SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST 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., 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 C.P.L.R.

v.

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.

No. 2023-04580

Supreme Court
New York County
Index No. 452564/2022

AFFIRMATION IN OPPOSITION TO MOTION FOR A STAY OF TRIAL

JUDITH N. VALE, an attorney admitted to practice law in the State of New York, who is not a party to this action, under penalty of perjury affirms as follows:

1. I am a Deputy Solicitor General in the Office of Letitia James, Attorney General of the State of New York (OAG). I submit this affirmation in opposition to the motion by petitioners—entities operating as the Trump Organization and certain executives of those entities—to stay the start of trial in an Executive Law § 63(12) civil enforcement action brought by OAG against petitioners, while the Court adjudicates petitioners' C.P.L.R. article 78 petition. The article 78 petition seeks mandamus and prohibition against respondents the Honorable Arthur F. Engoron—the justice of Supreme Court, New York County who is presiding over the Executive

Law § 63(12) action—and OAG. I submit this affirmation on behalf of solely OAG.[1] I am familiar with the facts and circumstances of this matter based upon my review of the relevant decisions and orders rendered in the underlying Executive Law § 63(12) enforcement action and the relevant submissions by the parties in that action and in this proceeding, and through communications with other OAG attorneys.

2. A single justice of this Court issued an interim stay of the trial start date in the underlying Executive Law § 63(12) action without "any determination of the merits," and referred petitioners' request for a stay of trial pending adjudication of their article 78 petition to a panel of this Court on an expedited basis. *See* Order (Sept. 15, 2023). OAG requested, and the single justice granted, a return date of September 25, 2023, on petitioners' stay request, *see id.*, so that the Court can *review the motion and decide it before October 2, 2023*—the trial start date that has been set for many months. OAG urges the Court to follow that schedule and to decide the motion before October 2, and to deny petitioners' motion for a stay of trial and thus immediately vacate the interim stay and allow trial to begin.

3. The stay motion should be denied because petitioners' article 78 petition is a brazen and meritless attempt to have this Court issue a writ that usurps both Supreme Court's broad discretionary authority to manage its own docket and Supreme Court's fundamental judicial role to render substantive legal rulings on the parties cross-motions for summary-judgment motions in the first instance. Mandamus and prohibition are not available for such ends; to rule otherwise would upend the judicial process.

4. Petitioners thus have no likelihood of success on the merits of their petition, and the Court should deny the stay motion on that ground. Mandamus and prohibition cannot be used

[1] OAG does not represent Justice Engoron in this article 78 proceeding.

to predetermine Supreme Court's forthcoming substantive legal ruling on the parties' currently pending cross-motions for summary judgment. Indeed, mandamus and prohibition are not available to challenge summary-judgment rulings that have already issued—let alone summary-judgment rulings that have yet to issue. Yet that is the meritless premise of the entire petition here.

5. The arguments that petitioners make about a tolling agreement, accrual of OAG's claims, and the application of a June 2023 decision from this Court have all been raised in summary-judgment briefing to Supreme Court. The reason Supreme Court has not yet adjudicated these issues is that petitioners filed this procedurally improper and meritless petition *before* the deadline for reply briefs on the summary-judgment motions and *before* the summary-judgment argument scheduled on September 22. Petitioners cannot plausibly complain that these summary-judgment deadlines are too close to the October 2 trial start date because the current summary-judgment schedule was ordered by Supreme Court at petitioners' request. Supreme Court has thus not been refusing to rule, as petitioners now claim, and has instead been following the summary-judgment schedule granted at petitioners' request. And during the interim stay argument before a single Justice of this Court, counsel for Justice Engoron stated that Supreme Court intends to rule on the summary-judgment motions before October 2.

6. The petition fails for many additional and independent reasons. Article 78 does not permit relief where there is an adequate remedy on appeal, which petitioners' plainly have here because they may appeal Supreme Court's forthcoming summary-judgment ruling if they are aggrieved by it. And article 78 does not permit relief unless petitioners establish a clear entitlement to the extraordinary relief of mandamus or prohibition, which they have not done. Neither discretionary scheduling decisions nor substantive summary-judgment rulings are ministerial acts

that a writ could compel. And no prohibition is available when Supreme Court indisputably has jurisdiction over the Executive Law § 63(12) action.

7. In urging otherwise, petitioners misconstrue both the standards for writs and a June 27, 2023 decision from this Court in *People v. Trump*, 217 A.D.3d 609 (1st Dep't 2023) (a copy of which is attached as Exhibit 1). The Court's decision did not specifically dictate the answers to the tolling and other accrual issues that the parties have briefed to Supreme Court. To the contrary, this Court stated that Supreme Court should resolve, if necessary, which individual petitioners are bound by the tolling agreement (as various entity petitioners are indisputably bound). *See Trump*, 217 A.D.3d at 611. And this Court left unresolved which portions of which claims against which petitioners may have accrued early enough to be time-barred, when the Court held that OAG's claims are time-barred "*to the extent* they accrued prior to July 2014," for petitioners subject to the tolling agreement, and prior to February 2016, for petitioners not subject to the tolling agreement. *Id.* at 610 (emphasis added). It is now for Supreme Court to determine in the first instance to what extent claims accrued prior to the relevant dates—an issue that has been fully briefed in the summary-judgment motions that will be argued before Supreme Court on September 22.

8. Fundamental equitable principles further confirm that the stay motion should be denied because a stay would prejudice OAG, the public, and the orderly administration of the judicial process. Even a brief stay of the October 2 trial date would likely wreak havoc on the trial schedule not only in this proceeding but also in scheduled trials in other courts that involve petitioner Donald J. Trump. The Court should not countenance such delays, particularly when there is no irreparable harm to petitioners from simply doing work to prepare for and start a trial that has been scheduled for many months. And there is no irreparable harm to petitioners when OAG has indisputably asserted timely claims against various Trump Organization entity

petitioners (*see* Pet. ¶¶ 4 n.1, 52), and petitioners are executives of those entities who will need to prepare and testify at trial.

BACKGROUND

A. The Executive Law § 63(12) Action Against Petitioners

9. In September 2022, OAG brought an Executive Law § 63(12) enforcement action in Supreme Court, New York County against petitioners. The enforcement complaint alleges that petitioners engaged in myriad Executive Law § 63(12) violations through repeated and persistent fraud and illegality in the carrying on, conducting, or transaction of business in New York. *See* Ex. A, Verified Compl. ¶¶ 1-8 (Sept. 21, 2022) (Compl.).[2]

10. As the complaint alleges, and as OAG is prepared to demonstrate at trial, petitioners misleadingly inflated the values of various holdings and interests of petitioner Donald J. Trump, as reflected in his statements of financial condition (Statements). *Id.* ¶ 3. Attached as Exhibit 2 is a copy of charts that were attached to OAG's pending summary-judgment motion, which detail how petitioners inflated Mr. Trump's assets by upwards of $2.2 billion (if not more). *See* Ex. 2, App. to Pl. Summ. J. Mot. (Aug. 30, 2023). Petitioners then presented the false Statements to banks and insurers while certifying that they were true and accurate. *See* Compl. ¶¶ 9-24; Ex. K, Pl. Rule 202.8-g Statement of Material Facts ¶¶ 1-671 (Aug. 4, 2023) (Rule 202 Statement), attached to Ex. B to Affirm. in Supp. of Order to Show Cause to Briefly Stay Trial.

11. The complaint alleges that a new false Statement was prepared and certified as true each year, from at least 2011 until 2021. The complaint alleges that petitioners engaged in a broad plan to inflate the assets noted in each year's Statement in a number of ways that were different

[2] Lettered exhibits refer to exhibits to the Verified Joint Article 78 Petition. Numbered exhibits refer to exhibits to this affirmation.

from year to year. *See* Compl. ¶¶ 1-2 6; *see also* Rule 202 Statement ¶ 1. For example, each Statement covered a different time period. *See* Compl. ¶¶ 50, 52, 54; Rule 202 Statement ¶¶ 1, 5. The precise number and types of assets misleadingly valued on each Statement also changed from year to year, as did the amounts of the valuations. And the fraudulent schemes that petitioners used to inflate the asset categories also shifted. *See* Compl. ¶ 15; Rule 202 Statement ¶¶ 36-437. Attached as Exhibit 3 is a copy of a chart that was attached to OAG's complaint, which depicts the different assets valued, and different fraudulent schemes used, in different years' Statements. *See* Ex. 3, Deceptive Strategies Employed By Trump By Asset Per Year (Sept. 21, 2022).

12. OAG's complaint also alleges that petitioners used the false Statements and certifications of accuracy on many different occasions during various business dealings with banks and insurance companies. *See* Compl. ¶¶ 559-714; Rule 202 Statement ¶¶ 438-671. The allegations of persistent and repeated fraud and illegality are not limited to petitioners' use of the Statements at the outset of those business dealings. Instead, for example, the complaint also alleges that petitioners engaged in persistent and repeated fraud and illegality in business each time they created, certified as true, and submitted new false Statements during the multi-year course of various loans that remained operative until repaid. *See, e.g.*, Compl. ¶¶ 590-595 (Doral loan), 609-612, 620 (Chicago loan), 633-643 (Old Post Office loan), 650 (40 Wall Street mortgage), 654-655, 658 (Seven Springs mortgage); Rule 202 Statement ¶¶ 452-616. These certified annual Statements were then used by bank personnel and relied upon in the annual review process of those loans. *See, e.g.*, Compl. ¶¶ 597, 613, 644; Rule 202 Statement ¶¶ 494, 520, 565. Attached as Exhibit 4 is a copy of charts, submitted with OAG's opposition to petitioners' pending summary-judgment motion, depicting when certain individual petitioners certified a Statement as true during certain loans. As the charts show, and as the complaint alleges, two loans were initiated before July 2014,

and three other loans were initiated or refinanced after July 2014. And for all the loans, individual petitioners fraudulently and illegally prepared, certified, or submitted false Statements each year from 2014 through 2021. *See* Ex. 4, App. to Pl. Summ. J. Opp. (Sept. 8, 2023).

13. Distinct from the allegations regarding various loans, the complaint also alleges that petitioners committed persistent and repeated fraud and illegality by using Mr. Trump's inflated net worth as documented in the Statements to secure surety bonds and directors and officers (D&O) insurance coverage long after July 2014. *See* Compl. ¶¶ 678, 681-690 (surety bonds), 697-98 (D&O insurance); Rule 202 Statement ¶¶ 617-671.

14. As the complaint alleges and as OAG is prepared to prove at trial, petitioners obtained well over $100 million in ill-gotten gains from the alleged misconduct. *See* Compl. ¶ 21. Attached as Exhibit 5 is a chart from one of OAG's experts that shows $187 million in ill-gotten gains from the submission of misleading Statements as to just four loans. *See* Ex. 5, Expert Report of Michiel McCarty, App. C, Ex. 2 (Sept. 8, 2023). For example, the maintenance of a number of loans was conditioned on Mr. Trump's Statements being accurate, and petitioners would have lost the financial benefit of favorable loan terms had the lenders known about the inflated assets. *See* Compl. ¶¶ 19, 569, 612, 637, 643; Rule 202 Statement ¶¶ 446, 450, 490-491, 519, 558, 564. Petitioners thus enjoyed reduced interest rates—and lower repayment amounts—each year that they falsified the Statements and then certified them to the banks as true. *See* Compl. ¶¶ 567-569; Rule 202 Statement ¶¶ 444, 461-467, 501-502, 549.

B. Supreme Court's Discretionary Management of Deadlines and Scheduling

15. After OAG filed its enforcement complaint, Supreme Court made various discretionary scheduling decisions. For example, the court issued a preliminary conference order on November 22, 2022, setting a detailed schedule for discovery, dispositive motions, the note of

issue, and pretrial matters. This order also set a trial start date of October 2, 2023. A copy of the November 22, 2022 preliminary conference order is attached as Exhibit 6. *See* Ex. 6, Prelim. Conf. Order (Nov. 22, 2022).

16. Supreme Court modified this schedule multiple times, often at petitioners' request. Attached as Exhibit 7 are various stipulations and orders that modified the preliminary conference order. *See* Ex. 7, Modifications to Prelim. Conf. Order (various dates). This included, for instance, extending the deadline for interrogatories (*id.* at 1, 5), the deadline to complete depositions (*id.* at 15, 18), the deadlines for experts (*id.* at 12, 15, 16, 20), and the overall discovery period (*id.* at 9, 12).

17. Supreme Court made clear, however, that the trial start date remained as October 2, 2023, and that petitioners should prepare to begin any trial on that date. For example, in March 2023, petitioners sought to delay the trial by six months. The court rejected that request, explaining that it would try to accommodate petitioners' requests to alter the discovery schedule but would not alter the trial start date. Attached as Exhibit 8 is a copy of the transcript where the court declines to modify the trial date. *See* Ex. 8, H'rg Tr. at 10, 11, 67 (Mar. 21, 2023).

18. In June 2023, petitioners requested that Supreme Court alter the preexisting schedule for summary-judgment motions, among other deadlines. The preexisting schedule had required summary-judgment motions to be fully briefed by September 1, 2023, a month before the October 2 trial date, and set argument on such motions for September 8, more than three weeks before the trial date. Petitioners requested that summary-judgment motions instead be fully briefed by September 15, and that the argument instead be scheduled for September 22. Petitioners represented to the trial court that their requested schedule "will not result in a delay of the trial." A copy of petitioners' June 2, 2023 letter to Supreme Court is attached as part of Exhibit 9, which

contains correspondence between the parties and the court regarding petitioners' request. *See* Ex. 9, Letter from Clifford S. Robert to Hon. Arthur F. Engoron (June 2, 2023).

19. OAG objected to any extensions that would delay the summary-judgment schedule. A copy of OAG's letter objecting to an extension is attached as part of Exhibit 9. Ex. 9, Letter from Kevin Wallace to Hon. Arthur F. Engoron at 2 (June 2, 2023). On June 9, 2023, Supreme Court granted petitioners' request to alter the summary-judgment schedule, thus setting the completion of briefing for September 15, and the argument for September 22. *See* Modifications to Prelim. Conf. Order at 16.

20. Fact discovery concluded and OAG filed a note of issue on July 31, 2023, certifying that the case is ready for trial. A copy of the note of issue is attached as Exhibit 10. *See* Ex. 10, Note of Issue (July 31, 2023).

C. Supreme Court's Consideration of the Pending Motions for Summary Judgment

21. The parties and trial court have been proceeding and continue to proceed with the summary-judgment schedule, as modified at petitioners' request. The parties' respective motions for summary judgment address several substantive legal issues left unresolved by a June 2023 decision issued by this Court. *See* Ex. 1, *Trump*, 217 A.D.3d 609 (1st Dep't 2023).

22. The Court's June 2023 decision affirmed in part and modified in part Supreme Court's order denying petitioners' and former defendant Ivanka Trump's motions to dismiss OAG's enforcement complaint. *People v. Trump*, No. 452564/2022, 2023 WL 128271 (Sup. Ct., N.Y. County Jan. 6, 2023), *aff'd as modified*, 217 A.D.3d 609 (1st Dep't 2023). The Court's June 2023 decision determined that all of the claims against Ivanka Trump were untimely and dismissed her from the case. *Trump*, 217 A.D.3d at 611-12. Ivanka Trump is not a petitioner here, however. The decision did not dismiss any petitioners from the case. *See id.* at 610-11.

23. Two substantive legal issues left unresolved by the Court's June 2023 decision are most relevant here and have been fully briefed in the summary-judgment motions pending before Supreme Court.

24. First, after concluding that a six-year statute-of-limitations period applies to OAG's Executive Law § 63(12) claims and that this limitations period was tolled by pandemic-related executive orders, the Court declined to resolve whether a tolling agreement that further tolled the limitations period bound individual petitioners. *Id.* at 611.

25. The tolling agreement was signed in August 2021, and extended by amendment in May 2022. Copies of those documents are attached as Exhibit 11. *See* Ex. 11, Tolling Agreement & Amendment (Aug. 27, 2011 & May 3, 2022). The tolling agreement was "entered into by the Attorney General of the State of New York ('OAG') with the Trump Organization." *Id*. at 1. The agreement further defines "Trump Organization" 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 3 & n.1. Alan Garten, Chief Legal Officer of the Trump Organization, signed the tolling agreement (and its amendment) as the "duly authorized representative" of the Trump Organization. *Id.* at 6. The tolling agreement represents that "[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." *Id.* at 5.

26. As mentioned, this Court's June 2023 decision did not resolve whether individual petitioners are within the tolling agreement's definition of "Trump Organization" and thus bound by that agreement. *See generally Matter of People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023) (concluding that corporation's tolling agreement may bind nonsignatory individual corporate officers). Instead, the Court stated: "We leave Supreme Court to determine, if necessary, the full range of defendants bound by the tolling agreement."[3] *Trump*, 217 A.D.3d at 611.

27. Second, the Court's June 2023 decision left unresolved many issues regarding when OAG's claims accrued. The Court stated that, "[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" for petitioners not bound by the tolling agreement. *Id.* For petitioners "bound by the tolling agreement," the Court stated that the "claims are untimely if they accrued before July 13, 2014." *Id.* The decision modified Supreme Court's order regarding the motions to dismiss, dismissing as time-barred "claims against [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)." *Id.* at 610.

28. The Court did not address which claims or portions of claims in OAG's 218-page complaint were encompassed in that language. For example, the Court did not say what "transactions" are relevant for accrual of Executive Law § 63(12) claims, or when any such

[3] The only individual whom the Court determined was not bound by the tolling agreement was former defendant Ivanka Trump, who had left the employment of the Trump Organization at the time of the agreement. The Court reasoned that she "was no longer within the agreement's definition of 'Trump Organization' by the date the tolling agreement was executed." *Trump*, 217 A.D.3d at 611-12. Petitioners have noted (Pet. ¶ 48 n.4) that Ivanka Trump remains listed in the case caption, but neither she nor petitioners has requested that Supreme Court amend the caption.

"transactions" might be "completed" for purposes of accrual. *See id.* at 611. And the Court thus did not resolve the extent to which any claim or portions of claims accrued prior to the limitations-period cutoffs of July 2014 (for any petitioner bound by the tolling agreement) or February 2016 (for any petitioner not bound by the tolling agreement).

29. In their respective summary-judgment papers, petitioners and OAG have each made extensive substantive legal arguments to Supreme Court about which petitioners are bound by the tolling agreement and about the accrual issues discussed above. *See* Ex. D, Defs. Summ. J. Mot. at 5-21 (Aug. 30, 2023); Ex. G, Defs. Summ. J. Opp. at 6-18 (Sept. 8, 2023); Ex. F, Pl. Summ. J. Opp. at 49-61. Since petitioners filed this petition, the parties have filed their respective summary-judgment replies, which further discuss those legal issues. Copies of the replies are attached as Exhibits 12 and 13, respectively. *See* Ex. 12, Defs. Summ. J. Reply at 12-24 (Sept. 15, 2023); Ex. 13, Pl. Summ. J. Reply at 24-33 (Sept. 15, 2023).

30. In its summary-judgment papers, OAG did not argue that all portions of all of its claims were timely. Rather, among many other arguments, OAG explained how under the tolling agreement and the related cutoff dates from the June 2023 decision, numerous wrongful acts occurred within the relevant limitations period. For example, OAG attached charts that depict the dates when certain petitioners certified a number of Statements as true. *See* Ex. 4, App. to Pl. Summ. J. Opp. Petitioners' summary-judgment papers do not dispute that various Trump Organization entities are bound by the tolling agreement, *see* Ex. G, Defs. Summ. J. Opp. at 13, and that at least some of OAG's claims are timely, *see id.* at 8-9 (chart displaying timely claims against certain petitioners).

31. On September 5, 2023—before both the September 15 deadline to file replies on the summary-judgment motions and the September 22 argument date for the motions—petitioners

sought an order to show cause from Supreme Court to stay the October 2 trial start date until three weeks after the court resolves the pending summary-judgment motions. *See* Ex. K, Proposed Order to Show Cause (Sept. 5, 2023). Petitioners repeatedly stated that the decision whether to stay the start date was within the court's broad discretion. *See, e.g.*, Ex. K, Memo. of Law. in Supp. of Order to Show Cause at 10 (Sept. 5, 2023) (noting "broad discretion to grant a stay of proceedings and trial"). The court declined to sign the order to show cause, explaining that petitioners' stay request was meritless. A copy of the unsigned order is attached as Exhibit 14. *See* Ex. 14, Unsigned Order to Show Cause.

D. Current Article 78 Proceeding

32. On September 13, 2023—again before both the September 15 deadline to file replies on the summary-judgment motions and the September 22 argument date for the motions—petitioners brought the instant article 78 petition in this Court. The petition seeks mandamus to compel Supreme Court to "render a determination as to the scope of the claims to be tried in the underlying action" and, in that determination, to comply with this Court's June 2023 decision. *See* Pet. 20. The petition also seeks prohibition, claiming that Supreme Court's purported "decision to proceed to trial" in the underlying enforcement proceeding "without complying with this Court's June 27, 2023, decision and order is in excess of Supreme Court's jurisdiction." *See id.* The return date on that petition is October 10, 2023. *See* Amended Notice of Pet., NYSCEF Doc. No. 3 (Sept 14, 2023).

33. Petitioners also requested, on an emergency basis, a stay of trial pending the Court's determination of their article 78 petition. *See* Application for Interim Relief, NYSCEF Doc. No. 4 (Sept. 14, 2023). A single justice of this Court held an argument. During that argument, counsel

for Justice Engoron stated that Supreme Court intends to rule on summary judgment prior to the trial date of October 2, 2023.

34. Following argument, the single justice granted an "interim stay of trial" without "any determination of the merits." *See* Order (Sept. 15, 2023). He referred petitioners' motion for a stay of trial pending adjudication of the petition to a panel of this Court for expedited resolution. So that the panel can decide the motion prior to the scheduled trial start date of October 2, the single justice set a September 25 return date for the motion for a stay. *See id.*

ARGUMENT

THE COURT SHOULD IMMEDIATELY DENY PETITIONERS' MOTION FOR A STAY OF TRIAL

35. Petitioners' motion for a stay of trial pending adjudication of their article 78 petition should be denied, and this Court should immediately vacate the interim stay. The petition reduces to a procedurally improper and meritless request to have this Court usurp Supreme Court's discretionary management of its scheduling and predetermine Supreme Court's substantive legal rulings on pending summary-judgment motions—which will be argued below on September 22, 2023. In requesting a stay of trial pursuant to C.P.L.R. 7805 (Pet. ¶ 103), petitioners have not demonstrated that they are likely to succeed on the merits, that they will suffer irreparable harm absent a stay, or that the equities favor a stay. *See Roberts v. Health & Hosps. Corp.*, 87 A.D.3d 311, 326-28 (1st Dep't 2011); *Matter of 36th & Second Tenants Assn. v. New York State Div. of Hous. & Community Renewal*, 243 A.D.2d 321, 321 (1st Dep't 1997); *see also* Vincent C. Alexander, Practice Commentaries to C.P.L.R. 7805 (Westlaw).

A. Petitioners Have No Likelihood of Success on the Merits of Their Petition for Mandamus or Prohibition.

36. Article 78 by its plain terms cannot be used to challenge a determination that "can be adequately reviewed by appeal to a court or to some other body or officer." C.P.L.R. 7801(1); *see Matter of Rush v. Mordue*, 68 N.Y.2d 348, 354 (1986) (prohibition); *Matter of Veloz v. Rothwax*, 65 N.Y.2d 902, 903-04 (1985) (mandamus).

37. Moreover, because of its extraordinary nature in disrupting ongoing matters before Supreme Court, a writ of mandamus may issue only "to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought." *Matter of National Equip. Corp. v. Ruiz*, 19 A.D.3d 5, 15 (1st Dep't 2005). A purely ministerial act is one which "the law requires a public officer to do in a specified way." *Matter of Posner v. Levitt*, 37 A.D.2d 331, 332 (3d Dep't 1971). The specific right to performance "must be so clear as not to admit of reasonable doubt or controversy." *Matter of Association of Surrogates & Supreme Ct. Reporters Within the City of N.Y.*574 (1976) (quotation marks omitted); *Matter of Coastal Oil N.Y. v. Newton*, 231 A.D.2d 55, 57 (1st Dep't 1997).

38. Mandamus is not available "to compel an act in which the officer may exercise judgment or discretion." *Matter of National Equip.*, 19 A.D. at 15; *accord Klostermann v. Cuomo*, 61 N.Y.2d 525, 540 (1984). It is therefore well established that litigants cannot use mandamus to direct trial courts how to administer their calendars or dockets, which are actions committed to the discretion of that court. *See Matter of Public Adm'r of County of N.Y. v. Cohen*, 221 A.D.2d 297, 298 (1st Dep't 1995) (article 78 proceeding is "wholly inappropriate" to compel scheduling change); *Matter of Holtzman v. Hellenbrand*, 92 A.D.2d 405, 409 (2d Dep't 1983) (mandamus not available to review trial court's decision not to grant 30-day adjournment of trial because "such an act was within the court's discretion in administering its calendar").

39. For the same reasons, litigants likewise cannot use mandamus to compel courts to issue a particular determination on a pending matter. *See Matter of National Equip.*, 19 A.D. at 15 ("Where the duty sought to be compelled involves the exercise of discretion or judicial power, mandamus may not be employed to direct the decision-maker to decide in a particular way."); *see also Matter of Gimprich v. Board of Educ. of City of N.Y.*, 306 N.Y. 401, 406 (1954) (similar). As the Third Department has explained, mandamus cannot be used to "dictate in advance what [a trial court's] decision must be" on a pending motion. *Matter of Dyno v. Rose*, 260 A.D.2d 694, 697 (3d Dep't 1999) (denying mandamus where the petitioner "improperly s[ought] to compel respondent to sign the proposed orders in his favor"); *see also Matter of Public Adm'r*, 221 A.D.2d at 299 (mandamus unavailable to compel trial court to issue ruling on a motion for summary judgment).

40. Similarly, "prohibition is an extraordinary remedy which lies only where a clear legal right to such relief exists, and only when a court 'acts or threatens to act either without jurisdiction or in excess of its authorized powers.'" *Matter of Neal v. White*, 46 A.D.3d 156, 159 (1st Dep't 2007) (footnote omitted) (quoting *Matter of Holtzman v. Goldman,* 71 N.Y.2d 564, 569 (1988)). The claimed defect in jurisdiction or authority must "implicate the legality of the entire proceeding, as for example, the prosecution of a crime committed beyond the county's geographic jurisdiction." *Matter of Rush*, 68 N.Y.2d at 353. Prohibition is "*never* available merely to correct or prevent trial errors of substantive law or procedure, however grievous." *Matter of Neal*, 46 A.D.3d at 159 (quotation marks omitted); *see Matter of Johnson v. Price*, 28 A.D.3d 79, 81 (1st Dep't 2006).

41. Petitioners have no chance of satisfying any of these extraordinarily high standards, and their stay request should be denied on this ground alone.

i. Neither mandamus nor prohibition is available to interfere with Supreme Court's discretionary scheduling decisions.

42. Neither mandamus nor prohibition is available to interfere with Supreme Court's exercise of its broad discretion over the scheduling of the pending summary-judgment motions or the trial start date. *See Matter of Public Adm'r*, 221 A.D.2d at 298 ("[I]t is ancient and undisputed law that courts have an inherent power over the control of their calendars, and the disposition of business before them, including the order in which disposition will be made of that business." (quotation marks omitted)); *see also Mayorga v. Jocarl & Ron Co.*, 41 A.D.3d 132, 134 (1st Dep't 2007) ("It is settled that the decision of whether to grant a continuance is a matter within the sound discretion of the trial court.").

43. But petitioners ask this Court to engage in precisely such interference in seeking a writ "directing" Supreme Court to "render a determination as to the scope of the claims to be tried." *See* Pet. at 20.

44. Supreme Court has not yet ruled on the scope of the claims to be tried because that issue is the subject of the pending summary-judgment motions that will be argued on September 22, 2023. *See* Modifications to Prelim. Conf. Order at 16. Indeed, petitioners filed this petition two days before the September 15 reply deadline for the summary-judgment motions. *See id.* There is no basis to direct Supreme Court to issue a particular summary-judgment decision, let alone a decision before the court receives full briefing, hears argument, and has an opportunity to rule. *See Matter of Dyno*, 260 A.D.2d at 697; *Matter of Public Adm'r*, 221 A.D.2d at 299.

45. To the extent petitioners are complaining that the summary-judgment briefing deadlines and the argument date ended up being close to the October 2, 2023 trial start date, that schedule is of petitioners' own making. Under Supreme Court's original schedule, dispositive motions were to be fully briefed on September 1, a month before the trial start date, and the

argument on such motions was to be held on September 15, more than three weeks before trial. But petitioners requested and obtained from the court an altered schedule, with dispositive motions fully briefed by September 15 and argument on September 22. *See* Ex. 9, Letter from Clifford S. Robert to Hon. Arthur F. Engoron (June 2, 2023). That is the summary-judgment schedule that the court and the parties have been and are currently following. Petitioners can hardly complain about this schedule now, on the eve of trial, when they represented to the court that their own requested changes were "both reasonable and necessary and will not result in a delay of the trial." *See id.*

46. The summary-judgment schedule also makes plain that, contrary to petitioners' false assertions (*see* Pet. ¶¶ 69-76, 87-91, 97-102), Supreme Court has not been refusing to rule on the scope of claims to be tried, on whether the tolling agreement binds individual petitioners, on claim-accrual issues, or on the application of this Court's June 2023 decision to any of those topics. Indeed, these are among the many issues that were still being briefed when petitioners filed this improper petition, and that Supreme Court will consider on September 22. Counsel for Justice Engoron stated during the interim-stay argument that the court intends to rule before October 2.

47. Nor has Supreme Court given any indication that it will "ignore this Court's decision." (Pet. ¶ 73.) Petitioners point to Supreme Court declining to sign their proposed order to show cause and explaining that their request was meritless. (*See* Pet. ¶ 73.) But petitioners' application merely asked the court to exercise its "broad discretion" to "briefly stay" trial until three weeks after the court rules on summary judgment. *See* Ex. K, Memo. of Law. in Supp. of Order to Show Cause at 10-11. The court's decision not to sign the order to show cause thus indicates only that, in exercising its broad discretion, it found no basis to stay a trial date that had been set ten months prior while the court proceeds with the summary-judgment schedule that petitioners had themselves requested. Nothing about that discretionary scheduling decision

indicates that Supreme Court will not consider or properly implement this Court's decision when it decides the summary-judgment motions.

ii. Mandamus and prohibition are unavailable because petitioners have an adequate remedy—an appeal—if they are aggrieved by Supreme Court's summary-judgment ruling.

48. The petition is also improper because petitioners have an adequate remedy through the usual judicial process, i.e., they may appeal from Supreme Court's summary-judgment ruling if they are aggrieved by it. *See* C.P.L.R. 7801(1); *see also Matter of Rush*, 68 N.Y.2d at 354; *Matter of Veloz*, 65 N.Y.2d at 903-04.

49. The petition inappropriately seeks (Pet. at 20) to have this Court predetermine the substance of the pending summary-judgment motions by directing Supreme Court to "comply" with this Court's June 2023 decision before the October 2 trial date. No such mandamus or prohibition relief is available to preempt Supreme Court's authority or to short-circuit the normal appeal process. Just like any other litigant, petitioners must await Supreme Court's decision on summary judgment—which the court indicated that it would issue before October 2 (see *supra* ¶ 33)—and then they may appeal that court's decision if they are aggrieved. *See Matter of Hirschfeld v. Friedman*, 307 A.D.2d 856, 859 (1st Dep't 2003). And the parties' summary-judgment papers make crystal clear that the application of this Court's June 2023 decision is an issue that has been squarely presented to Supreme Court. *See* Ex. D, Defs. Summ. J. Mot. at 5-21; Ex. F, Pl. Summ. J. Opp. at 49-61; Ex. G, Defs. Summ. J. Opp. at 6-18; Ex. 12, Defs. Summ. J. Reply at 12-24; Ex. 13, Pl. Summ. J. Reply at 24-33.

50. Petitioners are also incorrect to the extent they contend that they did not have an adequate remedy because Supreme Court declined to sign their proposed order to show cause seeking to stay the trial until three weeks after that court's ruling on summary judgment (*see* Pet. ¶¶ 69-76, 87-91, 97-102). Petitioners could have moved to vacate or modify the order and appeal

to this Court if that motion were denied. *See Matter of Northern Manhattan Equities, LLC v. Civil Ct. of City of N.Y.*, 191 A.D.3d 536, 536 (1st Dep't 2021); *see also Sholes v. Meagher*, 100 N.Y.2d 333, 335 (2003). Petitioners could have, alternatively, filed an application with this Court under C.P.L.R. 5704(a) to review the decision not to sign the proposed order to show cause. *See Matter of King v. Carrion*, 128 A.D.3d 461, 462 (1st Dep't 2015). Petitioners declined such an approach. Yet because petitioners had adequate remedies in this Court, article 78 is unavailable. *See Matter of Molea v. Marasco*, 64 N.Y.2d 718, 720 (1984); *see also Matter of Northern Manhattan Equities*, 191 A.D.3d at 536.

51. Moreover, when Supreme Court rules on the pending summary-judgment motions, that decision will render the petition moot. *See Matter of Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Sts. v. Greenfield*, 131 A.D.2d 355, 356 (1987) ("Mandamus relief in the nature of an order to compel respondent to render a decision is, of course, a moot issue, now that a decision has been rendered."). At that point, petitioners may appeal if they are aggrieved by the decision, and there will be nothing that a writ could appropriately direct the court to do.

iii. The petition does not establish a clear right to relief.

52. The petition also fails because petitioners do not establish a clear entitlement to mandamus or prohibition, as required for a writ.

53. *First*, petitioners have no clear entitlement to mandamus directing Supreme Court how to rule on the substantive legal issues raised in the parties' pending summary-judgment rulings. The parties' summary-judgment motions extensively brief, among other issues, whether the tolling agreement binds individual petitioners, the accrual of OAG's Executive Law § 63(12) claims, and the application of this Court's June 2023 ruling. See *supra* ¶¶ 29-30. Indeed, petitioners concede (Pet. ¶ 52) that their summary-judgment arguments seek to have the court implement the June 2023 decision. Ruling on summary judgment is not a ministerial act. To the contrary, it is a

quintessentially judicial act that requires decision-making and the exercise of judgment. *See Matter of National Equip.*, 19 A.D. at 15; *see also Matter of Dyno*, 260 A.D.2d at 697 (holding appellate court may not "dictate in advance what [a trial court's] decision must be" on a pending motion); *Matter of Public Adm'r*, 221 A.D.2d at 299 (finding mandamus to compel ruling on summary judgment improper).

54. Petitioners' contrary arguments rest on the fundamentally incorrect premise that this Court's June 2023 decision specifically dictated the result of the tolling-agreement and accrual issues raised in the parties' summary-judgment motions. But that premise is plainly incorrect, because the Court's decision expressly declined to decide whether the tolling agreement binds individual petitioners and instead left that issue to Supreme Court to decide, if necessary. *Trump*, 217 A.D.3d at 611.

55. Moreover, the Court's decision stated that OAG's claims against petitioners should be dismissed as untimely only "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)." *Trump*, 217 A.D.3d at 611. That direction, by its own terms, does not decide "the extent" to which any of OAG's claims "accrued" prior to either July 2014 or February 2016. *See id.*

56. Determining if claims accrued and when they accrued is a substantive legal determination that falls within the province of Supreme Court to determine in the first instance by adjudicating the summary-judgment motions, and if necessary to resolve factual disputes, at trial. Indeed, this Court's direction to Supreme Court "to determine, *if necessary*, the full range of petitioners bound by the tolling agreement" contemplates that, depending on when claims accrued, it might not even be necessary to decide the application of the tolling agreement until a later point.

See id. (emphasis added). Mandamus is not available to compel Supreme Court to decide these substantive legal issues, upon petitioners' demand, or in any particular way. *See Klostermann*, 61 N.Y.2d at 540; *see also Matter of Crain Communications v. Hughes*, 74 N.Y.2d 626, 628 (1989).

57. *Second*, for many of the same reasons discussed above, petitioners are also not entitled to a writ of prohibition. Petitioners' request for prohibition falters at the outset because it too is based on a false premise. Contrary to petitioners' assertion, Supreme Court has not made any "decision to proceed to trial . . . without complying with this Court's June 27, 2023 decision." (Pet. at 20; *see* Pet. ¶ 97 (alleging that Supreme Court has "refused to dismiss the time-barred claims").) Indeed, Supreme Court has not yet made *any* decision about which claims will proceed to trial.

58. In any event, Supreme Court's forthcoming summary-judgment decision will not support a writ of prohibition regardless of what the court decides. Even if Supreme Court issues a decision that petitioners believe is incorrect under this Court's June 2023 order, such a decision would amount only to a purported legal error that petitioners may appeal through this Court's ordinary appellate process. Prohibition is thus unavailable because, even where errors are alleged, the "orderly administration of justice requires that correction of litigation errors merely be left to the ordinary channels of appeal or review." *Matter of Neal*, 46 A.D.3d at 159; *see Matter of Holtzman*, 71 N.Y.2d at 569 (noting that "courts are most reluctant to entertain prohibition when doing so interferes with normal trial and appellate procedures"). Otherwise, litigants like petitioners would be able to use article 78 proceedings to "erect an additional avenue of judicial scrutiny in a collateral proceeding and thus frustrate the statutory or even constitutional limits on review." *Matter of Neal*, 46 A.D.3d at 159.

59. None of petitioners' remaining arguments has any merit. Petitioners misconstrue the extraordinarily high bar for prohibition by arguing that Supreme Court "cannot exercise jurisdiction" over time-barred claims. (Pet. ¶ 97.) As explained, Supreme Court has not yet decided which claims are proceeding to trial. More fundamentally, a court exceeds its jurisdiction for purposes of prohibition only when it "exceeds its jurisdiction in a manner *that implicates the legality of the proceeding itself*." *Matter of Hirschfeld*, 307 A.D.2d at 858 (emphasis added); *see Matter of Rush*, 68 N.Y.2d at 353. That is plainly not the situation here, because there is no question that Supreme Court has subject-matter jurisdiction over this action. Indeed, petitioners' fundamental demand is that Supreme Court *should* in fact rule (albeit in their favor), which is irreconcilable with the premise that the court altogether lacks jurisdiction.

60. Moreover, petitioners' do not dispute that at least some of OAG's claims are timely no matter how this Court's June 2023 order is interpreted. Notably, petitioners have admitted (Pet. ¶¶ 4 n.1, 52) that at least some claims against various Trump Organization entities fall within the limitations period. *See* Ex. G, Defs. Summ. J. Opp. at 8-9, 13. The fact that Supreme Court is able to exercise jurisdiction to resolve such claims itself defeats petitioners' request for prohibition. *See Matter of Hirschfeld*, 307 A.D.2d at 858 (denying prohibition where trial court "plainly had subject matter jurisdiction over any and all motions in the underlying civil action before it").

iv. Petitioners' arguments about the timeliness of OAG's claims are irrelevant to the petition and, in any event, wrong.

61. Throughout their petition, petitioners argue about the proper way to interpret the Court's June 2023 decision. (*See, e.g.*, Pet. ¶¶ 42-47, 84-86.) As explained, these arguments are irrelevant to the resolution of the petition, because the same arguments have already been raised to Supreme Court in the pending summary-judgment motions and because neither mandamus nor

prohibition are available to predetermine the outcome of Supreme Court's substantive legal rulings on those motions. Accordingly, the Court need not and should not consider petitioners' arguments.

62. In any event, petitioners are incorrect. Applying C.P.L.R. 213(9)'s six-year statute of limitations and the executive orders' tolling, this Court stated that "claims are time barred if they accrued—that is, the transactions were completed—before February 6, 2016" for any petitioner not bound by the tolling agreement and "if they accrued before July 13, 2014" for any petitioner bound by the tolling agreement. *Trump*, 217 A.D.3d at 611. Petitioners appear to argue that the Court meant that OAG's Executive Law § 63(12) claims accrued only when petitioners initially certified and used a false Statement to first enter into a business deal (such as a loan) and not when they subsequently certified and used new Statements—which differed in their misrepresentations in many important ways from prior Statements—each year during the course of those business dealings, as they were obligated to do under the terms of those still-active deals.

63. But that cannot plausibly be what the Court meant because it would contravene basic legal principles regarding Executive Law § 63(12) and this Court's precedents on claim accrual. Statutory causes of action 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. of Am.*, 96 N.Y.2d 201, 210 (2001); *see also Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175 (1986). The elements of Executive Law § 63(12) prohibit (i) "repeated" or "persistent" (ii) "fraudulent or illegal" acts (iii) "in the carrying on, conducting or transaction of business" in New York.

64. Under the statute's plain terms, Executive Law § 63(12) claims thus accrue with each instance of repeated or persistent fraudulent or illegal act in the carrying on, conducting, or transaction of business in this State. Here, petitioners engaged in fraudulent or illegal acts in

carrying on, conducting, or transacting business each time they prepared, certified as true, and submitted one of the many misleading annual Statements to lenders or insurance companies. And petitioners participated in at least two separate or one continuing fraudulent or illegal business acts (thus making it repeated or persistent) after the July 2014 or February 2016 cutoff dates. Indeed, the misleading Statements were made well into 2021. *See* Ex. 4, App. to Pl. Summ. J. Opp.

65. This Court's precedents further establish that Executive Law § 63(12) claims accrue with each instance of actionable fraud or illegality that occurs within the statute-of-limitations period (plus any tolling)—regardless of whether other instances of fraud or illegality also occurred earlier. In *Matter of 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 421, 422-23 (1st Dep't 2023); *see* OAG Br. at 34-40, *Cohen*, 2022 WL 19039982, at *34-10 (1st Dep't Aug. 8, 2022). This Court ruled that OAG's Executive Law § 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—even though the defendants had completed construction and submitted an offering plan far earlier (in 2009), *see* OAG Br. at 10-13, *Cohen*, 2022 WL 19039982. Similarly, in *People v. Allen*, this Court affirmed a post-trial judgment, concluding that Martin Act and Executive Law § 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, 2022 WL 394821, at *4 (Sup. Ct. N.Y. County Feb. 4, 2021); *see also People v. Pharmacia Corp.*, 27 Misc. 3d 368, 374 (Sup. Ct. Albany County 2010) (accrual with each inflated price report).

66. This Court's statement that OAG's claims accrued when "the transactions were completed," *Trump*, 217 A.D.3d at 611, did not upend its settled precedent. Rather, the Court was underscoring that Executive Law § 63(12) targets fraudulent and illegal conduct in the "transaction of business," and the Court's statement is best understood as shorthand for an Executive Law § 63(12) claim accruing with each repeated or persistent fraudulent or illegal act in the course of business. Indeed, a "transaction" is not limited to the initiation of a loan or insurance policy, but rather is an "extremely broad" term. *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). It includes not just the "formation" of a business deal but also any "instance of conducting business or other dealings," including the "performance" or "discharge of a contract." *Transaction*, Black's Law Dictionary (11th ed. 2019).[4]

67. Petitioners' theory about the Court's decision would instead improperly immunize from liability any Executive Law § 63(12) defendant's repeated acts of business fraud or illegality that are indisputably committed within the limitations period, on the ground that the defendant also committed separate, earlier acts of fraud or illegality outside of the limitations period. For example, under petitioners' theory, a defendant who starts a business deal by making misrepresentations to a customer or counterparty would not be liable under Executive Law § 63(12) for later making two or fifty or thousands of distinct misrepresentations that are indisputably within the limitations period, so long as the initial misrepresentation was outside the limitations period. The Court did

[4] Petitioners' observation (Pet. ¶ 8) that OAG did not seek reargument or leave to appeal this Court's June 2023 decision is irrelevant. That interlocutory decision may be challenged in the Court of Appeals after final judgment where it "necessarily affects the judgment." C.P.L.R. 5601(d).

not plausibly say that this is the law, particularly when Executive Law § 63(12) broadly covers all *repeated and persistent* fraud or illegality in business.[5]

68. Petitioners miss the mark in relying (Pet. ¶¶ 44, 54, 65) on this Court's statement that "[t]he continuing wrong doctrine does not delay or extend" the statute of limitations. *Trump*, 217 A.D.3d at 611. OAG has explained in its summary-judgment papers that it is not asking Supreme Court to delay or extend the limitations period beyond the July 2014 or February 2016 cutoff dates. Ex. 13, Pl. Summ. J. Reply at 27. Rather, OAG has argued that wrongful conduct committed *within the limitations period* is not immunized merely because earlier conduct was committed outside the limitations period.

69. These arguments are not "novel theories" that depart from OAG's "previous theory" of the case, as petitioners claim. (Pet. ¶¶ 7, 60-61.) OAG's complaint describes in detail, among other things, the many and distinct fraudulent acts that petitioners committed in the course of preparing, certifying, and submitting Statements from lenders and insurers annually from 2014 through at least 2021. See *supra* ¶¶ 10-13; *see also* Ex. 2. And OAG's respondent's brief in the appeal from Supreme Court's motion to dismiss order argued that OAG's claims based on these distinct fraudulent acts were timely because each act occurred within the limitations period. *See* Ex. I, Br. for Respondent at 34-35 (Apr. 26, 2023). OAG argued that the continuing-wrong doctrine

[5] Moreover, OAG's illegality claims based on violations of the Penal Law rely on accrual principles that are at least as broad as the basic Executive Law § 63(12) accrual rules. Individual Penal Law causes of actions do not accrue until "the claim becomes enforceable," *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (1993), and petitioners formed their fraudulent intent well into the limitations period. Penal Law conspiracy violations accrue 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," *Matter of Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999), and petitioners likewise engaged in overt acts well into the period.

applied only as an "independent alternative ground" to find timeliness but did not contend that the doctrine was necessary for OAG's claims. *Id.* at 46.

70. In any event, even under petitioners' theory, petitioners acknowledge (Pet. ¶ 4 n.1) that OAG has put forward plenty of loans or insurance renewals (such as the Old Post Office loan and the renewal of the surety program) that originated after the limitations period for those bound by the tolling agreement. *See* Ex. 4, App. to Pl. Summ. J. Opp. Indeed, petitioners do not dispute that various Trump Organization entities are bound by that agreement. (Pet. ¶ 52.)

B. Petitioners' Lack of Irreparable Harm and the Balance of the Equities Weighs Dispositively Against a Stay.

71. When considering a stay request, courts are "duty-bound to consider the relative hardships that would result from granting (or denying) a stay." *Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990). A party seeking a stay must "demonstrate irreparable injury." *Matter of 36th & Second Tenants Assn.*, 243 A.D.2d 321, 321 (1st Dep't 1997). Courts must also determine whether the balance of the equities favors the movant. *See* Vincent C. Alexander, Practice Commentaries to C.P.L.R. 7805. Here, these equitable factors each warrant denying petitioners' stay request.

72. Defendants have not shown that they will suffer any irreparable harm from allowing the trial to start on October 2, 2023. Starting trial on the schedule set by Supreme Court ten months ago will not cause petitioners the type of irreparable injury required for a stay—let alone a stay that would allow petitioners to circumvent normal trial and appellate procedures. It is well established that "'[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.'" *Founders Ins. Co. Ltd. v. Everest Natl. Ins. Co.*, 41 A.D.3d 350, 351 (1st Dep't 2007) (quoting *Federal Trade Commission v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980)); *see Standard Oil*, 449 U.S. at 244 (rejecting "the expense and disruption of defending [one]self in protracted adjudicatory proceedings" as irreparable harm).

73. Nor can petitioners credibly complain that they have not had sufficient time to prepare for trial. The trial date has been set for almost ten months. *See* Ex. 6, Prelim. Conf. Order. Discovery has been complete—and the case has been ready for trial—since July 31, 2023. *See* Ex. 10, Note of Issue. Much of the documentary discovery provided by OAG to petitioners indeed consisted of the Trump Organization's own documents, which were provided to OAG during its investigation and a special proceeding that preceded the filing of OAG's enforcement complaint.[6] Petitioners thus represented to Supreme Court in their order to show cause application that they "have been working diligently to prepare for trial and seek to proceed as expeditiously as possible." Ex. K, Memo. of Law. in Supp. of Order to Show Cause at 2 n.1. Moreover, as explained, the current summary-judgment schedule was requested by petitioners, who represented that their schedule "will not result in a delay of the trial." Ex. 9, Letter from Clifford S. Robert to Hon. Arthur F. Engoron.

74. The equities also weigh against a stay because this article 78 proceeding will not end the enforcement proceeding or obviate the need for trial—even under petitioners' incorrect statute-of-limitations arguments. This Court has repeatedly held that a stay of proceedings is "appropriate only where the decision in one [action] will determine all of the questions in the other, and where the judgment in one [case] will dispose of the controversy in both actions." *Eisner v. Goldberger*, 28 A.D.3d 354, 354 (1st Dep't 2006) (quotation marks omitted). A stay absent such circumstances would "only promote delay, not efficiency," and would thus be unwarranted. *Mt. McKinley Ins. Co. v. Corning Inc.*, 33 A.D.3d 51, 59 (1st Dep't 2006). Here, it is undisputed that

[6] Indeed, OAG produced its entire investigatory file of some 1.7 million documents early on in its Executive Law § 63(12) action, by early December 2022. Attached as Exhibit 15 is an affirmation filed by OAG, which describes the discovery to date. *See* Ex. 15, Affirm. of Colleen K. Faherty ¶¶ 4-8 (Mar. 15, 2023).

OAG has timely claims regardless of the outcome of this proceeding. As petitioners admit (Pet. ¶¶ 4 n.1, 52), various Trump Organization entities are bound by the tolling agreement and OAG has asserted timely claims against those petitioners. *See* Ex. G, Defs. Summ. J. Opp. at 8-9, 13. Thus, a trial regarding OAG's timely claims regarding the proper relief for the fraud and illegality committed by the Trump Organization entities is necessary. *See Mt. McKinley Ins.*, 33 A.D.3d at 58-59; *see also Otto v. Otto*, 110 A.D.3d 620, 621 (1st Dep't 2013) (finding "no basis for a stay of the action" where a decision in one case "will not determine all of the questions" in the stayed action).

75. Moreover, the outcome of this proceeding would not substantially limit the need for the individual petitioners to prepare for trial. Because the individual petitioners are executives of the Trump Organization entities who are alleged to have been deeply involved in the fraud and illegality, they would still be expected to be called as witnesses at trial even if some claims against them were dismissed as untimely. This proceeding will also not materially limit the evidence presented at trial. As this Court has explained, "[t]he limitations period operates as a remedy bar rather than an evidentiary bar." *Kent v. Papert Cos.*, 309 A.D.2d 234, 241 (1st Dep't 2003) (quotation marks omitted). Where, as here, there are timely underlying claims, OAG may present supplemental evidence outside the limitations period. *See id.* Moreover, the statute of limitations has no bearing on the injunctive relief that OAG may obtain. The statute of limitations might, at most, limit the eventual scope of monetary relief—but that speculative eventuality is no basis for staying proceedings on the threshold question of petitioners' liability.

76. The equities weigh heavily against a stay for the additional reason that OAG and the public interest would be severely prejudiced by even a brief delay of the trial pending adjudication of the petition. As an initial matter, OAG has been extensively preparing for trial in

this matter for months, including preparing dozens of witnesses. Such witnesses have planned on trial starting on October 2, and rearranging their schedules will impose substantial and unnecessary hardship on them. Moreover, representatives from both OAG and petitioners have met with officials from the Office of Court Administration to coordinate the logistics of trial, security, and other issues in light of the significant public interest in the case. Upending the trial schedule would waste public resources and burden OAG and Supreme Court. Staying proceedings for even a short time pending adjudication of this petition would therefore be highly disruptive and wasteful.

77. Moreover, even a short stay of the October 2 trial date is likely to create a cascade of delays in not only this case but also other litigations involving petitioner Donald J. Trump. Mr. Trump is a defendant in several other matters currently heading to trial, including: a January 15, 2024 civil trial in *Carroll v. Trump*, No. 20-cv-7311 (S.D.N.Y. June 15, 2023), ECF No. 170; a March 4, 2024 criminal trial in *United States v. Trump*, No. 23-cr-257 (D.D.C. Aug. 28, 2023), ECF No. 39; a March 25, 2024 criminal trial in *People v. Trump*, Ind. No. 71543-23 (Sup. Ct. N.Y. County); and a May 20, 2024 criminal trial in *United States v. Trump*, No. 23-cr-80101 (M.D. Fla. July 21, 2023), ECF No. 83. If the start of trial here is delayed at all, there is a significant risk that petitioners will request further delays of trial based on the deadlines in these other cases.

WHEREFORE, this Court should deny petitioners' motion for a stay of trial pending the disposition of their C.P.L.R. article 78 petition and immediately vacate the interim stay of trial.

Dated: New York, New York
September 20, 2023

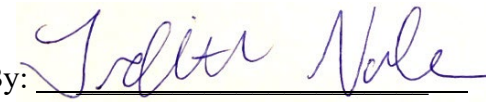
By: 

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EXHIBIT 1

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 2

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%

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

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

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**		

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

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

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

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

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		

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

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			

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		

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 3

Deceptive Strategies Employed By Trump By Asset Per Year

Asset	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cash			A	A	A	A	A	A	A	A	A
Escrow				A	A	A	A	A	A	A	A
Trump Park Ave	B C D	B C D	B C D	B C D	B C	B	B	B	B	B	B
40 Wall Street	E G	E G	E G	E G	E F G	G H	G H	H	H	H	H
Niketown	G	G	E F G	E F G	E F G	E F G	E F G	E F G	E F G	E G	
Trump Tower	E F	E F	E F	E F	H	E F	E F	E F	E F		
Seven Springs	H J	H J	H J	H J							
Trump Triplex		H I	H I	H I	H I	H I	H	H	H	H	H
Vornado Partnership: 1290 Ave of the Americas, 555 California Street	A	A F	A F	A	A	A F	A E F	A E F	A E F	A E	A E
Las Vegas*			J	J	J	J	C J	C J	J	J	J
Mar-a-Lago	B C H K	B C H K	B H K	B H K	B H K	B H	B H	B H	B H	B H	B H
Trump Aberdeen	J M	J M	J M	B J M H	B J M H	B J M H	B J M H	B J M H	B M	B M	B M
Trump Turnberry							M	M	M	M	M
TNGC: Jupiter			K M N	K M N	K M N	K M N	K M N	K M N	K M N	K M N	
TNGC: Briarcliff	J O	J M	J M H	J M H	J M H	J M H	J M H	J M H	J M H	J M H	J M H
TNGC: LA	J	J	J K M	J K M	J K M	J K M	J K M	J K M	J K M	J K M	J M
TNGC: Colts Neck	J N O	M N	K M N	K M N	K M N	K M N	K M N	K M N	K M N	K M N	
TNGC: Philadelphia	G J M N O	G J M N O	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G M N
TNGC: DC	J O	J O	K M N	K M N	K M N	K M N	K M N	K M N	K M N	K M N	
TNGC: Charlotte		J M N O	K M N	K M N	K M N	K M N	K M N	K M N	K M N	K M N	
TNGC: Hudson Valley	G J M N O	G J M N O	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G K M N	G M N
Licensing Development Fees	J	J	J P	J P	J L P	J L P	J L P	J L P	P	P	P

TNGC = Trump National Golf Club

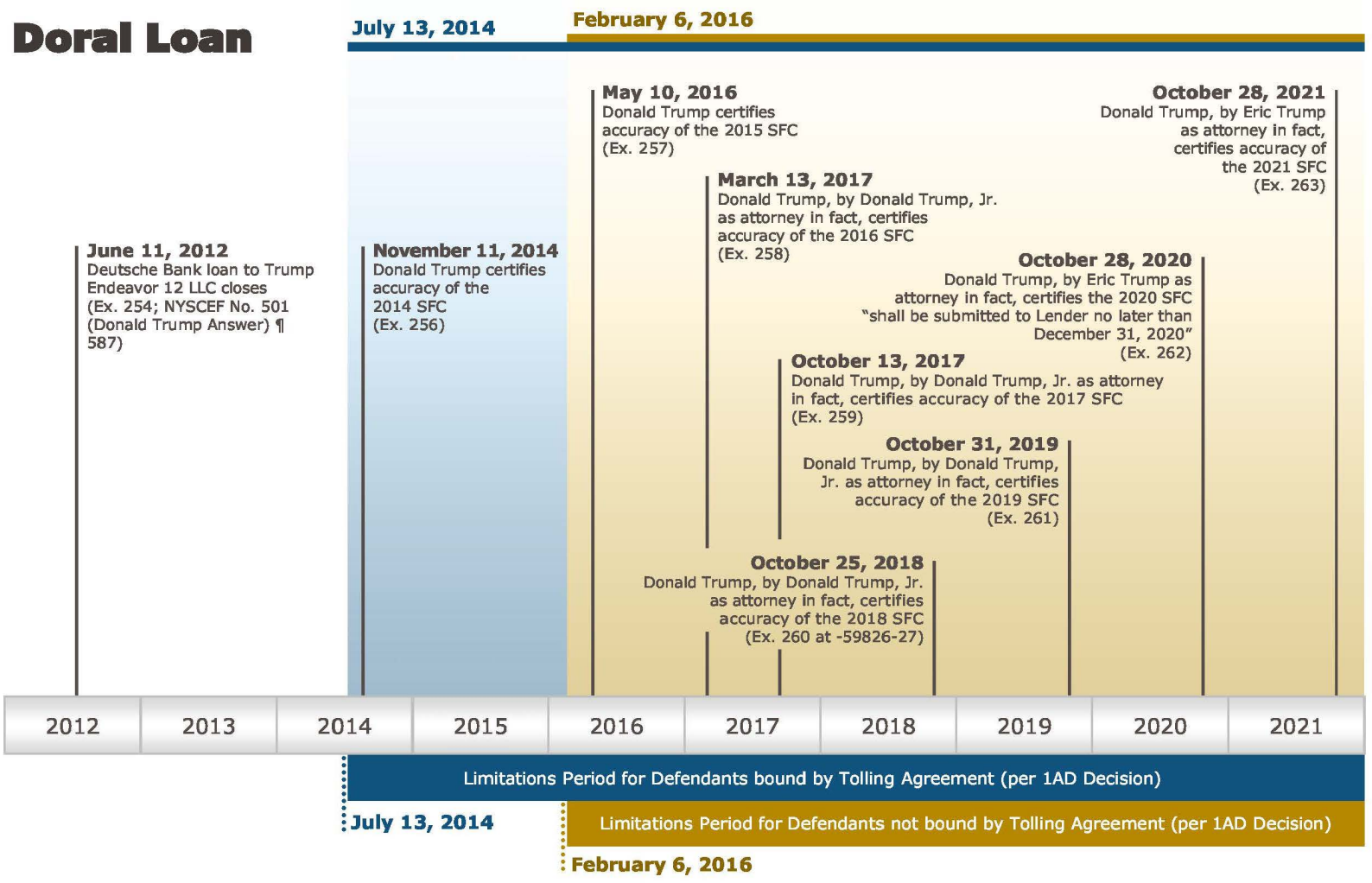
**Ruffin Joint Venture*

Deceptive Strategies Defined

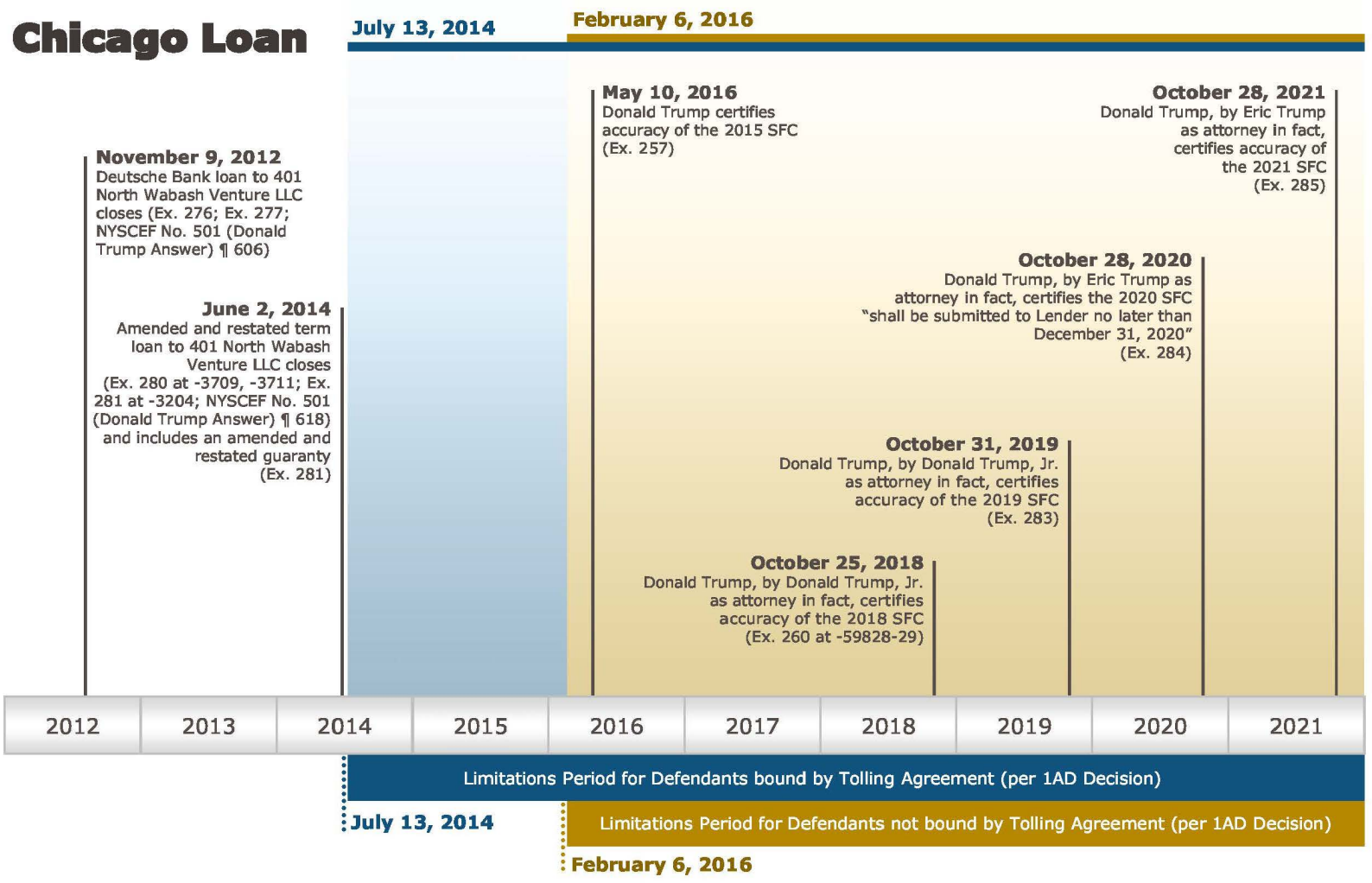
A	including the value of partnership assets in which Mr. Trump has only a limited interest with no control over disposition as if directly owned by him and under his control
B	valuing properties subject to legal restrictions that negatively impact value as if they could be sold free and clear of such restrictions
C	valuing unsold apartments and homes using the offering plan or asking prices rather than current market value
D	valuing unsold apartments that are subject to a purchase option at a value far greater than the option price
E	using a figure for net operating income that assumes lower expenses and/or higher income than what is reflected in the company's financial records
F	using low capitalization rates that are cherry-picked from generic marketing materials to derive the rate to use for valuations while ignoring higher rates listed for properties in the same materials that are more comparable
G	ignoring the impact of ground lease terms in valuing properties that are subject to a ground lease
H	using sales of properties that are not comparable to inflate valuations
I	using an inflated square footage figure when valuing a property based on a price per square foot
J	failing to conduct a discounted cash flow analysis to derive the present value for anticipated future income
K	increasing the value of a property by a fixed percentage to account for Trump brand value
L	including income from speculative future deals labeled “to be determined” despite representing only signed deals are included in the value
M	using a fixed-assets approach to value a golf club rather than acceptable approaches using income or comparable sales
N	inflating the purchase price of a golf club by including the amount of membership deposit liability despite representing the liability was worth zero
O	valuing unsold golf memberships at inflated prices that conflicted with what was actually being charged
P	including fees from related party transactions between Trump Organization affiliates as if they were transactions with outside entities negotiated at arms-length

EXHIBIT 4

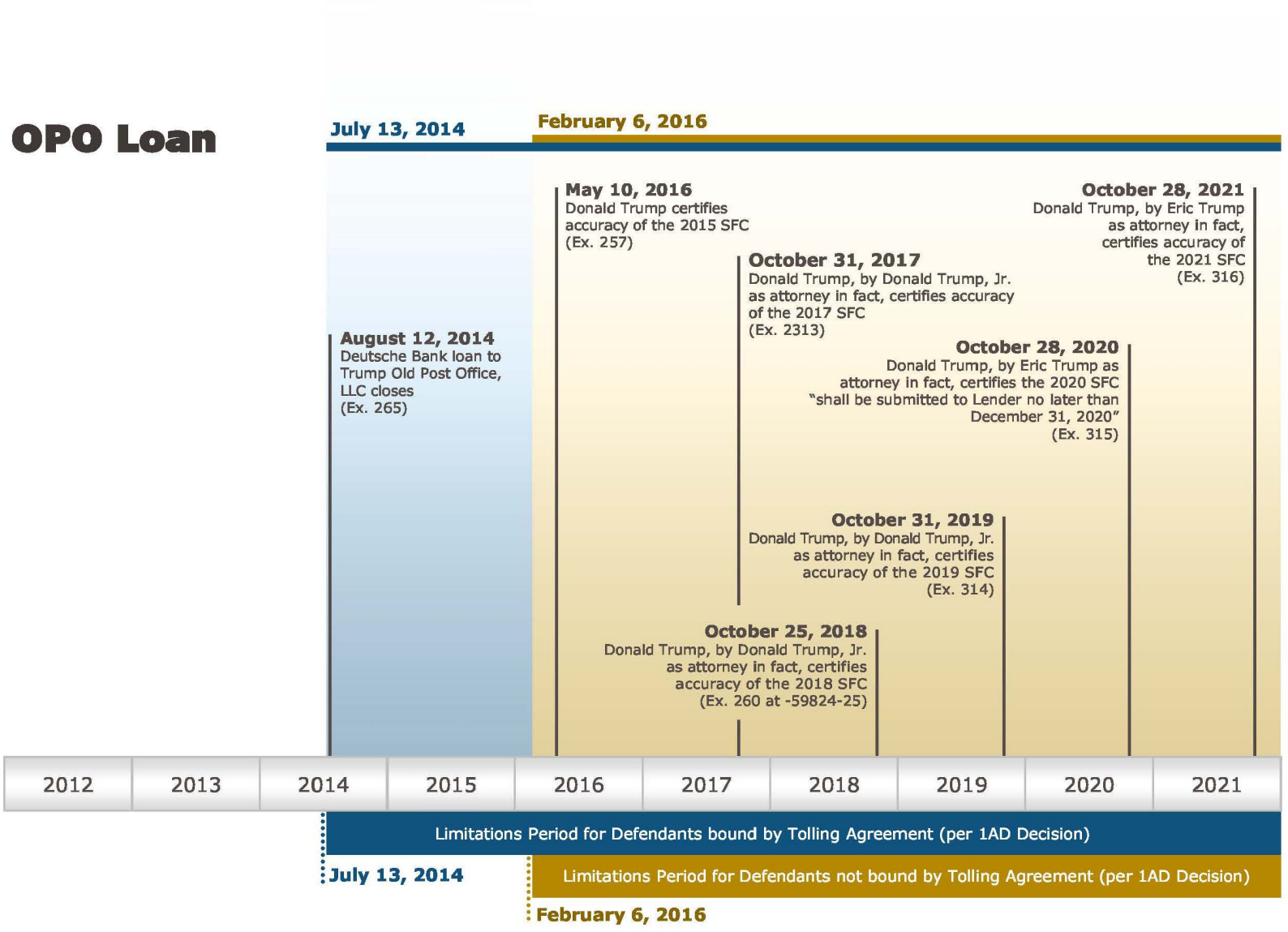
Doral Loan


July 13, 2014
February 6, 2016
June 11, 2012
Deutsche Bank loan to Trump Endeavor 12 LLC closes (Ex. 254; NYSCEF No. 501 (Donald Trump Answer) ¶ 587)
November 11, 2014
Donald Trump certifies accuracy of the 2014 SFC (Ex. 256)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
March 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2016 SFC (Ex. 258)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 262)
October 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 259)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 261)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59826-27)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 263)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

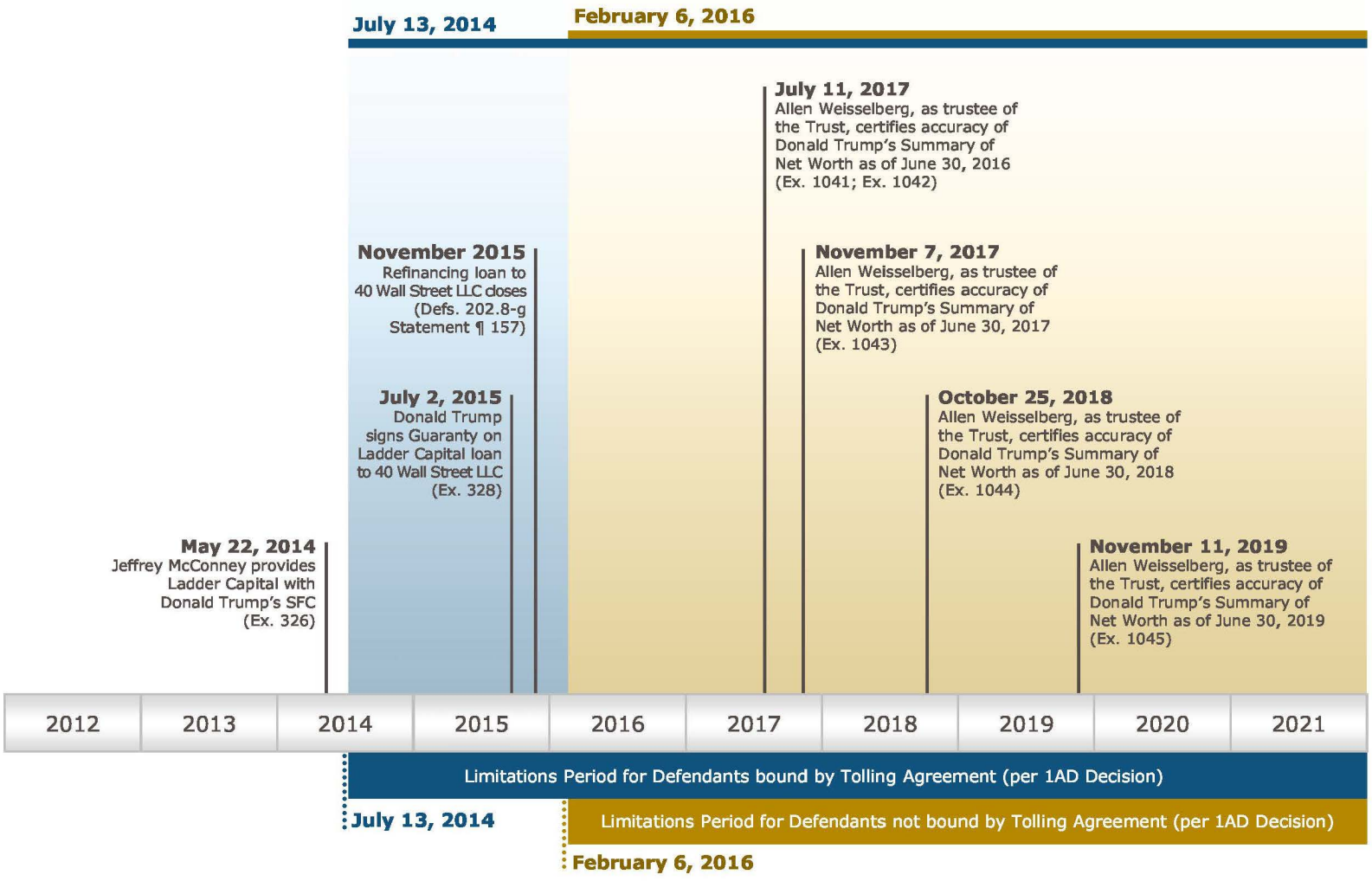
Chicago Loan



OPO Loan


July 13, 2014
February 6, 2016
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
October 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

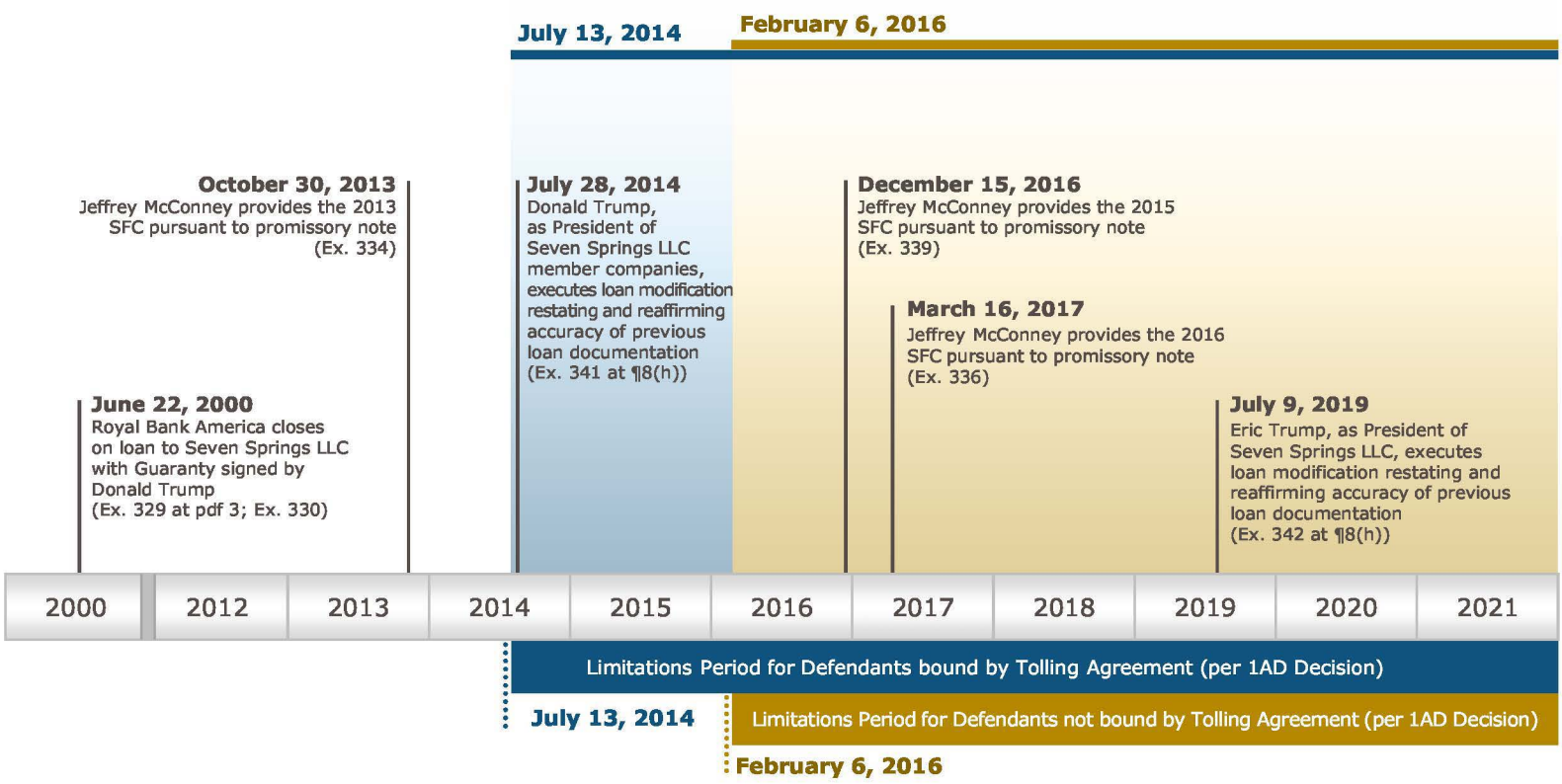


EXHIBIT 5

CONFIDENTIAL

Expert Report of Michiel McCarty
Exhibit 2 - DB Lost Interest Calculation **Appendix C**

Doral	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**Grand Total**
Actual Int %	2 72%	2 44%	1 90%	1 94%	2 20%	2 87%	3 80%	4 16%	1 93%	1 83%	1 80%	
CRE Int %	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	10 00%	
Term			08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	
Loan Amt Adj	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	$ 125,000,000	
Interest Delta	**$ (5,036,995)**	**$ (9,446,400)**	**$ (10,120,625)**	**$ (10,080,750)**	**$ (9,755,875)**	**$ (8,916,113)**	**$ (7,754,525)**	**$ (7,297,963)**	**$ (10,081,500)**	**$ (10,210,313)**	**$ (10,244,375)**	**$ (98,945,432)**
OPO												
Actual Int %				2 19%	2 20%	2 87%	3 80%	4 16%	1 93%	1 83%	1 80%	
CRE Int %				8 00%	8 00%	8 00%	8 00%	8 00%	8 00%	8 00%		
Term				08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj				$ 6,000,000	$ 112,922,728	$ 170,000,000	$ 170,000,000	$ 157,924,521	$ 170,000,000	$ 170,000,000		
Interest Delta				**$ (348,876)**	**$ (6,554,826)**	**$ (8,725,913)**	**$ (7,146,154)**	**$ (6,061,727)**	**$ (10,310,840)**	**$ (10,486,025)**		**$ (49,634,361)**
Chicago												
Actual Int %			2 15%	2 19%	2 45%	3 12%	4 05%	4 41%	2 18%	2 08%	2 05%	
CRE Int %			7 50%	7 50%	7 50%	7 50%	7 50%	7 50%	7 50%	7 50%	7 50%	
Term			06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj			$ 19,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000	
Interest Delta			**$ (1,015,835)**	**$ (2,391,570)**	**$ (2,274,615)**	**$ (1,972,301)**	**$ (1,554,129)**	**$ (1,389,767)**	**$ (2,391,840)**	**$ (2,438,213)**	**$ (2,450,475)**	**$ (17,878,744)**
40 Wall												
Actual Int %					3 67%	3 67%	3 67%	3 67%	3 67%	3 67%	3 67%	
Cap 1%					5 70%	5 70%	5 70%	5 70%	5 70%	5 70%	5 70%	
Term					07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj					$ 156,451,072	$ 152,413,916	$ 148,224,162	$ 143,876,042	$ 139,378,051	$ 134,595,568	$ 134,595,568	
Interest Delta					**$ (3,183,779)**	**$ (3,101,623)**	**$ (3,016,362)**	**$ (2,927,877)**	**$ (2,836,343)**	**$ (2,739,020)**	**$ (2,739,020)**	**$ (20,544,025)**

Grand Total of Lost Interest to DB **$ (187,002,561)**

Sources:
TTO_01786881, TTO_02183741, TTO_011614, TTO_04147137, TTO_013486, TTO_012842, TTO_012501, TTO_020348, TTO_02176920, TTO_06166279, DB-NYAG-001691, DB-NYAG-068520, DB-NYAG-001635, DB-NYAG-001739, DB-NYAG-105524, DB-NYAG-002691, DB-NYAG-212279, DB-NYAG-003046, DB-NYAG-236228, DB-NYAG-406675, DB-NYAG-669047

EXHIBIT 6

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. 452564/2022

PRELIMINARY CONFERENCE ORDER

Plaintiff: People of the State of New York, by Letitia James, Attorney General of the State of New York ("OAG") - Kevin Wallace, Andrew Amer, Colleen Faherty, Eric Haren

Defendants: Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC (collectively the entity Defendants the "Trump Organization") – Alina Habba, Michael Madaio (Habba Madaio & Associates LLP), Christopher Kise (Continental PLLC)

Donald Trump, Jr. and Eric Trump – Clifford Robert (Robert & Robert PLLC)

Ivanka Trump – Reid Figel (Kellogg, Hansen, Todd, Figel & Frederick, PLLC)

It is hereby ORDERED that disclosure shall proceed as follows:

(1) **Document Production:**

(a) Demands for discovery and inspection shall be served by all parties on or before December 9, 2022.

(b) Responses to demands shall be served by all parties on or before December 30, 2022.

(c) Plaintiff shall produce all transcripts of testimony from Defendants and Trump Organization employees before November 29, 2022.

(d) Plaintiff shall provide notice to third parties, no later than November 28, 2022, that it has been ordered to produce documents and transcripts from third parties to defendants; such third parties have until December 2, 2022 to lodge an objection to such production with the Court. Absent any such objection, all third-party documents shall be produced to defendants no later than December 2, 2022.

(2) **Interrogatories:**

(a) Plaintiff, and Defendants collectively, shall each be limited to 50 interrogatories.

(b) Plaintiff, and Defendants collectively, shall each be limited to 50 contention interrogatories.

(c) Interrogatories shall be served by all parties on or before December 9, 2022.

(d) Answers to interrogatories shall be served by all parties on or before December 30, 2022.

(e) Contention interrogatories shall be served by all parties on or before January 27, 2023.

(f) Responses to contention interrogatories shall be served by all parties on or before February 24, 2023.

(3) **Depositions on Oral Questions:**

(a) Plaintiff, and Defendants collectively, shall each be limited to 10 discovery depositions. Discovery depositions for all parties and non-parties shall be held by March 20, 2023. Any party may apply to the Court for leave to conduct additional discovery depositions beyond the 10 provided for.

(b) The parties may conduct trial depositions for non-party witnesses who are unavailable for trial, as provided for in CPLR 3117, upon application to the Court. Trial depositions for all non-party witnesses who are unavailable for trial as provided for in CPLR 3117 shall be held by June 5, 2023.

(4) **Other Disclosure:**

(a) Notices to admit pursuant to CPLR 3123 shall be served on or before February 17, 2023, with responses served on or before March 20, 2023.

(b) Fact discovery shall be completed by March 20, 2023.

(c) All parties shall identify the expert witnesses they intend to call at trial on or before March 27, 2023.

(d) All parties shall produce their expert witness reports on or before April 17, 2023.

(e) All parties shall identify any rebuttal experts on or before May 1, 2023.

(f) All parties shall produce their rebuttal expert reports on or before May 8, 2023.

(g) Depositions of expert witnesses (which may be taken at any point after the opening report is served) shall be completed on or before June 5, 2023. Parties are presumptively limited to one deposition of each expert identified by another party.

(h) Expert discovery shall close on June 5, 2023.

(5) **End Date for All Disclosure:** June 5, 2023.

(6) **Note of Issue:** Plaintiff shall file a Note of Issue and Certificate of Readiness on or before June 9, 2023.

(7) **Dispositive Motions:** Any dispositive motions shall be made on or before June 26, 2023. Any opposition brief shall be filed on or before July 24, 2023. Any reply brief shall be filed on or before August 14, 2023.

(8) **Additional Directives:**

(a) Final witness lists, final exhibit lists, deposition designations, and proposed facts to be proven at trial shall be filed on or before August 25, 2023.

(b) Pre-trial motions shall be filed on or before September 1, 2023.

(c) Final pre-trial conference shall be held on September 18, 2023.

(d) Trial shall begin on October 2, 2023.

Dated: New York, New York
November 22, 2022

Arthur F. Engoron, J.S.C.

EXHIBIT 7

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

STIPULATION AND ~~[PROPOSED]~~ ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the undersigned parties, as follows:

1. The deadline for Defendants to answer the Verified Complaint (NYSCEF No. 1) is extended from January 19, 2023 to and including January 26, 2023.

2. The deadline for all parties to serve contention interrogatories is extended from January 27, 2023 to and including February 3, 2023.

3. The deadline for all parties to serve responses to contention interrogatories is extended from February 24, 2023 to and including March 3, 2023.

4. All other dates in the Preliminary Conference Order (NYSCEF No. 228) remain unchanged.

IT IS HEREBY FURTHER STIPULATED AND AGREED that this stipulation is entered into without prejudice to and without waiving any of the parties' respective rights or remedies, during the pendency of this action.

IT IS HEREBY FURTHER STIPULATED AND AGREED that this stipulation may be executed in counterparts which taken together shall be deemed an original, and by e-mail and/or facsimile transmission with signatures and e-signatures thereon deemed original.

Dated: New York, New York
January 19, 2023

STIPULATED AND AGREED:

LETITIA JAMES,
Attorney General of the State of New York

By: _____
Kevin C. Wallace
28 Liberty Street
New York, NY 10005

Counsel for the People of the State of New York

HABBA MADAIO & ASSOCIATES LLP

By: _____
Alina Habba, Esq.
112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Counsel for Donald J. Trump, Alen 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

ROBERT & ROBERT PLLC

By: _____
Clifford S. Robert
529 RXR Plaza
Uniondale, NY 11556

Counsel for Donald Trump, Jr., Ivanka Trump and Eric Trump

SO ORDERED:

1/19/2023

Hon. Arthur 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,

-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. 452564/2022

STIPULATION AND [PROPOSED] ORDER

WHEREAS, on September 21, 2022 Plaintiff filed a Summons and Verified Complaint (the Complaint) in this action (NYSCEF No. 1); and

WHEREAS, after the parties stipulated to a one-week extension of time, Defendants each timely filed a Verified Answer to the Complaint on January 26, 2023; and

WHEREAS, OAG sent a letter to the Court on January 31, 2023 requesting a pre-motion conference to address certain issues OAG raised regarding Defendants' answers; and

WHEREAS, the Court held a pre-motion conference on February 1, 2023 to address the issues OAG raised in its January 31, 2023 letter;

NOW THEREFORE, the Parties agree as follows:

1. OAG agrees that on or before February 9, 2023, it will file categorical and specific objections to Defendants' respective answers;

2. Defendants will each respond to OAG's filing under paragraph 1 on or before February 21, 2023. Each defendant's response shall include the filing of an amended answer, unless that defendant affirmatively states that no amendment is required notwithstanding the matters raised by OAG's filing pursuant to paragraph 1;

3. In connection with the expected filing of amended answers, the deadline to serve contention interrogatories as set forth in the Preliminary Conference Order (NYSCEF No. 228), currently set for February 3, 2023 is adjourned to February 24, 2023; and

4. All other dates in the Preliminary Conference Order remain unchanged.

5. This stipulation is entered into without prejudice to and without waiving any of the parties' respective rights or remedies, during the pendency of this action.

Dated: New York, New York
February 2, 2023

STIPULATED AND AGREED:

LETITIA JAMES
Attorney General of the State of New York

By: _____

Kevin C. Wallace
28 Liberty Street
New York, NY 10005

Counsel for the People of the State of New York

HABBA MADAIO & ASSOCIATES LLP

By: _____

Alina Habba
112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

Christopher M. Kise
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301

Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

Armen Morian
Morian Law PLLC
One Grand Central Place
60 East 42nd Street, Suite 4600
New York, NY 10165

Counsel for Defendants Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC,

ROBERT & ROBERT PLLC

By: _____

Clifford S. Robert
526 RXR Plaza
Uniondale, NY 11556

Counsel for Donald Trump, Jr., Eric Trump and Ivanka Trump

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C

By: _____

Michael K. Kellogg
(*Admitted Pro Hac Vice*)
Reid M. Figel
(*Admitted Pro Hac Vice*)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel For Defendant Ivanka Trump

SO ORDERED:

_____
Hon. Arthur Engoron, J.S.C.

DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC

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

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

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

STIPULATION AND [PROPOSED] ORDER

WHEREAS, on November 22, 2022, the Court entered a Preliminary Conference Order in this action (NYSCEF No. 228) (the "PCO");

WHEREAS, the PCO provides that all discovery depositions for all parties and third-parties (excluding experts) shall be completed by March 20, 2023 (the "Fact Discovery Cutoff");

WHEREAS, the Parties have timely subpoenaed and noticed certain depositions of party and third-party witnesses for dates on or before the Fact Discovery Cutoff;

WHEREAS, counsel for the Parties and counsel for non-party subpoena recipients have been conferring in a good faith effort to schedule certain timely-subpoenaed and noticed depositions for mutually agreeable dates, but despite such efforts have been unable to find dates for some deponents on or before the Fact Discovery Cutoff due to unavoidable scheduling conflicts; and

WHEREAS, notwithstanding the dispute raised by the Defendants' pending motion seeking *inter alia* to vacate the fact and expert discovery deadlines and to modify the PCO (Motion Seq. No. 13 - the "Motion"), the Parties agree that the Fact Discovery Cutoff should be extended to permit certain timely-subpoenaed and noticed depositions (and only these depositions) to be conducted;

NOW THEREFORE, the Parties agree as follows:

1. The Fact Discovery Cutoff shall be extended to and including April 7, 2023 solely for the purposes of allowing all timely-subpoenaed and noticed depositions of non-party witnesses to be completed;

2. The Fact Discovery Cutoff shall be extended to and including April 30, 2023 solely for the purposes of allowing the timely-noticed depositions of party witnesses to be completed;

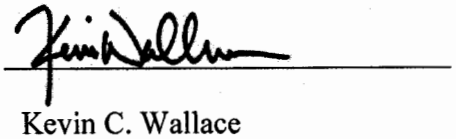
3. All other dates in the PCO (as amended pursuant to prior Court orders) remain unchanged; and

4. This stipulation is entered into without prejudice to and without waiving any of the Parties' respective rights or remedies during the pendency of this action, including without limitation those raised by the Motion.

Dated: New York, New York
March 13, 2023

STIPULATED AND AGREED:

LETITIA JAMES
Attorney General of the State of New York

By: 

Kevin C. Wallace
28 Liberty Street
New York, NY 10005

Counsel for the People of the State of New York

HABBA MADAIO & ASSOCIATES LLP

By: _____

Alina Habba
112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

Christopher M. Kise
(*Admitted Pro Hac Vice*)
Continental PLLC
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301

Counsel for Defendants The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

-and-

Armen Morian
Morian Law PLLC
One Grand Central Place
60 East 42nd Street, Suite 4600
New York, NY 10165

Counsel for Defendants Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC,

ROBERT & ROBERT PLLC

By: _____

Clifford S. Robert
526 RXR Plaza
Uniondale, NY 11556

Counsel for Donald Trump, Jr., Eric Trump and Ivanka Trump

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C

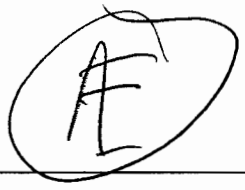
By: _____

Michael K. Kellogg
(*Admitted Pro Hac Vice*)
Reid M. Figel
(*Admitted Pro Hac Vice*)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel For Defendant Ivanka Trump

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

SO ORDERED:



Hon. Arthur 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, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 **ORDER**

For the reasons stated on the record at the hearing held March 21, 2023, it is hereby ORDERED that the Preliminary Conference Order, entered November 22, 2022 (NYSCEF No. 228) is modified as follows:

1. Fact discovery shall be completed by April 30, 2023.
2. All parties shall identify the expert witnesses they will call at trial on or before May 5, 2023.
3. All parties shall produce their expert witness reports on or before May 12, 2023.
4. All parties shall identify any rebuttal experts on or before May 26, 2023.
5. All parties shall produce their rebuttal expert reports on or before June 16, 2023.
6. Depositions of expert witnesses (which may be taken at any point after the opening report is served) shall be completed on or before July 14, 2023. Parties are presumptively limited to one deposition of each expert identified by another party.
7. Expert discovery shall close on July 14, 2023.
8. Trial depositions for all non-party witnesses who are unavailable for trial as provided for in CPLR § 3117 shall be held by July 14, 2023.
9. **End Date for All Disclosure**: July 14, 2023.
10. **Note of Issue**: Plaintiff shall file a Note of Issue and Certificate of Readiness on or before July 17, 2023.

11. **Dispositive Motions**: Any dispositive motions shall be made on or before July 21, 2023. Any opposition brief shall be filed on or before August 18, 2023. Any reply brief shall be filed on or before September 1, 2023. Oral argument on any dispositive motions shall be heard on September 8, 2023.

12. **Additional Directives**:

    a. Final witness lists, final exhibit lists, deposition designations and proposed facts to be proven at trial shall be filed on or before August 25, 2023.

    b. Pre-trial motions shall be filed on or before September 8, 2023.

    c. Final pre-trial conference is scheduled for September 18, 2023.

    d. Trial shall begin on October 2, 2023.

Dated: New York, New York
March 24, 2023

Hon. Arthur 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, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 **ORDER**

It is hereby ORDERED that the Preliminary Conference Order, entered November 22, 2022 (NYSCEF No. 228), as modified by the Order entered March 27, 2023 (NYSCEF No. 598), is further modified as follows:

1. The deadline to complete all outstanding document production is extended to May 12, 2023.

2. By May 15, 2023, each entity Defendant (collectively the "Trump Organization") shall submit a compliance affidavit setting forth: (i) the name of every custodian in possession of information responsive to any discovery notice issued by the Office of the Attorney General ("OAG"); (ii) every device used by each custodian for the conduct of business on behalf of the Trump Organization; (iii) every email address, telephone number or other electronic account used for communications concerning the business of the Trump Organization; (iv) whether each of the devices and accounts identified in items 2(ii) and 2(iii) were collected and searched for responsive documents; (v) what search terms or other means were used to conduct any search of the devices and accounts identified in items 2(ii) and 2(iii); and (vi) if any devices or accounts identified in items 2(ii) and 2(iii) were not retained or searched what efforts were undertaken to preserve or locate those devices or accounts.

3. By May 15, 2023, each individual Defendant shall submit a compliance affidavit detailing: (i) every device used for communications with or on behalf of the Trump Organization or concerning the business of the Trump Organization during the period 2011 to present; (ii) every email address, telephone number or other electronic account used for communications with the Trump Organization or concerning the business of the Trump Organization during the period 2011 to present; (iii) whether each of the devices and accounts identified in items 3(i) and 3(ii) were searched for responsive documents; (iv) what search terms or other

means were used to conduct any search of the devices and accounts identified in items 3(i) and 3(ii); and (v) if any devices or accounts identified in items 3(i) and 3(ii) were not retained or searched, what efforts were undertaken to preserve or locate those devices or accounts.

4. The deadline to take deposition testimony from witnesses properly noticed before the previous fact discovery deadline of April 30, 2023, is extended to May 12, 2023. No party is permitted to issue new subpoenas or deposition notices.

5. All parties shall identify the expert witnesses they will call at trial on or before May 19, 2023.

6. All parties shall produce their expert witness reports on or before May 26, 2023.

7. All parties shall identify any rebuttal experts on or before June 5, 2023.

8. All remaining deadlines set forth in this Court's order dated March 24, 2023 remain operative.

Dated: New York, New York
April 28, 2023

Hon. Arthur Engoron, J.S.C.

HON. ARTHUR F. ENGORON JSC.

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 **ORDER**

It is hereby ORDERED that the Preliminary Conference Order, entered on November 22, 2022 (NYSCEF Doc. No. 228), as modified by the Orders dated March 24, 2023 (NYSCEF Doc. No. 598) and May 1, 2023 (NYSCEF Doc. No 628), is further modified as follows:

1. All parties shall identify any rebuttal experts on or before June 19, 2023;

2. All parties shall produce their rebuttal expert reports on or before June 30, 2023;

3. Depositions of expert witnesses (which may be taken at any point after the opening report is served) shall be completed on or before July 28, 2023. Parties are presumptively limited to one deposition of each expert identified by another party.

4. Expert discovery shall close on July 28, 2023.

5. Trial depositions for all non-party witnesses who are unavailable for trial as provided for in CPLR § 3117 shall be held by July 28, 2023.

6. **End Date for All Disclosure:** July 28, 2023.

7. **Note of Issue:** Plaintiff shall file a Notice of Issue and Certificate of Readiness on or before July 31, 2023;

8. **Dispositive Motions:** Any dispositive motions shall be made on or before August 4, 2023. Any opposition brief shall be filed on or before September 1, 2023. Any

reply brief shall be filed on or before September 15, 2023. Oral argument on any dispositive motions shall be heard on September 22, 2023;

9. Additional Directives:

a. Final witness lists, final exhibit lists, deposition designations, and proposed facts to be proven at trial shall be filed on or before September 8, 2023;

b. Pre-trial motions shall be filed on or before September 22, 2023;

c. Final pre-trial conference is scheduled for September 27, 2023; and

d. Trial shall begin on October 2, 2023.

Dated: New York, New York
June 9, 2023

Hon. Arthur Engoron, J.S.C.
HON. ARTHUR F. ENGORON J.S.C.

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

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

WHEREAS, on November 22, 2022, the Court entered a Preliminary Conference Order in this action (NYSCEF No. 228) (the "PCO");

WHEREAS, the PCO, as amended by Order entered on June 9, 2023 (NYSCEF No. 636), provides that trial depositions of all non-party witnesses who are unavailable for trial as provided for in CPLR § 3117 shall be completed by July 28, 2023;

WHEREAS, Plaintiff has served a subpoena to conduct the trial deposition of a witness on July 25, 2023;

WHEREAS, at Defendants' request the Parties have agreed to adjourn the witness's trial deposition pursuant to Plaintiff's subpoena to August 9, 2023;

NOW THEREFORE, upon the consent of all parties, it is hereby ordered that:

1. The trial deposition noticed for July 25, 2023 pursuant to Plaintiff's subpoena shall proceed on August 9, 2023; and

Index # 452564/2022

2. All other dates in the PCO (as amended pursuant to prior Court orders) remain unchanged.

Dated: New York, New York
July 21, 2023

JUL 21 2023

Hon. Arthur Engoron, J.S.C.

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

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

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

WHEREAS, on November 22, 2022, the Court entered a Preliminary Conference Order in this action (NYSCEF No. 228) (the "PCO");

WHEREAS, the PCO, as amended by Order entered on June 9, 2023 (NYSCEF No. 636), provides that trial depositions of all non-party witnesses who are unavailable for trial as provided for in CPLR § 3117 shall be completed by July 28, 2023;

WHEREAS, Plaintiff has served a subpoena to conduct the trial deposition of a witness on July 25, 2023;

WHEREAS that witness' deposition was adjourned at Defendants' request and by order of this court to August 9, 2023 (NYSCEF Doc. No. 642);

WHEREAS, at Plaintiff's request the Parties have agreed to adjourn the witness's trial deposition pursuant to Plaintiff's subpoena to September 12, 2023;

NOW THEREFORE, it is hereby ordered that:

1. The trial deposition noticed for August 9, 2023 pursuant to Plaintiff's subpoena shall proceed on September 12, 2023;

INDEX # 452564/2022

2. All other dates in the PCO (as amended pursuant to prior Court orders) remain unchanged.

Dated: New York, New York
August 9, 2023

AUG 09 2023

Hon. Arthur Engoron, J.S.C.

HON. ARTHUR F. ENGORON

EXHIBIT 8

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

----------X

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

Plaintiff,

-against-

Index No.
452564/22

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

Defendants.

----------X

Motion

New York, New York
March 21, 2023

B E F O R E:

HONORABLE ARTHUR ENGORON,

JUSTICE.

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

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LETITIA JAMES
ATTORNEYS FOR THE PLAINTIFF
28 LIBERTY STREET
NEW YORK, NEW YORK 10005
BY: KEVIN WALLACE, ESQ.,
ANDREW AMER, ESQ.,
COLLEEN FAHERTY, ESQ.,
LOUIS M. SOLOMON, ESQ.,

CONTINUED:

APPEARANCES CONTINUED:

HABBA MADAIO & ASSOCIATES, LLP
ATTORNEYS FOR DEFENDANT DONALD J. TRUMP
AND THE TRUMP ENTITIES
1430 US HIGHWAY 206
BEDMINSTER, NEW JERSEY 07921
BY: ALINA HABBA, ESQ.,
ARMEN MORIAN, ESQ.,

ROBERT & ROBERT, PLLC
ATTORNEYS FOR DEFENDANTS
DONALD TRUMP, JR., AND ERIC TRUMP
526 RXR PLAZA
UNIONDALE, NEW YORK 11556
BY: CLIFFORD ROBERT, ESQ.,

KELLOGG HANSEN TODD FIGEL & FREDERICK, PLLC
ATTORNEYS FOR DEFENDANT IVANKA TRUMP
1615 M STREET NW
WASHINGTON, DC 20036
BY: REID FIGEL, ESQ.,

CONTINENTAL, PLLC
ATTORNEYS FOR DEFENDANTS 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
101 NORTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
BY: CHRISTOPHER M. KISE, ESQ.,

VINCENT J PALOMBO
OFFICIAL COURT REPORTER

* * *

THE COURT: Thank you for coming and I thank everybody for coming. Oh, I've got quite a crowd here.

Well, as if this case isn't exciting enough on its own, we had a little bit of a disturbance this morning, but my best understanding is that everybody is here and we're ready to go.

I'll remind everybody who is going to speak, speak right into the microphone, if you are a few inches away, we'll lose you.

We are here on James versus Trump. Index number 452564/2022 on a motion by defendants to vacate the November 22, 2022, preliminary conference order in this case, which set out a detailed schedule of disclosure and other maneuverings culminating in a trial to commence on October 2nd, 2023.

Simply put, defendants would like the trial adjourned for approximately six months.

This case generates significant press coverage, as you can see, and I want to continue to welcome the fourth estate into my courtroom, as they are the eyes and ears of the public, and I firmly believe in transparency, which may come up later, when we discuss how to go about all this.

Some 20 years ago, as an elected New York City official was charged with the crime of filing a false instrument. A lawyer friend of mine said that's an easy

charge to prove, you filed it and it's false. So it would seem in this case.

Plaintiff claims that the individual defendants filed or participated in filing false financial statements.

The 214-page complaint submits as exhibit statements of financial condition of Donald Trump from 2011 to 2021, that plaintiff alleges defendants submitted to insurers and lenders to obtain better rates.

Defendants claim that those exhibits are not their documents, that they did not submit them to third parties, that the documents are not false, that everyone was doing it, that those third parties could reach their own conclusions, that disclaimers insulated the statements and that those third parties were not harmed.

However, this Court has already ruled that everyone was doing it, that those parties could reach their own conclusions, that disclaimers insulated the documents, and that those parties were not harmed are not legal defenses here.

Plaintiff has brought this case pursuant to Executive Law Section 63 (12), which empowers the New York State Attorney General to police the commercial marketplaces to ensure honesty and good faith.

Simply put, if the statements of financial condition were false, the defendants that promulgated them

are liable and are subject to financial penalties and injunction prohibitions.

I note in passing that the lenders to which I just referred are often banks. As we all know, banks have been having a tough time lately. I certainly do not want to increase the risks they take for their woes.

Defendants claim, and plaintiff does not dispute, that defendants repaid all of the subject loans on time and in full.

But again, no harm is not a defense and in this Court's considered opinion, it should not be, because the next time or the time after that, or the time after that, there could be probably will be harm.

Thus, the crux of this case is whether the statements were false. If the plaintiff's theories were complicated and dependent upon intricate measures of value, as defendants claim, such as capitalization rate application and impacts, discounted cash flow methodologies, the impact of zoning requirements on valuation analyses, and for the grand prize, analyses of competing asset valuation methods relative to specified loan transactions, then, perhaps an expert disclosure and testimony would need to be extensive.

However, plaintiff's theories are simple and straightforward. Real property is worth less money if development is restricted than if it is not.

Residential buildings are worth less money if they contain regulated tenants than if they do not.

Assets are worth less money if they are owned in part than if they are owned in full.

A triplex apartment is worth less money if it is 11,000 square feet than if it is 30,000 square feet.

A statement that claims that third party experts vetted it when they did not is materially false.

You do not need to be an expert in GAAP, generally accepted accounting principles, to know these things, you don't even need a high school diploma, thus, the instant case is complex but not complicated.

By which I mean that plaintiff is alleging multiple instances of fraud, but the instances have only one moving part.

Defendants claim that this case satisfies the requirements of a, "Commercial Division case," and that therefore the Commercial Division guidelines, such as 15 months for disclosure in complex cases should apply.

Those of you who have followed this saga closely know that this case was automatically assigned to me, sitting in a general court part, not a commercial part, not because it did not fit the requirements of a Commercial Division case, which it probably does, but because it is related to an earlier special proceeding which was randomly

assigned to me, in which the Attorney General sought to compel defendants to provide certain information and answer certain questions under oath.

But whether or not this case satisfies the requirements of a Commercial Division case, it is not a typical garden variety Commercial Division case.

There are no counterclaims which most Commercial Division cases, 80 percent by one estimate, have, it is not two-sided or multi-sided, it is one sided.

Thus, it should be resolved in considerably less time than in a typical Commercial Division case.

Also, without ruling on this issue at this point, this case appears to me to be purely equitable in nature. The injunctive relief that the Attorney General seeks is equitable, and my preliminary research indicates that discoordinate, the other remedy the Attorney General seeks is also equitable.

Thus, the attorneys don't have to worry about the vagaries of a jury and by now I hope they realize they don't have to worry about me.

Several aspects of the instant application trouble me. One is the statement in one of defendants' papers that in issuing the preliminary conference order, I refused, quote, refused, unquote, to consider defendant's proposal. I considered it, I simply rejected it.

Another troubling aspect of this case is the role of certain defendants' counsel in the Southern District of New York case captioned Catherine McKoy, M-c-K-O-Y, et al., versus the Trump Corporation, et al., and asking Judge Lorna G. Schofield to delay the trial of that case until early 2024, so as not to conflict with this case.

Accordingly, she set a firm trial date of January 29, 2024.

Some of the state counsel are now asking this Court to delay this Court -- this case, in particular, the trial thereof, until early 2024, which would conflict with a trial of that case, which would occasion time-consuming negotiations, and necessitate the further delay of one case or the other as defendants might hope, both, in a domino effect. One case delays the other which delays the next.

Judges respect each other's prerogatives and disingenuously playing one judge against another is disrespectful and evinces bad faith.

The final troubling aspect has three related parts. First, according to plaintiff, defendants are subpoenaing third parties and asking whether these third parties are aware of other investigations of defendants. The harm that this could cause is fairly self-evident. Targets of investigations could be tipped off prematurely and unfairly.

Second, the subject matter of these questions would

almost certainly be irrelevant to the instant case and needlessly delay these proceedings.

Finally, according to a letter I received a few mornings ago, which I placed on the Court's electronic filing system, I think it was yesterday, defendants are subpoenaing grand jury evidence, which we all know is among the most confidential material on the planet.

After we discuss the instant motion to vacate the preliminary conference order, we should and I hope you will discuss the issues raised by the Court.

But now let's look at the all-important preliminary conference order.

It mandates that all factors of discovery be complete by yesterday, March 20th.

During interparty discussions of which there were many, and I understand it's continued this morning, the Attorney General suggested April 21st and defendants suggested April 28th. As they say in poker, I'll see you one and raise you one.

I plan to order May 5th, some seven weeks after yesterday and one week after defendants themselves requested it.

Skipping ahead, the preliminary conference order mandated that dispositive motions, such as summary judgement motions, be filed by June 26th. I've read the papers and of

course we'll hear from all counsel, but as matters now stand I intend to make those motion papers due one month later, July 26th, several days after defendants suggested.

I purposely drafted the preliminary conference order to allow some flexibility in the spring and summer deadlines.

And now let's look at the big enchilada, the trial date. At the preliminary conference back in November, I said that the trial in this action would commence on October 2nd, 2023, come hell or high water. October 2nd being the height of hurricane in New York City.

Coincidentally, as described in the lead article in yesterday's New York Law Journal, I can loan it out, about a case in which alleged victims of Jeffrey Epstein are suing JP Morgan Chase, Southern District of New York Judge Jed Rakoff just denied a motion to delay a trial currently scheduled for October 23rd, the same month as our case.

One of the defense lawyers said that he would, quote, prefer to have a full year to prepare for trial, close quote.

Judge Rakoff said he, quote, would not consider such a long delay, that the October 23rd date was firm and that, quote, it would take an act of God for me to move that any further, period, close quote. GMWA, great minds write alike.

I can go on and on but on end with something else defendants' counsel said to the effect that when I issued the preliminary conference order back in the fall, they did not realize how complicated this case is.

I am respectfully asking them to revert to their earlier thinking. This case is complex, but it is not complicated.

Essentially, all -- it all boils down to whether the statements of financial condition were true or false. And the rest, as Rabbi Hillel famously said, is just commentary.

So now, let's hear from the attorneys. As defendants are the moving parties, I will ask them to go first, and of course I will give them a chance to reply after the plaintiff speaks. Thank you.

Defendants.

MR. KISE: Thank you, Judge, good morning. Christopher Kise on behalf of certain of the Trump defendants and for purposes of this hearing speaking just on behalf of everyone except Ivanka Trump, whose counsel is here, Mr. Reid Figel.

I just want to point out, so we don't take too much of the Court's time this morning, that Mr. Wallace and I all counsel actually had a conversation before we began in an effort to reach some compromised position, but your dates

now, if I have them correctly, your Honor, are the fact discovery closure is May 5th, yes, sir?

THE COURT: Give me one second. I should be probably read these so we're all on the same page.

MR. KISE: Thank you.

(There is a pause in the proceedings.)

THE COURT: These are not written in stone, they're written in pencil. But I thought a lot about them and I'm serious about them, but I'll obviously hear what you have to say. I'm going to go through a list that have been e-mailed by one of the parties.

Fact discovery completed was March 20th, now May 5th.

Expert identification was March 27th, now May 19th.

Expert reports due, was April 17th, now June 2nd.

I feel like this is a sale, it was hundred dollars now it's 95. So expert reports are due June 2nd.

Rebuttal expert identification was May 1st, now June 16th.

Rebuttal expert reports was May 8th now June 23rd.

Expert discovery completed was June 5th, now June 30th.

Note of issue due June 9th, now due July 5th.

Dispositive motions such as summary judgement was due July -- were due July -- June 26th, now July 26th.

Opposition to dispositive motions were due July 24th, now due August 16th.

Reply to dispositive motions were due August 14th, now due August 30th.

Final witness list, exhibit lists, witness designation, proposed facts due same, August 25th.

Pretrial motions were due September 1st, now due September 5th, which would be the oral argument date.

Final pretrial conference September 18th. That has stayed the same.

And trial, of course, October 2nd, stays the same.

Thank you.

MR. KISE: Thank you, your Honor.

So in just discussing the schedule, rather than going through a full argument, let me point out that by discussing the schedule, I don't intend to certainly indicate that we're waiving our rights, we respect your Honor's ruling and we just want to preserve our rights with respect to what we think.

We certainly maintain our position that we need the entirety of the time, but we've heard your Honor this morning and so rather than belabor that point at the moment, I just want to ask some questions, if I might, your Honor, about the schedule that you have proposed in line with some of the things that Mr. Wallace and I discussed, if that's

all right?

THE COURT: Sure. And certainly no waiver, I understand.

MR. KISE: Thank you.

So one of the issues that we have identified as the parties, is this short distance between the submission of the expert reports and the submission of the rebuttal expert reports. That's actually where some of our discussions broke down the last time and we certainly, from the defendants' position, right now, you have that at a three week gap, June 2nd -- based on your new dates, but I think it was the same before -- that expert reports would be due June 2nd and rebuttal experts reports would be due June 23rd and I would submit, respectfully, and I think I have at least some support from my colleague, Mr. Wallace, we need more time there, your Honor.

We need probably -- because experts are going to get -- if they send us four or five expert reports and we send them four or five expert reports, our experts are going to get those and three weeks to read them, analyze them and prepare another report is a very short window and I would propose more like a five or six week period there.

I know that that bumps things around, but it gives the experts on both sides time to meaningfully review and respond. And then that would also impact the expert

discovery completion date.

We had moved that, suggested moving that slightly, so we had -- we had discussed having a -- let me see if I have this right -- I think it is a five week period between expert reports due and rebuttal expert reports due and then another -- roughly, another four weeks from that date to finish expert discovery, meaning all of the depositions of both sides' experts which is going to be -- I mean, roughly, probably 10 or 12 depositions in a four week period, which is pretty compact, especially expert depositions.

Where this interferes with the schedule, and I am -- I'm going to say this, but I know I'm going to tread lightly based on where you started, if we were hypothetically to move the trial date -- staying in October, to October 23rd, I think the Attorney General is more optimistic than I am, I think they like October 16th, that would then give us the requisite time if we have that rebuttal expert -- in other words, all these other dates then sort of would follow.

It would require your Honor to revisit, based on new information presented, and a discussion between counsel, the trial date, so, again, I want to tread lightly on that because I'm really not trying to offend you, I just want to point out the sort of the pragmatic on-the-ground realities of doing these expert reports and getting all this in front

of the Court in a way that is meaningful for you, your Honor, to be able to have time to review it.

So we are certainly amenable, without waiver, as we've already started, but in terms of the dates you proposed, I just think that building in more time for expert -- between expert reports and rebuttal expert and then in order to accomplish that, pushing out the trial date three weeks, instead of October 2nd to October 23rd.

And if you'd like us to discuss offline how that would look as a complete schedule and we can come back to you and talk about that, that's fine. I'm happy to do it in any way you like, your Honor, I'm just -- that's where I see -- that issue between expert report deadline and rebuttal report deadline is kind of where our discussions went off a little bit the last time.

And in trying to keep everything within this -- respecting your Honor's initial ruling within the trial date. But if we move that trial date it gives us time. I think it -- I still think it's an overly optimistic schedule, even given your direction and that's why I'm saying I don't want to waive anything, but at the same time I think it's at least more pragmatic to move that trial date just a couple weeks and then give us the difference between the expert reports, give us that extra gap between expert reports and rebuttal expert reports.

THE COURT: There are six months between -- little over six months between now and October 2nd. I'm hoping that a week or two here or there wouldn't matter.

I appreciate that you are only asking -- or both sides are only asking for a few weeks, but you have six months. There's got to be some more time in there. I do not want to move that trial date. Not just because I said I don't want to, but because I don't think it's necessary, and obviously, you know, you're talking about all these experts, I didn't expect the defendants necessarily to agree with my view that this case is simple, but that's how I see it.

If you possibly can, see if you can agree to not move the trial date. You can move anything else, you can have everything early, late, in between, I don't want to move that trial date.

MR. KISE: Understood, your Honor. I think it's actually more -- I don't want to speak for Mr. Wallace -- I think the defendants are more comfortable with a more compressed motion practice pretrial, as long as we have adequate time to prepare the record, even respecting your Honor's view, which I respectfully disagree with about simple, but nonetheless, even taking your view, your Honor, if it's just strictly on witness statements themselves are accurate and setting aside every other question, you're still talking about a lot of different experts because

there's a lot of different kinds of valuations, and each building -- there's many different components that go into this and there are so many different ways to view valuations, it is a highly subjective industry.

It all really depends on who you are. A bank is going to view the value of a building looking backwards, because that's all they can do. And so if you were to value a building in 2012, you, as a bank, you would look at what happened in the preceding five years which was a disaster in the real estate industry. So your valuations are necessarily going to be dependent on that.

But if you're a developer and you buy a building in 2012, you're thinking about what's happening in the future, where is this headed. I'm not thinking that things are going to be bad, if I'm buying this building, I'm thinking things are going to be really good and so I'm going to have a very different outlook and, frankly, that's how developers make money. They buy low and sell high. It is a simple proposition.

I don't want to belabor this, but my point is there's so many ways to look at valuation we are going to wind up with a number of competing experts on both sides, even just if that is the only question before the Court.

We think, respectfully, there may be other questions, but even if that is it.

We're certainly happy to compress the dispositive and pretrial motion practice, but I know respecting Mr. Wallace's position, I know that that is a challenge for them and I'll certainly let him speak to that.

I just think we need to come up with more time between the expert report deadline and the rebuttal report deadline, none of our experts on either side will be able to make this work.

If we leave the trial date the same, our choices are to compress one or the other or both, add a week here and take a week away from there.

I suppose we can do this as an iterative process, we -- like we've done so far. Frankly, I know that's why there's been a lot of back and forth about why the defendants took so long to ask for time. Well, it's because we tried, like I always do, to respect the Court's schedule so if the Court orders this schedule, we can certainly attempt to meet it, and then go from there.

We may have to come back to you, your Honor, particularly with respect to this expert report issue, if we can't agree. But I'm happy to take direction on what you think the next best thing to do is. I know you don't want to move the trial date, so then should we discuss, as we did earlier, some revisions?

THE COURT: Yes, I don't care what you do with

everything else.

MR. KISE: Okay.

THE COURT: It's up to you two.

Let me just say that determining the value of a building using all those arcane methods is a little bit different, I think -- although I could see it both ways -- than determining that a statement about it is false.

If you're not taking into consideration some obvious factors of valuation. But we could have a whole discussion --

MR. KISE: We could, and I know you don't want to do the today, your Honor.

The other issue that really remains, I guess, between the parties, it seems like the schedule -- well, it appears the schedule is going to get resolved because you are resolving them, so I'm not going to climb that hill.

The other issue that remains between the parties is this issue of continue -- allowing us to continue discovery. We're going to extend fact discovery to May 5th and we, the defendants, think that we should be allowed to continue doing fact discovery. That would include more than ten depositions.

You've seen in our papers, and I'll talk about that just momentarily here, that there are some at least 80 witnesses identified and even taking the Trump witnesses

out, the 25 or so Trump witnesses out, it still leaves you with a very large universe of witnesses.

MR. WALLACE: I'm sorry to interrupt this, can we manage our food in sizeable bites and then move on to the number of deponents.

MR. KISE: Sure. I'm happy to I'm sorry. Yes.

Do you want to speak to the schedule first --

MR. WALLACE: I think I see a solution, keeping your Honor's desire to make sure we don't move -- I also like October 2nd. I was willing to suggest October 16th as a compromise, but I think that the dates we -- we discussed with Mr. Kise were focused on note of issue and then trial.

And I believe the defendants' proposal for the note of issue date was going to be July 17th, and if we move the note of issue to July 17th, I believe we will be able to accommodate the schedule your Honor has proposed, dispositive motions would come nine days after that on July 26th, and then the parties could arrange the time for that so as to allow sufficient time -- or I guess more time for the rebuttal expert reports.

LAW SECRETARY: Mr. Wallace, can you repeat those dates?

MR. WALLACE: Sure.

The note of issue date would be moved to July 17th and we would maintain the date for dispositive motions

proposed by the Court of July 26.

LAW SECRETARY: And everything else the same?

MR. WALLACE: I think we might move the dates before that, so that maybe discovery ends April 30th, expert reports come at a different time and there's a little bit of time built in for these rebuttal reports.

But if we can agree on the 17th and your Honor is comfortable -- our issue was making sure that pretrial briefing is on your desk in time for you to consider in advance of trial, to the extent the issues that are narrow. If this pretrial schedule works for your Honor, it works for us.

So I think a note of issue on July 17th would address the expert rebuttal report timing issue that Mr. Kise has been discussing.

THE COURT: Fine with me.

Mr. Kise --

MR. KISE: I think that's right. I'm just looking backwards at the dates that you have proposed, your Honor, with the May 5th discovery cutoff and the June 2nd expert reports, and I think -- I guess what Mr. Wallace is saying is that we would go and try and tweak that ourselves.

MR. WALLACE: Yes, that we'd have a note of issue date and a trial date and we would just honor the Judge's -- absent a note of issue, but we would tweak the days before

that to accommodate the expert report timing.

MR. KISE: Again, without waiver, as we've said --

THE COURT: Yes.

MR. KISE: But yes, I think that works, and I think what we would do then, I guess, your Honor, is come back to you with a complete proposed order. I think that's what Mr. Wallace is proposing we have these two dates set and present something to you this afternoon or tomorrow.

MR. WALLACE: Correct. We have agreed here to a note of issue date and a trial date and we would incorporate the dates you've given us, but then work on the expert timing.

MR. KISE: That's fine, without moving July 17th and October 2nd.

Do we want to now -- okay. I don't want to skip ahead too far.

Again, the only remaining issue now is this issue of how much discovery, and what should happen now that we've expanded the date to whatever the date is going to be.

The Attorney General has a fairly unique position about the case in terms of discovery. I think their view was that, look, we gave you what we think is relevant. We gave you our file, so Trump knows what we think. Trump knows what we say happened. Those are the facts. What else does Trump need to know? Trump has the evidence we think is

relevant, the documents we want to focus on, the people we want him to talk to, the statements that we think are important, so this can all be done relatively rapidly. What more do you need?

Well, I would submit it's not quite that simple.

As the Attorney General admits in their papers, they gave us some 700,000 third-party documents that we had never seen before. That's admitted on the first page of the introduction.

Now, we whittled that down, so when I say we had never seen before, I'm saying that because that's what it appeared on the day we got it.

We got December 2nd -- November 28th -- don't remember the exact date, but end of November, 1st of December, we got this enormous amount of information.

As you've seen from the haystack affidavit we submitted from our third-party vendor, it took several weeks to process all that data. It was an extraordinary amount of data, and there's whole lot of technological reasons in there about why it took so long, I don't know, I still use paper calendars and handwritten notes, but it took an awful long time for that to get filtered out and the final filter, at least from our perspective, our starting point, if you will, on December 20th was 275,000 documents, some 2.6 million pages, which according to the experts and I'm glad I

don't have do the all this myself, takes roughly 11,000 hours of review time.

So this is a lot of information to go through --

THE COURT: Let me just interrupt a second.

MR. KISE: Yes, sir.

THE COURT: A lot of the documents you are receiving from third parties, didn't they originate with the defendants?

MR. KISE: No, not these. Not the ones I'm talking about. No, your Honor.

THE COURT: Okay.

MR. KISE: That's kind of the point when I say filtered out. There still may be some in that 2.6 million pages, there may be some, but what our vendor did is took -- as the Attorney General pointed out, there are a million documents that are just what we'll call Trump documents.

Then there are 700,000 documents that are third-party documents. Of those 700,000 documents, roughly 450,000 or so we have culled out as what I'll call something to do with Trump. And there's ways to do this electronically, I don't pretend to understand that, but it's detailed in the affidavit. It tells you how they did it.

But when it got whittled down, there's 2.6 million pages of information that are things like bank credit reports, credit risk guidelines, private wealth management

guidelines, rating policy, internal documents -- this would be true of the accounting firms, too, and I'm not going to mention any parties by name here or anything like that. I'm just being -- I'm just trying to give your Honor an understanding of what this information consists of.

And so, in order to evaluate the case and understand the facts, I mean, the lawyers have to understand what these documents -- setting aside all of the million-plus documents that are in some shape, form or fashion we'll concede for purpose of this hearing are Trump related, there's still 275,000, or more, considerable amount of pages that aren't.

THE COURT: What do you expect to find in those pages? What are you looking for?

MR. KISE: You know, interesting that you asked. So what we learned already from looking -- you know, the Attorney General's theory is that because of these inflated statements, for example, President Trump was able to qualify for a loan that he wouldn't have otherwise qualified for. That's their theory, that's the core of their case, is that he said his net worth was X and it really was Y, and if it was Y, he would not have qualified.

What we've already learned from those documents, though, is that President Trump would have qualified for the loans that he received if his net worth were ten percent of

what was in the statements. So there's a pretty big gap, and so it's facts like that, it's how the bank itself valued the properties, as well, because that goes to the reasonableness of our valuations, that goes to the accuracy of our statements.

In some instances, they may have agreed with our valuations. In other instances, they may not have.

We have to understand where all the parties are, and I'm not saying that is going to take forever, but it takes a little bit of time.

THE COURT: Who is taking the position that if the financial institutions would have lent anyway, doesn't matter if the documents were true or false? That's not the position I take or that the Appellate Division is going to take.

MR. KISE: I'm not necessarily taking that position. What I'm saying is is that it is highly relevant under the existing case law.

Something that has a capacity or tendency to deceive, which is some of the magic words in the case law under 63(12), has to actually have some capacity or tendency to state -- meaning, it has to have some materiality to it, it has to be relied on in some sense. These are all things I am hoping your Honor is going to keep an open mind to as we get into the evidence because I can't stand here today

and try the case.

And so -- and until I know what the facts are, I can't present them, so this is the whole point of discovery.

Now the Attorney General has had three years to look at all this, to look at all these pages, to interview people. We've had about three months. End of December to yesterday, and yet we're kind of being told we're delaying, I'm not sure I follow that.

But they interviewed more -- roughly, I would say 70 or 80 people, they have transcripts they sent us for 56, but the position is Trump only needs to talk to ten.

Now the Attorney General, just like I would do, like I did when I was in the Attorney General's office in Florida many years ago, I'm going to ask those people in an investigation, because I have them captive, I'm going to ask them the questions I think are important. I'm going to ask the questions that help my case, that help my investigation.

But that doesn't mean that Trump doesn't need to ask something else. That's not really transparency, right? The defendants' position is let's see all the facts, let's hear all the evidence.

The Attorney General asked for and kept what helped her case. Again, that's what you do, that's what you would expect. They asked, if you look at the interview transcripts, again, investigatory setting and in a grand

jury setting this is not unusual, they asked loaded, leading questions. It is a highly pressurized process. The focus of all those questions was on the Attorney General viewpoint.

There's really no way for us to test those answers. There's really no way, we haven't had any opportunity to cross-examine here.

And interestingly, the first two witnesses that we deposed gave us what we believe are exculpatory facts. These are two witnesses that -- and I don't remember if the Attorney General interviewed them or not, I think they did, seems like they would have, but there were no transcripts and both of these individuals were involved directly in the transactions at issue, and these people testified that they didn't think there was any problem with the statements of financial condition.

I mean, that's my characterization. Again, I'm not going to get into detail and identify people by name, but that's the upshot of their testimony is that they don't think there's any problem.

So this is the kind of record that we think we have an opportunity -- should have an opportunity to present. Unlike most cases of this nature, the entire world is watching this courtroom. There's more press people here than I -- today than I think there might be almost anywhere

else in the city and it's because everyone wants to see and hear all the facts.

That's what we want and I'm not suggesting the Attorney General doesn't either, I just think that they have a different view of what it is that we should see and what we shouldn't and what we're entitled to.

So we need more depositions. We haven't delayed. Depositions are inherently an iterative process. You don't really start taking depositions until you've looked at some of the documents. You don't just subpoena people willy-nilly.

We have 80-some-odd witnesses, we only right now have ten. So that's a pretty big crap shoot, like, okay, I've got to pick ten. That's why it took us a little bit of time just to pick the ten that we had.

But to give you an idea of why we came up with the number 30, which is what we think is a more acceptable and realistic number out of the 80, if you just add up the Cushman -- the potential -- this is just witnesses that we know about because they've been disclosed. A lot of times in discovery you'll depose one person and they will mention three other people that have better knowledge and so now, okay, I need to go talk to those other three people before trial.

But just based on the list that we know at the

outset, there are nine Cushman & Wakefield witnesses -- sorry, I said -- well, this is public.

There are nine appraisal witnesses, there are 18 bank witnesses, and there are three key insurance witnesses. So that's 30 right there. That doesn't count the other 50 people that I'm mentioning, maybe it's less than 50 because of the Trump folks. But there are people that we know today that we will need to talk to, that in any civil case we would have the ability to talk to. There would not be a constraint put on it, especially one like this.

And I would point out to your Honor that it's not the Commercial Division 15 months that we're necessarily focused on, we are, but also, any complex case.

Mr. Robert, as you know, is the expert -- or the professor -- the professor, if you will, on the CPLR but he'll correct me if I'm wrong, but I think that any complex case -- that's designated complex you get 15 months for discovery and you get these other expansive rights.

And so I think here this is the case that certainly warrants a little more discovery. We're not asking to depose 80 people, we're not asking to depose every last witness on the planet. You've given us relatively constrained timeframes. There's only so many depositions we could take even if we had-- even if you give us more than 30.

But we're certainly entitled to, we think, a full record, we're entitled to all the information, not just the facts that the Attorney General wants us to focus on.

This is just part and parcel of how a civil case is prepared. Our experts need this information, the valuation details as you've observed are critical here and the only way to determine the correct -- and this doesn't, again, count experts -- is to depose those.

THE COURT: I sort of did the opposite. I said you can look at the alleged fraudulent activity and not have to look at all the valuations. Yeah, to have professional evaluation, expert evaluation, with all these different properties, and all these different theories, including the ones I mentioned, yes, that would take a long time, but to see that the statements are allegedly false, I don't think that takes so long, and you want to interview all these people, what are they going to tell you about whether these statements of financial condition are true or false?

MR. KISE: Because they're going to tell me about the valuations, that's exactly what they're going to tell me and I respectfully disagree with your Honor, because if I say the property is worth X and I have got people over here that read the statements and agree with me and the Attorney General has ten people over here and they -- disagree with me, well, then, I don't know how anyone could determine that

the statements were fraudulent or false.

You've got a disagreement. You've got a commercial disagreement, which is why we have always maintained these kinds of cases really are not suited to 63(12) application. Because the parties already negotiated the terms of their agreement. The parties already agreed to what information they're going to exchange, and if you look at the contracts between the banks and their billionaire client, Donald Trump, those agreements spell out, this is what we want from you, this is what we're going to do, this is what we expect from you.

And as long as he satisfies those agreements, there really, in our view, can't be a problem, because the question of whether the statement is false or not is a subjective analysis -- this is the whole point of all this discovery, because there's going to be -- it's just like if you get ten lawyers in a room, you're going to get ten different opinions.

If I had ten different appraisers in here, ten different developers in here, they will all give me different opinions, but in order to say that someone did something false or fraudulent, that's more like a light switch. That's more like it's either right or it's wrong.

And I just -- I don't think we're ever going to see that in this case, I frankly know we're not, but we need to

develop this record. We're not asking again for 80 depositions, we're asking for 30, which is roughly a third of the witnesses that may be out there.

THE COURT: Well, I'm curious to know what the plaintiff thinks about the number of depositions, and again, you can take one hundred for all I care as long as it's by the trial date, but I understand it impacts how long a time you need. You don't need a valuation expert to know that restricted property is worth less than unrestricted property; true or false?

MR. KISE: That's not really the question, your Honor.

THE COURT: I think it very much is the question. Attorney General, is that one of the question, is that the question for some of these properties?

MR. KISE: I don't think --

THE COURT: Well, let me just --

MR. WALLACE: Sorry, could you repeat the question? I apologize, your Honor.

THE COURT: Is whether property, real estate, restricted, in terms of development, is that the question here -- or a question as to some of the properties?

MR. WALLACE: Our complaint, our action is showing that there are objective facts that were false that were incorporated into the statements.

Now, there are valuation aspects and I expect the parties will have valuation experts, but it is not -- I'm still not sure exactly what this additional discovery -- it's not very well defined, considering where we are in this case, that here we are, it's March, the complaint was filed in September and I just know -- I've heard -- this wasn't even in the papers, that generally there are nine Cushman witnesses and ten bank witnesses and three insurance witnesses.

I believe it's incumbent upon the party seeking to expand the discovery to make a good showing -- a showing of good faith reason to show why there should be additional discovery.

And since I'm now talking, I apologize --

THE COURT: Yes.

MR. WALLACE: I can finish.

THE COURT: I'm going to cut you off. You're violating one of my rules. If I ask you a simple question, like yes or no, don't go into a whole speech.

MR. KISE: I do it all the time.

MR. WALLACE: Someone should turn of my microphone.

THE COURT: Okay, and obviously, plaintiff, I'll give you as long a time as you need.

MR. KISE: To Mr. Wallace's point, though, I'm being purposefully vague because there are a lot of members

of the fourth estate here and I don't want to name, like, this witness, this witness, this witness, for the very reason that you began today, that we don't want to create some unintended consequence for these people.

I have a list of names, I can go right down the exact names and the names of the entities and so forth, but I don't believe it's really fair to them.

THE COURT: You have to be careful doing this. Isn't that what Joe McCarthy said --

MR. KISE: Right. Exactly. Exactly.

So the point is we are making a very detailed showing. I have laid out that just among this subgroup of the overall witnesses, just among the subgroup of the overall witnesses there are 30 specifically identifiable individuals that we think are highly relevant to be deposed.

To be clear, there are nine from the valuation community, I'll call it, there are 18 from the banks and there are three from the insurance company and actually, when I look at my list, it's actually more than three. There's six insurance witnesses that I -- so, we're well over 30.

What we're trying to do is contain the amount of depositions within your Honor's schedule. We're not trying to -- we don't want to take any more depositions than we need to take. I like your Honor's view and, frankly, that

is the view of most judges, you can take as many depositions as you want as long as you get here for trial in time and we think, respectfully, that that should be in keeping with due process and the broad scope of discovery under the CPLR, we think that should be the rule. Give us the 30 depositions, if they want to take 30 depositions they can. The difference is they've already taken 56. They've already had -- and they talked to more than 56 people, they've had an opportunity to interview almost all of these people in a setting where we could not actually participate in with the third parties, with did sit in on our own witnesses, of course.

THE COURT: Before we go further into how many depositions you should be allowed to take, expert, fact, whatever, the Attorney General is there disagreement about this? What would you agree to?

MR. WALLACE: Thirty, without seeing whose depositions we're going to take and how we'll fit these into the timeframe doesn't seem reasonable.

I also want to make clear, they've noticed ten depositions, they're not getting no discovery. We're not saying you have to be force fed our case --

THE COURT: How many would you agree to?

MR. WALLACE: I don't know, five. Five? They -- you mean five more -- five more, yes; correct.

Additional --

THE COURT: Mr. Kise, you want 20 more?

MR. KISE: Yes, your Honor.

THE COURT: The math is easy. Okay, I guess we have a disagreement. What was that Paul Newman line? We'll be happy with a failure to communicate -- failure to agree.

MR. KISE: Your Honor, again, just balancing the equities here, as I've said, they've had three years and unfettered opportunity to talk to anyone they want to talk to. So it's back to where I began. Trump doesn't need to ask any more questions. Trump doesn't need any more information. Trump has all the information we want him to get at. We don't need to do any of that.

I don't see how it impacts them in any material way; if anything, I would think that they want a full record, that they would want us to have a full opportunity to develop the record, and just because they have review of the evidence, that's never the view of the defendants. That's just the adversarial system. This strikes at the heart of our adversarial system.

So the idea that we don't get to have -- effectively asking for the opportunity to depose less than half the people that they've had three years to talk to. And I just don't think under the circumstances in this case -- and again, particularly given the closely watched

nature of this case, that anyone could conclude that giving us an opportunity to talk to a sufficient number of witnesses would be in any shape, form or fashion be unjust.

I think, frankly, the reverse would be true and we've set that forth in our papers.

I think that's the only remaining disagreement, as relates to this third-party discovery. There are issues with respect to scope of third party discovery that I can talk to if we want to proceed to that, because I don't know that Mr. Wallace is going to have any different view on my 30 and I'm going to have a different one on his five.

Your Honor, we get to that, I think --

THE COURT: Maybe we should figure out how many witnesses before we get into the scope of the witnesses.

MR. KISE: Fair enough. Let me yield the floor to Mr. Figel.

MR. FIGEL: Good morning, your Honor.

THE COURT: Good morning.

MR. FIGEL: I appreciate your Honor's observations about the financial statements, but I want to just make a few points for the record, which I think are very important.

These loans were not made against the statement of financial condition. These loans were made against specific property that was being acquired for redevelopment in highly structured lending transactions in which the guarantee was a

part.

But the valuations of, as you said, the apartment, the valuation of the things subject to restricted covenants, have nothing to do with the fundamental credit decision that was made by the bank here.

The fundamental credit decision was made by the bank related to the properties that were being acquired. First the Doral Golf Course, which was purchased for $150 million, the bank lent 125 of that for acquisition against a redevelopment plan. And the discovery we're seeking is important because that is the correct decision that the bank was making.

And with respect to my client, who is not alleged to have had anything to do with preparing financial statements, for vouching them, for disseminating them, she was involved in a transaction on behalf of a specific borrower.

There was a guarantee in the transaction, but there was a borrower and there was a piece of real estate that was pledged as collateral for a credit facility subject to very detailed construction budgets and renovation plans and commitments for additional capital and that is the credit decision that's at issue here. It's not the statement of financial condition.

So in order to do the discovery we believe we need

to do to make this case, it's not a simple question, as your Honor suggested, with all respect, as to whether there was a valuation on the statement of financial condition of the guarantor, as to which there is some dispute.

The question here is: What was the borrower and what was the pledged collateral and what was the value, the loan to values, and importantly, even under your Honor's theory is assuming there was a problem with the financial statement -- which we don't concede at all, we don't think there was -- what impact did that have on the interest rates?

Because the credit decision was made on secured lending based on the pledge of that collateral and construction budgets.

THE COURT: So is your position that because of your view -- let's assume that you are correct, that these lending decisions are made based on the value of the collateral, that the statements of financial condition are meaningless and you can just submit incorrect false ones? Is that your position?

MR. FIGEL: It's not our position, but the position is likely going to be, at least with respect to my client who knew nothing about the statement of financial conditions, they weren't material to the lending decision.

In other words, I don't think there's any dispute

here that President Trump was --

THE COURT: Wait a minute, whether property is restricted against development, that has nothing to do with what the lender would do?

MR. FIGEL: Your Honor, the question is what is the -- is the guarantor on a structured real estate transaction effectively able to perform. There's been no allegation I'm aware of that President Trump was not worth multi billions of dollars and he had a financial statement in which he had huge amounts, hundreds of millions of dollars of cash and cash equivalents and to perform the services under the guarantee.

So the question of is he a qualified guarantor is a question. And the financial statements may be relevant to that. But the lending decision, the interest rates they're applying, what the bank found important, what they relied on has to do with the pledged collateral in the redevelopment budget and that's something that is completely missing from the OAG's complaint, with all respect, I think they sold the Court and the public a bill of goods on this.

They have misrepresented what they credit tractions were all about. I'm not asking for a ruling, I'm not asking for you to agree with me. All I'm saying is this is the defense that we are trying to put together and in order to do that, we have to go through an enormously complex amount

of information.

In order to understand the context in which these transactions were made, in which the credit approvals were given, in which the interest rates and the terms of the loans were determined involves a consideration of federal and state bank regulations, the bank's internal lending policies, the division of responsibilities within the bank to determine who made these decisions and what was important to them, the credit reports that they wrote, the e-mails that surrounded it, the terms of the loan agreement, all in the context of a highly technical market.

That is structured lending, structured credit tractions, by enormously sophisticated people on both sides of the transaction.

So I understand your Honor's perception that if there was something on the financial statement that is arguably overstated, that is an issue. Other people have to defend that issue, my client had nothing to do with it.

My point is there's a whole part of this entire case that has nothing to do with the issues you've identified and everything to do with what was material to the bank, what was material to the parties, what the interest rates were and whether he benefited.

THE COURT: When lawyers will sometimes say to me Well, your Honor, I just want to say again, I'll stop and

say, wait a minute, I don't remember what I had for breakfast yesterday, but I remember what you said ten minutes ago. Nevertheless, I'm going to repeat myself.

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 or the valuation based on all those arcane values, I don't think they're relevant at all. You cannot lie -- to use a phrase that I sometimes say is banned, so I'll take that back -- you cannot submit false financial statements, whatever. Period.

But that's just my position and I understand yours is different. I understand that Ivanka's situation is different, which is why she has different counsel. Sometimes I'm lumping them together.

MR. FIGEL: Your Honor, with all respect, the point I want to make is the materiality of those alleged errors and I'm not conceding they were errors, but assuming that there's an inflation of those assets, what difference did it make to the lending decision, to the terms of the transaction and ultimately to the interest rates that were applied?

And that is important for the equitable relief, it's important to the calculation of how there will be

discoordinate, if there is any, and the suggestion that is just about whether the financial statements are false, with all respect, your Honor, they have to be materially false in a way that mattered for the transaction.

THE COURT: Well, they have to be materially false, but I don't think the lenders' subjective thoughts are relevant here. That's my position.

MR. FIGEL: Your Honor, with all respect, what we're asking for is the opportunity to make this defense -- to present the evidence to you so you can make that determination based on a full record.

THE COURT: Something I've been thinking about for a long time now, if you want to take disclosure on an issue that, let's say, it's in support of a defense that I think is irrelevant, I can just say no, you can't do that. You can appeal me and then maybe you'll be able to later, but I don't want to delay or complicate or make more expense in this case for you or your colleagues to take disclosure that is irrelevant.

We disagree on what is relevant, but anyway, I think I've said enough and I'm sure the Attorney General might agree or disagree or have a different take, but why don't you finish and we'll go on from there.

MR. FIGEL: I think I have, your Honor. We obviously disagree on the relevance, we disagree on your

Honor's characterization of what the case is about and the relevance of the financial statements to the credit decisions that are issued.

And for the record, I respect your Honor's point of view and you get to make these rulings, but I have an obligation to make a record that we think that the premise is just completely misguided for the real transactions that occurred here.

Thank you.

THE COURT: Thank you.

MR. WALLACE: Your Honor, I'll just -- I'm going to respond very quickly, I'm not going to get into the substance of the case.

THE COURT: In my discretion --

MR. WALLACE: I apologize, Chris.

For example, Mr. Kise said that the agreements with the banks spelled out exactly what they wanted and whether they were relevant. What the bank wanted were honest financial statements. In fact, they made Mr. Trump and then people running his business sign sworn affirmations that the truth they were giving was accurate and if Mr. Figel or Mr. Kise want to raise factual issues and say no, no, no, even though the bank was asking for sworn, accurate financial statements, they were meaningless, they can make that point and you can rule.

The question before us today is what more discovery are you getting? They've already noticed six depositions from people from Deutsche Bank. So how much more do you need? Isn't -- that's sort of the question we're facing and I guess we're now -- we were being told that we needed six months to do 30 depositions total and now I guess the pitch is we can do them in the additional few weeks that we have.

I just don't think that on the issue of how many more depositions are we going to do over the next few weeks -- I guess realistically, they should notice them, but, an infinite number or 30 even feels silly, but -- and our other point on this was they were free to start issuing this discovery on September 22nd. They knew who their appraisers were, they knew who their bankers were, they knew who their insurers were. They had access to the one million documents that they had produced to us.

So I appreciate it, and I'm not disputing that they're allowed to go find out what happened inside Deutsche Bank, how it was considered and they're doing that. It's painful, slow and repetitive testimony that they've taken so far, but it's there and they're doing it and they're permitted.

And so the question I think we're addressing today is how much more, and 20 seems to me like a fishing expedition and too much and there was -- whatever is on

Mr. Kise's list of paper, it wasn't in the papers that were filed with the Court, we haven't seen them, but nothing we saw in the papers that were filed suggested that we really need another 20 depositions.

MR. KISE: So just briefly, your Honor, just to respond to that, just a couple clarification points.

First of all, there is no way in a case like this -- there's no way in a case like this -- in any case that a complaint is filed and you just start issuing subpoenas, maybe in a car accident case you may be able to do that, but a case like this, you wait for the P.C., the preliminary conference, preliminary conference order, you wait for documents and it's an iterative process and I'm certain that your Honor appreciates that.

With respect to the names and identities of specific witnesses, I've already explained I appreciate Mr. Wallace's point about it's not in the papers, that's by design, so that we don't name a whole bunch of folks.

Without getting into a back and forth, clearly we have different views of the case, that's what the adversarial process is about and certainly you appear to have some different view of the case than we do.

But I'm certain that you are keeping an open mind, and to that end, all we're asking today is not for you to make determinations on who wins and who loses and what

actually comes in and what doesn't, because it's highly premature.

We're just asking, like, give us the opportunity -- we may not take it, we know the schedule you've now given us -- give us the opportunity to talk to a little under half of the people that the Attorney General had three years to talk to.

So 30 depositions, maybe we won't use them all, because we will run out of time based on the existing time schedule, but I can tell you I can identify well over a total of 30 people that we should be able to talk to that are highly relevant witnesses that go to the issues, even the issues as you've identified them. There are 15 alone from Deutsche Bank as Mr. Wallace pointed out --

THE COURT: I thought he said six.

MR. WALLACE: They've noticed six depositions already from Deutsche Bank.

MR. KISE: We've noticed six. This is part of the reason it took us a bit of time to figure out who to depose because when you only have ten and you've got 80 to choose from, or 60, let's call it, to choose from, you have to choose very carefully.

So the idea here is there's quite a number of other people. There's at least nine other people that we know of, actually, I probably consider it more than nine but again,

without expanding the universe, just from that one institution alone. These are people that were involved in the initial transactions that were involved at the core of the dispute here.

And, again, that all gets refined through the crucible litigation process, but we just are asking for a fair opportunity, which we just don't think is a big reach, and we're not really sure why the Attorney General is so opposed to it, we're all interested in transparency.

THE COURT: Well, let's assume that the Attorney General has unlimited assets, lawyers, et cetera, et cetera. How many depositions do you want without changing the timeframes here, the note of issue and trial?

MR. KISE: The twenty-one. The same number.

THE COURT: You want 20 more?

MR. KISE: We want the opportunity to take the same number of depositions, yes, your Honor, we would ask for that. Whether we are able to use it, I can't tell you standing here today, but I certainly don't want to have you say okay, you can go take six or eight or 10 -- first of all, because I think the disproportionality of that is staggering, they've had three years to talk to 80 people plus and we're getting limited and cabined and told that, no, you go over here and look at the evidence we want you to look at, you go focus on what we want you to focus on. You

go talk to the people we want you to talk to. Here are statements from these witnesses. You satisfy yourself with what we asked them.

I mean, it's unheard of in the context of civil litigation in this country, that any plaintiff would tell a defendant, you take the word that we give you, you take our questions, you don't get to cross-examine all these witnesses. It's unheard of -- certainly in my limited 30-plus years of doing this, I've never seen a case like this, particularly one that's this highly profiled, this highly watched.

So if we don't get to take the depositions within the time frame you've allowed, then we don't, and you're the one that's in control of the clock, it's just like a football game.

THE COURT: Give me one second.

(There is a pause in the proceedings.)

THE COURT: You mentioned several times, violating one of my rules. The fact that the Attorney General talked to a lot of people within the last three years or so, but this case is about your documents, okay? So they started at a disadvantage. You know, your documents and your people better than they know your documents and your people, but let's right now or a little later we'll figure out what we can do. Or I'll just decide, if you're going to say 15 and

you're going to say 30, I'll decide what to do.

MR. KISE: With respect to that, your Honor, I'm not talking about the witnesses that I'm talking about here. I'm not talking about our people. There are still roughly 60 third parties, not counting our own people and our own documents and as I've laid out and is undisputed in the record, there's over two million pages of third-party information that we don't understand.

I don't understand how the bank works, I don't understand how certain valuations that they have claimed are accurate or inaccurate and why -- I need to talk to the people. They've obviously talked to these people and come to conclusions, and it's reflected in the complaint.

I should have the same right on behalf of my clients to talk to the same people and ask them questions that go to the defense side of the case. And that's really all I'm asking for.

THE COURT: All right, let's move on to -- time for the other side?

MR. KISE: You want to talk, your Honor, about the scope issues? I can address some of that briefly because I don't think we're as far apart as we may appear.

THE COURT: Let's talk about scope, but briefly, we've been going at this for a while now.

MR. KISE: Certainly.

First of all, we're probably not as far apart as it may appear on the papers. We're not seeking grand jury materials, we're not seeking investigative materials that don't have anything to do with the facts that are at issue here.

I can understand, and meet and confer like we've had a good session today and I think in the past, where we talk those issues through is probably the best resolution of that today, because I'm not interested -- if the New York Attorney General was conducting investigations of these other entities or individuals on some other context, I'm not interested in getting at that.

I can see how they could read our subpoena to call for those types of things. I understand that, but I think we can work that out. We've already had some conversations with the third-party counsel where we've made that clear.

We also are not seeking duplication of efforts. The last thing I want into this schedule is to have someone reproduce to me everything that I already have, and so again, I can see how one could look at the subpoena and interpret it as, well, you're asking for things that have already been produced. Well, that's what the process of counsel conferring with one another, we've already done that with the third parties, we're happy to do it with the Attorney General to try and sort all this out.

I just think that taking up time today to debate it in too much detail may not be a productive use of the Court's time, I think we can work through this.

As to the production issues, I will say this, I do -- I will take responsibility for this, owe them some production on behalf of the various Trump defendants. We have been working very cooperatively on -- as they have reflected in their communication report, on the electronic discovery side, and I mean, at least in my experience as unprecedented, they have direct access to our in discovery vendor because it facilitates the process and I think we've gotten to a point, I hope that we are really close on that issue, as well, it's taken some time, but I think we're there.

But I do owe them some responses on what I'll call the non-E side, on the non-E discovery side, which we should be able to get out to them by the time that they have requested. I think it's March 31st. I think we can make that production begin to happen on the non-E discovery side and maybe even on the E discovery side since we've narrowed the numbers.

Unless your Honor intends to take a more fulsome debate, I don't want to take up more time. I just suggest that we can probably work some of issues out that are represented in the letters and I want to make clear, we're

not seeking grand jury materials.

THE COURT: You are not seeking ...?

MR. KISE: Grand jury materials.

THE COURT: I didn't think you were. You made your point.

Let's hear, generally or specifically from the Attorney General. They went on for a long time, so be brief.

MR. WALLACE: I will try, your Honor, to succinctly go through the position.

One, I'm glad to hear the productions are going to be coming. I think what our requests have been was for a date certain for the production to be complete, because while we have been going back and forth it does remain an obligation of the defendants to produce to us responsive documents. That was our request for a date certain of production by March 31st.

There is another discovery issue directed to defendants, which was the responses to our interrogatories, which were primarily objected to because they were really 1,600 because we multiplied 50 by all the defendants. There are single corporate entities, they're officers of that entity. I would hope that they were able to respond to the contention interrogatories substantively and that we can get an updated response to the rogs.

MR. KISE: Two things, your Honor. One, on Mr. Wallace's first point, we can get -- I think we can commit to getting them the non-E discovery documents by the 31st. Maybe I wasn't clear when I was standing up there.

On the E side, because I'm not the E discovery person, I don't know the answer to that, other than to say that counsel on both sides have been working -- as I've said, extraordinarily cooperatively. They have access to our E discovery vendor. I don't want to put a date certain on E discovery commitments because I don't know the answer to that question. I don't think it's going to take too much longer based on what I saw in the summaries, but I would want the opportunity to confer with the counsel that we've been working with and with the E discovery vendor so we can commit to some deadline.

But in terms of the non-E discovery documents, the items they're mentioning, I don't see any problem with the March 31st deadline.

MR. WALLACE: That's fine. I think we can -- what we can do is we hear a deadline on the E part, we can just submit a letter if there's a dispute, but I think sometimes a firm deadline helps in the process.

THE COURT: Is that like knowing that you are being hung in two weeks focuses the mind?

MR. WALLACE: Correct.

I assume if defendants are also capable of -- I'd essentially say conforming the original interrogatory requests to match the contention rogs where the parties were able to respond?

MR. ROBERT: I'll address that for a moment, your Honor.

We still have our objections as to their interrogatories. No matter how you slice or dice it, this Court's order limited it to 50 interrogatories. We would have liked more, the Court had its ruling, we accepted that ruling.

The way the interrogatories are drafted, Mr. Wallace is correct, it really counts as more than a thousand interrogatories.

In my career, I've never seen a question that's asked of all 16 defendants and worded in such a way and even within those 38 questions, some of those questions, as outlined in our letter, had various subparts to it.

My suggestion to the Attorney General would be if you'd like to serve 50 interrogatories and specifically say which ones are for my client, which ones are for the President, which ones are for which company, we're happy to comply pursuant to the CPLR.

To the extent we have a disagreement as to language in the interrogatory, which usually happens, there's a meet

and confer, the parties can discuss it and we answer it subject to the objections.

But in its current state, the way those interrogatories are worded, in addition to the -- in addition to the number being far excessive the language that's in there addressed to all 16 defendants makes it impossible to answer.

The Attorney General's suggestion was, well, have each one answer part of each question. That's not the way interrogatories work under the CPLR. It's one plaintiff asks one defendant a question, that defendant then answers the question.

So if they'd like to re-serve them, we're happy to deal with it in that way.

THE COURT: Well, I have my own thoughts, but let's hear from plaintiff first.

MR. WALLACE: These aren't 16 defendants. These are a unified corporation -- it is a corporate entity -- and I know they're going to raise defenses that 40 Wall LLC has nothing to do with -- is a completely separate entity -- I understand what the defense's position is, but they have an obligation to go to their executives, like Eric Trump, Donald Trump Junior, Allen Weisselberg, although, there may be problems getting access to him these days, but it was their obligation to go to their executives and to the

component corporate parts and get the answers that they can answer.

I feel like this is elevating --

THE COURT: Form over substance.

MR. WALLACE: -- form over substance who -- where we're asking people about company loans in testimony and being told, it's all Donald Trump's pocket, you can move it from one pocket to the other.

And so when it's convenient, I want to have an intercompany loan, but I don't want to put it on a record, doesn't matter, it's Trump's money, but, oh, the interrogatory needs to be divided up into 16 different parts. You know, we can reissue, we can issue it to one entity that every party it is responsible for will have the answer, but I really do think it's form over substance at this point.

MR. ROBERT: Respectfully, it's not form over substance.

If they want to issue interrogatories to that one entity, it's what that one entity knows. Forgetting about the interrogatories that have seven or ten parts, for example, interrogatory three: For each defendant, describe in sufficient detail your business transactions relating to real property, and it goes on.

So right then and there, for each defendant that

means I'm asking it 16 times, but is it what Eric Trump's understanding is of President Trump's feeling, as well? President Trump's understanding of what Don Junior's was? It's saying for each defendant.

These are impossible to answer, beyond the fact it is well beyond the 50 that this Court ordered.

So if Mr. Wallace wants to rethink in terms of I will issue 50 of those, targeted at a specific defendant to answer, I think that would be the appropriate way to proceed.

Thank you, sir.

THE COURT: I don't want to bring this up, but I will. Do you need to sue all 16 of these entities? You probably have thought about that or not thought about that. It would make things simpler if you could cut that back.

MR. WALLACE: I guess we could consider that.

THE COURT: Just consider it.

MR. WALLACE: But as you know, your Honor, a loan will go to a specific entity and so if there needs to be a financial recovery, we need to have -- we can look at it. We can reissue.

THE COURT: Why don't we do this, if this works, reissue them, if there's a problem, and there probably will be, I'll make some sort of decision.

And the defense or the objection based on subparts,

that's a philosophical issue. You have 50 questions, but if they have subparts, then maybe it's 150. So maybe you can restrict that more.

So I'm asking plaintiff to reissue, cut down as much as you can, simplify as much as you can and we'll see if there's an objection and I'll rule.

MR. ROBERT: Thank you, sir.

MR. WALLACE: I do think on the question of scope -- we sort of had the statement from the defendants that they're not looking for grand jury material, but certainly document requests are calling for communications with the District Attorney's office, document requests are calling for communications with bank regulators, there are subpoenas to law firms that are the representing parties.

I think it's not just a question of are they specifically asking what did you say when you went into the grand jury.

THE COURT: As I said in my opening remarks, I am somewhat troubled by the possibility that the defendants are saying, oh, you know, this gives us an opportunity to see who is investigating us and what people are saying. I don't think they're proper, for various reasons, and I certainly don't think they're relevant, but Mr. Kise.

MR. KISE: As I mentioned, your Honor, I can be more inclusive, but I know you're mindful of the time.

We're interested in things that relate to the allegations here. So if there are communications between -- look, in a sophisticated environment like this, the individuals don't communicate or the entities don't communicate directly with the Attorney General's office or the investigator, the lawyers do.

And that's what I always do. If someone wants to talk to my client in the context like this, I'm going to talk to them, there's going to be communication, that's why you ask the lawyers about communications.

We're just after basic communications between the parties if the plaintiff, which happens to be the Attorney General here, if the plaintiff talked to a third party, whether directly or through their lawyer, and that conversation or communication related to the subject matter at issue in this case, then I think we're entitled to see it, but if it has to do with something completely outside the scope here, we're not looking for that. We're not seeking to find out, oh, are you investigating us for X, Y and Z? No.

We are looking for basic standard communications that go on all the time. Any time a plaintiff -- or a defendant for that matter, communicates with a relevant third party material witness, the other side is entitled to know about it. That's just Discovery 101.

And that's really at the heart, that's why I say I think that through some meet and confer process we can probably figure out both with the Attorney General, who I'm not really sure has actual standing -- we are not going to get into that today, to object, I think it's for the third parties to object to these subpoenas, but in working with all counsel I think we can come up with a solution, particularly now given your Honor's direction.

THE COURT: Mr. Wallace.

MR. WALLACE: I certainly think we have standing. We are a party to this litigation and a party to the discovery that's happening.

THE COURT: The general rule would be a party has standing to object to subpoenas given to third parties. That's how I understand the law.

MR. WALLACE: I guess --

THE COURT: We can take a vote on it, there are a lot of lawyers out there.

MR. WALLACE: I take it that the proposal is these subpoenas will be narrowly withdrawn, we can narrowly withdraw the debate --

THE COURT: Wouldn't it make sense -- I'm asking everyone here -- to reissue more narrowly based on the objections -- things may get far afield.

MR. KISE: We could do that or we could just do

what we usually do, just work it out with the lawyers.

THE COURT: Fine.

MR. KISE: Because it's faster and will keep things moving faster given the schedule, reissuing things and it is a whole lot of new paper.

THE COURT: Totally agree.

So you will confer?

MR. WALLACE: We will. I think we should try to have this -- it will be painful to have, essentially, I guess, nine law firms on a communication, but maybe we can talk to the defendants before and take it to the third parties.

THE COURT: If we have significant amount more things to go over, should we take a break or are we almost finished?

MS. HABBA: I don't think there is anything.

MR. WALLACE: There's nothing on our agenda, your Honor.

THE COURT: I think the only thing I have to do is decide on the number of deposition witnesses, right?

MR. KISE: Right, your Honor.

THE COURT: Mr. Kise; correct?

MR. KISE: I think that's right. You know what we think.

Maybe we just do that afterwards and not take up

your Honor's time? If we could submit something --

THE COURT: No. I have to do that. Let me consider that.

Anything else that anyone has to say about anything at this point?

MR. WALLACE: We appreciate the time, your Honor.

MS. HABBA: Yes, thank you.

MR. KISE: Thank you.

THE COURT: Why don't you wait two or three minutes and I'll be back -- call it five, there's no such thing as a two-minute break.

(Recess taken.)

THE COURT: Don't you just love Officer Militello's Santorian voice?

I think I've got a ruling for you all on every issue that I left open or ambiguous or I need to be changing.

One. I thought about this long and hard, I'm allowing the Attorney General to issue one set of interrogatories and the fact that there may be 16 answers or two or one, still it's one interrogatory and they will have to decide how they're going to do this and the basic reason is, yeah, it's basically one organization.

Two. Both sides can include subparts in their interrogatories, but please be reasonable about the number

of subparts, let's not have 20 subparts. My experience in litigation is, yeah, there are subparts, but three, four, and I think also, the Attorney General might have had more subparts because the defendants might have had more of the questioning in the instructions.

So Attorney General, you do not need to reissue the interrogatories, because one for 16 is fine and subparts are okay.

And on the much debated question of how many interrogatory -- depositions -- you don't need a genius to do this -- ten more. So the total is 20. And it is in line with my view that this case is not that complicated. It's complex, but it's not complicated.

I'll ask the attorneys to submit a stipulation once they agree to the issues that they agreed they were going to agree on and that's about it for us.

Mr. Wallace, you look --

MR. WALLACE: No, just wanted to state on the record, your Honor, that we've agreed with the defendants that the third party discovery seeking information about other investigations, that the return dates for those third parties would be adjourned until the parties were able to meet and confer and discuss, this way your Honor is not getting a bunch of motions to quash or objections.

THE COURT: I should have said along with those ten

more, I am doubling the number of depositions, I don't want to hear requests for more time on the trial date. That's written in stone.

MR. KISE: And your Honor, with what Mr. Wallace said, suspending the response by the third parties until we meet and confer, that's on the record.

And with respect to the stipulation, we'll submit on the schedule, I just want to make clear it will be in -- at least in the stipulation -- that the defendants aren't waiving their position, as you've acknowledged. I don't want a stipulation to be presumed to be a waiver --

THE COURT: You might want to put that in a stipulation. Yes, I'm not big on waivers.

LAW CLERK: Rather than a stipulation, why don't you consult on a proposed order?

MR. KISE: Okay, that's fine.

MR. FIGEL: Your Honor, point of clarification. I'm not quite sure how to interpret the Court's order with respect to my client who wasn't part of the business after January 2017 and who has a different role even when she was at the organization, I don't see how she can join a collective response.

THE COURT: Attorney General, suggestion? She could just answer the questions with respect to her, to the extent she knows, wouldn't that satisfy --

MR. FIGEL: Well, then, we'll put in a separate response.

MR. ROBERT: Your Honor, with regard to your ruling, are you now saying that what they served on us, we now have to put in 16 responses to all 38 of their questions?

THE COURT: I'd rather you just put in 36 responses --

MR. ROBERT: But on behalf of which defendant is answering? That's the fundamental issue and that's the fundamental objection. If they want to decide these five are for this defendant and these six are for here, that's fine.

THE COURT: Is there going to be disagreement among defendants about what the answers are?

MR. ROBERT: It's what each defendant's knowledge would be as to the other. So if that example I gave you before, defendant's interaction with regard to real estate transactions, is it meaning that I want each defendant to say what their understanding is? Or each defendant as to them and then to their codefendants; and if it's as to each defendant, then it's still -- interrogatory three is now 16 interrogatories.

THE COURT: No, it's one interrogatory with 16 potential answers.

MR. ROBERT: Which would mean we were limited to 15, what we served, and still, the issue comes down to right now, is it that we are answering for each defendant their knowledge as to themselves, or their knowledge as to each of their codefendants?

THE COURT: Each of themselves. Some of these, they may be a single unitary answer.

If it has to be 16 because different levels of knowledge or participation, then it's 16.

MR. ROBERT: Is the Court going to allow us to serve additional interrogatories so that -- with the issue of fairness? Because as we sit right now, that would require over a thousand answers, your Honor.

THE COURT: No, I'm not going to let you issue more, but they're totally separate situations. They have one, you have 16. Fine. But it's one interrogatory. You can answer for 16 or you can answer for 16 individually, unitary, separate, I don't care.

MR. ROBERT: I'm not trying to belabor the issue, I'm just confused, your Honor.

There are 38 interrogatories that they served on all of the defendants.

THE COURT: Right.

MR. ROBERT: As I'm understanding your order now, that would require all 16 defendants to answer all 38

interrogatories.

THE COURT: Yes, unless they can agree to one unitary answer. Yes.

MR. ROBERT: And with that ruling in place, it's still that we were subject to having only 50 interrogatories served on the plaintiff collectively among all --

THE COURT: What do you need to find out from the plaintiff, by the way? This is about your documents and your people.

MR. ROBERT: I respectfully disagree with that, your Honor, because the theory of the case that the plaintiff had is based on the verified complaint that the Attorney General filed. So certain statements that are contained in that complaint, we would be entitled to then ask questions of them as to what was your basis for this statement and what was your basis for that.

Their complaint talks about more than just the statements of financial condition.

Again, we were limited to the 50, there are significant other questions that I know we would like to ask if given the opportunity, including the basis upon which the verification was made attached to the complaint attesting to the fact that the allegations in the complaint were true, which we respectfully submit in some instances was not.

THE COURT: Well, one way we could do this, I

suppose, is you could submit your proposed interrogatories and if there are 100, I'll see if I think they're all valid.

Plaintiff, does that make sense?

MR. WALLACE: I think that the --

THE COURT: When I say submit, I mean to me.

MR. WALLACE: I think we have to answer -- first of all, they were able to answer the RFAs and the contention rogs without this undue burden -- I think this is the defendants taking an extreme position to try and make it seem unreasonable. I don't think that this is a real issue because it is the Trump Organization and they can point out that there are various corporate entities that hold different properties, but there's a group of people, they're sitting on Fifth Avenue, who will be able to find out the answers. This isn't a Parthian Empire.

We actually did answer 1,144 document requests. So, to the extent they want discovery from us, they've been able to ask us for extensive discovery. We got three hundred and, like, ninety-five RFAs, request for admission.

So I think it's something they can work through, I don't think it is the kind of problem that they're presenting now.

MR. ROBERT: Your Honor, if I may, to your point you made a few moments ago, the Attorney General decided to sue 16 individual defendants. They didn't decide to sue one

or two or three. They put in issue these 16 defendants. These 16 defendants are entitled to defend themselves, part of their defense is understanding the plaintiff's claims and the plaintiff's case.

I know their view is it is a simple case. Our view is it is much more complicated than that, and in order for us to mount a proper defense, we're allowed to ask -- or should be allowed -- respectfully -- to find out the theories of their case. Because they elected to bring this as a new proceeding because they elected to have a verified complaint signed by Mr. Wallace, we have questions about the voracity of certain statements.

I understand the Court's ruling now, therefore, I think it would only be fair that we be allowed to ask additional questions, too, because even by the Court's own ruling now, their 38 are well in excess of the 50 and, respectfully, my understanding of the case law is subparts count as a separate and distinct interrogatory.

So our view is even in the most liberal state of viewing this, they still have exceeded the number by 50 significantly, sir.

THE COURT: How do they exceed the number? By the 16 different parties?

MR. ROBERT: Even before you get to that, your Honor, there are certain questions where there are subparts

contained within the questions, and even the subparts would bring the total to over 50, sir.

THE COURT: I understand that, but my ruling is unless there's an unreasonable number, or the subparts are unrelated to the main part, it's only counting as one interrogatory.

MS. HABBA: Sorry, your Honor, hi, how are you?

THE COURT: Good.

MS. HABBA: I just wanted to address one thing that we haven't addressed yet today, which is one of my client's, Mr. Weisselberg, and a little bit of struggle I'm having with the DOC in getting documents to him timely. I've actually made trips myself in person to avoid any delays in furtherance of your order.

What I would like, everybody's consent and, frankly, your Honor's, to understand that for him, I will need additional time. It is not my schedule, I am not permitted to just go in. It's actually taken me, in some cases, over two weeks just to get hold of him by phone by making requests through the DOC.

So, I appreciate that it's not a normal -- I also want to say it's not a normal portion of the DOC, he is not in the normal facility. So what people may understand there to be is not what is for Mr. Weisselberg.

So I need to ask for the Court's tolerance and

understanding, as well as OAG's in regards to my one client having a little more flexibility in terms of responses.

THE COURT: We'll all come back this afternoon and talk about prison reform.

That sounds like a reasonable request. You can't get answers from someone you can't communicate with. If a Court order from me would help, I don't know what jurisdiction I have over Riker's Island.

MS. HABBA: The most efficient way is when I can make the trip out and it often takes the entire day and I have a limited amount of time --

LAW CLERK: Counselor, I am actually very sympathetic to you, I'm a former Corp. Counsel, I've had to do that quite a bit. I think a Court order is very helpful --

MS. HABBA: Great.

LAW CLERK: To the extent that you want to e-mail us one, we will definitely help facilitate that. When you present a Court order to DOC, they jump, when you don't --

MS. HABBA: Yes, I've jumped through many hoops already, I'm on approved lists and all that, but I would appreciate any assistance --

LAW CLERK: E-mail us a proposed order that you need access on an expedited basis --

MS. HABBA: Great.

LAW CLERK: -- copying everyone and we'll get that taken care of.

MS. HABBA: I appreciate it.

THE COURT: Do we need to be more specific about your request for extension of time? Attorney General?

MR. WALLACE: No.

THE COURT: Whatever you need will be reasonable.

MS. HABBA: No.

THE COURT: Anybody? Anything else?

We've been here a long time, I appreciate everyone's patience.

Have a great day.

MR. WALLACE: Thank you, your Honor.

MR. KISE: Thank you.

* * *

CERTIFIED THE FOREGOING IS
A TRUE AND ACCURATE TRANSCRIPTION
OF THE PROCEEDINGS, THIS DATE.

VINCENT J. PALOMBO, RMR

EXHIBIT 9

Fan, Dennis

From: Faherty, Colleen
Sent: Friday, June 2, 2023 11:51 AM
To: Hon. Arthur Engoron; Clifford Robert
Cc: Allison R. Greenfield; Wallace, Kevin; Amer, Andrew; Gaber, Sherief; chris@ckise.net; Christopher Kise; ahabba@habbalaw.com; mmadaio@habbalaw.com; jsuarez@continentalpllc.com; lfields@continentalpllc.com; Garth A. Johnston; armenmorian@morianlaw.com; Moskowitz, Bennet J.; Michael Farina; Viktoriya Liberchuk; jhernandez@continentalpllc.com; iferis@continentalpllc.com
Subject: RE: People v. Trump, Index No. 452564/2022
Attachments: 2023.06.02 - Letter.pdf

Justice Engoron,

As directed by the Court, enclosed please find the AG's response concerning defendants' request to extend discovery and seek a conference. We thank the Court for the opportunity to address these issues.

Respectfully submitted,
Colleen K. Faherty

Colleen K. Faherty | Assistant Attorney General
Executive Division – Federal Initiatives
New York State Office of the Attorney General
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Tel: 212.416.6046 | Fax: 212.416.6009
Colleen.Faherty@ag.ny.gov

From: Hon. Arthur Engoron <aengoron@nycourts.gov>
Sent: Thursday, June 1, 2023 5:25 PM
To: Clifford Robert <crobert@robertlaw.com>
Cc: Allison R. Greenfield <argreenf@nycourts.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Gaber, Sherief <Sherief.Gaber@ag.ny.gov>; chris@ckise.net; Christopher Kise <ckise@continentalpllc.com>; ahabba@habbalaw.com; mmadaio@habbalaw.com; jsuarez@continentalpllc.com; lfields@continentalpllc.com; Garth A. Johnston <GAJOHNST@nycourts.gov>; armenmorian@morianlaw.com; Moskowitz, Bennet J. <Bennet.Moskowitz@troutman.com>; Michael Farina <mfarina@robertlaw.com>; Viktoriya Liberchuk <VLiberchuk@robertlaw.com>; jhernandez@continentalpllc.com; iferis@continentalpllc.com
Subject: Re: People v. Trump, Index No. 452564/2022

[EXTERNAL]

Dear Counselors,

As is my wont, I will give plaintiff until noon tomorrow (Friday) to respond before deciding anything.

Also, I would like, by that same time, defendants to suggest a revised pretrial schedule that still allows for the trial to commence on October 2, 2023.

Justice Engoron

Art Engoron
646-872-4833

Sent from my iPhone

On Jun 1, 2023, at 4:53 PM, Clifford Robert <crobert@robertlaw.com> wrote:

Dear Justice Engoron:

Please see the attached correspondence.

Thank you.

Respectfully submitted,

Clifford S. Robert
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<Letter to Judge Engoron with Exhibits A-B.pdf>

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June 1, 2023

VIA EMAIL

Hon. Arthur F. Engoron
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

This firm represents Defendants Donald Trump, Jr. and Eric Trump in the above-referenced matter. We write on behalf of all Defendants to respectfully request that the Court grant a two-week extension of time for the parties to identify rebuttal experts (from June 5, 2023 until June 19, 2023) and produce rebuttal expert reports (from June 16, 2023 until June 30, 2023). We also respectfully request that the Court schedule a conference to address the remaining discovery deadlines established under the operative scheduling orders, dated March 24, 2023 (NYSCEF Doc. No. 598) and May 1, 2023 (NYSCEF Doc. No. 628) (collectively the "Scheduling Orders").

Pursuant to the Scheduling Orders, the parties exchanged their expert reports late last Friday evening, on May 26, 2023. The Defendants served eight expert reports and the Attorney General served five expert reports. The Attorney General's expert reports opine on complex issues involving banking, accounting, insurance, real estate, golf courses, valuations and damages. These reports contain dozens of calculations and hundreds of pages of analysis. The reports themselves establish the complicated nature of this litigation and the complexity of the transactions at issue.

Under the Scheduling Orders, the parties must identify rebuttal experts by June 5, 2023, prepare and exchange rebuttal reports by June 16, 2023, and conduct 13 (and likely more than 15) expert depositions by July 14, 2023. Under this highly-compressed schedule, the parties must also complete all other disclosure, including trial depositions by July 14, 2023.

The original Preliminary Conference Order (NYSCEF Doc. No. 228) allotted the parties three weeks to submit rebuttal expert reports following the exchange of initial expert reports. During the March 21, 2023 oral argument before Your Honor, Defendants' counsel explained that three weeks is not sufficient time to adequately review and analyze these expert reports and prepare

rebuttal reports.[1] During oral argument, Defendants' counsel specifically requested five weeks for all parties to submit rebuttal expert reports so that they could "meaningfully review and respond" to the expert reports (A copy of the March 21, 2023 oral argument transcript is attached as Exhibit A).

Following the March 21, 2023 oral argument, the court issued a revised scheduling order (NYSCEF Doc. No. 598), with which the Attorney General's office agreed, extending the deadline for parties to submit expert witness reports to May 12, 2023 and rebuttal expert reports to June 16, 2023. Under this revised schedule, the parties had **five** weeks to prepare rebuttal reports.[2] By letter dated, April 25, 2023 (NYSCEF Doc. No. 623), the Attorney General's office requested jointly with Defendants' counsel a one-week extension—until May 19, 2023—to submit expert witness reports. Instead, the Court *sua sponte* granted the parties a two-week extension to submit these initial expert reports. The deadline for rebuttal reports, however, remained unaffected. Accordingly, the parties are now left with *only* three weeks to review, analyze, and respond to these expert reports containing complex calculations and valuations of various properties – which is less than the time provided for in the March 27, 2023 Order (NYSCEF Doc. No. 598).

Unfortunately, given the complexities of this lawsuit and the fact that Defendants' counsel could not begin to rebut Plaintiff's expert reports until they were received (the Attorney General served her expert reports after 11:30 p.m. on the Friday night before the Memorial Day Weekend), this timeline is not feasible. Although Defendants' counsel is now in the process of diligently reviewing, digesting, analyzing, and discussing with Defendants' experts the contents of the expert reports, the June 16, 2023 deadline for the exchange of rebuttal expert reports is not realistic.[3]

---

[1] Under Commercial Division Rule 13, expert disclosure "shall be completed no later than four months after the completion of fact discovery." Here, the deadline for the completion of document discovery and depositions was May 12, 2023. Thus, under Commercial Division Rule 13, the parties potentially would have until September 2023 to complete expert disclosure.

[2] Indeed, in other matters involving the Attorney General's office, the parties have at least five weeks— and often more—between the submission of expert witness reports and the rebuttal expert reports. *See, e.g., People v. Credit Suisse Securities (USA) LLC, et al.*, Index No. 451802/2012 (Sup. Ct., New York County) (scheduling order granted the parties more than six months following the submission of expert reports to submit rebuttal reports).

[3] The discretion of the Court to control its calendar and the proceedings is limited by the due process implications of its exercise upon the parties to a litigation. *See Lipson v. Dime Sav. Bank of N.Y., FSB*, 203 A.D.2d 161, 162 (1st Dep't 1994) ("no matter how pressing the need for expedition of cases, the court may not deprive the parties of the fundamental rights to which they are entitled[.]"); *Kellogg v. All Saints Hous. Dev. Fund Co.*, 146 A.D.3d 615, 616 (1st Dep't 2017) ("The motion court erred in not granting the motion [to] extend [ ] time to move for summary judgment where [the litigant] demonstrated that it would otherwise be deprived of a reasonable opportunity to complete discovery")).

As such, on Wednesday, May 31, 2023, we advised the Attorney General of our scheduling concerns and requested a call to discuss amending the schedule as it relates to expert discovery. The Attorney General refused to meet and confer with us by phone, stating: "No need for a call. We are a hard no on moving the expert rebuttal date or the close of expert discovery" (A copy of the above referenced email exchange is attached as Exhibit B).

The two-week extension for all parties to identify rebuttal experts and to produce rebuttal expert reports is both reasonable and necessary and will not result in a delay in this litigation. Thus, we respectfully request a conference with the Court at its earliest convenience. While reserving and maintaining all our rights as set forth on the record on March 21,2023, we believe that we can extend the operative dates and maintain the Court's current trial date of October 2, 2023. However, because of the Attorney General's unwillingness to cooperate, we respectfully request the Court's intervention.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
28 LIBERTY STREET
NEW YORK, NY 10005

June 2, 2023

Hon. Arthur Engoron
Supreme Court, New York County
60 Centre Street
New York, NY 10007

RE: *People v. Trump*, et al., No. 452564/2022

Dear Justice Engoron:

The Office of the Attorney General ("OAG") writes in opposition to Defendants' letter request seeking to: (i) extend the time to identify rebuttal experts by two weeks; (ii) extend the time to produce rebuttal expert reports by two weeks; and (iii) extend the close of discovery in this action by an indeterminate amount time. OAG opposes an extension of expert discovery because it is unnecessary and would only serve to delay and disrupt this proceeding. And while Defendants have not yet provided the revised pre-trial schedule requested by the Court, OAG opposes any change to the date for the note of issue and the subsequent events that follow-on from that filing.

The proposed extension is unnecessary because the parties have had and will have sufficient time to prepare reports and conduct examinations. Both parties have had months to retain and prepare experts. The "complex issues" identified by Defendants – "involving banking, accounting, insurance, real estate, golf courses, valuations and damages" – are self-evident from the face of the Complaint. Indeed the subjects are so self-evident that Defendants retained their own eight experts to cover those subjects.[1] And the OAG reports are straightforward; they largely quantify the scope of the fraud alleged in the Complaint and they rely extensively on documents that come from Defendants' own files. OAG for its part is prepared to submit whatever written rebuttal is necessary in response to the eight experts identified by Defendants by the current deadline of June 16, 2023, and take testimony from the eight or possibly ten experts Defendants are anticipating by July 14, 2023.

Extending expert discovery at the expense of other phases of this litigation makes no sense. While expert opinions may be helpful to the Court, this is primarily a documents case that

[1] Defendants have disclosed two accounting experts, one banking expert, one insurance expert, three experts on real estate covering topics including valuation and economics (two of whom discuss golf course valuation), and an expert on government contracting. Six of the experts are affiliated with firms that have been doing work for the Trump Organization since before this action was filed in September 2022: the valuation firm Ankura Consulting Group, LLC and the insurance broker Lockton Companies.

turns on whether the Statements of Financial Condition are supported by the underlying records of the Trump Organization. Many of the allegations in the Complaint are beyond dispute. As a result it is more important for the parties, and the Court, to have sufficient time to brief and decide summary judgment so as to resolve or potentially narrow issues for trial. Under the current schedule, oral argument on summary judgment is set for September 8, 2023, less than a month before trial. Extending that period any further would undermine the ability of the parties and the Court to efficiently prepare for trial. As a result, OAG objects to any alteration to the schedule that would move the note of issue date.

It is difficult to credit Defendants' most recent claim that due process requires an extension, or that the time provided is insufficient to meet the needs of the parties. Defendants have made it a routine practice to fritter away time and contend that deadlines are "not feasible" or "not realistic." For example, in March, Defendants sought a delay of (at least) six months in the date of trial, telling the Court that they needed more time to conduct discovery. Mr. Kise told the Court that he had a list of "30 specifically identifiable individuals that we think are highly relevant to be deposed." Mar. 21, 2023 Hearing Transcript, Def. Letter, Ex. A at 36. The Court granted Defendants an additional ten depositions beyond the ten provided for by the rules, for twenty depositions in total. But defendants never used that allocation. Indeed Defendants only took nine depositions in total, not even utilizing the ten they had as of right. Those nine depositions took place over eleven weeks.[2] The pre-trial schedule set by the Court in November provided more than enough time to conduct nine depositions if Defendants had been diligent in pursuing discovery.[3] So too here, three weeks is more than enough time for the parties to prepare rebuttal expert reports.

Defendants have sought to delay virtually every deadline in this proceeding. If expert discovery is delayed, we fully expect that Defendants will next tell us that there is not enough time for summary judgment, or witness lists, or deposition designations and eventually trial. There is no reason expert discovery cannot be completed on the timeline provided for in the current schedule, and so there is no reason to insert delay at this phase of the litigation.

Respectfully submitted,

Kevin Wallace
Senior Enforcement Counsel
Division of Economic Justice

[2] Notably, despite the list of 30 names Mr. Kise had at the hearing, Defendants did not notice another deposition until April 10, 2023, almost three weeks after the hearing.

[3] Defendants have also been dilatory in responding to discovery as well. OAG is still awaiting verifications on Defendants' revised interrogatories which were produced on April 21, 2023. Defendants have assured us they will be forthcoming on June 13, 2023.

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June 2, 2023

VIA EMAIL

Hon. Arthur F. Engoron
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

This firm represents Defendants Donald Trump, Jr. and Eric Trump in the above-referenced matter. On behalf of all Defendants, further to our letter to the Court, dated June 1, 2023, and in response to Your Honor's request, we write to provide the Court with the following proposed scheduling order, which we respectfully submit is both reasonable and necessary and will not result in a delay of the trial:

Relevant Event	**Current Scheduling Order**	**Proposed Dates**
Rebuttal Expert Identification	June 5	June 19
Rebuttal Expert Reports Due	June 16	June 30
Expert Discovery Completed/ Trial Deps Completed	July 14	July 28
Note of Issue	July 17	July 31
Dispositive Motions Due (MSJ)	July 21	August 4
Opposition To Dispositive Motions Due	August 18	September 1
Reply to Dispositive Motions Due	September 1	September 15
Final Witness Lists, Exhibit List, Deposition Designations, and Proposed Facts Due	August 25	September 8
Pre-Trial Motions and Oral Argument on Dispositive Motions	September 8	September 22
Final Pre-Trial Conference	September 18	September 27
Trial	October 2	October 2

Additionally, this modified schedule will not result in any prejudice to the Attorney General. The Attorney General has had over three years to investigate, prepare, and submit her expert reports but now wants to only provide the Defendants with three weeks to prepare and submit rebuttal reports. This disparity is not just patently unfair but substantially impedes the Defendants' ability to prepare and present an adequate defense in this action.

For the reasons set forth in our June 1, 2023 letter, and subject to our reservation of rights and remedies, including those set forth on the record on March 21, 2023, we respectfully request that the Court grant Defendants' request for an extension of the current discovery schedule.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record

EXHIBIT 10

NOTE OF ISSUE

Calendar No.
Index No. 452564/2022
Justice Assigned: Hon. Arthur Engoron

For use of Clerk

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

THE 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.

NOTICE FOR TRIAL

☐ Trial by jury demanded
☐ Of all issues
☐ Of issues specified below or attached hereto.
☑ Trial without jury

Filed by Attorney for Plaintiff
Date summons served: 9/21/2022
Date service completed: 10/27/2022
Date issue joined: 1/26/2023

Preference claimed under CPLR 3403(a)(1) on the ground that this is an action brought by the State.

Insurance carrier(s), if known:

NATURE OF ACTION OR PROCEEDING

☐ Tort
☐ Motor Vehicle Negligence
☐ Medical Malpractice
☐ Other Tort

☐ Contract
☐ Contested Matrimonial
☐ Uncontested Matrimonial
☐ Tax Certiorari
☑ Other (not itemized above) specify: Executive Law 63(12) Fraud

☐ This action is brought as a class action

Attorney for Plaintiff: LETITIA JAMES, Attorney General of the State of New York,
by Kevin Wallace, Esq., 28 Liberty Street, New York, NY 10005
(212) 416-8222

Attorneys for Defendants: Habba Madaio & Associates LLP
112 West 34th Street, New York, NY 10120
(908) 869-1188

(*Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Trump Organization, Inc. and Trump Organization LLC*)

Attorneys for Defendants:

Continental PLLC
101 North Monroe Street, Tallahassee, FL 32301
(305) 677-2167

(*Counsel for the Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavour 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC*)

Morian Law PLLC
60 East 42nd Street, New York, NY 10165
(212) 787-3300

(*Counsel for Donald J. Trump, the Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC*)

Robert & Robert PLLC
529 RXR Plaza, Uniondale, NY 11556
(516) 832-7000

(*Counsel for Donald Trump, Jr. and Eric Trump*)

Amount demanded: At least $250,000,000
Other relief: Permanent injunction and such other relief set forth in the Complaint

CERTIFICATE OF READINESS FOR TRIAL

For use of clerk

	Completed	Waived	Not Required
1. All pleadings served……	☑	☐	☐
2. Bill of particulars served…….	☐	☐	☑
3. Physical examinations completed.....	☐	☐	☑
4. Medical reports exchanged…….	☐	☐	☑
5. Appraisal reports exchanged…….....	☐	☐	☑
6. Compliance with rules in matrimonial actions……	☐	☐	☑
7. Discovery known to be necessary completed……..	☑	☐	☐

8. There are no outstanding requests for discovery.

9. There has been a reasonable opportunity to complete the foregoing proceedings.

10. There has been compliance with any order issued to Pre-calendar Rules (22 NYCRR 202.12).

11. If a medical malpractice action, there has been compliance with any order pursuant to 22 NYCRR 202.56.

12. The case is ready for trial.

Dated: July 31, 2023

LETITIA JAMES
Attorney General of the State of New York

By: _____

Kevin Wallace
28 Liberty Street
New York, NY 10005
(212) 416-8222

EXHIBIT 11

AMENDMENT TO TOLLING AGREEMENT

WHEREAS the Attorney General of the State of New York and the Trump Organization entered into a Tolling Agreement executed on August 27, 2021.[1]

WHEREAS the Tolling Period was extended to April 30, 2022 pursuant to Paragraph 2 of the Tolling Agreement.

IT IS HEREBY AGREED, by and between OAG and the Trump Organization, that the Tolling Agreement is amended as follows:

Paragraph 1 is amended to read:

"In any action commenced by OAG asserting any Potential Civil Claim, the applicable limitations period shall be tolled as to such Potential Claim for the period (a) beginning on November 5, 2020, and (b) continuing to and including May 31, 2022 (the "Tolling Period")."

Dated May 3, 2022

LETITIA JAMES
Attorney General of the State of New York

By: _____
Kevin Wallace
Senior Enforcement Counsel
28 Liberty Street
New York, New York 10005

THE TRUMP ORGANIZATION

By: _____

Name: Alan Garten

Title: General Counsel

[1] The defined terms used in this amendment are the same as those used in the Tolling Agreement executed on August 27, 2021 and attached as Tab A to this amendment.

TAB A

TOLLING AGREEMENT REGARDING POTENTIAL VIOLATIONS OF THE NEW YORK FALSE CLAIMS ACT AND EXECUTIVE LAW SECTION 63(12)

This agreement ("Tolling Agreement") is entered into by the Attorney General of the State of New York ("OAG") with the Trump Organization[1] (together, the "Parties").

OAG is conducting an investigation of conduct of the Trump Organization and related parties, including their agents and employees, for potential statutory and common-law violations 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. Such potential violations include, but are not limited to, violations of the New York False Claims Act and Executive Law section 63(12). (The State's potential civil claims arising out of this investigation will be referred to collectively as "Potential Civil Claims.")

The Parties believe it is in their mutual benefit and interest to enter into this Agreement in order to permit the OAG to pursue its investigation and to determine whether to commence any legal action or proceeding concerning the Potential Civil Claims.

Accordingly, the Parties agree as follows:

1. In any action commenced by OAG asserting any Potential Civil Claim, the applicable limitations period shall be tolled as to such Potential Claim for the period (a) beginning on November 5, 2020, and (b) continuing to and including October 31, 2021 (the "Tolling Period").

2. In its sole discretion, OAG shall have the right to extend the end of this tolling period from October 31, 2021 to April 30, 2022, provided, however, that OAG exercises such right by on or before October 1, 2021 by delivering notice to counsel for Trump Organization.

3. In the event that OAG asserts any Potential Civil Claim, the Trump Organization agrees not to assert or rely on the Tolling Period as a legal, equitable, or other defense to such Potential Civil Claim.

4. This Tolling Agreement does not constitute an admission or acknowledgment that any particular statute of limitations is applicable to any particular Potential Civil Claim.

5. Nothing in this Tolling Agreement shall be construed as precluding the Trump

[1] As noted in the December 27, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc.; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Organization from asserting a defense, response, or claim of untimeliness as to any Potential Civil Claim brought by OAG; provided that the Trump Organization shall not, in asserting such a defense, response, or claim, rely on the passage of time comprising the Tolling Period. Further, the execution of this Agreement shall not prejudice any party's position with respect to any other defense, response, or claim.

6. In the event a notice or other paper shall be necessary, such service shall be made by first class mail and e-mail to the undersigned.

7. This Agreement may not be extended, modified, or altered except in writing signed by the Parties. This Agreement may be executed in counterparts.

8. The Trump Organization agrees that it is entering into this Agreement knowingly and voluntarily and in express reliance on the advice of counsel.

9. This Agreement shall be governed by the law of the State of New York, without regard to any conflict of laws principles.

10. This Agreement shall not be modified except by a writing signed by the Parties hereto.

11. This Agreement and any execution or modification thereof may be signed in counterparts all of which together constitute the Agreement, and photocopies, electronic, or facsimile copies may be used as originals.

12. Nothing herein is intended to modify, diminish, or supersede any tolling period effected by Executive Order 202.8, issued by Governor Andrew Cuomo on March 20, 2020, and its subsequent extensions, including the extension in Executive Order 202.72. The Parties shall retain any arguments regarding any such tolling period that existed as of November 5, 2020.

13. OAG reserves its right to in the future seek a judicial (equitable) toll of the statute of limitations retroactive to whatever date it chooses.

14. If an issue arises subsequent to the execution of this agreement that OAG concludes constitutes an additional ground for a judicial (equitable) toll, OAG agrees to advise the Trump Organization of that issue at least 7 days prior to the filing of any court papers, and to work in good faith with the Trump Organization to resolve the issue without the necessity of judicial intervention. This paragraph is not binding, however, in the context of a pleading alleging a Potential Civil Claim or an action or other proceeding in which a Potential Civil Claim has been alleged.

15. The Trump Organization reserves any right to oppose such judicial (equitable) tolling on the merits, but agree that they will not assert laches, estoppel, waiver or any other equitable defenses that OAG sat on its rights by not filing any motion, proceeding, or action

between today's date and the date of filing.

16. Each 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.

17. The terms, meaning, and legal effect of this Tolling Agreement shall be interpreted under the laws of New York State.

THE STATE consents to this Tolling Agreement by its duly authorized representative on this 27 day of August, 2021.

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

By: _____
KEVIN WALLACE
Senior Enforcement Counsel
Economic Justice Division
28 Liberty St.
New York, NY 10005
212-416-6376

THE TRUMP ORGANIZATION consents to this Tolling Agreement by its duly authorized representative on this 27 day of August, 2021.

SIGNATURE: _____

NAME (print): Alan Garten

TITLE: EVP/Chief Legal Officer

EXHIBIT 12

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

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

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Defendants[1] hereby submit this reply in support of Defendants' Summary Judgment.

ARGUMENT

I. Defendants' Authority, Disclaimer, And Disgorgement Arguments Are Supported By Record Evidence

The NYAG claims it is "frivolous" for Defendants to argue on summary judgment that (1) the NYAG has failed to meet her burden to present sufficient evidence establishing her authority to pursue her § 63(12) allegations in this case; (2) the NYAG has failed to rebut Defendants' showing that the SOFCs contained disclaimers that put reasonable users on notice not to rely upon them; and (3) that disgorgement is not an available remedy in this case. (NYSCEF 1277 at 51–55). The NYAG claims that since Defendants "have plowed this same field twice before without success," at the preliminary injunction and motion to dismiss stages (NYSCEF 1277 at 51–53), these arguments are now somehow precluded at the summary judgment stage. However, such arguments ignore basic tenets of civil procedure, misapprehend and mischaracterize the Defendants' position, and deliberately distort the record.

A. Basic New York Practice Belies the NYAG's Position

Any party to a civil action is permitted to raise arguments at the summary judgment stage, when where those arguments proved unsuccessful at an earlier stage of the litigation due to the fundamental differences in the applicable burdens of proof and evidentiary standards. *See, e.g.*, *Tenzer, Greenblatt, Fallon & Kaplan v. Capri Jewelry, Inc.*, 128 A.D.2d 467, 469 (1st Dep't 1987) ("Because the two motions are distinguishable, the denial of a prior motion to dismiss a complaint for failure to state a cause of action does not bar a subsequent motion for summary judgment.") citing *M. Dietrich, Inc., v. Bentwood Television Corp*., 56 A.D.2d 753, 754 (1st Dep't 1977));

[1] The First Department dismissed Ivanka Trump from this action, and this Court's ruling on this Motion should reflect such dismissal. (NYSCEF 640).

Friedman v. Conn. Gen. Life Ins. Co., 30 A.D.3d 349, 349–50 (1st Dep't 2006), *aff'd as modified*, 9 N.Y.3d 105 (2007) ("The doctrine of law of the case is inapplicable where . . . a summary judgment motion follows a motion to dismiss, since the scope of review on the two motions differs; the motion to dismiss examines the sufficiency of the pleadings, whereas summary judgment examines the sufficiency of the evidence underlying the pleadings.") (citations omitted); *Bodtman v. Living Manor Love, Inc*., 105 A.D.3d 434, 434 (1st Dep't 2013) ("[C]ontrary to the motion court's finding that its prior denial of a motion to dismiss pursuant to CPLR 3211 precluded it from considering this issue, the prior ruling did not constitute law of the case, given the difference in procedural posture.") (citation omitted); *State v. Barclays Bank of N.Y., N.A*., 151 A.D.2d 19, 21 (3d Dep't 1989), *aff'd*, 76 N.Y.2d 533 (1990) ("The law of the case doctrine . . . is inapplicable here however, for unlike a motion for summary judgment which searches the record and assesses the sufficiency of the parties' evidence, a motion to dismiss for failure to state a cause of action merely examines the adequacy of the pleadings. The two motions being distinctly different, ***defendant had an unimpaired right*** to resort to summary judgment.") (emphasis added). This well-settled precedent refutes fully the NYAG's position.

This Court's rejection of arguments at the motion to dismiss stage simply does not preclude Defendants from raising these arguments again at the summary judgment stage.[2] The Court must now evaluate them in light of the well-developed evidentiary record and free from the motion to dismiss requirement of presuming Plaintiff's allegations to be true. *See Adam v. Cutner & Rathkopf*, 238 A.D.2d 234, 240–41 (1st Dep't 1997).

[2] The Court's prior rulings made no mention of these arguments in the summary judgment context and could not possibly preclude Defendants from arguing that "[u]nlike at the dismissal stage, where the NYAG was afforded the presumption of propriety, the record evidence now undermines fully her purported claims." (NYSCEF 835 at 38).

Indeed, the NYAG has herself pointed to these basic distinctions in burdens of proof and applicable evidentiary standards, arguing previously that the court should not consider certain § 63(12) cases Defendants cited because they were not decided at the dismissal stage, but rather on developed evidentiary records. (*See* NYSCEF 245 at 27) (arguing that the *Domino's* case did not support "Defendants' motion to dismiss *at the pleadings stage*" because the case "suggest[ed] that despite the proof found to be inadequate at trial the action was properly pleaded in the first instance") (emphasis added); (No. 2023-00717, NYSCEF 24 at 32) (arguing that multiple cases, including *Domino's* and *Exxon Mobil*, were "irrelevant because they address whether a particular § 63(12) complaint had plausibly alleged a § 63(12) violation [ ] or whether the facts adduced at a particular trial had proven that the defendants had committed a § 63(12) violation" rather than whether the NYAG's "complaint plausibly alleged conduct that fits squarely within § 63(12)") (citations omitted). The NYAG's sudden claim that Defendants' summary judgment arguments based on the "facts adduced" through discovery are "frivolous" is both untenable and disingenuous.

Nonetheless, the NYAG claims the Court should reject Defendants' authority, disclaimer, and disgorgement arguments because they are "threshold litigation questions of justiciability" that "are no different now that they are being raised in the context of a summary judgment motion." (NYSCEF 1277 at 55.) But, as recognized by an overwhelming line of established law, they ***are different***. Defendants' authority/capacity argument in connection with this motion focuses on the NYAG's failure to introduce sufficient evidence in this record that was obtained through discovery and could not have formed the basis of the arguments supporting the motion to dismiss. The disclaimer argument likewise is based on the actual record evidence. Further, the disgorgement argument had not even been presented previously, thus, there is no good faith basis for arguing

that it is foreclosed by prior rulings because the Court simply could not have considered and rejected arguments that were never before presented.

Defendants have every right to argue on summary judgment that the NYAG failed to prove her claims based on the actual record evidence. The NYAG may disagree with Defendants' legal position, but that does not render Defendants' summary judgment arguments "frivolous."

The NYAG's argument that the First Department rejected Defendants' arguments, thereby precluding any mention on summary judgment is similarly false. The First Department only observed that through § 63(12) the Legislature "authoriz[ed] the Attorney General ***to sue*** for any repeated or persistent fraud or legality." *Id.* (emphasis added). The First Department did not make any determination that such repeated or persistent fraud or legality actually exists *in this case*. Further, the First Department only considered the NYAG's authority at the "dismissal" stage based on what she had "allege[d]" because that was the question before the Court on appeal. *Id.* In that procedural posture, the Court, as it must, accepted the facts alleged as true and did not (and could not) address the now developed evidentiary record. As such, the First Department did not (and could not) relieve the NYAG of her burden *on summary judgment* "to establish a prima facie case" by "produc[ing] admissible evidence to support [her] claims," *Adam*, 238 A.D.2d at 240, including that she has authority to continue to maintain this suit. The First Department similarly did not reject Defendants' disgorgement argument which, as the NYAG concedes, was not made until summary judgment. (NYSCEF 1277 at 54.) Thus, the First Department could not explicitly or implicitly reject a legal argument Defendants never before presented. Instead, it determined only that under § 63(12) the NYAG "*may apply* . . . for disgorgement" and that "the failure to allege losses *does not require dismissal* of a claim for disgorgement." *People v. Trump*, 217 A.D.3d 609, 610 (1st Dep't 2023) (emphasis added). However, as explained *infra* I.D., she may only recover when the

underlying New York statutes that she seeks to vindicate through her § 63(12) action provide for disgorgement as an available remedy. (NYSCEF 835 at 70–74.)

B. Record Evidence Establishes Plaintiff No Longer Has The Authority and Capacity To Maintain This § 63(12) Action

The NYAG fully misapprehends (or deliberately mischaracterizes) Defendants' standing and capacity arguments, labeling them a "rehash" and "frivolous." But such arguments miss the mark by ignoring, willfully or otherwise, the fundamental distinction detailed above between arguments advanced at the injunctive or dismissal stage, and those on summary judgment. Here, Defendants no longer argue relative to threshold legal questions. The prior arguments had their focus on the inability of the NYAG to commence a § 63(12) action based on the facts as alleged, and accepted as true, in her Complaint. The basis of Defendants' argument was that her theory of recovery was flawed as a matter of law, irrespective of the presumption of correctness of the facts plead. Now, however, with the actual record evidence in hand (which was not previously available to Defendants), the summary judgment arguments are based on the fact that there is no legitimate sovereign interest in lawful, private business transactions between sophisticated commercial parties, the NYAG's continued maintenance of a § 63(12) action is improper.

The NYAG's prior opposition to the Defendants' standing and capacity arguments focused on the right and power of her office to commence actions to "enjoin fraudulent and illegal business activity." (NYSCEF 158 at 12.) The NYAG also previously maintained that "§ 63(12) gives OAG the capacity to maintain actions, like this one, alleging that defendants committed repeated or persistent fraud or illegality in conducting business." (No. 2023-00717, NYSCEF 24 at 2.)

But where, as here, the record evidence now establishes there was no misconduct or fraudulent activity, the NYAG ***can no longer maintain*** a 63(12) action, and Defendants are entitled to summary judgment. Indeed, Plaintiff herself acknowledged these limitations on the

scope of her § 63(12) authority, arguing "OAG's authority is circumscribed by the express language of the statute: OAG may sue only those persons who have committed repeated or persistent fraud or illegality in the conduct of business in this State. ***And to obtain relief, OAG must prove its case***." (No. 2023-00717, NYSCEF 24 at 29–30, n.4) (emphasis added). This is precisely the point of Defendants' current summary judgment argument, namely, that ***the NYAG did not "prove its case"*** and is not entitled to proceed further as the conduct at issue is not within the scope of her statutory authority and capacity.

Thus, as in *Exxon*, "here [there is] no evidence adduced" in the record that the certification of the SOFCs "had any market impact at the time they were" submitted, or that those SOFCs had any capacity or tendency to deceive. *People v. Exxon Mobil Corp.*, No. 452044/2018, 2019 WL 6795771, at *5 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 10, 2019). Likewise, in *Domino's*, the court declined to extend the NYAG's police power to disputes over "bilateral business transactions." *People v. Domino's Pizza Inc.*, No. 450627/2016, 2021 WL 39592, at *12 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 5, 2021). Therein, the court determined that commercial disputes (such as those reflected by the record now before this Court) "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." *Id.* at *12 (emphasis in original).

The actual evidence now proves any purported dispute is a strictly private matter between sophisticated commercial parties, and therefore, based, *inter alia*, on *Domino's* and *Exxon*, the NYAG cannot establish a legitimate interest within the proper ambit of the § 63(12) statutory framework. The record evidence establishes that "the transactions before the Court are complex, bilateral business transactions, none of which involve an impact on the public or implicate the public market in any way," meaning that "§ 63(12) simply does not extend to these transactions"

and "the NYAG cannot now stand in those sophisticated counterparties' shoes to vindicate a wrong that the counterparties never complained of and that the Defendants never perpetrated." (*See* NYSCEF 835 at 38–39.) Defendants relied upon loan agreements, contracts, and communications that showed each transaction at issue "was governed by extensively negotiated agreements fully defining the parties' respective obligations, what conduct constituted any breach, and, importantly, the consequences of any breach." (NYSCEF 835 at 37.) This documentary evidence established that the "parties' relationships were fully defined and self-contained" such that the "only parties impacted by the indisputably successful transactions were the specific private parties to those transactions"—leaving no authority for NYAG to intervene. (NYSCEF 835 at 37–38.) Defendants also cited deposition testimony from numerous representatives of the parties to these transactions that established the respective counterparties suffered no harm or injury, and never asserted any default or breach. (*See* NYSCEF 835 at 39–42 (citing deposition testimony of David Williams, Rosemary Vrablic, and Tom Sullivan).) Simply put, the record evidence now properly before this Court on summary judgment establishes that there is no connection between the conduct the NYAG seeks to enjoin, and some harm (or threat of harm) suffered by the People (*i.e.,* the public at large). (NYSCEF 835 at 34.) Thus, based on the actual evidence in this record, the NYAG cannot establish she has any legitimate role in the policing of ***what this record proves are*** private transactions that did not involve any private or public fraud or any impact on the public marketplace. Because the record evidence now proves there is no sovereign interest to vindicate, the action must be dismissed as a matter of law. The ***record here proves*** there is no legitimate sovereign interest in purely private commercial transactions, and thus the NYAG has not made out a case for § 63(12) relief within the appropriate scope of her statutory authority. Simply put, the

record evidence proves the NYAG has no authority to step in a decade later and enforce a private contract provision *post hoc* by providing her own theory of recovery and remedy.

C. The Disclaimers Establish The SOFCs Were Not Misleading

The record evidence now proves the disclaimers formed an integral part of the SOFCs and thus the Defendants are entitled to rely on the validity and impact of those disclaimers.[3] Indeed, the NYAG has not even attempted to introduce any evidence supporting her initial (and untenable) claim that the disclaimers benefit only Mazars. Moreover, those disclaimers, accompanied by the notes to the SOFCs, placed users (like DB and Zurich) on notice they needed to conduct their own analyses with respect to the information contained in the SOFCs when making lending and underwriting decisions.

Each SOFC contained extensive notes and disclosures, and each was accompanied by an Independent Accountants' Compilation Report ("IACR"). (NYSCEF 1029 ("Bartov Aff.") ¶ 19.) The notes, disclosures and IACRs (collectively, the "disclaimers") form one complete, integrated presentation made available to any SOFC user, and thus "must be and are considered together." (Bartov Aff. ¶ 20.) Indeed, consistent with established accounting practices, the SOFC's incorporated the IACRs by reference. *Id*. *See also*, (NYSCEF 872 ("Flemmons Aff.") ¶ 14, Ex. A ¶ 41.) (compilation financial statements are "not relied upon in a vacuum" and must be "reviewed in concert with the accountant's report"). Moreover, while the NYAG "seeks to separate the reporting in the accountants' compilation report from that of the SOFC itself . . . the AICPA standards dictate that they are issued together and mutually dependent." (Flemmons Aff., Ex. A ¶

[3] Although at the preliminary stages of this proceeding this Court held that Defendants were not protected by the SOFC's disclaimers (*See e.g.*, NYSCEF 183, 459), Defendants are entitled to raise disclaimer-related arguments at the summary judgment stage, given that these arguments are now supported by undisputed evidence. Additionally, the NYAG is simply wrong to suggest the First Department rejected Defendants' arguments related to disclaimers in its review of this Court's rulings on the motions to dismiss. (NYSCEF 1277 at 55.) Indeed, the word disclaimer does not appear once in the First Department's decision. *Trump*, 217 A.D.3d 609.

53.) The NYAG has not introduced any evidence to rebut this established accounting practice. Indeed, the NYAG simply "ignores the reality that in all years the accountants' compilation reports and the SOFCs were in fact provided to users together as a unified whole" and that her "own exhibits also confirm that the accountants' report and the SOFCs were issued together, cross-reference each other, and therefore could not reasonably have been viewed by users as separate documents that were not dependent on each other." (Flemmons Aff., Ex. A ¶ 54.) This evidence is unrebutted. The SOFCs also incorporate the IACRs by reference. (Bartov Aff., Ex. A ¶¶ 43, 49 – 50.) Thus, the NYAG's allegation (Complaint ¶13) that "boilerplate disclaimers in the accountant's compilation report accompanying each Statement" should not inure to the Defendants is wholly unsupported by the evidentiary record.

Also, these disclaimers[4] fully and adequately informed users "that the SOFC provided very little assurance and were replete with GAAP departures. . . . ***In other words, user beware***." (Flemmons Aff., Ex. A ¶ 44) (emphasis added.) "[T]he language that . . . Mazars [] put in its accountant's report . . . really served as the highest level of warning to any user of the financial statements." (Robert Aff., Ex. AH at 171:20-25.) "Thus, they put sophisticated users of the SOFCs, such as Deutsche Bank, for whom the SOFCs were prepared, on complete notice to perform their own diligence, which a sophisticated user like Deutsche Bank would have performed anyhow even in the absence of such disclaimers." (Bartov Aff. ¶ 21.)

The inclusion of these disclaimers nullifies any argument the SOFCs had a "capacity or tendency to deceive." Indeed, the SOFCs were not materially misleading, because, *inter alia*, the disclaimers and notes to the SOFCs provided recipients with all the information they needed to

[4] The disclaimers are summarized in the Defendants' motion for summary judgment. (NYSCEF 835 at 41-43, 55-56). The specific language may be found in Robert Aff., Exs. C, D, E, F, G, H, I, J, K, L, M.

make their own informed decisions, including the decision to require additional information from the Defendants and to seek information from other sources.[5] With respect to the loans and insurance policies at issue in this case. These disclaimers identify and describe the numerous departures from GAAP as well as the subjective nature of the SOFC property valuations. (Bartov Aff. ¶ 21.) Thus, the disclaimers "put sophisticated users of the SOFCs, such as Deutsche Bank . . . on complete notice to perform their own diligence. . .." (*Id.*)

D. Defendants' Disgorgement Argument Has Not Previously Been Addressed And Clearly Shows That The Remedy Is Not Available In This Case In Which There Is No Martin Act Claim

As explained above, contrary to the NYAG's suggestion, it is procedurally proper for Defendants to raise on summary judgment, their legal argument that disgorgement is unavailable to the NYAG as a matter of law. *Supra* § I.A.. As presented for the first time[6] in the Defendants' memorandum in support of the motion for summary judgment, disgorgement is *simply not available in this case*. The NYAG labels this argument "frivolous" but fails to offer any substantive rebuttal and/or cite any contrary authority.

While § 63(12) allows the NYAG to recover "restitution," "[d]isgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim." *People v. Ernst & Young, LLP*, 114 A.D.3d 569, 570 (1st Dep't 2014). But there is no basis for disgorgement as a remedy in a § 63(12) case unless there is statutory authorization.

In any § 63(12) case, "the AG can seek penalties available under both § 63(12) and the underlying statute being enforced." *City of New York v. FedEx Ground Package Sys., Inc.,* 314

[5] Robert Unell, an expert on commercial real estate lending, testified that one such disclaimer paragraph amounted to a "worthless clause in the language, [making it so that] no lender relies on these[,]" and that such language was sufficient to "cover the user and their analysis" (Robert Aff., Ex. AL at 183:2-4, 193:17-194:22).

[6] Also as noted above, a legal argument presented for the first time on summary judgment cannot possibly have been rejected previously by either this Court or the First Department. *See supra* at I.

F.R.D. 348, 362 (S.D.N.Y. 2016). However, the NYAG cannot pursue an unenumerated remedy where the Legislature has "provided precisely the remedies it considered appropriate" in the statutes she seeks to enforce. *Grochowski v. Phx. Const.,* 318 F.3d 80, 85 (2d Cir. 2003) (citing *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n,* 453 U.S. 1, 15 (1981)). Disgorgement is simply not an enumerated remedy under § 63(12) alone nor is it available via the statutes underlying the NYAG's Second through Seventh Causes of Action. Section 63(12)'s "text . . . makes clear [that] the State is generally limited to the three enumerated remedies when bringing actions under that provision—injunctive relief, restitution, and damages[.]" *FedEx,* 314 F.R.D. at 361; *see People v. Direct Revenue, LLC,* No. 401325/06, 2008 WL 1849855, at *7–8 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 12, 2008) ("[W]hile the Executive Law and the GBL permit monetary relief in the form of restitution and damages to consumers, the statutes do no[t] authorize the general disgorgement of profits received from sources other than the public."). Likewise, none of the three penal laws underlying the NYAG's Second through Seventh Causes of Action allow for disgorgement. Rather, they provide that a violation constitutes a misdemeanor or felony in varying degrees, thereby subjecting a violator to limited fines and incarceration. *See* N.Y. Penal Law § 175.10 ("class E felony"); *id.* § 175.45 ("class A misdemeanor"); *id.* § 176.30 ("class B felony" if fraud in the first degree).

The NYAG's continued reliance on the *Greenberg* and *Ernst & Young* cases for the proposition that disgorgement is available here is misplaced. In both cases, the NYAG brought a § 63(12) ***and also alleged a violation of the Martin Act, which does provide for disgorgement as an available remedy***. *Ernst & Young, LLP,* 980 N.Y.S.2d at 456 (noting that the NYAG brought causes of action "under New York's Executive Law [§ 63(12)] *and* the Martin Act [General Business Law § 353]"). (emphasis added); *People v. Greenberg,* 27 N.Y.3d 490, 497 (2016)

(finding that disgorgement is "is an available remedy *under the Martin Act*") (emphasis added)). These cases simply confirm disgorgement is only available in a § 63(12) case where the NYAG seeks to enforce an underlying statute that provides for disgorgement as an available remedy. ***The NYAG has not identified a single New York case where disgorgement was awarded under § 63(12) where the underlying statute did not provide for disgorgement.*** Defendants are therefore entitled to summary judgment on the NYAG's claim for disgorgement.[7]

II. The First Department's Holding Mandates Dismissal

A. All Causes Of Action Are Untimely To The Extent They Are Based On At Least 7 Of The 10 Transactions At Issue

The NYAG ignores the clear mandate of the First Department, claiming in her opposition that Court held "that only Ivanka Trump had engaged in conduct that fell altogether outside of [the statutory periods], but otherwise rejected the remaining Defendants' arguments for dismissal based on the limitations period." (NYSCEF 1277 at 56). Indeed, the NYAG completely ignores that the First Department expressly and affirmatively dismissed the NYAG's claims *as to all Defendants*—not just Ivanka Trump—to the extent those claims are based on transactions that were completed outside of the applicable statutory periods. *Trump*, 217 A.D.3d at 610 (dismissing "as time-barred, the claims against defendant Ivanka Trump ***and the claims against the remaining defendants*** to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August

[7] The NYAG has also failed to produce sufficient evidence of any causal link supporting her disgorgement claim. *See J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 91 A.D.3d 226, 233 (1st Dep't 2011) (requiring "a 'reasonable approximation of profits causally connected to the violation.'" (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)), *rev'd on other grounds*, 21 N.Y.3d 324 (2013). The record is clear, the NYAG has not produced evidentiary proof that any alleged misstatement actually affected a financial institution's decision to issue a loan or insurance policy to Defendants or actually caused the Defendants to make any profits. On the contrary, as explained above and in Defendants opening summary judgment brief, testimony from experts as well as representatives of the actual banks and insurance underwriters who executed the financial transactions with the Defendants that are at issue in this case establishes that the banks and insurance companies did not consider the SOFCs and the estimates they contained to be material to their decisions to make certain loans or underwrite particular polices. *See supra* § III.B. (NYSCEF 835 at 33–42.)

2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)" (emphasis added). The First Department then specifically found that "accrued" means when "the transactions were completed", and further held "the continuing wrong doctrine does not delay or extend these periods." *Id.* at 611.

Thus, the NYAG's causes of action against Defendants bound by the tolling agreement are to be dismissed to the extent they are based on transactions completed prior to July 13, 2014, and her allegations against all other Defendants are to be dismissed to the extent they are based on transactions completed prior to February 6, 2016. The First Department provided a roadmap for the Court to follow in implementing this mandate when it dismissed defendant Ivanka Trump from the case. First, the Court determined that Ivanka Trump "was no longer within the agreement's definition of 'Trump Organization' by the date the tolling agreement was executed" and then the Court determined that "[t]he allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016." *Id.* at 611–12. Thus, the Court dismissed all claims against her "as untimely." *Id.* at 612. Far from rejecting Defendants' arguments for dismissal based on the statute of limitations, the First Department imposed a clear mandate for the NYAG, and this Court, to follow.

Contrary to what the NYAG suggests, the closing dates of the loans at issue necessarily establish when each allegedly fraudulent transaction was "completed" and the statute of limitations began to run. *Id.* at 611. The NYAG's argument that these closing dates are "not relevant" (NYSCEF 1277 at 61) for determining accrual dates contravenes the First Department's decision and the cases cited therein, is unsupported by New York law and is merely an attempt to hide from the undisputed fact that many of the transactions at issue were completed prior to July 13, 2014 making them untimely as to all Defendants—regardless of the tolling agreement's applicability.

See Trump, 217 A.D.3d at 611 (citing *Boesky v. Levine*, 193 A.D.3d 403, 405 (1st Dep't 2021) ("cause of action for fraud accrued . . . when plaintiffs entered into the allegedly fraudulent transactions"), and *Rogal v. Wechsler*, 135 A.D.2d 384, 385 (2d Dep't 1987) ("Statute of Limitations commences to run at the time of the execution of the contract.")).

The First Department's holding that claims based on loan transactions accrue when they are completed—i.e., when the loan closed—accords fully with New York accrual jurisprudence. The Court of Appeals has "repeatedly rejected accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach." *ACE Sec. Corp. v. DB Structured Prods., Inc.,* 25 N.Y.3d 581, 593 (2015) (citations omitted). Thus, claims based on a loan accrue upon "closing" and obligations based on those loans are "breached, if at all, on that date." *Id.* at 595; *see Deutsche Bank Nat'l Tr. Co. Tr. for Harborview Mortg. Loan Tr. v. Flagstar Cap. Markets Corp*., 32 N.Y.3d 139, 148–49 (2018) ("Defendant therefore breached the representations and warranties, 'if at all,' on the closing date for each group of loans, because the representations and warranties with respect to each loan were either true or false on that date.") (citation omitted); *Deutsche Bank Nat'l Tr. Co. v. Barclays Bank PLC*, 34 N.Y.3d 327, 334 n.3 (2019) ("limitations period began to run on the closing date of each transaction") (citations omitted); *Bank of N.Y. Mellon v. WMC Mortg., LLC*, 151 A.D.3d 72, 77 (1st Dep't 2017) (action untimely where plaintiff "commenced the action more than six years after the closing" of the loans at issue); *Barnett v. Countrywide Bank, FSB*, 60 F. Supp. 3d 379, 392–93 (E.D.N.Y. 2014) ("the date of the occurrence of the violation is the date on which the borrower accepts the creditor's extension of credit" and the statutory period runs "from the date of closing of the loan").

The NYAG's positions in this matter show why the accrual period runs from the closing dates of the subject loans. From the outset, the NYAG has made clear that her entire premise of

this action is that Defendants' allegedly "used false and misleading Statements repeatedly and persistently ***to induce banks to lend money*** to the Trump Organization[.]" (NYSCEF 1 ¶ 3) (emphasis added.) In opposition to Defendants' motion to dismiss, the NYAG affirmed her position is that Defendants presented false "[s]tatements to lenders and insurers licensed in New York ***to obtain favorable loan and insurance terms they would otherwise not have been entitled to receive.***" (NYSCEF 245 at 19) (citing *People by James v. Donald J. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2022) (NYSCEF 183), slip op. at 1-2.) Then at the First Department, the NYAG again asserted Defendants submitted false and misleading financial statements "***to obtain significant financial benefits.***" (No. 2023-00717, NYSCEF 24 at 8.)

Therefore, based on the First Department's clear holding, these transactions were "completed" and the limitations period began to run when the Defendants "obtained" the loans by "closing" them. *See Trump*, 217 A.D.3d at 611; *Boesky*, 193 A.D.3d at 405; *Rogal*, 135 A.D.2d at 385; *see also, ACE Sec. Corp.*, 25 N.Y.3d at 594–95. Yet the NYAG simply refuses to acknowledge this unequivocal holding.

The undisputed record on summary judgment shows that seven of the ten lending transactions identified in the Complaint (viz., the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO Bid Selection and Approval, the Doral Loan, the Chicago Loan, and the OPO Contract & Lease) were all completed before the earliest cutoff date for timely claims, *i.e.,* before July 13, 2014. (NYSCEF 835 at 17–25.) These claims simply must be dismissed.

The NYAG does not dispute these closing dates. Rather, she repackages her continuing wrong doctrine theory, arguing now her allegations are timely because Defendants' "continuing obligations . . . under [the] loan covenants" required them to submit and/or certify SOFCs during

the statutory period, somehow extending the date the transactions were completed. (NYSCEF 1277 at 59.) However, the First Department has already squarely rejected that exact argument in this case. *Trump*, 217 A.D.3d at 611 ("The continuing wrong doctrine does not delay or extend these periods."). Indeed, Defendants addressed the NYAG's continuing wrong doctrine argument specifically in the context of loans in their First Department briefing. (*See, e.g.*, No. 2023-00717, NYSCEF 27 at 8–9) ("N.Y. Exec Law § 63(12) claims alleging a fraudulent transaction accrue for the parties to the subject transaction when it closes.") (citing cases)). The NYAG's repackaged argument is barred by the doctrine of the law of the case, *see, e.g.*, *Brodsky v. N.Y. City Campaign Fin. Bd.*, 107 A.D.3d 544, 545–46 (1st Dep't 2013), and is inconsistent with the Court of Appeals' "repeated[ ] reject[ion] [of] accrual dates which cannot be ascertained with any degree of certainty, in favor of a bright line approach," *ACE Sec. Corp.*, 25 N.Y.3d at 593.

B. The First Department Already Rejected The NYAG's New Theory—Improperly Raised for the First Time On Opposition—That Each Certification Of The SOFCs Constitutes An Independently Actionable Wrong

In her opposition brief, the NYAG advances a novel new legal theory arguing that each certification or submission of the SOFCs underlying the financial transactions at issue somehow constitutes a "separate, actionable wrong[ ]" independent from the actual loan transactions forming the foundation for her claims. (*See* NYSCEF 1277 at 59–61.) The First Department already rejected this argument, which in any event is improperly asserted for the first time in the NYAG's opposition brief.

As explained above, from the outset, the NYAG's theory of her case centered around the Defendants' alleged submission of false and misleading financial statements "***to induce banks to lend money*** to the Trump Organization on more favorable terms than would otherwise have been available to the company." (NYSCEF 1 ¶¶ 1–3) (emphasis added). The specified § 63(12)

violations were the use of false statements to "***obtain[ ]*** hundreds of millions of dollars in real estate ***loans*** in reliance on, among other things, Mr. Trump's net worth as reported in [the SOFCs]." (NYSCEF 1 ¶ 560) (emphasis added). That is, use of the allegedly fraudulent misrepresentations ***to obtain*** the loans constitutes the actionable wrong under § 63(12). The NYAG has never before asserted that submission or certification of the statements alone constituted "separate, actionable wrongs." To the contrary, the NYAG alleged in her Complaint that Defendants annual submission or certification of the statements was relevant merely to demonstrate the existence of an alleged "long-running conspiracy" and thereby avoid application of the statute of limitations under a continuing wrongs theory. (*See, e.g.*, NYSCEF 1 ¶¶ 760).

Now, however, the NYAG has changed her theory of the case, arguing that "each" of the allegedly false and misleading certifications and submissions of the SOFCs "are separate, actionable wrongs" such that a new § 63(12) claim "accrued each time any Defendant submitted . . . or certified" a financial statement "representing the financial condition of Mr. Trump or made other misrepresentations about Mr. Trump's financial condition." (NYSCEF 1277 at 59–61.) Based on this new theory, the NYAG now claims that because some of these SOFCs were submitted or certified on or after February 6, 2016, this "giv[es] rise to separate and actionable wrongs against [Defendants] that accrued within the limitations period." (NYSCEF 1277 at 59.)

However, the NYAG is barred from making this new legal argument for the first time in her opposition papers.[8] *Biondi v. Behrman*, 149 A.D.3d 562, 563–64 (1st Dep't 2017) (citing *Abalola v. Flower Hosp.*, 44 A.D.3d 522, 522 (1st Dep't 2007) ("It is axiomatic that a plaintiff

[8] Summary judgment "***is not, for the unsuccessful movant, an opportunity to reformulate its case***." *NexBank, SSB v. Soffer,* No. 652072/2013, 2018 WL 2282884, at *4 (Sup. Ct. N.Y. Cnty. May 18, 2018) (citing *Genesis Merch. Partners, L.P. v. Gilbride, Tusa, Last & Spellane, LLC,* 157 A.D.3d 479, 481 (1st Dep't 2018) (emphasis added)). Thus, "defendants' summary judgment motion should [be] granted" if "plaintiff's opposition papers [are] insufficient absent [a] new theory." *Biondi*, 149 A.D.3d at 564 (citing *Ostrov v. Rozbruch*, 91 A.D.3d 147, 154 (1st Dep't 2012)).

cannot defeat a summary judgment motion that made out a prima facie case by merely asserting, without more, a new theory of liability for the first time in the opposition papers."). A party may not "rais[e] a new assertion in opposition to summary judgment" when doing so "raises [a] new theory of law" and "prejudice[s] the moving party." *Warden v. Orlandi*, 4 A.D.3d 239, 241 (1st Dep't 2004). The NYAG's "separate, actionable wrongs" argument certainly constitutes a new legal theory not previously raised in this proceeding. Such "newly raised [legal] theories cannot be countenanced . . . mere days before trial, particularly when that new information amount[s] to a material alteration of the theory of the [case]." *Lissak v. Cerabona*, 10 A.D.3d 308, 309 (1st Dep't 2004). Indeed, allowing the NYAG to "materially alter[ ] [her] theory of recovery on the eve of trial" would significantly "prejudic[e] defendants." *Kassis v. Tchr.'s Ins. & Annuity Ass'n*, 258 A.D.2d 271, 272 (1st Dep't 1999).

Moreover, the First Department rejected any argument that actions linked to the annual submission or certification of the SOFCs can constitute independent wrongs, separately actionable from the transaction to which they are tied when the court dismissed the NYAG's causes of action against Defendant Ivanka Trump. *See Trump*, 217 A.D.3d at 611–12. Plaintiff argued on appeal that her causes of action were timely as to Ms. Trump because she had signed and submitted a draw request on the OPO Loan to Deutsche Bank ("DB") in December 2016, which request "relied on the Statements and their purported accuracy." (No. 2023-00717, NYSCEF 27 at 11.) As Ms. Trump explained on appeal, the submission did "not trigger a new limitations period . . . because it does not constitute a newly accruing 'wrong.'" (No. 2023-00717, NYSCEF 16 at 27.) Rather, "[a]t most" this submission constituted "a continuing *effect* of a previous, allegedly fraudulent action (i.e. securing the loan)." (No. 2023-00717, NYSCEF 27 at 23 n.7.) The First Department agreed, dismissing all claims against Ms. Trump "as untimely" because "[t]he allegations against

defendant Ivanka Trump do not support any claims that accrued after February 6, 2016." *Trump*, 217 A.D.3d at 612. Thus, the NYAG's "separate, actionable wrongs" argument impermissibly contradicts the First Department's binding holding in this case. *See Brodsky*, 107 A.D.3d at 545–46 ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted); *Kenney v. City of New York*, 74 A.D.3d 630, 630-31 (1st Dep't 2010) ("An appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court . . . [and] operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law[.]"). The NYAG cannot now "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State,* No. 112317, 2011 WL 5528963, at *5 (N.Y. Ct. Cl. Aug. 5, 2011).

C. The Tolling Agreement Plainly Does Not Bind All Defendants

Plaintiff asserts the Court should "defer ruling on the effect of the Tolling Agreement until trial" (NYSCEF 1277 at 57 n.10), but implementation of the First Department's mandate and determination of the claims to be tried and the range of Defendants bound by the agreement prior to trial is both imperative and mandatory. There is simply no discretion. Here, only two lending transactions alleged in the Complaint, the OPO Loan and the 40 Wall Street Loan, were completed before the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.,* February 6, 2016, but on or after the cutoff date for timely claims against those Defendants subject to the Tolling Agreement, i.e., July 13, 2014. (NYSCEF 835 at 18–20.) Accordingly, the NYAG's causes of action based on these two transactions are only timely as to those Defendants who are bound by the tolling agreement. The Court must therefore determine which Defendants are subject to the agreement prior to trial because the only claims that should

advance to trial are those that are (1) levied against Defendants who are bound by the tolling agreement and (2) based on these two transactions.

New York law and the record clearly establish that the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney (collectively, the "Unnamed Individuals"), and/or The Donald J. Trump Revocable Trust ("Trust"). (NYSCEF 1292 at 25–30.) The only lending based claims that arguably should proceed to trial are the NYAG's claims against the corporate entity Defendants that are based on the OPO Loan and/or the 40 Wall Street Loan.

As an initial matter, as detailed in Defendants' Motion for Summary Judgment (*see* NYSCEF 835 at 28–30), Plaintiff is judicially estopped from arguing that the tolling agreement applies to any of the Unnamed Individuals and/or the Trust. The NYAG stated in open court that "Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization.*" (NYSCEF 837 ("Robert Aff."), Ex. C at 34 (emphasis added).) She then advanced the same position before the First Department stating that the NYAG "and the Trump Organization entered a six-month tolling agreement, *to which Mr. Trump was not a party.*" (*Id.* (emphasis added).) The NYAG went on to obtain favorable rulings in connection with those arguments in prior proceedings in this case. (*See* NYSCEF 835 at 28–30.) This is plainly sufficient to invoke the doctrine of judicial estoppel and prevent the NYAG from "advancing a contrary position in [this] action, simply because [her] interests have changed." *Herman v. 36 Gramercy Park Realty Assocs., LLC*, 165 A.D.3d 405, 406 (1st Dep't 2018) (citations omitted). The NYAG's three arguments to the contrary are each without merit.

First, the NYAG claims, without authority, that judicial estoppel applies only to "factual" assertions rather than "legal positions" and argues that her "prior assertion about the binding effect

of the Tolling Agreement on non-signatories is a legal position rather than a factual position." (NYSCEF 1277 at 67.) Plaintiff cites no authority for good reason. A valid tolling agreement constitutes an enforceable contract subject to normal rules of interpretation. *See CMI Cap. Mkt. Invs., LLC v. Buchanan Ingersoll & Rooney P.C.*, No. 15-601951/08, 2009 WL 5102795, at *3 (N.Y. Sup. Ct. N.Y. Cnty. July 30, 2009). Determining which parties are bound by a contract is indeed a ***factual*** inquiry. *See Bowne of N.Y., Inc. v. Int'l 800 Telecom Corp.*, 178 A.D.2d 138, 139 (1st Dep't 1991) ("Whether the parties' conduct evinces a mutual intent to be bound by a purported agreement . . . [is a] question[ ] of fact[.]"); *All Boys Music, Ltd. v. DeGroot*, No. 89 CIV. 8258 (LMM), 1992 WL 51502, at *5 (S.D.N.Y. Mar. 9, 1992) ("[T]he inquiry into intent to be bound" is "factual [in] nature."); *In re Robbins Int'l, Inc*., 275 B.R. 456, 468 (S.D.N.Y. 2002), *aff'd*, 56 F. App'x 55 (2d Cir. 2003) ("[W]hether the parties intended that a corporation would be bound by [a] contract" is "a factual inquiry"); *Trs. of the Mosaic and Terrazzo Welfare, Pension, Annuity, and Vacation Funds v. Elite Terrazzo Flooring, Inc. & Picnic Worldwide*, No. 18CV1471CBACLP, 2019 WL 13414492, at *5 (E.D.N.Y. June 5, 2019) (calling issues "such as which individuals constituted the 'bargaining unit'" contemplated in an agreement "fact-bound questions"). Therefore, the NYAG's prior statements here were factual assertions regarding who is and who is not a party to the tolling agreement (i.e. the Trump Organization was a party and Donald J. Trump was not). The doctrine of judicial estoppel thus applies.

Second, Plaintiff mischaracterizes or ignores the prior proceedings in this case where she benefitted from advancing her tolling agreement positions before this Court and the First Department. In the Special Proceeding, the NYAG argued she would be prejudiced absent her contempt application being granted because "Donald J. Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." (*See* NYSCEF 836 ¶

273). The Court then granted the NYAG's application to hold President Trump in contempt, specifically noting that "each day that passes without compliance further prejudices [the NYAG], as the statute of limitations continues to run and may result in [the NYAG] being unable to pursue certain causes of action that it otherwise would." (NYSCEF 835 at 29.) The NYAG clearly assumed a certain position in that prior proceeding, benefitted from that position, and now attempts to advance a contrary position. That is all that is necessary for the doctrine to apply. *See Herman*, 165 A.D.3d at 406.

Third, the NYAG's argument that the judicial estoppel doctrine should not apply because the *JUUL* case constituted an intervening change in law is meritless. According to the NYAG, the *JUUL* case stands for the proposition that "an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the 'Trump Organization' definition in the Tolling Agreement here." (NYSCEF 1277 at 69.) But the First Department did not read *JUUL* in this manner. Rather, the First Department cited *JUUL* but then went on to find that Defendant Ivanka Trump was not bound by the agreement and left it to this Court to determine the range of defendants bound by the agreement. *Trump*, 217 A.D.3d at 611–12.

But the single mention in *JUUL* of the tolling agreement at issue: "Regarding the General Business Law §§ 349 and 350 claims, the motion court correctly concluded that defendants are bound by the tolling agreement into which JUUL entered with the People." *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). The *JUUL* Court does not provide any reasoning for why it held that the tolling agreement there applied to the company's two co-founders. Nor did the First Department discuss whether the defendant-officers even contested the point. Indeed, as the NYAG argued in its appellate brief, the individual defendants in *JUUL* had acquiesced to the

agreement because they "participate[d] as co-founders, senior executives, and board members in JUUL's signing of the tolling agreement" and had not, at any point prior to the commencement of litigation, attempted to "disclaim the agreement." Br. of Resp't, *JUUL Labs*, No. 2022-03188, 2022 WL 18355250, at *61–62 (Oct. 21, 2022).

Here, as detailed in Defendants motion for summary judgment, the unnamed, non-signatory individuals were ***expressly deleted*** from the agreement and the trust was never included at any point. (NYSCEF 835 at 31–32.) New York law establishes these individuals are not bound by the agreement because they did not sign it and are not named in it. *See*, *e.g.*, *Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Techs. Holdings, Ltd.*, 124 N.Y.S.3d 346, 352 (1st Dep't 2020)*; Gerschel v. Christensen*, 128 A.D.3d 455, 456 (1st Dep't 2015). The NYAG has also produced no evidence to dispute Defendants' showing that communications in the record between the "Trump Organization" and the NYAG surrounding the agreement confirm that the parties did not intend to bind the Unnamed Individuals. (NYSCEF 836 ¶ 269); *see, e.g.*, *Georgia Malone & Co. v. Ralph Rieder*, 86 A.D.3d 406, 408 (1st Dep't 2011) ("officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually"), *aff'd*, 19 N.Y.3d 511 (2012). Simply put, the agreement was executed by a company representative with no authority to bind the individuals or the trust.

Moreover, it is black letter law that the trust could only have been bound by a trustee.[9] Only a duly authorized trustee has the authority to enter into agreements on behalf of a trust. *See* N.Y. Est. Powers & Trusts Law § 11-1.1(b)(17); *Korn v. Korn,* 206 A.D.3d 529, 530–31 (1st Dep't 2022).

[9] In response to this settled law, the NYAG advances the absurd and layered position that since the individuals can somehow be bound by a company representative, and since one of those individuals is a trustee, the trust is therefore bound. There is simply no support for this contortion of established trust law.

Further, the NYAG utterly failed to address Defendants' alternative argument that her prior statements constitute a judicial admission. "[F]acts admitted by the pleadings are binding on the parties throughout the entire litigation," 57 N.Y. Jur. 2d Estoppel, Etc. § 63, and while "not conclusive," judicial admissions "are 'evidence' of the facts or facts admitted." *Matter of Liquidation of Union Indem. Ins. Co. of N.Y.*, 89 N.Y.2d 94, 103 (1996) (citation omitted). Here, Plaintiff filed a signed appellate brief in the contempt proceeding containing the factual statement that "OAG and the Trump Organization entered a six-month tolling agreement, to which Mr. Trump was not a party." (NYSCEF 836¶ 274); (Robert Aff., Ex. AY at 39 n.13, 57). Plaintiff has failed to contest this point on summary judgment.

III. Defendants Are Entitled To Summary Judgment On The First Cause of Action

A. The SOFCs Were Not False Or Misleading

Defendants do not, as Plaintiff asserts, "concede[ ] that the SOFCs are false and misleading." (NYSCEF 1277 at 70.) First, Defendants do not concede Estimated Current Values and market values are "synonymous." (NYSCEF 1277 at 79.) The NYAG misconstrues Dr. Laposa's testimony by stating that "Dr. Steven Laposa confirmed at his deposition that 'market value' is synonymous with 'estimated current value.'" (NYSCEF 1277 at 10 n.1.) Dr. Laposa is admittedly "not an expert on the current value as applied to the statements of financial condition." (NYSCEF 1047 at 82:20–21.) Despite this qualification, when asked if he "underst[ood] if there's a difference between estimated current value and market value," Dr. Laposa stated, "I would say, yes." (NYSCEF 1047 at 83:13–19.) Dr. Laposa expounded on his response, explaining that values could vary depending on "who is doing the estimate of the current values and who is doing the estimate of the market values. And what is the methodology that they are based on." (NYSCEF 1047 at 83:20-24.) Further explaining that "[i]f the current value is based upon investment value,

it's probably going to be different than a current value based on market value." (NYSCEF 1047 at 84:4–7.)

Dr. Laposa then reiterated that "[i]f the current value is based on the market value, it's one thing. If the current value is based on the investment value, that's another. They will not be the same." (NYSCEF 1047 at 85:16–19.) Finally, when NYAG confronted Dr. Laposa with the definition of estimated current value under FASB, he unequivocally stated "No" when asked if "estimated current value" was "conceptually the same as market value." (NYSCEF 1047 at 89:8–11.)[10]

Further, FASB ASC 274, Personal Financial Statements, governs the preparation of compilation reports like SOFCs and affords preparers of SOFCs significant latitude to choose the valuation methods they may use to value assets and liabilities on compilation reports, and leaves it to the discretion of the preparer which method and assumptions to use.[11] (Bartov Aff. ¶ 15, Ex. A ¶¶ 32 – 41.) ASC 274 introduces a definition of value for investment properties that is unique under GAAP, Estimated Current Value. (*Id*.; NYSCEF 836 ¶¶ 53–54.). There is no single generally accepted procedure for determining Estimated Current Value. The implementation guidance of ASC 274-10-55-4 states that for investments in closely held businesses valuation may be based upon, *inter alia*, "[a] multiple of earnings," "[r]eproduction value," or "[d]iscounted amounts of projected cash receipts and payments." And for investments in real estate, ASC 274-10-55-6 states

[10] Note, the actual accounting experts, Jason Flemmons and Eli Bartov testified that market value has a definition distinct from estimated market value under GAAP, and, therefore, the two definitions cannot coexist. (NYSCEF 873 at 176:14–18 ("the definition of value, market value in ASC 820 contradicts the definition of ASC 274. So obviously they cannot coexist."); NYSCEF 871 at 176:2-10 (testifying that the definition of market value contains "language [that is] different than estimated current value under ASC 274).)

[11] Notably, the NYAG ignores this governing standard and simply injects her own unsupported views as to how SOFC values were to have been derived. Indeed, the NYAG's experts, Korologos and Hirsh, perform analyses based on flawed economic assumptions and principles not based on actual accounting guidance. Thus, whether their valuations are acceptable or not based on economic principles, there is no dispute they ignore GAAP and ASC 274.

that available bases for determining Estimated Current Value include "[t]he discounted amount of projected cash receipts or payments relating to property or net realizable value of the property . . . based on planned courses of action." None of these methods hinge substantially on current market conditions but instead focus on a long-term perspective. Indisputably, "[e]stimated current value is not intended to be a market value model." (NYSCEF 871 at 178:20–22.) Indeed, as Bartov testified, when estimating a current value under ASC 274, "if you have a long-term perspective . . . then you will put very little weight on current market conditions." (NYSCEF 873 at 322:14–18.)

Plaintiff baselessly and improperly insists certain prior appraisals were the only appropriate method by which to value certain investment properties on the SOFCs, (*see, e.g.*, NYSCEF 1277 at 70–72, 74), even though GAAP affords preparers substantial latitude in selecting valuation methods and underlying assumptions that may result in substantially different valuations, (NYSCEF 1377 at 8, 12.) Accordingly, the NYAG has no basis to impose her *post hoc* view about which valuation method the preparer of a SOFC was required to use.

Plaintiff's assertion that "Defendants inflated the value of more than a dozen assets in each year by 17–39%," (NYSCEF 1277 at 72), demonstrates a fundamental misunderstanding (or deliberate contortion) of basic, established accounting and valuation principles. There is no such thing as objective valuation either in GAAP, economic theory, or in the applicable laws, regulations, and principles that govern this case. (Bartov Aff., Ex. B ¶¶ 53–65.) Valuation is an opinion about price and therefore subjective, period. (NYSCEF 1047 at 110:24–111:4.) The valuation of an asset is a highly subjective process that depends upon several factors including the selection of a methodology, assumptions, and benchmarks within a methodology, the discretion surrounding presentation, etc. (Bartov Aff. ¶ 15.) Which valuation methodology to choose and which assumptions to apply depends on GAAP, economic theory, and, perhaps most important on

the perspective of the person performing the valuation, because that person picks the valuation methods and the underlying assumptions. *Id*. In order to manufacture its claims that the valuations in the SOFCs were inflated, the NYAG appears to "reverse engineer" its valuations, by first selecting valuations that are substantially lower than the ones reported on the SOFCs, and then backing into the preselected result by choosing the valuation method and assumptions that produces the desired valuation. While Plaintiff asserts that "[f]or many properties" the Defendants allegedly "failed to consider existing appraisals," (NYSCEF 1277 at 72), GAAP and ASC 274 simply do not require preparers of SOFCs to do so when computing alternative SOFC values.

Moreover, it is evident why certain appraisals or values were not used in preparing the SOFCs for specific properties. For example, the Palm Beach County Property Appraiser used "assessed values" for Mar-A-Lago, which offer "minimal value to appraisers," Mark Ratterman, MAI, SRA, *Residential Property Appraisal,* Appraisal Institute at 41–42 (2020).

The appraisals prepared in 2011 and 2012 by Cushman & Wakefield for the 40 Wall Street property made significant and consequential errors driven by flawed market rental rate assumptions, inappropriate terminal capitalization rate selection, and inconsistent per square foot results. (Robert Aff., Ex. AO ¶¶ 34-36, Ex. A at 22–24)[12] Finally, expert testimony provides that the difference between the SOFC value and the 2015 appraisal for the Seven Springs property was minimal. (See Robert Aff., Ex. AO at Ex. A at 20–23.) Again, in accordance with ASC 274, the

[12] NYAG also claims that it was improper for the SOFCs to value the unsold condominium units at Trump Park Ave as if they were unrestricted, (NYSCEF 1277 at 72). However, despite uncertainties regarding the timing of unit vacancies due to tenant rights, rent-stabilized units offer substantial investment upside potential driven by favorable market dynamics, future rental appreciation prospects, and the ability to capitalize on tenant turnover. As tenants maintain long-term occupancy in rent-stabilized units, the disparity between market rents and contract rents widens. Nonetheless, the value of the condominiums underlying these units continues to increase, benefiting from limited supply, high demand for desirable locations, and the introduction of new inventory at premium prices. The owner's ultimate economic opportunity arises when units become vacant, enabling them to reset rents to market rates and realize a significant increase in rental income, or sell the unrestricted units at market prices.

record evidence establishes a valid basis for the SOFCs valuations and rejection of certain appraisals.

GAAP also permit the inclusion of the value of internally developed intangible assets, such as brand premiums, in the valuation of (tangible) golf clubs reported on SOFCs. (Bartov Aff., Ex. A ¶¶ 69–87.) Presenting President Trump's brand value as a standalone entry in the SOFCs is distinct from including his brand value when determining the Estimated Current Value of specific (tangible) investment properties. *Id*. The first primarily represents the value arising from President Trump's ability to capitalize on his brand value in future events such as selling his name to global real estate developers, whereas the second refers to the effect of President Trump's brand value on the value of specific, currently owned properties. (Bartov Aff., Ex. A ¶¶ 71–72, 74–75.) The representation that the SOFCs did not include overall brand value as a standalone intangible asset was therefore accurate. (Bartov Aff., Ex. A ¶¶ 76–79.)

The NYAG also argues that the SOFCs improperly included cash amounts held by separate partnerships over which President Trump "exercised no control." (NYSCEF 1277 at 72.) But, again, the NYAG is incorrect. The SOFCs do not say "cash" but rather cash and certain other items, clearly indicating that items other than cash were combined with cash under this entry on the SOFCs. (NYSCEF 771 at -37; NYSCEF 772 at -717; NYSCEF 773 at -691; NYSCEF 774 at -983; NYSCEF 775 at -842; NYSCEF 776 at -725; NYSCEF 777 at -790; NYSCEF 778 at -248; NYSCEF 779 at -418.) Mazars listed as a potential GAAP departure that certain cash positions were reported separately from their related operating entities, further calling to the attention of the reader that the cash from operating entities was reported separately. (NYSCEF 771 at -035; NYSCEF 772 at –715; NYSCEF 773 at -689; NYSCEF 774 at -982; NYSCEF 775 at -841; NYSCEF 776 at -724; NYSCEF 777 at -792–93; NYSCEF 778 at -250; NYSCEF 779 at -420.)

Further, President Trump fully disclosed the components of "cash" in a footnote as including cash in operating entities. (NYSCEF 771–9 at Note 2; Flemmons Aff., Ex. B ¶¶ 44–47.) Even if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the value of total assets or President Trump's net worth on the SOFCs. (Bartov Aff., Ex. B ¶¶ 89–99.)

Finally, NYAG asserts that "[a]dditional evidence that the People will present at trial (if necessary), including expert opinion testimony, will establish Defendants inflated Mr. Trump's assets to a far greater extent by employing other deceptions" and that "[b]ased on work performed by Plaintiff's valuation experts in correcting the Trump Organization's valuations to properly account for market factors that a willing buyer and willing seller would consider in determining 'estimates of current value,' Mr. Trump's net worth in any year between 2011 and 2021 would be *billions less* than stated in his SOFCs." (NYSCEF 1277 at 64–65.) But (1) the NYAG did not attach these expert opinions and so none of this purported "evidence to come" can be used to defeat summary judgment; and (2) even if they did, they would be insufficient as they fail to satisfy the requisite evidentiary standard.[13]

B. The SOFCs Were Not Materially Misleading

1. Materiality Is An Element of a § 63(12) Claim

The NYAG is entirely incorrect that "the People are not required to show that the victims of Defendants' fraud were *materially* mislead, (NYSCEF 1277 at 10) (emphasis added), and that

[13] While, as noted, under GAAP, there was/is no requirement to support the presentation of Estimated Current Value in the SOFCs with appraisals, if the NYAG wants to challenge the SOFC valuations, she must introduce current, valid expert appraisal data (not just rely on outdated "documents") just to get through the courthouse door, even though same would not necessarily establish the SOFC valuations were false or fraudulent. Estimates of value, rather than a "full appraisal," are "insufficient to raise a triable issue of fact" as to the value of properties. *See White Knight NYC Ventures, LLC v. 15 W. 17th St., LLC*, 110 A.D.3d 576, 577 (1st Dep't 2013) (*citing Trustco Bank v. Gardner*, 274 A.D.2d 873 (3d Dep't 2000)).

"materiality is not a required element of a fraud claim under § 63(12)," (NYSCEF 1277 at 73). First, even the case the NYAG relies on the standard for claims under § 63(12), *People v. Northern Leasing Sys., Inc.*, clearly states that "*[m]aterially* misleading representations violate Executive Law § 63(12)." 70 Misc. 3d 256, 267 (N.Y. Sup. Ct. N.Y. Cnty. 2020) (emphasis added). Second, the definitions of fraud under the Martin Act and § 63(12) are "virtually identical," and caselaw makes it abundantly clear that materiality is an element of Martin Act fraud. *Exxon*, 2019 WL 6795771, at *3. As such, Martin Act and § 63(12) cases alike involve detailed discussions of materiality issues. *See People v. Orbital Publ. Grp., Inc.*, 169 A.D.3d 564, 565 (1st Dep't 2019); *State v. Rachmani Corp.*, 71 N.Y.2d 718, 721 (1988). For example, in *Exxon*, the court found that "there was no proof offered at trial that established *material* misrepresentations or omissions [were] contained in any of" the "public disclosures" at issue in that case. 2019 WL 6795771, at *5 (the court itself emphasizing the word "material"). The court concluded:

> In sum, the Office of the Attorney General failed to prove, by a preponderance of the evidence, that ExxonMobil made any material misstatements or omissions about its practices and procedures that mislead any reasonable investor. The Office of the Attorney General produced no testimony either from any investor who claimed to have been mislead by any disclosure . . . . For all of these reasons, the claims asserted by the Office of the Attorney General under the Martin Act *and Executive Law § 63(12)* are denied, and the action is dismissed with prejudice.

Id. at *30–31 (emphasis added).

The NYAG has not cited any case holding she is exempt from proving materiality. Generally, fraud claims have five elements: (1) a misrepresentation or omission; (2) materiality; (3) scienter; (4) reliance; and (5) damages. *See McGhee v. Odell*, 96 A.D.3d 449, 450 (1st Dep't 2012). According to the NYAG, she need only establish ***one*** of these elements—a misrepresentation or omission. This absurd construct converts § 63(12) into a strict liability statute, where the NYAG need only identify some alleged error or inaccuracy, material or otherwise. Then

all the NYAG need do, as here, is conjure up some competing valuations and claim the Defendants committed "fraud." This flawed interpretation directly contravenes established law. Indeed, if New York intended to eliminate the requirements of materiality in addition to sciwhenter and reliance to establish fraud, they surely would have done so.[14]

Materiality (like reliance) is also certainly relevant in the evaluation of any alleged § 63(12) violation. "[E]vidence regarding falsity, materiality, reliance, and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Domino's Pizza, Inc.*, 2021 WL 39592, at *12.

2. The NYAG Fails To Rebut Defendants' Showing That Any Misstatements In The SOFCs Were Immaterial

The materiality standard under New York law tracks that of the federal courts. *City Trading Fund v. Nye*, 72 N.Y.S3d 371, 378 (N.Y. Sup. Ct. N.Y. Cnty. 2018); *see also Exxon*, 2019 WL 6795771 (turning to federal securities law for its materiality standard). To define materiality in the securities law context federal courts utilize a "reasonable investor" standard, asking whether such "reasonable investor would have found that the information about a quantitative and qualitative impact of the transactions significantly altered the total mix of information available," *People v. Greenberg*, 946 N.Y.S.2d 1, 10 (1st Dep't 2012), *aff'd*, 21 N.Y.3d 439 (2013) (citation omitted), and when evaluating the allegations of a fraudulent misrepresentation claim, "New York takes a contextual view, focusing on the level of sophistication of the parties, the relationship between

[14] Whether materiality and reliance are formally denominated as "elements" of a 63(12) claim or not, where, as here, the NYAG's theory of fraud is predicated on alleged violations of GAAP, the concepts of materiality and reliance are inalienable from and indispensable to the NYAG's claim. The materiality test under GAAP, which is performed from the perspective of the user, necessarily requires that the user relies on the financial statement in order for the financial statement to be materially misleading. If the user did not rely on the financial statement, then, by the accounting definition of materiality, the financial statement is not materially misstated through the lens of the user. (Bartov Aff. pp. 14, 26 – 27.)

them, and the information available at the time of the operative decision." *JP Morgan Chase Bank v. Winnick*, 350 F. Supp. 2d 393, 406 (S.D.N.Y. 2004). Thus, "[s]ophisticated business entities are held to a higher standard," *id.* at 406, and they are expected "to protect [themselves] from misrepresentations," *Solutia Inc. v. FMC Corp.*, 456 F. Supp. 2d 429, 450–51 (S.D.N.Y. 2006). Sophisticated parties include large banks, insurance companies, and multinational corporations—exactly the types of entities relevant to these proceedings. *See, e.g.*, *St. Paul Mercury Ins. Co. v. M&T Bank Corp.*, No. 12 Civ. 6322(JFK), 2014 WL 641438, at *6 (S.D.N.Y. Feb. 19, 2014); *U.S. Fire Ins. Co. v. Gen. Reinsurance Corp.*, 949 F.2d 569, 574 (2d Cir. 1991) (designating "insurance companies" as "sophisticated business entities"); *In re Residential Cap., LLC*, No. 12-12020 (MG), 2022 WL 17836560, at *31 (Bankr. S.D.N.Y. Dec. 21, 2022) (designating "multinational corporation" as "a sophisticated party"). Thus, the NYAG's burden in this case is to show that the SOFCs contained misstatements that would have had an impact on sophisticated banks and insurance companies' decision-making process.

The NYAG continuously asserts the SOFCs contained allegedly inflated values for several properties, but never explains *why* that matters. Executive Law § 63(12) is not a strict liability statute. Differences of opinion among various experts over inherently subjective property valuations cannot form the basis for a valid § 63(12) action. SOFCs are not designed to establish the precise value of a reporting entity, but serve only as the beginning, not the end, of the complex and highly subjective valuation process users such as banks and insurance companies engage in as they perform their own diligence. (NYSCEF 836 ¶ 67.) Banks and insurers know that an estimate put forth in a SOFC, even when written to follow GAAP, is "truly an estimate." (NYSCEF 836 ¶ 67.) This fact, coupled with the disclaimers and their own due diligence eliminates any "capacity or tendency to deceive" thus nullifying the NYAG's claims. Additionally, the SOFCs were not

materially misleading because they did comply with GAAP and ASC 274. The NYAG has failed to rebut this evidence.

a. The NYAG Ignores Reality

The NYAG asserts the Sullivan testimony that he was "'[c]omfortable with the level of assets' . . . says nothing about whether he would have remained 'comfortable' had he learned at the time that Mr. Trump's asset values were grossly inflated through deceptive practices" and that DB's practice of applying "haircuts" does not prove that the "enormous degree" of alleged inflation was immaterial. (NYSCEF 1277 at 77–78.) But ***there is no record evidence*** supporting this untoward assertion.

To the contrary, the periodic credit reports prepared by the Credit Risk Management Group establish that DB performed its own valuation analyses. In doing so, the Credit Risk Management Group did not mechanically apply a 50% haircut to the SOFC valuations. By way of example, the internal DB email cited in Bartov's affirmative report demonstrates DB performed its own valuation analysis and adjusted a reported net worth of $4.2 billion to $2.4 billion and still concluded the Guarantor had "an exceptionally strong financial profile." (DB-NYAG-001776 (May 2, 2014 Credit Report), at DB-NYAG-001790); (Bartov Aff. ¶¶ 24 – 25.) This and other record testimony establishes how DB used the SOFCs as merely estimates or a starting place and conducted its *own* analysis. This comports with the materiality standard that adjusts based on the sophistication of parties who have a burden to protect themselves. *See Solutia Inc.*, 456 F. Supp. 2d at 450–51.

The simple reality (here ignored by the NYAG) is that SOFCs identify assets and provide estimates as to their value, then DB (and all other banks) perform their own, independent analyses when deciding whether to make certain loans and on what terms. (*See* NYSCEF 836 ¶¶ 87, 107 (when DB received a copy of the 2011 SOFC to secure the Trump Endeavor 12 LLC loan described

in the Complaint, DB calculated its own values of President Trump's assets by applying "haircuts" to the values reported in the 2011 SOFC and used ***its own independent judgment*** "in setting the appropriate adjustments to achieve conservative valuations of concentrated assets"; (NYSCEF 836 ¶ 89 (DB "was focused on [its] own independent view, so [it] didn't spend a lot of time determining . . . what was disclosed.").)

Similarly, Plaintiff argues that "bank witnesses did not conduct any investigation to determine whether the SOFCs contained false information (as OAG has done)." (NYSCEF 1277 at 78.) This is wholly irrelevant. The record proves these highly sophisticated banks conducted their own due diligence and risk analysis and then made educated business judgments based on that due diligence and analysis. As demonstrated by that undisputed evidence, the SOFCs therefore did not even have theoretical capacity or tendency to deceive.[15] The NYAG cannot now supplant this evidence and the banks' judgment by inserting her own, uneducated, *post hoc* opinions.

Finally, the NYAG does nothing to rebut the Defendants' evidence that:

1. President Trump maintained a net worth of more than $160 million and liquidity above $15 million as required by the Ladder Capital Loan;
2. Zurich renewed and expanded the surety program at issue in this case and from 2013 through 2015 relied solely on estimates of President Trump's net worth published by Forbes; and

[15] The NYAG also claims, without evidence, that the involved banks would have charged a higher interest rate, (NYSCEF 1277 at 82), or the insurers would have sought a higher premium, (NYSCEF 1277 at 83) but for the alleged misstatements in the SOFCs. This argument is pure sophistry. The record evidence is devoid of any actual documentary evidence or testimony supporting the NYAG's position. Indeed, the record evidence proves the contrary, that the banks were satisfied fully with the subject transactions and the insurers often never even looked at the SOFCs. (NYSCEF 836 ¶¶ 67–68, 70, 93, 85–94, 106–11, 126, 129, 150, 172–76, 180, 182, 185, 197.) The NYAG merely speculates what might have happened but offers no proof to counter the record evidence of what did in fact happen.

3. HCC quoted an excess layer D&O policy to sit above an existing policy without reviewing any financials at all.

(*See* NYSCEF 835 at 47–49.)

b. The SOFCs Complied With GAAP, Preventing Any Finding That The SOFCs Were Materially Misleading

As explained above, the SOFCs were not materially misleading for the additional reason that they complied with GAAP. *See supra* § I.C. The disclaimers together with the notes to the SOFCs identified and described the numerous departures from GAAP as well as the subjective nature of the property valuations. Thus, they put sophisticated users of the SOFCs, such as DB, on complete notice to seek additional information from President Trump as they deemed necessary, and to perform their own diligence (which DB in fact did). (NYSCEF 836 ¶¶ 62, 67–70.) From the standpoint of the user (*i.e.*, DB), both documents must be and are considered together, because both were made available to the user together, and because the SOFCs incorporated the letters by reference. (Bartov Aff. ¶¶ 18–21.) As such, the SOFCs had little or no effect either on the lenders' decisions to extend loans to the Defendants or to set the terms of those loans, or on the insurers' decisions to write coverage for the Defendants and price the risk. (NYSCEF 836 ¶¶ 87–90.)

c. NYAG Does Not Submit Competing Expert Testimony On The Materiality Of Any Alleged Misstatements Contained In The SOFCs

The NYAG does not provide any expert testimony of its own to rebut the expert opinions provided by Defendants for the proposition that the SOFCs were not materially misleading. The NYAG substitutes her own subjective opinion, asserting in a conclusory fashion that the SOFCs were "woefully incomplete" and contained "misleading information" without any citation to expert testimony, or any other source. (NYSCEF 1277 at 84.) But the SOFCs cannot be viewed in a vacuum, and subjective valuations are not "fraudulent" simply because the NYAG says so.

Moreover, the NYAG's attempts to discredit Defendants' expert testimony are without merit. The NYAG asserts that Unell's testimony that banks would have no "reason to have concerns about the accuracy of the SOFCs" is contradicted by the fact that DB ended its business relationship with some of the Defendants following the filing of the pending lawsuit. (NYSCEF 1277 at 84.) This is simply a conclusory, self-fulfilling prophecy and cannot plausibly counter the actual record evidence. The fact of the matter is that the NYAG has not even attempted to show how the SOFCs were materially misleading beyond offering conclusory, and inaccurate, statements about the severity of the alleged misrepresentations or the actual reason DB ended its relationship with the Defendants.

C. The First Department Already Disposed Of, And The Record Does Not Support, The NYAG's Regurgitated Allegations Regarding Several Defendants' Participation In The Alleged Fraud

Several Defendants are entitled to summary judgment on the First Cause of Action because the record is devoid of any evidence that they participated in or had knowledge of the alleged fraud. (*See* NYSCEF 835 at 55–59.) The NYAG's response to this argument is essentially two-fold.

First, the NYAG, again, completely ignores the plain language of the First Department's decision, asserting that Defendants' submission or certification of SOFCs within the statute of limitations period is sufficient to meet the participation and/or knowledge requirement. (NYSCEF 1277 at 80–81.) Contrary to NYAG's assertion, it is her theory that is "fatally flawed." (NYSCEF 1277 at 80.) When this case went before the First Department, the NYAG tried the same argument, asserting that Ivanka Trump should remain in the case because she was "familiar with the true financial condition of the value of Mr. Trump's assets," (NYSCEF 1043 at 15); she negotiated a loan with DB that "included the requirement that Statements be annually submitted and certified

as true," (NYSCEF 1043 at 16); "she served as the 'primary point of contact' for Deutsche Bank on numerous loans as subsequent Statements were submitted and certified as true and accurate,'" (NYSCEF 1043 at 22); and she "personally requested a $4.3 million disbursement from one of those loans in December 2016, and her disbursement request was conditioned on the Statements remaining true and accurate," (NYSCEF 1043 at 35). The First Department could not have been clearer when it held: "The allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016" and "all claims against her should have been dismissed as untimely." *Trump*, 217 A.D.3d at 612. The NYAG simply cannot satisfy the participation and/or knowledge requirement of her § 63(12) claim with allegations almost identical to those alleged against Ms. Trump that were flatly rejected by the First Department.

Second, the NYAG ignores the respective burdens at the summary judgment stage. The NYAG needs to prove all elements of her claim to win at summary judgment, *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985), while the Defendants need only show that a single element cannot be established, *Shea v. Hambros PLC*, 244 A.D.2d 39, 46 (1st Dep't 1998), or that the record evidence is insufficient to establish the required elements, *Mendoza v. Highpoint Assoc., IX, LLC*, 83 A.D.3d 1, 8 (1st Dep't 2011). NYAG asserts "Defendants' analysis focuses on the '[p]reparation of the SOFCs' without any mention of the role any Defendant played in submitting and certifying the SOFCs to the banks and insurers." (NYSCEF 1277 at 80.) That is because, for several Defendants, there ***is no*** record evidence showing their involvement beyond the sort of allegations that did not support any claims against Ms. Trump.

Further, the NYAG does not rebut testimony establishing Eric Trump or Donald Trump, Jr.'s lack of involvement in the creation of the SOFCs, (NYSCEF 835 at 57–58), nor even attempt to explain the participation or knowledge of the property-holding Defendants, Trump Endeavor 12

LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC, beyond the fact that they in fact held property at issue in this case. And for The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member there is no individualized evidence to support a claim for of participation or even imputed knowledge. The evidence is simply insufficient to support the participation or knowledge element for Defendants Eric Trump, Donald Trump, Jr., Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, Seven Springs LLC, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, or DJT Holdings Managing Member.

IV. The NYAG Fails To Meet Her Burden In Response To Defendants' Showing Of Why They Are Entitled to Summary Judgment on Second, Fourth, and Sixth Cause of Action

The NYAG asserts that there is "evidence confirming the false entries were done with the intent to defraud," mentioning in a footnote that all Defendants must have had an intent to defraud because (1) Mr. Weisselberg and Donald Trump, Jr. knew of a discrepancy in the reported square footage President Trump's apartment and (2) "Trump Organization employees were aware" that unsold units in Trump Park Avenue were subject to rent stabilization. (NYSCEF 1277 at 86 n.17, 18.) Clearly such allegations do not suffice to establish an intent to defraud for *all* Defendants, but more importantly, at most, this evidence suggests that parties could disagree about the proper estimated value of the associated properties—this evidence does not establish that Defendants meant to "lead[ ] another into error or disadvantage," *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring), or "to cheat someone out of money, other property or something of value," *People v. Hankin*, 175 Misc. 2d 83, 89 (N.Y. Crim. Ct. Kings Cnty. 1997). For example, as explained above, *supra* at 28, n.12, it was perfectly proper for the SOFCs to consider the full

value of the apartments without rent stabilization when considering the future use of the apartments.

Further, NYAG asserts that "Defendants' intent to defraud is further evident from their numerous overt acts to conceal from Mazars critical information (such as appraisals and internal market prices for Trump Park Avenue unsold units) and from SOFC users wild swings in asset values as circumstances forced them to abandon certain deceptive practices." (NYSCEF 1277 at 86.) The NYAG is essentially arguing that because the SOFCs were false, Defendants intended them to be. But as explained thoroughly herein and throughout Defendants' pleadings, the SOFCs were not false and complied with GAAP. Moreover, NYAG has not explained how most of the Defendants had anything to do with creation of the SOFCs or even knew of their falsity. Without evidence to establish all Defendants even had knowledge of the alleged falsities in the SOFCs, she cannot show there was any intent to defraud. Defendants are entitled to summary judgment on the Second, Fourth, and Sixth Causes of Action.

V. The NYAG Also Fails To Meet Her Burden In Response To Defendants Showing Of Why They Are Entitled to Summary Judgment On The Third, Fifth, and Seventh Causes of Action

The Defendants remain entitled to summary judgment on the Third, Fifth, and Seventh Causes of Action because the evidence does not support all elements of the penal law claims underlying each of the NYAG's conspiracy claims. (NYSCEF 835 at 68–70.) Additionally, the failure of the evidence to support any conspiracy claim in this case should be evident from only a cursory review of the NYAG opposition brief. The NYAG mentions only two Defendants by name in the entirety of this section, (NYSCEF 1277 at 86), making it abundantly clear that the NYAG has not met her burden to show intentional participation of all 15 Defendants. Further, it was entirely proper for the Defendants to re-assert the argument that Defendants cannot be held liable

for conspiracy under the intra-corporate conspiracy doctrine at the summary judgment stage. *See supra* § I (explaining the propriety of repeating arguments at summary judgment).

The NYAG has not seriously attempted to prove a conspiracy in this case, and the record evidence does not support any such claim.

Dated: New York, New York
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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 No. 638), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 13,537 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 15, 2023

Respectfully submitted,

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EXHIBIT 13

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

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

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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The People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submit this Reply Memorandum of Law (with Appendix) and the accompanying Reply Affirmation of Colleen K. Faherty, dated September 15, 2023 ("Faherty Reply Aff."), in further support of Plaintiff's Motion for Partial Summary Judgment (NYSCEF No. 765).[1]

PRELIMINARY STATEMENT

In support of their motion, the People have presented reams of evidence detailing the various deceptive practices Defendants employed to prepare false and misleading personal financial statements that grossly inflated Donald Trump's assets, and hence his annual net worth, that Defendants then fraudulently submitted and certified as accurate to banks and insurers. In response, Defendants fail to raise any triable issue of fact to defeat Plaintiff's motion.

Defendants' principal argument is that when it comes to Mr. Trump's assets, "[t]here is no such thing as true, correct or objective values . . . in economic theory, or in the applicable laws, regulations, and principles that govern this case." Defendants' Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment (NYSCEF No. 1292) ("Defs. Opp. MOL") at 29. Rather, Mr. Trump's assets are worth whatever he believes they are worth from his perspective as a self-described "creative and visionary real estate developer who sees the potential and value of properties that others do not, not on a year to year time horizon but often decades ahead." Defs. Opp. MOL at 20-21. In other words, because there are no true or correct values and the values are whatever Mr. Trump says they are, his financial statements can never be false or misleading.

[1] The defined terms used in this reply brief are the same as those used in the People's opening brief.

Defendants' argument is without merit because under governing accounting rules and the representation contained in Mr. Trump's financial statements, his assets were required to be stated at their "Estimated Current Values." *See, e.g.*, Ex. 1 at -3136. Defendants acknowledge that "Estimated Current Value" is "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell,"[2] which is a far cry from whatever amount Mr. Trump believes an asset is worth from his "creative and visionary" perspective. Indeed, Defendants' assertion that the asset values in Mr. Trump's financial statements are based on Mr. Trump's "creative and visionary" perspective rather than "Estimated Current Values" based on market conditions is sufficient without more to support a finding that the financial statements are false and misleading.

Apart from this argument, Defendants raise a variety of other objections, excuses, conclusory assertions, and expert opinion prognostications without any evidentiary support that are legally insufficient to dispute the many deceptive practices Mr. Trump and his trustees employed to inflate his asset values by at least 17-39% in any given year—amounts which have the capacity or tendency to deceive the users of his financial statements. More specifically, Defendants fail to dispute that they: (i) valued properties far in excess of what appraisals indicated were the estimated current values or market values of the properties; (ii) disregarded legal restrictions that any willing buyer and willing seller would consider in determining "estimated current values"; (iii) used erroneous data to calculate asset values; and (iv) derived values in ways that conflict with representations in the financial statements about how the valuations were prepared.

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[2] Defendants' Response to Plaintiff's Rule 202.8-g Statement of Material Facts (NYSCEF No. 1293) ("Defs. 202.8-g Response") ¶31.

Defendants also disregard the First Department's statute of limitations ruling that § 63(12) claims accrue each time a fraudulent or illegal business transaction is completed, which occurred each time Mr. Trump's false and misleading financial statements were prepared, submitted, and certified to banks and insurers. Rather, Defendants argue that the claims here accrued not on the date when those transactions were completed, but on the closing dates of the loans associated with those transactions. Under this distorted view of the appellate court's decision, even the Defendants' submission and certification of the *2021 financial statement* to Deutsche Bank on the Doral Loan is time-barred because the Doral loan closed in 2012. Defendants' untenable position would effectively give borrowers free license to commit fraudulent business transactions without consequence and upends settled New York law on when claims accrue.

Finally, Defendants raise arguments that this Court and the appellate division have previously rejected—namely, that the Attorney General lacks standing and capacity to bring this action absent public harm, that disclaimers in the financial statements provide a complete defense, and that § 63(12) does not permit the Attorney General to seek disgorgement. These arguments have no more merit now than they did before; they should be summarily rejected.

* * *

The People have established beyond dispute that each of the financial statements from 2011 to 2021 was: (i) false and misleading with the capacity or tendency to deceive; and (ii) was used in connection with fraudulent business transactions with banks and insurers that were completed within the applicable limitations period to obtain favorable financial benefits that Defendants would otherwise not have received. Accordingly, the People are entitled to judgment on their First Cause of Action. In addition, the Court should exercise its discretion under CPLR § 3212(g) to enter an order making detailed findings of fact that Mr. Trump's financial statements

were false and misleading and the submission and certification of those statements by Mr. Trump and his business associates to banks and insurers were fraudulent.

ARGUMENT

I. DEFENDANTS PROFFER NO EVIDENCE TO DISPUTE THAT THE SFCs ARE FALSE AND MISLEADING WITH THE CAPACITY OR TENDENCY TO DECEIVE BANKS AND INSURERS

Once the moving party has made a *prima facie* showing that she is entitled to summary judgment as a matter of law, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial.[3] *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324–25 (1986). Where the opposing party's response to the movant's statement of undisputed facts is "bereft of citations to evidence supporting its contentions," it is "inadequate to the task of contravening [the movant's] statement of undisputed facts" and the court should "deem[] the factual assertions contained in movant's statement . . . to be admitted by" the opposing party. *Callisto Pharm., Inc. v. Picker*, 903 N.Y.S.2d 370, 371 (1st Dep't 2010) (citing *Moonstone Judge, LLC v. Shainwald,* 38 A.D.3d 215 (1st Dep't 2007)); s*ee also Signature Fin. LLC v. Garber*, 159 N.Y.S.3d 38, 39 (1st Dep't 2021) (holding where the opposing party offers nothing but conclusory assertions without evidentiary proof, summary

[3] Defendants argue that Plaintiff's reliance on sworn testimony elicited during the Attorney General's investigative interviews in Plaintiff's 202.8-g Statement is objectionable because of the "coercive nature" of the interviews and their lack of opportunity to conduct cross-examination. *See* Defs. 202.8-g Response at 2 (Preliminary Objection No. 1). This "objection" is without merit. The First Department has specifically held that testimony from investigative interviews "conducted by the Attorney General before an action" is brought is "admissible in support of a motion for summary judgment." *People v. Greenberg*, 946 N.Y.S.2d 1, 9 (1st Dept. 2012), *aff'd,* 21 N.Y.3d 439 (2013); *see also State v. Metz*, 671 N.Y.S.2d 79, 83–85 (1st Dept. 1998).

judgment to the moving party is proper) (citing *Friends of Animals v. Associated Fur Mfrs., Inc*., 46 N.Y.2d 1065, 1067–1068 (1979)).

As discussed below, Defendants fail to raise any triable issues that defeat the People's entitlement to judgment on their First Cause of Action for fraud under § 63(12).

A. Defendants' Attempts To "Dispute" Plaintiff's Factual Assertions Are Legally Insufficient

To a significant extent, in responding to Plaintiff's 202.8-g Statement, Defendants either admit that Plaintiff's factual assertions are "undisputed" or they attempt to raise disputes without record support, which is legally insufficient. *See* Appendix, Tab 1.

For example, in Defendants' 202.8-g Response, they purport to "dispute" nearly 100 factual assertions on the basis that the phrase "Trump Organization" "improperly groups all entity Defendants together without regard for the discrete legal entity of each Defendant and fails to specify as to which named Defendant(s)—or non-Defendant entity—the conduct alleged is attributed." *See, e.g*., Defendants' 202.8-g Response ¶1. This pat response is legally insufficient to create a triable issue of fact. As Defendants admit in their recently-filed verified mandamus petition, "Donald J. Trump is the beneficial owner of a vast number of corporate entities which, although legally distinct, *operate colloquially as the Trump Organization*."[4] Faherty Reply Aff. Ex. 504 (*In re Trump v. Engoron* (1st Dep't filed September 14, 2023), Verified Joint Article 78 Petition at ¶18) (emphasis added). Moreover, Defendants do not cite any record evidence to support the proposition that no Defendants were involved in the asserted conduct, nor do they

[4] This statement in Defendants' verified pleading "constitutes a formal judicial admission and evidence of the fact admitted." *Performance Comercial Importadora E Exportadora Ltda v. Sewa Int'l Fashions Pvt. Ltd.*, 79 A.D.3d 673, 674 (1st Dep't 2010).

assert that only specific Defendants are involved and not others. Such conclusory assertions without evidentiary proof are not enough to defeat summary judgment. *See Garber*, 159 N.Y.S.3d at 39.

In numerous other instances, Defendants do not dispute Plaintiff's factual assertion, but instead offer conclusory assertions that the cited evidence is inaccurate, supported only by speculative statements from their experts that are inadmissible; expert opinions that have no support in the record are legally insufficient to defeat summary judgment.[5] *See Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 (2002) ("Where the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment."); *Roques v. Noble*, 73 A.D.3d 204, 206 (1st Dep't 2010) ("[A]n expert cannot reach a conclusion by assuming material facts not supported by record evidence."); *Amaya v. Denihan Ownership Co., LLC*, 30 A.D.3d 327, 327 (1st Dep't 2006) (finding that expert affidavit has no probative value on summary judgment where it "contained speculative, conclusory assertions" and "cited to various broad or inapt . . . rules, regulations and standards").

B. The Court Should Assess The Veracity Of The SFCs Based On Whether The Assets Are Stated At Their "Estimated Current Values"

Defendants claim that Mr. Trump and his trustees valued assets from Mr. Trump's perspective as "a creative and visionary real estate developer who sees the potential and value of

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[5] Unlike Defendants, the People have chosen not to rely on the opinions of their experts in support of their dispositive motion. But it is not because the People view their experts' opinions to be in any way "flawed" as Defendants suggest. Defs. Opp. MOL at n.12. Rather, it is because the People recognize that the conflicting opinions of the parties' respective experts cannot be resolved by the Court on summary judgment, *Bradley v. Soundview Healthcenter,* 4 A.D.3d 194*,* 194 (1st Dep't 2004), a settled procedural rule that Defendants acknowledge in their own opposition brief but fail to heed, *see* Def. Opp MOL at n.3.

properties that others do not, not on a year to year time horizon but often decades ahead." Defs. Opp. MOL at 21. This "creative and visionary" post hoc rationalization is at odds with the applicable accounting rules and the plain language of the SFCs; as Defendants *concede*, ASC 274 "requires asset values reported in personal financial statements to be based on 'Estimated Current Value,'" Defs. 202.8-g Response ¶30, and the SFCs represented the assets were stated at their "estimated current values," *see, e.g.*, Ex. 1 at -3136. Defendants admit this means the values listed in the SFCs must be the amounts at which the assets could be exchanged between a willing buyer and willing seller, both fully informed and neither under compulsion to buy or sell, *see* Defs. 202.8-g Response ¶31—not at potential values only Mr. Trump sees that "others do not" on a time horizon that is "decades ahead," Defs. Opp. MOL at 21. The Court should reject Defendants' invitation to assess the veracity of the asset values presented in the SFCs on any basis other than what ASC 274 requires, and the SFCs represented, them to be—*i.e.*, "estimated current values."

C. Defendants Fail to Raise Any Triable Issues Of Fact Concerning Their Deceptive Practices In Valuing Assets

In support of their motion, the People submitted substantial evidence establishing that Mr. Trump and his associates employed a number of deceptive practices to inflate the values of 12 assets listed in his SFCs from 2011 to 2021, shifting the burden to Defendants to rebut those assertions with evidentiary proof in admissible form sufficient to establish the existence of triable material issues of fact. *Zuckerman*, 49 N.Y.2d at 562; *Alvarez*, 68 N.Y.2d at 324–25.

As a threshold matter, Defendants' insistence that Mr. Trump "value[d] the properties as he did" based on his perspective as a "creative and visionary real estate developer" is effectively an admission by Defendants that the SFCs are false and misleading because the assets in the SFCs were required to be stated at their "estimated current values," not based on what they were worth from Mr. Trump's perspective, which appears to be a method used to derive "investment values"

rather than "estimated current values."[6] As Defendants' own expert confirmed, "investment values" are fundamentally different from "estimated current value" (which he views as synonymous with "market value"). Affirmation of Clifford Robert (NYSCEF No. 837) ("Robert Aff."), Ex. AAC at 76:9-19; 80:13-21; 90:11-16. Accordingly, the Court should find that the SFCs are false and misleading because they represent to users that "investment values" determined by Mr. Trump are instead "estimated current values," which are fundamentally different.

Apart from this fatal admission, Defendants fail to rebut Plaintiff's factual assertions with evidentiary proof in admissible form sufficient to establish the existence of triable material issues of fact concerning Defendants' deceptive practices and the resulting inflated asset valuations for the reasons discussed below.

1. Asset Values That Far Exceed Contemporaneous Appraisals Are False And Misleading

Defendants do not dispute that they had valuations from appraisers for several of the properties listed in the SFCs in multiple years or that they valued those properties without regard to, and far in excess of, those values.[7] Instead, Defendants argue that they were not required to consider these appraisers' values because appraisals are "only one of several inputs preparers may consider in determining" estimated current values, and further maintain they were under no

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[6] The basis of valuing property from Mr. Trump's perspective fits within the definition of "investment value" according to the "Appraisal of Real Estate" published by the Appraisal Institute, which Defendants' expert Steven Laposa considers the "gold standard." Robert Aff., Ex. AAC at 73:19-74:11.

[7] Defendants do not dispute the existence and the values stated in the 2000 and 2006 appraisals of Seven Springs (Defs. 202.8-g Response ¶50 - 51), the 2010, 2012, and 2015 appraisals of 40 Wall Street (*id*. at ¶78, 85, 104), the 2012 and 2021 appraisals of 1290 Avenue of the Americas (*id*. at ¶233, 253), the Palm Beach County appraisals for Mar-a-Lago (*id*. at ¶199), the 2010 Oxford Group appraisal of rent stabilized apartments at Trump Park Avenue (*id*. at ¶337), or the appraisals for TNGC Briarcliff and TNGC LA (*id* at ¶291, 293-295, 298, 302-304).

obligation under GAAP "to reveal" the appraisers' values "to the external accountant that compiled the SOFC." Defs. Opp. MOL at 22, 25. These arguments are insufficient to establish a triable issue of fact for trial. The appraisers' values reflect what professional appraisers view the "estimated current values" of the properties to be as of dates that are within several months or less of the June 30 valuations dates of the SFCs. Absent competing appraisals for the same time periods or other evidence establishing a change in the property or its value—which Defendants do not offer—the appraisers' values constitute unrebutted evidence of what the SFC values should have been and against which the much higher values listed in the SFCs should be assessed. Moreover, Donald Bender, the "external accountant" at Mazars handling the SFC engagement, asked Jeffrey McConney every year for any appraisals in the company's possession in connection with the engagement and was assured by Mr. McConney that he had received any appraisals the company had, which was not the case. Ex. 421 at 229:9-24; 239:8-16; 242:21-24; 243:6-10. Defendants have offered no evidence to dispute Mr. Bender's testimony. Defs. 202.8-g Response ¶92. Whether GAAP required the company to disclose the appraisals or not, it was false and misleading for Mr. McConney to tell Mr. Bender all the appraisals had been provided when they were not.

Defendants also assert that an appraiser's value is not relevant because it presents "market value," which they contend "is an entirely different measure of value than Estimated Current Value, which is the proper measure of value under ASC 274" for personal financial statements. Defs. Opp. MOL at n.11. But their assertion is contradicted by the testimony of their own expert, Dr. Steven Laposa, who confirmed at his deposition that "market value" is synonymous with "estimated current value." *See* Robert Aff., Ex. AAC at 90:5-91:13.

Similarly unavailing is Defendants' attempt to challenge the "veracity" of some appraisals based on testimony from their expert Frederick Chin. *See. e.g.,* Defs. 202.8-g Response ¶85

(criticizing Cushman's 2012 appraisal of 40 Wall Street). Mr. Chin did not do an appraisal of any of the Trump properties. *See* Ex. Robert Aff., Ex. AN at 64:13-21 ("I haven't rendered any specific appraisal opinions on the properties"). Nor did he follow the accepted methods and techniques established by the Uniform Standards of Professional Appraisal Practice ("USPAP") for conducting an appraisal review. *See* USPAP Standard 3-3 available at https://www.millersamuel.com/files/2021/03/USPAP-Standards-1-4.pdf at p.27 ("In developing an appraisal review, a reviewer must apply the appraisal review methods and techniques that are necessary for credible assignment results."). As a member of the Appraisal Institute ("MAI"), Mr. Chin is required to follow USPAP standards. Affirmation of Clifford Robert in Opposition (NYSCEF No. 1294) ("Robert Opp. Aff."), Ex. AO at pdf 86, ¶71 ("an MAI appraiser . . . is required to adhere to USPAP, which governs the preparation, analysis, and reporting of appraisal results . . . ."). As a result, Mr. Chin's opinions challenging the "veracity" of any appraisal "depart from the generally accepted methodology" for conducting an appraisal review and are therefore inadmissible. *Cornell* v. *360 West 51st Street Realty, LLC*, 986 N.Y.S.2d 389, 403 (2014); *see also Hassett* v. *Long Island R.R. Co.*, 787 N.Y.S.2d 837, 840 (Sup. Ct. Kings Cty. 2004) (holding where the expert's methodology "deviate[s] significantly from the methodology generally accepted" and does not adhere to the standards the expert "himself testified was the generally accepted procedure in his profession," the testimony is inadmissible).

Finally, Defendants attempt to brush aside as irrelevant the Palm Beach County appraisals for Mar-a-Lago, arguing that "assessed values are not the same as" estimated current values. Defs. Opp. MOL at 35. Their argument conflicts with the evidence. The Palm Beach County appraisals provide a "Market Value" defined as "the most probable sale price for your property in a competitive, open market" with a "willing buyer and willing seller." *See, e.g.*, Ex. 98. In other

words, the Palm Beach County appraisals are prepared by professional appraisers using the same definition that applies to "estimated current value"—the basis on which the SFCs represent to users Mr. Trump's asset values are stated.[8]

Because Defendants fail to dispute that the appraisers' values they had in their possession when preparing the SFCs reflect the "estimated current values" they should have used, the Court should find that the much higher values in the SFCs are false and misleading. Such a finding applies to Seven Springs (Pl. 202.8-g Statement ¶75), 40 Wall Street (*id*. ¶114), 1209 AoA (*id*. ¶256), Mar-a-Lago (*id*. ¶200), Trump Park Avenue (*id*. ¶363, 381), and TNGC Briarcliff and TNGC LA (*id*. ¶295).

2. Asset Values That Ignore Legal Restrictions Are False And Misleading

For numerous properties, Mr. Trump and his trustees valued assets without regard to the applicable legal restrictions, even though a *well-informed* buyer and seller would be aware of legal restrictions that apply to a piece of real property and would take those restrictions into account when determining the property's "estimated current value." Defendants advance a number of arguments to explain why the various legal restrictions do not matter. None of their arguments has any merit.

With respect to the multiple legal documents that place onerous restrictions on Mar-a-Lago, pursuant to which Mr. Trump abandoned the right, among others, to use the property for any

[8] Defendants also rely on the opinion of their expert Lawrence Moens that "the values for Mar-A-Lago were higher than SOFC values." Defs. Opp. MOL at 35. Mr. Moens is real estate broker and not a professional appraiser; he presents no analysis whatsoever to support his opinion, which he admitted at his deposition is based on a "fantasy list" of potential buyers that includes "anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state." Robert Opp. Aff. Ex. AAAI at 184:18-20, 186:22. Suffice it to say his opinion is pure speculation that has "no probative force." *Diaz*, 99 N.Y.2d at 544.

purpose other than a social club, Defendants simply ignore the plain language of those restrictive documents, which the Court can construe as a matter of law without any assistance from experts. Defendants also claim the restrictive documents can be amended with agreement by the counterparties, including the National Trust, to remove any of the restrictions. Defs. Opp. MOL at 37-38. Defendants offer not even a scintilla of evidence to suggest that the counterparties would agree to such an amendment, especially given that Mr. Trump has reaped the benefit of the restrictions for many years in the form of lower property taxes, *see, e.g.,* Ex. 98.

With respect to the rent stabilized units at Trump Park Avenue, Defendants assert they can ignore rent stabilization laws because they do not reflect "the property's ultimate highest and best use *which is to sell the individual condominium units unencumbered by rent-stabilization,*" and that Mr. Trump and his trustees have "the latitude to adopt an As If Perspective for purposes of SOFC preparation." Defs. Opp. MOL at 44-45 (emphasis added). According to Defendants, an "As If Perspective" is a method of valuing assets that estimates a property's investment value, which is "the value of the property to a particular investor based on that person's (or entity's) investment requirements rather than market norms." Plaintiff's 202.8-g Statement ¶217. Defendants' "As If" argument for ignoring rent stabilization laws raises no triable issue. The units were subject to rent stabilization restrictions that any well-informed buyer and seller would consider when determining their estimated current values. Defendants fail to submit an appraisal or other evidence showing that the "estimated current value" of a rent stabilized unit—that is, the amount at which it would trade between a willing buyer and willing seller, fully informed and not under duress—is more than the value set forth in the 2010 Oxford Group appraisal that the Trump Organization had in its files.

Finally with respect to Aberdeen, where the SFC values are based on developing and selling far more homes than approved by the Scottish governmental authorities, Defendants offer no response at all in their brief and do not dispute that the SFCs themselves represent that only 500 private homes were approved for unrestricted sale. Defs. 202.8-g Response ¶208.

3. Asset Values Calculated Using Erroneous Data Are False And Misleading

For a number of properties, Mr. Trump and his trustees used data that was incorrect, resulting in values that were significantly inflated.

Mr. Trump acknowledged that he valued his Triplex in 2012 through 2016 using an incorrect figure for the square footage that was nearly triple the actual size of the apartment, resulting in a value that was nearly triple what it should have been based on his assumptions.[9] Defs. 202.8-g Response ¶37. Defendants only response is to claim that this error was "inadvertent" and "immaterial." Defs. Opp. MOL at 27. It was neither. Defendants fail to present any evidence disputing that Mr. Trump knew the actual square footage of his own apartment or that Mr. Weisselberg refused to correct the error in the 2016 SFC before it was issued even though the error had been pointed out to him by a journalist at Forbes.[10] Defs. 202.8-g Response ¶41-46. Moreover,

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[9] Defendants purport to "dispute" the assertion that the actual square footage of the Triplex was approximately one-third the figure used in calculating the value in the SFCs because "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation." Defs. 202.8-g Response at ¶38-41, 43-44. The Court should reject this assertion because it is nonsensical. There is nothing subjective about determining whether the size of an apartment is 30,000 square feet or one-third that size. Moreover, this argument is irrelevant since Mr. Trump acknowledged at his deposition that the square footage figure used to calculate the values for the SFCs for 2012 to 2016 was incorrect. Robert Aff., Ex. V at 218:19-221:04.

[10] In any event, whether Mr. Trump and his trustees intentionally used an erroneous figure for the Triplex square footage is not legally relevant because scienter is not required. *People v. Trump Entrepreneur Initiative,* 137 A.D.3d 409, 417 (1st Dep't 2016).

Prof. Bartov's opinion that the error—an overstatement of roughly $100-$200 million in each of five SFCs from 2012 to 2016—was immaterial in his view is entitled to no probative weight. *Diaz*, 99 N.Y.2d at 544.

For the unsold condominium units at Trump Park Avenue, Plaintiff established that Mr. Trump and his trustees used incorrect values that did not reflect market conditions as required for "estimated current value." Defendants have not cited any evidence disputing that the Trump Organization's real estate brokerage arm had prepared spreadsheets with current market values for the units or that Mr. Trump and his trustees disregarded those values and used instead the initial offering plan prices for the units. Defs. 202.8-g Response ¶373-81. Similarly, Mr. Trump used the wrong value for the two penthouse apartments that Ivanka Trump rented, selecting amounts for the SFCs from 2011 to 2014 that were $12-$30 million higher than the option prices in her leases. Pl. MOL at App., Tab 9 (Chart 2). Defendants rely on the opinion of their expert to contend that using the offering plan prices was "more reliable" than using the option prices, Defs. Opp. MOL at n.21, but this expert opinion is undermined by record; Mr. Trump and his trustees considered the option price to be the appropriate measure of estimated current value for the apartments starting in 2015 and continuing through 2021. Defs. 202.8-g Response ¶370.

For Trump Tower, the SFCs represent that the values in 2018 and 2019 are based on applying a capitalization rate to *stabilized* net operating income ("NOI") from a purportedly comparable building, *see* Ex. 8 at -729; Ex. 9 at -806, but the trustees failed to use the corresponding *stabilized* capitalization rate from the source material they relied upon. Defendants do not cite any evidence to dispute that the trustees used the lower capitalization rate for NOI for the comparable building that was *not* stabilized rather than the higher capitalization rate projected in the source material for *stabilized* NOI. Defs. 202.8-g Response ¶262.

This same error also inflated the value of the Vornado property at 1290 Avenue of the Americas in the 2018 and 2019 SFCs, which Defendants fail to refute with any evidence. Pl. MOL at App., Tab 7; Defs. 202.8-g Response ¶262.

4. Asset Values Calculated On A Basis That Conflicts With What Mr. Trump And His Trustees Represented In The SFCs Are False And Misleading

Defendants attempt to justify many of their deceptive practices, and hence the resulting inflated values, by contending that such practices are permitted under GAAP, with supporting citations to opinion testimony from their expert Prof. Bartov. Defs. Opp. MOL at 19-20, 22. But the issue is whether they conflict with the representations made by Mr. Trump and his trustees in the SFCs about how they calculated the asset values.

For example, each of the SFCs unequivocally states that "the financial statement does not reflect the value of Donald J Trump's worldwide reputation" and that "[t]he goodwill attached to the Trump name . . . has not been reflected in the preparation of this financial statement." *See, e.g.*, Ex. 5 at -0693. Yet it is undisputed that Mr. Trump and his trustees added a 30% or 15% brand premium to the value of seven of the U.S. golf club properties from 2013 to 2020. *See* Defs. 202.8-g Response ¶308-09. Their inclusion of a brand premium conflicts with the representation in the SFC that "goodwill attached to the Trump name" is not included.

Mr. Trump and his trustees engaged in similar deception with golf club valuations by including in the fixed asset value of certain golf clubs the full amount of membership deposit liabilities despite disclosing in the SFCs that they value such liabilities at $0. Pl. 202.8-g Statement ¶312-14. Defendants fail to submit any evidence disputing that the fixed asset approach was used to value the clubs (with the exception of Mar-a-Lago and Doral), that the full amount of refundable membership deposits was included in the SFC values for Jupiter, Colts Neck, Philadelphia, DC,

Charlotte, and Hudson Valley, or that the SFCs provide that these liabilities were valued at $0. Defs. 202.8-g Response ¶317, 320, 322-330.

Mr. Trump and his trustees also engaged in deception when valuing his cash and escrow deposits. The SFCs represented that Mr. Trump held a 30% partnership interest in two properties owned by Vornado partnerships, which Defendants do not dispute. Defs. 202.8-g Response ¶225. Defendants also do not dispute that the General Partners of the Vornado partnerships, not Mr. Trump, have "full control over the management, operation and activities" of the Vornado partnerships, and that Mr. Trump as a limited partner can "under no circumstances sign for or bind the [Vornado partnerships]." Defs. 202.8-g Response ¶227. Nevertheless, Mr. Trump and his trustees included within the cash and escrow deposit asset categories amounts held by the Vornado partnerships over which he had no control. Defs. 202.8-g Response ¶403, 417.

Defendants offer no justification for including Vornado escrow deposits, instead labeling it "an issue of misclassification," and they offer two excuses for why it was not deceptive to include Vornado cash that have no merit. First, they claim that the cash asset category included "certain other items, clearly indicating that items other than cash" were part of the total. Defs. Opp. MOL at 27. But the "items other than cash" were cash equivalents. *See, e.g.,* Ex. 1 at -3137 (describing other items as "common stock, mutual funds, a hedge fund, corporate notes and bonds, and a United States Treasury Security"); Ex. 5 at -0694 (same). Including other cash equivalents did not put users on notice that this asset category included amounts that were not part of Mr. Trump's liquid assets; indeed, even Defendants' own insurance experts conceded that the cash asset

category was intended and understood to reflect *Mr. Trump's* liquidity.[11] Robert Aff., Ex. AA at 40:14-41:20, 46:19-47:11, 49:10-50:10, 54:10-19; Robert Aff., Ex., Z at 97:25-98:7, 112:22-113:8). Second, they claim that the SFCs disclosed that the cash asset category included amounts held in "operating entities," apparently suggesting the Vornado partnerships were included within that term. Defs. Opp. MOL at 27. No user of the SFCS would reasonably interpret "operating entities" to mean anything other than entities within the Trump Organization falling under Mr. Trump's control.

Finally, Mr. Trump and his trustees inflated the values for "Real Estate Licensing Developments" by including amounts that did not qualify for inclusion based on the SFC disclosure for this category. Defendants do not dispute that the SFCs represented that this category included "only situations which have evolved to the point where signed arrangements" with "other parties exist and fees and other compensation will be earned are reasonably quantifiable." Defs. 202.8-g Response ¶419-421. Defendants offer no evidence to dispute that Mr. Trump and his trustees nevertheless included in this asset category many speculative, non-existent "TBD" deals and intra-company management agreements between Trump Organization affiliates that did not involve any arms-length deals with "other parties." Defs. 202.8-g Response ¶424-27.

With respect to the TBD deals, Defendants suggest that they were properly included as part of a "Future Portfolio" based on discussions with Mazars, Defs. 202.8-g Response ¶422, but that ignores the representation in the SFCs that only signed deals were included. In any event, as

[11] Defendants' suggestion that there was no deception because at most the Vornado cash was simply "misclassified and should have been reported elsewhere on the SOFCs," Defs. Opp. MOL at 27, ignores the importance of the cash asset category as a representation to users of Mr. Trump's liquidity. *See* Ex. 348 at 46:13-21, 46:22-47:19, 70:10-71:21, 88:5-89:23, 141:20-142:17; Ex. 370 at 161:7-164:9

Defendants concede, Mazars advised that "Future Portfolio" values needed to be removed. Defs. 202.8-g Response ¶422.

With respect to intra-company agreements, Defendants maintain this was proper because each Trump Organization affiliate is "a discrete legal entity that is a distinct legal person from [Mr.] Trump" and therefore they qualify as "other parties" within the meaning of the SFC representation. Defs. 202.8-g Response ¶427. Defendants offer no evidence to support this unreasonable interpretation that is contrary to the plain language of the SFC; no user of the SFCs would reasonably believe that "signed arrangements with other parties" includes agreements between Trump Organization affiliates as opposed to agreements with unaffiliated entities negotiated at arms-length.

5. Defendants' One Billion Dollar Plus Value For Doral Is Inadmissible And Irrelevant

Defendants attempt to use the Doral property to wipe away their years of deceptive practices that significantly inflated asset values and Mr. Trump's net worth. According to Defendants, "[t]oday" Doral "is worth, conservatively, more than one billion dollars" in the opinion of their expert Mr. Chin. Defs. Opp. MOL at 48. "When considering this value," Defendants argue, the SFC values were "under-reported" and Mr. Trump's "reported net worth numbers were actually lower" than they really were. *Id.*

Doral is not a magic wand that Defendants can wave to transform the SFCs into true and accurate presentations of Mr. Trump's financial condition for a number of reasons.

First, Defendants' claim that Doral is now worth "more than one billion dollars" is not supported by an appraisal, the method for deriving an opinion of value based on USPAP, the professional standards that Mr. Chin is required to follow as an MAI. *See, supra*, at 10. As Mr. Chin conceded at his deposition, "I haven't rendered any specific appraisal opinions on the

properties." S*ee* Robert Aff. Ex. AN at 64:13-21. Accordingly, Mr. Chin's opinion on Doral's value "depart[s] from the generally accepted methodology" for deriving an opinion of value for real property[12] and is therefore inadmissible. *Cornell*, 986 N.Y.S.2d at 403; *see also Hassett* 787 N.Y.S.2d at 840 (holding where the expert's methodology does not adhere to the generally accepted procedure in the expert's profession, the testimony is inadmissible as a matter of law).

Second, Mr. Chin uses as the "starting point" of his "valuation analysis" the "$1.3B value" set forth in document entitled "the 2022 Newmark Doral presentation," which he fails to attach as an exhibit. *See* Robert Opp. Aff., Ex. AO at ¶81. That presentation, which has no identified author and exists only in "draft," is nothing remotely resembling an appraisal. *See* Faherty Reply Aff., Ex. 502. Rather, it appears to be a February 2022 PowerPoint *marketing* presentation for the potential sale of Doral containing an informal valuation analysis that does not comply with USPAP standards. *Id*. at 17 ("Marketing Timeline"). Accordingly, Mr. Chin's "starting point" for his analysis is not admissible evidence and renders his entire analysis without any probative value. *Reif v. Nagy*, 175 A.D.3d 107, 125 (1st Dep't 2019) (holding expert's speculation unsupported by record evidence is insufficient to defeat summary judgment) (citing cases). Remarkably, Defendants and Mr. Chin ignore the actual appraisal prepared by Newmark on July 1, 2021 for Deutsche Bank that determined an "as is" market value of Doral as of June 1, 2021 of $297 million, which the trustees used as the property's value in the 2021 SFC. Ex. 23 at line 584 (listing the value of Doral as $297 million based on the "Newmark Appraisal prepared for Deutsche Bank"); Ex. 503 at -2925.

[12] *See* USPAP Standard 1: Real Property Appraisal, Development, available at https://www.millersamuel.com/files/2021/03/USPAP-Standards-1-4.pdf at p.18.

Third, while Mr. Chin purports to "adjust for actual value based on historic data" to calculate values for Doral from 2014 to 2021, the same absence of an appraisal for any of these years and his use of the inadmissible 2022 Newmark Doral presentation as his starting point fails to comply with USPAP standards for developing an opinion of value, and therefore renders his historic values similarly inadmissible as a matter of law.[13] *Cornell,* 986 N.Y.S.2d at 403; *Hassett* 787 N.Y.S.2d at 840.

D. The Inflated SFCs Had The Capacity Or Tendency To Deceive Users

Defendants argue at length that the SFCs "were not materially misleading" to the banks and insurers involved in the transactions at issue, assuming a "materiality" standard applies here as if this enforcement action were instead a case alleging general common law fraud. Defs. Opp. MOL at 57-64. Their argument misses the mark because materiality is not a required element of a fraud claim under § 63(12), which stands "[i]n contrast" to statutes that require a showing that a misstatement was material. *Gen. Elec. Co.*, 302 A.D.2d at 314-15. The relevant inquiry under the People's § 63(12) fraud claim is whether the SFCs had "the capacity or tendency to deceive" the banks and insurers. *Northern Leasing*, 193 A.D.3d at 75. The answer on this motion is a resounding "yes," given the sheer magnitude of the inflated asset values in the SFCs each year based on just the *undisputed evidence,* which resulted in the overstatement of Mr. Trump's annual net worth by

[13] As Mr. Chin concedes in his rebuttal report, as an MAI he is required to adhere to USPAP standards 1, 2, and 3 governing the preparation, analysis, and reporting of appraisal results, which "refers to the act or process of developing an opinion of value." Robert Opp. Aff., Ex. AO at pdf 86, ¶71.

17-39% over the period 2011 to 2021, or between $812 million to $2.2 billion in any given year. *See* Pl. MOL, App. Tab 1.[14]

Even if materiality were a required element of a § 63(12) fraud claim (which is not the case), this Court should reject Defendants' contention that the banks and insurers considered the SFCs to be immaterial. Defs. Opp. MOL at 59-64.

First, the loan documents expressly state that the lender is relying upon the guarantee of Mr. Trump and the required certifications, including the representations they contain, to extend credit, and the guaranties require the submission of true and accurate financials. Pl. 202.8-g Statement ¶484-85, 514-16, 556, 560. Additionally, bank underwriting documents cite the guarantee and the financial strength of the guarantor as support for the loans. *Id*. at ¶475-76, 494, 503, 507-08, 511, 516, 520, 526, 551-53, 565, 587-96. The insurers similarly required disclosure of Mr. Trump's SFC at renewal. *Id*. at ¶623, 654. Under these circumstances, the SFCs were material to the banks and insurers as a matter of law. *See Tannenbaum v. Provident Mut. Life Ins. Co. of Philadelphia*, 386 N.Y.S.2d 409, 417–18 (1st Dep't 1976) (where a financial institution "demands that specified information shall be furnished for the purpose of enabling it to determine whether the risk should be accepted, . . . any untrue representation, however innocent, . . . is material as matter of law."), *aff'd*, 364 N.E.2d 1122 (1977).

Second, testimony from bank and insurance company executives establish beyond dispute they relied on the SFCs when deciding to lend or offer insurance:

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[14] At trial (as necessary depending on the factual findings made by the Court on this motion), the People will show based on the analyses of their valuation and accounting experts that Mr. Trump's net worth has been inflated *by between $1.9 billion to $3.6 billion* per year, which is still a conservative estimate of the extent of the inflation because the analysis by Plaintiff's valuation experts accepted many of the inputs and assumptions used by Defendants to derive the asset values in the SFCs that would otherwise be rejected in a full-blown appraisal review.

- A former Head of Credit Risk Management for Deutsche Bank's PWM Americas division, Nicholas Haigh, whose approval was required for the bank's loans to the Trump Organization, reviewed evidence obtained during OAG's investigation showing that Mr. Trump reported the values for 2011 and 2012 of $525 million and $527 million, respectively, for his interest in 40 Wall Street despite possessing an appraisal showing a valuation of $200 million as of November 1, 2011, and that Mr. Trump had reported an NOI for 40 Wall Street that was approximately four times the actual NOI used in this same appraisal. *See* Ex. 1017 at 140:8-143:9, 172:2-177:24. When asked how he would have responded if these discrepancies had come to his attention during the credit review, he testified that he "would have treated [Mr. Trump's] financial disclosure with – generally with a larger degree of skepticism and specifically [he] would have adjusted the equity value of that specific asset," adding that "if The Trump Organization could not have provided a reasonable explanation then I think I would have recommended declining the transaction." *Id*. at 177:25-178:19. Mr. Haigh also testified he was "shocked at the numbers reported on Mr. Trump's financial statement" for 40 Wall Street given the then-existing appraised values of that property, and that had he learned at the time of discrepancies between NOI figures used in appraisals of 40 Wall Street and those used for Mr. Trump's SFCs, he would have questioned the accuracy of other information provided and would have asked whether the bank should continue doing business with Mr. Trump.[15] *Id*. at 177:25-178:19; 194:2-12; 196:13-15, 237:1-241:25; Pl. 202.8-g Statement ¶632-33, 637, 646, 650-52, 657-659.

- Zurich's underwriter, Claudia Markarian, testified that she viewed the valuations in the 2018 and 2019 SFCs to be reliable and assessed them favorably based on Allen Weisselberg's misrepresentation that they were prepared by a professional appraisal firm. Pl. 202.8-g Statement ¶627-28, 640-41. She also relied on the cash on hand figure listed in the SFCs as an indication of Mr. Trump's liquidity—an important consideration in her underwriting analysis and a figure that was inflated in the 2018 and 2019 SFCs by including cash that belonged to the Vornado partnerships over which Mr. Trump had no control. *Id*. at ¶631-33, 643-45. Ms. Markarian explained: (i) it would be a "major concern" to her if the SFCs she reviewed were "not actually accurate," which would have "call[ed] into question the whole account," Ex. 348 at 140:10-25; and (ii) it means there was "materially

[15] In response to this evidence establishing that Mr. Haigh viewed the SFCs to be material, Defendants rely on testimony from other Deutsche Bank employees that they are unaware of any misrepresentations in the SFCs. S*ee* Defs. Opp. MOL at n.23. This testimony is irrelevant. These bank witnesses did not conduct any investigation to determine whether the SFCs contained false information (as OAG has done), never read the People's detailed complaint in this action, *see* Robert Aff. Ex. P at 16:16-22, Ex. AAD at 18:9-25, Ex. S at 14:10-19, and were responding only "to the best of [their] knowledge," *id*., Ex. AAB at 229:16-230:7.

less liquidity" that may not have been sufficient for approval from management, *id*. at 142:18-144:2.

- HCC's underwriter Michael Holl testified that for the 2017 D&O renewal he relied on the cash on hand figure in the 2015 SFC when considering Mr. Trump's liquidity, which had bearing on Mr. Trump's ability to meet the retention obligation under the HCC policy, as well as the misrepresentation by Trump Organization personnel that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the policy.[16] Pl. 202.8-g Statement ¶659-60.

Third, two exchanges between the Trump Organization and Deutsche Bank further confirm the materiality of Mr. Trump's SFCs. In September 2020, the Trump Organization advised Deutsche Bank that it would not be providing a financial statement for Mr. Trump as required by its loan documents. But the bank insisted that Mr. Trump provide his SFC for 2020, which he did on January 12, 2021. Ex. 1021 at 5. Separately, when the bank became aware of the alleged misrepresentations in Mr. Trump's SFCs from OAG's public court filings and news reporting, the bank sent a letter to the Trump Organization on October 29, 2020, asking a series of questions about the SFCs. Pl. 202.8-g Statement ¶447-48. The Trump Organization refused to answer the questions, even after the bank pointed out that the company was required to provide accurate information about Mr. Trump's financial condition pursuant to various loan agreements and guarantees. *Id*. ¶449-50. As a result, the bank decided to exit its relationship with the Trump Organization once all its outstanding loans had matured or been repaid "in light of the failure and/or refusal of the covered client organization to respond" to the bank's questions about the SFCs. Ex. 237. Deutsche Bank would not have made the decision to exit the relationship based on

[16] Defendants' observation that HCC agreed in December 2016 to provide a $5 million excess policy to sit above the existing primary policy through February 17, 2017, without reviewing Mr. Trump's SFC, Defs. MOL at 37, is without import. HCC's quote was for a 2-month stub period that was, as Defendants concede, "subject to reviewing financials at renewal." *Id*.

the company's refusal to provide additional information about the SFCs if it did not consider the SFCs to be material.

* * *

The undisputed evidence leaves no doubt that the grossly inflated SFCs had the capacity or tendency to deceive and, although not a required element of Plaintiff's fraud claim, did in fact deceive the banks and insurers, who insisted on receiving the SFCs and relied upon them.

II. PLAINTIFF'S FIRST CAUSE OF ACTION IS TIMELY AS TO ALL DEFENDANTS BASED ON NUMEROUS FRAUDULENT TRANSACTIONS COMPLETED BY THEM WITHIN THE LIMITATIONS PERIOD

A. The First Department Did Not Accept Defendants' Argument That Plaintiff's Claims For Post-Closing SFC Preparation, Submission, And Certification Accrue On The Loan Closing Date

The First Department held in this case that "claims are time barred if they accrued—that is, the transactions were completed—before" either February 6, 2016 or July 13, 2014 depending on whether a Defendant is bound by the Tolling Agreement. *People v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023). On appeal, however, Defendants had raised the same argument they assert here—that a transaction to satisfy continuing loan obligations, such as the preparation, submission, and certification of an SFC, accrues when the loan closed, even if the loan closed years before the SFC was issued. In their opening appellate brief, Defendants contended (as they do here) that any "transactions" relating to loans took place only on the closing dates of the loans. Br. for Defendants-Appellants, 2023 WL 4552506, at *35. On reply, Defendants argued more pointedly that a certification as to the truth and accuracy of an SFC "is a requirement under loan transactions that closed respectively on June 11, 2012 (Doral), November 9, 2012 (Chicago) and August 12, 2014 (OPO)" and therefore, even if the six-year statute of limitations under CPLR 213(9) applies, claims based on these loans are time-barred because "the date of closing is the date that each of these transactions accrued." Reply Br. for Defendants-Appellants, 2023 WL 4552514, at *24.

The First Department did not accept Defendants' "loan closing" theory, as it did not rule that a claim arising from a transaction relating to a loan accrues when the loan closed, but instead was careful to hold that such a claim accrues when the transaction is "completed." *Trump*, 217 A.D.3d at 611. On the record before it, which included the closing dates for all the loans, the appellate division concluded that *only Ivanka Trump* had engaged in conduct that fell altogether outside of the applicable limitations period. And notably, the First Department reached that conclusion based on Ivanka Trump's argument that she had not prepared, submitted, or certified any of the SFCs at issue, which places her in a starkly different position than any of the other individual Defendants. Reply Br. for Defendant-Appellant Ivanka Trump, 2023 WL 4552510, at *19-22. The First Department *otherwise rejected the remaining Defendants' arguments for dismissal of claims against them,* even those relating to the Doral and Chicago loans that closed before July 13, 2014, the date by which the court concluded timely claims must accrue even for Defendants bound by the Tolling Agreement. *Trump*, 217 A.D.3d at 611. Had the appellate court agreed with Defendants' "loan closing" theory, the court would have ruled that all claims arising from the Doral and Chicago loans are time-barred as to all Defendants, not just Ms. Trump, which the court did not do.[17]

The First Department's refusal to dismiss claims against Defendants based on their "loan closing" argument comports with longstanding precedent under § 63(12) holding that a claim accrues with each instance of fraud or illegality, whether by misrepresentation, omission, or some other wrongful conduct, even though the conduct relates to business dealings entered into years

[17] While the First Department left it to this Court to determine which Defendants are bound by the Tolling Agreement, that open question did not have any impact on the application of Defendants' "loan closing" theory as to the Doral and Chicago loans, both of which closed before July 13, 2014.

earlier. *See People v. Cohen*, 214 A.D.3d 421, 422 (1st Dep't 2023) (holding that OAG's § 63(12) claims were timely as to *all* alleged misrepresentations (and illegal conduct) within the limitations period (between 2012 and 2018) even though the defendants had completed construction and submitted an offering plan far earlier (in 2009)[18]); *People v. Allen*, 198 A.D.3d 531, 532-33 (1st Dep't 2021) (holding Martin Act and § 63(12) claims accrued and were timely each time that the defendants made misrepresentations or engaged in other fraudulent conduct within the six-year limitation period (between 2013 and 2019)—even though the underlying investments occurred based on investment memoranda issued far earlier (in 2004 and 2005)); *People Pharmacia Corp*., 27 Misc. 3d 368, 374 (Sup. Ct. Albany Cty. 2010) (holding § 63(12) claims accrued each time that the defendant, within the limitations period, caused false and inflated price information to be published, and each such inflated price report constituted the accrual of a separate wrong); *see also CWCapital Cobalt VR Ltd. v. CWCapital Invs., LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021) (holding each instance of wrongful conduct is a "separate, actionable wrong" that "g[ives] rise to a new claim"); *Manipal Educ. Americas, LLC v. Taufiq,* 203 A.D.3d 662, 663 (1st Dep't 2022) (holding "a separate exercise of judgment, and thus a separate wrong, was committed" with each hiring decision made by defendant); *State v. 7040 Colonial Rd. Assocs. Co.*, 176 Misc. 2d 367, 374 (Sup. Ct., N.Y. Cty. 1998) (holding that each wrongful act is a separate accrual under the Martin Act, "even if the new act or practice simply repeated the misrepresentations or omissions made previously").

Defendants erroneously assert that the First Department upended this settled precedent in holding that "[t]he continuing wrong doctrine does not delay or extend" the limitations period

[18] The date of the offering plan was in the record. *See Cohen*, OAG Br., 2022 WL 19039982, at *10-13.

beyond the two applicable dates prescribed by the court—February 6, 2016, and July 13, 2014. Defs. Opp. MOL at 13 (quoting *Trump*, 217 A.D.3d at 611). That doctrine has no bearing on the issues pertinent to summary judgment. The court merely held that these two dates could not be extended *further* back in time based on an argument that Defendants' conduct was a "continuing wrong," not that the doctrine makes Defendants' separate fraudulent acts occurring *within* the limitations period somehow untimely. Again, if the appellate division decision meant what Defendants now say it means, the court would have dismissed the claims against *all Defendants* relating to the Doral and Chicago loans, not just the claims against Ivanka Trump. And indeed, the First Department's dismissal of only the claims against Ivanka Trump means that the court viewed her as in a markedly different situation than the other individual Defendants, whom the People specifically alleged (and have now established based on undisputed evidence) were involved in the preparation, submission, and certification of the SFCs within the applicable limitations period.

Defendants are thus correct in conclusion, but not consequence, that the Court "should implement" the First Department's decision "immediately," Defs. Opp. MOL at 8, as the First Department's decision permits no further relief based on Defendants' loan-closing argument. This means the Court does not need to reach any of Defendants' statute-of-limitations arguments, as the People need to demonstrate only that *some* amount of wrongful conduct by each Defendant occurred within the limitations period and "need not prove all of the [instances] in order to obtain the relief sought." *See People v. Boyajian Law Offs., P.C.*, 17 Misc.3d 1119(A), at *6 (Sup. Ct., N.Y. Cty. 2007). Plaintiff has brought at least two or more claims for "repeated" and "persistent" fraud under § 63(12) that accrued against each Defendant within the limitations period, even if the period began in February 2016, as depicted in the timelines attached at Tab 2 of the accompanying Appendix.

B. If The Court Reaches The Issue, The Tolling Agreement Binds All Defendants

There is no need to resolve the full scope of the Tolling Agreement on summary judgment—which the First Department instructed this Court to address "as necessary," *Trump*, 317 A.D.3d at 611—because Defendants concede that the entity Defendants are bound (Defs. Opp. MOL at 13) and because the individual Defendants participated in multiple fraudulent transactions on or after February 6, 2016, the date the limitations period begins in the absence of the Tolling Agreement. In the event the Court decides to address the binding effect of the Tolling Agreement at this time, the Court should find that the Tolling Agreement binds all the individual Defendants and the Trust, in addition to the entity Defendants (as Defendants concede).

1. Under JUUL, Non-Signatory Corporate Officers And The Trust May Be Bound By A Tolling Agreement Signed By The Corporation

Although Defendants argue that a "non-signatory" cannot be bound to a tolling agreement based on "general rule[s] of contract interpretation," Defs. Opp. MOL at 15, that position is contrary to *People v. JUUL*, which is controlling law. In *JUUL*, the First Department held that the *two individual corporate officers*, neither of whom were signatories, "are bound by the tolling agreement into which [the corporation] entered with the People" that specified officers were bound. *People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023). Indeed, the Tolling Agreement here is not materially distinguishable from the one in *JUUL*, which covered a similar range of individuals and entities, and so the same result should follow. *Id.* (tolling agreement's definition of "JUUL" included JUUL's "parents, subsidiaries, affiliates, predecessors, shareholders, officers, directors . . . and all other persons or entities acting on their behalf or under

their control.").[19] Such corporate non-signatories are bound unless they have disclaimed the agreement within a reasonable timeframe, which the individual Defendant non-signatories here did not do. *See* Restatement (Second) of Contracts § 306 (1981).

Moreover, the same broad definition that binds the individual Defendants also binds the Trust. The definition of "Trump Organization" includes all "Persons associated with or acting on behalf of" "The Trump Organization, Inc.; DJT Holdings LLC; [and] DJT Holdings Managing Member LLC." Ex. 419 at n.1. Both Allen Weisselberg and Donald Trump, Jr., in their capacity as trustees of the Trust, acted on behalf of all these corporate entities when signing representation letters for the SFCs and acting on behalf of the Trust as the party responsible for the SFCs during the period 2016 through 2021.[20] *See* 202.8-g Statement ¶682-87, 730-35; Exs. 6-11.

Defendants' attempt to distinguish *JUUL* as "inapposite" in a footnote is without merit. Defs. Opp. MOL at n.9. What Defendants characterize as "a single, throwaway sentence" is a critical aspect of the court's decision—the affirmance of the trial court's finding that the two individual defendants were bound by the tolling agreement; absent that holding, the court would have dismissed OAG's claims under General Business Law §§ 349 and 350. *JUUL*, 212 A.D.3d at 417. Nor are Defendants correct in contending that the two defendants in *JUUL* "had agreed to be bound by the tolling agreement." Defs. Opp. MOL at n.9. To the contrary, the defendants in *JUUL* argued that they "did not sign this tolling agreement," no one had authority to sign the

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[19] The *JUUL* tolling agreement is part of the record on appeal in that case and can be found at NYSCEF Doc. No. 176 (Exhibit QQQ to Popp Affirmation), Index No. 452168/2019 (Sup. Ct. N.Y. Cty).

[20] As a practical matter, whether the Trust is bound by the Tolling Agreement or not makes no difference. There is no dispute that the Trust, acting through its trustees, was "responsible" for issuing the SFCs covering 2016 through 2021, *see* Exs. 6-11, giving rise to timely claims against the Trust accruing after February 2016 in any event.

agreement on their behalf, and they received "no benefit" from the agreement. Reply Brief for Defendants-Appellants, 2022 WL 18355551, at *26. The *JUUL* decision is on point and controlling.

2. Judicial Estoppel Does Not Apply Here

Defendants' argument based on judicial estoppel is similarly without merit for three independent reasons.

First, judicial estoppel applies only to assertions of "*factual issue*[*s*]," not legal positions. *PL Diamond LLC v. Becker-Paramount LLC*, 16 Misc. 3d 1105(A), 2007 WL 1865044, at *10 (Sup. Ct. N.Y. Cty 2007) (emphasis added); *see also Bates v Long Island Railroad*, 997 F. 2d 1028, 1037 (2d Cir.) ("The doctrine of judicial estoppel prevents a party from asserting a *factual position* in a legal proceeding that is contrary to a position previously taken by him in a prior legal proceeding.") (emphasis added), *cert. denied* 510 U.S. 992 (1993)); *Zemel v. Horowitz*, 11 Misc. 3d 1058(A), 2006 WL 516798, at *4 (Sup. Ct. N.Y. Cty 2006) (same). As courts have observed, "[t]here is no legal authority" to support "extend[ing] the doctrine of judicial estoppel to include seemingly inconsistent legal positions." *Seneca Nation of Indians v. New York.*, 26 F. Supp. 2d 555, 565 (W.D.N.Y. 1998), *aff'd*, 178 F.3d 95 (2d Cir. 1999). Here, Plaintiff's prior assertion about the binding effect of the Tolling Agreement on non-signatories is a legal position rather than a factual position, and therefore judicial estoppel does not apply.

Second, even if the doctrine did apply to a legal position (which is not the case), it still does not apply here. For the doctrine to apply, the party taking the inconsistent position must have benefitted from the determination in the prior action based on the assertion it advanced in that matter; in other words, the doctrine does not require simply a prior determination rendered in favor of the party against whom estoppel is asserted, it also requires that the prior determination

"endors[e] the party's inconsistent position in the prior proceeding." *Ghatani v. AGH Realty, LLC*, 181 A.D.3d 909, 911 (2nd Dep't 2020); *see also 35 W. Realty Co., LLC v. Booston LLC*, 171 A.D.3d 545, 545 (1st Dep't 2019) (declining to apply judicial estoppel because the court in the prior proceeding did not rely on the party's inconsistent position in its determination). In the Court's decision granting the People's contempt motion in the Special Proceeding, the Court did not base its decision on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor did it otherwise "endors[e]" that legal position. *Ghatani*, 181 A.D.3d at 911. Rather, the Court, after noting that Mr. Trump had submitted a "woefully inadequate" compliance affidavit, agreed with Plaintiff's statement that "any delay causes prejudice to 'the rights or remedies of the State acting in the public interest.'" *People v. The Trump Organization, Inc*., No. 451685/2020, 2022 WL 1222708, at *2 (Sup. Ct. N.Y. Cty. Apr. 26, 2022) (quoting *State v. Stalling*, 183 A.D.2d 574, 575 (1st Dep't 1992)), *aff'd*, 213 A.D.3d 503 (1st Dep't 2023). The Court further noted, without singling out Mr. Trump or holding that he was not bound by the Tolling Agreement, that "the statutes of limitations continue to run and *may result* in OAG being unable to pursue certain causes of action that it otherwise would." 2022 WL 1222708, at *2 (emphasis added). The Court neither based its decision to hold Mr. Trump in contempt on the legal position that Mr. Trump was not bound by the Tolling Agreement, nor endorsed that legal position.

Third, courts do not apply estoppel doctrines where there has been an intervening "'change in [the] applicable legal context.'" *Bobby v. Bies*, 556 U.S. 825, 834 (2009) (quoting Restatement (Second) of Judgments § 28, cmt. c (1980)); *see Herrera v. Wyoming*, 139 S. Ct. 1686, 1697 (2019) (noting that "lower federal courts have long applied the change-in-law exception in a variety of contexts" in rejecting the application of estoppel doctrines). This change-in-law exception recognizes that applying equitable preclusion doctrines in changed circumstances may not

"advance the equitable administration of the law." *Bobby*, 556 U.S. at 836–837; *see Herrera*, 139 S. Ct. at 1697. Such is the case here based on the timing of the First Department's controlling decision in *JUUL*. That decision, definitively establishing that an individual corporate officer who did not sign a tolling agreement is nevertheless bound by its terms under contractual language materially indistinguishable from the "Trump Organization" definition in the Tolling Agreement, was issued on January 5, 2023—more than seven months *after* the hearing before this Court on the contempt motion in the Special Proceeding and nearly one month *after* OAG's appellate brief was filed in the appeal from this Court's contempt order. *Compare JUUL*, 212 AD.3d at 414 *with* Defs. 202.8-g Statement ¶¶273-74. Precluding Plaintiff from relying on the *JUUL* holding, which controls the legal issue of whether Mr. Trump and other individual Defendants are bound by the terms of the Tolling Agreement, would not "advance the equitable administration of the law," and warrants applying the change-in-law exception to judicial estoppel. *Bobby*, 556 U.S. at 836–837.

3. Extrinsic Evidence Is Inadmissible To Alter The Unambiguous Terms Of The Tolling Agreement

The broad definition of the "Trump Organization" in the Tolling Agreement, which the Trump Organization's signatory Alan Garten certified he was "fully authorized to enter into" and "execute" with binding effect, Ex. 419 at 3, unambiguously includes each of the individual Defendants based on their status within the Trump Organization at the time the Tolling Agreement was executed, and Defendants do not seriously suggest otherwise. Rather, Defendants argue that the plain meaning of the definition of "Trump Organization" should be altered to exclude the individual Defendants because they were named as signatories in "[p]revious drafts" of the agreement but not in the "final, executed version." Defs. Opp. MOL at 17-18. Defendants' effort to alter the plain meaning of the Tolling Agreement based on extrinsic drafting history should be rejected.

Under settled New York law, a contract is interpreted in accordance with the intent of the parties, and the best evidence of their intent is what they express in their written agreement. *Schron v. Troutman Sanders LLP,* 20 N.Y.3d 430, 436 (2013); *Greenfield v. Philles Records, Inc.,* 98 N.Y.2d 562, 569 (2002). Where, as here, the terms of an agreement are clear and unambiguous, "[e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing." *W.W.W. Assoc. v. Giancontieri,* 77 N.Y.2d 157, 162 (1990) (quoted by *Donohue v. Cuomo*, 38 N.Y.3d 1, 12–13 (2022)); *see also Ellington v. EMI Music, Inc.,* 24 N.Y.3d 239, 244 (2014); *Kass v. Kass,* 91 N.Y.2d 554, 566 (1998); *B.D. v. E.D.*, No. 111, 2023 WL 4770159 (1st Dep't July 27, 2023). Accordingly, Defendants' reliance on previous drafts of the Tolling Agreement are inadmissible to vary the plain terms of the broad definition of "Trump Organization" in the final, executed document.

III. DEFENDANTS' STANDING, CAPACITY, DISCLAIMER, AND DISGORGEMENT ARGUMENTS ARE FRIVOLOUS

Defendants contend that the Attorney General "lacks the authority and capacity" to maintain this enforcement action under Executive Law § 63(12) because there is no harm to the public. Defs. Opp. MOL at 55. Defendants further argue that the accountant's letter inserted at the beginning of each SFC has disclaimer language that, together with other provisions of the SFCs, puts users "on complete notice" to seek additional information and conduct their own due diligence, effectively insulating them from any liability for false and misleading statements and values in the SFCs. *Id*. at 58-59. Finally, Defendants argue that the People are "not entitled to disgorgement as a remedy for any violation of § 63(12) as a matter of law." *Id*. at 69-71.

As discussed more fully in the People's memoranda of law in opposition to Defendants' summary judgment motion (NYSCEF No. 1277) and in support of their motion for sanctions (NYSCEF No. 1264), this Court and the First Department have already considered and rejected

these arguments. Briefly restated here, in its decision granting Plaintiff's motion for a preliminary injunction, the Court explained there is no need for the Attorney General to show any public harm[21] because "the New York legislature has specifically empowered the Attorney General to bring [an Executive Law § 63(12)] action in a New York state court," and Defendants' attempt to restrict § 63(12) to consumer fraud cases "is wholly without merit." *People of the State of New York v. Trump*, No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022). Further, the Court held that the disclaimer language in the SFCs did not provide any defense at all to Defendants because the language "makes abundantly clear that Mr. Trump was fully responsible for the information contained within the SFCs" and that "allowing blanket disclaimers to insulate liars from liability would completely undercut" the "important function" that SFCs serve "in the real world." *Id*. at *3. Indeed, the Court noted that even under the cases Defendants cited, they

[21] Even if there was a "public harm" requirement (which is not the case), as the Court has already held, this case satisfies that requirement because the People have articulated "a quasi-sovereign interest that touches a substantial segment of the population and is distinct from the interests of private parties." *People of the State of New York v. Trump*, No. 452564/2022, 2022 WL 16699216, at *2 (Sup. Ct. N.Y. Cty. Nov. 03, 2022) (citing cases); *see also Trump*, 217 A.D.3d at 610; *People v. Coventry First LLC*, 52 A.D. 3d 345, 346 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009). Moreover, it is beyond dispute that there was harm to the banks and insurers here. The banks offered the Trump Organization lower interest rates because of Mr. Trump's personal guarantee backed by the false and misleading SFCs. *See* Pl. 202.8-g Statement ¶440-44, 462-70, 499-504, 543-50. As explained by the People's banking expert Michiel McCarty, this means the banks were harmed because they took on more risk with less profit due to Defendants' fraud; based on the differential between the interest rates that the Trump Organization paid on loans that were personally guaranteed by Mr. Trump and the market-based interest rates that would have applied to non-recourse loans secured only by the same commercial properties as collateral, Mr. McCarty calculated that "Mr. Trump obtained an improper benefit" of over $187 million between 2012 and 2022. Ex. 1015 at ¶¶ 48-61, 79, 87, 98, 102 & App. C, Ex. 2. The insurers were also harmed because, as explained by the People's insurance expert Professor Tom Baker, they took on greater risk for lower premium. *See* Ex. 1047 at ¶¶ 15-20, 26.

could not use the disclaimer as a defense because "the SFCs were unquestionably based on information peculiarly within" their knowledge. *Id*.

The Court rejected these arguments for a second time in denying Defendants' motions to dismiss, noting that they "were borderline frivolous even the first time defendants made them." *People v. Trump*, No. 452564/2022, 2023 WL 128271, at *2 (N.Y. Sup. Ct. Jan. 06, 2023), *aff'd in part and rev'd in part*, 217 A.D.3d 609 (1st Dep't 2023). In the same decision, the Court also rejected Defendants' disgorgement argument, holding that "disgorgement of profits is a form of damages" available in this § 63(12) action. *See Trump*, 2023 WL 128271, at *5. On Defendants' appeal from the denial of their motions to dismiss, the First Department also rejected their standing, capacity, and disgorgement arguments. *See Trump*, 217 A.D.3d at 610–11.

Defendants suggest that their standing and capacity arguments deserve consideration anew because "at the dismissal stage" when these arguments were considered and rejected, Plaintiff "was afforded the presumption of propriety" as to the allegations in the complaint. Defs. Opp. MOL at 55. But even this procedural excuse for rehashing previously-rejected arguments was *itself* previously rejected by the Court. When Defendants raised their standing and capacity arguments for a second time on their motions to dismiss, they argued the Court's prior rejection of these arguments was not determinative because it came in the context of deciding a preliminary injunction motion. *See* Consolidated Reply Memorandum in Support of Defendants' Motions to Dismiss (NYSCEF No. 410) at 3. The Court held otherwise:

> OAG's legal standing and capacity to sue are threshold litigation questions of justiciability; they do not change whether in the context of a motion for a preliminary injunction or to dismiss . . . . Here, the issues of capacity and standing, are *pure issues of law and do not depend on a trial of disputed issues of fact*. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried.

Trump, 2023 WL 128271, at *2-*4 (emphasis added).

The Court should summarily reject yet again Defendants' threshold justiciability arguments based on lack of standing and capacity, their reliance on the "disclaimer" language in the SFCs, and their challenge to Plaintiff's entitlement to disgorgement under § 63(12). These arguments are without merit, as this Court and the First Department have previously held.

IV. THE COURT SHOULD MAKE FINDINGS OF FACT TO NARROW ISSUES FOR TRIAL ON PLAINTIFF'S REMAINING CLAIMS UNDER CPLR 3212(g)

"If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court . . . shall, if practicable, ascertain what facts are not in dispute or are incontrovertible." CPLR § 3212(g); *see also Epic W14 LLC v. Malter*, 211 A.D.3d 574, 575 443 (1st Dep't 2022) (holding trial court "was correct to narrow the issues for trial in granting partial summary judgment" by making factual findings under CPLR § 3212(g)). Any such findings of fact "shall be deemed established for all purposes in the action," *Garcia v. Tri-Cnty. Ambulette Serv., Inc*., 282 A.D.2d 206, 207 (1st Dep't 2001), providing the "potential for limiting issues" and the "opportunity to control the scope of litigation," 4B N.Y.Prac., Com. Litig. in New York State Courts § 73:30 (5th ed.).

The Court should exercise its discretion under CPLR § 3212(g) and enter an order on Plaintiff's motion making detailed findings of fact with respect to the SFCs and the various loan and insurance transactions because there is substantial overlap between the predicate facts necessary for granting judgment in favor of the People on their First Cause of Action for fraud and the predicate facts material to the People's remaining causes of action for illegality and conspiracy. Doing so will limit the issues that remain for trial, with the potential to significantly reduce the number of trial days required to adjudicate the remaining claims, and will likely obviate the need for the Court to hear testimony from the parties' valuations experts.

Accordingly, the People request that the Court enter an order pursuant to CPLR § 3212(g) making the following findings of fact:

The SFCs

- The SFCs for 2011 through 2021 overstated Mr. Trump's net worth by between $818 million to $2.22 billion, depending on the year, and, accordingly, each was false and misleading with the capacity to deceive.

The Fraudulent Transactions

a. Doral Loan

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2014 SFC and 2015 SFC, for the benefit of Trump Endeavor 12 LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the SFCs for 2016 to 2019, for the benefit of Trump Endeavor 12 LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of Trump Endeavor 12 LLC.

b. Chicago Loan

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2015 SFC, for the benefit of 401 North Wabash Venture LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2018 SFC and 2019 SFC, for the benefit of 401 North Wabash Venture LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of 401 North Wabash Venture LLC.

c. OPO Loan

- Within the applicable limitations period, Trump Old Post Office LLC closed on the loan with Deutsche Bank, certifying to the bank at closing the accuracy of the 2011, 2012, and 2013 SFCs.

- Within the applicable limitations period, Donald Trump certified to Deutsche Bank the accuracy of the 2015 SFC, for the benefit of Trump Old Post Office LLC.

- Within the applicable limitations period, Donald Trump, by Donald Trump, Jr. acting as his attorney in fact, certified to Deutsche Bank the accuracy of the SFCs from 2016 to 2019, for the benefit of Trump Old Post Office LLC.

- Within the applicable limitations period, Donald Trump, by Eric Trump acting as his attorney in fact, certified to Deutsche Bank the accuracy of the 2021 SFC, for the benefit of Trump Old Post Office LLC.

d. 40 Wall Street Loan

- Within the applicable limitations period, Donald Trump executed the Guarantee on the refinancing loan with Ladder Capital, certifying to the bank the accuracy of the 2014 SFC, for the benefit of 40 Wall Street LLC.

- Within the applicable limitations period, 40 Wall Street LLC closed on the refinancing loan with Ladder Capital, certifying to the bank at closing the accuracy of the 2014 SFC.

- Within the applicable limitations period, Allen Weisselberg, as trustee of the Trust, certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 to 2019, for the benefit of 40 Wall Street LLC.

e. Seven Springs Mortgage

- Within the applicable limitations period, Donald Trump, as President of the Seven Springs LLC member companies, executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the 2013 SFC.

- Within the applicable limitations period, Jeffrey McConney submitted to Bryn Mawr Trust Company the 2015 SFC and 2016 SFC pursuant to the promissory note under the mortgage, for the benefit of Seven Springs LLC.

- Within the applicable limitations period, Eric Trump, as President of Seven Springs LLC, executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the SFCs, for the benefit of Seven Springs LLC.

f. 2019 Surety Program Renewal

- Allen Weisselberg submitted to Zurich the 2018 SFC during the renewal meeting on November 20, 2018, for the benefit of the named insureds on the expiring policy (including all the entity Defendants), misrepresenting to Zurich's underwriter that

the asset values were determined by professional appraisers and the values did not vary significantly year over year.

- Allen Weisselberg submitted to Zurich the 2019 SFC during the renewal meeting on January 15, 2020, for the benefit of the named insureds on the expiring policy (including all the entity Defendants), misrepresenting to Zurich's underwriter that the asset values were determined by professional appraisers and the values did not vary significantly year over year.

g. 2019 Directors & Officers Insurance Program Renewal

- Allen Weisselberg submitted to HCC and other insurers the 2015 SFC during the renewal meeting on January 10, 2017, for the benefit of the named insureds on the expiring policy (including all the Defendants), misrepresenting to the underwriters that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the coverage.

Each Defendant's Involvement In The Fraudulent Transactions[22]

a. The Individuals:

- Donald J. Trump was responsible for the 2015 SFC issued on March 18, 2016 and certified to Deutsche Bank the accuracy of the SFCs for 2015 through 2019 and 2021, either directly or through his attorney in fact, for the Doral, Chicago, and OPO loans.

- Donald Trump, Jr., in his capacity as trustee of the Trust, was responsible for issuing the SFCs from 2016 through 2021 and certified to Deutsche Bank the accuracy of the SFCs for 2016 through 2019 as Donald Trump's attorney in fact for the Doral, Chicago, and OPO loan.

- Eric Trump participated in the preparation of the value for TNGC Briarcliff for the SFCs from at least 2015 to 2018, certified to Deutsche Bank the accuracy of the 2021 SFC as Donald Trump's attorney in fact for the Doral, Chicago, and OPO loans, and on July 9, 2019 executed a loan modification agreement with Bryn Mawr Trust Company restating and reaffirming the accuracy of all previously-submitted loan documents, including the SFCs.

[22] For purposes of the requested findings of fact on this motion, Plaintiff assumes that February 6, 2016, is the beginning of the applicable statute of limitations period for all individual Defendants and the Trust and July 13, 2014, is the beginning of the applicable statute of limitations period for all entity Defendants (as Defendants do not dispute that all the entity Defendants are bound by the Tolling Agreement, *see* Defs. MOL at 14 (chart)). Plaintiff reserves the right to argue at trial, if necessary, that the individual Defendants and the Trust are bound by the Tolling Agreement.

- Allen Weisselberg prepared the SFCs from at least 2015 to 2021, and in his capacity as trustee of the Trust, was responsible for issuing the SFCs from 2016 through 2021 and certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 through 2019 for the 40 Wall Street loan.

- Jeffrey McConney prepared the SFCs from at least 2015 to 2021 and submitted the SFCs for 2015 and 2016 to Bryn Mawr Trust Company pursuant to the promissory note under the Seven Springs mortgage.

b. The Entities:

- Donald J. Trump is the beneficial owner of a vast number of corporate entities (including the entity Defendants) which, although legally distinct, operate colloquially as the Trump Organization.

- The Trust was responsible for issuing the SFCs from 2016 to 2021 and did so through acts of its trustees, Allen Weisselberg and Donald Trump, Jr.

- Trump Endeavor 12 LLC submitted and certified to Deutsche Bank the accuracy of the SFCs from 2014 to 2019 and for 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- 401 North Wabash Venture LLC submitted and certified to Deutsche Bank the accuracy of the SFCs for 2015 and from 2018 to 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- Trump Old Post Office LLC submitted and certified to Deutsche Bank the accuracy of the SFCs for 2011 to 2013 at closing on August 14, 2014, and the SFCs for 2015 to 2019 and for 2021 through the acts of Donald Trump and his attorneys in fact, Donald Trump, Jr., and Eric Trump.

- 40 Wall Street LLC submitted and certified to Ladder Capital the accuracy of the 2014 SFC at closing in November 2015 and certified to the servicing bank Wells Fargo the accuracy of Donald Trump's Summary of Net Worth based on the SFCs for 2016 through 2019 through the acts of Allen Weisselberg, as trustee of the Trust, acting on its behalf.

- Seven Springs LLC submitted and certified to Bryn Mawr Trust Company the accuracy of the 2013 SFC through a loan modification executed by Donald Trump as President of its member companies on July 28, 2014, submitted to Bryn Mawr Trust Company the SFCs for 2015 and 2016 through the acts of Jeffrey McConney, acting on its behalf, and certified to Bryn Mawr Trust Company the accuracy of all previously-submitted SFCs through a loan modification executed by Eric Trump as its President on July 9, 2019.

- The remaining entity Defendants participated in the transactions described above through the acts of the individual Defendants, who at all relevant times were executive officers, and in the case of Mr. Trump the beneficial owner, of these companies, and acted on their behalf and for their benefit.

CONCLUSION

Based on the foregoing, the People respectfully request that the Court enter an order: (i) granting the People's motion for partial summary judgment in its entirety; (ii) entering judgment in the People's favor on their First Cause of Action for fraud under Executive Law § 63(12); (iii) making the findings of fact set forth in Point IV above pursuant to CPLR § 3212(g); and (iv) granting such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
September 15, 2023

Respectfully submitted,

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CERTIFICATION

With leave of Court entered on June 21, 2023, NYSCEF No. 638, Plaintiff is filing this Reply Memorandum of Law in Further Support of Plaintiff's Motion for Partial Summary Judgment with an enlarged word count not to exceed 13,800 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 13,788 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
September 15, 2023

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Attorney for the People of the State of New York

APPENDIX

Tab 1

The facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement are "Undisputed" by Defendants:

2	3	4	6	8	9	10	11	12	13	16	18
22	27	28	29	30	31	32	36	37	49	52	56
59	65	67	68	69	70	71	73	74	77	80	81
82	86	88	89	90	91	93	94	95	96	98	99
100	101	102	108	109	110	111	116	123	124	127	130
131	134	135	136	138	139	140	145	146	153	154	155
156	157	158	159	160	161	162	163	164	165	166	167
168	169	170	171	172	173	174	175	176	178	179	180
181	182	183	184	186	187	188	189	190	191	192	193
195	196	223	224	225	226	227	230	231	234	235	238
257	260	263	267	269	270	278	285	290	296	309	313
317	320	321	322	323	324	325	326	327	328	329	330
334	336	344	346	350	352	354	356	359	361	384	385
386	387	388	393	394	395	396	397	399	400	401	402
403	407	408	409	410	411	412	413	421	439	441	445
447	448	450	453	454	456	457	459	460	463	464	465
466	468	469	470	472	473	474	475	476	477	478	479
482	483	484	486	487	488	489	491	492	493	494	496
500	501	502	503	504	505	506	507	508	509	510	511
513	515	517	518	520	523	524	525	526	527	528	530
536	538	539	540	541	544	546	547	548	550	551	552
554	556	557	558	559	561	562	563	565	566	567	571
572	575	577	579	580	581	585	587	588	589	590	591
592	593	594	595	596	597	599	600	601	602	603	604
605	606	609	610	611	612	613	619	630	631	638	643
644	655	658	663	668	670	671	674	676	678	680	682
683	684	685	686	687	688	689	691	692	693	694	697
698	699	703	706	707	708	712	713	714	715	716	717
718	719	720	721	722	723	724	725	726	727	728	729
730	731	732	733	734	735	736	737	738	739	740	741
743	745	746	747	748	749	750	751	752	753	754	755
756	759	761	762	763	765	766	767	768	769	770	771
772	773	774	775	776	777	779	780	781	782	783	784
786	788	789	790	791	792						

The Court should deem the facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement to be undisputed as a matter of law due to Defendants' failure to respond with evidentiary proof supporting their contentions (*see* Pl. Reply MOL at Point I.A):

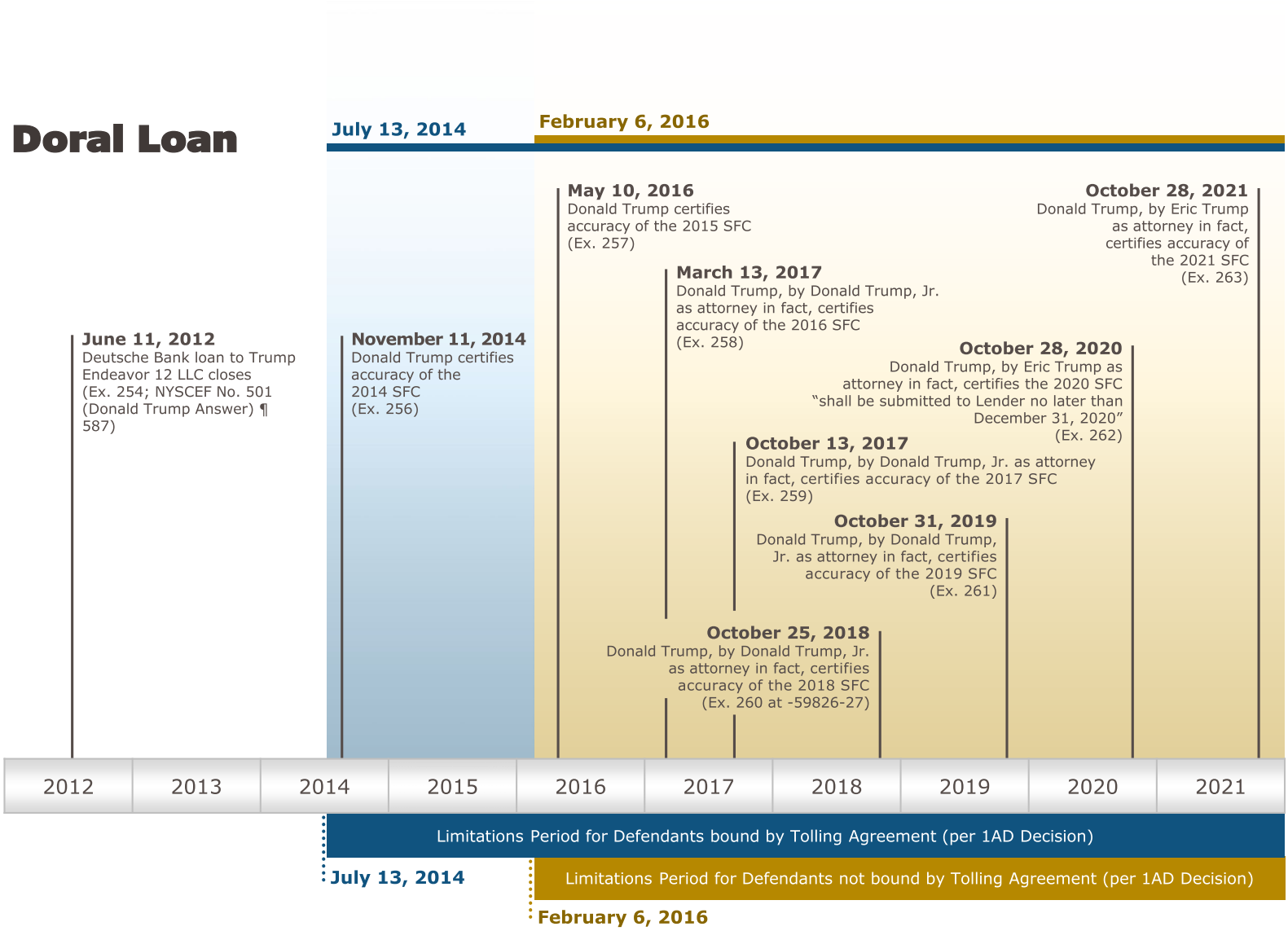
1	5	7	14	15	17	19	21	23	24	25	26
33	34	35	38	39	40	41	43	44	46	48	50
51	53	54	55	57	58	60	61	62	63	64	66
72	75	76	78	79	83	84	85	87	97	103	104
105	106	107	114	117	119	120	121	122	125	126	128
129	132	133	141	142	143	144	147	148	149	150	151
152	177	197	198	199	200	201	202	205	206	207	208
209	210	212	213	214	215	216	217	219	220	221	222
229	232	233	236	237	239	240	241	242	243	244	245
246	247	248	249	250	251	253	254	258	259	261	262
264	265	268	271	272	273	274	275	276	277	279	280
281	282	283	284	287	288	289	291	292	293	294	295
297	298	300	301	302	303	304	305	306	307	308	310
311	312	314	315	316	318	319	331	332	333	335	337
338	339	340	341	342	343	345	347	348	349	351	353
355	357	358	360	362	363	364	366	367	369	370	371
372	373	374	375	376	377	378	379	380	381	382	383
389	390	391	392	404	405	406	414	415	416	417	418
419	420	422	423	424	425	426	427	428	429	430	431
432	433	434	435	436	437	438	440	442	443	444	446
449	451	452	455	458	461	462	467	471	480	481	485
490	495	497	498	499	512	514	516	519	521	522	529
531	532	533	534	535	537	542	543	545	549	553	555
560	564	570	573	574	578	583	584	586	598	607	608
614	615	616	617	618	621	622	623	624	626	627	628
629	632	633	634	635	636	637	639	640	641	642	645
646	647	648	649	650	651	652	653	654	656	657	659
660	661	662	664	665	666	667	669	672	673	675	677
679	695	696	702	704	705	709	710	711	742	744	757
758	760	764	785	787							

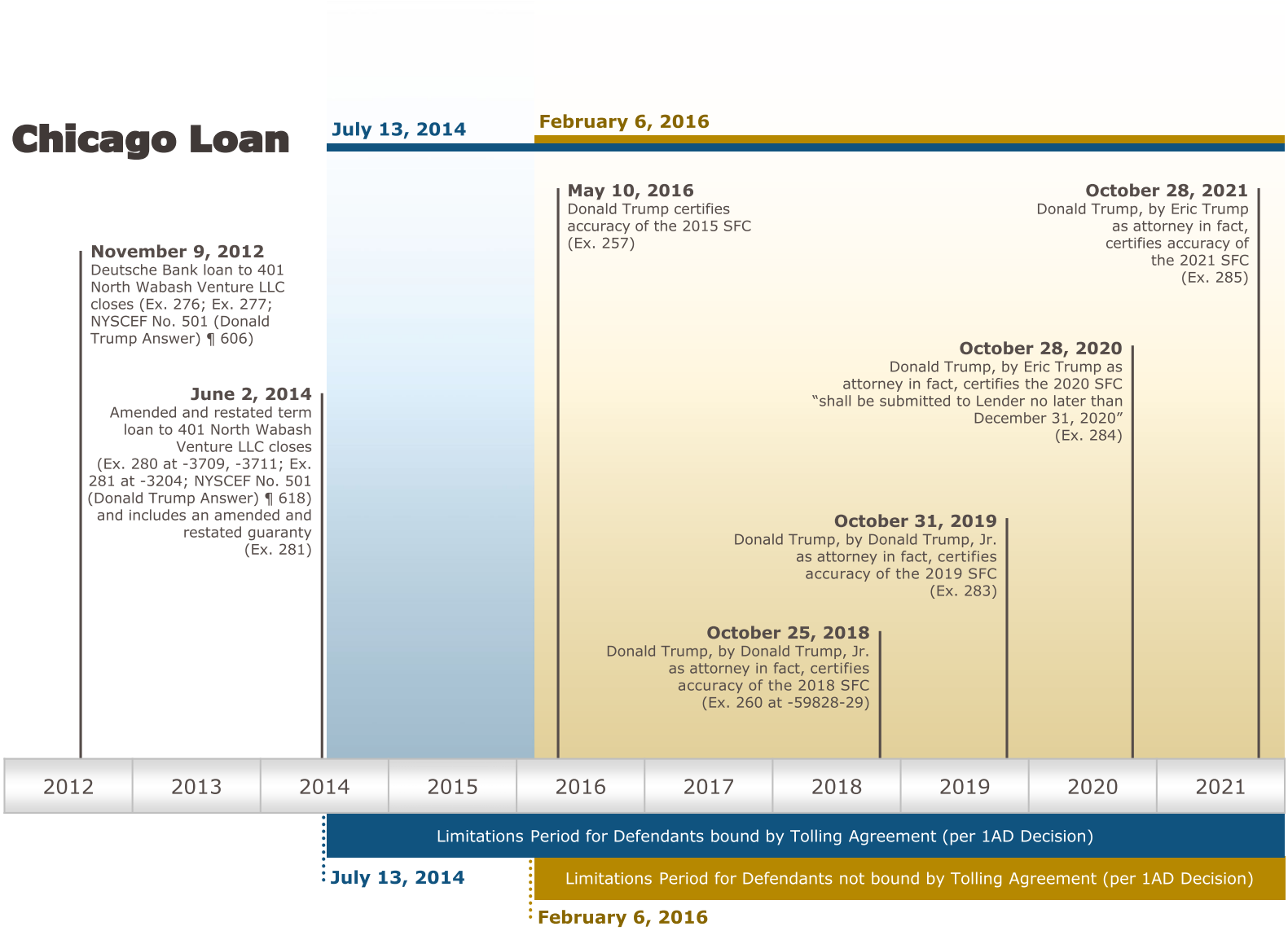
The facts asserted in the following paragraphs of Plaintiff's 202.8-g Statement are "Undisputed" with cited clarifications or technical corrections noted by Defendants:

20	The intended citation is Exhibit 34
185	The 2019 SFC estimated the total current value of Club Facilities and Related Real Estate at $2,182,200,000.
194	The asserted fact describes the 2021 Statement.
228	The agreement also included the "Events of Dissolution" language cited by Defendants.
266	The cited quotation omitted ellipses.
299	The easement appraisal considered "16 proposed lots" (Ex. 119 at -5568) while the workpapers described 17 lots.
365	The unit described here as "Penthouse A" is Penthouse 28.
368	The unit described here as "Penthouse B" is Penthouse 20.
398	The correct amount is $16,536,243 (Faherty Aff., Ex. 192 at Tab "As of 06.30.17" Rows 14, 21, 22, 23, 24, and 25).
568	Ivanka Trump signed the November 22, 2016 request (Ex. 309).
569	Ivanka Trump signed the November 22, 2016 request (Ex. 309).
576	The cited language appears as part of Exhibit 318.
582	The exhibit is being refiled to include the omitted attachment (Faherty Reply Aff. Ex. 501).
690	The cited certification states that the 2017 Statement is attached.
700	The net worth certification includes the "Step-Down Percentage" language cited by Defendants.
701	The net worth certification includes the "Step-Down Percentage" language cited by Defendants.
778	The borrower cited is 401 North Wabash Venture LLC

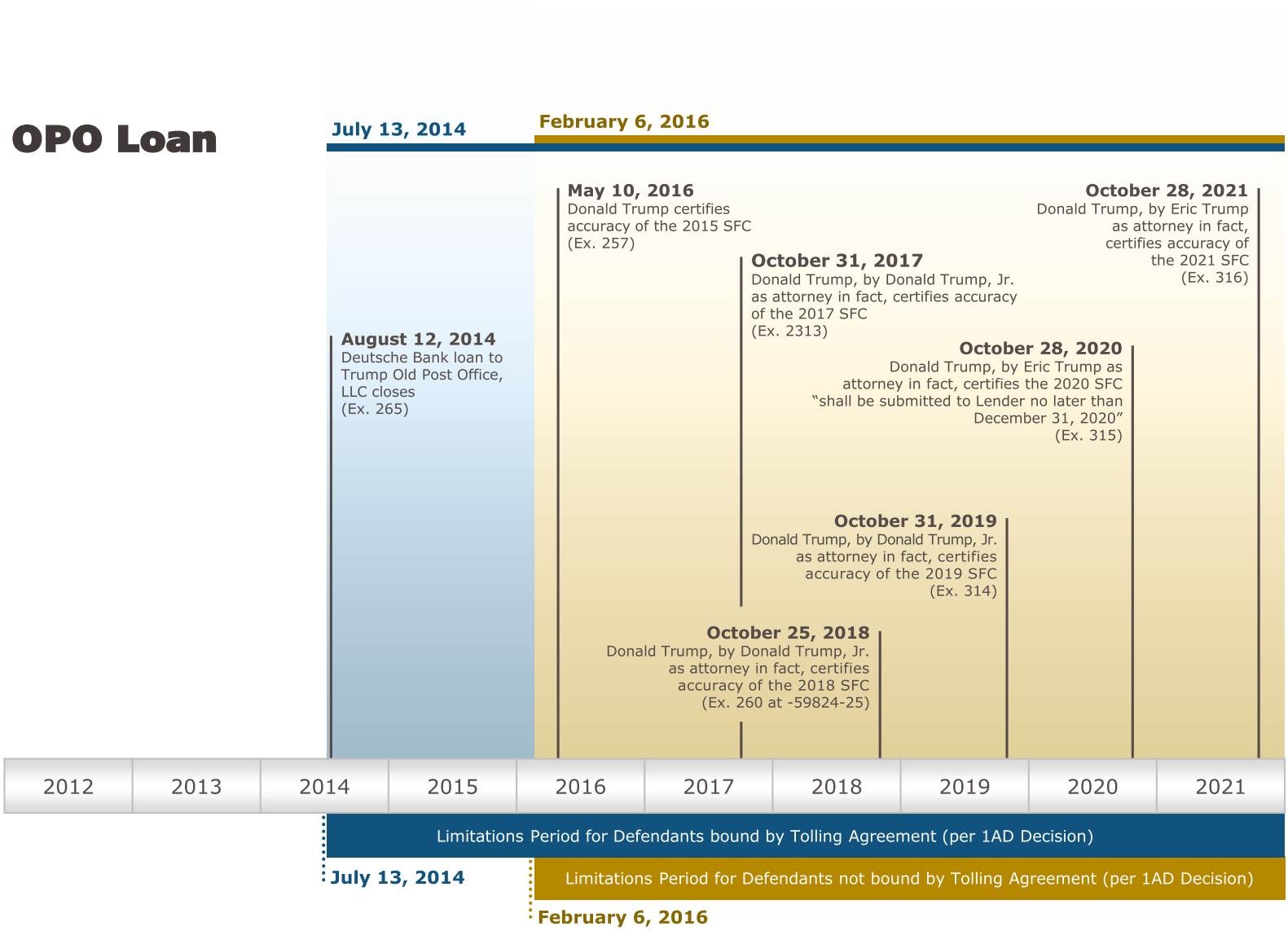
Tab 2

Doral Loan

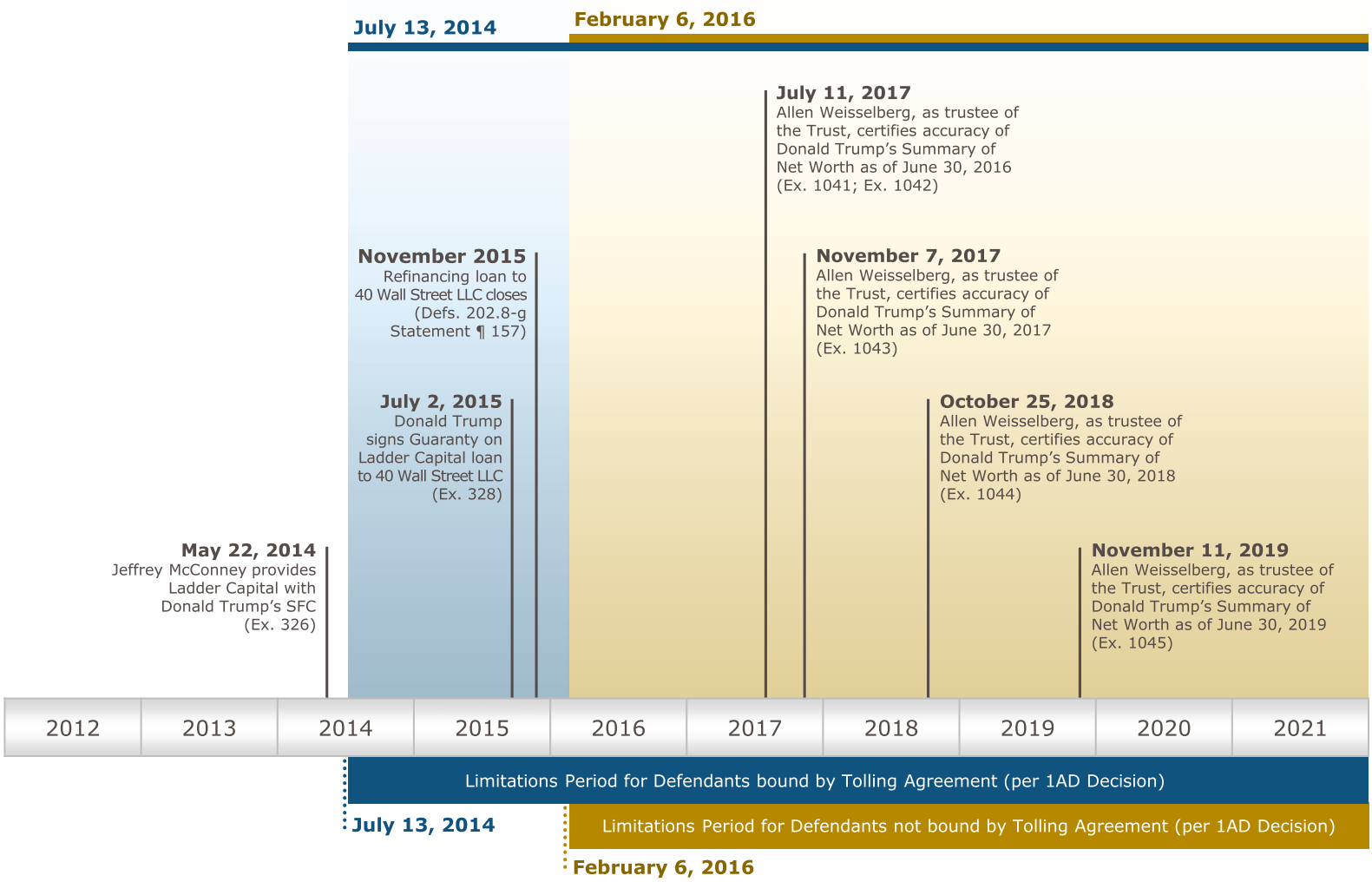

July 13, 2014
February 6, 2016
June 11, 2012
Deutsche Bank loan to Trump Endeavor 12 LLC closes (Ex. 254; NYSCEF No. 501 (Donald Trump Answer) ¶ 587)
November 11, 2014
Donald Trump certifies accuracy of the 2014 SFC (Ex. 256)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC (Ex. 257)
March 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2016 SFC (Ex. 258)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020" (Ex. 262)
October 13, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC (Ex. 259)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC (Ex. 261)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC (Ex. 260 at -59826-27)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC (Ex. 263)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016


Chicago Loan
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
August 12, 2014
Deutsche Bank loan to Trump Old Post Office, LLC closes
(Ex. 265)
May 10, 2016
Donald Trump certifies accuracy of the 2015 SFC
(Ex. 257)
October 31, 2017
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2017 SFC
(Ex. 2313)
October 28, 2021
Donald Trump, by Eric Trump as attorney in fact, certifies accuracy of the 2021 SFC
(Ex. 316)
October 28, 2020
Donald Trump, by Eric Trump as attorney in fact, certifies the 2020 SFC "shall be submitted to Lender no later than December 31, 2020"
(Ex. 315)
October 31, 2019
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2019 SFC
(Ex. 314)
October 25, 2018
Donald Trump, by Donald Trump, Jr. as attorney in fact, certifies accuracy of the 2018 SFC
(Ex. 260 at -59824-25)
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Limitations Period for Defendants bound by Tolling Agreement (per 1AD Decision)
July 13, 2014
Limitations Period for Defendants not bound by Tolling Agreement (per 1AD Decision)
February 6, 2016

40 Wall Street Loan



Seven Springs Loan

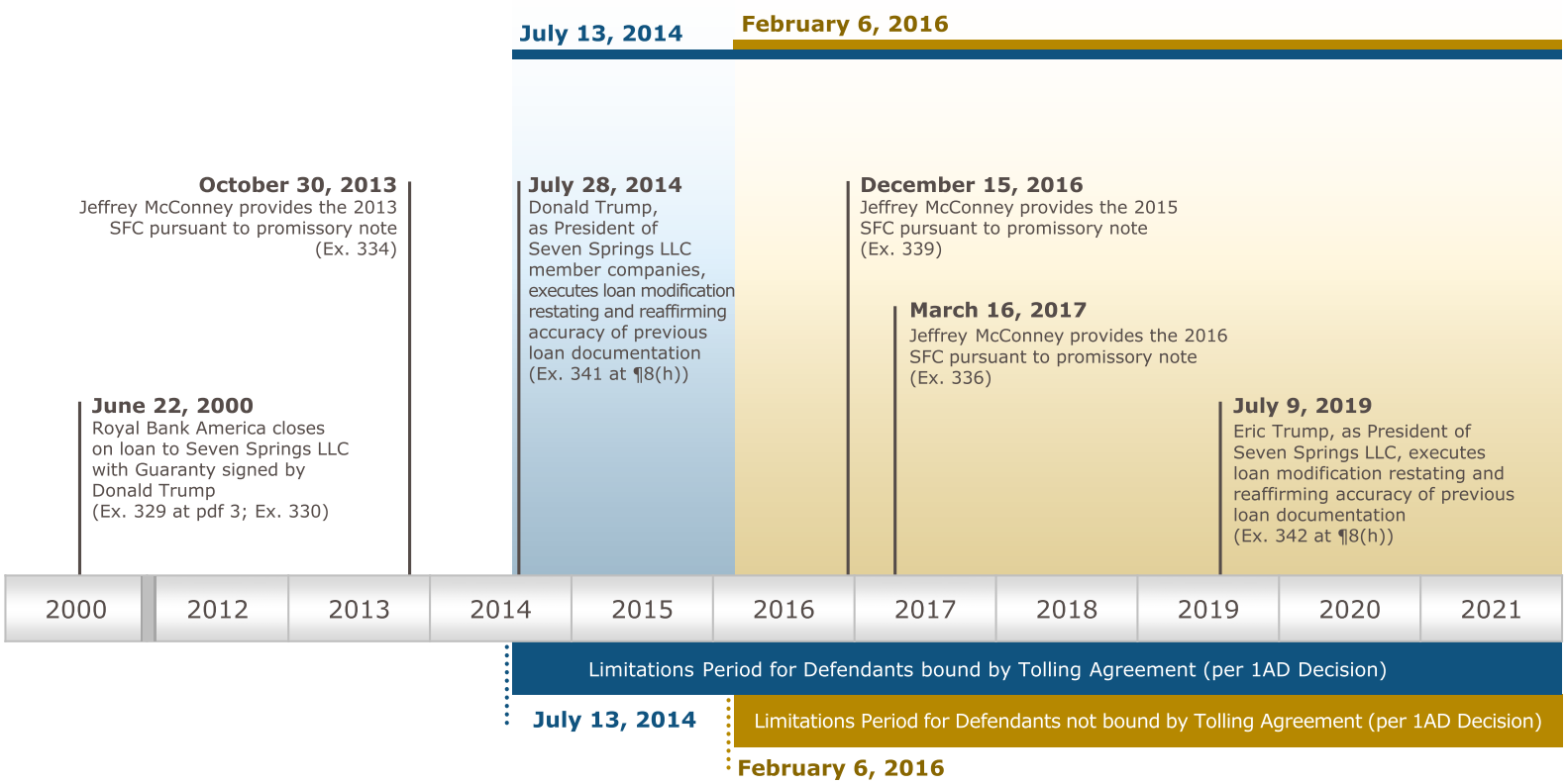


EXHIBIT 14

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").

J.S.C.

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 upon plaintiff and that such service shall be deemed good and sufficient notice of this Application.

ENTER :

_____
J.S.C.

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

2 SEP 06 2023

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

EXHIBIT 15

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

Motion Seq. No. 013

AFFIRMATION OF COLLEEN K. FAHERTY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO VACATE

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 enforcement action.
2. I submit this Affirmation in further support of OAG's Opposition to Defendants' Motion to Vacate and Modify the Preliminary Conference Order.
3. I am familiar with the facts and circumstances set forth herein, which are based upon my personal knowledge and an examination of records and documents contained in OAG's files.
4. The OAG investigative file relevant to this matter contains the following breakdown of documents:
    a. An electronic database containing 1,751,599 documents in total, (consisting of 12,027,796 pages);
    b. 1,055,815 documents, (consisting of 6,487,181 pages), from the Trump Organization's productions; and

c. 695,785 documents, (consisting of 5,540,615 pages), from third party subpoena recipient productions; as well as

d. transcripts from 56 witnesses, including 12 of whom are or were Trump Organization employees at the time of their examination.

5. In addition to those overall numbers, the OAG investigative file includes the following subsets of information:

a. approximately 10,000 documents within the investigatory file consisted of litigation records exchanged between counsel for Defendants and third parties in litigation over the restaurant space in the Old Post Office Building;

b. more than 10,000 documents were from the set reviewed by counsel for Defendants as part of the third-party privilege review during the subpoena enforcement proceeding in *People v. The Trump Organization*, NYS Index No. 451685/2020; and

c. approximately 276,000 documents are from Mazars, which consist primarily of audit workpapers and tax materials, including more than 6,000 pages of tax returns for Donald J. Trump, which can be requested by the client.

6. On November 28, 2022, OAG produced to defendants a secure cloud link containing a production of all the "63(12) examination transcripts, videos, and exhibits for all defendants and examinees employed by the Trump Organization at the time of their exam," (the November 28 Production). At no point after that production did defendants complain that they were unable to access the documents contained in that link.

7. On December 2, 2022, OAG hand-delivered via courier service a "production of documents called for by Item (1)(d) of the November 22, 2022 Preliminary Conference Order" (the

"PCO," NYSCEF No. 228), (the "December 2 Production"), specifically representing OAG's production of "third-party documents, and transcripts of 63(12) examinations of third parties."[1] The December 2 Production was contained on four encrypted BitLocker drives.[2]

8. Both the November 28 Production and December 2 Production were produced as part of a good-faith effort by OAG to ready those materials for prompt production to defendants so as to enable the expeditious adjudication of this action.

9. Defendants were informed four years ago that OAG had subpoenaed Deutsche Bank for records in 2019 concerning the Doral, Chicago, and Old Post Office transactions. *See* Ex. A.

10. Similarly, Defendants were contemporaneously informed (in 2019) that OAG had subpoenaed Mazars USA LLP for records concerning the financial statements at issue. On June 3, 2019, the Trump Organization's general counsel Alan Garten wrote OAG a letter seeking to discuss OAG's May 13, 2019 subpoena to Mazars. The parties (including Mr. Garten as well as outside counsel Lawrence Rosen) subsequently held a meet-and-confer on the request on June 10, 2019. *See* Ex. B.

11. Defendants are familiar with the substance of OAG's investigation and have been involved since as early as 2019. For example, during OAG's investigation, counsel for Defendants sat in on 26 days of testimony of Trump Organization witnesses. Additionally, they have had access to their own documents, witnesses, employees and agents for years.

12. At no point between September 21, 2022 and November 28, 2022 did defendants reach out to

[1] One third-party production was withheld from the December 2 Production—specifically, the CBRE Group, Inc. production, containing less than 1,000 documents—based on that third-party's objection to OAG's production of their materials. *See* NYSCEF No. 235. OAG supplemented and completed its production on December 21, 2022, after CBRE completed its designation review.

[2] Based on counsel's request, OAG promptly created and produced a second set of the December 2 Production, in order to provide Ivanka's counsel, Reid Figel, immediate access to the December 2 production. On December 5, 2022 OAG staff provided Mr. Figel's legal assistant OAG's internal copy of the four encrypted drives and by December 8 had managed to successfully upload the contents and returned the drives to OAG.

OAG to demand production of OAG's investigative file or any other discovery in this matter. Indeed, there were no discovery demands from defendants, other than those prescribed by the PCO (NYSCF No. 228) on the dates assigned or stipulated to.

13. The discovery demands propounded by defendants included the following:

    a. 1,144 party document requests issued to OAG on December 9, 2022;

    b. 50 interrogatories issued to OAG on December 9, 2022;

    c. 396 notices to admit issued to OAG on February 17, 2023; and

    d. 50 contention interrogatories issued to OAG on February 24, 2023.

14. OAG timely and substantively responded to defendants' discovery demands, as required by the PCO; and is otherwise drafting timely-responses to the remaining discovery demands for contention interrogatories and requests for admissions.

15. By the time Defendants issued their voluminous 1,144 document requests to OAG on December 9, 2022, they were already in possession of OAG's full investigative file. By December 30, 2022, in response to those 1,144 document requests, defendants had document citations supporting each allegation of the Complaint.

16. Defendants did not issue any subpoenas until February 16, 2023, 148 days after this action was filed, when they provided OAG notice of the five subpoenas it served[3] on third parties, including certain Deutsche Bank witnesses, Michael Cohen, and Donald Bender from Mazars.

17. Six days later, on February 22, 2023, Defendants notified OAG of additional subpoenas that they issued to additional witnesses and entities that had been known to Defendants for years, including Mazars, Cushman & Wakefield, Ladder Capital and Rosemary Vrablic, the former

[3] On the face of the documents, it appears counsel attempted service prior to its February 16 notice to OAG; however, despite requesting copies of counsel's formal certification of complete service, defendants have failed to furnish any such documentation and thus OAG is unaware when precisely the third party subpoena recipients actually received the subpoenas for testimony or whether service was proper.

Deutsche Bank employee who served as the Trump Organization's and Mr. Trump's longstanding business relationship manager.

18. On February 28, 2023—the last date to notice a subpoena returnable before the close of fact discovery under the PCO—Defendants provided OAG notice of another fifteen subpoenas, including nine document subpoenas issued to law firms representing subpoena recipients that had complied with OAG's investigatory subpoenas. On their face, the subpoenas appear to have no connection to the subject matter of OAG's investigation or enforcement action.

19. All told, between February 16 and February 28, 2023, OAG received notice of the issuance of twenty-seven document and testimonial subpoenas purportedly served on third parties.[4] The parties are currently scheduled to take 15 depositions between March 7 and April 7.

20. Each of these third-party witnesses subpoenaed were well known to Defendants, having worked closely with them for years before this investigation began. For example, based on my review of OAG's eDiscovery database, nearly all of the individuals subpoenaed appears in hundreds, if not thousands of emails in OAG's investigative file.[5]

21. Donald Bender had been the Trump Organization's accountant for decades. *See, e.g.,* Ex. C.

22. Rosemary Vrablic had been the lead banker for the Trump Organization and Mr. Trump since 2011 and was invited to dinners with friends by Ivanka Trump. *See*, *e.g.*, Ex. D.

23. Additionally, the document subpoenas issued to third parties seek nearly identical or substantially similar documents as those demanded by or produced in response to OAG's underlying investigatory subpoenas to these very same parties.

[4] On March 9, counsel provided OAG notice of an additional testimonial subpoena served on a DB witness., As with all of the other third party subpoenas, OAG has not received any confirmation about the timely or proper service of this subpoena.

[5] Based on a cursory search of the documents in OAG's investigatory file of the emails of those witnesses defendants noticed and their corresponding communications with a trumporg.com domain, there are collectively thousands of purportedly responsive hits.

24. For example, Defendants' February 2023 subpoena to Mazars explicitly calls for all documents "produced in response to any NYAG subpoena" from the investigation. Ex. E.

25. OAG issued its first subpoena to Mazars in May 2019, which in a straightforward manner sought the Statements of Financial Condition, all drafts of the same, documents and communications relating to the same, and communications such as engagement letters. Ex. F at Reqs. 1-3.

26. Meanwhile, Defendants' requests to Mazars also include a demand for all documents relating to communications with "any banking regulators regarding any of the Defendants" and "any governmental agency regarding … any of the Defendants." Ex. E at Request 23-24.

27. Defendants' subpoena duces tecum to Deutsche Bank contains similar improprieties as the Mazars' subpoena. Defendants' subpoena to Deutsche Bank includes virtually identical requests.[6] Ex. G at Reqs. 37-38.

28. On March 3, 2023, in its responses and objections to defendants' subpoena, Deutsche Bank noted that its original searches in response to OAG subpoenas had been "reasonably calibrated to the events, individuals, and transactions relevant to this proceeding." Ex. H.

29. In 2016, Mr. Trump successfully obtained a delay until after the election in the trial of the consumer class action against him for fraud in the advertising of Trump University, arguing "Mr. Trump must devote all of his full-time efforts and energies to running his campaign and running for office, and I don't believe that it would be fair to him -- in fact, I think it would be a virtually impossible burden on him to have to defend himself at trial between now and November." *Low v. Trump University, LLC*, No. 10 Civ. 940, Dkt. No. 481, Hearing Tr. at 10-19, (S.D. Cal. May 13, 2016). Ex. I.

[6] In its response, Deutsche Bank notes that the request for communications with banking regulators "calls for the production of information subject to the Bank Examination Privilege." Ex. G.

30. On March 13, 2023, Joseph Tacopina, an attorney representing Donald J. Trump released a letter he had written to Jocelyn Strauber, Commissioner of the New York City Department of Investigation dated March 10, 2023. The letter calls for a "independent investigation into the unprecedented multi-year probe of President Trump by the New York County District Attorney's Office." The letter goes on to describe actions by the District Attorney as "a blatant and unconstitutional attempt to interfere with a federal election by attempting to prosecute President Trump to make him unable to run for re-election." Ex. J.

31. Finally, defendants' affidavit from HaystackID does not support further extension here; even if all the allegations therein are taken at face value (which the accompanying affirmation of Paige Podolny shows why they should not), the entire data load process took only twenty days, completely incommensurate with Defendants' request for the court's intervention now.

32. I have attached hereto as exhibits true and correct copies of the following documents, excerpted where designated:

    a) Attached as "Exhibit A" is a true and correct copy of a document bearing Bates number DB-NYAG-299092, a March 14, 2019 letter addressed to Alan Garten.

    b) Attached as "Exhibit B" is a true and correct copy of a letter dated June 3, 2019 on Trump Organization letterhead from Alan Garten, Chief Legal Officer, concerning OAG's May 13, 2019 subpoena.

    c) Attached as "Exhibit C" is a true and correct copy of an excerpted transcript for Donald Bender August 27, 2019.

    d) Attached as "Exhibit D" is a true and redacted correct copy of a document bearing Bates number TTO_01213439.

    e) Attached as "Exhibit E" is a true and correct copy of the Subpoena Duces Tecum dated February 16, 2023, issued to Mazars USA LLP, by Defendants and signed by Clifford S. Robert, in this action.

    f) Attached as "Exhibit F" is a true and correct copy of the Subpoena Duces Tecum dated May 13, 2019, issued to Mazars USA LLP, by OAG and signed by Austin Thomson and Matthew Colangelo.

g) Attached as "Exhibit G" is a true and correct copy of the Subpoena Duces Tecum dated February 17, 2023, issued to Deutsche Bank Trust Company Americas, by Defendants and signed by Clifford S. Robert, in this action.

h) Attached as "Exhibit H" is a true and correct copy of Deutsche Bank's March 3, 2023 Non-Party Responses and Objections to Defendants' Subpoena Ad Testificandum Pursuant to CPLR § 3101(a)(4).

i) Attached as "Exhibit I" is a true and correct copy of the hearing transcript from *Low v. Trump University, LLC*, No. 10 Civ. 940, Dkt. No. 481, Hearing Tr. at 10-19, (S.D. Cal. May 13, 2016).

j) Attached as "Exhibit J" is a true and correct copy of a letter dated March 10, 2023, from Joseph Tacopina, an attorney representing Donald J. Trump, written to Jocelyn Strauber, Commissioner of the New York City Department of Investigation.

Dated: New York, New York
March 15, 2023

Colleen K. Faherty
COLLEEN K. FAHERTY

CERTIFICATION OF COMPLIANCE
WITH UNIFORM CIVIL RULE 202.8-b

I certify that the foregoing document, excluding the caption, table of contents, table of authorities, and signature block, contains 2,234 words. I further certify that I relied on the word count of the word-processing system used to prepare the document.

Colleen K. Faherty
COLLEEN K. FAHERTY

AFFIRMATION OF SERVICE

Daniel S. Magy affirms upon penalty of perjury:

I am over eighteen years of age and an Assistant Solicitor General in the office of the Attorney General of the State of New York, attorney for the respondent People of the State of New York, by Letitia James, Attorney General herein. On September 20, 2023, I served, with consent of opposing counsel or the opposing party, the accompanying affirmation by sending one portable document format copy by electronic mail as complete and effective personal service upon the following named person(s):

Clifford S. Robert
Michael Farina
Robert & Robert PLLC
crobert@robertlaw.com
mfarina@robertlaw.com

Michael Madaio
Habba, Madaio & Associates, LLP
mmadaio@habbalaw.com

Daniel S. Magy