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

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, Petitioners, vs. HON. ARTHUR F. ENGORON, PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Respondents.	Case No. 2023-04580 **NOTICE OF PETITION**

PLEASE TAKE NOTICE that upon the annexed verified petition of 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, duly verified on the 13th of September 2023, and the exhibits annexed thereto, the undersigned will move this Court before a Justice at the Courthouse located at 27 Madison Avenue, New York, New York 10010 at 9:30 am on Friday, October 6, 2023, or as soon thereafter as counsel may be heard, for a Judgment granting the relief in the annexed Verified Petition as follows:

(a) On the first cause of action, directing that Justice Engoron comply with this Court's June 27, 2023, decision and order and render a determination as to the scope of the claims to be tried in the underlying action pursuant to CPLR § 7803(1); and

(b) On the second cause of action, finding that Justice Engoron's decision to proceed to trial in the action captioned People v. Trump, et al., Index No. 452564/2022 without complying with this Court's June 27, 2023, decision and order is in excess of Supreme Court's jurisdiction under CPLR § 7803(2); and

(c) Granting such further and additional relief as the court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to C.P.L.R. §§ 7804(c) and (e), you must serve a verified answer and any supporting affidavits at least five days before the return date.

Dated: New York, New York
September 14, 2023

Respectfully submitted,

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Dated: Uniondale, New York
September 14, 2023

Respectfully submitted,

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

In the Matter of the Application of: 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 Under Article 78 of the CPLR -against- THE HONORABLE ARTHUR F. ENGORON, J.S.C., and PEOPLE OF THE STATE OF NEW YORK by LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Respondents.	Case No. 2023-04580 **VERIFIED JOINT ARTICLE 78 PETITION**

TO APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK:

Petitioners 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, "Petitioners"), by their attorneys, Habba Madaio & Associates and Robert & Robert PLLC, allege the following as and for their Verified Petition against The

Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron") and the People of the State of New York by Letitia James, Attorney General of the State of New York (the "Attorney General" and together with Justice Engoron, "Respondents"):

PRELIMINARY STATEMENT

1. Petitioners bring this Article 78 proceeding to redress Respondents' refusal to acknowledge and comply with this Court's unequivocal mandate in the Attorney General's underlying Executive Law § 63(12) action captioned *People v. Trump, et al.*, currently pending before Justice Engoron in Supreme Court, New York County, under Index No. 452564/2022.

2. On June 27, 2023, after extensive briefing and vigorous oral argument, this Court issued its decision and order (the "Decision") on appeal of Justice Engoron's January 9, 2023, order denying Petitioners' and co-defendant Ivanka Trump's ("Ivanka") motions to dismiss.

3. The Decision provides that the "Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered January 9, 2023, which denied defendants' respective motions to dismiss the complaint, [is] **unanimously modified, on the law, to dismiss, as time-barred** . . . the claims against the [Petitioners] to the extent they accrued prior to July 2014 (with respect to those [Petitioners] subject to the August 2021 tolling agreement) and February 2016 (with respect to those [Petitioners] not subject to the August 2021 tolling agreement." The Court further directed: "We leave Supreme Court to determine, if necessary, the full range of defendants bound by the tolling agreement."

4. The Decision is unequivocal: certain claims in the underlying action are time-barred and must be dismissed, and Supreme Court is stripped of its jurisdiction over such claims. Accordingly, the Decision directs Justice Engoron to determine which defendants were bound by

the tolling agreement, and, after doing so, to dismiss any claims that accrued prior to July 2014 for Petitioners bound by the tolling agreement and prior to February 2016 for the other Petitioners.[1]

5. The interlocutory Decision plainly contemplates that Supreme Court implement this Court's mandate, and thereby establish with specificity which of the Attorney General's claims are timely and which are beyond the scope of trial, ***before*** the trial commences. Indeed, it is evident the Decision cannot be implemented after trial.

6. Nonetheless, in the nearly three months since this Court mandated that time-barred claims be dismissed, Justice Engoron has taken no action. Instead, he has expressly refused to dismiss the time-barred claims and/or to evaluate the scope of the tolling agreement.

7. The Attorney General has likewise ignored this Court and clings to the legally and logically untenable position that *every* claim alleged against Petitioners in her 220-page complaint is triable. In recent filings, the Attorney General has even injected novel theories of liability into her case, effectively rewriting her pleading on the eve of trial in an effort to circumvent the Decision.

8. The Attorney General does all this while she insists, without authority, that she retains the right to "challenge" the Decision at some future date, despite never having sought reargument or otherwise moved for leave to appeal. A footnote in the Attorney General's motion for partial summary judgment inexplicably proclaims that she "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 in this case."

[1] There can be no dispute that (i) seven of the ten transactions at issue in the complaint involving lending were completed *before* July 13, 2014; (ii) one of the transactions involving lending was *never* consummated; and (iii) the two remaining transactions involving lending were completed *before* the cutoff date for timely claims against those Petitioners not subject to the tolling agreement, *i.e.*, February 6, 2016.

9. Although he has yet to perform his lawful duty, Justice Engoron plans to proceed with the trial of the Attorney General's claims on October 2, 2023—just nineteen days from the date of this Petition.

10. Given the imminent trial date, and with no action having been taken to effectuate the Decision, Petitioners moved Supreme Court on September 5, 2023, for a brief (3 weeks or less) stay of the trial to allow Justice Engoron to implement this Court's mandate and identify the remaining claims to be tried. Less than a day later, Justice Engoron rejected the motion in a terse filing stating that he declined to sign Petitioners' order to show cause and that "Defendants' arguments are completely without merit."

11. Justice Engoron's insistence that trial go forward even though he has not complied with the Court's binding directives in the Decision ensures Petitioners will be forced to try claims this Court has dismissed and over which Supreme Court lacks jurisdiction. Moreover, Justice Engoron's summary rejection of Petitioners' request to implement the Decision demonstrates he has no intent to do so and deems the notion that he is bound by this Court's mandate to be "completely without merit." This leaves no doubt that Petitioners' sole recourse is the instant proceeding. See Charalabidis v. Elnagar, 188 A.D.3d 44 (2d Dep't 2020).

12. A Justice of the Supreme Court and all parties appearing before him are bound by the decisions and directives of this Court. Under the Constitution, Supreme Court is not a court of coordinate jurisdiction with the First Department. The doctrine of law of the case is clear: "[T]here is no discretion involved; the lower court must apply the rule laid down by the appellate court." People v. Evans, 94 N.Y.2d 499, 503 (2000). Consequently, Justice Engoron is not free to disagree with or ignore this Court's Decision.

13. It is likewise beyond cavil that forcing Petitioners to defend at trial claims this Court dismissed as time-barred does not comport with the basic principles of fairness and due process to which all litigants, regardless of status or popularity, are entitled.

14. Petitioners will undoubtedly suffer substantial prejudice if Justice Engoron forces them to engage in a commercially complex trial on dismissed claims, over which Supreme Court has been divested of jurisdiction, wherein the Attorney General seeks hundreds of millions of dollars in penalties and a draconian prohibition on Petitioners' future conduct of lawful business enterprises. Moreover, manifest uncertainty as to the scope of the claims to be tried denies Petitioners a meaningful opportunity to craft defenses and legal strategy. Such prejudice cannot be mitigated retroactively.

15. Petitioners therefore respectfully ask that this Court make clear compliance with its rulings is not optional for Respondents. Accordingly, Petitioners seek an interim stay of the trial, a directive that Justice Engoron implement the Decision, and a prohibition on Respondents proceeding to trial on claims dismissed by this Court as time-barred and over which Supreme Court lacks jurisdiction.

JURISDICTION AND VENUE

16. This Court has jurisdiction pursuant to CPLR §§ 7804(b) and 506(b)(1), which provide that an Article 78 special proceeding against a justice of the supreme court shall be commenced in the appellate division in the judicial department where the action, in the course of which the matter sought to be enforced or restrained originated, is triable.

17. Venue in this Court is proper pursuant to CPLR § 506(b)(1) because the action, in the course of which the matter sought to be enforced or restrained originated, is triable in Supreme Court, New York County.

THE PARTIES

18. Petitioner Donald J. Trump is the beneficial owner of a vast number of corporate entities which, although legally distinct, operate colloquially as the Trump Organization.

19. Petitioner Donald Trump, Jr., is an Executive Vice President of certain Trump Organization entities, a Trustee of The Donald J. Trump Revocable Trust and maintains a business office at 725 Fifth Avenue, New York, New York.

20. Petitioner Eric Trump is Executive Vice President of certain Trump Organization entities and Chairman of the Advisory Board of the Donald J. Trump Revocable Trust and maintains a business office at 725 Fifth Avenue, New York, New York.

21. Petitioner Allen Weisselberg served as the Chief Financial Officer of the Trump Organization from 2003 to July 2021 and, during that time, maintained a business office at 725 Fifth Avenue, New York, New York.

22. Petitioner Jeffrey McConney is the Controller of the Trump Organization and maintains a business office at 725 Fifth Avenue, New York, New York.

23. Petitioner The Donald J. Trump Revocable Trust, herein by and through Trustee Donald J. Trump, Jr., is a trust created under the laws of New York, of which Petitioner Donald J. Trump is the sole beneficiary.

24. Petitioner The Trump Organization, Inc. is a New York corporation.

25. Petitioner The Trump Organization, LLC is a New York limited liability company with a principal place of business in New York.

26. Petitioner DJT Holdings LLC is a Delaware limited liability company with a principal place of business in New York.

27. Petitioner DJT Holdings Managing Member LLC is a Delaware limited liability company registered to do business in New York.

28. Petitioner Trump Endeavor 12 LLC is a Delaware limited liability company registered to do business in New York.

29. Petitioner 401 North Wabash Venture LLC is a Delaware limited liability company.

30. Petitioner Trump Old Post Office LLC is a Delaware limited liability company.

31. Petitioner 40 Wall Street LLC is a New York limited liability company.

32. Petitioner Seven Springs LLC is a New York limited liability company.

33. Respondent The Honorable Arthur F. Engoron, J.S.C, is a Justice of the Supreme Court, New York County. Justice Engoron is assigned to the action captioned *People v. Trump, et al*., Index No. 452564/2022.

34. Respondent People of the State of New York by Letitia James, Attorney General of the State of New York is the Plaintiff in the action captioned *People v. Trump, et al*., Index No. 452564/2022.

FACTS COMMON TO ALL CAUSES OF ACTION

35. 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 on September 21, 2022, following a three-year investigation into Petitioners' business practices that included interviews of more than 65 witnesses and the review of millions of pages of documents. Therein, the Attorney General has alleged from the outset that over a 10-year period, the Defendants "used 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 . . . ." Complaint ¶ 3, NYSCEF No. 1. A copy of the Complaint is annexed hereto as **Exhibit A**.

36. In the underlying action, the Attorney General seeks extensive and punitive relief against sixteen defendants, including Petitioners herein.[2] Among other things, the Attorney General asks Supreme Court to (1) appoint a monitor to oversee Petitioners' assets and businesses, (2) bar Petitioners from conducting any real-estate transactions in New York for five years, (3) permanently bar the individual Petitioners from serving as an officer or director of any New York corporation, and (4) order Petitioners to pay $250 million in "disgorgement."

37. On November 21, 2022, Petitioners and Ivanka moved to dismiss the complaint.

38. On November 22, 2022, before deciding the motions to dismiss and before any discovery had even materially commenced, Justice Engoron scheduled the trial to begin on October 2, 2023.

39. On January 6, 2023, Justice Engoron issued a decision denying the motions to dismiss in their entirety. A copy of that decision is annexed hereto as **Exhibit B**.

40. In that decision, Justice Engoron rejected Petitioners' statute of limitations argument and determined, *inter alia*, that the Attorney General "ha[d] 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." Id. (internal citations and quotations omitted). Consequently, he held that "[a]s 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." Id.

[2] As set forth above, Ivanka was initially named as a defendant but was dismissed from the case by this Court's June 2023 Decision.

41. On February 3, 2023, Petitioners and Ivanka timely filed notice of appeal of Justice Engoron's decision.

42. On June 27, 2023, upon its consideration of more than two hundred pages of briefing and after vigorous oral argument, this Court issued its Decision on appeal of Justice Engoron's order denying the motions to dismiss. A copy of the Decision is annexed hereto as **Exhibit C**.

43. The Decision, in relevant part, "unanimously modified" Justice Engoron's order denying the motions to dismiss as follows:

> 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)...

See Ex. C. (emphasis added).

44. This Court also facilitated implementation of its mandate by defining the process for determining the actual accrual date for the various claims:

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

Id. (emphasis added).

45. This Court thus (1) determined certain of the Attorney General's claims are actually time-barred and (2) unambiguously defined "accrued."[3]

46. This Court also determined that "[t]he record before [it], however, indicate[d] that defendant Ivanka Trump was no longer within the agreement's definition of 'Trump Organization' by the date the tolling agreement was executed," and, thus, "all claims against her should have been dismissed as untimely." Id.

47. The Decision's directive that Justice Engoron's order be modified to dismiss a significant portion of the Attorney General's claims as time-barred is therefore unequivocal.

48. Nonetheless, Justice Engoron has dismissed no claims or parties from the action since the date of the Decision and stated flatly that any request that he do so was "completely without merit."[4]

49. On July 28, 2023, discovery concluded with respect to all claims in the underlying action.

50. On July 31, 2023, the Attorney General filed note of issue and certified that her case was trial-ready.

51. On August 4, 2023, the parties served, and later filed, their motions for summary judgment.

52. Petitioners' motion for summary judgment seeks, *inter alia*, that Justice Engoron implement this Court's mandate and dismiss certain claims against Petitioners insofar as (1) certain causes of action are based on transactions completed outside of the applicable limitations period

[3] The Attorney General ignores both the law and fundamental grammatical principles, claiming absurdly this Court's specific definition of accrual, viz., the date on which "the transactions were completed," is mere *dicta*.

[4] Indeed, even Ivanka, against whom no claim remains after the Decision, remains a defendant in the case caption.

and (2) the tolling agreement does not bind any individual Petitioners or trusts. A copy of Petitioners' memorandum of law is annexed hereto as **Exhibit D.**

53. By contrast, the Attorney General effectively, and surprisingly, ignores this Court's Decision in her motion for summary judgment, mentioning it only twice in her 61-page memorandum of law. A copy of that memorandum of law is annexed hereto as **Exhibit E.**

54. Moreover, in contravention of the Decision's unequivocal holding that the continuing-wrong doctrine does not apply to preserve the Attorney General's claims, the Attorney General continues to invoke a continuing-wrong theory to support her use of pre-July 2014 facts. Id.

55. The Attorney General also states that "the cutoff date for timely claims against all Defendants is at latest July 13, 2014," despite this Court's admonition that "claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016" for Petitioners not bound by the tolling agreement. Id.; see also Ex. C.

56. As noted above, a footnote in the Attorney General's brief concisely demonstrates the extent of her disregard for this Court's Decision:

> 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.[5]

57. In opposition to Petitioners' motion for summary judgment, the Attorney General likewise casts this Court's holding on when claims accrued as an "observation in this case." A copy of that memorandum of law is annexed hereto as **Exhibit F.**

[5] At other junctures, the Attorney General has disingenuously characterized the modification language—contained in the Decision's first and only decretal paragraph—as dicta.

58. On September 1, 2023, the Petitioners served, and later filed, their opposition to the Attorney General's motion for partial summary judgment, demonstrating fully that the Attorney General continues to improperly advance time-barred claims. A copy of that memorandum of law is annexed hereto as **Exhibit G**.

59. It is beyond dispute that an order on an interlocutory appeal, such as on a motion to dismiss, is final and not appealable in connection with a final judgment, where no party has moved to re-argue or for leave to appeal to the Court of Appeals. The Attorney General never took such action. Nonetheless, she maintains she is empowered to pursue her own course of action, unimpeded by this Court's Decision.

60. In her memoranda of law at summary judgment, the Attorney General also reveals her intent to revive her time-barred claims by recasting them under novel theories of liability, on the eve of trial, in an obvious attempt to circumvent the Decision. See Exs. C, F.

61. Prior to summary judgment, indeed from the outset, the Attorney General's avowed position was the Petitioners' fraudulent procurement of certain loans themselves constituted the actionable wrongs herein. Under her previous theory, the subsequent, post-closing certifications as to the veracity of the statements of financial condition simply constituted continuing wrongs which extended the applicable limitations period. See, e.g., Appeal No. 2023-00717, NYSCEF Doc. No. 24.

62. The Attorney General's Complaint makes clear her claim is that Defendants' "used false and misleading Statements repeatedly and persistently to induce banks to lend money to the Trump Organization . . . ." Complaint ¶ 3. Thereafter, the Attorney General's statements in her memorandum in opposition to the defendants' motions to dismiss further reveal her position at the pleading stage. A copy of that memorandum of law is annexed hereto as **Exhibit H**.

63. Describing her claims, the Attorney General writes:

> [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, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) (NYSCEF No. 183), slip op. at 1-2.

Ex. H at 8-9 (emphasis added).

64. In her brief in opposition to the defendants' appeal, the Attorney General doubled down on the foregoing characterization of her own claims. A copy of the Attorney General's brief is annexed hereto as **Exhibit I**. The Attorney General writes:

> 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.

Ex. I at 8 (emphasis added).

65. Undeterred by this Court's Decision foreclosing the use of the continuing-wrong doctrine to expand the timeframe of actionable conduct, the Attorney General now contends that "the relevant 'transactions' for purposes of § 63(12) include each time Defendants engaged in fraudulent or illegal commercial conduct with another party, including but not limited to certifying or submitting false SFCs to meet obligations under existing loans or renew insurance." Ex. F at 54-55. By this sleight of hand, the Attorney General seeks to reframe her case to evade the Decision and to justify her presentation of whatever evidence she wishes, from any period of time, at trial.

66. The Attorney General's preliminary witness and exhibit lists further underscore that, in the Attorney General's opinion, none of the time-barred transactions are off-limits and that she intends to proceed to trial on all claims as if this Court never rendered its Decision. A copy of the witness list is annexed hereto as **Exhibit J**.

67. New York law does not permit, and fundamental fairness and due process do not allow, the Attorney General to change the core of her case or to impermissibly augment her pleading with new legal theories on the eve of trial, in an attempt to resurrect causes of action this Court has properly dismissed. See, e.g., Videobox Networks LP v. Durst, 259 A.D.2d 459 (1st Dep't 1999); Forman v. Davison, 74 A.D.2d 505 (1st Dep't 1980); see also Matter of County of Nassau, 40 A.D.2d 854 (2d Dep't 1972).

68. On September 5, 2023, given the Attorney General's continued reliance on claims dismissed by this Court, with no action by Justice Engoron to acknowledge and implement the Decision and a looming trial date, Petitioners moved Justice Engoron for a brief (three weeks or less) stay of the trial pursuant to CPLR § 2201. Copies of Petitioners' submissions in support of a stay are annexed hereto as **Exhibit K**.

69. Less than twenty-four hours after Petitioners filed their application, Justice Engoron uploaded an unsigned order to show cause, which included the handwritten notation: "Decline to sign; Defendants' arguments are completely without merit." A copy of the order is annexed hereto as **Exhibit L**.

70. The order purports to consider and reject Petitioners' application in under ten words, notwithstanding that by declining to sign, Justice Engoron impeded Petitioners' ability to seek review of his decision.

71. The order also demonstrates Justice Engoron's view that the directive in this Court's Decision with respect to time-barred claims is, as a substantive matter, "completely without merit," and he intends to proceed to trial without complying with this Court's mandate dismissing time-barred claims.

72. Indeed, Justice Engoron's order reveals he believes this Court's Decision does not require him to take *any* affirmative steps.

73. Thus, at this point, Justice Engoron has made plain his intention to ignore this Court's Decision and proceed to a full trial on claims dismissed by this Court and over which he exercises no jurisdiction.

74. A trial of unclear scope, on dismissed claims, is currently scheduled to begin on October 2, 2023.

75. The untenable posture of the case is attributable to both Justice Engoron's unwillingness to implement the Decision's unambiguous mandate and the Attorney General's willful determination to try all her claims, notwithstanding the Decision dismissing many of those claims as time-barred.

76. As set forth above, it contravenes bedrock principles of fairness and due process to demand Petitioners proceed to trial on claims that this Court has dismissed as untimely.

AS AND FOR A FIRST CAUSE OF ACTION
(For Judgment Pursuant to CPLR 7803)

77. Petitioners repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

78. Section 7802(a) of the CPLR defines "body or officer" to include "every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected b y a proceeding under this article."

79. Section 7803(1) of the CPLR authorizes a petitioner to raise in a special proceeding whether a "body or officer failed to perform a duty enjoined upon it by law."

80. Section 7803(1) codifies the common-law writ of mandamus to compel. See Alliance to End Chickens as Kaporos v. New York City Police Dept., 152 A.D.3d 113, 117 (1st Dep't 2017). "Mandamus to compel is a judicial command to an officer or body to perform a specified ministerial act that is required by law to be performed." Id.; see Klostermann v. Cuomo, 61 N.Y.2d 525, 539 (1984).

81. "A ministerial act is best described as one that is mandated by some rule, law or other standard and typically involves a compulsory result." Alliance to End Chickens as Kaporos v. New York City Police Dept., 152 A.D.3d at 117 (citing New York Civ. Liberties Union, 4 N.Y.3d 175, 184 [2005]). Nonetheless, mandamus will lie to compel any acts "that officials are duty-bound to perform, regardless of whether they may exercise their discretion in doing so." Klostermann v. Cuomo, 61 N.Y.2d at 540.

82. A writ of mandamus under Article 78 may be "addressed to subordinate judicial tribunals, to compel them to exercise their functions." Klostermann v. Cuomo, 61 N.Y.2d at 540 (quoting People ex rel. Francis v. Common Council, 78 N.Y. 33 [1879]); see Grant v. Cuomo, 130 A.D.2d 154, 167 (1st Dep't 1987).

83. The doctrine of law of the case ("LOTC") "is a rule of practice premised upon sound policy that once an issue is judicially determined, further litigation of that issue should be precluded in a particular case." In re Part 60 RMBS Put – Back Litig., 195 A.D.3d 40, 47 (1st Dep't 2021) (citing Martin v. City of Cohoes, 37 N.Y.2d 162, 165 [1975]). As this Court has confirmed, LOTC "bind[s] a trial court…to follow the mandate of an appellate court":

> Discretion…is circumscribed where the decision providing the basis for LOTC is by an appellate court. Thus, while LOTC cannot bind

> an appellate court to a trial court ruling (see Hutchings v. Yuter, 108 A.D.3d 416 [1st Dep't 2013]), it does bind 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 (People v. Evans, 94 N.Y.2d 499, 503 [2000]; Carmona v. Mathisson, 92 A.D.3d 492, 492–493 [1st Dept. 2012]). As the Court of Appeals recognized in Evans, "In this setting there is no discretion involved; the lower court must apply the rule laid down by the appellate court" (id. at 503).

Id. at 48 (cleaned up).

84. By its June 27, 2023, Decision, this Court unanimously modified Justice Engoron's January 9, 2023, decision denying Petitioners' motion to dismiss the complaint in the underlying action.

85. The Decision required that Justice Engoron dismiss the Attorney General's claims against Petitioners as time-barred "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)."

86. Further, the Decision expressly delegated to Justice Engoron a duty "to determine, if necessary, the full range of defendants bound by the tolling agreement."

87. As of the filing of this Petition, less than three weeks before Petitioners have been ordered to defend themselves at trial in the underlying action, Justice Engoron has affirmatively refused to take any action to implement the Decision.

88. Justice Engoron's refusal to implement this Court's mandate contravenes the doctrine of LOTC, which leaves him, as a trial court, with no discretion to ignore the rule laid down by an appellate court.

89. Further, the Attorney General continues to insist, in utter defiance of the Decision, that *all* of her claims against Petitioners survive. Such insistence directly contravenes this Court's unequivocal mandate.

90. Because Justice Engoron has refused to dismiss the time-barred claims or clarify which Petitioners are bound by the tolling agreement, Petitioners are now forced to proceed to trial on claims this Court has dismissed, over which Justice Engoron lacks jurisdiction, and without knowing the scope of the triable claims against them.

91. Accordingly, Petitioners request an order directing that Justice Engoron immediately implement fully this Court's June 27, 2023, Decision.

AS AND FOR A SECOND CAUSE OF ACTION
(For Judgment Pursuant to CPLR 7803)

92. Petitioners repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

93. Section 7802(a) of the CPLR defines "body or officer" to include "every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.

94. Section 7803(2) of the CPLR authorizes a petitioner to raise in a special proceeding whether a "body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction."

95. Section 7803(2) is a codification of the common-law writ of prohibition and is available "both to restrain an unwarranted assumption of jurisdiction and to prevent a court from exceeding its authorized powers in a proceeding over which it has jurisdiction." La Rocca v. Lane, 37 N.Y.2d 575, 578-79 (1975); see Soares v. Carter, 25 N.Y.3d 1011, 1013 (2015); Johnson v. Sackett, 109 A.D.3d 427, 428-29 (1st Dep't 2013).

96. In determining whether prohibition should issue, the Court should consider the "gravity of the harm which would be caused by an excess of power" and "whether the excess of power can be adequately corrected on appeal or by other ordinary proceedings at law or in equity." La Rocca v. Lane, 37 N.Y.2d at 579. Where "a court acts without jurisdiction, or acts or threatens to act in excess of its powers, and it affirmatively appears that this will be done in violation of a person's, even a party's rights, but especially constitutional rights, prohibition will lie to restrain the excess of power." Id. at 580.

97. Because Justice Engoron has refused to dismiss the time-barred claims or clarify which Petitioners are bound by the tolling agreement, Petitioners are now forced to proceed to trial on claims this Court has dismissed, over which Justice Engoron cannot exercise jurisdiction, and without knowing the scope of the triable claims against them.

98. The foregoing harm cannot be remedied by any other legal process.

99. Justice Engoron refused to allow Petitioners to make an application for a brief stay of trial pending his implementation of the Decision and determination of the scope of trial.

100. Instead of rendering a fulsome decision on Petitioners' application, Justice Engoron declined to sign Petitioners' order to show cause seeking a stay on the ground that he deems Petitioners' arguments "completely without merit."

101. Thus, Justice Engoron has made it clear that he intends to proceed to trial on all claims, including those over which he lacks jurisdiction. He has also made clear that he will not permit Petitioners to challenge that decision in the underlying action, inasmuch as he has refused to provide Petitioners with an appealable paper. Charalabidis, 188 A.D.3d at 54.

102. Accordingly, Petitioners request an order finding that Justice Engoron's decision to proceed to trial in the action captioned People v. Trump, et al., Index No. 452564/2022, prior to

compliance with this Court's Decision, is in excess of Supreme Court's jurisdiction and prohibiting Justice Engoron from so proceeding.

103. Petitioners also request, pursuant to CPLR § 7805, that this Court stay the underlying action pending the resolution of this proceeding.

WHEREFORE, Petitioners respectfully request that this Court grant judgment in their favor as follows:

(a) On the first cause of action, directing that Justice Engoron comply with this Court's June 27, 2023, decision and order and render a determination as to the scope of the claims to be tried in the underlying action pursuant to CPLR § 7803(1); and

(b) On the second cause of action, finding that Justice Engoron's decision to proceed to trial in the action captioned People v. Trump, et al., Index No. 452564/2022 without complying with this Court's June 27, 2023, decision and order is in excess of Supreme Court's jurisdiction under CPLR § 7803(2); and

(c) Granting such further and additional relief as the court deems just and proper.

Dated: New York, New York
September 13, 2023

Respectfully submitted,

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Dated: Uniondale, New York
September 13, 2023

Respectfully submitted,

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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

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

ATTORNEY VERIFICATION

I, MICHAEL MADAIO, am counsel for Petitioners 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 in the above-captioned Article 78 proceeding. I have read the foregoing Petition and know the contents thereof. The same are true to my knowledge, except to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

Dated: New York, New York
September 13, 2023

MICHAEL MADAIO

ATTORNEY VERIFICATION

I, CLIFFORD S. ROBERT, am counsel for Petitioners 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 in the above-captioned Article 78 proceeding. I have read the foregoing Petition and know the contents thereof. The same are true to my knowledge, except to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

Dated: Uniondale, New York
September 13, 2023

CLIFFORD S. ROBERT

EXHIBIT A

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

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

Plaintiff,

-against-

DONALD J. TRUMP, 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

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Andrew Amer
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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

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

I. NATURE OF THE ACTION

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

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

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

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

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

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

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

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

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

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

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

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

A. The Fraudulent Statements of Financial Condition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Relief Sought

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

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

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

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

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

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

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

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

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

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

j. Granting any additional relief the Court deems appropriate.

II. THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. JURISDICTION, APPLICABLE LAW, AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

A. Overview of Trump Organization Assets

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Overview of the Statements of Financial Condition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Cash and Cash Equivalents/Marketable Securities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Escrow and Reserve Deposits and Prepaid Expenses

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

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

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

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

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

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

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

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

3. Trump Park Avenue

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. 40 Wall Street

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Niketown

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Valuations of Niketown from 2013 through 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. June 30, 2019 valuation of Niketown

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

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

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

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

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

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

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

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

d. June 30, 2020 valuation of Niketown

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

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

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

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

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

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

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

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

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

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

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

6. Trump Tower

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. 2015 valuation of Trump Tower

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

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

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

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

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

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

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

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

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

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

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

7. Seven Springs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

257. More specifically, the Trump Organization:

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Mr. Trump's Triplex Apartment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRUMP TOWER PENTHOUSE

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

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

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

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

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

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

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

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

Very truly yours,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The False and Misleading Valuations of the Buildings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Las Vegas (Ruffin Joint Venture)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Club Facilities and Related Real Estate

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

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

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

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

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

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

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

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

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

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

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

a. Mar-a-Lago

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Trump Aberdeen

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

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

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

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

i. The Golf Course Valuations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. The Undeveloped Land Valuations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Trump Turnberry

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

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

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

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

d. TNGC Jupiter

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

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

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

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

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

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

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

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

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

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

e. TNGC Briarcliff

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

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

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

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

i. The Golf Course Valuations

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. The Undeveloped Land Valuations

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

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

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

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

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

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

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

f. TNGC LA

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

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

Year	Value of Golf Course	Value of Undeveloped Land	Total Value
2011	$23,800,000	$310,300,000	$334,100,000
2012	$23,800,000	$283,250,000	$307,050,000
2013	$73,505,900	$152,000,000	$225,505,900
2014	$74,300,642	$139,390,000	$213,690,642
2015	$56,615,895	$84,095,000	$140,710,895
2016	$52,426,829	$82,485,000	$134,911,829
2017	$52,670,127	$69,200,000	$121,870,127
2018	$51,322,079	$62,075,000	$113,397,079
2019	$54,734,733	$62,260,000	$116,994,733
2020	$54,734,733	$52,975,655	$107,710,388
2021	$28,446,251	$63,663,391	$92,109,642

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

i. The Golf Course Valuations

472. In 2011 and 2012, the Trump Organization valued the golf course at TNGC LA at $23.8 million based on the original loan and improvements.

473. Starting in 2013 and continuing through 2020, and without any disclosure of the change in methodology in violation of GAAP rules, the Trump Organization employed the Fixed-Assets Scheme to value the golf club component of TNGC LA. During this period, the company also added 30% to the value in 2013 and 2014 and 15% to the value in 2015 through 2020 under the Brand Premium Scheme.

474. In 2021, the company modified its fixed-assets approach, again without the required disclosure of a change in metodology, and derived the golf course value by averaging gross revenue times a multiplier and the value derived by the Fixed-Assets Scheme (but using "Net Fixed Assets" which factored in depreciation rather than just "Fixed Assets" without any depreciation as in prior years); this modification was purportedly based on advice of "golf course industry experts" Marcus & Millichap, despite receiving prior advice from that firm that using a fixed-assets approach for an operating golf course was improper. The use of a net figure for fixed assets that factors in depreciation is an implicit acknowledgement that ignoring depreciation in prior years was improper.

475. In every year from 2011 to 2020, the golf course has operated with a net income that barely reached the low seven figures, often at $1.5 million or lower, and in some cases lower than $1 million. As a result, using values for the golf course ranging between $23.8 million to $74.3 million in the Statements from 2011 to 2021 based on employing the Fixed-Assets Scheme, coupled with the Brand Premium Scheme starting in 2013 that tacked on an additional 30% or 15% in all years except 2021, is materially false and misleading; the golf course should have been valued at a much lower figure.

ii. The Undeveloped Land Valuations

476. Throughout the period 2011 to 2021, the TNGC LA valuation incorporated an inflated value for a substantial number of potential lots for sale in the areas around the golf course using the Inflated Home Sale Scheme.

477. TNGC LA was originally known as Ocean Trails Golf Club. Construction on the course started in 1997 and by June 1999, the golf course was almost complete—until a landslide dropped 300 yards of the 18th hole fairway into the Pacific Ocean. The landslide also caused most of the 18th hole to slide 50 feet toward the ocean, including the fairway and green.

Development on the property ceased after the landslide and the Ocean Trails Golf Course construction project went into bankruptcy. VH Property Corp., a Trump Organization subsidiary, acquired the property out of bankruptcy in November 2002 for a reported price of $27 million.

478. Given the site's instability, the landslide, and the site's proximity to the Pacific Coast, the Trump Organization needed approval from the City of Rancho Palos Verdes to develop the site. The Trump Organization's geologist worked with a Rancho Palos Verdes geologist to develop a geologic model and reach an understanding of any improvements necessary before the site could be further developed. This presented a particular hurdle for 16 planned lots on the driving range and putting green. In June 2011, the Trump Organization's geologist produced a report stating that 104 "shear pins," stabilizing implements drilled into the ground to provide engineering stability, would be required to develop the lots safely.

479. Given these difficulties in developing the lots, the Trump Organization began to consider another option: donating a conservation easement over the 16 proposed lots that would preclude any development but allow continued use of the area as a driving range and putting green.

480. Nevertheless, for the purposes of the Statement of Financial Condition, the Trump Organization valued the property as if there were no practical limitations on the development of the lots, in addition to assigning inflated values to each of those lots. For example, the 2011 valuation of $334 million had two components: the $23.8 million valuation of the clubhouse (which the valuation attributed to the value of a loan plus improvements) and the putative sales price of 70 housing lots valued at $310.3 million, which incorporated two lots that had been "priced out" at $8.8 million together, another $7.15 million lot under contract, and 67 remaining lots priced at an "average price" of $4.5 million. The valuation, which provides no source for this

average price, noted that "[a]lthough 17 lots have been used for a driving range, we can still convert the lots back to housing." The driving range lots would later be the subject of the Trump Organization's conservation easement in 2014.

481. The 2012 valuation of $307 million took a similar approach. For this year, 12 lots were listed as priced out at a total of $35,750,000 at an average of roughly $3 million per lot. These included two of the lots that had been previously listed as "priced out" at an average of $4.4 million per lot in 2011. Despite the lower lot prices for these two lots, the 2012 valuation retained the $4.5 million average price per lot for the remaining 55 lots, and the clubhouse remained valued at $23.8 million.

482. But this valuation was contradicted by advice the Trump Organization received from "outside professionals," specifically appraisers from Cushman asked to conduct a preliminary valuation to aid consideration of a potential easement donation over the driving range property.

483. After the issuance of the 2012 Statement, Trump Organization outside tax counsel Sheri Dillon engaged Cushman appraisers Richard Zbranek and Brian Curry to put a value on the potential easement donation. Ms. Dillon also hired an engineer to work on the project. The Cushman appraisers were to provide "initial valuation conclusions" for 16 lots on the TNGC LA driving range. This initial evaluation would not involve a formal written report or assess value enhancement for the full Trump-owned parcel. If this valuation met with the Trump Organization's approval, the appraisers would then move on to provide a valuation suitable for supporting a charitable donation.

484. The Trump Organization, through Bingham McCutchen LLP (Ms. Dillon's law firm at the time), conveyed to the appraisers that it believed the lots might be worth a total of $40 or $50 million.

485. In December 2012, Cushman, relying on costs and other information prepared by an engineer (also retained by Dillon and Bingham), reached a preliminary value conclusion for the development potential of the lots of only $17,725,000. As Mr. Curry described it to Mr. Zbranek, "They did paper napkin analysis and suggested 40 to 50 million dollars. I sent them my analyses, we walked through the whole thing, and they couldn't argue with it. More like. 'Oh'."

486. After this preliminary valuation, the Trump Organization put the conservation easement project on hold and did not pursue it further in 2012 or 2013.

487. While the 2013 Statement did not adopt the Cushman price estimate, it nevertheless reflected a decrease in the valuation of the development of the lots from $247.5 million in 2012 to $152 million in 2013. The drop was due to lower average sales prices: for the 11 lots priced out in 2013, the sales price was a mere $22 million, or an average of $2 million a lot. Three additional lots were under contract for a total of $4.65 million, or $1.55 million each. Given these lower prices, the company based the estimate for the remaining lots on an average sales price of $2.5 million—instead of $4.5 million—significantly reducing the calculated value of those 52 lots. But this valuation was still massively inflated over the price assessment the Trump Organization received from Cushman, which valued the 16 lots on the driving range at only $17,725,000 (or roughly $1.1 million per lot after accounting for development time).

488. To reach a total valuation of $225 million in 2013, the Trump Organization had to change its approach to valuing the golf club by utilizing the Brand Premium Scheme, without disclosing the change in the Statement in violation of GAAP rules. Instead of imputing a value

from the amount of a loan plus improvements as it had in previous years, in 2013 the Trump Organization identified the book value of the club as $56,543,000 and added a "Premium for fully operational branded facility @ 30%" of $16,962,900, to reach a $73.5 million valuation—creating an almost a $50 million increase in the valuation of the golf club. This significant increase in the golf club valuation masked the decrease in the value of the housing lots.

489. The 2014 valuation of $213 million continued this approach. The club "appreciated" slightly to $74,300,642 with the 30% brand premium, 24 units were "priced out" at $41,890,000 (an average of about $1.75 million), and the 39 remaining lots were listed at an estimated $2.5 million ($97,500,000 total).

490. This valuation, however, was undermined when the Trump Organization also decided to pursue the easement donation over the driving range property after all and began the process of obtaining the necessary formal appraisal to support the donation. By August 2014, Trump tax counsel Sheri Dillon had engaged Cushman appraisers Brian Curry and Richard Zbranek to value the TNGC LA property in 2014 for purposes of donating a conservation easement over 16 lots that comprised the driving range. On October 16, 2014, Mr. Curry reached a preliminary valuation for the property of "around $27 to $28MM for the driving range property." Given the 16 lots at issue in this valuation, Mr. Curry's estimate put the value of each lot at $1,687,500 to $1,750,000—much lower than the $2.5 million used by the Trump Organization. The next day, Eric Trump authorized Ms. Dillion to obtain a formal appraisal of the driving range property.

491. During the process of preparing that appraisal, Mr. Trump personally pushed to increase the value of the parcel, arguing that lots were in a "more prestigious" zip code than other lots on the property and could thus command a "'zip code' premium." Mr. Curry asked Ms.

Dillon to confirm whether the lots were in a different zip code. Trump Organization in-house counsel concluded they were not.

492. But even those preliminary numbers were significantly inflated. Indeed, when Cushman appraisers began to prepare a formal appraisal, they lowered the value of the driving range property down to as little as $20.5 million. They then realized that the engineer concluded that costs associated with developing the lots had been "underestimated," which would have lowered the value even further. The engineer in fact subsequently submitted substantially increased cost estimates on December 10. But during in the process of finalizing the appraisal, Ms. Dillion and the Trump Organization pushed Cushman to increase the appraised value of the driving range parcel, which in turn would increase the value of the easement donation. At one point Mr. Curry wrote to Mr. Zbranek that "Trump is fighting for every $1."

493. Ultimately the appraisal submitted to the Internal Revenue Service valued the donation at $25 million. But the appraisers only reached this valuation by fraudulently manipulating the valuation. Among other things, the appraisers:

a. Failed to use the final engineering report prepared by the engineer retained to assess the costs of developing the lot. Instead of using the final report which would have raised the cost of developing the lot and hence decreased the value of the donation, the appraisers used a draft report with lower costs and incorporated an unsupported development timeline.

b. Failed to account for a cost savings to the Trump Organization from the donation. By giving away development rights for the driving range property, the Trump Organization avoided an obligation to build two affordable housing units.

c. At the last moment, cut by one-third the value to the golf course of having a driving range available to golfers. By dropping the benefit of retaining the driving range from $1.5 million to $1 million, the appraisers inflated the value of the donation by $500,000.

494. In January 2015, the donation of the easement to the Palos Verdes Peninsula Land Conservancy was publicly disclosed. Ms. Dillion advised against the press conference for a host

of reasons, including a desire to avoid drawing undue scrutiny to the transaction. On January 14, 2015, she wrote to an in-house lawyer at the Trump Organization: "Remind him that the larger the value and the more he makes of it, then he is telling the world how large a tax deduction he is taking for it. In this case, this is tantamount to the US taxpayers paying Donald Trump to keep his driving range and use it for exactly what he is already using it for - and some could argue that as long as he is operating the golf course, he would continue to keep the driving range - effectively, the US taxpayers are paying him to do what he would already do anyway, and perhaps this isn't the best use of taxpayer dollars. Bottom line - the more publicity this gets, the more we invite scrutiny. This may cause renewed interest in the issue."

495. Mr. Trump nevertheless decided to hold a press conference at TNGC LA to announce the donation. Mr. Trump explained: "It's something I've been thinking about for a year, maybe a little longer than a year, and I decided to pull the trigger and do it," adding that giving up entitlements to develop the land "was not an easy thing to do" because it is valued at "much more than $25 million."

496. Having publicly disclosed the donation, in 2015, the Trump Organization adjusted its valuation—partially—to conform to the appraisal that Cushman prepared in connection with Mr. Trump's donation of a conservation easement over the driving range. The valuation acknowledged that 16 donated lots could no longer be built after the donation. It purported to value 23 remaining lots at a value reached in the appraisal, $50,450,000 (about $2.2 million per lot). Unlike the appraisal, however, the Trump Organization failed to discount that value back to present value.

497. Adopting some of the figures from the appraisal superficially conformed with the valuation provided by Cushman. However, the Trump valuation assumed that the lots would be

developed promptly even though the Trump Organization had no intent to develop the lots, and disregarded the discounted cash flow analysis Cushman performed. And, in fact, as depicted below, the lots remain cleared of vegetation but bare of development today.

498. As for the golf course component of the TNGC LA valuation, in 2015, after a shift from the previous 30% brand premium to a 15% brand premium—in accordance with the Trump Organization's change in valuation for the other clubs that year but contrary to the disclosure in the Statement that no brand value was included—the value was reduced to $56,615,895.

499. But even this reduced valuation was still higher than the (inflated) valuation reached by the Cushman appraisers for purposes of the tax deduction. The appraisal prepared by

Mr. Zbranek and Mr. Curry reached a valuation of the golf club using "direct capitalization" and sales comparison approaches. Their analysis placed the property's value at a mere $16 million—less than 30% of the value on Mr. Trump's Statement.

500. From 2016 through 2018, the Trump Organization continued the same approach to valuation it used in 2015: superficially purporting to use the valuation reached by Cushman to value the 23 lots it never developed, adopting inflated estimates for other unsold lots, failing to use the Cushman appraisal's valuation of the golf course itself, and applying an undisclosed brand premium that inflated the value of the golf club.

501. For 2019 and 2020, the Trump Organization used a similar approach. In 2019 and 2020, the Trump Organization adopted values purportedly "from a 3rd party real estate agent" rather than the Cushman appraisal or their internal sales records regarding sales prices at the site. And the Trump Organization did not do a discounted cash flow analysis that would have accounted for the time it would take to develop the site and sell the lots. Moreover, far from receiving updated pricing "from a 3rd party real estate agent," as the supporting data spreadsheets indicate, 2020 backup information indicates the "pricing" came from within the Trump Organization, from a person at Trump International Realty with a trumporg.com email address.

502. In 2021, the Trump Organization continued the same approach of adopting inflated estimates for unsold lots, relying this time on "2021 pricing from [Trump International Realty] and updated internal costs" to reach a higher value still of $63,663,391, or about $2.77 million per lot – again without performing a discounted cash flow analysis to account for development and sales time. The 2021 pricing schedule appears to be in the same form as the

2019 and 2020 schedules, indicating had been false to state that those schedules ever came from a third party agent.

g. TNGC Colts Neck

503. In July 2008, the Trump Organization, through the entity Trump National Golf Club Colts Neck LLC, purchased TNGC Colts Neck for $28 million.

504. The valuations of TNGC Colts Neck on the Statements of Financial Condition from 2011 to 2020 were false and misleading in ways that mirror the valuations of other club facilities.

505. The 2011 Statement of Financial Condition valuation of TNGC Colts Neck was infected by false and misleading statements in the supporting data and the Statement itself.

506. The valuation in this year had two essential components: (1) purchase price and improvements of the clubhouse, and (2) the purported value of unsold memberships. These figures were both false and misleading in important respects.

507. As for the purchase price of the clubhouse and improvements, those figures were inflated by employing the Membership Deposit Scheme.

508. As for the unsold memberships, the Trump Organization employed the Unsold Membership Scheme, pricing the vast majority of unsold membership at two to more than three times the then-current $50,000 price of a membership and failing to account for the considerable time it would take to sell those memberships, which would require a cash flow analysis applying a discount rate to bring the projected income to present value.

509. Nor is there any evidence to suggest that the membership prices and figures reflected in the supporting data were bona fide projections of membership revenue. Indeed, in the entire 2010 calendar year, the Trump Organization collected $419,667 in initiation fees at TNGC Colts Neck. At the price listed in the supporting data that would mean about 8 members joined

the club—not the 25 stated to pay $50,000 or the 177 stated to pay higher amounts. And, in July 2011, the Trump Organization established a promotional program where they waived initiation fees for any member who joined for a minimum of three years. In 2011, the Trump Organization collected less than $300,000 in initiation fees from TNGC Colts Neck.

510. Beginning in 2012, the Trump Organization shifted to employing the Fixed-Assets Scheme, the Membership Deposit Scheme, and starting in 2013, the Brand Premium Scheme to inflate the valuation, without disclosing the change in violation of GAAP rules.

511. Specifically for the membership deposits, despite advising recipients of the Statements that these were worthless liabilities, the Trump Organization included their full face value ($11.7 million) to inflate the purchase price of the club to approximately $40 million from 2012 to 2021.

512. On top of that inflated purchase price, the Trump Organization from 2013 to 2020 added a brand premium, even though the Statements represented that no amount was included for the Trump brand. Adding a brand premium not only conflicted with the description in the Statements, but violated the GAAP rule requiring that brand premium be excluded.

513. In 2021 the Trump Organization switched to valuing the club based on 10 times earnings before interest, taxes, depreciation, and amortization or "EBITDA," per the advice of the outside golf consultant they had ignored in earlier years. The resulting valuation of $27,583, 948 is about half of the valuation from 2020 of $55,191,322.

514. Therefore, when valued based on an income approach after thirteen years of ownership and capital expenditures by Mr. Trump, TNGC Colts Neck is worth less than the original $28 million purchase price absent membership deposits paid in 2008.

h. TNGC Philadelphia

515. Through an entity called TNGC Pine Hill LLC, Mr. Trump purchased a ground lease interest in TNGC Philadelphia located in Pine Hill, NJ, for a purchase price of $4,750,000 in 2009.

516. The Statements of Financial Condition from 2011 to 2021 do not disclose that Mr. Trump owns a leasehold interest for TNGC Philadelphia. Instead, the Statements misleadingly suggest that Mr. Trump holds a fee simple interest, and value the club either by employing the Unsold Memberships Scheme or by employing the Fixed-Assets Scheme. This was false and misleading for a number of reasons.

517. First, each of the Statements from 2011 to 2013 indicated that TNGC Philadelphia was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

518. Second, the supporting data for the years 2011 through 2020 confirms that the Trump Organization did not account for ground lease expenses when computing valuations of the property. The valuations failed to include rent payments required under the terms of the ground lease or account for the fact that the ground lease agreement requires consent of the landlord in order for Mr. Trump to transfer his leasehold interest to non-related parties.

519. Third, the Trump Organization employed the Unsold Membership Scheme in 2011 and 2012. For example, in 2011 the listed initiation fee was only $10,000, but the company valued all of the unsold memberships at prices ranging between $15,000 and $35,000. And in 2012 the unsold memberships were valued at prices ranging between $15,000 to $30,000. In reality, Trump Organization records showed that most initiation fees were waived for new members of TNGC Philadelphia from 2010 to 2013.

520. Fourth, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price the full face value of refundable membership deposits of $953,237 despite declaring in the Statements that the liability for the membership deposits was zero dollars.

521. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC Philadelphia was not expected until 2027 and the present value of the obligations would be less than one-third of the "actual" or nominal dollar value.

522. Fifth, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, even though the Statements disclaimed adding brand value and GAAP rules prohibit such premiums.

523. In 2021 the club was valued using the average of net fixed assets and gross revenue times a multiplier. This led to a reduction in value of almost $10 million from 2020.

i. TNGC DC

524. The valuations of TNGC DC on the Statements of Financial Condition from at least 2011 to 2021 were false and misleading in ways that mirror the valuations of other club facilities.

525. The valuations of TNGC DC in the 2011 and 2012 Statements of Financial Condition had two essential components: (1) purchase price plus improvements; and (2) the purported value of unsold memberships.

526. For 2011 and 2012, the cost of a full individual golf membership was $25,000 and the cost of a corporate membership was $125,000. Nevertheless, employing the Unsold Membership Scheme for the valuations in those years, the company valued nearly all of the

unsold memberships well above those prices—mostly in a range between $75,000 and $225,000—without any cash flow analysis..

527. Beginning in 2013 and continuing through 2021, the Trump Organization employed the Fixed-Assets Scheme—without disclosing the change in violation of GAAP rules–which produced valuations that were false and misleading in numerous respects.

528. First, each of the Statements from 2011 to 2013 indicated that TNGC DC was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

529. Second, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price from 2013 to 2020 the full face value of refundable membership deposits of $16,131,075 despite declaring in the Statements that the liability for the membership deposits was zero dollars.

530. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC DC was not expected until 2022 and the present value of the obligations would be a small fraction of the "actual" or nominal dollar value.

531. Third, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, adding either 30% or 15% (depending on the year) to fixed assets, even though the Statements represented that no brand value was included and GAAP rules prohibit adding any such internally developed intangible brand premiums.

532. In 2021, when the club switched to using an EBITDA multiplier, the valuation fell by $17 million from the 2020 figure.

j. TNGC Charlotte

533. The valuations of TNGC Charlotte on the Statements of Financial Condition from 2012 to 2020 were false and misleading in ways that mirror the valuations of other club facilities.

534. For the 2012 Statement of Financial Condition valuation of TNGC Charlotte, the Trump Organization employed the Membership Deposit Scheme -- including the full face value of refundable membership deposits of $4,080,550 despite declaring in the Statements that the liability for the membership deposits was zero dollars – and the Unsold Membership Scheme, and also included a value for the "club improvement fund."

535. With respect to the membership deposits, at the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed. According to the Trump Organization's internal analysis, the first repayment of a deposit for TNGC Charlotte was not expected until 2028 and the present value of the obligations would be a small fraction of the "actual" or nominal dollar value.

536. For 2013 and continuing through 2020, the Trump Organization continued to employ the Membership Deposit Scheme, adding to the purchase price the full face value of refundable membership deposits of $4,080,550.

537. Also during these years, the Trump Organization employed the Brand Premium Scheme, adding either 30% or 15% (depending on the year) to fixed assets, even though the Statements represented that no brand value was included and GAAP rules prohibit adding any such internally developed intangible brand premiums.

k. TNGC Hudson Valley

538. Mr. Trump purchased a ground lease interest in TNGC Hudson Valley through an entity called TNGC Dutchess County LLC for a stated purchase price of $3 million in 2009.

539. The Statements of Financial Condition from 2011 to 2021 do not disclose that Mr. Trump owns a leasehold interest for TNGC Hudson Valley. Instead, the Statements misleadingly suggest that Mr. Trump holds a fee simple interest, and value the club either by employing the Unsold Memberships Scheme or by employing the Fixed-Assets Scheme. This was false and misleading for a number of reasons.

540. First, each of the Statements from 2011 to 2013 indicated that TNGC Hudson Valley was valued based on "an assessment of the cash flow that is expected to be derived from club operations." This was false and misleading for a number of reasons, including because the Fixed-Assets Scheme does not consider cash flow from operations.

541. Second, the supporting data for the years 2011 through 2021 confirms that the Trump Organization did not account for ground lease expenses when computing valuations of the property. The valuations failed to include rent payments required under the terms of the ground lease or account for the fact that the ground lease agreement requires consent of the landlord in order for Mr. Trump to transfer his leasehold interest to non-related parties.

542. Third, the Trump Organization employed for the valuations in 2011 and 2012 the Unsold Membership Scheme. For example, in 2011 and 2012 the listed initiation fee was only $10,000, but in 2011 the company valued more than 93% of 161 unsold memberships at prices between $15,000 and $25,000, and in and 2012 the company valued 78% of the 254 unsold memberships at prices ranging between $15,000 and $30,000; meanwhile, Trump Organization records showed that most initiation fees were waived for new members of TNGC Hudson Valley from 2010 to 2012.

543. Fourth, the Trump Organization employed the Membership Deposit Scheme, including as part of the purchase price the full face value of refundable membership deposits of $1,235,619 despite declaring in the Statements that liability for the membership deposits was zero dollars. At the very least, in accordance with GAAP, the Trump Organization should have used the present value of the liability Mr. Trump assumed for the membership deposits. According to the Trump Organization's internal analysis, the present value of the obligations would be a fraction of the "actual" or nominal dollar value.

544. Fifth, from 2013 to 2020, the Trump Organization employed the Brand Premium Scheme, even though the Statements disclaimed adding brand value and GAAP rules prohibit such premiums.

545. In 2021 the club was valued using a combination of fixed assets and income, and the valuation fell by almost $4 million – roughly 25% – from the 2020 figure.

12. Real Estate Licensing Developments

546. From 2011 to present, Mr. Trump's Statement has included a category entitled Real Estate Licensing Developments.

547. This category is represented to value "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived . . . from these associations as their potential is realized."

548. The value assessment included in the Statements was represented to include "only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which will be earned are reasonably quantifiable."

549. Mr. Trump and the Trump Organization fraudulently inflated the valuation of the Real Estate Licensing Developments category in a number of ways.

550. One means of inflation was by including from 2015 to 2018 speculative and non-existent deals as components of the value—deals expressly identified on financial records supporting the valuation as "TBD," i.e. to be determined. These TBD deals included arrangements in Asia and the Middle East, were described in a list of purported "new openings," and were based on purely speculative projections that included thousands of new hotel rooms and millions of dollars in additional revenue. The inclusion of these TBD deals conflicted with the express representation in the Statements that only deals that "exist" and for which compensation was "reasonably quantifiable" were included.

551. And including the TBD deals in the 2016 and 2017 Statements was misleading for an additional reason. Both of these Statements were issued after January 20, 2017 – the date of the inauguration – when the Trump Organization purportedly ceased pursuing foreign deals consistent with public representations by Mr. Trump and his company and express restrictions incorporated into Mr. Trump's revocable trust, as confirmed by Donald Trump, Jr., a trustee under that trust, that precluded any Trump Organization entity from entering into any new management agreement in any foreign jurisdiction that uses the Trump brand. But the valuation on these two Statements still included prospective new foreign deals. Assuming the Trump Organization adhered to the ban on foreign deals put in place as of January 20, 2017, it was false and misleading to include such prohibited foreign deals in the 2016 and 2017 Statement valuations.

552. The impact of including the TBD deals was substantial. As shown in the chart below, the TBD deals accounted for between 20-30% of the total Real Estate Licensing Development valuations from 2015 to 2018:

Year	Total (only figure on the Statement)	Future Management Portfolio – TBD Deals	% of Total
2015	$339,000,000	$103,536,391	30.5%
2016	$227,400,000	$46,312,797	20.4%
2017	$246,000,000	$52,731,562	21.4%
2018	$202,900,000	$45,198,994	22.3%

553. According to Allen Weisselberg: "Licensing generally was handled by Ivanka in that I'll call it twenty-fifth floor, that's where they're located, it was a whole licensing department down there and they worked on those deals."

554. Ms. Trump and her brothers Donald Trump, Jr. and Eric Trump were also well aware of the actual revenue derived from licensing in general, and international licensing in particular given their financial interest in those projects. Each of them were paid a "consulting fee" on international licensing deals through an entity called TTT Consulting, LLC, which was jointly owned by the three children. Each child owned 33.3% of the company and they received regular distributions, including Ivanka Trump after she left the company in January 2017.

555. Another means of inflation was including in this category a number of deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, and Trump Chicago—deals in accounting parlance that are known as "related party transactions" because they are not arms-length deals in the marketplace but rather deals between affiliates. Including these related party transactions was contrary to the representation in the Statements that this category included only the value derived from "associations with others" that materialized into actual, signed agreements when in fact the value was substantially inflated through the inclusion of self-dealing agreements among and between Trump Organization affiliates.

556. Including the value of related party transactions also constituted a substantial, undisclosed departure from GAAP, which generally requires disclosure of details of related party transactions because, among other reasons, such self-dealing transactions are not arms-length transactions in the marketplace. See, e.g., Accounting Standards Codification (ASC) No. 850. Here, if properly disclosed, a reader would have understood that the Trump Organization was valuing its own intracompany deals—not deals negotiated at arms-length in the marketplace.

557. Finally, the Trump Organization inflated the valuations in this category from 2011 to 2018 by including so-called incentive licensing fees in a fraudulent and misleading manner. These are fees that are anticipated to be earned over the life of a project typically expected to last several years but were treated for purposes of the valuations as if the revenue would be received over a much shorter period of one or two years. As with other valuations, the Trump Organization's treatment of incentive licensing fees failed to include a cash flow analysis and ignored the speculative nature of the anticipated future income.

558. Starting with the 2019 Statement (issued after the commencement of OAG's investigation), the Trump Organization applied a discount factor to the valuation of the incentive licensing fees, and in their calculations indicated that a majority of the deals would be paid out over a period as long as seven to ten years.

D. The False and Misleading Statements of Financial Condition Were Used to Secure and Maintain Financial Benefits, Including Financing and Insurance, on Favorable Terms.

559. Mr. Trump and the Trump Organization utilized the false and misleading Statements of Financial Condition in an array of financial transactions, most prominently in obtaining real estate loans and insurance coverage.

560. Between 2011 and the present, the Trump Organization has obtained hundreds of millions of dollars in real estate loans in reliance on, among other things, Mr. Trump's net worth

as reported in his Statements of Financial Condition. The Statements were critical to these loans because in addition to being secured by real property or an "interest in" real property, they were backed by Mr. Trump's personal guaranty—either for the full amount of the loan, for a partial amount of the loan, or for the full amount of the loan in a manner that would "step down" to a partial or zero guaranty depending on the ratio of the loan amount to the value of the underlying real property interest.

561. The Statements were also a key component of the Trump Organization's insurance submissions to underwriters. For purposes of soliciting and binding one of its insurance programs, the Trump Organization used Mr. Trump's Statements of Financial Condition to satisfy requirements for financial disclosure for Mr. Trump's personal guaranty in lieu of collateral, and specifically misrepresented to underwriters that the valuations of the properties listed in two of the Statements were prepared by outside appraisers. In connection with renewing its directors and officers liability insurance, the Trump Organization also relied on the Statements to satisfy financial disclosure obligations and concealed the existence of at least one governmental investigation involving Mr. Trump and other company employees despite the company's intent and later efforts to seek coverage for defense costs associated with that investigation.

1. Deutsche Bank Loan Facilities

562. The financial relationship between Deutsche Bank and the Trump Organization dates back to the late 1990's and involved multiple loans for hundreds of millions of dollars in total. But at the start of 2011, the Trump Organization had a single outstanding loan held by Deutsche Bank on Trump Chicago with just over $140 million outstanding. The Trump Chicago loan was originated by the Commercial Real Estate ("CRE") lending group in Deutsche Bank.

563. Starting in 2011 the relationship with Deutsche Bank was revitalized when Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank, which enabled them to obtain more favorable terms than they could have received through the CRE division by having Mr. Trump personally guarantee the loans based on his net worth as reflected in his Statements of Financial Condition.

564. In essence, rather than obtain credit facilities through the wing of Deutsche Bank with an expertise in commercial real estate, Mr. Trump began to seek funds from a wing of Deutsche Bank focused on servicing ultrawealthy clients. Hence, Mr. Trump's personal guaranty, and his representations regarding his finances that backed up that guaranty, featured prominently in Mr. Trump's loan transactions through the PWM wing of Deutsche Bank.

565. Between 2011 and May 2022, Deutsche Bank served as the largest single lender to the Trump Organization and Mr. Trump. At the beginning of May 2022, the Trump Organization owed the bank approximately $340 million in principal and was spending tens of millions of dollars annually to service the debt. These loans, each originated by the PWM division, consisted of: (1) a $170 million facility covering OPO; (2) a $125 million facility covering Doral; and (3) a $45 million facility covering Trump Chicago. By the end of May 2022, the Trump Organization had repaid to the bank approximately $295 million of the debt. The Trump Organization repaid the $170 million OPO loan upon the sale of that property and repaid the Doral loan by refinancing with another financial institution.

566. The initial introduction to the PWM division at Deutsche Bank came in September 2011, when Jared Kushner, the husband of Ivanka Trump, introduced his brother-in-law Donald Trump, Jr. to Rosemary Vrablic, a Managing Director at the bank in the PWM division. Kushner told Donald Trump, Jr. that while "Rosemary only lends with recourse,"

meaning with a personal guaranty from the borrower, "the flexibility, rate and service you get is unparalleled." As part of this initial exchange, Vrablic confirmed the need for recourse in PWM loans telling Donald Trump, Jr. "Sorry about the recourse issue - a dirty word, I know - but it is a requirement in private banking."

567. Kushner was correct that PWM did provide Donald Trump, Jr. – and eventually his father Donald J. Trump and the Trump Organization – unparalleled rates on loans. Each of the three loans outstanding as of May 2022 were shopped to other banks as well as the CRE division within Deutsche Bank. The interest rates offered by PWM were significantly lower than any other offers. As Ivanka Trump wrote after receiving one term sheet from the PWM division: "It doesn't get better than this." And a personal guarantee of each loan by Donald J. Trump was necessary to meet the "recourse" requirement in order to obtain those preferential rates.

568. As a result of the personal guarantee, the annual Statement of Financial Condition was central to each of those loans. By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his Statements, Mr. Trump obtained for his company a significant improvement in the interest rates on the loans.

569. The personal guaranty and other loan documents entailed a certification by Mr. Trump of his Statement of Financial Condition as a requirement before any funds would be lent. The regular submission of the Statements of Financial Condition also helped the Trump Organization and Mr. Trump avoid having the loans placed into default, because annual certifications of the accuracy of Mr. Trump's Statements were required. All told, the interest rate savings from the issuance of the false and misleading Statements of Financial Condition totaled between $85 million and $150 million.

570. In 2020 when Deutsche Bank learned of the alleged misrepresentations in the Statements from the pendency of the action by OAG to enforce its investigative subpoenas against the Trump Organization and related parties, it asked the Trump Organization a series of questions about those Statements. The Trump Organization refused to respond. Thereafter, Deutsche Bank decided, given the Trump Organization's failure even to answer simple questions concerning the Statements, to exit its relationship with the company. Given the then-outstanding credit facilities totaling hundreds of millions of dollars, that exit would take some time, as each facility had an expiration a few years away.

2. Deutsche Bank Loan Issued in Connection with Trump National Doral Golf Club (Florida)

571. In November 2011, the Trump Organization executed a $150 million purchase and sale agreement for the Doral Golf Resort and Spa as part of a bankruptcy proceeding. The Trump Organization was to serve as a stalking horse bidder in a bankruptcy auction, with an eye toward closing the transaction in June 2012.

572. The formal process for soliciting the Doral loan began in late October 2011, when Ivanka Trump sent an "Investment Memo" and financial projections for the Doral property to two Deutsche Bank employees.

573. In November 2011, Mr. Trump began personally contacting banks to secure a loan to purchase Doral. On November 13, 2011, Mr. Trump spoke with Richard Byrne, the CEO of Deutsche Bank Securities to ask if the bank was interested in working with him on financing for the purchase of Doral. Mr. Byrne in turn forwarded the request to the Global Head of the CRE division at the bank who wrote that Doral was "a tough asset and our initial reaction was not enthusiastic."

574. Nevertheless, on November 14, 2011, the two bankers spoke with Mr. Trump and Ivanka Trump about the loan. The next day, Mr. Trump sent Mr. Byrne a letter, copying Ivanka Trump, enclosing his Statement of Financial Condition and writing, "As per our conversation, I am pleased to enclose the recently completed financial statement of Donald J. Trump (hopefully you will be impressed!)" The letter continued, "I am also enclosing a letter that establishes my brand value, which is not included in my net worth statement."

575. On November 21, 2011 the CRE division offered the Trump Organization a $130 million loan at LIBOR + 800 basis points, with a LIBOR floor of 2 percent – a minimum 10% interest rate.

576. The Trump Organization did not accept those terms and continued to look for financing for Doral. In December 2011, Mr. Trump and Ivanka Trump met with Rosemary Vrablic to discuss a potential loan through the PWM division. On December 6, 2011, Ms. Trump emailed Ms. Vrablic that, "My father and I are very much looking forward to meeting with you tomorrow to discuss Doral. I have attached our investment memo as well as some basic information on our golf and hotel portfolios." Ms. Trump copied her husband, Mr. Kushner, on the email who then wrote back just to her saying, "Also – push the relationship AND doral [sic]. Not Doral and the relationship . . . ."

577. The two sides began negotiating terms and on December 15, 2011, Ms. Vrablic sent Ms. Trump a term sheet proposing a $125 million loan with an interest rate of LIBOR + 225 basis points during a renovation period for the resort and LIBOR + 200 basis points during an amortization period for the resort. The terms of the loan included recourse through a personal guarantee by Mr. Trump of all principal and interest due on the loan and the operating expenses

of the resort. The proposal also included a number of covenants including requirements that Mr. Trump maintain a minimum net worth of $3 billion and unencumbered liquidity of $50 million.

578. Ivanka Trump forwarded the proposal to Allen Weisselberg, Jason Greenblatt (Executive Vice President and Chief Legal Officer), and Dave Orowitz (Senior Vice President, Acquisitions and Development) writing: "It doesn't get better than this . . . . I am tempted not to negotiate this though."

579. Mr. Greenblatt wrote back: "I will review, but [note] immediately that this is a FULL principal and interest and operating expense personal guaranty. Is DJT willing to do that? Also, the net worth covenants and DJT indebtedness limitations would seem to be a problem?"

580. Ms. Trump then responded: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal. As the market has illustrated getting leverage on resorts right now is not easy (ie 125 plus an equity kicker for 25 percent or Beal with full cash flow sweeps and steep prepayment penalties.)"[7]

581. Mr. Greenblatt again responded writing: "Obviously this is not my decision, but this is completely inconsistent with what he told me he would ever do again when we had the Chi and vegas issues and the magnitude of this is much bigger. He was so angry that he got himself 'into the chi/vegas mess' and told me he NEVER wanted to do this again." Mr. Greenblatt closed by noting "While none of this is my call, this is a highly risky proposition."

582. On December 18, 2011, Ivanka Trump sent a revised term sheet back to Ms. Vrablic, copying Allen Weisselberg, seeking to reduce Mr. Trump's net worth covenant from $3

[7] "Beal" is a reference to Beal Bank, another financial institution the Trump Organization contacted about a loan for Doral.

billion to $2 billion, and to reduce loan payments by making the full term of the loan interest-only (as opposed to having a period when payments would be principal plus interest).

583. In an internal credit report dated December 20, 2011, Deutsche Bank employees from the PWM division sought the approval of a $125 million term commitment for the Doral property. This report noted "[t]he Facility will also be supported by a full and unconditional guarantee provided by DJT of (i) Principal and Interest due under the Facility, and (ii) operating shortfalls of the Resort . . . ."

584. The credit memo listed this guaranty as a source of repayment, and recommended approval of the loan. The memo stated that "[t]he Facility is being recommended for approval based on" a series of factors, the first of which was "Financial Strength of the Guarantor" and another of which was the nature of the personal guaranty. In connection with that recommendation, the credit memo evaluated assets reported on Mr. Trump's Statement of Financial Condition for the year ending June 30, 2011. For many of the assets listed on Mr. Trump's Statement, the credit memo identified Mr. Trump's valuation and then a "DB Valuation." The DB Valuation included reductions to asset values based on applying "haircuts" to account for the risk that an asset's value might change in the future and the risk that the borrower's valuation might be overly optimistic. These reductions were not intended to account for fraud or knowing misrepresentations by a borrower. The result of those "DB Valuations" was to derive a "DB Adjusted" net worth for Mr. Trump for purposes of the bank's evaluation.

585. In support of the loan application, the Trump Organization submitted an appraisal of the Doral property prepared by CBRE for a different financial institution (Beal Bank based in Texas). When this appraisal was received, one of Deutsche Bank's appraisal reviewers was asked to "drop everything" and review it. That reviewer identified numerous problems with the

appraisal, and understood (as reflected in contemporaneous emails) that the matter would escalate internally once he raised those problems: "PWM wants to do the deal and I am rejecting the appraisal. [PWM Banker] said this is a very high profile deal and that her bosses will be elevating this . . . ."

586. In response to those concerns, Deutsche Bank personnel in February 2012 submitted a new credit memo to alter the terms of their prior credit memo. As a result of those changes, one tranche of the loan – amounting to $19 million – became an unsecured personal loan.

587. The Doral loan closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC personally guaranteed by Mr. Trump. Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter.

588. The loan agreement, signed by Mr. Trump, required that Mr. Trump's June 30, 2011 Statement of Financial Condition have been provided to the bank as a precondition of lending.

589. In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of that statement. In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of a material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, issuance of the loan was noted to be subject to several conditions precedent, including that "[t]he representations and warranties of

Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date."

590. The loan required submission of annual financial statements by the Doral operating entity on an unaudited basis but certified as presenting fairly that entity's financial condition and results in all material respects. The loan further included a debt service coverage ratio ("DSCR") covenant and a loan-to-value ("LTV") ratio covenant.

591. Mr. Trump's personal guaranty, which he signed, included various financial representations. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guaranty—reliance on which Mr. Trump agreed the loan itself was granted. As the guaranty spells out, "In order to induce Lender to accept this Guaranty and to enter into the Credit Agreement and the transactions thereunder, Guarantor hereby makes the following representations and warranties as of the date hereof." One of those representations was: "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2011." Further, the guaranty stated: "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Credit Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect." The guaranty further stated that "all the Guaranteed Obligations," referring to the entirety of the loan and other obligations Mr. Trump guaranteed, "shall be conclusively presumed to have been created in reliance hereon."

592. Pursuant to the guaranty, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." That language means the bank would determine Mr. Trump's compliance with his net worth covenant by reference solely to the net worth Mr. Trump *reported* and certified to the bank.

593. Mr. Trump was also required to "keep and maintain complete and accurate books and records" and periodically to "deliver to Lender or permit Lender to review," a series of documents under the guaranty's financial reporting requirements. One of those submissions was a statement of financial condition, which was to be delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented."

594. False certifications of such financial statements were expressly identified as events of default under the loan agreement. Under the loan, "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective" was one of several "events of default." The term "Loan Documents" includes the loan agreement, guaranty, and, *inter alia*, "any other document, agreement, consent, or instrument which has been or will be executed in connection with" the agreement and guaranty, and thus would include annual signed certifications, which provide they would be executed by Mr. Trump.

595. Mr. Trump submitted Statements of Financial Condition to Deutsche Bank accompanied by certifications required as described above for the years 2014 through 2021

(executed either personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as attorney-in-fact for Mr. Trump). When combined with certifications related to other loans, Mr. Trump (or his attorney-in-fact) certified the accuracy of his Statement of Financial Condition to Deutsche Bank for every year from 2011 through 2021.

596. Subsequent to the loan's origination, Deutsche Bank in a credit memo in July 2013 approved a modified version of the guaranty that enabled Mr. Trump's guaranteed obligation to step down, on a percentage basis, as the LTV ratio of the loan improved. This step-down scale kept Mr. Trump's guaranty at 100% of the guaranteed obligations if the LTV ratio fell between 66% and 85%, stepping down to 40% (LTV 56-65%), 20% (LTV 46-55%), 10% (LTV 36-45%), and 0% (LTV 35% and below). Mr. Trump's net worth covenant under this loan would also step down, based on the percentage of the guaranty that applied (in other words, if the guaranty had stepped down to 40%, then the governing net worth covenant would be 40% of $2.5 billion). The step-down in the guaranty would correlate with an increase in the loan's DSCR covenant amount (in essence, corroborating that the property's cash flow increased to balance the bank's risk in reducing the guaranty level). This credit memo document, which also was part of the annual review of the Trump Doral loan, evaluated Mr. Trump's 2011 and 2012 Statements of Financial Condition. An amended Doral guaranty dated August 12, 2013 indicates the guaranty would be "terminated" upon the reduction of the step-down percentage to 0%.

597. Incorporating figures from Mr. Trump's Statements of Financial Condition submitted in conjunction with compliance certificates, Deutsche Bank conducted annual reviews of the Doral loan in July 2013, May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021.

598. Pursuant to an appraisal provided by the Trump Organization in 2015, the loan-to-value ratio dropped to 34%--sufficient to eliminate Mr. Trump's personal guaranty. But, according to a bank credit memo, "Trump has requested to maintain a 10% guarantee on the combined loan amount of both tranches resulting in the facility being priced at L+1.75%"—in other words, the Trump Organization maintained a personal guaranty to keep the interest rate at a preferred level.

599. The loan remained outstanding until May 2022. As a result, Deutsche Bank received Mr. Trump's Statements of Financial Condition as of June 30, 2019, June 30, 2020 and June 30, 2021.

600. On May 26, 2022, the Trump Organization refinanced the loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank.

3. Deutsche Bank Loan Issued in Connection with Trump Chicago (2012)

601. Roughly contemporaneously with the Doral loan's closing in June 2012, the Trump Organization sought another loan from the PWM group at Deutsche Bank in connection with the Trump Chicago property—in essence, a refinancing of an existing $130 million from the CRE group at Deutsche Bank on that property.

602. Dueling proposals within Deutsche Bank were under discussion in or about March 2012. A memo drafted by the credit risk management group articulated the differences between them. One proposal from the CRE group was for a non-recourse (meaning, no personal guaranty) loan facility with an interest rate of LIBOR plus 800 basis points. The other proposal from the PWM group was for a loan facility *with* a personal guaranty at LIBOR plus 400 basis points—so, four percentage points lower, in terms of the interest rate. Both proposals were for two-year terms, though they may have had other differences. The difference between these two proposals indicates that Mr. Trump's personal guaranty, which was to be procured by means of

his Statement of Financial Condition, accounted for a difference in interest rate of approximately four percentage points on the loan. The memo notes as "Credit Support" that "Donald Trump has reported Net Worth of $4.0 billion with liquidity of approximately $250 million."

603. In October 2012, PWM recommended approval of a loan of up to $107 million to 401 North Wabash Venture LLC, guaranteed personally by Donald J. Trump. Given the mixed nature of the hotel-condo property, the loan was broken down into two facilities. One facility (Facility A) concerned the residential component—unsold residential condominium units, deeded parking spaces, storage spaces, and the like. The second facility (Facility B) concerned the commercial component—"a full service hotel, including 339 condo-hotel rooms, of which 175 are Borrower owned," and various other commercial operations at the property. Facility A was to be for up to $62 million, for a 4-year term, at a rate of LIBOR plus 3.35%; Facility B was to be for up to $45 million, for a 5-year term, at a rate of LIBOR plus 2.25%. For Facility A, the bank listed the primary source of repayment as the sale of the remaining un-sold condo units, and for facility B the cash flow generated by commercial components.

604. For both facilities, a source of repayment was "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the Collateral." In addition, the memo noted its "recommendation" was based in part on "Financial Strength of the Guarantor," the "Nature of the Guarantee," and a developing relationship between the bank and Mr. Trump and his family.

605. As with the Doral credit memo from 2011, this credit memo assessed Mr. Trump's Statements of Financial Condition. In connection with that assessment, the credit memo stated: "Although Facilities are secured by the Collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the Guarantor." The memo

assessed Mr. Trump's 2011 and 2012 Statements. The bank in this memo derived a "DB Adjusted" net worth for Mr. Trump by starting with Mr. Trump's reported values, reducing them to adjusted values to account for the risk that an asset's value might change in the future and that the borrower's valuation might be overly optimistic, and then totaling assets and subtracting liabilities.

606. The loans under the two facilities closed on November 9, 2012. As with the Doral loan, Mr. Trump personally guaranteed both Trump Chicago loan facilities.

607. The loan agreements, signed by Mr. Trump, required that Mr. Trump's June 30, 2012 Statement of Financial Condition or his then-most-recent Statement of Financial Condition have been provided to the bank as a precondition of lending. Mr. Trump's June 30, 2012 Statement of Financial Condition was provided to the bank in October 2012 and figures from that statement are reflected in the bank's internal consideration of the loans.

608. In multiple instances, the loan agreements required that Mr. Trump certify the accuracy of that Statement of Financial Condition. In particular, the agreements contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, both loan documents contained conditions precedent to lending, including that "[t]he representations and warranties of Borrower contained in this agreement and in all certificates, documents and instruments

delivered pursuant to this Agreement and the Loan documents shall be true and correct on and as of the Closing Date."

609. The 2012 Trump Chicago loans each entailed a personal guaranty signed by Mr. Trump. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guarantees—reliance on which Mr. Trump agreed the loans themselves were granted. The terms of each 2012 Trump Chicago loan's guarantees were materially identical to the Doral guaranty: Mr. Trump was required to maintain a minimum net worth, based upon his statement of financial condition, of $2.5 billion, and he was required to provide an annual statement of financial condition to the bank accompanied by an executed compliance certificate certifying that the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." In addition, both loans "shall be conclusively presumed to have been created in reliance" on their respective guarantees.

610. Each guaranty similarly provided that "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2012."

611. Each guaranty similarly provided that "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Credit Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect."

612. False certifications of such financial statements were expressly identified as events of default under the loan agreements, with the same or similar language as had been used in the Doral agreement.

613. Annual reviews including Trump Chicago facilities were conducted in May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021.

614. During the period between the Trump Chicago closing and the first annual review in May 2014 (with extensions in the interim to align the Trump Chicago annual review with other reviews), the Trump Organization paid down the Trump Chicago loan from an overall balance of $98 million to $19 million from the proceeds of condominium sales.

615. Based upon the purported strength of Mr. Trump's financial profile, the Trump Organization requested an additional $54 million in loan funds from Deutsche Bank to be fully guaranteed by Mr. Trump. According to the Trump Chicago annual review from 2014, "The Borrower has requested a $54 million increase to the current outstanding balance of $19 million for a total loan amount of $73 million." This credit memo states: "The proceeds will be used for business purposes including further real estate acquisitions and working capital." Collateral for the loan would be the seven remaining unsold condominium units and the Trump International Hotel Chicago, and the loan would be "fully guaranteed by Mr. Trump for all principal, interest and operating shortfalls until the balance of the facility is less than $45 million (34% LTV)." Specifically, as set forth in this memo, the modified Trump Chicago loan would include a step-down guarantee like the one for the Doral loan--with the guarantee percentage stepping down based on the LTV ratio, and the DSCR stepping up as the guarantee level dropped. The net worth covenant would also drop on a percentage basis with the guarantee.

616. The credit memo recommending approval did so based on the "Financial Strength of the Guarantor," the "DB Relationship" with Mr. Trump and his family, the "quality of the collateral and LTV," an accelerated repayment schedule, the property's cash flow, and potential refinancing in the future. Amended loan documents implementing the above covenants and financial reporting terms closed on June 2, 2014.

617. As with earlier credit memos, this 2014 credit memo (which also recommended approval for the $170 million loan in connection with the Old Post Office discussed below) evaluated Mr. Trump's Statements of Financial Condition. In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 Statements. In connection with that assessment, the credit memo stated: "Although Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." The bank in this memo derived a "DB Adjusted" net worth for Mr. Trump as of June 30, 2013 by starting with Mr. Trump's reported values, reducing them to adjusted values to account for the risk that an asset's value might change in the future and that the borrower's valuation might be overly optimistic, and then totaling assets and subtracting liabilities.

618. Amended Trump Chicago loan documents—including an agreement and a personal guaranty—were executed by Mr. Trump in May 2014. These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's Statements of Financial Condition that were substantially similar to those describe above for the Doral and 2012 Trump Chicago loans. In the amended Trump Chicago guaranty, Mr. Trump certified that his June 30, 2013 Statement of Financial Condition was true and correct

in all material respects and that the Statement "presents fairly Guarantor's financial condition as of June 30, 2013."

619. By the time of the annual review in July 2015, the Trump Organization had paid down the Trump Chicago loan to an overall balance of $45 million. Since the property had been appraised at $133 million, Mr. Trump's personal guarantee was eliminated because the LTV ratio was 34%--below the 35% threshold in the stepdown provision. A subsequent credit report states: "the loan documentation identifies the Guaranty reduction as a permanent event, meaning appraisals that are completed going forward will not change the Guaranty level, regardless of their value."

620. Either Mr. Trump, Eric Trump or his trustees certified the accuracy of the Statement of Financial Condition in connection with the Trump Chicago loans discussed herein for every year from 2013 through 2021, either through the execution of an amended guaranty or through the submission of a compliance certificate.

4. Deutsche Bank Loan Issued in Connection with Trump Old Post Office Hotel in Washington, D.C.

621. In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of OPO in Washington, DC.

622. The Trump Organization had obtained the right to redevelop the property as the result of a bidding process by the U.S. General Services Administration that company described as "one of the most competitive selection processes in the history of the agency." According to the Trump Organization:

> Over twenty of the top hotel companies in the world bid on the project, and The Trump Organization was awarded the job based on the strength of Trump development capabilities, financial wherewithal, vision for the property, and dedication to the preservation of the historic structure.

623. The Statement of Financial Condition was central to that successful effort, captained by Ivanka Trump. The GSA's request for proposals provided that a bidder's "Financial Capacity and Capability" was to be a factor in the government's decision, and required submission of the most recent three years of financial statements.

624. Mr. Trump's Statements, prepared in the same process described above, were submitted as part of Mr. Trump's July 2011 bid.

625. Mr. Trump and Ivanka Trump participated personally in the bidding process in 2011. In particular, Ivanka Trump was involved in crafting communications to the GSA in connection with the bid and in responding to deficiency comments raised by the GSA. Those communications concerned, among other topics, Mr. Trump's Statements of Financial Condition, including their departures from GAAP and contained detailed information about Mr. Trump's financial capabilities as well as his ability to perform the obligations under the lease at issue. The GSA questioned the use of Mr. Trump's Statements, and Mr. Trump and Ms. Trump participated in an in-person presentation to address GSA's concerns about those topics and others.

626. After addressing those issues, the Trump Organization was ultimately selected by GSA in February 2012 to redevelop the property and signed a lease for that purpose on August 5, 2013.

627. In advance of executing the lease, the Trump Organization reached out to the CRE group at Deutsche Bank about potential financing for the project. Despite the request coming into the CRE group, Rosemary Vrablic from the PWM group of the bank—at the urging of Ivanka Trump—kept close tabs on the bank's consideration of the request.

628. By October 2013, the CRE group had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points.

629. The next month, in November 2013, employees at the Trump Organization took that offer to the PWM group to see what terms that group could provide on an OPO loan.

630. By Monday, December 2, 2013 (the Monday after the Thanksgiving holiday), the bank's PWM group provided a draft term sheet directly to the Trump Organization. In an email to Ivanka Trump and Dave Orowitz, Deutsche Bank attached the term sheet and noted that, although the term sheet reflected a $160mm commitment, "[w]e understand the request is for $170 million and are working on getting the step-up approved."

631. The PWM term sheet was different in a number of respects from the CRE term sheet. For example:

- Mr. Trump would personally guaranty the full loan amount in the PWM term sheet (whereas the CRE proposal was unresolved as to whether there would be a 10% guaranty);
- The PWM term sheet had a loan term of ten years, versus a CRE term of approximately 42 months;
- The PWM term sheet had a loan amount, initially, of up to $160 million (and up to $170 million would ultimately be approved), whereas the CRE term sheet had a maximum loan amount of $140 million;
- Interest rates in the PWM term sheet were about half of what they were in the CRE term sheet: PWM's proposal was LIBOR + 2% during the "redevelopment period," and LIBOR + 1.75% during the "post-redevelopment period"; and
- The PWM term sheet required a $2.5 billion net worth (higher than any of net worth covenants proposed by CRE, which topped out at $500 million).

632. Ultimately the Trump Organization and the PWM group agreed on a term sheet that was executed on January 13 and 14, 2014. The executed term sheet's terms largely mirror those above: $170 million loan amount; a 10-year term; 100% personal guaranty; interest rates of LIBOR + 2% or 1.75% (depending on the period); and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500

million. Mr. Trump, as guarantor, would be required to provide his annual statement of financial condition to the bank; there were other financial reporting requirements as well.

633. A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 Statements of Financial Condition.

634. Mr. Trump's net worth and his Statements of Financial Condition were critical to the final terms of the loan, executed on August 12, 2014. As with the Doral and Trump Chicago loans described above, the loan agreement for the OPO project required that Mr. Trump's Statement of Financial Condition be provided to the bank. The Statement required to be submitted was as of June 30, 2013.

635. In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of that Statement. In particular, the agreement contained a provision entitled, "Full and Accurate Disclosure." This provision required Mr. Trump to make a representation that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." Similarly, issuance of the loan was noted to be subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date."

636. In addition, because the OPO loan was a construction loan to be disbursed over a long series of tranches, the loan agreement made clear that the bank was not obligated to make

such disbursements unless representations by the borrowing entity and the guarantor (Mr. Trump) were true and accurate at the time of the requested disbursement. One "condition" of such disbursements was that, "The representations and warranties made by Borrower and Guarantor in the Loan Documents" (including the guaranty and subsequent certifications) "shall be true and accurate in all material respects on and of the date of the requested Disbursement with the same effect as if made on such date."[8]

637. As with the Doral and Trump Chicago loan documents, an "Event of Default" in the OPO loan document was defined to include when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective."

638. Mr. Trump's personal guaranty on the OPO loan, which he signed, is dated August 12, 2014.

639. Mr. Trump's personal guaranty also included various financial representations. Mr. Trump, as guarantor, was required to certify the truth and accuracy of his Statement of Financial Condition as a condition of the guarantees—reliance on which Mr. Trump acknowledged when the loans themselves were granted. As the guaranty states, "In order to induce Lender to accept this Guaranty and to enter into the Loan Agreement and the transactions thereunder, Guarantor hereby makes the following representations and warranties as of the date hereof." One such representation and warranty was: "Guarantor has furnished to Lender his Prior Financial Statements. Such Prior Financial Statements are true and correct in all material respects

[8] The agreement spelled out an exception for such representations that were "no longer true and correct in all material respects solely as a result of" the passage of time, but a statement that was inaccurate when made would not have satisfied that exception.

and (i) Guarantor's Statement of Financial Condition presents fairly Guarantor's financial condition as of June 30, 2013[.]"

640. Further, the guaranty stated: "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor in connection with this Guaranty and the other Loan Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect."

641. Pursuant to the guaranty, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." That language means the bank would determine Mr. Trump's compliance with his net worth covenant by reference to the net worth Mr. Trump reported and certified to the bank.

642. Mr. Trump was also required to "keep and maintain complete and accurate books and records" and periodically to "deliver to Lender or permit Lender to review," a series of documents under the guaranty's financial reporting requirements. One of those submissions was a statement of financial condition, which was to be delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented."

643. False certifications of such financial statements were expressly contemplated as events of default under the loan agreement. Under the loan, "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false and misleading in any material respect at the time made or intended to be effective" was one of several "events of default." The term "Loan Documents"

includes the loan agreement, guaranty, and, inter alia, "any other document, agreement, consent, or instrument which has been or will be executed in connection with" the agreement and guaranty, and thus would include annual signed certifications, which provide they would be executed by Mr. Trump.

644. The bank conducted annual reviews of the OPO loan in July 2015, July 2016, July 2017, July 2018, September 2019, July 2020 , and July 2021.

645. Because the OPO loan was a construction loan, the $170 million loan amount was not disbursed on or about the closing date; instead, the loan was disbursed in a series of "draws" or disbursements over time. The first was on or about June 22, 2015 in a "Request for Disbursement" signed by Mr. Trump. Draws continued throughout 2015 and 2016; generally, requests for those draws were signed by Mr. Trump personally. However, on December 21, 2016, Ivanka Trump signed a draw request in the amount of $4,334,772.83. On February 22, 2017, Eric Trump signed a final draw request in the amount of $2,757,897.30, bringing the total amount dispersed up to $170 million.

646. On or about May 11, 2022 the Trump Organization sold the OPO property for $375 million. Of those proceeds, $170 million were used to repay the loan to Deutsche Bank.

5. 40 Wall Street Loan Issued by Ladder Capital

647. In approximately November 2015, the Trump Organization (through 40 Wall Street LLC) refinanced an existing $160 million mortgage from Capital One Bank on the office building property at 40 Wall Street, New York, NY.

648. The loan from Capital One had an interest rate of 5.7% and required a principal payment of $5 million in November 2015. In January 2015, after consulting with Eric Trump, Allen Weisselberg wrote to Capital One asking the bank to waive the principal payment, explicitly citing the $550 million valuation in the Statement of Financial Condition:

> Mr. Trump's latest financial statement dated June 30, 2014 shows a valuation of $550,000,000 for the building based upon NOI & CAP rates on that date This would put your loan at a 30% loan to value.
>
> In light of the aforementioned valuation and considerable capital investment, along with a much improved cash flow (which will continue to grow as new tenant free rent continues to burn off) and an occupancy rate of 91%, which will be 96% after pending leases totaling 34,862 square feet ate signed, we respectfully request that the required $5 million principal payment due in November 2015 be waived.

649. Capital One, which internally valued the building at roughly $260 million, declined to waive the principal payment. Mr. Weisselberg then began working with his son, a Director at Ladder Capital Finance, to refinance the $160 million mortgage at a rate that would be advantageous to the Trump Organization.

650. This new mortgage was issued by Ladder Capital Finance, and subsequently securitized pursuant to agreements between Ladder Capital and a number of banks. The loan required Mr. Trump to maintain a net worth of at least $160 million and liquidity of at least $15 million. In connection with those covenants, Mr. Trump was required to provide his annual financial statements "prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender (Lender agreeing that WeiserMazars LLP is an acceptable firm) and prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor."

651. In connection with this refinancing loan, Cushman performed an appraisal of the Trump Organization's leasehold interest in 40 Wall Street, concluding that this interest had an "as is" market value of $540 million on June 1, 2015. The appraisal reached this conclusion both through a discounted cash flow approach and a direct capitalization approach. The latter, a direct

function of NOI divided by a capitalization rate, used the figure of $23,203,919 as the property's NOI—noting that this figure was "Plus Year 1 Free Rent." The free rent figure is noted as $7,776,980—suggesting that NOI *without* counting free rent was, instead, $15,432,939. That figure dovetails with the results presented in an income-and-expense table, similar to that contained in the 2010, 2011, and 2012 Cushman appraisal of 40 Wall Street. This table showed, for example, an NOI for 2012 of $6.5 million; for 2013, of $15.4 million; for 2014, $10.6 million; a budgeted NOI for 2015 (the year in question) of $14.2 million; and a Cushman forecast for the same year of $15.43 million.

652. Internal Ladder Capital documents indicate that Ladder underwrote the $160 million loan based on the $23 million NOI figure—and note that Mr. Trump had personally guaranteed tenants' free rent in the first year in the loan documents. A presentation to Ladder's Risk and Underwriting Committee contained an executive summary stating that the loan's underwriting net cash flow DSCR was 2.10x, meaning that net cash flow was more than twice debt service payments according to Ladder's underwriting team.

653. Other listed strengths included Mr. Trump's reported net worth of $5.8 billion as of June 30, 2014, and the property's strong recent leasing activity and below-market rents (which could roll into higher-paying tenants). The presentation also noted that the property's NOI, per the Cushman appraisal, was "$23,203,919," with a footnote stating: "The Appraisal NOI reported above excludes free rent due to tenants during the first year of the Loan. Under the terms of the Loan Documents, Donald Trump will guarantee all outstanding Free Rent at closing of the Loan."

6. Seven Springs Loan Issued by Royal Bank America / Bryn Mawr Bank

654. In 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America ("RBA"), later acquired by Bryn Mawr Bank in 2017. Donald J. Trump personally guaranteed the mortgage.

655. Mr. Trump's Statements of Financial Condition were submitted to RBA and Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. A 2011 credit memo records that the financial statement was "compiled annually with a 6-30 date" and that the bank "typically receives the information in October." A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 Statements.

656. The memo states that because of the "personal financial strength of Mr. Trump, as evidenced by liquid assets of $339 million (cash and marketables) and net worth of $5 billion, Royal Bank America previously waived the requirement of personal tax returns." Another 2014 credit review document notes that the "primary shortfall" in the loan was the lack of cash flow at the property, because the annual loan payments (more than $1 million) is "a large number to cover," and notes figures from Mr. Trump's 2012 Statement.

657. Indeed, Bryn Mawr retained in its files Mr. Trump's Statements of Financial Condition for 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Typically the Statements were sent under the cover of a letter from Jeffrey McConney at the Trump Organization, stating that Mr. Trump's Statement was being provided pursuant to the mortgage.

658. The Statement of Financial Condition was material to not only the origination of the mortgage, but also to the regular maintenance of the loan and a series of extensions. For example, the Trump Organization obtained a series of extensions of the maturity date in 2001, 2002, 2003, 2006, 2009, 2011, 2014, and 2019. In connection with at least some of these modifications, the bank relied upon Mr. Trump's Statements. In particular, the modification

documents in 2011, 2014, and 2019 reiterate various representations and warranties made by the Borrower (Seven Springs LLC) in the original loan documents. Mr. Trump re-affirmed his personal guaranty prior to becoming President, and the 2019 modification was signed by Eric Trump "as attorney in fact" for Donald J. Trump.

659. The personal guaranty for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. For example, one 2011 memo stated, under the heading "pro" (vs. con), "Experienced and financially strong guarantor, with a reported $3.9 Billion net worth." A 2014 memo similarly noted that renewal of the loan was recommended based on, among other factors, "Strong Guarantor Support" and "Personal financial strength of Mr. Trump evidenced by a reported net worth of $5 Billion and liquid assets of $354MM."

660. During the 2019 loan modification Jeffrey McConney originally asked for a quote on the price of extending the loan without the personal guaranty of Donald J. Trump. He was told that he would be required to place about $700,000 in escrow at closing and was quoted an interest rate about half a percentage point higher per annum than if there was a guaranty. After receiving these terms, he and Eric Trump decided to extend the loan with the personal guaranty of Donald J. Trump in place.

661. Bryn Mawr personnel relied on Mr. Trump's Statements for purposes of extending and maintaining the mortgage and accepted that they were complete and accurate as represented to the bank.

7. Other Efforts To Use The False And Misleading Statements In Commercial Transactions

662. In or about February 11, 2016, the Trump Organization—via a communication from Ivanka Trump to Rosemary Vrablic—sought an additional $50 million loan secured by the Doral property.

663. Ms. Vrablic further explained two "things to note" with respect to "the $50mm request" in a response email. First, Ms. Vrablic explained that a new appraisal would be required because the Financial Institutions Reform, Recovery, and Enforcement Act would not allow the bank to use the Trump Organization-ordered appraisal from the prior year.

664. Second, the "[u]se of proceeds must be clearly detailed so as not to be involved in any political or campaign uses of events." "Dave O" (referring to Dave Orowitz) "had mentioned to Josh Frank in Lending that it would be used for Trump Turnberry improvements," referring to a Trump golf course in Turnberry, Scotland, "and we would need to see the budgets etc…. To confirm this so we are both covered should the files be picked up by the regulators."

665. On Monday, February 15, 2016, Ms. Vrablic wrote to a colleague at Deutsche Bank relaying the request from the Trump Organization that the bank either (a) agree to extend additional credit secured by the Doral property, with a full personal guaranty for the additional credit by Mr. Trump, or (b) agree to a wholly unsecured line of credit that, in "one year," could be "[pa]id off" with an increased mortgage after a new appraisal would be ordered.

666. Ultimately, Deutsche Bank declined the request to extend further credit to Mr. Trump, then a presidential candidate, because it "could lead to the perception that DB was not politically neutral which posed an unacceptable level of reputational risk."

667. Earlier, in July 2014, Donald J. Trump and the Trump Organization made a $1 billion bid to purchase the Buffalo Bills football team. Up to $800 million of that $1 billion bid

could have been financed. As part of that bid, DJT and the Trump Organization needed a confidence letter from a financial institution to submit with his bid package. Mr. Trump asked Deutsche Bank (through Rosemary Vrablic) for that letter.

668. Mr. Trump, Mr. Weisselbnerg, and Mr. McConney met with Deutsche Bank personnel in connection with the request in July 2014. Mr. McConney then certified as to Mr. Trump's liquidity as of June 30, 2014, and that there had been "no material decrease" from the 2013 Statement of Financial Condition figures previously certified by Mr. Trump. Mr. Weisselberg would typically have executed the certification, but Mr. McConney executed it instead because Mr. Weisselberg was not in the office.

669. Mr. Trump's bid package—which was partially successful, in that Mr. Trump did advance further into the bid process—included a letter signed by Ms. Vrablic indicating that based upon the bank's review of Mr. Trump's financial information he would have the "financial wherewithal" to fund his bid to purchase the Bills football team.

670. Although Mr. Trump's 2013 Statement of Financial Condition (inflated pursuant to the deceptive strategies described above) reported a net worth of approximately $5.1 billion, Mr. Trump sent a separate letter, under his own signature, using an even higher figure in an effort to win the bidding: "I have a net worth in excess of Eight Billion Dollars (financial statements to be provided upon request) . . . ."

671. Finally, in 2010 the Trump Organization, through Allen Weisselberg, submitted an offer to the City of New York for a concession to operate, maintain, and manage an 18-hole golf course and related facilitates at Ferry Point Park, Bronx, NY.

672. Mr. Trump's Statements of Financial Condition featured in the process of obtaining the contract, as well as the Trump Organization's maintaining its obligations under the contract.

673. In particular, the Trump Organization's bid enclosed a letter from Weiser LLP (Mazars' predecessor) incorporating Mr. Trump's Statement of Financial Condition, referencing his net worth and cash position. A similar December 2011 letter was also submitted to the City.

674. The award granting the Trump Organization the concession cites Mr. Trump's wealth as one basis for award, and the contract documents include a personal guaranty by Mr. Trump. The guaranty stated that the full 2010 Statement of Financial Condition had been furnished to the City.

675. After 2012, when the Trump Organization won the contract, it was required (as part of Mr. Trump's personal guaranty on the contract) to represent periodically that there had been no material change in Mr. Trump's financial position. It did so by letters from Mazars that were expressly based on the then-most-recent Statement of Financial Condition. The Trump Organization submitted "no material change letters" to the City in 2010, 2011, 2013, 2016, 2017, 2018, and 2021.

E. Insurance-Related Benefits

676. Under New York Penal Law § 176.05, the submission of false information in a written statement submitted as part of an application for commercial insurance or to claim a benefit under an insurance policy is insurance fraud.

677. The Trump Organization and other Defendants committed insurance fraud by submitting Mr. Trump's false and misleading Statements, along with making other false representations, to obtain financial benefits under insurance policies from insurers participating

on the Trump Organization's surety program and directors and officers liability program, as more fully described below.

1. Insurance Fraud Against Surety Underwriters

678. The Trump Organization submitted Mr. Trump's Statements of Financial Condition to insurers and its insurance broker by allowing underwriters only to review a copy of the Statements at the Trump Organization's offices. One of those insurers was Zurich North American ("Zurich").

679. From 2007 through 2021, Zurich underwrote a surety bond program (the "Surety Program") for the Trump Organization through insurance broker AON Risk Solutions ("AON"). Under the Surety Program, Zurich issued surety bonds on behalf of the Trump Organization within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. Most of the bonds were statutorily required for the Trump Organization's real estate business, such as liquor license bonds for golf courses or release of lien bonds for construction projects.

680. Over the course of the Surety Program, based on the financial disclosures made by the Trump Organization, Zurich agreed to increasingly more favorable terms—periodically increasing the limits and decreasing the rate. For example, in 2011, the Surety Program had a single bond limit of $500,000, an aggregate limit for all bonds of $2,000,000, and a rate of $20 per thousand. When the Surety Program was canceled in 2021, the single bond limit was $6,000,000, the aggregate limit was $20,000,000, and the rate was $10 per thousand. Over the course of the relationship, in accordance with its standard underwriting guidelines for surety business, Zurich required the Trump Organization to provide an indemnification against any loss should Zurich be required to pay under a bond.

681. From the inception of the Surety Program, the Trump Organization met this indemnification requirement through a General Indemnity Agreement ("GIA") executed by Donald J. Trump, pursuant to which (similar to a personal guaranty on a loan) he personally agreed to indemnify Zurich for claims under the Surety Program. The GIA also included an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements. This annual financial disclosure requirement permitted Zurich to ensure that the indemnification from Mr. Trump was sufficient to support the continued renewal of the Surety Program.

682. Indeed, on multiple occasions when AON was unable to secure in a timely manner the required financial disclosure—which took the form of an on-site review of the Statements in a conference room at the Trump Organization's offices—Zurich put the Surety Program into "cut-off" status, which means Zurich ceased writing new bonds and would cancel existing bonds on expiration, until Mr. Trump's Statements were made available for review.

683. The indemnity was such a critical aspect of the Surety Program, that in early January 2017, with Mr. Trump's inauguration fast approaching, Zurich insisted as a condition to renewing the Surety Program that the indemnification be modified to address the potential difficulty Zurich might have in seeking to enforce the GIA against a sitting president. After some negotiation, during which the Trump Organization's lawyers sought to persuade Zurich that there was no legal impediment to suing a sitting president, Zurich and the Trump Organization agreed to resolve the issue by adding DJT Holdings LLC as an additional indemnitor on the GIA effective January 17, 2017.

684. The Trump Organization obtained Zurich's approval to renew the Surety Program on at least two occasions through intentional misrepresentations concerning Mr. Trump's

Statements. During the on-site review that occurred on November 20, 2018 for the 2019 renewal, Zurich's underwriter was shown the June 30, 2018 Statement. The Statement listed as assets the Trump Organization's real estate holdings with valuations that Allen Weisselberg represented to Zurich's underwriter were determined each year by a professional appraisal firm "such as Cushman" "using cap rates and NOI as factors."

685. Zurich's underwriter considered the valuations to be reliable based on Weisselberg's representation that they were prepared by a professional appraisal firm and recorded such information in her underwriting file. Also, based on her interactions with Weisselberg during the review, Zurich's underwriter found him to be "highly professional, well educated, and conscientious about" his work. Weisselberg's representations about how the valuations were determined and the underwriter's impressions of Weisselberg factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program for 2019 on the existing terms, which it did.

686. During the on-site review for the next renewal, the Trump Organization disclosed to Zurich's underwriter Mr. Trump's 2019 Statement. Weisselberg again represented to Zurich's underwriter that the valuations for the real estate holdings listed in the Statements were derived annually by a professional appraisal firm. Further, he specified that the appraisals for the current Statement were performed by Newmark Group and had previously been prepared by Cushman, explaining that "[t]he reason for the change is the individual at Cushman with whom [the Trump Organization] had a longstanding relationship with moved to work at Newmark."

687. Again, Zurich's underwriter considered the valuations to be reliable based on Weisselberg's representation that they were prepared by the professional appraisal firm Newmark Group, and specifically by the same individual (Larson) who had purportedly derived

the previous valuations when he was an employee of Cushman. The underwriter again assessed Weisselberg to be "highly professional, well educated, and conscientious about the operations" of the Trump Organization. Her impressions of Weisselberg and the representation that Newmark prepared the valuations all factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program in 2020 on the existing terms, which it did.

688. Weisselberg's representations to Zurich's underwriter that the valuations listed in Mr. Trump's Statements were prepared annually by professional appraisal firms were false. As discussed in detail above, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the Statements; instead, the valuations were prepared by Trump Organization personnel, contrary to what Zurich's underwriter was expressly told and believed, and in almost all instances in a false and misleading manner.

689. Had Weisselberg told Zurich's underwriter the truth about how the valuations for the Statements she reviewed had actually been prepared, she would have accorded them less weight and it would have negatively impacted her underwriting analysis. Moreover, had Zurich's underwriter discovered during the renewal process that Weisselberg had misrepresented to her how the valuations were prepared, it would have caused her to doubt the veracity of the rest of the information disclosed by the Trump Organization during the renewal and would have called into serious question whether Zurich should continue its insurance relationship with the Trump Organization, or renew on terms less favorable to the Trump Organization.

690. The Trump Organization also failed to disclose that the valuation for the golf courses listed on Mr. Trump's Statements within the "Clubs" category, which was approximately $2.2 billion in the 2019 Statement, included a substantial brand premium baked into the reported

valuation. Under Zurich's underwriting guidelines, intangible assets such as brand value are to be excluded.

691. Had Weisselberg disclosed to Zurich's underwriter that the valuation listed for "Clubs" included the Trump brand premium, she would have been required under the guidelines to reduce that valuation to exclude the premium.

2. Insurance Fraud Against Directors & Officers Liability Underwriters

692. As of December 2016, the Trump Organization had in place Directors & Officers ("D&O) liability coverage consisting of a single primary policy providing a limit of $5,000,000 from Everest National Insurance Company ("Everest") at a premium of $125,000.

693. Everest had provided D&O liability coverage to the Trump Organization in 2013 and 2014 as well.

694. For purposes of that coverage, similar to the process described above with Zurich, the Trump Organization provided underwriters no more than fleeting access to Mr. Trump's Statements, through a monitored in-person review at Trump Tower. Pursuant to a non-disclosure agreement ("NDA"), the Everest underwriter would incorporate information from Mr. Trump's annual Statement provided by Allen Weisselberg for purposes of the annual renewal. At no point during such financial reviews were the underwriters informed about the false and misleading valuations contained within the Statement.

695. On December 6, 2016, AON reached out to an underwriter in the D&O Group of Tokio Marine HCC ("HCC") seeking a quote for additional limits of $5,000,000 to sit above the Everest policy. In presenting the opportunity to his supervisor, the HCC underwriter noted "[t]here are no financials to look at. Everest saw them for 30 minutes, under NDA at renewal but AON has never seen them."

696. The HCC underwriter received authority to quote a policy for the requested limits above the Everest policy through the expiration date of February 17, 2017 for a flat premium of $40,000 subject to reviewing the financials at renewal, which the underwriter conveyed in a formal quote to AON later in the day on December 6 and which the Trump Organization accepted.

697. In advance of the policy expiration, AON scheduled a "D&O Underwriting Meeting" at the Trump Organization's offices on January 10, 2017 between Trump Organization personnel (including Weisselberg) and various underwriters, including HCC's underwriter. Among the agenda items for discussion was Mr. Trump's financial condition. According to the HCC underwriter's email to his supervisor written the same day as the meeting, the Trump Organization was looking to cancel the existing policies and rewrite the program on the day of Mr. Trump's presidential inauguration with significantly higher limits of $50,000,000 – a tenfold increase in the D&O coverage that existed under the Everest policy. AON advised HCC's underwriter that HCC would be "in play" to take over the primary layer from Everest.

698. The underwriters at the meeting were provided very few financials but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion, cash of $192 million and total debt of $519 million with no single debt larger than $160 million and no concentration of maturities – all as reported in the 2015 Statement. The Trump Organization representatives assured the underwriters that the balance sheet for year-end 2016 that would be completed in a few weeks would be even better than the year-end 2015 balance sheet.

699. In response to specific questioning from the underwriters, the Trump Organization personnel represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. The HCC underwriter relied on

this representation in concluding that there were no investigations by law enforcement agencies that could potentially trigger coverage under the D&O policies.

700. On January 20, 2017, after considering the information conveyed during the January 10 meeting, HCC offered terms for a primary $10,000,000 policy with a $2,500,000 retention for a premium of $295,000 subject to certain conditions. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018.

701. Despite the representations made to underwriters by the Trump Organization personnel during the January 10 meeting that there was no material litigation or inquiry from anyone that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization.

702. In September 2016, four months before the January 10 meeting, OAG had sent a notice of violation to the Trump Foundation and a letter to Trump Organization outside counsel Sheri Dillon requesting documents, to which Ms. Dillon replied on October 16, 2016. In October 2016, OAG had also issued third-party subpoenas in connection with its investigation and examined Allen Weisselberg, one of the attendees at the January 10 meeting.

703. Neither Mr. Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the January 30 renewal of the D&O policies the existence of OAG's investigation into the Trump Foundation and Trump family members who were directors and officers of the Trump Organization. They withheld this information despite their understanding and belief that the OAG investigation could potentially lead to a claim under the D&O coverage, as evidenced by the notice of claim they

submitted to the D&O insurers HCC, Starpoint, Swiss Re, Argo, and Allianz through AON on January 17, 2019 seeking coverage in connection with OAG's enforcement action resulting from the investigation.

704. Other notices of claims and circumstances from AON tendered under the D&O policies soon followed.

705. In June 2017, the Donald J. Trump Revocable Trust, a named insured under the D&O policies, provided notice of claim on behalf of Michael Cohen in connection with a subpoena issued to him by the House of Representatives Permanent Select Committee on Intelligence ("House Intelligence Committee") seeking documents and testimony in connection with the House Intelligence Committee's investigation into Russian interference in the 2016 presidential election.

706. On January 12, 2018, just prior to the next renewal on January 30, 2018, AON provided notice of claim on behalf of Donald Trump, Jr., in connection with his involvement in the investigations by the Senate Committee on the Judiciary, the Senate Select Committee on Intelligence, the House Intelligence Committee, and Special Counsel Robert Mueller into Russian interference in the 2016 presidential election.

707. These claim notices raised issues for HCC's underwriter. Specially, on January 26, 2018, HCC's underwriter asked AON to obtain a response to the question: "Is the Trump Organization aware of any other individuals (other than Cohen and Don Jr) in the Trump Organization who are involved or could reasonably expect to be involved in the current investigation?" HCC's underwriter agreed to extend the policy expiration date to February 10, 2018 to provide time to obtain a response.

708. AON provided the response from Trump Organization's General Counsel Alan Garten on February 1, 2018, identifying four individuals who had been requested to testify in addition to Michael Cohen and Donald Trump, Jr. No other individuals were identified in response to the HCC underwriter's inquiry about others who are involved or could reasonably be expected to be involved in the investigations that were the subject of the two claim notices.

709. Nor did anyone from the Trump Organization disclose during the renewal negotiations in early 2018 the existence of any other investigations or inquiries that could potentially lead to a claim under the D&O policies.

710. On February 5, 2018, based on the information provided during the renewal negotiations, HCC agreed to extend its $10,000,000 policy with a $2,5000,000 retention for the expiring premium of $295,000 for another 12 months, ending February 10, 2019.

711. Based on further correspondence exchanged in 2018 between AON on behalf of the insureds and HCC's coverage counsel disputing whether coverage existed for the tendered claims on behalf of Michael Cohen and Donald Trump, Jr., HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. As a result, on January 24, 2019, HCC offered to renew the $10,000,000 policy for a substantially increased premium of $1,600,000, more than five times the expiring premium. The Trump Organization declined to accept the renewal terms.

712. On February 8, 2019, two days before the expiration of the policy term, AON provided notice to the D&O underwriters of the following "claims and/or circumstances which may reasonably be expected to give rise to Claims (as defined in the Policies) against the insureds under the Policies":

- 1etters from Congressional members or committees seeking information regarding a June 2016 meeting with Natalia Veselnitskaya at Trump Tower, other

campaign-related communications with Russian persons or entities relating to Hillary Clinton and/or the 2016 presidential election, and/or efforts by the Trump Organization or its affiliates to develop or partner with a developer to build a Trump-branded property in Moscow;

- letters from Congressional members or committees seeking information regarding Mr. Trump's compliance with the Emoluments Clause in the U.S. Constitution and/or conflicts of interest arising from Trump or Kushner-affiliated entities' business with foreign entities;

- a letter from a member of Congress seeking information regarding the use of a private email server by Ivanka Trump and Jared Kushner;

- two letters from Congressional members or committees seeking information regarding (a) payments made to Stephanie Clifford and Karen McDougal in violation of campaign finance laws, and/or (b) payments that the Trump Organization made to Michael Cohen relating to his payment of Ms. Clifford;

- an investigation by the U.S. Attorney's Office for the Southern District of New York regarding the payments to Ms. Clifford, Ms. McDougal, and Mr. Cohen;

- the investigation by Special Counsel Mueller;

- an investigation by the U.S. Attorney's Office for the Southern District of New York regarding the Presidential Inaugural Committee;

- "possible investigations" by multiple jurisdictions and investigative authorities (ICE, Dept. of Labor, State Attorneys General); and

- "possible investigations" by multiple investigative authorities (IRS, NYS Dept. of Taxation and Finance) regarding employer-provided housing and vehicles.

713. Trump Organization personnel made no disclosure at the January 10, 2017 meeting with underwriters or at any time prior to binding the policies that incepted on January 30, 2017 about any circumstances involving Russia and the 2016 presidential election, including the June 2016 meeting at Trump Tower with Ms. Veselnitskaya, or the effort to develop a Trump-branded property in Moscow.

714. With the exception of the House Intelligence Committee investigation and Mueller investigation into Russian interference in the 2016 presidential election, none of the investigations and inquiries referenced in AON's February 8, 2019 claim notice, or the

circumstances giving rise to those investigations and inquiries, had previously been disclosed by Trump Organization personnel to underwriters during renewal negotiations.

F. Ongoing Scheme and Conspiracy

715. The foregoing allegations constitute a continuous, integrated scheme to inflate Mr. Trump's net worth in order to obtain financial benefits.

716. Specifically, Defendants each agreed to participate in a scheme to use false and misleading information to increase Mr. Trump's stated net worth on the Statement of Financial Condition for each year from 2011 through the present. Defendants further agreed to use those inflated Statements to obtain economic and financial benefits from 2011 through the present day.

717. When asked if he had an ongoing agreement from at least 2005 through the present with Mr. Weisselberg, Mr. McConney, and others to prepare the Statement of Financial Condition in a manner that included intentional overvaluations, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer.

718. When asked if he had an ongoing agreement from at least 2005 to the present with Mr. Weisselberg, Mr. McConney and others to prepare the Statement of Financial Condition in a manner that included false and misleading valuation statements, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer.

719. Mr. Weisselberg and Mr. McConney directed other employees to prepare the Statements in a fraudulent manner and in a way that insured that Mr. Trump's wealth increased each year.

720. As Executive Vice Presidents of the Trump Organization, Donald Trump Jr., Ivanka Trump and Eric Trump were also aware of, and knowingly participated in, the scheme. Indeed, the fraudulent scheme was integral to the business of the Trump Organization and required the participation of Mr. Trump and his children.

721. As Executive Vice Presidents, the three children were intimately involved in the operation of the Trump Organization's business. They were aware of the true financial performance of the company, whether through Donald Trump Jr.'s work on commercial leasing, Ivanka Trump's work on Doral, Trump Chicago and OPO, or Eric Trump's work on the golf course portfolio.

722. Indeed, the Trump Organization took extensive steps to keep them all up to date on the company's operations. For example, the Trump Organization maintained a "Master Office Calendar" for Mr. Trump, Donald Trump, Jr., Ivanka Trump and Eric Trump.

Master Office Calendar* - 5/7/15

Distribution List*
Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump

723. While the calendar would also be distributed to lower level employees, it allowed the four executives to track key obligations of the business. Those included submission of "DJT June 30 Statement of Financial Condition" in connection with Doral, Trump Chicago and OPO. The master office calendar also reflected detail about financing, payment due dates, financial statements on individual properties and partnerships; in sum, all of the information that allowed Donald Trump, Jr., Ivanka Trump and Eric Trump to understand the true valuation of the properties contained in the Statement of Financial Condition.

724. Donald Trump, Jr., Ivanka Trump and Eric Trump were also familiar with the true performance of the properties compiled in the Statements of Financial through financial

reporting from Allen Weisselberg and others. For example, in February 2016, Mr. Weisselberg prepared a detailed report on the Trump Organization's performance in 2015, with a cover memo headed:

To: Don Jr., Ivanka & Eric
From: Allen Weisselberg
Date: February 24, 2016

Re: 2015 Corporate Operating Financial Summary

As per your request enclosed please find a detailed analysis setting forth our various business segments and their resulting operations for calendar year 2015.

725. The enclosed report included individualized breakdowns on golf courses, hotels, Trump Tower, Niketown, 40 Wall Street, and virtually every component of the Statement of Financial Condition.

726. And in their roles as Executive Vice Presidents, each of the three Trump children had familiarity with, responsibility for, and made use of, the Statements of Financial Condition in commercial transactions.

727. Donald Trump, Jr., a graduate of the Wharton School of Business at the University of Pennsylvania, was a source of valuations in the Statement of Financial Condition for properties like Trump Park Avenue. He was familiar with the financial performance of the properties incorporated in the Statement, including through his responsibility for commercial leasing in buildings like 40 Wall Street and Trump Tower. As a Trustee of the Donald J. Trump Revocable Trust, Donald Trump, Jr. was responsible for the preparation of the Statement for every year from 2016 to the present. Donald Trump, Jr. certified to the accuracy of the Statement in 2017, 2018 and 2019.

728. Ivanka Trump, an honors graduate of the Wharton School of Business at the University of Pennsylvania, was familiar with the Statements of Financial Condition, making presentations on them to the GSA in 2011, and using them to facilitate loans from Deutsche Bank in 2012 and 2013. Ms. Trump maintained responsibility for those loans, which required annual submission of the Statements and confirmation that there had been no material changes in Mr. Trump's net worth. Ms. Trump was familiar with the financial performance of the properties incorporated in the Statement, including through her responsibility for Trump International Realty.

729. Eric Trump, an honors graduate of Georgetown University with a degree in Finance and Management, was a source of valuations in the Statement of Financial Condition for properties like Seven Springs. Eric Trump certified to the accuracy of the Statement in 2020 and 2021. When asked if he ever assisted in the preparation of the Statement of Financial Condition, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. Eric Trump was familiar with the financial performance of the properties incorporated in the Statement, including through his responsibility for the Trump Golf properties.

730. The corporate Defendants each participated in the scheme through the actions of their high managerial agents – including Mr. Trump, Donald Trump, Jr., Ivanka Trump, Eric Trump, Allen Weisselberg and Jeffrey McConney – acting within the scope of the agent's employment.

731. Some aspects of the scheme were well known publicly. For example, Mr. Trump's desire to keep his reported net worth high was widely reported. In a 2015 article, Forbes wrote that of all the individuals who have appeared on its list of the 400 wealthiest Americans, "not one has been more fixated with his or her net worth estimate on a year-in, year-out basis

than Donald J. Trump." The article described Mr. Trump's net worth as a "subject that he cares about to the depths of his soul."

732. That same article quotes Mr. Trump on his motivation for inflating his net worth: "It was good for financing."

733. This public desire to inflate his net worth was well known amongst his children and employees. As far back as March 2007, the European Bureau Chief of Forbes wrote to Donald Trump, Jr. and Ivanka Trump with the subject matter "Still awfully rich . . . ." In that email, the bureau chief wrote that: "Your dad called. He's always good to me. He mentioned that he'd seen his wealth quoted at $2.6 billion in the local paper. That didn't sound right to me. I just checked: We've still got him at $2.9 billion, same as September. I told Kelly already but if you talk to him, mention it."

734. The scheme to inflate Mr. Trump's net worth also remained consistent year after year. The supporting data spreadsheet for each annual Statement incorporated the prior year's valuations and tracked changes to insure the total valuation increased as directed by Mr. Trump and Mr. Weisselberg. Starting in 2014, the supporting spreadsheets included a column entitled "change in clubs" that tracked the overall rise or fall in the value of the clubs individually and as a group. Properties were grouped together in broad buckets to disguise annual fluctuations in value of individual properties. Properties would move from one group to another to disguise significant declines. Single conversations with "professionals" and others would serve as the basis to inflate values over multiple years. For example, a single 2013 conversation with an executive at ClubCorp, a large, privately owned golf management company, served as the basis for adding a premium to the value of Trump golf clubs through 2018.

735. The loans obtained through the use of the inflated Statements likewise required performance and confirmation year after year. Each of the Deutsche Bank loans, for example had terms extending past 2022 and each had continuing obligations to maintain a net worth of at least $2.5 billion and unencumbered liquidity of $50 million. Each of the loans required the annual submission of the Statement of Financial Condition to meet these covenants as well as a certification that the Statements were true and accurate and there had been no material changes to either Mr. Trump's net worth or his liquidity.

736. Defendants also went to great lengths to conceal their fraud. In submitting information to Mazars, Defendants would exclude key information, like lender-ordered appraisals on a given property or limitations on development like the easements on Mar-a-Lago. In presenting the Statements, Defendants hid the precise valuation of individual properties by grouping them together into categories like "Club facilities and related real estate." When properties dropped in value, the change was covered up by increasing the valuation of other properties in the same category, or moving them into different categories, the way Seven Springs was moved into "other assets" following receipt of the appraisal for the easement donation.

737. The Trump Organization also sought to limit the ability of counter-parties to review the Statements of Financial Condition or disseminate them more broadly. Some insurers would only be able to sit in a room to review the Statements. Often the Trump Organization would only send hard copies of the Statements to lenders.

738. The Trump Organization also took steps to conceal Defendants' fraud in response to direct inquiries from Deutsche Bank. Specifically, on October 29, 2020, Deutsche Bank wrote to Donald Trump, Jr.:

> Deutsche Bank Trust Company Americas ("DBTCA") has recently become aware of certain public factual allegations concerning the accuracy of financial information and representations submitted to DBTCA in connection with various loan facilities extended to affiliates of the Trump Organization and subject to the personal financial guaranty of Donald J. Trump. These allegations have been raised, among other places, in public court filings by the Office of the New York Attorney General ("OAG"), as well as in public reporting by the *New York Times* related to certain tax return information reportedly obtained by that organization.
>
> The factual allegations appear to directly relate to the accuracy of certain Statements of Financial Condition submitted to DBTCA in Donald J. Trump's capacity as guarantor to the relevant loan facilities. The allegations pertain to, among other things, the value and other attributes of certain assets referenced in such Statements of Financial Condition, including but not limited to the Mansion at Seven Springs and the Trump National Golf Club in Los Angeles.

739. The bank asked a series of specific questions about the easement donations and an article in the New York Times discussing an inquiry by the IRS into a $72.9 million tax refund claimed in 2009.

740. The Trump Organization offered no response until December 7, 2020, when Alan Garten, Chief Legal Officer, emailed Deutsche Bank to say that the letter had only just come to the company's attention.

741. Deutsche Bank wrote back on December 14, 2020, requesting a response and providing additional detail:

As you know, Donald J. Trump is required under the terms of his loan guaranties to provide annual financial statements to Deutsche Bank and to ensure that those statements "are true and correct in all material respects." *See, e.g.*, Old Post Office ("OPO") Guaranty Agreement, § 9(ix). This information is used by the Bank to assess the borrowers' and Mr. Trump's compliance with loan and guaranty covenants, as non-compliance with such covenants may result in an event of default. *See, e.g.*, OPO Loan Agreement, § 7.1(b). Failure to provide accurate valuations of financial assets may fundamentally impact the Bank's view of borrowers' and Mr. Trump's compliance with such covenants. Additionally, Mr. Trump must submit annually a signed certificate certifying, among other things, his compliance with covenants relating to his net worth, debt, and unencumbered liquid assets, and further certifying that his Statement of Financial Condition "presents fairly in all material aspects" his financial condition. *See, e.g.*, Old Post Office Guaranty Agreement, Section 11(i)(D). The loan agreements and guaranties provide that an event of default occurs when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false or misleading in any material respect at the time made or intended to be effective." *See, e.g.*, OPO Loan Agreement, § 7.1(d).

742. On December 16, 2020, Mr. Garten said he hoped to have a response "within the next few days." Deutsche Bank wrote back on January 8, 2020 asking for a response. Ultimately none was forthcoming.

743. Defendants did try to limit their exposure on the Deutsche Bank loans in 2022 by selling the OPO property, paying off the loan to Deutsche Bank, and recovering their capital investment and any accrued profits. Shortly thereafter, Defendants exited the Doral loan by refinancing with Axos Bank.

744. During the negotiations with Axos Bank in February 2022, the Trump Organization sought to avoid submitting a Statement of Financial Condition or making representations about Mr. Trump's net worth. Instead, the Trump Organization pushed to provide a schedule of material real estate assets and liabilities and leave it to the lender to calculate net worth. As counsel for the Trump Organization wrote on February 11, 2022:

Subject: RE: Trump Tower/Axos - Loan Documents (Remaining Comments)

David,

In the Partial Payment Guaranty, can you please add the "material" as you did in the other Guaranty, and in each Guaranty add a reasonableness standard for Lender's determination of New Worth (see below). Other than that, no further comments. Thanks.

(a) Financial Reporting. Within forty-five (45) days after the end of each calendar quarter, Guarantor shall furnish to Lender a schedule of material real estate assets and all related material liabilities, including material contingent liabilities, and a calculation of ~~Net Worth and~~ Liquidity (as ~~such terms are~~ defined below), all in form and content acceptable

Net Worth shall be determined by Lender **in its reasonable direction**, taking into consideration the financial information delivered to Lender in accordance with Section [4/5] of this Agreement, together with Lender's **reasonable** determination of the value of the real estate assets identified therein.

745. The Trump Organization also sought to limit the liability of Donald Trump, Jr. as trustee, with the bank eventually drawing the line at exculpating him for fraud. As counsel for Axos Bank wrote:

2. With respect to the request to exculpate Donald J. Trump, Jr. in his role as trustee, we are generally ok with the language proposed by your trust counsel, provided that we do not believe the exculpation should eliminate liability for fraud or for a misrepresentation by trustee (1) in the certifications made in the Trust Certificate (in particular as it relates to authority to bind the trust) or (2) with respect to ongoing deliverables provided by the Guarantor under the Loan Documents. We will provide proposed language tomorrow and can discuss any concerns that you may have.

746. Finally, Defendants sought to conceal their fraud through repeated failures to provide documents in response to subpoenas from OAG. As reflected over the course of extensive litigation in the matter *People v. The Trump Organization*, No. 451685/2020, pending in this Court:

a. The Trump Organization failed to do a thorough search for electronic documents in response to an initial subpoena in December 2019, including failing to identify the fact that certain responsive documents had not been collected because of errors in a data migration. That issue was only identified and addressed upon inquiry by OAG. As a result, the Trump Organization hired a third-party vendor to review the collection process pursuant to a stipulated order. The Trump Organization did not certify that its production was complete until April 2022.

b. Even that production failed to include all responsive documents for Donald J. Trump, which were only obtained after a follow-up subpoena from OAG and Mr. Trump was held in contempt by this Court for failure to properly certify a response to that subpoena. The contempt was not purged until June 29, 2022.

747. But even after almost two years of litigation it appears that it may still be the case that not all responsive documents were produced. Among other things, in litigation over a search warrant executed at Mar-a-Lago on August 8, 2022, the United States District Court for the Middle District of Florida noted that "the seized materials include . . . correspondence related to taxes, and accounting information." *Trump v. United States*, 22 Civ. 81294, Order, Docket 64 (S.D. Fla. Sept. 5, 2022). Documents concerning taxes and accounting information would appear to be responsive to OAG's subpoenas, but no such documents for Mr. Trump were produced by counsel for Mr. Trump despite a representation by that counsel that: I "diligently searched each and every room of Respondent's private residence located at Mar-a-Lago, including all desks, drawers, nightstands, dressers, closets, etc. I was unable to locate any documents responsive to the Subpoena that have not already been produced to the OAG by the Trump Organization."

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Executive Law § 63(12) – Persistent and Repeated Fraud
(Against All Defendants)

748. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

749. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

750. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

751. Fraud under Executive Law § 63(12) is broadly defined to include "any device, scheme, or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

752. Fraudulent conduct as used in § 63(12) includes acts that have the "capacity or tendency to deceive, or create[ ] an atmosphere conducive to fraud." *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 107 (3d Dep't 2005), *aff'd on other grounds*, 11 N.Y.3d 105 (2008); *see also People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 73 (1st Dep't 2021). The terms "fraud" and "fraudulent" are "given a wide meaning so as to embrace all deceitful practices contrary to the plain rules of common honesty, including all acts, even though not originating in any actual evil design to perpetrate fraud or injury upon others, which do tend to deceive or mislead." *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep't 2012).

753. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

754. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

755. Defendants' acts and practices alleged herein constitute conduct proscribed by Executive Law § 63(12) in that Defendants engaged in persistent and repeated fraudulent acts. As set forth in the allegations above, Defendants made or caused to be made misrepresentations, false or misleading statements, and statements that were misleading by omission, concealment, or suppression of information. All of this conduct, moreover, occurred in an atmosphere conducive to fraud—in which the goal of increasing Mr. Trump's reported net worth on the Statements was well known and carried out by his agents and subordinates. Further, all of that

conduct was directed toward presenting misleading statements to others—including lenders, insurance companies, and governmental entities.

756. The acts of fraud alleged here were repeated—entailing, among other things, dozens of specific numerical entries in financial spreadsheets; dozens of verbal representations in financial statements; and other fraudulent and misleading conduct by the Defendants.

757. The acts of fraud alleged here also were repeated, in the sense that they affected more than one person under Executive Law § 63(12). In particular, the acts of fraud alleged herein affected lenders, employees who worked for those lenders and insurers, the accounting firm that compiled the Statements, and personnel of that firm.

758. The acts of fraud alleged herein were also persistent, which connotes the "continuance" or "carrying on" of fraudulent conduct. Here, the key individual players remained the same over the course of several years: Jeffrey McConney (prepared or supervised preparation of supporting spreadsheets); Allen Weisselberg (reviewed and approved spreadsheets, and, as trustee, certified Statements' accuracy); Donald J. Trump (reviewed and approved Statements and certified their accuracy), Donald Trump, Jr. (as trustee, certified the Statements' accuracy). Moreover, these Defendants engaged in the same or similar conduct consistently over the course of several years—relying on prior years' information to prepare new valuations, continuing the use of deceptive wording to describe valuations performed, and continuing deceptive strategies used on the prior year's Statements.

759. Executive Law § 63(12) also proscribes, as one type of fraud, "any . . . scheme or artifice to defraud." Defendants' conduct constituted one or more schemes to defraud under § 63(12). In particular, Defendants' conduct was committed to obtain property (including bank funds and insurance proceeds) by means of false or fraudulent pretenses or representations;

involved common and closely related techniques, misrepresentations, omissions and concealments of material facts over a period of years; and involved a common nucleus of actors, namely the Trump Organization, its constituent entities, its executives, and its other agents. *See, e.g.*, *People v. First Meridian Corp.*, 80 N.Y.2d 608, 616-17 (1995) (holding that it was appropriate to infer the existence of a "unitary scheme to defraud" under Penal Law using similar factors).

760. Defendants are also liable for persistent and repeated fraud under Executive Law § 63(12) as participants in a long-running conspiracy. Although not an independent cause of action in New York, a civil conspiracy, if it exists, may "connect the actions of separate defendants with an otherwise actionable tort." *Abacus Federal Savings Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010). Here, the actions of the Defendants—including making numerous false and misleading entries and omissions in financial statements and supporting materials in a similar manner over the course of more than a decade, and then submitting them to financial institutions as certified by Mr. Trump or his trustees—reflect the existence of an agreement to commit fraud within the meaning of § 63(12). *Cf. People v. Flanagan*, 28 N.Y.3d 644 (2017) (unlawful agreement often shown by circumstantial evidence). Indeed, when asked if he, Mr. Weisselberg, and Mr. McConney, since at least as far back as 2005, had an ongoing agreement to generate false or misleading financial statements, Mr. Trump invoked his Fifth Amendment privilege. Each Defendant knowingly participated in the conspiracy and engaged in overt acts in furtherance of it: helping craft the Statements, using them to secure favorable financial terms, or certifying their accuracy to third parties. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

SECOND CAUSE OF ACTION

Pursuant to Executive Law § 63(12), Repeated and Persistent Illegality: Falsifying Business Records under New York Penal Law

(Against All Defendants)

761. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

762. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

763. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

764. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

765. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

766. Falsifying business records in the second degree, New York Penal Law § 175.05, is committed when, with intent to defraud, a person:

a. Makes or causes a false entry in the business records of an enterprise; or

b. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

c. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

d. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

767. The elements of falsifying business records in the first degree are met when a person commits falsifying business records in the second degree, and when the intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof. *People v. Reyes*, 69 A.D.3d 537 (1st Dep't 2010).

768. Defendants, through their conduct described above, have made or caused to be made false entries and/or made or caused to be made the omission of true entries in the business records of an enterprise. Examples of falsified business records or portions thereof identified in the allegations above include false figures used to value properties, false claims that liquid assets belonged to Mr. Trump when they did not, false verbiage about how underlying valuations were prepared, and financial statements and supporting documents that omit true facts.

769. In addition, through their conduct described above, Defendants have made or caused to be made false entries and or made or caused to be made the omission of true entries in the business records of an enterprise with the intent to commit another crime or aid or conceal the omission thereof—including the issuance of a false financial statement under Penal Law § 175.45 and insurance-fraud violations below.

770. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

771. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

772. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful falsification of records was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

773. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by falsifying business records.

THIRD CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent Illegality: Conspiracy to Falsify Business Records under New York Penal Law
(Against All Defendants)

774. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

775. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

776. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

777. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

778. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

779. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

780. Defendants' acts and practices, such as making or causing to be made false entries in the business records of an enterprise, reflect the existence of an agreement to falsify the

Statements of Financial Condition, supporting data spreadsheets, and other business records with requisite intent for that conduct to violate the Penal Law.

781. At least one of the Defendant co-conspirators engaged in an overt act in furtherance of the conspiracy. Those acts included entering or causing to be entered false entries in the business records of an enterprise, or knowingly omitting to make true entries in those business records, or using the Statements of Financial Condition for purposes of obtaining financial benefits.

782. Thus, Defendants engaged in a conspiracy to falsify business records as defined by New York Penal Law.

783. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times or affected more than one person.

784. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

785. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

786. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful conspiracy to falsify business records was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

787. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by conspiring to falsify business records.

FOURTH CAUSE OF ACTION

Pursuant to Executive Law § 63(12) Persistent Illegality: Issuing False Financial Statements under New York Penal Law § 175.45

(Against All Defendants)

788. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

789. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

790. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

791. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

792. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

793. Pursuant to Executive Law § 63(12), Defendants' acts and practices constitute issuing false financial statements under the New York State Penal Code.

794. A person issues a false financial statement, under New York Penal Law § 175.45, when the person, with intent to defraud, (1) knowingly makes or utters a written instrument which purports to describe the financial condition of some person and which is inaccurate in some material respect, or (2) represents in writing that a written instrument purporting to describe a person's financial condition as of a particular date is accurate with respect to such person's current financial condition, knowing it is materially inaccurate in that respect.

795. Defendants, through their conduct described above, have, with intent to defraud, knowingly made or uttered materially inaccurate written instruments purporting to describe Donald Trump's financial condition.

796. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

797. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

798. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful issuance of a false financial statement was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

799. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by issuing false financial statements.

FIFTH CAUSE OF ACTION

Pursuant to Executive Law § 63(12) Repeated and Persistent Illegality: Conspiracy to Falsify False Financial Statements under New York Penal Law

(Against All Defendants)

800. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

801. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

802. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

803. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

804. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

805. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

806. Defendants' acts and practices, such as making or causing to be made materially inaccurate written instruments purporting to describe Donald Trump's financial condition, reflect the existence of an agreement to issue false financial statements as defined under the New York Penal Law.

807. At least one of the Defendant co-conspirators engaged in an overt act, such as preparing the Statements, certifying the Statements' accuracy, signing letters necessary to the Statements' issuances, preparing supporting information, contributing supporting information, or conveying such information to third parties, in furtherance of the agreement.

808. Overt acts in furtherance of the conspiracy occurred as late as 2019, 2020, 2021, and 2022.

809. Thus, Defendants engaged in a conspiracy to issue false financial statements as defined by New York Penal Law.

810. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times or affected more than one person.

811. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

812. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the unlawful conspiracy to issue false financial statements was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

813. Consequently, Defendants have engaged in repeated and persistent fraud or illegality in violation of Executive Law§ 63(12) by conspiring to issue false financial statements.

SIXTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent
Illegality: Insurance Fraud under New York Penal Law § 176.05
(Against All Defendants)

814. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

815. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

816. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

817. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

818. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

819. Pursuant to Executive Law § 63(12), Defendants' acts and practices constitute insurance fraud under the New York State Penal Code.

820. Under New York State Penal Law §176.05, "[a] fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer . . . or any agent thereof: 1. any written statement as part of, or in support of, an application for the issuance of . . . a commercial insurance policy, . . . or a claim for payment or other benefit pursuant to an insurance policy . . . for commercial or personal insurance that he or she knows to: (a) contain materially false information concerning any fact material thereto; or (b) conceal, for the purpose of misleading, information concerning any fact material thereto."

821. Defendants, through their conduct described above, knowingly and with the intent to defraud presented, caused to present, or prepared, written statements in support of applications for insurance knowing they contained materially false information concerning facts material to those applications, and/or concealed, for the purpose of misleading insurers, information concerning facts material to those written statements.

822. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

823. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

824. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the insurance fraud was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

825. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by committing insurance fraud.

SEVENTH CAUSE OF ACTION
Pursuant to Executive Law § 63(12) Repeated and Persistent Fraud or Illegality: Conspiracy to Commit Insurance Fraud under New York Penal Law
(Against All Defendants)

826. Plaintiff repeats and re-alleges the paragraphs above as if fully stated herein.

827. New York Executive Law § 63(12) empowers the Attorney General to seek restitution, damages, and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting or transaction of business.

828. At all relevant times, Defendants have engaged in carrying on, conducting, or the transaction of business in New York within the meaning of Executive Law § 63(12).

829. Persistent fraud or illegality under Executive Law § 63(12) is broadly defined to include continuance or carrying on of any fraudulent or illegal act or conduct.

830. Repeated fraud or illegality under Executive Law § 63(12) includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person."

831. In New York, a criminal conspiracy consists of an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

832. Defendants' acts and practices, such as causing to present, or preparing, written statements in support of insurance applications, knowing such statements to contain materially

false information concerning facts material to those applications, and/or concealing information concerning facts material to those written statements, reflect the existence of an agreement to commit insurance fraud as defined under the New York Penal Law.

833. At least one of the Defendant co-conspirators engaged in an overt act, causing to present, or preparing, written statements in support of insurance applications, knowing such statements to contain materially false information concerning facts material to those applications, and/or concealing information concerning facts material to those written statements, in furtherance of the agreement.

834. Thus, Defendants engaged in a conspiracy to commit insurance fraud as defined by New York Penal Law.

835. Defendants' conduct in this regard was "repeated" in the sense that it occurred multiple times and affected more than one person.

836. Defendants' conduct in this regard was "persistent" because it continued and was carried on over the course of several years.

837. With respect to Defendants that are not natural persons, they are liable for the additional reasons that the conspiracy to engage in insurance fraud was committed by one or more of their high managerial agents acting within the scope of the agent's employment.

838. Consequently, Defendants have engaged in repeated and persistent illegality in violation of Executive Law§ 63(12) by conspiring to commit insurance fraud.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order and judgment granting the following relief to remedy the substantial, persistent, and repeated fraudulent and misleading conduct in the business of the Trump Organization occurring since 2011:

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

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

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

D. Requiring the Trump Organization to prepare on an annual basis for the next five years a GAAP-compliant, audited statement of financial condition showing Mr. Trump's net worth, to be distributed to all recipients of his prior Statements of Financial Condition;

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

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

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

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

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

K. Granting any additional relief the Court deems appropriate.

Dated: New York, New York
September 21, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin Wallace

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Andrew Amer
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Attorneys for the People of the State of New York

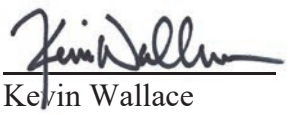
VERIFICATION

Kevin Wallace, an Attorney admitted to the Bar of this State, hereby affirms and certifies that:

1. I am an attorney in the Office of Letitia James, Attorney General of the State of New York, who appears on behalf of the People of the State of New York as Plaintiff in this proceeding. I am duly authorized to make this verification and am acquainted with the facts in this matter.

2. I have read the annexed verified complaint, know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
September 21, 2022



Kevin Wallace

EXHIBIT B

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 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 C

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 D

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

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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.

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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 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, -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.

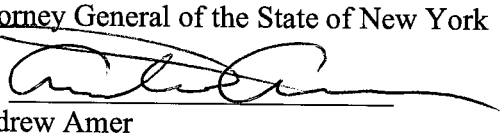
CONCLUSION

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,

LETITIA JAMES
Attorney General of the State of New York

By: 
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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
August 4, 2023

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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

EXHIBIT F

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

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

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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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 Appendix, the accompanying Affirmation of Colleen K. Faherty in Opposition, dated September 1, 2023 ("Faherty Opp. Aff."), and Response to Defendants' Rule 202.8-g Statement of Material Facts ("202.8-g Response") in opposition to Defendants' motion for summary judgment (NYSCEF No. 834).

PRELIMINARY STATEMENT

Defendants' motion is unmoored from the prior rulings in this case and the evidentiary record.

As if writing on a clean slate, Defendants argue that the Attorney General has no standing or capacity to bring this Executive Law § 63(12) enforcement action absent public harm, that the disclaimer language in Donald J. Trump's Statements of Financial Condition ("SFCs") provides them with a complete defense, and that the People cannot seek disgorgement. But these arguments have been rejected by this Court (twice) and the appellate division; they have no more merit now than they did before. Defendants' conduct in raising them again is frivolous.

Defendants similarly ignore the appellate division's ruling on how the statute of limitations applies. The undisputed evidence establishes that Defendants prepared false and misleading SFCs that they then submitted and certified as true to banks and insurers in business transactions in New York well after the beginning of the limitations period in July of 2014. All of that misconduct is actionable under § 63(12). Defendants argue that claims based on such conduct are nevertheless time-barred if the loan itself closed before the start of the limitations period, even if the SFCs are prepared, submitted, or certified within the limitations period. Defendants' position cannot be squared with the appellate division's holding that Plaintiff has timely claims arising from the preparation, submission, and/or certification of a false and misleading SFC that occurred during the limitations period. Defendants' interpretation leads to the untenable outcome that a borrower

on a long-term loan with annual financial disclosure requirements – like Defendants —is free to prepare, submit, and certify false or misleading financial statements without legal consequence so long as the loan closed before the limitations period began. To the contrary, each time Defendants prepared, submitted, and certified a false or misleading SFC to a bank within the applicable limitations period – *i.e.*, on or after July 13, 2014 – they engaged in a fraudulent business transaction giving rise to a timely claim. The record establishes that each Defendant engaged in multiple fraudulent business transactions during the limitations period, including through 2021; timelines for the five loans showing the numerous fraudulent transactions engaged in by Defendants within the limitations period are attached in the accompanying Appendix to this brief. As a result, all of Plaintiff's causes of action are timely as to all Defendants.

Turning to the merits of the § 63(12) fraud claim, the People are not required to show that the victims of Defendants' fraud were materially misled by the SFCs as Defendants argue, but rather merely that the challenged conduct has "the capacity or tendency to deceive" or "creates an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021). This standard is easily met.

As a threshold matter, Defendants assert facts in their supporting 202.8-g Statement (NYSCEF No. 836) that compel a finding that the SFCs were false and misleading. They acknowledge that assets may be valued on two very different bases, investment value ("as if") and market value or estimated current value ("as is"),[1] and that estimated current value reflects market conditions while investment value does not. They further contend that certain asset values listed

[1] Defendants' expert Dr. Steven Laposa confirmed at his deposition that "market value" is synonymous with "estimated current value." *See* Robert Aff. (NYSCEF No. 837), Ex. AAC at 90:5-91:13.

in the SFCs are stated at their *investment values,* reflecting Mr. Trump's investment requirements and divorced from market conditions. This is a fatal admission because it is undisputed that the SFCs themselves represent to users that all asset values are stated at their "estimated current value," reflecting market conditions. In other words, Defendants concede that the SFCs falsely describe the basis on which the asset values are presented – telling users the assets are "as is" values reflecting market conditions when they are (per Defendants' assertion) "as if" values. Defendants' admission that the SFCs misrepresent the asset values as something they are not is sufficient for the Court to find the SFCs are false and misleading without more.

In addition, as the People's detailed analysis of the *undisputed evidence* presented in their partial summary judgment motion establishes, regardless of the valuation methodology purportedly used, Defendants inflated many asset values by *hundreds of millions of dollars each year*. Defendants simply gloss over the deceptive practices they employed to inflate the values of the Triplex (by tripling the square footage), the Seven Springs Estate, 40 Wall Street, and Mar-a-Lago (by disregarding appraisals), the golf course in Aberdeen (by disregarding development restrictions), Vornado Partnership Properties and Trump Tower (by using the wrong capitalization rate), U.S. golf clubs (by adding an undisclosed "brand premium," including membership deposit liabilities that were represented to be valued at $0, and disregarding appraisals for TNGC LA and Briarcliff), Trump Park Avenue (by ignoring rent stabilization laws, option prices on Ivanka Trump's apartments, and internal Trump Organization current market values), cash and escrow deposits (by including amounts held by partnership interests over which Mr. Trump had no control), and real estate licensing developments (by including inchoate deals yet to be signed and management deals between Trump Organization affiliates that were not arms-length transactions).

These deceptive practices *inflated Mr. Trump's annual net worth by 17-39% at a minimum* – or between $812 million to $2.2 billion – depending on the year.

But the extent of Defendants' deception is far greater than what the People have laid out in their partial summary judgment motion relying just on the undisputed evidence. Based on the analyses of the People's valuation and accounting experts, which factor into Defendants' methodologies what market participants would consider when determining estimated current value, Mr. Trump's net worth is overstated by *billions* more. Among the factors the People's experts take into account to adjust the methodologies used by Defendants are: (i) discounting future income to present value; (ii) correcting for inconsistent methodologies; (iii) failing to account for relative risk and property-specific attributes; (iv) failing to account for development costs, (v) correcting for unsupportable market assumptions; and (vi) using income and expense information, mirroring the behavior of market participants, rather than fixed assets and a brand premium in valuing golf and club properties. After factoring in these and other fundamental considerations that any informed buyer and seller in the marketplace would take into account, Mr. Trump's net worth would be further *substantially reduced by between $1.9 billion to $3.6 billion* per year, which is still a conservative estimate of the extent of the inflation because the analysis by Plaintiff's valuation experts accepted many of the inputs and assumptions used by Defendants to derive the asset values in the SFCs that would otherwise be rejected in a full-blown appraisal review.

Based on this mountain of evidence establishing the extent to which Mr. Trump and his associates grossly and deceptively inflated his assets and net worth in the SFCs each year, and the undeniable fact that they submitted and certified the SFCs as true to banks and insurers, Plaintiff has clearly set forth evidence sufficient to establish at trial that Defendants engaged in fraudulent

business transactions with the capacity or tendency to deceive in violation of § 63(12) (if not as a matter of law based on the undisputed facts presented in Plaintiff's partial summary judgment motion, then certainly based on all of the evidence, including expert testimony, discussed here).

Similarly, Defendants' contention that all of Plaintiff's claims must fail because the counterparty banks and insurance companies were not harmed by, and did not rely upon, the SFCs is without legal support. It is settled law that the Attorney General is not required under § 63(12) to show reliance or harm. That is because the Legislature determined when enacting § 63(12) that the State is entitled to vindicate the public's strong interest in an honest marketplace without the need to show harm to, or reliance by, the victims of fraud.

But even if the People were required to show harm and reliance on a § 63(12) fraud claim (which is not the case), the notion that the banks and insurers here, each of which required financial disclosure of Mr. Trump's net worth as a condition of their continued business relationship with the Trump Organization, did not suffer any harm from, or rely upon, the false and misleading SFCs is easily refuted by the record. The SFCs were integral to the loans because of Mr. Trump's personal guarantee. The banks *required* their annual submission along with a certification as to their accuracy to obtain and maintain the loans. Indeed, Deutsche Bank's credit risk officer confirmed that the annual submission and certification of the SFCs were material to the Trump Organization's satisfaction of its continuing loan obligations. And the insurance underwriters similarly testified that they relied on financial information in the SFCs when assessing the risk presented during policy renewals. The *ipse dixit* testimony of Defendants' experts to the contrary is inadmissible as it lacks evidentiary foundation, and in all events cannot refute testimony from persons involved in the transactions and contemporaneous documents, including the governing agreements that make crystal clear the importance of the SFCs.

Finally, there is ample evidence to support the People's remaining claims under § 63(12) for making false entries in business records, falsifying financial statements, and committing insurance fraud, as well as conspiracy to commit these illegal acts. The evidence establishes beyond doubt that Defendants grossly inflated the value of many assets through deceptive practices, resulting in an overstatement of Mr. Trump's net worth by amounts that would be material to any user of the SFCs. And there is ample evidence to support a finding that Defendants had the requisite intent to defraud based on their numerous overt acts to conceal their deception from their accountants, banks, and insurers. Similarly, substantial evidence – both circumstantial and direct – establishes that each of the individual Defendants, and through their conduct the entity Defendants, engaged in numerous purposeful deceptive acts as part of a plan to (i) create false entries on business records and false financial statements by grossly inflating the value of assets listed on the SFCs in order to reverse engineer Mr. Trump's net worth to hit the target number desired by Mr. Trump, and (ii) submit the inflated SFCs to banks and insurers while attesting to their accuracy.

Copious evidence supports each of Plaintiff's claims. Accordingly, Defendants' motion should be denied.

STATEMENT OF FACTS[2]

Many of the facts material to opposing Defendants' summary judgment motion are already set forth in detail in the Statement of Facts section of the People's memorandum of law submitted

[2] The citations in this section use the following format: (i) cites to "202.8-g Statement ¶__" are to paragraphs in Plaintiff's 202.8-g Statement filed in support of Plaintiff's motion for partial summary judgment (NYSCEF No. 767); (ii) cites to "202.8-g Response ¶__" are to paragraphs in

in support of their motion for partial summary judgment (NYSCEF No. 766) and the accompanying 202.8-g Statement (NYSCEF No. 767). Plaintiff incorporates here by reference those prior filings and provides citations to Plaintiff's 202.8-g Statement rather than the underlying exhibits (unless exhibits are directly quoted) to avoid unnecessary repetition.

A. Preparation of the SFCs

Since at least 2011, Mr. Trump and Trump Organization employees have prepared an annual "Statement of Financial Condition of Donald J. Trump" that provides Mr. Trump's net worth as of June 30 for the year in question. (202.8-g Statement ¶1) The SFCs represent that "[a]ssets are stated at their estimated current values and liabilities at their estimated current amounts," consistent with GAAP. (Ex. 1 at -133; Ex. 2 at -310; Ex. 3 at -036; Ex. 4 at -716; Ex. 5 at -690; Ex. 6 at -1985; Ex. 7 at -1844; Ex. 8 at -2727; Ex. 9 at -792; Ex. 10 at -250; Ex. 11 at -420; 202.8-g Statement ¶29-35) The asset valuations for the SFCs were prepared by staff at the Trump Organization, working at the direction of Mr. Trump or the trustees of the Donald J. Trump Revocable Trust ("Trust"). (202.8-g Statement ¶5) The valuations were calculated in an Excel spreadsheet that was forwarded each year to the accounting firm preparing the SFC along with some supporting documents. (202.8-g Statement ¶6)

On May 18, 2021, Mazars, the accounting firm that had compiled the SFCs for 2011 through 2020, notified the Trump Organization that the firm was "resigning from all engagements with the Trump Organization and related entities." (Ex. 217) Subsequently on February 9, 2022,

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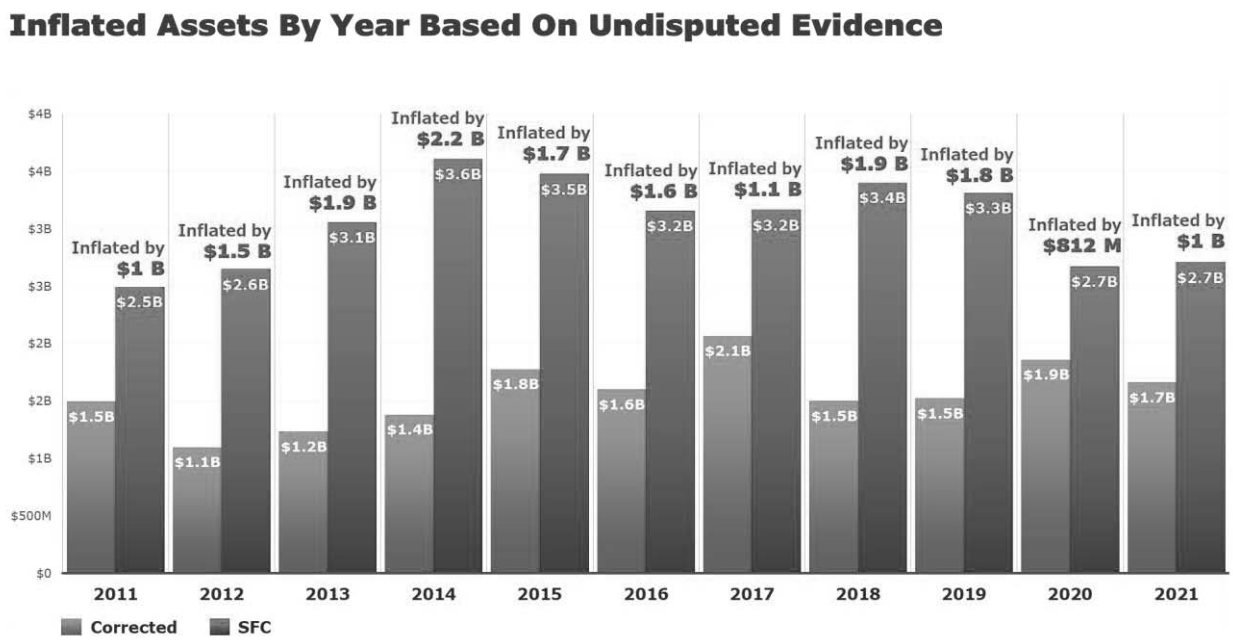
Plaintiff's Response to Defendants' 202.8-g Statement being served simultaneously with this brief; (iii) cites to "Ex. __" (from nos. 1 to 421) are to the exhibits listed and attached to the Faherty Affirmation previously filed in support of Plaintiff's motion for partial summary judgment (NYSCEF No. 768); and (iv) cites to "Ex. __" (starting with no. 1001) are to the exhibits listed and attached to the Faherty Opposition Affirmation accompanying this memorandum of law.

Mazars further informed the Trump Organization that the SFCs for the years 2011 to 2020 "should no longer be relied upon." (Ex. 218)

B. Inflation of Assets Based On The Undisputed Evidence

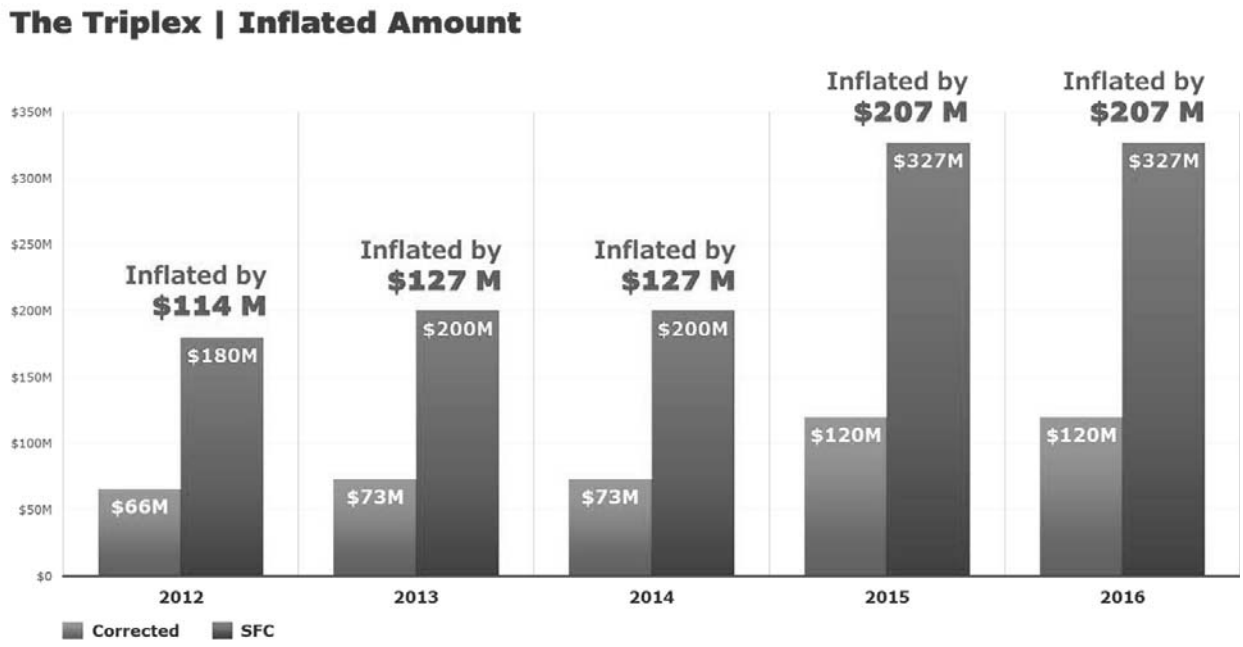
The undisputed evidence the People present in support of their motion for partial summary judgment establishes that many assets were grossly inflated by amounts that were material to any user of the SFCs, resulting in an overstatement of Mr. Trump's annual net worth by between 17-39%, or between $812 million to $2.2 billion, during the period 2011 to 2021, as shown in the graph below.[3]



[3]As discussed, *infra,* at 23-26, the People will present additional evidence at trial beyond the undisputed evidence supporting their partial summary judgment motion demonstrating Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SFCs based on the work done by Plaintiff's valuation experts in adjusting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value."

A description of each asset and the deceptive practices resulting in the inflated values established by the undisputed evidence is provided below.

The Triplex: In the years 2012 through 2016, the Triplex value was calculated based on multiplying a price per square foot as determined by the Trump International Realty Sales Office by an incorrect figure for the size of the Triplex of 30,000 square feet. (202.8-g Statement ¶37) In reality, the Triplex was 10,996 square feet. (202.8-g Statement ¶38) As a result of this error alone, the value of the Triplex reflected on each SFC from 2012 through 2016 was inflated by $114-$207 million as shown in the graph below. (202.8-g Statement ¶39)

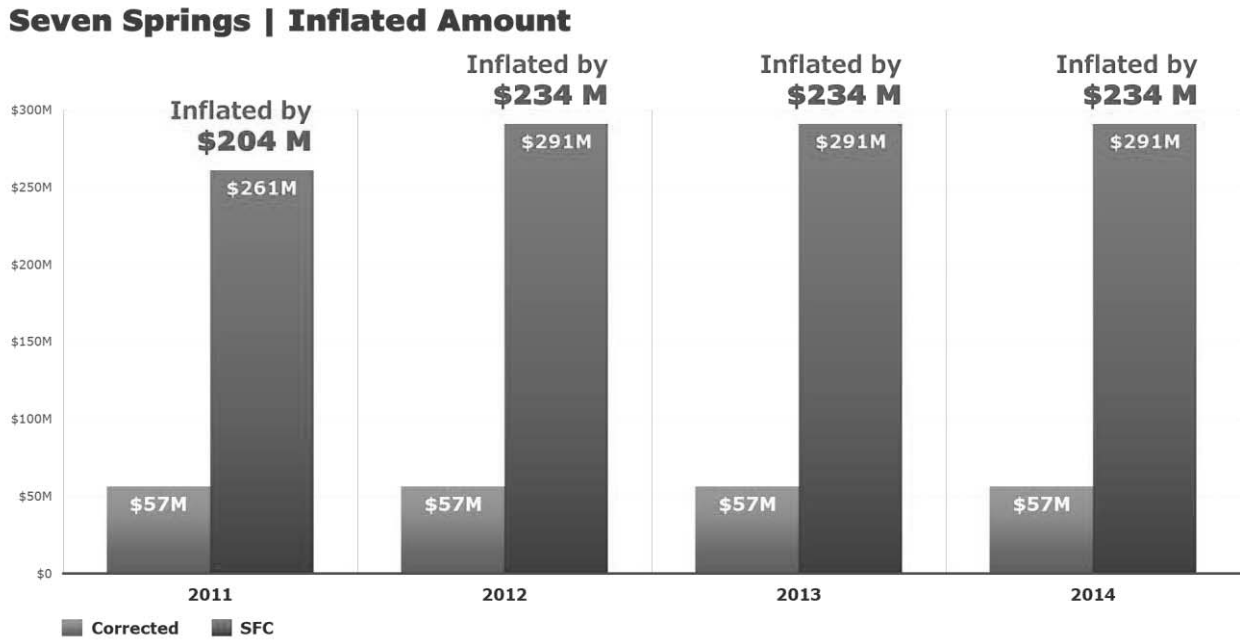


Seven Springs: Multiple appraisals of the property were prepared over the years, all of which were disregarded by the Trump Organization when valuing the property for the SFCs A 2000 appraisal prepared for the Royal Bank of Pennsylvania and sent to the Trump Organization estimated that Seven Springs had an "as-is" market value of $25 million for residential development. (202.8-g Statement ¶50) The same bank's records indicate that a 2006 appraisal showed an "as-is" market value of $30 million. (202.8-g Statement ¶51) Another appraiser retained

by Seven Springs LLC in late 2012 estimated the fair market value of a planned 6-lot subdivision on the portion of the property located in New Castle at around $700,000 per lot. (202.8-g Statement ¶55) In July 2014, an appraiser at Cushman & Wakefield ("Cushman") reached a present value for a 24-lot development plan of approximately $30 million and communicated his range to counsel for Seven Springs LLC in late August or September 2014, who then shared the range with Eric Trump months before Mazars finalized the 2014 SFC on November 7, 2014. (202.8-g Statement ¶59-63) Despite receiving values from professional appraisers in 2000, 2006, 2012, and 2014 putting the value of Seven Springs at or below $30 million, Mr. Trump wildly inflated the value of the property to $261 million in the 2011 SFC and $291 million for the SFCs from 2012 through 2014. (202.8-g Statement ¶73, 75)

In early 2016, the Trump Organization received from Cushman an appraisal of Seven Springs that valued the entire property as of December 1, 2015 at $56.5 million. (202.8-g Statement ¶67) In a concession that the appraised value was the proper amount to use as the value for the property in the SFC, Mr. Trump lowered the value of Seven Springs in the 2015 SFC to $56 million to match the Cushman appraisal. (202.8-g Statement ¶68) His trustees changed the value in subsequent years to $35.4 million for the period 2016 to 2018 and, based on another appraisal obtain by the Trump Organization, to $37.65 million for the period 2019 to 2021. (202.8-g Statement ¶69, 70)

Based on the highest appraised value of $56.5 million determined by Cushman in 2015, the property was vastly overvalued by more than $200 million in each year from 2011 through 2014 as shown in the graph below. (202.8-g Statement ¶75)



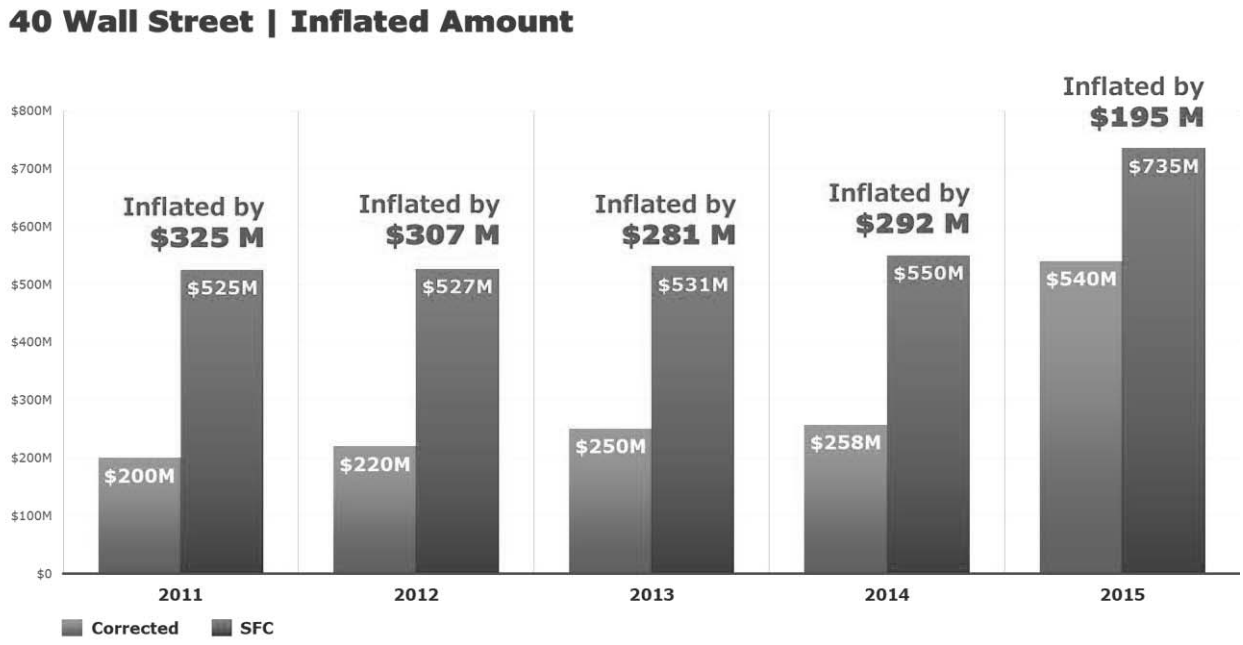
40 Wall Street: In connection with a loan modification, Cushman performed an appraisal in 2010 valuing the Trump Organization's interest in 40 Wall Street at $200 million as of August 1, 2010. (202.8-g Statement ¶78) Cushman performed similar appraisals for the bank in 2011 and 2012 reaching valuations of the Trump Organization's interest in the property of $200 million and $220 million, respectively. (202.8-g Statement ¶84, 85) Despite the values reached for 40 Wall Street in the $200-$220 million range by Cushman in its 2011 and 2012 appraisals, the 2011 SFC valued the property at $524.7 million and the 2012 SFC valued the property at $527.2 million – exceeding the appraised values by more than $300 million each year.[4] (202.8-g Statement ¶80, 88)

Cushman appraised the property again in 2015 for a different lender, reaching a value of

[4] The Trump Organization had the 2010 appraisal in its possession when Jeffrey McConney prepared the 2011 SFC, and Allen Weisselberg was specifically aware that an appraisal of 40 Wall Street from the 2010 to 2012 time period had valued the property in the $200-$220 million range prior to authorizing Mazars to issue the 2012 SFC. (202.8-g Statement ¶86, 87)

$540 million.[5] The Trump Organization was provided with a copy of the 2015 Cushman appraisal at the time it was prepared. Notwithstanding the appraised value of $540 million, the 2015 SFC valued the property at $735.4 million. (202.8-g Statement ¶104-108)

During the period 2011 to 2015, Mr. Trump valued his interest in 40 Wall Street in the SFCs at $195-$325 million more than the appraised values as shown in the graph below. (202.8-g Statement ¶114)

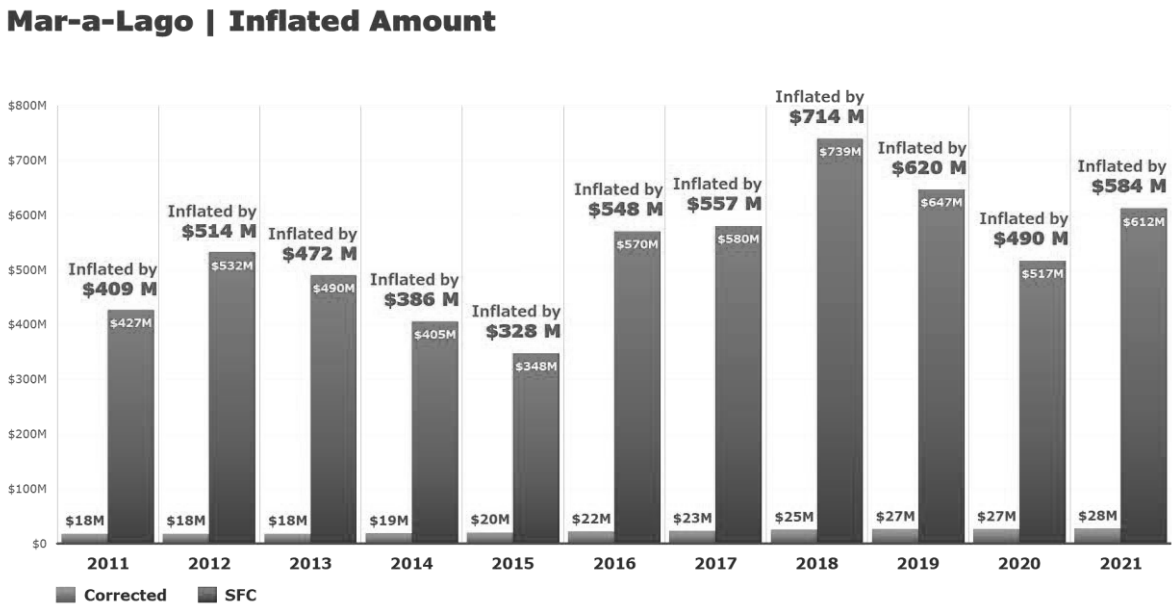


Mar-a-Lago: Mr. Trump won approval from Palm Beach to convert the property to a social club in 1993. (202.8-g Statement ¶146) Two years later he transferred the property to a wholly owned limited liability company and signed a Deed of Conservation and Preservation, giving up his rights to use the property for any purpose other than a social club ("1995 Deed"). (202.8-g

[5] This 2015 appraisal was improperly inflated, but Plaintiff does not dispute the amount of this appraisal for the purposes of this motion. Even taking the inflated value of this 2015 appraisal on its face proves that the value used by Mr. Trump for 40 Wall Street in the 2015 Statement was materially false.

Statement ¶147) Several years later, in 2002, Mr. Trump signed a deed of development rights conveying to the National Trust for Historic Preservation "any and all of [his] rights to develop the Property for any usage other than club usage" (the "2002 Deed"). (Ex. 94) As a result of that restriction, the club was taxed at a significantly lower rate. (202.8-g Statement ¶149)

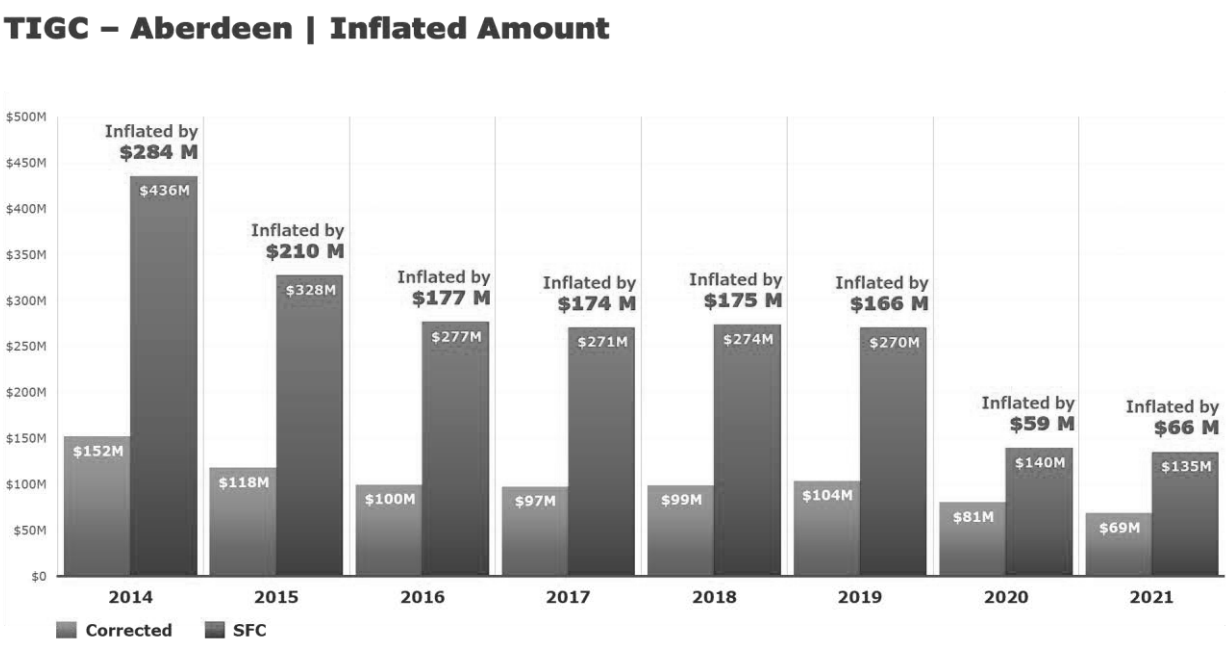
Disregarding these legal restrictions, Mr. Trump and his trustees valued the property during the period 2011 to 2021 between $347-$739 million on the basis that it was an unrestricted residential plot of land that could be sold and used as a private home. (202.8-g Statement ¶155, 159, 163, 167, 171, 175, 179, 183, 187, 191, 195, 200) In stark contrast to the wildly inflated values for Mar-a-Lago, the Palm Beach County Appraiser determined the market value of Mar-a-Lago for purposes of assessing property taxes was between $18-$27.6 million during the period 2011 to 2021. (202.8-g Statement ¶199) Property tax appraisals provide an appropriate basis under GAAP for determining estimated current value, which is the basis on which the SFCs purport to present the value of Mr. Trump's assets. (202.8-g Statement ¶198) The county appraiser's estimates of current value establish that the SFC values for Mar-a-Lago are inflated by $328-$714 million over the period 2011 to 2021 as shown in the graph below. (202.8-g Statement ¶200)



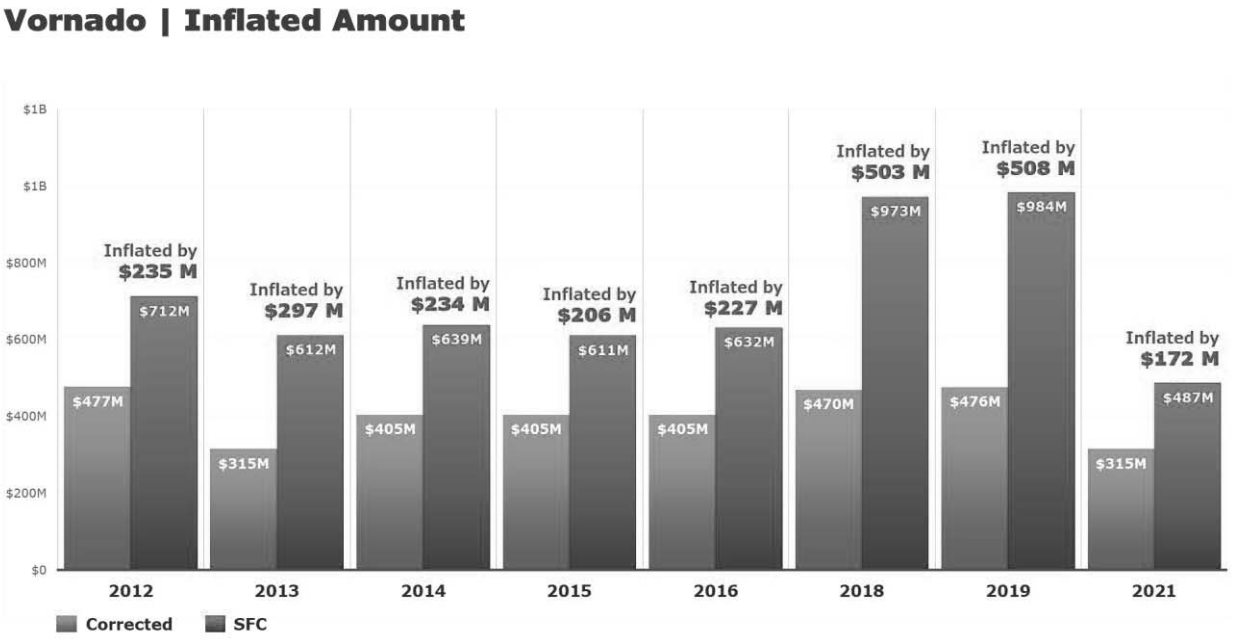
Aberdeen: The value assigned to the Trump International Golf Club in Aberdeen, Scotland in each year from 2011 to 2021 was comprised of two components: a value for the golf course and another value for the development of the non-golf course property, *i.e.*, the "undeveloped land." (202.8-g Statement ¶201) For the SFCs in 2014 through 2018, Jeffrey McConney and Allen Weisselberg valued the undeveloped land based on the assumption that 2,500 homes could be built and sold for £83,164 per home, for a value of £207,910,000. (202.8-g Statement ¶205) But the Trump Organization received planning permission under an initial proposal in December 2008 and a later revised proposal in September 2019 for only 500 unrestricted homes that could be sold. (Ex. 4 at -729; 202.8-g Statement ¶209-211, 214-17) Adjusting the values to correctly reflect the 500 private homes actually approved without restrictions, keeping all other variables constant, results in a reduction in the value of the undeveloped land component of Aberdeen of £166,328,000 in each year from 2014 to 2018, £164,196,704 for 2019, and £48,146,941 for 2020 and 2021. (202.8-g Statement ¶211, 219-20).

Applying the applicable exchange rate and accounting for an "economic downturn" reduction applied by the Trump Organization yields corrected values for Aberdeen that are $210-$284 million lower in 2014 and 2015, $166-$177 million lower in 2016 to 2019, and $59-$66 million lower in 2020 and 2021 as shown in the graph below.[6] (202.8-g Statement ¶222)

[6] For the years 2015 through 2019, the Trump Organization applied a "20% reduction due to economic downturn in the area" to the valuation of the undeveloped land component of Aberdeen. (202.8-g Statement ¶221) This same reduction was applied to the newly-calculated numbers based on using the correct number of approved homes.



Vornado Partnership Properties: Mr. Trump has a 30% limited partnership interest in entities that own office buildings in New York City and San Francisco located at 1290 Avenue of the Americas ("1290 AoA") and 555 California Street ("555 California"), respectively. (202.8-g Statement ¶223-225) For the SFCs from 2011 through 2021, Mr. Trump valued his interest in the properties by taking 30% of the values Messrs. McConney and Weisselberg calculated for 1290 AoA and 555 California that did not take into account existing appraisals for 1290 AoA prepared by outside appraisal firms in 2012 and 2021 and for two years used a cap rate taken from "comparable" buildings listed in their only cited source that was not the "stabilized" cap rate they stated they were using. (202.8-g Statement ¶239-242, 244, 246, 253-54, 258-60, 267, 270, 274, 276; Ex. 8 at -2741; Ex. 9 at -161806) The inflation of Mr. Trump's 30% interest in the properties due to disregarding the appraisals of 1290 AoA and using the wrong cap rate was between $172-508 million as shown in the graph below.



US Golf Clubs: The Clubs category of assets includes golf clubs in the United States and abroad that are owned or leased by Mr. Trump. (202.8-g Statement ¶284) The value for the golf clubs is presented in the SFCs each year from 2011 to 2021 in the aggregate, together with Mar-a-Lago. (202.8-g Statement ¶285) The undisputed evidence establishes that the aggregate value of the golf clubs was inflated as a result of three deceptive practices.

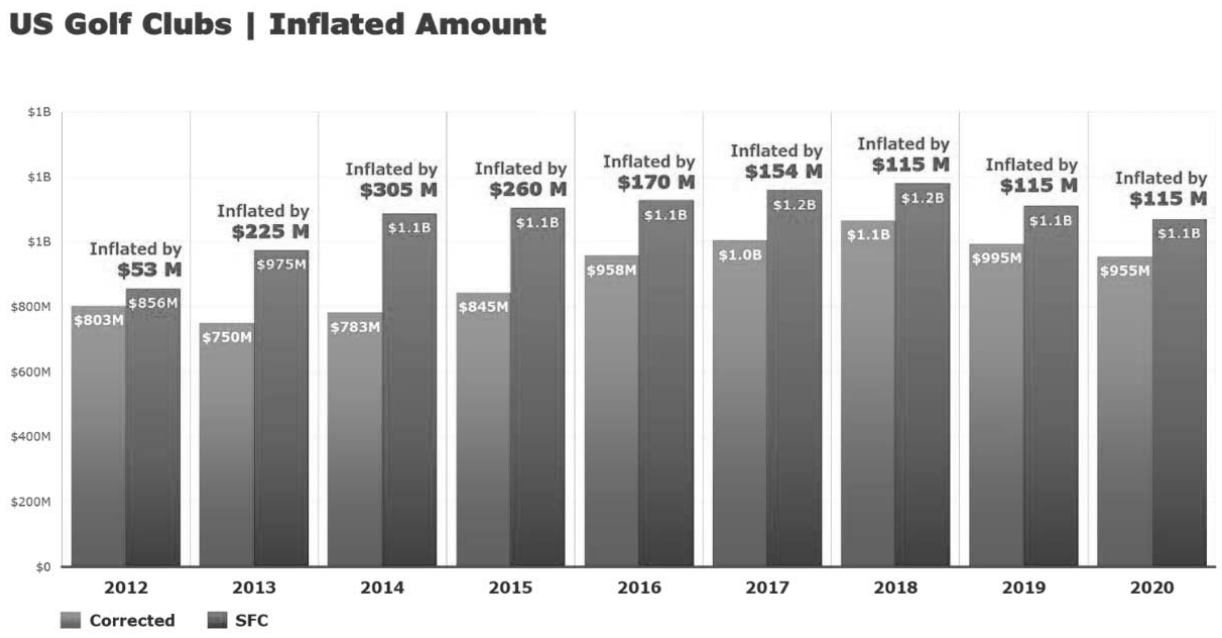
First, for many clubs in certain years, Mr. Trump added a 30% or 15% brand premium to the value – that is, the value of the club was increased by 30% or 15% because the property was completed and operating under the "Trump" brand.[7] (202.8-g Statement ¶305)

[7] Mr. Trump did not disclose in any of the SFCs that certain golf club values included a premium of 30% or 15% for the "Trump" brand. (202.8-g Statement ¶306) Rather, each SFC from 2011 to 2021 contained the following representation: "The goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." (Ex. 1 at -3136; Ex. 2 at -6313; Ex. 3 at -043; Ex. 4 at -723; Ex. 5 at -697; Ex. 6 at -1989; Ex. 7 at -1848; Ex. 8 at -2731; Ex. 9 at 1796; Ex. 10 at -2257; Ex. 11 at -6420)

Second, as part of the purchase of several club properties, Mr. Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits owed to existing club members. (202.8-g Statement ¶310) These liabilities for refundable memberships would need to be paid out only decades in the future, if at all. (202.8-g Statement ¶311) The SFCs represent that the liabilities resulting from these obligations are valued at $0. (202.8-g Statement ¶312) Contrary to this representation, in each year from 2012 to 2021, the Trump Organization included the face amount of the refundable membership deposit liabilities as a component of the value for many clubs. (202.8-g Statement ¶318)

Third, the valuations of TNGC Briarcliff and TNGC LA consisted of a valuation for the golf course and a valuation for the undeveloped land. (202.8-g Statement ¶288) The Trump Organization considered donating a conservation easement over parts of both properties and during that process received values from appraisers that Mr. Trump and his associates disregarded when preparing the SFCs. (202.8-g Statement ¶298, 302) From at least 2012 to 2016, the values assigned to TNGC Briarcliff and TNGC LA far exceeded the values determined by the appraisers.

Based on these deceptive practices, the values of the golf clubs were inflated by $115 million or more in all but one year and over $150 million in five years as shown in the graph below.



Trump Park Avenue: The valuation of the building in each year was based in part on inflated values calculated for unsold residential condominium units in the building using three deceptive practices. (202.8-g Statement ¶335)

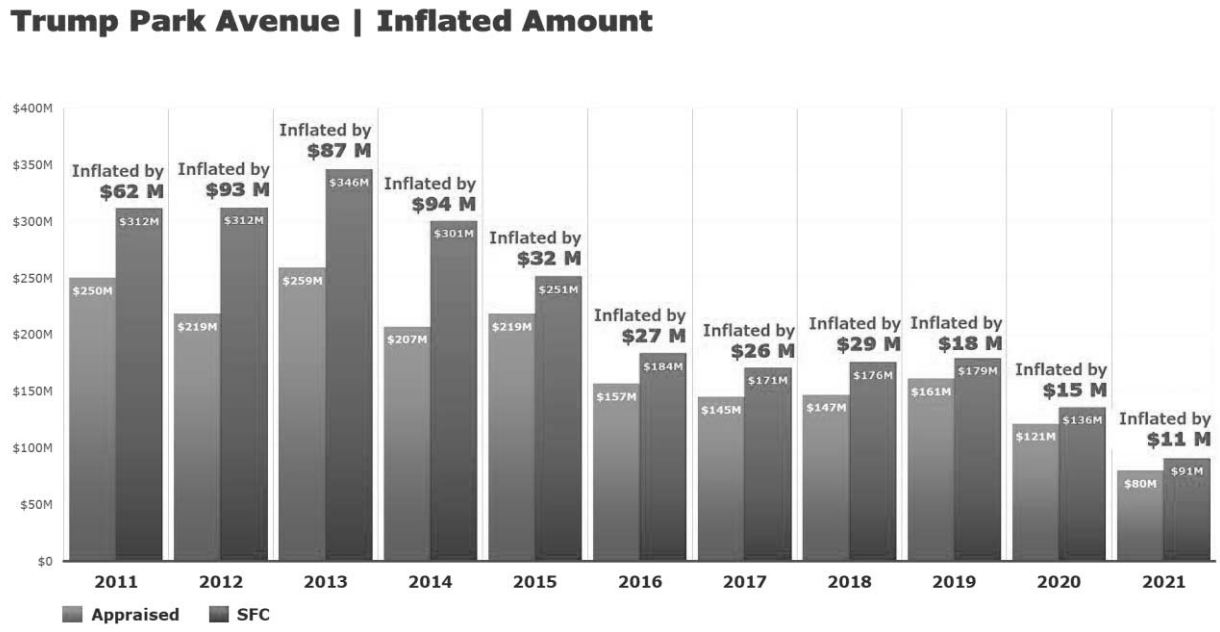
First, Mr. Trump and his trustees valued the unsold rent-stabilized units in the building (there were as many as 12 such units in 2011) as if they were freely marketable and not subject to rent stabilization laws at amounts that vastly exceeded the appraised value of $62,500 per unit. (202.8-g Statement ¶338, 341; Ex. 144 at -22)

Second, at least two of the unsold residential units not subject to rent stabilization laws were leased by Ivanka Trump and were valued at inflated amounts in the SFCs for a number of years over and above option prices agreed to by the Trump Organization in Ms. Trump's leases. (202.8-g Statement ¶364)

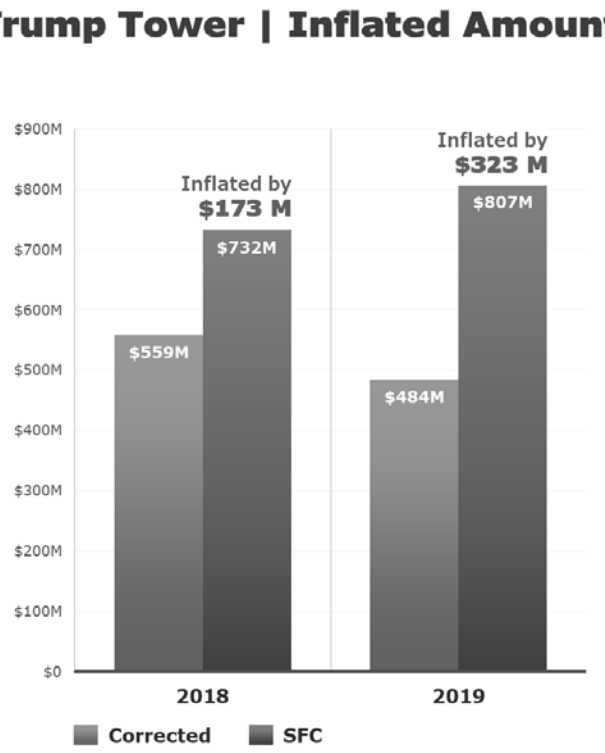
Third, in the SFCs from 2011 through 2015, the Trump Organization used the offering plan prices to value the remaining unsold residential condominium units rather than estimates of current

market value for these units developed by the Trump Organization's in-house real estate brokerage arm (Trump International Realty) for internal business purposes. (202.8-g Statement ¶372-74)

Based on these deceptive practices, the values for Park Avenue were inflated by $26-93 million in most years as shown in the graph below.

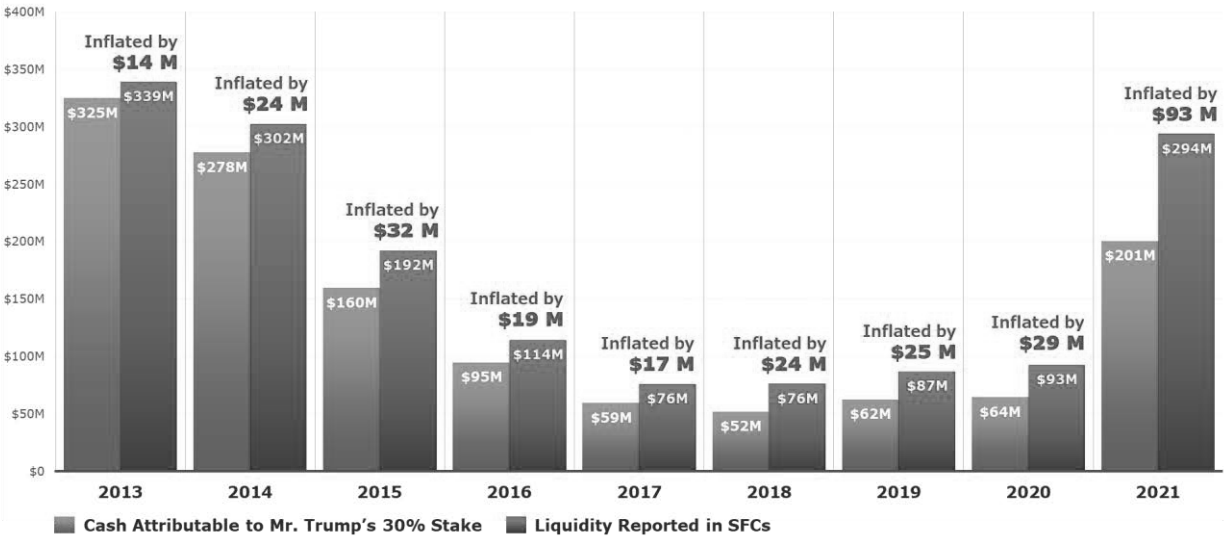


Trump Tower: In the 2018 and 2019 SFCs, the value of Trump Tower was calculated by applying a capitalization rate to the "stabilized net operating income," *i.e.*, by using a stabilized cap rate. (202.8-g Statement ¶266, 269; Ex. 8 at -729; Ex. 9 at -794) The supporting data shows that when calculating the value in both years, the Trump Organization used the wrong figure of 2.67% for the stabilized cap rate for 666 Fifth Avenue instead of the correct figure of 4.45%. (202.8-g Statement ¶260, 267, 270-71) Adjusting for this error reduces the value of Trump Tower by $173 million in 2018 and $323 million in 2019 as shown in the graph below. (202.8-g Statement ¶272)



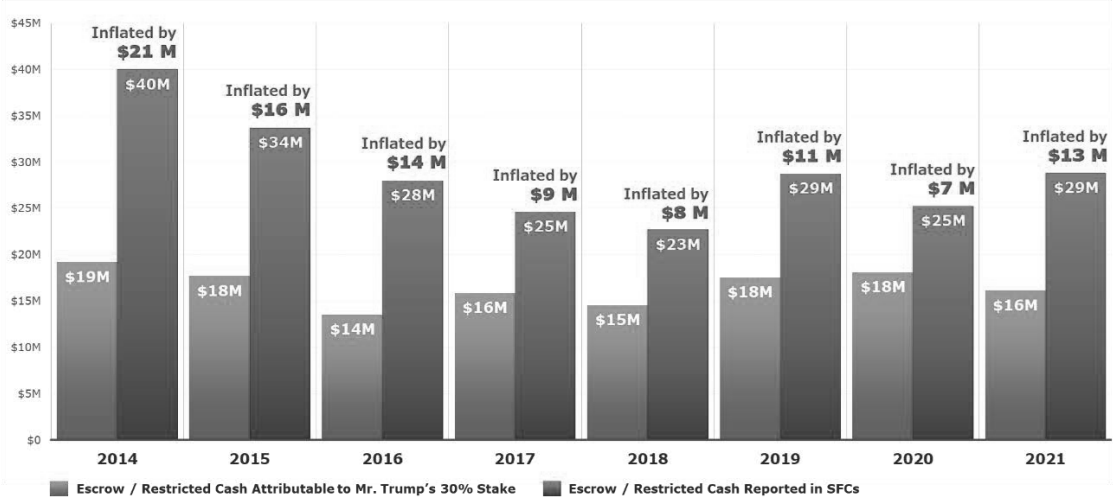
Cash and Escrow Deposits: As a general matter, when a GAAP-compliant financial statement reports "cash," it is referring to an amount of liquid currency or demand deposits available to the person or entity whose finances are described in the SFC. (202.8-g Statement ¶384, Ex. 181) For the SFCs covering 2011 to 2021, the value of the "cash" reflected in the SFCs included cash amounts held by the Vornado Partnership Interests. (202.8-g Statement ¶386) Mr. Trump has a 30% limited partnership stake in the Vornado Partnership Interests without the right to use or withdraw funds held by the partnership. (202.8-g Statement ¶387) Under GAAP, the cash held by Vornado Partnership Interests should not have been included as Mr. Trump's cash, and falsely inflates the SFCs by $277 million in the aggregate over the period 2013 to 2021 as shown in the graph below. (202.8-g Statement ¶403)

Cash | Inflated Amount



Similarly, the SFCs from 2014 to 2021 included in the total for the "escrow and reserve deposits and prepaid expenses" category of assets 30% of the escrow deposits or restricted cash held on the balance sheets of the Vornado Partnership Interests. (202.8-g Statement ¶407) Under GAAP, the escrow and restricted cash amounts held by Vornado Partnership Interests should not have been included and falsely inflate the SFCs by $99 million in the aggregate over the period 2014 to 2021 as shown in the graph below. (202.8-g Statement ¶417, 418)

Escrow | Inflated Amount

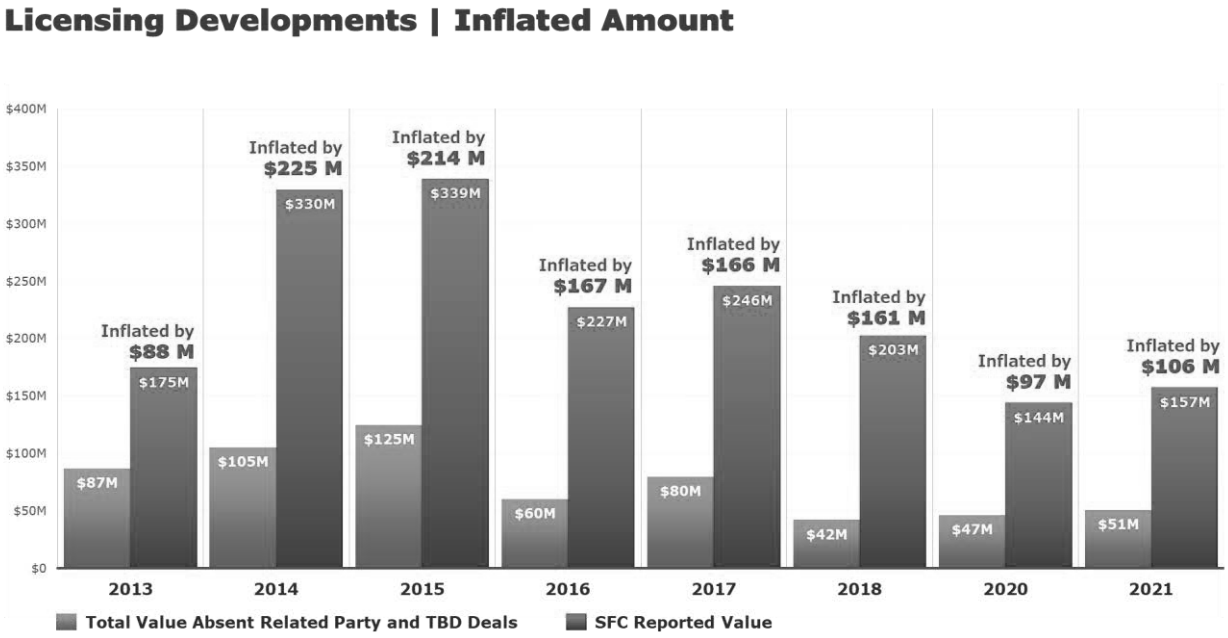


Real Estate Licensing Developments: The asset category entitled "Real Estate Licensing Developments" is represented to value "*associations with others* for the purpose of developing properties" and the cash flow that is expected to be derived from "*these associations* as their potential is realized" and to include "only situations which have evolved to the point *where signed arrangements with the other parties exist* and fees and other compensation which will be earned are reasonably quantifiable." (202.8-g Statement ¶420; *e.g.*, Ex. 1 at -3150 (emphasis added); Exs. 3-13 at n.5 (emphasis added)) However, Mr. Trump and his trustees inflated the value of this asset category employing two deceptive practices.

First, they included in this asset category from 2015 to 2018 speculative, unsigned deals as components of the value—deals expressly identified on internal Trump Organization financial records supporting the valuation as "TBD," *i.e*. to be determined. (202.8-g Statement ¶422) These TBD deals were not signed arrangements that "existed" and for which compensation was "reasonably quantifiable" as the SFCs represented was the case for deals included within this asset category. (202.8-g Statement ¶424)

Second, the Trump Organization included in this category deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, and Trump Chicago—deals in accounting parlance that are known as "related party transactions" because they are not arms-length deals in the marketplace but rather deals between affiliates. (202.8-g Statement ¶426) Including these related party transactions was contrary to the representation in the SFCs that this category included only the value derived from "associations with others," not agreements among and between Trump Organization affiliates. (202.8-g Statement ¶427)

Excluding the TBD deals and internal Trump Organization agreements reduces the value of this asset category by more than $100 million in all but one year as shown on the graph below.



C. Additional Substantial Inflation of Assets

There is far more evidence beyond just what is *undisputed* that the People will present at trial, as necessary, to establish the enormous extent to which Mr. Trump's net worth was overstated in each year from 2011 to 2021. As described below, based on the work done by Plaintiff's valuation experts in adjusting the SFC valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value," Mr. Trump's net worth in any year during the period 2011 and 2021 was inflated by *$1.9-$3.6 billion*.

Plaintiff's valuation expert Constantine Korologos analyzed the valuation methodologies used in the Defendants' "estimated current values" conclusions, and adjusted them giving consideration for inconsistencies, omissions, non-market methodologies applied, and factually incorrect assumptions, for certain real estate properties listed in Mr. Trump's SFCs for each of the years 2011 through 2021. (Ex. 1012 ¶ 1) Mr. Korologos concluded that "[t]he values of certain assets listed in the [SFCs] contain inconsistencies, omissions, and misleading information, and do not utilize methodologies and procedures used by informed buyers and sellers in the marketplace

and are therefore unreliable and misleading." (Ex. 1012 ¶ 15) By taking Defendants' valuations as a starting point and adjusting for discernable factual or methodological errors (such as Defendants' failure to discount cash flows to estimate current value, use of low unsupported cap rates, and use of incorrect square footage values), Mr. Korologos concluded that these adjustments resulted in "significant reduction in value for the assets that [he] assessed." (Ex. 1012 ¶ 15) Mr. Korologos then calculated a range of values reflecting the minimum estimated overstatement of value for each of the properties he considered. (Ex. 1012 ¶¶ 87 (40 Wall Street), 105 (Trump Tower), 119 (Niketown), 135 (Trump Park Avenue), 152 (Vornado Partnerships), 165 (Seven Springs), 177 (Triplex), 188 (TNGC-LA Subdivision), 198 (TNGC-Briarcliff Subdivision), 219 (Aberdeen Residential Development))

Plaintiff's golf course valuation expert Laurence Hirsh similarly identified significant discrepancies between the valuation methods employed by Defendants when valuing golf and club properties on Mr. Trump's SFCs and "generally accepted valuation methodology" used by buyers and sellers of such properties. Specifically, Mr. Hirsh identified that Defendants improperly:

- failed to analyze club income and expenses;
- failed to support their valuations with comparable market data;
- used inappropriate valuation methodologies that would not be used by an informed, willing buyer in the marketplace;
- improperly valued clubs based on "fixed assets" that were inflated by an improper brand premium;
- omitted management and capital reserve expenses;
- failed to acknowledge deferred maintenance or age of club infrastructure or components;
- ignored deed and easement restrictions;
- wrongly treated membership refunds as worth $0 when calculating liabilities (even while including refundable membership liabilities at full

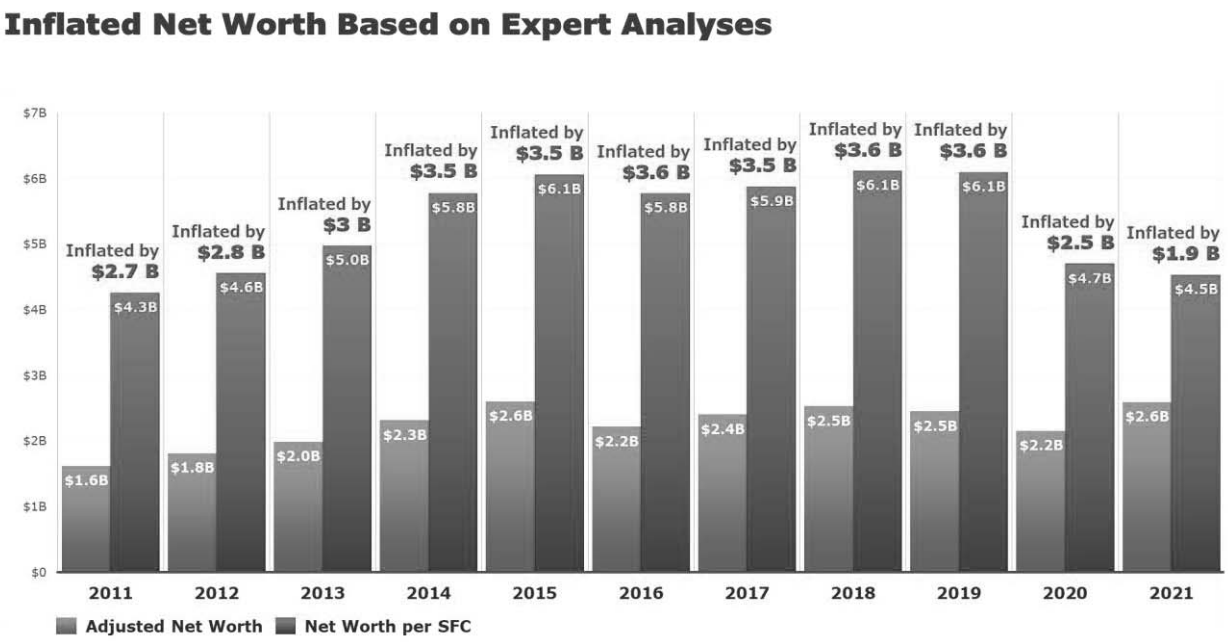
face value as a component of fixed asset value when valuing these properties);

- relied on inflated entrance fees;
- ignored the impact of leasehold values (which are likely to be significantly lower than fee simple values); and
- disregarded contemporaneous appraisals that valued the same properties at much lower values.

(Ex. 1013 at 15-24) Using the SFC valuations as a starting point and adjusting for identifiable errors, Mr. Hirsh concluded that the SFCs "contain gross overstatements of golf club property values, which would likely be greater once an analysis of membership refund liability is completed and once an analysis of deferred maintenance was done." (Ex. 1013 at 43) Mr. Hirsh then estimated a range of potential value overstatements by applying valuation methodologies accepted in the golf property marketplace to Defendants' own data, including the application of a market-based capitalization rate to net operating income for profitable courses and clubs (the Overall Rate or "OAR" method) and the application of a Gross Income Multiplier (or "GIM" method) to revenues for properties, including those with a negative cash flow. (Ex. 1013 at 9-10, 12-13) Mr. Hirsh concluded that "[c]umulative value differences for the properties range from roughly $655.3 million to $1.45 Billion (OAR) and $740.3 million to $1.3 Billion (GIM), depending on the year examined." (Ex. 1013 at 43-48)

* * *

Based on the analyses performed by Plaintiff's valuation experts, the resulting reduction to Mr. Trump's net worth is between $1.9-$3.6 billion per year over the period 2011 to 2021 as shown in the graph below, which is billions less than what Mr. Trump reported in his SFCs. (Ex. 1012 at App. Exs. 1-16; Ex. 1013 at 33-34, 39-40)



D. Other Violations of GAAP

In addition to employing the numerous quantifiable deceptive schemes discussed above that grossly and falsely inflated the value of his assets in the SFCs, Mr. Trump and his associates—notwithstanding the representation that the SFCs were GAAP-compliant—violated GAAP in the preparation of the SFCs in numerous other material ways, as detailed below based on both the undisputed evidence and the analysis performed by Prof. Lewis.

As explained by Prof. Lewis, personal financial statements are required to include sufficient disclosure of GAAP departures to make the statements adequately informative. (Ex. 1014 at ¶¶63-64) Prof. Lewis determined that the following departures from GAAP were not disclosed in the SFCs: (i) the inclusion of an internally generated brand premium in valuing golf course properties; (ii) the failure to properly record cash; (iii) the failure to properly record escrow and reserve deposits; (iii) the failure to properly disclose changes in valuation methodology for certain properties from year to year; (iv) the failure to determine present value of projected future income when including the income in a valuation; and (v) the failure to disclose the details of

related party transactions. (Ex. 1014 at ¶64, 67) The failure to disclose these GAAP deviations had a material impact on the users of the SFCs. (Ex. 1014 at ¶68)

E. Submission of the False SFCs to Banks and Insurers

1. Loans From the Deutsche Bank PWM Division

Starting in 2011, Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank. (202.8-g Statement ¶440). Rosemary Vrablic, a Managing Director at the bank in the PWM division, confirmed the need for recourse in PWM loans in the form of a personal guarantee as part of any loan application. (202.8-g Statement ¶442) By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his SFCs, Mr. Trump was able to apply to the PWM division for, and obtain for the Trump Organization, loans with significantly lower interest rates than would otherwise have been available through the Commercial Real Estate ("CRE") division at Deutsche Bank or from commercial real estate lending groups at other banks. (202.8-g Statement ¶444) Through at least 2021, Defendants used the SFCs to secure loans and satisfy annual loan obligations necessary to maintain the loans through the PWM division as described in summary below, recognizing that these facts are fully set forth in Plaintiff's 202.8-g Statement.

a. The Doral Loan

Mr. Trump first pursued a loan from Deutsche Bank for Doral through the CRE division of Deutsche Bank (202.8-g Statement ¶456-57; Ex. 244) On November 21, 2011, the CRE division offered the Trump Organization a $130 million loan at LIBOR + 800 basis points, with a LIBOR floor of 2 percent—a minimum 10% interest rate. (202.8-g Statement ¶461) The Trump Organization did not accept those terms and continued to look elsewhere for financing for Doral, including the bank's PWM division. (202.8-g Statement ¶462-63)

On December 15, 2011, in response to a request from Ivanka Trump, Ms. Vrablic sent Ms. Trump a term sheet proposing a $125 million loan with recourse through a personal guarantee by Mr. Trump of all principal and interest due on the loan and the operating expenses of the resort. (202.8-g Statement ¶465-66) The proposal also included a number of covenants, including requirements that Mr. Trump maintain a minimum net worth of $3 billion and unencumbered liquidity of $50 million. (202.8-g Statement ¶467) An internal credit report dated December 20, 2011, noted the loan will be "supported by a full and unconditional guarantee provided by DJT of (i) Principal and Interest due under the Facility, and (ii) operating shortfalls of the Resort . . . ." (Ex. 266 at -1691) The credit memo listed this guarantee as a source of repayment, and recommended approval of the loan. (202.8-g Statement ¶475)

The loan was approved through the PWM division and closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC personally guaranteed by Mr. Trump. (202.8-g Statement ¶477) Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter. (202.8-g Statement ¶478) The loan agreement, signed by Mr. Trump, recited that Mr. Trump's June 30, 2011 SFC had to be provided to the bank as a precondition of lending. (202.8-g Statement ¶479) In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of the financial information in his SFC. (202.8-g Statement ¶480) Similarly, issuance of the loan was subject to several conditions precedent, including that "[t]he representations and warranties of Borrower contained in this Agreement and in all certificates, documents and instruments delivered pursuant to this Agreement and the Loan Documents shall be true and correct on and as of the Closing Date." (202.8-g Statement ¶482; Ex. 254 at -5911)

Pursuant to the guarantee, Mr. Trump was required to maintain $50 million in unencumbered liquidity, and a minimum net worth of $2.5 billion to be "tested and certified to on

an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g Statement ¶486; Ex. 232 at -4180) Mr. Trump was required to deliver to the bank his annual SFC with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶489; Ex. 232 at -4180-81, 4189-90) False certifications were expressly identified as events of default under the loan agreement. (202.8-g Statement ¶490)

In connection with the Doral Loan, Mr. Trump submitted SFCs to Deutsche Bank accompanied by the required certifications for the years 2014 through 2021 (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as attorney-in-fact for Mr. Trump). (202.8-g Statement ¶493) Deutsche Bank conducted annual reviews of the Doral loan in July 2013, May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶494) The loan remained outstanding until May 2022, when the Trump Organization refinanced the loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank. (202.8-g Statement ¶495)

b. The Chicago Loan

Roughly contemporaneously with the Doral loan's closing in June 2012, the Trump Organization sought another loan from the PWM division at Deutsche Bank in connection with the Trump Chicago property—in essence, a refinancing of an existing $130 million from the CRE division at Deutsche Bank on that property. (202.8-g Statement ¶499) Dueling proposals for the Trump Chicago property within Deutsche Bank were under discussion in March 2012. (202.8-g Statement ¶500) One proposal from the CRE division was for a non-recourse (meaning, no personal guarantee) loan facility with a two-year term and an interest rate of LIBOR plus 800 basis points. (202.8-g Statement ¶501) The other proposal from the PWM division was for a loan facility

with a two-year term and *a personal guarantee* at LIBOR plus 400 basis points—so, at an interest rate that was four percentage points lower. (202.8-g Statement ¶502)

In October 2012, the PWM division recommended approval of a loan of up to $107 million to 401 North Wabash Venture LLC, guaranteed personally by Mr. Trump. (202.8-g Statement ¶504) Given the mixed nature of the hotel-condo property, the loan was broken down into two facilities: (i) Facility A for the residential portion was for up to $62 million, for a 4-year term, at a rate of LIBOR plus 3.35%; and (ii) Facility B for the hotel portion was for up to $45 million, for a 5-year term, at a rate of LIBOR plus 2.25%. (202.8-g Statement ¶505) For both facilities, a source of repayment was "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the Collateral." (202.8-g Statement ¶506; Ex. 228 at -68524)

The PWM division credit memo for the loan assessed Mr. Trump's 2011 and 2012 SFCs, stating: "Although Facilities are secured by the Collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g Statement ¶508; Ex. 228 at -68526) The loans under the two facilities closed on November 9, 2012, and both included personal guarantees by Mr. Trump supported by his 2011 and 2012 SFCs. (202.8-g Statement ¶509) The terms of each facility's personal guarantees were materially identical to the Doral guarantee, including the requirement that Mr. Trump maintain a minimum net worth, based upon his SFC, of $2.5 billion, and provide an annual SFC to the bank accompanied by an executed compliance certificate certifying that the SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶515; Ex. 277 at -38880-81; Ex. 276 at -3232-33)

Deutsche Bank conducted annual reviews of the Trump Chicago facilities in May 2014, July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶520) Based upon the purported strength of Mr. Trump's financial profile, the Trump Organization requested an additional $54 million in loan funds from Deutsche Bank to be "fully guaranteed by Mr. Trump for all principal, interest and operating shortfalls until the balance of the facility is less than $45 million (34% LTV)." (202.8-g Statement ¶522; Ex. 265 at -1741) The credit memo recommending approval of this increase in loan funds did so, in part, based on the "Financial Strength of the Guarantor." (202.8-g Statement ¶523) Amended loan documents advancing the additional requested funds closed on June 2, 2014. (202.8-g Statement ¶524)

As with earlier credit memos, this 2014 credit memo (which also recommended approval for the $170 million loan in connection with the Old Post Office discussed below) evaluated Mr. Trump's SFCs. (202.8-g Statement ¶525) In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 SFCs, stating: "Although Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." (202.8-g Statement ¶526; Ex. 265 at -1752)

These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's SFCs that were substantially similar to those described above for the Doral and 2012 Trump Chicago loan facilities. (202.8-g Statement ¶528) In the amended Trump Chicago guarantee, Mr. Trump certified that his 2013 SFC was true and correct in all material respects and that the SFC "presents fairly Guarantor's financial condition as of June 30, 2013." (202.8-g Statement ¶528; Ex. 281 at -3191) Either Mr. Trump, Eric Trump, or the trustees of the Trust (depending on the year) certified the accuracy of the SFCs submitted in connection with the Trump Chicago loan facilities between 2013 through 2021, either through the

execution of an amended guarantee or through the submission of a compliance certificate. (202.8-g Statement ¶530)

c. The OPO Loan

In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of The Old Post Office in Washington, DC after the Trump Organization was selected by the U.S. General Services Administration in February 2012 to redevelop the property and signed a lease for that purpose on August 5, 2013. (202.8-g Statement ¶533, 534, 542)

In advance of executing the lease, the Trump Organization reached out to the CRE division at Deutsche Bank about potential financing for the project. (202.8-g Statement ¶543) By October 2013, the CRE division had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points. (202.8-g Statement ¶545) The next month, in November 2013, employees at the Trump Organization took that offer to the PWM division to see if that division could offer more favorable terms. (202.8-g Statement ¶546) Ultimately the Trump Organization and the PWM division agreed on a term sheet that was executed on January 13 and 14, 2014 providing for a $170 million loan with a 10-year term, 100% personal guarantee by Mr. Trump, interest rates of LIBOR + 2% or 1.75% (depending on the period), and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500 million. (202.8-g Statement ¶549) Mr. Trump, as guarantor, would be required to provide his annual SFC to the bank. (202.8-g Statement ¶550)

A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. (202.8-g Statement ¶551) This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 SFCs. (202.8-g Statement ¶552) Mr. Trump's net worth and his

SFCs were critical to the bank's approval of the final terms of the loan, which closed on August 12, 2014. (202.8-g Statement ¶553)

As with the Doral and Trump Chicago loans, the loan agreement for the OPO loan required that Mr. Trump's most recent SFC (which was his 2013 SFC) be provided to the bank as a condition of the loan. (202.8-g Statement ¶554) The loan agreement required that Mr. Trump certify to the accuracy of the 2013 SFC and represent that no information contained in any loan document or in "any written statement furnished by or on behalf of Borrower or any other party pursuant to the terms of the" loan or associated documents "contains any untrue statement of material fact or omits to state a material fact necessary to make any material statements contained herein or therein not misleading in light of the circumstances under which they were made." (202.8-g Statement ¶555; Ex. 233 at -4991) Mr. Trump's personal guarantee on the OPO loan, which he signed, is dated August 12, 2014 – the same date that the loan closed. (202.8-g Statement ¶559)

Mr. Trump's personal guarantee contained the same financial representations included in the guarantees for the prior PWM loans, including that Mr. Trump's submitted personal financial statement (here the 2013 SFC) "presents fairly Guarantor's financial condition" as of the date indicated, and required Mr. Trump to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the Statement of Financial Condition delivered to Lender during each year." (202.8-g Statement ¶560-61) The bank conducted annual reviews of the OPO loan in July 2015, July 2016, July 2017, July 2018, September 2019, July 2020, and July 2021. (202.8-g Statement ¶565)

2. 40 Wall Street Loan From Ladder Capital

In approximately November 2015, the Trump Organization (through Defendant 40 Wall Street LLC), working with Mr. Weisselberg's son, a Director at Ladder Capital Finance ("Ladder

Capital"), refinanced a $160 million mortgage with Capital One Bank on the office building property at 40 Wall Street. (202.8-g Statement ¶579-80, 583) The Ladder Capital loan required Mr. Trump to maintain a net worth of at least $160 million and liquidity of at least $15 million. (202.8-g Statement ¶593) In connection with those covenants, Mr. Trump was required to provide his annual financial statements "prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." (202.8-g Statement ¶597; Ex. 328 at 3076-77) Internal documents indicate that Ladder Capital underwrote the $160 million loan based in part on Mr. Trump's reported net worth of $5.8 billion as set forth in the 2014 SFC. (202.8-g Statement ¶589-92)

3. Seven Springs Loan from RBA/Bryn Mawr

In 2000, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America ("RBA"), later acquired by Bryn Mawr Bank in 2017. (202.8-g Statement ¶599) Mr. Trump personally guaranteed the mortgage. (202.8-g Statement ¶600) As a result of the personal guarantee, Mr. Trump's SFCs were submitted to RBA/Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. (202.8-g Statement ¶601) A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 SFCs. (202.8-g Statement ¶603) Bryn Mawr retained in its files Mr. Trump's SFCs for 2010 through 2016. (202.8-g Statement ¶605)

Typically, the SFCs were sent under the cover of a letter from Mr. McConney, stating that Mr. Trump's SFC was being provided pursuant to the mortgage. (202.8-g Statement ¶606) Submission of the SFCs was required in order to maintain the loan and to obtain a series of extensions. (202.8-g Statement ¶607) For example, the bank approved extensions of the maturity date of the loan in 2011, 2014, and 2019 in reliance upon Mr. Trump's SFCs submitted pursuant

to Mr. Trump's personal guarantee. (202.8-g Statement ¶608) In connection with seeking these extensions, Mr. Trump re-affirmed his personal guarantee in 2011 and 2014, and in 2019 the guarantee was re-affirmed in a certification signed by Eric Trump "as attorney in fact" for Donald J. Trump. (202.8-g Statement ¶609) The personal guarantee for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. (202.8-g Statement ¶610-12)

4. Surety Insurance from Zurich

From 2007 through 2021, Zurich North America ("Zurich") underwrote a surety bond program (the "Surety Program") for the Trump Organization through insurance broker AON Risk Solutions ("AON"). (202.8-g Statement ¶617) Under the Surety Program, Zurich issued surety bonds on behalf of the Trump Organization within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. (202.8-g Statement ¶618) Over the course of the relationship, in accordance with its standard underwriting guidelines for surety business, Zurich required the Trump Organization to provide an indemnification against any loss should Zurich be required to pay under a bond. (202.8-g Statement ¶621) From the inception of the Surety Program, the Trump Organization met this indemnification requirement through a General Indemnity Agreement ("GIA") executed by Mr. Trump, pursuant to which (similar to a personal guarantee on a loan) he personally agreed to indemnify Zurich for claims under the Surety Program. (202.8-g Statement ¶622, 679) As specified in the term sheet Zurich provided to AON, the indemnity arrangement included as a condition of coverage an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements, which was through an on-site review of the SFC at Trump Tower. (202.8-g Statement ¶623)

During the on-site reviews for the 2019 and 2020 renewals, Zurich's underwriter Claudia Markarian was shown the then-current SFC, which listed as assets real estate holdings with

valuations that Mr. Weisselberg represented to her had been determined each year by a professional appraisal firm. (202.8-g Statement ¶626, 638-39) Ms. Markarian considered the valuations to be reliable based on this representation, which factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program each year on the existing terms, which it did. (202.8-g Statement ¶627-28, 640-41) During her on-site reviews of the SFCs, Ms. Markarian also relied on the amount of cash on hand listed in the SFCs as an indication of Mr. Trump's liquidity, which was important to her underwriting analysis as it represented the funds available to repay Zurich in the event Zurich had to pay on a surety bond issued under the program. (202.8-g Statement ¶631, 644) She also considered favorably Mr. Weisselberg's representations during her on-site reviews that the property values in the SFCs did not significantly vary year over year as that indicated stability. (202.8-g Statement ¶634-35, 647-48)

Contrary to Mr. Weisselberg's representations, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the SFCs, and the property values did vary significantly year over year for certain properties. (202.8-g Statement ¶629, 636, 649) Moreover, unbeknownst to Ms. Markarian, the amount of cash listed in the SFCs was inflated because it included cash held by Vornado Partnership Interests that was not within Mr. Trump's control. (202.8-g Statement ¶403) The Trump Organization also failed to disclose to any of the Zurich underwriters that the valuation for many of the golf courses listed on Mr. Trump's SFCs within the "Clubs" category included a Trump brand premium, which under Zurich's underwriting guidelines would have to be excluded as an intangible asset. (202.8-g Statement ¶651-52)

5. D&O Insurance from HCC

As of December 2016, the Trump Organization had in place Directors & Officers ("D&O") liability coverage consisting of a single primary policy providing a limit of $5,000,000 at a premium of $125,000, expiring on February 17, 2017. (202.8-g Statement ¶653) To obtain that

coverage, similar to the process for obtaining surety coverage from Zurich, the Trump Organization provided D&O underwriters access to Mr. Trump's SFCs through a monitored in-person review at Trump Tower. (202.8-g Statement ¶654)

In advance of the February 2017 policy expiration, the broker scheduled a "D&O Underwriting Meeting" at Trump Tower on January 10, 2017 between Trump Organization personnel (including Mr. Weisselberg) and various insurers, including Tokio Marine HCC ("HCC"). (202.8-g Statement ¶655) The Trump Organization was looking to cancel the existing policies and rewrite the program on the day of Mr. Trump's presidential inauguration with significantly higher limits of $50,000,000—a tenfold increase. (202.8-g Statement ¶656) The underwriters at the meeting, including HCC's underwriter Michael Holl, were provided very few financials but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion, cash of $192 million and total debt of $519 million—all as reported in the 2015 SFC. (202.8-g Statement ¶657) The Trump Organization representatives assured the underwriters that the balance sheet for year-end 2016 that would be completed in a few weeks would be even better than the year-end 2015 balance sheet. (202.8-g Statement ¶658) The representation that Mr. Trump had $192 million in cash was material to Mr. Holl's assessment of Mr. Trump's liquidity because it had bearing on his ability to meet the retention obligation under the HCC policy. (202.8-g Statement ¶659)

In response to specific questioning from the underwriters, the Trump Organization personnel at the meeting, including Mr. Weisselberg, represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. (202.8-g Statement ¶660) This representation was material to Mr. Holl's assessment that there were no investigations by law enforcement agencies that could potentially trigger coverage.

(202.8-g Statement ¶661) On January 20, 2017, after considering the information conveyed during the January 10 meeting, HCC offered terms for a primary $10,000,000 policy with a $2,500,000 retention for an annual premium of $295,000 subject to certain conditions. (202.8-g Statement ¶662) Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (202.8-g Statement ¶663)

Despite the representations made to underwriters during the January 10 meeting that there was no material litigation or inquiry from anyone that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization—an investigation of which Mr. Weisselberg was well aware. (202.8-g Statement ¶664; Ex. 375; Ex. 376; Ex. 377) Moreover, it is evident that the Trump Organization believed the OAG investigation could potentially give rise to a claim because on January 17, 2019, the Trump Organization submitted a claim notice to the D&O insurers, including HCC, seeking coverage for OAG's enforcement action resulting from the investigation. (202.8-g Statement ¶667)

F. Each Defendant was Involved in the Fraudulent Conduct

1. Donald J. Trump

Mr. Trump was the president of the Trump Organization and beneficial owner, including through the Trust, of all the assets listed in the SFCs. (202.8-g Statement ¶673) As expressly represented in the SFCs, Mr. Trump was responsible for the content of the SFCs from 2011 through 2015, the date covered by last SFC issued prior to Mr. Trump assuming public office. (202.8-g Statement ¶672) For the SFCs from 2011 to 2015, Mr. Trump had "final review" over each SFC's contents. (Ex. 54 at 98:5-16) In March 2017, Mr. Trump appointed his sons Donald Trump, Jr. and Eric Trump as his agents to act with power of attorney over banking and real estate transactions,

and exercising that power of attorney they signed guarantor compliance certificates pertaining to the SFCs during the period 2016 to 2021 as his attorney-in-fact, certifying on his behalf that the SFCs present fairly his financial condition in all material respects. (202.8-g Statement ¶674-75)

2. Donald Trump, Jr.

Donald Trump, Jr. is an Executive Vice President of the Trump Organization and has also served as an officer in each of the other entity Defendants named in this action. (202.8-g Statement ¶680-81, 695) He has also served as a trustee of the Trust from January 19, 2017 to the present, except for the seven-month period from January 19-July 7, 2021, during which period Donald J. Trump was the sole trustee of the Trust. (202.8-g Statement ¶681, 755-56) Donald Trump, Jr. signed the representation letters for the SFCs from 2016 through 2019 in his capacity as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g Statement ¶682-85) He signed the representation letters for the 2020 and 2021 SFCs as trustee of the Trust. (202.8-g Statement ¶686-87) He also signed numerous guarantor compliance certificates in connection with loans that are the subject of this action from 2017 through 2019 as attorney-in-fact for Mr. Trump variously certifying that the 2016, 2017, 2018, and 2019 SFCs each "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶688-694)

3. Eric Trump

Eric Trump is an Executive Vice President of the Trump Organization, served as an officer in each of the other entity Defendants named in this action, and from 2016 through at least 2021 was the "chief decision maker" at the company. (202.8-g Statement ¶696, 709; Ex. 391 at 29:10-13, 77:11-21; Ex. 50 at 19:7-17) He participated in the preparation of SFCs by providing values to Mr. McConney for Seven Springs (for 2012 to 2014) and TNGC Briarcliff (for 2013 to 2018) that were used in the SFCs. (202.8-g Statement ¶74, 296)

In his capacity as President of Seven Springs LLC, in June 2019 he signed a loan modification agreement in connection with the loan transaction with the Bryn Mawr restating and reaffirming the representations in all prior loan documents, and on the same date signed an agreement as attorney-in-fact for Mr. Trump reaffirming Mr. Trump's obligation as guarantor on the loan. (202.8-g Statement ¶698-99) Eric Trump also signed multiple guarantor compliance certificates in connection with loans that are the subject of this action in October 2020 as attorney-in-fact for Mr. Trump, certifying that to the best of their knowledge Mr. Trump's net worth was over $2.5 million. (202.8-g Statement ¶700-02)

For the 2021 SFC, Eric Trump signed the engagement letter with Whitley Penn on behalf of the Trump Organization and participated in discussions with others at the company concerning valuation methodologies for the 2021 SFC. (202.8-g Statement ¶703-04) In October 2021, he signed multiple guarantor compliance certificates in connection with loans that are the subject of this action as attorney-in-fact for Mr. Trump certifying that the 2021 SFC "presents fairly in all material respects the financial condition of Guarantor at the period presented." (202.8-g Statement ¶706-08)

4. Allen Weisselberg

Allen Weisselberg was Chief Financial Officer of the Trump Organization from at least 2011 until he resigned from that position and became a Senior Advisor to the company in August of 2022 after pleading guilty to charges of tax fraud. (202.8-g Statement ¶710) Prior to Mr. Trump assuming public office, Mr. Weisselberg reported directly to Mr. Trump. (202.8-g Statement ¶711) In his role as CFO, Mr. Weisselberg was in charge of the accounting department at the Trump Organization. (202.8-g Statement ¶712)

Mr. Weisselberg had a primary role in preparing the SFCs together with Mr. McConney and Trump Organization employee Patrick Birney, both of whom reported to him. (202.8-g

Statement ¶713-14) Mr. Weisselberg signed the SFC engagement and representation letters for 2011 through 2015 as an executive officer of the Trump Organization and for 2016 through 2020 as an executive officer of the Trump Organization and as trustee of the Trust. (202.8-g Statement ¶716-35) He also certified summaries of the SFCs for 2016 to 2019 as trustee. (Exs. 1041-1045)

5. Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s through at least 2022 and led the process of preparing Mr. Trump's SFCs since the 1990s. (202.8-g Statement ¶736-37) Working under Mr. Weisselberg's supervision, he was responsible for assembling the SFC documentation and sending it to the outside accounting firm along with his supporting data spreadsheets. (202.8-g Statement ¶738) In May 2016, Mr. McConney sent a compliance certificate pertaining to the 2015 SFC to Deutsche Bank, and the following year submitted to the bank another compliance certificate pertaining to the 2016 SFC. (202.8-g Statement ¶741-42) He also sent summaries of the SFCs for 2016 to 2019 to the servicing bank for the 40 Wall Street loan. (Exs. 1041-1045).

6. The Entity Defendants

The Trust was established in April 2014. (202.8-g Statement ¶745) The trustees of the Trust were responsible for the SFCs from 2016 through 2021. (202.8-g Statement ¶743)

DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. (202.8-g Statement ¶760, 762, 764, 766) Trump Organization Inc. is owned 100% by DJT Holdings Managing Member LLC and Trump Organization LLC is owned 100% by DJT Holdings LLC. (202.8-g Statement ¶746)

Trump Endeavor 12 LLC is the owner of the Doral Property and was the borrower on the Doral loan for which Mr. Trump was the guarantor. (202.8-g Statement ¶767-68) 401 North

Wabash Venture LLC is the owner of the Trump International Hotel & Tower in Chicago and was the borrower on the Trump Chicago loan, for which Mr. Trump was the guarantor. (202.8-g Statement ¶777-78) Trump Old Post Office LLC held the ground lease for Trump International Hotel in Washington, D.C. and was the borrower on the OPO loan, for which Mr. Trump was the guarantor. (202.8-g Statement ¶782-83) 40 Wall Street LLC holds the ground lease for the office building located at 40 Wall Street and was the borrower on the loan with Ladder Capital, for which Mr. Trump was the guarantor. (202.8-g Statement ¶785-86) Seven Springs LLC owns the Seven Springs estate and was the borrower on the mortgage from RBS/Bryn Mawr, for which Mr. Trump was the guarantor. (202.8-g Statement ¶787-78)

STANDARD OF REVIEW

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Where the moving party relies on expert opinion evidence to meet this initial burden, it is well settled that such evidence "must be based on facts in the record or personally known to the [expert] witness," and that where the moving party relies on an expert's conclusion that "assum[es] material facts not supported by record evidence," the movant fails to establish a *prima facie* entitlement to summary judgment. *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010); *see also* 6B Carmody-Wait 2d §39:138 (noting that where an expert witness's assertions "are speculative or unsupported by any evidentiary foundation, the expert's opinion should be given no probative force").

Once the moving party makes a *prima facie* showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form

sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman*, 49 N.Y.2d at 562; *Alvarez v. Prospect Hosp*., 68 N.Y.2d 320, 324–25 (1986).

ARGUMENT

I. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS

Defendants contend that, "whether framed as an issue of standing or capacity, the scope of NYAG's authority depends upon a public interest nexus" requiring "some harm (or threat of harm) suffered by the People (*i.e*., the public at large)." *See* Memorandum of Law in Support of Defendants' Motion for Summary Judgement (NYSCEF No. 835) ("Defs. MOL") at 22. They add that this "public interest" concept "is reinforced by the doctrine of *parens patriae*," which they urge "is fully applicable to actions brought under 63(12)." *Id*. at 22 n.10. Defendants further argue that the accountant's letter inserted at the beginning of each SFC has disclaimer language that puts users "on complete notice not to rely upon them," effectively insulating them from any liability for false and misleading statements and values in the SFCs. *Id*. at 42

Defendants have plowed this same field twice before without success.

The first time was in opposing Plaintiff's motion for a preliminary injunction, where Defendants argued that the Attorney General had no standing or capacity to maintain this action under Executive Law § 63(12) because there was no harm, and in particular no harm to the public, relying on cases brought under the *parens patriae* doctrine and the decision in *People v. Domino's Pizza, Inc*, Index No. 450627/2016, 2021 WL 39592 (Sup. Ct. N.Y. Cty. Jan. 5, 2021),[8] a case

[8] Defendants' continued heavy reliance on the trial court's decision in *Domino's* for a "public harm" requirement is misplaced for two reasons. First, the *Domino's* holding was not based on the

Defendants again rely upon heavily here. *See* Memorandum of Law in Opposition to Plaintiffs Application for a Preliminary Injunction and Expedited Preliminary Conference (NYSCEF No. 126) at 8-11 (arguing, in language that parrots their arguments here, that the Attorney General "has no right to intervene" in Defendants' "internal affairs and management . . . and private contractual rights between [Defendants] and corporate counter parties" as "those are private matters between sophisticated commercial parties, not matters of public interest."). They also contended in the same brief that the SFCs, "and the disclaimers explicitly set forth therein, conclusively establish a defense as a matter of law to the Executive Law § 63(12) fraud claim alleged in the Complaint" because it "forecloses Plaintiff from claiming any corporate counter party reasonably relied in any material way on the information contained in the SoFCs." *Id*. at 13.

The Court soundly rejected these arguments in its decision granting Plaintiff's motion for a preliminary injunction. *People of the State of New York v. Trump*, No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) ("*Trump I*"). As the Court explained, there is no need for the Attorney General to show any public harm[9] or the quasi-sovereign interest required

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absence of public harm but rather on the absence at trial of evidence establishing fraudulent conduct, *see* 2021 WL 39592, at *1, which is not the case here. Second, to the extent *Domino's* can be construed to hold that private business transactions fall outside the scope of § 63(12), that holding cannot be squared with the First Department's decision in this case. *See People v. Trump,* 217 A.D.3d 609, 610–11 (1st Dep't 2023).

[9] Even if there was a "public harm" requirement (which is not the case), as the Court has already held, this case satisfies that requirement because the People have articulated "a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties." *Trump I*, 2022 WL 16699216, at *2 (citing cases); *see also Trump*, 217 A.D.3d at 610 (noting this case "is vindicating the state's sovereign interest in enforcing its legal code – including its civil legal code – within its jurisdiction"); *People v. Coventry First LLC*, 52 A.D. 3d 345, 346 (1st Dep't 2008) (finding claim under § 63(12) "constituted proper exercise[] of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"), *aff'd*, 13 N.Y.3d 108 (2009).

under *parens patriae* because "the New York legislature has specifically empowered the Attorney General to bring [an Executive Law § 63(12)] action in a New York state court," and Defendants' attempt to restrict § 63(12) to consumer fraud cases "is wholly without merit." *Id*. Further, the Court held that the disclaimer language in the SFCs did not provide any defense at all to Defendants because the language "makes abundantly clear that Mr. Trump was fully responsible for the information contained within the SFCs" and that "allowing blanket disclaimers to insulate liars from liability would completely undercut" the "important function" that SFCs serve "in the real world." *Id*. at *3. Indeed, the Court noted that even under the cases Defendants cited, they could not use the disclaimer as a defense because "the SFCs were unquestionably based on information peculiarly within" their knowledge. *Id*.

Undeterred by the Court's decision on Plaintiff's preliminary injunction motion, Defendants raised these same three arguments for a second time in support of their motions to dismiss. *See, e.g*., Memorandum of Law in Support of the Motion to Dismiss of Defendants, The Trump Organization, Inc., Trump Organization LLC, and Donald J. Trump (NYSCEF No. 197) ("MTD Moving Br.") at 3-11 (Point I – "The NYAG Lacks Standing to Bring This Action"), 11-13 (Point II – "The NYAG Is Without Capacity to Bring the Suit"), at 21-22 (Point III – "Plaintiff's Fraud Claims are Barred by Documentary Evidence and Fail to State a Claim").

The Court rejected these arguments again, noting that they "were borderline frivolous even the first time defendants made them," and that reading Defendants' brief "was, to quote the baseball sage Lawrence Peter ('Yogi') Berra, 'Deja vu all over again.'" *People v. Trump*, No. 452564/2022, 2023 WL 128271, at *2 (N.Y. Sup. Ct. Jan. 06, 2023) ("*Trump II*") (holding that Executive Law § 63(12) "is tailor-made for Attorney General Enforcement actions such as the instant one, foreclosing any rational arguments against capacity and standing" and that the

disclaimers "shifted responsibility directly on to certain defendants"), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023) ("*Trump III*"). The Court went further to admonish Defendants' counsel for raising these arguments again, noting that "sophisticated defense counsel should have known better." *Trump II*, 2023 WL 128271, at *4. After observing that such conduct may warrant an "award [of] costs and financial sanctions against an attorney or party," the Court exercised its discretion and declined to do so, concluding they were unnecessary in light of the Court "having made its point." *Id*. While the point was made, it went unheeded.

Despite the Court's admonition, Defendants are pursuing their standing, capacity, and disclaimer arguments for a *third time* in their summary judgment motion. Defs. MOL at 22, 42. Moreover, Defendants have added to the list of previously-rejected positions yet another argument—that Plaintiff has no valid claim for disgorgement under § 63(12). *Id.* at 58-62. But the Court of Appeals has held that "disgorgement is an available remedy under . . . the Executive Law." *People v. Greenberg*, 27 N.Y.3d 490, 497 (2016). And the Court rejected this argument when Defendants raised it the first time in their motion to dismiss, holding that "disgorgement of profits is a form of damages" available in this § 63(12) action. *See Trump II*, 2023 WL 128271, at *5.

Defendants suggest that their standing and capacity arguments deserve consideration anew because "at the dismissal stage" when these arguments were considered and rejected, Plaintiff "was afforded the presumption of propriety" as to the allegations in the complaint. Defs. MOL at 26. But even this procedural excuse for rehashing previously-rejected arguments was *itself* previously rejected by the Court. When Defendants raised their standing and capacity arguments for a second time on their motion to dismiss, they argued the Court's prior rejection of these arguments was not determinative because it came in the context of deciding a preliminary

injunction motion. *See* Consolidated Reply Memorandum in Support of Defendants' Motions to Dismiss (NYSCEF No. 410) at 3. The Court held otherwise:

> OAG's legal standing and capacity to sue *are threshold litigation questions of justiciability*; they do not change whether in the context of a motion for a preliminary injunction or to dismiss . . . . The Court rejected such arguments as a matter of law, and defendants' reiteration of them, scattered across five different motions to dismiss, was frivolous.

Trump II, 2023 WL 128271, at *2 (emphasis added). Similarly, the arguments are no different now that they are being raised in the context of a summary judgment motion.

To make matters worse, Defendants rehash their standing, capacity, and disgorgement arguments after they have already been *rejected by the First Department in this case*:

> The New York Legislature enacted Executive Law § 63 (12) to combat fraudulent and illegal commercial conduct in New York. Under this provision, "[w]henever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York" *for disgorgement* and other equitable relief. The Attorney General is not suing on behalf of a private individual, but is vindicating the state's sovereign interest in enforcing its legal code—including its civil legal code—within its jurisdiction. We have already held that the failure to allege losses does not require dismissal of a claim *for disgorgement* under Executive Law § 63(12).

Trump III, 217 A.D.3d at 610–11 (internal citations omitted) (emphasis added).

For these reasons, the Court should summarily reject yet again Defendants' threshold justiciability arguments based on lack of standing and capacity, reliance on the "disclaimer" language in the SFCs, and challenge to Plaintiff's entitlement to disgorgement. These positions are meritless, as this Court and the First Department have previously held, and the conduct of Defendants and their counsel in raising them yet again is frivolous.

II. PLAINTIFF'S CAUSES OF ACTION ARE TIMELY FILED AS AGAINST ALL DEFENDANTS

Rejecting Defendants' argument, the First Department recently ruled that Plaintiff's claims under Executive Law § 63(12) are governed by the six-year statute of limitations under CPLR 213(9) and that executive orders issued during the pandemic tolled the limitations period. *Trump III*, 217 A.D.3d at 611. Based on these rulings, the appellate court held that "claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016" for any Defendant not bound by the August 21, 2021, tolling agreement (Ex. 419) ("Tolling Agreement"), and "before July 13, 2014" for any Defendant bound by the Tolling Agreement. *Id*. The court concluded that only Ivanka Trump had engaged in conduct that fell altogether outside of those timeframes, but otherwise rejected the remaining Defendants' arguments for dismissal based on the limitations period. *Id.*

Defendants offer no basis to revisit the First Department's conclusion that Defendants engaged in wrongful conduct within the governing limitations period. This Court therefore does not need to reach any of Defendants' statute-of-limitations arguments, as the People need to demonstrate that only some amount of wrongful conduct occurred within the limitations period and "need not prove all of the [instances] in order to obtain the relief sought." *See People v. Boyajian Law Offs., P.C.*, 17 Misc.3d 1119(A), at *6 (Sup. Ct., N.Y. Cty. 2007). For similar reasons, there is no need to resolve the full scope of the Tolling Agreement on summary judgment—which the First Department instructed this Court to address "as necessary," *Trump III*, 317 A.D.3d at 611—because Defendants concede that the entity Defendants are bound (Defs. MOL at 13-14) and because the individual Defendants participated in multiple fraudulent

transactions on or after February 6, 2016, the date the limitations period begins in the absence of the Tolling Agreement.[10]

In all events, Plaintiff has brought claims that accrued within the limitations period, even if the period began in February 2016. And if this Court decides to reach the issue, all Defendants are bound by the Tolling Agreement, under which the limitations period began in July 2014.

A. Plaintiff's Claims Accrued Within The Limitations Period

Statutory causes of action such as those established under § 63(12) "accrue[] . . . when all of the factual circumstances necessary to establish a right of action have occurred, so that the plaintiff would be entitled to relief," as determined by the elements of any claim in the statute. *Gaidon v. Guardian Life Ins. Co.*, 96 N.Y.2d 201, 210 (2001); *see also Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175 (1986) (holding a claim accrues "when all of the facts necessary to the cause of action have" occurred) (citing 1 Weinstein-Korn-Miller, N.Y.Civ.Prac. ¶ 201.02, at 2-9)). Here, § 63(12) prohibits (1) "repeated" or "persistent" (2) "fraudulent or illegal" acts (3) "in the carrying on, conducting or transaction of business."

As the First Department has confirmed, under CPLR 213(9)'s six-year limitations period, § 63(12) claims accrue with each instance of fraud or illegality violative of the statute that occurs within the period going back six years from the filing of OAG's enforcement complaint (plus any applicable tolling). *See People v. Cohen*, 214 A.D.3d 421, 422 (1st Dep't 2023). As a trial court explained in a case regarding misleadingly inflated price information, the § 63(12) claims accrued each time that the defendant, within the limitations period, caused false and inflated price

[10] The Court can defer ruling on the effect of the Tolling Agreement until trial, when it may be necessary to determine for purposes of disgorgement whether the Tolling Agreement extends the statute-of-limitations period for calculating ill-gotten gains to be disgorged from February 6, 2016 to July 13, 2014 for particular Defendants.

information to be published, and each such inflated price report constituted the accrual of a separate wrong. *People Pharmacia Corp*., 27 Misc. 3d 368, 374 (Sup. Ct., Albany Cty. 2010).

Indeed, the First Department has repeatedly applied these fundamental accrual principles. In *People v. Cohen*, for example, the defendants made repeated, annual misrepresentations to tenants and a state agency relating to the rent-stabilized status of defendants' apartments. 214 A.D.3d at 422-23; *see Cohen*, OAG Br., 2022 WL 19039982, at *34-10 (1st Dep't Aug. 8, 2022). After concluding that a six-year statute of limitations applied, the First Department ruled that OAG's § 63(12) claims were timely as to *all* of these alleged misrepresentations (and illegal conduct) within the limitations period (between 2012 and 2018), *Cohen*, 214 A.D.3d at 422—though the defendants had completed construction and submitted an offering plan far earlier (in 2009), *see Cohen*, OAG Br., 2022 WL 19039982, at *10-13. Similarly, in *People v. Allen*, the First Department affirmed a post-trial judgment concluding that Martin Act and § 63(12) claims accrued and were timely each time that the defendants made misrepresentations or engaged in other fraudulent conduct within the six-year limitation period (between 2013 and 2019)—even though the underlying investments occurred based on investment memoranda issued far earlier (in 2004 and 2005). *See* 198 A.D.3d 531, 532-33 (1st Dep't 2021); *People v. Allen*, No. 452378/2019, 2021 WL 394821, at *4 (Sup. Ct., N.Y. Cty. 2021). And that understanding accords with cases outside of the § 63(12) context, which have repeatedly concluded that each instance of wrongful conduct is a "separate, actionable wrong" that "g[ives] rise to a new claim." *CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021); *see also Manipal Educ. Americas, LLC v. Taufiq,* 203 A.D.3d 662, 663 (1st Dep't 2022) (holding "a separate exercise of judgment, and thus a separate wrong, was committed" with each hiring decision made by defendant); *State v. 7040 Colonial Rd. Assocs. Co.*, 176 Misc. 2d 367, 374 (Sup. Ct., N.Y. Cty. 1998) (holding that

each wrongful act is a separate accrual under the Martin Act, "even if the new act or practice simply repeated the misrepresentations or omissions made previously"); *U.S. Bank Nat'l Ass'n v. KeyBank, Nat'l Ass'n*, No. 20-cv-3577, 2023 WL 2745210, at *11 (S.D.N.Y. Mar. 31, 2023) (holding defendants "continuous failure to act" based on a contract "amounted to separate, actionable wrongs rather than a single breach with new instances of damage").

1. Claims For Fraud And Illegality Under § 63(12) Accrued With Each Fraudulent Certification or Submission Of A False And Misleading SFC Or Misrepresentation Concerning Mr. Trump's Financial Condition

Applying these principles here, Executive Law § 63(12) fraud and illegality claims accrued each time any Defendant submitted a new false and misleading SFC to a bank or insurer or certified the SFC as fairly and accurately representing the financial condition of Mr. Trump or made other misrepresentations about Mr. Trump's financial condition in the course of satisfying loan obligations or renewing insurance policies. And there is no question that such actions were integral to the transaction of business, as they were necessary, continuing obligations imposed on Mr. Trump as guarantor and the borrowing entity Defendant under loan covenants or required by underwriters as part of the policy renewal process.

Overwhelming evidence establishes that each individual Defendant and the Trust (through trustees Donald Trump, Jr. and Allen Weisselberg) participated in multiple acts of fraud and illegality in the transaction of business by submitting and/or certifying false and misleading SFCs to banks and insurers on or after February 6, 2016, and that each entity Defendant (admittedly bound by the Tolling Agreement) did the same on or after July 13, 2014, giving rise to separate and actionable wrongs against them that accrued within the limitations period, as detailed in the timelines provided in the Appendix to this brief and described below:

- Mr. Trump approved the SFC for 2015, which was issued after February 6, 2016, personally submitted and certified his 2015 SFC to Deutsche Bank for the Doral, Chicago, and OPO loans, and submitted and certified through an

"attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans that each of his SFCs for 2016 to 2019 and 2021 fairly presents his financial condition as of June 30 in those years and for 2020 that his net worth was no less than $2.5 billion as of June 30, 2020. *See, supra*, at 38-39; Appendix timelines.

- Donald Trump, Jr. signed the representation letters after February 6, 2016 for the 2016 to 2020 SFCs in his capacity as trustee of the Trust and officer of the Trump Organization and for the 2021 SFC in his capacity as trustee of the Trust, and submitted and certified as Mr. Trump's "attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans after February 2016 that each of the SFCs for 2016 to 2019 fairly presents Mr. Trump's financial condition in those years and Mr. Trump's net worth as of June 30 in each year is not less than $2.5 billion. *See, supra*, at 39; Appendix timelines.

- Eric Trump supervised the preparation of the 2021 SFC, approved the inflated valuation of undeveloped land at TNGC Briarcliff in November 2015 that was used for the 2015 to 2018 SFCs, provided the inflated valuations for Seven Springs used for 2012 to 2014 SFCs, signed a loan modification agreement on behalf of Seven Springs LLC and a related consent and joinder of guarantor as Mr. Trump's "attorney in fact" in 2019, and submitted and certified as Mr. Trump's "attorney in fact" to Deutsche Bank for the Doral, Chicago, and OPO loans that the 2021 SFC fairly presents Mr. Trump's financial condition and in 2020 that Mr. Trump's net worth as of June 30, 2020 is not less than $2.5 billion. *See, supra*, at 39-40; Appendix timelines.

- Allen Weisselberg supervised the preparation of all of the SFCs, including those issued after February 6, 2016, signed the representation letters after February 2016 for the 2016 to 2020 SFCs in his capacity as trustee of the Trust and officer of the Trump Organization, certified a summary of Mr. Trump's net worth to the servicing bank on the 40 Wall Street loan based on the SFCs from 2016 through 2019, submitted and misrepresented the 2018 and 2019 SFCs to Zurich's underwriter for the surety program renewal in 2019 and 2020, and submitted the 2015 SFC to the D&O insurers during the renewal in 2017, while failing to disclose an ongoing investigation into the company's officers that was likely to lead to a claim. *See, supra*, at 40-41; Appendix timelines.

- Jeffrey McConney had primary responsibility for preparing all of the SFCs issued after February 6, 2016 under Mr. Weisselberg's supervision and submitted the certified summary of Mr. Trump's net worth to the servicing bank on the 40 Wall Street loan in 2016 through 2019 based on the SFCs. *See, supra*, at 41; Appendix timelines.

- The Donald J. Trump Revocable Trust participated in the preparation, submission, and certification of the SFCs after February 6, 2016 through the acts of its trustees Allen Weisselberg and Donald Trump Jr. as described above. *See, supra*, at 41; Appendix timelines.

- Each of the borrowing entity Defendants—Trump Endeavor 12 LLC (Doral loan), 401 North Wabash Venture LLC (Chicago loan), Trump Old Post Office LLC (OPO loan), 40 Wall Street LLC (40 Wall Street loan), and Seven Springs LLC (Seven Springs loan)—submitted and certified the SFCs on multiple occasions after July 13, 2014 in compliance with the continuing obligations under their respective loans (including for Seven Springs LLC loan modifications on July 28, 2014 and in 2019) through the acts of the individual Defendants undertaken within the scope of their employment, including those described above that occurred after February 6, 2016. *See, supra*, at 41-42; Appendix timelines.

- The remaining entity Defendants—the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member, and the Donald J. Trump Revocable Trust—each participated in the preparation, submission, and certification of the SFCs after July 13, 2014 through the acts of the individual Defendants described above, as well as Patrick Birney and other Trump Organization employees, undertaken within the scope of their employment. *See, supra*, at 41; Appendix timelines.

Based on these acts by Defendants, each of Plaintiff's seven causes of action are timely even based on a limitations period that begins on February 6, 2016.

2. The Closing Dates Of The Loans Are Not Relevant To Determining Accrual Dates For Post-Closing Fraudulent Transactions

Defendants err in arguing that § 63(12) claims based on fraud or illegality alleged in connection with the Doral, Chicago, and Seven Springs loans are untimely because those loans closed before July 13, 2014, even for the entity Defendants they concede are bound by the Tolling Agreement. Defs. MOL at 6-7. Defendants do not seriously dispute that they participated in the certification or submission of SFCs *within the limitations period* for the Doral, Chicago, and Seven Springs transactions. Each of those false and misleading certifications and submissions are separate, actionable wrongs under § 63(12) that accrued within the limitations period. There is no plausible basis for Defendants' incongruous position they should be immunized from § 63(12) liability for repeated or persistent fraudulent conduct committed within the limitations period on the ground that they also committed separate, earlier wrongful conduct (here closing the loans using fraudulent and misleading SFCs) outside of the limitations period. To state the obvious, prior

to July 2014, OAG could not have enforced § 63(12) claims for fraud or illegality in the transaction of business based on SFCs prepared, certified, and submitted in late 2014 to 2021—which had not yet been prepared, certified, or submitted to any financial institution. And Defendants' argument contravenes the plain language and fundamental purpose of § 63(12), which makes it unlawful to engage in *any* repeated or persistent fraudulent or illegal conduct in the carrying on or transacting of any business—regardless of whether that fraud or illegal conduct happens at the initial stage of a business deal or during subsequent stages based on newly-created documents.

Defendants hinge their argument on the First Department's observation in this case that the § 63(12) fraud claims accrued when "the transactions were completed." 217 A.D.3d at 611. But the First Department did not, by using that language, casually upend longstanding precedents on § 63(12) claims or accrual principles (such as *Cohen* and *Allen*), in which fraudulent or illegal conduct subsequent to an initial business deal or event gives rise to a separate, actionable claim. *See Ezrasons, Inc. v. Rudd*, 217 A.D.3d 406, 407 (1st Dep't 2023) (declining to find that a decision "silently overruled [a] longstanding principle"). Rather, the First Department was merely underscoring that § 63(12) targets fraudulent and illegal conduct in the "transaction of business," Exec. Law § 63(12), and the court's statement is best understood as shorthand for when a claim arising from conduct that violates the statute accrues, namely, when each repeated or persistent fraudulent or illegal act in the conduct of business is completed. Indeed, a "transaction" is not limited to an initial loan closing or a sale, but rather is an "extremely broad" concept. *In re Enron Creditors Recovery Corp.*, 422 B.R. 423, 436 (S.D.N.Y. 2009), *aff'd*, 651 F.3d 329 (2d Cir. 2011); *see also Ray-Roseman v. Lippes Mathias Wexler Friedman, LLP*, 197 A.D.3d 944, 946 (4th Dep't 2021) (describing "loan transaction" to include origination as well as ongoing enforcement of a loan until it "was paid in full and the transaction completed"); Black's Law Dictionary (11th ed.

2019) definition of Transaction ("an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract"). Here, the relevant "transactions" for purposes of § 63(12) include each time Defendants engaged in fraudulent or illegal commercial conduct with another party, including but not limited to certifying or submitting false SFCs to meet obligations under existing loans or renew insurance.

Moreover, the People's § 63(12) claims for illegality based on violations of the Penal Law under the second, fourth, and sixth causes of action require the application of additional accrual principles. As to these claims, each does not accrue until "the claim becomes enforceable," *Kronos, Inc. v. AVX Corp*., 81 N.Y.2d 90, 94 (1993), which does not occur until the necessary elements of the underlying crime have been committed. Illegality based on falsifying business records in violation of New York Penal Law §175.05 (second cause of action) requires the making of a false entry in the business records of an enterprise or preventing the making of a true entry with the intent to defraud. N.Y. Penal Law §175.05. Defendants caused false entries to be made and prevented the making of true entries in the business records of the Trump Organization – the SFCs and certifications – with the requisite intent within the limitations period. *See, supra*, at 7-27. Illegality based on issuing a false financial statement in violation of New York Penal Law §175.45 (fourth cause of action) requires, with the intent to defraud, making a written instrument purporting to describe the financial condition of a person which is inaccurate in some material respect or representing in a writing that a written statement describing a person's financial condition is accurate knowing that it is materially inaccurate. N.Y. Penal Law §175.45. Defendants created false and misleading SFCs describing the financial condition of Mr. Trump and falsely represented in certifications that the SFCs were accurate with the requisite intent within the limitations period. *See, supra*, at 7-27, 38-42. And illegality based on committing insurance fraud in violation of New

York Penal Law §176.05 (sixth cause of action) requires, knowingly and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. N.Y. Penal Law §176.05. Defendants prepared and submitted knowingly false and misleading SFCs to insurers with the requisite intent within the limitations period.[11] *See, supra*, at 35-38.

With respect to Plaintiff's remaining third, fifth, and seventh causes of action under § 63(12) for conspiracy to commit the illegal acts enumerated above, a claim accrues when there is an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999). For each of the illegal acts alleged in the second, fourth, and sixth causes of action, there was an agreement among Defendants to prepare and submit false and misleading SFCs together with participation in the preparation and submission of the SFCs to banks and insurers, all within the limitations period. *See, supra*, at 7-38. Moreover, a defendant is not excused from their wrongdoing simply because some of their conduct occurred prior to a limitations period. Where the conspiracy offense consists of an agreement and a range of overt acts over time, some within and some outside the limitations period, the prosecution is timely if at least one of the overt acts occurs within the limitations period. *See People v. Leisner*, 73 N.Y.2d 140, 146 (1989). It is plain from the record that there are a large number of overt acts in furtherance

[11] Specifically in the context of insurance fraud, the crime is completed upon the submission of the fraudulent application or proof of loss to the insurer. *See People v. O'Boyle*, 136 Misc. 2d 1010, 1013-14 (Sup. Ct. N.Y. Cty 1987).

of the alleged conspiracies that occurred within limitations period, making the illegality counts based on those conspiracies timely.

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants

1. JUUL Held That Individual Corporate Officers May Be Bound By A Tolling Agreement Signed By The Corporation

In the event the Court decides to address the binding effect of the Tolling Agreement at this time, the Court should find that the Tolling Agreement binds all the individual Defendants and the Trust, in addition to the entity Defendants (as Defendants concede), and therefore the lookback period for disgorgement as to all Defendants extends to at least July 13, 2014.

Pursuant to the terms of the Tolling Agreement, the "Parties"—defined to be OAG and the "Trump Organization"—agreed to extend the six-year limitations period for any claim brought by OAG under Executive Law § 63(12). Ex. 419 at pdf 3. The "Trump Organization" is defined to include "The Trump Organization, Inc.; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing." *Id*. at n.1. The Tolling Agreement was executed on behalf of the Trump Organization by its Executive Vice President and Chief Legal Officer, Alan Garten, the company's "duly authorized representative" who represented in writing that he had authority to sign on behalf of the Trump Organization as defined in that manner. *Id*. at pdf 6.

The Court must enforce a tolling agreement according to its plain terms, the same as any other contract. *See Multibank, Inc. v. Access Global Capital LLC*, 158 A.D.3d 458, 459 (1st Dep't 2018). And the extremely broad definition of "The Trump Organization" easily encompasses all

of the individual Defendants (each of whom was a director, officer, employee, and/or person associated with or acting on behalf of the Trump Organization when the Tolling Agreement was executed in August 2021), the Trust (through its binding effect on the trustees, Mr. Weisselberg and Donald Trump, Jr.), and all of the entity Defendants (each of which is either expressly named in the definition or was, and still is, a subsidiary or affiliate of the Trump Organization).

Although Defendants argue that each individual Defendant "must be a direct signatory" to the Tolling Agreement to be bound by its terms, Defs. MOL at 15, that position is contrary to *People v. JUUL*, which is controlling law. In *JUUL*, the First Department held that the *two individual corporate officers*, neither of whom were signatories, "are bound by the tolling agreement into which [the corporation] entered with the People" that specified officers were bound. *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). Indeed, the Tolling Agreement here is not materially distinguishable from the one in *JUUL*, which covered a similar range of individuals and entities, and so the same result should follow. *Id.* (tolling agreement's definition of "JUUL" included JUUL's "parents, subsidiaries, affiliates, predecessors, shareholders, officers, directors . . . and all other persons or entities acting on their behalf or under their control.").[12] Such corporate non-signatories are bound unless they have disclaimed the agreement within a reasonable timeframe, which the non-signatories here did not do. *See* Restatement (Second) of Contracts § 306 (1981).

[12] The JUUL tolling agreement is part of the record on appeal in that case and can be found at NYSCEF Doc. No. 176 (Exhibit QQQ to Popp Affirmation), Index No. 452168/2019 (Sup. Ct. New York Cty).

2. Judicial Estoppel Does Not Apply Here

Defendants' argument based on judicial estoppel is without merit. The doctrine of judicial estoppel "prevents a party who assumed a certain position in a prior proceeding and secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed." *Becerril v. City of N.Y. Dept. of Health & Mental Hygiene*, 110 A.D.3d 517, 519 (1st Dept. 2013), *lv. denied*, 23 N.Y.3d 905 (2014); *see also Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018). Judicial estoppel does not apply for three independent reasons.

First, judicial estoppel applies only to assertions of "*factual issue*[*s*]," not legal positions. *PL Diamond LLC v. Becker-Paramount LLC*, 16 Misc. 3d 1105(A), 2007 WL 1865044, at *10 (Sup. Ct. N.Y. Cty 2007) (emphasis added); *see also Bates v Long Island Railroad*, 997 F. 2d 1028, 1037 (2d Cir.) ("The doctrine of judicial estoppel prevents a party from asserting a *factual position* in a legal proceeding that is contrary to a position previously taken by him in a prior legal proceeding.") (emphasis added), *cert. denied* 510 U.S. 992 (1993)); *Zemel v. Horowitz*, 11 Misc. 3d 1058(A), 2006 WL 516798, at *4 (Sup. Ct. N.Y. Cty 2006) (same). As courts have observed, "[t]here is no legal authority" to support "extend[ing] the doctrine of judicial estoppel to include seemingly inconsistent legal positions." *Seneca Nation of Indians v. New York.*, 26 F. Supp. 2d 555, 565 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999). Here, Plaintiff's prior assertion about the binding effect of the Tolling Agreement on non-signatories is a legal position rather than a factual position, and therefore judicial estoppel does not apply.

Second, even if the doctrine did apply to a legal position (which is not the case), it still does not apply here because the Court's prior determination was not based on Plaintiff's prior assertion. For the doctrine to apply, the party taking the inconsistent position must have benefitted

from the determination in the prior action based on the assertion it advanced in that matter; in other words, the doctrine does not require simply a prior determination rendered in favor of the party against whom estoppel is asserted, it also requires that the prior determination "endors[e] the party's inconsistent position in the prior proceeding." *Ghatani v. AGH Realty, LLC*, 181 A.D.3d 909, 911 (2nd Dep't 2020); *see also 35 W. Realty Co., LLC v. Booston LLC*, 171 A.D.3d 545, 545 (1st Dep't 2019) (declining to apply judicial estoppel because the court in the prior proceeding did not rely on the party's inconsistent position in its determination). In the Court's decision granting the People's contempt motion in the Special Proceeding, the Court did not base its decision on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor did it otherwise "endors[e]" that legal position. *Ghatani*, 181 A.D.3d at 911. Rather, the Court, after noting that Mr. Trump had submitted a "woefully inadequate" compliance affidavit, agreed with Plaintiff's statement that "any delay causes prejudice to 'the rights or remedies of the State acting in the public interest.'" *People v. The Trump Organization, Inc*., No. 451685/2020, 2022 WL 1222708, at *2 (Sup. Ct. N.Y. Cty. Apr. 26, 2022), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023) (quoting *State v. Stalling*, 183 A.D.2d 574, 575 (1st Dep't 1992)). The Court further noted, without singling out Mr. Trump or holding that he was not bound by the Tolling Agreement, that "the statutes of limitations continue to run and *may result* in OAG being unable to pursue certain causes of action that it otherwise would." 2022 WL 1222708, at *2 (emphasis added). The Court neither based its decision to hold Mr. Trump in contempt on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor endorsed that legal position.

Third, courts do not apply estoppel doctrines where there has been an intervening "'change in [the] applicable legal context.'" *Bobby v. Bies*, 556 U.S. 825, 834 (2009) (quoting Restatement (Second) of Judgments § 28, cmt. c (1980)); *see Herrera v. Wyoming*, 139 S. Ct. 1686, 1697 (2019)

(noting that "lower federal courts have long applied the change-in-law exception in a variety of contexts" in rejecting the application of estoppel doctrines). This change-in-law exception recognizes that applying equitable preclusion doctrines in changed circumstances may not "advance the equitable administration of the law." *Bobby*, 556 U.S. at 836–837; *see Herrera*, 139 S. Ct. at 1697. Such is the case here based on the timing of the First Department's controlling decision in *JUUL*. That decision, definitively establishing that an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the "Trump Organization" definition in the Tolling Agreement here, was issued on January 5, 2023 – more than seven months *after* the hearing before this Court on the contempt motion in the Special Proceeding and nearly one month *after* OAG's appellate brief was filed in the appeal from this Court's contempt order. *Compare JUUL*, 212 AD.3d at 414 *with* Defs. 202.8-g Statement ¶¶273-74. Precluding Plaintiff from relying on the *JUUL* holding, which controls the legal issue of whether Mr. Trump and other individual Defendants are bound by the terms of the Tolling Agreement, would not "advance the equitable administration of the law," and warrants applying the change-in-law exception to judicial estoppel. *Bobby*, 556 U.S. at 836–837.

III. OVERWHELMING EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S FIRST CAUSE OF ACTION FOR FRAUD

Executive Law § 63(12) gives OAG the power to bring an action against any person or entity that engages in "repeated fraudulent or illegal acts" or "otherwise demonstrate[s] persistent fraud or illegality in the carrying on . . . or transaction of business." N.Y. Exec. Law § 63(12). As to "fraud," the basis for Plaintiff's First Cause of Action, the statute broadly construes fraud "to include acts characterized as dishonest or misleading." *People v. Apple Health and Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994), *dismissed in part, denied in part,* 84 N.Y.2d 1004

(1994). The standard requires a showing that the challenged conduct has "the capacity or tendency to deceive," or that "creates an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021); *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (1st Dep't 2003).

Moreover, when a failure to effectively supervise creates "an enterprise conducive to fraud," a § 63(12) violation has been established. *Northern Leasing*, 193 A.D.3d at 75-76. Neither an intent to defraud nor reliance need be shown. *Apple Health*, 206 A.D.2d at 267; *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008); *see also People v. Trump Entrepreneur Initiative,* 137 A.D.3d 409, 417 (1st Dep't 2016) (recognizing prior First Department precedent establishing that "fraud under § 63(12) may be established without proof of scienter or reliance"). In assessing whether this broad standard for fraud has been satisfied, courts look not only to the average recipient of fraudulent conduct, "but also the ignorant, the unthinking and the credulous." *Gen. Electric*, 302 A.D.2d at 314; *see also People v. Allen*, 198 A.D.3d 531, 533 (1st Dep't 2021) (upholding finding of fraud under § 63(12) based on fraudulent representations to investors), *leave to appeal granted*, 38 N.Y.3d 996 (2022). While courts *may* consider evidence of falsity, materiality, reliance, and causation as bearing on the capacity or tendency of the challenged conduct to deceive, *see Domino's*, 2021 WL 39592, at *11, these are not required elements of proof on a § 63(12) fraud claim, *Gen. Elect. Co.*, 302 A.D.2d at 314.

For the reasons discussed below, overwhelming evidence establishes that the SFCs were false and misleading, and therefore had the capacity or tendency to deceive.

A. The SFCs Were False And Misleading

As a threshold matter, Defendants' summary judgment motion effectively concedes that the SFCs are false and misleading. In support of their motion, Defendants assert the following four facts: (1) assets may be appraised on the basis of their market value ("As Is") or investment value

("As If"), *see* Defendants' Statement of Undisputed Material Facts (NYSCEF No. 836) ("Defs. 202.8-g Statement") at ¶ 215; (2) market value reflects the "price a willing buyer and seller would agree upon in an open and competitive market," *id*. at ¶ 216; (3) investment value reflects the value of the property to a particular investor based on "that person's (or entity's) investment requirements rather than market norms" and includes "anticipated future market and property conditions from the vantage point" of the investor, *id*. at ¶¶ 217-18 (emphasis added); and (4) many of the assets listed in the SFCs reflect "As If" investment values based on various "As If" assumptions, as opposed to "As Is" market values, *id*. at ¶¶ 226-27.

These assertions, coupled with the fact that the assets in the SFCs are represented to be "stated at their estimated current values," *see, e.g*., Ex. 1 at -3136, which Defendants' expert acknowledged is synonymous with "market values,"[13] is tantamount to conceding the SFCs are false and misleading; the SFCs represent to users that the assets are stated at their "estimated current values," or "As Is" market values, reflecting what a willing buyer and seller would pay in an open and competitive market, which is false because according to Defendants they are stated on a completely different basis – at their "As If" investment values reflecting Mr. Trump's "investment requirements rather than market norms." Without more, Defendants' affirmative assertion that the SFCs present "As If" values, when the SFCs represent to users the values are "As Is," is sufficient for the Court to find that the SFCs are false and misleading.

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[13] Defendants' expert Steven Laposa agreed that "estimated current value" was the same as "market value," and that estimated current value is what governs personal financial statements. Robert Aff., Ex. AAC at 90:5-91:133; *see also id.* at 136:22-137:3 (stating that well-informed and willing buyers and sellers are a "common theme in market valuation"). Dr. Laposa also confirmed that the concepts of investment value and market value are fundamentally different. *Id*. at 76:9-19, 137:7-138:6; 139:22-140:25.

Beyond the admitted conflict between what Defendants contend the SFC asset values are and what the SFCs themselves expressly represent the asset values to be, the SFCs are false and misleadingly because Defendants inflated asset values by employing multiple deceptive schemes. Based on undisputed evidence, Defendants inflated the value of more than a dozen assets in each year by 17-39%, including the following examples:

- For Mr. Trump's triplex, Defendants used a fictitious number for the square footage of the apartment that was triple the actual size.
- For many properties (Seven Springs, 40 Wall Street, Mar-a-Lago, 1290 AoA, TNGC Briarcliff, TNGC LA, and Trump Tower), Defendants failed to consider existing appraisals, including appraisals that the Trump Organization itself relied on to challenge tax assessments.
- For many of the clubs, Defendants added an undisclosed brand premium and included the value of membership deposit liabilities despite representing that it valued those liabilities at $0.
- For unsold condominium units at Trump Park Avenue, Defendants valued rent stabilized units as if they were unrestricted at 65 times their appraised value, used original offering plan prices instead of option prices and current market values developed by the Trump Organization's real estate brokerage arm for internal business purposes.
- For Mr. Trump's cash—an important measure of his liquidity—and escrow deposits, Defendants included amounts held by separate partnerships over which Mr. Trump exercised no control.
- For real estate licensing developments, Defendants included speculative income from deals yet to be reduced to writing and intercompany agreements despite representing that only income from signed agreements with other developers would be included.

See, *supra*, at 7-23.

But these are just the deceptive schemes that can be quantified based on *undisputed evidence*. Additional evidence that the People will present at trial (as necessary), including expert opinion testimony, will establish Defendants inflated Mr. Trump's assets to a far greater extent by employing other deceptions such as including projected future income expected years out without

any discount to present value, cherry-picking only the most favorable capitalization rates from marketing reports, and ignoring internal budget projections when calculating net operating income, to name just a few. Based on the work performed by Plaintiff's valuation experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining "estimates of current value," Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SFCs. *See, supra*, at 23-26.

Accordingly, Plaintiff have presented sufficient evidence to establish that each SFC is false and misleading.

B. The SFCs Had The Capacity Or Tendency To Deceive Banks And Insurers

Defendants argue at length that the SFCs "were not materially misleading" to the banks and insurers involved in the transactions at issue, assuming a "materiality" standard applies here as if this enforcement action was instead an action alleging general common law fraud. Defs. MOL at 33. Their argument misses the mark because materiality is not a required element of a fraud claim under § 63(12). In this regard, § 63(12) stands "[i]n contrast" to statutes that require a showing that a misstatement was material. *Gen. Elec. Co.*, 302 A.D.2d at 314-15. Under § 63(12), the focus is on promoting a fair and functioning marketplace: § 63(12) targets "repeated" or "persistent" misstatements that distort the flow of commerce for "not only the average consumer"—let alone for reasonable counterparties—"but also 'the ignorant, the unthinking and the credulous.'" *Id.* at 314 (quoting *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 273 (1977)).

The relevant inquiry is thus whether the SFCs had "the capacity or tendency to deceive" the banks and insurers. *Northern Leasing*, 193 A.D.3d at 75. The answer is a resounding "yes" given the sheer magnitude of the inflated asset values in the SFCs each year, whether based on the

assessments by Plaintiff's valuation experts or just on the undisputed evidence presented in Plaintiff's partial summary judgment motion. *See, supra*, at Point III.A.

Additionally, beyond the gross inflation of asset values, the nature and extent of the GAAP departures also render the SFCs deceptive. As determined by Plaintiff's accounting expert Prof. Lewis, several departures from GAAP were not disclosed in the SFCs, including the addition of an internally-generated brand premium in valuing golf course properties, the failure to properly record cash, the failure to properly record escrow and reserve deposits, the failure to properly disclose changes in valuation methodology for certain properties from year to year, the failure to determine present value of projected future income when including the income in a valuation, and the failure to disclose the details of related party transactions. *See, supra*, at 26-27.

Moreover, while the People are not required to present proof that any bank or insurance executive was deceived by or relied on the SFCs, the evidence establishes that is what happened. *See People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409, 417 (1st Dep't 2016) (holding that "reliance" is not an element of the statute).

A former Head of Credit Risk Management for Deutsche Bank's PWM Americas division, Nicholas Haigh, whose approval was required for the bank's loans to the Trump Organization, reviewed evidence obtained during OAG's investigation showing that Mr. Trump reported the values for 2011 and 2012 of $525 million and $527 million, respectively, for his interest in 40 Wall Street despite possessing an appraisal showing a valuation of $200 million as of November 1, 2011, and that Mr. Trump had reported a Net Operating Income ("NOI") for 40 Wall Street that was approximately four times the actual NOI used in this same appraisal. (Ex. 1017 at 140:8-143:9, 172:2-177:24) When asked how he would have responded if these discrepancies had come to his attention during the credit review, he testified that he "would have treated [Mr. Trump's] financial

disclosure with – generally with a larger degree of skepticism and specifically [he] would have adjusted the equity value of that specific asset," adding that "if The Trump Organization could not have provided a reasonable explanation then I think I would have recommended declining the transaction." (*Id*. at 177:25-178:19)

Mr. Haigh also testified he was "shocked at the numbers reported on Mr. Trump's financial statement" for 40 Wall Street given the then-existing appraised values of that property, and that had he learned of discrepancies between NOI figures used in appraisals of 40 Wall Street and those used for Mr. Trump's SFCs he would have questioned the accuracy of other information provided and would have asked whether the bank should continue doing business with Mr. Trump. (*Id*. at 177:25-178:19; 194:2-12; 196:13-15, 237:1-241:25; 202.8-g Statement ¶632-33, 637, 646, 650-52, 657-659)

The insurance underwriters were similarly deceived by the SFCs. Zurich's underwriter, Claudia Markarian, testified that she viewed the valuations in the 2018 and 2019 SFCs to be reliable and assessed them favorably based on Allen Weisselberg's misrepresentation that they were prepared by a professional appraisal firm. (202.8-g Statement at ¶627-28, 640-41) She also relied on the cash on hand figure listed under the "cash and cash equivalents" asset category as an indication of Mr. Trump's liquidity—an important consideration in her underwriting analysis and a figure that was inflated in the 2018 and 2019 SFCs by including cash that belonged to the Vornado Partnership Interests over which Mr. Trump had no control. (*Id*. at ¶631-33, 643-45) When pressed at her deposition by Defendants' counsel on why it would have been material to her if the cash on hand was one-third lower than stated in the SFC (after excluding the amount alleged in the complaint to be Vornado cash), given that the maximum exposure on the surety program was $20 million, Ms. Markarian explained: (i) it would be a "major concern" to her if the SFCs

she reviewed were "not actually accurate," which would have "call[ed] into question the whole account," (Ex. 348 at 140:10-25); and (ii) it means there was "materially less liquidity" that may not have been sufficient for approval from management, (*id*. at 142:18-144:2).[14]

HCC's underwriter Michael Holl similarly testified that for the 2017 D&O renewal he relied on the cash on hand figure in the 2015 SFC when considering Mr. Trump's liquidity, which had bearing on Mr. Trump's ability to meet the retention obligation under the HCC policy, as well as the misrepresentation by Trump Organization personnel that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the policy.[15] (202.8-g Statement at ¶659-60)

And if further evidence were needed on whether the grossly inflated SFCs had the capacity or tendency to deceive, such evidence abounds. Where circumstances forced Defendants to abandon schemes that inflated certain asset values, Defendants hid the resulting lower values from SFC users so as not to alert them to the deception that had been going on in prior years. For example:

- When Mr. Trump donated a conservation easement over Seven Springs in 2015 and switched to the appraised value of the easement donation for Seven Springs, lowering the value from the 2014 SOFC by $234 million, he moved Seven Springs into the "Other Assets" category, which showed only an aggregate value for all assets in the category. Simultaneously, Mr. Trump dramatically increased the value of the Triplex in the "Other Assets" category in that year, which effectively masked from the user the decrease due to lowering the Seven Springs value that otherwise would have been

[14] Notably, Defendants ignore entirely the testimony of Ms. Markarian, focusing instead on the Zurich underwriter who handled the account prior to mid-2017, Joanne Caulfield. Defs. MOL at 36-37.

[15] Defendants' observation that HCC agreed in December 2016 to provide a $5 million excess policy to sit above the existing primary policy through February 17, 2017, without reviewing Mr. Trump's SFC, Defs. MOL at 37, is without import. HCC's quote was for a 2-month stub period that was, as Defendants concede, "subject to reviewing financials at renewal." *Id*.

evident.[16] (202.8-g Statement at ¶68-69, 73)

- Mr. Trump concealed the hugely-inflated value of Mar-a-Lago by including it within the "Club Facilities and Related Real Estate" category, which shows values only in the aggregate rather than providing the value of each club individually. (202.8-g Statement at ¶153-196, 285)

- Mr. McConney concealed from Mazars the internally-generated current market values for unsold units at Trump Park Avenue by deleting the column with that information from the supporting material he provided, leaving only offering prices. (202.8-g Statement at ¶92, 382-83)

Even if materiality were a required element of a § 63(12) fraud claim (which is not the case), this Court should reject Defendants' contention that the banks and insurers considered the SFCs to be immaterial. Defs. MOL at 34-38. The loan documents expressly state that the lender is relying upon the guarantee of Mr. Trump and the required certifications, including the representations they contain, to extend credit, and the guaranties require the submission of true and accurate financials. (202.8-g Statement ¶484-85, 514-16, 556, 560) Additionally bank underwriting documents cite the guarantee and the financial strength of the guarantor as support for the loans. (202.8-g Statement ¶475-76, 494, 503, 507-08, 511, 516, 520, 526, 551-53, 565, 587-96) The insurers required disclosure of Mr. Trump's SFC at renewal. (202.8-g Statement ¶623, 654) And testimony from bank and insurance company executives establish they relied on the SFCs when deciding to lend or offer insurance. *See, supra,* at 66-68.

Viewed against the backdrop of this volume of evidence, Defendants' contention has zero factual basis. Defendants cite the testimony of Tom Sullivan of Deutsche Bank stating that he was "[c]omfortable with the level of assets" reflected in Mr. Trump's SFCs. *Id*. at 34. That says nothing about whether he would have remained "comfortable" had he learned at the time that Mr. Trump's

[16] The value of the Triplex in 2014 was $200,000,000 but increased to $327,000,000 in 2015. (202.8-g Statement ¶37-40, 48)

asset values were grossly inflated through deceptive practices. Nor does Deutsche Bank's practice of applying "haircuts" to the values in a personal financial statement suggest that the enormous degree to which Defendants inflated the asset values was not material. As Mr. Haigh confirmed, and Defendants concede, Deutsche Bank applied "haircuts" to asset values as a matter of standard practice to reflect what the assets would be worth *in a liquidation scenario*. *See* Defs. 202.8-g Statement at ¶86; Ex. 1017 at 75:11-77:10; 79:7-24; 148:6-149:21. It was not intended to adjust values to account for deceptive practices by a borrower.

Defendants' reliance on the testimony of bank employees that they are unaware of any misrepresentations in the SFCs as evidence that they were not deceived by the SFCs, *see* Defs. MOL at 28-29, is similarly unavailing. The bank witnesses did not conduct any investigation to determine whether the SFCs contained false information (as OAG has done), never read the People's detailed complaint in this action, *see* Robert Aff. Ex. P at 16:16-22, Ex. AAD at 18:9-25, Ex. S at 14:10-19, and they were responding only "to the best of [their] knowledge," Ex. AAB at 229:16-230:7. The fact that these bank employees were at the time of the challenged transactions, and are now, unaware of any material misrepresentations by Defendants is simply proof that Defendants succeeded in their goal of using the SFCs to deceive.

Additionally, the fact that Deutsche Bank earned fees and interest on the loans, Defs. MOL at 35, is irrelevant to whether the bank was deceived. The undisputed facts surrounding the Doral loan application process illustrates how the bank was defrauded into offering a lower interest rate. When the bank's CRE division considered loaning funds to Trump Endeavor LLC without any personal guarantee from Mr. Trump backed by his SFC, the bank proposed a loan at a higher interest rate than what the PWM division proposed based on Mr. Trump's guarantee that was

supported by his SFC. *See, supra*, at 27-29. Mr. Trump's SFC was obviously material to the bank's consideration of the appropriate interest rate to charge.

Finally, the materiality of the annual submission of Mr. Trump's SFC to Deutsche Bank was confirmed in two exchanges between the Trump Organization and the bank. First, in September 2020, the Trump Organization advised Deutsche Bank that it would not be providing a financial statement for Mr. Trump as required by its loan documents. Following discussions between the bank's legal counsel and the Trump Organization, the bank advised that the request would be "modified to a request for an extension of time, from October 28, 2020 to December 31, 2020." (Ex. 1021 at 5) In other words, the bank insisted that Mr. Trump provide his SFC for 2020, which he did on January 12, 2021. (*Id*.) Second, when the bank became aware of the alleged misrepresentations in Mr. Trump's SFCs from OAG's public court filings and news reporting, the bank sent a letter to the Trump Organization on October 29, 2020 asking a series of questions about the SFCs. (202.8-g Statement ¶447-48) The Trump Organization refused to answer the questions, even after the bank pointed out that the company was required to provide accurate information about Mr. Trump's financial condition pursuant to various loan agreements and guaranties. (202.8-g Statement ¶449-50) As a result, the bank decided to exit its relationship with the Trump Organization once all of its outstanding loans had matured or been repaid "in light of the failure and/or refusal of the covered client organization to respond" to the bank's questions about the SFCs. (Ex. 237) Deutsche Bank would not have made the decision to exit the relationship based on the company's refusal to provide additional information about the SFCs if it did not consider the SFCs to be material.

C. Each Defendant Participated In Multiple Fraudulent Transactions

Defendants' assertion that there is no evidence showing *any* Defendant participated in or had knowledge of the fraudulent transactions here is wrong for multiple reasons. Such individuals

are liable for corporate conduct under § 63(12) if "they personally participated in the misrepresentation or had actual knowledge of the misrepresentation." *People v. Apple Health & Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994).

First, their argument is largely based on their erroneous "loan closing date" theory for applying the six-year statute of limitations. Relying on this theory, Defendants exclude from their analysis "for the sake of brevity" any participation by or knowledge of any Defendant in the preparation and submission of false and misleading SFCs on the Doral, Chicago, and Seven Springs loans. Defs. MOL at 45. That glaring omission, while convenient for Defendants, renders their entire analysis fatally flawed.

Second, Defendants' analysis focuses on the "[p]reparation of the SOFCS" without any mention of the role any Defendant played in submitting and certifying the SFCs to the banks and insurers. Defs. MOL at 45. That is another glaring omission that renders their analysis flawed because each Defendant who submits an SFC to a bank or insurer while representing that the SFC fairly presents Mr. Trump's financial condition in all material respects, even if he had no involvement in preparing the SFC, is nevertheless participating in the fraud because he either knows that the SFC is false or misleading and is affirmatively misrepresenting otherwise, or knows nothing about the veracity of the SFC and is acting with "willful blindness or conscious avoidance," which as Defendants concede establishes knowledge of fraud under the applicable standard. Defs. MOL at 44 (quoting *State v. United Parcel Serv., Inc.,* 253 F. Supp. 3d 583, 666-67 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019)).

Third, the undisputed evidence surrounding all of the fraudulent transactions that occurred within the limitations period, including transactions relating to *all five loans* and the insurance renewals—even using the later date of February 6, 2016 as the start of the limitations period—

establishes beyond any doubt that each Defendant participated in, and/or had actual knowledge of, multiple fraudulent acts that are the focus of Plaintiff's first cause of action. Defendants cannot dispute that Donald Trump, Allen Weisselberg, and Jeffrey McConney participated in the preparation, submission, and/or certification of SFCs or summaries of SFCs to banks, which is undeniable based on their own sworn testimony and the certifications and transmittals themselves. *See, supra*, at 38-41; Appendix timelines. As to the remaining Defendants, their participation in multiple fraudulent acts is similarly established by the undisputed evidence—including signed certifications—reviewed in detail in the fact section above and the timelines. *See, supra*, at 39-42; Appendix timelines.

D. Defendants' "No Harm – No Foul" Defense Is Legally And Factually Without Basis

Defendants argue that fraud under § 63(12) requires a showing that the defrauded banks and insurers suffered "harm or injury." Defs. MOL at 28. And they claim there is no harm or injury here because there was no "default, breach, [or] late payment" under the loans or insurance policies and no "complaint of harm" by the banks or insurers, each of which they claim "profited considerably from successfully consummated transactions." *Id*. These assertions are without merit.

First, § 63(12) does not require any showing of harm to the business counterparties to Defendants' fraudulent and illegal transactions. The First Department held *in this case* that OAG is not required to prove any losses were sustained to obtain disgorgement under § 63(12). *See Trump III*, 217 A.D.3d at 610. Similarly, in *People v. Ernst & Young LLP,* the First Department held that OAG may pursue disgorgement under § 63(12) without "a showing or allegation of direct losses to consumers or the public." 114 A.D.3d 569, 569-70 (1st Dep't 2014). As the court noted in *Ernst & Young*, unlike restitution, disgorgement "focuses on the gain to the wrongdoer as opposed to the loss to the victim," and the "source of the ill-gotten gains" is therefore "immaterial."

Ernst & Young, 114 A.D.3d at 569-70 (quotation marks omitted); *see Gen. Elec.*, 302 A.D.2d at 316-17 (requiring an approximation of "actual damages" for restitution). As the Court succinctly stated during a status conference: "You can't submit false financial statements. Period. That's what the Executive Law is all about and what this case is all about. So all this stuff about what the lenders thought . . . I don't think they're relevant at all." (Ex. 1049 at 44:4-9)

Here, because the People seek disgorgement and not restitution, they similarly need not allege or prove that Defendants' fraudulent and illegal conduct in connection with the transaction of business resulted in "losses" to any banks or insurers. *Trump III*, 217 A.D.3d at 610. Put another way, the Legislature has already decided that persistent fraud or illegality in business harms the public interest and has authorized the Attorney General to redress such harms by bringing civil enforcement actions under § 63(12) without any showing of additional harm suffered by the victims of Defendants' fraudulent and illegal conduct; such actions are a "proper exercise[] of the State's regulation of businesses within its borders in the interest of securing an honest marketplace," *Coventry*, 52 A.D.3d at 346, and vindicate "New York's recognized interest in maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center of the Nation," *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y.2d 574, 581 (1980). *See also J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited*, 37 N.Y.2d 220, 227 (1975) (recognizing New York's "overriding and paramount interest" as "a financial capital of the world, serving as an international clearinghouse and marketplace for a plethora of international transactions").

Second, it is beyond dispute that the banks offered the Trump Organization lower interest rates than the company otherwise would have received because of Mr. Trump's personal guarantee backed by the false and misleading SFCs. (202.8-g Statement ¶ 440-44, 462-70, 499-504, 543-50) As explained by the People's banking expert Michiel McCarty, this means the banks were harmed because they took on more risk with less profit due to Defendants' fraud. Ex. 1015 at . Based on

the differential between the interest rates that the Trump Organization paid on loans that were personally guaranteed by Mr. Trump and the market-based interest rates that would have applied to non-recourse loans secured only by the same commercial properties as collateral, Mr. McCarty calculated that "Mr. Trump obtained an improper benefit" of over $187 million between 2012 and 2022. (Ex. 1015 at ¶¶ 48-61, 79, 87, 98, 102 & App. C, Ex. 2) The insurers were also harmed because, as explained by the People's insurance expert Professor Tom Baker, they took on greater risk for lower premium. (Ex. 1047 at ¶¶ 15-20, 26)

E. The Opinion Testimony of Defendants' Experts Fails To Satisfy Defendants' *Prima Facie* Burden

Defendants offer the testimony and reports of several of their experts in support of their motion. But where the moving party relies on an expert's conclusion that "assum[es] material facts not supported by record evidence," the movant fails to establish a *prima facie* entitlement to summary judgment. *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010); *see also Diaz v. New York Downtown Hosp*., 99 N.Y.2d 542, 544 (2002) ("Where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment."); *Amaya v. Denihan Ownership Co., LLC*, 30 A.D.3d 327, 327 (1st Dep't 2006) (finding that expert affidavit has no probative value on summary judgment where it "contained speculative, conclusory assertions" and "cited to various broad or inapt . . . rules, regulations and standards"); *Measom v. Greenwich & Perry St. Hous. Corp*., 268 A.D.2d 156, 159 (1st Dep't 2000) ("Expert testimony as to a legal conclusion is impermissible."). That is the case here.

The opinion testimony offered by Defendants' expert Robert Unell that Deutsche Bank would not consider the inflated asset values to be material directly conflicts with testimony given by Mr. Haigh. *See, supra*, at 66-67. Indeed, Mr. Unell's testimony that Deutsche Bank would have

no "reason to have concerns about the accuracy of the SOFCs" should OAG prove "the allegations in the complaint are true," Defs. MOL at 37, is exactly the opposite of what Mr. Haigh testified to under oath and conflicts with Deutsche Bank's decision to exit the relationship when the Trump Organization refused to provide additional information to the bank about the SFCs in light of OAG's allegations of fraud, *see, supra*, at 71.

Similarly, Mr. Unell's "opinion" that the SFCs provide "ample information," including how the asset values "were calculated," Defs. MOL at 38, is without record support. (202.8-g Response ¶70) The Court need only review the SFCs to confirm that they provide woefully incomplete and misleading information, shedding almost no light on how the values were calculated. At most, the notes in the SFCs describe a variety of methods that may have been used to calculate the value of assets within a group, but they contain no information about which particular method was used for any specific asset, and the descriptions of the methods are vague, substantially inaccurate, highly misleading, and fail to note the many ways that the calculations violate GAAP. (Ex. 1014 at ¶¶ 61-137)

Likewise, Defendants' insurance expert David Miller offered an "opinion" that Zurich's underwriter "didn't rely on asset valuations at all." Defs. MOL at 38. This directly conflicts with the testimony of Zurich's underwriter, Claudia Markarian, who testified that she relied on the information contained in the SFC when preparing her Underwriters Annual Review and making the recommendation to renew the Surety program. *See, supra*, at 35-36, 67-68. Nor is there any evidentiary support for the opinion offered by Defendants' other insurance expert, Gary Giulietti, that the amount of "cash" listed in the SFCs was immaterial to Zurich's underwriter because the exposure to Zurich never exceeded $20 million. Defs. MOL at 38. As Ms. Markarian testified, the

Vornado cash that was improperly included was absolutely material to her assessment. *See, supra*, at 67-68.

IV. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON INDIVIDUAL PENAL LAW VIOLATIONS

Defendants argue they are entitled to summary judgment on Plaintiff's second, fourth, and sixth causes of action predicated on violations of New York's Penal Law proscribing falsification of business records, issuance of false financial statements, and insurance fraud, respectively – the illegality claims – because: (i) there is no evidence to support "a finding that the SOFCs were materially misleading" (Defs. MOL at 52); and (ii) there is no evidence to support "a finding that any Defendants had the requisite intent" to defraud the banks and insurers (Defs. MOL at 53).

The elements of each illegality claim are as follows: (i) falsifying business records requires, with the intent to defraud, the making of a false entry in the business records of an enterprise or preventing the making of a true entry; (ii) making a false financial statement requires, with the intent to defraud, making a written instrument purporting to describe the financial condition of a person which is inaccurate in some material respect or representing in a writing that a written statement describing a person's financial condition is accurate knowing that it is materially inaccurate; and (iii) committing insurance fraud requires, knowingly and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. *See, supra*, at 55-56.

As to falsification of business records, there are any number of false entries made out in the undisputed record before the Court--such as the misstated square footage of Mr. Trump's apartment, the inclusion of cash he did not control, the misstatement of golf club liabilities, and

many others—with evidence confirming the false entries were done with the intent to defraud.[17] Moreover, the SFCs are replete with omissions of true entries, such as entries that would describe, disclose, and take account of binding legal restrictions on assets, also with evidence confirming the omissions were done with the intent to defraud.[18] Similarly, there is little doubt that the elements are established for the issuance of false financial statements and committing insurance fraud, including the intent to defraud. These offenses apply to any person who participated in preparing the SFCs, transmitted them to any third party (or an insurer for insurance fraud), or represented their accuracy in writing to a third party (or insurer for insurance fraud). *See People v. First Meridian Planning Corp*., 86 N.Y.2d 608, 617 (1995) ("common techniques, misrepresentations and omissions of material" and "constant nucleus" of personnel suffices to support scheme to defraud charge). Moreover, Defendants' intent to defraud is further evident from their numerous overt acts to conceal from Mazars critical information (such as appraisals and internal market prices for Trump Park Avenue unsold units) and from SFC users wild swings in asset values as circumstances forced them to abandon certain deceptive practices. *See, supra*, at 68-69.

V. SUBSTANTIAL EVIDENCE SUPPORTS EACH ELEMENT OF PLAINTIFF'S ILLEGALITY CAUSES OF ACTION BASED ON PENAL LAW CONSPIRACY VIOLATIONS

In support of their motion for summary judgment as to Plaintiff's illegality causes of action alleging conspiracy to commit each of the illegal acts discussed above—falsification of business

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[17] For example, Mr. Weisselberg and Donald Trump, Jr. refused to reduce the value for the Triplex in the 2016 SFC even after learning that the square footage of the apartment was inflated by a factor of three. (202.8-g Statement ¶44-46)

[18] For example, Trump Organization employees were aware at least as of 2010 that many of the unsold units at Trump Park Avenue were subject to rent stabilization laws yet disregarded that fact when valuing those apartments for the SFCs from 2011 to 2021. (202.8-g Statement ¶338-41)

records, issuance of false financial statements, and insurance fraud—Defendants rely on the same contentions they raise as to the illegality claims, namely that there is no evidence to support a finding that the SFCs were materially misleading or that any of Defendants had the requisite intent to defraud. Defs. MOL at 56. Because these contentions have no merit for the reasons discussed above, *see, supra*, at Point IV, they provide no basis for granting Defendants summary judgment on Plaintiff's conspiracy counts.

Defendants argue in the alternative that the illegality counts based on a conspiracy fail as a matter of law because there is no evidence of any Defendant's intentional participation in the furtherance of a plan or purpose to commit any of the illegal acts. Defs. MOL at 56. As the Court of Appeals has recognized, evidence of a conspiracy is often circumstantial and rarely direct. *People v. Flanagan*, 28 N.Y.3d 644, 663 (2017) (noting that "[i]n prosecutions for the crime of conspiracy the People'' case must usually rest upon circumstantial evidence," as defendants "with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts") (quoting *People v. Seely*, 253 N.Y. 330, 339 (1930)); *see also Iannelli v. United States*, 420 U.S. 770, 777 n. 10 (1975) ("The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the case."). A tacit understanding will suffice to show agreement for purposes of a conspiracy conviction. *See* 2 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law § 6.4, at 71 (1986). Furthermore, the participants in a conspiracy need not be fully aware of the details of the venture so long as they agree on the "essential nature of the plan." *United States v. Stavroulakis*, 952 F.2d 686, 690 (2d Cir. 1992). Finally, evidence sufficient to link a particular defendant to a conspiracy "'need not be overwhelming.'" *United States v. Atehortva*, 17 F.3d 546, 550 (2d Cir.1994) (quoting *United States v. Rivera*, 971 F.2d 876, 891 (2d Cir.1992)).

Here, there is both direct and circumstantial evidence of a conspiracy to commit the illegal acts of falsifying business records, issuing false financial statements, and committing insurance fraud. As discussed in detail above, documents and testimony establish that each of the individual Defendants, and through their conduct the entity Defendants, engaged in numerous purposeful deceptive acts as part of a plan to: (i) create false entries on business records and false financial statements by grossly inflating the value of assets listed on the SFCs; and (ii) submit the inflated SFCs to banks and insurers while attesting to their accuracy. Indeed, there is direct evidence that Mr. Weisselberg and Mr. Trump worked together as part of an orchestrated plan year after year to inflate the asset values listed in the SFCs in order to reverse engineer Mr. Trump's net worth to hit the target number desired by Mr. Trump. (Ex. 1048 at 90:9-92:17 ("[S]o Mr. Trump would call Allen [Weisselberg] and I into the office, and let's say it said he was worth $6 billion. Well, he wanted to be higher on the Forbes list, and he then said, 'I'm actually not worth 6 billion. I'm worth 7. In fact, I think it's actually now worth 8 with everything that's going on.' Allen and I were tasked with taking the assets, increasing each of those asset classes in order to accommodate that $8 billion number."), Ex. 1046 at 960:11-963:5 (confirming Mr. Weisselberg told Patrick Birney that between mid-2017 to late-2019 Mr. Trump instructed that he "likes to see [his net worth] go up" on the SFC))

Finally, in a footnote, Defendants ask the Court to reconsider their previously-rejected defense based on the "intra-corporate conspiracy doctrine." Defs. MOL at 56 n.21. They cite no new law or facts that would justify reconsideration of the Court's prior ruling that the doctrine "is irrelevant." *Trump II*, 2023 WL 128271, at *5. The Court properly determined the argument was without merit the first time for all of the reasons set forth in Plaintiff's opposition to Defendants' motions to dismiss. *See* NYSCEF No. 245 at 47-49.

VI. DISGORGEMENT IS AVAILABLE BASED ON THE NEXUS BETWEEN THE FAVORABLE LOAN AND INSURANCE TERMS AND DEFENDANTS' FRAUDULENT USE OF THE FALSE AND MISLEADING SFCs

Disgorgement is meant to deter wrongdoing by denying the wrongdoer all ill-gotten gains from wrongful conduct. *See People v. Greenberg*, 27 N.Y.3d 490, 498 (2016); *People v. Applied Card Systems*, 11 N.Y.3d 105, 125-26 (2008); *People v. Ernst & Young LLP*, 114 A.D.3d 569, 569-70 (1st Dep't 2014); *S.E.C. v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). The amount awarded for disgorgement need only be a "reasonable approximation of profits causally connected to the violation." *First Jersey*, 101 F.3d at 1474-5.

In addition to advancing their frivolous argument that disgorgement is unavailable in a § 63(12) action, *see, supra*, at Point I, Defendants assert that disgorgement is not available here because there is purportedly no causal connection between any financial benefit obtained by them and their use of the SFCs in procuring and maintaining loans and renewing insurance. Defs. MOL at 62. This argument rests entirely on Defendants' meritless contention that there is a total absence in the record of any evidence "regarding the materiality of the alleged misstatements in the SOFC." *Id*. at 63. However, as demonstrated above and in Plaintiff's 202.8-g Statement and 202.8-g Response, copious evidence establishes that the false and misleading SFCs were material to the loan decisions made by the banks' credit risk officers and the renewal decisions made by the insurers' underwriters.

In contrast to this record evidence, expert opinions directly conflicting with what the bank and insurance company decision-makers wrote in contemporaneous communications and testified to under oath are without any probative weight. *Roques*, 73 A.D.3d at 206 (noting it is well settled that expert opinion evidence that "assum[es] material facts not supported by record evidence" fails to establish a *prima facie* entitlement to summary judgment); *see also* 6B Carmody-Wait 2d

§39:138 (noting that where an expert witness's assertions "are speculative or unsupported by any evidentiary foundation, the expert's opinion should be given no probative force").

Accordingly, the Court should reject Defendants' attempt to defeat the People's disgorgement claim on summary judgment.

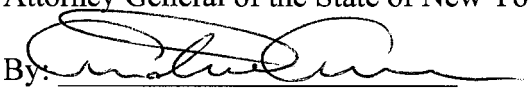
CONCLUSION

Based on the foregoing, the People respectfully request that the Court deny Defendants' motion for summary judgment in its entirety, along with such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
September 1, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 
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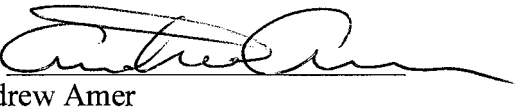
CERTIFICATION

With leave of Court entered on June 21, 2023, NYSCEF No. 638, Plaintiff is filing this Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment with an enlarged word count not to exceed 25,000 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 24,668 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
September 1, 2023

LETITIA JAMES
Attorney General of the State of New York

By: 
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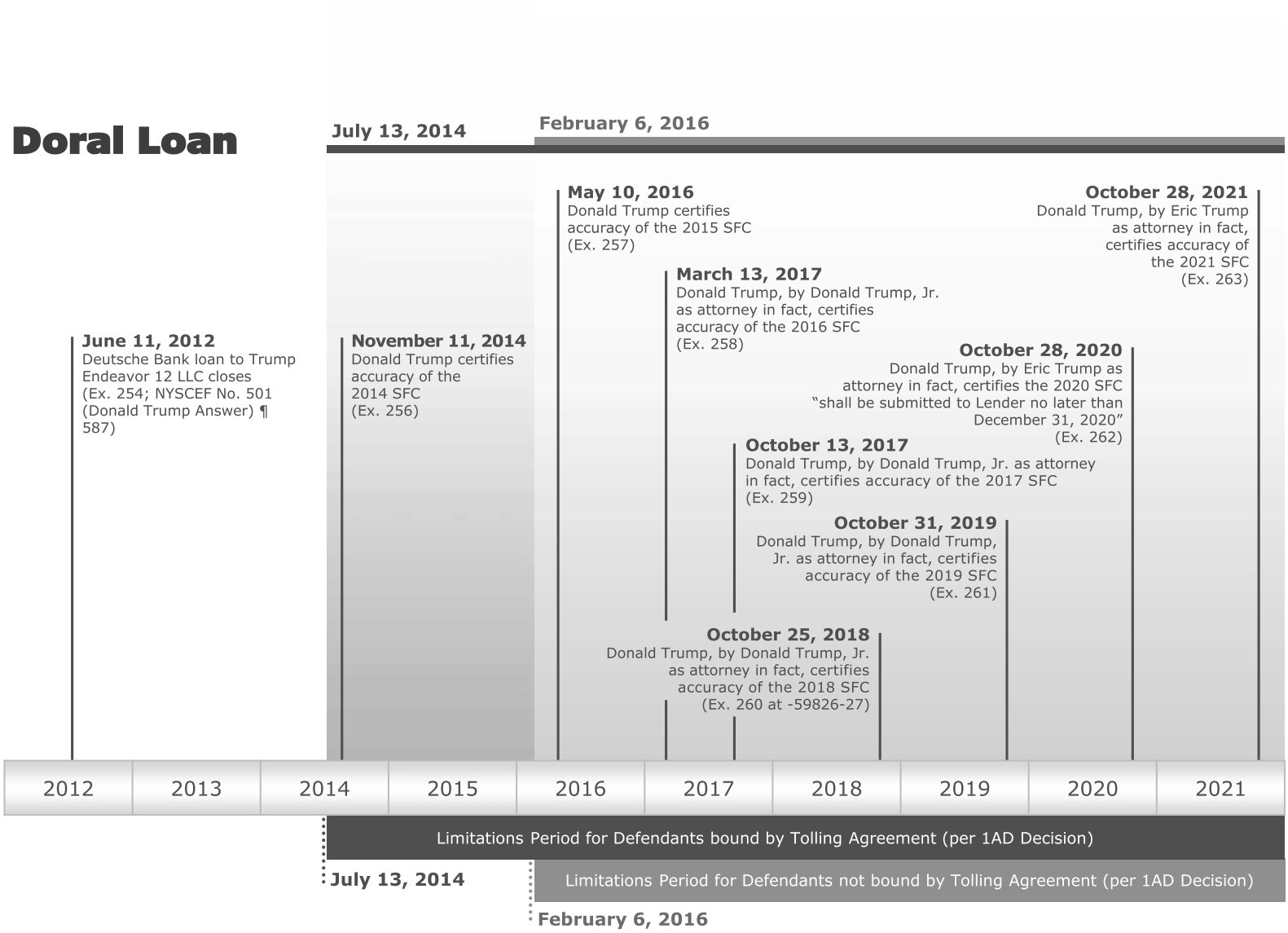
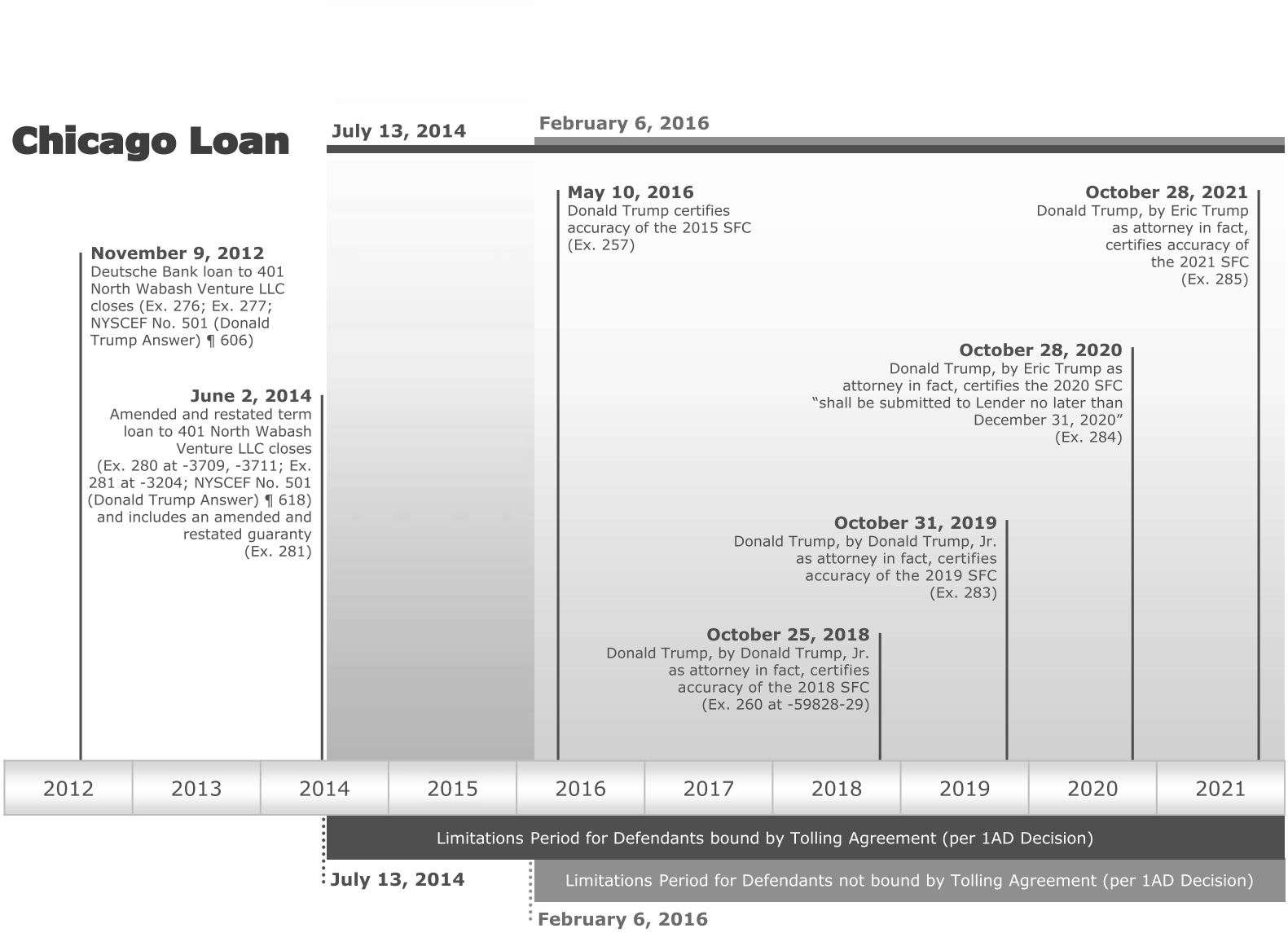
Attorney for the People of the State of New York

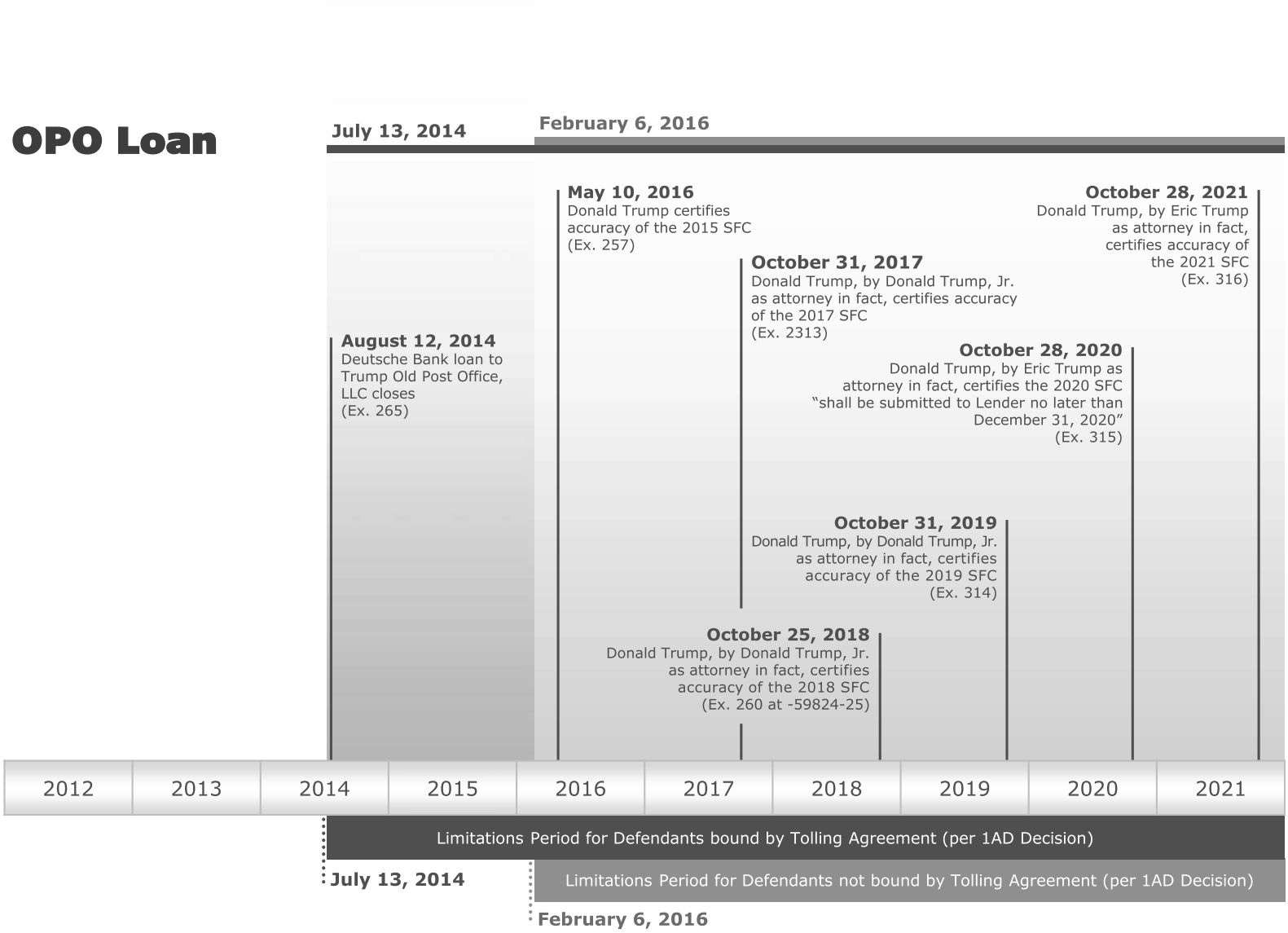
Appendix

Doral Loan

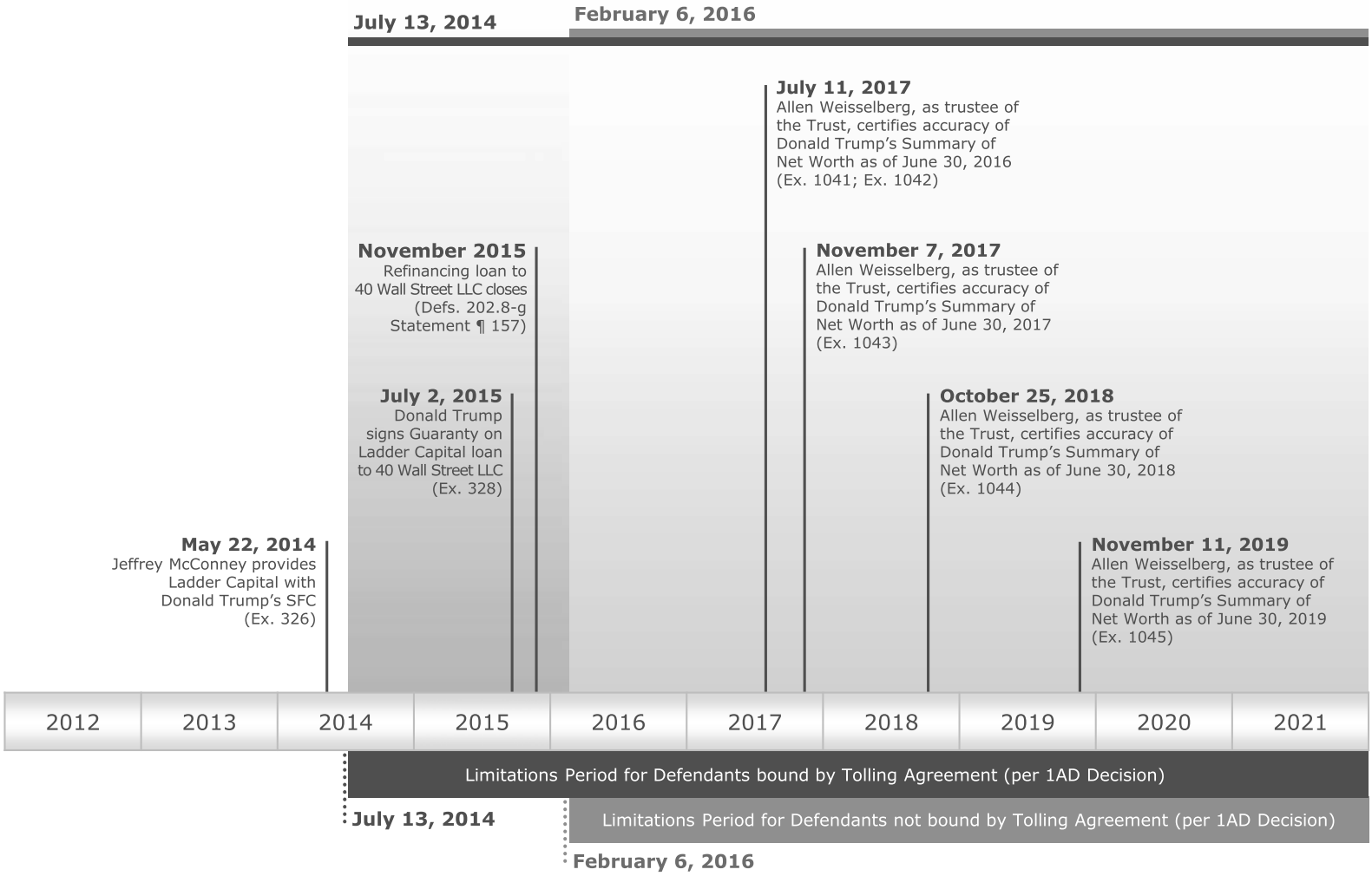

July 13, 2014
February 6, 2016
June 11, 2012
Deutsche Bank loan to Trump Endeavor 12 LLC closes (Ex. 254; NYSCEF No. 501 (Donald Trump Answer) ¶ 587)
November 11, 2014
Donald Trump certifies accuracy of the 2014 SFC (Ex. 256)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
March 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2016 SFC (Ex. 258)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 262)
October 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 259)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 261)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59826-27)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 263)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016


Chicago Loan
July 13, 2014
February 6, 2016
November 9, 2012
Deutsche Bank loan to 401 North Wabash Venture LLC closes (Ex. 276; Ex. 277; NYSCEF No. 501 (Donald Trump Answer) ¶ 606)
June 2, 2014
Amended and restated term loan to 401 North Wabash Venture LLC closes (Ex. 280 at -3709, -3711; Ex. 281 at -3204; NYSCEF No. 501 (Donald Trump Answer) ¶ 618) and includes an amended and restated guaranty (Ex. 281)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 285)
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. 284)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 283)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59828-29)
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

OPO Loan


July 13, 2014
February 6, 2016
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 316)
October 31, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 2313)
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

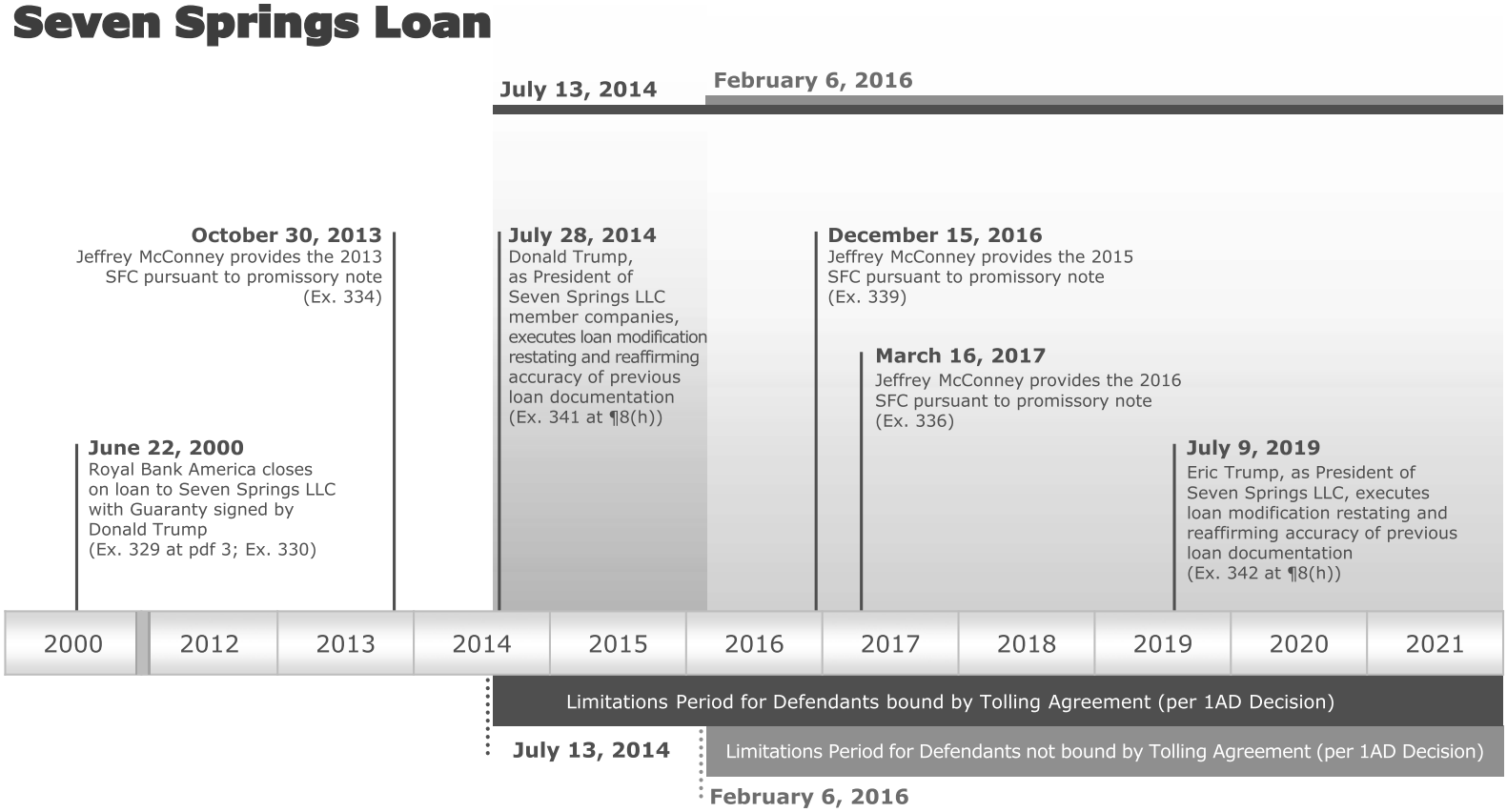


EXHIBIT G

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

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

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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Defendants submit this brief in opposition to Plaintiff's ("Plaintiff" or "NYAG") Motion for Partial Summary Judgment (NYSCEF 765).

INTRODUCTION

Donald J. Trump, the 45th President of the United States, made many billions of dollars being right about real estate and other investments. In fact, the record proves conclusively his assets and brand are worth many billions more than reflected in the very Statements of Financial Condition ("SOFCs") Letitia James, the New York Attorney General, shamelessly criticized even before seeing the numbers or actual evidence. President Trump has built a multi-billion-dollar, global corporate empire propelled by one of the most recognized and powerful brands in the world. At the center of his vast business empire sits a diverse real estate portfolio of luxury hotels, golf courses, social clubs, commercial buildings, and other real estate holdings comprised almost exclusively of prestigious, ultra-valuable, trophy properties, akin to treasured works of art. Whether it be Trump Tower on 5th Avenue in New York, the iconic Mar-a-Lago Club in Palm Beach, Florida, Doral National in Miami, Florida, the renowned Trump Turnberry Hotel and Resort in Scotland, or countless other properties, the record proves conclusively—*which notably, after reviewing the evidence, the NYAG does not dispute and has now altered her theory to justify her senseless lawsuit*—that President Trump's assets and other investments are worth many billions of dollars in excess of what the NYAG originally claimed.

To be clear, however, President Trump has not just made substantial sums of money for himself and his namesake companies. Rather, as the evidence now before this Court proves, he also made substantial sums of money for the many large, sophisticated institutions that financed and insured the real estate development projects and investments which are the subject of this lawsuit. The record also proves that throughout all of these successful business transactions with

highly sophisticated banks, President Trump's companies never missed a loan payment, never made a late payment, never defaulted on any loans, and never breached the highly complex, carefully negotiated agreements. No complaints were ever lodged by these large, highly sophisticated banks, insurers, and other institutions, which were represented by the top law firms in the country, and which were fully aware of the *powerful disclaimer clauses* highlighted in every SOFC. To the contrary, bankers responsible for reviewing, approving, and servicing the loans herein at issue have testified under oath that President Trump was a highly valued client, was never in default, and they were never "defrauded" as the NYAG claimed in her high-profile public relations lawsuit. Indeed, these bankers effectively stated, "what are we doing here?"

Yet despite same, the NYAG has maligned, demeaned, and libeled President Trump and his entire family via an opportunistic lawsuit filed for political gain. From the outset, the NYAG's specious claims that President Trump and his companies somehow misled and fraudulently induced these large, sophisticated, and well represented institutions to finance and insure his projects, have been replete with politically incendiary rhetoric but lacking in any substance whatsoever. The NYAG now wrongfully and baselessly asks this Court to ignore the evidentiary record in favor of her own, selective and unrealistic narrative, to ignore the mandate of the First Department, and to substitute her uninformed judgment for that of the sophisticated counterparties engaged in these complex, and highly successful transactions. However, the day of reckoning has arrived, and the record evidence exposes a complete lack of support, dooming her case, as her original premise failed.

The record herein establishes the NYAG has wasted millions of dollars of taxpayer money to prove what President Trump and his family have always known. That record demonstrates fully

President Trump is, without question, worth many billions of dollars, indeed billions more than what the NYAG claimed when lodging her baseless allegations.

Undeterred, the NYAG nonetheless persists, ignoring the record evidence and, importantly, ignoring the binding mandate of the unanimous Appellate Division, First Department, where the Defendants prevailed conclusively on the statute of limitations issues. The NYAG's "fact" statement[1] consists largely of mere allegations cut and pasted from her Complaint and concerns transactions well outside the applicable statute of limitations period. Moreover, last June, the First Department ruled that the NYAG's claims are "time barred if they accrued—that is, the transactions were completed—before February 6, 2016" and that "[f]or defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014." *People v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023). However, instead of taking the honorable step of voluntarily dismissing those time-barred claims, the NYAG has ignored the First Department's decision—shockingly treating it as if it has absolutely no effect on this case. Simply stated, this blatant disregard of both the actual record evidence and the First Department's clear limitations mandate is inexplicable and untenable.

Equally so is her disregard for the First Department's rejection of the continuing wrong doctrine in this case. *See id.* at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Despite this clear holding, the NYAG still relies, inappropriately, on continuing wrong theories to support her decision to recite pre-July 13, 2014, facts on this motion. However, the NYAG simply fails to explain (because she cannot) how conduct and transactions that pre-date July 13, 2014, are actionable.

[1] Defendants' response herein to the NYAG's statement of facts in no way concedes such facts are relevant and/or within the scope of the limitations period.

Additionally, the NYAG's Motion reveals she has now chosen to ignore her own, highly paid experts, no doubt realizing the evidence does not support her claims. The record now demonstrates the NYAG has failed to present, as she must, sufficient evidence the SOFCs had any capacity or tendency to deceive. To the contrary, the SOFC values were well supported, reflecting many billions in net worth. Moreover, each SOFC included unambiguous, powerful disclaimers making it abundantly clear the values set forth therein reflected President Trump's opinion based on an inherently subjective valuation process, and as such each user must and should conduct their own due diligence (which of course all the banks in fact did, and do).[2] This record thus proves there is no basis at all for the NYAG's cries of fraud and foul.

The NYAG also ignores, misconstrues, and misapplies GAAP, ignores the requisite materiality standard, and fails to demonstrate the necessary knowledge and participation by the various named Defendants. She presents only arguments, not admissible evidence, simply insufficient to establish any viable issue remains for trial. Finally, the NYAG avoids having to admit there is no basis under the law supporting her claim for disgorgement, sidestepping the issue by relegating its only mention to a footnote.

In sum, despite the NYAG's politically charged insults and accusations, President Trump (and all of the Defendants) has a great case centered around a phenomenal corporate empire worth billions of dollars more than the NYAG has falsely claimed, very little debt, significant cash and liquidity, powerful disclaimer clauses, paid off loans, and banks extremely pleased with highly profitable loan transactions. There was no fraud. There are no victims. Accordingly, the NYAG's

[2] Every SOFC contained numerous disclaimers, including, *inter alia*, the following statement: ***"Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts."*** (*See, e.g.,* NYSCEF 5 at 1.) (emphasis added).

Motion for Partial Summary Judgment should be denied, and summary judgment entered in favor of all Defendants.

LEGAL STANDARD

Summary judgment is only appropriate where there is no genuine issue of material fact, and the moving party has made a *prima facie* showing of entitlement to judgment as a matter of law. *Ayotte v Gervasio*, 81 N.Y.2d 1062, 1063 (1993); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). The movant must first meet its burden of tendering sufficient evidentiary proof in admissible form to demonstrate the absence of any material issue of fact. *Zuckerman v. City of N.Y.*, 49 N.Y.2d 557, 562 (1980). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." *Id.* (collecting cases). Only then does the burden shift to the opposing party to submit evidentiary proof sufficient to create material issues of fact requiring a trial.[3] *Id.; see Di Sabato v. Soffes,* 9 A.D.2d 297, 300–01 (1st Dep't 1959) (citing *Dodwell & Co. v. Silverman,* 234 A.D. 362 (1st Dep't 1932)). Moreover, a summary judgment movant is barred from advancing new arguments in its reply papers.[4] *Lumbermens Mut. Cas. Co. v. Morse Shoe Co*., 218 A.D.2d 624, 625 (1st Dep't 1995). Therefore, to the extent the NYAG failed to raise legal issues in her primary brief, she has abandoned those arguments. *See JPMorgan Chase Bank, N.A. v. Luxor Cap., LLC*, 101 A.D.3d 575, 576 (1st Dep't 2012); *Shaw v. Bluepers Fam. Billiards*, 94

[3] To the extent there is simply competing expert testimony on any point, the Court cannot resolve such dispute at this stage. *See Krasniqi v. Korpenn LLC*, 158520/2013, 2018 WL 5309753, at *11 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 24, 2018) (collecting cases)).

[4] The NYAG cannot change course in her reply brief, pointing to new evidence to show materiality or participation and knowledge (to the extent any exist, which Defendants contend it does not). In *NexBank, SSB v. Soffer*, the court faced dueling motions for summary judgment and denied the plaintiff's request to supplement its expert disclosure with more expert reports, finding that the plaintiff had "made the calculated decision to prove damages exclusively through . . . . its lay witness testimony and documentary evidence" and "chose not to rely on expert testimony." 2018 652072/2013, 2018 WL 2282884, at *2 (N.Y. Sup. Ct. N.Y. Cnty. May 18, 2018). Here, the NYAG has not introduced expert testimony or developed other evidence to support her claims and has instead decided to regurgitate the Complaint, arguing that the alleged differences in value are so great they must be material.

A.D.3d 858, 860 (2d Dep't 2012); *O'Sullivan v. O'Sullivan*, 206 A.D.2d 960, 960 (4th Dep't 1994).

ARGUMENT

I. The First Department Statute of Limitations Decision is Binding Law of the Case

Under "the doctrine of the 'law of the case,' . . . when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned." *Tischler v. Key One Corp.*, 67 A.D.2d 886, 886–87 (1st Dep't 1979); *see People v. Evans*, 94 N.Y.2d 499, 502 (2000) ("[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction.") (citations omitted). The doctrine applies to preclude relitigating any issue that is "judicially determined, either directly or by implication . . . in the course of the same litigation," *Holloway v. Cha Cha Laundry, Inc.*, 97 A.D.2d 385, 386 (1st Dep't 1983) (citation omitted). First Department prior rulings thus constitute the law of the case and are binding. *See Brodsky v. N.Y. City Campaign Fin. Bd.*, 107 A.D.3d 544, 545–46 (1st Dep't 2013) ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted). Such prior rulings must be followed regardless of whether this Court or the NYAG disagrees with its holding. *See* 28 N.Y. Jur. 2d Courts and Judges § 218 ("State trial courts are bound to follow existing precedent of a higher court even though they may disagree with the higher court's decision.") (collecting cases). Nor can the NYAG "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State*, No.112317, 2011 WL 5528963, at *5 (N.Y. Ct. Cl. Aug. 5, 2011) (collecting cases).

Here, the First Department clearly defined the applicable statute of limitations periods, holding that the NYAG's claims are "time barred if they accrued—that is, ***the transactions were completed***—before February 6, 2016" and that for those Defendants "bound by the tolling

agreement, claims are untimely if they accrued before July 13, 2014." *Trump*, 217 A.D.3d at 611 (emphasis added). The First Department also rejected application of the continuing wrong doctrine in this case, holding that "[t]he continuing wrong doctrine does not delay or extend these periods." *Id*. These rulings are binding.

Yet the NYAG ignores the First Department's ruling, mentioning it only *twice* in her 61-page memorandum of law. (NYSCEF 766 at 5, 56). NYAG fully ignores that the First Department established *two* applicable cutoff periods for the transactions at issue—one for Defendants bound by the tolling agreement and one for those who are not bound—rejected the continuing wrong doctrine and held that at least one Defendant was not bound by the tolling agreement. What is worse, NYAG claims that she "reserves the right to argue at trial or in response to Defendants' submissions that an *earlier* cutoff date for timely claims applies." (NYSCEF 766 at 5 n.3) (empahasis added). But the NYAG simply cannot "now raise issues which were previously adjudicated or could have been previously adjudicated by this court in the interlocutory appeal." *KTM P'ship-I v. 160 West 86th St. Partners*, 169 A.D.2d 462, 462 (1st Dep't 1991). The NYAG's apparent attempt to "raise again the very issues previously decided against them on a prior appeal" is "barred by the doctrine of law of the case." *Ometz Realty Corp. v. Vanette Auto Supplies*, 262 A.D.2d 539, 540 (2d Dep't 1999) (internal citations omitted). "[Q]uestions of law that have been resolved by an appellate court on a prior appeal will not be reviewed upon a further appeal to that court." *Local 345 of Retail Store Employees Union v. Heinrich Motors*, 96 A.D.2d 182, 186 (4th Dep't 1983) (citing 4 N.Y. Jur. 2d Appellate Review §§ 453, 454), *rev'd on other grounds*, 63 N.Y.2d 985 (1984).

The purpose of an interlocutory appeal is to resolve disputed issues during the pendency of the underlying trial court action. Thus, when a decision is rendered both the parties and the trial

court must and should implement that decision immediately and redefine the issues for resolution. Here, the First Department provided specific guidance as to the applicable limitations periods and then further directed this Court to determine the full range of Defendants who are not bound by the tolling agreement. *See Trump*, 217 A.D.3d at 611–12. The First Department's mandate must therefore be implemented at this stage and the ruling given effect ***before*** any remaining issues are tried. Thus, this Court should, respectfully, decline the NYAG's blatant invitation to error.

A. The NYAG Is Not Entitled To Summary Judgment On Time-Barred Allegations

The NYAG boldly claims that "the cutoff date for timely claims against all Defendants is at latest July 13, 2014," (NYSCEF 766 at 5, n.3), even though the First Department established that "claims are time barred if they accrued—that is, the transactions were completed—before February 6, 2016" for Defendants who are not bound by the tolling agreement, *Trump,* 217 A.D.3d at 611. However, even if the NYAG is correct in that July 13, 2014, is the operative date for all Defendants, which she is not, she ignores the First Department's ruling that claims accrued in this case when "***the transactions were completed***." *Id.* (emphasis added). Despite this holding, the NYAG continues to base her allegations on transactions that were clearly completed prior to July 13, 2014.

The table below provides shows each transaction, its completion date, and to which Defendants (if any) claims relative to these transactions remain timely:

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG'S Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None

GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by The Tolling Agreement.
Buffalo Bills Bid	Transaction never consummated.	None
40 Wall Street Loan	November 2015	Only Defendants Bound by The Tolling Agreement.

Each of the transactions mentioned above is addressed below:

Doral Loan. DB extended a $125 million loan in connection with Trump Endeavor 12, LLC's purchase of the property known as Trump National Doral. (Robert Aff.[5], Ex. AAR ("Defs. SOF") ¶ 103.) This transaction was completed when the "loan closed on June 11, 2012." (Defs. SOF ¶ 115.) Thus, all allegations based on the Doral Loan are time-barred as to all Defendants.

Chicago Loan. DB financed up to $107 million in debt in connection with the Trump International Hotel and Tower, Chicago, in 2012 and a $54 million loan expansion in 2014. (*See* Defs. SOF ¶¶ 124, 137.) The "Trump Chicago loan facilities" were "closed on November 9, 2012," (Defs. SOF ¶ 131), and the amended loan documents implementing the expansion were executed in May 2014. (Defs. SOF ¶ 138.) Thus, the Chicago Loan transaction was "completed," on November 9, 2012. The First Department held that the continuing wrong doctrine does not delay or extend the applicable statute of limitations, meaning the loan expansion does not constitute a separate transaction that would extend the limitations period. *See Trump,* 217 A.D.3d at 611–12. Accordingly, any allegations based on the Chicago Loan are time-barred for all Defendants.

[5] "Robert Aff." refers to the affirmation of Clifford Robert dated September 1, 2023 filed concurrently herewith.

GSA's OPO Contract and Lease. The GSA awarded Trump Old Post Office, LLC the contract to redevelop the OPO property in February 2012, (Defs. SOF ¶ 146), and that the GSA signed the associated OPO lease with Trump Old Post Office, LLC on August 5, 2013, (Defs. SOF ¶ 146.) Thus, any claims based on the OPO Contract and Lease transactions are time-barred for all Defendants.[6]

Deutsche Bank's OPO Loan. DB financed up to $170 million in funds in connection with Trump Old Post Office LLC's purchase and renovation of the OPO. (Defs. SOF ¶ 148.) The OPO Loan was closed "on August 12, 2014." (Defs. SOF ¶ 152.) Accordingly, the NYAG's purported claims based on this transaction are timely only as to Defendants subject to the Tolling Agreement.

Seven Springs Loan. "[I]n ***2000***, Seven Springs LLC took out an approximately $8 million mortgage from Royal Bank America" (later acquired by Bryn Mawr), which was "personally guaranteed" by President Trump. (Defs. SOF ¶ 161.) Despite the obvious fact this transaction was completed more than a decade prior to July 13, 2014, the NYAG contends Seven Springs LLC allegedly made fraudulent representations regarding President Trump's Statements of Financial Condition to "obtain[ ] a series of extensions of the maturity date" of the loan from Royal Bank America and Bryn Mawr Bank in 2001, 2002, 2003, 2006, 2009, 2011, 2014, and 2019. (NYSCEF 1 ¶ 658.) However, the First Department expressly held that the continuing wrong doctrine does not delay or extend the applicable statute of limitations. Accordingly, these loan extensions do not constitute separate transactions that would extend the limitations period. *See Trump,* 217 A.D.3d at 611–12.

[6] The NYAG bases $100 million of its $250 million disgorgement demand on the "asserted profit on the subsequent sale of [the OPO] property." *See* NYSCEF 245 at 53. As explained below *see infra,* Part IV, disgorgement is unavailable to the NYAG as a matter of law. Yet, even if disgorgement were available to the NYAG, there can be no award for disgorgement based on the OPO contract and lease transactions. The same rationale applies to, inter alia, the Doral Loan and the Chicago Loan.

Ferry Point Contract. It is undisputed that an entity affiliated with President Trump's businesses submitted an offer "in 2010" to the City of New York to operate an 18-hole golf course and related facilities at Ferry Point Park, Bronx, NY. (Defs. SOF ¶ 211.) Because the City "grant[ed] . . . the concession" and President Trump "won the contract" in "2012," (Defs. SOF ¶ 213), this transaction was completed and the statute of limitations began to run that year. *See U.S. v. Sabin Metal Corp.*, 151 F. Supp. 683, 687 (S.D.N.Y. 1957), *aff'd,* 253 F.2d 956 (2d Cir. 1958) ("The defendant's bid constituted the offer and the government's acceptance completed the contract.") (citations omitted). Thus, claims based on the Ferry Point Contract are time-barred for all Defendants. *See Trump,* 217 A.D.3d at 611–12.[7]

40 Wall Street Loan. 40 Wall Street LLC refinanced a $160 million mortgage from Capital One Bank, on the office building at 40 Wall Street in New York, with Ladder Capital Finance "[i]n approximately November 2015." (Defs. SOF ¶ 157). Therefore, the NYAG's causes of action based on the 40 Wall Street Loan are untimely as to all Defendants not subject to the Tolling Agreement. *See Trump,* 217 A.D.3d at 611–12.

Buffalo Bills Bid. The NYAG alleges Defendants made misleading statements regarding President Trump's 2013 SOFC figures and personal liquidity as of June 30, 2014, in connection with President Trump's bid package to purchase the Buffalo Bills football team. (NYSCEF 1 ¶ 670.) President Trump's initial bid was submitted "in July 2014." (Defs. SOF ¶ 208.) However, President Trump never entered into a contract or completed a transaction to purchase the Bills such that there is no transaction upon which the NYAG can base its claim. *See S.S.I. Invs. Ltd. v. Korea*

[7] Notably, the NYAG made no mention of the Ferry Point Contract in her summary judgment papers. Thus, she has abandoned this argument, *see JPMorgan*, 101 A.D.3d at 576; *Shaw*, 94 A.D.3d at 860; *O'Sullivan*, 206 A.D.2d at 960, and this Court should grant summary judgment in favor of Defendants dismissing as untimely all of NYAG's causes of action to the extent they are based on the Ferry Point Contract, *see e.g., MLRN LLC v. U.S. Bank, N.A.*, 217 A.D.3d 576 (1st Dep't 2023); *Tesciuba v. Shapiro,* 166 A.D.2d 281, 282 (1st Dep't 1990).

Tungsten Mining Co., 80 A.D.2d 155, 161 (1st Dep't 1981) ("[A] bid is nothing more than an offer. No legal rights are created until the offer has been accepted."); *Sabin Metal*, 151 F. Supp. at 687 (noting that an "invitation to bid [is] merely a request for offers and . . . not an operative offer" while "acceptance [of the bid] complete[s] the contract"). Because the bid did not constitute a completed transaction as a matter of law, and because the bid was submitted outside the limitations period, summary judgment is proper in favor of all Defendants.[8]

***Trump Park Avenue Loan*.** Investors Bank financed a $23 million loan collateralized by Trump Park Avenue on July 23, 2010. (Defs. SOF ¶ 165.) Given the July 23, 2010, completion date, any claims related to that financing agreement are time barred against all Defendants.

Unfazed by the First Department's clear mandate, the NYAG now argues that Defendants submitting "annual financial disclosures" or "certifications" and lenders conducting "annual reviews" of the loans after they closed somehow extends the completion dates and makes these transactions timely. (*See, e.g.,* NYSCEF 766 at 5, 34). For the OPO Loan, specifically, NYAG relies on "a series of draws over time" that were made on the construction loan. (NYSCEF 766 at p.41). But this is merely a veiled attempt to rely on the continuing wrong doctrine that the First Department already rejected in this case. *See Trump,* 217 A.D.3d at 611. Indeed, ***the NYAG briefed these exact arguments before the Appellate Division***:

> Here, defendants' scheme involved . . . continuing wrongs. For example, the Deutsche Bank loans imposed an ongoing requirement to annually submit the Statements and certify their truth and accuracy, and defendants repeatedly did so despite the misrepresentations in the Statements. Such subsequent and repeated false and misleading submissions made in connection with an initial

[8] As with Ferry Point, the NYAG made no mention of the Buffalo Bills Bid in her summary judgment papers and has therefore abandoned this argument, *see JPMorgan*, 101 A.D.3d at 576; *Shaw*, 94 A.D.3d at 860; *O'Sullivan*, 206 A.D.2d at 960, and this Court should grant summary judgment in favor of Defendants dismissing as untimely all of the NYAG's causes of action to the extent they are based on the Buffalo Bills Bid. *See e.g., MLRN LLC*, 217 A.D.3d 576.

> financial relationship constitute continuing wrongs. For the Old Post Office loan, defendants also repeatedly requested disbursements conditioned on their certifying the truth and accuracy of the previously submitted Statements.

Br. for Resp't, *Trump*, No. 2023-00717, 2023 WL 4552508, at *48 (citations omitted). The First Department's rejection of these arguments was unequivocal. *See Trump,* 217 A.D.3d at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Moreover, when the NYAG suggested during oral argument that resubmission of the SOFCs for purposes of recertification or disbursement were additional fraudulent acts, the First Department firmly stated that that sort of conduct was "the quintessential" example of the "effects of an earlier breach," not independent wrongs. Recording of Oral Argument at 1:18:00–09, *Trump*, No. 2023-00717 (1st Dep't June 6, 2023). Simply, the First Department's rejection of the continuing wrong doctrine constitutes the law of the case and the NYAG and this Court are bound to adhere to that ruling.

B. "All" Defendants Are Not Bound By The Tolling Agreement

Without any support, the NYAG flatly "takes the position that . . . all of the Defendants are bound by the August 2021 tolling agreement." (NYSCEF 766 at 5, n.3). However, New York law and the record establish the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney (collectively, the "Unnamed Individuals"), and/or The Donald J. Trump Revocable Trust ("Trust").

First, the NYAG is judicially estopped from taking this position as (1) it directly contravenes her own express arguments that the agreement only binds the Trump Organization itself and none of the Unnamed Individuals and (2) the NYAG obtained favorable rulings in connection with those arguments in prior proceedings. (*see* NYSCEF 835 at 16–17). The doctrine of judicial estoppel "prevents a party who assumed a certain position in a prior proceeding and

secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed." *Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018) (citations omitted). For the doctrine to apply, there need be only "a showing that the party taking the inconsistent position had benefitted from the determination in the prior action or proceeding based upon the position it advanced there."*12 New St., LLC v. Nat'l Wine & Spirits, Inc.*, 196 A.D.3d 883, 884–85 (3d Dep't 2021) (citations omitted).

Here, the NYAG previously filed an application in *People v. The Trump Org., et al.*, No. 451685/2020, N.Y. Sup. Ct. (the "Special Proceeding"), seeking to hold President Trump in contempt for his purported failure to comply with a court order relating to subpoena compliance. *See generally,* Special Proceeding, (NYSCEF Nos. 668–75). During oral argument, counsel for NYAG stated: "[t]here is hard prejudice because Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization.*" (*See* Defs. SOF ¶ 273 (emphasis added).) The court ultimately granted the NYAG's application to hold President Trump in civil contempt and specifically noted that "[the NYAG] correctly states that any delay causes prejudice to the 'rights or the remedies of the State acting in the public interest.' Moreover, each day that passes without compliance further prejudices [the NYAG], as the statute of limitations continues to run and may result in [the NYAG] being unable to pursue certain causes of action that it otherwise would." Special Proceeding, (NYSCEF 758).

Thereafter, the NYAG advanced the same position in writing before the First Department, arguing, "Mr. Trump's noncompliance and efforts at delay . . . prejudiced [the NYAG] given that the limitations period was continuing to run on potential enforcement claims." In putting forth this argument, NYAG stated unequivocally that "[the NYAG] and the Trump Organization entered a six-month tolling agreement, ***to which Mr. Trump was not a party***." (*See* Defs. SOF ¶ 274)

(emphasis added); (Robert Aff., Ex. AY at 39 n.13). The First Department ruled in favor of the NYAG and affirmed the lower court's finding of contempt. *See generally People v. Donald J. Trump, et al.*, 213 A.D.3d 503 (1st Dep't 2023). Given that the NYAG has twice successfully advanced the position that individuals were not bound by the Tolling Agreement, she is judicially estopped from taking a contrary position in the instant proceeding.

Alternatively, the NYAG's prior statements at least constitute a judicial admission. "As a general rule, facts admitted by the pleadings are binding on the parties throughout the entire litigation." 57 N.Y. Jur. 2d Estoppel, Etc. § 63 (collecting cases). Thus, an admission by a party "in a pleading in one action is admissible against the pleader in another suit, provided it is shown 'by the signature of the party, or otherwise, that the facts were inserted with his knowledge, or under his direction, and with his sanction.'" *Matter of Liquidation of Union Indem. Ins. Co. of N.Y.*, 89 N.Y.2d 94, 103 (1996) (citation omitted). Moreover, "it is irrelevant that the admissions were made in part by counsel . . . and that they were contained in affidavits or briefs." *Id.* (collecting cases). Here, the NYAG filed a signed appellate brief in the contempt proceeding containing the factual statement that "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." (Defs. SOF ¶ 274); (Robert Aff., Ex. AY at 39 n.13, 57). This constitutes a judicial admission that none of the Unnamed Individuals are bound by the Tolling Agreement.

Regardless, NYAG advances this position again without providing *any* additional case law or evidentiary proof to support it outside of the agreement itself. Indeed, the NYAG cites one case, *People v. JUUL Labs, Inc.*, 212 A.D.3d 414 (1st Dep't 2023)—the same one she cited before the First Department—to support the proposition that the First Department found a "corporate tolling agreement applied to corporate affiliates, officers, and directors under language defining the bound

parties similar to language in the tolling agreement here."[9] (NYSCEF 766 at p.5). The only other citation is to the last two paragraphs of the NYAG's statement of undisputed facts which simply state that "per the terms of the agreement, Defendants DJT, Junior, Eric Trump, Allen Weisselberg, and Jeffrey McConney are bound by the tolling agreement" and that "the tolling agreement binds all officer-members of the Trump Organization." (NYSCEF 767 ¶¶ 793–94). These paragraphs in turn cite to no record evidence outside of the tolling agreement itself. (*Id.*). These conclusory statements and arguments do nothing to address—let alone rebut—Defendants' robust legal arguments and record proof the tolling agreement did not bind the Unnamed Individuals.

A valid tolling agreement constitutes an enforceable contract subject to normal rules of interpretation. *See CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.,* No. 15601951/08, 2009 WL 5102795, at *3 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009). It is a general rule of contract interpretation that a non-signatory is not usually bound to an agreement. *See Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352 (1st Dep't 2020); *Capricorn Invs. III, L.P. v. Coolbrands Int'l, Inc.*, No. 603795/06, 2009 WL 2208339, at *8 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2009) ("Generally, a party that is not a signatory to an executed agreement is not bound to the agreement."), *aff'd*, 886 N.Y.S.2d 158 (1st Dep't 2009); *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 630 (2013)

[9] The *JUUL Labs* case is irrelevant in light of the several independent arguments advanced by Defendants concerning the non-applicability of the tolling agreement to the individual defendants, to which the NYAG has no retort. Nonetheless, it is worth noting that the *JUUL Labs* case is inapposite and certainly does not stand for the sweeping proposition that the NYAG contends. Notably, the First Department's entire discussion of the parties' tolling agreement is limited to a single, throwaway sentence in which court broadly states that "the motion court correctly concluded that defendants are bound by the tolling agreement into which JUUL entered with the People." *JUUL Labs*, 212 A.D.3d at 417. Moreover, in *JUUL*, unlike here, there was no underlying dispute as to whether the individual defendants in question—the company's two co-founders—had agreed to be bound by the tolling agreement. Indeed, as the NYAG argued in its appellate brief, the individual defendants had acquiesced to the agreement because they "participate[d] as co-founders, senior executives, and board members in JUUL's signing of the tolling agreement" and had not, at any point prior to the commencement of litigation, attempted to "disclaim the agreement." Br. of Resp't, *JUUL Labs*, No. 2022-03188, 2022 WL 18355250, at *61–62 (Oct. 21, 2022).

(noting "the general rule against binding nonsignatories"). To bind an individual to an agreement, the individual must be a direct signatory to the agreement, absent exceptions inapplicable here. *Gerschel v. Christensen*, 128 A.D.3d 455, 456 (1st Dep't 2015) ("Christensen & Barrus was not a party to either tolling agreement. Therefore, its addition as a defendant was untimely, and personal jurisdiction over it was not obtained."); *Georgia Malone & Co. v. Ralph Rieder*, 86 A.D.3d 406, 408 (1st Dep't 2011) ("It is well established that officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually."), *aff'd*, 19 N.Y.3d 511 (2012). In order to bind a non-signatory individual, "the party seeking to enforce the unsigned writing must prove the [other party] intended to be bound by the terms of that writing." *Moskowitz v. Herrmann*, No. SC 731/2018, 2018 WL 4291557, at *11 (N.Y. Sup. Ct. Orange Cnty. Sept. 6, 2018); *Freeford Ltd. v. Pendleton*, 53 A.D.3d 32, 40 (1st Dep't 2008). Here, Alan Garten is the only individual who signed the tolling agreement and he did so in his capacity as "EVP/Chief Legal Officer" of the "Trump Organization." (NYSCEF 272.) The individual Defendants—President Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney—are neither named in the agreement nor executed it. Thus, as a matter of law, under the plain language of the contract, the Tolling Agreement does not bind the Unnamed Individuals.

Further, despite calling this "a documents case," (NYSCEF 766 at 2), the NYAG produced no documents to dispute the record evidence showing that the parties did not intend to bind the Unnamed Individuals. Communications between the "Trump Organization" and the NYAG surrounding the agreement confirm this understanding. Previous drafts of the Tolling Agreement explicitly named the Unnamed Individuals and included separate signature blocks for each individual. (Defs. SOF ¶ 269). The final, executed version of the Tolling Agreement contained no

such references nor separate signature blocks.[10] The agreed and knowing removal of the Unnamed Individuals from the final Tolling Agreement itself confirms it does not apply to them. The NYAG offers no evidentiary proof to rebut this record evidence. The NYAG's causes of action involving the Unnamed Individuals are time-barred to the extent that they are based on transactions completed before February 6, 2016.

The Trust is likewise not bound by the tolling agreement. Simply as a matter of black letter trust law, only a duly authorized trustee has the authority to enter into agreements on behalf of a trust. *See* N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17); *Korn v. Korn,* 206 A.D.3d 529, 530–31 (1st Dep't 2022). Thus, a trustee may only "contract as an agent . . . and directly bind the trust estate or the beneficiary" where he is specifically "authoriz[ed] by statute or by the trust instrument" to do so. *Id.*

No trustee signed the Tolling Agreement—either individually or as a trustee with authority to bind the Trust. (Defs. SOF ¶ 267). Only Mr. Garten signed the Tolling Agreement on behalf of the Trump Organization. He is neither a Trustee nor a beneficiary of the Trust. (*See* Defs. SOF ¶ 267.) The Complaint's allegations and other evidence confirm that the various Defendant entities, including "Trump Organization" and the Trust, are "separate entities." (Defs. SOF ¶ 16.) Additionally, there is no evidence showing that the "Trump Organization" or Mr. Garten had the authority to bind the Trust. Plainly therefore, the NYAG's causes of action involving the Trust are time-barred to the extent that they are based on transactions completed before February 6, 2016.

[10] Both the original draft and the final, executed version contained the same footnoted definition of the "Trump Organization" dispensing with any argument that definition somehow includes the Unnamed Individuals who were specifically and knowingly deleted from the Tolling Agreement.

II. The NYAG Fails to Present Sufficient Evidence as to the First Cause Of Action

NYAG moves for summary judgment on her First Cause of Action, a claim under Executive Law § 63(12) for repeated and persistent fraud. There are four elements of a § 63(12) fraud claim of the nature alleged in the First Cause of Action:

(1) there was an act that tends to deceive or creates an environment conducive to fraud, meaning the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances;
(2) the act was misleading in a material way;
(3) the defendant participated in the act or had actual knowledge of it; and
(4) the act was persistent and/or repeated.

See People v. N. Leasing Sys., Inc., 70 Misc. 3d 256, 267 (N.Y. Sup. Ct. N.Y. Cnty. 2020) (collecting cases). "Ultimately, 'the test for fraud' under § 63(12) 'is whether the targeted act has the capacity or tendency to deceive or creates an atmosphere conducive to fraud.'" *People v. Exxon Mobil Corp.*, No. 452044/2018, 2019 WL 6795771, at *4 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019) (quoting *People v. Gen. Elec. Co., Inc.*, 302 A.D.2d 314 (1st Dep't 2003)). "[E]vidence regarding falsity, materiality, reliance and causation" are "plainly . . . *relevant* to determing whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's,* 2021 WL 39592, at *10.

The NYAG has not carried her burden on these elements of the § 63(12) claim. The NYAG misconstrues and misapplies GAAP, fails to establish that the SOFCs, the center of her case, are in fact misleading or false, presents an insufficient valuation analysis, and ignores materiality.

A. The NYAG Fails To Show That The SOFCs Were False Or Fraudulent

To succeed on her § 63(12) claims, the NYAG bears the initial burden to establish the valuations contained in the SOFCs were "false" and "fraudulent." As explained below, the SOFCs complied with GAAP, thus ending the inquiry. Moreover, even setting aside the GAAP compliance, the NYAG fails to offer evidence sufficient to support her own valuations. The purported existence of a disagreement over values does not establish a prima facie case. Put

differently, the NYAG's subjective opinion as to the values set forth in the SOFCs is, simply, irrelevant.

1. The NYAG Misconstrues And Misapplies GAAP

The NYAG alleges repeatedly that the SOFCs violated GAAP, suggesting that any departures from these established standards are significant in this Court's determination of liability. But the NYAG must show that (1) the SOFCs contained departures from GAAP, *i.e.*, either misstatements or omissions; and (2) that those departures, if they exist, were material. (Robert Aff., Ex. AK ("Bartov Aff.") at 11–12.) The NYAG fails to satisfy either burden.

The NYAG cannot declare that "the documents leave no shred of doubt that Mr. Trump's SFCs do not even remotely reflect the 'estimated current value' of his assets". It is necessary for the NYAG to first identify GAAP departures and then test each alleged misstatement or omission against GAAP. This requires the NYAG to show whether each item that it claims is misstated or omitted represents a departure from GAAP and why. The NYAG fails completely to do or show this work.

a. Misunderstandings of Valuation Concepts and Guidance Under GAAP

(a) **Objective Valuation**. The NYAG's allegations regarding the overstated valuations and insufficient disclosures contained in the SOFCs, which are central to their case, are predicated on the notion that there exists such a thing as objective value. But this notion is a fiction. There is no such thing as objective value either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff. at 10-11.) Valuation is an opinion about price and therefore subjective, period. (Bartov Aff. at 10-11); (Robert Aff., Ex. AAAN ("Laposa Aff.") ¶¶ 14–15.) The valuation of an asset is a highly subjective process that depends upon several factors including the selection of a

methodology, assumptions, and benchmarks within a methodology, the discretion surrounding presentation, etc. (Bartov Aff. at 10–11.)

Which valuation methodology to choose and which assumptions to apply depends on GAAP, economic theory, and, perhaps most importantly on the perspective of the person performing the valuation, because that person picks the valuation methods and the underlying assumptions. (Bartov Aff. at 10-11.) Indeed, in order to manufacture its claims that the valuations in the SOFCs were inflated, the NYAG appears to "reverse engineer" its valuations by selecting the lowest possible valuation first, and then backing into the result by choosing the valuation method and assumptions that produces the desired valuation. (Bartov Aff. at 10–11.)

A given asset may be valued in multiple different ways depending upon who is doing the valuation and the objectives, assumptions and world view that person brings to the exercise. (Bartov Aff. at 10-11); (Laposa Aff. ¶¶ 9–12, 15.) Even an appraiser can deliver a wide range of values depending upon the objective of the client and various subjective factors. (Laposa Aff. ¶ 11–15.) A bank will seek the lowest valuation to be able to quickly liquidate the asset at fire sale prices if the borrower defaults without suffering a significant loss. That is a very different set of imperatives than Mr. Trump would have had. From Mr. Trump's perspective—the perspective of a creative and visionary real estate developer who sees the potential and value of properties that others do not, not on a year to year time horizon but often decades ahead—the valuation of those properties would have looked very different. And, he was entirely within GAAP guidance and economic theory, and therefore within the law to value the properties as he did. (Bartov Aff. at 9–10.)

(b) **Estimated Current Value and the Use of Appraisals**. FASB ASC 274, *Personal Financial Statements*, governs the preparation of compilation reports like SOFCs and affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports, and leaves it to the discretion of the preparer which method and assumptions to use. ASC 274 introduces a definition of value for investment properties, unique under GAAP, Estimated Current Value. (Bartov Aff. at 4; Defs. SOF ¶¶ 53–54.) NYAG baselessly and improperly gives primacy to appraisals as the method by which to value investment properties on the SOFCs. (*See, e.g.*, NYSCEF 766 at 10 (comparing SOFC values to appraisal values for Seven Spring property).) But there is no requirement under ASC 274 to determine the Estimated Current Value of investment properties based on professional appraisals. In fact, ASC 274 affords substantial latitude to preparers in choosing valuation methods and assumptions, and specifically guides that appraisals are only one of several inputs preparers may consider in determining Estimated Current Value of investment properties. (Bartov Aff. at 8, 12.) GAAP affords preparers substantial latitude in selecting valuation methods and underlying assumptions that may result in substantially different valuations. (Bartov Aff. at 8, 12.) Accordingly, there is no basis for the NYAG or anyone else to impose their view about what an appropriate value is for a given property, and a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values. Where the NYAG states the proper definition of Estimated Current Value, it misapplies the definition by using it synonymously with appraised value.[11] The NYAG conflates the notion of

[11] Current market value is an entirely different measure of value than Estimated Current Value, which is the proper measure of value under ASC 274 for SOFCs.

Estimated Current Value with appraised value and of value either out of ignorance or deliberately because it is the only way they can prevail.

(c) **Valuation Using Fixed Assets Approach**. The NYAG incorrectly and improperly asserts that the fixed assets method is not a proper method to calculate Estimated Current Value. (*See* NYSCEF 766 at 26–27.) The "fixed assets approach" is consistent with both GAAP and economic theory. (*See* Bartov Aff. at 10, 28.) The assertion that "Using the fixed assets approach does not present the golf clubs at their Estimated Current Value because the approach ignores market conditions and the behavior of informed buyers and sellers," (NYSCEF 766 at 27), is unsubstantiated and false. (*See* Bartov Aff. at 10, 28.)

(d) **Inclusion of Brand Premium**. The NYAG incorrectly asserts that it was improper for President Trump to include the value of his brand in the valuation of golf clubs. (NYSCEF 766 at 19.) ASC 274GAAP specifically permits the presentation of internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements. (Bartov Aff. at 14, 22, 33.) This valuation method is consistent with ASC 274 and economic theory. (Bartov Aff. at 14, 22, 33.) In addition, presenting President Trump's brand value as a standalone entry in the SOFCs is distinct from including his brand value when estimating the current value of specific investment properties. (Bartov Aff. at 14, 22, 33.) The first primarily represents the value arising from President Trump's ability to capitalize on his brand value in future events such as selling his name to global real estate developers, whereas the second refers to the effect of President Trump's brand value on the value of specific, currently owned properties. (Bartov Aff. at 14, 22, 33.) It was proper for President Trump to declare that his SOFCs did not include his overall brand value. (Bartov Aff. at 14, 22, 33.)

(e) **Selection of Capitalization Rates**. The NYAG assumes there is a "correct stabilized cap rate." (NYSCEF 766 at 24.) But there is no such thing. Capitalization rates are totally subjective estimates subject to estimation error and huge variability because the facts upon which they are based are subject to multiple interpretations. (Bartov Aff. at 19, 22.) Further, the notions of stabilized capitalization rates and stabilized operating income are not GAAP terms and consequently only loosely defined (by economists or appraisers) with no fixed or standard methodology used to calculate them. (Bartov Aff. at 21–22.) Using different measurement rules and assumptions will yield widely varying capitalization rates. (Bartov Aff. at 19.) Thus, which capitalization rate to use is a matter of opinion within the acceptable boundaries of discretion. Nowhere in ASC 274 (or, for that matter, in the entire accounting literature) does it say that one should use a projected capitalization rate rather than a current capitalization rate or any capitalization rate at all. (Bartov Aff. at 21–22.)

(f) **Undiscounted Future Income**. The NYAG improperly claims President Trump "included within the value for many of his properties an amount attributable to the development and sale of residences on undeveloped land without any discount to present value, as if the residences could be immediately planned, developed, and sold," in violation of GAAP. (NYSCEF 766 at 27.) But because neither the amounts that will be collected in the future nor their timing were known, discounting to present value was impossible. (Bartov Aff. at 28.) Thus, President Trump used the only possible approach that was available to him given the data constraints, which is the Estimated Current Value of the assets as if the homes had been sold contemporaneously with when the SOFCs were prepared, which obviously does not require discounting. Given same, this valuation approach was appropriate. (Bartov Aff. at 28.)

b. Misunderstandings of the Disclosure Requirements Under GAAP

(a) **Disclosure of Alternative Valuations**. The NYAG baselessly and improperly asserts that President Trump was required to disclose the existence of alternative valuations such as appraisals in the SOFCs and to Mazars. (NYSCEF 766 at 23.) There is no requirement under GAAP for the preparer to disclose in the SOFC the alternative valuation methodologies he considered and rejected (*e.g.*, appraisals). (Bartov Aff. at 23); (Robert Aff., Ex. AI ("Flemmons Aff.") at Ex. A ¶¶ 63–68.) The existence of appraisals or alternative valuations in the files of the Trump Organization are irrelevant to the question of whether the valuations stated in the SOFCs were compliant with GAAP. Under ASC 274 the preparer may choose from among alternative valuations the valuation he believes best reflects the Estimated Current Value of the asset given his outlook and goals. Also, as GAAP does not govern the relationship between the preparer and the external accountant compiling the SOFC, GAAP do not obligate the preparer to reveal the alternative valuations he considered and rejected to the external accountant that compiled the SOFC. (Bartov Aff. at 23);(Flemmons Aff. ¶ 11.)

(b) **Disclosure of Valuation Methods**. The NYAG baselessly and improperly asserts that GAAP requires the detailed disclosure of valuation methods. (*See, e.g.*, NYSCEF 766 at 14.) ASC 274 does not require the detailed disclosure of the valuation method for each individual asset. ASC 274-10-50-2c states: "Personal financial statements disclosures shall include . . . either of the following: 1. [t]he methods used in determining the estimated current values of major assets and the estimated current amounts of major liabilities [or] 2. [t]he methods used in determining the major categories of assets and liabilities."

The SOFCs satisfied the disclosure requirements in ASC 274-10-50-2c by disclosing the method used in determining the major categories of assets and liabilities. In

addition, on a voluntary basis, the SOFCs also disclosed the valuation methodologies used for determining the Estimated Current Value of some but not all of the investment properties. Since this was done on a voluntary basis, there was no GAAP departure in disclosing the valuation methodologies for only some of the assets. Thus, no disclosure of valuation methodologies is required under ASC 274 and the NYAG attempts to hold President Trump to standards that simply do not exist under GAAP. (Bartov Aff. at 12, 18, 19.)

c. Misunderstandings of Other Issues Under GAAP

(a) **Grouping Together of Assets**. The NYAG baselessly and improperly asserts that the grouping together of assets, such as golf courses, is somehow improper under GAAP. (NYSCEF 766 at 19.) There is no requirement in ASC 274 to report each investment property separately in the SOFC. (Bartov Aff. at 20.) In fact, the accounting literature requires the grouping together of similar assets in order to keep the financial statement concise and this is a standard practice by all companies. (Bartov Aff. at 20.) The SOFCs may have stated the aggregate value of the club facilities, but the clubs were named and sophisticated users of the SOFCs who had access to President Trump and could make inquiries could have asked for a property-by-property breakdown of those assets. Both Mazars and Deutsche Bank knew which properties were included in the aggregate value reported and could have asked about them if they had any reason to be concerned. Further, Mazars did not list this as a departure from GAAP let alone a material departure. Thus, there is nothing unlawful about aggregating assets this way and the NYAG attempts to hold President Trump to standards that simply do not exist under GAAP. (Bartov Aff. at 20.)

(b) **Reporting of Cash**. The NYAG incorrectly acclaims that under GAAP, President Trump should not have included the cash held by the Vornado Partnership under cash in his

SOFCs, and that doing do falsely inflated the SOFCs. (NYSCEF 766 at 24.) The SOFCs do not say "cash" but rather cash and certain other items, clearly indicating that items other than cash were combined with cash under this entry on the SOFCs. (Faherty Aff., Ex. 3 at -37; Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790; Ex. 10 at -248; Ex. 11 at -418) Mazars listed as a potential GAAP departure that certain cash positions were reported separately from their related operating entities, further calling to the attention of the reader that the cash from operating entities was reported separately. Faherty Aff., Ex. 3 at -035; Ex. 4 at –715; Ex. 5 at -689; Ex. 6 at -982; Ex. 7 at -841; Ex. 8 -724; Ex. 9 at -792–93; Ex. 10 at -250; Ex. 11 at -420) Further, President Trump fully disclosed the components of "cash" in a footnote as including cash in operating entities. (Faherty Aff., Exs. 3–11 at Note 2; Flemmons Aff., Ex. B ¶¶ 44-47) In addition, the claim that the SOFCs were inflated is invalid. (Bartov Aff. at 26.) Even if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs. (Bartov Aff. at 26.)

(c) **Recording of Escrow Amounts**. The NYAG claims that GAAP does not allow escrow amounts held by the Vornado Partnership Interests to be included on the SOFCs and that doing do falsely inflates the SOFCs. (NYSCEF 766 at 24.) This claim is false. (Bartov Aff. at 26–27.) NYAG does not identify which GAAP was violated and this would be an issue of misclassification and therefore would not have inflated the SOFCs. (Bartov Aff. at 26–27.)

(d) **Value of the Triplex**: Given President Trump's plausible explanation in his deposition testimony, this inaccuracy is inadvertent, and, in particular, is immaterial. To be sure, such

errors in financial reports are not unusual. *See, e.g.*, Bartov, Marra, and Momenté, *Corporate Social Responsibility sand the Market Reaction to Negative Events: Evidence from Inadvertent and Fraudulent Restatement Announcements*, The Accounting Review 96(2), Mar. 2021, at 81–106.

(e) **Reporting of Membership Deposit Liabilities**. The NYAG claims that President Trump was required to determine the present value of the refundable membership deposits rather than reporting the full cash value of the potential liability in the SOFCs. (NYSCEF 766 at 26–27.) Non-recognition of the assumed refundable deposits as liabilities and their disclosure in a footnote align with the FASB definition of liabilities, which requires a commitment to be probable in order to be recognized as a liability in the SOFCs. This, in turn, nullifies the question of whether the liability should have been discounted or not. (Bartov Aff. at 22, 23, 28.)

(f) **Accuracy of Certifications**. President Trump simply did not misrepresent that his SOFCs complied with GAAP. Rather, his certifications that they did are descriptively valid because GAAP does not apply to immaterial values, and the NYAG has failed to show that the items she claims are actionable were materially misleading because it has failed to perform any valid materiality test. (Bartov Aff. at 30–31.)

2. The SOFCs Complied With GAAP

Once the NYAG's misunderstandings of GAAP are corrected, it is apparent that the SOFCs did indeed comply with GAAP, either because the SOFCs contained no misstatements (*i.e.*, departures from GAAP) or, to the extent the SOFCs contained misstatements, those misstatements were immaterial.

The NYAG's allegations regarding the allegedly overstated valuations and insufficient disclosures contained in the SOFCs, which are central to her case, are predicated on the notion that

there exists some "true," "correct," or "objective value," but no such value exists. There is no such thing as true, correct or objective value either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff. at 10–11.) At bottom, a valuation is an opinion and depends upon several factors, including the selection of a methodology, assumptions, and benchmarks within a methodology, and the discretion surrounding presentation. (Bartov Aff. at 10–11); (Laposa Aff. ¶ 12).

Indeed, ASC 274, which as noted above governs the preparation of compilation reports like the SOFCs, affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports and leaves it to the discretion of the preparer which method and assumptions to use as long as they are reasonably consistent with economic theory. Preparers may rely on methods and assumptions in formulating estimated current values that may be inherently different from those used by appraisers and lenders. (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) "GAAP does not require a specific method to be used to estimate current value for a particular asset for personal financial statements, nor does GAAP require the same method to be used for all assets in the same group." (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) The NYAG refuses to accept this because it fatally undermines her case. The NYAG's allegations that President Trump used inappropriate valuation methods fail to consider the wide latitude in choosing asset valuation methods and the assumptions underlying them, or else misinterpret GAAP. (Bartov Aff. at 5, 8-9, 12-13, 18, 23-24.) The NYAG cannot substitute her own subjective judgments for that of others *ex post facto* and then claim that the Defendants have broken the law.

Second and critically, the NYAG fails to realize that GAAP need not be applied to immaterial terms. (Bartov Aff. at 8, 10, 12, 14-15, 17, 20.) Under GAAP, immaterial financial statement items do not need to comply with the detailed requirements of GAAP. Specifically, ASC

105, Generally Accepted Accounting Principles, provides, "The provisions of the Codifications need not be applied to immaterial items." GAAP guides that immaterial financial statement items do not need to comply with GAAP, and thus allow preparers a reasonable level of flexibility in applying GAAP. In other words, GAAP recognizes that not all accounting errors, violations, or departures from GAAP have a material impact on the inferences of financial statement users. Thus, GAAP only prohibits material violations. (Bartov Aff. at 8, 10, 12, 14-15, 17, 20.)

None of the items on the SOFCs identified by the NYAG as misstatements or omissions were departures from GAAP. (Bartov. Aff. at 8, 10.) To the extent the SOFCs contained departures from GAAP (which they did not), the record establishes that any such departures were immaterial from the viewpoint of the sophisticated banks and underwriters who received the SOFCs. (*See* Bartov Aff. at 14-15, 17, 26-27, 31, 34.) The NYAG fails to offer any contrary materiality analysis.

3. The NYAG Has Not Produced Evidence Sufficient To Support Her Valuation Claims

The NYAG's claims fail even if ASC 274 did not apply and did not afford wide latitude in the selection of valuation methods. Here, rather than engaging with each element of a § 63(12) claim, the NYAG loosely asserts that President Trump's assets were so greatly inflated that there must be a § 63(12) violation. NYAG claims that "[b]ased on work done by [NYAG's] valuation and accounting experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining 'estimates of current values,' Mr. Trump's net worth in any year between 2011 and 2021 would be no more than $2.6 billion, rather than the stated net worth of up to $6.1 billion." (NYSCEF 766 at 4 n.2 (emphasis omitted).) But curiously, the NYAG does not attach opinions, depositions, or affidavits

proving this "work done" by her experts.[12] Instead, the NYAG diverts attention away from these failures claiming this is a "documents case." (NYSCEF 766 ("Motion") at 2.) This simplistic approach inappropriately ignores the substance, context and reality of the very transactions herein at issue, and fails to even attempt to establish any capacity of tendency to deceive which cannot be determined in a vacuum. Worse yet, the "documents" the NYAG relies upon, and the expert "work done" she references, fall well short of establishing triable issues of fact exists as to the SOFC valuations.

To succeed on her claims, the NYAG bears the initial burden to establish the SOFC valuations were "false" and/or "fraudulent." If the NYAG does not satisfy this prerequisite, the Defendants need not rebut her claims. New York law makes clear an appraisal report is the appropriate mechanism for determining the market value of a property, and mere estimates of value, rather than a "full appraisal," are "insufficient to raise a triable issue of fact" as to the value of properties.[13] *See White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC*, 110 A.D.3d 576, 577 (1st Dep't 2013)(*citing Trustco Bank v. Gardner*, 274 A.D.2d 873 (3d Dep't 2000)). For the NYAG to defeat summary judgment and then prevail at trial, New York law requires her to proffer something more than a mere estimate of value. *Id.*; *see also*, *Soffer*, 2018 N.Y. Slip Op. 30974[U]

[12] One can only surmise why the NYAG commissioned numerous experts at the cost of a small fortune in taxpayer dollars, only to decline to include their reports, testimony, or affidavits in support of its motion for summary judgment. The obvious inference is that the NYAG, after reviewing the expert reports and testimony of the defense experts, she realized the reports and opinions of her own experts are so flawed they provide no credible basis for her claims.

[13] As noted, under GAAP, there was/is no requirement to support the presentation of Estimated Current Value in the SOFCs with appraisals. Rather, ASC 274 affords substantial latitude to preparers in choosing valuation methods. (Bartov Aff. at 8.) But if the NYAG wants to challenge the valuations in the SOFCs, she must introduce current, valid expert appraisal data (not just rely on outdated "documents") to even get through the courthouse door. Moreover, even if the NYAG had done so, which she has not, same would not necessarily establish the valuations contained in the SOFCs were therefore false or fraudulent.

at *4 ("[E]xpert appraisal evidence is the method for proving the value of real property in litigation") (internal citations omitted).

Here, however, despite alleging forcefully and repeatedly the Defendants engaged in "numerous acts of fraud and misrepresentation" relative to the property values set forth in the SOFCs (*see e.g.*, NYSCEF 1 ¶¶ 1–3), the NYAG has put forward no actual evidence, referring instead only to the "work done" by her experts who admit freely they performed no appraisals.

This is simply not sufficient to raise a triable issue of fact as to the validity of the valuations contained in the SOFCs herein at issue and is alone fatal to the NYAG's claims. Indeed, the NYAG cannot accuse the Defendants of engaging in "numerous acts of fraud and misrepresentation" violative of § 63(12) without then presenting the requisite admissible evidence.

As noted, the NYAG's only reference to these insufficient expert opinions is set forth in a footnote on page four of its Memorandum. (Motion at 4 n.2.) Therein, the NYAG simply makes the conclusory observation that "work done" by her experts proves President Trump's net worth in any given year would be "*no more than $2.6 billion*" and then basically concedes no "full blown professional appraisals" were completed or presented. (Motion at 4 n.2) (emphasis in original). This startling concession establishes (1) President Trump is a billionaire and thus overqualified for any of the loans herein at issue (*See* Robert Aff., Ex. AAD ("Sullivan Dep.") 100:2–8; Robert Aff., Ex. AAE at 16), (2) there could never possibly have been any default under any of the loan agreements at issue in this action (as the minimum net worth covenant never exceeded $2.5 billion (Williams Dep. 190:25–191:10; Sullivan Dep. 81:21–82:4; Vrablic Dep. 305:21–306:16; SOF ¶¶ 116, 130, 148) and (3) the NYAG has not introduced sufficient proof.[14]

[14] The NYAG's failure to include the actual testimony and opinions of her experts concedes the points made by the Defense Experts. The NYAG cannot now supplement the record.

4. Disagreement As To The SOFC Values Does Not Establish Fraud

Property valuation is necessarily subjective. *See e.g.*, Robert Aff., Ex. AAAN at Ex. A at 12–28. Despite this undisputed[15] fact, the NYAG claims necessarily presuppose there is only one "true" or "correct" value for any given property, and deviations from that "true" or "correct" value demonstrate fraud. For example, the NYAG points to certain historical appraisals regarding the 40 Wall Street property[16] and Palm Beach County tax assessor valuations of Mar-A-Lago as essentially definitive proof of false or fraudulent valuations in the SOFCs. (Motion at Tabs 4–5.) However, "disparate but legitimate valuations of a specific property may co-exist" and the "mere existence of such disparate valuations for a given property does not in itself establish any specific valuation is inaccurate or inflated." (Laposa Aff. at Ex. A ¶ 22.) As Laposa opines, the subjective valuation process depends on numerous factors as well as the perspective of the proponent and the purpose of the valuation. (Laposa Aff. ¶ 12.) Thus, an owner or seller of property would have a vastly different viewpoint as to value than a bank or a buyer. (Laposa Aff. ¶ 15.); (Robert Aff., Ex. AAAT at Ex. A ¶¶ 4(e), 7.) This is indeed the essence of the commercial real estate marketplace, yet the NYAG seeks to cast such contextual reality aside in favor of her own "true" value.

At best, the record here demonstrates there is a disagreement as to the valuations presented in the SOFCs, valuations which themselves are indisputably and necessarily the product of a subjective process. But the NYAG cannot premise a § 63(12) violation on disagreements over value. The existence of such differing opinions simply does not establish fraud and/or a § 63(12) violation. This reveals further the fundamental and inherent flaw in the NYAG's efforts to apply

[15] The NYAG has not introduced any evidence sufficient to rebut this foundational premise set forth, *inter alia*, in the opinions of Dr. Steven Laposa. Indeed, this concept is so universally accepted the NYAG could not credibly disagree. Therefore, such unrebutted testimony is simply undisputed.

[16] Again, under ASC 274 there was simply no requirement to utilize or rely upon such appraisals in the SOFC valuation process.

§ 63(12) to the subject complex real estate transactions between highly sophisticated corporate parties represented by white-shoe counsel. Indeed, § 63(12) cases address ***objectively*** fraudulent conduct, conduct, *i.e.*, conduct that is demonstrably false or fraudulent. *See, e.g.*, *State v. Cortelle Corp.*, 38 N.Y.2d 83 (1975) (fraudulently inducing distressed homeowners into transfer of title); *People v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803 (1992) (fraudulent consumer health club contracts); *People v. Cohen*, 214 A.D.3d 421 (1st Dep't 2023) (fraud in collection of tenant security deposits); *N. Leasing*, 70 Misc. 3d 256 (fraudulent misrepresentations/unconscionable leases); *People v. Orbital Publ. Grp., Inc.*, 169 A.D.3d 564 (1st Dep't 2019) (false and misleading consumer solicitations); *People v. Ernst & Young LLP*, 114 A.D.3d 569 (1st Dep't 2014) (actively misleading public through accounting manipulations); *Gen. Elec. Co.*, 302 A.D.2d 314 (defective dishwashers); *People v. Am. Motor Club, Inc.*, 179 A.D.2d 277 (1st Dep't 1992) (fraudulent consumer insurance contracts); *State v. Solil Mgmt. Corp.*, 128 Misc. 2d 767 (N.Y. Sup. Ct. N.Y. Cnty. 1985), *aff'd*, 114 A.D.2d 1057 (1st Dep't 1985) (rent overcharges); *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005) (misleading consumer credit card solicitations); *People v. JUUL Labs, Inc.*, No. 452168/2019, 2022 WL 2757512 (N.Y. Sup. Ct. N.Y. Cnty. July 14, 2022) (failure to disclose known health risks of e-cigarettes); *People v. Coventry First LLC*, 52 A.D.3d 345 (1st Dep't 2008) (bid-rigging and anti-competitive schemes in life settlement contracts); *New York v. Feldman*, 210 F. Supp. 2d 294 (S.D.N.Y. 2002) (bid-rigging at public stamp auctions); *New York v. Gen. Motors Corp.*, 547 F. Supp. 703 (S.D.N.Y. 1982) (automobiles sold with faulty parts); *State v. Bevis Indus., Inc.*, 63 Misc. 2d 1088 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (deceptive sales practices in consumer merchandise transactions); *State v. ITM, Inc.*, 52 Misc. 2d 39 (N.Y. Sup. Ct. N.Y. Cnty. 1966) (unconscionable consumer installment sales contracts).

5. The NYAG's Representations As To The Values Of Each Property Are Erroneous

Defendants address below the myriad defects in the NYAG's attempted presentation of "true" or "correct" values.

a. Mar-A-Lago

The NYAG claims in her MSJ that utilizing tax records and assessed values is the appropriate basis for determining the estimated current value of Mar-a-Lago. As such, she reports the assessed values of Mar-A-Lago as determined by the Palm Beach County Property Appraiser. But the the use of assessed values as proof the SOFC values were false or fraudulent is simply flawed. "Case law . . . clearly distinguishes between an assessment or assessed value on the one hand, and the full market value or full value of the property on the other." *Briffel v. County of Nassau*, 31 A.D.3d 79, 83 (2d Dep't 2006) (collecting cases). Moreover, it is well recognized that assessed values are not the same as market values, estimated current values, or investment values; assessments may have no correlation to market value whatsoever. Robert Aff., Ex. AO ("Chin Aff.") at 23–24. Therefore, the NYAG's reliance on the assessed value of Mar-a-Lago is inappropriate. Indeed, assessed values do not necessarily equal investment or even market values and offer "minimal value to appraisers." Mark Ratterman, MAI, SRA, *Residential Property Appraisal,* Appraisal Institute, 2020, at 41–42.

The NYAG's approach also ignores completely the opinion of Lawrence Moens, doubtless the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida. Moens opined that the values for Mar-A-Lago were higher than SOFC values, as reflected in the charts attached to Mr. Moens and Mr. Unell's affidavits. See Robert Aff., Ex. AAAP at Ex. A at App. A; Unell Aff., at 5.

These values establish the SOFC valuations were and are appropriate and indeed conservative. The NYAG ignores this evidence as well as the substantial latitude afforded by ASC 274 to select valuation methodologies.

The NYAG's approach likewise ignores completely the entirety of the applicable covenants, deeds and restrictions relative to Mar-A-Lago[17], choosing instead to advance her own selective and unsupported interpretation.

The NYAG contends incorrectly President Trump somehow gave up his rights to use the Property for any purpose other than a social club when he entered into a Deed of Conservation and Preservation in 1995 (the "Preservation Easement"). (Motion at 13). In doing so, Plaintiff misreads the plain language of the Preservation Easement, as well as the 1993 Declaration of Use Agreement. These documents contain no restriction that would prohibit the Property from being used as an exclusive private residence.

Moreover, the restrictions set forth in the Declaration of Use Agreement and in the Preservation Easement must be strictly construed. Florida law is clear "covenants are strictly construed in favor of the free and unrestricted use of property. Where the terms of a covenant are unambiguous, the courts will enforce such restrictions according to the intent of the parties as expressed by the clear and ordinary meaning of its terms. A covenant which is substantially ambiguous is resolved against the party claiming the right to enforce the restriction." *Norwood-Norland Homeowners' Ass'n, Inc. v. Dade County*, 511 So. 2d 1009, 1014 (Fla. Dist. Ct. App. 1987) (collecting cases); *see also 19650 NE 18th Ave. LLC v. Presidential Ests. Homeowners Ass'n, Inc.*, 103 So. 3d 191, 195 (Fla. 3d DCA 2012) (There is a "general rule of covenant

[17] A complete (and unrebutted) analysis of the applicable covenants, deeds and restrictions is set forth in the affidavit and report of John Shubin. *See* Robert Aff., Ex. AAAQ.

interpretation that requires courts to strictly construe restrictive covenants in favor of the free and unrestricted use of real property") (collecting cases).

Contrary to Plaintiff's contention, there is no requirement in any of the documents that the Property be used exclusively as a private club in perpetuity. Indeed, based on the Town of Palm Beach Zoning Code and the approved 1993 Special Exception Plan (and consistent with the recorded documents), the permitted uses of the Property include *both* its use as a private residence and its use as a private social club.

The Declaration of Use Agreement also provides that the "Club use" may be "intentionally abandoned at any time" and, if it is, "the use of the Land shall revert to a single family residence and the ownership of the Owner." (Faherty Aff. Ex. 107, Art. IX). Similarly, the Rules of the Mar-a-Lago Club expressly reference this language from the Declaration of Use Agreement. The Club Rules further provide that "[m]embership in the Club is acquired on a non-equity basis [and] "does not confer any vested or prescriptive right or easement to use the Club and its facilities[,]" "[m]embers acquire only a revocable license to use the Club and its facilities [and] [t]hey have no ownership or voting interest in the Mar-a-Lago Club, L.C. which operates the Club." (Robert Aff., Ex. AAAQ at Ex. A at Ex. B (Club Rules), § VII (C)).

In addition, nothing in the Preservation Easement requires the grantor (President Trump) to continue to operate a private social club on the Property. Despite the restrictions in the Preservation Easement, it expressly provides that the grantor (President Trump) still has certain rights not requiring further approval by the grantee (National Trust), such as:

> (a) "the right to engage in those acts or uses permitted by governmental statute or regulation that are not expressly prohibited or regulated by this Easement;" and
> (b) "the right to perform work, exercise the rights and privileges contemplated by, and engage in those uses of the Property permitted by the Plan and by the Declaration of Use Agreement . . . as the Plan and/or the Declaration may be amended from time to time, provided that (i) such uses are not specifically prohibited or regulated by this

Easement. ”

(Faherty Aff., Ex. 93 (“Preservation Easement”) § 5.1(a)(b)).

Plaintiff also misconstrues the 2002 Deed of Development Rights (the “2002 Deed”), which must be construed consistent with the Preservation Easement. The 2002 Deed does *not* prohibit the Property from continuing to be used as a private residence. As noted, the 2002 Deed must be construed consistent with the Preservation Easement, which expressly allows the grantor to engage in uses not prohibited by the Preservation Easement, as well as uses permitted by the 1993 Special Exception Plan and the Declaration of Use Agreement. (Preservation Easement, ¶ 5.1(a)(b)).

Moreover, to the extent necessary, Mar-A-Lago Club, L.L.C., President Trump, and National Trust can agree to amend the Preservation Easement, including to sell the Property as *residential* real estate subject to the preservation of Critical Features and other limitations under the Preservation Easement. (Preservation Easement, ¶ 11).

Also, the Property is currently zoned R-AA (Large Estate Residential) and thus can be used as a single-family home. Under Florida law, “[m]unicipal ordinances are subject to the same rules of construction as are state statutes.” *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973) (collecting cases). As with state statutes, courts “are prohibited from inserting words or phrases into municipal ordinances to express intentions that do not appear,” *Mandelstam v. City Comm'n of City of S. Miami*, 539 So. 2d 1139, 1140 (Fla. Dis. Ct. App. 1983), and must give the ordinance “the plain and ordinary meaning of the words employed by the legislative body,” here the Town of Palm Beach, *Rinker*, 286 So. 2d at 554 (citation omitted).

Relatedly, “[z]oning laws are in derogation of the common law and, as a general rule, are subject to strict construction in favor of the right of a property owner to the unrestricted use of his property.” *Mandelstam*, 539 So.2d at 1140 (citing *City of Miami Beach v. 100 Lincoln*

Rd., Inc., 214 So. 2d 39 (Fla. Dist. Ct. App. 1968)); *see also Rinker*, 286 So.2d at 553 ("Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner.").

Similarly, for these same reasons, the "landmarked" status of the Property (including its historically significant Critical Features) do not prohibit its use as an exclusive private residence.

b. 40 Wall Street

As detailed in the Chin Affidavit (*see* Chin Aff. ¶¶ 38-44), the NYAG's reliance on the 2011 and 2012 Cushman & Wakefield ("Cushman") appraisals[18] of 40 Wall Street to discredit both Cushman's 2015 appraisal and the SoFC/Compilation values is erroneous.[19] In actuality, the 2011 and 2012 Cushman appraisals made a significant and consequential series of errors that significantly underestimated the "As Is" values, driven by flawed market rental rate assumptions, an inappropriate terminal capitalization rate selection, and inconsistent per square foot results compared to market data. The 2011 and 2012 report's reliance on a discounted cash flow analysis amplified the underestimation. Cushman's subsequent reappraisal of the property in 2015 more correctly evaluated the property in the context of market rental rates, market conditions, and actual property performance. (*See* Chin Aff. ¶¶ 40-44, Ex. A at 22-24.)

The NYAG makes numerous allegations and assertions regarding the 2015 Cushman Appraisal of 40 Wall Street, calling it **"**improperly inflated." But the 2011 and 2012 Cushman

[18] As noted herein, pursuant to GAAP and ASC 274, the preparers of the SOFCs had no obligation whatsoever to utilize any appraised values or appraisals when computing the various SOFC values. To the contrary, ASC 274 provides such preparers with broad latitude to select a valuation methodology.

[19] The NYAG also utilizes marginally higher values per the 2013 and 2014 Capital One Internal Valuations to compare to 2013 and 2014 SOFC values. As with the 2011 and 2012 Cushman appraisals, the 2013 and 2014 Capital One Internal Valuations were also slow to recognize significantly improving market conditions and improving property occupancy. (Chin Aff. ¶¶ 45-46, Ex. A at 22-24.)

appraisals significantly understated the "As Is" values by using market rental rate assumptions in their discounted cash flow analysis that did not accurately reflect the actual leasing conditions at the property. Additionally, Cushman's market assumptions were unchanged between 2011 and 2012. (Chin Aff. ¶¶ 38-40, Ex. A at 22-24.)

For example, the underestimation of net effective rent in 2011 and 2012 had a magnified impact on the market value over the 15-year projection period. Moreover, the property's attainment of stabilization, which represents a sustainable and consistent occupancy level at market rents, was significantly delayed. By 2015, Cushman made appropriate adjustments to reflect actual leasing and market conditions. In addition to recognizing the need to adjust assumed rental rates to the market, Cushman also recognized the need to change the floor breakdown which increased rental rates faster for mid to higher level locations in the building. (Chin Aff. ¶ 38, Ex. A at 22-24.)

Additionally, Cushman was also slow to recognize significantly improving market conditions and improving property occupancy. A prudent and knowledgeable real estate owner active in real estate leasing would be attuned to improving market conditions as they were occurring, and the positive impact those conditions would have on long term value creation. As such, owners would build occupancy and rental rate as quickly as possible. (Chin Aff. ¶¶ 38-43, Ex. A at 22-24.)

The 2015 Cushman Appraisal reflected significant and substantial adjustments compared to the 2011 and 2012 appraisals. It was evident that Cushman's 2015 appraisal recognized the underestimation of their market rental rate assumptions and incorporated the actual improved occupancy and market conditions into their 2015 discounted cash flow leasing assumptions. While the 2011 and 2012 projections anticipated stabilized net operating income ("NOI") to be achieved by 2026, the 2015 Cushman Appraisal more accurately projected the attainment of stabilized

occupancy with significantly higher rents eight years earlier, or 2018 (vs. 2026). (Chin Aff. ¶¶ 38-44, Ex. A at 22-24.)

Also, the 2011 and 2012 Cushman appraisals also used a capitalization ("cap") rate that was inconsistent with market sales. Cushman's selected cap rate of 7.0% far exceeds the cap rate data that reflects the highest cap rate at 6.74%, approximately 175 basis points higher than the average of Downtown Manhattan cap rates, and 310 basis points higher than the average of Midtown Manhattan cap rates. The Downtown Manhattan sales data reveals that cap rates for properties either under contract or sold in 2012 were on average about 200 basis points lower than those occurring in 2011. This data is consistent with the improving market conditions and increasing property values that Cushman failed to recognize. (Chin Aff. ¶¶ 40-44, Ex. A at 22-28.)

The 2012 Cushman appraisal also misstates its own data regarding "the most recent Investor Survey." While Cushman acknowledges the noted decrease in cap rates (that evidence increasing property values), their analysis does not reflect the on-going improvements in the market. The office selling prices per square foot were also increasing, further reflective of improving market conditions. Thus, all things considered, building owners (and the Guarantor) would have sufficient justification to expect that real estate selling prices, improved property performance, and increased rental rates were reasonably expected to continue. (Chin Aff. ¶¶ 40-43, Ex. A at 24-28.)

Additionally, the Guarantor had a strong understanding of New York market conditions and used a very straightforward method of computing a stabilized NOI for the purpose of calculating their As If valuations included in the annual SoFC/Compilations. The Guarantor employed an "As If" stabilized, static valuation approach that replicated improving property and market conditions, and the lease-up of vacant spaces to stabilized occupancy at higher face rental

rates after excluding free rent and tenant improvement costs. This approach more closely simulates the actual occurrences and provides a more accurate depiction of the property's ultimate condition. (Chin Aff. ¶¶ 40-43, Ex. A at 27-28.)

The differences between how the Guarantor and Cushman evaluated the property in 2011 and 2012 are significant: Cushman used historical actuals that reflected a lower occupancy, while the Guarantor projected NOI on a future stabilized, As If basis. The Guarantor projected NOI figures from 2011 to 2015 ranging from $22,722,000 to $26,234,400, based on the expectations of improving market conditions and property occupancy. These projections were proven accurate as the market and occupancy did indeed improve.[20] (Chin Aff. ¶ 41, Ex. A at 23-28.)

Importantly, the Guarantor projections are supported by the ***actual*** NOI figures achieved at the property. Independent auditor reports provided by Mazars USA LLP, based on Consolidated Financial Statements for the property, revealed that from 2016 through 2019, the adjusted NOI (adjusted for interest attributable to operations, depreciation, amortization, bad debt expense, and loss on abandonment of tenant improvements) at the property ranged from $19,568,012 to $20,647,573. These amounts were consistent with the projected amounts upon stabilization and upon exit/reversion. Coincidentally, these figures align with the 2015 Cushman Appraisal that cited an As Is NOI of $23,203,919. (Chin Aff. ¶ 41, Ex. A at 23-29.)

Further, the 2011 and 2012 Cushman appraisals provided As Stabilized values of $270 million and $260 million, respectively. However, the 2012 Cushman appraisal explicitly stated that their prospective value analysis "Upon Reaching Stabilized Occupancy" took a conservative

[20] As noted in the attached appraisal study, Susanne Ethridge Cannon & Rebel A. Cole, *How Accurate Are Commercial Real Estate Appraisals? Evidence from 25 Years of NCREIF Sales Data*, 37 J. Portfolio Mgmt. 68 (2011), significant evidence exists that appraisals are lagged indicators of value. The study notes that appraisals appear to lag the true sales prices, falling below in hot markets with the largest deviations observed during the peaks and valleys of various real estate cycles.

approach and did not fully acknowledge the potential upside when the property reached stabilized occupancy. This differs from how an informed office building owner would evaluate the asset's value, considering market conditions and growth potential. (Chin Aff. ¶ 43, Ex. A at 24-30.)

The ***actual*** NOI figures further support this perspective. According to the 2016 Consolidated Financial Statements Independent Auditor's Report by Mazars USA LLP, the adjusted NOI was reported as $19,568,012. Using the average cap rate of 4.51% from the 2012 Downtown Manhattan data cited in the 2012 Cushman report, the value of the property is estimated at $434.4 million. This value is $174.4 million higher than the concluded 2012 Cushman stabilized value and $92.8 million less than the Guarantor's 2012 SoFC value. Alternatively, applying a capitalization rate of 4.00% (within the range of the 2012 cap rate data) yields a value of $489.2 million, which is $229.2 million higher than the concluded 2012 Cushman stabilized value and $38.0 million less than the Guarantor's 2012 SOFC value. Thus, the Guarantor's valuations are far more closely aligned with actual performance. (Chin Aff. ¶¶ 43-44, Ex. A at 27-30.)

c. Trump Tower

The NYAG analysis seizes upon a stabilized cap rate for 666 Fifth Avenue of 4.45%. But the overall cap rate based on the purchase was 2.67% whereas the cap rate of 4.45% appears to be a projection (and it is unclear how this was derived). As the projected cap rate is not an artifact of the sale but rather a projection with unsupported assumptions, and is not based on data as of the date of the analysis, it is valid to exclude this sale entirely.

The NYAG Projected Stabilized Cap Rate also fails to consider the complete capitalization rate supporting data. As noted below, utilizing the totality of the sale and capitalization rate data provides a range of cap rates from 2.35% to 4.06%, with an average of 3.22%. Excluding the questioned 666 Fifth Avenue cap rate provides a range of cap rates from 2.35% to 4.06%, with an average of 3.30%, as reflected in the charts in Mr. Chin's affidavit. (*See* Chin Aff. at 17.)

Even after excluding the 666 Fifth Avenue sale, the NYAG Projected Stabilized Cap Rate for 2018 (3.75%) is above all but two of the cap rates provided, while the cap rate for 2019 is significantly above the range of the sales data.

Given the Class A, trophy nature of Trump Tower, one would expect the cap rate to fall at the lower end of the range of sales data. As such, (excluding the 666 Fifth Avenue) a more appropriate cap rate is 2.83%, fully consistent with the cap rates utilized in 2018 and 2019 (2.86% and 2.67%) in the SOFC.

d. Trump Park Avenue

The NYAG embraces a faulty premise when considering the potential conversion of the rent stabilized units in the Trump Park Avenue property. The NYAG's valuation approach is based on an outdated 2010 appraisal conducted by the Oxford Group. But this approach considers only the then current rental state and does not consider the property's ultimate highest and best use which is to sell the individual condominium units unencumbered by rent-stabilization. An owner would, appropriately, adopt a different valuation approach.

Despite uncertainties regarding the timing of unit vacancies due to tenant rights, rent-stabilized units offer substantial investment upside potential driven by favorable market dynamics, future rental appreciation prospects, and the ability to capitalize on tenant turnover. As tenants maintain long-term occupancy in rent-stabilized units, the disparity between market rents and contract rents widens. However, the value of the condominiums underlying these units continues to increase, benefiting from limited supply, high demand for desirable locations, and the introduction of new inventory at premium prices. The owner's ultimate economic opportunity arises when units become vacant, enabling them to reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices. Renovations

and improvements can further enhance rental income and attract higher-paying tenants or facilitate the sale of units at premium prices.

Thus, the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units. This is the assumption the owner made when assessing potential asset pricing or value. In fact, 6 of the 12 rent-stabilized units were vacated from 2013-2019 thus allowing the owner to then reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices and achieve substantial returns above the noted rent stabilized valuation of $62,500.

As the owner has the latitude to adopt an As If perspective for purposes of SOFC preparation, the SOFC values are adequately presented from that perspective. Simply because the NYAG disagrees and adopts an alternative approach does not prove the SOFC values were false or fraudulent.[21]

e. Seven Springs

For the Seven Springs property, the SOFCs incorporated a commonly used profitability analysis employed by developers. This analysis presumed the development of the property, projecting revenues expected to be received, the estimated costs, and the net profits to be realized. This analysis, which evaluates the potential profitability of development, was used in the SOFCs between 2011 and 2014.

When the business plan for the property changed in 2015 (to the development or sale of a portion of the property and the donation of the remainder for conservation purposes), the property was no longer held for development and was instead reported in a category noted as Other Assets

[21] The NYAG also claims an option price (between President Trump and his daughter) to purchase the Penthouse A unit is to be utilized in the SOFC valuations. But this is not at all an arms-length price indicative of the market. (Chin Aff. at 15) By contrast, the use of an offering price would be considered more reliable. (Chin Aff. at 15.)

in the SOFCs. The SOFC values were then adjusted to reflect the change. This explains the differential.

Also, the summary analysis performed by Mr. Chin (Chin Aff. at 11-14, Ex. A 20-23) demonstrates the propriety of the SOFC valuations. This analysis demonstrates the true difference between the SOFC and 2015 appraisal was minimal as compared to the substantially overstated noted difference as presented in the NYAG's inconsistent comparison.

f. 1290 Avenue of the Americas

For 1290 Avenue of the Americas, the NYAG analysis utilizes outdated source data which fails to account for marketplace realities. (Chin Aff. at 17-20) The use of the 2012 Cushman appraisals to project values in a rapidly increasing market is not reflective of valuation principals and sound valuation methodology. (Chin Aff. at 17-20) The NYAG analysis also fails to consider the Guarantor's perspective in deployment of the valuation methodology. (Chin Aff. at 17-20) Thus, even using the outdated (and flawed) Cushman data, incorporation of the Guarantor's legitimate perspective yields results consistent with the SOFC valuations, with any differences considered immaterial. (Chin Aff. at 17-20)

First, the NYAG provides values from 2012-2019 utilizing only the 2012 Cushman & Wakefield (Faherty Aff., Ex. 112) appraisal report as the sole Independent Value source. (Chin Aff. at 17-20) This is an incomplete comparison given the NYAG's values utilize static and stale assumptions and valuation metrics from a report dated October 18, 2012. (Chin Aff. at 17-20) During this time period, the Manhattan Office Market saw significant growth. The office selling prices per square foot increased reflecting improving market conditions. (Chin Aff. at 17-20) While the NYAG values remain static from 2012-2013 and increase only 15% in 2014 and remain static until 2016, the prices per square foot for Class A commercial office buildings increased over

70 percent between 2011 and 2015, while capitalization rates decreased during this same period. (Chin Aff. at 17-20)

Moreover, the NYAG's 2018 and 2019 values utilized a stabilized cap rate from the 2012 Cushman report but the actual market data over this time period reflects decreasing cap rates. (Chin Aff. at 17-20) The decrease in cap rates seen in the market would suggest significant value appreciation, consistent with that seen in other Manhattan office properties during this timeframe. (Chin Aff. at 17-20) The NYAG analysis ignores this actual data.

Finally, the NYAG and Cushman fail to acknowledge the potential upside when the property reached stabilized occupancy. (Chin Aff. at 17-20) An informed office building owner would evaluate the asset's value to consider market conditions and growth potential. (Chin Aff. at 17-20)

Next, the SOFC/Compilations include various investment value estimates that are based on certain reasonable assumptions made by the Guarantor (i.e., As If stabilized, As If Projected or Anticipated, and As If earned). (Chin Aff. at 17-20) The SoFC valuations for 1290 Avenue of the Americas property consistently adhere to this premise, thus it is essential to distinguish that these estimates are specific to the Guarantor's perspective of its assets and differ materially from the views of the NYAG.

Although there are numerous issues noted above regarding the use of the outdated 2012 Cushman appraisal, even if one were required to use this one data source, the rational and logical use and of this report to project future values similar to the SOFCs noted As If stabilized or As If Projected values is detailed below. Applying the 4.50% capitalization rate per the 2012 Cushman report provides a value of $3,200,000. This value would be consistent with the SoFC investment value estimates on an As If Projected or Anticipated / As If earned basis. (Chin Aff. at 17-20)

While immaterial variations in the yearly figures are present, the average implied cap rate from the Cushman projections over this time period is consistent with that utilized in the SoFC. (Chin Aff. at 17-20) Doing so then yields the revised Independent Values of the DJT Share presented below. While there are both increases and decreases from the noted SOFC values, the total difference over time is immaterial. (Chin Aff. at 17-20) Moreover, such fluctuations represent the impacts of varying legitimate inputs as part of an inherently subjective valuation process. as reflected in the chart in Mr. Chin's affidavit. (Chin Aff. at 19)

g. Doral

Notably, the NYAG fails to even mention the extraordinary success achieved through the Doral investment and the impact of that success on the SOFC valuations. The property was purchased in 2011 for $150 million. Defs. SOF ¶ 102. Thereafter, investments and improvements were made by the Trump team which resulted in a physical and financial transformation of the property. Today, the property is worth, conservatively, more than one billion dollars. *See* Chin Aff. at 19–21 (citing the 2022 Newmark Doral presentation).

When considering this value, it becomes apparent the SOFC values were over time always under-reported. This, contrary to the NYAG's core claims regarding value inflation, the SOFCs employed a conservative approach. When adjusting for actual value based on historic data, the values for each year (2014–2021) are as set forth in Mr. Chin's charts. (*See* Chin Aff. at 22.)

As illustrated by Mr. Unell's analysis and reflected in the charts therein, once these values are incorporated into the SOFCs, it is equally apparent that the reported net worth numbers were actually lower, not higher. *See* Unell Aff. at 4.

Of course, none of this is reflected in the NYAG's alleged proof, and all her experts conveniently ignored any mention of the Doral property.

B. NYAG Fails to Address Materiality, A Key Element Of Her § 63(12) Claim

As this Court's prior Order stated, Executive Law § 63(12) empowers the NYAG "to seek to remedy the deleterious effects . . . of *material* fraudulent misstatements issued to obtain financial benefits." (NYSCEF 458 at 5) (emphasis added). Materiality is a key element of the alleged offense.[22] Yet, in her 61-page memorandum of law, the NYAG never discusses materiality.

With respect to materiality, New York law tracks that of the federal courts. *City Trading Fund v. Nye*, 72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018); *see also Exxon Mobil*, 2019 WL 6795771 (turning to federal securities law for its materiality standard). To define materiality in the securities law context federal courts utilize a "reasonable investor" standard, asking whether such "reasonable investor would have found that the information about a quantitative and qualitative impact of the transactions significantly altered the total mix of information available." *People v. Greenberg,* 95 A.D.3d 474, 485 (1st Dep't 2012) (citation omitted). When evaluating the allegations of a fraudulent misrepresentation claim, "New York takes a contextual view, focusing on the level of sophistication of the parties, the relationship between them, and the information available at the time of the operative decision," *JP Morgan Chase Bank v. Winnick*, 350 F. Supp. 2d 393, 406 (S.D.N.Y. 2004). Thus, "[s]ophisticated business entities are held to a higher standard," *id.* at 406, and they are expected "to protect [themselves] from misrepresentations," *Solutia Inc. v. FMC Corp.*, 456 F. Supp. 2d 429, 450–51 (S.D.N.Y. 2006). Sophisticated parties include large banks, insurance companies, and multinational corporations—exactly the types of entities relevant to these proceedings. *See, e.g.*, *St. Paul Mercury Ins. Co. v.*

[22] At the motion to dismiss stage in these proceedings, the NYAG asserted that she does not in fact need to prove materiality, (*see* NYSCEF 380 at 17, n.5), but does not repeat such argument at this stage. Further, the case on which the NYAG relied for this statement clearly does not stand for the proposition the NYAG claimed. *See Domino's*, 2021 WL 39592, at *10 (finding evidence regarding materiality "plainly *relevant* to determining whether the Attorney General has established" a § 63(12) claim).

M&T Bank Corp., No. 12 Civ. 6322(JFK), 2014 WL 641438, at *6 (S.D.N.Y. Feb. 19, 2014); *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 574 (2d Cir. 1991) (designating "insurance companies" as "sophisticated business entities"); *In re Residential Cap., LLC*, No. 12-12020 (MG), 2022 WL 17836560, at *31 (Bankr. S.D.N.Y. Dec. 21, 2022) (designating "multinational corporation" as "a sophisticated party").

Further, in assessing this issue, the Court's inquiry should be focused on the "real-world impact" of the alleged misrepresentations. *Domino's*, 2021 WL 39592, at *24. As explained by the *Domino's* court:

> [E]vidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud . . . . ***In determining whether certain conduct was deceptive, surely it is relevant whether members of the target audience . . . were actually deceived. Similarly, if the evidence showed that the alleged false statements had no real-world impact (that is, no reliance or causation), that would speak to the question of whether the challenged conduct was unlawfully deceptive or fraudulent.***

Id.(emphasis added); *see also People v. Tempur-Pedic Intern., Inc.*, 30 Misc.3d 986, 993 (N.Y. Sup. Ct. N.Y. Cnty. 2011) (finding no violation of § 63(12) where NYAG had "submitted no evidence to show that retailers were misled or deceived in any way"); *Exxon Mobil*, 2019 WL 6795771, at *2 (finding no violation of § 63(12) where the NYAG had "produced no testimony . . . from any investor who claimed to have been misled by any disclosure").

Thus, materiality is not determined in this context from the perspective of "any user" as the NYAG falsely claims, but from the perspective of the ***actual users*** of the SOFCs as same is necessary to evaluate the "total mix of information" available to each user. *Exxon Mobil*, 2019 WL 6795771, at *24. By reducing the standard to "any user," the NYAG attempts to relegate the materiality analysis to a meaningless formality, something completely unsupported under GAAP or by any legal authority. Here, the SOFCs were prepared expressly for and presented only to

highly sophisticated counterparties engaged in complex transactions. The total mix of information made available to them, and, critically, how they actually used the information are essential components in conducting a materiality analysis through the lens of those actual users. (Bartov Aff. at 14-15, 17, 26-27, 31, 34.)

Instead of facing this burden head on, the NYAG focuses only on the misrepresentation aspect of a § 63(12) claim and sprinkles the word "material" throughout the brief to describe alleged misrepresentations. Indeed, under the section entitled "Gross Inflation of Assets" the NYAG asserts that "objective evidence establishes beyond dispute that many assets were grossly inflated by amounts that were ***material*** to any user of the SFCs," (NYSCEF 766 at 9). However, the text that follows that statement does not discuss how this is true and focuses on the nature of the alleged misrepresentations rather than why they are material. Further, despite her clear burden to establish the charged conduct was misleading in a material way, *N. Leasing*, 70 Misc. 3d at 267, and repeated references in the Complaint to "material misrepresentations" (*i.e.*, NYSCEF ¶ 19), the word "material" does not appear even once in the argument section of the NYAG's brief, (NYSCEF 766 at 53–60). The NYAG's claims fail as she has not even attempted to explain or show how the alleged misrepresentations at issue in this case were material to the actual recipients of the SOFCs. Furthermore, the testimony of DB's own witnesses demonstrate that neither President Trump, Donald Trump, Jr. or Eric Trump made any materially misleading statements to the Bank.[23]

[23] For example, DB Managing Director David Williams, a key corporate officer involved in the decisions relative to the loans at issue, testified that President Trump "had a verifiable net worth in a top tier of the regional market." (Defs. SOF ¶ 80.) Even if President Trump had a net worth of $1 billion, the pricing on the loans would have remained the same because a net worth in excess of $1 billion constitutes a strong guarantor. (Defs. SOF ¶¶ 79.) Numerous DB representatives, including Mr. Williams, Ms. Vrablic, and Mr. Sullivan, testified they did not believe there were any material misrepresentations made to the PWM division on these loans. (Defs. SOF ¶ 97.) For example, Ms. Vrablic explicitly testified under oath that she did not believe that either President Trump, Eric Trump or Donald Trump, Jr. made any materially misleading statements to Deutsche Bank. (Defs. SOF ¶ 97; Robert Aff., Ex. AAB, Vrablic Dep.

III. Defendants Are Entitled To Summary Judgment On The First Cause Of Action

In addition to the foregoing, the record herein is devoid of any evidence of harm, leaving the NYAG without authority to prosecute this case. Further, unlike the NYAG, the Defendants have put forth a sufficient record of undisputed evidence consisting of documents, expert affidavits and reports, and testimony of experts and fact witnesses—***including testimony of the very individuals the NYAG claims were targets of the Defendants' alleged fraud***—that establish (1) the NYAG lacks authority to maintain this action, (2) there is no record evidence of any harm and the SOFCs had no capacity or tendency to deceive[24] and (3) that several Defendants were in no way involved in the preparation of the SOFCs nor had actual knowledge of any misrepresentations within them.

A. The NYAG Lacks Authority To Maintain Suit

The record is devoid of any evidence establishing any impact on anyone, not the

229:16-23, 229:25-230:7, 234:17-20, 235:8-16. Mr. Williams explicitly informed the NYAG when he was interviewed previously that he was not concerned about whether any of the SOFCs were misleading. (Defs. SOF ¶ 98.) Even now, Mr. Williams has no concern that the SOFCs were misleading. (*Id.*) DB believed President Trump had a "proven successful track record in the United States commercial real estate market" and based its loan decision on President Trump's financial profile, the client's "historical successes," the banks' due diligence, and the adjustments to President Trump's reported values. (Defs. SOF ¶ 114.) This testimony squarely refutes any notion the SOFCs had any capacity or tendency to deceive. The record demonstrates these are sophisticated counterparties that conducted their own analysis and made valid, and profitable, business risk decisions.

[24] The NYAG makes much of Mazars' withdrawal letter advising the Defendants that the SOFCs should no longer be relied upon, citing it to support their allegation that the SOFCs contained misstatements and omissions. (NYSCEF 766 at 8.) But the letter provided no explanation or evidence whatsoever for that assertion. In fact, Mazars performed no audit, a necessary condition for opining on the SOFCs, so Mazars was in no position to release this statement. It thus follows that the letter provides no credible basis for the NYAG's allegation that the letter "in and of itself supports a finding that the SFCs were false." (*Id.*)

Moreover, Mazars' assertion that the SOFCs should no longer be relied upon constitutes a severe violation of the AICPA guidance to external accountants performing a compilation engagement. Specifically, Section.A42 of AR-C 80 provides: "The accountant is precluded from including a statement that the financial statements are not in conformity with the applicable financial reporting framework because such a statement would be tantamount to expressing an adverse opinion on the financial statements as a whole. Such an opinion can be expressed only in the context of an audit engagement."

counterparties to the various transactions at issue and not the public marketplace. In such case there is simply no role or authorization for the NYAG to second-guess the considered business judgment of private parties engaged in successfully consummated and profitable commercial transactions. Executive Law § 63(12) authorizes the NYAG to apply for relief "in the name of the people of the state of New York." The authority to recover on behalf of the People depends necessarily upon a connection between the conduct the NYAG seeks to enjoin, and some harm (or threat of harm) suffered by the People (*i.e.*, the public at large). The plain language of Executive Law § 63(12) is at once a conferral of authority and a limitation on the exercise of that authority.[25]

The Court of Appeals has articulated that limitation in cases interpreting statutory grants of authority to sue "in the name of the People" substantially identical to that in § 63(12), going back more than two centuries. *See People v. Lowe*, 117 N.Y. 175 (1889); *People v. Brooklyn, Flatbush & Coney. Island Ry. Co.*, 89 N.Y. 75 (1882); *People v. Ingersoll*, 58 N.Y. 1 (1874); *People v. Albany & S.R. Co.*, 57 N.Y. 161 (1874); *People v. Booth*, 32 N.Y. 397 (1865); *Attorney Gen. v. Utica Ins. Co.*, 2 Johns. Ch. 371 (N.Y. Ch. 1817). "While [a statute may] authorize[ ] the Attorney General, in [her] discretion, to institute suit where [she] believes the public interests require such action to be brought, [her] determination is not final for all purposes, and whether the action brought is permissible and maintainable is a matter subject to judicial review." *People v. Singer*, 85 N.Y.S. 2d 727, 731 (N.Y. Sup. Ct. N.Y. Cnty. 1949) (citing *Lowe*, 117 N.Y. at 194–95). Upon such review, "[u]nless … it appears that the matters alleged affect the public interest in the true and proper sense, rather than affecting individual private rights and interests, then the State

[25] The plain language of § 63 itself further establishes the NYAG's power is by no means unfettered. The NYAG's authority to prosecute and defend suits applies only to "all actions and proceedings in which the state is interested" and for the purposes of "protect[ing] the interest of the state." Exec. Law § 63(1). *Cf. Duguid v. B.K.*, 175 N.Y.S.3d 853, 859–60 (N.Y. Sup. Ct. Saratoga Cnty. 2022).

is without legal capacity to sue." *Singer*, 85 N.Y.S.2d at 730 (citing *People v. Albany & Susquehanna R. Co.*, 57 N.Y. 161, 167 (1874); *People v. O'Brien*, 111 N.Y. 1, 33 (1888); *Lowe*, 117 N.Y. at 191.

Thus, the *sine qua non* for the NYAG is to establish an interest within the public purpose of her office beyond that of the private litigants. To hold otherwise is to eliminate any, even theoretical, possibility of judicial oversight over the maintenance of actions under the statute. Such result is inconsistent with the plain language of § 63(12) and established precedent and was not (and could not have been) contemplated by the Legislature.[26]

Executive Law § 63(12) cases invariably involve some actual public interest that the NYAG seeks to vindicate, which is a stark contrast to what she seeks to do here in attempting to become the *post hoc* arbiter of the marketplace by interjecting her own judgment into strictly private transactions. *See Feldman*, 210 F. Supp. 2d at 302 ("repeated acts of deception [were] directed at a broad group of individuals" including "unsophisticated individual sellers, such as the elderly and one-time participants").[27]

In contrast, this case centers around a few discrete complex transactions involving only

[26] The undisputed legislative purpose behind § 63(12) is to "afford *the public and consumers* expanded protection from deceptive and misleading business practices[.]" *State v. Bevis Indus., Inc.*, 314 N.Y.S.2d 60, 64 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (emphasis added); *People v. 21st Century Leisure Spa Int'l Ltd.*, 583 N.Y.S.2d 726, 729 (N.Y. Sup. Ct. N.Y. Cnty. 1991) (Section 63(12)'s purpose "is to afford *the consumer* protection") (emphasis added); *Allstate Ins. Co. v. Foschio*, 462 N.Y.S.2d 44, 46–47 (2d Dep't 1983) (purpose "is to afford the *consuming public* expanded protection") (emphasis added).

[27] *See also People v. MacDonald*, 330 N.Y.S.2d 85, 88–89 (Sup. Ct. 1972) (ensuring public safety via enforcement of vessel navigation laws); *Cortelle Corp.*, 38 N.Y.2d at 85; *Apple Health & Sports Clubs*, 80 N.Y.2d at 806; *People v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009); *People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409 (1st Dep't 2016); *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 627 (2018); *People v. Greenberg*, No. 401720/20005, 2010 WL 4732745, at *11 (N.Y. Sup. Ct. N.Y. Cnty. Oct. 21, 2010); *State v. Ford Motor Co.*, 74 N.Y.2d 495 (1989); *People v. N. Leasing Sys., Inc.*, 193 A.D.3d 67, 70 (1st Dep't 2021); *State v. Wolowitz*, 468 N.Y.S. 2d 131, 135 (2d Dep't 1983); *Ernst & Young*, 114 A.D.3d 569 (complaint containing allegations of defendants "defrauding the investing public" (*Ernst & Young LLP*, No. 451586/2010, NYSCEF No. 1 at 1, 5 (N.Y. Sup. Ct. N.Y. Cnty. 2013)).

sophisticated counterparties that were represented by equally sophisticated legal counsel.[28] Each transaction was governed by extensively negotiated agreements fully defining the parties' respective obligations, what conduct constituted any breach, and, importantly, the consequences of any breach. The parties' relationships were therefore fully defined and self-contained. Each transaction was extraordinarily profitable for the counterparties and none of the contracts were ever breached. (Defs. SOF ¶¶ 96, 142, 154). None of the parties to any of these transactions ever lodged any complaint with the NYAG or otherwise claimed any fraud, misrepresentation, or breach.

The record does not contain a scintilla of evidence of any public harm (or for that matter, private harm).[29] Thus, the NYAG lacks the authority and capacity to now maintain this action for a lack of public impact.[30] And unlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims. Courts recognize § 63(12) claims involving the rights of private business entities "should be [adjudicated by] private contract litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *See, e.g.*, *Domino's*, 2021 WL 39592, at *12. Section 63(12) simply does not extend to the complex, "bilateral business

[28] The Complaint and Motion make clear the NYAG simply seeks to insert herself and her own business /risk judgment into private transactions and enforce the terms of complex, private agreements when the actual counterparties to those agreements have not claimed any fraud or breach.

[29] For example, the record does not provide any evidence of any impact on public share prices, *e.g., People v. Greenberg*, 21 N.Y.3d 439 (2013), the public financial markets, *e.g., Coventry First*, 13 N.Y.3d at 114, the public credit markets, *e.g.*, *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005), or members of the public at large, *e.g.*, *Gen. Motors Corp.*, 547 F. Supp. at 703–704; *Gen. Elec. Co.*, 302 A.D.2d 314.

[30] Nor can the NYAG invoke "honesty of the marketplace" as a predicate. Even the § 63(12) claims that have been brought to secure an "honest marketplace," deal with protecting the public at large. *See, e.g.*, *People v. Amazon.com, Inc.*, 550 F. Supp. 3d 122 (S.D.N.Y. 2021); *Gen. Motors Corp.*, 547 F. Supp. at 703–04; *People v. H & R Block, Inc.*, 870 N.Y.S.2d 315, 316 (1st Dep't 2009); *People v. Liberty Mut. Ins. Co.*, 52 A.D.3d 378, 379 (1st Dep't 2008) (bid rigging); *Gen. Elec. Co.*, 302 A.D.2d 314; *Orbital Publ. Grp.*, 169 A.D.3d at 565 (1st Dep't 2019); *Applied Card Sys.*, 27 A.D.3d 104.

transactions" herein at issue. *See id.*; *Exxon Mobil*, 2019 WL 6795771, at *30 (finding NYAG failed to prove Exxon Mobil "made any material misstatements or omissions about its practices and procedures that misled any reasonable investor"); *State v. Parkchester Apts. Co.*, 307 N.Y.S. 2d 741, 748 (N.Y. Sup. Ct. N.Y. Cnty. 1970) (dismissing claims brought by the NYAG in relation to a "private dispute" when the only basis for the Executive Law claim was a breach of contract demonstrating that claims that can be pursued by individual citizens are not actionable by the state). Indeed, had any of the sophisticated banks and insurers been financially harmed or deceived in any way, they would have long ago exercised their substantial legal rights under the operative agreements to seek redress. The NYAG cannot now stand in those sophisticated counterparties' shoes to vindicate a wrong that the counterparties never complained of and that the Defendants never perpetrated.

Here the record establishes conclusively the respective counterparties suffered no harm or injury, and never asserted any default or breach.[31] The record evidence indeed squarely refutes any notion the SOFCs had any capacity or tendency to deceive. The record demonstrates these are sophisticated counterparties that conducted their own analysis and made valid, and profitable, business risk decisions.

Additionally, there has never been any default associated with any loan herein at issue. (Defs. SOF ¶ 96.) Nor was there ever a recommendation at any time that there was a basis to declare default based on President Trump's failure to maintain a net worth of at least $2.5 billion.[32] (Defs. SOF ¶ 97.) Simply put, the NYAG has not established that the transactions at issue herein

[31] *See e.g.*, *supra* at n. 23.

[32] Even according to the NYAG's flawed analysis President Trump's net worth was never below $2.6 billion, rendering impossible any default.

are (or should be) the proper subject of "a law enforcement action under a statute designed to address public harm." *Domino's*, 2021 WL 39592, at *26. In sum, there is simply no role for the NYAG on this record.

B. The SOFCs Were Not Materially Misleading

As noted above, the caselaw provides that the standard for materiality for a § 63(12) claim involves asking whether the recipients of the allegedly false information would have found the information to have an impact on their decision-making process or "significantly altered the 'total mix of information made available.'" *See Exxon Mobil*, 2019 WL 6795771, at *2; *see also Greenberg*, 95 A.D.3d at 485; *JP Morgan*, 350 F. Supp. 2d at 406. This analysis takes into consideration the sophistication of the parties, such that sophisticated entities like large banks and insurance companies "are held to a higher standard." *JP Morgan*, 350 F. Supp. 2d at 406. Such entities "have a duty to protect [themselves] from misrepresentations," which "may apply even in circumstances where the defendant had peculiar knowledge of the relevant facts." *Solutia Inc.*, 456 F. Supp. 2d at 450–51. In this context, evidence—or lack thereof—concerning "falsity, materiality, reliance and causation"; whether the "target audience [was] actually deceived"; and whether the "alleged false statements had real-world impact" "plainly is relevant to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's*, 2021 WL 39592, at *24.

The record in this case, consisting of documentary evidence and expert and fact witness testimony, including the testimony of the very people whom the NYAG claims were the targets of Defendants' alleged fraud, establishes that the SOFCs were not materially misleading and had no capacity or tendency to deceive. No sophisticated counterparty would have considered the SOFCs without doing their own diligence—and none did.

1. <u>The SOFCs Present the Guarantor's Valuations</u>

SOFCs are not designed to establish the precise value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. Banks know that an estimate put forth in a SOFC, even when written to follow GAAP, is "truly an estimate." (Defs. SOF ¶ 67.)

President Trump's SOFCs for 2011 through 2021 were prepared in a personal financial statement format in accordance with GAAP, specifically ASC 274, which applies to the preparation of SOFCs. (Defs. SOF ¶ 51; Bartov Aff., ¶¶ 15-17) ASC 274 requires preparers of compilation reports to include sufficient disclosures to make the statements informative in light of all the information available to the user, including information apart from the financial report that the user may require and receive from the preparer (as DB did from President Trump, addressed below). (Bartov Aff., ¶ 16) Each of President Trump's SOFCs for 2011 through 2021 contains notes, which are an integral part of the SOFC, that provide information (including potential departures from GAAP) to help the user interpret the numbers reported, along with a sweeping disclaimer expressly stating: ***"Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts."*** (*See, e.g.*, NYSCEF 5 at 1.) (emphasis added).

In addition, each SOFC was accompanied by an "Independent Accountants' Compilation Report" letter from the accountants who compiled the SOFCs that noted that the SOFCS contained numerous departures from GAAP and provided a litany of those departures along with a

description of each departure. These compilation letters also expressly informed users that "[w]e have not audited or reviewed the accompanying financial statement and, accordingly, do not express an opinion or provide any assurance about whether the financial statement is in accordance with the accounting principles generally accepted in the United States of America" and stated that "users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised statement of financial condition without the above referenced exceptions to accounting principles generally accepted in the United States of America." (Defs. SOF ¶ 58.)

These disclaimers together with the notes to the SOFCs identify and describe the numerous departures from GAAP as well as the subjective nature of the property valuations. Thus, they put sophisticated users of the SOFCs, such as DB, for whom the SOFCs were prepared, on complete notice to seek additional information from President Trump as they deemed necessary, and to perform their own diligence (which DB in fact did). (Defs. SOF ¶¶ 62, 67–70.) From the standpoint of the user (i.e., DB), both documents must be and are considered together, because both were made available to the user together, and because the SOFCs incorporated the letters by reference. (Bartov Aff., ¶ 18.). As such, the SOFCs had little or no effect either on the lenders' decisions to extend loans to the Defendants or to set the terms of those loans, or on the insurers' decisions to write coverage for the Defendants and price the risk. (Defs. SOF ¶¶ 87–90.)

2. The Actual Users of The SOFCs Agree Any Mistatements Were Immaterial

Representatives of the actual banks and insurance companies testified they did not consider the SOFCs misleading.[33] President Trump was a customer of the Private Wealth Management ("PWM") program at DB, which allowed him to personally guarantee loans for business purposes.

[33] *See e.g.*, *supra* at n. 23.

(Defs. SOF ¶¶ 72, 116.) As Tom Sullivan, Managing Director of DB, testified, to qualify as a customer of the PWM program at DB, an individual needs to have a minimum total net worth of about $50 million. (Defs. SOF ¶ 73.) There is no dispute President Trump's net worth exceeded $50 million, and he was therefore exceedingly qualified for participation in the PWM. Further, for each of the three loans from DB that President Trump personally guaranteed, DB's own employees testified that they were "[c]omfortable with the level of assets" that President Trump held and as well as the "recordation of that amount of liquid assets." (Defs. SOF ¶ 85.)

DB also conducted its own due diligence and applied discounts to the amounts listed in President Trump's SOFCs, thus "protect[ing] [themselves] from" any possible "misrepresentations," just as New York courts have anticipated. *See Solutia Inc.*, 456 F. Supp. 2d at 450–51. DB, a highly sophisticated entity, was comfortable conducting its own analyses and making the loans at issue based on its routine application of "haircuts" to the values listed on SOFCs in order to prepare for any "adverse scenario" where "the client's financial position is under stress." (Defs. SOF ¶ 86.) For example, when DB received a copy of the 2011 SOFC to secure the Trump Endeavor 12 LLC loan described in the Complaint, DB calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC and used its own independent judgment "in setting the appropriate adjustments to achieve conservative valuations of concentrated assets." (Defs. SOF ¶¶ 87, 107.) DB "was focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed." (Defs. SOF ¶ 89.) DB's independent, rigorous, and subjective valuation process—which involves models employing a multitude of variables from several data sources, independent appraisals, and a variety of validity checks—demonstrates that DB's reliance on the information in the SOFCs was

marginal in deciding whether to extent the subject loans and what interest rates to require. (Bartov Aff. ¶ 25) This alone establishes the SOFCs had no capacity or tendency to deceive.

DB's relationship with President Trump was also profitable. (Defs. SOF ¶¶ 95, 101–102.) Between 2012 and 2016, DB received over $75 million in interest on these loans. (Robert Aff., Ex. AAQ ¶ 5.) Indeed, simply by closing on these transactions, DB generated fees totaling approximately $3 million. (Defs. SOF ¶¶ 119, 136, 154.) As a bank representative described, the Doral loan had "performed quite well, enough to warrant considering increasing the loan amount secured by the property." (Defs. SOF ¶ 121.) And the Chicago Loan was a "superb deal" to the bank that was "structured properly" with pricing that was "appropriate" making it a "very, very good safe deal for the bank" based on the "loan-to-values-and the guarantees involved." (Defs. SOF ¶ 133.) The Old Post Office loan was also a successful credit transaction for DB, as the property was "redeveloped and opened and was operating successfully" and the loan was performing such that "all interest payments and covenants were being met." (Defs. SOF ¶ 154.) At no point in the lifecycle of any credit transaction between DB's PWM division and President Trump or any entity affiliated with President Trump did a covenant or payment default ever occur. (Defs. SOF ¶ 96.) Nor did DB ever recommend that there was a basis for declaring a default based on President Trump's failure to maintain a net worth of at least $2.5 billion as required for each transaction. (Defs. SOF ¶ 97.) The NYAG has put forth no evidence that DB ever believed President Trump's net worth was lower than the $2.5 billion required to maintain any DB loans. Moreover, even the NYAG's flawed analysis concludes President Trump's net worth did not go below $2.6 billion.

As to Ladder Capital Finance, the terms of the 40 Wall Street Loan required President Trump to maintain a net worth of only $160 million and liquidity of only $15 million during the

term of the loan. (Defs. SOF ¶ 159.) Again, there is no dispute that President Trump's net worth and liquidity vastly exceeded these amounts. Additionally, the loan has been successful, as Ladder Capital has received in excess of $40 million in interest, and there has never been any default. (Robert Aff., Ex. AAQ ¶ 3).

Testimony of representatives from Zurich further confirms that the SOFCs were not materially misleading. As Joanne Caulfield, a project manager at Zurich, testified, it is common practice for a surety underwriter to require disclosure of financial statements, but Zurich's surety underwriter knew of no legal or contractual provision that required such disclosure from President Trump. (Defs. SOF ¶ 169.) From July 2011 to January 2017, Zurich increased its exposure to President Trump by renewing and expanding the surety program at issue in this case. (Defs. SOF ¶ 172.) ***In 2013, 2014, and 2015, the sole basis upon which Zurich relied to support its underwriting decisions were estimates of President Trump's net worth published by Forbes!*** (Defs. SOF ¶ 173-5.) In fact, despite not receiving traditional disclosure of a SOFC from July 2011 to January 2017, Zurich increased its exposure and renewed bonds as an accommodation to the insurance broker. (Defs. SOF ¶ 176.) According to Caulfield, Zurich reduced the rate President Trump's businesses were paying as an accommodation to the broker and to stave off another insurance company seeking to take the surety program from Zurich, and the account rate was lowered despite Zurich not having reviewed the updated SOFC in approximately four years. (Defs. SOF ¶ 180.) Zurich was simply not concerned with President Trump's financial health. (Defs. SOF ¶ 185.)

Similarly, in December 2016, President Trump's insurance broker reached out to Tokio Marine HCC ("HCC") seeking a quote for additional limits of $5,000,000 to sit above an already-existing Directors & Officers ("D&O") policy. (NYSCEF 1 ¶ 695.) ***Without reviewing any SOFC***,

HCC quoted a policy to sit above the existing policy through the expiration date of February 17, 2017, in exchange for a premium of $40,000, subject to reviewing financials at renewal. (NYSCEF 1 ¶¶ 695–96.)

Further, in addition to the testimony of the actual individuals involved in the subject transactions, expert testimony establishes that banks and insurance companies would not consider any of the alleged misstatements or omissions in the SOFCs to be material. Robert Unell, the Managing Director at Ankura Consulting Group, provided significant testimony about how DB performed its own analyses when assessing whether to make certain loans and did not rely on SOFCs, highlighting how sophisticated lenders such as the Defendants' counterparties here would not find any misstatements of the type alleged by the NYAG to be material. When asked, "Would it be your opinion that if the allegations in the complaint are true, that DB would have reason to have concerns about the accuracy of the SOFCs," Unell flatly answered "No," explaining that "even if the net worth or any of the other . . . allegations were . . . proven true, the net worth was still sufficient to qualify for inclusion in the private wealth bank" and that "Deutsche Bank had ample opportunity to investigate anything" it wanted to (Defs. SOF ¶ 91.) He continued, explaining that above all, liquidity was most important or "material" to the bank and that the bank "went and verified it." (Defs. SOF ¶ 92.)

According to Unell, "SOFCs provide ample information . . . for a sophisticated lender to be able to make . . . their own determination," as those documents "provide the actual amounts" and "how they were calculated" such that if any bank had concerns, it "had an opportunity to challenge those assumptions that were utilized in the preparation of the SOFC." (Defs. SOF ¶ 70.) "[L]enders are trained not to rely on" SOFCs, "which is why the independent analysis in the credit

memo is done." (Defs. SOF ¶ 67.) Unell further testified DB "did what they were supposed to do and verified" certain items and "anything else would have been immaterial." (Defs. SOF ¶ 93.)

Regarding insurance underwriting, David Miller, a former Senior Vice President/Division Officer at Erie Insurance, opined that Zurich, the underwriters for the surety bond program at issue in this case, "didn't rely on asset valuations at all." (Defs. SOF ¶ 182.) Or as Gary Giulietti, an Account Director at Lockton Northeast, testified, describing surety bond transactions with Zurich, liquidity is "all they're relying on, cash, all the way back in the relationship." (Defs. SOF ¶ 182.) In this case, the total exposure extended to President Trump's businesses in connection with the surety program at issue never exceeded $20 million. (Defs. SOF ¶ 182.)

In sum, the NYAG's First Cause of Action fails as a matter of law, and all Defendants are entitled to summary judgment.

C. The Record Shows Defendants Neither Participated In Any Alleged Fraud Nor Had Actual Knowledge Of It

To prevail on a claim for persistent and repeated fraud under § 63(12), the NYAG must show that ***each defendant*** participated in the act or had actual knowledge of it. *See N. Leasing*, 70 Misc. 3d at 267; *Abrahami v. UPC Constr. Co*., 224 A.D.2d 231, 233–34 (1st Dep't 1996). The participation element is satisfied where the defendant "directed, controlled, approved, or ratified the decision that led to the plaintiff's injury." *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 49 (1st Dep't 2012). Merely providing copies of purportedly false financial statements is insufficient. *See Abrahami,* 224 A.D.2d at 233–34. Similarly, brokering a loan transaction where others allegedly committed fraud does not by itself create an inference of participation in the fraud. *Frawley v. Dawson*, No. 6697/07, 2011 WL 2586369, at *8 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2011).

If the NYAG cannot show that a particular Defendant participated in a persistent and repeated fraud, she must show such Defendant had actual knowledge of the fraud. *See N. Leasing*,

70 Misc. 3d at 267; *Abrahami*, 224 A.D.2d at 233–34. Where, as here, actual knowledge is required under New York law, "[m]ere negligent failure to acquire knowledge of the falsehood is insufficient." *Marine Midland Bank v. Russo Produce Co.*, 50 N.Y.2d 31, 44 (1980). Likewise, showing that a Defendant "had access to the information by which it could have discovered the fraud is not sufficient." *Saltz v. First Frontier, LP*, 782 F. Supp. 2d 61, 75–77 (S.D.N.Y. 2010), *aff'd*, 485 F. App'x 461 (2d Cir. 2012) (citations omitted).

Thus, in order to show that a particular Defendant had "actual knowledge," the NYAG must put forth facts sufficient to support a finding of at least grossly negligent conduct on the part of that Defendant. New York courts define gross negligence as conduct that "smack[s] of intentional wrongdoing or evince[s] a reckless indifference to the rights of others." *Gallagher v. Ruzzine*, 46 N.Y.S.3d 323, 328 (4th Dep't 2017) (citation omitted). An officer may also be deemed grossly negligent if "the totality of the circumstances" show that the officer acted with "willful blindness or conscious avoidance." *State v. United Parcel Serv., Inc*., 253 F. Supp. 3d 583, 666–67 (S.D.N.Y. 2017), *aff'd*, 942 F.3d 554 (2d Cir. 2019) (citations omitted). But "[t]here must be evidence capable of supporting a finding that the defendant was aware of a high probability of the [incriminating] fact in dispute and consciously avoided confirmation of that fact." *Id.* at 667 (citation omitted) (alteration in original).

The NYAG must also show actual knowledge for *all* Defendants, including the corporate entities named in the Complaint. Usually, "[w]hen corporate agents act within the scope of their authority, 'everything they know or do is imputed to their principals.'" *People v. Gross*, 169 A.D.3d 159, 169 (2d Dep't 2019) (citations omitted). However, there are "exception[s] to the rule of imputed knowledge." *Id.* at 170. Notably, "imputation of knowledge may not apply where there is a specific statutory requirement of actual knowledge, and imputing knowledge would effectively

negate the purpose of the actual knowledge requirement." Robert L. Haig, *Imputed Knowledge*, 4D N.Y. Prac., Com. Litig. in N.Y. State Courts § 102:46 (5th ed., 2022). As the Court of Appeals has explained, if "knowledge of any [employee] may be imputed to a corporate [ ] employer, then the statutory distinction becomes significantly blurred and uneven. We have noted that strict construction of this statutory scheme is essential to ensure that the legislative policy of punishing only those with actual knowledge is properly effectuated." *Roberts Real Est., Inc. v. N.Y. State Dep't of State, Div. of Licensing Servs.*, 80 N.Y.2d 116, 122 (1992). Allowing the NYAG to impute actual knowledge here, "would contradict that interpretation by arrogating to itself instead an expansive new power not granted by the Legislature." *Id.*

Here, the NYAG has casually lumped together all Defendants as the "Trump Organization", asserting that all Defendants should be liable for each transaction at issue in this case. She has not explained, for example, how the Defendant corporate entities that held property at issue in the various transactions—Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC—had *anything* to do with transactions other than those applicable to their relevant properties. Defendant Trump Old Post Office LLC cannot be liable for any alleged fraud that occurred in the 40 Wall Street Loan and vice versa.

Meanwhile, the Defendants have put forth undisputed evidence that certain Defendants did not participate in and lacked actual knowledge of any alleged misstatements or omissions contained in the SOFCs, or shown that the record is devoid of any evidence to substantiate the NYAG's allegations. The Defendants have also shown certain Defendants played no role in securing the insurance policies at issue in this case, or that the record is devoid of any evidence to the contrary.

Preparation of the SOFC. Unrebutted deposition testimony demonstrates Eric Trump was not involved in preparing the SOFCs. (Defs. SOF ¶¶ 199, 200.) Eric Trump testified, "I never saw or ever even remotely worked on the Statement of Financial Condition. Th[at] was not my purview. Th[at] was not what I did." (Defs. SOF ¶ 200.) He further testified that he knew "just about nothing about the Statement of Financial Condition" and had "never seen" or "worked on" the SOFCs. (Defs. SOF ¶ 200.) He also had no role in the "valuation process in the company." (Defs. SOF ¶ 200.) Donald Bender, the engagement partner at Mazars, testified that he had no conversations with Eric Trump concerning the preparation of the SOFCs. (Defs. SOF ¶ 200.) Eric Trump also disclaimed any knowledge of the alleged falsities in the SOFC, stating that he relied on the accounting team to prepare the SOFCs. (Defs. SOF ¶ 201.)

Donald Trump, Jr. also did not participate in the preparation of the SOFCs. (Defs. SOF ¶ 199.) Bender testified that in preparing the SOFCs, he did not discuss with Donald Trump, Jr. the preparation of the SOFCs. (Defs. SOF ¶ 202.) The NYAG has not introduced any evidence that Donald Trump, Jr., participated in the preparation or submission of the SOFCs.

The record is also devoid of any evidence that the following Defendants were at all involved in the preparation of the SOFC or had actual knowledge of any alleged misrepresentations: Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. While the NYAG alleges that this "host of entities" are incorporated within the "Trump Organization," the Complaint alleges nothing concerning these entities beyond that they owned properties mentioned in the Complaint or received loans at issue in the Complaint. No record evidence establishes these entities were involved in creating or submitting the SOFCs.

Thus, to the extent that the NYAG asserts any claims against Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member based on their participation in the creation of the SOFCs or their actual knowledge of the alleged falsities in the SOFCs under the First Cause of Action, those claims fail. For for these Defendants, the Court's analysis on the First Cause of Action can stop there. The undisputed facts demonstrate these Defendants had no involvement in or knowledge of any alleged falsities in the SOFCs.

Surety Bond Program. The NYAG alleges that from 2007 through 2021, Zurich underwrote a surety bond program for the "Trump Organization" and that the SOFC were used in this process. (NYSCEF 1 ¶¶ 678–91.) Zurich representatives testified that they had no communications with Eric Trump or Donald Trump, Jr. in relation to the surety bond program. (Defs. SOF ¶ 187.) The NYAG has not rebutted this evidence, nor has she offered any evidence to suggest that any of these individuals had any knowledge of the submission of the SOFCs to Zurich. Further, the record lacks any evidence that The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC obtained surety bonds from Zurich. Nor is there any evidence to establish that any actions taken by Mr. Weisselberg were taken in his capacity as trustee on behalf of the Trust. To the extent the NYAG's claims concerning the First Cause of Action are related to transactions with Zurich and the surety bond program, they fail as to Defendants Eric Trump, Donald Trump, Jr., the Trust, The Trump Organization, Inc., Trump Organization, LLC, DJT Holdings LLC, DJT Holdings

Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC.

Directors & Officers Liability Insurance. Finally, the NYAG alleges that in December 2016, the "Trump Organization's" insurance broker reached out to an underwriter at HCC regarding a D&O policy to sit on top of an already-existing $5 million policy with Everest and that the 2015 SOFC was submitted to HCC as a part of this process. (NYSCEF 1. ¶¶ 692, 698.) The HCC policy was renewed several times. (Defs. SOF ¶¶ 189, 192.) There is no evidence in the record to suggest that any Defendants other than the Trust and Mr. Weisselberg were involved in or had knowledge of this transaction.

IV. The NYAG Is Not Entitled To Disgorgement As A Matter Of Law.

Even if this Court were to find that the NYAG is entitled to partial summary judgment on the First Cause of Action, the NYAG is not entitled to disgorgement as a remedy for any violation of § 63(12) as a matter of law.

Notably, the NYAG only mentions disgorgement once in her summary judgment memorandum, explaining in a footnote:

> While the focus of this motion is only on the People's First Cause of Action for the sake of expediency, these same predicate findings – that the SFCs were false and were used repeatedly and persistently by Defendants to commit fraud in connection with business transactions – are equally applicable to the People's remaining causes of action and will necessarily narrow the scope of matters to be addressed at trial, including at a minimum the People's claims for relief in the form of disgorgement, bans, and other equitable remedies.[34]

[34] The NYAG's decision to spend no effort on developing its arguments with respect to the Second through Seventh Causes of Action is reflective of her overall strategy in this case, which has been to focus solely on the First Cause of Action without ever specifying the exact conduct she believes subjects any particular Defendants to liability under the other provisions. For the reasons asserted in the Defendants' Motion for Summary Judgment, several Defendants are entitled to summary judgment on the Second through Seventh Causes of Action.

(NYSCEF 766 at 1 n.1.) The NYAG is wrong. Disgorgement is simply unavailable under § 63(12) or the underlying statutory claims in the Second through Seventh Cause of Action, and, thus, it is unavailable in this case.

In any § 63(12) case, "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced." *City of New York v. FedEx Ground Package Sys., Inc.,* 314 F.R.D. 348, 362 (S.D.N.Y. 2016). But "[i]t is an 'elemental canon' of statutory construction that where a statute expressly provides a remedy, 'courts must be especially reluctant to provide additional remedies.'" *Grochowski v. Phx. Const*., 318 F.3d 80, 85 (2d Cir. 2003) (quoting *Karahalios v. Nat'l Fed'n of Emps., Local 1263,* 489 U.S. 527, 533 (1989)). Allowing a plaintiff to pursue an unenumerated remedy would "be inconsistent with the underlying purpose of the legislative scheme" and amount to an "end-run" around the statute. *Id.* at 86 (citing *Davis v. United Air Lines, Inc.,* 575 F. Supp. 677, 680 (E.D.N.Y. 1983) (internal quotations omitted). Neither the NYAG as plaintiff nor § 63(12) itself are exempt from this general rule. *People v. Direct Revenue, LLC,* No. 401325/06, 2008 WL 1849855, *7 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008); *see also People v. Romero,* 91 N.Y.2d 750, 754 (1998) ("Attorney General . . . is without any prosecutorial power except when specifically authorized by statute.") (citations omitted).

A plain reading of the text of § 63(12) reveals that disgorgement is not an available remedy under the statute. Section 63(12) specifically instructs that the NYAG may "apply, in the name of the people of the state of New York . . . for an order enjoining the continuance" of the purportedly fraudulent "business activity or any fraudulent or illegal acts, directing restitution and damages." Therefore, the NYAG is limited to these "three enumerated remedies": "injunctive relief, restitution, and damages." *FedEx*, 314 F.R.D. at 361. Disgorgement is not restitution: "[d]isgorgement is distinct from the remedy of restitution because it focuses on the gain to the

wrongdoer as opposed to the loss of the victim." *Ernst & Young LLP,* 114 A.D.3d at 569. And while it may be available under the Martin Act, one of the alleged violations at issue in *Ernst & Young*, it is simply not an enumerated remedy available under § 63(12).

Caselaw confirms this conclusion. Addressing whether disgorgement was an available remedy in light of this plain reading, the court in *Direct Revenue* found that "while the Executive Law and the GBL permit monetary relief in the form of restitution and damages to consumers, the statutes do no[t] authorize the general disgorgement of profits received from sources other than the public. And even where restitution may be awarded to consumers, it may only be granted in an amount *related to the actual damages caused by the misconduct*." *Id.* (emphasis added). The court concluded that the NYAG is "strictly limited to recovery as specifically authorized by statute," and because disgorgement is not one of the authorized remedies under § 63(12), allowing "[d]isgorgement of [defendants'] profits to the state would effectively constitute punitive damages not authorized by statute." *Id.* at *8.

Disgorgement is unavailable under the Second through Seventh Causes of Action as well. Here, the NYAG alleges violations of the following underlying statutes: "New York Penal Law § 175.10 (Falsifying Business Records); Penal Law § 175.45 (Issuing a False Financial Statement); and Penal Law § 176.05 (Insurance Fraud)." (NYSCEF 1 ¶ 5.) None of these statutes provides that disgorgement as an available remedy for a violation. Rather, they provide that a violation constitutes a misdemeanor or felony in varying degrees, thereby subjecting a violator to fines up to certain amounts and jail or prison time. *See* N.Y. Penal Law § 175.10 ("class E felony"); *id.* § 175.45 ("class A misdemeanor"); *id.* § 176.30 ("class B felony" if fraud in the first degree). Therefore, disgorgement is unavailable as a remedy to the NYAG as a matter of law in this case.

Moreover, even if this Court were to find that disgorgement is an available remedy, which it should not, the NYAG has never even attempted to show any tie between the alleged "gains" made by the Defendants and the alleged fraudulent conduct. There needs to be "a 'reasonable approximation of profits causally connected to the violation.'" *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 91 A.D.3d 226, 233 (1st Dep't 2011) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)), *rev'd on other grounds*, 21 N.Y.3d 324 (2013); *S.E.C. v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013) (same); *see also* Deborah A. DeMott, *Causation in the Fiduciary Realm*, 91 B.U. L. Rev. 851, 857 (2011). ("A basic limit to a fiduciary's liability to disgorge ill-gotten gains is causal—the liability does not extend to assets acquired in a manner unrelated to the breach of duty."). Given the NYAG has put forth absolutely no evidence of the materiality of the alleged misstatements contained in the SOFCs, she has not shown (and cannot show based on Defendants' expert and witness testimony) that such misstatements actually *caused* the Defendants to make any profits. If the SOFCs and any alleged misrepresentations made in the SOFCs did not affect these financial institutions in their decision-making, there is no basis to disgorge any "ill-gotten" gains. The NYAG cannot therefore recover disgorgement of profits as a matter of law.

The NYAG's motion for partial summary judgment must be denied to the extent that the NYAG seeks disgorgement because that remedy is not available under the NYAG's causes of action in this case.

CONCLUSION

As set forth above, the First Department's clear limitations mandate eviscerates a substantial portion of this action and requires the dismissal of many of the NYAG's claims as time-barred. Notwithstanding the procedural infirmities, this action also must be dismissed because the NYAG lacks authority to maintain this action and fails to show that the SOFCs were false or fraudulent. In addition, the record shows that the SOFCs were not materially misleading and that

Defendants neither participated in any alleged fraud nor had actual knowledge of it. In the NYAG's obsessive, compulsive attempt to "get" President Trump, she even continues to unfairly drag his children Eric Trump and Donald Trump, Jr. along for the ride, despite their having had no direct involvement in the creation, preparation, or use of the SOFCs. It's time for the Court to put an end to this crusade by dismissing this action in its entirety.

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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 24,580 words. The foregoing word counts were calculated using Microsoft® Word®.

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EXHIBIT H

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

Motion Sequence Nos. 007, 008, 009, 010 and 011

PLAINTIFF'S CONSOLIDATED MEMORANDUM OF LAW IN OPPOSITION TO CERTAIN DEFENDANTS' MOTIONS TO DISMISS

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INTRODUCTION

Defendants' motions to dismiss addressed in this consolidated brief should be denied.[1] In granting the New York State Office of the Attorney General ("OAG") preliminary injunctive relief, the Court has already found OAG has made a "comprehensive demonstration of persistent fraud" by Defendants, who the Court determined have the "propensity to engage in persistent fraud." *See* Order Granting Preliminary Injunction ("PI Order"), NYSCEF No. 183, at 6, 9. The Court has already identified as "compelling" "instances of fraud" a number of the asset valuations detailed in the Complaint allegations, and concluded they are "more than sufficient to demonstrate OAG's likelihood of success on the merits." *Id.* at 6. Indeed, as the Complaint articulates, and the record already developed shows, the individual and entity Defendants engaged in a repeated and persistent scheme to defraud 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. Defendants' arguments cannot conceivably warrant dismissal of the claims asserted in OAG's meticulously detailed 214-page Complaint at any stage of the proceedings, let alone at the pleadings stage where the Court is bound to accept OAG's allegations as true.

A number of the Defendants' arguments are recycled from their unsuccessful opposition to OAG's preliminary injunction motion and have already been soundly rejected by the Court. In granting preliminary injunctive relief, the Court correctly determined that OAG has the legal

[1] The Court authorized OAG to file a consolidated opposition to Defendants' various motions to dismiss. This memorandum of law addresses Motion Sequence Nos. 007, 008, 009, 010, and 011, which comprise the motions to dismiss filed by all Defendants except Ivanka Trump and which individuals and entities are referred to collectively as "Defendants." Ms. Trump is separately referenced by name as necessary here, and her motion to dismiss (Motion Sequence No. 012) is addressed in a separately filed memorandum of law.

capacity to bring this action because Executive Law § 63(12) is not limited to consumer fraud cases (Point I). And the Court also correctly determined that *parens patriae* standing is irrelevant because OAG has express statutory standing to bring this action under § 63(12) (Point II). Nor do the disclaimers in the Statements of Financial Condition, which circumscribe the responsibility of the outside accountants to verify the accuracy of the information provided and place that responsibility squarely on Defendants, provide any defense to the Defendants, as the Court previously held (Point III).

Similarly, Defendants' equal protection/selective prosecution argument has already been raised in, and rejected by, this Court and a New York federal court. After reviewing the same public statements by the Attorney General that the Defendants rely on here, this Court rejected Defendants' claim that OAG's investigation was motivated by political animus and bias when denying Mr. Trump's motion to quash OAG's December 2021 subpoena in OAG's related subpoena enforcement action. The Appellate Division unanimously affirmed this Court's decision, ruling that the "political campaign and other public statements" by the Attorney General did not support a claim that OAG was improperly undermining Mr. Trump's rights and that OAG's investigation was "lawfully initiated at its outset and well founded." *People by James v. Trump Org., Inc.*, 205 A.D.3d 625, 626 (1st Dep't 2022), *appeal dismissed*, 38 N.Y.3d 1053 (2022). Mr. Trump and the Trump Organization, LLC raised this same claim of bias again in their separate action filed in federal court in the Northern District of New York, which rejected the argument on preclusion grounds based on this Court's prior decision and granted the Attorney General's motion to dismiss the action. *See Trump v. James*, No. 21-cv-1352, 2022 WL 1718951, at *1 (N.D.N.Y. May 27, 2022). The federal court also independently found that OAG's investigation was properly commenced and not the result of animus. *Id*. at *13. Defendants' third time raising this argument

is not the charm. Defendants' argument is barred by preclusion based on this Court's prior decision and the decision by the federal court, and in any event is without merit for the same reasons previously articulated by this Court and the First Department (Point IV).

In addition to rehashing these previously rejected arguments, Defendants raise a slew of new arguments in the most inefficient manner possible – scattering their new arguments across five separate briefs filed by seemingly random clusters of movants arranged into groups for no discernable purpose other than to give Defendants five times the applicable word count limit allowed by the Court's Uniform Civil Rules for a single memorandum of law.[2] For most of these arguments, one movant "group" takes the lead in making the full presentation of the issue with one or more of the other groups joining in the argument by including in its separate brief a much shorter "me too" paragraph.

Defendants' new arguments fare no better than those the Court has previously rejected, for reasons including:

- Statute of Limitations (Point V) – All of OAG's claims are timely because controlling case law establishes that the applicable limitations period is six years (not three as urged by Defendants) and in any event the limitations period is equitably tolled or does not begin to run until at least 2021 because a continuing scheme to defraud has been pleaded, Defendants' conduct was persistent and continuing, the continuing wrong doctrine applies, and Defendants concealed their fraud.

- Stating a Claim under § 63(12) (Point VI) – All of OAG's claims of fraud are adequately pled because there is no exception to the general rule that reliance and scienter are not required under § 63(12) and there is no pleading requirement that

[2] OAG cites in this consolidated brief to the various Defendants' briefs by their NYSCEF docket number as follows: "NYSCEF No. 197" (brief for The Trump Organization, Inc., Trump Organization LLC and Donald J. Trump); "NYSCEF No. 199" (brief for Allen Weisselberg and Jeffrey McConney); "NYSCEF No. 202" (brief for the "NY Entity Defendants"); "NYSCEF No. 211" (brief for the "Foreign Entity Defendants"); and "NYSCEF No. 221 (brief for Donal Trump, Jr. and Eric Trump).

allegations of fraud with respect to valuations must be supported by an expert statement.

- Disgorgement Amounts (Point VII) – The amounts sought in disgorgement are appropriately stated as approximations at this stage of the case and are amply supported by the detailed allegations in the Complaint; cases provide that once liability is established, there will be proceedings to establish the appropriate disgorgement amounts to award as a deterrence to others.

- Contract Merger Clauses (Point VIII) – The merger clauses in the loan documents provide no defense to fraud, because merger clauses generally are no defense to a fraud claim and cannot thwart OAG's statutory authority as a matter of law. In any event, the loan documents expressly incorporated as part of the "agreement" the fraudulent certifications at issue.

- Adequate Notice (Point IX) – The 214-page Complaint provides adequate notice to all Defendants of their wrongful conduct, spelling out the role each individual and entity Defendant played in the alleged fraud and illegality in detail.

- Naming the Revocable Trust (Point X) – Mr. Trump's Revocable Trust is properly named as a party defendant both because controlling case law establishes that a trust established in furtherance of a fraud can be held liable as a party defendant in an action and OAG has sued Donald Trump, Jr., the sole trustee, in his individual capacity and *as trustee*.

- Personal Jurisdiction (Point XI) – The Court has personal jurisdiction over all of the individual and entity Defendants raising a jurisdictional defense because they either are physically located or have their principal place of business in New York, conduct business in New York, including business directly related to the conduct giving rise to this action, through officers located in New York, and/or have purposely availed themselves of the privileges and benefits of a New York forum and of New York law in the conduct of their business..

For these reasons, and others set forth below, the Court should deny Defendants' motions to dismiss in their entirety.

BACKGROUND

A. OAG's Investigation and the New York Subpoena Action

OAG opened an investigation into Defendants' New York-based business operations in March 2019 (the "Investigation"), after Michael Cohen, a former senior executive of the Trump Organization and Special Counsel to Mr. Trump, produced to Congress copies of Mr. Trump's

financial statements for a number of years and testified that these financial statements inflated the values of Mr. Trump's assets to obtain favorable terms for loans and insurance coverage, while the Trump Organization also deflated the value of the same assets to reduce real estate taxes. *See The People of the State of New York v. The Trump Organization, Inc.*, No. 451685/2020, 2022 WL 489625, at *2, 5 (Sup. Ct. N.Y. Cnty. Feb. 17, 2022), *aff'd*, 205 A.D.3d 625 (1st Dep't 2022), *appeal dismissed*, 38 N.Y.3d 1053 (2022).

On August 24, 2020, OAG commenced a special proceeding in the New York Supreme Court, New York County, styled *People v. The Trump Organization*, Index No. 451685/2020 ("Special Proceeding"), to address subpoena enforcement issues arising during the course of the Investigation. *Id*. at *1-2. One enforcement issue presented to the Court involved a December 1, 2021 subpoena OAG served on Mr. Trump requiring him to produce responsive documents and provide deposition testimony. *Id*. Mr. Trump moved to quash the subpoena, arguing among other things that the Investigation was purportedly predicated on improper animus towards him and amounted to selective prosecution in violation of his constitutional rights. *Id*. at *4-5. As support for these assertions, he relied on the same public comments by the Attorney General cited by Defendants in support of their motions to dismiss. *Compare id*. at *4 *with* Affirmation of Alina Habba, Esq., dated November 21, 2022 (NYSCEF No. 203) ("Habba Aff."), at ¶¶ 3-29. OAG cross-moved to compel compliance with the subpoena, and in a decision and order dated February 17, 2022 ("February 2022 Order"), the Court denied the motion to quash and granted OAG's cross-motion to compel. 2022 WL 489625, at *1.

In the February 2022 Order, the Court rejected all of Mr. Trump's arguments, finding that OAG's Investigation had "uncover[ed] copious evidence of possible financial fraud" by the Trump Organization, giving OAG the "clear right" to question Mr. Trump under oath. *Id*. at *6. The Court

also found that "the impetus for the investigation was not personal animus" or alleged "campaign promises, but was sworn congressional testimony by former Trump associate Michael Cohen" that the Trump Organization was "'cooking the books.'" *Id*. at *5. Based on the Court's own review of "thousands of documents responsive to OAG's prior subpoenas," the Court confirmed that OAG had a "sufficient basis for continuing its investigation," which further undermined any claim that the "ongoing investigation is based on personal animus." *Id*. at *4. The Court also noted in rejecting Mr. Trump's selective prosecution claim the lack of "any evidence that the law was not applied [by OAG] to others similarly situated." *Id*. at *5.

Mr. Trump appealed the February 2022 Order to the New York Appellate Division, First Department, which unanimously affirmed. *People by James v. Trump Org., Inc*., 205 A.D.3d 625, 625 (1st Dep't 2022), *appeal dismissed*, 38 N.Y.3d 1053 (2022). The appellate court concluded that the "political campaign and other public statements" by the Attorney General did not support a claim that OAG was improperly using civil subpoenas to undermine Mr. Trump's rights. *Id*. at 626. The appellate court also determined that OAG's Investigation—which followed the "public testimony of a senior corporate insider" Michael Cohen that the Trump Organization "had issued fraudulent financial statements"—was "lawfully initiated at its outset and well founded." *Id*. And the court noted that OAG had reviewed "significant volumes of evidence" before subpoenaing Mr. Trump, who had not shown that any "similarly implicated" businesses or executives were treated differently. *Id*. at 627. Mr. Trump's appeal to the New York Court of Appeals was dismissed. *People by James v. Trump Org., Inc*., 38 N.Y.3d 1053 (2022).

B. Mr. Trump's Federal New York Action

In December 2021, the Trump Organization LLC and Mr. Trump filed a federal lawsuit pursuant to 42 U.S.C. § 1983 against the Attorney General in her official capacity in the United States District Court for the Northern District of New York styled *Trump v. James*, No. 21 Civ.

1352 (the "NDNY Action"). *See Trump v. James*, No. 21-cv-1352, 2022 WL 1718951, at *1 (N.D.N.Y. May 27, 2022). The lawsuit was filed nearly three years after OAG commenced its Investigation and more than a year after OAG commenced the Special Proceeding, but just weeks after OAG served its subpoena on Mr. Trump. By then, OAG had obtained through subpoenas more than 900,000 documents, interviewed dozens of witnesses (including many senior officers of the Trump Organization), and litigated numerous subpoena-compliance issues before this Court in the Special Proceeding.

The NDNY Action sought declaratory relief and an injunction halting or limiting OAG's Investigation. *Id.* The complaint raised four nominally separate but overlapping claims, alleging that: (i) OAG launched the Investigation in bad faith, in violation of the Fourteenth Amendment's Due Process Clause: (ii) the Investigation was intended to retaliate against Mr. Trump's political speech, in violation of the First Amendment; (iii) the document subpoenas to Mr. Trump and the Trump Organization were overbroad, unduly burdensome, and sought irrelevant material, in violation of the Fourth Amendment; and (iv) OAG's subpoenas constituted abuse of process. *Id*. at *4. In support of each of these claims, Mr. Trump and the Trump Organization again relied on many of the same public comments by the Attorney General cited in Mr. Trump's motion to quash filed in the Special Proceeding and cited by Defendants in support of their motions to dismiss. *Compare id*. at *1-4 *with* February 2021 Order, 2022 WL 489625, at *1 *with* Habba Aff. at ¶¶ 3-29.

Shortly after commencing the NDNY Action, Mr. Trump and the Trump Organization filed a motion for a preliminary injunction to enjoin OAG's Investigation or disqualify the Attorney General from involvement in the Investigation. 2022 WL 1718951, at *1. OAG opposed the motion and cross-moved to dismiss the complaint under Rule 12(b)(1) based on abstention and

under Rule 12(b)(6) based on preclusion and failure to allege a plausible claim for relief. *See id*. at *8. By decision and order dated May 27, 2022 ("May 2022 Order"), the court granted the motion to dismiss and denied the motion for a preliminary injunction as moot. *Id*. at *20. In dismissing the complaint, the district court held that *res judicata* barred the action based on the preclusive effect of this Court's February 2022 Order. *Id*. at *19. The court observed that 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 Special Proceeding, which it held arose from the same series of transactions—OAG's Investigation into the Trump Organization—and involved the same or related facts. *Id*. at *19. The court also concluded that dismissal was warranted under *Younger* abstention, finding that the Special Proceeding was a pending civil proceedings involving certain orders uniquely in furtherance of the state court's ability to perform its judicial functions – namely, the prior ruling by this Court holding Mr. Trump in civil contempt. *Id*. at *10-14. The court explained that enjoining OAG's Investigation "would have the practical effect of interfering with the contempt ruling in the New York proceeding" and would risk negating that order. *Id*. at *11. The court further found that the statements by the Attorney General – which are largely the same statements by the Attorney General referenced in counsel's affirmation in support of Defendants' motions to dismiss (*compare id*. at *1-4 *with* Habba Aff. at ¶¶ 3-29) – did not establish "that the [Special Proceeding] was commenced for the purpose of retaliation" and had a "legitimate factual predicate," namely, the congressional testimony of Michael Cohen. 2022 WL 1718951, at *13. Mr. Trump and the Trump Organization appealed the May 2022 Order, which is currently *sub judice*.

C. OAG's New York Enforcement Action

Based on the findings of the Investigation, on 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,* No. 452562/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) (NYSCEF No. 183), slip op. at 1-2.

On October 13, 2022, based on certain actions taken by Mr. Trump and the Trump Organization—including the formation of a new corporate entity in Delaware named "The Trump Organization LLC" and the registration of that entity as a foreign corporation in New York the same day that OAG filed this enforcement action—OAG filed a motion for a preliminary injunction to maintain the status quo and obtain a court-appointed independent monitor to oversee the Trump Organization's future transfer of assets and financial disclosures, including any continued use of the Statements to meet loan covenants and to obtain new loans and insurance coverage. *Id*. at 1-2. By Decision and Order dated November 3, 2022 (NYSCEF No. 183) (the "PI Order"), the Court granted OAG's motion, finding that the evidence presented by OAG was "more than sufficient to demonstrate OAG's likelihood of success on the merits" and "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." *Id*. at 9. Additionally, the Court ordered the appointment of an independent monitor, finding it 'the most prudent and narrowly tailored mechanism to ensure there is no further fraud or illegality . . . pending the final disposition" of the action, and ordered Mr. Trump and the other defendants to produce to the monitor, among other things, 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." *Id*. at 10. On November 14, 2022, this Court appointed the Honorable Barbara Jones, a retired federal judge and the consensus candidate of all parties, to serve as monitor, and on November 17, 2022, this Court ordered that Defendants provide the corporate structure documents to the monitor by no later than November 30, 2022. *See* Supplemental Decision + Order on Motion (NYSCEF No. 193) and Supplemental Monitorship Order (NYSCEF No. 194).

STANDARD OF REVIEW

"When a defendant moves for dismissal of a cause of action under CPLR 3211(a)(1), their documentary evidence must utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Chen v. Romona Keveza Collection LLC*, 208 A.D.3d 152, 157 (1st Dep't 2022) (cleaned up).

On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), this Court "must give the pleadings a liberal construction, accepting the allegations as true and according the plaintiff every possible favorable inference." *Id.* at 157 (cleaned up). On a motion to dismiss, "a court may freely consider affidavits" and other evidence submitted by the plaintiff, and the court then assesses whether the plaintiff "has a cause of action." *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). This Court can take judicial notice of the preliminary-injunction record. *See, e.g.*, *People v. Byrd*, 57 A.D.3d 442, 443 (1st Dep't 2007) ("[C]ourts may take judicial notice of their own prior proceedings and records, including exhibits, even sua sponte after trial") (citing *Musick v. 330 Wythe Ave. Assocs., LLC*, 41 A.D.3d 675, 676 (2d Dep't 2007)).

ARGUMENT

I. OAG HAS CAPACITY TO BRING THIS SUIT

Despite the Court's prior determination that OAG has standing to bring this well-founded Executive Law § 63(12) enforcement action, Defendants continue to press their argument that

OAG has no legal capacity to sue under the statute. While it should suffice for OAG to say there is no reason for the Court to revisit its prior holding in order to overcome this argument, OAG will nevertheless address Defendants' capacity argument on the merits for the sake of completeness.

Section 63(12) unqualifiedly states that "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 injunctive or monetary relief "[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." Exec. Law § 63(12). Thus, the statute makes clear that it authorizes the Attorney General—in other words, provides her with legal capacity—to "apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts." PI Order at 3 (quoting *State by Abrams v. Ford Motor Co*., 74 N.Y.2d 495, 502 (1989)). The Court of Appeals recognized nearly fifty years ago that the statute "provide[s] standing in the Attorney[ ]General to seek redress and additional remedies for recognized wrongs…." *State v. Cortelle Corp*., 38 N.Y.2d 83, 85 (1975); *see also People by Schneiderman v. Credit Suisse*, 31 N.Y.3d 622, 633 (2018); *People by Schneiderman v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409, 417 (1st Dept. 2016) (explaining that Executive Law § 63(12) authorizes OAG to seek equitable and other relief respecting fraudulent conduct within the statutory definition); *People by James v. N. Leasing Sys., Inc*., 70 Misc. 3d 256, 263 (Sup. Ct. N.Y. Cnty. 2020), *aff'd*, 193 A.D.3d 67 (1st Dep't 2021).

Indeed, as the Court already has emphasized, the public interest in injunctive relief—and accordingly the public interest supporting this action as a whole—is exceedingly strong here. New York, as a center of financial activity, has a strong interest in "ensur[ing] that financial transactions are conducted truthfully, not fraudulently." PI Order at 9; *see also id*. at 3 (noting State's interest in "securing an honest marketplace") (quoting *People ex rel. Cuomo v. Coventry First LLC*, 52

A.D.3d 345, 346 (1st Dep't 2008)). Echoing this Court's point about New York's status as an "epicenter of global finance," PI Order at 9, the Court of Appeals repeatedly has recognized New York's "overriding and paramount interest" as "a financial capital of the world, serving as an international clearinghouse and marketplace for a plethora of international transactions." *J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited*, 37 N.Y.2d 220, 227 (1975).

Defendants contend that OAG lacks capacity to sue under § 63(12) because this is not a consumer-protection action and the fraudulent conduct occurred between sophisticated commercial parties. *See, e.g.*, NYSCEF No. 197 at 12 (referring to "vulnerable members of the public"). But, as this Court already has recognized, that argument "is wholly without merit." PI Order at 4 (citing *New York v. Feldman*, 210 F. Supp. 2d 294, 299 (S.D.N.Y. 2002)). Indeed, in *People v. Ernst & Young LLP,* 114 A.D.3d 569 (1st Dep't 2014), the First Department held that OAG may pursue disgorgement under § 63(12) without "a showing or allegation of direct losses to consumers or the public," in part because "disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct" regardless of the source of those gains. 114 A.D.3d at 569-70; *see also*, *e.g.*, *Matter of People v. Northern Leasing Sys., Inc*., 193 A.D.3d 67, 70-78 (1st Dep't) (affirming determination that respondents violated § 63(12) by deceiving small business owners into entering noncancelable equipment leases), *lv. dismissed*, 37 N.Y.3d 1088 (2021); *New York* v. *Feldman*, 210 F. Supp. 2d 294, 299 (S.D.N.Y. 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)).

Defendants' position also conflicts with the plain text of § 63(12) in several respects. First, the statute sweeps broadly to cover "the carrying on, conducting or transaction of business." Exec. Law § 63(12). The ordinary meaning of those terms plainly encompasses preparation and use of financial statements describing and assessing a businessman's and business organization's commercial holdings for use in a business's lending, real estate, insurance, and similar business transactions. Indeed, courts have "broadly construed" § 63(12) to apply to virtually "all business activity." *Feldman*, 210 F. Supp. 2d at 300. Even the Defendants in their motion papers repeatedly describe the conduct at issue as "business,"[3] they just prefer to characterize it as "private" business in an attempt to insulate it from § 63(12) scrutiny. Second, the terms "fraud" and "fraudulent" include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise, or unconscionable contractual provisions," Exec. Law § 63(12). The plain language of that definition confirms that the Legislature empowered the Attorney General to police any occurrence of such conduct in New York; indeed, the use of the term "any" at the beginning of the non-exclusive list of covered conduct naturally suggests an expansive meaning. *See Ali v. Federal Bureau of Prisons*, 522 U.S. 214, 218-19 (2008). Third, the statute's express terms only require an effect on "more than one person" for the Attorney General to pursue a claim for repeated fraud or illegality—defeating any assertion that a broad impact on the consuming public is required. *See State of New York v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep't 1983) (explaining that Legislature amended § 63(12) in 1981 specifically to "allow[] the Attorney-General to bring a proceeding when the respondent was

[3] *See, e.g.*, NYSCEF No. 211 at 1 (referring to "decades of business transactions"); NYSCEF No. 202 at 1 (same); NYSCEF No. 197 at 2, 9 (referring to "private business" and "commercial" conduct); NYSCEF No. 199 at 9.

guilty of only one alleged act of misconduct, provided it affected more than one person"). The statute otherwise defines repeated fraud or illegality as "repetition of any separate and distinct fraudulent or illegal act." Exec. Law § 63 (12). Here, defendants allegedly issued at least 11 Statements replete with false and misleading asset valuations, and used these Statements to extract, among other benefits, three real-estate financing loans and multiple insurance renewals.

And it should be self-evident that Defendants' reliance on purported legislative history from the 1950s, *see* NYSCEF No. 197 at 12, is misplaced as even if one were to accept their historical reading of such documents, it has no possible bearing on the expansive interpretation given by the courts to the later 1981 amended version of § 63(12). The Court should adhere to its prior ruling that OAG has the legal capacity to bring this enforcement action under § 63(12).

II. *PARENS PATRIAE* STANDING IS IRRELEVANT TO THIS SUIT

Defendants' extended arguments regarding *parens patriae* standing miss the mark. This Court correctly concluded that a demonstration of *parens patriae* standing "is unnecessary where, as here, the New York Legislature has specifically empowered the Attorney General to bring" this action. PI Order at 3 (citing *Credit Suisse*, 31 N.Y.3d at 633).

Contrary to Defendants' arguments, governmental authorities—including OAG operating under the State's antifraud legislation—are "representing the People of the State at large," rather than "the interests of a few individuals." *People v. Bunge Corp.*, 25 N.Y.2d 91, 100 (1969). And § 63(12) gives OAG "statutory authority to serve the public interest by seeking *both* injunctive *and* victim-specific relief." *People v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009) (emphasis added). Thus, under § 63(12), in addition to recovery of losses incurred by specific victims, OAG may pursue prohibitory injunctions and disgorgement of economic benefits the Defendants wrongfully reaped from anyone—to deter others from engaging in such conduct in the future. *See, e.g.*, *People v. Greenberg*, 27 N.Y.3d 490, 496-97 (2016) (allowing OAG to seek disgorgement of

bonuses the corporation had paid to executives who engineered sham reinsurance transactions); *Ernst & Young*, 114 A.D.3d at 569 (allowing OAG to seek disgorgement of professional fees received by accounting firm that approved false financial reports). OAG has, in fact, sought such relief here—in the form of disgorgement (as a deterrent measure), the imposition of a monitorship for at least five years, and other forms of injunctive relief against entities and individuals. *See* Compl. § VI.

Moreover, the Court of Appeals has rejected nearly identical arguments to those made by Defendants about the extent of the Attorney General's § 63(12) authority. In *People v. Greenberg*, OAG sued former insurance executives under § 63(12) and the Martin Act for engaging in systematic accounting fraud. The Defendants moved to dismiss for lack of standing, arguing that the Attorney General had to establish "'parens patriae' standing," could not sue "'to protect the integrity of the securities marketplace in New York,'" and impermissibly sought relief "on behalf of specific private parties," who were "fully capable of obtaining appropriate relief on their own behalf." Joint Br. for Defants-Appellants filed in *People v. Greenberg*, No. 2013-0063, 2012 WL 9502919, at *17-25. The Court of Appeals rejected these contentions based on § 63(12)'s "broadly worded anti-fraud provisions, prohibiting among other things 'repeated fraudulent or illegal acts,'" along with the statute's express grant of authority to the Attorney General "to sue for violation[s]." *People v. Greenberg*, 21 N.Y.3d 439, 446 (2013).

In any event, to the extent any showing were required to establish *parens patriae* standing, OAG has "sufficiently articulat[ed] a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties." PI Order at 3 (collecting cases). Arguing to the contrary, Defendants invoke *People v. Grasso*, 11 N.Y.3d 64 (2008), but that decision has no bearing on the Attorney General's express statutory grant of power under

Executive Law § 63(12). That decision concerned whether certain "*nonstatutory* causes of action" brought by the Attorney General were sustainable, *id.* at 69 (emphasis added); however, the Attorney General also had brought claims that, as here, were expressly authorized by the statutory scheme in question—authority that was undisputed. *Id.* at 68. The First Department had, in the decision under review by the Court of Appeals in *Grasso*, also distinguished between nonstatutory causes of action and causes of action "the Legislature expressly authorized the Attorney General to bring," which required no independent analysis of capacity or standing. *People v. Grasso*, 42 A.D.3d 126 (1st Dep't 2007).[4]

Indeed, the thrust of the Defendants' argument that the State must show some "civil, property, or personal right" in order to bring an enforcement action concerning fraud cannot be correct. *See* NYSCEF No. 197 at 4. There is a "legitimate strong State interest in enforcing its own laws and in punishing violations of its criminal statutes," *People v. Mendoza*, 186 A.D.2d 458, 459 (1st Dep't 1992), and, as the Court already has noted, there is a strong public interest in ensuring an honest financial marketplace, particularly in New York as an epicenter of global finance. *See supra* at 11-12. Any time the United States brings a prosecution for bank fraud or false statements to financial institutions (*see* 18 U.S.C. §§ 1014, 1344), or the Securities and Exchange Commission brings a securities action concerning (for example) false or misleading financial statements or

[4] The 2007 *Grasso* decision noted that the *parens patriae* doctrine was applicable to "causes of action that otherwise properly can be brought only by private parties." 42 A.D.3d at 131. Executive Law § 63(12) claims cannot be brought by private parties at all, let alone solely by private parties; to the contrary, the Legislature has expressly, and exclusively, tasked the Attorney General with bringing § 63(12) actions. In a later decision in *Grasso*, cited by Defendants (NYSCEF No. 197 at 7-8), the First Department held that OAG lacked capacity to maintain an action under a statute authorizing suits on behalf of nonprofit corporations, after the company at issue had converted into a for-profit enterprise, 54 A.D.3d 180, 190-97 (1st Dep't 2008). Here, by contrast, there is no claim that intervening events have rendered § 63(12) textually inapplicable.

statements to accountants in representation letters (*see S.E.C. v. DiMaria*, 207 F. Supp. 3d 343, 354, 361 (S.D.N.Y. 2016)), those authorities need not show some special proprietary governmental harm before enforcing the law. Similarly, there is no need for the State of New York, in a prosecution for falsification of business records, or a scheme to defraud, or grand larceny, or in a civil fraud enforcement action reliant on § 63(12)'s broad and express authorization to sue, to show some special proprietary harm to the State before enforcing the State's law and its strong public policy against financial fraud.

The Court also correctly concluded on OAG's preliminary injunction application that Defendants' reliance on *People v. Domino's Pizza, Inc.*, No. 450627/2016, 2021 WL 39592 (Sup. Ct. N.Y. County Jan. 5, 2021), is misplaced. Indeed, Defendants heavily relied on that decision in briefing and argument on that application, but the Court nonetheless concluded OAG has made a comprehensive showing of persistent fraud and a resulting likelihood of success on the merits. *Domino's* provides no support for Defendants' motion to dismiss at the pleadings stage—particularly given that the *Domino's* opinion on which they rely was a decision finding that the State had not adequately proven *at trial* an actionably fraudulent misrepresentation by the defendant, suggesting that despite the proof found to be inadequate at trial the action was properly pleaded in the first instance.[5] Defendants' reference to language in the *Domino's* opinion regarding "bilateral business transactions" is incorrect, but beside the point.[6]

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[5] Notably, the *Domino's* opinion reiterates that neither scienter nor reliance is a required element of a § 63(12) claim, and states that "there is also support for the proposition that the Attorney General need not prove materiality and that causation is relevant only in determining damages, not liability." 2021 WL 39592 at *10 (internal citations omitted).

[6] The *Domino's* Court's post-trial findings of fact held that certain representations made between Domino's (as franchisor) and various franchisees were not shown to be false or misleading. *See,*

III. THE ACCOUNTANT'S DISCLAIMER DOES NOT BAR OAG'S CLAIMS

Defendants' contentions regarding the disclaimers in the Statements circumscribing the responsibilities of the *accounting firm* are similarly meritless, and Defendants (at a minimum) cannot conceivably meet their burden to demonstrate that the disclaimers "utterly refute" OAG's claims, as they must do to succeed on a motion to dismiss based on documentary evidence. *Chen*, 208 A.D.3d at 157.

Indeed, as the Court has already determined, "the Mazars disclaimer does not avail Mr. Trump" or the other Defendants "at all." PI Order at 4. Instead, the disclaimer advises that *Mazars* has not provided an assurance about the contents of the Statements—placing full responsibility for their content and fair presentation at the feet of Mr. Trump or his trustees. *Id.* (citing NYSCEF No. 6) ("Donald J. Trump is responsible for the preparation and fair presentation of the financial statement . . . ."). As the Court further noted, "the Mazars disclaimer makes abundantly clear that Mr. Trump was fully responsible for the information contained within the [Statements]." *Id.* In colloquial terms, the numbers came from the Trump Organization, Mazars provided no assurance about them, and Mazars' disclaimer advised that *it* provided no assurance—emphasizing that the responsibility for the numbers rested with Mr. Trump or his trustees. So while the disclaimer advised that Mazars had not verified the numbers in the Statement, it plainly put that responsibility on Defendants.

Defendants invoke justifiable-reliance case law to argue that, based on the disclaimer, no counterparty could justifiably rely on the Statements. This argument, as the Court already

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e.g., 2021 WL 39592 at *6 (¶31). Nothing in *Domino's* suggests that bilateral business agreements are immune from § 63(12) scrutiny; to the contrary, the *Domino*'s Court conducted a trial on that very subject.

concluded, fails. PI Order at 5. "[T]he test for fraud is whether the targeted act has the capacity or tendency to deceive or creates an atmosphere conducive to fraud." *People v. Northern Leasing Systems, Inc.*, 193 A.D.3d 67, 75 (1st Dep't 2021). That standard is easily met here, and justifiable reliance need not be shown by OAG. *See*, *infra,* at 45 (citing, among other authorities, *Trump Entrepreneur Initiative*, 137 A.D.3d at 417).

In all events, to demonstrate that the accountant's disclaimers absolve *Defendants* of responsibility even under the cited justifiable-reliance case law, they would be required to show 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 A.D.3d 128, 136 (1st Dep't 2014). Defendants have made neither showing—let alone one based on irrefutable documentary evidence. To the contrary, the Complaint and established record demonstrate, as the Court already concluded, that all of the facts concerning Mr. Trump's businesses and properties were "peculiarly within" the Defendants' knowledge. PI Order at 5. A cursory review of the Statements themselves reveals no specific warning (for example) that the size of Mr. Trump's apartment was overstated by a factor of three, Mr. Trump's cash and cash equivalents included funds that were not his to access, the Statements' valuation of Mar-a-Lago ignored restrictions Mr. Trump signed, the Statements' valuations of Trump Park Avenue ignored the rent-stabilized nature of many units, or many other examples of a similar ilk. The Statements thus contain false or misleading "concrete claims framed by do-nothing disclaimers." *FTC v. Direct Mktg. Concepts,* 624 F.3d 1, 12 (1st Cir. 2010).

Indeed, as a case cited by the Court in the PI Order indicates, the purported disclaimers and the Statements themselves contain a good deal of language that "conveys the unequivocal

impression that [the Statements] are a good-faith attempt to approximate current market value." *Joel v. Weber*, 166 A.D.2d 130, 137-38 (1st Dep't 1991). In *Joel*, for example, the First Department concluded that a note that "cost basis" had been used "to approximate the current market value of certain assets" conveyed such an "unequivocal impression." *Id.* Here, the Statements expressly say they are intended to approximate "current values" and reference particular methods of valuation when doing so—including in front matter entitled, "basis of presentation." *See, e.g.*, Compl. Ex. 3, at 4 ("Assets are stated at their estimated current values."); Compl. Ex. 7, at 4 (same); Compl. Ex. 9, at 3 (same). Indeed, the Statements profess that Mr. Trump (or his trustees) were responsible for fairly presenting their contents "in accordance with [GAAP]," but for expressly identified exceptions—indicating that GAAP had been carefully parsed and applied fairly and faithfully unless otherwise indicated. *See, e.g.*, Compl. Ex. 3 at 1; Ex. 9 at 1. The language relied upon by Defendants (*see* NYSCEF No. 199 at 15) merely alerts a user that conforming the Statement to GAAP—*i.e.*, undoing the expressly identified GAAP exceptions—may lead to different conclusions. *See, e.g.*, Compl. Ex. 3 at 2 (referring to GAAP departures "described above"); Compl. Ex. 9 at 1 (referring to "above noted items" as "these departures from" GAAP). But such language does nothing to undo the express assurances that the Statements are intended to present current values and have otherwise been fairly prepared in accordance with GAAP—let alone alert a reader to the specific sorts of misrepresentations and omissions alleged in the Complaint (which the Court must accept as true at the pleading stage) or disavow that the Statements concern facts within the Defendants' unique knowledge.

Putting aside the text of the Statements themselves, Defendants' arguments on this score ignore critical points. As noted, Mr. Weisselberg, and in some years Donald Trump, Jr., signed engagement and representation letters with the Mazars firm attesting to the accuracy of the

numbers used, and to not having knowingly withheld pertinent information. *See* Compl. ¶¶ 55-57; PI Order at 8 (describing the representation from "we" about withholding as "blatantly false"); NYSCEF No. 48 at 3; *see also* NYSCEF No. 47 at 2 (accepting understanding of duty to provide access to all relevant information and for accuracy and completeness of information). Those letters set forth the obligations of the Trump Organization and the representations it was required to make in connection with the Statements' issuance—including its agreement and representation that the Trump Organization would provide complete and accurate information to Mazars, the Trump Organization's numbers were fairly presented, and the Trump Organization had not knowingly withheld pertinent information. Compl. ¶¶ 54-56; NYSCEF Nos. 47, 48; *see also* Affirmation of Colleen K. Faherty, dated December 9, 2022 ("Faherty Aff.") Exs. 1-6 (signed engagement and representation letters for 2012, 2015, and 2018).[7] Defendants point to nothing undermining—much less contravening as a matter of irrefutable evidence—the plain terms of those annual engagement and representation letters signed by Mr. Weisselberg and/or Donald Trump, Jr., which objectively misled Mazars and, by extension, would have tainted any supposed disclaimers by the latter. *See Basis Yield Alpha Fund*, 115 A.D.3d at 137 (party cannot disclaim away misrepresentations "peculiarly within [its] knowledge").

Moreover, Mr. Trump and his trustees (and, for the 2021 Statement, Eric Trump) repeatedly certified in separate, executed written statements to one or more lenders that the Statements were true and correct in all material respects and fairly presented Mr. Trump's financial

[7] Donald Bender, the engagement partner at Mazars, has, as the Court previously noted, testified that the Trump Organization's failure to provide complete and accurate information could have led Mazars not to compile the Statements. PI Order at 7. In one instance, for example, Mr. Bender testified he was "shocked" by the discrepancy between the valuation of unsold residential units at Trump Park Avenue reflected in the 2012 Statement and the value of those units reflected in a 2012 appraisal in the company's possession. PI Order at 7 (citing NYSCEF Doc. No. 41, at 8).

condition. Those certifications occurred in personal guarantees and in subsequent certifications required as a condition of those continuing guarantees. Compl. ¶¶ 591, 595. Although justifiable reliance need not be shown here, when a party (such as a bank) "has taken reasonable steps to protect itself against deception," such as by having "gone to the trouble to insist on a written representation that certain facts are true, it will often be justified in accepting that representation rather than making its own inquiry." *DDJ Mgt., LLC v. Rhone Group L.L.C.*, 15 N.Y.3d 147, 154 (2010); *id.* (describing example of "banks that had extended credit"). That will be so even if "[s]ome aspects of the [counterparty's] financial statements" might in retrospect "have seemed too good to be true." *Id.* at 156. As the Court of Appeals explained, when parties have "obtained written representations and warranties to the effect that nothing in the financials was materially misleading," that effort alone is "a significant effort to protect themselves." *Id.*

Indeed, the personal guarantees on the Deutsche Bank loans—a precondition of Mr. Trump's and the Trump Organization's obtaining private wealth loans at lower interest rates—make clear that the loans themselves were conclusively presumed to have been underwritten in reliance on the continuing guarantees containing those express written certifications, and that Mr. Trump specifically made representations regarding the Statements to induce the bank to lend. Compl. ¶ 591; *see also* Faherty Aff. Ex. 7 (Doral Guaranty) at -4176 (reliance language), -4177 ("[i]n order to induce Lender to accept this Guaranty and to enter into the Credit Agreement . . . ."), -4178 (representation regarding prior financial statements); *see also* Ex. 9 (Amended Chicago Guaranty) at -3190, -3191; Ex. 11 (Old Post Office Guaranty) at -3285, -3287; Compl. ¶¶ 609 (noting Chicago guarantees had terms "materially identical to the Doral guaranty"); 638-642 (detailing parallel terms for Old Post Office guaranty). The loan agreements, too, made clear, among other things, that execution of the guarantees was a precondition to lending. *See* Faherty

Aff. Ex. 8 (Doral loan agreement) at -5912 (§ 6.1(f)); Ex. 10 (Chicago loan agreement), at -3688 (§6.1(f)); Ex. 12 (Old Post Office loan agreement), at -5025 (§ 6.1(f)). Those specific, written certifications and terms expressly foreclose Defendants' arguments seeking dismissal—even if justifiable reliance was required to be shown, which it is not. *DDJ Management*, 15 N.Y.3d at 154-57 (declining to "hold as a matter of law that plaintiff was required to do more" than obtain "representations and warranties to the effect that nothing in the financials was materially misleading.").

Furthermore, the Deutsche Bank loan documents themselves spell out the centrality of the Statements—and written certifications regarding them—to those transactions, which were private-wealth transactions rather than standard Commercial Real Estate transactions. *See* Compl. ¶¶ 563, 573-581; 602-603; 627-632. Deutsche Bank documents and correspondence cement the point, spelling out that, among other things, the unique nature of the loans meant that extending credit was "recommended based on the financial profile of the Guarantor." *E.g.*, Compl. ¶¶ 605, 617. Moreover, as the Complaint articulates in great detail, the transactions were obtained at favorable rates that would not have been obtained but for execution of Mr. Trump's guaranty and certification of the Statements. *See, e.g.*, Compl. ¶¶ 567, 568, 575, 587, 602, 628, 631. The impact of the Statements' vast deception is borne out by Deutsche Bank's decision to question the Trump Organization about the accuracy of the Statements once OAG made its allegations of fraud public, emphasize to the Trump Organization the importance of those Statements to its lending decisions, and exit its relationship with the Trump Organization when those questions (which touched on a tiny fraction of the issues set forth in OAG's comprehensive Complaint) went unanswered. *See* NYSCEF Doc. No. 39, ¶¶ 50-55; NYSCEF Doc. Nos. 102-104. Indeed, Deutsche Bank's

communications to the Trump Organization stressed that misrepresentations on loan documents could constitute events of default. Compl. ¶¶ 570, 741, 742; *see* NYSCEF No. 103.

In addition, misrepresentations that particular appraisal firms prepared the valuations influenced an insurance underwriter's decision to renew the Trump Organization's surety bond coverage on favorable terms. Compl. ¶¶ 684-89. Similarly, there were material omissions by Mr. Weisselberg and other Trump Organization representatives during a January 2017 renewal meeting with insurers on the company's Directors and Officers coverage that led to favorable renewal terms; none of the company's representatives disclosed to the underwriters at the meeting or at any time prior to the renewal the fact known to them that OAG was investigating Trump family members who were directors and officers of the Trump Organization for their role in the Trump Foundation, for which the company later sought coverage. Compl. ¶¶ 697-703.

IV. DEFENDANTS' EQUAL PROTECTION ARGUMENT IS BARRED BY PRECLUSION AND OTHERWISE WITHOUT MERIT

Defendants argue that OAG is selectively enforcing § 63(12) in violation of the equal protection clause, thus warranting the dismissal of the enforcement action. NYSCEF No. 197 at 13-21. Defendants fail to establish an equal protection violation and offer only meritless, recycled arguments that are barred by issue and claim preclusion based on prior rulings in related actions.

A. Issue Preclusion Bars Defendants' Equal Protection Argument

Under the doctrine of collateral estoppel, or issue preclusion, New York courts will bar re-litigation of an issue that "is identical to an issue which was raised, necessarily decided and material in the first action," if "the plaintiff had a full and fair opportunity to litigate the issue." *Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 350 (1999). Defendants' equal protection argument asserts that the Attorney General is motivated by an improper purpose to intimidate and harass Mr. Trump and his business based on personal and political animus, NYSCEF No. 197 at

18-19, and that the Attorney General unlawfully abused her power to discriminate against Defendants. *Id.* at 20. In support of these arguments, Defendants rely on the same statements by the Attorney General that have been reviewed and rejected by this Court, the First Department, and the Northern District of New York.

Mr. Trump raised these same issues in the Special Proceeding on his motion to quash, arguing among other things that OAG's investigation was purportedly predicated on improper animus towards him and amounted to selective prosecution in violation of his constitutional rights. February 2022 Order, 2022 WL 489625, at *4-5. These arguments rested almost entirely on the same public comments by the Attorney General cited in the affirmation submitted by counsel in support of Defendants' motions to dismiss. *Compare id*. at *4 *with* Habba Aff. at ¶¶ 4-6, 8-24. This Court rejected those arguments, finding that OAG had a "sufficient basis for continuing its investigation." February 2022 Order, 2022 WL 489625, at *4-5. The Court also found that "the impetus for the investigation was not personal animus" or alleged "campaign promises, but was sworn congressional testimony by former Trump associate Michael Cohen" that the Trump Organization was "'cooking the books.'" *Id*. at *5. The Court also noted in rejecting Mr. Trump's equal protection claim the lack of "any evidence that the law was not applied [by OAG] to others similarly situated." *Id*. at *5. On appeal from that February 2022 Order, the First Department similarly concluded that the "political campaign and other public statements" by the Attorney General did not support a claim that OAG was improperly using civil subpoenas to undermine Mr. Trump's rights and that OAG's Investigation was "lawfully initiated at its outset and well founded." *People v. Trump*, 205 A.D.3d at 626.

Mr. Trump attempted to relitigate these same issues for a second time in the NDNY Action, asserting in his complaint there that the Attorney General commenced the investigation in bad faith

and an abuse of power to retaliate against Mr. Trump in violation of his constitutional rights. More specifically, Mr. Trump argued (in opposition to the Attorney General's motion to dismiss on, *inter alia*, abstention grounds) that the bad faith exception to *Younger* abstention applies because OAG's investigation lacked a legitimate basis when it was commenced and "was brought for a retaliatory, harassing, or other improper purpose." NDNY Action, 2022 WL 1718951, at *12. In rejecting Mr. Trump's argument, the court found that the statements by the Attorney General – which are largely the same statements by the Attorney General referenced in counsel's affirmation here (*compare id*. at *1-4 *with* Habba Aff. at ¶¶ 4-6, 8-24) – did not establish "that the [Special Proceeding] was commenced for the purpose of retaliation," and instead concluded that the Special Proceeding and had a "legitimate factual predicate," namely, the congressional testimony of Michael Cohen. 2022 WL 1718951, at *13. According to the court, "[w]hile [the Attorney General's] public statements make clear that she disagrees vehemently with Mr. Trump's political views, [Mr. Trump does] not identify what protected speech or conduct [the Attorney General] allegedly retaliated against [him] for or demonstrate any causal connection between any such protected activity and the decision to commence" OAG's investigation. *Id*. Finally, the court found that Mr. Trump "submitted no evidence that [OAG's investigation] has been conducted in such a way as to constitute harassment." *Id*.

Mr. Trump cannot plausibly contend that he lacked a fair opportunity to litigate these issues having chosen to raise the same arguments and rely on the same evidence in both the Special Proceeding and the NDNY Action that he now seeks to raise here. A party cannot base an action on "virtually a verbatim repetition" of allegations from prior proceedings that resulted in adverse rulings on "dispositive factual and legal issues." *Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 350 (1999); *see also Allen v. McCurry*, 449 U.S. 90, 104 (1980).

B. Claim Preclusion Bars Defendants' Equal Protection Argument

Claim preclusion, or *res judicata*, also applies to bar Defendants' equal protection argument. Under New York law, the doctrine of *res judicata* applies where: (1) the previous action involved an adjudication on the merits; (2) the previous action involved the plaintiffs or those in privity with them; and (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action. *See Allen*, 449 U.S. at 94; *Chase Manhattan Bank, N.A. v. Celotex Corp*., 56 F.3d 343, 345–46 (2d Cir. 1995). Under New York's transactional approach to *res judicata*, "'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy'" from the prior action. *Simmons v. Trans Express Inc*., 37 N.Y.3d 107, 111 (2021) (quoting *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981)).

As already held by Judge Sannes when dismissing Mr. Trump's NDNY Action, all three elements are satisfied here based on this Court's February 2022 Order in the Special Proceeding. NDNY Action, 2022 WL 1718951, at *16-19. First, the February 22 Order, which denied Mr. Trump's motion to quash OAG's subpoena and granted OAG's cross-motion to compel compliance, is a final judgment on the merits which brought the parties' claims regarding compliance with the subpoena to a final conclusion. *Id*. at *17. Second, there is an identity of parties because the February 2022 Order decided Mr. Trump's motion. *Id*. Third, Mr. Trump had a full and fair opportunity to litigate in the Special Proceeding the propriety of OAG's investigation and OAG's document demands. *Id*. at *18-19. Just as the court in the NDNY Action applied the doctrine of *res judicata* to preclude Mr. Trump from raising an equal protection argument based on the February 2022 Order issued by this Court in the Special Proceeding, so too should this Court find that *res judicata* precludes Defendants from raising the equal protection argument for a third time.

C. Even If Not Precluded By Prior Rulings, Defendants' Equal Protection Argument Is Without Merit

Even if not precluded, Defendants' equal protection argument should be rejected for the same reasons that this Court and First Department previously held the argument had no merit. Defendants claim that OAG violates the equal protection clause because: (i) it is selectively enforcing Executive Law 63(12)—wielding it "in a novel fashion that is entirely inconsistent with its prior enforcement history," NYSCEF 197 at 15; and (ii) the Attorney General made public statements that purportedly demonstrate she is selectively targeting Mr. Trump, his family and his business due to personal and political animus, *id*. at 17-20.

Defendants have failed to make any satisfactory evidentiary showing to support these contentions. Such a claim demands proof that officials singled out the party challenging enforcement with both an "'evil eye'" and an "'unequal hand.'" *303 West 42nd St. Corp. v. Klein*, 46 N.Y.2d 686, 693 (1979) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886)); *accord Bower Assoc. v. Town of Pleasant Val.*, 2 N.Y.3d 617, 631 (2004). Specifically, Defendants must present evidence that: (i) the law "was not applied to others similarly situated;" and (ii) the aggrieved party was singled out "based upon an impermissible standard such as race, religion or some other arbitrary classification." *Klein*, 46 N.Y.2d at 693. Defendants have failed to meet their evidentiary burden on either element, much less both as required.

1. Defendants Fail To Provide Any Evidence Of Unequal Civil Enforcement

Defendants have failed to show that the law has not been applied the same to others similarly situated. For example, they have not asserted that OAG declined to prosecute any other prominent individual who was a senior principal or owner of a large New York business and who was publicly implicated by a corporate insider's sworn testimony as having perpetrated extensive

business fraud,[8] much less that OAG has declined enforcement action against such an individual when evidence has revealed ten years' worth of persistently fraudulent financial statements. Nor have Defendants met their "heavy burden of showing" that OAG has "consciously practiced" discriminatory fraud enforcement. *People v. Goodman*, 31 N.Y.2d 262, 269 (1972).

Defendants cannot demonstrate selective treatment by merely pointing out that Mr. Trump is a high-profile businessman and public figure. As "the financial capital of the world," New York is home to "untold numbers of sophisticated" parties and transactions. *Bluebird Partners v. First Fid. Bank*, 94 N.Y.2d 726, 739 (2000). And like any other litigant, even "controversial public figure[s]" in "highly visible cases" must provide "the necessary *prima facie* evidence that others similarly situated have not been prosecuted." *United States v. Moon*, 718 F.2d 1210, 1230 (2d Cir. 1983).

It is beyond debate that Mr. Trump and the other Defendants are not the first or only subjects of an OAG enforcement action concerning allegations of fraud or misrepresentation concerning asset valuations of the type involved here. *See, e.g.*, *People v. First Am. Corp.*, 18 N.Y.3d 173, 176 (2011) (OAG enforcement action under Executive Law § 63(12) and state consumer law against appraisal firm alleged to have committed fraudulent and deceptive acts related to real estate appraisals). Moreover, as this State's chief law enforcement office, OAG regularly investigates and takes enforcement action, where appropriate, against prominent individuals and companies. Several such proceedings have resulted in significant settlements. For

[8] As reiterated in numerous prior and relevant proceedings, including the Special Proceeding and the NDNY Action, OAG's investigation lawfully began as a result of sworn congressional testimony by then-Trump Organization Executive Michael Cohen concerning numerous instances of fraud in Donald J. Trump's Statements of Financial Condition. February 2022 Order, 2022 WL 48965 at *5.

example, OAG brought a securities fraud case against the former chief executive and financial officers of the world's largest insurer, American International Group, following that company's admission that it had deployed sham reinsurance transactions for the purpose of materially misstating its liabilities. *See Greenberg*, 21 N.Y.3d at 446.[9] In addition, OAG brought a proceeding under § 63(12) and New York's False Claims Act against Sprint Communications, based on whistleblower evidence that the company for years had knowingly underpaid sales taxes on flat-rate wireless calling plans.[10] *See People v. Sprint Nextel Corp.*, 26 N.Y.3d 98 (2015). Still other OAG enforcement efforts have addressed widespread fraudulent conduct involving significant financial sums. *See, e.g., Credit Suisse*, 31 N.Y.3d at 697 (claiming that major investment bank "misrepresented the quality of the mortgage loans" and "the due diligence process" for billions of dollars' worth of residential mortgage-backed securities). Thus, OAG's enforcement action against Defendants is in no way unique, as it cannot be said that Defendants have "never before seen the office" take similar positions "in a case involving comparable charges and a similar defendant." *People v. Adams*, 20 N.Y.3d 608, 613 (2013).

Lacking the requisite evidence of unequally treated comparators, Defendants suggest their selective treatment is borne out by the "anomalous nature" of the case, where they contend OAG is intervening in a private transaction to enforce the contract rights of sophisticated financial institutions. NYSCEF No. 197 at 16. This argument is an extension of Defendants' reliance on the

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[9] After many years of litigation, the case settled with, *inter alia*, a $9 million disgorgement payment. *See* Press Release, N.Y.State Off. Of Att'y Gen., *A.G. Schneiderman Announces Settlement of Martin Act Against Former AIG CEO Maurice R. Greenberg and Former AIG CFO Howard I. Smith* (Feb. 10, 2017).

[10] The case resulted in a settlement producing a large recovery. *See* Press Release, N.Y. State Off. Of Att'y Gen., *A.G. Underwood and cting Tax Commissioner Manion Announce Record $330 Million Settlement with Sprint in Groundbreaking False Claims Act Litigation Involving Unpaid Sales Tax* (Dec. 21, 2018).

Domino's case,[11] but as described above, their reliance on that case is misplaced. *See, supra,* at 17. Defendants have failed to show that OAG has acted with an uneven hand.

2. There Is No Evidence That OAG's Investigation And Enforcement Action Was Based On Improper Political Motivation

Defendants fail to demonstrate that OAG initiated the investigation or this enforcement action "based on race, religion, or any other impermissible or arbitrary classification." *Klein*, 46 N.Y.2d at 693. Defendants concede that they are not members of any protected class. NYSCEF No. 197 at 14, 20. Instead, they assert selective prosecution based on "malicious or bad faith intent to injure a person" – also known as a "class-of-one" claim. *Id.* at 15, 20 (quoting *Hu v. City of N.Y.*, 927 F.3d 81, 91, 94 (2d Cir. 2019)). That theory requires proof that Defendants have "been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (defining equal protection "class of one" claim); *accord Harlen Assoc. v. Incorporated Vil. of Mineola*, 273 F.3d 494, 499 (2d Cir. 2001) (same); *see Bower Assoc.*, 2 N.Y.3d at 630-31 (citing *Olech* and *Harlan* as governing selective-enforcement claim based on asserting malicious intent unrelated to protected status).

Defendants have not even attempted to show objectively discriminatory treatment by OAG. *See Amazon.com LLC v. New York State Dept. of Taxation & Fin.*, 81 A.D.3d 183, 206 (1st Dep't 2010) (rejecting website's equal protection claim of "being exclusively targeted" by taxing authorities when competitor was "being treated exactly the same"). For the same reasons that this

[11] *See e.g.*, NYSCEF No. 126 at 8 (citing to *Domino's* to argue that the allegations in OAG's complaint "do not typify consumer fraud cases [commonly pursued by OAG…but instead are] 'bilateral business transactions between [Trump entities] and [highly sophisticated financial and insurance institutions].'").

Court, the First Department, and the district court in the NDNY Action all found that OAG's investigation was well founded on Michael Cohen's congressional testimony, *see, e.g., People v. Trump*, 205 A.D.3d at 626, and an absence of personal animus as the impetus for OAG's conduct, *see, e.g.*, February 2022 Order, 2022 WL 489625, at *4-5, there is no basis to find discriminatory treatment by OAG in the commencement and prosecution of this action. If anything, the persistence of Defendants' misrepresentations over an eleven-year period further undermines their position—given the lack of any identified comparator, similarly situated to the defendants, who can be shown to have engaged in such conduct.

V. THE CLAIMS AGAINST DEFENDANTS ARE TIMELY

Defendants argue that § 63(12) claims are subject to a three-year statute of limitations because the August 26, 2019 amendment to CPLR 213(9) extending the limitations period for § 63(12) claims to six years does not apply retroactively. Defendants therefore assert they "cannot be held liable for any claims that arose on or before August 26, 2019." NYSCEF No.199 at 6. To reach this conclusion, Defendants ignore both binding precedent and the plain allegations of the Complaint. The First Department has determined that the 2019 amendment to the CPLR 213(9) *does* apply retroactively, meaning that the six-year statute of limitations applies to all of OAG's § 63(12) claims. In addition, the Complaint alleges an ongoing scheme by Defendants that extends up to the present and constitutes a continuing violation of law, which means the statute of limitations is equitably tolled or does not begin to run until at least 2021, rendering the retroactive effect of the 2019 amendment immaterial.

In moving to dismiss an action as barred by the statute of limitations, a defendant bears the initial burden of demonstrating that the time within which to commence the cause of action has expired. *People by Underwood v. Trump*, 62 Misc. 3d 500, 507 (Sup. Ct. N.Y. Cty. 2018) (citing

Norddeutsche Landesbank Girozentrale v. Tilton, 149 A.D.3d 152 (1st Dept. 2017)). The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or is otherwise inapplicable, or whether plaintiff commenced the action within the limitations period. *Trump*, 62 Misc. 3d at 507 (citing *Wilson v. Southampton Urgent Med. Care, P.C.*, 112 A.D.3d 499 (1st Dept. 2013)). Here, Defendants have failed to establish that the six-year statute of limitations has expired, and regardless of whether the six-year limitations period applies retroactively, that the limitations period is not equitably tolled.

A. The Statue Of Limitations Is Six Years (Plus 228 Days)

Defendants acknowledge that in August 2019, the Legislature amended CPLR 213 – adding a new subsection 213(9) to create a new six year limitations period for § 63(12) claims. NYSCEF No. 199 at 2. That amendment directly responded to the Court of Appeals' decision in *Credit Suisse*, which overturned longstanding First Department precedent and held that a three-year statute of limitations applied to Martin Act claims. 31 N.Y.3d at 627. In arguing that the amendment does not apply retroactively, however, Defendants ignore controlling precedent from the First Department holding that the amendment *does* apply retroactively. *See People v. Allen,* 198 A.D. 3d 531, 532 (1st Dep't 2021); *see also James v. Juul Labs, Inc.*, No. 452168/2019, 2022 WL 243459 (Sup. Ct. N.Y. Cty. July 5, 2022); *New York v. Penn. Higher Ed. Asst. Agency*, 19 Civ. 9155, 2022 WL 951048 (S.D.N.Y. Mar. 30, 2022).

In *Allen*, the First Department rejected the very arguments Defendants advance here, including their reliance on *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal,* 35 N.Y.3d 332 (2020). *See Allen,* 198 A.D. 3d at 532. Specifically, *Allen* determined that its analysis was governed by *In Matter of Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122 (2001), which held that an amendment applied to pending proceedings that concerned events preceding the amendment, even though it "did not state that it was to have retroactive

effect," because (i) the amendment was remedial legislation which "should be given retroactive effect in order to effectuate its beneficial purpose"; (ii) the Legislature "conveyed a sense of immediacy" because it "acted swiftly" after a Court of Appeals decision and "directed that the amendment was to take effect immediately"; and (iii) "the purpose of the amendment was to clarify what the law was always meant to do and say." *See Allen*, 198 A.D. 3d at 532.

Those same factors compel a finding that CPLR 213(9) applies to existing claims like those in this enforcement action. First, the Legislature conveyed urgency by directing that the amendment "shall take effect immediately." Ch. 184, § 2, 2019 N.Y. Laws, p. 1 (*reprinted in* Record on Appeal, *People v. Allen* (1st Dep't), No. 2020-01772, Vol. XVI (NYSCEF Doc. No. 25 on First Department docket), at R(16)-8244). Second, the Legislature acted in its first session after *Credit Suisse* to restore the six-year limitations period, and the Sponsor's Memorandum stated that the amendment was a response to that decision. Assembly Sponsor's Mem., *in* Bill Jacket for ch. 184 (2019), at 5-6 (*reprinted in* Record on Appeal, *People v. Allen* (1st Dep't), No. 2020-01772, Vol. XVI (NYSCEF Doc. No. 25 on First Department docket), at R(16)-8245-8246). Third, the Sponsor's Memorandum made clear that the amendment's purpose was remedial, as the Legislature acted to maintain the Attorney General's "status as a preeminent enforcer of . . . securities law in New York State" and allow the Attorney General "a reasonable amount of time to investigate cases of fraud." *Id.* Fourth, the Sponsor's Memorandum indicated that the amendment did not invent new law, but restored prior law by "[*c*]*larifying* that the statute of limitations for claims under the Martin Act . . . is six years." *Id.* (emphasis added). The Legislature thus intended the six-year limitations period, which had been the law prior to *Credit Suisse*, to apply once again to Martin Act claims that had already accrued. By the same reasoning, CPLR 213(9) applies retroactively to § 63(12) claims.

The decisions relied on by Defendants do not hold to the contrary. The above-referenced text and legislative history demonstrate that the Legislature gave a "clear expression of the legislative purpose to justify a retroactive application," *Regina*, 35 N.Y.3d at 370 (quotation and alteration marks omitted), of CPLR 213(9) because the Legislature sought to confirm what the limitations period always was, not to revive time-barred claims or create new claims.[12] In any event, as the next section demonstrates, all Defendants participated in an ongoing scheme of fraudulent and illegal conduct well past August 26, 2016—three years before the date CPLR 213(9) was enacted. As applied here, CPLR 213(9) simply extended the limitations period for § 63(12) claims that still could timely be brought. Contrary to Defendants' contention, the statute did not "revive time-barred claims," *Regina*, 35 N.Y.3d at 371, and the six-year period would thus apply here even if the First Department in *Allen* had not squarely held 213(9) to have full-scale retroactive application.

In addition to the six-year limitations period provided for in CPLR 213(9), prior to November 5, 2020, the statute of limitations period was tolled pursuant to a series of Executive Orders entered by the Governor in response to the COVID-19 pandemic. *See Brash v. Richards*, 195 A.D.3d 582, 585 (2d Dep't 2021); *Barnes v. Uzu et al.*, No. 20 Civ.5885, 2022 WL 784036, at *9-10 (S.D.N.Y. Mar. 15, 2022). That tolling period extended the statute of limitations another 228 days. *See, e.g., State v. Spectra Eng'g, Architecture & Surveying P.C.,* 73 Misc.3d 1224 (A), *5 (Sup. Ct. Albany Cty. Nov. 19, 2021) ("As this action was commenced within six years and 228 days . . . the claim is timely."). As a result, any statute of limitations as to Defendants is

[12] Notably Defendants do not argue that they relied upon the change in law, or that they would be subject to any unfairness from retroactive application. Indeed, most of the conduct at issue here largely predated the June 12, 2018, decision in *Credit Suisse*, when the operative statute of limitations was six years under controlling First Department case law.

extended to at least February 5, 2016 – six years and 228 days prior to September 21, 2022, when this action was filed.

Moreover, a tolling agreement operates against the Trump Organization and all of its affiliates, including the trust identified as a party here,[13] further extending the COVID-related toll described above for them until May 30, 2022. *See* Faherty Aff. Ex. 26. The agreement initially extended the limitations period against all bound by it by the end of the period covered by the COVID-related Executive Orders until April 30, 2022 (provided that OAG so elected). *Id.* at 3 (¶ 2). The agreement was later extended again until May 31, 2022, by an agreement noting OAG had previously extended the period until April 30, 2022. *Id.* at 1.

But for the reasons discussed below in Point V.B Defendants are still liable for their actions alleged, even if any occurred prior to the date on which they otherwise would be untimely if treated as discrete acts, because they constitute a continuous and persistent wrong that is part of a single scheme to defraud.

B. Because The Complaint Alleges Persistent Fraud, A Scheme To Defraud, And A Continuing Wrong, The Statute Of Limitations Has Not Expired

The fraud and illegality alleged in the Complaint is part of a continuing scheme that has persisted into at least 2021 (if, indeed, it even has concluded)—and entailed the continuing wrongful violation of duties owed on their part, such as the submission of the truthful and accurate

[13] The tolling agreement defines the "Trump Organization" to include "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," as well as any "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." Faherty Aff. Ex. 26 at 3. The agreement was signed by Alan Garten on August 27, 2021, as Executive Vice President and Chief Legal Officer, under language stating, "**THE TRUMP ORGANIZATION** consents to this Tolling Agreement by its duly authorized representative." *Id.* at 6

Statements under continuing loan guarantees. The Court's preliminary injunction order already held that OAG has comprehensively demonstrated "persistent fraud" from 2011 to 2021. PI Order at 6, 9, 10. Thus, Defendants engaged (and OAG has alleged they engaged) in the "*continuance or carrying on*" of the wrongful conduct during that entire period. Exec. Law § 63(12) (emphasis added); *see also Big Apple Concrete Corp. v. Abrams*, 103 A.D.2d 609, 614-15 (1st Dep't 1984) (recognizing legitimacy of inquiry into whether "continuing violation" and "continuing conduct" conduct could be shown).

Similarly, § 63(12) expressly covers schemes to defraud; and, though, defined somewhat differently under the Penal Law, a scheme to defraud there has been held to be a continuing offense whose limitations period does not begin until the scheme ends. *See, e.g.*, *People v. Milman*, 164 A.D.3d 609, 611 (2d Dep't 2018) (citing *People v. First Meridian Planning Corp.*, 86 N.Y.2d 608, 616 (1995) (noting that a scheme to defraud "permits, if not requires, characterization as a continuing offense over time"); *People v. Randall-Whitaker*, 55 A.D.3d 931, 931 (2d Dep't 2008). Moreover, the Complaint alleges conduct of a conspiracy among a wide range of individuals and entities. In the case of an unlawful conspiracy, the limitations period begins to run from the last overt act. *People v. Leisner*, 73 N.Y.2d 140 (1989).

Furthermore, the conduct alleged here has all of the hallmarks of a fraudulent scheme that § 63(12) expressly covers. Compl. ¶ 759. Considering the Penal Law offense of scheme to defraud in the first degree, *see* Penal Law § 190.65, the Court of Appeals has highlighted a series of facts that enable a factfinder to "infer the existence of a unitary scheme to defraud." *People v. First Meridian Corp.*, 86 N.Y.2d 608, 617 (1995). Those facts include "common techniques, misrepresentations and omissions of material facts employed in all transactions"—a standard easily applicable to the common, repeated, and persistent misrepresentations and omissions in Mr.

Trump's Statements over an 11-year period. *See* PI Order at 6, 9-10. A second factor is a "common nucleus" for the conduct. Here, too, Mr. McConney, Mr. Weisselberg, and others plainly were a common nucleus for the misconduct that occurred.

As a result, the limitations period here did not even accrue until the alleged persistent, continuous, scheme to defraud concluded—and the risk that it may not have ended, but may instead be continuing, was the basis of the Court's PI Order and the subsequent monitorship order. *See* PI Order at 10.

Even if the limitations period accrued for some acts notwithstanding the continuing nature of the alleged scheme, under the continuing wrongs doctrine, the statute of limitations was tolled until 2021—the date of the last wrongfully committed act. *See also, e.g., Allen,* 2021 WL 394821 at *5 ("Indeed, because the Martin Act is remedial legislation, accrual of a Martin Act claim must begin when the wrongful conduct occurs, and continued wrongful conduct tolls the statute of limitations.") (citing *7040 Colonial Rd. Assocs. Co.*, 176 Misc. 2d 367 (Sup. Ct. N.Y. Cty. 1998)); *Butler v. Gibbons*, 173 A.D.2d 352, 353 (1st Dep't 1991); *Merine ex rel. Prudential-Bache Util. Fund v. Prudential-Bache Util. Fund*, 859 F. Supp. 715, 725 (S.D.N.Y. 1994).

Indeed, one court in New York has already applied the continuing wrongs doctrine to extend the applicable statute of limitations for § 63(12) fraud against Mr. Trump. In *People v. Trump*, 62 Misc. 3d 500 (Sup. Ct. N.Y. County 2018) ("*Trump Foundation*"), the court noted that the "continuing wrong doctrine applies to a variety of types of cases including breach of contract, breach of fiduciary duty, and statutory violations." *Id.* at 508 (citing *King v. 870 Riverside Dr. Hous. Dev. Fund Corp.*, 74 A.D.3d 494 (1st Dept. 2010)); *Matter of Janke v. Community School Bd. of Community School Dist. No. 19*, 186 A.D.2d 190 (2d Dept. 1992). The court further explained that the "continuing wrong doctrine 'is usually employed where there are 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.'" *Trump Foundation*, 62 Misc. 3d 508 *(*quoting *Selkirk v. State*, 249 A.D.2d 818, 819 (3d Dept. 1998)); *see also Ganzi v. Ganzi*, 183 A.D.3d 433, 434 (1st Dep't 2020); *Palmeri v. Willkie Farr & Gallagher LLP*, 156 A.D.3d 564 (1st Dept. 2017). In the *Trump Foundation* case, the Court found that the allegations against Mr. Trump and the other defendants constituted a "continuous and pervasive failure to operate and manage the Foundation in accordance with corporate and statutory rules and fiduciary obligations, resulting in the misuse of charitable assets and self-dealing, starting with the Fisher House Transaction and continuing in the years thereafter." 62 Misc. 3d at 508.

Likewise, here, the Complaint alleges a continuous, integrated scheme to obtain financial benefits by inflating Mr. Trump's net worth. Compl. ¶ 715. As alleged in the Complaint: "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." *Id*. ¶ 716. The overarching scheme manifested in the annual Statements' inclusion of an expedient and evolving roster of fraudulent asset valuations suited to Mr. Trump's current circumstances and particular needs. As just one example, as the Complaint explains, to conceal a "precipitous drop in the value" of a proposed residential subdivision, that property in 2015 "was lumped together with the value of Mr. Trump's Triplex apartment," which in turn was given a sudden and unsupportable "$127 million increase in [its] value." *Id.* ¶¶ 264-265. And, to engage in this continuing conduct, Defendants used the same or similar personnel, to engage in the same or similar conduct, through

the same or similar methods—all hallmarks of wrongs that are continuing rather than discrete. *See, e.g.*, Compl. ¶¶ 52-65; *see generally* PI Order.

If anything, the nature of the loan contracts at issue in the Complaint makes the application of the continuing wrong doctrine especially appropriate in this proceeding. The loans, obtained through the use of the inflated Statements, continued in effect for many years and required performance and confirmation year after year. Compl. ¶ 735. 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. *Id.* Each of the loans required the annual submission of Mr. Trump's Statement 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. *Id.* And the loans helped to garner favorable insurance terms for fiscal years as late as 2019, for which the underwriting report expressly recounts how Mr. Weisselberg touted the Trump Organization's practice of "taking advantage of low interest rates" on loans, leading to "very low leverage for a real estate company." NYSCEF No. 91, at 1-2. Indeed, the guarantees themselves are expressly identified as "continuing." Faherty Aff. Exs. 7 (Doral Guaranty), 13 (40 Wall Guaranty).

C. Because The Defendants Concealed Their Fraud, The Statute Of Limitations Was Equitably Tolled Until February 2019

In addition to the equitable toll under the continuing wrong doctrine, the statute of limitations is tolled as to all Defendants because they fraudulently concealed their wrongdoing. *See State of New York v. Feldman*, 01 Civ. 6691, 2003 WL 21576518, * 3 (S.D.N.Y. Jul. 10, 2003) (finding in an action pursuant to § 63(12) and GBL §349 that "each of these state law claims may be tolled under the fraudulent concealment doctrine.") (citing *Meridien Intern. Bank Ltd. v.*

Government of the Republic of Liberia, 23 F.Supp.2d 439, 446 n. 4 (S.D.N.Y.1998); *Simcuski v. Saeli*, 44 N.Y.2d 442, 448–49 (1978)).

Defendants went to great lengths to conceal their fraud. Compl. ¶ 736. In submitting information to Mazars, Defendants would exclude key information, like lender-ordered appraisals on a given property or limitations on development like rent stabilization. *Id*. ¶¶ 89, 133; PI Order at 7. Indeed, even an internal junior employee responsible for the Statements was not aware of development restrictions at Mar-a-Lago, which were wholly omitted from backup material for the Statements. Compl. ¶¶ 380, 383-84. In presenting the Statements, Defendants concealed the precise valuation of individual properties by grouping them together into categories like "Club facilities and related real estate" or "other assets." *Id.* ¶¶ 353, 51.n. 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. *Id.* ¶ 262.

By taking these steps, Defendants sought obscure the scheme from their accountants and bankers, regulated entities who might have had to report fraud. As a result, OAG did not have notice of a potential violation until Michael Cohen provided his testimony to Congress in February 2019. *See, e.g., New York v. Hendrickson Brothers, Inc*., 840 F.2d 1065, 1083 (2d Cir. 1988) ("Thus, we have held that an antitrust plaintiff may prove fraudulent concealment sufficient to toll the running of the statute of limitations if he establishes (1) that the defendant concealed from him the existence of his cause of action, (2) that he remained in ignorance of that cause of action until some point within [the statute of limitations for] the commencement of his action, and (3) that his continuing ignorance was not attributable to lack of diligence on his part.").

VI. OAG'S COMPLAINT ADEQUATELY PLEADS EACH CLAIM UNDER § 63(12)

In granting preliminary injunctive relief, the Court has already determined that OAG's Complaint provides "compelling" instances of fraud, citing to allegations and proof of inflated values for Mr. Trump's triplex apartment, Trump Park Avenue rent-stabilized apartments, 40 Wall Street, Mar-a-Lago, and misrepresentations to Zurich, all of which the Court concluded was "more than sufficient to demonstrate OAG's likelihood of success on the merits." PI Order at 6-9. Beyond these examples expressly ruled on by the Court, there are considerably more similar instances of fraud alleged in the Complaint. *See, e.g.*, Compl. ¶¶ 15.g, 66-76 (demonstrating inclusion of cash not held or controlled by Mr. Trump as his own liquidity), 127-135 (example regarding 40 Wall Street similar to example already considered), 94-95 (conflict between actual estimates of current market value for Trump Park Avenue units and values presented on the Statements),[14] 384-393 (objectively false or misleading acreage figures used to generate price per acre for Mar-a-Lago), 415-425 (objective discrepancy between number of homes approved for Aberdeen property and numbers used for valuations in the Statements, among other defects), 427-445 (assumed membership liabilities at Jupiter club used at their full face value to inflate purchase price and value on Statements, despite express representation in Statements that those liabilities had been valued "at zero").[15]

Despite the Court's obligation in deciding a motion to dismiss to accept all allegations in OAG's Complaint as true – which was not the standard that applied on OAG's preliminary

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[14] When a financial statement asserts the value of a property, it is, at a minimum, asserting the issuer of the statement "actually holds the stated belief." *Omnicare, Inc. v. Laborers Dist. Council Const. Industry Pension Fund*, 575 U.S. 175, 184 (2015). Evidence of internal numbers actually estimating market value that conflicted with, and were lower than, the numbers used for purposes of a financial statement is suggestive of fraud. *Id.*; *see also Cristallina v. Christie, Manson &*

injunction motion – Defendants incongruously argue that the same allegations of fraud leading the Court to find OAG has a likelihood of success on the merits are nevertheless *insufficient* to state a cause of action. They base this argument on their contention that OAG's § 63(12) claims are subject to heightened pleading requirements and must be supported by an expert's statement. None of this finds any support in the law. OAG's meticulously detailed 214-page Complaint sufficiently pleads each claim as to all Defendants.

A. Executive Law § 63(12) Claims Do Not Require Reliance Or Scienter

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." 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).

Woods Intl., 117 A.D.2d 284, 294 (1st Dep't 1986); *Basis Yield Alpha Fund*, 115 A.D.3d at 136 (common law fraud claims sufficiently stated based on, among other things, firm's "internal valuations").

[15] The Complaint identifies numerous additional instances in which the specific language in the Statements was false or misleading. *See, e.g.*, Compl. ¶¶ 11, 78-79, 102, 150-158, 201-202, 239, 304, 308, 356-358, 415-416. The Complaint also alleges other clubs aside from Jupiter for which the same membership-liability misrepresentation was made. Compl. ¶¶ 510, 520, 529, 534, 543.

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." 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 (scienter) 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 Trump Entrepreneur Initiative,* 137 A.D.3d at 417 (recognizing prior First Department precedent establishing that "fraud under § 63(12) may be established without proof of scienter or reliance"). The Court has already recognized these principles in granting OAG preliminary injunctive relief. PI Order at 5 (distinguishing § 63(12) from cases in which justifiable reliance must be shown); *id.* at 7 n.5 (noting that OAG need not prove intent).

As to illegality, an "illegal act" under § 63(12) includes violations of state statutes. *See, e.g.*, *People v. American Motor Club*, 179 A.D.2d 277, 283 (1st Dep't 1992) (Insurance Law); *Apple Health*, 206 A.D.2d 266, 267 (1st Dep't 1994) (laws relating to health clubs); *Freedom Disc. Corp. v. Korn*, 28 A.D.2d 517 (1st Dep't 1967) (violation of Penal Laws §§ 1370 and 1371); *People v. World Interactive Gaming Corp.*, 185 Misc. 2d 852, 861-65 (Sup. Ct. N.Y. Cnty. 1999) (violation of state and federal criminal laws against gambling).

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." 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." *Wolowitz*, 96

A.D.2d at 61. The term "persistent" includes the "continuance or carrying on of any fraudulent or illegal act or conduct." Exec. Law § 63(12)

B. OAG's Fraud Claims Are Subject To The Same Pleading Standards As Every Other Fraud Claim Under § 63(12)

While Defendants acknowledge that under § 63(12) "New York courts have reasoned that reliance need not be shown" and OAG "is not required to prove scienter . . . as a general proposition," they nevertheless argue both reliance and scienter are required for this action. NYSCEF No. 199 at 6-7. They claim this exception is warranted here because of the "private transactions" involved and the focus on "Defendants' valuation practices." *Id*. But the controlling case law simply does not support any such fact specific exceptions to the "general proposition" that § 63(12) has no reliance or scienter requirement. And the Court has already rejected Defendants' attempt to impose on OAG a heightened pleading requirement, correctly distinguishing between claims for which reliance and scienter must be shown and claims brought under § 63(12) which require neither, *see* PI Order at 5-6 (noting that Executive Law § 63(12) addresses acts that tend to deceive or mislead, "whether or not they are the product of scienter or an intent to defraud"). The law on this point is settled. *Apple Health*, 206 A.D.2d at 267; *Coventry First*, 52 A.D.3d at 346; *Trump Entrepreneur Initiative,* 137 A.D.3d at 417. Accordingly, the Court should reject Defendants' invitation to carve out an exception just for this case.

For the same reason, Defendants' argument that a "heightened standard of reasonableness" applies "when evaluating reasonable reliance" of the lenders and insurers here, NYSCEF No. 199 at 8, should be rejected. There is no requirement, much less a heightened requirement, that OAG plead reliance on the part of the lenders and insurers who received the Statements along with assurances that they fairly presented the value of Mr. Trump's assets. Nevertheless, the Complaint more than adequately pleads these counterparties' actual and justifiable reliance, even though not

required as an element under § 63(12). *See*, *supra,* at 22-24. None of the cases relied on by Defendants involves a claim brought by OAG under § 63(12).

In any event, the factual premise of Defendants' argument – that the "total mix of information" available to any recipient of the Statements based on the accountant disclaimer makes clear that the information they contained was not verified, NYSCEF No. 199 at 9-10 – ignores the actual language of the disclaimer and the separate certifications that accompanied the Statements when they were presented to lenders. The disclaimers confirmed that Defendants had the responsibility of providing accurate information to the accountants when compiling the Statements and the certifications signed by Mr. Trump and/or his trustees expressly stated that the Statements fairly presented Mr. Trump's net worth.

C. There Is No "Expert Statement" Pleading Requirement

Defendants argue that "[g]iven the complex nature of the transactions at issue," OAG "must come forward with facts supported by a qualified expert" to support a fraud claim under Executive Law § 63(12). NYSCEF No. 199 at 10. Defendants offer no support whatsoever for their contention that in a § 63(12) civil financial fraud case, expert evidence must be presented *at the pleading stage* to survive a motion to dismiss. All of the cases they cite involve the need for expert testimony to prevail on summary judgment or at trial, and thus have no bearing on the standard for pleading fraud under § 63(12). *See, e.g.*, *Schechter v. 3320 Holding LLC*, 64 A.D.3d 446, 449-51 (1st Dep't 2009) (discussing standard on summary judgment); *Lehman Bros. Holdings v. Wall Street Mortg. Bankers*, 2012 WL 5842889 (Sup. Ct. N.Y. Cnty. Nov. 15, 2012) (involving motion for summary judgment).

Simply put, no case holds that OAG must allege facts supported by an expert statement in

order to adequately plead a fraud claim under § 63(12).[16] And no specialized skill or knowledge is required to conclude that the Complaint pleads actionable fraudulent misstatements or omissions based on Defendants' reporting of asset valuations completely at odds with easily verifiable objective facts known but not disclosed by Defendants.

D. The Intracorporate Conspiracy Doctrine Does Not Apply

In a single paragraph buried at the end of a catchall section of two of the Defendants' briefs, they assert that the "intracorporate conspiracy doctrine" bars OAG's claims that concern conspiracies.[17] NYSCEF No. 202 at 21-22; NYSCEF No. 211 at 22. Where applicable, the doctrine precludes a finding that officers, agents, and employees of a single corporate entity are capable of committing conspiracy to defraud. The short answer to Defendants' short argument is that they cite no case recognizing or applying this doctrine to a claim under Executive Law § 63(12)—the fraud language of which is "liberally construed" and given "wide meaning" by courts to encompass "all deceitful practices contrary to the plain rules of common honesty" in the conduct of business. *See, e.g.*, *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep't 2012). Defendants offer no basis to conclude that such a statute ought to be constrained in any respect by a novel and unprecedented application of the intracorporate conspiracy doctrine. *Cf. McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1039 (11th Cir. 2000) (en banc) (noting that it makes little sense,

[16] Indeed, even in financial fraud prosecutions based on accounting fraud, prosecutors are not required to present expert evidence even *at trial* despite the burden to prove guilt beyond a reasonable doubt. *See, e.g.*, *United States v. Rigas*, 490 F.3d 208, 219-20 (2d Cir. 2007) (citing *United States v. Simon*, 425 F.2d 796, 805-06 (2d Cir. 1969) (Friendly, J.)).

[17] This allegation presumably would pertain to the a single subsidiary allegation in the first cause of action (*see* Compl. ¶ 760) and to the third, fifth and seventh causes of action that allege conspiracies in violation of the Penal Law.

where "an incorporated collection of individuals creates the 'group danger' at which conspiracy liability is aimed, to view the corporation as "a single legal actor"). Indeed, it has long been held (in the federal courts, where case law is more extensive on the issue) that conspiracies in violation of criminal law are not within the doctrine's scope at all, even if they are the basis of a civil claim. *See, e.g.*, *id.* at 1035-36.

Moreover, even if the doctrine were to apply to a conspiracy allegation under § 63(12), the doctrine's application would be unsupportable here. The cases cited by Defendants involve activity occurring within "a single corporate entity," NYSCEF No. 211 at 22, not a 500-plus-entity conglomerate with the involvement of one or more trusts, trustees, outside agents, and a still-opaque ownership structure that Defendants continue to resist revealing.[18] Compl. ¶¶ 27, 31; *see also, infra*, at 67-68. Defendants have not come close to establishing this defense applies as a matter of law or based on the Complaint's allegations (all of which must be accepted as true). More specifically, Defendants ignore that the Statements were identified as "*personal* financial statements" of Mr. Trump to support his personal guaranty and were identified as having been issued not by a corporation or company but by Mr. Trump himself (a natural person) or by his trustees (also, natural persons), who purportedly performed the "evaluations" contained within the Statements in conjunction with Mr. Trump's or their "associates" or "outside professionals." *See* Compl. Exs. 3, 9 (emphases added). The Complaint alleges that hundreds of entities do business, collectively, under the moniker "The Trump Organization," Compl. ¶ 27, but defendants have not established the roles of all of the entities involved, let alone the personal interests, roles, and stakes

[18] The single New York case Defendants identify, *Lilley v. Greene Cent. Sch. Dist.*, 187 A.D.3d 1384, 1390 (3d Dep't 2020), applied the doctrine to employees of a single school district.

of the individual defendants, sufficient to invoke the doctrine at the pleading stage at a matter of law.

E. OAG Does Not Need To Plead Each Defendant's Actions With Particularity As They Acted In A Common Enterprise To Defraud And Are Necessary Parties

Defendants argue that the Complaint does not specifically plead each individual act undertaken by each of the entity Defendants. NYSCEF No. 202 at § IV(A); NYSCEF No. 211 at § V(A). This is unnecessary for two reasons: the entity Defendants are a common enterprise and liable for one another's actions, and the entity Defendants are also necessary parties, being beneficiaries of or linked to the fraudulent and illegal activities of other Defendants and thereby necessary to ensure complete and full relief.

Under the common enterprise theory, each entity within a set of interrelated companies may be held jointly and severally liable for the actions of other entities that are part of the group. *See New York v Debt Resolve, Inc*., 387 F Supp 3d 358, 365 (S.D.N.Y. 2019) (holding OAG adequately pled enterprise liability for multiple defendants involved in fraudulent and illegal scheme); F.T.C. v Tax Club, Inc., 994 F Supp 2d 461, 469 (S.D.N.Y. 2014). To determine whether a common enterprise exists, courts consider factors such as "whether they (1) maintain officers and employees in common, (2) operate under common control, (3) share offices, (4) commingle funds, and (5) share advertising and marketing." *Id.* All of these factors are present here; 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. Compl. ¶¶ 27-39. This common enterprise functioned to engage in the fraudulent and illegal acts detailed in the Complaint, as reflected in the way that valuations of properties and assets owned by each of the entity Defendants would be manipulated and compiled into the Statements to bolster and inflate Mr. Trump's overall net worth.

Second, the various entity Defendants are necessary parties. Because Executive Law § 63(12) is an equitable statute, joinder may be appropriate to ensure that "complete relief is to be accorded between the persons who are parties to the action." CPLR § 1001(a). At least one federal court has explicitly recognized OAG's authority to join necessary parties "even though [the Attorney General] did not allege any wrongdoing by those defendants." *State of New York v. Harris Home Design, Inc.*, No. 88-cv-4086, 1989 WL 88690, at *7 (S.D.N.Y. Aug. 2, 1989). Here, the entity Defendants are owners of many of the assets and property that are the subject of this enforcement action, as well as beneficiaries of Defendants' ill-gotten gains. At the very least, this Court's jurisdiction over these Defendants ensures that OAG, should it secure a judgment for disgorgement, would be able to satisfy such a judgment from the assets held by the various Defendants. Holding these Defendants as necessary parties also ensures that they remain within the supervision of the Court's Monitor through the pendency of this action.

VII. DISGORGEMENT AMOUNTS ARE APPROPRIATELY ESTIMATED AND MAY BE SHOWN AT THE REMEDIES STAGE

Certain Defendants argue that OAG's claim for disgorgement should be dismissed because OAG "does not explain" how it calculates the amount sought of $250 million. NYSCEF No. 202 at 17. This argument, too, is without merit. Indeed, the Court already has appreciated the substantial amount that may be owed by Defendants as disgorgement in this case by appointing an independent monitor to safeguard Defendants' assets and "ensur[e] that funds are available for potential disgorgement at the conclusion of this case." PI Order at 9.

"[D]isgorgement" is a form of equitable relief that may be awarded after the Court determines that Defendants' conduct violates § 63(12). *See Greenberg*, 27 N.Y.3d at 497. It is premature to consider whether a particular amount of disgorgement is appropriate at the motion-to-dismiss stage. *See People v. Greenberg*, 127 A.D.3d 529, 529-30 (1st Dep't 2015) (affirming

denial of summary judgment to defendants on disgorgement remedy despite lack of "discovery on the issue," and noting that lower court had indicated it would have barred discovery into disgorgement amount "prior to an adjudication of liability"). In a plenary action, disgorgement is not awarded on the pleadings. Assuming liability is found, the Court will be empowered to conduct proceedings on the amount of disgorgement—at which point it will be OAG's burden to reasonably approximate an appropriate disgorgement amount for each of the Defendants or jointly as to all Defendants,[19] and it will be Defendants' burden to present evidence demonstrating that a lower amount is warranted. *See S.E.C. v. Fowler*, 6 F.4th 255, 267 (2d Cir. 2021) (holding once reasonable approximation had been shown, risk of uncertainty fell to defendant, who failed to meet his burden to warrant reduction of disgorgement amount).

In any event, the amounts already articulated in the Complaint are reasonable approximations of disgorgement amounts that the Court may order following a finding of liability (assuming one is made). Disgorgement is meant to deter wrongdoing by denying the wrongdoer all ill-gotten gains from wrongful conduct. *See Greenberg*, 27 N.Y.3d at 498; *People v. Applied Card Systems*, 11 N.Y.3d 105, 125-26 (2008); *Ernst & Young*, 114 A.D.3d at 569-70; *S.E.C. v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). In determining a disgorgement amount, this Court will have "broad discretion." *First Jersey*, 101 F.3d at 1474-75.

Disgorgement awards likewise entail "awards of prejudgment interest on the ground that these awards deprive the Defendants of their ill-gotten gains, prevent unjust enrichment, and accord with the doctrine of fundamental fairness." *Hynes v. Iadarola*, 221 A.D.2d 131, 134 (2d

[19] "Joint and several liability for disgorgement is properly imposed when multiple Defendants have participated in an illegal scheme." *See F.T.C. v. Shkreli*, 581 F. Supp. 3d 579, 642 (S.D.N.Y. 2022).

Dep't 1996).[20] Ultimately, the amount ordered need only be a "reasonable approximation of profits causally connected to the violation." *First Jersey*, 101 F.3d at 1474-5. Moreover, "[t]he policies underlying the disgorgement remedy—deterrence and preventing unjust enrichment—must always weigh heavily in the court's consideration of whether particular profits are legally attributable to the wrongdoing, constituting unjust enrichment." *S.E.C. v. Teo*, 746 F.3d 90, 107 (3d Cir. 2014).

The Complaint articulates two theories of disgorgement, and both are amply supported by detailed allegations of fact and settled principles of law. First, OAG has alleged that the Defendants' wrongful conduct resulted in their obtaining reduced interest rates on hundreds of millions of dollars of financing—saving them more than $150 million in interest over a ten-year period. Compl. ¶ 21. Just focusing on the hundreds of millions of dollars of Deutsche Bank loans, OAG has alleged that the Trump Organization obtained interest rates several points lower on each loan as a result of Mr. Trump's guaranty supported by the certification of his Statements, and that each loan was outstanding for many years. Compl. ¶¶ 575, 587, 600, 602, 603, 628, 632. It is not difficult to see how, mathematically, the interest saved on that debt would add up quickly.[21] And the disgorgement that may be available in this action is not limited to the figures presented in the Complaint. For example, not included in the interest rate savings is any figure representing the

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[20] The prejudgment interest rate typically applied is a tax-related "underpayment rate," because "[t]hat rate reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud." *First Jersey*, 101 F.3d at 1477 (applying IRS underpayment rate).

[21] Taking just the example of the Doral loan, the Complaint alleges that a Commercial Real Estate loan from Deutsche Bank and the private wealth loan backed by Mr. Trump's guaranty and certification of his Statement were different, in terms of the interest rate assessed, by between 5.75 and 6.0%. Compl. ¶¶ 575, 587. Using the lower figure, the difference in interest paid in a single year on $125 million in debt would have exceeded $7 million (.0575 x $125,000,000 = $7,187,500).

compensation earned by any individual Defendant who participated in the wrongful conduct. "[C]ourts commonly order Defendants to disgorge not only the proceeds of a fraud or the profits of an unlawful trade, but also salary and bonuses earned during the period of a fraud." *See, e.g.*, *S.E.C. v. Wyly*, No. 10-cv-5760, 2014 WL 12771253, at *22 (S.D.N.Y. Sept. 24, 2014).

Second, OAG has asserted that the Statements were critical to the Trump Organization obtaining "construction loan" financing necessary to renovate the Old Post Office property in Washington, D.C., as well as the use of the Statements in obtaining the federal property for that purpose. *See* Compl. ¶¶ 22, 622, 625, 645-646. The appropriateness of disgorgement of the $100 million asserted profit on the subsequent sale of that property is amply supported by equitable principles. Disgorgement is meant to deny "the ability to *profit from ill-gotten gain*." *Hynes*, 221 A.D.2d at 135 (emphasis added). Thus, a defendant who wrongfully obtains property that increases in value (even due to his own "acumen") ought to disgorge the whole benefit he realized—not just the value of the property at the time he wrongfully obtained it. *See Teo*, 746 F.3d at 106-07 (quoting Restatement (Third) of Restitution § 51(5)). In the simplest example, a defendant who "embezzles $100 and invests the money in shares that he later sells for $500" should be held to disgorge the whole $500 amount, regardless of whether the $400 gain is due to "favorable market conditions and the defendant's investment acumen or simply luck." *Id.* Otherwise, the incentive to commit fraud would remain. *Id.* The same principle applies here.

VIII. CONTRACTUAL MERGER CLAUSES ARE NO DEFENSE TO A GOVERNMENTAL ANTIFRAUD ACTION

In an argument devoid of any case citations, certain Defendants maintain that a contractual merger clause in the loan agreements provides a complete defense because it "renders parol evidence" that it assumes would be necessary to prove the fraud "immaterial." NYSCEF No. 202 at 16-17. The Court should reject this argument out-of-hand. As a general matter, "when a

complaint states a cause of action for fraud, the parol evidence rule *is not a bar to showing the fraud* either in the inducement or in the execution—despite an omnibus statement that the written instrument embodies the whole agreement, or that no representations have been made." *Joel*, 166 A.D.2d at 137 (emphasis added) (citing *Danann Realty Corp. v. Harris*, 5 N.Y.2d 317 (1959) (noting "fundamental principle that a general merger clause is ineffective to exclude parol evidence to show fraud in inducing the contract")); *Rosenblum v. Glogoff*, 96 A.D.3d 514, 514-15 (1st Dep't 2012) ("Where, as here, a party has no expressly disclaimed reliance on particular misrepresentations, 'a general merger clause will not preclude parol evidence regarding fraud in the inducement or fraud in the execution.'") (internal citation omitted).

Moreover, no such contractual provision between private parties conceivably could thwart the Attorney General's broad statutory power to advance the public interest in ensuring an honest marketplace in New York. *Coventry First*, for example, considered claims brought under authorities including Executive Law § 63(12) seeking victim-specific and broader injunctive relief. The defendants there—while conceding that the Attorney General's injunctive claims were within the Attorney General's statutory power—sought to thwart the Attorney General's statutory power by invoking arbitration clauses in private agreements. The Court of Appeals rejected Defendants' argument, holding that "the Attorney General should not be limited, in his duty to protect the public interest, by an arbitration agreement he did not join," and that such an agreement in all events could not "alter the Attorney General's statutory role or the remedies that he is empowered to seek." *Coventry First*, 13 N.Y.3d at 114. Defendants offer no reason why a garden-variety merger clause should be treated any differently.

In addition, contrary to Defendants' arguments, each of the loan documents Defendants rely on—the Old Post Office loan, the 2015 40 Wall Street loan, and the 2000 Seven Springs

loan—refutes their arguments that any merger clause "vitiates the consideration" of any Statement. *See* NYSCEF No. 202 at 18. Defendants assert, for example, that the Old Post Office loan agreement "contains a merger provision that vitiates the consideration of any considerations not encapsulated within the loan itself." NYSCEF No. 202 at 18. Not so. The loan agreement itself makes clear that receipt of the guaranty, including Mr. Trump's representation regarding his prior Statements, was a condition precedent to lending. Compl. ¶¶ 634-35. Moreover, Defendants ignore that the purported "merger clause" covers Mr. Trump's guaranty because it is a "loan document." The purported merger provision refers to "This Agreement *and the other Loan Documents or other documents referred to herein*." Faherty Aff. Ex. 12 at -5037 (§ 8.2) (emphasis added). Indeed, the term "Loan Documents" under the agreement includes not only the loan agreement itself but also subsequent annual certifications of the Statements that Mr. Trump and his proxies executed over a multi-year period. *See id.* at -4957 (definition of "Loan Documents" includes guaranty and "any other document . . . which has been or will be executed" in connection with loan or guaranty). And the same agreement provides that material misrepresentations on any "loan document" are events of default. *See id.* at -5031 (§ 7.1(d)). The Doral and Chicago agreements—on which Trump Endeavor 12 LLC and 401 North Wabash Venture LLC were the Borrowers, respectively—contain identical or materially identical language.[22] *See* NYSCEF No. 211 at 16-17.

The same is true of the Seven Springs (2000) loan. *See* NYSCEF No. 199 at 18. As the Complaint alleges, Mr. Trump's Statements were submitted repeatedly to the financial institution that issued that loan. *See* Compl. ¶¶ 654, 655. Moreover, the Statement was incorporated into the

[22] *See* Faherty Aff. Ex. 8 (Doral loan agreement) at -5865 (definition of "loan documents"), -5912 (§ 6.1(f)), -5916 (event of default, § 7.1(d)), -5920 (purported merger clause, § 8.2); Ex. 10 (Chicago loan agreement) at -3628 (definition of "loan documents"), -3688 (§6.1(f)), -3691 (event of default, § 7.1(d)), -3697 (purported merger clause, § 8.2).

bank's decision to waive certain loan requirements and data from the Statements was incorporated into other internal bank documents. *Id*. ¶¶ 655-656. The "primary shortfall" of the loan, an internal document noted, was that the property had a lack of cash flow, rendering annual loan payments of more than $1 million "a large number to cover." *Id*. ¶ 656. The "integration" provision in the Seven Springs loan relied upon by Defendants referred to "[t]his Agreement *and the other Loan Documents*," Faherty Aff. Ex. 16 at -7177 (§ 8.16) (emphasis added), and the term "loan documents" included any document "now or hereafter delivered to the Bank with respect to the indebtedness by the Borrower or the Guarantor," *id.* At -7163 (§ 1.01). A condition of the loan was annual submission of Mr. Trump's personal financial statement, as compiled by Mazars's predecessor (M.R. Weiser), *id.* At -7171 (§ 6.01(a)), and the Statements were in fact submitted to the bank on multiple occasions, *see, e.g.*, Compl. ¶ 655.

Defendants make the same error in their merger-clause argument regarding the 2015 40 Wall Street loan. *See* NYSCEF No. 199 at 18; *see* Faherty Aff. Exs. 13, 14. The Guaranty of Recourse Obligations submitted by Defendants makes clear, for example, that the entire $160 million loan amount is predicated on the receipt of the Guaranty: "Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lender of the Guaranteed Obligations (as herein defined)." Faherty Aff. Ex. 13 at -5090 (item "B." under "Witnesseth" heading). Thus, the Guarantor, referring to Mr. Trump (*id.* -5110), "as an inducement to Lender to make the Loan to Borrower," agreed to perform a series of obligations, *id.* at -5090. One such obligation was that, "Until the Debt and the Guaranteed Obligations have been repaid in full," Mr. Trump was required to meet certain net worth and liquidity covenants, and to "deliver to Lender not later than September 30th of each calendar year" his Statements of Financial Condition "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)." *Id.* at -5103, -5104 (§ 5.2).[23] Moreover, such statements were required to be "certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." *Id.*[24] The loan agreement likewise represented that Mr. Trump's Statement was prepared "in accordance with GAAP in all material respects, except as disclosed therein." Faherty Aff. Ex. 14 at -5132 (§ 3.1.10). The merger provision in the 2015 40 Wall Street loan relied upon by Defendants merely provides that "*The Loan Documents* contain the entire agreement of the parties . . . ." *Id.* at -5234 (§ 11.23) (emphasis added). Defendants failed to submit the agreement schedule defining that term to the Court, but the term, as defined, includes not only the loan agreement and Guaranty of Recourse Obligations, but also "any other documents, agreements and instruments now or hereafter evidencing, securing or delivered to Lender in connection with the Loan." *Id*. at -5254. The phrase "Loan Documents" thus included *any* document submitted to

[23] Further demonstrating the importance of the Guaranty and the Statements to the loan agreement, the loan agreement provided that "[t]he death of Guarantor shall be an Event of Default," unless a suitable "Replacement Guarantor" were provided. Faherty Aff. Ex. 14 at -5199, -5200, 5201 (§ 8.3). To substitute such a guarantor, the Borrower was required to provide "all such information concerning the substitute guarantor(s) as Lender may reasonably require, including, without limitation, financial statements detailing assets and liabilities, in a form equivalent to the Statement of Financial Condition of Guarantor prepared by WeiserMazars LLP that was delivered to Lender in connection with the closing of the Loan." *Id.*

[24] Defendants assert, without factual support, that this lender did not later demand the financial statements. NYSCEF 199 at 19. There is no basis to accept Defendants' unsupported factual assertion, let alone in assessing the sufficiency of OAG's pleading here. In any event, even if Defendants admit that they failed to comply with their obligation to submit the Statements to a lender, they have no answer for Deutsche Bank's documented decision to exit its relationship with the Trump Organization or for Mazars' decision to withdraw the Statements.

Lender in connection with the loan, including Mr. Trump's Statements that were required to be submitted by the terms of the loan agreement and guaranty of recourse obligations.[25]

IX. THE COMPLAINT ADEQUATELY PLACES DEFENDANTS ON NOTICE

The arguments of certain Defendants that the Complaint fails to give them notice about the conduct at issue in this action are meritless. [26] The conduct in question—the preparation, use, and certification of the Statements of Financial Condition—is described at length in the Complaint. That conduct, the Court has held, showed a persistent pattern of fraud over an 11-year period. PI Order at 10. The Complaint likewise spells out the role of each Defendant in sufficient detail to survive a motion to dismiss. *See DDJ Management, LLC v. Rhone Group L.L.C.*, 78 A.D.3d 442, 444 (1st Dep't 2010) (holding common-law fraud claims sufficiently alleged against individual Defendants based "on the corporate positions and titles of the individual Defendants," who as a result may be assumed to have "knowledge of the fraud"); *see also Polonetsky v. Better Homes Depot, Inc.*, 97 N.Y.2d 46, 55 (2001) (finding corporate president properly held liable individually in light of day-to-day participation in business).

Taking the individual Defendants first, the Complaint plainly alleges that Donald Trump, Jr., was a top executive (and later, one of the two most senior executives) who participated in the charged conduct, Compl. ¶ 32. *See, e.g.*, *Northern Leasing*, 193 A.D.3d at 76 (top executives liable under § 63(12) to same extent as business entities); *Apple Health*, 206 A.D.2d at 267 (corporate

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[25] The loan agreement likewise made clear than an event of default would occur "if any representation . . . which is material in nature (as reasonably determined by Lender) made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender by or on behalf of Borrower, shall have been false or misleading in any material respect as of the date such representation or warranty was made." Faherty Aff. Ex. 14 at -5213 (§ 10.1(vi)).

[26] Mr. Trump, Mr. Weisselberg, Mr. McConney, The Trump Organization, Inc., and Trump Organization LLC do not advance this argument.

officers and directors personally liable for fraud where they "personally participated in the misrepresentation or had actual knowledge of the misrepresentation"). He signed letters instrumental to the preparation and issuance of the Statements and was one of the trustees—and later the *only* trustee—on whose behalf, and under whose responsibility, the Statements were issued. *See, infra,* at 66-67. He certified the Statements' truth and accuracy to financial institutions on many occasions. Compl. ¶¶ 6, 290, 595, 620. Beyond those specific roles, he was one of two top executives—effectively a co-CEO—of the entire Trump Organization from 2017 forward.[27] *See id.* ¶ 36. Donald Trump, Jr. "was familiar with the financial performance of properties incorporated in the Statement, including through his responsibility for commercial leasing in buildings like 40 Wall Street and Trump Tower." *Id*. ¶ 727. And, he was specifically and regularly kept apprised of key Trump Organization obligations—including the submission of the Statements to third parties. *Id.* ¶¶ 722-723.

Donald Trump, Jr. also was specifically apprised of facts suggestive of actual knowledge that matters in the Statements were misrepresented. In particular, he was advised of the true square footage of Mr. Trump's triplex—and Mr. Trump's statements that the triplex was more than 30,000 square feet in size—only days before certifying a Statement to the contrary. *Id*. ¶ 286. Moreover, he was regularly kept apprised of the Trump Organization's business. *Id*. ¶¶ 721-727. And he was advised that cash distributions from the Vornado partnership entities were "at the discretion of Vornado," *see id.* ¶ 73, but nevertheless certified Statements that included such cash as Mr. Trump's own liquidity.

[27] Donald Trump, Jr. also was "a source of valuations in the Statement of Financial Condition for properties like Trump Park Avenue." Compl. ¶ 727.

Defendant Eric Trump's misconduct likewise is adequately alleged. Eric Trump was one of two top executives at the Trump Organization beginning in 2017, when he "took over management" of the conglomerate. *Id*. ¶ 36. Eric Trump also had a Chairmanship position in the Donald J. Trump Revocable Trust—the Trustees of which were responsible for certifying many of the Statements. *Id*. ¶ 35. He was also "familiar with the financial performance of the properties incorporated in the Statement, including through his responsibility for the Trump Golf properties." *Id*. ¶ 729. He was specifically and regularly kept apprised of key Trump Organization obligations—including the submission of the Statements to third parties. *Id*. ¶¶ 722-723. And he, too, certified 2020 and 2021 Statements to a financial institution.[28] *Id*. ¶¶ 6, 729.

The Complaint also alleges Eric Trump's personal participation in the preparation of the Statements. In particular, he was the identified source for certain valuations in the Statements despite having awareness of contradictory information (*see id.* ¶¶ 240-242; 326-345; 465-468).[29] He was involved in the efforts, described in the Complaint, to procure an inflated appraisal of the Seven Springs property.[30] *Id*. ¶ 240. The Complaint likewise alleges that Eric Trump knew the

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[28] Eric Trump also signed a draw request for millions of dollars in funding under the Old Post Office loan, Compl. ¶ 645; *see also id.* ¶ 636 (noting linkage between guarantor's representation in loan documents and subsequent loan disbursements).

[29] For example, he was in possession of 2014 appraiser advice sharply contradicting the Statements' values of Seven Springs (Compl. ¶¶ 251-253), but nevertheless was the expressly identified source for the 2014 Statement's valuation (*id*. Ex. 17, at 26 ("6/30/14-Per telephone conversation with Eric Trump (9/12/2014)").

[30] Indeed, the Complaint alleges that Eric Trump "led the Trump Organization's efforts to develop" Seven Springs (*see* Compl. ¶ 243), was "deeply involved in" the process of obtaining valuation information regarding a proposed donation at the property (*id*. ¶ 247), and had specific awareness of "limitations on the ability of the Trump Organization to develop the Seven Springs property" that he concealed from appraisers (*id*. ¶ 247). The Complaint alleges that the Trump Organization, in this project for which Eric Trump was "deeply involved," failed to inform appraisers of key facts. *Id*. ¶ 257.

2012, 2013, and 2014 Statements' assumptions regarding Seven Springs development were not feasible (*id*. ¶ 242), and he repeatedly invoked his Fifth Amendment privilege when pressed about the 2012 and 2013 valuations of Seven Springs in the Statements and about his participation in the preparation of the Statements from 2013 through 2016 (*id*. ¶¶ 245, 346).[31]

Nor is there any basis to dismiss any of the entity Defendants who have raised this argument.[32] These Defendants are alleged to have "participated in the scheme through the actions of their high managerial agents," including the individual Defendants. *Id*. ¶ 730. Corporations and Limited Liability Companies "are not natural persons," so "of necessity they must act solely through the instrumentality of their officers or other duly authorized agents." *See Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 465 (2010). It is a "fundamental principle that has informed the law of agency and corporations for centuries; namely, the acts of agents, and the knowledge they acquire while acting within the scope of their authority are presumptively imputed to their principals." *Id.* Thus, a corporate entity must "be responsible for the acts of its authorized agents even if particular acts were unauthorized." *Id.*; *see also Weinberg v. Mendelow*, 113 A.D.3d 485, 486 (1st Dep't 2014) (holding liability properly attributed to company on theories that agent was "held . . . out" as a principal and, in all events, was employed by company); *cf. Waterbury v. New York City Ballet, Inc.*, 205 A.D.3d 154, 161 (1st Dep't 2022) (knowledge of board member attributed to corporation for purposes of negligent-hiring or retention claim).

Applying this fundamental principle, the Court should hold that Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven

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[31] Eric Trump, like Donald Trump, Jr. and Allen Weisselberg, was also apprised that Mr. Trump's triplex was one-third the size that he had proclaimed it to be only days before the 2016 Statement was issued. Compl. ¶ 286.

[32] The Donald J. Trump Revocable Trust is addressed *infra* at Point X.

Springs LLC are appropriately named as Defendants with adequate notice. These entities participated in the fraudulent scheme by obtaining funds from lending institutions on loan agreements under the signature of Donald J. Trump through the submission (and/or certification) of the Statements. The knowledge and conduct of Mr. Trump is imputed to these entities; with respect to each, he signed the loan agreements as their agent or President, in addition to any personal guaranty he may have signed.[33] The principal corporate officers of each of these entities have been, since 2017, Donald Trump, Jr., Allen Weisselberg, and, in some cases, Eric Trump—all individual Defendants here.[34] Moreover, in the case of 40 Wall Street LLC and Seven Springs LLC, the principal real properties in which they are interested have been identified as the focus of allegations of fraud. *See* Compl. §§ IV.C.4, IV.C.7. More generally, each of these entities is under the control, and under the beneficial ownership of, Mr. Trump (and, in some respects, other Defendants).[35] And, as part of the Trump Organization, they have been under the control of the

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[33] *See* Faherty Aff. Ex. 16 (Seven Springs) at -7178 (signature of Donald J. Trump on behalf of members of Seven Springs LLC); Ex. 8 (Doral loan agreement) at -5931 (signature of Donald J. Trump for borrower Trump Endeavor 12 Manager Corp., as manager of Trump Endeavor 12 LLC); Ex. 10 (Chicago amended loan agreement) at -3709 (signature of Donald J. Trump as President of 401 North Wabash Venture LLC); Ex. 12 (Old Post Office loan agreement) at -5049 (signature of Donald J. Trump as President of Trump Old Post Office LLC); Ex. 14 (40 Wall Street loan agreement) at page following page numbered -5238 (signature of Donald J. Trump on behalf of borrower 40 Wall Street LLC, as President of 40 Wall Street Member corp., as the borrower's managing member).

[34] *See* Faherty Aff. Ex. 17 (TTO_05697692) at 16-17 (appointment of Donald Trump, Jr. as President and Mr. Weisselberg, respectively, as President and Vice President, Treasurer and Secretary of Trump Endeavor 12 LLC), 19 (same for 401 North Wabash Venture LLC), 23 (same for Trump Old Post Office LLC); *id.* at 19 (appointing Eric Trump as President, Donald Trump, Jr. as Executive Vice President, and Mr. Weisselberg as Vice President, Treasurer and Secretary of 40 Wall Street LLC), 21 (same for Seven Springs LLC).

[35] *See* Compl. ¶ 34 (explaining that Ivanka Trump "retained a financial interest" in the Old Post Office property "through Ivanka OPO LLC"). Moreover, as the Complaint alleges, the Defendants sought to "recover[] their capital" from the OPO property in 2022. *Id.* ¶ 743. Several of the

organization's top executives—including Mr. Trump, Donald Trump, Jr., and Eric Trump—and under the financial supervision of Mr. Weisselberg (as C.F.O.) and Mr. McConney (as Controller). The actions and knowledge of Trump Organization executives, who were their agents (*see id.* ¶ 730), and held out to be top executives of the organization (*id.* ¶¶ 29, 32, 33, 35, 37, 39), are imputed to these entity Defendants.

DJT Holdings LLC and DJT Holdings Managing Member are appropriately named as Defendants with adequate notice for similar reasons. The Complaint alleges that hundreds of entities do business, collectively, under the moniker "The Trump Organization." *Id.* ¶ 27. All of these entities, the Complaint alleges, "operate for the benefit, and under the control, of Donald J. Trump." *Id.* DJT Holdings LLC and DJT Holdings Managing Member LLC are specifically identified on Exhibit 2 to the Complaint as sitting at the top of the Trump Organization's corporate structure—under the ownership of the Donald J. Trump Revocable Trust, of which Mr. Weisselberg and Donald Trump, Jr. were the trustees (and who issued the Statements in later years). *See id.* Ex. 2, at 1.[36] Indeed, a corporate-restructuring document stated that Donald Trump, Jr. and Mr. Weisselberg in January 2017 were appointed as the President and Vice President, Treasurer and Secretary of DJT Holdings LLC and DJT Holdings Managing Member LLC—thus acting as the top corporate officers for these entities at the top of the Trump Organization's pecking order at the same time they were trustees of the Revocable Trust responsible for issuance of the

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Defendants, including Mr. Trump, Ms. Trump, Donald Trump, Jr., and Eric Trump held percentage stakes in the Old Post Office project. *See, e.g.*, *id.* Ex. 2 at 29 (referring to "DJT ownership percentage"); *id.* ¶ 34.

[36] The ensuing schedule charts in Exhibit 2 to the Complaint further show that DJT Holdings LLC and DJT Holdings Managing Member LLC together hold, directly or indirectly, controlling interests in the property-level entities representing assets that are the focus of misrepresentations on the Statements or the entities that obtained funds through submission of the Statements. *See id.* at 15 (Jupiter Golf Club LLC); *id.* at 16 (Trump Endeavor 12 LLC).

Statements. (Faherty Aff. Ex. 17 (TTO_05697692) at 20.)[37] In any event, the actions and knowledge of Mr. Weisselberg and Donald Trump, Jr., who were the agents of these entities, and of other individuals held out to be top executives of the organization (*see* Compl. ¶ 730), are imputed to these Defendants at the very top of the Trump Organization's corporate structure.

Defendants argue that CPLR 3016(b) requires more specificity than the considerable detail OAG's Complaint provides, but this argument is incorrect and beside the point. The First Department's decision in *Feinberg v. Marathon Patent Group Inc.,* 193 A.D.3d 568 (1st Dep't 2021), recently held that claims premised on material "omissions" or "untrue" statements of material fact under the federal Securities Act were not subject to the heightened pleading standard of CPLR 3016(b) "because they are not premised on common-law fraud." 193 A.D.3d at 570-71. The same is true of § 63(12) actions; as the Court already has articulated, a § 63(12) fraud action does not require proof of scienter or reliance (indeed, damages need not be shown, either, because such a claim is equitable in nature). PI Order at 5; s*ee also New York v. Debt Resolve, Inc.*, 387 F. Supp. 3d 358 (S.D.N.Y. 2020) (Executive Law § 63(12) "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…"); *People v. Marolda Prop., Inc.*, 2017 N.Y. Misc. LEXIS 4583, at *7-*8 (Sup. Ct. N.Y. Cnty. Nov. 29, 2017); *People v. Empire Prop. Solutions, LLC*, 2012 N.Y. Misc. LEXIS 1845, at *2 (Sup. Ct. Nassau Cnty. April 10, 2012).

[37] Indeed, Donald Trump, Jr. recently executed a written consent that a loan was authorized to be obtained in relation to the Doral property in his capacity as trustee of the Donald J. Trump Revocable Trust, Director of Trump Endeavor 12 Manager Corp., President of DJT Holdings Managing Member LLC, and President of DJT Holdings LLC. Faherty Aff. Ex. 18 (TTO_06259667), at -689. Trump Endeavor 12 Manager Corp., along with DJT Holdings LLC, were identified as the 100% owners of the Borrower, Trump Endeavor 12 LLC. *Id.* at -688.

In all events, Defendants' reference to CPLR 3016(b) makes no difference here because the Court of Appeals has made clear that "corporate officers and directors may be held individually liable if they participated in or had knowledge of the fraud," *Pludernman v. Northern Leasing Systems*, 10 N.Y.3d 486, 491 (2008). In that context, CPLR 3016(b) merely requires provision of "facts sufficient to permit a reasonable inference of the alleged conduct," including with respect to an individual "facts sufficient to permit a [factfinder] to infer [the individual's] knowledge or participation in the fraudulent scheme," *id.* (quoting *Polonetsky*, 97 N.Y.2d at 55) (explaining that day-to-day participation and involvement in marketing supports inference that individual defendant knew of or actually participated in fraudulent scheme). That hurdle is easily cleared for each Defendant for reasons explained above.

X. THE DONALD J. TRUMP REVOCABLE TRUST, INCLUDING THROUGH ITS TRUSTEE, IS AN APPROPRIATE DEFENDANT

Defendants' argument that the Donald J. Trump Revocable Trust ("Trust") is an improper party is meritless. Indeed, the First Department recently held—in an Executive Law § 63(12) action—that both the trusts and trustees involved in an underlying fraud were appropriate parties. Upholding this Court's order in another enforcement action, the First Department held that certain trusts were established to further a "continuing fraudulent scheme," and that it could "be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism." *People by James v. Leasing Expenses Co. LLC*, 199 A.D.3d 521 (1st Dep't 2021). Accordingly, the Court concluded, "the family trusts and trustees may likewise be held liable for the fraud." *Id.* (citing *People v. One Source Networking, Inc.*, 125 A.D.3d 1354, 1357-58 (4th Dep't 2015)).

So too here. The Complaint's allegations concerning the Trust are more than sufficient to fall within the First Department's holding in *Leasing Expenses*. The Complaint alleges that the

Trust "is the legal owner of the entities constituting the Trump Organization." Compl. ¶ 30. Moreover, as the Complaint details, a continuing fraudulent scheme originating in 2011 or earlier continued after "the Trustees of the Donald J. Trump Revocable Trust" began to issue the Statements. *See, e.g.*, *id*. ¶¶ 30, 31, 52; *see also id.* Ex. 2 (organizational chart with "The Donald J. Trump Revocable Trust Dated April 7, 2014 (a New York grantor trust)" at the top). The Statements dated June 30, 2016 and forward are unambiguous in stating that "*The Trustees* of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended, on behalf of Donald J. Trump are responsible for" the accompanying Statement, *see id.* Ex. 8 (page entitled, "Independent Accountants' Compilation Report") (emphasis added); that those same trustees had provided the information contained in the Statements (*id.*); that a "significant portion" of Mr. Trump's assets were owned, alternatively, by "*the Trust* or entities owned by *the Trust*," and that the Statement reflected assets and liabilities of Mr. Trump and "of *the Trust* (*id.* at 3 ("Basis of Presentation") (emphases added)); and repeatedly that valuations contained in the Statements were "based on an evaluation *made by the Trustees*" (*e.g.*, *id.* at 7 (clubs), 18 (partnerships) (emphases added)).[38] Indeed, both trustees—Mr. Weisselberg and Donald Trump, Jr.—signed engagement and/or representation letters to Mazars during the period when they were the trustees issuing the Statements, and Donald Trump, Jr. likewise signed certifications regarding the accuracy of the Statements during his time as trustee. *See, e.g.*, Compl. ¶¶ 57, 288, 595. Both were also serving as officers of entity Defendants within the Trump Organization during the relevant time. *Id*. ¶¶ 32, 37.

[38] The argument by the "Foreign Entity Defendants" that the Trust "did not author any [Statement]," NYSCEF No. 211 at 16, is flatly contradicted by, among other evidence, the Statements themselves.

Furthermore, Donald Trump, Jr.'s status as a party defendant—both in his personal capacity *and as a trustee of the Trust*—means the trust estate, which includes New York assets, is within the Court's jurisdiction.[39] *See Wagenstein v. Shwarts*, 82 A.D.3d 628, 631 (1st Dep't 2011); *In re Jensen*, 39 A.D.3d 1136, 1136 (3d Dep't 2007). Donald Trump, Jr., as trustee, and the Trust have both been properly served—as the Court already concluded. *See* PI Order at 2 (noting service was "effectuated on all parties"). He was expressly identified in the Complaint repeatedly as a trustee of the Trust, and the Complaint expressly states that he is "named in both his personal capacity and as the Trustee of the Donald J. Trump Revocable Trust." Compl. ¶¶ 38, 727. Defendants acknowledge Donald Trump, Jr. is a trustee of the Trust, and they do not dispute that suing a trustee is sufficient to obtain jurisdiction over a trust in New York. *See* NYSCEF No. 211 at 20.[40] Defendants' points about whether the Trust itself, or a trustee, is the proper defendant—are thus beside the point (although, as stated above, that issue has been settled by *Leasing Expenses*, which confirms both are proper defendants in a § 63(12) action). Either way, the Trust and its corpus are properly before the Court.

To the extent there is any uncertainty about the role of the Trust in the Trump Organization's corporate structure, Defendants should not be permitted to benefit from such

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[39] The Complaint alleges that the Trust "is the legal owner of the entities constituting the Trump Organization," which plainly encompasses assets in New York. Compl. ¶ 30. A recent loan application to Axos Bank attached a structure chart for "Trump Tower Commercial LLC" demonstrating that that entity is owned indirectly by the trust. *See* Faherty Aff. Ex. 19 (TTO_06320130). Public records include a recently recorded refinancing document demonstrating Trump Tower Commercial LLC's ownership of the commercial condominium unit at Trump Tower in New York County. *See* N.Y.C. Dep't of Finance, ACRIS, Document ID 2022022300572004 (dated February 17, 2022).

[40] Cases abound in which trusts, or the estates of trusts, are properly identified as the subject of an action. *See, e.g.*, *In re Ruth Bronner and Zwi Levy Family Sprinkling Trust*, 112 A.D.3d 429 (1st Dep't 2013); *In the Matter of the Compulsory Accounting of the Lifetime trust of Joseph Srozenski*, 78 A.D.3d 1596 (4th Dep't 2010); *Matter of Jensen*, 39 A.D.3d 1136 (3d Dep't 2007).

uncertainty on this motion—having acted to obscure this very information. *See* NYSCEF No. 182 (OAG's November 3, 2022 letter to the Court advising of Mr. Trump's Florida lawsuit seeking to shield from discovery here key documents governing the structure of his business, including most particularly his Trust documents). For example, Defendants state that "the Trust was re-settled in Florida in 2017," NYSCEF No. 211 at 7, but the document submitted in support of this statement is dated August 9, 2021 and purports to have been signed by Donald Trump, Jr. on December 22, 2021. *See* Habba Aff. ¶ 38 (noting document dated August 9, 2021). Exhibit 2 to the Complaint—although alleged to have been prepared by the Trump Organization in 2017 (*see* Compl. ¶ 21)—states that the Trust was "a New York grantor trust" and was attached to a *September 2020* email to an outside insurance-related party with the text of the email indicating it was a "structure chart," confirming the Trump Organization was still representing to third parties that the Trust was a New York grantor trust in September 2020. Faherty Aff. Ex. 20 (TTO_02355775). Indeed, Donald Trump, Jr., Allen Weisselberg, and Eric F. Trump signed an affidavit in *May 2018* attesting that certain Trust documents were "true and complete copies of the pertinent portions of the Trust"; those portions were signed by Mr. Trump in January 2017 and identified him as a resident of New York. *Id*. Ex. 21 (TTO_03451963).

XI. THE COURT HAS PERSONAL JURISDICTION OVER EVERY DEFENDANT

The Court plainly has personal jurisdiction over all Defendants,[41] and the arguments of certain entities who have contended otherwise are meritless.

[41] The Defendants who directly raise personal jurisdiction defenses are the Donald J. Trump Revocable Trust, DJT Holdings Managing Member, Trump Endeavor 12 LLC, and 401 North Wabash LLC. Trump Old Post Office LLC and DJT Holdings LLC purport to incorporate a personal jurisdiction defense by reference.

It has long been held that a State's ability to bring a law enforcement or regulatory action and assert personal jurisdiction over a non-domiciliary entity is broader than the personal jurisdiction standards applicable to individuals. "[T]he right of a litigant to bring an action against a foreign corporation is not necessarily the measure of the State's power to regulate it. What is necessary to maintain a suit by a creditor…is not determinative when the state seeks to regulate … within its borders." *La Belle Creole Intl., S. A. v Attorney-General of State of N.Y.*, 10 N.Y.2d 192, 197-198 (1961). As the First Department recently reaffirmed, in such an action, "less is required than might otherwise be the case." *James v. iFinex Inc.*, 185 A.D.3d 22, 29 (1st Dep't 2020).

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 Cruz v. City of N.Y.*, No. 33774/18E, 2022 WL 16983208, at *1 (1st Dep't Nov. 17, 2022) (citing *Aybar v. Aybar*, 37 N.Y.3d 274, 289 (2021)). The Trump Organization is headquartered at Trump Tower in New York County, New York.[42] The Complaint specifically alleges that its top officers—who also are officers of the entity Defendants—maintain their offices at Trump Tower. Compl. ¶¶ 35-39.

Moreover, the apparent assertions that these entity Defendants are not "at home" in New York, or do not have their "principal place of business" in New York, are contradicted by their own documents. Operating agreements of DJT Holdings Managing Member and 401 North Wabash Venture LLC identify their principal offices as 725 Fifth Avenue, New York, New York. Faherty Aff. Ex. 22 (TTO_05821207) at -1215 ("Principal Office"), Ex. 23 (TTO_05828651) at -660 ("Principal Office"). An operating agreement of DJT Holdings LLC, in turn, identifies its

[42] The Trump Organization's website currently states that "Trump Tower located at 725 Fifth Avenue in Manhattan" opened in 1983 and that today it is "the headquarters of The Trump Organization." Available at https://www.trump.com/timeline (last visited December 8, 2022).

members (Mr. Trump and DJT Holdings Managing Member LLC)—both at 725 Fifth Avenue, New York, New York—and DJT Holdings Managing Member as the manager of DJT Holdings LLC. *Id*. Ex. 24 (TTO_05728768) at -779, -787. Donald Trump, Jr. recently executed (in May of this year) an "Officer's Certificate" for Axos bank identifying the members of DJT Holdings Managing Member LLC as the Donald J. Trump Revocable Trust—at 725 Fifth Avenue, New York, New York. *Id*. Ex. 18 (TTO_06259667) at -674. What is more, Trump Old Post Office LLC's schedule of members—including DJT Holdings LLC and various members representing the interests of Donald Trump, Jr., Ivanka Trump, and Eric Trump—were identified with the address 725 Fifth Avenue, New York, New York with attention to specific individuals there (Mr. Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump). *Id*. Ex. 25 (TTO_05733826) at -864.

In all events, specific personal jurisdiction is plainly present here for all of these entity Defendants. Under CPLR 302(a)(1), New York's long-arm jurisdiction statute, "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." *iFinex*, 185 A.D.3d at 29. Moreover, due process is satisfied when a foreign entity "never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." *Al Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 323 (2016). The key question is whether the defendant engaged in "purposeful activities" to "avail[] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.*; *see also id.* at 329 (purposeful relationship with New York bank, even for mere correspondent banking, is sufficient for personal jurisdiction).

Finally, the argument that any entity Defendant does not have sufficient minimum contacts with New York for the Court's exercise of jurisdiction to satisfy due process is baseless. As articulated above, Defendants' top officers—for the Trust (its trustees), for the organization as a whole (individuals with specific executive titles), and for specific entity Defendant—had their offices in New York during the time of the relevant conduct.

Indeed, the loan documents and agreements with Deutsche Bank for Doral (Trump Endeavor 12 LLC), Chicago (401 North Wabash Venture LLC), and the Old Post Office (Trump Old Post Office LLC) are indisputable documentary evidence of a choice by those borrowers to purposefully avail themselves of New York's jurisdiction. They in fact include a litany of references to New York contacts and specific choices by the parties to avail themselves of New York forums and laws. The guarantees identified Mr. Trump (who, as noted, also signed the loan agreements) as a "natural person" with his "principal residence" in New York.[43] The guarantees similarly provided that Mr. Trump's offices were in New York, and during an event of default the bank could review his financial records there.[44] The loan agreements likewise provided that they were entered with "a New York State chartered bank," and associated notes expressly provide for payment at the bank's New York offices.[45] The guarantees and loan agreements likewise provided

[43] *See* Faherty Aff. Ex. 7 (guaranty) at -4177; Ex. 9 (guaranty) at -3190; Ex. 11 (guaranty) at -3285.

[44] *See* Faherty Aff. Ex. 7 (guaranty) at -4181, -4182; Ex. 9 (guaranty) at -3196; Ex. 11 (guaranty) at -3291.

[45] *See* Faherty Aff. Ex. 8 (loan agreement) at -5858; Ex. 8 at -5937 (exhibit 2.3(i) to loan agreement) (note); Ex. 10 (loan agreement) at -3619; Ex. 10 at -3715 (exhibit 2.3(i) to loan agreement) (note).

for notices to be sent to the bank, Mr. Trump, and the Trump Organization entities in New York.[46] The loan agreements required maintenance of deposit accounts in New York.[47] Indeed, those same loan agreements contain express, all-caps language making unambiguous that those entities purposefully availed themselves of the benefits of New York State and New York law. As the Doral loan agreement provides (caps in original): "THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE PROCEEDS OF THE NOTES DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY." Faherty Aff. Ex. 8 (loan agreement) at -5922, -5923. Moreover, that provision states that the agreement would "BE GOVERNED BY, AND CONSTURED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE." *Id.* at -5923; *see also id.* ("TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND THE DEBT."); *id.* (borrower waiving any argument that any other jurisdiction's law governs the agreement); *id.*

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[46] *See* Faherty Aff. Ex. 7 (guaranty) at -4182, -4183 (notices to lender, Mr. Trump, Mr. Weisselberg, and Ivanka Trump in New York); Ex. 8 (loan agreement) at -5925, -5926 (notices to Trump Endeavor 12 LLC (attention to Ivanka Trump), Mr. Weisselberg, and lender in New York); Ex. 9 (guaranty) at -3197, 3198 (notices to lender, Mr. Trump, Mr. Weisselberg, and Ivanka Trump in New York); Ex. 10 (loan agreement) at -3702, -3703 (notices to 401 North Wabash Venture LLC (attention to Ivanka Trump), Mr. Weisselberg, and lender in New York); Ex. 11 (guaranty) at -3292, -3293 (notices to Mr. Trump, Ivanka Trump, and Mr. Weisselberg in New York); Ex. 12 (loan agreement) at -5042, -5043 (notices to Trump Old Post Office LLC (attention to Ivanka Trump), Allen Weisselberg, and lender in New York)).

[47] *See, e.g.*, Faherty Aff. Ex. 8 (loan agreement) at -5882; Ex. 10 (loan agreement) at -3648, -3649; Ex. 12 (loan agreement), at -4978, -4979.

(selecting New York forums to resolve disputes).[48] The Doral guaranty similarly provides that it would be "governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and to be performed wholly within the State, without reference to conflicts of laws principles." *Id*. Ex. 7 (guaranty) at -4186; *see also id.* (also unconditionally and irrevocably submitting to New York court jurisdiction).[49]

Given this litany of express contacts with New York on the very transactions that are the subject of this enforcement action, and the contacts of these entity Defendants acting in New York through their trustees or top officers (including Mr. Trump, Donald Trump, Jr., Mr. Weisselberg, Eric Trump, and Ivanka Trump), there can be no doubt that they are subject to personal jurisdiction in New York.[50]

CONCLUSION

Plaintiff respectfully requests that the Court deny Defendants' motions to dismiss bearing Sequence Nos. 007, 008, 009, 010, and 011 in their entirety and grant such other and further relief as the Court deems appropriate and necessary.

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[48] *See also* Faherty Aff. Ex. 10 (loan agreement) at -3699-702 (similar or identical language in 401 North Wabash Venture LLC loan agreement); Ex. 12 (loan agreement) at -5039-042 (similar or identical language in Trump Old Post Office LLC loan agreement).

[49] *See also* Faherty Aff. Ex. 9 (guaranty), at -3201 (similar or identical language in Chicago guaranty); Ex. 11 (guaranty), at -3296 (similar or identical language in Trump Old Post Office guaranty).

[50] To the extent that a personal jurisdiction defense is being raised by 40 Wall Street LLC and Seven Springs LLC, the argument is meritless because both are New York limited liability companies. Compl. ¶¶ 28.d, e.

Dated: New York, New York
December 9, 2022

Respectfully submitted,

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CERTIFICATION

With leave of Court upon Plaintiff's oral application made on November 22, 2022, Plaintiff is filing this consolidated memorandum of law in response to five separate memoranda of law filed by Defendants in the motions bearing sequence numbers 007, 008, 009, 010, and 011. 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 Consolidated Memorandum of Law contains 24,520 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission on a consolidated basis pursuant to Rule 202.8-b(f) of the Uniform Rules.

Dated: New York, New York
December 9, 2022

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EXHIBIT I

To be argued by:
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15 minutes requested

Supreme Court of the State of New York
Appellate Division – First Department

No. 2023-00717

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

Plaintiff-Respondent,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants.

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Dated: April 26, 2023

Supreme Court, New York County – Index No. 452564/2022

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PRELIMINARY STATEMENT

The New York State Office of the Attorney General (OAG) brought this civil enforcement action under Executive Law § 63(12) against the Trump Organization and certain of its executives. OAG's 214-page enforcement complaint provided detailed factual allegations describing defendants' decade-long scheme to misleadingly inflate the values of various holdings and interests of defendant Donald J. Trump, as reflected in his statements of financial condition (Statements). The assets whose values were inflated included some of Mr. Trump's signature properties: his own triplex residence in Trump Tower, Trump Park Avenue, the 40 Wall Street office building, Mar-a-Lago, and numerous golf clubs. Defendants then presented the false Statements to banks and insurers while certifying that they were true and accurate. Through their scheme, defendants derived significant economic benefits—such as favorable loan and insurance terms—that they would not otherwise have obtained.

Here, defendants appeal from a decision and order of Supreme Court, New York County (Engoron, J.) denying their motions to dismiss the enforcement complaint. This Court should affirm. Many of defendants'

arguments have been rejected by the Court of Appeals or this Court. And their other arguments are also meritless.

First, OAG has the authority to bring this action under § 63(12). Section 63(12) gives OAG the capacity to maintain actions, like this one, alleging that defendants committed repeated or persistent fraud or illegality in conducting business. Through § 63(12), the Legislature has empowered OAG to ensure that entities transacting business in New York—including in New York City, one of the world's most important financial centers—do so without fraud or illegality, thereby maintaining an honest marketplace. There is no basis in the statutory text for defendants' contention that OAG must show that the public or consumers at large were harmed by their scheme. Nor is there any basis for defendants' argument that OAG must satisfy the elements of parens patriae standing. That common-law doctrine has no bearing where, as here, OAG is suing under § 63(12) to vindicate the State's sovereign interests.

Second, OAG's suit is timely. This Court has held that the six-year limitations period governing claims under § 63(12) applies retroactively, foreclosing defendants' argument that a three-year period applies. The complaint contains ample allegations that fall within this six-year period,

including those detailing Ivanka Trump's involvement in the fraudulent and misleading scheme. Although the six-year limitations period alone suffices to render OAG's complaint timely, more than two years of tolling afforded by the Governor's pandemic-related executive orders and by a tolling agreement between OAG and the Trump Organization further support Supreme Court's decision. And the continuing-wrong doctrine provides an additional ground for affirmance.

Third, OAG sufficiently alleged that Ivanka Trump personally participated in defendants' scheme. Among other things, Ivanka Trump was an Executive Vice President of the Trump Organization who used the Statements to obtain hundreds of millions of dollars in reduced-rate loans to finance real-estate acquisitions. She was familiar with the true financial performance of properties owned by Mr. Trump, and the Statements misrepresented the value of an apartment that she rented and had the option buy. She also participated in communications with a federal agency about specific accounting exceptions contained in the Statements. And she oversaw the Trump Organization's real-estate licensing deals, a category of assets that was misleadingly valued in the Statements.

Finally, Supreme Court properly exercised personal jurisdiction over the Trump Organization entities that operate out of the Trump Organization's New York headquarters and that purposefully availed themselves of New York as a jurisdiction.

QUESTIONS PRESENTED

1. Whether Supreme Court correctly held that OAG has capacity and standing to sue defendants for repeated and persistent fraudulent and illegal conduct pursuant to Executive Law § 63(12), a statute that expressly authorizes OAG to bring such claims.

2. Whether Supreme Court correctly held that OAG's suit is timely.

3. Whether Supreme Court correctly held that OAG sufficiently alleged that Ivanka Trump personally participated in or had knowledge of the Trump Organization's scheme.

4. Whether Supreme Court properly exercised personal jurisdiction over various Trump Organization entities.

STATEMENT OF THE CASE

A. Statutory Background

The Legislature enacted Executive Law § 63(12) to combat fraudulent and illegal commercial conduct in New York. Under § 63(12), "[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 broad nature of § 63(12) reflects the State's manifest interest in "securing an honest marketplace." *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009). The statute defines "fraud" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." Executive Law § 63(12). The statute further prohibits persistent "illegality," which authorizes OAG to sue for violations of state, federal, or local laws. *See, e.g., People v. American Motor Club*, 179 A.D.2d 277, 283 (1st Dep't 1992).

Section 63(12) addresses repeated fraud or illegality in business regardless of whether the misconduct targeted consumers, small businesses, large corporations, or other individuals or entities. *See New York v. Feldman*, 210 F. Supp. 2d 294, 300 (S.D.N.Y. 2002) (courts have broadly construed § 63(12) to apply to virtually "all business activity" (quotation marks omitted)); *Matter of People v. MacDonald*, 69 Misc. 2d 456, 458 (Sup. Ct. N.Y. County 1972). "[R]epeated" fraud or illegality includes the "repetition of any separate and distinct fraudulent or illegal act" and "conduct which affects more than one person." Executive Law § 63(12). "[P]ersistent" fraud or illegality includes the "continuance or carrying on of any fraudulent or illegal act or conduct." *Id.*

The statute of limitations for § 63(12) actions is six years. C.P.L.R. 213(9). That six-year statute of limitations took effect immediately, when the Legislature enacted it in 2019, Ch. 184, § 2, 2019 McKinney's N.Y. Laws 1082, 1082, and applies to conduct that predates its enactment, *Matter of People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 416 (1st Dep't 2023).

B. Factual Background

As alleged in OAG's verified complaint, Mr. Trump controls and has beneficial ownership of around 500 entities that do business as the Trump Organization, which is headquartered in New York. Specifically, many Trump Organization entities are organized under defendant Donald J. Trump Revocable Trust (Trust), of which Mr. Trump is the sole beneficiary. (R. 1192-1193; *see* R. 1397-1421 (organization chart).) In managing the Trump Organization, Mr. Trump has relied on each of his three eldest children—defendants Donald Trump Jr., Ivanka Trump, and Eric Trump—to operate portions of the business as Executive Vice Presidents. (R. 1193-1195.)

1. The decade-long scheme to inflate Mr. Trump's net worth through his Statements of Financial Condition

From at least 2011 through 2021, Mr. Trump's annual Statements were false and misleading. (R. 1180, 1185-1187; *see* R. 1395-1396 (overview of deceptive strategies employed by defendants).) The Statements reflected Mr. Trump's supposed net worth based on inflated values of specific assets and classes of assets, minus outstanding liabilities. (R. 1182-1183.)

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. (*See* R. 1326-1368.) For example, defendants used the Statements to procure and maintain more than $300 million in loans from Deutsche Bank for the development of the Doral golf resort in Florida, a hotel in Chicago, and the redevelopment of the Old Post Office building in Washington, D.C. (*See* R. 1327-1350.)

Mr. Trump personally guaranteed each of these loans (R. 1328-1330), for which the guarantor's "'[f]inancial [s]trength'" or "'financial profile'" factored into the lending decision (R. 1333, 1339, 1343). As a condition of each guaranty, defendants submitted the Statements from the years prior to the loan closing and agreed to submit the Statements annually thereafter, each of which was certified as being true. (*See* R. 1336-1337 (Doral), 1340-1341 (Chicago), 1347-1349 (Old Post Office).) For the Old Post Office loan, which was not disbursed at closing but rather on an as-needed basis based on requests from the Trump Organization, the loan

required as a condition of each disbursement request that the Statements were true and accurate at the time of the request. (R. 1347-1348.)

False certifications of the Statements were expressly identified as events of default under the loan agreements. (R. 1336 (Doral), 1342 (Chicago), 1349-1350 (Old Post Office).) In 2020, in an effort to ensure that it could collect on its loans, Deutsche Bank warned defendants that false or inaccurate Statements could result in the loans being placed in default and subject to immediate collection. (*See* R. 1373-1375.)

Defendants also used the Statements in transactions and dealings with multiple insurance companies to procure favorable terms on insurance products that benefitted defendants. (R. 1358-1368.) For example, from 2007 through 2021, defendants used the Statements to secure favorable prices on surety bonds from Zurich North American. (R. 1358-1362.) Allen Weisselberg (then-CFO of the Trump Organization and a defendant here) misrepresented to Zurich that the asset values reflected in the Statements were prepared by a professional appraisal firm—even though they were not. He also failed to disclose that the values were falsely and misleadingly inflated. (R. 1359-1361.) From 2016 through 2018, defen-

dants used the Statements to secure favorable premiums on directors and officers insurance (D&O insurance). (R. 1362-1368; *see* R. 2188-2190.)

Defendants also used the Statements in several other commercial dealings. For instance, in 2015, defendants used the Statements in obtaining favorable loan terms in refinancing a mortgage for 40 Wall Street from Ladder Capital Finance. (R. 1219-1220, 1350-1351.) From at least 2011 through 2019, defendants used the false and misleading Statements to obtain, extend, and maintain a prior mortgage from Royal Bank America (later Bryn Mawr Bank). (R. 1353-1354.)

Despite the pervasive misstatements contained in the Statements, several defendants certified the Statements' accuracy when submitting the Statements to financial institutions and other companies. Mr. Trump certified the Statements from 2011 through 2015 as true and accurate. (*See* R. 1336-1337, 1344; *see also* R. 1370-1371.) As a trustee of Mr. Trump's Trust, Donald Trump Jr. was responsible for the preparation of the Statements for each year from 2016 until at least 2022. In his role as trustee, he certified the truth and accuracy of each of the Statements in 2016 through 2019. (R. 1370.) Eric Trump certified the truth and accu-

racy of the Statements from 2020 through 2021 as attorney-in-fact for Mr. Trump. (*See* R. 1336-1337, 1371.)

From 2004 until 2020, the accounting firm Mazars compiled the Statements. (R. 1202.) In February 2022, in a letter to the Trump Organization, Mazars announced that the Statements for the years ending June 30, 2011 to June 30, 2020, should no longer be relied upon, and that all recipients of the Statements should be notified of that status. (*See* R. 1187-1188, 1204.) Several examples of the false and misleading asset values reflected in the Statements follow.[1]

Trump Tower. From 2012 through 2016, the Statements valued Mr. Trump's personal triplex penthouse in Trump Tower in Manhattan based on the false premise that it was around three times its actual size. The Statements listed the apartment at 30,000 square feet, when property records show that it was actually 10,996 square feet. These misrepresentations inflated Mr. Trump's assets by anywhere from $100 to $200 million each year. (R. 1254-1262.)

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[1] The full scope of defendants' fraudulent scheme to inflate the valuations is laid out in detail in the complaint and further summarized in a chart appended to the complaint as an exhibit. (R. 1395-1396.)

Trump Park Avenue. From 2011 through 2021, the Statements valued rent-stabilized apartments at the Trump Park Avenue building in Manhattan as if those units were not under rent-stabilization restrictions. An independent appraisal in 2010 concluded that the unsold residential units in the Trump Park Avenue building had a total market value of $55 million. (R. 1210.) The appraisal valued a block of twelve rent-stabilized units at $750,000 total, noting that these units had less value because the "'current tenants cannot be forced to leave.'" (R. 1210.) Despite this appraisal, the 2011 and 2012 Statements valued the unsold residential units at $292 million, ignoring the status of the twelve rent-stabilized units. (R. 1211.) Nor did the Statements in any subsequent year through 2021 properly value the rent-stabilized units based on their restricted status. (R. 1211.)

40 Wall Street. From 2010 through 2021, the Statements included valuations of the Trump Organization's leasehold interest in the 40 Wall Street office building in Manhattan that did not reflect the appraised value of the property. For example, despite independent appraisals valuing the property at approximately $200 million from 2010 through 2012, the corresponding Statements valued the property at over $500 million.

And despite an appraisal valuing the property at $540 million in 2015, that year's Statement valued the property at over $735 million. (R. 1217, 1219-1222.) Those inflated values continued in subsequent years. (*See* R. 1223-1226.)

Cash. From 2013 through 2021, the Statements claimed that Mr. Trump had "cash" that did not belong to him. Mr. Trump has been a 30% limited partner in a partnership in which the general partner, not Mr. Trump, has sole discretion over any cash distributions. (R. 1201, 1206-1207.) Despite his lack of control over the partnership's cash, the Statements for several years included 30% of the cash held by the partnership as if it were "cash" belonging to, and under the control of, Mr. Trump. (R. 1206-1208.) These misrepresentations inflated Mr. Trump's assets by $14 to $100 million each year. (R. 1205-1210.)

Club Facilities. From 2011 through 2021, the Statements included numerous false and misleading valuations of Mr. Trump's various club facilities, which made up around one-third of the total value of his assets. (*See* R. 1277-1323.) For instance, the Statements valued the Mar-a-Lago property in Palm Beach, Florida at $350 to $750 million, based on the false premise that it could be developed and sold in an unrestricted

manner as one or more private residences. But years earlier, Mr. Trump, to obtain apparent tax benefits, had personally signed deeds that transferred to the National Trust for Historic Preservation the rights to develop Mar-a-Lago for any usage other than a social club. (R. 1280-1284.)

Several Statements also valued Mr. Trump's Aberdeen golf club property in Scotland at $135 to $435 million, based on the false premise that 2,500 homes could be constructed on the property, when in fact fewer than 1,500 homes had been approved by the Scottish government. (R. 1289-1290, 1293-1296.) And in numerous Statements, Mr. Trump added an undisclosed 15% or 30% brand premium to the value of his golf courses, even though the Statements expressly stated that the valuations did not include a brand premium and generally accepted accounting principles prohibit such premiums. (*See, e.g.*, R. 1286, 1306-1307, 1310-1311.)

2. Ivanka Trump personally participated in the fraudulent and illegal scheme

OAG's complaint describes in detail how each defendant participated in the fraudulent and illegal scheme. On appeal, no defendant except for Ivanka Trump challenges the sufficiency of those allegations. Accordingly, this subsection focuses on Ivanka Trump's role in the scheme.

Like her siblings, Ivanka Trump was aware of, and knowingly participated in, the scheme to inflate Mr. Trump's net worth as reflected in the Statements. (*See* R. 1368.) She took the lead in negotiations to obtain the favorable loan terms from Deutsche Bank that included annual submission and certification of the Statements. (*See* R. 1330-1337.) Like Donald Trump Jr. and Eric Trump, Ivanka Trump was an Executive Vice President of the Trump Organization who had familiarity with and responsibility for the Statements. (R. 1370-1371.) She was also familiar with the true financial condition of the value of Mr. Trump's assets, based on, among other things, her role in the company and updates she received from the CFO, Allen Weisselberg, about the overall performance of the Trump Organization—including the assets valued in the Statements. (R. 1368-1371.)

During 2011 and 2012, Ivanka Trump led the Trump Organization's efforts to win the right to redevelop the Old Post Office property in Washington, D.C. (R. 1344-1345.) The Statements were central to that effort and submitted as part of the bid. (R. 1345.) As part of the process, Ivanka Trump was involved in communications with a federal agency about the contents of the Statements. Those communications included

detailed discussions about whether the Statements conformed to generally accepted accounting principles. (R. 1344-1345.)

Ivanka Trump was also the lead negotiator in obtaining the loans from Deutsche Bank on favorable terms, which included the requirement that the Statements be annually submitted and certified as true. (R. 1330-1337.) She initiated the Trump Organization's relationship with the private-wealth-management group within Deutsche Bank, knowing that a demonstration of financial condition would be required to obtain loans from this group. (*See* R. 1328, 1330-1333.) For the loan used to purchase the Doral golf club, she advocated for the loan to be conditioned on Mr. Trump's personal guaranty. (R. 1329, 1332.) When she received the initial loan terms from the bank, including the terms regarding the guaranty and annual submission and certification of the Statements, she remarked that "[i]t doesn't get better than this." (R. 1329, 1331-1332.) And she pushed back on concerns from Trump Organization counsel about meeting the net worth requirements of $3 billion. (R. 1332.)

Ivanka Trump also handled the Trump Organization's real-estate licensing deals, the value of which was included and falsely inflated in the Statements. (R. 1325.) For example, from 2015 to 2018, defendants

inflated the licensing valuations by including values for deals or terms that were speculative and for which the projected fees and compensation were thus not "reasonably quantifiable"—as the Statements misrepresented. (R. 1324-1325.)

Although she formally left the Trump Organization in January 2017, Ivanka Trump retained an ongoing financial interest in the company. For example, she retained a financial interest in the performance of the licensing business and the Old Post Office building (*see* R. 21, 1194, 1325)—which the Trump Organization sold in 2022 (R. 1350).

C. Procedural Background

1. The investigation and special proceeding

In 2019, OAG began investigating the Trump Organization's operations after Michael Cohen—a former senior executive and attorney of the Trump Organization—testified before the U.S. Congress regarding the misrepresentations in the Statements. *See People v. Trump Org., Inc.*, 2022 N.Y. Slip Op. 30538(U), at 6 (Sup. Ct. N.Y. County 2022).

In August 2020, OAG commenced a special proceeding in Supreme Court, New York County (Engoron, J.), to compel production of documents and testimony, and to oversee compliance with ongoing investigatory

subpoenas. *See* Pet., *People v. Trump Org., Inc.*, Index No. 451685/2020 (Sup. Ct. N.Y. County Aug. 24, 2020). That special proceeding resulted in multiple appeals to this Court. *See Matter of People v. Trump*, 213 A.D.3d 503 (1st Dep't 2023); *Matter of People v. Trump Org., Inc.*, 205 A.D.3d 625 (1st Dep't), *appeal dismissed*, 38 N.Y.3d 1053 (2022).

During its three-year investigation, OAG reviewed millions of pages of documents and interviewed over 65 witnesses, building an evidentiary record that detailed the nature and scope of defendants' fraudulent and illegal conduct. (R. 1180.)

While OAG's investigation was pending, two events tolled the statute of limitations for more than two years (801 days). First, beginning on March 20, 2020, the Governor signed a series of executive orders that tolled the statutes of limitations in the State, on account of the COVID-19 pandemic.[2] Those orders tolled the State's limitations periods for 228 days. *See Murphy v. Harris*, 210 A.D.3d 410, 411 (1st Dep't 2022).

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[2] *See* Executive Order Nos. 202.8, 202.14, 202.28, 202.38, 202.48, 202.55, 202.55.1, 202.60, 202.67, 9 N.Y.C.R.R. §§ 8.202.8, 8.202.14, 8.202.28, 8.202.38, 8.202.48, 8.202.55, 8.202.55.1, 8.202.60, 8.202.67 (2020).

Second, in August 2021, OAG and the Trump Organization signed an agreement that tolled the limitations period for any Executive Law § 63(12) claim relating to Mr. Trump's financial representations. (R. 871-874.) The tolling agreement covered the Trump Organization and affiliated entities, as well as the Trump Organization's officers and directors and any persons associated with the Trump Organization. (R. 871 n.1.) The agreement initially tolled the limitations period from November 5, 2020 through October 31, 2021 (R. 871), and was later extended, first through April 30, 2022, and then through May 31, 2022 (R. 869). The agreement (as extended) tolled the limitations period for 573 days.

On September 21, 2022, based on its extensive investigation, OAG brought this action pursuant to Executive Law § 63(12). (R. 1177-1394.) Based on defendants' repeated and persistent misconduct, OAG alleged that defendants had engaged in fraud in their commercial dealings with banks and insurers (R. 1377-1380) and illegal conduct that violated Penal Law prohibitions against falsifying business records, issuing false financial statements, and submitting false information to insurance companies. (R. 1381-1391 (citing Penal Law §§ 175.05, 175.10, 175.45, 176.05).) As

relief, OAG sought disgorgement and various injunctive and equitable remedies. (R. 1392-1393.)

2. Supreme Court's preliminary injunction order

In November 2022, Supreme Court, New York County (Engoron, J.), granted OAG's motion for a preliminary injunction prohibiting defendants from disposing of non-cash assets without prior notice and requiring an independent monitor to, among other things, oversee compliance with that prohibition and the preparation of any future Statement. *People v. Trump*, 2022 N.Y. Slip Op. 33771(U), at 10 (Sup. Ct. N.Y. County 2022); *see also* Suppl. Monitorship Order (Nov. 17, 2022), Sup. Ct. NYSCEF Doc. No. 194. Supreme Court held that OAG had demonstrated a likelihood of prevailing on the merits. *Trump*, 2022 N.Y. Slip Op. 33771(U), at 6-9. The court explained that, contrary to defendants' contentions, OAG has capacity and standing to bring this § 63(12) action. *Id.* at 3-4. The court rejected defendants' argument that OAG was required to establish parens patriae standing, explaining that parens patriae standing is "unnecessary where, as here, the New York legislature has specifically empowered the Attorney General to bring" suit. *Id.* at 3. The court also rejected defendants' argument that § 63(12) is limited to consumer protection. *Id.*

The court further concluded that OAG was likely to succeed on the merits given the extensive evidence regarding "persistent misrepresentations throughout every one of Mr. Trump's [Statements] between 2011 and 2021." *See id.* at 8-9.

3. The decision below

On January 9, 2023, Supreme Court issued a decision and order denying defendants' motions to dismiss. (R. 13-21.)

First, the court adhered to its reasoning in the preliminary injunction order that OAG has capacity and standing to bring this action. The court explained that § 63(12) broadly empowers OAG "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." (R. 15.)

Second, Supreme Court held that OAG had alleged ample misconduct within the applicable statute of limitations. (R. 17-18.) In doing so, the court concluded that the applicable limitations period was six years under C.P.L.R. 213(9). (R. 17.) The court also recognized that the Governor had issued executive orders tolling the State's limitations periods and that

the Trump Organization had signed a tolling agreement, but the court did not squarely rule on these tolling events. (R. 18 n.3, 20.) As an alternative ground for finding OAG's complaint timely, the court further concluded that the continuing-wrong doctrine applied to defendants' ongoing scheme. (R. 17-19.)

Third, Supreme Court rejected Ivanka Trump's argument that she should be dismissed as a defendant, concluding that OAG sufficiently alleged her involvement in defendants' fraudulent and illegal scheme. The court explained that Ivanka Trump had substantial responsibilities within the Trump Organization and had engaged in repeated interactions with the Trump Organization's counterparties that involved the Statements. (R. 19-21.) As the court further reasoned, Ivanka Trump led negotiations to obtain a loan from Deutsche Bank that was based on Mr. Trump's personal guaranty, and she served as the "primary point of contact" for Deutsche Bank on numerous loans as subsequent Statements were submitted and certified as true and accurate. (R. 19-20.) And Ivanka Trump personally participated in obtaining a construction loan from Deutsche Bank to redevelop the Old Post Office building. (R. 20.) The court further noted that during the underlying negotiations regarding

that redevelopment project, Ivanka Trump was personally involved in addressing questions regarding the Statements and their preparation, such as the Statements' compliance with generally accepted accounting principles. (R. 20.)

Last, the court rejected defendants' argument that the court lacked personal jurisdiction over several entities that are controlled and directed by executives located in the Trump Organization's New York headquarters. (*See* R. 21; *see also* R. 971-974, 1106-1113.) As relevant to this appeal, those entities are defendants the Trust, DJT Holdings Managing Member LLC (HMM), 401 North Wabash Venture, LLC (401 Wabash), and Trump Endeavor 12 LLC (TE12).

ARGUMENT

POINT I

EXECUTIVE LAW § 63(12) AUTHORIZES OAG TO BRING THIS ENFORCEMENT ACTION AGAINST REPEATED AND PERSISTENT FRAUD AND ILLEGALITY

Defendants incorrectly argue that OAG lacks capacity and standing to bring this enforcement action under § 63(12). Defendants' arguments are contrary to both the plain language of § 63(12) and well-established precedent from the Court of Appeals and this Court.

Supreme Court correctly concluded that OAG has both capacity and standing to bring this enforcement action. Capacity "concerns a litigant's power to appear and bring its grievance before the court." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 384 (2017) (quotation marks omitted). A litigant has the capacity to sue when the "the legislature invested that party with authority to seek relief." *Id.* Capacity is therefore "a question of legislative intent and substantive state law." *Id.*

The plain language of § 63(12) establishes that the Legislature has authorized OAG to bring this action. *See Matter of Lisa T. v. King E.T.*, 30 N.Y.3d 548, 556 (2017) ("best evidence of the legislative intent is the plain language of the text"). Under § 63(12), "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 compensatory or equitable relief when "any person . . . engage[s] in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." Executive Law § 63(12). Section 63(12) thus unequivocally "*authorizes* the Attorney-General to prosecute 'any person' who engages" in repeated or persistent fraud or illegality in

business—which is precisely what defendants are alleged to have done here. *See People v. Apple Health & Sports Clubs*, 80 N.Y.2d 803, 807 (1992) (emphasis added); *accord People v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009); *see also Matter of People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409, 417-18 (1st Dep't 2016).

Section 63(12) also makes clear that OAG has standing to bring this action. As the Court of Appeals held a half a century ago, § 63(12) "provide[s] standing in the Attorney-General to seek redress and additional remedies for recognized wrongs." *State v. Cortelle Corp.*, 38 N.Y.2d 83, 85 (1975); *see People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 633 (2018) ("[I]t is undisputed that Executive Law § 63 (12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law . . . ."). As relevant here, those wrongs include falsifying business records, issuing false financial statements, and committing insurance fraud, in violation of the Penal Law. (R. 1381-1391.) And as this Court has held, § 63(12) also authorizes OAG "to bring a standalone cause of action for fraudulent conduct," which need not plead all the elements of common-law fraud, and need not plead scienter or reliance. *See Trump Entrepreneur Initiative*, 137 A.D.3d at 417-18.

As a result, defendants' extended discussion of parens patriae standing is irrelevant. *See* Joint Br. for Defs.-Appellants Donald J. Trump et al. (Trump Br.) 14-22. OAG does not need parens patriae standing to bring an action under § 63(12). Parens patriae is a common-law doctrine that allows the State to protect certain "quasi-sovereign" interests by bringing causes of action that "otherwise properly can be brought only by *private* parties." *See People v. Grasso*, 42 A.D.3d 126, 141 (1st Dep't 2007) (emphasis added) (quotation marks omitted), *aff'd*, 11 N.Y.3d 64 (2008). But § 63(12) claims cannot be brought by private parties at all, let alone solely by private parties. To the contrary, the Legislature enacted § 63(12) to give OAG exclusive authority to redress the wrongs inflicted by repeated or persistent business fraud or illegality. *See Matter of State v. Ford Motor Co.*, 74 N.Y.2d 495, 502 (1989); *see also People v. Grasso*, 11 N.Y.3d 64, 68, 70 (2008) (contrasting statutory claims that OAG was "expressly authorize[d]" to bring with "nonstatutory claims" for the same relief that "rest[ed] on an assertion of parens patriae authority").[3]

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[3] In another *People v. Grasso* decision, this Court held that OAG could not maintain an action under a statute expressly enabling OAG to sue on behalf of nonprofit corporations, after the nonprofit at issue had converted into a for-profit enterprise. 54 A.D.3d 180, 190-97 (1st Dep't

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In any event, the State has a sovereign interest in enforcing its laws, both civil and criminal. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982); *People v. Mendoza*, 186 A.D.2d 458, 459 (1st Dep't 1992) (explaining "legitimate strong State interest in enforcing its own laws"), *aff'd as modified*, 82 N.Y.2d 415 (1993). This sovereign interest establishes OAG's standing to sue based on express statutory authority and makes unnecessary any showing of quasi-sovereign interests under the parens patriae doctrine. No separate standing inquiry is needed when the State pursues a prosecution in the name of the People for criminal remedies, such as imprisonment fines, asset, forfeiture, or restitution. Likewise, no separate standing inquiry is needed when the State prosecutes a statutory enforcement action in the name of the People for civil remedies, including an injunction, fines, disgorgement, restitution, or damages. *See Alfred L. Snapp*, 458 U.S. at 601-02 (distinguishing "quasi-sovereign" interests implicated by parens patriae standing from the "sovereign" interest in enforcing civil and criminal statutes).

2008). Here, there is no claim that intervening events have rendered § 63(12) textually inapplicable.

Defendants' arguments about capacity and standing improperly attempt to impose limitations on § 63(12) actions that have no grounding in the statute. For example, they argue (Trump Br. 24) that § 63(12) cannot apply if the misconduct "involves only the contractual rights of sophisticated private parties." And they argue (Trump Br. 14 n.2, 29) that § 63(12) is limited to misconduct against solely consumers. But § 63(12) broadly applies "[w]henever *any* person" engages in repeated or persistent fraudulent or illegal conduct. Executive Law § 63(12) (emphasis added). And it reaches the "carrying on of *any* fraudulent or illegal act or conduct" in the conduct of business in this State. *Id.* (emphasis added). The statute thus applies to misconduct perpetrated by individuals or business entities, and regardless of whether that misconduct targets consumers or businesses entities large or small. *See, e.g.*, *Matter of People v. Northern Leasing Sys., Inc.*, 193 A.D.3d 67, 70, 78 (1st Dep't) (affirming determination that respondents violated § 63(12) by deceiving small business owners into entering noncancelable equipment leases), *lv. dismissed*, 37 N.Y.3d 1088 (2021). And § 63(12) covers all manner of fraudulent or illegal misconduct—whether that misconduct involves contracts or other

types of business dealings. *See Feldman*, 210 F. Supp. 2d at 300 (courts broadly construe § 63(12) to apply to virtually "all business activity").

Nor does § 63(12) require that the misconduct must harm a substantial number of individuals, as defendants contend. *See* Trump Br. 20-21, 29. Section 63(12) applies to "repeated" fraud or illegality, which is defined as "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects *more than one person*." Executive Law § 63(12) (emphasis added); *see State v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep't 1983) (permitting suit "when the respondent was guilty of only one act of alleged misconduct, providing it affected more than one person"). That definition is satisfied here, where OAG alleged that defendants generated at least eleven Statements replete with false and misleading asset valuations, and used these Statements to extract, among other benefits, three real-estate loans and multiple insurance renewals on more favorable terms than they otherwise would have obtained.[4] See *supra* at 7-14.

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[4] Although the Legislature has given OAG broad enforcement authority under § 63(12), *see People v. Greenberg*, 21 N.Y.3d 439, 446 (2013), that authority is not limitless, as defendants contend (*see* Trump Br. 14). OAG's authority is circumscribed by the express language of the statute: OAG may sue only those persons who have committed repeated or persistent

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Indeed, the Court of Appeals has already rejected arguments that are nearly identical to those defendants make here. In *People v. Greenberg*, OAG sued former insurance executives under § 63(12) for engaging in systematic accounting fraud. 21 N.Y.3d at 446. The executives moved to dismiss the case for lack of standing, arguing that OAG had to establish "*parens patriae* standing," could not sue "to protect the integrity of the securities marketplace in New York," and impermissibly sought relief "on behalf of specific private parties" who were "fully capable of obtaining appropriate relief on their own behalf." *See* Joint Br. for Defs.-Appellants at 17-25, *Greenberg*, 21 N.Y.3d 439 (No. 2013-0063), 2012 WL 9502919 (quotation marks omitted). The Court of Appeals rejected these contentions based on § 63(12)'s express grant of authority to OAG "to sue for violation[s]" and "broadly worded anti-fraud provisions, prohibiting among other things 'repeated fraudulent or illegal acts.'" *See Greenberg*, 21 N.Y.3d at 446.

Similarly, in *People v. Ernst & Young LLP*, this Court held that OAG may pursue disgorgement under § 63(12) *without* "a showing or

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fraud or illegality in the conduct of business in this State. And to obtain relief, OAG must prove its case.

allegation of direct losses to consumers or the public." 114 A.D.3d 569, 569-70 (1st Dep't 2014). Echoing defendants' arguments here, Supreme Court in *Ernst & Young* had held disgorgement unavailable under § 63(12) because OAG's "complaint fail[ed] to allege anything with respect to consumers or the public at large." *See* Hr'g Tr. at 30, *People v. Ernst & Young LLP*, Index No. 451586/2010 (Sup. Ct. N.Y. County Dec. 12, 2012), NYSCEF Doc. No. 34. But this Court rejected that argument. Unlike restitution, disgorgement "focuses on the gain to the wrongdoer as opposed to the loss to the victim," and the "source of the ill-gotten gains" is therefore "immaterial." *Ernst & Young*, 114 A.D.3d at 569-70 (quotation marks omitted). Here, because OAG seeks disgorgement (R. 1393), not restitution, it similarly need not allege that defendants' misconduct harmed consumers or the public.

Defendants fail to acknowledge *Greenberg* and instead rely (Trump Br. 12-14, 27-29) on inapposite cases. Some of those cases predate the enactment of § 63(12) by decades.[5] *See People v. North Riv. Sugar Ref.*

[5] *People v. National Rifle Association of America, Inc.*, 74 Misc. 3d 998 (Sup. Ct. N.Y. County 2022), while more recent, also does not involve § 63(12).

Co., 121 N.Y. 582 (1890)*; People v. Lowe*, 117 N.Y. 175 (1889); *People v. Ingersoll*, 58 N.Y. 1 (1874). Other cases are irrelevant because they address whether a particular § 63(12) complaint had plausibly alleged a § 63(12) violation, *e.g.*, *People v. Wells Fargo Ins. Servs., Inc.*, 62 A.D.3d 404, 405 (1st Dep't 2009), *aff'd*, 16 N.Y.3d 166 (2011), or whether the facts adduced at a particular trial had proven that the defendants had committed a § 63(12) violation, *e.g.*, *People v. Domino's Pizza, Inc.*, 2021 N.Y. Slip Op. 30015(U), at 26 (Sup. Ct. N.Y. County 2021); *People v. Exxon Mobil Corp.*, 2019 N.Y. Slip Op. 51990(U), at 29 (Sup. Ct. N.Y. County 2019).[6] Here, because OAG's detailed complaint plausibly alleged conduct that fits squarely within § 63(12), Supreme Court correctly denied defendants' motions to dismiss.

Defendants also err in relying on § 63(12)'s language that OAG's actions are brought "in the name of the people of the state of New York." *See* Trump Br. 25 (quotation marks omitted). Defendants appear to argue

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[6] The federal district-court decisions on which defendants rely support OAG; those decisions *distinguished* between common-law parens patriae standing and express statutory grants of authority like § 63(12). *See, e.g.*, *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 521 (E.D. Mich. 2003).

that there is no cognizable harm or wrong to the People of this State when fraud or illegality takes place between business entities. But they are mistaken. The language on which defendants rely vests OAG with the "statutory authority to serve the public interest." *Coventry*, 13 N.Y.3d at 114. And OAG acts in the public interest when, as here, it exercises civil enforcement authority that the Legislature has expressly and exclusively given to OAG by statute to police the marketplace in this State. In such actions, OAG "is representing the People of the State at large," rather than "the interests of a few individuals." *People v. Bunge Corp.*, 25 N.Y.2d 91, 100 (1969).

Put another way, the Legislature has already decided that persistent fraud or illegality in business harms the public interest and has authorized the Attorney General to redress such harms by bringing civil enforcement actions under § 63(12). Such actions are a "proper exercise[] of the State's regulation of businesses within its borders in the interest of securing an honest marketplace." *Coventry*, 52 A.D.3d at 346. Here, this action vindicates "New York's recognized interest in maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center of the Nation," *Ehrlich-Bober & Co. v. University*

of Houston, 49 N.Y.2d 574, 581 (1980), by instilling confidence "that financial transactions [in New York] are conducted truthfully, not fraudulently," *Trump*, 2022 N.Y. Slip Op. 33771(U), at 9. Defendants' contention that this action serves no public purpose assumes that unpoliced deception between large business entities has no adverse impact on the marketplace. While defendants might prefer to foster such an environment, the Legislature was entitled to take a different view, and has authorized OAG to take action to prevent it.

POINT II

THIS ACTION IS TIMELY

A. Supreme Court Properly Applied a Six-Year Limitations Period.

Supreme Court properly applied a six-year statute-of-limitations period to OAG's complaint. There is no dispute that when OAG filed the complaint on September 21, 2022, the limitations period for Executive Law § 63(12) claims was six years under C.P.L.R. 213(9). OAG's complaint alleged conduct that occurred after September 2016, and is thus within the six-year limitations period. For example, the Statements at the core of this lawsuit were prepared, certified as true and accurate, and submitted

to lenders and insurers annually from 2016 through at least 2021. (*See* R. 1202-1203, 1336-1338, 1344.) Ivanka Trump personally requested a $4.3 million disbursement from one of those loans in December 2016, and her disbursement request was conditioned on the Statements remaining true and accurate. (R. 1347-1348, 1350.) And from 2017 through at least 2020, defendants secured favorable insurance terms based at least in part on the Statements. (*See* R. 1358-1368.)

Rather than engage with these allegations, defendants contend (*see* Trump Br. 33-35; Br. for Def-Appellant Ivanka Trump (Ivanka Br.) 28-31) that a three-year limitations period applies here because C.P.L.R. 213(9)'s six-year limitations period cannot be applied retroactively to conduct that occurred prior to C.P.L.R. 213(9)'s enactment in August 2019. As an initial matter, even if defendants were correct, this action would still be timely under a three-year period because defendants prepared, certified, and submitted false Statements to lenders, insurers, and other businesses in 2019, 2020, and 2021. (*See* R. 1336-1337.)

In any event, this Court has repeatedly rejected defendants' argument, explaining that C.P.L.R. 213(9)'s six-year limitations period properly applies to conduct that predates the statute's enactment. *See JUUL*, 212

A.D.3d at 416; *People v. Allen*, 198 A.D.3d 531, 532 (1st Dep't 2021), *appeal dismissed*, 38 N.Y.3d 996, *and lv. denied & appeal dismissed*, 39 N.Y.3d 928 (2022); *Matter of People v. Cohen*, 214 A.D.3d 421, 421 (1st Dep't 2023). The Court's reasoning in those cases was not dicta, as defendants argue. *See* Trump Br. 33; Ivanka Br. 30. To the contrary, the Court addressed § 63(12) claims targeting conduct that, at least in part, occurred outside of a three-year period, and squarely held that C.P.L.R. 213(9)'s six-year limitations period properly applied.[7]

Even if the Court were to reexamine the issue yet again, it should conclude that C.P.L.R. 213(9)'s six-year limitations period properly applies to conduct that predates its enactment. As the Court of Appeals has made clear, a statutory limitations period may apply to conduct predating its enactment where the Legislature intended that result to restore a previously applicable limitations period that had been disrupted by a judicial interpretation. *Brothers v. Florence*, 95 N.Y.2d 290, 299-300 (2000) (quota-

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[7] *See Cohen*, 214 A.D.3d at 421 (suit filed in 2018 for conduct in 2012); *JUUL*, 212 A.D.3d at 414-15 (suit filed in 2019 based on conduct in 2014 and 2015); Br. for State Resp't at 12, 25, *Allen*, 198 A.D.3d 531 (No. 2020-01772 et al.), 2021 WL 4951999 (suit filed in 2019 based on conduct in 2014).

tion marks omitted); *Matter of Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122-23 (2001). That is the situation here. Before C.P.L.R. 213(9)'s enactment, a Court of Appeals decision had introduced ambiguity by holding that a three-year period applied to some § 63(12) claims but a six-year period applied to other § 63(12) claims. *See Credit Suisse*, 31 N.Y.3d at 633-34. The Legislature enacted C.P.L.R. 213(9) in swift response, stated expressly that the statute took effect immediately, and did so to restore the longstanding six-year period that applied for all § 63(12) claims. *See* Ch. 184, § 2, 2019 McKinney's N.Y. Laws at 1082; Senate Introducer's Mem., *in* Bill Jacket for ch. 184 (2019), at 5-6; *see also Allen*, 198 A.D.3d at 532. Accordingly, the six-year limitations period applies.

B. The Limitations Period Was Tolled for More Than Two Years.

The timeliness of the complaint is further confirmed by the fact that the applicable limitations period was also tolled for more than two years (specifically, 801 days) by executive orders issued by the Governor during the COVID-19 pandemic and by a tolling agreement between OAG and the Trump Organization. Although Supreme Court did not squarely address tolling, the Court may affirm on this alternative ground because this point was raised below and acknowledged by the trial court.

These tolling events mean that the complaint is timely so long as it alleged misconduct on or after July 13, 2014. In addition to the extensive allegations discussed above (see *supra* at 7-17, 34-35), the complaint alleged that defendants used the Statements in connection with the Old Post Office loan in August 2014, the refinancing of the 40 Wall Street mortgage with another lender in 2015, and the obtaining of beneficial terms on insurance renewals in and after 2015. (*See* R. 1347-1348, 1350-1351, 1355-1368.)

This tolling also forecloses Ivanka Trump's argument that the claims against her are time-barred. Although OAG need not rely on tolling to state timely claims against Ivanka Trump (see *supra* at 34-35), OAG plainly alleged misconduct committed by her after July 13, 2014. For example, she was deeply involved in the Old Post Office loan that closed in August 2014. (R. 1347.) Moreover, she was involved in and knew about assets misvalued in the Statements that were submitted and certified in 2014 through 2016, while she was a high-level officer of the Trump Organization. (*See* R. 1368-1371.)

1. COVID-19–related executive orders tolled the statute of limitations.

As Supreme Court observed (R. 18 n.3), the Governor issued a series of executive orders in response to the COVID-19 pandemic that together tolled the statute of limitations periods in this State for 228 days.[8] *See Murphy*, 210 A.D.3d at 411. That toll pushes back the start of the limitations period from September 21, 2016, to February 6, 2016.

Except for Ivanka Trump, defendants ignore the Governor's executive orders. Ivanka Trump argues (Ivanka Br. 31-32) that the executive orders did not toll the statute of limitations and that, as a result, Supreme Court should not have added 228 days to the applicable limitations period. She argues that the executive orders instead "suspended" the statute of limitations and that, as a result, OAG was merely exempted from filing suit during the pandemic without the limitations period itself having been extended. *See id.* But this Court has already rejected precisely the same argument, ruling that the executive orders did toll the statutes of limitations. *See Murphy*, 210 A.D.3d at 411. Ivanka Trump fails to provide

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[8] *See* Executive Order Nos. 202.8, 202.14, 202.28, 202.38, 202.48, 202.55, 202.55.1, 202.60, 202.67, 9 N.Y.C.R.R. §§ 8.202.8, 8.202.14, 8.202.28, 8.202.38, 8.202.48, 8.202.55, 8.202.55.1, 8.202.60, 8.202.67.

any plausible basis for the Court to depart from its precedent. As the Court correctly explained, the initial executive order used the word "toll," and the subsequent executive orders continued not only "suspensions" but also all of the directives and modifications of law that were made in the prior executive orders and not otherwise superseded. *See id.* And every other department of the Appellate Division has reached the same conclusion. *See, e.g.*, *Brash v. Richards*, 195 A.D.3d 582, 585 (2d Dep't 2021); *Matter of Roach v. Cornell Univ.*, 207 A.D.3d 931, 933 (3d Dep't 2022); *Matter of Larae L. (Heather L.)*, 202 A.D.3d 1454, 1455 (4th Dep't), *lv. denied*, 38 N.Y.3d 907 (2022).

There is also no merit to Ivanka Trump's argument (Ivanka Br. 32) that imposing a toll "repeals an existing statute of limitations and imposes a new one," such that a toll cannot be constitutionally imposed by the Governor through an executive order. A toll does not repeal the existing statute of limitations or enact a new one. Rather, it temporarily stops the existing statute of limitations from continuing to run during the tolling period; that statute of limitations does not go away, and instead starts running again when the tolling period ends. *See Brash*, 195 A.D.3d at 582.

Moreover, as this Court has already ruled, *Murphy*, 210 A.D.3d at 411, the Legislature has, by statute, authorized the Governor to issue not only a "suspension" but also an "alteration or modification" of statutes of limitations during a public-health emergency, such as the COVID-19 pandemic, *see* Executive Law § 29-a(2)(d). The tolling of statutes of limitations is plainly within that authority.[9] *See Murphy*, 210 A.D.3d at 411; *Brash*, 195 A.D.3d at 585. And this targeted statutory authority to offer temporary relief from legislative enactments during a public-health emergency does not unconstitutionally delegate power to enact or repeal laws to the Governor. *Cf. Delgado v. State*, 39 N.Y.3d 242, 250 (2022).

2. The tolling agreement further extended the applicable statute of limitations period.

In addition to the executive orders, a tolling agreement between OAG and the Trump Organization further tolled the limitations period here for another 573 days. (*See* R. 869-874.) When combined with the

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[9] *Eisenbach v. Metropolitan Transportation Authority*, 62 N.Y.2d 973 (1984), on which Ivanka Trump relies (Ivanka Br. 32) is thus inapposite. The Court of Appeals in *Eisenbach* did not hold that statutes of limitations can be tolled only by the Legislature. Rather, it held that it would not expand the scope of an existing statutory toll beyond its plain language. 62 N.Y.2d at 975.

executive orders, the tolling agreement pushes back the start of the limitations period from February 6, 2016 to July 13, 2014. Although Supreme Court did not rule on the agreement's application here (*see* R. 18 n.3), this Court may rely on the tolling agreement as an additional, alternative ground for affirmance because the parties briefed this legal issue below. (*See* R. 59 n.3, 108, 931-932, 1027 n.3, 1162 n.4.) *See Melgar v. Melgar*, 132 A.D.3d 1293, 1294 (4th Dep't 2015).

As this Court recently reconfirmed in *JUUL*, a corporate tolling agreement applies to corporate affiliates, officers, or directors when the agreement states that those categories of entities or individuals are covered. *See* 212 A.D.3d at 417. The Court enforces such an agreement according to its terms, the same as any other contract. *See Multibank, Inc. v. Access Global Capital LLC*, 158 A.D.3d 458, 459 (1st Dep't 2018).

Here, the tolling agreement, by its plain terms, covers each defendant. The agreement is between the Trump Organization and OAG, and it states expressly that the term "Trump Organization" includes "The Trump Organization, Inc.; DJT Holdings LLC; DJT Holdings Managing Member LLC" (R. 871 & n.1)—each a defendant here. Under the agreement, the term "Trump Organization" also includes any present or former

parent entity of the Trump Organization—i.e., the Trust (R. 1193); any subsidiaries of the Trump Organization (e.g., TE12) (R. 1192); and any of its affiliates (e.g., 401 Wabash) (R. 1192). (*See* R. 871 n.1.) The agreement also states that the term "Trump Organization" includes the officers and directors of those entities, and "any other Persons associated with or acting on behalf of" them. (R. 871 n.1.) The agreement thus plainly covers Mr. Trump, his three children, and the other individual defendants, particularly as they were all officers of the Trump Organization at the time of the relevant scheme. (*See* R. 1192-1195.) Indeed, the agreement was signed by the Trump Organization's chief legal officer, who confirmed in writing that he had the authority to sign for the "Trump Organization" as so defined. (*See* R. 873-874.)

Although Ivanka Trump left her role as Executive Vice President in 2017, prior to the tolling agreement's signing, the complaint here plausibly alleged that she remained affiliated and associated with the Trump Organization and was thus covered by the agreement. Specifically, Ivanka Trump owned corporate entities that operated from the Trump Organization's headquarters and profited from the Trump Organization's properties through at least 2021. (R. 865, 1194.) And the complaint alleged

that Ivanka Trump "agreed to participate" in the fraudulent and illegal scheme until at least 2022. (*See* R. 1368.)

Contrary to defendants' arguments in the trial court (R. 931-932), there is no rule that a business must obtain the signature of each officer or director to include them in a tolling agreement. And there is no allegation here that any defendant in fact lacked knowledge of the agreement at issue. In *JUUL*, for instance, this Court concluded that two senior corporate executives were bound by the tolling agreement into which JUUL entered with OAG because it was signed on behalf of JUUL's officers and directors, among others. *See* 212 A.D.3d at 417; *see also* Br. for Resp't at 59-62, *JUUL*, 212 A.D.3d 414 (No. 2022-03188), 2022 WL 18355250. And this Court has affirmed the application of an agreement against a non-signatory partner of a partnership, where the partnership signed on his behalf and where the non-signatory benefited from the agreement.[10] *See Johnson v. Proskauer Rose, LLP*, 2014 N.Y. Slip Op.

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[10] Defendants erred below in looking outside the four corners of the tolling agreement to ascertain its meaning, such as by noting that a non-final draft of the agreement included signature blocks for certain individuals. (*See* R. 2243-2244.) Because the terms of the agreement are not ambiguous in covering directors, officers, and other persons who are affiliated or associated with the Trump Organization, such extrinsic evidence

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30262(U), at 19-20 (Sup. Ct. N.Y. County 2014), *aff'd in relevant part*, 129 A.D.3d 59 (1st Dep't 2015); *see also JUUL*, 212 A.D.3d at 417 (relying on *Johnson*).

Here, as the tolling agreement recognized, the agreement was in the "mutual benefit and interest" of both OAG and the "Trump Organization" (R. 871), including all the entities and individuals encompassed within that term. Should a non-signatory wish to reject the benefits and obligations of such an agreement, that person may—as a third-party beneficiary—disclaim the agreement within a reasonable timeframe. *See Restatement (Second) of Contracts* § 306 (Oct. 2022 update) (Westlaw); *see also Matter of Part 60 Put-Back Litig.*, 146 A.D.3d 566, 567-68 (1st Dep't 2017) (considering if party is "intended third-party beneficiary" of tolling agreement). But none of the non-signatory defendants did so here.

OAG counsel's statement in a hearing—which urged against delaying the special proceeding because the "tolling agreement only applies to

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is not probative. *See Schulte Roth & Zabel LLP v. Metropolitan 919 3rd Ave. LLC*, 202 A.D.3d 641, 641 (1st Dep't 2022). In any event, the omission of the signature blocks in the final agreement supports the inference that the parties understood individualized signatures to be unnecessary, and thus does not aid defendants' motions to dismiss.

the Trump Organization" and "Donald Trump is not a party to the tolling agreement"—was not addressing whether Mr. Trump is bound as a *non-signatory*. (*See* R. 996.) Given the possibility that Mr. Trump could invoke the absence of his signature on the agreement and disclaim the agreement, *see Restatement*, *supra*, § 306, counsel properly asked Supreme Court to move the special proceeding along expeditiously so that OAG could file suit as soon as practicable.

C. The Continuing-Wrong Doctrine Also Applies.

OAG's claims are also timely under the continuing-wrong doctrine. The Court need not consider this doctrine to affirm Supreme Court's decision because, as demonstrated above, numerous allegations in OAG's complaint fall within the limitations period and render the claims timely without regard to the doctrine. But the continuing-wrong doctrine provides an independent alternative ground to find the complaint timely.[11]

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[11] As OAG argued below (*see* R. 108-110, 112-113), other common-law doctrines also tolled the statute of limitations for OAG's claims. These include fraudulent concealment, *see, e.g.*, *Zumpano v. Quinn*, 6 N.Y.3d 666, 674 (2006), as well as tolling based on the persistent, continuous nature of defendants' scheme, *see, e.g.*, *People v. Milman*, 164 A.D.3d 609, 611 (2d Dep't 2018). Because Supreme Court did not rely on these doctrines in

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Supreme Court properly relied on the continuing-wrong doctrine as an additional and independent reason to reject defendants' arguments about the timeliness of OAG's complaint. (*See* R. 17-20.) The continuing-wrong doctrine permits a plaintiff to sue for "a continuous series of wrongs," without regard to "'the day the original wrong was committed.'" *Capruso v. Village of Kings Point*, 23 N.Y.3d 631, 640 (2014). Such ongoing misconduct "generally give[s] rise to successive causes of action that accrue each time a wrong is committed." *Town of Oyster Bay v. Lizza Indus., Inc.*, 22 N.Y.3d 1024, 1031 (2013).

Contrary to defendants' contention (Trump Br. 37-38), the continuing-wrong doctrine "tolls the limitation period until the date of the commission of the last wrongful act" in cases involving "a series of continuing wrongs," *Palmeri v. Willkie Farr & Gallagher LLP*, 156 A.D.3d 564, 568 (1st Dep't 2017); *see also Marcal Fin. SA v. Middlegate Sec. Ltd.*, 203 A.D.3d 467, 468 (1st Dep't 2022). Although the doctrine may also be relevant to determining certain remedies, *see Jensen v. General Elec. Co.*, 82 N.Y.2d 77, 87 (1993), the proper extent of relief has no bearing on

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denying defendants' motions to dismiss, this Court need not consider them here.

defendants' motions to dismiss and is not at issue until trial, *see Greenberg*, 21 N.Y.3d at 448; *JUUL*, 212 A.D.3d at 417.

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. See *supra* at 8-11. Such subsequent and repeated false and misleading submissions made in connection with an initial financial relationship constitute continuing wrongs. *See CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC*, 195 A.D.3d 12, 19 (1st Dep't 2021) (subsequent transactions during ongoing fiduciary duty); *Sabourin v. Chodos*, 194 A.D.3d 660, 661 (1st Dep't 2021) (false documents submitted in furtherance of fraudulent scheme); *State v. 7040 Colonial Rd. Assoc. Co.*, 176 Misc. 2d 367, 374 (Sup. Ct. N.Y. County 1998) (repeated misrepresentations or omissions under Martin Act). For the Old Post Office loan, defendants also repeatedly requested disbursements conditioned on their certifying the truth and accuracy of the previously submitted Statements. See *supra* at 8-9. That ongoing conduct is also covered by the continuing-

wrong doctrine. *See Ganzi v. Ganzi*, 183 A.D.3d 433, 434 (1st Dep't 2020) (continuing-wrong doctrine covers reissuing of commercial agreements).

The statute of limitations was thus tolled during these and any of the other ongoing wrongs alleged in the complaint. *See Palmeri*, 156 A.D.3d at 568. Moreover, as explained (see *infra* at 51-56), OAG's complaint amply alleged Ivanka Trump's involvement in these continuing wrongs, disposing of her argument (Ivanka Br. 22-24) that OAG's claims against her accrued solely when the Deutsche Bank loan for the Doral golf club in Florida closed in 2012, and the Old Post Office loan closed in 2014.

POINT III

OAG'S COMPLAINT PLAUSIBLY ALLEGED IVANKA TRUMP'S PERSONAL PARTICIPATION IN AND KNOWLEDGE OF DEFENDANTS' FRAUDULENT AND ILLEGAL SCHEME

Supreme Court properly denied Ivanka Trump's motion to dismiss her as a defendant in this action. OAG's complaint plausibly alleged that Ivanka Trump participated in and had knowledge of defendants' decade-long scheme to misrepresent many of the asset values reflected in the Statements, and to use those Statements in commercial dealings with banks and lenders, insurance companies, and other entities. Ivanka

Trump's arguments to the contrary improperly dispute factual allegations in the complaint.

To sue a corporate officer or director for corporate wrongdoing, a plaintiff must allege that the individual personally participated in the wrongdoing or had knowledge of it. *See Apple Health*, 80 N.Y.2d at 807. It is not necessary to demonstrate that the corporate officer or director benefitted from the misconduct. *Polonetsky v. Better Homes Depot, Inc.*, 97 N.Y.2d 46, 55 (2001). In determining whether the complaint plausibly asserts § 63(12) claims against Ivanka Trump, the Court must afford OAG's allegations a liberal construction and every favorable inference, and considers only whether the allegations fit within a possible legal theory. *See Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 (2002).

Contrary to Ivanka Trump's contention (Ivanka Br. 33 n.3), C.P.L.R. 3016(b)'s heightened pleading standard for fraud claims does not apply here. That standard applies when a claim is premised on common-law fraud rather than when, as here, a claim is premised on statutory fraud under Executive Law § 63(12)—for which scienter and reliance are not

elements.[12] *See Trump Entrepreneur Initiative*, 137 A.D.3d at 417 (scienter and reliance not required for § 63(12) fraud claim); *see also Feinberg v. Marathon Patent Group Inc.*, 193 A.D.3d 568, 570-71 (1st Dep't 2021) (heightened pleading standard inapplicable to claim under federal Securities Act premised on misrepresentations because claim "not premised on common-law fraud"); *New York v. Debt Resolve, Inc.*, 387 F. Supp. 3d 358, 364-65 (S.D.N.Y. 2019) (same for Executive Law § 63(12) claim). In any event, under either notice or heightened pleading, OAG's complaint plausibly alleged Ivanka Trump's involvement in defendants' fraudulent and illegal scheme.

First, the complaint alleged that Ivanka Trump, like Donald Trump Jr. and Eric Trump, was an officer of the Trump Organization who had significant responsibilities and knowledge regarding the assets and transactions underlying the Statements. For example, she was an Executive

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[12] Although this Court noted in *People v. Katz*, 84 A.D.2d 381, 384-85 (1st Dep't 1982) that the heightened standard applied to certain § 63(12) fraud claims, this statement was dicta. *Katz* was not an appeal from a decision granting or denying a motion to dismiss. Instead, *Katz* was an appeal from an order granting the defendants' request for discovery, in which the pleading standard was unnecessary for the disposition of the appeal. *See id.* at 383.

Vice President "charged with the domestic and global expansion of the company's real estate interests," including that branch's "deal evaluation, pre-development planning, [and] financing." (R. 2105.) She was aware of the true financial performance of the Trump Organization and many of the assets underlying the Statements from, among other things, the reporting of other officers (R. 1369-1370), internal documents (R. 1369), and her ongoing involvement in several of the transactions at issue (R. 1371). These allegations support the plausible inference that Ivanka Trump was involved in defendants' decade-long scheme, particularly in the context of a closely held business run by a single family.[13] (*See* R. 1369.)

Second, Ivanka Trump was also deeply involved in obtaining the loans from Deutsche Bank and the rights to redevelop the Old Post Office building—and the Statements were central to those efforts. See *supra* at

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[13] Ivanka Trump misplaces her reliance (Ivanka Br. 40, 45) on inapposite cases. In *Abrahami v. UPC Construction Co.*, this Court opined that a corporate officer's involvement in "day-to-day management, operations or bookkeeping"—as is present here—*does* support an inference of involvement in specific financial statements. *See* 224 A.D.2d 231, 234 (1st Dep't 1996). And in *National Westminster Bank v. Weksel*, the transactions were "completely unobjectionable at the time they" occurred. 124 A.D.2d 144, 147 (1st Dep't 1987). Here, the Statements contained falsehoods and misrepresentations from their inception.

15-16. For example, Ivanka Trump personally negotiated a $125 million loan with Deutsche Bank, and the Statements were used during those negotiations. (R. 1330-1338.) Indeed, in one instance, the day after Ivanka Trump spoke with Deutsche Bank employees, Mr. Trump sent over his Statements to advance the ongoing negotiations. (R. 1331.)

These allegations (and others) refute Ivanka Trump's argument (Ivanka Br. 35-38, 43-44, 49-51) that she did not understand either the contents of the Statements or that they included misrepresentations. As an initial matter, § 63(12) statutory fraud claims do not require scienter. *Trump Entrepreneur Initiative*, 137 A.D.3d at 417. In any event, the fact that Ivanka Trump negotiated nine-figure transactions premised on the Statements supports the reasonable inference that she was familiar with their contents. *See People v. Greenberg*, 95 A.D.3d 474, 484-85 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439. Indeed, during the bidding process regarding the Old Post Office, Ivanka Trump was personally involved in communications that were sent to a federal agency that addressed numerous details in the Statements, including the financial status of Trump Organization entities, Mr. Trump's income taxes, and membership deposits at golf

courses, as well as the precise accounting principles under which the Statements were prepared. (R. 1345, 2170.)

Ivanka Trump argues (Ivanka Br. 35-37) that these communications were sent in 2011 and that her involvement with the Deutsche Bank loans did not extend past negotiating and procuring them in 2012 and 2014. But her engagement with the details of the Statements, including responding to inquiries about them, further supports an inference that she was knowledgeable about the Statements' contents and defendants' scheme in subsequent years. *See, e.g.*, *Greenberg*, 95 A.D.3d at 484-85 ("two relevant phone calls" and "knowledge as to the details of the transaction" supported inference that defendant "was complicit in the illicit scheme"); *Northern Leasing Sys.,* 193 A.D.3d at 76 ("respond[ing] to lessees' complaints" about fraud and illegality supported liability based on knowledge and personal participation). And given that she personally negotiated the loans, she plainly knew that they required repeated submission and certification of the Statements and played a role in causing those subsequent submissions and certifications.

Moreover, Ivanka Trump relied on the Statements and their purported accuracy in requesting a disbursement from the Old Post Office

loan in December 2016. (R. 1347-1348, 1350.) Ivanka Trump disputes (Ivanka Br. 36-37) that her disbursement request contained any misrepresentation, but the complaint alleged that each request was premised on the loan condition that the Statements remained true and accurate—which they were not (R. 1347-1348).

Third, Ivanka Trump was the Trump Organization officer who handled the company's real-estate licensing deals (R. 1325)—a category of assets that was misvalued in the Statements that defendants used from 2011 to 2018 (R. 1323-1326). These allegations contradict Ivanka Trump's argument (*see* Ivanka Br. 1-2, 21) that she had no plausible involvement in the transactions at issue after 2014. For example, from 2015 to 2018, the Statements inflated the licensing-deal valuations by including deals or deal terms that were speculative. (R. 1324.) Inclusion of these deals and terms conflicted with the Statements' express representation that the valuations included "'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.'" (R. 1323.) Ivanka Trump's high-level corporate positions and day-to-day responsibility over these licensing deals support the inference that

she participated in preparing these inflated licensing deal-valuations or, at minimum, knew or should have known about them. *See Pludeman v. Northern Leasing Sys., Inc.*, 40 A.D.3d 366, 367 (1st Dep't 2007), *aff'd*, 10 N.Y.3d 486 (2008). And even after she left the Trump Organization in 2017, Ivanka Trump continued to receive monetary distributions from these deals. (R. 1325.)

Fourth, the Statements repeatedly misrepresented the value of apartments in Trump Park Avenue that Ivanka Trump had the option to purchase. (R. 1215-1216.) For example, Ivanka Trump had the option to purchase a penthouse apartment at the price of $14,264,000, but the 2014 Statements valued that apartment at $45 million—more than three times the option price. And even though the Statements in 2016 through 2020 valued the apartment at $14,264,000, Ivanka Trump had, in December 2016, obtained a lower option price of $12,264,000. (R. 1216.) It is a plausible inference that Ivanka Trump knew about and participated in defendants' fraudulent scheme when the Statements misvalued an apartment that she rented and had the option to buy.

Finally, Ivanka Trump is wrong in arguing (Ivanka Br. 48-53) that OAG failed to allege that she engaged in any "illegality" under § 63(12).

OAG adequately alleged that Ivanka Trump falsified business records (Penal Law §§ 175.05, 175.10) by pleading that she caused the Statements to include false entries, including false entries about real-estate license deals (see *supra* at 14-17, 51-56). *See People v. Murray*, 185 A.D.3d 1507, 1509 (4th Dep't 2020). OAG adequately alleged that Ivanka Trump issued false financial statements (Penal Law § 175.45) by pleading that she caused defendants' submissions and certifications of the Statements to the Trump Organization's counterparties (see *supra* at 14-17, 51-56). And OAG adequately alleged that Ivanka Trump committed insurance fraud (Penal Law § 176.05) by pleading that Ivanka Trump pushed for D&O insurance to cover her activities, and the Statements were submitted in connection with those insurance policies. (*See* R. 1366-1367, 2188-2190.)

Ivanka Trump also incorrectly contends (Ivanka Br. 51-53) that OAG's § 63(12) illegality claims must be dismissed to the extent they are based on an alleged conspiracy. As set forth in detail above (at 7-17), the complaint alleged at length the facts supporting defendants' "ongoing scheme and conspiracy." (R. 1368-1377 (capitalization omitted).) To the extent that Ivanka Trump is also arguing (*see* Ivanka Br. 52) that OAG cannot bring a claim for civil conspiracy against her, OAG clarified in its

trial court brief that it was not alleging "an independent *civil* conspiracy," but rather a civil illegality claim under § 63(12) based on a criminal conspiracy (*see* R. 2086-2087 (emphasis added)).

POINT IV

NEW YORK HAS PERSONAL JURISDICTION OVER VARIOUS TRUMP ORGANIZATION ENTITIES THAT OPERATE FROM THE TRUMP ORGANIZATION'S NEW YORK HEADQUARTERS

Supreme Court properly exercised personal jurisdiction over the Trust, HMM, 401 Wabash, and TE12. At the pleading stage, a plaintiff "need not establish that there is personal jurisdiction," but only needs to "make a sufficient start in demonstrating, prima facie, the existence of personal jurisdiction." *Matter of James v. iFinex Inc.*, 185 A.D.3d 22, 30 (1st Dep't 2020) (quotation marks omitted)

First, Supreme Court has general jurisdiction over the Trump Organization entities because each entity has its principal place of business in Trump Tower, at 725 Fifth Avenue in Manhattan—the headquarters of the Trump Organization.[14] *Cf. Chen v. Dunkin' Brands, Inc.*,

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[14] *The Trump Story*, Trump Org., https://www.trump.com/timeline (last visited Apr. 26, 2023) (stating that "Trump Tower located at 725

(*continued on the next page*)

954 F.3d 492, 500 (2d Cir. 2020). As the complaint alleged, HMM, 401 Wabash, and TE12 are among the approximately 500 entities that "collectively do business as the Trump Organization" (R. 1192), of which the Trust is the legal owner (R. 1193). The executives of the Trump Organization maintained their offices at the Trump Organization headquarters in New York at all relevant times. (R. 1193-1195.) And at those headquarters, the executives are "responsible for all aspects of management and operation of the Trump Organization" and "oversee[] the Trump Organization's property portfolio," including the properties owned by 401 Wabash and TE12. (*See* R. 1192-1194.)

OAG's supporting evidence confirms those allegations. For example, the operating agreements for HMM and 401 Wabash identifies the "principal office" for each as 725 Fifth Avenue in Manhattan. (R. 614, 787.) A 2022 Officer's Certificate similarly identifies the Trust's address as 725 Fifth Avenue in Manhattan. (*See* R. 568.) And the loan agreement between TE12 and Deutsche Bank specifies that any notices to TE12 related to

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Fifth Avenue in Manhattan" is the "headquarters of The Trump Organization").

the loan must be sent to Ivanka Trump at 725 Fifth Avenue in Manhattan. (R. 242.)

Second, and in any event, Supreme Court also has specific jurisdiction. *See LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000). Under New York's long-arm statute, courts may exercise specific jurisdiction over a defendant that "transacts any business within the state or contracts anywhere to supply goods or services in the state" for claims related to those acts. C.P.L.R. 302(a)(1). That provision is satisfied here because the Trump Organization entities engaged in purposeful action directed to New York that substantially relates to OAG's claims. *See Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 7 N.Y.3d 65, 71 (2006). Specific jurisdiction exists over the Trust because the trustees prepared several of the Statements in New York to be relied on by New York banks and insurers in New York transactions. (*See* R. 1202; *see also, e.g.*, R. 1545 ("The Trustees of [the] Trust . . . are responsible for the accompanying statement of financial condition . . . .").) For the other entities, the relevant loan agreements demonstrate that the transactions bore a substantial connection to this State. For example, the loan agreement between TE12 (a subsidiary of HMM) and Deutsche Bank states that: the lender is a

"New York State chartered bank"; the loan was "negotiated in" New York; New York "has a substantial relationship to the parties and to the underlying transaction"; New York law governs the agreement; and New York has jurisdiction for any claims "arising out of or relating to" the agreement. (R. 212, 238-239 (capitalization omitted).) The loan also directs that a substantial portion of its performance will take place in New York. (*See, e.g.*, R. 228, 241-242.) The loan agreement between 401 Wabash and Deutsche Bank has the same language. (R. 285, 317-318.)

Defendants err in arguing (Trump Br. 46) that OAG cannot rely on the loan agreements to establish personal jurisdiction when Deutsche Bank has not alleged a breach of the agreements. Under the long-arm statute, the test is whether there is a "substantial relationship between the transaction and the claim asserted." *Deutsche Bank*, 7 N.Y.3d at 71 (quotation marks omitted). That standard is amply met here, where OAG's claims are based on fraud and illegality committed in procuring and maintaining the loans. *See D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 299 (2017).

For similar reasons, Supreme Court's exercise of specific jurisdiction comports with due process. It is rare for due process to prohibit an

exercise of personal jurisdiction permitted under the long-arm statute. *See id.* at 299-300. No such exceptional circumstances exist here. The Statements and loans demonstrate that defendants "purposefully avail[ed] [themselves] of the privilege of conducting activities within" New York. *See LaMarca*, 95 N.Y.2d at 216 (quotation marks omitted). Moreover, OAG's claims relate to defendants' contacts within the New York lending community and insurance market. *See Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). Finally, defendants have not come close to presenting a compelling case that jurisdiction in New York would be unreasonable in these circumstances.[15] *See D&R*, 29 N.Y.3d at 300.

[15] Defendants argue in a footnote (Trump Br. 45 n.12) that claims against the Trust should also be dismissed because trusts are not proper defendants. But this Court has recognized that trusts may be held liable under § 63(12). *Matter of People v. Leasing Expenses Co. LLC*, 199 A.D.3d 521, 522-23 (1st Dep't 2021).

CONCLUSION

For the foregoing reasons, this Court should affirm the January 9, 2023 decision and order of Supreme Court.

Dated: New York, New York
April 26, 2023

Respectfully submitted,

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Attorney General
State of New York
Attorney for Respondent

By: _____
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PRINTING SPECIFICATIONS STATEMENT

Pursuant to Uniform Practice Rules of the Appellate Division (22 N.Y.C.R.R.) § 1250.8(j), the foregoing brief was prepared on a computer (on a word processor). A proportionally spaced, serif typeface was used, as follows:

Typeface: Century Schoolbook
Point size: 14
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 12,126.

EXHIBIT J

People of the State of New York v. Donald J. Trump, et al.,
Index No. 452564/2022 (Sup. Ct. N.Y. Cty)

OAG Preliminary Witness List
as of September 8, 2023

No.	Witness	Fact/Expert	Affiliation/Expert Subject
1	Donald Bender	Fact	Mazars
2	William Kelly	Fact	Mazars
3	Camron Harris	Fact	Whitley Penn
4	Patrick Birney	Fact	Trump Organization
5	Jeffrey McConney	Fact	Defendant
6	Allen Weisselberg	Fact	Defendant
7	Michael Cohen	Fact	Former Trump Organization
8	Donna Kidder	Fact	Trump Organization
9	Mark Hawthorn	Fact	Trump Organization
10	Steven Borstein	Fact	Vornado Realty Trust
11	Kevin Sneddon	Fact	Former Trump International Realty
12	Sheri Dillon	Fact	Morgan Lewis
13	Nick Zemil	Fact	Former Morgan Lewis
14	Dave McArdle	Fact	Cushman & Wakefield
15	Timothy Barnes	Fact	Cushman & Wakefield
16	Didi Yep	Fact	Cushman & Wakefield
17	Henry Goldman	Fact	Former Trump Organization
18	Robert Heffernan	Fact	Robert F. Heffernan Associates
19	Jill Martin	Fact	Trump Organization
20	Selim Sawaya	Fact	Sawaya Engineering Consultants, Inc
21	Richard Zbranek	Fact	Cushman & Wakefield
22	Douglas Larson	Fact	Former Cushman & Wakefield
23	Naoum Papagianopoulos	Fact	Cushman & Wakefield
24	Brian Hegarty	Fact	Former Cushman & Wakefield
25	Kurt Clauss	Fact	Former Cushman & Wakefield

People of the State of New York v. Donald J. Trump, et al.,
Index No. 452564/2022 (Sup. Ct. N.Y. Cty)

OAG Preliminary Witness List
as of September 8, 2023

No.	Witness	Fact/Expert	Affiliation/Expert Subject
26	Ian Gillule	Fact	Former Trump Golf
27	Representative Witness	Fact	National Trust for Historic Preservation
28	Raymond Flores	Fact	Former Trump Organization
29	Constantine Korologos	Expert	Valuation, Including Commercial Real Estate
30	Laurence Hirsh	Expert	Golf Course and Club Valuation
31	Eric Lewis	Expert	Accounting and Financial Statement Preparation
32	David Orowitz	Fact	Former Trump Organization
33	Ivanka Trump	Fact	Former Trump Organization, Owner OPO
34	Jason Greenblatt	Fact	Former Trump Organization
35	Rosemary Vrablic	Fact	Former Deutsche Bank
36	Philip Ribolow	Fact	Deutsche Bank
37	Nicholas Haigh	Fact	Former Deutsche bank
38	Swasi Bate	Fact	Deutsche Bank
39	Arjun Nagarkatti	Fact	Deutsche Bank
40	Greg Candela	Fact	Deutsche Bank
41	Peter Welch	Fact	Former Capital One
42	Jack Weisselberg	Fact	Ladder Capital
43	Craig Robertson	Fact	Ladder Capital
44	Christopher Drimak	Fact	Bryn Mawr (now WSFS)
45	Michiel McCarty	Expert	Commercial Banking and Disgorgement Amounts
46	Michael Holl	Fact	Tokio Marine (HCC)
47	Joanne Caulfield	Fact	Former Zurich Insurance
48	Claudia Mouradian *by videotape deposition*	Fact	Former Zurich Insurance

***People of the State of New York v. Donald J. Trump, et al.*,**
Index No. 452564/2022 (Sup. Ct. N.Y. Cty)

OAG Preliminary Witness List
as of September 8, 2023

No.	Witness	Fact/Expert	Affiliation/Expert Subject
49	Tom Baker	Expert	Insurance Underwriting
50	David Cerron	Fact	New York City Department of Parks & Recreation
51	K. Don Cornwall	Fact	Former Morgan Stanley
52	Alan Garten	Fact	Trump Organization
53	Eric Brunnett	Fact	Trump Organization
54	Rhona Graff	Fact	Former Trump Organization
55	Eric Trump	Fact	Defendant
56	Don Trump Jr.	Fact	Defendant
57	Donald J. Trump	Fact	Defendant

EXHIBIT K

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. No. 002 **[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

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, and that such service shall be deemed good and sufficient notice of this Application.

ENTER

_____

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

Hon. Arthur F. Engoron

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE TO BRIEFLY STAY TRIAL

CLIFFORD 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. and Eric Trump. 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 is submitted, along with the accompanying Memorandum of Law, in support of the joint application by Order to Show Cause of 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 (collectively, "Defendants") for

an Order: (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").

3. This Affirmation is also submitted in support of Defendants' request for immediate relief in the form of temporarily staying the trial pending the hearing and determination of this Application.

4. Annexed hereto as **Exhibit A** is a true and correct copy of the Decision and Order issued by the Appellate Division, First Department, in this action on June 27, 2023.

5. Annexed hereto as **Exhibit B** is a true and correct copy of the Motion for Partial Summary Judgment (without exhibits) filed by Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York (the "NYAG") on August 30, 2023 (NYSCEF Nos. 765-833, 874-1028, 1062-1262).

6. Annexed hereto as **Exhibit C** is a true and correct copy of the Motion for Summary Judgment (without exhibits) filed by Defendants on August 30, 2023 (NYSCEF Nos. 834-873, 1029-1061).

7. No prior application has been made for the relief sought herein.

WHEREFORE, Defendants respectfully request that this Court grant the instant Application in its entirety.

Dated: Uniondale, New York
September 5, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT

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, signature block, and this certification, the foregoing Affirmation contains 393 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 5, 2023

Respectfully submitted,

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT
MICHAEL FARINA
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Uniondale, New York 11556
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Counsel for Donald Trump, Jr. and Eric Trump

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

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

Plaintiff,

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

Hon. Arthur F. Engoron

AFFIRMATION OF URGENCY OF CLIFFORD S. ROBERT

CLIFFORD 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. and Eric Trump. I am fully familiar with the facts and circumstances set forth herein based on the files and materials maintained by my firm.

2. This Affirmation of Urgency is submitted in support of the joint application by Order to Show Cause of 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 (collectively, "Defendants") for an Order: (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").

3. This Affirmation of Urgency is also submitted in support of Defendants' request for immediate relief in the form of temporarily staying the trial pending the hearing and determination of this Application.

4. The urgency of this Application is evident, given that the parties are presently required to (i) prepare and submit witness and exhibits lists, deposition designations, and proposed facts to be proven at trial; (ii) prepare and submit pre-trial motions on September 22, 2023; (iii) prepare for and attend the final pre-trial conference on September 27, 2023; and (iv) prepare for and attend the trial beginning on October 2, 2023. As set forth in the accompanying Memorandum of Law, it is essential that the Court temporarily stay the trial pursuant to CPLR § 2201 so that it can resolve the chaos created by the New York Attorney General's abject refusal to follow the unequivocal mandate of the Appellate Division, First Department. In the absence of a temporary stay of the trial, Defendants will face significant hardship and inequity. Indeed, based upon the First Department's unequivocal mandate, certain of the Defendants are not required to stand trial at all. This issue must therefore be resolved before the start of any trial.

5. Accordingly, Defendants respectfully request an award of immediate relief in the form of temporarily staying the trial pending the hearing and determination of this Application.

6. On September 5, 2023, I notified Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York, via e-mail, that Defendants would be bringing this Application. A true and correct copy of my e-mail is annexed hereto as **Exhibit A**.

7. No prior application has been made for the relief sought herein.

WHEREFORE, Defendants respectfully request that this Court grant the instant Application in its entirety.

Dated: Uniondale, New York
September 5, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT

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, signature block, and this certification, the foregoing Affirmation contains 520 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 5, 2023

Respectfully submitted,

s/ *Clifford S. Robert*

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EXHIBIT "A"

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 "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, *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
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cc: Counsel of record

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.

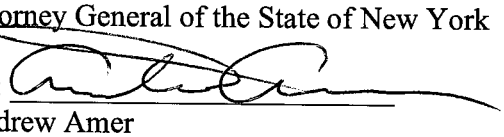
CONCLUSION

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,

LETITIA JAMES
Attorney General of the State of New York

By: 
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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
August 4, 2023

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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

Apt No. / Year	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

PLAINTIFF'S RULE 202.8-g STATEMENT OF MATERIAL FACTS

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Pursuant to Section 202.8-g of the Uniform Civil Rules for the Supreme Court and County Court and the Court's Order dated June 9, 2023 (NYSCEF No. 636), Plaintiff the People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York, submit the following statement of material facts as to which there are no genuine issues to be tried:

I. Donald J. Trump's Statements of Financial Condition are False and Misleading

A. Preparation of the Statements

1. Each year from 2011 through 2021 the Trump Organization prepared an annual Statement of Financial Condition for Donald J. Trump ("Statement" or "SFC").

2. Each Statement contained an assertion of Donald Trump's net worth, as of the date of the statement, based principally on asserted values of particular assets minus outstanding liabilities.

3. From at least 2011 until 2020, Mr. Trump's Statements were compiled by accounting firm Mazars. (Ex. 1 at -136; Ex. 2 at -313; Ex. 3 at -039; Ex. 4 at -719; Ex. 5 at -693; Ex. 6 at -1983; Ex. 7 at -1841; Ex. 8 at -2724; Ex. 9 at -789; Ex. 10 at -247)

4. Another accounting firm, Whitley Penn, compiled the June 30, 2021 Statement. (Ex. 11 at -417)

5. The process for preparing each Statement remained essentially the same throughout the period 2011 through 2021. The asset valuations for the Statements were be prepared by staff at the Trump Organization. For the Statements from 2011 through 2015, Jeffrey McConney was the Trump Organization employee with primary responsibility for the preparation of the Statements, working under the supervision of Allen Weisselberg. (Ex. 54 at 64:17-70:21) For the 2016 Statement forward, and beginning on or about November 16, 2016,

Mr. Weisselberg and Mr. McConney tasked a junior employee, Patrick Birney, with primary responsibility for the preparation of the Statements, working under their supervision. (Ex. 54 at 64:22-65:25)

6. The valuations, which were calculated in an Excel spreadsheet referred to as "JeffSupportingData" or Jeff's Supporting Data, were forwarded each year to the accounting firm along with supporting documents to be compiled by the accounting firm into a report that would become the SFC in each year. *See, e.g.,* Ex. 12.

7. From 2011 through 2021 Mazars would generate an annotated version of the supporting spreadsheet linking to the backup support for various assumptions provided by the Trump Organization. (Exs. 13-22).

8. A similar supporting spreadsheet was provided to Whitley Penn for 2021. Ex. 23.

9. From 2011 through 2015, each SFC stated 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." (Ex. 1 at -132; Ex. 2 at -309; Ex. 3 at -035; Ex. 4 at -715; Ex. 5 at -689) Accounting principles generally accepted in the United States of America are also referred to as "GAAP." (*See, e.g.,* Ex. 4 at –719)

10. From 2016 through 2020 each SFC stated that "The Trustees of The Donald J. Trump Revocable Trust dated April 7, 2014, as amended, on behalf of Donald J. Trump are responsible for the accompanying statement of financial condition . . . and the related notes to the

financial statement in accordance with accounting principles generally accepted in the United States of America." (Ex. 6 at -1981; Ex. 7 at -1841; Ex. 8 at -2724; Ex. 9 at -789).

11. In 2020 and 2021 the SFC stated that "The Trustee[s] of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended, on behalf of Donald J. Trump are responsible for the accompanying personal financial statement, which comprises the statement of financial condition . . . and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of America." (Ex. 10 at -246; Ex. 11 at -416).

12. Each year from 2011 through 2021, the SFC included a "Note 1" entitled "Basis of Presentation" that read: "Assets are stated at their estimated current values and liabilities at their estimated current amounts." (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).

1. Engagement Letters

13. Mazars entered into an engagement letter with the Trump Organization each year between 2011 and 2020 concerning the preparation of the SFC.

14. In 2011 the engagement letter with Mazars noted: "The objective of a compilation is to present in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the financial statements." (Ex. 24 at -3112) The engagement letter further identified five specific "departures from generally accepted accounting principles" that would be disclosed in the report. (Ex. 24 at -3113)

15. Between 2012 and 2015 the engagement letter with Mazars noted: "The objective of a compilation is to assist you in presenting financial information in the form of financial

statements. We will utilize information that is your representation without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in conformity with accounting principles generally accepted in the United States of America." (Ex. 25 at -3390; Ex. 26 – 012; Ex. 27 at -308; Ex. 28 at -618) The engagement letters further identified the specific "departures from generally accepted accounting principles" that would be disclosed in the report. (Ex. 25 at -3391; Ex. 26 – 012; Ex. 27 at -309; Ex. 28 at -619) Under "Management Responsibilities" the engagement letters noted that among other things, the Trump Organization was responsible for: (i) "the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America," (ii) "designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial statements," (iii) "the selection and application of accounting principles," and (iv) "making all financial records and related information available to us and for the accuracy and completeness of that information." (Ex. 25 at -3392; Ex. 26 – 013; Ex. 27 at -310; Ex. 28 at -620)

16. Between 2016 and 2020 the engagement letters with Mazars noted that the objective of the engagement was to "prepare the financial statement in accordance with accounting principles generally accepted in the United States of America based on information provided by you," and "apply accounting and financial reporting expertise to assist you in the presentation of the financial statement without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statement in order

for it to be in accordance with accounting principles generally accepted in the United States of America." (Ex. 29 at –1256; Ex. 30 – 1798; Ex. 31 at –2672; Ex. 32 at –1733; Ex. 33 at – 2191)

17. The engagement letters from 2016 through 2020 further identified the specific departures from GAAP that would be disclosed in the SFCs. (Ex. 29 at –1257; Ex. 30 – 1799; Ex. 31 at –2673; Ex. 32 at –1733-34; Ex. 33 at – 2191-92)

18. The engagement letters from 2016 through 2020 contained a section entitled "Your Responsibilities" that noted, among other things, the Trump Organization was responsible for: (i) "The selection of accounting principles generally accepted in the United States of America as the financial reporting framework to be applied in the preparation of the financial statement," (ii) "The preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and the inclusion of all informative disclosures that are appropriate for accounting principles generally accepted in the United States of America," (iii) "The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement," and (iv) providing Mazars with "access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statement." (Ex. 29 at –1257-58; Ex. 30 – 1799-1800; Ex. 31 at –2673-74; Ex. 32 at –1734; Ex. 33 at – 2192-93)

19. 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)

20. Thereafter, Whitley Penn entered into an engagement letter with the Trump Organization in 2021 concerning the preparation of the SFC. The 2021 engagement letter with Whitely Penn stated that the objective of the engagement was to "Prepare financial statements in accordance with GAAP based on information provided by you," and "Apply accounting and financial reporting expertise to assist you in the presentation of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for them to be in accordance with GAAP." (Ex. 33 at –460)

21. Under a section entitled "Your Responsibilities" the 2021 engagement letter with Whitley Penn noted that among other things, the Trump Organization was responsible for: (i) "The selection of GAAP as the financial reporting framework to be applied in the preparation of the financial statement," (ii) "The preparation and fair presentation of the financial statement in accordance with GAAP and the inclusion of all informative disclosures that are appropriate for GAAP," (iii) "The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement," and (iv) providing Whitley Penn with "Access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statement." (Ex. 33 at –461)

2. Representation Letters

22. Each year, from 2011 through 2020 the Trump Organization would send Mazars a representation letter concerning the preparation of the SFC.

23. From 2011 through 2014 the representation letter the Trump Organization to Mazars stated, among other things, that:

a. The Statement referred to above is fairly presented in conformity with accounting principles generally accepted in the United States of America. All assets are presented at their estimated current values and all liabilities are presented at their estimated current amounts which have been determined in accordance with guidelines promulgated by the American Institute of Certified Public Accountants except to the extent noted in the Accountants' Compilation Report which was annexed to the Statement. (Ex. 35 at -3117; Ex. 36 at -3397; Ex. 37 at -020; Ex. 38 at -316)

b. There are no material transactions that have not been properly recorded in the accounting work papers underlying the Statement other than those exceptions from accounting principles generally accepted in the United States of America that are noted in the Accountants' Compilation Report. (Ex. 35 at -3117; Ex. 36 at -3397; Ex. 37 at -020; Ex. 38 at -316)

c. We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities other than those noted in the accounting work papers underlying the Statement. (Ex. 35 at -3117; Ex. 36 at -3397; Ex. 37 at -020; Ex. 38 at -316)

d. There are no other material liabilities or gain or loss contingencies that are required to be accrued or disclosed by accounting principles generally accepted in the United States of America other than guarantees that may exist relating to whose omission has been noted to in the Accountants' Compilation Report. (Ex. 35 at -3118; Ex. 36 at -3398; Ex. 37 at -021; Ex. 38 at -317)

e. We believe that the carrying amounts of all material assets will be recoverable over a reasonable period. (Ex. 35 at -3118; Ex. 36 at -3398; Ex. 37 at -021; Ex. 38 at -317)

f. Mr. Trump has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets, or has any asset been pledged as collateral other than those noted in the Statement. (Ex. 35 at -3118; Ex. 36 at -3398; Ex. 37 at -021; Ex. 38 at -317)

g. Related party transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been properly recorded. (Ex. 35 at -3118; Ex. 36 at -3398; Ex. 37 at -021; Ex. 38 at -317)

24. In 2015 the representation letter from the Trump Organization to Mazars stated, among other things, that:

a. We confirm that we are responsible for the preparation and fair presentation of the statement of financial condition in accordance with accounting principles generally accepted in the United States of America and the selection and application of accounting policies. (Ex. 39 at -626)

b. Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a

reasonable person using the information would be changed or influenced by the omission or misstatement. (Ex. 39 at -626)

c. The financial statement . . . is fairly presented in accordance with accounting principles generally accepted in the United States of America apart from a series of specified exceptions. (Ex. 39 at -626)

d. We have made all financial records and related data available to you. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation. (Ex. 39 at -627)

e. No material transactions exist that have not been properly recorded in the accounting records underlying the financial statement. (Ex. 39 at -627)

f. We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities. (Ex. 39 at -628)

g. We have satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor have any assets been pledged, except as made known to you and disclosed in the notes to the financial statement. (Ex. 39 at -628)

h. Related party transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been properly recorded. (Ex. 39 at -628)

25. From 2016 through 2019 the representation letter from the Trump Organization to Mazars stated, among other things, that:

a. We 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, except for certain specified departures. (Ex. 40 at -1266; Ex. 41 at -1805; Ex. 42 at -2679; Ex. 43 at -1740)

b. We have made available to you all financial records and related data available to you, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation. (Ex. 40 at -1267; Ex. 41 at -1806; Ex. 42 at -2680; Ex. 43 at -1741)

c. All material transactions have been recorded and have been properly reflected in the financial statement. (Ex. 40 at -1267; Ex. 41 at -1806; Ex. 42 at -2680; Ex. 43 at -1741)

d. We have no plans or intentions that may materially affect the carrying amounts [or values] or classification of assets and liabilities. (Ex. 40 at -1267; Ex. 41 at -1806; Ex. 42 at -2680; Ex. 43 at -1741)

e. We have satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor have any assets been pledged, except as made known to you and disclosed in the notes to the financial statement. (Ex. 40 at -1267; Ex. 41 at -1806; Ex. 42 at -2680; Ex. 43 at -1741)

f. Related party transactions, including loans, transfers, leasing arrangements, and guarantees have been properly recorded. (Ex. 40 at -1268; Ex. 41 at -1807; Ex. 42 at -2681; Ex. 43 at -1742)

g. [In 2016-17] We have identified all accounting estimates that could be material to the financial statement, including the key factors and significant assumptions underlying those estimates, and we believe the estimates are reasonable in the circumstances. (Ex. 40 at -1268; Ex. 41 at -1807)

h. [In 2018-19] Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable in the circumstances. (Ex. 42 at -2681; Ex. 43 at -1742)

26. In 2020 the representation letter from the Trump Organization to Mazars stated, among other things, that:

a. We 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, except for certain specified departures. (Ex. 44 at -3377)

b. We have made available to you all financial records and related data, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements. (Ex. 44 at -3377)

c. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices. (Ex. 44 at -3377)

d. All transactions have been recorded and have been properly reflected in the financial statements. (Ex. 44 at -3377)

e. There are no uncorrected misstatements. (Ex. 44 at -3377)

f. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities. (Ex. 44 at -3378)

g. Related-party transactions and related accounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements, and guarantees have been properly recorded. (Ex. 44 at -3378)

h. The Company has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged other than disclosed on the balance sheet. (Ex. 44 at -3378)

i. We believe significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable in the circumstances. (Ex. 44 at -3378)

27. In 2021 the representation letter from the Trump Organization to Whitley Penn stated, among other things, that:

a. We acknowledge our responsibility and have fulfilled our responsibilities for the preparation and fair presentation of the SOFC in accordance with accounting principles generally accepted in the United States of America ("GAAP"), except for certain specified departures. (Ex. 45 at -103)

b. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable. (Ex. 45 at -103)

c. We have provided you with access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the SOFC, such as records, documents, and other matters. (Ex. 45 at -104)

d. The books and records for the assets reflected in the SOFC are complete in all material respects. (Ex. 45 at -104)

e. We have no knowledge of any fraud or suspected fraud, or allegations of any fraud or suspected fraud, that could have a material effect on the SOFC. We have previously disclosed to you certain indictments and ongoing investigations, but we do not believe that these have any effect on the SOFC. (Ex. 45 at -104)

f. We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities other than as disclosed herein. (Ex. 45 at -104)

g. We have satisfactory title to all owned assets, and no material liens or encumbrances on such assets exist, nor has any asset been pledged as collateral, except as disclosed to you and reported in the SOFC. (Ex. 45 at -104)

3. Accounting Standards

28. GAAP is the recognized set of accounting rules for public, private, and not-for-profit entities in the United States. The Accounting Standards Codification ("ASC") is the authoritative source of GAAP for nongovernmental entities. The ASC is comprised of numerous GAAP standards issued by recognized authorities over many decades.

29. One GAAP standard is specifically designed for the financial reporting of individuals, ASC 274 – "Personal Financial Statements," which states that "Personal financial statements are prepared for individuals either to formally organize and plan their financial affairs in general or for specific purposes, such as obtaining of credit, income tax planning, retirement planning, gift and estate planning, or public disclosure of their financial affairs." (Ex. 46)

30. ASC 274 requires asset values reported in personal financial statements to be based on "Estimated Current Value." (Ex. 46)

31. 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." (Ex. 219)

32. Accounting standard setters selected "Estimated Current Value" as a basis for reporting asset values in personal financial statements because the "primary focus of personal financial statements is a person's assets and liabilities, and the primary users of personal financial statements normally consider estimated current value information to be more relevant for their decisions than historical cost information. Lenders require estimated current value information to assess collateral, and most personal loan applications require estimated current value information. Estimated current values are required for estate, gift, and income tax planning, and estimated current value information about assets is often required in federal and state filings of candidates for public office" (Ex. 46 at 10-05-2)

33. ASC 274 further states that "personal financial statements shall include sufficient disclosures to make the statements adequately informative. That paragraph states that the

disclosures may be made in the body of the financial statements or in the notes to financial statements." (Ex. 46 at 10-45-13)

34. ASC 274 includes "illustrative notes" showing appropriate disclosures for a personal financial statement. An example of an interest in a real estate limited partnership that utilizes a capitalization rate, discloses that rate:

> **NOTE 4.**The investment in Kenbruce Associates is an 8 percent interest in a real estate limited partnership. The estimated current value is determined by the projected annual cash receipts and payments capitalized at a 12 percent rate.

35. Where a future interest is valued, the discount rate used to arrive at that valuation is disclosed:

> **NOTE 6.**Jane Person is the beneficiary of a remainder interest in a testamentary trust under the will of the late Joseph Jones. The amount included in the accompanying statements is her remainder interest in the estimated current value of the trust assets, discounted at 10 percent.

B. Inflated Assets

1. Donald Trump's Triplex Apartment

36. Mr. Trump's Triplex is valued as an asset in the Statements from 2011 through 2021. (Exs.1-11)

37. 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. (Ex. 14 at Rows 833-834, *see also* Ex. 220 at -3611; Ex. 15 at Rows 799-800, *see also*, Ex. 358; Ex. 16 at Rows 843-844; Ex. 17 at Rows 882; Ex. 18 at Rows 913)

38. In reality, the Triplex was 10,996 square feet. (Ex. 47; Ex. 48; Ex. 49 at 507:5-9; Ex. 50 at 216:24-219:5; Ex. 51 at ¶ 28 (can neither admit nor deny that trump's triplex apartment in Trump Tower "never exceeded 11,000 square feet in size"))

39. As a result of this error alone, the value of the Triplex reflected on each Statement from 2012 through 2016 was inflated by roughly $100-$200 million. (Ex. 49 at 507:5-22)

40. The chart below shows the increase in the value of the Triplex that is attributable to the incorrect square footage:

Statement Year	Triplex Value Based on 30,000 SF	Corrected Triplex Value Based on 10,996 SF	Inflated Amount
2012	$180,000,000	$65,976,000	$114,024,000
2013	$200,000,000	$73,306,667	$126,693,333
2014	$200,000,000	$73,306,667	$126,693,333
2015	$327,000,000	$119,856,400	$207,143,600
2016	$327,000,000	$119,856,400	$207,143,600

41. 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 were sent to Mr. Weisselberg in 2012. (Exs. 47, 48)

42. 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.

43. 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. (Exs. 47, 48)

44. Mr. Weisselberg – along with Donald Trump, Jr. and Eric Trump – was on an email chain in March 2017, in which Forbes Magazine highlighted the apartment's correct size; the email specifically alerted those Trump Organization personnel that Mr. Trump had told Forbes his apartment was approximately 33,000 square feet, but Forbes had looked at property records and concluded it was less than one third that size. (Ex. 52)

45. Despite being apprised of those specific facts, Mr. Weisselberg and Donald Trump, Jr. only days later represented to Mazars that the 2016 Statement was accurate despite incorporating the fraudulently inflated number. (Ex. 40)

46. Even when confronted with the 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. (Ex. 53)

47. Only after Forbes published an article in May 2017 entitled "Donald Trump has Been Lying About the Size of His Penthouse" did McConney, Weisselberg, and Mr. Trump stop fraudulently inflating the square footage of the Triplex when calculating the value for the Statements. (Ex. 19 at Rows 971; Ex. 20 at Rows 983; Ex. 21 at Rows 1010-1011 Ex. 22 at Rows 1100-1101; Ex. 23 at Rows 1093; Ex. 54 at 693:4-713:8)

48. The Triplex was only included in a catch-all category entitled "other assets" that omitted essentially all details about its value; accordingly, no itemized value was provided, and

no recipient of the Statements would have known the inputs used to generate the value. (Exs. 1-11)

2. Seven Springs

49. 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 Seven Springs LLC, a Trump Organization subsidiary. (Ex. 55; Ex. 1 at -3148; Ex. 56 at 57:20-58:3)

50. 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. (Ex. 57 at -4873-74)

51. The same bank's records indicate that a 2006 appraisal showed an "as-is" market value of $30 million. (Ex. 58 at 1)

52. On October 10, 2012, Sheri Dillon as counsel for Seven Springs LLC accepted a proposal from Robert Heffernan to prepare an appraisal to estimate the fair market value of a 6-lot subdivision to be developed on the portion of the Seven Springs property located in the Town of New Castle. (Ex. 59 at -6213-14)

53. The 6-lot subdivision to be valued by Mr. Heffernan was based on a sketch prepared by Insite Engineering, Surveying, Landscape Architecture, P.C. (Ex. 60 at –890-93; Ex. 61 at 213:4-15)

54. Eric Trump was aware of the appraisal being performed by Mr. Heffernan and was involved in obtaining information requested by Mr. Heffernan about the costs and fees to obtain town approval for the subdivision. (Ex. 60 at -893; Ex. 56 at 166:20-167:23)

55. Mr. Heffernan advised Robert Leonard, counsel for Seven Springs LLC, that his preliminary estimate for the net present value of each lot was around $700,000 for the subdivision. (Ex. 61 at 203:7-206:23)

56. After Mr. Heffernan provided Mr. Leonard with his preliminary estimate of value, Seven Springs LLC declined to move forward with the formal appraisal and Mr. Heffernan did no further work on the assignment. (Ex. 61 at 204:21-205:4, 226:8-228:20)

57. In July 2014, acting as an agent of the Trump Organization, attorney Sheri Dillon engaged Cushman & Wakefield, Inc. ("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." (Ex. 62 at -16742)

58. David McArdle, an appraiser at Cushman, performed this engagement, which was to provide a "range of value" of the Seven Springs property based on developing and selling residential lots on the property. (Ex. 63 at 50:11-24)

59. Mr. McArdle valued the sale of eight lots in the Town of Bedford, six lots in New Castle, and ten lots in North Castle. (Ex. 64 at Rows 13-16, Cols. H-J)

60. Under his "subdivision 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. (Ex. 64 at Rows 13-16, Cols. H-J; Ex. 63 at 456:25-457:21)

61. 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. (Ex. 64 at Rows 3-36, Cols. O-AI)

62. Using another valuation technique, Mr. McArdle also reached values "Before" and "After" an easement donation of $64 million and $34 million, respectively, putting the value of the property after the donation at $30 million. (Ex. 63 at 450:6-451:23; Ex. 122 at Rows 39-43, Cols. C-L)

63. Mr. McArdle communicated to Ms. Dillon the result of his work in late August or September 2014, months before the finalization of the 2014 Statement on November 7, 2014, which Ms. Dillon then shared with Eric Trump. (Ex. 63 at 445:10-18, 478:25-479:7, 505:22-506:15; Ex. 56 at 212:17-213:20)

64. After receiving the 2014 valuation from Mr. McArdle, Eric Trump engaged Mr. McArdle in mid-September 2014 to conduct an appraisal for Seven Springs LLC to value a conservation easement placed over the property. (Ex. 65 at -16762; Ex. 56 at 214:16-215:9, 217:19-25)

65. Seven Springs LLC decided not to proceed with obtaining a formal appraisal for a conservation easement and terminated the engagement with Mr. McArdle on October 6, 2014. (Ex. 66 at -50998)

66. The Trump Organization did ultimately decide to pursue the donation for the 2015 tax year, and in March 2016, Seven Springs LLC received from Cushman an appraisal of Seven Springs, including the planned development. (Ex. 67 at -202; Ex. 68 at -9123-9126; Ex. 56 at 222:23-223:4, 225:23-226:4)

67. Cushman's appraisal concluded that the entire property as of December 1, 2015 was worth $56.5 million. (Ex. 68 at -9126)

68. For the 2015 Statement, Mr. Trump valued Seven Springs at $56 million based on the Cushman appraisal for the easement donation, which value was incorporated into the aggregate value of $557.6 million for "Other assets." (Ex. 5 at -691; Ex. 17 at Row 895)

69. For the Statements from 2016 to 2018, the property was valued at $35.4 million, which value was incorporated into the aggregate value for "Other assets." (Ex. 6 at -1983; Ex. 18 at Row 927; Ex. 7 at -1842, -1861; Ex. 19 at Row 986; Ex. 8 at -2744; Ex. 20 at Row 997)

70. In June 2019, the Trump Organization received another appraisal of the Seven Springs estate prepared by Cushman for The Bryn Mawr Trust Company which valued the property at $37.65 million. (Ex. 69 at -71173)

71. For the Statements from 2019 to 2021, the property was valued at $37.65 million based on the June 2019 appraisal, which value was incorporated into the aggregate value for "Other assets." (Ex. 9 at -1790, -1809; Ex. 21 at Row 1024; Ex.10 at -2248, -2263; Ex. 22 at Row 1109; Ex. 11 at -418, -433; Ex. 23 at Row 1102)

72. Despite bank appraisals from 2000 and 2006 valuing the property at $25 million and $30 million, respectively, Mr. Heffernan's preliminary estimate of fair value of $700,000 per lot for a 6-lot subdivision development, and Mr. McCardle's 2014 analysis putting the value between $30-$50 million, the Statements from 2011 to 2014 valued the property at many multiples of these values. *See, infra*, at ¶¶ 107.

73. The 2011 Statement valued the property at $261 million and the Statements for 2012 to 2014 valued the property at $291 million, based in part on an estimated profit for developing homes of $23 million per lot. (Ex. 1 at -3134, -3148; Ex.13 at Rows 669, 677; Ex. 2

at -6311; Ex. 14 at Rows 686, 695; Ex. 3 at -037; Ex. 15 at Rows 649, 658; Ex. 4 at -0717; Ex.16 at Rows 671, 680)

74. The listed source for the valuations of Seven Springs from 2012-2014 is a series of telephone conversations with Eric Trump. (Ex. 14 at Row 679; Ex. 15 at Rows 638, 640; Ex. 16 at Row 660)

75. Based on the highest appraised value of $56.5 million determined by Cushman in 2015, the property was vastly overvalued in 2011 through 2014 as depicted in the chart below:

Year	Statement Value	Difference between Statement Value and 2015 Appraisal
2011	$261,000,000	$204,500,000
2012	$291,000,000	$234,500,000
2013	$291,000,000	$234,500,000
2014	$291,000,000	$234,500,000

76. Regarding the change from the 2014 value in the next year, Donald Trump testified that "we dropped that number, because we thought that number was too high." (Ex. 50 at 195:14-196:23)

3. 40 Wall Street

77. 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.

2011 Valuation of 40 Wall

78. In August 2010, Cushman prepared an appraisal of 40 Wall Street for Capital One Bank that valued the building at $200,000,000, as-of August 1, 2010, with a prospective market value of $280,000,000, as-of August 1, 2015 (the "2010 40 Wall Appraisal") . (Ex. 70 at -4723-4724; Ex. 71 at -1182-1183) The appraisal was signed by Douglas Larson, Naoum Papagianopoulos and Robert Nardella of Cushman. (Ex. 70 at -4725; Ex. 71 at -1184)

79. On December 20, 2010, George Ross, Vice President of 40 Wall Street LLC, sent an excerpt of the 2010 40 Wall Appraisal to Percy Pyne of Pyne Companies Ltd. (Ex. 71 at -1180) Mr. Ross wrote, "If you would like a complete copy of the appraisal, which consists of 130 pages, please let me know." (*Id.*)

80. The 2011 SFC represents that the $524,700,000 estimated current value of 40 Wall Street was "based upon a successful renegotiation of the ground lease and an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation, and a capitalization rate was applied to the resultant cash flow to be derived from the buildings operations." (Ex. 1 at -3139)

81. The supporting spreadsheet for the 2011 SFC shows that the valuation for 40 Wall Street was derived by applying a cap rate of 5% to net operating income of $26,234,000. (Ex. 13 at Rows 112-121)

82. The net operating income of $26,234,000 reflected income of $47,819,400 and expenses of $21,585,000. The $47,819,400 of income was based on projected "Average Income for the five year period 2013 – 2017." The $21,585,000 of expenses was based on projected "Average Expenses for the five year period 2013 – 2017." (Ex. 13 at Rows 114-118)

83. Donald Bender testified that it was misleading for the Trump Organization not to provide Mazars with the 2010 40 Wall Appraisal and that if he had been aware of it, that could have led to the 2011 SFC not being issued. (Ex. 72 at 661:12-664:7)

84. In November 2011, Cushman prepared another appraisal of 40 Wall Street for Capital One Bank ("Capital One") that valued the building at $200,000,000, as-of November 1, 2011, with a prospective market value of $280,000,000, as-of November 1, 2014. (Ex. 73 at -360-361) The appraisal was signed by Douglas Larson, Naoum Papagianopoulos and Robert Nardella of Cushman. (Ex. 73 at -362)

2012 Valuation of 40 Wall

85. In October 2012, Cushman prepared an appraisal of 40 Wall Street for Capital One that valued the building at $220,000,000, as-of November 1, 2012, with a prospective market value of $260,000,000, as-of November 1, 2015 (the "2012 40 Wall Appraisal"). (Ex. 74 at -0758-0759) The 2012 40 Wall Appraisal was signed by Douglas Larson, Naoum Papagianopoulos and Robert Nardella of Cushman. (Ex. 74 at -0760)

86. The Trump Organization had a copy of the 2012 40 Wall Appraisal in its files. (Ex. 75 at -8605)

87. Allen Weisselberg testified that in 2011 or 2012, he had "the appraisal for 40 Wall showing a value of about $200 million, [he] listed a higher value on the statement of financial condition because it was [his] view that the building was worth more." (Ex. 49 at 135:20-138:06)

88. The 2012 SFC represents that the $527,200,000 estimated current value of 40 Wall Street was "based upon a successful renegotiation of the ground lease and an evaluation

made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation, and a capitalization rate was applied to the resultant cash flow to be derived from the buildings operations." (Ex. 2 at -6316)

89. The supporting spreadsheet for the 2012 SFC shows that the valuation for 40 Wall Street was derived by applying a cap rate of 4.31% to net operating income of $22,722,000. (Ex. 14 at Rows 110-133)

90. The net operating income of $22,722,000 reflected income of $43,332,000 and expenses of $20,610,000. The $43,332,000 of income consisted of: (i) $35,212,000 from "Income-rented space," and (ii) $8,120,000 from "Income-vacant space." (Ex. 14 at Rows 115-121)

91. The supporting spreadsheet for 2012 shows that the cap rate of 4.31% was based on "Information provided by Doug Larson of Cushman & Wakefield, Inc which reflects cap rates of 4.23% and 4.39% for similar sized office buildings at 14 Wall Street and 4 NY Plaza. We used the average rate for these two properties (i.e. 4.31%)." (Ex. 14 Rows 131-133)

92. Donald Bender testified that it was misleading for the Trump Organization not to provide Mazars with the 2012 40 Wall Appraisal and that if he had been aware of it, that could have led to the 2012 SFC not being issued. (Ex. 72 at 665:15-666:18) Donald Bender testified in 2023 that, over the previous ten or twelve years, he asked the Trump Organization every year for appraisals in connection with the Statement of Financial Condition engagement, and specifically, "Do you have any other appraisals?" (Ex. 421 at 239:8-16; 229:9-24) Mr. Bender testified that he made this request to Mr. McConney. (Ex. 421 at 242:21-24) When asked whether "Mr. McConney's annual response to your request for appraisals" was "I've sent you everything I've

got," Mr. Bender responded that Mr. McConney's response was, "I have nothing else." (Ex. 421 at 243:6-10)

2013 Valuation of 40 Wall

93. The 2013 SFC represents that the $530,700,000 estimated current value of 40 Wall Street was "based upon a successful renegotiation of the ground lease and an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation, and a capitalization rate was applied to the resultant cash flow to be derived from the buildings operations." (Ex. 3 at -042)

94. The supporting spreadsheet for the 2013 SFC shows that the valuation for 40 Wall Street was derived by applying a cap rate of 4.31% to net operating income of $22,872,800. (Ex. 15 at Rows 110-142)

95. The net operating income of $22,872,800 reflected income of $43,552,800 and expenses of $20,680,000. The $43,552,800 of income consisted of: (i) $36,981,000 from "Income-rented space," (ii) $5,171,800 from "Income-vacant office space," and (iii) $1,400,000 from "Income-vacant retail space,". (Ex. 15 at Rows 115-122)

96. The supporting spreadsheet for 2013 shows that the cap rate of 4.31% was carried over from 2012 because "No similar sized buildings sold in the downtown area in the last year so we used the same rate cap." (Ex. 15 at Rows 141-142)

97. In an annual review dated October 31, 2013, Capital One valued 40 Wall at $250,489,000. (Ex. 76 at -0905)

2014 Valuation of 40 Wall

98. The 2014 SFC represents that the $550,100,000 estimated current value of 40 Wall Street was "based upon a successful renegotiation of the ground lease and an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation, and a capitalization rate was applied to the resultant cash flow to be derived from the buildings operations." (Ex. 4 at -722)

99. The supporting spreadsheet for the 2014 SFC shows that the valuation for 40 Wall Street was derived by applying a cap rate of 4.34% to net operating income of $23,873,545. (Ex. 16 at Rows 110-142)

100. The net operating income of $23,873,545 reflected "Stabilized-based on cash flow prepared July 2014 including pending leases, Green Ivy and vacant space." (Ex. 16 at Rows 137-138)

101. Based upon the supporting data provided to Mazars, Green Ivy did not start paying rent until November 18, 2016. (Ex. 77)

102. The supporting spreadsheet for 2014 shows that the cap rate of 4.34% was used based on "Information provided by Doug Larson of Cushman & Wakefield, Inc. Only one similar sized Class A building sold in the downtown area in the last year (110 William Street) with a cap rate of 4.97%. There was one Class B building sold recently (61 Broadway). The cap rate for this builing [sic] is 4.46%. According to Doug, the spread between Class A and Class B buildings is typically 50 -100 basis points. To be conservative, we reduced the cap rate by 75 basis points to 3.71%. We used the average of these two rates." (Ex. 16 at Rows 148-152)

103. In an annual review dated November 17, 2014, Capital One valued 40 Wall at $257,729,000. (Ex. 78 at -0385)

2015 Valuation of 40 Wall

104. In June 2015, Cushman prepared an appraisal of 40 Wall Street for Ladder Capital Finance LLC ("Ladder Capital") that valued the building as-is at $540,000,000, as-of June 1, 2015 (the "2015 40 Wall Appraisal"). (Ex. 79 at -9324) The appraisal was signed by Douglas Larson, Naoum Papagianopoulos and Robert Nardella of Cushman. (Ex. 79 at -9325)

105. One of the comparable properties considered by Cushman was 100 Wall Street. In comparing 100 Wall Street to 40 Wall, "a downward adjustment was required for property rights conveyed. A downward adjustment was required for size under the premise that smaller properties sell for more per square foot than larger properties." (Ex. 79 at -9419)

106. The Trump Organization had a copy of the 2015 40 Wall Appraisal in its files. (Ex. 75 at -8605)

107. In an email exchange from August 4, 2015, Allen Weisselberg discussed the $540 million valuation in the Cushman appraisal with his son Jack Weisselberg, an employee at Ladder Capital. (Ex. 80)

108. The 2015 SFC represents that the $735,400,000 estimated current value of 40 Wall Street was "based upon an evaluation made by Mr. Trump in conjunction with his associates and outside professionals of leases that have been signed or are currently the subject of negotiation, and a capitalization rate was applied to the resultant cash flow to be derived from the buildings operations." (Ex. 5 at -696)

109. The supporting spreadsheet for the 2015 SFC shows that the valuation for 40 Wall Street was derived by applying a cap rate of 3.29% to net operating income of $24,194,280. (Ex. 17 at Rows 120-127)

110. The net operating income of $24,194,280 consisted of: (i) $18569,800 from "2016 Budget before debt service, cap ex, TI, leasing commissions," (ii) $3,665,000 from "Additional income to bring rent roll to a stabilized basis," (iii) $891,985 from "Additional income for leases that are currently being negotiated," and (iv) $1,067,495 from "Additional income - vacant space." (Ex. 17 at Rows 120-124)

111. The supporting spreadsheet for 2015 shows that the cap rate of 3.29% was used based on "Based on information provided by Douglas Larson of Cushman & Wakefield on 11/23/2015 which reflects a rate cap of 3.04% for 100 Wall Street. Based on a telephone conversation with Doug Larsen [sic] on 2/1/2016, since the ground lease still has about 190 years left the effect on the cap rate is minimal. To be conservative we increased the cap rate .25% to 3.29%." (Ex. 17 at Rows 141-145)

112. Jeffrey McConney sent Donald Bender an excerpt of the 2015 40 Wall Appraisal to support using the 3.04% cap rate from 100 Wall Street. (Ex. 81) But Mr. McConney excluded from the excerpt a section of the appraisal showing that Mr. Larson declined to use the 3.04% cap rate from 100 Wall Street and determined that a 4.25% was appropriate for 40 Wall Street. (Ex. 79 at -9324)

113. Donald Bender testified that it was misleading for the Trump Organization not to disclose the evaluation of the 100 Wall Street transaction in the 2015 40 Wall Appraisal and that

if he had been aware of it, that could have led to the 2011 SFC not being issued. (Ex. 72 at 670:14-674:14)

114. The chart below shows the increase in the value of 40 Wall over the independent valuations conducted between 2011 and 2015:

Year	SFC Value	Independent Value	Reduction
2011	$524,700,000	$200,000,000	$324,700,000
2012	$527,200,000	$220,000,000	$307,200,000
2013	$530,700,000	$250,489,000	$280,211,000
2014	$550,100,000	$257,729,000	$292,371,000
2015	$735,400,000	$540,000,000	$195,400,000

2016 Valuation of 40 Wall

115. The 2016 SFC represents that the $796,400,000 estimated current value of 40 Wall Street was "based upon an evaluation made by the Trustees in conjunction with their associates and outside professionals based on comparable sales." (Ex. 6 at -1988) The 2016 SFC stated that 40 Wall Street was a "72-story tower consisting of 1.3 million square feet." (Ex. 6 at -1988) The 2016 SFC did not disclose the change in methodology from 2015 used to determine the estimated current value of 40 Wall Street.

116. The supporting spreadsheet for the 2016 SFC shows that the valuation for 40 Wall Street was derived by multiplying 1,164,286 "Total SF" by a price of "$684 per sq ft from 60 Wall Street." (Ex. 18 at Rows 134-140)

117. The 2016 valuation did not reduce the value of 40 Wall Street to account for the ground rent due on the building.

118. The supporting data provided to Mazars consisted of printouts of articles concerning the sale of 60 Wall Street and did not come from outside professionals. (Ex. 82)

119. The supporting data provided to Mazars, noted that the sale of 60 Wall Street was $1 billion for a 95 percent stake at a price of $640 per square foot. (Ex. 82) The Trump Organization adjusted the price to $684 per square foot to reflect a 100 percent interest in the building. The supporting documents noted that the $640 price per square foot was "down from the $730 per square foot the tower traded at in June 2007." (Ex. 82)

120. In the 2007 SFC, the Trump Organization valued 40 Wall Street at $525,000,000. (Ex. 83 at 8)

121. In the 2015 40 Wall Appraisal, Cushman distinguished 60 Wall Street as a "large post-war building," as compared with 40 Wall Street, a pre-war building built in 1929. (Ex. 79 at -9369-70)

122. The 2015 40 Wall Appraisal did not identify 60 Wall Street as either "considered to be competitive" or "directly competitive" with 40 Wall Street. (Ex. 79 at -9370-74)

2017 Valuation of 40 Wall

123. The 2017 SFC represents that the $702,100,000 estimated current value of 40 Wall Street was "based upon an evaluation made by the Trustees in conjunction with their associates and outside professionals based on comparable sales." (Ex. 7 at -1847) The 2017 SFC stated that 40 Wall Street was a "72-story tower consisting of 1.3 million square feet." (Ex. 7 at -1847)

124. The supporting spreadsheet for the 2017 SFC shows that the valuation for 40 Wall Street was derived by multiplying 1,164,286 "Total SF" by a price of "$603 per sq ft from recent sales comps." (Ex. 19 at Rows 137-147)

125. The 2017 valuation did not reduce the value of 40 Wall Street to account for the ground rent due on the building.

126. The supporting data provided to Mazars, indicated that the Trump Organization selected the two highest price per square foot sales 10 "Downtown Office Improved Sales." (Ex. 84) The two buildings selected – 60 Wall Street and 85 Broad Street – were built in the 1980s. (Ex. 84)

127. The sale price of 60 Wall Street was identified as $624 per square foot, below the $684 per square foot used for the same sale in 2016. (Ex. 84)

128. The 2015 40 Wall Appraisal did not identify 60 Wall Street or 85 Broad Street as either "considered to be competitive" or "directly competitive" with 40 Wall Street. (Ex. 79 at -9370-74)

129. The 2015 40 Wall Appraisal did list 123 William Street as a "directly competitive building." (Ex. 79 at -9374, -9462) The supporting data provided to Mazars indicated that 123 William Street sold in March 2015 for a price of $463.96 per square foot. (Ex. 84) The 2015 40 Wall Appraisal considered that sale and adjusted the price down to $443.97 per square foot to account for comparisons with 40 Wall Street, including the "property rights conveyed." (Ex. 79 at -9419-9418)

2018 Valuation of 40 Wall

130. The 2018 SFC represents that the $720,300,000 estimated current value of 40 Wall Street was "based upon an evaluation made by the Trustees in conjunction with their associates and outside professionals based on comparable sales." (Ex. 8 at -2730) The 2018 SFC stated that 40 Wall Street was a "72-story tower consisting of 1.3 million square feet." (Ex. 8 at -2730)

131. The supporting spreadsheet for the 2018 SFC shows that the valuation for 40 Wall Street was derived by multiplying 1,164,286 "Total SF" by a price of "$647 per sq ft from recent sales comps." (Ex. 20 Rows 137-157) That total of $753,293,042 was then reduced by $33,000,000, reflecting ground rent of $1,650,000 and a cap rate of 5%.

132. The supporting spreadsheet identified the source for the "recent sales comps" as "Sales price per sq ft comps provided by Michael Papagionopoulous [sic] of Cushman & Wakefield on 9/11/18." (Ex. 20 at Rows 155-156) That email, however, makes no mention of 40 Wall Street, covers a list of all midtown and downtown office sales, and contains no analysis of whether any properties listed are comparable to 40 Wall Street. (Ex. 85) In a later thread in that chain, a Trump Organization employee confirms that "there haven't been any Downtown Class A Office Building sales since November 2017." (Ex. 86)

133. The supporting data provided to Mazars, indicated that the Trump Organization selected the two highest price per square foot sales 10 "Downtown Office Improved Sales." (Ex. 87) Once again 60 Wall Street was selected. But this time 85 Broad Street was excluded for a higher priced sale at 1 Liberty Plaza, built in 1972. (Ex. 87)

2019 Valuation of 40 Wall

134. The 2019 SFC represents that the $724,100,000 estimated current value of 40 Wall Street was "based upon an evaluation made by the Trustees in conjunction with their associates and outside professionals based on comparable sales." (Ex. 19 at -1795) The 2019 SFC stated that 40 Wall Street was a "72-story tower consisting of 1.3 million square feet." (Ex. 19 at -1795)

135. The supporting spreadsheet for the 2019 SFC shows that the valuation for 40 Wall Street was derived by multiplying 1,207,042 "Newly Measured Square Footage per email from Miles Fennon of Cushman & Wakefield on 9/24/19" by a price of "$630 per sq ft from recent sales comps." (Ex. 21 at Rows 135-161) That total of $760,436,460 was then reduced by $36,300,000, reflecting an increased ground rent of $1,815,000 and a cap rate of 5%.

136. The supporting spreadsheet identified the source for the "recent sales comps" as "Sales price per sq ft comps provided by Douglas Larson of Newmark on 7/8/19." (Ex. 21 at Rows 156-157)

137. That email, however, makes no mention of 40 Wall Street, covers a list of all midtown and downtown office sales, and contains no analysis of whether any properties listed are comparable to 40 Wall Street. (Ex. 88) In a later thread in that chain, a Trump Organization employee confirms that as of July 2019, "the last Class A Downtown sale was May 2018." (Ex. 89)

138. The supporting data provided to Mazars, indicated that once again 60 Wall Street, 85 Broad Street and 1 Liberty Plaza were selected as comparables. (Ex. 89)

2020-2021 Valuation of 40 Wall

139. The 2020 SFC represents that the $663,600,000 estimated current value of 40 Wall Street was "based on comparable sales." (Ex. 10 at -2258) The 2020 SFC stated that 40 Wall Street was a "72-story tower consisting of 1.2 million square feet." (Ex. 10 at -2258)

140. The supporting spreadsheet for the 2020 SFC shows that the valuation for 40 Wall Street was derived by multiplying 1,207,042 "Newly Measured Square Footage per email from Miles Fennon of Cushman & Wakefield on 9/24/19" by a price per square foot of $588. (Ex. 22 at Rows 122-128) That price per square foot was derived by taking "$692 per sq ft from 44 Wall Street sold March 2020 (per NYC)" and applying a "15% ppsf discount to account for the difference in size of the buildings and covid." (Ex. 22 at Rows 127-128) That total of $709,904,341 was then reduced by $46,300,001, reflecting an increased ground rent of $2,315,000 and a cap rate of 5%.

141. The supporting data provided to Mazars, shows that for the first time, the Trump Organization used a New York City Department of Finance website as support for a comparable valuation. (Ex. 90 -2345) A printout from the website showing "PTS Sales as of 11/12/2020" included a sale of 44 Wall Street at $200,000,000 with a "gross square feet" of 289,049 feet. (Ex. 90 -2345) Those numbers were used to calculate a price per square foot of $691.93. (Ex. 90 -2345)

142. But on April 8, 2020, the Trump Organization had received an email from Doug Larson with the correct transaction details. (Ex. 91) The report from Mr. Larson reflected the correct square footage of 336,000 for a price per square foot of $595 per square foot. (Ex. 91 -8232)

143. In 2021, the SFC simply repeated the valuation from 2020 because "The most relevant data point is the still 44 Wall St." (Ex. 23 at Row 120)

4. Mar-a-Lago

144. The Mar-a-Lago club in Palm Beach, Florida is subject to a host of restrictions on its use and development.

145. In 1993, Donald Trump submitted an application for a special exception to use Mar-a-Lago as a private social club. (Ex. 92) That application noted that "it is impractical for a single individual to continuously own Mar-a-Lago as a private estate at his or her sole expense. When The Post Foundation marketed the property after its return to the Foundation from the U.S. Government, it was almost impossible to sell. About 80 qualified buyers, thoroughly screened, inspected Mar-a-Lago and elected against even making an offer. H. Ross Perot was one prospect. Although 'everything is for sale at a price,' no one would step forward to make any offers for this so-called 'white elephant.'" (Ex. 92 at 3)

146. As a result of the application, Mr. Trump entered into a Declaration of Use Agreement with the Town of Palm Beach providing that the "use of the Land shall be for a private social club . . . ." (Ex. 107 at -697)

147. Two years later, in 1995 Mr. Trump signed a Deed of Conservation and Preservation Easement giving up his rights to use the property for any purpose other than a social club. (Ex. 93).

148. 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 their rights to develop the Property for any usage other than club usage." (Ex. 94)

149. Because of the limitations placed on Mar-a-Lago through these deeds, the property has been taxed as a club, leading to a lower tax rate than a private home.

150. This approach by the county has been public record for decades. In 2003, the Palm Beach County Appraiser Gary Nikolits was publicly quoted as saying Mar-a-Lago "no longer can be considered for a residential subdivision," and "because the value of the club property has gone up, people can't afford to belong because the tax load is so great. They have no intention of being anything but a club so they give up development rights." (Ex. 96)

151. In 2019 the Palm Beach County Assessor was quoted publicly as saying: "the value of the Mar-a-Lago property is figured each year using an 'income approach,' said Tim Wilmath, chief appraiser for the property appraiser's office. The formula, he explained, 'capitalizes' the net operating income that the private club reports to the property appraiser each year. The reason for using that formula can be traced, in part, to a "deed of development rights "recorded in 2002 that prevents the property from being redeveloped or used for any purpose other than a club, Wilmath said. That deed restriction extended existing redevelopment restrictions already detailed in a conservation and preservation easement deed executed by the National Trust for Historic Preservation in 1995, the year before Trump opened his private club." (Ex. 95)

152. Neither the Trump Organization nor Donald Trump challenged either of these statements or the approach taken by the county in appraising Mar-a-Lago.

2011 Valuation of Mar-a-Lago

153. In the 2011 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 1 at -3140) The estimated current value of that category is

$1,314,600,000 in total. (Ex. 1 at -3140) The estimated current value of Mar-a-Lago is not separately disclosed in the 2011 SFC. (Ex. 1 at -3140) The 2011 SFC states that the "estimated current value of $1,314,600 is based on an assessment of cash flow that is expected to be derived from club operations, the sale of residential units after subtracting the estimated costs to be incurred, or recent sales of properties in a similar location." (Ex. 1 at -3140) The valuation method used for Mar-a-Lago is not separately disclosed in the 2011 SFC.

154. The 2011 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 1 at -3140) The 2011 SFC states that, through June 30, 2011, the Club holds $38,040,000 in membership deposits, but that because "Mr. Trump will have use of those funds for that period with without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." (Ex. 1 at -3140) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2011 SFC.

155. The supporting spreadsheet for the 2011 SFC shows the value of Mar-a-Lago as $426,529,614. (Ex. 13 at Row 217) That amount is described as "Value if sold to an individual." (Ex. 13 at Row 185)

156. The value of $426,529,614 was obtained by generating an "Average value per acre" using two asking prices for Palm Beach property, that average is then multiplied by the total acres of Mar-a-Lago. (Ex. 13 at Row 2000212) That number is then increased by 30 percent

reflecting a "Premium for completed facility." (Ex. 13 at Row 213) A deduction is then made for "Member Deposits." (Ex. 13 at Row 215)

2012 Valuation of Mar-a-Lago

157. In the 2012 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 2 at -6317) The estimated current value of that category is $1,570,300,000 in total. (Ex. 2 at -6317) The estimated current value of Mar-a-Lago is not separately disclosed in the 2012 SFC. (Ex. 2 at -6317) The 2012 SFC states that the "estimated current value of $1,570,300,000 is based on an assessment of cash flow that is expected to be derived from club operations, cash expenditures to improve certain facilities, the sale of residential units after subtracting the estimated costs to be incurred, or recent sales of properties in a similar location." (Ex. 2 at -6317) The valuation method used for Mar-a-Lago is not separately disclosed in the 2012 SFC.

158. The 2012 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 2 at -6317) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2012 SFC.

159. The supporting spreadsheet for the 2012 SFC shows the value of Mar-a-Lago as $531,902,903. That amount is described as "Value if sold to an individual." (Ex. 14 at Rows 187-220)

160. The value of $531,902,903 was obtained by generating an "Average value per acre" using two asking prices for Palm Beach property, that average is then multiplied by the

total acres of Mar-a-Lago. That number is then increased by 30 percent reflecting a "Premium for completed facility." A deduction is then made for "Member Deposits." (Ex. 14 at Rows 187-220)

2013 Valuation of Mar-a-Lago

161. In the 2013 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 3 at -043) The estimated current value of that category is $1,656,200,000 in total. (Ex. 3 at -043) The estimated current value of Mar-a-Lago is not separately disclosed in the 2013 SFC. (Ex. 3 at -043) The 2013 SFC states that the "estimated current value of $1,656,200,000 is based on an assessment of cash flow that is expected to be derived from club operations, cash expenditures to improve certain facilities, the sale of residential units after subtracting the estimated costs to be incurred, or recent sales of properties in a similar location. That assessment was prepared by Mr. Trump working in conjunction with his associates and outside professionals." (Ex. 3 at -043) The valuation method used for Mar-a-Lago is not separately disclosed in the 2013 SFC.

162. The 2013 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 3 at -043) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2013 SFC.

163. The supporting spreadsheet for the 2013 SFC shows the value of Mar-a-Lago as $490,149,221. That amount is described as "Value if sold to an individual." (Ex. 15 at Rows 193-228)

164. The value of $490,149,221 was obtained by generating a "Value per acre" using "Actual selling price" of property in Palm Beach. That value per acre is then multiplied by the total acres of Mar-a-Lago. Amounts are then added for, "Construction of Grand Ballroom," "Construction of beach cabanas," and "Construction of tennis pavillion and teahouse." The total number is then increased by 30 percent reflecting a "Premium for completed facility and a greater build out." An amount is added for "FF&E," or furniture, fixtures and equipment, because "1220 S Ocean was a spec house and sold without FF&E. Value of FF&E on Mar-a-Lago balance sheet as of 6/30/2013 is added to the value of the property." A deduction is then made for "Member Deposits." (Ex. 15 at Rows 209-233)

2014 Valuation of Mar-a-Lago

165. In the 2014 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 4 at -723) The estimated current value of that category is $2,009,300,000 in total. (Ex. 4 at -723) The estimated current value of Mar-a-Lago is not separately disclosed in the 2014 SFC. (Ex. 4 at -723) The 2014 SFC states that the "estimated current value of $2,009,300,000 for these properties is shown on a cost basis and is net of refundable non-interest bearing long-term deposits where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values. That assessment was prepared by Mr. Trump working in conjunction with his associates and outside professionals." (Ex. 4 at -723) The valuation method used for Mar-a-Lago is not separately disclosed in the 2014 SFC.

166. The 2014 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000

square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 4 at -723) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2014 SFC.

167. The supporting spreadsheet for the 2014 SFC shows the value of Mar-a-Lago as $405,362,123. That amount is described as "Value if sold to an individual." (Ex. 16 at Rows 207-242)

168. The value of $405,362,123 was obtained by generating a "Value per acre" using the "selling price" of property in Palm Beach. That value per acre is then multiplied by the total acres of Mar-a-Lago. Amounts are then added for, "Construction of Grand Ballroom," "Construction of beach cabanas," and "Construction of tennis pavillion and teahouse." The total number is then increased by 30 percent reflecting a "Premium for completed facility and a greater build out." An amount is added for "FF&E," or furniture, fixtures and equipment, because "1220 S Ocean was a spec house and sold without FF&E. Value of FF&E on Mar-a-Lago balance sheet as of 6/30/2013 is added to the value of the property." A deduction is then made for "Member Deposits." (Ex. 16 at Rows 210-242)

2015 Valuation of Mar-a-Lago

169. In the 2015 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 5 at -697) The estimated current value of that category is $1,873,300,000 in total. (Ex. 5 at -697) The estimated current value of Mar-a-Lago is not separately disclosed in the 2015 SFC. (Ex. 5 at -697) The 2015 SFC states that the "estimated current value of $1,873,300,000 for these properties is based on an evaluation made by Mr. Trump in conjunction with his associates and outside professionals and is net of refundable non-

interest bearing long-term deposits, where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values." (Ex. 5 at -697) The valuation method used for Mar-a-Lago is not separately disclosed in the 2015 SFC.

170. The 2015 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 5 at -697) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2015 SFC.

171. The supporting spreadsheet for the 2015 SFC shows the value of Mar-a-Lago as $347,761,431. That amount is described as "Value if sold to an individual." (Ex. 17 at Rows 192-218)

172. The value of $347,761,431 was obtained by generating a "Value per acre" using the "Actual selling price" of property in Palm Beach. That value per acre is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." The total number is then increased by 30 percent reflecting a "Premium for completed facility and a greater build out." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits." (Ex. 17 at Rows 200-218)

2016 Valuation of Mar-a-Lago

173. In the 2016 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 6 at -1989) The estimated current value of that category is $2,107,800,000 in total. (Ex. 6 at -1989) The estimated current value of Mar-a-Lago is not

separately disclosed in the 2016 SFC. (Ex. 6 at -1989) The 2016 SFC states that the "estimated current value of $2,107,800,000 for these properties is based on an evaluation made by the Trustees in conjunction with their associates and outside professionals and is net of refundable non-interest bearing long-term deposits, where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values." (Ex. 6 at -1989) The valuation method used for Mar-a-Lago is not separately disclosed in the 2016 SFC.

174. The 2016 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 6 at -1989) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2016 SFC.

175. The supporting spreadsheet for the 2016 SFC shows the value of Mar-a-Lago as $570,373,061. That amount is described as "Value if sold to an individual." (Ex. 18 at Rows 203-240)

176. The value of $570,373,061 was obtained by generating an "Average value per acre" using the "Selling price" of three properties in Palm Beach. That value per acre is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits" and "Member Deposits Non-Refundable." (Ex. 18 at Rows 206-240)

2017 Valuation of Mar-a-Lago

177. In the 2017 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 7 at -1848) The estimated current value of that category is $2,159,700,000 in total. (Ex. 7 at -1848) The estimated current value of Mar-a-Lago is not separately disclosed in the 2017 SFC. (Ex. 7 at -1848) The 2016 SFC states that the "estimated current value of $2,159,700,000 for these properties is based on an evaluation made by the Trustees in conjunction with their associates and outside professionals and is net of refundable non-interest bearing long-term deposits, where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values." (Ex. 7 at -1848) The valuation method used for Mar-a-Lago is not separately disclosed in the 2017 SFC.

178. The 2017 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 7 at -1848) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2017 SFC.

179. The supporting spreadsheet for the 2017 SFC shows the value of Mar-a-Lago as $580,028,373. That amount is described as "Value if sold to an individual." (Ex. 19 at Rows 214-246)

180. The value of $580,028,373 was obtained by generating an "Average value per acre" using the "Selling price" of three properties in Palm Beach. The three properties are the same three used for the 2016 SFC. That "Average value per acre" is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach

cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits Refundable." (Ex. 19 at Rows 217-246)

2018 Valuation of Mar-a-Lago

181. In the 2018 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 8 at -2731) The estimated current value of that category is $2,349,900,000 in total. (Ex. 8 at -2731) The estimated current value of Mar-a-Lago is not separately disclosed in the 2018 SFC. (Ex. 8 at -2731) The 2018 SFC states that the "estimated current value of $2,349,900,000 for these properties is based on an evaluation made by the Trustees in conjunction with their associates and outside professionals and is net of refundable non-interest bearing long-term deposits, where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values." (Ex. 8 at -2731) The valuation method used for Mar-a-Lago is not separately disclosed in the 2018 SFC.

182. The 2018 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 8 at -2731) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2018 SFC.

183. The supporting spreadsheet for the 2018 SFC shows the value of Mar-a-Lago as $739,452,519. That amount is described as "Value if sold to an individual." (Ex. 20 at Rows 215-255)

184. The value of $739,452,519 was obtained by generating an "Average value per acre" using the "Selling price" of two properties in Palm Beach. That value per acre is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits Refundable." (Ex. 20 at Rows 233-255)

2019 Valuation of Mar-a-Lago

185. In the 2019 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 9 at -1796) The estimated current value of that category is $2,349,900,000 in total. (Ex. 9 at -1796) The estimated current value of Mar-a-Lago is not separately disclosed in the 2019 SFC. (Ex. 9 at -1796) The 2019 SFC states that the "estimated current value of $2,182,200,000 for these properties is based on an evaluation made by the Trustees in conjunction with their associates and outside professionals and is net of refundable non-interest bearing long-term deposits, where applicable. In those cases where a residential component exists, comparable sales were utilized in arriving at their values." (Ex. 9 at -1796) The valuation method used for Mar-a-Lago is not separately disclosed in the 2019 SFC.

186. The 2019 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 9 at -1796) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2019 SFC.

187. The supporting spreadsheet for the 2019 SFC shows the value of Mar-a-Lago as $647,118,780. That amount is described as "Value if sold to an individual." (Ex. 21 at Rows 215-255)

188. The value of $647,118,780 was obtained by generating an "Average value per acre" using the "Selling price" of five properties in Palm Beach. The two properties with the highest "Value per acre" are the same two properties used for the 2018 SFC. That "Average value per acre" is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits Refundable." (Ex. 21 at Rows 233-255)

2020 Valuation of Mar-a-Lago

189. In the 2020 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 10 at -2251-52) The estimated current value of that category is $1,880,700,000 in total. (Ex. 10 at -2251) The estimated current value of Mar-a-Lago is not separately disclosed in the 2020 SFC. (Ex. 10 at -2252) The 2020 SFC states that the "estimated current value of $1,880,700,000 for these properties is net of refundable non-interest bearing long-term deposits, where applicable, and was derived utilizing various methodologies including, without limitation, cost basis, comparable sales, appraisals and offers, where available." (Ex. 10 at -2251) The valuation method used for Mar-a-Lago is not separately disclosed in the 2020 SFC.

190. The 2020 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest

cottages." (Ex. 10 at -2252) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2020 SFC.

191. The supporting spreadsheet for the 2020 SFC shows the value of Mar-a-Lago as $517,004,874. That amount is described as "Value if sold to an individual." (Ex. 22 at Rows 215-255)

192. The value of $517,004,874 was obtained by generating an "Average value per acre" using the "Selling price" of five properties in Palm Beach. The three properties with the highest "Value per acre" are three of same properties used for the 2019 SFC. That "Average value per acre" is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits Refundable." (Ex. 22 at Rows 233-255)

2021 Valuation of Mar-a-Lago

193. In the 2021 SFC, Mar-a-Lago is included in the category "Club Facilities and Related Real Estate." (Ex. 11 at -6421) The estimated current value of that category is $1,758,000,000 in total. (Ex. 11 at -6421) The estimated current value of Mar-a-Lago is not separately disclosed in the 2021 SFC. (Ex. 11 at -6421) The 2021 SFC states that the "estimated current value of $1,758,000,000 for these properties is net of refundable non-interest bearing long-term deposits, where applicable, and was derived utilizing various methodologies including, without limitation, capitalization of income, gross income multiplier, cost basis, comparable sales, appraisals and offers, where available." (Ex. 11 at -6421) The valuation method used for Mar-a-Lago is not separately disclosed in the 2021 SFC.

194. The 2020 SFC describes Mar-a-Lago as "an exclusive private club which consists of 117 rooms. Formerly known as the Marjorie Merriweather Post Estate, it features a 20,000 square foot Louis XIV style ballroom, world class dining, tennis courts, spa, cabanas and guest cottages." (Ex. 11 at -6421) There is no discussion of the use of Mar-a-Lago as a private home, or of a residential component to the property in the 2020 SFC.

195. The supporting spreadsheet for the 2021 SFC shows the value of Mar-a-Lago as $612,110,496. That amount is described as "Value if sold to an individual." (Ex. 23 at Rows 185-245)

196. The value of $612,110,496 was obtained by generating an "Average value per acre" using the "Selling price" of five properties in Palm Beach. That "Average value per acre" is then multiplied by the total acres of Mar-a-Lago. An amount is then added for, "Construction of Grand Ballroom and beach cabanas adjusted for inflation." An amount is added for "FF&E," or furniture, fixtures and equipment. A deduction is then made for "Member Deposits Refundable." (Ex. 23 at Rows 213-245)

197. Because of the restrictions on the Mar-a-Lago property, including the 1995 and 2002 Deeds, Mar-a-Lago pays property tax based on its operation as a club. (Ex. 95) Each year the Palm Beach County Appraiser appraises the market value of Mar-a-Lago to determine its value for taxation purposes. (Exs. 98, 99) The market value assessed by the appraiser is defined as "The estimated price a willing buyer would pay and a willing seller accept, both being fully informed and the property exposed to the market for a reasonable period of time." (https://www.pbcgov.org/papa/glossary.htm#Total_Market_Value).

198. Under ASC 274, Estimated Current Value can be determined using, "Assessed value for property taxes, including consideration of the basis for such assessments and their relationship to market values in the area."

199. Each year, from 2011 through 2021, the Palm Beach Count Appraiser determined the market value of Mar-a-Lago to be as follows:

Year	Market Value
2011	$18,000,000
2012	$18,000,000
2013	$18,000,000
2014	$18,651,310
2015	$20,309,516
2016	$21,013,331
2017	$23,100,000
2018	$25,400,000
2019	$26,600,000
2020	$26,600,000
2021	$27,600,000

(Source: Ex. 97; also available at https://www.pbcgov.org/papa/Asps/PropertyDetail/PropertyDetail.aspx?parcel=50434335000020390)

200. Comparing the county's independently derived market value against the stated value in the SFC reflects the following overstatement:

Year	SFC Value	Market Value	Overstatement
2011	$426,529,614	$18,000,000	$408,529,614
2012	$531,902,903	$18,000,000	$513,902,903
2013	$490,149,221	$18,000,000	$472,149,221
2014	$405,362,123	$18,651,310	$386,710,813
2015	$347,761,431	$20,309,516	$327,451,915
2016	$570,373,061	$21,013,331	$549,359,730
2017	$580,028,373	$23,100,000	$556,928,373
2018	$739,452,519	$25,400,000	$714,052,519
2019	$647,118,780	$26,600,000	$620,518,780
2020	$517,004,874	$26,600,000	$490,404,874
2021	$612,110,496	$27,600,000	$584,510,496

5. Aberdeen

201. 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." (Ex. 14 at Rows 527-539; Ex. 15 at Rows 487-503; Ex. 17 at Rows 494-540; Ex. 19 at Rows 532-591; Ex. 21 at Rows 561-623; Ex. 23 at Rows 625-689)

202. 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. (Ex. 14 at Cells G527-543, H527-543; Ex. 15 at Cells G487-503, H487-503; Ex. 17 at Cells

G494-540, H494-540; Ex. 19 at Cells G532-589, H532-589; Ex. 21 at Cells G561-619, H561-619; Ex. 23 at Cells G625-683, H625-683)

203. 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." (Ex. 14 at Cells G527-543)].

204. Mr. Sorial's 2011 email 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. (Ex. 15 at Cells G487-503, H487-503)

205. For the Statements in 2014 through 2018, the Trump Organization no longer relied on Mr. Sorial's 2011 email and instead 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. (Ex. 17 at Cells G494-540, H494-540; Ex. 19 at Cells G532-589, H532-589; Ex. 21 at Cells H561-619)

206. The Trump Organization then converted the value to US dollars based on the current exchange rate to derive a valuation for Aberdeen in each year. (Ex. 17 at Cells G494-540, H494-540; Ex. 19 at Cells G532-589, H532-589; Ex. 21 at Cells H561-619)

207. The Trump Organization had never received approval from the local Scottish authority to develop and sell 2,500 homes on the property. (Ex. 99; Ex. 4 at -729; Ex. 5 at -703; Ex. 6 at -1995; Ex.7 at -1854; Ex. 8 at -2737)

208. As reported in the 2014-2018 Statements, 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." (Ex. 4 at -729; Ex. 5 at -703; Ex. 6 at -1995; Ex.7 at -1854; Ex. 8 at -2737)

209. The 950 holiday homes and 36 golf villas had restricted use under the terms governing Trump Aberdeen and could be used solely as rental properties that could be rented for no more than twelve weeks a year. (Ex. 100 at -157)

210. The Trump Organization represented in material submitted to the local Scottish authority that these short-term rental properties would not be profitable and therefore would not add any value to Aberdeen. (Ex. 101 at -704, -719; Ex. 102 at -728)

211. Adjusting the valuations to correct for using 2,500 private homes rather than 500 private homes actually approved, keeping all other variables constant, results in a reduction in the valuation of the undeveloped land component of Aberdeen of £166,328,000 in each year from 2014 to 2018. (Ex. 17 at Cells G494-540, H494-540; Ex. 19 at Cells G532-589, H532-589; Ex. 21 at Cells H561-619)

212. In July 2017, Ryden LLP acting on behalf of the Trump Organization prepared a development appraisal pertaining to the Aberdeen property. (Ex. 390) The appraisal assessed the profit from developing 557 homes at the Aberdeen property in a series of development chapters. (Ex. 390 at -24)

213. The July 2017 development appraisal of Aberdeen estimates profit from the 557-home development at a range of £16,525,000 to £18,546,000. (Ex. 390 at -31)

214. In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings. (Ex. 103 at -837, -839)

215. The new proposal was to build 500 private residences, 50 leisure/resort units, and no holiday homes because the company had determined the holiday homes were not economically viable. (Ex. 103 at -837, -839)

216. 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 leisure/resort units, with the latter to be occupied on a holiday letting or fractional basis only and not as a person's sole or main residence. (Ex. 99 at-172)

217. Nevertheless, the 2019 Statement, finalized a month later in October 2019, derived a value of £217,680,973 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. (Ex. 9 at -789, 802; Ex. 21 at Cells G561-619; Ex. 104 at Cells F8-11, AH23; Ex. 99)

218. Adjusting the valuation to correct for using 2,035 private homes rather than the 500 private homes actually approved, keeping all other variables constant, results in a revised valuation of £53,484,269, or a reduction in the valuation of the undeveloped land component of Aberdeen for the 2019 Statement of £164,196,704. (Ex. 9 at -789, 802; Ex. 21 at Cells G561-619; Ex. 104 at Cells F8-11, AH23; Ex. 99)

219. The 2020 and 2021 Statements derived a much lower value of £82,537,613 in each year for the undeveloped land based on 1,200 homes, still more than twice the number of homes the City Council had approved in 2019. (Ex. 23 at G625-683, H625-683; Ex. 105 at Rows 41-42, 50; Ex. 106 at Rows 41-42, 50; Ex. 99)

220. Adjusting the valuation to correct for using 1200 private homes rather than the 500 private homes actually approved, keeping all other variables constant, 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 Statements of £48,146,941 in each year. (Ex. 23 at G625-683, H625-683; Ex. 105 at Rows 41-42, 50; Ex. 106 at Rows 41-42, 50; Ex. 99)

221. 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. Ex. 17 at Cells G494-540, H494-540; Ex. 19 at Cells G532-589, H532-589; Ex. 21 at cells G561-619, H561-619)

222. The chart below shows the negative change in the valuation of the undeveloped land component of Aberdeen for 2014 through 2021 based on using the number of homes actually approved and applying for 2015 through 2019 the "20% reduction due to economic downturn in the area" applied by the Trump Organization:

Statement Year	Value Reduction (£)	Exchange Rate Used	Value Reduction ($)	Value Reduction ($) After 20% Downturn Adjustment (2015-2019)	Record Cite
2014	£166,328,000	1.7034	$283,323,115	$283,323,115	Ex. 16 at H519-525
2015	£166,328,000	1.5732	$261,667,210	$209,333,768	Ex. 18 at G563-569
2016	£166,328,000	1.3318	$221,515,630	$177,212,504	Ex. 18 at H563-569
2017	£166,328,000	1.303	$216,725,384	$173,380,307	Ex. 20 at G594-600
2018	£166,328,000	1.31515	$218,746,269	$174,997,015	Ex. 20 at H594-600
2019	£164,196,704	1.269	$208,365,618	$166,692,494	Ex. 22 at G649-654
2020	£48,146,941	1.22699	$59,075,815	$59,075,815	Ex. 22 at H649-654
2021	£48,146,941	1.38504	$66,685,439	$66,685,439	Ex. 23 at G674-679

6. 1290 Avenue of the Americas

223. Every year from 2011 through 2021 the SFC values Donald Trump's interest in "1290 Avenue of the Americas in New York, New York and 555 California Street in San Francisco, California," under the category "Partnerships and Joint Ventures." (Exs. 1-11)

224. The description of the asset in each year is largely identical to the disclosure in 2021 which states that: "In May 2007, Mr. Trump and Vornado Realty Trust became partners in two properties; 1290 Avenue of the Americas located in New York City and 555 California Street (formally known as Bank of America Center) located in San Francisco, California." (Ex. 11 at -6431)

225. The SFCs further note that: "Mr. Trump owns 30% of these properties." (Ex. 3 at -052; Ex. 5 at -708, Ex. 7 at -1858). Beginning with the 2019 Statement, the Statements noted Mr. Trump's interest was "as a limited partner." (Ex. 9 at -806)

226. Mr. Trump's limited partnership interests are held through a series of entities named "Hudson Waterfront Associates," with substantially similar terms. (Ex. 108; Ex. 109)

227. Among other things the partnership agreements specify that 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." The agreements also state that the "Limited Partners may under no circumstances sign for or bind the Partnership." (Ex. 113, at -3942-43, -3916-17)

228. The partnership agreements do not provide for dissolution until the end of 2044, and limit the circumstances in which a limited partner may sell, transfer, or pledge his interest. (Ex. 113 at -3932, -3963-75)

229. Those partnership interests shall be referred to as "Vornado Partnership Interests" and the properties held by those partnerships shall be referred to as 1290 AoA and 555 California.

230. To value Mr. Trump interest in those partnerships, each year the SFC states that the valuation was calculated by applying a capitalization rate to net operating income and deducting debt. (*See, e.g.*, Ex. 2 at -17; Ex. 6 at – 2000; Ex. 11 at -6431)

231. Supporting schedules make clear that the valuations arrived at in each year were done by (1) generating a valuation for each building (555 California and 1290 AoA); (2) subtracting debt; (3) adding the two resulting valuations together; and (4) taking 30% of the remainder. (*See, e.g.*, Ex. 14 at Rows 708-759; Ex. 18 at Rows 769-787; Ex. 23 at Rows 907-927)

232. The portion of this interest attributable to 1290 AoA was inflated during the years 2012 through 2016 when compared with an outside appraisal obtained in connection with a debt offering on 1290 AoA in 2012. In addition, the interest attributable to 1290 AoA was inflated in 2018 and 2019 through the use of capitalization rates that the Trump Organization knew were inappropriate.

a. Appraisals

233. In October 2012, Cushman prepared an appraisal of 1290 AoA that valued the building at $2,000,000,000, "as is" as-of November 1, 2012, with a prospective market value of

$2,300,000,000 as-of November 1, 2016 ("2012 1290 Appraisal"). (Ex. 111 at -306-307; Ex. 112 at -965-966) The appraisal was signed by Douglas Larson, Naoum Papagianopoulos and Robert Nardella of Cushman. (Ex. 112 at -967).

234. That appraisal valuation was publicly disclosed as part of a $950 million debt offering on 1290 AoA in November 2012. (Ex. 110 at 3)

235. The valuation of Mr. Trump's Vornado Partnership Interests in the 2012 Statement of $823,300,000 was based on a calculation that used $2,784,970,588 as the value for 1290 AoA. (Ex. 14 at Rows 731-759)

236. Substituting the appraised value as of November 1, 2012 of $2,000,000,000 for the higher value of $2,784,970,588 reduces the valuation for Mr. Trump by more than $235 million. Specifically, the amount attributable to 1290 AoA in the 2012 Statement is 30% of ($2,784,970,588 - $410,000,000 in debt), or $712,491,176. (Ex. 14 at Rows 740-747)

237. Substituting the $2 billion appraised value of 1290 AoA in the same calculation generates a result of $477,000,000.

238. The valuation of Mr. Trump's 30% partnership interest in 1290 AoA in the 2013 Statement was based on a calculation that used $2,989,455,128 as the value for 1290 AoA. (Ex. 15 at Rows 678-681)

239. Substituting the appraised value as of November 1, 2012 of $2,000,000,000 for the higher value of $2,989,455,128 reduces the valuation by nearly $300 million. Specifically, the amount attributable to 1290 AoA in the 2013 Statement is 30% of ($2,989,455,128 - $950,000,000 in debt), or $611,836,538. (Ex. 15 at Rows 678-686)

240. Substituting the $2 billion appraised value of 1290 AoA in the same calculation generates a result of $315,000,000, a reduction of $296.83 million.

241. The 2012 appraisal likewise contains a valuation as of November 1, 2016 of $2,300,000,000. (Ex. 111 at -307; Ex. 112 at -966)

242. Substituting the $2.3 billion appraised value for the value of $3,078,338,462 used for 1290 AoA in the 2014 Statement to calculate the value of Mr. Trump's 30% interest reduces the reported value by $233.5 million. Specifically, the amount attributable to 1290 AoA in the 2014 Statement is 30% of ($3,078,338,462 - $950,000,000 in debt), or $638,501,538.60. (Ex. 14 at Rows 709-715)

243. Substituting the $2.3 billion appraised value in the same calculation generates a result of $405 million, a reduction of $233.5 million.

244. Substituting the $2.3 billion appraised value as of November 1, 2016 for the value of $2,985,819,936 used for 1290 AoA in the 2015 Statement to calculate the value of Mr. Trump's 30% interest reduces the reported value by $205.7 million. Specifically, the amount attributable to 1290 AoA in the 2015 Statement is 30% of ($2,985,819,936 - $950,000,000 in debt), or $610,745,980.80. (Ex. 17 at Rows 748-755)

245. Substituting the $2.3 billion appraised value as of November 1, 2016 in the same calculation generates a result of $405 million, a reduction of $205.7 million.

246. Substituting the $2.3 billion appraised value as of November 1, 2016 for the value of $3,055,000,000 used for 1290 AoA in the 2016 Statement to calculate the value of Mr. Trump's 30% interest reduces the reported value by $226.5 million. Specifically, the amount

attributable to 1290 AoA in the 2016 Statement is 30% of ($3,055,000,000 - $950,000,000 in debt), or $631,500,000. (Ex. 18 at Rows 779-784)

247. Substituting the $2.3 billion appraised value as of November 1, 2016 in the same calculation generates a result of $405 million, a reduction of $226.5 million.

248. The 2012 1290 Appraisal, which provided 2012 and 2016 values, was signed by three appraisers at Cushman, including Douglas Larson, and reflected capitalization rates in the mid-four percent range. (Ex. 111 at -313, -314; Ex. 112, at -972, -973)

249. Consistent with that appraisal, Trump Organization personnel stated that one of the same appraisers in mid-2018 told the Trump Organization that 1290 Avenue of the Americas would trade at a mid-four percent capitalization rate if the property were operating at a stabilized level. (Ex. 114)

250. The appraiser stated that, while he could not opine on the specific property, "mid 4s for stabilized" in midtown Manhattan reflected the "current market environment". (Ex. 114)

251. The 2017 Statement purported to rely for 1290 AoA on "stabilized net operating income" and an "evaluation made by the Trustees in conjunction with their associates and outside professionals." (Ex. 7 at -858)

252. The only outside professional identified in the supporting schedule for the 2017 Statement for the valuation of 1290 AoA was Douglas Larson who prepared the 2102 1290 Appraisal but was cited for a capitalization rate of 2.9%. (Ex. 19 at Rows 816-817) Using a 4.5% capitalization rate to apply to a "stabilized" property would reduce the value of Mr. Trump's interest, holding all other variables using in the supporting schedule constant, by approximately $413 million. (Ex. 19 at Rows 789-797)

253. 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 $2,000,000,000. (Ex. 139)

254. The valuation of Mr. Trump's 30% partnership interest in 1290 AoA and 555 California in the 2021 Statement of $645,600,000 was based on a calculation that used $2,574,813,800 as the value for 1290 AoA. (Ex. 23 at Row 918)

255. Substituting the appraised value as of 2021 of $2,000,000,000 for the higher value of $2,574,813,800 yields a value for Mr. Trump's 30% partnership interest in 1290 AoA and 555 California of $473,111,915 – nearly $175 million less than the value listed in the 2021 Statement. Specifically, the amount attributable to 1290 AoA in the 2021 Statement is 30% of ($2,574,813,800 - $950,000,000 in debt), or $487,444,140. (Ex. 23 at Row 916-927) Substituting the $2 billion appraised value in the same calculation yields a result of $315,000,000, a reduction of $172,444,140.

256. The chart below shows the increase in the valuation for Mr. Trump's 30% share of the Vornado Partnership Interests based on using an inflated estimate for the value of 1290 AoA that ignores the appraisals in November 2012 and October 2021:

Statement Year	SOFC Value – DJT Share	Independent Value - DJT Share	Reduction
2012	$712,491,176	$477,000,000	$235,491,176
2013	$611,836,538	$315,000,000	$296,836,538
2014	$638,501,539	$405,000,000	$233,501,539
2015	$610,745,981	$405,000,000	$205,745,981
2016	$631,500,000	$405,000,000	$226,500,000
2021	$487,444,140	$315,000,000	$172,444,140

b. Capitalization Rates

257. The valuation of 1290 AoA in 2018 and 2019 relied on use of a capitalization rate from a sale of 666 Fifth Avenue. The SFCs in those years relied on the same transaction for the valuation of the Trump Tower commercial space. (Ex. 21 at Rows 30-81; Ex. 133 at -2825; Ex. 138 at 230:3—240:13; Ex. 54 at 580:13-593:3 Ex. 9 at -873)

258. The underlying source for the valuations of Trump Tower and in both 2018 and 2019 was a generic marketing report that described the sale of 666 Fifth Avenue. (Ex. 133; Ex. 134)

259. That marketing report, under the entry for 666 Fifth Avenue, states: "At the time of contract, the property was 69.9% leased. . . . The existing leases at the time of sale were considered to be approximately 5.0% below current market levels . . . . If the sale occurs, the property would be purchased based on an overall capitalization rate of 2.67%." (Ex. 133; Ex. 134)

260. The report went on to state that, upon stabilization, the capitalization rate for that building would be 4.45%. As the document states: "The stabilized capitalization rate is projected to increase to 4.45% in year 3." (Ex. 133; Ex. 134)

261. The Trump Organization, in communications involving Patrick Birney and Jeffrey McConney, and Mr. Papagianopoulos on May 30, 2018, expressed an understanding that, for 1290 AoA, a "mid 4 cap rate at stabilization, low 4 if there is upside" would be appropriate. (Ex. 135) The appraiser, in those May 30, 2018 communications, stated: "current market environment for Class A MT properties is mid 4s for stabilized." (Ex. 135)

262. Notwithstanding the representation in the 2018 and 2019 statements that a capitalization rate was being applied to the "stabilized net operating income" in each of the two years for Trump Tower and 1290 AoA, the Statement valuations used the lower 2.67% capitalization rate rather than the 4.45% rate the source provided for a stabilized rate. (Ex. 20 at Rows 69-83, 808-837; Ex. 21 at Rows 65-81, 834-864)

263. The 2018 Statement, in connection with the 1290 AoA valuation, asserts that the valuation was "based on an evaluation made by the Trustees in connection with their associates and outside professionals." (Ex. 8 at -741)

264. The only outside professional identified in the supporting schedule for the 2018 Statement for the valuation of 1290 AoA was Mr. Papagianopoulos, who was cited for a capitalization rate of 2.67%. (Ex. 20 at Rows 832-833)

265. The only outside professional identified in the supporting schedule for the 2019 Statement for the valuation of 1290 AoA was Mr. Papagianopoulos, who was cited for a capitalization rate of 2.67%. (Ex. 21 at Rows 863-864)

266. The 2018 Statement states for Trump Tower that "The estimated current value of $732,300,000 is based on applying a capitalization rate to the stabilized net operating income." (Ex. 8 at -729)

267. The valuation of Trump Tower in the 2018 Statement used a capitalization rate of 2.86% which was an average of two capitalization rates, 2.67% and 3.05%. (Ex. 21 at Rows 47, 81-83)

268. Use of the stabilized capitalization rate for 666 Fifth Avenue in the same calculation would have changed the average capitalization rate used to 3.75%. That figure, in the

same calculation, would have resulted in a value of $558,463,547—$173,787,607 less than the value reported in the 2018 Statement. (Ex. 21 at Rows 30-81) (Ex. 133)

269. The 2019 Statement for Trump Tower states that "The estimated current value of $806,700,000 is based … applying a capitalization rate to the stabilized net operating income." (Ex. 9 at -794)

270. The valuation of Trump Tower in the 2019 Statement used a capitalization rate of 2.67% which the supporting data spreadsheet described as reflecting cap rate for "a comparable office building". (Ex. 21 at Rows 66, 80-81)

271. The underlying source for the capitalization rate used to value Trump Tower in 2019 was the same generic market report containing the description of the same sale of 666 Fifth Avenue used in the 2018 valuation. (Ex. 134, at -873)

272. The net operating income used to value Trump Tower in 2019 was $21,539,983. Dividing this figure by the 4.45% stabilized capitalization rate for 666 Fifth Avenue would have generated a value of $484,044,562, $322,696,375 lower than the value reported in the 2019 Statement. (Ex. 21 at Rows 65-68)

273. The 2018 Statement states that the valuation of 1290 AoA "was arrived at by applying a capitalization rate to the stabilized net operating income . . . ." (Ex. 8 at -41) The 2018 Statement values 1290 AoA at $4,192,479,775 based on a net operating income of $111,939,210 and a capitalization rate of 2.67%. (Ex. 20 at Rows 808-810). The source for the 2.67% figure was the reported sale of 666 Fifth Avenue identified on an excerpt of a generic market report. (Ex. 136 at -13) Subtracting $950,000,000 in debt from the calculated value of $4,192,479,775

led to a net amount of $3,242,479,775, thirty percent of which represents the value used for the 2018 Statement ($972,743,932.50). (Ex. 20 at Rows 812-816)

274. Using the 4.45% stabilized cap rate for 666 Fifth Avenue in the 2018 Statement calculation instead of the 2.67% figure would result in a value after debt of Mr. Trump's 30% interest at $469,646,359.50, a difference of $503,097,573. (Ex. 20 at Rows 812-816)

275. The 2019 Statement states that the valuation of 1290 AoA "was arrived at by applying a capitalization rate to the stabilized net operating income . . . ." (Ex. 9 at -806) The 2019 Statement values 1290 AoA at $4,230,109,625 based on a net operating income of $112,943,927 and a capitalization rate of 2.67%. (Ex. 21 at Rows 834-836) The source for the 2.67% figure was the reported sale of 666 Fifth Avenue identified on a generic market report. (Ex. 137 at -58) Subtracting $950,000,000 in debt from the calculated value of $4,230,109,625 led to a net amount of $3,275,110,625, thirty percent of which represents the value used for the 2019 Statement ($982,533,187.50). (Ex. 21 at Rows 834-845)

276. Applying the same recalculation using the 4.45% stabilized capitalization rate for 666 Fifth Avenue in the 2019 Statement calculation instead would result in a value after debt of Mr. Trump's 30% interest at $476,411,733, a difference of $507,613,155. (Ex. 21 at Rows 834-845)

277. In addition to the use of the 2.67% overall cap rate resulting in an inflated value, the stated rationale for choosing this building as the source for Trump Tower's capitalization rate was false and misleading.

278. A hand-written note on the underlying market report states that the 666 Fifth Avenue sale was the "only Plaza District sale in the last 2 years on Fifth Ave (non-allocated)." (Ex. 134)

279. This assertion was false as of the date of issuance of the 2019 Statement. The market report used for the valuation identifies a contracted sale of 711 Fifth Avenue in the Plaza District in Midtown as having a capitalization rate of 5.36%. (Ex. 134)

280. Public records show that 711 Fifth Avenue was sold at least once before the date on which the 2019 Statement was finalized. (Ex. 420) Patrick Birney acknowledged that it was not true that 666 Fifth Avenue was the only Plaza District sale in the last two years on Fifth Avenue as of the date the 2019 Statement was finalized. (Ex. 138 at 820:20-822:16)

281. The Trump Organization also rejected a sale at 640 Fifth Avenue—another property sold, identified as being in the Plaza District in Midtown—with a capitalization rate of 4.68%. (Ex. 134)

282. The purported justification for that exclusion was a note indicated on the same marketing report: "Allocated amount Part of 7 buildings We don't know how it was allocated can't use." (Ex. 134)

283. Moreover, another "Plaza District" sale was identified on the generic report and occurred more recently than the sale utilized by the Trump Organization. That sale, a May 2019 sale of 540 Madison Avenue, was described as a "Class A" office building in the "Plaza District, Midtown" and associated with a 4.65% capitalization rate. (Ex. 134 at -1874)

7. Golf Clubs

284. The Clubs category of assets is comprised of golf clubs in the United States and abroad that are owned or leased by Mr. Trump. (*See, e.g.,* Ex. 3 at -043-049)

285. The value for the golf clubs is presented in the Statements from 2011 to 2021 in the aggregate, together with Mar-a-Lago, and provides no itemized value for any individual Club in this category of assets. (Ex. 1 at -3140; Ex. 2 at -6317; Ex. 3 at -043; Ex. 4 at -723; Ex. 5 at -697; Ex. 6 at -1989; Ex. 7 at -1848; Ex. 8 at -2731; Ex. 9 at -1796; Ex. 10 at -2257; Ex. 11 at -6421)

286. Three issues impact the Golf Club category of assets. *First*, existing appraisals were not considered in valuing two Clubs, TNGC Briarcliff and TNGC LA. *Second*, the value of most Clubs was increased by an undisclosed "brand premium" despite a representation that the SFCs do not "reflect the value of Donald J. Trump's worldwide reputation." *Third*, the value of the Clubs was inflated by simultaneously valuing certain membership deposit liabilities as worth millions of dollars and zero dollars.

a. Golf Appraisals

287. The Statements of Financial Condition ignored valuations from professional appraisers of TNGC Briarcliff and TNGC LA in estimating the current value of those properties.

288. The Statements valuations of TNGC Briarcliff and TNGC LA consisted of a golf course component and an undeveloped land component. (*See, e.g.,* Ex. 5 at -698-699; Ex. 17 at Rows 255-278, 381-404)

289. The supporting spreadsheet for the 2014 SFC shows that the golf club portion of TNGC Briarcliff was valued at $73,130,987 based on "Value of Fixed Assets." (Ex. 16 at Row 267-287)

290. The supporting spreadsheet for the 2015 SFC shows that the golf club portion of TNGC Briarcliff was valued at $73,430,217 based on "Value of Fixed Assets." (Ex. 17 at Row 257)

291. In April 2014, the Trump Organization obtained a draft appraisal for TNGC Briarcliff that valued the golf course component of the club at $16,500,000 as-of March 12, 2014. (Ex. 115 at -516)

292. The supporting spreadsheet for the 2014 SFC shows that the golf club portion of TNGC LA was valued at $74,300,642 based on "Value of Fixed Assets." Plus a "Premium for fully operational branded facility @ 30%" (Ex. 16 at Row 384-387)

293. The supporting spreadsheet for the 2015 SFC shows that the golf club portion of TNGC LA was valued at $74,300,642 based on "Value of Fixed Assets." Plus a "Premium for fully operational branded facility @ 15%" (Ex. 17 at Row 381-387)

294. In March 2015, the Trump Organization obtained an appraisal for TNGC LA that valued the golf course component of the club at $16,000,000 as-of December 26, 2014. (Ex. 116 at -5562)

295. The difference between the values stated in the SFC and the appraised values for 2014 and 2015 are shown in the table below:

Year	Property	SFC Value	Appraised Value	Difference
2014	TNGC Briarcliff	$73,130,987	$16,500,000	$56,630,987
2014	TNGC LA	$74,300,642	$16,000,000	$58,300,642
2015	TNGC Briarcliff	$73,430,217	$16,500,000	$56,930,217
2015	TNGC LA	$56,615,895	$16,000,000	$40,615,895

b. Undeveloped Land Appraisals

296. From 2013-2018 the undeveloped land at Briarcliff was valued at $101,748,600 based on telephone conversations with Eric Trump despite a note that the development project was "on hold." (Ex. 15 at Cells G253-273; Ex. 16 at Rows 267-285; Ex. 17 at Rows 255-278; Ex. 18 at Rows 278-298; Ex. 19 at Rows 284-304; Ex. 20 at Rows 295-315)

297. In October 2013 Eric Trump received a preliminary valuation for the undeveloped land of $45 million. (Ex. 117 at -43)

298. In 2014 the Trump Organization received a draft appraisal indicating a value of $43.2 million for the undeveloped land and in 2015 they received a draft appraisal indicating a value of $45.2 million. (Ex. 115 at -373; Ex. 118 at-6588)

299. Beginning in 2012 the Trump Organization considered donating a conservation easement over 16 developable lots located on the TNGC LA driving range. (Ex. 119)

300. In 2012 the Statement valued the 16 lots at $4.5 million per lot. (Ex. 14 at Rows 466-489)

301. In 2013 and 2014 the Statement valued the 16 lots at a price of $2.5 million per lot. (Ex. 16 at Rows 384-416)

302. Cushman appraisers valued the 16 lots at up to $19 million as part of that 2012 engagement. (Ex. 120)

303. Cushman appraisers preliminarily valued the lots at up to $28 million in October 2014 and then valued them at $25 million in their final appraisal as of December 2014. (Ex. 121 at -886; Ex. 116 at -5411)

304. The differences in value between the Statements of Financial Condition and appraisals in the same time frame for the undeveloped land at TNGC Briarcliff and TNGC LA are shown in the chart below:

Year	Property	SFC Value	Appraised Value	Difference
2012	TNGC LA	$72,000,000	$19,000,000	$53,000,000
2013	TNGC Briarcliff	$101,748,600	$45,000,000	$56,748,600
2013	TNGC LA	$40,000,000	$19,000,000	$21,000,000
2014	TNGC Briarcliff	$101,748,600	$43,200,000	$58,448,600
2014	TNGC LA	$40,000,000	$25,000,000	$15,000,000
2015	TNGC Briarcliff	$101,748,600	$45,200,000	$56,548,600
2016	TNGC Briarcliff	$101,748,600	$45,200,000	$56,548,600

c. *Brand Premium*

305. For the following seven Clubs in the years 2013 to 2020, the Trump Organization added a 30% or 15% premium because the property was completed and operating under the "Trump" brand when calculating the value – that is, the value of the Club was increased by 30%

or 15% for the Trump brand: TNGC Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley.

306. The Trump Organization did not disclose in any of the Statements that certain golf club values were calculated by adding a premium of 30% or 15% for the "Trump" brand. (Ex. 3 at -043; Ex. 4 at -723; Ex. 5 at -697; Ex. 6 at -1989; Ex. 7 at -1848; Ex. 8 at -2731; Ex. 9 at -1796; Ex. 10 at -2257)

307. To the contrary, each Statement 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." (Ex. 3 at -039; Ex. 4 at -719; Ex. 5 at -693; Ex. 6 at -1985-86; Ex. 7 at -1844-45; Ex. 8 at 2727-28; Ex. 9 at 792-93; Ex. 10 at 2507)

308. The charts below list for each golf club that had its value increased by a premium for the Trump brand (i) the year such premium was added, (ii) the value of the club in each year, and (iii) the amount of the value that is due to the premium, along with supporting citations to the record for each row:

TNGC Jupiter			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$62,310,331	$14,131,800	Ex. 16 at G441-447
2014	$69,111,189	$15,399.036	Ex. 16 at H441-447
2015	$69,941,196	$8,680,598	Ex. 18 at G462-471
2016	$74,288,822	$9,093,500	Ex. 18 at H462-471
2017	$78,164,970	$9,287,777	Ex. 20 at G479-488

TNGC Jupiter			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2018	$73,112,268	$9,435,046	Ex. 20 at H479-488
2019	$73,575,183	$9,493,561	Ex. 22 at G515-534
2020	$73,575,183	$9,493,561	Ex. 22 at H515-534
Total Premium		**$69,631,242**	

TNGC LA			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$225,505,900	$18,962,900	Ex. 16 at G386-407
2014	$213,690,642	$17,146,302	Ex. 16 at H386-407
2015	$140,710,895	$7,384,682	Ex. 18 at G403-427
2016	$134,911,829	$6,838,282	Ex. 18 at H403-427
2017	$121,870,127	$6,870,017	Ex. 20 at G419-444
2018	$113,397,079	$6,694,184	Ex. 20 at H419-444
2019	$116,994,733	$7,139,313	Ex. 22 at G445-472
2020	$107,710,388	$7,139,313	Ex. 22 at H445-472
Total Premium		**$78,174,993**	

TNGC Colts Neck			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$61,910,300	$14,136,300	Ex. 16 at G308-318
2014	$62,079,911	$14,163,918	Ex. 16 at H308-318
2015	$55,684,506	$7,178,998	Ex. 18 at G319-330
2016	$54,439,292	$7,027,398	Ex. 18 at H319-330
2017	$54,391,045	$7,021,299	Ex. 20 at G334-345

TNGC Colts Neck			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2018	$54,408,665	$7,022,498	Ex. 20 at H334-345
2019	$55,191,322	$7,097,709	Ex. 22 at G344-362
2020	$55,191,322	$7,097,709	Ex. 22 at H344-362
Total Premium		**$70,745,829**	

TNGC Philadelphia			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$18,280,300	$4,188,300	Ex. 16 at G349-358
2014	$21,392,379	$4,914,735	Ex. 16 at H349-358
2015	$20,065,138	$2,548,516	Ex. 18 at G362-374
2016	$20,426,910	$2,597,752	Ex. 18 at H362-374
2017	$20,850,345	$2,684,775	Ex. 20 at G377-389
2018	$21,052,783	$2,711,844	Ex. 20 at H377-389
2019	$21,441,488	$2,730,185	Ex. 22 at G395-415
2020	$21,441,488	$2,730,185	Ex. 22 at H395-415
Total Premium		**$25,106,292**	

TNGC DC			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$61,489,000	$13,881,000	Ex. 16 at G327-340
2014	$65,648,308	$14,830,755	Ex. 16 at H327-340
2015	$64,595,120	$8,327,010	Ex. 18 at G339-353
2016	$66,313,250	$8,608,133	Ex. 18 at H339-353
2017	$68,682,763	$8,859,315	Ex. 20 at G354-368

TNGC DC			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2018	$68,757,621	$8,901,001	Ex. 20 at H354-368
2019	$69,337,380	$9,015,908	Ex. 22 at G367-389
2020	$69,337,380	$9,015,908	Ex. 22 at H367-389
Total Premium		**$81,439,030**	

TNGC Charlotte			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$14,013,400	$3,014,400	Ex. 16 at G421-432
2014	$16,375,669	$3,482,772	Ex. 16 at H421-432
2015	$16,325,546	$1,957,403	Ex. 18 at G441-453
2016	$18,643,283	$2,236,226	Ex. 18 at H441-453
2017	$20,098,054	$2,411,581	Ex. 20 at G458-470
2018	$21,372,507	$2,606,902	Ex. 20 at H458-470
2019	$22,570,785	$2,758,110	Ex. 22 at G490-509
2020	$22,570,785	$2,758,110	Ex. 22 at H490-509
Total Premium		**$21,225,504**	

TNGC Hudson Valley			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2013	$15,715,500	$3,499,500	Ex. 16 at G366-378
2014	$17,128,437	$3,822,041	Ex. 16 at H366-378
2015	$15,909,934	$1,993,966	Ex. 18 at G382-395
2016	$16,466,560	$2,040,231	Ex. 18 at H382-395
2017	$16,932,544	$2,107,623	Ex. 20 at G397-410

TNGC Hudson Valley			
Statement Year	**Total Value**	**Premium**	**Record Cite**
2018	$16,797,095	$2,082,934	Ex. 20 at H397-410
2019	$17,104,038	$2,132,759	Ex. 22 at G419-440
2020	$17,104,038	$2,132,759	Ex. 22 at H419-440
Total Premium		**$19,811,813**	

309. The chart below totals the premiums reflected in the above charts to show the aggregate premium in each Statement Year for all of the assets in the Clubs category:

Statement Year	Total Premium For All Clubs
2013	$71,814,200
2014	$58,375,922
2015	$38,071,173
2016	$38,441,522
2017	$39,242,387
2018	$39,454,409
2019	$40,367,545
2020	$40,367,545
Total	$366,134,703

d. Membership Deposit Liabilities

310. As part of the purchase of several club properties Donald J. Trump agreed to assume the obligation to pay back refundable membership deposits owed to club members.

311. These liabilities for refundable memberships would need to be paid out only decades in the future, if at all. (Ex. 123; *see also Hirsch v. Jupiter Golf Club LLC*, Civ. No. 13-80456, Answer, Exhibit A, Docket No. 52-1 (S.D. Fla June 3, 2014))

312. The Statements represent that the liabilities resulting from these obligations are valued at $0. (Ex. 1 at -3141-45; Ex. 2 at -6318-22; Ex. 3 at 044-49; Ex. 4 at -724-729; Ex. 5 at -

698-703; Ex. 6 at -1990-1994; Ex. 7 at -1848-1853; Ex. 8 at -2731-36; Ex. 9 at -1796-; Ex. 10 at -2252-55; Ex. 11 at -6422-425.)

313. 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." (Ex. 3 at -043-49)

314. Nevertheless, as described below, Mr. Trump did not value this liability at zero when calculating the value of certain clubs using a "fixed assets approach," but instead valued the membership deposit liabilities at their full face value amount.

315. The "fixed assets approach" described a valuation technique that utilized the balance sheet of each club, with the Trump Organization calculating the cost of acquiring a club and then increased the number based on additional capital expenditures after acquisition. (Ex. 54 at 52:10-54:11, 61:03-22, 64:06-11; 388:13-395:17, 398:20-399:14; 400:18-401:22; 505:03-507:18)

316. For purposes of calculating the fixed assets figure, the purchase price included the obligation to assume a liability for refundable membership deposits. (Ex. 54 at 505:03-507:18)

317. The fixed assets approach was used for all clubs except Mar-a-Lago and Doral from 2013-2020. (Ex. 15 at Rows 191-503; Ex. 16 at Rows 205-535; Ex. 17 at Rows 189-564; Ex. 18 at Rows 201-603; Ex. 19 at Rows 212-617; Ex. 20 at Rows 212-632; Ex. 21 at Rows 216-647; Ex. 22 at Rows 203-688)

318. For each of those clubs, the full face value of the membership deposit liability was incorporated into the purchase price, this despite the claim that the debt was valued at zero.

319. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC Jupiter was $41 million. (Ex. 125)

320. This full amount was incorporated into the fixed assets figure for TNGC Jupiter from 2013 to 2020. (Ex. 54 at 505:24-507:18; Ex. 125; Ex. 126; Ex. 16 at Cells G441-447, H441-447; Ex. 18 at Cells G462-471, H462-471; Ex. 20 at Cells G479-488, H479-488; Ex. 22 at Cells G515-534, H515-534)

321. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC Colts Neck was $11,700,000. (Ex. 128)

322. This full amount was incorporated into the fixed assets figure for TNGC Colts Neck from 2012 to 2020. (Ex. 54 505:24-507:18; Ex. 128; Ex. 14 at Cells H326-350; Ex. 16 at Cells G308-318, H308-318; Ex. 18 at Cells G319-330, H319-330; Ex. 20 at Cells G334-345, H334-345; Ex. 22 at G344-362, H344-362)

323. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC Philadelphia was $953,237. (Ex. 14 (Formula in Cell H431); Ex. 127; Ex. 132)

324. This full amount was incorporated into the value of TNGC Philadelphia from 2011 to 2021. (Ex. 54 at 505:24-507:18; Ex. 127; Ex. 14 at Cells G410-433, H410-433; Ex. 16 at cells G349-358, H349-358; Ex. 18 at Cells G362-374, H362-374; Ex. 20 at Cells G377-389, H377-389; Ex. 22 at G395-415, H395-415; Ex. 23 at Cells G394-417)

325. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC DC was $16,131,075. (Ex. 129)

326. This full amount was incorporated into the fixed assets figure for TNGC DC from 2013 to 2020. (Ex. 54 at 505:24-507:18; Ex. 129; Ex. 130; Ex. 16 at Cells G327-340, H327-340; Ex. 18 at Cells G339-353, H339-353; Ex. 20 at cells G354-368, H354-368; Ex. 22 at G367-389, H367-389)

327. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC Charlotte was $4,080,550. (Ex. 131; Ex. 14 (Formula in Cell H511))

328. This full amount was incorporated into the valuation for TNGC Charlotte from 2012 to 2020. (Ex. 54 at 505:24-507:18; Ex. 131; Ex. 14 at Cells H494-514; Ex. 16 at Cells G421-432, H421-432; Ex. 18 at Cells G441-453, H441-453; Ex. 20 at Cells G458-470, H458-470; Ex. 22 at Cells G490-509, H490-509)

329. The face value amount of the refundable membership deposit liability assumed in the purchase of TNGC Hudson Valley was $1,235,619. (Ex. 132; Ex. 14 (Formula in Cell H459))

330. This full amount was incorporated into the value of TNGC Hudson Valley from 2011 to 2021. (Ex. 54 at 505:24-507:18; Ex. 14 at Cells G435-461, H435-461; Ex. 16 at Cells G366-378, H366-378; Ex. 18 at Cells G382-395, H382-395; Ex. 20 at Cells G397-410, H397-410; Ex. 22 at G419-440, H419-440; Ex. 23 at Cells G423-446)

331. Despite the representation that the liabilities were valued at $0, in each year from 2013-2020, the Trump Organization included the above-mentioned refundable membership deposit liabilities totaling $75,100,481 as a part of their asset values in the Club Facilities and Related Real Estate category. The $75,100,481 amount does not address that a brand premium of

either 15% or 30% was applied to the fixed assets figures thereby increasing the inflation of value due to the inclusion of the refundable membership deposit liability.

332. Despite the representation that the liabilities were valued at $0, in 2012, the Trump Organization included the above-mentioned TNGC Colts Neck, TNGC Philadelphia, TNGC Charlotte, and TNGC Hudson Valley refundable membership deposit liabilities totaling $17,969,406 as a part of their asset values in the Club Facilities and Related Real Estate category.

333. Despite the representation that the liabilities were valued at $0, in 2021, the Trump Organization included the above-mentioned TNGC Philadelphia and TNGC Hudson Valley refundable membership deposit liabilities totaling $2,188,856 as a part of their asset values in the Club Facilities and Related Real Estate category.

8. Trump Park Avenue

334. 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. (Ex. 1 at -3134; Ex. 2 at -6311; Ex. 3 at -037; Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -1983; Ex. 7 at -1842; Ex. 8 at -2725; Ex. 9 at -161790; Ex. 10 at -162248; Ex. 11 at -6166418)

335. The valuation of the building in each year was based in part on the valuation of unsold residential condominium units in the building. (Ex. 1 at -3139-40; Ex. 2 at -6316-17; Ex. 3 at -042-43; Ex. 4 at -722-23; Ex. 5 at -696-97; Ex. 6 at -1988-89; Ex. 7 at -1847-48; Ex. 8 at -2730-31; Ex. 9 at -161795-96; Ex. 10 at -162258; Ex. 11 at -6166428)

a. Rent Stabilized Units

336. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent stabilization laws. (Ex. 140 at -27)

337. An appraisal of the building was performed in 2010 by the Oxford Group in connection with a $23 million loan from Investors Bank. (Exs. 141, 142, 143, 144)

338. The appraisal valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit, noting that the rent-stabilized units "cannot be marketed as individual units" for sale because the "current tenants cannot be forced to leave." (Ex 144 at -22)

339. The Trump Organization had a copy of the Oxford Group appraisal in its own files. (Exs. 141, 142, 143, 144)

340. 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. Ex. 145 at 78:18-81:04; Ex. 140)

341. Notwithstanding this 2010 appraisal, and the Trump Organization's knowledge that numerous units at the property were rent-stabilized, the Statements for 2011 to 2021 valued the unsold rent-stabilized units as if they were freely marketable and not subject to rent stabilization laws. (Exs. 146-156)

342. For example, in the 2011 and 2012 Statements, the 12 rent stabilized units were valued collectively at $49,595,500—a rate over 65 times higher than the $750,000 valuation for those units in the 2010 appraisal. (Ex. 146; Ex. 147; Ex. 144 at -23)

343. In 2011 and 2012 the following 12 units were rent stabilized: 4A, 6B, 7A, 7B, 7D, 7E, 7G, 8E, 8H, 10E, 12E, 15AB. (Ex. 140 at -27)

344. In 2013 the following 11 units were rent stabilized: 4A, 6B, 7A, 7B, 7D, 7E, 7G, 8H, 10E, 12E, 15AB (Ex. 157)

345. Those 11 units were valued at $46,544,500 on the 2013 SFC. (Ex. 148)

346. In 2014 the following 9 units were rent stabilized: 4A, 6B, 7D, 7E, 7G, 8H, 10E, 12E, 15AB. (Ex. 158)

347. Those 9 units were valued at $38,305,550 on the 2014 SFC. (Ex. 149)

348. In 2015 the following 8 units were rent stabilized: 4A, 6B, 7D, 7E, 8H, 10E, 12E, 15AB. (Ex. 159).

349. Those 8 units were valued at $33,294,000 on the 2015 SFC. (Ex. 150)

350. In 2016 the following 8 units were rent stabilized: 4A, 6B, 7D, 7E, 8H, 10E, 12E, 15AB. (Ex. 160).

351. Those 8 units were valued at $27,002,836 on the 2016 SFC. (Ex. 151)

352. In 2017 the following 8 units were rent stabilized: 4A, 6B, 7D, 7E, 8H, 10E, 12E, 15AB. (Ex. 161)

353. Those 8 units were valued at $26,200,247 on the 2017 SFC. (Ex. 152)

354. In 2018 the following 8 units were rent stabilized: 4A, 6B, 7D, 7E, 8H, 10E, 12E, 15AB. (Ex. 162).

355. Those 8 units were valued at $29,100,783 on the 2018 SFC. (Ex. 153)

356. In 2019 the following 6 units were rent stabilized: 4A, 6B, 7D, 7E, 10E, 15AB (Ex. 163)

357. Those 6 units were valued at $18,533,518 on the 2019 SFC. (Ex. 154)

358. A 2020 appraisal of Trump Park Avenue in the Trump Organization's files valued 6 rent stabilized units at $3,800,015. (Ex. 164 at-159)

359. In 2020 the following 6 units were rent stabilized: 4A, 6B, 7D, 7E, 10E, 15AB (Ex. 163).

360. Those 6 units were valued at $18,170,971 on the 2020 SFC. (Ex. 155)

361. In 2021 the following 6 units were rent stabilized: 4A, 6B, 7D, 7E, 10E, 15AB (Ex. 163)

362. Those 6 units were valued at $14,770,920 on the 2021 SFC. (Ex. 156)

363. The chart below shows the valuation of the unsold rent stabilized units each year and the value those units have based on the 2010, and then once completed, the 2020 appraisals:

Statement Year	Unsold Rent-Stabilized Units	Value for Unsold Rent-Stabilized Units	Appraised Value for Unsold Rent-Stabilized Units	Inflated Amount
2011	12	$49,595,500	$750,000	$48,845,500
2012	12	$49,595,500	$750,000	$48,845,500
2013	11	$46,544,500	$687,500	$45,857,000
2014	9	$38,305,550	$562,500	$37,743,000
2015	8	$33,294,000	$500,000	$32,794,000
2016	8	$27,002,836	$500,000	$26,502,836
2017	8	$26,200,247	$500,000	$25,700,247
2018	8	$29,100,783	$500,000	$28,600,783
2019	6	$18,533,518	$375,000	$18,158,518
2020	6	$18,170,971	$3,800,015	$14,370,776
2021	6	$14,770,920	$3,800,015	$10,970,905

b. Ivanka Trump Option Prices

364. At least two of the unsold residential units not subject to rent stabilization laws were valued at inflated amounts in the Statements for a number of years over and above option prices agreed to by the Trump Organization.

365. 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. (Ex. 165)

366. Despite this option price, for the 2011 and 2012 Statements this unit was valued at $20,820,000—approximately two and a half times the option price. (Exs. 146, 147)

367. For the 2013 Statement, the unit was valued at $25,000,000—more than three times the option price. (Ex. 148)

368. 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. (Ex. 166 at -39; Ex. 167)

369. That unit was valued at $45 million for the 2014 Statement -- more than three times as much as the option price. (Ex. 149)

370. For the Statements from 2015 to 2021, the value for Penthouse B was lowered to reflect an option price of $14,264,000. (Exs. 150-156)

371. However, a second amendment to the lease dated December 2016, lowered the option price of Penthouse B to $12,264,000 meaning the SOFC values for the unit from 2017 to 2021 were overstated by $2,000,000. (Ex. 168; Ex. 152-156)

c. Use of "Offering Prices"

372. In the Statements for 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. (Exs. 146-150)

373. 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. (Ex. 169-174)

374. Trump Organization employees used these spreadsheets for day-to-day operations and business planning purposes, but not for purposes of valuation for the Statements. (Ex. 138 at 396:17-409:24; Ex. 175 at 62:07-78:23; Exs. 146-150)

375. In 2012 the Trump Organization submitted to Mazars a spreadsheet containing a total value based on offering plan price for the non-rent stabilized units totaling $243,527,250. (Ex. 147)

376. In that same year the Trump Organization's internal spreadsheet contained a current market value for the non-rent stabilized units totaling $206,700,000. (Ex. 169)

377. In 2013 the Trump Organization submitted to Mazars a spreadsheet containing a total value based on offering plan price for the non-rent stabilized units totaling $280,310,000. (Ex. 148)

378. In that same year the Trump Organization's internal spreadsheet contained a current market value for the non-rent stabilized units totaling $252,875,000. (Ex. 170).

379. In 2014 the Trump Organization submitted to Mazars a spreadsheet containing a total value based on offering plan price for the non-rent stabilized units totaling $244,746,000. (Ex.149)

380. In that same year the Trump Organization's internal spreadsheet contained a current market value for the non-rent stabilized units totaling $207,740,000. (Exs. 176, 173)

381. The chart below shows the value reflected in the Statements for these remaining unsold units, absent the apartment with Ivanka Trump's option, in each year that is based on the offering plan prices and the value for these same units based on the current market value as listed on the Trump Organization prepared Sponsor Unit Inventory Valuation spreadsheets:

Statement Year	Value Based on Offering Plan Price	Current Market Value Prepared by Trump	Difference in Value
2012	$222,707,250	$190,050,000	$32,657,250
2013	$255,310,000	$230,875,000	$24,435,000
2014	$199,746,000	$174,740,000	$25,0006,000

382. 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 (Ex. 72 at 687:03-704:20; Exs. 147-149; Exs. 169-170; Ex. 176; Ex. 173)

383. In one year, McConney did send to Bender both columns of the spreadsheet—but within minutes sent him a revised spreadsheet that omitted the current market value column and directed him to review the revised version instead. (Ex. 72 at 687:03-704:20; Ex. 177-180)

9. Vornado Partnership Funds Included in Cash

384. 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 (Ex. 181)

385. As a general matter, when a GAAP-compliant financial statement reports "cash equivalents," it is referring to "short-term, highly liquid investments that have both of the following characteristics: a. Readily convertible to known amounts of cash b. So near their maturity that they present insignificant risk of changes in value because of changes in interest rates." FASB, Master Glossary – Cash Equivalents (Ex. 182).

386. For the Statements covering 2013 to 2021, the value of the "cash" included in the asset category "cash and marketable securities" in 2013 and 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. (Ex. 3 at -37; Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790; Ex. 10 at -248; Ex. 11 at -418)

387. Mr. Trump has a 30% limited partnership stake in the Vornado Partnership Interests without the right to use or withdraw funds held by the partnerships. In particular, Mr. Trump's 30% interests are held indirectly through limited partnership stakes in various partnerships named "Hudson Waterfront Associates" followed by a number and the term, "LP," for limited partnership. (Ex. 108, at -485, -486) The agreements governing the Hudson

Waterfront Associates limited partnerships are materially identical or substantially the same. (Ex. 109)

388. The partnership agreements governing the Vornado Partnership Interests make clear that the General Partner, *i.e.*, Vornado, has full control over business operations and the discretion to make case distributions. As one of the materially identical agreements explains, 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, the agreement states, "[t]he Limited Partners may under no circumstances sign for or bind the Partnership." The partnership agreement provides for cash distributions in an amount, if any, that is "determined by the General Partner in its sole discretion." (Ex. 113 at -916, -917 -942, -943, -3916-17)

389. Moreover, the partnership agreements do not provide for dissolution until the end of 2044, and limit the circumstances in which a limited partner may sell, transfer, or pledge his interest. (Ex. 113 at -932, -963-75)

390. Internal Trump Organization records acknowledge that cash residing within the Vornado Partnership interests was not the Trump Organization's or Mr. Trump's cash to access, but instead that any distributions were at Vornado's discretion.

391. Documents prepared in or about 2016 by Trump Organization accounting personnel reflect an understanding that any distributions from the Vornado Partnership Interests were at Vornado's discretion. (Ex. 183 at Tab "2017 Projection" and Cells F114 and F115

identifying "Discretionary Distributions" with the Note "(j)"; Tab "Notes" Rows 28-29 defining note "(j)")

392. One or more spreadsheets reflecting the discretionary nature of any cash distributions from the Vornado Partnership Interests were prepared and approved by personnel, including Mr. Weisselberg, who also worked on the Statements of Financial Condition. (Ex.184; Ex. 185 (Tab "Summary" at Rows 121-123 and Tab "Notes" at Rows 36-37; Ex. 186 at 168:6-169:16)

393. A memorandum from Mr. Weisselberg to Donald Trump, Jr., Eric Trump, and Ivanka Trump similarly advised them that "distributions are at the discretion of Vornado."(Ex. 187)

394. The "Cash and Marketable Securities" asset category on the 2013 Statement includes $14,221,800 in cash held within the Vornado Partnership Interests. (Ex. 188 at Rows 35 and 36)

395. The "Cash and Marketable Securities" asset category on the 2014 Statement includes $24,756,854 in cash held within the Vornado Partnership Interests. (Ex. 189 at Tab "06.30.14" Rows 41, 43, 100, 101, and 102, and at Tab "D-6.30.14" Row 39)

396. The "Cash, Marketable Securities and Hedge Funds" asset category on the 2015 Statement includes $32,708,696 in cash held within the Vornado Partnership Interests. (Ex. 190 at Tab "As of 06.30.15" Rows 12, 15, 16, 17, 18, and 19, and at Tab "As of 6.30.15 – Under $50k" Row 52)

397. The "Cash, Marketable Securities and Hedge Funds" asset category on the 2016 Statement includes $19,593,643 in cash held within the Vornado Partnership Interests. (Ex. 191 at Tab "As of 06.30.16" Rows 11, 16, 17, 18, 19, 56)

398. The "Cash and Cash Equivalents" asset category on the 2017 Statement includes $14,221,800 in cash held within the Vornado Partnership Interests. (Ex. 192 at Tab "As of 06.30.17" Rows 14, 21, 22, 23, 24, and 25)

399. The "Cash and Cash Equivalents" asset category on the 2018 Statement includes $24,355,588 in cash held within the Vornado Partnership Interests. (Ex. 193 at Tab "As of 06.30.18" Rows 15, 22, 23, 24, 25, and 26)

400. The "Cash and Cash Equivalents" asset category on the 2019 Statement includes $24,653,729 in cash held within the Vornado Partnership Interests. (Ex. 194 at Tab "As of 06.30.19" Rows 14, 19, 20, 21, 22, and 23)

401. The "Cash and Cash Equivalents" asset category on the 2020 Statement includes $28,251,623 in cash held within the Vornado Partnership Interests. (Ex. 195 at Tab "As of 06.30.20" Rows 15, 21, 22, 23, 24, and 25)

402. The "Cash and Cash Equivalents" asset category on the 2021 Statement includes $93,126,589 in cash held within the Vornado Partnership Interests. (Ex. 196 at Tab "As of 06.30.21" Rows 11, 19, 20, 21, 22, and 23)

403. The chart below shows the amount of cash attributable to Mr. Trump's 30% stake in the Vornado Partnership Interests in dollars and as a percent of the total asset value portrayed in the pertinent "cash" category in particular statement years. The amounts listed in the "Total Cash / Liquidity" column are derived from the "cash" category of asset (see paragraph __ for

how that category was identified in each year) for the Statements for the years 2013 through 2021. (Ex. 3 at -37; Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790; Ex. 10 at -248; Ex. 11 at -418)

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
2013	$14,221,800	$339,100,000	4%
2014	$24,756,854	$302,300,000	8%
2015	$32,708,696	$192,300,000	17%
2016	$19,593,643	$114,400,000	17%
2017	$16,536,243	$76,000,000	22%
2018	$24,355,588	$76,200,000	32%
2019	$24,653,729	$87,000,000	28%
2020	$28,251,623	$92,700,000	30%
2021	$93,126,589	$293,800,000	32%

404. The decision to include cash in the Vornado Partnership Interests as if it were Mr. Trump's own cash in the Statements was made by Mr. McConney and Mr. Weisselberg. (Ex. 138 at 670:23-671:11) In 2013, Mr. McConney first provided Mazars with a cash schedule that did not include cash held by the Vornado Partnership Interests. (Exs. 197-198) A few weeks later, he sent a revised cash schedule that did include such cash. (Ex. 199; Ex. 200 at Tab "06.30.13" Rows 35 and 306) In 2013, Mr. McConney's work on the Statement of Financial Condition was reviewed by Allen Weisselberg. (Ex. 54 at 70:2-21)

405. No description of the "cash" category on the Statements from 2013 through 2021 discloses that cash Mr. Trump cannot access at his discretion and that resides in entities Mr. Trump does not control is included in the category. (Ex. 3 at -40; Ex. 4 at -720; Ex. 5 at -694; Ex. 6 at -986; Ex. 7 at -845; Ex. 8 at -728; Ex. 9 at -793; Ex. 10 at -251; Ex. 11 at -421)

406. The cash listed as an asset on the Statements for 2011 to 2021 is falsely inflated by the cash held by Vornado Partnership Interests.

10. Vornado Partnership Funds Included in Escrow, Reserve Deposits and Prepaid Expenses

407. The Statements 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.

408. The label given to this category varies slightly. From 2014 through 2019, the label was "Escrow, reserve deposits and prepaid expenses." (Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790) From 2020 through 2021, it was "Escrow, reserve deposits, restricted cash and prepaid expenses." (Ex. 10 at -248; Ex. 11 at -418)

409. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2014 Statement included $20,800,000 held within the Vornado Partnership Interests. (Ex. 201 at Rows 47-48)

410. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2015 Statement included $15,980,000 held within the Vornado Partnership Interests. (Ex. 202 at Rows 40-41)

411. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2016 Statement included $14,470,000 held within the Vornado Partnership Interests. (Ex. 203 at Rows 12 and 16)

412. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2017 Statement included $8,750,000 held within the Vornado Partnership Interests. (Ex. 204 at Rows 12 and 16)

413. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2018 Statement included $8,180,000 held within the Vornado Partnership Interests. (Ex. 205 at Rows 14 and 16)

414. The "Escrow, reserve deposits and prepaid expenses" asset category on the 2019 Statement included $11,195,400 held within the Vornado Partnership Interests. (Ex. 206 at Rows 14 and 16)

415. The "Escrow, reserve deposits, restricted cash and prepaid expenses" asset category on the 2020 Statement included $7,108,500 held within the Vornado Partnership Interests. (Ex.207 at Rows 12 and 14)

416. The "Escrow, reserve deposits, restricted cash and prepaid expenses" asset category on the 2021 Statement included $12,696,600 held within the Vornado Partnership Interests. (Ex. 208 at Rows 14 and 15)

417. The chart below shows the amount of escrow deposits or restricted cash attributable to Mr. Trump's 30% stake in the Vornado Partnership Interests in dollars and as a percent of the total "escrow and reserve deposits and prepaid expenses" category. The amounts listed in the righthand column are derived by comparing the escrow or restricted cash amounts derived from the Vornado Partnership Interests to the total of the "escrow" category of asset in a particular year, as identified on the Statements of Financial Condition for the years 2014 through

2021. (Ex. 4 at -717; Ex. 5 at -691; Ex. 6 at -983; Ex. 7 at -842; Ex. 8 at -725; Ex. 9 at -790; Ex. 10 at -248; Ex. 11 at -418)

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
2014	$20,800,000	52%
2015	$15,980,000	47%
2016	$14,470,000	52%
2017	$8,750,000	36%
2018	$8,180,000	36%
2019	$11,195,400	39%
2020	$7,108,500	28%
2021	$12,696,600	44%

418. The escrow deposits and restricted cash listed as an asset on the Statements for 2014 to 2021 is falsely inflated by the escrow deposits and restricted cash held by Vornado Partnership Interests, because, as the Statements do not disclose, Mr. Trump does not control cash in those partnerships and thus would not control escrowed or restricted cash once any escrow or other restriction were lifted. (Ex. 4 at -717, -720; Ex. 5 at -691, -694; Ex. 6 at -983, -986; Ex. 7 at -842, -845; Ex. 8 at -725, -728; Ex. 9 at -790, -793; Ex. 10 at -248, -251; Ex. 11 at -418, -421)

11. TBD and Related-Party Transactions Included in Real Estate Licensing Developments

419. From 2011 to 2021, each Statement has included an asset category entitled "Real Estate Licensing Developments." (Ex. 1 at -3150; Ex. 2 at -6327; Ex. 3 at -054; Ex. 4 at -736-37; Ex. 5 at -709-10; Ex. 6 at -2001-02; Ex. 7 at -1860; Ex. 8 at -2743; Ex. 9 at -1808; Ex. 10 at -2262; Ex. 11 at -6433)

420. 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." (Ex. 1 at -3150; Ex. 2 at -6327; Ex. 3 at -054; Ex. 4 at -736-37; Ex. 5 at -709-10; Ex. 6 at -2001-02; Ex. 7 at -1860; Ex. 8 at -2743; Ex. 9 at -1808; Ex. 10 at -2262; Ex. 11 at -6433)

421. 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." (Ex. 3 at -054; Ex. 4 at -736-37; Ex. 5 at -709-10; Ex. 6 at -2001-02; Ex. 7 at -1860; Ex. 8 at -2743; Ex. 9 at -1808; Ex. 10 at -2262; Ex. 11 at -6433)

422. However, the Trump Organization included in this asset category from 2015 to 2018 speculative and non-existent 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. (Exs. 209-214, at "new signings" and "new openings" tab for Exs. 209, 201, 212, 214; *also*, Ex. 135; Ex. 138 at 1148:21-1153:16)

423. 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. (Exs. 209-210; Ex. 212; Ex. 214)

424. These TBD deals were not signed arrangements that "existed" and for which compensation was "reasonably quantifiable" as the Statements represented was the case for deals

included within this asset category. (Ex. 138 at 620:13-621:14; Ex. 5 at 709-10; Ex. 6 at -2001-02; Ex. 7 at -1860; Ex. 8 at -2743)

425. The chart below shows the value of the TBD deals included in the Real Estate Licensing Development valuations from 2015 to 2018:

Statement Year	Total Value	Amount of TBD Deals in Total Value	% of Total	Record Cite
2015	$339,000,000	$103,536,391	30.5%	Ex. 209
2016	$227,400,000	$46,312,797	20.4%	Ex. 210
2017	$246,000,000	$52,731,562	21.4%	Ex. 211
2018	$202,900,000	$45,198,994	22.3%	Ex. 213

426. The Trump Organization also included in this category a number of deals between entities within the Trump Organization concerning its own properties, including Doral, OPO, Turnberry, Doonbeg, Trump New York, Trump Las Vegas, 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. (Ex. 215; Ex. 216; Ex. 206; Ex. 210; Ex. 211; Ex. 213; Ex. 221; Ex. 222; Ex. 223)

427. 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 where "signed arrangements with the other parties exist" when in fact the value included intercompany agreements among and between Trump Organization affiliates. (Ex. 3 at-054-55; Ex. 4 at -736; Ex. 5 at 709-10; Ex. 6 at -2001-02; Ex. 7 at -1860; Ex. 8 at -2743; Ex. 9 at -161808; Ex. 10 at -162262; Ex. 11 at -6166433).

428. 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.,* ASC No. 850 (Ex. 124)

429. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2013 (Doral, OPO, Trump New York, Trump Las Vegas, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $87,535,099. (Ex. 215; Ex. 407)

430. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2014 (Doral, OPO, Doonbeg, Trump New York, Trump Las Vegas, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $224,259,337. (Ex. 216)

431. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2015 (Doral, OPO, Doonbeg, Trump New York, Trump Las Vegas, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $110,559,370. (Ex. 209)

432. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2016 (Doral, OPO, Doonbeg, Trump New York, Trump Las Vegas, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $120,921,757. (Ex. 210)

433. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2017 (Doral, OPO, Turnberry, Doonbeg, Trump New York, and Trump Chicago) from the

management company valuation while keeping all other variables constant results in a reduction in value of $113,528,527. (Ex. 211; Ex. 212)

434. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2018 (Doral, OPO, Turnberry, Doonbeg, Trump New York, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $115,487,035. (Ex. 213; Ex. 214)

435. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2020 (Doral, OPO, Turnberry, Doonbeg, Trump New York, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $97,468,692. (Ex. 222)

436. Removing (i.e. zeroing out) revenues attributable to the related party transactions in 2021 (Doral, OPO, Turnberry, Doonbeg, Trump New York, and Trump Chicago) from the management company valuation while keeping all other variables constant results in a reduction in value of $106,503,627,000. (Ex. 223).

437. 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.

II. Use of the Statements By Defendants to Obtain Loans and Insurance

A. Loans Through the PWM Division at Deutsche Bank

438. 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. (Ex. 224; DJT

Answer ¶ 562 (admitting "that there was a relationship with Deutsche Bank, and that in 2011 the Chicago Loan was outstanding with the CRE group of Deutsche Bank")

439. The Trump Chicago loan was originated by the Commercial Real Estate ("CRE") lending group in Deutsche Bank. (Ex. 224; DJT Answer ¶ 562 (admitting "that there was a relationship with Deutsche Bank, and that in 2011 the Chicago Loan was outstanding with the CRE group of Deutsche Bank")

440. Starting in 2011, Mr. Trump and the Trump Organization initiated a relationship with bankers in the Private Wealth Management ("PWM") division of Deutsche Bank. (Ex. 225; DJT Answer ¶ 563 (admitting "that in or about 2011 a relationship with the PWM division of Deutsche Bank commenced")

441. 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. (Ex. 225)

442. As part of this introduction, Vrablic confirmed the need for recourse in PWM loans in the form of a personal guarantee from as part of any loan application. (Ex. 225)

443. As a result of the personal guarantee, the Statements were central to the PWM division loan application. (Ex. 226; Ex. 227 at 180:17-181:23)

444. By personally guaranteeing the loans and providing evidence of his liquidity and net worth through his Statements, Mr. Trump was able to apply to the PWM division for, and obtain for his company, 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. (*Compare* Ex. 226; Ex. 228 *with* Ex. 229 (DB Corporate & Investment Bank Term Sheet for Doral loan); Ex. 230 (DB CRE Term Sheet for Trump OPO loan); *and* Ex. 231 (internal Deutsche Bank email dated May 23, 2012 describing proposed DB PWM and DB CIB loan terms, including a "spread differential based on the full guarantee of Donald Trump").

445. The personal guarantee and other loan documents required by the PWM division included a certification by Mr. Trump of his Statement as true and accurate before any funds would be lent. (Ex. 232; Ex. 233; Ex. 234)

446. The regular submission of the Statements certified as true and accurate by Mr. Trump or the trustees of the Trust (as applicable) also helped the Trump Organization and Mr. Trump avoid having the loans placed into default. (*See id.* (requiring annual compliance certification))

447. In a letter dated October 29, 2020, PWM Managing Director Greg Khost advised the Trump Organization that Deutsche Bank had become aware of alleged misrepresentations in Mr. Trump's Statements from OAG's public court filings and public news reporting. (Ex. 235)

448. Mr. Khost's letter stated that these public 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," and asked a series of questions about those Statements. (Ex. 235)

449. In an email sent to Mr. Khost on December 7, 2020, Trump Organization Chief Legal Officer Alan Garten declined to answer Deutsche Bank's questions and stated "we are unaware of anything that would require us to respond to an inquiry of this nature." (Ex. 236)

450. Deutsche Bank Associate General Counsel Gregory Candela's email in response cited various loan agreements and guaranties requiring Mr. Trump to provide the bank with accurate information about his financial condition, and stated that Deutsche Bank was "seeking further information from the Trump Organization to aid in its analysis of whether an event of default may have occurred with respect to such submissions and representations." (Ex. 236)

451. Deutsche Bank subsequently decided to exit its relationship with the Trump Organization once all of its outstanding loans had matured or been repaid "in light of the failure and/or refusal of the covered client organization to respond to DB's event-driven KYC review questions." (Ex. 237)

1. The Doral Loan

452. 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. (Ex. 226; Ex 238; Amended Answer of Donald J. Trump, NYSCEF No. 501 ("DJT Answer") ¶ 571 (admitting "Trump Endeavor 12 LLC executed a purchase and sale agreement for Doral Golf Resort and Spa as part of a bankruptcy proceeding, and served as a stalking horse bidder for the Doral property in a bankruptcy Auction"))

453. 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. (Ex. 226; Ex 238; NYSCEF No. 501 (DJT Answer) ¶ 571)

454. 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. (Ex. 239; Ex. 240; Ex. 241; Ex. 242; Ex. 243)

455. In November 2011, Mr. Trump began personally contacting banks to secure a loan to purchase Doral. (Ex. 244; NYSCEF No. 501 (DJT Answer) ¶ 573 (admitting that Mr. Trump "sought a loan to purchase Doral and spoke with Richard Byrne, the CEO of Deutsche Bank Securities relating to financing for the purchase of the Doral property in or about 2011"))

456. 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. (Ex. 244; NYSCEF No. 501 (DJT Answer) ¶ 573)

457. 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." (Ex. 244; NYSCEF No. 501 (DJT Answer) ¶ 573)

458. On November 14, 2011, the two bankers spoke with Mr. Trump and Ivanka Trump about the loan. (Ex. 244; NYSCEF No. 501 (DJT Answer) ¶ 573)

459. The next day, Mr. Trump sent Mr. Byrne a letter, copying Ivanka Trump, enclosing his Statement 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!)." (Ex. 245; NYSCEF No. 501 (DJT Answer) ¶ 574 (admitting "that Defendant and Ivanka Trump spoke with bankers about the loan and Mr. Trump wrote a letter to Mr. Byrne"))

460. 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; NYSCEF No. 501 (DJT Answer) ¶ 574)

461. 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. (Ex. 229; NYSCEF No. 501 (DJT Answer) ¶ 575 (admitting "the CRE division offered financing terms to Trump Endeavor 12 LLC"))

462. The Trump Organization did not accept those terms and continued to look for financing for Doral. (Ex. 246)

463. In December 2011, Mr. Trump and Ivanka Trump met with Rosemary Vrablic to discuss a potential loan for Doral through the PWM division. (Ex. 246)

464. On December 6, 2011, Ms. Trump emailed 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)

465. 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. (Ex. 247; Ex. 248)

466. 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. (Ex. 247; Ex. 248)

467. 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. (Ex. 247; Ex. 248)

468. 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." (Ex. 249)

469. 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)

470. 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.)" (Ex. 249)

471. In Ms. Trump's response, "Beal" is a reference to Beal Bank, another financial institution the Trump Organization contacted about a loan for Doral. (Ex. 250; Ex. 251)

472. On December 18, 2011, Ms. Trump sent a revised term sheet back to Vrablic, copying Allen Weisselberg, seeking to reduce Mr. Trump's net worth covenant from $3 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). (Ex. 252; Ex. 253)

473. 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. (Ex. 226)

474. 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)

475. The credit memo listed this guarantee as a source of repayment, and recommended approval of the loan. (Ex. 266 at -1693)

476. 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)

477. 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. (Ex. 254; NYSCEF No. 501 (DJT Answer) ¶ 587 (admitting "the Doral loan closed on June 11, 2012 and was personally guaranteed by Mr. Trump"))

478. Interest on the loan was set for LIBOR + 2.25 during a renovation period, and LIBOR + 2.0 thereafter. (Ex. 254 at -5874)

479. The loan agreement, signed by Mr. Trump, recited that Mr. Trump's June 30, 2011 Statement had to be provided to the bank as a precondition of lending. (Ex. 254 at -5911, -5914)

480. In multiple instances, the loan agreement required that Mr. Trump certify the accuracy of the financial information in his Statement. (Ex. 254 at -5887, -5891, -5892)

481. 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." (Ex. 254 at -5887)

482. 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." (Ex. 254 at -5911)

483. The loan agreement included a debt service coverage ratio ("DSCR") covenant and a loan-to-value ("LTV") ratio covenant. (Ex. 254 at -5894 to -5897)

484. Mr. Trump's personal guarantee, which he signed, included various financial representations. (Ex. 232)

485. Mr. Trump, as guarantor, was required to certify: (i) the truth and accuracy of his Statement 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 Statements" which are "true and correct in all material respects;" (iii) the Statement "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 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." (Ex. 232 at -4177 to -4178) 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)

486. 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." (Ex. 232 at -4180)

487. 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. (Ex. 232 at -4180; Ex. 255 at 270:7-15)

488. 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 to -4181)

489. 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." (Ex. 232 at -4180 to -4181, -4189 to -4190)

490. False certifications of such statements were expressly identified as events of default under the loan agreement. (Ex. 254 at -5916)

491. 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." (Ex. 254 at -5916)

492. The term "Loan Documents" includes the loan agreement, guarantee, and, *inter alia*, "any other document, agreement, consent, or instrument which has been or will be executed in connection with" the agreement and guarantee, and thus would include annual signed certifications. (Ex. 254 at -5865)

493. In connection with the Doral Loan, Mr. Trump submitted Statements 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). (Ex. 256; Ex. 257; Ex. 258; Ex. 259; Ex. 260; Ex. 261; Ex. 262; Ex. 263; *see also* NYSCEF No. 501 (DJT Answer) ¶ 597 (admitting "Statements and certificates were submitted in connection with the Doral Loan from 2013-2021"))

494. 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. (Ex. 264; Ex. 265; Ex. 266; Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272)

495. 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. (NYSCEF No. 501 (DJT Answer) ¶ 600 (admitting "the loan was repaid and refinanced in or about 2022 through Axos Bank"))

496. As a result, Deutsche Bank received Mr. Trump's Statements as of June 30, 2019, June 30, 2020 and June 30, 2021. (Ex. 271; Ex. 272)

497. The 2011 Statement was material to Deutsche Bank's consideration and approval of the Doral loan on the terms provided. (Ex. 226, at -1695)

498. The Statements for 2014 through 2021 were material to Deutsche Bank's continued maintenance of the loan. (Ex. 266; Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272)

2. The Chicago Loan

499. 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. (Ex. 228 at -68526)

500. Dueling proposals for the Trump Chicago property within Deutsche Bank were under discussion in or about May 2012. (Ex. 273; Ex. 274; Ex. 275 at 125:7-129:22)

501. 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. (Ex. 273; Ex. 274; Ex. 275 at 125:7-129:22)

502. 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. (Ex. 273; Ex. 274; Ex. 275 at 125:7-129:22)

503. 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 Statement. (Ex. 274)

504. 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 Donald J. Trump. (Ex. 228 at -68524)

505. 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%. (Ex. 228 at -68521)

506. 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." (Ex. 228 at -68524)

507. 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. (Ex. 228 at -68524)

508. This credit memo assessed Mr. Trump's 2011 and 2012 Statements, 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." (Ex. 228 at -68526)

509. 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 Statements. (Ex. 276; Ex. 277; NYSCEF No. 501 (DJT Answer) ¶ 606 (admitting "loans relative to the Chicago property closed on or about November 9, 2012 and there were personal guarantees associated with the loans"))

510. The loan agreements, signed by Mr. Trump, recited that Mr. Trump's then-most-recent Statement had to be provided to the bank as a precondition of lending. (Ex. 234 at -6022; Ex. 278 at -5310; NYSCEF No. 501 (DJT Answer) ¶ 607 (admitting "that Trump Chicago loan

exists and was signed by Mr. Trump and Statements of Financial Condition were submitted pursuant to the loan"))

511. Mr. Trump's 2012 Statement was provided to the bank in October 2012 and figures from that Statement are reflected in the bank's internal consideration of the loans. (Ex. 279; Ex. 228 at -68526)

512. In multiple instances, the loan agreements required that Mr. Trump certify the accuracy of that Statement, 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." (Ex. 234 at -5992; Ex. 278 at -5282)

513. 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." (Ex. 234 at -6020; Ex. 278 at -5308)

514. The Trump Chicago loan facilities each entailed a personal guarantee signed by Mr. Trump pursuant to which he, as guarantor, was required to certify to the truth and accuracy of his Statement as a condition of the guarantees—reliance on which Mr. Trump agreed the loans themselves were granted. (Ex. 277; Ex. 276)

515. The terms of each facility's personal guarantees were materially identical to the Doral guarantee: Mr. Trump was required to maintain a minimum net worth, based upon his Statement, of $2.5 billion, and he was required to provide an annual statement 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." (Ex. 277 at -38880 to -38881; Ex. 276 at -3232 to -3233)

516. In addition, both loan facilities "shall be conclusively presumed to have been created in reliance" on their respective continuing guarantees. (Ex. 277 at -38877; Ex. 276 at -3226)

517. Each guarantee similarly provided that "Guarantor has furnished to Lender his Prior Financial Statements," such prior Statements are true and correct in all material respects, and his 2012 Statement "presents fairly Guarantor's financial condition as of June 30, 2012." (Ex. 277 at -38878; Ex. 276 at -3229)

518. Each guarantee 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." (Ex. 277 at -38878; Ex. 276 at -3230)

519. 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 loan agreement. (Ex. 234 at -6024; Ex. 278 at -5312)

520. 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. (Ex. 265; Ex. 266; Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272)

521. 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. (Ex. 265 at -1741)

522. 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)." (Ex. 265 at -1741)

523. The credit memo recommending approval did so, in part, based on the "Financial Strength of the Guarantor." (Ex. 265 at -1748)

524. Amended loan documents advancing the additional requested funds closed on June 2, 2014. (Ex. 280; Ex. 281; NYSCEF No. 501 (DJT Answer) ¶ 616 (admitting "amended loan documents closed on June 2, 2014"))

525. 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. (Ex. 265 at -1752)

526. In particular, this credit memo incorporated figures from the 2011, 2012, and 2013 Statements, 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." (Ex. 265 at -1752)

527. Amended Trump Chicago loan documents—including an agreement and a personal guarantee—were executed by Mr. Trump in May 2014. (Ex. 280 at -3709, -3711; Ex. 281 at -3204; NYSCEF No. 501 (DJT Answer) ¶ 618 (admitting "Trump Chicago loan documents were executed in or about May 2014 and contain provisions relating to certification and submission of Statements"))

528. These new loan documents contained terms and conditions governing submission, certification, and misrepresentation of Mr. Trump's Statements that were substantially similar to those describe above for the Doral and 2012 Trump Chicago loan facilities. In the amended Trump Chicago guarantee, Mr. Trump certified that his 2013 Statement was true and correct in all material respects and that the Statement "presents fairly Guarantor's financial condition as of June 30, 2013." (Ex. 281 at -3191)

529. 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. (Ex. 266 at -5527)

530. Either Mr. Trump, Eric Trump or the trustees of the Trust certified the accuracy of the Statements when submitted in connection with the Trump Chicago loan facilities between 2013 and 2021, either through the execution of an amended guarantee or through the submission of a compliance certificate. (Ex. 281; Ex. 282; Ex. 257; Ex. 260 at -28-29; Ex. 283; Ex. 284; Ex.

285; *see also* NYSCEF No. 501 (DJT Answer) ¶ 620 (admitting "the Statements were submitted in connection with the Trump Chicago loans for the years referenced along with certifications"))

531. The 2011 and 2012 Statements were material to Deutsche Bank's consideration and approval of the Chicago loan on the terms provided. (Ex. 228)

532. The Statements for 2013 through 2021 were material to Deutsche Bank's continued maintenance of the loan. (*See supra*)

3. The OPO Loan

533. In approximately July 2013, Deutsche Bank began considering whether to extend credit for the Trump Organization's redevelopment of OPO in Washington, DC. (Ex. 286; Ex. 287; NYSCEF No. 501 (DJT Answer) ¶ 627 (admitting "Trump Old Post Office LLC reached out to Deutsche Bank about financing the Old Post Office project"))

534. 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 ("GSA") that the company described as "one of the most competitive selection processes in the history of the agency." (Ex. 288; NYSCEF No. 501 (DJT Answer) ¶ 622 (admitting "Trump Old Post Office LLC obtained the right to redevelop the Old Post Office property as the result of a competitive bidding process run by the U.S. General Services Administration, which included evaluation based on a set of specific criteria"))

535. Mr. Trump's Statement was central to that successful effort, captained by Ivanka Trump. (*See infra*; *see also* NYSCEF No. 501 (DJT Answer) ¶ 623 (admitting "that financial capacity was one among several factors which GSA stated would be a factor in the selection process"))

536. 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. The GSA's RFP specified that financial statements "must be in accordance with Generally Accepted Accounting Principles." (Ex. 289 at -3884122)

537. Mr. Trump's Statements, prepared in the same process described above, were submitted as part of Mr. Trump's July 2011 bid. The Trump Organization's submission to the GSA represented that "[t]he attached Statement of Financial Condition was compiled under GAAP, but it should be noted that there are departures from GAAP that are described in the Accountant's Compilation Report attached to the Statement of Financial Condition." (Ex. 290 at -2114408; NYSCEF No. 501 (DJT Answer) ¶ 624 (admitting "the Statement was submitted as part of the 2011 bid"))

538. Mr. Trump and Ivanka Trump participated personally in the bidding process in 2011. (*See infra*; *see also* NYSCEF No. 501 ("DJT Answer") ¶ 625 (admitting "Mr. Trump and Ivanka Trump had roles in the Old Post Office property bidding process and the communications with the GSA exist"))

539. In particular, Ms. Trump was involved in crafting communications to the GSA in connection with the bid and in responding to deficiency comments raised by the GSA. (Ex. 291; Ex. 292; Ex. 293)

540. Those communications concerned, among other topics, Mr. Trump's Statements, 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. (Ex. 291; Ex. 292; Ex. 293)

541. 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. (Ex. 294 at -193509)

542. 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. (NYSCEF No. 501 (DJT Answer) ¶ 626 (admitting that "Trump Old Post Office LLC was selected by GSA in February 2012 to redevelop the property and signed the lease on or about August 5, 2013"))

543. In advance of executing the lease, the Trump Organization reached out to the CRE division at Deutsche Bank about potential financing for the project. (Ex. 295; DJT Answer ¶ 627 (admitting "Trump Old Post Office LLC reached out to Deutsche Bank about financing the Old Post Office project"))

544. Despite the request coming into the CRE division, Vrablic from the PWM division—at the urging of Ms. Trump—kept close tabs on the bank's consideration of the request. (Ex. 296; Ex. 297; Ex. 298; Ex. 299)

545. By October 2013, the CRE division had proposed a term sheet offering the Trump Organization a $140 million loan at LIBOR + 400 basis points. (Ex. 300; NYSCEF No. 501 (DJT Answer) ¶ 628 (admitting "CRE offered a term sheet"))

546. 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. (Ex. 301; NYSCEF No. 501 (DJT Answer) ¶ 629 (admitting "the PWM group was approached regarding the OPO Loan"))

547. 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 $160 million commitment, "[w]e understand the request is for $170 million and are working on getting the step-up approved." (Ex. 302; Ex. 303; NYSCEF No. 501 (DJT Answer) ¶¶ 630-632 (admitting receipt of "a term sheet from Deutsche Bank in or about December 2013"))

548. The PWM division term sheet differed in a number of 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. (Ex. 302; Ex. 303)

549. 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. (Ex. 304)

550. Mr. Trump, as guarantor, would be required to provide his annual statement of financial condition to the bank. (Ex. 304 at -10301)

551. A May 2014 Deutsche Bank credit memo approved the $170 million loan to Trump Old Post Office LLC. (Ex. 265)

552. This credit memo incorporated information from Mr. Trump's 2011, 2012, and 2013 Statements. (Ex. 265 at -1752)

553. Mr. Trump's net worth and his Statements were critical to the bank's approval of the final terms of the loan, which closed on August 12, 2014. (Ex. 265)

554. As with the Doral and Trump Chicago loans, the loan agreement for the OPO loan required that Mr. Trump's most recent Statement (which was his 2013 Statement) be provided to the bank as a condition of the loan. (Ex. 233 at -4989)

555. The loan agreement required that Mr. Trump certify to the accuracy of the 2013 Statement 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." (Ex. 233 at -4991)

556. 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." (Ex. 233 at -5025)

557. 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 Disbursement with the same effect as if made on such date." (Ex. 233 at -5028)

558. 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." (Ex. 233 at -5031)

559. Mr. Trump's personal guarantee on the OPO loan, which he signed, is dated August 12, 2014. (Ex. 305)

560. Mr. Trump's personal guaranty contained various financial representations, including that Mr. Trump, as guarantor: (i) was required to certify the truth and accuracy of his Statement as a condition of the guarantees—reliance on which Mr. Trump acknowledged when the loans themselves were granted; (ii) "has furnished to Lender his Prior Financial Statements" that are true and correct in all material respects; (iii) that the 2013 Statement "presents fairly Guarantor's financial condition as of June 30, 2013"; and (iv) 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 Loan Documents to which he is a party inaccurate, incomplete or otherwise misleading in any material respect." (Ex. 305 at -3285-87)

561. 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." (Ex. 305 at -3290-91)

562. 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. (Ex. 305 at -3290-91; Ex. 255 at 270:7-15)

563. 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, including his statement of financial condition, delivered annually with a compliance certificate certifying the statement "presents fairly in all material respects the financial condition of Guarantor at the period presented." (Ex. 305 at 3290-91)

564. False certifications of such financial statements were expressly contemplated as events of default under the loan agreement. (Ex. 233 at -5031)

565. 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. (Ex. 266; Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272)

566. Because the OPO loan was a construction loan, the $170 million loan amount was disbursed in a series of "draws" over time. (Ex. 233 at -4979-84; NYSCEF No. 501 (DJT Answer) ¶ 645 (admitting "that the Old Post Office loan was disbursed over time according to draw requests"))

567. The first draw was on or about June 22, 2015 in a "Request for Disbursement" signed by Mr. Trump. (Ex. 306)

568. Draws continued throughout 2015 and 2016 and with two noted exceptions were made on requests signed by Mr. Trump personally. (Ex. 306; Ex. 307; Ex. 308; Ex. 309; Ex. 310; Ex. 311)

569. 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. (Ex. 310; Ex. 311)

570. On or about May 11, 2022, the Trump Organization sold the OPO property for $375 million. (Ex. 312; *see also* DJT Answer ¶ 646 (admitting "the OPO property was sold and the Deutsche Bank loan repaid")]

571. Of those proceeds, $170 million was used to repay the loan to Deutsche Bank. (Ex. 312, at -5173 (showing payoff to DB Private Wealth Mortgage Ltd); see also DJT Answer ¶ 646 (admitting "the OPO property was sold and the Deutsche Bank loan repaid"))

572. In connection with the OPO loan, Mr. Trump provided Deutsche Bank with his 2014 through 2021 Statements of Financial Condition, accompanied by certifications executed either by Mr. Trump personally or by Donald Trump, Jr. or Eric Trump as attorney-in-fact for Mr. Trump. (Ex. 282; Ex. 257; Ex. 313; Ex. 260; Ex. 314; Ex. 315; Ex. 316)

573. The 2011, 2012, and 2013 Statements were material to Deutsche Bank's consideration and approval of the OPO loan on the terms provided. (Ex. 265 at -1752)

574. The Statements for 2014 through 2021 were material to Deutsche Bank's continued maintenance of the loan. (Ex. 266; Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272)

B. 40 Wall Street Loan From Ladder Capital

575. As stated in the 2015 SFC, 40 Wall Street "was subject to a mortgage payable in the amount of $160,000,000 as of June 30, 2015. The interest rate on the note had been fixed through an interest rate swap agreement at a rate of 5.71% per annum until the initial maturity date, November 10, 2017. During this time, if certain cash flow provisions were met, the loan required that principal payments be made. The mortgage is collateralized by the lessee entity's interest in the property." (Ex. 5, -696; *see also* Ex. 78)

576. On January 12, 2015, Allen Weisselberg emailed Eric Trump a draft letter, writing, "I would like to discuss the enclosed letter with you before I send it to Peter." (Ex. 317) The draft letter attached was addressed to Capital One, N.A, Attention: Peter Welch "Senior Vice President/Commercial Real Estate." In the draft letter, Mr. Weisselberg wrote "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." (*Id.*)

577. On January 12, 2015, Mr. Weisselberg sent a signed copy of the letter to Peter Welch, with an email note "The attached is enclosed as a follow-up to your call with Jeff." (Ex. 318)

578. As reflected in handwritten notes from Mr. Weisselberg, Capital One declined to renegotiate the loan because "they came to the realization that the NOI . . . would not be sufficient to handle the reset ground rent in 2032." (Ex. 319) According to Allen Weisselberg "the above led us to Ladder Capital." (*Id.*)

579. Allen Weisselberg's son Jack Weisselberg has been employed at Ladder Capital since 2008. (Ex. 320 at 15:8-15:11)

580. By April 2015, Allen Weisselberg was communicating with Jack Weisselberg about the economics of exiting the loan with Capital One to take on a loan with Ladder Capital. (Ex. 321)

581. On April 17, 2015, Jack Weisselberg wrote to Brian Harris, the Chief Executive Officer of Ladder Capital that "Donald is on board for the refinance of 40 Wall. They would like to close in November, when their $5 million loan amortization payment would be due to their current lender (Capital One." (Ex. 322)

582. On April 23, 2015, Jack Weisselberg sent Allen Weisselberg a "term sheet for 40 Wall Street." The document reflected basic loan terms including "All reserves including TI/LC, CapEx, Outstanding Free Rent, Ground Rent Payments, etc. to be personally guaranteed by Donald J. Trump." (Ex. 323)

583. In May 2015, Allen Weisselberg sent Jack Weisselberg a letter enclosing a term sheet for a "Proposed $161,000,000 Refinancing of 40 Wall Street, New York, New York." (Ex.

324) The letter was signed by Donald Trump as President of 40 Wall Street Member Corp., who "Agreed to and Acknowledged on Behalf of Borrower," 40 Wall Street LLC. (LC00029513, at -517) The term sheet provided that: "In lieu of reserves for insurance, tenant improvements, leasing commissions, capital expenditures and ground lease payments, Donald J. Trump may provide a personal guaranty. In lieu of reserves for free rent periods (at Closing only), Donald J. Trump will guaranty all outstanding free rent, which will burn off on a lease by lease basis when the respective tenant begins to pay full, unabated rent." (Ex. 324, at -516) The term sheet identified a series of closing conditions, including "Delivery of financial statements (including tax returns) from Borrower and any guarantor. Weizer Mazars LLP will be acceptable to Lender in connection with any accounting or reporting obligation in the loan documents requiring an acceptable accounting firm." (Ex. 324, at -518)

584. A separate copy of "Exhibit C – Property and Principal Certification" to the term sheet was initialed and signed by Donald Trump. (Ex. 325) In response to question 20 "Are any of your assets pledged as collateral?" the addendum to the answer "Yes," says "See Donald J. Trump's June 30, 2014 Statement of Financial Condition." (Ex. 325 at -962, -963)

585. Jack Weisselberg testified that Ladder Capital would accept a guaranty in lieu of reserves when there is "enough net worth and liquidity to warrant such a reserve." He further testified that: "In this case, taking the guarantee for it we felt pretty safe with. We had done it in the past with other borrowers including him. And on this loan, we decided it was okay." (Ex. 320 at 188:17-189:3)

586. On May 22, 2014 Jeff McConney sent Jack Weisselberg a copy of the 2014 SFC, reporting a net worth of $5,777,540,000 and cash and marketable securities of $302,300,000. (Ex. 326; Ex. 4 at -717, - 718)

587. On June 29, 2015, Craig Robertson of Ladder Capital sent an "RUC Memo" concerning the 40 Wall Loan to the Risk and Underwriting Committee of Ladder Capital. (Ex. 327)

588. The RUC Memo noted that: "In lieu of ongoing reserves for insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments, Donald J. Trump will provide a personal guaranty. The TI/LC/ and Free Rent Reserves outstanding at closing are presented below. In lieu of an up-front reserve for these items, Donald J. Trump will provide a personal guaranty for such amounts outstanding" (Ex. 327, at -322)

589. In discussing Donald Trump as the sponsor of the loan, the RUC Memo states: "As of June 30, 2014 Mr. Trump reported a net worth of nearly $5.8 billion and liquidity in excess of $300 million." (Ex. 327, at -325)

590. In discussing the "Deal Strengths" Item 4 is listed as "Conservative Loan Structure" and the second bullet point states: "The Loan features a warm-body carveout guarantor, Donald J. Trump. As of June 30, 2014 Mr. Trump reported a net worth of nearly $5.8 billion and liquidity in excess of $300 million." (Ex. 327, at -326)

591. Item 8 under "Deal Strengths" is "Experienced and Well capitalized sponsorship," and the final bullet point states: "Mr. Trump reports a net worth of nearly $5.8 billion and liquidity in excess of $300 million."

592. Under the section "Sponsorship" the RUC Memo states: "As of June 30, 2014 Mr. Trump reported a net worth of nearly $5.8 billion and liquidity in excess of $300 million." (Ex. 327, at -333)

593. In discussing "Loan Features," the RUC Memo states: "Key Principal must maintain a net worth equal to at least $160 million and a liquidity of at least $15 million."

594. When asked about the inclusion of the net worth requirement, Jack Weisselberg testified: "In this case, the liquidity is a bit higher than we typically would use. Part of that is because of the loan size. Part of that is because of the amount of liquidity he was showing us at closing, and part of it is because of all the reserves that we had that he was guaranteeing. We wanted to make sure he always had enough cash on hand that could cover that in case we did have to call on those dollars to be spent." (Ex. 320 at 189:20-190:6)

595. When asked if the net worth requirement was a point of negotiation with the Trump Organization in the deal, Jack Weisselberg testified: "This is a point of negotiation on every deal we do with every sponsor, and they definitely negotiated more than most, so yes, we absolutely negotiated this point." (Ex. 320 at 190:10-190:14)

596. When asked what the process was for verifying net worth and liquidity, Jack Weisselberg testified: "So we had a personal financial statement for him or I think they call it a statement of financial condition and that is typically where we see their assets, their liabilities, and then from there we can ask questions if we want to know a little bit more. Basically, we're basing our net worth numbers on that, on their financial statement." (Ex. 320 at 191:17-191:25)

597. Donald Trump executed a "Guaranty of Recourse Obligations" as-of July 2, 2015, in connection with the 40 Wall Ladder Loan. The guaranty provided that Donald Trump "shall

deliver to Lender not later than September 30th of each calendar year, Guarantor's annual financial statements prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender (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, and (iii) shall deliver to Lender, not later than April 30th of each calendar year, a certificate signed by Guarantor certifying to the fact that as of March 31st of such year, there has been no material adverse change in Guarantor's financial condition from that shown on Guarantor's annual financial statements required to be delivered to Lender pursuant to clause (ii) above, and that the Net Worth and Liquidity covenants set forth in clause (i) above are satisfied." (Ex. 328 at -3076-3077)

598. Donald Trump executed a "Guaranty of Property Expenses" as-of July 2, 2015, in connection with the 40 Wall Ladder Loan. The guaranty provided that Donald Trump "shall deliver to Lender not later than September 30th of each calendar year, Guarantor's annual financial statements prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender (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, and (iii) shall deliver to Lender, not later than April 30th of each calendar year, a certificate signed by Guarantor certifying to the fact that as of March 31st of such year, there has

been no material adverse change in Guarantor's financial condition from that shown on Guarantor's annual financial statements required to be delivered to Lender pursuant to clause (ii) above, and that the Net Worth and Liquidity covenants set forth in clause (i) above are satisfied."

C. Seven Springs Loan from RBA/Bryn Mawr

599. 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. (Ex. 329, 330)

600. Donald J. Trump personally guaranteed the mortgage. (Ex. 330)

601. As a result of the personal guarantee Mr. Trump's Statements were submitted to RBA and Bryn Mawr on multiple occasions in connection with the Seven Springs mortgage. (Ex. 331; Ex. 332; Ex. 329; Ex. 333 at PDF 13; Ex. 334; Ex. 335 at PDF 5; Ex. 336)

602. 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." (Ex. 337 at PDF 6)

603. A 2014 credit memo from Bryn Mawr contains data drawn from Mr. Trump's 2011 and 2013 Statements. (Ex. 338 at PDF 11)

604. 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." (Ex. 338 at PDF 12)

605. Bryn Mawr retained in its files Mr. Trump's Statements for 2010, 2011, 2012, 2013, 2014, 2015, and 2016. (Ex. 329; Ex. 339; Ex. 336)

606. Typically, the Statements were sent under the cover of a letter from McConney, stating that Mr. Trump's Statement was being provided pursuant to the mortgage. (Ex. 329 at PDFs 7, 156, 230, 257; Ex. 339; Ex. 336)

607. Submission of the Statements was required in order to maintain the loan and to obtain a series of extensions. (Ex. 340 at PDF 8; Ex. 332; Ex. 341 at PDF 8; Ex. 342 at PDF 6)

608. For example, the bank approved extensions of the maturity date of the loan in 2011, 2014, and 2019 in reliance upon Mr. Trump's Statements submitted pursuant to Mr. Trump's personal guarantee. (Ex. 340; Ex. 341; Ex. 342)

609. 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. (Ex. 340; Ex. 341; Ex. 342)

610. The personal guaranty for this loan was described by Bryn Mawr in internal records as a positive component of the loan for the bank. (Ex. 329 at PDF 80)

611. 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." (Ex. 329 at PDF 80)

612. 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." (Ex. 338 at PDF 15)

613. During the 2019 loan modification, McConney originally asked for a quote on the price of extending the loan without the personal guarantee of Donald J. Trump. (Ex. 344)

614. 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 the rate that applied with a guarantee. (Ex. 344)

615. After receiving these terms, McConney and Eric Trump decided to extend the loan with the personal guaranty of Donald J. Trump in place. (Ex. 344)

616. The Statements from 2011 through 2019 were material to Bryn Mawr's agreements to extend and maintain the mortgage. (Ex. 345 at 61:12-19; 132:13-18; 183:3-11)

D. Surety Insurance from Zurich

617. From at least 2010 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"). (Ex. 346 at -8199-200; Ex. 347 at -9142; Ex. 348 at 27:3-10)

618. 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. (Ex. 346 at -8200; Ex. 349 at -8524; Ex. 350 at -8516; Ex. 351 at -8211; Ex. 352 at -8226; Ex. 353 at -8232; Ex. 354 at -8509; Ex. 355 at -8503; Ex. 356 at -8995)

619. 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. (Ex. 357 at -8481)

620. 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. (Ex. 356 at -8998; Ex. 248 at 81:10-17)

621. 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. (Ex. 348 at 18:17-23:2; Ex. 359 at 54:7-55:18)

622. 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. (Ex. 360 at -8276; Ex. 348 at 22:19-23:2)

623. The Surety Program included an annual requirement that Mr. Trump disclose to Zurich's underwriter his personal financial statements. (Ex. 357 at -8481; Ex. 361 at -8483; Ex. 359 at 50:15-51:16, 85:19-86:9; Ex. 348 at 30:11-31:13, 34:12-35:8)

624. 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. (Ex. 348 at 34:12-24; Ex. 359 at 50:15-51:4)

625. 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. (Ex. 362 at -8345; Ex. 349 at -8526; Ex. 359 at 79:6-22, 82:8-83:2)

626. During the on-site review that occurred on November 20, 2018 for the 2019 renewal, Zurich's underwriter Claudia Markarian[1] was shown the 2018 Statement, which listed as assets real estate holdings with valuations that Allen Weisselberg represented to Ms. Markarian had been determined each year by a professional appraisal firm "such as Cushman & Wakefield." (Ex. 354 at -8507; Ex. 348 at 49:10-50:10)

627. Ms. Markarian considered the valuations to be reliable based on Mr. Weisselberg's representation that they were prepared by a professional appraisal firm, which she recorded in her contemporaneous notes that she used to create the narrative portion of her annual underwriting review. (Ex. 354 at -8507; Ex. 348 at 37:16-40:5, 49:10-50:10, 51;10-52:7)

628. In connection with her underwriting analysis, Ms. Markarian viewed Mr. Weisselberg's representations about the valuations being prepared by a professional appraisal firm favorably. (Ex. 348 at 51:17-52:5, 54:17-55:7, 58:15-59:17)

629. Despite Mr. Weisselberg's representations, in reality Mr. Trump never retained a professional appraisal firm to prepare any of the property valuations reflected in the Statements. (Ex. 363 at 217:7-14)

630. Ms. Markarian noted in her narrative for her on-site review of the 2018 Statement the amount of cash on hand reflected in the asset category "cash and cash equivalents." (Ex. 354 at -8507; Ex. 348 at 46:13-21)

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[1] Ms. Markarian now goes by her married surname Mouradian, Ex. 348 at 9:13-23, but to avoid confusion we refer to her by her maiden name because that is the name she used while at Zurich and how she is identified in all of the relevant documents.

631. Ms. Markarian considered cash on hand to be an important figure for her underwriting analysis because it indicated Mr. Trump's liquidity and represented the funds available to repay Zurich in the event Zurich had to pay on a surety bond issued under the program. (Ex. 348 at 46:22-47:19)

632. Mr. Trump falsely inflated the amount of "cash and cash equivalents" in the 2018 Statement by including $24.4 million that belonged to the Vornado Partnership over which he had no control. *See, supra*, at ¶¶ 384-406.

633. This misrepresentation of the amount of cash on hand was material to Ms. Markarian's underwriting analysis because it meant Mr. Trump was less liquid than reflected in the 2018 Statement. (Ex. 348 at 88:5-89:3, 141:20-142:17)

634. Mr. Weisselberg also advised Ms. Markarian during her on-site review of the 2018 Statement that the "value of properties" did not "vary significantly" from year to year. (Ex. 354 at -8507; Ex. 348 at 52:6-20)

635. Mr. Weisselberg's representations about how the property values remained consistent year over year factored favorably into Ms. Markarian's analysis. (Ex. 348 at 52:21-54:7)

636. In reality, the values in the Statements for a number of properties varied significantly over time. *See, supra*, at ¶¶ 36-76.

637. Based on her favorable assessments resulting from the representations made to her by Mr. Weisselberg during her on-site review and the information contained in the 2018 Statement, Ms. Markarian recommended that the Surety Program be renewed at the expiring terms, which her manager approved. (Ex. 348 at 57:15-59:17)

638. During the on-site visit for the next renewal conducted on January 15, 2020, Ms. Markarian reviewed Mr. Trump's 2019 Statement. (Ex. 355 at -8501; Ex. 348 at 63:16-65:4)

639. During this on-site review, Mr. Weisselberg represented to Ms. Markarian that the "fair value for the properties is appraised annually by a professional firm" which for the 2019 Statement was the "Newmark Group and has previously been done by Cushman & Wakefield," explaining that the reason for the change in the firm was due to the "individual at Cushman & Wakefield with whom the Organization had a longstanding relationship with moved to work at Newmark." (Ex. 355 at -8501; Ex. 348 at 72:11-74:12)

640. Ms. Markarian 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 that she used to create the narrative portion of her annual underwriting review. (Ex. 355 at -8501; Ex. 348 at 65:15-66:22, 74:13-75:9)

641. In connection with her underwriting analysis, Ms. Markarian viewed Mr. Weisselberg's representations about the valuations being prepared again by a professional appraisal firm favorably. (Ex. 348 at 74:21-75:9)

642. Despite Mr. Weisselberg's representations, in reality Mr. Trump never retained a professional appraisal firm to prepare any of the property valuations reflected in the Statements. (Ex. 363 at 217:7-14)

643. Ms. Markarian noted in her narrative for her on-site review of the 2019 Statement the amount of cash on hand reflected in the asset category "cash and cash equivalents." (Ex. 355 at -8501; Ex. 348 at 70:10-71:21)

644. Ms. Markarian considered cash on hand to be an important figure for her underwriting analysis because it indicated Mr. Trump's liquidity and represented the funds available to repay Zurich in the event there was a claim that Zurich had to pay on a surety bond issued under the program. (Ex. 348 at 70:25-71:21)

645. Mr. Trump falsely inflated the amount of "cash and cash equivalents" in the 2019 Statement by including $24.7 million that belonged to the Vornado Partnership over which he had no control. *See, supra*, at ¶¶ 384-406.

646. This misrepresentation of the cash on hand was material to Ms. Markarian's underwriting analysis because it meant Mr. Trump was less liquid than reflected in the 2019 Statement. (Ex. 348 at 89:4-23, 141:20-142:17)

647. Mr. Weisselberg also advised Ms. Markarian during her on-site review of the 2019 Statement that the "value of properties" did not "vary significantly" from year to year. (Ex. 355 at -8502; Ex. 348 at 75:10-76:4)

648. Ms. Markarian viewed Mr. Weisselberg's representations about how the property values remained consistent year over year as a positive factor. (Ex. 348 at 76:5-19)

649. In reality, the values in the Statements for a number of properties varied significantly over time. *See, supra*, at ¶¶ 36-76.

650. Based on her favorable assessments resulting from the representations made to her by Mr. Weisselberg during her on-site review and the information contained in the 2019 Statement, Ms. Markarian recommended that the Surety Program be renewed at the expiring terms, which her manager approved. (Ex. 348 at 79:19-82:8)

651. Mr. Trump's Statements did not disclose to the reader that within the "Clubs" category many of the golf club values included a 30% or 15% premium for the Trump Brand. (Ex. 3 at -39)

652. Under Zurich's underwriting guidelines, intangible assets such as brand value are to be excluded as a disallowed item. (Ex. 364 at 96:49-97:18)

E. D&O Insurance from HCC

653. 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. (Ex. 365 at -94; Ex. 366)

654. 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 Statements, through a monitored in-person review at Trump Tower. (Ex, 367 at -61; Ex. 368; Ex. 369)

655. 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 Weisselberg) and various insurers, including Tokio Marine HCC ("HCC"). (Ex. 368)

656. 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. (Ex. 370 at 34:9-35:24; Ex. 365)

657. 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 Statement. (Ex. 5 at -691-92; Ex. 369; Ex. 370 at 57:21-64:16)

658. 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. (Ex. 370 at 63:19-64:16; Ex. 369)

659. The representation that Mr. Trump had $192 million in cash was material to the HCC underwriter's assessment of Mr. Trump's liquidity, which has bearing on his ability to meet the retention obligation under the HCC policy. (Ex. 370 at 161:7-164:9; Ex. 371 at -68)

660. 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. (Ex. 371; Ex. 372; Ex. 369; Ex. 370 at 68:22-69:13)

661. 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. (Ex. 370 at 69:5-13)

662. 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. (Ex. 373)

663. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (Ex. 374)

664. 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 and were aware of the investigation. (Ex. 375; Ex. 376; Ex. 377)

665. 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 7, 2016. (Ex. 376; Ex. 378)

666. Neither Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the 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. (Ex. 369; Ex. 370 at 68:22-69:13)

667. 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. (Ex. 379; Ex. 380)

668. 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. (Ex. 381; Ex. 382)

669. Based on further correspondence exchanged in 2018 between AON on behalf of the insureds and HCC's coverage counsel disputing whether coverage existed for tendered claims, HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. (Ex. 370 at 143:20-145:10)

670. 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. (Ex. 383; Ex. 384; Ex. 370 at 143:13-146:4)

671. The Trump Organization declined to accept the renewal terms. (Ex. 370 at 150:14-151:12)

III. The Parties

A. Donald Trump

672. The Statements of Financial Condition from 2011 through 2015 are personal financial statements for Mr. Trump, and they state that Mr. Trump is responsible for their contents. (Exs. 1-11)

673. Speaking about his own role at the Trump Organization before he became President of the United States, Donald J. Trump said his title probably was "President" but "my title was the owner. That was the only one that mattered." (Ex. 50 at 159:25-160:6)

674. On March 9, 2017, Donald J. Trump appointed Donald Trump Jr. and Eric Trump as agents with Power of Attorney over banking and real estate transactions. (Ex. 385 at -16, -20)

675. When Donald Trump, Jr. and Eric Trump signed compliance certificates pertaining to the Statements, each stated that he did so as Mr. Trump's attorney in fact.

676. Allen Weisselberg would not have permitted a final draft of the Statement of Financial Condition to be issued unless Mr. Trump had reviewed it and was satisfied with it. (Ex. 363 at 142:4-143:5)

677. Mr. Trump had "final review" over his Statement of Financial Condition in each year before he was President of the United States. (Ex. 54 at 98:5-16)

678. As Mr. Trump testified, Mr. Weisselberg and Mr. McConney "had the numbers" and that he would "see it mostly after it was completed, you know, he gave me a rundown or give me in some cases like the statement, maybe an outline in some cases." (Ex. 50 at 101:21-102:05)

679. By a document dated October 22, 2009, Donald J. Trump signed a "General Agreement of Indemnity" to Zurich insurance company, in order to procure surety bonds. (Ex. 386)

B. Donald Trump, Jr.

680. Donald Trump, Jr. is an Executive Vice President of the Trump Organization. https://www.trump.com/leadership/donald-trump-jr-biography

681. Donald Trump, Jr. was a trustee of the Trust from January 19, 2017 to January 15, 2021, and then from July 7, 2021 to present. (Ex. 387; Ex. 388; Ex. 389)

682. The representation letter for the 2016 Statement is signed by Donald Trump, Jr. and bears the date March 10, 2017. Donald Trump, Jr. signed the document as Executive Vice

President of the Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 40)

683. The representation letter for the 2017 Statement is signed by Donald Trump, Jr. and bears the date October 30, 2017. Donald Trump, Jr. signed the document as Executive Vice President of the Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 41)

684. The representation letter for the 2018 Statement is signed by Donald Trump, Jr. and bears the date October 24, 2018. Donald Trump, Jr. signed the document as Executive Vice President of the Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 42)

685. The representation letter for the 2019 Statement is signed by Donald Trump, Jr. and bears the date October 31, 2019. Donald Trump, Jr. signed the document as Executive Vice President of the Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 43)

686. The representation letter for the 2020 Statement is signed by Donald Trump, Jr. and bears the date January 11, 2021. Donald Trump, Jr. signed the document as Executive Vice President of the Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 44)

687. The representation letter for the 2021 Statement is signed by Donald Trump, Jr. and bears the date October 29, 2021. Donald Trump, Jr. signed the document as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended. (Ex. 45)

688. Donald Trump Jr. signed a guarantor compliance certificate dated March 13, 2017. Among other things, the certificate states that the 2016 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 258)

689. Donald Trump Jr. signed a guarantor compliance certificate dated October 31, 2017. Among other things, the certificate states that the 2017 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 259)

690. Donald Trump Jr. signed a guarantor compliance certificate dated October 31, 2017. Among other things, the certificate states that the 2019 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 313)

691. Donald Trump Jr. signed three separate guarantor compliance certificates, each dated October 25, 2018. Among other things, the certificates each stated that the 2018 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 260 at 24-25 (OPO), at 26-27 (Trump Endeavor), at 28-29 (N. Wabash))

692. Donald Trump Jr. signed a guarantor compliance certificate dated October 31, 2019. Among other things, the certificate states that the 2019 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 261)

693. Donald Trump Jr. signed a guarantor compliance certificate dated October 31, 2019. Among other things, the certificate states that the 2019 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 283)

694. Donald Trump Jr. signed a guarantor compliance certificate dated October 31, 2019. Among other things, the certificate states that the 2019 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Donald Trump Jr. signed the document as attorney in fact for Donald J. Trump. (Ex. 314)

695. From 2011 to present, Donald Trump Jr. has served as an officer in (i) The Trump Organization Inc; (ii) The Trump Organization LLC; (iii) DJT Holdings LLC; (iv) DJT Holdings Managing Member; (v) Trump Endeavor LLC; (vi) 401 North Wabash Venture LLC; (vii) Trump Old Post Office LLC; (viii) 40 Wall Street LLC; (ix) Seven Springs LLC. (Ex. 51 at ¶ 16)

C. Eric Trump

696. From the period of 2016 to 2023 Eric Trump was the "chief decision maker" at the Trump Organization, (Ex. 391 at 29:10-13, 77:11-21; Ex. 50 at 19:7-17), and maintains as

one of his titles "Executive Vice President" of the Trump Organization. https://www.trump.com/leadership/eric-trump-biography

697. On March 13, 2017, Eric Trump acknowledged his appointment by Donald J. Trump as agent with Power of Attorney over banking and real estate transactions. (Ex. 385 at -16, -20)

698. On July 9, 2019, Eric Trump, as President of Seven Springs LLC signed a loan modification agreement on behalf of the borrower Seven Springs LLC in a transaction with the Bryn Mawr Trust Company. (Ex. 342)

699. On July 9, 2019, Eric Trump, as attorney in fact for Donald J. Trump, signed a Consent and Joinder Agreement reaffirming the obligations of the Guarantor under the Guaranty. (Ex. 342)

700. Eric Trump signed a guarantor compliance certificate dated October 28, 2020. The borrower is stated to be Trump Endeavor 12 LLC and the Guarantor is stated to be Donald J. Trump. Among other things the certificate states that the Guarantor certifies that to the best of their current knowledge their net worth is over $2,500,000,000. The signature area on the certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 262) Subsequent to the signing of this certificate Deutsche Bank received the 2020 Statement of Financial Condition. (Ex. 392)

701. Eric Trump signed a guarantor compliance certificate dated October 28, 2020. The borrower is stated to be 401 North Wabash Venture LLC and the Guarantor is stated to be Donald J. Trump. Among other things the certificate states that the Guarantor certifies that to the best of their current knowledge their net worth is over $2,500,000,000. The signature area on the

certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 284) Subsequent to the signing of this certificate Deutsche Bank received the 2020 Statement of Financial Condition. (Ex. 392)

702. Eric Trump signed a guarantor compliance certificate dated October 28, 2020. The borrower is stated to be Trump Old Post Office, LLC and the Guarantor is stated to be Donald J. Trump. Among other things the certificate states that the Guarantor certifies that to the best of their current knowledge their net worth is over $2,500,000,000. The signature area on the certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 315) Subsequent to the signing of this certificate Deutsche Bank received the 2020 Statement of Financial Condition. (Ex. 392)

703. The engagement letter for the 2021 Statement bearing the date September 17, 2021, is addressed to Eric Trump, President of the Trump Organization and is signed by Eric Trump on behalf of the Trump Organization on the same date. (Ex. 34)

704. In October 2021, Eric Trump, as a top executive in the company, participated in a phone call to discuss valuation methodologies for the 2021 SOFC. (Ex. 138 at 1183:18-1186:18, 1194:10-1195:13, 1196:24-1197:09)

705. On that phone call Eric Trump said “Listen, you guys are the best numbers guys that I know, and if you’re recommending something, we’re going to --like, that’s fine.” (Ex. 138 at 1194:10-1195:13, 1196:24-1197:09)

706. Eric Trump signed a guarantor compliance certificate dated October 28, 2021. The borrower is stated to be Trump Endeavor 12 LLC and the Guarantor is stated to be Donald J. Trump Among other things, the certificate states that the 2021 Statement is attached and

"presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 263)

707. Eric Trump signed a guarantor compliance certificate dated October 28, 2021. The borrower is stated to be 401 North Wabash Venture LLC and the Guarantor is stated to be Donald J. Trump Among other things, the certificate states that the 2021 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 285)

708. Eric Trump signed a guarantor compliance certificate dated October 28, 2021. The borrower is stated to be Trump Old Post Office, LLC and the Guarantor is stated to be Donald J. Trump. Among other things, the certificate states that the 2021 Statement is attached and "presents fairly in all material respects the financial condition of Guarantor at the period presented." The signature area on the certificate states that Eric Trump signed the document as attorney in fact for Donald J. Trump. (Ex. 316)

709. From 2011 to present, Eric Trump has served as an officer in (i) The Trump Organization Inc; (ii) The Trump Organization LLC; (iii) DJT Holdings LLC; (iv) DJT Holdings Managing Member; (v) 401 North Wabash Venture LLC; (vi) Trump Old Post Office LLC; (vii) 40 Wall Street LLC; (viii) Seven Springs LLC. (Ex. 51 at ¶ 17)

D. Allen Weisselberg

710. Allen Weisselberg was Chief Financial Officer of the Trump Organization in 2011 and continued in that role until he pled guilty to tax fraud in 2021. (Ex. 363 at 291- 293, 307)

711. Until Mr. Trump became President of the United States, Allen Weisselberg as the Trump Organization's Chief Financial Officer reported to Mr. Trump directly and was under his control. (Ex. 49 at 31:2-32:12, Ex. 50 at 160:7-8)

712. Allen Weisselberg, as Chief Financial Officer, was in charge of the accounting department at the Trump Organization. (Ex. 50 at 165)

713. Jeffrey McConney and Allen Weisselberg worked on Statements of Financial Condition for Mr. Trump together. (Ex. 363 at 120:10-19)

714. Jeffrey McConney and Patrick Birney reported to Allen Weisselberg when he was Chief Financial Officer of the Trump Organization. (Ex. 49 at 28:7-18.)

715. Allen Weisselberg had a primary role working on Mr. Trump's Statements. (Ex. 50 at 100, 126-128, 156)

716. The engagement letter for the 2011 Statement is signed by Allen Weisselberg and bears the date July 20, 2011. (Ex. 24)

717. The engagement letter for the 2012 Statement is signed by Allen Weisselberg and bears the date September 25, 2012. Underneath Weisselberg's signature is a handwritten date, October 12, 2012. (Ex. 25)

718. The engagement letter for the 2013 Statement is signed by Allen Weisselberg and bears the date September 18, 2013. (Ex. 26) Underneath Weisselberg's signature is a handwritten date, September 30, 2013.

719. The engagement letter for the 2014 Statement is signed by Allen Weisselberg and bears the date January 2, 2014. (Ex. 27) Underneath Weisselberg's signature is a handwritten date, November 5, 2014.

720. The engagement letter for the 2015 Statement is signed by Allen Weisselberg and bears the date November 2, 2015. (Ex. 28) Underneath Weisselberg's signature is a handwritten date, March 21, 2016.

721. The engagement letter for the 2016 Statement is signed by Allen Weisselberg and bears the date January 21, 2017. (Ex. 29) Underneath Weisselberg's signature is a handwritten date, March 9, 2017. Weisselberg signed the document as Executive Vice President and Chief Financial Officer of The Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

722. The engagement letter for the 2017 Statement is signed by Allen Weisselberg and bears the date January 21, 2017. (Ex. 30) Underneath Weisselberg's signature is a handwritten date, October 10, 2017. Weisselberg signed the document as Executive Vice President and Chief Financial Officer of The Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

723. The engagement letter for the 2018 Statement is signed by Allen Weisselberg and bears the date January 11, 2018. (Ex. 31) Weisselberg signed the document as Executive Vice

President and Chief Financial Officer of The Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

724. The engagement letter for the 2019 Statement is signed by Allen Weisselberg and bears the date January 10, 2019. (Ex. 32) Underneath Weisselberg's signature is a handwritten date, March 13, 2019. Weisselberg signed the document as Executive Vice President and Chief Financial Officer of The Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

725. The engagement letter for the 2020 Statement is signed by Allen Weisselberg and bears the date December 14, 2020. (Ex. 33) Underneath Weisselberg's signature is a handwritten date, January 7, 2021. Weisselberg signed the document as Executive Vice President and Chief Financial Officer of The Trump Organization and as Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

726. The representation letter for the 2011 Statement is signed by Allen Weisselberg and bears the date October 6, 2011. (Ex. 35) Weisselberg signed the document as Chief Financial Officer of The Trump Organization.

727. The representation letter for the 2012 Statement is signed by Allen Weisselberg and bears the date October 12, 2012. (Ex. 36) Weisselberg signed the document as Chief Financial Officer of The Trump Organization.

728. The representation letter for the 2013 Statement is signed by Allen Weisselberg and bears the date October 28, 2013. (Ex. 37) Weisselberg signed the document as Chief Financial Officer of The Trump Organization.

729. The representation letter for the 2014 Statement is signed by Allen Weisselberg and bears the date November 7, 2014. (Ex. 38) Weisselberg signed the document as Chief Financial Officer of The Trump Organization.

730. The representation letter for the 2015 Statement is signed by Allen Weisselberg and bears the date March 18, 2016. (Ex. 39) Weisselberg signed the document as Chief Financial Officer of The Trump Organization.

731. The representation letter for the 2016 Statement is signed by Allen Weisselberg and bears the date March 10, 2017. (Ex. 40) Weisselberg signed the document as Chief Financial Officer of The Trump Organization and Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

732. The representation letter for the 2017 Statement is signed by Allen Weisselberg and bears the date October 30, 2017. (Ex. 41) Weisselberg signed the document as Chief Financial Officer of The Trump Organization and Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

733. The representation letter for the 2018 Statement is signed by Allen Weisselberg and bears the date October 24, 2018. (Ex. 42) Weisselberg signed the document as Chief Financial Officer of The Trump Organization and Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

734. The representation letter for the 2019 Statement is signed by Allen Weisselberg and bears the date October 31, 2019. (Ex. 43) Weisselberg signed the document as Chief Financial Officer of The Trump Organization and Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

735. The representation letter for the 2020 Statement is signed by Allen Weisselberg and bears the date January 11, 2021. (Ex. 44) Weisselberg signed the document as Chief Financial Officer of The Trump Organization and Trustee of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended.

E. Jeffrey McConney

736. Jeffrey McConney became Controller of the Trump Organization sometime between 2002 and 2004. (Ex. 54 at 23:15-22)

737. Jeffrey McConney led the process of preparing Mr. Trump's Statements of Financial Condition sometime beginning in the 1990s. (Ex. 54 at 24:4-25:4)

738. Jeffrey McConney described his personal role in preparing supporting data and backup for Mr. Trump's Statement of Financial Condition beginning in 2011. (Ex. 54 at 52:10-68:14) For example, Mr. McConney testified that "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. (Ex. 54 at 67:20-68:14)

739. Jeffrey McConney acknowledged that the supporting data spreadsheets pertaining to Mr. Trump's Statements were referred to as "Jeff's supporting data" or "Jeff's supporting schedule". (Ex. 54 at 40:2-8, 212:8-16, 294:20-24)

740. Jeffrey McConney worked, in Mr. Trump's words, "right under Allen" at the Trump Organization. (Ex. 50 at 101:8-13)

741. On May 10, 2016, Jeffrey McConney sent a compliance certificate pertaining to the 2015 Statement to Deutsche Bank. (Ex. 393; Ex. 282; Ex. 394; Ex. 395)

742. Jeffrey McConney caused the submission to Deutsche Bank in November 2017 of a compliance certificate pertaining to the 2016 Statement. On November 10, 2017, Jeffrey McConney was asked by Deutsche Bank to provide a guarantor compliance certificate pertaining to the Old Post Office loan. McConney requested to provide it the following week. (Ex. 396) Patrick Birney, who was supervised by Mr. McConney, provided the certificate the following week. (Ex. 397)

F. The Donald J. Trump Revocable Trust

743. The Statements from 2016 to 2021 states that the Trustees of the Donald J. Trump Revocable Trust dated April 7, 2014, as amended, on behalf of Donald J. Trump are responsible for the accompanying financial statement. (Exs. 6-11)

744. The Statements from 2016 to 2020 further advise that that "Donald J. Trump transferred a significant portion of his assets and liabilities, including certain entities that he owned, to The Donald J. Trump Revocable Trust dated April 7, 2014, as amended (the "Trust"), or entities owned by the Trust, prior to Donald J. Trump being sworn in as President of the United States of America on January 20, 2017. (Ex. 6-10)

745. The Donald J. Trump Revocable Trust ("Trust") was created by an instrument dated April 7, 2014 which established Donald J. Trump as sole Trustee of the Trust. (Ex. 398)

746. The entities held by the Trust in or about 2017 are accurately represented by the organizational chart annexed to the Verified Complaint as Exhibit 2 (NYSCEF No. 4; NYSCEF No. 501 at ¶31; Ex. 51 at ¶1)

747. In December 2016 and January 2017, an internal restructuring occurred at the Trump Organization. (Ex. 399) The document reflecting the restructuring states: "Through

various assignments dated as of December 31, 2016, January 1 2017, and January 19, 2017, DJT transferred all of his direct interests in The Trump Organization and all entities affiliated therewith to the Trust or subsidiaries thereof." (Ex. 399 at ~93)

748. Donald J. Trump was the beneficial owner of all Entity Defendants until he transferred his interest in the Entity Defendants to the Donald J. Trump Revocable Trust ("Trust") in 2016 (Ex. 51 at ¶14)

749. By an undated instrument, Mr. Trump resigned as trustee of the Trust "in advance of [his] inauguration as president] effective January 19, 2017." (Ex. 400)

750. By an undated instrument, Donald Trump Jr. accepted appointment as trustee of the Trust effective January 19, 2017. (Ex. 401)

751. By an undated instrument, Allen Weisselberg accepted appointment as "Business Trustee" of the Trust effective January 19, 2017. (Ex. 402)

752. On January 15, 2021 Mr. Trump executed a Removal of Trustee removing Allen Weisselberg as Trustee of the Trust effective "as of 12:00 p.m. Eastern Standard Time, January 20, 2021." (Ex. 403)

753. On January 15, 2021 Mr. Trump executed an Appointment and Acceptance of Trustee by which he appointed himself as Trustee of the Trust effective "as of 12:00 p.m. Eastern Standard Time, January 20, 2021." (Ex. 388)

754. On January 19, 2021 Donald Trump Jr. and Allen Weisselberg executed an Amendment to Agreement of Trust that provided that on Mr. Trump's ceasing to serve as President of the United States of America, Donald Trump Jr. and Allen Weisselberg would be removed as Trustees and Mr. Trump would be reinstated as sole Trustee of the Trust. (Ex. 404)

755. As of January 20, 2021 Mr. Trump was once again sole trustee of the Trust. (Ex. 405)

756. On July 7, 2021 Mr. Trump removed himself as Trustee of the Trust and appointed Donald Trump Jr. as Trustee of the Trust. (Ex. 406, Ex. 389)

G. Trump Organization Inc.

757. 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.

H. Trump Organization LLC

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

759. By reorganization in 2017, DJT Holdings LLC accepted Donald J. Trump's membership interest in Trump Organization LLC. (Ex. 399)

I. DJT Holdings LLC

760. DJT Holdings LLC is near the top of the corporate structure chart of the Trump Organization, owning interests in numerous subsidiary entities and sitting just below the Donald J. Trump Revocable Trust in its organizational position.

761. In December 2016 and January 2017, an internal restructuring occurred at the Trump Organization. (Ex. 399) As part of the restructuring, Donald J. Trump, Jr. was appointed President of DJT Holdings LLC, and Allen Weisselberg was appointed Vice President, Treasurer and Secretary of that entity. (Ex. 399 at ~707)

762. DJT Holdings LLC holds an interest in Trump Organization, LLC, Trump Endeavor 12, LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. (Ex. 51 at ¶ 4)

763. By a document dated January 17, 2017, Donald Trump Jr. and Allen Weisselberg, respectively, signed a "Rider Adding Additional Indemnitor to General Agreement of Indemnity" to Zurich insurance company, to modify the 2009 "Agreement of General Indemnity" in order to add DJT Holdings LLC as an additional indemnitor. Donald Trump Jr. signed as "President" and Allen Weisselberg signed as "Treasurer/Vice President" of DJT Holdings LLC. (Ex. 360)

J. DJT Holdings Managing Member LLC

764. DJT Holdings Managing Member LLC is near the top of the corporate structure chart of the Trump Organization, owning interests in numerous subsidiary entities and sitting just below the Donald J. Trump Revocable Trust in its organizational position. (Compl. Ex. 2, 2017 restructuring doc)

765. In December 2016 and January 2017, an internal restructuring occurred at the Trump Organization. (Ex. 399) As part of the restructuring, Donald J. Trump, Jr. was appointed President of DJT Holdings Managing Member LLC, and Allen Weisselberg was appointed Vice President, Treasurer and Secretary of that entity. (Ex. 399 at ~707)

766. DJT Holdings Managing Member holds an interest in DJT Holdings LLC, Trump Organization, LLC, The Trump Organization, Inc., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. (Ex. 51 at ¶ 5)

K. Trump Endeavor 12 LLC

767. Trump Endeavor 12 LLC signed a purchase and sale agreement for the Doral property and is the owner of the Doral Property. (Ex. 238, NYSCEF No. 501 Amended Answer of Donald J. Trump ¶ 571; NYSCEF No. 511 Amended Answer of Trump Endeavor 12 LLC at ¶28)

768. Trump Endeavor 12 LLC was the borrower in a loan agreement dated June 11, 2012. Donald J. Trump signed the agreement as President of Trump Endeavor 12 LLC. (Ex. 254 at -005931-33)

769. "In consideration of financial accommodations given or to be given or continued to Trump Endeavor 12, LLC" Donald J. Trump signed a guaranty agreement dated June 11, 2012. (Ex. 232 at -172, 188)

770. Donald J. Trump as President of Trump Endeavor 12 LLC signed a first amendment to term loan agreement dated November 9, 2012. (Ex. 408)

771. Donald J. Trump as guarantor for a loan to Trump Endeavor 12 LLC signed a first amended guaranty dated November 9, 2012. (Ex. 409 at -592)

772. Donald J. Trump as President of Trump Endeavor 12 LLC signed a second amendment to term loan agreement dated August 12, 2013. (Ex. 410 at -3056)

773. Donald J. Trump as guarantor for a loan to Trump Endeavor 12 LLC signed a second amended guaranty dated August 12, 2013. (Ex. 411 at -854)

774. Donald J. Trump as President of Trump Endeavor 12 LLC signed a third amendment to term loan agreement dated August 12, 2014. (Ex. 412 at -864)

775. Donald J. Trump as guarantor for a loan to Trump Endeavor 12 LLC signed a third amended guaranty dated August 12, 2014. (Ex. 413 at -871)

776. Donald J. Trump as guarantor for a loan to Trump Endeavor 12 LLC signed a fourth amended guaranty dated August 7, 2015. (Ex. 414 at -8327)

L. 401 North Wabash Venture LLC

777. 401 North Wabash Venture LLC owns the building doing business as Trump International Hotel & Tower, Chicago. (NYSCEF No. 505 (Amended Answer of 401 North Wabash Venture LLC) at ¶28)

778. North Wabash Venture LLC was the borrower on a hotel loan and a residential loan that closed November 9, 2012. The hotel and residential loan agreements were signed by Donaldd J. Trump as President of 401 North Wabash Venture LLC. (Ex. 234 at -6041; Ex. 278 at -5328; see also DJT Answer ¶ 607 (admitting "that Trump Chicago loan exists and was signed by Mr. Trump and Statements of Financial Condition were submitted pursuant to the loan").

779. Donald J. Trump as guarantor signed guaranties in connection with both loan agreements on November 9, 2012. (Ex. 276; Ex. 277)

780. Donald J. Trump as President of 401 North Wabash Venture LLC signed a first amendment to term loan agreement dated June 2, 2014. (Ex. 280)

781. Donald J. Trump as guarantor for 401 North Wabash Venture LLC signed an amended and restated guaranty dated June 2, 2014. (Ex. 281)

M. Trump Old Post Office LLC

782. Trump Old Post Office LLC is a Delaware entity that held a ground lease to operate Trump International Hotel, Washington, DC. (NYSCEF No. 509 (Amended Answer of Trump Old Post Office LLC) at ¶28)

783. Trump Old Post Office LLC was the borrower in a loan agreement dated August 12, 2014. The loan agreement was signed by Donald J. Trump as President of Trump Old Post Office LLC. (Ex. 233)

784. "In consideration of financial accommodations given or to be given or continued to Trump Old Post Office, LLC," Donald J. Trump signed a guaranty agreement dated August 12, 2014. (Ex. 305)

N. 40 Wall Street LLC

785. 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.

786. 40 Wall Street LLC was the borrower in a $160 million loan agreement dated July 2, 2015, with Ladder Capital Finance. The loan agreement was signed by Donald J. Trump as President of 40 Wall Street LLC Member Corp—the managing member of 40 Wall Street LLC. (Ex. 415 at -2541)

O. Seven Springs LLC

787. 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.

788. Seven Springs LLC was the borrower on a loan and security agreement dated June 22, 2000. Donald J. Trump signed the loan and security agreement as President of Seven Springs LLC and as member of Bedford Hills Corporation. (Ex. 417)

789. Donald J. Trump as guarantor for the loan to Seven Springs LLC signed a guaranty dated June 22, 2000. (Ex. 330)

790. Donald J. Trump signed an agreement, that stated in consideration of a loan made to [Seven Springs LLC], the party signing below hereby agrees to send… a financial statement on a compilation basis reflecting an accurate evaluation of financial condition annually until the credit facility to [Seven Springs LLC] is terminated." (Ex. 331; Ex. 332)

791. Donald J. Trump signed a Modification Agreement dated June 29, 2011, as President of Seven Springs LLC and as member of Bedford Hills Corporation. (Ex. 417)

792. Donald J. Trump signed a Modification Agreement dated July 28, 2014, on behalf of Seven Springs LLC through its members, as President of Bedford Hills Corporation and President of DJT Holdings LLC. (Ex. 418)

IV. Tolling Agreement

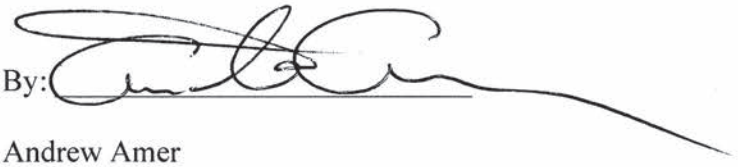
793. Per the terms of the agreement, Defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are bound by the tolling agreement executed by "The Trump Organization." (Ex. 419)

794. The tolling agreement binds all officer-members of the "Trump Organization."

Dated: New York, New York
August 4, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: 

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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, *et al.*,

Defendants.

Index No. 452564/2022

AFFIRMATION OF COLLEEN K. FAHERTY IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COLLEEN K. FAHERTY, an attorney duly admitted to practice before the Courts of this State, does hereby state the following pursuant to penalty of perjury:

1. I am an attorney in the Office of New York State Attorney General ("OAG") who appears on behalf of the People of the State of New York in this proceeding. I submit this Affirmation in further support of OAG's motion for partial summary judgment.

2. I have attached hereto as exhibits true and correct copies of the following documents. Testimonial transcripts are excerpted to show those portions cited in OAG's Memorandum of Law or 202.8-g Statement.

EXHIBIT	DOCUMENT
1	2011 SFC (MAZARS-NYAG-00003131)
2	2012 SFC (MAZARS-NYAG-00006308)
3	2013 SFC (MAZARS-NYAG-00000034)

EXHIBIT	DOCUMENT
4	2014 SFC (MAZARS-NYAG-00000714)
5	2015 SFC (MAZARS-NYAG-00000688)
6	2016 SFC (MAZARS-NYAG-00001981)
7	2017 SFC (MAZARS-NYAG-00001840)
8	2018 SFC (MAZARS-NYAG-00002723)
9	2019 SFC (MAZARS-NYAG-00161788)
10	2020 SFC (MAZARS-NYAG-00162245)
11	2021 SFC (TTO_06166415)
12	MAZARS-NYAG-00005094
13	2011 JSD (MAZARS-NYAG-00003154)
14	2012 JSD (MAZARS-NYAG-00003456)
15	2013 JSD (MAZARS-NYAG-00000082)
16	2014 JSD (MAZARS-NYAG-00000381)
17	2015 JSD (MAZARS-NYAG-00000740)
18	2016 JSD (MAZARS-NYAG-00001365)
19	2017 JSD (MAZARS-NYAG-00002024)
20	2018 JSD (MAZARS-NYAG-00002772)
21	2019 JSD (MAZARS-NYAG-00161836)
22	2020 JSD (MAZARS-NYAG-00162291)
23	2021 JSD (TTO_06166407)
24	2011 Mazars Engagement Letter (MAZARS-NYAG-00003112)

EXHIBIT	DOCUMENT
25	2012 Mazars Engagement Letter (MAZARS-NYAG-00003390)
26	2013 Mazars Engagement Letter (MAZARS-NYAG-00000012)
27	2014 Mazars Engagement Letter (MAZARS-NYAG-00000308)
28	2015 Mazars Engagement Letter (MAZARS-NYAG-00000618)
29	2016 Mazars Engagement Letter (MAZARS-NYAG-00001256)
30	2017 Mazars Engagement Letter (MAZARS-NYAG-00001798)
31	2018 Mazars Engagement Letter (MAZARS-NYAG-00002672)
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47	LC00132518
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50	Donald J. Trump Deposition Transcript Excerpts
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131	TTO_05323018
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133	MAZARS-NYAG-00002819
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140	TTO_009326
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215	MAZARS-NYAG-00000275
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252	DB-NYAG-012112
253	DB-NYAG-012113
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256	DB-NYAG-060415
257	DB-NYAG-260865
258	DB-NYAG-059755
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268	DB-NYAG-002865
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275	Nicholas Haigh Investigative Transcript Excerpts
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282	DB-NYAG-024831
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294	TTO_193501
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298	DB-NYAG-074811
299	DB-NYAG-011538
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301	DB-NYAG-010586
302	DB-NYAG-011630
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314	DB-NYAG-230561
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319	TTO_123039
320	Jack Weisselberg Investigative Transcript Excerpts
321	TTO_01563819
322	LC00278737
323	TTO_01193621
324	LC00029513
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338	BMawr-00000343
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340	BMawr-00000099
341	BMawr-00000333
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344	TTO_028142
345	Christopher Drimak Investigative Transcript Excerpts
346	ZurichNA_008199
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359	Joanne Caulfield Deposition Transcript Excerpts
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387	MAZARS-NYAG-00002653
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391	Mark Hawthorn Deposition Transcript Excerpts
392	DB-NYAG-248537
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398	TTO_02922134
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403	TrumpNYAG_0031213
404	TrumpNYAG_0017752
405	TrumpNYAG_0037387
406	Removal of Trustee (DJT) (7-7-21)
407	TTO_04053361
408	DB-NYAG-003497
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414	DB-NYAG-118324
415	LC00002507
416	TTO_05737161
417	BMawr-00000100
418	BMawr-00000102
419	Tolling Agreement
420	ACRIS document
421	Donald Bender Deposition Transcript Excerpts

Dated: New York, New York
August 4, 2023

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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,

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

NOTICE OF JOINT MOTION

Hon. Arthur F. Engoron

PLEASE TAKE NOTICE that upon the annexed Affirmation of Clifford S. Robert, Esq. dated August 4, 2023, together with the exhibits annexed thereto, the accompanying Memorandum of Law dated August 4, 2023, the accompanying Statement of Undisputed Material Facts dated August 4, 2023, and all prior papers and proceedings herein, defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, the "Defendants"), will move this Court, Supreme Court of the State of New York, County of New York, at the courthouse located at 60 Centre Street, Room 130, New York, New York 10007, on

the **22nd** day of **September 2023, at 9:30 a.m.**, or as soon thereafter as counsel may be heard, for an Order:

(a) pursuant to CPLR § 3212, granting summary judgment in favor of the Defendants, dismissing the Complaint (NYSCEF Doc. No. 1) of Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York, in its entirety; and

(b) awarding such other and further relief as the Court may deem just, equitable and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court's Order dated August 1, 2023 (NYSCEF Doc. No 646), opposition papers shall be served on all counsel of record by electronic mail, with a courtesy copy delivered to Chambers via electronic mail, on or before September 1, 2023, and reply papers shall be served in the foregoing manner on or before September 15, 2023.

Dated: New York, New York
August 4, 2023

s/ *Michael Madaio*
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Dated: Uniondale, New York
August 4, 2023

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

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

Plaintiff,

vs.

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

Defendants.

Index No. 452564/2022

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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 (collectively, "Defendants") hereby submit this Statement of Undisputed Material Facts in support of their joint motion seeking (i) summary judgment in favor of the Defendants, 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"), in its entirety, and (ii) such other and further relief as the Court deems just, equitable, and proper (the "Motion").

Reference is made to the accompanying Affirmation of Clifford S. Robert in Support of the Motion ("Robert Aff."), the exhibits annexed thereto, and pursuant to CPLR 2214(c) to all documents previously filed in this action.

I. Parties

1. Donald J. Trump ("President Trump") is the 45th President of the United States and the sole beneficiary of The Donald J. Trump Revocable Trust dated April 7, 2014, as amended (the "Trust"). Robert Aff., Ex. A ("Compl.")[1] ¶¶ 29–30. President Trump previously served as a Trustee for the Trust for a period of time. *See, e.g.,* Robert Aff., Ex. AAA. President Trump also served as President and Chairman of the Trump Organization, Inc. and Trump Organization, LLC until January 19, 2017. NYSCEF No. 501 ¶ 29.

2. Donald Trump, Jr. is a trustee of the Trust, Compl. ¶ 38, and served, or currently serves, as the Executive Vice President ("EVP") for various corporate entities held by the Trust, NYSCEF No. 501 ¶ 32; Compl. ¶ 31, Ex. 2.

3. Eric Trump is Chairman of the Advisory Board of the Trust, Compl. ¶ 35, and served, or currently serves, as the EVP for various corporate entities held by the Trust, NYSCEF No. 501 ¶ 32; Compl. ¶ 31, Ex. 2.

4. Allen Weisselberg was employed as the Chief Financial Officer of the Trump Corporation from 2003 until July 2021. NYSCEF No. 501 ¶ 37. Mr. Weisselberg also served as Trustee for the Trust beginning on or about 2017 through 2021. NYSCEF No. 501 ¶ 38. On January 20, 2021, Mr. Weisselberg was removed as Trustee for the Trust. *See* Robert Aff. at Ex. AP.

[1] Citations to the Complaint by paragraph number in support of averments made in this Statement of Undisputed Material Facts are intended only to provide support for such averments, and are not intended to adopt all allegations set forth in the cited paragraph as undisputed facts.

5. Jeffrey McConney was employed as the Controller of the Trump Corporation until 2021. Compl. ¶ 39; NYSCEF No. 501 ¶ 39.

6. The Trust is a Florida trust that was created under the laws of the state of New York and owns various companies for the exclusive benefit of President Trump. NYSCEF No. 501 ¶ 30.

7. The Trump Organization, Inc. is a New York entity. NYSCEF No. 501 ¶ 27.

8. Trump Organization LLC is a New York entity. NYSCEF 501 ¶ 27..

9. DJT Holdings LLC is a Delaware limited liability company with a principal place of business in New York. Compl. ¶ 27(c).

10. DJT Holdings Managing Member is a Delaware limited liability company registered to do business in New York. Compl. ¶ 27(d).

11. Trump Endeavour 12 LLC is a Delaware limited liability company that owns Trump National Doral. Compl. ¶ 28(a); NYSCEF No. 501 ¶ 28.

12. 401 North Wabash Venture LLC is a Delaware limited liability company that owns Trump International Hotel & Tower Chicago. Compl. ¶ 28(b); NYSCEF No. 501 ¶ 28.

13. Trump Old Post Office LLC is Delaware limited liability company that held a ground lease to operate Trump International Hotel, Washington, DC. Compl. ¶ 28(c); NYSCEF No. 501 ¶ 28.

14. 40 Wall Street LLC is a New York limited liability company that holds a ground lease for 40 Wall Street, New York, NY. Compl. ¶ 28(d); NYSCEF No. 501 ¶ 28.

15. Seven Springs LLC is a New York limited liability company that owns the Seven Springs property located within the towns of Bedford, New Castle, and North Castle in Westchester County, New York. Compl. ¶ 28(e); NYSCEF No. 501 ¶ 28.

16. The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs, LLC are all distinct entities. *See* Robert Aff., Ex. S ("Pereless Dep.") 148:13–152:8.

II. Relevant Assets

17. Below is a list of the relevant assets listed in the SOFCs that are beneficially owned by President Trump. *See generally* Compl. at Exs. 3–13.

a. Cash and Cash Equivalents

18. Figures for cash and cash equivalents represent amounts held by President Trump and amounts in operating entities. NYSCEF No. 15, p.4.

b. Real and Operating Properties

19. **Trump Tower**. Trump Tower is a sixty-eight-story mixed used property located at 725 Fifth Avenue in New York, NY. NYSCEF No. 15, p.10. The building has commercial space, which includes residential condominiums owned by the residents. NYSCEF No. 15, p.10; Compl. ¶ 51(c). The property includes the Manhattan flagship retail location of Gucci America Inc., as well as office tenants such as IOCC Industries, Inc., S.S. Steiner, Inc., and Industrial and Commercial Bank of China. NYSCEF No. 15, p.10.

20. **Trump Tower Triplex**. This is a triplex apartment on the top three floors of Trump Tower. NYSCEF No. 15, p.16.

21. **Niketown**. Niketown represents two long-term ground leasehold estates for the land and building located between Fifth and Madison Avenues and principally on 57th Street in

New York City. NYSCEF No. 15, p.10; Compl. ¶ 51(e). The property, leased to NIKE Retail Services Inc., is subleased to Tiffany & Co as its flagship store. NYSCEF No. 15, p.10.

22. **40 Wall Street**. 40 Wall Street is a 72-story tower located in lower Manhattan that contains a mix of office and retail space. NYSCEF No. 15, p.11; Compl. ¶¶ 51(f), 113. 40 Wall Street LLC owns the long-term ground lease for this property. NYSCEF No. 15, p.11.

23. **Trump Park Avenue**. Trump Park Avenue is a property consisting of 134 residential condominium units that range from one to seven bedrooms. NYSCEF No. 15, p.11. The property also includes three commercial condominium units containing approximately 30,000 square feet of commercial space. NYSCEF No. 15, p.11.

24. **Mansion at Seven Springs**. Seven Springs is a property in Bedford, New York, consisting of over 200 acres of land, a mansion, and other buildings. NYSCEF No. 15, p.16. A portion of the land is encumbered by a conservation easement. NYSCEF No. 15, p.16. Seven Springs LLC owns the Seven Springs property. NYSCEF No. 15, p.16. Compl. ¶ 51(h).

25. **Trump International Hotel & Tower, Chicago ("Trump Chicago")**. Trump Chicago is a condominium-hotel building located in Chicago, Illinois. Compl. ¶ 51(i). 401 North Wabash Venture LLC owns the building doing business as Trump Chicago. Compl. ¶ 28(b).

26. **Trump Old Post Office, Washington, DC ("OPO")**. OPO refers to the Old Post Office on Pennsylvania Avenue in Washington, D.C. Compl. ¶ 51(j). In February 2012, Trump Old Post Office LLC was awarded a ground lease from the General Services Administration ("GSA") to redevelop the "Old Post Office" on Pennsylvania Avenue in Washington, D.C. Compl. ¶¶ 51(j), 626.

27. **The Mar-a-Lago Club ("Mar-a-Lago")**. Mar-a-Lago is an exclusive, private club consisting of 117 rooms in Palm Beach, Florida. NYSCEF No. 15, p.4. Mar-a-Lago features a

20,000 square foot Louix XIV style ballroom, dining, tennis courts, a spa, cabanas, and guest cottages. NYSCEF No. 15, p.4.

28. **Trump National Golf Club in Briarcliff Manor ("TNGC Briarcliff")**. TNGC Briarcliff is a golf club in Briarcliff Manor, New York. NYSCEF No. 15, p.5.

29. **Trump National Golf Club in Hudson Valley ("TNGC Hudson Valley")**. TNGC Hudson Valley is a golf club in Hopewell Junction, New York. NYSCEF No. 15, p.7.

30. **Trump National Golf Club, Jupiter ("TNGC Jupiter")**. TNGC Jupiter is a golf club located just north of Palm Beach, Florida. NYSCEF No. 15, p.8.

31. **Trump National Golf Club, Los Angeles ("TNGC LA")**. TNGC LA is a golf club located on the bluffs of the southernmost point of the Palos Verdes Peninsula in California. NYSCEF No. 15, p.5.

32. **Trump National Golf Club, Bedminster ("TNGC Bedminster")**. TNGC Bedminster is a 580-acre golf club in Bedminster, New Jersey. NYSCEF No. 15, p.6.

33. **Trump National Golf Club, Washington, DC ("TNGC DC")**. TNGC DC is a golf club outside of Washington, DC. NYSCEF No. 15, p.6.

34. T**rump National Golf Club, Philadelphia ("TNGC Philadelphia")**. TNGC Philadelphia is a 365-acre property with views of the Philadelphia skyline in Pine Hill, New Jersey. NYSCEF No. 15, p.7.

35. **Trump National Golf Club, Charlotte ("TNGC Charlotte")**. TNGC Charlotte is a golf club located in Mooresville, North Carolina. NYSCEF No. 15, p.8.

36. **Trump National Doral ("Doral")**. Doral is a golf club located on over 650 acres in Doral, Florida. NYSCEF No. 15, p.7. Trump Endeavor 12 LLC owns the property doing business as Trump Doral. Compl. ¶ 28(a).

37. **Trump International Golf Club, Scotland, Aberdeen ("Trump Aberdeen")**. Trump Aberdeen is a golf club located on over 1,200 acres on the Northeast Coast of Scotland. NYSCEF No. 15, p. 9.

38. **Trump International Golf Club in Scotland, Turnberry ("Trump Turnberry")**. Trump Turnberry is a golf club located in South Ayrshire, Scotland. NYSCEF No. 15, p.9. Trump Turnberry is home to the renowned Ailsa golf course, which hosted the Open Championship in 1977. NYSCEF No. 15, p.9.

39. **Trump National Golf Club, Colts Neck ("TNGC Colts Neck")**. TNGC Colts Neck is a golf club located in Colts Neck, New Jersey. NYSCEF No. 15, p.6.

40. **Palm Beach Properties**. This includes three properties in Palm Beach, Florida: 1094 South Ocean Boulevard, 124 Woodbridge Drive, and 1125 South Ocean Boulevard. Robert Aff., Ex. V ("Donald Trump Dep.") at 225–227.

c. <u>Partnerships and Joint Ventures</u>

41. **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")**. In May 2017, President Trump and Vornado Realty Trust became partners in two properties: 1290 Avenue of the Americas and 555 California Street. NYSCEF No. 15, p.14. 1290 Avenue of the Americas consists of an office tower and retail space containing approximately 2,000,000 leasable square feet and 555 California Street consists of one retail and two office buildings comprising approximately 1,700,000 leasable square feet along with a subterranean garage. NYSCEF No. 15, p.14.

42. **Trump International Hotel and Tower, Las Vegas, Nevada ("Trump Las Vegas")**. Trump Las Vegas is a luxury hotel condominium tower near the Las Vegas Strip that

was built in a joint venture with Phillip Ruffin. NYSCEF No. 15, p.15. The property is the tallest hotel condominium tower in Las Vegas with over 1,200 hotel condominium units. NYSCEF No. 15, p.15.

d. Real Estate Licensing Developments

43. Figures for real estate licensing developments represent expected cash flow to be derived from associations with developers of quality property seeking to do business with President Trump because of his skill and reputation. NYSCEF No. 15, p.16.

III. The Statements of Financial Condition

44. The 2011 through 2021 Statements of Financial Condition of Donald J. Trump were annual compilation reports which identified and described the assets and liabilities of President Trump, and later, of the Trust, and provided President Trump's net worth (hereinafter, "SOFC" or "SOFCs"). NYSCEF No. 501 ¶ 51; Compl. ¶¶ 6, 52–54.

45. Mazars, an accounting firm, compiled the SOFCs until 2020. Compl. ¶ 53.

46. Another accounting firm, Whitley Penn, LLP, compiled the 2021 SOFC. Compl. ¶ 59.

47. The asset values were prepared by personnel who were, in some instances, working in conjunction with outside professionals. Compl. ¶ 54; NYSCEF No. 15, p.3.

48. The asset values were then forwarded to the accounting firm, who would then use that data, among other things, to generate a compilation report of those valuations (*i.e.*, the SOFC). Compl. ¶¶ 6, 54; NYSCEF No. 501 ¶ 61.

49. In addition to providing a schedule of assets and liabilities, the SOFC provided President Trump's net worth as of June 30 of the year it covered. Compl. ¶ 6.

50. Unlike public companies, "private companies in the US need not prepare financial statements based on GAAP.[2] However, for a variety of reasons (e.g., obtaining financing) private companies may choose to follow GAAP and although not subject to an external audit requirement, private companies may choose voluntarily to have their financial statements audited." Robert Aff., Ex. AK ("Bartov Aff."), Ex. A ("Bartov Expert Report") ¶ 20.

51. Nonetheless, the SOFCs were prepared pursuant to GAAP in compilation format in accordance with Accounting Standards Codification ("ASC") 274. *See* Bartov Expert Report ¶ 32; Robert Aff., Ex. AI ("Flemmons Aff."), Ex. A ("Flemmons Expert Report") ¶ 25.

52. ASC 274 establishes "estimated current value" as the "valuation standard applicable to personal financial statements." Bartov Expert Report at ¶ 33.

53. Under GAAP preparers of financial statements have significant latitude when reporting asset values. Flemmons Expert Report at 4–7.

54. "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." Flemmons Expert Report ¶ 31.

55. Estimated current value "affords preparers substantial latitude in the selection of asset valuation models and the assumptions underlying those models." Bartov Expert Report ¶ 33.

56. In a compilation engagement, an accountant provides no assurance or opinion with his or her services. Flemmons Expert Report at 8.

57. "A compilation does not contemplate performing inquiry, analytical procedures, or other procedures performed in a review." *Id.* (quoting AR § 80.03).

[2] "GAAP" refers to generally accepted accounting principles in the United States of America.

58. Accordingly, each SOFC states "[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." Compl. at Ex. 3, p.1.

59. The SOFCs also explicitly note that they contain departures from GAAP. Compl. ¶ 60, Ex. 3–13, p.1; *see also* Bartov Expert Report ¶ 46.

60. The Independent Accountants' Compilation Report included with each SOFC explicitly warns users that due to the "significance and pervasiveness" of GAAP departures in the SOFCs, users "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 accepted in the United States." ***See, e.g.,*** Compl. at Ex. 3 at p.2.

61. This paragraph constitutes the "highest level of warning an accountant can raise in its communication to users when there are significant departures from GAAP." Flemmons Expert Report ¶ 59.

62. "While it is customary for the accountants' report to be addressed to the client, accounting standards establish that the users of the financial statements expand far beyond the client, including investors, vendors considering executing a contract with the company, banks seeking to lend to the entity, among many other purposes." Flemmons Expert Report ¶ 40.

63. Additionally, "GAAP acknowledges that ***immaterial*** financial statement items do not need to comply with all the detailed requirements of GAAP, and thus allows preparers a reasonable level of flexibility in applying GAAP." Bartov Aff., Ex. B ("Bartov Rebuttal Report") ¶ 54 (emphasis added).

64. "[F]or an omission or misstatement in the financial statements to be material through the lens of a user, the user must *rely* on the information in the financial statements in his/her decision-making process." *Id.* ¶ 63 (emphasis in original).

65. Viewing the SOFCs through the lens of a user like Deutsche Bank, "the SOFCs did not contain material misstatements." Bartov Rebuttal Report ¶ 174.

IV. Transactions with Lenders and Insurers

66. The SOFCs were submitted in connection with the loans with Deutsche Bank's Private Wealth Management division for the Doral, Chicago, and OPO properties, the loan with Ladder Capital for the 40 Wall Street property, the loan with Royal Bank of America/Bryn Mawr for the Seven Springs property, the surety bond program with Zurich North America, and the Directors & Officers ("D&O") liability coverage with Tokio Marine HCC Insurance Company. *See infra* §§ IV(a)–(f).

67. In analyzing the SOFCs, banks are aware that the SOFCs are "truly an estimate" and they provide "knowledge to a reader and the user more than anything for them to be able to make their own informed decision." Robert Aff., Ex. AL ("Unell Dep.") 195:7–196:18, Unell Dep. 175:20–22 ("[L]enders are trained not to rely on" SOFCs, "which is why the independent analysis in the credit memo is done.").

68. The SOFCs are a "roadmap" for banks to do their own independent analysis (Unell Dep. 197:2–11) and are just one of many factors that banks use to approve loan transactions and provide loan terms. Robert Aff., Ex. AM ("Unell Aff."), Ex. A ("Unell Expert Report") ¶ 6.

69. Banks also consider "loan-to-value, cash flow, debt service coverage ratio, and the experience of the borrower in operating similar assets" in determining the pricing of loans. Unell Expert Report ¶ 6.

70. "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." Unell Dep. 112:12–113:2.

71. Additionally, banks are focused on the collateral itself as the primary source of repayment in loan transactions. Unell Expert Report ¶ 7.

a. Deutsche Bank

72. Beginning in 2011, President Trump and his businesses commenced a relationship with a Deutsche Bank Private Wealth Management division ("PWM") banker. Compl. ¶ 563.

73. To qualify as a customer of the PWM division, an individual generally needed to have a minimum total net worth of over $50 million. *See* Robert Aff., Ex. AAD ("Sullivan Dep.") 100:2–8; Robert Aff., Ex. AAE at 16. ("Typical borrowers will have a net worth of over $50 million).

74. Pricing on loans made to PWM customers was according to an internal pricing grid based on the particular type of collateral involved. Robert Aff., Ex. P ("Williams Dep.") at 210:17–213:15.

75. The pricing grid "provides a range of spread over LIBOR . . . depending on the collateral type of the credit transaction." *Id.* at 210:23–25.

76. Interest rates may have deviated lower than the recommended amount for "competitive reasons," and would not be subject to an upward deviation to a range higher than listed on the pricing grid absent a determination that "that the risk commensurate with a particular credit transaction warrant[ed] charging a higher rate[.]" *Id.* at 213:2–214:5.

77. The factors that PWM looked at when pricing a loan were the collateral, risk, and cost of funding. *Id.* at 214–215.

78. The PWM pricing grid indicated a price of 2-2.5% above LIBOR for commercial real estate collateral in the Americas, as applicable to President Trump. *Id.* at 271:16–25; Robert Aff., Ex. AB.

79. President Trump's financial profile qualified him to be at the lower range of the pricing guidelines contained on the grid—even potentially qualifying him for a downward deviation—and this pricing would not have changed even if President Trump's net worth was $1 billion. *Id.* at 272:20–275:17. Mr. Williams was of the opinion that a net worth of $1 billion would not have affected the pricing on the loans, even when compared to a net worth of $4.3 billion, because a net worth in excess of 1 billion constitutes a strong borrower or guarantor. *Id.* at 274:6–17.

80. In Deutsche Bank's view, President Trump "had a verifiable net worth in a top tier of the regional market." *Id.* at 160:14–161:7.

81. Ultimately, when it came to pricing, Deutsche Bank's "goal is to remain within the range set forth in th[e] pricing grid[,]" *Id.* at 274:2–4.

82. At all times, Deutsche Bank believed that President Trump had "a proven successful track record in the United States commercial real estate market." *Id.* at 125:2–6.

83. In total, Trump guaranteed three loans with Deutsche Bank's PWM division: (1) the Trump National Doral loan for Trump Endeavor 12 LLC ("Doral loan"), (2) the Trump International Hotel & Tower Chicago loan for 401 North Wabash Venture LLC ("Chicago loan"), and (3) the Old Post Office Hotel loan for Trump Old Post Office LLC ("OPO loan"). *See infra* §§ IV(a)(i)–(iii).

84. As part of the due diligence process for these loans, Deutsche Bank lenders met with Jeff McConney and reviewed bank statements representing liquid assets and synthesized that information into the Deutsche Bank prepared credit memos. Pereless Dep. 165:23–167:7.

85. Deutsche Bank was "[c]omfortable with the level of assets" that President Trump held and was "comfortable that the recordation of that amount of liquid assets that were included in the credit memo" were "accurate." Pereless Dep. 167:8–168:8.

86. Deutsche Bank also applied "haircuts" to the values listed on the SOFCs. Haircuts are "[d]iscounts to clients' stated values" (Williams Dep. 31:6–7) that are meant to serve as an "adverse scenario analysis" to determine "what happens if the client's financial position is under stress." Robert Aff., Ex. O ("Haigh Dep.") 148:8–21.

87. These haircuts are Deutsche Bank's independent assessments of value that it calculates during its application of "stresses" on the client's reported asset values (Pereless Dep. 265:4–8) to determine a "conservative value" (Pereless Dep. 224:22–225:8) of the asset.

88. A "haircut" thus results in an "adjusted value," otherwise synonymous with the "DB adjusted" value. Pereless Dep. 224:11–21.

89. Deutsche Bank was "focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed." Sullivan Dep. 83:19–84:13.

90. Ultimately, Deutsche Bank was "comfortable with the assessment [it] did independently." Sullivan Dep. 84:4–13.

91. In fact, "Deutsche Bank had ample opportunity to investigate anything" in the SOFCs, as "Deutsche Bank had ample material listed in the Statement of Financial Condition to make their own informed decision." Unell Dep. 110:25–113:18.

92. Even if the allegations in the Complaint were true, "the net worth was still sufficient to qualify for inclusion in the private wealth bank" and liquidity is "material" to the bank and that the bank "went and verified it." Unell Dep. 110:25–112:5.

93. Generally, 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 Deutsche Bank "did what they were supposed to do and verified" certain items and "anything else would have been immaterial." Unell Dep. 190:9–17.

94. "[T]he information in the Compilation Reports did not impact Deutsche Bank's decisions whether or not to extend loans to Defendants and what interest rate to require." Bartov Expert Report ¶ 107.

95. In general, the bank's relationship with President Trump was profitable. *See* Robert Aff., Ex. AAB ("Vrablic Dep.") 306:3–13.

96. There was never a covenant or payment default involving any entity affiliated with President Trump in a credit transaction made by the PWM division. Williams Dep. 187:9–15; 189:10–16; 192:13–193:4.

97. There was never 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. Williams Dep. 190:25–191:10; Sullivan Dep. 81:21–82:4; Vrablic Dep. 305:21–306:16.

97. Additionally, numerous former Deutsche Bank employees testified they did not believe there was any material misrepresentation made to the PWM division in connection with any loan affiliated with President Trump. *See* Williams Dep. 184:21–185:1; Sullivan Dep. 81:21–83:7, 293:7–20; Vrablic Dep. 32:3–13, 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.")

98. When Mr. Williams was interviewed by the NYAG as part of their investigation, he was not concerned about whether any of the SOFCs were misleading because "Deutsche Bank has a reasonable expectation the client's, any client's financial reporting that is provided to the bank is true and accurate in all material respects." Williams Dep. 34:23–35:21, 36:16–37:4. Mr. Williams believes this expectation is still reasonable as it relates to the SOFCs. Williams Dep. 37:5–12.

99. During his deposition, Mr. Williams testified that he still had no concern that the SOFCs were misleading. Williams Dep. 36:9–15.

100. Moreover, Deutsche Bank earned millions of dollars in revenue from dealing with President Trump. *See* Robert Aff., Exs. AAI, AAH, AAG, Ex. AAQ ("Garten Aff.") ¶ 5.

101. The available revenue figures are as follows: $13,477 (2011), $2.6 million (2012); $3.5 million (2013); projected $6.8 million (2014) $3,305,699 (2015) $2,733,072 (2016), for an estimated total revenue between 2011–2016 alone that ranges upwards of $15 million. Robert Aff., Exs. AAI, AAH, AAG.

i. <u>Trump Endeavor 12 LLC (2012)</u>

102. In November of 2011, Trump Endeavor 12 LLC executed a $150 million purchase and sale agreement for Trump Doral. Compl. ¶¶ 571, 587. Trump Endeavor 12 LLC held plans to invest another $50 million of its own capital in a luxurious renovation. Robert Aff., Ex. T.

103. The PWM division offered a loan to support the purchase of Trump Doral with a total loan amount of $125 million (Compl. ¶ 583), $19 million of which was an unsecured personal loan. Compl. ¶ 586. The loan was supported by an appraisal, (Compl. ¶ 585), and the confirmation that President Trump had roughly $258.9 million in liquid assets at the time the loan was negotiated through the review of bank and brokerage statements. Williams Dep. 198:5–201:8.

104. Deutsche Bank expected the value of the collateral to "increase significantly over the term of the facility" considering the "$50 million in capital expenditures" on renovations. Pereless Dep. 268:8–24.

105. A condition of the loan was that the 2011 SOFC be provided to Deutsche Bank. Compl. ¶ 588.

106. In reviewing the 2011 SOFC, Deutsche Bank calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC. Compl. ¶ 584; Pereless Dep. 265:4-17.

107. Lending officers completed their "due diligence" in compliance with Deutsche Bank's operational policies (Pereless Dep. 227:14-25) by evaluating specific assets and using "their judgment in setting the appropriate adjustments to achieve conservative valuations of concentrated assets." Pereless Dep. Ex. 13 at 8.

108. In connection with the proposal from PWM, an internal credit memo evaluated assets reported on the 2011 SOFC. Compl. ¶ 584; Robert Aff., Ex. T. These assets included: Trump Tower, Niketown, 40 Wall Street, Trump Park Ave, "Club Facilities," "Other Property interests," and "Properties under Development." Robert Aff., Ex. T at 5.

109. Deutsche Bank chose to perform a "higher level of due diligence on the assets being pledged than [those] not being pledged" because "[the bank was] taking a mortgage on those [pledged] assets and potentially the bank could own those assets[.]". Pereless Dep. 238:8–21.

110. Ultimately, Deutsche Bank adjusted the net worth reported in the 2011 SOFC based on haircuts it performed. Compl. ¶ 584; *see generally* Robert Aff., Ex. T at 4–7.

111. This "DB adjusted value" was one that Deutsche Bank lending officers were "comfortable with." That is, "[c]omfortable with the level of liquid assets that Mr. Trump held" and "comfortable that the recordation of that amount of liquid assets that were included in the credit memo" were "accurate." Pereless Dep. 167:8–168:8.

112. Deutsche Bank lending officers recommended approval of the Doral Loan and determined that President Trump had the financial wherewithal to fully repay the loan if needed as well. Sullivan Dep. 110:19–111:9, 120:21–121:10; Robert Aff., Ex. T.

113. Deutsche Bank's adjusted net worth for President Trump when underwriting the Doral Loan was set at $2.365B. Robert Aff., Ex. T at 4.

114. Other factors considered as a basis for Structured Lending's recommendation of approval for the Trump Doral credit facility included "President Trump's operating experience" as "any client's historical success in a certain business model would be a credit enhancement if … approving a similar business model[,]" President Trump's "financial profile[,]" Deutsche Bank's "due diligence" conducted at the Trump "family office[,]" and "adjustments to [President Trump's] reported values." Pereless Dep. 266:2–19; Robert Aff., Ex. T at 4.

115. The Trump Doral loan closed on June 11, 2012, with a loan to Trump Endeavor 12 LLC. Compl. ¶ 587.

116. As part of the loan, President Trump signed a personal guarantee with requirements that, *inter alia*, he maintain: (i) $50 million in unencumbered liquidity and (ii) a $2.5 billion net worth to be tested and certified on an annual basis based upon the SOFC delivered to Deutsche Bank. Compl. ¶ 592.

117. The primary and secondary form of repayment on the Doral loan were the underlying collateral, while the Guarantee would only be implicated as a tertiary form of repayment. Robert Aff., Ex. T at 3 ("Primary Source of Repayment: Refinancing of the Resort with long-term financing following the completion of the Renovation Period or upon expiration of the 5-year term. Secondary Source of Repayment: Cash flow from Resort following the Renovation Period. Based on projections the Resort will be able to satisfactorily service principal and interest based on a 25-year amortization schedule. Tertiary Source of Repayment: Full and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating collateral.")

118. Simply by closing on the Doral Loan, Deutsche Bank generated fees in the sum of 1.25% of the loan amount, a .25% commitment fee which would be fully earned at the execution of a Commitment Letter, and a 1% commitment fee payable at closing. *Id.* at 2. With a $125 million commitment amount, the fees generated by Deutsche Bank at the closing of Doral were upward of $1.5 million ($125 million X 1.25% = $1,562,500).

119. The primary and secondary form of repayment on the Doral loan were the underlying collateral, while the Guarantee would only be implicated as a tertiary form of repayment. Robert Aff., Ex. T at 3 ("Primary Source of Repayment: Refinancing of the Resort with long-term financing following the completion of the Renovation Period or upon expiration of the 5-year term. Secondary Source of Repayment: Cash flow from Resort following the

Renovation Period. Based on projections the Resort will be able to satisfactorily service principal and interest based on a 25-year amortization schedule. Tertiary Source of Repayment: Full and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating collateral.")

120. In July 2013, Deutsche Bank approved a modified version of the guarantee that enabled President Trump's guarantee obligation and net worth covenant to step down as the loan-to-value ratio of the loan was reduced, which minimized the "risk profile" absorbed by Deutsche Bank. Compl. ¶ 596; Pereless Dep. 269:4–17.

121. Overall, Deutsche Bank believed the Trump Doral loan had "performed quite well, enough to warrant considering increasing the loan amount secured by the property." Williams Dep. 221:10–19. Deutsche Bank determined this performance rating based on "predominantly the value of the property" and the improvement in terms of "cash flow" and "loan-to-value." Williams Dep. 221:20–222:14.

122. To certify the maintenance of the net worth covenant, Deutsche Bank considered a representation from the Guarantor, President Trump (or others on his behalf in subsequent years), "sufficient . . . to comply with his obligations under the guarantee[,]" the certification was to effect of:

> [T]o the best of Guarantor's current knowledge and information, and Guarantor currently not being aware of facts, circumstances or events that individually, or in the aggregate, establish the contrary conclusion, 'net worth of Guarantor for the period ending June 30th is not less than X $2,500,000,000 times Y, the applicable stepdown percentage on the date hereof.

See Robert Aff., Ex. R. Deutsche Bank accepted this representation from President Trump as a form of compliance with the net worth covenant. Williams Dep. 309:24–310:21.

123. On May 26, 2022, Trump Endeavor 12 LLC refinanced the Doral Loan through Axos Bank, repaying the $125 million of principal outstanding to Deutsche Bank. Compl. ¶¶ 587, 600.

ii. 401 North Wabash Venture LLC (2012)

124. In June 2012, 401 North Wabash Venture LLC sought a loan from the PWM division at Deutsche Bank to refinance an existing $130 million loan from the CRE division of Deutsche Bank secured by the Trump Chicago property. Compl. ¶ 601.

125. The 2012 SOFC was provided to Deutsche Bank as part of the Chicago loan. Compl. ¶ 607.

126. Just as with the Trump Doral loan, Deutsche Bank again assessed its own "DB adjusted values" and conducted its due diligence of President Trump's assets by applying "haircuts" to the values reported in the 2011 and 2012 SOFC. Compl. ¶ 605. The assets considered again included: Trump Tower, Niketown, 40 Wall Street, Trump Park Ave, "Club Facilities," and "Other Property interests." Robert Aff., Ex. U at 8; Pereless Dep. 383:7–17.

127. Deutsche Bank calculated its "DB adjusted" values and recommended approval for the Chicago facility based on its independent analysis of President Trump's 2011 and 2012 SOFCs. Robert Aff., Ex. U at 7–9. Ultimately, Deutsche Bank reached an adjusted net worth for President Trump of $2.436 billion. *Id.* at 7.

128. Lending officers and bankers understood the Chicago transaction to be a "better loan" in terms of being a lower risk loan in comparison to Trump Doral. Pereless Dep. 359:9–17, 360:2–5.

129. Ultimately, Deutsche Bank lending officers held no reservations in supporting and going forward with the Chicago transaction. Pereless Dep. 360:22–361:6.

130. Under the Chicago Loan, President Trump was required to: (i) maintain a minimum net worth of $2.5 billion and (ii) provide a SOFC to Deutsche Bank annually. Compl. ¶ 609.

131. The loan for 401 North Wabash Venture LLC closed on November 9, 2012. Compl. ¶ 606.

132. The $107 million loan from Deutsche Bank was broken down into two credit facilities given the mixed nature of the hotel-condo property. *Id.* ¶¶ 28(b), 603. The first facility concerned the residential component and the second facility concerned the commercial component. Compl. ¶ 63. Both facilities were supported by President Trump's personal guarantee. Compl. ¶ 604.

133. 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." Vrablic Dep. 267:9–22.

134. Simply by closing on the Chicago Loan, Deutsche Bank generated fees in the amount of .625% for facility A and .75% on Facility B. Robert Aff., Ex. U at 4.

135. With a loan amount of $62 million on Facility A and $45 million on Facility B, Deutsche Bank was projected to generate $725,000 in fees at the closing on of the Chicago Loan at the time of loan approval ((.625% X $62 million) + (.75% X 45 million) = $725,000).

136. For both the commercial and the residential loan facilities of the Chicago Loan, the primary and secondary form of repayment would be the underlying collateral, while President Trump's Guarantee would only be used as a tertiary repayment source to eliminate shortfalls (if any) in the collateral's performance. Robert Aff., Ex. U at 5 ("Primary Source of Repayment: Facility A: Sale of the remaining un-sold condo Units. Facility B: Cash flow generated by the Commercial Component of the collateral. Secondary Source of Repayment: Refinancing of the

collateral property. Tertiary Source of Repayment: Full and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidation of the collateral.")

137. In 2014, 401 North Wabash Venture LLC obtained an additional $54 million loan for Trump Chicago. Compl. ¶¶ 28(b), 615. This additional loan included a step-down guarantee like the Trump Doral loan, with the personal guarantee and net worth covenant stepping down based on the loan-to-value ratio. Compl. ¶ 615.

138. The loan was amended in 2014. Compl. ¶ 616.

139. Again, as with earlier internal credit memos, the 2014 credit memo prepared in conjunction with this additional loan, (which also recommended approval for the Old Post Office transaction discussed further below), evaluated President Trump's 2011, 2012, and 2013 SOFCs. Compl. ¶ 617; Robert Aff., Ex. Q.

140. Deutsche Bank again reached its "DB adjusted" values of the assets. Robert Aff., Ex. Q at 13–16. The assets considered were Trump Tower, Niketown, 40 Wall Street, Trump Park Ave, Club Facilities, and Other Property Interest. *Id.* at 14. As of 2015, the personal guarantee was eliminated because the loan-to-value ratio was below the threshold in the step-down provision. Compl. ¶ 619.

141. As with the initial loan, the additional loan on Trump Chicago would be primarily and secondarily repaid through the collateral, and the step-down Guarantee would be the tertiary form of repayment on the loan. Robert Aff., Ex. Q at 10.

142. 401 North Wabash Venture LLC never defaulted on the loan or missed a payment. *See generally* Williams Dep. 187:9–15.

iii. Trump Old Post Office LLC (2014)

143. In 2011, Trump Old Post Office LLC bid on a ground lease from the General Services Administration ("GSA") to redevelop the Old Post Office on Pennsylvania Avenue in Washington, D.C. Compl. ¶¶ 51(j), 624. As required by the GSA, the 2008–2010 SOFCs were submitted as part of the bid. Compl. ¶¶ 623–24; RFP at 18 (requesting "[f]inancial statements for the past three years prior to the RFP issuance date").

144. Trump's Proposal to the GSA stated: "[t]he attached Statement of Financial Condition was compiled under GAAP, but it should be noted that there are departures from GAAP that are described in the Accountant's Compilation Report attached to the Statement of Financial Condition. Most personal financial statements contain GAAP exceptions. WeiserMazars, LLP has compiled these financials." *See* Robert Aff., Ex. AQ.

145. Additionally, in response to the GSA's inquiries, Trump's presentation indicated again "[u]nlike the statements of public companies, it is not uncommon for personal financial statements to include GAAP exceptions." Robert Aff., Ex. AR. With respect to separately held entities, Trump's presentation explained:

> Mr. Trump owns approximately 400 entities that are in various businesses. Unlike Mr. Trump's personal financial statements, which are completed as of June 30th each year, the books for these individual entities are generally accounted for on a calendar year. Including these entities on the June 30th statement would require the books of the 400 entities to be closed twice per year, which would be highly unconventional and costly. Mr. Trump finds that the level of detail that is provided is adequate for his purposes.

Id. Trump's presentation also addressed other inquiries relating to the SOFCs. *See generally id.*

146. In its Source Selection Evaluation Report and Recommendation, the GSA stated: "The Trump Organization presented one of the strongest financial teams of all offerors," while noting that a weakness of Trump's proposal was that "[f]inancial statements provided by Mr.

Trump were qualified by his accountants as not complying with GAAP." Robert Aff., Ex. AS at 13–14. Trump Old Post Office LLC was ultimately selected by GSA in February 2012 to redevelop the OPO property and signed a lease for that purpose on August 5, 2013. Compl. ¶¶ 51(j), 626.

147. In advance of executing the lease, Deutsche Bank's CRE and PWM groups were consulted about potential financing for the project. Compl. ¶ 627. The PWM proposal required a personal guarantee from President Trump. Compl. ¶ 631.

148. The terms of the $170 million included the following requirements: (i) maintaining a minimum net worth of $2.5 billion, $50 million in unencumbered liquidity, and no additional indebtedness exceeding $500 million and (ii) providing SOFC to Deutsche Bank annually. Compl. ¶ 632.

149. A May 2014 Deutsche Bank credit memo, which incorporated information from the 2011, 2012, and 2013 SOFC, approved the $170 million loan to Trump Old Post Office LLC. Compl. ¶ 633; Robert Aff., Ex. Q.

150. Like in previous years, Deutsche Bank reached its "DB adjusted" performing haircuts on the values of assets, including Trump Tower, Niketown, 40 Wall Street, Trump Park Ave, Club Facilities, and Other Property Interest. Robert Aff., Ex. Q at 13–16.

151. Deutsche Bank internally adjusted President Trump's net worth to $2.645 billion. *Id.* at 13.

152. A term sheet with the material terms of the OPO Loan was agreed to and "executed on January 13 and 14, 2014." Compl. ¶ 634. Thereafter, the OPO loan closed on August 12, 2014. Compl. ¶ 634.

153. Simply to close the OPO Loan, Deutsche Bank was projected to generate a .5% fee of the facility amount, which is equivalent to $850,000 based on a $170 million loan facility ($170 million X .5% = $850,000). *See* Robert Aff., Ex. Q at 8–9.

154. Trump Old Post Office LLC never defaulted on the loan or missed a payment under the loan. *See* Williams Dep. 187:9–15; 189:10–16; 295:13–17. The Old Post Office loan was 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." *See* Vrablic Dep. 310:7–311:6.

155. The primary and secondary source of repayment on the OPO Loan were the collateral, while President's Trump guarantee would only be implicated as a tertiary source of repayment. Robert Aff., Ex. Q at 10 ("Primary Source of Repayment: Refinancing of the Collateral Property. Secondary Source of Repayment: Cash flow from Hotel following the Redevelopment Period. Based on projections, the Hotel should be able to satisfactorily service the debt paying principal and interest based on a 25-year amortization schedule. Tertiary Source of Repayment: DJT provides a full and unconditional guarantee of the entire facility for the term.").

156. On or about May 11, 2022, Trump Old Post Office LLC sold the OPO property for $375 million, of which $170 million was used to repay the loan to Deutsche Bank. Compl. ¶ 646.

b. Ladder Capital

i. 40 Wall Street LLC (2015)

157. In November 2015, 40 Wall Street LLC refinanced an existing $160 million mortgage from Capital One Bank for 40 Wall Street through Ladder Capital Finance ("Ladder Capital"). Compl. ¶¶ 125, 647.

158. 40 Wall Street LLC never defaulted on the loan or missed a payment. *See* Garten Aff. ¶ 3.

159. Under the terms of the loan, President Trump had to maintain a net worth of $160 million and a liquidity of at least 15 million. *See* Robert Aff., Ex. AX at 10.

160. A 2015 appraisal ordered by the Bank appraised 40 Wall Street at a value of $540,00,000, which resulted in loan-to-value of 29.6%. *See id.* at 4. Cushman also appraised the dark value of the Property at $440,000,000, $280,000,000 in excess of the loan amount. *Id.*

c. Royal Bank America/Bryn Mawr Bank

i. Seven Springs LLC

161. On July 17, 2000, Seven Springs LLC obtained an approximately $8 million loan from RBA, which was later acquired by Bryn Mawr Bank in 2017. Compl. ¶ 654. President Trump personally guaranteed the loan. Compl. ¶ 654.

162. Seven Springs LLC never defaulted on the loan or missed a payment. *See, e.g.,* Garten Aff., ¶ 4; *see also* Robert Aff., Ex. AAL at 6 (indicating no events of default).

163. A June 17, 2014 Memorandum prepared by Bryn Mawr to analyze a proposed existing loan renewal indicates the "current value [of the Seven Springs property] more than supports the debt." *See* Robert Aff., Ex. AAN at 6.

164. Additionally, in connection with the 2019 modification of the loan, the 2019 Credit Approval Memorandum prepared by Bryn Mawr explicitly notes that the Mazars "does not express an opinion, conclusion or any form of assurance on the personal financial statement." *See* Robert Aff., Ex. AAM 2019 at 7. The loan to value rate was 16.6% as of the May 30, 2019 appraisal on the property (which gave the property an appraised value of $37,650,000). *See id.* at 5.

d. Investors Bank

i. Trump Park Avenue

165. Investors Bank funded a $23 million loan secured by Trump Park Avenue that closed on July 23, 2010. Compl. ¶ 85-86; NYSECF No. 205.

e. Zurich North America Insurance Company

166. From 2007 through 2021, Zurich North America Insurance Company ("Zurich") underwrote a surety bond program for President Trump's businesses through insurance broker AON Risk Solutions ("AON"). Compl. ¶ 679. Under the program, Zurich issued surety bonds on behalf of President Trump's businesses in exchange for premium calculated based on a set rate. Compl. ¶ 679. Most of the bonds were statutorily required for President Trump's businesses, such as liquor license bonds for golf courses or release of lien bonds for construction projects. Compl. ¶ 679.

167. President Trump entered into a General Indemnity Agreement ("GIA") with Zurich, which indemnified Zurich against any loss incurred by Zurich on the surety bonds underwritten for President Trump's businesses. Compl. ¶¶ 680–81.

168. The GIA executed by President Trump on October 22, 2009, did not have an annual requirement that President Trump disclose to Zurich's underwriter the SOFC. Robert Aff., Ex. X ("Caulfield Dep.") 57:4–8; ZurichNA_008990.

169. 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 disclosure of financial statements. Caulfield Dep. 56:11–57:3.

170. Prior to Zurich's underwriting of the surety program, Zurich had a longstanding insurance relationship with President Trump's businesses that ended in May 2011. Caulfield Dep.

48:2–6. During that insurance relationship, an insurance underwriter shared financial information from his review of the SOFC with the surety underwriter. Caulfield Dep. 47:15–25.

171. When the insurance relationship ended, Zurich's underwriter reviewed the 2010 SOFC at Trump Tower in July 2011. Caulfield Dep. 66:5–12.

172. Between July 2011 and January 2017, Zurich's underwriter did not review the SOFC and routinely threatened to stop writing new bonds until she was given access to updated financial information. Caulfield Dep. 82:18–21, 102:19–103:10; Robert Aff., Ex. AAO at ZurichNA_008206. Nevertheless, between July 2011 and January 2017, Zurich continued to expand the surety program by adding new bonds based, in part, on media publications reporting President Trump's net worth, including Forbes and USA Today. Caulfield Dep. 81:5–24, 88:7–21, 93:11–25, 94:2–7.

173. In 2013, the sole basis for supporting Zurich's underwriting decision was a Forbes publication that estimated President Trump's net worth at $3.2 billion. Caulfield Dep. 81:5–24.

174. In 2014, Zurich's surety underwriter underwrote the surety program by relying on a Forbes publication that estimated President Trump's net worth at $4.1 billion and a USA Today press release in connection with President Trump's run for President that estimated his net worth at $10 billion. Caulfield Dep. 93:16–94:7.

175. In 2015, Zurich's surety underwriter underwrote the surety program by relying on a Forbes publication that estimated President Trump's net worth at $4.5 billion and a USA Today press release in connection with President Trump's run for President that estimated his net worth at $10 billion. Caulfield Dep. 111:20–112:11.

176. Despite not receiving traditional financial disclosure of the SOFC from July 2011 to January 2017, Zurich increased its exposure and renewed bonds as an accommodation to AON. Caulfield Dep. 85:19–87:16, 90:6–15, 98:10–17.

177. Zurich's reliance on information provided by Forbes and other media publications continued through January 2017 when Zurich's surety underwriter visited Trump Tower to review the 2015 SOFC. Caulfield Dep. 115:19–116:14.

178. In January 2017, Zurich agreed to add DJT Holdings LLC as an additional indemnitor because of concerns Zurich had involving enforcement of the GIA during President Trump's term of office. Caulfield Dep. 119:4–18.

179. The rates charged by Zurich for the surety program were rates filed with insurance regulators in the state of New York. Robert Aff., Ex. AA ("Miller Dep.") 60:17-61:8.

180. Zurich reduced the rate President Trump's businesses were paying as an accommodation to AON and to stave off another insurance company seeking to take the surety program from Zurich. Caulfield Dep. 104:6–105:15. The account rate was lowered despite Zurich not having reviewed updated SOFCs in approximately four years. Caulfield Dep. 105:20–106:3.

181. The total exposure extended to President Trump's businesses in connection with the surety program never exceeded $20 million. Caulfield Dep. 133:3–7; Robert Aff., Ex. Y ("Potter Dep.") 68:5–8, 70:2–7, 72:20–25, 73:5–8.

182. Zurich did not focus on individual asset values because their focus was on President Trump's liquidity to satisfy any claims on the indemnity agreement. Caulfield Dep. 71:8–14, 95:16–18, 117:23–118:2, 154:20–25; Miller Dep. 93:24–94:7 ("Zurich didn't rely on an asset valuations at all. They looked at liquidity and they looked at keeping AON happy and they looked at keeping a customer and those were the primary focus that they had in determining whether they

would keep the risk and write the bonding program"); Robert Aff., Ex. Z ("Giulietti Dep.") 108:9–19; 113:4–8 ("Yes, based on our previous conversation, that's all they're relying on, cash, all the way back in the relationship.")

183. Liquidity is an important factor for a surety underwriter in determining if an indemnitor can meet its obligation under an indemnity agreement. Miller Dep. 31:25–32:6. To determine accuracy of financial information provided to a surety, the underwriter can look at previous loss information, S&P reporting, Comprehensive Loss Underwriting Information. Miller Dep. 97:7–12.

184. To determine accuracy of financial information provided to a surety, the underwriter can request independent appraisals. Miller Dep. 98:15–17.

185. Ms. Caulfield indicated that during her time at Zurich, she was never concerned with President Trump's financial health. Caulfield Dep. 146:2–8.

186. There were no claims ever made on the surety bonds underwritten by Zurich. Caulfield Dep. 155:2–6; Potter Dep. 103:20–22. Thus, Zurich did not incur financial harm because of the surety program. Caulfield Dep. 155:7–12.

187. In connection with the surety bond program, Zurich never communicated with Donald Trump, Jr. or Eric Trump. *See* Caulfield Dep. 144:21–145:2.

f. <u>Tokio Marine HCC Insurance Company</u>

188. As of December 2016, the Trust had in place D&O 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. Compl. ¶ 692.

189. On December 6, 2016, AON, President Trump's insurance broker, obtained a quote from Tokio Marine HCC ("HCC") for additional limits of $5,000,000 to sit above the Everest

policy. Compl. ¶ 695. Without reviewing a SOFC, HCC quoted a policy to sit above the Everest policy through the expiration date of February 17, 2017, in exchange for a premium of $40,000 subject to reviewing financials at renewal. Compl. ¶¶ 695–96.

190. In advance of renewal, an HCC underwriter met with Trump personnel at Trump Tower on January 10, 2017. Compl. ¶ 697. The HCC underwriter reviewed a balance sheet for year-end 2015, which showed total assets of $6.6 billion, $192 million liquidity, and total debt of $519 million. Compl. ¶ 698.

191. On January 20, 2017, HCC offered the Trust terms for a primary $10,000,000 D&O policy with a $2,500,000 retention for an annual premium of $295,000. Compl. ¶ 700. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017, to January 30, 2018. Compl. ¶ 700.

192. HCC agreed to renew the D&O policy on the same terms for another twelve months, with a policy expiration date of February 10, 2019. Compl. ¶ 710.

193. The HCC D&O policy contained a provision that specified who had to know about a claim under the policy before it had to be reported to HCC. *See* Robert Aff., Ex. AD at HCC_00000724.

194. Under the terms of the policy, only when the risk manager or general counsel became aware of a claim did the insured have to provide written notice. *See* Robert Aff., Ex. AD at HCC_00000724.

195. The policy required notice to HCC as soon as practicable after the risk manager or general counsel become aware of a claim, but in no event later than ninety days after the end of the policy period, which ended January 30, 2018. *See* Robert Aff., Ex. AD at HCC_00000724.

196. On February 8, 2019, AON provided notice to HCC of various "claims and/or circumstances which may reasonably be expected to give rise to Claims." Compl. ¶ 712.

197. If there has been materially false information provided by an applicant to a D&O carrier, the carrier can issue a reservation of rights letter, deny coverage, and rescind a policy. Miller Dep. 75:19–76:8.

198. HCC was not required to follow filed rates with New York regulators for the D&O policy. *See* Robert Aff., Ex. AD at HCC_00000684.

g. <u>The Defendants' Roles in the SOFC Transactions</u>

199. Allen Weisselberg, Jeffrey McConney, Patrick Birney, and President Trump were the only Trump personnel involved in the preparation of the SOFC. Robert Aff., Ex. AAJ ("Weisselberg Dep.") 86:3–10, 106:8–18, 114:19–115:21, 286:24–287:8; Robert Aff., Ex. W ("Eric Trump Dep.") 273:9–20, 280:2–11, 286:22–288:13, 294:14–295:9, 304:2–5; Robert Aff., Ex. AAP ("Bender Dep.") 142:16–20, 143:2–7.

200. Eric Trump was not involved in the preparation of the SOFCs. *See* Eric Trump Dep. 273:9–20 ("I know nothing about the Statement of Financial Condition. I, certainly, wouldn't know anything about the backup to the Statement of Financial Condition. It's just not what I did."), 280:2–11 ("I do not ever recall speaking about a Statement of Financial Condition with Jeff McConney. This is not an exercise I was involved in."), 287:2–25 ("To the best of my knowledge, I never saw or ever even remotely worked on the Statement of Financial Condition. This was not in my purview. This is not what I did."), 288:2–13 ("I had nothing to do with the valuation process in the company. That just was not my domain"), 294:14–295:9 ("I knew just about nothing about the Statement of Financial Condition. I had, to the best of my knowledge, never seen the document, never worked on the document"), 304:2–5; Bender Dep. 142:16–20 ("Q: Did you have a discussion

with Eric Trump concerning the preparation of the President's Statement of Financial Condition? A: Not to my recollection").

201. Eric Trump stated he relied on the work of the accounting department when certifying the accuracy of the 2021 SOFC. *See* Eric Trump Dep. 336:11–338:7.

202. Donald Trump Jr. was not involved in the preparation of the SOFCs. *See* Bender Dep. 143:2–7 ("Q: Did you have any discussion Donald Trump Jr. in connection with the preparation of the President's Statement of Financial Condition? A: Discussions? No, I did not have – not to the best of my recollection").

203. With respect to the Deutsche Bank loans, Eric Trump had no role in securing the loan for the Chicago, Doral, or Old Post Office transactions. *See* Vrablic Dep. 173:18–174:12, 232:17–233:18; *see also* Pereless Dep. 93:10–14; Sullivan Dep. 88:15–89:2 ("Q: As you sit here today, do you recall any involvement that Eric Trump had with respect to the guarantee on the Doral property? A. He was not involved.").

204. With respect to the Deutsche Bank loans, Donald Trump Jr. was not involved in the Doral transaction. Vrablic 174:8–12, 229:16–23, Sullivan Dep. 89:3-13 ("Q. Do you recall whether Donald Trump, Jr. had any involvement in the guarantee on the Doral property? A. He did not.").

205. Moreover, Ms. Vrablic, a former Managing Director at Deutsche Bank, did not believe President Trump, Eric Trump, or Donald Trump, Jr. had ever submitted any materially false or misleading statements to Deutsche Bank. *See* Vrablic Dep. 229:16–23, 232:17–234:6; 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.")

V. Other SOFC Submissions

a. Additional $50 Million Loan from Deutsche Bank

206. In February 2016, Deutsche Bank considered extending an additional $50 million loan secured by Trump Doral. Compl. ¶ 662.

207. Ultimately, Deutsche Bank declined to extend further credit due to President Trump's then-campaign for office because it could lead to the perception that Deutsche Bank was not politically neutral, which posed a level of reputational risk. Compl. ¶ 666.

b. Buffalo Bills

208. In July 2014, President Trump bid to purchase the Buffalo Bills football team. Compl. ¶ 667. In support of its bid, President Trump obtained a confidence letter from Deutsche Bank indicating that President Trump would have the financial wherewithal to fund his bid to purchase the Buffalo Bills. Compl. ¶¶ 667, 669.

209. In connection with the confidence letter, Jeff McConney certified that, as of June 30, 2014, there had been no material decrease from the 2013 SOFC. Compl. ¶¶ 668, 670.

210. President Trump did not purchase the Buffalo Bills. Compl. ¶ 669.

c. Trump Golf Links at Ferry Point in Bronx, New York

211. In 2010, an offer was submitted to the City of New York for a concession to operate, maintain, and manage an 18-hole golf course and related facilities at Ferry Point Park, Bronx, New York. Compl. ¶ 671.

212. The contract award included a personal guarantee by President Trump. Compl. ¶ 674. The guarantee stated that the 2010 SOFC had been furnished to the City of New York. Compl. ¶ 674.

213. After being awarded the contract in 2012, President Trump was required to periodically represent there had been no material change in his financial position. Compl. ¶ 675. Mazars submitted such letters to the City of New York in 2010, 2011, 2013, 2016, 2017, 2018, and 2021. Compl. ¶ 675.

VI. Methods of Asset Valuation

214. The American Institute of Certified Public Accountants ("AICPA") provide for various methods to value real property. Robert Aff., Ex. AO ("Chin Aff."), Ex. A ("Chin Expert Report") ¶ 41–42.

215. The market value ("As Is") and investment value ("As If") for a property may produce differences in estimated valuation because they provide different perspectives. Robert Aff., Ex. AN ("Chin Dep.") 98:3-19, 108:4-10.

216. Market value is generally described as "As Is," as of a specific date, reflective of a price that a willing buyer and seller would agree upon in an open and competitive market. Chin Expert Report ¶ 43.

217. Investment value is "the value of the property to a particular investor based on that person's (or entity's) investment requirements rather than market norms." Robert Aff., Ex. AAC ("Laposa Dep.") 74:16–75:24, 135:9–11.

218. Investment value is usually estimated based on anticipated future market and property conditions from the vantage point of a specific investor or owner and is often expressed as an "As If" value. Chin Expert Report ¶ 42; Chin Dep. 90:3–19, 91:24–92:8.

219. The AICPA does not mandate or require reporting "As Is" values in compilation reports, nor does it mandate or require that a market value definition be applied. Chin Expert Report ¶ 42.

220. Appraised values prepared by certified professional appraisers generally reflect as is market values. Chin Dep. 91:24–92:8, 104:23–105:5.

221. Bank and developer appraisals often yield contrasting value estimates due to their distinct perspectives and considerations. Chin Expert Report ¶ 53. As lenders, banks prioritize safeguarding their investment and therefore approach collateral valuation with a conservative mindset, focusing on worst-case scenarios. Chin Expert Report ¶ 53. Bank-ordered appraisals heavily rely on historical data and performance, while potential market changes that could impact values may receive less emphasis. Chin Expert Report ¶ 53.

222. Developers are typically more optimistic about the property's profit potential and prospects. Chin Expert Report ¶ 54. Developers presume that favorable market conditions will persist, leading to higher property values. Chin Expert Report ¶ 54.

223. Uncertainty exists in the accuracy of appraisals, as "appraisal[s] are not always accurate." Laposa Dep. 163:14–22.

224. Generally, there can be "divergent opinions between investors and owners and developers versus other stakeholders." Laposa Dep. 167:6–9.

225. Developers typically have a unique insight and perspective on creating value through development. Chin Expert Report ¶ 48. Developers perceive and manage risks different than more passive real estate owners and investors, and have definitive, often controversial, views on how a development or sell-out process could unfold. Chin Expert Report ¶ 48.

226. Many of the assets listed in the SOFC reflect "As If" valuation estimates based on President Trump's understanding and perspective of those assets. Chin Dep. 159:15–160:11.

227. The SOFC include assumptions made by President Trump, such as As If stabilized, As If developed, As If realized, As If projected or anticipated, and As If earned. Chin Expert Report ¶ 44.

228. The value of President Trump's businesses, a privately owned collective of assets ("Enterprise"), is not only the sum of its real estate assets, business units, and subsidiaries. Chin Report ¶ 51. A significant portion of the asset values is derived from the synergies and strategic advantages resulting from integrating and coordinating its various business units operating under a single brand with complete ownership control. Chin Expert Report ¶ 51. These synergies and advantages arise from more efficient portfolio management, improved market position, increased diversification, differentiation and pricing of product offerings, increased supplier leverage and purchasing power, and improved operating efficiencies that combined, create a more competitive advantage over non-branded, single property ownerships. Chin Expert Report ¶ 51.

229. If the Enterprise were put up for sale, buyers would recognize the Enterprise's synergies and would pay a premium to own and control this position. Chin Expert Report ¶ 51.

230. A control premium exists for President Trump's businesses as they have the unique, unilateral ability to make strategic decisions that directly impact company's operations and future profit. Chin Expert Report ¶ 52.

231. Net Operating Income approach, otherwise known as NOI, is commonly 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). Compl. ¶ 117.

232. In practice, the NOI approach takes the form of a calculation considering a "discounted cash flow analysis of a property and discounting the cash flows and net operating income to a present value and then capping it in some way." Laposa Dep. 48:4–25. The resulting number is the "estimated value of that property." Laposa Dep. 88:15–89:20.

233. Cushman & Wakefield determined "the appraised market value," (Laposa Dep. 47:13–18) by using the NOI approach and sought support from "sales comparisons" as is "typical for [ap]praisers." Laposa Dep. 47:19–48:3.

234. "[C]aping it" (Laposa Dep. 48:9) refers to capitalization rate or "[c]ap rate," which is the overall rate used to divide NOI to determine the value the appraisal seeks. Laposa Dep. 49:2–12.

235. Many factors are considered in an NOI and a cap rate. Laposa Dep. 90:18–20. A "market cap rate" is one determined through an analysis of sufficient number of sales comparable whereby the cap rate is known, qualified, investigated, and sometimes adjusted. Laposa Dep. 91:8–18.

236. Under the NOI approach, when using the discounted cash flow analysis, otherwise known as "DCF," the value determined—whether it is market value or investment value depends on who is conducting it and what assumptions are included in the model. Laposa Dep. 141:8–142:8.

237. Dividing the NOI by the market cap rate, as it is defined above, equals the "estimated current value" as defined under FASB—assuming there exists a willing buyer and a willing seller behind the calculation. Laposa Dep. 93:15–20.

238. The "investment value" is determined under the NOI approach, in accordance with the "Appraisal Institute's 15th edition— … if the specific investor's criteria and expectations are mirrored with the market value…." Laposa Dep. 94:15–22.

a. Cash and Cash Equivalents

239. To determine whether the cash and cash equivalents were materially misstated under GAAP, it is irrelevant to consider whether President Trump was entitled to access the cash because under ASC 274 there is no classification for current and non-current assets. Robert Aff., Ex. AJ ("Bartov Dep.") 177:4–18.

b. Real Properties

i. 40 Wall Street

240. Cushman & Wakefield appraisals for 2011, 2012, and 2015 valued 40 Wall Street at $200,000,000, $220,000,000, and $540,000,000, respectively. Compl. ¶ 122; Chin Expert Report ¶ 56.

241. The 2011 and 2012 Cushman appraisals significantly understated the market value by using market rental rate assumptions in the discounted cash flow analysis that did not accurately reflect the actual leasing conditions at the property. Chin Expert Report ¶ 58. Moreover, the 2011 and 2012 Cushman appraisals also used a capitalization rate that was inconsistent with market sales. Chin Expert Report ¶ 66.

242. The 2015 Cushman appraisal recognized the underestimation of their market rental rate assumptions and incorporated the actual improved occupancy and market conditions into their 2015 discounted cash flow leasing assumptions. Chin Expert Report ¶ 65.

ii. Trump Tower

243. With the exception 2015, the valuations of Trump Tower from 2011 through 2019 were derived by dividing the net operating income by a capitalization rate. Compl. ¶ 199.

244. In 2015, the valuation of Trump Tower was determined based on the sale of a comparable nearby building. Compl. ¶ 199.

iii. Trump Tower Triplex

245. The Trump Tower Triplex valuations from 2011 to 2016 were unintentional errors because they relied on a misapprehension of the square footage. Donald Trump Dep. 212:4–22, 219:10–24.

246. The error in valuing the Trump Tower Triplex did not materially affect the value of the Enterprise. Chin Dep. 209:4–22.

247. The error was corrected in future statements once Trump personnel became aware of it. Donald Trump Dep. 212:4–22, 219:10–24.

iv. Club Facilities

248. President Trump's golf club facilities are trophy assets with a high-quality reputation. Robert Aff., Ex AG ("Christovich Dep.") 254:17–255:16. The golf club facilities are in high end markets and are maintained and resourced and recapitalized on an ongoing basis. Christovich Dep. 254:22–255:2.

1. Mar-a-Lago

249. After President Trump purchased the Mar-a-Lago property, the Town of Palm Beach approved an application for a special exception to use the property as a private social club without abandoning its use as a single-family residence. Robert Aff., Ex. AE ("Shubin Dep.")

54:11–21. This resulted in a Declaration of Use Agreement between President Trump and the Town of Palm Beach. Shubin Dep. 55:15–56:15.

250. In 2002, President Trump executed a deed in favor of the National Trust for Historic Preservation in the United States to convey rights to develop Mar-a-Lago for any usage other than club usage. Shubin Dep. 63:7–64:2; Robert Aff., Ex. AF. This deed did not restrict President Trump from using Mar-a-Lago as a single-family residence in connection with its use as a private club. Shubin Dep. 64:3–13.

251. Mar-a-Lago can be used by President Trump as an exclusive private residence for him and his family while simultaneously being used as a private social club. Shubin Dep. 38:9–40:13.

252. Mar-A-Lago could also be used as a private residence without having a social club simultaneously operating. Shubin Dep. 41:6–8.

2. <u>The Remaining Club Facilities (Trump Aberdeen, Trump Turnberry, TNGC Jupiter, TNGC Briarcliff, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, TNGC Hudson Valley)</u>

253. The SOFC values for the remaining club facilities represent "As If" valuations because they are future oriented with no plans for bulk selloffs or discounted liquidations prior to the competition of development. Chin Aff., Ex. B ("Chin Rebuttal Report") ¶¶ 105–07.

254. An asset-by-asset approach, as opposed to valuing the Enterprise as a whole, ignores significant operating, marketing, financial and competitive differences, and benefits that accrue from the ownership and operation of an Enterprise. Chin Rebuttal Report ¶ 146.

255. A Going-Concern Value of the Enterprise analysis ("GCEV") is an acceptable form of valuation that reflects the actual operating status of the Enterprise, as well as the tangible and intangible assets, the future earnings potential, growth prospects, market position, customer base,

brand reputation, financial statements, and other factors that contribute to the ongoing profitability and value of the Enterprise. Chin Rebuttal Report ¶ 148.

256. The GCEV involves assessing the present value of expected future cash flows and applying appropriate valuation methods such as discounted cash flow analysis, market multiples, or comparable transactions. Chin Rebuttal Report ¶ 148. Once the GCEV is established, allocations to each property can then be made. Chin Rebuttal Report ¶ 148.

257. The GCEV is a holistic assessment of an Enterprise's total value, while market value As Is focuses on the present worth of individual assets at a specific point in time. Chin Rebuttal Report ¶ 149.

258. The GCEV most accurately reflects the ownership, operations, and marketing of the Enterprise. Chin Rebuttal Report ¶ 150. The GCEV approach is consistent with the Enterprise's current use and conforms to the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 820, which requires that an Enterprise operated and marketed under a single name should be valued as a unit. Chin Rebuttal Report ¶ 151.

259. The break-up value of each individual asset for separate sale is not applicable since the highest value is achieved by operating the Enterprise as a single unit. Chin Rebuttal Report ¶ 153.

260. Given the existing operating condition of the Enterprise, the GCEV valuation provides a more accurate reflection of the value of the Enterprise because it recognizes the continued operations, synergies, and income-generating aspects of the enterprise as a whole, rather than isolating and valuing the assets as separate entities in a liquidation scenario. Chin Rebuttal Report ¶ 161.

261. Applying an asset-by-asset approach fails to capture the integrated value created by the Enterprise as a unified entity. Chin Rebuttal Report ¶ 166.

262. The intangible value associated with a brand name is a permissible valuation consideration. Chin Rebuttal Report ¶ 168. And the use of the Trump brand value as part of the value of the reported tangible assets was also properly disclosed in the SOFC. *See, e.g.*, Compl., Ex. 3 at 4; Flemmons Expert Report ¶¶ 69–72.

263. As compared to an asset-by-asset valuation, a GCEV valuation that considers intangible assets such as President Trump's brand, should reflect lower capitalization rates or higher adjusted gross income multipliers. Chin Rebuttal Report ¶ 170.

264. The assets of President Trump's Enterprise hold more value when operated and marketed under a single name. Chin Rebuttal Report ¶ 154.

VII. Tolling Agreement

265. On August 27, 2021, the Trump Organization, through its EVP/Chief Legal Officer, Alan Garten, entered into a tolling agreement with the NYAG to toll the statute of limitations for any "action commenced by OAG asserting any Potential Civil Claim" (hereinafter, the "Tolling Agreement"). *See generally* Robert Aff., Ex. AT ("Tolling Agreement").

266. The Tolling Agreement defines the Trump Organization as follows: "[T]he '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." Tolling Agreement at 1.

267. The sole signatories on the Tolling Agreement were Alan Garten, in his capacity as officer of the Trump Organization, and Kevin Wallace on behalf of the NYAG.

268. The Tolling Agreement also indicates "[e]ach of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into this Tolling Agreement and to execute and bind such Party to this document." Tolling Agreement ¶ 16.

269. The first draft of the Tolling Agreement circulated by the NYAG on May 3, 2021 explicitly named Donald J. Trump, Eric Trump, Allen Weisselberg, and Jeffrey McConney as parties to the agreement, and had a signature block each individual. *See* Robert Aff., Ex. AT ("Draft Tolling Agreement") at 1, 3–4.

270. On June 16, 2021, the "Trump Organization" circulated an updated draft of the agreement that included a footnote to clarify that the agreement would not "toll any civil claims that might in the future be asserted by the OAG against any ***individuals***, including any directors, officers, partners, employees, agents, contractors, consultants, representatives, and/or attorneys of the Trump Organization." *See* Robert Aff., Ex. AU. NYAG counsel responded via email on June 17, 2021, noting that this proposed change to the footnote at issue was "generally acceptable." *See* Robert Aff., Ex. AV.

271. Despite the AG's indication that the language was "generally acceptable," the proposed footnote in the June 16, 2021 draft was not incorporated into the final executed Tolling Agreement. *See* Tolling Agreement.

272. The executed Tolling Agreement did not mention Donald J. Trump, Eric Trump, Allen Weisselberg, or Jeffrey McConney and removed the signature blocks for these individuals. *See generally* Tolling Agreement.

273. The NYAG also stated at an April 25, 2022, hearing that: "Donald J. Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." *See* Robert Aff., Ex. AW at 58:8–10.

274. In an appellate brief dated December 7, 2022, the NYAG stated: "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." Robert Aff., Ex. AY at 39 n.13.

Dated: New York, New York
August 4, 2023

s/ *Michael Madaio*
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-and-

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August 4, 2023

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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 **AFFIRMATION IN SUPPORT OF DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT**

CLIFFORD 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:

INTRODUCTION

1. I am the principal of the law firm of Robert & Robert PLLC, attorneys for Defendants Donald Trump, Jr. and Eric Trump. 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 is submitted, along with the accompanying Memorandum of Law and the accompanying Statement of Undisputed Material Facts, in support of the joint motion of 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 (collectively, "Defendants") seeking (i) summary judgment in favor of the Defendants, 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"), in its entirety, and (ii) such other and further relief as the Court deems just, equitable and proper (hereinafter the "Motion").

3. Annexed hereto as **Exhibit A** is a true and correct copy of the operative Verified Complaint in the above-captioned action (NYSCEF No. 1).

4. Annexed hereto as **Exhibit B** is a true and correct copy of an organizational chart appended to the Complaint in the above-captioned action (NYSCEF No. 4).

5. Annexed hereto as **Exhibit C** is a true and correct copy of the 2011 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 5).

6. Annexed hereto as **Exhibit D** is a true and correct copy of the 2012 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 6).

7. Annexed hereto as **Exhibit E** is a true and correct copy of the 2013 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 7).

8. Annexed hereto as **Exhibit F** is a true and correct copy of the 2014 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 8).

9. Annexed hereto as **Exhibit G** is a true and correct copy of the 2015 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 9).

10. Annexed hereto as **Exhibit H** is a true and correct copy of the 2016 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 10).

11. Annexed hereto as **Exhibit I** is a true and correct copy of the 2017 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 11).

12. Annexed hereto as **Exhibit J** is a true and correct copy of the 2018 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 12).

13. Annexed hereto as **Exhibit K** is a true and correct copy of the 2019 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 13).

14. Annexed hereto as **Exhibit L** is a true and correct copy of the 2020 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 14).

15. Annexed hereto as **Exhibit M** is a true and correct copy of the 2021 Statement of Financial Condition appended to the Complaint in the above-captioned action (NYSCEF No. 15).

16. Annexed hereto as **Exhibit N** is a true and correct copy of the Amended Answer of Donald J. Trump to Verified Complaint in the above-captioned action (NYSCEF No. 501).

17. Annexed hereto as **Exhibit O** is a true and correct copy of the transcript of the deposition of Nicholas Haigh ("Haigh Dep.") in this action taken on May 8, 2023.

18. Annexed hereto as **Exhibit P** is a true and correct copy of the transcript of the deposition of David Williams ("Williams Dep.") in this action taken on March 8, 2023.

19. Annexed hereto as **Exhibit Q** is a true and correct copy of Exhibit 10 to the deposition of David Williams in this action taken on March 8, 2023, beginning with Bates stamp DB-NYAG-001776.

20. Annexed hereto as **Exhibit R** is a true and correct copy of a document beginning with Bates stamp DB-NYAG-248558, a true and correct copy of Exhibit R (that did not bear a

Bates stamp) was introduced as Exhibit 20 to the deposition of David Williams in this action taken on March 8, 2023.

21. Annexed hereto as **Exhibit S** is a true and correct copy of the transcript of the deposition of Emily Pereless ("Pereless Dep.") in this action taken on March 15, 2023.

22. Annexed hereto as **Exhibit T** is a true and correct copy of Exhibit PM9 to the deposition of Emily Pereless in this action taken on March 15, 2023, beginning with Bates stamp DB-NYAG-001691.

23. Annexed hereto as **Exhibit U** is a true and correct copy of Exhibit 17 to the deposition of Emily Pereless in this action taken on March 15, 2023, beginning with Bates stamp DB-NYAG-001655.

24. Annexed hereto as **Exhibit V** is a true and correct copy of the deposition of Donald J. Trump ("Donald Trump Dep.") in this action taken on March 7, 2023.

25. Annexed hereto as **Exhibit W** is a true and correct copy of the transcript of the deposition of Eric Trump ("Eric Trump Dep.") in this action taken on March 7, 2023.

26. Annexed hereto as **Exhibit X** is a true and correct copy of the transcript of the deposition of Joanne Caulfield ("Caulfield Dep.") in this action taken on April 6, 2023.

27. Annexed hereto as **Exhibit Y** is a true and correct copy of the transcript of the deposition of Chandar Potter ("Potter Dep.") in this action taken on May 18, 2023.

28. Annexed hereto as **Exhibit Z** is a true and correct copy of the transcript of the deposition of Gary Giulietti ("Giulietti Dep.") in this action taken on July 27, 2023.

29. Annexed hereto as **Exhibit AA** is a true and correct copy of the transcript of the deposition of David Miller ("Miller Dep.") in this action taken on July 24, 2023.

30. Annexed hereto as **Exhibit AB** is a true and correct copy of Exhibit 16 to the deposition of David Williams in this action taken on March 8, 2023, beginning with Bates stamp DB-NYAG-462326.

31. Annexed hereto as **Exhibit AC** are true and correct copies of documents beginning with Bates stamp ZurichNA_008990.

32. Annexed hereto as **Exhibit AD** are true and correct copies of documents beginning with Bates stamp HCC_00000684.

33. Annexed hereto as **Exhibit AE** is a true and correct copy of the transcript of the deposition of John K. Shubin, Esq. ("Shubin Dep.") in this action taken on July 20, 2023.

34. Annexed hereto as **Exhibit AF** is a true and correct copy of Exhibit 3 to the deposition of John K. Shubin, Esq. in this action taken on July 20, 2023, beginning with Bates stamp TrumpNYAG_0000554.

35. Annexed hereto as **Exhibit AG** is a true and correct copy of the transcript of the deposition of Greg Christovich ("Christovich Dep.") in this action taken on July 13, 2023

36. Annexed hereto as **Exhibit AH** is a true and correct copy of the transcript of the deposition of Jason Flemmons ("Flemmons Dep.") in this action taken on July 10, 2023.

37. Annexed hereto as **Exhibit AI** is a true and correct copy of the affidavit of Jason Flemmons dated August 4, 2023.

38. Annexed hereto as **Exhibit AJ** is a true and correct copy of the transcript of the deposition of Eli Bartov ("Bartov Dep.") in this action taken on July 28, 2023.

39. Annexed hereto as **Exhibit AK** is a true and correct copy of the affidavit of Eli Bartov dated August 4, 2023.

40. Annexed hereto as **Exhibit AL** is a true and correct copy of the transcript of the deposition of Robert Unell ("Unell Dep.") in this action taken on July 21, 2023.

41. Annexed hereto as **Exhibit AM** is a true and correct copy of the affidavit of Robert Unell dated August 3, 2023.

42. Annexed hereto as **Exhibit AN** is a true and correct copy of the transcript of the deposition of Frederick Chin ("Chin Dep.") in this action taken on July 26, 2023.

43. Annexed hereto as **Exhibit AO** is a true and correct copy of the affidavit of Frederick Chin dated August 3, 2023.

44. Annexed hereto as **Exhibit AP** is a true and correct copy of the Removal of Trustee dated January 15, 2021 bearing Bates stamp Trump NYAG_0088780.

45. Annexed hereto as **Exhibit AQ** is a set of true and correct of the Proposal of Trump Old Post Office, LLC beginning with Bates stamp TTO_02114256.

46. Annexed hereto as **Exhibit AR** is a set of true and correct copies of documents beginning with Bates stamp TTO_02114568.

47. Annexed hereto as **Exhibit AS** is a set of true and correct copies of documents beginning with Bates stamp GSA_NYSupCt_000001.

48. Annexed hereto as **Exhibit AT** is a set of true and correct copies of documents titled: "Tolling Agreement Regarding Potential Violations of the New York False Claims Act and Executive Law Section 63(12)," (NYSCEF No. 412).

49. Annexed hereto as **Exhibit AU** is true and correct copy of a June 16, 2021, email thread between Amy Carlin and Austin Thompson with the draft Tolling Agreement attached thereto.

50. Annexed hereto as **Exhibit AV** is a true and correct copy of an e-mail thread between Austin Thomson and Amy Carlin dated June 17, 2021.

51. Annexed hereto as **Exhibit AW** is a true and correct copy of a transcript from a court proceeding in the case styled *People of the State of New York by Letitia James v. The Trump Organization, Inc., et. al.*, Index No. 451685/2020 (Sup. Ct. N.Y. Cnty. 2022) dated April 25, 2022.

52. Annexed hereto as **Exhibit AX** is a set of true and correct copies of documents with Bates stamp document title NYAG_WF_00024390.

53. Annexed hereto as **Exhibit AY** is a true and correct copy of the Brief for Petitioner-Respondent New York Attorney General in the case styled *People of the State of New York by Letitia James v. Donald J. Trump, et. al.*, Case No: 2022-01812 (1st Dep't 2022) dated December 7, 2022.

54. Annexed hereto as **Exhibit AZ** is a true and correct copy of the May 3, 2021, email from Austin Thomson to Lawrence Rosen with the first draft of the Tolling Agreement attached.

55. Annexed hereto as **Exhibit AAA** is a true and correct copy of Exhibit 2 to the deposition of Allen Weisselberg bearing Bates stamp TrumpNYAG_0018048.

56. Annexed hereto as **Exhibit AAB** is a true and correct copy of the deposition of Rosemary Vrablic ("Vrablic Dep.") dated April 24, 2023.

57. Annexed hereto as **Exhibit AAC** is a true and correct copy of the deposition of Steven Laposa ("Laposa Dep.") dated July 19, 2023.

58. Annexed hereto as **Exhibit AAD** is a true and correct copy of the deposition of Tom Sullivan ("Sullivan Dep.") dated March 24, 2023.

59. Annexed hereto as **Exhibit AAE** is a true and correct copy of Exhibit 2 to the deposition of David Williams in this action taken on March 8, 2023, beginning with Bates stamp DB-NYAG-479000.

60. Annexed hereto as **Exhibit AAF** is a true and correct copy of the visual aid relating to the statute of limitations for the transactions in this matter.

61. Annexed hereto as **Exhibit AAG** is a true and correct copy of an email between Rosemary Vrablic and Tom Sullivan dated December 2, 2013, bearing Bates stamp DB-NYAG-463353.

62. Annexed hereto as **Exhibit AAH** is a true and correct copy of a Reputational Risk Memorandum dated February 29, 2016, bearing Bates stamp DB-NYAG-225064.

63. Annexed hereto as **Exhibit AAI** is a true and correct copy of a Reputational Risk Memorandum dated December 5, 2016, bearing Bates stamp DB-NYAG-377878.

64. Annexed hereto as **Exhibit AAJ** is a true and correct copy of the deposition of Allen Weisselberg ("Weisselberg Dep.") dated May 12, 2023.

65. Annexed hereto as **Exhibit AAK** is a true and correct copy of the GSA's Request for Proposals dated March 24, 2011, bearing Bates stamp TTO_03884105.

66. Annexed hereto as **Exhibit AAL** is a true and correct copy of Bryn Mawr Trust's 2018 Credit Approval Memorandum dated February 1, 2018, with Bates stamp document title BMawr-00000311.

67. Annexed hereto as **Exhibit AAM** is a true and correct copy of Bryn Mawr Trust's 2019 Credit Approval Memorandum dated June 13, 2019, with Bates stamp document title BMawr-00000013.

68. Annexed hereto as **Exhibit AAN** is a true and correct copy of Bryn Mawr Trust's Loan Renewal Memorandum dated June 17, 2014, with Bates stamp document title BMawr-00000348.

69. Annexed hereto as **Exhibit AAO** is a true and correct copy of Exhibit 7 to the deposition of Joanne Caulfield in this action taken on April 6, 2023, beginning with Bates stamp ZURICHNA_008203.

70. Annexed hereto as **Exhibit AAP** is a true and correct copy of the transcript of the deposition of Donald Bender ("Bender Dep.") in this action taken on April 18, 2023.

71. Annexed hereto as **Exhibit AAQ** is a true and correct copy of the Affirmation of Alan Garten, dated August 4, 2023.

WHEREFORE, Defendants respectfully request that this Court grant the instant Motion in its entirety.

Dated: Uniondale, New York
August 4, 2023

s/ *Clifford S. Robert*
CLIFFORD S. ROBERT

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, signature block, and this certification, the foregoing Affirmation contains 2,271 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
August 4, 2023

Respectfully submitted,

s/ *Clifford S. Robert*
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EXHIBIT “A”

Michael Farina

From: Clifford Robert
Sent: Tuesday, September 5, 2023 9:27 PM
To: kevin.wallace@ag.ny.gov; colleen.faherty@ag.ny.gov; andrew.amer@ag.ny.gov
Cc: chris kise; Christopher Kise; Michael Madaio; Michael Farina; Viktoriya Liberchuk; jsuarez@continentalpllc.com; armenmorian@morianlaw.com; JHernandez@ContinentalPLLC.com
Subject: People v. Donald J. Trump, et al.

Kevin/Colleen:

Please be advised that Defendants will be bringing an Order to Show Cause seeking an order, inter alia, 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. Defendants will also be seeking immediate relief in the form of temporarily staying the trial pending the hearing and determination of their application.

We intend to request that the Court hear Defendants' application on Thursday, September 7, 2023.

Thanks.

Cliff

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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

Hon. Arthur F. Engoron

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO BRIEFLY STAY TRIAL

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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 (collectively, "Defendants"), by and through their undersigned counsel, respectfully submit this Memorandum of Law in support of Defendants' application for emergency relief by Order to Show Cause for an Order: (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").

INTRODUCTION

The New York Attorney General's (the "NYAG") callous disregard of the Appellate Division, First Department's unequivocal mandate has placed the Court in an extraordinarily untenable position and impeded the ability of the Defendants to prepare adequately for trial. The First Department issued a unanimous modification of this Court's Decision and Order on Defendants' respective Motions to Dismiss the Complaint. Any claim to the contrary, or that the text of the First Department's Decision and Order explaining that modification is *dicta*, is simply frivolous. The Court and the Defendants are entitled to know the issues to be tried by the NYAG ***before*** the trial commences. Moreover, the purpose of an interlocutory appeal to the First Department is to obtain an interlocutory decision which is then implemented on an interlocutory basis ***prior to the commencement of trial***.

Here, unfortunately, the NYAG has created unjustifiable ambiguity, interfered with the orderly pre-trial process, and exposed the Court and the Defendants to the prospect of a needlessly-protracted trial by her refusal to acknowledge the First Department's statute-of-limitations ruling. Indeed, the NYAG's opposition to Defendants' Motion for Summary Judgment makes abundantly clear that the NYAG intends to proceed to trial on time-barred claims and invites the Court to err and ignore the obvious fact that many of her claims ***have already been dismissed*** by the First Department.[1]

On June 27, 2023, the First Department issued an unambiguous mandate, ***judicially modifying*** this Court's Decision and Order on Defendants' respective Motions to Dismiss the Complaint (NYSCEF No. 1) ("Complaint" or "Compl.") and dismissing certain of the NYAG's claims as untimely. *People by James v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023) (Affirmation of Clifford S. Robert (Sept. 5, 2023) ("Robert Aff.") Ex. A.) (the "Appellate Order"). The Appellate Order provides as follows:

> 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. A at 1 (emphasis added).) This clear directive leaves no doubt certain of the NYAG's claims are in fact dismissed. There is no discretion vested in this Court and the NYAG

[1] The Defendants apologize to the Court for the timing and expedited nature of this filing. To be clear, and anticipating the NYAG's opposition, this application is not interposed for purposes of delay. As the Court is aware from both the recent filings and the conference last week, the Defendants have been working diligently to prepare for trial and seek to proceed as expeditiously as possible. However, the Defendants could not possibly have anticipated that the NYAG would so brazenly disregard the First Department's ruling and, in so doing, jeopardize the pre-trial preparation process and the Court's trial schedule.

is not free to ignore this mandate. The Court and the parties must simply perform the ministerial task of identifying the respective dates of accrual for each of the NYAG's claims (based on the unambiguous definition of same in the Appellate Order), and then applying the bar date. This process will necessarily result in narrowing the claims and issues to be tried, thus providing the Defendants with essential clarity as to the relevant pre-trial filings and the actual issues to be tried, and importantly, lessening the burden on this Court by reducing considerably the number of required trial days.[2]

The First Department also facilitated implementation of its mandate by specifically defining the process for determining the actual accrual date for the various claims:

> 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.

(Robert Aff. Ex. A at 3.) The First Department thus (1) determined certain of the NYAG's claims are actually time-barred, and (2) defined unambiguously what "accrued" means.[3] The First Department also held that "[t]he continuing wrong doctrine does not delay or extend these periods." (*Id.* at 3-4 (citing *CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021) and *Henry v Bank of Am.*, 147 A.D.3d 599, 601-602 (1st Dep't 2017)).)

The import of the Appellate Order cannot be overstated. *All ten* transactions involving lending, which give rise to the NYAG's claims against the individual Defendants and the Donald

[2] As the Court will recall from the recent conference, the NYAG's estimate of the number of trial days required to present her case extends the completion date into late December 2023. However, the number of trial days will be reduced substantially once the First Department's mandate is implemented.

[3] The NYAG ignores both the law and fundamental grammatical principles, claiming absurdly that the First Department's specific definition of accrual, viz., the date on which "the transactions were completed," is mere *dicta*.

J. Trump Revocable Trust (the "Trust"), have been dismissed; only *two of the ten* transactions involving lending asserted against the corporate-entity Defendants may proceed to trial. There is simply no dispute that: (i) seven of the ten transactions involving lending were completed *before* July 13, 2014; (ii) one of the transactions involving lending was *never* consummated; and (iii) the two remaining transactions involving lending were completed *before* the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.*, February 6, 2016. Thus, the First Department limited substantially both the number of claims to be adjudicated at trial and the number of parties and counsel required to prepare for and participate in such trial.

Despite the First Department's unequivocal holding, the NYAG still impermissibly relies on continuing-wrong theories to support her desire to recite pre-July 13, 2014, facts in her Partial Motion for Summary Judgment (Robert Aff. Ex. B) (the "NYAG's Partial SJM"). Notably, the NYAG cannot explain how conduct or transactions that pre-date July 13, 2014, remain actionable. In a footnote, the NYAG's explicit disregard of the Appellate Order is evident:

> 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 in this case.

(Robert Aff. Ex. B at 13, n.3.)[4]

Next, the NYAG doubles down on her contempt for the Appellate Order in her opposition to the Defendants' Motion for Summary Judgment, this time deliberately distorting the First

[4] The NYAG simply cannot "reserve[] the right to challenge the First Department's holding at a later stage in this case." *See KTM Partnership-I v. 160 West 86th St. Partners*, 169 A.D.2d 462 (1st Dep't 1991) (*citing Bray v. Cox*, 38 N.Y.2d 350 (1976)) (affirming the principle that parties cannot subsequently "raise issues which were previously adjudicated or could have been previously adjudicated by this court in the interlocutory appeal.")

Department's unequivocal ruling.[5] Worse, the NYAG irresponsibly invites this Court to err by ignoring the First Department's mandate. In so doing, the NYAG throws this action into a state of chaotic uncertainty where neither the Court nor the Defendants know what the operative claims are to be tried, or who the parties are or will be going forward during the trial.

Given these facts and circumstances, including that the parties are presently required to (i) prepare and submit witness and exhibits lists, deposition designations, and proposed facts to be proven at trial; (ii) prepare and submit pre-trial motions on September 22, 2023; (iii) prepare for and attend the final pre-trial conference on September 27, 2023; and (iv) prepare for and attend the trial beginning on October 2, 2023, it is essential that the Court temporarily stay the trial pursuant to CPLR § 2201 so that it can resolve the chaos created by the NYAG's abject refusal to follow the Appellate Order.

A trial of this magnitude should not begin in chaos. The Court and the Defendants are entitled to know the claims and issues to be tried sufficiently in advance to prepare adequately for trial. The Appellate Order is dispositive of many of the NYAG's claims and significantly reduces the scope of issues to be tried, thus shortening the length of the trial. A temporary stay of the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment ensures fair notice and a more efficient trial on only the remaining viable claims.

[5] The Court's August 1 and 17, 2023 Orders (NYSCEF Nos. 646, 739), required the parties to serve (but not file) their respective Motions for Summary Judgment upon all counsel of record via electronic mail, with a courtesy copy delivered to Chambers via electronic mail, pending resolution of any applications filed by non-parties seeking to seal any Confidential Information reproduced, paraphrased, or attached to the parties' respective motions. As the time for any non-parties to file any applications seeking to seal any Confidential Information reproduced, paraphrased, or attached to the NYAG's opposition to Defendants' SJM has yet to expire, Defendants have not attached the opposition papers to this Application. The Court is already in possession of the NYAG's opposition to Defendants' SJM, but Defendants are prepared to provide another copy to the Court upon request.

BACKGROUND

In the interest of brevity and avoiding burdening the Court with duplicative briefing, the Defendants respectfully refer the Court to their Motion for Summary Judgment (Robert Aff. Ex. C) ("Defendants' SJM"), NYAG's Partial SJM (Robert Aff. Ex. B), and the Appellate Order (Robert Aff. Ex. A) for a full recitation of the background facts. Below is a brief summary of the background facts relevant to this Application.

This complex commercial action was commenced on September 21, 2022, by the NYAG following a three-year investigation involving interviews with more than 65 witnesses and the review and analysis of millions of pages of documents. The 200-page Complaint seeks sweeping and punitive relief against sixteen named Defendants including, *inter alia*, the appointment of a Monitor to oversee the Defendants' assets and businesses,[6] barring the Defendants from conducting any real-estate transactions in New York for five years, permanently barring the individual Defendants from serving as an officer or director of any New York corporation and ordering the Defendants to pay $250 million in "disgorgement." The allegations in the Complaint involve more than 200 asset valuations and 11 financial compilations stretching over a decade. (*See* Compl. ¶ 10.)

On November 21, 2022, Defendants moved to dismiss the Complaint. (NYSCEF Nos. 195, 198, 201, 210, 220, 224.) This Court denied all of Defendants' motions. (NYSCEF Nos. 453-58.) Defendants appealed (NYSCEF Nos. 486, 487, 488), and on June 27, 2023 the First Department judicially modified this Court's 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")

[6] The Court already granted this relief and the Monitor, Hon. Barbara S. Jones (Ret.), has been in place pursuant to the Court's Orders dated November 14 and November 17, 2022 (NYSCEF Nos. 193, 194).

"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." (Robert Aff. Ex. A 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 entirely but left it to this Court to determine "the full range of defendants bound by the tolling agreement." (*Id.* at 4.) Finally, the First Department held that "[t]he continuing wrong doctrine does not delay or extend" the limitations periods. (*Id.* at 3.)

All discovery concluded in the case on July 28, 2023. On July 31, 2023, the NYAG filed a note of issue with the Court confirming that discovery has been "completed" and stating that "[t]he case is ready for trial." (NYSCEF No. 644 at 3.)

The Parties' Summary Judgment Motions

On August 4, 2023, the parties served (but did not file) their respective Motions for Summary Judgment (Robert Aff. Exs. B, C).[7]

Defendants' SJM seeks implementation of the First Department's mandate since (1) certain of the NYAG's causes of action are based on transactions that were completed outside of the applicable limitations period; and (2) the Tolling Agreement does not bind any individual Defendant or the Trust (Robert Aff. Ex. C).

As to (1), Defendants' SJM states *inter alia* as follows:

> 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

[7] As noted, the Court's August 1 and 17, 2023 Orders (NYSCEF Nos. 646, 739), required the parties to serve (but not file) their respective Motions for Summary Judgment upon all counsel of record via electronic mail, with a courtesy copy delivered to Chambers via electronic mail, pending resolution of any applications filed by non-parties seeking to seal any Confidential Information reproduced, paraphrased, or attached to the parties' respective motions. On August 30, 2023, the Court issued its Decision and Order on certain non-parties' sealing applications (NYSCEF Nos. 759-64), and the parties filed their respective Motions for Summary Judgment on August 30, 2023 (NYSCEF Nos. 765-1262).

> 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 Agreement's applicability—because there is no dispute that they were completed before July 13, 2014.
>
> …
>
> 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.

(*Id.* at 23-30.) Defendants' SJM also provides the following visual aid for each transaction, its closing/accrual date, and to which Defendants (if any) claims relative to these lending transactions remain viable under the limitations period pursuant to the Appellate Order:

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

(*Id*. at 25.)

As to (2), Defendants' SJM states *inter alia* as follows:

> [T]he 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.
>
> 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." 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").

(*Id.* at 30-31 (citation omitted).) Defendants' SJM also provides the following 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

(*Id.* at 31.)

In the NYAG's Partial SJM, the NYAG brazenly ignores the Appellate Order, mentioning it only *twice* in passing in her entire 61-page memorandum of law. (Robert Aff. Ex. B.) The NYAG

continues to base her allegations on lending transactions that were indisputably completed prior to July 13, 2014, ignoring the First Department's mandate. Indeed, the NYAG still relies, inappropriately, on continuing-wrong theories to support her recitation of pre-July 13, 2014, facts in her motion, and fails to articulate any reason why the conduct or transactions that pre-date July 13, 2014, would remain actionable following the Appellate Order. The NYAG also boldly, and incorrectly, states that "the cutoff date for timely claims against all Defendants is at latest July 13, 2014" (Robert Aff. Ex. B at 13, n.3), even though the First Department established that "claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016" for Defendants who are not bound by the Tolling Agreement. (Robert Aff. Ex. A at 3.)

The NYAG served her Opposition to Defendants' SJM on September 1, 2023. In the NYAG's opposition papers, she continues to distort and ignore the Appellate Order.

LEGAL STANDARD

The Court has broad discretion to grant a stay of proceedings and trial "in a proper case, upon such terms as may be just." CPLR § 2201. The issuance of a stay pursuant to CPLR § 2201 is within the discretion of the trial court and may be granted where the moving party shows "a clear case of hardship or inequity in being required to go forward[.]" *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). The Court has "broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, duplication of proof and potential waste of judicial resources." *215 West 84th St. Owner LLC v. Ozsu*, 209 A.D.3d 401, 401 (1st Dep't 2022). This includes, for example, discretion to stay a trial pending the determination of a dispositive motion. *See Van Duzar v. The Metropolitan Transp. Auth.,* No. 10237/06, 2008 WL 3819721 (Sup. Ct. Queens County Jul. 31, 2008) (granting motion to stay trial pending the determination of dispositive motion).

ARGUMENT

I. GOOD CAUSE EXISTS TO BRIEFLY STAY THE TRIAL.

Defendants seek to briefly stay the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment. This relief will prevent significant hardship and inequity to the Defendants and avoid a massive waste of judicial and party resources.

A. The First Department Has Dismissed Many of the NYAG's Claims.

Given the First Department's unequivocal mandate, which is now law of the case, Defendants' SJM seeks implementation of that Order (1) through dismissal of claims based on transactions completed outside of the applicable limitations period; and (2) a determination that the Tolling Agreement does not bind any individual Defendant or the Trust. Implementation of the First Department's judicial modification will provide essential clarity as to the issues to be tried and significantly reduce such issues to be tried in this action. A temporary stay of the trial pending a decision on Defendants' SJM will thus ensure a more efficient trial on only the viable claims.

In this Court, prior rulings of the First Department constitute the law of the case and are binding. *See Brodsky v. N.Y. City Campaign Fin. Bd.,* 107 A.D.3d 544, 545–46 (1st Dep't 2013) ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted). Where, as here, the issue has been judicially determined by the First Department, the decision is binding on the Supreme Court. *See* 28 N.Y. Jur. 2d Courts and Judges § 218 ("State trial courts are bound to follow existing precedent of a higher court even though they may disagree with the higher court's decision.") (collecting cases); *Kenney v. City of New York*, 74 A.D.3d 630, 630-31 (1st Dep't 2010) ("An appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court . . . [and] operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law[.]")

(collecting cases). Nor can the NYAG "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State*, No.112317, 2011 WL 5528963, at *5 (Ct. Cl. Aug. 5, 2011).

As set forth in Defendants' SJM, regardless of the applicability of the Tolling Agreement there is no dispute that seven of the ten lending transactions alleged in the Complaint (viz., the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO Bid Selection and Approval, the Doral Loan, the Chicago Loan, and the OPO Contract & Lease) were completed before the earliest cutoff date for timely claims, *i.e.*, before July 13, 2014. Likewise, there is no dispute that one of the ten lending transactions alleged in the Complaint, the Buffalo Bills Bid, was never consummated. Because any claims in the Complaint that were based upon these eight lending transactions "accrued before July 13, 2014" and "[t]he continuing wrong doctrine does not delay or extend" the statute of limitations period, the Appellate Order dismissed these claims.

As for the remaining two lending transactions alleged in the Complaint, the OPO Loan and the 40 Wall Street Loan, there is no dispute that these transactions were completed before the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.*, February 6, 2016, but on or after the cutoff date for timely claims against those Defendants subject to the Tolling Agreement, i.e., July 13, 2014. There is likewise no dispute that the Tolling Agreement was entered into between only the "Trump Organization" and the NYAG, and that it only binds certain corporate Defendants, not the individual Defendants or the Trust.[8]

[8] Indeed, the NYAG has admitted that the "Trump Organization" is the only party bound by the Tolling Agreement, stating in open court that "Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization*." (Robert Aff. Ex. C at 34 (emphasis added).) The NYAG advanced the same position before the First Department stating that the NYAG "and the Trump Organization entered a six-month tolling agreement, *to which Mr. Trump was not a party*." (*Id.* (emphasis added]).) Communications between the "Trump Organization" and the NYAG surrounding the agreement further confirm that the parties did not intend to bind the

The First Department provided specific guidance as to the applicable limitations periods and its mandate of dismissal must be implemented ***before*** any remaining issues are tried. However, given the NYAG's willful disregard of the Appellate Order a stay of the trial during the pendency of the parties' respective Motions for Summary Judgment is required to avert chaos.

B. Defendants Will Face Significant Hardship and Inequity Absent a Brief Stay of the Trial in this Action.

The First Department's modification must be implemented ***before*** the trial commences, requiring the Court to specify which causes of action remain. The only substantive task remaining in this action is to proceed with the trial on those remaining claims. If a temporary stay of the trial is not granted and Defendants are required to proceed to trial on October 2, 2023, without the Court having implemented the rulings in the Appellate Order, the Defendants will suffer significant hardship and inequity.

As an initial matter, the harm to the individual Defendants and the Trust is real and substantial. As set forth above the effect of the Appellate Order, coupled with the fact that the individual Defendants are not bound by the Tolling Agreement, is that all of the NYAG's claims involving lending transactions against the individual Defendants and the Trust are time-barred and must be dismissed. The hardship and inequity that will be imposed upon certain Defendants by having to participate in a lengthy trial in which they are no longer parties, that is expected to involve over fifty fact and expert witnesses and is currently estimated to span almost three months, is manifest. In addition, the certain Defendants will suffer irreparable damage to their reputations and goodwill should they be required to participate in a high-profile trial in which they will be

individual Defendants, and that the agreement is not binding upon the Trust. (*Id.* at 36.) For these reasons, any claims in the Complaint that are based upon these two transactions and asserted against the individual Defendants and the Trust are time-barred and must be dismissed. The only claims in the Complaint that are arguably not time-barred are those claims that are based upon these two transactions and *asserted against the corporate-entity Defendants*.

accused of wrongdoing despite having a dispositive defense. Courts recognize that a "defendant's reputation and goodwill" suffer "from improvident charges of wrongdoing." *Ross v. Bolton*, 904 F.2d 819, 823 (2d Cir. 1990); see also *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 114 (2d Cir. 1982) (recognizing "the irreparable damage to reputations and goodwill which results from charges of fraud").

The same is true for the corporate-entity Defendants. If the corporate-entity Defendants are required to participate in a trial before the Court implements the mandate in the Appellate Order, those Defendants will have to devote time and resources and incur litigation expense on issues that should be disposed of and should never have been tried. Simply put, implementation of the First Department's mandate will alter significantly the path forward in this case and impact the pre-trial filings and the Defendants preparation for trial. Thus, a brief interim stay is necessary to ensure that Defendants, some of which are required to be discharged from the action pursuant to the Appellate Order, are not required to spend hundreds of hours actively preparing for the October 2, 2023 trial.

Given the grave prejudice that Defendants would suffer in the absence of a temporary stay, any incidental effect of delaying the start of the trial a mere few weeks does not justify denial of Defendants' request for a temporary stay. A temporary stay of the trial also conserves pre-trial resources by avoiding any unnecessary expenditure of Defendants' time, preparation resources, and related trial expenses. The Defendants continue to work diligently and are fully prepared to go to trial once the actual issues to be tried are identified.

CONCLUSION

Although the Court should never have been placed in this unfortunate and untenable position, the only permissible path forward now is to implement the First Department's mandate

and define the issues to be tried. For the foregoing reasons, the Court should grant a brief stay of the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment and implementing the First Department's mandate.

Dated: New York, New York
September 5, 2023

Respectfully submitted,

s/ *Michael Madaio*

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Dated: Uniondale, New York
September 5, 2023

Respectfully submitted,

s/ *Clifford S. Robert*

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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 4,825 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 5, 2023

Respectfully submitted,

s/ *Clifford S. Robert*

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EXHIBIT L

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.

Prepared by PrintingHouse Press, Ltd. 10 East 39th Street, New York, NY 10016
Tel No: (212) 719-0990 Fax No: (212) 398-9253

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS

Willie Addison, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 9/14/2023 deponent caused to be served 1 copy(s) of the within

Notice of Petition and Petition

upon the attorneys at the address below, and by the following method:

By Hand

Kevin Wallace, Esq.
Colleen Faherty, Esq.
People of the State of New York
by Letitia James
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By Hand

The Honorable Arthur F. Engoron
New York Supreme Court
111 Centre Street
New York, New York 10013
646-386-3600

Sworn to me this
Thursday, September 14, 2023

KEVIN AYALA
Notary Public, State of New York
No. 01AY6207038
Qualified in New York County
Commission Expires 7/13/2025

Case Name: Trump v. Hon. Arthur F. Engoron

Docket/Case No: 2023-04580

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