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

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendant-Appellants, IVANKA TRUMP, Defendant.	Appeal No: 2023-04925 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.)

REPLY MEMORANDUM OF LAW IN SUPPORT OF A STAY

PENDING APPEAL PURSUANT TO CPLR 5519(c)

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Defendant-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Appellants"), through their undersigned attorneys, respectfully submit this memorandum of law in further support of their motion, brought by order to show cause, pursuant to CPLR § 5519(c) and this Court's inherent discretionary powers for a stay pending appeal of the decision and order entered by the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron"), dated September 26, 2023, and duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on September 27, 2023, as supplemented by the Supplemental Order dated October 4, 2023, and duly entered on October 5, 2023, (1) denying Appellants' motion for summary judgment in its entirety, (2) granting Plaintiff-Respondent People of the State of New York by Letitia James, Attorney General of the State of New York's (the "Attorney General") motion for partial summary judgment, (3) cancelling any certificates filed under and by virtue of GBL § 130 by any of the entity Appellants or any other *non-party* entity controlled or beneficially owned by any of the individual Appellants, and (4) directing that the parties recommend the names of no more than three independent receivers to manage the dissolution of the cancelled LLCs (the "MSJ Decision"). Appellants also submit this memorandum in further support of their application for a stay of the trial pending resolution of their appeal to this Court.

PRELIMINARY STATEMENT

The Attorney General's opposition fundamentally misconstrues multiple court orders, while acknowledging *sub silentio* that the relief granted in the MSJ Decision was patently improper.

First, the Attorney General argues "defendants' claims of irreparable harm miss the mark because they are based on the mistaken premise that Supreme Court has placed entities into receivership or ordered their dissolution," claiming "[t]he court did no such thing, and instead made clear that further remedial questions will be resolved in due course." NYSCEF Doc. 8, Respondent's Opp. at 2 ("Respondent's Opp."). That argument is both preposterous and frivolous. The MSJ Decision provides as follows:

> ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants *or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled*; and it is further
>
> ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent *receivers to manage the dissolution of the canceled LLCs*.

NYSCEF Doc. No. 3, Robert Aff., Ex. A at 35 (emphasis added).[1]

Supreme Court's Supplemental Order dated October 4, 2023 (the "Supplemental Order"), issued numerous additional directives and deadlines to the parties in furtherance of the cancellation and dissolution of all "entity defendants and any other entities controlled or beneficially owned by Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney that have existing certificates filed pursuant to GBL § 130." NYSCEF Doc.

[1] The Attorney General does not oppose a stay of the portion of the MSJ Decision directing the cancellation of GBL § 130 certificates. See Respondent's Opp. at 35. As such, Appellants focus on the ad damnum clause of the MSJ Decision concerning dissolution of the canceled LLCs.

No. 3, Robert Aff., Exhibit Q at 2. Supreme Court also extended the period to provide the Court with names of potential receivers to October 26, 2023. Id. However, the Supplemental Order did not recall the mandates contained in the MSJ Decision concerning the immediate dissolution of the Appellant and ***nonparty*** entities, notwithstanding that Supreme Court has no rationale or legal authority to grant any such relief.

The Attorney General's arguments relying on Justice Engoron's statements at the September 20, 2023, Pretrial Conference, which occurred prior to the issuance of the Supplemental Order, fare no better. The September 20, 2023, transcript makes plain that Justice Engoron failed to comprehend the grave consequences of the MSJ Decision. This included a failure to recognize what entities came within the scope of the decision on dissolution. The Court elected not to recall those mandates either on the record or in the Supplemental Order following that conference. NYSCEF Doc. No. 3, Robert Aff., Exhibit O.

Perhaps more egregiously, the Attorney General misconstrues this Court's June 27, 2023, order, which "unanimously modified, on the law," Justice Engoron's January 9, 2023, order denying Appellants' and Ms. Trump's motions to dismiss (the "June 27 Decision"). The Court's decretal paragraph provides, in relevant part:

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered January 9, 2023, which denied defendants' respective motions to dismiss the complaint, *unanimously modified, on the law, to dismiss, as time-barred*, the claims against defendant Ivanka Trump and *the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)...*

Robert Aff., Ex. G. at 2 (emphasis added). The Attorney General argues, "[t]he Court dismissed former defendant Ivanka Trump based on its conclusion that she was not bound by the tolling agreement and the OAG's allegations did not support a claims [sic] that she participated in wrongful conduct after February 2016." Respondent's Opp. at 10. The Attorney General puts words in this Court's mouth, claiming that the dismissal of Ms. Trump was "based on her argument that she had not personally participated in any repeated or persistent fraud or illegality within the limitations period." Respondent's Opp. at 31, fn. 5. This is a complete fabrication by the Attorney General to avoid the consequences of this Court's unambiguous determination that certain claims are time-barred where those claims are premised on transactions—here, complex loan agreements involving sophisticated commercial entities—completed outside of the statutory limitations period.

Instead of addressing Appellants' substantive arguments, the Attorney General devotes much of her opposition to Appellants' request to stay the trial pending appeal to avoid stalling her "highly public trial" and feigned (and recycled) concern that a stay in the interest of justice will "cause a cascade of delays in … other litigation involving Mr. Trump." Respondent's Opp. at 16, 18. Lost to the Attorney General, however, is Appellants' argument that Appellants are being forced to defend against time-barred claims in excess of Supreme Court's jurisdiction, resulting in a demonstrable and continuing compounding of error. That the trial has been underway is of no moment when measured against the systemic harm to the rule of law and the prejudice to Appellants in continuing a trial where Supreme Court is acting in excess of its jurisdiction by hearing time-barred claims and considering large scale disgorgement. Permitting the trial to proceed and allowing Supreme Court to enter a judgment based on claims this Court determined were non-viable as a matter of law will wreak havoc for the Appellants that cannot

be rectified by filing a post-judgment appeal. Appellants, like any other litigant regardless of status or social standing, are entitled to due process. Appellants seek simply the constitutionally guaranteed fair trial to which they are entitled. Supreme Court has ignored this Court, ignored the law, and sown chaos in a manner fundamentally at odds with the purpose and integrity of the New York State judicial system.

ARGUMENT

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL

A. The MSJ Decision and the Supplemental Order

Perhaps recognizing the absurdity of the MSJ Decision, rather than address the merits of Appellants' arguments regarding the unasked-for dissolution of party *and non-party* entities, the Attorney General ignores the plain language of the decision and instead claims: (i) the "step of soliciting recommendations merely gathers information and does not impose a receivership or dissolution"; (ii) "the court will need to determine if a receiver is even warranted"; (iii) "any relief appointing a receiver will involve a process during which defendants (and any nonparties) will have opportunities to raise objections, prior to either an order declining to impose a receivership or a final order of receivership that they may challenge on appeal"; and (iv) "Defendants' arguments relating to dissolution under a receivership are … [] contingent upon events which may not come to pass." Respondent's Opp. at 23.[2] The Attorney General's mental gymnastics do not alter the fact that the MSJ Decision orders: "that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential

[2] The Attorney General concedes that this Court should stay the portion of the MSJ Decision "directing the cancellation of the GBL § 130 business certificates." Respondent's Opp. at 35.

independent receivers *to manage the dissolution of the canceled LLCs*." NYSCEF Doc. No. 3, Robert Aff., Ex. A at 35 (emphasis added).

Supreme Court did not recall any of the mandates in the MSJ decision either on the record at the pretrial conference or in the Supplemental Order. See NYSCEF Doc. No. 3, Robert Aff., Exhibits O and Q. Thus, while the Attorney General argues that Supreme Court plans to address "further remedial issues" later, Respondent's Opp. at 22, this ignores the language of the MSJ Decision. Counsel specifically sought to clarify the decision by asking whether the entities owning assets in real property "are now going to be sold" or "managed under the direction of the monitor or whomever we appoint for this process." Robert Aff., Ex. O at 5:11-14. Supreme Court responded: "I appreciate the concern. I understand the question. I'm not prepared to just issue a ruling right now, but, we'll take that up in various contexts, I'm sure." Id. at 5:15-18. Counsel pressed for further clarification on which entities were actually impacted by Supreme Court's far-reaching order:

> Which of the entities are actually covered here, because you have New York entities. You have New York entities that, for example, own like, just like a house or own a townhouse or something. They're just, maybe Don, Jr. or Eric's residence. Are those covered? Because they're owned through LLCs, at least *under a technical reading of the statute or of the order, then those entities would also be surrendering their GBL 130 Certificates, even though they don't really have any connection to the proceeding per se*.

Id. at 6:6-16 (emphasis added). Supreme Court again responded that it would "be happy to try to work this out" and then increased the number of days it had permitted for the parties to name potential receivers from 10 to 30. Id. at 7:20-24. Without recalling or vacating the mandates in the MSJ Decision or otherwise clarifying them in the Supplemental Order, Supreme Court's comments about "work[ing] it out" are meaningless.

B. The Attorney General Does Not Dispute that Supreme Court Had No Authority to Order Dissolution

Having ignored the language in the ad damnum clause of the MSJ Decision directing a sentence of corporate death in the form of judicial dissolution, the Attorney General fails to dispute any of the following salient points in Appellants' moving papers:

- Executive Law § 63(12) does not alone permit either purely punitive relief or the wholesale dissolution of any business entity irrespective of whether certain discrete transactions are determined to be "fraudulent or illegal." Indeed, the statute does not contain any reference at all to dissolution as a remedy. Rather, where the Attorney General demonstrates "persistent fraud or illegality in the carrying on, conducting or transaction of business," "*such* [i.e., the fraudulent] business activity" may be permanently enjoined. In cases where injunctive relief is merited—the statute uses the conjunctive—cancellation of a business certificate may also be authorized "in an appropriate case." Cancellation, then, is warranted not as matter of course but only if necessary to enjoin "such [fraudulent] business activity." There are simply no cases wherein dissolution was granted based solely on § 63(12) authority.
- The Attorney General did not assert a claim for dissolution. Indeed, as noted, Executive Law § 63(12) does not authorize judicial dissolution. For Supreme Court to impose such a remedy, the Attorney General must seek relief pursuant to BCL §1101. Not only did the Attorney General not bring such a claim against Appellants, but at no point in this litigation has she ever even requested that any

entity be dissolved.[3] Thus, the *sua sponte* court ordered dissolution is wholly ultra vires and lacks any jurisdictional basis.

- Supreme Court has no authority to transform a cause of action under Executive Law § 63(12) into one under BCL § 1101 *sua sponte.* Even if the Attorney General did request such relief, BCL § 1101 precludes the relief granted as: (a) any claim for dissolution under the provision is "triable by jury as a matter of right" and (b) BCL § 1111(b)(1) mandates that "[i]n an action brought by the attorney-general, the interest of the public is of paramount importance." Supreme Court fails to identify any public harm. Thus, the Attorney General "does not allege the type of *public* harm that is the legal linchpin for imposing the 'corporate death penalty.'" People by James v. Natl. Rifle Assn. of Am., Inc., 74 Misc. 3d 998, 1004 (Sup. Ct. N.Y. Cty. 2022)[4]. "State-imposed dissolution…should be the last option, not the first." Id.
- Supreme Court is not empowered to grant such relief, which is legally and factually distinct from cancellation, based on a general relief clause. Hyman v Able & Ready Appliance Repair Corp., 193 A.D.3d 509, 510 (1st Dep't 2021)

[3] The ramifications of Supreme Court's decision reach far beyond the impacted parties and non-parties. The brazen disregard of any notions of due process and the upending of long-established trial practice and the CPLR are the outcome of a plague within the justice system stemming from the weaponization of authority. Not even the Attorney General requested the extreme relief awarded by Supreme Court before it *sua sponte* imposed draconian mandates on Defendants and non-parties. Supreme Court, in granting relief the Attorney General *never requested*, deprived Defendants and the non-parties of any notice or opportunity to be heard as to the award of such extreme remedies through ***the adjudication of a motion, which expressly sought only a determination as to liability of the Defendants.*** Indeed, it cannot be disputed that Defendants and non-parties could not defend against the issuance of relief that was never requested. The ramifications of such unchecked judicial manipulation are both evident and severe. If left intact by this Court, all parties opposing any summary judgment motion, even those expressly not seeking any remedial relief, will be at risk for a *sua sponte* award of extraordinary and unrequested relief by Supreme Court. Such manifestly unconstitutional disregard for the law cannot and should not be countenanced by this Court.

[4] Except where indicated, internal quotation marks and internal citations are omitted throughout.

("The presence of a general relief clause enables the court to grant relief that is not too dramatically unlike that which is actually sought, as long as the relief is supported by proof in the papers and the court is satisfied that no party is prejudiced."). Appellants and the affected nonparties also had no ability to defend against a remedy that has never been asserted in this action. Supreme Court's wholesale grant of dissolution by fiat absent a BCL § 1101 claim, *any* prior request for such relief, or any notice whatsoever that it was considering granting such relief is an egregious violation of Appellants' due process rights and in clear excess of Supreme Court's lawful authority and jurisdiction.

- Finally, Supreme Court's election to order the dissolution of non-party entities, over which Supreme Court has no jurisdiction, is impermissible. Weiner v. Weiner, 107 A.D.3d 976, 977 (2d Dep't 2013) ("A court has no power to grant relief against an entity not named as a party and not properly summoned before the court.") Since the entities affected by Supreme Court's permanent injunction have never been properly summoned before the court, Supreme Court has no power to award any relief against them.

Based on the Attorney General's failure to dispute that an order directing dissolution is palpably improper and would cause irreparable harm to Appellants and non-party entities, and her concession that there should be a stay of decision granting cancellation of the business certificates, this Court should stay the decretal paragraphs of the MSJ Decision ordering (a) that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or *by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney* are canceled; and it is further and (b) that

within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs. NYSCEF Doc. No. 3, Robert Aff., Ex. A at 35.[5]

C. The Directives of the MSJ Decision Directing Advance Notice to the Monitor Are Improper

The Supplemental Order directs that for all entity defendants and any other entities controlled or beneficially owned by Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney that have existing certificates filed pursuant to GBL § 130, defendants provide the Monitor with advance notice of:

> (1) Any application for a new business certificate (including, but not limited to, "doing business as" or "assumed name" certificates) in any jurisdiction;
> (2) The creation of a new entity to hold or acquire the assets of a Section 130 Entity;
> (3) Any anticipated transfer of assets or liabilities to any other entity;
> (4) Any anticipated distribution from a Section 130 Entity;
> (5) Any assignment of rights from a Section 130 Entity;
> (6) Any disclosures to third parties regarding the transfer or cancellation of the business certificates including, but not limited to, correspondence to the Section 130 Entities' lenders, banks, finance companies, leasing agents, insurance companies, buyers, equity partners / co-owners, or taxing authorities;
> (7) Any modifications to existing contracts or obligations with any counterparty; and
> (8) Any notice by a counterparty declaring an event of default resulting from the September 26 Order, including the cancellation of the certificates or the appointment of a receiver.

See Robert Aff., Ex. Q at 2-3.

The Attorney General urges this Court to permit the "information-gathering" portion of the Supplemental Order to move forward because it permits her to access information to which she would otherwise never be entitled. The Attorney General essentially argues no harm, no foul

[5] Given the limited time to propose a receiver, Defendants immediately suggested the parties use the preexisting monitor, Hon. Barbara S. Jones. NYSCEF Doc. No. 3, Robert Aff., Exhibit O at 4. Judge Jones ultimately declined to serve as the receiver. The Attorney General has not yet proposed additional names and this Court should stay those portions of the order directing any further steps toward dissolution or receivership.

while ignoring the Supplemental Order's extraordinary curtailment of the business activities of ***non-party*** entities Supreme Court cannot even name. Supreme Court simply has no jurisdiction to order non-party entities to do anything at all, including without limitation to provide advance information of every business decision to the Monitor. The Supplemental Order thus confirms that Supreme Court fully intends to order dissolution and other relief without jurisdiction, authority, or comprehension of the consequences. Consequently, all aspects of the MSJ Decision and the Supplemental Order should be stayed pending resolution of this appeal.

D. The Attorney General Misconstrues this Court's June 27, 2023 Decision Rejecting the Application of the Continuing Wrong Doctrine

Supreme Court has unquestionably spurned this Court's authority and clear mandate. Appellants therefore now find themselves in the unenviable position of appealing an issue already decided by this Court. The Attorney General baselessly argues that "[d]efendants' statute-of-limitations arguments are meritless." Respondent's Opp. at 2. This position ignores that Appellants' arguments are based on *this Court's June 27 Decision* explicitly rejecting the "continuing wrong" theory as a basis to extend the statute of limitations. The Attorney General's claim that "the timeliness of OAG's claims does not depend on the continuing-wrong doctrine" is a transparent attempt to walk back the theory of her case since its inception to avoid the consequences of this Court's decision. Respondent's Opp. at 31.

Since the Complaint was filed, the Attorney General's singular theory has been that Appellants' improper ***procurement*** of certain discrete loans constituted actionable wrongs under Executive Law § 63(12), *i.e.,* the submission of purportedly false and misleading financial statements **"*to induce banks to lend money to the Trump Organization on more favorable terms than would otherwise have been available to the company*."** Robert Aff., Ex. B ¶ 3

(emphasis added). The purported harm the Attorney General sought to redress was the Appellants' use of the SFCs to ***obtain*** favorable loan or insurance terms, and her argument was that subsequent, post-closing certifications as to the veracity of the SFCs, as required by the loan documents, constituted continuing wrongs extending the applicable limitations period.

Supreme Court ***fully embraced and accepted*** the Attorney General's argument regarding the continuing wrongs doctrine in deciding the motion to dismiss, holding,

> As OAG persuasively argues, ***the nature of the loan contracts at issue renders the application of the continuing wrong doctrine particularly compelling*** in this action. The loans, ***obtained through the use of allegedly inflated [Statements of Financial Condition]***, continued in effect for many years after the loan was issued and required annual performance by defendants. For example, each of the Deutsche Bank loans had terms extending past 2022, and each had continuing obligations to maintain a net worth of at least $2.5 billion and unencumbered liquidity of $50 million. ***Each of the loans required annual submissions of Mr. Trump's [Statement of Financial Condition] and a certification that the Statements were true and accurate and that there had been no material change in Mr. Trump's net worth or his liquidity***…Ms. Trump's own biography from 2014 indicated that she "spearheaded the acquisition of [Trump National Doral] and was responsible for overseeing the 250 million dollar renovation of the 800 acre property."
> …
> Accordingly, *as the verified complaint sufficiently alleges Ms. Trump's participation in continuing wrongs*…Ms. Trump is not entitled to dismissal pursuant to the statute of limitations.

Robert Aff., Ex. F at 7-8 (emphasis added). Indeed, the Attorney General made the same argument to this Court, claiming:

> Here, defendants' scheme involved such continuing wrongs. For example, the Deutsche Bank loans imposed an ongoing requirement to annually submit the Statements and certify their truth and accuracy, and defendants repeatedly did so despite the misrepresentations in the Statements. ***Such subsequent and repeated false and misleading submissions made in connection with an initial financial relationship constitute continuing wrongs.***. . . For the Old Post Office Loan, defendants also repeatedly requested disbursements conditioned on their certifying the truth and accuracy of the previously submitted Statements. That ongoing conduct *is also covered by the continuing-wrong doctrine*.

People v. Trump, et al., Appeal No. 2023-00717, NYSCEF Doc. No. 24 at 48-49 (emphasis added).

This Court ***flatly rejected*** the argument that annual certifications themselves could support the timeliness of the Attorney General's claims under the continuing wrong doctrine, holding "*[t]he continuing wrong doctrine does not delay or extend these periods (see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v. Bank of Am.*, 147 AD3d 599, 601-602 [1st Dept 2017])." Robert Aff., Ex. G at 3-4 (emphasis added). Supreme Court and the Attorney General completely disregard the cases cited by this Court, which explain that "[t]he doctrine may only be predicated on continuing unlawful acts and *not on the continuing effects of earlier unlawful conduct*. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs." Henry v. Bank of Am., 147 A.D.3d 599, 601 (1st Dep't 2017)b(emphasis added). Thus, "[i]n contract actions, the doctrine is applied to extend the statute of limitations when the contract imposes a continuing duty on the breaching party." Id.; see CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC, 195 A.D.3d 12, 19-20 (1st Dep't 2021). By rejecting the continuing wrong doctrine on the motion to dismiss, this Court concluded that Appellants' submissions of purported "separate fraudulent SFC[s]" pursuant to time-barred contracts ***were not separate, fraudulent acts at all***. Rather, they were the continuing effects of the original loan transactions. Supreme Court disregarded this distinction in the MSJ Decision. Tellingly, while the Attorney General now ignores CWCapital Cobalt Vr. Ltd., she previously cited the case for the proposition that "subsequent transactions" constitute *continuing wrongs*. See People v. Trump, et al., Appeal No. 2023-00717, NYSCEF Doc. No. 24 at 48.

Relegating this Court's June 27 Decision to make a memory hole, the Attorney General now argues, "[f]or a statutory cause of action such as § 63(12), a claim accrues 'when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court.'" Respondent's Opp. at 25, citing Aetna Life & Cas. Co. v. Nelson, 67 N.Y.2d 169, 175 (1986). The Aetna court addressed the question of whether a cause of action accrues upon an insurance company's right to foreclose a lien under Insurance Laws. The holding had nothing to do with claims under § 63(12) and certainly cannot overrule this Court's thorough analysis ***in this case under this statute*** that the cause of action for fraud arising from a loan transaction is the date the loan closed.

The Attorney General simply does not address any of the cases cited in this Court's June 27 Decision or Appellants' discussion of those cases in the opening brief. Indeed, the Attorney General now argues the "plain terms" of § 63(12) and cites to inapposite cases where the continuing wrong doctrine was not at issue. For example, the Attorney General argues "the Court has confirmed that the conduct of disseminating misrepresentations in the course of business is itself actionable as a § 63(12) fraud." Respondent's Opp. at 26, citing People v. General Electric Co., 302 A.D.2d 314 (1st Dep't 2003). Next, the Attorney General claims that "this Court's § 63(12) precedents have repeatedly held that a business's subsequent fraud or illegality, after an initial fraudulent or illegal act, produces a separate claim for the purpose of the statute of limitations." Id. citing Matter of People v. Cohen, 214 A.D.3d 421, 422-23 (1st Dep't 2023). However, Cohen ***does not involve continuing effects pursuant to a contract***, but instead involves an annual failure to register a building as rental property and the repeated issuance of illegal leases during the statute of limitations. The Attorney General's reliance on People v. Allen fares no better. Again, that case ***does not involve the continuing wrong doctrine or***

continuing effects pursuant to a contract, but instead addresses "statements … about the investments that [a] Partnership would make during the wind-down period." 198 A.D.3d 531 (1st Dep't 2021).[6] None of these cases implicate the continuing wrong doctrine, which was central to this Court's June 27 Decision.

The Attorney General argues, "[t]he Court dismissed former defendant Ivanka Trump based on its conclusion that she was not bound by the tolling agreement and the OAG's allegations did not support a claims [sic] that she participated in wrongful conduct after February 2016." Respondent's Opp. at 10. This fabricated narrative by the Attorney General is a transparent effort to avoid the consequences of what this Court actually held *i.e.,* the Attorney General's claims "accrued" when "transactions were completed" (i.e., the loans at issue closed). Robert Aff., Ex. G. at 3.

E. Supreme Court Disregarded Black Letter Law in Finding that the Trust is Subject to the Tolling Agreement[7]

In a footnote, the Attorney General claims, there are no specific objections to the application of the tolling agreement at this stage—not true.

Under NY Est Pow & Trusts L § 7-2.4 (2022), only a fiduciary is able to bind a trust. The term "fiduciary" is defined and limited to specified positions.[8] Alan Garten served in none of these positions for the DJT Revocable Trust, and therefore, did not have fiduciary authority to bind the Trust under the Tolling Agreement. The holding in JUUL Labs does not alter

[6] The Attorney General previously cited Cohen and Allen to argue that a six-year statute of limitations applied. See People v. Trump, et al., Appeal No. 2023-00717, NYSCEF Doc. No. 24 at 36.
[7] The individual Defendants are likewise not subject to the Tolling Agreement. Both Supreme Court and the Attorney General simply ignore this fact.
[8] Under N.Y. E. P. T. L. § 7-2.4 "fiduciary is defined to include: administrators, executors, preliminary executors, administrators d.b.n., administrators c.t.a.d.b n., administrators c.t.a., ancillary executors, ancillary administrators, ancillary administrators c.t.a and trustees of express trusts, including a corporate as well as a natural person acting as fiduciary, and a successor or substitute fiduciary, whether designated in a trust instrument or otherwise."

established trust law. Yet, Supreme Court once again ignored established black-letter law to obtain its predetermined result.

Moreover, even if the Court were to overlook the fact that Mr. Garten did not have fiduciary authority to bind the Trust, the Trust is not subject to the Tolling Agreement, as it was not a party to the Agreement and should not be read in. See Korff v. Corbett, 2016 NY Slip Op 31127(U) 26 (Sup. Ct. N.Y. Cty. June 15, 2016), citing Andy Warhol Foundation for the Visual Arts, Inc. v. Federal Ins. Co., 189 F.3d 208, 217 (2d Cir. 1999) (stating that "a nonparty to a tolling agreement is not bound by that agreement").

Supreme Court, in its summary judgment decision, cited Highland and Oberon in support of the contention that the DJT Revocable Trust, as an unnamed legal entity, is subject to the Tolling Agreement. What Supreme Court failed to include is that in both Highland and Oberon, the referenced agreements, which bound the entities there at issue under clear definitions and limited terms, specifically contemplated the creation and inclusion of such entities. See Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Tech. Holdings, Ltd., 184 A.D.3d 116, 125-26 (1st Dep't 2020); Oberon Sec., LLC v. Titanic Entertainment Holdings LLC, 198 A.D.3d 602, 603 (1st Dep't 2021). In Highland, the entities found to be included in the agreement there at issue were created following the agreement, and the agreement itself expansively considered the creation, and inclusion, of such specific future entities.[9] See 184 A.D.3d at 125-26. Similarly,

[9] "Here, the express terms of the indenture make clear that the parties intended future Celtic entities to qualify as 'Guarantors' by virtue of benefitting from the proceeds of the offering. An 'Additional Product Subsidiary' is defined as 'any 75% Owned Subsidiary of Celtic [defined as Fund therein] that acquires any rights or interests (directly or indirectly) in an Additional Product *after the Closing Date*' (emphasis added). Similarly, 'Additional Product' is defined as 'any drug development project acquired, directly or indirectly, by Celtic or any Subsidiary thereof following the Closing Date that is financed by Additional Product Funds or funds from the Issuer Closing Account' (emphasis added). Thus, the indenture explicitly contemplated that if noteholder funds were expended after the closing date by any entity 75% owned by Fund to develop products, that entity would qualify as an 'Additional Product Subsidiary,' i.e., a 'Guarantor[ ]' under the indenture." Highland, 184 A.D.3d at 125.

in Oberon, the agreement expressly considered the creation and inclusion of the non-signatory entities there at issue, when certain conditions were met, making clear that such entities were intended to be included.[10] See 198 A.D.3d at 603.

Further, where the signatory entities have a "highly sophisticated understanding" of the issue, it "bears emphasi[zing]" that if they had intended to include certain entities in such an agreement "they could readily have included specific language in the agreement to that effect, rather than content[ing] themselves with [] vague term[s]." Federal Hous. Fin. Agency, 2016 N.Y. Slip Op. 32867(U) at 24 (Sup. Ct. N.Y. Cty. 2016). The Attorney General, as arbiter of such agreements, must have a "highly sophisticated understanding" of tolling agreements in the state of New York. That the Attorney General did not include the Trust by name, when it did name every other legal entity that it intended to make subject to the Tolling Agreement, makes it abundantly clear that the Attorney General did not intend to include the Trust in the Agreement.

The foregoing demonstrates Appellants' likelihood of success on the merits of the appeal as the Trust plainly is not bound by the tolling agreement, and there are no loan transactions within the limitations period determined by this Court. As such, the Trust is subject to irreparable harm if Supreme Court's orders granting relief not authorized by statute pursuant to time-barred claims is not stayed, and the trial is permitted to proceed where there are no viable claims against it.

[10] "The Company agrees to cause the financing or acquisition vehicle upon its formation, and each other investor in such vehicle as a condition to participation in the Transaction, to agree in writing to be bound (jointly and severally with the Company) by the terms of this Agreement." Oberon, 198 A.D.3 at 603.

F. The Refusal to Comply with this Court's Order and Governing Law Along with the Resultant Systemic Harm Necessarily Requires a Stay of Trial

The Attorney General spends much of her opposition arguing that the ongoing "highly public" trial should not be stayed using her recycled claim that "any delay here would threaten a cascade of delays not only in this case but also in other pending criminal and civil cases against Donald J. Trump" and summarily concludes "[t]he lack of any irreparable harm to defendants alone warrants denial of a stay of trial. Respondent's Opp. at 1, 16. The Attorney General further contends that there is "no basis to disrupt the ongoing trial," and that "upending the trial midstream would be highly inequitable and prejudicial." Respondent's Opp. at 15. As the harm discussed above so clearly shows, the Attorney General is profoundly wrong.

Severe prejudice will result from the denial of a stay of trial, even as it is ongoing, due to the mounting irreparable harm to Appellants caused by proceeding on time-barred claims and evidence before a judge that has demonstrated a penchant to ignore both this Court and governing law and signaled clearly his intention to rely on such evidence to order disgorgement on a large scale. Even an appeal in the ordinary course is not an adequate remedy for the harm Appellants are suffering. The Attorney General has been allowed to present evidence of a purported "scheme" dating back to 2011, and to repeat the words "fraud and illegality" innumerable times. The effect of this conduct has not been lost on Supreme Court, or on the public.

The constitutional deprivations resulting from Supreme Court's flagrant disregard for this Court's decisions and any other governing law inconsistent with a preordained outcome constitute *per se* irreparable harm.

Moreover, the damage wrought to the rule of law and to the integrity of the New York judicial system is likewise irreparable. Where, as here, Supreme Court proceeds to ignore fully the mandate of this Court and the lawful bounds of statutory authority and then proceeds to impose remedies not even requested, against non-parties to the action, and further compounds such flagrant conduct exponentially by encouraging openly a run-away-train of evidentiary error, this Court must and should intervene. Indeed, to allow this charade to continue under the guise of administering justice weakens permanently the public confidence in the integrity of the courts. See, e.g., Goodwin, M.J., *Donald Trump's Fraud Trial is a Showing of Dirty Politics*, N.Y. Post, November 8, 2023, available at https://nypost.com/2023/11/07/opinion/donald-trumps-fraud-trial-is-a-showing-of-dirty-politics/. This gross and open disregard for the integrity of the process will not be stopped unless and until this Court once again intervenes and commands respect for the judicial hierarchy and the rule of law. The time for action by this Court has long since arrived.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant a stay of enforcement of Supreme Court's Decision and Order dated September 26, 2023, pursuant to CPLR § 5519(c) pending appeal, a stay of the trial, and grant any other such and further relief it may think proper.

Dated: New York, New York
November 9, 2023

Respectfully submitted,

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