. 2d 61 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012).....65

SEC v. First Pac. Bancorp,
142 F.3d 1186 (9th Cir. 1998).....72

Shaw v. Bluepers Fam. Billiards,
94 A.D.3d 858 (2d Dep't 2012).....5, 11, 12

Solutia Inc. v. FMC Corp.,
456 F. Supp. 2d 429 (S.D.N.Y. 2006).....49, 57, 60

St. Paul Mercury Ins. Co. v. M&T Bank Corp.,
No. 12 Civ. 6322(JFK), 2014 WL 641438 (S.D.N.Y. Feb. 19, 2014).....49

State v. Bevis Indus., Inc.,
314 N.Y.S.2d 60 (N.Y. Sup. Ct. N.Y. Cnty. 1970).....54

State v. Bevis Indus., Inc.,
63 Misc. 2d 1088 (N.Y. Sup. Ct. N.Y. Cnty. 1970).....34

State v. Cortelle Corp.,
38 N.Y.2d 83 (1975).....34, 54

State v. Ford Motor Co.,
74 N.Y.2d 495 (1989).....54

State v. ITM, Inc.,
52 Misc. 2d 39 (N.Y. Sup. Ct. N.Y. Cnty. 1966).....34

State v. Parkchester Apts. Co.,
307 N.Y.S. 2d 741 (N.Y. Sup. Ct. N.Y. Cnty. 1970).....56

State v. Solil Mgmt. Corp.,
128 Misc. 2d 767 (N.Y. Sup. Ct. N.Y. Cnty. 1985), *aff'd*, 114 A.D.2d 1057
(1st Dep't 1985).....34

State v. United Parcel Serv., Inc.,
253 F. Supp. 3d 583 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019) 65

State v. Wolowitz,
468 N.Y.S. 2d 131 (2d Dep't 1983) 54

Tesciuba v. Shapiro,
166 A.D.2d 281 (1st Dep't 1990) 11

Tischler v. Key One Corp.,
67 A.D.2d 886 (1st Dep't 1979) 6

Trustco Bank v. Gardner,
274 A.D.2d 873 (3d Dep't 2000) 31

U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.,
949 F.2d 569 (2d Cir. 1991) 50

U.S. v. Sabin Metal Corp.,
151 F. Supp. 683 (S.D.N.Y. 1957), *aff'd,* 253 F.2d 956 (2d Cir. 1958) 11, 12

White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC,
110 A.D.3d 576 (1st Dep't 2013) 31

Zuckerman v. City of N.Y.,
49 N.Y.2d 557 (1980) 5

Statutes

Exec. Law § 63(1) 53

Exec. Law § 63(12) 19, 30, 32, 33, 34, 48, 49, 50, 51, 53, 54, 55, 56, 57, 64, 69, 70, 71

N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17) 18

N.Y. Penal Law § 176.30 71

N.Y. Penal Law § 175.10 71

N.Y. Penal Law § 175.45 71

N.Y. Penal Law § 176.05 71

Other Authorities

Deborah A. DeMott, *Causation in the Fiduciary Realm*, 91 B.U. L. Rev. 851, 857 (2011) 72

Mark Ratterman, MAI, SRA, *Residential Property Appraisal* 35

4 N.Y. Jur. 2d Appellate Review §§ 453, 454 7

28 N.Y. Jur. 2d Courts and Judges § 218.....6

57 N.Y. Jur. 2d Estoppel, Etc. § 63.....15, 53

Robert L. Haig, *Imputed Knowledge*, 4D N.Y. Prac., Com. Litig. in N.Y. State Courts §102:46 (5th ed., 2022) 66

Susanne Ethridge Cannon & Rebel A. Cole, *How Accurate Are Commercial Real Estate Appraisals? Evidence from 25 Years of NCREIF Sales Data* J. Portfolio Mgmt. 68 2011) 42

Defendants submit this brief in opposition to Plaintiff's ("Plaintiff" or "NYAG") Motion for Partial Summary Judgment (NYSCEF 765).

INTRODUCTION

Donald J. Trump, the 45th President of the United States, made many billions of dollars being right about real estate and other investments. In fact, the record proves conclusively his assets and brand are worth many billions more than reflected in the very Statements of Financial Condition ("SOFCs") Letitia James, the New York Attorney General, shamelessly criticized even before seeing the numbers or actual evidence. President Trump has built a multi-billion-dollar, global corporate empire propelled by one of the most recognized and powerful brands in the world. At the center of his vast business empire sits a diverse real estate portfolio of luxury hotels, golf courses, social clubs, commercial buildings, and other real estate holdings comprised almost exclusively of prestigious, ultra-valuable, trophy properties, akin to treasured works of art. Whether it be Trump Tower on 5th Avenue in New York, the iconic Mar-a-Lago Club in Palm Beach, Florida, Doral National in Miami, Florida, the renowned Trump Turnberry Hotel and Resort in Scotland, or countless other properties, the record proves conclusively—*which notably, after reviewing the evidence, the NYAG does not dispute and has now altered her theory to justify her senseless lawsuit*—that President Trump's assets and other investments are worth many billions of dollars in excess of what the NYAG originally claimed.

To be clear, however, President Trump has not just made substantial sums of money for himself and his namesake companies. Rather, as the evidence now before this Court proves, he also made substantial sums of money for the many large, sophisticated institutions that financed and insured the real estate development projects and investments which are the subject of this lawsuit. The record also proves that throughout all of these successful business transactions with

highly sophisticated banks, President Trump's companies never missed a loan payment, never made a late payment, never defaulted on any loans, and never breached the highly complex, carefully negotiated agreements. No complaints were ever lodged by these large, highly sophisticated banks, insurers, and other institutions, which were represented by the top law firms in the country, and which were fully aware of the *powerful disclaimer clauses* highlighted in every SOFC. To the contrary, bankers responsible for reviewing, approving, and servicing the loans herein at issue have testified under oath that President Trump was a highly valued client, was never in default, and they were never "defrauded" as the NYAG claimed in her high-profile public relations lawsuit. Indeed, these bankers effectively stated, "what are we doing here?"

Yet despite same, the NYAG has maligned, demeaned, and libeled President Trump and his entire family via an opportunistic lawsuit filed for political gain. From the outset, the NYAG's specious claims that President Trump and his companies somehow misled and fraudulently induced these large, sophisticated, and well represented institutions to finance and insure his projects, have been replete with politically incendiary rhetoric but lacking in any substance whatsoever. The NYAG now wrongfully and baselessly asks this Court to ignore the evidentiary record in favor of her own, selective and unrealistic narrative, to ignore the mandate of the First Department, and to substitute her uninformed judgment for that of the sophisticated counterparties engaged in these complex, and highly successful transactions. However, the day of reckoning has arrived, and the record evidence exposes a complete lack of support, dooming her case, as her original premise failed.

The record herein establishes the NYAG has wasted millions of dollars of taxpayer money to prove what President Trump and his family have always known. That record demonstrates fully

President Trump is, without question, worth many billions of dollars, indeed billions more than what the NYAG claimed when lodging her baseless allegations.

Undeterred, the NYAG nonetheless persists, ignoring the record evidence and, importantly, ignoring the binding mandate of the unanimous Appellate Division, First Department, where the Defendants prevailed conclusively on the statute of limitations issues. The NYAG's "fact" statement[1] consists largely of mere allegations cut and pasted from her Complaint and concerns transactions well outside the applicable statute of limitations period. Moreover, last June, the First Department ruled that the NYAG's claims are "time barred if they accrued—that is, the transactions were completed—before February 6, 2016" and that "[f]or defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014." *People v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023). However, instead of taking the honorable step of voluntarily dismissing those time-barred claims, the NYAG has ignored the First Department's decision—shockingly treating it as if it has absolutely no effect on this case. Simply stated, this blatant disregard of both the actual record evidence and the First Department's clear limitations mandate is inexplicable and untenable.

Equally so is her disregard for the First Department's rejection of the continuing wrong doctrine in this case. *See id.* at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Despite this clear holding, the NYAG still relies, inappropriately, on continuing wrong theories to support her decision to recite pre-July 13, 2014, facts on this motion. However, the NYAG simply fails to explain (because she cannot) how conduct and transactions that pre-date July 13, 2014, are actionable.

[1] Defendants' response herein to the NYAG's statement of facts in no way concedes such facts are relevant and/or within the scope of the limitations period.

Additionally, the NYAG's Motion reveals she has now chosen to ignore her own, highly paid experts, no doubt realizing the evidence does not support her claims. The record now demonstrates the NYAG has failed to present, as she must, sufficient evidence the SOFCs had any capacity or tendency to deceive. To the contrary, the SOFC values were well supported, reflecting many billions in net worth. Moreover, each SOFC included unambiguous, powerful disclaimers making it abundantly clear the values set forth therein reflected President Trump's opinion based on an inherently subjective valuation process, and as such each user must and should conduct their own due diligence (which of course all the banks in fact did, and do).[2] This record thus proves there is no basis at all for the NYAG's cries of fraud and foul.

The NYAG also ignores, misconstrues, and misapplies GAAP, ignores the requisite materiality standard, and fails to demonstrate the necessary knowledge and participation by the various named Defendants. She presents only arguments, not admissible evidence, simply insufficient to establish any viable issue remains for trial. Finally, the NYAG avoids having to admit there is no basis under the law supporting her claim for disgorgement, sidestepping the issue by relegating its only mention to a footnote.

In sum, despite the NYAG's politically charged insults and accusations, President Trump (and all of the Defendants) has a great case centered around a phenomenal corporate empire worth billions of dollars more than the NYAG has falsely claimed, very little debt, significant cash and liquidity, powerful disclaimer clauses, paid off loans, and banks extremely pleased with highly profitable loan transactions. There was no fraud. There are no victims. Accordingly, the NYAG's

[2] Every SOFC contained numerous disclaimers, including, *inter alia*, the following statement: ***"Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts."*** (*See, e.g.,* NYSCEF 5 at 1.) (emphasis added).

Motion for Partial Summary Judgment should be denied, and summary judgment entered in favor of all Defendants.

LEGAL STANDARD

Summary judgment is only appropriate where there is no genuine issue of material fact, and the moving party has made a *prima facie* showing of entitlement to judgment as a matter of law. *Ayotte v Gervasio*, 81 N.Y.2d 1062, 1063 (1993); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). The movant must first meet its burden of tendering sufficient evidentiary proof in admissible form to demonstrate the absence of any material issue of fact. *Zuckerman v. City of N.Y.*, 49 N.Y.2d 557, 562 (1980). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." *Id.* (collecting cases). Only then does the burden shift to the opposing party to submit evidentiary proof sufficient to create material issues of fact requiring a trial.[3] *Id.; see Di Sabato v. Soffes,* 9 A.D.2d 297, 300–01 (1st Dep't 1959) (citing *Dodwell & Co. v. Silverman,* 234 A.D. 362 (1st Dep't 1932)). Moreover, a summary judgment movant is barred from advancing new arguments in its reply papers.[4] *Lumbermens Mut. Cas. Co. v. Morse Shoe Co*., 218 A.D.2d 624, 625 (1st Dep't 1995). Therefore, to the extent the NYAG failed to raise legal issues in her primary brief, she has abandoned those arguments. *See JPMorgan Chase Bank, N.A. v. Luxor Cap., LLC*, 101 A.D.3d 575, 576 (1st Dep't 2012); *Shaw v. Bluepers Fam. Billiards*, 94

[3] To the extent there is simply competing expert testimony on any point, the Court cannot resolve such dispute at this stage. *See Krasniqi v. Korpenn LLC*, 158520/2013, 2018 WL 5309753, at *11 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 24, 2018) (collecting cases)).

[4] The NYAG cannot change course in her reply brief, pointing to new evidence to show materiality or participation and knowledge (to the extent any exist, which Defendants contend it does not). In *NexBank, SSB v. Soffer*, the court faced dueling motions for summary judgment and denied the plaintiff's request to supplement its expert disclosure with more expert reports, finding that the plaintiff had "made the calculated decision to prove damages exclusively through . . . . its lay witness testimony and documentary evidence" and "chose not to rely on expert testimony." 2018 652072/2013, 2018 WL 2282884, at *2 (N.Y. Sup. Ct. N.Y. Cnty. May 18, 2018). Here, the NYAG has not introduced expert testimony or developed other evidence to support her claims and has instead decided to regurgitate the Complaint, arguing that the alleged differences in value are so great they must be material.

A.D.3d 858, 860 (2d Dep't 2012); *O'Sullivan v. O'Sullivan*, 206 A.D.2d 960, 960 (4th Dep't 1994).

ARGUMENT

I. The First Department Statute of Limitations Decision is Binding Law of the Case

Under "the doctrine of the 'law of the case,' . . . when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned." *Tischler v. Key One Corp.*, 67 A.D.2d 886, 886–87 (1st Dep't 1979); *see People v. Evans*, 94 N.Y.2d 499, 502 (2000) ("[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction.") (citations omitted). The doctrine applies to preclude relitigating any issue that is "judicially determined, either directly or by implication . . . in the course of the same litigation," *Holloway v. Cha Cha Laundry, Inc.*, 97 A.D.2d 385, 386 (1st Dep't 1983) (citation omitted). First Department prior rulings thus constitute the law of the case and are binding. *See Brodsky v. N.Y. City Campaign Fin. Bd.*, 107 A.D.3d 544, 545–46 (1st Dep't 2013) ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted). Such prior rulings must be followed regardless of whether this Court or the NYAG disagrees with its holding. *See* 28 N.Y. Jur. 2d Courts and Judges § 218 ("State trial courts are bound to follow existing precedent of a higher court even though they may disagree with the higher court's decision.") (collecting cases). Nor can the NYAG "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State*, No.112317, 2011 WL 5528963, at *5 (N.Y. Ct. Cl. Aug. 5, 2011) (collecting cases).

Here, the First Department clearly defined the applicable statute of limitations periods, holding that the NYAG's claims are "time barred if they accrued—that is, ***the transactions were completed***—before February 6, 2016" and that for those Defendants "bound by the tolling

agreement, claims are untimely if they accrued before July 13, 2014." *Trump*, 217 A.D.3d at 611 (emphasis added). The First Department also rejected application of the continuing wrong doctrine in this case, holding that "[t]he continuing wrong doctrine does not delay or extend these periods." *Id*. These rulings are binding.

Yet the NYAG ignores the First Department's ruling, mentioning it only *twice* in her 61-page memorandum of law. (NYSCEF 766 at 5, 56). NYAG fully ignores that the First Department established *two* applicable cutoff periods for the transactions at issue—one for Defendants bound by the tolling agreement and one for those who are not bound—rejected the continuing wrong doctrine and held that at least one Defendant was not bound by the tolling agreement. What is worse, NYAG claims that she "reserves the right to argue at trial or in response to Defendants' submissions that an *earlier* cutoff date for timely claims applies." (NYSCEF 766 at 5 n.3) (empahasis added). But the NYAG simply cannot "now raise issues which were previously adjudicated or could have been previously adjudicated by this court in the interlocutory appeal." *KTM P'ship-I v. 160 West 86th St. Partners*, 169 A.D.2d 462, 462 (1st Dep't 1991). The NYAG's apparent attempt to "raise again the very issues previously decided against them on a prior appeal" is "barred by the doctrine of law of the case." *Ometz Realty Corp. v. Vanette Auto Supplies*, 262 A.D.2d 539, 540 (2d Dep't 1999) (internal citations omitted). "[Q]uestions of law that have been resolved by an appellate court on a prior appeal will not be reviewed upon a further appeal to that court." *Local 345 of Retail Store Employees Union v. Heinrich Motors*, 96 A.D.2d 182, 186 (4th Dep't 1983) (citing 4 N.Y. Jur. 2d Appellate Review §§ 453, 454), *rev'd on other grounds*, 63 N.Y.2d 985 (1984).

The purpose of an interlocutory appeal is to resolve disputed issues during the pendency of the underlying trial court action. Thus, when a decision is rendered both the parties and the trial

court must and should implement that decision immediately and redefine the issues for resolution. Here, the First Department provided specific guidance as to the applicable limitations periods and then further directed this Court to determine the full range of Defendants who are not bound by the tolling agreement. *See Trump*, 217 A.D.3d at 611–12. The First Department's mandate must therefore be implemented at this stage and the ruling given effect ***before*** any remaining issues are tried. Thus, this Court should, respectfully, decline the NYAG's blatant invitation to error.

A. The NYAG Is Not Entitled To Summary Judgment On Time-Barred Allegations

The NYAG boldly claims that "the cutoff date for timely claims against all Defendants is at latest July 13, 2014," (NYSCEF 766 at 5, n.3), even though the First Department established that "claims are time barred if they accrued—that is, the transactions were completed—before February 6, 2016" for Defendants who are not bound by the tolling agreement, *Trump,* 217 A.D.3d at 611. However, even if the NYAG is correct in that July 13, 2014, is the operative date for all Defendants, which she is not, she ignores the First Department's ruling that claims accrued in this case when "***the transactions were completed***." *Id.* (emphasis added). Despite this holding, the NYAG continues to base her allegations on transactions that were clearly completed prior to July 13, 2014.

The table below provides shows each transaction, its completion date, and to which Defendants (if any) claims relative to these transactions remain timely:

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG'S Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None

GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by The Tolling Agreement.
Buffalo Bills Bid	Transaction never consummated.	None
40 Wall Street Loan	November 2015	Only Defendants Bound by The Tolling Agreement.

Each of the transactions mentioned above is addressed below:

Doral Loan. DB extended a $125 million loan in connection with Trump Endeavor 12, LLC's purchase of the property known as Trump National Doral. (Robert Aff.[5], Ex. AAR ("Defs. SOF") ¶ 103.) This transaction was completed when the "loan closed on June 11, 2012." (Defs. SOF ¶ 115.) Thus, all allegations based on the Doral Loan are time-barred as to all Defendants.

Chicago Loan. DB financed up to $107 million in debt in connection with the Trump International Hotel and Tower, Chicago, in 2012 and a $54 million loan expansion in 2014. (*See* Defs. SOF ¶¶ 124, 137.) The "Trump Chicago loan facilities" were "closed on November 9, 2012," (Defs. SOF ¶ 131), and the amended loan documents implementing the expansion were executed in May 2014. (Defs. SOF ¶ 138.) Thus, the Chicago Loan transaction was "completed," on November 9, 2012. The First Department held that the continuing wrong doctrine does not delay or extend the applicable statute of limitations, meaning the loan expansion does not constitute a separate transaction that would extend the limitations period. *See Trump,* 217 A.D.3d at 611–12. Accordingly, any allegations based on the Chicago Loan are time-barred for all Defendants.

[5] "Robert Aff." refers to the affirmation of Clifford Robert dated September 1, 2023 filed concurrently herewith.

GSA's OPO Contract and Lease. The GSA awarded Trump Old Post Office, LLC the contract to redevelop the OPO property in February 2012, (Defs. SOF ¶ 146), and that the GSA signed the associated OPO lease with Trump Old Post Office, LLC on August 5, 2013, (Defs. SOF ¶ 146.) Thus, any claims based on the OPO Contract and Lease transactions are time-barred for all Defendants.[6]

Deutsche Bank's OPO Loan. DB financed up to $170 million in funds in connection with Trump Old Post Office LLC's purchase and renovation of the OPO. (Defs. SOF ¶ 148.) The OPO Loan was closed "on August 12, 2014." (Defs. SOF ¶ 152.) Accordingly, the NYAG's purported claims based on this transaction are timely only as to Defendants subject to the Tolling Agreement.

Seven Springs Loan. "[I]n ***2000***, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America" (later acquired by Bryn Mawr), which was "personally guaranteed" by President Trump. (Defs. SOF ¶ 161.) Despite the obvious fact this transaction was completed more than a decade prior to July 13, 2014, the NYAG contends Seven Springs LLC allegedly made fraudulent representations regarding President Trump's Statements of Financial Condition to "obtain[ ] a series of extensions of the maturity date" of the loan from Royal Bank America and Bryn Mawr Bank in 2001, 2002, 2003, 2006, 2009, 2011, 2014, and 2019. (NYSCEF 1 ¶ 658.) However, the First Department expressly held that the continuing wrong doctrine does not delay or extend the applicable statute of limitations. Accordingly, these loan extensions do not constitute separate transactions that would extend the limitations period. *See Trump,* 217 A.D.3d at 611–12.

[6] The NYAG bases $100 million of its $250 million disgorgement demand on the "asserted profit on the subsequent sale of [the OPO] property." *See* NYSCEF 245 at 53. As explained below *see infra,* Part IV, disgorgement is unavailable to the NYAG as a matter of law. Yet, even if disgorgement were available to the NYAG, there can be no award for disgorgement based on the OPO contract and lease transactions. The same rationale applies to, inter alia, the Doral Loan and the Chicago Loan.

Ferry Point Contract. It is undisputed that an entity affiliated with President Trump's businesses submitted an offer "in 2010" to the City of New York to operate an 18-hole golf course and related facilities at Ferry Point Park, Bronx, NY. (Defs. SOF ¶ 211.) Because the City "grant[ed] . . . the concession" and President Trump "won the contract" in "2012," (Defs. SOF ¶ 213), this transaction was completed and the statute of limitations began to run that year. *See U.S. v. Sabin Metal Corp.*, 151 F. Supp. 683, 687 (S.D.N.Y. 1957), *aff'd,* 253 F.2d 956 (2d Cir. 1958) ("The defendant's bid constituted the offer and the government's acceptance completed the contract.") (citations omitted). Thus, claims based on the Ferry Point Contract are time-barred for all Defendants. *See Trump,* 217 A.D.3d at 611–12.[7]

40 Wall Street Loan. 40 Wall Street LLC refinanced a $160 million mortgage from Capital One Bank, on the office building at 40 Wall Street in New York, with Ladder Capital Finance "[i]n approximately November 2015." (Defs. SOF ¶ 157). Therefore, the NYAG's causes of action based on the 40 Wall Street Loan are untimely as to all Defendants not subject to the Tolling Agreement. *See Trump,* 217 A.D.3d at 611–12.

Buffalo Bills Bid. The NYAG alleges Defendants made misleading statements regarding President Trump's 2013 SOFC figures and personal liquidity as of June 30, 2014, in connection with President Trump's bid package to purchase the Buffalo Bills football team. (NYSCEF 1 ¶ 670.) President Trump's initial bid was submitted "in July 2014." (Defs. SOF ¶ 208.) However, President Trump never entered into a contract or completed a transaction to purchase the Bills such that there is no transaction upon which the NYAG can base its claim. *See S.S.I. Invs. Ltd. v. Korea*

[7] Notably, the NYAG made no mention of the Ferry Point Contract in her summary judgment papers. Thus, she has abandoned this argument, *see JPMorgan*, 101 A.D.3d at 576; *Shaw*, 94 A.D.3d at 860; *O'Sullivan*, 206 A.D.2d at 960, and this Court should grant summary judgment in favor of Defendants dismissing as untimely all of NYAG's causes of action to the extent they are based on the Ferry Point Contract, *see e.g., MLRN LLC v. U.S. Bank, N.A.*, 217 A.D.3d 576 (1st Dep't 2023); *Tesciuba v. Shapiro,* 166 A.D.2d 281, 282 (1st Dep't 1990).

Tungsten Mining Co., 80 A.D.2d 155, 161 (1st Dep't 1981) ("[A] bid is nothing more than an offer. No legal rights are created until the offer has been accepted."); *Sabin Metal*, 151 F. Supp. at 687 (noting that an "invitation to bid [is] merely a request for offers and . . . not an operative offer" while "acceptance [of the bid] complete[s] the contract"). Because the bid did not constitute a completed transaction as a matter of law, and because the bid was submitted outside the limitations period, summary judgment is proper in favor of all Defendants.[8]

***Trump Park Avenue Loan*.** Investors Bank financed a $23 million loan collateralized by Trump Park Avenue on July 23, 2010. (Defs. SOF ¶ 165.) Given the July 23, 2010, completion date, any claims related to that financing agreement are time barred against all Defendants.

Unfazed by the First Department's clear mandate, the NYAG now argues that Defendants submitting "annual financial disclosures" or "certifications" and lenders conducting "annual reviews" of the loans after they closed somehow extends the completion dates and makes these transactions timely. (*See, e.g.,* NYSCEF 766 at 5, 34). For the OPO Loan, specifically, NYAG relies on "a series of draws over time" that were made on the construction loan. (NYSCEF 766 at p.41). But this is merely a veiled attempt to rely on the continuing wrong doctrine that the First Department already rejected in this case. *See Trump,* 217 A.D.3d at 611. Indeed, ***the NYAG briefed these exact arguments before the Appellate Division***:

> Here, defendants' scheme involved . . . continuing wrongs. For example, the Deutsche Bank loans imposed an ongoing requirement to annually submit the Statements and certify their truth and accuracy, and defendants repeatedly did so despite the misrepresentations in the Statements. Such subsequent and repeated false and misleading submissions made in connection with an initial

[8] As with Ferry Point, the NYAG made no mention of the Buffalo Bills Bid in her summary judgment papers and has therefore abandoned this argument, *see JPMorgan*, 101 A.D.3d at 576; *Shaw*, 94 A.D.3d at 860; *O'Sullivan*, 206 A.D.2d at 960, and this Court should grant summary judgment in favor of Defendants dismissing as untimely all of the NYAG's causes of action to the extent they are based on the Buffalo Bills Bid. *See e.g., MLRN LLC*, 217 A.D.3d 576.

> financial relationship constitute continuing wrongs. For the Old Post Office loan, defendants also repeatedly requested disbursements conditioned on their certifying the truth and accuracy of the previously submitted Statements.

Br. for Resp't, *Trump*, No. 2023-00717, 2023 WL 4552508, at *48 (citations omitted). The First Department's rejection of these arguments was unequivocal. *See Trump,* 217 A.D.3d at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Moreover, when the NYAG suggested during oral argument that resubmission of the SOFCs for purposes of recertification or disbursement were additional fraudulent acts, the First Department firmly stated that that sort of conduct was "the quintessential" example of the "effects of an earlier breach," not independent wrongs. Recording of Oral Argument at 1:18:00–09, *Trump*, No. 2023-00717 (1st Dep't June 6, 2023). Simply, the First Department's rejection of the continuing wrong doctrine constitutes the law of the case and the NYAG and this Court are bound to adhere to that ruling.

B. "All" Defendants Are Not Bound By The Tolling Agreement

Without any support, the NYAG flatly "takes the position that . . . all of the Defendants are bound by the August 2021 tolling agreement." (NYSCEF 766 at 5, n.3). However, New York law and the record establish the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney (collectively, the "Unnamed Individuals"), and/or The Donald J. Trump Revocable Trust ("Trust").

First, the NYAG is judicially estopped from taking this position as (1) it directly contravenes her own express arguments that the agreement only binds the Trump Organization itself and none of the Unnamed Individuals and (2) the NYAG obtained favorable rulings in connection with those arguments in prior proceedings. (*see* NYSCEF 835 at 16–17). The doctrine of judicial estoppel "prevents a party who assumed a certain position in a prior proceeding and

secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed." *Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018) (citations omitted). For the doctrine to apply, there need be only "a showing that the party taking the inconsistent position had benefitted from the determination in the prior action or proceeding based upon the position it advanced there."*12 New St., LLC v. Nat'l Wine & Spirits, Inc.*, 196 A.D.3d 883, 884–85 (3d Dep't 2021) (citations omitted).

Here, the NYAG previously filed an application in *People v. The Trump Org., et al.*, No. 451685/2020, N.Y. Sup. Ct. (the "Special Proceeding"), seeking to hold President Trump in contempt for his purported failure to comply with a court order relating to subpoena compliance. *See generally,* Special Proceeding, (NYSCEF Nos. 668–75). During oral argument, counsel for NYAG stated: "[t]here is hard prejudice because Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization.*" (*See* Defs. SOF ¶ 273 (emphasis added).) The court ultimately granted the NYAG's application to hold President Trump in civil contempt and specifically noted that "[the NYAG] correctly states that any delay causes prejudice to the 'rights or the remedies of the State acting in the public interest.' Moreover, each day that passes without compliance further prejudices [the NYAG], as the statute of limitations continues to run and may result in [the NYAG] being unable to pursue certain causes of action that it otherwise would." Special Proceeding, (NYSCEF 758).

Thereafter, the NYAG advanced the same position in writing before the First Department, arguing, "Mr. Trump's noncompliance and efforts at delay . . . prejudiced [the NYAG] given that the limitations period was continuing to run on potential enforcement claims." In putting forth this argument, NYAG stated unequivocally that "[the NYAG] and the Trump Organization entered a six-month tolling agreement, ***to which Mr. Trump was not a party***." (*See* Defs. SOF ¶ 274)

(emphasis added); (Robert Aff., Ex. AY at 39 n.13). The First Department ruled in favor of the NYAG and affirmed the lower court's finding of contempt. *See generally People v. Donald J. Trump, et al.*, 213 A.D.3d 503 (1st Dep't 2023). Given that the NYAG has twice successfully advanced the position that individuals were not bound by the Tolling Agreement, she is judicially estopped from taking a contrary position in the instant proceeding.

Alternatively, the NYAG's prior statements at least constitute a judicial admission. "As a general rule, facts admitted by the pleadings are binding on the parties throughout the entire litigation." 57 N.Y. Jur. 2d Estoppel, Etc. § 63 (collecting cases). Thus, an admission by a party "in a pleading in one action is admissible against the pleader in another suit, provided it is shown 'by the signature of the party, or otherwise, that the facts were inserted with his knowledge, or under his direction, and with his sanction.'" *Matter of Liquidation of Union Indem. Ins. Co. of N.Y.*, 89 N.Y.2d 94, 103 (1996) (citation omitted). Moreover, "it is irrelevant that the admissions were made in part by counsel . . . and that they were contained in affidavits or briefs." *Id.* (collecting cases). Here, the NYAG filed a signed appellate brief in the contempt proceeding containing the factual statement that "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." (Defs. SOF ¶ 274); (Robert Aff., Ex. AY at 39 n.13, 57). This constitutes a judicial admission that none of the Unnamed Individuals are bound by the Tolling Agreement.

Regardless, NYAG advances this position again without providing *any* additional case law or evidentiary proof to support it outside of the agreement itself. Indeed, the NYAG cites one case, *People v. JUUL Labs, Inc.*, 212 A.D.3d 414 (1st Dep't 2023)—the same one she cited before the First Department—to support the proposition that the First Department found a "corporate tolling agreement applied to corporate affiliates, officers, and directors under language defining the bound

parties similar to language in the tolling agreement here."[9] (NYSCEF 766 at p.5). The only other citation is to the last two paragraphs of the NYAG's statement of undisputed facts which simply state that "per the terms of the agreement, Defendants DJT, Junior, Eric Trump, Allen Weisselberg, and Jeffrey McConney are bound by the tolling agreement" and that "the tolling agreement binds all officer-members of the Trump Organization." (NYSCEF 767 ¶¶ 793–94). These paragraphs in turn cite to no record evidence outside of the tolling agreement itself. (*Id.*). These conclusory statements and arguments do nothing to address—let alone rebut—Defendants' robust legal arguments and record proof the tolling agreement did not bind the Unnamed Individuals.

A valid tolling agreement constitutes an enforceable contract subject to normal rules of interpretation. *See CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.,* No. 15601951/08, 2009 WL 5102795, at *3 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009). It is a general rule of contract interpretation that a non-signatory is not usually bound to an agreement. *See Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352 (1st Dep't 2020); *Capricorn Invs. III, L.P. v. Coolbrands Int'l, Inc.*, No. 603795/06, 2009 WL 2208339, at *8 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2009) ("Generally, a party that is not a signatory to an executed agreement is not bound to the agreement."), *aff'd*, 886 N.Y.S.2d 158 (1st Dep't 2009); *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 630 (2013)

[9] The *JUUL Labs* case is irrelevant in light of the several independent arguments advanced by Defendants concerning the non-applicability of the tolling agreement to the individual defendants, to which the NYAG has no retort. Nonetheless, it is worth noting that the *JUUL Labs* case is inapposite and certainly does not stand for the sweeping proposition that the NYAG contends. Notably, the First Department's entire discussion of the parties' tolling agreement is limited to a single, throwaway sentence in which court broadly states that "the motion court correctly concluded that defendants are bound by the tolling agreement into which JUUL entered with the People." *JUUL Labs*, 212 A.D.3d at 417. Moreover, in *JUUL*, unlike here, there was no underlying dispute as to whether the individual defendants in question—the company's two co-founders—had agreed to be bound by the tolling agreement. Indeed, as the NYAG argued in its appellate brief, the individual defendants had acquiesced to the agreement because they "participate[d] as co-founders, senior executives, and board members in JUUL's signing of the tolling agreement" and had not, at any point prior to the commencement of litigation, attempted to "disclaim the agreement." Br. of Resp't, *JUUL Labs*, No. 2022-03188, 2022 WL 18355250, at *61–62 (Oct. 21, 2022).

(noting "the general rule against binding nonsignatories"). To bind an individual to an agreement, the individual must be a direct signatory to the agreement, absent exceptions inapplicable here. *Gerschel v. Christensen*, 128 A.D.3d 455, 456 (1st Dep't 2015) ("Christensen & Barrus was not a party to either tolling agreement. Therefore, its addition as a defendant was untimely, and personal jurisdiction over it was not obtained."); *Georgia Malone & Co. v. Ralph Rieder*, 86 A.D.3d 406, 408 (1st Dep't 2011) ("It is well established that officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually."), *aff'd*, 19 N.Y.3d 511 (2012). In order to bind a non-signatory individual, "the party seeking to enforce the unsigned writing must prove the [other party] intended to be bound by the terms of that writing." *Moskowitz v. Herrmann*, No. SC 731/2018, 2018 WL 4291557, at *11 (N.Y. Sup. Ct. Orange Cnty. Sept. 6, 2018); *Freeford Ltd. v. Pendleton*, 53 A.D.3d 32, 40 (1st Dep't 2008). Here, Alan Garten is the only individual who signed the tolling agreement and he did so in his capacity as "EVP/Chief Legal Officer" of the "Trump Organization." (NYSCEF 272.) The individual Defendants—President Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney—are neither named in the agreement nor executed it. Thus, as a matter of law, under the plain language of the contract, the Tolling Agreement does not bind the Unnamed Individuals.

Further, despite calling this "a documents case," (NYSCEF 766 at 2), the NYAG produced no documents to dispute the record evidence showing that the parties did not intend to bind the Unnamed Individuals. Communications between the "Trump Organization" and the NYAG surrounding the agreement confirm this understanding. Previous drafts of the Tolling Agreement explicitly named the Unnamed Individuals and included separate signature blocks for each individual. (Defs. SOF ¶ 269). The final, executed version of the Tolling Agreement contained no

such references nor separate signature blocks.[10] The agreed and knowing removal of the Unnamed Individuals from the final Tolling Agreement itself confirms it does not apply to them. The NYAG offers no evidentiary proof to rebut this record evidence. The NYAG's causes of action involving the Unnamed Individuals are time-barred to the extent that they are based on transactions completed before February 6, 2016.

The Trust is likewise not bound by the tolling agreement. Simply as a matter of black letter trust law, only a duly authorized trustee has the authority to enter into agreements on behalf of a trust. *See* N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17); *Korn v. Korn,* 206 A.D.3d 529, 530–31 (1st Dep't 2022). Thus, a trustee may only "contract as an agent . . . and directly bind the trust estate or the beneficiary" where he is specifically "authoriz[ed] by statute or by the trust instrument" to do so. *Id.*

No trustee signed the Tolling Agreement—either individually or as a trustee with authority to bind the Trust. (Defs. SOF ¶ 267). Only Mr. Garten signed the Tolling Agreement on behalf of the Trump Organization. He is neither a Trustee nor a beneficiary of the Trust. (*See* Defs. SOF ¶ 267.) The Complaint's allegations and other evidence confirm that the various Defendant entities, including "Trump Organization" and the Trust, are "separate entities." (Defs. SOF ¶ 16.) Additionally, there is no evidence showing that the "Trump Organization" or Mr. Garten had the authority to bind the Trust. Plainly therefore, the NYAG's causes of action involving the Trust are time-barred to the extent that they are based on transactions completed before February 6, 2016.

[10] Both the original draft and the final, executed version contained the same footnoted definition of the "Trump Organization" dispensing with any argument that definition somehow includes the Unnamed Individuals who were specifically and knowingly deleted from the Tolling Agreement.

II. The NYAG Fails to Present Sufficient Evidence as to the First Cause Of Action

NYAG moves for summary judgment on her First Cause of Action, a claim under Executive Law § 63(12) for repeated and persistent fraud. There are four elements of a § 63(12) fraud claim of the nature alleged in the First Cause of Action:

(1) there was an act that tends to deceive or creates an environment conducive to fraud, meaning the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances;
(2) the act was misleading in a material way;
(3) the defendant participated in the act or had actual knowledge of it; and
(4) the act was persistent and/or repeated.

See People v. N. Leasing Sys., Inc., 70 Misc. 3d 256, 267 (N.Y. Sup. Ct. N.Y. Cnty. 2020) (collecting cases). "Ultimately, 'the test for fraud' under § 63(12) 'is whether the targeted act has the capacity or tendency to deceive or creates an atmosphere conducive to fraud.'" *People v. Exxon Mobil Corp.*, No. 452044/2018, 2019 WL 6795771, at *4 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019) (quoting *People v. Gen. Elec. Co., Inc.*, 302 A.D.2d 314 (1st Dep't 2003)). "[E]vidence regarding falsity, materiality, reliance and causation" are "plainly . . . *relevant* to determing whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's,* 2021 WL 39592, at *10.

The NYAG has not carried her burden on these elements of the § 63(12) claim. The NYAG misconstrues and misapplies GAAP, fails to establish that the SOFCs, the center of her case, are in fact misleading or false, presents an insufficient valuation analysis, and ignores materiality.

A. The NYAG Fails To Show That The SOFCs Were False Or Fraudulent

To succeed on her § 63(12) claims, the NYAG bears the initial burden to establish the valuations contained in the SOFCs were "false" and "fraudulent." As explained below, the SOFCs complied with GAAP, thus ending the inquiry. Moreover, even setting aside the GAAP compliance, the NYAG fails to offer evidence sufficient to support her own valuations. The purported existence of a disagreement over values does not establish a prima facie case. Put

differently, the NYAG's subjective opinion as to the values set forth in the SOFCs is, simply, irrelevant.

1. The NYAG Misconstrues And Misapplies GAAP

The NYAG alleges repeatedly that the SOFCs violated GAAP, suggesting that any departures from these established standards are significant in this Court's determination of liability. But the NYAG must show that (1) the SOFCs contained departures from GAAP, *i.e.*, either misstatements or omissions; and (2) that those departures, if they exist, were material. (Robert Aff., Ex. AK ("Bartov Aff.") at 11–12.) The NYAG fails to satisfy either burden.

The NYAG cannot declare that "the documents leave no shred of doubt that Mr. Trump's SFCs do not even remotely reflect the 'estimated current value' of his assets". It is necessary for the NYAG to first identify GAAP departures and then test each alleged misstatement or omission against GAAP. This requires the NYAG to show whether each item that it claims is misstated or omitted represents a departure from GAAP and why. The NYAG fails completely to do or show this work.

a. Misunderstandings of Valuation Concepts and Guidance Under GAAP

(a) **Objective Valuation**. The NYAG's allegations regarding the overstated valuations and insufficient disclosures contained in the SOFCs, which are central to their case, are predicated on the notion that there exists such a thing as objective value. But this notion is a fiction. There is no such thing as objective value either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff. at 10-11.) Valuation is an opinion about price and therefore subjective, period. (Bartov Aff. at 10-11); (Robert Aff., Ex. AAAN ("Laposa Aff.") ¶¶ 14–15.) The valuation of an asset is a highly subjective process that depends upon several factors including the selection of a

methodology, assumptions, and benchmarks within a methodology, the discretion surrounding presentation, etc. (Bartov Aff. at 10–11.)

Which valuation methodology to choose and which assumptions to apply depends on GAAP, economic theory, and, perhaps most importantly on the perspective of the person performing the valuation, because that person picks the valuation methods and the underlying assumptions. (Bartov Aff. at 10-11.) Indeed, in order to manufacture its claims that the valuations in the SOFCs were inflated, the NYAG appears to "reverse engineer" its valuations by selecting the lowest possible valuation first, and then backing into the result by choosing the valuation method and assumptions that produces the desired valuation. (Bartov Aff. at 10–11.)

A given asset may be valued in multiple different ways depending upon who is doing the valuation and the objectives, assumptions and world view that person brings to the exercise. (Bartov Aff. at 10-11); (Laposa Aff. ¶¶ 9–12, 15.) Even an appraiser can deliver a wide range of values depending upon the objective of the client and various subjective factors. (Laposa Aff. ¶ 11–15.) A bank will seek the lowest valuation to be able to quickly liquidate the asset at fire sale prices if the borrower defaults without suffering a significant loss. That is a very different set of imperatives than Mr. Trump would have had. From Mr. Trump's perspective—the perspective of a creative and visionary real estate developer who sees the potential and value of properties that others do not, not on a year to year time horizon but often decades ahead—the valuation of those properties would have looked very different. And, he was entirely within GAAP guidance and economic theory, and therefore within the law to value the properties as he did. (Bartov Aff. at 9–10.)

(b) **Estimated Current Value and the Use of Appraisals**. FASB ASC 274, *Personal Financial Statements*, governs the preparation of compilation reports like SOFCs and affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports, and leaves it to the discretion of the preparer which method and assumptions to use. ASC 274 introduces a definition of value for investment properties, unique under GAAP, Estimated Current Value. (Bartov Aff. at 4; Defs. SOF ¶¶ 53–54.) NYAG baselessly and improperly gives primacy to appraisals as the method by which to value investment properties on the SOFCs. (*See, e.g.*, NYSCEF 766 at 10 (comparing SOFC values to appraisal values for Seven Spring property).) But there is no requirement under ASC 274 to determine the Estimated Current Value of investment properties based on professional appraisals. In fact, ASC 274 affords substantial latitude to preparers in choosing valuation methods and assumptions, and specifically guides that appraisals are only one of several inputs preparers may consider in determining Estimated Current Value of investment properties. (Bartov Aff. at 8, 12.) GAAP affords preparers substantial latitude in selecting valuation methods and underlying assumptions that may result in substantially different valuations. (Bartov Aff. at 8, 12.) Accordingly, there is no basis for the NYAG or anyone else to impose their view about what an appropriate value is for a given property, and a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values. Where the NYAG states the proper definition of Estimated Current Value, it misapplies the definition by using it synonymously with appraised value.[11] The NYAG conflates the notion of

[11] Current market value is an entirely different measure of value than Estimated Current Value, which is the proper measure of value under ASC 274 for SOFCs.

Estimated Current Value with appraised value and of value either out of ignorance or deliberately because it is the only way they can prevail.

(c) **Valuation Using Fixed Assets Approach**. The NYAG incorrectly and improperly asserts that the fixed assets method is not a proper method to calculate Estimated Current Value. (*See* NYSCEF 766 at 26–27.) The "fixed assets approach" is consistent with both GAAP and economic theory. (*See* Bartov Aff. at 10, 28.) The assertion that "Using the fixed assets approach does not present the golf clubs at their Estimated Current Value because the approach ignores market conditions and the behavior of informed buyers and sellers," (NYSCEF 766 at 27), is unsubstantiated and false. (*See* Bartov Aff. at 10, 28.)

(d) **Inclusion of Brand Premium**. The NYAG incorrectly asserts that it was improper for President Trump to include the value of his brand in the valuation of golf clubs. (NYSCEF 766 at 19.) ASC 274GAAP specifically permits the presentation of internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements. (Bartov Aff. at 14, 22, 33.) This valuation method is consistent with ASC 274 and economic theory. (Bartov Aff. at 14, 22, 33.) In addition, presenting President Trump's brand value as a standalone entry in the SOFCs is distinct from including his brand value when estimating the current value of specific investment properties. (Bartov Aff. at 14, 22, 33.) The first primarily represents the value arising from President Trump's ability to capitalize on his brand value in future events such as selling his name to global real estate developers, whereas the second refers to the effect of President Trump's brand value on the value of specific, currently owned properties. (Bartov Aff. at 14, 22, 33.) It was proper for President Trump to declare that his SOFCs did not include his overall brand value. (Bartov Aff. at 14, 22, 33.)

(e) **Selection of Capitalization Rates**. The NYAG assumes there is a "correct stabilized cap rate." (NYSCEF 766 at 24.) But there is no such thing. Capitalization rates are totally subjective estimates subject to estimation error and huge variability because the facts upon which they are based are subject to multiple interpretations. (Bartov Aff. at 19, 22.) Further, the notions of stabilized capitalization rates and stabilized operating income are not GAAP terms and consequently only loosely defined (by economists or appraisers) with no fixed or standard methodology used to calculate them. (Bartov Aff. at 21–22.) Using different measurement rules and assumptions will yield widely varying capitalization rates. (Bartov Aff. at 19.) Thus, which capitalization rate to use is a matter of opinion within the acceptable boundaries of discretion. Nowhere in ASC 274 (or, for that matter, in the entire accounting literature) does it say that one should use a projected capitalization rate rather than a current capitalization rate or any capitalization rate at all. (Bartov Aff. at 21–22.)

(f) **Undiscounted Future Income**. The NYAG improperly claims President Trump "included within the value for many of his properties an amount attributable to the development and sale of residences on undeveloped land without any discount to present value, as if the residences could be immediately planned, developed, and sold," in violation of GAAP. (NYSCEF 766 at 27.) But because neither the amounts that will be collected in the future nor their timing were known, discounting to present value was impossible. (Bartov Aff. at 28.) Thus, President Trump used the only possible approach that was available to him given the data constraints, which is the Estimated Current Value of the assets as if the homes had been sold contemporaneously with when the SOFCs were prepared, which obviously does not require discounting. Given same, this valuation approach was appropriate. (Bartov Aff. at 28.)

b. Misunderstandings of the Disclosure Requirements Under GAAP

(a) **Disclosure of Alternative Valuations**. The NYAG baselessly and improperly asserts that President Trump was required to disclose the existence of alternative valuations such as appraisals in the SOFCs and to Mazars. (NYSCEF 766 at 23.) There is no requirement under GAAP for the preparer to disclose in the SOFC the alternative valuation methodologies he considered and rejected (*e.g.*, appraisals). (Bartov Aff. at 23); (Robert Aff., Ex. AI ("Flemmons Aff.") at Ex. A ¶¶ 63–68.) The existence of appraisals or alternative valuations in the files of the Trump Organization are irrelevant to the question of whether the valuations stated in the SOFCs were compliant with GAAP. Under ASC 274 the preparer may choose from among alternative valuations the valuation he believes best reflects the Estimated Current Value of the asset given his outlook and goals. Also, as GAAP does not govern the relationship between the preparer and the external accountant compiling the SOFC, GAAP do not obligate the preparer to reveal the alternative valuations he considered and rejected to the external accountant that compiled the SOFC. (Bartov Aff. at 23);(Flemmons Aff. ¶ 11.)

(b) **Disclosure of Valuation Methods**. The NYAG baselessly and improperly asserts that GAAP requires the detailed disclosure of valuation methods. (*See, e.g.*, NYSCEF 766 at 14.) ASC 274 does not require the detailed disclosure of the valuation method for each individual asset. ASC 274-10-50-2c states: "Personal financial statements disclosures shall include . . . either of the following: 1. [t]he methods used in determining the estimated current values of major assets and the estimated current amounts of major liabilities [or] 2. [t]he methods used in determining the major categories of assets and liabilities."

The SOFCs satisfied the disclosure requirements in ASC 274-10-50-2c by disclosing the method used in determining the major categories of assets and liabilities. In

addition, on a voluntary basis, the SOFCs also disclosed the valuation methodologies used for determining the Estimated Current Value of some but not all of the investment properties. Since this was done on a voluntary basis, there was no GAAP departure in disclosing the valuation methodologies for only some of the assets. Thus, no disclosure of valuation methodologies is required under ASC 274 and the NYAG attempts to hold President Trump to standards that simply do not exist under GAAP. (Bartov Aff. at 12, 18, 19.)

c. Misunderstandings of Other Issues Under GAAP

(a) **Grouping Together of Assets**. The NYAG baselessly and improperly asserts that the grouping together of assets, such as golf courses, is somehow improper under GAAP. (NYSCEF 766 at 19.) There is no requirement in ASC 274 to report each investment property separately in the SOFC. (Bartov Aff. at 20.) In fact, the accounting literature requires the grouping together of similar assets in order to keep the financial statement concise and this is a standard practice by all companies. (Bartov Aff. at 20.) The SOFCs may have stated the aggregate value of the club facilities, but the clubs were named and sophisticated users of the SOFCs who had access to President Trump and could make inquiries could have asked for a property-by-property breakdown of those assets. Both Mazars and Deutsche Bank knew which properties were included in the aggregate value reported and could have asked about them if they had any reason to be concerned. Further, Mazars did not list this as a departure from GAAP let alone a material departure. Thus, there is nothing unlawful about aggregating assets this way and the NYAG attempts to hold President Trump to standards that simply do not exist under GAAP. (Bartov Aff. at 20.)

(b) **Reporting of Cash**. The NYAG incorrectly acclaims that under GAAP, President Trump should not have included the cash held by the Vornado Partnership under cash in his

SOFCs, and that doing do falsely inflated the SOFCs. (NYSCEF 766 at 24.) The SOFCs do not say "cash" but rather cash and certain other items, clearly indicating that items other than cash were combined with cash under this entry on the SOFCs. (Faherty Aff., Ex. 3 at -37; Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790; Ex. 10 at -248; Ex. 11 at -418) Mazars listed as a potential GAAP departure that certain cash positions were reported separately from their related operating entities, further calling to the attention of the reader that the cash from operating entities was reported separately. Faherty Aff., Ex. 3 at -035; Ex. 4 at –715; Ex. 5 at -689; Ex. 6 at -982; Ex. 7 at -841; Ex. 8 -724; Ex. 9 at -792–93; Ex. 10 at -250; Ex. 11 at -420) Further, President Trump fully disclosed the components of "cash" in a footnote as including cash in operating entities. (Faherty Aff., Exs. 3–11 at Note 2; Flemmons Aff., Ex. B ¶¶ 44-47) In addition, the claim that the SOFCs were inflated is invalid. (Bartov Aff. at 26.) Even if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs. (Bartov Aff. at 26.)

(c) **Recording of Escrow Amounts**. The NYAG claims that GAAP does not allow escrow amounts held by the Vornado Partnership Interests to be included on the SOFCs and that doing do falsely inflates the SOFCs. (NYSCEF 766 at 24.) This claim is false. (Bartov Aff. at 26–27.) NYAG does not identify which GAAP was violated and this would be an issue of misclassification and therefore would not have inflated the SOFCs. (Bartov Aff. at 26–27.)

(d) **Value of the Triplex**: Given President Trump's plausible explanation in his deposition testimony, this inaccuracy is inadvertent, and, in particular, is immaterial. To be sure, such

errors in financial reports are not unusual. *See, e.g.*, Bartov, Marra, and Momenté, *Corporate Social Responsibility sand the Market Reaction to Negative Events: Evidence from Inadvertent and Fraudulent Restatement Announcements*, The Accounting Review 96(2), Mar. 2021, at 81–106.

(e) **Reporting of Membership Deposit Liabilities**. The NYAG claims that President Trump was required to determine the present value of the refundable membership deposits rather than reporting the full cash value of the potential liability in the SOFCs. (NYSCEF 766 at 26–27.) Non-recognition of the assumed refundable deposits as liabilities and their disclosure in a footnote align with the FASB definition of liabilities, which requires a commitment to be probable in order to be recognized as a liability in the SOFCs. This, in turn, nullifies the question of whether the liability should have been discounted or not. (Bartov Aff. at 22, 23, 28.)

(f) **Accuracy of Certifications**. President Trump simply did not misrepresent that his SOFCs complied with GAAP. Rather, his certifications that they did are descriptively valid because GAAP does not apply to immaterial values, and the NYAG has failed to show that the items she claims are actionable were materially misleading because it has failed to perform any valid materiality test. (Bartov Aff. at 30–31.)

2. The SOFCs Complied With GAAP

Once the NYAG's misunderstandings of GAAP are corrected, it is apparent that the SOFCs did indeed comply with GAAP, either because the SOFCs contained no misstatements (*i.e.*, departures from GAAP) or, to the extent the SOFCs contained misstatements, those misstatements were immaterial.

The NYAG's allegations regarding the allegedly overstated valuations and insufficient disclosures contained in the SOFCs, which are central to her case, are predicated on the notion that

there exists some "true," "correct," or "objective value," but no such value exists. There is no such thing as true, correct or objective value either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff. at 10–11.) At bottom, a valuation is an opinion and depends upon several factors, including the selection of a methodology, assumptions, and benchmarks within a methodology, and the discretion surrounding presentation. (Bartov Aff. at 10–11); (Laposa Aff. ¶ 12).

Indeed, ASC 274, which as noted above governs the preparation of compilation reports like the SOFCs, affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports and leaves it to the discretion of the preparer which method and assumptions to use as long as they are reasonably consistent with economic theory. Preparers may rely on methods and assumptions in formulating estimated current values that may be inherently different from those used by appraisers and lenders. (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) "GAAP does not require a specific method to be used to estimate current value for a particular asset for personal financial statements, nor does GAAP require the same method to be used for all assets in the same group." (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) The NYAG refuses to accept this because it fatally undermines her case. The NYAG's allegations that President Trump used inappropriate valuation methods fail to consider the wide latitude in choosing asset valuation methods and the assumptions underlying them, or else misinterpret GAAP. (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) The NYAG cannot substitute her own subjective judgments for that of others *ex post facto* and then claim that the Defendants have broken the law.

Second and critically, the NYAG fails to realize that GAAP need not be applied to immaterial terms. (Bartov Aff. at 8, 10, 12, 14-15, 17, 20.) Under GAAP, immaterial financial statement items do not need to comply with the detailed requirements of GAAP. Specifically, ASC

105, Generally Accepted Accounting Principles, provides, "The provisions of the Codifications need not be applied to immaterial items." GAAP guides that immaterial financial statement items do not need to comply with GAAP, and thus allow preparers a reasonable level of flexibility in applying GAAP. In other words, GAAP recognizes that not all accounting errors, violations, or departures from GAAP have a material impact on the inferences of financial statement users. Thus, GAAP only prohibits material violations. (Bartov Aff. at 8, 10, 12, 14-15, 17, 20.)

None of the items on the SOFCs identified by the NYAG as misstatements or omissions were departures from GAAP. (Bartov. Aff. at 8, 10.) To the extent the SOFCs contained departures from GAAP (which they did not), the record establishes that any such departures were immaterial from the viewpoint of the sophisticated banks and underwriters who received the SOFCs. (*See* Bartov Aff. at 14-15, 17, 26-27, 31, 34.) The NYAG fails to offer any contrary materiality analysis.

3. The NYAG Has Not Produced Evidence Sufficient To Support Her Valuation Claims

The NYAG's claims fail even if ASC 274 did not apply and did not afford wide latitude in the selection of valuation methods. Here, rather than engaging with each element of a § 63(12) claim, the NYAG loosely asserts that President Trump's assets were so greatly inflated that there must be a § 63(12) violation. NYAG claims that "[b]ased on work done by [NYAG's] valuation and accounting experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining 'estimates of current values,' Mr. Trump's net worth in any year between 2011 and 2021 would be no more than $2.6 billion, rather than the stated net worth of up to $6.1 billion." (NYSCEF 766 at 4 n.2 (emphasis omitted).) But curiously, the NYAG does not attach opinions, depositions, or affidavits

proving this "work done" by her experts.[12] Instead, the NYAG diverts attention away from these failures claiming this is a "documents case." (NYSCEF 766 ("Motion") at 2.) This simplistic approach inappropriately ignores the substance, context and reality of the very transactions herein at issue, and fails to even attempt to establish any capacity of tendency to deceive which cannot be determined in a vacuum. Worse yet, the "documents" the NYAG relies upon, and the expert "work done" she references, fall well short of establishing triable issues of fact exists as to the SOFC valuations.

To succeed on her claims, the NYAG bears the initial burden to establish the SOFC valuations were "false" and/or "fraudulent." If the NYAG does not satisfy this prerequisite, the Defendants need not rebut her claims. New York law makes clear an appraisal report is the appropriate mechanism for determining the market value of a property, and mere estimates of value, rather than a "full appraisal," are "insufficient to raise a triable issue of fact" as to the value of properties.[13] *See White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC*, 110 A.D.3d 576, 577 (1st Dep't 2013)(*citing Trustco Bank v. Gardner*, 274 A.D.2d 873 (3d Dep't 2000)). For the NYAG to defeat summary judgment and then prevail at trial, New York law requires her to proffer something more than a mere estimate of value. *Id.*; *see also*, *Soffer*, 2018 N.Y. Slip Op. 30974[U]

[12] One can only surmise why the NYAG commissioned numerous experts at the cost of a small fortune in taxpayer dollars, only to decline to include their reports, testimony, or affidavits in support of its motion for summary judgment. The obvious inference is that the NYAG, after reviewing the expert reports and testimony of the defense experts, she realized the reports and opinions of her own experts are so flawed they provide no credible basis for her claims.

[13] As noted, under GAAP, there was/is no requirement to support the presentation of Estimated Current Value in the SOFCs with appraisals. Rather, ASC 274 affords substantial latitude to preparers in choosing valuation methods. (Bartov Aff. at 8.) But if the NYAG wants to challenge the valuations in the SOFCs, she must introduce current, valid expert appraisal data (not just rely on outdated "documents") to even get through the courthouse door. Moreover, even if the NYAG had done so, which she has not, same would not necessarily establish the valuations contained in the SOFCs were therefore false or fraudulent.

at *4 ("[E]xpert appraisal evidence is the method for proving the value of real property in litigation") (internal citations omitted).

Here, however, despite alleging forcefully and repeatedly the Defendants engaged in "numerous acts of fraud and misrepresentation" relative to the property values set forth in the SOFCs (*see e.g.*, NYSCEF 1 ¶¶ 1–3), the NYAG has put forward no actual evidence, referring instead only to the "work done" by her experts who admit freely they performed no appraisals.

This is simply not sufficient to raise a triable issue of fact as to the validity of the valuations contained in the SOFCs herein at issue and is alone fatal to the NYAG's claims. Indeed, the NYAG cannot accuse the Defendants of engaging in "numerous acts of fraud and misrepresentation" violative of § 63(12) without then presenting the requisite admissible evidence.

As noted, the NYAG's only reference to these insufficient expert opinions is set forth in a footnote on page four of its Memorandum. (Motion at 4 n.2.) Therein, the NYAG simply makes the conclusory observation that "work done" by her experts proves President Trump's net worth in any given year would be "*no more than $2.6 billion*" and then basically concedes no "full blown professional appraisals" were completed or presented. (Motion at 4 n.2) (emphasis in original). This startling concession establishes (1) President Trump is a billionaire and thus overqualified for any of the loans herein at issue (*See* Robert Aff., Ex. AAD ("Sullivan Dep.") 100:2–8; Robert Aff., Ex. AAE at 16), (2) there could never possibly have been any default under any of the loan agreements at issue in this action (as the minimum net worth covenant never exceeded $2.5 billion (Williams Dep. 190:25–191:10; Sullivan Dep. 81:21–82:4; Vrablic Dep. 305:21–306:16; SOF ¶¶ 116, 130, 148) and (3) the NYAG has not introduced sufficient proof.[14]

[14] The NYAG's failure to include the actual testimony and opinions of her experts concedes the points made by the Defense Experts. The NYAG cannot now supplement the record.

4. Disagreement As To The SOFC Values Does Not Establish Fraud

Property valuation is necessarily subjective. *See e.g.*, Robert Aff., Ex. AAAN at Ex. A at 12–28. Despite this undisputed[15] fact, the NYAG claims necessarily presuppose there is only one "true" or "correct" value for any given property, and deviations from that "true" or "correct" value demonstrate fraud. For example, the NYAG points to certain historical appraisals regarding the 40 Wall Street property[16] and Palm Beach County tax assessor valuations of Mar-A-Lago as essentially definitive proof of false or fraudulent valuations in the SOFCs. (Motion at Tabs 4–5.) However, "disparate but legitimate valuations of a specific property may co-exist" and the "mere existence of such disparate valuations for a given property does not in itself establish any specific valuation is inaccurate or inflated." (Laposa Aff. at Ex. A ¶ 22.) As Laposa opines, the subjective valuation process depends on numerous factors as well as the perspective of the proponent and the purpose of the valuation. (Laposa Aff. ¶ 12.) Thus, an owner or seller of property would have a vastly different viewpoint as to value than a bank or a buyer. (Laposa Aff. ¶ 15.); (Robert Aff., Ex. AAAT at Ex. A ¶¶ 4(e), 7.) This is indeed the essence of the commercial real estate marketplace, yet the NYAG seeks to cast such contextual reality aside in favor of her own "true" value.

At best, the record here demonstrates there is a disagreement as to the valuations presented in the SOFCs, valuations which themselves are indisputably and necessarily the product of a subjective process. But the NYAG cannot premise a § 63(12) violation on disagreements over value. The existence of such differing opinions simply does not establish fraud and/or a § 63(12) violation. This reveals further the fundamental and inherent flaw in the NYAG's efforts to apply

[15] The NYAG has not introduced any evidence sufficient to rebut this foundational premise set forth, *inter alia*, in the opinions of Dr. Steven Laposa. Indeed, this concept is so universally accepted the NYAG could not credibly disagree. Therefore, such unrebutted testimony is simply undisputed.

[16] Again, under ASC 274 there was simply no requirement to utilize or rely upon such appraisals in the SOFC valuation process.

§ 63(12) to the subject complex real estate transactions between highly sophisticated corporate parties represented by white-shoe counsel. Indeed, § 63(12) cases address ***objectively*** fraudulent conduct, conduct, *i.e.*, conduct that is demonstrably false or fraudulent. *See, e.g.*, *State v. Cortelle Corp.*, 38 N.Y.2d 83 (1975) (fraudulently inducing distressed homeowners into transfer of title); *People v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803 (1992) (fraudulent consumer health club contracts); *People v. Cohen*, 214 A.D.3d 421 (1st Dep't 2023) (fraud in collection of tenant security deposits); *N. Leasing*, 70 Misc. 3d 256 (fraudulent misrepresentations/unconscionable leases); *People v. Orbital Publ. Grp., Inc.*, 169 A.D.3d 564 (1st Dep't 2019) (false and misleading consumer solicitations); *People v. Ernst & Young LLP*, 114 A.D.3d 569 (1st Dep't 2014) (actively misleading public through accounting manipulations); *Gen. Elec. Co.*, 302 A.D.2d 314 (defective dishwashers); *People v. Am. Motor Club, Inc.*, 179 A.D.2d 277 (1st Dep't 1992) (fraudulent consumer insurance contracts); *State v. Solil Mgmt. Corp.*, 128 Misc. 2d 767 (N.Y. Sup. Ct. N.Y. Cnty. 1985), *aff'd*, 114 A.D.2d 1057 (1st Dep't 1985) (rent overcharges); *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005) (misleading consumer credit card solicitations); *People v. JUUL Labs, Inc.*, No. 452168/2019, 2022 WL 2757512 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2022) (failure to disclose known health risks of e-cigarettes); *People v. Coventry First LLC*, 52 A.D.3d 345 (1st Dep't 2008) (bid-rigging and anti-competitive schemes in life settlement contracts); *New York v. Feldman*, 210 F. Supp. 2d 294 (S.D.N.Y. 2002) (bid-rigging at public stamp auctions); *New York v. Gen. Motors Corp.*, 547 F. Supp. 703 (S.D.N.Y. 1982) (automobiles sold with faulty parts); *State v. Bevis Indus., Inc.*, 63 Misc. 2d 1088 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (deceptive sales practices in consumer merchandise transactions); *State v. ITM, Inc.*, 52 Misc. 2d 39 (N.Y. Sup. Ct. N.Y. Cnty. 1966) (unconscionable consumer installment sales contracts).

5. The NYAG's Representations As To The Values Of Each Property Are Erroneous

Defendants address below the myriad defects in the NYAG's attempted presentation of "true" or "correct" values.

a. Mar-A-Lago

The NYAG claims in her MSJ that utilizing tax records and assessed values is the appropriate basis for determining the estimated current value of Mar-a-Lago. As such, she reports the assessed values of Mar-A-Lago as determined by the Palm Beach County Property Appraiser. But the the use of assessed values as proof the SOFC values were false or fraudulent is simply flawed. "Case law . . . clearly distinguishes between an assessment or assessed value on the one hand, and the full market value or full value of the property on the other." *Briffel v. County of Nassau*, 31 A.D.3d 79, 83 (2d Dep't 2006) (collecting cases). Moreover, it is well recognized that assessed values are not the same as market values, estimated current values, or investment values; assessments may have no correlation to market value whatsoever. Robert Aff., Ex. AO ("Chin Aff.") at 23–24. Therefore, the NYAG's reliance on the assessed value of Mar-a-Lago is inappropriate. Indeed, assessed values do not necessarily equal investment or even market values and offer "minimal value to appraisers." Mark Ratterman, MAI, SRA, *Residential Property Appraisal,* Appraisal Institute, 2020, at 41–42.

The NYAG's approach also ignores completely the opinion of Lawrence Moens, doubtless the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida. Moens opined that the values for Mar-A-Lago were higher than SOFC values, as reflected in the charts attached to Mr. Moens and Mr. Unell's affidavits. See Robert Aff., Ex. AAAP at Ex. A at App. A; Unell Aff., at 5.

These values establish the SOFC valuations were and are appropriate and indeed conservative. The NYAG ignores this evidence as well as the substantial latitude afforded by ASC 274 to select valuation methodologies.

The NYAG's approach likewise ignores completely the entirety of the applicable covenants, deeds and restrictions relative to Mar-A-Lago[17], choosing instead to advance her own selective and unsupported interpretation.

The NYAG contends incorrectly President Trump somehow gave up his rights to use the Property for any purpose other than a social club when he entered into a Deed of Conservation and Preservation in 1995 (the "Preservation Easement"). (Motion at 13). In doing so, Plaintiff misreads the plain language of the Preservation Easement, as well as the 1993 Declaration of Use Agreement. These documents contain no restriction that would prohibit the Property from being used as an exclusive private residence.

Moreover, the restrictions set forth in the Declaration of Use Agreement and in the Preservation Easement must be strictly construed. Florida law is clear "covenants are strictly construed in favor of the free and unrestricted use of property. Where the terms of a covenant are unambiguous, the courts will enforce such restrictions according to the intent of the parties as expressed by the clear and ordinary meaning of its terms. A covenant which is substantially ambiguous is resolved against the party claiming the right to enforce the restriction." *Norwood-Norland Homeowners' Ass'n, Inc. v. Dade County*, 511 So. 2d 1009, 1014 (Fla. Dist. Ct. App. 1987) (collecting cases); *see also 19650 NE 18th Ave. LLC v. Presidential Ests. Homeowners Ass'n, Inc.*, 103 So. 3d 191, 195 (Fla. 3d DCA 2012) (There is a "general rule of covenant

[17] A complete (and unrebutted) analysis of the applicable covenants, deeds and restrictions is set forth in the affidavit and report of John Shubin. *See* Robert Aff., Ex. AAAQ.

interpretation that requires courts to strictly construe restrictive covenants in favor of the free and unrestricted use of real property") (collecting cases).

Contrary to Plaintiff's contention, there is no requirement in any of the documents that the Property be used exclusively as a private club in perpetuity. Indeed, based on the Town of Palm Beach Zoning Code and the approved 1993 Special Exception Plan (and consistent with the recorded documents), the permitted uses of the Property include *both* its use as a private residence and its use as a private social club.

The Declaration of Use Agreement also provides that the "Club use" may be "intentionally abandoned at any time" and, if it is, "the use of the Land shall revert to a single family residence and the ownership of the Owner." (Faherty Aff. Ex. 107, Art. IX). Similarly, the Rules of the Mar-a-Lago Club expressly reference this language from the Declaration of Use Agreement. The Club Rules further provide that "[m]embership in the Club is acquired on a non-equity basis [and] "does not confer any vested or prescriptive right or easement to use the Club and its facilities[,]" "[m]embers acquire only a revocable license to use the Club and its facilities [and] [t]hey have no ownership or voting interest in the Mar-a-Lago Club, L.C. which operates the Club." (Robert Aff., Ex. AAAQ at Ex. A at Ex. B (Club Rules), § VII (C)).

In addition, nothing in the Preservation Easement requires the grantor (President Trump) to continue to operate a private social club on the Property. Despite the restrictions in the Preservation Easement, it expressly provides that the grantor (President Trump) still has certain rights not requiring further approval by the grantee (National Trust), such as:

> (a) "the right to engage in those acts or uses permitted by governmental statute or regulation that are not expressly prohibited or regulated by this Easement;" and
> (b) "the right to perform work, exercise the rights and privileges contemplated by, and engage in those uses of the Property permitted by the Plan and by the Declaration of Use Agreement . . . as the Plan and/or the Declaration may be amended from time to time, provided that (i) such uses are not specifically prohibited or regulated by this

Easement. ”

(Faherty Aff., Ex. 93 (“Preservation Easement”) § 5.1(a)(b)).

Plaintiff also misconstrues the 2002 Deed of Development Rights (the “2002 Deed”), which must be construed consistent with the Preservation Easement. The 2002 Deed does *not* prohibit the Property from continuing to be used as a private residence. As noted, the 2002 Deed must be construed consistent with the Preservation Easement, which expressly allows the grantor to engage in uses not prohibited by the Preservation Easement, as well as uses permitted by the 1993 Special Exception Plan and the Declaration of Use Agreement. (Preservation Easement, ¶ 5.1(a)(b)).

Moreover, to the extent necessary, Mar-A-Lago Club, L.L.C., President Trump, and National Trust can agree to amend the Preservation Easement, including to sell the Property as *residential* real estate subject to the preservation of Critical Features and other limitations under the Preservation Easement. (Preservation Easement, ¶ 11).

Also, the Property is currently zoned R-AA (Large Estate Residential) and thus can be used as a single-family home. Under Florida law, “[m]unicipal ordinances are subject to the same rules of construction as are state statutes.” *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973) (collecting cases). As with state statutes, courts “are prohibited from inserting words or phrases into municipal ordinances to express intentions that do not appear,” *Mandelstam v. City Comm'n of City of S. Miami*, 539 So. 2d 1139, 1140 (Fla. Dis. Ct. App. 1983), and must give the ordinance “the plain and ordinary meaning of the words employed by the legislative body,” here the Town of Palm Beach, *Rinker*, 286 So. 2d at 554 (citation omitted).

Relatedly, “[z]oning laws are in derogation of the common law and, as a general rule, are subject to strict construction in favor of the right of a property owner to the unrestricted use of his property.” *Mandelstam*, 539 So.2d at 1140 (citing *City of Miami Beach v. 100 Lincoln*

Rd., Inc., 214 So. 2d 39 (Fla. Dist. Ct. App. 1968)); *see also Rinker*, 286 So.2d at 553 ("Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner.").

Similarly, for these same reasons, the "landmarked" status of the Property (including its historically significant Critical Features) do not prohibit its use as an exclusive private residence.

b. 40 Wall Street

As detailed in the Chin Affidavit (*see* Chin Aff. ¶¶ 38-44), the NYAG's reliance on the 2011 and 2012 Cushman & Wakefield ("Cushman") appraisals[18] of 40 Wall Street to discredit both Cushman's 2015 appraisal and the SoFC/Compilation values is erroneous.[19] In actuality, the 2011 and 2012 Cushman appraisals made a significant and consequential series of errors that significantly underestimated the "As Is" values, driven by flawed market rental rate assumptions, an inappropriate terminal capitalization rate selection, and inconsistent per square foot results compared to market data. The 2011 and 2012 report's reliance on a discounted cash flow analysis amplified the underestimation. Cushman's subsequent reappraisal of the property in 2015 more correctly evaluated the property in the context of market rental rates, market conditions, and actual property performance. (*See* Chin Aff. ¶¶ 40-44, Ex. A at 22-24.)

The NYAG makes numerous allegations and assertions regarding the 2015 Cushman Appraisal of 40 Wall Street, calling it **"**improperly inflated." But the 2011 and 2012 Cushman

[18] As noted herein, pursuant to GAAP and ASC 274, the preparers of the SOFCs had no obligation whatsoever to utilize any appraised values or appraisals when computing the various SOFC values. To the contrary, ASC 274 provides such preparers with broad latitude to select a valuation methodology.

[19] The NYAG also utilizes marginally higher values per the 2013 and 2014 Capital One Internal Valuations to compare to 2013 and 2014 SOFC values. As with the 2011 and 2012 Cushman appraisals, the 2013 and 2014 Capital One Internal Valuations were also slow to recognize significantly improving market conditions and improving property occupancy. (Chin Aff. ¶¶ 45-46, Ex. A at 22-24.)

appraisals significantly understated the "As Is" values by using market rental rate assumptions in their discounted cash flow analysis that did not accurately reflect the actual leasing conditions at the property. Additionally, Cushman's market assumptions were unchanged between 2011 and 2012. (Chin Aff. ¶¶ 38-40, Ex. A at 22-24.)

For example, the underestimation of net effective rent in 2011 and 2012 had a magnified impact on the market value over the 15-year projection period. Moreover, the property's attainment of stabilization, which represents a sustainable and consistent occupancy level at market rents, was significantly delayed. By 2015, Cushman made appropriate adjustments to reflect actual leasing and market conditions. In addition to recognizing the need to adjust assumed rental rates to the market, Cushman also recognized the need to change the floor breakdown which increased rental rates faster for mid to higher level locations in the building. (Chin Aff. ¶ 38, Ex. A at 22-24.)

Additionally, Cushman was also slow to recognize significantly improving market conditions and improving property occupancy. A prudent and knowledgeable real estate owner active in real estate leasing would be attuned to improving market conditions as they were occurring, and the positive impact those conditions would have on long term value creation. As such, owners would build occupancy and rental rate as quickly as possible. (Chin Aff. ¶¶ 38-43, Ex. A at 22-24.)

The 2015 Cushman Appraisal reflected significant and substantial adjustments compared to the 2011 and 2012 appraisals. It was evident that Cushman's 2015 appraisal recognized the underestimation of their market rental rate assumptions and incorporated the actual improved occupancy and market conditions into their 2015 discounted cash flow leasing assumptions. While the 2011 and 2012 projections anticipated stabilized net operating income ("NOI") to be achieved by 2026, the 2015 Cushman Appraisal more accurately projected the attainment of stabilized

occupancy with significantly higher rents eight years earlier, or 2018 (vs. 2026). (Chin Aff. ¶¶ 38-44, Ex. A at 22-24.)

Also, the 2011 and 2012 Cushman appraisals also used a capitalization ("cap") rate that was inconsistent with market sales. Cushman's selected cap rate of 7.0% far exceeds the cap rate data that reflects the highest cap rate at 6.74%, approximately 175 basis points higher than the average of Downtown Manhattan cap rates, and 310 basis points higher than the average of Midtown Manhattan cap rates. The Downtown Manhattan sales data reveals that cap rates for properties either under contract or sold in 2012 were on average about 200 basis points lower than those occurring in 2011. This data is consistent with the improving market conditions and increasing property values that Cushman failed to recognize. (Chin Aff. ¶¶ 40-44, Ex. A at 22-28.)

The 2012 Cushman appraisal also misstates its own data regarding "the most recent Investor Survey." While Cushman acknowledges the noted decrease in cap rates (that evidence increasing property values), their analysis does not reflect the on-going improvements in the market. The office selling prices per square foot were also increasing, further reflective of improving market conditions. Thus, all things considered, building owners (and the Guarantor) would have sufficient justification to expect that real estate selling prices, improved property performance, and increased rental rates were reasonably expected to continue. (Chin Aff. ¶¶ 40-43, Ex. A at 24-28.)

Additionally, the Guarantor had a strong understanding of New York market conditions and used a very straightforward method of computing a stabilized NOI for the purpose of calculating their As If valuations included in the annual SoFC/Compilations. The Guarantor employed an "As If" stabilized, static valuation approach that replicated improving property and market conditions, and the lease-up of vacant spaces to stabilized occupancy at higher face rental

rates after excluding free rent and tenant improvement costs. This approach more closely simulates the actual occurrences and provides a more accurate depiction of the property's ultimate condition. (Chin Aff. ¶¶ 40-43, Ex. A at 27-28.)

The differences between how the Guarantor and Cushman evaluated the property in 2011 and 2012 are significant: Cushman used historical actuals that reflected a lower occupancy, while the Guarantor projected NOI on a future stabilized, As If basis. The Guarantor projected NOI figures from 2011 to 2015 ranging from $22,722,000 to $26,234,400, based on the expectations of improving market conditions and property occupancy. These projections were proven accurate as the market and occupancy did indeed improve.[20] (Chin Aff. ¶ 41, Ex. A at 23-28.)

Importantly, the Guarantor projections are supported by the ***actual*** NOI figures achieved at the property. Independent auditor reports provided by Mazars USA LLP, based on Consolidated Financial Statements for the property, revealed that from 2016 through 2019, the adjusted NOI (adjusted for interest attributable to operations, depreciation, amortization, bad debt expense, and loss on abandonment of tenant improvements) at the property ranged from $19,568,012 to $20,647,573. These amounts were consistent with the projected amounts upon stabilization and upon exit/reversion. Coincidentally, these figures align with the 2015 Cushman Appraisal that cited an As Is NOI of $23,203,919. (Chin Aff. ¶ 41, Ex. A at 23-29.)

Further, the 2011 and 2012 Cushman appraisals provided As Stabilized values of $270 million and $260 million, respectively. However, the 2012 Cushman appraisal explicitly stated that their prospective value analysis "Upon Reaching Stabilized Occupancy" took a conservative

[20] As noted in the attached appraisal study, Susanne Ethridge Cannon & Rebel A. Cole, *How Accurate Are Commercial Real Estate Appraisals? Evidence from 25 Years of NCREIF Sales Data*, 37 J. Portfolio Mgmt. 68 (2011), significant evidence exists that appraisals are lagged indicators of value. The study notes that appraisals appear to lag the true sales prices, falling below in hot markets with the largest deviations observed during the peaks and valleys of various real estate cycles.

approach and did not fully acknowledge the potential upside when the property reached stabilized occupancy. This differs from how an informed office building owner would evaluate the asset's value, considering market conditions and growth potential. (Chin Aff. ¶ 43, Ex. A at 24-30.)

The ***actual*** NOI figures further support this perspective. According to the 2016 Consolidated Financial Statements Independent Auditor's Report by Mazars USA LLP, the adjusted NOI was reported as $19,568,012. Using the average cap rate of 4.51% from the 2012 Downtown Manhattan data cited in the 2012 Cushman report, the value of the property is estimated at $434.4 million. This value is $174.4 million higher than the concluded 2012 Cushman stabilized value and $92.8 million less than the Guarantor's 2012 SoFC value. Alternatively, applying a capitalization rate of 4.00% (within the range of the 2012 cap rate data) yields a value of $489.2 million, which is $229.2 million higher than the concluded 2012 Cushman stabilized value and $38.0 million less than the Guarantor's 2012 SOFC value. Thus, the Guarantor's valuations are far more closely aligned with actual performance. (Chin Aff. ¶¶ 43-44, Ex. A at 27-30.)

c. Trump Tower

The NYAG analysis seizes upon a stabilized cap rate for 666 Fifth Avenue of 4.45%. But the overall cap rate based on the purchase was 2.67% whereas the cap rate of 4.45% appears to be a projection (and it is unclear how this was derived). As the projected cap rate is not an artifact of the sale but rather a projection with unsupported assumptions, and is not based on data as of the date of the analysis, it is valid to exclude this sale entirely.

The NYAG Projected Stabilized Cap Rate also fails to consider the complete capitalization rate supporting data. As noted below, utilizing the totality of the sale and capitalization rate data provides a range of cap rates from 2.35% to 4.06%, with an average of 3.22%. Excluding the questioned 666 Fifth Avenue cap rate provides a range of cap rates from 2.35% to 4.06%, with an average of 3.30%, as reflected in the charts in Mr. Chin's affidavit. (*See* Chin Aff. at 17.)

Even after excluding the 666 Fifth Avenue sale, the NYAG Projected Stabilized Cap Rate for 2018 (3.75%) is above all but two of the cap rates provided, while the cap rate for 2019 is significantly above the range of the sales data.

Given the Class A, trophy nature of Trump Tower, one would expect the cap rate to fall at the lower end of the range of sales data. As such, (excluding the 666 Fifth Avenue) a more appropriate cap rate is 2.83%, fully consistent with the cap rates utilized in 2018 and 2019 (2.86% and 2.67%) in the SOFC.

d. Trump Park Avenue

The NYAG embraces a faulty premise when considering the potential conversion of the rent stabilized units in the Trump Park Avenue property. The NYAG's valuation approach is based on an outdated 2010 appraisal conducted by the Oxford Group. But this approach considers only the then current rental state and does not consider the property's ultimate highest and best use which is to sell the individual condominium units unencumbered by rent-stabilization. An owner would, appropriately, adopt a different valuation approach.

Despite uncertainties regarding the timing of unit vacancies due to tenant rights, rent-stabilized units offer substantial investment upside potential driven by favorable market dynamics, future rental appreciation prospects, and the ability to capitalize on tenant turnover. As tenants maintain long-term occupancy in rent-stabilized units, the disparity between market rents and contract rents widens. However, the value of the condominiums underlying these units continues to increase, benefiting from limited supply, high demand for desirable locations, and the introduction of new inventory at premium prices. The owner's ultimate economic opportunity arises when units become vacant, enabling them to reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices. Renovations

and improvements can further enhance rental income and attract higher-paying tenants or facilitate the sale of units at premium prices.

Thus, the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units. This is the assumption the owner made when assessing potential asset pricing or value. In fact, 6 of the 12 rent-stabilized units were vacated from 2013-2019 thus allowing the owner to then reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices and achieve substantial returns above the noted rent stabilized valuation of $62,500.

As the owner has the latitude to adopt an As If perspective for purposes of SOFC preparation, the SOFC values are adequately presented from that perspective. Simply because the NYAG disagrees and adopts an alternative approach does not prove the SOFC values were false or fraudulent.[21]

e. Seven Springs

For the Seven Springs property, the SOFCs incorporated a commonly used profitability analysis employed by developers. This analysis presumed the development of the property, projecting revenues expected to be received, the estimated costs, and the net profits to be realized. This analysis, which evaluates the potential profitability of development, was used in the SOFCs between 2011 and 2014.

When the business plan for the property changed in 2015 (to the development or sale of a portion of the property and the donation of the remainder for conservation purposes), the property was no longer held for development and was instead reported in a category noted as Other Assets

[21] The NYAG also claims an option price (between President Trump and his daughter) to purchase the Penthouse A unit is to be utilized in the SOFC valuations. But this is not at all an arms-length price indicative of the market. (Chin Aff. at 15) By contrast, the use of an offering price would be considered more reliable. (Chin Aff. at 15.)

in the SOFCs. The SOFC values were then adjusted to reflect the change. This explains the differential.

Also, the summary analysis performed by Mr. Chin (Chin Aff. at 11-14, Ex. A 20-23) demonstrates the propriety of the SOFC valuations. This analysis demonstrates the true difference between the SOFC and 2015 appraisal was minimal as compared to the substantially overstated noted difference as presented in the NYAG's inconsistent comparison.

f. 1290 Avenue of the Americas

For 1290 Avenue of the Americas, the NYAG analysis utilizes outdated source data which fails to account for marketplace realities. (Chin Aff. at 17-20) The use of the 2012 Cushman appraisals to project values in a rapidly increasing market is not reflective of valuation principals and sound valuation methodology. (Chin Aff. at 17-20) The NYAG analysis also fails to consider the Guarantor's perspective in deployment of the valuation methodology. (Chin Aff. at 17-20) Thus, even using the outdated (and flawed) Cushman data, incorporation of the Guarantor's legitimate perspective yields results consistent with the SOFC valuations, with any differences considered immaterial. (Chin Aff. at 17-20)

First, the NYAG provides values from 2012-2019 utilizing only the 2012 Cushman & Wakefield (Faherty Aff., Ex. 112) appraisal report as the sole Independent Value source. (Chin Aff. at 17-20) This is an incomplete comparison given the NYAG's values utilize static and stale assumptions and valuation metrics from a report dated October 18, 2012. (Chin Aff. at 17-20) During this time period, the Manhattan Office Market saw significant growth. The office selling prices per square foot increased reflecting improving market conditions. (Chin Aff. at 17-20) While the NYAG values remain static from 2012-2013 and increase only 15% in 2014 and remain static until 2016, the prices per square foot for Class A commercial office buildings increased over

70 percent between 2011 and 2015, while capitalization rates decreased during this same period. (Chin Aff. at 17-20)

Moreover, the NYAG's 2018 and 2019 values utilized a stabilized cap rate from the 2012 Cushman report but the actual market data over this time period reflects decreasing cap rates. (Chin Aff. at 17-20) The decrease in cap rates seen in the market would suggest significant value appreciation, consistent with that seen in other Manhattan office properties during this timeframe. (Chin Aff. at 17-20) The NYAG analysis ignores this actual data.

Finally, the NYAG and Cushman fail to acknowledge the potential upside when the property reached stabilized occupancy. (Chin Aff. at 17-20) An informed office building owner would evaluate the asset's value to consider market conditions and growth potential. (Chin Aff. at 17-20)

Next, the SOFC/Compilations include various investment value estimates that are based on certain reasonable assumptions made by the Guarantor (i.e., As If stabilized, As If Projected or Anticipated, and As If earned). (Chin Aff. at 17-20) The SoFC valuations for 1290 Avenue of the Americas property consistently adhere to this premise, thus it is essential to distinguish that these estimates are specific to the Guarantor's perspective of its assets and differ materially from the views of the NYAG.

Although there are numerous issues noted above regarding the use of the outdated 2012 Cushman appraisal, even if one were required to use this one data source, the rational and logical use and of this report to project future values similar to the SOFCs noted As If stabilized or As If Projected values is detailed below. Applying the 4.50% capitalization rate per the 2012 Cushman report provides a value of $3,200,000. This value would be consistent with the SoFC investment value estimates on an As If Projected or Anticipated / As If earned basis. (Chin Aff. at 17-20)

While immaterial variations in the yearly figures are present, the average implied cap rate from the Cushman projections over this time period is consistent with that utilized in the SoFC. (Chin Aff. at 17-20) Doing so then yields the revised Independent Values of the DJT Share presented below. While there are both increases and decreases from the noted SOFC values, the total difference over time is immaterial. (Chin Aff. at 17-20) Moreover, such fluctuations represent the impacts of varying legitimate inputs as part of an inherently subjective valuation process. as reflected in the chart in Mr. Chin's affidavit. (Chin Aff. at 19)

g. Doral

Notably, the NYAG fails to even mention the extraordinary success achieved through the Doral investment and the impact of that success on the SOFC valuations. The property was purchased in 2011 for $150 million. Defs. SOF ¶ 102. Thereafter, investments and improvements were made by the Trump team which resulted in a physical and financial transformation of the property. Today, the property is worth, conservatively, more than one billion dollars. *See* Chin Aff. at 19–21 (citing the 2022 Newmark Doral presentation).

When considering this value, it becomes apparent the SOFC values were over time always under-reported. This, contrary to the NYAG's core claims regarding value inflation, the SOFCs employed a conservative approach. When adjusting for actual value based on historic data, the values for each year (2014–2021) are as set forth in Mr. Chin's charts. (*See* Chin Aff. at 22.)

As illustrated by Mr. Unell's analysis and reflected in the charts therein, once these values are incorporated into the SOFCs, it is equally apparent that the reported net worth numbers were actually lower, not higher. *See* Unell Aff. at 4.

Of course, none of this is reflected in the NYAG's alleged proof, and all her experts conveniently ignored any mention of the Doral property.

B. NYAG Fails to Address Materiality, A Key Element Of Her § 63(12) Claim

As this Court's prior Order stated, Executive Law § 63(12) empowers the NYAG "to seek to remedy the deleterious effects . . . of *material* fraudulent misstatements issued to obtain financial benefits." (NYSCEF 458 at 5) (emphasis added). Materiality is a key element of the alleged offense.[22] Yet, in her 61-page memorandum of law, the NYAG never discusses materiality.

With respect to materiality, New York law tracks that of the federal courts. *City Trading Fund v. Nye*, 72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018); *see also Exxon Mobil*, 2019 WL 6795771 (turning to federal securities law for its materiality standard). To define materiality in the securities law context federal courts utilize a "reasonable investor" standard, asking whether such "reasonable investor would have found that the information about a quantitative and qualitative impact of the transactions significantly altered the total mix of information available." *People v. Greenberg,* 95 A.D.3d 474, 485 (1st Dep't 2012) (citation omitted). When evaluating the allegations of a fraudulent misrepresentation claim, "New York takes a contextual view, focusing on the level of sophistication of the parties, the relationship between them, and the information available at the time of the operative decision," *JP Morgan Chase Bank v. Winnick*, 350 F. Supp. 2d 393, 406 (S.D.N.Y. 2004). Thus, "[s]ophisticated business entities are held to a higher standard," *id.* at 406, and they are expected "to protect [themselves] from misrepresentations," *Solutia Inc. v. FMC Corp.*, 456 F. Supp. 2d 429, 450–51 (S.D.N.Y. 2006). Sophisticated parties include large banks, insurance companies, and multinational corporations—exactly the types of entities relevant to these proceedings. *See, e.g.*, *St. Paul Mercury Ins. Co. v.*

[22] At the motion to dismiss stage in these proceedings, the NYAG asserted that she does not in fact need to prove materiality, (*see* NYSCEF 380 at 17, n.5), but does not repeat such argument at this stage. Further, the case on which the NYAG relied for this statement clearly does not stand for the proposition the NYAG claimed. *See Domino's*, 2021 WL 39592, at *10 (finding evidence regarding materiality "plainly *relevant* to determining whether the Attorney General has established" a § 63(12) claim).

M&T Bank Corp., No. 12 Civ. 6322(JFK), 2014 WL 641438, at *6 (S.D.N.Y. Feb. 19, 2014); *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 574 (2d Cir. 1991) (designating "insurance companies" as "sophisticated business entities"); *In re Residential Cap., LLC*, No. 12-12020 (MG), 2022 WL 17836560, at *31 (Bankr. S.D.N.Y. Dec. 21, 2022) (designating "multinational corporation" as "a sophisticated party").

Further, in assessing this issue, the Court's inquiry should be focused on the "real-world impact" of the alleged misrepresentations. *Domino's*, 2021 WL 39592, at *24. As explained by the *Domino's* court:

> [E]vidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud . . . . ***In determining whether certain conduct was deceptive, surely it is relevant whether members of the target audience . . . were actually deceived. Similarly, if the evidence showed that the alleged false statements had no real-world impact (that is, no reliance or causation), that would speak to the question of whether the challenged conduct was unlawfully deceptive or fraudulent.***

Id.(emphasis added); *see also People v. Tempur-Pedic Intern., Inc.*, 30 Misc.3d 986, 993 (N.Y. Sup. Ct. N.Y. Cnty. 2011) (finding no violation of § 63(12) where NYAG had "submitted no evidence to show that retailers were misled or deceived in any way"); *Exxon Mobil*, 2019 WL 6795771, at *2 (finding no violation of § 63(12) where the NYAG had "produced no testimony . . . from any investor who claimed to have been misled by any disclosure").

Thus, materiality is not determined in this context from the perspective of "any user" as the NYAG falsely claims, but from the perspective of the ***actual users*** of the SOFCs as same is necessary to evaluate the "total mix of information" available to each user. *Exxon Mobil*, 2019 WL 6795771, at *24. By reducing the standard to "any user," the NYAG attempts to relegate the materiality analysis to a meaningless formality, something completely unsupported under GAAP or by any legal authority. Here, the SOFCs were prepared expressly for and presented only to

highly sophisticated counterparties engaged in complex transactions. The total mix of information made available to them, and, critically, how they actually used the information are essential components in conducting a materiality analysis through the lens of those actual users. (Bartov Aff. at 14-15, 17, 26-27, 31, 34.)

Instead of facing this burden head on, the NYAG focuses only on the misrepresentation aspect of a § 63(12) claim and sprinkles the word "material" throughout the brief to describe alleged misrepresentations. Indeed, under the section entitled "Gross Inflation of Assets" the NYAG asserts that "objective evidence establishes beyond dispute that many assets were grossly inflated by amounts that were ***material*** to any user of the SFCs," (NYSCEF 766 at 9). However, the text that follows that statement does not discuss how this is true and focuses on the nature of the alleged misrepresentations rather than why they are material. Further, despite her clear burden to establish the charged conduct was misleading in a material way, *N. Leasing*, 70 Misc. 3d at 267, and repeated references in the Complaint to "material misrepresentations" (*i.e.*, NYSCEF ¶ 19), the word "material" does not appear even once in the argument section of the NYAG's brief, (NYSCEF 766 at 53–60). The NYAG's claims fail as she has not even attempted to explain or show how the alleged misrepresentations at issue in this case were material to the actual recipients of the SOFCs. Furthermore, the testimony of DB's own witnesses demonstrate that neither President Trump, Donald Trump, Jr. or Eric Trump made any materially misleading statements to the Bank.[23]

[23] For example, DB Managing Director David Williams, a key corporate officer involved in the decisions relative to the loans at issue, testified that President Trump "had a verifiable net worth in a top tier of the regional market." (Defs. SOF ¶ 80.) Even if President Trump had a net worth of $1 billion, the pricing on the loans would have remained the same because a net worth in excess of $1 billion constitutes a strong guarantor. (Defs. SOF ¶¶ 79.) Numerous DB representatives, including Mr. Williams, Ms. Vrablic, and Mr. Sullivan, testified they did not believe there were any material misrepresentations made to the PWM division on these loans. (Defs. SOF ¶ 97.) For example, Ms. Vrablic explicitly testified under oath that she did not believe that either President Trump, Eric Trump or Donald Trump, Jr. made any materially misleading statements to Deutsche Bank. (Defs. SOF ¶ 97; Robert Aff., Ex. AAB, Vrablic Dep.

III. Defendants Are Entitled To Summary Judgment On The First Cause Of Action

In addition to the foregoing, the record herein is devoid of any evidence of harm, leaving the NYAG without authority to prosecute this case. Further, unlike the NYAG, the Defendants have put forth a sufficient record of undisputed evidence consisting of documents, expert affidavits and reports, and testimony of experts and fact witnesses—***including testimony of the very individuals the NYAG claims were targets of the Defendants' alleged fraud***—that establish (1) the NYAG lacks authority to maintain this action, (2) there is no record evidence of any harm and the SOFCs had no capacity or tendency to deceive[24] and (3) that several Defendants were in no way involved in the preparation of the SOFCs nor had actual knowledge of any misrepresentations within them.

A. The NYAG Lacks Authority To Maintain Suit

The record is devoid of any evidence establishing any impact on anyone, not the

229:16-23, 229:25-230:7, 234:17-20, 235:8-16. Mr. Williams explicitly informed the NYAG when he was interviewed previously that he was not concerned about whether any of the SOFCs were misleading. (Defs. SOF ¶ 98.) Even now, Mr. Williams has no concern that the SOFCs were misleading. (*Id.*) DB believed President Trump had a "proven successful track record in the United States commercial real estate market" and based its loan decision on President Trump's financial profile, the client's "historical successes," the banks' due diligence, and the adjustments to President Trump's reported values. (Defs. SOF ¶ 114.) This testimony squarely refutes any notion the SOFCs had any capacity or tendency to deceive. The record demonstrates these are sophisticated counterparties that conducted their own analysis and made valid, and profitable, business risk decisions.

[24] The NYAG makes much of Mazars' withdrawal letter advising the Defendants that the SOFCs should no longer be relied upon, citing it to support their allegation that the SOFCs contained misstatements and omissions. (NYSCEF 766 at 8.) But the letter provided no explanation or evidence whatsoever for that assertion. In fact, Mazars performed no audit, a necessary condition for opining on the SOFCs, so Mazars was in no position to release this statement. It thus follows that the letter provides no credible basis for the NYAG's allegation that the letter "in and of itself supports a finding that the SFCs were false." (*Id.*)

Moreover, Mazars' assertion that the SOFCs should no longer be relied upon constitutes a severe violation of the AICPA guidance to external accountants performing a compilation engagement. Specifically, Section.A42 of AR-C 80 provides: "The accountant is precluded from including a statement that the financial statements are not in conformity with the applicable financial reporting framework because such a statement would be tantamount to expressing an adverse opinion on the financial statements as a whole. Such an opinion can be expressed only in the context of an audit engagement."

counterparties to the various transactions at issue and not the public marketplace. In such case there is simply no role or authorization for the NYAG to second-guess the considered business judgment of private parties engaged in successfully consummated and profitable commercial transactions. Executive Law § 63(12) authorizes the NYAG to apply for relief "in the name of the people of the state of New York." The authority to recover on behalf of the People depends necessarily upon a connection between the conduct the NYAG seeks to enjoin, and some harm (or threat of harm) suffered by the People (*i.e.*, the public at large). The plain language of Executive Law § 63(12) is at once a conferral of authority and a limitation on the exercise of that authority.[25]

The Court of Appeals has articulated that limitation in cases interpreting statutory grants of authority to sue "in the name of the People" substantially identical to that in § 63(12), going back more than two centuries. *See People v. Lowe*, 117 N.Y. 175 (1889); *People v. Brooklyn, Flatbush & Coney. Island Ry. Co.*, 89 N.Y. 75 (1882); *People v. Ingersoll*, 58 N.Y. 1 (1874); *People v. Albany & S.R. Co.*, 57 N.Y. 161 (1874); *People v. Booth*, 32 N.Y. 397 (1865); *Attorney Gen. v. Utica Ins. Co.*, 2 Johns. Ch. 371 (N.Y. Ch. 1817). "While [a statute may] authorize[ ] the Attorney General, in [her] discretion, to institute suit where [she] believes the public interests require such action to be brought, [her] determination is not final for all purposes, and whether the action brought is permissible and maintainable is a matter subject to judicial review." *People v. Singer*, 85 N.Y.S. 2d 727, 731 (N.Y. Sup. Ct. N.Y. Cnty. 1949) (citing *Lowe*, 117 N.Y. at 194–95). Upon such review, "[u]nless … it appears that the matters alleged affect the public interest in the true and proper sense, rather than affecting individual private rights and interests, then the State

[25] The plain language of § 63 itself further establishes the NYAG's power is by no means unfettered. The NYAG's authority to prosecute and defend suits applies only to "all actions and proceedings in which the state is interested" and for the purposes of "protect[ing] the interest of the state." Exec. Law § 63(1). *Cf. Duguid v. B.K.*, 175 N.Y.S.3d 853, 859–60 (N.Y. Sup. Ct. Saratoga Cnty. 2022).

is without legal capacity to sue." *Singer*, 85 N.Y.S.2d at 730 (citing *People v. Albany & Susquehanna R. Co.*, 57 N.Y. 161, 167 (1874); *People v. O'Brien*, 111 N.Y. 1, 33 (1888); *Lowe*, 117 N.Y. at 191.

Thus, the *sine qua non* for the NYAG is to establish an interest within the public purpose of her office beyond that of the private litigants. To hold otherwise is to eliminate any, even theoretical, possibility of judicial oversight over the maintenance of actions under the statute. Such result is inconsistent with the plain language of § 63(12) and established precedent and was not (and could not have been) contemplated by the Legislature.[26]

Executive Law § 63(12) cases invariably involve some actual public interest that the NYAG seeks to vindicate, which is a stark contrast to what she seeks to do here in attempting to become the *post hoc* arbiter of the marketplace by interjecting her own judgment into strictly private transactions. *See Feldman*, 210 F. Supp. 2d at 302 ("repeated acts of deception [were] directed at a broad group of individuals" including "unsophisticated individual sellers, such as the elderly and one-time participants").[27]

In contrast, this case centers around a few discrete complex transactions involving only

[26] The undisputed legislative purpose behind § 63(12) is to "afford *the public and consumers* expanded protection from deceptive and misleading business practices[.]" *State v. Bevis Indus., Inc.*, 314 N.Y.S.2d 60, 64 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (emphasis added); *People v. 21st Century Leisure Spa Int'l Ltd.*, 583 N.Y.S.2d 726, 729 (N.Y. Sup. Ct. N.Y. Cnty. 1991) (Section 63(12)'s purpose "is to afford *the consumer* protection") (emphasis added); *Allstate Ins. Co. v. Foschio*, 462 N.Y.S.2d 44, 46–47 (2d Dep't 1983) (purpose "is to afford the *consuming public* expanded protection") (emphasis added).

[27] *See also People v. MacDonald*, 330 N.Y.S.2d 85, 88–89 (Sup. Ct. 1972) (ensuring public safety via enforcement of vessel navigation laws); *Cortelle Corp.*, 38 N.Y.2d at 85; *Apple Health & Sports Clubs*, 80 N.Y.2d at 806; *People v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009); *People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409 (1st Dep't 2016); *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 627 (2018); *People v. Greenberg*, No. 401720/20005, 2010 WL 4732745, at *11 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 21, 2010); *State v. Ford Motor Co.*, 74 N.Y.2d 495 (1989); *People v. N. Leasing Sys., Inc.*, 193 A.D.3d 67, 70 (1st Dep't 2021); *State v. Wolowitz*, 468 N.Y.S. 2d 131, 135 (2d Dep't 1983); *Ernst & Young*, 114 A.D.3d 569 (complaint containing allegations of defendants "defrauding the investing public" (*Ernst & Young LLP*, No. 451586/2010, NYSCEF No. 1 at 1, 5 (N.Y. Sup. Ct. N.Y. Cnty. 2013)).

sophisticated counterparties that were represented by equally sophisticated legal counsel.[28] Each transaction was governed by extensively negotiated agreements fully defining the parties' respective obligations, what conduct constituted any breach, and, importantly, the consequences of any breach. The parties' relationships were therefore fully defined and self-contained. Each transaction was extraordinarily profitable for the counterparties and none of the contracts were ever breached. (Defs. SOF ¶¶ 96, 142, 154). None of the parties to any of these transactions ever lodged any complaint with the NYAG or otherwise claimed any fraud, misrepresentation, or breach.

The record does not contain a scintilla of evidence of any public harm (or for that matter, private harm).[29] Thus, the NYAG lacks the authority and capacity to now maintain this action for a lack of public impact.[30] And unlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims. Courts recognize § 63(12) claims involving the rights of private business entities "should be [adjudicated by] private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *See, e.g.*, *Domino's*, 2021 WL 39592, at *12. Section 63(12) simply does not extend to the complex, "bilateral business

[28] The Complaint and Motion make clear the NYAG simply seeks to insert herself and her own business /risk judgment into private transactions and enforce the terms of complex, private agreements when the actual counterparties to those agreements have not claimed any fraud or breach.

[29] For example, the record does not provide any evidence of any impact on public share prices, *e.g., People v. Greenberg*, 21 N.Y.3d 439 (2013), the public financial markets, *e.g., Coventry First*, 13 N.Y.3d at 114, the public credit markets, *e.g.*, *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005), or members of the public at large, *e.g.*, *Gen. Motors Corp.*, 547 F. Supp. at 703–704; *Gen. Elec. Co.*, 302 A.D.2d 314.

[30] Nor can the NYAG invoke "honesty of the marketplace" as a predicate. Even the § 63(12) claims that have been brought to secure an "honest marketplace," deal with protecting the public at large. *See, e.g.*, *People v. Amazon.com, Inc.*, 550 F. Supp. 3d 122 (S.D.N.Y. 2021); *Gen. Motors Corp.*, 547 F. Supp. at 703–04; *People v. H & R Block, Inc.*, 870 N.Y.S.2d 315, 316 (1st Dep't 2009); *People v. Liberty Mut. Ins. Co.*, 52 A.D.3d 378, 379 (1st Dep't 2008) (bid rigging); *Gen. Elec. Co.*, 302 A.D.2d 314; *Orbital Publ. Grp.*, 169 A.D.3d at 565 (1st Dep't 2019); *Applied Card Sys.*, 27 A.D.3d 104.

transactions" herein at issue. *See id.*; *Exxon Mobil*, 2019 WL 6795771, at *30 (finding NYAG failed to prove Exxon Mobil "made any material misstatements or omissions about its practices and procedures that misled any reasonable investor"); *State v. Parkchester Apts. Co.*, 307 N.Y.S. 2d 741, 748 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (dismissing claims brought by the NYAG in relation to a "private dispute" when the only basis for the Executive Law claim was a breach of contract demonstrating that claims that can be pursued by individual citizens are not actionable by the state). Indeed, had any of the sophisticated banks and insurers been financially harmed or deceived in any way, they would have long ago exercised their substantial legal rights under the operative agreements to seek redress. The NYAG cannot now stand in those sophisticated counterparties' shoes to vindicate a wrong that the counterparties never complained of and that the Defendants never perpetrated.

Here the record establishes conclusively the respective counterparties suffered no harm or injury, and never asserted any default or breach.[31] The record evidence indeed squarely refutes any notion the SOFCs had any capacity or tendency to deceive. The record demonstrates these are sophisticated counterparties that conducted their own analysis and made valid, and profitable, business risk decisions.

Additionally, there has never been any default associated with any loan herein at issue. (Defs. SOF ¶ 96.) Nor was there ever a recommendation at any time that there was a basis to declare default based on President Trump's failure to maintain a net worth of at least $2.5 billion.[32] (Defs. SOF ¶ 97.) Simply put, the NYAG has not established that the transactions at issue herein

[31] *See e.g.*, *supra* at n. 23.

[32] Even according to the NYAG's flawed analysis President Trump's net worth was never below $2.6 billion, rendering impossible any default.

are (or should be) the proper subject of "a law enforcement action under a statute designed to address public harm." *Domino's*, 2021 WL 39592, at *26. In sum, there is simply no role for the NYAG on this record.

B. The SOFCs Were Not Materially Misleading

As noted above, the caselaw provides that the standard for materiality for a § 63(12) claim involves asking whether the recipients of the allegedly false information would have found the information to have an impact on their decision-making process or "significantly altered the 'total mix of information made available.'" *See Exxon Mobil*, 2019 WL 6795771, at *2; *see also Greenberg*, 95 A.D.3d at 485; *JP Morgan*, 350 F. Supp. 2d at 406. This analysis takes into consideration the sophistication of the parties, such that sophisticated entities like large banks and insurance companies "are held to a higher standard." *JP Morgan*, 350 F. Supp. 2d at 406. Such entities "have a duty to protect [themselves] from misrepresentations," which "may apply even in circumstances where the defendant had peculiar knowledge of the relevant facts." *Solutia Inc.*, 456 F. Supp. 2d at 450–51. In this context, evidence—or lack thereof—concerning "falsity, materiality, reliance and causation"; whether the "target audience [was] actually deceived"; and whether the "alleged false statements had real-world impact" "plainly is relevant to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's*, 2021 WL 39592, at *24.

The record in this case, consisting of documentary evidence and expert and fact witness testimony, including the testimony of the very people whom the NYAG claims were the targets of Defendants' alleged fraud, establishes that the SOFCs were not materially misleading and had no capacity or tendency to deceive. No sophisticated counterparty would have considered the SOFCs without doing their own diligence—and none did.

1. <u>The SOFCs Present the Guarantor's Valuations</u>

SOFCs are not designed to establish the precise value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. Banks know that an estimate put forth in a SOFC, even when written to follow GAAP, is "truly an estimate." (Defs. SOF ¶ 67.)

President Trump's SOFCs for 2011 through 2021 were prepared in a personal financial statement format in accordance with GAAP, specifically ASC 274, which applies to the preparation of SOFCs. (Defs. SOF ¶ 51; Bartov Aff., ¶¶ 15-17) ASC 274 requires preparers of compilation reports to include sufficient disclosures to make the statements informative in light of all the information available to the user, including information apart from the financial report that the user may require and receive from the preparer (as DB did from President Trump, addressed below). (Bartov Aff., ¶ 16) Each of President Trump's SOFCs for 2011 through 2021 contains notes, which are an integral part of the SOFC, that provide information (including potential departures from GAAP) to help the user interpret the numbers reported, along with a sweeping disclaimer expressly stating: ***"Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts."*** (*See, e.g.*, NYSCEF 5 at 1.) (emphasis added).

In addition, each SOFC was accompanied by an "Independent Accountants' Compilation Report" letter from the accountants who compiled the SOFCs that noted that the SOFCS contained numerous departures from GAAP and provided a litany of those departures along with a

description of each departure. These compilation letters also expressly informed users that "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with the accounting principles generally accepted in the United States of America" and stated that "users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial condition without the above referenced exceptions to accounting principles generally accepted in the United States of America." (Defs. SOF ¶ 58.)

These disclaimers together with the notes to the SOFCs identify and describe the numerous departures from GAAP as well as the subjective nature of the property valuations. Thus, they put sophisticated users of the SOFCs, such as DB, for whom the SOFCs were prepared, on complete notice to seek additional information from President Trump as they deemed necessary, and to perform their own diligence (which DB in fact did). (Defs. SOF ¶¶ 62, 67–70.) From the standpoint of the user (i.e., DB), both documents must be and are considered together, because both were made available to the user together, and because the SOFCs incorporated the letters by reference. (Bartov Aff., ¶ 18.). As such, the SOFCs had little or no effect either on the lenders' decisions to extend loans to the Defendants or to set the terms of those loans, or on the insurers' decisions to write coverage for the Defendants and price the risk. (Defs. SOF ¶¶ 87–90.)

2. The Actual Users of The SOFCs Agree Any Mistatements Were Immaterial

Representatives of the actual banks and insurance companies testified they did not consider the SOFCs misleading.[33] President Trump was a customer of the Private Wealth Management ("PWM") program at DB, which allowed him to personally guarantee loans for business purposes.

[33] *See e.g.*, *supra* at n. 23.

(Defs. SOF ¶¶ 72, 116.) As Tom Sullivan, Managing Director of DB, testified, to qualify as a customer of the PWM program at DB, an individual needs to have a minimum total net worth of about $50 million. (Defs. SOF ¶ 73.) There is no dispute President Trump's net worth exceeded $50 million, and he was therefore exceedingly qualified for participation in the PWM. Further, for each of the three loans from DB that President Trump personally guaranteed, DB's own employees testified that they were "[c]omfortable with the level of assets" that President Trump held and as well as the "recordation of that amount of liquid assets." (Defs. SOF ¶ 85.)

DB also conducted its own due diligence and applied discounts to the amounts listed in President Trump's SOFCs, thus "protect[ing] [themselves] from" any possible "misrepresentations," just as New York courts have anticipated. *See Solutia Inc.*, 456 F. Supp. 2d at 450–51. DB, a highly sophisticated entity, was comfortable conducting its own analyses and making the loans at issue based on its routine application of "haircuts" to the values listed on SOFCs in order to prepare for any "adverse scenario" where "the client's financial position is under stress." (Defs. SOF ¶ 86.) For example, when DB received a copy of the 2011 SOFC to secure the Trump Endeavor 12 LLC loan described in the Complaint, DB calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC and used its own independent judgment "in setting the appropriate adjustments to achieve conservative valuations of concentrated assets." (Defs. SOF ¶¶ 87, 107.) DB "was focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed." (Defs. SOF ¶ 89.) DB's independent, rigorous, and subjective valuation process—which involves models employing a multitude of variables from several data sources, independent appraisals, and a variety of validity checks—demonstrates that DB's reliance on the information in the SOFCs was

marginal in deciding whether to extent the subject loans and what interest rates to require. (Bartov Aff. ¶ 25) This alone establishes the SOFCs had no capacity or tendency to deceive.

DB's relationship with President Trump was also profitable. (Defs. SOF ¶¶ 95, 101–102.) Between 2012 and 2016, DB received over $75 million in interest on these loans. (Robert Aff., Ex. AAQ ¶ 5.) Indeed, simply by closing on these transactions, DB generated fees totaling approximately $3 million. (Defs. SOF ¶¶ 119, 136, 154.) As a bank representative described, the Doral loan had "performed quite well, enough to warrant considering increasing the loan amount secured by the property." (Defs. SOF ¶ 121.) And the Chicago Loan was a "superb deal" to the bank that was "structured properly" with pricing that was "appropriate" making it a "very, very good safe deal for the bank" based on the "loan-to-values-and the guarantees involved." (Defs. SOF ¶ 133.) The Old Post Office loan was also a successful credit transaction for DB, as the property was "redeveloped and opened and was operating successfully" and the loan was performing such that "all interest payments and covenants were being met." (Defs. SOF ¶ 154.) At no point in the lifecycle of any credit transaction between DB's PWM division and President Trump or any entity affiliated with President Trump did a covenant or payment default ever occur. (Defs. SOF ¶ 96.) Nor did DB ever recommend that there was a basis for declaring a default based on President Trump's failure to maintain a net worth of at least $2.5 billion as required for each transaction. (Defs. SOF ¶ 97.) The NYAG has put forth no evidence that DB ever believed President Trump's net worth was lower than the $2.5 billion required to maintain any DB loans. Moreover, even the NYAG's flawed analysis concludes President Trump's net worth did not go below $2.6 billion.

As to Ladder Capital Finance, the terms of the 40 Wall Street Loan required President Trump to maintain a net worth of only $160 million and liquidity of only $15 million during the

term of the loan. (Defs. SOF ¶ 159.) Again, there is no dispute that President Trump's net worth and liquidity vastly exceeded these amounts. Additionally, the loan has been successful, as Ladder Capital has received in excess of $40 million in interest, and there has never been any default. (Robert Aff., Ex. AAQ ¶ 3).

Testimony of representatives from Zurich further confirms that the SOFCs were not materially misleading. As Joanne Caulfield, a project manager at Zurich, testified, it is common practice for a surety underwriter to require disclosure of financial statements, but Zurich's surety underwriter knew of no legal or contractual provision that required such disclosure from President Trump. (Defs. SOF ¶ 169.) From July 2011 to January 2017, Zurich increased its exposure to President Trump by renewing and expanding the surety program at issue in this case. (Defs. SOF ¶ 172.) ***In 2013, 2014, and 2015, the sole basis upon which Zurich relied to support its underwriting decisions were estimates of President Trump's net worth published by Forbes!*** (Defs. SOF ¶ 173-5.) In fact, despite not receiving traditional disclosure of a SOFC from July 2011 to January 2017, Zurich increased its exposure and renewed bonds as an accommodation to the insurance broker. (Defs. SOF ¶ 176.) According to Caulfield, Zurich reduced the rate President Trump's businesses were paying as an accommodation to the broker and to stave off another insurance company seeking to take the surety program from Zurich, and the account rate was lowered despite Zurich not having reviewed the updated SOFC in approximately four years. (Defs. SOF ¶ 180.) Zurich was simply not concerned with President Trump's financial health. (Defs. SOF ¶ 185.)

Similarly, in December 2016, President Trump's insurance broker reached out to Tokio Marine HCC ("HCC") seeking a quote for additional limits of $5,000,000 to sit above an already-existing Directors & Officers ("D&O") policy. (NYSCEF 1 ¶ 695.) ***Without reviewing any SOFC***,

HCC quoted a policy to sit above the existing policy through the expiration date of February 17, 2017, in exchange for a premium of $40,000, subject to reviewing financials at renewal. (NYSCEF 1 ¶¶ 695–96.)

Further, in addition to the testimony of the actual individuals involved in the subject transactions, expert testimony establishes that banks and insurance companies would not consider any of the alleged misstatements or omissions in the SOFCs to be material. Robert Unell, the Managing Director at Ankura Consulting Group, provided significant testimony about how DB performed its own analyses when assessing whether to make certain loans and did not rely on SOFCs, highlighting how sophisticated lenders such as the Defendants' counterparties here would not find any misstatements of the type alleged by the NYAG to be material. When asked, "Would it be your opinion that if the allegations in the complaint are true, that DB would have reason to have concerns about the accuracy of the SOFCs," Unell flatly answered "No," explaining that "even if the net worth or any of the other . . . allegations were . . . proven true, the net worth was still sufficient to qualify for inclusion in the private wealth bank" and that "Deutsche Bank had ample opportunity to investigate anything" it wanted to (Defs. SOF ¶ 91.) He continued, explaining that above all, liquidity was most important or "material" to the bank and that the bank "went and verified it." (Defs. SOF ¶ 92.)

According to Unell, "SOFCs provide ample information . . . for a sophisticated lender to be able to make . . . their own determination," as those documents "provide the actual amounts" and "how they were calculated" such that if any bank had concerns, it "had an opportunity to challenge those assumptions that were utilized in the preparation of the SOFC." (Defs. SOF ¶ 70.) "[L]enders are trained not to rely on" SOFCs, "which is why the independent analysis in the credit

memo is done." (Defs. SOF ¶ 67.) Unell further testified DB "did what they were supposed to do and verified" certain items and "anything else would have been immaterial." (Defs. SOF ¶ 93.)

Regarding insurance underwriting, David Miller, a former Senior Vice President/Division Officer at Erie Insurance, opined that Zurich, the underwriters for the surety bond program at issue in this case, "didn't rely on asset valuations at all." (Defs. SOF ¶ 182.) Or as Gary Giulietti, an Account Director at Lockton Northeast, testified, describing surety bond transactions with Zurich, liquidity is "all they're relying on, cash, all the way back in the relationship." (Defs. SOF ¶ 182.) In this case, the total exposure extended to President Trump's businesses in connection with the surety program at issue never exceeded $20 million. (Defs. SOF ¶ 182.)

In sum, the NYAG's First Cause of Action fails as a matter of law, and all Defendants are entitled to summary judgment.

C. The Record Shows Defendants Neither Participated In Any Alleged Fraud Nor Had Actual Knowledge Of It

To prevail on a claim for persistent and repeated fraud under § 63(12), the NYAG must show that ***each defendant*** participated in the act or had actual knowledge of it. *See N. Leasing*, 70 Misc. 3d at 267; *Abrahami v. UPC Constr. Co*., 224 A.D.2d 231, 233–34 (1st Dep't 1996). The participation element is satisfied where the defendant "directed, controlled, approved, or ratified the decision that led to the plaintiff's injury." *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 49 (1st Dep't 2012). Merely providing copies of purportedly false financial statements is insufficient. *See Abrahami,* 224 A.D.2d at 233–34. Similarly, brokering a loan transaction where others allegedly committed fraud does not by itself create an inference of participation in the fraud. *Frawley v. Dawson*, No. 6697/07, 2011 WL 2586369, at *8 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2011).

If the NYAG cannot show that a particular Defendant participated in a persistent and repeated fraud, she must show such Defendant had actual knowledge of the fraud. *See N. Leasing*,

70 Misc. 3d at 267; *Abrahami*, 224 A.D.2d at 233–34. Where, as here, actual knowledge is required under New York law, "[m]ere negligent failure to acquire knowledge of the falsehood is insufficient." *Marine Midland Bank v. Russo Produce Co.*, 50 N.Y.2d 31, 44 (1980). Likewise, showing that a Defendant "had access to the information by which it could have discovered the fraud is not sufficient." *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 75–77 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012) (citations omitted).

Thus, in order to show that a particular Defendant had "actual knowledge," the NYAG must put forth facts sufficient to support a finding of at least grossly negligent conduct on the part of that Defendant. New York courts define gross negligence as conduct that "smack[s] of intentional wrongdoing or evince[s] a reckless indifference to the rights of others." *Gallagher v. Ruzzine*, 46 N.Y.S.3d 323, 328 (4th Dep't 2017) (citation omitted). An officer may also be deemed grossly negligent if "the totality of the circumstances" show that the officer acted with "willful blindness or conscious avoidance." *State v. United Parcel Serv., Inc*., 253 F. Supp. 3d 583, 666–67 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019) (citations omitted). But "[t]here must be evidence capable of supporting a finding that the defendant was aware of a high probability of the [incriminating] fact in dispute and consciously avoided confirmation of that fact." *Id.* at 667 (citation omitted) (alteration in original).

The NYAG must also show actual knowledge for *all* Defendants, including the corporate entities named in the Complaint. Usually, "[w]hen corporate agents act within the scope of their authority, 'everything they know or do is imputed to their principals.'" *People v. Gross*, 169 A.D.3d 159, 169 (2d Dep't 2019) (citations omitted). However, there are "exception[s] to the rule of imputed knowledge." *Id.* at 170. Notably, "imputation of knowledge may not apply where there is a specific statutory requirement of actual knowledge, and imputing knowledge would effectively

negate the purpose of the actual knowledge requirement." Robert L. Haig, *Imputed Knowledge*, 4D N.Y. Prac., Com. Litig. in N.Y. State Courts § 102:46 (5th ed., 2022). As the Court of Appeals has explained, if "knowledge of any [employee] may be imputed to a corporate [ ] employer, then the statutory distinction becomes significantly blurred and uneven. We have noted that strict construction of this statutory scheme is essential to ensure that the legislative policy of punishing only those with actual knowledge is properly effectuated." *Roberts Real Est., Inc. v. N.Y. State Dep't of State, Div. of Licensing Servs.*, 80 N.Y.2d 116, 122 (1992). Allowing the NYAG to impute actual knowledge here, "would contradict that interpretation by arrogating to itself instead an expansive new power not granted by the Legislature." *Id.*

Here, the NYAG has casually lumped together all Defendants as the "Trump Organization", asserting that all Defendants should be liable for each transaction at issue in this case. She has not explained, for example, how the Defendant corporate entities that held property at issue in the various transactions—Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC—had *anything* to do with transactions other than those applicable to their relevant properties. Defendant Trump Old Post Office LLC cannot be liable for any alleged fraud that occurred in the 40 Wall Street Loan and vice versa.

Meanwhile, the Defendants have put forth undisputed evidence that certain Defendants did not participate in and lacked actual knowledge of any alleged misstatements or omissions contained in the SOFCs, or shown that the record is devoid of any evidence to substantiate the NYAG's allegations. The Defendants have also shown certain Defendants played no role in securing the insurance policies at issue in this case, or that the record is devoid of any evidence to the contrary.

Preparation of the SOFC. Unrebutted deposition testimony demonstrates Eric Trump was not involved in preparing the SOFCs. (Defs. SOF ¶¶ 199, 200.) Eric Trump testified, "I never saw or ever even remotely worked on the Statement of Financial Condition. Th[at] was not my purview. Th[at] was not what I did." (Defs. SOF ¶ 200.) He further testified that he knew "just about nothing about the Statement of Financial Condition" and had "never seen" or "worked on" the SOFCs. (Defs. SOF ¶ 200.) He also had no role in the "valuation process in the company." (Defs. SOF ¶ 200.) Donald Bender, the engagement partner at Mazars, testified that he had no conversations with Eric Trump concerning the preparation of the SOFCs. (Defs. SOF ¶ 200.) Eric Trump also disclaimed any knowledge of the alleged falsities in the SOFC, stating that he relied on the accounting team to prepare the SOFCs. (Defs. SOF ¶ 201.)

Donald Trump, Jr. also did not participate in the preparation of the SOFCs. (Defs. SOF ¶ 199.) Bender testified that in preparing the SOFCs, he did not discuss with Donald Trump, Jr. the preparation of the SOFCs. (Defs. SOF ¶ 202.) The NYAG has not introduced any evidence that Donald Trump, Jr., participated in the preparation or submission of the SOFCs.

The record is also devoid of any evidence that the following Defendants were at all involved in the preparation of the SOFC or had actual knowledge of any alleged misrepresentations: Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. While the NYAG alleges that this "host of entities" are incorporated within the "Trump Organization," the Complaint alleges nothing concerning these entities beyond that they owned properties mentioned in the Complaint or received loans at issue in the Complaint. No record evidence establishes these entities were involved in creating or submitting the SOFCs.

Thus, to the extent that the NYAG asserts any claims against Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member based on their participation in the creation of the SOFCs or their actual knowledge of the alleged falsities in the SOFCs under the First Cause of Action, those claims fail. For for these Defendants, the Court's analysis on the First Cause of Action can stop there. The undisputed facts demonstrate these Defendants had no involvement in or knowledge of any alleged falsities in the SOFCs.

Surety Bond Program. The NYAG alleges that from 2007 through 2021, Zurich underwrote a surety bond program for the "Trump Organization" and that the SOFC were used in this process. (NYSCEF 1 ¶¶ 678–91.) Zurich representatives testified that they had no communications with Eric Trump or Donald Trump, Jr. in relation to the surety bond program. (Defs. SOF ¶ 187.) The NYAG has not rebutted this evidence, nor has she offered any evidence to suggest that any of these individuals had any knowledge of the submission of the SOFCs to Zurich. Further, the record lacks any evidence that The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC obtained surety bonds from Zurich. Nor is there any evidence to establish that any actions taken by Mr. Weisselberg were taken in his capacity as trustee on behalf of the Trust. To the extent the NYAG's claims concerning the First Cause of Action are related to transactions with Zurich and the surety bond program, they fail as to Defendants Eric Trump, Donald Trump, Jr., the Trust, The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings

Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC.

Directors & Officers Liability Insurance. Finally, the NYAG alleges that in December 2016, the "Trump Organization's" insurance broker reached out to an underwriter at HCC regarding a D&O policy to sit on top of an already-existing $5 million policy with Everest and that the 2015 SOFC was submitted to HCC as a part of this process. (NYSCEF 1. ¶¶ 692, 698.) The HCC policy was renewed several times. (Defs. SOF ¶¶ 189, 192.) There is no evidence in the record to suggest that any Defendants other than the Trust and Mr. Weisselberg were involved in or had knowledge of this transaction.

IV. The NYAG Is Not Entitled To Disgorgement As A Matter Of Law.

Even if this Court were to find that the NYAG is entitled to partial summary judgment on the First Cause of Action, the NYAG is not entitled to disgorgement as a remedy for any violation of § 63(12) as a matter of law.

Notably, the NYAG only mentions disgorgement once in her summary judgment memorandum, explaining in a footnote:

> While the focus of this motion is only on the People's First Cause of Action for the sake of expediency, these same predicate findings – that the SFCs were false and were used repeatedly and persistently by Defendants to commit fraud in connection with business transactions – are equally applicable to the People's remaining causes of action and will necessarily narrow the scope of matters to be addressed at trial, including at a minimum the People's claims for relief in the form of disgorgement, bans, and other equitable remedies.[34]

[34] The NYAG's decision to spend no effort on developing its arguments with respect to the Second through Seventh Causes of Action is reflective of her overall strategy in this case, which has been to focus solely on the First Cause of Action without ever specifying the exact conduct she believes subjects any particular Defendants to liability under the other provisions. For the reasons asserted in the Defendants' Motion for Summary Judgment, several Defendants are entitled to summary judgment on the Second through Seventh Causes of Action.

(NYSCEF 766 at 1 n.1.) The NYAG is wrong. Disgorgement is simply unavailable under § 63(12) or the underlying statutory claims in the Second through Seventh Cause of Action, and, thus, it is unavailable in this case.

In any § 63(12) case, "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced." *City of New York v. FedEx Ground Package Sys., Inc.,* 314 F.R.D. 348, 362 (S.D.N.Y. 2016). But "[i]t is an 'elemental canon' of statutory construction that where a statute expressly provides a remedy, 'courts must be especially reluctant to provide additional remedies.'" *Grochowski v. Phx. Const*., 318 F.3d 80, 85 (2d Cir. 2003) (quoting *Karahalios v. Nat'l Fed'n of Emps., Local 1263,* 489 U.S. 527, 533 (1989)). Allowing a plaintiff to pursue an unenumerated remedy would "be inconsistent with the underlying purpose of the legislative scheme" and amount to an "end-run" around the statute. *Id.* at 86 (citing *Davis v. United Air Lines, Inc.,* 575 F. Supp. 677, 680 (E.D.N.Y. 1983) (internal quotations omitted). Neither the NYAG as plaintiff nor § 63(12) itself are exempt from this general rule. *People v. Direct Revenue, LLC,* No. 401325/06, 2008 WL 1849855, *7 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008); *see also People v. Romero,* 91 N.Y.2d 750, 754 (1998) ("Attorney General . . . is without any prosecutorial power except when specifically authorized by statute.") (citations omitted).

A plain reading of the text of § 63(12) reveals that disgorgement is not an available remedy under the statute. Section 63(12) specifically instructs that the NYAG may "apply, in the name of the people of the state of New York . . . for an order enjoining the continuance" of the purportedly fraudulent "business activity or any fraudulent or illegal acts, directing restitution and damages." Therefore, the NYAG is limited to these "three enumerated remedies": "injunctive relief, restitution, and damages." *FedEx*, 314 F.R.D. at 361. Disgorgement is not restitution: "[d]isgorgement is distinct from the remedy of restitution because it focuses on the gain to the

wrongdoer as opposed to the loss of the victim." *Ernst & Young LLP,* 114 A.D.3d at 569. And while it may be available under the Martin Act, one of the alleged violations at issue in *Ernst & Young*, it is simply not an enumerated remedy available under § 63(12).

Caselaw confirms this conclusion. Addressing whether disgorgement was an available remedy in light of this plain reading, the court in *Direct Revenue* found that "while the Executive Law and the GBL permit monetary relief in the form of restitution and damages to consumers, the statutes do no[t] authorize the general disgorgement of profits received from sources other than the public. And even where restitution may be awarded to consumers, it may only be granted in an amount *related to the actual damages caused by the misconduct*." *Id.* (emphasis added). The court concluded that the NYAG is "strictly limited to recovery as specifically authorized by statute," and because disgorgement is not one of the authorized remedies under § 63(12), allowing "[d]isgorgement of [defendants'] profits to the state would effectively constitute punitive damages not authorized by statute." *Id.* at *8.

Disgorgement is unavailable under the Second through Seventh Causes of Action as well. Here, the NYAG alleges violations of the following underlying statutes: "New York Penal Law § 175.10 (Falsifying Business Records); Penal Law § 175.45 (Issuing a False Financial Statement); and Penal Law § 176.05 (Insurance Fraud)." (NYSCEF 1 ¶ 5.) None of these statutes provides that disgorgement as an available remedy for a violation. Rather, they provide that a violation constitutes a misdemeanor or felony in varying degrees, thereby subjecting a violator to fines up to certain amounts and jail or prison time. *See* N.Y. Penal Law § 175.10 ("class E felony"); *id.* § 175.45 ("class A misdemeanor"); *id.* § 176.30 ("class B felony" if fraud in the first degree). Therefore, disgorgement is unavailable as a remedy to the NYAG as a matter of law in this case.

Moreover, even if this Court were to find that disgorgement is an available remedy, which it should not, the NYAG has never even attempted to show any tie between the alleged "gains" made by the Defendants and the alleged fraudulent conduct. There needs to be "a 'reasonable approximation of profits causally connected to the violation.'" *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 91 A.D.3d 226, 233 (1st Dep't 2011) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)), *rev'd on other grounds*, 21 N.Y.3d 324 (2013); *S.E.C. v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013) (same); *see also* Deborah A. DeMott, *Causation in the Fiduciary Realm*, 91 B.U. L. Rev. 851, 857 (2011). ("A basic limit to a fiduciary's liability to disgorge ill-gotten gains is causal—the liability does not extend to assets acquired in a manner unrelated to the breach of duty."). Given the NYAG has put forth absolutely no evidence of the materiality of the alleged misstatements contained in the SOFCs, she has not shown (and cannot show based on Defendants' expert and witness testimony) that such misstatements actually *caused* the Defendants to make any profits. If the SOFCs and any alleged misrepresentations made in the SOFCs did not affect these financial institutions in their decision-making, there is no basis to disgorge any "ill-gotten" gains. The NYAG cannot therefore recover disgorgement of profits as a matter of law.

The NYAG's motion for partial summary judgment must be denied to the extent that the NYAG seeks disgorgement because that remedy is not available under the NYAG's causes of action in this case.

CONCLUSION

As set forth above, the First Department's clear limitations mandate eviscerates a substantial portion of this action and requires the dismissal of many of the NYAG's claims as time-barred. Notwithstanding the procedural infirmities, this action also must be dismissed because the NYAG lacks authority to maintain this action and fails to show that the SOFCs were false or fraudulent. In addition, the record shows that the SOFCs were not materially misleading and that

Defendants neither participated in any alleged fraud nor had actual knowledge of it. In the NYAG's obsessive, compulsive attempt to "get" President Trump, she even continues to unfairly drag his children Eric Trump and Donald Trump, Jr. along for the ride, despite their having had no direct involvement in the creation, preparation, or use of the SOFCs. It's time for the Court to put an end to this crusade by dismissing this action in its entirety.

Dated: New York, New York
September 1, 2023

s/ *Michael Madaio*
MICHAEL MADAIO
HABBA MADAIO & ASSOCIATES, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com
mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

CHRISTOPHER M. KISE
(*Admitted Pro Hac Vice*)
JESUS M. SUAREZ
(*Admitted Pro Hac Vice*)
LAZARO P. FIELDS
(*Admitted Pro Hac Vice*)
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Phone: (850) 332-0702

Dated: Uniondale, New York
September 1, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald Trump, Jr., and Eric Trump

Email: ckise@continentalpllc.com
jsuarez@continentalpllc.com
lfields@continentalpllc.com
Counsel for The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
Phone: (212) 787-3300
Email: armenmorian@morianlaw.com
Counsel for Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court and the Order, dated June 21, 2023 (NYSCEF Doc. No. 638), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 24,580 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 1, 2023

Respectfully submitted,

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
Counsel for Donald Trump, Jr. and Eric Trump

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- Donald J. Trump, *et al*., Defendants.	Index No. 452564/2022 Hon. Arthur Engoron

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Of Counsel

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

ARGUMENT 4

I. DEFENDANTS PROFFER NO EVIDENCE TO DISPUTE THAT THE SFCS ARE FALSE AND MISLEADING WITH THE CAPACITY OR TENDENCY TO DECEIVE BANKS AND INSURERS 4

A. Defendants' Attempts To "Dispute" Plaintiff's Factual Assertions Are Legally Insufficient 5

B. The Court Should Assess The Veracity Of The SFCs Based On Whether The Assets Are Stated At Their "Estimated Current Values" 6

C. Defendants Fail to Raise Any Triable Issues Of Fact Concerning Their Deceptive Practices In Valuing Assets 7

1. Asset Values That Far Exceed Contemporaneous Appraisals Are False And Misleading 8

2. Asset Values That Ignore Legal Restrictions Are False And Misleading 11

3. Asset Values Calculated Using Erroneous Data Are False And Misleading 13

4. Asset Values Calculated On A Basis That Conflicts With What Mr. Trump And His Trustees Represented In The SFCs Are False And Misleading 15

5. Defendants' One Billion Dollar Plus Value For Doral Is Inadmissible And Irrelevant 18

D. The Inflated SFCs Had The Capacity Or Tendency To Deceive Users 20

II. PLAINTIFF'S FIRST CAUSE OF ACTION IS TIMELY AS TO ALL DEFENDANTS BASED ON NUMEROUS FRAUDULENT TRANSACTIONS COMPLETED BY THEM WITHIN THE LIMITATIONS PERIOD 24

A. The First Department Did Not Accept Defendants' Argument That Plaintiff's Claims For Post-Closing SFC Preparation, Submission, And Certification Accrue On The Loan Closing Date 24

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants 28

1. Under *JUUL*, Non-Signatory Corporate Officers And The Trust May Be Bound By A Tolling Agreement Signed By The Corporation 28

2. Judicial Estoppel Does Not Apply Here 30

3. Extrinsic Evidence Is Inadmissible To Alter The Unambiguous Terms Of The Tolling Agreement 32

III. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS 33

IV. THE COURT SHOULD MAKE FINDINGS OF FACT TO NARROW ISSUES FOR TRIAL ON PLAINTIFF'S REMAINING CLAIMS UNDER CPLR 3212(G) 36

CONCLUSION 41

TABLE OF AUTHORITIES

CASES

35 W. Realty Co., LLC v. Booston LLC, 171 A.D.3d 545 (1st Dep't 2019) 31

Alvarez v. Prospect Hosp., 68 N.Y.2d 320 (1986) 4, 7

Amaya v. Denihan Ownership Co., LLC, 30 A.D.3d 327 (1st Dep't 2006) 6

B.D. v. E.D., No. 111, 2023 WL 4770159 (1st Dep't July 27, 2023) 33

Bates v Long Island Railroad, 997 F. 2d 1028 (2d Cir.) 30

Bobby v. Bies, 556 U.S. 825 (2009) 31, 32

Bradley v. Soundview Healthcenter, 4 A.D.3d 194 (1st Dep't 2004) 6

Callisto Pharm., Inc. v. Picker, 903 N.Y.S.2d 370 (1st Dep't 2010) 4

Cornell v. *360 West 51st Street Realty, LLC*, 986 N.Y.S.2d 389 (2014) 10, 19, 20

CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC, 195 A.D.3d 12 (1st Dep't 2021) 26

Diaz v. New York Downtown Hosp., 99 N.Y.2d 542 (2002) 6, 11

Donohue v. Cuomo, 38 N.Y.3d 1 (2022) 33

Ellington v. EMI Music, Inc., 24 N.Y.3d 239 (2014) 33

Epic W14 LLC v. Malter, 211 A.D.3d 574 (1st Dep't 2022) 36

Friends of Animals v. Associated Fur Mfrs., Inc., 46 N.Y.2d 1065 (1979) 5

Garcia v. Tri-Cnty. Ambulette Serv., Inc., 282 A.D.2d 206 (1st Dep't 2001) 36

Ghatani v. AGH Realty, LLC, 181 A.D.3d 909 (2nd Dep't 2020) 31

Greenfield v. Philles Records, Inc., 98 N.Y.2d 562 (2002) 33

Hassett v. *Long Island R.R. Co.*, 787 N.Y.S.2d 837 (Sup. Ct. Kings Cty. 2004) 10, 19, 20

Herrera v. Wyoming, 139 S. Ct. 1686 (2019) 31

Kass v. Kass, 91 N.Y.2d 554 (1998) 33

Manipal Educ. Americas, LLC v. Taufiq, 203 A.D.3d 662 (1st Dep't 2022) 26

Moonstone Judge, LLC v. Shainwald, 38 A.D.3d 215 (1st Dep't 2007) 4

People of the State of New York v. Trump, No. 452564/2022, 2022 WL 16699216 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) 34, 35

People Pharmacia Corp., 27 Misc. 3d 368 (Sup. Ct. Albany Cty. 2010) 26

People v. Allen, 198 A.D.3d 531 (1st Dep't 2021) 26

People v. Boyajian Law Offs., P.C., 17 Misc.3d 1119(A) (Sup. Ct., N.Y. Cty. 2007) 27

People v. Cohen, 214 A.D.3d 421 (1st Dep't 2023) 26

People v. Coventry First LLC, 52 A.D. 3d 345 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009) 34

People v. Greenberg, 946 N.Y.S.2d 1 (1st Dept. 2012), *aff'd*, 21 N.Y.3d 439 (2013) 4

People v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023) 28, 29, 32

People v. The Trump Organization, Inc., No. 451685/2020, 2022 WL 1222708 (Sup. Ct. N.Y. Cty. Apr. 26, 2022), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023) 31

People v. Trump Entrepreneur Initiative, 137 A.D.3d 409 (1st Dep't 2016) 13

People v. Trump, 217 A.D.3d 609 (1st Dep't 2023) 24

People v. Trump, No. 452564/2022, 2023 WL 128271 (N.Y. Sup. Ct. Jan. 06, 2023), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023) 35

Performance Comercial Importadora E Exportadora Ltda v. Sewa Int'l Fashions Pvt. Ltd., 79 A.D.3d 673 (1st Dep't 2010) 5

PL Diamond LLC v. Becker-Paramount LLC, 16 Misc. 3d 1105(A), 2007 WL 1865044 (Sup. Ct. N.Y. Cty 2007) 30

Reif v. Nagy, 175 A.D.3d 107 (1st Dep't 2019) 19

Roques v. Noble, 73 A.D.3d 204 (1st Dep't 2010) 6

Schron v. Troutman Sanders LLP, 20 N.Y.3d 430 (2013) 33

Seneca Nation of Indians v. New York., 26 F. Supp. 2d 555 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999) 30

Signature Fin. LLC v. Garber, 159 N.Y.S.3d 38 (1st Dep't 2021) 4, 6

State v. 7040 Colonial Rd. Assocs. Co., 176 Misc. 2d 367 (Sup. Ct., N.Y. Cty. 1998) 26

State v. Metz, 671 N.Y.S.2d 79 (1st Dept. 1998) 4

State v. Stalling, 183 A.D.2d 574 (1st Dep't 1992) 31

Tannenbaum v. Provident Mut. Life Ins. Co. of Philadelphia, 386 N.Y.S.2d 409 (1st Dep't. 1976), *aff'd*, 364 N.E.2d 1122 (1977). 21

W.W.W. Assoc. v. Giancontieri, 77 N.Y.2d 157 (1990) 33

Zemel v. Horowitz, 11 Misc. 3d 1058(A), 2006 WL 516798 (Sup. Ct. N.Y. Cty 2006) 30

Zuckerman v. City of New York, 49 N.Y.2d 557 (1980) 4, 7

RULES

CPLR § 3212(g) 36

TREATISES

4B N.Y.Prac., Com. Litig. in New York State Courts § 73:30 (5th ed.) 36

Restatement (Second) of Contracts § 306 (1981) 29

Restatement (Second) of Judgments § 28 (1980) 31

The People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submit this Reply Memorandum of Law (with Appendix) and the accompanying Reply Affirmation of Colleen K. Faherty, dated September 15, 2023 ("Faherty Reply Aff."), in further support of Plaintiff's Motion for Partial Summary Judgment (NYSCEF No. 765).[1]

PRELIMINARY STATEMENT

In support of their motion, the People have presented reams of evidence detailing the various deceptive practices Defendants employed to prepare false and misleading personal financial statements that grossly inflated Donald Trump's assets, and hence his annual net worth, that Defendants then fraudulently submitted and certified as accurate to banks and insurers. In response, Defendants fail to raise any triable issue of fact to defeat Plaintiff's motion.

Defendants' principal argument is that when it comes to Mr. Trump's assets, "[t]here is no such thing as true, correct or objective values . . . in economic theory, or in the applicable laws, regulations, and principles that govern this case." Defendants' Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment (NYSCEF No. 1292) ("Defs. Opp. MOL") at 29. Rather, Mr. Trump's assets are worth whatever he believes they are worth from his perspective as a self-described "creative and visionary real estate developer who sees the potential and value of properties that others do not, not on a year to year time horizon but often decades ahead." Defs. Opp. MOL at 20-21. In other words, because there are no true or correct values and the values are whatever Mr. Trump says they are, his financial statements can never be false or misleading.

[1] The defined terms used in this reply brief are the same as those used in the People's opening brief.

Defendants' argument is without merit because under governing accounting rules and the representation contained in Mr. Trump's financial statements, his assets were required to be stated at their "Estimated Current Values." *See, e.g.*, Ex. 1 at -3136. Defendants acknowledge that "Estimated Current Value" is "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell,"[2] which is a far cry from whatever amount Mr. Trump believes an asset is worth from his "creative and visionary" perspective. Indeed, Defendants' assertion that the asset values in Mr. Trump's financial statements are based on Mr. Trump's "creative and visionary" perspective rather than "Estimated Current Values" based on market conditions is sufficient without more to support a finding that the financial statements are false and misleading.

Apart from this argument, Defendants raise a variety of other objections, excuses, conclusory assertions, and expert opinion prognostications without any evidentiary support that are legally insufficient to dispute the many deceptive practices Mr. Trump and his trustees employed to inflate his asset values by at least 17-39% in any given year—amounts which have the capacity or tendency to deceive the users of his financial statements. More specifically, Defendants fail to dispute that they: (i) valued properties far in excess of what appraisals indicated were the estimated current values or market values of the properties; (ii) disregarded legal restrictions that any willing buyer and willing seller would consider in determining "estimated current values"; (iii) used erroneous data to calculate asset values; and (iv) derived values in ways that conflict with representations in the financial statements about how the valuations were prepared.

[2] Defendants' Response to Plaintiff's Rule 202.8-g Statement of Material Facts (NYSCEF No. 1293) ("Defs. 202.8-g Response") ¶31.

Defendants also disregard the First Department's statute of limitations ruling that § 63(12) claims accrue each time a fraudulent or illegal business transaction is completed, which occurred each time Mr. Trump's false and misleading financial statements were prepared, submitted, and certified to banks and insurers. Rather, Defendants argue that the claims here accrued not on the date when those transactions were completed, but on the closing dates of the loans associated with those transactions. Under this distorted view of the appellate court's decision, even the Defendants' submission and certification of the *2021 financial statement* to Deutsche Bank on the Doral Loan is time-barred because the Doral loan closed in 2012. Defendants' untenable position would effectively give borrowers free license to commit fraudulent business transactions without consequence and upends settled New York law on when claims accrue.

Finally, Defendants raise arguments that this Court and the appellate division have previously rejected—namely, that the Attorney General lacks standing and capacity to bring this action absent public harm, that disclaimers in the financial statements provide a complete defense, and that § 63(12) does not permit the Attorney General to seek disgorgement. These arguments have no more merit now than they did before; they should be summarily rejected.

* * *

The People have established beyond dispute that each of the financial statements from 2011 to 2021 was: (i) false and misleading with the capacity or tendency to deceive; and (ii) was used in connection with fraudulent business transactions with banks and insurers that were completed within the applicable limitations period to obtain favorable financial benefits that Defendants would otherwise not have received. Accordingly, the People are entitled to judgment on their First Cause of Action. In addition, the Court should exercise its discretion under CPLR § 3212(g) to enter an order making detailed findings of fact that Mr. Trump's financial statements

were false and misleading and the submission and certification of those statements by Mr. Trump and his business associates to banks and insurers were fraudulent.

ARGUMENT

I. DEFENDANTS PROFFER NO EVIDENCE TO DISPUTE THAT THE SFCs ARE FALSE AND MISLEADING WITH THE CAPACITY OR TENDENCY TO DECEIVE BANKS AND INSURERS

Once the moving party has made a *prima facie* showing that she is entitled to summary judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial.[3] *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324–25 (1986). Where the opposing party's response to the movant's statement of undisputed facts is "bereft of citations to evidence supporting its contentions," it is "inadequate to the task of contravening [the movant's] statement of undisputed facts" and the court should "deem[] the factual assertions contained in movant's statement . . . to be admitted by" the opposing party. *Callisto Pharm., Inc. v. Picker*, 903 N.Y.S.2d 370, 371 (1st Dep't 2010) (citing *Moonstone Judge, LLC v. Shainwald*, 38 A.D.3d 215 (1st Dep't 2007)); s*ee also Signature Fin. LLC v. Garber*, 159 N.Y.S.3d 38, 39 (1st Dep't 2021) (holding where the opposing party offers nothing but conclusory assertions without evidentiary proof, summary

[3] Defendants argue that Plaintiff's reliance on sworn testimony elicited during the Attorney General's investigative interviews in Plaintiff's 202.8-g Statement is objectionable because of the "coercive nature" of the interviews and their lack of opportunity to conduct cross-examination. *See* Defs. 202.8-g Response at 2 (Preliminary Objection No. 1). This "objection" is without merit. The First Department has specifically held that testimony from investigative interviews "conducted by the Attorney General before an action" is brought is "admissible in support of a motion for summary judgment." *People v. Greenberg*, 946 N.Y.S.2d 1, 9 (1st Dept. 2012), *aff'd*, 21 N.Y.3d 439 (2013); *see also State v. Metz*, 671 N.Y.S.2d 79, 83–85 (1st Dept. 1998).

judgment to the moving party is proper) (citing *Friends of Animals v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 1067–1068 (1979)).

As discussed below, Defendants fail to raise any triable issues that defeat the People's entitlement to judgment on their First Cause of Action for fraud under § 63(12).

A. Defendants' Attempts To "Dispute" Plaintiff's Factual Assertions Are Legally Insufficient

To a significant extent, in responding to Plaintiff's 202.8-g Statement, Defendants either admit that Plaintiff's factual assertions are "undisputed" or they attempt to raise disputes without record support, which is legally insufficient. *See* Appendix, Tab 1.

For example, in Defendants' 202.8-g Response, they purport to "dispute" nearly 100 factual assertions on the basis that the phrase "Trump Organization" "improperly groups all entity Defendants together without regard for the discrete legal entity of each Defendant and fails to specify as to which named Defendant(s)—or non-Defendant entity—the conduct alleged is attributed." *See, e.g.*, Defendants' 202.8-g Response ¶1. This pat response is legally insufficient to create a triable issue of fact. As Defendants admit in their recently-filed verified mandamus petition, "Donald J. Trump is the beneficial owner of a vast number of corporate entities which, although legally distinct, *operate colloquially as the Trump Organization*."[4] Faherty Reply Aff. Ex. 504 (*In re Trump v. Engoron* (1st Dep't filed September 14, 2023), Verified Joint Article 78 Petition at ¶18) (emphasis added). Moreover, Defendants do not cite any record evidence to support the proposition that no Defendants were involved in the asserted conduct, nor do they

[4] This statement in Defendants' verified pleading "constitutes a formal judicial admission and evidence of the fact admitted." *Performance Comercial Importadora E Exportadora Ltda v. Sewa Int'l Fashions Pvt. Ltd.*, 79 A.D.3d 673, 674 (1st Dep't 2010).

assert that only specific Defendants are involved and not others. Such conclusory assertions without evidentiary proof are not enough to defeat summary judgment. *See Garber,* 159 N.Y.S.3d at 39.

In numerous other instances, Defendants do not dispute Plaintiff's factual assertion, but instead offer conclusory assertions that the cited evidence is inaccurate, supported only by speculative statements from their experts that are inadmissible; expert opinions that have no support in the record are legally insufficient to defeat summary judgment.[5] *See Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 (2002) ("Where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment."); *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010) ("[A]n expert cannot reach a conclusion by assuming material facts not supported by record evidence."); *Amaya v. Denihan Ownership Co., LLC*, 30 A.D.3d 327, 327 (1st Dep't 2006) (finding that expert affidavit has no probative value on summary judgment where it "contained speculative, conclusory assertions" and "cited to various broad or inapt . . . rules, regulations and standards").

B. The Court Should Assess The Veracity Of The SFCs Based On Whether The Assets Are Stated At Their "Estimated Current Values"

Defendants claim that Mr. Trump and his trustees valued assets from Mr. Trump's perspective as "a creative and visionary real estate developer who sees the potential and value of

---

[5] Unlike Defendants, the People have chosen not to rely on the opinions of their experts in support of their dispositive motion. But it is not because the People view their experts' opinions to be in any way "flawed" as Defendants suggest. Defs. Opp. MOL at n.12. Rather, it is because the People recognize that the conflicting opinions of the parties' respective experts cannot be resolved by the Court on summary judgment, *Bradley v. Soundview Healthcenter,* 4 A.D.3d 194, 194 (1st Dep't 2004), a settled procedural rule that Defendants acknowledge in their own opposition brief but fail to heed, *see* Def. Opp MOL at n.3.

properties that others do not, not on a year to year time horizon but often decades ahead." Defs. Opp. MOL at 21. This "creative and visionary" post hoc rationalization is at odds with the applicable accounting rules and the plain language of the SFCs; as Defendants *concede*, ASC 274 "requires asset values reported in personal financial statements to be based on 'Estimated Current Value,'" Defs. 202.8-g Response ¶30, and the SFCs represented the assets were stated at their "estimated current values," *see, e.g.*, Ex. 1 at -3136. Defendants admit this means the values listed in the SFCs must be the amounts at which the assets could be exchanged between a willing buyer and willing seller, both fully informed and neither under compulsion to buy or sell, *see* Defs. 202.8-g Response ¶31—not at potential values only Mr. Trump sees that "others do not" on a time horizon that is "decades ahead," Defs. Opp. MOL at 21. The Court should reject Defendants' invitation to assess the veracity of the asset values presented in the SFCs on any basis other than what ASC 274 requires, and the SFCs represented, them to be—*i.e.*, "estimated current values."

C. Defendants Fail to Raise Any Triable Issues Of Fact Concerning Their Deceptive Practices In Valuing Assets

In support of their motion, the People submitted substantial evidence establishing that Mr. Trump and his associates employed a number of deceptive practices to inflate the values of 12 assets listed in his SFCs from 2011 to 2021, shifting the burden to Defendants to rebut those assertions with evidentiary proof in admissible form sufficient to establish the existence of triable material issues of fact. *Zuckerman*, 49 N.Y.2d at 562; *Alvarez*, 68 N.Y.2d at 324–25.

As a threshold matter, Defendants' insistence that Mr. Trump "value[d] the properties as he did" based on his perspective as a "creative and visionary real estate developer" is effectively an admission by Defendants that the SFCs are false and misleading because the assets in the SFCs were required to be stated at their "estimated current values," not based on what they were worth from Mr. Trump's perspective, which appears to be a method used to derive "investment values"

rather than "estimated current values."[6] As Defendants' own expert confirmed, "investment values" are fundamentally different from "estimated current value" (which he views as synonymous with "market value"). Affirmation of Clifford Robert (NYSCEF No. 837) ("Robert Aff."), Ex. AAC at 76:9-19; 80:13-21; 90:11-16. Accordingly, the Court should find that the SFCs are false and misleading because they represent to users that "investment values" determined by Mr. Trump are instead "estimated current values," which are fundamentally different.

Apart from this fatal admission, Defendants fail to rebut Plaintiff's factual assertions with evidentiary proof in admissible form sufficient to establish the existence of triable material issues of fact concerning Defendants' deceptive practices and the resulting inflated asset valuations for the reasons discussed below.

1. Asset Values That Far Exceed Contemporaneous Appraisals Are False And Misleading

Defendants do not dispute that they had valuations from appraisers for several of the properties listed in the SFCs in multiple years or that they valued those properties without regard to, and far in excess of, those values.[7] Instead, Defendants argue that they were not required to consider these appraisers' values because appraisals are "only one of several inputs preparers may consider in determining" estimated current values, and further maintain they were under no

---

[6] The basis of valuing property from Mr. Trump's perspective fits within the definition of "investment value" according to the "Appraisal of Real Estate" published by the Appraisal Institute, which Defendants' expert Steven Laposa considers the "gold standard." Robert Aff., Ex. AAC at 73:19-74:11.

[7] Defendants do not dispute the existence and the values stated in the 2000 and 2006 appraisals of Seven Springs (Defs. 202.8-g Response ¶50 - 51), the 2010, 2012, and 2015 appraisals of 40 Wall Street (*id*. at ¶78, 85, 104), the 2012 and 2021 appraisals of 1290 Avenue of the Americas (*id*. at ¶233, 253), the Palm Beach County appraisals for Mar-a-Lago (*id*. at ¶199), the 2010 Oxford Group appraisal of rent stabilized apartments at Trump Park Avenue (*id*. at ¶337), or the appraisals for TNGC Briarcliff and TNGC LA (*id* at ¶291, 293-295, 298, 302-304).

obligation under GAAP "to reveal" the appraisers' values "to the external accountant that compiled the SOFC." Defs. Opp. MOL at 22, 25. These arguments are insufficient to establish a triable issue of fact for trial. The appraisers' values reflect what professional appraisers view the "estimated current values" of the properties to be as of dates that are within several months or less of the June 30 valuations dates of the SFCs. Absent competing appraisals for the same time periods or other evidence establishing a change in the property or its value—which Defendants do not offer—the appraisers' values constitute unrebutted evidence of what the SFC values should have been and against which the much higher values listed in the SFCs should be assessed. Moreover, Donald Bender, the "external accountant" at Mazars handling the SFC engagement, asked Jeffrey McConney every year for any appraisals in the company's possession in connection with the engagement and was assured by Mr. McConney that he had received any appraisals the company had, which was not the case. Ex. 421 at 229:9-24; 239:8-16; 242:21-24; 243:6-10. Defendants have offered no evidence to dispute Mr. Bender's testimony. Defs. 202.8-g Response ¶92. Whether GAAP required the company to disclose the appraisals or not, it was false and misleading for Mr. McConney to tell Mr. Bender all the appraisals had been provided when they were not.

Defendants also assert that an appraiser's value is not relevant because it presents "market value," which they contend "is an entirely different measure of value than Estimated Current Value, which is the proper measure of value under ASC 274" for personal financial statements. Defs. Opp. MOL at n.11. But their assertion is contradicted by the testimony of their own expert, Dr. Steven Laposa, who confirmed at his deposition that "market value" is synonymous with "estimated current value." *See* Robert Aff., Ex. AAC at 90:5-91:13.

Similarly unavailing is Defendants' attempt to challenge the "veracity" of some appraisals based on testimony from their expert Frederick Chin. *See. e.g.,* Defs. 202.8-g Response ¶85

(criticizing Cushman's 2012 appraisal of 40 Wall Street). Mr. Chin did not do an appraisal of any of the Trump properties. *See* Ex. Robert Aff., Ex. AN at 64:13-21 ("I haven't rendered any specific appraisal opinions on the properties"). Nor did he follow the accepted methods and techniques established by the Uniform Standards of Professional Appraisal Practice ("USPAP") for conducting an appraisal review. *See* USPAP Standard 3-3 available at https://www.millersamuel.com/files/2021/03/USPAP-Standards-1-4.pdf at p.27 ("In developing an appraisal review, a reviewer must apply the appraisal review methods and techniques that are necessary for credible assignment results."). As a member of the Appraisal Institute ("MAI"), Mr. Chin is required to follow USPAP standards. Affirmation of Clifford Robert in Opposition (NYSCEF No. 1294) ("Robert Opp. Aff."), Ex. AO at pdf 86, ¶71 ("an MAI appraiser . . . is required to adhere to USPAP, which governs the preparation, analysis, and reporting of appraisal results . . . ."). As a result, Mr. Chin's opinions challenging the "veracity" of any appraisal "depart from the generally accepted methodology" for conducting an appraisal review and are therefore inadmissible. *Cornell* v. *360 West 51st Street Realty, LLC*, 986 N.Y.S.2d 389, 403 (2014); *see also Hassett* v. *Long Island R.R. Co.*, 787 N.Y.S.2d 837, 840 (Sup. Ct. Kings Cty. 2004) (holding where the expert's methodology "deviate[s] significantly from the methodology generally accepted" and does not adhere to the standards the expert "himself testified was the generally accepted procedure in his profession," the testimony is inadmissible).

Finally, Defendants attempt to brush aside as irrelevant the Palm Beach County appraisals for Mar-a-Lago, arguing that "assessed values are not the same as" estimated current values. Defs. Opp. MOL at 35. Their argument conflicts with the evidence. The Palm Beach County appraisals provide a "Market Value" defined as "the most probable sale price for your property in a competitive, open market" with a "willing buyer and willing seller." *See, e.g.*, Ex. 98. In other

words, the Palm Beach County appraisals are prepared by professional appraisers using the same definition that applies to "estimated current value"—the basis on which the SFCs represent to users Mr. Trump's asset values are stated.[8]

Because Defendants fail to dispute that the appraisers' values they had in their possession when preparing the SFCs reflect the "estimated current values" they should have used, the Court should find that the much higher values in the SFCs are false and misleading. Such a finding applies to Seven Springs (Pl. 202.8-g Statement ¶75), 40 Wall Street (*id*. ¶114), 1209 AoA (*id*. ¶256), Mar-a-Lago (*id*. ¶200), Trump Park Avenue (*id*. ¶363, 381), and TNGC Briarcliff and TNGC LA (*id*. ¶295).

2. Asset Values That Ignore Legal Restrictions Are False And Misleading

For numerous properties, Mr. Trump and his trustees valued assets without regard to the applicable legal restrictions, even though a *well-informed* buyer and seller would be aware of legal restrictions that apply to a piece of real property and would take those restrictions into account when determining the property's "estimated current value." Defendants advance a number of arguments to explain why the various legal restrictions do not matter. None of their arguments has any merit.

With respect to the multiple legal documents that place onerous restrictions on Mar-a-Lago, pursuant to which Mr. Trump abandoned the right, among others, to use the property for any

[8] Defendants also rely on the opinion of their expert Lawrence Moens that "the values for Mar-A-Lago were higher than SOFC values." Defs. Opp. MOL at 35. Mr. Moens is real estate broker and not a professional appraiser; he presents no analysis whatsoever to support his opinion, which he admitted at his deposition is based on a "fantasy list" of potential buyers that includes "anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state." Robert Opp. Aff. Ex. AAAI at 184:18-20, 186:22. Suffice it to say his opinion is pure speculation that has "no probative force." *Diaz*, 99 N.Y.2d at 544.

purpose other than a social club, Defendants simply ignore the plain language of those restrictive documents, which the Court can construe as a matter of law without any assistance from experts. Defendants also claim the restrictive documents can be amended with agreement by the counterparties, including the National Trust, to remove any of the restrictions. Defs. Opp. MOL at 37-38. Defendants offer not even a scintilla of evidence to suggest that the counterparties would agree to such an amendment, especially given that Mr. Trump has reaped the benefit of the restrictions for many years in the form of lower property taxes, *see, e.g.*, Ex. 98.

With respect to the rent stabilized units at Trump Park Avenue, Defendants assert they can ignore rent stabilization laws because they do not reflect "the property's ultimate highest and best use *which is to sell the individual condominium units unencumbered by rent-stabilization*," and that Mr. Trump and his trustees have "the latitude to adopt an As If Perspective for purposes of SOFC preparation." Defs. Opp. MOL at 44-45 (emphasis added). According to Defendants, an "As If Perspective" is a method of valuing assets that estimates a property's investment value, which is "the value of the property to a particular investor based on that person's (or entity's) investment requirements rather than market norms." Plaintiff's 202.8-g Statement ¶217. Defendants' "As If" argument for ignoring rent stabilization laws raises no triable issue. The units were subject to rent stabilization restrictions that any well-informed buyer and seller would consider when determining their estimated current values. Defendants fail to submit an appraisal or other evidence showing that the "estimated current value" of a rent stabilized unit—that is, the amount at which it would trade between a willing buyer and willing seller, fully informed and not under duress—is more than the value set forth in the 2010 Oxford Group appraisal that the Trump Organization had in its files.

Finally with respect to Aberdeen, where the SFC values are based on developing and selling far more homes than approved by the Scottish governmental authorities, Defendants offer no response at all in their brief and do not dispute that the SFCs themselves represent that only 500 private homes were approved for unrestricted sale. Defs. 202.8-g Response ¶208.

3. Asset Values Calculated Using Erroneous Data Are False And Misleading

For a number of properties, Mr. Trump and his trustees used data that was incorrect, resulting in values that were significantly inflated.

Mr. Trump acknowledged that he valued his Triplex in 2012 through 2016 using an incorrect figure for the square footage that was nearly triple the actual size of the apartment, resulting in a value that was nearly triple what it should have been based on his assumptions.[9] Defs. 202.8-g Response ¶37. Defendants only response is to claim that this error was "inadvertent" and "immaterial." Defs. Opp. MOL at 27. It was neither. Defendants fail to present any evidence disputing that Mr. Trump knew the actual square footage of his own apartment or that Mr. Weisselberg refused to correct the error in the 2016 SFC before it was issued even though the error had been pointed out to him by a journalist at Forbes.[10] Defs. 202.8-g Response ¶41-46. Moreover,

---

[9] Defendants purport to "dispute" the assertion that the actual square footage of the Triplex was approximately one-third the figure used in calculating the value in the SFCs because "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation." Defs. 202.8-g Response at ¶38-41, 43-44. The Court should reject this assertion because it is nonsensical. There is nothing subjective about determining whether the size of an apartment is 30,000 square feet or one-third that size. Moreover, this argument is irrelevant since Mr. Trump acknowledged at his deposition that the square footage figure used to calculate the values for the SFCs for 2012 to 2016 was incorrect. Robert Aff., Ex. V at 218:19-221:04.

[10] In any event, whether Mr. Trump and his trustees intentionally used an erroneous figure for the Triplex square footage is not legally relevant because scienter is not required. *People v. Trump Entrepreneur Initiative*, 137 A.D.3d 409, 417 (1st Dep't 2016).

Prof. Bartov's opinion that the error—an overstatement of roughly $100-$200 million in each of five SFCs from 2012 to 2016—was immaterial in his view is entitled to no probative weight. *Diaz*, 99 N.Y.2d at 544.

For the unsold condominium units at Trump Park Avenue, Plaintiff established that Mr. Trump and his trustees used incorrect values that did not reflect market conditions as required for "estimated current value." Defendants have not cited any evidence disputing that the Trump Organization's real estate brokerage arm had prepared spreadsheets with current market values for the units or that Mr. Trump and his trustees disregarded those values and used instead the initial offering plan prices for the units. Defs. 202.8-g Response ¶373-81. Similarly, Mr. Trump used the wrong value for the two penthouse apartments that Ivanka Trump rented, selecting amounts for the SFCs from 2011 to 2014 that were $12-$30 million higher than the option prices in her leases. Pl. MOL at App., Tab 9 (Chart 2). Defendants rely on the opinion of their expert to contend that using the offering plan prices was "more reliable" than using the option prices, Defs. Opp. MOL at n.21, but this expert opinion is undermined by record; Mr. Trump and his trustees considered the option price to be the appropriate measure of estimated current value for the apartments starting in 2015 and continuing through 2021. Defs. 202.8-g Response ¶370.

For Trump Tower, the SFCs represent that the values in 2018 and 2019 are based on applying a capitalization rate to *stabilized* net operating income ("NOI") from a purportedly comparable building, *see* Ex. 8 at -729; Ex. 9 at -806, but the trustees failed to use the corresponding *stabilized* capitalization rate from the source material they relied upon. Defendants do not cite any evidence to dispute that the trustees used the lower capitalization rate for NOI for the comparable building that was *not* stabilized rather than the higher capitalization rate projected in the source material for *stabilized* NOI. Defs. 202.8-g Response ¶262.

This same error also inflated the value of the Vornado property at 1290 Avenue of the Americas in the 2018 and 2019 SFCs, which Defendants fail to refute with any evidence. Pl. MOL at App., Tab 7; Defs. 202.8-g Response ¶262.

4. Asset Values Calculated On A Basis That Conflicts With What Mr. Trump And His Trustees Represented In The SFCs Are False And Misleading

Defendants attempt to justify many of their deceptive practices, and hence the resulting inflated values, by contending that such practices are permitted under GAAP, with supporting citations to opinion testimony from their expert Prof. Bartov. Defs. Opp. MOL at 19-20, 22. But the issue is whether they conflict with the representations made by Mr. Trump and his trustees in the SFCs about how they calculated the asset values.

For example, each of the SFCs unequivocally states that "the financial statement does not reflect the value of Donald J Trump's worldwide reputation" and that "[t]he goodwill attached to the Trump name . . . has not been reflected in the preparation of this financial statement." *See, e.g.*, Ex. 5 at -0693. Yet it is undisputed that Mr. Trump and his trustees added a 30% or 15% brand premium to the value of seven of the U.S. golf club properties from 2013 to 2020. *See* Defs. 202.8-g Response ¶308-09. Their inclusion of a brand premium conflicts with the representation in the SFC that "goodwill attached to the Trump name" is not included.

Mr. Trump and his trustees engaged in similar deception with golf club valuations by including in the fixed asset value of certain golf clubs the full amount of membership deposit liabilities despite disclosing in the SFCs that they value such liabilities at $0. Pl. 202.8-g Statement ¶312-14. Defendants fail to submit any evidence disputing that the fixed asset approach was used to value the clubs (with the exception of Mar-a-Lago and Doral), that the full amount of refundable membership deposits was included in the SFC values for Jupiter, Colts Neck, Philadelphia, DC,

Charlotte, and Hudson Valley, or that the SFCs provide that these liabilities were valued at $0. Defs. 202.8-g Response ¶317, 320, 322-330.

Mr. Trump and his trustees also engaged in deception when valuing his cash and escrow deposits. The SFCs represented that Mr. Trump held a 30% partnership interest in two properties owned by Vornado partnerships, which Defendants do not dispute. Defs. 202.8-g Response ¶225. Defendants also do not dispute that the General Partners of the Vornado partnerships, not Mr. Trump, have "full control over the management, operation and activities" of the Vornado partnerships, and that Mr. Trump as a limited partner can "under no circumstances sign for or bind the [Vornado partnerships]." Defs. 202.8-g Response ¶227. Nevertheless, Mr. Trump and his trustees included within the cash and escrow deposit asset categories amounts held by the Vornado partnerships over which he had no control. Defs. 202.8-g Response ¶403, 417.

Defendants offer no justification for including Vornado escrow deposits, instead labeling it "an issue of misclassification," and they offer two excuses for why it was not deceptive to include Vornado cash that have no merit. First, they claim that the cash asset category included "certain other items, clearly indicating that items other than cash" were part of the total. Defs. Opp. MOL at 27. But the "items other than cash" were cash equivalents. *See, e.g.*, Ex. 1 at -3137 (describing other items as "common stock, mutual funds, a hedge fund, corporate notes and bonds, and a United States Treasury Security"); Ex. 5 at -0694 (same). Including other cash equivalents did not put users on notice that this asset category included amounts that were not part of Mr. Trump's liquid assets; indeed, even Defendants' own insurance experts conceded that the cash asset

category was intended and understood to reflect *Mr. Trump's* liquidity.[11] Robert Aff., Ex. AA at 40:14-41:20, 46:19-47:11, 49:10-50:10, 54:10-19; Robert Aff., Ex., Z at 97:25-98:7, 112:22-113:8). Second, they claim that the SFCs disclosed that the cash asset category included amounts held in "operating entities," apparently suggesting the Vornado partnerships were included within that term. Defs. Opp. MOL at 27. No user of the SFCS would reasonably interpret "operating entities" to mean anything other than entities within the Trump Organization falling under Mr. Trump's control.

Finally, Mr. Trump and his trustees inflated the values for "Real Estate Licensing Developments" by including amounts that did not qualify for inclusion based on the SFC disclosure for this category. Defendants do not dispute that the SFCs represented that this category included "only situations which have evolved to the point where signed arrangements" with "other parties exist and fees and other compensation will be earned are reasonably quantifiable." Defs. 202.8-g Response ¶419-421. Defendants offer no evidence to dispute that Mr. Trump and his trustees nevertheless included in this asset category many speculative, non-existent "TBD" deals and intra-company management agreements between Trump Organization affiliates that did not involve any arms-length deals with "other parties." Defs. 202.8-g Response ¶424-27.

With respect to the TBD deals, Defendants suggest that they were properly included as part of a "Future Portfolio" based on discussions with Mazars, Defs. 202.8-g Response ¶422, but that ignores the representation in the SFCs that only signed deals were included. In any event, as

[11] Defendants' suggestion that there was no deception because at most the Vornado cash was simply "misclassified and should have been reported elsewhere on the SOFCs," Defs. Opp. MOL at 27, ignores the importance of the cash asset category as a representation to users of Mr. Trump's liquidity. *See* Ex. 348 at 46:13-21, 46:22-47:19, 70:10-71:21, 88:5-89:23, 141:20-142:17; Ex. 370 at 161:7-164:9

Defendants concede, Mazars advised that "Future Portfolio" values needed to be removed. Defs. 202.8-g Response ¶422.

With respect to intra-company agreements, Defendants maintain this was proper because each Trump Organization affiliate is "a discrete legal entity that is a distinct legal person from [Mr.] Trump" and therefore they qualify as "other parties" within the meaning of the SFC representation. Defs. 202.8-g Response ¶427. Defendants offer no evidence to support this unreasonable interpretation that is contrary to the plain language of the SFC; no user of the SFCs would reasonably believe that "signed arrangements with other parties" includes agreements between Trump Organization affiliates as opposed to agreements with unaffiliated entities negotiated at arms-length.

5. Defendants' One Billion Dollar Plus Value For Doral Is Inadmissible And Irrelevant

Defendants attempt to use the Doral property to wipe away their years of deceptive practices that significantly inflated asset values and Mr. Trump's net worth. According to Defendants, "[t]oday" Doral "is worth, conservatively, more than one billion dollars" in the opinion of their expert Mr. Chin. Defs. Opp. MOL at 48. "When considering this value," Defendants argue, the SFC values were "under-reported" and Mr. Trump's "reported net worth numbers were actually lower" than they really were. *Id.*

Doral is not a magic wand that Defendants can wave to transform the SFCs into true and accurate presentations of Mr. Trump's financial condition for a number of reasons.

First, Defendants' claim that Doral is now worth "more than one billion dollars" is not supported by an appraisal, the method for deriving an opinion of value based on USPAP, the professional standards that Mr. Chin is required to follow as an MAI. *See, supra*, at 10. As Mr. Chin conceded at his deposition, "I haven't rendered any specific appraisal opinions on the

properties." S*ee* Robert Aff. Ex. AN at 64:13-21. Accordingly, Mr. Chin's opinion on Doral's value "depart[s] from the generally accepted methodology" for deriving an opinion of value for real property[12] and is therefore inadmissible. *Cornell*, 986 N.Y.S.2d at 403; *see also Hassett* 787 N.Y.S.2d at 840 (holding where the expert's methodology does not adhere to the generally accepted procedure in the expert's profession, the testimony is inadmissible as a matter of law).

Second, Mr. Chin uses as the "starting point" of his "valuation analysis" the "$1.3B value" set forth in document entitled "the 2022 Newmark Doral presentation," which he fails to attach as an exhibit. *See* Robert Opp. Aff., Ex. AO at ¶81. That presentation, which has no identified author and exists only in "draft," is nothing remotely resembling an appraisal. *See* Faherty Reply Aff., Ex. 502. Rather, it appears to be a February 2022 PowerPoint *marketing* presentation for the potential sale of Doral containing an informal valuation analysis that does not comply with USPAP standards. *Id*. at 17 ("Marketing Timeline"). Accordingly, Mr. Chin's "starting point" for his analysis is not admissible evidence and renders his entire analysis without any probative value. *Reif v. Nagy*, 175 A.D.3d 107, 125 (1st Dep't 2019) (holding expert's speculation unsupported by record evidence is insufficient to defeat summary judgment) (citing cases). Remarkably, Defendants and Mr. Chin ignore the actual appraisal prepared by Newmark on July 1, 2021 for Deutsche Bank that determined an "as is" market value of Doral as of June 1, 2021 of $297 million, which the trustees used as the property's value in the 2021 SFC. Ex. 23 at line 584 (listing the value of Doral as $297 million based on the "Newmark Appraisal prepared for Deutsche Bank"); Ex. 503 at -2925.

[12] *See* USPAP Standard 1: Real Property Appraisal, Development, available at https://www.millersamuel.com/files/2021/03/USPAP-Standards-1-4.pdf at p.18.

Third, while Mr. Chin purports to "adjust for actual value based on historic data" to calculate values for Doral from 2014 to 2021, the same absence of an appraisal for any of these years and his use of the inadmissible 2022 Newmark Doral presentation as his starting point fails to comply with USPAP standards for developing an opinion of value, and therefore renders his historic values similarly inadmissible as a matter of law.[13] *Cornell*, 986 N.Y.S.2d at 403; *Hassett* 787 N.Y.S.2d at 840.

D. The Inflated SFCs Had The Capacity Or Tendency To Deceive Users

Defendants argue at length that the SFCs "were not materially misleading" to the banks and insurers involved in the transactions at issue, assuming a "materiality" standard applies here as if this enforcement action were instead a case alleging general common law fraud. Defs. Opp. MOL at 57-64. Their argument misses the mark because materiality is not a required element of a fraud claim under § 63(12), which stands "[i]n contrast" to statutes that require a showing that a misstatement was material. *Gen. Elec. Co.*, 302 A.D.2d at 314-15. The relevant inquiry under the People's § 63(12) fraud claim is whether the SFCs had "the capacity or tendency to deceive" the banks and insurers. *Northern Leasing*, 193 A.D.3d at 75. The answer on this motion is a resounding "yes," given the sheer magnitude of the inflated asset values in the SFCs each year based on just the *undisputed evidence*, which resulted in the overstatement of Mr. Trump's annual net worth by

[13] As Mr. Chin concedes in his rebuttal report, as an MAI he is required to adhere to USPAP standards 1, 2, and 3 governing the preparation, analysis, and reporting of appraisal results, which "refers to the act or process of developing an opinion of value." Robert Opp. Aff., Ex. AO at pdf 86, ¶71.

17-39% over the period 2011 to 2021, or between $812 million to $2.2 billion in any given year. *See* Pl. MOL, App. Tab 1.[14]

Even if materiality were a required element of a § 63(12) fraud claim (which is not the case), this Court should reject Defendants' contention that the banks and insurers considered the SFCs to be immaterial. Defs. Opp. MOL at 59-64.

First, the loan documents expressly state that the lender is relying upon the guarantee of Mr. Trump and the required certifications, including the representations they contain, to extend credit, and the guaranties require the submission of true and accurate financials. Pl. 202.8-g Statement ¶484-85, 514-16, 556, 560. Additionally, bank underwriting documents cite the guarantee and the financial strength of the guarantor as support for the loans. *Id*. at ¶475-76, 494, 503, 507-08, 511, 516, 520, 526, 551-53, 565, 587-96. The insurers similarly required disclosure of Mr. Trump's SFC at renewal. *Id*. at ¶623, 654. Under these circumstances, the SFCs were material to the banks and insurers as a matter of law. *See Tannenbaum v. Provident Mut. Life Ins. Co. of Philadelphia*, 386 N.Y.S.2d 409, 417–18 (1st Dep't 1976) (where a financial institution "demands that specified information shall be furnished for the purpose of enabling it to determine whether the risk should be accepted, . . . any untrue representation, however innocent, . . . is material as matter of law."), *aff'd*, 364 N.E.2d 1122 (1977).

Second, testimony from bank and insurance company executives establish beyond dispute they relied on the SFCs when deciding to lend or offer insurance:

---

[14] At trial (as necessary depending on the factual findings made by the Court on this motion), the People will show based on the analyses of their valuation and accounting experts that Mr. Trump's net worth has been inflated *by between $1.9 billion to $3.6 billion* per year, which is still a conservative estimate of the extent of the inflation because the analysis by Plaintiff's valuation experts accepted many of the inputs and assumptions used by Defendants to derive the asset values in the SFCs that would otherwise be rejected in a full-blown appraisal review.

- A former Head of Credit Risk Management for Deutsche Bank's PWM Americas division, Nicholas Haigh, whose approval was required for the bank's loans to the Trump Organization, reviewed evidence obtained during OAG's investigation showing that Mr. Trump reported the values for 2011 and 2012 of $525 million and $527 million, respectively, for his interest in 40 Wall Street despite possessing an appraisal showing a valuation of $200 million as of November 1, 2011, and that Mr. Trump had reported an NOI for 40 Wall Street that was approximately four times the actual NOI used in this same appraisal. *See* Ex. 1017 at 140:8-143:9, 172:2-177:24. When asked how he would have responded if these discrepancies had come to his attention during the credit review, he testified that he "would have treated [Mr. Trump's] financial disclosure with – generally with a larger degree of skepticism and specifically [he] would have adjusted the equity value of that specific asset," adding that "if The Trump Organization could not have provided a reasonable explanation then I think I would have recommended declining the transaction." *Id*. at 177:25-178:19. Mr. Haigh also testified he was "shocked at the numbers reported on Mr. Trump's financial statement" for 40 Wall Street given the then-existing appraised values of that property, and that had he learned at the time of discrepancies between NOI figures used in appraisals of 40 Wall Street and those used for Mr. Trump's SFCs, he would have questioned the accuracy of other information provided and would have asked whether the bank should continue doing business with Mr. Trump.[15] *Id*. at 177:25-178:19; 194:2-12; 196:13-15, 237:1-241:25; Pl. 202.8-g Statement ¶632-33, 637, 646, 650-52, 657-659.

- Zurich's underwriter, Claudia Markarian, testified that she viewed the valuations in the 2018 and 2019 SFCs to be reliable and assessed them favorably based on Allen Weisselberg's misrepresentation that they were prepared by a professional appraisal firm. Pl. 202.8-g Statement ¶627-28, 640-41. She also relied on the cash on hand figure listed in the SFCs as an indication of Mr. Trump's liquidity—an important consideration in her underwriting analysis and a figure that was inflated in the 2018 and 2019 SFCs by including cash that belonged to the Vornado partnerships over which Mr. Trump had no control. *Id*. at ¶631-33, 643-45. Ms. Markarian explained: (i) it would be a "major concern" to her if the SFCs she reviewed were "not actually accurate," which would have "call[ed] into question the whole account," Ex. 348 at 140:10-25; and (ii) it means there was "materially

[15] In response to this evidence establishing that Mr. Haigh viewed the SFCs to be material, Defendants rely on testimony from other Deutsche Bank employees that they are unaware of any misrepresentations in the SFCs. S*ee* Defs. Opp. MOL at n.23. This testimony is irrelevant. These bank witnesses did not conduct any investigation to determine whether the SFCs contained false information (as OAG has done), never read the People's detailed complaint in this action, *see* Robert Aff. Ex. P at 16:16-22, Ex. AAD at 18:9-25, Ex. S at 14:10-19, and were responding only "to the best of [their] knowledge," *id*., Ex. AAB at 229:16-230:7.

less liquidity" that may not have been sufficient for approval from management, *id*. at 142:18-144:2.

- HCC's underwriter Michael Holl testified that for the 2017 D&O renewal he relied on the cash on hand figure in the 2015 SFC when considering Mr. Trump's liquidity, which had bearing on Mr. Trump's ability to meet the retention obligation under the HCC policy, as well as the misrepresentation by Trump Organization personnel that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the policy.[16] Pl. 202.8-g Statement ¶659-60.

Third, two exchanges between the Trump Organization and Deutsche Bank further confirm the materiality of Mr. Trump's SFCs. In September 2020, the Trump Organization advised Deutsche Bank that it would not be providing a financial statement for Mr. Trump as required by its loan documents. But the bank insisted that Mr. Trump provide his SFC for 2020, which he did on January 12, 2021. Ex. 1021 at 5. Separately, when the bank became aware of the alleged misrepresentations in Mr. Trump's SFCs from OAG's public court filings and news reporting, the bank sent a letter to the Trump Organization on October 29, 2020, asking a series of questions about the SFCs. Pl. 202.8-g Statement ¶447-48. The Trump Organization refused to answer the questions, even after the bank pointed out that the company was required to provide accurate information about Mr. Trump's financial condition pursuant to various loan agreements and guarantees. *Id*. ¶449-50. As a result, the bank decided to exit its relationship with the Trump Organization once all its outstanding loans had matured or been repaid "in light of the failure and/or refusal of the covered client organization to respond" to the bank's questions about the SFCs. Ex. 237. Deutsche Bank would not have made the decision to exit the relationship based on

[16] Defendants' observation that HCC agreed in December 2016 to provide a $5 million excess policy to sit above the existing primary policy through February 17, 2017, without reviewing Mr. Trump's SFC, Defs. MOL at 37, is without import. HCC's quote was for a 2-month stub period that was, as Defendants concede, "subject to reviewing financials at renewal." *Id*.

the company's refusal to provide additional information about the SFCs if it did not consider the SFCs to be material.

* * *

The undisputed evidence leaves no doubt that the grossly inflated SFCs had the capacity or tendency to deceive and, although not a required element of Plaintiff's fraud claim, did in fact deceive the banks and insurers, who insisted on receiving the SFCs and relied upon them.

II. PLAINTIFF'S FIRST CAUSE OF ACTION IS TIMELY AS TO ALL DEFENDANTS BASED ON NUMEROUS FRAUDULENT TRANSACTIONS COMPLETED BY THEM WITHIN THE LIMITATIONS PERIOD

A. The First Department Did Not Accept Defendants' Argument That Plaintiff's Claims For Post-Closing SFC Preparation, Submission, And Certification Accrue On The Loan Closing Date

The First Department held in this case that "claims are time barred if they accrued—that is, the transactions were completed—before" either February 6, 2016 or July 13, 2014 depending on whether a Defendant is bound by the Tolling Agreement. *People v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023). On appeal, however, Defendants had raised the same argument they assert here—that a transaction to satisfy continuing loan obligations, such as the preparation, submission, and certification of an SFC, accrues when the loan closed, even if the loan closed years before the SFC was issued. In their opening appellate brief, Defendants contended (as they do here) that any "transactions" relating to loans took place only on the closing dates of the loans. Br. for Defendants-Appellants, 2023 WL 4552506, at *35. On reply, Defendants argued more pointedly that a certification as to the truth and accuracy of an SFC "is a requirement under loan transactions that closed respectively on June 11, 2012 (Doral), November 9, 2012 (Chicago) and August 12, 2014 (OPO)" and therefore, even if the six-year statute of limitations under CPLR 213(9) applies, claims based on these loans are time-barred because "the date of closing is the date that each of these transactions accrued." Reply Br. for Defendants-Appellants, 2023 WL 4552514, at *24.

The First Department did not accept Defendants' "loan closing" theory, as it did not rule that a claim arising from a transaction relating to a loan accrues when the loan closed, but instead was careful to hold that such a claim accrues when the transaction is "completed." *Trump*, 217 A.D.3d at 611. On the record before it, which included the closing dates for all the loans, the appellate division concluded that *only Ivanka Trump* had engaged in conduct that fell altogether outside of the applicable limitations period. And notably, the First Department reached that conclusion based on Ivanka Trump's argument that she had not prepared, submitted, or certified any of the SFCs at issue, which places her in a starkly different position than any of the other individual Defendants. Reply Br. for Defendant-Appellant Ivanka Trump, 2023 WL 4552510, at *19-22. The First Department *otherwise rejected the remaining Defendants' arguments for dismissal of claims against them*, even those relating to the Doral and Chicago loans that closed before July 13, 2014, the date by which the court concluded timely claims must accrue even for Defendants bound by the Tolling Agreement. *Trump*, 217 A.D.3d at 611. Had the appellate court agreed with Defendants' "loan closing" theory, the court would have ruled that all claims arising from the Doral and Chicago loans are time-barred as to all Defendants, not just Ms. Trump, which the court did not do.[17]

The First Department's refusal to dismiss claims against Defendants based on their "loan closing" argument comports with longstanding precedent under § 63(12) holding that a claim accrues with each instance of fraud or illegality, whether by misrepresentation, omission, or some other wrongful conduct, even though the conduct relates to business dealings entered into years

[17] While the First Department left it to this Court to determine which Defendants are bound by the Tolling Agreement, that open question did not have any impact on the application of Defendants' "loan closing" theory as to the Doral and Chicago loans, both of which closed before July 13, 2014.

earlier. *See People v. Cohen,* 214 A.D.3d 421, 422 (1st Dep't 2023) (holding that OAG's § 63(12) claims were timely as to *all* alleged misrepresentations (and illegal conduct) within the limitations period (between 2012 and 2018) even though the defendants had completed construction and submitted an offering plan far earlier (in 2009)[18]); *People v. Allen*, 198 A.D.3d 531, 532-33 (1st Dep't 2021) (holding Martin Act and § 63(12) claims accrued and were timely each time that the defendants made misrepresentations or engaged in other fraudulent conduct within the six-year limitation period (between 2013 and 2019)—even though the underlying investments occurred based on investment memoranda issued far earlier (in 2004 and 2005)); *People Pharmacia Corp*., 27 Misc. 3d 368, 374 (Sup. Ct. Albany Cty. 2010) (holding § 63(12) claims accrued each time that the defendant, within the limitations period, caused false and inflated price information to be published, and each such inflated price report constituted the accrual of a separate wrong); *see also CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021) (holding each instance of wrongful conduct is a "separate, actionable wrong" that "g[ives] rise to a new claim"); *Manipal Educ. Americas, LLC v. Taufiq,* 203 A.D.3d 662, 663 (1st Dep't 2022) (holding "a separate exercise of judgment, and thus a separate wrong, was committed" with each hiring decision made by defendant); *State v. 7040 Colonial Rd. Assocs. Co.*, 176 Misc. 2d 367, 374 (Sup. Ct., N.Y. Cty. 1998) (holding that each wrongful act is a separate accrual under the Martin Act, "even if the new act or practice simply repeated the misrepresentations or omissions made previously").

Defendants erroneously assert that the First Department upended this settled precedent in holding that "[t]he continuing wrong doctrine does not delay or extend" the limitations period

[18] The date of the offering plan was in the record. *See Cohen,* OAG Br., 2022 WL 19039982, at *10-13.

beyond the two applicable dates prescribed by the court—February 6, 2016, and July 13, 2014. Defs. Opp. MOL at 13 (quoting *Trump*, 217 A.D.3d at 611). That doctrine has no bearing on the issues pertinent to summary judgment. The court merely held that these two dates could not be extended *further* back in time based on an argument that Defendants' conduct was a "continuing wrong," not that the doctrine makes Defendants' separate fraudulent acts occurring *within* the limitations period somehow untimely. Again, if the appellate division decision meant what Defendants now say it means, the court would have dismissed the claims against *all Defendants* relating to the Doral and Chicago loans, not just the claims against Ivanka Trump. And indeed, the First Department's dismissal of only the claims against Ivanka Trump means that the court viewed her as in a markedly different situation than the other individual Defendants, whom the People specifically alleged (and have now established based on undisputed evidence) were involved in the preparation, submission, and certification of the SFCs within the applicable limitations period.

Defendants are thus correct in conclusion, but not consequence, that the Court "should implement" the First Department's decision "immediately," Defs. Opp. MOL at 8, as the First Department's decision permits no further relief based on Defendants' loan-closing argument. This means the Court does not need to reach any of Defendants' statute-of-limitations arguments, as the People need to demonstrate only that *some* amount of wrongful conduct by each Defendant occurred within the limitations period and "need not prove all of the [instances] in order to obtain the relief sought." *See People v. Boyajian Law Offs., P.C.*, 17 Misc.3d 1119(A), at *6 (Sup. Ct., N.Y. Cty. 2007). Plaintiff has brought at least two or more claims for "repeated" and "persistent" fraud under § 63(12) that accrued against each Defendant within the limitations period, even if the period began in February 2016, as depicted in the timelines attached at Tab 2 of the accompanying Appendix.

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants

There is no need to resolve the full scope of the Tolling Agreement on summary judgment—which the First Department instructed this Court to address "as necessary," *Trump*, 317 A.D.3d at 611—because Defendants concede that the entity Defendants are bound (Defs. Opp. MOL at 13) and because the individual Defendants participated in multiple fraudulent transactions on or after February 6, 2016, the date the limitations period begins in the absence of the Tolling Agreement. In the event the Court decides to address the binding effect of the Tolling Agreement at this time, the Court should find that the Tolling Agreement binds all the individual Defendants and the Trust, in addition to the entity Defendants (as Defendants concede).

1. Under JUUL, Non-Signatory Corporate Officers And The Trust May Be Bound By A Tolling Agreement Signed By The Corporation

Although Defendants argue that a "non-signatory" cannot be bound to a tolling agreement based on "general rule[s] of contract interpretation," Defs. Opp. MOL at 15, that position is contrary to *People v. JUUL*, which is controlling law. In *JUUL*, the First Department held that the *two individual corporate officers*, neither of whom were signatories, "are bound by the tolling agreement into which [the corporation] entered with the People" that specified officers were bound. *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). Indeed, the Tolling Agreement here is not materially distinguishable from the one in *JUUL*, which covered a similar range of individuals and entities, and so the same result should follow. *Id.* (tolling agreement's definition of "JUUL" included JUUL's "parents, subsidiaries, affiliates, predecessors, shareholders, officers, directors . . . and all other persons or entities acting on their behalf or under

their control.").[19] Such corporate non-signatories are bound unless they have disclaimed the agreement within a reasonable timeframe, which the individual Defendant non-signatories here did not do. *See* Restatement (Second) of Contracts § 306 (1981).

Moreover, the same broad definition that binds the individual Defendants also binds the Trust. The definition of "Trump Organization" includes all "Persons associated with or acting on behalf of" "The Trump Organization, Inc.; DJT Holdings LLC; [and] DJT Holdings Managing Member LLC." Ex. 419 at n.1. Both Allen Weisselberg and Donald Trump, Jr., in their capacity as trustees of the Trust, acted on behalf of all these corporate entities when signing representation letters for the SFCs and acting on behalf of the Trust as the party responsible for the SFCs during the period 2016 through 2021.[20] *See* 202.8-g Statement ¶682-87, 730-35; Exs. 6-11.

Defendants' attempt to distinguish *JUUL* as "inapposite" in a footnote is without merit. Defs. Opp. MOL at n.9. What Defendants characterize as "a single, throwaway sentence" is a critical aspect of the court's decision—the affirmance of the trial court's finding that the two individual defendants were bound by the tolling agreement; absent that holding, the court would have dismissed OAG's claims under General Business Law §§ 349 and 350. *JUUL*, 212 A.D.3d at 417. Nor are Defendants correct in contending that the two defendants in *JUUL* "had agreed to be bound by the tolling agreement." Defs. Opp. MOL at n.9. To the contrary, the defendants in *JUUL* argued that they "did not sign this tolling agreement," no one had authority to sign the

---

[19] The *JUUL* tolling agreement is part of the record on appeal in that case and can be found at NYSCEF Doc. No. 176 (Exhibit QQQ to Popp Affirmation), Index No. 452168/2019 (Sup. Ct. N.Y. Cty).

[20] As a practical matter, whether the Trust is bound by the Tolling Agreement or not makes no difference. There is no dispute that the Trust, acting through its trustees, was "responsible" for issuing the SFCs covering 2016 through 2021, *see* Exs. 6-11, giving rise to timely claims against the Trust accruing after February 2016 in any event.

agreement on their behalf, and they received "no benefit" from the agreement. Reply Brief for Defendants-Appellants, 2022 WL 18355551, at *26. The *JUUL* decision is on point and controlling.

2. Judicial Estoppel Does Not Apply Here

Defendants' argument based on judicial estoppel is similarly without merit for three independent reasons.

First, judicial estoppel applies only to assertions of "*factual issue*[*s*]," not legal positions. *PL Diamond LLC v. Becker-Paramount LLC*, 16 Misc. 3d 1105(A), 2007 WL 1865044, at *10 (Sup. Ct. N.Y. Cty 2007) (emphasis added); *see also Bates v Long Island Railroad*, 997 F. 2d 1028, 1037 (2d Cir.) ("The doctrine of judicial estoppel prevents a party from asserting a *factual position* in a legal proceeding that is contrary to a position previously taken by him in a prior legal proceeding.") (emphasis added), *cert. denied* 510 U.S. 992 (1993)); *Zemel v. Horowitz*, 11 Misc. 3d 1058(A), 2006 WL 516798, at *4 (Sup. Ct. N.Y. Cty 2006) (same). As courts have observed, "[t]here is no legal authority" to support "extend[ing] the doctrine of judicial estoppel to include seemingly inconsistent legal positions." *Seneca Nation of Indians v. New York.*, 26 F. Supp. 2d 555, 565 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999). Here, Plaintiff's prior assertion about the binding effect of the Tolling Agreement on non-signatories is a legal position rather than a factual position, and therefore judicial estoppel does not apply.

Second, even if the doctrine did apply to a legal position (which is not the case), it still does not apply here. For the doctrine to apply, the party taking the inconsistent position must have benefitted from the determination in the prior action based on the assertion it advanced in that matter; in other words, the doctrine does not require simply a prior determination rendered in favor of the party against whom estoppel is asserted, it also requires that the prior determination

"endors[e] the party's inconsistent position in the prior proceeding." *Ghatani v. AGH Realty, LLC*, 181 A.D.3d 909, 911 (2nd Dep't 2020); *see also 35 W. Realty Co., LLC v. Booston LLC*, 171 A.D.3d 545, 545 (1st Dep't 2019) (declining to apply judicial estoppel because the court in the prior proceeding did not rely on the party's inconsistent position in its determination). In the Court's decision granting the People's contempt motion in the Special Proceeding, the Court did not base its decision on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor did it otherwise "endors[e]" that legal position. *Ghatani*, 181 A.D.3d at 911. Rather, the Court, after noting that Mr. Trump had submitted a "woefully inadequate" compliance affidavit, agreed with Plaintiff's statement that "any delay causes prejudice to 'the rights or remedies of the State acting in the public interest.'" *People v. The Trump Organization, Inc.*, No. 451685/2020, 2022 WL 1222708, at *2 (Sup. Ct. N.Y. Cty. Apr. 26, 2022) (quoting *State v. Stalling*, 183 A.D.2d 574, 575 (1st Dep't 1992)), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023). The Court further noted, without singling out Mr. Trump or holding that he was not bound by the Tolling Agreement, that "the statutes of limitations continue to run and *may result* in OAG being unable to pursue certain causes of action that it otherwise would." 2022 WL 1222708, at *2 (emphasis added). The Court neither based its decision to hold Mr. Trump in contempt on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor endorsed that legal position.

Third, courts do not apply estoppel doctrines where there has been an intervening "'change in [the] applicable legal context.'" *Bobby v. Bies*, 556 U.S. 825, 834 (2009) (quoting Restatement (Second) of Judgments § 28, cmt. c (1980)); *see Herrera v. Wyoming*, 139 S. Ct. 1686, 1697 (2019) (noting that "lower federal courts have long applied the change-in-law exception in a variety of contexts" in rejecting the application of estoppel doctrines). This change-in-law exception recognizes that applying equitable preclusion doctrines in changed circumstances may not

"advance the equitable administration of the law." *Bobby*, 556 U.S. at 836–837; *see Herrera*, 139 S. Ct. at 1697. Such is the case here based on the timing of the First Department's controlling decision in *JUUL*. That decision, definitively establishing that an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the "Trump Organization" definition in the Tolling Agreement, was issued on January 5, 2023—more than seven months *after* the hearing before this Court on the contempt motion in the Special Proceeding and nearly one month *after* OAG's appellate brief was filed in the appeal from this Court's contempt order. *Compare JUUL*, 212 AD.3d at 414 *with* Defs. 202.8-g Statement ¶¶273-74. Precluding Plaintiff from relying on the *JUUL* holding, which controls the legal issue of whether Mr. Trump and other individual Defendants are bound by the terms of the Tolling Agreement, would not "advance the equitable administration of the law," and warrants applying the change-in-law exception to judicial estoppel. *Bobby*, 556 U.S. at 836–837.

3. Extrinsic Evidence Is Inadmissible To Alter The Unambiguous Terms Of The Tolling Agreement

The broad definition of the "Trump Organization" in the Tolling Agreement, which the Trump Organization's signatory Alan Garten certified he was "fully authorized to enter into" and "execute" with binding effect, Ex. 419 at 3, unambiguously includes each of the individual Defendants based on their status within the Trump Organization at the time the Tolling Agreement was executed, and Defendants do not seriously suggest otherwise. Rather, Defendants argue that the plain meaning of the definition of "Trump Organization" should be altered to exclude the individual Defendants because they were named as signatories in "[p]revious drafts" of the agreement but not in the "final, executed version." Defs. Opp. MOL at 17-18. Defendants' effort to alter the plain meaning of the Tolling Agreement based on extrinsic drafting history should be rejected.

Under settled New York law, a contract is interpreted in accordance with the intent of the parties, and the best evidence of their intent is what they express in their written agreement. *Schron v. Troutman Sanders LLP,* 20 N.Y.3d 430, 436 (2013); *Greenfield v. Philles Records, Inc.,* 98 N.Y.2d 562, 569 (2002). Where, as here, the terms of an agreement are clear and unambiguous, "[e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing." *W.W.W. Assoc. v. Giancontieri,* 77 N.Y.2d 157, 162 (1990) (quoted by *Donohue v. Cuomo,* 38 N.Y.3d 1, 12–13 (2022)); *see also Ellington v. EMI Music, Inc.*, 24 N.Y.3d 239, 244 (2014); *Kass v. Kass,* 91 N.Y.2d 554, 566 (1998); *B.D. v. E.D.*, No. 111, 2023 WL 4770159 (1st Dep't July 27, 2023). Accordingly, Defendants' reliance on previous drafts of the Tolling Agreement are inadmissible to vary the plain terms of the broad definition of "Trump Organization" in the final, executed document.

III. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS

Defendants contend that the Attorney General "lacks the authority and capacity" to maintain this enforcement action under Executive Law § 63(12) because there is no harm to the public. Defs. Opp. MOL at 55. Defendants further argue that the accountant's letter inserted at the beginning of each SFC has disclaimer language that, together with other provisions of the SFCs, puts users "on complete notice" to seek additional information and conduct their own due diligence, effectively insulating them from any liability for false and misleading statements and values in the SFCs. *Id*. at 58-59. Finally, Defendants argue that the People are "not entitled to disgorgement as a remedy for any violation of § 63(12) as a matter of law." *Id*. at 69-71.

As discussed more fully in the People's memoranda of law in opposition to Defendants' summary judgment motion (NYSCEF No. 1277) and in support of their motion for sanctions (NYSCEF No. 1264), this Court and the First Department have already considered and rejected

these arguments. Briefly restated here, in its decision granting Plaintiff's motion for a preliminary injunction, the Court explained there is no need for the Attorney General to show any public harm[21] because "the New York legislature has specifically empowered the Attorney General to bring [an Executive Law § 63(12)] action in a New York state court," and Defendants' attempt to restrict § 63(12) to consumer fraud cases "is wholly without merit." *People of the State of New York v. Trump*, No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022). Further, the Court held that the disclaimer language in the SFCs did not provide any defense at all to Defendants because the language "makes abundantly clear that Mr. Trump was fully responsible for the information contained within the SFCs" and that "allowing blanket disclaimers to insulate liars from liability would completely undercut" the "important function" that SFCs serve "in the real world." *Id*. at *3. Indeed, the Court noted that even under the cases Defendants cited, they

[21] Even if there was a "public harm" requirement (which is not the case), as the Court has already held, this case satisfies that requirement because the People have articulated "a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties." *People of the State of New York v. Trump*, No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) (citing cases); *see also Trump*, 217 A.D.3d at 610; *People v. Coventry First LLC*, 52 A.D. 3d 345, 346 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009). Moreover, it is beyond dispute that there was harm to the banks and insurers here. The banks offered the Trump Organization lower interest rates because of Mr. Trump's personal guarantee backed by the false and misleading SFCs. *See* Pl. 202.8-g Statement ¶440-44, 462-70, 499-504, 543-50. As explained by the People's banking expert Michiel McCarty, this means the banks were harmed because they took on more risk with less profit due to Defendants' fraud; based on the differential between the interest rates that the Trump Organization paid on loans that were personally guaranteed by Mr. Trump and the market-based interest rates that would have applied to non-recourse loans secured only by the same commercial properties as collateral, Mr. McCarty calculated that "Mr. Trump obtained an improper benefit" of over $187 million between 2012 and 2022. Ex. 1015 at ¶¶ 48-61, 79, 87, 98, 102 & App. C, Ex. 2. The insurers were also harmed because, as explained by the People's insurance expert Professor Tom Baker, they took on greater risk for lower premium. *See* Ex. 1047 at ¶¶ 15-20, 26.

could not use the disclaimer as a defense because "the SFCs were unquestionably based on information peculiarly within" their knowledge. *Id*.

The Court rejected these arguments for a second time in denying Defendants' motions to dismiss, noting that they "were borderline frivolous even the first time defendants made them." *People v. Trump*, No. 452564/2022, 2023 WL 128271, at *2 (N.Y. Sup. Ct. Jan. 06, 2023), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023). In the same decision, the Court also rejected Defendants' disgorgement argument, holding that "disgorgement of profits is a form of damages" available in this § 63(12) action. *See Trump*, 2023 WL 128271, at *5. On Defendants' appeal from the denial of their motions to dismiss, the First Department also rejected their standing, capacity, and disgorgement arguments. *See Trump*, 217 A.D.3d at 610–11.

Defendants suggest that their standing and capacity arguments deserve consideration anew because "at the dismissal stage" when these arguments were considered and rejected, Plaintiff "was afforded the presumption of propriety" as to the allegations in the complaint. Defs. Opp. MOL at 55. But even this procedural excuse for rehashing previously-rejected arguments was *itself* previously rejected by the Court. When Defendants raised their standing and capacity arguments for a second time on their motions to dismiss, they argued the Court's prior rejection of these arguments was not determinative because it came in the context of deciding a preliminary injunction motion. *See* Consolidated Reply Memorandum in Support of Defendants' Motions to Dismiss (NYSCEF No. 410) at 3. The Court held otherwise:

> OAG's legal standing and capacity to sue are threshold litigation questions of justiciability; they do not change whether in the context of a motion for a preliminary injunction or to dismiss . . . . Here, the issues of capacity and standing, are *pure issues of law and do not depend on a trial of disputed issues of fact*. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried.

Trump, 2023 WL 128271, at *2-*4 (emphasis added).

The Court should summarily reject yet again Defendants' threshold justiciability arguments based on lack of standing and capacity, their reliance on the "disclaimer" language in the SFCs, and their challenge to Plaintiff's entitlement to disgorgement under § 63(12). These arguments are without merit, as this Court and the First Department have previously held.

IV. THE COURT SHOULD MAKE FINDINGS OF FACT TO NARROW ISSUES FOR TRIAL ON PLAINTIFF'S REMAINING CLAIMS UNDER CPLR 3212(g)

"If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court . . . shall, if practicable, ascertain what facts are not in dispute or are incontrovertible." CPLR § 3212(g); *see also Epic W14 LLC v. Malter*, 211 A.D.3d 574, 575 443 (1st Dep't 2022) (holding trial court "was correct to narrow the issues for trial in granting partial summary judgment" by making factual findings under CPLR § 3212(g)). Any such findings of fact "shall be deemed established for all purposes in the action," *Garcia v. Tri-Cnty. Ambulette Serv., Inc*., 282 A.D.2d 206, 207 (1st Dep't 2001), providing the "potential for limiting issues" and the "opportunity to control the scope of litigation," 4B N.Y.Prac., Com. Litig. in New York State Courts § 73:30 (5th ed.).

The Court should exercise its discretion under CPLR § 3212(g) and enter an order on Plaintiff's motion making detailed findings of fact with respect to the SFCs and the various loan and insurance transactions because there is substantial overlap between the predicate facts necessary for granting judgment in favor of the People on their First Cause of Action for fraud and the predicate facts material to the People's remaining causes of action for illegality and conspiracy. Doing so will limit the issues that remain for trial, with the potential to significantly reduce the number of trial days required to adjudicate the remaining claims, and will likely obviate the need for the Court to hear testimony from the parties' valuations experts.

Accordingly, the People request that the Court enter an order pursuant to CPLR § 3212(g) making the following findings of fact:

The SFCs

- The SFCs for 2011 through 2021 overstated Mr. Trump's net worth by between $818 million to $2.22 billion, depending on the year, and, accordingly, each was false and misleading with the capacity to deceive.

The Fraudulent Transactions

a. Doral Loan

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2014 SFC and 2015 SFC, for the benefit of Trump Endeavor 12 LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the SFCs for 2016 to 2019, for the benefit of Trump Endeavor 12 LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of Trump Endeavor 12 LLC.

b. Chicago Loan

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2015 SFC, for the benefit of 401 North Wabash Venture LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2018 SFC and 2019 SFC, for the benefit of 401 North Wabash Venture LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of 401 North Wabash Venture LLC.

c. OPO Loan

- Within the applicable limitations period, Trump Old Post Office LLC closed on the loan with Deutsche Bank, certifying to the bank at closing the accuracy of the 2011, 2012, and 2013 SFCs.

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2015 SFC, for the benefit of Trump Old Post Office LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the SFCs from 2016 to 2019, for the benefit of Trump Old Post Office LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of Trump Old Post Office LLC.

d. 40 Wall Street Loan

- Within the applicable limitations period, Donald Trump executed the Guarantee on the refinancing loan with Ladder Capital, certifying to the bank the accuracy of the 2014 SFC, for the benefit of 40 Wall Street LLC.

- Within the applicable limitations period, 40 Wall Street LLC closed on the refinancing loan with Ladder Capital, certifying to the bank at closing the accuracy of the 2014 SFC.

- Within the applicable limitations period, Allen Weisselberg, as trustee of the Trust, certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 to 2019, for the benefit of 40 Wall Street LLC.

e. Seven Springs Mortgage

- Within the applicable limitations period, Donald Trump, as President of the Seven Springs LLC member companies, executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the 2013 SFC.

- Within the applicable limitations period, Jeffrey McConney submitted to Bryn Mawr Trust Company the 2015 SFC and 2016 SFC pursuant to the promissory note under the mortgage, for the benefit of Seven Springs LLC.

- Within the applicable limitations period, Eric Trump, as President of Seven Springs LLC, executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the SFCs, for the benefit of Seven Springs LLC.

f. 2019 Surety Program Renewal

- Allen Weisselberg submitted to Zurich the 2018 SFC during the renewal meeting on November 20, 2018, for the benefit of the named insureds on the expiring policy (including all the entity Defendants), misrepresenting to Zurich's underwriter that

the asset values were determined by professional appraisers and the values did not vary significantly year over year.

- Allen Weisselberg submitted to Zurich the 2019 SFC during the renewal meeting on January 15, 2020, for the benefit of the named insureds on the expiring policy (including all the entity Defendants), misrepresenting to Zurich's underwriter that the asset values were determined by professional appraisers and the values did not vary significantly year over year.

g. 2019 Directors & Officers Insurance Program Renewal

- Allen Weisselberg submitted to HCC and other insurers the 2015 SFC during the renewal meeting on January 10, 2017, for the benefit of the named insureds on the expiring policy (including all the Defendants), misrepresenting to the underwriters that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the coverage.

Each Defendant's Involvement In The Fraudulent Transactions[22]

a. The Individuals:

- Donald J. Trump was responsible for the 2015 SFC issued on March 18, 2016 and certified to Deutsche Bank the accuracy of the SFCs for 2015 through 2019 and 2021, either directly or through his attorney in fact, for the Doral, Chicago, and OPO loans.

- Donald Trump, Jr., in his capacity as trustee of the Trust, was responsible for issuing the SFCs from 2016 through 2021 and certified to Deutsche Bank the accuracy of the SFCs for 2016 through 2019 as Donald Trump's attorney in fact for the Doral, Chicago, and OPO loan.

- Eric Trump participated in the preparation of the value for TNGC Briarcliff for the SFCs from at least 2015 to 2018, certified to Deutsche Bank the accuracy of the 2021 SFC as Donald Trump's attorney in fact for the Doral, Chicago, and OPO loans, and on July 9, 2019 executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the SFCs.

[22] For purposes of the requested findings of fact on this motion, Plaintiff assumes that February 6, 2016, is the beginning of the applicable statute of limitations period for all individual Defendants and the Trust and July 13, 2014, is the beginning of the applicable statute of limitations period for all entity Defendants (as Defendants do not dispute that all the entity Defendants are bound by the Tolling Agreement, *see* Defs. MOL at 14 (chart)). Plaintiff reserves the right to argue at trial, if necessary, that the individual Defendants and the Trust are bound by the Tolling Agreement.

- Allen Weisselberg prepared the SFCs from at least 2015 to 2021, and in his capacity as trustee of the Trust, was responsible for issuing the SFCs from 2016 through 2021 and certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 through 2019 for the 40 Wall Street loan.

- Jeffrey McConney prepared the SFCs from at least 2015 to 2021 and submitted the SFCs for 2015 and 2016 to Bryn Mawr Trust Company pursuant to the promissory note under the Seven Springs mortgage.

b. The Entities:

- Donald J. Trump is the beneficial owner of a vast number of corporate entities (including the entity Defendants) which, although legally distinct, operate colloquially as the Trump Organization.

- The Trust was responsible for issuing the SFCs from 2016 to 2021 and did so through acts of its trustees, Allen Weisselberg and Donald Trump, Jr.

- Trump Endeavor 12 LLC submitted and certified to Deutsche Bank the accuracy of the SFCs from 2014 to 2019 and for 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- 401 North Wabash Venture LLC submitted and certified to Deutsche Bank the accuracy of the SFCs for 2015 and from 2018 to 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- Trump Old Post Office LLC submitted and certified to Deutsche Bank the accuracy of the SFCs for 2011 to 2013 at closing on August 14, 2014, and the SFCs for 2015 to 2019 and for 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- 40 Wall Street LLC submitted and certified to Ladder Capital the accuracy of the 2014 SFC at closing in November 2015 and certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 through 2019 through the acts of Allen Weisselberg, as trustee of the Trust, acting on its behalf.

- Seven Springs LLC submitted and certified to Bryn Mawr Trust Company the accuracy of the 2013 SFC through a loan modification executed by Donald Trump as President of its member companies on July 28, 2014, submitted to Bryn Mawr Trust Company the SFCs for 2015 and 2016 through the acts of Jeffrey McConney, acting on its behalf, and certified to Bryn Mawr Trust Company the accuracy of all previously-submitted SFCs through a loan modification executed by Eric Trump as its President on July 9, 2019.

- The remaining entity Defendants participated in the transactions described above through the acts of the individual Defendants, who at all relevant times were executive officers, and in the case of Mr. Trump the beneficial owner, of these companies, and acted on their behalf and for their benefit.

CONCLUSION

Based on the foregoing, the People respectfully request that the Court enter an order: (i) granting the People's motion for partial summary judgment in its entirety; (ii) entering judgment in the People's favor on their First Cause of Action for fraud under Executive Law § 63(12); (iii) making the findings of fact set forth in Point IV above pursuant to CPLR § 3212(g); and (iv) granting such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
September 15, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre
Kevin C. Wallace

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

Attorney for the People of the State of New York

CERTIFICATION

With leave of Court entered on June 21, 2023, NYSCEF No. 638, Plaintiff is filing this Reply Memorandum of Law in Further Support of Plaintiff's Motion for Partial Summary Judgment with an enlarged word count not to exceed 13,800 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 13,788 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
September 15, 2023

LETITIA JAMES
Attorney General of the State of New York

By: 
Andrew Amer
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6127
andrew.amer@ag.ny.gov

Attorney for the People of the State of New York

APPENDIX

Tab 1

The facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement are "Undisputed" by Defendants:

2	3	4	6	8	9	10	11	12	13	16	18
22	27	28	29	30	31	32	36	37	49	52	56
59	65	67	68	69	70	71	73	74	77	80	81
82	86	88	89	90	91	93	94	95	96	98	99
100	101	102	108	109	110	111	116	123	124	127	130
131	134	135	136	138	139	140	145	146	153	154	155
156	157	158	159	160	161	162	163	164	165	166	167
168	169	170	171	172	173	174	175	176	178	179	180
181	182	183	184	186	187	188	189	190	191	192	193
195	196	223	224	225	226	227	230	231	234	235	238
257	260	263	267	269	270	278	285	290	296	309	313
317	320	321	322	323	324	325	326	327	328	329	330
334	336	344	346	350	352	354	356	359	361	384	385
386	387	388	393	394	395	396	397	399	400	401	402
403	407	408	409	410	411	412	413	421	439	441	445
447	448	450	453	454	456	457	459	460	463	464	465
466	468	469	470	472	473	474	475	476	477	478	479
482	483	484	486	487	488	489	491	492	493	494	496
500	501	502	503	504	505	506	507	508	509	510	511
513	515	517	518	520	523	524	525	526	527	528	530
536	538	539	540	541	544	546	547	548	550	551	552
554	556	557	558	559	561	562	563	565	566	567	571
572	575	577	579	580	581	585	587	588	589	590	591
592	593	594	595	596	597	599	600	601	602	603	604
605	606	609	610	611	612	613	619	630	631	638	643
644	655	658	663	668	670	671	674	676	678	680	682
683	684	685	686	687	688	689	691	692	693	694	697
698	699	703	706	707	708	712	713	714	715	716	717
718	719	720	721	722	723	724	725	726	727	728	729
730	731	732	733	734	735	736	737	738	739	740	741
743	745	746	747	748	749	750	751	752	753	754	755
756	759	761	762	763	765	766	767	768	769	770	771
772	773	774	775	776	777	779	780	781	782	783	784
786	788	789	790	791	792						

The Court should deem the facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement to be undisputed as a matter of law due to Defendants' failure to respond with evidentiary proof supporting their contentions (*see* Pl. Reply MOL at Point I.A):

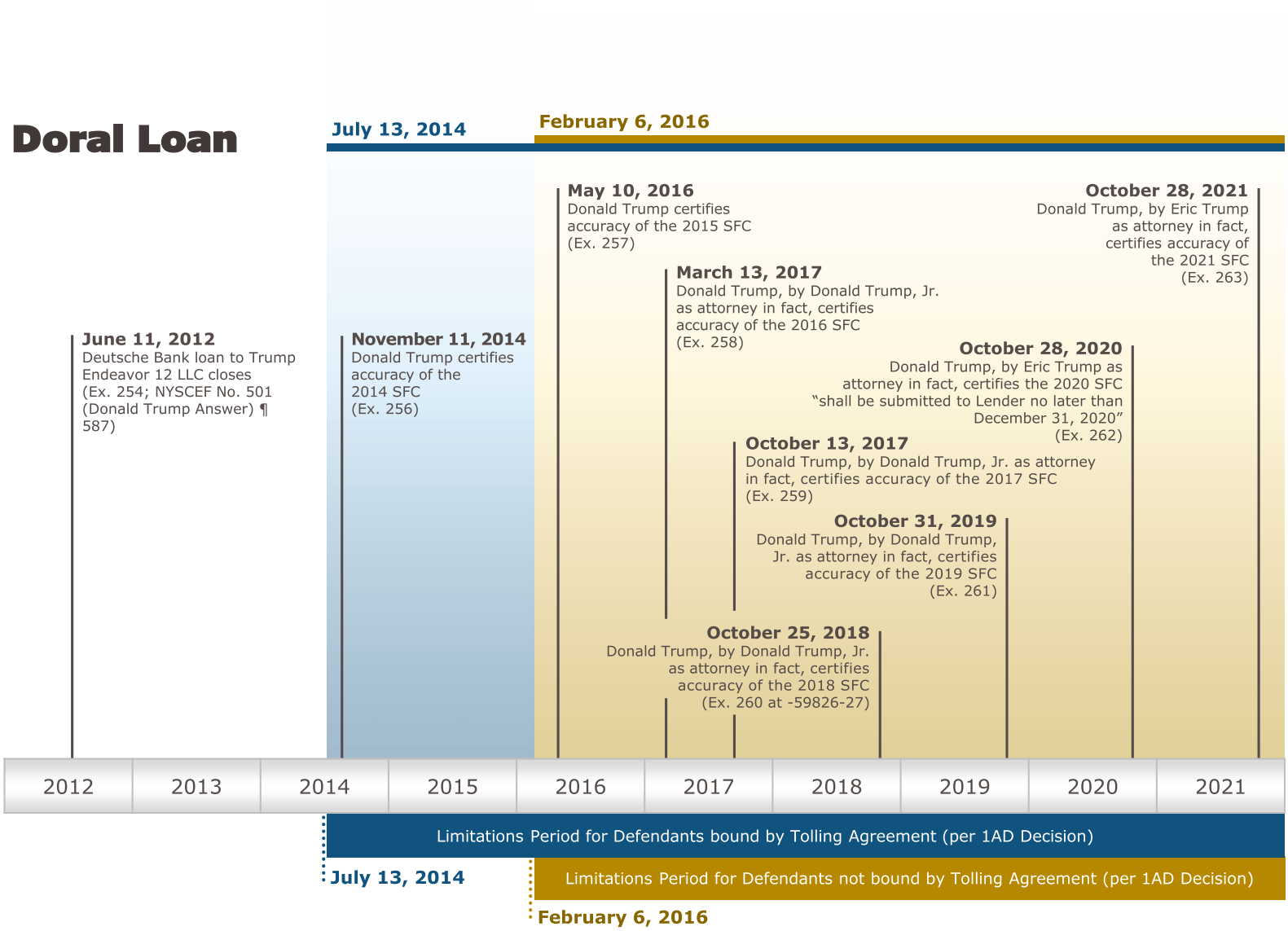
1	5	7	14	15	17	19	21	23	24	25	26
33	34	35	38	39	40	41	43	44	46	48	50
51	53	54	55	57	58	60	61	62	63	64	66
72	75	76	78	79	83	84	85	87	97	103	104
105	106	107	114	117	119	120	121	122	125	126	128
129	132	133	141	142	143	144	147	148	149	150	151
152	177	197	198	199	200	201	202	205	206	207	208
209	210	212	213	214	215	216	217	219	220	221	222
229	232	233	236	237	239	240	241	242	243	244	245
246	247	248	249	250	251	253	254	258	259	261	262
264	265	268	271	272	273	274	275	276	277	279	280
281	282	283	284	287	288	289	291	292	293	294	295
297	298	300	301	302	303	304	305	306	307	308	310
311	312	314	315	316	318	319	331	332	333	335	337
338	339	340	341	342	343	345	347	348	349	351	353
355	357	358	360	362	363	364	366	367	369	370	371
372	373	374	375	376	377	378	379	380	381	382	383
389	390	391	392	404	405	406	414	415	416	417	418
419	420	422	423	424	425	426	427	428	429	430	431
432	433	434	435	436	437	438	440	442	443	444	446
449	451	452	455	458	461	462	467	471	480	481	485
490	495	497	498	499	512	514	516	519	521	522	529
531	532	533	534	535	537	542	543	545	549	553	555
560	564	570	573	574	578	583	584	586	598	607	608
614	615	616	617	618	621	622	623	624	626	627	628
629	632	633	634	635	636	637	639	640	641	642	645
646	647	648	649	650	651	652	653	654	656	657	659
660	661	662	664	665	666	667	669	672	673	675	677
679	695	696	702	704	705	709	710	711	742	744	757
758	760	764	785	787							

The facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement are "Undisputed" with cited clarifications or technical corrections noted by Defendants:

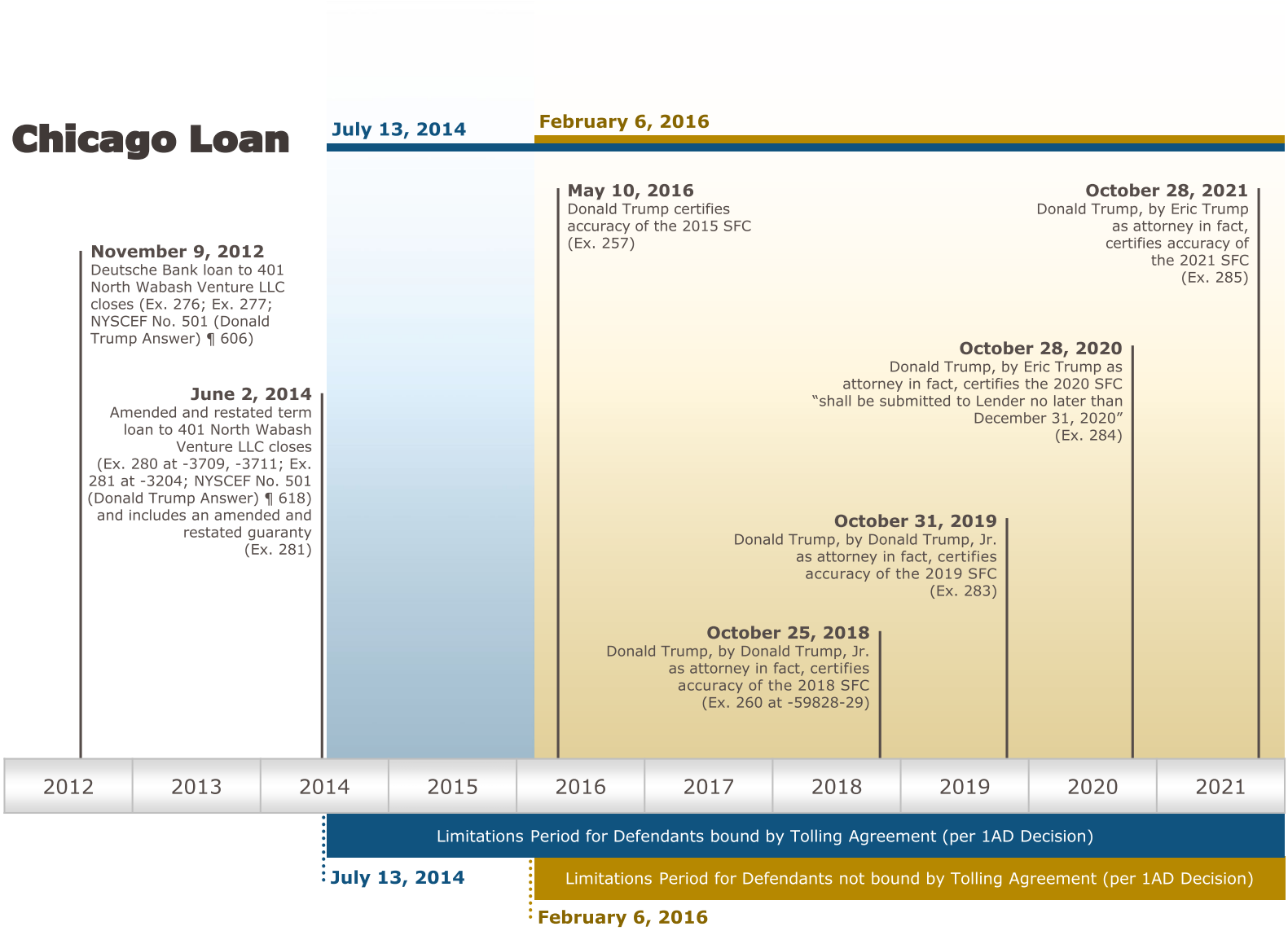
20	The intended citation is Exhibit 34
185	The 2019 SFC estimated the total current value of Club Facilities and Related Real Estate at $2,182,200,000.
194	The asserted fact describes the 2021 Statement.
228	The agreement also included the "Events of Dissolution" language cited by Defendants.
266	The cited quotation omitted ellipses.
299	The easement appraisal considered "16 proposed lots" (Ex. 119 at -5568) while the workpapers described 17 lots.
365	The unit described here as "Penthouse A" is Penthouse 28.
368	The unit described here as "Penthouse B" is Penthouse 20.
398	The correct amount is $16,536,243 (Faherty Aff., Ex. 192 at Tab "As of 06.30.17" Rows 14, 21, 22, 23, 24, and 25).
568	Ivanka Trump signed the November 22, 2016 request (Ex. 309).
569	Ivanka Trump signed the November 22, 2016 request (Ex. 309).
576	The cited language appears as part of Exhibit 318.
582	The exhibit is being refiled to include the omitted attachment (Faherty Reply Aff. Ex. 501).
690	The cited certification states that the 2017 Statement is attached.
700	The net worth certification includes the "Step-Down Percentage" language cited by Defendants.
701	The net worth certification includes the "Step-Down Percentage" language cited by Defendants.
778	The borrower cited is 401 North Wabash Venture LLC

Tab 2

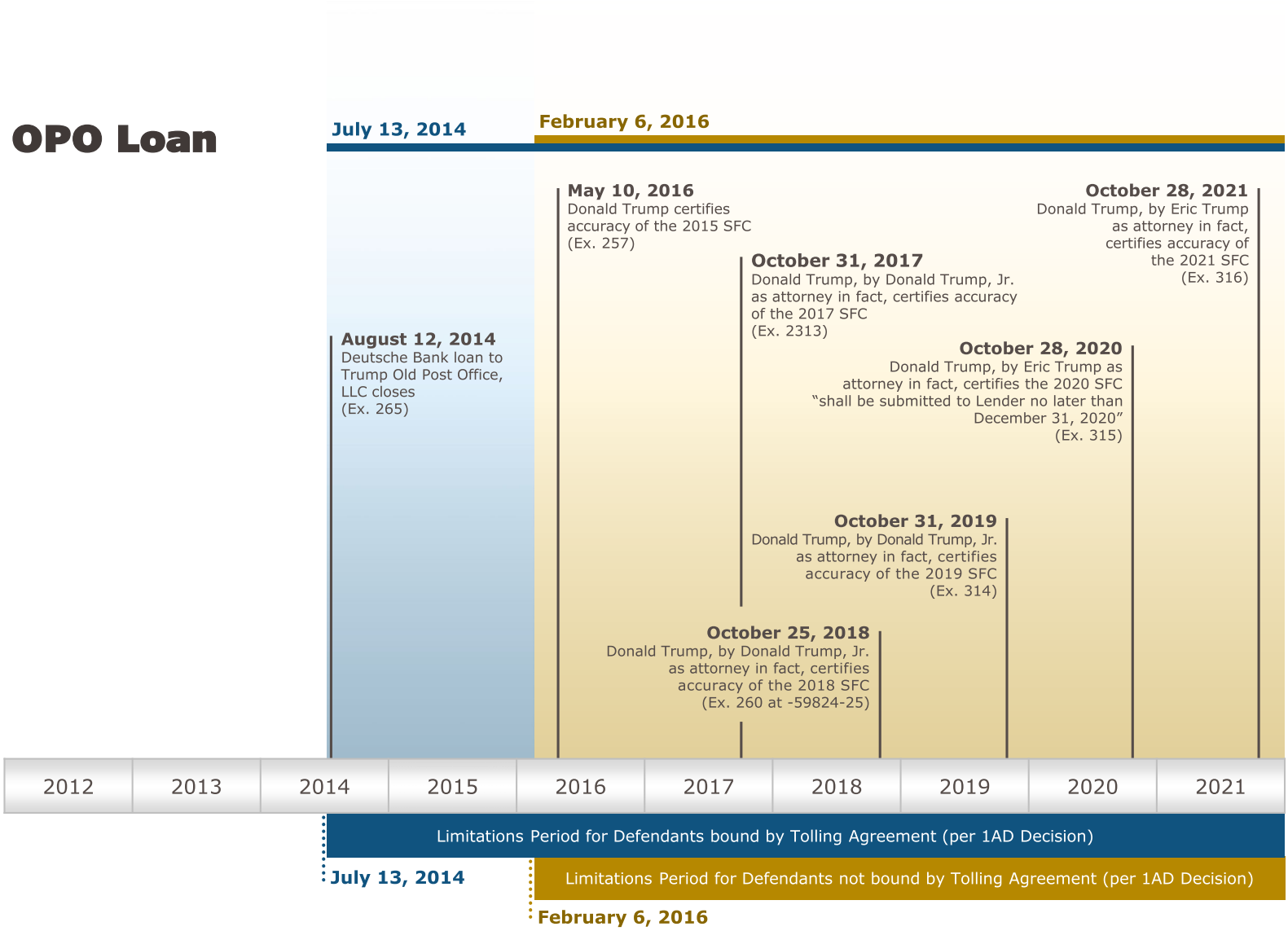
Doral Loan


July 13, 2014
February 6, 2016
June 11, 2012
Deutsche Bank loan to Trump Endeavor 12 LLC closes (Ex. 254; NYSCEF No. 501 (Donald Trump Answer) ¶ 587)
November 11, 2014
Donald Trump certifies accuracy of the 2014 SFC (Ex. 256)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
March 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2016 SFC (Ex. 258)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 262)
October 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 259)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 261)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59826-27)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 263)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

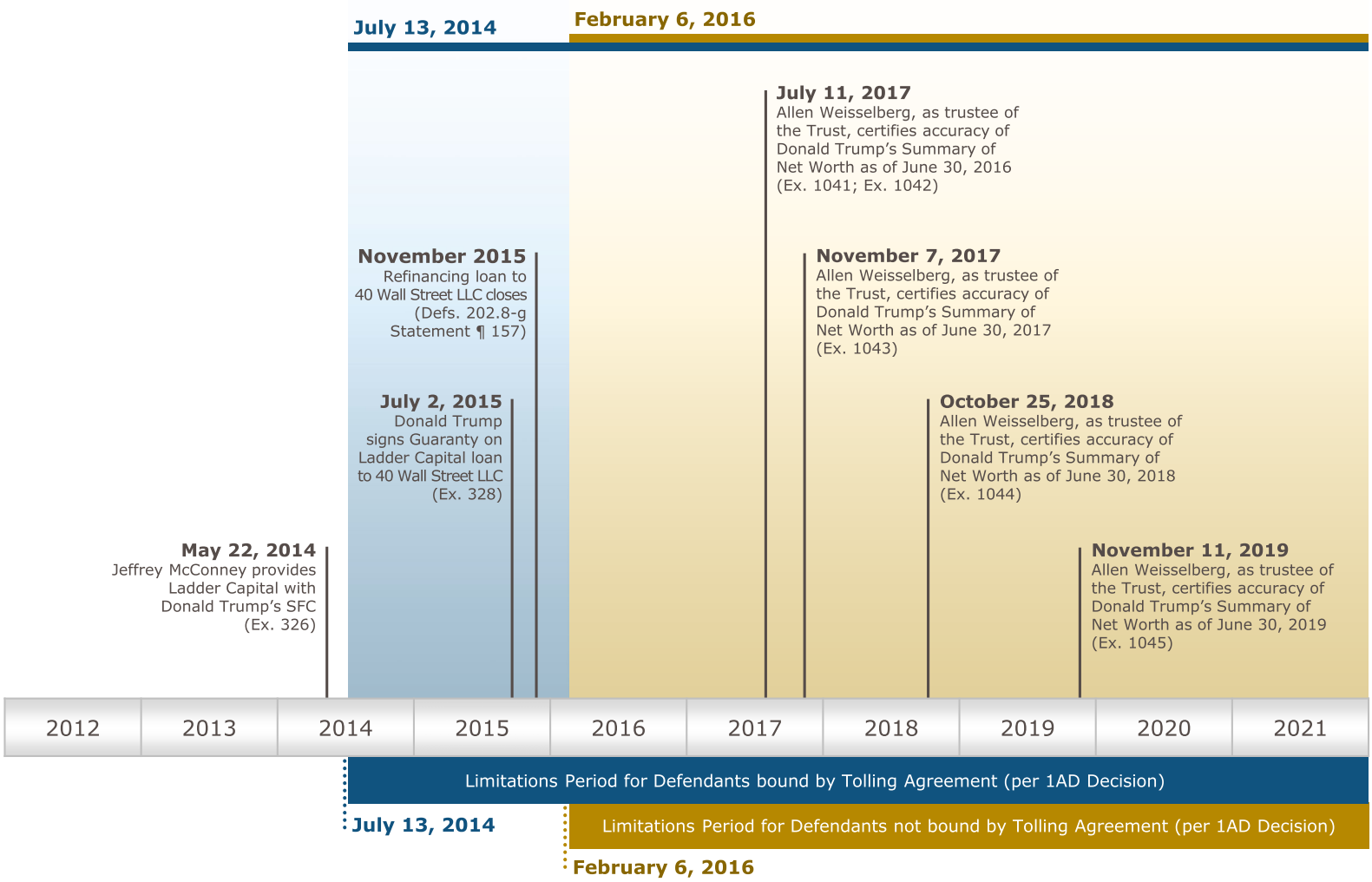
Chicago Loan



OPO Loan


July 13, 2014
February 6, 2016
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
October 31, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 2313)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 316)
August 12, 2014
Deutsche Bank loan to Trump Old Post Office, LLC closes (Ex. 265)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 315)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 314)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59824-25)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

40 Wall Street Loan



Seven Springs Loan

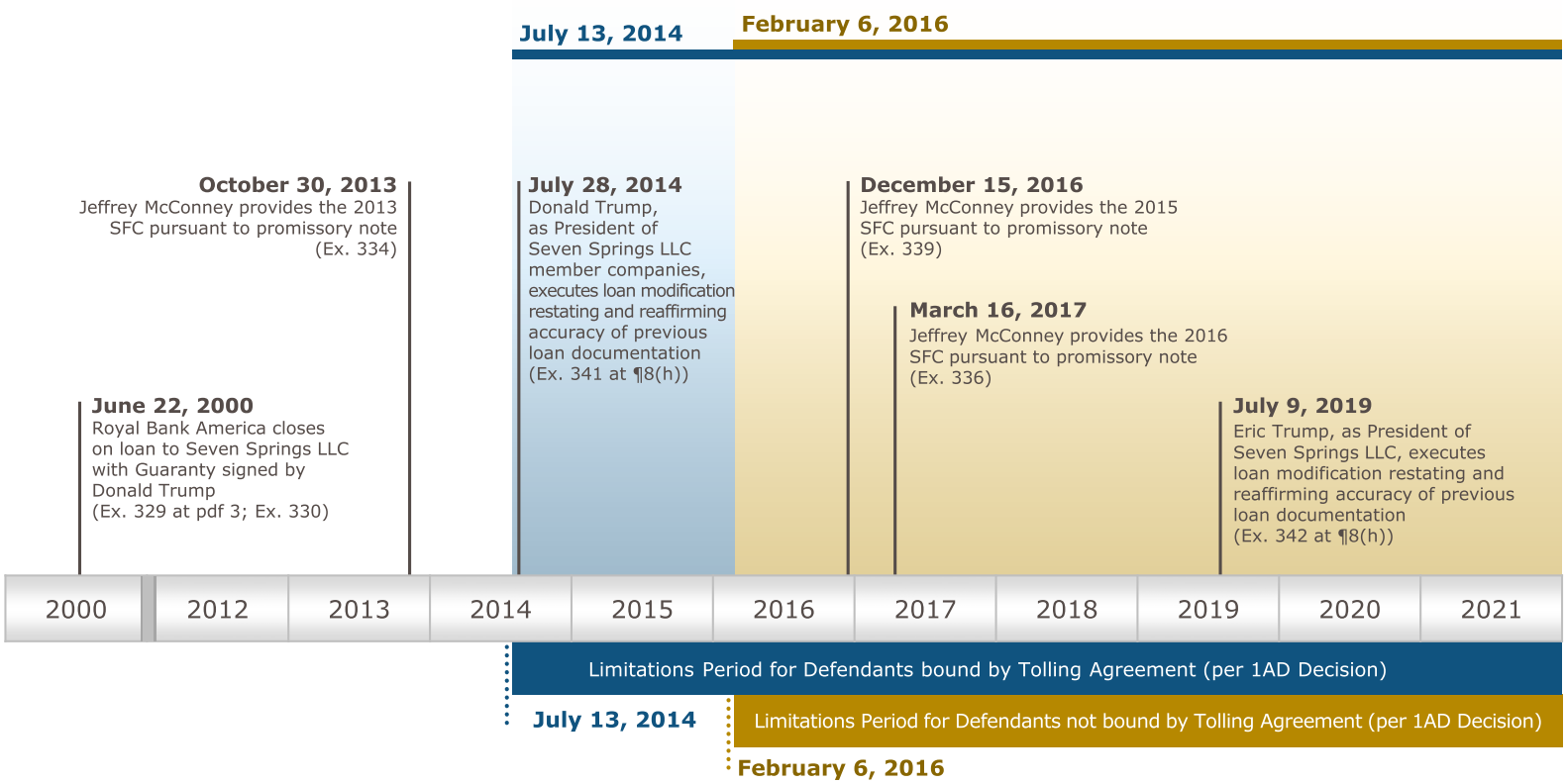


EXHIBIT L

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

MOTION SEQ. NO. 026, 027, 028

DECISION + ORDER ON MOTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS.

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness…").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees… were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

---

[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

---

5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to… pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

---

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amount that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

---

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
> ...
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an… agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12). the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

---

[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq, conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

---

[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

---

[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest… that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

---

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach… the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

---

[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for… a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit… ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196.704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement*." NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%.* NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values…" NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived… from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary.*" Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc.**, **the Trump Organization LLC**, **DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

---

[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts… and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law…."

"[T]he Attorney General may obtain permanent injunctive relief under… Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders – such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

> In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

EXHIBIT M

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date: October 6, 2023 Case # 2023-04925

Title of Matter: People v. Donald J. Trump, et al. Index/Indict/Docket # 452564/2022

Appeal by Defendants from Order ☑ Judgment ☐ Decree ☐ of Supreme ☑ Surrogate's ☐ Family ☐ County New York

Court entered on September ,20 23

Name of Judge Hon. Arthur F. Engoron, J.S.C.

Notice of Appeal filed on October 4 & 5 ,20 23

If from administrative determination, state agency

Nature of action or proceeding Executive Law 63(12) action.

Provisions of ☑ order ☐ judgment ☐ decree appealed from decretal paragraphs purporting to (1) cancel the business certificates of multiple entities, including non-parties, and (2) appointing an independent monitor to dissolve those entities.

This application by appellant ~~respondent~~ is for an interim stay of enforcement of Supreme Court's decision and order on summary judgment and an interim stay of trial pending appeal.

If applying for a stay, state reason why requested Supreme Court's Sept. 26 and Oct. 5, 2023 decision impose unauthorized, undemanded, overbroad relief without proper factual or legal predicate, which will result in significant, irreparable harm to, inter alia, non-parties.

Has any undertaking been posted No If "yes", state amount and type

Has application been made to court below for this relief Yes, in part If "yes", state Disposition Unsigned OTSC for stay of trial

Has there been any prior application here in this court Yes, in part If "yes", state dates and nature September 14, 2023

Appellants filed a writ of mandamus on September 14, 2023, seeking a stay of trial pending Supreme Court's compliance with this Court's June 27, 2023 decision.

Has adversary been advised of this application Yes Does he/she consent

Attorney for Movant	Attorney for Opposition
Name: Clifford S. Robert and Michael Madaio	Kevin Wallace, Esq. and Colleen Faherty, Esq.
Address: Robert & Robert PLLC, 526 RXR Plaza, Uniondale	People of the State of New York, by Letitia James
NY 11566/Habba Madaio & Associates LLP, 112 West	Attorney General of the State of New York
34th Street, 17th and 18th Floors, NY, NY 10120	28 Liberty Street, NY, NY 10005
Tel. No.: (516) 832-7000/(908) 869-1188	(212) 416-6376
Email: crobert@robertlaw.com/mmadaio@habbamaddaio.com	kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov
Appearing by:	

(Do not write below this line)

DISPOSITION

Justice Date

Motion Date _____ Opposition _____ Reply _____

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY.

Court Attorney

"Revised 10/19"

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendant-Appellants, IVANKA TRUMP, Defendant.	Appeal No: Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.) **ORDER TO SHOW CAUSE**

UPON reading and filing the annexed Affirmation of Urgency of Clifford Robert, dated October 6, 2023 and the exhibits annexed thereto; and the Memorandum of Law in Support of a Stay Pending Appeal dated October 6, 2023; and upon all the pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

LET Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York, by her attorneys, show cause before this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, New York 10010, on the ____

day of October, 2023, at _____, or as soon thereafter as counsel may be heard, why an order should not be made and entered:

(a) granting a stay of enforcement pursuant to CPLR § 5519 and/or this Court's inherent discretionary power of the decision and order entered by the Honorable Arthur F. Engoron, J.S.C., dated September 26, 2023, and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on September 27, 2023, as supplemented by the supplemental order by the Honorable Arthur F. Engoron, J.S.C., dated October 4, 2023, and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on October 5, 2023;

(b) granting a stay of trial pursuant to § 5519 and/or this Court's inherent discretionary power; and

(b) granting such other and further relief as this Court deems just and proper.

Sufficient cause therefore appearing, it is

ORDERED that enforcement of the decision and order on summary judgment dated September 26, 2023, and duly entered on September 27, 2023, as supplemented by the supplemental order dated October 4, 2023, and duly entered on October 5, 2023, in the action captioned *People v. Trump, et al*., Index No. 452564/2022 is stayed pending the resolution of this proceeding; and it is further

ORDERED that the trial in the action captioned *People v. Trump, et al*., Index No. 452564/2022 is stayed pending the resolution of this proceeding; and it is further

ORDERED that opposition papers, if any, are to be served on Petitioners' counsel via e-filing on or before the ___ day of October 2023; and it is further

ORDERED that reply papers, if any, are to be served on Respondent's counsel via e-filing on or before the ___ day of October 2023; and it is further

ORDERED that service of a copy of this Order to Show Cause and the papers upon which it is based, be made on or before October ____, 2023, by e-filing same shall be deemed good and sufficient service thereof.

_____

Associate Justice
Appellate Division: First Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendant-Appellants, IVANKA TRUMP, Defendant.	Appeal No: 2023-04925 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.)

MEMORANDUM OF LAW IN SUPPORT OF A STAY
PENDING APPEAL PURSUANT TO CPLR 5519(c)

HABBA MADAIO & ASSOCIATES, LLP
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com

Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

mfarina@robertlaw.com
Counsel for Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 2

BACKGROUND 5

ARGUMENT 5

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL 5

A. Legal Standard 5

POINT I APPELLANTS, NONPARTIES, AND HUNDREDS OF EMPLOYEES WILL SUFFER HARDSHIP IN THE ABSENCE OF A STAY 6

POINT II APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL 11

A. Supreme Court Exceeded its Jurisdiction and Abused its Discretion in Granting Sprawling and Unprecedented Injunctive Relief 11

1. The Expansive Injunctive Relief Granted is Not Authorized by the Executive Law 12

2. The Attorney General Did Not Assert a Claim for Dissolution and Supreme Court Exceeded its Jurisdiction in Awarding Such Relief *Sua Sponte* 19

3. Supreme Court Expressly Relied on Time-Barred Claims in Granting Injunctive Relief 21

4. Supreme Court Ordered the Unasked-For Dissolution of Nonparty Entities Without Process 22

B. The MSJ Decision Grants Judgment on Time-Barred Claims in Contravention of the Law of the Case 24

1. Supreme Court Entered Judgment Upon the Same "Continuing Wrongs" Previously Rejected by this Court as Bases to Extend the Statute of Limitations 27

2. Most of the Attorney General's Claims Accrued Prior to July 13, 2014, and are Subject to Dismissal as Untimely 32

CONCLUSION 34

TABLE OF AUTHORITIES

Page(s)

Cases

People v. Abbott Maint. Corp.,
11 A.D.2d 136 (1st Dep't 1960), aff'd, 9 N.Y.2d 810 (1961) 14

Applehole v. Wyeth Ayerst Laboratories,
213 A.D.3d 611 (1st Dep't 2023) 25

Berle v. Buckley,
57 A.D.3d 1276 (3d Dep't 2008) 24

Boesky v. Levine,
193 A.D.3d 403 (1st Dep't 2021) 25, 33

Bos. Nat. Bank v. Armour,
3 N.Y.S. 22 (Gen. Term 1st Dep't 1888) 23

People v. Codina,
110 A.D.3d 401 (1st Dep't 2013) 26

Coucounas v. Coucounas,
33 Misc. 2d 559 (Sup. Ct. Special Term Kings Cty. 1962) 20

CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC,
195 A.D.3d 12 (1st Dep't 2021) 28, 29, 30

Datwani v. Datwani,
102 A.D.3d 616 (1st Dep't 2013) 24

DeLury v. City of New York,
48 A.D.2d 595 (1st Dep't 1975) 6

Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc.,
2016 WL 4194195 (Sup. Ct. N.Y. Cty. 2016) 6

People v. Evans,
94 N.Y.2d 499 (2000) 26

Four Times Sq. Assoc. v. Cigna Invs.,
306 A.D.2d 4 (1st Dep't 2003) 6

Graubard Mollen Dannett & Horowitz v. Moskovitz,
86 N.Y.2d 112 (1995) 32

People v. Greenberg,
27 N.Y.3d 490 (2016) 18, 21, 22

Matter of Grisi v. Shainswit,
119 A.D.2d 418 (1st Dep't 1986) 5

Henry v. Bank of Am.,
147 A.D.3d 599 (1st Dep't 2017) 28

Hyman v Able & Ready Appliance Repair Corp.,
193 A.D.3d 509 (1st Dep't 2021) 21

Matter of J.O.M. Corp. v. Department of Health of State of N.Y.,
173 A.D.2d 153 (2d Dep't 1991) 6

Kenney v. City of New York,
74 A.D.3d 630 (1st Dep't 2010) 26

Magen David of Union Square v. 3 West 16th Street, LLC,
132 A.D.3d 503 (1st Dep't 2015) 25

Mintz & Gold LLP v. Zimmerman,
17 Misc.3d 972 (Sup. Ct. N.Y. Cty. 2007), aff'd, 56 A.D.3d 358 (1st Dep't 2008) 5, 6

Matter of Part 60 RMBS Put-Back Litig.,
195 A.D.3d 40 (1st Dep't 2021) 25, 26

People by Abrams v. Oliver Sch., Inc.,
206 A.D.2d 143 (4th Dep't 1994) 13, 15

People by James v. Donald J. Trump,
No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) 18, 27

People by James v. N. Leasing Sys., Inc.,
133 N.Y.S.3d 389 (Sup. Ct. N.Y. Cty. 2020), aff'd, 193 A.D.3d 67 (1st Dep't 2021) 13, 14, 15

People by James v Natl. Rifle Assn. of Am., Inc.,
74 Misc. 3d 998 (Sup. Ct. N.Y. Cty. 2022) 18, 20

People by Lefkowitz v. Therapeutic Hypnosis, Inc.,
374 N.Y.S.2d 576 (Sup. Ct. Albany Cty. 1975) 14, 15

Pokoik v. Dep't of Health Servs. of Cty. of Suffolk,
220 A.D.2d 13 (2d Dep't 1996) 6

Rogal v. Wechsler,
135 A.D.2d 384 (1st Dept 1987).....25, 33

Saint Robert v. Azoulay Realty Corp.,
209 A.D.3d 781 (2d Dep't 2022).....24

State v. Saksniit,
332 N.Y.S.2d 343 (Sup. Ct. N.Y. Cty. 1972).....14

Matter of Schneider v. Aulisi,
307 N.Y. 376 (1954).....6

Schwartz v. New York City Hous. Auth.,
219 A.D.2d 47 (2d Dep't 1996).....6

Tax Equity Now NY LLC v. City of New York,
173 A.D.3d 464 (1st Dep't 2019).....6

Weiner v. Weiner,
107 A.D.3d 976 (2d Dep't 2013).....24

Yin Shin Leung Charitable Found. v Seng,
177 A.D.3d 463 (1st Dep't 2019).....30

Statutes

Business Corporation Law § 1101 ..... *passim*

Executive Law § 63(12) ..... *passim*

General Corporation Law § 91 14

New York General Business Law § 130 ..... *passim*

Other Authorities

New York Civil Practice Law and Rules § 5501(c) 26

New York Civil Practice Law and Rules § 5519(c) ..... *passim*

Richard C. Reilly, Practice Commentaries McKinney's Cons Laws of NY 6

Defendant-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Appellants"), through their undersigned attorneys, respectfully submit this memorandum of law in support of their motion, brought by order to show cause, pursuant to CPLR § 5519(c) and this Court's inherent discretionary powers for a stay pending appeal of the decision and order entered by the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron"), dated September 26, 2023, and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on September 27, 2023, as supplemented by the Supplemental Order dated October 4, 2023, and duly entered on October 5, 2023, (1) denying Appellants' motion for summary judgment in its entirety, (2) granting Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York's (the "Attorney General") motion for partial summary judgment, (3) cancelling any certificates filed under and by virtue of GBL § 130 by any of the entity Appellants or any other ***non-party*** entity controlled or beneficially owned by any of the individual Appellants, and (4) directing that the parties recommend the names of no more than three independent ***receivers to manage the dissolution of the cancelled LLCs*** (the "MSJ Decision").[1]

[1] Appellants further submit this memorandum in support of their application for a stay of the trial pending resolution of their appeal to this Court.

PRELIMINARY STATEMENT

Appellants bring this application to stay enforcement of Supreme Court's decision and order dated September 26, 2023, wherein Justice Engoron, *inter alia*, granted the Attorney General summary judgment on her first cause of action, ordered the immediate cancellation of the business certificates of any of the entity defendants or any ***non-party*** entity "controlled or beneficially owned" by any of the individual Appellants, and directed that the parties take certain steps to "manage the dissolution of the canceled LLCs."[2] As set forth herein, the MSJ Decision is clearly subject to reversal as it, *inter alia,* granted relief against parties not before Supreme Court, not authorized by statute, and not requested by the Attorney General, on claims dismissed by the Court. The consequences of enforcing the MSJ Decision are dire and, once done, cannot be undone.

Supreme Court's decision will unquestionably inflict severe and irreparable harm not only to Appellants but to innocent nonparties and employees who depend on the affected entities for their livelihoods. Terminating non-party business licenses without jurisdiction, without process, without statutory authority, without trial, and without reason renders impossible the lawful operation of multiple businesses and threatens termination of hundreds of New York employees without any jurisdiction or due process.

Supreme Court clearly does not comprehend the scope of the chaos its decision has wrought. When questioned about the outcome he envisioned, Justice Engoron would not even clarify which entities the MSJ Decision covered or define the scope of its impact. He stated,

[2] By a Supplemental Order dated October 4, 2023, filed on October 5, 2023, Supreme Court issued numerous additional directives and deadlines to the parties in furtherance of the cancellation and dissolution of all "entity defendants and any other entities controlled or beneficially owned by Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney that have existing certificates filed pursuant to GBL § 130." Affirmation of Clifford Robert, Exhibit Q. Supreme Court also extended the period to provide the Court with names of potential receivers to October 26, 2023. Id.

instead, that he was "not prepared to just issue a ruling right now." Affirmation of Clifford Robert ("Robert Aff."), Exhibit O at 5:16-17. Unfortunately, however, the MSJ Decision is, by its terms, of immediate effect. Supreme Court's Supplemental Order, entered on October 5, 2023, (the "Supplemental Order") does nothing to address this problem. Instead, the Supplemental Order confirms Appellants' fears: Supreme Court intends to proceed expeditiously with the dissolution of the Appellant entities and nonparty entities, notwithstanding that it has no rationale or legal authority to do so.

Supreme Court has openly stated that it considered *all* evidence, including conduct it concedes cannot form the basis of any timely claim, in granting the Attorney General injunctive relief that is overbroad, unrequested, and unauthorized. Nonetheless, Supreme Court directed the wholesale and immediate cancellation of party and non-party business entities. Supreme Court has also directed, without authority, that all of those entities be dissolved. Supreme Court's sprawling and punitive relief is both unprecedented in a civil action in this State and indefensible under the law or any reasonable view of the facts.

The relief far exceeds what the Attorney General asked for in her complaint and/or in her summary judgment motion. Executive Law § 63(12) only authorizes a Court to grant "the relief applied for or so much thereof as it may deem proper." There is simply no statutory basis for Supreme Court to grant non-requested relief *sua sponte*. Additionally, since the Attorney General never sought such relief either in her complaint or in her motion for partial summary judgment, Appellants were never provided any notice or opportunity to be heard and to defend against the award of the MSJ Order's relief.

Additionally, Executive Law § 63(12) does not authorize the Attorney General to seek judicial dissolution as a remedy for persistent fraud; only BCL § 1101(a)(2) does that. Yet, the

Attorney General brings no claim under BCL § 1101(a)(2). Indeed, the Attorney General *does not even mention judicial dissolution* in her 213-page complaint or in any of her ten prayers for relief.

The MSJ Order also penalizes, *sua sponte*, legitimate non-party business entities whom the Attorney General neither named as Defendants nor identified in the underlying action and over which Supreme Court has no jurisdiction. These non-parties are impacted without any finding of *any* wrongdoing on the part of such businesses, as is required under Executive Law § 63(12). Perhaps worst of all, it seeks to impose the corporate death penalty with no statutory authority for such remedy.

Exacerbating Supreme Court's plain error is the fact that this Court unequivocally dismissed many of the claims upon which Supreme Court has now adjudicated liability and granted permanent relief. Supreme Court's finding that Appellants are liable under Executive Law § 63(12) for "persistent and repeated fraud" arising from loan transactions outside of the statutory limitations period contravenes this Court's unanimous June 27, 2023, decision (the "First Department Decision"). The decretal paragraph of the First Department Decision makes clear this Court did not affirm Supreme Court. Nonetheless, Supreme Court defiantly declared in the MSJ Decision that this Court "declined to dismiss…*any* causes of action." Robert Aff., Ex. A at 3 (emphasis in original). Based upon this glaring fallacy and its inexplicable invocation of the very same continuing wrong doctrine this Court said was patently inapplicable, Supreme Court refused to dismiss a single claim. Instead of complying immediately with a binding directive from this Court, Supreme Court required Appellants to re-litigate the previously decided statute of limitations issues via summary judgment, thereby evading fully the First Department Decision.

In sum, Supreme Court has directly contravened the law of the case, abused its discretion, proceeded in the absence of statutory authority, and exceeded its lawful jurisdiction. The far-reaching implications of its unprecedented directives are of staggering consequence to Appellants and innocent non-parties whose only connection is an affiliation with individuals the Attorney General has previously sworn to punish if elected. Consequently, it is respectfully submitted that an immediate stay of enforcement of Supreme Court's decision and order is necessary to prevent irreparable harm pending resolution of Appellants' application to correct a grave miscarriage of justice. Further, a stay of trial is necessary to avoid Supreme Court proceeding further on dismissed claims, to avoid an avalanche of compounding errors, and to afford Appellants any semblance of process, let alone the due process guaranteed to any litigant regardless of status or social standing.

BACKGROUND

A full recitation of the factual and procedural background relevant to this application is provided in the Affirmation of Clifford Robert annexed hereto.

ARGUMENT

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL

A. Legal Standard

This Court has statutory authority and inherent discretion to stay "all proceedings to enforce the judgment or order appealed from pending an appeal." CPLR § 5519(c); see also Matter of Grisi v. Shainswit, 119 A.D.2d 418, 421 (1st Dep't 1986) (noting that the "granting of stays pending appeal" is "for the most part, a matter of discretion"). A stay pursuant to CPLR § 5519(c) is generally "restricted to the executory directions of the judgment or order appealed from which command a person to do an act." Mintz & Gold LLP v. Zimmerman, 17 Misc.3d

972, 976 (Sup. Ct. N.Y. Cty. 2007), aff'd, 56 A.D.3d 358 (1st Dep't 2008), quoting Matter of Pokoik v. Department of Health Servs. of County of Suffolk, 220 A.D.2d 13, 15 (2d Dep't 1996). Additionally, this Court retains broad inherent authority to grant a general discretionary stay of any proceedings in the underlying action in order to prevent acts or proceedings that will disturb the status quo and tend to defeat or impair appellate jurisdiction. See Tax Equity Now NY LLC v. City of New York, 173 A.D.3d 464, 465 (1st Dep't 2019); Schwartz v. New York City Hous. Auth., 219 A.D.2d 47, 48-49 (2d Dep't 1996); see also Matter of Schneider v. Aulisi, 307 N.Y. 376, 383-84 (1954) (noting a court's inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction).

In exercising its discretion to impose a stay pursuant to CPLR § 5519(c), the Court may consider "'any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.'" Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc., 2016 WL 4194195, at *4 (Sup. Ct. N.Y. Cty. 2016), quoting Richard C. Reilly, Practice Commentaries McKinney's Cons Laws of NY, CPLR C:5519:4.

POINT I

APPELLANTS, NONPARTIES, AND HUNDREDS OF EMPLOYEES WILL SUFFER HARDSHIP IN THE ABSENCE OF A STAY

Under New York law, irreparable injury is that which cannot be compensated by money damages. See Matter of J.O.M. Corp. v. Department of Health of State of N.Y., 173 A.D.2d 153, 154 (2d Dep't 1991), citing DeLury v. City of New York, 48 A.D.2d 595, 599 (1st Dep't 1975); c.f. Four Times Sq. Assoc. v. Cigna Invs., 306 A.D.2d 4, 6 (1st Dep't 2003) (reversing denial of preliminary injunction where, *inter alia*, "the threat to [plaintiff's] good will and creditworthiness is sufficient to establish irreparable injury"). The MSJ Decision plainly results

in irreparable injury more than sufficient to meet this standard. That Supreme Court has, *sua sponte*, ordered the immediate cancellation of the business licenses and dissolution of the entity Appellants without any statutory authority in and of itself warrants a stay. However, the impact on Appellants is only the tip of the iceberg. Supreme Court also summarily cancelled the business licenses of *any* entity "controlled or beneficially owned" by the individual Appellants and directed that a receiver be appointed to dissolve those cancelled entities forthwith.

Eschewing actual findings of wrongdoing in favor of an overinclusive guilt-by-association approach, in a single decretal paragraph, Supreme Court sounds the death knell of multiple non-party entities authorized to do business in New York without notice or due process. The consequences of that order are grave. Cancellation of these entities' certificates to conduct business under GBL § 130 prohibits them from "carrying on, conducting or transacting business." See GBL § 130(9). That means these entities are suspended in uncertainty and ostensibly can no longer pay their employees. The status of any New York bank accounts or real property they maintain is unclear. Supreme Court's order directs that all affected entities must be dissolved by a receiver. This is forfeiture and a taking, all without any authority or jurisdiction.

The MSJ Decision's relief, imposed in the context of a civil case, without a trial, does not comport with due process and principles of fundamental fairness. As set forth below, Supreme Court is without jurisdiction or power to grant any relief, let alone a sentence of death by dissolution, against non-parties. Likewise, Supreme Court's *sua sponte* decision to terminate all entities controlled or beneficially owned by Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney is an abuse of authority writ large. *The Attorney General has never even requested such relief*. Nor was anyone ***ever put on notice*** that Supreme Court was considering

summarily depriving these Appellants and non-parties of their property rights without any process whatsoever. Even more unsettling is that Supreme Court ordered dissolution as a remedy at all when the Attorney General never asked for it, the statute authorizing her claims does not permit it, and there is no New York caselaw to support its application.

Perhaps most alarming is Supreme Court's incomprehension of the sweeping and significant consequences of its own ruling. At a pre-trial conference held before Supreme Court the day after the decision issued, Appellants' counsel sought clarification of Supreme Court's order. Specifically, counsel asked Supreme Court whether the entities owning assets in real property such as Trump Tower and 40 Wall Street "are now going to be sold" or "managed under the direction of the monitor or whomever we appoint for this process." Robert Aff., Ex. O at 5:11-14. Supreme Court responded: "I appreciate the concern. I understand the question. I'm not prepared to just issue a ruling right now, but, we'll take that up in various contexts, I'm sure." Id. at 5:15-18.

Counsel pressed for further clarification on which entities were actually impacted by Supreme Court's far-reaching order:

> Which of the entities are actually covered here, because you have New York entities. You have New York entities that, for example, own like, just like a house or own a townhouse or something. They're just, maybe Don, Jr. or Eric's residence. Are those covered? Because they're owned through LLCs, at least *under a technical reading of the statute or of the order, then those entities would also be surrendering their GBL 130 Certificates, even though they don't really have any connection to the proceeding per se*.

Id. at 6:6-16 (emphasis added). Again, Supreme Court would not clarify. Instead, it responded that it would "be happy to try to work this out" and then increased the number of days it had permitted for the parties to name potential receivers from 10 to 30. Id. at 7:20-24.

A week later, Supreme Court issued the Supplemental Order. Rather than resolve any of the pressing questions Appellants have raised regarding how the far-reaching MSJ Decision will be implemented, Supreme Court required Appellants to provide detailed lists of party and non-party entities with GBL § 130 certificates and third parties with ownership interests in the entities to the independent monitor. See Robert Aff., Ex. Q. Appellants are also now required to notify the independent monitor, in advance, any time one of the affected entities (1) applies for any "new business certificate" in any jurisdiction, (2) "anticipate[s]" transferring any assets or liabilities or makes any distribution, (3) assigns any rights, (4) makes any disclosures to third-parties regarding the "transfer or cancellation of the business certificates," and (5) modifies any existing contracts or obligations with any counterparty. Id. at 2-3. The Supplemental Order's extraordinary curtailment of the business activities of entities it cannot even name confirms that Supreme Court fully intends to order dissolution without jurisdiction, authority, or comprehension of the consequences.

Supreme Court's unprecedented and unlawfully punitive directive is in excess of any remedy provided for by Executive Law § 63(12). BCL § 1101, not the Executive Law, empowers the Attorney General to seek judicial dissolution of a corporate entity, but the Attorney General's 838-paragraph complaint contains *no* reference to Article 11 of the BCL or dissolution. Supreme Court cannot convert the Attorney General's action on its own initiative.[3] Moreover, BCL § 1101 does not apply to LLCs, and the Limited Liability Company Law has no provision authorizing the Attorney General to seek dissolution.

[3] Further, as a claim for dissolution under BCL § 1101 is "triable by jury as a matter of right," Supreme Court cannot *sua sponte* amend the Attorney General's complaint and then award relief on its own.

Supreme Court has therefore issued an overbroad directive that sows confusion and chaos in its implementation. Supreme Court's willingness to "work things out" after punctuating its 35-page decision with the bombshell proclamation that non-party businesses are now to be dissolved is simply untenable. There is no precedent nor authority to justify such sweeping and punitive relief.

Compounding the injustices imposed by the MSJ Decision, Supreme Court also directed the parties to proceed to trial on claims this Court dismissed as time-barred several months ago, claims over which Supreme Court lacks jurisdiction. Moreover, in preparing for trial, Appellants rightfully relied on the First Department Decision's dismissal of most of the claims in this action. Days before the trial was set to begin, Supreme Court announced that it was trying all claims, significantly expanding the scope of trial.[4]

The MSJ Decision has thus created a morass of epic proportions. The parties, non-parties, and their employees are now plunged into uncertainty. None of the non-party entities have any connection to the successful, profitable loan transactions at issue in this case. Indeed, there has been no allegation, let alone a finding, that these non-party entities have engaged in any wrongful conduct. Nor does Supreme Court explain how these entities possibly pose a danger to any bank or individual. As discussed in further detail below, Supreme Court lacked any evidentiary basis for its extraordinarily broad conclusion that "defendants have continued to disseminate false and misleading information while conducting business" over the past year. Robert Aff., Ex. A at 34. In sum, no harm will be prevented by enforcement of the MSJ

[4] The prejudice inherent in such a last-minute ruling is further amplified by Supreme Court's inability—or unwillingness—to advise the parties at a pretrial conference last week what issues it views as triable. Consequently, Appellants have been forced to defend against a plethora of previously dismissed claims on a few days' notice. Appellants are also presumably unable to challenge at trial Supreme Court's erroneous factual determination on summary judgment that all of the SFCs were "fraudulent," even though their accuracy was contested by experts and the SFCs do not form the basis of an independent claim.

Decision.[5] A stay of enforcement would thus result in no prejudice to the Attorney General qua Attorney General or as a guardian of the public interest.

By contrast, Appellants and non-party entities are unable to engage in lawful business enterprises, upon which hundreds of non-party individuals depend for their livelihoods. Clearly, this harm cannot be corrected retroactively. The scales of equity do more than merely "tip" in favor of a stay. If Supreme Court's miscarriage of justice is to be prevented in any respect, there is no question that a stay must be granted.

POINT II

APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL

A. Supreme Court Exceeded its Jurisdiction and Abused its Discretion in Granting Sprawling and Unprecedented Injunctive Relief

Supreme Court summarily cancelled the business certificates of party and non-party entities operating lawful businesses in the State based on its finding that the international commercial banks with which Appellants transacted should have made *more* than the hundreds of millions of dollars Appellants paid them under the subject loan agreements. Stunningly, Supreme Court also ordered that those party and non-party entities be placed into receivership and dissolved. Indeed, Supreme Court's determination that non-party entities should pay the ultimate price without ever having a day in court and in the absence of any public threat, consumer-directed conduct, or actual, or even alleged, harm to the public or anyone else, plainly violates the Executive Law's prescription that cancellation be applied as a remedy only in "appropriate cases," doles out corporate death sentences that the Executive Law does not authorize in *any* respect, and is without precedent in this State. Supreme Court's application of

[5] All of the affected parties and non-parties remain subject to the oversight of the court appointed monitor, Judge Barbara Jones. Thus, there is no even theoretical harm that could result from a stay of the MSJ Order.

such punitive relief to remedy purported misconduct outside the statutory period, to non-parties, in the absence of a request from the Attorney General, and without statutory authority also violates the LOTC and bedrock principles of due process and fundamental fairness.

1. The Expansive Injunctive Relief Granted is Not Authorized by the Executive Law

Supreme Court granted permanent injunctive relief to the Attorney General pursuant to Executive Law § 63(12), which provides, in relevant part:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate *persistent fraud* or *illegality in the carrying on*, *conducting or transaction of business*, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order *enjoining the continuance of such business activity* or of any fraudulent or illegal acts, directing restitution and damages and, *in an appropriate case*, *cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law*, and the court may award the relief applied for or so much thereof as it may deem proper.

Executive Law § 63(12) begins with a focus on a specific "person," *i.e.*, the subject of an action commenced by the Attorney General, not unnamed non-parties. The grant of authority to cancel a business certificate "in an appropriate case" is not mere superfluity. The provision begins with a dependent clause joined to the rest of the sentence by the subordinating conjunction "[w]henever," which demonstrates that the Attorney General's powers are triggered to prevent "persistent fraud or illegality in the carrying on, conducting or transaction of business." The remedies the statute authorizes can therefore only be understood with reference to this stated concern.

Executive Law § 63(12) permits neither purely punitive relief nor the wholesale dissolution of a business entity whose principal business activities are legal and appropriate simply because certain discrete transactions are determined to be "fraudulent or illegal." Indeed,

the statute does not contain any reference to dissolution as a remedy for fraud. Rather, where the Attorney General demonstrates "persistent fraud or illegality in the carrying on, conducting or transaction of business," "*such* [i.e., the fraudulent] business activity" may be permanently enjoined. In cases where injunctive relief is merited—the statute uses the conjunctive—cancellation of a business certificate may also be authorized "in an appropriate case." Cancellation, then, is warranted not as matter of course but only if necessary to enjoin "such [fraudulent] business activity." This would be the case, for example, where a business entity has been formed, and exists, for the near-exclusive purpose of defrauding consumers, *i.e.,* where the entity is the instrumentality of the fraud itself.

That fundamental principles of statutory interpretation caution against frequent resort to Executive Law § 63(12)'s injunctive remedies is unsurprising. As discussed above, such extreme remedies can have devastating consequences when applied against even a single entity. Accordingly, statutory cancellation of an entity's business certificate and judicial dissolution in an action by the Attorney General are exceedingly rare.

To Appellants' knowledge, only a handful of cases in the State even discuss the issue, and all involve factual allegations orders of magnitude more severe than the Attorney General's allegations in this case. See People by James v. N. Leasing Sys., Inc., 133 N.Y.S.3d 389 (Sup. Ct. N.Y. Cty. 2020), aff'd, 193 A.D.3d 67 (1st Dep't 2021) (defendant leasing company committed acts of forgery and fraud by routinely "leasing" equipment it never delivered, delivering broken equipment it never fixed, overcharging lessees, and then attempting to collect debts purportedly owed by the lessees from their family members, who the company would threaten to, and actually did, report to credit reporting agencies); People by Abrams v. Oliver Sch., Inc., 206 A.D.2d 143 (4th Dep't 1994) (defendant, a defunct operator of business schools,

failed to return money rightfully belonging to its students to solve its own cash flow problems); People by Lefkowitz v. Therapeutic Hypnosis, Inc., 374 N.Y.S.2d 576 (Sup. Ct. Albany Cty. 1975) (defendant pretended to be a doctor, made numerous false public representations that his business oversaw the licensed practice of hypnosis, and treated members of the public who believed he had the certifications he claimed); State v. Saksniit, 332 N.Y.S.2d 343 (Sup. Ct. N.Y. Cty. 1972) (defendants "ghost wrote" term papers for college students and assisted them in cheating to the detriment of their peers); People v. Abbott Maint. Corp., 11 A.D.2d 136 (1st Dep't 1960), aff'd, 9 N.Y.2d 810 (1961) (defendant company sold a waxing machine that could not fulfill the purpose it was advertised for).

A review of the relevant caselaw thus makes clear that there is a method to when any injunctive relief is available in an action by the Attorney General. In every instance, the Attorney General alleged defendants engaged in fraudulent conduct directed at the public that resulted in serious economic and other harm to consumers. Further, the dissolved entities were themselves the corporate fronts for the fraudulent schemes, and their business operations were predominantly, if not exclusively, dedicated to engaging in "fraudulent or illegal acts." Thus, the forced dissolution of the entities was deemed "appropriate" to shut down the schemes and prevent further exploitation of the public.

Moreover, in virtually all[6] of the foregoing cases where dissolution was authorized, the Attorney General brought a parallel BCL § 1101 claim. ***None of the cases granted dissolution pursuant to Executive Law § 63(12) alone.*** In People by James v. N. Leasing Systems, the Attorney General brought two distinct causes of action: one under Executive Law § 63(12) for

[6] The Court in Abbott ordered dissolution pursuant to General Corporation Law § 91, a defunct provision no longer in effect, as BCL § 1101 was enacted in 1961. 11 A.D.2d at 138, 140-41.

"fraud" and one under BCL § 1101(a)(2) for "dissolution." Index No. 450460/2016, NYSCEF Doc. No. 1. Supreme Court specifically analyzed the request for dissolution under BCL § 1101(a) and ordered that "respondent Northern Leasing Systems, Inc., shall [be] dissolve[d]," citing BCL § 1101(a)(2). 133 N.Y.S.3d at 411-412. This Court, in affirming Supreme Court in its entirety, likewise characterized the relief sought as follows: "[t]he State brought this special proceeding against respondents under Executive Law § 63(12) for engaging in repeated and persistent fraud and under Business Corporation Law (BCL) § 1102(a)(2) to have Northern Leasing System dissolved." 193 A.D.3d at 72. In People v. Oliver Schools, the Attorney General specifically commenced an action for dissolution pursuant to Article 11 of the BCL, and the Court granted relief exclusively on that basis, with no reference at all to Executive Law § 63(12). 206 A.D.2d 143, 145 (4th Dep't 1994). Similarly, in People by Lefkowitz v. Therapeutic Hypnosis, Inc., the proceeding was brought pursuant to, *inter alia*, BCL §§ 1101(a)(1), (a)(2), and the Court "order[ed] dissolution of THI [pursuant to] (s 63(12) of Executive Law; sections 1101(a)(1), (2) and 109(a)(5) of the Business Corporation Law)." 374 N.Y.S.2d at 579. Finally, in People v. Saskniit, the Court stated that "[t]he Attorney General has brought an action to dissolve the corporate defendant and to enjoin all defendants from engaging in certain allegedly fraudulent acts (Exec. Law, s 63(12); Bus. Corp. Law, s 1101)" and granted the Attorney's General's motion "in all respects." 332 N.Y.S.2d at 344, 350.

The instant case bears no resemblance to any precedent wherein a court decided cancellation and dissolution were authorized remedies. Here, Supreme Court has decided that Appellants are liable because the individuals "repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received." Robert Aff., Ex. A at 5. The "fraudulent financial documents" consist of SFCs that the Attorney

General contends inflated the valuation of Appellants' businesses, thus obtaining the "financial benefits" of loans with interest rates lower than the Attorney General believes Appellants deserved. There has never been any allegation of consumer-directed conduct or of economic or other harm to anyone. Moreover, it is uncontested that the subject loan transactions were extraordinarily profitable for the lenders and that Appellants never had a late payment, never missed a loan payment, and did not default on a single loan. Indeed, many of the subject loans were repaid prior to maturity and no longer exist.

While Supreme Court admits the foregoing in footnotes, it nonetheless conjures out of thin air the speculative harm that could possibly arise in the event of a future default as a sufficient concern to warrant the imposition of vast injunctive relief:

> The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

Robert Aff., Ex. A at 25 n.20. Supreme Court further suggests that, even if default were *not* a concern, the international commercial banks to which Appellants paid millions in interest *might* have been harmed because they could have made more money:

> The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal [sic] of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Id. at 25 n.21. Without any basis in the record, Supreme Court's explanations contradict one another and make little business sense. If the problem with Appellants' conduct was that there "might" be a future default that Appellants "might" be unable to cover, then higher interest rates are not a solution. If Appellants actually borrowed at interest rates higher than they could repay,

they would default. The banks would not make "more" money off of a default because interest rates were higher. The default would simply happen sooner. Here, however, there was never any default. Supreme Court's equivocating concerns that the banks could both "be left holding the bag" and could have made "even more money than they did" are nothing more than a *post hoc* fallacy. Id. at 25 n.20, 21

In sum, Supreme Court is unable to identify any actual harm that its injunctive relief is aimed at preventing. It does not, and cannot, invoke any statute authorizing judicial dissolution. Nonetheless, Supreme Court announces that cancelling the certificates and dissolving the entities is a "necessity" because "defendants have continued to disseminate false and misleading information while conducting business." Id. at 34-35. Supreme Court's view that business entities can be destroyed wholesale whenever it concludes that some related entities used "false and misleading information" in any aspect of "conducting business" ignores the inherent limiting principles of the Executive Law and constitutes a denial of fundamental due process.

Moreover, Supreme Court's conclusion is based solely on its mischaracterization of the observations of an independent monitor it appointed last year to review financial and accounting information submitted to lenders by the Trump Organization. As set forth in the MSJ Decision, (1) "information regarding certain material liabilities provided to lenders . . . has been incomplete," (2) the "[t]rust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements," and (3) externally prepared "annual audited financial statements for certain entities . . . list depreciation expenses," while "interim internally prepared financial statements" report the same expenses "inconsistently." Id. at 33-34. Even though this issue (and the issue of remedies in general) was not raised at all in the Attorney General's Motion for Partial Summary Judgment, Supreme

Court, *sua sponte*, took the foregoing and inflated it to "continued [] disseminat[ion of] false and misleading information." Id. at 34. Thus, Supreme Court never afforded Appellants (or the non-parties) any notice or opportunity to respond. Moreover, granular and isolated examples of incompleteness and inconsistency do not equate to widespread, willful misrepresentation. Simply put, Judge Jones' observations do not, by any stretch of the imagination, justify "the necessity of cancelling the certificates filed under GBL § 130," even with respect to the Appellant entities.[7]

Supreme Court hardly considers that there may be even a question as to the propriety and legality of the relief it has granted. Having anointed the Attorney General's case as "conclusive," "indisputable," and "unquestionabl[e]," Supreme Court dismisses out of hand every one of Appellants' challenges to it and, for good measure, sanctions Appellants' attorneys for preserving objections to the Attorney General's ability to bring this suit. Robert Aff., Ex. P at 19, 22. In the end, Supreme Court justifies the attempted destruction of a multi-billion-dollar New York real-estate empire with the observation that, in recent months, an independent monitor has said some information one Appellant submitted to lenders was "incomplete." Supreme Court's grant of injunctive relief is a clear abuse of its discretion under Executive Law § 63(12). At the very least, there is a triable issue as to whether the relief is justifiable. See People v. Greenberg, 27 N.Y.3d 490, 497 (2016); see also BCL § 1101(b).[8]

[7] Indeed, Supreme Court's Supplemental Monitorship Order requires the monitor to report to the Court "any unusual and/or suspicious and/or suspected or actual fraudulent activity." Index No. 452564/2022, NYSCEF Doc. No. 194. The monitor has never reported any such activity.

[8] Even BCL § 1101, the statute that authorizes judicial dissolution of a corporation, is construed narrowly. See People by James v Natl. Rifle Assn. of Am., Inc., 74 Misc. 3d 998, 1018-19 (Sup. Ct. N.Y. Cty. 2022) (internal citations and quotations omitted).

2. The Attorney General Did Not Assert a Claim for Dissolution and Supreme Court Exceeded its Jurisdiction in Awarding Such Relief *Sua Sponte*

As set forth above, Executive Law § 63(12) does not authorize judicial dissolution. In order to impose such a remedy for repeated fraud, the Attorney General must seek relief pursuant to BCL §1101. Nonetheless, ***the Attorney General does not bring any claim pursuant to BCL §1101 against Appellants.*** Nor has she requested that any entity be dissolved in her complaint or at any other point in this action. Even Supreme Court does not so much as *reference* dissolution in its multi-page discussion of "injunctive relief." It quotes the relevant portion of Executive Law § 63(12), which authorizes cancellation of business certificates, and proceeds to hold as follows:

> [T]he Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuation, and disclosures to lenders, insurers, and tax authorities at the Trump Organization.

Robert Aff., Ex. A at 34. Thus, Supreme Court appears to have recognized that the Attorney General sought an independent monitor, not dissolution. Nonetheless, Supreme Court announces in a single decretal paragraph that, for reasons known only to Supreme Court, party and non-party entities should receive a sentence of corporate death in the form of judicial dissolution.

BCL § 1101 delineates specific grounds upon which the Attorney General can bring an action for dissolution of a corporation, including that the corporation "carried on, conducted or transacted its business in a persistently fraudulent or illegal manner." While BCL § 1101(c)

provides that these grounds are not exclusive,[9] it lacks any provision sufficient to permit Supreme Court to transform a cause of action under Executive Law § 63(12) into one under BCL § 1101 *sua sponte*. Even if it could, the provisions of the BCL would preclude the relief granted. First, any claim for dissolution under BCL § 1101 (not asserted herein) is "*triable by jury as a matter of right*." \ (emphasis added). A jury trial is not available to Appellants in this strictly Executive Law § 63(12) action.

Further, BCL § 1111(b)(1) mandates that "[i]n an action brought by the attorney-general, the interest of the public is of paramount importance." Other than vague, footnoted allusions to "distort[ion] [of] the lending marketplace," Supreme Court identifies no preeminent public interest that its summary cessation of lawful business enterprises effectuates. Robert Aff., Ex. A at 25 n. 20. As discussed, it does not identify any public harm. It is well-settled that "corporate death in the form of judicial dissolution represents the extreme rigor of the law," and "its infliction must rest upon grave cause, and be warranted by material misconduct." People by James v Natl. Rifle Assn. of Am., Inc., 74 Misc. 3d 998, 1018-19 (Sup. Ct. N.Y. Cty. 2022) (internal citations and quotations omitted). The Attorney General "does not allege the type of *public* harm that is the legal linchpin for imposing the 'corporate death penalty.'" Id. at 1004. "State-imposed dissolution…should be the last option, not the first." Id.

Additionally, all of the Attorney General's claims arise under the Executive Law, not the BCL. See Coucounas v. Coucounas, 33 Misc. 2d 559, 560 (Sup. Ct. Special Term Kings Cty. 1962) ("The jurisdiction of the court with respect to an action for the dissolution of a corporation under the circumstances is derived solely from the statute and unless the complaint shows the

[9] BCL § 1101(c) specifically provides that "[t]he enumeration in paragraph (a) of grounds for dissolution shall not exclude actions or special proceedings by the attorney-general or other state officials for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state."

jurisdictional facts the court has no power to act."). Nothing in the Attorney General's prayer for relief, in her complaint, in her motion for summary judgment, or in any other brief makes even an oblique reference to dissolution. Supreme Court is not empowered to grant such relief, which is legally and factually distinct from cancellation, based on a general relief clause. Hyman v Able & Ready Appliance Repair Corp., 193 A.D.3d 509, 510 (1st Dep't 2021) ("The presence of a general relief clause enables the court to grant relief that is not too dramatically unlike that which is actually sought, as long as the relief is supported by proof in the papers and the court is satisfied that no party is prejudiced."). Appellants and the affected nonparties also had no ability to defend against a remedy that has never been mentioned in this action. Supreme Court's wholesale grant of dissolution by fiat absent a BCL § 1101 claim, *any* prior request for such relief, or notice that it was considering granting such relief is an egregious violation of Appellants' due process rights and in clear excess of Supreme Court's lawful jurisdiction.

3. Supreme Court Expressly Relied on Time-Barred Claims in Granting Injunctive Relief

Supreme Court expressly relies on claims and transactions unquestionably outside of the statutory period in granting expansive injunctive relief: "Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of [the Attorney General]'s request for injunctive relief." Robert Aff., Ex. A at 24 n.17. Supreme Court further explains, in another footnote, that "although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating [the Attorney General]'s request for permanent injunctive relief, wherein the Court must determine whether there has been 'a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances.' People v Greenberg, 27 NY3d 490, 496-97 (2016)." Id. at 22 n.14.

People v. Greenberg, which summarizes the standard for permanent injunctive relief under the Martin Act and Executive Law § 63(12), does not stand for the proposition that time-barred claims can be considered in determining whether relief can be granted. See 27 N.Y.3d 490 (2016). That conclusion is Supreme Court's own. In Supreme Court's view, that certain claims are time-barred is a minor and irrelevant detail. Such claims can still be assessed, and liability thereon can still be imposed, if Supreme Court christens a connection between the statutorily barred claims and timely conduct. Once again, Supreme Court applies its own twisted version of the continuing wrong doctrine in direct defiance of this Court's ruling. There is no basis in existing law for the notion that a claim a defendant cannot be, and has never been, held liable for constitutes evidence of a prior bad act sufficient to justify permanent injunctive relief. Supreme Court effectively imposes liability on claims it admits are time-barred and, in doing so, nullifies the entire concept of a statutory period.

4. Supreme Court Ordered the Unasked-For Dissolution of Nonparty Entities Without Process

Supreme Court granted the injunctive relief described herein against Appellants and non-parties who had no notice that the relief was even being considered. In addition to the fact that the Attorney General never sought dissolution, as discussed above, the Attorney General's request for cancellation of business certificates was circumscribed. The Complaint's prayer for relief, in relevant part, requests an order and judgment: "Cancelling any certificate filed under and by virtue of the provisions of section one hundred thirty of the General Business Law for the corporate entities named as defendants and *any other entity controlled by or beneficially owned by Donald J. Trump* ***which participated in or benefitted from the foregoing fraudulent scheme***." Robert Aff., Ex. B at 213. The Attorney General does not even mention this ultimate relief in her Notice of Motion, instead restricting her request to "Finding in Plaintiff's favor

judgment as a matter of law on Plaintiff's First Cause of Action for fraud under Executive Law § 63(12) and limiting the contested issues of fact for trial, by specifying such facts deemed established for all purposes in this action." Robert Aff., Ex. M. Moreover, only once in the 176-page transcript of oral argument on the motions for summary judgment is cancellation of business certificates even mentioned. That single allusion to this drastic remedy by the Attorney General comes in the context of "remaining claims left for trial." Robert Aff., Ex. N at 46:2-13.

Nonetheless, the MSJ Decision orders as follows:

> ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or *by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney* are canceled; and it is further
>
> ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs.

Robert Aff., Ex. A at 35.

Supreme Court thus directed the cancellation and dissolution of entities (1) controlled or beneficially owned by individuals and entities other than Donald J. Trump, including, inexplicably, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney, (2) without regard to whether the entity "participated in or benefitted from" any fraudulent scheme, and (3) despite the fact that Attorney General did not ask for any such relief against Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney, or *any* relief against entities who unquestionably had no involvement in, and unquestionably did not benefit from, the underlying allegations, in either the Complaint or the Notice of Motion. See Bos. Nat. Bank v. Armour, 3 N.Y.S. 22, 23 (Gen. Term 1st Dep't 1888) ("Relief of this character is so distinct from that asked for, that under the general prayer for relief such relief should not have been granted. Under a general prayer for relief upon a motion every possible relief should not be granted, but it

should be allied to what is asked for, and not entirely distinct therefrom."); see also Datwani v. Datwani, 102 A.D.3d 616 (1st Dep't 2013) ("It was error for the IAS court to sua sponte impose a stay of this action, as no party requested that relief, and defendant, who would have benefited from the stay, did not even make a motion, cross motion or other application for relief."). Supreme Court's grant of broad, un-demanded relief, without notice it was considering doing so and or an opportunity for Appellants to oppose it, severely prejudices Appellants, especially those against whom the Attorney General never sought cancellation and is patently improper and unconstitutional. Cf. Saint Robert v. Azoulay Realty Corp., 209 A.D.3d 781 (2d Dep't 2022); Berle v. Buckley, 57 A.D.3d 1276 (3d Dep't 2008).

Finally, Supreme Court's election to order the dissolution of non-party entities, over which Supreme Court has no jurisdiction, is impermissible. Weiner v. Weiner, 107 A.D.3d 976, 977 (2d Dep't 2013) ("A court has no power to grant relief against an entity not named as a party and not properly summoned before the court.") Since the entities affected by Supreme Court's permanent injunction have never been properly summoned before the court, Supreme Court has no power to award any relief against them.

B. The MSJ Decision Grants Judgment on Time-Barred Claims in Contravention of the Law of the Case

On June 27, 2023, this Court "unanimously modified, on the law," Justice Engoron's January 9, 2023, order denying Appellants' and Ms. Trump's motions to dismiss. The Court's decretal paragraph provides, in relevant part:

> Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered January 9, 2023, which denied defendants' respective motions to dismiss the complaint, *unanimously modified, on the law, to dismiss, as time-barred*, the claims against defendant Ivanka Trump and *the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling*

> *agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)...*

Robert Aff., Ex. G. at 1 (emphasis added). The Court defined the accrual date for each claim as follows:

> Applying the proper statute of limitations and the appropriate tolling, *claims are time barred if they accrued - that is, the transactions were completed* - before February 6, 2016 (*see Boesky v Levine*, 193 AD3d 403, 405 [lst Dept 2021]; *Rogal v Wechsler*, 135 AD2d 384, 385 [1st Dept 1987]). For defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014.

Id. at 3 (emphasis added). The Court then "le[ft to] Supreme Court to determine, if necessary, the full range of defendants bound by the tolling agreement." Id. at 4.

This Court thus made an unambiguous determination that certain claims are time-barred. Specifically, it held that the Attorney General's claims are time-barred where they are premised on transactions—here, loan agreements with commercial entities—completed outside of the statutory limitations period. The *only* discretionary act left with respect to these time-barred claims was for Supreme Court to decide which of the defendants were bound by the tolling agreement in order to apply the proper cut-off date. Based on this clear ruling, eight of the ten lending-based claims in the Complaint are time-barred.

This Court's determination is law of the case ("LOTC"). LOTC "bind[s] a trial court (and subsequent appellate courts of coordinate jurisdiction) to follow the mandate of an appellate court, absent new evidence or a change in the law." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d 40, 48 (1st Dep't 2021) (Gische, J.S.C.); see also, e.g., Applehole v. Wyeth Ayerst Laboratories, 213 A.D.3d 611, 611 (1st Dep't 2023) ("[R]esolution of the issue on the prior appeal constitutes the law of the case and forecloses reexamination of the issue."); Magen David of Union Square v. 3 West 16th Street, LLC, 132 A.D.3d 503, 504 (1st Dep't 2015) (although

prior appeal did not "specifically address" counterclaim, "the underlying issues were necessarily resolved in that appeal, and that resolution constitutes 'the law of the case'"); People v. Codina, 110 A.D.3d 401, 406 (1st Dep't 2013); Kenney v. City of New York, 74 A.D.3d 630, 630-31 (1st Dep't 2010). "[N]o discretion [is] involved; *the lower court must apply the rule laid down by the appellate court*." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d at 48 (quoting People v. Evans, 94 N.Y.2d 499, 503 (2000) (quotation marks omitted)) (emphasis added). Accordingly, Supreme Court was powerless to revisit or countermand the First Department Decision on remittal.

The doctrine of LOTC ensures that when Appellate Division exercises its broad authority to review questions of law and fact, (CPLR § 5501(c)), its determinations have a legal and practical effect on the parties and the court below. This Court unequivocally required Supreme Court to dismiss certain claims upon remand. Nonetheless, Supreme Court failed to even acknowledge the First Department Decision for months, forcing Appellants to relitigate the issues. Then, days before trial was set to begin, Supreme Court issued a decision wherein it proclaimed that (1) ***this Court had "affirmed" its "dismissal decision,"*** (Robert Aff., Ex. A at 4, 8, 11), (2) this Court ***did not dismiss "any causes of action***," (id. at 3 (emphasis added)), and (3) "any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations" because each is "a distinct fraudulent act," (id. at 18). Supreme Court has resorted to accusing Appellants of living in "a fantasy world, not the real world," sweepingly characterizing their arguments throughout the entire action as "bogus." Id. at 10. But the decretal paragraph of this Court's decision is unequivocal in that it was a modification, not an affirmance. Ultimately, it is Supreme Court's own interpretation of the First Department Decision that is simply untenable.

1. Supreme Court Entered Judgment Upon the Same "Continuing Wrongs" Previously Rejected by this Court as Bases to Extend the Statute of Limitations

The Attorney General's theory of the case as articulated in the Complaint, which has never been amended, is that Appellants' improper procurement of certain discrete loans constituted actionable wrongs under Executive Law § 63(12), *i.e.,* the submission of purportedly false and misleading financial statements "***to induce banks to lend money to the Trump Organization on more favorable terms than would otherwise have been available to the company***." Robert Aff., Ex. B ¶ 3 (emphasis added). Thereafter, prior to summary judgment, the Attorney General consistently maintained that Appellants' use of the SFCs to obtain favorable loan or insurance terms were the wrongs she sought to redress.[10] Under this original theory, the Attorney General argued that subsequent, post-closing certifications as to the veracity of the SFCs, as required by the loan documents, simply constituted continuing wrongs extending the applicable limitations period.[11] In its decision denying Appellants' and Ms. Trump's motions

[10] For example, in opposition to Appellants' Motion to Dismiss, the Attorney General was unequivocal about her theory of recovery: "[O]n September 21, 2022, OAG commenced this enforcement action pursuant to New York Executive Law § 63(12) alleging that Defendants (plus Ivanka Trump) engaged in repeated and persistent fraud and illegality by inflating asset values on Mr. Trump's annual statements of financial condition ("Statements") covering at least the years 2011 through 2021 and presenting those Statements to lenders and insurers licensed in New York to obtain favorable loan and insurance terms they would otherwise not have been entitled to receive. See People by James v. Donald J. Trump, Index No. 452564/2022, NYSCEF No. 183, slip. Op. at 1-2. On appeal before this Court, the Attorney General likewise asserted: "Defendants scheme involved submitting (and certifying as true) Mr. Trump's false and misleading Statements in various commercial transactions to banks and lenders, insurance companies, and other entities ***to obtain significant financial benefits*** *such as favorable loan or insurance terms*." People v. Trump, et al., Appeal No. 2023-00717, NYSCEF Doc. No. 24 (emphasis added)

[11] The following quote is but one example of the Attorney General's invocation of the continuing wrong theory on appeal:

> Here, defendants' scheme involved such continuing wrongs. For example, the Deutsche Bank loans imposed an ongoing requirement to annually submit the Statements and certify their truth and accuracy, and defendants repeatedly did so despite the misrepresentations in the Statements. . . . *Such subsequent and repeated false and misleading submissions made in connection with an initial financial relationship constitute continuing wrongs.*[11] . . . . For the Old Post Office Loan, defendants also repeatedly requested disbursements conditioned on their certifying the truth and accuracy of the previously submitted Statements. . . . That ongoing conduct *is also covered by the continuing-wrong doctrine.*

People v. Trump, et al., Appeal No. 2023-00717, NYSCEF Doc. No. 24 at 48-49 (emphasis added)].

to dismiss, Supreme Court likewise invoked the continuing wrong doctrine to explain why it believed the Attorney General's claims could be sustained against Ms. Trump.[12] This Court disagreed.

In unanimously modifying Supreme Court's decision, this Court assessed and rejected the argument that annual certifications themselves could support the timeliness of the Attorney General's claims under the continuing wrong doctrine. In a simple declaratory sentence, the Court thus concluded that the Attorney General's claims are time-barred insofar as they are premised on transactions completed outside of the applicable statutory periods: "*The continuing wrong doctrine does not delay or extend these periods (see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v. Bank of Am.*, 147 AD3d 599, 601-602 [1st Dept 2017])." Robert Aff., Ex. G at 3 (emphasis added).

This Court's citations elucidate its point: "The doctrine may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs." Henry v. Bank of Am., 147 A.D.3d 599, 601 (1st Dep't 2017) (internal

---

[12] Supreme Court wrote:

> As OAG persuasively argues, ***the nature of the loan contracts at issue renders application of the continuing wrong doctrine particularly compelling*** in this action. The loans, ***obtained through the use of allegedly inflated [Statements of Financial Condition]***, continued in effect for many years after the loan was issued and required annual performance by defendants. For example, each of the Deutsche Bank loans had terms extending past 2022, and each had continuing obligations to maintain a net worth of at least $2.5 billion and unencumbered liquidity of $50 million. *Each of the loans required annual submissions of Mr. Trump's [Statement of Financial Condition] and a certification that the Statements were true and accurate and that there had been no material change in Mr. Trump's net worth or his liquidity*…Ms. Trump's own biography from 2014 indicated that she "spearheaded the acquisition of [Trump National Doral] and was responsible for overseeing the 250 million dollar renovation of the 800 acre property."
> …
> Accordingly, *as the verified complaint sufficiently alleges Ms. Trump's participation in continuing wrongs*…Ms. Trump is not entitled to dismissal pursuant to the statute of limitations.

Robert Aff., Ex. G.

quotation marks and citation omitted). Thus, "[i]n contract actions, the doctrine is applied to extend the statute of limitations when the contract imposes a continuing duty on the breaching party." Id.; see CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC, 195 A.D.3d 12, 19-20 (1st Dep't 2021). By rejecting the continuing wrong doctrine in this case, the Court concluded that Appellants' submissions of purported "separate fraudulent SFC[s]" pursuant to time-barred contracts were *not* separate, fraudulent acts at all. Rather, they were the continuing effects of the original loan transactions.

Notwithstanding the First Department Decision, Supreme Court now adopts the view that the post-closing submissions of the SFCs are not "continuing wrongs" but, rather, separately actionable claims. Supreme Court has thus decided that the performance of a contractual covenant brings loan agreements indisputably entered into before the statutory cut-off back into play. Supreme Court explained:

> As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that [the Attorney General]'s causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, *the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements*.

Robert Aff., Ex. A at 17. Thus, Supreme Court justified its refusal to dismiss any of the Attorney General's claims because all of the loan transactions, no matter when entered, entailed continuing contractual obligations to submit annual certification of the original SFCs. Supreme Court concluded: "Indeed, each submission of a financial document to a third-party lender or insurer would 'requir[e] a separate exercise of judgment and authority,' triggering a new claim.

Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim)." Id. at 17.

Supreme Court derides Appellants' argument for dismissal of time-barred claims as demanding that it "apply a bizarre, invented, inverted form of the 'relation back' doctrine." Id. But the only "bizarre, invented, inverted" legal doctrine apparent in these passages, though never actually named, is *the continuing wrong doctrine*. Supreme Court's citations, including to one of the cases cited in the First Department Decision, make clear that Supreme Court believes it may cherry-pick portions of the doctrine to sustain dismissed claims despite this Court's ruling.

In Yin Shin Leung, this Court addressed the timeliness of various claims for breaches of fiduciary duty. 177 A.D.3d 463, 463 (1st Dep't 2019). Supreme Court avers in a parenthetical that the Court in Yin Shin Leung found a "continuous series of wrongs each of which gave rise to its own claim." Robert Aff., Ex. A at 17. Supreme Court couples that inaccurate summary with an inaccurate partial quotation used to support Supreme Court's contention that every act that "'requir[es] a separate exercise of judgment and authority,' trigger[s] a new claim." Id. The full quote is revealing:

> *The continuing wrong doctrine is applicable* to respondents' use of the disputed "special account." While respondents disclosed the formation of the special account and their intent to use corporate funds diverted thereto to pay expenses in related litigation in Hong Kong, those disbursements were not automatic consequences of the initial decision. *Each payment of litigation expenses required a separate exercise of judgment and authority*.

Id. at 464. In other words, Yin Shin Leung does *not* stand for the proposition that every exercise of judgment and authority gives rise to a "new claim" separate and apart from a previous wrong. Rather, it stands for the proposition that independent exercises of judgment and authority in connection with the same transaction can revive time-barred claims *through the continuing wrong doctrine*.

As set forth above, CWCapital also applies the continuing wrong doctrine. Nonetheless, Supreme Court cites to it for the bare concept that "each instance of wrongful conduct [is] a 'separate, actionable wrong' giving 'rise to a new claim'" and again uses partial quotations to misleading effect. Robert Aff., Ex. A at 18. The quoted passage actually begins as follows: "We find that *the continuing wrong doctrine does apply to this case*." 195 A.D.3d at 19. Thus, this Court explained in CWCapital that the plaintiff's claims were timely because each instance of defendant's wrongdoing under the same contract was found to constitute a "new claim" *triggering the continuing wrong doctrine*.

Each of Supreme Court's cases thus describes instances where this Court applied the continuing wrong doctrine. As such, each is inapposite to the premise that a plaintiff—or a Court—can simply declare as "independent claims" what LOTC has determined are continuing effects to avoid the impact of an appellate ruling. This Court ruled unequivocally that the continuing wrong doctrine did not apply to the Attorney General's claims. Supreme Court ignores that ruling and relies on the continuing wrong doctrine, in all but name, to support its entry of a judgment that contravenes the LOTC.

If there were any lingering doubt that the First Department Decision rejected the concept of the annual certifications serving as separate claims, its treatment of the claims against Ms. Trump conclusively resolves the matter. At the pleading stage, Supreme Court sustained claims against Ms. Trump based on Deutsche Bank loan transactions entered into in 2011, with terms extending past 2022, wherein Appellants were obligated to submit annual certifications. Supreme Court did so because it found that, *based on the annual certifications*, "the verified complaint sufficiently alleges Ms. Trump's participation in continuing wrongs." Robert Aff., Ex. F.

In a clear rejection of that position, the First Department Decision "dismiss[ed], as time-barred" all claims against Ms. Trump because the record was sufficiently clear that she was not subject to the tolling agreement and the Attorney General's allegations did "not support any claims that accrued after February 6, 2016." Robert Aff., Ex. G at 1, 4 (emphasis added). Thus, this Court held that "*all claims against [Ms. Trump] should have been dismissed as untimely*." Id. at 4. The implications of the First Department Decision could not be clearer: the Attorney General's claims are untimely as to all Appellants to the extent they are premised on transactions that accrued—that is, loans that closed—outside of the statutory period. The question of whether certifications form the bases for separate claims is not up for debate.

2. Most of the Attorney General's Claims Accrued Prior to July 13, 2014, and are Subject to Dismissal as Untimely

The First Department Decision holds that the Attorney General's claims "accrued" when "transactions were completed." Supreme Court suggests that this Court's use of "completed" rather than "closed" indicates that it rejected Appellants (and Ms. Trump's) contention that the accrual date for each loan was its closing date. Robert Aff., Ex. A at 17. Supreme Court then proceeds to reject this Court's definition of accrual in favor of "controlling case law," which it avers "holds that a cause of action accrues at the time 'when one misrepresents a material fact.' Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12[2] (1995)." Id. at 18.

Notably, Supreme Court's substituted definition of accrual includes neither the word "completed" nor the word "transaction." It is also followed by yet another partial quotation from an inapposite case that does not contain the word "accrual." The full quotation is as follows: "A cause of action for fraud may arise when one misrepresents a material fact, knowing it is false, which another relies on to its injury." Graubard Mollen Dannett & Horowitz v. Moskovitz, 86

N.Y.2d 112, 122 (1995). It is plain that this Court referred to the date "the transactions were completed" as the accrual date because the "completion" of a loan transaction is the date when the transaction is actually entered into, a benefit is conferred, and an "injury" arises.

The cases cited in the First Department Decision are dispositive. In Boesky v. Levine, this Court found that a cause of action for fraud accrued "when plaintiffs ***entered into*** the allegedly fraudulent transactions." 193 A.D.3d 403, 405 (1st Dep't 2021) (emphasis added). In Boesky, this Court determined that the fraud claim accrued between 2002 and 2004, when the plaintiffs actually invested in tax shelters of questionable legitimacy, notwithstanding that the plaintiffs alleged the defendants continued to provide flawed and erroneous advice through 2016. Id. at 404-05. In Rogal v. Wechsler, this Court similarly held: "The cause of action for fraud accrues and the Statute of Limitations commences to run ***at the time of execution of the contract***." 135 A.D.2d 384, 385 (1st Dep't 1987). The Rogal Court thus found that Supreme Court "erroneously fixed the accrual" of the plaintiffs' fraud claim on the date "when certain misrepresentations allegedly were made." Id. In other words, Rogal expressly forecloses Supreme Court's stated definition of the accrual date for a fraud claim.

Contrary to Supreme Court's conclusions, (i) seven of the ten loan transactions at issue in the Complaint involving lending were completed *before* July 13, 2014; (ii) one of the transactions was *never* consummated; and (iii) the two remaining transactions were completed *before* February 6, 2016. Thus, even assuming, *arguendo*, that Supreme Court properly determined that all of the non-signatory Appellants are bound by the tolling agreement, most of the Attorney General's claims are nonetheless untimely as a matter of law. Consequently, it was plain error for Supreme Court to refuse to dismiss such claims and to grant the Attorney General judgment thereupon. Moreover, forcing Appellants to defend against time-barred claims at trial

exceeds Supreme Court's jurisdiction and ensures chaos and a continuing compounding of error.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant a stay of enforcement of Supreme Court's Decision and Order dated September 26, 2023, pursuant to CPLR § 5519(c) pending appeal, a stay of the trial, and grant any other such and further relief it may think proper.

Dated: New York, New York
October 6, 2023

Respectfully submitted,

HABBA MADAIO & ASSOCIATES, LLP
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: New York, New York
October 6, 2023

Respectfully submitted,

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendant-Appellants, IVANKA TRUMP, Defendant.	Appeal No: 2023-04925 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.) **AFFIRMATION OF CLIFFORD ROBERT**

CLIFFORD S. ROBERT, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury:

1. I am the principal of the law firm of Robert & Robert PLLC, attorneys for Defendants Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. I am

fully familiar with the facts and circumstances set forth herein based on the files and materials maintained by my firm.

2. This Affirmation of Urgency is submitted in support of Defendant-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC's (collectively, "Appellants") application brought by Order to Show Cause pursuant to CPLR § 5519(c) for a stay pending appeal of Supreme Court's decision and order, dated September 26, 2023 and duly entered by the Clerk of the Supreme Court, County of New York, on September 27, 2023, as supplemented by Supreme Court's Supplemental Order dated October 4, 2023, and duly entered by the Clerk of the Supreme Court, County of New York on October 5, 2023, (the "MSJ Decision") and for a stay of trial. Annexed hereto as **Exhibit A** is a true and correct copy of the MSJ Decision.

3. The MSJ Decision denied Appellants' motion for summary judgment, granted in part Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York's (the "Attorney General") motion for partial summary judgment, and directed, *inter alia*, that (1) "any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are cancelled" and (2) "that within [30][1] days of the date of this order, the parties are directed to recommend the names

[1] By its Supplemental Order dated October 4, 2023, and duly entered on October 5, 2023, Supreme Court extended the period to provide the Court with names of potential receivers to October 26, 2023.

of no more than three potential independent receivers to manage the dissolution of the cancelled LLCs." **Ex. A** at 35.

4. As set forth more fully below and in Appellants' accompanying memorandum of law, the extraordinary relief Supreme Court has granted was never sought by the Attorney General in this action, is unavailable under the Executive Law, and is premised upon claims this Court ruled are time-barred. It also purports to permanently suspend the business activities of multiple unidentified non-party entities.

5. The MSJ Decision evinces Supreme Court's continued unwillingness to comply with the directive in this Court's June 27, 2023, decision that all untimely claims be dismissed and states outright that Supreme Court considered, and will continue to consider at trial, time-barred evidence "in evaluating OAG's request for permanent injunctive relief." **Ex. A** at 22 n.14.

6. The urgency of this application is evident, given that Supreme Court's order (1) immediately cancels the GBL § 130 business certificates of entities owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney and (2) requires that the parties submit the names of receivers to dissolve the relevant entities within 30 days. Supreme Court's supplemental order entered on October 4, 2023, does little to clarify its overbroad and impermissible decision. It does, however, make clear that Supreme Court intends to dissolve those entities expeditiously, without process, authority, or regard for the rights of nonparties.

7. Supreme Court's actions will undoubtedly hinder, and likely prevent, the continued lawful business operations and result in serious disruption to the lives of hundreds of employees. This is the epitome of irreparable harm. Further, because the trial of this action is

based on the MSJ Decision, the parties are placed in the position of trying claims that this Court has dismissed.

STATEMENT OF FACTS

The Complaint

8. On September 21, 2022, the Attorney General initiated the underlying civil enforcement action captioned *People v. Trump, et al.*, Index No. 452564/2022, in Supreme Court, New York County by filing of a summons and complaint following a three-year investigation.

9. During the course of that investigation, due to the Covid-19 pandemic, certain Appellants and the Attorney General entered into a tolling agreement, which tolled the statute of limitations from November 5, 2020, to May 31, 2022.

10. The complaint alleges seven causes of action pursuant to Executive Law § 63(12). At base, the Attorney General contends that Appellants engaged in fraudulent and deceptive conduct by submitting allegedly false Statements of Financial Condition ("SFCs") to induce banks to grant favorable interest rates to certain Appellant entities. It is undisputed that those transactions were private, complex commercial transactions fully governed by bilateral agreements negotiated by commercially savvy parties. Annexed hereto as **Exhibit B** is a true and correct copy of the complaint.

11. The complaint named the following defendants: individuals Donald J. Trump, Donald Trump, Jr., Ivanka Trump, Eric Trump, Allen Weisselberg; and Jeffrey McConney; corporate entities Donald J. Trump Revocable Trust, the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member; and single-

purpose entities Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC.[2]

12. Donald J. Trump is the sole beneficiary of The Donald J. Trump Revocable Trust dated April 7, 2014, as amended (the "Trust"). The SFCs, which were compiled between 2011 and 2021, identified and described the assets and liabilities of both Mr. Trump and the Trust, which owns various companies for the benefit of Mr. Trump. Donald Trump, Jr. is a Trustee of the Trust and serves as the Executive Vice President for various corporate entities owned by the Trust. Eric Trump is the Chairman of the Advisory Board of the Trust and serves as the Executive Vice President for various corporate entities held by the Trust. Allen Weisselberg was formerly employed as the Chief Financial Officer of the Trump Corporation from 2003 through to July 2021. Mr. Weisselberg was also the Trustee of the Trust beginning on or about 2017 through 2021. Jeffrey McConney was employed as the Controller of the Trump Organization until 2021.

13. The relief sought by the Attorney General in her complaint includes "[c]ancelling any certificate filed under and by virtue of the provisions of section one hundred thirty of the General Business Law for the corporate entities *named as defendants and any other entity controlled by or beneficially owned by Donald J. Trump which participated in or benefitted from the foregoing fraudulent scheme*." **Ex. B** at 213 (emphasis added). By contrast, on summary judgment, Supreme Court cancelled the business licenses of "any of the entity defendants or by *any other entity* controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney."[3] **Ex. A** at 35 (emphasis added). Notably,

[2] This Court, in its June 27, 2023, decision, modified the caption to reflect that Donald J. Trump, Jr., is sued both personally and in his capacity as Trustee for the Donald J. Trump Revocable Trust.
[3] The notice of motion for summary judgment only sought a determination of liability on the Attorney General's first cause of action.

the Attorney General did not bring a cause of action pursuant to BCL Article 11 or otherwise seek dissolution in her complaint.

The Attorney General's Motion for a Preliminary Injunction

13. On October 13, 2022, the Attorney General moved by order to show cause for a preliminary injunction and the appointment of an independent monitor to oversee Appellants' submission of financial information pending disposition of the case. Annexed hereto as **Exhibit C** is a true and correct copy of the Attorney General's memorandum of law in support of her request for a preliminary injunction. In support of the motion, the Attorney General proffered the unsubstantiated claim that the Trump Organization, by registering as a Delaware corporation with the Secretary of State, was "taking steps to restructure its business to avoid existing responsibilities under New York law." **Ex. C** at 3.

14. On November 3, 2022, Supreme Court issued a decision granting the Attorney General's requests for (1) a preliminary injunction enjoining Appellants from selling, transferring or otherwise disposing of any non-cash assets listed on the 2021 Statement of Financial Condition of Donald J. Trump, without first providing the Attorney General with 14 days' written notice; and (2) appointing as an independent monitor to oversee Appellants' financial statements and significant asset transfers (the "November 3 Decision"). Annexed hereto as **Exhibit D** is a true and correct copy of the November 3 Decision.

15. Notably, despite being issued before any discovery was exchanged, the November 3 Decision contained myriad determinations of fact. In doing so, Supreme Court ostensibly relied on the exhibits attached to the Attorney General's preliminary injunction motion, stating that those exhibits "contain documentary evidence not subject to interpretation (i.e., the SFCs speak

for themselves) that support OAG's contention that it is likely to succeed on the merits. Conversely, defendants have failed to submit an iota of evidence, or an affidavit from anyone with personal knowledge, rebutting *OAG's comprehensive demonstration of persistent fraud.*" **Ex. D.** at 6 (emphasis added).

Appellants' Motion to Dismiss

16. On November 21, 2022, Appellants and defendant Ivanka Trump filed motions to dismiss the complaint arguing, *inter alia*, that certain allegations in the Attorney General's complaint were time-barred based on the statute of limitations. Annexed hereto as **Exhibit E** are true and correct copies of Appellants' memoranda of law in support of their motions to dismiss.

17. In a decision and order dated January 6, 2023, Supreme Court denied the motion in its entirety (the "January 6 Decision"). Annexed hereto as **Exhibit F** is a true and correct copy of the January 6 Decision.

18. On February 3, 2023, Appellants filed notice of appeal of the January 6 Decision. In a decision entered on June 27, 2023, this Court modified Supreme Court's January 6 Decision by "dismiss[ing], as time-barred, the claims against defendant Ivanka Trump and the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)" (the "June 27 Decision"). Annexed hereto as **Exhibit G** is a true and correct copy of this Court's June 27 Decision.

Supreme Court's Failure to Comply with this Court's Decision

19. Despite this Court's clear directive to dismiss (1) all claims against Ivanka Trump, (2) all claims against Appellants subject to the tolling agreement that accrued prior to 2014, and (3) all other claims that accrued prior to February 2016, Supreme Court failed to take any action.

As a result, Appellants moved by order to show cause on September 5, 2023, for a brief stay of the trial to allow Supreme Court to implement this Court's mandate and identify the remaining claims to be tried. Supreme Court summarily rejected Appellants' motion the next day, rejecting Appellants' arguments as "completely without merit." Annexed hereto as **Exhibit H** is Supreme Court's decision and order rejecting Appellants' request for a stay.

20. Due to Supreme Court's continued failure to comply with or even address this Court's decision less than a month before trial was set to begin, on September 13, 2023, Appellants filed a verified petition by order to show cause seeking, *inter alia*, a writ of mandamus directing the Supreme Court to comply with the June 27 Decision and render a determination on the scope of the claims to be determined. Appellants also sought an interim stay of the trial pending determination of the petition.

21. On September 14, 2023, a Justice of this Court entered an order granting Appellants' request for a stay of the trial. Annexed hereto as **Exhibit I** is a copy of this Court's order granting an interim stay of trial.

22. On September 28, 2023, after Supreme Court issued the MSJ Decision which, as set forth below, determined the scope of the tolling agreement and denied Appellants' request for dismissal of time-barred claims in compliance with this Court's order, a full panel of this Court denied Appellants' request for a stay of trial. Annexed hereto as **Exhibit J** is a copy of this Court's September 28, 2023, order.

The Parties' Motions for Summary Judgment

23. On August 30, 2023, Appellants filed a motion for summary judgment seeking dismissal of the Attorney General's complaint in its entirety. Annexed hereto as **Exhibit K** is a true and correct copy of all briefing on Appellants' motion for summary judgment. That same

day, the Attorney General filed a motion for partial summary judgment requesting that Supreme Court determine as a matter of law that she had prevailed on her first cause of action. Annexed hereto as **Exhibit L** is a true and correct copy of all briefing on the Attorney General's motion for partial summary judgment.

24. The Attorney General's notice of motion requested a "[finding in [the Attorney General's] favor judgment as a matter of law on Plaintiff's First Cause of Action for fraud under Executive Law § 63(12) and limiting the contested issues of fact for trial, by specifying such facts deemed established for all purposes in this action." Annexed hereto as **Exhibit M** is a true and correct copy of the Attorney General's notice of motion.

25. In her motion for summary judgment, the Attorney General, argues, *inter alia*, that the following assets of the Trump Organization were overinflated in the SFCs from 2011 to 2021: (1) the triplex in Trump Tower, New York (the "Triplex"); (2) the Seven Springs property in Bedford, New Castle and North Castle ("Seven Springs"); (3) the ground lease at 40 Wall Street, a 72-story tower located in Manhattan ("40 Wall Street"); (4) the Mar-a-Lago Club in Palm Beach, Florida ("Mar-a-Lago"); (5) Trump International Golf Club in Aberdeen, Scotland, ("Trump Aberdeen"); (6) 1290 Avenue of the Americas in New York, NY ("1290 Avenue of the Americas") and 555 California Street in San Francisco, California ("555 California Street") (collectively, "Vornado Partnership Interests"); (7) various Golf Clubs located in the United Stated that are either owned or leased by Mr. Trump; Trump Park Avenue, which consists of 134 residential condominium units that range from one to seven bedrooms; (8) Trump Tower, a sixty-eight-story mixed-use property located at 725 Fifth Avenue; and (9) Vornado partnership cash and escrow deposits.

26. Despite making sweeping accusations that Appellants overvalued the above-listed properties in SFCs prepared between 2011 and 2021, the Attorney General's motion for summary judgment does not include any opinions, depositions, or affidavits of the numerous experts engaged by the Attorney General to assess the assets at issue. Rather, the Attorney General claims that this is a "documents case."

27. On September 22, 2023, Supreme Court held oral argument on both summary judgment motions. Annexed hereto as **Exhibit N** is a true and correct copy of the transcript of the oral argument.

28. On September 26, 2023, Supreme Court issued a decision and order dismissing Appellants' summary judgment motion in its entirety and granting the Attorney General's motion for partial summary judgment and motion for sanctions.

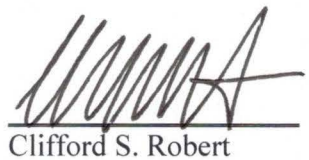
29. On September 27, 2023, Supreme Court held a pre-trial conference. At the conference, Supreme Court agreed to extend the time for the parties to submit potential receivers to oversee dissolution of the relevant entities from 10 days to 30 days. Annexed hereto as **Exhibit O** is a true and correct copy of the September 27, 2023, transcript.

30. On October 4, 2023, Appellants filed notice of appeal of the MSJ Decision. Annexed hereto as **Exhibit P** is a true and correct copy of that notice of appeal.

31. On October 5, 2023, Supreme Court entered a Supplemental Order in furtherance of the cancellation and dissolution directives. Annexed hereto as **Exhibit Q** is a true and correct copy of the Supplemental Order. That same day, Appellants filed notice of appeal of that order. Annexed hereto as **Exhibit R** is a true and correct copy of that notice of appeal.

32. On October 5, 2023, pursuant to 22 N.Y.C.R.R. § 1250.4(b)(2), my partner Mike Farina notified the Attorney General, via e-mail, of Appellants' request for a stay. Annexed hereto as **Exhibit S** is a true and correct copy of that email notification.

Dated: Uniondale, New York
October 6, 2023



Clifford S. Robert

EXHIBIT N

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date: October 6, 2023 Case # 2023-04925

Title of Matter: People v. Donald J. Trump, et al. Index/Indict/Docket # 452564/2022

Appeal by Defendants from Order ☑ Judgment ☐ Decree ☐ of Supreme ☑ Surrogate's ☐ Family ☐ County New York Court entered on September 26, 2023

Name of Judge Hon. Arthur F. Engoron, J.S.C. Notice of Appeal filed on October 4 & 5, 2023

If from administrative determination, state agency

Nature of action or proceeding Executive Law 63(12) action.

Provisions of ☑ order ☐ judgment ☐ decree appealed from decretal paragraphs purporting to (1) cancel the business certificates of multiple entities, including non-parties, and (2) appointing an independent monitor to dissolve those entities.

This application by appellant ~~respondent~~ is for an interim stay of enforcement of Supreme Court's decision and order on summary judgment and an interim stay of trial pending appeal.

If applying for a stay, state reason why requested Supreme Court's Sept. 26 and Oct. 5, 2023 decision impose unauthorized, undemanded, overbroad relief without proper factual or legal predicate, which will result in significant, irreparable harm to, inter alia, non-parties.

Has any undertaking been posted No If "yes", state amount and type

Has application been made to court below for this relief Yes, in part If "yes", state Disposition Unsigned OTSC for stay of trial

Has there been any prior application here in this court Yes, in part If "yes", state dates and nature September 14, 2023

Appellants filed a writ of mandamus on September 14, 2023, seeking a stay of trial pending Supreme Court's compliance with this Court's June 27, 2023 decision.

Has adversary been advised of this application Yes Does he/she consent

Attorney for Movant	Attorney for Opposition
Name Clifford S. Robert and Michael Madaio	Kevin Wallace, Esq. and Colleen Faherty, Esq.
Address Robert & Robert PLLC, 526 RXR Plaza, Uniondale	People of the State of New York, by Letitia James
NY 11566/Habba Madaio & Associates LLP, 112 West	Attorney General of the State of New York
34th Street, 17th and 18th Floors, NY, NY 10120	28 Liberty Street, NY, NY 10005
Tel. No. (516) 832-7000/(908) 869-1188	(212) 416-6376
Email crobert@robertlaw.com/mmadaio@habbamaddaio.com	kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov
Appearing by	

(Do not write below this line)

DISPOSITION

Defendants' application for an interim stay of enforcement of Supreme Court's decisions dated September 26 and October 4, 2023, and for a stay of trial, is granted solely to the extent of staying enforcement of Supreme Court's order directing the cancellation of business certificates. The interim application is denied in all other respects.

PHM Justice PHM

October 6, 2023
Date

Motion Date Nov. 13, 2023 Opposition Oct. 30, 2023 Reply Nov. 9, 2023

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY.

EH
Court Attorney

"Revised 10/19"

EXHIBIT O

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Sallie Manzanet-Daniels, Justice Presiding,
David Friedman
Lizbeth González
Manuel J. Mendez
Llinét M. Rosado, Justices.

People of the State of New York, by Letitia James, Attorney General of the State of New York, Plaintiff-Respondent,	Motion No. **2023-04357** Index No. 452564/22 Case Nos. 2023-04925 2023-05181

-against-

Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC,
Defendants-Appellants,

Ivanka Trump,
Defendant.

Appeals having been taken to this Court from orders of the Supreme Court, New York County, entered on or about September 27, 2023 (Case No. 2023-04925) and on or about October 05, 2023 (Case No. 2023-05181),

And defendants-appellants having moved to stay enforcement of the aforesaid orders and a stay of trial pending hearing and determination of the appeals,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of continuing, pending hearing and determination of the appeals, the interim relief granted by a Justice of this Court on October 06, 2023, and is otherwise denied.

ENTERED: December 07, 2023

Susanna Molina Rojas
Clerk of the Court

EXHIBIT P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- Donald J. Trump, *et al*., Defendants.	Index No. 452564/2022 Hon. Arthur Engoron

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre

Of Counsel

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. FINDINGS OF FACT 5

A. Deceptive Practices to Inflate Asset Values on SFCs 5

1. Defendants' Role in SFC Preparation 5

2. Inflated Assets 10

a. Vornado Cash 10

b. Triplex Apartment 11

c. 40 Wall 14

d. Trump Park Avenue 15

e. Seven Springs 16

f. Mar-a-Lago 18

g. Licensing Deals 19

h. Golf Clubs 19

i) No Present Value 19

ii) Brand Premium 20

iii) Fixed Assets 20

iv) Briarcliff 22

v) TNGC-LA 23

vi) Aberdeen 23

B. Defendants Falsely Certified the SFCs' Accuracy to Mazars and Whitley Penn 24

C. Defendants Used False and Misleading SFCs to Secure and Maintain Financing from Deutsche Bank's Private Wealth Management Division 27

1. DB Relied on SFCs for Doral Loan Approval and Annual Reviews 28

2. DB Relied on SFCs for Chicago Loan Approvals and Annual Reviews 29

3. DB Relied on SFCs for OPO Loan Approval and Annual Reviews 30

D. Defendants Used False and Misleading SFCs to Secure and Maintain Refinancing from Ladder Capital for the 40 Wall Loan 33

E. Defendants Used SFCs to Maintain the Seven Springs Loan 35

F. Defendants Used False and Misleading Financial Information to Secure and Maintain the License Agreement from NYC Parks for Ferry Point 35

G. Defendants Used False and Misleading SFCs to Renew Surety Coverage from Zurich 37

H. Defendants Used a False and Misleading SFC to Secure Higher Limits from D&O Insurer HCC at Renewal 39

I. Defendants' Ill-Gotten Gains 42

1. Interest Differential 42

2. OPO Profits 44

3. Ferry Point Profits 45

4. Severance Agreements 45

J. Failure of Corporate Governance and Internal Controls 46

1. Preparation of Fraudulent SFCs was Persistent 46

2. The Company Lacks Effective Leadership 47

3. TTO Has a History of Criminal Convictions and Regulatory Resolutions 49

III. CONCLUSIONS OF LAW 50

A. Plaintiff's Burden of Proof is a Preponderance of the Evidence 50

B. Individual Defendants are Liable Based on Penal Law Violations 51

1. Falsifying Business Records 52

a. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos are Business Records 53

b. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos Contain False Entries 54

c. Donald Trump Is Liable for Falsification of Business Records 56

d. Allen Weisselberg Is Liable for Falsification of Business Records 59

e. Jeffrey McConney Is Liable for Falsification of Business Records 63

f. Donald Trump, Jr. and Eric Trump Are Liable for Falsification of Business Records 66

2. Issuing False Financial Statements 72

3. Committing Insurance Fraud 74

4. Engaging in Conspiracy 75

C. The Entity Defendants are Liable for Penal Law Violations Through the Acts of the Individual Defendants 77

IV. RELIEF 80

A. Broad Injunctive Relief is Appropriate 80

B. An Industry Bar Is Appropriate for the Individual Defendants 84

C. Disgorgement of $370 Million Plus Interest is Appropriate 85

D. The Court Should Appoint a Monitor to Oversee Compliance with the Final Judgment 91

V. CONCLUSION 92

TABLE OF AUTHORITIES

CASES

Aldridge v. A.T. Cross Corp., 284 F.3d 72 (1st Cir. 2002) 53

CFTC v. Deutsche Bank, 16-cv-6544, 2016 WL 6135664 (S.D.N.Y. Oct. 20, 2016) .....

China Development Indus. Bank v. Morgan Stanley & Co., Inc., 86 A.D.3d 435 (1st Dep't 2011) 53

City of New York v. Golden Feather Smoke Shop, Inc., 08-cv-3966, 2009 WL 2612345 (E.D.N.Y. Aug. 25, 2009) 81

Cullen v. Margiotta, 811 F.2d 698 (2d Cir. 1987) 51

Delgado v. City of New York, 144 A.D.3d 46 (1st Dep't 2016) 5

Employees' Retirement Sys. of Govt. of the Virgin Is. v Blanford, 794 F.3d 297 (2d Cir. 2015) 61

F. Hoffman-La Roche Ltd. v. Empagran S.A., 524 U.S. 155 (2004) 80

FTC v. Bronson Partners, LLC, 654 F.3d 359 (2d Cir. 2011) 86

Hynes v. Iadarola, 221 A.D.2d 131 (2d Dep't 1996) 85-86, 90

Iannelli v. United States, 420 U.S. 770 (1975) 75

In re AOL Time Warner, Inc., 381 F.Supp.2d 192 (S.D.N.Y. 2004) 53

In the Matter of the Estate of Brandon, 55 N.Y.2d 206 (1982) 62

Jarrett v. Madifari, 67 A.D.2d 396 (1st Dep't 1979) 50

Kent v. Papert Companies, Inc., 309 A.D.2d 234 (1st Dep't 2003) 5

Liu v. SEC, 140 S. Ct. 1936 (2020) 85

Marine Midland Bank, N.A. v. Embassy East, Inc., 160 A.D.2d 420 (1st Dep't 1990) 69

Matter of Cappoccia, 59 N.Y.2d 549 (1983) 51

Matter of Seiffert, 65 N.Y.2d 278 (1985) 51

Oncor Commc'ns, Inc. v. State, 165 Misc. 2d 262 (Sup. Ct. Albany Cty. 1995) 51

People v Ivybrooke Equity Enters., LLC, 175 A.D.3d 1000 (4th Dep't 2019) 51

People v. Assi, 14 N.Y.3d 335 (2010) 78

People v. Bloomfield, 6 N.Y.3d 165 (2006) 54

People v. Byrne, 77 N.Y.2d 460 (1991) 78

People v. Credel, 99 A.D.3d 541 (1st Dep't 2012) 53

People v. Dallas, 46 A.D.3d 489 (1st Dep't 2007) 52

People v. Ernst & Young, *LLP*, 980 N.Y.S.2d 456 (1st Dep't 2014) 86

People v. Essner, 124 Misc.2d 840 (Sup. Ct. N.Y. Cty. 1984) 72

People v. Fashion Place Associates, 638 N.Y.S.2d 26 (1st Dep't 1996) 84

People v. Feldman, 791 N.Y.S.2d 361 (Sup. Ct. Kings Cty. 2005) 78

People v. First Meridian Planning Corp., 86 N.Y.2d 608 (1995) 53, 57, 60, 67

People v. Flanagan, 28 N.Y.3d 644 (2017) 75

People v. Garrett, 39 A.D.3d 431 (1st Dep't 2007) 53

People v. Gen. Elec. Co., 302 A.D.2d 314 (1st Dep't 2003). 80

People v. Gibson, 118 A.D.3d 1157 (3d Dep't 2014) 52

People v. Greenberg, 27 N.Y.3d 490 (2016) 80

People v. Harco Construction LLC, 163 A.D.3d 406 (1st Dep't 2018) 78

People v. Highgate LTC Management, LLC, 69 A.D.3d 185 (3d Dep't 2009) 78

People v. Houghtaling, 14 A.D.3d 879 (3d Dep't 2005) 53

People v. Imported Quality Guard Dogs, Inc., 930 N.Y.S.2d 906 (2d Dep't 2011) 84

People v. Johnson, 39 A.D.3d 338 (1st Dep't 2007) 53

People v. Kisina, 14 N.Y.3d 153 (2010) 52, 54

People v. Newspaper and Mail Deliverers' Union of New York and Vic., 250 A.D.2d 207 (1st Dep't 1998) 78

People v. Reyes, 69 A.D.3d 537 (1st Dep't 2010) 52

People v. Ribowsky, 77 N.Y.2d 284 (1991) 77

People v. Rivera, 84 N.Y.2d 766 (1995) 56, 59, 66

People v. Rodriguez, 17 N.Y.3d 486 (2011) 52

People v. Sala, 258 A.D.2d 182 (3d Dep't 1999) 53

People v. Seely, 253 N.Y. 330 (1930) 75

People v. Taylor, 14 N.Y.3d 727 (2010) 52

People v. Telehublink Corp., 301 A.D.2d 1006 (3d Dep't 2003) 51

People v. Vomvos, 137 A.D.3d 1172 (2d Dep't 2016) 53

Pludeman v. Northern Leasing Sys., Inc., 10 N.Y.3d 486 (2008) 53

Polonetsky v. Better Homes Depot, 97 N.Y.2d 46 (2001) 53

Prop. Clerk, New York City Police Dep't v. Ferris, 77 N.Y.2d 428, (1991) 51

Prop. Clerk, New York City Police Dep't v. Hurlston, 104 A.D.2d 312 (1st Dep't 1984) 51

Quintel Corp., N.V. v. Citibank, N.A., 596 F.Supp. 797 (S.D.N.Y. 1984) 91

Reichman v. Warehouse One, Inc., 173 A.D.2d 250 (1st Dep't 1991) 66

Robinson v. Snyder, 259 A.D.2d 280 (1st Dep't 1999) 75, 77

Root v. Railway Co., 105 U.S. 189 (1882) 85

S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese, 284 F.3d 518 (4th Cir. 2002) 51

Saleh v. Bear Creek Productions, Inc., 1988 WL 391125 (Sup. Ct. N.Y. Cty. Jan. 8, 1988) 51

SEC v. Cavanagh, 155 F.3d 129 (2d Cir. 1998) ..... , 83

SEC v. D'Onofrio, 72-cv-3507, 1975 WL 393 (S.D.N.Y. June 3, 1975) 82

SEC v. Egan, 994 F.Supp.2d 558 (S.D.N.Y. 2014) 53

SEC v. First Jersey Secs., 101 F.3d 1450 (2d Cir. 1996) 85, 86, 89

SEC v. Management Dynamics, Inc., 515 F.2d 801 (2d Cir. 1975) 81

SEC v. Manor Nursing Center, Inc., 458 F. 2d 1082 (2d Cir. 1972) 81, 82

SEC v. Mattessich, 2022 WL 16948236 (S.D.N.Y. Nov. 15, 2022) 83

SEC v. Pentagon Capital Mgmt. PLC, 725 F.3d 279 (2d Cir. 2013) 89

SEC v. Razmilovic, 738 F.3d 14 (2d Cir. 2013) 91

SEC v. Teo, 746 F.3d 90 (3d Cir. 2014) 90

Selective Ins. Co. of N.Y. v. St. Catherine's Ctr. for Children, 67 Misc.3d 339 (Sup. Ct. Albany Cty. 2019) 53

State v. Applied Card Sys., Inc., 11 N.Y.3d 105 (2008) 80

State v. Princess Prestige, 42 N.Y.2d 104 (1977) 80

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007) 67

United States v. Amiel, 95 F.3d 135, 144 (2d Cir. 1996) 75

United States v. Apple, 992 F.Supp.2d 263 (S.D.N.Y. 2014) 92

United States v. Colasuonno, 697 F.3d 164 (2d Cir. 2012) 70, 72

United States v. MacPherson, 424 F.3d 183 (2d Cir. 2005) 53

United States v. Rivera, 971 F.2d 876 (2d Cir.1992) 76

United States v. Stavroulakis, 952 F.2d 686 (2d Cir. 1992) 76

United States v. Yonkers Bd. of Educ., 29 F.3d 40 (2d Cir. 1994) 92

STATUTES

N.Y. Executive Law §63(12) ..... passim

N.Y. General Business Law §130 91

N.Y. General Obligations Law §5-1501 67

N.Y. Penal Law §175.45 72

N.Y. Penal Law §176.05 74-75

N.Y. Penal Law §175.00 52

N.Y. Penal Law §175.05 52

N.Y. Penal Law §20.00 ..... 56, 59, 66, 75

N.Y. Penal Law §20.20 .... 74, 78

I. PRELIMINARY STATEMENT

On a voluminous summary judgment record, the Court found Donald Trump ("Trump"), his company ("TTO"), and its top executives (including Eric Trump and Donald Trump, Jr.) liable for repeated and persistent fraud under Executive Law §63(12) in preparing and certifying as true Trump's falsely inflated statements of financial condition ("SFCs"). NYSCEF No. 1531 ("SJ Decision") at 32-33. The Court found "that between 2014 and 2021, defendants overvalued the assets . . . between $812 million and $2.2 billion dollars," *id*. at 19, amounts that are material by any standard. The Court left for trial the remaining causes of action alleging illegality under §63(12) by falsifying business records and financial statements, committing insurance fraud, and conspiracy to commit those acts.

Based on the documents and testimony introduced during 44 days of trial, the People have established that defendants: (i) committed the alleged illegal acts with the requisite intent to defraud when they employed numerous deceptive schemes to falsely inflate more than a dozen assets on the SFCs over 11 years; (ii) reaped hundreds of millions of dollars in ill-gotten gains; and (iii) continue to conduct business without meaningful corporate oversight to prevent further fraud on the marketplace.

The conclusion that defendants intended to defraud when preparing and certifying Trump's SFCs is inescapable; the myriad deceptive schemes they employed to inflate asset values and conceal facts were so outrageous that they belie innocent explanation. To cite a few examples:

- reporting as "liquid" assets cash not controlled by Trump;
- valuing non-existent, yet-to-be-developed buildings as if estimated profits from those buildings could be realized immediately without any present-value discount;

- valuing properties with onerous legal restrictions – like rent stabilization and conservation easements – as if they could be sold or developed free and clear of such restrictions;

- disregarding and concealing appraisals in favor of much higher values calculated based on false assumptions, often conflicting with the very assumptions used in the appraisals;

- valuing properties using the listing prices of purportedly comparable properties (instead of sale prices);

- valuing properties based on objectively false assumptions such as grossly inflated square footage and misrepresentations about the quantity of homes approved for development; and

- valuing properties based on assumptions that were contrary to express representations in the SFCs, such as the exclusion of brand value and refundable golf membership deposits being worth $0.

Moreover, direct evidence from multiple witnesses establishes Trump made known his desired target net worth each year prior to assuming public office in 2017, which his CFO and Controller then dutifully set out to hit by reverse-engineering the asset values in the SFC, a practice that continued under the leadership of Eric Trump and Donald Trump, Jr. as co-CEOs of TTO. The trial record also includes copious circumstantial evidence demonstrating defendants repeatedly acted in ways courts typically view as inferring intent: (i) engaging in an overall pattern of fraudulent conduct over the course of many years using similar techniques with a similar nucleus of people; (ii) exercising substantial control of the organization and its day-to-day operations; (iii) repeatedly misrepresenting objective facts in the relevant documents; (iv) actively concealing material facts from counterparties; (v) possessing financial motive based on the benefit to be received from the fraud; (vi) possessing unique knowledge of, and ready access to, the true facts being misrepresented; and (v) dissembling, evading, and prevaricating on the stand.

Defendants failed to present any legally relevant response to the People's proof. It does not matter how many times defendants' counsel recite there was "no reliance" and were "no victims." Plaintiff's claims do not require proof of "reliance," the Court has already ruled multiple times that "the State has an interest in protecting the integrity of the marketplace" (NYSCEF Nos. 1655 at 3, 1531 at 4-5), and the banks *did* lose money "by lending at lower interest rates than they otherwise would have" (NYSCEF No. 1655 at 2-3). In any event, third parties *did* rely on the SFCs. Deutsche Bank ("DB") witnesses, including Nicholas Haigh (the only bank witness with credit authority) testified the bank relied on the asset values reported in the SFCs when applying standard "haircuts," which was confirmed by the plain language of the bank's credit memos. *Id*. at 3 ("Indeed, many of the lenders' calculations used the SFCs as their starting point, to which they often applied a standard 'haircut.'"). Similarly, the insurance underwriters testified they relied on figures in the SFCs, most importantly the inflated cash figure, when conducting their underwriting analyses. Contrary to defendants' repeated assertions, defendants' conduct deprived counterparties of the ability to properly price the risk of doing business with TTO.

Defendants reaped hundreds of millions of dollars in ill-gotten gains through their unlawful conduct. Record evidence, including the substantively unrebutted testimony of Plaintiff's banking expert Michiel McCarty, supports disgorgement of $370 million, plus pre-judgment interest, based on: (i) the interest rate differential between what defendants procured through the fraudulent SFCs and what they would have received through a nonrecourse commercial real estate loan; (ii) the profit they realized from the Old Post Office and Ferry Point deals; and (iii) the "bonuses" paid to employees for participation in defendants' fraudulent schemes.

The People have also conclusively established that TTO continues to operate without necessary corporate governance oversight to protect against future fraud and illegality. Much of

the misconduct occurred on the watch of current co-CEOs Eric Trump and Donald Trump, Jr., who perpetuated the scheme to inflate the SFCs (even during OAG's active investigation) and themselves certified SFCs. On their watch, the company's CFO Allen Weisselberg and Controller Jeffrey McConney confessed to committing multiple acts relating to tax fraud, and a jury convicted the company for that same criminal conduct. After these illegal acts came to light, Eric Trump and Donald Trump, Jr. allowed Weisselberg and McConney to remain on the payroll and rewarded them with lucrative severance packages that restricted their ability to cooperate with law enforcement investigations, rather than immediately terminating their employment. To this day the positions of CFO and Controller remain unfilled.

These acts of corporate malfeasance warrant appointing an independent monitor to closely oversee the company for at least the next five years, and to impose statewide permanent industry bars on Trump, Weisselberg, and McConney, and five-year bars on Eric Trump and Donald Trump, Jr.

II. FINDINGS OF FACT

A. Deceptive Practices to Inflate Asset Values on SFCs[1]

1. Defendants' Role in SFC Preparation

1. As the SFCs represent, Trump was responsible for the preparation and fair presentation of the SFC's from 2011 through 2015,[2] the date covered by the last SFC issued before Trump became President. (*E.g.,* PX-729)

2. To meet that responsibility, Trump directed Weisselberg and McConney to prepare the SFCs and work with TTO's outside accountants at Mazars USA LLP ("Mazars") to compile and publish them. (Tr.3485:02-3486:10, 3491:09-11)

3. Trump told Weisselberg that he "wanted his net worth on the Statement of Financial Condition to go up." (Tr.1409:16-1410:03)

4. To ensure the net worth went up, between 2011 and 2015 Weisselberg and Michael Cohen were tasked by clear implication from Trump to "reverse engineer the various different asset classes" in the SFCs, to "increase those assets in order to achieve the number"—Trump's net worth figure—that he told them to reach. (Tr.2211:06-17, 2215:09-18, 2218:15-18, 2230:05-17)

---

[1] This section contains factual findings the Court made on summary judgment (which are law of the case) and additional proposed findings supported by trial evidence. *Delgado v. City of New York*, 144 A.D.3d 46, 47 (1st Dep't 2016) (emphasizing that "when an issue is specifically decided on a motion for summary judgment, that determination is the law of the case").

[2] To the extent any proposed finding or conclusion relates to events occurring before the cutoff date established by the Appellate Division, the limitations period is a bar on claims, not evidence, as the Court has stated repeatedly. Tr.1812:24-25; 1924:2-11 (bank robbery example); *Kent v. Papert Companies, Inc.*, 309 A.D.2d 234, 241 (1st Dep't 2003); NYSCEF No. 1535 (collecting cases). Such events may show a course of conduct, knowledge, intent, or a long-running conspiracy or scheme, or may be relevant to equitable relief to be awarded. *See* Guide to New York Evidence § 4.38, available at https://www.nycourts.gov/JUDGES/evidence/; *People v. Leisner*, 73 N.Y.2d 140, 146-47 (1989).

5. Once Weisselberg and Cohen achieved the numbers Trump tasked them to reach, Weisselberg would obtain Trump's approval and send the SFCs to Mazars for finalization. (Tr.2220:01-18)

6. From 2011 to 2015, Trump had "final review" over each SFC's contents. (Tr.597:10-18, 2230:18-2231:03, 5047:10-21)

7. Trump continues to assert that the preparation of the SFCs was "fine" and, if anything, understated his assets "by a substantial amount." (Tr.3493:01-07, 3495:09-13)

8. Trump would discuss valuations of individual properties with Weisselberg and McConney. (Tr.3495:16-18) In his own view, Trump knew "more about real estate than other people," and "is more of an expert than anybody else." (Tr.3487:01-08)

9. In March 2017—two months after his inauguration—Trump appointed Donald Trump, Jr. and Eric Trump as his agents with power of attorney over banking and real estate transactions, including execution and delivery of certifications for existing loans. (PX-1330; Tr.3433:01-3434:11)

10. Donald Trump, Jr. and Eric Trump have been Executive Vice Presidents at TTO since at least 2011, and since January 2017 they have been acting as co-chief executive officers, running the company together with Weisselberg (until his departure). (Tr. 3164:17-20, 3168:16-25, 3170:12-18, 3286:06-08, 3288:11-22)

11. Donald Trump, Jr. became trustee of the Donald J. Trump Revocable Trust ("Trust") effective January 19, 2017, and has continued in that role since then except between January 19 and July 7 of 2021. (PX-1015, PX-1016; Tr.3184:06-3185:06)

12. From January 2017 through 2021, Weisselberg and Donald Trump Jr., as trustees of the Trust, were responsible for preparation and fair presentation of the SFCs. (*E.g.*, PX-756; Tr.961:19-963:18)

13. In addition, as detailed below, Eric Trump and Donald Trump, Jr. were involved in the valuations of specific properties. In 2021, they took direct control of the SFC preparation: retaining the accounting firm Whitley Penn, interviewing and selecting the firm, signing the engagement letter, supervising McConney and Patrick Birney, participating in a video call update on the SFC, and eventually signing the final representation letter. (*Infra* ¶¶98-99, 110-116)

14. Allen Weisselberg was Chief Financial Officer ("CFO") of TTO from 2011 until he was placed on leave in October 2022 after pleading guilty to 15 counts related to tax fraud. (PX-1751 at 2, PX-3041 ¶710)

15. Prior to Trump assuming public office, Weisselberg reported directly to him. (PX-3041 ¶711)

16. As CFO, Weisselberg was in charge of the corporate accounting department at TTO. (Tr.790:03-07; PX-3041 ¶711-712)

17. Weisselberg was never a CPA and did not know any components of GAAP. (Tr.788:11-19)

18. Weisselberg was trustee of the Trust from January 2017 through January 2021. (Tr.794:08-795:23; PX-769, PX-1016)

19. Weisselberg had a primary role in preparing SFCs, supervising McConney from 2011 until late 2016, and McConney and Birney from late 2016 until at least 2020. (Tr.1229:23-1231:5, 3561:5-17, PX-3041 ¶714)

20. Weisselberg signed SFC engagement and management representation letters for the 2011 through 2015 SFCs as an executive officer of TTO and for the 2016 through 2020 SFCs as an executive officer of TTO and trustee. (PX-3041 ¶716-35; *e.g.,* PX-753, PX-786)

21. Weisselberg understood that in the management representation letters, TTO was making representations to Mazars that Mazars was relying upon, and that Mazars would not release the SFCs without these representations. (Tr.837:11-22; 856:06-17)

22. Notwithstanding his lack of knowledge of GAAP, Weisselberg represented, among other things, that the SFCs were presented in conformity with GAAP and that assets in the SFCs were stated at their Estimated Current Value ("ECV"), even though he was not familiar with the definition of that term. (Tr.839:13-842:12; *e.g.,* PX-706)

23. TTO was obligated to provide to Mazars any relevant information it had, including any information that contradicted the valuations in the SFCs. (Tr.847:19-23)

24. Weisselberg would not have permitted a final draft of the SFC to be issued unless Trump had reviewed it and was satisfied with it. (Tr.900:11-19; PX-3041 at 676)

25. Jeffrey McConney was Controller of TTO from the early 2000s until February 25, 2023. (PX-3041 ¶736; Tr.582:09-12)

26. McConney led the preparation of Trump's SFCs beginning in the 1990s and was primarily responsible for preparing the valuations in the SFCs from at least 2011 until (at the earliest) November 2016, when Birney became involved with preparing the SFC. (PX-3041 ¶737; Tr.583:01-24, 1207:22-1208:10, 1209:16-24)

27. Under Weisselberg's supervision and control, McConney was responsible for selecting valuation methodologies, assembling documentation for each asset based on the

methodology selected, and preparing supporting data spreadsheets containing the valuations from 2011 until (at the earliest) November 2016. (PX-3041 ¶738; Tr.587:16-589:17)

28. During this period, he reviewed the valuation methodologies and valuations with Weisselberg, who gave him approval each year to inform Mazars when the SFC could be finalized and issued. (Tr.581:16-21, 589:06-17, 596:24-597:09)

29. McConney understood that it was the responsibility of Trump and later the trustees to provide outside accountants compiling the SFCs with complete and accurate information in connection with the engagement. (Tr.589:18-592:02)

30. McConney lacked expertise in GAAP, but when working on the SFCs from 2011 to 2021 he understood that the SFCs had to be GAAP compliant unless there was a departure from GAAP specifically noted. (Tr.629:19-630:05)

31. When working on SFCs from 2011 to 2021, McConney understood that regardless of the methodology used to value an asset, the result had to be an amount at which the asset could be exchanged between a buyer and seller, each of whom is well informed and willing and neither of whom is compelled to buy or sell. (PX-3041 ¶31; Tr.630:20-631:04, 6250:08-6250:13)

32. From 2011 until he assigned Birney to assist with the SFCs, McConney provided information to Mazars required for the SFC compilation engagement by sending Mazars the supporting data spreadsheets and backup information. (Tr.592:08-16)

33. When he assigned Birney to work on the SFCs in November 2016, McConney provided no written training materials to him on how to prepare an SFC and no instruction on how to value property using a capitalization rate or how to apply GAAP or ASC 274 – all of which Birney knew nothing about. (Tr.1210:04-1212:07)

34. After November 2016, McConney continued to play a critical role in SFC preparation, reviewing supporting data spreadsheets with Birney and Weisselberg for Weisselberg's approval and continuing to be a decision-maker with Weisselberg on which valuation methodologies to select. (Tr.1212:08-1213:21, 1215:11-15, 1217:10-1218:13, 1223:03-08, 1226:22-25, 1228:17-20)

2. Inflated Assets

a. Vornado Cash

35. Donald Trump and his trustees falsely and misleadingly classified his 30% interest in cash held by the Vornado Partnership Interests ("Vornado Cash") as a liquid/cash asset on his SFCs for 2013-2021 in amounts between $14,221,800 and $93,126,589. (SJ Decision 30)

36. McConney intentionally included Vornado Cash in the cash asset category despite knowing that such cash did not reflect Trump's liquidity and despite being told by Donald Bender that he could not include in this asset category cash Trump did not control. (PX-2587, PX-3401 ¶403; Tr.615:08-620:24, 702:24-704:05)

37. In the cash spreadsheet he provided Mazars each year from 2013-2016, McConney intentionally listed Vornado Cash in a column labeled "Capital One" that included cash amounts for other entities that, unlike Vornado Cash, are controlled by Trump. (PX-2587; Tr.620:25-621:16, 623:17-19, 626:10-15) McConney did so even though Vornado Cash was held in bank accounts at Bank of America, not Capital One, which McConney would have known based on bank statements confirming periodic distributions of Vornado Cash to TTO. (PX-3106; Tr.688:08-690:04)

38. Weisselberg was aware Vornado Cash was included in the cash asset category on the SFCs and that Vornado Cash was not under Trump's control yet approved this valuation methodology. (Tr.939:16-940:12)

39. By at least February 2016, Weisselberg advised Donald Trump, Jr. and Eric Trump that distributions from the Vornado Partnerships were at the general partner's discretion and hence not in the control of Trump or the Trust. (PX-1293; Tr.1381:22-1383:04, 1387:18-1388:17)

40. Mark Hawthorn, Chief Operating Officer of Trump Hotels, conceded that including Vornado Cash in the cash asset category in Trump's SFCs was inaccurate. (Tr.1414:06-07, 1454:19-23) Defendants' own accounting expert, Jason Flemmons, described the inclusion of Vornado Cash in the cash asset category as a "red flag" and a "very glaring issue" that "is not GAAP compliant." (Tr.4390:17-4391:05, 4392:03-04)

b. Triplex Apartment

41. Defendants valued Trump's triplex ("Triplex") by multiplying a price per square foot by the Triplex's purported square footage. (Tr.637:20-24)

42. For 2012 through 2016, defendants used a false figure for the size of the Triplex of 30,000 square feet, or approximately three times the apartment's actual size. (SJ Decision 21-22; PX-3041 ¶37)

43. For 2012 and 2013, McConney calculated the price per square foot based on asking prices for other apartments rather than what he knew was the relevant measure: actual sale prices. Similarly, for 2014 to 2016, he used unreasonably high sale prices of apartments in new, ultra-luxury buildings. (PX-714, PX-1037, PX-1052, PX-3044; Tr.634:11-638:03, 640:21-641:16, 646:06-649:21, 653:07-13, 654:18-657:17)

44. On October 1, 1994, Trump consented to the First Amendment to the Declaration of Trump Tower Condominium ("First Amendment"), which states that the Triplex was only 10,996 square feet. (Tr.808:21-809:08)

45. Prior to February 2012, TTO had documents (including the First Amendment) in its files reflecting the Triplex's actual square footage. (PX-633; Tr.805:24-808:10)

46. In 2012, Weisselberg asked a Trump International Realty ("TIR") employee, Kevin Sneddon, to value the Triplex; Sneddon asked to inspect the apartment or review a floor plan, but Weisselberg refused those requests and told Sneddon that the Triplex was 30,000 square feet, despite Weisselberg having access to documents identifying the true size. (Tr.6618:12-6621:12) Sneddon thereafter provided McConney a valuation using the false 30,000 number from Weisselberg. (PX-1052)

47. On February 22, 2017, Forbes magazine emailed Weisselberg and McConney to question the 30,000 figure TTO used for the Triplex's size because public records showed that it was only 10,996 square feet. (PX-1324)

48. Despite this email, Weisselberg declined to review the First Amendment or otherwise confirm the Triplex's actual size. (Tr.819:09-15)

49. On March 3, 2017, Forbes emailed Alan Garten, TTO's General Counsel, about the Triplex's reported size and specifically referenced the First Amendment. (PX-1345)

50. Garten forwarded the email to Weisselberg, Eric Trump, Donald Trump, Jr. and Amanda Miller, who was responsible for press relations. (PX-1344)

51. Weisselberg spoke with Miller and advised her on the Triplex square footage to "leave it alone." (Tr.821:10-822:07)

52. Four days later, on March 10, 2017, Weisselberg and Donald Trump, Jr. signed the Mazars management representation letter to finalize the 2016 SFC. In the letter, they represented the information provided to Mazars for the 2016 SFC was accurate, and that there were no changes since June 30, 2016, despite being on notice from Forbes that the value of the Triplex was based on a falsely inflated square footage number. (PX-741)

53. For the next year's SFC, when the Triplex's square footage was reduced to the correct figure in a draft supporting data spreadsheet between October 5 and October 6, 2017, Birney, at Weisselberg's direction, added "presidential premiums" to the Triplex and a series of other assets to boost reported asset values to offset the reduction in the Triplex value. (Tr.1288:04-1292:17; PX-1198) Removing those premiums would have lowered the net worth number from the prior year. (Tr.1292:5:1293:24) At Weisselberg's direction, when those premiums (totaling $144.6 million) were removed, Birney increased the reported value of Trump's interest in the Vornado Partnerships by $267.8 million just prior to when the 2017 SFC was finalized, compensating for the eliminated presidential premiums and increasing the net worth figure over the prior year. (Tr.1198:18-1300:07; PX-1212 rows 23-24, 39)

54. To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" (in 2017) and "record shattering" (in 2019) penthouse sales when calculating price per square foot. (Tr.1241:08-1247:23; PX-767, PX-2530)

55. Trump testified he personally determined that the Triplex's reported value was too high and directed Weisselberg and McConney to correct it. (Tr.3524:12-22) In actuality, the Triplex's reported size was not reduced until 2017, months after Trump was inaugurated and ceased having any involvement in the preparation of the SFCs.

c. 40 Wall

56. From 2011-2016, McConney and Weisselberg valued 40 Wall based on dividing net operating income ("NOI") by a capitalization rate ("cap rate"). (PX-793 rows 110-133; Tr.659:21-660:20)

57. When valuing 40 Wall from 2011-2016, McConney cherry-picked cap rates from a Cushman & Wakefield ("Cushman") generic market report sent to him by appraiser Doug Larson while ignoring appraisals of the property he assisted Larson in preparing. (PX-3046, PX-3047, PX-3048; Tr.660:25-661:20, 666:01-667:18, 669:02-13, 670:12-16, 671:18-672:07, 674:08-20)

58. In fact, despite his frequent communication with Larson about such appraisals, McConney never asked Larson if the cap rates McConney was selecting from the Cushman generic market reports were appropriate or what cap rates Larson was using for any of the appraisals. (Tr.675:01-13)

59. When valuing 40 Wall for the 2015 SFC, McConney forwarded an excerpt of Larson's 2015 appraisal to Bender. The excerpt included the source for McConney's selected cap rate of 3.04%, which he cherry-picked from the market report based on the sale of 100 Wall. The excerpt omitted the pages showing Larson selected a higher cap rate of 4.25%, which resulted in an appraised value that was $227 million lower than McConney's value. The excluded sections of the appraisal specifically rejected using the 100 Wall cap rate. (PX-118 at 15, 100, 105, PX-868 at 11; Tr.676:03-677:01, 678:05-681:14)

60. In December 2015, when McConney was using the Cushman 2015 appraisal in the valuation, McConney sought to justify to Bender increasing the value above the $540,000,000 appraised value by including additional income for leases signed after the Ladder refinancing, including a Dean & Deluca lease. (PX-3004_Native1 rows 118-120; Tr.690:18-693:18)

61. This double-counted income because the appraisal already included Dean & Deluca rent -- as stated on four pages of the 2015 appraisal McConney omitted from what he sent to Bender. (PX-118 at 115, 117, 136, 137; Tr.695:05-697:24, 700:22-701:01)

62. From 2011-2016, Weisselberg and McConney knew the NOI numbers used to value 40 Wall were falsely inflated.

63. Weisselberg had final approval over 40 Wall budgets. (Tr.1499:12-15) He thus was aware that TTO had budgeted a negative cash flow from 40 Wall for 2011. (Tr.1520:09-1521:16) Weisselberg nevertheless directed Donna Kidder to prepare a document containing a series of aggressive assumptions to generate a $26.2 million NOI to use but concealed from her that this would be used for the SFC. (Tr.1523:10-1526:01, 1529:03-07)

64. 40 Wall never reached a net operating income of $26.2 million, but instead ran a deficit as high as $20.9 million through 2015. (PX-636, PX-652) Trump knew this, but misrepresented to Forbes that the building was going to net $64 million in 2015 after debt service. (Tr.3571:20-3573:07, Tr.3573:03-3579:09) The building is currently under special servicing by the lender. (PX-3380; Tr.4414:14-16, 4703:07-4706:16)

d. Trump Park Avenue

65. When valuing unsold apartments at Trump Park Avenue ("TPA"), McConney used offering plan prices on a spreadsheet maintained by TIR while disregarding lower "current market values" on the same spreadsheet, and intentionally omitted the market values when forwarding the spreadsheet to Mazars. (PX-793 row 166, PX-796; Tr.704:06-707:02, 707:08-708:19)

66. McConney knew rent-stabilized units were among the unsold units he valued at offering plan prices with Weisselberg's approval. (Tr.711:07-712:14)

67. In some years, Weisselberg worked with Michael Cohen to identify "the highest price per square foot for other assets in [the] city" and "use[d] those numbers in order to inflate the value of these apartments," despite knowing the "comparables" used were not similar because they did not have the same restrictions (such as rent stabilization) or similar features. (Tr.2217:05-24)

68. When Birney worked on preparing the SFC, Weisselberg concealed from him appraisals of rent-stabilized units at TPA. (Tr.1282:25-1283:08)

e. Seven Springs

69. When valuing Seven Springs from 2011-2014, McConney failed to discount estimated future profit of $161 million attributable to building and selling seven mansions to account for the time it would take to build and sell the homes, despite understanding the time value of money and the need as a matter of basic accounting principles to discount future cash flows to present value. (Tr.716:03-10, 717:02-05, 717:14-718:11, 719:05-11, 1469:18-25, 2784:20-22)

70. On September 24, 2012, Eric Trump spoke by telephone with McConney and advised him to value the seven-mansion development at $161 million for the 2012 SFC without any discount to present value. (PX-793 rows 679, 683-688; Tr.719:05-720:10, 3290:16-3291:10)

71. On August 20, 2013, and September 12, 2014, Eric Trump advised McConney by telephone to value the seven-mansion development for the 2013 and 2014 SFCs the same as he did for the 2012 SFC. (PX-719 rows 660-673; Tr.713:17-714:18, 719:12-21, 3292:01-10)

72. When he provided McConney the value for the seven-mansion development at Seven Springs in September 2012, Eric Trump was aware his father prepared an annual SFC to evidence to third parties TTO's financial wherewithal and that the value he was providing to McConney would be used for his father's 2012 SFC. (PX-1091; Tr.3307:04-3312:03)

73. When Eric Trump advised McConney to use the same value in 2013 that was used in the 2012 SFC, he was responding to a specific request by McConney for information "to value Seven Springs" on his "dad's annual financial statement." (PX-1075; Tr.3315:05-3316:18, 3339:16-20)

74. Contrary to Eric Trump's sworn testimony that he was "unaware" of his father's SFC and "didn't know anything about it really until this case came into fruition" (Tr.3294:01-11), on multiple occasions from 2013 to 2017, Eric Trump received emails from McConney and Weisselberg specifically referencing Trump's SFC, and in some instances specifically requesting information from him for purposes of preparing the SFC. (PX-1071, PX-1079, PX-1112, PX-1113)

75. When Eric Trump advised McConney in August 2013 to continue to use the undiscounted value of $161 million for the seven-mansion development at Seven Springs, he was aware of an initial estimate of $775,000 per raw lot derived by an appraiser retained by TTO to provide a written appraisal estimating the fair market value of a conservation easement to be placed on the property – an estimate that would have valued the seven-mansion development at roughly $5.5 million. (PX-908, PX-3296; Tr.3342:13-3345:13, 3347:15-25)

76. By September 8, 2014 – just four days before Eric Trump advised McConney to continue using $161 million as the value of the seven-mansion development for the 2014 SFC – David McArdle of Cushman had completed an engagement providing Eric Trump with a verbal estimate of around $2 million per lot and completed home. That estimate that would have valued the seven mansions at $14 million. (PX-169, PX-181; Tr.1996:12-1997:12, 3353:22-3354:17)

77. Beginning with the 2015 SFC, Defendants valued the property based on the value determined by Cushman in an appraisal prepared for purposes of donating a conservation easement. Defendants used the "before" value of $56 million for the SFC value as of June 30, 2015

since the donation was not taken until December 2015, and used the "after" value of $34.5 million for the 2016 SFC. (Tr.723:20-724:10)

78. The Cushman appraisal valued all the property development rights at $21 million–far less than the $161 million defendants used for just the seven-mansion development from 2011-2014. (SJ Decision 22-23; Tr.724:11-725:03)

f. Mar-a-Lago

79. From 2011-2021, defendants valued Mar-a-Lago based on the false premise that the property could be sold as a private residence when years earlier Trump conveyed his rights to develop Mar-a-Lago for any usage other than commercial usage as a club. (SJ Decision 25-27; PX-793 at row 188; Tr.759:05-25, 773:24-775:21)

80. When valuing the commercial property as a private residence, in 2011 and 2012 defendants used asking prices for neighboring homes although they knew actual sales prices were the correct comparison. From 20112015 defendants added a 30% premium because the property was a "completed [commercial] facility." (PX-719 row 234, PX-742 row 233, PX-793 row 216 ; Tr.640:21-641:16, 762:18-763:16, 765:12-22, 888:02-04)

81. McConney valued Mar-a-Lago as if it could be sold as a private residence despite possessing the 2002 Deed of Development Rights between Trump and the National Trust for Historic Preservation, in which Trump conveyed his rights to develop Mar-a-Lago for any usage other than club usage (the "2002 Deed"). (Tr.773:24-775:21) Trump also signed an earlier 1995 Deed of Conservation and Preservation (the "1995 Deed"). (PX-1013; D-360)

82. After signing the 2002 Deed, Trump stated that Mar-a-Lago would "forever be a club." Because of the 2002 Deed, Trump paid significantly lower property taxes on Mar-a-Lago. (PX-1730; Tr.3533:03-3535:25)

83. When Birney worked on the SFC, Weisselberg and McConney concealed from him the 1995 Deed and 2002 Deed. (Tr.1258:01-1259:13)

g. Licensing Deals

84. From 2013-2021, despite representing in the SFCs that real estate licensing deals as an asset category included only "signed arrangements" with "other parties," defendants included in this category purely speculative, unsigned to-be-determined (TBD) deals and intra-company agreements between TTO affiliates. (SJ Decision 31; *E.g.,* PX-729, PX-1518; Tr.1461:04-08, 1465:12-21)

85. McConney noted on a draft 2015 SFC that the valuation of real estate licensing deals included $151 million in forecasted deals that "have not signed yet" because he was concerned about the inconsistency. (Tr.5070:18-5072:17; PX-806 at 25)

86. Despite his concern, McConney did not modify the representation or remove the unsigned deals from the valuations of the licensing deals for the 2015-2018 SFCs. (*Compare* PX-729 *with* PX-773)

87. 88. The licensing fee category also included a group of "incentive fees." (*e.g.* PX-742 row 940) derived from annual spreadsheets prepared by Kidder. As expressly directed by McConney, and regardless of the deal or actual sellout pace, those annual spreadsheets assumed that all revenue would be received within one year; and thus contained undiscounted figures. (PX-774 row 1018; PX-3168, PX-3169, Tr. 1550:15- 1554: 16, 1555:7-1556:15)

h. Golf Clubs

i) No Present Value

88. When valuing certain golf clubs, McConney included future golf club membership sales without discounting the revenue to present value even when it would have taken 30 years to

sell the memberships at the then-current sales pace and despite his understanding of the time value of money. (726:19-728:06, 731:22-25, 733:10-14; PX-788, PX-793)

89. McConney did not discount to present value estimated profit from developing undeveloped land at Briarcliff, TNGC-LA, and Aberdeen; while he claimed he did not know how to perform such a calculation, he never asked Ray Flores or Mark Hawthorn to assist him with such a calculation despite knowing they both knew how to prepare a discounted cash flow analysis. (Tr.716:03-10, 716:19-717:19, 730:10-12, 735:03-736:07, 1487:07-13, 1488:17-1489:10, 2782:16-2784:22)

ii) Brand Premium

90. Starting in 2013, Weisselberg directed McConney to add an undisclosed 30% premium to golf course valuations. (Tr.875:02-24)

91. When including a brand premium in club valuations, McConney was aware that the SFC contained a contradictory disclosure stating that "[t]he goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement," language that he specifically reviewed and approved. (SJ Decision 28-29; Tr.747:22-749:08, 5055:02-5059:15; PX-3054)

iii) Fixed Assets

92. In 2012, defendants began valuing certain golf clubs using a fixed-assets approach, and from 2013-2020 valued all golf clubs using the fixed-assets approach. (Tr.749:20-750:04; PX-793, PX-3041 ¶317)

93. Weisselberg was advised in 2013 by someone he described as a "top golf course advisor on buying and selling of courses" that golf courses are valued using multiples of gross revenue, and in fact in 2014 provided advice to that effect in communications with Forbes

magazine. (PX-3116; Tr.878:11-880:09) Nevertheless, Weisselberg approved using the fixed-assets method reflected on the supporting data spreadsheets from 2013-2020.

94. Under the fixed-assets approach, defendants included in the value the purchase price of the club and funds spent on improvements since purchase, without accounting for depreciation or what price the property might obtain from a willing, informed buyer. This approach was completely different from any method used in the marketplace to value golf courses. (SJ Decision 29; Tr. 1354:02-1358:02, 1369:23-1373:07)

95. For Jupiter, Colts Neck, TNGC-DC, TNGC-Charlotte, TNGC-Hudson Valley, and TNGC-Philadelphia it is undisputed that the fixed-assets valuation included the full-face amount of assumed refundable membership deposits. (PX-3041 ¶¶319-330) Although the purchase prices (and thus fixed-asset numbers) were increased by including those liabilities at their full-face value, those same liabilities were then treated as worthless and not subtracted from net worth as liabilities. The SFCs' representation that such liabilities were valued at $0 thus misrepresented and concealed the truth: that the liabilities were fully included in the club purchase price to increase the fixed-asset value while simultaneously valued at $0 as a liability and thus excluded from the SFCs' liability page. (Tr.755:25-756:19, 757:18-758:12)[3]

96. For example, defendants added $41 million in refundable membership deposit liabilities to Jupiter's cash purchase of $5 million to reach a fixed-assets value of approximately

[3] Even defense expert Jason Flemmons could not justify this discrepancy. When asked at deposition whether it was "appropriate under the accounting rules" to count the membership deposits at full-face value when valuing Trump's golf clubs, while counting them at $0 when calculating the clubs' liabilities, Flemmons acknowledged he would "expect the value to be the same and not have different values for the different purposes." (NYSCEF No. 871 at 304:21-306:23)

$46 million before adding the brand premium—a fraud that persisted every year the fixed-assets number was used—without noting any offsetting liability for these membership deposits on SFCs' liability page. (Tr.749:25-754:11; PX-708, PX-3041 ¶¶315-333, PX-3055_Native1) Users were told these liabilities were worthless, when in fact they comprised $41 million (plus a premium) in Jupiter's fixed-assets value.

97. When valuing golf clubs using the fixed-assets approach, McConney was aware through appraisals commissioned by TTO that the fixed-assets approach (a modified form of the "cost" approach) was not used by buyers and sellers of golf courses and therefore did not yield a result that would be an ECV. (1962:04-1963:04, 1968:23-1969:14, 1977:09-24; PX-205 at 24, PX-910 at 17, PX-3194 at 25)

98. Eric Trump signed the engagement letter with Whitley Penn for the 2021 SFC, discussed the preparation of the SFC with Ray Flores in August 2021, and participated in a virtual meeting hosted on Google Meet in October 2021 with Donald Trump, Jr., Birney, Garten, Flores, and McConney to discuss the 2021 SFC. (Tr.1389:21-1391:01, 2758:20- 2759:13; PX-3298B, PX-3300)

99. During the meeting, Birney updated Donald Trump, Jr. and Eric Trump on the 2021 SFC and ensured that they were aware of and agreed to changing the methodology for valuing golf clubs. (Tr.1399:21-1400:13,1405:22-25, 1406:23-1407:04, 5077:04-5084:13; PX-1352 row 272)

iv) Briarcliff

100. Eric Trump retained McArdle in August 2013 to provide an appraisal to estimate the value of developing 71 condominium units on undeveloped land at Briarcliff, which he understood would include a discounted cash flow analysis to reflect the time needed to build and sell the units. (PX-157, PX-3195; Tr.1930:4-19, Tr.3368:18-3371:04)

101. By October 16, 2013, Eric Trump was aware that McArdle had determined the value of the 71-unit development was approximately $45 million. (PX-1465, PX-3201; Tr.3374:20-3375:14) Eric Trump was also aware TTO only had the right to build 31, not 71, units. (Tr. 2695:22-2702:22; PX-3261)

102. Despite retaining McArdle in August 2013 to value the 71 units, Eric Trump advised McConney in a September 25, 2013 call to value the units at over $101 million based on comparable sales in the area, and then failed to advise McConney of the much lower appraised value of around $45 million for the 71 units he received from McArdle in mid-October 2013. (PX-719 rows 277-285; Tr.738:07-740:13)

103. Beginning in November 2015, Eric Trump instructed McConney to leave the value of the 71 units "as is" for the 2015-2018 SFCs at just over $101 million despite being aware of McArdle's value of around $45 million. (PX-742 rows 288-295, PX-758 rows 294-301, PX-843 rows 311-317; Tr.3378:10-23, 3379:16-21)

v) TNGC-LA

104. When valuing the TNGC-LA golf club at $56.6 million and the entire property at just over $140 million for 2015, McConney was aware that Cushman appraised the golf club at $16 million, and the entire property at $82 million, in March 2015. (PX-731_Native, PX-1464 at 5, 158)

vi) Aberdeen

105. Despite receiving permission to develop only 500 homes as year-round private residences, for 2014-2018 McConney valued undeveloped land at Aberdeen on the basis that a total of 2500 year-round private residences could be built and sold immediately. (SJ Decision 27-28; *e.g.*, PX-742_Native rows 565-568, PX-756 at 15, PX-729 at 16, PX-3041 ¶209)

106. Despite receiving a July 2017 appraisal by Ryden LLP valuing the development profit of private homes at Aberdeen at a maximum of £33,296 per home (£18,546,000/557), TTO valued the development of private homes at £83,164 per home from 2017-2018 based on a September 18, 2014, email from a "Registered Valuer for Ryden LLP." (PX-774 rows 588-590, 595, PX-1450 at 11) In 2019, TTO derived a land value of £217,680,973 using 2,035 homes (£106,969 per home) despite only recently receiving approval to reduce development to "550 dwellings, consisting of 500 private residences, 50 leisure/resort units, and zero holiday homes." (SJ Decision 28; PX-843 at row 612) In 2020-2021 TTO disregarded the Ryden appraisal and the approval by deriving a land value of £82,537,613 using 1200 homes (£68,781 per home). (PX-1352 at Row 674, PX-3041 ¶219)

B. Defendants Falsely Certified the SFCs' Accuracy to Mazars and Whitley Penn

107. For each SFC from 2011-2020, defendants were required to sign a representation letter affirming to Mazars the SFC's accuracy. (PX-706, PX-718, PX-728, PX-741, PX-754, PX-772, PX-786, PX-792, PX-841, PX-855) For example, in 2014 the representation letter stated:

We confirm, to the best of our knowledge and belief, the following as of November 7, 2014:

You have provided us with a copy of the Statement that you have compiled. We have read that information.

The data presented in the Statement was provided to you by members of Mr. Trump's accounting department and you have compiled that information in an appropriate manner when preparing the Statement.

The Statement referred to above is fairly presented in conformity with accounting principles generally accepted in the United States of America. A l assets are presented at their estimated current values and all liabilities are presented at their estimated current amounts which have been determined in accordance with guidelines promulgated by the American Institute of Certified Public Accountants except to the extent noted in the Accountants' Compilation Report which was annexed to the Statement.

There are no material transactions that have not been properly recorded in the accounting work papers underlying the Statement other than those exceptions from accounting principles generally accepted in the United States of America that are noted in the Accountants' Compilation Report.

We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities other than those noted in the accounting work papers underlying the Statement.

(PX-718 at 2)

108. In addition, from 2011-2015 the representations letters stated that "We have responded fully and truthfully to all inquiries made to us by you during your compilation." (PX-718)

109. From 2016 forward, the representation letters contained a more detailed representation that:

We have made available to you all financial records and related data, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation.

(*E.g.,* PX-741 at 2)

110. For the 2021 SFC, Whitley Penn required a similar representation letter. (PX-1502)

111. TTO signed engagement letters similarly committing to provide complete, accurate information. (PX-791; PX-2300, at 28)

112. Based on deceptive practices identified in the SJ Decision, in Section II.A. above and at trial, those representations were false and misleading.

113. Bender, the Mazars partner responsible for the TTO relationship, testified that without the representation letters, Mazars would not have issued the SFCs. Bender further testified that if Mazars knew that the representations made in the letters were false, it would not have issued the SFCs. (Tr.169:09-176:09, 194:21-195:23, 199:06-23, 204:05-205:07, 208:03-209:24, 241:15-242:01, 254:16-255:25, 258:20-260:14, 262:25-264:05, 268:06-268:18)

114. Indeed, when Mazars learned in May 2021 that defendants generally and Weisselberg specifically had not disclosed appraisals in TTO's possession, it terminated the relationship, save for work on certain tax returns then in progress. (PX-2992; Tr.2115:24-2118:20)

115. When Mazars learned in February 2022 of other misrepresentations identified in public filings by OAG, it terminated all ongoing work and informed TTO that "that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011-June 30, 2020, should no longer be relied upon," and that TTO "should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon." (PX-2994; Tr.2119:16-2121:06, 2128:09-2131:02)

116. The lead partner for Whitley Penn likewise testified that without the representation letter, Whitley Penn would not have issued the 2021 SFC. (Tr.481:04-19)

C. Defendants Used False and Misleading SFCs to Secure and Maintain Financing from Deutsche Bank's Private Wealth Management Division

117. Starting in 2011, Trump and TTO executives Ivanka Trump and Donald Trump, Jr. initiated a relationship with the Private Wealth Management ("PWM") division of DB. (PX-1129, PX-3041 ¶441; Tr.3586:12-18, 3670:05-16, 5573:25-5577:20)

118. PWM loans required recourse in the form of a personal guarantee, in return for which PWM offered lower rates and greater flexibility. (Tr.1003:15-1004:03, 5331:10-5332:09, 5573:25-5577:20; PX-1129)

119. TTO executives and staff understood that PWM loans supported by Trump's personal guarantee offered lower rates and higher proceeds than non-recourse loans that would otherwise be available to fund commercial real estate projects. (PX-1129, PX-3232; Tr.2954:04-2956:23, 2976:18-2977:05, 5573:25-5577:20) As Ivanka Trump remarked after she received a proposed PWM term sheet for Doral, "It doesn't get better than this." (PX-1251, PX-3041 ¶¶463-70; Tr.3700:17-3701:09)

120. To obtain these benefits, defendants provided DB with Trump's false and misleading SFCs, which PWM relied on to underwrite the guaranteed loans made to entities affiliated with TTO, and which PWM required as a condition of maintaining these loans after origination. (Tr.1004:06-1007:03, 1009:21-1010:02, 1022:7-1023:9)

121. Many of the calculations found in the credit memos approving and reviewing these facilities used the SFCs as their starting point, to which DB underwriters often applied a standard "haircut." (NYSCEF No. 1655 at 3; Tr.1040:19-1041:22, 1061:14-1062:09, 5374:11-5375:11; PX-291 at 7-9, PX-293 at 5-7, PX-294 at 14-16, PX-298 at 10-12, PX-300 at 15-17, PX-302 at 9-11, PX-498 at 11-12, PX-519 at 11-13, PX-561 at 9-12, PX-3137 at 11-13)

122. The "haircuts" applied by DB were intended to reflect what assets "might be worth in an adverse market situation" or "if the client's financial position is under stress," (Tr.1041:06-10; NYSCEF No. 1278 ¶86) and, as defendants' expert agreed, to calculate a "liquidation" value that may be 50 to 80 percent less than the ECV provided in a client's personal financial statement. (Tr.1016:3-16, 5328:01-5329:01, 5365:01-5366:16, 6307:14-6309:03)

123. PWM expected all clients, including defendants, to provide truthful and accurate financial information to the bank. (Tr.1009:21-1010:02, 5328:10-5329:01, 5427:13-20, 5579:07-23; see also Tr.5819:01-24)

1. DB Relied on SFCs for Doral Loan Approval and Annual Reviews

124. PWM relied on the SFCs for information to underwrite, approve, and maintain the $125 million loan to purchase the Doral property. (PX-293 at 5-7, PX-3041 ¶¶452-54, 456-66, 476)

125. In November 2011, DB's Commercial Real Estate ("CRE") division offered TTO a $130 million loan at LIBOR +8%, with a LIBOR floor of 2% – a minimum 10% interest rate. (PX-369, NYSCEF No. 501 ¶575)

126. TTO instead agreed to a recourse loan with PWM that carried an initial interest rate of LIBOR +2.25% during a renovation period and LIBOR plus 2% after renovations. (PX-293 at 2) In 2013, the interest rate on the Doral loan was further reduced to LIBOR +1.75% (with a step-up to 2% if the guarantee fell below 10%). (PX-290 at 2)

127. Trump's personal guarantee for the Doral loan required him to certify the truth and accuracy of his SFC and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion. (PX-1303 at 10-13, PX-3041 ¶¶484, 486-489) The bank required annual submission of a compliance certificate and personal financial statement to confirm compliance

with loan covenants; failure to comply with this reporting covenant, or the submission of any false or misleading compliance certificate, was defined in the loan documents as an event of default. (Tr.1022:07-1023:09, 1027:10-1028:16, 1052:04-1054:10, 5337:02-11, 5429:16-5430:10; PX-1303 at 9-10, D-212 at 13, 63-65)

128. To maintain the Doral loan, Trump submitted SFCs to DB and the required certifications for the years 2014-2021 (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as his attorney-in-fact). (PX-391, PX-393, PX-394, PX-503, PX-517, PX-518, PX-1386 at 5-6, 101-102, PX-3041 ¶493)

129. In May 2016, McConney sent DB a compliance certificate pertaining to the 2015 SFC, and the following year submitted to DB another compliance certificate pertaining to the 2016 SFC. (PX-3041 ¶¶741-42; PX-344; Tr.1373:8-1375:15)

130. DB relied on these signed certifications and the attached SFCs for its annual reviews of the Doral loan. (PX-290, PX-294, PX-298, PX-300, PX-302, PX-498, PX-519, PX-561, PX-3041 ¶494, PX-3137)

131. The loan remained outstanding until May 2022, when TTO refinanced through Axos Bank and repaid the $125 million of principal outstanding to DB. (Tr. 3623:19-3624:06; PX-3041 ¶495)

2. DB Relied on SFCs for Chicago Loan Approvals and Annual Reviews

132. Dueling proposals to refinance an existing loan on the Chicago property with the CRE and PWM divisions were under discussion within DB in May 2012. (PX-3041 ¶¶438-39, 500-502) CRE proposed a non-recourse loan secured by unsold condo units and priced at LIBOR +8% points, while PWM proposed a recourse loan priced at LIBOR +4%, with the "spread differential . . . based on a full guarantee of Donald Trump." (Tr.1035:11-1039:17; PX-470)

133. CRE also proposed a non-recourse loan secured by the commercial (hotel and retail) property in Chicago which would have carried a higher interest rate along with additional costs and fees compared to a recourse loan. (PX-470 at 3, PX-3242)

134. TTO ultimately agreed to a PWM recourse loan for Chicago that was split into two tranches: a facility of up to $62 million using unsold condos as collateral and bearing an interest rate of LIBOR +3.35% and a facility of up to $45 million using the commercial property as collateral and bearing an interest rate of LIBOR +2.25%. (PX-291 at 2-3)

135. PWM relied on Trump's SFCs for information used to underwrite, approve and maintain loans of up to $107 million that closed on November 9, 2012. (PX-291 at 1-2, 7-9, PX-3041 ¶¶502-509). PWM required the annual submission of Trump's SFC, and the certification that it accurately reflected his financial condition, to monitor for changes in the Guarantor's net worth and liquidity. (PX-367 at 13-14, 23-25, 39-40, 50-52, PX-3041 ¶515; Tr.1022:07-1023:09, 5670:19-5671:25)

136. Trump submitted SFCs to DB and the required certifications for the years 2014-2021 for the Chicago facility (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump), either through the execution of an amended guarantee or through the submission of a compliance certificate. (PX-393 at 5-6, PX-502, PX-503, PX-516, PX-518 at 2-3, PX-3041 ¶530)

137. TTO paid off the Chicago facility in October 2023. (Tr.3623:19-3624:06)

3. DB Relied on SFCs for OPO Loan Approval and Annual Reviews

138. In 2013, TTO sought financing offers from CRE and PWM at DB to fund the redevelopment of the Old Post Office ("OPO") in Washington, DC. (PX-322, PX-327, PX-3041 ¶¶543-549)

139. CRE offered loan terms for a facility of up to $140 million with a higher interest rate, as well as costs and fees affiliated with the securitization of the loan. (PX-513)

140. Ultimately TTO and PWM agreed on a fully-guaranteed $170 million loan with interest rates of LIBOR +2% or 1.75% (depending on the period) and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500 million. (PX-294 at 1, 8-9, PX-3041 ¶¶549-552)

141. The OPO loan was a construction loan to be disbursed in tranches, and the loan agreement stated that the bank was not obligated to make disbursements unless representations by the borrowing entity and the guarantor (Trump) "shall be true and accurate" on the date of requested Disbursements. (PX-3041 ¶557) The loan agreement further made clear that (except when used to pay interest) that loan funds must be used for costs of renovating the OPO property. (PX-309 at 39-42, 226)

142. PWM relied on Trump's 2011-2013 SFCs for information used to underwrite the $170 million loan to Trump Old Post Office LLC, and this information was reflected in the May 2014 credit memo approving the new lending facility. (PX-294 at 14-16, PX-3041 ¶¶551-552)

143. The OPO loan closed on August 12, 2014 (within the statute of limitations for all defendants). (PX-305, PX-309)

144. As with Doral and Chicago, the OPO loan agreement required that Trump provide his most recent (2013) SFC to the bank as a condition of the loan and that Trump certify to its accuracy. (PX-309 at 48-50)

145. Trump's personal guarantee for OPO also contained various financial representations, including that Trump, as guarantor: (i) certified the truth and accuracy of his personal financial statements; (ii) "has furnished to Lender his Prior Financial Statements" that are

true and correct in all material respects; and (iii) certified that "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor…inaccurate, incomplete or otherwise misleading in any material respect." (PX-305 at 12-14) As with other DB guarantees, the OPO guarantee stated that Trump's representations were made "[i]n order to induce Lender to accept this Guaranty and to enter into the Loan Agreement and the transactions thereunder," and that loan obligations were "conclusively presumed to have been created in reliance" on Trump's guarantee and its representations. (PX-305 at 9)

146. Pursuant to the guarantee, Trump was required to "keep and maintain complete and accurate books and records," and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the SFC delivered to Lender during each year." (PX-305 at 17-18, PX-3041 ¶¶561-563)

147. In connection with the OPO loan, Trump provided DB with his 2014-2021 SFCs, as well as certifications executed either by Trump or by Donald Trump, Jr. (from 2016-2019) or Eric Trump (2021) as attorney-in-fact for Trump. (PX-393, PX-503, PX-515, PX-518 at 6-7, PX-1386 at 2-3, 34-38, 103-104, PX-3041 ¶572)

148. The bank relied on these SFCs and certifications for its annual reviews of the OPO loan between July 2015-July 2021. (PX-298 at 10-11, PX-300 at 15-17, PX-302 at 9-11, PX-498 at 11-12, PX-519 at 11-13, PX-561 at 9-12, PX-3137 at 11-13)

149. Donald Trump Jr. intended the banks to rely on the certifications he signed to satisfy obligations for DB loans. (Tr.3241:13-15, 3250:10-3251:02, 3254:18-20) And while Eric Trump testified that he had "no idea" what DB did with the 2021 certifications he signed and did not know if he intended the bank to rely on it (Tr.3437:17-3438:19), that testimony is not credible; it is not

plausible that when signing and submitting the certifications for the 2021 SFC to DB he did not intend the bank rely on them to satisfy TTO's obligations under the loan.

150. PWM's loan for OPO (like the prior loans for Doral and Chicago) included a "Default Rate" provision that increased the interest rate after an event of default to "the greater of (x) Prime Rate plus four percent (4%) and (y) the interest rate then in effect with respect to the Loan plus four percent (4%)." (PX-1238 at 11, 33; D-212 at 9, 19-20, D-876 at 11, 30)

151. On May 11, 2022, TTO sold the redeveloped OPO property for $375 million, and used $170 million of these proceeds to repay the loan to DB. (PX-3041 ¶¶570-571)

D. Defendants Used False and Misleading SFCs to Secure and Maintain Refinancing from Ladder Capital for the 40 Wall Loan

152. Prior to 2015, 40 Wall was subject to a $160 million mortgage with Capital One Bank. (PX-3041 ¶575)

153. On January 12, 2015, Allen Weisselberg sent a letter to Capital One (after sharing a draft with Eric Trump for review) claiming that "Trump's latest financial statement dated June 30, 2014 shows a valuation of $550,000,000 for the building based upon NOI & CAP rates on that date." (PX-3041 ¶¶576-577) Weisselberg asked Capital One to waive a $5 million principal payment due in November 2015 based on that purported valuation and other factors concerning the property's financials. (*Id.*)

154. By April 2015, after Capital One declined to waive the $5 million payment and lower the loan's 5.71% interest rate, TTO entered discussions with Ladder Capital to refinance the existing loan. (Tr.1821:11-19, 1837:21-1840:06; PX-647, PX-3041 ¶¶580-82)

155. In the application process for the refinancing, TTO provided Ladder a copy of Trump's 2014 SFC. (Tr.1858:21-1861:22, 1873:25-1875:09; PX-654)

156. Ladder relied on Trump's SFC for information about his net worth and liquidity, and Ladder's underwriter incorporated information from Trump's SFC into the memorandum presented to Ladder's Risk and Underwriting Committee ("RUC") for approval. (Tr.1877:12-1878:05, 1878:11-16, 1888:11-1889:02, 1889:17-1891:02; PX-645 at 8-10, 15-16)

157. As a condition of the Ladder loan, and to avoid setting aside ongoing cash reserves, Trump was required to unconditionally guaranty payment of certain obligations of 40 Wall Street LLC (including insurance, tenant improvements, leasing commissions, capital expenditures and ground lease payments). (Tr.1885:19-1886:25; PX-625, PX-645 at 5, 14, PX-3041 ¶¶587-588) Trump's personal guarantee also allowed him to avoid an up-front reserve to cover the tenant improvements, leasing commissions and free rent reserves outstanding at closing. (*Id.*)

158. The personal guarantee executed by Trump required him to maintain a net worth of $160 million and liquid assets of at least $15 million; and to document compliance with those financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein)…and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." (PX-625 at 14-15, PX-3041 ¶597)

159. The 40 Wall loan was subsequently securitized and was serviced by Wells Fargo. (Tr.1784:23-1785:14, 5815:02-5818:19)

160. To comply with 40 Wall loan covenants, TTO in 2017-2019 provided Wells Fargo summaries of Trump's net worth that were derived from the SFCs and certified by Weisselberg as "true, correct and complete and fairly present[ing] the financial condition of Donald J. Trump." (Tr.923:07-929:21, 934:21-935:15; PX-1386 at 39-41, 83-86, 92-94, 155)

161. The loan agreement for 40 Wall included an Interest Rate of 3.665% and Default Rate set at "four percent (4%) above the Interest Rate." (PX-2973 at 12, 137, 141)

E. Defendants Used SFCs to Maintain the Seven Springs Loan

162. McConney provided the 2015 and 2016 SFCs to the bank holding the Seven Springs mortgage as required under a promissory note. (PX-99, PX-100; Tr.598:09-14, 599:18-602:14)

163. On July 9, 2019, Eric Trump, as President of Seven Springs LLC, signed a loan modification in connection with the Seven Springs property restating and reaffirming the representations in all prior loan documents, and signed an agreement as attorney-in-fact reaffirming Trump's obligation as guarantor. (PX-76 at 4-6; Tr.3443:03-16)

F. Defendants Used False and Misleading Financial Information to Secure and Maintain the License Agreement from NYC Parks for Ferry Point

164. In 2010, the City of New York Department of Parks and Recreation ("NYC Parks") issued a Request for Offers ("RFO") for operation and maintenance of a golf course at Ferry Point Park in the Bronx ("Ferry Point"). (PX-3290)

165. NYC Parks was seeking an operator that had experience from an operational standpoint but also "financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." (Tr.2793:15-2794:06)

166. Financial capability of a potential operator was a particular focus of this RFO as NYC Parks had invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." (Tr.2796:01-10)

167. TTO submitted an offer in March 2010, signed by Weisselberg and copying Trump, that represented the net worth and liquidity of Trump and enclosed a letter from Mazars representing the same. (PX-1331; Tr.2798:04-06)

168. NYC Parks subsequently made a Recommendation for Award on the basis that TTO demonstrated sufficient capability and business integrity to justify the concession. (PX-3291; Tr.2798:19-2799:05)

169. NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to receive truthful, complete and accurate information. (Tr.2801:19-22)

170. Trump signed the license agreement on February 21, 2012. (D-981 at 103-104)

171. The license agreement required Trump to submit a personal guarantee to NYC Parks for certain capital and operational expenses and financial obligations related to operation of Ferry Point; NYC Parks could, on default of these conditions under the license, seek to enforce the guarantee. (D-981 §6, §3.3(b); PX-3283 at 1-3; Tr.2804:04-19)

172. The guarantee additionally obligated Trump to submit annually a letter from his accountant stating that there has been no material adverse change in his net worth ("No MAC letters") from the financial statements shared with NYC Parks during the RFO process. (PX-3283 §4; Tr.2805:02-07)

173. TTO submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021. In each year the letter, written by Mazars, relied on that year's SFC for the representation that there had been no material, adverse change in the Guarantor's net worth. (PX-3282, PX-3284, PX-3285, PX-3286, PX-3280, PX-3281)

174. In 2013, the No MAC letter was sent alongside a request to extend the license agreement that was signed by Trump. (PX-3286)

175. On October 7, 2016, Eric Trump sent a letter to NYC Parks renewing the 2013 request. *See Trump Ferry Point LLC v. Silver*, No. 155933/2021 (N.Y. Cty. Sup. Ct.), NYSCEF No. 51.

176. NYC Parks expected that the No MAC letters would be true, complete and accurate. The submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks, including potential referral to the New York City Department of Investigations. (Tr.2805:11-2806:03)

177. In June of 2023, TTO assigned the Ferry Point license to Bally's Corporation, with TTO receiving $60 million from the deal. Bally's also agreed to pay an additional $115 million to TTO if it obtains a gaming license for the site. (Tr.2850:22-24; PX-3304, PX-3306)

G. Defendants Used False and Misleading SFCs to Renew Surety Coverage from Zurich

178. From at least 2010-2020, Zurich North America ("Zurich") underwrote a surety bond program (the "Surety Program") for TTO through insurance broker AON Risk Solutions ("AON"). (D-44 at 1-2, PX-3324 at 27:03-27:10)

179. Under the Surety Program, Zurich issued surety bonds on behalf of TTO within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. (*See, e.g.*, D-44 at 2, D-49 at 1-2, PX-1561 at 2-3, PX-1552 at 2-3, D-47 at 1-2, D-45 at 1-2, PX-3324 at 32:03-34:06)

180. During the relationship, Zurich required TTO to indemnify any loss should Zurich be required to pay under a bond, which the company met through a General Indemnity Agreement ("GIA") executed by Trump, pursuant to which Trump personally agreed to indemnify Zurich for claims under the Surety Program. (PX-1534 at 1, PX-3324 at 22:19-23:02)

181. Because of the GIA, the Surety Program included an annual requirement that Trump disclose to Zurich's underwriter his personal financial statements. (PX-1548 at 1, PX-3324 at 30:11-31:13, 34:12-35:8)

182. During on-site reviews for the renewal of the program that occurred in late 2018 and early 2020, Zurich's underwriter Claudia Markarian was shown the 2018 and 2019 SFCs, respectively, which listed as assets real estate holdings with valuations that Weisselberg represented to Markarian had been determined each year by a professional appraisal firm. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 36:22-37:15, 49:10-50:10, 63:16-65:04, 72:11-74:12)

183. Markarian considered Weisselberg's representation, which she recorded in her contemporaneous notes, to be favorable and an indication that the valuations were reliable. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 51:10-52:05, 65:15-66:22, 74:13-75:09)

184. Despite Weisselberg's representation, TTO never retained a professional appraisal firm to prepare any of the property valuations for the 2018 and 2019 SFCs. (Tr.952:13-953:02, 955:03-10)

185. Markarian noted in her narrative for each on-site review the amount of cash on hand reflected in the cash asset category, which she considered to be important and material to her underwriting analysis because it indicated Trump's liquidity and represented the funds available to repay Zurich for a loss. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 46:13-47:19, 65:15-66:22, 70:10-71:21, 74:13-75:09, 87:21-89:23)

186. Weisselberg, along with other defendants, falsely inflated the amount of cash in the 2018 and 2019 SFCs by including Vornado Cash. (Tr.617:25-620:24)

187. Weisselberg advised Markarian during her on-site reviews that the "value of properties" did not "vary significantly" from year to year, which she factored into her analysis favorably. (PX-1561 at 2, PX-1552 at 1, PX-3324 at 52:06-54:07, 75:10-76:19)

188. In reality, the values in the SFCs for a number of properties varied significantly over time. (PDX-3)

189. Based on her favorable assessments resulting from these misrepresentations made by Weisselberg during her on-site reviews and the false and misleading information contained in the 2018 and 2019 SFCs, Markarian recommended that the Surety Program be renewed in 2019 and 2020 at the expiring terms, which her manager approved. (PX-3324 at 57:15-59:17, 79:19-82:08)

H. Defendants Used a False and Misleading SFC to Secure Higher Limits from D&O Insurer HCC at Renewal

190. As of December 2016, TTO had in place Directors & Officers ("D&O") liability coverage consisting of a single primary policy providing a limit of $5,000,000 at a premium of $125,000, expiring on February 17, 2017. (PX-596, PX-587 at 2)

191. TTO was looking to rewrite the program on the day of Trump's presidential inauguration with significantly higher limits of $50,000,000. (Tr.2492:01-2493:02, 4887:17-21; PX-587)

192. To obtain that coverage, similar to the process for obtaining surety coverage from Zurich, TTO provided D&O underwriters access to Trump's SFC through a monitored, in-person review at Trump Tower. (PX-588, PX-2985)

193. Weisselberg and other TTO personnel attended the meeting with various potential insurers, including Tokio Marine HCC ("HCC"). (PX-588; Tr.2497:08-2498:08)

194. The HCC underwriter was provided very few financials at the meeting, but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion and cash of $192 million, both as reported in the 2015 SFC. (PX-729 at 4-5, PX-2985; Tr.2499:22-2500:19)

195. Additionally, in response to specific questioning from the underwriters, TTO personnel represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. (Tr.2500:20-2502:03; PX-2985)

196. Two representations were material to the HCC underwriter's assessment: (i) Trump had $192 million in cash, which he viewed as bearing on the insureds' ability to meet the retention obligation under the HCC policy (Tr.2500:06-19; PX-2985); and (ii) there were no lawsuits or inquiries, which included investigations by law enforcement agencies, that could potentially trigger coverage under the D&O policies. (Tr.2500:20-2502:03)

197. On January 20, 2017, after considering the information conveyed during the January 10 meeting, the HCC underwriter offered terms for a primary $10,000,000 policy with a $2,500,000 retention for a premium of $295,000 subject to certain conditions. (PX-592)

198. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (PX-592)

199. Despite the representation made to underwriters during the January 10 meeting by Weisselberg and the other TTO participants that liquidity/cash was $192 million per the 2015 SFC, nearly $33 million of that amount, or 17%, was Vornado Cash and accordingly did not reflect Trump's liquidity. (PX-3041 ¶403; Tr.615:08-620:24, 702:24-704:05)

200. Despite the representation made to underwriters during the January 10 meeting by Weisselberg and the other TTO participants that there was no material litigation or inquiry that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by

OAG into the Trump Foundation and Trump family members Donald Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of TTO and were aware of the investigation. (PX-1001, PX-1002, PX-1003; Tr.2557:16-2558:02)

201. In September 2016, OAG had sent a notice of violation to the Trump Foundation and a letter to TTO outside counsel Sheri Dillon requesting documents, to which Dillon replied on October 7, 2016. (PX-1002, PX-1003)

202. Neither Weisselberg nor any other TTO representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the binding of the D&O policies the existence of OAG's investigation into the Trump Foundation and directors and officers of TTO. (PX-2985; Tr.2500:20-2502:03)

203. Weisselberg and the other TTO representatives understood at the time of the January 10 meeting that OAG's investigation into the Trump Foundation could potentially lead to a claim, and in fact tendered a claim for coverage to their insurers, including HCC, for the enforcement action arising from OAG's investigation into the Trump Foundation by notice dated January 17, 2019 through their broker. NYSCEF Nos. 1220, 1221.

204. Based on this notice of claim and other correspondence exchanged between the insureds and HCC's coverage counsel disputing whether coverage existed for tendered claims, HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. (Tr.2507:02-10)

205. As a result, on January 24, 2019, HCC offered to renew the $10,000,000 policy for a substantially increased premium of $1,600,000, more than five times the expiring premium. (PX-2989; Tr.2507:08-14)

206. TTO declined to accept the renewal terms. (Tr.2507:15-17)

I. Defendants' Ill-Gotten Gains

207. Defendants profited substantially from their fraudulent conduct in preparing and submitting the false and misleading SFCs. During the period of 2014-2023, Trump and the entities he controls obtained financial benefits that fell into three main categories: (i) reduced interest on loans from DB and Ladder; (ii) profit on the sale of OPO; and (iii) windfall profits from the Ferry Point license assignment.

208. In addition, Eric Trump and Donald Trump, Jr. obtained benefits in the form of funds available for distribution from the sale of OPO.

209. Finally, Weisselberg and McConney obtained a benefit in the form of severance agreements that rewarded their fraudulent conduct and encouraged them to avoid cooperation with law enforcement.

1. Interest Differential

210. The central benefit from defendants' fraudulent scheme took the form of reduced interest costs on the loans for Doral, Chicago, OPO, and 40 Wall. Within the limitations period, defendants used the fraudulent SFCs to obtain favorable terms on new loans originated for OPO and 40 Wall. Defendants further used the fraudulent SFCs to maintain the loans on those properties as well as the loans on Doral and Chicago.

211. Defendants utilized the fraudulent SFCs to access preferable interest rates available through PWM. Without the use of the fraudulent SFCs, defendants would have been limited to loans based on the underlying commercial real estate. As reflected in the pricing obtained by defendants for commercial real estate loans with no personal guarantee, such loans reflect the true economic risk of the underlying project. (Tr.3047:22-3051:25)

212. Defendants sought financing for Doral, Chicago and OPO from multiple lenders in addition to DB, and in each instance the terms offered for the real estate projects were comparable to the offers from CRE, and substantially more expensive than PWM's recourse loans. (Tr.2954:04-2955:22, 2983:06-2989:15, 2991:10-2996:07, 2999:02-3000:11; PX-3232, PX-3235, PX-3239, PX-3241) For example, TTO understood that rates on Doral could be as high as the "low teens" without Trump's guarantee. (Tr.2954:04-2955:22, 3672:14-3681:13; PX-3232, PX-3243)

213. The improper interest benefit attributable to defendants' fraud is the difference between the interest rates available from PWM and CRE. A reasonable approximation of the improper interest benefit from the use of the fraudulent SFCs is $168,040,168. (Tr.3057:10-3081:18; PDX-4)

214. For the Doral loan, the improper interest benefit is calculated by comparing the offer defendants obtained from CRE of 10% against the terms of the loan obtained from PWM. (Tr.3056:17-3059:15) For the period starting from July 14, 2014 through the payoff of the Doral loan, the total improper interest benefit was $72,908,308. (Tr.3057:10-3059:22, 3080:19-3081:01)

215. For the Chicago loan, the improper interest benefit is calculated by comparing a term sheet from CRE with a rate equivalent to 7.5% against the terms of the loan obtained from PWM. (Tr.3073:13-3074:08) For the period starting from July 14, 2014 through October 27, 2023, the total improper interest benefit was $17,433,359. (Tr.3074:01-11, 3080:19-3081:01)

216. For the OPO loan, the improper interest benefit is calculated by comparing a term sheet from CRE with a rate equivalent to 8% against the terms of the loan obtained from PWM. (Tr.3069:02-3072:09) From loan closing on August 12, 2014 through the payoff of the OPO loan, the total improper interest benefit was $53,423,209. (Tr.3072:09-13)

217. For the 40 Wall loan, the improper interest benefit is calculated by comparing the interest rate on the existing loan with Capital One against the terms of the loan obtained from Ladder to refinance the existing loan. (Tr.3081:02-18) From loan closing in November 2015 through October 27, 2023, the total improper interest benefit was $24,265,291. (Tr.3081:02-18; PDX-4)

2. OPO Profits

218. The interest savings from defendants' use of the fraudulent SFCs also allowed them to preserve capital to invest in other projects. By 2017, after removing $16,500,0000 in cash held by the Vornado Partnerships, Trump would have been in a negative cash position without the $73,811,815 saved through reduced interest payments. (*Supra* II.I.1; PX-3041 ¶398) As shown in the table below, without the interest savings from the use of the fraudulent SFCs, Trump would have been in a negative cash position in every year from 2017-2020.

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests	Total Cash Savings From Interest	Reported Cash	Reported Cash (w/o Fraud)
2014	$24,700,000	$5,217,355	$302,300,000	$272,382,645
2015	$32,700,000	$29,578,191	$192,300,000	$130,021,809
2016	$19,600,000	$51,080,625	$114,400,000	$43,719,375
2017	$16,500,000	$73,811,815	$76,000,000	-$14,311,815
2018	$24,400,000	$93,297,807	$76,200,000	-$41,497,807
2019	$24,700,000	$111,453,030	$87,000,000	-$49,153,030
2020	$28,300,000	$137,087,492	$92,700,000	-$72,687,492
2021	$93,100,000	$162,976,566	$293,800,000	$37,723,434

219. Defendants used this additional capital to invest in a number of projects, including the renovation of Doral and OPO as well as Trump's 2016 presidential campaign. (PX-3137 at 11)

220. The excess capital from the interest savings, along with the proceeds of the $170 million OPO construction loan, financed the renovation and completion of the OPO property. (PX-302 at 16; Tr.3814:05-3816:08, 4106:23-4108:10) These funds were necessary to finance defendants' redevelopment of the OPO building, which defendants sold for substantial profit after

its completion. (PX-3041 ¶¶570-71; Tr.3813:04-3816:08, 3818:06-3819:01, 4106:08-4108:02, 4111:22-4112:02)

221. A reasonable approximation of the total profit for all participants in the OPO transaction is $139,408,146. (PX-1373 at 1; Tr.3626:01-24) This approximation comes from the ultimate sale of the property and does not account for any operational profits that may have been obtained on the property.

222. A reasonable approximation of profit to Trump individually from the OPO transaction is $126,828,600. A reasonable approximation of the profits to Donald Trump Jr. and Eric Trump individually is $4,013,024 each.

3. Ferry Point Profits

223. To maintain its license to operate Ferry Point, TTO submitted No Mac letters to NYC Parks from 2016-2021. (*Supra* II.F)

224. By maintaining the license agreement for Ferry Point, TTO was able to secure a windfall profit by assigning the license to Bally's Corporation. (PX-3304)

225. A reasonable approximation of the current profit from this assignment is $60 million. (Tr.3266:22-3267:17; PX-3304 at 1, PX-3306 at 12) This approximation comes from the ultimate lease assignment and does not account for any operational profits that may have been obtained from the operation of Ferry Point.

226. Defendants have not identified any specific costs that should be offset against this amount.

4. Severance Agreements

227. Weisselberg entered into the Separation Agreement for $2,000,000 that reimbursed him for penalties paid as a result of his criminal convictions. (*Supra* ¶209)

228. McConney also received a severance package structured as four payments totaling $500,000. At the time of his testimony on November 21, 2023, Mr. McConney was still owed one payment of $125,000. (Tr.5075:11-17)

229. These severance agreements allowed TTO to retain control over Weisselberg and McConney during the pendency of this proceeding and other governmental investigations and proceedings. The severance agreements discourage cooperation with OAG or any entity "adverse" to TTO and reflect an improper benefit to Weisselberg and McConney.[4] (Tr.3454:12-3456:15) Through the severance payments, Eric Trump and Donald Trump, Jr. (co-leaders of the company) rewarded Weisselberg and McConney for their criminal conduct and encouraged and condoned the continuation of illegal activity by defendants, including the scheme to inflate the assets of Trump for the benefit of TTO.

J. Failure of Corporate Governance and Internal Controls

230. At the direction of the individual defendants, TTO operated with virtually no serious internal controls and created an "atmosphere conducive to fraud." *People v. Northern Leasing Sys., Inc.* 193 A.D.3d 67, 75 (1st Dep't 2021).

1. Preparation of Fraudulent SFCs was Persistent

231. Defendants' fraudulent and illegal conduct in preparing false SFCs persisted for more than a decade. It persisted even with the transfer of control of the business from Donald Trump to his sons in 2017. (PX-1330)

---

[4] McConney implausibly testified that he could not recall if his severance agreement contained a non-disparagement clause. (Tr.5076:03-15) But given testimony from Eric Trump that such language was "standard" and "boilerplate" (Tr.3454:05-3456:08), together with defendants' failure to produce the agreement, the Court should discount McConney's testimony and infer that such language was included in his agreement.

232. When TTO replaced Mazars with Whitley Penn, Eric Trump and Donald Trump, Jr. managed the transition, which did not result in any substantive changes to the process for preparing the SFC. (PX-1497, PX-1498; Tr.454:02-19, 451:13-22) The process, supporting documents and disclosures carried over with only minor changes. (PX-1354, PX-1497, PX-1501, PX-1502)

233. Defendants excluded the only senior executive at the company who was qualified as a CPA, Mark Hawthorn, from participation in preparing the SFCs. (Tr.1487:04-1489:20) Indeed, Hawthorn considered the SFC to be "a very sensitive document" that he "didn't need to be any part of," such that even when he was going to have a conversation with outside auditors from Scotland he did not ask for a copy. (Tr.1436:24-1437:07)

234. The use of fraudulent financial information extended beyond just real estate acquisitions and extended to other commercial transactions, like the effort to purchase the Buffalo Bills. (Tr.2884:17-2892:21)

2. The Company Lacks Effective Leadership

235. Approximately five months after Weisselberg pleaded guilty to 15 counts relating to tax fraud, Eric Trump negotiated, approved, and executed on January 12, 2023 a separation agreement providing Weisselberg with eight equal payments of $250,000, for a total of $2 million, in exchange for Weisselberg's agreement, among other things, "not to verbally or in writing disparage, criticize or denigrate" TTO "or any of its current or former entities, officers, directors, managers, employees, owners or representatives." (PX-1751 at 2; Tr.3451:25-3457:18)

236. Under the leadership of Eric Trump and Donald Trump, Jr., Weisselberg remained at the company for over four months following his guilty plea, until the company finally terminated his employment on December 30, 2022. (PX-1751 at 2)

237. Despite being one of the two executives in charge of TTO, Donald Trump, Jr. claimed he lacked any specific knowledge as to the reason Weisselberg's employment relationship with TTO ended. (Tr.3172:05-08, 3173:07-11)

238. Since Weisselberg left TTO in December 2022, the company has had no CFO, a fact that Donald Trump, Jr. did not know when testifying in this case as he mistakenly believed that Hawthorn was functioning as the CFO. (Tr. 3283:3-18, 3987:13-3988:02, 5245:15-5249:13)

239. Since McConney left the company in February 2023, the company has had no one functioning in the role of Controller. (Tr.5246:12-5247:23)

240. During the period that McConney was Controller and reported to Weisselberg, McConney would, and did, engage in conduct he knew was illegal, including fraud, at Weisselberg's direction because he feared he would probably lose his job if he refused to comply. (Tr.776:01-778:21)

241. Defendants were unable to produce an SFC in 2022 or 2023. (Tr.482:13-483:05; NYSCEF No. 489) Instead, defendants agreed to provide some lenders with lists of assets (without values) and liabilities. (Tr.5282:15-23)

242. During the pendency of this action, the Independent Monitor observed that defendants provided lenders with incomplete information about certain material liabilities. NYSCEF No. 647 at 2.

243. In addition, the Independent Monitor observed that defendants: (i) failed to promptly disclose tax returns as required; (ii) made cash transfers of approximately $40 million without prior disclosure as required; (iii) maintained inconsistent records regarding depreciation of expenses; and (iv) could not immediately explain an intercompany loan concerning the Chicago

property. NYSCEF No. 647, 1641. As a result of these issues, defendants agreed to "enhanced monitoring." *Id*.

244. Trump did not believe that TTO needed to make any changes based on the facts that came out during this action. (Tr.3635:22-3636:15) He was not aware of any changes to the financial reporting system at TTO. (Tr.3639:04-10)

3. TTO Has a History of Criminal Convictions and Regulatory Resolutions

245. This enforcement action is only the latest in a long series of prosecutions against TTO-related entities and senior TTO executives for corporate malfeasance.

246. In August 2013, OAG sued Donald Trump, Trump Organization, Inc., and Trump Organization LLC, among others, for violation of §63(12) in the marketing and operation of an entity doing business as "Trump University." *People v. Trump Entrepreneur Initiative LLC*, Docket No. 451463/2013, Doc. 1 (Sup. Ct. N.Y. Cty.). That litigation was resolved as part of a $25 million class action settlement with Trump University customers. *Id.* at Doc. 336.

247. In June 2018, OAG sued Donald Trump, Donald Trump Jr., Eric Trump, and others for persistent violations of law involving the Donald J. Trump Foundation, including "failure to follow basic fiduciary obligations or implement even elementary corporate formalities required by law." *People v. Trump*, Docket No. 451130/2018, Doc. 1 (Sup. Ct. N.Y. Cty.). That litigation was resolved in November 2019 pursuant to a settlement that included the dissolution of the Foundation and a requirement that Donald Trump, Jr. and Eric Trump attend training on the responsibilities of officers and directors of charitable organizations. *Id*. at Doc. 139.

248. On May 3, 2022, defendants Trump Organization LLC and Trump Old Post Office LLC entered into a settlement agreement with the Office of the Attorney General for the District of Columbia over allegations the 58th Presidential Inaugural Committee paid excessive fees to

OPO to defendants' benefit. (*See* https://oag.dc.gov/sites/default/files/2022-05/Trump-PIC-Consent-Motion-Settlement-Order.pdf)

249. On August 18, 2022, Weisselberg pleaded guilty to 15 criminal counts involving tax fraud, including four counts of Falsifying Business Records. *People v. Weisselberg*, Indictment No. 1473-2021 (Sup. Ct. N.Y. Cty.).

250. Based in part on testimony from Weisselberg, on December 6, 2022, two entities owned by Trump, the Trust and DJT Holdings – the Trump Corporation and Trump Payroll Corp. – were convicted on 17 criminal counts involving tax fraud. Those convictions included seven counts of Falsifying Business Records. *People v. The Trump Corp*., Indictment No. 1473/2021 (Sup. Ct. N.Y. Cty.).

III. CONCLUSIONS OF LAW

A. Plaintiff's Burden of Proof is a Preponderance of the Evidence

251. Where OAG brings an action under §63(12) seeking equitable relief for repeated or persistent illegality in the conduct of business, OAG's burden of proof is a preponderance of the evidence—the usual burden in civil litigation. *Jarrett v. Madifari*, 67 A.D.2d 396, 404 (1st Dep't 1979).

252. Contrary to defendants' suggestions at trial (Tr.3931-3933), the preponderance standard—and not the higher "clear and convincing" standard—applies here even where OAG would establish defendants' civil liability through evidence that defendants engaged in criminal conduct. Whether to apply the "clear and convincing" standard does not depend on the conduct alleged, but on whether there are public policy reasons to require unusual certainty before granting a particular judicial remedy, such as loss of fundamental "personal or liberty rights," as through

denaturalization or involuntary civil commitment. *Matter of Cappoccia*, 59 N.Y.2d 549, 553 (1983).

253. In contrast, the preponderance standard applies where the relief involves a person's property interest, including cases where the government seeks civil forfeiture of property used in the commission of a crime—and the standard may be satisfied even if the underlying criminal charges are dismissed or lead to an acquittal. *Prop. Clerk, New York City Police Dep't v. Ferris*, 77 N.Y.2d 428, 430-31 (1991); *Prop. Clerk, New York City Police Dep't v. Hurlston*, 104 A.D.2d 312, 313 (1st Dep't 1984).[5]

254. Because a person has at most a quasi-property interest in availing themselves of the privilege to engage in a profession, the preponderance standard also applies where, as here, the relief sought is a professional bar or other job-related discipline—even in cases based on allegations of criminal wrongdoing. *See Matter of Seiffert*, 65 N.Y.2d 278, 280-81 (1985); *Matter of Capoccia*, 59 N.Y.2d at 553.

B. Individual Defendants Are Liable Based on Penal Law Violations

255. Illegality under §63(12) covers conduct that violates local, state, or federal law. *People v Ivybrooke Equity Enters., LLC*, 175 A.D.3d 1000, 1001 (4th Dep't 2019); *People v. Telehublink Corp.*, 301 A.D.2d 1006, 1007 (3d Dep't 2003); *Oncor Commc'ns, Inc. v. State*, 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995). The individual defendants violated penal laws

[5] The preponderance standard likewise governs civil claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), notwithstanding that a civil RICO plaintiff must prove a criminal-law violation. *Saleh v. Bear Creek Productions, Inc.*, 1988 WL 391125 (Sup. Ct. N.Y. Cty. Jan. 8, 1988); *Cullen v. Margiotta*, 811 F.2d 698, 731 (2d Cir. 1987) (citing cases) *S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 530 (4th Cir. 2002).

prohibiting falsification of business records, issuing false financial statements, insurance fraud, and conspiracy.

1. Falsifying Business Records

256. Illegality based on falsifying business records (second cause of action) requires the making of a false entry, preventing the making of a true entry, or omitting to make a true entry (despite a duty to do so) in the business records of an enterprise, with intent to defraud. Penal Law ("PL") §175.05; *People v. Kisina*, 14 N.Y.3d 153, 158 (2010); *People v. Reyes*, 69 A.D.3d 537, 538 (1st Dep't 2010). Materiality is not an element of the claim.

257. A "business record" means: "any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity." PL §175.00 (2).

258. An "enterprise" means: "any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity." PL §175.00 (1).

259. A showing of intent to defraud does not require a showing of reliance. *People v. Taylor*, 14 N.Y.3d 727, 729 (2010). Intent to defraud means general intent to defraud, not intent to defraud a particular person. *People v. Dallas*, 46 A.D.3d 489, 491 (1st Dep't 2007).

260. An "intent to defraud" is a conscious aim and objective to defraud. *Taylor*, 14 N.Y.3d at 729. "[I]ntent may be established by the defendant's conduct and the circumstances." *People v. Gordon*, 23 N.Y.3d 643, 650 (2014). "Because intent is an invisible operation of the mind, direct evidence is rarely available (in the absence of an admission) and is unnecessary where there is legally sufficient circumstantial evidence of intent." *People v. Rodriguez*, 17 N.Y.3d 486, 489 (2011) (cleaned up); *People v. Gibson*, 118 A.D.3d 1157, 1158 (3d Dep't 2014).

261. Fraudulent intent can be inferred from facts, including: (i) an "overall pattern" of conduct,[6] (ii) an executive's control of an organization and involvement in its day-to-day operations,[7] (iii) false statements on financial documents,[8] (iv) motive,[9] (v) peculiar knowledge of facts rendering a representation false or misleading, or ready access to such facts,[10] (vi) concealment,[11] and (vii) a defendant's lack of credibility and deception on the stand.[12]

a. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos are Business Records

262. The SFCs and associated supporting data spreadsheets are business records of an enterprise because, among other things, they are writings kept by TTO, Trump, and the Trust for the purpose of evidencing or reflecting their condition and activity. Any draft of any of the

---

[6] *People v. Vomvos*, 137 A.D.3d 1172, 1173 (2d Dep't 2016); *People v. Houghtaling*, 14 A.D.3d 879, 881 (3d Dep't 2005) ("overall and protracted pattern"). The existence of a scheme to defraud (and thus intent to defraud) may be inferred from (1) "common techniques, misrepresentations and omissions of material facts" and 2) a "constant nucleus" through which contacts with third parties were "initiated or maintained." *People v. First Meridian Planning Corp.*, 86 N.Y.2d 608, 616-18 (1995). In such a circumstance, the fact that "codefendants played differing roles" at "different times" does "not negate the existence of a single scheme." *Id.* (citation omitted).

[7] *See Pludeman v. Northern Leasing Sys., Inc*., 10 N.Y.3d 486, 492-93 (2008) (citing *Polonetsky v. Better Homes Depot*, 97 N.Y.2d 46, 55 (2001)); *In re AOL Time Warner, Inc.*, 381 F.Supp.2d 192, 220-222 (S.D.N.Y. 2004).

[8] *People v. Garrett,* 39 A.D.3d 431, 432 (1st Dep't 2007); *People v. Johnson,* 39 A.D.3d 338, 339 (1st Dep't 2007).

[9] *China Development Indus. Bank v. Morgan Stanley & Co., Inc*., 86 A.D.3d 435, 436 (1st Dep't 2011); *United States v. MacPherson*, 424 F.3d 183, 185 n. 2 (2d Cir. 2005).

[10] *Selective Ins. Co. of N.Y. v. St. Catherine's Ctr. for Children*, 67 Misc.3d 339, 357 (Sup. Ct. Albany Cty. 2019); *Aldridge v. A.T. Cross Corp*., 284 F.3d 72, 83 (1st Cir. 2002); *SEC v. Egan*, 994 F.Supp.2d 558, 566 (S.D.N.Y. 2014).

[11] *People v. Sala*, 258 A.D.2d 182, 189 (3d Dep't 1999) (attendance at meetings regarding concealment among facts from which knowing participation in fraudulent scheme could be inferred), *aff'd*, 95 N.Y.2d 254 (2000); *Vomvos*, 137 A.D.3d at 1173.

[12] *People v. Credel*, 99 A.D.3d 541, 541-42 (1st Dep't 2012) (incredibility supports intent finding).

foregoing, or any backup to any valuation in any of Trump's SFCs, is also a business record of an enterprise.

263. The SFCs and associated supporting data spreadsheets in the files of the outside accountants – Mazars and Whitley Penn – are business records because they are writings kept by those entities in their work paper files for the purpose of reflecting their work on compilation engagements. *See People v. Kisina*, 14 N.Y.3d 153, 158-59 (2010) (conviction appropriate for falsifying business records of "recipient enterprise") (citing *People v. Bloomfield*, 6 N.Y.3d 165, 170-71 (2006)).

264. The credit memoranda prepared by DB personnel in connection with the Doral, OPO, and Chicago loans are business records because each is kept by DB evidencing or reflecting its activities. (Tr.983:18-984:6, 5452:14-23, 5467:1-19)

265. The RUC memorandum prepared by Ladder personnel in connection with the 40 Wall loan is a business record of Ladder because it is a writing kept by Ladder evidencing or reflecting its activities. (Tr.1878:7-16)

b. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos Contain False Entries

266. Because of the vast web of documents connected to any particular SFC (supporting data spreadsheet, backup documents, numerous drafts, engagement and representation letters, final versions, transmittals to third parties, and business records of third parties incorporating SFC figures) and because of the number of years at issue, the number of false or omitted true entries in business records at issue in this case numbers in the thousands.

267. Any entry in an SFC, associated supporting data spreadsheet, or related backup material containing a false and misleading inflated value for an asset or Trump's net worth or a

false and misleading fact used in the calculation of an asset value is a false entry in a business record. Moreover, any instance in which an entry in an SFC, associated supporting data spreadsheet, or related backup material omits a key true fact is an omitted true entry in a business record.

268. As the Court has found and as demonstrated at trial, the SFCs from 2014-2021 and the associated supporting data spreadsheets contain numerous false entries in the form of false and misleading net worth figures, false and misleading inflated values for assets, and false and misleading facts used in the calculation of asset values with respect to the following assets: cash, the Triplex, 40 Wall, TPA, Seven Springs, Mar-a-Lago, Real Estate Licensing Deals, and the Golf Clubs. (*See* SJ Decision 21-31)

269. The related backup material for the SFCs from 2014-2021 contain numerous false entries in the form of false and misleading facts used in the calculation of asset values with respect to the foregoing assets. (*See* SJ Decision 21-31)

270. Any entry in a lender's credit memo containing a false and misleading inflated value for an asset or Trump's net worth is a false entry in a business record.

271. The DB credit memos for the Doral, OPO, and Chicago loans contain numerous false entries in the form of false and misleading inflated values for Trump's net worth and certain assets. (*See* SJ Decision 31-32)

272. The RUC memorandum prepared by Ladder personnel in connection with the 40 Wall loan contain numerous false entries in the form of false and misleading inflated values for Trump's net worth and certain assets. (*See* SJ Decision 24-25, n.19)

c. Donald Trump Is Liable for Falsification of Business Records

273. The record on summary judgment and at trial demonstrated that Trump (i) caused the creation of the false records identified above, and (ii) acted with the requisite fraudulent intent.

274. Trump also is liable for each act of falsification of business records pertaining to the SFCs committed by McConney and Weisselberg during the period of time he exercised control over their conduct. Under Penal Law §20.00, a person is liable as a principal if he acts with the intent required for a criminal offense and "solicits, requests, commands, importunes, or intentionally aids" another to commit the offense. *People v. Rivera*, 84 N.Y.2d 766, 771 (1995).

i. Creation of False Business Records

275. Trump had full knowledge of and responsibility for the false statements contained in the SFCs. From 2013-2015, each SFC stated that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement." (PX-3041 ¶9) Trump directed Weisselberg and McConney to prepare the SFCs and had final review and approval of their contents. (*Supra* ¶¶5-7)

276. Trump is a self-proclaimed expert on real estate, knows his properties better than anyone, and agreed with the valuations reached by McConney and Weisselberg. (*Supra* ¶8)

277. Trump, as top corporate executive and the individual responsible for the SFCs, not only approved their contents but omitted to make (or prevented the making of) numerous true entries in the SFCs he approved despite his obligation to do so. Such omitted true entries (for Trump and other individual defendants who reviewed, approved, or certified the SFCs) include disclosures of true facts regarding assets or valuations on the SFCs—such as deed restrictions on Mar-a-Lago, rent-stabilized status of TPA apartments, lack of control over Vornado Cash,

appraised values of assets, or failure to present-value future profit. These examples are not exhaustive but illustrative of omitted true facts present in the voluminous trial record.

ii. Intent

278. The record is replete with evidence of Trump's intent. Most directly, Trump told Weisselberg that he wanted the net worth figure shown on the SFC to go up. (*Supra* ¶3) He caused Weisselberg and Michael Cohen to reverse-engineer specific values. And he continues to insist to this day that the SFCs understate his wealth. (*Supra* ¶¶4, 7)

279. **Overall Pattern:** Trump's certifications of the SFCs in numerous transactions support an inference that he acted with intent to defraud, particularly given the "overall pattern" of his conduct. That Trump—acting through a "constant nucleus" of himself, Weisselberg, McConney, and TTO—repeatedly approved and certified the SFCs, which contain a pattern of the same or similar misrepresentations and omissions over a series of years, confirms his intent. *First Meridian*, 86 N.Y.2d at 616-17.

280. Many of the documents Trump signed expressly stated that he was representing the truth of his financial statements "to induce Lender" to extend credit, and that the underlying loans were "conclusively presumed to have been created in reliance" on Trump's guarantee and representations, confirming Trump knew he was certifying to the truth of his SFCs to induce them to give him loans. (PX-305, at 12-14)

281. **Day-to-Day Control:** Trump, who was TTO's top executive and remains the beneficial owner of all assets in the Trust, was expressly identified as the person responsible for the preparation and fair presentation of the SFCs for certain years and was deeply involved in TTO's business operations until he became President.

282. **Motive:** Trump had a financial motive to defraud that enables an inference that he acted with fraudulent intent. Trump was no mere salaried executive; funds within TTO entities were routinely treated as his own personal cash. Moreover, excess entity cash was swept up to Trump's or his Trust's accounts regularly and subject to weekly reporting to him. (Tr.1500:14-1502:25, 1513:02-1515:07)

283. **Peculiar Knowledge:** Trump was aware of many of the key facts underpinning various fraudulent misstatements in the SFCs. He signed the Mar-a-Lago deed restrictions. He litigated about Vornado Partnership restrictions in his personal capacity in this Court. *Trump v. Cheng*, 9 Misc.3d 1120(A) (Sup. Ct. N.Y. Cty. Sept. 14, 2005). He signed the condominium consent confirming the square footage of his Triplex as 10,996.39 and used the apartment as his primary residence. (PX-633 at 13-15, 20) He would have been aware of rent-stabilization restrictions on unsold units in TPA and the number of homes approved at Aberdeen by the Scottish government. (*E.g.,* Tr.3548:12-3549:15) Trump professed to "know more about real estate than other people" and to be "more expert than anybody else," making it implausible he lacked peculiar knowledge of his own assets. (Tr.3487:1-7)

284. **Deception**: As the Court has already found, Trump is not a credible witness.[13] Over the course of his entire testimony, he was evasive, gave irrelevant speeches, and was incapable of answering questions in a direct and credible manner. (*E.g.* Tr.3493:05-3495:04) ("Mr. Kise, can you control your client. This is not a political rally.")

[13] In imposing sanctions, the Court already concluded Trump was not a credible witness when testifying regarding events that happened only a short time earlier. NYSCEF No. 1598, at 2 ("this testimony rings hollow and untrue").

d. Allen Weisselberg Is Liable for Falsification of Business Records

285. The record on summary judgment and at trial demonstrated that Weisselberg (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

286. Weisselberg also is liable for each act of falsification of business records pertaining to the SFCs committed by McConney. *See* PL §20.00; *Rivera*, 84 N.Y.2d at 771.

i. Creation of False Business Records

287. Weisselberg had centralized control of financial reporting at TTO and had to approve any financial document before it was sent to an outside party. (Tr.1530:14-1531:01) Thus, Weisselberg was in a position to modify any figure or methodology used in any SFC he approved.

288. Weisselberg, as CFO, made or caused numerous false entries to be made in the SFCs he approved.

289. Weisselberg, as CFO, omitted to make numerous true entries in the SFCs he approved despite his obligation to do so.

290. Weisselberg, by approving the SFCs, and by signing associated representation letters to Mazars, caused false entries to be made in the business records of Mazars.

291. Without Weisselberg signing those representation letters, Mazars would not have completed the engagement and issued the SFCs. (Tr.195:17-23)

292. Weisselberg, by approving the SFCs with the knowledge that they would be certified to financial institutions including DB and Ladder, caused false entries to be made in the business records of those institutions.

293. Weisselberg, in his position of direction and control over Birney and McConney, prevented them making true entries in the SFCs and omitted to make true entries in the SFCs.

294. Weisselberg's testimony that Birney did not report to him or to McConney is not credible. (Tr.791:17-792:08) Weisselberg offered Birney a job in Weisselberg's office, and Weisselberg promoted him. (Tr.1202:18-23) Birney reported to Weisselberg, and worked with McConney, on the SFCs. (Tr.1203:13-16, 1212:08-1213:06) Weisselberg was the final decisionmaker on the SFCs for 2016-2019. (Tr.1213:21)

ii. Intent

295. There is ample direct evidence of Weisselberg's fraudulent intent. His intent is evident through his statement to Birney that Trump wanted the net worth figure shown on the SFC to go up, *supra* ¶3, and through his approval, over a decade, of SFCs containing common misrepresentations and omissions. *First Meridian*, 86 N.Y.2d at 616-17.

296. There is also direct evidence of his intent to defraud based on his decision to keep the square footage of the Triplex at 30,000 for calculating the apartment's value in the 2016 SFC despite his knowledge that this figure was triple the actual size. (*Supra* ¶¶47-52).

297. Even before that, Weisselberg told Sneddon in 2012 to use the 30,000 figure for the size of the Triplex while denying his request to inspect the apartment or view the floorplans to verify the size for himself and despite the relevant records (which Weisselberg had ready access to) showing the true size of the Triplex. (*Supra* ¶45) Later in 2017 and 2019, Weisselberg further inflated the price of the Triplex by directing Birney to use "record shattering" comparable sales. (*Supra* ¶¶53,54).

298. The Court can infer Weisselberg's intent to defraud from his misrepresentation to Zurich that the valuations contained in the SFCs were the work of an outside appraiser. The Zurich underwriter's testimony about this misrepresentation was clear and specific and corroborated by her contemporaneous notes. (See *supra* II.G)

299. Other instances of falsification support a finding that Weisselberg acted with intent to defraud. As Birney testified, Weisselberg (or McConney) directed him to exclude management fees as an expense when calculating net operating income used in SFC valuations. (Tr.1327:06-1328:08) Moreover, Weisselberg directed Kidder to prepare cash flow data regarding 40 Wall stating false amounts of management fees when submitting that data to Ladder. (Tr.1506:17-1507:10, 1536:17-1539:20)

300. In valuing the interest in Trump Tower and 1290 Avenue of the Americas in 2018 and 2019, Weisselberg knew that a 4.8% capitalization rate was appropriate (Tr.1310:22-1318:24), but he nevertheless directed Birney to use a 2.67% capitalization rate and record a false, concocted justification in the supporting spreadsheet. (Tr.1323:04-1342:14)

301. To the extent Weisselberg failed to check information he had a duty to monitor, or failed to examine information he represented was compiled appropriately (*e.g.*, PX-706), those facts further show Weisselberg's intent. *Employees' Retirement Sys. of Govt. of the Virgin Is. v Blanford*, 794 F.3d 297, 306 (2d Cir. 2015)

302. **Peculiar Knowledge:** As CFO with centralized control over financial reporting, Weisselberg had peculiar knowledge of and ready access to facts rendering the SFC valuations false or misleading. The sheer pattern of misrepresentation and inflation—year after year—confirms his intent.

303. Weisselberg knew Trump did not control the Vornado Cash but approved its inclusion in the SFC. (*Supra* ¶38). He knew the actual size of the Triplex but directed it be valued at the inflated size. (*Supra* ¶¶46-52) He also knew rent-stabilized apartments were valued as free market (*Supra* ¶65-68), and Mar-a-Lago was valued as a private residence despite being used as a social club per the deed restriction (*Supra* ¶81-83).

304. **Concealment**: Weisselberg concealed key facts from Birney when he became involved in the preparation of the SFC. Weisselberg concealed the 2002 Deed on Mar-a-Lago and the appraisals of the rent-stabilized units at TPA. (*Supra* ¶¶68, 83) Weisselberg concealed from Birney the Vornado partnership agreements. (Tr.1284:19-1285:01) The SFCs themselves conceal a variety of important facts from users, too, as Weisselberg knew.

305. **Motive**: Weisselberg's severance agreement establishes his continued financial motive to offer testimony favorable to TTO—which suggests his lack of credibility that supports an inference of intent to defraud. *See, supra,* at II.I.4. Weisselberg's receipt of periodic payments totaling $2 million is contingent on his continued resistance to cooperate with law enforcement (except when compelled), among other conditions. (PX-1751 at 2-3) Weisselberg's testimony that, despite these provisions, he "didn't give a lot of thought" to them (Tr.1194:21-24) is not credible. His testimony that the $2 million severance figure only coincidentally matches the amount he was required to pay in back taxes, penalties and interest is not credible. (Tr.1193:11-1195:13)

306. **Other similar fraudulent acts.** Weisselberg and McConney worked together to defraud taxpayers. In particular, by Weisselberg's admission, he committed a scheme to defraud and various acts relating to tax fraud. He did so in concert with McConney, who engineered false financial records to aid Weisselberg's tax schemes. These undisputed criminal acts of fraud committed by Weisselberg and McConney together, as the top financial executives at TTO, undercut any argument that they acted with an innocent state of mind. *See In the Matter of the Estate of Brandon*, 55 N.Y.2d 206, 211 (1982) ("Where guilty knowledge or an unlawful intent is in issue, evidence of other similar acts is admissible to negate the existence of an innocent state of mind").

e. Jeffrey McConney Is Liable for Falsification of Business Records

307. The record on summary judgment and at trial demonstrated that McConney (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

i. Creation of Records

308. From 2013-2016, McConney was the primary preparer of the supporting data for the SFCs and for the SFCs from 2017-2021 he supervised Birney in the preparation of the supporting data.

309. He caused the creation of every entry in the SFCs and supporting data for the 2013-2016 SFCs. As a senior financial executive (Controller) he also omitted to make (or prevented the making of) true entries in SFCs from 2013-2021 despite his obligation to do so.

ii. Intent

310. Many of the facts that demonstrate intent by Weisselberg or Trump apply equally to McConney: a yearslong pattern of financial misconduct in preparing the SFCs, a common set of misrepresentations and omissions, peculiar access to facts as a top executive, concealment of facts (such as the 2002 Deed) from Birney, day-to-day involvement with TTO's business, and familiarity with Trump Organization assets. (*See, supra,* at III.B.1)

311. McConney also provided additional evidence of his culpable intent.

312. McConney reviewed the engagement and representation letters prior to Weisselberg signing them and was aware of the obligations therein. (Tr.589:18-594:13, 830:08-13, 835:2-25)

313. McConney lacked knowledge of GAAP when he was a primary person responsible for preparing the SFC in accordance with GAAP. (Tr.629:19-630:05)

314. McConney intentionally valued rent-stabilized units at TPA as if they were free market units, even though he knew TPA had rent regulated units and his own office was responsible for collecting rent on those units. (Tr.4970:7-24, *supra* II.A.2.d)

315. McConney intentionally concealed the current market value column in the backup for TPA that he provided to Mazars, providing only the higher offering price figures he used in his valuations.

316. McConney falsely told Bender that TTO did not have appraisals in its possession when Bender specifically asked for appraisals. (Tr.242:20-246:16)

317. McConney intentionally included Vornado Cash in the cash asset category in the supporting data and the SFCs from 2013-2021 despite knowing it was money that Trump and TTO did not control. (*Supra* II.A.2.a)

318. McConney inflated the value of Mar-a-Lago by ignoring legal restrictions even though they were attached to an appraisal he relied upon as backup for the property's acreage. (Tr.771:17-775:21) McConney did not disclose the existence of the 2002 Deed in the SFCs.

319. McConney, despite being aware of the time value of money, did not discount numerous valuations in the SFCs including future profit to present value. This failure to discount was a blatant means of inflation, a violation of GAAP (Tr. 4413:20-4414:3, 4418:10-20), and assumes a false premise that future revenue is received at the present time, which defendants' own expert conceded was not reasonable. (Tr.5993:10-19)

320. McConney's fraudulent intent is further demonstrated by his assigning to Birney—then a recent college graduate with no training or experience in accounting or valuation—the task of preparing SFC supporting data. That choice enabled the perpetuation of McConney's and Weisselberg's fraudulent conduct. (Tr.583:16-584:12, 589:6-17, 1210:1-1212:7, 1199:14-19)

321. McConney for years in conjunction with Eric Trump valued Seven Springs at $261 million or $291 million based on the false premise that revenue from developable lots was available immediately (*Supra* II.A.2.e). Once that premise became untenable—and TTO obtained an appraisal showing the total value to be only $56 million—McConney concealed the extreme reduction in Seven Springs's value by moving it to a category ("other assets") where the reduction would not be evident. (Tr.720:11-724:1). Simultaneously, McConney increased the value of Trump's already-inflated Triplex—also hidden in the "other assets" category—by $127 million in a further attempt to conceal the reduction in Seven Springs's stated value. (Tr.653:20-659:19).

322. McConney testified that he had very little to do with the SFC after 2016 or 2017. (Tr.583:16-584:12, 748:21-24). That testimony is belied by the record demonstrating his continued involvement and further confirms his intent to defraud. (PX-1361, PX-3297A; Tr.1389:21-1391:12, 5079:01-5084:18, 5102:04-5106:09)

323. McConney included brand value in the golf club valuations even though the SFC stated that "the goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." (Tr.747:17-749:08) His false trial testimony that Mazars drafted the section on brand value—which he made after this Court found the language to be misleading—further confirms his intent to defraud. (SJ Order at 28-29; Tr.5055:02-5059:15; PX-3054)

324. McConney admitted he was willing to engage in fraud at Weisselberg's direction, and did so on multiple occasions, out of fear of losing his job. (Tr.777:19-778:21)

325. McConney is still owed a severance payment by TTO. Defendants have not produced McConney's severance agreement. The Court can infer from defendants' failure to produce that agreement that it contains provisions similar to those in Weisselberg's severance

agreement (*see, supra,* ¶235), further undermining McConney's credibility. *Reichman v. Warehouse One, Inc*., 173 A.D.2d 250, 252 (1st Dep't 1991).

f. Donald Trump, Jr. and Eric Trump Are Liable for Falsification of Business Records

326. The record on summary judgment and at trial demonstrated that Donald Trump, Jr. and Eric Trump (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

327. Donald Trump, Jr., as trustee, and he and Eric Trump, as attorneys-in-fact for their father and the two co-CEOs running TTO from January 2017 forward, caused numerous false entries in SFC-related records covering the period 2016-2021 and omitted to make true entries in those same records.

328. Donald Trump, Jr. and Eric Trump also are liable for each act of falsification of business records pertaining to the SFCs committed by McConney and Weisselberg with respect to the SFCs from 2016-2021 based on their control over the conduct of those employees. PL §20.00; *Rivera*, 84 N.Y.2d at 771. Their intent to defraud is well-established; they intentionally aided McConney and Weisselberg in falsifying business records by, among other actions, reviewing the SFCs, approving their issuance, and certifying their accuracy to one or more financial institutions.

329. Donald Trump, Jr. and Eric Trump had a heightened duty of prudence as attorneys-in-fact for Trump. *See* General Obligations Law §§5-1501(2)(a), 1505(1)(a), 1501(2)(a)(3).

330. Their intent—as with their father's intent—can be inferred from their roles as the top executives at TTO,[14] their direct participation in obtaining and using the SFCs, their involvement in day-to-day business operations of TTO, and for Donald Trump, Jr. his role as trustee pursuant to which he was expressly responsible for the contents of the SFCs from 2016-2021. Functioning as co-CEOs of TTO from January 2017 to present, Donald Trump, Jr. and Eric Trump had intimate knowledge of TTO's business, had ready access to facts and records contradicting the SFCs, and were provided financial updates upon request by Weisselberg and Birney–including for Eric Trump monthly updates from Birney on the financial performance of club properties. (Tr.1202:22-1203:05, 1381:22-1383:13, 1387:18-1388:17, 1418:17-1419:08, 3270:12-3271:3, 3288:17-3289:12, 3446:21-24, 3474:22-3475:02; PX-1293) The common techniques, misrepresentations, and omissions that occurred in the SFCs with their supervision, control, and approval provide ample basis to infer their intent, even if they had "differing roles" with respect to the SFCs "at different times." *First Meridian*, 86 N.Y.2d at 616-17.

331. Donald Trump, Jr. and Eric Trump likewise had motive to defraud, given their personal stake in Trump Old Post Office LLC. (PX-1373) Indeed, they were personally responsible for a portion of the OPO loan that their father had guaranteed—so they had both upside and downside risk in the OPO project. (PX-1314) *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007) ("[M]otive can be a relevant consideration, and personal financial gain may weigh heavily in favor of a scienter inference").

[14] In addition to their role as co-CEOs of TTO, Donald Trump, Jr. and Eric Trump were also President, Director, Executive Vice President, and/or Chairman of various TTO entities beginning in January 2017—confirming their positions of executive responsibility. (PX-1329 at 13-25)

332. Despite being expressly advised by no later than February 2016 that distributions from the Vornado Partnerships were at the general partner's discretion, Donald Trump, Jr. and Eric Trump signed certifications pertaining to numerous SFCs that included Vornado Cash in the cash asset category, and Donald Trump, Jr. also signed representations letters as to some of those same SFCs. (PX-1293; Tr.1381:22-1383:04, 1387:18-1388:17)

333. The testimony of Donald Trump, Jr. and Eric Trump claiming they have no recollection of attending the October 2021 virtual meeting in which Birney and others reviewed the valuation methodologies for the 2021 SFC with them is not credible. Birney's testimony on that score was specific and credible and remains unrebutted: there was a virtual meeting in October 2021 in which Birney presented the 2021 SFC, supporting data, and related summary to Eric Trump and Donald Trump, Jr. (Tr.1389:21-1392:11) Birney testified that "the purpose of the call was to update them on the status of the current year's Statement of Financial Condition." (Tr.1405:22-1407:04)

i. Additional Conclusions of Law Regarding Donald Trump, Jr.'s Intent

334. Donald Trump, Jr., had a heightened duty as trustee—as he acknowledged. (Tr.3195:07-15)

335. During a near-full day of trial, Donald Trump Jr. provided substantial testimony about his extensive knowledge of the business of TTO and the various "buckets" of operations, including development projects, licensing deals, and condominium and building management. (Tr.3988:10-3991:11) He testified that McConney and Weisselberg performed their work on the SFCs "as expected," describing it as "materially correct." (Tr. 3275:23-3276:10)

336. Donald Trump, Jr. signed representation letters to Mazars affirmatively representing the fair presentation of the SFCs from 2016-2020, and he is presumed to have read and understood both those letters and the SFCs to which they related. *Marine Midland Bank, N.A. v. Embassy East, Inc*., 160 A.D.2d 420, 422 (1st Dep't 1990). The SFCs from 2016 to 2021 state that the Trustee(s) are responsible for their contents. (*E.g.*, PX-755)

337. Donald Trump, Jr. signed certifications verifying the accuracy of the SFCs to DB in 2017, 2018, and 2019, causing false entries to be made in the business records of DB, and he is presumed to have read and understood both those certifications and the SFCs to which they related. *Marine Midland*, 160 A.D.2d at 422. While disclaiming responsibility, he nevertheless testified that he "would have sat with the relevant parties," meaning Weisselberg, McConney and Bender, to discuss the SFCs. (Tr.3238:25-3239:15)

338. Donald Trump, Jr.'s intent can be inferred from his intent that a third party would rely on his certifications. (*E.g*., Tr.3241:13-15)

339. Donald Trump, Jr.'s denials of involvement in any valuations for the SFCs only further confirm his intent to deceive. From 2016-2019, the SFCs expressly ascribe numerous asset values to evaluations or assessments done "by the Trustees," of which Donald Trump, Jr. was one of two. (*E.g*., PX-773 at 7-9, PX-842 at 7-9) Assuming Donald Trump, Jr.'s testimony regarding his lack of participation in valuations is accurate, his testimony confirms that he personally attested to false statements *saying he performed valuations* when he *knew that was not true*.

340. Donald Trump, Jr.'s denials of involvement are also not credible because they conflict with Whitley Penn documents confirming his involvement. (E.g., PX-1498 at 3 ("The trustees of the trust, Eric Trump and Donald Trump, Jr., will be the signers on the engagement letters and representation letters as they are charged with governance and will be reviewing the

reports"), PX-1497 at 14 (SFC would be read and reviewed by "upper management . . . and also one of the Trump family members"); Tr.450:25-451:23)

341. Despite denying involvement, Donald Trump, Jr. claimed he met with the accountants and "would have" relied on them before certifying the SFCs. (Tr.3239:02-10) His claim of reliance on accountants is not credible; it is not backed up by any document or testimony indicating that any accountant (Bender or others) assured Donald Trump, Jr. that each (or any) SFC was true and correct. Donald Trump, Jr. provided no specific testimony on that score, and defendants elicited no testimony from any other accountant corroborating that he "would have" sought such assurance.

342. Donald Trump, Jr.'s claims to have relied on counsel are similarly not credible. (Tr.3239:02-10) He produced no evidence identifying any attorney who purportedly provided advice, suggesting he sought such advice, providing any attorney all relevant facts to render such advice, or establishing any attorney provided specific advice that he then actually followed. *United States v. Colasuonno*, 697 F.3d 164, 181 (2d Cir. 2012) (collecting cases).

ii. Additional Conclusions of Law Regarding Eric Trump's Intent

343. Eric Trump, as Executive Vice President, caused McConney and, from 2016 forward, Birney to make numerous false entries in the SFCs for 2012-2018 and the related supporting spreadsheets. For Seven Springs, Eric Trump instructed McConney to use an inflated, undiscounted value for the seven-mansion development from 2012-2014 (*supra*, II.A.2.e) and for Briarcliff he instructed McConney and Birney to use an inflated, undiscounted value for the 71-unit condominium development from 2014-2018 (*supra*, II.A.2.h.iv). He did so despite receiving during this period much lower values from appraisers for developing these properties and being

advised by his counsel Sheri Dillon that the number of units that could be developed as of right at Briarcliff was reduced from 71 to 31 (PX-3261; Tr.2701:12-2702:12).

344. Eric Trump, by engaging Whitley Penn to compile the 2021 SFC, and by supervising and controlling TTO personnel who prepared the underlying data for that SFC, caused false entries to be made in the business records of Whitley Penn. (PX-3298B; PX-2300 at 32; Tr.1389:21-1392:11, 1405:22-1407:4)

345. Eric Trump, by certifying to DB Trump's net worth in 2020 and the accuracy of the 2021 SFC on the Chicago, OPO, and Doral loans, caused false entries to be made in the business records of DB. (*E.g.*, PX-515, PX-516, PX-517, PX-518)

346. Eric Trump's claim that he was unaware of his father's SFCs until after OAG commenced its investigation (*e.g.*, Tr.3294:01-11) is not credible because it directly conflicts with the contemporaneous evidence establishing that on multiple occasions from 2013-2017 he received emails from McConney and Weisselberg specifically referencing Trump's SFC, and in some instances, specifically requesting information from him for purposes of preparing the SFC. (PX-1071, PX-1079, PX-1112, PX-1113) Indeed, when confronted with the contemporaneous evidence, he was forced to admit that "it appears" he *did* know about his father's SFC as of August 2013 after all. (Tr.3315:25-3316:02)

347. As with his sworn deposition testimony where he claimed to have only a very vague memory of McArdle's name (PX-3335), Eric Trump's insistence on the stand that he had only very limited involvement in appraisal work performed by McArdle and did not focus on appraisals (Tr.3380:11-25, 3384:22-3385:20) was not credible as it directly conflicted with numerous contemporaneous emails and calendar invites establishing that he was in frequent communication

with McArdle over an extended period of time on both the Seven Springs and Briarcliff appraisal engagements, even providing McArdle with comps (*supra*, II.A.2.e and II.A.2.h.iv).

348. Eric Trump's claims that he relied on "one of the biggest accounting firms" and "a great legal team" to tell him the 2021 SFC was "perfect" before he signed the certifications for that SFC (Tr.3442:08-19) are not credible; they are not backed up by any document or testimony indicating that any accountant from Whitley Penn assured him that the 2021 SFC was "perfect," much less true and accurate. Nor have defendants produced any evidence identifying any attorney who purportedly provided advice to Eric Trump on the 2021 SFC, suggesting Eric Trump ever sought such advice, indicating that Eric Trump provided any attorney all relevant facts to render such advice, or establishing any attorney provided specific advice to Eric Trump that he execute the certifications. *United States v. Colasuonno*, 697 F.3d 164, 181 (2d Cir. 2012) (collecting cases).

2. Issuing False Financial Statements

349. Illegality based on issuing a false financial statement in violation of PL §175.45 (fourth cause of action) requires, with intent to defraud, the defendant "knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect." PL §175.45(1).

350. Materiality under this statute is judged not by reference to reliance by or materiality to a particular victim, but rather on whether the financial statement "properly reflected the financial condition" of the person to which the statement pertains. *People v. Essner*, 124 Misc.2d 840, 835-36 (Sup. Ct. N.Y. Cty. 1984) (Baer, J.). "[T]here need be no 'victim,' ergo, reliance is neither an element of the crime nor a valid yardstick with which to test the materiality of a false statement." *Id.*

351. The Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law. (SJ Decision 21-31). Indeed, Weisselberg testified to his own understanding that five percent was the threshold for materiality (Tr.810:07-10), and the summary judgment decision establishes defendants inflated assets by amounts far greater than that threshold (and at times several multiples of it). (SJ Decision 21-31)

352. Intent to defraud by Trump, Weisselberg, McConney, Donald Trump, Jr., and Eric Trump is well established. (*See, supra*, at III.B.1.)

353. Trump "made or uttered" the 2014 and 2015 SFCs by reviewing and approving them with Weisselberg and by certifying their accuracy to financial institutions.

354. Weisselberg "made or uttered" the SFCs from 2014-2021 by reviewing supporting data spreadsheets, reviewing SFCs, approving the issuance of the SFCs, signing engagement and representation letters necessary for the SFCs' issuance and by certifying the summaries of net worth based on the SFCs to the lender on the 40 Wall loan.

355. McConney "made or uttered" the SFCs from 2014-2021 by preparing and/or supervising Birney's preparation of supporting data spreadsheets, reviewing SFCs, and reviewing engagement letters and representation letters necessary for the SFCs' issuance. McConney further "made or uttered" the supporting data spreadsheets and SFCs by sending them in their final form to Mazars and/or instructing Birney to do so.

356. Donald Trump, Jr. "made or uttered" the SFCs from 2016-2021 by reviewing SFCs and signing representation letters necessary for the SFCs' issuance, and further "made or uttered" the SFCs from 2016-2019 by certifying their accuracy to DB on the Chicago, OPO and Doral loans.

357. Eric Trump "made or uttered" the SFCs from 2014-2021 by communicating false information to McConney for inclusion in those SFCs from 2014-2018, thereby intentionally aiding McConney in making false SFCs in those years. PL §20.20. He further intentionally aided the making of the false 2021 SFC by signing the engagement letter for that SFC, and "made or uttered" a false financial statement in 2021 by certifying the 2021 SFC to DB on the Chicago, OPO and Doral loans.

3. Committing Insurance Fraud

358. Illegality based on committing insurance fraud in violation of New York Penal Law §176.05 (sixth cause of action) requires knowingly, and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. PL §176.05.

359. Weisselberg participated with McConney and, from November 2016 on, Birney in the preparation of false and misleading SFCs, which he then presented to underwriters from Zurich and HCC as part of insurance applications knowing they contained false and misleading material information about Trump's financial condition and concealed material facts concerning TTO's risk profile, all with the requisite intent to defraud within the limitations period. (*See, supra*, II.G-H.)

360. As a result of this conduct, Weisselberg committed insurance fraud within the meaning of New York Penal Law §176.05 based on a preponderance of the evidence within the limitations period.

361. As longtime Controller, McConney was aware of the SFCs' business uses, including their use for insurance, and attended one of the renewal meetings with the Zurich

underwriter. (PX-3324 at 45:07-45:20; Tr.602:12-14) By reviewing and approving the supporting data and SFCs, including the knowingly false assertions regarding Mr. Trump's liquidity, McConney intentionally aided Weisselberg's commission of insurance fraud and so is liable as a principal.[15] PL §20.00.

4. Engaging in Conspiracy

362. Plaintiff's remaining third, fifth, and seventh causes of action under §63(12) for conspiracy to commit the illegal acts enumerated above require an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

363. Evidence of a conspiracy is often circumstantial and rarely direct. *People v. Flanagan*, 28 N.Y.3d 644, 663 (2017) (noting conspiracy prosecutions "must usually rest upon circumstantial evidence," as defendants "with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts") (*quoting People v. Seely*, 253 N.Y. 330, 339 (1930)); *see also Iannelli v. U.S.*, 420 U.S. 770, 777 n. 10 (1975) ("The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the case."). A tacit understanding will suffice to show agreement for purposes of a conspiracy conviction. *See United States v. Amiel*, 95 F.3d 135, 144 (2d Cir. 1996) (citing 2 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law §6.4, at 71 (1986)).

[15] The only individual defendants engaging in insurance fraud were Weisselberg and McConney, so counts six and seven do not apply to Trump, Eric Trump, or Donald Trump, Jr.

364. The participants in a conspiracy need not be fully aware of the details of the venture so long as they agree on the "essential nature of the plan." *U.S. v. Stavroulakis*, 952 F.2d 686, 690 (2d Cir. 1992).

365. Evidence sufficient to link a particular defendant to a conspiracy "'need not be overwhelming.'" *U.S. v. Atehortva*, 17 F.3d 546, 550 (2d Cir.1994) (*quoting U.S. v. Rivera*, 971 F.2d 876, 891 (2d Cir.1992)).

366. For the illegal acts alleged in the sixth cause of action (insurance fraud), Weisselberg and McConney agreed to generate false and fraudulent SFCs and committed overt acts to present the SFCs to insurance underwriters when applying for insurance on behalf of all defendants, including during a meeting with Zurich's underwriter they both attended where Weisselberg misrepresented that the SFC values were determined by a professional appraisal firm.

367. For the illegal acts alleged in the second and fourth causes of action, the evidence of an illicit agreement to falsify business records and issue false financial statements is overwhelming. The sheer number of falsifications by multiple individuals is, by itself, proof of an agreement between them. There is direct evidence that Weisselberg worked with McConney to prepare the false SFCs in each year, and that Trump reviewed and approved them prior to the time he became President. There likewise is direct evidence that Weisselberg expressed one motive behind the conspiracy—to fulfill Trump's desire that the net worth shown on the SFC increase each year. Michael Cohen testified as to his similar understanding of Trump's objective based on meetings he attended with Weisselberg and Trump, and Birney corroborated this testimony based on his own understanding from Weisselberg that Trump "wanted his net worth" on the SFC to "go up." (Tr.1409:19-22, 2215:25-2216:11)

368. Eric Trump joined these conspiracies as of 2012 when he first provided inflated figures to McConney for Seven Springs, and he remained part of the conspiracies until at least his certifications of the 2021 SFC.

369. Donald Trump, Jr. joined these conspiracies, at the latest, by 2017 when he was appointed as trustee of the Trust, obtained power of attorney for Trump to sign bank certifications and began signing representation letters and certifications concerning the SFCs. He remained part of the conspiracies until at least when he signed the representation letter pertaining to the 2021 SFC.

370. Only "an overt act by one of the conspirators in furtherance of a conspiracy" need be shown. *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999); *People v. Ribowsky*, 77 N.Y.2d 284, 293 (1991). Here, there is conclusive evidence of numerous overt acts by Weisselberg, McConney, Trump, Donald Trump, Jr., and Eric Trump in furtherance of the conspiracy to falsify business records and the conspiracy to issue false financial statements. Those overt acts include, but are not limited to, creation and transmission of the supporting data spreadsheets and backup; creation, transmission, and approval of the SFCs; creation of specific false entries in the supporting data spreadsheets and backup; signing of engagement and representation letters; signing of guarantees and compliance certificates; and still more.

C. The Entity Defendants are Liable for Penal Law Violations Through the Acts of the Individual Defendants

371. Each entity defendant is liable for the unlawful acts covered in Counts II through VII of the People's complaint.

372. A corporation is liable for a misdemeanor committed by its agents acting within the scope of their employment and on the corporation's behalf. PL §20.20(c).

373. LLCs are liable for criminal acts committed by their employees and are persons under the Penal Law. *People v. Highgate LTC Management, LLC*, 69 A.D.3d 185, 187 (3d Dep't 2009) (quoting PL § 10.00(7)). *Highgate* articulated the longstanding rule, apart from specific requirements pertaining to corporations in PL §20.20, that business entities such as LLCs may be criminally liable for intentional acts of their agents that are "authorized through the action of [their] officers or which are done with the acquiescence of [their] officers" or are "performed on behalf of the [business entity] if undertaken within the scope of the agents' authority, real or apparent." *Id*. at 188-89 (cleaned up) (quoting *People v. Byrne*, 77 N.Y.2d 460, 465 (1991)); *People v. Harco Construction LLC*, 163 A.D.3d 406, 407 (1st Dep't 2018) (upholding conviction of LLC).

374. The Trust may be liable for the criminal acts of its agents, including (at a minimum) its trustees and those who performed work on their behalf. The First Department in this case held that the Trust is a proper party (since its trustees are parties) rejecting defendants' contrary position. *Trump*, 217 A.D.3d at 612. And, the Trust is, in essence, part of an associated group of business entities and individuals who operate as TTO. *People v. Newspaper and Mail Deliverers' Union of New York and Vic.*, 250 A.D.2d 207, 215 (1st Dep't 1998) (reinstating indictment against unincorporated union); *People v. Feldman*, 791 N.Y.S.2d 361, 375 (Sup. Ct. Kings Cty. 2005) (political party); *People v. Assi*, 14 N.Y.3d 335, 340-41 (2010) (religious congregation is association of individuals, and thus "person," under Penal Law).

375. During his unlawful acts at issue, Trump was the top executive of TTO and thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. Further, until January 2017, Trump was the Trust's sole trustee, a post he resumed in January 2021. (Tr.3474:2-8, 3475:3-15, PX-1720)

376. During his unlawful acts at issue, Weisselberg was CFO of TTO and thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He also was trustee of the Trust beginning in 2017. From January 19, 2017 until the date his employment was terminated in December 2022, Weisselberg was also Vice President, Treasurer, and Secretary of defendants DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, Trump Old Post Office LLC, and 401 North Wabash Venture LLC, and Trump Organization LLC. (PX-1329 at 17, 18, 19, 20, 23) Weisselberg was also Director of the Trump Organization, Inc. (PX-1329 at 13-14) Weisselberg's unlawful actions were undertaken on behalf of TTO and its constituent entities.

377. During his unlawful acts at issue, McConney was Controller of TTO and thus was a high managerial agent of TTO and all of its constituent entities that are defendants in this case. McConney's unlawful actions were undertaken on behalf of TTO and its constituent entities.

378. During his unlawful acts at issue, Donald Trump, Jr. was Executive Vice President of TTO and trustee of the Trust, which holds all or nearly all of TTO's assets. He thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He was also President, Director, Executive Vice President, and/or Chairman of various TTO entities beginning in January 2017. (PX-1329 at 13-25) Donald Trump, Jr.'s unlawful acts were undertaken on behalf of TTO and its constituent entities.

379. During his unlawful acts at issue, Eric Trump was Executive Vice President of TTO and Chairman of the Advisory Board of the Trust, which holds all or nearly all of TTO's assets. He thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He was also President, Director, Executive Vice President, and/or Chairman of various

TTO entities beginning in January 2017. (PX-1329 at 13-25) Eric Trump's unlawful acts were undertaken on behalf of TTO and its constituent entities.

IV. RELIEF[16]

A. Broad Injunctive Relief is Appropriate

380. Once liability has been established under §63(12), courts are explicitly authorized to grant a permanent injunction enjoining the conduct at issue. *See State v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 117 (2008); *State v. Princess Prestige*, 42 N.Y.2d 104, 107 (1977); *People v. Gen. Elec. Co.*, 302 A.D.2d 314, 316 (1st Dep't 2003).

381. "It is well settled that once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 524 U.S. 155, 170-71 (2004) (cleaned up).

382. The People may obtain permanent injunctive relief under §63(12) "upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." *People v. Greenberg*, 27 N.Y.3d 490, 496-97 (2016).

383. Courts consider the following factors to assess likelihood of recurrence: "[1] the fact that defendant has been found liable for illegal conduct, [2] the degree of scienter involved, [3] whether the infraction is an isolated occurrence, [4] whether defendant continues to maintain that his past conduct was blameless, and [5] whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated." *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998).

---

[16] In addition to the foregoing, the Court should order each Defendant to pay to Plaintiff $2,000 pursuant to CPLR 8303(a)(6).

384. Defendants' unlawful conduct is likely to recur absent an injunction. For more than a decade, defendants manipulated each SFC to inflate Trump's net worth, knowing that: (i) it was going to be sent to banks and other financial institutions; (ii) it needed to demonstrate a net worth above $2.5 billion; (iii) without that manipulation and false certifications, defendants would face potentially tens of millions of dollars more in lending costs; and (iv) those costs would threaten Trump's "incredible" and "sexy" real estate projects. (Tr.4045:07-24) "[T]he commission of past illegal conduct is highly suggestive of the likelihood of future violations." *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975); *City of New York v. Golden Feather Smoke Shop, Inc*., 08-cv-3966, 2009 WL 2612345, at *42 (E.D.N.Y. Aug. 25, 2009) ("long history" of unlawful conduct supports award of injunctive relief).

385. Defendants took steps to actively conceal their fraud as discussed above detailing the evidence of their intent to defraud. (*Supra* III.B.1.)

386. Over the past decade, defendants have been subject to multiple civil and criminal law enforcement proceedings, including multiple criminal convictions for Falsification of Business Records. *Supra* II.J.3; *SEC v. Manor Nursing Center, Inc.*, 458 F. 2d 1082, 1100 (2d Cir. 1972) ("fraudulent past conduct gives rise to an inference of a reasonable expectation of continued violations").

387. Defendants continued their fraudulent scheme during the pendency of these proceedings, despite knowing that both OAG and the New York District Attorney's Office were investigating the inflation of Trump's net worth.

388. Indeed, while the investigation was ongoing, defendants continued their efforts to actively conceal their fraud by, for example, failing to turn over more than one million pages of

documents until their absence was identified by OAG, refusing to sit for testimony absent court order, and not producing an appropriate *Jackson* affidavit until compelled by $110,000 in fines.

389. Even after the Independent Monitor was in place, defendants were still incapable of complying with Court orders, failing to provide advance notice of $40 million in asset transfers among other breaches. (*Supra*, at II.J.2) In short, defendants have proven themselves incapable, time and again, of following the law. *SEC v. D'Onofrio*, 72-cv-3507, 1975 WL 393, at *11 (S.D.N.Y. June 3, 1975) ("'Where no attempt is made to cease or undo the effects of their unlawful activity until the institution of an investigation,' the court may infer a reasonable expectation of continued violation.") (*quoting Manor Nursing*, 458 F.2d at 1101 (cleaned up)).

390. Nor have defendants demonstrated any ability to operate TTO with a functional financial reporting structure that would protect against fraud in the future. For years, the financial reporting and accounting functions were managed by Weisselberg and McConney, neither of whom is a CPA, neither of whom has familiarity with GAAP, and neither of whom demonstrated any commitment to honest and accurate financial reporting.

391. When Weisselberg pleaded guilty to tax fraud and falsifying financial records at TTO, TTO's senior leadership (Eric Trump and Donald Trump, Jr.) did not fire him and conduct an immediate internal investigation as any responsible CEO would have done, but instead provided him a $2 million "bonus" that would cover his criminal fines as long as he did not cooperate with government investigations. And leadership failed to immediately hire a new CFO to clean up after Weisselberg's criminal activities, choosing instead to leave the CFO position vacant to this day.

392. When McConney admitted at the criminal trial to aiding and abetting Weisselberg's criminal activities for fear of being fired, leadership similarly chose not to terminate his employment effective immediately. Rather he was allowed to continue in his position until he

decided on his own to retire, at which point he was given his own severance agreement and bonus. And once again, leadership has chosen to leave the Controller position vacant to this day.

393. And defendants have made it extraordinarily clear, both inside and outside the courtroom, that they consider all of their actions to be blameless.[17] Indeed, defendants have not simply argued in good faith that they are not liable for fraud but have been utterly dismissive of this case and the Court's findings and contemptuous of these proceedings. *SEC v. Mattessich*, 2022 WL 16948236, at *7 (S.D.N.Y. Nov. 15, 2022) ("Defendant continues to deflect blame for his conduct by pursuing arguments that failed at trial"); *Cavanagh*, 155 F.3d at 135 ("Levy displayed a general lack of concern for the seriousness of the charges")

394. An injunction prohibiting defendants from the creation of further false financial entries and financial records is appropriate to protect existing and future counterparties, including lenders, insurance companies and tax authorities.

395. An injunction requiring defendants to implement an appropriate set of internal controls is also appropriate to protect existing and future counterparties, including lenders, insurance companies and tax authorities.

---

[17] Compiling all the examples of defendants and their counsel arguing their actions were blameless would exceed the word limit for this submission. But examples can be found at: Tr.3275:09-3276:15, 3365:06-3367:17, 3551:24-3556:08 ("This is a political witch-hunt."), 3626:25-3628:14, 6431:11-64320:03 ("There was no fraud and their complaint has no merit."); Donald Trump, October 24, 2023 ("And there was nothing wrong, they found no discrepancies, there was nothing wrong with financial. This case should be ended immediately, and it should have never started."), Eric Trump, November 3, 2023 ("We have one of the greatest companies anywhere in the world. . . . We haven't done a single thing wrong."), Donald Trump, Jr., November 13, 2023 ("It doesn't matter because it's a witch hunt. It always has been.").

396. An injunction barring defendants from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of five years is appropriate to protect New York lending intuitions and the marketplace.

397. An injunction barring the entity defendants from entering into any New York State commercial real estate acquisitions for a period of five years is appropriate to protect potential counterparties and the marketplace.

B. An Industry Bar Is Appropriate for the Individual Defendants

398. The individual defendants' unlawful conduct is likely to recur absent an injunction. The individual defendants have a demonstrated history of creating and using false financial documents in the real estate industry.

399. The Court has the authority to bar the individual defendants from participating in the real estate industry. *See People v. Fashion Place Associates*, 638 N.Y.S.2d 26, 28 (1st Dep't 1996) (upholding injunction barring defendants from involvement in the sale of real estate securities from or within New York); *People v. Imported Quality Guard Dogs, Inc.*, 930 N.Y.S.2d 906, 908 (2d Dep't 2011) (affirming order permanently enjoining defendant from engaging in the business that gave rise to his wrongful conduct).

400. Lifetime injunctions barring Trump, Weisselberg and McConney from participating in the real estate industry in New York State or from serving as an officer or director of any New York corporation or other legal entity are necessary and appropriate. Trump, Weisselberg and McConney worked together for years to inflate Trump's net worth while concealing the fraud from counterparties. Indeed, the SFCs were never an honest effort to estimate Trump's value from the ground up but existed solely as a device to inflate his net worth and obtain

the benefits from that inflation. Virtually every action they took in preparing those SFCs was part of a fraudulent scheme.

401. For Donald Trump Jr. and Eric Trump, the current co-leaders of the company, a five-year bar on participating in the real estate industry in New York State or serving as an officer or director of any New York corporation or other legal entity is necessary and appropriate. The evidence establishes that Eric Trump was aware of and participated in the fraudulent scheme at least as early as 2012. (*Supra* II.A.2.e) In 2017, Donald Trump, Jr. took over responsibility for the SFC together with Weisselberg. Under their direction, the scheme continued unabated through 2021. And even if the Court were to credit their claims that they had no knowledge of what was contained in the SFCs or how the asset values were calculated, a bar would be appropriate, nevertheless. The two would have falsely certified time and again that they were responsible for the preparation of the statements, familiar with their contents and could assure counterparties that they were fair and accurate. If Donald Trump Jr. and Eric Trump certified as to those facts with no real knowledge of the SFCs, those lies are equally damaging to counterparties.

C. Disgorgement of $370 Million Plus Interest Is Appropriate

402. Disgorgement is "a remedy tethered to a wrongdoer's net unlawful profits" and "has been a mainstay of equity courts." *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020). It is based on the "foundational principle" that "it would be inequitable that a wrongdoer should make a profit out of his own wrong." *Id.* (*quoting Root v. Railway Co.*, 105 U.S. 189, 207 (1882)). Disgorgement entails "awards of prejudgment interest on the ground that these awards deprive the defendants of their ill-gotten gains, prevent unjust enrichment, and accord with the doctrine of fundamental fairness." *Hynes v. Iadarola*, 221 A.D.2d 131, 135 (2d Dep't 1996); *SEC v. First Jersey Secs.*, 101 F.3d 1450, 1476-77 (2d Cir. 1996); C.P.L.R. 5001(a), 5004(a).

403. Disgorgement focuses on the gain to the wrongdoer as opposed to the loss to the victim. *People v. Ernst & Young*, LLP, 980 N.Y.S.2d 456, 457 (1st Dep't 2014). "Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is immaterial." *Id*.

404. This Court has determined that disgorgement is available under §63(12) for persistent or repeated violations of law. SJ Decision 7-8.

405. The court "has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." *First Jersey*, 101 F.3d at 1474-75.

406. Courts apply a two-step burden-shifting framework to calculate disgorgement. First, the plaintiff must show "that its calculations reasonably approximated the amount of the defendant's unjust gains." *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 368 (2d Cir. 2011) (cleaned up). The burden then shifts to defendants "to show that those figures were inaccurate." *Id.* "Any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created the uncertainty." *First Jersey*, 101 F.3d at 1475 (cleaned up).

407. The Court should order disgorgement which as of October 27, 2023 totaled $369,948,314, consisting of: (i) $168,040,168 in saved interest on four commercial real estate loans; (ii) $139,408,146 in profit from the sale of OPO; (iii) $60,000,000 in profit from the sale of Ferry Point; and (iv) $2,500,000 in bonuses paid to Weisselberg and McConney.[18] The Court

[18] Insofar as defendants urge that relief is available only for loans or insurance policies issued after the First Department's statute-of-limitations cutoff, OAG respectfully continues to advance those further doctrines toll or extend the limitations period. NYSCEF No. 245, at 36-41; 1AD NYSCEF No. 24. at 46 n.11.

should order Defendants to pay prejudgment interest on those disgorgement amounts at the statutory rate of 9% per annum. (CPLR 5004)

1. Interest Savings

408. Trump and each entity defendant he controls should be jointly and severally liable for disgorgement of the decreased interest costs incurred during the period July 14, 2014 through the present. As OAG's expert Michiel McCarty explained, a conservative estimation of that benefit can be calculated by comparing the interest rate obtained by defendants from PWM with the market rate for the three projects financed by DB as standalone commercial real estate loans. (Tr.3047:22-3048:08, 3051:16-3056:16) The interest benefit on the 40 Wall loan can be calculated by comparing the Ladder loan to the existing Capital One loan. (Tr.3081:02-3982:01) Those interest benefits amount to $168,040,168. (*Supra* II.I.1)

409. Defendants offered no specific rebuttal to these calculations by McCarty. Robert Unell, defendants' banking expert, testified that he disagreed with McCarty's calculation and that it was "unsupported," but offered no independent assessment of what the market rate would be for commercial real estate loans on the subject properties. (Tr.5764:09-5765:13) Indeed, Unell testified that "I do not know exactly what Mr. McCarty did," and that he did not form a view as to what the market rate would be on the DB loans without a guarantee. (Tr.5762:02-5763:16)

410. At trial Unell offered an alternative disgorgement calculation that assumed defendants obtained the same loans through PWM but removed the interest rate improvement based on the guarantee. (Tr.5743:07-5747:25; DD5) Unell's calculations are irrelevant. They fail to remove any benefit defendants obtained through their fraud. The record conclusively demonstrates that defendants engaged in fraud to access the PWM loan terms utilized by Unell. Indeed, defendants continually argued that Trump was "overqualified" for the DB loans and

always had sufficient net worth and liquidity to obtain the loans on the same terms. (Tr.50:20-51:12, 5442:06-5444:06) But that argument is a red herring. To demonstrate Trump's net worth and liquidity, defendants would have had to submit a true and accurate SFC based on ECVs. No such document ever existed. Defendants never prepared a true and accurate SFC that would have satisfied Trump's obligations under the DB loans.[19] More than that, except for Mar-a-Lago, defendants did not even attempt at trial to elicit evidence of the ECVs of the assets listed in the SFCs between 2011-2021.[20] The record plainly demonstrates that access to the DB loans was procured by fraud and therefore disgorgement should be calculated by stripping out that ill-gotten benefit. Notably, without the false representations to Mazars and Whitley Penn there would have been no SFC in any year between 2014-2021, meaning defendants would have been excluded from all of the credit facilities. (*Supra* II.B.)

411. Unell's opinion that Trump's guarantee was worth only 0.25% lacks any credibility. (Tr.5731:19-5733:10, 5743:7-5747:18) Unell's analysis is based on Doral loan terms which permitted defendants to retain a 0.25% interest-rate benefit by retaining a 10% guarantee, rather than allowing Trump's guarantee to step-down completely once Doral's loan-to-value ratio had improved past 35%.[21] (Tr. 5751:11-5752:7) This analysis selectively looks at a single loan term,

---

[19] Unell himself admitted "it is not acceptable" for a guarantor to intentionally inflate his assets in representations made to his bankers. (Tr.5819:15-24)

[20] Even then, defendants' expert (whom the Court has found "unpersuasive," *see* SJ Decision 26-27), made it clear that he did not review the valuations in the SFC and was not valuing Mar-a-Lago as an operating club. (Tr.6102:2004, 6105:10-17, 6159:19-6162:13)

[21] Even after the guarantee stepped down, however, it remained a material loan mechanism; for

in only one of the loans, without considering the "unparalleled" benefits of the PWM facilities. (PX-1129, Tr.5576:2-5577:20) TTO executives and employees fully understood that these financial benefits could only be unlocked (particularly for risky redevelopment projects like OPO and Doral) if Trump provided a full personal guarantee of these loans. (*Supra* ¶¶ 118, 119; PX-3041 ¶¶461-470) DB employees similarly and consistently testified to the substantial pricing benefit of guaranteed recourse loans (Tr.1003:15-1004:03, 1035:11-1039:17, 5331 :10-5332:09, 5573:25-5577:20), and Unell's claim to rely on this testimony to support contradictory opinions is remarkably frivolous.

412. The liability for these interest savings should be joint and several among Donald Trump and the entities he owns and controls. *E.g.*, *SEC v. Pentagon Capital Mgmt. PLC*, 725 F.3d 279, 287 (2d Cir. 2013) (joint and several liability appropriate because defendants had collaborated on a common scheme). Joint and several liability is warranted when the misconduct of the company and its top controlling officers are indistinguishable. *First Jersey*, 101 F.3d at 1461; *212 Investment Corp v. Kaplan*, 847 N.Y.S.2d 905, 910 (Sup Ct. N.Y. Cty. 2007). Here, the misconduct at issue was committed by TTO's top personnel. And TTO's corporate accounting department possessed centralized control over cash positions and financial reporting, even to the point that TTO headquarters would wire funds to subsidiaries for the sole purpose of directing them to transmit the

---

example, it could be (and was) restored to address cash shortfalls at Trump properties. Debt-Service-Coverage-Ratio ("DSCR") covenants in the Doral and Chicago loan provided that when the DSCR covenant was breached, Trump could cure either by paying additional principal, providing additional cash collateral or by stepping-up the guarantee. (e.g. PX-307:§4.6, PX-303:§2(a), PX-498, Tr.5404:5-5405:22) DB notified Trump personally of DSCR breaches because of the nature of his guarantee even where the guarantee step-down was at 0%. (e.g., PX-520, Tr-5410:15-5411:6) TTO breached these DSCR thresholds numerous times and DB either accepted cash payments from DJT Holdings, LLC or a step-up of the guarantee as a cure. (PX-519)

funds right back to headquarters as a fee. (Tr.1500:14-1515:07, 1530:18-1531:1) Weisselberg described management fees within TTO as being "one pocket to another," a phrase that captures control of TTO entities by Trump and his top corporate personnel and the free flow of funds among TTO entities wherever Trump needed them. (Tr. 1539:19-20)

2. OPO Profit

413. Trump and Trump Old Post Office LLC should be jointly and severally liable for disgorgement of the full profit earned on the sale of OPO. Absent the fraud in loan origination and the increased availability of capital from the fraud on the other loans, Trump would not have had the financial wherewithal to make the project successful. The loan itself was a construction loan—its proceeds were necessary to the construction and renovation of OPO that enabled the 2022 sale. (*Supra* II.C.3) Disgorgement is meant to deny "the ability to *profit from ill-gotten gain*." *Hynes*, 221 A.D.2d at 135 (emphasis added). Thus, when a wrongdoer obtains funds through fraud, and then employs them (even through his own "acumen") to earn a large profit, it is the *whole benefit* that is disgorged. *See SEC v. Teo*, 746 F.3d 90, 106-07 (3d Cir. 2014) (embezzler of $100 who turns it into $500 should disgorge $500) (quoting Restatement (Third) of Restitution § 51(5)). Here, a reasonable approximation of the profit on the OPO sale—derived from ill-gotten loan proceeds—is $139,408,146. (*Supra* II.I.2)

414. Donald Trump Jr. and Eric Trump should be individually liable for their personal profits from the OPO project. A fair approximation of those profits is $4,013,024 each. (*Supra* II.I.2) If recovered, those amounts should be deducted from the disgorgement owing by Donald Trump and Trump Old Post Office LLC attributable to the OPO project.

3. Ferry Point

415. Trump and each entity defendant he controls should be jointly and severally liable for disgorgement of the windfall profits of $60,000,000 attributable to the Ferry Point license transfer. *Quintel Corp., N.V. v. Citibank, N.A.*, 596 F.Supp. 797, 804 (S.D.N.Y. 1984) ("defrauders will be required to disgorge windfall profits"); *Teo*, 746 F.3d at 106-07.

4. Severance

416. Weisselberg should disgorge his severance payments of $2,000,000. McConney should disgorge his severance payments of $500,000. *SEC v. Razmilovic*, 738 F.3d 14, 33 (2d Cir. 2013) ("Razmilovic should disgorge his $5 million severance payment.")

D. The Court Should Appoint a Monitor to Oversee Compliance with the Final Judgment

417. The monitorship by Judge Jones should be extended for at least five years in the final judgment.[22]

418. The Court held in 2022 that "persistent misrepresentations" warranted an independent monitor during this action, and the robust summary-judgment and trial records confirm that a monitor remains the "most prudent" course to prevent "further fraud or illegality." NYSCEF No. 183, at 10.

419. OAG's preliminary-injunction papers detailed the authority and rationale for a monitor,[23] but, in brief, "[t]his Court has broad discretion to appoint a compliance monitor as a

---

[22] After review by the Monitor, the Court should determine what additional relief is necessary and how it should be implemented. This would include relief already ordered like the cancellation of certificates issued under General Business Law §130 or other requested relief like the removal of trustees and the preparation of an audited financial statement for Donald Trump.

[23] NYSCEF No. 38 at 17-18; No. 158 at 11-13; No. 159, ¶ 4(g)

form of equitable remedy, and may tailor the appointment to the special needs of the individual case." *CFTC v. Deutsche Bank*, 16-cv-6544, 2016 WL 6135664, at *2 (S.D.N.Y. Oct. 20, 2016) (cleaned up). Monitors "have been found to be appropriate where consensual methods of implementation of remedial orders are 'unreliable' or where a party has proved resistant or intransigent to complying with the remedial purpose of the injunction in question." *U.S. v. Apple*, 992 F.Supp.2d 263, 280 (S.D.N.Y. 2014) (quoting *US v. Yonkers Bd. of Educ.*, 29 F.3d 40, 44 (2d Cir. 1994)); *SEC v. Trabulse*, 526 F.Supp.2d 1008, 1009 (N.D. Cal. 2007).

420. TTO has proven itself profoundly unreliable and intransigent, continuing to prepare fraudulent SFCs even while under investigation. (*Supra* II.J.1) Even during the existing monitorship, defendants have proven that they are still not capable of adhering to Court orders. (*Supra* II.J.2)

V. CONCLUSION

The People respectfully request that the Court conform the pleadings to the evidence pursuant to CPLR 3025(c), find all defendants liable on counts two through five, and find all entity defendants and individual defendants Weisselberg and McConney liable on counts six and seven, and upon such order and the Court's prior SJ Decision, enter final judgment granting disgorgement and other equitable relief described above.

Dated: New York, New York
January 5, 2024

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Mark Ladov
Louis M. Solomon
Stephanie Torre

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6376
kevin.wallace@ag.ny.gov

Attorney for the People of the State of New York

CERTIFICATION

With leave of Court granted on December 13, 2023, Plaintiff is filing this Proposed Findings of Fact and Conclusions of Law with an enlarged word count not to exceed 25,000 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, paragraph numbers, and this certification, the foregoing Proposed Findings of Fact and Conclusions of Law contains 24,789 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
January 5, 2024

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin Wallace
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6376
kevin.wallace@ag.ny.gov

Attorney for the People of the State of New York

EXHIBIT Q

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

PROPOSED FINDINGS OF FACT OF DEFENDANTS DONALD J. TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC

TABLE OF CONTENTS

Page

I. Seven of the Ten Transactions in Plaintiff's Complaint Closed Prior to July 13, 2014, and are Time-Barred 1

II. NYAG Has Not Demonstrated Any Real-World Impact, Any Material Misstatements, or Rebutted the Overwhelming Evidence to the Contrary 3

1. Fact Witnesses, Including Those Called by NYAG, Confirm that the Banks Did Their Own Diligence and Considered Myriad Factors Prior to Entering into Transactions with President Trump, a Target Client Who Was Overqualified for the PWM Division 3

a. Nicholas Haigh Testified that DB Considered Numerous Factors and Independent Analysis in Extending the Doral, Chicago, and OPO Loans, and did not Testify that DB Would Have Done Anything Differently with Additional Information 5
i. DB Relied on Its Own Analyses and Valuations in Extending the Doral Loan 6
ii. DB Relied on Its Own Analyses and Valuations in Extending the Chicago Loan . 8
iii. DB Relied on Its Own Analyses and Valuations in Extending the OPO Loan 8
iv. DB Relied on Its Own Analyses and Valuations in its Annual Approvals from 2013-2018 9
v. There is No Record Evidence that the Terms or Pricing of Any of DB's Loans Would Have Been Affected by the Alleged Inaccuracies in the SFCs 11
vi. Haigh's Testimony is Credible 11

b. Williams Testified that DB used Bank-Adjusted Values, Independently Verified All Material Facts Pertaining to the Loan Transactions, and Would Have Qualified President Trump for the Pricing He Received Even if his Net Worth Was $100 Million 12

c. Rosemary Vrablic Testified that DB Pursued President Trump as a Client and that DB's Relationship with the Trump Family Was Incredibly Lucrative for DB 16

d. Jack Weisselberg Testified that Net Worth in an SFC is not a Key Factor in Ladder's Underwriting Process and Did Not State that Ladder would have Acted Any Differently with Additional Information. 19

e. David Cerron Testified that President Trump fully performed the Ferry Point Contract 20

III. The SFCs were GAAP Complaint and Contain No Material Misstatements. 23

1. Expert Testimony from Jason Flemmons Established that the SFCs Complied with GAAP or Properly Disclosed Any Departures Therefrom 23

a. The GAAP Standards Applicable to an SFC Permit a Preparer Broad Latitude in Selecting Valuation Methodology 23

b. Accountant's Obligations in Compiling an SFC. 25

c. All GAAP Departures Identified in the Record Were Adequately Disclosed in the Notes to the SFCs and Highlighted in the AICPA Disclaimer Included in the Compilation Reports Annexed to the SFCs 26

d. Flemmons' Testimony is Credible 27

2. Expert Testimony Confirms that the Lenders Did Not Rely on the Valuations Provided in the SFCs in Issuing and/or Pricing the Loans 29

a. Eli Bartov Confirmed that the Banks Conducted and Relied Upon Independent Valuations 29
i. DB Conducted its Own Analysis and Valuations 29
ii. Any GAAP Deviations in the SFCs Were Immaterial……..32
iii. Bartov's Testimony is Credible……34
b. Robert Unell Confirmed that the SFCs Were Not Materially Misleading and that DB and Ladder Capital Conducted and Relied Upon Their Own Independent Valuations……34
i. Unell Corroborated Flemmons' Testimony that the SFCs Were Adequate to Put Lenders on Notice of the Valuation Methodologies Used 35
ii. DB and Ladder Capital Relied on Independent Analysis of the Assets and Factors such as President Trump's Experience and Reputation in Issuing the Loans..... 35
iii. Unell's Testimony is Credible 38
IV. Plaintiff Has Failed To Prove Insurance Fraud..... 38
1. Zurich North American Insurance Company ("Zurich"), TTO's Surety, Was Not Defrauded Because Zurich Did Not Receive Materially False Information And The Surety Program Was An Accommodation..... 38
2. Tokio Marine ("HCC") Was Not Defrauded Because It Was Not Provided Materially False Information 45
V. NYAG Has Not Demonstrated Any Defendant Had the Intent to Defraud..... 49
1. The Record Evidence Does Not Support a Finding That President Trump Had Intent to Defraud 49
2. The Record Evidence Does Not Support a Finding that Weisselberg Had Intent to Defraud 52
3. The Record Evidence Does Not Support a Finding That McConney Had Intent to Defraud 57
4. Defendants' Expert Witnesses Further Demonstrate that No Defendant Had an Intent to Defraud, and the Testimony of NYAG's Purported Expert Witness Should be Disregarded in Its Entirety 61
a. Any Deviations from GAAP in the SFCs Were Disclosed to the User by Means of the Highest-Level Disclaimer Suggested by the AICPA..... 61
b. Flemmons Testified that Defendants Properly Relied on their Accountants, Who Were Required Under the Professional Standard to Understand and Evaluate the Methodologies Used in the SFCs and to Address Any Deviations From GAAP..... 64
c. Bartov Testified that there were No Indicia of an Intentional Misstatement in the SFCs..... 66
d. Eric Lewis's Testimony is Not Credible..... 68
5. Defendants' Valuation and Appraisal Experts Further Demonstrate that Defendants Did Not Have an Intent to Defraud..... 70
a. Dr. Steven Laposa Testified that Appraisers Can Reach Significantly Different Valuations in Exercising Professional Judgment..... 70
b. Steven Witkoff Testified that Developers Often View Property Differently than Appraisers 73

c. Fredrick Chin Testified that there is a Distinction between "As If" and "As Is" Valuations in Appraisals 75
d. Lawrence Moens Testified About the Uniqueness and Value of Mar-A-Lago Based on His Extensive Experience in the Palm Beach Real-Estate Market 77
e. John Shubin Concluded that There is No Prohibition on Mar-A-Lago Being Used as a Single-Family Residence 80
f. Steven Collins Testified that GSA Adhered to Federal Regulations in Guidance in Awarding the OPO BSA 83
6. Fact Witnesses Called by NYAG Further Demonstrate that Defendants Had No Intent to Defraud. 85
a. Donald Bender Was Provided with the Access and Information Needed to Complete the SFCs 85
b. Plaintiff's Own Appraisal Witness, Douglas Larson, Knowingly Provided Comparables, Capitalization Rates, and Other Information to McConney, Which McConney Used in Compiling the SFCs 89
c. Mark Hawthorn Testified About TTO's Reliance on Mazars and Compliance with the Independent Monitor 94
d. Kevin Sneddon's Testimony About the Triplex is not Credible 98
VI. The Record Evidence Does Not Demonstrate that NYAG Is Entitled to Disgorgement 100
VII. The Record Evidence Does Not Establish the Existence of a Conspiracy 106

Findings of Fact

I. Seven of the Ten Transactions in Plaintiff's Complaint Closed Prior to July 13, 2014, and are Time-Barred

1. On June 22, 2000, Seven Springs, LLC, closed on a loan with Royal Bank America ("Seven Springs Loan"). 3886:24-25; PX-1334.[1]

2. In July 2010, Trump Park Avenue closed on a loan with Investor's Bank for the property located at 502 Park Avenue, New York, NY ("Trump Park Avenue Loan"). 3886:25-3887:1.

3. In February 2012, the City of New York (the "City") awarded Defendant Donald J. Trump ("President Trump") a contract and lease to operate a golf course and related facilities at Ferry Point Park, Bronx, New York ("Ferry Point Contract"). 3887:1-2, 2803:11-16; DX-981.

4. On June 11, 2012, Trump Endeavor, LLC, closed on a loan with Deutsche Bank ("DB") in connection with Trump National Doral Golf Club ("Doral Loan"). 3887:2-3; PX-426.

5. On November 9, 2012, 401 North Wabash Venture, LLC, closed on a loan with DB in connection with Trump International Hotel and Tower, Chicago ("Chicago Loan"). PX-310, PX-312.

6. In 2012, the U.S. General Services Administration ("GSA") awarded the Trump Old Post Office, LLC ("OPO"), a contract to redevelop the Old Post Office property ("GSA OPO BSA"). 3887:2.

7. In 2013, the GSA signed the associated lease with OPO ("OPO Contract and Lease"). 3887:3-4.

[1] Citations to page and/or line number herein refer to the trial transcript. Citations to PX refer to Plaintiff's trial exhibits, unless otherwise specified; citations to DX refer to Defendants' trial exhibits.

8. On August 12, 2014, OPO closed on a loan with DB in connection with the Old Post Office in Washington, D.C. ("OPO Loan"). 3610:1-6; PX-309.

9. On July 2, 2015, 40 Wall Street LLC re-financed with Ladder Capital a loan for the property located at 40 Wall Street ("40 Wall Loan"). PX-624.

10. In or about 2014, President Trump also considered a potential acquisition of the football team the "Buffalo Bills," which was never consummated ("Buffalo Bills Bid"). 2257:8-11; 1069:1-1070:8.

11. On June 27, 2023, the First Department dismissed as time-barred all claims in this action that accrued prior to July 13, 2014 (with respect to those Defendants subject to the August 2021 tolling agreement) and February 6, 2016 (with respect to those Defendants not subject to the August 2021 tolling agreement). NYSCEF Doc. No. 641; 181:14-182:5.

12. Trump Organization, LLC, Trump Organization, Inc., DJT Holdings LLC, and DJT Holdings Managing Member were not parties to any of the subject transactions and had no obligations to submit SFCs.

13. Trump Endeavor 12 LLC was only a party to the Doral Loan and had no obligation submit SFCs.

14. 401 North Wabash Venture LLC was only a party to the Chicago Loan and had no obligation to submit SFCs.

15. Trump Old Post Office LLC was only a party to the Old Post Office transaction and had no obligation to submit SFCs.

16. 40 Wall Street LLC was only a party to the 40 Wall Loan and had no obligation to submit SFCs.

17. Seven Springs LLC was only a party to the Seven Springs Loan and had no obligation to submit SFCs.

II. NYAG Has Not Demonstrated Any Real-World Impact, Any Material Misstatements, or Rebutted the Overwhelming Evidence to the Contrary

1. Fact Witnesses, Including Those Called by NYAG, Confirm that the Banks Did Their Own Diligence and Considered Myriad Factors Prior to Entering into Transactions with President Trump, a Target Client Who Was Overqualified for the PWM Division

18. According to DB, a high-net-worth individual has a net worth in excess of $25 or $50 million and an ultra-high-net-worth individual in excess of $100 million. 5325:6-15. PWM's "target market profile" for structured lending products was anyone with a net worth more than $100 million and investable assets of at least $10 million. 5325:25-5326:3; see also DX-62 at 5.

19. David Williams, a current senior lender at DB who was involved directly in the DB transactions with President Trump, testified that President Trump more than satisfied the eligibility criteria for CRE loans as set forth in the June 2012 Credit Risk Management Credit Guidelines for Private Wealth Americas, namely (1) that borrowers are worth over $50 million, (2) have a proven track record in the U.S. commercial real estate market, and (3) the loan seeks to acquire or reposition particular property. 5326:11-5327:2; 5329:18-5331:18; DX-66 at 17-18. Once qualified as a PWM customer, President Trump had access to the PWM loan pricing. 5392:13-5396:4.

20. President Trump qualified as an ultra-high-net-worth individual, demonstrating excellent financial wherewithal to support a credit transaction. 5326:14-17.

21. Moreover, President Trump's Statements of Financial Condition ("SFCs") do not encompass the entirety of President Trump's net worth as one of President Trump's most valuable assets is not listed on the SFC and others are otherwise undervalued on the SFCs.

22. Each year from 2011 through 2021, the SFCs (in form or substance) disclose that "Pursuant to GAAP, this financial statement does not reflect the value of Donald J. Trump's worldwide reputation[,]" and that the "goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." PX-707 at 6; PX-729 at 6; PX-755 at 6; PX-756 at 6; PX-773 at 6; PX-787 at 6; PX-815 at 7; PX-842 at 5; PX-856 at 6; PX-1354 at 6.

23. Professor Bartov explained that following GAAP can lead to the undervaluing of assets; for example, Coca-Cola has a net worth of 10 times more in the stock market than in its annual report because intangible assets such as internally developed brand value cannot be reported on a balance sheet under GAAP, despite brand value being one of Coca-Cola's most valuable assets. 6242:2-6243:5. Professor Bartov testified that, like Coca-Cola, a major asset is missing from President Trump's SFCs—his brand; "there is no question that the brand value of [] President Trump [is] worth billions" and brand was not included in the SFCs as a standalone asset. 6243:6-18.

24. If President Trump's brand value is accounted for, President Trump is worth far more than is reflected on the SFCs.

25. Moreover, President Trump owns assets that are not included in the SFCs, for example, both the Trump International Hotel and Tower in Chicago (from 2011-2021) and the Trump International Hotel and Tower in Vegas (from 2011-2012) are excluded from the SFCs. PX-707 at 3; PX-729 at 3; PX-730 at 3; PX-755 at 6; PX-756 at 6; PX-773 at 6; PX-787 at 3; PX-815 at 4; PX-842 at 6; PX-856 at 6; PX-1354 at 6. The inclusion of these assets would have added value to the net worth stated on the SFC.

26. Moreover, several major assets were undervalued in the SFCs, including Ferry Point, OPO, Mar-a-Lago and Doral (for Doral see 3487:24 - 3488:8).

27. The 2021 supporting data for the SFC valued Ferry Point at $22,548,589, far less than the $60 million Bally's paid. 2851:3-24; PX-1501.

28. The 2021 supporting data for the SFC valued OPO at $130,200,000, which is far below the almost $400 million purchase price received for the property. PX-1501.

29. Lawrence Moens, a leading real estate broker in West Palm Beach, Florida, testified that the value of Mar-A-Lago was higher than the value listed on the supporting data to the SFC every year from 2011-2021(6121:11-6126:9) and far exceeded the tax assessed value of the property during that time period.

30. For example, Moens testified that every year from 2011 through 2021, he could have sold Mar-A-Lago for a price ranging from $705,000,000 in 2011 to $1,215,000,000 in 2021 (including membership sales), and every year the price for which he could sell Mar-A-Lago was higher than the value listed on the supporting data to the SFCs—which ranged from $347,761,431 to $739,452,519. 6121:11-6126:9; PX-708; PX-719; PX-731; PX-742; PX-758; PX-774; PX-788; PX-793; PX-843; PX-857; PX-1501.

a. Nicholas Haigh Testified that DB Considered Numerous Factors and Independent Analysis in Extending the Doral, Chicago, and OPO Loans, and did not Testify that DB Would Have Done Anything Differently with Additional Information

31. Nicholas Haigh ("Haigh") served as head of risk management for DB's PWM business in the Americas. 980:6-21.

32. PWM services high net-worth individuals. Haigh's job was to assess the client's risk profile and make the ultimate decision to approve or deny credit transactions for those clients. 982:4-19; 989:16-24. DB's primary purpose in analyzing risk was to ensure the loan

could be repaid. 1074:18–1075:4. Importantly, Haigh never testified that there were any material misstatements in the SFCs.

33. A credit memorandum is prepared outlining the terms of the transaction and summarizing the financial condition of the client, to assess the risk and spell out the terms of the transaction. 983:18-984:6; *see e.g.*, PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX-302; PX-2960; PX-3137.

34. Lending officers would supply the information to the risk management team, and all their information and judgment would be memorialized in the credit memorandum, which is submitted to the credit risk division for approval. 1078:2-1079:7; *see e.g.*, PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX-302; PX-2960; PX-3137.

35. Haigh had authority to approve credit transactions between €15 million and €500 million depending on credit quality. 990:10-16. His signature on a credit memorandum indicated approval of the transaction terms contained therein. 991:10-15.

36. Haigh testified that the relevant approvals, terms, and pricing were based on multiple factors, including whether the proposed transaction fit the bank's business model and whether the bank was comfortable taking on the credit. 984:7-20; 1074:21-1078:8.

37. DB would also consider the value of proposed collateral, whether there was a market for the collateral, whether it could be sold, and whether there were any legal impediments to doing so. 984:21-985:24; 10-1017:18.

i. DB Relied on Its Own Analyses and Valuations in Extending the Doral Loan

38. The Doral property is atypical collateral because it is a golf resort and spa, which affects its marketability. 999:1-1000:8.

39. When determining whether to support the Doral Loan, President Trump's financial strength was assessed on the basis of DB's own adjusted values, not the guarantor's self-reported estimates of value, especially as to liquidity and net worth. 1087:3-1088:25.

40. The bank determined President Trump's asset values based on its own diligence. 1092:4-1093:7.

41. DB focused primarily on four trophy properties identified in the SFCs because they were (a) "significantly sized assets" of which the bank could gain a "better understanding . . . of their potential market value" and (b) the properties "were broke out because they were large and 1represented significant asset positions." 1010:18-1011:13.

42. PWM consulted the Deutsche Bank Valuation Services Group ("VSG") because of their experience valuing real estate assets. 1094:12-1096:13. The valuation adjustments to those trophy assets ranged from 35% to 75%. 1098:2-1102:5. DB also obtained additional information regarding the trophy properties, including capitalization rates and NOI utilized in the SFC values, from the Trump Organization ("TTO"). 1012:1-6; 1013:13-20.

43. President Trump's extensive experience in real estate was a "significant factor in recommending approval of the loan transaction," as well as the general economic climate and quality of the collateral. 1077:10-11; 1103:19-24. DB also relied on President Trump's $135 million in net liquidity, $48 million in adjusted recurring net cash flow, experience operating private clubs, and plan to make capital expenditures. 1102:11-1105:1.

44. The interest rate was lower in the post-renovation period because there was less risk when it was fully income producing. 1019:9-12.

45. At the time of the Doral Loan closing, President Trump had $20 million in assets under management at DB. 1084:22-1085:24.

46. The record is devoid of any fact testimony that the terms or pricing of the Doral Loan would have been different because of the alleged misstatements identified by the New York Attorney General ("Plaintiff" or "NYAG").

ii. DB Relied on Its Own Analyses and Valuations in Extending the Chicago Loan

47. Haigh also approved the Chicago Loan. 1029:1-17. The collateral and guaranty were also significant factors in that decision. 1031:8-22; 1032:3-13; PX-291.

48. The loan to value ("LTV") at closing was low compared to other deals at condos and office buildings. 1118:6-21.

49. DB, again, relied on its own adjusted values, not client reported values, as a basis to recommend the transaction and calculate key ratios and relied on President Trump's experience. 1119:8-1120:17; 1121:17-1122:1; PX-291 at 5. A similar analysis of the trophy properties was conducted for the Chicago Loan. 1121:4-14.

50. The record is devoid of any fact testimony that the terms or pricing of the Chicago loan would have been different because of the alleged misstatements identified by Plaintiff.

iii. DB Relied on Its Own Analyses and Valuations in Extending the OPO Loan

51. At the time the OPO Loan was originated, the credit limit had increased beyond $378M, requiring further approval. 1046:1-13. The loan covenants ensured the client had the wherewithal to make payments during adverse market conditions. 1047:18-1049:11. However, DB could waive a covenant default if it considered the breach inconsequential, renegotiate the terms, or potentially accelerate the repayment of the loan. 1028:9-16.

52. The OPO property was atypical collateral because it involved a significant amount of reconstruction. 1049:12-1050:1. DB again conducted adjustments to reported values and tracked the guarantor's historical performance. 1052:4-23.

53. The DB-adjusted values—not client provided values— along with the operating experience of the guarantor and the enhanced equity investment to Doral were the basis for DB's approval of the OPO Loan. 1132:14-1134:9; PX-294 at 10-12. DB also had another meeting at TTO's office to verify the client-reported numbers. 1134:14-19; PX-294 at 14.

54. The record is devoid of any fact testimony that the terms or pricing of the OPO loan would have been different because of the alleged misstatements identified by Plaintiff.

55. In conjunction with the approval of the OPO Loan, DB approved the step-down on the Chicago Loan. 1136:2-1138:14; PX-294. The stepdown reduced the level of the guaranty on the Chicago Loan as the LTV on the collateral decreased; thus, as the guaranty level decreased so did financial covenants such as net worth and unencumbered liquidity. PX-294 at 6-7. When the LTV level dropped below 35% on the Chicago collateral, the guarantee and corresponding financial covenants were eliminated. PX-294 at 6-7.

56. The record is devoid of any fact testimony that the terms or pricing of the OPO loan would have been different because of the alleged misstatements identified by Plaintiff.

iv. DB Relied on Its Own Analyses and Valuations in its Annual Approvals from 2013-2018

57. DB also relied on its own adjusted values, not client adjusted values, in conjunction with its annual approvals. PX-290 at 5; PX-294 at 10; PX-298 at 6-8; PX-300 at 7-8; PX-302 at 3; PX-2960 at 3; PX-3137 at 8-9.

58. As of the 2013 annual review, DB did not report any late or missed payments. 1123:21-1124:5; PX-290. The Doral loan documents were amended in August of 2013 to add a Step-Down provision. 1124:6-1126:2; PX-290 at 4–6; *see also* 5218:13–19.

59. The 2013 amendment also reflected an equity increase from $50 to $150 million, adequate collateralization, and significant operating experience. 1126:3-1127:20; PX-290 at 5-6.

The assets under management increased to $29.7 million, and the adjusted values were used to calculate the lending ratios. 1128:11-1129:14; PX-290 at 1.

60. For the July 2015 annual review, Haigh confirmed lending officers independently verified information such as liquidity, even though the credit memo did not have a specific reference to such verification. 1057:1-1058:10; PX-298. DB continued to believe that President Trump had substantial financial strength.1058:13-23.

61. By July 2015, the guaranty on the Chicago Loan had been completely extinguished, and President Trump had invested $20 million into the OPO renovation. 1141:23-1142:21, 1145:17-25 PX-298 at 4, 7.

62. Another review was conducted in August 2015 which resulted in the reduction of the guaranty of the Doral Loan from 100% to 10% based on a new appraisal ordered by DB; yet the guarantor had the option to elect the step-down percent to go to zero because of the LTV, but instead, elected to keep the step-down percentage at 10% ($12.5 million), which also reduced the net worth requirement to $250 million and the unencumbered liquidity requirement to $5 million. 1147:18-1149:5; PX-2960 at 3; PX-290 at 5; *see also* 5218:15–5219:13. Assets under management increased to more than $100 million, and there was nearly $250 million invested into the Doral project. 1149:6-1151:23.

63. Haigh was absent for the July 2016 review, but Gaston Allegre approved the credit report in his stead. 1060:11-1061:13. President Trump elected to keep a 10% guaranty on the Doral Loan because eliminating the guaranty would have caused an interest rate increase of 25 basis points. 1062:10-1063:7; PX-300. The approval was predicated on Doral's completed renovation and increased value and DB's adjusted valuations, not client reported values. 1157:4-25.

64. For the July 2017 review, the loans were approved based on the guarantor's financial strength, DB's adjusted values, not client reported values, with input from DB Valuation Services Group, and key ratios based on adjusted numbers. 1066:13-1067:11; 1159:6-14; 1160:19-1161:13; PX-3137 at 8-9, 14.

65. For the July 2018 review, financial trends were followed in determining whether to sign off on the credit report. 1067:18-1068:10; *see* PX-302 at 9. The loans were approved based on the financial profile of the guarantor using DB adjusted numbers with input from the VSG; the long-standing relationship with the Trump family; and key ratios using adjusted numbers. 1161:25-1163:7; PX-302 at 3, 10, 12.

66. Haigh testified that relative to the Doral, Chicago, and OPO loans there were no late payments, no missed payments, and that all three loans were performing (i.e., there were no defaults). 1123:21-1124:5; 1130:19-1131:11; 1139:25-1140:24; 1152:3-21; 1167:22-1168:7.

v. There is No Record Evidence that the Terms or Pricing of Any of DB's Loans Would Have Been Affected by the Alleged Inaccuracies in the SFCs

67. Haigh did not testify that the terms or pricing of any of DB's loans would have been impacted by any of the allegations identified by Plaintiff.

68. Haigh believed he did a good job on risk assessment of the subject loans because they were all being paid back when he left DB. 1169:12-1172:3. Also, Haigh testified that ECV does not require "appraisals or market evidence for the value of all those assets, but it's estimating what they're worth[.]" 1007:25-1008:6.

vi. Haigh's Testimony is Credible

69. Haigh's testimony regarding DB's independent analysis and valuation of the SFC values and DB's reliance on its own adjusted values is corroborated by testimony from Bartov, Unell, Williams, and DB lender Emily Pereless.

70. Pereless testified that she and Williams went to TTO's offices and reviewed bank and brokerage statements to confirm the values for liquid assets. 5454:12-21.

71. Haigh did not testify that the conditions of pricing would have been different based on the alleged misstatements identified by Plaintiff.

72. Haigh did not identify any misstatements in any of the SFCs evaluated by DB.

73. Haigh's testimony was not rebutted by any other witness.

74. The Court finds Haigh's testimony was credible.

b. Williams Testified that DB used Bank-Adjusted Values, Independently Verified All Material Facts Pertaining to the Loan Transactions, and Would Have Qualified President Trump for the Pricing He Received Even if his Net Worth Was $100 Million

75. Williams, the only current DB employee to testify at trial, has been employed by the bank's PWM division for almost 17 years. 5323:23-5324:9; 5326:4-10. Williams was involved directly in the loan transactions at issue. 5326:4-6.

76. Williams underwrites structured loans and credit requests for high-net-worth individuals. 5324:14-17.

77. Williams testified that, from DB's perspective, it is not possible to calculate an individual's assets to mathematical certainty because net worth is highly subjective and subject to estimates. 5327:3-25. Williams stated that an individual's net worth is, as its reported, largely subjective or is subject to the use of estimates. 5327:24-25. Therefore, in underwriting a loan, the bank makes adjustments to client reported numbers to account for the subjectivity of self-reported asset values. 5327:19-5328:6; PX-290 at 7-10; PX-291 at 7-10; PX-293 at 5-8; PX-294 at 15-17; PX-298 at 10-12; PX-300 at 15-18; PX-302 at 9-13; PX-2960 at 4-7; PX-3137 at 11-14; PX-498 at 9-14; PX-519 at 10-15; PX-561 at 9-14.

78. In fact, when DB initiated its relationship with President Trump, internal bank communications demonstrate that President Trump's reported net worth of $4.2B was adjusted to $2.4B, yet bank personnel still believed that President Trump had "among the strongest personal balance sheets [the bank had ever] seen and totally unlike any of [DB's] major [real estate] developer clients in that [the bank] observe[d] an absence of personal debt, with huge asset base and diversified [cash flow]." DX-312 at 1.

79. Based on its own independent analysis, DB concluded that President Trump's net worth was $2.4B as opposed to the reported $4.2B, the difference in these two numbers is expected due to different definitions of value and underlying value assumptions, and is not indicative of fraud. 6295:13-6287:22; 6299:8-6300:25; DX-293; DX-312.

80. DB evaluates and adjusts a client's stated asset values in the underwriting process as a conservative measure because financial statements are largely unaudited and use estimates. 5328:1-5329:9. Differences between bank-adjusted values and client-reported values are not disqualifying for extending credit. 5328:10-5329:9. This is because DB has an expectation or understanding that there is a use of estimates in the preparation of personal financial statements. 5329:7-9. The adjusted basis reflects the bank's own analysis. 5365:12-15.

81. DB independently verifies all material facts as they pertain to a credit transaction. 5334:1-5335:23. In 2011, Williams met with Defendant Allen Weisselberg ("Weisselberg") to review and verify bank and brokerage statements and President Trump's tax returns. 5340:2-24. Williams was unaware of any instance which DB failed to adhere to its own credit lending guidelines when making loans guaranteed by President Trump. 5335:20-23.

82. The step down of the Doral personal guaranty was implemented so that as the LTV decreases, the guaranty level and net-worth covenant would be reduced. 5346:2-6; 5349:2-

23; 5352:7-17. Once LTV dropped below 35%, the guaranty would be eliminated, but President Trump could retain a 10% guaranty to retain a 25-basis point pricing benefit. 5354:8-5356:11, PX-2960.

83. The Chicago Loan was also subject to a stepdown, where the guaranty and liquidity and net-worth covenants would decrease as LTV decreased. 5358:9-5361:3. The guaranty net worth and liquidity requirements were ultimately fully eliminated. 5388:9-25; PX-294.

84. When the guarantee stepped down to 10% the minimum liquidity covenant would be satisfied if the guarantor held $5 million in liquidity with DB. 5360:8-5361:1; PX-294 at 5-6.

85. The OPO originating memo indicated that DB adjusted President Trump's valuation of assets by approximately 50% (from approximately $4.9 billion to approximately $2.6 billion). 5365:1-5366:16; 5382:15-5384:6; PX-294 at 14-17. It was atypical, but not entirely unusual, for stated liquidity and assets to be reduced by 50% or more. 5343:18-22, 5366:12-16; 5380:11-20. The memo also indicated that DB had an increased level of comfort in the loan transactions due to various factors. 5366:17-5374:9; *see generally* PX-294.

86. Any DSCR breaches, which were common during the COVID-19 pandemic, could be cured by an equity infusion or other built-in mechanism to the bank's satisfaction. 5407:4-5409:7; 5419:18-5420:24; 5424:1-8; 5431:10-5432:4; PX-498; PX-519; PX-561.

87. A DSCR covenant breach does not constitute an event of default when the guaranty is below a certain threshold. DX-387; DX-876 at 51.

88. Williams was not aware of any payment default (a definitive breach of the repayment of the loan) or covenant default (a default in a guardrail to the loan) on any loan guaranteed by President Trump. 5337:2-5339:9.

89. DB was capable of determining whether to extend a loan based on its own evaluation of the guarantor's financial condition, and its evaluation of the credit facilities was consistent with the bank's approved business strategies. 5387:5-12. DB would also consider the individual's broader relationship with the bank. 5355:13-14.

90. A lending officer has some responsibility in determining pricing on the loan, and to ensure the interest rate exposure aligns with approved business strategies of the bank. 5389:4-14. The pricing grid provides a range of acceptable pricing ranges based on product type, and a lender is supposed to consider the ranges on the grid when determining pricing. 5389:23-5390:14; DX-205. A lender may deviate downward from the pricing on the grid, based on competitive market pricing/forces, noncredit relationship, investible assets, internal risk rating, collateral type, and financial wherewithal. 5390:15-5393:12.

91. President Trump's financial condition would support pricing at the lower end of the range for these types of loans. He surpassed the minimum requirements to qualify for such pricing and would have qualified for the pricing he received on these loans even if his net worth was only $100 million on an adjusted basis. 5392:13-5396:4.

92. Williams did not testify that the loan terms or pricing would have been different because of the alleged misstatements identified by Plaintiff.

93. Williams did not identify any misstatements in any of the SFCs evaluated by DB.

94. Williams' testimony was corroborated by additional witnesses, including Unell, Vrablic, and Haigh.

95. Williams' testimony was not rebutted by the testimony of any other witness.

96. The Court finds Williams' testimony was credible.

c. Rosemary Vrablic Testified that DB Pursued President Trump as a Client and that DB's Relationship with the Trump Family Was Incredibly Lucrative for DB

97. Rosemary Vrablic ("Vrablic") was employed by DB from 2006 through 2020. 5485:20-24. Vrablic worked in the PWM group and served as a relationship manager, team leader, and office manager. 5485:1-9.

98. Vrablic originated the Doral, Chicago, and OPO Loans while she was employed at DB. 5486:23-5487:2.

99. Vrablic identified President Trump as a "whale," a term used for very high-net-worth individuals. 5487:24-5488:9; DX-291.

100. President Trump was considered an entrepreneur and investor "with a successful track record" and a target client for real estate lending because of his net worth in excess of a hundred million dollars. 5491:10-21; 5492:8-21; DX-62 at 5. In fact, Mr. Jain, CEO of DB, indicated that President Trump was underleveraged. 5495:13-15; 5504:3-11.

101. Vrablic testified regarding PWM's real estate lending business and explained that DB had an incentive to develop a broader real estate capability f'2or PWM clients. DB's approved business strategy was to become the primary financial institution and develop a long-lasting relationship with President Trump as a client. President Trump fit the category of the target client base of PWM for real estate lending. President Trump had a net worth well in excess of $100 million, as required for real estate lending, and the loans extended to President Trump fit within DB's goals and approved business strategy of creating opportunities for cross selling. 5487:24-5493:6; 5526:13-25; DX-62; DX-298 at 2; DX-300 at 3-4.

102. A February 19, 2013, briefing stated President Trump's "personal financial statement reflects a net worth in excess of $2.5 billion as adjusted by DB Lending with liquidity of 100 million plus, and limited liabilities. He is risk rated A." 5498:14-18. The briefing further stated that DB had "in excess of 200 million in loans, 30 million in investable assets, and closed on an asset interest rate swap generating capital markets income" meaning it was a "broad-based relationship of various product that were being used by the Trump family," consistent with DB's goal of developing a relationship with President Trump. 5499:9-18.

103. On the Doral Loan, Vrablic served as an intermediary between President Trump and DB. 5511:16-5512:6.

104. From the inception of the negotiations, DB intended to cross-sell President Trump on additional business, such as a significant deposit business, cash management services, estate planning, and referrals to new clients, all profitable vehicles for the bank. 5512:21-24; 5513:13-5514:15; 5515:7-5516:2; DX-311; DX-312. Indeed, strategic leveraging of President Trump's business relationships and expanding DB business with President Trump were priorities in a meeting between President Trump and the then Chairman of DB. 5503:9 - 5504:11.

105. DB wanted to engage in the Doral Loan because of the "significant relationship opportunities with the family," including an increase in deposits, the possibility that Ms. Trump would be a referral, and potential referrals. 5520:12-22; DX-313 at 4.

106. When closing on the Doral Loan, DB considered several factors including (1) the fact that the facility was a sound credit even without the guaranty, (2) the relationship with President Trump was a great franchise opportunity, and (3) President Trump's expertise in successfully running world-class assets such as hotels, condos, clubs, and golf courses. 5517:13-5518:9; 5519:3-16; PX-293; DX-312.

107. President Trump "had a successful track record" and was uniquely capable of managing Doral based on his "expertise in all of those categories." 5492:8-21; 5519:3-16; DX-62; DX-66.

108. DB's own analysis determined that, in their judgment, President Trump had one of the strongest personal balance sheets of real estate developers they had seen with expertise in the development and management of real estate assets—making the loan a likely success story. 5568:8-5570:4; DX-312. President Trump had extensive experience with hotel, condos, clubs, and golf courses, and individuals at the bank felt that the Doral loan was a "sound credit [] even in the absence of a personal guarantee" making Doral a "remarkably safe deal given the strength" of President Trump, his absence of personal debt, his "huge asset base," and the bank's opportunity to develop a "great franchise." DX-312 at 1.

109. Vrablic viewed the OPO transaction to be highly competitive because other branches of DB were seeking President Trump's business and PWM had an interest in obtaining "profitability" from booking President Trump as a client. 5541:21-5543:8.

110. With respect to the Chicago loan, Vrablic testified that DB would not have entered the deal unless it was satisfied, that she personally thought it was a good deal, and that DB shared that perspective. 5533:7-5534:5. Vrablic agreed with Dominic Scalzi ("Scalzi") that individuals from TTO were professional and efficient, and "great to work with"—thus DB and Scalzi were "appreciative" of the business they received from President Trump. DX-338; 5537:10-23.

111. In 2013, the balance of the Chicago Loan was reduced from $53 million to $23 million because the condominiums that secured the loan were selling more quickly than DB expected. 5494:1-25; 5510:11-5511:7; DX-296.

112. In 2013, for the Doral Loan, Credit Risk was "very open to the extension and burn off of [Trump's] guarantee," noting "[i]t was quite remarkable and a testament to [President Trump] and [his] family in what [he] ha[d] achieved [] so quickly." 5527:1-23; DX-325 at 1.

113. The OPO Loan performed consistent with expectations because "[t]hey took it from a shell to a fully operational hotel and event space." 5552:5-16.

114. DB projected to make $6 million in revenue in 2013 from the relationship. 5500:9-11. It was a top 5 relationship for Vrablic and top ten revenue-generating names of Asset and Wealth Management. 5501:11-17; 5055:9-5506:7; 5506:16-22; PX-298; DX-299.

115. DB "expect[ed] to continue to grow the relationship in all asset categories." 5501:18-5502:1; 5505:9-5506:7; DX-298 at 2.

116. According to Vrablic, "the lending and credit departments would always adjust people's net worths, so whatever they would conclude was the adjusted number would be the adjusted number to me" and "[i]f they were comfortable with it, [she] would be comfortable with it. 5564:9-22.

117. Vrablic did not testify that the loan terms or pricing would have been different because of the alleged misstatements identified by Plaintiff.

118. Vrablic did not identify any misstatements in any of the SFCs evaluated by DB.

119. Vrablic's testimony was corroborated by additional witnesses, including Unell, Williams, and Haigh.

120. Vrablic's testimony was not rebutted by the testimony of any other witness.

121. The Court finds Vrablic's testimony was credible.

d. Jack Weisselberg Testified that Net Worth in an SFC is not a Key Factor in Ladder's Underwriting Process and Did Not State that Ladder would have Acted Any Differently with Additional Information.

122. Jack Weisselberg ("J. Weisselberg") is an executive director at Ladder Capital. 1769:24-25-1770:1-4.

123. J. Weisselberg worked on five loans with either President Trump or an entity affiliated with TTO. 1780:17-1781:1.

124. The net worth listed on an SFC is "one of many things that [Ladder] would look at in the underwriting process" but not a key factor." 1877:11-24.

125. For the 40 Wall Loan, Ladder Capital was primarily paying attention to liquidity because there were some contingent liabilities. 1877:11-18

126. J. Weisselberg did not testify that the terms of pricing on any loan would have been different because of the alleged misstatements identified by Plaintiff.

127. J. Weisselberg did not identify any misstatements in any of the SFCs received by Ladder Capital.

128. Moreover, President Trump was only required to maintain a net worth of $160 million and unencumbered liquidity of $15 million under the terms of the 40 Wall Street loan. President Trump met these financial covenants (DX-552 at 12; PX-625 at 14-15), and there is no evidence on the record to suggest that President Trump failed to maintain the required net worth and liquidity to fulfill these covenants.

129. J. Weisselberg's testimony was not meaningfully rebutted by the testimony of any other witness.

130. The Court finds J. Weisselberg's testimony was credible.

e. David Cerron Testified that President Trump fully performed the Ferry Point Contract

131. David Cerron ("Cerron") has worked for the New York City Department of Parks and Recreation ("Parks Department") for more than twenty years. 2786:23-2787:20.

132. Cerron was not involved in the Ferry Point award process and only later became involved in the administration of the license. 2817:22-2818:3. Cerron did not know what information the Parks Department relied upon during the award process and was not a part of the committee that reviewed the financial information. 2841:13-2842:17; 2821:3-21.

133. The Parks Department sought to find an operator with experience and the financial wherewithal to ensure that the course was maintained at a high level and complete any necessary capital improvements. 2793:1-2794:6; 2795:13-23.

134. Offers would be scored 10% on financial capability, 60% on planned operations and operating experience, 15% on investment and design, and 15% compensation. 2794:7-2795:12; 2819:5-13.

135. Cerron stated that Ferry Point was a "tough one to accomplish," as the City had tried "a handful of times" to find an operator. 2795:16-2796:10. Four offers were submitted. 2796:11-13.

136. TTO "enclosed a statement from the certified public accounting firm of Weiser, L.L.P. indicating a net worth in excess of $3 billion and cash on hand in excess of $200 million." 2797:2-14.

137. The Parks Department, in a document submitted to the Mayor's office, confirmed that it believed TTO had the financial resources, wherewithal, and organization to run Ferry Point. 2798:7-2799:24.

138. President Trump provided a personal guaranty regarding payment obligations and the completion of capital improvements for Ferry Point. 2799:13-18; 2799:25-2800:8.

139. President Trump's personal guaranty was a condition of the Ferry Point license. 2803:17-2804:19. It required that "within 120 days of the end of each calendar year, [the]

guarantor shall be required to furnish Parks with a letter from [the] guarantor's accountant stating that there has been no material adverse change in [the] guarantor's net worth," (a "No MAC" letter) to reaffirm that the initial financial statements shared with the city were the same in material respects, and that these letters be true, complete, and accurate. 2804:20-2805:10.

140. President Trump met and exceeded his obligations under the License Agreement, thus, there was never a need to invoke the personal guaranty. 2824:4-2830:25.

141. Cerron was not aware of any capital obligations that were not met by Trump Ferry Point. 2840:1-25. In fact, Trump Ferry Point agreed to and spent more than $10 million on a capital improvement to the clubhouse. 2823:4-16.

142. The License Agreement did not require that President Trump submit his SFCs to the Parks Department. 2831:4-21. Cerron never reviewed President Trump's Statement of Financial Condition in connection with the Ferry Point agreements. 2831:22-25.

143. The sole remedy for failure to submit the "No MAC" letter is an increase of the security deposit to a maximum of $470,000. 2832:2-21.

144. Cerron confirmed that the Parks Department did not receive or request an SFC during the term of the license of Trump Ferry Point. 2843:16-2844:21.

145. The "No MAC" letters were not reviewed to determine whether President Trump had the financial capability to perform the contract, as this determination was largely made during the award process. 2844:22-25; 2845:1-4. The Parks Department sought to confirm "that what was[,] is what is" and that President Trump submitted the required documentation. 2845:5-13.

146. Cerron was not aware of, and did not identify, any false statements in the April 22, 2017, April 5, 2018, or February 26, 2021, "No MAC" letters. 2845:14-2850:9.

147. Cerron was involved in the deal wherein Trump Ferry Point assigned the concession of Ferry Point to Bally's for $60 million. 2850:12-24.

148. The 2021 supporting data for the SFC valued Ferry Point at $22,548,589, far less than the $60 million Bally's paid. 2851:3-24.

149. Cerron's testimony was not rebutted by the testimony of any other witness.

150. The Court finds Cerron's testimony was credible.

III. The SFCs were GAAP Complaint and Contain No Material Misstatements.

1. Expert Testimony from Jason Flemmons Established that the SFCs Complied with GAAP or Properly Disclosed Any Departures Therefrom

151. Jason Flemmons ("Flemmons") is a certified public accountant ("CPA") in the State of Virginia, is credentialed by the American Institute of Certified Public Accountants as certified in financial forensics and is a certified fraud examiner. 4238:2-20; 4248:15-4249:12. Flemmons has worked in the auditing and forensic accounting practices of PricewaterhouseCoopers and its corporate predecessor, as a deputy chief accountant of the Enforcement Division of the Securities and Exchange Commission ("SEC"), and as a senior managing director with FTI Consulting. 4237:12-4250:11.

152. Flemmons was admitted as an expert in the field of accounting. 4252:13-16.

a. The GAAP Standards Applicable to an SFC Permit a Preparer Broad Latitude in Selecting Valuation Methodology

153. The preparation of the subject SFCs was governed by GAAP Accounting Standards Codification ("ASC") 274. 4254:4-10; DX-27.

154. The SFCs, the accompanying notes, and the Independent Accountant's Compilation Report are all one document which must be read together. 4338:8–4339:3.

155. The measure of value for an asset or liability under ASC-274 is "estimated current value" ("ECV"). ECV, for an asset, is "the amount at which the item ***could*** be

exchanged…between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." 6737:7-18 (reciting ASC glossary definition); DX-452 at 2.

156. ECV is an internal determination of value premised on the perspective of management or the individual of what they deem the value to be. 4255:8-4256:13; 4269:14-19. ECV is not the same as "fair value." *Id.*

157. A person reporting ECV in an SFC has many more valuation options available to him under the governing accounting standard than a person reporting a "fair value" estimate. 4257:16-4258:1; *see* DX-27.

158. ASC-274 allows the preparer of an SFC to select from numerous methodologies in reporting ECV, including (1) capitalization of future revenues that could be generated from an asset, (2) use of liquidation values, (3) adjustment of historical cost based on changes in a specific price index, (4) use of appraisals, and (5) discounted amounts of projected cash receipts. DX-27 (ASC-274-10-55); 4258:13-4265:4. In reporting the ECV of real estate, the preparer can also use, *inter alia*, discounted projected cash receipts based on "planned courses of action" and sales of similar properties. *Id.* (ASC-274-10-55-6); 4266:5-4271:7.

159. ASC-274 permits consideration of hypothetical, future revenues and projections in order to determine ECV. 4259:6-12; 4268:21-4269:10; 4279:25-4280:5; 4409:10-4410:9; 4524:12-15.

160. The methods listed under ASC-274 can generate wildly different results, by many orders of magnitude. 4274:12- 4276:12. For example, using a conservative assessed value approach to reach an ECV of $18 million would not preclude an ECV of $800-900 million derived from a different method. 4272:10-4274:2.

161. Notwithstanding the potential for extremely large discrepancies, none of the methods listed under ASC-274, including those based on appraisals or that yield the lowest result, are mandated or preferred over another. 4265:5-8; 4276:13-4277:11; 4370:8-20.

162. Selection of methodology is within the discretion of the filer of the SFC. 4263:13-4264:10. A filer could perform twelve ECV scenarios under different methods and only report one to the accountants without reference to the other eleven scenarios. 4477:13-4478:6.

163. The use of any one method under ASC-274 is compliant with GAAP. 4264:3-6; 4265:16-25; 4271:4-7; 4370:2-7; 4517:1-6.

164. There is no requirement in ASC-274 that a preparer re-evaluate compliance with the ECV definition after selecting and appropriately applying an approved methodology. 4495:12-21; 4498:1-23; 4501:1-4507:24.

165. There is also no requirement that single-year financial statements disclose changes in methods from year to year. 4329:10-22.

b. Accountant's Obligations in Compiling an SFC.

166. An accountant performing compilation services is required to read the financial statements that are being compiled, understand the methods that are being used to develop estimated current values, and evaluate the appropriateness of those methods. 4286:9-22.

167. To the extent an accountant discovers a departure from GAAP, the accountant is required to resolve the discrepancy or modify the report to reference the exception in the accountants' report. 4296:13-4297:14. The accountant must also confirm whether the disclosures contained within the SFC are consistent with the underlying support. 4346:16-22.

168. Compilation standards also require that an accountant respond to any "obvious misstatements or differences" between the accounting being provided to them and GAAP.

4287:13-24. Even the NYAG's own purported expert agreed that it would be a performance failure for an accountant to miss an obvious GAAP departure. 6709:20-23. It is reasonable for a client to rely on its outside accountant to respond to obvious GAAP departures that it identifies. 4391:23-4392:9.

169. For example, for the Triplex, the change in square footage from 2016 to 2017 was obvious from the supporting data, and it should have led Mazars to inquire further. 4393:2-14.

170. There is no obligation or expectation by an accountant performing a compilation service to receive supporting information for amounts not reflected in the SFC, as a compilation report does not entail seeking multiple valuation scenarios or assisting the client with selecting the method to use. 4328:1-12.

171. Accordingly, Flemmons testified that it is "professionally implausible" that Bender would request appraisals that were not used to report values in the SFCs because such a request is inconsistent with professional standards. 4326:1-13; 4327:8-21.

c. All GAAP Departures Identified in the Record Were Adequately Disclosed in the Notes to the SFCs and Highlighted in the AICPA Disclaimer Included in the Compilation Reports Annexed to the SFCs

172. The U.S. accounting system permits the issuance of non-GAAP financial statements as long as a modified accountant's report is attached. The GAAP deviations do not have to be resolved. 4293:3-4294:2; 4298:2-12; 4317:9-19; 4341:3-9.

173. If GAAP departures are significant, AICPA guidance provides additional language to include in the accountant's report. 4288:9-4289:23. This "user beware" language amounts to the highest-level warning that an accountant can communicate to a user regarding GAAP departures. 4295:8-14; 4297:15-4298:12; 4514:10-19.

174. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFC's from the year 2011 through 2020. 4297:15-20; 4385:5-24; 4517:17-4518:20.

175. Indeed, the 2014 SFC disclosed GAAP exceptions for determining ECV related to Notes 3, 4, 5 and 6, which in totality covered 95% of the reported assets. 4339:4-16; 4343:1-20.

176. Defendants' accountants' release of a compilation report with authorized warning language signifies that they were satisfied with the disclosures and any GAAP deviations. 4516:1-15; 4522:12-15; 4527:18-4528:2.

177. There is no record evidence that any GAAP departures were not adequately disclosed in the accountants' report or the notes to the SFCs. 4434:24-4435:12.

178. For example, Flemmons testified there was a disclosure in the SFCs regarding brand premium being a part of the property valuations. 4359:11-15.

179. Flemmons testified that TTO utilized GAAP compliant methods to value its properties on the SFCs, including Trump Tower, Niketown, 40 Wall Street, Trump Park Avenue, Mar-a-Lago, the golf clubs, Trump Parc East, Trump Plaza, Trump International Hotel, Seven Springs, OPO, and Vornado. 4346:3-4374:22

d. Flemmons' Testimony is Credible

180. Bender's testimony corroborates Flemmons' testimony that ECV is more flexible, and there are five or six methodologies that can be used to estimate a current value. 366:3-367:10.

181. Bender agreed that the SFCs disclosed the methods used or presented an appropriate value for numerous Trump properties, including but not limited to Trump Tower,

Niketown, 40 Wall, Trump Park Avenue, and the club facilities and real estate, Trump World Tower, Trump Parc, Trump International Hotel, Seven Springs, and Vornado. 412:22-427:13.

182. Kelly also corroborated Flemmons' testimony as he indicated that he would have expected Mazars to read and understand the basis for the values in the SFCs. 2150:4-20.

183. Moreover, Bender corroborates Flemmons' testimony that there can be wildly different valuation results under ASC 274, as Bender as no problem with the methods used to value assets.

184. Flemmons did not opine on values and clarified to the Court that he was not opining as to the ultimate valuations but as to the accounting methodologies used in the SFCs. 4268:4-12; 4364:14-4365:12; 4417:18-20; 4490:21-24.

185. Flemmons testified that GAAP methods must be applied properly, "not using inputs that are obviously inappropriate." 4499:20-4502:10.

186. Flemmons also affirmatively testified as to several specific instances involving an apparent lack of discounting that Mazars would have been obligated to follow up on. 4371:23-4372:15; 4374:23-4375:11; 4406:22-4407:10; 4413:24-4414:16; 4414:24-4416:7.

187. To the extent that NYAG's "rebuttal" expert, Eric Lewis ("Lewis"), opined, contrary to Flemmons' testimony, that applying ASC-274 requires the preparer to compare the results of its valuation method to the definition of ECV, the Court rejects Lewis' opinion testimony. *See* infra § V.4.d. Unlike Flemmons, Lewis is neither a licensed CPA nor a certified fraud examiner. His statement is bereft of textual or other support and absurdly suggests that ASC-274 expressly authorizes the use of non-compliant methodologies.

188. Accordingly, the Court finds Flemmons' testimony is credible.

2. Expert Testimony Confirms that the Lenders Did Not Rely on the Valuations Provided in the SFCs in Issuing and/or Pricing the Loans

a. Eli Bartov Confirmed that the Banks Conducted and Relied Upon Independent Valuations

189. Professor Eli Bartov ("Bartov") is a distinguished full professor of accounting at New York University Stern School of Business. 6180:23-6181:3. Bartov prepared several personal financial statements while practicing in Israel. 6186:25-6187:1.

190. Bartov has testified five to six times and once at trial for NYAG in People v. Exxon Mobil as a valuation and GAAP expert. 6205:16-6206:17.

191. Bartov was deemed an expert in financial accounting, credit analysis, and valuation. 6214:16-21.

i. DB Conducted its Own Analysis and Valuations

192. Personal financial statements, i.e., SFCs, are governed by ASC-274. 6186:5-9. Here, the user is DB and the preparer of the SFCs is TTO. 6251:21-24, 6279:3-6.

193. ASC-274 is the only provision of the ASC that uses ECV. 6245:19-24.

194. ECV is defined as "the amount at which the item ***could be*** exchanged between the buyer and the seller, each of whom is well-informed and willing and neither of whom is compelled to buy or sell." 6250:10-13.

195. ECV is "substantially different" than fair value, and the two definitions have "completely different meaning[s]" including because of the use of the word "could" instead of "would." 6280:7–6282:22.

196. ECV accounts for the preparer's prediction for the asset's value in the future based on its plan for the asset. 6276:19-6277:7; 6282:11-15.

197. Values reported in an SFC are only the first step in a "long and complex" negotiation process. 6198:8-10; 6239:11-13.

198. A user must read the accompanying notes as they are an integral part of the SFCs and obtain any additional information from the preparer, including net operating income ("NOI") and cash flow. 6198:8-10; 6240:2-5; 6335:3-5; 6240:3-8; 6259:13-15. The numbers alone are meaningless. 6251:3–8.

199. A user is then tasked with making a lending or investment decision based on its own adjusted values derived from the user's own valuation model and assumptions. 6198:10-15, 6255:3-8. The FASB, Federal Reserve, and accounting literature instructs a user to conduct its own analysis. 6266:24-6267:6.

200. Here, the evidence is overwhelming that DB performed its own independent valuations and employed the VSG to do so. 6290:11-25; 6297:11-13.

201. For the Doral Loan, DB concluded, based on its own independent analysis, "through [its] due diligence" that President Trump had an "exceptionally strong financial profile consisted of a reported net worth of 4.2 billion which [it] ha[d] adjusted to 2.4 billion." 6299:24-6300:9; DX-312. DB further observed on December 23, 2011, that President Trump's balance sheet was "among the strongest personal balance sheets we have seen and totally unlike any of [its] major real estate developer clients in that [it] observe[d] an absence of personal debt with a huge asset base and diversified CF." 6305:4-8; DX-312.

202. For the Chicago Loan, DB likewise stated that it "made certain assumptions that have resulted in adjustments to reported values." 6307:24-6308:4; PX-291.

203. For the OPO Loan, DB also performed its own analysis of valuation before making a lending decision. 6406:3-17; PX-300.

204. For each asset, the difference between the valuation reported on the SFC and DB valuation is significant. 6411:4-7.

205. The only record evidence establishes that DB did not rely on the valuations in the 2013 SFC, as its own analysis reflected an overall net worth of $2.1 billion versus the reported $3.6 billion. 6397:18-6398:12; PX-290.

206. DB did not rely on the valuations provided in the 2015 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $4.3 billion. 6398:13-6399:22; PX-298.

207. DB did not rely on the valuations provided in the 2016 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $5.7 billion. 6403:19-6404:16; PX-300.

208. DB did not rely on the valuations provided in the 2017 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $4.3 billion. 6405:3-18; PX-3137.

209. DB did not rely on the valuations provided in the 2018 SFC, as its own analysis reflected an overall net worth of $2.515 billion versus the reported $4.39 billion. 6405:25-6408:12; PX-302.

210. DB did not rely on the valuations provided in the 2019 SFC, as its own analysis reflected a valuation for the trophy properties of $1.16 billion, versus the reported $2 billion. 6407:2-6408:12; PX-498.

211. DB did not rely on the valuations provided in the 2020 SFC, as its own analysis reflected an overall net worth of $2.7 billion, versus the reported $4.7 billion. 6408:25-6410:5; PX-519.

212. DB did not rely on the valuations provided in the 2021 SFC, as its own analysis reflected an overall net worth of $2.2 billion, versus the reported $3.8 billion. 6410:16-6411:10; PX-561.

213. A precondition for the SFCs to be considered materially misstated is that the user (i.e., DB) relied on them in its decision making process, and financial statements that have not been relied upon are by definition immaterial under GAAP; therefore, DB's reliance on its own adjusted values, and thereby its non-reliance on the values stated of the SFCs, conclusively establishes that the SFCs were immaterial because they did not change the judgment of the user. 6388:17-6389:16; 6393:20-6394:4; 6397:18-6398:14; 6399:9-22; 6402:10-6403:4; 6403:24-6410:5.

214. Given that DB performed its own independent analyses to determine the values of the assets listed on the SFCs, DB's judgment was not affect by any alleged misstatements contained in the SFCs, rendering any misstatements in the SFCs immaterial from the perspective of the user. 6388:17-6389:16; 6393:20-6394:4; 6397:18-6398:14; 6399:9-22; 6402:10-6403:4; 6403:24-6410:5.

215. The record is devoid of any evidence to support a conclusion that any of the SFCs were materially misstated from the lens of the user, and the NYAG presented no evidence that it performed a valid materiality assessment using both quantitative and qualitative factors to support a finding of materiality.

ii. Any GAAP Deviations in the SFCs Were Immaterial

216. DB relied on its own financial analysis to extend the loans. Any discrepancy in valuation in the SFCs was objectively immaterial, i.e., it did not change the bank's decision whether to extend loans or the interest rate. 6556:3-18.

217. A deviation is not considered a violation of GAAP if it is immaterial; GAAP does not apply to misstatements or omissions that are immaterial. 6284:3-7, 6394:15-23.

218. Determining whether a misstatement is material is a two-step process. 6284:8-20. The first step is to quantify the error. 6284:10-13. The second step is to decide whether it is material based on qualitative factors. 6284:14-20. Of note is that Professor Bartov explained that inadvertent misstatements are errors and do not demonstrate an indicia of fraud, and that the main indication of fraud is intentional concealment, manipulation, falsification of information, fabrication of transaction, alteration of accounting records or supporting documents misrepresentation or intentional omission of events/transaction, or intentional misapplication of accounting principles. 6411:11-6413:12.

219. Errors or misstatements happen all the time in accounting, if there are no indicia of fraud such as concealment, forgery, or deceit, then there is no basis to determine that these SFCs are fraudulent, and any misstatements are just accidental errors. *Id*.

220. In fact, Professor Bartov testified that his main finding is that there "there is no evidence, whatsoever, for any accounting fraud" and that the "statement of financial condition for all the years were no, materially misstated" 6221:19-25. Indeed, the trial record establishes that Mazars was fully informed about the underlying methodologies employed to derive values of the SFCs based on the supporting materials Defendants provided, and by virtue of what Mazars had learned from Defendants over decades serving as accounts for and annually performing tax and other accounting/attestation services for the Defendants and related entities. 109:4-111:18; 304:23-305:5; 305:6-306:1; 318:8-22; 398:21-400:11; 385:3-387:21; 426:16-429:3; 385:3-387:21; 407:16-25. Further, any disagreement regarding valuation was resolved to Mazars's satisfaction whenever it arose. 383:9-21.

221. A rational economic actor will determine whether to self-finance based on the interest rate. 6329:12-18.

222. President Trump had the demonstrable ability to self-finance certain loans, including the Chicago Loan. 6313:6-10; 6329:10-11.

iii. Bartov's Testimony is Credible

223. Bartov's testimony is not rendered unreliable because of his status as a paid expert witness. Every expert who testified for NYAG or Defendants was compensated for their time. 6443:18-6444:1.

224. Bartov's testimony was consistent with his deposition and expert reports, and concerned certain errors in the SFCs (i.e., Triplex valuation as an inadvertent error—also immaterial).

225. Bartov's testimony was corroborated by additional witnesses, including Flemmons and Haigh.

226. Bartov's testimony was not meaningfully rebutted by the testimony of any other witness.

227. The Court finds Bartov's testimony is credible.

b. Robert Unell Confirmed that the SFCs Were Not Materially Misleading and that DB and Ladder Capital Conducted and Relied Upon Their Own Independent Valuations

228. Robert Unell ("Unell") is a Managing Director in the Real Estate Advisory Practice at Ankura. 5627:17-5629:10.

229. Unell was admitted as an expert in commercial real estate finance and banking. 5619:13-5627:20.

i. Unell Corroborated Flemmons' Testimony that the SFCs Were Adequate to Put Lenders on Notice of the Valuation Methodologies Used

230. The SFCs were in line with, or were of better quality than, those typically received in commercial real-estate finance transactions and provided a complete disclosure of information with ample detail to evaluate exactly how various assets were valued. 5633:3-21.

231. SFCs typically constitute the preparer's estimated opinion and serve simply as a roadmap for a lender to do their own analysis. 5633:25-5635:23.

232. The SFCs also contained a disclaimer alerting the lender that different conclusions of value could be reached. 5634:13-5635:12.

233. The SFCs alerted the users that they should use the information contained therein to conduct their own analysis and form their own opinions. 5636:3-5638:4.

ii. DB and Ladder Capital Relied on Independent Analysis of the Assets and Factors such as President Trump's Experience and Reputation in Issuing the Loans

234. The credit memos indicated that the banks did their own analysis and adjusted the SFCs. 5636:19-5637:6. PX-290 at 7-10; PX-291 at 7-10; PX-293 at 5-8; PX-294 at 15-17; PX-298 at 10-12; PX-300 at 15-18; PX-302 at 9-13; PX-2960 at 4-7; PX-3137 at 11-14; PX-498 at 9-14; PX-519 at 10-15; PX-561 at 9-14.

235. DB and Ladder Capital correctly applied Office of the Comptroller of Currency's ("OCC") underwriting guidelines because they performed an independent analysis of the collateral. 5638:5-5645:22; 5654:21-5655:5. Banks also may consider a guaranty or other items of credit. 5642:19-5643:18.

236. The DB loans had a full guaranty and the 40 Wall Loan had a limited guaranty. 5643:22-5644:2.

237. The banks followed the OCC guidelines to consider whether the guarantor is willing and able to support the credit, and whether the guaranty is legally enforceable. 5644:3-5645:10.

238. The guaranty provides a level of comfort to the lender in case of borrower default, as a guarantor will ensure repayment. 5645:11-5648:20.

239. DB relied heavily upon President Trump and TTO's experience. 5648:23-5649:2. There was also significant economic incentive for President Trump to perform on the loans as guarantor. 5650:1-5652:10.

240. A change in the values of the assets owned by the guarantor would be immaterial to DB and Ladder Capital. 5745:25-5746:17; 5747:7-11.

241. DVSG performed a full analysis of Trump's assets and liquidity. 5651:21-5653:25.

242. Ladder Capital utilized the same practices in underwriting the 40 Wall Loan. 5654:1-4.

243. DB followed its own lending guidelines and policies, including expanding its business with and offering loans on competitive terms to real estate entrepreneurs and investors. 5656:5-5659:6. The PWM group had its own standards for guaranties, liquidity covenants, and nonrecourse loans, which were consistent with industry standards. 5659:11-5662:3; 5665:23-5668:11.

244. As a billionaire, President Trump therefore was more than qualified as a member of the PWM group, and DB sought to have a continuing relationship with him. 5694:7-5696:2; 5697:10-5700:1.

245. DB used compliance certificates to monitor the borrower and guarantor's financial condition throughout the loan. 5671:19-25.

246. The certificates state that, in the opinion of the borrower and guarantor, the information presented is correct in all ***material*** respects. 5669:2-5671:18; *see.eg.,* PX-391.

247. All the compliance certifications made out to Deutsche Bank present fairly in all material respects the financial condition of the borrower or guarantor and the record is devoid of any evidence to the contrary. 5670:1-5671:7, 3239:2-3241:4, 3247:11-3251:2, 3253:19-3254:20, 3256:8-3257:12, 3437:9-3438:23, 3439:21-3440:5, 3440:18-3441:2, 3441:24-3442:7, 3442:16-19, 6221:19-25, 6569:13-19, PX-391, PX-1386, PX-393, PX-497, PX-515, PX-516, PX-517, PX-518, DX-1047, DX-1048, DX-1049, DX-1051, DX-1052, PX-502, PX-503.

248. Materiality is in the eye of the user/lender, and a user/lender will determine its own risk rating, profile, and underwriting analysis. 5670:3-18.

249. The discrepancy in the size of the triplex would not be material or even a factor in evaluating whether President Trump's financial condition was presented fairly in all material respects. 5672:12-5673:3.

250. A lender determines a guarantor's "adjusted net worth" in its discretion. It is typical to see a deviation between adjusted net worth and reported net worth. 5673:8-5674:21; 5676:13-5677:4; 5701:4-10; 5706:8-5708:6. A violation of a minimum net-worth covenant would not be a default. 5678:23-5679:5.

251. When pricing a loan, a bank considers the terms, the collateral, overall cash flow, the debt service coverage ratio ("DSCR"), the borrower and guarantor's liquidity, the overall relationship with the guarantor, risk-adjusted return on capital, diversification, and risk tolerance. 5679:19-5680:15; 5687:17-5688:14; 5713:8-5714:1.

252. DB, as the end user, evaluates materiality, and it determines how to price the loan. 5687:1-4; 5693:9-16; 5762:23-5764:8.

253. Where collateral is sufficient, the pricing would be based on that collateral, not the guaranty, and any fluctuations in the guarantor's net worth or liquidity of the guarantor would be immaterial. 5716:16-5720:19; 5760:2-14.

254. There have been no losses to any party, as the loans here were negotiated between very sophisticated parties, and all contractual obligations were paid. The lenders derived their own interest rates and negotiated loan documents, on which the borrower and guarantor performed. Lenders made their own informed decisions. 5748:1-16.

iii. Unell's Testimony is Credible

255. Unell's testimony was consistent with his deposition and expert reports.

256. Unell's testimony was corroborated by additional witnesses, including Flemmons, Bartov, Haigh, Vrablic, and Williams.

257. Unell's testimony was not meaningfully rebutted by the testimony of any other witness.

258. The Court finds Unell's testimony was credible.

IV. Plaintiff Has Failed To Prove Insurance Fraud

1. Zurich North American Insurance Company ("Zurich"), TTO's Surety, Was Not Defrauded Because Zurich Did Not Receive Materially False Information And The Surety Program Was An Accommodation

259. Zurich supported TTO's surety bond needs from as early as 2009 through at least 2019 ("surety program"). DX-43. In May 2011, Zurich stopped writing commercial insurance policies for TTO but continued to support the surety program. DX-44.

260. In May 2011, Joanne Caulfield ("Caulfield"), a Zurich surety underwriter, reviewed President Trump's 2010 SFC. DX-44. At this time, the total aggregate exposure Zurich approved for the surety program was $2 million. DX-44.

261. In subsequent years, when Caulfield had not reviewed updated SFCs, Caulfield temporarily cut off the account from approval of new bonds. DX-45. Despite Caulfield's decision to not approve new bonds because TTO had not furnished her updated financial information, Caulfield expanded the surety program on numerous occasions, relying on media publications like Forbes that estimated President Trump's net worth to support her decision. DX-45; DX-46; DX-48.

262. In 2014, Caulfield referenced a USA Today article in the personal financial analysis section. 4755:24-4756:2; DX-48.

263. As Gary Giulietti testified, underwriters usually do not rely on media publications to support an underwriting decision. 4754:14-17; 4756:3-7.

264. In 2016, Caulfield expanded the surety to an aggregate maximum exposure of $10 million, despite not having reviewed updated financial information for President Trump since reviewing the 2010 SFC. DX-51. Supporting her decision to expand the program without reviewing financial information, Caulfield wrote: "[G]iven Mr. Trump's significant personal wealth versus the type and size of program we are on, the recommendation is to increase and renew the line for billing purposes." DX-51.

265. Although Caulfield threatened to not approve new bonds, Zurich allowed existing bonds to continue to renew as an "accommodation" to AON, TTO's broker. DX-48. Caulfield was comfortable supporting the expansion of the surety program, in part, because she viewed TTO's executives as "highly professional, well educated, and conscientious about the work that

they do," DX-52, and because of the very small size and limited exposure of the surety program as compared to President Trump's significant personal wealth. DX-51.

266. An accommodation occurs where a surety grants something that is out of the ordinary and ultimately provides a product with minimal or no underwriting. 4743:13-21. An accommodation is like a favor, and in the surety industry, accommodations are rare. 4744:3-14.

267. Zurich mitigates the risk of loss by requiring a customer to execute an indemnity agreement, requiring collateral from the customer, by pricing and rating a customer appropriately, and/or declining the account. PX-3324 (De Bene Esse Deposition Transcript (hereinafter, "Dep.")) 18:17-25; 19:1-22.

268. In 2009, President Trump executed a General Indemnity Agreement with Zurich whereby he personally indemnified Zurich for any claims filed on bonds in the surety program. DX-42; DX-47; 4536:21-4537:11. The General Indemnity Agreement did not require the disclosure of financial information to Zurich. DX-42.

269. One of the primary purposes of an indemnity agreement is to ensure that, if the surety pays a claim, they can "get the money back from the person they insured." 4808:6-12. To collect on an indemnification agreement, the surety puts the indemnitor on notice that payment on a claim has been made and that the surety "intend[s] to collect from cash, or cash equivalents." 4808:13-20.

270. Surety underwriters generally require financial information, including on liquidity, overall net worth, and leverage on assets, before underwriting a bond, including a full audit. 4738:11-21; 4740:1-4743:12.

271. Surety underwriters look at the "3 C's": "character, capacity, and capitalization liquidity." 4809:9-13. When considering liquidity, the "most important aspect" for the surety is

the single bond limit because "the likelihood of the whole program getting called at once is pretty minimal. So their real exposure is what is the largest single bond that they would put out there." 4810:17-4811:3.

272. TTO did not provide audited financial statements to Zurich, and an underwriter would have given no credence to the compilation statements provided by TTO. 4738:22-4739:7.

273. Claudia Mouradian, f/k/a Claudia Markarian ("Mouradian") was employed at Zurich as an underwriter in the commercial surety division from August 2010 until 2020. Dep. 9:15-10:4; 13:10-16.

274. Zurich vets their customers and reviews their financial statements to make sure they are creditworthy. Dep. 21:13-21; 90:5-21.

275. Mouradian was involved with underwriting the surety program for TTO. Dep. 10:15-19; 23:5-22.

276. Zurich required an on-site review of President Trump and DJT Holdings LLC's financial statements. Dep. 34:12-24.

277. On November 20, 2018, Mouradian coordinated with AON to review the financial statements at Trump Tower. Dep. 35:9-14; 37:8-38:13.

278. On November 20, 2018, A. Weisselberg provided Mouradian the 2018 SFC and told her that she could take as many notes as she wanted, but no photos or copies. Dep. 38:19-39:5; 41:13-22.

279. Mouradian understood the SFC to be a compilation and of a lower quality than an audit. Dep. 42:15-43:11.

280. Mouradian spent less than an hour reviewing the SFC, during which time she took handwritten notes and A. Weisselberg remained in the room and provided some general commentary on TTO. Dep. 39:6-17; 45:21-46:7; 54:8-11.

281. Defendant Jeffrey McConney ("McConney") was in the room for a portion of Mouradian's review, but she did not recall speaking with him. Dep. 45:7-20; 46:8-12. In doing so, she "skimmed" the notes to the SFCs but asked no questions about them. Dep. 113:22-114:12; 152:1-11; 116:25-117:8.

282. Mouradian noted the cash on hand for TTO as $76.2 million, which bore on Zurich's ability to recover in the event of a claim. Dep. 46:13-47:19.

283. Mouradian noted total assets of $6.6 billion, $6 billion of which was connected to real estate and golf club resorts, which were unlikely to be sold in the event of a loss. Dep. 47:20-49:5.

284. Mouradian described TTO as being in "very good financial shape" and that the "the asset quality in the portfolio is very good and sustainable." Dep. 56:19-57:7.

285. Mouradian recommended that the program be renewed with no changes, which was approved by her manager. Dep. 58:10-59:17.

286. In January 2020, she conducted her on-site review of the 2019 SFC, following the same procedures. Dep. 65:9-66:22; 67:19-68:17; 69:9-13.

287. Mouradian again understood the SFC to be compiled by Mazars. Dep. 67:10-24.

288. Mouradian noted the cash on hand as $87 million and hard assets as $5.9 billion. Dep. 70:25-72:10.

289. Mouradian wrote in her underwriting memorandum that "[t]he fair value of the properties is appraised annually by a professional firm . . . . The firm provides the capitalization

rates to Trump as well as updated comps. This, combined with the Net Operating Income factor provided by Trump Org., determines the valuation of the properties." PX-1561. Mouradian received this information from Weisselberg. Dep. 45:15-46:7.

290. Mouradian understood a valuation and an appraisal to be the same thing and used the terms "value," "valuation," and "appraisal" interchangeably. Dep. 109:3-22, 109:23-25, 110:1-8.

291. Mouradian was not told where the capitalization rates were derived. Dep. 123:10-22. Mouradian agreed that TTO would be in the best position to know how much income was being generated from a particular property. Dep. 121:4-22.

292. Zurich could have requested appraisals and audited financial statements as part of its financial analysis, but it did not. 4766:1-4767:9.

293. Mouradian described TTO as being "once again in very good financial shape." Dep. 78:25-79:7.

294. Mouradian stated that "the asset quality in the portfolio is very good and sustainable." Dep. 79:8-81:9.

295. Mouradian recommended that the program be renewed with no changes, which was approved by her manager. Dep. 81:10-82:11.

296. After reading a media article about TTO allegedly misrepresenting the value of assets to insurers, Mouradian wrote in an e-mail to her superiors that she considered TTO surety program to be "quite modest for the organization with no real issues. The terms for the program have generally stayed consistent, with a few rate decreases when we felt it was warranted. I do plan to continue supporting the surety program as I feel it is merited, unless there is a legal reason/concern for us to exit the program." DX-969.

297. Mouradian lost credibility when she was asked whether she would describe TTO's surety program as "modest," and she responded: "I don't know what that means," Dep. 128:22-25, despite the fact that she had described the program as "quite modest" to her superiors. DX-969. Expert testimony confirmed TTO surety program was a "very small program for a company like Zurich or even for an organization as large as this. It is a relatively small program by industry standards. Not a lot of exposure." 4843:19-4844:3.

298. Mouradian lost even more credibility when she was asked whether TTO surety program was an important account for her to maintain and she responded: "It wasn't any more important than any of the other accounts," Dep. 147:13-14, despite writing in an e-mail that TTO was a "very important client." DX-970.

299. As such, Mouradian's testimony was not entirely credible. Mouradian was confused about how to determine property values and, because she recognized the net operating income for a property was known only by TTO, she improperly assumed the third-party companies such as Cushman and Newmark were providing valuations that reflected values in the SFC.

300. For TTO's surety bonds, the largest single bond was approximately $5.7 million, less than the $6 million single bond limit imposed by Zurich and, for the most part, the aggregate exposure did not exceed $10 million. 4811:3-9.

301. Liquidity is a heavy factor for Zurich's surety underwriters, 4740:4-6, and President Trump had more than sufficient liquidity to cover his obligations for the "modest" amount of Zurich's exposure.

302. Zurich issued seven bonds for TTO in August 2023 without reviewing financials. 4750:5-17; 4768:16-21. Sureties do not continue writing bonds for companies if the surety feels the company has defrauded them. 4816:20-23.

303. Further, Zurich was not defrauded by TTO because, from the surety program's inception, it was an accommodation to TTO and/or AON. 4744:3-14; 4813:1-6; 4815:17-21. This is evidenced by the fact that Zurich did not do a lot of "technical underwriting," which would include "ordering clue reports, past claim reports . . . analyzing different reports that are available in the industry. None of that was really done in this case." 4816:6-14. From reviewing the underwriting memorandums, there was no underwriting done because "there [wa]s nothing filled in." 4827:7-9.

304. In 2019, the year Plaintiff alleges Zurich was defrauded when Mouradian was the responsible underwriter, there was "little or no underwriting [] done." 4841:17-20.

305. Moreover, in August of 2023 Zurich underwrote seven bonds for Trump, which are active today, and Zurich still currently insures the first $400 million of claims on Trump properties. 4750:5-17; 4772:19-4773:5.

306. The Court finds the testimony of Defendants' experts Giulietti and Miller very credible and discounts the testimony of Mouradian.

307. Thus, the evidence adduced by Plaintiff is insufficient to support a finding of insurance fraud based on the surety program.

2. Tokio Marine ("HCC") Was Not Defrauded Because It Was Not Provided Materially False Information

308. Michael Holl is an underwriter in the Directors &Officers ("D&O") writing unit at HCC.

309. In December 2016, HCC agreed to write a 5x5 D&O policy for TTO until February 2017 without reviewing financials. PX-587.

310. The HCC underwriter described the possibility of writing a D&O policy for TTO as a "[n]ice juicy one." PX-587.

311. HCC knew TTO was looking for additional D&O coverage as the primary coverage was with Everest insurance company. 2492:4-15; PX-587.

312. Holl was "excited about the prospect of insuring the Trump Organization or various of its subsidiaries." 2510:17-20. When Holl was seeking TTO's business, he knew TTO was "concerned about potential exposure now that Donald Trump had been elected president." 2513:21-2514:2.

313. HCC never bound the 5x5 policy. 2496:18-24.

314. The purpose of reviewing financials is to find out if the company is profitable and what their "overall financial health is." 2494:21-25.

315. However, D&O carriers do not always look at financials for private insureds because they are "more interested in claims history and the type of business and location, because they feel that's more indicative of future performance." 4848:1-7. Further, D&O carriers understand that "any financials from a private company are a mere snapshot. So while it may be true today, they could change tomorrow. So the relevance or how much weight they put into those are not as extensive as the other items they look at." 4848:11-15.

316. Holl participated in an underwriting meeting at Trump Tower on January 10, 2017. 2497:15-16; PX-588. Holl recalled meeting with Weisselberg during the meeting. 2497:25-2498:1.

317. Holl was shown a balance sheet for year end 2015 that, according to Holl, showed total assets of $6.6 billion, cash of $192 million, and total debt of $519 million. PX-2985.

318. The cash amount is a useful figure in D&O underwriting because it is a measure of liquidity for the company. 2500:10-19.

319. A retention in D&O insurance is similar to a deductible in a health insurance policy. 2515:18-23. The purpose of reviewing financials for a private company seeking D&O coverage is to ensure the company has the "financial wherewithal to cover the retention." 2515:24-2516:3.

320. Holl recounted in his notes there was a statement made that there was "no material litigation or communications from anyone." 2501:12-16.

321. During the meeting, someone (Holl could not recall if he did or if someone else did) inquired whether there were any "material litigation or communications from anyone." 2500:20-2501:11. "Material litigation or communication" includes information the company is aware of "that's not public; that is, litigation or notices or communications that could lead to litigation that would implicate the D&O policy." 2500:23-2501:2. The response Holl recalls to the inquiry was that there was no "material litigation or communications from anyone." 2501:12-16.

322. Holl does not recall "who made the statement about" no "material litigation or communications from anyone." 2501:12-16; 2519:20-22.

323. After the meeting, HCC bound the D&O coverage for the Trust. 2504:1-3; PX-597. The D&O policy was an excess surplus lines policy, which means HCC could "use rates that are their judgment" because they are not regulated filed and regulated by the state. 4851:18-4852:1; PX-597.

324. HCC renewed the D&O policy in 2018 for the same premium ($295,000) and coverage terms. 2506:1-5.

325. In 2019, HCC quoted a premium of $1.6 million, which the Trust did not accept, because, as Holl testified, "our assessment of the risk changed and we believed that the risk was significantly more risky than our initial assessments." 2507:6-17.

326. The retention on the D&O policy and the extension that were bound was $2.5 million. 2516:4-7.

327. If TTO had identified $25 million in cash on the balance sheet Holl saw at the underwriting meeting, "there would be enough on the balance sheet to cover their retention," according to Holl. 2516:21-2517:12.

328. Holl was not concerned with any of the debt he saw on the balance sheet. 2517:13-15.

329. Because the retention on the D&O policy and extension was $2.5 million, President Trump had more than sufficient liquidity to cover it as the balance sheet reviewed by Holl showed $192 million in cash.

330. Holl did not ask to see bank statements. 2517:16-17. Had Holl been concerned about the Trust's ability to meet the retention, he would have asked to see bank statements.

331. The Trump Foundation is not an insured under the Trust D&O policy and extension. PX-597. Therefore, the Trust was not required to disclose communications by a law enforcement agency to the Trump Foundation as part of the HCC D&O underwriting process.

332. The D&O policy required that the risk manager or general counsel of TTO have knowledge of a potential claim to trigger the reporting requirement. 4849:8-17.

333. Plaintiff has not put forth evidence the risk manager or general counsel had knowledge of potential claims under the D&O policy when any of the alleged verbal inquiry pertaining to "material litigation or communication from anyone" was made.

334. Further, there is no evidence in the record that the alleged statement about no "material litigation or communication from anyone" was written, which is required to prove insurance fraud.

335. The Court credits the testimony of Holl and Defendants' expert (Miller).

336. HCC was never furnished a materially false financial statement.

337. Thus, the evidence adduced by Plaintiff is insufficient to support a finding of insurance fraud based on the D&O policy and extension.

V. NYAG Has Not Demonstrated Any Defendant Had the Intent to Defraud

1. The Record Evidence Does Not Support a Finding That President Trump Had Intent to Defraud

338. President Trump was the 45th President of the United States. Prior to his presidency, he was the owner of hundreds of entities under the umbrella of TTO, including single-purpose entities used to purchase property and enter into loan transactions. 3472:13-15. Upon assuming the presidency in January 2017, he relinquished his position at the company and the trusteeship of the Donald J. Trump Revocable Trust. 3472:20-3473:10. President Trump has extensive experience and success as a real estate developer and has worked with banks for decades. 3487:4-8; 3479:10-13.

339. Weisselberg and McConney primarily prepared the SFCs. 3491:9-14.

340. President Trump would receive a copy of the statement at some point, and in some cases, he would review it. 3491:9-16.

341. There is no record evidence that President Trump ever reviewed the backup supporting data for the SFCs.

342. He "gave [Weisselberg and McConney] total authority to work with a very expensive accounting firm, . . . [a]nd they worked with the accounting firm and they came up with a statement." 3561:5-9.

343. Weisselberg and McConney were responsible for making sure TTO maintained complete and accurate books and records. 3617:3-6.

344. The SFCs were prepared by other people, and President Trump accepted them but did not say to make any values contained therein higher or lower. 3513:10-15.

345. President Trump was not involved in any way with the SFCs between 2017 and 2021 because he was President of the United States. 3551:20-23.

346. In his estimation, the SFCs were not important financially. 3492:1-12.

347. In connection with the 2014 SFC, Niketown was not valued at a price President Trump would sell it for based on its location and holdup value. 3499:3-3500:24.

348. The valuation of 40 Wall Street, which President Trump did not prepare, did not take into account building residential condominiums. 3505:11-14; 3513:2. The highest and best use of the property would be residential condominiums, making the $550 million valuation a very low number. 3506:8-14.

349. President Trump believed Mar-a-Lago and Doral were much more valuable than indicated in the backup to the 2014 SFC. 3488:8-22; 3530:11-19.

350. President Trump explained that he had "very complicated, many transaction, many, many, many-pages document. The overall number is somewhere much higher. And some are a little bit lower or not materially lower. But the overall net is that we are much, much higher,

much, much higher than the document." 3627:6-18. President Trump also testified that he believed the SFCs were "very good" and "actually somewhat conservative and in some cases very conservative." 3629:3-5.

351. In valuing real estate, a developer would consider "[w]hat the use is; how much money can be derived from that use; in other words, the return on investment." 4191:24-25.

352. Testimony from other witnesses called by NYAG demonstrates that President Trump was minimally involved with the SFCs.

353. Mouradian did not speak to President Trump. Dep. 124:5-11.

354. Dillon testified that President Trump was not involved in the day-to-day operations of the company and was involved in "very few things" since he is "the highest level executive at the company." 2574:15-2575:23.

355. Weisselberg received "periodic" comments from President Trump on statements before he became President. 898:23-25. President Trump was particularly interested in the notes to the SFCs because they served to market the buildings. 869:16-22. He would occasionally change a word, e.g., from beautiful to magnificent, to explain to anyone reading the SFC that these were premier properties. 897:18-898:6.

356. The only witness called by NYAG to prove intent on the part of President Trump was Michael Cohen.

357. Michael Cohen was supposed to be NYAG's star witness.

358. Michael Cohen is a convicted felon, disbarred lawyer, and serial liar. 2428:8-10; 2300:12-25.

359. Michael Cohen admitted to previously lying under oath on several occasions. 2425:14-19.

360. Michael Cohen lied at his plea hearing in the Southern District of New York. 2436:22.

361. Michael Cohen lied at his plea even after being warned by USDJ William Pauley that if he answered any of the Judge's [50 or so questions] falsely he could be prosecuted for perjury. 2429:25-2430:21.

362. Michael Cohen continued to lie at his sentencing in the S.D.N.Y. 2437:1-9.

363. Despite Michael Cohen being NYAG's star witness, who on his direct examination claimed that he "was tasked by [President] Trump to increase the total assets" on the SFC by an arbitrary number that President Trump selected (2211:3-11), Cohen was forced to admit during cross examination that this statement was yet another lie and that President Trump in fact NEVER directed him to inflate the numbers on the SFC. 2443:25-2444:3.

364. The Court finds President Trump's testimony was credible.

365. President Trump's testimony was corroborated by witnesses called by NYAG, including Weisselberg, McConney, Eric Trump, and Donald J. Trump, Jr.

366. President Trump's testimony was not rebutted by any other witness.

367. The evidence adduced at trial is insufficient to support a finding that President Trump had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

2. The Record Evidence Does Not Support a Finding that Weisselberg Had Intent to Defraud

368. Allen Weisselberg ("Weisselberg") began working with President Trump in or about 1986, as Controller for TTO. 789:18-790:2. From 2002 through January 2023, Weisselberg was the Chief Financial Officer of TTO. 790:3-7; PX-1751. From January 2017

through January 2021, Weisselberg was a trustee of the Donald J. Trump Revocable Trust. 794:8-19; 795:8-23; PX-769; PX-1016.

369. McConney reported to Weisselberg from in or about 1987 through Weisselberg's departure from TTO. 791:4-16.

370. Birney sometimes reported to Weisselberg or McConney from 2016 or 2017 through Weisselberg's departure. 791:17-792:17.

371. Weisselberg relied on other individuals within TTO, including McConney and Birney, to determine ECV for purposes of the SFCs. 792:18-24; 800:7-10; 824:18-25; 843:19-845:12; 846:4-18; 865:1-7; 870:21-22.

372. Weisselberg did not personally calculate any asset's ECV for purposes of the SFCs. At most, Weisselberg would review McConney's work and give suggestions as to values or forward relevant information while Birney was preparing the SFCs. 843:19-25; 870:6-20; 872:3-11.

373. Weisselberg did not review every line of the thousands of pages of supporting documentation for the ECV calculations before they went to Mazars but "reviewed the totals" provided to Mazars. 825:4-20; 869:6-22.

374. Weisselberg is not a CPA and is not familiar with any of the components of GAAP. 787:23-788:19.

375. Weisselberg relied on Mazars, the accounting firm responsible for compiling the SFCS, to understand GAAP and identify any departures from GAAP in the SFCs.

376. Mazars had complete access to the information, records, documentation and others matters needed to prepare the SFCs. 852:5-853:12.

377. Weisselberg trusted that Mazars would not compile an SFC if it did not comply with GAAP. 968:23-969:9.

378. Weisselberg did not know whether GAAP required discounting when an asset might have future value and testified that Mazars, who was part and parcel of producing the SFCs, would have told him if such valuation was inappropriate because certain properties were obviously future developments on the supporting data. 909:8-25; 967:3-24. Nonetheless, Mazars allowed the values to remain as they were. 909:8-25.

379. The same applied to other future developments, such as club facilities, where Weisselberg relied on "Donald Bender and Mazars's firm who are GAAP experts" and "they allowed future values to be put on [the SFC] because they saw the spreadsheet from Mr. McConney and it showed future value." 967:3-25. Based on this, Weisselberg understood that future values were appropriately used under GAAP. 967:3-25.

380. Valuation methods such as the premium added to golf courses that were valued on a fixed assets basis were likewise disclosed on work papers provided to Mazars. 875:2-13.

381. That Mazars' management representation letter was signed by Weisselberg and included his representation that the SFCs were GAAP-compliant is not indicative of intent to defraud. The management representation letter was prepared by Mazars for Weisselberg to sign. 969:3-13. Mazars clearly did not assume the valuations provided were all GAAP-compliant, inasmuch as Mazars included disclaimer language in their compilation reports and approved the notes detailing extensive GAAP departures.

382. Further, Weisselberg testified that he was unfamiliar with GAAP. While Mazars never limited the number of exceptions to GAAP that may have been included in a SFC,

Weisselberg "relied upon the Mazars firms to understand GAAP" and to understand what exceptions to GAAP were included in the SFCs. 854:21-856:5.

383. Flemmons' testimony confirms that Weisselberg's reliance on Mazars was appropriate and that Mazars had a professional responsibility to understand valuations, identify apparent deviations from GAAP, and address them appropriately. 4286:9-22, 4391:23-4392:9; 4296:13-4297:14.

384. That Weisselberg was notified Forbes was inquiring about a potential discrepancy in the Triplex square footage likewise does not indicate an intent to defraud. Weisselberg testified that the discrepancy went unnoticed because the Triplex was part of the "other assets" category of the statements and he considered it to be "relatively" "non-material" when compared to other larger assets such as commercial buildings and golf courses. 809:4-810:2.

385. Weisselberg considered the Triplex error to be practically de minimis relative to President Trump's net worth because the commercial aspects of Trump Tower were prioritized over the Triplex in the SFCs. 817:20-25; 823:17-22. Weisselberg did not immediately change the 2016 SFC or refrain from submitting a representation letter to Mazars after contact by Forbes because he believed the square footage issue would not be material to the preparation of the SFC. 828:12-829:11.

386. In Weisselberg's mind there was no need to immediately adjust the value of the Triplex because it was not material. 859:6-21. Even if Weisselberg were mistaken, there is no evidence that he refrained from correcting the valuation because he thought it would extract an advantage from lenders. Importantly, after some time passed AW had someone at his office go back and check the offering plan to determine the correct square footage and the square footage

of the Triplex was corrected in the 2017 SFC. 828:25-829:11; PX-758. The change in square footage resulted in a decrease in value to the Triplex. PX-758.

387. That Weisselberg knew cash in the Vornado partnership accounts was not accessible without the partnership's consent likewise does not indicate an intent to defraud. Weisselberg relied on Mazars to tell him whether including that portion of cash in the SFCs was acceptable under GAAP. 940:2-16.

388. Weisselberg does not recall underwriters or insurers ever being told that appraisals were obtained to derive the values of assets listed on the SFCs. 953:24-954:12. He recalled that Markarian was told that summaries of comparable for Manhattan properties were provided to McConney and Birney, who would then take capitalization rates from those comparables to derive their own computation. *Id.* Weisselberg explained that there was no need to spend hundreds of thousands of dollars on appraisals unless it was required for some reason, such as to obtain financing; therefore, it was inaccurate for Markarian to say that appraisals were performed on the subject properties. 955:3-956:1.

389. Weisselberg testified that year after year, insurers and sureties were satisfied with taking a day to review the SFC, instead of taking copies of the statement with them. 1187:11-19.

390. Weisselberg's demeanor was candid and forthcoming.

391. Weisselberg's testimony was corroborated by witnesses called by NYAG, including Defendant McConney, Patrick Birney, Donald Bender and William Kelly, and by Flemmons' expert testimony.

392. Weisselberg's testimony was not rebutted by any other witness.

393. The Court finds Weisselberg's testimony was credible.

394. The evidence adduced by Plaintiff is insufficient to support a finding that Weisselberg had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

3. The Record Evidence Does Not Support a Finding That McConney Had Intent to Defraud

395. McConney became Controller for TTO when Weisselberg was promoted from controller to Chief Financial Officer and reported to Weisselberg. 581:9-25.

396. McConney retired from TTO on February 25, 2023, and received a severance package of $500,000. 582:9-25.

397. McConney is not a CPA. 4900:23-4901:1.

398. Mazars prepared the 2011 to 2017 SFCs, and McConney worked on the backup for the statement. 583:1-12.

399. McConney was primarily responsible for the valuations that went into the statement from 2011 to 2016 or 2017 when Patrick Birney took over, at which point McConney had little to do with the statement. 583:13-584:7

400. McConney had minimal involvement in the 2021 SFC and does not recall having a call with Donald Trump Jr. and Eric Trump about reviewing it. 5080:12-21; 5082:1-13; 5083:4-5084:18; 5088:11-25.

401. McConney would gather information needed to prepare the SFC and input that information into the Jeff Supporting Data spreadsheet, and the valuation methodology dictated what new information was needed each year. 588:1-589:5.

402. McConney confirmed that he made a few mistakes and oversights in compiling the Jeff's Supporting Data, including the square footage of the triplex, the comparables for the

triplex, and missing that the Cushman appraisal referenced the Dean & DeLuca rent value that made valuations increase, but other mistakes made valuations go down. 702:2-704:3.

403. McConney stated that Bender was involved in everything and was effectively an extension of TTO's accounting department. 4908:8-4909:5. It would not have been possible for the accounting department of TTO to operate without Mazars' assistance. 4921:11-14.

404. Bender was McConney's principal point of contact at Mazars and anything they needed accounting help for, they would go through Bender. 4919:22-4920:4.

405. McConney stated that Bender had access to any information that he wanted or asked for, and he never hid any information from Bender. 4913:7-4915:2, 4955:2-4956:3; 4957:3-5.

406. McConney provided the Jeff Supporting Data spreadsheet to Bender in September or October of each year along with the backup for the valuations. 4926:4-25. Bender would then send McConney and Weisselberg a draft, they would review it back and forth, and Weisselberg would tell them when it was final. 4917:22-25. Bender would then ask questions and ask for additional information as necessary. 4927:1-4928:5.

407. McConney could not remember a time he did not make a change Bender requested, and he never ignored a request for information from Bender. 4930:9-15; 5107:9-24; 5108:8-12.

408. Bender reviewed the information in the footnotes and then McConney re-reviewed it. 4935:5-19.

409. The record is devoid of any evidence that Bender ever spoke to President Trump about the preparation of the SFCs.

410. McConney relied on Mazars to determine whether the notes were consistent with the supporting data and appropriately disclosed material information. 4943:11-24.

411. McConney discussed the selection of cap rates for Trump Tower valuation with Bender. 4996:1-25, 4998:1-9; 4998:15-4999:16.

412. Mazars confirmed the information in the supporting data and examined the documents that McConney sent to get to the values he used. 4943:10-25; 4944:1-24.

413. Mazars had knowledge of the rent-regulated apartments in the Trump buildings, and McConney provided them with this information through rent rolls and other information requested. 4960:24-4961:7; 4962:1-4963:20; 4970:22-4971:13; 4972:5-9; 4983:23-4987:3; 4987:15-23; 4988:1-10; 4990:11-4991:10; 4992:18-21.

414. Ivanka Trump's right to purchase Penthouse 20 was disclosed to Mazars. 4989:20-4990:4.

415. McConney stated that certain golf course properties had a premium added to them, which were disclosed to and not contested by Mazars. 5022:11-19; 5024:22-5025:10; 5028:3-5029:14; 5035:13-5036:11.

416. McConney disclosed to Mazars where a minority of the property was owned and adjusted the values accordingly, and Bender specifically asked for partnership tax documents. 5005:14-5008:10; 5010:2-15; 5010:19-5011:4.

417. McConney sent Bender documents that McConney and/or TTO relied on in completing valuations. 5032:5-13; 5034:2-24.

418. Kevin Sneddon, who was running Trump International Realty at the time, sent McConney an email which included a statement that the triplex was 30,000 square feet and that he relied on it, as he believed Sneddon knew the property better than he did. 5003:8-22.

419. When valuing Mar-a-Lago, McConney did what he could to find comps for the property, which was difficult due to its unique nature. 5018:22-25; 5021:17-21.

420. McConney used the value from the 2015 appraisal of Doral for the valuation of Doral, as Weisselberg instructed him to do so. 5030:16-24.

421. McConney would not always use appraisals as the baseline for his valuation because "[j]ust because it is an appraisal [] doesn't mean it's going to properly reflect the value of that property." 5031:5-17.

422. McConney used the information provided by George Sorial or Sarah Malone to value the Aberdeen property. 5037:11-5038:5.

423. McConney used information in Larson's report to come up with his valuations or Larson would assist with coming up with cap rates. McConney had telephone conversations, for which he noted the date on the supporting data spreadsheet, with Larson. 4938:18-4943:9; 4973:19-4976:5; 4995:16-22; 4996:1-4997:10; 5016:14-22; 5016:23-5017:22; 5018:5-10.

424. Larson provided him with comparables via email on September 19, 2012, to value the triplex, and he and Weisselberg determined to use the upper end of that range. 634:13-639:20.

425. Larson also provided a generic market report, which was used for 40 Wall Street in the 2012, 2013, and 2014 SFCs 659:25-668:2.

426. McConney relied on Larson for 40 Wall Street cap rates but came to different conclusions than Larson's appraisals. 675:8-681:22; 690:9-693:18.

427. McConney understood that the SFCs had to comply with GAAP but there are many ways to calculate ECV. 629:24-630:19.

428. McConney felt good about the work he did on the SFCs, he had no problems with his work and he never intended to mislead anyone or be inaccurate. 5041:22-5042:4.

429. There is no evidence in the record that McConney intended to mislead or defraud anyone.

430. McConney's demeanor was candid and forthcoming.

431. The Court finds McConney's testimony was credible.

432. McConney's testimony was corroborated by witnesses called by NYAG, including Defendant Weisselberg, Defendant Eric Trump, Patrick Birney, and Donald Bender, and corroborated in part by Douglas Larson,

433. McConney's testimony at trial was not rebutted by any other witness.

434. The evidence adduced at trial is insufficient to support a finding that McConney had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

4. Defendants' Expert Witnesses Further Demonstrate that No Defendant Had an Intent to Defraud, and the Testimony of NYAG's Purported Expert Witness Should be Disregarded in Its Entirety

a. Any Deviations from GAAP in the SFCs Were Disclosed to the User by Means of the Highest-Level Disclaimer Suggested by the AICPA

435. The unrebutted and unrefuted testimony adduced at trial establishes that the compilation report and notes to SFCs form an integral part of the statements, must be considered as one document, and are intended for the users of the SFC. 4338:8-4339:3; 6251:25-6252:9.

436. The very first note to each SFC provides in pertinent part:

> "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions

and/or estimation methodologies may have a material effect on the estimated current value amounts."

See e.g., PX-787 at 6.

437. As set forth above, the U.S. accounting system permits the issuance of financial statements that deviate from GAAP if the departures are adequately disclosed.

438. The AICPA suggests highest-level "user beware" language that warns the user that GAAP **departures** are of such significance that the reliability of the financials is in question. 4514:7-19, 4297:21-4298:1.

439. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFCs from the year 2011 through 2020. 4295:8-14.

440. There is no evidence of any GAAP departure in the SFCs that was not adequately disclosed in the accountants' report or notes to the financials, or that was not readily apparent to Mazars in the supporting data. 4434:24-4436:3.

441. Disclaimers are provided to ensure that the user fully understands the limitations of the SFCs. The benefit of the disclaimer inheres to the user and not the preparer. 6264:7-20. However, sophisticated lenders will already be aware of the limitations of an SFC. 6256:2-16. The reason is that accounting rules are often at odds with economic principles due to GAAP limitations, but users are interested in economic values, not accounting values. 6239:3-6240:23.

442. The warning that "the accompanying notes are an integral part of this financial statement" cautions a user that it must consider the information in the footnotes. 6251:25-6252:12; PX-787.

443. The warning that "considerable judgment is necessary to interpret market data" cautions a user that the valuations are subjective, and it should evaluate whether the stated valuation meets its needs. 6252:13-6253:12.

444. This is also consistent with President Trump's understanding of the purpose of this disclaimer clause—to warn the user "very strongly, do your own due diligence. Do your own work. Do your own study. Don't take anything from this statement for granted. You could look at the statement, but you must do your own analysis and due diligence." 3551:1-14.

445. The notes to the SFCs, broad disclaimer language and the accompanying Mazars's independent accountant's compilation report—both of which travel together and are part of the same document—provide important information in sufficient detail to put users such as DB of the SFC on complete notice of their limitations. 6339:25-6343:25.

446. The notes to the SFC warn users that failure to read and consider the information in the footnotes will be hazardous to the user's financial health similar to the Surgeon General's warning on a pack of cigarettes, putting users on notice that the valuation of the SFCs are subjective and that users should not rely on the raw data contained within the SFCs. 6252:4-6255:20. This warning is put in place for the user, not the preparer—similar to how a warning on a cigarette box is for the smoker, not Phillip Morris. 6259:22-6260:9.

447. The notes and disclaimers in the SFCs are unusually detailed and transparent, even more so than similar disclosures provided by public companies that are under more stringent disclosure requirements than private companies, such as the Defendants. 6285:16-6286:10.

448. Additionally, Mazars had a responsibility to advise TTO of any additional GAAP disclaimers that became evident to them. 4334:4-18.

b. Flemmons Testified that Defendants Properly Relied on their Accountants, Who Were Required Under the Professional Standard to Understand and Evaluate the Methodologies Used in the SFCs and to Address Any Deviations From GAAP

449. The AICPA requires that an accountant performing compilation services is required to read the financial statements that are being compiled, understand the methods that are being used to develop estimated current values as reported in the financial statements, and to evaluate the appropriateness of those methods. 4286:9-16, 4296:13-4297:14, 4304:20-4305:14; DX-950 at 21.

450. To the extent an accountant uncovers or discovers a particular accounting treatment that is contradictory to GAAP, the accountant is required to seek to resolve the discrepancies or, if not resolved, modify the standard report and include reference to those exceptions in the accountant's report. 4286:17-22, 4296:22-4297:14, 4305:15-4307:1; DX-950 at 22.

451. Mazars and Whitley Penn were obligated under the professional accounting standards for compilations to (1) evaluate the appropriateness of the valuation methodologies used by President Trump and whether the disclosures contained within the SFCs were consistent with the underlying support and (2) respond to any obvious misstatements or differences between the accounting that was provided to them and GAAP. 4344:4-18, 4346:16-22, 4376:17-4377:14, 4382:3-11, 4391:11-21, 4407:17-4408:11, 4429:1-17, 4516:1-15.

452. Defendants relied on their outside accountants to respond to any obvious GAAP departures apparent from the support they provided with their valuations. Given the professional standards, it was reasonable for Defendants to do so. 4392:6-9.

453. Flemmons identified several very apparent GAAP departures in the ECVs and supporting documentation that would have been equally visible to Mazars and Whitley Penn. 4347:25-4348:24, 4374:14-22, 4375:9-11, 4414:11-16, 4522:16-4523:2.

454. There is no record evidence of any GAAP departure that would not have been apparent to Defendants' outside accountants from the support provided. 4435:18-4436:3, 4442:3-8.

455. While an accountant performing compilation services must understand the valuation method selected and whether it comports with GAAP, he would not expect to receive supporting information for amounts not reflected in the SFC. 4325:7-21.

456. A compilation does not entail seeking multiple valuation scenarios or assisting the client with selecting the method to use. 4327:10-4328:12. It is perfectly appropriate under GAAP for a filer to prepare multiple valuations for the same asset and deliver to the compiler only one valuation. 4523:4-4524:3, 4480:13-4481:3.

457. Requesting appraisals that were not actually used to report values in the SFC is inconsistent with professional standards. Donald Bender's ("Bender") claim that he made such requests, (see infra, ¶¶ 572-573), is not professionally plausible. 4325:14-4326:13, 4327:8-21, 4478:20-4479:23.

458. To the extent that Bender stated, contrary to Flemmons' testimony, that Mazars had no responsibility to assess the appropriateness of valuation methods in an SFC, the Court credits Flemmons. In fact, Mazar's general counsel William Kelly testimony was consistent with Flemmons, as he also acknowledged that Mazar's had an obligation to (i) read and understand supporting data to each SFC; (ii) understand the basis for valuation of each asset on the SFC; and (iii) confirm that the valuation methodology selected by the preparer was an

appropriate measure of estimated current value. 2150:4-19. Bender's testimony that he expected any documents related to valuation to be shared with him is inconsistent with his disclaimer of responsibility.

459. Flemmons had no discernible motivation to fabricate his testimony or tarnish his formidable professional reputation.

c. Bartov Testified that there were No Indicia of an Intentional Misstatement in the SFCs

460. Price is an objective measure of value derived from a market transaction, and valuation is an opinion on price. 6244:11-13, 24-25.

461. There are several different definitions of value that will result in different opinions about price. 6246:12-20. There are also different implementation guides or models for each definition and different underlying assumptions for each model. 6246:21-6247:7.

462. A difference in valuation does not evince anything wrong with a particular valuation. 6249:17-22.

463. From an accounting perspective, there were no indicia of material misstatements in the SFCs. 6221:19-25, 6229:9-10, 6393:8-22.

464. A misstatement is the difference between what is reported and what is required under GAAP. 6347:24-6348:7.

465. The only way to determine a GAAP violation is by reference to a specific provision of GAAP. 6238:25-6239:2.

466. The value of the triplex was misstated, as well as a few other allegations in NYAG's complaint. 6224:14-22, 6349:1-3. However, those misstatements were inadvertent. 6349:4-7.

467. The triplex also could be reasonably omitted from a credit analysis because it is not an income-producing asset. 6292:16-6293:8.

468. The complaint did not otherwise contain any references to specific provisions of GAAP that were violated. 6222:9-14.

469. For example, the SFCs do not separately include brand value of the overall Trump name. 6242:14-16, 6243:8-10, 6243:24-6244:6. However, including the effect of brand name on the value of a tangible asset does not violate GAAP. 6441:8-10.

470. 3-4% of companies report errors in audited financial statements. 6225:1-5. The Federal Reserve advises banks not to rely on SFCs because, in part, they are unaudited and likely to contain errors. 6225:6-9.

471. From an accounting perspective, the number one indicator of fraud is concealment. 6225:20-21. Other important indicators are falsification of material provided to accountants, forged documents, and false transactions. 6411:15-6412:4. There is no evidence of any of these factors. 6225:20-6227:21.

472. The more information provided, including the assumptions underlying valuation, the collateral's physical attributes and location, make it less likely that the preparer intends to commit fraud. 6339:9-17, 6343:19-25.

473. GAAP is not designed to give a user the true economic value of an asset, and most users are interested in economic values, not accounting values. 6240:10-11, 17-22.

474. In fact, it is not unusual to have a discrepancy in value where the user and preparer employ different definitions of value. 6299:15-17.

475. Price is the only objective measure of value; valuation is an opinion on price, making it necessarily subjective. 6244:9-6245:4.

476. The reason that valuations are subjective is that there are a variety of definitions of value, different valuation models, and different assumptions to choose from; moreover, valuations on personal financial statements differ from other types of valuations in accounting. 6245:5-6248:4. Differences of opinions in value does not indicate that the values in the SFCs were inaccurate under GAAP. 6248:18-22.

477. ASC 274 uses a unique definition of value, Estimated Current Value, which is only applicable to personal financial statements and affords preparers broad latitude in choosing methodologies and assumptions to derive value. 6245:15-6246:4.

478. Estimated Current Value is derived from the perspective of the SFCs preparer based on planned courses of action, or the long-term vision for the asset, whereas a market value definition, like fair value, is an of value from the perspective of market participants based on contemporaneous market conditions. 6279:3-6283:5.

479. Estimated Current Value is what an informed buyer and seller "could" hypothetically exchange an asset for some-day, while the Fair Value is what an asset "would" be exchanged for between "market participants"—these differences could result in substantial valuation differences. 6279:3-6283:5.

480. Here, the discrepancies between the SFCs and values included in the credit reports were "expected" based on "different definitions and different approaches." 6291:10-18; 6339:18-22. For example, DB relied on liquidation values, which are consistently lower than ECV. 6422:23-6423:16.

d. Eric Lewis's Testimony is Not Credible

481. Lewis is a "Professor of Practice" at Cornell University. 6646:7-10.

482. Lewis received his Ph.D in Engineering Systems with only a concentration in accounting. 6639:2-6.

483. Lewis is not a CPA. 6645:13-14. His only exposure to compilation statements was as a the most junior member of an accounting staff in the early 1990s. 6653:10-13.

484. While Lewis testified that a result must be compared to the definition of ECV in order to be an ECV, the implementation guidance does not contain such a requirement. 6695:3-7, 6743:5-8, 6745:8-19.

485. The issuer has ultimate responsibility for determining ECV and complying with GAAP. 6697:1-7, 6702:10-17, 6709:16-19. This allocation of responsibility is typically contained in an engagement letter and a management representation letter. 6710:18-6711:1.

486. However, if the accountant reviewing the statement notices a GAAP departure, they must bring the issue to the preparer. 6706:11-15, 6716:3-11.

487. Lewis, demonstrating a lack of accounting knowledge, misstated the definition of ECV. Nonetheless, he agreed that there is a distinction between an "amount at which [an] item ***could be*** exchanged" and an "amount at which [an] item ***would be*** exchanged." 6684:13-17, 6735:14-6736:9.

488. ASC-274 uses "could," which implies a transfer at some point in the future. 6739:8-6740:2.

489. Lewis's testimony was not proper rebuttal testimony and should have been elicited during Plaintiff's case-in-chief. 6681:20-6682:2. Lewis's testimony is not admissible.

490. The testimony of Bartov, Chin, Flemmons, and Bender meaningfully rebuts Lewis' testimony.

491. Lewis's testimony also directly contradicts the testimony of William Kelly, General Counsel of Mazars, that "Mazars has an obligation to understand the basis of valuation for each asset listed in" the SFC and "confirm that the valuation method is consistent with the definition of" ECV. 2150:9-15; 6749:23-6751:3.

492. Lewis failed to offer any credible opinion to rebut Flemmons, Bartov, Kelly or Bender concerning materiality, the obligations of an accountant performing a compilation report, or the obligations of the preparer of a statement of financial condition. Additionally, Lewis offered no real world or identifiable academic analysis to support his testimony.

493. Lewis's testimony is therefore disregarded in its entirety.

5. Defendants' Valuation and Appraisal Experts Further Demonstrate that Defendants Did Not Have an Intent to Defraud.

a. Dr. Steven Laposa Testified that Appraisers Can Reach Significantly Different Valuations in Exercising Professional Judgment

494. Doctor Steven Laposa ("Laposa") obtained his MBA in real estate and construction management from the University of Denver in 1989 and a Ph.D. from the University of Reading. 4572:20-23.

495. Laposa has over 31 years of experience in real estate valuation analytics and valuation. 4588-89:25-4.

496. Laposa was deemed an expert in real estate, including real estate research, economics and processes. 4598:17-25.

497. Appraisal and real estate valuations are more of an art than a science because of the subjectivities involved in determining a property's value. 1629:25-1630:14; 4601:2-11.

498. Examples of subjectivities in valuing property include selection of comparable properties, adjusting the comparables selected to the size and age of the subject property being

valued, the location of the property being valued. 4620:10-19. Further, appraisers have biases that are often challenged by other similarly experienced appraisers. 4621:10-22.

499. Assumptions and methods underlying appraisals are subjective, as is the "process of collecting all the data that is necessary to eventually determine an estimate appraised value." 4601: 6-11.

500. The purpose of the valuation or appraisal could lead similarly experienced professionals to disagree. 4610:9-14.

501. For instance, lender-ordered appraisals tend to be "conservative" because lenders are always looking at the downside. 4610:23-4612:19. In lender-ordered appraisals, appraisers often use more conservative tactics like using low rent growth rates when the market may be dictating a higher rate. 4612:3-16.

502. Lenders do not have the same valuation timeline as developers when estimating future value of a property because they are focused on a near-term exit strategy. 1736:1-7.

503. Larson, Plaintiff's own appraisal witness, conceded that, when seeking appraisals, lenders are seeking to know what their worst-case scenario looks like if they need to liquidate the property in the event of default. Further, Larson conceded lenders do not have the same view as President Trump regarding what a property could be worth in the future. 1735:22-1736:7.

504. Similarly experienced appraisers can disagree about the value of the same property at the same moment in time because of the multitude of subjectivities such as training, education, bias, knowledge of the market, purpose of the appraisal or valuation, and outlook on the market. 4608:9-23. Larson, Plaintiff's own appraisal witness, agreed with this when he agreed that two equally qualified appraisers could appraise the courthouse he was sitting in based on the same data at two different figures. 1630: 4-8.

505. Disagreement among appraisals does not necessarily indicate that one of the valuations is inaccurate and it is very common to have appraisers and non-appraisers disagree about the value of real property. 4609:1-12,4613:23-4614:9. This is so, because appraisal "is an art not a science." 1629:25-1630:3. Two equally qualified appraisers could appraise the same property at the same moment in time based on the same data at different values because one appraiser may give more weight to some subjective factors the other appraiser might give less weight to. 1630:4-12.

506. Appraisers exercise judgment in determining property value. 4621:23-4622:6. Choosing capitalization and discount rates, which were both used in determining various of the property values in the SFC and the appraisals discussed in trial, are "pure example[s] of subjectivity." 4657:4-16.

507. Plaintiff's view that appraisal values are "true" values and the allegation the values are inflated is flawed because, unless explicitly stated in the appraisal, appraisals do not account for investment value and therefore only account for market value. 4630:16-4632:10.

508. Appraisers conduct investment value appraisals for real estate developers. 1621:16-19.

509. Investment value appraisals are based on future assumptions and the investment value differs from market value. 1621:20-1622:2.

510. Valuation professionals regularly encounter disparate property values for the same property, including differences in value in the hundreds of millions of dollars. 4635:2-11. In situations like that, a valuation professional is not surprised by the disparate figures because the professional must determine what subjectivities each appraiser relied on. 4636:1-22.

511. The process of valuing properties is further complicated with "trophy properties" because trophy properties are unique in the marketplace and attract a limited pool of high-net-worth investors. 4665:22-4666:22. Valuing trophy properties requires looking at comparables for similar property around the world, rather than in the subject property's immediate vicinity. 4670:18.

512. As an example of the highly subjective nature of property valuations and appraisals, with respect to 40 Wall Street, Laposa was not surprised the appraised values had gone from $260 million to $540 million in less than three years but was confident it was due to rent growths. 4650:12-16, 4654:22-23.

513. Larson, the appraiser in the 2011 and 2012 40 Wall Street appraisals used a very conservative 3% rent growth figure to forecast rent growth in 2012, which, in part, led to an undervaluing of 40 Wall Street by approximately $114 million based on the actual net operating income data in 2015. 1685:2-6. This conservative approach is supported by the fact Dr. Laposa had never seen a 3% rent growth rate in his over 30 years of experience. 4641:22-4642:3.

514. Laposa's credible testimony was not rebutted; rather, it was corroborated by Plaintiff's own appraisal witness, Douglas Larson and Defendants' other witnesses like Chin and Witkoff.

b. Steven Witkoff Testified that Developers Often View Property Differently than Appraisers

515. Expert witness Steven Witkoff ("Witkoff") is a developer and founder of the Witkoff Group, a holding and management company that owns and develops real estate in different sectors of the real estate market. 4171:11, 4173:22-4174:1, 4175:3-6.

516. Witkoff was deemed an expert in real-estate development. 4189:17-18.

517. None of Witkoff's testimony was rebutted.

518. Real-estate developers consider various factors when valuing property. 4186:24-4187:8.

519. Real-estate developers assess the value that can be derived from the use of a property; in other words, they look at the "return on investment." 4191:21-4192:2.

520. Developers also consider the different opportunities in developing the property, such as turning a parking lot into a hotel, thus influencing the value of the property. 4192:3-17.

521. In this forward-looking perspective, developers consider the direction of the market and rent growth. 4196:14-18.

522. When valuing a building, for example, developers take into account the rent roll, cash flow, vacancy, tax forecasts, the office leasing market and the alternatives to leasing, whether the property can be converted to a different use, and potential exit strategies. 4196:11-18, 4198:6-24, 4222:9-4223:1. Potential uses for a property can include "[a]nything within the real estate spectrum." 4222:22.

523. In determining the value of 40 Wall Street, a developer would also consider cash flow, vacancy, other uses and location. 4223:5-20. Location is an especially critical factor in determining the use of the property as 40 Wall Street is "Main and Main for downtown" and downtown rental prices "are probably the equivalent of almost anywhere in New York today." 4223:14–19.

524. While Defendants would need the ground lessor's consent to convert 40 Wall Street to a condominium, ground lessors are typically passive. 4225:5-10. The requirement for ground lessor consent to convert 40 Wall Street is a constraint "[b]ut certainly not something that couldn't be overcome" and their decisions will be focused on strengthening the financial cash flow of the property. 4225:3-10.

525. Although appraisals are one of many factors that developers use to guide their valuations of a property, they are merely "guide post[s]," as there are "plenty of examples of appraisers not getting it right" because "[t]hey don't know the market well enough or what is trending in the marketplace." 4193:9–22, 4195:16–4196:3.

526. Witkoff's testimony is corroborated by Chin, Larson, and Laposa.

527. The Court finds Witkoff's testimony was credible.

c. Fredrick Chin Testified that there is a Distinction between "As If" and "As Is" Valuations in Appraisals

528. Fredrick Chin ("Chin") was deemed an expert in real-estate market analysis, real-estate valuation, and real-estate operations. 5905:19-5906:16.

529. Chin has over 40 years of experience as a real-estate professional and holds, *inter alia*, MAI and CRE designations. 5898:25-5899:16.

530. Chin's testimony was not rebutted and was instead corroborated by the testimony of Laposa, Witkoff, and Larson's testimony on cross-examination.

531. Appraisal information either lags or is incongruent with the market. 5911:2-21.

532. Appraisals are based on historical transactions that occurred in a different market environment. 5911:2-11.

533. The type of and intended purpose of the appraisal can affect the bottom-line valuation. 5945:18-25. Market value, including information related to recent sales and other economic indicators, is commonly used for lender-ordered appraisals, because it provides the lender with information about what the collateral is worth in case of default. 5946:9-5948:6.

534. "As is" valuation connotes a condition at a specific date, often referred to as the market value, while "as if" valuation is akin to investment value, based on a condition to be completed. 5912:15-5915:2, 5919:24-5928:16.

535. Appraisals commonly refer to the "as is" value. Appraisers' value conclusions are based on historical information, and appraisers interpret projected income, occupancy, and market direction. 5914:6-8, 5915:13-19.

536. Developers, on the other hand, are focused on future performance and the evolution of the markets and properties. New projects utilize an "as if," or prospective, appraisal. 5916:13-22, 5917:19-5918:7, 5932:8-5933:10, 5934:15-23.

537. In determining "as if" value, developers consider the potential to build on the property, restrictions and encumbrances, demand, the market cycle, underutilization of the property, cost of capital, and interest rates. 5927:18-5930:5, 5934:24-5935:23, 5949:9-5950:16. A developer's market experience or expertise concerning the profitability of a property will affect the "as if" value. 5930:10-5932:3.

538. A buyer would also pay a premium to own and control a collection of real estate assets owned and operated under one umbrella--this is commonly referred to as "Enterprise Value." 5938:12-5944:25.

539. Here, there were differences of perspective of whether "as is" or "as if" valuations would apply, as the SFCs contained many "as if" valuations and NYAG used "as is" valuations. 5913:12-5914:2.

540. The 2011 and 2012 appraisals of 40 Wall Street reflected an extremely conservative "as is" value of the property, driven by flawed market rental rate assumptions, an inappropriate terminal capitalization rate, inconsistent per square foot results compared to market data, and a discounted cash flow analysis. 5951:14-5965:3; PX-1573.

541. Using the highest cap rate is relatively uncommon, and suggesting positive market trends without adjusting the cap rate is improper. 5956:15-5957:2, 5960:2-20.

542. Cushman's 2015 appraisal of 40 Wall Street, valuing it at $540 million, more appropriately evaluated the property in the context of market rental rates, market conditions, and actual property performance. 5961:16-21, 6019:24-6020:19; PX-118.

543. Although a 2015 Morningstar report valued 40 Wall Street at $261.5 million, it incorrectly applied cap rate to net cash flow instead of net operating income, the cap rate applied was too high, and the price per square foot was too low. 5961:22-5965:3, 6020:20-6021:5; PX-3186 at 40.

544. As to Seven Springs, the 2011 to 2014 SFCs reflected an "as if" valuation of that property, because there were plans to develop the property. 5983:5-22, 5965:4-5967:11.

545. The 2015 appraisal of Seven Springs was based on its "as is" value. 5998:19-5999:8; DX-1016.

546. As to Trump Park Avenue, which included rent-stabilized apartments, a 2010 appraisal conducted by the Oxford Group failed to consider the property's ultimate highest and best use, to sell the individual condominium units unencumbered by rent-stabilization. 5967:12-5968:24, 5994:17-5996:18, 6006:17-6007:17.

547. ECV, as used in ASC-274, offers significant latitude in terms of how real estate or assets could be valued. 6038:21-6039:6.

548. Chin's testimony is corroborated by Laposa, Witkoff, and Larson.

549. The Court finds Chin's testimony was credible.

d. Lawrence Moens Testified About the Uniqueness and Value of Mar-A-Lago Based on His Extensive Experience in the Palm Beach Real-Estate Market

550. Expert witness Lawrence Moens ("Moens") is a licensed real-estate broker. 6092:9-10.

551. Moens has 45 years of experience in Palm Beach real estate and has opined on the value of property in Palm Beach "thousands of time[s]." 6098:1-6, 6096:1-5.

552. There is simply no one in the Palm Beach, Florida real-estate market that has sold as much real-estate as Moens. 6094:8-11.

553. Even McArdle of Cushman & Wakefield testified that it is appropriate to rely on real estate brokers when valuing property, especially because real estate brokers have an appreciation for the local values of the land. 1986:9-16, 2029:7-19.

554. In fact, out of the twelve properties in Palm Beach that have sold for over $100,000,000 over the last few years, Moens sold ten of the twelve properties. 6094:12-24.

555. Moens was deemed an expert in the value of residential Palm Beach real estate. 6106:6-8.

556. None of Moens' testimony was rebutted.

557. Mar-a-Lago is an exceptionally unique and important property that is in a league of its own. 6111:1-14, 6115:2-10. Not only is Mar-a-Lago intracoastal, "It's on the Ocean, and it's connected by a tunnel underneath the road so that it's contiguous, so you have access to both the Ocean and the Intracoastal by way of the underground tunnel, which is rare in Palm Beach." 6111:10-14.

558. The parcel of land that Mar-a-Lago sits on is approximately 17.6 acres and the home is approximately 76,000 square feet. 6111:15-23.

559. Moens valued Mar-a-Lago between 2011 and 2021. 6109:5-6112:7; 6133:5-6135:1.[2]

[2] Moens also valued 1094 South Ocean Boulevard, 124 Woodbridge and 1125 South Ocean Boulevard, which abut Mar-a-Lago and are owned by President Trump, using the same method. 6141:15-6142:17; Demonstrative Exhibit DD6-2-4.

560. In performing his valuations, Moens considered various factors, including market conditions, comparable sales, the size and location of the property, and the quality of construction, considering, for example, the hand-painted tiles, the carved stone outside, the gold gilded ceilings, the hand carved cherubs on the doors. 6106:18-6108:9, 6116:4-12, 6133:5-13, 6134:7-6135:1, 6135:21-6136:10.

561. The assessment in taxable value has nothing to do with a property's selling price. 6108:1-4. This is consistent with Flemmons testimony that simply because the tax assessed value is $18 million would not preclude an ECV of $800 - $900 million derived from a different method. 4272:10 – 4274: His valuations for Mar-a-Lago during that time ranged from $655 million to $1.041 billion without memberships and $705 million to $1.215 billion with club memberships. 6121:21-6126:9. Below are Moens' valuations for 2011 through 2021:

Year	**Moens Value Without Membership**	**Moens Value With Membership**
2011	$655,000,000	$705,000,000
2012	$675,000,000	$725,000,000
2013	$660,000,000	$697,500,000
2014	$685,000,000	$735,000,000
2015	$720,000,000	$770,000,000
2016	$760,000,000	$835,000,000
2017	$790,000,000	$890,000,000
2018	$825,000,000	$950,000,000
2019	$865,000,000	$990,000,000
2020	$950,000,000	$1,075,000,000
2021	$1,040,000,000	$1,215,000,000

562. It would cost between $7,000 and $9,000 dollars per square foot to recreate Mar-a-Lago, due to the exceptional design and craftsmanship, including the inlaid stone and gilding. 6140:10-17.

563. Moens' valuations for 1094 South Ocean Boulevard during that time ranged from $9.7 million to $13.9 million without memberships and $9.8 million to $14.3 million with club memberships. 6142:10-6145:7.

564. Moens' valuations for 124 Woodbridge Road during that time ranged from $4.8 million to $7.9 million without memberships and $4.9 million to $8.3 million with club memberships. 6146:4-6148:7.

565. Moens' valuations for 1125 South Ocean Boulevard from 2017 through 2021 ranged from $19.2 million to $42.5 million without memberships and $19.4 million to $42.8 million with club memberships. 6151:1-6152:20.

566. The Court finds Moens' testimony was credible.

e. John Shubin Concluded that There is No Prohibition on Mar-A-Lago Being Used as a Single-Family Residence

567. Expert witness John Shubin ("Shubin") graduated from Harvard College in 1983, received a J.D. from the University of Miami in 1988, and is admitted to practice law in the State of Florida. 6043:9-17.

568. Shubin was deemed an expert in land-use planning, entitlement, and zoning. 6048:9-11.

569. None of Shubin's testimony was rebutted.

570. Shubin identified a variety of documents relating to Mar-a-Lago, including a title report and conducted a public records search for Palm Beach, and opined that all such documents must be considered in any analysis of permitted uses for Mar-a-Lago. 6050:15-6051:13.

571. Although Shubin was precluded from testifying as to his conclusions, his report was introduced as an exhibit to the trial record. 6072:21-6074:11; DX-1079.

572. At trial, Shubin took the Court through the documents that conclusively established that there is no prohibition on Mar-a-Lago being used as a single-family residence. DX-478, DX359, DX-360, PX-1013, DX-427, DX-429, DX484. These documents are briefly discussed below.

573. Shubin testified that the document entitled, The Mar-a-Lago Club: A Special Exception Use and Preservation Plan, which includes the materials that accompanied an application for a special exception to use Mar-a-Lago as a private club, is significant because it "identifies what uses occurred on the property and it's a commitment as to what uses will occur on the property . . . ." 6060:24-6061:3, 6061:16-21; DX-478.

574. Shubin read into the record excerpts of this document concerning the historical use of Mar-a-Lago, which includes entertaining, opening to the public, and using it as a private residence. 6062:8-6062:10; DX-478.

575. Mar-a-Lago is currently being used as a social club and as President Trump's residence. 6061:4-11.

576. Shubin also read into the record the relevant provisions of the Declaration of Use Agreement by The Town of Palm Beach, The Mar-a-Lago Club, Inc., and Donald J. Trump, dated August 10, 1993. 6062:11-6065:8, DX-359. Shubin testified that this document "reflects the intention of the parties to the agreement to agree to certain conditions related to the use of Mar-a-Lago in connection with the approval of the special exception application." 6062:14-24.

577. In reviewing the Deed of Conservation and Preservation Easement from Donald J. Trump to the National Trust for Historic Preservation, dated March 26, 1995 ("Preservation

Easement"), Shubin testified that this document is a commitment by President Trump to "preserve and conserve and to restore and agree to restore certain specific features of the Mar-a-Lago property." 6066:12-17; DX-360. Shubin further testified that this document "describes the circumstances under which future uses can occur on the property, alterations to the property can occur, essentially what can and cannot occur and what is the process for seeking an amendment to those conditions that are part [of] the preservation easement." 6068:7-13, DX-360.

578. Shubin also read into the record provisions from the Deed of Development Rights, recorded on October 17, 2002. 6068:14-10, PX-01013

579. Shubin read into the record the relevant provisions of the Rules of The Mar-a-Lago Club. 6075:10-6076:20, DX-427.

580. Shubin was also shown the Minutes of the Town Council meeting, held on February 9, 2021, which address various complaints by neighbors of Mar-a-Lago that President Trump is not permitted to reside there. 6077:2-11, DX-484.

581. Shubin then read into the record parts of John C. Randolph Esq.'s letter to the Mayor and Town Council of the Town of Palm Beach in response to the allegations of President Trump's inability to reside at Mar-a-Lago discussing how the matter of President Trumps entitlement to reside at Mar-a-Lago is actually a matter of whether he is a "bonafide employee of the club." 6078:4-6082:8, DX-429.

582. John C. Randolph Esq. attached to his letter a letter from John Marion Esq., on behalf of President Trump and The Mar-a-Lago Club, which states in relevant part:

> President Trump is the President of Mar-a-Lago Club, LLC (the legal owner of MAL), and as a corporate officer oversees the property. He is therefore a bona fide employee within the express terms of the Town's Zoning Code. As such, separate and apart from all of the other reasons outlined above, under the Town's own Zoning Code he is clearly entitled to reside there.

DX-429.

583. Shubin testified that the Town of Palm Beach took no action at the meeting with respect to President Trump residing at the property. Shubin further testified that they "simply chose not to agree with the position of the neighbors," and thus, "there has been no action taken against Mar-a-Lago subsequent to that meeting." 6083:6-19. Therefore, the evidence has established that the Town of Palm Beach is not prohibiting the use of Mar-a-Lago as a single-family residence.

584. The Court finds Shubin's testimony was credible.

f. Steven Collins Testified that GSA Adhered to Federal Regulations in Guidance in Awarding the OPO BSA

585. Steven Collins ("Collins") holds a Bachelor of Science in Civil Engineering from Northeastern University and is the Senior Managing Director in the Construction Disputes & Advisory group for Ankura Consulting Group LLC. 4531:13-16, 4533:25-4534:6.

586. He was deemed an expert in government contract procurement. 4541:23-4542:1.

587. In determining whether GSA complied with the procurement process in awarding TTO the OPO Contract and Lease, Collins reviewed the request for proposal ("RFP") for the OPO and TTO's Proposal in Response to the RFP. 4543:9-20; 4545:2-20, 4546:5-9; PX-1164.

588. The RFP stated that GSA followed the standards set forth in 48 Code of Federal Regulations ("CFR") 9.104-1. 4546:19-4547:19.

589. For the first factor, 15% of the total score, GSA asks the developer to demonstrate its experience, and that of its team, in relevant work. 4548:20-22, 4549:12-16.

590. For the second factor, 35% of the total score, GSA asks the developer to provide both a narrative plan and illustrations of its intended use for the project, including open space usage, elevations of the building, access, egress, how it will incorporate the historical factors of

the building for its intended use, the conceptual narrative, and written dialogue. 4548:20-21, 4550:3-8, 4550:18-21.

591. For the third factor, 15% of the total score, GSA asks the developer to provide its audited or GAAP-compliant financial statements. 4548:14-15, 4549:25-4550:2-22, 4556:15-17, 4551:20-23.

592. The fourth factor, 35% of the total score, GSA asks the developer how much it would pay. 4548:20-22, 4552:2-19.

593. In its July 2011 response to the RFP, TTO indicated that the financial statements submitted would include departures from GAAP. 4554:25-4555:7.

594. In September 2011, GSA asked TTO questions about the GAAP departures, and in December 2011, TTO answered those questions. 4557:4-8.

595. GSA's Source Selection Evaluation Board was assembled to review the proposals received for the OPO and select a preferred developer. 4559:6-4560:11, 4561:15-4562:9, 4562:17-4563:1.

596. In its Report and Recommendation, the Board addressed TTO's past experience as a qualified developer, particularly in the hospitality space; the scale of the projects, including large complex hotels; its experience with historical renovations and rehabilitations; and its strong financial offer to the government, among other elements. 4563:4-11, DX-431.

597. The Board ranked the Trump proposal as number two among the submitted proposals, scoring it as follows: factor one, 84/100; factor two, 92/100; factor three, 91/100; factor four, 97/100. 4564:9-16.

598. Under factor three, the Board noted its prior concerns regarding the financial statements' departures from GAAP and a lack of audited financial statements. 4566:11-23. This

establishes the Board was informed, of and understood fully, the limitations and scope of the financial statements submitted.

599. Under factor four, the Board noted that TTO offered a strong financial offer that was tiered, with a minimum based on percentage of annual revenue, and a potential upside based on percentage of profit. 4567:1-13.

600. Collins opined that GSA adhered to the FAR guidance and 48 CFR 109.9104-1 in awarding the OPO to TTO. 4567:19-4568:14.

601. Collins opined that there was no one factor was determinative of TTO being selected as the preferred developer. 4568:15-4569:9.

602. Collins's testimony was not rebutted by the testimony of any other witness.

603. The Court finds Collins's testimony was credible.

6. Fact Witnesses Called by NYAG Further Demonstrate that Defendants Had No Intent to Defraud.

a. Donald Bender Was Provided with the Access and Information Needed to Complete the SFCs

604. Donald Bender ("Bender") graduated with a Bachelor of Arts from Queens College in 1979 and is a CPA licensed by New York State. 104:6-11. Before his retirement, Bender was a partner at Mazars USA ("Mazars"). 104:11-18.

605. Bender worked with McConney, and Mazars did accounting work for DJT Holdings, LLC, DJT Holdings Managing Member, LLC, Trump Endeavor 12, LLC, 401 North Wabash Venture, LLC, Trump Old Post Office, LLC, 40 Wall Street, LLC, and Seven Springs, LLC. 108:15–112:18. Mazars was paid millions of dollars in fees. 2166:21-22.

606. Bender did "a little bit of everything" and "[w]hatever needed to be" done for TTO, including compiling the SFCs. 105:1-106:12.

607. Bender knew neither McConney nor Weisselberg is a CPA, and Bender was intimately familiar with the TTO's books and records. 316:19–317:25.

608. Bender stated that Mazars compiled but "did not prepare the statement." 113:2-12.

609. The SFCs were prepared in accordance with ASC-274. 285:17-20.

610. A private company is not required to follow GAAP. 314:3-315:5.

611. Without GAAP exceptions, the financial statements would be presented in a different format. 216:3-25.

612. Bender would ensure the numbers in the backup data and the numbers in the SFCs were consistent and would ask questions about the supporting data if anything bothered him or did not make sense. 116:16-117:8.

613. While TTO was responsible for making sure the statements complied with GAAP, determining the departures, and crafting the language, Bender informed TTO on multiple occasions that they needed to identify certain practices as GAAP exceptions and brought certain errors to their attention. 120:14-121:21, 129:2-131:14, 140:12-142:4, 162:23-24.

614. Mazars would also sometimes check the math on the SFCs. 156:13-23, 158:1-17.

615. Mazars also may have adjusted or revised the notes, but any changes were approved by TTO. 168:1-7.

616. Mazars relied on and used the AICPA audit guide for personal financial statements to the extent relevant. 510:2-12. However, Bender confirmed that the FASB Accounting Standards Codification replaced the AICPA audit guide in 2009. 573:5-574:11.

617. Section 2.03 of the AICPA guide states that "[a]t a minimum, however, the accountant should obtain an understanding of the methods by which the individual determined

estimated current values of significant assets, and the estimated current amounts of significant liabilities, and consider whether the methods are appropriate, in light of the nature of each asset or liability." 511:1-11.

618. There is no one generally accepted way to determine ECV. 367:7-10 "[M]ateriality is not a concept" in compilations, and he understood that "[m]aterial means important, big." 173:4-22.

619. The valuation methodology for assets was both disclosed to Bender and contained in the Jeff Supporting Data. 383:25-383:6, 386:3-387:15.

620. Bender did not notice that any SFCs failed to disclose the methods used to determine ECV with respect to the assets listed on the SFCs. 400:5-11.

621. Bender confirmed that every time he went to TTO to have a discussion about a GAAP concern, they complied with his suggestion. 551:14-552:4.

622. Bender looked at how the largest assets were valued in the SFCs and did not have a problem with the methods used. 568:10-569:19.

623. Weisselberg affirmatively consulted Bender regarding certain GAAP exceptions, suggesting that other disclosures be referenced as departures, which were resolved to Mazars' satisfaction. 324:14-19.

624. Bender missed the change in square footage of the triplex. 333:3-334:10.

625. Mazars did not perform any procedures to determine if valuation for Trump Tower was appropriate. 238:3-16

626. Prior to 2020, Bender could not recall disagreeing with the methods used to determine ECV other than the property at 57th Street, which was subsequently revised to his satisfaction. 393:9-21.

627. Bender did not determine that any assets were presented at inappropriate value for the 2011 to 2020 SFCs and did not notice a failure to disclose the methods used to determine ECV in any year. 394:7-25 – 400:1-14; 410:5-25 – 411:1-23.

628. In his opinion, the SFCs did not fail to disclose the methods used or the estimated amount of loans or liabilities or present inappropriate values for Trump Tower, Niketown, 40 Wall Street, Trump Park Avenue, club facilities, Trump Palace, Trump Parc, Trump Parc East, Trump International Hotel, Seven Springs, partnerships and joint ventures, Trump International Hotel Law Vegas, Miss Universe, or any other asset. 426:16-439:25.

629. While Bender ultimately realized he was missing certain appraisals, he also admitted that he had intimate knowledge of and full access to TTO and should have noticed any errors. 303:6-17.

630. It was not until the Zoom meeting Bender had with the Manhattan District Attorney's Office that he had any concern about the work he had done for TTO. 571:7-11.

631. Bender's demeanor was not forthcoming, as he appeared to be attempting to minimize the level of his involvement as the primary outside CPA for TTO and the only CPA involved in any way in the SFC process.

632. The Court finds Donald Bender's testimony was credible in part.

633. Donald Bender's testimony was contradicted in part by McConney, Weisselberg, Sherri Dillon ("Dillon"), William Kelly, and Jason Flemmons.

634. William Kelly, General Counsel of Mazars, confirmed that Mazars had obligations to read and understand the supporting data provided in connection with preparing the compilation of a SFC; understand the basis of valuation for each asset listed in the SFC; confirm that the valuation method is consistent with the definition of estimated current value; and confirm that the notes to a SFC are consistent to the supporting data. 2150:4-20.

635. Dillon testified that she would keep Bender apprised of the steps she took on appraisals and conservation easements since he "would have needed to have been aware of the conservation easement throughout the process." 4146:20-24.

636. Dillon testified that she kept Bender apprised as he "was responsible for tax returns, preparing the returns. And we would be, around this time, watching the revenues, expenses, and, you know, basically the overall income position in order to turn up – predict the tax positions by the end of the year," and "Bender was the one most familiar with where the tax position stood." 4156:7-4157:5.

637. Dillon also testified that she kept Bender apprised of the Seven Springs appraisal. 4159:20-4160:3. He would therefore have knowledge of the valuation discrepancies relative to Seven Springs.

b. Plaintiff's Own Appraisal Witness, Douglas Larson, Knowingly Provided Comparables, Capitalization Rates, and Other Information to McConney, Which McConney Used in Compiling the SFCs

638. Larson works at Newmark as an executive vice president and professional appraiser. 1558:18-1559:2. Prior to Newmark, he worked at Cushman & Wakefield. 1559:19-1560:8.

639. Larson is a certified New York real estate appraiser and specializes in office and retail. 1559:3-8.

640. Because anyone can do their own non-appraisal valuation of property, nothing prohibited President Trump from valuing his own properties. 1609:7-1610:22. Further, there is nothing illegal or unethical about valuing property without doing an appraisal. 1613:9-12.

641. Different similarly situated appraisers relying on their independent judgment could arrive at different conclusions based on the same data, as the appraisers may weigh the subjective factors, including growth rates for incomes and expenses, sales comparables, changes in cap rates, selection of markets, selection of discount rates, determining the highest and best use of the property, and real estate cycles, differently. 1628:1-1630:14, 1658:18-1660:9, 1728:10-25.

642. An assessed value is completely different from an appraised value for a property, and the fact that an appraised value is eight times greater than an assessed value does not indicate an attempt to mislead. 1636–1637, 1733:17-1734:1.

643. Larson agreed that naming rights have value in appraising a property. 1739:24-1740:1.

644. Different market assumptions and/or estimation methodologies can materially affect valuation. 1742:24-1743:25.

645. Clients can have input on an ultimate appraisal value. 1681:11-22.

646. Larson worked on appraisal reports prepared by Cushman & Wakefield for Capital One Bank for 40 Wall Street dated November 1, 2011, and November 1, 2012. 1599:5-23-1600:25; 1625:22-1626:18.

647. Larson and his colleagues inspected the property and reviewed market trends, market statistics, surveys, and data collected from public resources in discussion with other real-estate professionals in prior appraisals. 1563:8-1564:3.

648. The engagement letter listed two valuation approaches, the income capitalization approach and the sales comparison approach. 1564:7-12

649. Larson had previously appraised properties owned by TTO for lenders but had never appraised properties for TTO as the client. 1569:24-1570:16.

650. McConney's name was provided as the property contact for 40 Wall Street. 1572:18-1573:4.

651. To value a property based on the income approach, a net operating income needs to be calculated and the capitalization rate is applied and produces a value. 1565:5-11.

652. In the 2012 40 Wall Street appraisal, Larson employed a conservative approach when he used a 6% capitalization rate when the average based on the comparables he selected was 5.81%. PX-1435; 1665:6-16.

653. A similarly situated, reasonable appraiser could have arrived at a different, more favorable, capitalization rate from 2011 to 2012 for the appraisal of 40 Wall Street. 1655:14-1655:25.

654. Larson worked on an appraisal report prepared by Cushman & Wakefield for Ladder Capital for 40 Wall Street, dated June 1, 2015. 1560:9-1561:21.

655. The capitalization rate Larson used in 2015 was 4.25%, which was lower than the 6% capitalization rate he used in 2012. 1668:14-20; PX-118.

656. Larson claimed the appraisals completed for 2012 and 2015 for 40 Wall Street are both correct despite the fact that they differ by $280 million. 1729:1-1731:25. This establishes that valuation differences of hundreds of millions of dollars are not alone indicia of fraud or misstatement.

657. Larson agreed that it was an "assumption" that he was one of the outside professionals referenced in the Statement of Financial Condition, as he is not referenced by name. 1708:21-1709:15.

658. Larson agreed that the truest value for a property is what it can sell at, and it does not surprise him that an asset would sell for higher than its appraised value. 1737:1-1738:13.

659. The 2011, 2012, and 2015 40 Wall Street appraisals contained language restricting their use to the lender client the appraisals were prepared for. 1626:8-18; 1667:14-17; PX-118; PX-1435; PX-1573. TTO was not authorized to use or rely on the 2011, 2012, and 2015 40 Wall Street appraisals.

660. Because the 2011, 2012, and 2015 40 Wall Street appraisals were prepared for the benefit of lenders and contained explicit language restricting the appraisals' use, TTO could not use or rely on the appraisals. 1666:9-18, 1627:1-4, 1622:3-6; PX-118, PX-1435, PX-1573.

661. In 2012, Larson appraised 1290 Avenue of the Americas for Deutsche Bank. PX-1824; 1714:18-1715:1. The appraisal continued the same language limiting the appraisal's use to solely Deutsche Bank. 1715:23-1716:14.

662. Larson routinely sent out e-mail blasts to a wide variety of real-estate professionals for marketing purposes, including reports on recent sales data. 1570:17-1572:17.

663. McConney, who Larson knew was a recipient of his e-mail blasts, would call him periodically to talk about sales and market conditions. 1685:15-22.

664. Larson knew McConney was seeking market information. For instance, he gave McConney Robert Farwell's name so that he could obtain capitalization rates for the San Francisco property. 1725:7-1726:11.

665. On August 5, 2013, Larson sent an email to McConney with a market report in response to McConney's request for information, which included a chart of office comparables. 1578:6-1580:1, 1685:15-20, 1686:5-10.

666. Larson then sent spreadsheets of sales to McConney. 1686:12-25.

667. McConney sent Larson emails on September 15 and 16, 2014, requesting market information for completing "his [McConney's] valuations." 1688:3-1689:6.

668. On direct examination, Larson was asked whether he worked with McConney in 2013 to determine the cap rate that he used to value TTO property, to which Larson responded he did not. 1689:11-16.

669. On cross-examination, Larson admitted he knew the information he provided to McConney in 2013 contained capitalization rates, which Larson knew McConney was using to value TTO properties. 1698:22-1700:3; PX-3184.

670. While Larson claimed he was not aware that McConney was citing him or his information as a valuation source, Larson knew he was providing market information to McConney so that McConney could use it to compile his valuations. 1580:15-1581:4, 1689:3-10; 1713:21-1714:17.

671. He also knew that McConney was using his (Larson's) capitalization rates to value TTO properties because McConney discussed valuations in his email. 1699:3-18; 1699:23-1700:3; 1701:2-13.

672. As another example, Larson confirmed that he provided information to McConney for the valuation of 40 Wall Street in 2014 and that the information cited is "most likely" from discussions he had with McConney and the market information he was sending McConney. 1702:1-25; 1703:1-7.

673. In a meeting with members of NYAG's office to prepare for his testimony, Larson was not shown the emails between him and McConney where McConney told him he needs information to prepare his (McConney's) valuations. 1720:12-1723:7.

674. The valuations in the supporting spreadsheets were McConney's valuations, not Larson's, although they were based on information knowingly provided by Larson, and McConney's valuations did not need to rely on the same data that Larson would have used. 1700:22-1701:13.

675. The Court finds Larson's testimony on direct examination related to his knowledge of whether he worked with McConney to assist McConney in valuing TTO properties was not credible. There is irrefutable evidence that Larson was aware of Mcconney's valuations and was complicit in providing McConney information to assist McConney in arriving at his (McConney's) valuations. PX-3184.

676. The Court finds Larson's testimony on cross-examination was credible and corroborated by the testimony of Laposa, Chin, and Witkoff.

c. Mark Hawthorn Testified About TTO's Reliance on Mazars and Compliance with the Independent Monitor

677. Mark Hawthorn ("Hawthorn") is currently employed at TTO as the Chief Operating Officer overseeing the operations aspect of Trump Hotels. 1414:5-7; 1417:9-11. Hawthorn is the most senior executive within the hotel division and reports directly to Eric Trump since the prior CEO, Eric Danzinger, left. 1417:16-18,1417:24-1418:4.

678. Hawthorn has a bachelor's and master's degree in accounting and is a CPA. 1414:11-16.

679. Hawthorn was not involved in preparing the SFCs. 5139:18-23

680. Hawthorn only became aware of the SFCs in 2021, and his personal involvement was very limited. 1426:11-23. He was made aware one of the statements in connection with the audits of SLC Turnberry Limited and Trump International Golf Links Scotland Limited. 1427:4-8. Although Hawthorn spoke to Patrick Birney to obtain information related to the audits, he never obtained a copy of the SFC and never requested a copy either. 1435:8–1437:1.

681. Hawthorn worked with Mazars and Whitley Penn on compilation statements for the hotel entities and was responsible for "oversight" of the reports. 1423:22-1424:7, 1425:6-10, 5153:18-23, 5155:16-24. Hawthorn was only directly involved in the financial statements for the hotel properties, not the commercial properties. 5156:25–5157:21.

682. Hawthorn "relied heavily on Mazars to understand what the current pronouncements are in accounting . . . [to] make sure that we are properly disclosing required disclosures that we[']re ensuring that we are properly recording entries appropriately and in accordance with the latest standards," since he is not a practicing CPA. 5144:18–5145:3.

683. Hawthorn would give Mazars the information "they would require to put together the compilation or for their audit, which would be the underlying financial statements of the entity, and any supporting backup, or schedules, or detail that they required so that they could conduct audit testing" and gave Mazars everything they asked for. 5145:9-18, 5154:6-13, 5156:2-7

684. Hawthorn testified that he prepared the compliance certificate for the borrowers under the DB loans. 5198:9-19; 5200:6-16; 5203:4-9; 5221:19-5222:5. In preparing the certificates, Hawthorn reviewed the 2018 issued financial statements and computed the DSCR. 5200:22-5201:10. He would "advise [Donald J. Trump Jr.] that the work had been completed,

that we were comfortable with it being submitted, and we would present it to [him] for signature." 5203:12-15.

685. After the guaranty was extinguished in 2014, there was no requirement to submit guarantor financials on the Chicago Loan. 5213:13-23.

686. However, TTO still submitted compliance certificates and SFCs under the Chicago Loan for 2016, 2018, and 2019. 5257:8–17, 5258:16–22, 5259:7–14.

687. In 2020, TTO increased the stepdown basis from zero to 10%, which reinstituted the net worth requirement of $250 million and obligation to provide guarantor financials for the Chicago Loan. 5206:2-16. There was no obligation to submit guarantor financials between July 2021, when the stepdown went back to 0%, and October 2023, when the loan was repaid in full. 5209:2-5214:12.

688. In 2015, a 10% step-down was put in place on the Doral Loan, requiring a guarantee of $12.5 million. 5218:17-19. The Doral loan was repaid in May 2022. 5219:14–15.

689. Pursuant to the terms of that loan, Trump Endeavor 12 submitted SFCs and DSCR calculations until the loan was paid off in 2022. 5218:16-5221:1. Hawthorn presented those financials to Donald J. Trump Jr. for signature. 5221:25-5222:5.

690. The OPO Loan followed a similar procedure. 5224:20-5225:19.

691. TTO no longer prepares SFCs for President Trump, as it is no longer required by any lender or constituency. 5141:20–5142:2.

692. Hawthorn first became involved with the Monitor, Judge Jones, in November 2022. 5230:6–8.

693. He has significant involvement with the Monitor and works with her regularly. 5230:2–5.

694. There is a "very cooperative, transparent, regular partnership," where Hawthorn meets regularly with Judge Jones and her team, and there is a data room to send the Monitor information. 5232:14–21, 5233:14–20

695. It has been a very thorough and detailed process, and TTO has been "transparent and open and happy to assist them in whatever information they need." 5233:21–5234:5.

696. Hawthorn is not aware of any request the Monitor has made with which the company has not complied. 5235:13–16. He also is not aware of any finding of fraud or impropriety by the Monitor. 5235:17–5236:10; DX-1073.

697. Regarding the Monitor's August 3, 2023, finding that reporting on intercompany loans was incomplete, Hawthorn explained that the company did not list an intercompany loan to the Trust because lenders are not concerned about intercompany loans, and it would also have to be listed as a liability. 5282:15–5284:20; DX-1057. However, as a compromise, TTO made a footnote on the schedule identifying the intercompany loan. 5284:6-11.

698. Regarding refundable golf membership deposits, Hawthorn explained that they were not disclosed because if included in liabilities, there is actually a greater asset value associated with them. 5285:14–5288:20. If one member leaves, a new member joins at a higher value, particularly on clubs where there are waiting lists. 5285:14–5288:20. In any event, the company said it would add a footnote on the topic. 5288:12-20.

699. Regarding annual and quarterly certifications, Hawthorn explained that while certain loans say that the financials should be accompanied by a signed certification, financials have historically been submitted without a manual signature. 5289:1–20; DX-1057. The company again agreed that going forward, they would add a signature line and have someone physically sign the statement. 5289:20-23.

700. Finally, regarding inconsistent reporting of depreciation expenses, Hawthorn explained that when the financial statements were prepared, the depreciation expenses were not yet finalized, and they are immaterial to the receiving party because it is a non-cash change. 5290:14–5292:19; DX-1057.

701. Defendants complied with Judge Jones, and to Hawthorn's knowledge, she has not uncovered any fraud or anything improper. 5235:13-5236:10, 5282:5-5284:20, 5288:15-20.

702. Hawthorn's testimony was not rebutted by the testimony of any other witness.

703. Hawthorn's testimony was credible.

d. Kevin Sneddon's Testimony About the Triplex is not Credible

704. Kevin Sneddon ("Sneddon") holds real-estate brokers' licenses in New York and Connecticut. 6601:8-19.

705. Sneddon worked for Trump International Realty from late winter 2011 through late winter 2012 as a managing director, where he brokered real estate on behalf of TTO and oversaw eight to ten salespersons. 6602:8-6603:4.

706. Sneddon was aware that President Trump had a penthouse apartment in Trump Tower. 6603:5-6604:25.

707. Sneddon did not recall sending McConney an email advising him that the Triplex was 30,000 square feet. 6606:15-6607:13, 6616:3.

708. On September 19, 2012, Sneddon sent an email to Cathy Kaye, his direct supervisor, with a CC to Jeff McConney stating "I already valued DJT's Triplex for Allen [Weisselberg] our 75MM [million] Triplex listing is in 240 RSB, period. Total Square footage is 14.5K including main residence, guest residence, and staff residence, period. As is 5K plus per foot." 6617:4-6619:19.

709. Sneddon was purportedly asked by Weisselberg over the phone if he could give him "a rough, market value of the Triplex." 6619:20-6620:9.

710. Weisselberg was purportedly calling for valuation input on "sponsored units" in various buildings. 6621:3-7.

711. On September 20, 2012, Sneddon sent an email to Jeff McConney and Cathy Kaye under the same subject line, stating that "at 30,000 square feet, DJT's Triplex is worth between 4k to 6k per foot or 120 million to 180 million." 6622:13-6623:19; PX-1052. Thus, Sneddon's email contained the 30,000 square foot number.

712. Sneddon did not know McConney when he worked at TTO. 6624:7-6625:1.

713. In fact, Ms. Faherty, in a pre-interview conversation with Sneddon, explained to him who McConney was. 6626:1-6.

714. Sneddon had not heard of an SFC until that conversation. 6626:7-18.

715. Ms. Faherty told Sneddon that it was important to the case that Sneddon say he was not the person who came up with the 30,000 square foot number. 6627:13-16.

716. Sneddon's testimony was contradicted by McConney, who stated that "Kevin Sneddon sent me an e-mail that the triplex was 30,000 square feet," and that McConney "would rely on him" because he was a broker and he "figured [Sneddon] knew the property a lot better than [McConney] did." 5003:8-16.

717. Moreover, Sneddon's testimony is contradicted by his own email which includes the 30,000 square foot number. PX-1052.

718. Finally, Sneddon is an experienced real estate broker and would have superior market knowledge. 6601:8-6602:7.

719. The Court therefore finds Sneddon's testimony was not credible.

VI. The Record Evidence Does Not Demonstrate that NYAG Is Entitled to Disgorgement

720. Michiel McCarty ("McCarty") has worked in banking since 1975 and currently serves as the CEO and chairman of MM Dillon & Company. 3032:2-13.

721. He has testified at trial approximately 14 to 15 times on "capital markets issues" but had never dealt with compilation statements prior to this engagement. 3037:23-3038:6.

722. McCarty has never worked in a PWM group. 3084:5-8. He could not recall reviewing with the DB or Ladder Capital credit policies prior to this retention and could not recall how long he spent reviewing those policies. 3084:16-3085:22, 3089:10-3090:6.

723. McCarty was retained to consider the economic impact of the allegedly false and misleading statements. 3045:2-4. McCarty was paid $950 per hour for a total of approximately $350,000 to $400,000. 3085:23-3086:18.

724. There is no evidence in the record that the terms or pricing of any of the subject loans would have been different based on the purported misstatements alleged by Plaintiff. Not a single witness from any bank (or anywhere else) testified to this at trial.

725. McCarty received the documents he ultimately reviewed from NYAG. 3092:10-13. He did not interview anyone from DB, Mazars, Ladder Capital, or TTO. 3093:16-24. McCarty also assumed the conclusions of the valuation and accounting experts. 3048:21-25.

726. McCarty's associates provided him with documents he requested from NYAG's production. 3090:25-3092:2. He became familiar with loan and guaranty documents only for the economic terms he needed to analyze. 3100:9-19. His associates also assisted him in conducting the research and analysis underlying his opinions. 3088:25-3089:9.

727. McCarty supplemented his expert disclosure in response to the September 26, 2023, summary judgment decision. 3045:10-3048:12. His basis for stating that the SFCs were misstated came from that decision. 3048:9-13.

728. McCarty estimated the interest rate differential based on credit ratings. 3051:18-3052:7. Generally, as the probability of default increases, the interest rate increases. 3051:18-22.

729. If the probability of default is near zero, the loan would have an AA credit rating. 3052:7-10. If the probability of default is five percent, the loan would have a BB credit rating. 3052:9-10.

730. The Doral, OPO, and Chicago Loans have an A-grade or better credit rating and a risk premium of almost zero with their respective guaranties. 3054:7-11.

731. The CRE group prepared reports proposing to finance the Doral, OPO, and Chicago Loans without personal guaranties. 3056:12-16.

732. McCarty concluded without any factual support in the record that the Doral, OPO, and Chicago Loans would have a non-investment BB rating without their respective guaranties. 3054:14-3055:1, 3056:12-16.

733. The actual interest rate for the Doral Loan ranged from 1.8318% and 4.1616% between 2014 and 2021. 3057:1-9; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:12.

734. The collateral for the Doral Loan was a first mortgage lien and first priority security interest in the Doral property. 3103:6-15; PX-293. No other property was pledged as collateral. 3101:2-3103:14, 3106:7-9.

735. The personal guaranty on the Doral Loan was reduced to 10% by August 3, 2015. 3106:10-22. At that time, the interest rate stepped up to LIBOR plus two percent or prime minus 25 basis points and would step up 25 basis points if the guaranty was eliminated entirely. 3107:11-3108:4; PX-290.

736. McCarty nonetheless estimated the adjusted interest rate for the Doral Loan at 10% based on the CRE proposal for the project. 3057:7-17; PX-3302.

737. The actual interest rate for the OPO Loan ranged from 1.8318% and 4.1616% between 2015 and 2021. 3069:2-5; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:8.

738. McCarty nonetheless estimated the adjusted interest rate for the OPO Loan at 8% based on the CRE proposal, with adjustments for increased equity, syndication, and a lockbox. 3069:6-3071:9; PX-3302.

739. The collateral for the OPO Loan was a first mortgage lien on the borrower's leasehold interest in the property and improvements thereto; security interests in and assignments of the borrower's interest in permits, licenses, leases, contracts, agreements, operating agreements, and receivables; and borrower's interest in customary ancillary collateral relating to the property. 3113:2-18; PX-294. No other property was pledged as collateral. 3113:22-25.

740. The actual interest rate for the Chicago Loan ranged from 2.0818% and 4.4116% between 2014 and 2021. 3073:22-25; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:8.

741. McCarty analyzed only the B facility relating to the hotel condominium complex because the A facility was retired early. 3073:13-18.

742. McCarty estimated the adjusted interest rate for the Chicago Loan at 7.5% based on the CRE proposal. 3074:1-8; PX-3302.

743. The B facility had collateral of a mortgage lien and first priority security interest in the commercial component of the property. 3109:11-3110:7; PX-291. No other property was pledged as collateral for the B facility of the Chicago Loan. 3111:23-3112:1.

744. The personal guaranty on the Chicago Loan was extinguished by July 20, 2015. 3112:2-4. Thus, there was no, even theoretical, possibility of any breach.

745. The actual interest rate for the 40 Wall Loan was 3.6650%. 3081:8-18; PX-3302.

746. McCarty estimated the adjusted interest rate for the 40 Wall Loan at 5.7% on the assumption that Ladder Capital would not have agreed to re-finance and the existing facility with Capital One would have been extended. 3081:11-18; PX-3302.

747. The 40 Wall Loan did not have a guaranty. 3081:22-3082:1.

748. The collateral for the 40 Wall Loan was the building that sits on top of 40 Wall Street and associated leasehold interests. 3116:5-11; DX-552. No other property was pledged as collateral. 3116:13-3117:1.

749. The guaranty for the 40 Wall Loan required that the guarantor maintain a net worth of at least $160 million and a liquidity of at least $15 million. 3117:19-22. That covenant was not violated. 3118:1-5.

750. Banks have historically been very willing to lend to high-net worth individuals at low interest rates because they get repaid. 3055:21-24.

751. Here, DB was repaid in full on the Doral, OPO, and Chicago Loans. 3083:6-15.

752. McCarty did not consider relevant material and unrebutted testimony from Williams that (1) President Trump was in the top tier of verifiable net worth; (2) the PWM group

used a pricing grid from which it would depart downward based on a competitive business case and from which it never departed upward, and (3) the pricing grid would remain ***unchanged*** if the guarantor's net worth was $1 billion rather than $2.5 billion. 3120:16-20, 3121:21-25; 3123:13-17; 3124:15-19; 3125:9-25; DX-205.

753. McCarty did not consider relevant or material testimony from Tom Sullivan that (1) DB was not misled in any aspect of any credit decision it made based on information contained in the SFCs, (2) DB developed its own independent view of President Trump's financial condition, (3) its decision-making was based on what DB was comfortable with, and (4) a $1 billion net worth would be sufficient to obtain a PWM Group loan. 3129:17-21, 3130:3-17, 3131:5-10.

754. McCarty either did not consider, or disregarded, that Haigh testified he reviewed the 2011 SFC and recalls (a) low debt, (b) good liquidity, (c) significant real estate holdings, and (d) the values were estimates and determined by management, not audited. 1007:4-9; 1008:2-6.

755. McCarty could not be certain that the CRE Group would have provided loans on the terms set forth in their reports. 3134:16-3137:19.

756. McCarty did not consider additional financing sources, borrowing against another asset, pledging another asset as collateral, or choosing to forego the loan entirely. 3137:22-3141:5.

757. McCarty did not consider that President Trump had sufficient liquid assets to self-finance the Doral and Chicago loans. 6313:6-10; PX-787 at 4; PX-815 at 5.

758. His analysis also did not consider President Trump's obligation to maintain deposits and assets under management at DB or the amount of those assets. 3143:5-12. The CRE Group does not require assets under management. 3144:16-19.

759. The ability to develop relationships with ultra-high-net worth individuals like President Trump is an objective of the PWM Group. 3145:10-13. The co-chairman of DB expressed interest in developing a relationship with President Trump and his companies, and the PWM Group specifically marketed to him. 3145:18-3146:7.

760. McCarty's basis for his interest rate differentials was that President Trump would not have been extended a loan from the PWM Group had the SFCs reflected different valuations. 3059:16-22. But this conclusion is contradicted by all of the unrebutted factual evidence.

761. No testimony was elicited from any current or former employee of DB or Ladder Capital that they would not have extended the loans to President Trump or lent at a different interest rate had the SFCs reflected different valuations. 3060:2-7, 3060:21-25.

762. The interest rates were set as of closing, other than LIBOR-related fluctuations. 2871:14-2872:7. Any subsequent submission of an SFC would have no effect on interest rates. Id.

763. NYAG adduced no factual evidence from any witness that the gains were ill-gotten.

764. McCarty cannot substitute his judgment for that of the decision-makers, i.e., the DB and Ladder Capital employees underwriting and approving the loans.

765. The unrebutted testimony of Unell, Bartov, Williams, Haigh, and Vrablic conflicts with McCarty's assumptions and therefore provides no factual support for his opinions. McCarty's opinions are speculation.

766. According to Unell, the best indication of the interest rate is the one employed by DB. 5686:13-5687:13.

767. Unell testified that he could not find any support for McCarty's approach, which included an extremely high commercial real estate interest rate and improper assumptions that President Trump would provide no guaranty and have no other financing options. Instead, he relied solely on a non-binding term sheet for a deal with different terms, where a lender may issue a non-binding term sheet with obtuse rates. 5680:12-5686:5, 5689:2-5692:10, 5686:13-17, 5688:15-5689:1, 5733:11-13, 5764:12-5765:24.

768. Unell also testified that the rates utilized by McCarty for the OPO, Doral, and Chicago Loans were not indicative of actual terms available in the market at the time. 5690:19-5692:10. McCarty failed to account for other factors that impact pricing, including the LTV ratio. 5724:17-5725:1, 5726:14-5733:20, 5737:23-5738:4.

769. Unell also testified that the interest rate for the 40 Wall Loan was not commensurate with the market, and McCarty likewise failed to consider the $160 million net-worth requirement, LTV, occupancy rate, and payoff to another bank's loan. 5701:20-5702:10, 5714:2-5716:13

770. McCarty's testimony must be disregarded in its entirety.

VII. The Record Evidence Does Not Establish the Existence of a Conspiracy

771. Although President Trump testified that he directed Weisselberg and McConney to lower the valuation of the triplex, no record evidence was adduced to support the claim that President Trump directed any TTO employees to overstate the value of the relevant assets in SFCs.

772. Weisselberg testified that the meeting with Michael Cohen and President Trump regarding the SFCs did not occur. 867:4-869:2. There is no record evidence to support Cohen's uncorroborated claims as to his involvement in the SFC preparation process.

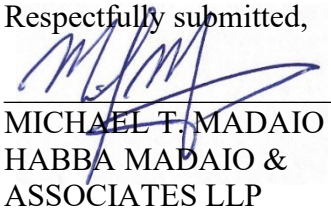
773. Testimony from Michael Cohen, who NYAG considered the linchpin of her case, must be disregarded, as he admitted to perjury on the stand. 2288: 9-18.

774. Cohen was also impeached with previous testimony that said he wasn't directed by President Trump to inflate the SFCs. 2407:24-2410:19.

775. Cohen's uncorroborated testimony that President Trump "speaks like a mob boss" and "tells you what he wants without specifically telling you" does not support a finding of conspiracy. 2461:13-24.

Dated: New York, New York
January 5, 2024

Respectfully submitted,



MICHAEL T. MADAIO
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th and 18th Floors
New York, New York 10120
(908) 869-1188
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Trump Organization, Inc., Trump Organization LLC, Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC

-and-

CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

PROPOSED CONCLUSIONS OF LAW OF DEFENDANTS DONALD J. TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC

TABLE OF CONTENTS

Page:

I. The NYAG's Claims are Dismissed to the Extent they are Premised on a Time-Barred Transaction 1

II. The Clear and Convincing Evidentiary Standard Applies 2

III. The Court Must Have a Basis for Its Factual Findings and Cannot Disregard Unrebutted Testimony 5

IV. The NYAG has not Met her Burden on Materiality 8

V. The NYAG has not Met her Burden on Intent 14

VI. The NYAG has not Established the Existence of a Conspiracy 21

VII. The Remedies the Attorney General Seeks Are Improper 23

1. Executive Law §63(12) Does Not Authorize Disgorgement or the Other Remedies the NYAG Seeks 23

2. The Constitution does not Permit the NYAG to Recover Excessive Fines or Interfere with Defendants' Power of Disposition over their Own Property 28

VIII. There is No Record Evidence Supporting a Likelihood of Continuing Fraud Sufficient to Support the Sprawling Injunctive Relieve the NYAG Seeks 35

IX. The Attorney General Has Adduced No Record Evidence of Ill-Gotten Gains 36

TABLE OF AUTHORITIES

Page(s)

Cases

Matter of 91st St. Crane Collapse Litig.,
154 A.D.3d 139 (1st Dep't 2017) 33, 37

Abacus Fed. Sav. Bank v. Lim,
75 A.D.3d 472 (1st Dep't 2010) 21

Abacus Fed. Sav. Bank v. Lim,
8 A.D.3d 12 (1st Dep't 2004) 16

Abrahami v. UPC Constr. Co.,
224 A.D.2d 231 (1st Dep't 1996) 16

Addington v. Texas,
441 U.S. 418 (1979).....3, 4

People v. Alamo Rent A Car, Inc.,
174 Misc. 2d 501 (Sup. Ct. N.Y. Cty. 1997) 8

People v. Alvino,
71 N.Y.2d 233 (1987) 19

United States v. Ambrosio,
575 F.Supp. 546 (E.D.N.Y. 1983) 29

Applehole v. Wyeth Ayerst Laboratories,
213 A.D.3d 611 (1st Dep't 2023) 1

United States v. Bajakajian,
524 U.S. 321 (1998).....29, 30, 31

Beeley v. Spencer,
309 A.D.2d 1303 (2003) 21

BMW of North Am. Inc., v. Gore,
517 U.S. 559 (1996).....32

Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,
492 U.S. 257 (1989).....29

People v. Butler,
27 A.D.3d 365 (1st Dep't 2006) 5

City of Buffalo v. J. W. Clement Co.,
28 N.Y.2d 241 (1971) 33

People v. Caban,
5 N.Y.3d 143 (2005) 22

Channel Master Corp. v. Aluminum Ltd. Sales, Inc.,
4 N.Y.2d 403 (1958) 15

People v. Codina,
110 A.D.3d 401 (1st Dep't 2013) 1

Cohen v. Calloway,
246 A.D.2d 473 (1st Dep't 1998) 9

Cooke v. Bernstein,
45 A.D.2d 497 (1st Dep't 1974) 39

County of Nassau v. Canavan,
1 N.Y.3d 134 (2003) 29, 30

People v. Credit Suisse,
31 N.Y.3d 622 (2018) 3

Della Pietra v. State of New York,
71 N.Y.2d 792 (1988) 24

Eaton Factors Co. v. Double Eagle Corp.,
17 A.D.2d 135 (1st Dep't 1962) 16

People v. Ernst & Young LLP,
114 A.D.3d 569 (1st Dep't 2014) 26

People v. Evans,
94 N.Y.2d 499 (2000) 1

People v. Flanagan,
28 N.Y.3d 644 (2017) 23

Fortich v. Ky-Miyasaka,
102 A.D.3d 610 (1st Dep't 2013) 21

Gaidon v. Guardian Life Ins. Co. of Am.,
94 N.Y.2d 330 (1999) 4

Gathers v. New York City Transit Auth.,
242 A.D.2d 506 (1st Dep't 1997) 33, 37, 39

People v. Gilmour,
284 A.D.2d 341 (2d Dep't 2001) 25

GMAC Commer. Credit L.L.C v. Mitchell-B.J., Ltd.,
272 A.D.2d 51 (1st Dep't 2000) 39

People v. Greenberg,
95 A.D.3d 474 (1st Dep't 2012) 9, 25

People v. Harris,
98 N.Y.2d 452 (2002) 19

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
91 A.D.3d 226 (1st Dep't 2011) 36

People v. Jamail,
51 Misc.3d 940 (Sup. Ct., Bronx Cty. 2016) 4

Jim Beam Brands Co. v. Tequila Cuervo La Rojena S.A. de C.V.,
2011 N.Y. Misc. LEXIS 7257 (Sup. Ct. N.Y. Cty. 2011) 36

Kenney v. City of New York,
74 A.D.3d 630 (1st Dep't 2010) 1

Lama Holding Co. v. Smith Barney Inc.,
88 N.Y.2d 413 (1996) 15

Lessard v. Caterpillar, Inc.,
291 A.D.2d 825 (4th Dep't 2002) 20

People v. Lurie,
249 A.D.2d 119 (1st Dep't 1998) 16

Magen David of Union Square v. 3 West 16th Street, LLC,
132 A.D.3d 503 (1st Dep't 2015) 1

United States v. Mackby,
261 F.3d 821 (9th Cir. 2001) 31

Marine Midland Bank v. Russo Produce Co.,
50 N.Y.2d 31 (1980) 16

United States v. Michael Cohen,
No. 18-cr-602 (S.D.N.Y. 2018) 22

Moreno v. Fabre,
46 A.D.3d 254 (1st Dep't 2007) 20

Murray v. Roedel,
196 Misc. 233 (Sup. Ct. Albany Cty. 1949) 3

People v. Nationwide,
26 Misc.3d 258 (Sup. Ct., Erie Cty. 2009) 5

O'Malley v. Campione,
70 A.D.3d 595 (1st Dep't 2010) 5

Ober v. Rogers-Ober,
287 A.D.2d 282 (1st Dep't 2001) 5

Ortiz v. City of New York,
39 A.D.3d 359 (1st Dep't 2007) 39

Ortiz v. Variety Poly Bags, Inc.,
19 A.D.3d 239 (1st Dep't 2005) 33, 37

Matter of Part 60 RMBS Put-Back Litig.,
195 A.D.3d 40 (1st Dep't 2021) 1

People by James v. Exxon Mobil Corp.,
119 N.Y.S.3d 829 (N.Y. Sup. Ct. 2019) 11

People by James v. Image Plastic Surgery, LLC,
210 A.D.3d 444 (1st Dep't 2022) 34

People by James v. JUUL Labs, Inc.,
212 A.D.3d 414 (1st Dep't 2023) 34

People by James v. N. Leasing Sys., Inc.,
70 Misc. 3d 256 (Sup. Ct. N.Y. Cty. 2020), aff'd, 193 A.D.3d 67 (1st Dep't 2021) 26

People by James v. Orbital Publ. Grp., Inc.,
193 A.D.3d 661 (1st Dep't 2021) 31

Matter of People v. Imported Quality Guard Dogs, Inc.,
88 A.D.3d 800 (2d Dep't 2011) 26, 27

Matter of People v. Veleanu,
89 A.D.3d 950 (2d Dep't 2011) 27

Prince v. City of New York,
108 A.D.3d 114 (1st Dep't 2013) 29, 31

Quinn v. Artcraft Const., Inc.,
203 A.D.2d 444 (2d Dep't 1994) 33, 37, 39

State v. Rachmani Corp.,
71 N.Y.2d 718 (1988) 9

Reed v. McCord,
160 N.Y. 330 (1899) 22

People v. Reyes,
69 A.D.3d 537 (1st Dep't 2010) 14

Robinson v. Snyder,
259 A.D.2d 280 (1st Dep't 1999) 21

People v. Romero,
91 N.Y.2d 750 (1998) 24, 25

Roni LLC v. Arfa,
74 A.D.3d 442 (1st Dep't 2010) 9

People v. Saffore,
18 N.Y.2d 101 (1966) 30

Santosky v. Kramer,
455 U.S. 745 (1982) 3

Schechter v. 3320 Holding LLC,
64 A.D.3d 446 (1st Dep't 2009) 20

People ex rel. Schneiderman v. Greenberg,
27 N.Y.3d 490, 497 (2016) 25, 26

Schwartz v. Genfit, S.A.,
212 A.D.3d 96 (1st Dep't 2022) 9

FTC v. Shkreli,
581 F. Supp. 3d 579 (S.D.N.Y. 2022) 33

People v. Silinsky,
217 A.D. 247 (2d Dep't 1926) 5

Slavin v. Victor,
168 A.D.2d 399 (1st Dep't 1990) 9

People ex rel. Spitzer v. Direct Revenue, LLC,
19 Misc. 3d 1124(A) (Sup. Ct. N.Y. Cty. 2008) 27, 28

People ex rel. Spitzer v. Frink Am., Inc.,
2 A.D.3d 1379 (4th Dep't 2003) 25

State by Abrams v. Solil Mgt. Corp.,
128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985); 27

State by Lefkowitz v. Hotel Waldorf-Astoria Corp.,
67 Misc. 2d 90 (Sup. Ct. N.Y. Cty. 1971) 27

Sterling Ins. Co. v. Chase,
287 A.D.2d 892 (3d Dep't 2001) 5

People v. Sumpter,
177 Misc.2d 492 (Crim. Ct. Queens Cty. June 26, 1998) 3

Thoreson v. Penthouse Intl., Ltd.,
179 A.D.2d 29 (1st Dep't 1992), aff'd, 80 N.Y.2d 490 (1992) 5

Towers v. City of Chicago,
173 F.3d 619 (7th Cir. 1999) 31

State of New York v. Town of Wallkill,
170 A.D.2d 8 (3d Dep't 1991) 31

People v. Trump Entrepreneur Initiative LLC,
2014 N.Y. Slip Op. 32685[U] (Sup. Ct. N.Y. Cty. Oct. 8, 2014), aff'd in relevant part, 137 A.D.3d 409 (1st Dep't 2016) 4

People v. Trump,
2023 WL 128271 (Sup. Ct., N.Y. Cty. Jan. 6, 2023) 2

Union Square Supply Inc. v. De Blasio,
572 F.Supp.3d 15 (S.D.N.Y. 2021) 30, 32

Vermeer Owners, Inc. v. Guterman,
78 N.Y.2d 1114 (1991) 4

United States v. Viloski,
814 F.3d 104 (2d Cir. 2016) 29, 30

von Hofe v. United States,
492 F.3d 175 (2d Cir. 2007) 29

People v. Wyatt,
89 A.D.3d 112 (2d Dep't 2011) 3

Matter of Yudelka A. M. v. Jose A. R.,
72 A.D.3d 622 (1st Dep't 2010) 19

Statutes and Codes

General Business Law,
General Business Law....5
General Business Law article 22-a....5
General Business Law §349....28
General Business Law § 350....28
General Business Law § 353-a....25

Martin Act....25

New York Penal Law,
New York Penal Law....2
New York Penal Law § 156.20....28
New York Penal Law § 175.05....14, 23
New York Penal Law § 175.10....14, 23
New York Penal Law §175.45....8, 15, 23
New York Penal Law §176.05.... *passim*

New York Executive Law,
New York Executive Law....25, 26
Executive Law § 63(12).... *passim*

Rules and Regulations

CPLR § 5519(c)....41

Constitutions

United States Constitution,
Commerce Clause....34
Eighth Amendment....28, 29, 30, 31, 34
Fourteenth Amendment....29, 32
Takings Clause....34

New York Constitution,
N.Y. Const., art. I, §5....28

Other Authorities

Benjamin Weiser, Michael Cohen Used Artificial Intelligence in Feeding Lawyer Bogus Cases, N.Y. Times, Dec. 29, 2023, https://www.nytimes.com/2023/12/29/nyregion/michael-cohen-ai-fake-cases.html....22

Conclusions of Law

I. The NYAG's Claims are Dismissed to the Extent they are Premised on a Time-Barred Transaction

1. Based on the First Department's June 27, 2023, decision, the only two loans that are at issue are OPO (closing in August 2014) and 40 Wall (closing in November 2015). NYSCEF Doc. No. 641.

2. The First Department's determination is law of the case ("LOTC"). LOTC "bind[s] a trial court (and subsequent appellate courts of coordinate jurisdiction) to follow the mandate of an appellate court, absent new evidence or a change in the law." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d 40, 48 (1st Dep't 2021); see also, e.g., Applehole v. Wyeth Ayerst Laboratories, 213 A.D.3d 611, 611 (1st Dep't 2023) ("[R]esolution of the issue on the prior appeal constitutes the law of the case and forecloses reexamination of the issue."); Magen David of Union Square v. 3 West 16th Street, LLC, 132 A.D.3d 503, 504 (1st Dep't 2015) (although prior appeal did not "specifically address" counterclaim, "the underlying issues were necessarily resolved in that appeal, and that resolution constitutes 'the law of the case'"); People v. Codina, 110 A.D.3d 401, 406 (1st Dep't 2013); Kenney v. City of New York, 74 A.D.3d 630, 630-31 (1st Dep't 2010). "[N]o discretion [is] involved; *the lower court must apply the rule laid down by the appellate court*." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d at 48, quoting People v. Evans, 94 N.Y.2d 499, 503 (2000) (quotation marks omitted) (emphasis added).

3. The AG's novel theory of the case is that "[e]very use of a false financial statement in business starts the statute of limitations running, again, no matter when the transaction it arose out of closed." Trial Transcript ("Tr.") at 182:6-13.

4. That theory attempts impermissibly to end run the First Department's holding that the continuing-wrong doctrine does not extend the statute of limitations and effectively nullifies the First Department's finding that the applicable limitations period began in 2014 or 2016, depending on the applicability of the tolling agreement. However, this Court is powerless to revisit or countermand the First Department Decision on remittal.

5. The NYAG's claims are therefore only timely (1) with respect to the OPO and 40 Wall Loans and (2) for Defendants bound by the tolling agreement. All remaining claims arising from loans that closed prior to the statutory date are dismissed.

6. Moreover, OPO and 40 Wall Loans each closed, and thus were completed for accrual purposes, prior to February 2016. Based on the First Department's decision, the claims arising from the OPO and 40 Wall Loans are untimely as asserted against any Defendant not bound by the August 2021 tolling agreement.

II. The Clear and Convincing Evidentiary Standard Applies

7. This Court has held that "[a] standalone Executive Law § 63(12) claim is not subject to the heightened pleading standard [for fraud] because the underlying conduct is premised on deceptive acts or practices that do not include intent or reliance as an element of those claims." People v. Trump, 2023 WL 128271, at *4 (Sup. Ct., N.Y. Cty. Jan. 6, 2023).

8. However, the NYAG's second through seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law.

9. This Court's September 26, 2023, summary judgment decision recognized that those causes of action require some component of intent and/or materiality. While there is no binding caselaw in this State regarding the standard of review for violation of Executive Law §

63(12) with penal law predicates, jurisprudence on the applicability of the clear and convincing standard and common-law fraud is instructive.

10. Executive Law § 63(12) requires courts to ""look through" Executive Law § 63(12)" to apply the statute of limitations for the underlying predicate. See People v. Credit Suisse Sec. (USA) LLC, 31 N.Y.3d 622, 634 (2018).

11. Application of the clear and convincing standard is warranted given that the NYAG seeks to impose civil liability for violations of criminal statutes.

12. "[T]he 'clear and convincing evidence' standard [is] an 'intermediate standard' between the high standard of 'beyond a reasonable doubt' used in criminal proceedings and 'fair preponderance' used in ordinary civil proceedings." People v. Wyatt, 89 A.D.3d 112, 126-27 (2d Dep't 2011) (citations omitted).

13. The clear and convincing standard is "deemed necessary 'to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma.'" Id. at 127, citing Santosky v. Kramer, 455 U.S. 745, 756 (1982); see also Addington v. Texas, 441 U.S. 418, 424 (1979) (emphasizing that "clear and convincing" standard is necessary to "reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof.").

14. The Supreme Court of the United States has "mandated" that the "clear and convincing evidence" standard be applied "when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'" Santosky, 455 U.S. at 756 (internal citations omitted); see also People v. Sumpter, 177 Misc.2d 492 (Crim. Ct. Queens Cty. June 26, 1998); Murray v. Roedel, 196 Misc. 233, 236 (Sup. Ct. Albany Cty. 1949).

15. Here, the NYAG seeks to deprive the Defendants from engaging in any and all even lawful business activity. This is far more substantial than the mere loss of money.

16. Moreover, the Supreme Court has expressly stated that the "clear and convincing' standard must be applied to "civil cases *involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant*." Addington, 441 U.S. at 424 (emphasis added).

17. It is beyond dispute that the instant matter is based in "allegations of fraud." Id.

18. Further, since the NYAG is attempting to impose civil liability for violations of criminal statutes, the second through seventh causes of action can be aptly described as "quasi-criminal." Id.

19. Additionally, common-law fraud must be established by clear and convincing evidence. See Gaidon v. Guardian Life Ins. Co. of Am., 94 N.Y.2d 330, 349-50 (1999) ("The elements of fraud are narrowly defined, requiring proof by clear and convincing evidence."); Vermeer Owners, Inc. v. Guterman, 78 N.Y.2d 1114, 1116 (1991) ("[Plaintiffs] were required to prove by clear and convincing evidence a representation of material fact, falsity, scienter, reliance and injury."). This standard also applies when the "bulk of the [NYAG's] allegations sound in fraud." See People v. Jamail, 51 Misc.3d 940, 952 (Sup. Ct., Bronx Cty. 2016) ("To the extent that the bulk of the Attorney General's [Executive Law § 63(12)] allegations sound in fraud and the standard of proof for common-law fraud is clear and convincing evidence, the court accordingly applies that heightened standard of proof, a standard favorable to the respondent."); see also People v. Trump Entrepreneur Initiative LLC, 2014 N.Y. Slip Op. 32685[U], 2014 WL 5241483, *14 (Sup. Ct. N.Y. Cty. Oct. 8, 2014), aff'd in relevant part, 137 A.D.3d 409 (1st Dep't 2016) (In the context of an Executive Law § 63(12) claim for common-law fraud, "scienter is established upon clear and convincing proof of a misrepresentation or a

material omission of fact which was false and known to be false and made for the purpose of inducing the other party to rely upon it."); Sterling Ins. Co. v. Chase, 287 A.D.2d 892, 893-94 (3d Dep't 2001); People v. Nationwide, 26 Misc.3d 258, 278 (Sup. Ct., Erie Cty. 2009) ("Insofar as the petition might be construed to allege common-law fraud [under Executive Law § 63(12) and General Business Law article 22-a], the court concludes that this record is lacking in clear and convincing evidence from which this court could infer that respondents harbored the specific intent to defraud or cheat New York consumers.").

III. The Court Must Have a Basis for Its Factual Findings and Cannot Disregard Unrebutted Testimony

20. When Supreme Court's findings are unjustified or clearly erroneous, *i.e.,* "when they lack evidentiary basis in the record," the Appellate Division has a duty "to substitute the [Appellate Division's] own findings on credibility." People v. Butler, 27 A.D.3d 365, 368 (1st Dep't 2006) (internal citations omitted). While deference is afforded to Supreme Court's findings of fact based on the credibility of witnesses, the Appellate Division may disturb those findings where they cannot be reached under any fair interpretation of the evidence. See Thoreson v. Penthouse Intl., Ltd., 179 A.D.2d 29, 31 (1st Dep't 1992), aff'd, 80 N.Y.2d 490 (1992) (internal citations omitted).

21. Supreme Court must have actual evidence to support its conclusions, or the findings of fact will be reversed as "contrary to the evidence." People v. Silinsky, 217 A.D. 247, 248-49 (2d Dep't 1926) (reversing finding of fact but not judgment in action brought by the Attorney General under the General Business Law).

22. The Court may not disregard unrebutted testimony. See generally Ober v. Rogers-Ober, 287 A.D.2d 282, 283 (1st Dep't 2001) (Saxe, J. dissenting); O'Malley v. Campione, 70 A.D.3d 595, 595 (1st Dep't 2010). Therefore, where the Court has received

unrebutted testimony, including from the Attorney General's own witnesses, it cannot simply substitute its own judgment for that of the witnesses.

23. For example, the testimony of Williams, a current Deutsche Bank ("DB") employee, that DB understood the Statements of Financial Condition ("SFCs") to be estimates, that DB was not concerned about the difference between its adjusted valuations and the valuations contained in the SFCs, and that such discrepancies are common, is unrebutted. This testimony cannot be disregarded and negates the requisite materiality and reliance elements.

24. The unequivocal and unrebutted evidence contained in the DB credit memos and the associated testimony from Haigh and Williams establishes that DB conducted its own independent valuation analysis and, importantly, relied on that analysis and not the SFCs when making determinations regarding the terms and pricing of the subject loans. This unrebutted testimony and evidence cannot be disregarded by the Court and the Court is simply not free to substitute its own judgment.

25. Moreover, DB witnesses confirmed that there were no missed payments, late payments, or defaults relative to the Doral, Chicago, and OPO loans.

26. Additionally, the unrebutted testimony of Flemmons, Bartov and others at trial establishes that the notes to the SFCs form an integral part of the statements, must be considered as one document, and are intended for the ***users*** of the SFCs, not the preparer and not Mazars or Whitley Penn. This unrebutted testimony cannot be disregarded by the Court and the Court is simply not free to contravene same "as a matter of law" or otherwise.

27. Also, the very first note to the SFCs, which was prepared by President Trump or the Trust ***not*** Mazars, provides in pertinent part: "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates

presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts." *See, e.g.*, PX-787. Professor Bartov describes this disclaimer language as the equivalent of the "surgeon general's warning." Tr. 6259:2-6260:9. His testimony is unrebutted. The Court cannot disregard this testimony.

28. Further, this language from the preparer of the statements, here President Trump or the Trust, informs the user, here DB, Ladder Capital, etc., of the fact the statements contain estimated values and discloses the limitations of those estimates in clear, unequivocal language. This is language contained in the SFCs, not in the Independent Accountants' Compilation Report. Thus again, the Court is not free to ignore the impact of this unrebutted evidence "as a matter of law" or otherwise.

29. This unrebutted evidence regarding the disclaimers is alone sufficient to negate the requisite intent element.

30. Also, Professor Bartov's testimony regarding materiality is likewise unrebutted. Professor Bartov testified that, based on the governing accounting standards, that materiality must be determined through the lens of the user (here, DB, Ladder Capital, etc.) and that user must rely on the relevant information. This is unrebutted and cannot be ignored by the Court. Since as noted above it is likewise unrebutted that, for example, DB relied on its own valuation analysis and not the SFCs, then based on the applicable standard, the NYAG has failed to establish the requisite materiality.

IV. The NYAG has not Met her Burden on Materiality.

31. The NYAG must demonstrate "some component of intent and materiality" to prevail on the second through seventh causes of action. See NYSCEF Doc. No. 1531, citing People v. Alamo Rent A Car, Inc., 174 Misc. 2d 501, 505 (Sup. Ct. N.Y. Cty. 1997).

32. New York Penal Law §175.45, the predicate for the fourth cause of action, requires the NYAG to demonstrate materiality.

33. Specifically, it provides that a defendant is guilty of issuing a false financial statement when, with intent to defraud, when:

> (1) [h]e knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some ***material*** respect; or (2) [h]e represents in writing that a written instrument purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas he knows it is ***materially inaccurate*** in that respect.

Id. (emphasis added).

34. New York Penal Law §176.05, the predicate for the sixth cause of action, also requires the NYAG to demonstrate materiality.

35. It provides, in relevant part, that:

> [a] fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that is will be presented to or by an insurer, self insurer, or purported insurer, or purported self insurer, or any agent thereof: (1) any written statement as part of, or in support of, an application for the issuance of, or the rating of a commercial insurance policy, or certificate or evidence of self insurance for commercial insurance or commercial self insurance, or a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance that he or she knows to: (a) contain ***materially false*** information concerning any fact material thereto; or (b) conceal, for the purpose of misleading, information concerning any fact ***material thereto***.

Id. (emphasis added).

36. The Court of Appeals has articulated the standard for materiality in an Executive Law §63(12) action as whether there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the *'total mix'* of information made available." See State v. Rachmani Corp., 71 N.Y.2d 718, 726 (1988) (emphasis in original) (internal citations omitted).

37. The First Department has framed the standard as "whether a reasonable investor would have found that the information about a quantitative and qualitative impact of the transaction significantly altered the total mix of information available." People v. Greenberg, 95 A.D.3d 474, 485 (1st Dep't 2012) (internal citations omitted); see also Schwartz v. Genfit, S.A., 212 A.D.3d 96, 99-100 (1st Dep't 2022). Where the method of valuation "would not have been viewed by the reasonable investor as a significant part of the total mix of information," it is not material. See Cohen v. Calloway, 246 A.D.2d 473, 473 (1st Dep't 1998).

38. In the context of securities fraud, the First Department has deemed a misstatement material where "knowledge [thereof] would [] have influenced the[] decision" of investors. Roni LLC v. Arfa, 74 A.D.3d 442, 445 (1st Dep't 2010) (internal citations omitted).

39. The First Department permits investors to "speak from first-hand knowledge as to the nature of the misrepresentations" in assessing materiality. Slavin v. Victor, 168 A.D.2d 399, 399 (1st Dep't 1990) (internal citations omitted).

40. Additionally, under the reasonable investor standard, an omission is actionable only if "there is an affirmative duty to disclose or the omission rendered the actual disclosure made materially misleading." Schwartz, 212 A.D.3d at 99-100.

41. The NYAG cannot, and did not, demonstrate materiality, as she failed to elicit any testimony reflecting that the banks would have pursued a different course of action had they known of the alleged inaccuracies in the SFCs.

42. Fundamentally, the onus is on the lender to determine what is material based on its own risk rating, risk profile, underwriting, and analysis.

43. No bank or underwriter was, or would have been, materially misled by the alleged misstatements because the unrebutted evidence establishes they did their own extensive due diligence on the values in the SFCs and relied on that due diligence.

44. The testimony from bank representatives, including Haigh, Williams, and Vrablic, demonstrates that the alleged inaccuracies in the SFCs were not material to DB, as the unrebutted evidence establishes that the relevant approvals, terms, pricing, etc., were based on DB's own independent analyses and valuations as well as a multitude of internal business considerations.

45. DB independently verified all material facts and specifically engaged their valuation services group for trophy assets. It was "atypical, but not entirely unusual" for stated liquidity to be reduced by 50%. Tr. 5343:18-21. Moreover, the unrebutted evidence demonstrated that DB adhered to its own credit lending guidelines.

46. The unrebutted evidence established that DB gave significant weight to President Trump and the Trump Organization's experience in real estate, operating private clubs, and repositioning assets in deciding to extend the loans.

47. The unrebutted evidence established that DB sought to increase assets and deposits under management from President Trump, to continue to grow the relationship in all asset categories, and to create other income opportunities for the bank.

48. The unrebutted evidence established that DB openly pursued a continuing banking relationship with President Trump and his family because of their objectively high net worth, business expertise, and connections.

49. The unrebutted evidence established that DB's banking relationship with President Trump and the Trump Organization was, by every account, extremely profitable.

50. There is no evidence in the record to suggest that DB would have foregone lucrative transactions with President Trump and the Trump Organization, or that the terms and/or pricing of those transactions would have been different if the lower valuations the NYAG claims are accurate were disclosed in the SFCs.

51. Simply put, the NYAG has failed to establish by clear and convincing evidence (really any evidence) that any person or entity associated with the subject transactions claimed to have been misled by the SFCs, relied on the SFCs, and/or lost any money or was otherwise harmed. The NYAG there has the same issue as she faced in the Exxon case. People by James v. Exxon Mobil Corp., 119 N.Y.S.3d 829 (N.Y. Sup. Ct. 2019).

52. J. Weisselberg's testimony demonstrates that Ladder Capital did not consider net worth in an SFC to be a key factor and was focusing on liquidity. This testimony is unrebutted.

53. Further, Unell's testimony demonstrates that Ladder Capital performed its own independent analysis of the collateral in accordance with OCC guidelines.

54. McCarty's testimony confirms that the Ladder Capital net-worth minimum was only $160 million. There is simply no record evidence that President Trump ever fell below this figure, even if the NYAG's allegations regarding values are credited.

55. There is no evidence in the record to suggest that Ladder Capital would have foregone lucrative transactions with President Trump and the Trump Organization, or that the

terms and/or pricing of those transactions would have been different if the lower valuations the NYAG claims are accurate were disclosed in the SFCs.

56. David Cerron's testimony demonstrated that the City neither requested nor received an SFC during the term of the license of Trump Ferry Point. This testimony is unrebutted.

57. Moreover, the sole remedy for failure to submit the required "No MAC" letter was an increase in the security deposit.

58. There is no evidence in the record to suggest that the City would have foregone its transaction with President Trump and the Trump Organization if the valuations the NYAG claims are accurate were disclosed.

59. Defendants' expert witnesses, including Bartov, Flemmons, and Giulietti further confirmed that the banks and insurance carriers did their own independent valuation analyses in transacting business with President Trump and the Trump Organization.

60. The information Defendants provided to DB and Ladder Capital was not misleading and was consistent with accounting and industry standards, lender credit policies, and OCC guidance. The NYAG has failed to establish to the contrary by clear and convincing evidence.

61. The SFCs put the lenders on notice of the subjective nature of the valuations, the notes to the SFCs included specific disclaimers, and the compilation reports attached thereto included disclaimers suggested by the AICPA, all of which provided the highest-level warning to users/lenders that the valuations were estimates and included deviations from GAAP. The unrebutted evidence established that the lenders were aware that they were required to do their own diligence and make their own decisions.

62. The unrebutted evidence established that the lenders did not rely on the SFCs but rather on their own independent valuations and analysis.

63. Zurich did little detailed underwriting during the program, as testimony demonstrates the program functioned as an accommodation for different reasons at different times.

64. In fact, in some years, Zurich made underwriting decisions based on no information presented by any Trump businesses.

65. There is no evidence in the record to suggest that Zurich would have foregone transactions with President Trump and the Trump Organization if the valuations the NYAG claims are accurate were disclosed in the SFCs.

66. There is no evidence in the record to suggest that Tokio Marine (HCC) would have foregone writing the D&O insurance for the Trump Organization if the valuations the NYAG claims are accurate were disclosed in the SFCs. The evidence in the record is clear that HCC would have written the D&O policy even if the cash on the balance sheet was lower because the retention was only $2.5 million. Further, any alleged representations made about knowledge of circumstances that could potentially lead to a claim under the D&O policy were not made in writing, which is required to prove insurance fraud.

67. The NYAG has not adduced clear and convincing evidence that any Defendant has issued a false financial statement.

68. The NYAG has not adduced clear and convincing evidence that any Defendant has committed insurance fraud.

V. The NYAG has not Met her Burden on Intent

69. New York Penal Law § 175.10 incorporates § 175.05, which is the predicate for the second cause of action and requires that the NYAG demonstrate an intent to defraud.

70. New York Penal Law § 175.05 provides, in relevant part, that:

> A person is guilty of falsifying business records in the second degree when, with ***intent to defraud***, he: (1) [m]akes or causes a false entry in the business records of an enterprise; or (2) [a]lters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or (3) [o]mits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or (4) [p]revents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Id. (emphasis added).

71. Falsification of business records in the first degree requires the additional element that the defendant intends to "commit another crime or to aid or conceal the commission thereof." New York Penal Law §175.10; see also People v. Reyes, 69 A.D.3d 537, 538 (1st Dep't 2010).

72. New York Penal Law §176.05, the predicate for the sixth cause of action, also requires that the NYAG demonstrate an intent to defraud.

73. It provides, in relevant part, that:

> [a] fraudulent insurance act is committed by any person who, ***knowingly and with intent to defraud*** presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, self insurer, or purported insurer, or purported self insurer, or any agent thereof: (1) any written statement as part of, or in support of, an application for the issuance of, or the rating of a commercial insurance policy, or certificate or evidence of self insurance for commercial insurance or commercial self insurance, or a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance that he or she knows to: (a) contain

> materially false information concerning any fact material thereto; or (b) conceal, for the purpose of misleading, information concerning any fact material thereto.

Id. (emphasis added).

74. New York Penal Law §175.45, the predicate for the fourth cause of action, also requires that the NYAG demonstrate an intent to defraud.

75. Specifically, it provides that a defendant is guilty of issuing a false financial statement when, with intent to defraud, "(1) [h]e knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect; or (2) [h]e represents in writing that a written instrument purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas he knows it is materially inaccurate in that respect." Id. (emphasis added).

76. To demonstrate an intent to commit fraud, a plaintiff "must prove a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury." Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413, 421 (1996); see also Channel Master Corp. v. Aluminum Ltd. Sales, Inc., 4 N.Y.2d 403, 406-407 (1958) ("To maintain an action based on fraudulent representations . . . it is sufficient to show that the defendant knowingly uttered a falsehood intending to deprive the plaintiff of a benefit and that the plaintiff was thereby deceived and damaged.").

77. The NYAG introduced no evidence that anyone relied (justifiably or otherwise) on any alleged misrepresentation and/or that anyone was injured. To the contrary, the unrebutted

evidence established that DB and Ladder Capital relied on their own independent valuations and analysis, had no issues with the values presented in the SFCs, and suffered no harm or injury.

78. Therefore, the NYAG is required to prove "by clear and convincing evidence, that defendant possessed the requisite fraudulent intent in that [defendants] knew, personally, that the various financial statements overstated [defendants'] assets, profits, retained earnings and capital." Abrahami v. UPC Constr. Co, 224 A.D.2d 231, 233 (1st Dep't 1996); People v. Lurie, 249 A.D.2d 119, 122-23 (1st Dep't 1998).

79. The NYAG cannot rely on the summary judgment decision to prove intent. Fraudulent intent cannot be merely inferred; it must be definitively proven. Abacus Fed. Sav. Bank v. Lim, 8 A.D.3d 12, 13 (1st Dep't 2004); see also Eaton Factors Co. v. Double Eagle Corp., 17 A.D.2d 135, 136 (1st Dep't 1962) ("Fraud cannot be inferred; it must be proved…it must appear that such fraudulent intent really existed in the mind of the defendants, and not merely in the ingenuity of the plaintiffs.") (internal citations and quotations omitted).

80. The NYAG is not permitted to conflate Defendants and ascribe conduct relating to one Defendant to others, effectively piercing the corporate form without a showing of entitlement to such relief. See Abrahami, 224 A.D.2d at 233-234.

81. The Attorney General must show that each Defendant personally participated in the alleged misrepresentation or had actual knowledge of it. Marine Midland Bank v. Russo Produce Co., 50 N.Y.2d 31, 44 (1980) ("Mere negligent failure to acquire knowledge of the falsehood is insufficient.").

82. There is no clear and convincing evidence (or any evidence) that DJT Holdings LLC, DJT Holdings Managing Member, Trump Organization, Inc., Trump Organization LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40

Wall Street LLC, and Seven Springs LLC were even involved in the preparation of the SFCs, let alone that any proof that these entities had the requisite intent to defraud as established by clear and convincing evidence.

83. There is no specificity in the record as to which Defendants, if any, are responsible for which conduct.

84. There is no clear and convincing evidence (or any evidence) that President Trump intentionally filed a misleading SFC.

85. In fact, witnesses have testified that President Trump was only nominally involved in the preparation of the SFCs and relied on Trump Organization staff and his outside accountants, Mazars and Whitley Penn, to ensure compliance with GAAP.

86. Testimony from President Trump demonstrates that he did not have the requisite fraudulent intent. There is no clear and convincing evidence to the contrary.

87. The evidence is insufficient to establish that Weisselberg and McConney intentionally overvalued assets in the SFCs.

88. Testimony from McConney demonstrates he was confident in the SFCs he prepared and never intended to mislead anyone, and any errors were inadvertent. There is no clear and convincing evidence to the contrary.

89. Testimony from Weisselberg demonstrates that he did not possess the requisite intent to defraud and that he relied on others in the Trump Organization and its outside accountants to ensure compliance with GAAP. There is no clear and convincing evidence to the contrary.

90. Testimony from Defendants' experts further demonstrates that there was no intent to defraud.

91. The valuations underlying the statements were prepared according to methods permitted by ASC-274. To the extent there were departures from GAAP, all such departures were disclosed and/or glaringly apparent in the supporting documentation provided to Mazars and Whitley Penn. There is no record evidence of any GAAP departure that would not have been immediately apparent to the accountants.

92. Professional accounting standards required the accountants to vet the valuation methodologies provided and to raise any issues.

93. Flemmons confirmed that it was reasonable for Defendants to rely on their outside accountants to confirm compliance with GAAP and/or address any deviations from GAAP. This testimony is not rebutted.

94. The SFCs therefore complied with GAAP or the deviations from GAAP were disclosed.

95. The disclaimers contained in the SFCs likewise cautioned lenders to do their own analysis and that the valuations contained therein were estimates.

96. The disclaimers included were the highest-level warnings permitted by the AICPA guidance to alert the user of deviations from GAAP.

97. Testimony from Defendants' experts further demonstrates that appraisals are retrospective and conservative, whereas developers consider possible future uses for the property. Consequently, a valuation reached through an appraisal and another approved valuation method can differ by orders of magnitude and still both be appropriate.

98. Even appraisals can vary significantly based on appraiser judgment and inputs.

99. Defendants were not obligated to use appraisal methodologies in valuing assets in the SFCs. As Flemmons, the only licensed fraud examiner and forensic accountant to testify,

stated, failure to provide existing appraisal reports to Mazars is not indicative of fraud. This testimony was unrebutted. Indeed, not a single witness testified that any fraud occurred or that any indicia of fraud was identified.

100. The NYAG has not adduced clear and convincing evidence any Defendant was personally involved in or knowingly intended to falsify business records.

101. The NYAG has not adduced clear and convincing evidence that any Defendant was personally involved in or knowingly intended to issue a false financial statement.

102. The NYAG has not established by clear and convincing sufficient evidence that any Defendant was personally involved in or knowingly intended to commit insurance fraud.

103. The Lewis testimony was not properly admitted.

104. The NYAG's failure to both set forth the governing accounting standards and elicit expert testimony that there were violations thereof in her case-in-chief does not entitle her to backfill her case with rebuttal testimony on those topics. People v. Harris, 98 N.Y.2d 452, 489 (2002); Matter of Yudelka A. M. v. Jose A. R., 72 A.D.3d 622, 623 (1st Dep't 2010); 6477:24-6478:5.

105. "Rebuttal evidence is evidence which overcomes some affirmative fact." People v. Alvino, 71 N.Y.2d 233, 248 (1987). "The opportunity to present rebuttal, however, does not permit a party to hold back evidence properly part of the case-in-chief and then submit that evidence to bolster the direct case after the opponent has rested." Harris, 98 N.Y.2d at 489 (2002). Rebuttal evidence "is not merely evidence which contradicts defendant's evidence and corroborates that of" the plaintiff. Alvino, 71 N.Y.2d at 248. Given this black-letter law, the defense's objections to Lewis' testimony were well-founded.

106. Lewis also cannot testify outside of the scope of his expert report, as an expert's testimony may not "transcend[] the scope of information set forth in the applicable expert disclosure form or the previously exchanged" expert reports. Moreno v. Fabre, 46 A.D.3d 254, 255 (1st Dep't 2007) (internal citations omitted). For example, Lewis repeatedly opined that for a valuation to be proper, it must be compared to the definition of ECV, a conclusion notably absent from both his initial expert report and rebuttal report. 6695:3-7; DX-1778; DX-1783. Any admission of this testimony or other opinion as to the interpretation of ECV and the relevant governing standards would be improper as it was never disclosed, and it is therefore excluded.

107. Further, based on this testimony, it is now apparent that Lewis lacks the required skill, knowledge, training, and experience to opine on the application of GAAP, procedures relating to compilation engagements, or valuation to be qualified as an accounting expert. See, e.g., Schechter v. 3320 Holding LLC, 64 A.D.3d 446, 450 (1st Dep't 2009) (deeming unqualified an expert where defendant failed to adduce evidence of any formal training in inspecting, maintaining, or repairing elevators or certifications or licenses with respect to elevator maintenance or repair, despite working for elevator maintenance companies for 20 years.)

108. Where a purported expert is only "generally familiar" but does not possess any training or experience in the specifics pertaining to that subject area, that expert lacks the requisite skill, knowledge, training, education, or experience from which it can be assumed that the information is reliable. Lessard v. Caterpillar, Inc., 291 A.D.2d 825, 825 (4th Dep't 2002) (affirming that the trial court did not abuse its discretion in precluding a putative expert witness that took several mechanical engineering courses in college, and was "generally familiar" with heavy construction vehicles, but lacked the necessary qualifications to opine on the defectiveness

of a lock on a vehicle because he had no training in the design of those specific vehicles or their individual parts); Beeley v. Spencer, 309 A.D.2d 1303, 1305 (2003) (affirming preclusion of accident reconstruction specialist as lacking qualifications to testify about the functions of brakes); Fortich v. Ky-Miyasaka, 102 A.D.3d 610 (1st Dep't 2013) (affirming preclusion of opinion by general surgical resident regarding plastic surgery procedures outside his field of practice as lacking "sufficient knowledge or expertise to testify outside his or her specialty").

109. Moreover, given the conflicting and compelling testimony of Flemmons and Bartov, both exceptionally qualified accounting experts, the NYAG cannot possibly establish her claims are supported by clear and convincing evidence.

VI. The NYAG has not Established the Existence of a Conspiracy

110. The third, fifth and seventh causes of action allege civil conspiracy claims based on the same underlying criminal acts as the second, fourth and sixth causes of action. The NYAG must show not only the same elements of each underlying statute, including intent, but also the elements of conspiracy based on clear and convincing evidence.

111. Conspiracy requires "(1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." Abacus Fed. Sav. Bank v. Lim, 75 A.D.3d 472, 474 (1st Dep't 2010) (internal citations and quotations omitted); see also Robinson v. Snyder, 259 A.D.2d 280, 281 (1st Dep't 1999) ("[A]greement to cause a specific crime to be committed [] together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy.").

112. Testimony from Michael Cohen should be disregarded, as he admitted to committing perjury on several occasions, including at his plea hearing after being warned by

U.S. District Judge Pauly about the penalties of perjury. Notably, it recently became public that Cohen relied on Artificial Intelligence generated citations to non-existent cases in his federal court filings. United States v. Michael Cohen, No. 18-cr-602 (S.D.N.Y. 2018) at ECF No. 104; see also Benjamin Weiser, Michael Cohen Used Artificial Intelligence in Feeding Lawyer Bogus Cases, N.Y. Times, Dec. 29, 2023, https://www.nytimes.com/2023/12/29/nyregion/michael-cohen-ai-fake-cases.html.

113. The testimony from Patrick Birney is inadmissible. Specifically, the Court cannot rely on the testimony that Alan Weisselberg told him "Trump wanted his net worth on the Statement of Financial Condition to go up."

114. The statement has two layers of hearsay: President Trump's purported statement and Weisselberg's statement.

115. Weisselberg's statement is not admissible for its truth as a party admission because it is a recitation without adoption or indorsement rather than a plain admission of a pertinent fact or material element of a cause of action. Reed v. McCord, 160 N.Y. 330, 341 (1899). It is also not admissible as state of mind or motive because it is irrelevant for any non-hearsay purpose, *i.e.*, only useful for its truth.

116. It is also not admissible as a co-conspirator statement because such statements are admissible only "when a prima facie case of conspiracy has been established . . . without recourse to the declarations sought to be introduced." People v. Caban, 5 N.Y.3d 143, 148 (2005) (internal citations and quotations omitted).

117. While statements can be conditionally admitted on the assumption that a *prima facie* case will be demonstrated later, here there is no other clear and convincing evidence of any conspiracy.

118. The statement also provides no information as to when the conspiracy began or when the statement was made. See People v. Flanagan, 28 N.Y.3d 644, 663-64 (2017).

119. The statement also did not come up during Weisselberg's own testimony.

120. The record is devoid of any evidence relating to the participants of the conspiracy or the respective role of each participant.

121. The NYAG has not adduced clear and convincing evidence to demonstrate a conspiracy to falsify business records under New York Penal Law §§175.05, 175.10.

122. The NYAG has not adduced clear and convincing evidence to demonstrate a conspiracy to issue false financial statements under New York Penal Law §175.45.

123. The NYAG has not adduced clear and convincing evidence to demonstrate a conspiracy to commit insurance fraud under New York Penal Law §176.05.

VII. The Remedies the Attorney General Seeks Are Improper

1. Executive Law §63(12) Does Not Authorize Disgorgement or the Other Remedies the NYAG Seeks

124. The NYAG seeks an award of disgorgement in the amount of $250 million.

125. The NYAG also seeks to (1) replace the current trustees of the Trust with independent trustees, (2) require the Trump Organization to prepare GAAP-compliant, audited SFCs for the next five years, (3) bar President Trump and the Trump Organization from entering into commercial real-estate acquisitions in New York for five years, (4) bar President Trump and the Trump Organization from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for five years, (5) permanently bar President Trump, Donald Trump, Jr., and Eric Trump from serving as an officer or director in any New York corporation or similar business entity registered and/or licensed in New York State, (6) permanently bar Messrs. Weisselberg and McConney from serving in the financial

control function of any New York corporation or similar business entity registered and/or licensed in New York State.

126. This is an unprecedented extension of §63(12) into a sophisticated commercial context. Seeking to penalize profitable commercial transactions without evidentiary support and impose sweeping and punitive relief without providing Defendants access to a jury constitutes an expansion of the law and creates constitutional concerns.

127. The NYAG is "without any prosecutorial power except when specifically authorized by statute." People v. Romero, 91 N.Y.2d 750, 754 (1998), citing Della Pietra v. State of New York, 71 N.Y.2d 792, 796-797 (1988).

128. Executive Law §63(12) provides, in relevant part:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.

129. Thus, Executive Law §63(12) does not expressly authorize disgorgement or any of the other remedies the NYAG seeks.

130. Principles of statutory construction likewise militate against the availability of these remedies under Executive Law §63(12).

131. The provision begins with a dependent clause joined to the rest of the sentence by the subordinating conjunction "[w]henever." The NYAG's powers are triggered to prevent "persistent fraud or illegality in the carrying on, conducting or transaction of business."

132. The remedies the statute authorizes can therefore only be understood with reference to this stated concern. The remedies are also limited to an order enjoining the specific conduct at issue or of any fraudulent or illegal acts. The statute therefore does not, and cannot, possibly authorize enjoining any and all ***lawful*** business activity by any or all of the defendants. Thus, barring President Trump or any of the other individual Defendants from entering into ***lawful*** real-estate transactions or ***lawful*** loan transactions exceeds the statutory scope of relief. Indeed, any construction of the statute to authorize such an extraordinary, confiscatory, and punitive remedy would present significant constitutional violations (takings, commerce clause, due process, etc.) and would simply be untethered to the authority granted under the express language of the statute. This is especially true where, as here, the unrebutted evidence establishes there are no complainants, no victims, no losses, and no harm.

133. Caselaw reinforces the principle that the NYAG is limited to the remedies prescribed in Executive Law §63(12) or the underlying penal law predicates. People v. Romero, 91 N.Y.2d 750, 754-755 (1998).

134. At base, Executive Law §63(12) does not create new claims but, rather, "provides particular remedies and standing in a public officer to seek redress on behalf of the State and others." People ex rel. Spitzer v. Frink Am., Inc., 2 A.D.3d 1379, 1380 (4th Dep't 2003) (internal citations and quotations omitted); see also People v. Gilmour, 284 A.D.2d 341 (2d Dep't 2001).

135. The Court of Appeals in People ex rel. Schneiderman v. Greenberg, in holding that "disgorgement is an available remedy under the Martin Act and the Executive Law," analyzed the Martin Act's "broad, residual relief clause," *i.e.,* that a Court is permitted to redress a violation of the Martin Act with "such other and further relief as may be proper." 27 N.Y.3d 490, 497 (2016), citing GBL § 353-a. The Court thus concluded that "in *an appropriate case*,

disgorgement may be an available equitable remedy distinct from restitution under this State's anti-fraud legislation." Id. 498 (emphasis added) (internal citations and quotations omitted). However, based on the unrebutted evidence, this is hardly "an appropriate case". Even if statutorily authorized there can simply be no disgorgement where there is no actual evidence in the record that the subject transactions would not have been approved or the terms or pricing would have been altered. The Court is simply not free to accept the invitation of the NYAG to ignore the actual facts, the unrebutted evidence, and the testimony of the actual transaction participants and substitute the *post-hoc* judgment of the NYAG.

136. Likewise, the First Department in People v. Ernst & Young LLP held that "it was error to dismiss a claim for the equitable remedy of disgorgement at the pleading stage" in an action "brought under New York's Executive Law *and* Martin Act." 114 A.D.3d 569, 569 (1st Dep't 2014) (emphasis added). The Court thus concluded that "while the Attorney General d[id] not allege direct injury to the public or consumers as a result of defendant's alleged . . . the equitable remedy of disgorgement is available *in this action*, and it was premature to categorically preclude it at the pleading stage." Id. at 570 (emphasis added).

137. Also, as noted, although the NYAG can seek a permanent injunction under Executive Law § 63(12), the Court is only permitted to enjoin the specific activity from which the fraud arose. See, e.g., People by James v. N. Leasing Sys., Inc., 70 Misc. 3d 256, 279-280 (Sup. Ct. N.Y. Cty. 2020) (permanently enjoining respondents "from conducting the business of equipment finance leasing or collection of debts under equipment finance leases and from purchasing, financing, transferring, servicing, or enforcing equipment finance leases"), aff'd, 193 A.D.3d 67 (1st Dep't 2021); Matter of People v. Imported Quality Guard Dogs, Inc., 88 A.D.3d 800, 801-802 (2d Dep't 2011) (permanently enjoining defendant from "selling, breeding,

or training dogs, or advertising or soliciting the sale, breeding, or training of dogs"); Matter of People v. Veleanu, 89 A.D.3d 950, 950 (2d Dep't 2011) (permanently enjoining defendant from "doing business as Objets D'Art Uniques [and] from materially misrepresenting any item he offers for sale."). At issue herein is the purported submission of allegedly inflated SFCs. The statutory relief is thus limited to enjoining that conduct, not all otherwise lawful conduct. There is therefore no basis to enjoin lawful business activity and or to interfere with the fiduciary operations of a Florida Trust, the interstate commerce between lawful business entities, or to otherwise confiscate the property rights of individuals.

138. Also, the requested disgorgement amount is, based on the unrebutted evidence in the record, simply punitive. There has been no factual demonstration of any loss or harm, actual or theoretical. The actual transaction participants did not testify as to the existence of any misrepresentation, material or otherwise, reliance, detrimental or otherwise, or harm or loss of any amount. The Court is therefore not free to simply adopt the NYAG's unsupported calculations of "disgorgement".

139. A Justice of this Court, in State by Abrams v. Solil Mgt. Corp., concluded that the plaintiff was "not entitled to punitive damages or treble damages, or both…Executive Law § 63 (12) does not provide for either of these extraordinary remedies and petitioner is limited to obtaining restitution or compensatory damages." 128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985); see also State by Lefkowitz v. Hotel Waldorf-Astoria Corp., 67 Misc. 2d 90, 92 (Sup. Ct. N.Y. Cty. 1971) (denying a demand for treble damages because "[t]he Executive Law provides for restitution only").

140. Awarding relief outside that prescribed by Executive Law §63(12) and the underlying statutes is punitive. A Justice of this Court in People ex rel. Spitzer v. Direct

Revenue, LLC, in a special proceeding brought pursuant to Executive Law §63(12), General Business Law §§ 349 and 350, Penal Law § 156.20 and New York common law, held that the state was "strictly limited to recovery as specifically authorized by statute." 19 Misc. 3d 1124(A) at *7-8 (Sup. Ct. N.Y. Cty. 2008). The Court further held that to the extent disgorgement was even available, "it may only be granted in an amount related to the actual damages caused by the misconduct," since "[d]isgorgement of respondents' profits to the state would effectively constitute punitive damages not authorized by statute." Id. at 8.

141. Here, the NYAG's requested relief is not authorized by Executive Law §63(12) and is punitive. The relief sought is only tangentially related to the purportedly fraudulent conduct, *i.e.*, procurement of loans on more favorable terms than Defendants would have otherwise obtained. Instead, the NYAG seeks to effectively ban President Trump's companies from operating in the state of New York for five years. Worse even, she seeks to permanently ban President Trump and his children from being an officer or director of a New York corporation indefinitely, despite their extremely limited involvement with the conduct at issue.

2. The Constitution does not Permit the NYAG to Recover Excessive Fines or Interfere with Defendants' Power of Disposition over their Own Property

142. Both the Federal and State Constitutions prohibit the imposition of excessive fines. See U.S. Const. 8th Amend.; N.Y. Const., art. I, §5.

143. The Eighth Amendment (applicable to the States under the Fourteenth Amendment's Due Process Clause) provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. 8th Amend.

144. The Excessive Fines Clause thus "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" Austin v. United

States, 509 U.S. 602, 609-610 (1993) (citation omitted); United States v. Bajakajian, 524 U.S. 321, 334 (1998).

145. A fine should not deprive any person of his livelihood. See Bajakajian, 524 U.S. at 335; see also Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 269-71 (1989).

146. If a fine or penalty constitutes punishment, in either the civil or criminal context, it falls under the protections of the Eighth Amendment. See Austin, 509 U.S. at 609-610; Prince v. City of New York, 108 A.D.3d 114, 119 (1st Dep't 2013). Although civil penalties serving "solely remedial purposes" do not fall under the rubric of the Eighth Amendment (see Austin, 509 U.S. at 621–622), where a civil fine "serves, at least in part, deterrent and retributive purposes," it is considered punitive and subject to the Excessive Fines Clause. County of Nassau v. Canavan, 1 N.Y.3d 134, 139-140 (2003); see Austin, 509 U.S. 621; Bajakajian, 524 U.S. at 329.

147. The form of the fine is irrelevant and may be a "payment in kind," *i.e.,* a forfeiture or a payment in cash. See von Hofe v. United States, 492 F.3d 175, 178 (2d Cir. 2007); see Austin, 509 U.S. at 609-610; Bajakajian, 524 U.S. at 328. Civil forfeiture serves, at least in part, deterrent and retributive purposes and is thus punitive and subject to the Excessive Fines Clause. See Austin, 509 U.S. at 619-622; Bajakajian, 524 U.S. at 328-329).

148. A fine against a defendant mandating forfeiture of his interest in his business is clearly a form of monetary punishment no different from a traditional fine. See Austin, 509 U.S. at 621; Bajakajian, 524 U.S. at 328; United States v. Ambrosio, 575 F.Supp. 546 (E.D.N.Y. 1983) see also United States v. Viloski, 814 F.3d 104, 110 (2d Cir. 2016).

149. Where, as here, the fine constitutes punishment, the Excessive Fines Clause is violated where the fine is "grossly disproportional to the gravity of [the] offense." Bajakajian, 524 U.S. at 334; Canavan, 1 N.Y.3d at 140. A fine is unconstitutionally excessive if it "notably exceeds in amount that which is reasonable, usual, proper or just." People v. Saffore, 18 N.Y.2d 101, 104 (1966).

150. "The touchstone of [this] constitutional inquiry ... is the principle of proportionality: The amount of the [fine] must bear some relationship to the gravity of the offense that it is designed to punish." Bajakajian, 524 U.S. at 334.

> In determining whether a civil penalty is grossly disproportionate, courts look to factors such as (1) the essence of [the violation for which the civil penalty is imposed] and its relation to other [violations], (2) whether the [violator] fits into the class of persons for whom the statute was principally designed, (3) the maximum [penalty] that could have been imposed, and (4) the nature of the harm caused by the [violator's] conduct.

Union Square Supply Inc. v. De Blasio, 572 F.Supp.3d 15, 25 (S.D.N.Y. 2021) (alterations in original) (citing Viloski, 814 F.3d at 110). See Canavan, 1 N.Y.3d at 140; Bajakajian, 524 U.S. at 334.

151. Here, many of the penalties sought by the NYAG are excessive fines, including seeking to bar President Trump and the Trump Organization from entering into any New York State commercial real estate acquisitions, applying for loans, and from serving as an officer or director in any New York corporation or similar business entity registered and/or licensed in New York State.

152. First, the sanctions, mandating President Trump's forfeiture of his businesses and directing other improper payments in kind, constitute punishment against President Trump and Defendants that cannot fairly be viewed as solely remedial. The sanctions are explicitly intended to deter Defendants' future conduct, not to compensate the People of New York for any of the

purported acts of Defendants, and they bear no relationship to any actual loss sustained by the People of New York. See Prince, 108 A.D.3d at 120; Bajakajian, 524 U.S. at 329; Towers v. City of Chicago, 173 F.3d 619, 624 (7th Cir. 1999). Because the proposed §63(12) sanctions here, "at least in part, serve[] a deterrent purpose, [they] cannot be considered solely remedial and thus [are] subject to Eighth Amendment analysis." Prince, supra; State of New York v. Town of Wallkill, 170 A.D.2d 8, 11 (3d Dep't 1991); see also United States v. Mackby, 261 F.3d 821, 830 (9th Cir. 2001).

153. Second, the sanctions at issue are clearly grossly disproportionate to the gravity of the purported offenses. Even if the NYAG had proven Defendants' alleged conduct, which it did not, it caused no harm to the public. The transactions at issue were complex, bilateral business transactions between Defendants and their banks, none of which involved an impact on the public or implicated the public market in any way. It is undisputed that the lenders profited from the transactions. No entity has identified any wrong or lodged a complaint with the NYAG. All loans were repaid in full, and there were no defaults. Nor do any witnesses from a single financial institution testify that the institution would have done anything different if it knew what it knows now.

154. Therefore, nothing would support a finding that the proposed sanctions are commensurate with the purported offenses. Compare People by James v. Orbital Publ. Grp., Inc., 193 A.D.3d 661 (1st Dep't 2021) ("[The defendant] was at the heart of a years'-long scheme that deceptively wrested tens of millions of dollars from consumers across the country, including tens of thousands of New Yorkers. The total monetary judgment, while significant, is commensurate with the offense.").

155. Third, the arms-length transactions in this case do not involve the type of deceptive and fraudulent conduct that §63(12) was enacted to prevent. Compare Union Square Supply, 572 F.Supp.3d 15, 25 (S.D.N.Y. 2021) ("Union Square Supply's conduct fell squarely into the heartland of what the Rule was enacted to prevent -- price gouging with respect to products necessary to protect health during the COVID-19 pandemic.").

156. The Supreme Court has also provided a framework for punitive damages analysis. In BMW of North Am. Inc., v. Gore, the Court held that while "[p]unitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition," a "grossly excessive" award "violates the Due Process Clause of the Fourteenth Amendment." 517 U.S. 559, 568 (1996) (internal citations omitted).

157. In determining whether an award is grossly excessive, a Court should consider (1) "the degree of reprehensibility of the [conduct];" (2) the "disparity between the harm or potential harm suffered by [plaintiff] and [the] punitive damages award;" and (3) "the difference between this remedy and the civil penalties authorized or imposed in comparable cases." Id. at 574-575.

158. First, as Defendants have repeatedly argued, there was no harm to the public caused by Defendants' alleged conduct. The transactions at issue were complex, bilateral business transactions between Defendants and their banks, none of which involved an impact on the public or implicated the public market in any way.

159. Second, McCarty's $187 million interest rate differential (which directly contravenes the only fact evidence upon which it could possibly be based) is grossly disproportionate to any alleged harm suffered. PX-1780. Again, the banks were repaid in full, no harm has inhered to them, and there has also been no cognizable harm to the public. No bank witness testified that any approvals, terms, or pricing would have been altered by the

misstatements alleged by the NYAG.[1] The absence of such testimony is fatal to any claim for disgorgement. McCarty cannot simply presume harm or loss without a factual predicate.[2]

160. Third, a disgorgement penalty of hundreds of millions of dollars is far beyond that awarded in other cases. While binding caselaw in this state addresses the applicability, rather than the magnitude, of a disgorgement penalty, the Southern District of New York awarded $64.6 million in disgorgement against Martin Shkreli in 2022, a quarter of the award sought by the NYAG. FTC v. Shkreli, 581 F. Supp. 3d 579 (S.D.N.Y. 2022).

161. By seeking to bar President Trump, any of the other individual Defendants, and the Trump Organization from entering any New York State commercial real estate acquisitions of any kind for a period of five years, the NYAG is also requesting that this Court "interfere with an owner's power of disposition of the property," which amounts to an unconstitutional taking. C.f. City of Buffalo v. J. W. Clement Co., 28 N.Y.2d 241, 255 (1971) ("[A] de facto taking requires a physical entry by the condemnor, a physical ouster of the owner, a legal interference with the physical use, possession or enjoyment of the property or a legal interference with the owner's power of disposition of the property.").

---

[1] To the contrary, Mr. Haigh testified that Deutsche Bank's relevant approvals were based on Deutsche Bank's own internal analysis ("DB adjusted values"). See Tr. at 1098:9-1103:2; 1103:13-15; 1111:13-17; 1119:3-5; 1119:16-25; 1121:17-1122:1; 1126:3-22; 1129:11-14; 1132:18-24; 1132:25-1133:13; 1133:18-25; 1135:7-13; 1135:14-18; 1146:1-9; 1157:4-17; 1157:22-25.

[2] The Attorney General did not elicit any testimony from any lender representative tasked with decision making as to what specifically they would have done with any additional information in connection with the approval, terms, pricing and/or monitoring of the subject loans. McCarty, like any expert, is simply not permitted to speculate as to what he thinks the *actual testifying witnesses* of the financial institutions *might have done* under the circumstances. See Gathers v. New York City Transit Auth., 242 A.D.2d 506, 506-07 (1st Dep't 1997) (reversing admission of expert testimony which was "based on speculation, lacked competent factual support and was beyond the proper scope of expert testimony"). "An expert may not reach a conclusion by assuming material facts not supported by the evidence, and may not guess or speculate in drawing a conclusion." Quinn v. Artcraft Const., Inc., 203 A.D.2d 444, 445 (2d Dep't 1994) (purported expert to testify regarding improper window installation was properly excluded where no evidence on the record supported negligent installation); Matter of 91st St. Crane Collapse Litig., 154 A.D.3d 139, 159 (1st Dep't 2017) ("The trial court properly precluded the proposed testimony of defense expert . . . , which not only was not based on facts in the record, but also contradicted facts in the record"). See also, Ortiz v. Variety Poly Bags, Inc., 19 A.D.3d 239, 240 (1st Dep't 2005).

162. §63(12) was designed to address conduct that is demonstrably and *objectively* misleading, false or fraudulent and harmful the public, not subjective valuations in transactions between private, sophisticated parties represented by sophisticated lawyers, as here. See, e.g., People by James v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023) (holding that marketing and sales of JUULs' electronic cigarettes constitutes deceptive and illegal practices and contributed to a statewide public health crisis); People by James v. Image Plastic Surgery, LLC, 210 A.D.3d 444 (1st Dep't 2022) (holding that advertising of a stem cell treatment misrepresented its efficacy in treating various medical conditions and falsely stated that the treatment was part of a study authorized or overseen by the FDA).

163. There is no connection between the purported statements Defendants provided to their private lending banks and any public interest in securing an honest marketplace. Defendants' activities in no way affected the marketplace. Nothing indicates that the non-party banks were defrauded by Defendants or that they would have structured the loans differently.

164. While the NYAG seeks the maximum penalties under §63(12), there is no proportionality between the offenses charged and the penalties she seeks to impose.

165. Based on the foregoing, the sweeping penalties sought by the NYAG against Defendants violate the Excessive Fines Clause, the Commerce Clause, the Takings Clause and the Due Process Clause.

VIII. There is No Record Evidence Supporting a Likelihood of Continuing Fraud Sufficient to Support the Sprawling Injunctive Relieve the NYAG Seeks

166. Moreover, the NYAG is not entitled to the remedies she seeks on a theory of continuing violations, as Defendants have complied in good faith with the Monitor.

167. The Court appointed the Monitor and directed that Monitor to report any financial reporting misconduct, suspicious activity or any suspected or actual fraudulent activity. NYSCEF Doc. Nos. 193, 194. Pursuant to her appointment, the Monitor has submitted reports dated December 19, 2022, February 3, 2023, April 11, 2023, August 3, 2023, and November 29, 2023 (the "Reports"). NYSCEF Doc. Nos. 441, 489, 617, 647, 1641. There is no mention whatsoever in any of the Reports of any suspicious activity, suspected or actual fraud. Indeed, the word "fraud" does not appear in any of the Reports. The absence of any such reference in the Reports demonstrates the Monitor has not in fact identified any suspicious activity, suspected or actual fraud. As noted above, the Court is not free to "interpret" non-existent evidence. That is, where the Monitor has not identified any fraud, the Court cannot determine any exists.

168. The Reports, along with testimony from Hawthorn demonstrates that the Monitor has not identified any fraud. Hawthorn's testimony (and the actual language of the Reports) establishes Defendants have been consistently cooperating with the Monitor and have resolved all issues presented other than the provision of follow-up information relating to intercompany loans.

169. Hawthorn’s testimony demonstrated that to the extent the Monitor identified certain discrepancies, there were explanations for those discrepancies and the company worked with the Monitor to resolve the issue to her satisfaction.

170. Therefore, as this record evidence is unrebutted, and the NYAG has presented no evidence whatsoever of any ongoing fraud or misconduct, the Court cannot simply conclude otherwise and impose sweeping, punitive relief.

IX. The Attorney General Has Adduced No Record Evidence of Ill-Gotten Gains

171. Even assuming, *arguendo,* an award of disgorgement was permitted, the NYAG must demonstrate a nexus between the alleged ill-gotten gains and the purported wrongful conduct.

172. The First Department has held that "the disgorged amount must be causally connected to the violation." J.P. Morgan Sec. Inc. v. Vigilant Ins. Co., 91 A.D.3d 226, 232-33 (1st Dep't 2011), rev'd on other grounds, 21 N.Y.3d 324 (2013) (internal citations and quotations omitted).

173. The NYAG has been woefully unable to make a "reasonable approximation of profits causally connected to the violation" because there is no record evidence that the purported violation, *i.e.*, the alleged misstatements in the statements of financial condition, resulted in any gain to Appellants. Id. at 233 (citation omitted); see also Jim Beam Brands Co. v. Tequila Cuervo La Rojena S.A. de C.V., 2011 N.Y. Misc. LEXIS 7257, at *11 (Sup. Ct. N.Y. Cty. 2011) (unpublished) ("Jim Beam's expert's reliance on a disgorgement theory also fails because there is no causal link between any increase in profits during the period of the breach.").

174. The NYAG's theory of disgorgement, *i.e.*, "the difference between the interest rates the Trump Organization could have obtained, if their loans were treated as regular commercial real estate loans, and the interest rates they actually obtained, using the false financial statements with the private wealth management groups," is fundamentally flawed. 29:3-9.

175. Here, there is no record evidence of "ill-gotten" gains, *i.e.,* that any lender would have declined to extend the loan or extended it on different terms had it been provided additional information.

176. The Attorney General did not elicit any testimony from any lender representative tasked with decision making as to what specifically they would have done with any additional information in connection with the approval, terms, pricing and/or monitoring of the subject loans. The NYAG's expert, McCarty, is simply not permitted to speculate as to what he thinks the *actual testifying witnesses* of the financial institutions *might have done* under the circumstances. See Gathers, 242 A.D.2d at 506-07 (reversing admission of expert testimony which was "based on speculation, lacked competent factual support and was beyond the proper scope of expert testimony"). "An expert may not reach a conclusion by assuming material facts not supported by the evidence, and may not guess or speculate in drawing a conclusion." Quinn v. Artcraft Const., Inc., 203 A.D.2d 444, 445 (2d Dep't 1994) (purported expert to testify regarding improper window installation was properly excluded where no evidence on the record supported negligent installation); Matter of 91st St. Crane Collapse Litig., 154 A.D.3d at 159 ("The trial court properly precluded the proposed testimony of defense expert . . . , which not only was not based on facts in the record, but also contradicted facts in the record"). See also, Ortiz v. Variety Poly Bags, Inc., 19 A.D.3d 239, 240 (1st Dep't 2005).

177. Once again, Nicholas Haigh, former Managing Director of DB, was never asked in the NYAG's prima facie or rebuttal case whether DB would have done anything differently had it been provided additional information. Indeed, as noted, Mr. Haigh testified that Deutsche Bank's relevant approvals, terms, pricing were based on Deutsche Bank's own internal analysis ("DB adjusted values"). *See* Tr. at 1098:9-1103:2; 1103:13-15; 1111:13-17; 1119:3-5; 1119:16-

25; 1121:17-1122:1; 1126:3-22; 1129:11-14; 1132:18-24; 1132:25-1133:13; 1133:18-25; 1135:7-13; 1135:14-18; 1146:1-9; 1157:4-17; 1157:22-25. This is supported fully by the DB credit memos. PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX-302; PX-2960; PX-3137; PX-498, PX-519, PX-561. This unrebutted evidence cannot simply be ignored by the Court. Therefore, there is no basis on this record for the Court to conclude the NYAG's requested disgorgement amount is appropriate.

178. Additionally, Vrablic and Williams of DB testified that DB relied on many factors in electing to extend the loans, including President Trump's track record and ability to refer other high-net worth individuals. 5326:11-5327:2; 5329:18-5331:18; 5487:24-5493:6; 5491:10-21; 5492:8-21; 5520:12-22; 5526:13-25; DX62; DX-66 at 17-18; DX-298 at 2; DX-300 at 3-4; DX-313 at 4. Williams further testified that the valuation differentials (some $2 billion or more) between the DB independent valuation analysis and the SFC values were expected and not at all problematic. 5327:19-5328:6; 5365:1-5366:16; 5382:15-5384:6. Also, Williams testified DB viewed the SFC values as estimates. 5327:24-25. Moreover, Williams testified that President Trump would have qualified for the PWM loan pricing even if his net worth was $1 billion, an amount never in dispute in this action. 5392:13-5396:4. This testimony is unrebutted. The Court cannot therefore substitute the NYAG's judgment, that of the NYAG's expert, or its own judgment in the face of unrebutted evidence.

179. Similarly, J. Weisselberg, Executive Director at Ladder Capital, was never asked by the NYAG whether Ladder Capital would have done anything differently had it been provided additional information.

180. Michiel McCarty's testimony should be accorded no weight, as the NYAG attempted to backfill her case with testimony she should have elicited from fact witnesses as part

of her prima facie case. See Gathers, 242 A.D.2d at 506-507 (reversing admission of expert testimony which was "based on speculation, lacked competent factual support and was beyond the proper scope of expert testimony").

181. "[A]n expert's opinion not based on facts in the record or personally known to the witness is worthless." Cooke v. Bernstein, 45 A.D.2d 497, 500 (1st Dep't 1974) (citations omitted). Experts opine on the factual predicate; they do not supply the factual predicate. This is a fundamental flaw in the NYAG's prima facie case.

182. A party is "not entitled to introduce testimony from a banking expert" where "it fail[s] to demonstrate how the proposed expert testimony would clarify an issue involving professional and technical knowledge beyond the ken of the typical" factfinder. GMAC Commer. Credit L.L.C v. Mitchell-B.J., Ltd., 272 A.D.2d 51, 51 (1st Dep't 2000); see also Ortiz v. City of New York, 39 A.D.3d 359, 360 (1st Dep't 2007) (affirming trial court's preclusion of expert testimony where "there was no showing that the proposed testimony would clarify an issue involving professional or technical knowledge beyond the ken of the typical juror").

183. McCarty seeks to substitute his judgment for the judgment of the sophisticated private actors that underwrote and negotiated highly successful business transactions. Quinn v. Artcraft Const.., 203 A.D.2d at 445 ("[A]n expert may not reach a conclusion by assuming material facts not supported by the evidence, and may not guess or speculate in drawing a conclusion."). McCarty's testimony cannot be used to supplant the factual record with speculative testimony as to what he thought the lenders might have done.

184. McCarty's disgorgement calculation is premised on the assumption that the Private Wealth Management Group at DB would not have extended the loans to President Trump at those interest rates had they been provided different or additional information. This

assumption has no basis in the record and is, in fact, rebutted by the factual record, as well as Defendants' expert witnesses.

185. McCarty adopted the Court's position on summary judgment that the SFCs contained misstatements. But the Court expressly did not determine any alleged misstatements were either intentional or material. NYSCEF Doc. No. 1531. Since the unrebutted evidence establishes any alleged misstatements were not material and not relied upon, McCarty's assumption and adoption of the Court's is further flawed.

186. Based on this assumption, McCarty used higher interest rates from reports prepared by the CRE group.

187. However, McCarty could not be certain that the CRE group would have extended the loans on the terms in the report or that President Trump would have accepted those terms. 3134:16-3137:19.

188. He did not account for the possibility of additional financing sources, the possibility of pledging other assets as collateral, or the possibility of choosing to forego the loans entirely. 3137:22-3141:5.

189. He did not consider that President Trump had sufficient liquid assets to self-finance the Doral and Chicago loans. 6313:6-10; PX-787 at 4; PX-815 at 5.

190. His analysis ignored testimony from bank witnesses that the lenders made decisions based on their own analyses and were based on other factors, including developing relationships with ultra-high-net-worth individuals and the PWM price grid.

191. Nonetheless, even McCarty agreed that banks have historically been very willing to lend to high-net worth individuals at low interest rates because they get repaid, and that the lenders here were repaid in full. 3055:21-24.

192. Disgorgement also cannot be awarded for any transactions that closed after July 13, 2014.

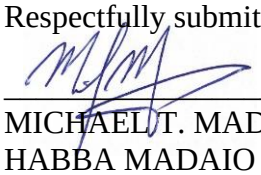
193. While the interest rates fluctuated over the course of the loan terms, any fluctuations were a result of LIBOR or a step-down in guaranty.

194. Based on the foregoing, the NYAG has failed to demonstrate her entitlement to disgorgement as a matter of law.

195. Finally, to the extent the Court intends to issue a decision adverse to any Defendant(s), it should be stayed pursuant to CPLR § 5519(c) to permit Defendants to perfect their appeal.

Dated: New York, New York
January 5, 2024

Respectfully submitted,



MICHAEL T. MADAIO, ESQ.
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th and 18th Floors
New York, New York 10120
(908) 869-1188
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Trump Organization, Inc., Trump Organization LLC, Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC

-and-

CHRISTOPHER M. KISE
Pro Hac Vice
CONTINENTAL PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
(305) 677-2707
Counsel for Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

PROPOSED FINDINGS OF FACT OF DEFENDANTS DONALD TRUMP, JR. AND ERIC TRUMP

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants
Donald Trump, Jr. and Eric Trump

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DONALD TRUMP, JR. DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS 2

A. Testimony Adduced at Trial 2

i. Donald Trump, Jr. 2

ii. Donald Bender 4

iii. Michael Cohen 5

iv. Allen Weisselberg 5

v. Patrick Birney 6

vi. Camron Harris 6

vii. Claudia Mouradian 6

B. Additional Findings of Fact 7

III. ERIC TRUMP, JR. DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS 7

A. Testimony Adduced at Trial 7

i. Eric Trump 7

ii. Allen Weisselberg 8

iii. Michael Cohen 8

iv. Donald Bender 10

v. Partrick Birney 10

vi. Camron Harris 10

vii. Claudia Mouradian.....11

B. Additional Findings of Fact.....11

IV. CONCLUSION.....12

Defendants Donald Trump, Jr. and Eric Trump, by and through their undersigned counsel, respectfully submit the following proposed findings of fact.[1]

I. INTRODUCTION.

1. After a three-year investigation involving interviews with more than 65 witnesses, and nearly a year of pre-trial proceedings during which more than 30 depositions were taken and more than 5.5 million pages of information were produced to the Attorney General, this action was tried before this Court beginning on October 2, 2023. During the ensuing 11 weeks of trial, more than 40 witnesses testified, under oath, before this Court.

2. Despite the foregoing, not a single witness has ever testified that either Donald Trump, Jr. or Eric Trump had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the Statements of Financial Condition ("SFCs") which are at the center of this action. As demonstrated below, this includes the Attorney General's primary witnesses such as the company's longtime outside accountant, Donald Bender and, former employee, Michael Cohen. Instead, the record evidence and testimony adduced at trial conclusively establishes that the SFCs were prepared, in their entirety, by others at the company working in conjunction with the company's long time outside accountants.

3. Accordingly, the Court should render judgment in favor of Donald Trump, Jr. and Eric Trump, dismissing this action against them in its entirety.

[1] Donald Trump, Jr. and Eric Trump expressly incorporate herein by reference Defendants' Joint Findings of Fact dated January 5, 2023, as if fully set forth herein. *See* **Exhibit A**. Undefined capitalized terms and names have the meaning set forth in Defendants' Joint Findings of Fact.

II. DONALD TRUMP, JR. DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS.

A. Testimony Adduced at Trial.

i. Donald Trump, Jr.

4. Donald Trump, Jr. began working for the Trump Organization in September 2001. Transcript ("Tr.") 3160:4-7.

5. He has served as an Executive Vice President at the Trump Organization since approximately 2011. Tr. 3164:17-20.

6. On or about January 19, 2017, Donald Trump, Jr. became a trustee of the Donald J. Trump Revocable Trust. Tr. 3180:20-25, 3181:5-17.

7. In making decisions related to the Trust, Donald Trump, Jr. would consult with "any number of people in the organization," including counsel and "accounting." Tr. 3196:2-8.

8. Donald Trump, Jr. could not recall performing any work on the SFCs for any year.

> Q Did you ever perform work on the Donald J. Trump Statement of Financial Condition for any year?
>
> A Not that I recall, no.
>
> Q No specific knowledge, sir?
>
> A No.

Tr. 3213:21-25; *see* Tr. 3216:18-21, 3226:13-22, 3241:22-3245:2, 3277:6-8.

9. Donald Trump, Jr. is similarly not familiar with the supporting data spreadsheets prepared in connection with the SFCs. Tr. 3228:3-11, 3243:20-3245:2.

10. Donald Trump, Jr. is not a certified public accountant and does not hold any professional certifications in accounting. Tr. 3155:14-19. He has also not received any

professional training applying generally accepted accounting principles and, therefore, relies on the company's accounting department and outside accounting firm. Tr. 3155:23-3156:1.

> THE WITNESS: Yes, I know nothing about GAAP in terms of that capacity and I'll leave it to my accountants. That's why we have Big 5 CPA firms to do all of that.

Tr. 3156:13-15.

11. Donald Trump, Jr. relied on CPAs and other accounting professionals in ultimately signing documents relating to the SFCs, including the 2016-2020 representation letters from Mazars and the 2021 representation letter from Whitley Penn. Tr. 241:5-14, 255:10-268:18, 479:21-482:12, 964:3-965:6, 3234:11-24.

12. Prior to signing the compliance certificates as attorney-in-fact for President Trump, which state that, in the opinion of the borrower and guarantor, the information presented is correct in all material respects, Donald Trump, Jr. confirmed with his internal accounting team and/or external accountants at Mazars, such as Donald Bender that the contents of the SFCs were correct.

> Q Did you take any steps to assure yourself of this certification?
>
> A As with all of the certifications, as I think we discussed yesterday, I would have sat with the relevant parties; namely, in accounting, whether that's the Trump team and/or Donald Bender. I would have asked them if everything that is in here is correct. I would have likely also checked with our legal department to make sure that the conditions are met as it relates to anything I would sign for Deutsche Bank and if they assured me in their expert opinion that these things were fine, I would have been fine with that and signed off accordingly.
>
> Q Is that specific to this particular certification, sir?
>
> A Well, I think I probably would save us some time and say that's probably specific to all of these

> certifications because I'm sure I've signed dozens of these in my time as a trustee.

Tr. 3239:2-10; *see* Tr. 3239:19-3241:4.

13. Donald Trump, Jr. knew bankers did their own diligence.

> Q Correct that you signed this certification with the intent that the bank would rely on it?
>
> A I don't know that they rely on it. I don't -- I know a lot of bankers and they do their own due diligence, but I was fine signing this based on everything I had been told as per everything we've discussed today, yes.

Tr. 3249:20-3251:2.

14. Any involvement Donald Trump, Jr. had with the SFCs or documents that ultimately became a part of the SFCs was limited. Tr. 3523:9-13.

ii. Donald Bender.

15. Donald Bender of Mazars, the Trump Organization's primary outside accounting firm for several decades, corroborated Donald Trump, Jr.'s testimony that he was not involved in the preparation of the SFC's, testifying that did not recall discussing the SFCs with Donald Trump, Jr.

> Q Mr. Bender, did you ever speak with Donald Trump, Jr. about his Statement of Financial Condition?
>
> A Not that I recall.

Tr. 527:23-25.

16. In fact, Donald Trump, Jr. would have needed to rely on others in determining which GAAP exceptions would be included in the SFCs. Tr. 328:13-25.

iii. Michael Cohen.

17. Michael Cohen, the Attorney General's so-called key witness, also corroborated Donald Trump, Jr.'s testimony, testifying that he did not recall ever discussing the SFCs with Donald Trump, Jr.

> Q Okay. And you never discussed the Statement of Financial Conditions with Donald Trump Jr. did you?
>
> A Not that I recall.

Tr. 2327:2-4.

iv. Allen Weisselberg.

18. Allen Weisselberg also did not rely on Donald Trump, Jr. for any of the information contained in the SFCs. Tr. 845:21-22.

19. Specifically, Mr. Weisselberg testified that Donald Trump, Jr. neither participated in coming up with the valuations contained in the SFCs nor did he do anything to calculate the estimated current values.

> Q What, if anything, did [Donald Trump, Jr.] do, to your knowledge, to determine the estimated current value?
>
> A I don't believe he did anything. It was -- it was done by the same people that did it for 25 years.

Tr. 964:3-9; *see* Tr. 3227:2-4.

20. In fact, Allen Weisselberg did not even share with Donald Trump, Jr. how the values in the SFCs were calculated.

> Q Did you tell Donald Trump, Jr. during the time you were both trustees how the values were calculated?
>
> A Not that I can remember.

Tr. 965:20-22.

v. Patrick Birney.

21. Patrick Birney also testified that he did not recall ever discussing the SFCs with Donald Trump, Jr. Tr. 5599:19-21.

22. The first time Mr. Birney recalled ever discussing the SFCs with Donald Trump Jr. was in 2021 and only because Mr. Birney had included him in a call regarding a change in the methodology used to value certain golf courses in the SFC. Tr. 1390:16-1400:17.

vi. Camron Harris.

23. Donald Trump, Jr also did not have any meetings with Camron Harris of Whitley Penn (the accounting firm that took over for Mazars) regarding the SFCs.

> Q So, while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?
>
> A I did not have any meetings with Donald Trump, Jr. or Eric Trump in regards to the Statement of Financial Condition.

Tr. 458:19-23.

vii. Claudia Mouradian.

24. Donald Trump, Jr. was also not involved in the procurement of insurance on behalf of the Trump Organization. Ms. Mouradian testified that she had no communications with Donald Trump, Jr.

> Q Did you speak to Donald Trump, Donald J. Trump?
>
> A No.
>
> Q Donald Trump, Jr.?

A No.

Mouradian Deposition Transcript 124:5-9.

B. Additional Findings of Fact.

25. Donald Trump, Jr.'s demeanor was candid and forthcoming. He appeared as an honest witness with nothing to hide.

26. The Court finds that Donald Trump, Jr.'s testimony was credible.

27. Donald Trump, Jr.'s testimony was corroborated by all the witnesses, including witnesses called by the Attorney General who were predisposed to give testimony beneficial to the Attorney General (*i.e.*, Donald Bender, Michael Cohen, and Claudia Mouradian).

28. Donald Trump, Jr.'s testimony was not refuted by the testimony of any other witness.

29. Donald Trump, Jr. was not a party to any of the subject transactions and had no obligation to submit SFCs.

30. The evidence adduced by the Attorney General is insufficient to support a finding that Donald Trump, Jr. had any intent to defraud, including with respect to the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO BSA, the Doral Loan, the OPO Contract & Lease, the OPO Loan, the 40 Wall Street Loan, the Chicago Loan, or Zurich, or that he had any involvement with the Buffalo Bills Bid.

III. ERIC TRUMP DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS.

A. Testimony Adduced at Trial.

i. <u>Eric Trump.</u>

31. Eric Trump began working for the Trump Organization in 2006. Tr. 3285:10-16.

32. Eric Trump has served as an Executive Vice President at the Trump Organization since at least 2014. Tr. 3286:6-10.

33. Eric Trump did not prepare the SFCs. Tr. 3292:11-3294:17, 3314:3-9.

34. Any connection Eric Trump had with the SFCs was extremely limited. Tr. 3328:18-3329:4, 3337:16-3338:3.

35. For example, while Eric Trump worked on occasion with the Trump Organization's controller, Jeff McConney, Eric Trump was not part of the team involved in preparing the SFCs and, thus, was not specifically aware that any information he may have given to Mr. McConney would be used in the preparation of the SFCs.

> A I think where we're getting tripped up is I clearly understood that I sent notes to Jeff McConney. I worked with him almost every single day. What's maybe not registering is the difference between sending him things that were used for financials and things that were used for a Statement of Financial Condition. Somebody from accounting would ask me something, they'd ask me details of a project and I would respond. I don't think it ever registered that it was for a personal Statement of Financial Condition. It was just a detail that was irrelevant to me.

Tr. 3328:18-3329:4; *see* Tr. 3335:1-24.

36. To the extent Eric Trump executed a few certifications as President Trump's attorney-in-fact, he justifiably relied on the company's internal and outside accountants, and the unrebutted evidence at trial has shown that the documents he signed were in fact accurate in all material respects.

> Q And when you executed these three certifications, you intended the bank to rely on the certifications; isn't that right?
>
> A I don't know what the bank does with the certifications. I certified something that I believe was accurate and my

> lawyers told me that it was accurate and our financial people told me it was accurate and that's absolutely accurate. As to what Deutsche Bank does with a piece of paper like this, I have no idea.
>
> …
>
> A I relied on a very big accounting office. I relied on one of the biggest accounting firms in the country. And I relied on a great legal team and when they gave me comfort that the statement was perfect, I was more than happy to execute it.

Tr. 3437:17-25, 3442:16-19; *see* Tr. 458:20-469:9.

ii. Allen Weisselberg.

37. Allen Weisselberg corroborated Eric Trump's testimony by testifying that he did not rely on Eric Trump for any of the information contained in the SFCs.

> Q Did you rely on Eric Trump?
>
> A No.
>
> Q Not at all for any of the information contained in the Statements of Financial Condition?
>
> A Not me personally, no.

Tr. 845:13-17.

iii. Michael Cohen.

38. Michael Cohen also corroborated Eric Trump's testimony, testifying that he did not recall discussing the SFCs with Eric Trump.

> Q And you never discussed the SOFC with Eric Trump, did you?
>
> A Not that I recall.

Tr. 2328:1-3.

iv. Donald Bender.

39. Donald Bender of Mazars also testified that he did not recall ever discussing the preparation of the SFCs with Eric Trump.

> Q Mr. Bender, you never spoke with Eric Trump about his father's Statement of Financial Condition, correct?
>
> A I may have had -- nothing with the actual compilation of the report.

Tr. 526:3-6.

v. Partrick Birney.

40. Patrick Birney also testified that he did not recall discussing the SFCs with Eric Trump. Tr. 5599:16-18.

41. The first time Mr. Birney ever recalled discussing the SFCs with Eric Trump was in 2021 and only because Mr. Birney had included him in a call regarding a change in the methodology used to value certain golf courses in the SFC. Tr. 1390:16-1400:17.

vi. Camron Harris.

42. Eric Trump also did not have any meeting with Camron Harris of Whitley Penn regarding the SFCs.

> Q So, while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?
>
> A I did not have any meetings with Donald Trump, Jr. or Eric Trump in regards to the Statement of Financial Condition.
>
> ….
>
> Q I had asked you if you had had any meeting with Eric Trump that discussed the Statement of Financial Condition.

A No, I did not.

Tr. 458:19-23, 455:9-11.

vii. Claudia Mouradian.

43. Eric Trump was also not involved in the procurement of insurance on behalf of the Trump Organization. Ms. Mouradian testified that she had no communications with Eric Trump.

Q Did you speak to Donald Trump, Donald J. Trump?

A No.

Q Donald Trump, Jr.?

A No.

Q Eric Trump?

A No.

Mouradian Deposition Transcript 124:5-11.

B. Additional Findings of Fact.

44. Eric Trump's demeanor was candid and forthcoming. He appeared as an honest witness with nothing to hide.

45. The Court finds that Eric Trump's testimony was credible.

46. Eric Trump's testimony was corroborated by all the witnesses, including witnesses called by the Attorney General who were predisposed to give testimony beneficial to the Attorney General (*i.e.*, David McArdle, Donald Bender, Michael Cohen, and Claudia Mouradian).

47. Eric Trump's testimony was not refuted by the testimony of any other witness.

48. Eric Trump was not a party to any of the subject transactions and had no obligation to submit SFCs.

49. The evidence adduced by the Attorney General is insufficient to support a finding that Eric Trump had any intent to defraud, including with respect to the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO BSA, the Doral Loan, the OPO Contract & Lease, the OPO Loan, the 40 Wall Street Loan, the Chicago Loan, or Zurich, or that he had any involvement with the Buffalo Bills Bid.

III. CONCLUSION.

50. Given the foregoing, it is clear that neither Donald Trump, Jr. nor Eric Trump prepared the SFCs and that they justifiably relied upon the work of others at the Trump Organization together with the company's long time outside accountants, Mazars. It is equally clear that Donald Trump, Jr. and Eric Trump never had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the SFCs. Accordingly, the Court should render judgment in favor of Donald Trump, Jr. and Eric Trump, dismissing this action against them in its entirety.

Dated: Uniondale, New York
January 5, 2024

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants Donald Trump, Jr. and Eric Trump

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

PROPOSED CONCLUSIONS OF LAW OF DEFENDANTS DONALD TRUMP, JR. AND ERIC TRUMP

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants
Donald Trump, Jr. and Eric Trump

TABLE OF CONTENTS

INTRODUCTION 1

I. CONCLUSIONS OF LAW, GENERALLY 1

II. CONCLUSIONS OF LAW, SPECIFICALLY AS THEY PERTAIN TO DONALD TRUMP, JR. AND ERIC TRUMP.....2

Defendants Donald Trump, Jr. and Eric Trump, by and through their undersigned counsel, respectfully submit the following proposed conclusion of law.

I. INTRODUCTION.

1. The Attorney General has woefully failed to prove her case and is not entitled to any of the relief sought in this action. As set forth in the Proposed Findings of Fact of Defendants Donald Trump, Jr. and Eric Trump dated January 5, 2024, not a single witness has ever testified that either Donald Trump, Jr. or Eric Trump had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the Statements of Financial Condition ("SFCs") which are at the center of this action. This includes the Attorney General's primary witnesses such as the company's longtime outside accountant, Donald Bender and, former employee, Michael Cohen. Instead, the record evidence and testimony adduced at trial conclusively establishes that the SFCs were prepared, in their entirety, by others at the company working in conjunction with the company's long time outside accountants.

2. Accordingly, the Court should render judgment in favor of Donald Trump, Jr. and Eric Trump, dismissing this action against them in its entirety.

II. CONCLUSIONS OF LAW, GENERALLY.

3. In the interest of judicial economy, Donald Trump, Jr. and Eric Trump expressly incorporate herein by reference Defendants' Joint Conclusions of Law dated January 5, 2024 (the "COL"), as if fully set forth herein, a copy of which is annexed hereto as **Exhibit A**.[1] Below is a summary of the conclusions of law set forth in the joint COL.

- The NYAG's Claims are Dismissed to the Extent they are Premised on a Time-Barred Transaction. *See* Joint COL, Section I.

[1] Undefined capitalized terms and names have the meaning set forth in Defendants' Joint Conclusion of Law.

- The Clear and Convincing Evidentiary Standard Applies. *See* Joint COL, Section II.

- The Court Must Have a Basis for Its Factual Findings and Cannot Disregard Unrebutted Testimony. *See* Joint COL, Section III.

- The NYAG has not Met her Burden on Materiality. *See* Joint COL, Section IV.

- The NYAG has not Met her Burden on Intent. *See* Joint COL, Section V.

- The NYAG has not Established the Existence of a Conspiracy. *See* Joint COL, Section VI.

- The Remedies the Attorney General Seeks Are Improper. *See* Joint COL, Section VII.

- There is No Record Evidence Supporting a Likelihood of Continuing Fraud Sufficient to Support the Sprawling Injunctive Relieve the NYAG Seeks. *See* Joint COL, Section VIII.

III. CONCLUSIONS OF LAW, SPECIFICALLY AS THEY PERTAIN TO DONALD TRUMP, JR. AND ERIC TRUMP.

4. In addition to the conclusions of law contained in the joint COL, set forth below are further conclusions of law as they pertain to Donald Trump, Jr. and Eric Trump. The foregoing conclusions of law are intended to supplement the conclusions of law contained in the joint COL.

5. Testimony from Donald Trump, Jr. and Eric Trump demonstrates that they never had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the SFCs.

6. Testimony from non-party fact witnesses demonstrates that Donald Trump, Jr. and Eric Trump never had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the SFCs, and that they relied on the company's internal and outside accountants in signing any documents related to the SFCs.

7. Testimony from Donald Trump, Jr. and Eric Trump demonstrate that they did not have the requisite fraudulent intent, and that they relied on the company's internal and outside accountants in signing any documents related to the SFCs.

8. Testimony from non-party fact witnesses demonstrates that Donald Trump, Jr. and Eric Trump did not have the requisite fraudulent intent, and that they relied on the company's internal and outside accountants in signing any documents related to the SFCs.

9. Testimony from Defendants' experts demonstrates that Donald Trump, Jr. and Eric Trump did not have the requisite fraudulent intent.

10. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump falsified business records.

11. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump issued a false financial statement.

12. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump have committed insurance fraud.

13. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were personally involved in or knowingly intended to falsify business records.

14. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were personally involved in or knowingly intended to issue a false financial statement.

15. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were personally involved in or knowingly intended to commit insurance fraud.

16. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were engaged in a conspiracy to falsify business records.

17. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were engaged in a conspiracy to issue a false financial statement.

18. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were engaged in a conspiracy to commit insurance fraud.

19. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump are engaged in any ongoing fraud or misconduct.

20. There is no clear no convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump received any "ill-gotten" gains.

21. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump were parties to the subject transactions or had an obligation to submit SFCs.

22. There is no clear and convincing evidence (or any evidence) that Donald Trump, Jr. or Eric Trump had any intent to defraud with respect to the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO BSA, the Doral Loan, the OPO Contract & Lease, the OPO Loan, the 40 Wall Street Loan, the Chicago Loan, or Zurich, or that they had any involvement with the Buffalo Bills Bid.

Dated: Uniondale, New York
January 5, 2024

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Defendants Donald Trump, Jr. and Eric Trump

EXHIBIT R

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 Hon. Arthur Engoron NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of the Hon. Arthur Engoron dated February 16, 2024 that was entered in the Supreme Court, New York County Clerk's Office on February 16, 2024.

Dated: New York, New York
February 16, 2024

By: */s/ Colleen K. Faherty*
Colleen K. Faherty

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
Colleen.Faherty@ag.ny.gov

Attorneys for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

Decision and Order
After Non-Jury Trial

Arthur F. Engoron, Justice

After presiding over a non-jury trial that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024, this Court makes the following findings of fact and conclusions of law and issues this Decision and Order:

SUMMARY

Donald Trump and entities he controls own many valuable properties, including office buildings, hotels, and golf courses. Acquiring and developing such properties required huge amounts of cash. Accordingly, the entities borrowed from banks and other lenders. The lenders required personal guarantees from Donald Trump, which were based on statements of financial condition compiled by accountants that Donald Trump engaged. The accountants created these "compilations" based on data submitted by the Trump entities. In order to borrow more and at lower rates, defendants submitted blatantly false financial data to the accountants, resulting in fraudulent financial statements. When confronted at trial with the statements, defendants' fact and expert witnesses simply denied reality, and defendants failed to accept responsibility or to impose internal controls to prevent future recurrences. As detailed herein, this Court now finds defendants liable, continues the appointment of an Independent Monitor, orders the installation of an Independent Director of Compliance, and limits defendants' right to conduct business in New York for a few years.

INTRODUCTION

In this civil action, plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, seeks monetary penalties and injunctive relief against Donald John Trump ("Donald Trump") (the former president of the United States); Donald Trump, Jr. ("Donald Trump, Jr." or "Trump, Jr.") and Eric Trump (two of his sons); Allen Weisselberg and Jeffrey McConney (two former employees of defendant The Trump Organization, Inc.); and various real estate holding entities. Plaintiff essentially alleges (1) that the individual defendants violated New York Executive Law § 63(12) by submitting false financial statements to banks and insurance companies to obtain better rates on loans and insurance coverage; and (2) that the holding entities are liable for the individual defendants' misdeeds. Defendants (1) allege that the statements were completely or substantially correct; and (2) crow that the borrowers paid back all loans fully and on time.

Common Law Fraud

The instant action is not a garden-variety common law fraud case. Common law fraud (also known as "misrepresentation") has five elements: (1) A material statement; (2) falsity; (3) knowledge of the falsity ("scienter"); (4) justifiable reliance; and (5) damages. See, e.g., Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership, 12 NY3d 236, 242 (2009) ("[T]he elements of common law fraud" are "a false representation . . . in relation to a material fact; scienter; reliance; and injury."). Alleging the elements is easy; proving them is difficult. Is the statement one of fact or opinion? Material according to what standard? Knowledge demonstrated how? Justifiable subjectively or objectively? In mid-twentieth century New York, to judge by contemporary press reports and judicial opinions, fraudsters were having a field day.

Executive Law Section 63(12)

Along came Executive Law § 63(12), which began life as Laws of 1956, Chapter 592, "An act to amend the executive law, in relation to cancellation of registration of doing business under an assumed name or as partners for repeated fraudulent or illegal acts." Jacob Javits, then the Attorney General of the State of New York (the position that Attorney General James now occupies), pushed for the bill, as did the Better Business Bureau of New York City. See Senate Bill Jacket, February 21, 1956. State Comptroller Arthur Levitt asked, "Why not grant the Attorney General authority to enjoin anyone from continuing in a business activity if such person has been guilty of frequent fraudulent dealings." The preponderance of the evidence standard, the one used in almost all civil cases would apply. Comptroller Levitt noted: "In a suit for an injunction, there is no need to prove the charge beyond a reasonable doubt, as in a criminal case—a mere preponderance of evidence would be sufficient." Id.

In the subsequent six decades, the State has toughened the statute. In Laws of 1965, Chapter 666, the definitions of the words "fraud" and "fraudulent" were expanded to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, false pretence [sic], false promise or unconscionable contractual provisions." The statute casts a wide net.

"The general grant of power to the Attorney General under section 63(12) has traditionally been his most potent." 3 Fordham Urb. L. J. 491, 502 (1975).

Executive Law § 63(12) now reads as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply… for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

The Financial Marketplace

This Court takes judicial notice that New York State, particularly New York City, is the financial capital of the country and one of the financial capitals of the world. The City's fabled Wall Street is synonymous with capital formation, investing, trading, lending, and borrowing. In a summary judgment Decision and Order dated September 26, 2023, NYSCEF Doc. 1531, the Court addressed the State's judicially recognized interest in an honest marketplace:

> "In varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." People v Grasso, 11 NY3d 64, 69 at n 4 (2008); People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SDNY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal

> for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness …").

Timely and total repayment of loans does not extinguish the harm that false statements inflict on the marketplace. Indeed, the common excuse that "everybody does it" is all the more reason to strive for honesty and transparency and to be vigilant in enforcing the rules. Here, despite the false financial statements, it is undisputed that defendants have made all required payments on time; the next group of lenders to receive bogus statements might not be so lucky. New York means business in combating business fraud.

Procedural Background

This action follows an extensive investigation conducted by plaintiff, the Office of the Attorney General of the State of New York ("OAG"). In 2020, OAG commenced a special proceeding to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling, in part, compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020.

OAG filed the instant complaint on September 21, 2022. On November 3, 2022, in response to a motion by OAG, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of Donald Trump. NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194. To date, Judge Jones has delivered six reports to this Court, dated December 19, 2022, February 3, 2023, April 11, 2023, August 2, 2023, November 29, 2023, and January 26, 2024. NYSCEF Doc. Nos. 441, 489, 617, 647, 1641, 1681.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. No. 453. Defendants appealed, resulting in a June 27, 2023 Order, wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that in this case the "continuing wrong doctrine does not delay or extend [the statute of limitations]";[1] (2) finding that claims are timely against defendants subject to a tolling agreement[2] if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint

[1] As this Court explained *ad nauseum* at trial, statutes of limitation bar claims, not evidence.

[2] The Trump Organization's Chief Legal Officer, Alan Garten, originally entered into a tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. This Court previously found, pursuant to the terms of the agreement, that it binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries.

as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not bound by the tolling agreement, as she was not an employee of the Trump Organization at the time Garten entered into the agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Complaint

The Complaint asserts seven causes of action. The first cause of action is of a type known as a "stand-alone § 63(12) claim." Consistent with the wording of the statute, plaintiff need only prove that defendants used false statements in business.

The second through seventh causes of action require plaintiff to prove that defendants intended to violate a provision of the Penal Law. The second cause of action, pursuant to New York Penal Law § 175.10, requires plaintiff to prove that defendants intended to falsify business records. The third cause of action requires plaintiff to prove that defendants intended to conspire to falsify business records. The fourth cause of action, pursuant to New York Penal Law § 175.45, requires plaintiff to prove that defendants intended to issue a false financial statement. The fifth cause of action requires plaintiff to prove that defendants intended to conspire to issue a false financial statement. The sixth cause of action, pursuant to New York Penal Law § 176.05, requires plaintiff to prove that defendants intended to engage in insurance fraud. The seventh cause of action requires plaintiff to prove that defendants intended to conspire to engage in insurance fraud.

Summary Judgment

In a 35-page Decision and Order, dated September 26, 2023, this Court granted plaintiff summary judgment only on liability and only on the first cause of action. Simply put, the Court found that plaintiff had capacity and standing to sue; that non-party disclaimers and party "worthless clauses" do not insulate defendants' material misrepresentations; that intent, scienter, and reliance are not elements of a stand-alone § 63(12) claim; that disgorgement of profits is an available remedy; and that the subject financial statements materially misrepresented the value of the Trump Tower Triplex, The Seven Springs Estate, certain apartments in Trump Park Avenue, 40 Wall Street, Mar-a-Lago, and a golf course in Aberdeen, Scotland. NYSCEF Doc. 1531.

This Court also held that the tolling agreement the parties entered into bound all defendants, such that the applicable statute of limitations allowed claims accruing on or after July 13, 2014. This Court also ordered the cancellation of defendants' business certificates filed under and by virtue of GBL § 130. The Appellate Division stayed the cancellation of the certificates pending the final disposition of defendants' appeal of the summary judgment rulings.

The Trial

The eleven-week trial of this action addressed whether defendants are liable pursuant to the second through seventh causes of action and what monetary penalties and/or injunctive relief this

Court should impose. Plaintiff is seeking "disgorgement" of "ill-gotten gains," and to limit defendants' abilities to conduct business in New York.

Constitutional provisions guaranteeing a jury trial, such as the Seventh Amendment to the United States Constitution, apply only to cases "at common law," so-called "legal" cases. The phrase "at common law" is used in contradistinction to cases that are "equitable" in nature. Whether a case is "legal" or "equitable" depends on the relief that plaintiff sought. Here, plaintiff seeks disgorgement and injunctions, each of which are forms of equitable relief. Thus, there was no right to a jury,[3] and the case was "tried to the Court;" the Court being the sole factfinder and the sole "judge of credibility."

This Court listened carefully to every witness, every question, every answer. Witnesses testified from the witness stand, approximately a yard from the Court, who was thus able to observe expressions, demeanor, and body language. The Court has also considered the simple touchstones of self-interest and other motives, common sense, and overall veracity.

[3] In any event, neither party applied nor moved for a jury trial.

FINDINGS OF FACT

This Court heard testimony from 40 witnesses over 43 days[4] and makes the following findings of fact:

The Non-Party Witnesses

Donald Bender

Donald Bender is an accountant who worked for Mazars USA LLP ("Mazars"), an accounting firm, for approximately 41 years. From approximately 2011-2021, Bender spent approximately half of his time working on engagements for Donald Trump and the Trump Organization, and between 2-4% of his time working on Donald Trump's SFCs. Trial Transcript ("TT") 106-107.

Donald Trump engaged Mazars to create SFC "compilations," comprised of accounting data that defendants sent to Mazars; Mazars simply "compiled" that data into SFC format. "Audits" are the highest level of review of accounting data; "reviews" subject the data to medium-level scrutiny; "compilations" require the least scrutiny of the data. The accountant does not test or audit the raw numbers and thus cannot, and does not, assure the accuracy of the statement. TT 113. Mazars compiled Donald Trump's SFCs from 2011 through 2020.

Bender received all his information for the compilations from Jeffrey McConney or a member of his team, such as Patrick Birney. TT 114-116, 221-222, 387.

Mazars would not have issued the SFCs if Allen Weisselberg had not represented that the information in the SFCs was in conformity with Generally Accepted Accounting Principles ("GAAP") or if Mazars had learned that any of the representations in the letter were not true. TT 199, 254-255, 263-269.

Bender made absolutely clear that under the terms of the engagement for compilation services, the client was responsible for ensuring that assets were stated at their "estimated current values," and that Weisselberg was responsible for determining which GAAP departures were identified and disclosed. TT 237-238, 319-320. The engagement letters, signed by a combination of Weisselberg, Donald Trump, and Donald Trump, Jr., confirmed this by unambiguously acknowledging that Donald Trump, through his trustees, was responsible for the preparation and fair presentation of the personal financial information in accordance with GAAP. See, e.g., PX 741.

Bender later learned that the Trump Organization had withheld records, such as appraisals, that Mazars had requested while preparing the compilations, leading Mazars to conclude that the Trump Organization had falsely represented that it had complied fully and truthfully with all inquiries from Mazars. Mazars subsequently terminated its relationship with the Trump Organization. TT 242-243; PX 2992, 2994. Bender stated that it was not until he was interviewed by the Manhattan District Attorney's Office, in spring 2021, that he learned that the Trump Organization had withheld appraisals from Mazars. TT 536-538. Bender made clear that

[4] Indeed, the trial transcript spans 6,758 pages, excluding closing arguments.

Mazars would not have issued the SFCs if it had known that it had not been provided with all appraisals. TT 251.

Camron Harris

Camron Harris is an audit partner at Whitley Penn, an accounting firm that compiled Donald Trump's SFC for 2021. TT 442. His testimony buttressed Donald Bender's that compilers simply use the numbers provided by the client; they do not check them. TT 447-448; PX-1497.

Harris's contemporaneous notes, taken during or shortly after a meeting with Jeffrey McConney and Mark Hawthorn of the Trump Organization, state:

> Patrick [Birney] explained that he is the primary preparer of the valuations. Patrick obtained all of the necessary information for the valuations from external and internal sources. He worked with other team members to pull this information together, such as Ray Flores. Ray Flores performs the first review of Patrick's spreadsheet and financial statements. Prior to issuance of the SOFC, an individual from upper management of the Trump Organization, and also one of the Trump family members, will read and review the financial statements.

TT 450-451. Harris also indicated that the Trump Organization designated McConney as the "individual with suitable skills, knowledge and experience to oversee [Whitley Penn's] preparation of your financial statements," as the Whitley Penn compilation engagement agreement required. TT 459-464; PX-2300. Harris stressed the "fundamental" importance of the client's obligations, particularly during a compilation engagement, emphasizing that "[u]nder a compilation, we are not doing anything, you know, to verify the accuracy of that information, so that responsibility and accountability follows within the client to be doing those things so that the information is correct, because we didn't do anything to verify that it is correct." TT 464-465.

Harris further made clear that Whitley Penn would not have issued the 2021 SFC without a signed representation letter from the client, indicating that it acknowledged its responsibility for providing a fair presentation of values in accordance with GAAP. TT 480-481.

Nicholas Haigh

Nicholas Haigh worked as a risk officer and managing director of Deutsche Bank's Private Wealth Management Division from 2008 to 2018. TT 980.

The Private Wealth Management Division serviced high net worth individuals and provided various products to them, including credit products. As the risk officer, Haigh's job was to examine the client's credit exposure and determine whether a client's credit request fit within the bank's desired risk profile. TT 982.

When a client wanted a loan or other "credit facility" from the Private Wealth Management Division, a relationship manager would interface with the client and then speak with a lending officer at the bank. The lending officer would document the terms of a proposed loan in a credit memorandum that would be sent to Haigh and his team for final approval. TT 986-987. If the credit risk management team was comfortable with the terms and information contained in the credit memorandum, they would approve and sign off on the proposal. TT 989. Haigh was the most senior credit officer to sign off on the Deutsche Bank loans to the Trump Organization entities. TT 992.

In 2011, the risk management team approved the terms of a credit facility to the "Trump Family"[5] "based on the financial strength of the guarantor," emphasizing that "[t]he financial profile of the guarantor includes on an adjusted basis, 135 million in encumbered liquidity, 2.4 billion in net worth and approximately 48 million in adjusted recurring net cash flow." The risk management team noted that "[a]lthough facility is being extended to [a special purpose vehicle] for the purposes of financing the purchase of the resort, the credit exposure is being recommended primarily based on the financial profile of the guarantor," further emphasizing the "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating Collateral." PX 293; TT 1001.

Haigh made clear that:

> The wealth management business at Deutsche Bank would not make loans secured just on collateral without a strong financial guarantee or personal guarantee from a financially strong person. Given that this was unusual collateral as a golf resort and spa, we would not really want to have to foreclose on that collateral and so we would most likely look to the guarantor to remedy any default – payment default on the loan.

TT 1003-1004.

In deciding to approve the credit facility, Haigh relied on Donald Trump's 2011 SFC and assumed that the representations of value of the assets and liabilities were "broadly accurate." TT 1009-1010; PX 330. The Deutsche Bank Credit Report's "Financial Analysis" is based on numbers provided by the "family office" (here, the Trump Organization) and contains the same numbers represented in the SFC. PX 293; TT 1010-1013.

Before approving the credit facility, the Private Wealth Management Division consulted Deutsche Bank's Valuation Services Group about market conditions to arrive at a conservative estimate of the value of the commercial real estate should a need arise to liquidate during "bad market conditions." TT 1013-1016. In so doing, the Valuation Services Group applied a 50%

[5] The funds from this "Trump Family" credit facility would later be used to purchase Doral under the entity Trump Endeavor 12 LLC.

"haircut" to the valuations presented by the client, which Haigh affirmed was the "standardized number for commercial real assets."[6] TT 1016, 1041.

Haigh affirmed that the Private Wealth Management Division would not have done business with Donald Trump without a personal guarantee, and that the personal guarantee was the reason for favorable pricing on the loan and the large size of the loan itself. TT 1017, 1020-1021, 1032.

The Doral loan was conditioned on certain continuing covenants. One such covenant required Donald Trump to maintain a minimum net worth of $2.5 billion, excluding any value related to his brand. PX 293; TT 1024. As the "ultimate signer" of the credit risk management team, Haigh determined the required amount of Donald Trump's minimum net worth "in order to make sure that the bank would be fully protected under adverse market conditions." TT 1025-1026. In the event of a default of any of the covenants, Haigh stated the bank would have "various remedies … which it can pursue like waiving the breach, which it might do for an inconsequential breach; negotiating some variation of the terms of the loan; or potentially accelerating the loan and ask for repayment." TT 1028.

The covenant obligated Donald Trump to provide an annual financial statement. Haigh stressed that the annual SFCs were required because "[t]he bank wants to be sure that the client's financial strength is being maintained and also the bank wants to be able to test its covenants periodically," and that "[t]he bank would use the financial information that [the client] provided to test itself to try and ensure that the client is in compliance with those covenants." TT 1022-1023.

In 2012, the Trump Organization, under the entity 401 North Wabash Venture LLC, sought another loan from Deutsche Bank's private wealth division for a new project in Chicago ("Trump Chicago"). PX 291; TT 1028-1029. The credit memorandum indicates that the beneficial owner of the borrower was "Donald J. Trump." PX 291. Like the previous credit facility, the Chicago facility was conditioned on a full and unconditional guarantee provided by Donald Trump; the Deutsche Bank risk team specifically noted "[a]lthough facilities are secured by the collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the guarantor." PX 291; TT 1030-1033. Similar to the previous credit facility review, the risk management team utilized Deutsche Bank's Valuation Services Group to estimate the value of the liquidation of the commercial assets in bad market conditions and applied a standard 50% haircut to the valuations represented by the client.[7] TT 1033.

---

[6] Haigh also confirmed that in addition to the 50% standard "haircut" applied to most commercial real estate assets, the risk management team applied a 75% haircut to Seven Springs as "properties under development or not yet developed potentially have a large range of outcomes of their value." TT 1040-1041; PX 293.

[7] Beyond the 50% standard "haircut," the credit risk management team adjusted another value that had been provided by the client. Upon discovering that Trump Tower had recently been refinanced, but not by Deutsche Bank, the financing entity had commissioned an appraisal that was made available to Deutsche Bank. Upon realizing that the independent appraised value was less than the number reported by the client, the credit risk management team confirmed that they were "adjusting the property value to reflect the recent appraisal and new debt." PX 291; TT 1034-1035.

While he was seeking the loan from the Private Wealth Management Division and waiting to see if it would be approved, Donald Trump was simultaneously exploring a loan from Deutsche Bank's Commercial Investment Bank Division, which maintained a commercial real estate lending group. PX 470; TT 1036-1038. The dueling proposals resulted in an internal Deutsche Bank memo, as Haigh explained, reflecting that "[t]wo business divisions at Deutsche Bank were making proposals on the same potential loan and … we wanted to be sure that they made sense with regard to each other so the bank didn't look foolish in front of the client with two completely different sets of term sheets that bore no relation to each other." PX 470; TT 1036-1038. The memo indicated that for Trump Chicago, the Commercial Investment Bank Division would be willing to provide a loan on a non-recourse basis (i.e., no personal guarantee) at LIBOR plus 8%, and that the private wealth division would be willing to provide a loan on a full recourse basis (with an unconditional personal guarantee) at LIBOR plus 4%. PX 470; TT 1036-1038.

In 2014, the Trump Organization sought several more approvals from Deutsche Bank: (1) a loan for the Washington, D.C. "Old Post Office" project; (2) the renewal of an existing Trump Endeavor 12, LLC credit facility for Doral; and (3) an increase in the Trump Chicago credit facility. PX 294; TT 1041-1045. The approval process for these three discrete items was the same as the previous approval processes, except that a higher level of authority was needed to approve the transactions within the credit risk management team. TT 1045. Like the previous credit facilities, approval required Donald Trump, as guarantor, to maintain a minimum net worth of $2.5 billion, as "[t]he bank wanted to be sure that in an adverse market scenario the client would always have enough financial resources to be able to pay off our loan." TT 1048-1049. Like the previous credit facilities, the credit risk management team noted that "[a]lthough all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." PX 294; TT 1050. Haigh noted that the Private Wealth Management Division did not normally extend loans that involved substantial reconstruction on its collateral, here, the Old Post Office, so the loan was approved in reliance Donald Trump's personal guarantee. TT 1050-1051. Once again, as a required covenant, Donald Trump was obligated to provide certifications and annual statements of financial condition so that the bank could test his required covenants at any time. TT 1049.

Rosemary Vrablic

Rosemary Vrablic worked at Deutsche Bank in the Private Wealth Management Division and was the chief relationship manager for the Trump Organization. TT 994, 5484-5486. Vrablic explained that her job was to be "an intermediary between the customer and/or prospect and the credit and lending parts of the bank." TT 5486. Vrablic served as the client intermediary for the bank for all three of the loans that Deutsche Bank's Private Wealth Management Division extended to Donald Trump. TT 5486-5487.

Jared Kushner, Ivanka Trump's husband, introduced Vrablic to Donald Trump in 2011. TT 5486, 5498-5499, 5511-5512. Vrablic testified that one goal of her job was to initiate a broad-based relationship with Donald Trump. TT 5499. Ivanka Trump was Vrablic's main liaison for the subject credit facilities. TT 5504.

Vrablic was not a part of the credit risk analysis team, and she had no input or authority on whether credit was ultimately extended. TT 5578. She was not involved in the bank's annual review of Donald Trump's SFCs. TT 5554, 5578-5579.

Vrablic confirmed, and emails corroborate, that when considering whether to extend the Doral loan, the head of the global asset management group wrote: "I support the transaction, but we need iron clad full recourse under all circumstances," indicating that an iron-clad personal guarantee was a non-negotiable term of the loan. DX 313; TT 5519-5521, 5572-5573. Vrabalic further confirmed that each of the Trump family members she dealt with, including Donald Trump, Donald Trump, Jr., and Ivanka Trump, fully understood the recourse requirement to obtain a loan from the Private Wealth Management Division. TT 5574-5777; PX 1129.

Vrablic expected Donald Trump to submit accurate financial information to the bank. TT 5579.

Doug Larson

Doug Larson is a valuation advisor and certified New York real estate appraiser who currently works at Newmark. Prior to working at Newmark, he worked at Cushman & Wakefield for almost 25 years. TT 1558-1559.

In 2015, while at Cushman & Wakefield, Larson appraised 40 Wall Street for Ladder Capital as part of its due diligence. TT 1560-1570; PX 118.

Larson testified clearly and credibly that although his name is cited as the source to justify a 2.940 capitalization (or "cap") rate[8] on Niketown, a property in which Donald Trump owned two long-term leases on 57th Street, Larson never had a specific conversation with Jeffrey McConney in which he advised him that such a cap rate would be appropriate; nor was he aware that he was listed as a source for such a cap rate. TT 1572-1575; See, e.g., PX 758. Larson further said that he would not have advised McConney to select that cap rate, as "it's not how we would value [it] in our practice." TT 1583. Larson stated that McConney was incorrect in stating that he consulted with Larson when valuing Trump Tower. TT 1581.

Upon learning that his name had been repeatedly used to justify cap rates that he had not recommended, Larson said it was "inappropriate and inaccurate … I should have been told and, you know, an appraisal should have been ordered." TT 1587.

Larson further took issue with his name being used to justify a cap rate on the property controlled by a Vornado partnership interest. In 2012, Larson appraised the property at 1290 Avenue of the Americas at $2 billion with a cap rate of 4.5 percent. PX 1824; TT 1588-1589. Notwithstanding, in the following SFC's supporting data, McConney cites Larson as the source for using a 3.12 percent cap rate, even though he never worked with McConney to pick a cap rate

[8] A capitalization rate is calculated by dividing a property's net operating income by the current market value. This ratio, expressed as a percentage, is an estimation of an investor's return on real estate. The higher the cap rate, the lower the value. Cap rates have an extraordinarily large effect on the value of a property.

to value that property, and that he would not have, as valuing minority interests is a specialized area beyond his expertise. TT 1589-1595.

In a 2015 appraisal of 40 Wall Street, Larson included the value of a Dean & Deluca lease that yielded annual rent of $1.4 million, and he applied a 4.25 percent cap rate, for a total valuation of $540 million. Notwithstanding, the 2015 SFC backup data double-counted the Dean & Deluca lease. McConney also chose a much lower cap rate than that on the appraisal and listed the total value of 40 Wall Street at over $735 million, citing Larson as the source. Larson repeatedly confirmed that he was not a source for that number, that the number was nearly $200 million more than his own appraisal, and that he did not work with McConney or anyone else at the Trump Organization to determine the cap rate used to generate the $735 million value.[9] PX 118,729; TT 1601-1606.

Jack Weisselberg

Since 2008, Jack Weisselberg has worked at Ladder Capital as a "loan originator," which includes finding new business and maintaining the client relationship throughout the life of a loan. TT 1770-1773; 1779.

When originating a loan for the Trump Organization, Jack Weisselberg primarily communicated with Allen Weisselberg (his father), Jeffrey McConney, and Donna Kidder. TT 1790-1791. Jack Weisselberg understood that the Trump Organization had concerns about its financial information becoming public because of a potential Ladder Capital loan (stating in an email to his supervisor that Donald Trump is "nervous about Gucci's rent becoming public knowledge, as he tends to embellish from time to time"). PX 650; TT 1811-1816.

In spring 2015, Allen Weisselberg began inquiring about the possibility of refinancing a loan on 40 Wall Street that was serviced by Capital One Bank. In January 2015, Allen Weisselberg wrote to Capital One asking it to waive an upcoming required $5 million principal payment. After Capital One declined to waive the payment, Allen Weisselberg contacted Jack Weisselberg about Ladder Capital refinancing the loan. TT 1820-1826. In the application process, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later required that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital

[9] In a theatrical attempt to halt the testimony of Doug Larson, defendants tried to impeach him with a 2014 email showing that McConney had asked for his advice on whether the fact that a ground lease had a far-off expiration would affect the cap rate in any way. Defendants then suggested that Larson had committed perjury and should be removed from the stand to consult with counsel. As an initial matter, the Court does not find Larson's testimony to be contradictory. The fact that McConney sent one email in 2014 that generically discussed the effect of lease expirations on cap rates does not in any way give defendants cart blanche to cite Larson as an omnibus form of counsel that immunizes all the future manufactured valuations that comprised the SFCs. Further, defendants do not cite to this email in the supporting data for the SFCs, they cite to a series of telephone calls that, by Doug Larson's account, never even took place. Moreover, the assertions of defendants' counsel, Christopher Kise, that Larson's testimony amounted to such blatant perjury he should be immediately removed from the stand to consult with counsel about his Fifth Amendment rights is belied by the record and seemed like nothing more than a performance for a non-existent jury. PX 109; TT 1696-1712; 1754-1767.

incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886.

In 2017, the Trump Organization approached Ladder Capital about a short-term loan on its property on Central Park South, which was then unencumbered, for the purpose of funding a $25 million settlement arising out of litigation by OAG against Trump University. People v Trump Entrepreneur Initiative LLC, Docket No. 451463/2013, Doc. 1 (Sup Ct, NY County). Jack Weisselberg testified that he understood that the loan was necessary because "they had recourse obligations to another lender [Deutsche Bank] that limited the amount of cash they could access." In approving the loan, Ladder Capital helped Donald Trump avoid triggering a default on his outstanding Deutsche Bank's lending covenants. TT 1817-1820.

David McArdle

David McArdle was, and still is, the senior managing director of Cushman & Wakefield and a professional appraiser. TT 1909-1910.

In summer 2013, attorney Sheri Dillon, on behalf of the Trump Organization, retained McArdle to appraise portions of the Trump National Golf Course in Westchester County, New York. Even though Sheri Dillon and her law firm retained Cushman & Wakefield, McArdle stated "[i]t was widely understood that [the] intended users of this document would also be the Trump Organization, Donald J. Trump, [and] Eric Trump." TT 1919-1926; px 157. The engagement was focused on the valuation of 71 potential attached units within the confines of the Trump National Golf Club in Briarcliff ("Briarcliff"). TT 1926. McArdle was retained because the Trump Organization was "contemplating a donation, conservation easement donation, and they were looking for my input on valuation of this 71-unit project." TT 1928. In performing this work, Eric Trump was McArdle's primary point of contact at the Trump Organization. TT 1926-1939, 1952.

In fall 2013, McArdle told Eric Trump and Sheri Dillon that the highest supportable value for a potential conservation easement of the 71-units was $45 million. PX 1465; TT 1944-1945. McArdle explained that although "Eric had certain ideas of value" that were "a little more lofty and above $45 million," the "team of Sheri, Bob and myself clearly recognized that we were sort of at the end here and anything beyond $45 million would have put some people at risk," and "[i]t would not have been credible." TT 1944-1945. In response, Eric Trump told McArdle to "hold off" sending a written appraisal. PX 3201; TT 1946-1948.

In February 2014, McArdle was again retained for a similar engagement; this time he was tasked with valuing the same 71-units and, also, determining if a potential conservation easement would have any effect on the adjacent 18-hole golf club known as Trump National Golf Club

Westchester, which included an already-built town home owned by Eric Trump on the perimeter of the property. TT 1949-1950. In April 2014, McArdle provided a written appraisal to Sheri Dillon that valued the 71-unit plot at $43.3 million. PX 3194; TT 1958-1963.

In June 2014, Eric Trump again retained McArdle to appraise the same plot of land and changed the scope of the engagement to consider more IRS tax guidelines. Despite the change in scope, McArdle once again valued the 71-unit plot at $43.3 million. PX 132, 3217; TT 1963-1972.

In July 2014, Sheri Dillon, on behalf of the Trump Organization, engaged Cushman & Wakefield to appraise land on the Seven Springs property in Westchester, New York. PX 131; TT 1980-1982. Once again, Eric Trump served as the primary point of contact for McArdle, including providing him with proposed comparables. TT 1983-1986. McArdle understood this to be a verbal assignment (meaning the client did not want to receive a written appraisal), but McArdle was obligated to build a work file as he "certainly couldn't keep everything in [his] head." TT 1988-1989. McArdle concluded that the valuation ranged from $36-50 million before discounting to present value, and $29.5 million when discounting was applied. TT 1990-1994. McArdle communicated these results verbally to Eric Trump in August 2014, before closing out the engagement at Sheri Dillon's request in October 2014. PX 3206, 911, 185; TT 1995-1997.

In June 2015, Eric Trump once again retained Cushman & Wakefield to appraise Seven Springs. This time, McArdle was unavailable, so he referred the assignment to a colleague, Tim Barnes. PX 104; TT 2001-2002.

McArdle, whom the Court found credible, stated that Eric Trump's testimony that he was not involved in the appraisal work on the Seven Springs property did not conform to McArdle's recollection of events. TT 2005.

William Kelly

William Kelly is the general counsel of Mazars, a role he assumed in 2018. TT 2111, 2115. Kelly participated in the decision to terminate Mazars' relationship with the Trump Organization in spring 2021. TT 2115-2116. Kelly said that the decision to terminate the relationship was based upon what Mazars "had come to learn about Allen Weisselberg," stating:

> Allen Weisselberg was the CFO of the Trump Organization. He was our main contact at the Trump Organization for the providing –for them providing us financial information. If his representations to us about the accuracy and truthfulness of the financial records that he's providing to us as the outside accountants is compromised, if we can no longer rely on him as CFO, then we can no longer perform our engagements. The engagements we were preparing at the time were preparing tax returns for the corporate entities and Donald Trump individually, as well as doing the statements of financial condition. Both of those engagements require that we rely upon the representations of management, in this case, Allen Weisselberg, the

> CFO. If we are no longer allowed or no longer reasonably allowed to rely on his management, we can no longer do those engagements.

TT 2116-2117; PX 2992. Kelly, on behalf of Mazars, followed up with a letter to the Trump Organization dated February 9, 2022, in which he stated, as here pertinent:

> We write to advise that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011-June 30, 2020, should no longer be relied upon and you should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon.
>
> We have come to this conclusion based, in part, upon the filings made by the New York Attorney General on January 18, 2022, our own investigation, and information received from internal and external sources. While we have not concluded that the various financial statements, as a whole, contain material discrepancies, based upon the totality of the circumstances, we believe our advice to you to no longer rely upon those financial statements is appropriate.

PX 2994; TT 2119-2128. Kelly further emphasized that when Mazars was issuing the SFCs for Donald Trump, Mazars was performing a compilation, which is the lowest level of scrutiny of financial statement preparation, and which relies on the representations and information provided by the client. TT 2128-2131, 2149.

Michael Holl

Michael Holl is an employee of HCC Global ("HCC"), an international specialty insurance group. From 2015-2018, Holl served as an underwriter. TT 2487-2490. In December 2016, Holl was contacted by a broker at AON NY on behalf of the Trump Organization, indicating that the company was seeking additional Director & Officer ("D&O") coverage. TT 2491-2492.

Holl confirmed that to underwrite the account he would need to look at the "financials for those companies to understand what their financial situation is," as it is relevant to assessing the risk. TT 2494. Holl elaborated that "[i]t's relevant because you're trying to find out if they're a successful company and if they're profitable and if they are in debt that they can't manage and what their overall financial health is," and "[i]f they are a bankruptcy risk, there is significant increase in the likelihood of a D&O claim if a company goes bankrupt." TT 2494-2495.

On January 10, 2017, Holl attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained. PX 2985; TT 2498-2499. Holl's contemporaneous email reads: "Saw very few financials but did see the balance sheet for year ends 2015. They assured me that the

one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email also reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communication that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502.

Holl deemed these representations relevant when HCC ultimately decided to extend coverage. TT 2502.

Sheri Dillon

Sheri Dillon is a tax lawyer who provided business and legal advice to the Trump Organization from 2005 through 2020. TT 2527. Throughout her various engagements from 2011-2020, Dillon interfaced with Donald Trump, Donald Trump, Jr. Eric Trump, Ivanka Trump, Patrick Birney, and Jill Martin. TT 2532-2534.

Contrary to the representations made to Holl about no pending litigation or claims, as early as June 2016 Dillon was aware of claims made against the Trump Organization that could trigger liability, and she had discussed such claims with Donald Trump, Jeffrey McConney, and Allen Weisselberg. TT 2540-2555.

Part of her work for the Trump Organization was advising it about potential conservation easements. TT 2531. Dillon explained that a conservation easement is essentially a "negative covenant" in which someone who owns property agrees, in a recorded deed that runs in perpetuity with the land, not to do something, in exchange for a tax deduction that is "equal to the value of the easement." TT 4123-4126.

Dillon recalls working on potential conservation easements at Trump National Golf Club LA ("TNGCLA"), Briarcliff, and Seven Springs. As part of her engagements, Dillon would retain appraisers from Cushman & Wakefield. She explained that obtaining a qualified appraisal to value the potential conservation easement is an essential part of the process, as only a qualified appraisal could determine the value of the tax deduction that could be taken. TT 4127-4128. She clarified that qualified appraisers were tasked with determining the "highest and best use" of a property if it were developed. TT 4141-4142.

When working on a potential conservation easement for TNGCLA, Dillon retained Brian Curry, of Cushman & Wakefield, who valued the driving range on the property at between $27-28 million in 2014. PX 944; TT 2578-2580. On March 12, 2015, Cushman & Wakefield sent an appraisal of the TNGCLA driving range portion of the property that valued it at $25 million as of December 26, 2014; the appraisal also valued the entire TNGCLA property, before any potential conservation easement, at $107 million. PX 1464; TT 2598-2603. Although Dillon could not recall exactly with whom at the Trump Organization she shared this valuation, she knows it

would have gone to McConney, as he "would have needed it." TT 2608-2611. Further, email communications demonstrate ongoing discussions between Dillon, Weisselberg, and Trump, Jr. about the potential conservation easement on TNGCLA. PX 1412; TT 4142-4146. Notwithstanding, the 2015 supporting data and accompanying SFC valued TNGCLA at over $140 million. PX 731; TT 2611-2623.

In 2013, Dillon engaged Cushman & Wakefield, on behalf of the Trump Organization, to explore the potential benefits of donating a conservation easement over parts of the Trump National Golf Club located in Briarcliff. PX 157; TT 2626-2628. In so doing, Cushman & Wakefield was tasked with determining the value of 71 hypothetical residential units that could be built on the property. TT 2628; PX 3261. On October 1, 2013, David McArdle emailed Dillon and her colleague, indicating that McArdle was ready to move forward with a written appraisal report on Briarcliff. PX 3197. On October 16, 2013, Dillon emailed McArdle, as here pertinent:

> I spoke to Eric and he is aware that the more supportable value at this point is around $45M… I further explained that we needed to reconcile the comp sales approach with the [discounted cash flow], and in so doing, you and your team arrived at a value of around $45M, which remains quite substantial. I also noted that in the event the claimed value was too far off as ultimately determined by the IRS or a Court, a taxpayer could be subject to [a] valuation misstatement penalty, and we wanted to ensure that there would be no argument that a valuation misstatement occurred. Eric was pleased with the number.

PX 1465. Later that same day, Eric Trump emailed McArdle and Sheri Dillon, instructing McArdle to finish the appraisal "but hold off sending the appraisal until further notice." PX 3201.

In February 2014, Dillon's firm once again engaged Cushman & Wakefield to appraise Briarcliff. PX 158. In April 2014, Cushman & Wakefield submitted a written appraisal to Dillon, valuing the hypothetical 71-unit development at Briarcliff at $43.3 million. PX 3194; TT 2687.

Dillon confirmed that it would have been her practice to share the values with her client along the way. TT 2687. Notwithstanding, beginning in November 2015, Eric Trump instructed McConney to leave the value of the 71 units at just over $101 million. PX 742, 758, 843. TT 3378-3379. He continued to do this for the 2016, 2017, and 2018 SFCs.

By at least June 2014, Dillon became aware that the Trump Organization's rights to build units at Briarcliff had been reduced from 71 units to 31 units. PX 3261; TT 2701-2702. Notwithstanding, the supporting data for every SFC from 2015-2021 values Briarcliff as if it had the right to build 71 units, and, indeed, explicitly states: "Sale of 71 Mid-Rise units approved." PX 731, 742, 758, 774, 843, 857, 1501.

In October 2012, Dillon, on behalf of the Trump Organization, engaged appraiser Robert Heffernan "to provide a written appraisal… estimating the fair market value of a conservation easement placed on the Client's property located in the town of New Castle, New York (the 'Seven Springs Estate') for federal income tax purposes." PX 908; TT 2703-2704. Email correspondence from Heffernan to Dillon demonstrates that as of December 18, 2012, Dillon was aware that Heffernan valued the potential Seven Springs conservation easement over seven mansion lots at $775,000 per raw lot, an estimate that would have valued the entire seven-mansion development at approximately $5.5 million. PX 3296; TT 2707-2708.

Notwithstanding, the SFC backup data for 2013 demonstrates that on August 20, 2013, Eric Trump advised McConney to value the seven-mansion undeveloped plots on the SFC at a staggering $161 million. PX 708.

By September 8, 2014, McArdle completed another verbal estimate of the value of the seven-mansion development at Seven Springs, this time valuing it at $14 million. PX 169, 181. Notwithstanding, the SFC backup data for 2014 demonstrates that on September 12, 2014, Eric Trump again advised McConney to value the seven-mansion undeveloped plots on the SFC at $161 million. PX 719.

In June 2015, Eric Trump re-engaged Cushman & Wakefield to perform yet another appraisal on the potential Seven Springs conservation easement, this time asking it to value not just the seven-mansion undeveloped lots, but the entire Seven Springs property encompassed by three towns. PX 104; TT 2723. PX 195; TT 2724-2725. On November 6, 2015, Timothy Barnes of Cushman & Wakefield emailed Dillon its appraisal, which valued the entire Seven Springs property at $56.6 million, and the 7-mansion undeveloped lots at $23.5 million. PX 195; TT 2725-2726. As was her customary practice, Dillon informed her client of the appraisal. TT 2727.

David Cerron

David Cerron is the assistant commissioner for business development and special events at the New York City Department of Parks and Recreation ("NYC Parks"). TT 2786-2787.

In February 2010, NYC Parks published a Request for Offers ("RFO") for operation and maintenance of a golf course at Ferry Point Park in the Bronx ("Ferry Point"). PX 3290. Cerron confirmed that NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. Cerron explained that NYC Parks had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars stating that according to Donald Trump's 2009 SFC, which

Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to the RFO. TT 2796. NYC Parks ultimately awarded the contract to the Trump Organization. In doing so, it highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. Cerron testified that NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

Donald Trump signed the license agreement with NYC Parks on February 21, 2012. DX 981. The agreement required him to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit an annual letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. Cerron confirmed that NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks and could lead to a referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation. The Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtained a gaming license for the site. TT 2850; PX 3304, 3306.

Claudia Markarian

Claudia Markarian, previously Claudia Mouradian, was an underwriter at Zurich Insurance from 2010-2020. PX 3324 at 7-10. During the period from late 2017 through 2020, she worked on the Trump Organization account as an underwriter for the commercial surety program. PX 3324 at 8, 18. Markarian worked with the insurance brokerage firm AON during her time working on the Trump Organization account. PX 3324 at 18.

Markarian recalled that when reviewing the Trump financials for her underwriting responsibilities, she was prohibited from retaining a copy of any financials, and she was only permitted to view them at Trump Tower with Allen Weisselberg or Jeffrey McConney, or both,

in the room at all times. Markarian testified that this was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59.

During these on-site reviews at the Trump Organization, which occurred in late 2018 and early 2020, Markarian was shown the 2018 and 2019 SFCs, respectively, which listed as assets real estate holdings with valuations that Allen Weisselberg represented to Markarian had been determined each year by an outside professional appraisal firm. PX 1561, 1552, 3324 at 25-32. Markarian considered Weisselberg's representation, which she recorded in her contemporaneous notes, to be favorable and an indication that the valuations were reliable. PX 1561, 1552, 3324 at 51-75. Notwithstanding Weisselberg's explicit representation to Markarian, the Trump Organization never retained a professional appraisal firm to prepare any of the property valuations for the 2018 and 2019 SFCs. TT 952-955.

Markarian's contemporaneous memorandum for each on-site review reflected the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52.

Markarian testified that she "relied on what [Weisselberg] said" about the valuations being determined by professional appraisers when she made her recommendation that the surety program be renewed in 2019 and 2020. PX 3324 at 32-34. She further relied on Weisselberg's representation that the Trump Organization real estate assets do not fluctuate much in value regardless of economic cycles,[10] and on the values in the 2018 and 2019 SFCs when making her recommendation to renew the programs. PX 3324 at 33-52. Markarian testified that at the time, she had no reason to doubt that Weisselberg was being truthful and honest in his representations and that she accepted at face value his representations about the values contained in the SFCs. PX 3324 at 28-53.

When presented with Weisselberg's testimony that confirmed that the Trump Organization did not engage any professional appraisers to perform valuations of the properties in the SFCs, Markarian testified that Weisselberg's misrepresentations would have been "material" to her analysis, as "without the third party it – it means that there's –it could possibly be less reliance on the numbers that are presented to me." PX 3324 at 52-54. Markarian further testified that Weisselberg's misrepresentations about the cash on hand, and specifically misrepresenting Donald Trump's partnership interest in Vornado as cash available to him, would also have been "material" in her analysis to approve the renewals. PX 3324 at 54-56.

Markarian stated that because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about its financial condition, other than to rely on the financial documents that the client provides to them. PX 3324 at 57. She explained that because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account").

[10] Despite Weisselberg's repeated representations to Markarian, in reality the values in the SFCs for a number of properties varied significantly over time. PDX 3.

David Williams

David Williams has worked at Deutsche Bank for the past 17 years. TT 5324. He is currently a senior lender and team leader in the Private Wealth Management Division. TT 5324.

Williams testified that, generally, a payment default is more material than a covenant default, as it "speaks definitively to the repayment of the loan." TT 5337. Williams stated that he was not aware of any payment defaults on any of Donald Trump's loans with Deutsche Bank. TT 5339.

Williams corroborated the testimony of Nicholas Haigh that Deutsche Bank would apply a standard 50% haircut to the values of assets supplied by a client on an SFC, testifying that "it is – it is after we have made what I would say are generally our standard adjustments that we apply to really any given high-net-worth individual or ultra-high-net-worth individual's provided financial statements." TT 5374-5375, 5382-5384.

Williams confirmed that the numbers to which Deutsche Bank applied its standard haircut in evaluating the credit risk of the Trump loans came from Donald Trump's SFCs. PX 498; TT 5400-5403.

Williams testified that Donald Trump agreed to continue a guarantee requirement "in order to keep a more favorable pricing on the loans." TT 5406-5407, 5417-5419; PX 498.

In summer 2019, Deutsche Bank sent three different letters to Donald Trump, indicating that he was not in compliance with his Debt Service Coverage Ratio covenants under the Trump Chicago, Doral, and Old Post Office loans. PX 520, 521, 522. Williams confirmed that these notices were sent to Donald Trump because the covenant breaches could implicate the personal guarantee. TT 5410-5415. Williams testified that there were two more breaches of the Old Post Office and Trump Chicago loans in 2020. TT 5419-5420. Williams went on to detail that all three loans breached their debt service coverage requirements in 2021, resulting in Deutsche Bank commissioning appraisals on all three properties. TT 5424-5425; PX 561.

Williams confirmed that in July 2021, Deutsche Bank determined to "exit" the client relationship with Donald Trump, stating "we would be opting not to renew or extend that credit facility, and we would advise the client with some advance notice of that." TT 5425-5427; PX 561.

Williams further corroborated that as a lending officer, he would expect a client to provide truthful and accurate information to the bank, and that Donald Trump's net worth and personal guarantee were significant factors in Deutsche Bank's determining whether to underwrite a loan. TT 5427-5428. Williams additionally confirmed his previous deposition testimony, in which he stated that had he determined that Donald Trump's net worth fell below $2.5 billion at any time, he would have recommended that the private wealth division declare an "event of default." TT 5429-5430.

Emily Pereless

Emily Pereless, formerly Emily Schroder, worked at Deutsche Bank from 2007 through 2015. TT 5448-5449. For a time, she worked as an analyst in the lending group of the Private Wealth Management Division. TT 5449-5451.

Pereless confirmed that, at the request of the client, she went to Trump Tower to review Donald Trump's financial statements. TT 5454-5455. She testified that in preparing a credit risk memorandum for a potential credit facility, the credit risk team would consult with Deutsche Bank's Valuation Services Group about market conditions. TT 5455-5456. Pereless confirmed that her responsibility as a lender was to analyze the information provided and compile a report. TT 5459, 5463-5464, 5467.

The Individual Defendant Witnesses

Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s until February 25, 2023. TT 581-582; PX 3041 at ¶ 736. At the time of his testimony, McConney was still awaiting receipt of $125,000 of the $500,000 severance package the Trump Organization promised him. TT 582.

McConney reported directly to Allen Weisselberg, the Chief Financial Officer ("CFO"), and to Donald Trump. TT 4910-4911.

McConney took over responsibility for preparing the valuations for Donald Trump's SFCs sometime in the 1990s and had primary responsibility for preparing the valuations and supporting data between 2011 and 2017. TT 583. Beginning in 2016, McConney began receiving assistance from Patrick Birney, who took over primary responsibility for preparing the valuations used in the SFCs after 2017. TT 583-584.

McConney created and maintained annual spreadsheets referred to as "Jeff's Supporting Data" (or "supporting data" or "supporting spreadsheets") that contained the itemized valuations that became the aggregate numbers reported on the SFCs. Each annual version of Jeff's Supporting Data[11] contained two years' worth of information—the current year and the prior year—and included the valuation methodology and valuations for each of the assets used in the SFCs. TT 588. When McConney had primary responsibility for maintaining Jeff's Supporting Data, all decisions about valuation would be made by him, in consultation with Allen Weisselberg. When Patrick Birney first came on board, decisions were made by McConney, Weisselberg, and Birney. Once Birney took over primary responsibility for maintaining Jeff's Supporting Data, Birney and Weisselberg made the initial valuation decisions. TT 589.

[11] The employees of the Trump Organization continued to refer to the annual spreadsheets as "Jeff's Supporting Data" even after McConney turned over responsibility for maintaining and updating the spreadsheets to Patrick Birney. TT 588, 1204, 1254, 1285, 1465.

McConney understood that it was Donald Trump's or his trustees' responsibility to make sure that all financial records and related information were provided to Mazars. TT 590-591. McConney further understood that Donald Trump had engaged Mazars to perform a compilation, which differs significantly from a review or an audit. McConney acknowledged that the preparation of the compilation does not contemplate that the accountants would inquire, perform analytical procedures, assess fraud risk, or test accounting records. TT 592-594. He confirmed that Donald Trump would get final review for each financial statement after McConney and his team prepared it and Weisselberg approved it. TT 596-597, 5047.

McConney's emails and contemporaneous notes indicate that Eric Trump and Donald Trump, Jr. had final review of the SFCs after Donald Trump assumed the presidency of the United States, TT 5079-5084; PX 1361.

McConney testified that he never hid any information from Donald Bender. TT 4915. However, this is belied by the documentary evidence and the testimony of Bender, which conclusively establish that Mazars did, in fact, inquire about appraisals, and that McConney falsely told them that there were none. TT 242-247, 4915, 4930; NYSCEF Doc. No. 1262 at 243.

McConney testified that nearly all the disclaimer and valuation disclosure language that appeared in the SFCs was written by Mazars. However, he was then confronted with his handwritten notes to the draft SFC language that demonstrated that he, himself, marked-up and made changes to the majority of the language and forwarded those changes to Mazars to incorporate. TT 4928-4937, 5055-5059; PX 729, 3054. When confronted with this evidence, McConney conceded that "[m]y memory was incorrect" on direct examination and that he "frequently made changes." TT 5059-5071.

McConney was aware that Donald Trump had no right to withdraw funds from his interest in Vornado Partnerships, and yet he listed the interest on the SFCs from 2013 to 2021 as if it were cash immediately available to Donald Trump. TT 617-626, 5019.

McConney knew that the SFCs had to be GAAP compliant. TT 629-630. He admitted pre-trial that it was "undisputed" that GAAP defines "estimated current value" as "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." PX 3041 at ¶ 31. After some equivocation, and baseless objections by counsel,[12] McConney confirmed this at trial. TT 627-631.

During the period of 2012-2016, the Trump Organization hired Cushman & Wakefield to appraise 40 Wall Street, as required under the terms of another lending agreement. Doug Larson, of Cushman & Wakefield, was the primary contact on this project, and McConney was the Trump Organization's conduit for all 40 Wall Street appraisals. TT 668-669. As part of these

[12] Counsel for defendants, Christopher Kise, inexplicably tried to assert that McConney was not bound by his clear admission of "undisputed" in his response to OAG's Statement of Material Facts pursuant to 22 NYCRR 202.8-g. However, as the admission was affirmative and unequivocal, counsel's argument is without merit.

appraisals, Larson included cap rate calculations that he viewed as appropriate for the specifics of the property. On the valuations for the SFCs for the corresponding subject years, McConney selected cap rates that were lower than those that Doug Larson selected.[13] The supporting spreadsheets for the same time period credit Doug Larson as the source for the chosen cap rates, notwithstanding that the rates were much lower than those that appeared in Larson's appraisals. When questioned about the difference, McConney admitted that when choosing the lower cap rate, he relied on a generic marketing report that Cushman & Wakefield emailed a large customer base that was derived from data not specific, or even closely related, to 40 Wall Street. TT 660-681, 4995, 5101-5102. McConney further admitted that he made no attempt to adjust the numbers to reflect more accurately the value of 40 Wall Street when he was selecting cap rates. TT 681-682.

When questioned about his working relationship with Doug Larson and his knowledge of these appraisals, McConney's credibility was severely impaired, as he obfuscated and equivocated at length before finally conceding that between 2012 and 2016, when he was preparing the valuations for the SFCs, he was simultaneously acting as the conduit for Doug Larson for information needed for formal appraisals of 40 Wall Street. TT 668-674. He further admitted that despite his knowledge of these Cushman & Wakefield appraisals, he never sought to use any of these values for 40 Wall Street in the SFCs. TT 674-675.

When valuing Trump Park Avenue on the SFCs, McConney knowingly valued rent-regulated apartments using an anticipated selling price that assumed not only that the apartments were unrestricted, but that they had already been renovated, thus failing to discount future value to present value. TT 4946-4953, 5097-5099.

Although he testified that he knew "very little" about conservation easements, McConney said that he would select a value for the conservation easement based on "an appraisal done specifically for the conservation easement that had a before donation and after donation value." TT 5000-5001. However, the SFCs from 2012-2014 demonstrate that McConney ignored several Seven Springs appraisals commissioned by the Trump Organization that valued the potential seven-mansion development at between $5.5 million and $21 million and instead valued the seven-mansion development at $161 million, citing Eric Trump as the source. PX 1075.

McConney testified that for every SFC, Donald Trump valued Mar-a-Lago as if it were a private residence and not a social club, despite knowing that "Mar-a-Lago is a social club." When asked the reason for his doing so, he testified: "I don't remember off the top of my head." TT 5018-5022.

McConney's credibility was further compromised when he was questioned about his testimony in the recent criminal trial of the Trump Organization brought by the District Attorney of New York. Initially, when questioned by OAG, McConney denied that Allen Weisselberg ever asked

[13] Cap rates have an extraordinary effect on the value of a property, and the higher the cap rate, the lower the value. In a single year, McConney selected a cap rate of 3.04% that resulted in a $227 million dollar increase in the value of a property as compared to the appraisal's cap rate of 4.25%. TT 660-664, 678-679.

him to commit fraud on behalf of the Trump Organization. However, when confronted with his sworn testimony from the criminal trial, McConney admitted that Weisselberg did, on more than one occasion, ask McConney to assist him in committing tax fraud. TT 776-778. He further conceded, after initially denying, that even though he knew these activities were illegal at the time he was performing them, he continued to assist Weisselberg in committing fraud, as he was afraid that if he refused Weisselberg's requests he would lose his job. TT 776-778.

Plaintiff questioned McConney about his "Separation Agreement" with the Trump Organization, pursuant to which was to receive $500,000, to be paid in installments, the last of which remains outstanding. TT 5075. Plaintiff questioned him as to whether his agreement includes the same covenant found in Weisselberg's separation agreement that prohibits voluntary cooperation with governmental investigations or any entity "adverse" to the Trump Organization. TT 5075-5076. McConney testified that he could not recall if his agreement contained that covenant, further straining his credibility, as it seems implausible that McConney would not remember such a requirement, given the many investigations in which the Trump Organization has been engaged since McConney signed the agreement.

When asked how he feels today about the work he did on Donald Trump's SFCs, McConney replied: "I feel great. I have no problems with the work I did on this." TT 5041.

Allen Weisselberg

Allen Weisselberg was the CFO of the Trump Organization from 2002 until he was placed on leave in October 2022, after pleading guilty to 15 criminal counts of tax fraud and falsification of business records at the Trump Organization. TT 790; PX 1751, 3041. In that same vein, his testimony in this trial was intentionally evasive, with large gaps of "I don't remember." He conceded that his Separation Agreement, on which he is still apparently awaiting four payments, prohibits him from voluntarily cooperating with any entity "adverse" to the Trump Organization or its former or current employees. PX 1751. That alone renders his testimony highly unreliable. The Trump Organization keeps Weisselberg on a short leash, and it shows.

As CFO, Weisselberg oversaw the Trump Organization's accounting department, although he was not a certified public accountant ("CPA") and did not know any components of GAAP. TT 788-790, 864. Before Donald Trump assumed public office in 2017, Weisselberg reported directly to him. TT 790. McConney reported directly to Weisselberg from the time McConney was hired until the time Weisselberg left the Trump Organization. TT 791.

After Donald Trump assumed the presidency, Weisselberg's reporting structure was "more informal"; he dealt "mostly with Eric Trump," and "periodically" with Donald Trump, Jr. TT 790. From January 2017 through 2021, Weisselberg and Donald Trump, Jr. were the trustees of the Donald J. Trump Revocable Trust and were responsible for the preparation and fair presentation of its SFCs. TT 794-795, 961-963; PX 756, 769, 1016.

From 2011 until at least 2020, Weisselberg had a primary role in preparing the valuations for the SFCs, supervising McConney from 2011 until late 2016, and Birney and McConney from late 2015 until at least 2020. TT 1228-1231, 3561; PX 3041 at ¶ 714.

Each year from 2011 to 2020, Weisselberg signed SFC engagement and management representation letters (the "Management Representation Letters") as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). PX 3041 at ¶ 716-735, PX 753, PX 786.

The Management Representation Letters to Mazars stated, as here pertinent, that the Trump Organization and Donald Trump undertook the following responsibilities:

> (a) the preparation and fair presentation of the financial statements in accordance with the accounting principles generally accepted in the United States of America.
> (b) designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial statements.
> (c) preventing and detecting fraud.
> (d) identifying and ensuring that the company complies with the laws and regulations applicable to its activities.
> (e) the selection and application of accounting principles.
> (f) making all financial records and related information available to [Mazars] and for the accuracy and completeness of that information.

See, e.g., PX-791. When Weisselberg signed the Management Representation Letters, he understood their contents, that Mazars was relying on those representations, and that Mazars would not have issued the SFCs without having secured those representations. TT 835-837, 969. Weisselberg further admitted that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict or be inconsistent with the values represented in the SFCs. TT 846-847.

Notwithstanding his lack of knowledge of GAAP and his not knowing what the term "estimated current value" means, each year, Weisselberg represented to Mazars that the SFCs were presented in conformity with GAAP and that assets in the SFCs were stated at their estimated current value. TT 839-842. 940; see, e.g., PX 706.

Weisselberg provided dozens of certifications to lending institutions affirming the truth and accuracy of the SFCs, knowing that if he failed to do so, Donald Trump would be in breach of his various loan covenants. TT 923-935.

Between 2011 and when Donald Trump became president, before finalizing each SFC and its valuations, Weisselberg would give them to Donald Trump for final review and changes. TT 898. Weisselberg would not have permitted a final draft of the SFC to be issued to Mazars unless Trump had reviewed and was satisfied with it. PX 3041 at ¶ 676; TT 900.

Once Donald Trump assumed the presidency, Weisselberg would give the SFCs to Eric Trump or Donald Trump, Jr. for final review. TT 899.

Weisselberg testified that "I certainly am not one to value a property. I have no idea what properties are worth." TT 896. Yet, Weisselberg also testified that he knew that the selling price, not the asking or offering price, is the relevant number in selecting comparable properties. TT 887-888.

Weisselberg had final approval over the 40 Wall Street budgets and was, thus, aware that in 2011, the Trump Organization had a negative cash flow from 40 Wall Street. TT 1499, 1520-1521. He nonetheless directed Donna Kidder, a Trump employee who worked in accounting, to prepare a document containing a series of implausible assumptions to generate a $26.2 million net operating income.[14] Weisselberg concealed from Kidder that these assumptions would be used for the SFC's valuations. TT 1523-1526, 1529.

Weisselberg confirmed that insurance company representatives could only review financial information at Trump Tower and were not permitted to make copies or take anything with them. TT 1187.

On January 9, 2023, Weisselberg entered into a "Separation Agreement and General Release" with the Trump Organization wherein the Trump Organization promised him a total of $2 million dollars in installment payments as long as he performed his obligations under the agreement. Section 3(d) of the separation agreement provided that:

> [E]xcept for acts or testimony directly compelled by subpoena or other lawful process issued by a court of competent jurisdiction, he will not: (1) communicate with, provide information to, or otherwise cooperate in any way with any other person or entity, including his counsel or other agents, having or claiming to have any adverse claims against the Company or any person or entity released by this Agreement, with regard to the adverse claim; or (2) take any action to induce encourage, instigate, aid, abet or otherwise cause any other person or entity to bring or file a complaint, charge, lawsuit or other proceeding of any kind against the Company or any person or entity released by this Agreement.[15]

PX 1751; TT 796-798. Weisselberg affirmed that he understood that under the terms of the separation agreement, he was not permitted to cooperate voluntarily with any law enforcement agency adverse to the Trump Organization, including the Attorney General's Office. TT 1193-1195.

---

[14] As discussed *infra*, 40 Wall Street never reached a net operating income of $26.2 million, but, instead, ran a deficit as high as -$20.9 million through 2015. PX 636, 652.

[15] Although not before this Court, such provision would almost certainly be unenforceable as against public policy, to the extent that it restricts full and truthful cooperation with legal investigations and actions. Denson v Donald J. Trump for President, Inc., 530 F Supp 3d 412, 437 (SDNY 2021) (Trump campaign's non-disclosure and non-disparagement provisions are invalid and unenforceable as against public policy).

Donald Trump, Jr.

Donald Trump, Jr. started his employment at the Trump Organization in 2001. TT 3160, 3976. Early in his tenure, he worked as a project manager at Trump Park Avenue, where he did a "[l]ittle bit of everything; design, construction, overseeing some of the banking relationships we had, anything and everything." TT 3161-3162. Trump, Jr. affirmed that, at the time, he knew about the impact of rent stabilization laws on development at Trump Park Avenue, and he was aware of the limitations imposed by that law. TT 3162. Trump, Jr. also served as project manager for Trump Chicago, working on "everything from design, architecture, sales and marketing, finance, construction… [y]ou name it." TT 3162-3163.

Since at least 2011, Trump, Jr. has served as an executive vice-president of the Trump Organization, reporting to his father, until Donald Trump assumed the presidency in January 2017. TT 3164, 3167. After that, Trump, Jr. and Eric Trump served as co-chief executive officers of the Trump Organization and, collectively, with Allen Weisselberg, had "ultimate authority over decisions made at the Trump Organization." TT 3164-3170. TT 3286-3288. In addition to their role as co-CEOs of the Trump Organization, beginning in January 2017, Trump, Jr. and Eric Trump were also presidents, directors, executive vice presidents, and/or chairmen of various Trump Organization entities. PX 1329 at 13-25.

Also in January 2017, Trump, Jr. and Weisselberg became trustees of the Donald J. Trump Revocable Trust, which Trump, Jr. understood to be "the trust that governed all of my father's assets[,] especially while he was president." TT 3170, 3179, PX 769. When examined about his knowledge of Allen Weisselberg's departure from the Trump Organization, Trump, Jr. testified that Weisselberg was terminated from his role as trustee because of his criminal indictment, but that he was not terminated from his employment at the helm of the Trump Organization for that reason. TT 3170-3172. Trump, Jr. then testified that he does not know the details of how or why Weisselberg ended his employment relationship with the Trump Organization, which this Court finds entirely unbelievable. TT 3172-3173.

On January 20, 2021, Donald Trump re-appointed himself as a trustee of the Donald J. Trump Revocable Trust and removed Trump, Jr., while leaving Weisselberg as a "business trustee." PX 1016; TT 3185-3186. After Weisselberg was terminated from his role as trustee in June of 2021, Trump, Jr. was re-appointed trustee on July 7, 2021. Apparently,[16] Trump, Jr. remains the sole trustee of the Donald J. Trump Revocable Trust. TT 3181-3185, 3190-3191; PX 1015, 1016.

In early 2016, at the request of "one of the three children" (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business, in anticipation of taking over. PX 1293; TT 1181-1186. Trump, Jr. and Eric Trump were continuously kept apprised of the operating financials by Weisselberg. TT 3270-3273; PX 1454.

In January 2017, Trump, Jr., along with Eric Trump, took over responsibility for running the Trump Organization. TT 3982-3983.

[16] When asked if he was aware if his father, Donald Trump, is serving as a current trustee of the Donald J. Trump Revocable Trust, Trump, Jr. testified "I don't recall." TT 3191.

In March 2017, Trump, Jr. and Eric Trump were given power of attorney over certain of their father's real estate and banking relationships. PX 1330; TT 3174-3177. The power of attorney explicitly states "[t]he authority granted hereunder is solely with respect to the execution and delivery of certifications and similar documentation (including, without limitation, compliance certificates) in connection with existing financings in which Donald J. Trump is guarantor." PX 1330; TT 3177-3178, 3433-3434.

Trump, Jr. stated that his father had no role in decision-making at the Trump Organization between January 20, 2017 and January 20, 2021, but that he resumed "some" decision-making after January 20, 2021, choosing certain activities in which to get involved. TT 3173-3174, 3984.

From January 2017 through 2021, Trump, Jr. and Weisselberg, as trustees of the Donald J. Trump Revocable Trust, were responsible for the preparation and fair presentation of the SFCs. See, e.g., PX 756; TT 961-963. Trump, Jr. acknowledged that as a trustee, he was subject to fiduciary responsibilities.

In his capacity as trustee, Trump, Jr. certified that he was "responsible for the accompanying statement of financial condition … and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of America." See, e.g., PX 756. He did this every year from 2017 to 2021 despite having no knowledge of the requirements of GAAP, never having been employed in a position that required him to apply GAAP, and never having received any training on applying GAAP. TT 3155-3156. In his capacity as trustee, Trump, Jr. also certified that the values of assets contained in the SFCs were "estimated current values." See, e.g., PX 756.

On March 3, 2017, Alan Garten, chief legal officer for the Trump Organization, forwarded Trump, Jr. an email from Forbes that, *inter alia*, questioned the claimed size of Donald Trump's Trump Tower Triplex and cited that property records indicated it was only 10,996 square feet. PX 1344. Trump, Jr. acknowledged receiving the email, and he responded that same day with: "Insane amount of stuff there." PX 1344. Notwithstanding, four days later, on March 10, 2017, Trump, Jr., along with Weisselberg, signed a Management Representation Letter to Mazars in which they represented the value of the Triplex based on the false assumption that it was 30,000 square feet. PX 741; TT 3231-3234. Trump, Jr. testified that he could not recall if he did any fact checking or "anything" in response to the Forbes inquiry, despite specifically affirming the following representations in the Management Representation Letter:

> (2) We have made available to you all financial records and related data, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation.
>
> …

(4) We acknowledge and have fulfilled our responsibility for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the personal financial statement that is free from material misstatement, whether due to fraud or error.

(5) We acknowledge our responsibility for designing, implementing, and maintaining internal control to prevent and detect fraud.

(6) We have no knowledge of any allegations of fraud, or suspected fraud, affecting us that could have a material effect on the personal financial statement.

PX 741; TT 3231-3234. When asked on whom he relied to assure himself that making the representations in the Management Representation Letter was appropriate, Trump, Jr. testified: "I don't recall who I relied on." TT 3236. Yet, when he signed the certifications, Trump, Jr. "intended for the bank to rely upon [them]." TT 3241, 3250.

Trump, Jr. signed certifications verifying the accuracy of the SFCs submitted to Deutsche Bank in 2017, 2018 and 2019. See, e.g., PX 1386, 393; TT 3238-3239. While disclaiming responsibility for the SFCs contents, Trump, Jr. testified that he "would have sat with the relevant parties," which he identified as Weisselberg, McConney, and Bender, to discuss the SFCs. TT 3238-3241.

Trump, Jr. also certified to Mazars that there were no significant changes in Donald Trump's net worth in 2017 and 2018, upon which Mazars relied in issuing the No MAC letters to NYC Parks to fulfill Donald Trump's obligations under the Ferry Point contract. PX 3280, 3285. In 2023, Trump, Jr. approved the sale and assignment of the Ferry Point contract to Bally's for $60 million, with an additional $115 million to be paid to the Trump Organization should Bally's obtain a gaming license for the site. PX 3304, 3305, 3306; TT 3261-3268.

Despite disclaiming responsibility for or knowledge of the SFCs contents, Trump, Jr. still insisted that the SFCs were "materially accurate." TT 3275-3276.

Trump, Jr. mistakenly testified that Mark Hawthorn is the current chief financial officer ("CFO") of the Trump Organization, claiming that he replaced Allen Weisselberg. TT 3282-3283, 3987. However, the CFO position has remained unfilled since Allen Weisselberg departed the Trump Organization. TT 5245-5248.

Eric Trump

Eric Trump joined the Trump Organization right after college in 2006. TT 3285. From the time he became an executive vice president in 2014, until Donald Trump assumed the presidency in January 2017, the hierarchy of the Trump Organization was like a pyramid, with Donald Trump at the top. TT 3286. During this period, Eric Trump reported directly to his father. TT 3287.

In early 2016, at the request of "one of the three children" [17] (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Donald Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business. PX 1293; TT 1181-1186. Allen Weisselberg affirmed that he was directed to advise Eric, Ivanka, and Trump, Jr. of the performance of the business "as Mr. Trump had now become president," "[t]hey wanted to be knowledgeable about the running of the business… [s]o [in] 2016, he was in the process of running for president and they wanted to get up to speed on how the business was operating." TT 1185-1186.

Beginning in January 2017, Eric Trump, Trump, Jr. and Weisselberg ran the day-to-day operations of the Trump Organization. TT 3288. Eric Trump confirmed that beginning in January 2017, he did not report to anyone, although he confirmed that post-presidency, he resumed following his father's directives. TT 3289.

Eric Trump became involved in the Seven Springs project in 2012. TT 3289-3290. He testified that "I never had anything to do with the Statement of Financial Condition." TT 3292. However, McConney's supporting spreadsheets from 2012-2014 indicate that he relied on Eric Trump for the valuations of Seven Springs, which were inflated to $161 million for the undeveloped seven mansions, far more than the $21 million appraised value, of which Eric Trump was aware. PX 793, 708, 719.

Eric Trump's credibility was severely damaged when he repeatedly denied knowing that his father ever even compiled an SFC that valued his assets and showed his net worth "until this case came into fruition." Upon being confronted with copious documentary evidence conclusively demonstrating otherwise, he finally conceded that, at least as early as August 20, 2013, he knew about his father's SFCs (begrudgingly acknowledging: "It appears that way, yes"). TT 3292-3294, 3300-3304, 3307-3316, 3319-3336; PX 1071, 1079, 1112, 1113, 1075, 3333, 1091, 1265, 3332.

Moreover, emails indicate that contrary to Eric Trump's testimony, McConney relied on Eric Trump for the $161 million valuation of the undeveloped seven-mansion plot at Seven Springs, from 2012-2014. PX 1075. In particular, an August 20, 2013 email from Jeff McConney to Eric Trump, with the subject "Seven Springs," reads: "Hi Eric, I'm working on your Dads [sic] annual financial statement. I need to value Seven Springs. Attached please find how we valued it last year. Can you let me know when you have time to talk about this year's valuation? Thanks Jeff." PX 1075.

When the documentary evidence against him became overwhelming, Eric Trump reversed his previous testimony:

> Q. It is correct that when you received this e-mail in August of 2013, you understood that your father had an annual

[17] After much obfuscation on the stand, initially testifying that he could not recall who asked Birney to put together the 2015 operating financial summary, Weisselberg ultimately conceded that it was "one of the three children" but could not "recall which child it was." TT 1184-1185.

> financial statement and you understood that Mr. McConney was asking you for information specifically to assist him in working on the notes to the annual financial statement; isn't that correct?
>
> A. Yes.

TT 3325, 3339.

Although Eric Trump advised McConney in August 2013 to continue to use the $161 million value for the proposed seven-mansion development at Seven Springs, emails demonstrate that Eric Trump was aware of a valuation by a professional appraiser, engaged by the Trump Organization, who valued the hypothetical development at approximately $5.5 million. PX 908, 3296; TT 3342-3349.

By September 8, 2014, a mere four days before Eric Trump advised McConney to continue using $161 million as the value for the seven-mansion development in the 2014 SFC, David McArdle of Cushman & Wakefield had completed an appraisal for the property and delivered a verbal estimate to Eric Trump of $14 million. PX 169, 181, 3331; TT 3349-3354.

Eric Trump's testimony that he had very limited involvement in the appraisal work that McArdle performed on Seven Springs and Briarcliff was shown to be false when he was confronted with the ample contemporaneous documentary evidence demonstrating otherwise. PX 133, 1074, 3206, 3327, 3207, 3189, 3190, 3328, 3195, 3196, 3204, 3202, 3201; TT 3360-3364, 3367-3381, 3383-3385, 3427-3432. He unconvincingly tried to distance himself from this evidence, asserting that he was not focused on it because, "I am a construction guy." TT 3385.

Despite retaining McArdle in August 2013 to value the proposed 71-units at Briarcliff, and receiving a professional appraised value of $45 million, Eric Trump directed McConney to value the proposed units at over $101 million in the 2014-2018 SFCs. PX 719, 742, 758, 843; TT 3378-3379.

In 2020, Eric Trump, as attorney-in-fact for his father, signed three certifications based on the SFCs and sent to Deutsche Bank to satisfy obligations for the Trump Chicago, Doral, and Old Post Office loans. PX 518. TT 3434-3438. In 2021, again as attorney-in-fact for his father, Eric Trump signed two certifications based on that year's SFC, and sent them to Deutsche Bank to satisfy obligations under the Doral and Old Post Office loans. PX 517; TT 3438-3442.

When questioned about his knowledge and involvement in valuing Mar-a-Lago, Eric Trump adamantly maintained that it was appropriate to value Mar-a-Lago as a private residence, even though it was being taxed as a commercial club and the deed prohibited, in perpetuity, use of it as anything other than a social club. TT 3445-3451; PX 1013.

When confronted with Patrick Birney's testimony that Eric Trump and Trump, Jr. participated in a video conference call in fall 2021 to discuss the preparation of the 2021 SFC, Eric Trump acknowledged that he would have "no reason to doubt Pat." TT 3385-3391.

Eric Trump, on behalf of the Trump Organization, signed Allen Weisselberg's separation agreement, in which, in exchange for $2 million in installment payments, Allen Weisselberg agreed, *inter alia*, not to disparage or criticize the Trump Organization or its current or former employees, and not to cooperate voluntarily with law enforcement or anyone with adverse legal claims to the Trump Organization unless compelled to by a court. PX 1751; TT 3451-3457. Eric Trump took responsibility for negotiating the terms of the separation agreement. TT 3457.

Donald Trump

Donald Trump is the beneficial owner of the collection of companies branded as "the Trump Organization." TT 3472. From May 1, 1981 through January 19, 2017, he was its Director, President, and Chairman. TT 3472.

He is also the sole beneficiary of the Donald J. Trump Revocable Trust, under which all Trump Organization assets are held. TT 3472. After he assumed the presidency in 2017, Donald Trump appointed Donald Trump, Jr. and Allen Weisselberg as the trustees of the trust. TT 3474. When he left the White House in 2021, Donald Trump re-appointed himself as the sole trustee of the trust, stating that "I figured that I would be back in the business world for a little while… So, I figured that I would be back in business, I might as well be the Trustee." TT 3475. However, on July 7, 2021, Donald Trump once again removed himself as trustee, stating that "I think we were at a position where I was gaining more and more confidence in my family in terms of business." PX 1720; TT 3475-3476. He re-appointed Trump, Jr. and Weisselberg as trustees. TT 3476-3477.

Donald Trump testified that Weisselberg and McConney were responsible for maintaining complete and accurate books and records of the Trump Organization. TT 3617. Donald Trump confirmed that Weisselberg and McConney prepared the supporting data on which the SFCs were based before coming to him for final review. TT 3491. Donald Trump acknowledged that he reviewed the SFCs each year from 2011 to 2017 before they became final, further adding that "I would see them. And I would maybe, on occasion, have some suggestions." TT 3478, 3513. He recalled that on specific occasions Weisselberg and McConney asked his opinion about the valuations of 40 Wall Street, Seven Springs, and his limited partnership with Vornado. TT 3495-3496; 3519-3522; PX 3344.

Donald Trump also acknowledged that, as he certified to Mazars in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements. PX 730; TT 3481-3482, 3564-3568. He understood that Deutsche Bank would rely on his certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630.

Donald Trump insisted that the values within the SFCs were not only not fraudulently inflated, as this Court has already found, but that, if anything, they were deflated, as the following exchange with OAG demonstrates:

Q. In light of your expertise in real estate, do you recall ever thinking that the values were off in your Statements of Financial Condition?

A. Yeah, on occasion.

Q. What were some of those occasions?

A. Both high and low; both high and low.

Q. Which occasions do you recall?

A. I thought that Mar-a-Lago was very underestimated, but I didn't do anything about it. I just left it be. It didn't matter, I didn't care, because the numbers you are talking about here is, you know, they are very big numbers, very, very big. Far bigger – the values are far bigger than what is on the financial statement. I thought Mar-a-Lago was underestimated. I thought 40 Wall Street was very underestimated because that building has tremendous value. I thought that there were numerous other things. I thought Doral was very underestimated. I thought it was considerably more valuable. Not necessarily [its] golf courses, but it is right in the middle of Miami, right next to the airport. I would say you could build thousands of units and hotels on the site. So you don't look at it as a golf course. It is a great golf course, very successful, four of them, four courses. One was sold. It was five. One was sold that was a little disconnected, and [I] sold it. But I thought Doral was very underestimated.

…

Q. [I]f anything, do you think the statement undervalued your assets; is that correct?

A. Yes, by a lot. The financial statements.

TT 3487-3488, 3495.

When asked about his limited partnership interest in Vornado, and specifically, whether he had control over the assets, Donald Trump equivocated several times, extolling the virtues of his limited partnership, before ultimately conceding: "In the true sense, no." TT 3518-3519.

When examined about the valuation of Mar-a-Lago, Donald Trump did not recall having any specific conversations with Weisselberg or McConney about valuing it as a private residence, although he conceded that it was valued on the SFCs as if it could be sold as a private residence.

TT 3527-3530. When confronted with the 2002 deed[18] in which he signed away, in perpetuity, the right to use or develop Mar-a-Lago as anything other than as a social club, in exchange for a conservation easement tax benefit, he offered that "when you say, 'intend,' intend doesn't mean we will do it." PX 1730; TT 3533-3535.

Nonetheless, Donald Trump insisted that he believed Mar-a-Lago is worth "between a billion and a billion five" today, which would require not only valuing it as a private residence, which the deed prohibits,[19] but as more than the most expensive private residence listed in the country by approximately 400%.[20] TT 3530.

When questioned about Aberdeen, and whether he was aware that the SFCs for 2014-2018 valued the property as if the Trump Organization could build 2500 year-round private residences (when in fact, they had received permission to build only 500), Donald Trump testified: "I don't know, but it could very well be. It's sort of like a painting. You could do pretty much what you want to do. The land is there. You could do what you want to do. So you could do either one of them, actually." TT 3539-3547. When confronted with evidence that, in 2014, the Trump Organization had submitted a statement to UK regulators stating that the Trump Organization did not intend to develop the Aberdeen property any further because of Donald Trump's opposition to wind farms, Trump testified: "At some point that will be developed into a magnificent job. I just don't want to do it now." TT 3547-3549.

Notwithstanding the foregoing, the 2014-2018 SFCs valued Aberdeen not only as if Donald Trump had permission to develop 2500 private year-round residences, which he did not, but also as if those residences had already been built, and the SFCs and supporting data failed to account for any development costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

When questioned about whether he had ever inflated the value of 40 Wall Street, Donald Trump was confronted with a Forbes article, including a published audio recording, dated September 21, 2022, that reported that Trump had told Forbes in 2015 that 40 Wall Street was 72 stories tall, when in fact, it is only 63, resulting in an overvaluation of $50 million. The article also reported that Donald Trump told Forbes that 40 Wall Street had a net operating income of $64 million in 2015, when in fact, the building ran a deficit[21] of more than $8.7 million for the 12-month period ending on March 31, 2015. TT 3568-3576; PX 652, 636. When asked if he was misquoted in the Forbes article, Donald Trump replied "I don't know. I don't know what I said." TT 3571.

---

[18] See further discussion of Mar-a-Lago *infra*.

[19] A fact of which he is well aware, having signed the deed himself.

[20] According to a CNBC report, as of January 7, 2022, the most expensive private family residence listing in the United States was $295 million, for a newly developed 105,000 square foot mega-mansion in Los Angeles, California. https://www.cnbc.com/2022/01/07/most-expensive-home-in-america-lists-for-295-million-may-head-to-auction.html.

[21] 40 Wall Street also ran net operating deficits in 2013 and 2012 ranging from -$7.3 million to -$20.9 million. TT 3577-3579.

When asked if he still approved of the work that McConney and Weisselberg did in preparing the SFCs from 2011-2017, Donald Trump testified: "As far as I know I do. You haven't shown me anything that would change my mind." TT 3551.

Donald Trump stated he was not involved in the preparation of the 2021 SFC, and that it would have been prepared by Weisselberg, McConney, Trump, Jr., and Eric Trump. TT 3523.

Donald Trump was aware that receiving loans from the Deutsche Bank Private Wealth Management Division required him: to provide a personal guarantee; to maintain a minimum net worth of $2.5 billion; to maintain unencumbered liquidity of $50 million at all times; and to submit annual SFCs to Deutsche Bank, so that Deutsche Bank could test his compliance with the loan covenants. TT 3586-3601, 3604-3614; PX 426, 312, 307, 1844, 309, 394, 503.

When Donald Trump sold the Old Post Office hotel, he paid off the Deutsche Bank loan, and the following profits were distributed: $126,828,600 to Donald Trump; $4,013,024 to Eric Trump; $4,013,024 to Donald Trump, Jr., and $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

When questioned about Weisselberg's guilty plea to tax fraud in connection with his employment at the Trump Organization, Donald Trump challenged that Weisselberg had committed any wrongdoing (to which Weisselberg admitted), saying "I mean is there something wrong… I mean IBM executives get apartments that are compensated by IBM. And lots of other companies do. But people that work for me can't be so compensated? I don't know, I don't think that's a big thing. Is it?"[22] TT 3632-3634.

Overall, Donald Trump rarely responded to the questions asked, and he frequently interjected long, irrelevant speeches on issues far beyond the scope of the trial. His refusal to answer the questions directly, or in some cases, at all, severely compromised his credibility.

The Party Witnesses

Donna Kidder

Donna Kidder joined the Trump Organization in 2007 as a senior accountant and currently serves as Assistant Controller. TT 1491-1492. Since at least 2008, she has overseen preparing spreadsheets illustrating the cash positions of each Trump Organization entity for the purpose of enabling Allen Weisselberg to provide Donald Trump with weekly updates.[23] TT 1513-1515.

From 2011-2021, Kidder also prepared, in consultation with Weisselberg and Matthew Calamari (another Trump Organization employee), budget projections for 40 Wall Street and Trump Tower that were then incorporated into financial statements sent to third parties. TT 1520-1524;

[22] The record does not reflect whether IBM executives pay taxes on their perks.

[23] Kidder confirmed that the practice was the same after Donald Trump became president, except the reports did not go directly to Donald Trump. TT 1514.

1529-1533. Weisselberg directed Kidder to assume certain things when preparing the budget projections, such as presupposing that any vacant space remaining in a property would be fully leased by the end of the year and omitting management fees from affiliated entities (falsely claiming that "payment[s] to an affiliated company" did not have to be included in costs). TT 1524-1525, 1536-1539.

Weisselberg reviewed and approved any financial document that went to an outside party. TT 1530-1533.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that Donald Trump would receive through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of how many deals were finalized or the pace at which offers were being received. TT 1550-1556; PX 774, PX 3168.

Patrick Birney

Patrick Birney is a current employee of the Trump Organization. He started there in 2015 as a senior financial analyst, and in the eight years since, he has held the titles of Associate, Assistant Vice President of Financial Operations, and Vice President of Financial Operations, the title he currently holds. TT 1198-1199. Patrick Birney is neither a CPA nor a licensed appraiser, and he has received no training in applying GAAP or Accounting Standards Codification 274 ("ASC-274"). TT 1199; 1211.

Before joining the Trump Organization, Birney worked at AON, an insurance broker, in claim management, where he serviced the Trump Organization insurance accounts. TT 1199-1201. While at AON, he liaised with who people referred to as the "Team of Four" that was comprised of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen, who were responsible for overseeing the Trump Organization's insurance program. TT 1200-1201.

From in or around November 2016 through 2021, Birney prepared the initial valuations for Donald Trump's SFCs. TT 1207-1208, 5305. Birney maintained Jeff's Supporting Data, which referred to the spreadsheets that supported the numbers on Donald Trump's SFCs. He also maintained the "backup," which referred to "anything that was used to" support the information on Jeff's Supporting Data. TT 1204, 1207-1209.

When Birney took over for Jeffrey McConney in preparing and maintaining Jeff's Supporting Data, he would show his draft to and ask questions of Weisselberg, and Weisselberg would review them, answer the questions, and adjust whatever he deemed appropriate. TT 1212, 1213; 1220-1228.

When Birney took over primary responsibility for preparing and maintaining the SFCs' supporting data, McConney still selected cap rates, appropriate comparables, and valuation methods. TT 1220-1228.

When valuing Trump Tower for the 2018 and 2019 SFCs, Weisselberg instructed Birney to remove the management fees from the net operating expenses, even though they were an expense, and to apply a 2.67 cap rate, despite Birney's raising concerns with Weisselberg that he might not be able to support such a low cap rate. TT 1310-1318, 1332-1342.

Birney confirmed that the only reason the Trump Tower Triplex's square footage on the supporting spreadsheets was updated to reflect accurately the size was in response to the Forbes article. TT 5592-5593. To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Between 2017 and 2019, Weisselberg told Birney that Donald Trump wanted to see his net worth on his SFCs increase. TT 1409-1410.

Birney stated that the process of preparing the 2020 supporting data for the SFC was different than it had been for the years 2016-2019 in that "there was more input from more people," specifically identifying Ray Flores, Adam Rosen, and Alan Garten. TT 1229-1231. The process for preparing the 2021 SFC was similar to that of 2020, with the exception that Weisselberg was not involved and McConney was "barely involved." TT 1233.

Mark Hawthorn

In 2016, the Trump Organization hired Mark Hawthorn, a CPA, as the Chief Accounting Officer for Trump Hotels. Currently, he is the Chief Operating Officer of Trump Hotels. TT 1414-1416, 1421. The role of Chief Executive Officer of Trump Hotels has remained vacant since its last CEO departed in May 2022. TT 1417. Hawthorn currently reports directly to Eric Trump, who has overseen the hotel division since at least 2016, and whom Hawthorn understood to be the chief decision-maker at the company. TT 1417-1421, 5128-5129. Hawthorn oversees accounting and finance for the hotels' properties, and he frequently interacted with Allen Weisselberg, Jeffrey McConney, Donna Kidder, and Patrick Birney, who collectively oversaw the separate corporate accounting group. TT 1419-1421.

Hawthorn conceded that including the Vornado partnership interest in the cash asset category of Donald Trumps' SFCs was inaccurate. TT 1414-1454.

Hawthorn affirmed that the requirements of GAAP must still be followed when performing a compilation. TT 5279. Although Hawthorn was the only CPA with knowledge of GAAP in the Trump Organization senior management, and, thus, the only one qualified to calculate correctly the present value of future cash flows to estimated current values, neither Weisselberg, nor McConney, nor Birney ever once asked for Hawthorn's assistance in preparing the SFCs. TT 1487-1489, 5139.

When Weisselberg left the Trump Organization, Hawthorn took over part of his responsibilities in the corporate accounting department, although he never participated in preparing the supporting data for any of Donald Trump's SFCs. TT 5244-5245.

On September 8, 2022, the Trump Organization, by Adam Rosen, requested that Deutsche Bank forego the requirement that Donald Trump submit his annual SFC on his outstanding loan, and, instead, accept a "one-page spreadsheet that shows his material assets and liabilities but does not show any valuations of real estate." PX 563; TT 5259-5265. On September 23, 2022, Deutsche Bank rejected that request, making it clear that, "[th]e modified financial reporting you have proposed is not acceptable to Deutsche Bank," and further quoting the covenant of the loan that requires submission of an SFC. PX 563. Hawthorn testified that, notwithstanding this correspondence, it was the Trump Organization's position that Deutsche Bank did not require the submission of further SFCs, notwithstanding that the Trump Organization continued to seek an extension from Deutsche Bank of Donald Trump's time to submit an SFC. TT 5263-5270; PX 562. Hawthorn ultimately conceded that he was not suggesting "that there was ever a point in the life of this loan where the guarantor ceased to have an obligation to submit a compliance certificate attaching Mr. Trump's Statement of Financial Condition." TT 5272.

Hawthorn confirmed that "the company no longer prepares a Statement of Financial Condition," again insisting it is not required by any lenders. TT 5282-5284.

Raymond Flores

Raymond Flores joined the Trump Organization in 2012 as an analyst on the acquisitions and development team. In 2014 he was promoted to associate, and in 2016 he was promoted to vice-president, where he began negotiating financial agreements and managing properties. TT 2038-2039. From 2016 until he left the Trump Organization in March 2022, he reported to Donald Trump, Jr. and Eric Trump. TT 2040-2041.

While vice president, Flores interacted weekly with Allen Weisselberg, explaining that Weisselberg would reach out to him for information about certain properties that Flores had a role in managing and overseeing, including the Old Post Office in Washington D.C., the Doral golf resort, and the Chicago hotel. TT 2042. During that time, McConney would also ask for information about the properties that Flores oversaw. TT 2042-2043.

Beginning in 2020, and at the direction of Alan Garten, chief legal officer, Flores helped prepare the supporting valuations and data for the SFCs. Garten also asked him to review the statements and the underlying assumptions that went into the valuations. TT 2043-2046. In preparing the 2020 supporting data, Flores worked with Garten, Adam Rosen, Weisselberg, McConney, and Patrick Birney. TT 2046.

When asked about specific actions, meetings, discussions, phone calls, methodologies, and valuations that went into preparing the supporting data, Flores consistently and repeatedly testified that he "did not recall." TT 2060-2063; 2075-2082, 2085-2089, 2750-2751.

What Flores did not recall is memorialized in emails and voicemails. Flores repeatedly denied any recollection of performing a cash flow analysis of Niketown in 2020 and denied any recollection of McConney asking him to come up with additional reasoning to justify using a four percent cap rate on Niketown in the 2020 valuations. He was then confronted with a

voicemail message that McConney left for him on Christmas Eve of 2020, asking Flores to come up with additional reasoning to justify using the four percent cap rate on Niketown. When presented with the voicemail, Flores still claimed not to remember any such events. TT 2748-2756.

Similarly, he denied recalling having worked on the 2021 SFC supporting data. He was then confronted with a voicemail message that he left for Patrick Birney on August 2, 2021, stating that Eric Trump had asked Flores to reach out to Birney about preparing the 2021 SFC data. TT 2756-2759. Again, Flores claimed this voicemail did not refresh his recollection on whether he was involved in preparing the 2021 SFC. TT 2759.

Flores was also a conduit with a firm, Marvin F. Poer & Company ("Poer"), that handled property tax assessment appeals in Florida for the Trump Organization. TT 2762; PX 3211. In 2020, the property appraiser determined the market value of Doral to be $78 million, a fact of which, emails reveal, Flores was acutely aware. PX 3209, PX 3211. Notwithstanding, the supporting data for the 2020 and 2021 SFCs value Doral at $345 million and $297 million, respectively. PX 857, 1501. Flores denied any recollection of this, despite the emails that demonstrate his active participation. TT 2772-2773.

In 2020, the Trump Organization hired Poer to file an appeal of the 2020 tax assessment of Mar-a-Lago, claiming that the assessed, taxed value of $26.6 million was too high. PX 3170, 3214, 3041 at ¶ 199. As part of the appeal, the Trump Organization explicitly stated that the property was commercial, and not residential. PX 3170. Two months after filing the appeal, the Trump Organization withdrew it, stating that it agreed with the $26.6 million determination of value. PX 3170. 3214; TT 2774- 2777. Flores conceded that that "determination was based on Mar-a-Lago being categorized as a commercial property." TT 2776-2777.

When presented with additional emails and documents found in Flores' possession that unquestionably reveal that he absolutely understood that Mar-a-Lago was exclusively a commercial, not residential, property, Flores continued to deny any recollection, stating "[t]hat's what the email says. I don't recall." TT 2777-2781; PX 1382. Notwithstanding, every SFC from 2011-2021 valued Mar-a-Lago not only as if it could be sold as a private residence, but also as if there were no deed restrictions burdening it; the SFCs' values for that decade range from $405 million to $739 million. PX 788, 793, 708, 719, 731, 742, 758, 774, 843, 857, 1501.

Overall, Flores was not a credible witness, and the Court finds it highly unlikely that none of the documentary evidence with which Flores was confronted revived his recollection as to his participation in any of the aforementioned activities.

Michael Cohen

Michael Cohen joined the Trump Organization in 2007 as executive vice president and special counsel to Donald Trump.[24] TT 2191, 2195-2197. During his entire tenure at the Trump Organization, Cohen reported directly to Donald Trump. TT 2197.

[24] The Court lists Michael Cohen as a "party witness," as he was a Trump Organization employee at all relevant times. However, the Court is mindful that Mr. Cohen is now adverse to defendants.

In 2018, Cohen pleaded guilty, in the federal district court for the Southern District of New York, to several counts of tax evasion, one count of misrepresentation to a financial institution, two counts of violating campaign finance laws, and one count of misrepresentation to Congress. Cohen cooperated with the government and was sentenced to 36 months of incarceration. TT 2184-2188.

Beginning in 2012, Donald Trump asked Cohen to assist in preparing the SFCs and their supporting valuations. TT 2208-2209, 2213. Specifically, Cohen affirmed: "I was tasked by Mr. Trump to increase the total assets based upon a number that he arbitrarily selected[,] and my responsibility[,] along with Allen Weisselberg predominantly[,] was to reverse engineer[25] the various different asset classes, increase those assets in order to achieve the number that Mr. Trump had tasked us." TT 2210-2211.

The "reverse engineering" conversations took place in meetings amongst Donald Trump, Weisselberg, and Cohen. Cohen testified that Donald Trump would intentionally give indirect instructions (i.e., "He would look at the total assets and he would say, 'I'm actually not worth four and a half billion dollars. I'm really worth more, like, six."), which Cohen and Weisselberg understood as a directive to inflate the assets until the desired value was achieved. TT 2215-2287, 2460-2461.[26]

As part of this reverse engineering scheme, Cohen said they would look at numbers being achieved elsewhere, find the highest price per square foot achieved in New York City, and apply that price per square foot to Trump assets, even though the Trump properties were neither comparable nor similar. TT 2216-2217.

Cohen described the process of arbitrarily adding values to the asset categories on the SFC categories as follows:

> I would sit down with Allen [Weisselberg] and we would make the changes. That document would then be photocopied that had all of the changes at which point in time Allen and I would return to Mr. Trump to demonstrate that we achieved or [were] close to the number that he was seeking and I had no use for that document any longer.

---

[25] To reverse engineer, in this context, means to start with the desired result and end with the necessary numbers to achieve that result.

[26] Cohen elaborated that Donald Trump "did not specifically state 'Michael, go inflate the numbers,'" specifically testifying that "Donald Trump speaks like a mob boss and what he does is he tells you what he wants without specifically telling you. So[,] when he said to me 'I'm worth more than five billion. I'm actually worth maybe six, maybe seven, could be eight,' we understood what he wanted." TT 2460-2461.

TT 2218-2219. Cohen said that each reverse engineering process would take several days, and that Weisselberg relied on McConney to assist him in adding value to the numbers on the supporting data for the SFCs. TT 2220-2221, 2230. Cohen further made clear that Donald Trump had to approve the final numbers before they went to Mazars to be used in the compilations. TT 2220.

Cohen specifically recalled working to reverse engineer the values of Trump Tower, Trump Park Avenue, Trump World Tower United Nations, 100 Central Park South, Seven Springs, and the Miss Universe Pageant. TT 2226-2227, 2340-2341.

Cohen was also a member of the "Team of Four" that was tasked with acquiring insurance on behalf of the Trump Organization. TT 2234-2239; PX 3119. When meeting with insurance representatives or brokers for the purpose of acquiring coverage, Weisselberg would permit the representatives only to view the SFCs at Trump Tower; they were not permitted to make copies or to keep the original. TT 2240. Cohen also described Donald Trump's participation in the meetings with the insurance representatives, detailing an orchestrated routine wherein Donald Trump would intentionally come into the meetings three quarters of the way through to boast that he is richer than the insurance companies and should consider going self-insured, in an attempt to garner a lower premium from the insurance representatives. TT 2245, 2248-2249; PX 3166.

Michael Cohen was an important witness on behalf of the plaintiff, although hardly the linchpin that defendants have attempted to portray him to be. His testimony was significantly compromised by his having pleaded guilty to perjury and by some seeming contradictions in what he said at trial. However, carefully parsed, he testified that although Donald Trump did not expressly direct him to reverse engineer financial statements, he ordered him to do so indirectly, in his "mob voice." Although the animosity between the witness and the defendant is palpable, providing Cohen with an incentive to lie, the Court found his testimony credible, based on the relaxed manner in which he testified, the general plausibility of his statements, and, most importantly, the way his testimony was corroborated by other trial evidence. A less-forgiving factfinder might have concluded differently, might not have believed a single word of a convicted perjurer. This factfinder does not believe that pleading guilty to perjury means that you can never tell the truth. Michael Cohen told the truth.

David Orowitz

David Orowitz joined the Trump Organization in 2008 as a vice president of acquisition and development and worked his way up to senior vice-president of acquisition and development before leaving the Trump Organization in 2016. He was hired by Donald Trump, Jr. and promoted by "the Trump kids," referring to Eric Trump, Donald Trump, Jr, and Ivanka Trump. TT 2941-2942. Throughout his tenure at the Trump Organization, he reported to Eric Trump, Trump, Jr., and Ivanka Trump. TT 2942.

Allen Weisselberg directed Orowitz to provide valuation information to Forbes, with the objective of "persuad[ing] Forbes that some of the assets were worth more than what [Forbes]

originally were [sic] discussing valuing them at," so that Donald Trump would be "represented higher on the listing" of the world's richest people. TT 2944-2945.

Emails to the Trump Organization (Weisselberg, Ivanka Trump, and Orowitz) and Orowitz's testimony confirm that the Trump Organization sought financing for Doral, Trump Chicago, and the Old Post Office from multiple lenders besides Deutsche Bank's Private Wealth Management Division, and in each instance the terms offered by the commercial real estate arm of the banks were less favorable than the terms offered by Deutsche Bank Private Wealth Management, which required a personal guarantee from Donald Trump. PX 3232, 3233, 3235, 3239, 3241, 3243; TT 2976-2981, 2984-3005. For example, the Trump Organization understood that rates on Doral could be as high as the "low teens" without Donald Trump's personal guarantee. TT 2954-2955, 3672-3681.

Ivanka Trump

Ivanka Trump began working for the Trump Organization in 2006 and continued working there until 2017, when she left to work in her father's presidential administration. TT 3662.

She testified that she has not performed work for the Trump Organization since 2017, although she received payments from TTT Consulting after 2017, and she received a share of the profits upon the sale of the Old Post Office in 2022. TT 3666; PX 1373.

In 2011, Ivanka Trump was seeking financing for the Trump Organization to fund the Doral project. TT 3670-3692; PX 1266, 3232, 3243, 3247, 1289, 1433, 1067. Her husband, Jared Kushner, introduced her to Rosemary Vrablic, who worked in the Private Wealth Management Division of Deutsche Bank. TT 3670; PX 315.

Following an introductory meeting in fall 2011, in December, Vrablic emailed Ivanka Trump a proposed "Summary of Terms" for the Doral loan. PX 319, 315, 1129. Vrablic's proposal made clear that any lending from the Private Wealth Management Division would require a personal guarantee. PX 319. The initial summary of terms proposed that Donald Trump maintain a minimum net worth of $3.0 billion; this was subsequently negotiated down to $2.5 billion in the final loan agreement. PX 319, 320. Despite being presented with ample emails and other documentary evidence demonstrating the critical role she played in the negotiation, Ms. Trump professed to have no memory of any of the events of the loan negotiation or the agreed upon terms.[27] TT 3694-3707, 3710-3711; PX 3226, 332, 320.

[27] In an email dated December 15, 2011, Ivanka Trump forwarded the initial proposed terms received from Rosemary Vrablic to Allen Weisselberg, Jason Greenblatt, and David Orowitz, with the notation: "It doesn't get better than this. lets [sic] discuss asap." Greenblatt immediately responded to Ms. Trump's email and expressed his reservations about entering into any loan that required a personal guarantee from Donald Trump. In a reply email later that day Ivanka Trump wrote: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal." PX 3226.

In February 2016, Ivanka Trump contacted Vrablic about an additional unsecured loan on behalf of Donald Trump. PX 355, 352. Vrablic responded that, having run the request by the credit risk management team, an unsecured loan would not be possible, explaining "we do not have any large unsecured amounts such as this request in the entire [private banking] portfolio." PX 355. Ivanka Trump, on behalf of the Trump Organization, implored Vrablic to have Deutsche Bank make an exception, to which Vrablic responded in April of 2016: "we are disappointed that the bank couldn't make an exception in this case." PX 558. Ivanka Trump again denied any recollection of these events, although she conceded she had no reason to believe that she did not send or receive the emails with which she was confronted. TT 3712-3717.

Ivanka Trump was presented with emails that demonstrated that in 2012 she actively participated in trying to secure a loan for the Chicago project. PX 3236, 3239, 477, 365, 3242. When confronted with these emails, Ms. Trump denied any recollection of their contents. TT 3724-3734.

Emails exchanged between Deutsche Bank and the Trump Organization demonstrate that in 2012, Deutsche Bank offered dueling proposals to refinance an existing loan on the property: (1) a non-recourse loan from the commercial real estate group, secured only by the real estate, priced at LIBOR + 8 points; and (2) a recourse loan from the Private Wealth Management Division, with a full personal guarantee from Donald Trump, priced at LIBOR + 4 points. PX 470.

Emails and other documentary evidence similarly show Ivanka Trump's active involvement in securing the bid for the Old Post Office and negotiating the terms thereof. PX 1288, 1429, 1431, 1302, 327, 1333. She consistently denied recalling the contents of documentary evidence that confirmed that she actively participated in events, even after she was confronted with the evidence. TT 3734-3738, 3747-3760, 3777-3782. In 2022, Ms. Trump received a profit payout of $4,013,024 from the sale of the Old Post Office. PX 1373; TT 3790-1391.

On direct examination by plaintiff, Ivanka Trump had no recollection of any of the events that gave rise to this action; no number of emails or documents with her signature served to refresh her recollection. Notably, on cross-examination by defendants' counsel, Ms. Trump suddenly and vividly recalled details of the projects and her interactions with Vrablic. TT 3801-3810. For example, after testifying on direct examination that she could not recall any of the details of her father's personal guarantee of the Old Post Office loan, on cross-examination, she suddenly recalled: "There was a step down of the guarant[ee], if I recall, once the property was operational." TT 3761-3763, 3777-3782, 3810-3811.

Ivanka Trump was a thoughtful, articulate, and poised witness, but the Court found her inconsistent recall, depending on whether she was questioned by OAG or the defense, suspect. In any event, what Ms. Trump cannot recall is memorialized in contemporaneous emails and documents; in the absence of her memory, the documents speak for themselves.

Kevin Sneddon

Trump International Realty employed Kevin Sneddon from 2011-2012 as the managing director of its brokerage office. TT 6602. He recalled Allen Weisselberg asking him to assess the value

of Donald Trump's Triplex apartment. PX 1052; TT 6619-6620. In response to the request, Sneddon asked Weisselberg if he could see the Triplex, to which Weisselberg responded that that was "not possible." TT 6620. Sneddon then asked if Weisselberg could send him a floorplan or specs of the Triplex to evaluate, to which Weisselberg also said "no." TT 6620. Sneddon then asked Weisselberg what size the Triplex was, to which Weisselberg responded "around 30,000 square feet." TT 6620. Sneddon then used the 30,000 square foot number in ascertaining a value for the Triplex. TT 6620-6623.

The Expert Witnesses

Michiel McCarty

Michiel McCarty testified as an expert witness for plaintiff on banking and capital markets.[28] He is the chairman and CEO of an investment bank called MM Dillon & Company, where he works on debt, convertible, and equity transactions, and mergers and acquisitions. TT 3031-3032. He has worked in the banking industry since 1975, holds an MBA from the Wharton School with a concentration in capital markets, and has worked on financing engagements and underwriting projects for Fannie Mae, the Marriot Corporation, AT&T, and the late Queen Elizabeth II. TT 3032-3040.

He has been qualified as an expert witness more than a dozen times in adequacy of equity and terms and conditions of debt, structure of debt, knowledge of participants who bought debt, and generally in capital markets. TT 3037-3039.

In performing his expert review, McCarty conducted an analysis of the risk differentials of the various loans and loan proposals at issue in this action. In so doing, he "looked at the internal documents by Deutsche Bank of analyzing first the credit level of the guarantor versus the credit level of the collateral, then the project itself without a guarantee" for the Doral, Old Post Office, and Trump Chicago loans. TT 3051-3054.

In calculating the interest rate differentials for the perceived credit risks with and without a personal guarantee on the Doral loan, McCarty took the competing loan proposal terms that Deutsche Bank's commercial real estate group had offered (which was LIBOR + 8% with a floor of LIBOR + 2%, or 10%) and compared them to the terms extended by Deutsche Bank's Private Wealth Management Division that were contingent upon a personal guarantee from Donald Trump (which was between 1.8% and 4.1%, depending on whether it was pre- or post-renovation). PX 1780; TT 3066-3067, 3132-3136. He also analyzed the Old Post Office and Trump Chicago Loan using the same method, comparing the terms offered by the Private Wealth Management Division, which were contingent on a personal guarantee and relied on his SFCs, with those offered by the commercial real estate group for a non-recourse loan. PX 1786, 1780, 3302; TT 3068-3074.

[28] McCarty charged $950 per hour for his expert review, and, at the time he testified, he had received a little under $400,000 in total for his time. TT 3085-3086. The list of documents that McCarty reviewed is extensive and can be found in his expert report at Appendix B. PX 1780 at 50.

McCarty further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan based on a fraudulent SFC than the interest rate with a non-recourse loan, and he compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing, with the terms extended by Ladder Capital.

McCarty's calculations determined that Donald Trump improperly saved the following amounts on interest as a result of the banks relying on Donald Trump's fraudulent SFCs and personal guarantee: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan. PX 3302.

McCarty thoughtfully and logically explained why, contrary to defendants' assertions, using the default penalty rate would have been inappropriate, and, in any event, McCarty calculated the differential using the default penalty rate and determined it would be larger than the numbers he calculated in his report. PX 3077-3078. In fact, McCarty used conservative measures; by way of example, even though interest rates were rising in 2017, 2018, and 2019, McCarty used a standard flat 10% interest rate, resulting in significantly lower interest rate differentials than had he calculated using the floating market interest rate. TT 3057-3058. He similarly conservatively calculated his numbers using simple, not compound interest, which does not consider the time value of money. TT 3082.

The method McCarty used to determine the amount of money defendants saved by borrowing with full recourse, such as from Deutsche Bank's Private Wealth Management Division, as opposed to borrowing non-recourse, such as from Deutsche Bank's Commercial Real Estate Division, is simple in theory, although a little tricky in application. This Court reviewed McCarty's numbers and performed calculations to confirm his method and accuracy: four examples should suffice:

(1) In 2020 the Doral loan was $125,000,000. Applying the non-recourse rate of 10% (or .01) results in an interest payment of $12,500,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $2,418,500. Subtracting the latter from the former yields a saving of $10,081,500, as seen on PX3302, page 4.

(2) Also in 2020, the Old Post Office loan was $170,000,000. Applying the non-recourse rate of 8% (or .08) results in an interest payment of $13,600,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $3,289,160. Subtracting the latter from the former yields a saving of $10,310,840, as seen on PX3302, page 4.

(3) In 2019 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (or .07500) results in an interest payment of $3,375,000. Applying the recourse rate of 4.4116% (or .044116) results in an interest payment of $1,985,220. Subtracting the latter from the former yields a saving of $1,389,780, which is $13 more than the amount McCarty used, $1,389,767, presumably because of a rounding differential, and in any event de minimis.

(4) In 2018 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (.07500) again results in an interest payment of $3,375,000. Applying the recourse rate of 4.0464% (or .040464) results in an interest payment $1,820,880. Subtracting the latter from the former yields a saving of $1,554,110, which is $19 less than the amount McCarty used, $1,554,129, presumably because of a rounding differential, in any event de minimis, and largely cancelled out by the $13 lower amount McCarty used for Chicago, 2019.

McCarty calculated that defendants saved $72,908,308 on the Doral loan, $53,423,209 on the Old Post Office loan, $17,443,359 on the Trump Chicago loan, and $24,265,291 on the 40 Wall Street loan, for a grand total of $168,040,167, one dollar less than McCarty's $168,040,168, presumably because of a rounding differential (or user error by a non-accountant, and in any case de minimis).

Defendants do not accept McCarty's methodology, which this Court finds to be air-tight, but they do not challenge his calculations, which this Court finds to be correct. The expert defendants called to the stand to challenge McCarty's methodology, Robert Unell, left McCarty unscathed.

Steven Witkoff

Steven Witkoff was offered by defendants as an expert in the field of real estate development.[29] TT 4189. Witkoff has been a "good friend" of Donald Trump's for more than 20 years. TT 4191.

Witkoff conceded that he is neither an appraiser nor an accounting expert, nor is he familiar with what "estimated current value" is under GAAP. He did not review any of Donald Trump's SFCs, which are the primary subjects of this case, nor did he review any of the operative legal documents for the properties upon which he attempted to opine. Accordingly, his testimony was irrelevant to the issues before the Court. TT 4196-4197, 4228-4233.

Jason Flemmons

Defendants offered Jason Flemmons, a CPA, as an expert in the field of accounting.[30] TT 4238, 4252. He testified that ASC-274 is the accounting standard that governs the preparation of SFCs, and that the measure of value for an asset or liability under ASC-274 is "estimated current value." TT 4254-4255. Flemmons spent considerable time detailing the "methods" of valuation that ASC-274 permits. TT 4257-4264. The crux of Flemmons's testimony was that so long as

[29] This was the first time Steven Witkoff had been deemed an expert witness. TT 4427. He is a personal friend of Donald Trump, who did not compensate him for his testimony. TT 4191.

[30] Flemmons was compensated at the rate of $925 per hour but could not recall or estimate how many hours he had billed defendants for his work. TT 4529-4530.

defendants selected one of the permissible methods under ASC-274, then any numbers may be inputted into such methodology, regardless of their accuracy or relationship to reality.[31] TT 4264-4268, 4273-4277.

The Court examined Flemmons on this issue, resulting in the following exchange:

> Q. You were asked 20 or 30 times, was the method used for determining the estimated current value of the project at issue consistent with the requirements of ASC-274. I think your answers were always yes. My question is: Were you saying that the method listed on the statement was one of the methods that ASC 274 allows? Or were you saying that the actual computations using that method were correct?
>
> A. Your Honor, I am not opining as to the ultimate valuation itself. I am not a valuation expert. But I am an expert on the methods permitted by ASC-274. So my testimony is really limited to, again, its methods that are clear from the documents that were being used, and not necessarily to the numbers that were attached to them.
>
> Q. Right. And so if the statement says we are using the capitalization rate method or the fixed asset method, your answers are just meaning that, yes, that's one of the methods you can use, correct?
>
> A. That's correct.

TT 4364-4365. Accordingly, Flemmons's testimony is of no evidentiary value, as the plaintiff has not alleged that defendants used an impermissible method, but that they have inputted and used patently false data with a permissible method.

Mr. Flemmons also, inexplicably, acknowledged that future income had to be discounted to present value on a financial statement, and that not to do so would be a "red flag," while at the same time stating that there were no GAAP departures, even though defendants failed to discount future income to present value. TT 4371-4373, 4375, 4434-4436, 4441-4443.

Although he opined that Mazars should have followed up on items in the SFCs, he adamantly stated that asking for any appraisals when creating a compilation would have been

[31] For example, Flemmons testified that it would be "appropriate" for the Trump Organization to use a methodology that valued selling Mar-a-Lago to a private individual to be used as a private residence, despite the deed restrictions that Donald Trump signed that prevent him from doing so in perpetuity. TT 4351-4352; PX 1013.

highly unusual."[32] TT 4291-4292, 4303-4307, 4325-4328, 4376, 4377, 4381-4382, 4408, 4476-4481.

Flemmons was reluctant to acknowledge that an asset controlled by a third party cannot be considered "cash," while also acknowledging that it was a "red flag," before ultimately conceding: "I think the fundamental recording or reporting of partnership cash would not be consistent with GAAP." TT 4373-4374, 4385-4392, 4446-4452.

Steven Collins

Defendants offered Steven Collins as an expert witness in "contract procurement."[33] TT 4539-4542. Collins testified, essentially, that he reviewed the documents used in the Trump Organization's bid and award of the Old Post Office, and he opined that no one factor was determinative in the General Services Administration's selection of the Trump Organization. TT 4548-4569.

Steven Laposa

Defendants offered Steven Laposa as an expert witness in "real estate research."[34] TT 4596-4599.

Laposa formed no opinion as to whether any of the valuations at issue in this case were accurate, and, prior to this assignment, he had no experience preparing or reviewing personal financial statements. TT 4600, 4633, 4684-4685. He further conceded that he had no knowledge of the types of valuations or methods that Donald Trump used to value the assets on his SFCs. TT 4709-4712.

His testimony was limited to general methods by which one can appraise property, and that different appraisers might disagree about the value of the same property. TT 4603-4625. He opined that lenders generally prefer a more conservative approach to an appraisal than developers do. TT 4611-4613.

[32] In any event, there is documentary evidence, previously submitted to the Court on the parties' summary judgment motions, conclusively establishing that Mazars did, in fact, inquire about appraisals, and were told there were none. NYSCEF Doc. No. 1262 at 243.

[33] Collins billed at the rate of $925 per hour and testified that he billed somewhere between 40 to 60 hours. TT 4543-4544.

[34] Laposa billed at the rate of $850 per hour for his work on the case and estimated that he billed approximately 325 hours. TT 4596.

Gary Giulietti

Defendants offered Gary Giulietti as an expert in "surety underwriting and surety brokering."[35] He has an ongoing personal and professional relationship with Donald Trump. TT 4723. Having met him in the late 90s, Giulietti plays golf and lunches with Donald Trump and is a member of "a bunch of his clubs." TT 4723. Additionally, sometime between 2017-2018, Giulietti became the Trump Organization's insurance broker, and he remains its broker to this day. TT 4723-4724.

In its over 20 years on the bench, this Court has never encountered an expert witness who not only was a close personal friend of a party, but also had a personal financial interest in the outcome of the case for which he is being offered as an expert.[36]

Giulietti opined that an insurance company like Zurich would pay no credence to an SFC compilation provided by a client, and that the main element that an insurance company would weigh is the client's liquidity. TT 4738-4741.

Giulietti also opined that, in his experience, any insurance company would have offered Donald Trump an "accommodation," which he explained would "provide a product with minimal [to] no underwriting," describing Zurich's underwriting program as based on "airballs and witchcraft." TT 4743-4744, 4768-4770.

However, Giulietti's testimony not only is belied by the testimony and contemporaneous notes of the Zurich underwriter, Claudia Markarian, it is also completely inconsistent with the expert report of another defense expert, David Miller, who opined that "Zurich made a competent business decision to underwrite the Trump Organization's business as an exception to their normal guidelines based on reasonable risk factors, such as the sufficient liquidity of the Trump Organization to indemnify Zurich should a loss take place." NYSCEF Doc. No. 1434; TT 4770-4772; PX 1561, 1552.

Giulietti also testified that the Trump Organization had filed very few claims, despite being presented with evidence demonstrating that the Trump Organization tendered numerous claims. TT 4775-4778; PX 603.

[35] Despite having never been qualified as an expert witness before, when examined about his qualifications, Giulietti boasted that "I don't think there are four people in America that have my qualifications to do what I do." TT 4728-4729.

[36] Giulietti had not billed directly for his trial testimony but clarified that "this would be included in our overall relationship year over year." TT 4726. In 2022, Giulietti's company earned $1.2 million in commissions from the Trump Organization account. TT 4761-4762.

David Miller

David Miller was offered by the defense as an expert in "commerce insurance and surety underwriting."[37] TT 4806.

Miller opined that, based on his review of the Zurich underwriting memoranda, he did not believe Zurich would have been concerned with Donald Trump's assets. TT 4807-4810. He further testified: "My perception was there was not a lot of technical underwriting that took place, um, because it was done as what I would perceive – what I would call a business decision. They wanted to write the business to keep the relationship between Aon and Zurich in place." TT 4815. He opined that "accommodations" are "probably too common" in the insurance industry, and that "very often surety is written as an accommodation to other lines of business." TT 4817-4818. He further explained: "An accommodation generally means that you've already made the decision to write it, or you are going to write it, because of the situation that you are being asked to do. So, in general, it probably loosens or eliminates the underwriting standards, because you already know you are going to do it, so you just do it." TT 4821. When asked if there was anything that required an insurer to make an accommodation, Miller stated "[p]ressure from the broker" to try and develop more business. TT 4821.

However, on cross-examination, Miller was confronted with his previous deposition testimony, in which he affirmed that based on his review of the credit memoranda, Zurich employed "normal underwriting guidelines that included sufficient liquidity as a reasonable risk factor," and Miller confirmed that he believed that that was still the case. TT 4872-4873.

Moreover, on cross-examination, Miller conceded that in forming his expert opinion, he did not consider any of the information Zurich underwriter Claudia Markarian recorded in her contemporaneous notes of her meetings at the Trump Organization in 2018 and 2019, which are the basis of plaintiff's causes of action for insurance fraud. TT 4865-4867, 4874-4880. He further conceded that he had no reason not to accept Markarian's testimony as true. TT 4881-4884; PX 3224.

Robert Unell

Defendants offered Robert Unell as a witness in "commercial real estate finance and banking."[38] TT 5627-5629. To prepare for his testimony, Unell reviewed the Deutsche Bank loans on Trump Chicago, the Old Post Office and Doral, as well as the Ladder Capital loan on 40 Wall Street. TT 5629. Unell did not perform any valuation work on any of the assets found in the SFCs. TT 5820.

[37] This is the first time Miller had been qualified as an expert. TT 4806. He was compensated at the rate of $350 per hour and has spent approximately 90-100 hours on this engagement. TT 4868.

[38] Mr. Unell was compensated at a rate of between $900-950 per hour, but he could not recall with any specificity how many hours he had billed, estimating "a couple hundred probably." TT 5631. Upon cross-examination, Unell stated he had previously worked on engagements for the Trump Organization, including a potential conservation easement valuation on Doral. TT 5756.

Unell opined that Deutsche Bank and Ladder Capital would have conducted their own analysis into Donald Trump's assets and liabilities based on the contents of the SFCs. TT 5635-5639.

Unell opined that any misstatements in Donald Trump's SFCs were immaterial, and even stated that the inflation of the Triplex (which resulted in an overvaluation of approximately $200 million) was immaterial and did not cause the SFCs to be unfairly or inaccurately presented, a statement which severely diminished his credibility before the Court. TT 5672-5673, 5819.

Unell opined that, based on his review of the Deutsche Bank credit risk memoranda, the covenants that required Donald Trump to maintain a minimum net worth and level of liquidity were not significant for the bank. However, he then conceded that the bank "relied upon – their knowledge and their information to set the net worth covenant… [and] the net worth covenant was determined by the guarantor submitted statements," seemingly contradicting his initial opinion of non-reliance. TT 5673-5676.

Unell also opined that a breach of a covenant would not "really raise the eyebrows of the lending institution." TT 5678-5679.

Unell disagreed with the mathematical calculations McCarty used to determine the interest rate differential between the Private Wealth Management Division loan and the commercial real estate group loan terms. McCarty used, as an assumption for the commercial real estate group interest rate, a term sheet Deutsche Bank's commercial real estate group offered to Donald Trump at the same time at which he secured the loan from the Private Wealth Management Division. Notwithstanding, Unell said there was no support for McCarty's use of that number, disregarding entirely the term sheet that the commercial real estate group offered Donald Trump for a non-recourse loan. TT 5682-5684.

Unell further contradicted himself by stating:

> It is nearly impossible to place an exact interest rate on this looking back in time, because none of us have worked for Deutsche Bank. And the best indication as to what this rate would be, would be Deutsche Bank, because Deutsche Bank is the evaluator of risk. They are the evaluator of materiality. And they are the ultimate user and the one where this matters. And it is their sole determination, based on this analysis, as to how they want to price the loan.

TT 5686-5687. Unell appears to be opining that the term sheets that Deutsche Bank's commercial real estate group offered Donald Trump would be the best indicator of how the loan would have been priced without a personal guarantee, contradicting Unell's prior opinion that McCarty's utilization of the Deutsche Bank term sheets in his analysis was improper.

Unell additionally opined that the interest rates McCarty used to calculate the rate differential for a non-recourse loan with Ladder Capital were not commensurate with what the market was at that time. TT 5712-5713. However, he offered absolutely no evidentiary basis for that opinion,

and he offered no independent assessment for what the market rate would have been for a non-recourse commercial real estate loan on the subject property at that time. TT 5758-5761.

Notwithstanding this lack of foundation for his opinion, Unell offered up his own calculations of the interest rate differentials on the subject properties and opined that Donald Trump received the following savings: (1) $2,458,048 on the Doral loan; (2) $2,567,000 on the Old Post Office loan; (3) $1,015,632 on the Chicago loan;[39] and (4) $2,966,000 on the 40 Wall Street Loan. TT 5743-5748. However, on cross-examination, Unell clarified that his "hypothetical lost interest" rate differentials did not actually calculate the difference between a fully guaranteed loan and a non-recourse loan, he merely assumed a 25 basis point reduction as the guarantee may have been reduced over the course of the loan, and he assumed, without evidentiary support, that the "guarant[ee] was worth 25 basis points." TT 5758-5761. When further examined about this opinion, Unell stated, in a conclusory fashion, that the "guarant[ee] to them was valuable for 25 basis points for the engagement of a warm body of a billionaire to stand behind the loan in his equity infusion and capital there." TT 5761. However, this statement is belied by the documentary evidence originating from Deutsche Bank, as well as the testimony of former and current Deutsche Bank employees. Unell testified that he did not form a view "as to what the market interest rate would be for a commercial real estate loan on these four properties with no guarant[ee] at the time they were originated," stating again that the "only person… that is able to do that is Deutsche Bank." TT 5762-5763 5775, 5812, 5815.

Unell additionally offered: "The only group that can speculate or actually state what the interest rate would be is Deutsche Bank, because they are the ones that were the users of the documents, the ones that entered into the loan agreement and the ones that offered the terms to the defendants." TT 5763. This statement once again contradicts Unell's prior opinion that it was inappropriate for McCarty to rely on the term sheets Deutsche Bank's commercial real estate group offered to Donald Trump for non-recourse loans on the subject properties. By Unell's own admission, the term sheet (or "offered terms") are the best evidence of what interest rate Deutsche Bank would have offered for a non-recourse loan. PX 369, 3232, 3243.

Unell then undercut his own calculations in the following exchange with the Court:

> Q. Let me jump in. Are you testifying that with your experience, your expertise, your knowledge of the facts in this case, you could not possibly estimate what Deutsche Bank would have charged as an interest rate in any particular situation, because it is all up to them?
>
> A. Yes. I can give you a range and give historical [sic] as to what has been out there and show illustrative examples of it, but at the end of the day as referenced in the Deutsche Bank documents, all of their risk rating, all of the pricing is

[39] At trial, Unell failed to opine particularly on the Trump Chicago loan, and defendants failed to submit to the Court the demonstrative exhibit to which he referred during trial. However, as Unell testified that he believed the total hypothetical interest savings on all four loans was $9,006,603, the Court deduces that his specific calculation for the Chicago loan interest rate deferential is $1,015,632. TT 5743-5747.

proprietary. None of us have that information. None of us have that ability. None of us understand the total relationship value. We can try to do our best to understand it based off of the testimony that has been provided, as well as the documents. But the only person that has the ability to determine the risk and the interest rate and the overall relationship value, is the lender.

….

Q. So let me clarify one thing. Well, let me ask then, so are you saying that actually the commercial real estate loan, no guarant[ee], issued by the Commercial Real Estate group at Deutsche Bank or some other Commercial Real Estate division, would have priced even closer to the private wealth loans than your hypothetical here with the 25 basis points added?

A. That's not correct.

Q. So what are you saying? I don't understand what you are saying.

A. What I am trying to say is that 10 percent is unfounded.

Q. And you said, I think it would be closer to the numbers reflected here, even more than the 25 basis points?

A. Absolutely. And that's reflected in the loan documents.

Q. So, sir, do you have an opinion, one way or the other, as to what the market rate would be for a commercial real estate loan with no personal guarant[ee] for these four properties?

A. It would be in the range of where I have it here.

Q. So close to the private wealth amounts?

A. Yes. As illustrated in the loan documents.

TT 5763-5766.

Unell's testimony is not only inconsistent, but the Deutsche Bank documents, testimony from former and current employees, and Trump Organization emails conclusively demonstrate that Donald Trump, in fact, did seek non-recourse loans from the Private Wealth Management Division and was told, adamantly, that no exceptions could be made for him and a full "iron clad" personal guarantee was required for him to receive the preferential terms of the Private

Wealth Management group. TT 1003-1004, 1035, 1039, 5331-5332, 5572-5577, 5770-5773; PX 1251, 369, 3232, 3243.

Unell testified that it was inappropriate for McCarty to rely on the Deutsche Bank term sheets because they were non-binding and Deutsche Bank's commercial real estate group did not yet have a detailed understanding of the properties. However, on cross-examination he was confronted with emails between Deutsche Bank and the Trump Organization indicating that Deutsche Bank had, in fact, conducted due diligence on the properties[40] and considered itself to be "very familiar" with them. PX 3111, TT 5804-5806.

On the whole, the Court was unable to ascribe any reliability to Unell's "expert" opinions, finding them unresearched, unsupported, inconsistent, and contradicted by ample other documentary and testimonial evidence.

Frederick Chin

Frederick Chin is a certified appraiser and was offered by defendants as an expert in "real estate valuations," "real estate market analysis," and "real estate operations."[41] TT 5905-5906. Chin did not render any opinions of value as to the assets contained in the SFCs. TT 6041.

Chin opined on the difference between "as is" and "as if" values, explaining: "'As is' generally connotates to [sic] a condition that exists at the time, a specific date, generally often times referred to as market value. 'As if' is a condition that will be expected to be—expected to be completed or expected to be received either kind of a hypothetical condition that might exist in the future." TT 5912. Chin opined that the many of the valuations that appeared in Donald Trump's SFCs contained "as if" valuations. TT 5913. He further opined that professional appraisers generally use "as is" valuations, while developers are generally focused on future performance and use "as if" valuations. TT 5914. Chin also stated that he "occasionally" would come across a request for a professional "as if" appraisal, but that in those instances, the governing standards mandate that the appraisal be clearly identified and labeled as "as if." TT 5917-5919.

Chin affirmed that "as if" appraisals must still make accurate assumptions; in particular, he affirmed that land use restrictions that encumber a property, or any sort of restriction that limited possible uses, would negatively affect the value of the property. TT 5949-5050. He conceded that any assumptions incorporated into "highest and best use" must be legally permissible and physically possible, and that a developer's "as if" value cannot be based on something that is legally impermissible or physically impossible. TT 6001-6002. He also agreed that there needs

[40] For example, a November 17, 2011 email from the Deutsche Bank commercial real estate group to Ivanka Trump reads: "Ivanka, Thank you for providing us with the investment memo and projections for the Doral Golf Resort and Spa in Miami, Florida. We, at Deutsche Bank, are very familiar with the asset, as we have financed this loan several times over the years for previous ownership." PX 3111 (emphasis added).

[41] Mr. Chin bills $850 per hour and has billed "probably a thousand" hours on this engagement, for a total of approximately $850,000. TT 5912.

to "be a reasonable, factual basis for the developer's perspective of value that he puts in a Statement of Financial Condition." TT 6006.

When examined about his experience with rent-restricted apartments in New York City, Chin affirmed that the owner of a rent-stabilized unit wanting to value the unit as if it could be sold on the open market "would need to include in the value calculation the cost to remove the legal restriction," which could include expensive "buy-outs" to the rent-stabilized tenants, and potential profit-sharing losses. TT 6007-6011. Chin further conceded that it would be a "significant omission" in an SFC if the owner of 20 apartments in a New York City building, of which 10 are rent-regulated, valued the apartments as if they were all free market without disclosing that half of them were subject to rent regulation. TT 6012. When cross-examined about Donald Trump's 2013 SFC, Chin admitted that the SFC failed to disclose that any of the units at Trump Park Avenue were rent stabilized, notwithstanding that they were being valued at their offering plan prices, which itself is erroneous. TT 6015-6016; PX 707

Chin opined that the identity of the property owner would not affect either "as is" or "as if" appraisal values. TT 5966.

Chin identified different types of appraisals, such as "market value" and "liquidation value" and clarified that the "intended purpose of an appraisal can affect the outcome." TT 5945-5946. He testified that lender-ordered appraisers generally calculate "market value." TT 5946.

However, Chin is not an expert in accounting and stated that he would "rely on the experts and people designated in [his] firm that dealt with accounting matters." TT 5902-5905, 5971. The SFCs represent that they are providing assets and liabilities at their "estimated current value," not their future "as if" value. See, e.g., PX 756. Chin even conceded that, when reviewing the SFCs in preparation for this case, he understood that the SFCs were representing to the reader that the assets contained in the statement were being presented at their estimated current value. TT 5978. Moreover, Chin testified that Donald Trump "clearly" used "as if" values in his SFCs from 2011-2014 that "presumed a situation that didn't exist." TT 5966-5967. He further stated that he did not believe that the valuation method employed by McConney in valuing Seven Springs on the SFCs was reasonable. TT 5992-5993.

Chin further opined: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And it may make a development less feasible." TT 5929.

John Shubin

John Shubin is a lawyer called by the defense as an expert in "land use planning, entitlement, and zoning."[42] TT 6043, 6048.

[42] Mr. Shubin had never been qualified as an expert witness before. He was compensated between $1,395 and $1,595 per hour and has billed approximately 80-100 hours for his work on this engagement. He also had two colleagues assisting him who billed between $735 and $935 per hour and have billed approximately 100-110 hours. TT 6086-6088.

On direct examination, Shubin attempted to offer a host of legal conclusions about the deed restrictions that encumber Mar-a-Lago, plaintiff's objections to which this Court sustained, as it is exclusively the Court's province to interpret and apply the law. TT 6051-6075, 6084-6085. Accordingly, there was no evidentiary value to Mr. Shubin's testimony.

Lawrence Moens

Lawrence Moens is a licensed real estate broker and was offered by the defense as a witness in "residential real estate in Palm Beach."[43] TT 6092, 6099-6106.

The Court had already questioned the credibility of Moens based on the affidavit he submitted with defendants' motion for summary judgment, in which he opined, that "[i]f Mar-a-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." NYSCEF Doc. No. 1435 at 29. As this Court noted in its September 26, 2023 Decision and Order, Moens failed to identify at what price he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property was worth $1.51 billion).

At trial, Moens testified that he met Donald Trump in the late 1980s, they have remained cordial, and Moens has been a member of Mar-a-Lago since 1995. TT 6108-6109, 6160-6161.

Moens opined about the values he believed he could sell Mar-a-Lago for from the years 2011-2021. TT 6115-6126. When asked about his method for generating those values, he testified that he did not use any specific equations, that his method was not "re-creatable," and that the only way to understand his valuation method was to "go inside [his] head." TT 6157-6158. However, to be admissible, expert testimony must have some objective basis and must be subject to objective scrutiny. Wilson v Corestaff Servs. L.P., 28 Misc 3d 425, 427 (Sup Ct, Kings County 2010) ("New York courts permit expert testimony if it is based on … principles, procedures or theory only after the principles, procedures or theories have gained general acceptance in the relevant… field, proffered by a qualified expert and on a topic beyond the ken of the average [fact-finder]").

Moreover, Moens affirmed that each of these valuations was premised upon the assumption that Mar-a-Lago could be sold as a private residence, although he conceded that he was aware that Mar-a-Lago was being taxed as a private club. TT 6160.

[43] Mr. Moens had never been qualified as an expert witness before. Moens was not examined about his compensation for his work on this case.

Eli Bartov

Eli Bartov is a tenured professor at New York University, whom defendants offered as an expert in "financial accounting, credit analysis, and valuation."[44] TT 6181, 6206-6215.

Professor Bartov did not assess the valuations of any of the assets on Donald Trump's SFCs. TT 6445. Yet, as this Court previously noted when denying defendants' motion for a directed verdict, Bartov's overarching point was that the subject statements of financial condition were accurate in every respect and that they were "100 percent consistent with GAAP." TT 6537. As this Court discussed in excruciating detail in its September 26, 2023 Decision and Order, the SFCs contained numerous significant errors. By doggedly attempting to justify every misstatement, Professor Bartov lost all credibility in the eyes of the Court.[45]

Indeed, Bartov insisted that the misrepresentation of the Triplex, resulting in a $200 million overvaluation, was not intentional[46] or material (leading the Court to wonder in what universe is $200 million immaterial). TT 6348-6356.

Bartov opined that "GAAP is not designed to give you the true economic value of an asset." TT 6240. However, it is undisputed that the SFCs required, and Donald Trump represented, that the assets be presented at their estimated current value and be GAAP compliant, so Bartov's statement is of no consequence.

Bartov further attempted to opine on the disclaimer and "worthless clauses," previously rejected as a defense by this Court in several decisions and orders (subsequently affirmed by the Appellate Division), repeatedly referring to the clauses as "[j]ust like when you have the Surgeon General warning on the box of cigarettes, this warnings [sic] is not Phillip Morris. This warning is for the smokers." TT 6252-6256, 6259-6262, 6265-6267.

Eric Lewis

Eric Lewis, a professor at Cornell University, was called by the plaintiff as a rebuttal expert witness in the field of accounting.[47] TT 6637, 6668-6671.

---

[44] Professor Bartov bills at the rate of $1,350 per hour and has billed approximately 650 hours in this engagement. TT 6443.

[45] As the Court previously observed, Dr. Bartov suffered essentially the same fate testifying before the Hon. Barry Ostrager in People v Exxon Mobil Corp., 65 Misc 3d 1233(A) (Sup Ct, NY County 2019) ("the Court rejects Dr Bartov's expert testimony as unpersuasive and, in the case of his testimony about the Mobile Bay facility, finds Dr. Bartov's testimony to be flatly contradicted by the weight of the evidence").

[46] However, it is well-settled law that experts may not testify as to intent. People v Kincey, 168 AD2d 231, 232 (1st Dept 1990) ("It was highly improper and prejudicial to allow [defendant's expert witness] to testify concerning the defendant's intent").

[47] Lewis was compensated for his work on this engagement in the amount of $150,000. TT 6730.

Professor Lewis disputed the testimony of Jason Flemmons, stating that, contrary to what Flemmons opined, it is not sufficient under GAAP merely to select a permissible method of valuation under ASC-274 if the assumptions and numbers used to arrive at a value are false, notwithstanding the propriety of the method. TT 6695-6697. He further testified that Flemmons was incorrect in stating that the responsibility for ensuring that the methods of valuation are GAAP compliant lies with the accountants performing the compilation, citing industry standards that clearly demonstrate that the ultimate responsibility for determining GAAP compliant methods and estimated current values, as the SFC requires and represents, lies with the issuer of the statement, here, Donald Trump. TT 6697-6706.

He testified that under industry standards, accountants performing a compilation engagement are not responsible for finding GAAP departures, as compilations offer the lowest level of scrutiny and assurance. TT 6709-6710. He convincingly demonstrated that, according to the operative standards, an accountant creating a compilation will not verify the accuracy of the supporting information. TT 6715-6716.

Lewis further corroborated that each of the permissible methods of valuation in ASC-274 requires that the valuation be discounted to present value, and failure to do so would be a GAAP departure for which the issuer would be responsible. TT 6711. Lewis further identified several valuations in the SFCs that had not been discounted to present value and for which there was no disclosure of the failure to do so in the SFCs. TT 6711-6714, 6719-6725, 6727-6728.

Specific Assets on the SFCs

The Triplex

On October 1, 1994, Donald Trump consented to the "First Amendment to the Declaration of Trump Tower Condominium" ("First Amendment") which documented that the Triplex at Trump Tower, in which Donald Trump resided for decades, was 10,996 square feet. PX 633.

Since at least 2012, copies of the First Amendment showing the square footage of the Triplex were in Allen Weisselberg's email inbox (multiple times over) and in the physical filing cabinet immediately outside his office. PX 633; TT 805-809.

Since at least as early as 2012, Jeffrey McConney was valuing Donald Trump's Triplex apartment, in which he resided, as if it were 30,000 square feet, not 10,996 square feet, resulting in an annual overvaluation of between $114-207 million dollars. PX 1052; NYSCEF Doc. No. 1531 at 21.

In 2012, Weisselberg asked Trump International Realty employee Kevin Sneddon to value the Triplex. Sneddon asked to inspect the apartment or review the floorplan, and Weisselberg told him that both requests were "not possible" and advised Sneddon that the Triplex was 30,000 square feet. TT 6618-6621. Sneddon thereafter provided McConney a valuation using the incorrect 30,000 number from Weisselberg. PX 1052.

On February 22, 2017, Dan Alexander from Forbes emailed Weisselberg and McConney with data indicating that Forbes believed the Triplex to be 10,996 square feet. PX 1324. On March 3, 2017, Noack Kirsch from Forbes emailed Alan Garten with many questions about Donald Trump's assets, one of which reads: "President Trump has told Forbes in the past that his penthouse occupies 33,000 square feet, comprising the entirety of 66-68 of Trump Tower. Property records (notably the latest amended condo declaration, dated October 11, 1994) [sic]. Is the 1994 declaration accurate and up-to-date? It shows President Trump's apartment is 10,996.39 square feet." PX 1345.

Alan Garten then forwarded the email chain to Weisselberg, Eric Trump, Donald Trump, Jr., and Amanda Miller (who was responsible for press relations). PX 1344. This resulted in a conversation between Miller and Weisselberg and culminated in Miller sending an email to Garten on March 6, 2017, stating that "I spoke to Allen W. re: [Trump World Tower] + [Trump Tower] – we are going to leave these alone." PX 1345; TT 821-823.

Notwithstanding the size of the Triplex being brought to his attention, on March 10, 2017, a mere four days after telling Miller to "leave it alone," Weisselberg certified to Mazars the accuracy and truthfulness of the 2016 SFC, which included valuing the Triplex as if it were 30,000 square feet. PX 741. Indeed, Weisselberg "[was] comfortable certifying that nothing occurred subsequent to the date of the statement that would require adjustment." TT 831.

Despite this email, Weisselberg declined to review the First Amendment or take any other steps to confirm the actual size of the Triplex. TT 819.

When examined about how this violated the Trump Organization's responsibilities under the Management Representation Letters to Mazars, Weisselberg said he was not obligated to adjust the SFCs to reflect that change because he didn't think it was "material." TT 854-859.

It was not until Forbes made the issue public, by publishing an article in May of 2017 indicating that Donald Trump had been misrepresenting the size of his Triplex,[48] that the Trump Organization "began to do our investigation, as to, you know, what the number really was at that point." TT 833-834. Weisselberg admitted that "it was only after this article was published and the information became public that the Trump Organization corrected the square footage for Mr. Trump's triplex." TT 834.

When asked about his understanding of the events that led to the change in the square footage used in the 2017 SFC, Birney stated that he was never informed about the actual square footage of the Triplex before issuing the 2016 SFC, and that it was not until Forbes published the article revealing the true square footage that they adjusted the 30,000 square foot basis upon which they had been relying since at least 2012. TT 1234-1238.

[48] PX 1605, Peterson-Withorn, Chase. "Donald Trump Has Been Lying About The Size of His Penthouse." Forbes, May 3, 2017.

In an effort to cover up the decrease in the reported value of the Triplex, Allen Weisselberg instructed Birney to draft a version of the SFC that added a 35% "ex-president premium" to the value of the Triplex, although the idea was ultimately scrapped.[49] TT 1288-1290; 1298-1299.

To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Donald Trump testified that he personally determined that the Triplex's reported value was too high and directed Weisselberg and McConney to correct it. TT 3524. In reality, the Triplex's reported size was not corrected until 2017, months after Trump was inaugurated as president and ceased having any involvement in the preparation of the SFCs.

40 Wall Street

From 2011-2016, Jeffrey McConney and Allen Weisselberg valued 40 Wall Street based on dividing net operating income by a capitalization rate. During this same time, when valuing 40 Wall Street, McConney would "cherry-pick" cap rates from a generic marketing report Cushman & Wakefield emailed to its large customer base that was based on data not specific, or even closely related, to 40 Wall Street, and wholly ignored the appraisals of 40 Wall Street that Doug Larson had prepared. TT 660-681, 4995, 5101-5102; PX 3046, 3047, 3048. McConney did not adjust the cap rates from the generic marketing email to more accurately reflect the specifications of 40 Wall Street. TT 681-682. When valuing 40 Wall Street for the 2015 SFC, McConney forwarded an excerpt of Larson's 2015 appraisal to Donald Bender, but intentionally omitted the pages of the appraisal that show that Larson selected a cap rate of 4.25%, which resulted in an appraised value that was $227 million lower than using McConney's selected cap rate of 3.04%. PX 118, 868; TT 676-681.

In 2015, McConney began incorporating Larson's appraisal of 40 Wall Street in his SFC valuations. However, he manipulated the data—increasing the appraised value to account for income from a Dean & Deluca lease, even though the original appraisal had already explicitly incorporated the Dean & Deluca lease into its valuation, resulting in an overvaluation of $120 million. PX 3004, 868; TT 690-701.

McConney also omitted the pages of Larson's appraisal that valued the Dean & Deluca lease when sending excerpts of it to Donald Bender at Mazars. PX 118; TT 695-701.

Weisselberg had final approval over 40 Wall Street budgets, and was, thus, aware that the Trump Organization had budgeted a negative cash flow for 40 Wall Street for 2011. TT 1499, 1520-1521. Notwithstanding, he directed Donna Kidder to prepare a document containing a series of

[49] Indeed, there was such an effort to conceal the loss in value from the accurately reported Triplex that in a draft version of the 2017 SFC, dated October 10, 2017, Birney had added a 15-25% premiums to many of Donald Trump's properties, calling them "premium for presidential personal residence"; "premium for presidential property"; "premium for presidential winter residence"; and "premium for presidential summer residence." In total these various versions of "presidential premiums" amounted to an extra $144,680,601 for the year. PX 1290; TT 1290-1292.

implausible assumptions to generate a $26.2 million net operating income to be used for the SFCs. TT 1523-1526, 1529. However, 40 Wall Street never reached a net operating income of $26.2 million; instead, it ran a deficit as high as -$20.9 million through 2015. PX 636, 652. Donald Trump was aware of this, but he misrepresented to Forbes that the building was going to net $64 million in 2015.[50] TT 3571-3579.

Weisselberg also directed Kidder to prepare cash flow data for 40 Wall Street that stated false amounts of management fees when submitting that data to Ladder Capital. TT 1506-1507, 1536-1539.

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. PX 3041 at ¶¶ 576-577. After Capital One declined to do so, Allen Weisselberg contacted his son, Jack Weisselberg, and inquired about Ladder Capital refinancing the loan. TT 1820-1826; PX 647, 3041 at ¶¶ 580-82. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC. TT 1858-1861, 1873-1876; PX 654. Ladder Capital relied on the SFC for the information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891; PX 654. As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. This personal guarantee, executed by Donald Trump, required that he maintain a net worth of $160 million and liquid assets of at least $15 million, and to document compliance with those financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX-3041 at ¶ 597.

The Ladder Capital loan on 40 Wall Street was subsequently securitized and serviced by Wells Fargo. TT 1784-1885, 5815-5818. To comply with the 40 Wall Street loan covenants, from 2017 through 2019, the Trump Organization provided Wells Fargo summaries of Donald Trump's net worth that were derived from the SFCs and certified by Allen Weisselberg as "true, correct and complete and fairly present[s] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

Vornado

Donald Trump has a 30% limited partnership interest in non-party Vornado Realty Trust ("Vornado"), which owns office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street. Neither Donald Trump nor the Trump Organization could access his interest in any of the assets in the partnership without

[50] 40 Wall Street is currently under "special servicing" by the lender. PX 3380; Tr.4414, 4703-4706. A special servicer assumes servicing responsibility for defaulted loans or loans that are at the risk of default.

Vornado's consent. TT 940. Yet, every year Donald Trump's interest in the Vornado partnership was included in the "cash" portion of his SFC, falsely indicating that it was at his disposal, and that it was liquid, when it clearly and contractually was not. TT 940.

One year, Donald Bender advised McConney that McConney needed to remove cash that belonged to the Trump Foundation from the SFC's "cash" assets because it was controlled by the Trump Foundation and not by Donald Trump. McConney removed it from the SFC, understanding that it was not appropriate to include it because Donald Trump did not control those assets. TT 703-704. Notwithstanding, McConney intentionally continued to include the Vornado interest as "cash" on the SFCs, even though he was aware that Donald Trump could not control the assets. PX 2587, PX 3401 at ¶ 403; TT 688-690.

Allen Weisselberg was aware that the Vornado interest was included in the cash asset category on the SFCs, and that the Vornado assets were not under Donald Trump's control. He nonetheless approved reporting it as cash. TT 939-940.

By at least February 2016, Weisselberg advised Donald Trump, Donald Trump, Jr., and Eric Trump that the distributions from the Vornado limited partnership were not in the control of Donald Trump or the Donald J. Trump Revocable Trust. PX 1293; TT 1381-1388. Still, Trump, Jr. and Eric Trump continued to sign certifications that included the Vornado interest in the "cash" category. PX 1293; TT 1381-1383, 1387-1388.

Mark Hawthorn, chief operating officer of Trump Hotels, conceded that including the Vornado interest in the cash asset category in Trumps SFCs was improper. TT 1414-1454. Defendants' own accounting expert, Jason Flemmons, also conceded that the inclusion of the Vornado interest in the cash asset category was a "red flag," a "very glaring issue," and "not GAAP compliant." TT 4390-4392.

When Birney took over preparing and maintaining the SFCs' supporting data, no one ever provided him with a summary of the partnership agreement, let alone the agreement itself, demonstrating that Donald Trump was a limited partner without control over the assets. TT 1283-1285.

When preparing the 2017 SFC in which Donald Trump's value of the Triplex had been corrected to account for its actual size, Birney added $267.8 million dollars to the value of 1290 Avenue of the Americas. Birney said that they were able to achieve this increase in valuation from 2016 to 2017 by "increasing the EBITDA [Earnings Before Interest, Taxes, Depreciation, and Amortization] by free rent and reduction of the straight line rent." TT 1298-1300; PX 1212.

When preparing the supporting data for the 2018 SFC, on May 30, 2018, Birney emailed a representative from Cushman & Wakefield seeking confirmation "that 1290 Ave of Americas could probably be estimated at a mid 4 cap rate at stabilization, low 4 if there is upside." PX 3027. Michael Papagianopoulos, of Cushman & Wakefield, responded that "[w]hile I cannot opine on 1290AoA, as I do not know the actual financials, current market environment for Class A [Midtown] properties is mid 4s for stabilized and below that for proprieties with upside." PX 3027. McConney was copied on this email chain and the entire email chain was forwarded to

Weisselberg. PX 1159; TT 1317-1318. Notwithstanding, on the 2018 SFC, a 2.67 cap rate was used. The notes in the supporting data state: "6/30/2018—based on information provided by Michael Papagianopoulos of Cushman & Wakefield which reflects a cap rate of 2.67% for a comparable office building." PX 774; TT 1318-1325.

Trump Park Avenue

When valuing unsold units in Trump Park Avenue for Donald Trump's SFCs, McConney used offering plan prices from an internal Trump International Realty spreadsheet, while wholly disregarding "current market values" listed on the exact same spreadsheet. Moreover, McConney "intentionally removed" the current market values column from the spreadsheet before forwarding it to Donald Bender at Mazars, despite McConney's knowledge and representation that he understood that the SFCs had to reflect the estimated current value. PX-793; TT 629-631, 706-708.

McConney was aware that as of September 2011, there were 12 rent stabilized apartments at Trump Park Avenue. PX 3041; TT 709-711. Despite this knowledge, McConney, in consultation with Allen Weisselberg, intentionally valued the rent stabilized apartments not just as if they were unregulated, but at an aspirational offering price, resulting in overvaluations of as much as 700%. TT 711-712; NYSCEF Doc. No. 1531 at 23.

When Patrick Birney helped prepare the SFCs supporting data, neither Weisselberg nor McConney ever informed him of this gross overvaluation, or of any appraisals of the rent-stabilized units at Trump Park Avenue. TT 1282-1283.

Seven Springs

From 2011-2014, when valuing a plot of land upon which seven mansions could be built in Bedford, McConney relied on valuations provided by Eric Trump, who advised McConney to value the seven-mansion development at $161 million on the 2012 SFC. This valuation assumed a host of future events that had not—and as hindsight has shown, would not—occur, including that the Trump Organization had received legal permission to develop the lots, that the mansions were already built and available for sale, and that there would be no construction or development costs associated with building the mansions. PX 719; TT 713-718. Eric Trump further advised McConney to use these values again in 2013 and 2014. TT 713-720; PX 719, 793, 1075. Eric Trump was aware that the values he was providing would be used on his father's SFCs. PX 1075; TT 3315-3316, 3339.

Upon realizing that building the seven mansions would be neither feasible nor profitable, the Trump Organization, through outside counsel Sheri Dillon, commissioned an appraisal from Cushman & Wakefield to determine the value of the development rights for the plot of land upon which the Trump Organization had previously considered building the seven mansions.

In August 2013, Eric Trump advised McConney to continue to use the undiscounted value of $161 million for the seven-mansion development, despite having received an initial estimate of approximately $5.5 million from Cushman & Wakefield. PX 908, 3296; TT 3342-3347.

On September 8, 2014, David McArdle, of Cushman & Wakefield, advised Eric Trump verbally that he had appraised the seven-mansion development at $14 million. Notwithstanding, a mere four days later, Eric Trump advised McConney to continue using the $161 million value. PX 169, 181; TT 1996-1997, 3353-3354.

Briarcliff

In August 2013, Eric Trump retained David McArdle of Cushman & Wakefield to appraise the value of developing 71 condominium units on undeveloped land in Briarcliff, New York. PX 157, 3197; TT 1930, 3368-3371.

Despite having retained Cushman & Wakefield to value the 71 units, in a September 25, 2013 phone call Eric Trump advised McConney to value the 71 units at over $101 million, based on comparable sales in the area. PX 719; TT 738-745. Less than one month later, by October 16, 2013, Eric Trump was aware that McArdle had determined the value of the 71-unit development to be $45 million. PX 1465, 3201; TT 3374-3375. Notwithstanding that the 2014 SFC had not yet been submitted, Eric Trump failed to advise McConney that the appraised value was less than half of what he had reported the value to be. TT 738-744. Each year from 2015 to 2018, Eric Trump advised McConney to leave the $101 million as is, despite his knowledge of the much lower $45 million appraisal. TT 744-747.

Moreover, by October 16, 2013, Eric Trump was aware that the Trump Organization only had the right to build 31, not 71, units. PX 3261; TT 2695-2702. Notwithstanding, the SFCs for 2013-2018 continued to reflect that the Trump Organization had the right to build 71 units. PX 742, 758, 774; TT 2701-2702.

Mar-a-Lago

In 1995, Donald Trump signed a "Deed of Conservation and Preservation" in which he gave up the right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed").

In 2002, Donald Trump granted a conservation easement to the National Trust for Historic Preservation and signed a deed in which, in addition to conveying the rights to develop or use Mar-a-Lago for any purpose other than a social club, the Deed further *"limits changes to the Property including, without limitation*, the division or subdivision of the Property for any purpose, including use as single family homes, *the interior renovation of the mansion, which may be necessary and desirable for the sale of the property as a single family residential estate*, the construction of new buildings and the obstruction of open vistas." NYSCEF Doc. No. 1531 at 25-26 (emphasis added).

In exchange for executing the 2002 Deed, in which he gave away, in perpetuity, the right to develop or use the property as a single-family residence, Donald Trump paid significantly lower property taxes on Mar-a-Lago. PX 1730; TT 3533-3535.

McConney had in his possession, since at least 2011, a copy of the 2002 Deed, restricting the use of Mar-a-Lago as a single-family residence. TT 773-775; PX 1013; DX 360. McConney was also aware, when he prepared the SFCs supporting data, that the entire basis of the valuations of Mar-a-Lago rested on the premise that it could be sold as a private residence to an individual. Each and every year, he valued Mar-a-Lago as if it could be sold as a single-family residence, notwithstanding the deeded prohibitions against such use in perpetuity. TT 759, 775.

Further, when Patrick Birney took over for McConney in preparing the valuations for the SFCs, Weisselberg and McConney both concealed from Birney the 1995 and 2002 deeds. TT 1258-1259. When valuing Mar-a-Lago on the SFCs from 2016-2021, McConney and Weisselberg selected comparables for Birney to use that were exclusively for private residences. TT 1248-1256, 1268-1282; see, e.g., PX 3026.

There is no legal gray area surrounding the permanent nature of the deed restrictions. PX 1013.

Accordingly, there can be no mistake that Donald Trump's valuation of Mar-a-Lago from 2011-2021 was fraudulent.

TNGC-LA

McConney was aware that Cushman and Wakefield had appraised the property known as Trump National Golf Club LA ("TNGCLA") and valued the golf club portion at $16 million and the entire property at just over $82 million as of March 2015. Notwithstanding, in the 2015 SFC, McConney valued the golf club at $56.6 million and the entire property at just over $140 million. PX 1464, 731.

Aberdeen

Aberdeen is the name of a golf course and adjacent land that the Trump Organization owns in Aberdeen, Scotland. The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

Despite receiving permission to develop only 500 homes as year-round private residences on the non-golf course property, the 2014-2018 SFCs valued Aberdeen not only as if permission existed to develop 2500 private year-round residences, which it did not, but also as if those residences had already been built. The valuations also fail to account for any development (i.e., construction) costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

Despite receiving a July 2017 appraisal by Ryden LLP valuing the development profit of private homes at Aberdeen at a maximum of £33,296 per home, from 2017-2018 the Trump Organization valued the development of private homes at £83,164 per home, allegedly based on a September 18, 2014 email from an unidentified "Registered Valuer for Ryden LLP," which more than doubles the actual appraisal amount. PX 774, 1450.

In 2019, the Trump Organization began valuing each home at £106,969, more than triple the last appraised value, and the SFCs supporting data represented that the Trump Organization had permission to build 2035 private residences, when it still only had permission for 500. PX 843.

In 2020 and 2021, the Trump Organization valued each home at £68,781 and represented that it had permission to build 1200 private residences, when it still only had permission for 500. PX 1352, PX 3041 at ¶ 219.

Licensing Deals

From 2013-2021, despite representing explicitly in the SFCs that the "real estate licensing deals" asset category included only "signed agreements" with "other parties," the SFCs incorporated into this category wholly speculative, unsigned, and intra-company agreements between Trump Organization entities and affiliates. PX 729; TT 1461, 1465; NYSCEF Doc. 1531.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that would be received through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of the number of deals in place or the pace at which deals were being signed. TT 1550-1556; PX 774, PX 3168.

On a draft 2015 SFC, McConney noted that the valuation of real estate licensing deals included $151 million in forecasted deals that "have not signed yet" because he was concerned about the inconsistency. Despite this concern, McConney did nothing to modify the representations or remove the unsigned deals from the valuations of the licenses for the 2015-2018 SFCs. TT 5070-5072; PX 806, 729, 733.

Fraud in Business

Deutsche Bank

The evidence adduced at trial makes clear that Deutsche Bank relied on the SFCs for the information to underwrite, approve, and maintain the credit facilities on Doral, Trump Chicago, and the Old Post Office. PX 293, PX 3041 at ¶¶ 452-54, 456-466, 476.

The record is also clear that Donald Trump would not have received the credit facilities from the Private Wealth Management Division, and the favorable interest rates that came with that, had he not executed an unconditional, "ironclad," personal guarantee. Moreover, the Private Wealth Management Division was willing to accept the personal guarantees based upon false SFCs.

Doral

At the same time the Trump Organization was soliciting terms from Deutsche Bank's Private Wealth Management Division for the Doral loan, it was shopping for loans from other commercial real estate lenders, including Deutsche Bank's own commercial real estate group. In November 2011, Deutsche Bank's commercial real estate group offered the Trump Organization a $130 million loan at LIBOR + 8%, with a LIBOR floor of 2 – a minimum 10% interest rate. PX 369; NYSCEF No. 501 at ¶ 575. Instead, Donald Trump agreed to a full-recourse loan (i.e., with an unconditional personal guarantee) with the much more favorable terms of an initial interest rate of LIBOR + 2.25% during a renovation period and LIBOR + 2% after renovations. PX 293.

Donald Trump's personal guarantee for the Doral loan required him to certify the truth and accuracy of his SFC and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion. PX 1303, 3041 at ¶¶ 484, 486-489; TT 5429-5430. The guarantee further required him to submit an annual compliance certificate and an updated SFC to confirm his compliance with the loan covenants, the failure of which could have triggered a default. TT 1022-1023, 1027-1028, 1052-1054, 5337; PX 1303; DX 212.

Trump Chicago

When seeking to finance Trump Chicago, the Trump Organization again sought dueling proposals from both the Private Wealth Management Division, which required an unconditional personal guarantee, and the commercial real estate group, which did not. PX 3041 at ¶¶ 439, 500-502.

The commercial real estate group proposed two non-recourse loan options: the first was secured only by unsold condo units and priced at LIBOR + 8%; the second would have carried a higher interest rate along with additional costs and fees but would be secured only by the commercial (hotel and retail) property. The Private Wealth Management Division proposed a recourse loan priced at LIBOR + 4%, with the "spread differential . . . based on a full guarantee of Donald Trump." TT 1035-1039; PX 470.

Donald Trump ultimately agreed to a loan from the Private Wealth Management Division that was split into two tranches: (1) a facility of up to $62 million using unsold condos as collateral and bearing an interest rate of LIBOR + 3.35%; and (2) a facility of up to $45 million using the commercial property as collateral and bearing an interest rate of LIBOR + 2.25%. PX 470, 3242, 291. As with all lending from the Private Wealth Management Division, the loan was conditioned upon a personal guarantee from Donald Trump.

Old Post Office

In 2013, Donald Trump once again sought dueling financing offers from both the commercial real estate group and the Private Wealth Management Division to finance the redevelopment of the Old Post Office in Washington, D.C. PX 322, 327, 3041 at ¶¶ 543-549. Donald Trump once again elected to choose the lower interest rate option and higher credit facility that the Private Wealth Management Division was offering, which required a personal guarantee and submission

of annuals SFCs, over the higher interest non-recourse loan that the commercial real estate group was offering. PX 513, 294, 3041 at ¶¶ 549-552.

As with the Doral and Trump Chicago credit facilities, the Old Post Office loan agreement required Donald Trump to provide his most recent SFC to the bank and to certify its accuracy. PX 309.

The Old Post Office guarantee explicitly stated that Trump's representations were made "[i]n order to induce Lender to accept this Guarant[ee] and to enter into the Loan Agreement and the transactions thereunder," and that loan obligations were "conclusively presumed to have been created in reliance" on Trump's guarantee and its representations. PX 305. This was confirmed by the testimony of former and current Deutsche Bank employees Nicholas Haigh and David Williams.

Pursuant to the personal guarantee, Donald Trump was required to "keep and maintain complete and accurate books and records," and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the SFC delivered to Lender during each year." PX 305, PX 3041 at ¶¶ 561-563.

Pursuant to his loan obligations, Donald Trump provided Deutsche Bank with his 2014-2021 SFCs, as well as certifications that were executed either by Donald Trump, or by Donald Trump, Jr. or Eric Trump as attorneys-in-fact for Donald Trump. PX 393, 503, 515, 518, 1386, 3041 at ¶ 572. Deutsche Bank relied on these SFCs and certifications for its annual review of Donald Trump's financial covenants. PX 298, 300, 302, 498, 519, 561, 3137.

Donald Trump testified that he knew Deutsche Bank would rely on these certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630. Donald Trump, Jr. testified he when he signed the certifications, he "intended for the bank to rely upon [them]." TT 3241, 3250. Although Eric Trump testified that he had "no idea" if he intended the banks to rely upon his certifications, the Court finds that testimony not credible, as Eric Trump was aware that the certifications were required for the loans. Moreover, his inconsistent memory at trial renders his testimony that he has "no idea" even less plausible.

On May 11, 2022, Donald Trump sold the redeveloped Old Post Office for $375 million, and used $170 million of those proceeds to repay the Deutsche Bank loan. PX 3041 at ¶¶ 570-571. By selling the Old Post Office, Donald Trump and his adult children netted the following respective profits: (1) $126,828,600 to Donald Trump; (2) $4,013,024 to Eric Trump; (2) $4,013,024 to Donald Trump, Jr., and (4) $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

Ladder Capital/Wells Fargo

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Allen Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. After Capital One declined to waive the required payment, Allen Weisselberg contacted his son, Jack Weisselberg, about Ladder

Capital refinancing the loan. TT 1820-1826. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later requiring that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether it would approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required unconditionally to guarantee payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. The personal guarantee executed by Donald Trump required him to document compliance with his financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX 3041 at ¶ 597.

The 40 Wall Street loan was subsequently securitized and serviced by Wells Fargo. TT 1784-1785, 5815-5818. To comply with the 40 Wall loan covenants, in 2017-2019, Donald Trump submitted to Wells Fargo summaries of his net worth that were derived from the SFCs, and certified by Weisselberg as "true, correct, and complete and fairly present[ing] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

As discussed *supra*, the SFCs Donald Trump submitted to Wells Fargo as part of his obligations were none of these things—they were not GAAP compliant and were not "correct," "complete," or "fairly present[ed]".

Ferry Point

In February of 2010, NYC Parks published an RFO for operation and maintenance of a golf course at Ferry Point Park in the Bronx. PX 3290. NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. NYC Parks was particularly focused on the financial capability of a potential operator, as it had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars that indicated that according to Donald Trump's 2009 SFC, which Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to this RFO, ultimately awarding the contract to the Trump Organization. In so doing, NYC Parks highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump, the president of Trump, has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

On February 21, 2012, Donald Trump signed the license agreement with NYC Parks. DX 981. The license agreement required Donald Trump to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit annually a letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks, including potential referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation; the Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtains a gaming license[51] for the site. TT 2850, 3266-3267; PX 3304, 3306. Accordingly, by maintaining the license agreement for Ferry Point by submitting false SFCs, and which was initially awarded based on false SFCs, the Trump Organization was able to secure a windfall profit by selling the license. PX 3304.

Zurich Insurance

Surety Insurance

Acquiring insurance coverage for the Trump Organization was handled by a self-titled "Team of Four" that consisted of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen. TT 943-944, 1201. The Team of Four decided coverage and interfaced with insurance broker AON. TT 946.

[51] After Donald Trump was awarded the license in 2012, but before he assigned it to Bally's in 2023, the State of New York amended its constitution to permit gaming (i.e., gambling) licenses for up to seven commercial casinos in the state, other than those operated by Native Americans.

When Zurich representatives responsible for underwriting asked to review the financials, they were prohibited from retaining a copy of any documents for review but were permitted only to view them at Trump Tower with Allen Weisselberg and/or Jeffrey McConney in the room at all times, which was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59. Weisselberg was physically present at every meeting with the sureties or their representatives, wherein members of the Team of Four would describe how the assets were valued. TT 953-954.

When questioned whether the insurance representative asked him if there had been appraisals of any of the assets identified on the SFC, Weisselberg stated "not that I can remember." TT 948. This is directly contradicted by the testimony of Zurich representative Claudia Markarian, whose testimony and contemporaneous notes taken during the meetings indicate that Weisselberg represented to her, and she relied on, his assurances that the valuations of the real estate assets in the SFCs were based on professional outside appraisals. PX 3324 at 25-34.

In Court, Weisselberg maintained that despite having appraisals of properties on the SFCs in the Trump Organization's possession, he did not feel they had to be disclosed to the insurance representatives because the Trump Organization had not commissioned the appraisals on their property; rather, the lenders had. TT 954-959. However, this is simply not what he represented to Zurich. PX 3324 at 25-34.

Markarian's contemporaneous memoranda for each on-site review reflect the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52. However, the amount of cash on hand was intentionally and materially misrepresented, as the SFC included Donald Trump's interest in the Vornado partnership as cash, notwithstanding that those assets were not liquid or within Donald Trump's control. TT 617-620.

Because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about the financial condition of the company other than to rely on the financial statements that the client provides to them. PX 3324 at 57. Markarian credibly testified that, because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account"). Markarian had no reason to doubt that Weisselberg was being truthful and honest in his representations, and she accepted at face value, and relied upon, his representations about the values contained in the SFCs. PX 3324 at 28-53.

Zurich relied on false representations by Weisselberg and McConney, and the intentionally false and misleading information in the SFCs about the amount of cash on hand, when determining to underwrite policies for the Trump Organization. PX 1561, 1552, 3324 at 28-57.

D&O Insurance

As of December 2016, the Trump Organization had a D&O liability policy in place that offered coverage consisting of a single primary policy with a limit of $5 million at an annual premium of $125,000; the policy was to expire on February 17, 2017. PX 596, 587.

In December 2016, the Trump Organization contacted several insurance brokers, including HCC, as the Trump Organization was looking to rewrite the program on the day of Donald Trump's inauguration, with significantly higher limits, to wit, $50 million. TT 2492-2493, 4887; PX 587.

Similar to Zurich's representatives, HCC representatives were told they could review the financials only while being monitored at Trump Tower and could not retain copies for their own records. PX 588, 2985. On January 10, 2017, Michael Holl, of HCC, attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained in the meeting. PX 2985; TT 2498-2499. His contemporaneous email reads: "Saw very few financials but did see the balance sheet for year-end 2015. They assured me that the one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email further reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communications that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502. However, this representation was false, as, at the time of the meeting, there was an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization and were aware of the investigation. PX 1001, PX 1002, PX 1003; TT 2557-2558. Neither Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting, or at any other time prior to the binding of the D&O policies, the existence of OAG's investigation into the Trump Foundation and directors and officers of the Trump Organization, despite understanding at the time that OAG's investigation into the Trump Foundation could potentially lead to a claim. In fact, they tendered a claim for coverage to their insurers, including HCC, for the enforcement action arising from OAG's investigation into the Trump Foundation, by notice dated January 17, 2019. NYSCEF Nos. 1220, 1221; PX 2985; TT 2500-2502. When HCC ultimately became aware of the claims, its underwriter determined that the exposure on the risk was significantly higher than it had been priced at and offered a renewal policy at more than five times the expiring premium. TT 2507; PX 2989.

HCC further relied on the false representation that Donald Trump had $192 million cash on hand (as it improperly included Vornado "cash"), as was reflected in the 2015 SFC, which was material in HCC's analysis of whether to write the policy. TT 2494-2495, 2502.

CONCLUSIONS OF LAW

Burden of Proof

An action brought by the Attorney General seeking equitable relief for repeated or ongoing fraud in conducting business is subject to a "preponderance of the evidence" standard, as is customary in civil litigation. Jarrett v Madifari, 67 AD2d 396, 404 (1st Dept 1979). As noted, *supra*, this is supported by the legislative history of Executive Law § 63(12), wherein the legislators expressly contemplated and intended for a preponderance of the evidence standard to apply. Moreover, defendants have provided no legal authority for their contention that the higher "clear and convincing" standard does, or should, apply. A clear and convincing standard applies only when a case involves the denial of, addresses, or adjudicates fundamental "personal or liberty rights"[52] not at issue in this action. Matter of Capoccia, 59 NY2d 549, 552 (1983).

Defenses Asserted

Reliance

Defendants have argued vociferously throughout the trial that there can be no fraud as, they assert, that none of the banks or insurance companies relied on any of the alleged misrepresentations. The proponents of this theory posit that lenders demand complex statements of financial condition but then ignore them.

Defendants' argument is to no avail, as none of plaintiff's causes of action requires that it demonstrate reliance. Instead, plaintiff must merely show that defendants intended to commit the fraud. Reliance is not a requisite element of either Executive Law § 63(12) or of any of the alleged Penal Law violations. See, e.g., People v Essner, 124 Misc 2d 830, 834 (Sup Ct, NY County 1984) ("Reliance then is not an element of [Penal Law § 175.45 - Falsifying Business Records], and documents subpoenaed to prove or disprove reliance by the banks are immaterial").

However, the Court notes that, although not required, there is ample documentary and testimonial evidence that the banks, insurance companies, and the City of New York did, in fact, rely on defendants to be truthful and accurate in their financial submissions. The testimony in this case makes abundantly clear that most, if not all, loans began life based on numbers on an SFC, which the lenders interpreted in their own unique way. The testimony confirmed, rather than refuted, the overriding importance of SFCs in lending decisions.[53]

---

[52] The Court of Appeals has identified instances that would amount to loss of "personal or liberty rights," such as denaturalization, loss of paternity rights, and involuntary civil commitment. Matter of Capoccia, 59 NY2d 549, 552 (1983). A case arising out of alleged fraud in the business place does not come within that category.

[53] To take one of innumerable examples, Robert Unell testified that Deutsche Bank and Ladder Capital would have analyzed Donald Trump's net worth based on the contents of the SFCs. Indeed, witness after witness testified that the SFCs were important to them, and/or were the starting point of their analysis.

Blame the Accountants

The crux of the defense at trial was that defendants relied on their accountants, mainly Mazars, but sometimes Whitley Penn, to make sure that the SFCs were accurate, and that responsibility for any misrepresentations lies with the accountants, not defendants. Donald Trump, Jr. and Eric Trump testified several times that they would have relied on their accountants to find any errors in the SFCs' supporting data.

As an initial matter, the Court notes that neither Mazars, nor Whitley Penn, nor Donald Bender, is a defendant in this action, nor did defendants ever attempt to implead them as third party defendants. More significantly, however, this defense is wholly undercut by the overwhelming evidence adduced at trial demonstrating that Mazars and Whitley Penn relied on the Trump Organization, not vice versa, to be truthful and accurate, and they had a right to do so.

Each year from 2011-2020, Weisselberg signed SFC Management Representation Letters as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). Weisselberg understood that Mazars was relying on what was in the Management Representation Letters, and that Mazars would not have issued the SFCs without having secured these representations. Weisselberg further knew that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict the values represented in the SFCs. The whole situation could hardly have been otherwise, as only defendants had the information, and the accountants were not performing audits.

Donald Trump himself acknowledged that, as was certified to in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements.

There is overwhelming evidence from both interested and non-interested witnesses, corroborated by documentary evidence, that the buck for being truthful in the supporting data valuations stopped with the Trump Organization, not the accountants. Moreover, the Trump Organization intentionally engaged their accountants to perform compilations, as opposed to reviews or audits, which provided the lowest level of scrutiny and rely on the representations and information provided by the client; compilation engagements make clear that the accountants will not inquire, assess fraud risk, or test the accounting records.

Materiality

In its summary judgment decision, this Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law. NYSCEF Doc. 1531

Indeed, materiality under this statute is judged not by reference to reliance by or materiality to a particular victim, but rather on whether the financial statement "properly reflected the financial condition" of the person to which the statement pertains. People v Essner, 124 Misc 2d 830, 835 (Sup Ct, NY County 1984) ("there need be no 'victim,' ergo, reliance is neither an element of the crime nor a valid yardstick with which to test the materiality of a false statement").

Materiality has been one of the great red herrings of this case all along. Faced with clear evidence of a misstatement, a person can always shout that "it's immaterial." Absolute perfection, including with numbers, exists only in heaven. If fraud is insignificant, then, like most things in life, it just does not matter. As an ancient maxim has it, *de minimis non curat lex*, the law is not concerned with trifles. Neither is this Court.

But that is not what we have here. Whether viewed in relative (percentage) or absolute (numerical) terms, objectively (the governing standard) or subjectively (how the lenders viewed them), defendants' misstatements were material. United States Supreme Court Justice Potter Stewart famously, or infamously, declared that he could not define pornography, but that he knew it when he saw it. Jacobellis v State of Ohio, 378 US 184, 197 (1964). The frauds found here leap off the page and shock the conscience.

Wisely, courts have refused to define "material" in a "one size fits all" fashion. At trial, this Court attempted to get the experts to go where Courts have dared not tread. Not surprisingly, a firm definition could not be found. But in the present context, this Court confidently declares that any number that is at least 10% off could be deemed "material," and any number that is at least 50% off would likely be deemed material. These numbers are probably conservative given that here, such deviations from truth represent hundreds of millions of dollars, and in the case of Mar-a-Lago, possibly a billion dollars or more.

Different Appraisers, Different Appraisals

Yet another great red herring in this case has been that different appraisers can legitimately and in good faith appraise the same property at different amounts. True enough, as appraising is an art as well as a science. However, the science part cannot be fraudulent. When two appraisals rely on starkly different assumptions, that is not evidence of a difference of opinion, that is evidence of deceit.

Second Cause of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, and Donald Trump, Jr. are each liable under the second cause for action for repeatedly and persistently falsifying business records, thus violating Executive Law § 63(12) and New York Penal Law § 175.05.

Penal Law § 175.00 defines a "business record" as "any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity." Clearly, each of the SFCs and supporting spreadsheets that were submitted to lenders and insurers qualifies as a business record, as each constituted a writing kept by the Trump Organization for the purpose of evidencing or reflecting its activities. Additionally, the individual defendants' actions in furnishing false information and values to third parties caused third parties, such as Deutsche Bank, to create their own business records that contain fraudulent information, such as the credit memoranda created by Deutsche Bank and Ladder Capital.

As detailed in the Findings of Fact, there is overwhelming evidence that each of these defendants made or participated in making a false statement in the business records of an enterprise, the Trump Organization, with the intent to defraud.

Donald Trump was aware of many of the key facts underpinning various material fraudulent misstatements in the SFCs: he was aware of having deeded away the right to use Mar-a-Lago as anything other than a social club, and notwithstanding, continued to value it as if it could be used as a single family residence; he was aware that the Triplex apartment in which he, a real estate mogul and self-identified expert, resided for decades was not 30,000 square feet, but actually 10,996 square feet; he was aware that he did not control the Vornado partnership interest even though he represented it as "cash"; he was aware that he had permission to build only 500 private residences in Aberdeen, notwithstanding that he represented that he had permission for 2500; and he was aware that 40 Wall Street was operating at a deficit despite proclaiming that it was running a net operating income of $64 million. As Eric Trump testified, Donald Trump sat at the top of the pyramid of the Trump Organization until 2017. Donald Trump professed to "know more about real estate than other people" and to be "more expert than anybody else." TT 3487. He repeatedly falsified business records with the intent to defraud. See People v Gordon, 23 NY3d 643, 650 (2014) ("Intent may be established by the defendant's conduct and the circumstances"); People v Rodriguez, 17 NY3d 486, 489 ("Because intent is an 'invisible operation of the mind' direct evidence is rarely available (in the absence of an admission) and it is unnecessary when there is legally sufficient circumstantial evidence of intent," "noting that 'intent can also be 'inferred from the defendant's conduct and the surrounding circumstances'") (internal citations omitted).

There is overwhelming evidence that Allen Weissberg intentionally falsified hundreds of business records during his tenure as CEO of the Trump Organization. Weisselberg understood that his assignment from Donald Trump was to have his reported assets increase every year irrespective of their actual values. The examples of Weisselberg's intent to falsify business records are too numerous to itemize, but include, and are not limited to: concealing the square footage of the Triplex to inflate its value by $200 million; misrepresenting to insurance representatives that the real estate valuations found in the SFCs were prepared by outside appraisers; directing Donna Kidder to prepare a budget for 40 Wall Street that showed a positive net operating income, notwithstanding that 40 Wall Street was running repeated deficits; valuing the Vornado partnership interest as cash, despite knowing that Donald Trump had no control over it; directing Birney to remove management fees as expenses when calculating net operating income; and certifying to banks and other third parties that all of the valuations in the SFCs were GAAP compliant and presented at fair and accurate estimated current values, which they were not.

There is ample evidence that Jeffrey McConney intentionally falsified business records. Not only was McConney responsible for the preparation of the valuations contained in the SFCs from 2014 through 2017, he also continued to overvalue certain properties from 2017 until he left the Trump Organization. In particular, examples of McConney's fraudulent conduct include, but are not limited to: knowingly and intentionally valuing the apartments at Trump Park Avenue based on an offering price that failed to reflect that the apartments were rent-restricted; intentionally

including the Vornado partnership interest as cash despite knowing Donald Trump did not control it; failing to discount to present value; valuing undeveloped properties as if they were already built and ready to be sold; intentionally lying to Donald Bender and representing that the Trump Organization had no appraisals of their real property in its possession, when it did; intentionally and knowingly valuing Mar-a-Lago as if it could be sold as a single family residence despite the deed restrictions that require it to be a social club in perpetuity.

There is also sufficient evidence that Donald Trump, Jr. and Eric Trump intentionally falsified business records. They served as attorneys-in-fact for Donald Trump and were under a heightened duty of prudence. See General Obligations Law §§ 5-1501(2)(a), 1505(1)(a), 1501(2)(a)(3). They also served as co-executives running the company from January 2017 to today, in which they had intimate knowledge of the Trump Organization's business, assets, and were provided with financial updates upon request by Weisselberg and Patrick Birney. Both Trump, Jr. and Eric Trump also continued to represent Donald Trump's Vornado limited partnership interest as cash, despite having been expressly advised that it was not under the Trump Organization's control.

Additionally, Eric Trump intentionally provided McConney with knowingly false and inflated valuations for Seven Springs, despite having commissioned appraisals that valued Seven Springs at a fraction of Eric Trump's number.

Moreover, Trump, Jr., as a trustee of the Donald J. Trump Revocable Trust, signed Management Representation Letters to Mazars affirming the accuracy of the supporting data and signed certifications to banks and insurance companies verifying the accuracy of the false SFCs' contents.

Accordingly, the law presumes that Donald Trump, Jr. read and understood the contents of his representations. Marine Midland Bank, N.A. v Embassy E., Inc., 160 AD2d 420, 422 (1st Dept 1990) ("It is no defense that respondents did not read the note or the guarantees, for the law presumes that one who is capable of reading has read the document which he has executed and he is conclusively bound by the terms contained therein") (internal citations omitted). Trump, Jr.'s intent can also be inferred from his acknowledgment that third parties would rely on his certifications.

Third Cause of Action

Plaintiff's third cause of action is for conspiracy to falsify business records.

> 'The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy.' The essence of the offense is an agreement to cause a specific crime to be omitted together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy … 'Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other

> conspirators to establish the offense of conspiracy… and that act may be the object crime.

Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999). Moreover, "[i]n prosecutions for the crime of conspiracy[,] the People's case must usually rest upon circumstantial evidence." People v Connolly, 253 NY 330, 339 (1930) ("[d]efendants, with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts").

For the reasons detailed in the second cause of action, there is ample evidence that each of the defendants conspired to falsify business records. This includes not only the individual defendants, but also the corporate defendants, as Penal Law § 20.20(c) makes clear that a corporation is liable for a misdemeanor committed by its agents "acting within the scope of [their] employment and on behalf of the corporation." Moreover, this applies to LLCs as well as corporations. People v Highgate LTC Mgmt., LLC, 69 AD3d 185, 189 (3rd Dept 2009) (just as corporations are liable for acts committed by their agents in the scope of their employment under Penal Law § 20.20(c), LLCs are similarly liable as "individuals" under Penal Law § 20.20(c)); People v Harco Constr. LLC, 163 AD3d 406, 407 (1st Dept 2018) (upholding conviction of LLC).

Similarly, the Donald J. Trump Revocable Trust is also liable for the criminal acts of its agents, including its trustees and those who performed work on their behalf. The trust is part of an associated group of business entities and individuals who operate as "the Trump Organization," and the trust holds all of the assets of the Trump Organization. People v Newspaper and Mail Deliverers' Union of New York and Vic., 250 AD2d 207, 215 (1st Dept 1998) (reinstating indictment against unincorporated union). People v Feldman, 791 NYS2d 361, 375 (Sup Ct, Kings County 2005) (political party is a "person"); People v Assi, 14 NY3d 335, 340-41 (2010) (religious congregation is association of individuals, and thus "person," under Penal Law). Moreover, the First Department, in a previous appeal arising out of this case, rejected defendants' argument that the trust cannot be held liable and could not be a proper party.

Fourth and Fifth Causes of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, Donald Trump, Jr., and all of the entity defendants are liable under the fourth cause for action for repeatedly and persistently issuing false financial statements, thus violating Executive Law § 63(12) and New York Penal Law § 175.45. All defendants are liable under the fifth cause of action for conspiracy to submit false financial statements.

As detailed in the Findings of Fact, there is ample evidence that each of the individual defendants, with the intent to defraud, "knowingly ma[de] or utter[ed] a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect." PL § 175.45(1). There is even more evidence that each of the defendants participated in a conspiracy to submit false financial statements.

Sixth Cause of Action

Defendants Allen Weisselberg and Jeffrey McConney are each liable under the sixth cause for action for repeatedly and persistently committing insurance fraud in violation of Executive Law § 63(12) and New York Penal Law § 176.05.

To establish liability under this cause of action, plaintiff must establish that Weisselberg and McConney knowingly, and with the intent to defraud, presented or prepared, with knowledge or belief that it will be presented to an insurer, any written instrument as part of an insurance application that is known to contain materially false information or to conceal, for the purpose of misleading, information concerning any material fact. PL § 176.05.

As discussed in the Findings of Fact, both Weisselberg and McConney participated in the insurance meetings in which they made false representations to the insurance representatives about Donald Trump's SFCs, including misrepresenting the value of his cash assets, representing to the insurance companies that the real estate asset valuations in the SFCs came from outside appraisals, and lying about the existence of potential claims against the Trump Organization. Each of these actions caused the insurance application to contain materially false information for the purpose of misleading the insurer.

Seventh Cause of Action

All defendants are liable under the seventh cause of action, for conspiracy to commit insurance fraud. Although only Allen Weisselberg and Jeffrey McConney performed the overt acts of the insurance fraud, all defendants are liable for the conspiracy, as only "an overt act by one of the conspirators in furtherance of a conspiracy" need be shown. Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999).

For the reasons detailed *supra*, each of the defendants participated in aiding and abetting the conspiracy to commit insurance fraud by their individual acts in falsifying business records and valuations, causing materially fraudulent SFCs to be intentionally submitted to insurance companies.

DISGORGEMENT OF ILL-GOTTEN GAINS

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct

> losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014) (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also People v Amazon.com, Inc., 550 F Supp 3d 122, 130 (SDNY 2021) ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief," and finding "the Attorney General can seek disgorgement of profits on the State's behalf"). Indeed, the last sentence of Executive Law § 63(12) clearly contemplates disgorgement ("all monies recovered or obtained under this subdivision").

The Personal Guarantee Interest Rate Differential

Having prevailed on its causes of action demonstrating intentional, repeated, and persistent fraud by defendants, plaintiff is entitled to disgorgement of defendants' "ill-gotten gains." Disgorgement is "the equitable remedy that deprives wrongdoers of their net profits from unlawful activity." Liu v Sec. & Exch. Comm'n, 140 S Ct 1936, 1937 (2020) (further stating that "it would be inequitable that a wrongdoer should make a profit out of his own wrong").

Plaintiff's expert, Michiel McCarty, testified reliably and convincingly that defendants profited by paying lower interest rates on loans from Deutsche Bank's Private Wealth Management Division, based on fraudulent SFCs, than the interest rates they would have paid under non-recourse loans simultaneously offered to them. He further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan, based on a fraudulent SFC, than the interest rate on a non-recourse loan, and compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing with Ladder Capital.

McCarty calculated the differences between interest rates and determined the following ill-gotten interest savings, which this Court hereby adopts as the most reasonable approximation of the ill-gotten interest rate savings upon which evidence was presented at trial: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan.

In total, defendants' fraud saved them approximately $168,040,168 in interest, which shall be imposed, jointly and severally, among Donald Trump and the defendant entities that he owns and controls, as the misconduct at issue was committed by the Trump Organization's top management. SEC v Pentagon Cap. Mgmt. PLC, 725 F3d 279, 287 (2d Cir 2013) (joint and several liability appropriate because defendants had collaborated on a common scheme); S.E.C. v First Jersey Sec., Inc., 101 F 3d 1450, 1476 (2d Cir 1996) (joint and several liability is warranted when the misconduct of the company and its top controlling officers are indistinguishable); S.E.C. v Hughes Cap. Corp., 917 F Supp 1080, 1089 (DNJ 1996), aff'd, 124 F3d 449 (3d Cir 1997) (joint and several liability appropriate where defendants were "knowing

participants who acted closely and collectively" when their activities were "inextricably interwoven with that of the corporation") (internal citations omitted).

Old Post Office Profit

As with so many Trump real estate deals, the Old Post Office contract was obtained through the use of false SFCs (no false SFCs, no deal). Thus, the net profits received on its sale were ill-gotten gains, subject to disgorgement, which is meant to deny defendants "the ability to profit from ill-gotten gain." Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996).

Plaintiff has also argued that without the ill-gotten savings on interest rates, defendants would not even have been able to invest in the Old Post Office and/or other projects. To that end, plaintiff asserts that the interest rate savings from defendants' use of the fraudulent SFCs also allowed them to preserve capital to invest in other projects that they would not have been able to otherwise.[54] Plaintiff asserts that by 2017, after deducting the $16,500,0000 Vornado partnership interest, fraudulently labeled as cash, Trump would have been in a negative cash position (without the $73,811,815 saved through reduced interest payments). Plaintiff further asserts that without the interest savings from the use of the fraudulent SFCs, Donald Trump would have been in a negative cash position in every year from 2017-2020 (which would have violated his loan covenants).

Plaintiff also argues that the Old Post Office loan itself was a construction loan, and its proceeds were necessary to the construction and renovation of the hotel, which enabled the 2022 sale and resulting profits.

Of the three theories advanced by plaintiff, the first is by far the strongest; but all three, viewed collectively, support disgorgement of the profits defendants received from the sale of the Old Post Office as ill-gotten gains.

Accordingly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable, in the amount of $126,828,600, for the ill-gotten profits Donald Trump netted from the sale of the Old Post Office.

Eric Trump is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

Donald Trump, Jr. is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

[54] Indeed, as defendants' own expert, Frederick Chin, testified: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And, it may make a development less feasible." TT 5929.

Ferry Point Profit

Similarly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for disgorgement of the windfall profits of $60 million attributable to selling Ferry Point to Bally's. By maintaining the license agreement for Ferry Point, based on fraudulent financials, Donald Trump was able to secure a windfall profit by selling the license to Bally's Corporation. Quintel Corp., N.V. v Citibank, N.A., 596 F Supp 797, 804 (SDNY 1984) ("defrauders will be required to disgorge windfall profits").

Allen Weisselberg's Severance Payments

There is substantial evidence that Allen Weisselberg's $2 million separation agreement was negotiated to compensate him for his continued non-cooperation with any entities with any legal interests "adverse" to defendants. Moreover, as Weisselberg was a critical player in nearly every instance of fraud, it would be inequitable to allow him to profit from his actions by covering up defendants' misdeeds.

Accordingly, Allen Weisselberg is liable for the money he has received from this separation agreement as ill-gotten gains. S.E.C. v Razmilovic, 738 F 3d 14, 33 (2d Cir 2013) ("The court also reasonably ruled that Razmilovic should disgorge his $5 million severance payment"). Although he was promised $2 million in total, at the time of his testimony, he had received only $1 million. PX 1751. Accordingly, Allen Weisselberg must disgorge the $1 million he has already received as ill-gotten gains.

Pre-Judgment Interest

Public policy favors awarding interest in equity actions. 5 Weinstein–Korn–Miller, NY Civ Prac ¶ 5001.06, at 50–24.

CPLR 5001(b) directs that:

> Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. Where such damages were incurred at various time, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.

"Further, a defendant's 'corrupt intent or desire for personal profit' is a factor to be weighed in the court's exercise of discretion pursuant to CPLR 5001. Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996) (further holding equitable relief favors granting prejudgment interest as "the awards of prejudgment interest on the ground that these awards 'deprive the defendants of their ill-gotten gains prevent unjust enrichment and accord with the doctrine of fundamental fairness'") (internal citations omitted).

Weighing these public policy considerations, the Court directs that pre-judgment interest, per CPLR 5004(a),[55] shall run from the following dates: (1) March 4, 2019, the date the Attorney General commenced its investigation, for all disgorgement of ill-gotten interest savings on the Doral, Trump Chicago, Old Post Office, and 40 Wall Street loans; (2) June 26, 2023, the date of the sale of the Ferry Point lease, for all ill-gotten profits obtained from the sale; (3) May 11, 2022, the date of the sale of the Old Post Office, for all ill-gotten profits obtained from the sale; and (4) January 9, 2023, the date that Allen Weisselberg entered into his Separation Agreement, for all ill-gotten payments to Weisselberg designed to ensure his continued loyalty to the Trump Organization and his non-cooperation with law enforcement.

INJUNCTIVE RELIEF

"[T]he Attorney General may obtain permanent injunctive relief under … Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating, "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

An Attorney General who has demonstrated "repeated illegal or fraudulent acts" may obtain injunctive relief pursuant to Executive Law § 63(12). State v Princess Prestige Co., 42 NY2d 104, 106 (1977); People v Gen. Elec. Co., 302 AD2d 314, 315 (1st Dept 2003).

When determining whether injunctive relief is appropriate, courts are instructed to consider the following facts:

> [T]he fact that the defendant has been found liable for illegal conduct; the degree of scienter involved; whether the infraction is an "isolated occurrence"; whether defendant continues to maintain that his past conduct was blameless; and whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated.

S.E.C. v Cavanagh, 155 F3d 129, 135 (2d Cir 1998). Consideration of each of these factors weighs heavily towards granting injunctive relief.

Necessity of Ongoing Oversight

Defendants' Conduct Since OAG Commenced its Investigation

In a Decision and Order dated November 14, 2022, this Court granted a motion by plaintiff for a preliminary injunction and, among other things, appointed the Hon. Barbara Jones (ret.) as an

[55] CPLR 5004(a) provides, as here pertinent: "Interest shall be at the rate of nine percent per annum, except where otherwise provided by statute."

Independent Monitor tasked with overseeing the Trump Organization's financial disclosures to any third parties and any transfer or other dissipation of assets.[56] The Court also directed Judge Jones to provide regular updates to the Court summarizing her findings and observations. To date, she has provided six reports, the last of which was dated January 26, 2024, after the conclusion of the trial.

In her final report, Judge Jones made the followings findings and observations: (1) beginning in 2022, defendants elected no longer to submit SFCs, instead crafting their own list of "the Trust's Material Assets and Material Liabilities, which does not include estimated current values of the properties contained therein and does not include a balance sheet of the guarantor or any representations regarding his financial condition, notwithstanding the loan covenants that still require it;[57] (2) during the course of her monitorship, defendants transferred significant funds[58] outside of the Trust without notifying the monitor, as they were obligated to do; (3) during the course of her monitorship, defendants have submitted disclosures to third parties that fail to include significant liabilities;[59] (4) the defendants are no longer representing that any disclosures are GAAP compliant, despite certain continuing obligations to do so; (5) annual budgets of projected performance were submitted to third parties that were materially different from the actual budgets of the prior year and which excluded or significantly reduced actual management fees as liabilities; (6) the internal accounting structure of the Trump Organization continues to be plagued by math and/or reporting errors; and (7) there are no adequate internal controls over financial reporting in place at the Trump Organization to ensure that there will not continue to be misstatements and errors going forward. NYSCEF Doc. No. 1681.

Further, the Court notes that top leadership roles at the Trump Organization, particularly the CFO and Controller, remain vacant. Approximately five months after Weisselberg pleaded guilty to having committed 15 counts of tax fraud at the Trump Organization, Eric Trump

[56] The Court did not appoint Judge Jones randomly or arbitrarily or by happenstance. Rather, she was the only one of the three candidates that both sides proposed for the position of independent monitor. However, after she issued her scathing January 26, 2024 report, quite critical of defendants' financial practices, defendants changed their tune. Overnight, a universally respected former judge with a stellar resume, nominated by defendants themselves, joined the ranks of all those people and institutions being unfair to defendants and out to get them.

[57] As detailed by Judge Jones, over the past 14 months she has identified ten instances where the lender required defendants to submit certifications attesting to the accuracy and completeness of financial information, but which defendants failed to submit.

[58] So as not to interfere with the day-to-day business operations, the monitor and defendants agreed upon a $5 million threshold; accordingly, defendants were obligated to inform the monitor of any transfer of assets of $5 million or more. Defendants transferred approximately $40 million without disclosing it to the monitor.

[59] The January 26, 2024 report details that the Trump Organization is omitting certain liabilities on their disclosures, including, but not limited to, intra-company loans. At first blush, these loans may not seem to matter, because the money is all kept "in house." However, the failure to report these transfers distorts the balance sheet for the transferor and the transferee.

negotiated, approved, and executed his separation agreement.[60] The role of CFO has remained vacant ever since, a fact that Donald Trump, Jr. did not know at trial, mistakenly believing that Mark Hawthorn was the new CFO. Similarly, the role of Controller has remained vacant since McConney left the Trump Organization in February 2023.

Thus, the Trump Organization does not have the ability to operate with a functional financial reporting structure that would protect against fraud in the future. The fact that there are virtually no internal controls in place at the Trump Organization, "creates an atmosphere conducive to fraud." People v Northern Leasing Sys., Inc., 193 AD3d 67, 75 (1st Dept 2021).

Moreover, the fact that the Trump Organization has refused to prepare SFCs, even though various loan covenants obligate them to do so, ever since the monitor was appointed, leads the Court to conclude that the Trump Organization cannot, or will not, prepare an accurate SFC that is GAAP compliant and that values assets at their estimated current values. That the Trump Organization has taken to manufacturing its own version of its assets, one that fails to include any valuations, is a telling admission that it simply cannot, or will not, prepare an SFC without committing fraud.

Refusal to Admit Error

The English poet Alexander Pope (1688-1744) first declared, "To err is human, to forgive is divine." Defendants apparently are of a different mind. After some four years of investigation and litigation, the only error ("inadvertent," of course) that they acknowledge is the tripling of the size of the Trump Tower Penthouse, which cannot be gainsaid. Their complete lack of contrition and remorse borders on pathological. They are accused only of inflating asset values to make more money. The documents prove this over and over again. This is a venial sin, not a mortal sin. Defendants did not commit murder or arson. They did not rob a bank at gunpoint. Donald Trump is not Bernard Madoff. Yet, defendants are incapable of admitting the error of their ways. Instead, they adopt a "See no evil, hear no evil, speak no evil" posture that the evidence belies.

This Court is not constituted to judge morality; it is constituted to find facts and apply the law. In this particular case, in applying the law to the facts, the Court intends to protect the integrity of the financial marketplace and, thus, the public as a whole. Defendants' refusal to admit error—indeed, to continue it, according to the Independent Monitor—constrains this Court to conclude that they will engage in it going forward unless judicially restrained.

Indeed, Donald Trump testified that, even today, he does not believe the Trump Organization needed to make any changes based on the facts that came out during this trial.

Trump Organization's History of Corporate Malfeasance

In considering the need for ongoing injunctive relief, this Court is mindful that this action is not the first time the Trump Organization or its related entities has been found to have engaged in

[60] Thus, even after Weisselberg pleaded guilty to committing fraud at the Trump Organization, Eric Trump and Donald Trump, Jr. left Weisselberg in his critical role as CFO for an additional five months.

corporate malfeasance. Of course, the more evidence there is of defendants' ongoing propensity to engage in fraud, the more need there is for the Court to impose stricter injunctive relief. This is not defendants' first rodeo.

In August 2013, OAG sued Donald Trump, the Trump Organization, and affiliated entities doing business as "Trump University" for fraud in the marketing and operation of "Trump University." People v Trump Entrepreneur Initiative LLC, Sup Ct, NY County, Index No. 451463/2013. That litigation was resolved as part of a class action settlement in which Donald Trump and the Trump Organization agreed to pay $25 million to Trump University clients. Id. at NYSCEF Doc. 336.

In June 2018, OAG sued Donald Trump, Donald Trump, Jr., Eric Trump, and others for persistent violations of law arising out of the Donald J. Trump Foundation, including "failure to follow basic fiduciary obligations or implement even elementary corporate formalities required by law." People v Trump, Sup Ct, NY County, Index No. 451130/2018. That litigation was resolved in November 2019 pursuant to a settlement that included the dissolution of the Foundation and a requirement that Donald Trump, Jr. and Eric Trump attend training on the responsibilities of officers and directors of charitable organizations. Id. at NYSCEF Doc. 139.

On May 3, 2022, the Trump Organization and the Trump Old Post Office LLC entered into a settlement agreement with the Office of the Attorney General for the District of Columbia arising out of allegations that the 58th Presidential Inaugural Committee paid excessive fees to the Old Post Office LLC that accrued to defendants' benefit. See https://oag.dc.gov/sites/default/files/2022-05/Trump-PIC-Consent-Motion-Settlement-Order.pdf.

And finally, as previously noted, on August 18, 2022, Weisselberg pleaded guilty to 15 criminal counts of tax fraud, including four counts of Falsifying Business Records, while at the Trump Organization. People v Weisselberg, Indictment No. 1473-2021 (Sup Ct, NY County). In that same case, the Trump Organization, the Donald J. Trump Revocable Trust and DJT Holdings LLC were convicted of 17 criminal counts arising out of tax fraud, including seven counts of Falsifying Business Records. People v The Trump Corp., Sup Ct, NY County, Indictment No. 1473/2021.

Accordingly, this Court finds that defendants are likely to continue their fraudulent ways unless the Court grants significant injunctive relief.

Continuation of Judge Jones as Independent Monitor

The Court hereby concludes and orders that Judge Jones shall continue in her role as Independent Monitor for a period of no less than three years. However, Judge Jones's role and duties shall be enhanced from those operative during the preliminary injunction, as her observations over the past 14 months indicate that still more oversight is required.

In particular, the Trump Organization shall be required to obtain prior approval—not, as things are now, subsequent review—from Judge Jones before submitting any financial disclosure to a third party, so that such disclosure may be reviewed beforehand for material misrepresentations.

Within 30 days of this Decision and Order, Judge Jones shall submit a proposed order to the Court outlining the specific authority she believes that she needs to keep defendants honest, and the obligations of defendants, to effectuate a productive and enhanced monitorship going forward.

Appointment of an Independent Director of Compliance

In addition to the continued monitorship, the Court hereby orders that an Independent Director of Compliance be installed at the Trump Organization, who shall be responsible for ensuring good financial and accounting practices, shall establish internal written protocols for financial reporting, and shall also approve any financial disclosures to third parties in advance of submission.

The Independent Director of Compliance shall report directly to Judge Jones, and the Trump Organization shall pay such person reasonable compensation.

Within 30 days of this Decision and Order, Judge Jones shall submit to the Court a proposed order including, without limitation, a list of proposed persons who may fulfil this role, and the specifics of the role itself.

Prior Cancellation of Business Licenses

In its September 26, 2023, Decision and Order granting partial summary judgment to OAG, this Court ordered the cancellation of defendants' business licenses. The Appellate Division, First Department has stayed this relief pending the final disposition on appeal.

However, as going forward there will be two-tiered oversight, an Independent Monitor and an Independent Director of Compliance, of the major activities that could lead to fraud, cancellation of the business licenses is no longer necessary.[61] Accordingly, this Court hereby modifies its September 26, 2023, Decision and Order solely to the extent of removing the language ordering the LLCs cancellation en masse. The restructuring and potential dissolution of any LLCs shall be subject to individual review by the Court appointed Independent Director of Compliance in consultation with Judge Jones.

Industry Bans

The Attorney General asks, and the Court has the authority, temporarily or permanently, to enjoin certain defendants from participating in certain business activities as a result of their persistent fraud. See People v Fashion Place Assoc., 224 AD2d 280 (1st Dept 1996) (upholding injunction barring defendants from involvement in the sale of real estate securities from or within

[61] This Court did not order the corporate cancellations cavalierly. Although Executive Law § 63(12) expressly allows a Court to do this, doing so could implicate serious economic concerns.

New York); People v Imported Quality Guard Dogs, Inc., 930 NYS2d 906, 908 (2d Dept 2011) (affirming order permanently enjoining defendant from engaging in the business that gave rise to his wrongful conduct).

The evidence is overwhelming that Allen Weisselberg and Jeffrey McConney cannot be entrusted with controlling the finances of any business. Accordingly, this Court hereby permanently enjoins Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity operating in New York State.

The Court hereby enjoins Donald Trump, Allen Weisselberg, and Jeffrey McConney from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years.

The Court hereby enjoins Donald Trump and the Trump Organization and its affiliates from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years.

The Court hereby enjoins Eric Trump and Donald Trump, Jr. from serving as an officer or director of any New York corporation or other legal entity for a period of two years.

CONCLUSION AND ORDER

For the reasons stated herein, it is hereby

ORDERED that defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable under the second, third, fourth, fifth, and seventh causes of action; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are liable under the sixth cause of action; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, are jointly and severally liable to plaintiff in the amount of $168,040,168, with pre-judgment interest from March 4, 2019; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable to plaintiff in the amount of $126,828,600, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable to plaintiff in the amount of $60,000,000, with pre-judgment interest from June 26, 2023; and it is further

ORDERED that defendant Eric Trump is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Donald Trump, Jr. is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Allen Weisselberg is liable to plaintiff in the amount of $1,000,000, with pre-judgment interest from January 9, 2023; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are hereby permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State; and it is further

ORDERED that defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, are hereby enjoined from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of three years; and it is further

ORDERED that defendants Eric Trump and Donald Trump, Jr., are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years; and it is further

ORDERED that this Court's September 26, 2023, Decision and Order is hereby modified solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence; and it is further

ORDERED that the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones (ret.) shall submit to the Court a proposed order outlining the specify authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward; and it is further

ORDERED that an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance; and it is further

ORDERED that the Clerk hereby enter judgment accordingly.

DATE: 2/16/2024 **ARTHUR F. ENGORON, JSC**

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

EXHIBIT S

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff*, *-against-* DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC, *Defendants*.	Index No. 452564/2022 **JUDGMENT**

WHEREAS this matter came on for a bench trial before Hon. Arthur F. Engoron, Justice of the Supreme Court of the State of New York, at the courthouse at 60 Centre Street, New York, New York, that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024; and

WHEREAS this Court rendered a DECISION AND ORDER ON MOTIONS dated September 26, 2023 (NYSCEF Doc. No. 1531), which determined, inter alia, that defendants Donald J. Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable

on the first cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

WHEREAS this Court rendered a DECISION AND ORDER AFTER NON-JURY TRIAL dated February 16, 2024 (NYSCEF Doc. No. 1688) which found, inter alia, that:

(1) defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the second, third, fourth, fifth, and seventh causes of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

(2) defendants Allen Weisselberg and Jeffrey McConney are liable on the sixth cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1),

NOW, on motion of Letitia James, Attorney General of the State of New York, counsel for plaintiff the People of the State of New York, whose address is 28 Liberty Street, 16th floor, New York, New York 10005, it is

ADJUDGED, as follows:

1. Plaintiff recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings Managing Member, whose last known place of business is at 725 5th

Ave, New York, NY 10022, Trump Endeavor 12 LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, 401 North Wabash Venture LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and 40 Wall Street LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$168,040,168**, with 9% interest thereon from March 4, 2019 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

2. Plaintiff recover from defendants Donald J. Trump who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and the Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$126,828,600**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

3. Plaintiff recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, and Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$60,000,000**, with 9% interest thereon from June

26, 2023 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

4. Plaintiff recover from defendant Eric Trump, who resides at 502 Bald Eagle Drive, Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

5. Plaintiff recover from defendant Donald Trump, Jr., who resides at 494 Mariner Dr., Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor; and

6. Plaintiff recover from defendant Allen Weisselberg, who resides at 6554 Piemonte Dr, Boynton Beach, FL 33472, in the amount of **$1,000,000**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

7. defendants Allen Weisselberg and Jeffrey McConney, as of the date of the Court's Decision And Order After Non-Jury Trial, are permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

8. defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney, as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years;

9. defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC, as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years;

10. defendants Eric Trump and Donald Trump, Jr., as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years;

11. the Court's September 26, 2023 Decision and Order (NYSCEF Doc. No. 1531) is modified as of the date of the Court's Decision And Order After Non-Jury Trial, solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence;

12. the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years;

13. within 30 days of the date of the Court's Decision And Order After Non-Jury Trial, the Independent Monitor shall submit to the Court a proposed order outlining the specific authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward;

14. an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and

15. within 30 days of the date of the Court's Decision And Order After Non-Jury Trial, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance.

ADJUDGED that this Judgment shall bear interest from the date of its entry at the statutory rate of 9% per annum.

Dated: New York, New York
February 20, 2024

_____
Clerk, Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff*, *-against-* DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC, *Defendants*.	Index No. 452564/2022

JUDGMENT

Letitia James,
Attorney General of the State of New York
Attorney for Plaintiff
28 Liberty Street, 16th Floor
New York, New York 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Of Counsel

EXHIBIT T

LAW OFFICES
ROBERT & ROBERT PLLC

526 RXR PLAZA
UNIONDALE, NEW YORK 11566
(516) 832-7000
FACSIMILE (516) 832-7000

ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET, SUITE 4600
NEW YORK, NEW YORK 10165*
(212) 858-9270
*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

February 21, 2024

VIA NYSCEF
Hon. Arthur F. Engoron, J.S.C.
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

We write on behalf of all Defendants in response to the Attorney General's improper, unilateral submission of a proposed Judgment to the Clerk of the Court on February 20, 2024, at 5:21 p.m. (the "Proposed Judgment") (NYSCEF No. 1690), which incredibly states that it is "**on motion** of Letitia James, Attorney General of the State of New York," but fails to provide any notice whatsoever, thereby depriving Defendants of the opportunity to be heard before judgment is entered. As set forth below, Defendants respectfully request that the Court set a return date for the Proposed Judgment that affords Defendants sufficient time to submit a proposed counter-judgment.

As the Court of Appeals explained in *Funk v. Barry*, 89 N.Y.2d 364, 367 (1996), the appropriate procedural mechanism for submitting a judgment to the Clerk of the Court "for more complicated dispositions, such as orders involving restraints or contemplating a set of follow-up procedures" is a directive to "settle order." "Because the decision ordinarily entails more complicated relief, the instruction contemplates notice to the opponent so that both parties may either agree on a draft or prepare counter proposals to be settled before the court (*id; see,* 22 NYCRR 202.48[c]; *see also* Siegel, N.Y. Prac. § 250, at 376–377 [2d ed.])." *Id.*

The Court's Decision and Order After Non-Jury Trial, dated February 16, 2024 (NYSCEF No. 1688) (the "February 16 Decision") directed the Clerk of the Court to "enter judgment." Notwithstanding, the Attorney General has now taken it upon herself to submit a proposed judgment to the Clerk of the Court ***without notice*** to the Defendants and ***without conferring*** with Defendants' counsel, clearly hoping that the Clerk will issue the Proposed Judgment ***before*** Defendants even have a chance to review it, let alone submit a proposed counter-judgment. This conduct not only violates the February 16 Decision, but it is clearly designed and intended to prejudice the Defendants.

Given the Attorney General's submission of the Proposed Order, and the fact that the February 16 Decision "entails more complicated relief," including "restraints" and "follow-up procedures" (*see id.*), Defendants submit that the appropriate procedural mechanism for submitting a judgment to the Clerk of the Court is a directive to "settle order." Defendants therefore request that the Court set a return date for the Proposed Judgment that affords Defendants sufficient time to submit a proposed counter-judgment. To deprive Defendants of the opportunity to submit a proposed counter-judgment would be contrary to fundamental fairness and due process.

Should the Court have any questions, please feel free to contact me.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record

EXHIBIT U

LAW OFFICES
ROBERT & ROBERT PLLC

526 RXR PLAZA
UNIONDALE, NEW YORK 11566
(516) 832-7000
FACSIMILE (516) 832-7000

ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET, SUITE 4600
NEW YORK, NEW YORK 10165*
(212) 858-9270
*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

February 22, 2024

VIA NYSCEF
Hon. Arthur F. Engoron, J.S.C.
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

We write on behalf of all Defendants.

Annexed hereto as **Exhibit A** is a copy of yesterday's and today's e-mail correspondence between the Court, Defendants and the Attorney General.

Should the Court have any questions, please feel free to contact me.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record

EXHIBIT “A”

From: "Hon. Arthur Engoron" <aengoron@nycourts.gov>
Date: February 22, 2024 at 11:37:05 AM EST
To: Clifford Robert <crobert@robertlaw.com>, "Amer, Andrew" <Andrew.Amer@ag.ny.gov>, "Wallace, Kevin" <Kevin.Wallace@ag.ny.gov>, chris kise <chris@ckise.net>, ckise@continentalpllc.com, Alina Habba <ahabba@habbalaw.com>, "Faherty, Colleen" <Colleen.Faherty@ag.ny.gov>, "Solomon, Louis" <Louis.Solomon@ag.ny.gov>
Cc: "Allison R. Greenfield" <argreenf@nycourts.gov>
Subject: RE: People v. Trump, et al., No. 452564/2022

Dear Mr. Robert,

You have failed to explain, much less justify, any basis for a stay.

I am confident that the Appellate Division will protect your appellate rights.

Justice Engoron

From: Clifford Robert
To: Hon. Arthur Engoron
Cc: Amer, Andrew; Wallace, Kevin; chris kise; ckise@continentalpllc.com; Alina Habba; Faherty, Colleen; Solomon, Louis; Allison R. Greenfield; Michael Farina
Subject: Re: People v. Trump, et al., No. 452564/2022
Date: Thursday, February 22, 2024 11:29:16 AM

Dear Justice Engoron:

We are in receipt of your email where the Court does not address the defendants' request for a temporary stay of enforcement of the Judgment necessary to protect defendants' appellate rights and ensure an orderly post judgment process.

As the Court is well aware, the Monitor that the Court appointed remains in place. As such there is no exigency or potential prejudice to the attorney general from a brief stay of enforcement of the Judgment. To the contrary the prejudice to the defendants is considerable.

Respectfully,

Clifford S. Robert
Robert & Robert PLLC

Long Island Office
526 RXR Plaza
Uniondale, New York 11556
Tel: 516-832-7000
Fax: 516-832-7080
Mail and Service of Process Address

Manhattan Office
One Grand Central Place
60 East 42nd Street, Suite 4600
New York, New York 10165
Tel: 212-858-9270

www.robertlaw.com

****

On Feb 22, 2024, at 11:13 AM, Hon. Arthur Engoron <aengoron@nycourts.gov> wrote:

Dear Mr. Robert,

I have confirmed that the judgment that the Attorney General has proposed has been updated to correct the error regarding the starting date for Mr. Weisselberg's pre-judgment interest.

However, there is no evidence in the record to corroborate your claim that the entity defendants' addresses are incorrect. Conversely, there is ample evidence in the record that the correct address for the subject defendant entities is Trump Tower, 725 Fifth Avenue, New York, New York. NYSCEF Docs. Nos. 245, 264, and 268-271.

You have again asked for time to file a proposed counter-judgment again without explaining in what way the Attorney General's proposed judgment is incorrect (except as dealt with above) and again without specifying how your proposed judgment would differ. The proposed judgment accurately reflects the spirit and letter of the February 16 Decision and Order.

Accordingly, I intend to sign the proposed judgment this morning and to send it to the Clerk for further processing.

Justice Engoron

From: Amer, Andrew <Andrew.Amer@ag.ny.gov>
Sent: Thursday, February 22, 2024 9:24 AM
To: Hon. Arthur Engoron <aengoron@nycourts.gov>
Cc: Allison R. Greenfield <argreenf@nycourts.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Clifford Robert <crobert@robertlaw.com>; chris kise <chris@ckise.net>; ckise@continentalpllc.com; Alina Habba <ahabba@habbalaw.com>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: RE: People v. Trump, et al., No. 452564/2022

Dear Justice Engoron:

Attached is a courtesy copy of OAG's brief letter response (NYSCEF No. 1695) to Defendants' letter (NYSCEF No. 1693). I am also attaching for the Court's convenience a Word and pdf version of Plaintiff's proposed judgment filed yesterday but with the agreed-upon correction to the pre-judgment interest accrual date for Mr. Weisselberg's disgorgement amount.

Respectfully,

Andrew Amer | Special Counsel
New York State Office of the Attorney General
Executive Division
28 Liberty Street
New York, NY 10005
Tel: (212) 416-6127
Email: Andrew.Amer@ag.ny.gov

From: Amer, Andrew
Sent: Wednesday, February 21, 2024 4:12 PM
To: Hon. Arthur Engoron <aengoron@nycourts.gov>
Cc: Allison R. Greenfield <argreenf@nycourts.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Clifford Robert <crobert@robertlaw.com>; chris kise <chris@ckise.net>; ckise@continentalpllc.com; Alina Habba <ahabba@habbalaw.com>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: RE: People v. Trump, et al., No. 452564/2022

Dear Justice Engoron:

The judgment clerk has advised us that because the judgment will include both monetary and equitable relief, it needs to be signed by Your Honor rather than the clerk. *See* CPLR 5016(c). Accordingly, attached is a proposed judgment that OAG has slightly revised only to modify the caption to identify the location of the Court, change the title to "Judgment [Proposed]," add a final line instructing the Clerk to calculate the interest and enter judgment, and change the signature line. We will shortly refile this proposed judgment on NYSCEF under the document type "Judgment – (Proposed) Submit Judgment Per Judge's Decision." Once Your Honor has determined the final form of the judgment after considering any competing proposal from Mr. Robert to be submitted by 5pm today, we ask that Your Honor sign the judgment and request that the judgment clerk enter the

judgment on an expedited basis to avoid any potential undue delay.

Respectfully,

Andrew Amer | Special Counsel
New York State Office of the Attorney General
Executive Division
28 Liberty Street
New York, NY 10005
Tel: (212) 416-6127
Email: Andrew.Amer@ag.ny.gov

From: Hon. Arthur Engoron <aengoron@nycourts.gov>
Sent: Wednesday, February 21, 2024 10:32 AM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Clifford Robert <crobert@robertlaw.com>; Alina Habba <ahabba@habbalaw.com>; ckise@continentalpllc.com; chris kise <chris@ckise.net>; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Solomon, Louis <Louis.Solomon@ag.ny.gov>
Cc: Allison R. Greenfield <argreenf@nycourts.gov>
Subject: People v. Trump, et al., No. 452564/2022

[EXTERNAL]

Dear Mr. Robert,

I have compared the language of the Attorney General's proposed judgment to the language of my February 16, 2024 Decision and Order, and the former exactly tracks the latter (except for the addition of defendants' addresses and blanks for interest amounts).

Please let me know, by 5pm today, if you object in any specific ways, and how your counter-judgment would differ. Given the foregoing, I see no need for a motion or conference on this.

Justice Engoron

EXHIBIT V

LAW OFFICES
ROBERT & ROBERT PLLC

526 RXR PLAZA
UNIONDALE, NEW YORK 11566
(516) 832-7000
FACSIMILE (516) 832-7000

ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET, SUITE 4600
NEW YORK, NEW YORK 10165*
(212) 858-9270
*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

February 21, 2024

VIA NYSCEF
Hon. Arthur F. Engoron, J.S.C.
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

We write on behalf of all Defendants in response to the Court's e-mail of today's date, stating that the Court "see[s] no need for a motion or conference[,]" and directing Defendants to "let [the Court] know by 5pm today, if [Defendants] object in any specific ways, and how [Defendants] counter-judgment would differ." A copy of the Court's e-mail is annexed hereto as **Exhibit A**.

Defendants respectfully submit that the concerns raised in their letter of today's date about the Attorney General's unilateral submission of a proposed Judgment to the Clerk of the Court, stating that it is made "**on motion**," merit full compliance with the CPLR and the Uniform Civil Rules for the Supreme Court and the County Court. The Court's direction that it sees "no need for a motion or conference," because the proposed Judgment "exactly tracks the" February 16 Decision, ignores the fact that the proposed Judgment expressly states that a motion has been made, which is simply wrong. The Attorney General has not filed *any* motion on notice, nor moved to settle the proposed Judgment; her unseemly rush to memorialize a "judgment" violates all accepted practice in New York state court.

Should the Court decide that the standard processes set forth in the CPLR and the Uniform Civil Rules for the Supreme Court and the County Court do not apply in this case, and proceed to enter the Attorney General's proposed Judgment, Defendants request the Court stay enforcement of that Judgment for thirty (30) days. Given that the court-appointed monitor continues to be in place, there is no prejudice to the Attorney General in briefly staying enforcement to allow for an orderly post-Judgment process, particularly given the magnitude of Judgment.

In addition, the Court should be aware of two errors in the proposed Judgment, which Defendants have thus far identified in the extremely limited time provided by the Court. First, the date on which interest begins to accrue for the Judgment against defendant Allen Weisselberg is January 9, 2023, not May 11, 2022. The Attorney General's proposed Judgment seeks nearly eight (8) additional months of interest than that provided for in the February 16 Decision. Second, several of the addresses for the Defendants in the proposed Judgment are incorrect; set forth below is a chart containing the proper addresses for certain Defendants.

Entity Name:	Address:
Donald J. Trump Revocable Trust	1100 South Ocean Boulevard, West Palm Beach, FL 33480
DJT Holdings LLC	Trump National Golf Club Jupiter, 115 Eagle Tree Terrace, Jupiter, FL 33477
DJT Holdings Managing Member LLC	Trump National Golf Club Jupiter, 115 Eagle Tree Terrace, Jupiter, FL 33477
Trump Endeavor 12 LLC	Trump National Doral Miami, 4400 NW 87th Avenue, Miami, FL 33178
401 North Wabash Venture LLC	Trump National Golf Club Jupiter, 115 Eagle Tree Terrace, Jupiter, FL 33477
Trump Old Post Office LLC	Trump National Golf Club Jupiter, 115 Eagle Tree Terrace, Jupiter, FL 33477

Lastly, at 4:23 p.m., the Attorney General e-filed a "slightly revised" proposed Judgment (NYSCEF No. 1692), which purports to make certain changes based upon advice that she received from the "judgment clerk." Given that Defendants only received the revised proposed Judgment a few moments ago, we have not had a chance to review it. However, the "slightly revised" proposed Judgment only further serves as proof that the Attorney General's rush to memorialize a "judgment" violates all accepted practice in New York state court and is intended to prejudice Defendants.

Defendants reiterate their request that the Court set a return date for the proposed Judgment that affords Defendants sufficient time to submit a proposed counter-Judgment.

Should the Court have any questions, please feel free to contact me.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record

EXHIBIT “A”

From: Hon. Arthur Engoron <aengoron@nycourts.gov <mailto:aengoron@nycourts.gov> >
Sent: Wednesday, February 21, 2024 10:32 AM
To: kevin.wallace@ag.ny.gov <mailto:kevin.wallace@ag.ny.gov> ; Clifford Robert <crobert@robertlaw.com <mailto:crobert@robertlaw.com> >; Alina Habba <ahabba@habbalaw.com <mailto:ahabba@habbalaw.com> >; ckise@continentalpllc.com <mailto:ckise@continentalpllc.com> ; chris kise <chris@ckise.net <mailto:chris@ckise.net> >; Amer, Andrew <Andrew.Amer@ag.ny.gov <mailto:Andrew.Amer@ag.ny.gov> >; Faherty, Colleen <Colleen.Faherty@ag.ny.gov <mailto:Colleen.Faherty@ag.ny.gov> >; Solomon, Louis <Louis.Solomon@ag.ny.gov <mailto:Louis.Solomon@ag.ny.gov> >
Cc: Allison R. Greenfield <argreenf@nycourts.gov <mailto:argreenf@nycourts.gov> >
Subject: People v. Trump, et al., No. 452564/2022

Dear Mr. Robert,

I have compared the language of the Attorney General's proposed judgment to the language of my February 16, 2024 Decision and Order, and the former exactly tracks the latter (except for the addition of defendants' addresses and blanks for interest amounts).

Please let me know, by 5pm today, if you object in any specific ways, and how your counter-judgment would differ. Given the foregoing, I see no need for a motion or conference on this.

Justice Engoron

EXHIBIT W

At an IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the New York County Court House, 60 Centre Street, New York, New York, on the ___ day of February 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

JUDGMENT [PROPOSED]

WHEREAS this matter came on for a bench trial before Hon. Arthur F. Engoron, Justice of the Supreme Court of the State of New York, at the courthouse at 60 Centre Street, New York, New York, that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024; and

WHEREAS this Court rendered a DECISION AND ORDER ON MOTIONS dated September 26, 2023 (NYSCEF Doc. No. 1531), which determined, inter alia, that defendants Donald J. Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT

Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the first cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

WHEREAS this Court rendered a DECISION AND ORDER AFTER NON-JURY TRIAL dated February 16, 2024 (NYSCEF Doc. No. 1688) which found, inter alia, that:

(1) defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the second, third, fourth, fifth, and seventh causes of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

(2) defendants Allen Weisselberg and Jeffrey McConney are liable on the sixth cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1),

NOW, on motion of Letitia James, Attorney General of the State of New York, counsel for plaintiff the People of the State of New York, whose address is 28 Liberty Street, 16th floor, New York, New York 10005, it is

ADJUDGED, as follows:

1. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New

York, NY 10022, DJT Holdings LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings Managing Member, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Endeavor 12 LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, 401 North Wabash Venture LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and 40 Wall Street LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$168,040,168**, with 9% interest thereon from March 4, 2019 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

2. Plaintiff have judgment and do recover from defendants Donald J. Trump who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and the Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$126,828,600**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

3. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, and Trump Organization LLC, whose last known place of business is at 725 5th Ave,

New York, NY 10022, jointly and severally, the amount of **$60,000,000**, with 9% interest thereon from June 26, 2023 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

4. Plaintiff have judgment and do recover from defendant Eric Trump, who resides at 502 Bald Eagle Drive, Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

5. Plaintiff have judgment and do recover from defendant Donald Trump, Jr., who resides at 494 Mariner Dr., Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor; and

6. Plaintiff have judgment and do recover from defendant Allen Weisselberg, who resides at 6554 Piemonte Dr, Boynton Beach, FL 33472, in the amount of **$1,000,000**, with 9% interest thereon from May 11, 2022 in the amount of $_____ amounting to the sum of $_____, and that the Plaintiff have execution therefor;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

7. defendants Allen Weisselberg and Jeffrey McConney, as of the date of the Court's Decision And Order After Non-Jury Trial, are permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

8. defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney, as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years;

9. defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC, as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years;

10. defendants Eric Trump and Donald Trump, Jr., as of the date of the Court's Decision And Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years;

11. the Court's September 26, 2023 Decision and Order (NYSCEF Doc. No. 1531) is modified as of the date of the Court's Decision And Order After Non-Jury Trial, solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence;

12. the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years;

13. within 30 days of the date of the Court's Decision And Order After Non-Jury Trial, the Independent Monitor shall submit to the Court a proposed order outlining the specific authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward;

14. an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and

15. within 30 days of the date of the Court's Decision And Order After Non-Jury Trial, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance.

ADJUDGED that this Judgment shall bear interest from the date of its entry at the statutory rate of 9% per annum.

ORDERED that the Clerk is directed to calculate the interest and enter judgment in accordance with the above in favor of the Plaintiff.

ENTER

Dated: New York, New York
February ___, 2024

_____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff*, *-against-* DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC, *Defendants*.	Index No. 452564/2022

JUDGMENT [PROPOSED]

Letitia James,
Attorney General of the State of New York
Attorney for Plaintiff
28 Liberty Street, 16th Floor
New York, New York 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Of Counsel

EXHIBIT X

Judgment/SOL Analysis

Relevant Dates for Analysis	
For Defendants ….	*Claims are barred if transaction was completed before…..*
Not Bound by Tolling Agreemen	February 6, 2016
Bound by Tolling Agreement	July 13, 2014

Key
Yellow = Within SOL
Gray = Outside SOL

Transaction	Amount Awarded	Prejudgment Interest	Description of Award	Date Transaction Closed	Notes
Old Post Office Award	134,854,648	21,713,445.66	"Ill-Gotten Profits" from sale of OPO	February 1, 2012	Combined all damages from profits, including ET + Don Jr.
Ferry Point	60,000,000	3,580,273.97	"Windfall profits"	February 21, 2012	
Doral Loan	72,908,308	32,664,919.47	"Ill-Gotten Interest Rate Savings" from 2014-2022	June 11, 2012	These all come from the $168,040,168 award. There is a $1 discrepancy from the individual amounts of the "interest rate savings" and the overall amount awarded, as acknowledged by the opinion.
Chicago Loan	17,443,359	7,815,102.73	"Ill Gotten Interest Rate Savings" from 2014-2022	November 9, 2012	
Old Post Office Loan	53,423,209	23,935,061.28	"Ill-Gotten Interest Rate Savings" from 2015-2022	August 12, 2014	
40 Wall Street Loan	24,265,291	10,871,515.17	"Ill-Gotten Interest Rate Savings" from 2015-2022	November 2015	
Misc. Damages (AW)	1,000,000	101,095.89	"Ill-Gotten Gain" from Severance		
TOTAL AWARDED	**363,894,815**				
	TOTAL WITH INTEREST	***464,576,229***			

	Without Interest	*With Interest*
TOTAL DAMAGES BARRED BY SOL	**285,206,315**	350,980,057
TOTAL DAMAGES REMAINING	**78,688,500**	113,596,172

EXHIBIT Y

WSJ | OPINION

OPINION REVIEW & OUTLOOK

Elon Musk and Donald Trump Cases Imperil the Rule of Law

American prosperity rests on equal justice. Delaware and New York judges have called it into question.

By Jeb Bush and Joe Lonsdale
Feb. 21, 2024, 2:14 pm ET

Donald Trump in Minden, Nev., Oct. 8, 2022, and Elon Musk in Wilmington, Del., July 12, 2021.
PHOTO: /ASSOCIATED PRESS

The U.S. is the business capital of the world in large part because of its robust constitutional system and impartial judiciary. But two unprecedented legal decisions, against Donald Trump in New York and Elon Musk in Delaware, call that into question. In both cases, judges

have ordered massive punitive judgments on behalf of dubious or nonexistent "victims."

Every American has a right to be critical of Mr. Trump's politics—one of us ran against him in 2016—or Mr. Musk's public persona. But equality before the law is precious, and these rulings represent a crisis not only for the soundness of our courts, but for the business environment that has allowed the U.S. to prosper. If these rulings stand, the damage could cascade through the economy, creating fear of arbitrary enforcement against entrepreneurs who seek public office or raise their voices as citizens in a way that politicians dislike.

In Delaware, Chancellor Kathaleen McCormick of the Court of Chancery ordered the unwinding of five years of Mr. Musk's incentive-based compensation at Tesla, which had been approved by 80% of the company's shareholders. The plaintiff, Richard Tornetta, held nine shares in 2018—worth about $200 then and $2,000 today, after the execution of the compensation plan that supposedly injured him.

Mr. Musk's compensation plan awarded him stock bonuses tied to earnings and stock-value benchmarks, which many critics thought he could never meet. When he did, he received $56 billion, enriching shareholders like Mr. Tornetta along the way. Judge McCormick has yet to say how she wants the pay package unwound, but Mr. Tornetta's lawyers could petition her for a percentage of the $56 billion as a fee for having succeeded in their challenge. Mr. Musk's performance at Tesla enriched all shareholders, but Judge McCormick's ruling may primarily enrich Delaware trial lawyers.

In New York, Judge Arthur Engoron ordered Mr. Trump to pay more than $350 million in a civil fraud judgment for inflating the value of his real-estate holdings. That case was brought by Attorney General Letitia James, who ran for office in 2018 on a promise to target the man she called "an illegitimate president."

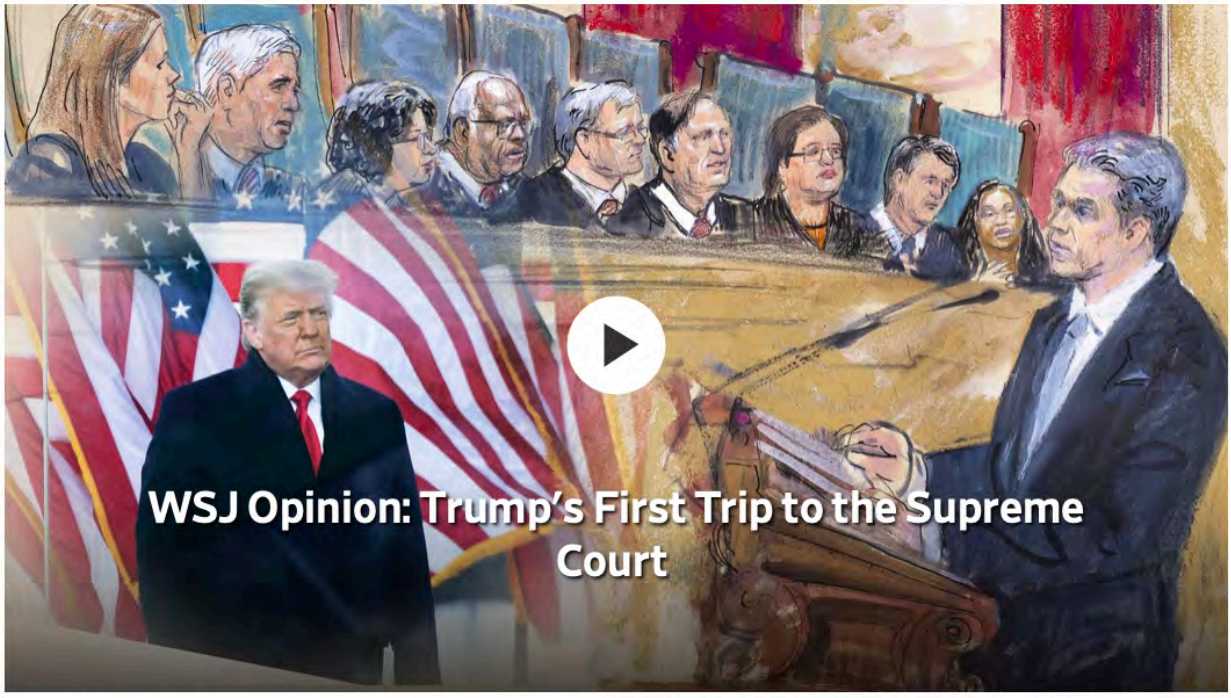
The unusual New York law Ms. James used to investigate and sue Mr. Trump didn't require her to prove that he had intended to defraud anyone, or even that anyone lost money. The Associated Press found that of the 12 cases brought under that law since its adoption in 1956 in which significant penalties were imposed, the case against Mr. Trump was the only instance without an alleged victim or financial loss. Bankers from Deutsche Bank, which lent money to Mr. Trump, testified that they were satisfied with having done so, given they were paid back on time and with interest. They also testified that they were uncertain whether the alleged exaggerations would have affected the terms of the loans to Mr. Trump—a key part of Ms.

James's case. Since there were no victims, the state will collect the damages.

New York and Delaware have played an outsize role in business in the U.S. Many major companies are incorporated in Delaware owing to the state's body of corporate legal precedents; and a significant number of banks operate in New York, the world financial capital. The appellate courts in those states now have a chance to review these dangerous judicial rulings and try to stop further damage to the reputations of their respective judiciaries.

If they don't, blue-state politicians may have the satisfaction of "sticking it" to Messrs. Trump and Musk, but the loss to those states will be significant. The damage to the legal fabric of the country will be even worse. A dispassionate justice system is at the heart of American exceptionalism, and the country will be poorer if we lose it.

Mr. Bush served as governor of Florida, 1999-2007. Mr. Lonsdale is a founder of Palantir and managing partner of 8VC.



Journal Editorial Report: The former president may not be banned in Colorado, after all. Images: Dana Verkouteren via AP/AFP/Getty Images Composite: Mark Kelly

Appeared in the February 22, 2024, print edition as 'Musk and Trump Cases Imperil the Rule of Law'.

Just the News.

'Shark Tank' investor Kevin O'Leary says he 'will never invest in New York' after Trump ruling

Even before the ruling, "New York was already a loser state," O'Leary said.

By Madeleine Hubbard
Published February 20, 2024, 10:57 am EST

Kevin O'Leary, the "Shark Tank" investor known as "Mr. Wonderful," said he would "never invest in New York" again and other investors feel the same way after a state judge ruledthat former President Donald Trump would have to pay more than $350 million in a civil fraud case brought by New York Democratic Attorney General Letitia James.

"Leaving the whole Trump thing out of it and seeing what occurred, I'm no different than any other investor. I'm shocked at this. I cannot understand or fathom the decision at all. There's no rationale for it," O'Leary, the chairman of O'Leary Ventures, said Monday on Fox Business.

O'Leary also said that "New York was already a loser state" due to its policies, including high taxes, and this title was only cemented further after Judge Arthur Engoron found Trump responsible for fraud before the trial even began.

The judge later ordered Trump to pay about $355 million and he banned the former president from serving as a director of a New York-based business for three years. Engoron also fined Trump's two eldest sons, Donald Trump Jr. and Eric Trump, $4 million and banned them from being directors of businesses in the state for two years.

"I would never invest in New York now, and I'm not the only person saying that," O'Leary also said. Rather than investing in New York, O'Leary said he is looking into Oklahoma, North Dakota and West Virginia because they are "winner states."

Follow Madeleine Hubbard on X or Instagram.

reason
FREE MINDS AND FREE MARKETS

The Volokh Conspiracy
Mostly law professors | Sometimes contrarian | Often libertarian | Always independent

About The Volokh Conspiracy

President Trump's Kafkaesque Civil Trial in New York State

Everything he has done since Nov. 2022 is null and void.

By Steven Calabresi
February 18, 2024, 3:10 pm EST

Donald Trump has been ordered to pay a $355 million fine and has been barred from doing business in New York State for three years. Judge Arthur Engoron ordered Trump to pay essentially all of his cash reserves of $400 million, which fine if upheld would force Trump to sell some of his real estate holdings to raise cash to live on. Once interest is added on the total fine will rise to $450 million. This is all on top of an $83.3 million fine Trump must pay for allegedly defaming the writer E. Jean Carroll. The fines in total could deprive Trump of between 11% and 13% of his wealth. Trump's adult sons Donald Jr. and Eric have also been fined, and

they are barred from doing business in New York State for two years. Ivanka or Melania Trump could legally run the Trump businesses for the next two years, but Judge Engoron appointed retired U.S. District Judge Barbara Jones to continue in her role as an "independent monitor" of the Trump business empire but expanded her authority to review financial disclosures *before* they are submitted to third parties. Judge Jones can hire an independent director of compliance, and she has the authority to compel Trump to sell some or even all of his businesses down the road. This is all punishment for Trump allegedly committing fraud by falsely in inflating and deflating the value of his real estate assets to pay lower state taxes and to receive more favorable loans from banks.

The New York State laws used to go after Trump have NEVER been used in this way, historically, and while Trump may owe some back state taxes, if Judge Engoron is right, not a single bank claimed that it had been defrauded by Trump in the loans it had made to him. This is truly a victimless crime.

Bankers took the stand at Trump's civil trial testifying that they would have gladly made loans to Donald Trump given his extraordinary success as a businessman. It must also be noted that the banks that made loans to Trump did not take his assessment of the net worth of his assets at face value but made their own independent assessments of the value of Trump's assets. This is apparently standard practice in the New York State real estate market where borrowers often overstate the value of their assets.

The bottom line is that a never before used New York State penalty has been twisted into a tool for a grossly excessive fine and more seriously the completely inappropriate appointment of Judge Jones as an "independent monitor" who can micromanage the Trump business, which she is not competent to do, and to even order the dissolution of the Trump Business in New York State. This outcome was pursued by Letitia James, a politically ambition Democrat, who is the Attorney General of New York State, and who hopes to win a future Democratic primary for Governor of or Senator from New York State.

Ms. James and Judge Engeron have essentially turned a vaguely worded New York State law into a modern day Bill of Attainder targeted at Donald Trump both for political gain and because they despise his political views and desperately want to call his truthfulness into question as he runs for President of the United States inn 2024. In doing this, the have violated Trump's First Amendment right to freedom of speech and of the press; his Fifth Amendment right not to be deprived of liberty or property without due process of law; his Fifth Amendment right not to have property taken

away from him except for a pubic use with just compensation being paid; his Eighth Amendment right not to be made to pay an excessive fine; his Article IV, Section 2 right as a citizen of Florida to do make and enforce contracts in New York on the same terms as are other New Yorkers; and his Fourteenth Amendment right to be free to pursue an occupation without unnecessary and burdensome regulation.

The civil fraud judgment against Donald Trump is a travesty and an unjust political act rivaled only in American politics by the killing of former Treasury Secretary Alexander Hamilton by Vice President Aaron Burr. If the New York State appellate courts do not reverse this judgment, the U.S. Supreme Court MUST grant cert on this case and reverse Judge Engeron's outrageous decisions. National, presidential politics will be permanently altered if a local State's legal system can be used in this way against candidates for President of the United States. This case raises a national issue of profound importance and if the New York State appellate courts do not address it, the U.S. Supreme Court MUST!

NEXT: **ADA Doesn't Require Employer to Keep Customer-Facing Employee Whose Tourette's Leads Him to Use Slurs**

STEVEN CALABRESI is the Clayton J. & Henry R. Barber Professor of Law at Northwestern Pritzker School of Law, where he specializes in constitutional law. He also teaches regularly at the Yale Law School. Before going into teaching, he worked in the Reagan White House, and was a Special Assistant for Attorney General Edwin Meese III.

American Thinker

New York's Trump Fraud Findings Refute Judge's Conclusions

By Jay Tucker
February 22, 2024

Last week, a New York court issued judgments against Donald J. Trump and his sons, asserting violation of state anti-fraud law in connection with several real estate mortgage loans. The judgments, which aggregate $355 million and may escalate to $454 million or more, shocked Republicans and Democrats alike and stunned the national real estate community. It was immediately apparent that something was wildly wrong, since the Trump transactions were nothing unusual or remarkable for the real estate industry.

Essential Requirements for Claims of Fraud

The case primarily involves applications for mortgage loans submitted by Trump entities to major federal banks. The state of New York claims that Trump, in connection with such loans, committed repeated fraudulent and illegal acts. The judge acknowledges that common law fraud (also known as "misrepresentation") requires a finding of five elements: (1) A material statement of fact (not opinion), (2) falsity, (3) knowledge of the falsity, (4) justifiable reliance by the alleged victim, and (5) damages. Although the judge apparently concludes that all of the elements have been proven, it is quite obvious that none, let alone all, of the required elements of fraud and misrepresentation were proven.

1. Material Statement of Fact: Most of the 92-page document relates to alleged false statements in so-called Statements of Financial Condition (SFCs), which were schedules of values allocated to various Trump properties. Values, by their nature, are opinions (not facts) and therefore cannot serve as a basis for a claim of fraud.

2. Falsity: The Statements of Financial Condition were merely statements of opinion submitted by the proposed borrowers and guarantor(s) and, thus, were neither true nor false.

3. Knowledge of the Falsity: The proposed borrowers knew that the SFCs were schedules of opinions as to values, were subject to debate, and were neither true nor false.

4. Justifiable Reliance by the Alleged Victim: The word *justifiable* appears only twice, only on page 2 of the document, and only with respect to a listing of the required elements of fraud and misrepresentation. The judge reports that some of the bankers indicated that they had relied on statements in the SFCs (i.e., as to valuations) in connection with making a loan, but the judge's findings do not provide any grounds for determining whether or not any such reliance was justified. Valid justifiable reliance does not even appear to be possible:

    a. The Office of the Controller of the Currency (OCC) has promulgated laws and regulations prohibiting federally chartered banks from making large commercial mortgage loans without first securing an appraisal by an independent and state-licensed and/or state-certified appraiser, which appraisal must comply with additional applicable requirements. Reliance upon other

valuations that deviate from the required appraisals is clearly not justified.

b. Valuations by the borrower or appraisers engaged by the borrower are subject to bias and conflicts of interest. Reliance on such tainted valuations is unwarranted and unwise and unjustified.

c. The judge's findings contain evidence that valuations contained in the SFCs submitted by Trump entities were summarily reduced 50% by one of the lenders, which lender also reduced valuations submitted by similar borrowers in similar situations in similar amounts. Such policies evidence that bankers recognize and acknowledge that they are not justified in relying on borrower valuations and, in fact, do not and will not so rely.

5. Damages: The findings confirm that all of the lenders suffered no loss or damage and apparently were paid in full and in a timely manner. Thus, yet another essential element for recovery for common law fraud and misrepresentation did not exist. As the Wall Street Journal concluded (2/17-18/2024), "there was no real financial victim."

Notwithstanding that New York, for the above reasons, has no valid claim on behalf of itself or any of the lenders for common law fraud and misrepresentation, New York is claiming under a state statute that some immaterial mistakes or misrepresentations justify recovery, not for the banks, but for the benefit of the state of New York, of all gains or profits that the borrower may have made on each project where claimed illegality may have occurred. All of this comes about, according to the judge, notwithstanding that the lenders suffered no financial or other loss, were not fraudulently induced to do anything, and were aware and comfortable with the notion that the banks are totally responsible for performing their own due diligence, securing of their own appraisals, and developing their own valuations.

In the Trump case, that approach has led to a claim that New York is entitled to recover for its own account (not for the account of any lender) the sum of at least $355 million, apparently just to teach Trump and others a lesson. The findings reveal no evidence of the amount or extent to which any bank would have raised its interest rate if the guarantor's (Trump's) net worth valuation had potentially been reduced by various amounts. New York's entitlement to such recovery and the amounts thereof will assuredly be challenged on appeal for the above reasons and for constitutional, equitable, and other reasons.

Pre-emption

A remedy for the disaster being thrust upon normal nationwide borrower/lender policies and procedures may be for Trump and one or more of the national banks to seek a judicial or OCC determination that New York is prevented and pre-empted by federal law from utilizing its state law for the purposes and in the manner utilized in the Trump case or in any other specific manner that "prevents or significantly interferes with" a national bank's exercise of its powers in connection with the Trump cases. If any lie can put a borrower out of business, even if there is no reliance on it, the entire nature of loan transactions will need wholesale realignment, at great expense to both borrower and lender.

Consequences

Other extremely damaging consequences will befall banks and other businesses alike.

The Trump judgment has caused consternation in the business community, especially in the real estate sector, the mortgage sector, and other business lending sectors. In cases where there may be claimed fraud or misrepresentation (material or otherwise), borrowers are now at great risk that New York will come after them for all their profits and gains on a project, notwithstanding that no one has suffered financial loss or damage. The Trump case provides excuse and incentive and warning for borrowers, lenders, and other businesses to avoid subjecting themselves to similar outrageous claims. That may, indeed, necessitate removing their businesses and all negotiations, contracts, meetings, and property from the jurisdiction of the state of New York.

Stalinist $370M judgment against Trump should be vacated immediately

The only way to restore confidence that New York will not destroy those with whom it disagrees is for the appellate tribunals to immediately vacate the judgment

By Arthur Fergenson
Published February 20, 2024 9:14am EST

Trump attorney says he will pay $400 million bond to appeal NY ruling

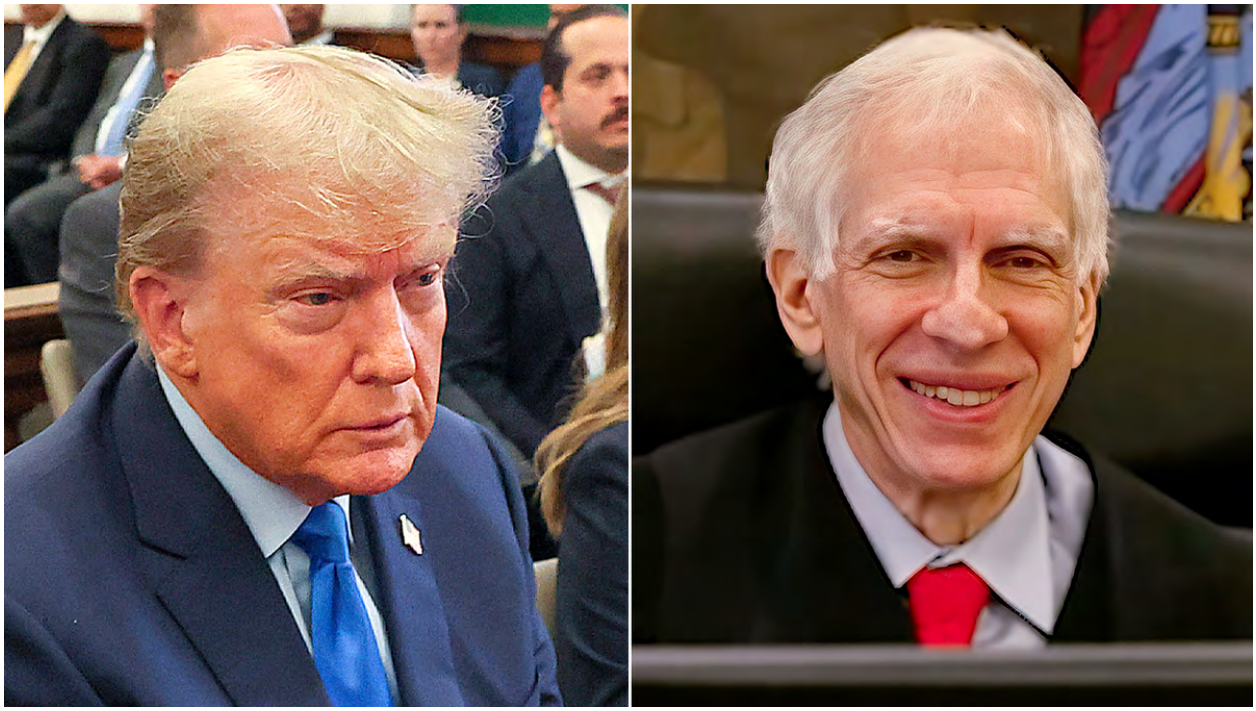
Constitutional attorney Mark Smith joined 'Fox & Friends First' to discuss the latest on Trump's legal woes and the news that the former president is challenging Judge Engoron's 'fraud' claims.

This past week Judge Arthur Engoron of New York State Supreme Court, the lowest level of courts of general jurisdiction, levied a mammoth fine of some $370 million, including interest, against Donald Trump for purported fraud under a New York statute.

The term fraud is used loosely since no one was defrauded, an element of a cause of action under common law fraud, and no one was harmed, also an

element, and there was no proof of reliance, another element. This is fraud "in the air," as the saying goes: no harm by no one against no one for no loss by anyone.

No one testified that they lost a penny from the purported fraud, or that they would not have wanted to deal with Trump as a customer. No one came forward to complain, except Attorney General Letitia James. But more about this modern-day Torquemada later in this column.



New York Judge Arthur Engoron ruled that former President Trump must pay over $350 million in damages to the state of New York as the result of his civil fraud trial. (Fox News)

Previously, the same judge ordered dissolution of Trump's businesses in the state, under the supervision of a receiver. That order was stayed by the appellate court pending appeal.

THE $355M TRUMP CRAZY CIVIL COURT DECISION HAS ALL KINDS OF UNEXPECTED CONSEQUENCES

Following the order of dissolution, The Associated Press reviewed nearly 150 reported cases under the statute used to punish Trump and stated "that nearly every previous time a company was taken away, victims and losses were key factors. Customers had lost money or brought defective products or never received services ordered, leaving them cheated and angry."

Angry, although not a word to describe a single customer, is Trump, and he has every right to be. But it is also a word, along with outraged, that applies to a range of commentators, not all allied with the former president.

Professor Jonathan Turley called the $370 million judgment confiscatory, extreme and abusive. Professor Steven Calabresi termed it a travesty and an unjust political act. The subhead for his online commentary employed the term "Stalinist." Both law professors are right.

Because the judgment does not relate to any loss, the $370 million is not, properly understood, violative of the prohibition against grossly excessive punitive damages. It does fall, however, directly within the excessive fines clause of the Eighth Amendment to the United States Constitution.

TRUMP BLASTS 'CLUBHOUSE POLITICIAN' JUDGE AFTER BEING FINED $350M, DEFENDS THE 'GREAT COMPANY' HE BUILT

In an opinion especially illuminating to understand the wrongdoing by the attorney general and Judge Engoron, the U.S. Supreme Court held in Timbs v. Indiana (2019), that the excessive fines clause is an incorporated protection applicable to the states (all of them, even New York) under the 14th Amendment to the U.S. Constitution.

The Supreme Court stated that the clause "traces it venerable lineage back to at least 1215" and the Magna Carta. "Despite Magna Carta, imposition of excessive fines persisted. The 17th century Stuart kings, in particular, were criticized for using large fines to raise revenue, harass their political foes, and indefinitely detain those unable to pay." These remain concerns.

As the Supreme Court stated in Timbs: "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate or chill the speech of political enemies, as the Stuarts' critics learned several centuries ago."

And excessive fines are a cheap source of revenue, in the case of Trump being a lot of revenue, especially for a state that has been bleeding population and high-income taxpayers.

The virtue of an Eighth Amendment challenge is that it places the political prejudices of the attorney general and the supine Judge Engoron relevant and front and center. James made getting Trump a centerpiece of her campaign for the post she now holds. All of her statements attacking Trump are now fodder for the inevitable appeal and attendant stay.

TRUMP FRAUD RULING REVEALS NEW YORK'S 'ASSAULT' ON REAL ESTATE, 'MR. WONDERFUL' SAYS: MOVE YOUR BUSINESS OUT

With this Stalinist judgment, it is no longer Trump who is on trial, but the New York state (in)justice system. Judge Engoron, New York's version of the infamous Judge Ito, has brought the New York courts into disrepute.

The only way to restore even a modicum of confidence that New York will not destroy those with whom it disagrees is for the appellate tribunals to take immediate action to vacate the judgment in its entirety as bringing into disrepute the state's courts. If the case survives even a day longer than tomorrow, Judge Engoron should be removed from the matter and replaced with a jurist who understands law and justice.

Finally, this is not the only case that New York prosecutors have levied against Trump. Manhattan District Attorney Alvin Bragg has indicted Trump for what is almost universally condemned as a legally meritless alleged crime.

While it is beyond the brief of this column to discuss it in more detail here, it does seem that cooperation by Bragg and James relating to their respective actions against Trump could potentially support a lawsuit by the former president under 42 U.S.C. 1983 and 1985 for violations of his constitutional rights.

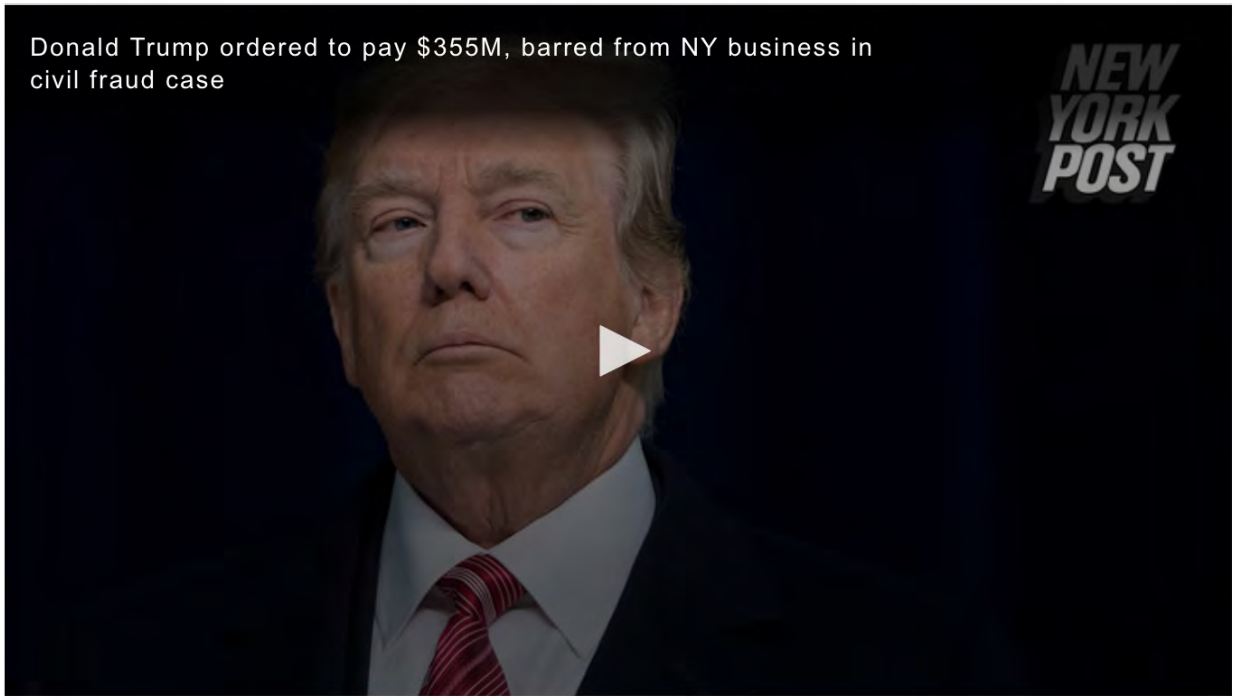
Congress has the power to investigate the possibility of collusion by these two New York officials, and should do so promptly. They owe it to not only to Trump, but also to all of us, wherever we might live.

Arthur Fergenson is senior counsel with Ansa Assuncao LLP. The views expressed are his alone and not those of the firm.

NEW YORK POST

Democrats weaponized justice system to punish Trump in business case

By Jonathan Turley
Published Feb. 19, 2024, 12:13 p.m. ET



Oscar Wilde wrote that “moderation is a fatal thing. Nothing succeeds like excess.” Justice Arthur Engoron took that line to heart with his absurd imposition of $455 million in fines and interest against Donald Trump and his corporation.

It succeeded wonderfully with New Yorkers, who celebrated the verdict like a popular public execution. It also worked wonderfully to make it difficult to appeal.

Much of the criticism of the decision focused on the unprecedented use of the law and the excessive size of the fine. The New York statute has been on the books for decades and has always been something of an anomaly in not requiring an actual victim or loss to justify disgorgement or fines.

Even the New York Times agreed that it could not find a single case in history where this statute was used against an individual or a company that did not commit a criminal offense, go bankrupt, or leave financial victims.

Donald Trump was ordered to pay $455 million in fines and interest.
Steven Hirsch

Under New York law, Trump cannot appeal this ruling without depositing the full amount, including interest, in a court account.
AP

Engoron then combined that unprecedented application with an equally extraordinary penalty, which is greater than the gross national product of some countries.

EXPLORE MORE

Biden laughs off question about Gavin Newsom being Democrats' 'Plan B' in 2024

Emotional Nikki Haley vows to fight on in GOP primary as new South Carolina poll shows her down 28 points to Trump

'The View' hosts think Biden could lose to Trump in a debate – here's why

He disgorged hundreds of millions in a case where not one dollar was lost by anyone. Indeed, the “victims” wanted to get more business from Trump and are now being prevented from doing so by Engoron.

There is also an added inequity to Engoron’s decision.

Under New York law, Trump cannot appeal this ruling without depositing the full amount, including interest, in a court account. Even for Trump, $455 million is hard to come by. Likewise, a bond would require a company to guarantee payment for a defendant who has been barred from doing business in New York and is facing the need to liquidate much of his portfolio.

Nothing succeeds like excess for judges like Engoron. By imposing this astronomical figure, he can make it difficult or impossible for a defendant to appeal, absent declaring bankruptcy or selling off assets at distress prices.

The excessive fine and its basis raise serious statutory and constitutional questions. Many of us believe it should be substantially reduced or tossed out entirely.

First, however, Trump must come up with almost half a billion dollars to park with the court. Even with a bond, the high costs of securing a guarantor could come at a premium. It would cost a fortune to the bond holder just to carry the risk even if Trump prevails on appeal.

Gov. Kathy Hochul told New York business owners that they have nothing to worry about after Trump's fraud ruling.
REUTERS

The combination of the draconian fine and the threshold deposit for appeal has produced a shudder throughout the New York business community. The city is already experiencing an exodus of businesses and individuals from the top tax brackets. Rising crime, taxes, and eat-the-rich politics have made New York a hostile environment for businesses. At a time with rising costs from undocumented migrants, even Mayor Eric Adams is alarmed about the loss of his high earners.

The case brought by Attorney General Letitia James was unnerving for many. James previously sought to dissolve the National Rifle Association and campaigned on bagging Trump on some unnamed offense. The ecstasy expressed by many in the city reinforced the image of a thrill-kill chase around the island of Manhattan, like a corporate version of "Lord of the Flies."

Watching the celebrations probably caused many executives to check time shares in Florida. New York Gov. Kathy Hochul has rushed to assure businesses that there is "nothing to worry about" after the corporate public execution of Trump and his company.

Here's the latest coverage of Donald Trump's $355M civil fraud trial ruling

- Donald Trump ordered to pay $355M, barred from NY business in civil fraud case
- Here's what Trump's $355M fraud ruling means for his company, real estate empire – and wallet
- Trump rips $355M ruling in NY civil fraud trial as 'complete and total sham'
- Dem elites shouldn't be laughing at Trump's civil trial outcome — they just made him a political martyr

But the best that politicians like Hochul and Adams can offer is that you have nothing to fear from confiscatory actions unless you are Trump in New York.

Which is precisely why this decision should be overturned.

What is clear is that this case would never have been brought, let alone result in this massive fine, except for politics.

For example, if you are the NRA, James will seek your destruction for financial irregularities, but if you are Black Lives Matter or Al Sharpton's National Action Network, there is little real risk in such controversies.

If the only protection in New York is the discretion of figures like James, few businesses would relish the future. The message is that you can expect blind and equal justice so long as you don't run afoul of the Democrats in power.

If you are unpopular, you could be looking at not only unprecedented actions and fines, but a need to virtually liquidate your assets just to be able to appeal a decision.

This should shock the conscience of anyone concerned about the integrity and fairness of the New York legal system. Confiscatory fines and required deposits leave not just defendants but the entire system bankrupt.

Jonathan Turley is an attorney and professor at George Washington University Law School.

The National Pulse.
REAL NEWS AND INVESTIGATIONS.

FedSoc Founder: Trump NY Case A Travesty On Par With Killing of Hamilton.

By Ed Kozak
February 19, 2024

Steve Calabresi, founder and co-chairman of the influential Federalist Society, has compared the judgment against former President Donald Trump in a New York civil fraud trial to the killing of Alexander Hamilton. He also describes it as a “Stalinist nightmare.”

Writing for Reason, Calabresi states: “The civil fraud judgment against Donald Trump is a travesty, and an unjust political act rivaled only in American politics by the killing of former Treasury Secretary Alexander Hamilton by Vice President Aaron Burr.”

“[NY AG Letitia] James and Judge Engeron have essentially turned a vaguely worded New York State law into a modern day Bill of Attainder targeted at Donald Trump both for political gain and because they despise his political views,” Calabresi explains. He claims that the ruling is a

violation of several of Trump's constitutional rights. These include his rights under the First Amendment, Fifth Amendment, Eighth Amendment, Fourteenth Amendment, and Article IV, Section 2.

"[P]residential politics will be permanently altered if a... State's legal system can be used in this way," Calabresi writes. "This case raises a national issue of profound importance," he says. "If the New York State appellate courts do not address it, the U.S. Supreme Court MUST!"

reason
FREE MINDS AND FREE MARKETS

The Volokh Conspiracy
Mostly law professors | Sometimes contrarian | Often libertarian | Always independent

About The Volokh Conspiracy

New York's Civil Lawsuit Against Trump Is Unconstitutional

Trump has a constitutional right to do business in New York

By Steven Calabresi
January 14, 2024, 4:50 am EST

New York State Attorney General Letitia James' lawsuit against Donald Trump is unconstitutional and unfair. James is demanding that Trump, his business, his two oldest sons, and two business partners give back $370 million that she says they obtained through fraud. James wants to permanently ban Trump from running a business in New York State. And, she has obtained a ruling from the judge trying the case to place all of Trump's New York businesses in receivership and sold with Trump getting only the cash from a forced fire sale. James' lawsuit alleges that Trump fraudulently inflated the value of his assets in annual net worth statements to banks to obtain savings on loan interest. It must be noted at the outset that no bank has complained that Trump committed fraud and that James is charging Trump an enormous and unconstitutional penalty for what is essentially a victimless crime.

The New York State law, as it is being applied to Trump, raises the same due process of law problem as is raised by a classic politically motivated Bill of Attainder. Historically, a Bill of Attainder was a legislative act that singled out a politically unpopular person for punishment. In Trump's case, a general and over-broad state law is being used against him in a hitherto unheard of way depriving him of property without due process of law. And, everyone on both sides of the aisle knows that it is all because New York has a lot of people, especially in the Democratic Party, who hate Trump. The victimless crime that James has charged Trump with is basically that he is a liar, and she does not like his political views. State Bills of Attainder are banned under Article I, Section 10 of the Constitution, and the Fifth Amendment provides that no person can be deprived of property without due process of law.

The Constitution does not allow banning people from running a business or putting all their assets in receivership and auctioning them off in a fire sale with the victim getting back the resulting cash. I am not aware of any precedent that supports what James is doing. The Constitution does not allow hitting Trump with a $370 million fine for a victimless crime, which almost certainly violates the Excessive Fines Clause of the Eighth Amendment. Putting Trump's assets in receivership and auctioning them off in a fire sale is a violation of the Fifth Amendment's Takings Clause for which Trump must at a minimum receive just compensation. But, even then, private property can only be taken for "a public use", and there is no "public use" unless you hate Trump's politics and want to punish him as a result. And, at that point, you must confront the Bill of Attainder prohibition once again.

I have in the past opposed Trump, vigorously, as I did when he acted improperly as President on January 6, 2021. I also think that most politicians lie and that Donald Trump lies more than most politicians. But that does not strip Donald Trump of his fundamental right to do business in New York on the same terms as other New Yorkers. Under the Privileges and Immunities Clause of Article IV, Section 2, Trump, who is a citizen of Florida, has the same right to do business in New York as does a New York citizen. James should have to show that other New York citizens have been banned from doing business in New York and had all their assets put in receivership for a victimless crime of lying.

I also believe, along with the Institute for Justice, that the four dissenters in *The Slaughter-House Cases*, 83 U.S. 36 (1873) were right that Americans have a fundamental right to pursue any occupation they want to pursue so long as they do not endanger or hurt third parties along the way. Occupational licensing of doctors, airplane pilots, and engineers are all O.K., but I think occupational licensing of barbers, flower shops, and tanning salons is unconstitutional. I hope that some day the Supreme Court will have an epiphany and that it will overrule *The Slaughter-House Cases.* Americans should have the same fundamental, constitutional right to pursue whatever occupation they want to pursue, as is mentioned explicitly in the Constitutions of Germany, Japan, South Africa, and Israel. All Americans, including Donald Trump, should and do have a constitutional right to pursue an occupation by, for example, running a business, either in New York State, or in any other state.

STEVEN CALABRESI is the Clayton J. & Henry R. Barber Professor of Law at Northwestern Pritzker School of Law, where he specializes in constitutional law. He also teaches regularly at the Yale Law School. Before going into teaching, he worked in the Reagan White House, and was a Special Assistant for Attorney General Edwin Meese III.

NATIONAL REVIEW

Truckers Vow to Cut Off Deliveries to NYC in Protest of Trump's $355 Million Civil-Fraud Ruling

BY DAVID ZIMMERMANN
February 18, 2024 1:06 PM

Shipping containers are seen at a terminal inside the Port of Oakland in Oakland, Calif., July 21, 2022. (Carlos Barria/Reuters)

Truckers have indicated they will soon cut off deliveries to New York City in protest of former president Donald Trump's civil fraud case, by the end of which he was ordered on Friday to pay $355 million in penalties for multiple fraud counts related to his business empire.

A trucker and conservative social-media influencer, known as Chicago Ray on X, announced the move Friday night in a video that has garnered 6 million views and 56,000 likes at the time of this writing. In the viral clip, Ray claimed he and some of his colleagues who support Trump will stop delivering loads to New York City once the coming work week begins.

"I've been on the radio talking to drivers for about the past hour and I've talked to about ten drivers . . . and they're going to start refusing loads to

New York City starting on Monday," he said in the video while driving his truck.

Ray said he wasn't sure "how far across the country this is" or how many truckers will join in protesting the decision against Trump, "but I'll tell you what — you f*** around and find out," he said.

"Our bosses ain't gonna care if we deny the loads — we'll just go somewhere else. Do you know how f***ing hard it is to get into New York City with one of these motherf***ers?" the trucker said, referring to his truck. "Man, f*** that."

Later in the video, Ray claimed 95 or 96 percent of American truckers support Trump over President Joe Biden, and said he would provide any updates on the protest's details come Monday.

Notably, the former president reposted Ray's video on his Truth Social account Saturday night. "Such an honor to have so many Great Patriots on the side of FREEDOM! Joe Biden's Unfair and Dangerous Weaponization of Law Enforcement is a serious threat to Democracy. MAKE AMERICA GREAT AGAIN!" the post reads.

Two days ago, Manhattan judge Arthur Engoron imposed a hefty fine on Trump, his companies, and co-defendants over their allegedly fraudulent financial statements. The court decision was made without a jury.

Trump's adult sons, Donald Jr. and Eric, each must pay $4 million after Engoron found them liable for multiple fraud counts, including issuing false financial statements, falsifying business records, and conspiracy. Additionally, former Trump Organization CFO Allen Weisselberg is being held liable for $1 million. Overall, a $364 million penalty fine was issued to all defendants Friday afternoon.

As part of the ruling, Trump Organization is banned from taking loans in New York for the next three years. In that same period, Trump himself is banned from "serving as an officer or director of any New York corporation or other legal entity in New York," the 92-page order states.

Trump attorney Alina Habba called Engoron's decision a "manifest injustice" and said the former president plans to appeal the ruling.

"It is the culmination of a multi-year, politically fueled witch hunt that was designed to 'take down Donald Trump,' before Letitia James ever stepped foot into the Attorney General's office," Habba added. "If this decision

stands, it will serve as a signal to every single American that New York is no longer open for business."

DAVID ZIMMERMANN is a news writer for National Review. Originally from New Jersey, he is a graduate of Grove City College and currently writes from Washington, D.C. His writing has appeared in the *Washington Examiner*, the *Western Journal*, *Upward News*, and the *College Fix*. **@dezward01**

GATEWAY PUNDIT
We report the truth – and leave the Russia-Collusion fairy tale to the Conspiracy media

WAYNE ROOT: LET "THE GREAT NEW YORK CITY BOYCOTT" BEGIN. CONSERVATIVES TO NEW YORK: "DROP DEAD."

By Wayne Allyn Root
February 18, 2024, 12:00 pm EST

The greatest President of my lifetime, who loves this country and wants to make it great again, was just framed and publicly lynched by the government, politicians, prosecutors and court system of New York City.

Trust me, New York City is going to wish they never played this game. They may not know it yet, but New York City just committed financial suicide.

Stay tuned for a strategy to bring New York City to its knees.

I was born and raised in New York. I graduated from Columbia University in New York City. My first apartment as an adult was in New York City. Even in the past three decades since I left, I've looked forward to my many business trips each year to New York.

I've always been proud of being from New York. I've given business speeches around the world about using "New York Attitude" to enjoy mega-success in the business world. All ex-New Yorkers live forever in Billy Joel's words, "in a New York state of mind."

Not anymore. New York is now dead to me.

New York City has become a cesspool of mental illness, wokeness, communism, and hatred towards conservatives and patriots.

Even worse, the Democrat politicians of New York suffer from "Trump Derangement Syndrome." As a result, they have weaponized New York government against President Trump in a way that represents a combination of Soviet KGB, East German Stasi, and Nazi Gestapo.

The time to stop this madness is now- before it gets far worse. Today it's Trump. Tomorrow it's you and me. New York City must be made an example. So this never happens again in America.

And I know how to do it.

I wrote the books on how to stop this Marxist woke madness- by boycotting, punishing and defunding the companies on the left.

Both my books were #1 bestsellers- "The Great Patriot Protest & Boycott Book" and "The Great Patriot BUY-cott Book." The latter was endorsed by President Trump.

So, this is my expertise. And it works! Look no further than what conservatives and patriots have done to Bud Light. We brought them to their knees like never before. Their brand lies in ruins. They may never recover.

It's time to make New York City the next Bud Light.

The more Democrats try to destroy Trump with fake charges, the more popular he becomes. I'm betting there are now 100 million Americans on Trump's side after the past year of government weaponization, persecution, indictments and judgements against the one man who stands in their way.

How did we destroy Bud Light? 100 million conservative and patriotic Americans (an exact match with Trump's base) all aimed our cannons at one company.

That was the key: Teamwork, discipline, determination, patience. We can't boycott everyone. We can't afford to divide our focus. But if 100 million of us all row in the same direction, we can win this battle.

We just proved that with Bud Light.

Trending: BREAKING REPORT: Truckers Plan to Stop Shipments to NYC in Response to Political Hack Judge Engoron's $350 Million Ruling Against Trump and His Sons (VIDEO)

But we can't afford to divide our attention. Like Bud Light, let's all focus on one city- New York City.

All 100 million of us must boycott New York City. No more vacations there. No business trips. No more attending conventions. No Christmas trips to see the Rockettes and the tree at Rockefeller Center. No more clothes shopping on Fifth Avenue. No Broadway shows. No more spending at hotels or fancy restaurants. Just say, "NO!"

Ask every store or online site you buy from, "Are you based in New York City?" If they are, find someone else to buy from.

Truckers must stop all deliveries and shipments to New York City. If you own a business and sell supplies to stores in New York City, cut them off.

But this isn't just about a boycott. This is about intimidation. We must mentally crush them. Don't just stop spending...

LOUDLY AND PROUDLY, let them know why.

Call all your favorite hotels, department stores, Broadway theatres, and restaurants in New York City, and let them know you will never spend another cent with them because of the way New York City treats President Trump. They need to be swamped with calls and emails. They need to know what kind of nightmare they're facing.

And for the final step, every conservative, Republican, patriot and Christian who lives in New York- get out now. Sell your home, your property, your business. Run for your life.

Result? There goes the tax base. Without the business owners and high-income earners (ie Republicans and conservatives), who will pay the bills? Without your taxes, New York will starve.

Besides, life is so much better in places like Florida, Texas, South Carolina, Phoenix, Nashville and Las Vegas. Taxes are much lower, houses are bigger, the sun is always out. And you are free to be a Republican or conservative without fear of being persecuted.

Let "The Great New York City Boycott" begin.

From now on, not one red cent for New York City. If all 100 million of us stick together…like we did with Bud Light…New York City will starve.

As President Ford once said to New York City, "DROP DEAD."

Wayne Allyn Root is known as "the Conservative Warrior." Watch Wayne's TV shows- "America's Top Ten Countdown" on Real America's Voice TV Network on Saturdays at Noon ET…and Wayne's daily TV show on Lindell TV 2 at 7 pm ET at FrankSpeech.com. He is also host of the nationally-syndicated "Wayne Allyn Root: Raw & Unfiltered" on USA Audio Network, daily at 6 pm ET. Wayne's latest book is a #1 bestseller, "The Great Patriot BUY-cott Book." You can order here: https://www.amazon.com/Great-Patriot-BUY-cott-Book-Conservative/dp/099173372X/ref=tmm_pap_swatch_0?_encoding=UTF8&qid=1676215826&sr=8-1

Hindustan Times

Truckers refuse to accept loads from NYC after Donald Trump slapped with a $355M fine in fraud case

By Sumanti Sen
February 18, 2024, 11:42 AM IST

Former U.S. President Donald Trump looks on at a campaign event in Waterford Township, Michigan, U.S., February 17, 2024 (REUTERS/Rebecca Cook)(REUTERS)

Truckers who support Donald Trump are refusing to driveto New York City aftera New York judge ordered the former president to pay nearly $355 million in penalties in a civil fraud case. Chicago Ray, a conservative social media influencer and trucker, posted a video where he claimed that some of his colleagues have decided to stop making deliveries to New York City as a protest against the Manhattan Supreme Court ruling.

“I’ve been on the radio talking to drivers for about the past hour and I’ve talked to about ten drivers ... and they’re going to start refusing loads to New York City starting on Monday,” Ray said in the video from inside his truck.

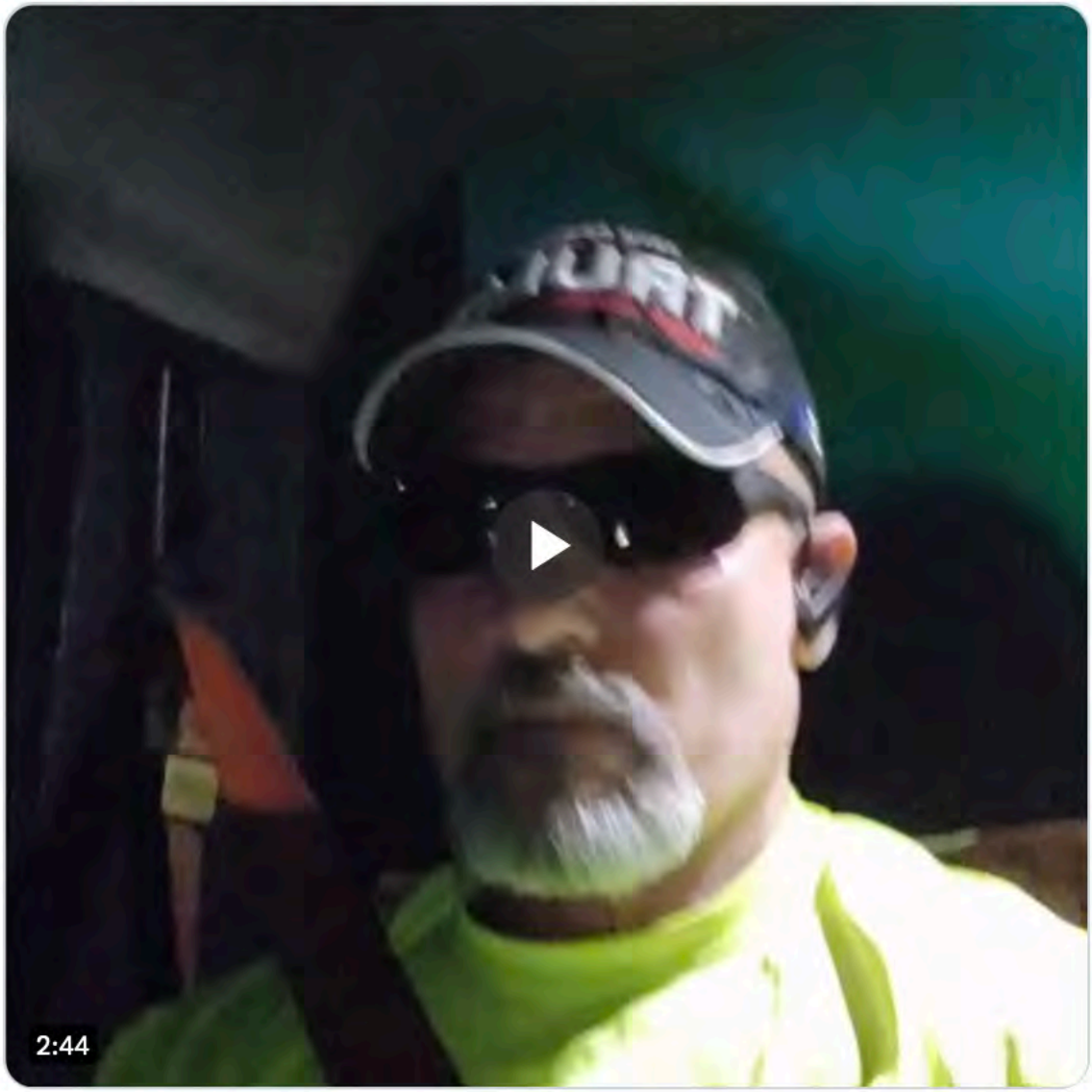
He added that some people who work with him have already told their bosses they would not go to New York City. “I don’t know how far across the country this is or how many truckers are going to start denying loads going to New York City, but I’ll tell you what — you f–k around and find out,” Ray said, adding that their bosses “ain’t gonna care if we deny the loads — we’ll just go somewhere else.”

“Do you know how f—king hard it is to get into New York City with one of these motherf—ckers?” he said, referring to his truck. “Man, f—k that. “ Ray went on to suggest that 95% of truckers support Trump.

Chicago1Ray 🇺🇸
@Chicago1Ray

I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)

Truckers are (95%) Trump... it'll get overturned on appeal but you know how fucken hard it is to get one of these mfrs into (NYC) cut the bullshit
I'll cya down the road



9:05 PM · Feb 16, 2024 · **6.1M** Views

Judge Arthur Engoron banned Trump from serving as a company director. Trump has also been banned from taking out loans from banks in the state for as many as three years.

Trump later said he would appeal the ruling, according to BBC. "A crooked New York state judge just ruled I have to pay a fine for $355m for having built a perfect company," he said. "It's a very sad day for - in my opinion - the country."

US truckers refuse shipment to New York City after Trump banned from NY business in fraud trial | Watch

18 Feb 2024, 08:55 AM IST

A New York judge ordered Donald Trump to pay $355 million over fraud allegations and banned him from running companies in the state for three years.

Republican presidential candidate former President Donald Trump finned $355 million over fraud allegations in New York's civil suit over his inflated asset valuations (AP)

Truck drivers who support former US President Donald Trump have reportedly turned down shipments coming to New York City. Truckers will start refusing loads in New York City starting on Monday, according to a truck driver.

Daily Mail reported that a truck driver who goes by the online handle Chicago Ray on the X platform wrote, "I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing

loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)".

The truck driver continued to issue a warning, saying that Trump ought to be left alone and that New York City fraud investigation against him amounted to "election interference".

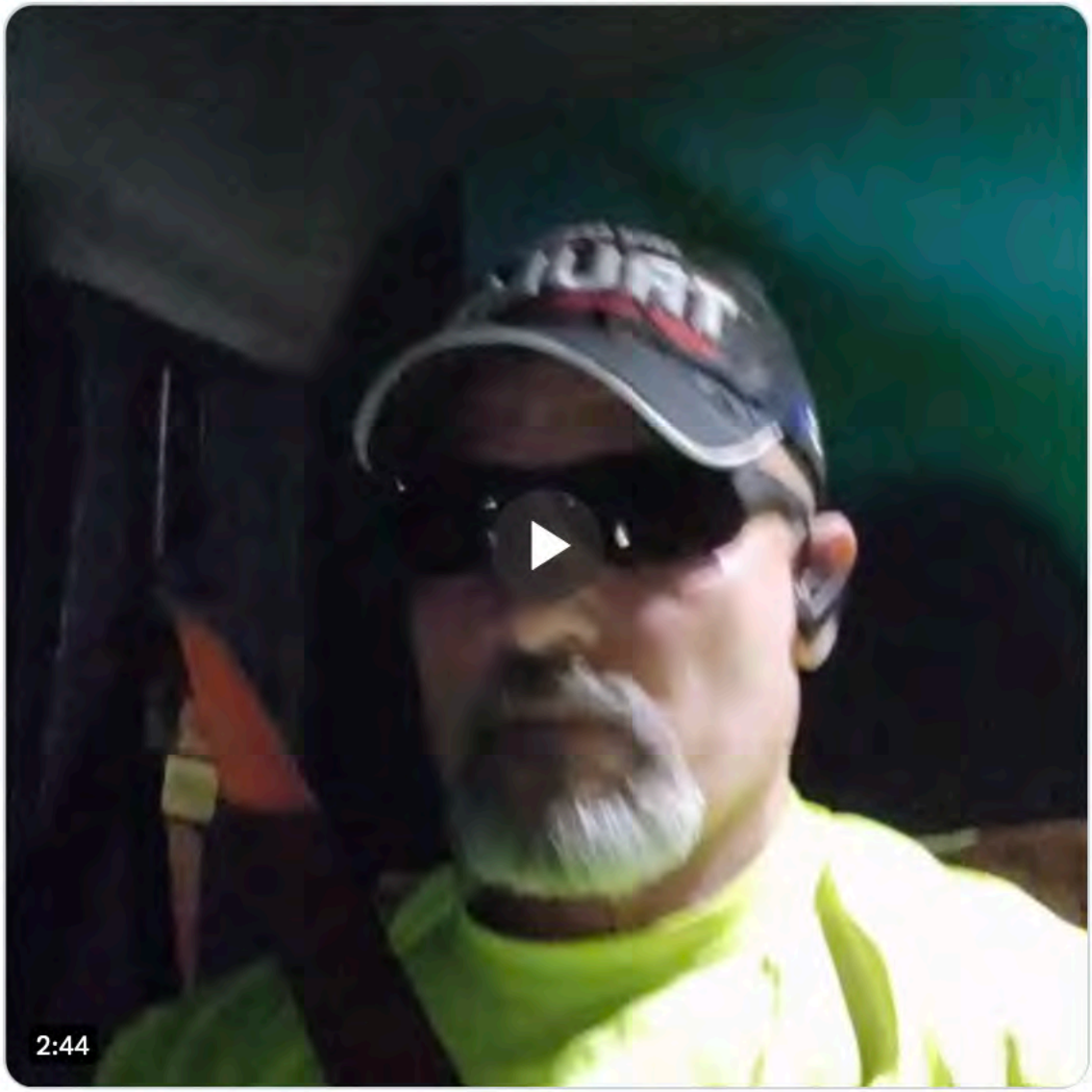
The truckers have refused to take loads to New York after a judge barred the former president from running any business in the state for three years in a civil fraud suit on Saturday.

"Truckers are (95%) Trump... it'll get overturned on appeal but you know how fu**c hard it is to get one of these mfrs into (NYC) cut the bu***sh** I'll cya down the road," the truck driver added.

Chicago1Ray 🇺🇸
@Chicago1Ray

I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)

Truckers are (95%) Trump... it'll get overturned on appeal but you know how fucken hard it is to get one of these mfrs into (NYC) cut the bullshit
I'll cya down the road



9:05 PM · Feb 16, 2024 · **6.1M** Views


Chris Randolph
@TrumpAF2024 · Follow
Truckers STAND WITH TRUMP
Farmers STAND WITH TRUMP
Ranchers STAND WITH TRUMP
Police STAND WITH TRUMP
Military STAND WITH TRUMP
I STAND WITH TRUMP.
Who else stands with Trump?
Last edited 3:09 PM · Feb 17, 2024
12.1K
Reply
Share this post
Read 2.5K replies

Trump and his firms hit with $364 million fine:

A New York judge ordered Donald Trump to pay $355 million over fraud allegations and banned him from running companies in the state for three years.

Trump was found liable for unlawfully inflating his wealth and manipulating the value of properties to obtain favorable bank loans or insurance terms.

Sneaker Con: How is Donald Trump going to pay $355 million fine? $399 at a time

Judge Arthur Engoron said the financially shattering penalties are justified by Trump's behavior.

Trump's sons Eric and Donald Trump Jr. were also found liable in the case and ordered to pay more than $4 million each.

Trump and real estate firm hit with $365 million fine in NY fraud suit

The Trump Organisation will also be forced by the ruling to allow in an independent compliance director answerable to the court.

As the case was civil, not criminal, there was no threat of imprisonment. But Trump said ahead of the ruling that a ban on conducting business in New York state would be akin to a "corporate death penalty."

Trump's penalty could cause NY biz exodus to FL, as New York State becomes 'legal banana republic': experts

NY AG Letitia James and liberal interests in the state appear to be seeking a political 'death by exposure' of Trump, analysts said

By Charles Creitz
Published February 16, 2024, 6:07 pm EST

Trump's 'breathtaking' fine in fraud case is larger than budgets of some countries: Jonathan Turley

Fox News contributors Jonathan Turley and Ari Fleischer join chief legal correspondent Shannon Bream to react to Judge Arthur Engoron fining Donald Trump more than $350 million on 'The Story.'

Legal experts analyzed what they called "breathtaking" civil penalties against former President Donald Trump, Donald Trump Jr., Eric Trump, former Trump Organization Comptroller Jeffrey McConney and ex-CFO Allen Weisselberg – warning other corporations based in the Empire State may realize they could suddenly be put out of business by the state on a political whim.

New York Supreme Court Judge Arthur Engoron found Trump liable for more than $350 million in damages in the fraud suit brought against him and his company by New York State Democratic District Attorney Letitia James.

Trump Sr., the Trump Revocable Trust and Trump Organization were found liable for $60 million, while Trump's sons and Weisselberg were found liable for $4.01 million each – and Trump Sr. plus several entities including the Trump Organization and the LLC signifying Trump's Chicago hotel were banned from applying for loans with institutions registered with New York for three years.

The three Trump family members were also banned from serving as executives of any business or legal entity based in New York for a similar length – which is key, as the Trump Organization is housed at its iconic tower at 5 Av and E. 57th Street.

In that regard, former Bush White House press secretary Ari Fleischer told Fox News the ban may spur Trump to relocate his entire business empire to Florida, just as he has his primary residence.

"If you're Eric [or] Donald Junior, what are you going to do?" he asked.

"[Y]ou just say goodbye to New York, which fits a pattern that many successful people have been doing and leaving New York because New York is just too political, too blue and too punitive – you're seeing that in the

business community and among upper income New Yorkers already," he said – adding the state's crime wave accentuates the issue.

George Washington University Law Prof. Jonathan Turley further commented to Fox News that Engoron appeared to compound the highest fine figures in most of the areas adjudicated – noting that New York's civil law in this area is unique because the proverbial crime can essentially be victimless.

"[It's] an odd one because it does not require that anyone actually lose money. And so James was able to come in here with this [fraud] figure, and she kept on going up."

Turley said the public and other legal officials may indeed take note of Trump world's penalty, because, "when you're imposing fines larger than the budget of some countries, you really have to wonder whether you've allowed your thoughts to run away with your judgment."

"It's one of the greatest ironies of this case: In the name of protecting businesses in New York, you probably just led to hundreds of businesses looking at potential rentals in Florida because they look and they go, 'wow, if we fall on the wrong side of the politics in New York, they could sell us off for spare parts'."

Fleischer noted that New York's justice system has descended into a quasi-political entity, in that liberals and Democrats have been placed at the highest levers of power for the past few decades.

A young Donald Trump stands outside his namesake 5 Av tower, headquarters of the Trump Organization
(Getty)

He noted that New York County, which is Engoron's purview and contains Manhattan Island and Marble Hill, has voted on average 85 percent to 15 percent Democratic in presidential elections going back to his former boss Bush's first race in 2000.

New York State hasn't awarded its electoral votes to a Republican since Ronald Reagan, and only sided substantively with a losing GOP candidate once: when Thruway namesake Gov. Thomas Dewey lost to President Harry Truman in 1948.

Fleischer called Engoron's ruling a legal extension of liberal activists successfully pressing to have Trump's name stripped from buildings in New York City.

Officials have also squabbled over land Trump had donated to New York State for parkland. To signify the 2006 gift, 436 acres in Westchester County were named "Donald J. Trump State Park" and large signage was posted on the nearby Taconic Parkway.

In what WCBS reported to be the seventh attempt to strip Trump's name from the park, State Sen. Brad Hoylman, D-Greenwich Village put forward legislation to do so last year.

Residents of a high-rise in then-Rep. Jerry Nadler's, D-N.Y. district in 2016 voted to strip Trump's name from their complex, as Trump later took to X – then Twitter – to rail against the lawmaker's long-ago fight with him over the land when the then-Judiciary chairman launched the Russia probe.

"There's very little pressure pushing back on these politicians here (in New York) to stop doing it because it's wrong," Fleischer added.

"So unless the appeals process in New York comes to the rescue, it's become a legal banana republic."

Turley told "The Story" that when Trump very likely appeals the decision, the appellate court – which is higher than the districted Supreme Court in New York – will have to determine whether the former president was subject to a selective prosecution.

He pointed to James' campaign promises which included plans to "be a real pain in [Trump's] a--."

"Clearly, James made this pledge that she was going to bag Donald Trump. And it is part of an overall campaign that seems to be an effort at 'death by exposure' both on the civil and criminal side."

Charles Creitz is a reporter for Fox News Digital.

He joined Fox News in 2013 as a writer and production assistant.

Charles covers media, politics and culture for Fox News Digital.

Charles is a Pennsylvania native and graduated from Temple University with a B.A. in Broadcast Journalism. Story tips can be sent to charles.creitz@fox.com.

New York City Shipments To Stop After Trump Civil Fraud Verdict? Truck Driver Threatens Boycott In Viral Video

By Arkaprovo Roy
Updated February 18, 2024, 06:36 AM IST

Chicago Ray went on to warn again to leave former President Trump alone, and that the fraud case against him in NYC amounts to "election interference," said The Post Millennial. Former President Donald Trump was ordered to pay $354 million in damages in a civil fraud case in NYC. Attorney General Letitia James was seeking $370 million in damages after she argued Trump inflated the value of his business entities in the city with real estate pricing andaccused him of engaging in a pattern of "repeated and persistent fraud."

Image Via X
Photo: Twitter

According to The Post Millennial, a truck driver who goes by the online handle Chicago Ray warned on Friday that other truckers will begin turning down shipments coming to New York City.

Ray says he was informed by at least 10 other truck drivers that they would no longer betraveling to New York City as of Monday, in a video that was

uploaded to X. He told The Post Millennial, "I talked to (3) guys that I work with who texted the boss and told him no (NYC)."

"I do know how far across the country this is, or how many truckers are gonna start denying loads to New York City," Ray continued. "But I tell you what, you f**k around and find out. Ok,We're tired of you motherf**king leftist f**king with Trump," he said,

"Our bosses aren't going to care if we deny the loads, we'll just go somewhere else," he noted. "By what I'm hearing, this is real. We'll see."

Chicago Ray continued to issue a warning, saying that the former president Trump ought to be left alone and that the New York City fraud investigation against him amounted to "election interference," as reported by The Post Millennial.

Recently, the truck driver gave the Take Our Border Back Convoy, which happened in late January, high marks.

Former President Donald Trump was forced to pay $354 million in damages in a civil fraud action in New York. Attorney General Letitia James was seeking $370 million in damages after claiming Trump manipulated real estate prices to boost the worth of his city-based businesses and accused him of "repeated and persistent fraud."

The former president lashed out at the decision in a post on Truth Social. He stated, "A crooked New York State Judge, working with a completely corrupt Attorney General who campaigned on the platform of 'I will get Trump,' before knowing anything about me or my company, has just fined me $355 million for nothing more than having established a GREAT COMPANY. Election interference. "WITCH HUNT."

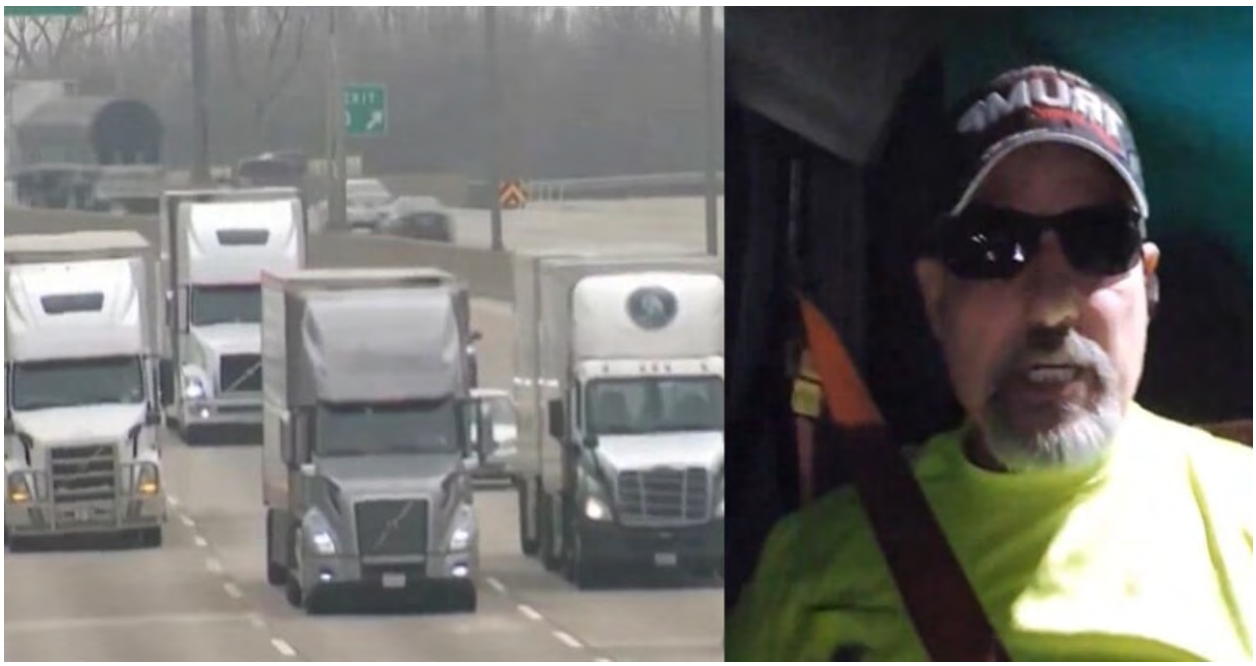
"The Justice System in New York State, and America as a whole, is under assault by partisan, deluded, biased Judges and Prosecutors," Trump added. "Racist, Corrupt A.G. Tish James has been obsessed with “Getting Trump” for years, and used Crooked New York State Judge Engoron to get an illegal, unAmerican judgment against me, my family, and my tremendous business."

"I helped New York City during its worst of times, and now, while it is overrun with Violent Biden Migrant Crime, the Radicals are doing all they can to kick me out," the former president noted before he called the decision "a Complete and Total SHAM."

BPR BUSINESS & POLITICS

Truckers talk stopping shipments to NYC in protest of $350M+ Trump fine

By Chris Donaldson
February 18, 2024



Pro-Trump truckers are looking to send a message to the corrupt Democrat-run New York City political machine over the sham fraud trial against the GOP frontrunner and the obscene financial penalty imposed on him.

On Friday, Manhattan Supreme Court Judge Arthur Engoron, a left wing activist in robes who wore his hatred for Trump on his sleeve, delivered a crushing blow to the real estate mogul turned American hero with a mind-blowing $350 million ruling that could have far-reaching consequences for Gotham businesses.

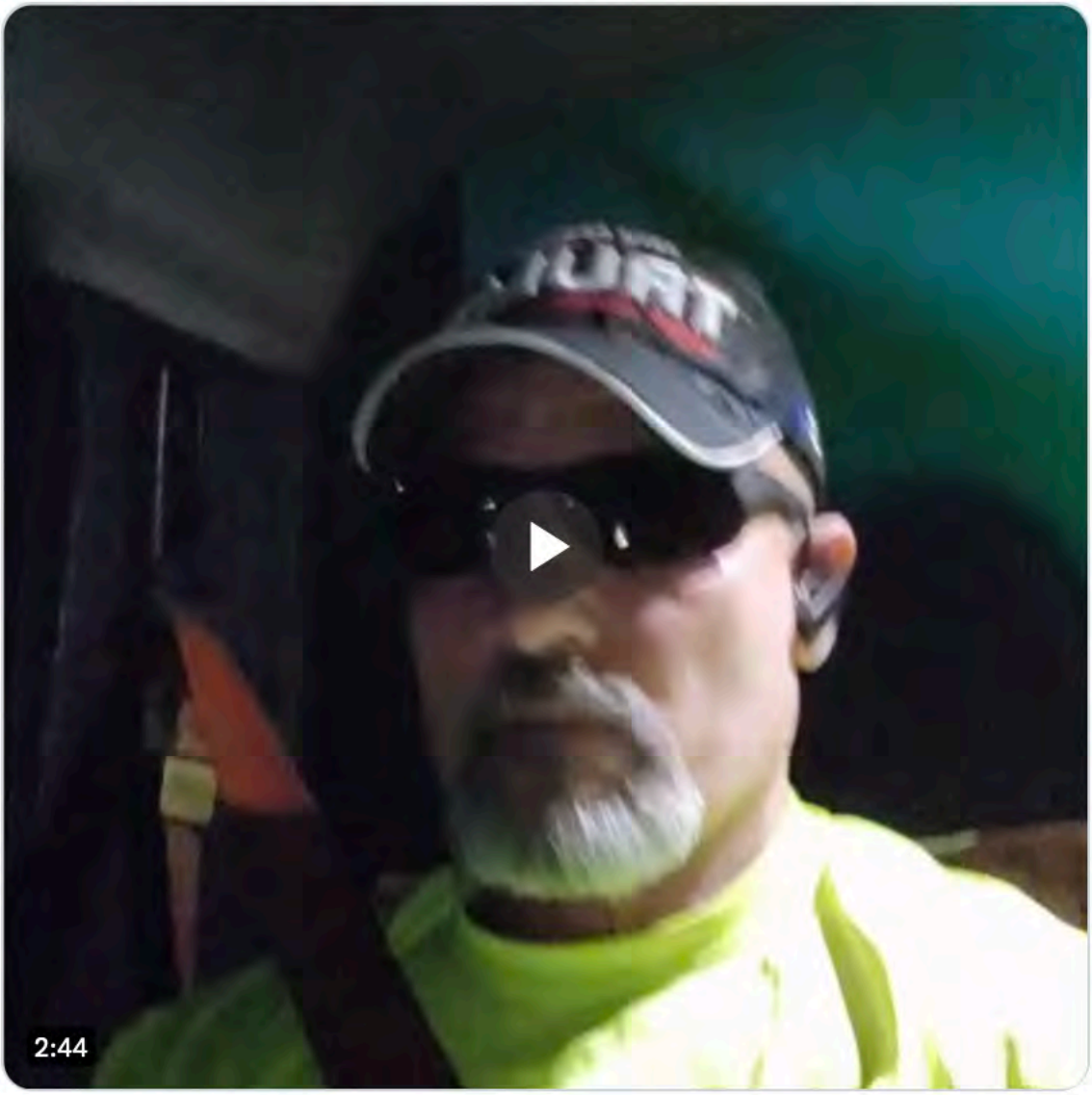
Following the grossly un-American punishment that capped off the unseemly legal spectacle, one fed-up trucker took to social media to announce that there would be a protest with an untold number of his colleagues who would be refusing to transport loads to the Big Apple to protest perversion of the judicial system by Engoron and rabidly partisan New York Attorney General Letitia James to get Trump.

In an F-bomb riddled video shared to the X platform by a trucker who goes by the handle of Chicago Ray, he says that he's spoken to a number of his colleagues who won't be making runs to New York City.

Chicago1Ray 🇺🇸
@Chicago1Ray

I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)

Truckers are (95%) Trump... it'll get overturned on appeal but you know how fucken hard it is to get one of these mfrs into (NYC) cut the bullshit
I'll cya down the road



9:05 PM · Feb 16, 2024 · **6.1M** Views

“I’ve been on the radio talking to drivers for about the last hour, hour and fifteen minutes, and I’ve talked to at least ten drivers going the other way. I’m heading down from South Wisconsin and they’re gonna start refusing loads in New York City starting on Monday,” he said.

“I don’t know how far across the country this is or how many truckers are gonna start denying loads to go, going to New York City, but I’ll tell you what—you f**k around and find out!,” Chicago Ray added.

“Okay? We’re tired of you motherf**kin’ leftists f**king with Trump,” he said. “You know, motherf**kers are starting to get tired of this sh*t and our bosses ain’t gonna care if we’re denying the loads, we’ll just go somewhere else.”

X users reacted to the idea that truckers, the lifeblood of the U.S. economy, could send a message to the Democrats.


Marvin Davis
@MarvinDav313 · Follow
Replying to @Chicago1Ray
We can always rely on the "Trucker" to restore some semblance of "the right thing" in response.
Thank You from the many here on "X" for your courage to stand up to the Marxist leftists . . .
10:05 PM · Feb 16, 2024
2.1K
Reply
Share
Read 39 replies


Scott Reagan
@Scottreagan1963 · Follow
Replying to @Chicago1Ray
40 YEAR TRUCK DRIVER HERE , NOT OTR ANYMORE , BUT TRUCKERS CAN SHUT DOWN NYC.
12:21 AM · Feb 17, 2024
1.9K
Reply
Share
Read 63 replies


God Bless the USA
@tek22gbp · Follow
Replying to @Chicago1Ray
We need to do the same with tourism, products, productions etc... time to boycott NYC and the state.
9:44 PM · Feb 16, 2024
3.8K
Reply
Share
Read 169 replies


CHRISTEN CHIVES
@ChivesChristen · Follow
Replying to @Chicago1Ray
No trucks to nyc ,, cut them off
9:29 PM · Feb 16, 2024
4.4K
Reply
Share
Read 50 replies


Albert Latham
@albert1776 · Follow
Replying to @Chicago1Ray
If truckers start denying loads to certain regime-controlled cities, it's going to get spicy.
9:20 PM · Feb 16, 2024
10.3K
Reply
Share
Read 309 replies


msnatalie
@realmsnatalie · Follow
Replying to @Chicago1Ray
Let Europe show you the way this one time. They can't arrest everyone at once, and we have way more on our side
10:27 PM · Feb 16, 2024
269
Reply
Share
Read 5 replies


80-DeuceOnTheLoose
@MANLEY6969 · Follow
Replying to @Chicago1Ray
Over-the-road truckers are the silent cornerstones of our economy. Without them, freight stops moving, the economy stops moving, America stops moving. When the people demand their government's undivided attention, truckers are the folks that can make that happen with a quickness.... Show more
11:31 PM · Feb 16, 2024
199
Reply
Share
Read 9 replies

“You know you ain’t got sh*t on Trump, so cut the bullsh*t! He’s gonna win this motherf**ker on appeal, but it’s still—you know it’s bullsh*t. It’s election interference,” Chicago Ray said, adding, “Truckers are for Trump. We’re like 95% – 96% out here, all Trump. Ain’t no motherf**kers for Biden!”

Truckers Rally in Support of Trump: A Bold Protest Disrupts NYC Supply Chain

Truck drivers loyal to former President Trump have stopped deliveries to NYC following his recent $355M fine. This collective action reflects deep-seated political allegiances and could disrupt the city's logistics and economic vitality.

By Geeta Pillai
18 Feb 2024 01:45 EST
Updated On 18 Feb 2024 13:33 EST

Truckers Rally in Support of Trump: A Bold Protest Disrupts NYC Supply Chain

In a striking display of political loyalty, truck drivers who ardently support former US President Donald Trump have launched a bold action that could ripple through the arteries of New York City's supply chain. At the heart of this unfolding drama is a recent judicial verdict that not only imposed a hefty $355 million fine on Trump over fraud allegations but also rendered him unable to helm any business within the state for three years. The ruling, stemming from a civil fraud suit, has ignited a fervent protest among a segment of the trucking community, casting long shadows over the logistics and delivery networks critical to New York City's bustling life.

A Bold Stand by Truckers

In the wake of the Manhattan Supreme Court's decision, a wave of truck drivers has declared an outright refusal to transport goods to and from New York City. This protest, beginning Monday, is a direct response to what they perceive as an unjust attack on Trump, who alongside his sons was found liable in the fraud case. The truckers' decision is not just a logistical challenge; it's a political statement, echoing their deep-seated disillusionment with what they term as 'leftist interference.' Their collective action signals a readiness to stand in solidarity with Trump, despite the potential economic fallout their boycott might trigger.

The Voices Behind the Movement

Chicago Ray, a social media influencer and one of the truck drivers at the forefront of this movement, has been vocal about the collective decision to halt deliveries. In his narrative, an overwhelming 95% of truckers support this action, underscoring a widespread sentiment within the community. Ray and his fellow drivers view the court's ruling as not just a legal setback for Trump but as an act of election interference, with ominous implications for New York City's economic vitality and logistical operations. This sentiment resonates with a significant portion of the trucking community, ready to translate their frustrations into tangible action.

Implications and Reactions

The truckers' boycott raises crucial questions about the intersection of politics, commerce, and the everyday functioning of one of America's largest cities. With Trump vowing to appeal the ruling, the situation remains fluid, and the full impact of the truckers' stance is yet to be seen. New York City, already grappling with a migrant crisis and financial strains, now faces an additional challenge as it navigates the consequences of this protest. The decision by truck drivers to withdraw their services in solidarity with Trump is more than a logistical headache; it's a political statement, a rallying cry that underscores the deep divisions and passionate allegiances that mark our current era.

To sum it up, the truckers' refusal to make deliveries to New York City is a testament to the enduring influence of Donald Trump within certain segments of the American populace. The Manhattan Supreme Court's ruling has inadvertently set the stage for a protest that transcends the immediate legal and financial ramifications for Trump, morphing into a broader demonstration of political allegiance and discontent. As New York City braces for the impact, the nation watches closely, witnessing the unfolding of a highly charged chapter in the complex narrative of American politics and its reverberations across the fabric of society.

INDEPENDENT

Truckers for Trump are refusing to drive to New York City after $350m fraud ruling

‘Boycott NYC’ was trending on X, with more than 13,000 posts mentioning the term

By Kelly Rissman
February 18, 2024

Truck drivers who support former president Donald Trump have voiced that they won't be driving to New York City to underscore their disappointment with the civil fraud judgment that fined Mr Trump more than $350m.

On 16 February, Judge Arthur Engoron ruled that Mr Trump, his two sons, Trump Organization associates and Trump properties were liable for tens of millions of dollars. While Mr Trump — and his companies and his trust — were ordered to pay over $350m plus interest, his sons were also ordered to pay roughly $4m. Many truck drivers across the country have seemingly taken issue with the ruling.

A man known online as Chicago Ray posted a video on X following the decision: "I've been on the radio talking to drivers for about the past hour and I've talked to about 10 drivers" He added that truckers are going to "stop refusing loads starting on Monday."

"I don't know how far across the country this is or how many truckers are going to start denying loads going to New York City, but I'll tell you what — you f*** around and find out," he said.

"We're tired of you f***ing leftists f***ing with Trump," he continued, while wearing a Trump-branded cap. "Our bosses ain't going to care if we deny the loads. We'll just go somewhere else, alright? You know how f***ing hard it is to get into New York City in one of these [vehicles]?"

"Truckers out for Trump," he said, before reciting one of Mr Trump's lines, calling the ruling "election interference."

The video seemed to gain some traction. As of Sunday morning, the phrase "Boycott NYC" was trending on X, with more than 13,000 posts mentioning the term.

It's unclear whether the boycott will actually manifest. But Chicago Ray isn't the only one who has voiced opposition to the civil fraud ruling.

Elena Cardone, the wife of wealthy real estate investor Grant Cardone, created a GoFundMe page — called "Stand with Trump; Fund the $355M Unjust Judgment." Her husband explained on X that "100% of funds will be forwarded to Trump Org for his defense of this ridiculous judgement."

On the page, she wrote: "I stand unwaveringly with President Donald Trump in the face of what I see as unprecedented and unfair treatment by certain judicial elements in New York."

Since Ms Cardone launched the fundraiser, it has already raked in over $240,000.

The strong reaction to the civil fraud judgment could serve as a bellwether of how America will respond to the outcomes of the now-ongoing court cases that Mr Trump is facing in federal and state courts.

NEW YORK POST

Trump-loving truckers refusing to drive to NYC after his $355 million fraud ruling

By Patrick Reilly
Published Feb. 17, 2024, Updated Feb. 18, 2024, 9:20 a.m. ET

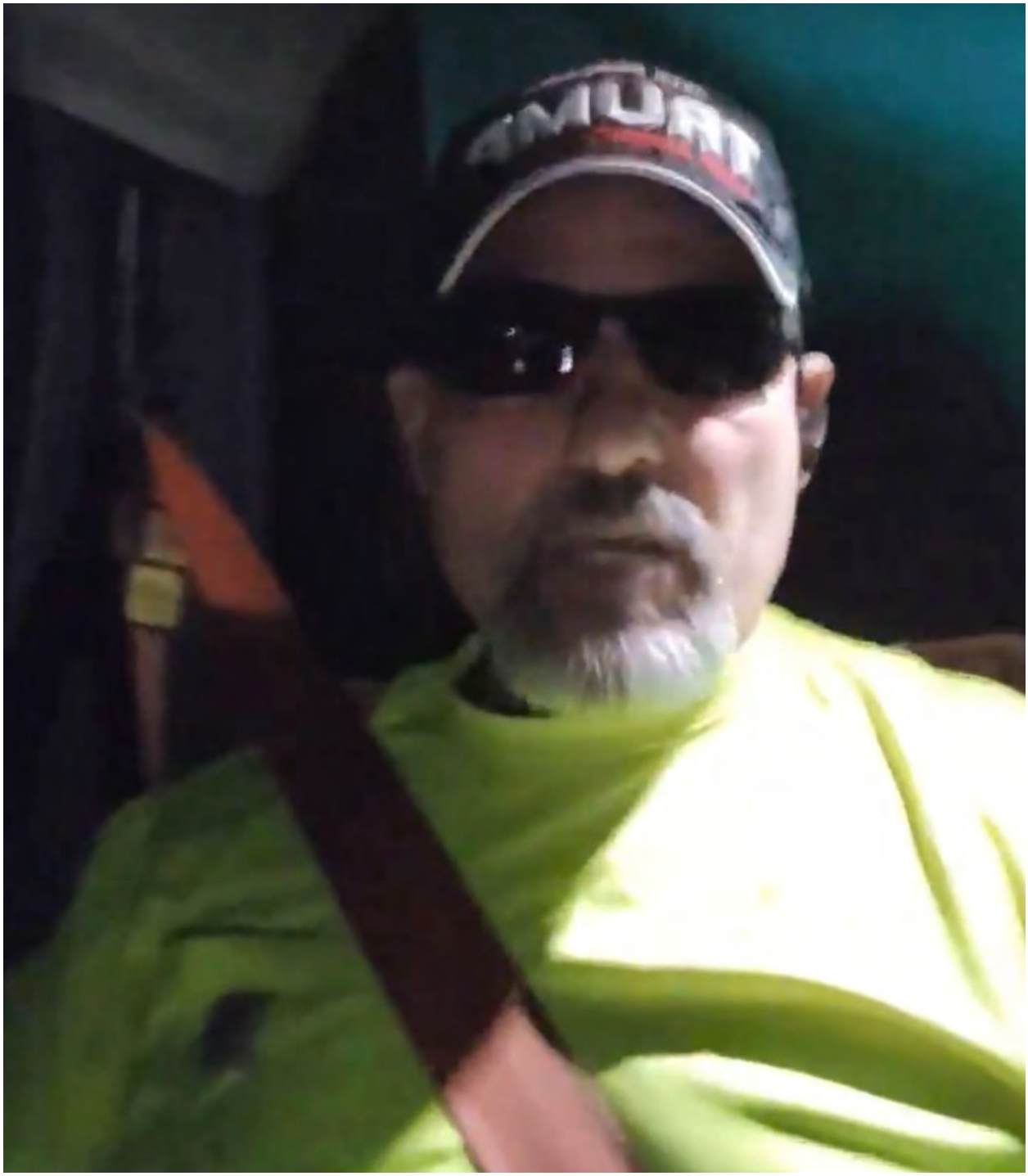
Trump-supporting truckers are saying they are refusing to drive to New York City after the former president was slapped with a $355 million fine in his fraud case last week.

A conservative social media influencer and trucker who goes by Chicago Ray posted a video clip in which he claims that some of his colleagues are going to stop making deliveries to New York City to protest the ruling, issued in Manhattan Supreme court on Friday.

“I’ve been on the radio talking to drivers for about the past hour and I’ve talked to about ten drivers … and they’re going to start refusing loads to

New York City starting on Monday," Ray said in the video from inside his truck.

He said he's already spoken to some drivers that work with him who told their boss they won't go to The Big Apple.



Truckers have said they will refuse to make deliveries to New York, Chicago Ray said.. Chicago1Ray/X

“I don’t know how far across the country this is or how many truckers are going to start denying loads going to New York City, but I’ll tell you what — you f–k around and find out,” Ray said.

EXPLORE MORE

Nikki Haley won’t say she’ll back Trump if he wins the nod — despite debate pledge

Tim Scott shrugs off Trump’s birther attacks on Haley, claims her rhetoric goes ‘further’

Trump speaks of new ‘N-word,’ compares himself to Al Capone in off-script moment at rally in wake of legal woes

The trucker said their bosses “ain’t gonna care if we deny the loads — we’ll just go somewhere else.”

“Do you know how f—king hard it is to get into New York City with one of these motherf—ckers?” he said, referring to his truck. “Man, f—k that. “

Ray claimed that 95% of truckers support the former president in the X post, which has been viewed more than 4.6 million times and received more than 50,000 likes since Friday night.

Donald Trump while in court in Manhattan.
Steven Hirsch for NY Post

Some voiced their support for the boycott online.

“Do it! Let us know how we can help! You’re NOT alone in this fight!” one user wrote in response.

“We stand with the truckers,” wrote another.

Manhattan Supreme Court Justice Arthur Engoron ordered that Trump pay a $355 million fine for inflated his net worth by billions over a decade to receive favorable loans from banks.

Chicago Ray said he spoke to a number of truck drivers who told their bosses they wouldn't be going to New York. AP

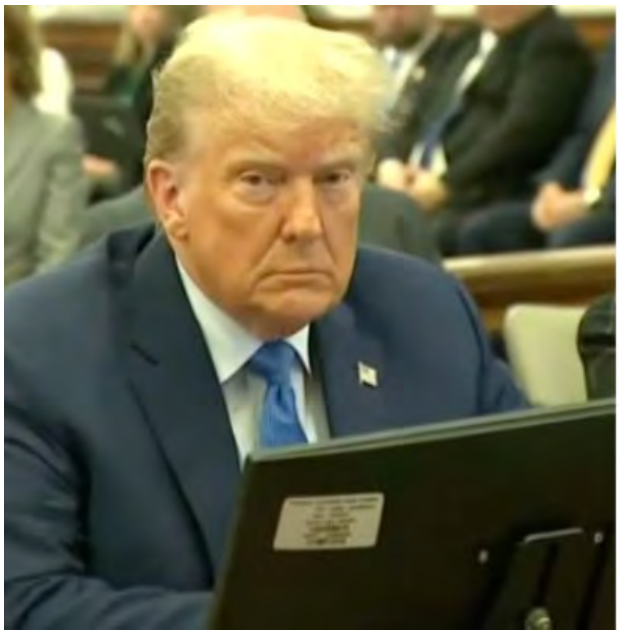
He's additionally barred from serving as an officer or director of any company in New York for three years, the judge ruled.

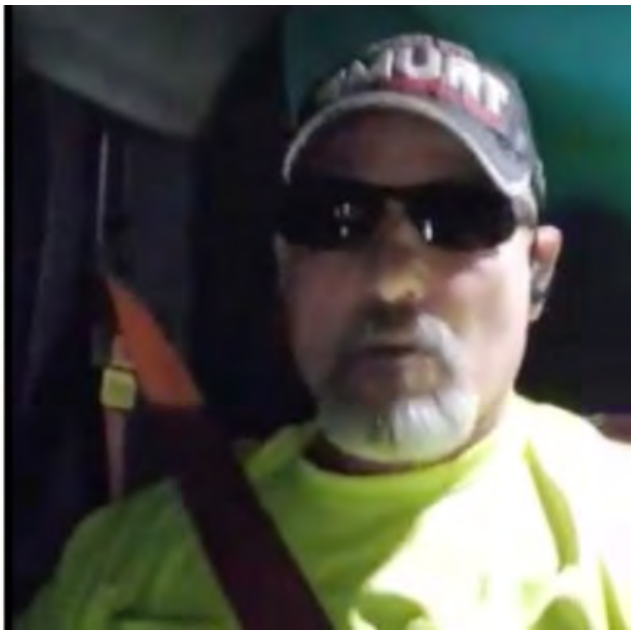
Trump, like Chicago Ray, has blasted the case as "election interference" by his political opponents, and predicted other fall out for NYC, as he said at a rally Saturday that other businesses will leave the city after his ruling.

The Paradise

Report: Truckers to Deny Loads in NYC to Protest $350 Million Ruling Against Trump

February 18, 2024





“It’s election interference. So we’ll see what happens. Truckers are for Trump!”

Truckers are reportedly in talks to refuse delivering loads in New York City beginning on Monday in solidarity with former President Donald Trump in the wake of the $350 million fraud case ruling against him.

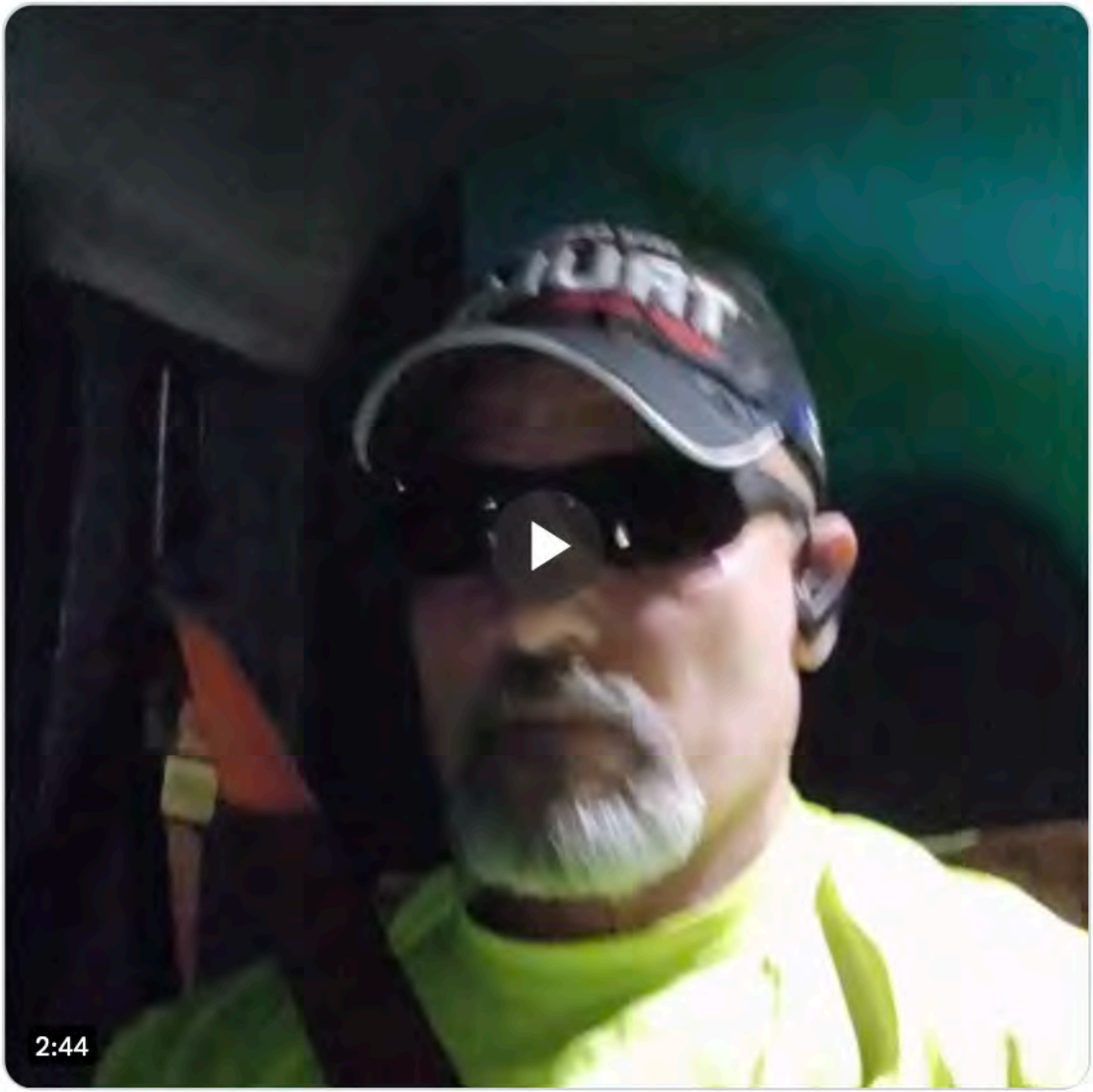
A trucker who goes by Chicago Ray took to X on Friday to report that he’s spoken with a dozen other drivers who are prepared to deny NYC loads in protest of Judge Arthur Engoron’s Friday ruling against Trump that also prohibits him from doing business in the city for three years.

“I’ve been on the radio talking to drivers for the last hour…and I’ve talked to at least 10 drivers going the other way. They’re going to start refusing loads in New York City starting on Monday,” Chicago Ray claimed.

Chicago1Ray 🇺🇸 ✔
@Chicago1Ray

I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)

Truckers are (95%) Trump... it'll get overturned on appeal but you know how fucken hard it is to get one of these mfrs into (NYC) cut the bullshit
I'll cya down the road



9:05 PM · Feb 16, 2024 · **6.1M** Views

He added that he knows three drivers he works with who've informed their boss that "they ain't going to New York City."

"I don't know how far across the country this is or how many truckers are going to start denying loads going to New York City, but I'll tell you what, you f*ck around and find out," he said.

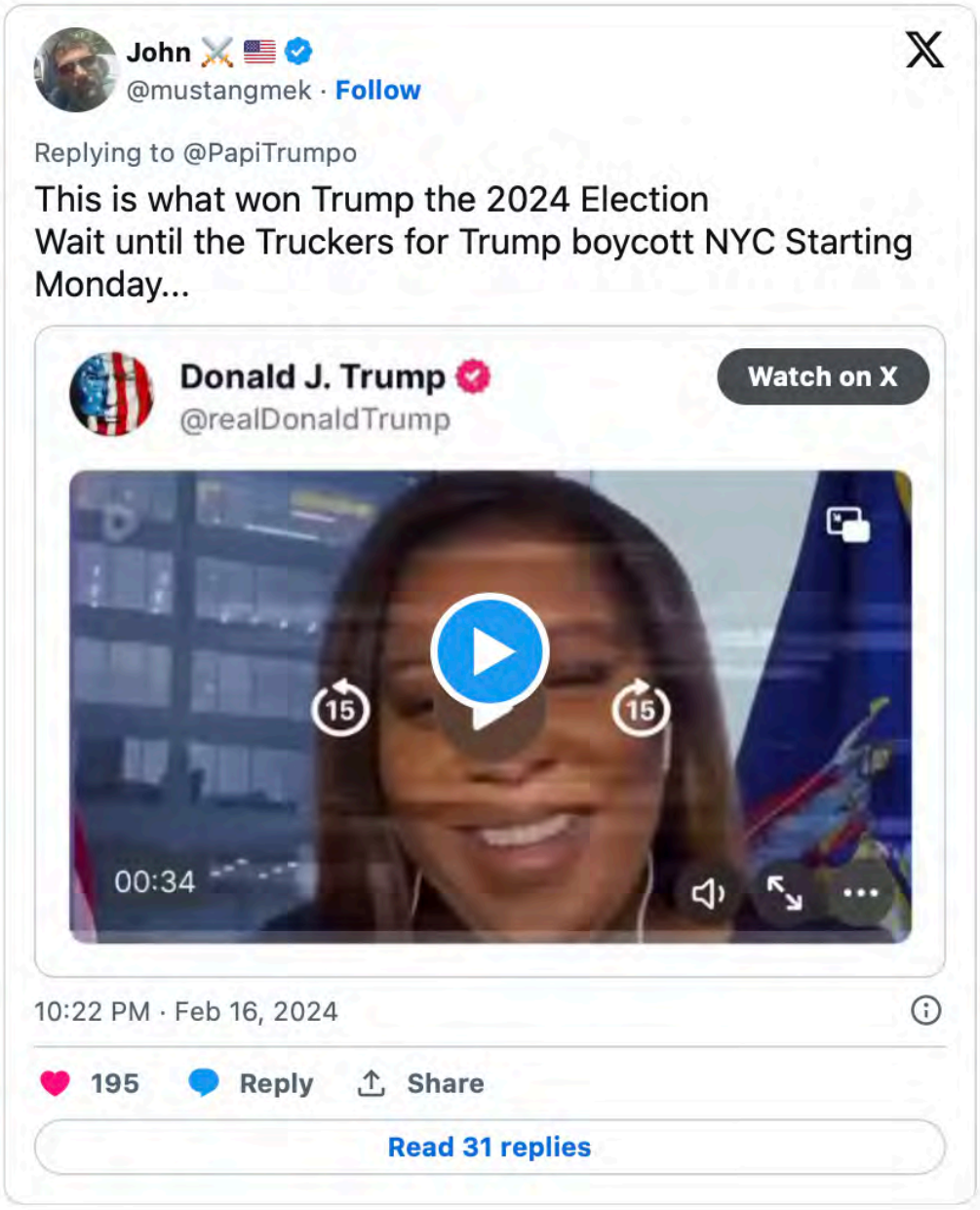
The livid trucker went on to address the NYC leftist waging lawfare against Trump, claiming their latest ruling amounts to election interference.

"We're tired of you motherf*ckin' leftists f*ckin' with Trump, okay? Motherf*ckers starting to get tired of this sh*t," he said. "Our bosses ain't going to care if we deny loads, we'll just go somewhere else. You know how f*ckin' hard it is to get into New York City with one of these motherf*ckers? F*ck that."

"I wish nothin' on nobody but from what I'm hearing, this is real," he continued. "We'll see. Leave Trump the f*ck alone with the bullsh*t. You know you ain't got sh*t on Trump, so cut the bullsh*t. He's going to win this motherf*cker on appeal but it's still, you know, it's bullsh*t. It's election interference. So we'll see what happens."

"Truckers are for Trump, man. We're like 95, 96% out here, all Trump. Ain't no motherf*ckers for Biden," he added.

Others on social media showed their support for a trucker boycott on NYC for as long as Trump's business practices are banned in the state — 3 years.


John ⚔️
@mustangmek · Follow
Replying to @PapiTrumpo
This is what won Trump the 2024 Election
Wait until the Truckers for Trump boycott NYC Starting Monday...
Donald J. Trump
@realDonaldTrump
Watch on X
15
15
00:34
10:22 PM · Feb 16, 2024
195
Reply
Share
Read 31 replies


Matt Culver
@trucker_mfc · Follow
Replying to @SpeakerJohnson
BUSINESS BLOCKADE OF NYC. #truckers and businesses for
TRUMP
BUSINESS BLOCKADE
TRUCKERS
AND OTHER BUSINESSES
Begin a 3 year ban on NYC in support of
TRUMP
11:43 AM · Feb 17, 2024
534
Reply
Share
Read 156 replies


Rick Percoco
@RickPercoco1776 · Follow
To all the truckers out there. Refuse loads going to NYC. If they are going to fuck with Trump like this, let's refuse to deliver their products to them.
Please help make this go viral. Truckers have the power to make them hurt.
10:57 AM · Feb 17, 2024
227
Reply
Share
Read 30 replies


Jim Patriot
@TX_Pirate1776 · Follow
Trucker boycott of NYC in response to the fake ruling against President Trump, a good idea or not?
8:55 AM · Feb 17, 2024
146
Reply
Share
Read 45 replies

It remains to be seen just how many truckers will participate in the rumored boycott against NYC on Monday, or how effective it will be in sending a message to the anti-Trump left, but Infowars will report on the developments as they happen.

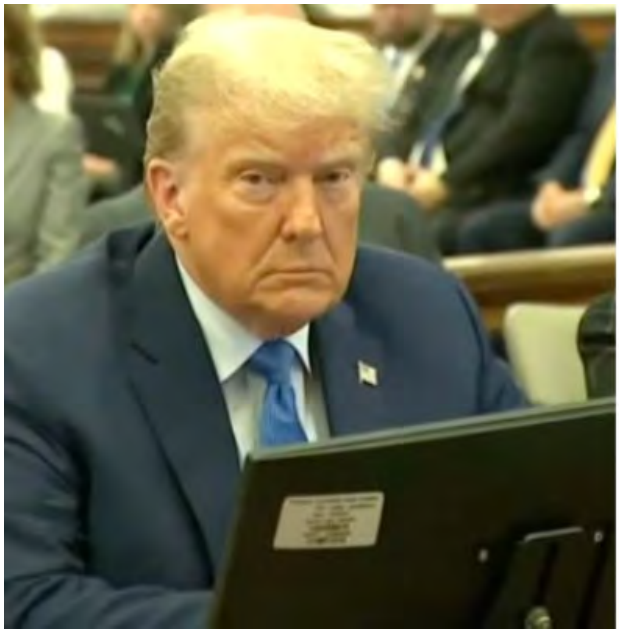
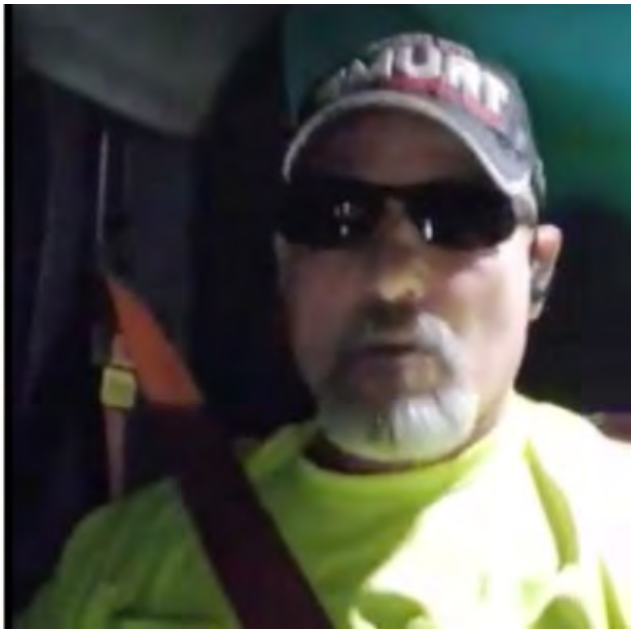
The Post Millennial.

AMERICAN NEWS

Truck driver says other truckers will stop accepting loads from NYC after Trump verdict

"Our bosses aren't going to care if we deny the loads, we'll just go somewhere else."

By Sara Higdon
February 17, 2024

On Friday, a truck driver who goes by Chicago Ray online said that other truckers are going to start refusing loads to New York City.

In a video posted to X, Ray claims he was told by at least ten other truck drivers that starting Monday they are going to stop going to NYC. "I talked to (3) guys that I work with who texted the boss and told him no (NYC)," he said.

"I do know how far across the country this is, or how many truckers are gonna start denying loads to New York City," Ray continued. "But I tell you what, you f**k around and find out. Ok, We're tired of you motherf**king leftist f**king with Trump."

"Our bosses aren't going to care if we deny the loads, we'll just go somewhere else," he noted. "By what I'm hearing, this is real. We'll see."

Chicago Ray went on to warn again to leave former President Trump alone, and that the fraud case against him in NYC amounts to "election interference."

The trucker also recently applauded the Take our Border back Convoy late in January.

Former President Donald Trump was ordered to pay $354 million in damages in a civil fraud case in NYC. Attorney General Letitia James was seeking $370 million in damages after she argued Trump inflated the value of his business entities in the city with real estate pricing and accused him of engaging in a pattern of "repeated and persistent fraud."

In a post on Truth Social, the former president slammed the decision. He said, "A Crooked New York State Judge, working with a totally Corrupt

Attorney General who ran on the basis of 'I will get Trump,' before knowing anything about me or my company, has just fined me $355 Million based on nothing other than having built a GREAT COMPANY. ELECTION INTERFERENCE. WITCH HUNT."

"The Justice System in New York State, and America as a whole, is under assault by partisan, deluded, biased Judges and Prosecutors," Trump added. "Racist, Corrupt A.G. Tish James has been obsessed with “Getting Trump” for years, and used Crooked New York State Judge Engoron to get an illegal, unAmerican judgment against me, my family, and my tremendous business."

"I helped New York City during its worst of times, and now, while it is overrun with Violent Biden Migrant Crime, the Radicals are doing all they can to kick me out," the former president noted before he called the decision "a Complete and Total SHAM."

New York Resident Greg Gutfeld Threatens to Move to Florida Over Trump Being Fined for Fraud

By Charlie Nash
Feb 21st, 2024, 6:48 pm EST

Fox News host and New York resident Greg Gutfeld threatened to move to Florida on Wednesday in protest over former President Donald Trump's $354 million civil fraud fine in New York.

After New York Attorney General Letitia James said Trump's whopping fine would be "paid to New Yorkers," Gutfeld asked on *The Five*, "What does she mean by that?"

He insisted:

> No, we're not getting paid, we're not getting paid because there is no victim. Where is the $355 million gonna go if Trump owes the bank zero? The bank agreed he owes them nothing because he fulfilled the contract, he broke no laws. You know people, whenever they bring up Trump, they always say, "No one is above the law." Well, what law–

> apparently this is a first, as Kat Timpf pointed out yesterday. It's about being below the law. Trump is below the law, meaning you can punish him for not crossing into illegality, much like the rest of us.

Gutfeld argued, "Trump is 100% innocent in this. It can't be fraud, because who is it against? When I'm in a contract negotiation, I can pretty much present anything I want, because the other side will assess it and come back with their number, and then we agree. There's nothing hidden in a contract."

He concluded:

> I think this is all an act to keep Trump off his game. That's all this is. But this is why we all need to move to Florida, Fox, because I never thought that my politics and political choices would affect my privacy, my speech, and my livelihood, but that's how it is these days. They're gonna do what they did to Trump, they're gonna do to you and me, and how soon before I get arrested for public indecency? And this time, I will be innocent.

Trump has maintained his innocence and has indicated that he will appeal the judgment.

Meanwhile, James warned this week that if Trump could not find the funds to pay his fine, "we will ask the judge to seize his assets."

James has suggested that the Trump Building at 40 Wall Street could be seized, declaring, "We are prepared to make sure that the judgment is paid to New Yorkers, and yes, I look at 40 Wall Street each and every day."

Watch above via Fox News.

Have a tip we should know? tips@mediaite.com

THE AMERICAN SPECTATOR
EDITED BY R. EMMETT TYRRELL, JR.

Truckers Target Trump-Hating New York Judge

A boycott of New York City.

By Jeffrey Lord
February 19, 2024, 5:24 PM EST

Gorodenkoff/Shutterstock

Finally.

The seriously out-of-control far-leftist Manhattan Supreme Court Justice Arthur Engoron, he who has taken upon his Trump-hating self to fine the former president for $355 million for supposedly inflating his net worth, is finally getting some comeuppance.

The *New York Post* front-paged the news:

> Trump-supporting truckers vow their boycott could 'shut New York City down' after $355M fraud ruling

The *Post* reports:

> Truckers supporting Donald Trump are warning that their refusal to deliver to the Big Apple could paralyze New York City — as more drivers vow to join the boycott following the bombshell ruling in the former president's civil fraud case.

> "It could shut New York City down," said Jennifer Hernandez, a trucker who has joined in the protest against Manhattan Supreme Court Justice Arthur Engoron's decision to fine Trump $355 million for inflating his net worth by billions to dupe banks and insurers.
>
> "I'm not trying to hurt the people of New York, that's not what I'm trying to do," Hernandez insisted on NewsNation Monday morning.
>
> "But if New York loses just 10% of the trucks that go in there, their prices are going to skyrocket on everything — from milk to eggs, to any type of goods that the consumer needs. When that happens, it's going to cost everyone more money," she warned.

Well, exactly.

What's of serious significance here is that finally the out-of-control authoritarian and decidedly corrupt New York legal establishment is being taken on — in this instance, by truckers.

READ MORE from Jeffrey Lord: Trump: The New Eisenhower on NATO

One question that comes out of this is: Just why did it take truckers to take on these people?

Which is to say: Where is the New York Bar?

Whether it's Judge Engoron or New York Attorney General Letitia James — the latter openly campaigning on a vow to use her office to get Trump — the corruption each have brought to the New York legal system is vividly self-evident.

Along with the truckers, New York Republican Rep. Elise Stefanik has also stepped up to the plate.

As reported over at ABC News, Stefanik has sent a letter to the New York State Commission on Judicial Conduct, saying this of Engoron:

> Judge Engoron's bizarre and biased behavior is making New York's judicial system a laughingstock....Simply put, Judge Engoron has displayed a clear judicial bias against the defendant throughout the case, breaking several rules in the New York Code of Judicial Conduct.

Similarly, Stefanik has filed a complaint against James, the New York attorney general. Writes Stefanik, per NBC:

> Stefanik, R-N.Y., alleges that James is "conducting a biased investigation and prosecution" of Trump and "attacking" him through "extrajudicial statements," her letter to the New York Committee on Professional Standards says.
>
> She also argues that James made "highly inappropriate and prejudicial comments on social media" and asks that the Attorney Grievance Committee investigate James and issue consequences, such as disbarring or suspending her.

Bingo.

Now come the truckers, who are turning to economic action in taking on the corrupt Engoron.

In its own way, the truckers' action is symbolic of the general revolt by millions of Americans against a political establishment that they see as decidedly corrupt. It is that belief that has so vividly animated the Trump movement, well on display at the former president's decidedly energized rallies filled with enthusiastic thousands.

So, as the former president once said, stand back and stand by.

It seems to be forgotten that the heart of commercial New York City is Manhattan — a literal island. If truckers refuse to transport the most basic of goods into Manhattan, there will be serious economic problems. As mentioned, prices in the city will skyrocket.

And in the larger sense, there is a decided lesson here for those paying attention. Which is to say, Americans have awakened to the reality that their once-honored legal and political establishments — here personified by Judge Engoron and Attorney General James — have been corrupted. And they will be looking closely at those unwilling to call out the corruption — and do something about it.

The truckers are standing up for America. And, for that, they should be congratulated.

JEFFREY LORD

FOLLOW THEIR STORIES:

VIEW MORE

Jeffrey Lord, a contributing editor to *The American Spectator*, is a former aide to Ronald Reagan and Jack Kemp. An author and former CNN commentator, he writes from Pennsylvania at jlpa1@aol.com. His new book, *Swamp Wars: Donald Trump and The New American Populism vs. The Old Order*, is now out from Bombardier Books.

NEWSMAX

MAGA Truckers Say They'll Refuse NYC Loads After Trump Verdict

By Charlie McCarthy
Sunday, 18 February 2024 09:06 AM EST

Truckers who support former President Donald Trump say they will refuse to drive loads to and from New York City following the $355 million verdict in Trump's civil fraud trial.

A trucker with the X name "Chicago Ray" took to the social media platform Friday night and posted a video in which he expressed fellow truckers' outrage at the verdict.

"I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)," Chicago Ray posted on X.

"Truckers are (95%) Trump... it'll get overturned on appeal but you know how f**ken hard it is to get one of these mfrs into (NYC) cut the bulls**t I'll cya down the road"

In the video, Chicago Ray said truckers were "tired with you leftists" focused on getting Trump, and added the truckers' bosses did not care where the loads are dropped.

"I don't wish nothing on nobody, but what I'm hearing, this is real," said Chicago Ray, wearing a cap that showed "TRUMP" across the top.

By Sunday morning, Ray's post had been viewed more than 5.4 million times and received more than 54,000 likes.

Since Chicago Ray sharing his video, others have commented in support of the alleged boycott.

"40 YEAR TRUCK DRIVER HERE , NOT OTR ANYMORE , BUT TRUCKERS CAN SHUT DOWN NYC.," Scott Reagan posted on Chicago Ray's thread.

"We can always rely on the 'Trucker' to restore some semblance of 'the right thing' in response," Marvin Davis posted. "Thank You from the many here on 'X' for your courage to stand up to the Marxist leftists . . ."

"God bless our truckers. The people need to show their power. Enough. Bud Light for NY it is," Nomuck posted.

"God bless the truckers. [muscle emoji, fist emoji]," Jule Taylor posted.

Late last month, a convoy of protesters calling itself "God's Army" drove to the U.S. southern border, with organizers aiming to expose the Biden administration's lax immigration policies.

"To the naysayers: We're just ordinary citizens, farmers, ranchers, retired police officers. Not crazy conspiracy theorists," Kim Yeater, an organizer for Take Our Border Back, told the New York Post. "It will be a peaceful assembly of Americans of all political classes and all ethnicities."

A coalition of 15 Republican governors, led by Texas Gov. Greg Abbott, later joined the convoy at the border.

Charlie McCarthy

Charlie McCarthy, a writer/editor at Newsmax, has nearly 40 years of experience covering news, sports, and politics.

Related Stories:

- Trump: 'Fascists' Who 'Control' Biden Are 'Threat to Democracy'
- Alina Habba to Newsmax: Trump Victim of AG's Campaign Vow

VNY La Voce di New York

The First Italian English Digital Daily in the US

Pro-Trump Truckers to Halt Rides in NYC after Ex-President's $355M Fine

"You f**k around and find out," said conservative social media personality Chicago Ray

La Voce di New York

President Donald Trump sits in the driver's seat of a semi-truck as he welcomes truckers and CEOs to the White House, Thursday, March 23, 2017, to discuss healthcare. (Official White House Photo by Benjamin Applebaum)

Trump-supporting truckers are reportedly refusing to go to New York City after the former president was fined $355 million by a Manhattan court in a civil fraud lawsuit last week.

Chicago Ray, a truck driver and conservative social media personality, uploaded a video clip in which he says some of his colleagues would cease delivering goods to the Big Apple in protest of the decision made by the Manhattan Supreme Court on Friday.

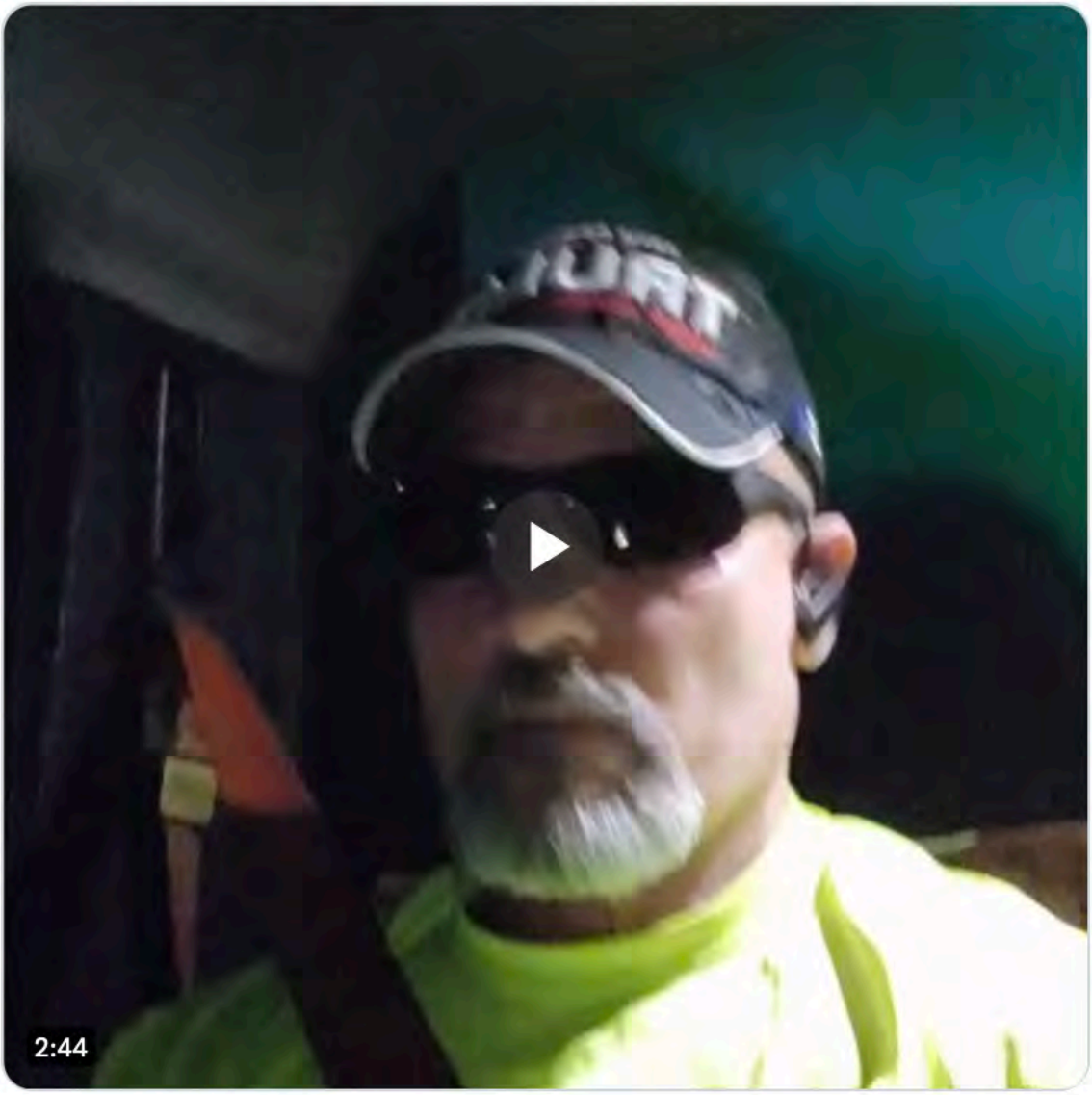
“I’ve been on the radio talking to drivers for about the past hour and I’ve talked to about ten drivers”, Ray said in the video. “They’re going to start refusing loads to New York City starting on Monday,” he added.

“I don’t know how far across the country this is or how many truckers are going to start denying loads going to New York City, but I’ll tell you what — you f**k around and find out,” Ray said.

Chicago1Ray
@Chicago1Ray

I've been on the radio for over an hour and I've talked to at least (10) Truckers who are gonna start refusing loads of Monday for (NYC) ...I talked to (3) guys that I work with who texted the boss and told him no (NYC)

Truckers are (95%) Trump... it'll get overturned on appeal but you know how fucken hard it is to get one of these mfrs into (NYC) cut the bullshit
I'll cya down the road



9:05 PM · Feb 16, 2024 · **6.1M** Views

In the X post — which has earned more than 50,000 likes and more than 4.6 million views since Friday night — Ray claimed that 95% of truckers back the former president, saying that their superiors “ain’t gonna care if we deny the loads—we’ll just go somewhere else.”

On Friday, a fine of $355 million was assessed on Trump by Manhattan Supreme Court Justice Arthur Engoron for inflating his net worth by billions over a ten-year period in order to get advantageous bank loans. The judge also decided to prevent him from holding any position as an officer or director of a firm in New York for a period of three years.

Trump denounced the case as “election interference” by his political rivals and foresaw more consequences for New York City, stating during a rally on Saturday that more companies will depart the city following Engoron’s decision.

Truckers Boycott NYC Deliveries After Trump's Civil Fraud Trial Outcome

By Genevieve St. Clair
February 17, 2024

Truckers refuse to accept loads from NYC after Trump's civil fraud trial outcome

- Chicago Ray, a conservative social media influencer and trucker, reported that some truckers are refusing to make deliveries to New York City in protest of a court ruling against former President Donald Trump.
- Ray stated that some of his colleagues have decided to stop making deliveries to New York City as a protest against the Manhattan Supreme Court ruling.
- Judge Arthur Engoron banned Trump from serving as a company director and from taking out loans from banks in the state for as many as three years.
- Trump later said he would appeal the ruling, claiming it's a "very sad day" for the country.

Truckers Refuse to Accept Loads from NYC After Trump's Civil Fraud Trial Outcome

Truckers who support Donald Trump are refusing to drive to New York City after a New York judge ordered the former president to pay nearly $355 million in penalties in a civil fraud case. Chicago Ray, a conservative social media influencer and trucker, posted a video where he claimed that some of his colleagues have decided to stop making deliveries to New York City as a protest against the Manhattan Supreme Court ruling.

Judge Bans Trump from Business Activities in New York

Judge Arthur Engoron banned Trump from serving as a company director and from taking out loans from banks in the state for as many as three years, following the civil fraud case ruling.

Trump later said he would appeal the ruling, In accordance with the latest findings of BBC. "A crooked New York state judge just ruled I have to pay a fine for $355m for having built a perfect company," he said. "It's a very sad day for – in my opinion – the country."

NATIONAL REVIEW

Having Ruled that Trump Inflated Assets, Judge Engoron Is Suddenly Stunned That Assets Appear to Have Been Inflated!

By Andrew C. McCarthy
February 7, 2024, 5:23 PM EST

Judge Arthur Engoron at closing arguments in the Trump Organization civil fraud trial at New York State Supreme Court in New York City, January 11, 2024. (Shannon Stapleton/Pool/Reuters)

Is there *anything* about the Trump legal cases that is normal?

That's a rhetorical question, of course.

As you may recall, a seemingly endless bench trial has still not been concluded in the civil fraud case brought by New York state's attorney general, elected progressive Democrat Letitia James, against former president Donald Trump. James is asking for the corporate death penalty — i.e., that the Trump

TOP STORIES

1. The D.C. Circuit's Misunderstood Trump Immunity Ruling
2. The Self-Defeating Republican Party
3. The Curse of *The Princess Bride*

organization be put out of business in the state — as well as a whopping $370 million in disgorgement damages, notwithstanding that there are no fraud victims in the case.

More on
DONALD TRUMP

1. The D.C. Circuit's Misunderstood Trump Immunity Ruling
2. The Self-Defeating Republican Party
3. Trump Gets Bought Out of the Culture Wars

In light of this gargantuan potential punishment, the lawsuit should have resulted in a jury trial, not a bench trial. But whether because of the monstrous statutes involved, bad lawyering by Team Trump, or some combination of both, it is a bench trial before a state judge, elected progressive Democratic Arthur Engoron.

So (and yes, that's me sighing), the *New York Times* reports that Judge Engoron, not surprisingly, was reading about himself in the *New York Times* when he stumbled upon revelations — which I wrote about here — that Manhattan's district attorney, elected progressive Democrat Alvin Bragg, may be about to charge Allen Weisselberg, Trump's chief financial officer and co-defendant in the civil fraud case — with perjury, based on statements Weisselberg made in testimony at the trial before Judge Engoron. If it happens, it would be the second time Bragg has charged the 76-year-old CFO — last time, after a conviction on minor tax charges, Weisselberg was jailed at Rikers Island for about a hundred days, as the notoriously progressive prosecutor pressured him to flip on Trump.

Specifically (best we can tell from the reporting), Weisselberg implausibly testified that he never paid much attention to the size of Trump's plush Trump Tower triplex apartment which, though a bit less than 11,000 square feet in area, was estimated at about 30,000 feet in Trump's statements of financial condition (which are the core of AG James's case). As a result, the apartment was valued at a risible $327 million — nearly four times as much as the $88 million price tag for what, at the time, was the record-high sale price of a comparable dwelling in Manhattan.

On October 12, after Weisselberg's testimony, *Forbes* published a story headlined, "Trump's Longtime CFO Lied, Under Oath, About Trump Tower Penthouse." The report related that, for years, Weisselberg played a key role in trying to convince the magazine of the value of the apartment, in connection with his (and Trump's) assiduous campaigns to convince *Forbes* that Trump's fortune was worthy of recognition it its profiles of the fabulously wealthy.

In other words, Weisselberg's incredible testimony about the triplex was . . . yes . . . *incredible*.

Perhaps that would be a revelation to Captain Obvious, but it shouldn't be to Judge Engoron. He cited the inflation of this asset as part of his conclusion that Trump had committed persistent fraud *even before the trial started*, and thus long before he heard Weisselberg's testimony. (See Judge Engoron's September 26, 2023, opinion, p. 21, describing the exaggeration of the triplex apartment's size, concluding it had been overvalued by up to $207 million, and observing that Trump, Weisselberg, and their co-defendants continued their "misrepresentation" even after they "received written notification from *Forbes* that Donald Trump had been overestimating the square footage . . . by a factor of three" — after which, in footnote 11, Engoron elaborated that the matter had been brought to Weisselberg's attention, who declined to correct the misrepresentation.)

Nevertheless, based upon reading the *Times* – i.e., not based on any formal motion from James's office about any need to address Weisselberg's apparently false testimony — Engoron contacted the parties and directed Trump's lawyers to address Weisselberg's testimony and what the court is to make of it in light of the reportedly ongoing criminal plea negotiations.

This is inane. The record in the trial was completed weeks ago, after summations. The only thing we have been waiting for is Engoron's verdict — and not exactly with bated breath. He has been as solicitous of James as could be throughout the proceedings, and there's no reason to believe his final judgment will depart from that. In a normal trial, if a juror read something in the newspaper that was not part of the evidentiary record and wanted to include it in the jury's deliberations on the case, that would violate the rules and draw an admonition from the judge. Here, the judge himself is bringing media reporting into his deliberations.

Plainly, if the state believed a potential Weisselberg perjury plea altered the record in a material way, its attorneys could make a motion to reopen the record and present new testimony. That the state hasn't done that indicates that (a) nothing of moment has happened at this point because Weisselberg has not been charged, much less pled guilty to making false statements, and (b) the state doesn't see Weisselberg's potential guilty plea as material because the evidence that his testimony was false and that the triplex was ridiculously overvalued is overwhelming.

So why is Engoron doing this? I can only assume that he is poised to clobber Trump with the bonkers $370 million fraud judgment that James is asking for but he realizes, given the dearth of fraud victims, that there will be significant blowback — condemnations that Trump is hardly the first New York businessman to exaggerate his wealth, that no one was actually harmed, that the punishment does not fit the crime, and that the case is a

partisan hit job. Ergo, the judge is seizing on a new “revelation” that is really no surprise at all and that does not shed a scintilla of new light on the evidence, but that Engoron can point to as felony misconduct that further justifies a ruinously harsh sentence.

Think of it as, oh, I don’t know, an asset that Judge Engoron is inflating out of all proportion.

NEXT POST Self-Starvation to Qualify for Assisted Suicide

BACK TO THE CORNER

Share 154 Comments Gift

ANDREW C. MCCARTHY is a senior fellow at National Review Institute, an NR contributing editor, and author of ***BALL OF COLLUSION: THE PLOT TO RIG AN ELECTION AND DESTROY A PRESIDENCY***. **@andrewcmccarthy**

reason
FREE MINDS AND FREE MARKETS

The Volokh Conspiracy
Mostly law professors | Sometimes contrarian | Often libertarian | Always independent

About The Volokh Conspiracy

Donald Trump is the Victim of Selective Prosecution

Trump is the victim of political witch hunts by Democrats suffering from Trump derangement syndrome

By Steven Calabresi
February 10, 2024, 8:12 A.M. EST

The U.S. Supreme Court has said that "A selective prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." *United States v. Armstrong*, 517 U.S. 456 (1996). The defendant must prove that "the *** prosecution policy 'had a discriminatory effect and that it was motivated by a discriminatory purpose.'" *Tyler v. Boles*, 368 U.S. 448 (1962).

Among the discriminatory purposes, which are barred by the selective prosecution doctrine are discrimination involving the Equal Protection Clause and on the basis of race, religion, sex, gender, or political alignment. I think Donald Trump is absolutely right on the merits in the four criminal cases which have been brought against him and in the New York State civil fraud case. But, I also think that all five of these legal actions against Trump are nothing less than a political witch hunt that is motivated by political ambition in the two cases brought respectively by New York State Attorney General Letitia James and by District Attorney Alvin Bragg. Trump's First Amendment rights are being stripped away by discriminatory legal actions brought against him because of his political views in flagrant violation of the First Amendment and the Equal Protection Clause.

The New York civil case in which Trump is at risk of being fined $370 million for fraud and being barred from ever doing business in New York State again is a victimless crime. No bank or lender complained that Trump had defrauded them, and the Democratic State Attorney General's accusations that Trump inflated the value of his assets to get favorable loans is standard practice in the New York real estate market. The banks that loaned Trump the money he borrowed discounted the value of Trump's assets from what he claimed, just as they do with every other real estate mogul in the New York real estate market. Letitia James brought this civil action because New York State Democrats suffer from Trump derangement syndrome, and James wants to win some future New York Democratic primary. In doing so, James is violating Trump's First Amendment rights and his rights under the Equal Protection clause. James should have to show that some other New York businessman has been prosecuted for hundreds of millions of dollars and threatened with a ban on doing business in New York for conduct like Trump's. She cannot do that because the politically charged Trump lawsuit she has brought against Trump is one of a kind.

Alvin Bragg's indictment of Trump for paying hush money to Stormy Daniels and not reporting it as a campaign expenditure is also a case of selective prosecution. John Edwards, the Vice Presidential running mate along with John Kerry in 2004, had used more than $1 million in campaign money to hide his very own illegitimate affair. Edwards case led to the U.S. Justice Department adopting guideline against brining charges about the use of campaign funds to cover up sexual affairs. If John Edwards gets off, then Donald Trump should too. This is another case of selective prosecution based on Trump's political views to go after him so Alvin Bragg can win a Democratic primary in New York for some higher elective office.

The criminal federal classified document case brought in Florida by Jack Smith is yet another travesty of unequal justice based on party affiliation in violation of the First Amendment and the Equal Protection Clause. For years, Barack Obama knew that Hillary Clinton, as Secretary of State, had an insecure personal computer at her home, which she was illegally using to store and exchange highly classified top secret information. Neither Obama nor his Attorney General Loretta Lynch chose to prosecute Clinton for these violations of the criminal law. Most recently, President Joe Biden was excused from prosecution for violations of the law concerning classified documents stored in one's house. Donald Trump, however, does get prosecuted for mishandling classified documents. This is a blatant double standard for Republicans and Democrats on the handling of classified information. Again, Trump is being selectively prosecuted in violation of the First Amendment and the Equal Protection Clause.

The January 6th, 2021 indictments of Donald Trump are also blatantly unfair. To begin with, Jack Smith is an unconstitutionally appointed Special Counsel for reasons I point out in my law review article with Gary Lawson: *Why Robert Mueller's Appointment Was Unlawful?* 95 Notre Dame University Law Review 87 (2019). All Trump did on January 6, 2021 was to give his followers a fiery speech and urge them to "fight like hell." Trump never urged his followers to disrupt the counting of the Electoral votes from each state. Trump had a First Amendment right to give the speech he gave at the Ellipse, and he is again the victim of a selective prosecution in violation of the Equal Protection Clause.

As for the Georgia case, Fani Willis is angling to win a future Democratic primary by going after Donald Trump over a phone call in which Trump exercised his First Amendment rights to ask if more Trump votes could be found in Georgia. This is again selective prosecution of Trump by a Democratic prosecutor in violation of the Equal Protection Clause.

In my 34 years as a law professor, I have repeatedly seen the rules in legal academia bent dramatically to favor liberals over conservatives. I thus identify with what Trump is going through in terms of selective prosecution. Trump's First Amendment and Equal Protection Clause rights are being flagrantly violated, and the U.S. Supreme Court should put an end to this charade now.

STEVEN CALABRESI is the Clayton J. & Henry R. Barber Professor of Law at Northwestern Pritzker School of Law, where he specializes in constitutional law. He also teaches regularly at the Yale Law School. Before going into teaching, he worked in the Reagan White House, and was a Special Assistant for Attorney General Edwin Meese III.

Mob Rule Law Convicts Trump of Crimeless Crime

By Michael Reagan with Michael R. Shannon
Tuesday, 20 February 2024 09:34 AM EST

Judge Arthur Engoron (Seth Wenig/Pool/AFP via Getty Images)

There is quite a bit of suspense here at the Columnist's Corral.

We're wondering if some leftist California district attorney is going to come after the Reagan family for overvaluing real estate, like New York went after Donald Trump.

What, you ask, could cause that?

Well, when Ronald Reagan's Belair, California home and his ranch in Santa Barbara county were put on sale after his death the asking price was more than the appraised value.

Why? Because it was Ronald Reagan's home and ranch.

Property owned by a famous person has an intrinsic or notoriety value, if you prefer, that exceeds the strictly bookkeeping valuation of the property.

Just like have Trump's name on a building in giant gold letters (is there any other color where Trump is concerned?) acts as an enhancement to the bricks and mortar value.

But based on Judge Arthur "My Time in the Spotlight" Engoron's ruling in the New York Trump real estate case, the Reagans may be on the spot.

We're wondering if any of these Marxists has ever been to an auction?

At an auction items are given an estimated value by the auction house but many times the final price vastly exceeds the initial valuation.

Does that mean the buyer was cheated? Esteemed Marsupial Court Judge Engoron might think so, but the truth is the value of anything is what someone else will pay for it.

We've written about this case before. (Complete details here.)

Before the trial was even held, "Judge Engoron — who, based on his photos, we wouldn't trust to estimate the value of a ham sandwich — "dissolved Trump's New York businesses and LLCs."

Because in his expert estimation Trump overvalued the worth of his properties.

And even more remarkable, *the judge claims Trump committed fraud.*

As legal expert Jonathan Turley observed, "In laying the foundation for his sweeping decision against former President Donald Trump, Judge Arthur Engoron observed that 'this is a venial sin, not a mortal sin.' Yet, at $355 million, one would think that Engoron had found Trump to be the source of Original Sin."

Turley goes on to put the decision and the penalty Engoron levied against Trump — $460 million, including interest — in perspective, "That makes

the damages against Trump greater than the gross national product of some countries, including Micronesia.

"Yet the court admitted that not a single dollar was lost by the banks from these dealings. Indeed, witnesses testified that they wanted to do more business with Trump, who was described as a "whale" client with high yield business opportunities."

This is the kangaroo court's real gift to America.

The Trump affair is not only a victimless crime.

It's a crimeless crime.

As we wrote earlier, men who made the mistake of purchasing a Chinese shirt on Facebook have suffered more damage than the anonymous banks and insurance companies in New York.

Those who believe the system works and Donald Trump will be vindicated in a future appellate ruling are ignoring the reality of the here and now in favor of some fantasy justice in the future.

Trump will have to either pay the ruling now or post a bond in the full amount during the appeal.

Bonds are like bail. Even if Trump can find someone to post the bond, he will have to pay a hefty fee — if it's like bond for a criminal — in the neighborhood of $46 million dollars, which won't be refunded to him if he wins on appeal.

And Trump won't be able to direct his companies because an expensive "independent monitor" (probably someone's campaign contributor) will be in the driver's seat, calling all the shots.

The process here is the punishment, regardless of the final verdict.

Even if vindicated by an appellate court, Trump will have spent millions of dollars he won't get back, his companies will be under the direction of people who hate him for the duration of the appellate process and this entire clown circus will be a distraction from his re-election campaign.

Which is the motive behind all these leftist legal attacks.

This isn't the rule of law.

It’s the rule of mobs.

And the sooner conservatives cowboy up and start retaliating, the sooner it will stop.

Michael Reagan, the eldest son of President Reagan, is a Newsmax TV analyst. A syndicated columnist and author, he chairs The Reagan Legacy Foundation. Michael is an in-demand speaker with Premiere speaker's bureau. Read Michael Reagan's Reports —More Here.

Michael R. Shannon is a commentator, researcher for the League of American Voters, and an award-winning political and advertising consultant with nationwide and international experience. He is author of "Conservative Christian's Guidebook for Living in Secular Times (Now With Added Humor!)" Read Michael Shannon's Reports — More Here.

Posts by Michael Reagan

- 'Heartbeat Act' an Anti-Abortion Victory In Lone Star State
- El Salvador Actually Stops Crime, Meanwhile - DC Surrenders
- View More Posts by Michael Reagan

Newsmax Blogs:

- : Sen. Sinema Would Face Obstacles in Reelection Try
- : Danny Masterson Transferred From 'Charles Manson' Prison
- View More Newsmax Blogs

THE SPECTATOR WORLD

The ruling against Trump is perverse in true New York fashion

It is the outcome of the vindictive actions of a politician wielding the law enforcement power of the state to destroy her enemy

By Joseph Moreno
February 17, 2024, 4:53 PM EST

Attorney General Letitia James (Getty)

While Donald Trump's excessive rhetoric often evokes eye rolls, in the case of Friday's record-setting $350 million judgment against the Trump Organization, he is spot on. "Disgraceful." "Lawfare." "Banana republic." All three apply.

It's hard to imagine a more perverse and vindictive misuse of the justice system than that which New York attorney general Letitia James has committed. While campaigning in 2018, James promised to vigorously

investigate Trump and his business. True to her word, once in the office James spent three years seizing and scouring through Trump's tax and financial records for anything she could use as the basis for legal action. Manhattan district attorney Alvin Bragg — no Trump fan, he — reviewed the evidence and declined criminal prosecution, but James forged ahead and ultimately brought a civil fraud action against the Trump Organization, despite the lack of a single fraud victim.

Abetted by the clownish Judge Arthur Engoron, the two elected Democrats tag-teamed to ensure Trump never had a chance. Engoron, who declared the Trump Organization liable before the trial even began, could not even be bothered to pretend he was a neutral jurist. His eye-rolling and whispering with his clerk throughout the bench trial left little doubt he planned to award the attorney general what she asked for — even if she could not decide herself. The proposed amount was an arbitrary moving target, wherein her initial ask for $250 million somehow increased *during* the trial by another $120 million.

With no victims to be made whole or other damages to be shown, Engoron could have issued an appropriate hand-slapping penalty reflective of the situation. Yet, true to form, he obediently gave James nearly all she demanded with a $364 million fine and a ruling clearly designed to drive the Trump Organization out of business.

And how did James and Engoron reach this staggering amount? Well, since James could produce no party that was damaged by Trump's actions she had to make it up. A supposed expert for the state testified that had Trump been more accurate in his asset valuations the terms of his bank loans would have been less favorable in the amount of $170 million.

But does anyone really believe that if these sophisticated financial institutions had been cheated out of hundreds of millions of dollars, they would not be first in line to sue? Not only did these banks have no complaints about their dealings with the Trump Organization, they made clear they did not rely on Trump's valuations and were in fact happy to keep doing business with him. In fact, not a single witness could provide evidence that Trump even *intended* to defraud his lenders.

So whose interests was Attorney General James representing in this case? It was not the banks who lent money to the Trump Organization and were repaid under the terms negotiated. What about the people of New York? They did not lose any money — in fact, the less the Trump Organization paid in interest rates, the fewer deductions and thus more in taxes it likely paid to New York State. The fact is this case was pure politics on behalf of

James — the vindictive actions of a politician wielding the law enforcement power of the state to destroy her enemy.

James's abuse of her position should result in her removal from office. But on the contrary, following the ruling, she was out before the cameras preening about how there "cannot be different rules for different people." So, should real estate firms in New York — who are notorious for serially overvaluing their holdings — now watch out for future enforcement actions? Don't hold your breath.

New York's population is shrinking, crime is on the rise and the tax base is eroding. James will not want to be seen as making the business environment even more hostile. No, this was a special action reserved specifically to destroy the Trump Organization. Any appellate decisions to overturn this disaster are years away. Meanwhile, James will strut around claiming she took down Donald Trump. This might be the stuff future gubernatorial campaigns are made of, but it is not to be confused with justice.

By Joseph Moreno

Joseph Moreno is a former federal prosecutor with the Department of Justice in the National Security Division, a former staff member with the FBI's 9/11 Review Commission and a US Army combat veteran.

EXHIBIT Z

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Defendants President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC ("Defendants") hereby appeal to the Appellate Division, First Department, from the Judgment by Hon. Arthur F. Engoron, J.S.C., dated February 22, 2024 (NYSCEF Doc. No. 1699), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on February 23, 2024, and served by Notice of Entry on February 23, 2024, which found all Defendants liable under the second, third, fourth, fifth, and seventh causes of

action and Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, entered judgment in favor of the plaintiff in the amount of $464,576,230.62, and entered injunctive relief.

This appeal is taken from each and every part of the Judgment insofar as Defendants are aggrieved. Copies of the Notice of Entry and Informational Statement pursuant to 22 NYCRR § 1250.3(a) are attached hereto as Exhibit A.

Dated: New York, New York
February 26, 2024

Respectfully submitted,

HABBA MADAIO & ASSOCIATES, LLP
Alina Habba
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
ahabba@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: New York, New York
February 26, 2024

Respectfully submitted,

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald J. Trump, Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

EXHIBIT “A”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 Hon. Arthur Engoron NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed as Exhibit A is a true copy of the Judgment dated February 22, 2024 that was entered in the Supreme Court, New York County Clerk's Office on February 23, 2024.

Dated: New York, New York
February 23, 2024

By: */s/ Colleen K. Faherty*
Colleen K. Faherty

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
Colleen.Faherty@ag.ny.gov

Attorneys for the People of the State of New York

EXHIBIT A

At an IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the New York County Court House, 60 Centre Street, New York, New York, on the 22 day of February 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

JUDGMENT

WHEREAS this matter came on for a bench trial before Hon. Arthur F. Engoron, Justice of the Supreme Court of the State of New York, at the courthouse at 60 Centre Street, New York, New York, that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024; and

WHEREAS this Court rendered a DECISION AND ORDER dated September 26, 2023 (NYSCEF Doc. No. 1531), which determined, inter alia, that defendants Donald J. Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings

Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the first cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

WHEREAS this Court rendered a DECISION AND ORDER AFTER NON-JURY TRIAL dated February 16, 2024 (NYSCEF Doc. No. 1688) which found, inter alia, that:

(1) defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the second, third, fourth, fifth, and seventh causes of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

(2) defendants Allen Weisselberg and Jeffrey McConney are liable on the sixth cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1),

NOW, on application of Letitia James, Attorney General of the State of New York, counsel for plaintiff the People of the State of New York, whose address is 28 Liberty Street, 16th floor, New York, New York 10005, it is

ADJUDGED, as follows:

1. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings LLC, whose last known place of business is at 725 5th Ave, New

York, NY 10022, DJT Holdings Managing Member, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Endeavor 12 LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, 401 North Wabash Venture LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and 40 Wall Street LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$168,040,168**, with 9% interest thereon from March 4, 2019 in the amount of $75,286,599.10 amounting to the sum of $243,326,767.10 and that the Plaintiff have execution therefor; X

2. Plaintiff have judgment and do recover from defendants Donald J. Trump who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and the Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$126,828,600**, with 9% interest thereon from May 11, 2022 in the amount of $20,421,141.98 amounting to the sum of $147,249,741.98 and that the Plaintiff have execution therefor; X

3. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, and Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$60,000,000**, with 9% interest thereon

from June 26, 2023 in the amount of $3,580,273.97 amounting to the sum of $ 63,580,273.97, and that the Plaintiff have execution therefor; X

4. Plaintiff have judgment and do recover from defendant Eric Trump, who resides at 502 Bald Eagle Drive, Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $4,659,175.84 and that the Plaintiff have execution therefor; X

5. Plaintiff have judgment and do recover from defendant Donald Trump, Jr., who resides at 494 Mariner Dr., Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $ 4,659,175.84 , and that the Plaintiff have execution therefor; and X

6. Plaintiff have judgment and do recover from defendant Allen Weisselberg, who resides at 6554 Piemonte Dr, Boynton Beach, FL 33472, in the amount of **$1,000,000**, with 9% interest thereon from January 9, 2023 in the amount of $101,095.89 amounting to the sum of $1,101,095.89 and that the Plaintiff have execution therefor; X

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

7. defendants Allen Weisselberg and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State;

8. defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years;

9. defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC, as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years;

10. defendants Eric Trump and Donald Trump, Jr., as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years;

11. the Court's September 26, 2023 Decision and Order (NYSCEF Doc. No. 1531) is modified as of the date of the Court's Decision and Order After Non-Jury Trial, solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence;

12. the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years;

13. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, the Independent Monitor shall submit to the Court a proposed order outlining the specific authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward;

14. an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and

15. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance.

ADJUDGED that this Judgment shall bear interest from the date of its entry at the statutory rate of 9% per annum.

ORDERED that the Clerk is directed to calculate the interest and enter judgment in accordance with the above in favor of the Plaintiff.

ENTER

Dated: New York, New York
February 22, 2024

Justice of the Supreme Court

HON. ARTHUR F. ENGORON, J.S.C.

FILED
Feb 23 2024
NEW YORK
COUNTY CLERK'S OFFICE

FEB 22 2024

Clerk

Judgment Creditor
People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York
28 Liberty St, New York, NY 10005
(212) 416-8222

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

JUDGMENT

Letitia James,
Attorney General of the State of New York
Attorney for Plaintiff
28 Liberty Street, 16th Floor
New York, New York 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Of Counsel

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	☐ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	■ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 02/22/2024	Entered: 02/23/2024
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ☐ Interlocutory ■ Final ☐ Post-Final	Trial: ■ Yes ☐ No If Yes: ☐ Jury ■ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Defendants President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC ("Defendants") appeal from the Judgment of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated February 22, 2024, and entered by the Clerk of the Court on February 23, 2024, which found all Defendants liable under the second, third, fourth, fifth, and seventh causes of action and Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, entered judgment in favor of the Plaintiff in the amount of $464,576,230.62, and entered injunctive relief.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, finding all Defendants liable under the second, third, fourth, fifth, and seventh causes of action, finding Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, entering disgorgement in favor of Plainiff in the principal sum of $363,894,816.00 plus pre-judgment interest, and entering far-reaching, punitive injunctive relief including, inter alia, enjoining the individual Defendants from serving as officers or directors of a New York corporation or other legal entity, enjoining Defendant President Donald J. Trump and the entity Defendants from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services, installing an Independent Director of Compliance at the Trump Organization, and extending and enhancing the monitorship of Hon. Barbara Jones for a period of at least three years.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	Appellant
3	DONALD TRUMP, JR.	Defendant	Appellant
4	ERIC TRUMP	Defendant	Appellant
5	IVANKA TRUMP	Defendant	None
6	ALLEN WEISSELBERG	Defendant	Appellant
7	JEFFREY MCCONNEY	Defendant	Appellant
8	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	Appellant
9	THE TRUMP ORGANIZATION, INC.	Defendant	Appellant
10	THE TRUMP ORGANIZATION LLC	Defendant	Appellant
11	DJT HOLDINGS LLC	Defendant	Appellant
12	DJT HOLDINGS MANAGING MEMBER	Defendant	Appellant
13	TRUMP ENDEAVOR 12 LLC	Defendant	Appellant
14	401 NORTH WABASH VENTURE LLC	Defendant	Appellant
15	TRUMP OLD POST OFFICE LLC	Defendant	Appellant
16	40 WALL STREET LLC	Defendant	Appellant
17	SEVEN SPRINGS LLC	Defendant	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	**State:** New York	**Zip:** 10005	**Telephone No:** 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	**State:** New York	**Zip:** 10020	**Telephone No:** 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 6-17			
Attorney/Firm Name: Chris Kise, Esq. of Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	**State:** Florida	**Zip:** 32301	**Telephone No:** 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 8, 11-17			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq. of Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	**State:** New York	**Zip:** 11556	**Telephone No:** 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2-4, 8-17			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 5			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

MICHAEL FARINA, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am a partner of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On February 26, 2024, I served the within Notice of Appeal and Informational Statement, both dated February 26, 2024, together with a copy of the Judgment of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated February 22, 2024, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same enclosed in a postpaid properly addressed

wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Alina Habba, Esq.
Michael Madaio, Esq.
Habba Madaio & Associates, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Christopher M. Kise, Esq.
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
February 26, 2024

Michael Farina
MICHAEL FARINA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Defendants President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC ("Defendants") hereby appeal to the Appellate Division, First Department, from the Decision and Order After Non-Jury Trial by Hon. Arthur F. Engoron, J.S.C., dated February 16, 2024 (NYSCEF Doc. No. 1688), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on February 16, 2024, and served by Notice of Entry on February 16, 2024, which found all Defendants liable under the second, third,

fourth, fifth, and seventh causes of action and Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, directed the Clerk to enter judgment in favor of the Plaintiff in the principal sum of $363,894,816.00, and ordered injunctive relief.

This appeal is taken from each and every part of the Order insofar as Defendants are aggrieved. Copies of the Notice of Entry and Informational Statement pursuant to 22 NYCRR 1250.3(a) are attached hereto as Exhibit A.

Dated: New York, New York
February 26, 2024

Respectfully submitted,

HABBA MADAIO & ASSOCIATES, LLP
Alina Habba
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
ahabba@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: New York, New York
February 26, 2024

Respectfully submitted,

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald J. Trump, Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

EXHIBIT “A”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 Hon. Arthur Engoron NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of the Hon. Arthur Engoron dated February 16, 2024 that was entered in the Supreme Court, New York County Clerk's Office on February 16, 2024.

Dated: New York, New York
February 16, 2024

By: */s/ Colleen K. Faherty*
Colleen K. Faherty

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
Colleen.Faherty@ag.ny.gov

Attorneys for the People of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

Decision and Order
After Non-Jury Trial

Arthur F. Engoron, Justice

After presiding over a non-jury trial that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024, this Court makes the following findings of fact and conclusions of law and issues this Decision and Order:

SUMMARY

Donald Trump and entities he controls own many valuable properties, including office buildings, hotels, and golf courses. Acquiring and developing such properties required huge amounts of cash. Accordingly, the entities borrowed from banks and other lenders. The lenders required personal guarantees from Donald Trump, which were based on statements of financial condition compiled by accountants that Donald Trump engaged. The accountants created these "compilations" based on data submitted by the Trump entities. In order to borrow more and at lower rates, defendants submitted blatantly false financial data to the accountants, resulting in fraudulent financial statements. When confronted at trial with the statements, defendants' fact and expert witnesses simply denied reality, and defendants failed to accept responsibility or to impose internal controls to prevent future recurrences. As detailed herein, this Court now finds defendants liable, continues the appointment of an Independent Monitor, orders the installation of an Independent Director of Compliance, and limits defendants' right to conduct business in New York for a few years.

INTRODUCTION

In this civil action, plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, seeks monetary penalties and injunctive relief against Donald John Trump ("Donald Trump") (the former president of the United States); Donald Trump, Jr. ("Donald Trump, Jr." or "Trump, Jr.") and Eric Trump (two of his sons); Allen Weisselberg and Jeffrey McConney (two former employees of defendant The Trump Organization, Inc.); and various real estate holding entities. Plaintiff essentially alleges (1) that the individual defendants violated New York Executive Law § 63(12) by submitting false financial statements to banks and insurance companies to obtain better rates on loans and insurance coverage; and (2) that the holding entities are liable for the individual defendants' misdeeds. Defendants (1) allege that the statements were completely or substantially correct; and (2) crow that the borrowers paid back all loans fully and on time.

Common Law Fraud

The instant action is not a garden-variety common law fraud case. Common law fraud (also known as "misrepresentation") has five elements: (1) A material statement; (2) falsity; (3) knowledge of the falsity ("scienter"); (4) justifiable reliance; and (5) damages. See, e.g., Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership, 12 NY3d 236, 242 (2009) ("[T]he elements of common law fraud" are "a false representation . . . in relation to a material fact; scienter; reliance; and injury."). Alleging the elements is easy; proving them is difficult. Is the statement one of fact or opinion? Material according to what standard? Knowledge demonstrated how? Justifiable subjectively or objectively? In mid-twentieth century New York, to judge by contemporary press reports and judicial opinions, fraudsters were having a field day.

Executive Law Section 63(12)

Along came Executive Law § 63(12), which began life as Laws of 1956, Chapter 592, "An act to amend the executive law, in relation to cancellation of registration of doing business under an assumed name or as partners for repeated fraudulent or illegal acts." Jacob Javits, then the Attorney General of the State of New York (the position that Attorney General James now occupies), pushed for the bill, as did the Better Business Bureau of New York City. See Senate Bill Jacket, February 21, 1956. State Comptroller Arthur Levitt asked, "Why not grant the Attorney General authority to enjoin anyone from continuing in a business activity if such person has been guilty of frequent fraudulent dealings." The preponderance of the evidence standard, the one used in almost all civil cases would apply. Comptroller Levitt noted: "In a suit for an injunction, there is no need to prove the charge beyond a reasonable doubt, as in a criminal case—a mere preponderance of evidence would be sufficient." Id.

In the subsequent six decades, the State has toughened the statute. In Laws of 1965, Chapter 666, the definitions of the words "fraud" and "fraudulent" were expanded to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, false pretence [sic], false promise or unconscionable contractual provisions." The statute casts a wide net.

"The general grant of power to the Attorney General under section 63(12) has traditionally been his most potent." 3 Fordham Urb. L. J. 491, 502 (1975).

Executive Law § 63(12) now reads as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply… for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

The Financial Marketplace

This Court takes judicial notice that New York State, particularly New York City, is the financial capital of the country and one of the financial capitals of the world. The City's fabled Wall Street is synonymous with capital formation, investing, trading, lending, and borrowing. In a summary judgment Decision and Order dated September 26, 2023, NYSCEF Doc. 1531, the Court addressed the State's judicially recognized interest in an honest marketplace:

> "In varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." People v Grasso, 11 NY3d 64, 69 at n 4 (2008); People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SDNY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal

> for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness …").

Timely and total repayment of loans does not extinguish the harm that false statements inflict on the marketplace. Indeed, the common excuse that "everybody does it" is all the more reason to strive for honesty and transparency and to be vigilant in enforcing the rules. Here, despite the false financial statements, it is undisputed that defendants have made all required payments on time; the next group of lenders to receive bogus statements might not be so lucky. New York means business in combating business fraud.

Procedural Background

This action follows an extensive investigation conducted by plaintiff, the Office of the Attorney General of the State of New York ("OAG"). In 2020, OAG commenced a special proceeding to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling, in part, compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020.

OAG filed the instant complaint on September 21, 2022. On November 3, 2022, in response to a motion by OAG, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of Donald Trump. NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194. To date, Judge Jones has delivered six reports to this Court, dated December 19, 2022, February 3, 2023, April 11, 2023, August 2, 2023, November 29, 2023, and January 26, 2024. NYSCEF Doc. Nos. 441, 489, 617, 647, 1641, 1681.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. No. 453. Defendants appealed, resulting in a June 27, 2023 Order, wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that in this case the "continuing wrong doctrine does not delay or extend [the statute of limitations]";[1] (2) finding that claims are timely against defendants subject to a tolling agreement[2] if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint

[1] As this Court explained *ad nauseum* at trial, statutes of limitation bar claims, not evidence.

[2] The Trump Organization's Chief Legal Officer, Alan Garten, originally entered into a tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. This Court previously found, pursuant to the terms of the agreement, that it binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries.

as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not bound by the tolling agreement, as she was not an employee of the Trump Organization at the time Garten entered into the agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Complaint

The Complaint asserts seven causes of action. The first cause of action is of a type known as a "stand-alone § 63(12) claim." Consistent with the wording of the statute, plaintiff need only prove that defendants used false statements in business.

The second through seventh causes of action require plaintiff to prove that defendants intended to violate a provision of the Penal Law. The second cause of action, pursuant to New York Penal Law § 175.10, requires plaintiff to prove that defendants intended to falsify business records. The third cause of action requires plaintiff to prove that defendants intended to conspire to falsify business records. The fourth cause of action, pursuant to New York Penal Law § 175.45, requires plaintiff to prove that defendants intended to issue a false financial statement. The fifth cause of action requires plaintiff to prove that defendants intended to conspire to issue a false financial statement. The sixth cause of action, pursuant to New York Penal Law § 176.05, requires plaintiff to prove that defendants intended to engage in insurance fraud. The seventh cause of action requires plaintiff to prove that defendants intended to conspire to engage in insurance fraud.

Summary Judgment

In a 35-page Decision and Order, dated September 26, 2023, this Court granted plaintiff summary judgment only on liability and only on the first cause of action. Simply put, the Court found that plaintiff had capacity and standing to sue; that non-party disclaimers and party "worthless clauses" do not insulate defendants' material misrepresentations; that intent, scienter, and reliance are not elements of a stand-alone § 63(12) claim; that disgorgement of profits is an available remedy; and that the subject financial statements materially misrepresented the value of the Trump Tower Triplex, The Seven Springs Estate, certain apartments in Trump Park Avenue, 40 Wall Street, Mar-a-Lago, and a golf course in Aberdeen, Scotland. NYSCEF Doc. 1531.

This Court also held that the tolling agreement the parties entered into bound all defendants, such that the applicable statute of limitations allowed claims accruing on or after July 13, 2014. This Court also ordered the cancellation of defendants' business certificates filed under and by virtue of GBL § 130. The Appellate Division stayed the cancellation of the certificates pending the final disposition of defendants' appeal of the summary judgment rulings.

The Trial

The eleven-week trial of this action addressed whether defendants are liable pursuant to the second through seventh causes of action and what monetary penalties and/or injunctive relief this

Court should impose. Plaintiff is seeking "disgorgement" of "ill-gotten gains," and to limit defendants' abilities to conduct business in New York.

Constitutional provisions guaranteeing a jury trial, such as the Seventh Amendment to the United States Constitution, apply only to cases "at common law," so-called "legal" cases. The phrase "at common law" is used in contradistinction to cases that are "equitable" in nature. Whether a case is "legal" or "equitable" depends on the relief that plaintiff sought. Here, plaintiff seeks disgorgement and injunctions, each of which are forms of equitable relief. Thus, there was no right to a jury,[3] and the case was "tried to the Court;" the Court being the sole factfinder and the sole "judge of credibility."

This Court listened carefully to every witness, every question, every answer. Witnesses testified from the witness stand, approximately a yard from the Court, who was thus able to observe expressions, demeanor, and body language. The Court has also considered the simple touchstones of self-interest and other motives, common sense, and overall veracity.

[3] In any event, neither party applied nor moved for a jury trial.

FINDINGS OF FACT

This Court heard testimony from 40 witnesses over 43 days[4] and makes the following findings of fact:

The Non-Party Witnesses

Donald Bender

Donald Bender is an accountant who worked for Mazars USA LLP ("Mazars"), an accounting firm, for approximately 41 years. From approximately 2011-2021, Bender spent approximately half of his time working on engagements for Donald Trump and the Trump Organization, and between 2-4% of his time working on Donald Trump's SFCs. Trial Transcript ("TT") 106-107.

Donald Trump engaged Mazars to create SFC "compilations," comprised of accounting data that defendants sent to Mazars; Mazars simply "compiled" that data into SFC format. "Audits" are the highest level of review of accounting data; "reviews" subject the data to medium-level scrutiny; "compilations" require the least scrutiny of the data. The accountant does not test or audit the raw numbers and thus cannot, and does not, assure the accuracy of the statement. TT 113. Mazars compiled Donald Trump's SFCs from 2011 through 2020.

Bender received all his information for the compilations from Jeffrey McConney or a member of his team, such as Patrick Birney. TT 114-116, 221-222, 387.

Mazars would not have issued the SFCs if Allen Weisselberg had not represented that the information in the SFCs was in conformity with Generally Accepted Accounting Principles ("GAAP") or if Mazars had learned that any of the representations in the letter were not true. TT 199, 254-255, 263-269.

Bender made absolutely clear that under the terms of the engagement for compilation services, the client was responsible for ensuring that assets were stated at their "estimated current values," and that Weisselberg was responsible for determining which GAAP departures were identified and disclosed. TT 237-238, 319-320. The engagement letters, signed by a combination of Weisselberg, Donald Trump, and Donald Trump, Jr., confirmed this by unambiguously acknowledging that Donald Trump, through his trustees, was responsible for the preparation and fair presentation of the personal financial information in accordance with GAAP. See, e.g., PX 741.

Bender later learned that the Trump Organization had withheld records, such as appraisals, that Mazars had requested while preparing the compilations, leading Mazars to conclude that the Trump Organization had falsely represented that it had complied fully and truthfully with all inquiries from Mazars. Mazars subsequently terminated its relationship with the Trump Organization. TT 242-243; PX 2992, 2994. Bender stated that it was not until he was interviewed by the Manhattan District Attorney's Office, in spring 2021, that he learned that the Trump Organization had withheld appraisals from Mazars. TT 536-538. Bender made clear that

[4] Indeed, the trial transcript spans 6,758 pages, excluding closing arguments.

Mazars would not have issued the SFCs if it had known that it had not been provided with all appraisals. TT 251.

Camron Harris

Camron Harris is an audit partner at Whitley Penn, an accounting firm that compiled Donald Trump's SFC for 2021. TT 442. His testimony buttressed Donald Bender's that compilers simply use the numbers provided by the client; they do not check them. TT 447-448; PX-1497.

Harris's contemporaneous notes, taken during or shortly after a meeting with Jeffrey McConney and Mark Hawthorn of the Trump Organization, state:

> Patrick [Birney] explained that he is the primary preparer of the valuations. Patrick obtained all of the necessary information for the valuations from external and internal sources. He worked with other team members to pull this information together, such as Ray Flores. Ray Flores performs the first review of Patrick's spreadsheet and financial statements. Prior to issuance of the SOFC, an individual from upper management of the Trump Organization, and also one of the Trump family members, will read and review the financial statements.

TT 450-451. Harris also indicated that the Trump Organization designated McConney as the "individual with suitable skills, knowledge and experience to oversee [Whitley Penn's] preparation of your financial statements," as the Whitley Penn compilation engagement agreement required. TT 459-464; PX-2300. Harris stressed the "fundamental" importance of the client's obligations, particularly during a compilation engagement, emphasizing that "[u]nder a compilation, we are not doing anything, you know, to verify the accuracy of that information, so that responsibility and accountability follows within the client to be doing those things so that the information is correct, because we didn't do anything to verify that it is correct." TT 464-465.

Harris further made clear that Whitley Penn would not have issued the 2021 SFC without a signed representation letter from the client, indicating that it acknowledged its responsibility for providing a fair presentation of values in accordance with GAAP. TT 480-481.

Nicholas Haigh

Nicholas Haigh worked as a risk officer and managing director of Deutsche Bank's Private Wealth Management Division from 2008 to 2018. TT 980.

The Private Wealth Management Division serviced high net worth individuals and provided various products to them, including credit products. As the risk officer, Haigh's job was to examine the client's credit exposure and determine whether a client's credit request fit within the bank's desired risk profile. TT 982.

When a client wanted a loan or other "credit facility" from the Private Wealth Management Division, a relationship manager would interface with the client and then speak with a lending officer at the bank. The lending officer would document the terms of a proposed loan in a credit memorandum that would be sent to Haigh and his team for final approval. TT 986-987. If the credit risk management team was comfortable with the terms and information contained in the credit memorandum, they would approve and sign off on the proposal. TT 989. Haigh was the most senior credit officer to sign off on the Deutsche Bank loans to the Trump Organization entities. TT 992.

In 2011, the risk management team approved the terms of a credit facility to the "Trump Family"[5] "based on the financial strength of the guarantor," emphasizing that "[t]he financial profile of the guarantor includes on an adjusted basis, 135 million in encumbered liquidity, 2.4 billion in net worth and approximately 48 million in adjusted recurring net cash flow." The risk management team noted that "[a]lthough facility is being extended to [a special purpose vehicle] for the purposes of financing the purchase of the resort, the credit exposure is being recommended primarily based on the financial profile of the guarantor," further emphasizing the "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating Collateral." PX 293; TT 1001.

Haigh made clear that:

> The wealth management business at Deutsche Bank would not make loans secured just on collateral without a strong financial guarantee or personal guarantee from a financially strong person. Given that this was unusual collateral as a golf resort and spa, we would not really want to have to foreclose on that collateral and so we would most likely look to the guarantor to remedy any default – payment default on the loan.

TT 1003-1004.

In deciding to approve the credit facility, Haigh relied on Donald Trump's 2011 SFC and assumed that the representations of value of the assets and liabilities were "broadly accurate." TT 1009-1010; PX 330. The Deutsche Bank Credit Report's "Financial Analysis" is based on numbers provided by the "family office" (here, the Trump Organization) and contains the same numbers represented in the SFC. PX 293; TT 1010-1013.

Before approving the credit facility, the Private Wealth Management Division consulted Deutsche Bank's Valuation Services Group about market conditions to arrive at a conservative estimate of the value of the commercial real estate should a need arise to liquidate during "bad market conditions." TT 1013-1016. In so doing, the Valuation Services Group applied a 50%

[5] The funds from this "Trump Family" credit facility would later be used to purchase Doral under the entity Trump Endeavor 12 LLC.

"haircut" to the valuations presented by the client, which Haigh affirmed was the "standardized number for commercial real assets."[6] TT 1016, 1041.

Haigh affirmed that the Private Wealth Management Division would not have done business with Donald Trump without a personal guarantee, and that the personal guarantee was the reason for favorable pricing on the loan and the large size of the loan itself. TT 1017, 1020-1021, 1032.

The Doral loan was conditioned on certain continuing covenants. One such covenant required Donald Trump to maintain a minimum net worth of $2.5 billion, excluding any value related to his brand. PX 293; TT 1024. As the "ultimate signer" of the credit risk management team, Haigh determined the required amount of Donald Trump's minimum net worth "in order to make sure that the bank would be fully protected under adverse market conditions." TT 1025-1026. In the event of a default of any of the covenants, Haigh stated the bank would have "various remedies … which it can pursue like waiving the breach, which it might do for an inconsequential breach; negotiating some variation of the terms of the loan; or potentially accelerating the loan and ask for repayment." TT 1028.

The covenant obligated Donald Trump to provide an annual financial statement. Haigh stressed that the annual SFCs were required because "[t]he bank wants to be sure that the client's financial strength is being maintained and also the bank wants to be able to test its covenants periodically," and that "[t]he bank would use the financial information that [the client] provided to test itself to try and ensure that the client is in compliance with those covenants." TT 1022-1023.

In 2012, the Trump Organization, under the entity 401 North Wabash Venture LLC, sought another loan from Deutsche Bank's private wealth division for a new project in Chicago ("Trump Chicago"). PX 291; TT 1028-1029. The credit memorandum indicates that the beneficial owner of the borrower was "Donald J. Trump." PX 291. Like the previous credit facility, the Chicago facility was conditioned on a full and unconditional guarantee provided by Donald Trump; the Deutsche Bank risk team specifically noted "[a]lthough facilities are secured by the collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the guarantor." PX 291; TT 1030-1033. Similar to the previous credit facility review, the risk management team utilized Deutsche Bank's Valuation Services Group to estimate the value of the liquidation of the commercial assets in bad market conditions and applied a standard 50% haircut to the valuations represented by the client.[7] TT 1033.

---

[6] Haigh also confirmed that in addition to the 50% standard "haircut" applied to most commercial real estate assets, the risk management team applied a 75% haircut to Seven Springs as "properties under development or not yet developed potentially have a large range of outcomes of their value." TT 1040-1041; PX 293.

[7] Beyond the 50% standard "haircut," the credit risk management team adjusted another value that had been provided by the client. Upon discovering that Trump Tower had recently been refinanced, but not by Deutsche Bank, the financing entity had commissioned an appraisal that was made available to Deutsche Bank. Upon realizing that the independent appraised value was less than the number reported by the client, the credit risk management team confirmed that they were "adjusting the property value to reflect the recent appraisal and new debt." PX 291; TT 1034-1035.

While he was seeking the loan from the Private Wealth Management Division and waiting to see if it would be approved, Donald Trump was simultaneously exploring a loan from Deutsche Bank's Commercial Investment Bank Division, which maintained a commercial real estate lending group. PX 470; TT 1036-1038. The dueling proposals resulted in an internal Deutsche Bank memo, as Haigh explained, reflecting that "[t]wo business divisions at Deutsche Bank were making proposals on the same potential loan and … we wanted to be sure that they made sense with regard to each other so the bank didn't look foolish in front of the client with two completely different sets of term sheets that bore no relation to each other." PX 470; TT 1036-1038. The memo indicated that for Trump Chicago, the Commercial Investment Bank Division would be willing to provide a loan on a non-recourse basis (i.e., no personal guarantee) at LIBOR plus 8%, and that the private wealth division would be willing to provide a loan on a full recourse basis (with an unconditional personal guarantee) at LIBOR plus 4%. PX 470; TT 1036-1038.

In 2014, the Trump Organization sought several more approvals from Deutsche Bank: (1) a loan for the Washington, D.C. "Old Post Office" project; (2) the renewal of an existing Trump Endeavor 12, LLC credit facility for Doral; and (3) an increase in the Trump Chicago credit facility. PX 294; TT 1041-1045. The approval process for these three discrete items was the same as the previous approval processes, except that a higher level of authority was needed to approve the transactions within the credit risk management team. TT 1045. Like the previous credit facilities, approval required Donald Trump, as guarantor, to maintain a minimum net worth of $2.5 billion, as "[t]he bank wanted to be sure that in an adverse market scenario the client would always have enough financial resources to be able to pay off our loan." TT 1048-1049. Like the previous credit facilities, the credit risk management team noted that "[a]lthough all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." PX 294; TT 1050. Haigh noted that the Private Wealth Management Division did not normally extend loans that involved substantial reconstruction on its collateral, here, the Old Post Office, so the loan was approved in reliance Donald Trump's personal guarantee. TT 1050-1051. Once again, as a required covenant, Donald Trump was obligated to provide certifications and annual statements of financial condition so that the bank could test his required covenants at any time. TT 1049.

Rosemary Vrablic

Rosemary Vrablic worked at Deutsche Bank in the Private Wealth Management Division and was the chief relationship manager for the Trump Organization. TT 994, 5484-5486. Vrablic explained that her job was to be "an intermediary between the customer and/or prospect and the credit and lending parts of the bank." TT 5486. Vrablic served as the client intermediary for the bank for all three of the loans that Deutsche Bank's Private Wealth Management Division extended to Donald Trump. TT 5486-5487.

Jared Kushner, Ivanka Trump's husband, introduced Vrablic to Donald Trump in 2011. TT 5486, 5498-5499, 5511-5512. Vrablic testified that one goal of her job was to initiate a broad-based relationship with Donald Trump. TT 5499. Ivanka Trump was Vrablic's main liaison for the subject credit facilities. TT 5504.

Vrablic was not a part of the credit risk analysis team, and she had no input or authority on whether credit was ultimately extended. TT 5578. She was not involved in the bank's annual review of Donald Trump's SFCs. TT 5554, 5578-5579.

Vrablic confirmed, and emails corroborate, that when considering whether to extend the Doral loan, the head of the global asset management group wrote: "I support the transaction, but we need iron clad full recourse under all circumstances," indicating that an iron-clad personal guarantee was a non-negotiable term of the loan. DX 313; TT 5519-5521, 5572-5573. Vrabalic further confirmed that each of the Trump family members she dealt with, including Donald Trump, Donald Trump, Jr., and Ivanka Trump, fully understood the recourse requirement to obtain a loan from the Private Wealth Management Division. TT 5574-5777; PX 1129.

Vrablic expected Donald Trump to submit accurate financial information to the bank. TT 5579.

Doug Larson

Doug Larson is a valuation advisor and certified New York real estate appraiser who currently works at Newmark. Prior to working at Newmark, he worked at Cushman & Wakefield for almost 25 years. TT 1558-1559.

In 2015, while at Cushman & Wakefield, Larson appraised 40 Wall Street for Ladder Capital as part of its due diligence. TT 1560-1570; PX 118.

Larson testified clearly and credibly that although his name is cited as the source to justify a 2.940 capitalization (or "cap") rate[8] on Niketown, a property in which Donald Trump owned two long-term leases on 57th Street, Larson never had a specific conversation with Jeffrey McConney in which he advised him that such a cap rate would be appropriate; nor was he aware that he was listed as a source for such a cap rate. TT 1572-1575; See, e.g., PX 758. Larson further said that he would not have advised McConney to select that cap rate, as "it's not how we would value [it] in our practice." TT 1583. Larson stated that McConney was incorrect in stating that he consulted with Larson when valuing Trump Tower. TT 1581.

Upon learning that his name had been repeatedly used to justify cap rates that he had not recommended, Larson said it was "inappropriate and inaccurate … I should have been told and, you know, an appraisal should have been ordered." TT 1587.

Larson further took issue with his name being used to justify a cap rate on the property controlled by a Vornado partnership interest. In 2012, Larson appraised the property at 1290 Avenue of the Americas at $2 billion with a cap rate of 4.5 percent. PX 1824; TT 1588-1589. Notwithstanding, in the following SFC's supporting data, McConney cites Larson as the source for using a 3.12 percent cap rate, even though he never worked with McConney to pick a cap rate

[8] A capitalization rate is calculated by dividing a property's net operating income by the current market value. This ratio, expressed as a percentage, is an estimation of an investor's return on real estate. The higher the cap rate, the lower the value. Cap rates have an extraordinarily large effect on the value of a property.

to value that property, and that he would not have, as valuing minority interests is a specialized area beyond his expertise. TT 1589-1595.

In a 2015 appraisal of 40 Wall Street, Larson included the value of a Dean & Deluca lease that yielded annual rent of $1.4 million, and he applied a 4.25 percent cap rate, for a total valuation of $540 million. Notwithstanding, the 2015 SFC backup data double-counted the Dean & Deluca lease. McConney also chose a much lower cap rate than that on the appraisal and listed the total value of 40 Wall Street at over $735 million, citing Larson as the source. Larson repeatedly confirmed that he was not a source for that number, that the number was nearly $200 million more than his own appraisal, and that he did not work with McConney or anyone else at the Trump Organization to determine the cap rate used to generate the $735 million value.[9] PX 118,729; TT 1601-1606.

Jack Weisselberg

Since 2008, Jack Weisselberg has worked at Ladder Capital as a "loan originator," which includes finding new business and maintaining the client relationship throughout the life of a loan. TT 1770-1773; 1779.

When originating a loan for the Trump Organization, Jack Weisselberg primarily communicated with Allen Weisselberg (his father), Jeffrey McConney, and Donna Kidder. TT 1790-1791. Jack Weisselberg understood that the Trump Organization had concerns about its financial information becoming public because of a potential Ladder Capital loan (stating in an email to his supervisor that Donald Trump is "nervous about Gucci's rent becoming public knowledge, as he tends to embellish from time to time"). PX 650; TT 1811-1816.

In spring 2015, Allen Weisselberg began inquiring about the possibility of refinancing a loan on 40 Wall Street that was serviced by Capital One Bank. In January 2015, Allen Weisselberg wrote to Capital One asking it to waive an upcoming required $5 million principal payment. After Capital One declined to waive the payment, Allen Weisselberg contacted Jack Weisselberg about Ladder Capital refinancing the loan. TT 1820-1826. In the application process, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later required that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital

[9] In a theatrical attempt to halt the testimony of Doug Larson, defendants tried to impeach him with a 2014 email showing that McConney had asked for his advice on whether the fact that a ground lease had a far-off expiration would affect the cap rate in any way. Defendants then suggested that Larson had committed perjury and should be removed from the stand to consult with counsel. As an initial matter, the Court does not find Larson's testimony to be contradictory. The fact that McConney sent one email in 2014 that generically discussed the effect of lease expirations on cap rates does not in any way give defendants cart blanche to cite Larson as an omnibus form of counsel that immunizes all the future manufactured valuations that comprised the SFCs. Further, defendants do not cite to this email in the supporting data for the SFCs, they cite to a series of telephone calls that, by Doug Larson's account, never even took place. Moreover, the assertions of defendants' counsel, Christopher Kise, that Larson's testimony amounted to such blatant perjury he should be immediately removed from the stand to consult with counsel about his Fifth Amendment rights is belied by the record and seemed like nothing more than a performance for a non-existent jury. PX 109; TT 1696-1712; 1754-1767.

incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886.

In 2017, the Trump Organization approached Ladder Capital about a short-term loan on its property on Central Park South, which was then unencumbered, for the purpose of funding a $25 million settlement arising out of litigation by OAG against Trump University. People v Trump Entrepreneur Initiative LLC, Docket No. 451463/2013, Doc. 1 (Sup Ct, NY County). Jack Weisselberg testified that he understood that the loan was necessary because "they had recourse obligations to another lender [Deutsche Bank] that limited the amount of cash they could access." In approving the loan, Ladder Capital helped Donald Trump avoid triggering a default on his outstanding Deutsche Bank's lending covenants. TT 1817-1820.

David McArdle

David McArdle was, and still is, the senior managing director of Cushman & Wakefield and a professional appraiser. TT 1909-1910.

In summer 2013, attorney Sheri Dillon, on behalf of the Trump Organization, retained McArdle to appraise portions of the Trump National Golf Course in Westchester County, New York. Even though Sheri Dillon and her law firm retained Cushman & Wakefield, McArdle stated "[i]t was widely understood that [the] intended users of this document would also be the Trump Organization, Donald J. Trump, [and] Eric Trump." TT 1919-1926; px 157. The engagement was focused on the valuation of 71 potential attached units within the confines of the Trump National Golf Club in Briarcliff ("Briarcliff"). TT 1926. McArdle was retained because the Trump Organization was "contemplating a donation, conservation easement donation, and they were looking for my input on valuation of this 71-unit project." TT 1928. In performing this work, Eric Trump was McArdle's primary point of contact at the Trump Organization. TT 1926-1939, 1952.

In fall 2013, McArdle told Eric Trump and Sheri Dillon that the highest supportable value for a potential conservation easement of the 71-units was $45 million. PX 1465; TT 1944-1945. McArdle explained that although "Eric had certain ideas of value" that were "a little more lofty and above $45 million," the "team of Sheri, Bob and myself clearly recognized that we were sort of at the end here and anything beyond $45 million would have put some people at risk," and "[i]t would not have been credible." TT 1944-1945. In response, Eric Trump told McArdle to "hold off" sending a written appraisal. PX 3201; TT 1946-1948.

In February 2014, McArdle was again retained for a similar engagement; this time he was tasked with valuing the same 71-units and, also, determining if a potential conservation easement would have any effect on the adjacent 18-hole golf club known as Trump National Golf Club

Westchester, which included an already-built town home owned by Eric Trump on the perimeter of the property. TT 1949-1950. In April 2014, McArdle provided a written appraisal to Sheri Dillon that valued the 71-unit plot at $43.3 million. PX 3194; TT 1958-1963.

In June 2014, Eric Trump again retained McArdle to appraise the same plot of land and changed the scope of the engagement to consider more IRS tax guidelines. Despite the change in scope, McArdle once again valued the 71-unit plot at $43.3 million. PX 132, 3217; TT 1963-1972.

In July 2014, Sheri Dillon, on behalf of the Trump Organization, engaged Cushman & Wakefield to appraise land on the Seven Springs property in Westchester, New York. PX 131; TT 1980-1982. Once again, Eric Trump served as the primary point of contact for McArdle, including providing him with proposed comparables. TT 1983-1986. McArdle understood this to be a verbal assignment (meaning the client did not want to receive a written appraisal), but McArdle was obligated to build a work file as he "certainly couldn't keep everything in [his] head." TT 1988-1989. McArdle concluded that the valuation ranged from $36-50 million before discounting to present value, and $29.5 million when discounting was applied. TT 1990-1994. McArdle communicated these results verbally to Eric Trump in August 2014, before closing out the engagement at Sheri Dillon's request in October 2014. PX 3206, 911, 185; TT 1995-1997.

In June 2015, Eric Trump once again retained Cushman & Wakefield to appraise Seven Springs. This time, McArdle was unavailable, so he referred the assignment to a colleague, Tim Barnes. PX 104; TT 2001-2002.

McArdle, whom the Court found credible, stated that Eric Trump's testimony that he was not involved in the appraisal work on the Seven Springs property did not conform to McArdle's recollection of events. TT 2005.

William Kelly

William Kelly is the general counsel of Mazars, a role he assumed in 2018. TT 2111, 2115. Kelly participated in the decision to terminate Mazars' relationship with the Trump Organization in spring 2021. TT 2115-2116. Kelly said that the decision to terminate the relationship was based upon what Mazars "had come to learn about Allen Weisselberg," stating:

> Allen Weisselberg was the CFO of the Trump Organization. He was our main contact at the Trump Organization for the providing –for them providing us financial information. If his representations to us about the accuracy and truthfulness of the financial records that he's providing to us as the outside accountants is compromised, if we can no longer rely on him as CFO, then we can no longer perform our engagements. The engagements we were preparing at the time were preparing tax returns for the corporate entities and Donald Trump individually, as well as doing the statements of financial condition. Both of those engagements require that we rely upon the representations of management, in this case, Allen Weisselberg, the

> CFO. If we are no longer allowed or no longer reasonably allowed to rely on his management, we can no longer do those engagements.

TT 2116-2117; PX 2992. Kelly, on behalf of Mazars, followed up with a letter to the Trump Organization dated February 9, 2022, in which he stated, as here pertinent:

> We write to advise that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011-June 30, 2020, should no longer be relied upon and you should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon.
>
> We have come to this conclusion based, in part, upon the filings made by the New York Attorney General on January 18, 2022, our own investigation, and information received from internal and external sources. While we have not concluded that the various financial statements, as a whole, contain material discrepancies, based upon the totality of the circumstances, we believe our advice to you to no longer rely upon those financial statements is appropriate.

PX 2994; TT 2119-2128. Kelly further emphasized that when Mazars was issuing the SFCs for Donald Trump, Mazars was performing a compilation, which is the lowest level of scrutiny of financial statement preparation, and which relies on the representations and information provided by the client. TT 2128-2131, 2149.

Michael Holl

Michael Holl is an employee of HCC Global ("HCC"), an international specialty insurance group. From 2015-2018, Holl served as an underwriter. TT 2487-2490. In December 2016, Holl was contacted by a broker at AON NY on behalf of the Trump Organization, indicating that the company was seeking additional Director & Officer ("D&O") coverage. TT 2491-2492.

Holl confirmed that to underwrite the account he would need to look at the "financials for those companies to understand what their financial situation is," as it is relevant to assessing the risk. TT 2494. Holl elaborated that "[i]t's relevant because you're trying to find out if they're a successful company and if they're profitable and if they are in debt that they can't manage and what their overall financial health is," and "[i]f they are a bankruptcy risk, there is significant increase in the likelihood of a D&O claim if a company goes bankrupt." TT 2494-2495.

On January 10, 2017, Holl attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained. PX 2985; TT 2498-2499. Holl's contemporaneous email reads: "Saw very few financials but did see the balance sheet for year ends 2015. They assured me that the

one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email also reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communication that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502.

Holl deemed these representations relevant when HCC ultimately decided to extend coverage. TT 2502.

Sheri Dillon

Sheri Dillon is a tax lawyer who provided business and legal advice to the Trump Organization from 2005 through 2020. TT 2527. Throughout her various engagements from 2011-2020, Dillon interfaced with Donald Trump, Donald Trump, Jr. Eric Trump, Ivanka Trump, Patrick Birney, and Jill Martin. TT 2532-2534.

Contrary to the representations made to Holl about no pending litigation or claims, as early as June 2016 Dillon was aware of claims made against the Trump Organization that could trigger liability, and she had discussed such claims with Donald Trump, Jeffrey McConney, and Allen Weisselberg. TT 2540-2555.

Part of her work for the Trump Organization was advising it about potential conservation easements. TT 2531. Dillon explained that a conservation easement is essentially a "negative covenant" in which someone who owns property agrees, in a recorded deed that runs in perpetuity with the land, not to do something, in exchange for a tax deduction that is "equal to the value of the easement." TT 4123-4126.

Dillon recalls working on potential conservation easements at Trump National Golf Club LA ("TNGCLA"), Briarcliff, and Seven Springs. As part of her engagements, Dillon would retain appraisers from Cushman & Wakefield. She explained that obtaining a qualified appraisal to value the potential conservation easement is an essential part of the process, as only a qualified appraisal could determine the value of the tax deduction that could be taken. TT 4127-4128. She clarified that qualified appraisers were tasked with determining the "highest and best use" of a property if it were developed. TT 4141-4142.

When working on a potential conservation easement for TNGCLA, Dillon retained Brian Curry, of Cushman & Wakefield, who valued the driving range on the property at between $27-28 million in 2014. PX 944; TT 2578-2580. On March 12, 2015, Cushman & Wakefield sent an appraisal of the TNGCLA driving range portion of the property that valued it at $25 million as of December 26, 2014; the appraisal also valued the entire TNGCLA property, before any potential conservation easement, at $107 million. PX 1464; TT 2598-2603. Although Dillon could not recall exactly with whom at the Trump Organization she shared this valuation, she knows it

would have gone to McConney, as he "would have needed it." TT 2608-2611. Further, email communications demonstrate ongoing discussions between Dillon, Weisselberg, and Trump, Jr. about the potential conservation easement on TNGCLA. PX 1412; TT 4142-4146. Notwithstanding, the 2015 supporting data and accompanying SFC valued TNGCLA at over $140 million. PX 731; TT 2611-2623.

In 2013, Dillon engaged Cushman & Wakefield, on behalf of the Trump Organization, to explore the potential benefits of donating a conservation easement over parts of the Trump National Golf Club located in Briarcliff. PX 157; TT 2626-2628. In so doing, Cushman & Wakefield was tasked with determining the value of 71 hypothetical residential units that could be built on the property. TT 2628; PX 3261. On October 1, 2013, David McArdle emailed Dillon and her colleague, indicating that McArdle was ready to move forward with a written appraisal report on Briarcliff. PX 3197. On October 16, 2013, Dillon emailed McArdle, as here pertinent:

> I spoke to Eric and he is aware that the more supportable value at this point is around $45M… I further explained that we needed to reconcile the comp sales approach with the [discounted cash flow], and in so doing, you and your team arrived at a value of around $45M, which remains quite substantial. I also noted that in the event the claimed value was too far off as ultimately determined by the IRS or a Court, a taxpayer could be subject to [a] valuation misstatement penalty, and we wanted to ensure that there would be no argument that a valuation misstatement occurred. Eric was pleased with the number.

PX 1465. Later that same day, Eric Trump emailed McArdle and Sheri Dillon, instructing McArdle to finish the appraisal "but hold off sending the appraisal until further notice." PX 3201.

In February 2014, Dillon's firm once again engaged Cushman & Wakefield to appraise Briarcliff. PX 158. In April 2014, Cushman & Wakefield submitted a written appraisal to Dillon, valuing the hypothetical 71-unit development at Briarcliff at $43.3 million. PX 3194; TT 2687.

Dillon confirmed that it would have been her practice to share the values with her client along the way. TT 2687. Notwithstanding, beginning in November 2015, Eric Trump instructed McConney to leave the value of the 71 units at just over $101 million. PX 742, 758, 843. TT 3378-3379. He continued to do this for the 2016, 2017, and 2018 SFCs.

By at least June 2014, Dillon became aware that the Trump Organization's rights to build units at Briarcliff had been reduced from 71 units to 31 units. PX 3261; TT 2701-2702. Notwithstanding, the supporting data for every SFC from 2015-2021 values Briarcliff as if it had the right to build 71 units, and, indeed, explicitly states: "Sale of 71 Mid-Rise units approved." PX 731, 742, 758, 774, 843, 857, 1501.

In October 2012, Dillon, on behalf of the Trump Organization, engaged appraiser Robert Heffernan "to provide a written appraisal… estimating the fair market value of a conservation easement placed on the Client's property located in the town of New Castle, New York (the 'Seven Springs Estate') for federal income tax purposes." PX 908; TT 2703-2704. Email correspondence from Heffernan to Dillon demonstrates that as of December 18, 2012, Dillon was aware that Heffernan valued the potential Seven Springs conservation easement over seven mansion lots at $775,000 per raw lot, an estimate that would have valued the entire seven-mansion development at approximately $5.5 million. PX 3296; TT 2707-2708.

Notwithstanding, the SFC backup data for 2013 demonstrates that on August 20, 2013, Eric Trump advised McConney to value the seven-mansion undeveloped plots on the SFC at a staggering $161 million. PX 708.

By September 8, 2014, McArdle completed another verbal estimate of the value of the seven-mansion development at Seven Springs, this time valuing it at $14 million. PX 169, 181. Notwithstanding, the SFC backup data for 2014 demonstrates that on September 12, 2014, Eric Trump again advised McConney to value the seven-mansion undeveloped plots on the SFC at $161 million. PX 719.

In June 2015, Eric Trump re-engaged Cushman & Wakefield to perform yet another appraisal on the potential Seven Springs conservation easement, this time asking it to value not just the seven-mansion undeveloped lots, but the entire Seven Springs property encompassed by three towns. PX 104; TT 2723. PX 195; TT 2724-2725. On November 6, 2015, Timothy Barnes of Cushman & Wakefield emailed Dillon its appraisal, which valued the entire Seven Springs property at $56.6 million, and the 7-mansion undeveloped lots at $23.5 million. PX 195; TT 2725-2726. As was her customary practice, Dillon informed her client of the appraisal. TT 2727.

David Cerron

David Cerron is the assistant commissioner for business development and special events at the New York City Department of Parks and Recreation ("NYC Parks"). TT 2786-2787.

In February 2010, NYC Parks published a Request for Offers ("RFO") for operation and maintenance of a golf course at Ferry Point Park in the Bronx ("Ferry Point"). PX 3290. Cerron confirmed that NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. Cerron explained that NYC Parks had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars stating that according to Donald Trump's 2009 SFC, which

Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to the RFO. TT 2796. NYC Parks ultimately awarded the contract to the Trump Organization. In doing so, it highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. Cerron testified that NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

Donald Trump signed the license agreement with NYC Parks on February 21, 2012. DX 981. The agreement required him to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit an annual letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. Cerron confirmed that NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks and could lead to a referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation. The Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtained a gaming license for the site. TT 2850; PX 3304, 3306.

Claudia Markarian

Claudia Markarian, previously Claudia Mouradian, was an underwriter at Zurich Insurance from 2010-2020. PX 3324 at 7-10. During the period from late 2017 through 2020, she worked on the Trump Organization account as an underwriter for the commercial surety program. PX 3324 at 8, 18. Markarian worked with the insurance brokerage firm AON during her time working on the Trump Organization account. PX 3324 at 18.

Markarian recalled that when reviewing the Trump financials for her underwriting responsibilities, she was prohibited from retaining a copy of any financials, and she was only permitted to view them at Trump Tower with Allen Weisselberg or Jeffrey McConney, or both,

in the room at all times. Markarian testified that this was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59.

During these on-site reviews at the Trump Organization, which occurred in late 2018 and early 2020, Markarian was shown the 2018 and 2019 SFCs, respectively, which listed as assets real estate holdings with valuations that Allen Weisselberg represented to Markarian had been determined each year by an outside professional appraisal firm. PX 1561, 1552, 3324 at 25-32. Markarian considered Weisselberg's representation, which she recorded in her contemporaneous notes, to be favorable and an indication that the valuations were reliable. PX 1561, 1552, 3324 at 51-75. Notwithstanding Weisselberg's explicit representation to Markarian, the Trump Organization never retained a professional appraisal firm to prepare any of the property valuations for the 2018 and 2019 SFCs. TT 952-955.

Markarian's contemporaneous memorandum for each on-site review reflected the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52.

Markarian testified that she "relied on what [Weisselberg] said" about the valuations being determined by professional appraisers when she made her recommendation that the surety program be renewed in 2019 and 2020. PX 3324 at 32-34. She further relied on Weisselberg's representation that the Trump Organization real estate assets do not fluctuate much in value regardless of economic cycles,[10] and on the values in the 2018 and 2019 SFCs when making her recommendation to renew the programs. PX 3324 at 33-52. Markarian testified that at the time, she had no reason to doubt that Weisselberg was being truthful and honest in his representations and that she accepted at face value his representations about the values contained in the SFCs. PX 3324 at 28-53.

When presented with Weisselberg's testimony that confirmed that the Trump Organization did not engage any professional appraisers to perform valuations of the properties in the SFCs, Markarian testified that Weisselberg's misrepresentations would have been "material" to her analysis, as "without the third party it – it means that there's –it could possibly be less reliance on the numbers that are presented to me." PX 3324 at 52-54. Markarian further testified that Weisselberg's misrepresentations about the cash on hand, and specifically misrepresenting Donald Trump's partnership interest in Vornado as cash available to him, would also have been "material" in her analysis to approve the renewals. PX 3324 at 54-56.

Markarian stated that because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about its financial condition, other than to rely on the financial documents that the client provides to them. PX 3324 at 57. She explained that because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account").

[10] Despite Weisselberg's repeated representations to Markarian, in reality the values in the SFCs for a number of properties varied significantly over time. PDX 3.

David Williams

David Williams has worked at Deutsche Bank for the past 17 years. TT 5324. He is currently a senior lender and team leader in the Private Wealth Management Division. TT 5324.

Williams testified that, generally, a payment default is more material than a covenant default, as it "speaks definitively to the repayment of the loan." TT 5337. Williams stated that he was not aware of any payment defaults on any of Donald Trump's loans with Deutsche Bank. TT 5339.

Williams corroborated the testimony of Nicholas Haigh that Deutsche Bank would apply a standard 50% haircut to the values of assets supplied by a client on an SFC, testifying that "it is – it is after we have made what I would say are generally our standard adjustments that we apply to really any given high-net-worth individual or ultra-high-net-worth individual's provided financial statements." TT 5374-5375, 5382-5384.

Williams confirmed that the numbers to which Deutsche Bank applied its standard haircut in evaluating the credit risk of the Trump loans came from Donald Trump's SFCs. PX 498; TT 5400-5403.

Williams testified that Donald Trump agreed to continue a guarantee requirement "in order to keep a more favorable pricing on the loans." TT 5406-5407, 5417-5419; PX 498.

In summer 2019, Deutsche Bank sent three different letters to Donald Trump, indicating that he was not in compliance with his Debt Service Coverage Ratio covenants under the Trump Chicago, Doral, and Old Post Office loans. PX 520, 521, 522. Williams confirmed that these notices were sent to Donald Trump because the covenant breaches could implicate the personal guarantee. TT 5410-5415. Williams testified that there were two more breaches of the Old Post Office and Trump Chicago loans in 2020. TT 5419-5420. Williams went on to detail that all three loans breached their debt service coverage requirements in 2021, resulting in Deutsche Bank commissioning appraisals on all three properties. TT 5424-5425; PX 561.

Williams confirmed that in July 2021, Deutsche Bank determined to "exit" the client relationship with Donald Trump, stating "we would be opting not to renew or extend that credit facility, and we would advise the client with some advance notice of that." TT 5425-5427; PX 561.

Williams further corroborated that as a lending officer, he would expect a client to provide truthful and accurate information to the bank, and that Donald Trump's net worth and personal guarantee were significant factors in Deutsche Bank's determining whether to underwrite a loan. TT 5427-5428. Williams additionally confirmed his previous deposition testimony, in which he stated that had he determined that Donald Trump's net worth fell below $2.5 billion at any time, he would have recommended that the private wealth division declare an "event of default." TT 5429-5430.

Emily Pereless

Emily Pereless, formerly Emily Schroder, worked at Deutsche Bank from 2007 through 2015. TT 5448-5449. For a time, she worked as an analyst in the lending group of the Private Wealth Management Division. TT 5449-5451.

Pereless confirmed that, at the request of the client, she went to Trump Tower to review Donald Trump's financial statements. TT 5454-5455. She testified that in preparing a credit risk memorandum for a potential credit facility, the credit risk team would consult with Deutsche Bank's Valuation Services Group about market conditions. TT 5455-5456. Pereless confirmed that her responsibility as a lender was to analyze the information provided and compile a report. TT 5459, 5463-5464, 5467.

The Individual Defendant Witnesses

Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s until February 25, 2023. TT 581-582; PX 3041 at ¶ 736. At the time of his testimony, McConney was still awaiting receipt of $125,000 of the $500,000 severance package the Trump Organization promised him. TT 582.

McConney reported directly to Allen Weisselberg, the Chief Financial Officer ("CFO"), and to Donald Trump. TT 4910-4911.

McConney took over responsibility for preparing the valuations for Donald Trump's SFCs sometime in the 1990s and had primary responsibility for preparing the valuations and supporting data between 2011 and 2017. TT 583. Beginning in 2016, McConney began receiving assistance from Patrick Birney, who took over primary responsibility for preparing the valuations used in the SFCs after 2017. TT 583-584.

McConney created and maintained annual spreadsheets referred to as "Jeff's Supporting Data" (or "supporting data" or "supporting spreadsheets") that contained the itemized valuations that became the aggregate numbers reported on the SFCs. Each annual version of Jeff's Supporting Data[11] contained two years' worth of information—the current year and the prior year—and included the valuation methodology and valuations for each of the assets used in the SFCs. TT 588. When McConney had primary responsibility for maintaining Jeff's Supporting Data, all decisions about valuation would be made by him, in consultation with Allen Weisselberg. When Patrick Birney first came on board, decisions were made by McConney, Weisselberg, and Birney. Once Birney took over primary responsibility for maintaining Jeff's Supporting Data, Birney and Weisselberg made the initial valuation decisions. TT 589.

[11] The employees of the Trump Organization continued to refer to the annual spreadsheets as "Jeff's Supporting Data" even after McConney turned over responsibility for maintaining and updating the spreadsheets to Patrick Birney. TT 588, 1204, 1254, 1285, 1465.

McConney understood that it was Donald Trump's or his trustees' responsibility to make sure that all financial records and related information were provided to Mazars. TT 590-591. McConney further understood that Donald Trump had engaged Mazars to perform a compilation, which differs significantly from a review or an audit. McConney acknowledged that the preparation of the compilation does not contemplate that the accountants would inquire, perform analytical procedures, assess fraud risk, or test accounting records. TT 592-594. He confirmed that Donald Trump would get final review for each financial statement after McConney and his team prepared it and Weisselberg approved it. TT 596-597, 5047.

McConney's emails and contemporaneous notes indicate that Eric Trump and Donald Trump, Jr. had final review of the SFCs after Donald Trump assumed the presidency of the United States, TT 5079-5084; PX 1361.

McConney testified that he never hid any information from Donald Bender. TT 4915. However, this is belied by the documentary evidence and the testimony of Bender, which conclusively establish that Mazars did, in fact, inquire about appraisals, and that McConney falsely told them that there were none. TT 242-247, 4915, 4930; NYSCEF Doc. No. 1262 at 243.

McConney testified that nearly all the disclaimer and valuation disclosure language that appeared in the SFCs was written by Mazars. However, he was then confronted with his handwritten notes to the draft SFC language that demonstrated that he, himself, marked-up and made changes to the majority of the language and forwarded those changes to Mazars to incorporate. TT 4928-4937, 5055-5059; PX 729, 3054. When confronted with this evidence, McConney conceded that "[m]y memory was incorrect" on direct examination and that he "frequently made changes." TT 5059-5071.

McConney was aware that Donald Trump had no right to withdraw funds from his interest in Vornado Partnerships, and yet he listed the interest on the SFCs from 2013 to 2021 as if it were cash immediately available to Donald Trump. TT 617-626, 5019.

McConney knew that the SFCs had to be GAAP compliant. TT 629-630. He admitted pre-trial that it was "undisputed" that GAAP defines "estimated current value" as "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." PX 3041 at ¶ 31. After some equivocation, and baseless objections by counsel,[12] McConney confirmed this at trial. TT 627-631.

During the period of 2012-2016, the Trump Organization hired Cushman & Wakefield to appraise 40 Wall Street, as required under the terms of another lending agreement. Doug Larson, of Cushman & Wakefield, was the primary contact on this project, and McConney was the Trump Organization's conduit for all 40 Wall Street appraisals. TT 668-669. As part of these

[12] Counsel for defendants, Christopher Kise, inexplicably tried to assert that McConney was not bound by his clear admission of "undisputed" in his response to OAG's Statement of Material Facts pursuant to 22 NYCRR 202.8-g. However, as the admission was affirmative and unequivocal, counsel's argument is without merit.

appraisals, Larson included cap rate calculations that he viewed as appropriate for the specifics of the property. On the valuations for the SFCs for the corresponding subject years, McConney selected cap rates that were lower than those that Doug Larson selected.[13] The supporting spreadsheets for the same time period credit Doug Larson as the source for the chosen cap rates, notwithstanding that the rates were much lower than those that appeared in Larson's appraisals. When questioned about the difference, McConney admitted that when choosing the lower cap rate, he relied on a generic marketing report that Cushman & Wakefield emailed a large customer base that was derived from data not specific, or even closely related, to 40 Wall Street. TT 660-681, 4995, 5101-5102. McConney further admitted that he made no attempt to adjust the numbers to reflect more accurately the value of 40 Wall Street when he was selecting cap rates. TT 681-682.

When questioned about his working relationship with Doug Larson and his knowledge of these appraisals, McConney's credibility was severely impaired, as he obfuscated and equivocated at length before finally conceding that between 2012 and 2016, when he was preparing the valuations for the SFCs, he was simultaneously acting as the conduit for Doug Larson for information needed for formal appraisals of 40 Wall Street. TT 668-674. He further admitted that despite his knowledge of these Cushman & Wakefield appraisals, he never sought to use any of these values for 40 Wall Street in the SFCs. TT 674-675.

When valuing Trump Park Avenue on the SFCs, McConney knowingly valued rent-regulated apartments using an anticipated selling price that assumed not only that the apartments were unrestricted, but that they had already been renovated, thus failing to discount future value to present value. TT 4946-4953, 5097-5099.

Although he testified that he knew "very little" about conservation easements, McConney said that he would select a value for the conservation easement based on "an appraisal done specifically for the conservation easement that had a before donation and after donation value." TT 5000-5001. However, the SFCs from 2012-2014 demonstrate that McConney ignored several Seven Springs appraisals commissioned by the Trump Organization that valued the potential seven-mansion development at between $5.5 million and $21 million and instead valued the seven-mansion development at $161 million, citing Eric Trump as the source. PX 1075.

McConney testified that for every SFC, Donald Trump valued Mar-a-Lago as if it were a private residence and not a social club, despite knowing that "Mar-a-Lago is a social club." When asked the reason for his doing so, he testified: "I don't remember off the top of my head." TT 5018-5022.

McConney's credibility was further compromised when he was questioned about his testimony in the recent criminal trial of the Trump Organization brought by the District Attorney of New York. Initially, when questioned by OAG, McConney denied that Allen Weisselberg ever asked

[13] Cap rates have an extraordinary effect on the value of a property, and the higher the cap rate, the lower the value. In a single year, McConney selected a cap rate of 3.04% that resulted in a $227 million dollar increase in the value of a property as compared to the appraisal's cap rate of 4.25%. TT 660-664, 678-679.

him to commit fraud on behalf of the Trump Organization. However, when confronted with his sworn testimony from the criminal trial, McConney admitted that Weisselberg did, on more than one occasion, ask McConney to assist him in committing tax fraud. TT 776-778. He further conceded, after initially denying, that even though he knew these activities were illegal at the time he was performing them, he continued to assist Weisselberg in committing fraud, as he was afraid that if he refused Weisselberg's requests he would lose his job. TT 776-778.

Plaintiff questioned McConney about his "Separation Agreement" with the Trump Organization, pursuant to which was to receive $500,000, to be paid in installments, the last of which remains outstanding. TT 5075. Plaintiff questioned him as to whether his agreement includes the same covenant found in Weisselberg's separation agreement that prohibits voluntary cooperation with governmental investigations or any entity "adverse" to the Trump Organization. TT 5075-5076. McConney testified that he could not recall if his agreement contained that covenant, further straining his credibility, as it seems implausible that McConney would not remember such a requirement, given the many investigations in which the Trump Organization has been engaged since McConney signed the agreement.

When asked how he feels today about the work he did on Donald Trump's SFCs, McConney replied: "I feel great. I have no problems with the work I did on this." TT 5041.

Allen Weisselberg

Allen Weisselberg was the CFO of the Trump Organization from 2002 until he was placed on leave in October 2022, after pleading guilty to 15 criminal counts of tax fraud and falsification of business records at the Trump Organization. TT 790; PX 1751, 3041. In that same vein, his testimony in this trial was intentionally evasive, with large gaps of "I don't remember." He conceded that his Separation Agreement, on which he is still apparently awaiting four payments, prohibits him from voluntarily cooperating with any entity "adverse" to the Trump Organization or its former or current employees. PX 1751. That alone renders his testimony highly unreliable. The Trump Organization keeps Weisselberg on a short leash, and it shows.

As CFO, Weisselberg oversaw the Trump Organization's accounting department, although he was not a certified public accountant ("CPA") and did not know any components of GAAP. TT 788-790, 864. Before Donald Trump assumed public office in 2017, Weisselberg reported directly to him. TT 790. McConney reported directly to Weisselberg from the time McConney was hired until the time Weisselberg left the Trump Organization. TT 791.

After Donald Trump assumed the presidency, Weisselberg's reporting structure was "more informal"; he dealt "mostly with Eric Trump," and "periodically" with Donald Trump, Jr. TT 790. From January 2017 through 2021, Weisselberg and Donald Trump, Jr. were the trustees of the Donald J. Trump Revocable Trust and were responsible for the preparation and fair presentation of its SFCs. TT 794-795, 961-963; PX 756, 769, 1016.

From 2011 until at least 2020, Weisselberg had a primary role in preparing the valuations for the SFCs, supervising McConney from 2011 until late 2016, and Birney and McConney from late 2015 until at least 2020. TT 1228-1231, 3561; PX 3041 at ¶ 714.

Each year from 2011 to 2020, Weisselberg signed SFC engagement and management representation letters (the "Management Representation Letters") as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). PX 3041 at ¶ 716-735, PX 753, PX 786.

The Management Representation Letters to Mazars stated, as here pertinent, that the Trump Organization and Donald Trump undertook the following responsibilities:

> (a) the preparation and fair presentation of the financial statements in accordance with the accounting principles generally accepted in the United States of America.
> (b) designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial statements.
> (c) preventing and detecting fraud.
> (d) identifying and ensuring that the company complies with the laws and regulations applicable to its activities.
> (e) the selection and application of accounting principles.
> (f) making all financial records and related information available to [Mazars] and for the accuracy and completeness of that information.

See, e.g., PX-791. When Weisselberg signed the Management Representation Letters, he understood their contents, that Mazars was relying on those representations, and that Mazars would not have issued the SFCs without having secured those representations. TT 835-837, 969. Weisselberg further admitted that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict or be inconsistent with the values represented in the SFCs. TT 846-847.

Notwithstanding his lack of knowledge of GAAP and his not knowing what the term "estimated current value" means, each year, Weisselberg represented to Mazars that the SFCs were presented in conformity with GAAP and that assets in the SFCs were stated at their estimated current value. TT 839-842. 940; see, e.g., PX 706.

Weisselberg provided dozens of certifications to lending institutions affirming the truth and accuracy of the SFCs, knowing that if he failed to do so, Donald Trump would be in breach of his various loan covenants. TT 923-935.

Between 2011 and when Donald Trump became president, before finalizing each SFC and its valuations, Weisselberg would give them to Donald Trump for final review and changes. TT 898. Weisselberg would not have permitted a final draft of the SFC to be issued to Mazars unless Trump had reviewed and was satisfied with it. PX 3041 at ¶ 676; TT 900.

Once Donald Trump assumed the presidency, Weisselberg would give the SFCs to Eric Trump or Donald Trump, Jr. for final review. TT 899.

Weisselberg testified that "I certainly am not one to value a property. I have no idea what properties are worth." TT 896. Yet, Weisselberg also testified that he knew that the selling price, not the asking or offering price, is the relevant number in selecting comparable properties. TT 887-888.

Weisselberg had final approval over the 40 Wall Street budgets and was, thus, aware that in 2011, the Trump Organization had a negative cash flow from 40 Wall Street. TT 1499, 1520-1521. He nonetheless directed Donna Kidder, a Trump employee who worked in accounting, to prepare a document containing a series of implausible assumptions to generate a $26.2 million net operating income.[14] Weisselberg concealed from Kidder that these assumptions would be used for the SFC's valuations. TT 1523-1526, 1529.

Weisselberg confirmed that insurance company representatives could only review financial information at Trump Tower and were not permitted to make copies or take anything with them. TT 1187.

On January 9, 2023, Weisselberg entered into a "Separation Agreement and General Release" with the Trump Organization wherein the Trump Organization promised him a total of $2 million dollars in installment payments as long as he performed his obligations under the agreement. Section 3(d) of the separation agreement provided that:

> [E]xcept for acts or testimony directly compelled by subpoena or other lawful process issued by a court of competent jurisdiction, he will not: (1) communicate with, provide information to, or otherwise cooperate in any way with any other person or entity, including his counsel or other agents, having or claiming to have any adverse claims against the Company or any person or entity released by this Agreement, with regard to the adverse claim; or (2) take any action to induce encourage, instigate, aid, abet or otherwise cause any other person or entity to bring or file a complaint, charge, lawsuit or other proceeding of any kind against the Company or any person or entity released by this Agreement.[15]

PX 1751; TT 796-798. Weisselberg affirmed that he understood that under the terms of the separation agreement, he was not permitted to cooperate voluntarily with any law enforcement agency adverse to the Trump Organization, including the Attorney General's Office. TT 1193-1195.

---

[14] As discussed *infra*, 40 Wall Street never reached a net operating income of $26.2 million, but, instead, ran a deficit as high as -$20.9 million through 2015. PX 636, 652.

[15] Although not before this Court, such provision would almost certainly be unenforceable as against public policy, to the extent that it restricts full and truthful cooperation with legal investigations and actions. Denson v Donald J. Trump for President, Inc., 530 F Supp 3d 412, 437 (SDNY 2021) (Trump campaign's non-disclosure and non-disparagement provisions are invalid and unenforceable as against public policy).

Donald Trump, Jr.

Donald Trump, Jr. started his employment at the Trump Organization in 2001. TT 3160, 3976. Early in his tenure, he worked as a project manager at Trump Park Avenue, where he did a "[l]ittle bit of everything; design, construction, overseeing some of the banking relationships we had, anything and everything." TT 3161-3162. Trump, Jr. affirmed that, at the time, he knew about the impact of rent stabilization laws on development at Trump Park Avenue, and he was aware of the limitations imposed by that law. TT 3162. Trump, Jr. also served as project manager for Trump Chicago, working on "everything from design, architecture, sales and marketing, finance, construction… [y]ou name it." TT 3162-3163.

Since at least 2011, Trump, Jr. has served as an executive vice-president of the Trump Organization, reporting to his father, until Donald Trump assumed the presidency in January 2017. TT 3164, 3167. After that, Trump, Jr. and Eric Trump served as co-chief executive officers of the Trump Organization and, collectively, with Allen Weisselberg, had "ultimate authority over decisions made at the Trump Organization." TT 3164-3170. TT 3286-3288. In addition to their role as co-CEOs of the Trump Organization, beginning in January 2017, Trump, Jr. and Eric Trump were also presidents, directors, executive vice presidents, and/or chairmen of various Trump Organization entities. PX 1329 at 13-25.

Also in January 2017, Trump, Jr. and Weisselberg became trustees of the Donald J. Trump Revocable Trust, which Trump, Jr. understood to be "the trust that governed all of my father's assets[,] especially while he was president." TT 3170, 3179, PX 769. When examined about his knowledge of Allen Weisselberg's departure from the Trump Organization, Trump, Jr. testified that Weisselberg was terminated from his role as trustee because of his criminal indictment, but that he was not terminated from his employment at the helm of the Trump Organization for that reason. TT 3170-3172. Trump, Jr. then testified that he does not know the details of how or why Weisselberg ended his employment relationship with the Trump Organization, which this Court finds entirely unbelievable. TT 3172-3173.

On January 20, 2021, Donald Trump re-appointed himself as a trustee of the Donald J. Trump Revocable Trust and removed Trump, Jr., while leaving Weisselberg as a "business trustee." PX 1016; TT 3185-3186. After Weisselberg was terminated from his role as trustee in June of 2021, Trump, Jr. was re-appointed trustee on July 7, 2021. Apparently,[16] Trump, Jr. remains the sole trustee of the Donald J. Trump Revocable Trust. TT 3181-3185, 3190-3191; PX 1015, 1016.

In early 2016, at the request of "one of the three children" (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business, in anticipation of taking over. PX 1293; TT 1181-1186. Trump, Jr. and Eric Trump were continuously kept apprised of the operating financials by Weisselberg. TT 3270-3273; PX 1454.

In January 2017, Trump, Jr., along with Eric Trump, took over responsibility for running the Trump Organization. TT 3982-3983.

[16] When asked if he was aware if his father, Donald Trump, is serving as a current trustee of the Donald J. Trump Revocable Trust, Trump, Jr. testified "I don't recall." TT 3191.

In March 2017, Trump, Jr. and Eric Trump were given power of attorney over certain of their father's real estate and banking relationships. PX 1330; TT 3174-3177. The power of attorney explicitly states "[t]he authority granted hereunder is solely with respect to the execution and delivery of certifications and similar documentation (including, without limitation, compliance certificates) in connection with existing financings in which Donald J. Trump is guarantor." PX 1330; TT 3177-3178, 3433-3434.

Trump, Jr. stated that his father had no role in decision-making at the Trump Organization between January 20, 2017 and January 20, 2021, but that he resumed "some" decision-making after January 20, 2021, choosing certain activities in which to get involved. TT 3173-3174, 3984.

From January 2017 through 2021, Trump, Jr. and Weisselberg, as trustees of the Donald J. Trump Revocable Trust, were responsible for the preparation and fair presentation of the SFCs. See, e.g., PX 756; TT 961-963. Trump, Jr. acknowledged that as a trustee, he was subject to fiduciary responsibilities.

In his capacity as trustee, Trump, Jr. certified that he was "responsible for the accompanying statement of financial condition … and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of America." See, e.g., PX 756. He did this every year from 2017 to 2021 despite having no knowledge of the requirements of GAAP, never having been employed in a position that required him to apply GAAP, and never having received any training on applying GAAP. TT 3155-3156. In his capacity as trustee, Trump, Jr. also certified that the values of assets contained in the SFCs were "estimated current values." See, e.g., PX 756.

On March 3, 2017, Alan Garten, chief legal officer for the Trump Organization, forwarded Trump, Jr. an email from Forbes that, *inter alia*, questioned the claimed size of Donald Trump's Trump Tower Triplex and cited that property records indicated it was only 10,996 square feet. PX 1344. Trump, Jr. acknowledged receiving the email, and he responded that same day with: "Insane amount of stuff there." PX 1344. Notwithstanding, four days later, on March 10, 2017, Trump, Jr., along with Weisselberg, signed a Management Representation Letter to Mazars in which they represented the value of the Triplex based on the false assumption that it was 30,000 square feet. PX 741; TT 3231-3234. Trump, Jr. testified that he could not recall if he did any fact checking or "anything" in response to the Forbes inquiry, despite specifically affirming the following representations in the Management Representation Letter:

> (2) We have made available to you all financial records and related data, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation.
>
> …

(4) We acknowledge and have fulfilled our responsibility for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the personal financial statement that is free from material misstatement, whether due to fraud or error.

(5) We acknowledge our responsibility for designing, implementing, and maintaining internal control to prevent and detect fraud.

(6) We have no knowledge of any allegations of fraud, or suspected fraud, affecting us that could have a material effect on the personal financial statement.

PX 741; TT 3231-3234. When asked on whom he relied to assure himself that making the representations in the Management Representation Letter was appropriate, Trump, Jr. testified: "I don't recall who I relied on." TT 3236. Yet, when he signed the certifications, Trump, Jr. "intended for the bank to rely upon [them]." TT 3241, 3250.

Trump, Jr. signed certifications verifying the accuracy of the SFCs submitted to Deutsche Bank in 2017, 2018 and 2019. See, e.g., PX 1386, 393; TT 3238-3239. While disclaiming responsibility for the SFCs contents, Trump, Jr. testified that he "would have sat with the relevant parties," which he identified as Weisselberg, McConney, and Bender, to discuss the SFCs. TT 3238-3241.

Trump, Jr. also certified to Mazars that there were no significant changes in Donald Trump's net worth in 2017 and 2018, upon which Mazars relied in issuing the No MAC letters to NYC Parks to fulfill Donald Trump's obligations under the Ferry Point contract. PX 3280, 3285. In 2023, Trump, Jr. approved the sale and assignment of the Ferry Point contract to Bally's for $60 million, with an additional $115 million to be paid to the Trump Organization should Bally's obtain a gaming license for the site. PX 3304, 3305, 3306; TT 3261-3268.

Despite disclaiming responsibility for or knowledge of the SFCs contents, Trump, Jr. still insisted that the SFCs were "materially accurate." TT 3275-3276.

Trump, Jr. mistakenly testified that Mark Hawthorn is the current chief financial officer ("CFO") of the Trump Organization, claiming that he replaced Allen Weisselberg. TT 3282-3283, 3987. However, the CFO position has remained unfilled since Allen Weisselberg departed the Trump Organization. TT 5245-5248.

Eric Trump

Eric Trump joined the Trump Organization right after college in 2006. TT 3285. From the time he became an executive vice president in 2014, until Donald Trump assumed the presidency in January 2017, the hierarchy of the Trump Organization was like a pyramid, with Donald Trump at the top. TT 3286. During this period, Eric Trump reported directly to his father. TT 3287.

In early 2016, at the request of "one of the three children" [17] (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Donald Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business. PX 1293; TT 1181-1186. Allen Weisselberg affirmed that he was directed to advise Eric, Ivanka, and Trump, Jr. of the performance of the business "as Mr. Trump had now become president," "[t]hey wanted to be knowledgeable about the running of the business… [s]o [in] 2016, he was in the process of running for president and they wanted to get up to speed on how the business was operating." TT 1185-1186.

Beginning in January 2017, Eric Trump, Trump, Jr. and Weisselberg ran the day-to-day operations of the Trump Organization. TT 3288. Eric Trump confirmed that beginning in January 2017, he did not report to anyone, although he confirmed that post-presidency, he resumed following his father's directives. TT 3289.

Eric Trump became involved in the Seven Springs project in 2012. TT 3289-3290. He testified that "I never had anything to do with the Statement of Financial Condition." TT 3292. However, McConney's supporting spreadsheets from 2012-2014 indicate that he relied on Eric Trump for the valuations of Seven Springs, which were inflated to $161 million for the undeveloped seven mansions, far more than the $21 million appraised value, of which Eric Trump was aware. PX 793, 708, 719.

Eric Trump's credibility was severely damaged when he repeatedly denied knowing that his father ever even compiled an SFC that valued his assets and showed his net worth "until this case came into fruition." Upon being confronted with copious documentary evidence conclusively demonstrating otherwise, he finally conceded that, at least as early as August 20, 2013, he knew about his father's SFCs (begrudgingly acknowledging: "It appears that way, yes"). TT 3292-3294, 3300-3304, 3307-3316, 3319-3336; PX 1071, 1079, 1112, 1113, 1075, 3333, 1091, 1265, 3332.

Moreover, emails indicate that contrary to Eric Trump's testimony, McConney relied on Eric Trump for the $161 million valuation of the undeveloped seven-mansion plot at Seven Springs, from 2012-2014. PX 1075. In particular, an August 20, 2013 email from Jeff McConney to Eric Trump, with the subject "Seven Springs," reads: "Hi Eric, I'm working on your Dads [sic] annual financial statement. I need to value Seven Springs. Attached please find how we valued it last year. Can you let me know when you have time to talk about this year's valuation? Thanks Jeff." PX 1075.

When the documentary evidence against him became overwhelming, Eric Trump reversed his previous testimony:

> Q. It is correct that when you received this e-mail in August of 2013, you understood that your father had an annual

[17] After much obfuscation on the stand, initially testifying that he could not recall who asked Birney to put together the 2015 operating financial summary, Weisselberg ultimately conceded that it was "one of the three children" but could not "recall which child it was." TT 1184-1185.

> financial statement and you understood that Mr. McConney was asking you for information specifically to assist him in working on the notes to the annual financial statement; isn't that correct?
>
> A. Yes.

TT 3325, 3339.

Although Eric Trump advised McConney in August 2013 to continue to use the $161 million value for the proposed seven-mansion development at Seven Springs, emails demonstrate that Eric Trump was aware of a valuation by a professional appraiser, engaged by the Trump Organization, who valued the hypothetical development at approximately $5.5 million. PX 908, 3296; TT 3342-3349.

By September 8, 2014, a mere four days before Eric Trump advised McConney to continue using $161 million as the value for the seven-mansion development in the 2014 SFC, David McArdle of Cushman & Wakefield had completed an appraisal for the property and delivered a verbal estimate to Eric Trump of $14 million. PX 169, 181, 3331; TT 3349-3354.

Eric Trump's testimony that he had very limited involvement in the appraisal work that McArdle performed on Seven Springs and Briarcliff was shown to be false when he was confronted with the ample contemporaneous documentary evidence demonstrating otherwise. PX 133, 1074, 3206, 3327, 3207, 3189, 3190, 3328, 3195, 3196, 3204, 3202, 3201; TT 3360-3364, 3367-3381, 3383-3385, 3427-3432. He unconvincingly tried to distance himself from this evidence, asserting that he was not focused on it because, "I am a construction guy." TT 3385.

Despite retaining McArdle in August 2013 to value the proposed 71-units at Briarcliff, and receiving a professional appraised value of $45 million, Eric Trump directed McConney to value the proposed units at over $101 million in the 2014-2018 SFCs. PX 719, 742, 758, 843; TT 3378-3379.

In 2020, Eric Trump, as attorney-in-fact for his father, signed three certifications based on the SFCs and sent to Deutsche Bank to satisfy obligations for the Trump Chicago, Doral, and Old Post Office loans. PX 518. TT 3434-3438. In 2021, again as attorney-in-fact for his father, Eric Trump signed two certifications based on that year's SFC, and sent them to Deutsche Bank to satisfy obligations under the Doral and Old Post Office loans. PX 517; TT 3438-3442.

When questioned about his knowledge and involvement in valuing Mar-a-Lago, Eric Trump adamantly maintained that it was appropriate to value Mar-a-Lago as a private residence, even though it was being taxed as a commercial club and the deed prohibited, in perpetuity, use of it as anything other than a social club. TT 3445-3451; PX 1013.

When confronted with Patrick Birney's testimony that Eric Trump and Trump, Jr. participated in a video conference call in fall 2021 to discuss the preparation of the 2021 SFC, Eric Trump acknowledged that he would have "no reason to doubt Pat." TT 3385-3391.

Eric Trump, on behalf of the Trump Organization, signed Allen Weisselberg's separation agreement, in which, in exchange for $2 million in installment payments, Allen Weisselberg agreed, *inter alia*, not to disparage or criticize the Trump Organization or its current or former employees, and not to cooperate voluntarily with law enforcement or anyone with adverse legal claims to the Trump Organization unless compelled to by a court. PX 1751; TT 3451-3457. Eric Trump took responsibility for negotiating the terms of the separation agreement. TT 3457.

Donald Trump

Donald Trump is the beneficial owner of the collection of companies branded as "the Trump Organization." TT 3472. From May 1, 1981 through January 19, 2017, he was its Director, President, and Chairman. TT 3472.

He is also the sole beneficiary of the Donald J. Trump Revocable Trust, under which all Trump Organization assets are held. TT 3472. After he assumed the presidency in 2017, Donald Trump appointed Donald Trump, Jr. and Allen Weisselberg as the trustees of the trust. TT 3474. When he left the White House in 2021, Donald Trump re-appointed himself as the sole trustee of the trust, stating that "I figured that I would be back in the business world for a little while… So, I figured that I would be back in business, I might as well be the Trustee." TT 3475. However, on July 7, 2021, Donald Trump once again removed himself as trustee, stating that "I think we were at a position where I was gaining more and more confidence in my family in terms of business." PX 1720; TT 3475-3476. He re-appointed Trump, Jr. and Weisselberg as trustees. TT 3476-3477.

Donald Trump testified that Weisselberg and McConney were responsible for maintaining complete and accurate books and records of the Trump Organization. TT 3617. Donald Trump confirmed that Weisselberg and McConney prepared the supporting data on which the SFCs were based before coming to him for final review. TT 3491. Donald Trump acknowledged that he reviewed the SFCs each year from 2011 to 2017 before they became final, further adding that "I would see them. And I would maybe, on occasion, have some suggestions." TT 3478, 3513. He recalled that on specific occasions Weisselberg and McConney asked his opinion about the valuations of 40 Wall Street, Seven Springs, and his limited partnership with Vornado. TT 3495-3496; 3519-3522; PX 3344.

Donald Trump also acknowledged that, as he certified to Mazars in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements. PX 730; TT 3481-3482, 3564-3568. He understood that Deutsche Bank would rely on his certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630.

Donald Trump insisted that the values within the SFCs were not only not fraudulently inflated, as this Court has already found, but that, if anything, they were deflated, as the following exchange with OAG demonstrates:

Q. In light of your expertise in real estate, do you recall ever thinking that the values were off in your Statements of Financial Condition?

A. Yeah, on occasion.

Q. What were some of those occasions?

A. Both high and low; both high and low.

Q. Which occasions do you recall?

A. I thought that Mar-a-Lago was very underestimated, but I didn't do anything about it. I just left it be. It didn't matter, I didn't care, because the numbers you are talking about here is, you know, they are very big numbers, very, very big. Far bigger – the values are far bigger than what is on the financial statement. I thought Mar-a-Lago was underestimated. I thought 40 Wall Street was very underestimated because that building has tremendous value. I thought that there were numerous other things. I thought Doral was very underestimated. I thought it was considerably more valuable. Not necessarily [its] golf courses, but it is right in the middle of Miami, right next to the airport. I would say you could build thousands of units and hotels on the site. So you don't look at it as a golf course. It is a great golf course, very successful, four of them, four courses. One was sold. It was five. One was sold that was a little disconnected, and [I] sold it. But I thought Doral was very underestimated.

…

Q. [I]f anything, do you think the statement undervalued your assets; is that correct?

A. Yes, by a lot. The financial statements.

TT 3487-3488, 3495.

When asked about his limited partnership interest in Vornado, and specifically, whether he had control over the assets, Donald Trump equivocated several times, extolling the virtues of his limited partnership, before ultimately conceding: "In the true sense, no." TT 3518-3519.

When examined about the valuation of Mar-a-Lago, Donald Trump did not recall having any specific conversations with Weisselberg or McConney about valuing it as a private residence, although he conceded that it was valued on the SFCs as if it could be sold as a private residence.

TT 3527-3530. When confronted with the 2002 deed[18] in which he signed away, in perpetuity, the right to use or develop Mar-a-Lago as anything other than as a social club, in exchange for a conservation easement tax benefit, he offered that "when you say, 'intend,' intend doesn't mean we will do it." PX 1730; TT 3533-3535.

Nonetheless, Donald Trump insisted that he believed Mar-a-Lago is worth "between a billion and a billion five" today, which would require not only valuing it as a private residence, which the deed prohibits,[19] but as more than the most expensive private residence listed in the country by approximately 400%.[20] TT 3530.

When questioned about Aberdeen, and whether he was aware that the SFCs for 2014-2018 valued the property as if the Trump Organization could build 2500 year-round private residences (when in fact, they had received permission to build only 500), Donald Trump testified: "I don't know, but it could very well be. It's sort of like a painting. You could do pretty much what you want to do. The land is there. You could do what you want to do. So you could do either one of them, actually." TT 3539-3547. When confronted with evidence that, in 2014, the Trump Organization had submitted a statement to UK regulators stating that the Trump Organization did not intend to develop the Aberdeen property any further because of Donald Trump's opposition to wind farms, Trump testified: "At some point that will be developed into a magnificent job. I just don't want to do it now." TT 3547-3549.

Notwithstanding the foregoing, the 2014-2018 SFCs valued Aberdeen not only as if Donald Trump had permission to develop 2500 private year-round residences, which he did not, but also as if those residences had already been built, and the SFCs and supporting data failed to account for any development costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

When questioned about whether he had ever inflated the value of 40 Wall Street, Donald Trump was confronted with a Forbes article, including a published audio recording, dated September 21, 2022, that reported that Trump had told Forbes in 2015 that 40 Wall Street was 72 stories tall, when in fact, it is only 63, resulting in an overvaluation of $50 million. The article also reported that Donald Trump told Forbes that 40 Wall Street had a net operating income of $64 million in 2015, when in fact, the building ran a deficit[21] of more than $8.7 million for the 12-month period ending on March 31, 2015. TT 3568-3576; PX 652, 636. When asked if he was misquoted in the Forbes article, Donald Trump replied "I don't know. I don't know what I said." TT 3571.

---

[18] See further discussion of Mar-a-Lago *infra*.

[19] A fact of which he is well aware, having signed the deed himself.

[20] According to a CNBC report, as of January 7, 2022, the most expensive private family residence listing in the United States was $295 million, for a newly developed 105,000 square foot mega-mansion in Los Angeles, California. https://www.cnbc.com/2022/01/07/most-expensive-home-in-america-lists-for-295-million-may-head-to-auction.html.

[21] 40 Wall Street also ran net operating deficits in 2013 and 2012 ranging from -$7.3 million to -$20.9 million. TT 3577-3579.

When asked if he still approved of the work that McConney and Weisselberg did in preparing the SFCs from 2011-2017, Donald Trump testified: "As far as I know I do. You haven't shown me anything that would change my mind." TT 3551.

Donald Trump stated he was not involved in the preparation of the 2021 SFC, and that it would have been prepared by Weisselberg, McConney, Trump, Jr., and Eric Trump. TT 3523.

Donald Trump was aware that receiving loans from the Deutsche Bank Private Wealth Management Division required him: to provide a personal guarantee; to maintain a minimum net worth of $2.5 billion; to maintain unencumbered liquidity of $50 million at all times; and to submit annual SFCs to Deutsche Bank, so that Deutsche Bank could test his compliance with the loan covenants. TT 3586-3601, 3604-3614; PX 426, 312, 307, 1844, 309, 394, 503.

When Donald Trump sold the Old Post Office hotel, he paid off the Deutsche Bank loan, and the following profits were distributed: $126,828,600 to Donald Trump; $4,013,024 to Eric Trump; $4,013,024 to Donald Trump, Jr., and $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

When questioned about Weisselberg's guilty plea to tax fraud in connection with his employment at the Trump Organization, Donald Trump challenged that Weisselberg had committed any wrongdoing (to which Weisselberg admitted), saying "I mean is there something wrong… I mean IBM executives get apartments that are compensated by IBM. And lots of other companies do. But people that work for me can't be so compensated? I don't know, I don't think that's a big thing. Is it?"[22] TT 3632-3634.

Overall, Donald Trump rarely responded to the questions asked, and he frequently interjected long, irrelevant speeches on issues far beyond the scope of the trial. His refusal to answer the questions directly, or in some cases, at all, severely compromised his credibility.

The Party Witnesses

Donna Kidder

Donna Kidder joined the Trump Organization in 2007 as a senior accountant and currently serves as Assistant Controller. TT 1491-1492. Since at least 2008, she has overseen preparing spreadsheets illustrating the cash positions of each Trump Organization entity for the purpose of enabling Allen Weisselberg to provide Donald Trump with weekly updates.[23] TT 1513-1515.

From 2011-2021, Kidder also prepared, in consultation with Weisselberg and Matthew Calamari (another Trump Organization employee), budget projections for 40 Wall Street and Trump Tower that were then incorporated into financial statements sent to third parties. TT 1520-1524;

[22] The record does not reflect whether IBM executives pay taxes on their perks.

[23] Kidder confirmed that the practice was the same after Donald Trump became president, except the reports did not go directly to Donald Trump. TT 1514.

1529-1533. Weisselberg directed Kidder to assume certain things when preparing the budget projections, such as presupposing that any vacant space remaining in a property would be fully leased by the end of the year and omitting management fees from affiliated entities (falsely claiming that "payment[s] to an affiliated company" did not have to be included in costs). TT 1524-1525, 1536-1539.

Weisselberg reviewed and approved any financial document that went to an outside party. TT 1530-1533.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that Donald Trump would receive through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of how many deals were finalized or the pace at which offers were being received. TT 1550-1556; PX 774, PX 3168.

Patrick Birney

Patrick Birney is a current employee of the Trump Organization. He started there in 2015 as a senior financial analyst, and in the eight years since, he has held the titles of Associate, Assistant Vice President of Financial Operations, and Vice President of Financial Operations, the title he currently holds. TT 1198-1199. Patrick Birney is neither a CPA nor a licensed appraiser, and he has received no training in applying GAAP or Accounting Standards Codification 274 ("ASC-274"). TT 1199; 1211.

Before joining the Trump Organization, Birney worked at AON, an insurance broker, in claim management, where he serviced the Trump Organization insurance accounts. TT 1199-1201. While at AON, he liaised with who people referred to as the "Team of Four" that was comprised of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen, who were responsible for overseeing the Trump Organization's insurance program. TT 1200-1201.

From in or around November 2016 through 2021, Birney prepared the initial valuations for Donald Trump's SFCs. TT 1207-1208, 5305. Birney maintained Jeff's Supporting Data, which referred to the spreadsheets that supported the numbers on Donald Trump's SFCs. He also maintained the "backup," which referred to "anything that was used to" support the information on Jeff's Supporting Data. TT 1204, 1207-1209.

When Birney took over for Jeffrey McConney in preparing and maintaining Jeff's Supporting Data, he would show his draft to and ask questions of Weisselberg, and Weisselberg would review them, answer the questions, and adjust whatever he deemed appropriate. TT 1212, 1213; 1220-1228.

When Birney took over primary responsibility for preparing and maintaining the SFCs' supporting data, McConney still selected cap rates, appropriate comparables, and valuation methods. TT 1220-1228.

When valuing Trump Tower for the 2018 and 2019 SFCs, Weisselberg instructed Birney to remove the management fees from the net operating expenses, even though they were an expense, and to apply a 2.67 cap rate, despite Birney's raising concerns with Weisselberg that he might not be able to support such a low cap rate. TT 1310-1318, 1332-1342.

Birney confirmed that the only reason the Trump Tower Triplex's square footage on the supporting spreadsheets was updated to reflect accurately the size was in response to the Forbes article. TT 5592-5593. To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Between 2017 and 2019, Weisselberg told Birney that Donald Trump wanted to see his net worth on his SFCs increase. TT 1409-1410.

Birney stated that the process of preparing the 2020 supporting data for the SFC was different than it had been for the years 2016-2019 in that "there was more input from more people," specifically identifying Ray Flores, Adam Rosen, and Alan Garten. TT 1229-1231. The process for preparing the 2021 SFC was similar to that of 2020, with the exception that Weisselberg was not involved and McConney was "barely involved." TT 1233.

Mark Hawthorn

In 2016, the Trump Organization hired Mark Hawthorn, a CPA, as the Chief Accounting Officer for Trump Hotels. Currently, he is the Chief Operating Officer of Trump Hotels. TT 1414-1416, 1421. The role of Chief Executive Officer of Trump Hotels has remained vacant since its last CEO departed in May 2022. TT 1417. Hawthorn currently reports directly to Eric Trump, who has overseen the hotel division since at least 2016, and whom Hawthorn understood to be the chief decision-maker at the company. TT 1417-1421, 5128-5129. Hawthorn oversees accounting and finance for the hotels' properties, and he frequently interacted with Allen Weisselberg, Jeffrey McConney, Donna Kidder, and Patrick Birney, who collectively oversaw the separate corporate accounting group. TT 1419-1421.

Hawthorn conceded that including the Vornado partnership interest in the cash asset category of Donald Trumps' SFCs was inaccurate. TT 1414-1454.

Hawthorn affirmed that the requirements of GAAP must still be followed when performing a compilation. TT 5279. Although Hawthorn was the only CPA with knowledge of GAAP in the Trump Organization senior management, and, thus, the only one qualified to calculate correctly the present value of future cash flows to estimated current values, neither Weisselberg, nor McConney, nor Birney ever once asked for Hawthorn's assistance in preparing the SFCs. TT 1487-1489, 5139.

When Weisselberg left the Trump Organization, Hawthorn took over part of his responsibilities in the corporate accounting department, although he never participated in preparing the supporting data for any of Donald Trump's SFCs. TT 5244-5245.

On September 8, 2022, the Trump Organization, by Adam Rosen, requested that Deutsche Bank forego the requirement that Donald Trump submit his annual SFC on his outstanding loan, and, instead, accept a "one-page spreadsheet that shows his material assets and liabilities but does not show any valuations of real estate." PX 563; TT 5259-5265. On September 23, 2022, Deutsche Bank rejected that request, making it clear that, "[th]e modified financial reporting you have proposed is not acceptable to Deutsche Bank," and further quoting the covenant of the loan that requires submission of an SFC. PX 563. Hawthorn testified that, notwithstanding this correspondence, it was the Trump Organization's position that Deutsche Bank did not require the submission of further SFCs, notwithstanding that the Trump Organization continued to seek an extension from Deutsche Bank of Donald Trump's time to submit an SFC. TT 5263-5270; PX 562. Hawthorn ultimately conceded that he was not suggesting "that there was ever a point in the life of this loan where the guarantor ceased to have an obligation to submit a compliance certificate attaching Mr. Trump's Statement of Financial Condition." TT 5272.

Hawthorn confirmed that "the company no longer prepares a Statement of Financial Condition," again insisting it is not required by any lenders. TT 5282-5284.

Raymond Flores

Raymond Flores joined the Trump Organization in 2012 as an analyst on the acquisitions and development team. In 2014 he was promoted to associate, and in 2016 he was promoted to vice-president, where he began negotiating financial agreements and managing properties. TT 2038-2039. From 2016 until he left the Trump Organization in March 2022, he reported to Donald Trump, Jr. and Eric Trump. TT 2040-2041.

While vice president, Flores interacted weekly with Allen Weisselberg, explaining that Weisselberg would reach out to him for information about certain properties that Flores had a role in managing and overseeing, including the Old Post Office in Washington D.C., the Doral golf resort, and the Chicago hotel. TT 2042. During that time, McConney would also ask for information about the properties that Flores oversaw. TT 2042-2043.

Beginning in 2020, and at the direction of Alan Garten, chief legal officer, Flores helped prepare the supporting valuations and data for the SFCs. Garten also asked him to review the statements and the underlying assumptions that went into the valuations. TT 2043-2046. In preparing the 2020 supporting data, Flores worked with Garten, Adam Rosen, Weisselberg, McConney, and Patrick Birney. TT 2046.

When asked about specific actions, meetings, discussions, phone calls, methodologies, and valuations that went into preparing the supporting data, Flores consistently and repeatedly testified that he "did not recall." TT 2060-2063; 2075-2082, 2085-2089, 2750-2751.

What Flores did not recall is memorialized in emails and voicemails. Flores repeatedly denied any recollection of performing a cash flow analysis of Niketown in 2020 and denied any recollection of McConney asking him to come up with additional reasoning to justify using a four percent cap rate on Niketown in the 2020 valuations. He was then confronted with a

voicemail message that McConney left for him on Christmas Eve of 2020, asking Flores to come up with additional reasoning to justify using the four percent cap rate on Niketown. When presented with the voicemail, Flores still claimed not to remember any such events. TT 2748-2756.

Similarly, he denied recalling having worked on the 2021 SFC supporting data. He was then confronted with a voicemail message that he left for Patrick Birney on August 2, 2021, stating that Eric Trump had asked Flores to reach out to Birney about preparing the 2021 SFC data. TT 2756-2759. Again, Flores claimed this voicemail did not refresh his recollection on whether he was involved in preparing the 2021 SFC. TT 2759.

Flores was also a conduit with a firm, Marvin F. Poer & Company ("Poer"), that handled property tax assessment appeals in Florida for the Trump Organization. TT 2762; PX 3211. In 2020, the property appraiser determined the market value of Doral to be $78 million, a fact of which, emails reveal, Flores was acutely aware. PX 3209, PX 3211. Notwithstanding, the supporting data for the 2020 and 2021 SFCs value Doral at $345 million and $297 million, respectively. PX 857, 1501. Flores denied any recollection of this, despite the emails that demonstrate his active participation. TT 2772-2773.

In 2020, the Trump Organization hired Poer to file an appeal of the 2020 tax assessment of Mar-a-Lago, claiming that the assessed, taxed value of $26.6 million was too high. PX 3170, 3214, 3041 at ¶ 199. As part of the appeal, the Trump Organization explicitly stated that the property was commercial, and not residential. PX 3170. Two months after filing the appeal, the Trump Organization withdrew it, stating that it agreed with the $26.6 million determination of value. PX 3170. 3214; TT 2774- 2777. Flores conceded that that "determination was based on Mar-a-Lago being categorized as a commercial property." TT 2776-2777.

When presented with additional emails and documents found in Flores' possession that unquestionably reveal that he absolutely understood that Mar-a-Lago was exclusively a commercial, not residential, property, Flores continued to deny any recollection, stating "[t]hat's what the email says. I don't recall." TT 2777-2781; PX 1382. Notwithstanding, every SFC from 2011-2021 valued Mar-a-Lago not only as if it could be sold as a private residence, but also as if there were no deed restrictions burdening it; the SFCs' values for that decade range from $405 million to $739 million. PX 788, 793, 708, 719, 731, 742, 758, 774, 843, 857, 1501.

Overall, Flores was not a credible witness, and the Court finds it highly unlikely that none of the documentary evidence with which Flores was confronted revived his recollection as to his participation in any of the aforementioned activities.

Michael Cohen

Michael Cohen joined the Trump Organization in 2007 as executive vice president and special counsel to Donald Trump.[24] TT 2191, 2195-2197. During his entire tenure at the Trump Organization, Cohen reported directly to Donald Trump. TT 2197.

[24] The Court lists Michael Cohen as a "party witness," as he was a Trump Organization employee at all relevant times. However, the Court is mindful that Mr. Cohen is now adverse to defendants.

In 2018, Cohen pleaded guilty, in the federal district court for the Southern District of New York, to several counts of tax evasion, one count of misrepresentation to a financial institution, two counts of violating campaign finance laws, and one count of misrepresentation to Congress. Cohen cooperated with the government and was sentenced to 36 months of incarceration. TT 2184-2188.

Beginning in 2012, Donald Trump asked Cohen to assist in preparing the SFCs and their supporting valuations. TT 2208-2209, 2213. Specifically, Cohen affirmed: "I was tasked by Mr. Trump to increase the total assets based upon a number that he arbitrarily selected[,] and my responsibility[,] along with Allen Weisselberg predominantly[,] was to reverse engineer[25] the various different asset classes, increase those assets in order to achieve the number that Mr. Trump had tasked us." TT 2210-2211.

The "reverse engineering" conversations took place in meetings amongst Donald Trump, Weisselberg, and Cohen. Cohen testified that Donald Trump would intentionally give indirect instructions (i.e., "He would look at the total assets and he would say, 'I'm actually not worth four and a half billion dollars. I'm really worth more, like, six."), which Cohen and Weisselberg understood as a directive to inflate the assets until the desired value was achieved. TT 2215-2287, 2460-2461.[26]

As part of this reverse engineering scheme, Cohen said they would look at numbers being achieved elsewhere, find the highest price per square foot achieved in New York City, and apply that price per square foot to Trump assets, even though the Trump properties were neither comparable nor similar. TT 2216-2217.

Cohen described the process of arbitrarily adding values to the asset categories on the SFC categories as follows:

> I would sit down with Allen [Weisselberg] and we would make the changes. That document would then be photocopied that had all of the changes at which point in time Allen and I would return to Mr. Trump to demonstrate that we achieved or [were] close to the number that he was seeking and I had no use for that document any longer.

---

[25] To reverse engineer, in this context, means to start with the desired result and end with the necessary numbers to achieve that result.

[26] Cohen elaborated that Donald Trump "did not specifically state 'Michael, go inflate the numbers,'" specifically testifying that "Donald Trump speaks like a mob boss and what he does is he tells you what he wants without specifically telling you. So[,] when he said to me 'I'm worth more than five billion. I'm actually worth maybe six, maybe seven, could be eight,' we understood what he wanted." TT 2460-2461.

TT 2218-2219. Cohen said that each reverse engineering process would take several days, and that Weisselberg relied on McConney to assist him in adding value to the numbers on the supporting data for the SFCs. TT 2220-2221, 2230. Cohen further made clear that Donald Trump had to approve the final numbers before they went to Mazars to be used in the compilations. TT 2220.

Cohen specifically recalled working to reverse engineer the values of Trump Tower, Trump Park Avenue, Trump World Tower United Nations, 100 Central Park South, Seven Springs, and the Miss Universe Pageant. TT 2226-2227, 2340-2341.

Cohen was also a member of the "Team of Four" that was tasked with acquiring insurance on behalf of the Trump Organization. TT 2234-2239; PX 3119. When meeting with insurance representatives or brokers for the purpose of acquiring coverage, Weisselberg would permit the representatives only to view the SFCs at Trump Tower; they were not permitted to make copies or to keep the original. TT 2240. Cohen also described Donald Trump's participation in the meetings with the insurance representatives, detailing an orchestrated routine wherein Donald Trump would intentionally come into the meetings three quarters of the way through to boast that he is richer than the insurance companies and should consider going self-insured, in an attempt to garner a lower premium from the insurance representatives. TT 2245, 2248-2249; PX 3166.

Michael Cohen was an important witness on behalf of the plaintiff, although hardly the linchpin that defendants have attempted to portray him to be. His testimony was significantly compromised by his having pleaded guilty to perjury and by some seeming contradictions in what he said at trial. However, carefully parsed, he testified that although Donald Trump did not expressly direct him to reverse engineer financial statements, he ordered him to do so indirectly, in his "mob voice." Although the animosity between the witness and the defendant is palpable, providing Cohen with an incentive to lie, the Court found his testimony credible, based on the relaxed manner in which he testified, the general plausibility of his statements, and, most importantly, the way his testimony was corroborated by other trial evidence. A less-forgiving factfinder might have concluded differently, might not have believed a single word of a convicted perjurer. This factfinder does not believe that pleading guilty to perjury means that you can never tell the truth. Michael Cohen told the truth.

David Orowitz

David Orowitz joined the Trump Organization in 2008 as a vice president of acquisition and development and worked his way up to senior vice-president of acquisition and development before leaving the Trump Organization in 2016. He was hired by Donald Trump, Jr. and promoted by "the Trump kids," referring to Eric Trump, Donald Trump, Jr, and Ivanka Trump. TT 2941-2942. Throughout his tenure at the Trump Organization, he reported to Eric Trump, Trump, Jr., and Ivanka Trump. TT 2942.

Allen Weisselberg directed Orowitz to provide valuation information to Forbes, with the objective of "persuad[ing] Forbes that some of the assets were worth more than what [Forbes]

originally were [sic] discussing valuing them at," so that Donald Trump would be "represented higher on the listing" of the world's richest people. TT 2944-2945.

Emails to the Trump Organization (Weisselberg, Ivanka Trump, and Orowitz) and Orowitz's testimony confirm that the Trump Organization sought financing for Doral, Trump Chicago, and the Old Post Office from multiple lenders besides Deutsche Bank's Private Wealth Management Division, and in each instance the terms offered by the commercial real estate arm of the banks were less favorable than the terms offered by Deutsche Bank Private Wealth Management, which required a personal guarantee from Donald Trump. PX 3232, 3233, 3235, 3239, 3241, 3243; TT 2976-2981, 2984-3005. For example, the Trump Organization understood that rates on Doral could be as high as the "low teens" without Donald Trump's personal guarantee. TT 2954-2955, 3672-3681.

Ivanka Trump

Ivanka Trump began working for the Trump Organization in 2006 and continued working there until 2017, when she left to work in her father's presidential administration. TT 3662.

She testified that she has not performed work for the Trump Organization since 2017, although she received payments from TTT Consulting after 2017, and she received a share of the profits upon the sale of the Old Post Office in 2022. TT 3666; PX 1373.

In 2011, Ivanka Trump was seeking financing for the Trump Organization to fund the Doral project. TT 3670-3692; PX 1266, 3232, 3243, 3247, 1289, 1433, 1067. Her husband, Jared Kushner, introduced her to Rosemary Vrablic, who worked in the Private Wealth Management Division of Deutsche Bank. TT 3670; PX 315.

Following an introductory meeting in fall 2011, in December, Vrablic emailed Ivanka Trump a proposed "Summary of Terms" for the Doral loan. PX 319, 315, 1129. Vrablic's proposal made clear that any lending from the Private Wealth Management Division would require a personal guarantee. PX 319. The initial summary of terms proposed that Donald Trump maintain a minimum net worth of $3.0 billion; this was subsequently negotiated down to $2.5 billion in the final loan agreement. PX 319, 320. Despite being presented with ample emails and other documentary evidence demonstrating the critical role she played in the negotiation, Ms. Trump professed to have no memory of any of the events of the loan negotiation or the agreed upon terms.[27] TT 3694-3707, 3710-3711; PX 3226, 332, 320.

[27] In an email dated December 15, 2011, Ivanka Trump forwarded the initial proposed terms received from Rosemary Vrablic to Allen Weisselberg, Jason Greenblatt, and David Orowitz, with the notation: "It doesn't get better than this. lets [sic] discuss asap." Greenblatt immediately responded to Ms. Trump's email and expressed his reservations about entering into any loan that required a personal guarantee from Donald Trump. In a reply email later that day Ivanka Trump wrote: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal." PX 3226.

In February 2016, Ivanka Trump contacted Vrablic about an additional unsecured loan on behalf of Donald Trump. PX 355, 352. Vrablic responded that, having run the request by the credit risk management team, an unsecured loan would not be possible, explaining "we do not have any large unsecured amounts such as this request in the entire [private banking] portfolio." PX 355. Ivanka Trump, on behalf of the Trump Organization, implored Vrablic to have Deutsche Bank make an exception, to which Vrablic responded in April of 2016: "we are disappointed that the bank couldn't make an exception in this case." PX 558. Ivanka Trump again denied any recollection of these events, although she conceded she had no reason to believe that she did not send or receive the emails with which she was confronted. TT 3712-3717.

Ivanka Trump was presented with emails that demonstrated that in 2012 she actively participated in trying to secure a loan for the Chicago project. PX 3236, 3239, 477, 365, 3242. When confronted with these emails, Ms. Trump denied any recollection of their contents. TT 3724-3734.

Emails exchanged between Deutsche Bank and the Trump Organization demonstrate that in 2012, Deutsche Bank offered dueling proposals to refinance an existing loan on the property: (1) a non-recourse loan from the commercial real estate group, secured only by the real estate, priced at LIBOR + 8 points; and (2) a recourse loan from the Private Wealth Management Division, with a full personal guarantee from Donald Trump, priced at LIBOR + 4 points. PX 470.

Emails and other documentary evidence similarly show Ivanka Trump's active involvement in securing the bid for the Old Post Office and negotiating the terms thereof. PX 1288, 1429, 1431, 1302, 327, 1333. She consistently denied recalling the contents of documentary evidence that confirmed that she actively participated in events, even after she was confronted with the evidence. TT 3734-3738, 3747-3760, 3777-3782. In 2022, Ms. Trump received a profit payout of $4,013,024 from the sale of the Old Post Office. PX 1373; TT 3790-1391.

On direct examination by plaintiff, Ivanka Trump had no recollection of any of the events that gave rise to this action; no number of emails or documents with her signature served to refresh her recollection. Notably, on cross-examination by defendants' counsel, Ms. Trump suddenly and vividly recalled details of the projects and her interactions with Vrablic. TT 3801-3810. For example, after testifying on direct examination that she could not recall any of the details of her father's personal guarantee of the Old Post Office loan, on cross-examination, she suddenly recalled: "There was a step down of the guarant[ee], if I recall, once the property was operational." TT 3761-3763, 3777-3782, 3810-3811.

Ivanka Trump was a thoughtful, articulate, and poised witness, but the Court found her inconsistent recall, depending on whether she was questioned by OAG or the defense, suspect. In any event, what Ms. Trump cannot recall is memorialized in contemporaneous emails and documents; in the absence of her memory, the documents speak for themselves.

Kevin Sneddon

Trump International Realty employed Kevin Sneddon from 2011-2012 as the managing director of its brokerage office. TT 6602. He recalled Allen Weisselberg asking him to assess the value

of Donald Trump's Triplex apartment. PX 1052; TT 6619-6620. In response to the request, Sneddon asked Weisselberg if he could see the Triplex, to which Weisselberg responded that that was "not possible." TT 6620. Sneddon then asked if Weisselberg could send him a floorplan or specs of the Triplex to evaluate, to which Weisselberg also said "no." TT 6620. Sneddon then asked Weisselberg what size the Triplex was, to which Weisselberg responded "around 30,000 square feet." TT 6620. Sneddon then used the 30,000 square foot number in ascertaining a value for the Triplex. TT 6620-6623.

The Expert Witnesses

Michiel McCarty

Michiel McCarty testified as an expert witness for plaintiff on banking and capital markets.[28] He is the chairman and CEO of an investment bank called MM Dillon & Company, where he works on debt, convertible, and equity transactions, and mergers and acquisitions. TT 3031-3032. He has worked in the banking industry since 1975, holds an MBA from the Wharton School with a concentration in capital markets, and has worked on financing engagements and underwriting projects for Fannie Mae, the Marriot Corporation, AT&T, and the late Queen Elizabeth II. TT 3032-3040.

He has been qualified as an expert witness more than a dozen times in adequacy of equity and terms and conditions of debt, structure of debt, knowledge of participants who bought debt, and generally in capital markets. TT 3037-3039.

In performing his expert review, McCarty conducted an analysis of the risk differentials of the various loans and loan proposals at issue in this action. In so doing, he "looked at the internal documents by Deutsche Bank of analyzing first the credit level of the guarantor versus the credit level of the collateral, then the project itself without a guarantee" for the Doral, Old Post Office, and Trump Chicago loans. TT 3051-3054.

In calculating the interest rate differentials for the perceived credit risks with and without a personal guarantee on the Doral loan, McCarty took the competing loan proposal terms that Deutsche Bank's commercial real estate group had offered (which was LIBOR + 8% with a floor of LIBOR + 2%, or 10%) and compared them to the terms extended by Deutsche Bank's Private Wealth Management Division that were contingent upon a personal guarantee from Donald Trump (which was between 1.8% and 4.1%, depending on whether it was pre- or post-renovation). PX 1780; TT 3066-3067, 3132-3136. He also analyzed the Old Post Office and Trump Chicago Loan using the same method, comparing the terms offered by the Private Wealth Management Division, which were contingent on a personal guarantee and relied on his SFCs, with those offered by the commercial real estate group for a non-recourse loan. PX 1786, 1780, 3302; TT 3068-3074.

[28] McCarty charged $950 per hour for his expert review, and, at the time he testified, he had received a little under $400,000 in total for his time. TT 3085-3086. The list of documents that McCarty reviewed is extensive and can be found in his expert report at Appendix B. PX 1780 at 50.

McCarty further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan based on a fraudulent SFC than the interest rate with a non-recourse loan, and he compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing, with the terms extended by Ladder Capital.

McCarty's calculations determined that Donald Trump improperly saved the following amounts on interest as a result of the banks relying on Donald Trump's fraudulent SFCs and personal guarantee: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan. PX 3302.

McCarty thoughtfully and logically explained why, contrary to defendants' assertions, using the default penalty rate would have been inappropriate, and, in any event, McCarty calculated the differential using the default penalty rate and determined it would be larger than the numbers he calculated in his report. PX 3077-3078. In fact, McCarty used conservative measures; by way of example, even though interest rates were rising in 2017, 2018, and 2019, McCarty used a standard flat 10% interest rate, resulting in significantly lower interest rate differentials than had he calculated using the floating market interest rate. TT 3057-3058. He similarly conservatively calculated his numbers using simple, not compound interest, which does not consider the time value of money. TT 3082.

The method McCarty used to determine the amount of money defendants saved by borrowing with full recourse, such as from Deutsche Bank's Private Wealth Management Division, as opposed to borrowing non-recourse, such as from Deutsche Bank's Commercial Real Estate Division, is simple in theory, although a little tricky in application. This Court reviewed McCarty's numbers and performed calculations to confirm his method and accuracy: four examples should suffice:

(1) In 2020 the Doral loan was $125,000,000. Applying the non-recourse rate of 10% (or .01) results in an interest payment of $12,500,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $2,418,500. Subtracting the latter from the former yields a saving of $10,081,500, as seen on PX3302, page 4.

(2) Also in 2020, the Old Post Office loan was $170,000,000. Applying the non-recourse rate of 8% (or .08) results in an interest payment of $13,600,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $3,289,160. Subtracting the latter from the former yields a saving of $10,310,840, as seen on PX3302, page 4.

(3) In 2019 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (or .07500) results in an interest payment of $3,375,000. Applying the recourse rate of 4.4116% (or .044116) results in an interest payment of $1,985,220. Subtracting the latter from the former yields a saving of $1,389,780, which is $13 more than the amount McCarty used, $1,389,767, presumably because of a rounding differential, and in any event de minimis.

(4) In 2018 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (.07500) again results in an interest payment of $3,375,000. Applying the recourse rate of 4.0464% (or .040464) results in an interest payment $1,820,880. Subtracting the latter from the former yields a saving of $1,554,110, which is $19 less than the amount McCarty used, $1,554,129, presumably because of a rounding differential, in any event de minimis, and largely cancelled out by the $13 lower amount McCarty used for Chicago, 2019.

McCarty calculated that defendants saved $72,908,308 on the Doral loan, $53,423,209 on the Old Post Office loan, $17,443,359 on the Trump Chicago loan, and $24,265,291 on the 40 Wall Street loan, for a grand total of $168,040,167, one dollar less than McCarty's $168,040,168, presumably because of a rounding differential (or user error by a non-accountant, and in any case de minimis).

Defendants do not accept McCarty's methodology, which this Court finds to be air-tight, but they do not challenge his calculations, which this Court finds to be correct. The expert defendants called to the stand to challenge McCarty's methodology, Robert Unell, left McCarty unscathed.

Steven Witkoff

Steven Witkoff was offered by defendants as an expert in the field of real estate development.[29] TT 4189. Witkoff has been a "good friend" of Donald Trump's for more than 20 years. TT 4191.

Witkoff conceded that he is neither an appraiser nor an accounting expert, nor is he familiar with what "estimated current value" is under GAAP. He did not review any of Donald Trump's SFCs, which are the primary subjects of this case, nor did he review any of the operative legal documents for the properties upon which he attempted to opine. Accordingly, his testimony was irrelevant to the issues before the Court. TT 4196-4197, 4228-4233.

Jason Flemmons

Defendants offered Jason Flemmons, a CPA, as an expert in the field of accounting.[30] TT 4238, 4252. He testified that ASC-274 is the accounting standard that governs the preparation of SFCs, and that the measure of value for an asset or liability under ASC-274 is "estimated current value." TT 4254-4255. Flemmons spent considerable time detailing the "methods" of valuation that ASC-274 permits. TT 4257-4264. The crux of Flemmons's testimony was that so long as

[29] This was the first time Steven Witkoff had been deemed an expert witness. TT 4427. He is a personal friend of Donald Trump, who did not compensate him for his testimony. TT 4191.

[30] Flemmons was compensated at the rate of $925 per hour but could not recall or estimate how many hours he had billed defendants for his work. TT 4529-4530.

defendants selected one of the permissible methods under ASC-274, then any numbers may be inputted into such methodology, regardless of their accuracy or relationship to reality.[31] TT 4264-4268, 4273-4277.

The Court examined Flemmons on this issue, resulting in the following exchange:

> Q. You were asked 20 or 30 times, was the method used for determining the estimated current value of the project at issue consistent with the requirements of ASC-274. I think your answers were always yes. My question is: Were you saying that the method listed on the statement was one of the methods that ASC 274 allows? Or were you saying that the actual computations using that method were correct?
>
> A. Your Honor, I am not opining as to the ultimate valuation itself. I am not a valuation expert. But I am an expert on the methods permitted by ASC-274. So my testimony is really limited to, again, its methods that are clear from the documents that were being used, and not necessarily to the numbers that were attached to them.
>
> Q. Right. And so if the statement says we are using the capitalization rate method or the fixed asset method, your answers are just meaning that, yes, that's one of the methods you can use, correct?
>
> A. That's correct.

TT 4364-4365. Accordingly, Flemmons's testimony is of no evidentiary value, as the plaintiff has not alleged that defendants used an impermissible method, but that they have inputted and used patently false data with a permissible method.

Mr. Flemmons also, inexplicably, acknowledged that future income had to be discounted to present value on a financial statement, and that not to do so would be a "red flag," while at the same time stating that there were no GAAP departures, even though defendants failed to discount future income to present value. TT 4371-4373, 4375, 4434-4436, 4441-4443.

Although he opined that Mazars should have followed up on items in the SFCs, he adamantly stated that asking for any appraisals when creating a compilation would have been

[31] For example, Flemmons testified that it would be "appropriate" for the Trump Organization to use a methodology that valued selling Mar-a-Lago to a private individual to be used as a private residence, despite the deed restrictions that Donald Trump signed that prevent him from doing so in perpetuity. TT 4351-4352; PX 1013.

highly unusual."[32] TT 4291-4292, 4303-4307, 4325-4328, 4376, 4377, 4381-4382, 4408, 4476-4481.

Flemmons was reluctant to acknowledge that an asset controlled by a third party cannot be considered "cash," while also acknowledging that it was a "red flag," before ultimately conceding: "I think the fundamental recording or reporting of partnership cash would not be consistent with GAAP." TT 4373-4374, 4385-4392, 4446-4452.

Steven Collins

Defendants offered Steven Collins as an expert witness in "contract procurement."[33] TT 4539-4542. Collins testified, essentially, that he reviewed the documents used in the Trump Organization's bid and award of the Old Post Office, and he opined that no one factor was determinative in the General Services Administration's selection of the Trump Organization. TT 4548-4569.

Steven Laposa

Defendants offered Steven Laposa as an expert witness in "real estate research."[34] TT 4596-4599.

Laposa formed no opinion as to whether any of the valuations at issue in this case were accurate, and, prior to this assignment, he had no experience preparing or reviewing personal financial statements. TT 4600, 4633, 4684-4685. He further conceded that he had no knowledge of the types of valuations or methods that Donald Trump used to value the assets on his SFCs. TT 4709-4712.

His testimony was limited to general methods by which one can appraise property, and that different appraisers might disagree about the value of the same property. TT 4603-4625. He opined that lenders generally prefer a more conservative approach to an appraisal than developers do. TT 4611-4613.

[32] In any event, there is documentary evidence, previously submitted to the Court on the parties' summary judgment motions, conclusively establishing that Mazars did, in fact, inquire about appraisals, and were told there were none. NYSCEF Doc. No. 1262 at 243.

[33] Collins billed at the rate of $925 per hour and testified that he billed somewhere between 40 to 60 hours. TT 4543-4544.

[34] Laposa billed at the rate of $850 per hour for his work on the case and estimated that he billed approximately 325 hours. TT 4596.

Gary Giulietti

Defendants offered Gary Giulietti as an expert in "surety underwriting and surety brokering."[35] He has an ongoing personal and professional relationship with Donald Trump. TT 4723. Having met him in the late 90s, Giulietti plays golf and lunches with Donald Trump and is a member of "a bunch of his clubs." TT 4723. Additionally, sometime between 2017-2018, Giulietti became the Trump Organization's insurance broker, and he remains its broker to this day. TT 4723-4724.

In its over 20 years on the bench, this Court has never encountered an expert witness who not only was a close personal friend of a party, but also had a personal financial interest in the outcome of the case for which he is being offered as an expert.[36]

Giulietti opined that an insurance company like Zurich would pay no credence to an SFC compilation provided by a client, and that the main element that an insurance company would weigh is the client's liquidity. TT 4738-4741.

Giulietti also opined that, in his experience, any insurance company would have offered Donald Trump an "accommodation," which he explained would "provide a product with minimal [to] no underwriting," describing Zurich's underwriting program as based on "airballs and witchcraft." TT 4743-4744, 4768-4770.

However, Giulietti's testimony not only is belied by the testimony and contemporaneous notes of the Zurich underwriter, Claudia Markarian, it is also completely inconsistent with the expert report of another defense expert, David Miller, who opined that "Zurich made a competent business decision to underwrite the Trump Organization's business as an exception to their normal guidelines based on reasonable risk factors, such as the sufficient liquidity of the Trump Organization to indemnify Zurich should a loss take place." NYSCEF Doc. No. 1434; TT 4770-4772; PX 1561, 1552.

Giulietti also testified that the Trump Organization had filed very few claims, despite being presented with evidence demonstrating that the Trump Organization tendered numerous claims. TT 4775-4778; PX 603.

[35] Despite having never been qualified as an expert witness before, when examined about his qualifications, Giulietti boasted that "I don't think there are four people in America that have my qualifications to do what I do." TT 4728-4729.

[36] Giulietti had not billed directly for his trial testimony but clarified that "this would be included in our overall relationship year over year." TT 4726. In 2022, Giulietti's company earned $1.2 million in commissions from the Trump Organization account. TT 4761-4762.

David Miller

David Miller was offered by the defense as an expert in "commerce insurance and surety underwriting."[37] TT 4806.

Miller opined that, based on his review of the Zurich underwriting memoranda, he did not believe Zurich would have been concerned with Donald Trump's assets. TT 4807-4810. He further testified: "My perception was there was not a lot of technical underwriting that took place, um, because it was done as what I would perceive – what I would call a business decision. They wanted to write the business to keep the relationship between Aon and Zurich in place." TT 4815. He opined that "accommodations" are "probably too common" in the insurance industry, and that "very often surety is written as an accommodation to other lines of business." TT 4817-4818. He further explained: "An accommodation generally means that you've already made the decision to write it, or you are going to write it, because of the situation that you are being asked to do. So, in general, it probably loosens or eliminates the underwriting standards, because you already know you are going to do it, so you just do it." TT 4821. When asked if there was anything that required an insurer to make an accommodation, Miller stated "[p]ressure from the broker" to try and develop more business. TT 4821.

However, on cross-examination, Miller was confronted with his previous deposition testimony, in which he affirmed that based on his review of the credit memoranda, Zurich employed "normal underwriting guidelines that included sufficient liquidity as a reasonable risk factor," and Miller confirmed that he believed that that was still the case. TT 4872-4873.

Moreover, on cross-examination, Miller conceded that in forming his expert opinion, he did not consider any of the information Zurich underwriter Claudia Markarian recorded in her contemporaneous notes of her meetings at the Trump Organization in 2018 and 2019, which are the basis of plaintiff's causes of action for insurance fraud. TT 4865-4867, 4874-4880. He further conceded that he had no reason not to accept Markarian's testimony as true. TT 4881-4884; PX 3224.

Robert Unell

Defendants offered Robert Unell as a witness in "commercial real estate finance and banking."[38] TT 5627-5629. To prepare for his testimony, Unell reviewed the Deutsche Bank loans on Trump Chicago, the Old Post Office and Doral, as well as the Ladder Capital loan on 40 Wall Street. TT 5629. Unell did not perform any valuation work on any of the assets found in the SFCs. TT 5820.

[37] This is the first time Miller had been qualified as an expert. TT 4806. He was compensated at the rate of $350 per hour and has spent approximately 90-100 hours on this engagement. TT 4868.

[38] Mr. Unell was compensated at a rate of between $900-950 per hour, but he could not recall with any specificity how many hours he had billed, estimating "a couple hundred probably." TT 5631. Upon cross-examination, Unell stated he had previously worked on engagements for the Trump Organization, including a potential conservation easement valuation on Doral. TT 5756.

Unell opined that Deutsche Bank and Ladder Capital would have conducted their own analysis into Donald Trump's assets and liabilities based on the contents of the SFCs. TT 5635-5639.

Unell opined that any misstatements in Donald Trump's SFCs were immaterial, and even stated that the inflation of the Triplex (which resulted in an overvaluation of approximately $200 million) was immaterial and did not cause the SFCs to be unfairly or inaccurately presented, a statement which severely diminished his credibility before the Court. TT 5672-5673, 5819.

Unell opined that, based on his review of the Deutsche Bank credit risk memoranda, the covenants that required Donald Trump to maintain a minimum net worth and level of liquidity were not significant for the bank. However, he then conceded that the bank "relied upon – their knowledge and their information to set the net worth covenant… [and] the net worth covenant was determined by the guarantor submitted statements," seemingly contradicting his initial opinion of non-reliance. TT 5673-5676.

Unell also opined that a breach of a covenant would not "really raise the eyebrows of the lending institution." TT 5678-5679.

Unell disagreed with the mathematical calculations McCarty used to determine the interest rate differential between the Private Wealth Management Division loan and the commercial real estate group loan terms. McCarty used, as an assumption for the commercial real estate group interest rate, a term sheet Deutsche Bank's commercial real estate group offered to Donald Trump at the same time at which he secured the loan from the Private Wealth Management Division. Notwithstanding, Unell said there was no support for McCarty's use of that number, disregarding entirely the term sheet that the commercial real estate group offered Donald Trump for a non-recourse loan. TT 5682-5684.

Unell further contradicted himself by stating:

> It is nearly impossible to place an exact interest rate on this looking back in time, because none of us have worked for Deutsche Bank. And the best indication as to what this rate would be, would be Deutsche Bank, because Deutsche Bank is the evaluator of risk. They are the evaluator of materiality. And they are the ultimate user and the one where this matters. And it is their sole determination, based on this analysis, as to how they want to price the loan.

TT 5686-5687. Unell appears to be opining that the term sheets that Deutsche Bank's commercial real estate group offered Donald Trump would be the best indicator of how the loan would have been priced without a personal guarantee, contradicting Unell's prior opinion that McCarty's utilization of the Deutsche Bank term sheets in his analysis was improper.

Unell additionally opined that the interest rates McCarty used to calculate the rate differential for a non-recourse loan with Ladder Capital were not commensurate with what the market was at that time. TT 5712-5713. However, he offered absolutely no evidentiary basis for that opinion,

and he offered no independent assessment for what the market rate would have been for a non-recourse commercial real estate loan on the subject property at that time. TT 5758-5761.

Notwithstanding this lack of foundation for his opinion, Unell offered up his own calculations of the interest rate differentials on the subject properties and opined that Donald Trump received the following savings: (1) $2,458,048 on the Doral loan; (2) $2,567,000 on the Old Post Office loan; (3) $1,015,632 on the Chicago loan;[39] and (4) $2,966,000 on the 40 Wall Street Loan. TT 5743-5748. However, on cross-examination, Unell clarified that his "hypothetical lost interest" rate differentials did not actually calculate the difference between a fully guaranteed loan and a non-recourse loan, he merely assumed a 25 basis point reduction as the guarantee may have been reduced over the course of the loan, and he assumed, without evidentiary support, that the "guarant[ee] was worth 25 basis points." TT 5758-5761. When further examined about this opinion, Unell stated, in a conclusory fashion, that the "guarant[ee] to them was valuable for 25 basis points for the engagement of a warm body of a billionaire to stand behind the loan in his equity infusion and capital there." TT 5761. However, this statement is belied by the documentary evidence originating from Deutsche Bank, as well as the testimony of former and current Deutsche Bank employees. Unell testified that he did not form a view "as to what the market interest rate would be for a commercial real estate loan on these four properties with no guarant[ee] at the time they were originated," stating again that the "only person… that is able to do that is Deutsche Bank." TT 5762-5763 5775, 5812, 5815.

Unell additionally offered: "The only group that can speculate or actually state what the interest rate would be is Deutsche Bank, because they are the ones that were the users of the documents, the ones that entered into the loan agreement and the ones that offered the terms to the defendants." TT 5763. This statement once again contradicts Unell's prior opinion that it was inappropriate for McCarty to rely on the term sheets Deutsche Bank's commercial real estate group offered to Donald Trump for non-recourse loans on the subject properties. By Unell's own admission, the term sheet (or "offered terms") are the best evidence of what interest rate Deutsche Bank would have offered for a non-recourse loan. PX 369, 3232, 3243.

Unell then undercut his own calculations in the following exchange with the Court:

> Q. Let me jump in. Are you testifying that with your experience, your expertise, your knowledge of the facts in this case, you could not possibly estimate what Deutsche Bank would have charged as an interest rate in any particular situation, because it is all up to them?
>
> A. Yes. I can give you a range and give historical [sic] as to what has been out there and show illustrative examples of it, but at the end of the day as referenced in the Deutsche Bank documents, all of their risk rating, all of the pricing is

[39] At trial, Unell failed to opine particularly on the Trump Chicago loan, and defendants failed to submit to the Court the demonstrative exhibit to which he referred during trial. However, as Unell testified that he believed the total hypothetical interest savings on all four loans was $9,006,603, the Court deduces that his specific calculation for the Chicago loan interest rate deferential is $1,015,632. TT 5743-5747.

proprietary. None of us have that information. None of us have that ability. None of us understand the total relationship value. We can try to do our best to understand it based off of the testimony that has been provided, as well as the documents. But the only person that has the ability to determine the risk and the interest rate and the overall relationship value, is the lender.

….

Q. So let me clarify one thing. Well, let me ask then, so are you saying that actually the commercial real estate loan, no guarant[ee], issued by the Commercial Real Estate group at Deutsche Bank or some other Commercial Real Estate division, would have priced even closer to the private wealth loans than your hypothetical here with the 25 basis points added?

A. That's not correct.

Q. So what are you saying? I don't understand what you are saying.

A. What I am trying to say is that 10 percent is unfounded.

Q. And you said, I think it would be closer to the numbers reflected here, even more than the 25 basis points?

A. Absolutely. And that's reflected in the loan documents.

Q. So, sir, do you have an opinion, one way or the other, as to what the market rate would be for a commercial real estate loan with no personal guarant[ee] for these four properties?

A. It would be in the range of where I have it here.

Q. So close to the private wealth amounts?

A. Yes. As illustrated in the loan documents.

TT 5763-5766.

Unell's testimony is not only inconsistent, but the Deutsche Bank documents, testimony from former and current employees, and Trump Organization emails conclusively demonstrate that Donald Trump, in fact, did seek non-recourse loans from the Private Wealth Management Division and was told, adamantly, that no exceptions could be made for him and a full "iron clad" personal guarantee was required for him to receive the preferential terms of the Private

Wealth Management group. TT 1003-1004, 1035, 1039, 5331-5332, 5572-5577, 5770-5773; PX 1251, 369, 3232, 3243.

Unell testified that it was inappropriate for McCarty to rely on the Deutsche Bank term sheets because they were non-binding and Deutsche Bank's commercial real estate group did not yet have a detailed understanding of the properties. However, on cross-examination he was confronted with emails between Deutsche Bank and the Trump Organization indicating that Deutsche Bank had, in fact, conducted due diligence on the properties[40] and considered itself to be "very familiar" with them. PX 3111, TT 5804-5806.

On the whole, the Court was unable to ascribe any reliability to Unell's "expert" opinions, finding them unresearched, unsupported, inconsistent, and contradicted by ample other documentary and testimonial evidence.

Frederick Chin

Frederick Chin is a certified appraiser and was offered by defendants as an expert in "real estate valuations," "real estate market analysis," and "real estate operations."[41] TT 5905-5906. Chin did not render any opinions of value as to the assets contained in the SFCs. TT 6041.

Chin opined on the difference between "as is" and "as if" values, explaining: "'As is' generally connotates to [sic] a condition that exists at the time, a specific date, generally often times referred to as market value. 'As if' is a condition that will be expected to be—expected to be completed or expected to be received either kind of a hypothetical condition that might exist in the future." TT 5912. Chin opined that the many of the valuations that appeared in Donald Trump's SFCs contained "as if" valuations. TT 5913. He further opined that professional appraisers generally use "as is" valuations, while developers are generally focused on future performance and use "as if" valuations. TT 5914. Chin also stated that he "occasionally" would come across a request for a professional "as if" appraisal, but that in those instances, the governing standards mandate that the appraisal be clearly identified and labeled as "as if." TT 5917-5919.

Chin affirmed that "as if" appraisals must still make accurate assumptions; in particular, he affirmed that land use restrictions that encumber a property, or any sort of restriction that limited possible uses, would negatively affect the value of the property. TT 5949-5050. He conceded that any assumptions incorporated into "highest and best use" must be legally permissible and physically possible, and that a developer's "as if" value cannot be based on something that is legally impermissible or physically impossible. TT 6001-6002. He also agreed that there needs

[40] For example, a November 17, 2011 email from the Deutsche Bank commercial real estate group to Ivanka Trump reads: "Ivanka, Thank you for providing us with the investment memo and projections for the Doral Golf Resort and Spa in Miami, Florida. We, at Deutsche Bank, are very familiar with the asset, as we have financed this loan several times over the years for previous ownership." PX 3111 (emphasis added).

[41] Mr. Chin bills $850 per hour and has billed "probably a thousand" hours on this engagement, for a total of approximately $850,000. TT 5912.

to "be a reasonable, factual basis for the developer's perspective of value that he puts in a Statement of Financial Condition." TT 6006.

When examined about his experience with rent-restricted apartments in New York City, Chin affirmed that the owner of a rent-stabilized unit wanting to value the unit as if it could be sold on the open market "would need to include in the value calculation the cost to remove the legal restriction," which could include expensive "buy-outs" to the rent-stabilized tenants, and potential profit-sharing losses. TT 6007-6011. Chin further conceded that it would be a "significant omission" in an SFC if the owner of 20 apartments in a New York City building, of which 10 are rent-regulated, valued the apartments as if they were all free market without disclosing that half of them were subject to rent regulation. TT 6012. When cross-examined about Donald Trump's 2013 SFC, Chin admitted that the SFC failed to disclose that any of the units at Trump Park Avenue were rent stabilized, notwithstanding that they were being valued at their offering plan prices, which itself is erroneous. TT 6015-6016; PX 707

Chin opined that the identity of the property owner would not affect either "as is" or "as if" appraisal values. TT 5966.

Chin identified different types of appraisals, such as "market value" and "liquidation value" and clarified that the "intended purpose of an appraisal can affect the outcome." TT 5945-5946. He testified that lender-ordered appraisers generally calculate "market value." TT 5946.

However, Chin is not an expert in accounting and stated that he would "rely on the experts and people designated in [his] firm that dealt with accounting matters." TT 5902-5905, 5971. The SFCs represent that they are providing assets and liabilities at their "estimated current value," not their future "as if" value. See, e.g., PX 756. Chin even conceded that, when reviewing the SFCs in preparation for this case, he understood that the SFCs were representing to the reader that the assets contained in the statement were being presented at their estimated current value. TT 5978. Moreover, Chin testified that Donald Trump "clearly" used "as if" values in his SFCs from 2011-2014 that "presumed a situation that didn't exist." TT 5966-5967. He further stated that he did not believe that the valuation method employed by McConney in valuing Seven Springs on the SFCs was reasonable. TT 5992-5993.

Chin further opined: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And it may make a development less feasible." TT 5929.

John Shubin

John Shubin is a lawyer called by the defense as an expert in "land use planning, entitlement, and zoning."[42] TT 6043, 6048.

[42] Mr. Shubin had never been qualified as an expert witness before. He was compensated between $1,395 and $1,595 per hour and has billed approximately 80-100 hours for his work on this engagement. He also had two colleagues assisting him who billed between $735 and $935 per hour and have billed approximately 100-110 hours. TT 6086-6088.

On direct examination, Shubin attempted to offer a host of legal conclusions about the deed restrictions that encumber Mar-a-Lago, plaintiff's objections to which this Court sustained, as it is exclusively the Court's province to interpret and apply the law. TT 6051-6075, 6084-6085. Accordingly, there was no evidentiary value to Mr. Shubin's testimony.

Lawrence Moens

Lawrence Moens is a licensed real estate broker and was offered by the defense as a witness in "residential real estate in Palm Beach."[43] TT 6092, 6099-6106.

The Court had already questioned the credibility of Moens based on the affidavit he submitted with defendants' motion for summary judgment, in which he opined, that "[i]f Mar-a-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." NYSCEF Doc. No. 1435 at 29. As this Court noted in its September 26, 2023 Decision and Order, Moens failed to identify at what price he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property was worth $1.51 billion).

At trial, Moens testified that he met Donald Trump in the late 1980s, they have remained cordial, and Moens has been a member of Mar-a-Lago since 1995. TT 6108-6109, 6160-6161.

Moens opined about the values he believed he could sell Mar-a-Lago for from the years 2011-2021. TT 6115-6126. When asked about his method for generating those values, he testified that he did not use any specific equations, that his method was not "re-creatable," and that the only way to understand his valuation method was to "go inside [his] head." TT 6157-6158. However, to be admissible, expert testimony must have some objective basis and must be subject to objective scrutiny. Wilson v Corestaff Servs. L.P., 28 Misc 3d 425, 427 (Sup Ct, Kings County 2010) ("New York courts permit expert testimony if it is based on … principles, procedures or theory only after the principles, procedures or theories have gained general acceptance in the relevant… field, proffered by a qualified expert and on a topic beyond the ken of the average [fact-finder]").

Moreover, Moens affirmed that each of these valuations was premised upon the assumption that Mar-a-Lago could be sold as a private residence, although he conceded that he was aware that Mar-a-Lago was being taxed as a private club. TT 6160.

[43] Mr. Moens had never been qualified as an expert witness before. Moens was not examined about his compensation for his work on this case.

Eli Bartov

Eli Bartov is a tenured professor at New York University, whom defendants offered as an expert in "financial accounting, credit analysis, and valuation."[44] TT 6181, 6206-6215.

Professor Bartov did not assess the valuations of any of the assets on Donald Trump's SFCs. TT 6445. Yet, as this Court previously noted when denying defendants' motion for a directed verdict, Bartov's overarching point was that the subject statements of financial condition were accurate in every respect and that they were "100 percent consistent with GAAP." TT 6537. As this Court discussed in excruciating detail in its September 26, 2023 Decision and Order, the SFCs contained numerous significant errors. By doggedly attempting to justify every misstatement, Professor Bartov lost all credibility in the eyes of the Court.[45]

Indeed, Bartov insisted that the misrepresentation of the Triplex, resulting in a $200 million overvaluation, was not intentional[46] or material (leading the Court to wonder in what universe is $200 million immaterial). TT 6348-6356.

Bartov opined that "GAAP is not designed to give you the true economic value of an asset." TT 6240. However, it is undisputed that the SFCs required, and Donald Trump represented, that the assets be presented at their estimated current value and be GAAP compliant, so Bartov's statement is of no consequence.

Bartov further attempted to opine on the disclaimer and "worthless clauses," previously rejected as a defense by this Court in several decisions and orders (subsequently affirmed by the Appellate Division), repeatedly referring to the clauses as "[j]ust like when you have the Surgeon General warning on the box of cigarettes, this warnings [sic] is not Phillip Morris. This warning is for the smokers." TT 6252-6256, 6259-6262, 6265-6267.

Eric Lewis

Eric Lewis, a professor at Cornell University, was called by the plaintiff as a rebuttal expert witness in the field of accounting.[47] TT 6637, 6668-6671.

---

[44] Professor Bartov bills at the rate of $1,350 per hour and has billed approximately 650 hours in this engagement. TT 6443.

[45] As the Court previously observed, Dr. Bartov suffered essentially the same fate testifying before the Hon. Barry Ostrager in People v Exxon Mobil Corp., 65 Misc 3d 1233(A) (Sup Ct, NY County 2019) ("the Court rejects Dr Bartov's expert testimony as unpersuasive and, in the case of his testimony about the Mobile Bay facility, finds Dr. Bartov's testimony to be flatly contradicted by the weight of the evidence").

[46] However, it is well-settled law that experts may not testify as to intent. People v Kincey, 168 AD2d 231, 232 (1st Dept 1990) ("It was highly improper and prejudicial to allow [defendant's expert witness] to testify concerning the defendant's intent").

[47] Lewis was compensated for his work on this engagement in the amount of $150,000. TT 6730.

Professor Lewis disputed the testimony of Jason Flemmons, stating that, contrary to what Flemmons opined, it is not sufficient under GAAP merely to select a permissible method of valuation under ASC-274 if the assumptions and numbers used to arrive at a value are false, notwithstanding the propriety of the method. TT 6695-6697. He further testified that Flemmons was incorrect in stating that the responsibility for ensuring that the methods of valuation are GAAP compliant lies with the accountants performing the compilation, citing industry standards that clearly demonstrate that the ultimate responsibility for determining GAAP compliant methods and estimated current values, as the SFC requires and represents, lies with the issuer of the statement, here, Donald Trump. TT 6697-6706.

He testified that under industry standards, accountants performing a compilation engagement are not responsible for finding GAAP departures, as compilations offer the lowest level of scrutiny and assurance. TT 6709-6710. He convincingly demonstrated that, according to the operative standards, an accountant creating a compilation will not verify the accuracy of the supporting information. TT 6715-6716.

Lewis further corroborated that each of the permissible methods of valuation in ASC-274 requires that the valuation be discounted to present value, and failure to do so would be a GAAP departure for which the issuer would be responsible. TT 6711. Lewis further identified several valuations in the SFCs that had not been discounted to present value and for which there was no disclosure of the failure to do so in the SFCs. TT 6711-6714, 6719-6725, 6727-6728.

Specific Assets on the SFCs

The Triplex

On October 1, 1994, Donald Trump consented to the "First Amendment to the Declaration of Trump Tower Condominium" ("First Amendment") which documented that the Triplex at Trump Tower, in which Donald Trump resided for decades, was 10,996 square feet. PX 633.

Since at least 2012, copies of the First Amendment showing the square footage of the Triplex were in Allen Weisselberg's email inbox (multiple times over) and in the physical filing cabinet immediately outside his office. PX 633; TT 805-809.

Since at least as early as 2012, Jeffrey McConney was valuing Donald Trump's Triplex apartment, in which he resided, as if it were 30,000 square feet, not 10,996 square feet, resulting in an annual overvaluation of between $114-207 million dollars. PX 1052; NYSCEF Doc. No. 1531 at 21.

In 2012, Weisselberg asked Trump International Realty employee Kevin Sneddon to value the Triplex. Sneddon asked to inspect the apartment or review the floorplan, and Weisselberg told him that both requests were "not possible" and advised Sneddon that the Triplex was 30,000 square feet. TT 6618-6621. Sneddon thereafter provided McConney a valuation using the incorrect 30,000 number from Weisselberg. PX 1052.

On February 22, 2017, Dan Alexander from Forbes emailed Weisselberg and McConney with data indicating that Forbes believed the Triplex to be 10,996 square feet. PX 1324. On March 3, 2017, Noack Kirsch from Forbes emailed Alan Garten with many questions about Donald Trump's assets, one of which reads: "President Trump has told Forbes in the past that his penthouse occupies 33,000 square feet, comprising the entirety of 66-68 of Trump Tower. Property records (notably the latest amended condo declaration, dated October 11, 1994) [sic]. Is the 1994 declaration accurate and up-to-date? It shows President Trump's apartment is 10,996.39 square feet." PX 1345.

Alan Garten then forwarded the email chain to Weisselberg, Eric Trump, Donald Trump, Jr., and Amanda Miller (who was responsible for press relations). PX 1344. This resulted in a conversation between Miller and Weisselberg and culminated in Miller sending an email to Garten on March 6, 2017, stating that "I spoke to Allen W. re: [Trump World Tower] + [Trump Tower] – we are going to leave these alone." PX 1345; TT 821-823.

Notwithstanding the size of the Triplex being brought to his attention, on March 10, 2017, a mere four days after telling Miller to "leave it alone," Weisselberg certified to Mazars the accuracy and truthfulness of the 2016 SFC, which included valuing the Triplex as if it were 30,000 square feet. PX 741. Indeed, Weisselberg "[was] comfortable certifying that nothing occurred subsequent to the date of the statement that would require adjustment." TT 831.

Despite this email, Weisselberg declined to review the First Amendment or take any other steps to confirm the actual size of the Triplex. TT 819.

When examined about how this violated the Trump Organization's responsibilities under the Management Representation Letters to Mazars, Weisselberg said he was not obligated to adjust the SFCs to reflect that change because he didn't think it was "material." TT 854-859.

It was not until Forbes made the issue public, by publishing an article in May of 2017 indicating that Donald Trump had been misrepresenting the size of his Triplex,[48] that the Trump Organization "began to do our investigation, as to, you know, what the number really was at that point." TT 833-834. Weisselberg admitted that "it was only after this article was published and the information became public that the Trump Organization corrected the square footage for Mr. Trump's triplex." TT 834.

When asked about his understanding of the events that led to the change in the square footage used in the 2017 SFC, Birney stated that he was never informed about the actual square footage of the Triplex before issuing the 2016 SFC, and that it was not until Forbes published the article revealing the true square footage that they adjusted the 30,000 square foot basis upon which they had been relying since at least 2012. TT 1234-1238.

[48] PX 1605, Peterson-Withorn, Chase. "Donald Trump Has Been Lying About The Size of His Penthouse." Forbes, May 3, 2017.

In an effort to cover up the decrease in the reported value of the Triplex, Allen Weisselberg instructed Birney to draft a version of the SFC that added a 35% "ex-president premium" to the value of the Triplex, although the idea was ultimately scrapped.[49] TT 1288-1290; 1298-1299.

To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Donald Trump testified that he personally determined that the Triplex's reported value was too high and directed Weisselberg and McConney to correct it. TT 3524. In reality, the Triplex's reported size was not corrected until 2017, months after Trump was inaugurated as president and ceased having any involvement in the preparation of the SFCs.

40 Wall Street

From 2011-2016, Jeffrey McConney and Allen Weisselberg valued 40 Wall Street based on dividing net operating income by a capitalization rate. During this same time, when valuing 40 Wall Street, McConney would "cherry-pick" cap rates from a generic marketing report Cushman & Wakefield emailed to its large customer base that was based on data not specific, or even closely related, to 40 Wall Street, and wholly ignored the appraisals of 40 Wall Street that Doug Larson had prepared. TT 660-681, 4995, 5101-5102; PX 3046, 3047, 3048. McConney did not adjust the cap rates from the generic marketing email to more accurately reflect the specifications of 40 Wall Street. TT 681-682. When valuing 40 Wall Street for the 2015 SFC, McConney forwarded an excerpt of Larson's 2015 appraisal to Donald Bender, but intentionally omitted the pages of the appraisal that show that Larson selected a cap rate of 4.25%, which resulted in an appraised value that was $227 million lower than using McConney's selected cap rate of 3.04%. PX 118, 868; TT 676-681.

In 2015, McConney began incorporating Larson's appraisal of 40 Wall Street in his SFC valuations. However, he manipulated the data—increasing the appraised value to account for income from a Dean & Deluca lease, even though the original appraisal had already explicitly incorporated the Dean & Deluca lease into its valuation, resulting in an overvaluation of $120 million. PX 3004, 868; TT 690-701.

McConney also omitted the pages of Larson's appraisal that valued the Dean & Deluca lease when sending excerpts of it to Donald Bender at Mazars. PX 118; TT 695-701.

Weisselberg had final approval over 40 Wall Street budgets, and was, thus, aware that the Trump Organization had budgeted a negative cash flow for 40 Wall Street for 2011. TT 1499, 1520-1521. Notwithstanding, he directed Donna Kidder to prepare a document containing a series of

[49] Indeed, there was such an effort to conceal the loss in value from the accurately reported Triplex that in a draft version of the 2017 SFC, dated October 10, 2017, Birney had added a 15-25% premiums to many of Donald Trump's properties, calling them "premium for presidential personal residence"; "premium for presidential property"; "premium for presidential winter residence"; and "premium for presidential summer residence." In total these various versions of "presidential premiums" amounted to an extra $144,680,601 for the year. PX 1290; TT 1290-1292.

implausible assumptions to generate a $26.2 million net operating income to be used for the SFCs. TT 1523-1526, 1529. However, 40 Wall Street never reached a net operating income of $26.2 million; instead, it ran a deficit as high as -$20.9 million through 2015. PX 636, 652. Donald Trump was aware of this, but he misrepresented to Forbes that the building was going to net $64 million in 2015.[50] TT 3571-3579.

Weisselberg also directed Kidder to prepare cash flow data for 40 Wall Street that stated false amounts of management fees when submitting that data to Ladder Capital. TT 1506-1507, 1536-1539.

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. PX 3041 at ¶¶ 576-577. After Capital One declined to do so, Allen Weisselberg contacted his son, Jack Weisselberg, and inquired about Ladder Capital refinancing the loan. TT 1820-1826; PX 647, 3041 at ¶¶ 580-82. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC. TT 1858-1861, 1873-1876; PX 654. Ladder Capital relied on the SFC for the information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891; PX 654. As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. This personal guarantee, executed by Donald Trump, required that he maintain a net worth of $160 million and liquid assets of at least $15 million, and to document compliance with those financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX-3041 at ¶ 597.

The Ladder Capital loan on 40 Wall Street was subsequently securitized and serviced by Wells Fargo. TT 1784-1885, 5815-5818. To comply with the 40 Wall Street loan covenants, from 2017 through 2019, the Trump Organization provided Wells Fargo summaries of Donald Trump's net worth that were derived from the SFCs and certified by Allen Weisselberg as "true, correct and complete and fairly present[s] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

Vornado

Donald Trump has a 30% limited partnership interest in non-party Vornado Realty Trust ("Vornado"), which owns office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street. Neither Donald Trump nor the Trump Organization could access his interest in any of the assets in the partnership without

[50] 40 Wall Street is currently under "special servicing" by the lender. PX 3380; Tr.4414, 4703-4706. A special servicer assumes servicing responsibility for defaulted loans or loans that are at the risk of default.

Vornado's consent. TT 940. Yet, every year Donald Trump's interest in the Vornado partnership was included in the "cash" portion of his SFC, falsely indicating that it was at his disposal, and that it was liquid, when it clearly and contractually was not. TT 940.

One year, Donald Bender advised McConney that McConney needed to remove cash that belonged to the Trump Foundation from the SFC's "cash" assets because it was controlled by the Trump Foundation and not by Donald Trump. McConney removed it from the SFC, understanding that it was not appropriate to include it because Donald Trump did not control those assets. TT 703-704. Notwithstanding, McConney intentionally continued to include the Vornado interest as "cash" on the SFCs, even though he was aware that Donald Trump could not control the assets. PX 2587, PX 3401 at ¶ 403; TT 688-690.

Allen Weisselberg was aware that the Vornado interest was included in the cash asset category on the SFCs, and that the Vornado assets were not under Donald Trump's control. He nonetheless approved reporting it as cash. TT 939-940.

By at least February 2016, Weisselberg advised Donald Trump, Donald Trump, Jr., and Eric Trump that the distributions from the Vornado limited partnership were not in the control of Donald Trump or the Donald J. Trump Revocable Trust. PX 1293; TT 1381-1388. Still, Trump, Jr. and Eric Trump continued to sign certifications that included the Vornado interest in the "cash" category. PX 1293; TT 1381-1383, 1387-1388.

Mark Hawthorn, chief operating officer of Trump Hotels, conceded that including the Vornado interest in the cash asset category in Trumps SFCs was improper. TT 1414-1454. Defendants' own accounting expert, Jason Flemmons, also conceded that the inclusion of the Vornado interest in the cash asset category was a "red flag," a "very glaring issue," and "not GAAP compliant." TT 4390-4392.

When Birney took over preparing and maintaining the SFCs' supporting data, no one ever provided him with a summary of the partnership agreement, let alone the agreement itself, demonstrating that Donald Trump was a limited partner without control over the assets. TT 1283-1285.

When preparing the 2017 SFC in which Donald Trump's value of the Triplex had been corrected to account for its actual size, Birney added $267.8 million dollars to the value of 1290 Avenue of the Americas. Birney said that they were able to achieve this increase in valuation from 2016 to 2017 by "increasing the EBITDA [Earnings Before Interest, Taxes, Depreciation, and Amortization] by free rent and reduction of the straight line rent." TT 1298-1300; PX 1212.

When preparing the supporting data for the 2018 SFC, on May 30, 2018, Birney emailed a representative from Cushman & Wakefield seeking confirmation "that 1290 Ave of Americas could probably be estimated at a mid 4 cap rate at stabilization, low 4 if there is upside." PX 3027. Michael Papagianopoulos, of Cushman & Wakefield, responded that "[w]hile I cannot opine on 1290AoA, as I do not know the actual financials, current market environment for Class A [Midtown] properties is mid 4s for stabilized and below that for proprieties with upside." PX 3027. McConney was copied on this email chain and the entire email chain was forwarded to

Weisselberg. PX 1159; TT 1317-1318. Notwithstanding, on the 2018 SFC, a 2.67 cap rate was used. The notes in the supporting data state: "6/30/2018—based on information provided by Michael Papagianopoulos of Cushman & Wakefield which reflects a cap rate of 2.67% for a comparable office building." PX 774; TT 1318-1325.

Trump Park Avenue

When valuing unsold units in Trump Park Avenue for Donald Trump's SFCs, McConney used offering plan prices from an internal Trump International Realty spreadsheet, while wholly disregarding "current market values" listed on the exact same spreadsheet. Moreover, McConney "intentionally removed" the current market values column from the spreadsheet before forwarding it to Donald Bender at Mazars, despite McConney's knowledge and representation that he understood that the SFCs had to reflect the estimated current value. PX-793; TT 629-631, 706-708.

McConney was aware that as of September 2011, there were 12 rent stabilized apartments at Trump Park Avenue. PX 3041; TT 709-711. Despite this knowledge, McConney, in consultation with Allen Weisselberg, intentionally valued the rent stabilized apartments not just as if they were unregulated, but at an aspirational offering price, resulting in overvaluations of as much as 700%. TT 711-712; NYSCEF Doc. No. 1531 at 23.

When Patrick Birney helped prepare the SFCs supporting data, neither Weisselberg nor McConney ever informed him of this gross overvaluation, or of any appraisals of the rent-stabilized units at Trump Park Avenue. TT 1282-1283.

Seven Springs

From 2011-2014, when valuing a plot of land upon which seven mansions could be built in Bedford, McConney relied on valuations provided by Eric Trump, who advised McConney to value the seven-mansion development at $161 million on the 2012 SFC. This valuation assumed a host of future events that had not—and as hindsight has shown, would not—occur, including that the Trump Organization had received legal permission to develop the lots, that the mansions were already built and available for sale, and that there would be no construction or development costs associated with building the mansions. PX 719; TT 713-718. Eric Trump further advised McConney to use these values again in 2013 and 2014. TT 713-720; PX 719, 793, 1075. Eric Trump was aware that the values he was providing would be used on his father's SFCs. PX 1075; TT 3315-3316, 3339.

Upon realizing that building the seven mansions would be neither feasible nor profitable, the Trump Organization, through outside counsel Sheri Dillon, commissioned an appraisal from Cushman & Wakefield to determine the value of the development rights for the plot of land upon which the Trump Organization had previously considered building the seven mansions.

In August 2013, Eric Trump advised McConney to continue to use the undiscounted value of $161 million for the seven-mansion development, despite having received an initial estimate of approximately $5.5 million from Cushman & Wakefield. PX 908, 3296; TT 3342-3347.

On September 8, 2014, David McArdle, of Cushman & Wakefield, advised Eric Trump verbally that he had appraised the seven-mansion development at $14 million. Notwithstanding, a mere four days later, Eric Trump advised McConney to continue using the $161 million value. PX 169, 181; TT 1996-1997, 3353-3354.

Briarcliff

In August 2013, Eric Trump retained David McArdle of Cushman & Wakefield to appraise the value of developing 71 condominium units on undeveloped land in Briarcliff, New York. PX 157, 3197; TT 1930, 3368-3371.

Despite having retained Cushman & Wakefield to value the 71 units, in a September 25, 2013 phone call Eric Trump advised McConney to value the 71 units at over $101 million, based on comparable sales in the area. PX 719; TT 738-745. Less than one month later, by October 16, 2013, Eric Trump was aware that McArdle had determined the value of the 71-unit development to be $45 million. PX 1465, 3201; TT 3374-3375. Notwithstanding that the 2014 SFC had not yet been submitted, Eric Trump failed to advise McConney that the appraised value was less than half of what he had reported the value to be. TT 738-744. Each year from 2015 to 2018, Eric Trump advised McConney to leave the $101 million as is, despite his knowledge of the much lower $45 million appraisal. TT 744-747.

Moreover, by October 16, 2013, Eric Trump was aware that the Trump Organization only had the right to build 31, not 71, units. PX 3261; TT 2695-2702. Notwithstanding, the SFCs for 2013-2018 continued to reflect that the Trump Organization had the right to build 71 units. PX 742, 758, 774; TT 2701-2702.

Mar-a-Lago

In 1995, Donald Trump signed a "Deed of Conservation and Preservation" in which he gave up the right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed").

In 2002, Donald Trump granted a conservation easement to the National Trust for Historic Preservation and signed a deed in which, in addition to conveying the rights to develop or use Mar-a-Lago for any purpose other than a social club, the Deed further *"limits changes to the Property including, without limitation*, the division or subdivision of the Property for any purpose, including use as single family homes, *the interior renovation of the mansion, which may be necessary and desirable for the sale of the property as a single family residential estate*, the construction of new buildings and the obstruction of open vistas." NYSCEF Doc. No. 1531 at 25-26 (emphasis added).

In exchange for executing the 2002 Deed, in which he gave away, in perpetuity, the right to develop or use the property as a single-family residence, Donald Trump paid significantly lower property taxes on Mar-a-Lago. PX 1730; TT 3533-3535.

McConney had in his possession, since at least 2011, a copy of the 2002 Deed, restricting the use of Mar-a-Lago as a single-family residence. TT 773-775; PX 1013; DX 360. McConney was also aware, when he prepared the SFCs supporting data, that the entire basis of the valuations of Mar-a-Lago rested on the premise that it could be sold as a private residence to an individual. Each and every year, he valued Mar-a-Lago as if it could be sold as a single-family residence, notwithstanding the deeded prohibitions against such use in perpetuity. TT 759, 775.

Further, when Patrick Birney took over for McConney in preparing the valuations for the SFCs, Weisselberg and McConney both concealed from Birney the 1995 and 2002 deeds. TT 1258-1259. When valuing Mar-a-Lago on the SFCs from 2016-2021, McConney and Weisselberg selected comparables for Birney to use that were exclusively for private residences. TT 1248-1256, 1268-1282; see, e.g., PX 3026.

There is no legal gray area surrounding the permanent nature of the deed restrictions. PX 1013.

Accordingly, there can be no mistake that Donald Trump's valuation of Mar-a-Lago from 2011-2021 was fraudulent.

TNGC-LA

McConney was aware that Cushman and Wakefield had appraised the property known as Trump National Golf Club LA ("TNGCLA") and valued the golf club portion at $16 million and the entire property at just over $82 million as of March 2015. Notwithstanding, in the 2015 SFC, McConney valued the golf club at $56.6 million and the entire property at just over $140 million. PX 1464, 731.

Aberdeen

Aberdeen is the name of a golf course and adjacent land that the Trump Organization owns in Aberdeen, Scotland. The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

Despite receiving permission to develop only 500 homes as year-round private residences on the non-golf course property, the 2014-2018 SFCs valued Aberdeen not only as if permission existed to develop 2500 private year-round residences, which it did not, but also as if those residences had already been built. The valuations also fail to account for any development (i.e., construction) costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

Despite receiving a July 2017 appraisal by Ryden LLP valuing the development profit of private homes at Aberdeen at a maximum of £33,296 per home, from 2017-2018 the Trump Organization valued the development of private homes at £83,164 per home, allegedly based on a September 18, 2014 email from an unidentified "Registered Valuer for Ryden LLP," which more than doubles the actual appraisal amount. PX 774, 1450.

In 2019, the Trump Organization began valuing each home at £106,969, more than triple the last appraised value, and the SFCs supporting data represented that the Trump Organization had permission to build 2035 private residences, when it still only had permission for 500. PX 843.

In 2020 and 2021, the Trump Organization valued each home at £68,781 and represented that it had permission to build 1200 private residences, when it still only had permission for 500. PX 1352, PX 3041 at ¶ 219.

Licensing Deals

From 2013-2021, despite representing explicitly in the SFCs that the "real estate licensing deals" asset category included only "signed agreements" with "other parties," the SFCs incorporated into this category wholly speculative, unsigned, and intra-company agreements between Trump Organization entities and affiliates. PX 729; TT 1461, 1465; NYSCEF Doc. 1531.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that would be received through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of the number of deals in place or the pace at which deals were being signed. TT 1550-1556; PX 774, PX 3168.

On a draft 2015 SFC, McConney noted that the valuation of real estate licensing deals included $151 million in forecasted deals that "have not signed yet" because he was concerned about the inconsistency. Despite this concern, McConney did nothing to modify the representations or remove the unsigned deals from the valuations of the licenses for the 2015-2018 SFCs. TT 5070-5072; PX 806, 729, 733.

Fraud in Business

Deutsche Bank

The evidence adduced at trial makes clear that Deutsche Bank relied on the SFCs for the information to underwrite, approve, and maintain the credit facilities on Doral, Trump Chicago, and the Old Post Office. PX 293, PX 3041 at ¶¶ 452-54, 456-466, 476.

The record is also clear that Donald Trump would not have received the credit facilities from the Private Wealth Management Division, and the favorable interest rates that came with that, had he not executed an unconditional, "ironclad," personal guarantee. Moreover, the Private Wealth Management Division was willing to accept the personal guarantees based upon false SFCs.

Doral

At the same time the Trump Organization was soliciting terms from Deutsche Bank's Private Wealth Management Division for the Doral loan, it was shopping for loans from other commercial real estate lenders, including Deutsche Bank's own commercial real estate group. In November 2011, Deutsche Bank's commercial real estate group offered the Trump Organization a $130 million loan at LIBOR + 8%, with a LIBOR floor of 2 – a minimum 10% interest rate. PX 369; NYSCEF No. 501 at ¶ 575. Instead, Donald Trump agreed to a full-recourse loan (i.e., with an unconditional personal guarantee) with the much more favorable terms of an initial interest rate of LIBOR + 2.25% during a renovation period and LIBOR + 2% after renovations. PX 293.

Donald Trump's personal guarantee for the Doral loan required him to certify the truth and accuracy of his SFC and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion. PX 1303, 3041 at ¶¶ 484, 486-489; TT 5429-5430. The guarantee further required him to submit an annual compliance certificate and an updated SFC to confirm his compliance with the loan covenants, the failure of which could have triggered a default. TT 1022-1023, 1027-1028, 1052-1054, 5337; PX 1303; DX 212.

Trump Chicago

When seeking to finance Trump Chicago, the Trump Organization again sought dueling proposals from both the Private Wealth Management Division, which required an unconditional personal guarantee, and the commercial real estate group, which did not. PX 3041 at ¶¶ 439, 500-502.

The commercial real estate group proposed two non-recourse loan options: the first was secured only by unsold condo units and priced at LIBOR + 8%; the second would have carried a higher interest rate along with additional costs and fees but would be secured only by the commercial (hotel and retail) property. The Private Wealth Management Division proposed a recourse loan priced at LIBOR + 4%, with the "spread differential . . . based on a full guarantee of Donald Trump." TT 1035-1039; PX 470.

Donald Trump ultimately agreed to a loan from the Private Wealth Management Division that was split into two tranches: (1) a facility of up to $62 million using unsold condos as collateral and bearing an interest rate of LIBOR + 3.35%; and (2) a facility of up to $45 million using the commercial property as collateral and bearing an interest rate of LIBOR + 2.25%. PX 470, 3242, 291. As with all lending from the Private Wealth Management Division, the loan was conditioned upon a personal guarantee from Donald Trump.

Old Post Office

In 2013, Donald Trump once again sought dueling financing offers from both the commercial real estate group and the Private Wealth Management Division to finance the redevelopment of the Old Post Office in Washington, D.C. PX 322, 327, 3041 at ¶¶ 543-549. Donald Trump once again elected to choose the lower interest rate option and higher credit facility that the Private Wealth Management Division was offering, which required a personal guarantee and submission

of annuals SFCs, over the higher interest non-recourse loan that the commercial real estate group was offering. PX 513, 294, 3041 at ¶¶ 549-552.

As with the Doral and Trump Chicago credit facilities, the Old Post Office loan agreement required Donald Trump to provide his most recent SFC to the bank and to certify its accuracy. PX 309.

The Old Post Office guarantee explicitly stated that Trump's representations were made "[i]n order to induce Lender to accept this Guarant[ee] and to enter into the Loan Agreement and the transactions thereunder," and that loan obligations were "conclusively presumed to have been created in reliance" on Trump's guarantee and its representations. PX 305. This was confirmed by the testimony of former and current Deutsche Bank employees Nicholas Haigh and David Williams.

Pursuant to the personal guarantee, Donald Trump was required to "keep and maintain complete and accurate books and records," and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the SFC delivered to Lender during each year." PX 305, PX 3041 at ¶¶ 561-563.

Pursuant to his loan obligations, Donald Trump provided Deutsche Bank with his 2014-2021 SFCs, as well as certifications that were executed either by Donald Trump, or by Donald Trump, Jr. or Eric Trump as attorneys-in-fact for Donald Trump. PX 393, 503, 515, 518, 1386, 3041 at ¶ 572. Deutsche Bank relied on these SFCs and certifications for its annual review of Donald Trump's financial covenants. PX 298, 300, 302, 498, 519, 561, 3137.

Donald Trump testified that he knew Deutsche Bank would rely on these certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630. Donald Trump, Jr. testified he when he signed the certifications, he "intended for the bank to rely upon [them]." TT 3241, 3250. Although Eric Trump testified that he had "no idea" if he intended the banks to rely upon his certifications, the Court finds that testimony not credible, as Eric Trump was aware that the certifications were required for the loans. Moreover, his inconsistent memory at trial renders his testimony that he has "no idea" even less plausible.

On May 11, 2022, Donald Trump sold the redeveloped Old Post Office for $375 million, and used $170 million of those proceeds to repay the Deutsche Bank loan. PX 3041 at ¶¶ 570-571. By selling the Old Post Office, Donald Trump and his adult children netted the following respective profits: (1) $126,828,600 to Donald Trump; (2) $4,013,024 to Eric Trump; (2) $4,013,024 to Donald Trump, Jr., and (4) $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

Ladder Capital/Wells Fargo

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Allen Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. After Capital One declined to waive the required payment, Allen Weisselberg contacted his son, Jack Weisselberg, about Ladder

Capital refinancing the loan. TT 1820-1826. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later requiring that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether it would approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required unconditionally to guarantee payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. The personal guarantee executed by Donald Trump required him to document compliance with his financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX 3041 at ¶ 597.

The 40 Wall Street loan was subsequently securitized and serviced by Wells Fargo. TT 1784-1785, 5815-5818. To comply with the 40 Wall loan covenants, in 2017-2019, Donald Trump submitted to Wells Fargo summaries of his net worth that were derived from the SFCs, and certified by Weisselberg as "true, correct, and complete and fairly present[ing] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

As discussed *supra*, the SFCs Donald Trump submitted to Wells Fargo as part of his obligations were none of these things—they were not GAAP compliant and were not "correct," "complete," or "fairly present[ed]".

Ferry Point

In February of 2010, NYC Parks published an RFO for operation and maintenance of a golf course at Ferry Point Park in the Bronx. PX 3290. NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. NYC Parks was particularly focused on the financial capability of a potential operator, as it had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars that indicated that according to Donald Trump's 2009 SFC, which Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to this RFO, ultimately awarding the contract to the Trump Organization. In so doing, NYC Parks highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump, the president of Trump, has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

On February 21, 2012, Donald Trump signed the license agreement with NYC Parks. DX 981. The license agreement required Donald Trump to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit annually a letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks, including potential referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation; the Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtains a gaming license[51] for the site. TT 2850, 3266-3267; PX 3304, 3306. Accordingly, by maintaining the license agreement for Ferry Point by submitting false SFCs, and which was initially awarded based on false SFCs, the Trump Organization was able to secure a windfall profit by selling the license. PX 3304.

Zurich Insurance

Surety Insurance

Acquiring insurance coverage for the Trump Organization was handled by a self-titled "Team of Four" that consisted of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen. TT 943-944, 1201. The Team of Four decided coverage and interfaced with insurance broker AON. TT 946.

[51] After Donald Trump was awarded the license in 2012, but before he assigned it to Bally's in 2023, the State of New York amended its constitution to permit gaming (i.e., gambling) licenses for up to seven commercial casinos in the state, other than those operated by Native Americans.

When Zurich representatives responsible for underwriting asked to review the financials, they were prohibited from retaining a copy of any documents for review but were permitted only to view them at Trump Tower with Allen Weisselberg and/or Jeffrey McConney in the room at all times, which was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59. Weisselberg was physically present at every meeting with the sureties or their representatives, wherein members of the Team of Four would describe how the assets were valued. TT 953-954.

When questioned whether the insurance representative asked him if there had been appraisals of any of the assets identified on the SFC, Weisselberg stated "not that I can remember." TT 948. This is directly contradicted by the testimony of Zurich representative Claudia Markarian, whose testimony and contemporaneous notes taken during the meetings indicate that Weisselberg represented to her, and she relied on, his assurances that the valuations of the real estate assets in the SFCs were based on professional outside appraisals. PX 3324 at 25-34.

In Court, Weisselberg maintained that despite having appraisals of properties on the SFCs in the Trump Organization's possession, he did not feel they had to be disclosed to the insurance representatives because the Trump Organization had not commissioned the appraisals on their property; rather, the lenders had. TT 954-959. However, this is simply not what he represented to Zurich. PX 3324 at 25-34.

Markarian's contemporaneous memoranda for each on-site review reflect the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52. However, the amount of cash on hand was intentionally and materially misrepresented, as the SFC included Donald Trump's interest in the Vornado partnership as cash, notwithstanding that those assets were not liquid or within Donald Trump's control. TT 617-620.

Because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about the financial condition of the company other than to rely on the financial statements that the client provides to them. PX 3324 at 57. Markarian credibly testified that, because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account"). Markarian had no reason to doubt that Weisselberg was being truthful and honest in his representations, and she accepted at face value, and relied upon, his representations about the values contained in the SFCs. PX 3324 at 28-53.

Zurich relied on false representations by Weisselberg and McConney, and the intentionally false and misleading information in the SFCs about the amount of cash on hand, when determining to underwrite policies for the Trump Organization. PX 1561, 1552, 3324 at 28-57.

D&O Insurance

As of December 2016, the Trump Organization had a D&O liability policy in place that offered coverage consisting of a single primary policy with a limit of $5 million at an annual premium of $125,000; the policy was to expire on February 17, 2017. PX 596, 587.

In December 2016, the Trump Organization contacted several insurance brokers, including HCC, as the Trump Organization was looking to rewrite the program on the day of Donald Trump's inauguration, with significantly higher limits, to wit, $50 million. TT 2492-2493, 4887; PX 587.

Similar to Zurich's representatives, HCC representatives were told they could review the financials only while being monitored at Trump Tower and could not retain copies for their own records. PX 588, 2985. On January 10, 2017, Michael Holl, of HCC, attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained in the meeting. PX 2985; TT 2498-2499. His contemporaneous email reads: "Saw very few financials but did see the balance sheet for year-end 2015. They assured me that the one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email further reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communications that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502. However, this representation was false, as, at the time of the meeting, there was an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization and were aware of the investigation. PX 1001, PX 1002, PX 1003; TT 2557-2558. Neither Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting, or at any other time prior to the binding of the D&O policies, the existence of OAG's investigation into the Trump Foundation and directors and officers of the Trump Organization, despite understanding at the time that OAG's investigation into the Trump Foundation could potentially lead to a claim. In fact, they tendered a claim for coverage to their insurers, including HCC, for the enforcement action arising from OAG's investigation into the Trump Foundation, by notice dated January 17, 2019. NYSCEF Nos. 1220, 1221; PX 2985; TT 2500-2502. When HCC ultimately became aware of the claims, its underwriter determined that the exposure on the risk was significantly higher than it had been priced at and offered a renewal policy at more than five times the expiring premium. TT 2507; PX 2989.

HCC further relied on the false representation that Donald Trump had $192 million cash on hand (as it improperly included Vornado "cash"), as was reflected in the 2015 SFC, which was material in HCC's analysis of whether to write the policy. TT 2494-2495, 2502.

CONCLUSIONS OF LAW

Burden of Proof

An action brought by the Attorney General seeking equitable relief for repeated or ongoing fraud in conducting business is subject to a "preponderance of the evidence" standard, as is customary in civil litigation. Jarrett v Madifari, 67 AD2d 396, 404 (1st Dept 1979). As noted, *supra*, this is supported by the legislative history of Executive Law § 63(12), wherein the legislators expressly contemplated and intended for a preponderance of the evidence standard to apply. Moreover, defendants have provided no legal authority for their contention that the higher "clear and convincing" standard does, or should, apply. A clear and convincing standard applies only when a case involves the denial of, addresses, or adjudicates fundamental "personal or liberty rights"[52] not at issue in this action. Matter of Capoccia, 59 NY2d 549, 552 (1983).

Defenses Asserted

Reliance

Defendants have argued vociferously throughout the trial that there can be no fraud as, they assert, that none of the banks or insurance companies relied on any of the alleged misrepresentations. The proponents of this theory posit that lenders demand complex statements of financial condition but then ignore them.

Defendants' argument is to no avail, as none of plaintiff's causes of action requires that it demonstrate reliance. Instead, plaintiff must merely show that defendants intended to commit the fraud. Reliance is not a requisite element of either Executive Law § 63(12) or of any of the alleged Penal Law violations. See, e.g., People v Essner, 124 Misc 2d 830, 834 (Sup Ct, NY County 1984) ("Reliance then is not an element of [Penal Law § 175.45 - Falsifying Business Records], and documents subpoenaed to prove or disprove reliance by the banks are immaterial").

However, the Court notes that, although not required, there is ample documentary and testimonial evidence that the banks, insurance companies, and the City of New York did, in fact, rely on defendants to be truthful and accurate in their financial submissions. The testimony in this case makes abundantly clear that most, if not all, loans began life based on numbers on an SFC, which the lenders interpreted in their own unique way. The testimony confirmed, rather than refuted, the overriding importance of SFCs in lending decisions.[53]

---

[52] The Court of Appeals has identified instances that would amount to loss of "personal or liberty rights," such as denaturalization, loss of paternity rights, and involuntary civil commitment. Matter of Capoccia, 59 NY2d 549, 552 (1983). A case arising out of alleged fraud in the business place does not come within that category.

[53] To take one of innumerable examples, Robert Unell testified that Deutsche Bank and Ladder Capital would have analyzed Donald Trump's net worth based on the contents of the SFCs. Indeed, witness after witness testified that the SFCs were important to them, and/or were the starting point of their analysis.

Blame the Accountants

The crux of the defense at trial was that defendants relied on their accountants, mainly Mazars, but sometimes Whitley Penn, to make sure that the SFCs were accurate, and that responsibility for any misrepresentations lies with the accountants, not defendants. Donald Trump, Jr. and Eric Trump testified several times that they would have relied on their accountants to find any errors in the SFCs' supporting data.

As an initial matter, the Court notes that neither Mazars, nor Whitley Penn, nor Donald Bender, is a defendant in this action, nor did defendants ever attempt to implead them as third party defendants. More significantly, however, this defense is wholly undercut by the overwhelming evidence adduced at trial demonstrating that Mazars and Whitley Penn relied on the Trump Organization, not vice versa, to be truthful and accurate, and they had a right to do so.

Each year from 2011-2020, Weisselberg signed SFC Management Representation Letters as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). Weisselberg understood that Mazars was relying on what was in the Management Representation Letters, and that Mazars would not have issued the SFCs without having secured these representations. Weisselberg further knew that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict the values represented in the SFCs. The whole situation could hardly have been otherwise, as only defendants had the information, and the accountants were not performing audits.

Donald Trump himself acknowledged that, as was certified to in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements.

There is overwhelming evidence from both interested and non-interested witnesses, corroborated by documentary evidence, that the buck for being truthful in the supporting data valuations stopped with the Trump Organization, not the accountants. Moreover, the Trump Organization intentionally engaged their accountants to perform compilations, as opposed to reviews or audits, which provided the lowest level of scrutiny and rely on the representations and information provided by the client; compilation engagements make clear that the accountants will not inquire, assess fraud risk, or test the accounting records.

Materiality

In its summary judgment decision, this Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law. NYSCEF Doc. 1531

Indeed, materiality under this statute is judged not by reference to reliance by or materiality to a particular victim, but rather on whether the financial statement "properly reflected the financial condition" of the person to which the statement pertains. People v Essner, 124 Misc 2d 830, 835 (Sup Ct, NY County 1984) ("there need be no 'victim,' ergo, reliance is neither an element of the crime nor a valid yardstick with which to test the materiality of a false statement").

Materiality has been one of the great red herrings of this case all along. Faced with clear evidence of a misstatement, a person can always shout that "it's immaterial." Absolute perfection, including with numbers, exists only in heaven. If fraud is insignificant, then, like most things in life, it just does not matter. As an ancient maxim has it, *de minimis non curat lex*, the law is not concerned with trifles. Neither is this Court.

But that is not what we have here. Whether viewed in relative (percentage) or absolute (numerical) terms, objectively (the governing standard) or subjectively (how the lenders viewed them), defendants' misstatements were material. United States Supreme Court Justice Potter Stewart famously, or infamously, declared that he could not define pornography, but that he knew it when he saw it. Jacobellis v State of Ohio, 378 US 184, 197 (1964). The frauds found here leap off the page and shock the conscience.

Wisely, courts have refused to define "material" in a "one size fits all" fashion. At trial, this Court attempted to get the experts to go where Courts have dared not tread. Not surprisingly, a firm definition could not be found. But in the present context, this Court confidently declares that any number that is at least 10% off could be deemed "material," and any number that is at least 50% off would likely be deemed material. These numbers are probably conservative given that here, such deviations from truth represent hundreds of millions of dollars, and in the case of Mar-a-Lago, possibly a billion dollars or more.

Different Appraisers, Different Appraisals

Yet another great red herring in this case has been that different appraisers can legitimately and in good faith appraise the same property at different amounts. True enough, as appraising is an art as well as a science. However, the science part cannot be fraudulent. When two appraisals rely on starkly different assumptions, that is not evidence of a difference of opinion, that is evidence of deceit.

Second Cause of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, and Donald Trump, Jr. are each liable under the second cause for action for repeatedly and persistently falsifying business records, thus violating Executive Law § 63(12) and New York Penal Law § 175.05.

Penal Law § 175.00 defines a "business record" as "any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity." Clearly, each of the SFCs and supporting spreadsheets that were submitted to lenders and insurers qualifies as a business record, as each constituted a writing kept by the Trump Organization for the purpose of evidencing or reflecting its activities. Additionally, the individual defendants' actions in furnishing false information and values to third parties caused third parties, such as Deutsche Bank, to create their own business records that contain fraudulent information, such as the credit memoranda created by Deutsche Bank and Ladder Capital.

As detailed in the Findings of Fact, there is overwhelming evidence that each of these defendants made or participated in making a false statement in the business records of an enterprise, the Trump Organization, with the intent to defraud.

Donald Trump was aware of many of the key facts underpinning various material fraudulent misstatements in the SFCs: he was aware of having deeded away the right to use Mar-a-Lago as anything other than a social club, and notwithstanding, continued to value it as if it could be used as a single family residence; he was aware that the Triplex apartment in which he, a real estate mogul and self-identified expert, resided for decades was not 30,000 square feet, but actually 10,996 square feet; he was aware that he did not control the Vornado partnership interest even though he represented it as "cash"; he was aware that he had permission to build only 500 private residences in Aberdeen, notwithstanding that he represented that he had permission for 2500; and he was aware that 40 Wall Street was operating at a deficit despite proclaiming that it was running a net operating income of $64 million. As Eric Trump testified, Donald Trump sat at the top of the pyramid of the Trump Organization until 2017. Donald Trump professed to "know more about real estate than other people" and to be "more expert than anybody else." TT 3487. He repeatedly falsified business records with the intent to defraud. See People v Gordon, 23 NY3d 643, 650 (2014) ("Intent may be established by the defendant's conduct and the circumstances"); People v Rodriguez, 17 NY3d 486, 489 ("Because intent is an 'invisible operation of the mind' direct evidence is rarely available (in the absence of an admission) and it is unnecessary when there is legally sufficient circumstantial evidence of intent," "noting that 'intent can also be 'inferred from the defendant's conduct and the surrounding circumstances'") (internal citations omitted).

There is overwhelming evidence that Allen Weissberg intentionally falsified hundreds of business records during his tenure as CEO of the Trump Organization. Weisselberg understood that his assignment from Donald Trump was to have his reported assets increase every year irrespective of their actual values. The examples of Weisselberg's intent to falsify business records are too numerous to itemize, but include, and are not limited to: concealing the square footage of the Triplex to inflate its value by $200 million; misrepresenting to insurance representatives that the real estate valuations found in the SFCs were prepared by outside appraisers; directing Donna Kidder to prepare a budget for 40 Wall Street that showed a positive net operating income, notwithstanding that 40 Wall Street was running repeated deficits; valuing the Vornado partnership interest as cash, despite knowing that Donald Trump had no control over it; directing Birney to remove management fees as expenses when calculating net operating income; and certifying to banks and other third parties that all of the valuations in the SFCs were GAAP compliant and presented at fair and accurate estimated current values, which they were not.

There is ample evidence that Jeffrey McConney intentionally falsified business records. Not only was McConney responsible for the preparation of the valuations contained in the SFCs from 2014 through 2017, he also continued to overvalue certain properties from 2017 until he left the Trump Organization. In particular, examples of McConney's fraudulent conduct include, but are not limited to: knowingly and intentionally valuing the apartments at Trump Park Avenue based on an offering price that failed to reflect that the apartments were rent-restricted; intentionally

including the Vornado partnership interest as cash despite knowing Donald Trump did not control it; failing to discount to present value; valuing undeveloped properties as if they were already built and ready to be sold; intentionally lying to Donald Bender and representing that the Trump Organization had no appraisals of their real property in its possession, when it did; intentionally and knowingly valuing Mar-a-Lago as if it could be sold as a single family residence despite the deed restrictions that require it to be a social club in perpetuity.

There is also sufficient evidence that Donald Trump, Jr. and Eric Trump intentionally falsified business records. They served as attorneys-in-fact for Donald Trump and were under a heightened duty of prudence. See General Obligations Law §§ 5-1501(2)(a), 1505(1)(a), 1501(2)(a)(3). They also served as co-executives running the company from January 2017 to today, in which they had intimate knowledge of the Trump Organization's business, assets, and were provided with financial updates upon request by Weisselberg and Patrick Birney. Both Trump, Jr. and Eric Trump also continued to represent Donald Trump's Vornado limited partnership interest as cash, despite having been expressly advised that it was not under the Trump Organization's control.

Additionally, Eric Trump intentionally provided McConney with knowingly false and inflated valuations for Seven Springs, despite having commissioned appraisals that valued Seven Springs at a fraction of Eric Trump's number.

Moreover, Trump, Jr., as a trustee of the Donald J. Trump Revocable Trust, signed Management Representation Letters to Mazars affirming the accuracy of the supporting data and signed certifications to banks and insurance companies verifying the accuracy of the false SFCs' contents.

Accordingly, the law presumes that Donald Trump, Jr. read and understood the contents of his representations. Marine Midland Bank, N.A. v Embassy E., Inc., 160 AD2d 420, 422 (1st Dept 1990) ("It is no defense that respondents did not read the note or the guarantees, for the law presumes that one who is capable of reading has read the document which he has executed and he is conclusively bound by the terms contained therein") (internal citations omitted). Trump, Jr.'s intent can also be inferred from his acknowledgment that third parties would rely on his certifications.

Third Cause of Action

Plaintiff's third cause of action is for conspiracy to falsify business records.

> 'The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy.' The essence of the offense is an agreement to cause a specific crime to be omitted together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy … 'Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other

> conspirators to establish the offense of conspiracy… and that act may be the object crime.

Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999). Moreover, "[i]n prosecutions for the crime of conspiracy[,] the People's case must usually rest upon circumstantial evidence." People v Connolly, 253 NY 330, 339 (1930) ("[d]efendants, with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts").

For the reasons detailed in the second cause of action, there is ample evidence that each of the defendants conspired to falsify business records. This includes not only the individual defendants, but also the corporate defendants, as Penal Law § 20.20(c) makes clear that a corporation is liable for a misdemeanor committed by its agents "acting within the scope of [their] employment and on behalf of the corporation." Moreover, this applies to LLCs as well as corporations. People v Highgate LTC Mgmt., LLC, 69 AD3d 185, 189 (3rd Dept 2009) (just as corporations are liable for acts committed by their agents in the scope of their employment under Penal Law § 20.20(c), LLCs are similarly liable as "individuals" under Penal Law § 20.20(c)); People v Harco Constr. LLC, 163 AD3d 406, 407 (1st Dept 2018) (upholding conviction of LLC).

Similarly, the Donald J. Trump Revocable Trust is also liable for the criminal acts of its agents, including its trustees and those who performed work on their behalf. The trust is part of an associated group of business entities and individuals who operate as "the Trump Organization," and the trust holds all of the assets of the Trump Organization. People v Newspaper and Mail Deliverers' Union of New York and Vic., 250 AD2d 207, 215 (1st Dept 1998) (reinstating indictment against unincorporated union). People v Feldman, 791 NYS2d 361, 375 (Sup Ct, Kings County 2005) (political party is a "person"); People v Assi, 14 NY3d 335, 340-41 (2010) (religious congregation is association of individuals, and thus "person," under Penal Law). Moreover, the First Department, in a previous appeal arising out of this case, rejected defendants' argument that the trust cannot be held liable and could not be a proper party.

Fourth and Fifth Causes of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, Donald Trump, Jr., and all of the entity defendants are liable under the fourth cause for action for repeatedly and persistently issuing false financial statements, thus violating Executive Law § 63(12) and New York Penal Law § 175.45. All defendants are liable under the fifth cause of action for conspiracy to submit false financial statements.

As detailed in the Findings of Fact, there is ample evidence that each of the individual defendants, with the intent to defraud, "knowingly ma[de] or utter[ed] a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect." PL § 175.45(1). There is even more evidence that each of the defendants participated in a conspiracy to submit false financial statements.

Sixth Cause of Action

Defendants Allen Weisselberg and Jeffrey McConney are each liable under the sixth cause for action for repeatedly and persistently committing insurance fraud in violation of Executive Law § 63(12) and New York Penal Law § 176.05.

To establish liability under this cause of action, plaintiff must establish that Weisselberg and McConney knowingly, and with the intent to defraud, presented or prepared, with knowledge or belief that it will be presented to an insurer, any written instrument as part of an insurance application that is known to contain materially false information or to conceal, for the purpose of misleading, information concerning any material fact. PL § 176.05.

As discussed in the Findings of Fact, both Weisselberg and McConney participated in the insurance meetings in which they made false representations to the insurance representatives about Donald Trump's SFCs, including misrepresenting the value of his cash assets, representing to the insurance companies that the real estate asset valuations in the SFCs came from outside appraisals, and lying about the existence of potential claims against the Trump Organization. Each of these actions caused the insurance application to contain materially false information for the purpose of misleading the insurer.

Seventh Cause of Action

All defendants are liable under the seventh cause of action, for conspiracy to commit insurance fraud. Although only Allen Weisselberg and Jeffrey McConney performed the overt acts of the insurance fraud, all defendants are liable for the conspiracy, as only "an overt act by one of the conspirators in furtherance of a conspiracy" need be shown. Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999).

For the reasons detailed *supra*, each of the defendants participated in aiding and abetting the conspiracy to commit insurance fraud by their individual acts in falsifying business records and valuations, causing materially fraudulent SFCs to be intentionally submitted to insurance companies.

DISGORGEMENT OF ILL-GOTTEN GAINS

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct

> losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014) (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also People v Amazon.com, Inc., 550 F Supp 3d 122, 130 (SDNY 2021) ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief," and finding "the Attorney General can seek disgorgement of profits on the State's behalf"). Indeed, the last sentence of Executive Law § 63(12) clearly contemplates disgorgement ("all monies recovered or obtained under this subdivision").

The Personal Guarantee Interest Rate Differential

Having prevailed on its causes of action demonstrating intentional, repeated, and persistent fraud by defendants, plaintiff is entitled to disgorgement of defendants' "ill-gotten gains." Disgorgement is "the equitable remedy that deprives wrongdoers of their net profits from unlawful activity." Liu v Sec. & Exch. Comm'n, 140 S Ct 1936, 1937 (2020) (further stating that "it would be inequitable that a wrongdoer should make a profit out of his own wrong").

Plaintiff's expert, Michiel McCarty, testified reliably and convincingly that defendants profited by paying lower interest rates on loans from Deutsche Bank's Private Wealth Management Division, based on fraudulent SFCs, than the interest rates they would have paid under non-recourse loans simultaneously offered to them. He further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan, based on a fraudulent SFC, than the interest rate on a non-recourse loan, and compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing with Ladder Capital.

McCarty calculated the differences between interest rates and determined the following ill-gotten interest savings, which this Court hereby adopts as the most reasonable approximation of the ill-gotten interest rate savings upon which evidence was presented at trial: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan.

In total, defendants' fraud saved them approximately $168,040,168 in interest, which shall be imposed, jointly and severally, among Donald Trump and the defendant entities that he owns and controls, as the misconduct at issue was committed by the Trump Organization's top management. SEC v Pentagon Cap. Mgmt. PLC, 725 F3d 279, 287 (2d Cir 2013) (joint and several liability appropriate because defendants had collaborated on a common scheme); S.E.C. v First Jersey Sec., Inc., 101 F 3d 1450, 1476 (2d Cir 1996) (joint and several liability is warranted when the misconduct of the company and its top controlling officers are indistinguishable); S.E.C. v Hughes Cap. Corp., 917 F Supp 1080, 1089 (DNJ 1996), aff'd, 124 F3d 449 (3d Cir 1997) (joint and several liability appropriate where defendants were "knowing

participants who acted closely and collectively" when their activities were "inextricably interwoven with that of the corporation") (internal citations omitted).

Old Post Office Profit

As with so many Trump real estate deals, the Old Post Office contract was obtained through the use of false SFCs (no false SFCs, no deal). Thus, the net profits received on its sale were ill-gotten gains, subject to disgorgement, which is meant to deny defendants "the ability to profit from ill-gotten gain." Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996).

Plaintiff has also argued that without the ill-gotten savings on interest rates, defendants would not even have been able to invest in the Old Post Office and/or other projects. To that end, plaintiff asserts that the interest rate savings from defendants' use of the fraudulent SFCs also allowed them to preserve capital to invest in other projects that they would not have been able to otherwise.[54] Plaintiff asserts that by 2017, after deducting the $16,500,0000 Vornado partnership interest, fraudulently labeled as cash, Trump would have been in a negative cash position (without the $73,811,815 saved through reduced interest payments). Plaintiff further asserts that without the interest savings from the use of the fraudulent SFCs, Donald Trump would have been in a negative cash position in every year from 2017-2020 (which would have violated his loan covenants).

Plaintiff also argues that the Old Post Office loan itself was a construction loan, and its proceeds were necessary to the construction and renovation of the hotel, which enabled the 2022 sale and resulting profits.

Of the three theories advanced by plaintiff, the first is by far the strongest; but all three, viewed collectively, support disgorgement of the profits defendants received from the sale of the Old Post Office as ill-gotten gains.

Accordingly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable, in the amount of $126,828,600, for the ill-gotten profits Donald Trump netted from the sale of the Old Post Office.

Eric Trump is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

Donald Trump, Jr. is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

[54] Indeed, as defendants' own expert, Frederick Chin, testified: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And, it may make a development less feasible." TT 5929.

Ferry Point Profit

Similarly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for disgorgement of the windfall profits of $60 million attributable to selling Ferry Point to Bally's. By maintaining the license agreement for Ferry Point, based on fraudulent financials, Donald Trump was able to secure a windfall profit by selling the license to Bally's Corporation. Quintel Corp., N.V. v Citibank, N.A., 596 F Supp 797, 804 (SDNY 1984) ("defrauders will be required to disgorge windfall profits").

Allen Weisselberg's Severance Payments

There is substantial evidence that Allen Weisselberg's $2 million separation agreement was negotiated to compensate him for his continued non-cooperation with any entities with any legal interests "adverse" to defendants. Moreover, as Weisselberg was a critical player in nearly every instance of fraud, it would be inequitable to allow him to profit from his actions by covering up defendants' misdeeds.

Accordingly, Allen Weisselberg is liable for the money he has received from this separation agreement as ill-gotten gains. S.E.C. v Razmilovic, 738 F 3d 14, 33 (2d Cir 2013) ("The court also reasonably ruled that Razmilovic should disgorge his $5 million severance payment"). Although he was promised $2 million in total, at the time of his testimony, he had received only $1 million. PX 1751. Accordingly, Allen Weisselberg must disgorge the $1 million he has already received as ill-gotten gains.

Pre-Judgment Interest

Public policy favors awarding interest in equity actions. 5 Weinstein–Korn–Miller, NY Civ Prac ¶ 5001.06, at 50–24.

CPLR 5001(b) directs that:

> Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. Where such damages were incurred at various time, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.

"Further, a defendant's 'corrupt intent or desire for personal profit' is a factor to be weighed in the court's exercise of discretion pursuant to CPLR 5001. Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996) (further holding equitable relief favors granting prejudgment interest as "the awards of prejudgment interest on the ground that these awards 'deprive the defendants of their ill-gotten gains prevent unjust enrichment and accord with the doctrine of fundamental fairness'") (internal citations omitted).

Weighing these public policy considerations, the Court directs that pre-judgment interest, per CPLR 5004(a),[55] shall run from the following dates: (1) March 4, 2019, the date the Attorney General commenced its investigation, for all disgorgement of ill-gotten interest savings on the Doral, Trump Chicago, Old Post Office, and 40 Wall Street loans; (2) June 26, 2023, the date of the sale of the Ferry Point lease, for all ill-gotten profits obtained from the sale; (3) May 11, 2022, the date of the sale of the Old Post Office, for all ill-gotten profits obtained from the sale; and (4) January 9, 2023, the date that Allen Weisselberg entered into his Separation Agreement, for all ill-gotten payments to Weisselberg designed to ensure his continued loyalty to the Trump Organization and his non-cooperation with law enforcement.

INJUNCTIVE RELIEF

"[T]he Attorney General may obtain permanent injunctive relief under … Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating, "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

An Attorney General who has demonstrated "repeated illegal or fraudulent acts" may obtain injunctive relief pursuant to Executive Law § 63(12). State v Princess Prestige Co., 42 NY2d 104, 106 (1977); People v Gen. Elec. Co., 302 AD2d 314, 315 (1st Dept 2003).

When determining whether injunctive relief is appropriate, courts are instructed to consider the following facts:

> [T]he fact that the defendant has been found liable for illegal conduct; the degree of scienter involved; whether the infraction is an "isolated occurrence"; whether defendant continues to maintain that his past conduct was blameless; and whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated.

S.E.C. v Cavanagh, 155 F3d 129, 135 (2d Cir 1998). Consideration of each of these factors weighs heavily towards granting injunctive relief.

Necessity of Ongoing Oversight

Defendants' Conduct Since OAG Commenced its Investigation

In a Decision and Order dated November 14, 2022, this Court granted a motion by plaintiff for a preliminary injunction and, among other things, appointed the Hon. Barbara Jones (ret.) as an

[55] CPLR 5004(a) provides, as here pertinent: "Interest shall be at the rate of nine percent per annum, except where otherwise provided by statute."

Independent Monitor tasked with overseeing the Trump Organization's financial disclosures to any third parties and any transfer or other dissipation of assets.[56] The Court also directed Judge Jones to provide regular updates to the Court summarizing her findings and observations. To date, she has provided six reports, the last of which was dated January 26, 2024, after the conclusion of the trial.

In her final report, Judge Jones made the followings findings and observations: (1) beginning in 2022, defendants elected no longer to submit SFCs, instead crafting their own list of "the Trust's Material Assets and Material Liabilities, which does not include estimated current values of the properties contained therein and does not include a balance sheet of the guarantor or any representations regarding his financial condition, notwithstanding the loan covenants that still require it;[57] (2) during the course of her monitorship, defendants transferred significant funds[58] outside of the Trust without notifying the monitor, as they were obligated to do; (3) during the course of her monitorship, defendants have submitted disclosures to third parties that fail to include significant liabilities;[59] (4) the defendants are no longer representing that any disclosures are GAAP compliant, despite certain continuing obligations to do so; (5) annual budgets of projected performance were submitted to third parties that were materially different from the actual budgets of the prior year and which excluded or significantly reduced actual management fees as liabilities; (6) the internal accounting structure of the Trump Organization continues to be plagued by math and/or reporting errors; and (7) there are no adequate internal controls over financial reporting in place at the Trump Organization to ensure that there will not continue to be misstatements and errors going forward. NYSCEF Doc. No. 1681.

Further, the Court notes that top leadership roles at the Trump Organization, particularly the CFO and Controller, remain vacant. Approximately five months after Weisselberg pleaded guilty to having committed 15 counts of tax fraud at the Trump Organization, Eric Trump

[56] The Court did not appoint Judge Jones randomly or arbitrarily or by happenstance. Rather, she was the only one of the three candidates that both sides proposed for the position of independent monitor. However, after she issued her scathing January 26, 2024 report, quite critical of defendants' financial practices, defendants changed their tune. Overnight, a universally respected former judge with a stellar resume, nominated by defendants themselves, joined the ranks of all those people and institutions being unfair to defendants and out to get them.

[57] As detailed by Judge Jones, over the past 14 months she has identified ten instances where the lender required defendants to submit certifications attesting to the accuracy and completeness of financial information, but which defendants failed to submit.

[58] So as not to interfere with the day-to-day business operations, the monitor and defendants agreed upon a $5 million threshold; accordingly, defendants were obligated to inform the monitor of any transfer of assets of $5 million or more. Defendants transferred approximately $40 million without disclosing it to the monitor.

[59] The January 26, 2024 report details that the Trump Organization is omitting certain liabilities on their disclosures, including, but not limited to, intra-company loans. At first blush, these loans may not seem to matter, because the money is all kept "in house." However, the failure to report these transfers distorts the balance sheet for the transferor and the transferee.

negotiated, approved, and executed his separation agreement.[60] The role of CFO has remained vacant ever since, a fact that Donald Trump, Jr. did not know at trial, mistakenly believing that Mark Hawthorn was the new CFO. Similarly, the role of Controller has remained vacant since McConney left the Trump Organization in February 2023.

Thus, the Trump Organization does not have the ability to operate with a functional financial reporting structure that would protect against fraud in the future. The fact that there are virtually no internal controls in place at the Trump Organization, "creates an atmosphere conducive to fraud." People v Northern Leasing Sys., Inc., 193 AD3d 67, 75 (1st Dept 2021).

Moreover, the fact that the Trump Organization has refused to prepare SFCs, even though various loan covenants obligate them to do so, ever since the monitor was appointed, leads the Court to conclude that the Trump Organization cannot, or will not, prepare an accurate SFC that is GAAP compliant and that values assets at their estimated current values. That the Trump Organization has taken to manufacturing its own version of its assets, one that fails to include any valuations, is a telling admission that it simply cannot, or will not, prepare an SFC without committing fraud.

Refusal to Admit Error

The English poet Alexander Pope (1688-1744) first declared, "To err is human, to forgive is divine." Defendants apparently are of a different mind. After some four years of investigation and litigation, the only error ("inadvertent," of course) that they acknowledge is the tripling of the size of the Trump Tower Penthouse, which cannot be gainsaid. Their complete lack of contrition and remorse borders on pathological. They are accused only of inflating asset values to make more money. The documents prove this over and over again. This is a venial sin, not a mortal sin. Defendants did not commit murder or arson. They did not rob a bank at gunpoint. Donald Trump is not Bernard Madoff. Yet, defendants are incapable of admitting the error of their ways. Instead, they adopt a "See no evil, hear no evil, speak no evil" posture that the evidence belies.

This Court is not constituted to judge morality; it is constituted to find facts and apply the law. In this particular case, in applying the law to the facts, the Court intends to protect the integrity of the financial marketplace and, thus, the public as a whole. Defendants' refusal to admit error—indeed, to continue it, according to the Independent Monitor—constrains this Court to conclude that they will engage in it going forward unless judicially restrained.

Indeed, Donald Trump testified that, even today, he does not believe the Trump Organization needed to make any changes based on the facts that came out during this trial.

Trump Organization's History of Corporate Malfeasance

In considering the need for ongoing injunctive relief, this Court is mindful that this action is not the first time the Trump Organization or its related entities has been found to have engaged in

[60] Thus, even after Weisselberg pleaded guilty to committing fraud at the Trump Organization, Eric Trump and Donald Trump, Jr. left Weisselberg in his critical role as CFO for an additional five months.

corporate malfeasance. Of course, the more evidence there is of defendants' ongoing propensity to engage in fraud, the more need there is for the Court to impose stricter injunctive relief. This is not defendants' first rodeo.

In August 2013, OAG sued Donald Trump, the Trump Organization, and affiliated entities doing business as "Trump University" for fraud in the marketing and operation of "Trump University." People v Trump Entrepreneur Initiative LLC, Sup Ct, NY County, Index No. 451463/2013. That litigation was resolved as part of a class action settlement in which Donald Trump and the Trump Organization agreed to pay $25 million to Trump University clients. Id. at NYSCEF Doc. 336.

In June 2018, OAG sued Donald Trump, Donald Trump, Jr., Eric Trump, and others for persistent violations of law arising out of the Donald J. Trump Foundation, including "failure to follow basic fiduciary obligations or implement even elementary corporate formalities required by law." People v Trump, Sup Ct, NY County, Index No. 451130/2018. That litigation was resolved in November 2019 pursuant to a settlement that included the dissolution of the Foundation and a requirement that Donald Trump, Jr. and Eric Trump attend training on the responsibilities of officers and directors of charitable organizations. Id. at NYSCEF Doc. 139.

On May 3, 2022, the Trump Organization and the Trump Old Post Office LLC entered into a settlement agreement with the Office of the Attorney General for the District of Columbia arising out of allegations that the 58th Presidential Inaugural Committee paid excessive fees to the Old Post Office LLC that accrued to defendants' benefit. See https://oag.dc.gov/sites/default/files/2022-05/Trump-PIC-Consent-Motion-Settlement-Order.pdf.

And finally, as previously noted, on August 18, 2022, Weisselberg pleaded guilty to 15 criminal counts of tax fraud, including four counts of Falsifying Business Records, while at the Trump Organization. People v Weisselberg, Indictment No. 1473-2021 (Sup Ct, NY County). In that same case, the Trump Organization, the Donald J. Trump Revocable Trust and DJT Holdings LLC were convicted of 17 criminal counts arising out of tax fraud, including seven counts of Falsifying Business Records. People v The Trump Corp., Sup Ct, NY County, Indictment No. 1473/2021.

Accordingly, this Court finds that defendants are likely to continue their fraudulent ways unless the Court grants significant injunctive relief.

Continuation of Judge Jones as Independent Monitor

The Court hereby concludes and orders that Judge Jones shall continue in her role as Independent Monitor for a period of no less than three years. However, Judge Jones's role and duties shall be enhanced from those operative during the preliminary injunction, as her observations over the past 14 months indicate that still more oversight is required.

In particular, the Trump Organization shall be required to obtain prior approval—not, as things are now, subsequent review—from Judge Jones before submitting any financial disclosure to a third party, so that such disclosure may be reviewed beforehand for material misrepresentations.

Within 30 days of this Decision and Order, Judge Jones shall submit a proposed order to the Court outlining the specific authority she believes that she needs to keep defendants honest, and the obligations of defendants, to effectuate a productive and enhanced monitorship going forward.

Appointment of an Independent Director of Compliance

In addition to the continued monitorship, the Court hereby orders that an Independent Director of Compliance be installed at the Trump Organization, who shall be responsible for ensuring good financial and accounting practices, shall establish internal written protocols for financial reporting, and shall also approve any financial disclosures to third parties in advance of submission.

The Independent Director of Compliance shall report directly to Judge Jones, and the Trump Organization shall pay such person reasonable compensation.

Within 30 days of this Decision and Order, Judge Jones shall submit to the Court a proposed order including, without limitation, a list of proposed persons who may fulfil this role, and the specifics of the role itself.

Prior Cancellation of Business Licenses

In its September 26, 2023, Decision and Order granting partial summary judgment to OAG, this Court ordered the cancellation of defendants' business licenses. The Appellate Division, First Department has stayed this relief pending the final disposition on appeal.

However, as going forward there will be two-tiered oversight, an Independent Monitor and an Independent Director of Compliance, of the major activities that could lead to fraud, cancellation of the business licenses is no longer necessary.[61] Accordingly, this Court hereby modifies its September 26, 2023, Decision and Order solely to the extent of removing the language ordering the LLCs cancellation en masse. The restructuring and potential dissolution of any LLCs shall be subject to individual review by the Court appointed Independent Director of Compliance in consultation with Judge Jones.

Industry Bans

The Attorney General asks, and the Court has the authority, temporarily or permanently, to enjoin certain defendants from participating in certain business activities as a result of their persistent fraud. See People v Fashion Place Assoc., 224 AD2d 280 (1st Dept 1996) (upholding injunction barring defendants from involvement in the sale of real estate securities from or within

[61] This Court did not order the corporate cancellations cavalierly. Although Executive Law § 63(12) expressly allows a Court to do this, doing so could implicate serious economic concerns.

New York); People v Imported Quality Guard Dogs, Inc., 930 NYS2d 906, 908 (2d Dept 2011) (affirming order permanently enjoining defendant from engaging in the business that gave rise to his wrongful conduct).

The evidence is overwhelming that Allen Weisselberg and Jeffrey McConney cannot be entrusted with controlling the finances of any business. Accordingly, this Court hereby permanently enjoins Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity operating in New York State.

The Court hereby enjoins Donald Trump, Allen Weisselberg, and Jeffrey McConney from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years.

The Court hereby enjoins Donald Trump and the Trump Organization and its affiliates from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years.

The Court hereby enjoins Eric Trump and Donald Trump, Jr. from serving as an officer or director of any New York corporation or other legal entity for a period of two years.

CONCLUSION AND ORDER

For the reasons stated herein, it is hereby

ORDERED that defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable under the second, third, fourth, fifth, and seventh causes of action; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are liable under the sixth cause of action; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, are jointly and severally liable to plaintiff in the amount of $168,040,168, with pre-judgment interest from March 4, 2019; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable to plaintiff in the amount of $126,828,600, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable to plaintiff in the amount of $60,000,000, with pre-judgment interest from June 26, 2023; and it is further

ORDERED that defendant Eric Trump is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Donald Trump, Jr. is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Allen Weisselberg is liable to plaintiff in the amount of $1,000,000, with pre-judgment interest from January 9, 2023; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are hereby permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State; and it is further

ORDERED that defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, are hereby enjoined from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of three years; and it is further

ORDERED that defendants Eric Trump and Donald Trump, Jr., are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years; and it is further

ORDERED that this Court's September 26, 2023, Decision and Order is hereby modified solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence; and it is further

ORDERED that the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones (ret.) shall submit to the Court a proposed order outlining the specify authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward; and it is further

ORDERED that an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance; and it is further

ORDERED that the Clerk hereby enter judgment accordingly.

DATE: 2/16/2024 **ARTHUR F. ENGORON, JSC**

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

- against -

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC.,THE TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, AND SEVEN SPRINGS LLC,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ Action Commenced under CPLR 214-g
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☒ Business Relationships	☒ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 02/16/2024	Entered: 02/16/2024
Judge (name in full): Hon. Arthur F. Engoron	Index No.: 452564/2022
Stage: ☐ Interlocutory ■ Final ☐ Post-Final	Trial: ■ Yes ☐ No If Yes: ☐ Jury ■ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ■ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2023-04925

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Defendants President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC ("Defendants") appeal from the Decision and Order After Non-Jury Trial of Supreme Court, New York County (Hon. Arthur F. Engoron, J.S.C.), dated February 16, 2024, and entered by the Clerk of the Court on February 16, 2024, which found all Defendants liable under the second, third, fourth, fifth, and seventh causes of action and Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, directed the Clerk to enter judgment in favor of the Plaintiff in the principal sum of $363,894,816.00, and ordered injunctive relief.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether Supreme Court committed errors of law and/or fact, abused its discretion, and/or acted in excess of its jurisdiction by, inter alia, finding all Defendants liable under the second, third, fourth, fifth, and seventh causes of action, finding Defendants Allen Weisselberg and Jeffrey McConney liable under the sixth cause of action, awarding disgorgement in the principal sum of $363,894,816.00 plus pre-judgment interest, and ordering far-reaching, punitive injunctive relief including, inter alia, enjoining the individual Defendants from serving as officers or directors of a New York corporation or other legal entity, enjoining Defendant President Donald J. Trump and the entity Defendants from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services, installing an Independent Director of Compliance at the Trump Organization, and extending and enhancing the monitorship of Hon. Barbara Jones for a period of at least three years.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	PEOPLE OF THE STATE OF NEW YORK	Plaintiff	Respondent
2	DONALD J. TRUMP	Defendant	Appellant
3	DONALD TRUMP, JR.	Defendant	Appellant
4	ERIC TRUMP	Defendant	Appellant
5	IVANKA TRUMP	Defendant	None
6	ALLEN WEISSELBERG	Defendant	Appellant
7	JEFFREY MCCONNEY	Defendant	Appellant
8	THE DONALD J. TRUMP REVOCABLE TRUST	Defendant	Appellant
9	THE TRUMP ORGANIZATION, INC.	Defendant	Appellant
10	THE TRUMP ORGANIZATION LLC	Defendant	Appellant
11	DJT HOLDINGS LLC	Defendant	Appellant
12	DJT HOLDINGS MANAGING MEMBER	Defendant	Appellant
13	TRUMP ENDEAVOR 12 LLC	Defendant	Appellant
14	401 NORTH WABASH VENTURE LLC	Defendant	Appellant
15	TRUMP OLD POST OFFICE LLC	Defendant	Appellant
16	40 WALL STREET LLC	Defendant	Appellant
17	SEVEN SPRINGS LLC	Defendant	Appellant
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin C. Wallace, Esq. and Colleen K. Faherty, Esq., Office of the New York State Attorney General			
Address: 28 Liberty Street			
City: New York	State: New York	Zip: 10005	Telephone No: 212-416-6046
E-mail Address: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Alina Habba, Esq. and Michael Madaio, Esq., Habba Madaio & Associates, LLP			
Address: 112 West 34th Street, 17th &18th Floors			
City: New York	State: New York	Zip: 10020	Telephone No: 908-869-1188
E-mail Address: ahabba@habbalw.com; mmadaio@habbalaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 6-17			
Attorney/Firm Name: Chris Kise, Esq. of Continental PLLC			
Address: 101 North Monroe Street, Suite 750			
City: Tallahassee	State: Florida	Zip: 32301	Telephone No: 305-677-2707
E-mail Address: ckise@continentalpllc.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 8, 11-17			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq. of Robert & Robert PLLC			
Address: 526 RXR Plaza			
City: Uniondale	State: New York	Zip: 11556	Telephone No: 516-832-7000
E-mail Address: crobert@robertlaw.com; mfarina@robertlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2-4, 8-17			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 5			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, IVANKA TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022

AFFIRMATION OF SERVICE

MICHAEL FARINA, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalty of perjury:

1. I am a partner of the law firm of Robert & Robert PLLC, and am not a party to the above-captioned action.

2. On February 26, 2024, I served the within Notice of Appeal and Informational Statement, both dated February 26, 2024, together with a copy of the Decision and Order After Non Jury Trial of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated February 16, 2024, with Notice of Entry, upon the following parties, at the addresses listed after each party's name, by depositing a true copy of same

enclosed in a postpaid properly addressed wrapper in official deposit under the exclusive care and custody of the United States Postal Service within the State of New York:

Kevin C. Wallace, Esq.
Colleen K. Faherty, Esq.
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff

Alina Habba, Esq.
Michael Madaio, Esq.
Habba Madaio & Associates, LLP
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Counsel for Defendants Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Christopher M. Kise, Esq.
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: Uniondale, New York
February 26, 2024

Michael Farina
MICHAEL FARINA

EXHIBIT AA

Michael Farina

From: Michael Farina
Sent: Tuesday, February 27, 2024 9:01 AM
To: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov; andrew.amer@ag.ny.gov; judith.vale@ag.ny.gov; dennis.fan@ag.ny.gov; cleland.welton@ag.ny.gov
Cc: chris@ckise.net; Christopher Kise; Clifford Robert; ahabba@habbalaw.com; Michael Madaio
Subject: People v. Trump, et al.

Counsel:

Pursuant to 22 N.Y.C.R.R. 1250.4(b)(2), please be advised that Defendants Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; The Donald J. Trump Revocable Trust; The Trump Organization, Inc.; The Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC will be presenting an order to show cause tomorrow, February 28, at 10:00 a.m. to the Appellate Division, First Department seeking a stay.

Thanks.

Mike

Michael Farina | Partner
Robert & Robert PLLC

Long Island Office
526 RXR Plaza
Uniondale, New York 11556
Tel: 516-832-7000
Fax: 516-832-7080
Mail and Service of Process Address

Manhattan Office
One Grand Central Place
60 East 42nd Street, Suite 4600
New York, New York 10165
Tel: 212-858-9270

www.robertlaw.com

****

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants-Appellants, IVANKA TRUMP, Defendant.	Appeal Nos: 2024-01134 2024-01135 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.)

MEMORANDUM OF LAW IN SUPPORT OF A STAY
PENDING APPEAL PURSUANT TO CPLR 5519(c)

HABBA MADAIO & ASSOCIATES, LLP
Alina Habba
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com
mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC,

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald J. Trump, Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings

DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

TABLE OF CONTENTS

PRELIMINARY STATEMENT 2

BACKGROUND 9

ARGUMENT 10

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL 10

A. Legal Standard 10

POINT I 11

THE CONTINUED MONITORSHIP AND ANTICIPATED UNDERTAKING ADEQUATELY SECURE ANY JUDGMENT AFFIRMED 11

A. Appellants Will Continue to Operate Under the Independent Monitorship of Judge Jones 11

B. Appellants Plan to Post a $100 Million Undertaking 14

POINT II 15

APPELLANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY 15

A. Irreparable Harm Inheres to Appellants from Any Forced Sale of Properties 16

B. Irreparable Harm Inheres to the Entity Appellants if the Judgment is Not Stayed 16

C. The Years-Long Bans Supreme Court Has Imposed on the Individual Appellants Will Inflict Serious and Irreparable Harm 19

D. The Relief Appellants Seek to Stay is Purely Punitive 21

1. No Harm Inheres to the Attorney General if the Relief is Stayed 21
2. Appellants Have Been Selectively Prosecuted and Punished for Mounting a Defense 22
3. This Court Has Previously Stayed Supreme Court's Overreach and Should Do So Again Here 24

POINT IV 26

APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL 26

A. Supreme Court Entered Judgment on Time-Barred Claims 26

B. The Disgorgement Award is an Unconstitutional Excessive Fine and Is Impermissibly Punitive 29

1. No Harm Has Inhered to Any Party 33
2. The Disgorgement Award Is Disproportionate to Even the Alleged Harm and Improperly Compounds Purported Gains 34
3. The Award is Unprecedented 36

C. Executive Law § 63(12) Does Not Authorize the Punitive and Overbroad Relief Imposed 38

D. The Disclaimers Negate Any Indicia of Intent to Defraud or Materiality 40

CONCLUSION 41

TABLE OF AUTHORITIES

Page(s)

Cases

7 W. 57th St. Realty Co., LLC v. Citigroup, Inc.,
2015 WL 1514539 (SDNY Mar. 31, 2015), aff'd, 771 F. App'x 498 (2d Cir 2019); 17

People v. Allen,
2021 N.Y. Misc. LEXIS 468 (Sup. Ct. N.Y. Cty. Feb. 4, 2021) 37

U.S. v. Alvarez,
567 U.S. 709 (2012)....23

New York by James v. Amazon.com, Inc.,
550 F. Supp. 122 (S.D.N.Y. 2021)....23

Animalfeeds Intern. Inc. v. Banco Espirito Santo E Comercial De Lisboa,
101 Misc. 2d 379 (Sup. Ct. N.Y. Cty. 1979) 17

People ex rel. Vacco v. Appel,
258 A.D.2d 957 (4th Dep't 1999)....30

Applehole v. Wyeth Ayerst Laboratories,
213 A.D.3d 611 (1st Dep't 2023) 26

Matter of People v. Applied Card Sys., Inc.,
27 A.D.3d 104 (3d Dept 2005) 23

Austin v. United States,
509 U.S. 602 (1993)....29

United States v. Bajakajian,
524 U.S. 321 (1998)....29, 33

Boesky v. Levine,
193 A.D.3d 403 (1st Dep't 2021) 28

SEC v. Blatt,
583 F.2d 1325 (5th Cir. 1978) 30, 32

BMW of North Am. Inc., v. Gore,
517 U.S. 559 (1996)....31

Cavanagh v. Hutcheson,
232 A.D. 470 (1st Dep't 1931) 14

People v. Codina,
110 A.D.3d 401 (1st Dep't 2013) 26

Cooper Indus. v. Leatherman Tool Group, Inc.,
532 U.S. 424 (2001).....30

County of Nassau v. Canavan,
1 N.Y.3d 134 (2003) 29, 33

People v. Coventry First LLC,
52 A.D.3d 345 (1st Dep't 2008) 23

CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC,
195 A.D.3d 12 (1st Dep't 2021) 27

DeLury v. City of New York,
48 A.D.2d 595 (1st Dep't 1975) 15

Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc.,
No. 850120/2015, 2016 N.Y. Slip. Op. 31509(U) (Sup. Ct. N.Y. Cty. 2016).....10

People ex rel. Spitzer v. Direct Revenue, LLC,
19 Misc. 3d 1124(A) (Sup. Ct. N.Y. Cty. 2008).....31, 38

People v. Domino's Pizza Inc.,
450627/2016, 2021 N.Y. Slip. Op. 30015(U) (Sup. Ct. N.Y. Cty. 2021) 4

SEC v. ETS Payphones, Inc.,
408 F.3d 727 (11th Cir. 2005) 30, 32

People v. Evans,
94 N.Y.2d 499 (2000) 26

People v. Exxon Mobil Corp.,
452044/2018, 65 Misc.3d 1233(A) (Sup. Ct. N.Y. Cty. 2019).....4

State v. Fashion Place Assocs.,
224 A.D.2d 280 (1st Dep't 1996) 39

Four Times Sq. Assoc. v. Cigna Invs.,
306 A.D.2d 4 (1st Dep't 2003) 15

Frederick Douglass Found., Inc. v. District of Columbia,
82 F.4th 1122 (D.C. Cir. 2023).....23

People v. General Elec. Co.,
302 A.D.2d 314 (1st Dep't 2003) 23

State v. Gen. Motors Corp.,
547 F.Supp. 703 (S.D.N.Y. 1982).....23

People v. Greenberg,
27 N.Y.3d 490 (2016).....28, 29

Matter of Grisi v. Shainswit,
119 A.D.2d 418 (1st Dep't 1986).....10

Hateley v. SEC,
8 F.3d 653 (9th Cir. 1993).....30

Henry v. Bank of Am.,
147 A.D.3d 599 (1st Dep't 2017).....27

State by Lefkowitz v. Hotel Waldorf-Astoria Corp.,
67 Misc. 2d 90 (Sup. Ct. N.Y. Cty. 1971).....38

Hynes v. Iadarola,
221 A.D.2d 131 (2d Dep't 1996).....37

Matter of People v. Imported Quality Guard Dogs, Inc.,
88 A.D.3d 800 (2d Dep't 2011).....39

People by James v. Image Plastic Surgery,
LLC, 210 A.D.3d 444 (1st Dep't 2022).....39

Matter of J.O.M. Corp. v. Department of Health of State of N.Y.,
173 A.D.2d 153 (1st Dep't 1991).....15

J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,
91 A.D.3d 226 (1st Dep't 2011).....30

People by James v. JUUL Labs, Inc.,
212 A.D.3d 414 (1st Dep't 2023).....39

Kenney v. City of New York,
74 A.D.3d 630 (1st Dep't 2010).....26

State by Abrams v. Lodato,
156 Misc. 2d 440 (Sup. Ct. Dutchess Cty. 1993).....37

Schneiderman ex rel. People v. Lower Esopus River Watch, Inc.,
39 Misc.3d 1241(A) (Sup. Ct. Ulster Cty. 2013).....37

Litton Industries, Inc. v. Lehman Bros. Kuhn Loeb, Inc.,
734 F. Supp. 1071 (S.D.N.Y. 1990).....30

SEC v. MacDonald,
699 F.2d 47 (1st Cir. 1983) 30

Magen David of Union Square v. 3 West 16th Street, LLC,
132 A.D.3d 503 (1st Dep't 2015) 26

Mintz & Gold LLP v. Zimmerman,
848 N.Y.S.2d 814, (Sup. Ct. N.Y. Cty. 2007), (1st Dep't 2008) 10

People by James v. N. Leasing Sys., Inc.,
70 Misc. 3d 256 (Sup. Ct. N.Y. Cty. 2020), (1st Dep't 2021) 39

O'Malley v. Campione,
70 A.D.3d 594 (1st Dep't 2010) 40

Ober v. Rogers-Ober,
287 A.D.2d 282 (1st Dep't 2001) 40

Matter of People v. Orbitual Publ. Group, Inc.,
169 A.D.3d 564 (1st Dep't 2019) 23

Matter of Part 60 RMBS Put-Back Litig.,
195 A.D.3d 40 (1st Dep't 2021) 26

Matter of Pokoik v. Department of Health Servs. of County of Suffolk,
220 A.D.2d 13 (2d Dep't 1996) 10

Prince v. City of New York,
108 A.D.3d 114 (1st Dept. 2013) 33

Rogal v. Wechsler,
135 A.D.2d 384 (1st Dep't 1987] 28

Matter of Schneider v. Aulisi,
307 N.Y. 376 (1954) 10

Schwartz v. New York City Hous. Auth.,
219 A.D.2d 47 (2d Dep't 1996) 10

FTC v. Shkreli,
581 F. Supp. 3d 579 (S.D.N.Y. 2022) 36

Sonterra Capital Master Fund, Ltd. v Barclays Bank PLC,
366 F. Supp. 3d 516 (S.D.N.Y. 2018) 17

State by Abrams v. Solil Mgt. Corp.,
128 Misc. 2d 767 (Sup. Ct. N.Y. Cty. 1985), (1st Dep't 1985), aff'd, 114
A.D.2d 1057 (1st Dep't 1985) 31, 38

Tax Equity Now NY LLC v. City of New York,
173 A.D.3d 464 (1st Dep't 2019) 10, 20

Texaco Inc. v. Pennzoil, Co.,
784 F.2d 1133 (2d. Cir 1986), rev'd on other grounds, 481 U.S. 1 (1987) 25

Matter of People v. Veleanu,
89 A.D.3d 950 (2d Dep't 2011).....39

Union Square Supply v. De Blasio,
572 F.Supp.3d 15, 25 (S.D.N.Y. 2021).....33

Statutes and Codes

Executive Law § 63(12)..... *passim*

Banking Law § 200.....17

General Business Law,
General Business Law § 130.....25
General Business Law § 349.....31, 38
General Business Law § 350.....38

Martin Act.....29

Penal Law § 156.20.....38

Richard C. Reilly, Prac. Comm. McKinney's Cons Laws of New York 11

Rules and Regulations

New York Civil Practice Law and Rules,
CPLR § 5001.....37
CPLR § 5519.....1, 10, 14, 41
CPLR Article 13-A 37

Constitution

United States Constitution,
Due Process Clause.....3, 25, 26, 30
Equal Protection Clause.....23
Excessive Fines Clause 2,3, 29, 30, 32
Free Speech Clause.....23

Other Authorities

Allan Smith, *Incoming New York attorney general plans wide-ranging investigations of Trump and family* NBC News (Dec. 12, 2018), available at https://www.nbcnews.com/politics/donald-trump/incoming-new-york-attorney-general-plans-wide-ranging-investigations-trump-n946706 24

Steven Calabresi, *Former President Donald Trump's New York State Civil Fraud Verdict*, The Volokh Conspiracy (Feb. 23, 2024), available at https://reason.com/volokh/2024/02/23/former-president-donald-trumps-new-york-state-civil-fraud-verdict/ 38

CNN, *See what New York AG said while running for office about charging Trump*, Oct. 3, 2023, available at https://www.cnn.com/videos/politics/2023/10/03/letitia-james-prosecute-trump-2018-comments-running-office-cnntm-vpx.cnn 24

Erin Durkin, *Tish James just sued Trump – but they've been at it for years*, Politico (Sept. 21, 2022), available at https://www.politico.com/news/2022/09/21/james-lawsuit-trump-longstanding-battle-00058128; 24

Jeffery C. Mays, *N.Y.'s New Attorney General Is Targeting Trump. Will Judges See a 'Political Vendetta?'*, New York Times (Dec. 31, 2018), available at https://www.nytimes.com/2018/12/31/nyregion/tish-james-attorney-general-trump.html.....24

Max Matza, *Letitia James and Donald Trump's history of clashes,* BBC News (Sept. 27, 2023), available at https://www.bbc.com/news/world-us-canada-63000691.....24

Michael R. Sisak, *New York AG says she'll seize Donald Trump's property if he can't pay $454 million civil fraud debt,* AP News (Feb. 22, 2024), available at: https://apnews.com/article/trump-letitia-james-fraud-lawsuit-judgment-verdict-63e643d0fe098cc1ac178c003f21a40d 5

NBC News (Dec. 12, 2018), available at https://www.nbcnews.com/politics/donald-trump/incoming-new-york-attorney-general-plans-wide-ranging-investigations-trump-n946706; 24

NowThis Impact, *Why Letitia James Wants to Take on Trump as NY's Attorney General – Op-Ed*, YouTube (Sept. 28, 2018), available at https://www.youtube.com/watch?v=D1yj0NKSsuU 24

NY AG James (@New York State AG), Twitter (Feb. 16, 2024, 4:20 PM) 5

NY AG James (@New York State AG), Twitter (Feb. 24, 2024, 1:26 PM) 5

NY AG James (@New York State AG), Twitter (Feb. 25, 2024, 11:06 AM) 5

Office of the New York State Attorney General, *Attorney General James Wins Landmark Victory in Case Against Donald Trump* (Feb. 16, 2024), available at: https://ag.ny.gov/press-release/2024/attorney-general-james-wins-landmark-victory-case-against-donald-trump;.....5

Defendants-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Appellants"), through their undersigned attorneys, respectfully submit this memorandum of law in support of their motion, brought by order to show cause, pursuant to CPLR § 5519(c) and this Court's inherent discretionary powers for a stay pending appeal of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron"), dated February 16, 2024, duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on February 16, 2024, and reduced to Judgment on February 23, 2024 (the "Judgment"), (1) finding Appellants liable on the second through seventh[1] causes of action; (2) ordering disgorgement to the Attorney General of the State of New York (the "Attorney General") in the principal sum of $363,894,816.00, exclusive of pre-judgment interest[2]; (3) permanently barring Appellants Allen Weisselberg ("Weisselberg") and Jeffrey McConney ("McConney") from serving in the financial

---

[1] Supreme Court found only Allen Weisselberg and Jeffrey McConney liable on the sixth cause of action for insurance fraud.

[2] Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC are jointly and severally liable for disgorgement in the principal sum of $168,040,168.00, with prejudgment interest from March 4, 2019; Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable for disgorgement in the principal sum of $126,828,600.00, with prejudgment interest from May 11, 2022; Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for disgorgement in the principal sum of $60,000,000.00, with prejudgment interest from June 26, 2023; Appellant Eric Trump is liable for disgorgement in the principal sum of $4,013,024.00, with prejudgment interest from May 11, 2022; Appellant Donald Trump, Jr. is liable for disgorgement in the principal sum of $4,013,024.00, with prejudgment interest from May 11, 2022, and Appellant Allen Weisselberg is liable for disgorgement in the principal sum of $1,000,000.00, with prejudgment interest from January 9, 2023.

control function of any New York corporation or similar business entity registered and/or licensed in New York State; (4) barring Appellant President Donald J. Trump ("President Trump"), Weisselberg, and McConney from serving as an officer or director of any New York corporation or other legal entity in New York for three years; (5) barring President Trump and Appellants the Donald J. Trump Revocable Trust (the "Trust"), the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for three years; (6) barring Appellants Donald Trump, Jr., and Eric Trump from serving as an officer or director of any New York corporation or other legal entity in New York for two years; (7) vacating the Court's September 26, 2023, decision and order cancelling Appellants' and affiliated entities' business certificates[3]; (8) extending and enhancing the monitorship of Hon. Barbara Jones (ret.) ("Judge Jones" or "Monitor") for a period of no less than three years; and (9) installing an Independent Director of Compliance.

PRELIMINARY STATEMENT

Appellants bring this application to stay enforcement of Supreme Court's February 23, 2024, Judgment, wherein Justice Engoron, *inter alia*, imposed against Appellants a disgorgement penalty in the unprecedented and unconstitutional sum of over $450 million, as well as draconian injunctive relief that once again exceeds statutory authority and impedes a global real estate empire in the conduct of lawful business. Supreme Court's staggering $450 million judgment

[3] Supreme Court vacated that directive "without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence." Affirmation of Clifford Robert ("Robert Aff."), Ex. R at 92.

not only ignores this Court's controlling decision in this very case, but also violates the Excessive Fines and Due Process Clauses of the U.S. and New York Constitutions. The requested stay would continue the monitorship that the Attorney General herself demanded and deemed adequate at the outset of this case to protect her ability to recover any eventual judgment. The monitorship would be coupled with the additional security of a $100 million bond that Appellants plan to post forthwith.

The Court Has Already Ruled on the Statute of Limitations

The Judgment nullifies this Court's holding that the continuing wrong doctrine does not extend the statute of limitations and is in direct conflict with the First Department's July 13, 2014, statute of limitations cutoff. It is undisputed that the vast majority of transactions forming the basis for the "disgorgement" award were completed well prior to July 13, 2014. Thus, just applying the express mandate of this Court reduces the total amount of the Judgment by approximately $350 million. See Point IV(A), *infra*.

The Eighth Amendment Excessive Fines Violation

The Judgment violates the Excessive Fines Clause of the Eighth Amendment and the New York Constitution because there has been no showing whatsoever of any ill-gotten gains in this case. Indeed, the so-called "disgorgement" order is in fact a grossly disproportionate penalty assessment. See Point IV(C), *infra*. Left unchecked, this empowers the Attorney General and future courts to target anyone by intervening in and unwinding complex commercial transactions between sophisticated parties years after those transactions have closed even where, as here, there were never any defaults, late payments, missed payments, or other demonstrable harm. It is undisputed that not one witness testified at trial that Appellants' financial statements were fraudulent or that any of the loan terms or pricing would have been different, multiple witnesses

testified that the loans were fully performed, not one complaint was ever lodged regarding any of the complex loan transactions, and not a single market participant raised any concerns or articulated any real-world impact.[4] To the contrary, the actual bankers involved in the actual transactions at issue testified there were no issues and they were satisfied with their profitable business dealings with Appellants. This untenable Judgment therefore threatens the entire New York business community, as it will render profitable, arms-length transactions between sophisticated commercial parties meaningless and subject to arbitrary, *post hoc* review by the Attorney General and the courts.

Needless Irreparable Injury Will Result

In the absence of a stay, the Judgment would needlessly result in irreparable injury, including, *inter alia*, loss of real estate assets, deprivation of the right to conduct and manage Appellants' lawful businesses, and a violation of the constitutional bar against selective enforcement. See Point II, *infra*. All such irreparable harm is avoided with the implementation of a stay pending appeal providing the Attorney General the very security she demanded.

The sweeping relief imposed by Supreme Court has real consequences. The financial penalty, which will accrue nearly $115,000 *per day* in post-judgment interest, goes light years

[4] Thus, as in People v. Exxon Mobil Corp., here "there [is] no evidence adduced" in the record that the certification of the Statements of Financial Condition ("SFCs") "had any market impact at the time they were" submitted, or that those SFCs had any capacity or tendency to deceive. No. 452044/2018, 65 Misc.3d 1233(A) at *5 (Sup. Ct. N.Y. Cty. 2019). Likewise, in People v. Domino's Pizza Inc., the court declined to extend the Attorney General's police power to disputes over "bilateral business transactions." No. 450627/2016, 2021 N.Y. Slip Op. 30015(U) at *26 (Sup. Ct. N.Y. Cty. 2021). Therein, the court determined that commercial disputes (such as those reflected by the record now before this Court) "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." Id. (emphasis in original).

beyond any permissible or constitutional scope of disgorgement.[5] The obvious point of such a facially absurd award is not to deprive Appellants of some purported "ill-gotten gains," but, rather, to impose a half a billion-dollar penalty for engaging in transactions with satisfied counterparties, none of whom claimed any fraud or harm. In recent days, the Attorney General has shamelessly threatened to seize President Trump's property if she is not paid quickly enough, all but confirming that the goal was never to deter "illegal activities" in the State but to "get Trump" in the most public manner possible.[6]

The purported equitable relief Supreme Court ordered, including the removal of the individual Appellants as corporate officers or directors, the vague and overbroad proscription on "applying for loans," and the court's imposition of "joint and several liability" on the disgorgement award, are equally punitive, excessive, and devoid of legal merit.

A Stay Includes Adequate Security for the Attorney General

Indeed, a stay is particularly appropriate here where Appellants do not seek to stay the portion of the Judgment providing that Judge Jones remains in place as an independent monitor and plan to post an undertaking in the amount of $100 million. The presence of a $100 million bond would only augment the security originally deemed sufficient by the Attorney General to

---

[5] The Attorney General has publicly flaunted both the amount of the judgment and the accruing interest. See, e.g., Office of the New York State Attorney General, *Attorney General James Wins Landmark Victory in Case Against Donald Trump* (Feb. 16, 2024), available at: https://ag.ny.gov/press-release/2024/attorney-general-james-wins-landmark-victory-case-against-donald-trump; NY AG James (@New York State AG), Twitter (Feb. 16, 2024, 4:20 PM). In addition to tweeting the full amount of the Judgment each day since it was entered, the Attorney General has tweeted "+$114,533.04," denoting the daily interest accrued. NY AG James (@New York State AG), Twitter (Feb. 24, 2024, 1:26 PM); NY AG James (@New York State AG), Twitter (Feb. 25, 2024, 11:06 AM).

[6] Michael R. Sisak, *New York AG says she'll seize Donald Trump's property if he can't pay $454 million civil fraud debt*, AP News (Feb. 22, 2024), available at: https://apnews.com/article/trump-letitia-james-fraud-lawsuit-judgment-verdict-63e643d0fe098cc1ac178c003f21a40d ("If he does not have funds to pay off the judgment, then we will seek judgment enforcement mechanisms in court, and we will ask the judge to seize his assets.").

ensure her ability to collect on any judgment. The security provided by the ongoing oversight of the independent monitor—with or without a bond—cannot be overstated. Indeed, at no time during her tenure has Judge Jones ever identified any financial reporting misconduct, suspicious activity, or any suspected or actual fraud. To the contrary, the Monitor's reports all confirm Appellants have fully cooperated throughout the process in providing information and correcting any purported (and minor) defects. More importantly, during her tenure, there has been no dissipation of assets, and Appellants continue to own substantial real estate assets within New York. Those assets are not going anywhere, nor could they given the oversight of the Monitor and the practical realities of the existence of the very public Judgment. The Attorney General's interests are therefore more than adequately secured as to any judgment affirmed. Further, there is no possible prejudice to the Attorney General because there are no distributions to purported "victims." Any funds paid pursuant to the Judgment would go to the State of New York. No "victim" is waiting on payment to recover any actual loss because the loans at issue were fully performed.

Penalties are Imposed on Non-Parties

Supreme Court further compounds its error by awarding unprecedented disgorgement. Supreme Court's ignorance of corporate realities and the corporate form is nowhere more evident than in the disgorgement awards, where single-purpose entities that entered into discrete loan agreements with respect to one property have been made jointly and severally liable for purported "ill-gotten gains" arising from loan agreements with respect to an entirely *different* entity and property, with *different* employees and managers, in a *different* state. Practically, this would force each individual entity to carry a liability on its individual financial statement for the full amount of disgorgement, even though Supreme Court's decision and order only attributes a

fraction of that sum, if any, to the entity. Likewise, in punishing Appellants—and Trump Ferry Point LLC, an entity that was not even a defendant in the case—for successful investments, Supreme Court conflates distributions from certain sale transactions with actual profits earned from those transactions, thereby overstating, by tens of millions of dollars, the amount of putative disgorgement.

Supreme Court Has Exceeded its Authority

The myriad and irreparable harms flowing from the Judgment arise out of Supreme Court's extraordinary desire to levy the punishment it deems Appellants deserve for daring to defend themselves at trial from the Attorney General's claims. In Supreme Court's estimation, Appellants were obligated to show "contrition and remorse" for their actions *during the trial itself*, notwithstanding the fact that they are *civil defendants* who heretofore had been found liable on only one of the Attorney General's claims. Apparently because Appellants did not grovel and apologize for "the error of their ways" while on the stand, Supreme Court adjudged them unworthy of running their own businesses. Ironically, while Supreme Court recognizes that it is "not constituted to judge morality," that is precisely what the court did when it specifically justified severe punishment for the "venial sin"[7] of "inflating asset values to make more money" by "lack of contrition and remorse." Robert Aff., Ex. R at 87.

Supreme Court has, once again, far exceeded its authority under Executive Law § 63(12) in furtherance of the Attorney General's crusade to punish Appellants for "fraud" that Supreme Court declares "leap[s] off the page" and "shock[s] the conscience." Id. at 77. Put simply, no "equitable" relief as imposed herein can lie where, as here, there is no victim. Nonetheless,

[7] A venial sin in Roman Catholic catechism is recognized as the most minor of offenses: certainly not that which merited such a gross penalty.

unfettered by any legal standard, Supreme Court affirms that "fraud" worthy of the most punitive of sanctions exists simply because the judge "kn[ows] it when he s[ees] it." Id.

There was no evidence from any actual transaction or market participant that Appellants received any "unjust benefit," that any bank lost money, or that any of the loan terms or pricing (the purported foundation of Supreme Court's disgorgement award) would have been any different. Yet, Supreme Court either ignorantly or willfully ignored this evidence, and much more,[8] in a zealous quest to inflict untoward punishment. Supreme Court further conflates pre-judgment interest with punitive sanctions, imposing an additional sum of almost $100 million as a penalty for Appellants' purported "corrupt intent or desire for personal profit," notwithstanding that Appellants paid *millions* in interest to the banks and that those transactions are plainly time-barred under law of the case. Id. at 84.

The Effect on The Marketplace is Significant

Allowing trial courts to ignore the mandates of this Court and impose unlawful and unconstitutional penalties based on time-barred claims undermines public confidence in the judicial system and threatens the rule of law. Moreover, the harms that the Judgment inflicts are exacerbated by the impact the draconian and irrational penalties imposed on Appellants will have on commercial activity in New York.[9] Simply put, what has happened to Appellants can happen

[8] Another example of Supreme Court's lack of understanding and analysis, as well as its willful failure to consider unrebutted evidence, is its absurd valuation of Mar-a-Lago. Supreme Court valued Mar-a-Lago at $18 million when the unrebutted testimony places its value at over $1.2 billion.

[9] Jeb Bush and Joe Lonsdale, *Elon Musk and Donald Trump Cases Imperil the Rule of Law*, WSJ Opinion (Feb. 21, 2024); Madeline Hubbard, *'Shark Tank' investor Kevin O'Leary says he 'will never invest in New York' after Trump ruling*, Just the News (Feb. 20, 2024); Andrew C. McCarthy, *Having Ruled that Trump Inflated Assets, Judge Engoron Is Suddenly Stunned That Assets Appear to Have Been Inflated*, National Review (Feb. 7, 2024);

to any citizen of this State who has the misfortune of dissenting from the Attorney General's politics. To prevent irreparable harm to Appellants and to preserve this Court's jurisdiction, the Judgment must and should be stayed as outlined herein pending appeal.

BACKGROUND

A full recitation of the factual and procedural background relevant to this application is provided in the Affirmation of Clifford S. Robert annexed hereto.

Steven Calabresi, *President Trump's Kafkaesque Civil Trial in New York State*, The Volokh Conspiracy (Feb. 18, 2024); Jay Tucker, *New York's Trump Fraud Findings Refute Judge's Conclusion*, American Thinker (Feb. 22, 2024); Arthur Fergenson, *Stalinist $370M judgment against Trump should be vacated immediately*, Fox News (Feb. 20. 2024); Jonathan Turley, *Democrats weaponized justice system to punish Trump in business case*, N.Y. Post (Feb. 19, 2024); Ed Kozak, *FedSoc Founder: Trump NY Case a Travesty on Par with Killing of Hamilton*, The National Pulse (Feb. 19, 2024); Steven Calabresi, N*ew York's Civil Lawsuit against Trump is Unconstitutional*, Volokh Conspiracy (Jan. 14, 2024), David Zimmerman, *Truckers Vow to Cut Off Deliveries to NYC in Protest of Trump's $355 Million Civil-Fraud Ruling*, National Review (Feb. 18, 2024); Wayne Allen Root, *Wayne Root: Let "The Great New York City Boycott" Begin. Conservatives to New York: "Drop Dead."* Gateway Pundit (Feb. 18, 2024); Sumanti Sen, *Truckers refuse to accept loads from NYC after Donald Trump slapped with a $355M fine in fraud case*, Hindustan Times (Feb. 18, 2024); *U.S. truckers refuse shipment to New York City after Trump banned for NY business in fraud trial*, mint (Feb. 18, 2024); Charles Creitz, *Trump's penalty could cause NY biz exodus to FL, as New York State becomes 'legal banana republic': experts*, Fox News (Feb. 16, 2024); Arkaprovo Roy, *New York City Shipments to Stop after Trump Civil Fraud Verdict? Truck Driver Threatens Boycott in Viral Video*, TimesNowWorld (Feb. 18, 2024); Chris Donaldson, *Truckers talk stopping shipments to NYC in protest of $350M+ Trump fine*, BPR Business & Politics (Feb. 18, 2024); Geeta Pillai, *Truckers Rally in Support of Trump: A Bold Protest Disrupts NYC Supply Chain*, bnn (Feb. 18, 2024); Kelly Rissman, *Truckers for Trump are refusing to drive to New York City after $350m fraud ruling*, Independent (Feb. 18, 2024); Patrick Reilly, *Trump-loving truckers refusing to drive to NYC after his $355 million fraud ruling*, N.Y. Post (Feb. 18, 2024), *Report: Truckers to Deny Loads in NYC to Protest $350 Million Ruling Against Trump*, The Paradise (Feb. 18, 2024); Charlie Nash, *New York Resident Greg Gutfeld Threatens to Move to Florida Over Trump Being Fined for Fraud*, Mediaite (Feb. 21, 2024), Jeffrey Lord, *Truckers Target Trump-Hating New York Judge*, The American Spectator (Feb. 19, 2024); Charlie McCarthy, *MAGA Truckers Say They'll Refuse NYC Loads After Trump Verdict*, Newsmax (Feb. 18, 2024); *Pro-Trump Truckers to Halt Rides in NYC after Ex-President's $355M Fine*, La Voce di New York (Feb. 18, 2024); Genevieve St. Clair, *Truckers Boycott NYC Deliveries After Trump's Civil Fraud Trial Outcome,* Bollyinside (Feb. 17, 2024); Steven Calabresi, *Donald Trump is the Victim of Selective Prosecution*, The Volokh Conspiracy, (Feb. 10, 2024); Michael Reagan, *Mob Rule Law Convicts Trump of Crimeless Crime*, Newsmax (Feb. 20, 2024); Joseph Moreno, *The ruling against Trump is perverse in true New York fashion*, The Spectator World (Feb. 17, 2024).

ARGUMENT

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL

A. Legal Standard

This Court has statutory authority and inherent discretion to stay "all proceedings to enforce the judgment or order appealed from pending an appeal." CPLR § 5519; see also Matter of Grisi v. Shainswit, 119 A.D.2d 418, 421 (1st Dep't 1986) (noting that the "granting of stays pending appeal" is "for the most part, a matter of discretion"). A stay pursuant to CPLR § 5519(c) is generally "restricted to the executory directions of the judgment or order appealed from which command a person to do an act." Mintz & Gold LLP v. Zimmerman, 848 N.Y.S.2d 814, 818 (Sup. Ct. N.Y. Cty. 2007), aff'd, 56 A.D.3d 358 (1st Dep't 2008), quoting Matter of Pokoik v. Department of Health Servs. of County of Suffolk, 220 A.D.2d 13, 15 (2d Dep't 1996). Additionally, this Court retains broad inherent authority to grant a general discretionary stay of any proceedings in the underlying action in order to prevent acts or proceedings that will disturb the status quo and tend to defeat or impair appellate jurisdiction. See Tax Equity Now NY LLC v. City of New York, 173 A.D.3d 464, 465 (1st Dep't 2019); Schwartz v. New York City Hous. Auth., 219 A.D.2d 47, 48-49 (2d Dep't 1996); see also Matter of Schneider v. Aulisi, 307 N.Y. 376, 383-384 (1954) (noting a court's inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction).

In exercising its discretion to impose a stay pursuant to CPLR § 5519(c), the Court may consider "'any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.'" Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc., No. 850120/15, 2016 WL 4194195, N.Y. Slip Op. 31509(U), at *4 (Sup. Ct. N.Y.

Cty. 2016), quoting Richard C. Reilly, Prac. Commentaries, McKinney's Cons Laws of NY, CPLR C:5519:4.

POINT I

THE CONTINUED MONITORSHIP AND ANTICIPATED UNDERTAKING ADEQUATELY SECURE ANY JUDGMENT AFFIRMED

A. Appellants Will Continue to Operate Under the Independent Monitorship of Judge Jones

The Attorney General has exactly the safeguards that she demanded at the outset of this case. There is no risk of Appellants secreting or disposing of assets in light of the continued monitorship Supreme Court has imposed. Appellants have been operating under this monitorship since November 2022 and will continue to do so during the pendency of any appeal. While Appellants disagree that "ongoing oversight" is necessary or that there is any evidence of an "atmosphere conducive to fraud," they have worked closely with Judge Jones throughout the monitorship. Robert Aff., Ex. R at 85-87.

The Attorney General initially sought the appointment of a monitor in her October 13, 2022, motion for a preliminary injunction to (1) "ensur[e] [her] ability [] to obtain satisfaction of the large sum [she] will seek as disgorgement at this [sic] conclusion of this action" and (2) "ensure that the Trump Organization does not remove assets from the Court's power during the pendency of this action." Robert Aff., Ex. C at 17, 19. By its order dated November 3, 2022, Supreme Court granted, over Appellants' objection, the Attorney General's application, appointed an independent monitor to oversee Appellants' businesses, and enjoined Appellants from "selling, transferring, or otherwise disposing of any non-cash asset listed on the 2021 Statement of Financial Condition of Donald J. Trump, without first providing 14 days['] written notice to [the Attorney General] and this Court." Id., Ex. D at 11. On November 17, 2022, Supreme Court issued a supplemental monitorship order, directing, *inter alia*, Judge Jones to

monitor "any corporate restructuring, disposition or dissipation of any significant assets." Id., Ex. E at 1. That order also required Judge Jones to immediately report "any unusual and/or suspicious and/or suspected or actual fraudulent activity," and to issue status reports. Id. at 2. The Attorney General therefore received exactly what she asserted was necessary to protect her interests in the event a "large sum" was awarded as disgorgement. There is no valid basis to contend such security is now somehow insufficient to protect those same interests.

In furtherance of Supreme Court's directive, Judge Jones submitted reports dated December 19, 2022, February 3, 2023, April 11, 2023, August 3, 2023, November 29, 2023, and January 26, 2024 (collectively, the "Reports"). See Robert Aff., Ex. F. None of the Reports mention any financial reporting misconduct, suspicious activity, or any suspected or actual fraud. Id. Rather, the Reports make plain that Appellants are cooperating with Judge Jones' requests and complying with Supreme Court's orders.

In her December 19, 2022, report, Judge Jones stated that "[Appellants] are complying with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 441). In her February 3, 2023, report, she again stated that "[Appellants] are continuing to comply with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 489). In her April 11, 2023, report, Judge Jones again stated that Appellants "are continuing to comply with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 617). In her August 3, 2023, report, Judge Jones again stated that "[b]ased upon the foregoing, and having carefully reviewed the information provided to [her], it appears that [Appellants] continue to cooperate with [her] and the requirements of the Court's Orders." Robert Aff., Exhibit F (NYSCEF Doc. No. 647). In her November 26, 2023, report, Judge Jones again stated that "[Appellants] have agreed to

enhanced monitoring given the matters described in this report. [Appellants] continue to cooperate with me and are *generally in compliance with the Court's orders*, and have committed to ensure that all required information, including tax information and cash transfers, are promptly disclosed to the Monitor." Robert Aff., Ex. F (NYSCEF Doc. No. 1641) (emphasis added).

Supreme Court ultimately asked Judge Jones to summarize her work as monitor, including "an assessment of financial disclosures" made during the monitorship. Robert Aff., Ex. F (NYSCEF Doc. No. 1681). After raising her suggestion of a more robust compliance department and training in accounting procedures, Judge Jones ultimately concluded that:

> It is important to note that the Trump Organization acknowledged the disclosure issues described after I brought them to its attention and has been open to recommendations to improve accuracy and transparency. Indeed, during the Monitorship, the Trump Organization has implemented changes to disclosures or processes, several of which are discussed above. In addition, with respect to the instances where required disclosures were not provided to the Monitor, the Trump Organization submitted the information for review when it was made aware of the omissions.

Id.

In short, in Judge Jones' own words, any time she has raised a concern or discrepancy, Appellants have sought to rectify or clarify it immediately. Based on the language in her own Reports, and her review of thousands of pages of financial data regarding a complex assemblage of more than 400 entities, none of the items identified during her tenure revealed anything at all material or consequential. Moreover, every item identified has been resolved to her full satisfaction.

No sale, transfer, or dissipation of any assets in New York could possibly occur without the Monitor's oversight. Further, as a practical matter, none is possible given the highly public nature of the Judgment. Under the terms of the monitorship, President Trump's major assets, including his significant real estate holdings and trophy properties, simply cannot be summarily

disposed of or secreted out of the jurisdiction.[10] Thus, there is no discernable risk under the circumstances that Appellants will divert assets or take any other steps that would prevent the Attorney General from collecting on any judgment affirmed.

B. Appellants Plan to Post a $100 Million Undertaking

The purpose of an appeal bond is to maintain the status quo during the appeal and to ensure sufficient resources are available to satisfy any judgment affirmed. See Cavanagh v. Hutcheson, 232 A.D. 470, 471 (1st Dep't 1931) (requiring bond as condition of stay pending appeal "so as to protect [respondents] from any change of position on the part of [appellant], until the appeal is determined"). Here, any judgment affirmed by this Court would be adequately secured by the precise oversight the Attorney General sought and has relied on during the pendency of these entire proceedings, augmented by a $100 million undertaking Appellants plan to post forthwith.

CPLR § 5519 provides that service of a notice of appeal "stays all proceedings to enforce the judgment or order appealed from pending the appeal" where "(2) the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed." CPLR § 5519(a)(2).

An appeal bond would include the amount of the underlying judgment—here, more than $460 million—as well as costs and interest during the pendency of the appeal. Robert Aff. ¶ 46. To account for post-judgment interest and appeal cost, a surety will often set the bond amount at

[10] Assets like 40 Wall Street cannot be hypothecated or removed from the jurisdiction in secret.

120% of the judgment or more, *i.e.*, more than $550 million. Id. ¶ 47. The exorbitant and punitive amount of the Judgment coupled with an unlawful and unconstitutional blanket prohibition on lending transactions would make it impossible to secure and post a complete bond. Appellants nonetheless plan to secure and post a bond in the amount of $100 million. Moreover, Appellants' vast ownership interests in New York real estate (not to mention elsewhere) include 40 Wall Street,[11] Trump Tower, Seven Springs, Trump National Golf Club Hudson Valley, Trump National Golf Club Westchester, and Trump Park Avenue. Thus, the ongoing oversight by the Monitor, which has and will continue to preclude any dissipation or transfer of assets, would alone be sufficient to adequately secure any judgment affirmed. Appellants' bond would simply serve as further security. Finally, Appellants discontinued the practice of preparing Statements of Financial Condition ("SFCs") two years ago.

POINT II

APPELLANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY

Under New York law, irreparable injury is that which cannot be compensated by money damages. See Matter of J.O.M. Corp. v. Department of Health of State of N.Y., 173 A.D.2d 153, 154 (1st Dep't 1991), citing DeLury v. City of New York, 48 A.D.2d 595, 599 (1st Dep't 1975); cf. Four Times Sq. Assoc. v. Cigna Invs., 306 A.D.2d 4, 6 (1st Dep't 2003) (reversing denial of preliminary injunction where, *inter alia*, "the threat to [plaintiff's] good will and creditworthiness is sufficient to establish irreparable injury"). Irreparable harm will inhere to Appellants absent a stay pending appeal. As set forth more fully below, Supreme Court's

[11] The ownership interest in 40 Wall Street is likely alone sufficient to satisfy any judgment.

injunctive relief and disgorgement award evince the Court's ignorance of corporate governance and the day-to-day operations of a complex business enterprise.

A. Irreparable Harm Inheres to Appellants from Any Forced Sale of Properties

In the absence of a stay on the terms herein outlined, properties would likely need to be sold to raise capital under exigent circumstances, and there would be no way to recover any property sold following a successful appeal and no means to recover the resulting financial losses from the Attorney General. Thus, Supreme Court and the Attorney General will have succeeded in imposing a punitive and irreversible financial sanction even where Appellants prevail on appeal. Simply put, Appellants would be unable to recover the value of that which was taken by the court and the Attorney General during the pendency of the appeal.

B. Irreparable Harm Inheres to the Entity Appellants if the Judgment is Not Stayed

The Judgment also (1) enjoins the entity Appellants, as well as President Trump, from "applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services" for three years, (2) continues the monitorship for "no less than three years," and (3) mandates the installation of an "Independent Director of Compliance." Robert Aff., Ex. R at 92. Once again, this exceeds Supreme Court's statutory authority, which simply does not permit a blanket prohibition on otherwise lawful conduct.

Supreme Court's order proscribing loan applications is overbroad on its face, to the extent its scope can even be understood. Supreme Court appears unaware of—or unconcerned by—the far-reaching implications of this directive. Supreme Court proscribes loans from institutions "chartered" or "registered" in this State. While there is no statutory requirement of "registration" under the Banking Law, a foreign bank must be "licensed in this State as a prerequisite for transacting business here so as to protect the public interest and the interests of depositors." See

Animalfeeds Int'l Inc. v. Banco Espirito Santo e Commercial de Lisboa, 420 N.Y.S.2d 954, 959 (Sup. Ct. N.Y. Cty. 1979); see also Banking Law § 200.[12] Consequently, as written, Appellants would be prevented from obtaining financing from any bank that does business in this State, regardless of whether it is headquartered or even has an office in this State. Even certain properties with existing loans could not seek re-financing, creating a default scenario resulting in irreparable injury. This prohibition again demonstrates Supreme Court's lack of understanding of commercial realities and partisan bent. Appellants deploy their assets into real estate and other investments to earn a profit, thereby stimulating beneficial economic activity. Here, the Judgment precludes Appellants from using their own lawful assets and the equity in those assets to protect their appellate rights and interferes unlawfully and unconstitutionally with the ability to manage the financial affairs of otherwise lawful businesses. This represents an unconstitutional burden on interstate commerce.

But taking out a loan is not unlawful conduct. Although there were no complaints, no victims, and no evidence of any actual harm, the "unlawful" conduct consisted of the alleged preparation and submission of falsely inflated financial statements to certain sophisticated counterparties. So, any statutory relief is and must be limited to enjoining that conduct and the adoption of ancillary measures (*i.e.*, monitor oversight) to prevent future occurrences. Any legitimate concerns regarding financial information submitted to lenders going forward are alleviated fully by the Monitor's oversight.

---

[12] Federal caselaw applying the Banking Law seems to conflate registration and licensure. 7 W. 57th St. Realty Co., LLC v. Citigroup, Inc., 2015 WL 1514539 (S.D.N.Y. 2015), aff'd, 771 F. Appx. 498 (2d Cir. 2019)(unpublished); Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC, 366 F. Supp. 3d 516, 560 (S.D.N.Y. 2018).

Additionally, while the loans at issue before Supreme Court were for tens of millions or hundreds of millions of dollars, the Judgment, by its terms, would ostensibly cover even *de minimis* loans or leases of basic equipment (*i.e.*, copy machines, golf carts, lawn maintenance equipment, etc.), resulting in an inability to operate lawful businesses. Supreme Court's ignorance and imprecision threatens to needlessly grind to a halt Appellants' day-to-day operations for three years. Such relief is not narrowly tailored to enjoining purportedly fraudulent practices, and the harm inflicted on Appellants will be irreparable.

Moreover, as set forth above, Appellants have been under monitorship since November 2022. See Robert Aff., Ex. D at 10. Appellants are now obligated to provide to the Monitor any "financial statement, statement of financial condition, other asset valuation disclosure, or other financial disclosure to a lender, insurer, or other financial institution." Id. Given this pre-clearance requirement and the Monitor's oversight, there is no risk Appellants will submit any purportedly false information to a putative lender.

Finally, Supreme Court's ill-considered finding that a bevy of entities are jointly and severally liable for particular portions of the disgorgement award has serious consequences. Trump Ferry Point LLC, the assignee of the Ferry Point license, is not even a party to this action. Nonetheless, disgorgement in the amount of approximately $60 million was ordered against President Trump, the Trust, Trump Organization LLC, the Trump Organization, Inc., and Trump Old Post Office LLC for "profits" obtained by a non-party. Most egregiously, Supreme Court ordered that President Trump, the Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC are *all* jointly and severally liable for more than $240 million of interest-rate differential. Several of

these entities, including Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, and 40 Wall Street LLC, are single-purpose entities created to own a particular piece of property. Each entity has its own independent books and records, employees, and managers. In Supreme Court's view, Trump Old Post Office LLC, which no longer even owns the Old Post Office property in Washington, D.C., would be responsible for the debt of a Delaware or New York LLC created only to own and operate a specific property (*i.e.*, 40 Wall Street or 401 North Wabash), and its balance sheet would necessarily reflect the full amount of that debt. Supreme Court's repeated conflation of discrete entities belies its own misunderstanding of corporate law and effectively functions as reverse veil-piercing. Such impermissible group relief runs afoul of the very purpose of a limited liability company in a complex, well-considered corporate structure such as the Trump Organization. An individual or a discrete corporate entity is simply not liable for profits or "damages" flowing from a transaction to which it was not a party.[13]

C. The Years-Long Bans Supreme Court Has Imposed on the Individual Appellants Will Inflict Serious and Irreparable Harm

Supreme Court has granted the extraordinary and punitive remedies of, *inter alia*, (1) a three-year ban on President Trump "serving as an officer or director of any New York corporation or other legal entity in New York," and (2) a two-year bar on the same activities for Donald Trump, Jr. and Eric Trump. Robert Aff., Ex. R at 91-92; see also Robert Aff., Ex. P ¶¶

[13] Supreme Court also erred in conflating distributions from the proceeds of a sale with actual profits from the transaction. For example, Supreme Court held that "Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable, in the amount of $126,828,600, for the ill-gotten profits Donald Trump netted from the sale of the Old Post Office." Robert Aff., Ex. R at 83. However, even the testimony and exhibit the Attorney General cited for that proposition make clear that that figure was the amount distributed to President Trump and his children after repaying the mortgage and other associated costs and does not represent the actual profit from the transaction. Robert Aff., Ex. P at ¶221, citing NYSCEF Doc. No. 1637 at 3626:1-24 and PX-1373.

400-401.[14] This effectively deprives Appellants of engaging in lawful business activity and forces them to operate without leadership until this appeal is resolved. However, the Appellant businesses simply cannot operate themselves. Directing them to do so, especially in a case without any complainants, victims, or harm, will inevitably result in irreparable injury. Given the length of the appellate process, this Court will be unable to vindicate Appellants' rights with respect to those bans if relief is not stayed now. A stay is necessary to preserve the Court's appellate jurisdiction on this issue. Tax Equity Now NY LLC, 173 A.D.3d at 465.

The relief Supreme Court has imposed, in the context of a civil case, flies in the face of bedrock notions of due process and, as before, far exceeds statutory authorization. Executive Law § 63(12) permits a court to enter an order "enjoining the continuance" of fraudulent or illegal business activity but does not authorize a blanket prohibition on otherwise lawful activity (*i.e.*, the normal operation and management of the Appellant businesses). This case has always centered around a few discrete loan and insurance transactions. Indeed, the "disgorgement" award is tied directly to specific transactions. There was never any allegation nor any evidence at trial that the mere conduct of Appellants' business operations posed some risk of harm. As noted, although there were no complainants, no victims, and no evidence of any actual harm, the "unlawful" conduct consisted of the alleged preparation and submission of falsely inflated financial statements to certain sophisticated counterparties. As such, any statutory relief is and must be limited to enjoining that conduct and the adoption of ancillary measures (*i.e.*, monitor oversight) to prevent future occurrences of that conduct.

[14] Indeed, the Judgment, as written, appears to prevent an individual Appellant from even executing the requisite documentation to appoint his successor or change signatories on company accounts.

D. The Relief Appellants Seek to Stay is Purely Punitive

1. No Harm Inheres to the Attorney General if the Relief is Stayed

Not one witness testified that Appellants' financial statements were fraudulent, not one counterparty or market participant complained, and not one victim was ever identified. Even so, the Attorney General has framed the relief she sought as necessary to the welfare of the People of New York, arguing that it was necessary to "protect existing and future counterparties, including lenders, insurance companies, and tax authorities," as well as "potential counterparties and the marketplace." Robert Aff., Ex. P ¶¶ 394, 397. But there is no record of any harm or injury to anyone, actual or theoretical. Moreover, the record evidence demonstrates that the banks did their own extensive diligence prior to entering into the subject transactions and relied on their own independent valuations. Robert Aff., Ex. Q, Proposed Findings of Fact ("FF") ¶¶ 18-150; id., Proposed Conclusions of Law ("CL") ¶¶ 31-68.

After a three-year investigation, a year-long action with dozens of motions and hundreds of pages of briefing, and a three-month spectacle of a trial, the record evidence demonstrates that there was no harm to anyone, particularly not the sophisticated lenders involved in the relevant transactions. Supreme Court has embraced and endorsed the Attorney General's misguided crusade against the Trump family under the guise of "protect[ing] the integrity of the financial marketplace" and "keep[ing] [Appellants] honest." Robert Aff., Ex. R at 87, 89. Its imposition of injunctive relief is based on nothing more than a purely theoretical "harm that false statements inflict on the marketplace." Id. at 4. There was no evidence whatsoever that the "marketplace" was harmed in any way. Thus, a stay pending appeal cannot possibly harm the Attorney General, and the Monitor's continued oversight eliminates any purported (and unjust) concerns regarding counterparties or some amorphous marketplace.

2. Appellants Have Been Selectively Prosecuted and Punished for Mounting a Defense

The Attorney General, and now Supreme Court, have unquestionably targeted President Trump, the frontrunning candidate for the 2024 presidency. Amid a developing ascent towards the White House, Supreme Court seeks to punish President Trump for his success and his children for mere affiliation. See Robert Aff., Ex. R at 79 (finding that Appellants Donald Trump, Jr. and Eric Trump "intentionally falsified business records" because, *inter alia*, they "served as co-executives" of the Trump Organization from January 2017 onwards).

Despite a disclaimer to the contrary, Supreme Court has plainly appointed itself a judge of morality instead of one of facts and law, justifying the imposition of injunctive relief by concluding that Appellants' "complete lack of contrition and remorse borders on pathological," deeming Appellants' "sin[s]" "venial" rather than "mortal," and rebuking Appellants for failing to "admit[] the error of their ways." Id. at 87. A *mea culpa* would not absolve a party from civil liability, and Supreme Court has not been endowed with divine providence. Appellants were absolutely within their rights to vociferously deny the Attorney General's claims. They cannot be penalized because they mounted a defense, appeared insufficiently contrite, or exercised their right to contest the claims and proceed to trial. Moreover, the burden was on the Attorney General to prove her case, not on Appellants to display adequate contrition, and on Supreme Court to apply the facts to the law rather than invoke moral authority to punish Appellants for their "sin[s]." Id. Supreme Court's rambling screed cannot undergird a grant of absurd, vindictive, and grossly disproportionate relief.

A state's "selective enforcement" of its laws is unconstitutional when a defendant has been disparately punished for his First Amendment activity[15] and/or when state officers proceed against the defendant out of "animus." See Frederick Douglass Found., Inc. v. District of Columbia, 82 F.4th 1122, 1146-1147 (D.C. Cir. 2023). In the former case, selective enforcement violates the First Amendment's free speech clause; in the latter, it violates the Fifth Amendment's equal protection clause. See id. (upholding a "free speech selective enforcement claim" and stating that an "equal protection selective enforcement claim" lies where government's "enforcement decisions were rooted in 'animus'" against a viewpoint).

There can be no doubt that "selective enforcement" has occurred here. The State's use of Executive Law § 63(12) is utterly different from its past uses of that statute. All prior § 63(12) cases have dealt with fraudulent activity threatening harm, typically widespread harm, to consumers or the public.[16] Here, without any precedent, the Attorney General targeted private commercial transactions between sophisticated corporate titans, prosecuting Appellants without any showing that their alleged misconduct had harmed any victims and where the evidence

---

[15] The First Amendment precludes application of Executive Law § 63(12) to punish inaccurate or incorrect statements without requiring a showing of prior culpability or subsequent actual harm to specific persons. By targeting inaccuracy, regardless of whether it is material, the Executive Law is dangerously unconstitutional and its overbreadth chills speech. In U.S. v. Alvarez, the Supreme Court emphatically declared that the Constitution "rejects the notion that false speech should be in a general category that is presumptively unprotected." 567 U.S. 709, 722 (2012). A freedom to be wrong is an essential part of the freedom of speech, and a law punishing inaccuracy, including immaterial error, is patently unconstitutional. See id.

[16] See, e.g., State v. Gen. Motors Corp., 547 F.Supp. 703 (S.D.N.Y. 1982) (affecting a vast number of consumers in the automobile industry); People v. Coventry First LLC, 52 A.D.3d 345 (1st Dep't 2008) (schemes used to deprive policy holders of a fair marketplace in which to sell); State v. Amazon.com, Inc., 550 F. Supp. 3d 122 (S.D.N.Y. 2021) (alleging that Amazon failed to protect *thousands* of workers through inadequate disinfection and contract-tracing protocols); People v. General Elec. Co., 302 A.D.2d 314 (1st Dep't 2003) (widespread misrepresentations regarding consumer dishwashers); Matter of People v. Orbitual Publ. Group, Inc., 169 A.D.3d 564 (1st Dep't 2019) (materially misleading consumer solicitations for newspaper and magazine subscriptions); Matter of People v. Applied Card Sys., Inc., 27 A.D.3d 104 (3d Dept 2005) (misleading consumer credit card offers).

established the actual participants were fully satisfied with the transactions. Moreover, the staggering $464 million penalty imposed here is unique in the history of § 63(12) cases.

The Attorney General's public statements further demonstrate her animus against President Trump and her deliberate targeting of President Trump. In her campaign for Attorney General in 2018, James called then-President Trump "*an illegitimate president*."[17] She has repeatedly made plain that she considers him a political danger.[18] She campaigned on the promise that she would "get Trump"—prosecute him—if elected Attorney General,[19] and she has made good on that promise. Accordingly, the unprecedented use of § 63(12) and the unprecedented $464 million fine imposed are unconstitutional acts of selective enforcement.

3. This Court Has Previously Stayed Supreme Court's Overreach and Should Do So Again Here

Supreme Court's overreach, and the necessity of this Court's intervention to stay enforcement of the expansive and wholly improper penalties Supreme Court has awarded, has precedent in this action. In its September 26, 2023, decision and order on summary judgment (the "MSJ Decision"), Supreme Court found that Appellants were liable under Executive Law §

---

[17] CNN, *See what New York AG said while running for office about charging Trump* (Oct. 3, 2023), available at https://www.cnn.com/videos/politics/2023/10/03/letitia-james-prosecute-trump-2018-comments-running-office-cnntm-vpx.cnn.

[18] See, e.g., NowThis Impact, *Why Letitia James Wants to Take on Trump as NY's Attorney General – Op-Ed*, YouTube (Sept. 28, 2018), available at https://www.youtube.com/watch?v=D1yj0NKSsuU ("I'm running for attorney general because I will never be afraid to challenge this illegitimate president"); Erin Durkin, *Tish James just sued Trump – but they've been at it for years*, Politico (Sept. 21, 2022), available at https://www.politico.com/news/2022/09/21/james-lawsuit-trump-longstanding-battle-00058128; Max Matza, *Letitia James and Donald Trump's history of clashes*, BBC News (Sept. 27, 2023), available at https://www.bbc.com/news/world-us-canada-63000691.

[19] See, e.g., Allan Smith, *Incoming New York attorney general plans wide-ranging investigations of Trump and family*, NBC News (Dec. 12, 2018), available at https://www.nbcnews.com/politics/donald-trump/incoming-new-york-attorney-general-plans-wide-ranging-investigations-trump-n946706; Jeffery C. Mays, *N.Y.'s New Attorney General Is Targeting Trump. Will Judges See a 'Political Vendetta?'*, New York Times (Dec. 31, 2018), available at https://www.nytimes.com/2018/12/31/nyregion/tish-james-attorney-general-trump.html.

63(12) for the statements made in the SFCs, cancelled the entity Appellants' GBL § 130 certificates, as well as certificates for companies affiliated with any Appellants, and directed that the parties recommend an independent receiver to manage the dissolution of the cancelled LLCs.

Appellants moved for a stay of such relief inasmuch as it was granted in defiance of the law of the case, unauthorized by Executive Law § 63(12), awarded in the absence of actual harm, and, in the case of dissolution, granted *sua sponte* by Supreme Court. This Court agreed a stay of the award was warranted. Now, in tacit recognition of its own error, the Judgment issued by Supreme Court vacates the relief this Court had stayed, citing "serious economic concerns" while defiantly maintaining it did not "order the corporate cancellations cavalierly" and was "expressly allow[ed]" to do so. Robert Aff., Ex. R at 89 n.61.

However, the Judgment fails to cure, and, in fact, compounds, the other myriad errors of the MSJ Decision. Supreme Court's findings of liability on the second through seventh causes of action are predicated in part upon the MSJ Decision's premature and erroneous factual findings.

POINT III

DENYING A STAY IN THIS CASE WOULD VIOLATE DUE PROCESS

As the United States Court of Appeals for the Second Circuit has held, a state's "inflexible requirement [denying] a stay of execution unless a supersedeas bond in the full amount of the judgment is posted can in some circumstances . . . amount[ ] to a confiscation of the judgment debtor's property without due process." Texaco Inc. v. Pennzoil, Co., 784 F.2d 1133, 1154 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1 (1987). This is such a case.

As set forth above, by blocking Appellants from borrowing and otherwise conducting their business, Supreme Court's order would make it impossible for Appellants to post a bond in the full amount of the Judgment. Moreover, the Attorney General has publicly stated her intent

to immediately seize Appellants' real estate assets to satisfy the Judgment. Thus, unless a stay issues, Appellants will suffer "a confiscation of [their] property without due process." Id. At the same time, denying a stay in this case in the absence of a full undertaking will impose an unconstitutional condition on Appellants' right of appeal.

POINT IV

APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL

A. Supreme Court Entered Judgment on Time-Barred Claims

This Court's June 27, 2023, decision alone eliminates seventy-five percent of the "disgorgement" principal and interest award, reducing the total to approximately $113 million and wiping out some approximately $350 million of the approximately $465 million award. See Robert Aff., Ex. X; id., Ex. Q, FF ¶¶ 1-17; id., CL ¶¶ 1-6. Supreme Court has willfully and repeatedly refused to adhere to the clear mandate of this Court, and the resulting chaos and overreach has rippled throughout these proceedings.[20] There was and is simply no basis to award any amounts relative to transactions that were completed well prior to July 13, 2014.

This Court's June 27, 2023, decision "unanimously modified, on the law" Justice Engoron's January 9, 2023, order denying Appellants' and co-defendant Ivanka Trump's motions "***to dismiss, as time-barred,***" claims that accrued prior to July 2014 for Appellants subject to the August 2021 tolling agreement and prior to February 2016 for Appellants not

[20] This Court's decision is law of the case ("LOTC"). LOTC "bind[s] a trial court (and subsequent appellate courts of coordinate jurisdiction) to follow the mandate of an appellate court . . ." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d 40, 48 (1st Dep't 2021); see also, e.g., Applehole v. Wyeth Ayerst Labs., 213 A.D.3d 611, 611 (1st Dep't 2023); Magen David of Union Square v. 3 West 16th Street, LLC, 132 A.D.3d 503, 504 (1st Dep't 2015); People v. Codina, 110 A.D.3d 401, 406 (1st Dep't 2013); Kenney v. City of New York, 74 A.D.3d 630, 630-631 (1st Dep't 2010). "[N]o discretion [is] involved; *the lower court must apply the rule laid down by the appellate court*." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d at 48, quoting People v. Evans, 94 N.Y.2d 499, 503 (2000) (quotation marks omitted) (emphasis added).

subject to the tolling agreement. Robert Aff., Ex. I at 1 (emphasis added). This Court's unanimous ruling dismissed as time-barred seven out of ten loan transactions at issue and explicitly rejected application of the continuing wrong doctrine to the facts of this case. Id., Ex. I. Yet, undeterred by the patent absurdity of its position or any modicum of respect for the appellate jurisdiction of this Court, Supreme Court contorted the continuing wrong doctrine and entered judgment on time-barred claims.

The Attorney General's theory until this Court's decision on the motion to dismiss was that Appellants' improper procurement of the loans themselves constituted actionable wrongs under Executive Law § 63(12). Id., Ex. B ¶ 3 (alleging that Appellants submitted purportedly false and misleading financial statements "*to induce banks to lend money to the Trump Organization on more favorable terms than would otherwise have been available to the company*"). Under this theory, the Attorney General argued that subsequent, post-closing certifications simply constituted continuing wrongs extending the applicable limitations period. Supreme Court likewise invoked the continuing wrong doctrine to explain why it believed the Attorney General's claims could be sustained. Id., Ex. H at 5-6.

This Court disagreed, unanimously rejecting the argument that annual certifications themselves could support the timeliness of the Attorney General's claims under the continuing wrong doctrine. Id., Ex. I at 3-4. The Court thus concluded that the Attorney General's claims are time-barred insofar as they are premised on transactions completed outside of the applicable statutory periods: "*The continuing wrong doctrine does not delay or extend these periods* (*see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v Bank of Am.*, 147 AD3d 599, 601-602 [1st Dept 2017])." Id. (emphasis added).

For the avoidance of any doubt as to the intended effect of this paragraph, the Court defined the accrual date for each claim:

> Applying the proper statute of limitations and the appropriate tolling, ***claims are time barred if they accrued – that is, the transactions were completed*** – before February 6, 2016 (*see Boesky v Levine*, 193 AD3d 403, 405 [lst Dept 2021]; *Rogal v Wechsler*, 135 AD2d 384, 385 [1st Dept 1987]). For defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014.

Id. at 3 (emphasis added).[21]

Nonetheless, in the MSJ Decision, Supreme Court cast aside this binding decision and proclaimed that (1) *this Court had "affirmed" its "dismissal decision,"* (Robert Aff., Ex. L at 4, 8, 11 [emphasis added]), (2) this Court *did not dismiss "any causes of action*," (id. at 3 [emphasis added]), and (3) "any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations" because each is "a distinct fraudulent act[.]" (id. at 18). This flawed rationale flatly ignores this Court's continuing wrong analysis and demonstrates Supreme Court is willfully ignoring this Court's decision. Supreme Court held in a footnote to the MSJ Decision that People v. Greenberg authorized it to consider time-barred evidence "in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been a 'showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances.'" Robert Aff, Ex. L at 22 n.14, quoting 27 N.Y.3d 490, 496-497 (2016).

---

[21] The "completion" of a loan transaction is the date when the transaction is actually entered into, and a benefit is conferred, for purposes of the Attorney General's fraud claims. In Boesky v. Levine, this Court found that a cause of action for fraud accrued "when plaintiffs ***entered into*** the allegedly fraudulent transactions." 193 A.D.3d 403, 405 (1st Dept 2021). In Boesky, notwithstanding that the plaintiffs alleged the defendants continued to provide flawed and erroneous advice through 2016, this Court determined that the claim for fraud accrued between 2002 and 2004, when the plaintiffs actually invested in the tax shelters. Id. In Rogal v. Wechsler, this Court similarly held: "The cause of action for fraud accrues and the Statute of Limitations commences to run at the time of the execution of the contract." 135 A.D.2d 384, 385 (1st Dep't 1987). The Court thus found that Supreme Court "erroneously fixed the accrual" of the plaintiffs' fraud claim on the date "when certain misrepresentations allegedly were made." Id. In other words, Rogal expressly forecloses the argument that a fraud claim accrues whenever a misrepresentation is made, no matter its effect.

However, Greenberg, which summarizes the standard for permanent injunctive relief under the Martin Act and Executive Law § 63(12), provides no support for this proposition. See 27 N.Y.3d 490.

In the Judgment, Supreme Court compounds its error, resorting to its refrain that "statutes of limitation bar claims, not evidence" to impermissibly impose hundreds of millions of dollars in draconian penalties based on time-barred claims, without any citation in support. Robert Aff., Ex. R at 4 n.1. A time-barred claim that a defendant cannot be held liable for cannot provide a basis for exorbitant damages and permanent injunctive relief. Supreme Court thus imposes liability on claims it admits are time-barred and, in doing so, nullifies the entire concept of a statutory period.[22]

B. The Disgorgement Award is an Unconstitutional Excessive Fine and Is Impermissibly Punitive

Both the Eighth Amendment of the U.S. Constitution and the Bill of Rights of the New York Constitution prohibit "excessive fines." U.S. CONST. Amend. VIII; N.Y. CONST. Art. I, § 5. A money judgment payable to the State is a "fine" within the meaning of the Excessive Fines Clause if the payment is a "penalty" or "in part . . . punitive" in purpose. County of Nassau v. Canavan, 1 N.Y.3d 134, 139-140 (2003), quoting Austin v. United States, 509 U.S. 602, 609-610 (1993). A fine violates the Excessive Fines Clause if it is "grossly disproportional to the gravity of [the defendant's] offense." United States v. Bajakajian, 524 U.S. 321, 324 (1998); Canavan, 1

[22] For example, the Old Post Office contract was awarded and the Ferry Point license contract was signed in 2012, two years ***before*** the July 13, 2014 statute of limitations cut-off. Moreover, the relevant decisions did not even involve the SFCs challenged by the Attorney General. Robert Aff., Ex. Q ¶¶ 3, 6, 131-150, 585-602. Supreme Court nonetheless awarded disgorgement of the profits of both the Old Post Office sale and the Ferry Point license in the total amount of nearly $220 million.

N.Y.3d at 140. Appellate courts "must review the proportionality determination '*de novo*.'" Cooper Indus. v. Leatherman Tool Group, Inc., 532 U.S. 424, 435 (2001). In addition, the Due Process Clause similarly prohibits "grossly excessive" damages awards. BMW of North Am. Inc., v. Gore, 517 U.S. 559, 568 (1996).

Here, the entirety of Supreme Court's $450 million "disgorgement" order is excessive and unconstitutional. Because there has been no showing that Appellants reaped a single penny in any kind of gain (much less unlawful gain) as a result of their alleged misrepresentations, the $450 million "disgorgement" order is in fact a grossly excessive penalty violating the Excessive Fines Clause and Due Process Clause.

It is well-established under federal law that "disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum [] constitute[s] a penalty assessment." SEC v. Blatt, 583 F.2d 1325, 1335 (5th Cir. 1978); see also, e.g., SEC v. ETS Payphones, Inc., 408 F.3d 727, 735 (11th Cir. 2005); SEC v. MacDonald, 699 F.2d 47, 54 (1st Cir. 1983); Hateley v. SEC, 8 F.3d 653, 656 (9th Cir. 1993) (reversing so-called "disgorgement" exceeding actual gain from fraud); Litton Industries, Inc. v. Lehman Bros. Kuhn Loeb, Inc., 734 F. Supp. 1071, 1076 (S.D.N.Y. 1990) ("Once ill-gotten profits have been disgorged to the SEC, further disgorgement . . . is clearly punitive in its effect and would constitute an impermissible penalty assessment.").

New York law is no different. Disgorgement is an equitable remedy intended to deprive defendants of their "ill-gotten gains" and requires a causal link between the alleged gains and the purported wrongdoing. See J.P. Morgan Sec. Inc. v. Vigilant Ins. Co., 91 A.D.3d 226, 230-233 (1st Dep't 2011), rev'd on other grounds, 21 N.Y.3d 324 (2013); see also People v. Appel, 258 A.D.2d 957, 958 (4th Dep't 1999) (finding that despite the fact that the Attorney General had

met his initial burden of establishing violations of Executive Law § 63(12) and General Business Law § 349, Supreme Court abused its discretion in ordering restitution of the full amount of revenue fees without proof of "what percentage of those revenues is attributable to respondents' deception"). The onus is on the Attorney General to prove that Appellants committed wrongdoing and what, if any, gains can be attributed to that wrongdoing.

Although New York courts have awarded exemplary damages in cases involving high degrees of moral culpability, the Attorney General is "not entitled to punitive damages or treble damages, or both, from respondent," as "Executive Law Section 63(12) does not provide for either of these extraordinary remedies and petitioner is limited to obtaining restitution or compensatory damages" alongside an injunction. See State v. Solil Mgt. Corp., 128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985); see also State v. Hotel Waldorf-Astoria Corp., 67 Misc. 2d 90, 92 (Sup. Ct. N.Y. Cty. 1971). Any award of disgorgement in excess of actual damages caused by Appellants' alleged misconduct is impermissibly punitive. See People v. Direct Revenue, LLC, 19 Misc. 3d 1124(A) at *8 (Sup. Ct. N.Y. Cty. 2008) (finding disgorgement only available "in an amount related to the actual damages caused by the misconduct," since "[d]isgorgement of respondents' profits to the state would effectively constitute punitive damages not authorized by statute" [citations omitted]).

There was never any showing that Appellants profited in any way from any alleged wrongdoing. Supreme Court determined that under Executive Law § 63(12), the State did not have to prove reliance by the banks. See Robert Aff., Ex. R at 2 (distinguishing Executive Law § 63(12) from "common law fraud," which requires proof of reliance and materiality); id. at 75 ("Defendants have argued vociferously throughout the trial that . . . none of the banks or insurance companies relied on any of the alleged misrepresentations. . . . Defendants' argument

is to no avail, as none of plaintiff's causes of action requires that it demonstrate reliance."). But if the banks did not rely on Appellants' (alleged) misrepresentations, then Appellants did not (and could not) profit from them as those alleged misrepresentations did not (and could not) have led to the banks' decision to grant the loans or their determination of the interest rate charged. Indeed, there was no showing that Appellants would not have obtained the loans but for the (alleged) misrepresentations, and there was no showing that Appellants would have received a higher interest rate but for the (alleged) misrepresentations.[23] Thus, the entire $464 million sanction ordered by Supreme Court was not disgorgement at all, but a naked "penalty assessment" dressed up in the clothing of disgorgement. SEC v. Blatt, 583 F.2d at 1335; see also SEC v. ETS Payphones, Inc., 408 F.3d at 735 (rejecting $300 million disgorgement where record did not "establish[] that amount" of ill-gotten gains and instead ordering disgorgement of only $21 million because defendant was shown to have actually received that amount from the fraud); Hately v. SEC, 8 F.3d at 656 (striking so-called disgorgement of monies not actually gained by defendants as result of alleged fraud).

In Gore, the U.S. Supreme Court held that in determining whether a damage award is grossly excessive, courts are to consider: (1) "the degree of reprehensibility of the [conduct];" (2) the "disparity between the harm or potential harm suffered by [plaintiff] and [the] punitive damages award;" and (3) "the difference between this remedy and the civil penalties authorized

---

[23] Supreme Court based approximately $170 million (plus interest) of its $464 million order on a calculation of the higher interest rate Appellants supposedly would have been charged had the banks not relied on the personal guaranty document signed by President Trump containing the (alleged) property overvaluations. Robert Aff., Ex. R at 46-47. But no witness ever testified that the banks actually relied on Appellants' property valuations, no document evidenced such reliance, and Supreme Court never actually found as a factual matter that any bank relied on those valuations (because Supreme Court ruled that reliance was not an element of the offense). Thus, there was, in fact, never any showing below that Appellants' alleged misrepresentations actually caused any bank to charge a lower interest rate, an essential prerequisite to sustain any disgorgement judgment.

or imposed in comparable cases." 517 U.S. at 574-575.[24] All three factors demonstrate the so-called "disgorgement" award ordered here is grossly disproportional.

1. No Harm Has Inhered to Any Party

There was no harm to anyone, the parties to the transactions, the public, or the "marketplace." Supreme Court itself concluded that "Donald Trump is not Bernard Madoff," nor did Appellants "commit murder or arson" or "rob a bank at gunpoint." Robert Aff., Ex. A at 87. The transactions at issue were complex, bilateral business transactions between Appellants and their banks, none of which implicated the public market in any way. Supreme Court's half-hearted attempt to rebut this contention is that protecting the "integrity of the financial marketplace" necessarily protects "the public as a whole." Id. at 87. The arms-length transactions in this case do not involve the type of deceptive and fraudulent conduct that § 63(12) was enacted to prevent. Compare Union Square Supply Inc. v. De Blasio, 572 F. Supp. 3d 15, 25 (S.D.N.Y. 2021) ("Union Square Supply's conduct fell squarely into the heartland of what the Rule was enacted to prevent – price gouging with respect to products necessary to protect health during the COVID-19 pandemic."). That truism is inapplicable here. As the Attorney General has conceded, Appellants already "repa[id] hundreds of millions of dollars in debt early," which effectively amounted to "partial disgorgement." See Robert Aff., Ex. B at ¶ 21. The award bears no relationship to any actual loss sustained by the People of this State. See Prince v. City of New York, 108 A.D.3d 114, 120 (1st Dep't 2013); Bajakajian, 524 U.S. at 329. Since an award

[24] See also Canavan, 1 N.Y.3d at 140 (courts are to consider (1) the "seriousness" of the (alleged) offense; (2) the maximum punishment that could have been imposed under statutes prohibiting the conduct at issue; and (3) the "severity of the harm" caused by the defendant's conduct).

of disgorgement must be tied to actual, wrongfully obtained benefits and Appellants already repaid their outstanding debt, Appellants do not possess any "ill-gotten gains" to be disgorged.

2. The Disgorgement Award Is Disproportionate to Even the Alleged Harm and Improperly Compounds Purported Gains

The $168 million interest-rate differential testified to by Michiel McCarty, the Attorney General's purported disgorgement expert, is grossly disproportionate to any alleged harm suffered. Robert Aff., Ex. P ¶¶ 407-42; id., Ex. R at 46-48. No bank witness testified that any approvals, terms, or pricing would have been altered by the alleged misstatements. The absence of such testimony is fatal to any claim for disgorgement, as Mr. McCarty cannot simply presume harm or loss without a factual predicate. Id., Ex. Q, CL ¶¶ 171-194. Rather, testimony made clear that the banks did their own diligence, that they viewed President Trump as a premier client, and based on the bank's own analysis, he had one of the best balance sheets the bank had ever seen. Id., FF ¶¶ 18-150, citing DX-312; id., CL ¶¶ 31-68. For example, Nicholas Haigh, the head of risk management for Deutsche Bank's Private Wealth Management business, confirmed at trial that all decisions were made based on the bank's own analysis. Id., FF ¶¶ 31-74, citing PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX302; PX-2960; PX-3137; id., Ex. R at 8-11. Even Supreme Court's lengthy recitation of Mr. Haigh's testimony referenced only the *post hoc* SFCs as a metric for Deutsche Bank to "try and ensure the client was in compliance" with certain loan covenants. Robert Aff., Ex. R at 11.

Supreme Court sidesteps this issue in contending that "materiality under [Executive Law § 63(12)] is judged not by reference to reliance by or materiality to a particular victim" and impermissibly relies on its own finding that "[i]n its summary judgment decision, this Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law." Id. at 76. This recitation of the MSJ Decision misrepresents its actual holding that "unlike a

standalone cause of action under Executive Law § 63(12), the second through seventh causes of action ***require*** demonstrating some component of intent and materiality." Id., Ex. L at 20 (emphasis added). Supreme Court erroneously recites that materiality is a "great red herring of this case" and that a statement is material if Supreme Court subjectively believes it to be so because "a person can always shout that 'it's immaterial.'" Id., Ex. R at 77. Supreme Court then "confidently declares" its own standard that "any number that is at least 10% off *could* be deemed material, and any number that is at least 50% off *would likely* be deemed material." Id. (emphasis added). Indeed, the Attorney General conspicuously failed to elicit from any witness, including any of the actual bankers involved in the loan transactions, that based on current knowledge the bank would have altered any of the loan terms or pricing. Robert Aff., Ex. Q, FF ¶¶ 18-150. Supreme Court simply ignores this fatal defect and holds, contrary to established law, that materiality under Executive Law § 63(12) does not require reliance, and, even if it did, it is irrelevant because the loans "began life based on numbers in an SFC, which the lenders interpreted in their own unique way." Id., Ex. R. at 75. This absurd construct fully ignores the bank's own analysis and the obvious point that no reliance means no impact (actual or theoretical) on the loan terms or pricing.

Rather than address the impropriety of Mr. McCarty's testimony, the Court analyzed only the mechanics of his calculations, *i.e.*, whether the commercial real-estate group's proposals were the correct comparative metric for the interest-rate differential. Id. at 46-48, 82-84. But as McCarty himself testified, this ***presumes*** the loan terms and pricing would have been altered and ***presumes*** the bank(s) lost money. The only "evidence" that any bank lost money came from Supreme Court's own conclusion. Therefore, Supreme Court's conclusion that the interest rate savings were "the most reasonable approximation" of ill-gotten gains is nothing more than its

own *ipse dixit*. Id. at 82. Likewise, Supreme Court's conclusion that Old Post Office profits must be disgorged because, "[a]s with so many Trump real estate deals, the Old Post Office contract was obtained through the use of false SFCs" is unavailing. Id. at 83. In awarding more than $136 million—without interest—Supreme Court credits the Attorney General's factually incorrect arguments that (1) the interest-rate savings allowed them to invest in the Old Post Office, (2) President Trump would have been in a negative cash position without the interest-rate savings from 2017 to 2020, and (3) the proceeds of the Old Post Office loan were necessary to constructing and renovating the hotel. Id.[25]

3. The Award is Unprecedented

A disgorgement penalty of hundreds of millions of dollars is far beyond that awarded in other cases. While binding caselaw in this state addresses the applicability, rather than the magnitude, of a disgorgement penalty, the Southern District of New York awarded $64.6 million in disgorgement against Martin Shkreli in 2022, a fraction of the award here. FTC v. Shkreli, 581 F. Supp. 3d 579, 591 (S.D.N.Y. 2022). Consequently, any argument that Appellants should have to pay amounts over and above the alleged benefits is unavailing. New York courts have narrowly construed punitive damages and will only award such relief in extraordinary circumstances. The principal award the Attorney General sought and received here, which has somehow inflated over the course of this prosecution from $250 million to $370 million, is punitive on its face.

Worse even, Supreme Court has awarded nearly $100 million in "pre-judgment interest," some of which runs from as early as March 4, 2019, *i.e.*, when the Attorney General initiated her

[25] Supreme Court likewise concludes that President Trump "maintain[ed] the license agreement for Ferry Point [] based on fraudulent financials." Robert Aff., Ex. R at 84.

investigation. See Robert Aff., Ex. A. In doing so, Supreme Court relies on a Second Department case for the proposition that "a defendant's 'corrupt intent or desire for personal profit' is a factor to be weighed in the court's exercise of discretion pursuant to CPLR § 5001." Id., Ex. R at 84, citing Hynes v. Iadarola, 221 A.D.2d 131, 135 (2d Dep't 1996).[26] CPLR § 5001 provides that in an equitable action, pre-judgment interest "shall be computed . . . in the court's discretion" from "the earliest ascertainable date the cause of action existed." In light of "public policy considerations," Supreme Court awarded pre-judgment interest from the date the Attorney General commenced her investigation for the interest-rate differential, the dates of the sales for the OPO and Ferry Point profits, and the date of Weisselberg's separation agreement for his severance payments. Robert Aff., Ex. R at 85. Even assuming, *arguendo*, that this is an equitable action, Appellants have found no case where pre-judgment interest—let alone of this magnitude—has been awarded in an action brought pursuant to Executive Law § 63(12).[27] The sheer size of the penalty and improper, entirely unsupported allusions to corrupt intent and nefarious desire for personal profit make plain that the award, both with and without the pre-judgment interest, is grossly disproportionate and punitive.

Indeed, Supreme Court has trampled Appellants' rights to satisfy a political vendetta. As one national legal observer noted:

---

[26] In Hynes, the Second Department reversed Supreme Court's denial of pre-judgment interest on an award in a civil forfeiture action pursuant to CPLR article 13-A regarding the operation of gambling facilities. Article 13-A expressly permits the recovery of "property which constitutes the proceeds of a crime" or "a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime" after a felony conviction. 221 A.D.2d at 134.

[27] The citation to Executive Law § 63(12) in Schneiderman ex rel. People v. Lower Esopus River Watch, Inc. appears to be a typographical error. 39 Misc.3d 1241(A) (Sup. Ct. Ulster Cty. 2013). The two other courts in this state that expressly contemplated pre-judgment interest on an Executive Law § 63(12) claim declined to award it. People v. Allen, 2021 N.Y. Misc. LEXIS 468, at *24 (Sup. Ct. N.Y. Cty. Feb. 4, 2021); State by Abrams v. Lodato, 156 Misc. 2d 440, 444 (Sup. Ct. Dutchess Cty. 1993).

> I stand by my position that New York State has violated Donald Trump's First Amendment freedom of expression rights; his rights under the due process, equal protection, excessive fines, and Bill of Attainder Clauses; and that he has been stripped of the liberty of occupation that is necessary to protect his 'Life, Liberty, and the pursuit of Happiness.' Because New York State's civil fraud verdict interferes with Former President Donald Trump's right to run for President, the U.S. Supreme Court should hear this case as fast as possible.[28]

C. Executive Law § 63(12) Does Not Authorize the Punitive and Overbroad Relief Imposed

Executive Law § 63(12) provides, in relevant part:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate *persistent fraud* or *illegality in the carrying on*, *conducting or transaction of business*, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order *enjoining the continuance of such business activity or of any fraudulent or illegal acts,* directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.

Executive Law § 63(12) does not itself expressly authorize disgorgement.[29] Nor does Executive Law § 63(12) permit purely punitive relief against a business entity whose principal business activities are legal and appropriate simply because certain discrete transactions are determined to

---

[28] Steven Calabresi, *Former President Donald Trump's New York State Civil Fraud Verdict*, The Volokh Conspiracy (Feb. 23, 2024), available at: https://reason.com/volokh/2024/02/23/former-president-donald-trumps-new-york-state-civil-fraud-verdict/.

[29] In State by Abrams v. Solil Mgt. Corp., the court concluded that the plaintiff was "not entitled to punitive damages or treble damages, or both…Executive Law § 63 (12) does not provide for either of these extraordinary remedies and [Plaintiff] is limited to obtaining restitution or compensatory damages." 128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985) (internal citations omitted); see also State by Lefkowitz v. Hotel Waldorf-Astoria Corp., 67 Misc. 2d 90, 92 (Sup. Ct. N.Y. Cty. 1971) (denying a demand for treble damages because "[t]he Executive Law provides for restitution only"). Likewise, the court in People ex rel. Spitzer v. Direct Revenue, LLC, in a special proceeding brought pursuant to Executive Law § 63(12), General Business Law §§ 349 and 350, Penal Law § 156.20, and New York common law, held that the state was "strictly limited to recovery as specifically authorized by statute." 19 Misc. 3d 1124(A) at *7-8 (Sup. Ct. N.Y. Cty. 2008). To the extent disgorgement was even available, "it may only be granted in an amount related to the actual damages caused by the misconduct," since "[d]isgorgement of respondents' profits to the state would effectively constitute punitive damages not authorized by statute." Id. at *8 (internal citations omitted).

be "fraudulent or illegal." Executive Law § 63(12) was designed to address discrete conduct that is demonstrably and objectively misleading, false, or fraudulent and harmful to the public. See, e.g., People by James v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023); People by James v. Image Plastic Surgery, LLC, 210 A.D.3d 444 (1st Dep't 2022).

In every case where a court has granted a permanent injunction pursuant to Executive Law § 63(12), courts have limited the relief to only enjoining the specific activity from which the fraud arose. See, e.g., People by James v. N. Leasing Sys., Inc., 70 Misc. 3d 256, 279-280 (Sup. Ct. N.Y. Cty. 2020), aff'd, 193 A.D.3d 67 (1st Dep't 2021); Matter of People v. Imported Quality Guard Dogs, Inc., 88 A.D.3d 800, 801-802 (2d Dep't 2011), Matter of People v. Veleanu, 89 A.D.3d 950, 950-951 (2d Dep't 2011), State v. Fashion Place Assocs., 224 A.D.2d 280, 280-281 (1st Dep't 1996). Likewise, in all such cases, the Attorney General alleged the defendants engaged in fraudulent conduct directed at the public that resulted in serious economic and other harm to consumers.

Here, there was no fraudulent enterprise that targeted the public and harmed consumers. Rather, the crux of the Attorney General's case is the purported submission of allegedly inflated SFCs to sophisticated lenders for the purpose of obtaining favorable interest rates on loans. Robert Aff., Ex. R at 1. The statutory relief is therefore limited to enjoining that conduct, which, if any existed, is fully accomplished by imposition of the monitorship.

To make matters worse, the penalty Supreme Court imposed improperly aggregated estimates of "gain" under multiple speculative theories the Attorney General proffered at trial. By way of illustration, Supreme Court punished Appellants for entering into the Old Post Office loan by awarding the sum of both (1) their purported interest-rate savings and (2) their "profits" from the sale of Old Post Office. If Appellants improperly "gained" interest-rate savings, then

the amount of the interest-rate differential alone would serve to make any purportedly aggrieved party whole. To also order disgorgement of "profits" for the sale of the same property is duplicative and, thus, purely punitive.

D. The Disclaimers Negate Any Indicia of Intent to Defraud or Materiality

Finally, Supreme Court also continues to ignore the import of the disclaimers contained in the notes to the SFCs. Specifically, the first note to each SFC advised its user, *inter alia*, that:

> Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

Robert Aff., Ex. Q, FF ¶ 436. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFCs from the year 2011 through 2020. Id. at ¶ 438.

This language informs the user that the statements contain estimated values and discloses the limitations of those estimates in clear, unequivocal language. Appellants' expert witness Eli Bartov described the language as the "equivalent of the [S]urgeon [G]eneral's warning," and President Trump himself explained it as instructing the bank "very strongly, [to] do your own due diligence. Do your own work. Do your own study. Don't take anything from this statement for granted." Id. at ¶¶ 444-446. The Court nonetheless summarily rejected this ***unrebutted testimony***[30] by holding that the "defense" had been "previously rejected . . . by this Court in

[30] Supreme Court was simply not free to disregard unrebutted testimony. See generally Ober v. Rogers-Ober, 287 A.D.2d 282, 283 (1st Dep't 2001) (Saxe, J. dissenting); O'Malley v. Campione, 70 A.D.3d 595, 595 (1st Dep't 2010).

several decisions and orders (subsequently affirmed by the Appellate Division)." Id., Ex. R at 59. There was therefore simply no basis to support this manifest error.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant a stay of enforcement of Supreme Court's Judgment entered on February 23, 2024, pursuant to CPLR § 5519(c) pending appeal, and grant any other such and further relief it may think proper.

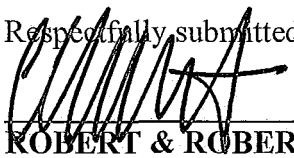
Dated: New York, New York
February 28, 2024

Respectfully submitted,

HABBA MADAIO & ASSOCIATES, LLP
Alina Habba
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: ahabba@habbalaw.com
mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: New York, New York
February 28, 2024

Respectfully submitted,



ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald J. Trump, Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC