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

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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)

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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

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[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,

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Dated: New York, New York
October 6, 2023

Respectfully submitted,

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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.

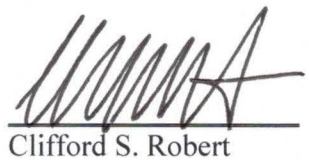
29. On September 27, 2023, Supreme Court held a pre-trial conference. At the conference, Supreme Court agreed to extend the time for the parties to submit potential receivers to oversee dissolution of the relevant entities from 10 days to 30 days. Annexed hereto as **Exhibit O** is a true and correct 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 A

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.

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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'").

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[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.

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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

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[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.

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[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%.

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[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.

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[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.

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[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

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[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

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[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

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[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 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
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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

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: _____
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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

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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]

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[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,

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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

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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.

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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.

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[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

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[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.

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[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
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

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Rules and Statues

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.

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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 OF DEFENDANTS DONALD J. TRUMP, JR. AND ERIC TRUMP IN SUPPORT OF MOTION TO DISMISS COMPLAINT

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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,

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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,

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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

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Rules

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
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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®.

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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

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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
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Respectfully submitted,

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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

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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

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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

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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

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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

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Rules and Statues

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.

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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.

EXHIBIT F

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

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[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 G

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

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.
----------X

Index No. 452564/2022

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the annexed Decision and Order was duly entered by the Clerk of the Supreme Court, Appellate Division, First Department, on June 27, 2023.

Dated: New York, New York
June 27, 2023

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: */s/ Bennet J. Moskowitz*
Bennet J. Moskowitz
875 Third Avenue
New York, New York 10022
(212) 704-6000
Bennet.Moskowitz@troutman.com

Attorneys for Ivanka Trump

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 H

At an IAS Part 37 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse located at 60 Centre Street, New York, NY on the __ day of September 2023.

PRESENT: HON. ARTHUR F. ENGORON, J.S.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,

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

Motion Seq. # 25

~~[PROPOSED]~~ **ORDER TO SHOW CAUSE**

ORAL ARGUMENT REQUESTED

Upon reading and filing the annexed Affirmation of Urgency of Clifford S. Robert dated September 5, 2023, the Affirmation of Clifford S. Robert dated September 5, 2023 and the exhibits annexed thereto, the accompanying Memorandum of Law dated September 5, 2023, and upon all pleadings, papers and proceedings heretofore had herein, and sufficient cause having being shown,

LET Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York ("Plaintiff"), show cause before this Court at IAS Part 37 of the Supreme Court

of the State of New York, County of New York, to be held at the courthouse located at 60 Centre Street, New York, New York, Room 418, on the __ day of September 2023 at __ a.m., or as soon thereafter as counsel may be heard, why an Order should not be made and entered:

(a) pursuant to Civil Practice Law and Rules ("CPLR") § 2201, briefly staying the trial of this action, which is scheduled to begin on October 2, 2023, until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment; and

(b) awarding such other and further relief as this Court deems just, equitable and proper (the "Application").

ORDERED that Defendants' request for immediate relief in the form of temporarily staying the trial pending the hearing ~~and determination~~ of this Application is granted; and it is further

J.S.C.

ORDERED that opposition papers, if any, are to be served on Defendants' counsel via e-filing on or before the __ day of September 2023; and it is further

ORDERED that service of a copy of this order and the papers upon which it is based, be made on or before the __ day of September 2023, via e-mail upon plaintiff and that such service shall be deemed good and sufficient notice of this Application.

ENTER :

_____
J.S.C.

Decline to sign; Defendants' arguments are completely without merit.

2 SEP 06 2023

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

EXHIBIT I

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

(SUBMITTED BY MOVING PARTY)

Date: September 13, 2023 Case # 2023-04580

Title of Matter: Donald J. Trump, et al. v. Hon. Arthur F. Engoron, et al. Index/Indict/Docket # _____

Appeal by _____ from ☐ Order ☐ Judgment ☐ Decree of ☐ Supreme ☐ Surrogate's ☐ Family County _____ Court entered on _____,20_____

Name of Judge _____ Notice of Appeal filed on _____,20_____

If from administrative determination, state agency _____

Nature of action or proceeding: Original Proceeding

RECEIVED
SEP 14 2023
SUP COURT APP. DIV.
FIRST DEPT.

Provisions of ☐ order ☐ judgment ☐ decree appealed from _____

This application by ☐ appellant ☐ ~~respondent~~ is for an interim stay of proceedings pending a full panel determination of Article 78 Petition brought before this Court in nature of a writ of mandamus / prohibition.

If applying for a stay, state reason why requested This Court's decision and order of June 27, 2023, required dismissal of certain claims based on the statute of limitations. Respondents Supreme Court and Attorney General have refused to comply with this Court's decision.

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 Unsigned OTSC

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 and Michael Madaio	Kevin Wallace, Esq. and Colleen Faherty, Esq.
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(Do not write below this line)

DISPOSITION

Interim stay of trial granted w/o any determination of the merits. Submit motion to panel on an expedited basis.

DS
Justice DF

9-14-23
Date

Motion Date 9/25 Opposition 9/20 Reply 9/25 10 am

EXPEDITE ✓ PHONE ATTORNEYS ✓ DECISION BY

ALL PAPERS TO BE SERVED PERSONALLY.

EAH
Court Attorney

"Revised 10/19"

EXHIBIT J

Supreme Court of the State of New York
Appellate Division, First Judicial Department

PRESENT: Hon. Troy K. Webber, Justice Presiding,
David Friedman
Lizbeth González
Manuel J. Mendez
Martin Shulman, Justices.

In the Matter of the Application of	Motion No. 2023-04028 Case No. 2023-04580
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, Petitioners, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules, -against- The Honorable Arthur F. Engoron, J.S.C., and the People of the State of New York by Letitia James, Attorney General of the State of New York, Respondents.	

A petition having been filed with this Court on September 14, 2023, seeking a writ of mandamus (1) directing that respondent The Honorable Arthur F. Engoron render a determination as to the scope of the claims to be tried in the underlying action entitled *People v Trump et al.*, New York County Index No. 452564/22, and (2) finding that said respondent's decision to proceed with the trial in said action, without taking certain steps that are alleged to be necessary to comply with the decision and order of this Court entered on June 27, 2023, is in excess of Supreme Court's jurisdiction,

And petitioners having moved for a stay of the trial in the underlying action, pending the hearing and determination of the aforesaid proceeding,

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 for a stay of trial is denied; the interim relief granted by a Justice of this Court entered on September 14, 2023, is hereby vacated.

ENTERED: September 28, 2023

Susanna Molina Rojas
Clerk of the Court

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, 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

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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

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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,

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EXHIBIT L

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

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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,

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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
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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, -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

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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

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[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

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[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,

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[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:

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[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

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[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,

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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

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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):

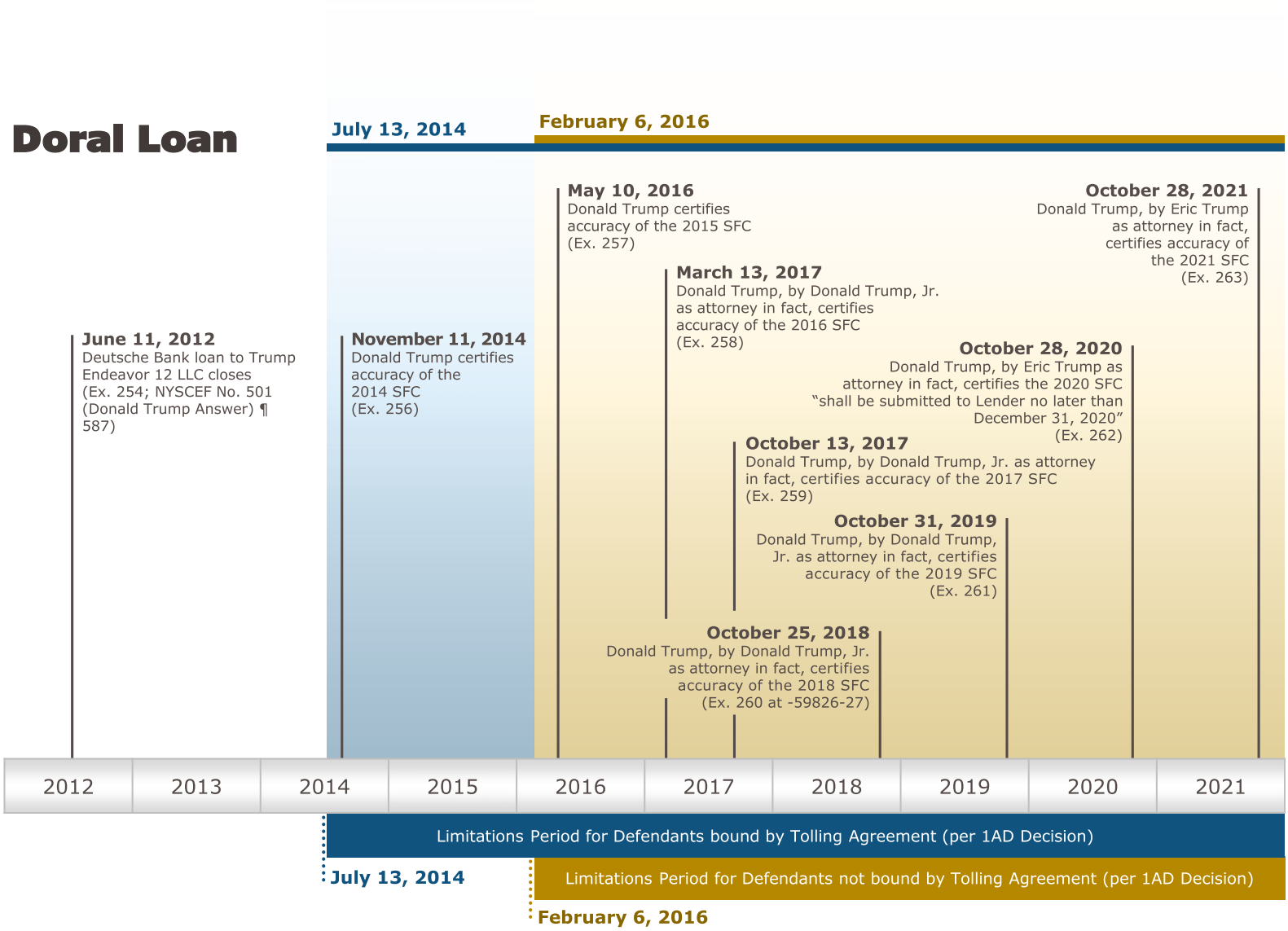
1	5	7	14	15	17	19	21	23	24	25	26
33	34	35	38	39	40	41	43	44	46	48	50
51	53	54	55	57	58	60	61	62	63	64	66
72	75	76	78	79	83	84	85	87	97	103	104
105	106	107	114	117	119	120	121	122	125	126	128
129	132	133	141	142	143	144	147	148	149	150	151
152	177	197	198	199	200	201	202	205	206	207	208
209	210	212	213	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:

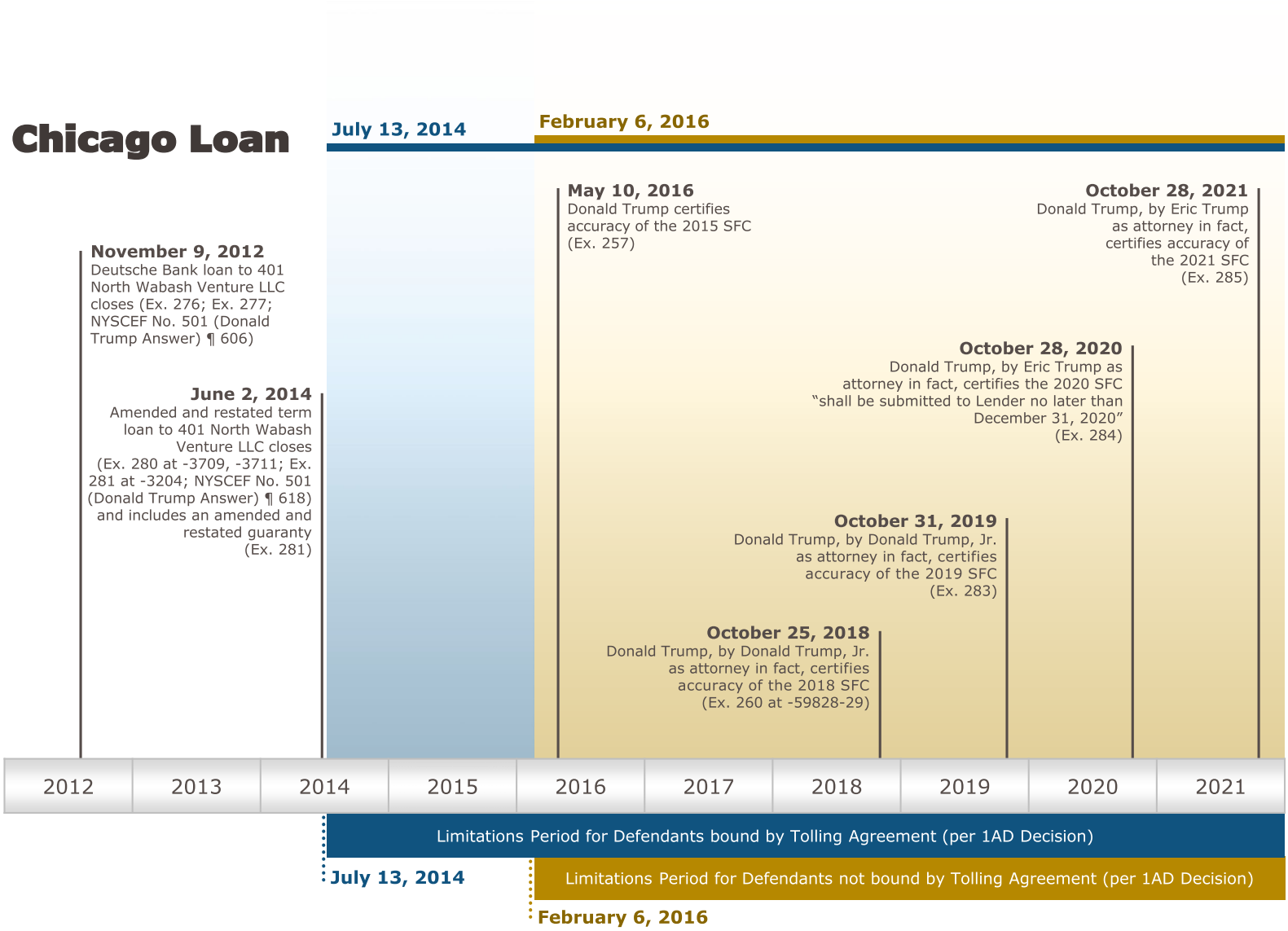
20	The intended citation is Exhibit 34
185	The 2019 SFC estimated the total current value of Club Facilities and Related Real Estate at $2,182,200,000.
194	The asserted fact describes the 2021 Statement.
228	The agreement also included the "Events of Dissolution" language cited by Defendants.
266	The 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

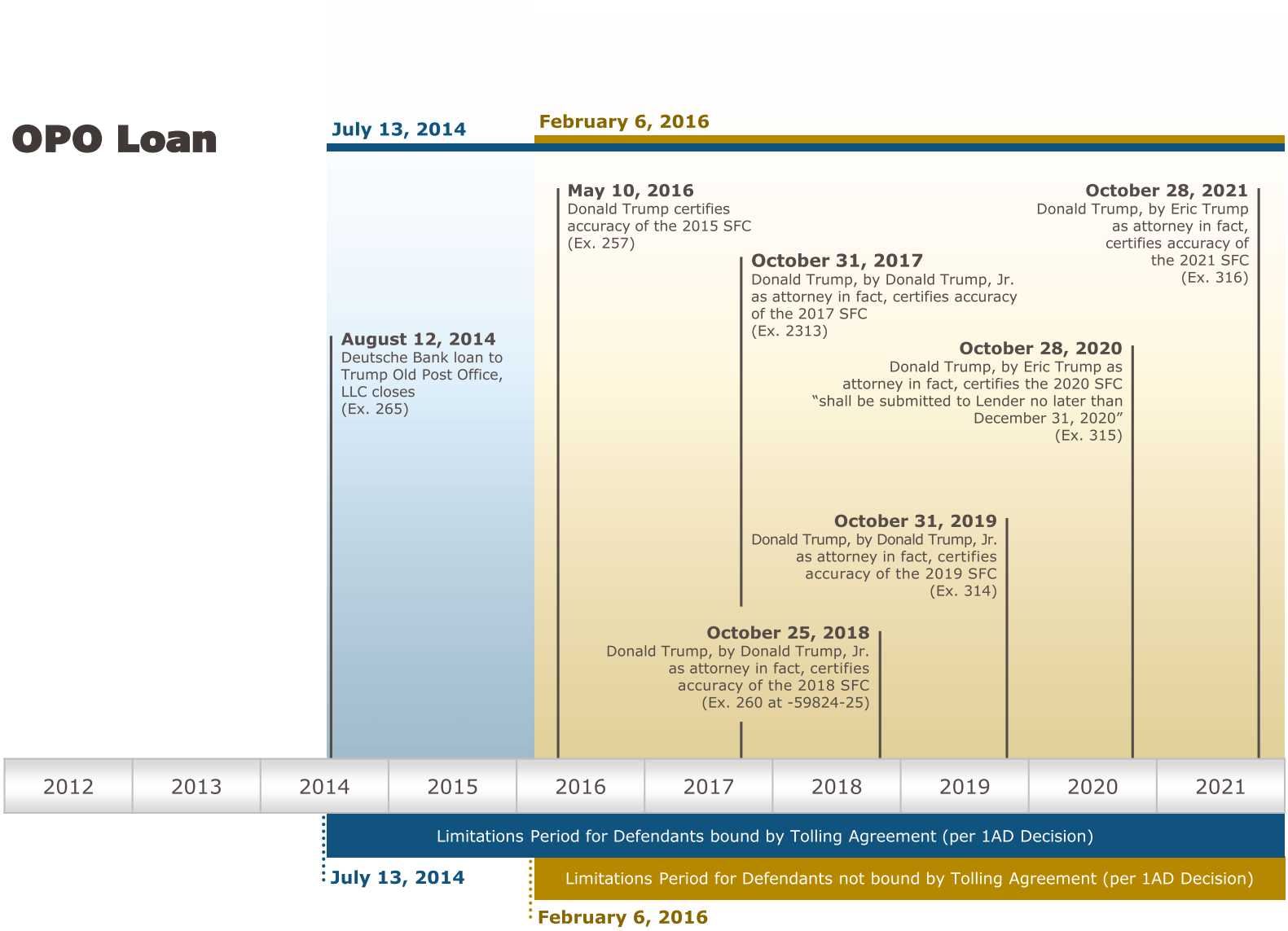
Doral Loan


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

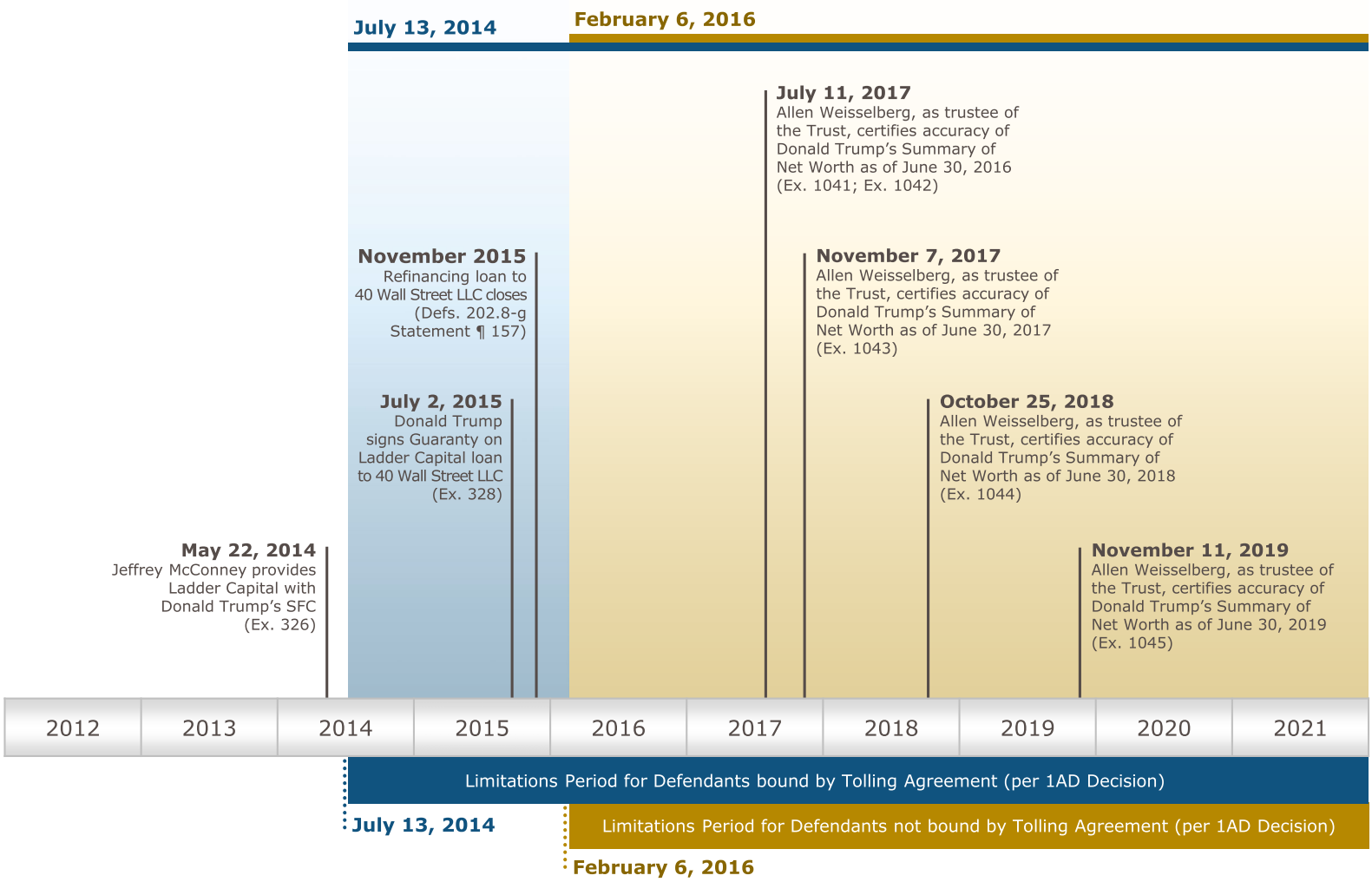
Chicago Loan



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

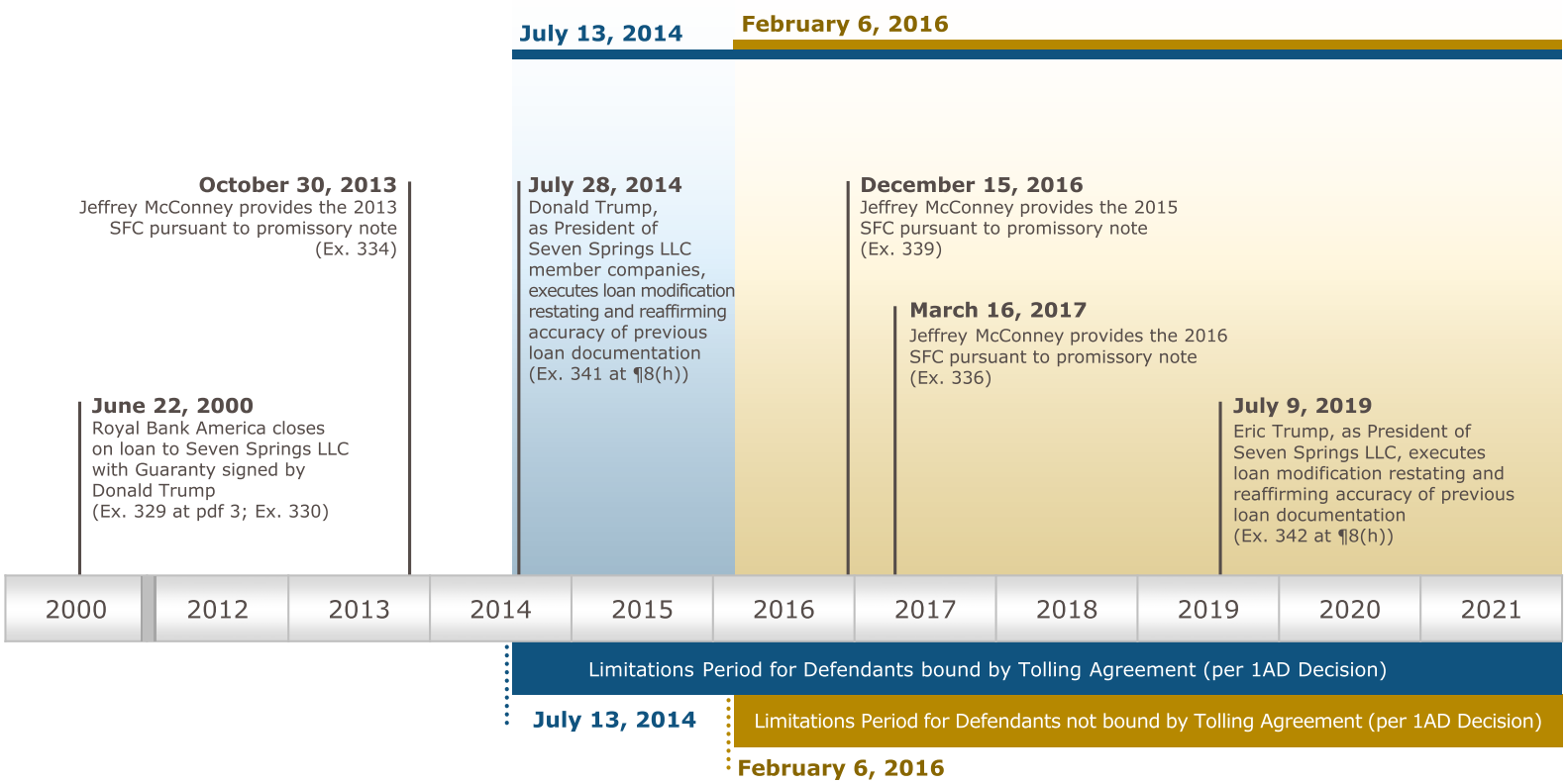


EXHIBIT M

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 **NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that upon the accompanying memorandum of law, rule 202.8-g statement of material facts, and declaration of Colleen K. Faherty with exhibits appended thereto, and upon all the pleadings and proceedings to date, petitioner the People of the State of New York, by Letitia James, Attorney General of the State of New York, will move this Court before the Honorable Arthur Engoron, New York State New York County Supreme Court Justice, at the Supreme Court, Civil Branch, New York County, 60 Centre Street, New York, New York, 10007, on a date set by the Court, for an Order, pursuant to C.P.L.R. § 3212(e), (g):

1. 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; and
2. For such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's Order dated June 9, 2023, any opposing memoranda shall be served by September 1, 2023; and any reply memoranda shall be served by September 15, 2023.

Dated: New York, New York
August 4, 2023

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

cc: Counsel of record

EXHIBIT N

In The Matter Of:

Letitia James, Attorney General of State of New York v. Donald J. Trump & Donald Trump Jr., Et. Al.

Oral Argument
September 22, 2023

Supreme Court State of New York - Civil Term
60 Centre Street - Room 420
New York, New York 10007
(646) 386-3012
SMHarris006@gmail.com

Original File Sept-22 Trump.txt
Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL TERM : PART 37

----------x

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,
Plaintiff(s).
: Index: 452564/2022

- 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, DJG 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(s).
: ORAL ARGUMENT

----------x

60 Centre Street
New York, New York 10007
September 22, 2023

B E F O R E:

HONORABLE ARTHUR F. ENGORON,
J U S T I C E

A P P E A R A N C E S:

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
Attorneys for the Plaintiffs
28 Liberty Street
New York, New York 10005
BY: ANDREW AMER, ESQ.,
KEVIN WALLACE, ESQ.
ERIC R. HAREN, ESQ. &
COLLEEN FAHERTY, ESQ.

(Appearances cont'd on next page)

CONTINENTAL PLLC
Attorneys for the Donald J. Trump Revocable Trust, et al
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BY: CHRISTOPHER M. KISE, ESQ.

ROBERT & ROBERT, PLLC
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526 RXR Plaza
Uniondale, New York 11556
BY: CLIFFORD S. ROBERT, ESQ.

HABBA MADAIO & ASSOCIATES, LLP
Attorneys for Donald J. Trump,
Allen Weisselberg & Jeffrey McConney, et al
1430 US-206 - Suite 240
Bedminster, New Jersey 07921
BY: ALINA HABBA, ESQ.

Also Present:

ALLISON GREENFIELD - Principal Law Clerk

SHAMEEKA HARRIS, CSR, RMR, CLR
KITTY ACOSTA
Senior Court Reporters

Proceedings

THE COURT: Welcome, everyone, including the press and several law students and their professor. The plaintiff in this action is the Attorney General of the State of New York and the defendants in this action are Donald John Trump and various of his associates and businesses. For the purposes of these brief remarks only, I will aggregate all of the defendants. The plaintiff claims that the defendants violated New York State Executive Law Section 6312 by submitting force financial statements to lenders and insurers.

Plaintiffs 200-plus page complaint contains seven causes of action. The first is a standalone Section 6312 claim. The other six causes of action allege that the defendants are liable under Section 6312 for violating various provisions of the New York State Penal Code. Plaintiff seeks to limit defendants ability to conduct business in New York and disgorgement of alleged ill gotten gains.

The defendants claim that the plaintiff does not have capacity or standing to sue, that the financial statements were not false, that even if they were false they contained various disclaimers which made them not misleading and that disgorgement is not an available remedy in this type of case. That's a very basic simplified outline of this case and is not meant to be technical, exact or

complete. For more details, I encourage you to consult the record which is on the New York State electronic filing system finally known as NYSCEF. There are only 1,500 entries so far.

What brings us here today are duly summary judgement motions and a motion for sanctions for frivolous litigation. The premise of a motion for summary judgement is that the movant is entitled to a favorable judgment as a matter of law based simply on the record consisting largely of documents and sworn testimony. If the papers contain any disputed issues of material fact, the Court must deny the motion. Plaintiffs' motion for summary judgement seeks a judgment only on the issue of liability and only on the first cause of action, the standalone Section 6312 claim.

Defendants' motion for summary judgement seeks a judgment dismissing all seven causes of action. Each side has submitted simultaneous moving opposition and reply papers and my staff and I have digested them all. Plaintiffs' motion for sanctions in the form of money essentially claims that defendants have made frivolous, meaning completely and obviously unavailing, arguments. Defendants vigorously oppose that motion as I'm sure you will see soon firsthand.

I will issue a single decision and order disposing of all three of the aforementioned motions by this coming

Proceedings

Tuesday, September 26, 2023. If I grant defendants' motion for summary judgement, the case is over and there will be no trial. If I grant plaintiffs' motion for summary judgement, there will still be a trial of various issues. Until a week ago, that trial was scheduled to commence this Monday, October 2nd and end by Friday, December 22nd, the Friday before Christmas and more importantly Chris Kise's birthday.

Lastly in response to a special proceeding that defendants commenced, a justice of the Appellate Division First Department stayed the trial pending expedited briefing before a full panel of five judges next week. Whenever the trial, if there is to be one, commences, it will not be here in this courtroom. It will be in room 300 what is sometimes called the ceremonial courtroom and which was reasonably dedicated to a named in honor of the late Paul Fineman a colleague of mine who was sent to the Court of Appeals.

Well, I said enough, maybe, more than enough, and I promise to listen very intently to what counsel have to say. Unless counsel have agreed otherwise, I will ask plaintiff to speak first. Please use the microphones, speak closely and directly into them, as I am now doing, and please speak loudly, slowly and clearly. If you do not, you risk a mild admonishment and the need to repeat yourself. A court reporter or two, who have the hardest jobs in this room, will be recording every word. Thank you. Plaintiff.

Please proceed.

MR. WALLACE: Good morning, Your Honor. My name is Andrew Amer. I represent the People in this case. The Attorney General commenced this action exactly one year ago yesterday against Donald Trump, a number of his associates, and his business enterprise after a lengthy investigation revealed two things.

One, that there was rampant fraud in the preparation of Mr. Trump's personal financial statements for an 11-year period from 2011 to 2021 and, two, that the defendants used those fraudulent statements repeatedly and persistently in business transactions with banks and insurance companies to gain financial benefits.

THE COURT: Are you sure your microphone is on?

MR. AMER: It is. I will try to speak closer.

THE COURT: Follow everything I said.

MR. AMER: This motion seeks judgment on the People's first cause of action for fraud and leaves for trial the remaining counts for illegalities. Those are; namely, issuing false business records, issuing false financial statements, and committing insurance fraud and conspiracy to commit those violations of law. And because there is substantial overlap between the facts underlying fraud claim and the facts underlying the other claims, we ask the Court to enter findings of fact pursuant to CPLR

3212 (g) so that the Court can then apply those facts to narrow the issues remaining for trial.

Now from 2011 to 2015, each statement contains the highlighted language 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 known as GAAP for short.

Now, this is a critical representation. It tells the user of the statement that Mr. Trump and no one else bears the ultimate responsibility for preparing the statements in accordance with GAAP. So to the extent that Mr. Trump might seek to blame others or to downplay his role, he cannot do so. The statements in these years say that he bears the responsibility.

Now, for the statements from 2016 to 2021, it is the trustees of his revokable trust who bears the responsibility for the preparation of the statements in accordance with GAAP. Those trustees are Donald Trump Junior and Allen Weisselberg. Again, to the extent that they try to blame others or downplay their roles in the preparation of the statements or disclaim any knowledge of GAAP, as in the case of Donald Trump Junior at his deposition, that does not shield them from liability. The statements represent that the trustees bear the ultimate responsibility for the presentation of the statements in

accordance with GAAP during these years.

Now, each of the statements from 2011 to 2021 contains another critical representation. Each represents to the user that Mr. Trump's assets are, quote, stated at their estimated current value. That is a key term in the world of accounting and valuation, estimated current values. There are two facts about estimated current values that are undisputed in this case and they are up on the screen now. This is from our 202 -- this is from actually defendants' 202 response.

The first fact, paragraph 30, is that ASC 274, which is the GAAP standard that applies to personal financial statements, that ASC 274 requires asset values reported in personal financial statements to be based on estimated current value. Defendants' response was undisputed so that is deemed to be admitted for purposes of this case.

The second fact, paragraph 31, we stated that GAAP defines estimated current value as, quote, 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. Defendants' response to that was undisputed so that is now a fact that is admitted for purposes of this case.

So, under GAAP ASC 274, the financial statements of

Mr. Trump will require to state the assets at their estimated current value and, in fact, the statements all represent that that is what they do. So in that regard, they, on their face, purport to comply with GAAP. And based on the definition of estimated current value that we've just looked at and is agreed to by the parties, it means to the user that all of the assets in Mr. Trump's personal financial statements are stated at the amount that each asset could be exchanged between a willing buyer and a willing seller who are fully informed and not under duress.

But here, Your Honor, is where the defendants' case goes off the rails. The principal defense put forward by Mr. Trump and his associates to justify the inflated values in the statements completely disregards the concept of estimated current value. They say valuing assets is completely subjective. There is no true value for the assets and that Mr. Trump was free to value the assets as he saw fit from his perspective. And so that's what they contend he did.

But, his perspective, Your Honor, is light years away from what estimated current value is. As defendants put it in their brief, which is on the screen, assets are valued, quote, 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, do

not, not on a year-to-year time horizon but often decades ahead.

As an indication of just how far defendants take this position that assets have no objective value, we just need to look at the response they gave to the 202 assertion of fact about the square footage of Mr. Trump's triplex which they tripled to 30,000 square feet early on to inflate the value. Here's what they say to the assertion in reality that triplex was 10,996 square feet. Their response disputed. Defendants object insofar as the calculation of square footage is a subjective process that could lead to different results or opinions based on the method employed to conduct a calculation.

In defendant's world, there is no objective truth even in the square footage of a New York City condominium where the square footage is documented in an offering plan that's on file with our office. To borrower the literary reference Your Honor put in one of your earlier decisions, defendants have clearly stepped through the looking glass. But on this side of the looking glass, Mr. Trump and his trustees represented in the statements that the values are stated at their estimated current value which is a defined term that means the amount that would be agreed to between a willing buyer and a willing seller who were fully informed an not under duress not whatever value Mr. Trump decides is

the number he wants to see in the statement.

As the Court is aware from defendants' papers, valuing an asset from Mr. Trump's perspective is what defendants and their experts refer to by the terms as if or investment value. Now, there's one more valuation term that we need to discuss and define before turning to how Mr. Trump inflated his assets that are the subject of our motion and that is the term market value. That is the term that is in many of the appraisals that were in the Trump organizations files and which defendants simply ignore.

Now, here's what defendants' expert Dr. Steven Laposa had to say about how market value relates to estimated current value.

"QUESTION: Let me go back and make sure we're clear. Is estimated current value the same as market value?

"ANSWER: Yes."

This is important because defendants own expert is saying that the basis on which appraisals are typically performed market value is the same as estimated current value which is what the statements represent Mr. Trump assets are presented to be. And here's what Dr. Laposa had to say about how those terms compared to investment value.

"QUESTION: The concepts of investment value and market value are fundamentally different do you agree with that statement?

"ANSWER: Yes."

So where does that leave us? The statements say assets are stated at their estimated current value which is the same as market value. Defendants say Mr. Trump valued his assets based on his creative and visionary perspective on an "as if" basis which Dr. Laposa tells us is a fundamentally different valuation method. What that means is there's a complete disconnect between what the statements represent the asset values are, estimated current value, and what Mr. Trump says they are "as if".

Now, could it be possible for Mr. Trump to depart from GAAP and use the "as if" methodology to value all of his assets. In theory, sure that's possible, but you would need to then disclose in the statements to the users that that is what he is doing and that's not what he told banks and insurers in his statements. He told them the values were estimated current values in accordance with GAAP and that's the lens through which the Court should assess whether the values listed in the statements were false and misleading.

Now, the People submit that representing two banks and insurers that asset values are stated at their estimated current value willing buyer, willing seller, fully informed, not under duress. But providing instead "as if" values based on Mr. Trump's creative and visionary perspective

going decades into the future, is a clear bait and switch that renders the statements false and misleading without more. But in fact, there is much more. There is undisputed evidence showing that regardless of the method used Mr. Trump and his trustees grossly inflated the value of his assets and, therefore, the statements are false and misleading and they have the capacity or tendency to deceive.

For purposes of this motion, we focus on these 12 assets that are up on the screen, and we rely on a subset of the evidence that which is undisputed which is what we must do on a summary judgement motion. That means we are not relying on the analysis done by our experts. We are not reviewing other assets that are in the statement that are also inflated. We are not considering the full compliment of deceptive practices that defendants employ to inflate Mr. Trump's net worth.

These are the four deceptive practices that we are focusing on for these 12 assets. Disregarding appraisals, disregarding legal restrictions on the properties using erroneous data as input to calculate the property values and using methods that are contrary to what the statements represent are the methods that were used. But before getting to the 12 assets, let's look at the big picture.

This graph shows vividly the effect on Mr. Trump's

net worth based on how Mr. Trump and his trustees inflated just the 12 assets and just using the four deceptive practices. This is what the undisputed evidence shows. Substantial inflation of value in every year ranging from a low of $812 million in 2020 to a high of $2.28 billion -- sorry, $2.2 billion in 2014.

Now, let's turn to the assets and discuss how they were inflated by Mr. Trump and his associates. Let's first talk about the triplex. The triplex was inflated between 114 million to $207 million between 2012 and 2016 because Mr. Trump used a figure for the square footage of his apartment that was tripled what it actually was. Here is Mr. Weisselberg testimony on the point.

"QUESTION: I think we agreed that 30,000 feet is a mistake and that the actual size of the triplex was 10,996 square feet; is that right?

"ANSWER: That is correct."

So, apparently, Mr. Weisselberg accepts that square footage is, in fact, an objective measure of the size of an apartment. Now, defendants say this mistake is immaterial but the graph we just looked at shows otherwise. They also say it was an innocent mistake. Now, that doesn't matter for purposes of the court's assessment of whether the value was false or misleading and have the capacity or tendency to deceive, but the evidence actually shows that this was an

intentional ploy to inflate the asset.

In paragraphs 44 and 45 of our 202 statement, we establish that Allen Weisselberg, Donald Trump Junior, and Eric Trump all were sent an e-mail from the Forbes reporter in March of 2017 before the 2016 financial statement was finalized and issued that pointed out the error in the square footage number. Nevertheless, as the evidence shows, Allen Weisselberg and Donald Trump Junior, days after receiving this e-mail, instructed Mazars to keep the triplex value as is based on the wrong square footage for purposes of the 2016 statement of financial condition.

THE COURT: I'm not sure everybody knows who Mazars is.

MR. AMER: Mazars was from 2011 to 2020 the outside accounting firm that was tasked with the engagement to compile the statements. Defendants failed to put in any evidence to refute these facts which shows that this error was, in fact, intentional. Seven Springs is Mr. Trump's estate in Westchester. In 2011 to 2014, this asset was inflated by over $200 million in each year based on the deceptive practice of disregarding appraisals.

Now, defendants had a number of appraisers provide values for Seven Springs during the period 2011 to 2015 all of which were less than $57 million. Defendants do not dispute that they had these values from appraisers. They

just say that they were under no obligation to pay any attention to these appraised values and could instead use the "as of" values that Mr. Trump came up with purportedly reflecting investment potential of the property from Mr. Trump's creative and visionary perspective but that's not a valid defense in this case.

Mr. Trump represented in the statements that the values were stated at their estimated current value not at their fundamentally different "as if" value. So defendants cannot justify the inflated value on a basis that conflicts with Mr. Trump's representation in the statements.

THE COURT: So is it your position that if there is an appraisal out there or that Trump people have that has to be taken into consideration and/or disclosed.

MR. AMER: Yes, Your Honor. And I would go further to say that in the absence of Mr. Trump and his trustees going out and coming up with a competing appraisal, they have no basis to disregard what a professional appraiser says is the estimated current value of the property.

THE COURT: So it has to be disclosed.

MR. AMER: Yes, Your Honor.

THE COURT: All right. We'll hear from the defendants on that.

MR. AMER: It has to be disclosed in this case because Mazars asked to be provided with any appraisals that

they had in their files. So that is a key point. Donald Bender has testified, and it hasn't been refuted by any evidence, that he requested that the company provide him, along with the rest of the backup material, each year with any appraisals that they had in their files. And so that, in our view, placed an obligation on Mr. Trump and his trustees to provide any appraisals they had.

I should point out though whether they provided the appraisals to Mazars or not we know the appraisals were in their files and this court should certainly look to those appraisals in the absence of a competing appraisal for what the estimated current value is for a property especially if the only other value they used to justify what they did is an "as if" value which is fundamentally different and doesn't consider willing buyer, willing seller fully informed not under duress.

THE COURT: Let's go back to the triplex for a second. I think most New Yorkers would call it a triplex but we'll call it triplex. I understand your position that it couldn't have been an honest mistake because there was the Forbes article or e-mail. But speaking maybe philosophically, are honest mistakes actionable? Are you liable if you make an honest mistake under 6312?

MR. AMER: The question under 6312 is was the value false and misleading. You don't need to show scienter under

6312. Whether it was an honest mistake or not, the value that was produced from using three times the actual apartment size was false and misleading.

THE COURT: Interesting to know that Justice Oliver Wendell Holmes said, "even a dog knows the difference between being kicked and being tripped over." Normally in life we think of what -- there's a difference between lies and misstatements, but I understand your position.

MR. AMER: I think, Your Honor, if you go back to the representation in the statement, the representation is that the values -- that the statement is a fair presentation of Mr. Trump's financial condition. And if they made mistakes, innocent or not, they are responsible if that representation is not true. So, they need to live by the representation. If that means they had to exercise more care in the way they calculated these values to ensure that there weren't any mistakes made, then that is what they should have done because that is the representation they made to banks and insurers and any user of these statements.

THE COURT: I don't want to belabor the point but saying that it can't be false and misleading certainly makes the world a simpler place and you don't have to try issues, well, what did you really know. It has to be true or it's either true or it's false and that's your position, okay.

MR. AMER: Yes, Your Honor. And also, of course,

under the Northern Leasing case, the question becomes when the statements -- did the statements have the capacity or tendency to deceive. If they're false due to an innocent mistake or not and they're false by a wide margin, then the answer to the question is, yes, they do have the tendency or capacity to deceive.

So, going back to Seven Springs and the appraisals, there were all of these appraisal appraised values. There were no disputes they had these appraised values. We took the conservative approach and we used the highest appraised value for the property, the market value that Cushman derived in 2015. That put the market value of the entire property at 56.5 million, way lower than Mr. Trump's "as if" values.

It is our position, and we submit, that in the absence of any competing appraisal from the defendants showing the estimated current value or market value of the property, the Court should accept the Cushman appraised value as the estimated current value of the property and on that basis find that the values in the statements that are hundreds of millions of dollars higher from 2011 to 2014 were false and misleading.

Now, on 40 Wall Street, Mr. Trump's leasehold property in lower Manhattan, Mr. Trump used the same deceptive practice to inflate the value. He disregarded

appraisals and the inflation of the value was by 195 million to 325 million depending on the year.

Now, in paragraph 114 of our 202 statement, we established that there were five appraised values for the property from 2011 to 2015. They are up on the screen. These were hundreds of millions of dollars less than Mr. Trump's "as if" values. Again, defendants do not dispute that these appraised values existed for these years in these amounts. Instead, they say that Mr. Trump, as a land developer, took optimistic values of 40 Wall Street and its future potential. Again, the statements represented the value of 40 Wall Street was stated at its estimated current value based on market conditions and willing buyer and willing seller not at the fundamentally different "as if" values Mr. Trump came up with that are divorced from what a willing buyer and willing seller would view the property to be worth.

Again, the Court should find that the appraised values reflect the estimated current value of the property and on that basis find that the values in the statements for this property in these years were false and misleading. That gets us to Mar-a-Lago, Mr. Trump's property down in Palm Beach, Florida. The inflation of Mar-a-Lago is simply staggering between 328 million to $714 million based on the year. The inflation is the result of two deceptive

practices, disregarding appraisals and disregarding the legal restriction that prevents Mr. Trump from using the property for any purpose other than a social club.

There is no dispute that appraisals were done every year on the property by Palm Beach County as set forth in paragraphs 200 of our 202 statement and it is up on the screen. Defendants argue those appraisals were for property tax assessment purposes and have nothing to do with estimated current value or market value.

Your Honor, that's simply not true. Let's look at the county appraisal. Here's a sample. This one is for 2021. It says, right on the face of the document, that it provides the market value and it gives a definition of market value. It says, it's the value -- the value is the most probable sale price for your property in a competitive open market on January 1, 2021, in the case of this appraisal. It is based on a willing buyer and a willing seller, close quote.

(Continued on next page)

MR. AMER: So this is the same definition that is used for estimated current value under ASC 274. Based on applying this definition, the county appraiser would have considered all of the restrictions that existed on the property because that is what a willing buyer and a willing seller would consider. The county appraisal should be the end of the analysis and the Court should find they reflect the estimated current value of the property. But even if the Court were to assess Mr. Trump's much larger values based on his claim that he valued the property as if it could be sold as a private residence, because that's what he claims he did, it still doesn't hold up the scrutiny because Mr. Trump is ignoring legal restrictions that exist on a property.

This is the 2002 National Trust Deed. Mr. Trump deeded away his rights to develop the property for any usage other than club usage and consistent club usage restriction, the statements, themselves, describe the property as a social club without any mention of the ability to sell the property or use the property as a private residence. This is from our 202 statement, where we said there is no discussion of the use of Mar-a-Lago as a private home or a residential component of the property in the 2012 statement. We say the same thing for the other statements, and the Defendant's response is undisputed.

Let me step back a minute so we can all fully appreciate the duplicitous nature of the Mr. Trump's position with respect to Mar-a-Lago. Mr. Trump agrees, even before 2002, but certainly as of 2002 to onerous restrictions on the property deeding away his right to use it for anything other than a social club, which includes not using it as a private residence.

Palm Beach County then assesses the market value of the property, taking into consideration all of these rights that Mr. Trump deeded away, and the result is lower assessments and lower property taxes. This is all to Mr. Trump's benefit because now he is paying lower property taxes. But when it comes to his statement of financial condition, each year while he is paying lower taxes, benefitting from the County's appraisal at a lower value because of his restrictions, he is disregarding those legal restrictions and he is throwing out the county's appraisal and valuing the property as if it were a private residence, which is exactly the right he deeded away in order to get the benefit of lower property taxes in the first place.

THE COURT: Hold on one second.

Because we keep using the terms "appraisal, assessment," I just want to make clear, and the lawyers probably understand this, I am not here to decide whether one appraisal, the OAG's or the other appraisal, the Trump

appraisal, is the right appraisal. That would probably be an issue of fact. But what I understand Mr. Amer to be saying is that there were appraisals that the Trump Organization or people knew about but did not disclose. Is that a fair statement as you understand everything?

MR. AMER: That's correct, but I go one step further.

THE COURT: Go ahead.

MR. AMER: There is no Mar-a-Lago appraisal coming from Defendants to justify Mr. Trump'S as-if value. So this is not asking Your Honor to decide between the County's appraisal and somebody else's appraisal. This is asking you to confirm that the County's appraisal is the estimated currently value that should have been used consistent with the representation in the statement. The Court should not allow Mr. Trump to play it both ways. He shouldn't be allowed to embrace the restrictions and the County's lower appraisal to benefit in the form of paying lower property taxes and, at the same time, using as-if value that is not based on any appraisal in order to inflate the value in the statements.

Let's talk about Aberdeen, which is Mr. Trump's golf course in Scotland. For Aberdeen, a huge portion of the value is attributable to developing and selling private homes on the property, but Defendants ignored the legal

restrictions on the number of private homes that were approved for development by the Scottish authorities when doing his calculation.

As we can see, the statements represent that only 500 single family residences were approved for sale. Yet, the spreadsheet, which is the bottom portion of the slide, shows that the calculation used to value the property was based on 2,500 homes, not 500. So this, in fact, is an even more egregious than the tripling of the square footage of the triplex.

THE COURT: The math is simple.

MR. AMER: It is a quintupling of the number of the approved homes.

Now, Defendants don't offer any excuse for this use of 2,500, instead of 500, and it vastly inflated the value of this property. Based on using a number of homes that was five times what had been approved, the Court should find that the Aberdeen values were false and misleading.

There are two properties that are owned by Formato Partnership Interest in which Mr. Trump has a 30 percent interest. On these properties, Defendants inflated the values based on a combination of disregarding appraisals in a number of years and in 2018 and 2019 using the wrong capitalization rate, which is one of the two components that appraisers use to calculate the value of a building. It is

capitalization rate and it is net operating income.

Now, for the Formato Properties, as established in paragraph 256 of our 202 statement, there were appraised values for one of the two properties, 1290 Avenue of the Americas, here in Midtown Manhattan ranging from $2 billion to $2.3 billion for 2012 through 2016 and for 2021. Yet, Mr. Trump valued his 30 percent interest in the building based on a value that was at least $500 million more than these appraised values. Again, there is no competing appraisal that provides the as-if value that Mr. Trump used. Defendants do not dispute that these values existed. They simply disregarded them.

The Court, again, should reject Defendants' arguments that Mr. Trump and his trustees were simply free to ignore these appraised values and should, instead, accept these appraised values as reflecting the estimated current value of the property.

Now, for 2018 and 2019, the values were inflated for a different reason. I mentioned a point about the capitalization rate or CAP rate for short, and it is based on selecting a different CAP rate than the one that they represented they were using. As represented in the statements in these years, the valuation was derived at by using a CAP rate that applies to something called a stabilized net operating income. So if you are going to do

that, you need to take the CAP rate from a comparable building, if that's the method you are using, that applies to the stabilized net operating income based on what they represented they were doing. But as established in paragraph 262 of our 202 statement, Defendants did not use the CAP rate that applied to stabilized net operating income. They used a lower CAP rate. Now, the difference between the two CAP rates is only about two percentage points, but the difference between those two percentages, while it seems small, when you plug it into the calculation, it has a very substantial impact on the value. It, in fact, inflated the value by over $300 million in 2018 and 2019.

Now Defendants do not offer any evidence to dispute that they failed to use the correct CAP rate from the source material they were relying on, that is the CAP rate that applied to stabilized net operating income, which is what they should have been done based on the representation they made in the statements because that's what users of the statement would have understood that they would have done. So the inflated values are false and misleading in those two years for that reason.

The U.S. golf clubs inflated because Defendants used a combination of disregarding appraisals and using methods that contradict the representations they made in their statements.

Let's first look at one of those representations.

Mr. Trump and his trustees represented that the financial statement does not reflect the value of Donald J. Trump's worldwide reputation. The goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement. That's what he represented in the statements. And yet, the supporting data shows that Mr. Trump and his trustees added a brand premium for that goodwill.

Here, in this instance, for the Jupiter Golf Course, we can see that a premium for a branded facility was added of 30 percent. In later years, it is 15 percent. The values are falsely inflated by premiums because the statements represented that Goodwill associated with the Trump name was not included.

Another way of which the valuation contradicts a representation relates to membership deposit liabilities and how they are accounted for in the values. Now, membership liabilities are, essentially, initiation fees that members deposit with the club when they join and they may need to be refunded in the future under certain conditions, but those conditions may or may not come to pass.

Now, in the statements, Mr. Trump represented that he valued those liabilities at zero dollars, meaning he didn't think he would ever have to pay the deposits back.

The top portion is from the statements. It says the fact that Mr. Trump will have the use of these funds for that period without costs and that the source of repayment will, most likely, be a replacement membership has led the trustees to value this liability at zero and not its present value. That's all fine, but then he went ahead and included the value of the membership deposit liabilities at its face amount in calculating the price of the clubs, which then translated into the value of the club.

As you can see from the backup material that's below for the Jupiter Club, he baked into the value of the club over $41 million dollars in his membership liabilities that he represented in the statements he was valuing at zero because he never thought he would have to pay them back.

THE COURT: But he warned the co-parties. They could have followed up with any questions they had.

I just want to -- At the risk of repeating, the statements of the disclosure said, well, yes, I have to pay these back, but I am planning to get new members, so it won't cost me anything. Isn't that a full disclosure?

MR. AMER: I think you are misreading what the disclosure says, Your Honor. The reason he is saying he values them at zero is because he thinks he is not going to have to pay them back because if they do have to get paid back, they will be replaced by other membership deposits.

So he doesn't have to ever pay them back, which is fine, but his valuation is based on the notion that these are liabilities he does have to pay back because he is including it in the price of the club.

So, for example, if you buy a club for and you pay $5 million dollars but the club has an existing liability of a million, what Mr. Trump is saying here is he is effectively paid $6 million dollars for that club and that's the value he is listing. Why? Because he has paid out $5 million in cash and he has accrued a million dollars in liability. So he is effectively paid $6 million dollars. He can't have it both ways. He cannot say that he is valuing the liabilities at zero and then include the liabilities as part of the purchase price for the club, which he then uses as the value of the asset for the statement purposes. So he is doing the exact opposite of what he represents, and the fact that there will be new members who will replace those membership costs is just something that supports his decision to value them at zero, but he should have valued them at zero. Instead, he valued it at $41 million dollars for Jupiter. He contended right here, he paid -- it says allocation of purchase price. He paid $5 million. He incurred a liability of $41 million, which should have been zero, and he said the total purchase price is $46 million dollars. That's counting the

membership liabilities, not at zero, but at their full face amount, and he is saying, in effect, he paid $46 million for this club, so that's what it is worth, not that he paid only $5 million for the club and that it is worth $5 million.

So hopefully, I tried to clarify that for the Court.

THE COURT: I think so, but those issues are philosophical. In any event, we will hear from the Defendants at some point, I assume.

Move on.

MR. AMER: The other way in which the golf clubs are inflated are based on appraisals that they had for the Briarcliff in L A. Again, they don't dispute that these appraised values existed in these amounts. They simply argue they could ignore them and our view is the Court should accept these appraised values as the estimated current values for these golf course, both, for the golf course piece and the undeveloped land piece and should reject Mr. Trump's higher as-if values that, again, are not based on a competing appraisal.

Let's talk about Trump Park Avenue.

This asset was inflated by disregarding rent stabilization laws and using the wrong prices for the apartments.

Defendants had a 2010 Oxford appraisal calculating

the value for rent stabilized apartments at $62,500 per unit. Yet, Mr. Trump and his trustees valued these apartments at millions of dollars each. Defendants response is that, well, eventually, each apartment will lose its rent stabilized tenant, but that's no justification for pretending that those tenants don't exist and don't at the time reside in those apartments and won't be there for many years to come. Those are restrictions that any willing buyer and willing seller would take into account when purchasing a rent stabilized apartment.

THE COURT: I have to -- I want to warrant counsel on both sides. We have a New York audience here. They are experts in rent stabilization. They know all about it.

MR. AMER: Now, in valuing the units, including those subject to rent stabilization laws, Mr. Trump and his trustees ignored internal market values that the Trump Organization's real estate brokerage arms had developed in-house for internal business purposes. And, instead, went with the much higher offering plan values.

The two charts shown here, the one on the left, the unit number on the left, the middle column is the offering planned price and to the right is the market, current market value price. They literally had the equivalent of two sets of books for the prices for these apartment units. They had one set of books, which were the offering plan prices that

they used for the statements and they had the second set of books, which were the internal current market values that they used for their own internal purposes, which they not only disregarded, but they never sent to Mazars when they were provided backup information. They only sent the column with the offering plan prices.

Now, the Court should accept the internal market prices as an admission by the Defendants as to what the value should have been for the statements because those are the estimated current values, not the offering plan prices.

Now, and finally, there were two penthouse apartments set above the Trump lease that had options to purchase with purchase prices in those options. We contend that they should have used the lower option prices that were in the leases and we contend that Defendants agreed with that approach because beginning in 2015, that's the value that they used in the statements.

Now, Trump Tower was inflated in 2018 and 2019 for the same reason that the values of 1290 Avenue of the Americas were inflated. In those years, they used the wrong CAP rate. As with 1290 Avenue of the Americas, they represented that they were using the CAP rate that applied to stabilized net operating income. In fact, they used the wrong CAP rate, the one that didn't apply stabilized net operating income and the difference was substantial in the

value. It was inflated by $173 million in 2018 and inflated by $323 million in 2019.

Quickly, the cash, the cash asset item on the statement, the cash was inflated because they included cash held by Formato over which Mr. Trump had no control. The cash was represented to be Mr. Trump's cash and a measure of his liquidity. This was particularly important for banks and insurers that viewed it as a measure of Mr. Trump's liquidity. So included in this category cash that Mr. Trump actually didn't hold and didn't control inflated this asset value by the amount of the Formato cash that was included.

Now, Defendants have said, well, they could have listed it in another place on the statement. That doesn't help them because when you list it in the cash -- when you list it in the cash, you are including it in his liquidity. When you list it as a separate line item and you disclose accurately that it is cash that he has no control over, it is not part of his liquidity. The same exact argument applies to the escrow deposits, which included amounts held by Formato, again, however which Mr. Trump had no control.

Finally, the last asset, licensing developments. These were substantially inflated by including amounts that should not have been included based on the representation of what the asset included in the statement.

According to the statement, the category was

supposed to include only deals with other companies, so that means deals that were at arm's length and only deals that had been reduced to a signed contract. In fact, contrary to these representations, Mr. Trump and his trustees included management contracts that were between Trump Organization companies, some money that was just flowing from one pocket into the other and didn't reflect fees that were negotiated at arm's length and deals that were not yet signed and were actually labeled in their internal documentation as "to be determined" or TBD deals. The amounts attributable to intracompany agreements of TBD deals should not have been included because the representation in the statement said that they wouldn't have been included. And the Court should find that these -- including these values inflated them by $88 million to $225 million depending on the year.

So we have now gone through the twelve assets and we have discussed the impact in grossly inflating the statements from 2011 through 2012 based on just the undisputed evidence.

The next chapter and story is how these false and misleading statements were used by Defendants in fraudulent carrying on, conducting and transaction of business with banks and insurers all within the statute of limitations consistent with the First Department's decision.

THE COURT: Can we just stay with or go back to the

in intracompany deals?

Why doesn't that balance out if there is a Trump company on my right and a Trump company on my left, and they make a deal, aren't they all under the same financial reporting umbrella? Why does it matter?

MR. AMER: It matters, Your Honor, because the points of this asset category was to value deals with outside companies, other companies not within the Trump Enterprise. And that's relevant to the user of the statement because that reflects deals that are going to bring money into the company. A deal between two Trump Organization companies is not bringing money into the company. It is taking money out of one pocket and putting it into another pocket.

THE COURT: So why do they matter?

MR. AMER: They shouldn't matter. They should be excluded from the category, but they were included in the category, and the result was it inflated the value. They should have --

THE COURT: Wasn't there a corresponding liability?

MR. AMER: No, Your Honor. These were management contracts. So one company enters a management contract, a licensing deal, to manage a hotel. So, you know, one of the companies that owns the hotel is paying another Trump company that manages the hotel and they are paying the money

under a contract which, obviously, was not negotiated at arm's length. Now, the user is viewing that as a contract that exists with some outside company that's not part of the Trump Enterprise that is going to be generating income for the Trump Organization and that just wasn't the case.

Now, in terms of the fraudulent transactions that occurred when the statements were then used to maintain -- to obtain and maintain loans and to renew insurance, I would like to start with the First Department's decision.

The First Department has confirmed the applicable limitations period is six years, as this Court held and was affirmed, and is extended by pandemic executive orders and the tolling agreement for those bound by the tolling agreement.

Per the First Department's decision, the two limitation periods are as follows: February 6, 2016 forward for those not bound by the tolling agreement, and July 13, 2014 forward by those bound by the tolling agreement.

For the loans -- Well, here, we contend there are dozens of completed fraudulent transactions within the periods laid out by the First Department involving all five of the loans that are at issue. For these loans, there can be no serious dispute that the preparation of a new false and misleading statement and the submission and certification of that new statement to a bank constitutes a

fraudulent transaction of business in the State of New York that is completed within the meaning of the First Department's decision when the certification is delivered to the bank.

Let's look at one of the certifications. Here is an example. It is a certification that was submitted on May 10th of 2016. So within even the shorter limitations period specified by the First Department, and it relates to three Deutsch Bank loans, the Dural loan, the Chicago loan and the Old Post Office or OPO loan, Mr. Trump submits in this certification the 2015 statement of financial condition and he represents under his signature that the statement presents fairly in all material respects his financial condition. That is fraudulent conduct that is actionable under 63 (12) within the limitations period.

Now, we created a number of timelines for each loan that shows all of the fraudulent transactions completed within the limitations period. For the Dural loan, which we have up on the screen, there were seven fraudulent transactions in the gold shaded area, the shorter limitations period and one additional fraudulent transaction in the extended period, the blue shaded area. The transactions involve Mr. Trump, Donald Trump, Jr., and Eric Trump on behalf of the borrowing entity, Trump Endeavor, LLC.

Now, let me pause here to address the Defendant's statute of limitations argument. They say, as far as this loan goes, that all eight acts of fraud that occurred within the limitations period in the blue and gold shaded area are time-barred because the Dural loan closed before the limitations period began in June of 2012. That's their argument.

Your Honor, that just makes no sense. It would upend decades of law on accrual precedent. Just focusing on the preparation submission and certification of the 2021 statement of financial condition in October of 2021, which is the last flag on the timeline, it is just nonsensical, Your Honor, to say that the Attorney General's cause of action for that fraudulent transaction, the preparation of the statement, false and misleading and the submission of that statement and certification of that statement, that that cause of action is time-barred because nine years earlier, the Dural loan closed, long before anyone even had an inkling of what would be in the 2021 statement.

The effect of their position, we submit, is to say the Defendants get a license to commit fraud on any existing loan with respect to whatever they submit to the bank after the loan closes, including financial disclosure that they are required to make along with certifications that they have to make if the loan is going to be maintained and not

go into default.

It is clear under First Department cases, including recent decisions that we cite in our brief, People v. Cohen and People v. Allen, on page 26 of our reply brief, that claims or misrepresentation and fraud accrue when those acts are completed, here, when the statements are sent to the banks, even though they arise out of or relate to business arrangements entered into years earlier.

I am going to quickly go through the other loan transactions for the Chicago loan. There are five transactions within the shorter period involving Donald Trump, Donald Trump, Jr. and Eric Trump on behalf of borrowing entity 401 North Wallbash.

For the OPO loan, there were seven fraudulent transactions, including the loan closing, by the way, that fall within the limitations period. The transactions involve Mr. Trump, Donald Trump, Jr., Eric Trump and the borrowing entity, Trump Old Post Office, it is also worth pointing out here that because this loan closed on August 12, 2014, within the limitations period, it brings in without question all of the statements of financial condition going all the way back to 2011 because on this loan Deutsch Bank relied on the 2011, 2012 and 2013 statements of financial condition to approve this loan, and that's clearly set forth in Exhibit 265, which is the credit

memo for Deutsch Bank.

THE COURT: Wasn't the alleged fraud before the limitations period and outside of it?

MR. AMER: No, Your Honor, because for this loan, the closing date is within the limitations period.

THE COURT: That's the closing date. When was the fraud?

MR. AMER: Well, the fraud was on the closing date with respect to the reliance on those statements. When we close a loan, the borrower is certifying that all of the representations in the loan documentation are true and correct. Some we have a timely claim related to the 2011, 2012, 2013 statements because they were relied on and certified as of the date of the closing of this loan, which was in the limitations period.

THE COURT: I see your point. I hope you see my point.

You know, you say that the Defendants relied on the statement.

Well, we are not here about the Defendants -- I'm sorry. We are not here about the lenders. We are here about what the Defendants did.

MR. AMER: Deutsch Bank, though, relied on those false and misleading information in the statements. If the statements, those 2011, 2012 and 2013 statements, went into

a drawer in Mr. Trump's offices and never saw the light of day, they would not be part of a fraudulent transaction that would be actionable under 63 (12).

THE COURT: I understand that.

(Whereupon, there was a change in reporters.)

THE COURT: I understand that. So, does your argument essentially equate to the idea that those statements were continuing statements?

MR. AMER: No, Your Honor. Those statements were part of the bank's file that the credit memo relies on that were all part of the loan documentation that were certified as of the date of closing to be true and accurate. So we have a cause of action that is timely for that loan closing. Now, I will -- I will acknowledge that for, if we go back, for the Chicago loan the loan closing predated the limitations period. We are not asserting that we have a timely cause of action for that loan closing, but we have timely fraudulent transactions that occurred in the gold shaded area that related to that loan.

THE COURT: All right. Final question and then we'll move on. Did the defendants do anything on the date of the closing or within the limitations period?

MR. AMER: Absolutely.

THE COURT: What did they do?

MR. AMER: They went forward with the closing and represented at closing that all of the documentation -- all of loan documents that the bank had received were accurate.

THE COURT: But you say they went forward with the closing. They went forward with it passively, right? They didn't do anything.

MR. AMER: No, Your Honor.

THE COURT: What did they do.

MR. AMER: They certified at closing.

THE COURT: How did they certify?

MR. AMER: They signed loan documents.

THE COURT: Okay. That's what I am looking for. On that date, they signed documents, right?

MR. AMER: Yes.

THE COURT: All right. We all understand. Let's move on.

MR. AMER: Apologies for not getting where you needed me to go as soon as you wanted me to get there, but I'm happy to have arrived.

40 Wall Street four fraudulent transactions within a shorter limitations period and an additional two fraudulent transactions within a longer period. This transaction involves Mr. Trump, Allen Weisselberg and the borrowing entity 40 Wall Street. Finally, the fifth loan, Seven Springs, there were three fraudulent transactions within the shorter limitations period and one additional fraudulent transaction within a longer period and it involved Mr. Trump, Jeffrey McConney and Eric Trump along with the borrowing entity Seven Springs.

THE COURT: I promise to move on but one more point. You say they or the defendants on the closing date

of that earlier loan signed off or said, yes, this is all true. Which defendants? They weren't all there, obviously.

MR. AMER: We do have in the records, Your Honor, the loan closing documents. I don't have, off the top of my head, which particular individual defendants signed. But to the extent they signed, they certainly would have been signing on behalf of the borrowing entity and on behalf of the related, you know, control group that has the beneficial ownership of the assets.

I would also add, Your Honor, that as of closing the other signature was the signature of the guarantor and that we know was Donald Trump. So, a few closing remarks about what relief we seek from the Court and what is left for trial if the Court grants us relief.

Your Honor, we are asking for a judgment in the People's favor on the first cause of action for fraud and for an order under 3212(g) making detailed findings of fact and those findings are in our reply brief .4. And we are asking that you find that each statement was inflated by at least the amounts we've indicated based on a subset of the evidence that we presented which we contend is undisputed and to find that the preparation and certification of a statement is a fraudulent transaction that involves specific defendants as participants or as individuals having knowledge. We've set forth, again, in .4 the specific

findings.

In terms of the remaining claims left for trial, we think that the findings that we've asked for in .4 of our brief will allow for a streamlined trial involving evidence relating to disgorgement and evidence of intent to defraud which is a necessary element of the three illegality claims as well as evidence to support the equitable relief that we are seeking. That equitable relief, Your Honor, is in addition to disgorgement, cancelling corporate certificates, appointing a monitor, requiring that they provide audited statements of financial condition, replacing the trustees and barring individual defendants from serving in certain capacities in any New York corporation.

THE COURT: I'm not seeing that on the screen.

MR. AMER: I didn't put it on the screen but it's encompassed within the bullet that says other equitable relief. I'm happy to take the Court's questions if you have any more. Otherwise, I'd just ask for an opportunity to come back up and comment on Mr. Kise's presentation.

THE COURT: Will Mr. Kise be presenting?

MR. KISE: I will, Your Honor. I am fine with however your court pleasure is whether we do rebuttals or not do rebuttals. We could be here, as you know, until midnight if you let us keep going back and forth, but I am happy to do whatever the Court pleases to do.

THE COURT: I normally would just allow replies, sur-replies, sur-sur-replies, but I am hoping we finish by one o'clock.

MR. KISE: I am, Your Honor.

MR. AMER: I will be brief, Your Honor, but I will point out that Mr. Kise's motion is much broader in scope than my motion. So there are issues that I haven't addressed in support of my motion that may relay to other claims they are seeking to dismiss. I do have, Your Honor, a hard copy of the presentation that I thought may be useful to the Court if I could hand it up.

THE COURT: Yeah, we will like that.

MR. KISE: Your Honor, could we take five minutes just to get set up.

THE COURT: I have often said there is no such thing as a five-minute break. We can take a ten-minute break. Ten minutes, everybody. See you then.

(Whereupon, a recess was taken.)

(Whereupon, the following discussion take place on the record in open court.)

MR. AMER: I did have a quick question. Since we are submitting these to the Court, does it make sense for both sides to file them on the docket?

THE COURT: Yes.

MR. AMER: We will do that. Thank you.

THE COURT: I just want to make clear it says summary judgement hearing. Today is not a hearing which to me means facts on the record under oath. It is an argument, and I'm sure you'll argue.

MR. KISE: That is all it is, yes, Your Honor. I am going to try to do this from a technological standpoint, click these forward. I am not really that technologically capable as we may learn here painfully. If so, I will have my technology assistant help out with this.

Thank you, Judge. Christopher Kise on behalf of all of the defendants. I want to point out two things before I begin in substance. One is, Mr. Robert will be adding just a few comments after I'm done and, two, is that what we've done today, because we have these various motions, you know, they were filed simultaneously, this presentation encompasses sort of everything. It's not like designed to focus on one or the other. It is just really addressing all of the issues to try to be efficient.

I am also going to try to get through this quickly, Your Honor, and we are not going to touch on every point. So there are a lot of things, as you probably know from looking at the filing, there is a lot of things in our materials that I'm not necessarily going to touch on, but I don't want it to be construed as any waiver of those arguments.

THE COURT: Understood.

MR. KISE: I will congratulate Your Honor for summarizing what is probably 15 or 20 thousand pages worth of material at the beginning of this hearing. That is a pretty concise summary. I'm not sure how long it took you to do that, but I don't think I could have done that. That was very concise.

THE COURT: Not too long I have been living this case for a while.

MR. KISE: I also appreciate you remembering that the 23rd is my birthday so we want to try and get done by the 22nd. I certainly do. So, to borrow -- it's interesting. You are going to hear things that are similar in concept between us and the Attorney General and then you are going to hear things that are quite divergent. You know, to borrow, as Mr. Amer did, from your comment before, we do also likewise feel like we are fully, through the looking glass here, you are going to hear a very different world now than what was presented before. That's the nature of our process.

So, the nature of the Attorney General's case, from our perspective, is -- the foundation of the case is ignore everything except what they want you to focus on, ignore the First Department mandate, ignore the facts certain defendants are not parties to the tolling agreement, ignore

their own statements and filings about the tolling agreement, ignore the transactions. These are all successful profitable business transactions for all parties. The banks alone made a hundred million, 200 million in interest. Ignore the testimony of actual parties. I am going to come back to all of these points. Ignore the testimony of the actual parties to those successful profitable transactions. No defaults. You are going to hear there is no defaults. There is no fraud.

Ignore the governing accounting standards for preparation of the statements of financial condition. The only place that you'll hear agreement is that we agree on what the standard is. We just don't agree on how that standard applies here. Ignore the established principles of property valuation. These are not things that are subject to dispute. Ignore the disclosures and disclaimers in the statement of financial conditions. Ignore experts except for the Attorney General's experts and where there is any reference to our experts, as you heard Mr. Amer like the quotes from Dr. Laposa's testimony, it is sort of this selective excerpt. It's just this one line out of hundreds of pages.

Most everything you heard, most everything you heard, I would say, from Mr. Amer is taken out of context. They may be true to a point or they may be statements that

on their face are correct, but when you view them in the entire context and you understand the applicable law, you understand applicable accounting regulations or accounting principles, I'm sorry, and you understand the entire context, it's evident that they are isolating statements.

The Attorney General wants you to ignore all of their hand picked quotes from documents. Ignore materiality. That's really the point. They are asking the Court to ignore materiality. They are asking the Court to ignore the fact that there was no reliance and there were no capacity or tendency to deceive. Interestingly, Mr. Amer made an affirmative statement in his argument that the banks, in fact, relied on these statements. It's not supported by the record that they did rely.

Ignore the fact that there was no real world impact here other than positive. These were successful transactions for both sides. They're complexed sophisticated commercial transactions. The Attorney General's position is believe me; this is fraud. If you disagree with the Attorney General's valuations, that's fraud. The Attorney General knows they are fraud because she says they're fraud, not because any actual fraud took place in the context of the law.

The Attorney General is the accounting expert. Do not listen to our accounting experts. They are very

dismissive in their papers of our accounting experts, one who is a distinguished NYU Stern School professor and the other who is a Senior SEC Chief Enforcement Accountant. Those accounting experts testified about GAAP compliance, about the disclaimers, about estimated current value which you heard so much about. We are going to come back to that. Ignore all of that. Ignore the valuation experts. The Attorney General is the valuation expert. The Attorney General is the legal expert. The Attorney General is going to tell you what the law is. And, frankly, you just heard that at the end, and I am going to start where Mr. Amer left off on the limitations because they now have a very different and creative view of what the law is.

And the Attorney General is, respectfully, using hyperbole to go this court into -- to go this court into the wrong direction, moving in the wrong direction. So unlike at the preliminary injunction, the motion to dismiss phases, the Attorney General must now prove her case. This is a very different phase of the case. Before the facts were assumed, her case was assumed. She was entitled to a presumption. Anything that was unrebutted before was at the injunction phase or the facts as pled in the complaint were presumed as correct. But now she has to prove her case and we say the controlling law and the evidence simply do not support her claims.

The case comes down to prosecuting the defendants for engaging in successful business transactions. The Attorney General is supplanting sophisticated banks and insurers judgment for her own opinions. The First Department has already dismissed time barred claims. The Attorney General cannot establish, as to the remaining claims, any viable violation of Section 6212 and all of the remaining counts, counts two through seven -- which I'm not going to cover in detail today. That's in our papers -- failed for a want to prove particularly as it relates to intent. There is absolutely no evidence of intent. The only mention of intent is in their briefing when the Attorney General contends that on the one hand they don't have to prove intent under 6312 but yet you can use the evidence under 6312 that demonstrates a 6312 violation to establish the requisite intent under the remaining counts. It is a nonsecretive.

Let's start with the controlling law. The First Department mandate the best starting point is the actual First Department decision. If you look there, it states very clearly that the order is unanimously bona fide on the law to dismiss as time barred the claims against defendant Ivanka Trump and the claims against the remaining defendants. And then there's accrual, accrual prior to July 2014 or February 2016 with respect to the tolling

agreement but that is unequivocal language. That is a unanimous court dismissed as time barred certain claims.

So, the First Department is unequivocal. There's no jurisdiction remaining over those claims. There is no opportunity now or discretion now to consider alternative theories which is what are the Attorney General is advancing. It's an interlocutory decision which is designed to be implemented before we start the trial. The latest bar date is July 13, 2014, as you heard. There is another area where we are at least in agreement.

Any claims that accrued, an important word, prior to that date are time barred. And the First Department also provided very specific direction as to what accrual means. The language of the opinion makes this clear. So going back to the language of the opinion. 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, for defendants bound by the tolling agreement claims are untimely if they are created before July 13, 2014.

Now, this is not, as Mr. Amer contended, this is not defendants' argument. This is the First Department's position. And one thing that hasn't gotten any attention so far today are the two cases that are cited by the First Department right after they defined what accrual means,

claims are time barred if they accrued.

So, if you look at the Boesky case, which we discussed in our papers, and the Rogal case, both of them are cases that relate to claims exactly like the Attorney General's claims have always been up until now in this case based on specific lending transactions, specific transactions, a specific date. So, the Boesky case, the cause of action for fraud accrued when the plaintiffs entered into the allegedly fraudulent transactions when they entered. Rogal --

THE COURT: Wait. I guess we will have to discuss this. There are loans that are essentially -- I'm not a financial expert but I'll speak somewhat as a layperson -- where monies transferred it's owed. Don't we have in front of us a different situation where money is transferred and then the borrower must continue to state his -- their financial condition? So these cases that you're relying on were there any followups or was that it? Let me just ask along this, the Appellate Division, the operative word is completed. It doesn't say but I think your papers, yours, generally speaking, talk about when the loan closed. But after these loans closed, there are a lot of statements which seems to me they can't be misleading.

MR. KISE: But, the First Department -- and I'll get there, Your Honor, but to answer your question directly

right now, the First Department already addressed that scenario in the Ivanka Trump decision. It is already there in the opinion. The Boesky case and the Rogal case stand for proposition that the closing date is the operative date and it is fully consistent with the Court of Appeals jurisprudence.

The Court of Appeals has repeatedly rejected accrual dates that cannot be ascertained with any degree of certainty meaning that they can be fluid. The Attorney General is espousing a fluid date concept. No, the transaction, the Court -- if you look -- if you look at their -- maybe, this will make it a little clear. Let's look at the Attorney General's theory from the outset. The Attorney General's theory from the outset is that the statements of financial conditions themselves induced loans. And I haven't cited every paragraph. I've just picked out a couple.

Look at complaint paragraph three. Mr. Trump and the Trump organization used these false and misleading statements, that be the statements of financial condition, repeatedly and persistently to induce banks to lend money. That's paragraph three.

Paragraph 560, Trump and 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 the statements of financial condition.

Paragraph 568, by personally guaranteeing the loans and providing evidence of his liquidity and net worth through his statements, that is the statement of financial condition, Mr. Trump obtained or his company a significant improvement in the interest rate on the loans.

THE COURT: Mr. Kise, you know I am not a ha, ha got you judge. If I haven't said that before, I'll say it now. The fact that a complaint, you know, the initial pleading talks about obtaining loans, I'm not going to exclude maintaining loans because that's not the law.

(Continued on next page)

MR. KISE: Okay. Well, let's look -- That's a good point, Your Honor.

Let's look at their filings then. In the opposition to the motion to dismiss, the Attorney General then said that they presented those statements, as the statements of financial admission, to lenders and insurers licensed in New York to obtain favorable loan and insurance terms they would otherwise not have been entitled to receive. Then in their Appellate brief, long after the complaint was filed, while we are all nearing post-discovery, they described the scheme as involving this submission of these statements, submitting misleading statements to obtain significant financial benefits, such as favorable loan or insurance terms.

The Attorney General is asking you to ignore their complaint, ignore their motion to dismiss opposition, ignore the Appeal brief, ignore the core of their position because now it doesn't fit within the confines of the Appellate Division decision. This is their theory and they can't now change their theory and decide to pivot and call it something else.

THE COURT: So is your position that if the initial statements of prior to the limitations period, that after that the Defendants can submit whatever they want in regard to that loan, such as the financial statement that the loan

agreement said they had to submit, whether it is false or not; is that your position?

MR. KISE: No, Your Honor, that's not my position and I will get there in some detail. I loath to skip too far ahead, but I will reference it now. It is not my position. It is the First Department's position. It is the law's position that these are continuing effects of the initial -- You have to look at what the wrong is. The wrong is that if you obtain a loan, if you look at their entire damage -- and I am calling it damages, but if you look at their construct, it is centered around the obtaining of loan that you would not have otherwise been able to obtain. And so you can't pivot on that theory and it is not that anything that happened subsequent is irrelevant. It is just all a continuing effect of the initial wrong. That's what Boski talks about, that's what Rowe V. talks about. That's what the cases that were considered by the First Department, and as I said that we will get there --

THE COURT: By the way, I see all sorts of activity on Plaintiff counsels' table. I am sure they are going to address hose issues.

MR. KISE: Oh, I am sure they will, but applying that mandate in the appropriate accrual date, at least seven of the ten lending-based claims have been dismissed by the First Department.

The chart that is -- The next line shows you the operative dates. The Court no longer has jurisdiction over these claims. Any transaction enclosed for the July 13th, 2014. So that would be all the ones listed there, the Springs loan, the Trump Park Avenue loan, the Ferry Point contract, the GSA OPO bid selection and approval, which we didn't hear anything about, the Doral loan, the Chicago loan, Old Post Office contract and lease, all of those pre-date July 13th of 2014 and I argue are out irrespective of the subsequent event. And again, that's not our view. That's what the First Department has already determined. So the only arguable transactions that could proceed further would be the OPO loan for those Defendants bound by the tolling agreement or 40 Wall Street loan for those Defendants bound by the tolling agreement.

So the Attorney General's first response is ignore the decision. They have an interesting footnote, which I have not seen ever before -- not that that's anything, but I have been doing this awhile -- where they reserve the right to argue at trial in response to Defendants' submissions that an earlier cutoff date for timely claims applies based on tolling documents 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. Well, there is no legal authority for that

position. If there is no rehearing request and there is no appeal of the decision, then the decision is the law and it is final and binding on the case and we have cited many cases. I just cite here the Kenney, K-E-N-N-E-Y case, but there isn't an opportunity to ignore the decision. There isn't an opportunity to say that we reserve our right later. No. You had your opportunity and that's over.

The second response, as you heard me mention, is to adopt a new theory. The new theory now appearing for the first time is that each of the alleged false and misleading certifications and submissions of the SOFC's statements are separate actionable wrongs, such that a new Section 63 (12) claim accrued each time any Defendants submitted or certified a financial statement representing the financial condition of Mr. Trump. The first time we see that theory is in the memorandum of law in opposition to the Defendants' motion for summary judgment. That was not argued at the First Department. That was not argued previously. That's not in the complaint. And so now this new theory they also include in their reply, that the certification and submission are separate fraudulent acts, this fundamentally alters the Attorney General's acknowledged theory of liability.

If you go back -- well, I am going to try, but if you go back to slides nine and ten, you can see that it is

inducement. It is obtaining benefits. It is obtaining improvement in the loan interest rates. Again, their expert report is constructed around this concept. But now, the new theory is that no, no, no, these are separate acts and, therefore, we are entitled to recover for those acts. So ignore what I said before, focus on this now. Don't worry about what I said before. That's the AG's approach.

Well, the First Department, as you heard me say, and I am going to go through this, has already rejected this repackaged theory. So the First Department rejected the argument that annual submission or certification of the statements can constitute independent wrongs separately actionable from the transaction to which they relate.

So in the appeal, the Attorney General argued that --

THE COURT: Wait a minute, wait a minute.

Maybe I am off on the timeline. You said the First Department already rejected these theories of the later statements, but then you said it is new in the opposition to your motion.

MR. KISE: Sorry, Judge. They rejected the concept. They didn't reject the actual articulation by the Attorney General as applied to these Defendants because they didn't argue it as applied to these Defendants. They rejected, though, the theory in addressing Ms. Trump's

arguments. They argued that because Ms. Trump had signed and submitted a draw request on the Old Post Office. This is after the loan closes. This is a subsequent submittal. It is actually not just a certification. It is a submittal to get money, actually a withdraw request.

In December of 2016 --

THE COURT: Wait, wait, wait. It is coming into focus for me.

She asked, if I am correct, she asked to withdraw money; is that correct? That's what they said that's not good enough.

MR. KISE: She submitted a certification, yes, along with -- based on the statements, yes.

THE COURT: Well, what did the certification say?

MR. KISE: It is the same certification, the same.

THE COURT: Well, did it give numbers, the borrowers are worth X dollars?

MR. KISE: There is no distinction. In other words, it is the same statements and the same certification, it is the same underlying argument that the Attorney General is presenting to you right now. It is that you are submitting the certifications to keep the loans going, that these statements --

THE COURT: Well, what did she certify? That's what I am trying to get at.

MR. KISE: Well, she certified by submitting the withdraw request along with the certifications. They relied on it, that they are accurate, that they are accurate, the accuracy of the statements.

THE COURT: The prior statements?

MR. KISE: And the ongoing statements.

THE COURT: Okay. So she says I want to take out money, and by the way, everything we said is accurate.

MR. KISE: In sum and substance, yes.

So the First Department, nonetheless, dismissed all the claims against Ms. Trump as untimely because the allegations against her do not support claims that accrued after the bar date for her, which was February of 2016. This is the same argument. The certification, itself, is actionable, the submissions of post-closing representations and requests are actionable. These are continuing effects. They are not wrong. This is a repackaging. What the Attorney General is doing is repackaging their argument about, oh, well, these are all continuing wrongs. That's how they originally tried to get in the door with the First Department and that was rejected. So we would say that the First Department has already rejected that. We would also say that the law of the case precludes them from changing this position post-discovery. This is an obvious attempt to evade the First Department position. We are changing our

fundamental theory, and I only quoted on pages nine and ten from a handful of representations about their theory, but there is many of them.

So the Attorney General cannot now advance a new theory on opposition to a motion for summary judgment and we cite in our papers the Biondi case, B-I-O-N-D-I, and then the NexBank, N-E-X-B-A-N-K, one word. Summary judgment is not for the unsuccessful movant and an opportunity to reformulate its case. So these arguments have been considered. They have been rejected. Even if they haven't been considered or rejected, they can't be advanced now for the first time post-discovery. They can't come in and fundamentally alter their theory of the case after we are a week, two weeks before trial. This is impermissible on the case law and we cite to that.

Let's briefly talk about the tolling agreement. It is undisputed that the original draft tolling agreement included the individual defendants. There was a specific provision -- and this is in our papers -- the original draft had the individuals by name. There was a signature block for them. They were all referenced. It is also undisputed that those individuals Defendants' names and signature blocks were deleted. It is also undisputed that the signed tolling agreement does not name the individual Defendants, and it is undisputed that the tolling agreement is not

signed by any individual Defendant.

THE COURT: I have a, sort of, personal question.

Does Florida have the parole evidence rule?

MR. KISE: Yes.

THE COURT: Okay. You can't introduce evidence of prior negotiations when there is a completed contract or am I missing something?

MR. KISE: Your Honor, I am just pointing out the context. If you look at the final document -- if you look at the final document, it is undisputed that the signed tolling agreement does not name the individual defendants. It is undisputed that the tolling agreement is not signed by any of individual defendant. So that is the beginning and end of it, I am with you, but they have raised, you know, arguments about it is incorporated somehow and the individuals are somehow bound up in the tolling agreement. So this is a responsive argument, not an affirmative one. I agree with you, the individuals are not in the tolling agreement. They are not named.

THE COURT: Yes, but you are trying to use it as a sword, not just a shield.

By the way, the parole evidence rule is -- you might have heard in law school if you went. It is not about parole. Is not about evidence. It is about substantive law and it is not a rule because there are exceptions, sort of

like the Holy Roman Empire was not holy, was not Roman and was not an empire, but in all seriousness, parole evidence rule, basically, says that -- and this is all off the top of my head. It has been a while since law school. You cannot rely on -- you can't even introduce it at trial evidence of prior negotiations where there is a completed contract. So you are trying to use it as a sword. You are saying, well, they weren't named, so therefore they are not part of it. That doesn't fly.

MR. KISE: So, Your Honor, parole evidence can be introduced if the other side says there is an ambiguity. They are claiming that somehow the individuals are bound. Again, I don't need to go there.

THE COURT: But for other reasons. They are not saying they are bound because they are in the signed, you know, statements. They are saying they are bound under the Jewel case, which I am sure we will hear a lot about.

MR. KISE: The signed tolling agreement does not name the individual defendants.

THE COURT: As a very broad definition of who the signatory should be considered, but let's move on.

MR. KISE: All right.

The Attorney General is asking you to ignore the fact that their names don't appear and that they were not decided individually. And in the Jewel case, we don't think

constitutes any intervening change in the law and we don't think the Jewel case -- There is no explanation in the Jewel case as to why, just simply says that they are bound, but there is no understanding as to how or why. They don't offer any analysis.

THE COURT: Okay, but that's what, the -- That is what, the First Department? That's what the First Department said. I don't tell them what reasons to give. They tell me what reasons to give. They said that's the law when they issued the Jewel decision, right?

MR. KISE: They didn't say that was the law. They said in that case on those facts those individuals were bound. That's what they said. They didn't write any legal analysis of any kind.

THE COURT: They don't have to.

MR. KISE: Well, I will leave that to you. I think you understand our position.

Let's talk about the trust.

So basic trust law, only a trustee is authorized to execute contract agreements on behalf of the trust, and we cite the Kornbook law as well as the Korn, K-O-R-N, case. It is disputed, the parole evidence, no trustees signed the tolling agreement. The trust is simply not bound. In order to get there, this Court would have to ignore 100-plus years of settled trust law.

The Attorney General's layered argument that because an individual company officer can somehow bind individuals who are not named in the trust and then one or more of those individuals happens to be a trustee, then the trust is now bound is a complete non-sequitur in the law. They don't cite any authority for it and there isn't anyway to get there.

The Attorney General also asks this Court to ignore what I said about the tolling agreement. The New York Attorney General argued explicitly to Your Honor, as well as to the First Department, that the tolling agreement did not bind the individual defendants.

On April 25, 2022, Mr. Amer said in open court, "Donald J. Trump is not a party to the tolling agreement. That tolling agreement only applies to the Trump Organization."

Then again --

THE COURT: I wouldn't say he argued it. He did say it. I am very aware of that.

MR. KISE: And then before the First Department in a brief, OAG and the Trump Organization entered a six-month tolling agreement to which Mr. Trump was not a party. So now they are arguing the exact opposite, and they are saying, as I began, ignore what I said before. Don't pay any attention to that. So for the reasons stated, we

believe that they are both judicially estopped from making that argument and that it is a judicial admission that binds them. In either event, they can't possibly succeed on that argument based on their own statements in addition to the legal propositions.

THE COURT: Now, let me ask you this, the statement or statements that the other individuals are not bound, is that a statement of fact or law?

MR. KISE: It is a statement of fact really. I mean, they are saying -- They are arguing it is a legal statement, but it is a fact. They are representing to the Court who they bound when they got -- they entered into the agreement. That is a party to an agreement stating as a matter of fact, not as a matter of law, a party to an agreement stating their position as to the parties and that position is consistent with the case law, that position is consistent with the document, itself, and that position is consistent with the interpretation of similar documents. So now to say that it is a legal conclusion somehow or another is, again, another ignore the facts, ignore the law. Listen to me. I am the Attorney General. I am going to tell you don't pay attention to what I said before. This is a judicial admission. It is judicially estopped from taking the opposite position, but don't let that trouble you because this is a legal conclusion.

THE COURT: Wouldn't you say that who is bound by an agreement is a legal conclusion?

MR. KISE: I think in the first instance, it is a factual determination. Ultimately, ultimately, you would have to decide, but have to decide based on the facts, and they are judicially estopped from countering the factual admission that they made that the individuals aren't bound.

THE COURT: But just by way of contrast, if they said someone signed the agreement, that's one thing. But to say that they are bound by it, that's -- I think you practically said it yourself. That's eventually a legal conclusion.

MR. KISE: Again, ultimately, you will make that decision, but they have already admitted to the underlying factual point.

THE COURT: How did they do that.

MR. KISE: By saying that.

THE COURT: By saying they are not bound. They didn't say what they did or didn't do.

MR. KISE: No. They said -- Let's go back and look at it.

"Donald J. Trump is not a party to the tolling agreement."

It doesn't say bound, it says he is not a party. "OAG and the Trump Organization entered into a six-month

tolling agreement to which Mr. Trump was not a party."

THE COURT: I think the ultimate question is whether someone is bound, not whether --

MR. KISE: That's the legal question.

What we are saying right now is what the Attorney General told you and what they told the First Department is the factual point, which is the judicial admission. They are judicially estopped. That's the point.

THE COURT: Judicial admission? That's doesn't sound very factual. That sounds very legal.

Any way, this is another situation. I understand you and I think you understand me.

MR. KISE: Thank you.

So just to summarize, this chart on page 20 summarizes the parties that are not bound by the tolling agreement and the parties bound by the tolling agreement. Not bound would be the individual defendants and the trust. And, again, the trust is a separate category onto itself in that regard in addition to the other arguments. And then the parties bound by the tolling agreement would be the corporate entities.

Let's talk about disgorgement not being an available remedy. I'm just going to touch briefly on this. So the first point I want to the make, not to belabor it, I have never advanced this argument before in this courtroom.

It has not been in any of our papers, so I am not sure how we can be precluded from making this argument or someone can say it was decided already since we never advanced it. But, nonetheless, I just want to point that out.

Disgorgement is simply unavailable under Section 6312 or the underlying statutory claims, counts two through seven. Under 6312, there are three enumerated remedies, enjoined continuance of purportedly fraudulent acts, restitution, which is not the same as disgorgement, and that's clear in our papers, and damages. Every single 6312 case involving disgorgement was based on another specific statutory predicate. Allowing it without that predicate amounts to an unlawful penalty.

Again, the Attorney General ignores the law, it is the law because I say so, but they don't cite a single case supporting this position. The Greenberg and Ernst and Young cases that they rely on, on there disgorgement is permissible. So we would just say disgorgement is not permissible.

Moving on to statements of financial condition.

So --

THE COURT: Wait, wait, wait.

I have the First Department decision that we have been discussing along with the -- Is it the same one with the Ivanka -- that released Ivanka. It talked a lot about

the tolling agreement.

I quote, "We have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law Section 63 (12) (see People versus Ernst and Young, LLP 114 A.D.3d 569, 569, 569 to 570 [First Department 2014])," which seems to me in black and white they said disgorgement is a possible remedy under 63 (12).

MR. KISE: It is a possible remedy if you have the statutory predicate, but what that -- that decision is addressing is our argument based on dismissal. Our only argument on dismissal was they didn't allege any damage, any actual harm, and that, therefore, disgorgement wasn't appropriate. It had nothing to do whether it was available under the statute. It just had to do with whether disgorgement was supported by the facts. And what the First Department is saying is it is not a basis for dismissal that disgorgement is not supported by damages. They don't have to establish any harm for disgorgement, but they don't at all talk about whether or not disgorgement is available in the abstract in the absence of a predicate. No one ever discussed that with the First Department. It never came up because at that moment no one was focused at all, including us, on whether the underlying predicates allowed for disgorgement. So that is not an argument that was even

addressed, Your Honor. Respectfully, I don't disagree with what you read, but it is completely beside the point, respectfully.

THE COURT: I think you are overanalyzing. The statement says what it says. My cardinal philosophy is either a sentence is either true or not true. That's what they said, and I am going to throw something back at you. Who is ignoring something here? This is what the First Department said. You are not ignoring that?

MR. KISE: No, I am not ignoring that.

THE COURT: Is there a distinction here?

MR. KISE: The distinction is is that our argument there that they are addressing and the language that you read specifically talks about whether or not the claim is subject to dismissal because damages weren't alleged -- no harm was alleged. That is a very different thing than saying that there is no statutory predicate. Those are two completely different legal positions.

THE COURT: I think you started out by saying disgorgement is not available under 63 (12). Did you say that or did you not say that?

MR. KISE: No. I said it is not available under 63 (12) unless there is an underlying statutory predicate for it. I didn't say it wasn't available at all.

THE COURT: I stand corrected.

I believe that the Defendant's briefs say "not available as a matter of law." Defendants or Mr. Kise, isn't that what the brief says?

MR. KISE: Your Honor, to the extent that there is ambiguity, I will clear it up here, but I don't think there is. But again, you have to understand the arguments being made as it is not available as a remedy in the absence of an underlying statutory predicate. That's what the section says.

Now, maybe the header -- maybe the header says disgorgement is not an available remedy, just like my header there says disgorgement is not an available remedy, but you have to understand what we mean by that.

THE COURT: Obviously, I don't rely on headers or the head notes.

I just want to read this again.

"We have already held that the failure to allege losses does not require dismissal of a claim," et cetera.

MR. KISE: Correct.

The failure to allege losses, yes, that doesn't require dismissal. We agree with that. At this point we do. We didn't agree with it. Now the First Department said it and we agree with that, but our argument is not that there is a failure to allege losses. Our argument is there is no the underlying statutory predicate for it. We did not

raise that at dismissal. It was our choice not to raise it at dismissal.

THE COURT: We are not getting into a whole back and for and discussion, it just seems that when the Attorney General changes its position or says something slightly different, no, they can't do that. It is too late. They have already taken a stand. But now you want to change your position. You argued that at the First Department. You lost, but now you want to make a different argument. Am I missing something?

MR. KISE: Respectfully, you are, Your Honor. I'm not changing my position. I never took a position in the first place. The argument was that the failure to allege harm damaged -- eliminated as a matter of law their disgorgement claim. That was the argument before. The argument now is is there is no underlying statutory predicate. It is a very different thing, whether they alleged harm or don't allege harm.

THE COURT: I know it is different. That's part of my point. You keep trying to hang the Plaintiff on the grounds that now there is a different theory, too late, but now you have a different theory. Am I right or wrong?

MR. KISE: You are. These are purely -- This is a legal argument about disgorgement. And on summary judgment we are saying that the facts now -- There is no facts in the

record to support disgorgement and we are also saying since there is no underlying statutory predicate, we are allowed to raise it. That's what the statutes provide. We are not changing position at all. That's very different than what the Attorney General is doing, which is completely changing their underlying theory of the case, totally different.

THE COURT: I am thinking about your statement that the complaint in the other documents say "obtain a loan." Now they are saying Plaintiff is saying there were fraudulent statements to maintain a loan.

MR. KISE: Right.

THE COURT: But you are saying too late, they can't do that in the opposition to summary judgment. The summary judgment is where it all comes together.

MR. KISE: I am not saying that. That's what the case law says. We have cited that case law. You can't change your theory of the case on the eve of trial and you can't change your theory of the case at the summary judgment phase.

THE COURT: Well, the opposition, I think, was September 1st or 2nd.

MR. KISE: Well post-discovery.

THE COURT: By the way, I apologize to counsel for the last-minute nature of some of this. I originally preferred and originally scheduled things to be concluded

much earlier, but various extensions were requested. I won't say by whom. I think by both sides. I always accommodated those extensions, but I wish we had more time, but we have what we ever.

MR. KISE: I do as well, Your Honor, and I appreciate that.

You will recall that we asked for a great deal more time at the outset and this was one of the reasons why, but in any event, let's move to -- I do want to be mindful of the time clock for Your Honor.

The statements had no capacity or tendency to deceive. So the governing legal standard -- This is another point where I think we agree, the Exxon case.

The test for fraud under 63 (12) is whether the targeted act has the capacity or tendency to deceive and evidence regarding falsity, materiality, reliance and causation are plainly relevant to determining whether the Attorney General has established that challenged conduct has the capacity or tendency to deceive. So the standard is do the statements have the capacity and tendency to deceive? And in order to determine that, you need to look at things like falsity, materiality, reliance and causation. That is the Exxon case and then the Dominos Pizza case.

So the statements had no capacity or tendency to deceive. They were not false or misleading. Any

valuations, disparities or errors were not material. The disclaimers were unequivocal. This agreement about valuations do not establish fraud. There was no real world impact. The banks, themselves, acknowledge there was no fraud. And so, therefore, there is simply no proof supporting those claims.

So let's talk about not false or misleading.

So all of the statements values comply -- and I am going to talk about this in a little more detail. I'm going to try not to get too grand, but it is important.

With GAAP and what's known as ASC 274 -- in ASC 274 provides preparers of statements, like the statements of financial condition. They are called compilation statements.

Wide latitude selecting valuation and methodology.

(Whereupon, there was a discussion held off the record.)

MR. KISE: But the Mar-a-Largo example, the 40 Wall and the Doral example are instructed. What the Attorney General has done is they point to issues in the record but they don't look at the whole record. They look at things sort of in isolation and they don't take sort of the overall view as to what is permissible under ASC 274 and what the full record provides.

And so, for example, before I get into the details, Mr. Amer mentioned goodwill discussion about brand value not being incorporated in the statements. Well, under ASC 274 that's a very different thing than a brand premium associated with the specific hard asset and there are specific testimony in the record that talks about that. The same with the trump Park Avenue rent controlled apartments, they want to simplify that but ASC 274, we are going to look at it next, provides a method for these valuations.

So, again, this isn't intended to be a comprehensive rebuttal of each item that's in our papers but let's look at the governing standard. The governing standard is ASC, Accounting Standard Codification, 274, personal financial statements, they're compilations, shall present assets at their estimated current value. That's another thing that we agree on that term, estimated current value. We just can't seem to agree on what that means and how it's implemented. That's really the core dispute is

estimated current value and what it means and how it's implemented.

The compilation statements are very different than audited financial statements. They are subject to a very different GAAP standard. Estimated current value is unique to personal financial statements and offers much greater latitude than the methods available to report asset values as compared to other GAAP standards. It is not fair value. It is not market value. Fair value is frequently, if not commonly, determined by an appraiser who follows specific valuation rules. But under ASC 274, there is no one generally accepted procedure for determining the estimated current value of an investment in a closely held business. It specifies multiple valuation methods.

We don't disregard those valuation methods. We apply them. And, importantly, it does not require a specific method to be used to estimate current value for a specific asset and even more importantly it doesn't require the same method to be used for all assets in the same group. So, we're not playing it both ways as Mr. Amer said. We are following, as our Professor Bartov and Mr. Flemons (Phonetic) testified, again, an NYU Stern School Professor and an SEC Chief Accountant, we are following the guidelines, the rule book that was laid out for us in preparing these statements.

So, appraisals, for example, don't need to be relied on. They are not the only methodology. There are multiple approved methods and -- and if there is an appraisal, if it's not being relied upon, then it doesn't need to be disclosed if we don't decide to rely on that appraisal because for one reason or another we think it's faulty. Mr. Flemons makes this very clear at pages 23 and 24 of his report paragraph 77.

Appraisals that aren't used aren't going to be disclosed. We have our own valuation of methodology. That's the whole point of valuations. It's not whatever we want. It's what ASC 274 provides. It isn't we are doing what we want as Mr. Amer said. We are doing what ASC 274 allows us to do.

THE COURT: So, to use the plaintiff's example, if you have a building and a certified appraiser -- Cushman and Wakefield, whomever -- says it's worth a hundred million and you want -- and you put in a financial statement it is worth 400 million, that's perfectly okay without indicating that there is this other appraisal that you bought and paid for in a sense. Is that acceptable?

MR. KISE: If we have a valuation method that is acceptable under ASC 274 and it reaches a different conclusion than an appraiser valuating under different standards, yes, it is absolutely acceptable. If you look at

the wide latitude that is accorded by ASC 274, this is listed in our papers. There are multiple basis. The discounted amount of projected cash receipts or payments related to property or importantly the net realized value of the property based on planned causes of action.

THE COURT: Let me ask you this. I'm sorry to keep interrupting you. Taking it face value what you said that you don't have to disclose an appraisal, what if the compiler, the Mazars, asks you do you have any appraisals and you say no and you do, is that false, fraudulent, misleading?

MR. KISE: I don't think those are the facts here. Number one, I don't think it is the facts. Number two, if we are not relying on it, if they ask, yes, if Mazars would have asked and said, okay, I want to see every appraisal for that property for the last 20 years, everything that's appraised, that's a different set of facts.

THE COURT: Well, let me just ask, plaintiffs, did Donald Bender ever ask about a particular statement, do you have any appraisals and they did and they said they didn't?

MR. AMER: Well, he testified at his deposition that he asked for it. It is in our 202 statement. They don't dispute it with any evidence.

THE COURT: Okay.

MR. KISE: We do dispute it. I don't have their

202 statement in front of me here, but we did not disclose appraisals that we did not rely on. You don't disclose things that you don't rely on. It just doesn't make any sense. I don't recall that Mr. Bender asked -- the testimony reflects, and you have the unfortunate task of sorting through the record, but I do not see that Mr. Bender asked about every last appraisal that we had ever done on the property.

By the way, Mr. Bender would have been familiar with almost everything we did because he wasn't just a compilation accountant. That's a whole other issue that we didn't address. But unlike most compilation engagements, this was not just a narrow compilation. The counsel comes in and does a very narrow engagement. They look at a discrete set of facts. They prepare the compilation and they leave. Here, Mazars did everything from the trust on down. So they would have access to every last piece of information. This will come out, if we go to trial, this will come out at trial. The statement that either -- what I would suggest in this regard, if you are troubled, Your Honor, is either look at the testimony or this is an issue that, you know, respectfully then you would have to determine what needs to be tried.

In relying on Mr. Amer or myself to tell you exactly what's in the record on a particular issue, it is

just important. I don't know that I would recommend that, frankly. What I am telling you is my recollection and what Amer is telling you is his.

MR. AMER: It is paragraph 92.

THE COURT: Paragraph 92 of Donald Bender's --

MR. AMER: The 202 statement, our 202 statement.

THE COURT: Can you find what you're relying on that Bender said I asked?

MR. KISE: Again, again, again, we are looking at one statement out of context. It is the whole point of their case. We are looking at one statement out of context. You have to look at the entirety of what Bender said. It's not -- It's not really just one statement.

THE COURT: How could this -- the statement I asked them and they said, no, taken out of context. What's the context?

MR. KISE: Well, is that any year? Is that every year? Is it the year in question? Are we talking about the 40 Wall Street appraisals? Are we talking about any appraisals? Are we talking about appraisals from Mar-a-Lago? Are we talking about appraisals for Old Post Office. I mean, there are so many variables, Your Honor, it would take me a half an hour to go through them all. That's my point. It is not as simple as they want you to believe. It's not.

THE COURT: Okay.

MR. KISE: So under ASC 274, the approved methods do not hinge substantially on current market conditions. They focus on a long-term prospective. Estimated current value is not intended to be a market value. Professor Bartov stated when estimating a current value under ASC 274, if you have a long-term prospective, then you will put very little weight on current market conditions.

So the Attorney General focuses on appraisals at a certain period and says that's it; you must determine that that appraisal is the valuation but those appraisals were done for different reasons. They have different perspectives. That's what the whole record reflects is that -- you are going to see here shortly that that's what even the bank knows. Even the bank knows its own valuation. Even the bank knows that there is differences in valuations. This is the nature of property valuation.

So, again, it is not whatever we want. It is what ASC 274 provides. The Seven Springs example -- I am not going to go through each one of Mr. Amer's example but that one comes to mind. The Seven Springs example, the use and the plan for property changed. Between the two years, we went from developing the property and having a long-term view with a long-term view and then to a conservation easement which is an entirely separate valuation process.

It is IRS regulations. It is completely different animals so district but legitimate valuations of the same property can exist. I am going to get to you an example of that in moment.

Because valuations are highly subjective, there is no such thing as objective value in either GAAP economic theory or in the applicable laws, regulations and principles that are in this case. That's Professor Bartov again. Valuation is an opinion about price and, therefore, subjective. Opinions are subjective, they are not facts, valuations are opinions. They are a view based on one person's view. I might think my house is worth $5 million. You might think it's worth $0.50. You might not want to live in Florida. I might not want to live here but that's my opinion. I'm not wrong for telling you that that's my opinion, and you are not wrong for saying that your opinion is a lower number.

So the valuation of an asset is highly subjective process that depends on several factors including the selection of a methodology, assumptions and benchmarks within that methodology, and the discretion surrounding the presentation. Again, that's Professor Bartov. Which valuation methodology to choose, and this is where he is speaking about ASC 274, 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.

And so Mr. Amer, in his presentation, walk you into this cap rate discussion. If there is anything that is highly subjective and complexed and not cut and dry, it is a cap rate assumption. You can get twenty different appraisers in here and you would have twenty different views on what the appropriate cap rate is to apply to a particular property depending on what the outcome is and depending on what perspective they are looking at. A bank is going to take a conservative approach. A seller or owner is going to take a more aggressive approach.

So, any of the valuations themselves are not -- just because they differ from the Attorney General doesn't mean that they are fraudulent. Their Mar-a-Lago analysis, I want to talk about that in a minute too -- their Mar-a-Lago analysis really ignores the complete record. So they take the position, astonishingly, that Mar-a-Lago is worth, I don't know. The highest number there I saw was less than $50 million on the tax roll. I will tell you right now if someone would sell it to me for that, I don't know if you have been there but for ten times that.

Tax appraisers and market values, despite what Mr. Amer cleverly pointed out on the tax assessment roll --

I am very familiar with those in Florida -- yes, it says market value but you could get, again, different appraisers you are going to have different values. It is undeniably -- it is one of only two inner coastal to ocean front property in the estate section of Palm Beach. The entirety of the covenant ease and restrictions, which the Attorney General ignores, demonstrate that it can be -- it can be used as a private residence. I mean, it's actually currently being used as a private residence.

They carve out one provision to usurp their, what I will respectfully call, an absurd valuation. To value Mar-a-Lag, this is the highest certainty at 20, 30, 40, 50 million dollars. This is an extraordinary piece of property. So the full view of the documents reveals that there is no requirement that Mar-a-Lago ultimately remain a private club. There's no prohibition on the use as a primary residence.

If you look at the declaration of use agreement, and Mr. Shobin's report that you have, Your Honor, which goes through the facts of the covenant deeds and restrictions. It lays out the facts. The club use may be intentionally abandoned at any time. The use of the land shall revert to a single family residence. These are from the declaration of use. You need to look at the entire record when it comes to Mar-a-Lago.

Also, when you look at ASC 274, their approach ignores the valuation principles and the record evidence. ASC 274 does not require us to use appraisals or tax assessed values. Tax assessed values don't bear any relationship to actual values. And we provided the Court with an opinion, an acceptable opinion, of Lawrence Moens. Mr. Moens, M-O-E-N-S, is -- well, I'll say this. He's probably the most extinguished and successful real estate broker in the country. I mean, he is certainly one of the most knowledgeable ultra high net worth brokers in Palm Beach, but his opinion is unequivocal about the valuations of Mar-a-Lago.

And so that opinion alone, which would be acceptable, an acceptable basis under ASC 274, demonstrates -- if you look at his value numbers -- that our values on the statement of financial conditions were actually low. And, you know, I'm not saying that we're right or he's right or the Attorney General is right or the bank is right. What I am saying is you can't base fraud on these disagreements amongst sophisticated professional participants in the commercial real estate marketplace. That's not fraud because they disagree.

Mr. Moens' opinion is highly relevant. His numbers are well in excess, as you could see, in 2011 he is nearly 300 million more than the statement of financial condition.

In 2016, he is 300 million more. In 2021, we're -- the statement of financial condition is at 600 million. Mr. Moens has the property valued all in at 1.2 billion. So these disparities, I mean, this is part of the valuation process.

Now, I'm sure that the Attorney General could go find someone else to come in and say, well, no, that number is a wrong number. In fact, their own expert, Mr. Hersh, has the number quite different than the tax assessed value. They've just chosen to seize on the tax assessed value, but the own expert has it yet a third number.

THE COURT: Which I assume is higher?

MR. KISE: It is higher than the tax assessed value. It is still lower than ours but what it shows is that this is all a highly subjective process and it depends on what you put in.

THE COURT: Let's talk for a moment about alienation -- restrictions on the alienation of property. I am referring in particular to the front Park Avenue apartments and Mar-a-Lago. I think you just said in your considered legal opinion there no restrictions on Mar-a-Lago development; is that correct?

MR. KISE: No, I didn't say there were no restrictions on development, no, no, no. Let me be clear, Your Honor, not at all. I said that it can be used a single

family residence and can be sold for that. That's what Mr. Moens numbers relate to. They don't relate to development, very different, no. You -- they can't put up condominiums. They can't see it and subdivide it. There are restrictions, absolutely, but you need to look at the entirety of the restrictions.

THE COURT: So somebody would pay a billion "B," billion and a half dollars just to live there?

MR. KISE: Well, I mean, don't --

THE COURT: Maybe that's so. I know --

MR. KISE: Ken Griffin, who's well known in New York circles, he paid I think 6 or $700 million to assemble a property slightly larger. I think his property might be 19 or 20 acres, Mar-a-Lago is 17 acres and change. And so -- and it is not in the estate section of Palm Beach. He is going to spend another 400 million or so building out the structure from what I told. These all published newspapers reports. Yes, there are people in the world. That's what Mr. Moens testified to.

I am certainly not going to buy it for a billion dollars. I would buy it for 27 million. I would figure out how; I can tell you that. But the point is, yes, there are those buyers. There are the Jeff Bezos in the world. There are the Ken Griffin. There are people who want to live in the estate section of Palm Beach and want an intercoastal to

ocean front property.

And, again, Your Honor, you don't have to take my word for it. You could look at these properties. I mean, that's the unique nature. Many of these properties that President Trump owns are trophy properties. They are not just like a hostel.

THE COURT: I tend to agree with you. I am sure there is somebody out there that would pay a billion point five for this property. Let's talk about the Trump Park Avenue apartments. I'm not sure we did or didn't so much. Aren't they -- isn't the rent stabilization -- it doesn't exist until the rent stabilized tenants decrease the value of those apartments current market value.

MR. KISE: Current market value but not estimated current value, two different things. I'm not playing word games with you, estimated current value under ASC 274 allows for the net realizable value of the property based on the owner's claim. So if you have -- as Professor Bartov, you don't have to take my word for this, our NYU Stern School professor says -- if you have a long-term view, your view of value is going to be different.

THE COURT: Long-term view is that what the financial statement said they are giving long-term view?

MR. KISE: It said they were giving an estimated current value which is incorporated under ASC 274. We're

not talking about a conversation between President Trump and someone on the street. We are talking about a conversation between an extraordinary sophisticated bank, an extraordinary sophisticated valuation experts who understand fully what compilations are and they understand fully what ASC 274 provides.

THE COURT: So you're bringing up one of the 800 pound elephants in the room, I guess. So, Mr. Kise, is it your position that if nobody was harmed the case should be thrown out?

MR. KISE: My position is if we complied with the statements had no capacity or tendency to deceive, okay, and if they complied with ASC 274, if there were no material departures, we are going to talk about materiality, and, yes, if there is no -- other than the private parties -- if there is no impact outside the confines of the private relationship between the bank and its customer, in this case, President Trump and the various companies, then, yes, if you put all of that together, then, yes, there's no basis for the case ultimately.

THE COURT: It's understood that the banks will pay them back. They will pay them back on time and there is no default. They made lots of money on the interest, but the -- does the law of 6312 and you having authority that in that situation if nobody was hurt, although you can argue

about whether they were hurt, that that alone is the case should be thrown out? I think that's what you argue a lot in the papers nobody was hurt.

MR. KISE: What we say in our papers is if there is no harm outside -- if the evidence establishes, this is a very different argument. I know we disagree about that too. It is a very different argument than the motion to dismiss argument. But if the evidence establishes -- nothing extends beyond the four corners of that agreement. You might disagree with me about that conclusion. That's fair. The Attorney General might disagree with me about that conclusion, but the fact remains that our view of the evidence is is that there's nothing outside the four corners of the relationship between President Trump on the one hand and the banks on the other hand, the defendants on the one hand -- I am using that term loosely but, yes, if -- because the case law says that and we have cited those cases. I mean, you have to look --

THE COURT: What case are you referring to? I didn't see that case.

MR. KISE: On our break, I'll get it for you because I don't want -- I certainly don't want to misspeak. But our cases -- the cases that we rely on, the Dominos case, the Exxon case, they talk about this context about if there is no real world impact. That's either Exxon or

Dominos. I don't know right off the top of my head which one but there is no real world impact. We are going to talk about that in a minute but, yes.

THE COURT: Even if the statement is false, misleading and has a tendency to deceive as long as they aren't hurt, no case.

MR. KISE: No, Your Honor. I already said it is not false or misleading.

THE COURT: I know you are saying that.

MR. KISE: I know.

THE COURT: Let's assume hypothetically the statement is false, misleading has a tendency to deceive is used in business, do you still adhere to your four corners argument?

MR. KISE: Well, Your Honor, if the statement is false, misleading and has a capacity or tendency to deceive, then by definition someone has been harmed.

THE COURT: Disagree.

MR. KISE: Okay. There lies the disagreement. 40 Wall Street, I am going to move through this quickly. This actually demonstrates, I think best, the subjective nature of the valuation process an inherent flaw in the Attorney General's analysis. And it proves conclusively there is no one right answer here. If you look in their papers, they point to -- and you heard about it here -- the 2011 and 2012

Cushman appraisals as evidence of falsity. They say that we had appraisals on 40 Wall Street and those appraisals showed a value that was lower than our value.

Number one, that argument ignores ASC 274 because there is no requirement to use appraisals. We use a different but acceptable valuation method. Number two, it ignores the flaws, which I am not going to go there here, in those appraisals, the 2011 and 2012 appraisals that are detailed in our brief. But then, here's the interesting thing, in their briefs, while the Attorney General likes the Cushman and Wakefield appraisals on 40 Wall Street from 2011 and 2012, it then pivots -- they then pivot in their brief to criticize the 2015 Cushman and Wakefield appraisal for the same property declaring it faulty and there are problems with it. The only distinction between the two is that one is $300 million higher than the other.

So, in a span of a few years, Cushman and Wakefield itself values the property in 2011 and 2012 around 200 million and all of a sudden in 2015 goes to 540 million. Now, the Attorney General is not claiming that's fraud. They pick at it, but the point is what it demonstrates even within Cushman and Wakefield, an appraisal company, is there is this wide disparity of valuations that are possible that you could have one set of valuations at one period of time looking at certain factors and certain cap rates and using

certain assumptions and then a year later the same appraisal company, or two years later, can come along and come up with a different value.

I mean, there's no way that anyone would believe that the market in New York between 2012 and 2015 more than doubled. So this is highly subjective. Doral, last example, the Attorney General ignores the Doral property and entirely and for good reason. This is what demonstrates President Trump's investment genius. This is what I want to talk about because it moves the needle in the other direction.

He purchased this property in 2011 for $150 million dollars out of a bankruptcy sale. He invested and improved that property and now it is worth north of a billion dollars. The adjustments for actual value, based on historic data -- this is very different than an appraisal looking forward. These are adjustments looking backwards -- demonstrates that our statement of financial condition values were underreported.

If you look at the table that is included in Dr. Tim's affidavit, I believe it is paragraph 86, you'll see that this historic analysis, again, taking numbers that we now know and looking backwards at comparing those to the SOF values demonstrates that we were always undervalued when it comes to Doral and that undervalue, that undervaluation

more than offsets anything that they pointed to on many of their other points including the triplex.

THE COURT: Mr. Kise, let me interrupt you a second. Sorry. Two items of bad news. One, we are going to have to be here this afternoon. We never said it would only entail the morning. Two, I have been trying, as I usually do, to keep a straight neutral face when the plaintiffs talk, when you talk. I did smile two or three times but that was for the sketch artist. I want you to know. Thank you.

MR. KISE: All right. So what Doral demonstrates -- I mean, truly, not to put too fine a point on it but I have to say this -- it demonstrates that President Trump is a master at finding value. He's a master at finding value where other see nothing. He's made billions in real estate investments. He's got a proven track record. He's paid back the lender.

All of these transactions are the subject for profitable transactions and the Attorney General just discards this exceptional success in favor of her own uneducated opinions. They are either willfully blind or they're uneducated. I'm not sure which but they just completely -- they point to minor issues and they don't take in the totality of the circumstances. I certainly know this. If I had money to invest in real estate, I am not

going to ask the Attorney General.

THE COURT: As a fire burning underneath, my law clerk would like to ask a question.

MS. GREENFIELD: I think you are getting into this territory, and I saw this was present throughout all of your memos of law and throughout the deposition testimony of Mr. Trump, there seems to be this notion that if the properties go up in value over time then that would retroactively justify having given a higher value than it was worth in the past and it seems to be this argument that the future will then go back and justify the past. So I am wondering, and Mr. Trump testifies to that at his deposition extensively, so I am wondering if you can address that.

MR. KISE: It's not the present justifies the past. It is that the present demonstrate that his valuations at the time were correct. He has a different view. If you asked him what -- if all of us walked around downtown Manhattan and looked at building after building after building, I doubt anybody in this room would be able to discern between what kind of windows are in that building, what kind of doors are in that building, how much that building is worth, what this one sold for over here.

This is the nature of expertise. This is why billionaires are billionaires. This is what makes them successful. If anyone could do it, then they would do it.

So, yes, he does have a different view. That's the whole point of ASC 274. The whole point of ASC 274 is that he gets to provide his value of the world and the banks fully and completely understand that. So it is not that the present justifies the past. It is that the present demonstrate that his values in the past based on his expertise. He would qualify as an expert in real estate in any courtroom anywhere in the country. He is an expert. He is. He has been doing this for 50 plus years. He's got an extraordinary track record of success. Has she succeeded in every deal? I don't know but he succeeded far more than he has not.

So he is entitled -- this is the point that the Attorney General is asking the Court to overlook and ignore. He's entitled to the -- to the presumption that he has a view that is a legitimate view, and he' not saying it's the only view. Unlike the Attorney General, we are not saying it's the only view.

THE COURT: Warning, three or four minutes. We have to out of here by one.

(Continued on next page)

MR. KISE: If you just add Dural and Mar-a-Lago, if you just look at that impact, then you will see, page 35, that in every year the statements, the total net worth was actually higher, not lower.

Materiality.

And, well, Your Honor, we may, if we are continuing after lunch, I would ask for about fifteen minutes. Should we just stop now?

THE COURT: Yes, we should.

2:15, everyone. Have a great lunch.

Thanks, everyone.

(Whereupon, there was a lunch recess.)

(Whereupon, the matter resumed as follows:)

COURT OFFICER: Part 37 is back in session.

The Honorable Arthur Engoron presiding.

As a reminder, all cell phones on silent, absolutely no recording or photography of any kind.

Please be seated and come to order.

THE COURT: Back on the record.

We will hear more from Mr. Kise.

MR. KISE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KISE: So I will try to move through these more officially than I had before.

So materiality, I just want to touch on some points on materiality. The Attorney General claims she is not required to show that the victims of Defendant's fraud were materially misled, but even the case that the Attorney General cites for this proposition, the Northern Leasing case, clearly states that materially misleading representations violate Executive Law 63 (12).

The Attorney General doesn't cite to any case holding that she exempt from proving materiality and simply ignores the applicable law in favor of her own view. The Attorney General also ignores her own pleadings, the certifications that are at the core here in GAAP.

So fraud claims have five elements generally, misrepresentation or omission, materiality, scienter or intent, reliance and damages. The Attorney General has taken the position in this case that she need establish only one of these elements at this point, a misrepresentation or omission, because materiality is out, intent is out, reliance is out, and damages is out. That's her construct. But that rather absurd construct converts 63 (12) into a strict liability statute. So then all the Attorney General need do is identify some alleged error or inaccuracy, material or otherwise, relied upon or otherwise, impactful or otherwise, and now there is a violation of 63 (12), and Mr. Amer's representation this morning alluded to this

because he noted that, even if the triplex were an innocent mistake, which we claim it was a mistake, that don't matter under liability 63 (12), you are still liable. And that is just not the law. The Attorney General's hue is all that she need do is come up with some competing valuations, point to something different, or point to some actual error, and that's a 63 (12) violation, but there is no case of any kind supporting that position.

THE COURT: Hold on.

First of all, I don't think that's their position.

Second of all, 63 (12) is not simply a codification of common law fraud, and I agree with you, five elements, falsities, scienter, materiality, reliance, damages, et cetera. There are only two in the statute. The statute is very clear. If I had written it, it would have been clearer, but, basically, it is a misstatement, false statement, and used in business. Now, let's not get all wrapped up and worked up about materiality. Every number in the law to be liable as a mistake has to be material. Okay, we've got a million dollars, we've got a million and five dollars. That's not material, but my understanding from reading cases is materiality, in a legal sense, if you will, is not a requirement. That's not what the statute says. The statute is clear. It is only a paragraph. It doesn't say material. It says misstatement use in business or

something like that.

Again, what am I missing?

MR. KISE: I think that converts then -- just like the Attorney General is trying to do -- the statute into a strict liability statute, and there is no case that has ever done that, respectfully. I don't see that. There has to be some -- Even if you look at the Dominos case, even if it is not a requirement -- which I am going to come back to the fact that I think it is, but let's go to the next line -- even if it is not a requirement, evidence regarding falsity, materiality, reliance and causation are clearly relevant to determining whether the Attorney General has established that the challenged conduct has the capacity or the tendency to deceive.

THE COURT: Dominos is a trial court decision, so it is not binding on me. It is distinguishable on its facts and it is a total outlier. Basically, Dominos treats it like a common law fraud case, which 63 (12) is not.

MR. KISE: I don't think it treats it like a common law fraud case. I think it points out -- Because it doesn't require those elements, but you have to have some foundation upon which to determine liability. And if you don't look at things like real world impact, if you don't look at things like materiality, if you don't look at things like reliance, if you don't even consider them, then what happens is is you

have what Mr. Amer said, even if there is an innocence, if it is a false statement, whether it matters or not to anyone, now you have a violation of the statute. And I just, respectfully, don't see that as the law under the 63 (12).

THE COURT: That's what the statute says, though you keep leaving out the part that it has to be used in business. As I said, materiality, we all understand what materiality is, but it is not part of the statute. It is not part of the cases, except an outlier that is distinguishable by a Court that's not binding on me.

MR. KISE: I think the Exxon case, as well, respectfully, speaks to the same concept, which is the total mix of available information. I mean, again, you have to look at the entire context. You can't look at one statement one piece at a time because if the Court is going to do that, if any Court is going to do that, then there would be 63 (12) violations all over the place for innocent mistakes, for actual inaccuracies. That's just not the purpose and intent behind 63 (12) and the language is not converted into a strict liability statute. And the statements of financial condition, themselves, are not designed to show the precise value of the reporting entity. They are to help -- They are to help serve as the beginning -- Again, this is Professor Bartov -- not the end of a complex and highly subjective

evaluation process users, such as banks and insurance companies engage in as they perform their own due diligence. Banks, like the banks involved here, know that an estimate put forth in a statement, like a statement of financial condition, even when written to follow GAAP, which these were under ASC 274, that those are truly estimates. They are opinions. They are not -- You have to look at the total mix of available information -- in Exxon -- to the user of a statement to determine whether an inaccuracy or even a misstatement or omission makes a difference in context.

As I have said, it is probative, but let's look at the Attorney General's complaint. Even in the Attorney General's complaint, they incorporate materiality. There is 48 paragraphs in the Attorney General's complaint referencing materiality. They are all listed there. There is 25 paragraphs referencing materiality in loan --

THE COURT: The fact that they claim immaterial doesn't mean they have to claim immaterial.

MR. KISE: But they have to prove what's in their complaint, Your Honor.

THE COURT: No, they don't. They have to make out a case. They don't have to prove everything in a pleading.

MR. KISE: They don't have to establish what they have alleged?

THE COURT: No, they don't.

MR. KISE: Okay. I would respectfully disagree. I think, if they have alleged it in their complaint, I would think they have to.

The compliance certificates as well, the compliance certificates which you have heard so much about, the compliance certificates, themselves, incorporate materiality.

The compliance certificates, there is an example here from 2016 compliance certificate. I will represent to the Court you can look at them all. They are all, basically, the same.

The foregoing presents fairly in all material respects the financial condition of the guarantor at the period presented. All of the representations and warranties made by the guarantor under various sections remain true and correct in all material respects.

In complex commercial settings, materiality is just an essential component of the representation analysis. I mean, it's the various compliance certificates they are seeking to enforce and say that we violated incorporate materiality. That also incorporates materiality. The GAAP Standards that govern the preparation and presentation of compilation statements, like the statements of financial condition, the GAAP makes very clear that it does not apply to immaterial items. It recognizes that not all accounting

errors, violations or departures from GAAP have a material impact on the inferences of financial statement users.

So we would submit and we think the record shows that none of the items on the statements identified by the Attorney General as misstatements or omissions are departures from GAAP and any such items were immaterial from the viewpoint of the sophisticated banks and underwriters who receive those statements. Under GAAP, you have to consider who is receiving the statements, and the Attorney General can't simply just ignore GAAP and immateriality when they have incorporated into their case.

THE COURT: The Attorney General is alleging hundreds of millions of dollars even in just one statement, even as to just one property. Now, they may or may not be able to prove that the asset was overvalued by $300 million dollars, but they are alleging it. Let's not play games here.

MR. KISE: They are alleging it, but they haven't proven it is our point. They haven't proven that that is material either.

THE COURT: They haven't proven that $200 -- $300 million dollars above $200 million dollars is material?

MR. KISE: I don't think it was material to the bank and I will show you why.

THE COURT: Go ahead.

MR. KISE: I will, I will.

So let me just touch briefly on the disclaimer issue.

So the disclaimers were contained in the notes and in the independent accountant's compilation report.

Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein -- that's in the statements -- are not necessarily indicative of the amounts that could be realized upon disposition of the assets or payment of the related liabilities.

The independent accountant's compilation report also makes clear because of the significance and pervasiveness of the matters discussed above -- that's the GAAP departures. They are all identified -- make it difficult to assess their impact on the statement of financial condition. Users of this financial statement should recognize they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement.

And so these statements are unequivocal, and more importantly, and this is the difference between our dismissal argument and our argument now.

At the dismissal phase at the early stage, we had to accept as true, the Court did, the Attorney General's

position about who the disclaimers applied to and why they applied, Mazars or Trump or the Defendants. Now we have un-rebutted evidence in the record that is very clear that the notes, disclosures and the independent accountant compilation reports collectively the disclaimers form one complete integrated presentation made available to any statement user, and thus, must be an and considered together. That's Professor Bartov.

Mr. Flemmings testified that the statements are not relied upon in a vacuum and must be reviewed in concert with the accountant's report. So while the Attorney General, as Mr. Flemmings put it, chief enforcement accountant seeks to separate the reporting in the accountant's compilation report from that of the statement, itself, the AICPA standards dictate they are issued together and mutually dependent, their own exhibits. Mr. Flemmings continues in his affidavit that the Attorney General's, quote, "own exhibits confirm the accountant's report and the statements were issued together, cross referenced each other and, therefore, could not reasonably have been viewed by users as separate documents that were not dependent on each other," close quote.

So this is un-rebutted and now this is what makes this argument different than before, because we now have facts in the record that are un-rebutted, that, basically,

tie the disclaimers and the notes and the independent compilation report together. So whereas before complaint paragraph thirteen, that boiler plate disclaimers in the accountant's compilation report accompanying each statement should not had been to the Defendant's benefit, well, the Court had to accept that as true, understandably, at the dismissal stage, but now we have evidence. We have evidence that says otherwise. We have GAAP. We have AICPA standards. We have an NYU Sterns Professor. We have Flemmings, an FCC enforcement accountant. That's the only evidence on the record on this. No one has rebutted that evidence. So those disclaimers alone establish that there is no capacity or tendency to deceive.

THE COURT: Let's talk about what Mazars said, am I pronouncing it correctly?

I am talking about what Mazars said and what Trump said. So Mazars, what I seem to remember from the Mazars disclaimer, I think that's what we are all calling it. Basically, we are relying on Trump. We are not saying these are true or false. Look to Trump for the accuracy. Isn't that what the Mazars disclaimer said?

MR. KISE: The entirety of the disclaimers made clear that, yes, as in all compilation engagements, under AICPA standards, under ASC 274, yes. The compilation engagement is limited to what the client provides. That's

why there is not an audit. That's what makes it different.

THE COURT: I know you want to interpret that together, but that alone would not be a disclaimer by Donald Trump that would insulate him, correct?

MR. KISE: That's not a disclaimer at all. It is just an observation by the accounting firm that we relied on the information he provided to us.

THE COURT: I think, for months you've been calling it a disclaimer, but --

MR. KISE: No, no, the statement that you identified -- the independent accountant's compilation report, which is what you are referencing --

THE COURT: Right.

MR. KISE: That report is part of the statement, just like the notes to the statement are part of it, just like the numbers in the statement are part of it. That is the impact of Professor Bartov's and Flemming's testimony. There is no escaping that. That is the record.

THE COURT: I am not trying to escape anything. I am trying to interpret what they said.

MR. KISE: What they said, if you look at this, what I have up there, they are telling folks we relied on the numbers that were provided to us. And here are all these GAAP departures. They identified them. There is a GAAP departure notification in the accountant's compilation

report for all the things that were GAAP departures. They are GAAP departures.

THE COURT: I can't speak to that.

MR. KISE: And then they sum it up by saying that users of this -- the independent compilation report -- 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 different information. That is a warning. According to Dr. Flemmings or Professor -- Mr. Flemmings. There are so many experts here. That's a high a warning as you can provide. And the SOFC, itself, not the independent accountant's compilation report, but the statement, itself, the notes to the statement itself that were prepared says right there, use of different market assumptions and/or estimation methodologies -- everything we have been talking about -- may have a material effect on the estimated current value amounts. That is telling recipient we are giving you our opinion.

And as Professor Bartov states, they put sophisticated users of the statements, such Deutsch Bank for whom the statements were prepared, on complete notice to perform their own due diligence, which a sophisticated user like Deutsch Bank would have performed anyhow even in the absence of such disclaimers. And, in fact, as I said I was going to get to, the banks actually did perform this

independent analysis.

So all of the GAAP departures are disclosed. There is a bright line for both the accountants and the preparer, in this case Trump, that tell the user, the recipient of the statement, this is an opinion of value, and just like all opinions of value, like all opinions, in general, it is subject to disagreement. You need to make your own determination.

THE COURT: I think one of the Deutsch Bank employee witnesses, unless it was a different bank, said, oh, really, I didn't know that. I would have taken that into account.

MR. KISE: We are going to get to that testimony.

THE COURT: Okay.

MR. KISE: We will and you are correct, Your Honor.

So this agreement over valuations and the statements does not establish fraud.

THE COURT: Okay. We all know that, but --

You know if you take your disclaimers, your worthless statements -- That's what Trump calls them -- if you take both statements into logic and the logical conclusion is those statements are nothing, they are worthless, they are nothing, why are they done if they are so worthless?

MR. KISE: They are done, as the testimony

reflects, and I will show you, they are done as a starting point.

Let's look at -- I will come back.

Look at the bank testimony.

So here is Thomas Sullivan, who was involved in the actual loan approval process -- his name is on the documents and Emily Schroder at the time. Her name is now Pierless. They explain it. They understand that compilations are opinions and are subjective. They are not audited.

Mr. Sullivan, "As a banker, again, we independently assess the risks away from what the client will tell us. So" -- And this is really the key. This is at the heart of the matter -- "a client may have a view for any number of reasons, almost an infinite number of reasons of why they value something a certain way, and we don't get into a debate on what their view is. We may question it, but at the end of the day, we are making an independent credit decision on what we view it to be. And so most of our underwritings, you will see a difference between what the value a client presents and what the bank ultimately underwrites to to a more conservative standard."

Ms. Schroder, now Pierless testifying.

"I don't think misleading is the right word because it is not misleading. I mean, the client states they think the value is X. We do our due diligence, as you saw, and

come up with our own value."

Then again, Mr. Sullivan, "Do you consider the customer to have made a false statement to you when they express an opinion about the valuation of an asset that's significantly higher than the estimate that private wealth management has reached?"

His answer, "no."

"And why not?"

"Again, because so much goes into how they view something, which is usually an emotional asset for them and how we view something as a lender. And so, again, we can question and investigate what their thinking is, but at the end of the day, we want to make our own judgment to best we can, and we tend to ere on the side of undervaluing."

Question: "Can you explain why that is?"

Mr. Sullivan's answer, which is really instructive, "As a banker, you are usually looking at the most conservative set of assumptions. And just as we would challenge or question a client's value, they would certainly question ours."

And the last question he was asked, "And that's the ordinary course of discussions with a high-network customer, correct?"

His answer, "Correct."

And this is borne out in -- I got an excerpt here

from the Deutsch Bank. This is the 2014 credit memo that would relate to the Old Post Office loan. You could see it here. You can see -- This is to your question, Your Honor, and I'm sorry I took so long to get to it and -- but I wanted to give you a specific example about the $100 million here and the $200 million there.

Just look here at the client's reported net worth in 2012. There is five columns there I am going to focus you on. This doesn't work, so I'm sorry, but it is really, like, the four right-hand columns, the first column, 2011, there is no comparison to that. It is just informational. But if you look at the line that says net worth and you go across, you will see that in 2012, Donald J. Trump reports a net worth of $4.559 billion. The bank adjusts that based on their own evaluation to $2.4 billion.

In 2013, the client, Donald J. Trump reports $4.978 billion. The bank does their own evaluation and they come to $2.645 billion. So not only is $100 million not material to the bank, roughly, $2 billion isn't material. In other words, they are making assumptions very different than what President Trump is making. They are looking at valuations in a different way.

If you look at the next page, you will see how this valuation analysis bears out. They talk about four trophy properties. They put President Trump's valuation and

Deutsch Bank's valuation and their own adjustments to these numbers. And so the total portfolio adjustments, there is a -- just for the four trophy properties, if you look at the first column and the last column, you got Donald J. Trump's valuation at $1.691 billion and you got the bank's adjusted at $1 billion. You got the total portfolio. The bottom line, $3.759 billion, and the bank is at $1.8. The point is what the bank considers material is important in this context. You can't just simply write it away. And the Attorney General wants the Court to -- this error or that error, what matters is the actual users of the financial statements, because going back to -- and I know you don't like this case. Actually, maybe it is not. Maybe I have a case. I do.

Going back to the case law, so the Temper-Pedic case, no evidence to show that retailers were misled. The Exxon Mobile, no testimony from investors who claim to have been misled. And the Dominos case, which I know you don't like, but it's the same principle. And there are other principles in our case that the members are the target. They are not actually deceived. They are conducting their own independent analysis, if they understand -- as Mr. Sullivan testified and as Ms. Pierless testified, if they understand that these are opinions, then it is, kind of, the equivalent of claiming fraud because you have a Jets

fan and a Bills fan. I could give you fifty reasons why the Jets are the best in history and someone can give you fifty reasons why the Bills are the best in history. Those are opinions, just opinions, and it is not a statement of fact and the statements of financial condition are not intended as absolute statements of fact. And that's the disconnect the Attorney General has. If you look at ASC 274, if you listen to the accounting experts, then there is no other conclusion.

THE COURT: I am surprised you didn't use the Miami Dolphins.

So on the one side we have the Deutsch Bank employees saying we, you know, put too much stock in this, you were going to do it anyway, and other side you have, the way of the statute and my interpretation of the case law --

Just give me one minute.

Going back to some of the figures you were saying that the Trump Organization gave a certain value, let's say $200 million, and the bank said, well, we only took it to mean $1 million, okay, are you trying to convince me that the banks didn't trust Donald Trump?

MR. KISE: No. I am trying to convince you that what's going on here is what happens every day in complex sophisticated commercial real estate transactions. This is the give and take that is ordinary in this process, sir.

That's what I am trying to convince you of, respectfully, I really am because they are trying to marginalize or make fraudulent things that happen every day in this city. It is the heart and soul of the commercial real estate business.

I have an opinion of value. Someone else has a different opinion of value. The bank has a third opinion of value, as you see from the record. These are all opinions. But you can't say it is fraudulent because they come up with one opinion that is different than ours. Mar-a-Lago, they have a tax appraisal value. They have the Kushman and Wakefield appraisals. For every appraisal or valuation they have, we could fifty that are different. If you look at the bank's numbers that we are talking about, look at that disparity. You are talking about --

THE COURT: Sorry. Go ahead.

MR. KISE: You are talking about billions of dollars in disparity in terms of how everyone assesses things, and what that demonstrates is that these vast disparities are normal in this process and they are legitimate because you have different people valuing things for different reasons.

The only way for the Attorney General to establish their case is to buy into the notion that there is one right answer, like Mr. Amer is saying. You must accept the property appraiser in Palm Beach County, $27 million or the

$50 million number for Mar-a-Lago because that's the right number. It is respectfully preposterous. You could get fifty different appraisers and fifty different real estate brokers. They are all going to give you different numbers. That's the nature of this business and this is how money is made and lost. This is why Donald Trump and others like him have been successful because they see value where others don't. So they come in. They find a property, like Dural, that's in distress and figure out how to rescue it. They then turn $150 million investment into over a billion dollars in value. He bought Mar-a-Lago for $8 million dollars back in 1980. It is worth six, seven, eight, I mean Mar-a-Lago is worth $1.2 billion dollars. These are not made up numbers. They may be numbers that are subject to debate, but they are not fraudulent numbers.

THE COURT: Hold on.

I assume you heard the saying "making a virtue out of a necessity." So your position is almost if there is one evaluation of $200 million, Kushman & Wakefield, whatever, some appraisal, and if the Trump Organization values it at $900 billion in a statement, oh, well, that just proves there is a difference of opinion, what?

MR. KISE: As long as they complied with ASC 274 in doing so, as long as they fit within the confines of the appropriate valuation methodologies, then my answer is yes,

and they did here. They did.

THE COURT: But do you see my point? The fact that the estimates or the values or one appraisal versus one statement are so different, oh, that just proves different people have different values, you know, evaluate it differently.

I am going to ask for the last one on that. We have limited time.

My interpretation of the statute is certainly and the case law also is reliance is not a defense. They didn't rely on it. You cannot make false statements and use them in business. That's what this statute prohibits. That's what the allegation is here. Let's move on.

MR. KISE: All right.

But again, they are not false in the context of which I am presenting.

Just to touch on a couple final points, the Attorney General is claiming that President Trump got access to rates he would have otherwise not been entitled to because of his overinflated net worth. But based on the testimony, again, of Thomas Sullivan, the total net worth requirement to be a customer of the Private Wealth Management Group was, as he said, in the range of $50 million. And then he was asked at any time did you believe President Trump had a net worth of less than $100 million?

No. At any time did you believe President Trump did not have a proven successful record.

THE COURT: This is not reliance.

MR. KISE: But they are saying --

THE COURT: It is your time to say what you want, but I am telling I am not buying anything that, basically, says, well, they didn't rely on it because reliance is not an element of the statute.

MR. KISE: It is not an element but it is relevant.

According to case law, you must consider it in determining whether or not there has been a violation when something has the capacity or tendency deceive, and I would respectfully disagree with you.

President Trump was overqualified on the subject loans. If his net worth had been at $1 billion as opposed to $2.5 or $4.3, would that have affected the rate at which these credit facilities were priced?

Probably not.

And why not?

I would say a net worth in excess of $1 billion dollars constitutes a strong borrower or guarantor.

Is it fair to say that once you are at the low end of this range, whether your net worth is a billion or 2.5 or 4.3, it is immaterial to the pricing?

The answer is yes. That's David Williams.

And if you go back, that's borne out in their credit memorandum. If you look at their credit memorandum, again, there is a $2 billion dollar disparity, again, between what President Trump says his properties are worth and the bank says the properties are worth. And by the way, the Attorney General's numbers are yet a third set of numbers that we don't have. They have a whole different set of numbers that are in some cases higher, some cases lower. All that proves is everyone has their subjective evaluation, but it doesn't establish there has been a capacity or tendency to deceive. It is not a statement in the abstract. It is statement that has a capacity or tendency to deceive. So if no one has deceived, it cannot be.

THE COURT: I will take issue with that last statement.

Reliance is not an issue.

That's my opinion. Let's move on to a non-reliance.

(Whereupon, there was a change of reporters.)

MR. KISE: There was never any violation of the loan agreements. As you sit here today, this is Rosemary Balick (Phonetic) who is the private wealth management lead banker.

"As you sit here today, do you have any reason to believe that any time between January 1, 2011, and the time you left that President Trump submitted any materially misleading statement of his personal financial condition?

"No.

"That President Trump violated any applicable net worth covenant in any loan documentation that you are familiar with?

"No.

"Did President Trump did not maintain a net worth greater than two and a half billion?

"No."

There is no violation of the loan agreements. There's no breach of the applicable net worth covenant. There is nothing materially misleading. President Trump did not make false statements. Are you aware of any false oral statements President Trump made? Any false written statements that President Trump made? Any false information that President Trump provided to Deutsche Bank? The answer to all three of those questions according to Rosemary Balick, again, the private wealth manager and banker on this

account. No.

Eric Trump, the same, the same questions, the same answers. Any false oral statements that Eric Trump made, any false written statements that Eric Trump made, any false information that Eric Trump provided, no, no, no. Donald Trump Junior, the same. Any false oral statements? No. Any false written statements? No. Any false information ever provided to Deutsch Bank? No.

And Mr. Robert is going to talk briefly about, about his clients. I am just going to point out just to close out that thought that there is just no evidence in the record that Eric Trump or Donald Trump Junior had any direct involvement in the creation or preparation of the statements of financial condition but Mr. Roberts will speak to that.

So in sum --

MS. GREENFIELD: I am sorry, Counselor, just one quick question. Donald Trump Junior was the trustee of the Donald J. Trump revocable trust for a number or years; isn't that correct?

MR. KISE: Correct.

MS. GREENFIELD: And didn't he, as the trustee, certify the accuracy of the SFC's for that period?

MR. KISE: I said the preparation of the financial statements.

MS. GREENFIELD: But you acknowledge that he

certified the accuracy for those periods?

MR. KISE: I think he signed the certifications as a trustee.

MS. GREENFIELD: As a trustee of the Donald J. Trump revocable trust.

MR. KISE: I believe he signed the certifications. So in sum, Your Honor, I know I have gone over the time and I appreciate the court's patience as always. We believe the First Department's decision mandates dismissal of certain time barred claims, that the record proves the individual defendants and the trust are not subject to the tolling agreement, that the only thing you have here is demonstrating that President Trump has made many billions of dollars being right about real estate investments, that his statements were accurate and complied with GAAP in ASC 274 which is governing standard.

If they complied with GAAP at ASC 274, then it's very difficult to conclude that there's a problem here, that the sophisticated banks and insurers executed carefully negotiated commercial agreements. The record proves those banks were never mislead about anything, that the subject transactions were highly profitable for those banks. There were never any loan defaults. The banks received 100 million plus, almost 200 million, I believe, in interest. There was no fraud. There are no victims. This is a

dispute about valuation opinions which by it very nature cannot be fraudulent conduct.

I got my opinion of value. The Attorney General has her opinion of value. The bank has its opinion of value. You might have your opinion. Everyone in this room might have different opinions, but that is what they are. They are opinions. And so for that reason and the reasons expressed in our papers, we believe that we're entitled to summary judgement dismissing all of the claims.

THE COURT: I am going give in here for a second. The square footage a subject or a subject of measurement.

MR. KISE: The square footage. The square footage is a mistake. It's in the testimony. They made a mistake.

THE COURT: But it is an object of fact at least.

MR. KISE: It is an object of fact. If the square footage -- again, you are talking about a 152, $200 million Delta and so you got the bank itself with the $2 billion Delta. It comes back to materiality which cannot be ignored under GAAP. The total mix of available information. That's Exxon. That's the case law. And so you have to take it all in context. You can't look at one point and say uh, ha, I got you on that one. I got you on this one. No, you have to look at the total mix and information available. Thank you, Judge.

THE COURT: Thank you. Please.

MR. ROBERT: Good afternoon, Your Honor. I will be extraordinary brief and I changed my notes since Mr. Kise talked. The beginning has already changed. Instead of good morning it's good afternoon, Your Honor. So I am going to start off by answering a question that Miss Greenfield just asked about the certifications. They were signed by Don Junior, some of them in his capacity as trustee. But, again, going back to the issue of materiality, if you read the language of the certification, which is contained in slide 42 -- we don't have to pull it up again -- but in it it says, quote, the foregoing presents fairly in all material respects the financial condition of guarantor at the period presented.

The same thing about whether it's the compliance certificate or any of those certifications, it has the same phraseology all material respects which, in our view, is extraordinary important. That kind of dovetails into the Attorney General's request in their motion for certain 3122(g) relief. I would share with the Court that in my experience I have never seen such a request in a complicated case such as this where there are so many facts and so many specific issues. I have seen it in very simple personal injury matters.

What I would submit is that what they had suggested at the end of their brief are the matters that this Court

could rule on pursuant to 3122(g) is the equivalent of using a hammer instead of a scaffold because they would make phraseologies such as isn't it a fact that Donald Trump Junior as trustee certified the accuracy of something.

Well, if you want to say was there a certification signed and said it was accurate in all material respects, the documents speak for themselves. Nobody is going to dispute that that's not his signature on the document but it has to do with the specificity of we can't talk in terms of grandiose theory or grandiose statements. It has to be tied specifically to whatever representation was made and whatever riveting language was contained in that representation.

I will say on behalf of my clients, Donald Trump Junior and Eric Trump, obviously, I agree with that what Mr. Kise has said. We fully support the notion that under the First Department's decision as is demonstrated -- and I am not a Power Point guy -- so I think Exhibit 12 of the Power Point was the chart which showed all the claims that we believed were time barred as to Mr. Trump Junior and as to Eric Trump. And we don't think that there's any other assessment that can be made other than these transactions that are listed are time barred.

I also think that it is clear that our clients or my clients are not signatories to the tolling agreement. To

Your Honor's point, our view is that the tolling agreement is clear and unequivocal. Under parol evidence will be used to the extent there was any ambiguity. It is our view there is no ambiguity in that -- in that it is clear that they was not signatories to it and they are not bound by it.

As far as the issue of the subsequent certifications are concerned, again, our view is based on the First Department's decision and the First Department's dismissal of the case against Ivanka Trump all of the certifications that were signed by my clients related back to the transactions that had previously been closed. The distinction, if there is one, between the Ivanka Trump situation and my clients is that in Ivanka's Trump situation you are actually increasing the loans at that point because more money was coming out.

So, if the loan was $100 and there was only $95 that had been drawn, when Ms. Trump made the request and made her recertifications, she was actually increasing the amount of exposure to the bank. And in the First Department in its decision, based on the briefs that were before it, the First Department said, no, that still is a continuing -- that continues and relates back to the original transaction. And since the First Department summarily rejected the continuing loan doctrine, it is our respectful view to this Court that any of the certifications signed by Eric Trump or

Donald Trump Junior that relate to the transactions that are time barred based on the Appellate Division decision, therefore, needs to be dismissed from this case as well.

And, finally, as it pertains to the record, there is nothing in the record to suggest that Eric Trump or Donald Trump Junior in any way were involved directly in the creation or the preparation of the statements of financial condition. Thank you, Your Honor.

MS. GREENFIELD: I apologize I don't have the exact citation, but isn't there evidence in the record that Eric Trump provided THE valuations for Seven Springs?

MR. ROBERT: There is evidence in the record that he was asked questions, but the record is also clear that he didn't know when he was giving information about the valuations that was being used for the statement of financial condition. You have Mr. Trump's testimony that he didn't know it was being used for that purpose. He got a call about it.

We'll be making a motion in limine about the use of the examinations under oath and whether or not they are admissible at purposes of the trial. But to answer your question, since we weren't present for the original interviews that the Attorney General did with its witnesses, but I will submit to you that the testimony at the examination under oath of Jeffrey McConney, who's the person

who actually was preparing the underlying spreadsheets for SOFC, said at no time did Eric Trump know why it is he called and said, hey, can you give me a value for that.

I will also share with you, based on that testimony, there is no evidence in the record that Donald Trump Junior or Eric Trump ever saw any of the spreadsheets or any of the backup that Mr. McConney prepared when putting together the statements of financial condition.

MS. GREENFIELD: Just to followup, it's your position that even if Eric Trump provided what may ultimately be found to be false overinflated valuations, he didn't know it was going to be used for the SFC, there is no liability?

MR. ROBERT: Again, I would have to respectfully disagree with the premise of the question because, again, for all the reasons Mr. Kise set forth, when Eric Trump was giving valuation, it was based on his experience as a developer, what he thought the uses of the property were. The Attorney General probably spent close to an hour or more at his deposition in this case asking him about that. That is part of the record. His testimony is consistent with what I am telling you now. But separate and apart from that, if someone ask you a question and you give an answer and you don't know what that information is being used, I don't believe no liability can attach to that, no.

THE COURT: I'm sure you have a lot to say but not a lot of time to say it so do your best.

MR. AMER: I am going to be laser focused and trying to hit the points in the order that they came up because that's the way they are on my notes. I want to first address the point that we somehow have changed the theory of our case from obtaining loans to maintaining loans. I appreciate Your Honor is not a got you judge and is going to be generous to us and allow us to pursue that, but I am going to take your generosity where I really need it and not where I don't need it.

So I'd like to put up paragraph 18 of our complaint. It says, 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 11-year period. I think I can stop reading there.

THE COURT: Yes.

MR. AMER: So, I don't know why Mr. Kise got so far over his skis but he did and they should have read the complaint before creating this argument that we are somehow changing the theory of our case. We are not and there are other paragraphs in the complaint, which I don't think we

need to go through for time, where we specifically allege each of the fraudulent transactions that are on the various timelines that we showed. So, this is absolutely a case that was and is about obtaining and then maintaining the loans throughout the course of the life of the loans.

THE COURT: Since we are talking about Mr. Kise, he must have been water skiing not snow skiing, right.

MR. AMER: Let's talk about the First Department decision. The argument that somehow the First Department has rejected our theory that each fraudulent certification was a timely completed transaction when it was submitted to the bank. The First Department not only didn't reject that theory. I would argue that the First Department rejected their theory that the closing date means that -- that if the closing date is before the limitations period any subsequent certification relating to that loan is somehow time barred.

And the reason why we know that the First Department rejected that position is because Trump Endeavor LLC, you'll recall, is the borrowing entity for the Doral loan. It's the only loan that it's involved in and the Doral loan closed in 2012. So, if the First Department agreed with the defendant's position that the closing date is when the claim accrued, then there would be no reason why the First Department would not have dismissed Trump Endeavor LLC along with Ivanka Trump because there's no transaction

that that borrowing entity is involved in that under their theory would be timely.

The same is true -- the same is true for 401 North Wabash because that's the borrowing entity for just the Chicago loan which is also another loan that closed before the limitations period and yet the Appellate Division did not dismiss that borrowing entity and it would have if the panel agreed with their theory.

Now, I've looked at the Boesky and the Rogal cases that Mr. Kise mentioned and they have nothing to do with this case. They're not cases that involve loans and they stand for the simple proposition that an allegation of fraud is completed -- that it accrues when it's completed. We know that. It has nothing to do with loan closing and subsequent certification under a loan obligation.

Mr. Kise talked about Miss Trumps draw and he told us that the draw that Miss Trump signed was no different from the certifications of the financial statements that Mr. Trump, Eric Trump, Donald Trump Junior all signed. I don't know what certification draw he's referring to, but it's not the draw document that was produced in this case. If we could put up the draw request. This is it.

There was only one of them. And it says after the long paragraph, "borrower hereby certifies as of the date hereof to the lender, that the loan is in-balance." That's

what the certification is and actually it was true. This is so different from the certifications that were submitted with respect to the statements of financial condition. I would also mention there's only one of them and we know that 6312 requires repeated and persistent fraudulent transactions. So we don't even know what the Appellate Division thought of this certification because it could be that having only seen one of them the panel determined that you don't meet the requirements of repeated and persistent under the statute.

Let's talk a little bit about the tolling agreement, a little bit about the tolling agreement. Your Honor, you are exactly right that the question of whether a tolling agreement is signed is a factual question and the question of whether somebody who hasn't signed is nevertheless legally bound by it is a question of law. And you don't get judicial estoppel for a question of law. It's also the case that the Jewel (Phonetic) decision was issued after we argued the motion to hold Mr. Trump in contempt when I made my representations about whether or not Mr. Trump, as a legal matter, was bound or not.

So we shouldn't be deprived of being able to take advantage of the Jewel decision which we think is directly on point and controlling and compels the Court to conclude, if it even needs to reach the issue which we don't think you

need to reach for purposes of this motion, that -- that all of the individual defendants, even though they didn't sign the agreement, as a legal matter, are bound because of the broad definition in the agreement. I would also add that --

THE COURT: Don't you want to read that broad definition in the agreement?

MR. AMER: It's too late for that, Your Honor. I will read this portion of it though because it relates to the trustee. The definition includes, quote, persons associated with or acting on behalf of the Trump Organization, DJT Holdings LLC, and DJT Holdings Managing Member LLC. It's our position that the trustee fits within that definition because persons associated with the trustee; namely, the trustees were acting on behalf of those entities.

I would also add that we agree and have briefed the point that you cannot rely on extrinsic evidence to alter the meaning of an unambiguous document and we argue that on page 32 of our reply brief. I'd like to put up, because Mr. Kise said that we don't get disgorgement because this is not a Martin Act claim and the cases say that you only get disgorgement in a Martin Act claim. We have a quote from the Greenberg decision.

"We further conclude that disgorgement is an available remedy under the Martin Act and the Executive

Law." So, yes, we get disgorgement under 6312. I'd like to address the argument about ASC 274. Mr. Kise spent a lot of time arguing that you can use different methods, but he misses the point that whatever methods you choose, at the end of the day under ASC 274, the results you end up with has to be estimated current value, a specifically defined term that means what a willing buyer and willing seller fully informed not under duress would agree that the property is worth.

So it's not correct to say that you could use whatever methods you want under ASC 274. No. You have to use a method that gets you to a market condition estimated current value between a willing buyer and a willing seller. Mr. Kise made the point, I think, when he said, well, two people can bid on Mar-a-Lago and if you don't want to live in Florida maybe you wouldn't pay $0.50 for it. I think that's a rough paraphrase of what he said. If you don't want to live in Florida, you are not a willing buyer of that property.

It's not based on idiosyncratic needs or wants of the person doing the valuation. It's not based on what Mr. Trump's perspective is. If it's estimated current value, then it has a meaning. And as I've said, the meaning has to take into account market conditions. Mar-a-Lago is a heavily restricted property. It is not being used currently

as Mr. Kise said as a private residence. It's being used as a social club where the owner happens to live on the property, but it's not a private residence. It's a social club. It has members.

Now, Mr. Kise mentioned that Mr. Moens valued Mar-a-Lago at this very high number as a private residence and that somehow they can revert the use of the property to a private residence. That's not true. They like to refer to the declaration of use which is a 1993 document, but they ignore the 2002 deed that I put up on the screen with the national trust. That is a later agreement and it is an agreement pursuant to which Mr. Trump conveys his right to use it for any purpose other than a social club.

There is not a stitch of evidence in the record suggesting that the national trust would agree to amend that document to allow Mr. Trump to use the club for others, for any purpose other than a social club. So the this court shouldn't speculate on what may or may not be possible in terms of future use. The Court should read the deed and should interpret it as a legal document for what it is which is a very onerous restriction on the property.

I want to talk a little bit about Doral, and I want to pick up on a comment that Miss Greenfield mentioned about whether you can use a current day valuation of the property to claim that an earlier year value was somehow justified.

The answer is no. You have to justify the value that you assign at the time based on what the information was that you had. And to their point on Doral, I think they're taking it even further. They are not saying, well, we can justify the value of property "X" back in 2012 based on what property "X" is worth today. With Doral, they are saying we can justify property X's inflated value because a different property, Doral was really worth much more than we even said it was worth in the statement and, therefore, somehow the excess value of Doral, that we can show today, compensates for all the inflation that we have in the assets for all of our other properties.

It is a ridiculous notion. There was never any disclosure of this $1.3 billion number for Doral in any of the statements that we're talking about. I would also point out that their entire argument about Doral and it's $1.3 billion value is based on an analysis that their expert Frederick Chen (Phonetic) did where the start of his analysis was a marketing pitch by New Mark that put the value at 1.3 billion in 2022, I believe.

Now, they didn't put that document in evidence but we did and it's Exhibit 502. And can you look at it. It is a Power Point marketing sales pitch. It's not an appraisal. And what is so startling about their expert's use of the New Mark sales pitch is that New Mark actually did an appraisal

of the property in 2021. And the value that New Mark came up with was $297 million and that is the figure that they used for Doral in the 2021 statement. So this whole idea that Doral somehow is a $1.3 billion agreement it is just nonsense.

Very quickly on materiality. Your Honor, the statute is very carefully worded and it says that it targets fraud or illegality in the carrying on, conducting or transacting of business that is repeated or persistent. That's it. It doesn't say anything about materiality. Now, the cases say that conduct is fraudulent if it is false or misleading. Again, nothing about materiality. And the cases say that it's false or misleading if it has the tendency or capacity to deceive. Again, nothing about materiality. It's just not an element under the statute.

Now, is it relevant to an analysis of whether it has the tendency or capacity to deceive, sure. There are a lot of factors that would go into that analysis. If, as Your Honor posited, a valuation is off by $10, nobody would say that it has the tendency or capacity to deceive but it's off by a hundred million dollars, absolutely.

The disclaimers. The statement of financial condition, I am going to quote it because Mr. Kise put it up on the screen, says use of different market assumptions and/or estimation methodologies may have a material affect

on the estimated current values.

I think that hurts them and I think it helps us. Why? Because it references different market assumptions. It's emphasizing that this is all about market value and it talks about methodologies having a material affect on estimated current values. So it's emphasizing again to the user that at the end of the day what we're talking about are estimated current values not "as if" values, estimated current values.

Now, what the bank considers material or not is, again, not relevant under this statute. They seem to view this statute as some victim's recovery act. It's not. It's a market integrity statute. That's what it's designed to do. And the legislature presumed that if you have fraud in the marketplace in business transactions you are harming the public because you know no longer have an honest marketplace.

Mr. Kise showed the credit memos from Deutsche Bank. Again, we don't think that's the least bit relevant, but it's worth pointing out that the credit memos take a haircut off of the personal statement -- personal financial statement values because they are looking at a liquidation scenario, right. The bank wants to understand what these properties could sell for on the auction block. That is the antithesis of estimated current value because if we go back

to the definition it's a willing buyer willing seller fully informed not under duress. Nobody is under more duress to sell property than a debtor in bankruptcy. And so when the bank is giving haircuts to these property values they are doing something that converts the values for their own internal analysis from estimated current value to something that is a liquidation value.

And so the question is not whether the bank would be okay with the liquidation value that they end up with. The question is whether the bank would be okay if the estimated current values that they started with were hundreds or maybe even over a billion dollars less than what were being reported in Mr. Trump's statements of financial condition.

We do have the testimony -- we do have the testimony of Nicholas Hague from Deutsche Bank which I think is something Your Honor should take note of. We saw testimony from Mr. Sullivan and Miss Piercelis (Phonetic). They weren't credit risk officers. They were on the business side of getting the clients in the door. Mr. Hague was a credit risk manager and his testimony is on the top of page 22 in our reply brief. He was a decision maker on whether to approve these loans and he absolutely was offended when we showed him what was really going on with these values.

THE COURT: That's obviously what I was referring to a while ago. And what did he say. Maybe, you should read a little bit of it. I know we're short on time.

MR. AMER: So, Mr. Hague, what we did was we showed Mr. Hague that Mr. Trump had reported values for 2011 and 2012 of 525 million and 527 million respectively for his interest in 40 Wall Street despite the fact that he possessed an appraisal showing a valuation of $200 million as of November 1, 2011. And then Mr. Trump had reported a net operating income for 40 Wall Street that was approximately four times the actual net operating income used in this appraisal.

Now, when asked how you would have responded if these discrepancies had come to his attention during the credit review, he testified that he, quote, 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. That's his deposition testimony at 177 line 25 to 178 line 19.

Mr. Hague also testified that he was, quote, shocked at the numbers reported on Mr. Trump's financial statement, close quote, for 40 Wall Street giving a then

existing appraised values of the property and that had he learned at the time of the discrepancies between the net operating income figures used in the appraisals for 40 Wall Street and those used for Mr. Trump's statements he would have questioned the accuracy of other information provided and would have asked whether the bank should continue doing business with Mr. Trump. That's his deposition transcript 177 lines 25 to 178 line 19, page 194 2 to 12, page 196 to 13 to 15 and page 237 line 1 to 241 line 25.

Quick point on Donald Trump Junior. He was a trustee. He certified the statements in his role as a trustee and as to the point that, oh, he had no involvement in the preparation of the statements, I'd go back to the slide I showed that pursuant to the statements as the trustee he was responsible for the fair presentation of the statements in accordance with GAAP. That's the representation that was made in the statements.

Just a final point, Your Honor, it's not enough to say, well, I have a value and you have a value and so everybody is entitled to their own value. That's not true. If your value is an "as if" value that has nothing to do with the market conditions and my value is an estimated current value that is based on market conditions and is, in fact, based on an appraisal, then it's my value that's the correct value. And your value if it's an "as if" value

that's based on, you know, your assumptions about your perspectives on investing decades into the future, it's not relevant to the statement because it's not an estimated current value and this court should understand that when we have an appraised value showing what estimated current value is to the property and the defendants have nothing, meaning no estimated current value because they are telling us that what they put in the statement is fundamentally different from an estimated current value and they have no competing appraisal, here, we are at summary judgement. They have had their opportunity to make the record. If the evidence isn't there, then they don't get the benefit of proving something at trial that there's no evidence on this record to support.

So, the Court should, in our view, when looking at these properties and seeing appraised values and no competing estimated current value on the other side in the record, should conclude that there "as of" values are false and misleading because they are way inflated beyond what the appraisal values are. Thank you, Your Honor.

(Continued on next page)

MR. KISE: So I will check off at this point, but on the change theory, you heard us on that. On the First Department decision, you heard us on that. I am not going to belabor that. You understand our position and it's, obviously, your discretion.

I would say just briefly on his point about how the First Department would have dismissed claims if they thought they should have dismissed, I would just say they did. It says, "To dismiss as time barred the claim." They didn't go through a line item because they didn't have the record in front of them, but I would take issue with what Mr. Amer is saying, that they didn't dismiss those claims. They did dismiss those claims. And to say that we don't know what the Appellate Division thought, it is right there. It is just in an application of dates to report from, but you heard us on that. The tolling agreement, you heard us on that. You understand our position on the document, as Mr. Robert mentioned.

As to the Trust again, there is no mention of the Trust in any of the documents. It is not even, like -- Their argument is a layer upon layer because it doesn't reference the individual directly, but it references them separately because of their association with the company, that, therefore, that indirect reference then means that, because they are indirectly referenced and they happened to

be a trustee, now they are bound. It flies in the face of Trust Law. There is just no way to get there.

ASC 274 and the estimated current value, Mr. Amer is testifying. What I am pointing you to is an NYU professor and a SCC chief accountant. I would direct Your Honor's attention to that testimony. I would read those affidavits and those reports carefully because they are -- Estimated current value is not what Mr. Amer is saying it is. You have to read all of the ASC 274. You have to understand the context of the opinion. There isn't one value. There isn't one estimated current value. There are a myriad of ways to get this estimated current value. And that is what Mr. Flemming says, that's exactly what Mr. Bartov said. And Mr. Amer's position -- The Attorney General's position is, sort of, turn that on its head.

THE COURT: Let me ask you this.

Let's say two estimates could both be accurate, reasonable. Is there any kind of estimate that could not be considered reasonable?

MR. KISE: If it doesn't fit within the confines of ASC 274, which provides as we noted, extraordinary latitude, extraordinary latitude. I am not going to take your time Your Honor. It is in the record that there are a myriad of ways to get the estimated current value. There is not one way. So it wouldn't be two. It could be twenty. You could

have twenty different valuations of the same property, all of which would accord with ASC 274, all of which would be GAAP compliant. They would just be based on different inputs, different perspectives, and as long as you get there that way, you are there.

As to Mar-a-Lago, again, the Attorney General was taking little pieces. If you look at the Schuman Declaration, you know, he walks through the facts of all of the documents. All of the documents are there. And if you look at the documents as a whole, they demonstrate what we said. And it is used as a private residence and Palm Beach has approved its use as a private residence, but that's all in the records. I am not going to take your time this afternoon.

On Dural, we are not using -- As I said before, we are not using current day value to justify prior numbers. Our numbers were much lower in the SOFCs. What I am saying is that we were conservative at that point. We could have been higher, we weren't. There is just great disparities. This is a highly subjective process and you heard us on that.

Materiality, I am not going back there. You heard us on that.

As to the disclaimers, again, Mr. Amer, respectfully, he is testifying. There is no actual

testimony from anyone in the record, other than Professor Bartov and Mr. Flemmings, that talk about the impact to these disclaimers, how they fit the AICPA Standards, GAAP.

The Attorney General wants to talk about GAAP when it benefits them, but then they want to ignore it when it doesn't. Again, I would encourage the Court to look at Bartov and Flemmings. There is no evidence in the record that disputes their point about those disclaimers apply fully and the impacts of those disclaimers on the transactions. It is not a situation -- moving on to his next point -- about the starting point being lower, but the bank still says okay.

The bank -- The testimony from at least one of the bankers that I showed you demonstrates -- that was involved in the transaction and was involved in the credit approval process. So they want to put all of their eggs in the Nicholas Haye basket, and I am going to get to that in a second, but the fact of the matter is there were five people that signed off on that credit approval. They are all listed right there on the credit memo. You could see them. So the idea that one has primacy over the other, we have several individuals testifying. And pointedly, Mr. Haye didn't say absolutely this would have been different. He said, if there was no explanation, then yes, I think I might have done something differently. But they are speculating

as to what might have happened. They are saying that, oh, well, Nicholas Haye is saying he would have denied the credit. He would have never approved it. He never said that. What he said is yes, if you, the, Attorney General, in a conference room with ten Attorney General lawyers, he has got nobody to defend him and he is sitting there and they are throwing his stuff in front of him and he says, and this is from the examination under oath, which we object to. I am not going there. But the bottom line is what Mr. Haye said is equivocal at best. It is not conclusive. It is certainly not sufficient to withstand the rigorous summary judgment -- the base summary judgment on what Nicholas Haye said. The statements by Williams, Sullivan, Braverman, Pierless, they were all unequivocal statements.

THE COURT: I don't know about that, but I would dispute you on that. What are we going to do, take a vote on this? Four bankers said it didn't matter to us, one banker said it did matter, I felt misled. We are going to now say it is four against one, no they weren't misled. I mean, this strikes me what we learned in high school, if a statement has any counterexamples, it is false. So if somebody was misled, doesn't that make the statement misleading?

MR. KISE: But Nicholas Haye didn't say he was misled. What he said was I didn't know this and I didn't

know that, and that might have made a difference. That's what he said. It might have made a difference if I didn't have an explanation. But there is no indication -- He didn't go actually to the due diligence visit. So Ms. Schroder now Pierless and Mr. Sullivan, I believe, went, actually, to the Trump Organization and met with them and asked questions. And so there is no telling what came up in that process. That's in the record.

THE COURT: Another minute or two. It is really about reliance anyway. We are going to take a break and then we are going to talk about sanctions.

MR. KISE: Can I just make these last two points?

THE COURT: Sure.

MR. KISE: First of all, Mr. Amer mentioned that we didn't do our statements in accordance with GAAP and because we didn't comply with GAAP, that's a problem. But they were in accordance with GAAP. That's the point, is that we did follow GAAP and that's what ASC 274 was. And that, alone, demonstrates there is no capacity or tendency to deceive because we did what we were required to do under the applicable accounting principles. And we are not saying that there is no estimated current value. This is the point I made moments ago. Where Mr. Amer posits this idea that we are saying there is no estimated current value and it can be anything we want, no. What we are saying is that our

numbers are estimated current value. They are just different than the Attorney General's numbers. They are different than the bank's numbers and all in accordance with ASC 274 and GAAP, just as Professor Bartov and Mr. Flemmings testified to. All of that is permissible. All of that is permissible. So there is really not enough substance here.

Mr. Amer made a very passionate appeal on the accounting question, but if you look at the actual testimony of the experts, it reveals the flaws in their theory.

Thank you, Judge.

THE COURT: Thank you. It is 3:41 and a half. Let's be back in ten minutes. You can use your own Apple watch.

(Whereupon, there was a short break and the matter resumed as follows:)

COURT OFFICER: All rise.

Part 37 is back in session. Please be seated and come to order.

THE COURT: Counselors, ignore that man behind the curtain. What I said before about 4:30, as long as we are out of here at 4:45, I will push it all the way there. So we have to maybe stop at 4:40. How about ten or twelve minutes on sanctions. I read the papers, of course, but you can say whatever you want to say.

MR. AMER: Thank you, Your Honor.

I actually had planned only about a minute and a half.

The first three arguments, capacity, standing and disgorgement, these are pure issues of law. Your Honor has already decided that. And, therefore, their whole argument that these are mixed questions of law and fact is just wrong, and it is not only wrong, it is contrary to what the Court has already decided.

The fourth argument, which is based on Mazars disclaimer is based on language that has been part of this case from day one. It hasn't changed with discovery. It is the same language now as it was then. And Your Honor already decided twice that the language doesn't provide any defense because what it actually says is that Mazars is placing responsibility on the shoulders of Mr. Trump. So it is no defense for Defendants. Maybe it is a defense for Mazars some day, but it is not a defense for these Defendants. So we have been over this ground. Your Honor has admonished them. Your Honor even said it was borderline frivolous. You exercised your discretion and didn't sanction them, but it, obviously, had no effect and they didn't take heed of your warning.

So to be perfectly candid, Your Honor, we felt compelled to bring this motion because Your Honor having

issued the warning and having the Defendants ignore the warning, to us, suggested that we couldn't just sit back and let their conduct go unanswered. So that's why we moved for sanctions and there is just nothing new here for the Court to decide.

Thank you.

THE COURT: Thank you.

MR. ROBERT: Good afternoon, Your Honor.

Clifford Robert on behalf of the Defendants.

Listening to Mr. Amer saying that the Attorney General felt compelled to bring this motion is an outrageous statement. It is an outrageous statement that Mr. Amer made that the Attorney General felt compelled to bring this motion. This motion was brought in an attempt to try to chill the defense in this case.

I speak on behalf of myself, my colleagues and our clients. We have acted in a professional and appropriate manner. We are doing our job in defending our clients' rights and availing our clients the rights that they are afforded in New York.

The AG's motion is simply meritless as a matter of law. In opposing the motion, we retained the services of retired Appellate Division Justice Leonard Austin, and in a twenty-plus page opinion, Judge Austin, whose reputation is beyond reproach, one of the founders of the Commercial

Division, one of the authors of the Padded Jury Instructions, and, clearly, one of the most well-respected jurists in New York made a determination that the conduct of the attorneys was not even close to being frivolous. It was actually appropriate under the standards. It was appropriate for us as a matter of CPLR practice and it was a matter of our appropriate conduct in us under the rules of professional responsibility to protect our clients' rights.

What the Attorney General is either doing recklessly, intentionally or willfully ignorantly is trying to conflate the various standards of a preliminary injunction, a motion to dismiss and a summary judgment motion.

For Mr. Amer to stand here and say that there has been nothing learned -- I will just start with the last thing he said on the disclaimer issue through discovery is -- You want to talk about materiality? It is a materially false statement. There was expert testimony that was not part of the Attorney General's complaint, was not considered by this Court during the preliminary injunction or the motion to dismiss, which makes clear who the intended user of the disclaimer was, the effect that the banks have when they read a statement of financial condition, the way the banks handle a statement of financial condition, and that sophisticated users in reading that would realize that the

statement of financial conditions is a starting point and that there are GAAP exceptions. So for them to stand here and say that we, as attorneys, should be sanctioned, which this Court knows has significant implications for us professionally, or that our clients should be sanctioned for that which we felt is appropriate, as Judge Austin said in his affirmation quote, "Forcing the Defendants to even respond, rather than simply engage in the substantive legal arguments at the summary judgment hearing is wasteful and unwarranted. That the Attorney General disagrees with certain arguments raised by Defendants does not mean that those arguments are frivolous or improperly imposed."

So what they are doing is, rather than opposing it on the merits, which they did in their reply, they are now trying to say we want to prohibit you from raising these defenses (A) to preserve your record, and (B) because we believe they are appropriate on a motion for summary judgment. The Attorney General tried the same thing at the beginning, when we made our motion to dismiss. And as it turned out, one of the grounds that the Attorney General wanted to sanction us for, ultimately, the Appellate Division reversed on. So the Attorney General's heavy handedness in dealing with us as the professionals and our clients simply has no place, and I don't believe this Court should continence that. There is nothing in their reply

papers that even comes close to refuting the twenty-three page affirmation of Judge Austin, who, in pain-staking detail goes through the status of the case, the history of the case, the appropriate law and standards, both, for a preliminary injunction, a motion to dismiss, and a motion for summary judgment, and ultimately comes to the conclusion where he says, quote, in paragraph two, "For the reasons set forth below, it is my opinion to a reasonable degree of legal certainty that the conduct of Defendants' counsel was well within the standards of civil procedure and civil practice in the New York State courts." And he goes on, "It is, therefore, my further opinion that the conduct of Defendants' counsel was not frivolous within the meaning of 22 NYCRR 130-1.1.

Now, in Mr. Amer's reply papers, he takes the position that it was improper to have Justice Retired Judge Austin give an expert affirmation in a situation like this. Well, one, I would respectfully disagree with that and I would draw the Court's attention to a First Department's decision where, actually, we have a similar fact pattern, and it is Stewart versus New York City Transit Authority 125 A.D.2d 3d 129 from 2014. And the similarity is that that case had to do with retainer agreements, and an expert lawyer was brought in to give an opinion to interpret the meaning of 22 NYCRR 603.7, which had to do with propriety of

a retainer. Part 130 is also governed by NYCRR. So there is First Department authority and the First Department embraced the fact that an expert who was an attorney came in that case to give his opinion -- and here it is a him -- as to the conduct of the lawyers and to whether that conduct was appropriate.

As far as the specifics that Mr. Amer just got up with, again, standing and capacity, the disgorgement argument and the disclaimers, the standing and capacity arguments that were made on the motion to dismiss pursued all the facts in the Attorney General's complaint were true and they were based on a writ large defense saying that the Attorney General didn't have standing and capacity.

Our position now that discovery is complete, you heard during the presentations today testimony from the representatives of Deutsch Bank where they felt there were no material misrepresentations, our position that there is no harm or injury to the public, now, again, the Court may disagree with our view of that, but at the end of day, based on the evidence now before the Court and the record, we believe that we were absolutely appropriate in re-bringing up a standing and capacity argument now based on the record before the Court.

As far as the disgorgement part is referenced, as Mr. Kise explained, our discussion now on summary judgment

has to do with the fact that under 63 (12), unless there is another independent statute that the Attorney General is relying on, disgorgement is not a proper remedy.

And finally, as I started with the issue of the disclaimers, so where I will lead with this, Your Honor, is even to the extent the Attorney General disagrees with us, even to the extent this Court feels we are not entitled to the relief we sought in the summary judgment motions, that does not make this frivolous. That does not make this reckless. That does not make this wanton. We, as the attorneys acted appropriately, and there is nothing in this record, other than Justice Austin's affirmation, and they said nothing that refutes that. And if the Court has any questions, I would be happy to answer them.

THE COURT: I have more comments than questions.

You could stand, you could sit.

MR. ROBERT: Whichever Your Honor would prefer.

THE COURT: Maybe you can stand. You may want to say something.

I have been aware of Justice Austin's renown, et cetera, for years, maybe decades, very successful and very highly regarded jurist. I think it is fair to say that.

Twenty years ago, I read in the law journal something that this judge said. I am not quoting exactly, but, basically, said I am not going to accept a memo of law

on an expert on the law. I am the expert on the law. And I did some research on this before reading the Attorney General's points on this. You are, basically, not allowed to put in an expert on the law. There is cases like crazy. I am not familiar with the one case that you mentioned, but you can't do that. It is not done because you can't do it, but I read it, you know, for what it was worth. I didn't think it was worth very much. It was, essentially, a primer on summary judgment law, motions to dismiss. I know the difference and, of course, there is a big difference. You can say anything you want in a pleading, but at summary judgment stage, you've got to come up with evidence.

I will only address, certainly in this discussion, I don't know about an opinion, standing and capacity. When I first heard those arguments, I thought that was a joke. Basically, people that don't have capacity to sue are either declared incompetent or they are infants or they are under some sort of legal disability. I don't know if that ever applies in New York. None of this applies to the Attorney General of the State of New York, just blew my mind.

Standing, and I think I have written this before in one or more decisions, it is custom-made for the Attorney General to bring a case like this. How you could possibly say she doesn't have standing -- Who doesn't have standing? Your neighbor doesn't have standing to bring your case, your

friend doesn't, your sibling doesn't. I think there is also a lot of law that the average citizen doesn't have standing to bring a case against the Government, unless they have suffered some sort of individual personalized harm. Don't quote me on that, but that's the kind of argument people make when they say "standing." That's not his claim to pursue, that's her claim. No. This is the Attorney General's claim.

What your papers do and Judge Austin, I guess these are your papers, you look at the merits and you say, well, Attorney General can't bring this case because she loses on the merits because she hasn't proved anything, therefore, she doesn't have standing. But that's totally different.

Cases are on a different posture after motions to dismiss and summary judgment, but -- and I am picking up on your point -- now you have had full disclosure, as much as I allowed you. Now we have a record. You -- I don't mean you, personally, but the Defendants have not pointed -- though I will give you a chance to dispute me -- to one thing in the record that has been developed that changes the situation. Of course, she has capacity. Of course, she has standing to sue. What did the record have to do with any of this, other than the fact that you think she loses on the merits, therefore, you are going to say she didn't have standing.

Go ahead.

MR. ROBERT: Unlike Your Honor's original hypotheticals, where, for example, there are two parties to a contract and it is clear or there is a personal injury case and, you know, someone has been injured as a result of the alleged negligence of someone else, here, the Attorney General's standing and capacity is based on her ability to be able to interject herself into these transactions. Our view has been that, because these are purely private transactions, there has been no public harm, and this Court may disagree with that view, as it did on the motion to dismiss and on the preliminary injunction, now that there is testimony in the record from the Deutsch Bank witnesses and our experts as to these other issues, it is our view that making this argument at this point is clearly not frivolous because we still believe the Attorney General's standing is inextricably linked with the fact as to whether we believe there has been a harm perpetrated to the public.

So it is not quite as simple, Your Honor, respectfully, as the traditional person's standing were you in the car accident? Were you the one that signed the contract? This is a different fact pattern, sir.

THE COURT: Mr. Amer, do you want to respond to something in particular here?

MR. AMER: Two points.

It is not just --

THE COURT: I didn't mean stand. I meant to keep your voice up.

MR. AMER: I will stand anyway and speak louder.

It is not just Your Honor who has rejected their standing and capacity arguments. They took an appeal and the First Department affirmed you on those issues.

THE COURT: I will interrupt you one second. Sorry to steal your thunder.

What I said to Mr. Kise also, what I said at the start was I thought these arguments were crazy, literally crazy. Then I wrote two decisions saying they are frivolous. I think I said in the second decision these arguments were borderline frivolous the first time they were made. Then the Appellate Division affirms me, I think, twice, twice I am told. And then, of course, the law on sanctions is if you have been warned, don't do it. You were warned. Now you are taking the position in twenty-seven pages of Leonard Austin -- say hello for me -- that the lay of the land is different. We now know more than we used to know. I had not heard one thing you said today or read one thing in your papers that made any difference, other than you think you win this case, and that's not capacity or standing.

MR. ROBERT: Your Honor --

MR. AMER: If I can make my second point.

My second point, Your Honor, was just that you don't need expert testimony to interpret the legal effect of Mazars disclaimer language. I thought I heard Mr. Robert say we now have expert testimony about the effect of the Mazars disclaimer. You looked at that language. You interpreted it. You told us what the legal effect was of it, and that is not a proper subject of expert testimony and the same law that we cited in our brief saying that you can't put in a legal expert affidavit to tell you what the law is similarly says you can't put in a legal expert affidavit to tell you, the Court, how to interpret unambiguous language.

That's all I am saying.

THE COURT: Mr. Robert, go ahead.

MR. ROBERT: First of all, we don't have a legal expert that's talking about the Mazars disclaimer. I am talking about the experts that testified in the underlying case, and I will defer to Mr. Kise on that in a moment. But the affidavit setting forth what the standard of care was in that hour-conduct was appropriate within that, I still stand by what we did, sir. The fact that you may vigorously disagree with us, which, of course, you are the Judge, you have the ability to do that, sir.

THE COURT: And the Appellate Division.

MR. ROBERT: Well, the Appellate Division, sir, dealt with it on a motion to dismiss. Our position, respectfully, today is that we believe in a non-frivolous manner, we believe based on the evidence and the record that's before you on summary judgment that the circumstances have changed based on the expert's testimony that is part of the record, as well as the Deutsch Bank witnesses, who are also -- their testimony is part of the record. So again, while you may have a difference of opinion with us, I stand firmly on the position that what we did is not frivolous. We were protecting our clients' rights.

THE COURT: Well, what the Deutsch Bank people said was that your reliance argument, and there is no reliance requirement.

Mr. Kise.

(Whereupon, there was a change of reporters.)

MR. KISE: Thanks, Judge. So, just to clarify, and if you look at our reply brief on the summary judgement, I think this may be directed to the question you're asking. The point on standing now and capacity and maybe it's a misnomer but it's -- the point is there's no real world impact. We cite the cases that we rely on. I know you don't like Domino's, I got that.

THE COURT: The pizza is okay but the case.

MR. KISE: Right. Exact. But, you know, our point is that the Attorney General said that -- that they need to prove their case. That's the check. And we are saying they haven't proved their case. Maybe, we call it standing capacity and you don't agree with that nomenclature but that's how we view it. That's the point. And if you look at our rely, this is all made pretty clear.

There's no real world impact. And we are saying because there is no real world impact there is no room for the Attorney General under the statute. And while the First Department did push us back on dismissal, I mean, I argued the case so I recall one of the judges, you can watch the video yourself, when I made this argument said, well, this is a motion to dismiss. Why don't you come back to me on summary judgement. Watch the video. I know that's not binding but, you know, when I have a statement like that, and this is really what I want to say, we're all going to

have to be here a long time now unless you grant summary judgement of course you won't be, but I would just respectfully, number one, no one is trying to usurp your authority as a judge. The lawyers make the arguments. Mr. Amer and I have had a spirited debate today. You've asked questions. You get to make the decisions. But as lawyer, I have to make the arguments. When I go to the First Department and I have even an aside comment like that well a judge, says, well, come back to me on summary judgement, I have to at least preserve my record. Otherwise, I am going to have a malpractice claim on my hands which is the last thing I want.

THE COURT: Maybe, he said come back to me on summary judgement because he was giving you the benefit of the doubt that something would change.

MR. KISE: Maybe so.

THE COURT: Nothing has changed.

MR. KISE: But there is a change, respectfully, and this is the difference between frivolous and substantive. We are having a spirited debate. We all are going to have to be here quite some period of time, and I would just say, you've heard me say this before, I think you said it's something you think your grand mom would say but I say it all the time, I've never had a crossroad with any of these folks and I don't intend to. I never had a crossroad with

you. I respect your role. I respect their role. I'm not sure why they don't respect mine I guess is the point. I have very vigorous differences of opinion about what the First Department held, you have seen it, and what applies here and they are completely ignoring the law. I use that word. But I'm not saying that it's sanctionable. I just say I vigorously disagree. It's up to you, Judge, to make those determinations.

So I would just ask as we go into a trial this is probably, respectfully, not the way we want to start out and so I would ask that whatever your opinion of our legal arguments, if you think our legal arguments are ridiculous, that's your prerogative, but we're just hear lawyers making arguments. We are not making things up. We do think that the evidence is different now. We are -- we have made points in our briefs. If they are not good points, just like if you don't think the Attorney General -- we don't think the Attorney General points are good, but you are going to ultimately decide that.

So I would just ask that the Court exercise its discretion in this regard and let's keep the temperature down while we go into what is going to be a challenging process where everyone has been getting along and needs to continue to. Thank you, Judge.

THE COURT: Considering everything, counsel have

gotten along well and I hope I've gotten along well with them.

Miss Greenfield, do you have a question for Mr. Robert.

MS. GREENFIELD: Just for either of you, do you have any case law that stand for the proposition that standing dependent upon development of a factual record?

MR. KISE: The case.

THE COURT: That's really just a yes or no question.

MR. KISE: I can't give you a yes or no question. The point is if you look at Exxon and Domino's, which I know the judge don't like, if you look at those cases, that's our view of the impact of those cases. There is no real world impact. There is no role here for 6312. This is not a 6312 kind of case. This is a private transaction, private -- if you look at the long language of those case, does it say standing and capacity and those terms, it all depends on how you look at it. I look at that as a standing or capacity question. You might look at it as a statutory authority question. They might look at it as bogus argument, but that's the argument. It's nomenclature. The point of those cases is there is no role here for the Attorney General because there is nothing that impacts the public sector.

Now you could disagree with whether it does or

doesn't, but we believe that the evidence that has been advanced now at to this point shows that there isn't any. Again, you can disagree. We got bank testimony. We have support for that. That's not really meaning disrespect. It's just that's how we view it. That's all.

THE COURT: This is somewhat beyond the sanctions question but one of the defendants main defenses all on this whole case even before Mr. Kise got involved is no one was hurt. What was arguably heard here was fairness in the marketplace, honesty in the marketplace. I am surprised that plaintiff hasn't made more of a point about that although it did come up at one point and something I said -- again, I'm in the sure Mr. Kise was here for this particular discussion -- New York is the or at least a leading financial and otherwise marketplace.

We want people to trust us. We want people to deal fairly. We want honesty. We want fairness. That's I think what this -- what the -- what 6312 is about and what this case is about. The fact that, in this particular instance, the loans are repaid, nobody got hurt. In fact, they made a lot of money, probably could have made more money if things had been a little different, if the statements had been more accurate -- I'm not reaching a conclusion -- that's maybe the next time somebody inflates, again, allegedly, inflates a financial statement they will be in default. Somebody

will be hurt.

We're not just talking about one case here. We're talking about fairness and honesty in the marketplace. So, I don't think the -- actually, not that I don't think. I am sure, in my own mind at least, that the fact that nobody was hurt doesn't mean the case gets dismissed. And I think that's the Appellate Division's decision clearly so... All right. Everybody has been here a long time and we are getting close. Mr. Robert, go ahead.

MR. ROBERT: Pursuant to your order, motions in limine were due today and they are going to be heard next Wednesday. The Attorney General had filed certain motions in limine a few days ago with a notice of motion which would then require us to put in opposition on Monday. My understanding was we were just going to file our motions and argue them before you next Wednesday without the need of putting in opposition papers.

THE COURT: Let's see if we can all agree we don't need any further papers. We are having extensive oral argument on Wednesday.

MR. WALLACE: We just wanted to give the defendants an opportunity to put in answers. If they don't need it, that's fine by us.

THE COURT: Unless anybody has anything else to say, see you Wednesday at 10 o'clock.

(Whereupon, the oral argument is adjourned until next Wednesday, September 27, 2023, at 10 o'clock.)

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EXHIBIT O

In The Matter Of:

People of the State of New York v.
Donald J. Trump, et.al.

September 20, 2023

SUPREME COURT - NY COUNTY

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 37

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Index No. 452564/22

Plaintiff,

-against-

DONALD J. TRUMP; DONAL 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.

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PROCEEDINGS

60 Centre Street
New York, New York
September 27, 2023

B E F O R E:

HONORABLE ARTHUR S. ENGORON,

JUSTICE

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OFFICIAL COURT REPORTERS

THE COURT: Looks like everybody came back from Friday.

I gave a whole long speech at the start of Friday to make sure we were all on the same page, and, I think now we're much more all on the same page.

Today, if I understand things correctly, we have eight motions to exclude expert testimony, generally, about accounting, appraisals, et cetera. Obviously, or at least in my opinion, the contour of the case has changed significantly since yesterday.

So, I'll just ask counsel for each side to keep that in mind. Maybe some in the motions or parts of the motions have been mooted out. Unless the parties care -- Mr. Kise, did you want to say something first? Please go ahead.

MR. KISE: Your Honor, good morning. Can you hear me okay?

We just had a few clarifying questions to ask the Court so that we understand exactly the parameters, both with respect to today as well as sort of operationally. There are some pretty significant considerations. I can get through them in just a couple of minutes; but, I think it might be useful if your Honor will indulge us to let me ask some of these questions so at least we, as the defendants, understand how we are to

proceed.

THE COURT: Chris, you know I'm a very indulgent guy.

MR. KISE: You are.

THE COURT: Please, go ahead.

MR. KISE: Thank you. So, first, your Honor, and I've read the order, as much as was able between last night and this morning. I guess the initial question we have is, it asks the defendants to come up with names or an individual or individuals to manage the process under for the entities that are surrendering your GBL 130 Certificates.

Stating that, let me be clear, I'm not exactly sure exactly what a GBL 130 Certificate is and how it works but I'll use that loosely.

Our thought that we wanted to raise with the Court, working with the monitor has been a very expensive and extremely time-consuming process. We certainly think, and would recommend to the Court, that we just use the monitor for that process, because, otherwise, you have all of these different entities. Whoever comes in new is going to have to familiarize themselves with a lot of background information; and, it can take a lot of time, and, it can be expensive.

The monitor has told me, as of this morning,

that she does not believe there's a conflict with her serving in that capacity. That's really all I asked her about, but, if we introduce yet another person, it's going to be operationally difficult; and, let me give you an example of what I mean.

This is also a clarification question. I'm not sure, and, this may demonstrate my lack of familiarity with the GBL 130 Certificate, but, certain of the entities are entities that own physical assets, like Trump Tower, like 40 Wall Street.

Is it the Court's contemplation that those assets are now going to be sold, or, are they just going to be managed under the direction of the monitor or whomever we appoint for this process?

THE COURT: 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.

MR. KISE: In companion with this discussion about using the monitor for this process, and, I don't want to take too much of the Court's time, but, I can assure you this is very complicated.

We would ask that instead of ten days that we have at least 30 days to work with the monitor to come up with a plan that we can then present to the Court that

you can then look at and decide if this is how you want to proceed. There's so many moving parts. There's 400 or 500 entities and I'm not even sure -- this is another question I have for the Court and you, likely, won't be able to answer any better than I can.

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.

I mean, they don't-- they're just, say, it might be a townhouse in upstate New York or a house in upstate New York. I mean, it's just not -- so, this is all part of the reason why, and, again, I don't know you're prepared to answer this question today but it's the reason why I'm saying we'd ask the Court for a little more time to work with the monitor. That is going to be faster than identifying a new person and then come to you and you can decide.

You can decide how we are to proceed, but, with all of these entities and all of the employees of these entities, we just want to be sure that we have some clear picture, and, we have someone who is managing this process that has a broad familiarity with the Trump Organization at large because, again, it's taken the better part of a year for the monitor to work with us, and, it's been a very expensive process getting someone familiar and her team.

So, if we're going to start that all over again, that's going to be a pretty Herculean task.

THE COURT: Something I wish I had put in yesterday's decision and order, I can tell all you folks, most of you probably know, both sides, plaintiff and defendants, had recommended Barbara Jones.

You know I try to be, and, I think I am, very accessible to work things out, and, I'd be happy to all sit down at the table any time you want with Judge Jones, if she is available, and with whomever you want there and any kind of business expert, I'd be happy to try to work this out.

The ten days to name, you know, denominate is a somewhat arbitrary number, obviously. Attorney General, you don't care, I assume, 30 days. You do care?

MR. WALLACE: I don't think we care,

particularly, about the ten days. I think Judge Jones could be a perfectly excellent choice for receiver, as well. I think we wanted to, though, conduct our own analysis on whether there'd be a conflict or it would create an issue.

We haven't quite completed it in the last 16 hours or so, but, I think that it's certainly something we're amenable to; and, as you said, happy to sit down with the other side, with the Court, with Judge Jones, and work those issues out.

THE COURT: All right. So, the only official ruling I'll make, up to this point, is ten days is now 30 days to nominate anybody.

MR. KISE: Thank you, Judge.

THE COURT: Sure.

MR. KISE: We will coordinate with both the Attorney General and, ultimately, with the Court and, certainly, I mean, Mr. Wallace knows, but, I'll say it for the record. He certainly can reach out to Judge Jones today and work through whatever issues they may have or may not have.

For the reasons stated, I would very much recommend we stick with the same person, if that's at all possible.

THE COURT: Unofficially, off the record, I'm

inclined to agree. Let's just have one person look at this, but, that's not a ruling.

MR. KISE: Then this is a broader question and don't take this the wrong way, but, what, in the Court's mind, does this trial now look like? Like, what are the issues? We certainly have our idea. We haven't had time to talk to the Attorney General about their idea. I'm sure they have an idea, and I don't mean to preempt that at all. I just don't really know.

I mean, for example, I mean, Counts 2 through 7 are all 6312 counts. They all relate to different statute predicates but they're all 6312 counts. The Court has already entered the vast majority other than the disgorgement number of the 6312 relief.

So, I'm just, me, wondering what's the point of the other 63 -- it's 6312 but I'm not suggesting that's the right outcome. I'm just saying that's a question that I have, because, I don't know how many more 6312 counts you need. You've already granted the relief, again, other than the disgorgement penalty. So, that would be one question.

Then, the second question --

THE COURT: Let me ask. Attorney General, do you want to withdraw the second through seventh causes of action?

MR. WALLACE: Certainly, not sitting here right now, your Honor. I do think that there's additional evidence that comes in through the other claims of conspiracy, of the culpability, of the individual defendants and I understand your Honor hasn't reached-- actually, I think you've only reached two of the relief items that the Attorney General has asked for.

So, my understanding was that kind of evidence that we would present at trial would be useful in providing that relief. That was sort of our interpretation.

THE COURT: I tend to agree with that. So, 2 through 7 is still in. I'm not sure how else to respond.

MR. KISE: Then with respect to the element for Counts 2 through 7, which was an issue we brought up in our papers, at least in a small way, but, what is the Court's -- I mean, the Court has our view of what those elements would be, which is just the statutory elements.

They'd be required to prove intent. They'd be required to prove materiality. So, that's a very different thing, and, I'm very hesitant to even use the word materiality because of what happened on Friday, but, nonetheless, that is an element of counts-- at least some of the counts, maybe not all of them. So, that's a question we have as well.

Are we going to deal with that evidence because-- and, if the answer is yes, that's fine. I just want to be sure that we, the defendants, understand where we're starting from.

THE COURT: I'll see if this answer, at least partially, answers your question.

I think from the decision, the law is -- my interpretation of the law is clear that the plaintiff did not have to demonstrate materiality, intent, whatever, on the standalone 6312, the first cause of action. The others they do and they're not withdrawing them, and I'm not going to dismiss them right now.

If your point is partly to inform me that the materiality, intent, damage, whatever, are elements, yes, I understand that.

MR. KISE: Okay. I just wanted to make sure, because, that's how we're envisioning how the trial would proceed, but, we don't want to, particularly given the order, be attempting to introduce evidence on issues you don't believe we're entitled to. I don't think that is an issue, though.

THE COURT: I don't think that's an issue. We understand each other.

MR. KISE: Okay.

MR. WALLACE: Actually, I would say, I guess

there could be different views on materiality as to what -- where we are targeting materiality findings. Is the finding -- do we have a finding that statements are false and the question remains to be are the statements material to the transactions where they're used or are we looking at a question of whether the statements are materially misstated in, I think, the way the defendants were arguing, which is it has to be a sufficient amount or a sufficient level.

I think there are multiple ways of looking at materiality, and, I think it might be helpful for us to come to a common understanding of what target both sides are aiming at for trial. I could see it being helpful to both sides to have clarity on that.

MR. KISE: Can I get one thing, your Honor?

THE COURT: This is starting to remind me of the story about a lawyer argues something and the Judge says, "you're right." You've, maybe, heard this one. The lawyer on the other side argues exactly the opposite, and, the Judge says, "you're right." The law clerk says, "they can't both be right," and the Judge says, "you're right."

I have to give you a little bit of New York humor while you're up here.

MR. KISE: We certainly can use it today.

So, for example, and, I agree with Mr. Wallace, it would be helpful just for the parties to get some either collective understanding or the Court's direction, because, with respect to Penal Law 175.45, the issuance of a false financial statement, that, in our view, requires that the financial statement itself be inaccurate, as it says in the statute, "in some material respect or representation in writing that a written instrument purported to describe a person's financial condition is accurate when he knows it is materially inaccurate."

So, that goes to whether or not the statement itself is materially false, in our view, not whether the falsity was material to the recipient but whether or not the statement itself was materially false in the first place.

That's a little different, I think, to Mr. Wallace's point, than Penal Law 175.10, which is falsifying business records, which doesn't use the word material with respect to the -- and I don't know what the case law says. I'm just reading the statute.

"The falsification of business records includes making or causing a false entry in the business records of an enterprise," and I think that there is likely a case law materiality component to that, but, I don't have

it in front of me; but, assuming for a minute that there is not, then that would be different than the issuing of false financial statement which requires the statement itself to be materially false, and, the point of that is that I, the defendant wouldn't think then that you can use the finding of falsity as to Count 1 as relevant to Counts 2 through 7 where the falsity itself has to be material.

That's our view and I don't know what Mr. Wallace -- I'm not trying to put him on the spot. We can talk about this afterwards or later. I just think we just need to come to some common understanding, as Mr. Wallace says, as to what it is, because, that is also going to affect the motions in limine, quite frankly.

THE COURT: I understand everything you're saying and, you know, I believe there probably are different standards based on the different statutory language.

So, Plaintiff, anything to add, quickly?

MR. WALLACE: I would just say we haven't parsed out exactly what we think we need to prove at trial. Some of this could be each party needs to decide which evidence I need to put on to prove my case.

You don't always get the Judge to say here's every box I want you to fill. It's up to the parties to

make a strategic decision about what evidence they're going to put in at trial. That said, I think the differences we're talking about here would lead to potentially different presentations at trial of different lengths and different sets of witnesses.

So, it's a conversation we can have with the defendants, and, if we need guidance, we can submit something to the Judge so we're not all spit-balling standing in front of you this morning.

MR. KISE: To use the technical term. Mr. Wallace said it exactly right. We just need to come to some -- because it will affect the evidence. It may affect even the motions for today, at least to some degree, ultimately.

THE COURT: Possibly.

MR. KISE: We'll proceed any way, of course, the Court would like. Would you rather us just deal with what's in front of us today at the moment as best we can and we can try and visit, after the hearing or in the next day or so, and figure out how this shakes out and submit something to the Court, either collectively or separately so it can be decided, and we wind up having a phone conference with your Honor or something else?

I just want to make sure that before we get to the start button that we know, all of us have some idea,

and, I agree with Mr. Wallace, we're not talking about each item of evidence. It's just the big picture of what issues are we trying to prove and what issues are we not.

THE COURT: I think we should proceed with the instant motions and if the issue comes up of which definition of materiality are we talking about and you're saying that may affect the decision on the motions, we'll just deal with it when it arises, if it arises.

MR. KISE: The last thing I'll say, as an overarching point, I know you know this, and, I'm not in a hurry to leave, by any stretch of the imagination, but, it is a bench trial, and, so, the Court has, as you know, and, you'll hear us say this in more detail, at least our side, and maybe their side, too, has pretty wide discretion.

For what it's worth, in all my years, I've never been on a bench trial where the Judge just didn't let the experts in and figure it out, because, you have such broad discretion, and, trying to parse these issues with so many moving parts, respectfully, in our view, may not make sense.

I know we have our arguments about their experts and they have their arguments about our experts, but, at the same time, since there is no risk of jury confusion and there's no jury, I think the case law provides that

you have the discretion to let the evidence in and then sort out what you think is relevant, what's not relevant, what's, you know, sufficient, what's insufficient, what is an opinion about X or an opinion about Y.

I just point that out, again, not to short circuit it. I always love spending time here, but, that is an overall observation.

THE COURT: Well, would you rather I let in more evidence or less evidence?

MR. KISE: I mean, more, certainly, in our view. At least that has always been my experience in a bench trial, for what that is worth. It's just been that the Judges take the evidence in and you're, unlike a lay juror, you're, you know, extremely intelligent and capable of making these decisions, you know.

THE COURT: Flattery will get you nowhere.

MR. KISE: Well, intelligent. How about that? But all judges are. I mean, it's just a function of a bench trial.

THE COURT: I'll always remember a personal injury lawyer was having trouble presenting a case with a tough Judge and says to me, "all I want to do is present my case." As I tend to be liberal, I think, letting things in and the fact there is not a jury. You can't have jury confusion without a jury.

So, we'll see what each individual motion is but, yeah, I tend to be somewhat liberal but, AG? Allison and I consult, so you two can consult.

MR. WALLACE: Thank you for the opportunity to do that, your Honor. If Mr. Kise is proposing that, you know, the motions are stayed or denied without prejudice and the Court can decide, after you hear people testify, whether or not.

MR. KISE: And to the extent there's any sort of admissibility, objections other than these issues that are raised in these items here can-- I guess they would come up. They'd come up at trial, in any event. They would just come up at trial.

No one is prejudicing either side, I guess, is the point. There's no prejudice to either side. We can raise whatever objections because we don't even know, standing here right now, your Honor, based on the earlier colloquy, exactly who is going to come in and testify and who isn't.

It seems more efficient, if they're amenable to just preserve everything for trial, and, you can rule and you can let it in and decide what's good and what isn't.

THE COURT: I certainly don't have a problem. I think we're in agreement on that.

It's a nice day outside, you know. You can all

go out and play.

MR. KISE: For the first time in five.

THE COURT: Why don't plaintiff and defendants, and Judge, all take a minute or two.

Are you actually proposing that we just withdraw all the motions without prejudice as moot and, you know, let them-- let people testify and you can cross-examine as much as you want but you want a little time to think?

MR. KISE: You want us to --

MR. WALLACE: Give us a couple of minutes.

THE COURT: Sure.

(Discussion held off the record.)

THE COURT: Before you announce any agreement, so many people are out there, I feel like I should take a vote. Who wants to hear argument and who wants to go out and play? All right.

I'll ask Mr. Kise to update everybody on what the situation is.

MR. KISE: Your Honor, thank you. So, I think we have an agreement. If I don't say this correctly, I know my colleagues will, because, all motions will be withdrawn without prejudice to any party's right to make an application if and when a particular witness appears and then the Court will take up that application during the trial phase, and, we'll have everyone just reserve

their rights, because, there may be some of these witnesses that don't appear or there may be some issues that fall away. We don't need to take up the Court's time today with that.

We'll just reserve with no prejudice to either side. We can raise whatever arguments we want at the time, and, your Honor can consider them and rule on them at that point.

THE COURT: That's how it's usually done, in my experience, call a witness and then --

MR. KISE: Right. Correct.

THE COURT: Then the proponent asks for the qualifications and the opponent seeks to cross-examine. All right, let's hear from the other side.

MR. WALLACE: Mr. Kise has correctly stated the terms to which we agree.

MR. KISE: Write this day down.

THE COURT: I knew this case would be a love fest one of these days. All right, anything else?

Can we accomplish anything, as long as we're all here? Allison has an agenda.

MR. WALLACE: The People have two issues. One, we've proposed some stipulations with the defendants on issues of authenticity and admissibility. I'm not sure-- we can continue those after this. There was one proposal

that we had that could be done as an order.

I haven't heard back from you guys on this, which is, during the summary judgment phase, your Honor received the 202 statements from both sides. There's a significant number of facts in those statements that are purely undisputed by both sides, not undisputed with some condition after it, just undisputed. We would propose that those be entered as findings of fact.

We think that, essentially, operates as a matter of law based on where the parties came out in 202. We can do it by stipulation or we can propose an order from your Honor, but, that was something that we thought would streamline and clarify some of the issues for trial.

THE COURT: Obviously, I considered your request before issuing the order. I'm not -- obviously, I'm not opposed to either the parties agreeing on what facts are incontestable or arguing that the other side won't admit it, but, yes, Judge, you should just decide that that is not really an issue of fact.

I guess that's something we can, again, talk about amongst ourselves, but, yeah, obviously, I'd be happy to streamline the trial. We don't want Chris to miss out on preparing for his birthday. Is it the 22nd or 23rd?

MR. KISE: It is the 23rd, Judge, and I'll be

59, which is, you know, where I hope to stay.

THE COURT: We'll try to keep you there.

All right. Anything else we can accomplish, with or without all the press and other onlookers?

MR. WALLACE: Having had our pre-pretrial conference, I think we've worked through most of the issues already with the exception of what's come up today.

THE COURT: I'm going to turn over the microphone to Allison Greenfield, my law clerk.

MS. GREENFIELD: Just some logistical questions I want to confirm. It's my understanding both sides have had a chance to do a walkthrough with the tech person and both sides have said they're satisfied with the tech that's been set up. Is that accurate?

MR. KISE: The tech, yes. I had one comment about the layout.

MS. GREENFIELD: Okay. I'll get to that next. The tech, everybody is good with, satisfied that they're good to go for Monday.

The next thing is my understanding is both sides have asked for more room. It is my understanding that they have both been provided to you. As of today you were able to use them; is that correct?

MR. KISE: They may have ---

MS. GREENFIELD: It might be the trial is finishing up in yours and they'll put the courtroom aside for you. So, I'll work on that and make sure you're notified as to where you're able to set up.

MS. FAHERTY: The People have not been notified as of their set up.

MS. GREENFIELD: I received false information.

MR. KISE: I know the People expressed a preference to having theirs on the same floor as the courtroom. That is fine. To the extent there is one on that floor, let the People.

-THE COURT: I think it was reversed in the way they've intended. So, I'll talk to the administers.

MR. KISE: We don't mind being on a different floor.

MS. FAHERTY: Is there also a room allocated for witnesses?

MS. GREENFIELD: I'm working on that. Do both sides need that or just one room?

MS. FAHERTY: I think one room because I don't think we'll both going to have witnesses at--

MS. GREENFIELD: Did you have any other logistical questions before Monday?

MR. KISE: It may have changed but when I went there -- this is going to be very crude but when I went

there, the two counsel tables are right next to each other. They're like this. They're all together. The bench is here. The witness box is here. The video screen is here. What I would suggest is if you turned it around and we move one of the counsel tables this way so it faces this way, so there's room in between the two.

As you can see, there's a lot of us. If we're right next to each other, it's going to be jammed up. I think they can move. In this courtroom, it would be the equivalent of turning this table that way on the side and it would be facing and then in between the two tables there is room for a podium so you can examine witnesses.

We can go look at it is what I'm proposing. I don't mean to spring it on you. It just seems those tables are jammed together. Everyone will be on top of everyone else, and, getting around them is going to be hard.

MR. ROBERT: The podium is behind the table, so the questioner would be standing behind the table.

MR. KISE: Like back over there.

MS. GREENFIELD: We'll take a look at that and see what we can do. I assume there's no objection.

MR. WALLACE: We're happy to go down and take a look.

MS. GREENFIELD: When this is over, why don't we

all take a look.

THE COURT: I think originally when we were first told room 300, there was one long counsel table like this, right?

MS. GREENFIELD: They changed it.

THE COURT: The whole purpose of having two half tables was so they could be separated. I don't know why you'd want to turn 190 degrees.

MR. KISE: If we go over there, you'll see, because, there's no room to separate them, I don't think. You know, like cut a space in the middle. I didn't study it but it looked like there is enough room to do that. If there is, that's fine, too, if there is a separation.

THE COURT: We'll just cut away one of the barriers. Anything else?

MR. WALLACE: I hate to spoil the love fest and take us back to one issue but there are two issues that are briefed that aren't just expert admissibility issues. One is the admissibility of investigative testimony, and, the other issue is the appearance of witnesses who are not specifically named in discovery but appeared on the witness list and especially with witnesses we'd rather not have people appear and then have an argument as to whether or not they get to come and testify.

So, I think it might be helpful to go through

those two issues now rather than save those for trial.

THE COURT: Let's start with the first one, which is interesting, and, I'd like to hear what both sides have to say about that.

MR. WALLACE: I believe on these, the defendants are the movant. So, I don't know if they should go first.

MR. ROBERT: Whatever your Honor's preference is.

(Continued on the following page..)

THE COURT: You can really start from the start. You are the movants, obviously.

MR. ROBERT: Good morning, your Honor.

It's the defendants' view that the examinations under oath that were taken of nonparties by the Attorney General are inadmissible under the CPLR. They are the equivalent of depositions for purposes of CPLR 3117. The Attorney General took these depositions, or these investigatory statements, from people without notice to the defendants. To the extent the defendants did have notice, they were not allowed to participate; they were not allowed to be in the room.

The beginning of each one of these transcripts starts with several pages of admonitions, coming from the People to these witnesses and to their counsel, that could best be summarized as, you know: "You have no right to objections; there's no right to ask your witness any questions or follow-up; there are no objections to form. There's basically nothing you can do. You're a potted plant while you sit there as the lawyer for the witness."

And furthermore, the transcripts are not sent to the witnesses to authenticate or to certify them. The attorneys were advised that they were not allowed to take notes during these examinations. The attorneys were not able to take with them any of the exhibits that were shown

to these people.

So, all of the indicia necessary to use these transcripts as if they were depositions under the CPLR are nonexistent. Therefore, it's our view that they can certainly be used for impeachment purposes, because any inconsistent statement of a witness can be used for that purpose, whether it's under oath or any type of other statement. But as far as evidence-in-chief, it's our view that any of these statements with regard to nonparties is inadmissible hearsay.

We cited the appropriate case law and the statute in our motion in limine, and we think it's a fairly open-and-shut issue, your Honor.

THE COURT: This issue, in a very broad sense, comes up occasionally, or maybe frequently.

Let's say, it's a garden-variety motor vehicle accident at an intersection and both cars are claiming -- or both vehicles are claiming -- that they had the green light. Can an investigator go out to that corner the next day and ask, "Hey, anybody here yesterday see that?" and somebody raises their hand and says, "Yes, I saw it." And can the investigator just ask questions and take a statement down: "Who had the red light?" "Plaintiff" or "defendant had the red light," or "green light."

Let's start with that. Can they do that?

MR. ROBERT: They're allowed to do it, but would it be admissible? No. It would be hearsay.

THE COURT: Well, it would be hearsay, yeah, subject to a hearsay objection.

MR. ROBERT: There would be a hearsay objection and they would have to bring the person in -- who they gave the statement to -- no different than if a police officer writes in his or her report that they made someone culpable for the automobile accident. Other than an admission coming from the defendant itself, which would be a hearsay exception in the police report, the fact that someone's told the police officer, "Hey, I saw X run the red light," that would be inadmissible.

So --

THE COURT: So what, exactly -- what exact relief are you asking for?

MR. ROBERT: We're asking that none of -- the "EUO's," I'll just call them -- the examinations under oath of any of the third parties can be used by the People for any purpose other than impeachment of that particular witness when he or she were to take the stand.

THE COURT: But why is that any different from the normal rules of hearsay?

MR. ROBERT: It really isn't any different, except that the People have proffered it in their summary judgment

motion. We made an objection to it and now, when we sent them a letter giving them our view that it was inadmissible for all purposes other than impeachment, their response, which is attached to our motion in limine, says they're reserving their rights to use it for all purposes. We just want it to be clear at the get-go that it's limited to the purpose of impeachment of a particular witness, sir.

THE COURT: Which is the other side of the same coin of, it doesn't come in because it's hearsay but it can come in as impeachment.

MR. ROBERT: Yes.

THE COURT: All right, Attorney General?

MR. WALLACE: My colleague Mr. Gaber is going to speak on this issue.

MR. GABER: Good morning, Judge.

I think that the issue as raised in our objection primarily relates to, and is unaddressed by, defendants. We're not talking about third-party appearances. We're talking about nonparty agents and employees of defendants. I think that that is a different situation than the ordinary hearsay objection, even under 4514, for impeachment purposes. These are -- as we put in our letter that we filed last night, these are admissible against them as statements attributable to those two parties.

So we think that there is a distinction here that's

operative, which is why we raised it in our letter.

THE COURT: And your best authority for that; case, statute, whatever?

MR. GABER: Well -- so, we laid this out in our letter, but CPLR 4549 seeks to incorporate the federal rule of evidence 801(d)(2)(D) and in doing so, it -- you know, the legislative history, as well, makes it quite implicit that statements offered against opposing parties should not be excluded from evidence as hearsay if made by a person whom the opposing party authorized to make the statement on the subject or by the opposing party's agent or employee.

So this is a scope-of-employment issue. These are employees or agents of the defendant entities who are acting in their capacity as agents and gave statements. So we believe that these are admissible against them.

THE COURT: Well, let's come up with a concrete, specific example, so it will be -- I think it will make it clearer; to me, at least.

Whose statement do you want to admit, despite the fact that it's hearsay?

MR. GABER: Mr. Birney, for instance, was not named. He was intimately involved in the preparation of many of the statements. He did give testimony before our office during the investigatory phase and although not being named as a defendant, he was acting in the employ of

defendants and in an authorized capacity when he gave those statements.

THE COURT: And defendants?

MR. ROBERT: Mr. Birney is on the People's witness list. Mr. Birney, I know, has already met with the People on several occasions, with his counsel, to prepare to testify. He is going to be testifying in the trial. So, if they want to use his EUO to the extent that he wants to say something to impeach him on, again, that's the exception to the Hearsay Rule. But to suggest that they can bolster his in-person testimony with the use of his EUO, I would respectfully submit, is improper.

THE COURT: Well, then it would be excluded under the bolstering rule.

MR. ROBERT: There are several different layers of it. When I heard Patrick Birney as the example they gave, that's the example I would use for Patrick Birney. If he wants to give me someone else, I'll find another reason why it would be excluded.

I mean, these extra parties -- you know, they have EUO's from people from Cushman & Wakefield and from Deutsche Bank and from all sorts of third parties that there's no agency relationship; there's no nothing. It's our view that all of that is impermissible hearsay during the course of the trial.

THE COURT: Well, is it the plaintiff's position that somebody at Cushman & Wakefield would fall within this rule, so that that person's statement would come in?

MR. GABER: No. I think I made that distinction very clear at the outset of my argument: that we're not talking about pure third parties. We're talking about agents and employees of defendants. It's a different rule under the CPLR; it's a different purpose.

You know, these are admissions; they're party admissions made by agents not named as parties in the caption, but they are party admissions.

THE COURT: By the way, do we still have a 188-page witness list? Because --

Sorry, a numbered list.

I think, though ...

Plaintiff, do you agree that just the person on the street, the person that works for Cushman & Wakefield, that statement would not come in because it's hearsay and there's no exception? Is that correct?

MR. GABER: There are exceptions under which a prior statement can be admitted for impeachment purposes. That's CPLR --

THE COURT: Yes, I understand that. But just as an initial matter.

MR. GABER: Yes.

THE COURT: Okay. So I think we have to figure out, for all 188 people, not pages -- thank you -- whether they're an agent or not or whether they would fit within the rule.

MR. ROBERT: Well, the first issue is: If they're on the People's witness list and they're going to testify, that would be a reason not to use it. Then you'd have to do an analysis, whether an employee had the speaking authority on behalf of the defendants in this case, if it was a low-level person versus a senior executive of the company.

But the People get at the prime issues here. Whether it's the President, Eric Trump, Donald Trump Jr., Mr. McConney, Mr. Weisselberg, they're all testifying here during the trial and if there's a specific example of someone the People want to talk to us about ... But I don't see any reason that the EUO's, writ large, come into evidence other than for issues of impeachment. There's no exception under the CPLR to allow for it.

THE COURT: Isn't the --

Hold on one second.

(Pause.)

THE COURT: I mean, the most basic point is, still, all the hearsay rules apply. These would be out-of-court statements being introduced to prove the truth of the contents, unless there's an exception. And there is --

obviously, there's an exception for agent or -- is it somebody authorized to speak on behalf of the person?

MR. GABER: So, Judge, CPLR 4549 provides both for authorized -- persons authorized -- to make statements, but, also, opposing parties' agent or employee on a matter within the scope of that relationship and during the existence of that relationship.

THE COURT: So, Mr. Robert, does that sound like -- he's reading the law.

MR. ROBERT: I don't -- the CP -- we can agree that the CPLR 4549 says what it says.

I think the only practical approach is: Now that the People are saying that the third parties are the two third parties and no disagreement, we can do it on a witness-by-witness basis to make a determination: Are they an agent or do they fall within something here? That's fine with us.

THE COURT: Okay. All right, I think we agree on that, also.

MR. GABER: That's fine.

THE COURT: Okay. Thanks for the tutorial.

Any other --

MR. GABER: There's a question about the witnesses. Defendants have raised some objection to certain witnesses on plaintiff's witness list, as well. I don't know if you'd

like to hear from them on that issue.

MR. ROBERT: Yes, your Honor.

There were certain witnesses that for the first time, the People put on their witness list, that they intended to call. They were not listed in the Response to Interrogatories or the Amended Response to Interrogatories where we asked them to list all persons that had knowledge or that potentially would testify in the case. So it's our view, at this late stage, with our inability to take a deposition of them or anything like that, that they should be precluded from testifying in the People's case.

THE COURT: Yeah, that's the big issue; is, you haven't had a chance to depose them.

MR. ROBERT: Yes, sir.

THE COURT: Okay.

And what do the People have to say about that?

MR. GABER: So defendants -- there's two categories under the list of witnesses that they've objected to. Some of these are just corporate representatives. We named the transactions; we named the occurrences that were relevant. The names were either in the documents directly or it was very clear that these were issues that were subject to the case and these were representatives who were being called on to speak on behalf of the parties that were involved.

This is the New York City Parks Department, a

representative from them; someone from the Vornado Trust, who can basically introduce documents and speak, just generally, as to any of their agency's policies and practices.

THE COURT: Well, why didn't you just put them on your witness list?

MR. GABER: We weren't necessarily aware of the individual names at the time. I think, for some of them, we did put --

THE COURT: Well, you can could have --

MR. GABER: They are on the witness list, Judge. I should say, they were on the witness list. We're talking about -- defendants are concerned that we didn't list them in the responses to their interrogatories at the outset of this case, prior to discovery in this case.

MR. ROBERT: So, when we sent -- when they sent the witness list a week-or-so ago or two weeks ago, there were names on it that hadn't previously been disclosed, but I think one of the most glaring of them is the assertion of William Kelly of Mazars. Now, William Kelly is a gentleman who I believe signed the letter that is the letter that went to The Trump Organization when Mazars disengaged their relationship with Trump. There was a lot of time spent about Donald Bender; we deposed Donald Bender. Mr. Kelly actually appeared as one of the lawyers for Mr. Bender at

Mr. Bender's deposition.

So, now to say that William Kelly of Mazars is one of their first few witnesses who they're going to call and put on the stand ... Had we known that he was someone that they believed was material and were going do call, we certainly would have taken his deposition, as a central figure in the case.

So it's your view that it would be incredibly prejudicial, at this point, to allow them to call someone who they clearly knew about, who they elected not to put as someone who had knowledge about the case in the two disclosures they gave to us about the witnesses, and now subject us to have to cross-examine this witness at the beginning of the trial.

THE COURT: Plaintiff?

MR. GABER: It's kind of a baffling assertion to think that there's prejudice and surprise here in the case of Mr. Kelly, who did sign the very publicized Mazars withdrawal letter.

Defendants also had 20 depositions that they didn't fully exercise their right to take. They knew that Mr. Kelly was involved intimately in the Mazars relationship and the termination. They had opportunity to depose him; they didn't.

I don't see any prejudice or surprise here.

MR. ROBERT: Your Honor, it's the People's burden of proof. The fact that we asked them to list anyone that they had knowledge of that had relevant information and they were going to use at time of trial and they did not put Mr. Kelly's name on that list, I think, is all you need to know as to the severe prejudice we would have now, of him being called to testify in their case-in-chief.

(Pause.)

THE COURT: Let me see if I understand the sort of facts here, the sequence of events: There was --

Well, what are we calling it; an initial witness list and then a -- it was a Response to Interrogatories. And Mr. Kelly's name was not on the list. Now he's on the final list, right?

MR. GABER: Well, there is a preliminary --

MR. ROBERT: There were two sets. There was a response to defendants' first set of interrogatories, which is December 30th, 2020. Then there is a supplemental response to defendants' first set of interrogatories, which is dated February 16th, 2023. It was based on the names that were provided in these two interrogatories that we then decided who we were going to depose and who we weren't going to depose. Then, when a witness list was presented to us a few weeks ago by the People, there were several names, including Mr. Kelly of Mazars, a gentleman of Vornado Realty

Trust, someone from the National Trust for Historic Preservation, which -- that entity has never shown up in their -- in any of the responses they gave to us; it's clearly in response to Mr. Shubin's testimony about the deeds and covenants and restrictions as relates to Mar-a-Lago; a new person from Deutsche Bank, and a person from the New York City Department of Parks and Recreation. Had we had [sic] known these were people they were going to call, we certainly would have taken depositions of these people, so that we would then be able to be prepared to deal with them at time of trial.

So, to allow them to spring it at the last minute, we would think, is unfairly prejudicial to our clients.

THE COURT: I think the point that weighs heavily in favor of the plaintiff is, they're not going to know, at the start of the litigation -- start of the case -- who they're going to want to call. We might have to go over each person in terms of whether there is any real prejudice.

I hate to bring up this idea, but is there any way to have depositions, now, of these last -- of these few -- people, apparently, that defendants claim they would have deposed had they known?

MR. ROBERT: Well, the answer is: If the options are, we can take their depositions or we can't take their depositions and the Court's going to allow them to testify,

obviously, we would take the opportunity to take their depositions.

But the whole point of the interrogatories is, "Identify each witness with pertinent information regarding this proceeding." Then the People filed the Note of Issue, certifying that discovery was complete. During the course of discovery, if they had determined that there were additional people that were necessary, they had an obligation to tell us.

Because remember, we were limited in the number of depositions we could take; we decided to take certain ones, based on the information provided in the pleadings from the People. And now, to spring these people, who are not insignificant people and insignificant issues, without having had the benefit of deposing them, getting additional potential document information and being able to review it, in our view, is extraordinarily prejudicial.

And even to allow a deposition at this point, on the eve of trial, on issues of this significance --

THE COURT: Well, it doesn't have to be eve of trial; it could be during trial.

MR. GABER: If I may, Judge ...

MR. ROBERT: Yeah. I mean, at the end of the day, we don't even -- the People would have to first make a proffer to us as to what these people are going to testify

about, but at this point, the People may not even know. So, if they're planning on calling these witnesses in the middle of trial, yes, your Honor could suspend the trial for a day or two to allow us to take a deposition of them before they take the stand, but we were entitled to that opportunity to inquire of them before there's official trial testimony from them.

MR. GABER: So, starting from backwards forwards, to suspend the trial to take depositions when there's a whole fleet of lawyers on either side ... So we can clearly multitask if that's what's needed.

However, I'll note as well that in addition to the explicit names that were put forward in the interrogatories, the People put forward almost a paragraph-by-paragraph link to our complaint, citing documents which had all of the -- which had, if not all of these names, the relevant names in them. These are names -- Mr. Candela, Mr. Kelly -- that were intimately known to defendants.

THE COURT: And were they intimately known to you?

MR. GABER: The -- we did --

THE COURT: Probably.

MR. GABER: We did know of these names. We put them in the documents that we provided to the defendants in certain other discovery responses.

What I'm saying is that we didn't necessarily know

that it would be necessary to call these witnesses at trial.

For instance, the National Trust, the People did not think that it would be relevant until defendants put the plain language of the conservation deed and easement at issue. So this came up because of actions taken on defendants on briefing in summary judgment and so, we would not have had an opportunity, back in February or back during the discovery period, to realize that we might need somebody to testify as to this.

So we don't see any prejudice here; we don't see any surprises.

And again, these are some corporate representatives and some people who were intimately known to defendants.

Defendants, as well, had 20 depositions, only took ten. The fact is, they didn't exercise their full rights to utilize their depositions at the time when they were entitled to take them.

MR. ROBERT: Your Honor, if I may, as the Court is well familiar, we had an extraordinarily truncated time period to conduct discovery. To suggest that this needle in the haystack; that because in the millions of documents they gave us, there were these names, when there were two interrogatories and the People felt encumbered [sic] to serve a supplemental response to update the first response and didn't put these names in, is really where the analysis

should end.

But, to respond to Mr. Sherief's [sic] comment, this issue about the National Trust: John Schuman's (phonetic) report was submitted months ago; they took John Schuman's deposition. If at that moment they realized they needed some modification or someone else to come in, that would have been the appropriate time to send a letter and say: "Hey, wait a minute. We know we filed the Note of Issue; we know we said -- we certified -- discovery is complete, but there's a new issue that now came about. We're now going to need to call So-and-So, either as an expert or a fact witness in the case. We want to give you notice of it." That would have given us the ability to take a deposition, review the documents, to see, and do a search, where these names came up in the documents. But it's not like they gave us five documents. There were millions of pages of documents and if these names were buried in them, I'm not going to say yes; I'm not going to say no.

But at the end of the day, now, to put these people on their witness list --

And Mr. Kelly, I think, is their second witness they plan to call during the trial, so it's right at the beginning. I think their first witness is Donald Bender and Mr. Kelly is the second one. So they now want to start the trial with a witness they didn't disclose, that we didn't

have an opportunity to depose.

MR. GABER: So, again, defendants' own arguments are the reasons why these witnesses are here.

Defendants argued that the Mazars letter doesn't say what it says, so the People decided at that point that we may have to bring up Mr. Kelly to actually speak to that as the author of that letter.

These were not considered as potential witnesses until we were deep into the summary judgment briefing. We provided notice at the appropriate time, when preliminary witness lists were to be made.

Defendants also -- I'll note, defendants are concerned that it wasn't on the interrogatory response. There are many names on that response that defendants chose not to take depositions of.

THE COURT: All right. That's not a waiver, obviously.

MR. GABER: It's not a waiver.

But at the same time, defendants are saying that this is prejudicial, that they didn't have time. Defendants didn't utilize the time that they were afforded during discovery to take their full amount of depositions.

It's unclear to us how having some additional names on that list would have changed the circumstances, particularly when those names were known to defendants so

intimately. These are not -- again, these are not minor characters on the wings.

MR. ROBERT: That's the point: They're not minor characters that the People knew about.

The notion that this issue of the letter is new: We've been talking about the letter and the disclaimer since last fall; that's been the subject of much debate in this courtroom and much debate in our papers.

So Mr. Kelly, if you're planning to call him, is extraordinarily relevant and someone that we would be entitled to inquire about before he's able to talk on the stand.

The city of New York Parks and Recreation? I don't even know what it is you want from this person.

And as far as the National Trust, because we decided to call an expert to be able to explain what covenants and restrictions mean, not in a legal sense but in the sense of reality, and now the People deciding, "Hey, wait a minute; we don't have someone to rebut that, so we now need to call someone from the National Trust," well, you either could have done it during the expert witness phase; you could have made an application then to say, "Hey, we know we're past the deadline, but we want to call in an expert to refute your rebuttal expert." But the People didn't. They waited, literally -- maybe not the eve of

trial, but a couple of weeks before trial to give us these names. It wasn't even like, "Hey, we want to add these names; let's arrange for you to take a deposition of these people before they testify." It was just, "We're going to put these names on."

And again -- I'll just end with, your Honor: -- one of these people is their second witness in the case, clearly someone extraordinarily important to the People, and they just didn't put it on their list of people that had knowledge.

MR. WALLACE: I hate to interrupt my colleague on this, but they're upset because Mr. Kelly is the second witness on our list; they're saying he's very important.

I'm going to add, the defendants have a witness list of 130 individuals, many of whom have not been deposed. They are allowed to put those people on their witness list.

The rules in New York say, you get your witness list two weeks before, typically, and that -- you know, that's different than the federal system. That is what they're allowed in terms of notice of who we decide, strategically, we want to put on the stand at trial. It's a different standard than what's in the interrogatories.

The point I just want to get to is: The defendants have given us a list of 130 people, in alphabetical order. So they're able to say today, and wave Mr. Kelly in our

face, because we gave them, in good faith, a list of people that we would be calling at trial, in the order that we intended to call them, and what we have from them is a list that is buried. The parties are free to do this. I don't think it means we should start precluding witnesses on either side.

And a representative from an entity is a standard thing for them to learn. The fact that we didn't name the individual -- they asked for individuals; we're still trying to figure out who the individual might be. We identified the individual from the New York City Parks Department as we were preparing for trial.

So the plaintiff is allowed to make strategic decisions about how they're going to present their case at trial. We didn't hide any information. They knew about the New York City issue; it's in the complaint. They knew about the National Trust issue; it's in the complaint.

Whether we have to call witnesses and what we have to prove about that, we're allowed to decide, and we gave them a clear and honest disclosure of who our witnesses were on the schedule that we were directed by the Court. There's really nothing untoward or hidden here. And this everything that happens is an affront and a violation of their constitutional rights ... They got their witness list on the schedule we were ordered to provide it on.

THE COURT: Well, you keep saying they got their list, but they're saying they didn't have a name on it that -- it was on the list but it wasn't on the -- in the preliminary list, I'll call it.

The Response to Interrogatories. I'm calling them -- shortening that to "preliminary."

Let's do this: Say what you want to say and then I have an idea.

MR. ROBERT: Your Honor, whatever witnesses we have on our list -- on our proposed witness list -- are witnesses that were identified through the discovery process. If Mr. Wallace has an issue with someone who's on our list or, for some reason, wasn't, bring it to our attention. I'm not aware of one as I stand here today.

At the end of the day, there is absolutely no basis whatsoever to allow Mr. Kelly, the person from the City Parks Department or anyone who's listed on their proposed witness list who they hadn't previously identified as a witness with knowledge of the facts in this case, to be allowed to testify in this matter.

Thank you, sir.

THE COURT: Let's look at Mr. Kelly, all right? When did the defendants send an interrogatory asking, "What witnesses do you plan to propose?" or when was the response?

MR. ROBERT: The responses --

The first response from the plaintiff --

The plaintiff's response to our request; correct, sir?

THE COURT: Right.

MR. ROBERT: The first one is signed by Ms. Faherty on December 30th. There's a typo. The document says, "December 30th, 2022." Her verification says "2020," but I think we can agree, it's December 30th, 2022.

And then their supplemental response is -- and these are attached to our motion in limine -- is signed -- it's also signed on December 30th of 2022.

I'm not sure why they have the same date. It must have just been a typographical error from the People.

THE COURT: Does anyone --

MR. ROBERT: No. I'm sorry, your Honor. My mistake.

The first one was dated December 20th of 2022, with the mistaken verification of 2020. The second one was served on February 16th of '23, so about six weeks later.

THE COURT: Okay. And Mr. Kelly was not on the response to either of those queries.

MR. ROBERT: Correct.

And neither were any of the other people that are subject to our motion in limine (indicating), sir.

THE COURT: And then, plaintiff, when was the first

notification to defendants that you wanted to call Mr. Kelly? Was it not until two weeks ago, whenever it was?

MR. ROBERT: Whatever the date was your Honor had set for the initial exchange of exhibit -- of the witness lists, which was on September 8th, according to your order, sir.

MR. WALLACE: I think the question was to us, but ...

MR. ROBERT: Oh, I'm sorry. I thought the Court was asking me. I apologize.

THE COURT: Well, I was asking everybody.

MR. ROBERT: Thank you.

THE COURT: I mean, it was September 8th.

MR. ROBERT: Yes, sir.

THE COURT: And that was the first time defendants knew.

And the Note of Issue was filed --

MR. ROBERT: July 31st.

THE COURT: -- July 31st.

And what's plaintiff's response, at the risk of repeating yourselves, which is fine?

MR. WALLACE: I -- I'll summarize:

I believe our disclosures -- and I don't have it in front of me, so Mr. Robert will be able to look it up. But I believe we also said that we may call witnesses who are

identified in the documents. The individual name, though, I agree, did not come until we identified who our witnesses were in the witness list.

I think our other responses, though --

And on the law, they don't cite any cases where witnesses are precluded because they don't appear -- they aren't named -- individually in discovery responses.

THE COURT: All right, let's ask: Do you have any authority for the proposition that you can exclude someone because they weren't named in the discovery responses, even though they're on the witness list?

MR. ROBERT: It -- it -- I'll have to see what we have in our motion in limine.

But any element of surprise, when there's a disclosure request that says, "identify people with knowledge," you don't put a person down and then certify the discovery is complete and you then surprise the witness list -- you put a witness list together a few weeks before trial, six weeks after the Note of Issue, after fact -- and fact discovery closed, if I'm not mistaken, June 30th, or it may be May 30th; sometime around there.

So this is clearly a last-minute attempt to add additional people who clearly are very relevant, now we're seeing, in the People's case. So it is prejudicial to us because we didn't have an opportunity to depose them and to

find out information that would help us to be able to effectively cross-examine them.

THE COURT: Obviously, courts want each side to be able to depose the witnesses for the other.

Give me a few moments on this one and you can do whatever.

MR. ROBERT: Thank you, sir.

(Continued on next page.)

THE COURT: I like to throw out ideas to see if I can get people to agree or at least not jump up and down screaming.

What if we had an agreement that Mr. Kelly would not testify second and the defendants would get to depose him sometime within the next week or two, something like that? I don't want surprise. I don't think there's any right or wrong answer here.

Although, the CPLR says you have to give your witness list two weeks before or whenever is asked for. Obviously, there is a whole purpose to these interrogatory responses that say, all right, we who are you planning to call. I don't want to have some mini trial on should they have known or should they have not known.

Is there any way to work this out? Both sides have lots of attorneys, so -- a plethora of attorneys, you can say.

MR. ROBERT: So, your Honor, if the People would give us a proffer of what these people are anticipating testifying about and us being able to take a deposition of these people, that would be a sensible solution and would solve the problem.

MR. WALLACE: Mr. Kelly was second because he was going with the Mazars piece.

THE COURT: I'll remember. I'll backdate what he says to when you want me to.

MR. WALLACE: We can backdate the witness list then, your Honor. I think we can certainly make a proffer. We can certainly not object to them taking testimony subject to the witnesses' availabilities.

I do think we'd like the defendants to provide us with a witness list of who they're likely to actually call in the order they intend to call them, but, as to the other piece that was raised in that motion I think we're amenable to that.

MR. KISE: As to the latter point, Judge, we're waiting. As to the latter point, we were just waiting to figure out exactly what the People's case was going to look like and exactly how that was going to take shape.

As I've explained to Mr. Wallace, and, I'm not calling him out. Hopefully, he knows this. We will provide that information as soon as we're able, maybe even as soon as next week. Up until now, we haven't been able to really narrow things. The Court has done a good job of narrowing things.

So, we now have a better idea of who is going to be called and in what order. His request is reasonable, and, we'll certainly provide that information as timely as we can.

THE COURT: Mr. Kise, I'll take to heart that you said I did a good job.

MR. KISE: Well, on some things, perhaps.

THE COURT: Have we got that sorted out? I'm here. We're here. We can iron out the details. For all these people that are on the plaintiff's list that the defendant is claiming surprise, we'll try to get a deposition done, and, Plaintiff, you'll just have to present things a little out of order.

MR. WALLACE: Understood.

MR. ROBERT: We'll also provide the proffer.

THE COURT: And provide the proffer. How long will that take?

MR. WALLACE: Sorry?

THE COURT: When can you provide the proffer?

MR. WALLACE: We can provide the proffer tomorrow.

THE COURT: Then sometime within the next two weeks?

MR. ROBERT: That's fine, your Honor.

MR. WALLACE: I would also hope the parties can agree we'll try to not necessarily use every minute of the seven hours the CPLR provides us and that we'll try to just reasonably cover the grounds that people tell you is necessary, but, I'm not going to ask for an order on

anything like that.

THE COURT: Okay. Maybe this is obvious but I'm not going to worry about the limitations on the number of witnesses. You can go over insignificantly.

MR. WALLACE: They had ten left over anyway at the end.

THE COURT: Okay. Next?

MS. GREENFIELD: For all the attorneys, we're going to meet with all of the building security and operations, higher ups. So, why don't you stay here. Everyone else, can go.

MR. ROBERT: Thank you, very much.

MR. KISE: Are we going to go to the courtroom on the third floor?

THE COURT: We're going to go now.

MR. KISE: All of us?

MS. GREENFIELD: Yes.

* * *

Certified to be a true and accurate transcript of the above matter.

_____

Lisa M. De Crescenzo,

Alan Bowin,

Official Court Reporters

M

N

Q

R

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,

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

Motion Seq. No. 026, 027

PLEASE TAKE NOTICE THAT, pursuant to CPLR § 5515, 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 (hereinafter collectively referred to as "Appellants") hereby appeal to the Appellate Division, First Department, from the Decision and Order on Motions by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1531 & 1532), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which denied Appellants' Motion for

Summary Judgment, granted in part Plaintiff's Motion for Partial Summary Judgment on its first cause of action, cancelled any certificates filed under and by virtue of GBL § 130 by any of the entity Appellants or any other entity controlled or beneficially owned by 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 within 10 days.

This appeal is taken from each and every part of the Order insofar as Appellants are aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 4, 2023

Respectfully submitted,

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Dated: New York, New York
October 4, 2023

Respectfully submitted,

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EXHIBIT A

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: 09/26/2023	Entered: 09/27/2023
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.

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:

An Article 78 Petition under Case No. 2023-04580 is currently pending before this Court.

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 appeal from the Decision and Order of Supreme Court, New York County (Hon. Arthur F. Engoron), dated September 26, 2023 and entered by the Clerk of the Court on September 27, 2023, which denied Defendants' Motion for Summary Judgment in its entirety, granted Plaintiff's Motion for Partial Summary Judgment in part, cancelled any certificates filed under and by virtue of GBL § 130 by any of the entity Defendants or any other entity controlled or beneficially owned by the individual Defendants other than Ivanka Trump, and directed that the parties recommend the names of no more than three independent receivers to manage the dissolution of the cancelled LLCs within 10 days.

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, denying Defendants' Motion for Summary Judgment on All Causes of Action, granting in part Plaintiff's Motion for Partial Summary Judgment on its First Cause of Action, cancelling any certificates filed under and by virtue of GBL § 130 by any of the entity Defendants or any other entity controlled or beneficially owned by the individual Defendants, and directing the dissolution of the cancelled LLCs.

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			
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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			
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Party or Parties Represented (set forth party number(s) from table above): 2, 6-17			
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Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☒ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 8, 11-13, 15-17			
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Party or Parties Represented (set forth party number(s) from table above): 3-5			
Attorney/Firm Name:			
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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			
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City:	State:	Zip:	Telephone No:
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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, -against- DONALD J. TRUMP, *et al*., Defendants.	Index No. 452564/2022 **NOTICE OF ENTRY**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. dated September 26, 2023, on Motion Sequence Numbers 027, 028, and 029 (NYSCEF Nos. 1531, 1532, 1533), filed and entered in the Office of the Clerk of the Supreme Court, New York County on the 27th day of September, 2023.

Dated: New York, New York
September 27, 2023

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Colleen K Faherty*
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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,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- 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,

DECISION + ORDER ON MOTIONS

Defendants.

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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'").

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[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.

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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

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[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.

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[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%.

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[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.

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[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.

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[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

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[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

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[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

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

Motion Seq. Nos. 026, 027

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 October 4, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 4, 2023, together with a copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated September 26, 2023, 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
October 4, 2023

Michael Farina
MICHAEL FARINA

EXHIBIT Q

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

Present: Hon. Arthur F. Engoron **Part 37**

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.

Index No.: 452564/2022

Mot. Seq. Nos. 26, 27, 28

SUPPLEMENTAL ORDER

On September 26, 2023, the Court issued a Decision and Order (the "September 26 Order") denying defendants' motion for summary judgment and granting, in part, plaintiff's motion for summary judgment (NYSCEF Doc. No. 1532). The September 26 Order, among other things, 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." The September 26 Order also directed the parties, within 10 days, to provide the Court with names of potential independent receivers to manage the dissolution of the cancelled LLCs.

It is hereby

ORDERED that the parties shall have until October 26, 2023 to provide the Court with names of potential receivers; and it is further

ORDERED that within seven days of the date of this Order, defendants shall provide the Independent Monitor, the Hon. Barbara S. Jones (Ret.) ("Monitor"), with a list 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 (the "Section 130 Entities"); and it is further

ORDERED that for each of the Section 130 Entities, defendants shall inform the Monitor whether and to what extent any third-party has an ownership, partnership, or membership interest in such entity; and it is further

ORDERED that plaintiff shall assist the Monitor by confirming, through access to Department of State records, the information provided by defendants regarding the Section 130 Entities; and it is further

ORDERED that for each of the Section 130 Entities, defendants shall provide the Monitor with advance notice of:

(1) Any application for a new business certificate (including, but not limited to, "doing business as" or "assumed name" certificates) in any jurisdiction;

(2) The creation of a new entity to hold or acquire the assets of a Section 130 Entity;

(3) Any anticipated transfer of assets or liabilities to any other entity;

(4) Any anticipated distribution from a Section 130 Entity;

(5) Any assignment of rights from a Section 130 Entity;

(6) Any disclosures to third parties regarding the transfer or cancellation of the business certificates including, but not limited to, correspondence to the Section 130 Entitities' lenders, banks, finance companies, leasing agents, insurance companies, buyers, equity partners / co-owners, or taxing authorities;

(7) Any modifications to existing contracts or obligations with any counterparty; and

(8) Any notice by a counterparty declaring an event of default resulting from the September 26 Order, including the cancellation of the certificates or the appointment of a receiver.

Date: October 4, 2023 OCT 04 2023

ARTHUR F. ENGORON, J.S.C.

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

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,

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

Motion Seq. No. 026, 027

PLEASE TAKE NOTICE THAT, pursuant to CPLR § 5515, 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 (hereinafter collectively referred to as "Appellants") hereby appeal to the Appellate Division, First Department, from the Supplemental Order by Hon. Arthur F. Engoron, J.S.C., dated October 4, 2023 (NYSCEF Doc. No. 1553), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on October 5, 2023.

This appeal is taken from each and every part of the Order insofar as Appellants are aggrieved. A copy of the Informational Statement pursuant to 22 N.Y.C.R.R. 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 5, 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
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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

Respectfully submitted,

ROBERT & ROBERT PLLC
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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

EXHIBIT A

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: 10/04/2023	Entered: 10/05/2023
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:

An Article 78 proceeding under Case No. 2023-04580 is currently pending before this Court.

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 appeal from the Supplemental Order of Supreme Court, New York County (Hon. Arthur F. Engoron), dated October 4, 2023 and entered by the Clerk of the Court on October 5, 2023, which issued numerous 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 J. Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney that have existing certificates filed pursuant to GBL § 130" and extended the period to provide the Court with names of potential receivers to October 26, 2023.

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, issuing numerous 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 J. Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney that have existing certificates filed pursuant to GBL § 130" and extending the period to provide the Court with names of potential receivers to October 26, 2023.

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., 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, 11-13, 15-17			
Attorney/Firm Name: Clifford S. Robert, Esq. and Michael Farina, Esq., 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): 3-5			
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): 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,

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

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of the Supplemental Order of the Hon. Arthur F. Engoron, J.S.C., dated October 4, 2023, and duly entered in the office of the Clerk of the Supreme Court, New York County on October 5, 2023.

Dated: Uniondale, New York
October 5, 2023

Clifford S. Robert

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
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Uniondale, New York 11556
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Counsel for Donald Trump, Jr.
and Eric Trump

To: All Counsel of Record (via NYSCEF)

EXHIBIT A

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

Present: Hon. Arthur F. Engoron **Part 37**

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.

Index No.: 452564/2022

Mot. Seq. Nos. 26, 27, 28

SUPPLEMENTAL ORDER

On September 26, 2023, the Court issued a Decision and Order (the "September 26 Order") denying defendants' motion for summary judgment and granting, in part, plaintiff's motion for summary judgment (NYSCEF Doc. No. 1532). The September 26 Order, among other things, 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." The September 26 Order also directed the parties, within 10 days, to provide the Court with names of potential independent receivers to manage the dissolution of the cancelled LLCs.

It is hereby

ORDERED that the parties shall have until October 26, 2023 to provide the Court with names of potential receivers; and it is further

ORDERED that within seven days of the date of this Order, defendants shall provide the Independent Monitor, the Hon. Barbara S. Jones (Ret.) ("Monitor"), with a list 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 (the "Section 130 Entities"); and it is further

ORDERED that for each of the Section 130 Entities, defendants shall inform the Monitor whether and to what extent any third-party has an ownership, partnership, or membership interest in such entity; and it is further

ORDERED that plaintiff shall assist the Monitor by confirming, through access to Department of State records, the information provided by defendants regarding the Section 130 Entities; and it is further

ORDERED that for each of the Section 130 Entities, defendants shall provide the Monitor with advance notice of:

(1) Any application for a new business certificate (including, but not limited to, "doing business as" or "assumed name" certificates) in any jurisdiction;

(2) The creation of a new entity to hold or acquire the assets of a Section 130 Entity;

(3) Any anticipated transfer of assets or liabilities to any other entity;

(4) Any anticipated distribution from a Section 130 Entity;

(5) Any assignment of rights from a Section 130 Entity;

(6) Any disclosures to third parties regarding the transfer or cancellation of the business certificates including, but not limited to, correspondence to the Section 130 Entitities' lenders, banks, finance companies, leasing agents, insurance companies, buyers, equity partners / co-owners, or taxing authorities;

(7) Any modifications to existing contracts or obligations with any counterparty; and

(8) Any notice by a counterparty declaring an event of default resulting from the September 26 Order, including the cancellation of the certificates or the appointment of a receiver.

Date: October 4, 2023 OCT 04 2023

ARTHUR F. ENGORON, J.S.C.

HON. ARTHUR F. ENGORON J.S.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,

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

Motion Seq. Nos. 026, 027

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 October 5, 2023, I served the within Notice of Appeal and Informational Statement, both dated October 5, 2023, together with a copy of the Supplemental Order of the Supreme Court of the State of New York, New York County (Honorable Arthur F. Engoron, J.S.C.), dated October 4, 2023, 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
October 5, 2023

Michael Farina
MICHAEL FARINA

EXHIBIT S

From: Michael Farina
Sent: Thursday, October 5, 2023 9:48 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; chris@ckise.net; Christopher Kise; Clifford Robert; Michael Madaio
Subject: People v. Trump, et al., Index No. 452564/2022

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, October 6, 2023, at 10:00 a.m. to the Appellate Division, First Department seeking a stay.

Thanks.

Mike

Michael Farina | Partner
Robert & Robert PLLC

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