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

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

Plaintiff,

vs.

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

Defendants.

Index No. 452564/2022

PROPOSED FINDINGS OF FACT OF DEFENDANTS DONALD TRUMP, JR. AND ERIC TRUMP

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Defendants Donald Trump, Jr. and Eric Trump, by and through their undersigned counsel, respectfully submit the following proposed findings of fact.[1]

I. INTRODUCTION.

1. After a three-year investigation involving interviews with more than 65 witnesses, and nearly a year of pre-trial proceedings during which more than 30 depositions were taken and more than 5.5 million pages of information were produced to the Attorney General, this action was tried before this Court beginning on October 2, 2023. During the ensuing 11 weeks of trial, more than 40 witnesses testified, under oath, before this Court.

2. Despite the foregoing, not a single witness has ever testified that either Donald Trump, Jr. or Eric Trump had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the Statements of Financial Condition ("SFCs") which are at the center of this action. As demonstrated below, this includes the Attorney General's primary witnesses such as the company's longtime outside accountant, Donald Bender and, former employee, Michael Cohen. Instead, the record evidence and testimony adduced at trial conclusively establishes that the SFCs were prepared, in their entirety, by others at the company working in conjunction with the company's long time outside accountants.

3. Accordingly, the Court should render judgment in favor of Donald Trump, Jr. and Eric Trump, dismissing this action against them in its entirety.

[1] Donald Trump, Jr. and Eric Trump expressly incorporate herein by reference Defendants' Joint Findings of Fact dated January 5, 2023, as if fully set forth herein. *See* **Exhibit A**. Undefined capitalized terms and names have the meaning set forth in Defendants' Joint Findings of Fact.

II. DONALD TRUMP, JR. DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS.

A. Testimony Adduced at Trial.

i. Donald Trump, Jr.

4. Donald Trump, Jr. began working for the Trump Organization in September 2001. Transcript ("Tr.") 3160:4-7.

5. He has served as an Executive Vice President at the Trump Organization since approximately 2011. Tr. 3164:17-20.

6. On or about January 19, 2017, Donald Trump, Jr. became a trustee of the Donald J. Trump Revocable Trust. Tr. 3180:20-25, 3181:5-17.

7. In making decisions related to the Trust, Donald Trump, Jr. would consult with "any number of people in the organization," including counsel and "accounting." Tr. 3196:2-8.

8. Donald Trump, Jr. could not recall performing any work on the SFCs for any year.

> Q Did you ever perform work on the Donald J. Trump Statement of Financial Condition for any year?
>
> A Not that I recall, no.
>
> Q No specific knowledge, sir?
>
> A No.

Tr. 3213:21-25; *see* Tr. 3216:18-21, 3226:13-22, 3241:22-3245:2, 3277:6-8.

9. Donald Trump, Jr. is similarly not familiar with the supporting data spreadsheets prepared in connection with the SFCs. Tr. 3228:3-11, 3243:20-3245:2.

10. Donald Trump, Jr. is not a certified public accountant and does not hold any professional certifications in accounting. Tr. 3155:14-19. He has also not received any

professional training applying generally accepted accounting principles and, therefore, relies on the company's accounting department and outside accounting firm. Tr. 3155:23-3156:1.

> THE WITNESS: Yes, I know nothing about GAAP in terms of that capacity and I'll leave it to my accountants. That's why we have Big 5 CPA firms to do all of that.

Tr. 3156:13-15.

11. Donald Trump, Jr. relied on CPAs and other accounting professionals in ultimately signing documents relating to the SFCs, including the 2016-2020 representation letters from Mazars and the 2021 representation letter from Whitley Penn. Tr. 241:5-14, 255:10-268:18, 479:21-482:12, 964:3-965:6, 3234:11-24.

12. Prior to signing the compliance certificates as attorney-in-fact for President Trump, which state that, in the opinion of the borrower and guarantor, the information presented is correct in all material respects, Donald Trump, Jr. confirmed with his internal accounting team and/or external accountants at Mazars, such as Donald Bender that the contents of the SFCs were correct.

> Q Did you take any steps to assure yourself of this certification?
>
> A As with all of the certifications, as I think we discussed yesterday, I would have sat with the relevant parties; namely, in accounting, whether that's the Trump team and/or Donald Bender. I would have asked them if everything that is in here is correct. I would have likely also checked with our legal department to make sure that the conditions are met as it relates to anything I would sign for Deutsche Bank and if they assured me in their expert opinion that these things were fine, I would have been fine with that and signed off accordingly.
>
> Q Is that specific to this particular certification, sir?
>
> A Well, I think I probably would save us some time and say that's probably specific to all of these

> certifications because I'm sure I've signed dozens of these in my time as a trustee.

Tr. 3239:2-10; *see* Tr. 3239:19-3241:4.

13. Donald Trump, Jr. knew bankers did their own diligence.

> Q Correct that you signed this certification with the intent that the bank would rely on it?
>
> A I don't know that they rely on it. I don't -- I know a lot of bankers and they do their own due diligence, but I was fine signing this based on everything I had been told as per everything we've discussed today, yes.

Tr. 3249:20-3251:2.

14. Any involvement Donald Trump, Jr. had with the SFCs or documents that ultimately became a part of the SFCs was limited. Tr. 3523:9-13.

ii. Donald Bender.

15. Donald Bender of Mazars, the Trump Organization's primary outside accounting firm for several decades, corroborated Donald Trump, Jr.'s testimony that he was not involved in the preparation of the SFC's, testifying that did not recall discussing the SFCs with Donald Trump, Jr.

> Q Mr. Bender, did you ever speak with Donald Trump, Jr. about his Statement of Financial Condition?
>
> A Not that I recall.

Tr. 527:23-25.

16. In fact, Donald Trump, Jr. would have needed to rely on others in determining which GAAP exceptions would be included in the SFCs. Tr. 328:13-25.

iii. Michael Cohen.

17. Michael Cohen, the Attorney General's so-called key witness, also corroborated Donald Trump, Jr.'s testimony, testifying that he did not recall ever discussing the SFCs with Donald Trump, Jr.

> Q Okay. And you never discussed the Statement of Financial Conditions with Donald Trump Jr. did you?
>
> A Not that I recall.

Tr. 2327:2-4.

iv. Allen Weisselberg.

18. Allen Weisselberg also did not rely on Donald Trump, Jr. for any of the information contained in the SFCs. Tr. 845:21-22.

19. Specifically, Mr. Weisselberg testified that Donald Trump, Jr. neither participated in coming up with the valuations contained in the SFCs nor did he do anything to calculate the estimated current values.

> Q What, if anything, did [Donald Trump, Jr.] do, to your knowledge, to determine the estimated current value?
>
> A I don't believe he did anything. It was -- it was done by the same people that did it for 25 years.

Tr. 964:3-9; *see* Tr. 3227:2-4.

20. In fact, Allen Weisselberg did not even share with Donald Trump, Jr. how the values in the SFCs were calculated.

> Q Did you tell Donald Trump, Jr. during the time you were both trustees how the values were calculated?
>
> A Not that I can remember.

Tr. 965:20-22.

v. Patrick Birney.

21. Patrick Birney also testified that he did not recall ever discussing the SFCs with Donald Trump, Jr. Tr. 5599:19-21.

22. The first time Mr. Birney recalled ever discussing the SFCs with Donald Trump Jr. was in 2021 and only because Mr. Birney had included him in a call regarding a change in the methodology used to value certain golf courses in the SFC. Tr. 1390:16-1400:17.

vi. Camron Harris.

23. Donald Trump, Jr also did not have any meetings with Camron Harris of Whitley Penn (the accounting firm that took over for Mazars) regarding the SFCs.

> Q So, while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?
>
> A I did not have any meetings with Donald Trump, Jr. or Eric Trump in regards to the Statement of Financial Condition.

Tr. 458:19-23.

vii. Claudia Mouradian.

24. Donald Trump, Jr. was also not involved in the procurement of insurance on behalf of the Trump Organization. Ms. Mouradian testified that she had no communications with Donald Trump, Jr.

> Q Did you speak to Donald Trump, Donald J. Trump?
>
> A No.
>
> Q Donald Trump, Jr.?

A No.

Mouradian Deposition Transcript 124:5-9.

B. Additional Findings of Fact.

25. Donald Trump, Jr.'s demeanor was candid and forthcoming. He appeared as an honest witness with nothing to hide.

26. The Court finds that Donald Trump, Jr.'s testimony was credible.

27. Donald Trump, Jr.'s testimony was corroborated by all the witnesses, including witnesses called by the Attorney General who were predisposed to give testimony beneficial to the Attorney General (*i.e.*, Donald Bender, Michael Cohen, and Claudia Mouradian).

28. Donald Trump, Jr.'s testimony was not refuted by the testimony of any other witness.

29. Donald Trump, Jr. was not a party to any of the subject transactions and had no obligation to submit SFCs.

30. The evidence adduced by the Attorney General is insufficient to support a finding that Donald Trump, Jr. had any intent to defraud, including with respect to the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO BSA, the Doral Loan, the OPO Contract & Lease, the OPO Loan, the 40 Wall Street Loan, the Chicago Loan, or Zurich, or that he had any involvement with the Buffalo Bills Bid.

III. ERIC TRUMP DID NOT PREPARE THE STATEMENTS OF FINANCIAL CONDITION AND JUSTIFIABLY RELIED UPON THE WORK OF OTHERS AT THE TRUMP ORGANIZATION TOGETHER WITH THE COMPANY'S LONG TIME OUTSIDE ACCOUNTANTS, MAZARS.

A. Testimony Adduced at Trial.

i. <u>Eric Trump.</u>

31. Eric Trump began working for the Trump Organization in 2006. Tr. 3285:10-16.

32. Eric Trump has served as an Executive Vice President at the Trump Organization since at least 2014. Tr. 3286:6-10.

33. Eric Trump did not prepare the SFCs. Tr. 3292:11-3294:17, 3314:3-9.

34. Any connection Eric Trump had with the SFCs was extremely limited. Tr. 3328:18-3329:4, 3337:16-3338:3.

35. For example, while Eric Trump worked on occasion with the Trump Organization's controller, Jeff McConney, Eric Trump was not part of the team involved in preparing the SFCs and, thus, was not specifically aware that any information he may have given to Mr. McConney would be used in the preparation of the SFCs.

> A I think where we're getting tripped up is I clearly understood that I sent notes to Jeff McConney. I worked with him almost every single day. What's maybe not registering is the difference between sending him things that were used for financials and things that were used for a Statement of Financial Condition. Somebody from accounting would ask me something, they'd ask me details of a project and I would respond. I don't think it ever registered that it was for a personal Statement of Financial Condition. It was just a detail that was irrelevant to me.

Tr. 3328:18-3329:4; *see* Tr. 3335:1-24.

36. To the extent Eric Trump executed a few certifications as President Trump's attorney-in-fact, he justifiably relied on the company's internal and outside accountants, and the unrebutted evidence at trial has shown that the documents he signed were in fact accurate in all material respects.

> Q And when you executed these three certifications, you intended the bank to rely on the certifications; isn't that right?
>
> A I don't know what the bank does with the certifications. I certified something that I believe was accurate and my

> lawyers told me that it was accurate and our financial people told me it was accurate and that's absolutely accurate. As to what Deutsche Bank does with a piece of paper like this, I have no idea.
>
> …
>
> A I relied on a very big accounting office. I relied on one of the biggest accounting firms in the country. And I relied on a great legal team and when they gave me comfort that the statement was perfect, I was more than happy to execute it.

Tr. 3437:17-25, 3442:16-19; *see* Tr. 458:20-469:9.

ii. Allen Weisselberg.

37. Allen Weisselberg corroborated Eric Trump's testimony by testifying that he did not rely on Eric Trump for any of the information contained in the SFCs.

> Q Did you rely on Eric Trump?
>
> A No.
>
> Q Not at all for any of the information contained in the Statements of Financial Condition?
>
> A Not me personally, no.

Tr. 845:13-17.

iii. Michael Cohen.

38. Michael Cohen also corroborated Eric Trump's testimony, testifying that he did not recall discussing the SFCs with Eric Trump.

> Q And you never discussed the SOFC with Eric Trump, did you?
>
> A Not that I recall.

Tr. 2328:1-3.

iv. Donald Bender.

39. Donald Bender of Mazars also testified that he did not recall ever discussing the preparation of the SFCs with Eric Trump.

> Q Mr. Bender, you never spoke with Eric Trump about his father's Statement of Financial Condition, correct?
>
> A I may have had -- nothing with the actual compilation of the report.

Tr. 526:3-6.

v. Partrick Birney.

40. Patrick Birney also testified that he did not recall discussing the SFCs with Eric Trump. Tr. 5599:16-18.

41. The first time Mr. Birney ever recalled discussing the SFCs with Eric Trump was in 2021 and only because Mr. Birney had included him in a call regarding a change in the methodology used to value certain golf courses in the SFC. Tr. 1390:16-1400:17.

vi. Camron Harris.

42. Eric Trump also did not have any meeting with Camron Harris of Whitley Penn regarding the SFCs.

> Q So, while not specifically, did you have any meetings in which the Statement of Financial Condition would be a part of the discussion?
>
> A I did not have any meetings with Donald Trump, Jr. or Eric Trump in regards to the Statement of Financial Condition.
>
> ….
>
> Q I had asked you if you had had any meeting with Eric Trump that discussed the Statement of Financial Condition.

A No, I did not.

Tr. 458:19-23, 455:9-11.

vii. Claudia Mouradian.

43. Eric Trump was also not involved in the procurement of insurance on behalf of the Trump Organization. Ms. Mouradian testified that she had no communications with Eric Trump.

Q Did you speak to Donald Trump, Donald J. Trump?

A No.

Q Donald Trump, Jr.?

A No.

Q Eric Trump?

A No.

Mouradian Deposition Transcript 124:5-11.

B. Additional Findings of Fact.

44. Eric Trump's demeanor was candid and forthcoming. He appeared as an honest witness with nothing to hide.

45. The Court finds that Eric Trump's testimony was credible.

46. Eric Trump's testimony was corroborated by all the witnesses, including witnesses called by the Attorney General who were predisposed to give testimony beneficial to the Attorney General (*i.e.*, David McArdle, Donald Bender, Michael Cohen, and Claudia Mouradian).

47. Eric Trump's testimony was not refuted by the testimony of any other witness.

48. Eric Trump was not a party to any of the subject transactions and had no obligation to submit SFCs.

49. The evidence adduced by the Attorney General is insufficient to support a finding that Eric Trump had any intent to defraud, including with respect to the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO BSA, the Doral Loan, the OPO Contract & Lease, the OPO Loan, the 40 Wall Street Loan, the Chicago Loan, or Zurich, or that he had any involvement with the Buffalo Bills Bid.

III. CONCLUSION.

50. Given the foregoing, it is clear that neither Donald Trump, Jr. nor Eric Trump prepared the SFCs and that they justifiably relied upon the work of others at the Trump Organization together with the company's long time outside accountants, Mazars. It is equally clear that Donald Trump, Jr. and Eric Trump never had anything more than a peripheral knowledge or involvement in the creation, preparation, or use of any of the SFCs. Accordingly, the Court should render judgment in favor of Donald Trump, Jr. and Eric Trump, dismissing this action against them in its entirety.

Dated: Uniondale, New York
January 5, 2024

Respectfully submitted,

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EXHIBIT “A”

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

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

Plaintiff,

vs.

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

Defendants.

Index No. 452564/2022

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

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Findings of Fact

I. Seven of the Ten Transactions in Plaintiff's Complaint Closed Prior to July 13, 2014, and are Time-Barred

1. On June 22, 2000, Seven Springs, LLC, closed on a loan with Royal Bank America ("Seven Springs Loan"). 3886:24-25; PX-1334.[1]

2. In July 2010, Trump Park Avenue closed on a loan with Investor's Bank for the property located at 502 Park Avenue, New York, NY ("Trump Park Avenue Loan"). 3886:25-3887:1.

3. In February 2012, the City of New York (the "City") awarded Defendant Donald J. Trump ("President Trump") a contract and lease to operate a golf course and related facilities at Ferry Point Park, Bronx, New York ("Ferry Point Contract"). 3887:1-2, 2803:11-16; DX-981.

4. On June 11, 2012, Trump Endeavor, LLC, closed on a loan with Deutsche Bank ("DB") in connection with Trump National Doral Golf Club ("Doral Loan"). 3887:2-3; PX-426.

5. On November 9, 2012, 401 North Wabash Venture, LLC, closed on a loan with DB in connection with Trump International Hotel and Tower, Chicago ("Chicago Loan"). PX-310, PX-312.

6. In 2012, the U.S. General Services Administration ("GSA") awarded the Trump Old Post Office, LLC ("OPO"), a contract to redevelop the Old Post Office property ("GSA OPO BSA"). 3887:2.

7. In 2013, the GSA signed the associated lease with OPO ("OPO Contract and Lease"). 3887:3-4.

[1] Citations to page and/or line number herein refer to the trial transcript. Citations to PX refer to Plaintiff's trial exhibits, unless otherwise specified; citations to DX refer to Defendants' trial exhibits.

8. On August 12, 2014, OPO closed on a loan with DB in connection with the Old Post Office in Washington, D.C. ("OPO Loan"). 3610:1-6; PX-309.

9. On July 2, 2015, 40 Wall Street LLC re-financed with Ladder Capital a loan for the property located at 40 Wall Street ("40 Wall Loan"). PX-624.

10. In or about 2014, President Trump also considered a potential acquisition of the football team the "Buffalo Bills," which was never consummated ("Buffalo Bills Bid"). 2257:8-11; 1069:1-1070:8.

11. On June 27, 2023, the First Department dismissed as time-barred all claims in this action that accrued prior to July 13, 2014 (with respect to those Defendants subject to the August 2021 tolling agreement) and February 6, 2016 (with respect to those Defendants not subject to the August 2021 tolling agreement). NYSCEF Doc. No. 641; 181:14-182:5.

12. Trump Organization, LLC, Trump Organization, Inc., DJT Holdings LLC, and DJT Holdings Managing Member were not parties to any of the subject transactions and had no obligations to submit SFCs.

13. Trump Endeavor 12 LLC was only a party to the Doral Loan and had no obligation submit SFCs.

14. 401 North Wabash Venture LLC was only a party to the Chicago Loan and had no obligation to submit SFCs.

15. Trump Old Post Office LLC was only a party to the Old Post Office transaction and had no obligation to submit SFCs.

16. 40 Wall Street LLC was only a party to the 40 Wall Loan and had no obligation to submit SFCs.

17. Seven Springs LLC was only a party to the Seven Springs Loan and had no obligation to submit SFCs.

II. NYAG Has Not Demonstrated Any Real-World Impact, Any Material Misstatements, or Rebutted the Overwhelming Evidence to the Contrary

1. Fact Witnesses, Including Those Called by NYAG, Confirm that the Banks Did Their Own Diligence and Considered Myriad Factors Prior to Entering into Transactions with President Trump, a Target Client Who Was Overqualified for the PWM Division

18. According to DB, a high-net-worth individual has a net worth in excess of $25 or $50 million and an ultra-high-net-worth individual in excess of $100 million. 5325:6-15. PWM's "target market profile" for structured lending products was anyone with a net worth more than $100 million and investable assets of at least $10 million. 5325:25-5326:3; see also DX-62 at 5.

19. David Williams, a current senior lender at DB who was involved directly in the DB transactions with President Trump, testified that President Trump more than satisfied the eligibility criteria for CRE loans as set forth in the June 2012 Credit Risk Management Credit Guidelines for Private Wealth Americas, namely (1) that borrowers are worth over $50 million, (2) have a proven track record in the U.S. commercial real estate market, and (3) the loan seeks to acquire or reposition particular property. 5326:11-5327:2; 5329:18-5331:18; DX-66 at 17-18. Once qualified as a PWM customer, President Trump had access to the PWM loan pricing. 5392:13-5396:4.

20. President Trump qualified as an ultra-high-net-worth individual, demonstrating excellent financial wherewithal to support a credit transaction. 5326:14-17.

21. Moreover, President Trump's Statements of Financial Condition ("SFCs") do not encompass the entirety of President Trump's net worth as one of President Trump's most valuable assets is not listed on the SFC and others are otherwise undervalued on the SFCs.

22. Each year from 2011 through 2021, the SFCs (in form or substance) disclose that "Pursuant to GAAP, this financial statement does not reflect the value of Donald J. Trump's worldwide reputation[,]" and that the "goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." PX-707 at 6; PX-729 at 6; PX-755 at 6; PX-756 at 6; PX-773 at 6; PX-787 at 6; PX-815 at 7; PX-842 at 5; PX-856 at 6; PX-1354 at 6.

23. Professor Bartov explained that following GAAP can lead to the undervaluing of assets; for example, Coca-Cola has a net worth of 10 times more in the stock market than in its annual report because intangible assets such as internally developed brand value cannot be reported on a balance sheet under GAAP, despite brand value being one of Coca-Cola's most valuable assets. 6242:2-6243:5. Professor Bartov testified that, like Coca-Cola, a major asset is missing from President Trump's SFCs—his brand; "there is no question that the brand value of [] President Trump [is] worth billions" and brand was not included in the SFCs as a standalone asset. 6243:6-18.

24. If President Trump's brand value is accounted for, President Trump is worth far more than is reflected on the SFCs.

25. Moreover, President Trump owns assets that are not included in the SFCs, for example, both the Trump International Hotel and Tower in Chicago (from 2011-2021) and the Trump International Hotel and Tower in Vegas (from 2011-2012) are excluded from the SFCs. PX-707 at 3; PX-729 at 3; PX-730 at 3; PX-755 at 6; PX-756 at 6; PX-773 at 6; PX-787 at 3; PX-815 at 4; PX-842 at 6; PX-856 at 6; PX-1354 at 6. The inclusion of these assets would have added value to the net worth stated on the SFC.

26. Moreover, several major assets were undervalued in the SFCs, including Ferry Point, OPO, Mar-a-Lago and Doral (for Doral see 3487:24 - 3488:8).

27. The 2021 supporting data for the SFC valued Ferry Point at $22,548,589, far less than the $60 million Bally's paid. 2851:3-24; PX-1501.

28. The 2021 supporting data for the SFC valued OPO at $130,200,000, which is far below the almost $400 million purchase price received for the property. PX-1501.

29. Lawrence Moens, a leading real estate broker in West Palm Beach, Florida, testified that the value of Mar-A-Lago was higher than the value listed on the supporting data to the SFC every year from 2011-2021(6121:11-6126:9) and far exceeded the tax assessed value of the property during that time period.

30. For example, Moens testified that every year from 2011 through 2021, he could have sold Mar-A-Lago for a price ranging from $705,000,000 in 2011 to $1,215,000,000 in 2021 (including membership sales), and every year the price for which he could sell Mar-A-Lago was higher than the value listed on the supporting data to the SFCs—which ranged from $347,761,431 to $739,452,519. 6121:11-6126:9; PX-708; PX-719; PX-731; PX-742; PX-758; PX-774; PX-788; PX-793; PX-843; PX-857; PX-1501.

a. Nicholas Haigh Testified that DB Considered Numerous Factors and Independent Analysis in Extending the Doral, Chicago, and OPO Loans, and did not Testify that DB Would Have Done Anything Differently with Additional Information

31. Nicholas Haigh ("Haigh") served as head of risk management for DB's PWM business in the Americas. 980:6-21.

32. PWM services high net-worth individuals. Haigh's job was to assess the client's risk profile and make the ultimate decision to approve or deny credit transactions for those clients. 982:4-19; 989:16-24. DB's primary purpose in analyzing risk was to ensure the loan

could be repaid. 1074:18–1075:4. Importantly, Haigh never testified that there were any material misstatements in the SFCs.

33. A credit memorandum is prepared outlining the terms of the transaction and summarizing the financial condition of the client, to assess the risk and spell out the terms of the transaction. 983:18-984:6; *see e.g.*, PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX-302; PX-2960; PX-3137.

34. Lending officers would supply the information to the risk management team, and all their information and judgment would be memorialized in the credit memorandum, which is submitted to the credit risk division for approval. 1078:2-1079:7; *see e.g.*, PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX-302; PX-2960; PX-3137.

35. Haigh had authority to approve credit transactions between €15 million and €500 million depending on credit quality. 990:10-16. His signature on a credit memorandum indicated approval of the transaction terms contained therein. 991:10-15.

36. Haigh testified that the relevant approvals, terms, and pricing were based on multiple factors, including whether the proposed transaction fit the bank's business model and whether the bank was comfortable taking on the credit. 984:7-20; 1074:21-1078:8.

37. DB would also consider the value of proposed collateral, whether there was a market for the collateral, whether it could be sold, and whether there were any legal impediments to doing so. 984:21-985:24; 10-1017:18.

i. DB Relied on Its Own Analyses and Valuations in Extending the Doral Loan

38. The Doral property is atypical collateral because it is a golf resort and spa, which affects its marketability. 999:1-1000:8.

39. When determining whether to support the Doral Loan, President Trump's financial strength was assessed on the basis of DB's own adjusted values, not the guarantor's self-reported estimates of value, especially as to liquidity and net worth. 1087:3-1088:25.

40. The bank determined President Trump's asset values based on its own diligence. 1092:4-1093:7.

41. DB focused primarily on four trophy properties identified in the SFCs because they were (a) "significantly sized assets" of which the bank could gain a "better understanding . . . of their potential market value" and (b) the properties "were broke out because they were large and 1represented significant asset positions." 1010:18-1011:13.

42. PWM consulted the Deutsche Bank Valuation Services Group ("VSG") because of their experience valuing real estate assets. 1094:12-1096:13. The valuation adjustments to those trophy assets ranged from 35% to 75%. 1098:2-1102:5. DB also obtained additional information regarding the trophy properties, including capitalization rates and NOI utilized in the SFC values, from the Trump Organization ("TTO"). 1012:1-6; 1013:13-20.

43. President Trump's extensive experience in real estate was a "significant factor in recommending approval of the loan transaction," as well as the general economic climate and quality of the collateral. 1077:10-11; 1103:19-24. DB also relied on President Trump's $135 million in net liquidity, $48 million in adjusted recurring net cash flow, experience operating private clubs, and plan to make capital expenditures. 1102:11-1105:1.

44. The interest rate was lower in the post-renovation period because there was less risk when it was fully income producing. 1019:9-12.

45. At the time of the Doral Loan closing, President Trump had $20 million in assets under management at DB. 1084:22-1085:24.

46. The record is devoid of any fact testimony that the terms or pricing of the Doral Loan would have been different because of the alleged misstatements identified by the New York Attorney General ("Plaintiff" or "NYAG").

ii. DB Relied on Its Own Analyses and Valuations in Extending the Chicago Loan

47. Haigh also approved the Chicago Loan. 1029:1-17. The collateral and guaranty were also significant factors in that decision. 1031:8-22; 1032:3-13; PX-291.

48. The loan to value ("LTV") at closing was low compared to other deals at condos and office buildings. 1118:6-21.

49. DB, again, relied on its own adjusted values, not client reported values, as a basis to recommend the transaction and calculate key ratios and relied on President Trump's experience. 1119:8-1120:17; 1121:17-1122:1; PX-291 at 5. A similar analysis of the trophy properties was conducted for the Chicago Loan. 1121:4-14.

50. The record is devoid of any fact testimony that the terms or pricing of the Chicago loan would have been different because of the alleged misstatements identified by Plaintiff.

iii. DB Relied on Its Own Analyses and Valuations in Extending the OPO Loan

51. At the time the OPO Loan was originated, the credit limit had increased beyond $378M, requiring further approval. 1046:1-13. The loan covenants ensured the client had the wherewithal to make payments during adverse market conditions. 1047:18-1049:11. However, DB could waive a covenant default if it considered the breach inconsequential, renegotiate the terms, or potentially accelerate the repayment of the loan. 1028:9-16.

52. The OPO property was atypical collateral because it involved a significant amount of reconstruction. 1049:12-1050:1. DB again conducted adjustments to reported values and tracked the guarantor's historical performance. 1052:4-23.

53. The DB-adjusted values—not client provided values— along with the operating experience of the guarantor and the enhanced equity investment to Doral were the basis for DB's approval of the OPO Loan. 1132:14-1134:9; PX-294 at 10-12. DB also had another meeting at TTO's office to verify the client-reported numbers. 1134:14-19; PX-294 at 14.

54. The record is devoid of any fact testimony that the terms or pricing of the OPO loan would have been different because of the alleged misstatements identified by Plaintiff.

55. In conjunction with the approval of the OPO Loan, DB approved the step-down on the Chicago Loan. 1136:2-1138:14; PX-294. The stepdown reduced the level of the guaranty on the Chicago Loan as the LTV on the collateral decreased; thus, as the guaranty level decreased so did financial covenants such as net worth and unencumbered liquidity. PX-294 at 6-7. When the LTV level dropped below 35% on the Chicago collateral, the guarantee and corresponding financial covenants were eliminated. PX-294 at 6-7.

56. The record is devoid of any fact testimony that the terms or pricing of the OPO loan would have been different because of the alleged misstatements identified by Plaintiff.

iv. DB Relied on Its Own Analyses and Valuations in its Annual Approvals from 2013-2018

57. DB also relied on its own adjusted values, not client adjusted values, in conjunction with its annual approvals. PX-290 at 5; PX-294 at 10; PX-298 at 6-8; PX-300 at 7-8; PX-302 at 3; PX-2960 at 3; PX-3137 at 8-9.

58. As of the 2013 annual review, DB did not report any late or missed payments. 1123:21-1124:5; PX-290. The Doral loan documents were amended in August of 2013 to add a Step-Down provision. 1124:6-1126:2; PX-290 at 4–6; *see also* 5218:13–19.

59. The 2013 amendment also reflected an equity increase from $50 to $150 million, adequate collateralization, and significant operating experience. 1126:3-1127:20; PX-290 at 5-6.

The assets under management increased to $29.7 million, and the adjusted values were used to calculate the lending ratios. 1128:11-1129:14; PX-290 at 1.

60. For the July 2015 annual review, Haigh confirmed lending officers independently verified information such as liquidity, even though the credit memo did not have a specific reference to such verification. 1057:1-1058:10; PX-298. DB continued to believe that President Trump had substantial financial strength.1058:13-23.

61. By July 2015, the guaranty on the Chicago Loan had been completely extinguished, and President Trump had invested $20 million into the OPO renovation. 1141:23-1142:21, 1145:17-25 PX-298 at 4, 7.

62. Another review was conducted in August 2015 which resulted in the reduction of the guaranty of the Doral Loan from 100% to 10% based on a new appraisal ordered by DB; yet the guarantor had the option to elect the step-down percent to go to zero because of the LTV, but instead, elected to keep the step-down percentage at 10% ($12.5 million), which also reduced the net worth requirement to $250 million and the unencumbered liquidity requirement to $5 million. 1147:18-1149:5; PX-2960 at 3; PX-290 at 5; *see also* 5218:15–5219:13. Assets under management increased to more than $100 million, and there was nearly $250 million invested into the Doral project. 1149:6-1151:23.

63. Haigh was absent for the July 2016 review, but Gaston Allegre approved the credit report in his stead. 1060:11-1061:13. President Trump elected to keep a 10% guaranty on the Doral Loan because eliminating the guaranty would have caused an interest rate increase of 25 basis points. 1062:10-1063:7; PX-300. The approval was predicated on Doral's completed renovation and increased value and DB's adjusted valuations, not client reported values. 1157:4-25.

64. For the July 2017 review, the loans were approved based on the guarantor's financial strength, DB's adjusted values, not client reported values, with input from DB Valuation Services Group, and key ratios based on adjusted numbers. 1066:13-1067:11; 1159:6-14; 1160:19-1161:13; PX-3137 at 8-9, 14.

65. For the July 2018 review, financial trends were followed in determining whether to sign off on the credit report. 1067:18-1068:10; *see* PX-302 at 9. The loans were approved based on the financial profile of the guarantor using DB adjusted numbers with input from the VSG; the long-standing relationship with the Trump family; and key ratios using adjusted numbers. 1161:25-1163:7; PX-302 at 3, 10, 12.

66. Haigh testified that relative to the Doral, Chicago, and OPO loans there were no late payments, no missed payments, and that all three loans were performing (i.e., there were no defaults). 1123:21-1124:5; 1130:19-1131:11; 1139:25-1140:24; 1152:3-21; 1167:22-1168:7.

v. There is No Record Evidence that the Terms or Pricing of Any of DB's Loans Would Have Been Affected by the Alleged Inaccuracies in the SFCs

67. Haigh did not testify that the terms or pricing of any of DB's loans would have been impacted by any of the allegations identified by Plaintiff.

68. Haigh believed he did a good job on risk assessment of the subject loans because they were all being paid back when he left DB. 1169:12-1172:3. Also, Haigh testified that ECV does not require "appraisals or market evidence for the value of all those assets, but it's estimating what they're worth[.]" 1007:25-1008:6.

vi. Haigh's Testimony is Credible

69. Haigh's testimony regarding DB's independent analysis and valuation of the SFC values and DB's reliance on its own adjusted values is corroborated by testimony from Bartov, Unell, Williams, and DB lender Emily Pereless.

70. Pereless testified that she and Williams went to TTO's offices and reviewed bank and brokerage statements to confirm the values for liquid assets. 5454:12-21.

71. Haigh did not testify that the conditions of pricing would have been different based on the alleged misstatements identified by Plaintiff.

72. Haigh did not identify any misstatements in any of the SFCs evaluated by DB.

73. Haigh's testimony was not rebutted by any other witness.

74. The Court finds Haigh's testimony was credible.

b. Williams Testified that DB used Bank-Adjusted Values, Independently Verified All Material Facts Pertaining to the Loan Transactions, and Would Have Qualified President Trump for the Pricing He Received Even if his Net Worth Was $100 Million

75. Williams, the only current DB employee to testify at trial, has been employed by the bank's PWM division for almost 17 years. 5323:23-5324:9; 5326:4-10. Williams was involved directly in the loan transactions at issue. 5326:4-6.

76. Williams underwrites structured loans and credit requests for high-net-worth individuals. 5324:14-17.

77. Williams testified that, from DB's perspective, it is not possible to calculate an individual's assets to mathematical certainty because net worth is highly subjective and subject to estimates. 5327:3-25. Williams stated that an individual's net worth is, as its reported, largely subjective or is subject to the use of estimates. 5327:24-25. Therefore, in underwriting a loan, the bank makes adjustments to client reported numbers to account for the subjectivity of self-reported asset values. 5327:19-5328:6; PX-290 at 7-10; PX-291 at 7-10; PX-293 at 5-8; PX-294 at 15-17; PX-298 at 10-12; PX-300 at 15-18; PX-302 at 9-13; PX-2960 at 4-7; PX-3137 at 11-14; PX-498 at 9-14; PX-519 at 10-15; PX-561 at 9-14.

78. In fact, when DB initiated its relationship with President Trump, internal bank communications demonstrate that President Trump's reported net worth of $4.2B was adjusted to $2.4B, yet bank personnel still believed that President Trump had "among the strongest personal balance sheets [the bank had ever] seen and totally unlike any of [DB's] major [real estate] developer clients in that [the bank] observe[d] an absence of personal debt, with huge asset base and diversified [cash flow]." DX-312 at 1.

79. Based on its own independent analysis, DB concluded that President Trump's net worth was $2.4B as opposed to the reported $4.2B, the difference in these two numbers is expected due to different definitions of value and underlying value assumptions, and is not indicative of fraud. 6295:13-6287:22; 6299:8-6300:25; DX-293; DX-312.

80. DB evaluates and adjusts a client's stated asset values in the underwriting process as a conservative measure because financial statements are largely unaudited and use estimates. 5328:1-5329:9. Differences between bank-adjusted values and client-reported values are not disqualifying for extending credit. 5328:10-5329:9. This is because DB has an expectation or understanding that there is a use of estimates in the preparation of personal financial statements. 5329:7-9. The adjusted basis reflects the bank's own analysis. 5365:12-15.

81. DB independently verifies all material facts as they pertain to a credit transaction. 5334:1-5335:23. In 2011, Williams met with Defendant Allen Weisselberg ("Weisselberg") to review and verify bank and brokerage statements and President Trump's tax returns. 5340:2-24. Williams was unaware of any instance which DB failed to adhere to its own credit lending guidelines when making loans guaranteed by President Trump. 5335:20-23.

82. The step down of the Doral personal guaranty was implemented so that as the LTV decreases, the guaranty level and net-worth covenant would be reduced. 5346:2-6; 5349:2-

23; 5352:7-17. Once LTV dropped below 35%, the guaranty would be eliminated, but President Trump could retain a 10% guaranty to retain a 25-basis point pricing benefit. 5354:8-5356:11, PX-2960.

83. The Chicago Loan was also subject to a stepdown, where the guaranty and liquidity and net-worth covenants would decrease as LTV decreased. 5358:9-5361:3. The guaranty net worth and liquidity requirements were ultimately fully eliminated. 5388:9-25; PX-294.

84. When the guarantee stepped down to 10% the minimum liquidity covenant would be satisfied if the guarantor held $5 million in liquidity with DB. 5360:8-5361:1; PX-294 at 5-6.

85. The OPO originating memo indicated that DB adjusted President Trump's valuation of assets by approximately 50% (from approximately $4.9 billion to approximately $2.6 billion). 5365:1-5366:16; 5382:15-5384:6; PX-294 at 14-17. It was atypical, but not entirely unusual, for stated liquidity and assets to be reduced by 50% or more. 5343:18-22, 5366:12-16; 5380:11-20. The memo also indicated that DB had an increased level of comfort in the loan transactions due to various factors. 5366:17-5374:9; *see generally* PX-294.

86. Any DSCR breaches, which were common during the COVID-19 pandemic, could be cured by an equity infusion or other built-in mechanism to the bank's satisfaction. 5407:4-5409:7; 5419:18-5420:24; 5424:1-8; 5431:10-5432:4; PX-498; PX-519; PX-561.

87. A DSCR covenant breach does not constitute an event of default when the guaranty is below a certain threshold. DX-387; DX-876 at 51.

88. Williams was not aware of any payment default (a definitive breach of the repayment of the loan) or covenant default (a default in a guardrail to the loan) on any loan guaranteed by President Trump. 5337:2-5339:9.

89. DB was capable of determining whether to extend a loan based on its own evaluation of the guarantor's financial condition, and its evaluation of the credit facilities was consistent with the bank's approved business strategies. 5387:5-12. DB would also consider the individual's broader relationship with the bank. 5355:13-14.

90. A lending officer has some responsibility in determining pricing on the loan, and to ensure the interest rate exposure aligns with approved business strategies of the bank. 5389:4-14. The pricing grid provides a range of acceptable pricing ranges based on product type, and a lender is supposed to consider the ranges on the grid when determining pricing. 5389:23-5390:14; DX-205. A lender may deviate downward from the pricing on the grid, based on competitive market pricing/forces, noncredit relationship, investible assets, internal risk rating, collateral type, and financial wherewithal. 5390:15-5393:12.

91. President Trump's financial condition would support pricing at the lower end of the range for these types of loans. He surpassed the minimum requirements to qualify for such pricing and would have qualified for the pricing he received on these loans even if his net worth was only $100 million on an adjusted basis. 5392:13-5396:4.

92. Williams did not testify that the loan terms or pricing would have been different because of the alleged misstatements identified by Plaintiff.

93. Williams did not identify any misstatements in any of the SFCs evaluated by DB.

94. Williams' testimony was corroborated by additional witnesses, including Unell, Vrablic, and Haigh.

95. Williams' testimony was not rebutted by the testimony of any other witness.

96. The Court finds Williams' testimony was credible.

c. Rosemary Vrablic Testified that DB Pursued President Trump as a Client and that DB's Relationship with the Trump Family Was Incredibly Lucrative for DB

97. Rosemary Vrablic ("Vrablic") was employed by DB from 2006 through 2020. 5485:20-24. Vrablic worked in the PWM group and served as a relationship manager, team leader, and office manager. 5485:1-9.

98. Vrablic originated the Doral, Chicago, and OPO Loans while she was employed at DB. 5486:23-5487:2.

99. Vrablic identified President Trump as a "whale," a term used for very high-net-worth individuals. 5487:24-5488:9; DX-291.

100. President Trump was considered an entrepreneur and investor "with a successful track record" and a target client for real estate lending because of his net worth in excess of a hundred million dollars. 5491:10-21; 5492:8-21; DX-62 at 5. In fact, Mr. Jain, CEO of DB, indicated that President Trump was underleveraged. 5495:13-15; 5504:3-11.

101. Vrablic testified regarding PWM's real estate lending business and explained that DB had an incentive to develop a broader real estate capability f'2or PWM clients. DB's approved business strategy was to become the primary financial institution and develop a long-lasting relationship with President Trump as a client. President Trump fit the category of the target client base of PWM for real estate lending. President Trump had a net worth well in excess of $100 million, as required for real estate lending, and the loans extended to President Trump fit within DB's goals and approved business strategy of creating opportunities for cross selling. 5487:24-5493:6; 5526:13-25; DX-62; DX-298 at 2; DX-300 at 3-4.

102. A February 19, 2013, briefing stated President Trump's "personal financial statement reflects a net worth in excess of $2.5 billion as adjusted by DB Lending with liquidity of 100 million plus, and limited liabilities. He is risk rated A." 5498:14-18. The briefing further stated that DB had "in excess of 200 million in loans, 30 million in investable assets, and closed on an asset interest rate swap generating capital markets income" meaning it was a "broad-based relationship of various product that were being used by the Trump family," consistent with DB's goal of developing a relationship with President Trump. 5499:9-18.

103. On the Doral Loan, Vrablic served as an intermediary between President Trump and DB. 5511:16-5512:6.

104. From the inception of the negotiations, DB intended to cross-sell President Trump on additional business, such as a significant deposit business, cash management services, estate planning, and referrals to new clients, all profitable vehicles for the bank. 5512:21-24; 5513:13-5514:15; 5515:7-5516:2; DX-311; DX-312. Indeed, strategic leveraging of President Trump's business relationships and expanding DB business with President Trump were priorities in a meeting between President Trump and the then Chairman of DB. 5503:9 - 5504:11.

105. DB wanted to engage in the Doral Loan because of the "significant relationship opportunities with the family," including an increase in deposits, the possibility that Ms. Trump would be a referral, and potential referrals. 5520:12-22; DX-313 at 4.

106. When closing on the Doral Loan, DB considered several factors including (1) the fact that the facility was a sound credit even without the guaranty, (2) the relationship with President Trump was a great franchise opportunity, and (3) President Trump's expertise in successfully running world-class assets such as hotels, condos, clubs, and golf courses. 5517:13-5518:9; 5519:3-16; PX-293; DX-312.

107. President Trump "had a successful track record" and was uniquely capable of managing Doral based on his "expertise in all of those categories." 5492:8-21; 5519:3-16; DX-62; DX-66.

108. DB's own analysis determined that, in their judgment, President Trump had one of the strongest personal balance sheets of real estate developers they had seen with expertise in the development and management of real estate assets—making the loan a likely success story. 5568:8-5570:4; DX-312. President Trump had extensive experience with hotel, condos, clubs, and golf courses, and individuals at the bank felt that the Doral loan was a "sound credit [] even in the absence of a personal guarantee" making Doral a "remarkably safe deal given the strength" of President Trump, his absence of personal debt, his "huge asset base," and the bank's opportunity to develop a "great franchise." DX-312 at 1.

109. Vrablic viewed the OPO transaction to be highly competitive because other branches of DB were seeking President Trump's business and PWM had an interest in obtaining "profitability" from booking President Trump as a client. 5541:21-5543:8.

110. With respect to the Chicago loan, Vrablic testified that DB would not have entered the deal unless it was satisfied, that she personally thought it was a good deal, and that DB shared that perspective. 5533:7-5534:5. Vrablic agreed with Dominic Scalzi ("Scalzi") that individuals from TTO were professional and efficient, and "great to work with"—thus DB and Scalzi were "appreciative" of the business they received from President Trump. DX-338; 5537:10-23.

111. In 2013, the balance of the Chicago Loan was reduced from $53 million to $23 million because the condominiums that secured the loan were selling more quickly than DB expected. 5494:1-25; 5510:11-5511:7; DX-296.

112. In 2013, for the Doral Loan, Credit Risk was "very open to the extension and burn off of [Trump's] guarantee," noting "[i]t was quite remarkable and a testament to [President Trump] and [his] family in what [he] ha[d] achieved [] so quickly." 5527:1-23; DX-325 at 1.

113. The OPO Loan performed consistent with expectations because "[t]hey took it from a shell to a fully operational hotel and event space." 5552:5-16.

114. DB projected to make $6 million in revenue in 2013 from the relationship. 5500:9-11. It was a top 5 relationship for Vrablic and top ten revenue-generating names of Asset and Wealth Management. 5501:11-17; 5055:9-5506:7; 5506:16-22; PX-298; DX-299.

115. DB "expect[ed] to continue to grow the relationship in all asset categories." 5501:18-5502:1; 5505:9-5506:7; DX-298 at 2.

116. According to Vrablic, "the lending and credit departments would always adjust people's net worths, so whatever they would conclude was the adjusted number would be the adjusted number to me" and "[i]f they were comfortable with it, [she] would be comfortable with it. 5564:9-22.

117. Vrablic did not testify that the loan terms or pricing would have been different because of the alleged misstatements identified by Plaintiff.

118. Vrablic did not identify any misstatements in any of the SFCs evaluated by DB.

119. Vrablic's testimony was corroborated by additional witnesses, including Unell, Williams, and Haigh.

120. Vrablic's testimony was not rebutted by the testimony of any other witness.

121. The Court finds Vrablic's testimony was credible.

d. Jack Weisselberg Testified that Net Worth in an SFC is not a Key Factor in Ladder's Underwriting Process and Did Not State that Ladder would have Acted Any Differently with Additional Information.

122. Jack Weisselberg ("J. Weisselberg") is an executive director at Ladder Capital. 1769:24-25-1770:1-4.

123. J. Weisselberg worked on five loans with either President Trump or an entity affiliated with TTO. 1780:17-1781:1.

124. The net worth listed on an SFC is "one of many things that [Ladder] would look at in the underwriting process" but not a key factor." 1877:11-24.

125. For the 40 Wall Loan, Ladder Capital was primarily paying attention to liquidity because there were some contingent liabilities. 1877:11-18

126. J. Weisselberg did not testify that the terms of pricing on any loan would have been different because of the alleged misstatements identified by Plaintiff.

127. J. Weisselberg did not identify any misstatements in any of the SFCs received by Ladder Capital.

128. Moreover, President Trump was only required to maintain a net worth of $160 million and unencumbered liquidity of $15 million under the terms of the 40 Wall Street loan. President Trump met these financial covenants (DX-552 at 12; PX-625 at 14-15), and there is no evidence on the record to suggest that President Trump failed to maintain the required net worth and liquidity to fulfill these covenants.

129. J. Weisselberg's testimony was not meaningfully rebutted by the testimony of any other witness.

130. The Court finds J. Weisselberg's testimony was credible.

e. David Cerron Testified that President Trump fully performed the Ferry Point Contract

131. David Cerron ("Cerron") has worked for the New York City Department of Parks and Recreation ("Parks Department") for more than twenty years. 2786:23-2787:20.

132. Cerron was not involved in the Ferry Point award process and only later became involved in the administration of the license. 2817:22-2818:3. Cerron did not know what information the Parks Department relied upon during the award process and was not a part of the committee that reviewed the financial information. 2841:13-2842:17; 2821:3-21.

133. The Parks Department sought to find an operator with experience and the financial wherewithal to ensure that the course was maintained at a high level and complete any necessary capital improvements. 2793:1-2794:6; 2795:13-23.

134. Offers would be scored 10% on financial capability, 60% on planned operations and operating experience, 15% on investment and design, and 15% compensation. 2794:7-2795:12; 2819:5-13.

135. Cerron stated that Ferry Point was a "tough one to accomplish," as the City had tried "a handful of times" to find an operator. 2795:16-2796:10. Four offers were submitted. 2796:11-13.

136. TTO "enclosed a statement from the certified public accounting firm of Weiser, L.L.P. indicating a net worth in excess of $3 billion and cash on hand in excess of $200 million." 2797:2-14.

137. The Parks Department, in a document submitted to the Mayor's office, confirmed that it believed TTO had the financial resources, wherewithal, and organization to run Ferry Point. 2798:7-2799:24.

138. President Trump provided a personal guaranty regarding payment obligations and the completion of capital improvements for Ferry Point. 2799:13-18; 2799:25-2800:8.

139. President Trump's personal guaranty was a condition of the Ferry Point license. 2803:17-2804:19. It required that "within 120 days of the end of each calendar year, [the]

guarantor shall be required to furnish Parks with a letter from [the] guarantor's accountant stating that there has been no material adverse change in [the] guarantor's net worth," (a "No MAC" letter) to reaffirm that the initial financial statements shared with the city were the same in material respects, and that these letters be true, complete, and accurate. 2804:20-2805:10.

140. President Trump met and exceeded his obligations under the License Agreement, thus, there was never a need to invoke the personal guaranty. 2824:4-2830:25.

141. Cerron was not aware of any capital obligations that were not met by Trump Ferry Point. 2840:1-25. In fact, Trump Ferry Point agreed to and spent more than $10 million on a capital improvement to the clubhouse. 2823:4-16.

142. The License Agreement did not require that President Trump submit his SFCs to the Parks Department. 2831:4-21. Cerron never reviewed President Trump's Statement of Financial Condition in connection with the Ferry Point agreements. 2831:22-25.

143. The sole remedy for failure to submit the "No MAC" letter is an increase of the security deposit to a maximum of $470,000. 2832:2-21.

144. Cerron confirmed that the Parks Department did not receive or request an SFC during the term of the license of Trump Ferry Point. 2843:16-2844:21.

145. The "No MAC" letters were not reviewed to determine whether President Trump had the financial capability to perform the contract, as this determination was largely made during the award process. 2844:22-25; 2845:1-4. The Parks Department sought to confirm "that what was[,] is what is" and that President Trump submitted the required documentation. 2845:5-13.

146. Cerron was not aware of, and did not identify, any false statements in the April 22, 2017, April 5, 2018, or February 26, 2021, "No MAC" letters. 2845:14-2850:9.

147. Cerron was involved in the deal wherein Trump Ferry Point assigned the concession of Ferry Point to Bally's for $60 million. 2850:12-24.

148. The 2021 supporting data for the SFC valued Ferry Point at $22,548,589, far less than the $60 million Bally's paid. 2851:3-24.

149. Cerron's testimony was not rebutted by the testimony of any other witness.

150. The Court finds Cerron's testimony was credible.

III. The SFCs were GAAP Complaint and Contain No Material Misstatements.

1. Expert Testimony from Jason Flemmons Established that the SFCs Complied with GAAP or Properly Disclosed Any Departures Therefrom

151. Jason Flemmons ("Flemmons") is a certified public accountant ("CPA") in the State of Virginia, is credentialed by the American Institute of Certified Public Accountants as certified in financial forensics and is a certified fraud examiner. 4238:2-20; 4248:15-4249:12. Flemmons has worked in the auditing and forensic accounting practices of PricewaterhouseCoopers and its corporate predecessor, as a deputy chief accountant of the Enforcement Division of the Securities and Exchange Commission ("SEC"), and as a senior managing director with FTI Consulting. 4237:12-4250:11.

152. Flemmons was admitted as an expert in the field of accounting. 4252:13-16.

a. The GAAP Standards Applicable to an SFC Permit a Preparer Broad Latitude in Selecting Valuation Methodology

153. The preparation of the subject SFCs was governed by GAAP Accounting Standards Codification ("ASC") 274. 4254:4-10; DX-27.

154. The SFCs, the accompanying notes, and the Independent Accountant's Compilation Report are all one document which must be read together. 4338:8–4339:3.

155. The measure of value for an asset or liability under ASC-274 is "estimated current value" ("ECV"). ECV, for an asset, is "the amount at which the item ***could*** be

exchanged…between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." 6737:7-18 (reciting ASC glossary definition); DX-452 at 2.

156. ECV is an internal determination of value premised on the perspective of management or the individual of what they deem the value to be. 4255:8-4256:13; 4269:14-19. ECV is not the same as "fair value." *Id.*

157. A person reporting ECV in an SFC has many more valuation options available to him under the governing accounting standard than a person reporting a "fair value" estimate. 4257:16-4258:1; *see* DX-27.

158. ASC-274 allows the preparer of an SFC to select from numerous methodologies in reporting ECV, including (1) capitalization of future revenues that could be generated from an asset, (2) use of liquidation values, (3) adjustment of historical cost based on changes in a specific price index, (4) use of appraisals, and (5) discounted amounts of projected cash receipts. DX-27 (ASC-274-10-55); 4258:13-4265:4. In reporting the ECV of real estate, the preparer can also use, *inter alia*, discounted projected cash receipts based on "planned courses of action" and sales of similar properties. *Id.* (ASC-274-10-55-6); 4266:5-4271:7.

159. ASC-274 permits consideration of hypothetical, future revenues and projections in order to determine ECV. 4259:6-12; 4268:21-4269:10; 4279:25-4280:5; 4409:10-4410:9; 4524:12-15.

160. The methods listed under ASC-274 can generate wildly different results, by many orders of magnitude. 4274:12- 4276:12. For example, using a conservative assessed value approach to reach an ECV of $18 million would not preclude an ECV of $800-900 million derived from a different method. 4272:10-4274:2.

161. Notwithstanding the potential for extremely large discrepancies, none of the methods listed under ASC-274, including those based on appraisals or that yield the lowest result, are mandated or preferred over another. 4265:5-8; 4276:13-4277:11; 4370:8-20.

162. Selection of methodology is within the discretion of the filer of the SFC. 4263:13-4264:10. A filer could perform twelve ECV scenarios under different methods and only report one to the accountants without reference to the other eleven scenarios. 4477:13-4478:6.

163. The use of any one method under ASC-274 is compliant with GAAP. 4264:3-6; 4265:16-25; 4271:4-7; 4370:2-7; 4517:1-6.

164. There is no requirement in ASC-274 that a preparer re-evaluate compliance with the ECV definition after selecting and appropriately applying an approved methodology. 4495:12-21; 4498:1-23; 4501:1-4507:24.

165. There is also no requirement that single-year financial statements disclose changes in methods from year to year. 4329:10-22.

b. Accountant's Obligations in Compiling an SFC.

166. An accountant performing compilation services is required to read the financial statements that are being compiled, understand the methods that are being used to develop estimated current values, and evaluate the appropriateness of those methods. 4286:9-22.

167. To the extent an accountant discovers a departure from GAAP, the accountant is required to resolve the discrepancy or modify the report to reference the exception in the accountants' report. 4296:13-4297:14. The accountant must also confirm whether the disclosures contained within the SFC are consistent with the underlying support. 4346:16-22.

168. Compilation standards also require that an accountant respond to any "obvious misstatements or differences" between the accounting being provided to them and GAAP.

4287:13-24. Even the NYAG's own purported expert agreed that it would be a performance failure for an accountant to miss an obvious GAAP departure. 6709:20-23. It is reasonable for a client to rely on its outside accountant to respond to obvious GAAP departures that it identifies. 4391:23-4392:9.

169. For example, for the Triplex, the change in square footage from 2016 to 2017 was obvious from the supporting data, and it should have led Mazars to inquire further. 4393:2-14.

170. There is no obligation or expectation by an accountant performing a compilation service to receive supporting information for amounts not reflected in the SFC, as a compilation report does not entail seeking multiple valuation scenarios or assisting the client with selecting the method to use. 4328:1-12.

171. Accordingly, Flemmons testified that it is "professionally implausible" that Bender would request appraisals that were not used to report values in the SFCs because such a request is inconsistent with professional standards. 4326:1-13; 4327:8-21.

c. All GAAP Departures Identified in the Record Were Adequately Disclosed in the Notes to the SFCs and Highlighted in the AICPA Disclaimer Included in the Compilation Reports Annexed to the SFCs

172. The U.S. accounting system permits the issuance of non-GAAP financial statements as long as a modified accountant's report is attached. The GAAP deviations do not have to be resolved. 4293:3-4294:2; 4298:2-12; 4317:9-19; 4341:3-9.

173. If GAAP departures are significant, AICPA guidance provides additional language to include in the accountant's report. 4288:9-4289:23. This "user beware" language amounts to the highest-level warning that an accountant can communicate to a user regarding GAAP departures. 4295:8-14; 4297:15-4298:12; 4514:10-19.

174. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFC's from the year 2011 through 2020. 4297:15-20; 4385:5-24; 4517:17-4518:20.

175. Indeed, the 2014 SFC disclosed GAAP exceptions for determining ECV related to Notes 3, 4, 5 and 6, which in totality covered 95% of the reported assets. 4339:4-16; 4343:1-20.

176. Defendants' accountants' release of a compilation report with authorized warning language signifies that they were satisfied with the disclosures and any GAAP deviations. 4516:1-15; 4522:12-15; 4527:18-4528:2.

177. There is no record evidence that any GAAP departures were not adequately disclosed in the accountants' report or the notes to the SFCs. 4434:24-4435:12.

178. For example, Flemmons testified there was a disclosure in the SFCs regarding brand premium being a part of the property valuations. 4359:11-15.

179. Flemmons testified that TTO utilized GAAP compliant methods to value its properties on the SFCs, including Trump Tower, Niketown, 40 Wall Street, Trump Park Avenue, Mar-a-Lago, the golf clubs, Trump Parc East, Trump Plaza, Trump International Hotel, Seven Springs, OPO, and Vornado. 4346:3-4374:22

d. Flemmons' Testimony is Credible

180. Bender's testimony corroborates Flemmons' testimony that ECV is more flexible, and there are five or six methodologies that can be used to estimate a current value. 366:3-367:10.

181. Bender agreed that the SFCs disclosed the methods used or presented an appropriate value for numerous Trump properties, including but not limited to Trump Tower,

Niketown, 40 Wall, Trump Park Avenue, and the club facilities and real estate, Trump World Tower, Trump Parc, Trump International Hotel, Seven Springs, and Vornado. 412:22-427:13.

182. Kelly also corroborated Flemmons' testimony as he indicated that he would have expected Mazars to read and understand the basis for the values in the SFCs. 2150:4-20.

183. Moreover, Bender corroborates Flemmons' testimony that there can be wildly different valuation results under ASC 274, as Bender as no problem with the methods used to value assets.

184. Flemmons did not opine on values and clarified to the Court that he was not opining as to the ultimate valuations but as to the accounting methodologies used in the SFCs. 4268:4-12; 4364:14-4365:12; 4417:18-20; 4490:21-24.

185. Flemmons testified that GAAP methods must be applied properly, "not using inputs that are obviously inappropriate." 4499:20-4502:10.

186. Flemmons also affirmatively testified as to several specific instances involving an apparent lack of discounting that Mazars would have been obligated to follow up on. 4371:23-4372:15; 4374:23-4375:11; 4406:22-4407:10; 4413:24-4414:16; 4414:24-4416:7.

187. To the extent that NYAG's "rebuttal" expert, Eric Lewis ("Lewis"), opined, contrary to Flemmons' testimony, that applying ASC-274 requires the preparer to compare the results of its valuation method to the definition of ECV, the Court rejects Lewis' opinion testimony. *See* infra § V.4.d. Unlike Flemmons, Lewis is neither a licensed CPA nor a certified fraud examiner. His statement is bereft of textual or other support and absurdly suggests that ASC-274 expressly authorizes the use of non-compliant methodologies.

188. Accordingly, the Court finds Flemmons' testimony is credible.

2. Expert Testimony Confirms that the Lenders Did Not Rely on the Valuations Provided in the SFCs in Issuing and/or Pricing the Loans

a. Eli Bartov Confirmed that the Banks Conducted and Relied Upon Independent Valuations

189. Professor Eli Bartov ("Bartov") is a distinguished full professor of accounting at New York University Stern School of Business. 6180:23-6181:3. Bartov prepared several personal financial statements while practicing in Israel. 6186:25-6187:1.

190. Bartov has testified five to six times and once at trial for NYAG in People v. Exxon Mobil as a valuation and GAAP expert. 6205:16-6206:17.

191. Bartov was deemed an expert in financial accounting, credit analysis, and valuation. 6214:16-21.

i. DB Conducted its Own Analysis and Valuations

192. Personal financial statements, i.e., SFCs, are governed by ASC-274. 6186:5-9. Here, the user is DB and the preparer of the SFCs is TTO. 6251:21-24, 6279:3-6.

193. ASC-274 is the only provision of the ASC that uses ECV. 6245:19-24.

194. ECV is defined as "the amount at which the item ***could be*** exchanged between the buyer and the seller, each of whom is well-informed and willing and neither of whom is compelled to buy or sell." 6250:10-13.

195. ECV is "substantially different" than fair value, and the two definitions have "completely different meaning[s]" including because of the use of the word "could" instead of "would." 6280:7–6282:22.

196. ECV accounts for the preparer's prediction for the asset's value in the future based on its plan for the asset. 6276:19-6277:7; 6282:11-15.

197. Values reported in an SFC are only the first step in a "long and complex" negotiation process. 6198:8-10; 6239:11-13.

198. A user must read the accompanying notes as they are an integral part of the SFCs and obtain any additional information from the preparer, including net operating income ("NOI") and cash flow. 6198:8-10; 6240:2-5; 6335:3-5; 6240:3-8; 6259:13-15. The numbers alone are meaningless. 6251:3–8.

199. A user is then tasked with making a lending or investment decision based on its own adjusted values derived from the user's own valuation model and assumptions. 6198:10-15, 6255:3-8. The FASB, Federal Reserve, and accounting literature instructs a user to conduct its own analysis. 6266:24-6267:6.

200. Here, the evidence is overwhelming that DB performed its own independent valuations and employed the VSG to do so. 6290:11-25; 6297:11-13.

201. For the Doral Loan, DB concluded, based on its own independent analysis, "through [its] due diligence" that President Trump had an "exceptionally strong financial profile consisted of a reported net worth of 4.2 billion which [it] ha[d] adjusted to 2.4 billion." 6299:24-6300:9; DX-312. DB further observed on December 23, 2011, that President Trump's balance sheet was "among the strongest personal balance sheets we have seen and totally unlike any of [its] major real estate developer clients in that [it] observe[d] an absence of personal debt with a huge asset base and diversified CF." 6305:4-8; DX-312.

202. For the Chicago Loan, DB likewise stated that it "made certain assumptions that have resulted in adjustments to reported values." 6307:24-6308:4; PX-291.

203. For the OPO Loan, DB also performed its own analysis of valuation before making a lending decision. 6406:3-17; PX-300.

204. For each asset, the difference between the valuation reported on the SFC and DB valuation is significant. 6411:4-7.

205. The only record evidence establishes that DB did not rely on the valuations in the 2013 SFC, as its own analysis reflected an overall net worth of $2.1 billion versus the reported $3.6 billion. 6397:18-6398:12; PX-290.

206. DB did not rely on the valuations provided in the 2015 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $4.3 billion. 6398:13-6399:22; PX-298.

207. DB did not rely on the valuations provided in the 2016 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $5.7 billion. 6403:19-6404:16; PX-300.

208. DB did not rely on the valuations provided in the 2017 SFC, as its own analysis reflected an overall net worth of $2.5 billion versus the reported $4.3 billion. 6405:3-18; PX-3137.

209. DB did not rely on the valuations provided in the 2018 SFC, as its own analysis reflected an overall net worth of $2.515 billion versus the reported $4.39 billion. 6405:25-6408:12; PX-302.

210. DB did not rely on the valuations provided in the 2019 SFC, as its own analysis reflected a valuation for the trophy properties of $1.16 billion, versus the reported $2 billion. 6407:2-6408:12; PX-498.

211. DB did not rely on the valuations provided in the 2020 SFC, as its own analysis reflected an overall net worth of $2.7 billion, versus the reported $4.7 billion. 6408:25-6410:5; PX-519.

212. DB did not rely on the valuations provided in the 2021 SFC, as its own analysis reflected an overall net worth of $2.2 billion, versus the reported $3.8 billion. 6410:16-6411:10; PX-561.

213. A precondition for the SFCs to be considered materially misstated is that the user (i.e., DB) relied on them in its decision making process, and financial statements that have not been relied upon are by definition immaterial under GAAP; therefore, DB's reliance on its own adjusted values, and thereby its non-reliance on the values stated of the SFCs, conclusively establishes that the SFCs were immaterial because they did not change the judgment of the user. 6388:17-6389:16; 6393:20-6394:4; 6397:18-6398:14; 6399:9-22; 6402:10-6403:4; 6403:24-6410:5.

214. Given that DB performed its own independent analyses to determine the values of the assets listed on the SFCs, DB's judgment was not affect by any alleged misstatements contained in the SFCs, rendering any misstatements in the SFCs immaterial from the perspective of the user. 6388:17-6389:16; 6393:20-6394:4; 6397:18-6398:14; 6399:9-22; 6402:10-6403:4; 6403:24-6410:5.

215. The record is devoid of any evidence to support a conclusion that any of the SFCs were materially misstated from the lens of the user, and the NYAG presented no evidence that it performed a valid materiality assessment using both quantitative and qualitative factors to support a finding of materiality.

ii. Any GAAP Deviations in the SFCs Were Immaterial

216. DB relied on its own financial analysis to extend the loans. Any discrepancy in valuation in the SFCs was objectively immaterial, i.e., it did not change the bank's decision whether to extend loans or the interest rate. 6556:3-18.

217. A deviation is not considered a violation of GAAP if it is immaterial; GAAP does not apply to misstatements or omissions that are immaterial. 6284:3-7, 6394:15-23.

218. Determining whether a misstatement is material is a two-step process. 6284:8-20. The first step is to quantify the error. 6284:10-13. The second step is to decide whether it is material based on qualitative factors. 6284:14-20. Of note is that Professor Bartov explained that inadvertent misstatements are errors and do not demonstrate an indicia of fraud, and that the main indication of fraud is intentional concealment, manipulation, falsification of information, fabrication of transaction, alteration of accounting records or supporting documents misrepresentation or intentional omission of events/transaction, or intentional misapplication of accounting principles. 6411:11-6413:12.

219. Errors or misstatements happen all the time in accounting, if there are no indicia of fraud such as concealment, forgery, or deceit, then there is no basis to determine that these SFCs are fraudulent, and any misstatements are just accidental errors. *Id*.

220. In fact, Professor Bartov testified that his main finding is that there "there is no evidence, whatsoever, for any accounting fraud" and that the "statement of financial condition for all the years were no, materially misstated" 6221:19-25. Indeed, the trial record establishes that Mazars was fully informed about the underlying methodologies employed to derive values of the SFCs based on the supporting materials Defendants provided, and by virtue of what Mazars had learned from Defendants over decades serving as accounts for and annually performing tax and other accounting/attestation services for the Defendants and related entities. 109:4-111:18; 304:23-305:5; 305:6-306:1; 318:8-22; 398:21-400:11; 385:3-387:21; 426:16-429:3; 385:3-387:21; 407:16-25. Further, any disagreement regarding valuation was resolved to Mazars's satisfaction whenever it arose. 383:9-21.

221. A rational economic actor will determine whether to self-finance based on the interest rate. 6329:12-18.

222. President Trump had the demonstrable ability to self-finance certain loans, including the Chicago Loan. 6313:6-10; 6329:10-11.

iii. Bartov's Testimony is Credible

223. Bartov's testimony is not rendered unreliable because of his status as a paid expert witness. Every expert who testified for NYAG or Defendants was compensated for their time. 6443:18-6444:1.

224. Bartov's testimony was consistent with his deposition and expert reports, and concerned certain errors in the SFCs (i.e., Triplex valuation as an inadvertent error—also immaterial).

225. Bartov's testimony was corroborated by additional witnesses, including Flemmons and Haigh.

226. Bartov's testimony was not meaningfully rebutted by the testimony of any other witness.

227. The Court finds Bartov's testimony is credible.

b. Robert Unell Confirmed that the SFCs Were Not Materially Misleading and that DB and Ladder Capital Conducted and Relied Upon Their Own Independent Valuations

228. Robert Unell ("Unell") is a Managing Director in the Real Estate Advisory Practice at Ankura. 5627:17-5629:10.

229. Unell was admitted as an expert in commercial real estate finance and banking. 5619:13-5627:20.

i. Unell Corroborated Flemmons' Testimony that the SFCs Were Adequate to Put Lenders on Notice of the Valuation Methodologies Used

230. The SFCs were in line with, or were of better quality than, those typically received in commercial real-estate finance transactions and provided a complete disclosure of information with ample detail to evaluate exactly how various assets were valued. 5633:3-21.

231. SFCs typically constitute the preparer's estimated opinion and serve simply as a roadmap for a lender to do their own analysis. 5633:25-5635:23.

232. The SFCs also contained a disclaimer alerting the lender that different conclusions of value could be reached. 5634:13-5635:12.

233. The SFCs alerted the users that they should use the information contained therein to conduct their own analysis and form their own opinions. 5636:3-5638:4.

ii. DB and Ladder Capital Relied on Independent Analysis of the Assets and Factors such as President Trump's Experience and Reputation in Issuing the Loans

234. The credit memos indicated that the banks did their own analysis and adjusted the SFCs. 5636:19-5637:6. PX-290 at 7-10; PX-291 at 7-10; PX-293 at 5-8; PX-294 at 15-17; PX-298 at 10-12; PX-300 at 15-18; PX-302 at 9-13; PX-2960 at 4-7; PX-3137 at 11-14; PX-498 at 9-14; PX-519 at 10-15; PX-561 at 9-14.

235. DB and Ladder Capital correctly applied Office of the Comptroller of Currency's ("OCC") underwriting guidelines because they performed an independent analysis of the collateral. 5638:5-5645:22; 5654:21-5655:5. Banks also may consider a guaranty or other items of credit. 5642:19-5643:18.

236. The DB loans had a full guaranty and the 40 Wall Loan had a limited guaranty. 5643:22-5644:2.

237. The banks followed the OCC guidelines to consider whether the guarantor is willing and able to support the credit, and whether the guaranty is legally enforceable. 5644:3-5645:10.

238. The guaranty provides a level of comfort to the lender in case of borrower default, as a guarantor will ensure repayment. 5645:11-5648:20.

239. DB relied heavily upon President Trump and TTO's experience. 5648:23-5649:2. There was also significant economic incentive for President Trump to perform on the loans as guarantor. 5650:1-5652:10.

240. A change in the values of the assets owned by the guarantor would be immaterial to DB and Ladder Capital. 5745:25-5746:17; 5747:7-11.

241. DVSG performed a full analysis of Trump's assets and liquidity. 5651:21-5653:25.

242. Ladder Capital utilized the same practices in underwriting the 40 Wall Loan. 5654:1-4.

243. DB followed its own lending guidelines and policies, including expanding its business with and offering loans on competitive terms to real estate entrepreneurs and investors. 5656:5-5659:6. The PWM group had its own standards for guaranties, liquidity covenants, and nonrecourse loans, which were consistent with industry standards. 5659:11-5662:3; 5665:23-5668:11.

244. As a billionaire, President Trump therefore was more than qualified as a member of the PWM group, and DB sought to have a continuing relationship with him. 5694:7-5696:2; 5697:10-5700:1.

245. DB used compliance certificates to monitor the borrower and guarantor's financial condition throughout the loan. 5671:19-25.

246. The certificates state that, in the opinion of the borrower and guarantor, the information presented is correct in all ***material*** respects. 5669:2-5671:18; *see.eg.,* PX-391.

247. All the compliance certifications made out to Deutsche Bank present fairly in all material respects the financial condition of the borrower or guarantor and the record is devoid of any evidence to the contrary. 5670:1-5671:7, 3239:2-3241:4, 3247:11-3251:2, 3253:19-3254:20, 3256:8-3257:12, 3437:9-3438:23, 3439:21-3440:5, 3440:18-3441:2, 3441:24-3442:7, 3442:16-19, 6221:19-25, 6569:13-19, PX-391, PX-1386, PX-393, PX-497, PX-515, PX-516, PX-517, PX-518, DX-1047, DX-1048, DX-1049, DX-1051, DX-1052, PX-502, PX-503.

248. Materiality is in the eye of the user/lender, and a user/lender will determine its own risk rating, profile, and underwriting analysis. 5670:3-18.

249. The discrepancy in the size of the triplex would not be material or even a factor in evaluating whether President Trump's financial condition was presented fairly in all material respects. 5672:12-5673:3.

250. A lender determines a guarantor's "adjusted net worth" in its discretion. It is typical to see a deviation between adjusted net worth and reported net worth. 5673:8-5674:21; 5676:13-5677:4; 5701:4-10; 5706:8-5708:6. A violation of a minimum net-worth covenant would not be a default. 5678:23-5679:5.

251. When pricing a loan, a bank considers the terms, the collateral, overall cash flow, the debt service coverage ratio ("DSCR"), the borrower and guarantor's liquidity, the overall relationship with the guarantor, risk-adjusted return on capital, diversification, and risk tolerance. 5679:19-5680:15; 5687:17-5688:14; 5713:8-5714:1.

252. DB, as the end user, evaluates materiality, and it determines how to price the loan. 5687:1-4; 5693:9-16; 5762:23-5764:8.

253. Where collateral is sufficient, the pricing would be based on that collateral, not the guaranty, and any fluctuations in the guarantor's net worth or liquidity of the guarantor would be immaterial. 5716:16-5720:19; 5760:2-14.

254. There have been no losses to any party, as the loans here were negotiated between very sophisticated parties, and all contractual obligations were paid. The lenders derived their own interest rates and negotiated loan documents, on which the borrower and guarantor performed. Lenders made their own informed decisions. 5748:1-16.

iii. Unell's Testimony is Credible

255. Unell's testimony was consistent with his deposition and expert reports.

256. Unell's testimony was corroborated by additional witnesses, including Flemmons, Bartov, Haigh, Vrablic, and Williams.

257. Unell's testimony was not meaningfully rebutted by the testimony of any other witness.

258. The Court finds Unell's testimony was credible.

IV. Plaintiff Has Failed To Prove Insurance Fraud

1. Zurich North American Insurance Company ("Zurich"), TTO's Surety, Was Not Defrauded Because Zurich Did Not Receive Materially False Information And The Surety Program Was An Accommodation

259. Zurich supported TTO's surety bond needs from as early as 2009 through at least 2019 ("surety program"). DX-43. In May 2011, Zurich stopped writing commercial insurance policies for TTO but continued to support the surety program. DX-44.

260. In May 2011, Joanne Caulfield ("Caulfield"), a Zurich surety underwriter, reviewed President Trump's 2010 SFC. DX-44. At this time, the total aggregate exposure Zurich approved for the surety program was $2 million. DX-44.

261. In subsequent years, when Caulfield had not reviewed updated SFCs, Caulfield temporarily cut off the account from approval of new bonds. DX-45. Despite Caulfield's decision to not approve new bonds because TTO had not furnished her updated financial information, Caulfield expanded the surety program on numerous occasions, relying on media publications like Forbes that estimated President Trump's net worth to support her decision. DX-45; DX-46; DX-48.

262. In 2014, Caulfield referenced a USA Today article in the personal financial analysis section. 4755:24-4756:2; DX-48.

263. As Gary Giulietti testified, underwriters usually do not rely on media publications to support an underwriting decision. 4754:14-17; 4756:3-7.

264. In 2016, Caulfield expanded the surety to an aggregate maximum exposure of $10 million, despite not having reviewed updated financial information for President Trump since reviewing the 2010 SFC. DX-51. Supporting her decision to expand the program without reviewing financial information, Caulfield wrote: "[G]iven Mr. Trump's significant personal wealth versus the type and size of program we are on, the recommendation is to increase and renew the line for billing purposes." DX-51.

265. Although Caulfield threatened to not approve new bonds, Zurich allowed existing bonds to continue to renew as an "accommodation" to AON, TTO's broker. DX-48. Caulfield was comfortable supporting the expansion of the surety program, in part, because she viewed TTO's executives as "highly professional, well educated, and conscientious about the work that

they do," DX-52, and because of the very small size and limited exposure of the surety program as compared to President Trump's significant personal wealth. DX-51.

266. An accommodation occurs where a surety grants something that is out of the ordinary and ultimately provides a product with minimal or no underwriting. 4743:13-21. An accommodation is like a favor, and in the surety industry, accommodations are rare. 4744:3-14.

267. Zurich mitigates the risk of loss by requiring a customer to execute an indemnity agreement, requiring collateral from the customer, by pricing and rating a customer appropriately, and/or declining the account. PX-3324 (De Bene Esse Deposition Transcript (hereinafter, "Dep.")) 18:17-25; 19:1-22.

268. In 2009, President Trump executed a General Indemnity Agreement with Zurich whereby he personally indemnified Zurich for any claims filed on bonds in the surety program. DX-42; DX-47; 4536:21-4537:11. The General Indemnity Agreement did not require the disclosure of financial information to Zurich. DX-42.

269. One of the primary purposes of an indemnity agreement is to ensure that, if the surety pays a claim, they can "get the money back from the person they insured." 4808:6-12. To collect on an indemnification agreement, the surety puts the indemnitor on notice that payment on a claim has been made and that the surety "intend[s] to collect from cash, or cash equivalents." 4808:13-20.

270. Surety underwriters generally require financial information, including on liquidity, overall net worth, and leverage on assets, before underwriting a bond, including a full audit. 4738:11-21; 4740:1-4743:12.

271. Surety underwriters look at the "3 C's": "character, capacity, and capitalization liquidity." 4809:9-13. When considering liquidity, the "most important aspect" for the surety is

the single bond limit because "the likelihood of the whole program getting called at once is pretty minimal. So their real exposure is what is the largest single bond that they would put out there." 4810:17-4811:3.

272. TTO did not provide audited financial statements to Zurich, and an underwriter would have given no credence to the compilation statements provided by TTO. 4738:22-4739:7.

273. Claudia Mouradian, f/k/a Claudia Markarian ("Mouradian") was employed at Zurich as an underwriter in the commercial surety division from August 2010 until 2020. Dep. 9:15-10:4; 13:10-16.

274. Zurich vets their customers and reviews their financial statements to make sure they are creditworthy. Dep. 21:13-21; 90:5-21.

275. Mouradian was involved with underwriting the surety program for TTO. Dep. 10:15-19; 23:5-22.

276. Zurich required an on-site review of President Trump and DJT Holdings LLC's financial statements. Dep. 34:12-24.

277. On November 20, 2018, Mouradian coordinated with AON to review the financial statements at Trump Tower. Dep. 35:9-14; 37:8-38:13.

278. On November 20, 2018, A. Weisselberg provided Mouradian the 2018 SFC and told her that she could take as many notes as she wanted, but no photos or copies. Dep. 38:19-39:5; 41:13-22.

279. Mouradian understood the SFC to be a compilation and of a lower quality than an audit. Dep. 42:15-43:11.

280. Mouradian spent less than an hour reviewing the SFC, during which time she took handwritten notes and A. Weisselberg remained in the room and provided some general commentary on TTO. Dep. 39:6-17; 45:21-46:7; 54:8-11.

281. Defendant Jeffrey McConney ("McConney") was in the room for a portion of Mouradian's review, but she did not recall speaking with him. Dep. 45:7-20; 46:8-12. In doing so, she "skimmed" the notes to the SFCs but asked no questions about them. Dep. 113:22-114:12; 152:1-11; 116:25-117:8.

282. Mouradian noted the cash on hand for TTO as $76.2 million, which bore on Zurich's ability to recover in the event of a claim. Dep. 46:13-47:19.

283. Mouradian noted total assets of $6.6 billion, $6 billion of which was connected to real estate and golf club resorts, which were unlikely to be sold in the event of a loss. Dep. 47:20-49:5.

284. Mouradian described TTO as being in "very good financial shape" and that the "the asset quality in the portfolio is very good and sustainable." Dep. 56:19-57:7.

285. Mouradian recommended that the program be renewed with no changes, which was approved by her manager. Dep. 58:10-59:17.

286. In January 2020, she conducted her on-site review of the 2019 SFC, following the same procedures. Dep. 65:9-66:22; 67:19-68:17; 69:9-13.

287. Mouradian again understood the SFC to be compiled by Mazars. Dep. 67:10-24.

288. Mouradian noted the cash on hand as $87 million and hard assets as $5.9 billion. Dep. 70:25-72:10.

289. Mouradian wrote in her underwriting memorandum that "[t]he fair value of the properties is appraised annually by a professional firm . . . . The firm provides the capitalization

rates to Trump as well as updated comps. This, combined with the Net Operating Income factor provided by Trump Org., determines the valuation of the properties." PX-1561. Mouradian received this information from Weisselberg. Dep. 45:15-46:7.

290. Mouradian understood a valuation and an appraisal to be the same thing and used the terms "value," "valuation," and "appraisal" interchangeably. Dep. 109:3-22, 109:23-25, 110:1-8.

291. Mouradian was not told where the capitalization rates were derived. Dep. 123:10-22. Mouradian agreed that TTO would be in the best position to know how much income was being generated from a particular property. Dep. 121:4-22.

292. Zurich could have requested appraisals and audited financial statements as part of its financial analysis, but it did not. 4766:1-4767:9.

293. Mouradian described TTO as being "once again in very good financial shape." Dep. 78:25-79:7.

294. Mouradian stated that "the asset quality in the portfolio is very good and sustainable." Dep. 79:8-81:9.

295. Mouradian recommended that the program be renewed with no changes, which was approved by her manager. Dep. 81:10-82:11.

296. After reading a media article about TTO allegedly misrepresenting the value of assets to insurers, Mouradian wrote in an e-mail to her superiors that she considered TTO surety program to be "quite modest for the organization with no real issues. The terms for the program have generally stayed consistent, with a few rate decreases when we felt it was warranted. I do plan to continue supporting the surety program as I feel it is merited, unless there is a legal reason/concern for us to exit the program." DX-969.

297. Mouradian lost credibility when she was asked whether she would describe TTO's surety program as "modest," and she responded: "I don't know what that means," Dep. 128:22-25, despite the fact that she had described the program as "quite modest" to her superiors. DX-969. Expert testimony confirmed TTO surety program was a "very small program for a company like Zurich or even for an organization as large as this. It is a relatively small program by industry standards. Not a lot of exposure." 4843:19-4844:3.

298. Mouradian lost even more credibility when she was asked whether TTO surety program was an important account for her to maintain and she responded: "It wasn't any more important than any of the other accounts," Dep. 147:13-14, despite writing in an e-mail that TTO was a "very important client." DX-970.

299. As such, Mouradian's testimony was not entirely credible. Mouradian was confused about how to determine property values and, because she recognized the net operating income for a property was known only by TTO, she improperly assumed the third-party companies such as Cushman and Newmark were providing valuations that reflected values in the SFC.

300. For TTO's surety bonds, the largest single bond was approximately $5.7 million, less than the $6 million single bond limit imposed by Zurich and, for the most part, the aggregate exposure did not exceed $10 million. 4811:3-9.

301. Liquidity is a heavy factor for Zurich's surety underwriters, 4740:4-6, and President Trump had more than sufficient liquidity to cover his obligations for the "modest" amount of Zurich's exposure.

302. Zurich issued seven bonds for TTO in August 2023 without reviewing financials. 4750:5-17; 4768:16-21. Sureties do not continue writing bonds for companies if the surety feels the company has defrauded them. 4816:20-23.

303. Further, Zurich was not defrauded by TTO because, from the surety program's inception, it was an accommodation to TTO and/or AON. 4744:3-14; 4813:1-6; 4815:17-21. This is evidenced by the fact that Zurich did not do a lot of "technical underwriting," which would include "ordering clue reports, past claim reports . . . analyzing different reports that are available in the industry. None of that was really done in this case." 4816:6-14. From reviewing the underwriting memorandums, there was no underwriting done because "there [wa]s nothing filled in." 4827:7-9.

304. In 2019, the year Plaintiff alleges Zurich was defrauded when Mouradian was the responsible underwriter, there was "little or no underwriting [] done." 4841:17-20.

305. Moreover, in August of 2023 Zurich underwrote seven bonds for Trump, which are active today, and Zurich still currently insures the first $400 million of claims on Trump properties. 4750:5-17; 4772:19-4773:5.

306. The Court finds the testimony of Defendants' experts Giulietti and Miller very credible and discounts the testimony of Mouradian.

307. Thus, the evidence adduced by Plaintiff is insufficient to support a finding of insurance fraud based on the surety program.

2. Tokio Marine ("HCC") Was Not Defrauded Because It Was Not Provided Materially False Information

308. Michael Holl is an underwriter in the Directors &Officers ("D&O") writing unit at HCC.

309. In December 2016, HCC agreed to write a 5x5 D&O policy for TTO until February 2017 without reviewing financials. PX-587.

310. The HCC underwriter described the possibility of writing a D&O policy for TTO as a "[n]ice juicy one." PX-587.

311. HCC knew TTO was looking for additional D&O coverage as the primary coverage was with Everest insurance company. 2492:4-15; PX-587.

312. Holl was "excited about the prospect of insuring the Trump Organization or various of its subsidiaries." 2510:17-20. When Holl was seeking TTO's business, he knew TTO was "concerned about potential exposure now that Donald Trump had been elected president." 2513:21-2514:2.

313. HCC never bound the 5x5 policy. 2496:18-24.

314. The purpose of reviewing financials is to find out if the company is profitable and what their "overall financial health is." 2494:21-25.

315. However, D&O carriers do not always look at financials for private insureds because they are "more interested in claims history and the type of business and location, because they feel that's more indicative of future performance." 4848:1-7. Further, D&O carriers understand that "any financials from a private company are a mere snapshot. So while it may be true today, they could change tomorrow. So the relevance or how much weight they put into those are not as extensive as the other items they look at." 4848:11-15.

316. Holl participated in an underwriting meeting at Trump Tower on January 10, 2017. 2497:15-16; PX-588. Holl recalled meeting with Weisselberg during the meeting. 2497:25-2498:1.

317. Holl was shown a balance sheet for year end 2015 that, according to Holl, showed total assets of $6.6 billion, cash of $192 million, and total debt of $519 million. PX-2985.

318. The cash amount is a useful figure in D&O underwriting because it is a measure of liquidity for the company. 2500:10-19.

319. A retention in D&O insurance is similar to a deductible in a health insurance policy. 2515:18-23. The purpose of reviewing financials for a private company seeking D&O coverage is to ensure the company has the "financial wherewithal to cover the retention." 2515:24-2516:3.

320. Holl recounted in his notes there was a statement made that there was "no material litigation or communications from anyone." 2501:12-16.

321. During the meeting, someone (Holl could not recall if he did or if someone else did) inquired whether there were any "material litigation or communications from anyone." 2500:20-2501:11. "Material litigation or communication" includes information the company is aware of "that's not public; that is, litigation or notices or communications that could lead to litigation that would implicate the D&O policy." 2500:23-2501:2. The response Holl recalls to the inquiry was that there was no "material litigation or communications from anyone." 2501:12-16.

322. Holl does not recall "who made the statement about" no "material litigation or communications from anyone." 2501:12-16; 2519:20-22.

323. After the meeting, HCC bound the D&O coverage for the Trust. 2504:1-3; PX-597. The D&O policy was an excess surplus lines policy, which means HCC could "use rates that are their judgment" because they are not regulated filed and regulated by the state. 4851:18-4852:1; PX-597.

324. HCC renewed the D&O policy in 2018 for the same premium ($295,000) and coverage terms. 2506:1-5.

325. In 2019, HCC quoted a premium of $1.6 million, which the Trust did not accept, because, as Holl testified, "our assessment of the risk changed and we believed that the risk was significantly more risky than our initial assessments." 2507:6-17.

326. The retention on the D&O policy and the extension that were bound was $2.5 million. 2516:4-7.

327. If TTO had identified $25 million in cash on the balance sheet Holl saw at the underwriting meeting, "there would be enough on the balance sheet to cover their retention," according to Holl. 2516:21-2517:12.

328. Holl was not concerned with any of the debt he saw on the balance sheet. 2517:13-15.

329. Because the retention on the D&O policy and extension was $2.5 million, President Trump had more than sufficient liquidity to cover it as the balance sheet reviewed by Holl showed $192 million in cash.

330. Holl did not ask to see bank statements. 2517:16-17. Had Holl been concerned about the Trust's ability to meet the retention, he would have asked to see bank statements.

331. The Trump Foundation is not an insured under the Trust D&O policy and extension. PX-597. Therefore, the Trust was not required to disclose communications by a law enforcement agency to the Trump Foundation as part of the HCC D&O underwriting process.

332. The D&O policy required that the risk manager or general counsel of TTO have knowledge of a potential claim to trigger the reporting requirement. 4849:8-17.

333. Plaintiff has not put forth evidence the risk manager or general counsel had knowledge of potential claims under the D&O policy when any of the alleged verbal inquiry pertaining to "material litigation or communication from anyone" was made.

334. Further, there is no evidence in the record that the alleged statement about no "material litigation or communication from anyone" was written, which is required to prove insurance fraud.

335. The Court credits the testimony of Holl and Defendants' expert (Miller).

336. HCC was never furnished a materially false financial statement.

337. Thus, the evidence adduced by Plaintiff is insufficient to support a finding of insurance fraud based on the D&O policy and extension.

V. NYAG Has Not Demonstrated Any Defendant Had the Intent to Defraud

1. The Record Evidence Does Not Support a Finding That President Trump Had Intent to Defraud

338. President Trump was the 45th President of the United States. Prior to his presidency, he was the owner of hundreds of entities under the umbrella of TTO, including single-purpose entities used to purchase property and enter into loan transactions. 3472:13-15. Upon assuming the presidency in January 2017, he relinquished his position at the company and the trusteeship of the Donald J. Trump Revocable Trust. 3472:20-3473:10. President Trump has extensive experience and success as a real estate developer and has worked with banks for decades. 3487:4-8; 3479:10-13.

339. Weisselberg and McConney primarily prepared the SFCs. 3491:9-14.

340. President Trump would receive a copy of the statement at some point, and in some cases, he would review it. 3491:9-16.

341. There is no record evidence that President Trump ever reviewed the backup supporting data for the SFCs.

342. He "gave [Weisselberg and McConney] total authority to work with a very expensive accounting firm, . . . [a]nd they worked with the accounting firm and they came up with a statement." 3561:5-9.

343. Weisselberg and McConney were responsible for making sure TTO maintained complete and accurate books and records. 3617:3-6.

344. The SFCs were prepared by other people, and President Trump accepted them but did not say to make any values contained therein higher or lower. 3513:10-15.

345. President Trump was not involved in any way with the SFCs between 2017 and 2021 because he was President of the United States. 3551:20-23.

346. In his estimation, the SFCs were not important financially. 3492:1-12.

347. In connection with the 2014 SFC, Niketown was not valued at a price President Trump would sell it for based on its location and holdup value. 3499:3-3500:24.

348. The valuation of 40 Wall Street, which President Trump did not prepare, did not take into account building residential condominiums. 3505:11-14; 3513:2. The highest and best use of the property would be residential condominiums, making the $550 million valuation a very low number. 3506:8-14.

349. President Trump believed Mar-a-Lago and Doral were much more valuable than indicated in the backup to the 2014 SFC. 3488:8-22; 3530:11-19.

350. President Trump explained that he had "very complicated, many transaction, many, many, many-pages document. The overall number is somewhere much higher. And some are a little bit lower or not materially lower. But the overall net is that we are much, much higher,

much, much higher than the document." 3627:6-18. President Trump also testified that he believed the SFCs were "very good" and "actually somewhat conservative and in some cases very conservative." 3629:3-5.

351. In valuing real estate, a developer would consider "[w]hat the use is; how much money can be derived from that use; in other words, the return on investment." 4191:24-25.

352. Testimony from other witnesses called by NYAG demonstrates that President Trump was minimally involved with the SFCs.

353. Mouradian did not speak to President Trump. Dep. 124:5-11.

354. Dillon testified that President Trump was not involved in the day-to-day operations of the company and was involved in "very few things" since he is "the highest level executive at the company." 2574:15-2575:23.

355. Weisselberg received "periodic" comments from President Trump on statements before he became President. 898:23-25. President Trump was particularly interested in the notes to the SFCs because they served to market the buildings. 869:16-22. He would occasionally change a word, e.g., from beautiful to magnificent, to explain to anyone reading the SFC that these were premier properties. 897:18-898:6.

356. The only witness called by NYAG to prove intent on the part of President Trump was Michael Cohen.

357. Michael Cohen was supposed to be NYAG's star witness.

358. Michael Cohen is a convicted felon, disbarred lawyer, and serial liar. 2428:8-10; 2300:12-25.

359. Michael Cohen admitted to previously lying under oath on several occasions. 2425:14-19.

360. Michael Cohen lied at his plea hearing in the Southern District of New York. 2436:22.

361. Michael Cohen lied at his plea even after being warned by USDJ William Pauley that if he answered any of the Judge's [50 or so questions] falsely he could be prosecuted for perjury. 2429:25-2430:21.

362. Michael Cohen continued to lie at his sentencing in the S.D.N.Y. 2437:1-9.

363. Despite Michael Cohen being NYAG's star witness, who on his direct examination claimed that he "was tasked by [President] Trump to increase the total assets" on the SFC by an arbitrary number that President Trump selected (2211:3-11), Cohen was forced to admit during cross examination that this statement was yet another lie and that President Trump in fact NEVER directed him to inflate the numbers on the SFC. 2443:25-2444:3.

364. The Court finds President Trump's testimony was credible.

365. President Trump's testimony was corroborated by witnesses called by NYAG, including Weisselberg, McConney, Eric Trump, and Donald J. Trump, Jr.

366. President Trump's testimony was not rebutted by any other witness.

367. The evidence adduced at trial is insufficient to support a finding that President Trump had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

2. The Record Evidence Does Not Support a Finding that Weisselberg Had Intent to Defraud

368. Allen Weisselberg ("Weisselberg") began working with President Trump in or about 1986, as Controller for TTO. 789:18-790:2. From 2002 through January 2023, Weisselberg was the Chief Financial Officer of TTO. 790:3-7; PX-1751. From January 2017

through January 2021, Weisselberg was a trustee of the Donald J. Trump Revocable Trust. 794:8-19; 795:8-23; PX-769; PX-1016.

369. McConney reported to Weisselberg from in or about 1987 through Weisselberg's departure from TTO. 791:4-16.

370. Birney sometimes reported to Weisselberg or McConney from 2016 or 2017 through Weisselberg's departure. 791:17-792:17.

371. Weisselberg relied on other individuals within TTO, including McConney and Birney, to determine ECV for purposes of the SFCs. 792:18-24; 800:7-10; 824:18-25; 843:19-845:12; 846:4-18; 865:1-7; 870:21-22.

372. Weisselberg did not personally calculate any asset's ECV for purposes of the SFCs. At most, Weisselberg would review McConney's work and give suggestions as to values or forward relevant information while Birney was preparing the SFCs. 843:19-25; 870:6-20; 872:3-11.

373. Weisselberg did not review every line of the thousands of pages of supporting documentation for the ECV calculations before they went to Mazars but "reviewed the totals" provided to Mazars. 825:4-20; 869:6-22.

374. Weisselberg is not a CPA and is not familiar with any of the components of GAAP. 787:23-788:19.

375. Weisselberg relied on Mazars, the accounting firm responsible for compiling the SFCS, to understand GAAP and identify any departures from GAAP in the SFCs.

376. Mazars had complete access to the information, records, documentation and others matters needed to prepare the SFCs. 852:5-853:12.

377. Weisselberg trusted that Mazars would not compile an SFC if it did not comply with GAAP. 968:23-969:9.

378. Weisselberg did not know whether GAAP required discounting when an asset might have future value and testified that Mazars, who was part and parcel of producing the SFCs, would have told him if such valuation was inappropriate because certain properties were obviously future developments on the supporting data. 909:8-25; 967:3-24. Nonetheless, Mazars allowed the values to remain as they were. 909:8-25.

379. The same applied to other future developments, such as club facilities, where Weisselberg relied on "Donald Bender and Mazars's firm who are GAAP experts" and "they allowed future values to be put on [the SFC] because they saw the spreadsheet from Mr. McConney and it showed future value." 967:3-25. Based on this, Weisselberg understood that future values were appropriately used under GAAP. 967:3-25.

380. Valuation methods such as the premium added to golf courses that were valued on a fixed assets basis were likewise disclosed on work papers provided to Mazars. 875:2-13.

381. That Mazars' management representation letter was signed by Weisselberg and included his representation that the SFCs were GAAP-compliant is not indicative of intent to defraud. The management representation letter was prepared by Mazars for Weisselberg to sign. 969:3-13. Mazars clearly did not assume the valuations provided were all GAAP-compliant, inasmuch as Mazars included disclaimer language in their compilation reports and approved the notes detailing extensive GAAP departures.

382. Further, Weisselberg testified that he was unfamiliar with GAAP. While Mazars never limited the number of exceptions to GAAP that may have been included in a SFC,

Weisselberg "relied upon the Mazars firms to understand GAAP" and to understand what exceptions to GAAP were included in the SFCs. 854:21-856:5.

383. Flemmons' testimony confirms that Weisselberg's reliance on Mazars was appropriate and that Mazars had a professional responsibility to understand valuations, identify apparent deviations from GAAP, and address them appropriately. 4286:9-22, 4391:23-4392:9; 4296:13-4297:14.

384. That Weisselberg was notified Forbes was inquiring about a potential discrepancy in the Triplex square footage likewise does not indicate an intent to defraud. Weisselberg testified that the discrepancy went unnoticed because the Triplex was part of the "other assets" category of the statements and he considered it to be "relatively" "non-material" when compared to other larger assets such as commercial buildings and golf courses. 809:4-810:2.

385. Weisselberg considered the Triplex error to be practically de minimis relative to President Trump's net worth because the commercial aspects of Trump Tower were prioritized over the Triplex in the SFCs. 817:20-25; 823:17-22. Weisselberg did not immediately change the 2016 SFC or refrain from submitting a representation letter to Mazars after contact by Forbes because he believed the square footage issue would not be material to the preparation of the SFC. 828:12-829:11.

386. In Weisselberg's mind there was no need to immediately adjust the value of the Triplex because it was not material. 859:6-21. Even if Weisselberg were mistaken, there is no evidence that he refrained from correcting the valuation because he thought it would extract an advantage from lenders. Importantly, after some time passed AW had someone at his office go back and check the offering plan to determine the correct square footage and the square footage

of the Triplex was corrected in the 2017 SFC. 828:25-829:11; PX-758. The change in square footage resulted in a decrease in value to the Triplex. PX-758.

387. That Weisselberg knew cash in the Vornado partnership accounts was not accessible without the partnership's consent likewise does not indicate an intent to defraud. Weisselberg relied on Mazars to tell him whether including that portion of cash in the SFCs was acceptable under GAAP. 940:2-16.

388. Weisselberg does not recall underwriters or insurers ever being told that appraisals were obtained to derive the values of assets listed on the SFCs. 953:24-954:12. He recalled that Markarian was told that summaries of comparable for Manhattan properties were provided to McConney and Birney, who would then take capitalization rates from those comparables to derive their own computation. *Id.* Weisselberg explained that there was no need to spend hundreds of thousands of dollars on appraisals unless it was required for some reason, such as to obtain financing; therefore, it was inaccurate for Markarian to say that appraisals were performed on the subject properties. 955:3-956:1.

389. Weisselberg testified that year after year, insurers and sureties were satisfied with taking a day to review the SFC, instead of taking copies of the statement with them. 1187:11-19.

390. Weisselberg's demeanor was candid and forthcoming.

391. Weisselberg's testimony was corroborated by witnesses called by NYAG, including Defendant McConney, Patrick Birney, Donald Bender and William Kelly, and by Flemmons' expert testimony.

392. Weisselberg's testimony was not rebutted by any other witness.

393. The Court finds Weisselberg's testimony was credible.

394. The evidence adduced by Plaintiff is insufficient to support a finding that Weisselberg had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

3. The Record Evidence Does Not Support a Finding That McConney Had Intent to Defraud

395. McConney became Controller for TTO when Weisselberg was promoted from controller to Chief Financial Officer and reported to Weisselberg. 581:9-25.

396. McConney retired from TTO on February 25, 2023, and received a severance package of $500,000. 582:9-25.

397. McConney is not a CPA. 4900:23-4901:1.

398. Mazars prepared the 2011 to 2017 SFCs, and McConney worked on the backup for the statement. 583:1-12.

399. McConney was primarily responsible for the valuations that went into the statement from 2011 to 2016 or 2017 when Patrick Birney took over, at which point McConney had little to do with the statement. 583:13-584:7

400. McConney had minimal involvement in the 2021 SFC and does not recall having a call with Donald Trump Jr. and Eric Trump about reviewing it. 5080:12-21; 5082:1-13; 5083:4-5084:18; 5088:11-25.

401. McConney would gather information needed to prepare the SFC and input that information into the Jeff Supporting Data spreadsheet, and the valuation methodology dictated what new information was needed each year. 588:1-589:5.

402. McConney confirmed that he made a few mistakes and oversights in compiling the Jeff's Supporting Data, including the square footage of the triplex, the comparables for the

triplex, and missing that the Cushman appraisal referenced the Dean & DeLuca rent value that made valuations increase, but other mistakes made valuations go down. 702:2-704:3.

403. McConney stated that Bender was involved in everything and was effectively an extension of TTO's accounting department. 4908:8-4909:5. It would not have been possible for the accounting department of TTO to operate without Mazars' assistance. 4921:11-14.

404. Bender was McConney's principal point of contact at Mazars and anything they needed accounting help for, they would go through Bender. 4919:22-4920:4.

405. McConney stated that Bender had access to any information that he wanted or asked for, and he never hid any information from Bender. 4913:7-4915:2, 4955:2-4956:3; 4957:3-5.

406. McConney provided the Jeff Supporting Data spreadsheet to Bender in September or October of each year along with the backup for the valuations. 4926:4-25. Bender would then send McConney and Weisselberg a draft, they would review it back and forth, and Weisselberg would tell them when it was final. 4917:22-25. Bender would then ask questions and ask for additional information as necessary. 4927:1-4928:5.

407. McConney could not remember a time he did not make a change Bender requested, and he never ignored a request for information from Bender. 4930:9-15; 5107:9-24; 5108:8-12.

408. Bender reviewed the information in the footnotes and then McConney re-reviewed it. 4935:5-19.

409. The record is devoid of any evidence that Bender ever spoke to President Trump about the preparation of the SFCs.

410. McConney relied on Mazars to determine whether the notes were consistent with the supporting data and appropriately disclosed material information. 4943:11-24.

411. McConney discussed the selection of cap rates for Trump Tower valuation with Bender. 4996:1-25, 4998:1-9; 4998:15-4999:16.

412. Mazars confirmed the information in the supporting data and examined the documents that McConney sent to get to the values he used. 4943:10-25; 4944:1-24.

413. Mazars had knowledge of the rent-regulated apartments in the Trump buildings, and McConney provided them with this information through rent rolls and other information requested. 4960:24-4961:7; 4962:1-4963:20; 4970:22-4971:13; 4972:5-9; 4983:23-4987:3; 4987:15-23; 4988:1-10; 4990:11-4991:10; 4992:18-21.

414. Ivanka Trump's right to purchase Penthouse 20 was disclosed to Mazars. 4989:20-4990:4.

415. McConney stated that certain golf course properties had a premium added to them, which were disclosed to and not contested by Mazars. 5022:11-19; 5024:22-5025:10; 5028:3-5029:14; 5035:13-5036:11.

416. McConney disclosed to Mazars where a minority of the property was owned and adjusted the values accordingly, and Bender specifically asked for partnership tax documents. 5005:14-5008:10; 5010:2-15; 5010:19-5011:4.

417. McConney sent Bender documents that McConney and/or TTO relied on in completing valuations. 5032:5-13; 5034:2-24.

418. Kevin Sneddon, who was running Trump International Realty at the time, sent McConney an email which included a statement that the triplex was 30,000 square feet and that he relied on it, as he believed Sneddon knew the property better than he did. 5003:8-22.

419. When valuing Mar-a-Lago, McConney did what he could to find comps for the property, which was difficult due to its unique nature. 5018:22-25; 5021:17-21.

420. McConney used the value from the 2015 appraisal of Doral for the valuation of Doral, as Weisselberg instructed him to do so. 5030:16-24.

421. McConney would not always use appraisals as the baseline for his valuation because "[j]ust because it is an appraisal [] doesn't mean it's going to properly reflect the value of that property." 5031:5-17.

422. McConney used the information provided by George Sorial or Sarah Malone to value the Aberdeen property. 5037:11-5038:5.

423. McConney used information in Larson's report to come up with his valuations or Larson would assist with coming up with cap rates. McConney had telephone conversations, for which he noted the date on the supporting data spreadsheet, with Larson. 4938:18-4943:9; 4973:19-4976:5; 4995:16-22; 4996:1-4997:10; 5016:14-22; 5016:23-5017:22; 5018:5-10.

424. Larson provided him with comparables via email on September 19, 2012, to value the triplex, and he and Weisselberg determined to use the upper end of that range. 634:13-639:20.

425. Larson also provided a generic market report, which was used for 40 Wall Street in the 2012, 2013, and 2014 SFCs 659:25-668:2.

426. McConney relied on Larson for 40 Wall Street cap rates but came to different conclusions than Larson's appraisals. 675:8-681:22; 690:9-693:18.

427. McConney understood that the SFCs had to comply with GAAP but there are many ways to calculate ECV. 629:24-630:19.

428. McConney felt good about the work he did on the SFCs, he had no problems with his work and he never intended to mislead anyone or be inaccurate. 5041:22-5042:4.

429. There is no evidence in the record that McConney intended to mislead or defraud anyone.

430. McConney's demeanor was candid and forthcoming.

431. The Court finds McConney's testimony was credible.

432. McConney's testimony was corroborated by witnesses called by NYAG, including Defendant Weisselberg, Defendant Eric Trump, Patrick Birney, and Donald Bender, and corroborated in part by Douglas Larson,

433. McConney's testimony at trial was not rebutted by any other witness.

434. The evidence adduced at trial is insufficient to support a finding that McConney had any intent to defraud with respect to the Seven Springs Loan, Trump Park Avenue Loan, Ferry Point Contract, GSA OPO BSA, Doral Loan, OPO Contract & Lease, OPO Loan, 40 Wall Loan, Chicago Loan, Zurich surety bonds, or Buffalo Bills bid.

4. Defendants' Expert Witnesses Further Demonstrate that No Defendant Had an Intent to Defraud, and the Testimony of NYAG's Purported Expert Witness Should be Disregarded in Its Entirety

a. Any Deviations from GAAP in the SFCs Were Disclosed to the User by Means of the Highest-Level Disclaimer Suggested by the AICPA

435. The unrebutted and unrefuted testimony adduced at trial establishes that the compilation report and notes to SFCs form an integral part of the statements, must be considered as one document, and are intended for the users of the SFC. 4338:8-4339:3; 6251:25-6252:9.

436. The very first note to each SFC provides in pertinent part:

> "Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions

and/or estimation methodologies may have a material effect on the estimated current value amounts."

See e.g., PX-787 at 6.

437. As set forth above, the U.S. accounting system permits the issuance of financial statements that deviate from GAAP if the departures are adequately disclosed.

438. The AICPA suggests highest-level "user beware" language that warns the user that GAAP **departures** are of such significance that the reliability of the financials is in question. 4514:7-19, 4297:21-4298:1.

439. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFCs from the year 2011 through 2020. 4295:8-14.

440. There is no evidence of any GAAP departure in the SFCs that was not adequately disclosed in the accountants' report or notes to the financials, or that was not readily apparent to Mazars in the supporting data. 4434:24-4436:3.

441. Disclaimers are provided to ensure that the user fully understands the limitations of the SFCs. The benefit of the disclaimer inheres to the user and not the preparer. 6264:7-20. However, sophisticated lenders will already be aware of the limitations of an SFC. 6256:2-16. The reason is that accounting rules are often at odds with economic principles due to GAAP limitations, but users are interested in economic values, not accounting values. 6239:3-6240:23.

442. The warning that "the accompanying notes are an integral part of this financial statement" cautions a user that it must consider the information in the footnotes. 6251:25-6252:12; PX-787.

443. The warning that "considerable judgment is necessary to interpret market data" cautions a user that the valuations are subjective, and it should evaluate whether the stated valuation meets its needs. 6252:13-6253:12.

444. This is also consistent with President Trump's understanding of the purpose of this disclaimer clause—to warn the user "very strongly, do your own due diligence. Do your own work. Do your own study. Don't take anything from this statement for granted. You could look at the statement, but you must do your own analysis and due diligence." 3551:1-14.

445. The notes to the SFCs, broad disclaimer language and the accompanying Mazars's independent accountant's compilation report—both of which travel together and are part of the same document—provide important information in sufficient detail to put users such as DB of the SFC on complete notice of their limitations. 6339:25-6343:25.

446. The notes to the SFC warn users that failure to read and consider the information in the footnotes will be hazardous to the user's financial health similar to the Surgeon General's warning on a pack of cigarettes, putting users on notice that the valuation of the SFCs are subjective and that users should not rely on the raw data contained within the SFCs. 6252:4-6255:20. This warning is put in place for the user, not the preparer—similar to how a warning on a cigarette box is for the smoker, not Phillip Morris. 6259:22-6260:9.

447. The notes and disclaimers in the SFCs are unusually detailed and transparent, even more so than similar disclosures provided by public companies that are under more stringent disclosure requirements than private companies, such as the Defendants. 6285:16-6286:10.

448. Additionally, Mazars had a responsibility to advise TTO of any additional GAAP disclaimers that became evident to them. 4334:4-18.

b. Flemmons Testified that Defendants Properly Relied on their Accountants, Who Were Required Under the Professional Standard to Understand and Evaluate the Methodologies Used in the SFCs and to Address Any Deviations From GAAP

449. The AICPA requires that an accountant performing compilation services is required to read the financial statements that are being compiled, understand the methods that are being used to develop estimated current values as reported in the financial statements, and to evaluate the appropriateness of those methods. 4286:9-16, 4296:13-4297:14, 4304:20-4305:14; DX-950 at 21.

450. To the extent an accountant uncovers or discovers a particular accounting treatment that is contradictory to GAAP, the accountant is required to seek to resolve the discrepancies or, if not resolved, modify the standard report and include reference to those exceptions in the accountant's report. 4286:17-22, 4296:22-4297:14, 4305:15-4307:1; DX-950 at 22.

451. Mazars and Whitley Penn were obligated under the professional accounting standards for compilations to (1) evaluate the appropriateness of the valuation methodologies used by President Trump and whether the disclosures contained within the SFCs were consistent with the underlying support and (2) respond to any obvious misstatements or differences between the accounting that was provided to them and GAAP. 4344:4-18, 4346:16-22, 4376:17-4377:14, 4382:3-11, 4391:11-21, 4407:17-4408:11, 4429:1-17, 4516:1-15.

452. Defendants relied on their outside accountants to respond to any obvious GAAP departures apparent from the support they provided with their valuations. Given the professional standards, it was reasonable for Defendants to do so. 4392:6-9.

453. Flemmons identified several very apparent GAAP departures in the ECVs and supporting documentation that would have been equally visible to Mazars and Whitley Penn. 4347:25-4348:24, 4374:14-22, 4375:9-11, 4414:11-16, 4522:16-4523:2.

454. There is no record evidence of any GAAP departure that would not have been apparent to Defendants' outside accountants from the support provided. 4435:18-4436:3, 4442:3-8.

455. While an accountant performing compilation services must understand the valuation method selected and whether it comports with GAAP, he would not expect to receive supporting information for amounts not reflected in the SFC. 4325:7-21.

456. A compilation does not entail seeking multiple valuation scenarios or assisting the client with selecting the method to use. 4327:10-4328:12. It is perfectly appropriate under GAAP for a filer to prepare multiple valuations for the same asset and deliver to the compiler only one valuation. 4523:4-4524:3, 4480:13-4481:3.

457. Requesting appraisals that were not actually used to report values in the SFC is inconsistent with professional standards. Donald Bender's ("Bender") claim that he made such requests, (see infra, ¶¶ 572-573), is not professionally plausible. 4325:14-4326:13, 4327:8-21, 4478:20-4479:23.

458. To the extent that Bender stated, contrary to Flemmons' testimony, that Mazars had no responsibility to assess the appropriateness of valuation methods in an SFC, the Court credits Flemmons. In fact, Mazar's general counsel William Kelly testimony was consistent with Flemmons, as he also acknowledged that Mazar's had an obligation to (i) read and understand supporting data to each SFC; (ii) understand the basis for valuation of each asset on the SFC; and (iii) confirm that the valuation methodology selected by the preparer was an

appropriate measure of estimated current value. 2150:4-19. Bender's testimony that he expected any documents related to valuation to be shared with him is inconsistent with his disclaimer of responsibility.

459. Flemmons had no discernible motivation to fabricate his testimony or tarnish his formidable professional reputation.

c. Bartov Testified that there were No Indicia of an Intentional Misstatement in the SFCs

460. Price is an objective measure of value derived from a market transaction, and valuation is an opinion on price. 6244:11-13, 24-25.

461. There are several different definitions of value that will result in different opinions about price. 6246:12-20. There are also different implementation guides or models for each definition and different underlying assumptions for each model. 6246:21-6247:7.

462. A difference in valuation does not evince anything wrong with a particular valuation. 6249:17-22.

463. From an accounting perspective, there were no indicia of material misstatements in the SFCs. 6221:19-25, 6229:9-10, 6393:8-22.

464. A misstatement is the difference between what is reported and what is required under GAAP. 6347:24-6348:7.

465. The only way to determine a GAAP violation is by reference to a specific provision of GAAP. 6238:25-6239:2.

466. The value of the triplex was misstated, as well as a few other allegations in NYAG's complaint. 6224:14-22, 6349:1-3. However, those misstatements were inadvertent. 6349:4-7.

467. The triplex also could be reasonably omitted from a credit analysis because it is not an income-producing asset. 6292:16-6293:8.

468. The complaint did not otherwise contain any references to specific provisions of GAAP that were violated. 6222:9-14.

469. For example, the SFCs do not separately include brand value of the overall Trump name. 6242:14-16, 6243:8-10, 6243:24-6244:6. However, including the effect of brand name on the value of a tangible asset does not violate GAAP. 6441:8-10.

470. 3-4% of companies report errors in audited financial statements. 6225:1-5. The Federal Reserve advises banks not to rely on SFCs because, in part, they are unaudited and likely to contain errors. 6225:6-9.

471. From an accounting perspective, the number one indicator of fraud is concealment. 6225:20-21. Other important indicators are falsification of material provided to accountants, forged documents, and false transactions. 6411:15-6412:4. There is no evidence of any of these factors. 6225:20-6227:21.

472. The more information provided, including the assumptions underlying valuation, the collateral's physical attributes and location, make it less likely that the preparer intends to commit fraud. 6339:9-17, 6343:19-25.

473. GAAP is not designed to give a user the true economic value of an asset, and most users are interested in economic values, not accounting values. 6240:10-11, 17-22.

474. In fact, it is not unusual to have a discrepancy in value where the user and preparer employ different definitions of value. 6299:15-17.

475. Price is the only objective measure of value; valuation is an opinion on price, making it necessarily subjective. 6244:9-6245:4.

476. The reason that valuations are subjective is that there are a variety of definitions of value, different valuation models, and different assumptions to choose from; moreover, valuations on personal financial statements differ from other types of valuations in accounting. 6245:5-6248:4. Differences of opinions in value does not indicate that the values in the SFCs were inaccurate under GAAP. 6248:18-22.

477. ASC 274 uses a unique definition of value, Estimated Current Value, which is only applicable to personal financial statements and affords preparers broad latitude in choosing methodologies and assumptions to derive value. 6245:15-6246:4.

478. Estimated Current Value is derived from the perspective of the SFCs preparer based on planned courses of action, or the long-term vision for the asset, whereas a market value definition, like fair value, is an of value from the perspective of market participants based on contemporaneous market conditions. 6279:3-6283:5.

479. Estimated Current Value is what an informed buyer and seller "could" hypothetically exchange an asset for some-day, while the Fair Value is what an asset "would" be exchanged for between "market participants"—these differences could result in substantial valuation differences. 6279:3-6283:5.

480. Here, the discrepancies between the SFCs and values included in the credit reports were "expected" based on "different definitions and different approaches." 6291:10-18; 6339:18-22. For example, DB relied on liquidation values, which are consistently lower than ECV. 6422:23-6423:16.

d. Eric Lewis's Testimony is Not Credible

481. Lewis is a "Professor of Practice" at Cornell University. 6646:7-10.

482. Lewis received his Ph.D in Engineering Systems with only a concentration in accounting. 6639:2-6.

483. Lewis is not a CPA. 6645:13-14. His only exposure to compilation statements was as a the most junior member of an accounting staff in the early 1990s. 6653:10-13.

484. While Lewis testified that a result must be compared to the definition of ECV in order to be an ECV, the implementation guidance does not contain such a requirement. 6695:3-7, 6743:5-8, 6745:8-19.

485. The issuer has ultimate responsibility for determining ECV and complying with GAAP. 6697:1-7, 6702:10-17, 6709:16-19. This allocation of responsibility is typically contained in an engagement letter and a management representation letter. 6710:18-6711:1.

486. However, if the accountant reviewing the statement notices a GAAP departure, they must bring the issue to the preparer. 6706:11-15, 6716:3-11.

487. Lewis, demonstrating a lack of accounting knowledge, misstated the definition of ECV. Nonetheless, he agreed that there is a distinction between an "amount at which [an] item ***could be*** exchanged" and an "amount at which [an] item ***would be*** exchanged." 6684:13-17, 6735:14-6736:9.

488. ASC-274 uses "could," which implies a transfer at some point in the future. 6739:8-6740:2.

489. Lewis's testimony was not proper rebuttal testimony and should have been elicited during Plaintiff's case-in-chief. 6681:20-6682:2. Lewis's testimony is not admissible.

490. The testimony of Bartov, Chin, Flemmons, and Bender meaningfully rebuts Lewis' testimony.

491. Lewis's testimony also directly contradicts the testimony of William Kelly, General Counsel of Mazars, that "Mazars has an obligation to understand the basis of valuation for each asset listed in" the SFC and "confirm that the valuation method is consistent with the definition of" ECV. 2150:9-15; 6749:23-6751:3.

492. Lewis failed to offer any credible opinion to rebut Flemmons, Bartov, Kelly or Bender concerning materiality, the obligations of an accountant performing a compilation report, or the obligations of the preparer of a statement of financial condition. Additionally, Lewis offered no real world or identifiable academic analysis to support his testimony.

493. Lewis's testimony is therefore disregarded in its entirety.

5. Defendants' Valuation and Appraisal Experts Further Demonstrate that Defendants Did Not Have an Intent to Defraud.

a. Dr. Steven Laposa Testified that Appraisers Can Reach Significantly Different Valuations in Exercising Professional Judgment

494. Doctor Steven Laposa ("Laposa") obtained his MBA in real estate and construction management from the University of Denver in 1989 and a Ph.D. from the University of Reading. 4572:20-23.

495. Laposa has over 31 years of experience in real estate valuation analytics and valuation. 4588-89:25-4.

496. Laposa was deemed an expert in real estate, including real estate research, economics and processes. 4598:17-25.

497. Appraisal and real estate valuations are more of an art than a science because of the subjectivities involved in determining a property's value. 1629:25-1630:14; 4601:2-11.

498. Examples of subjectivities in valuing property include selection of comparable properties, adjusting the comparables selected to the size and age of the subject property being

valued, the location of the property being valued. 4620:10-19. Further, appraisers have biases that are often challenged by other similarly experienced appraisers. 4621:10-22.

499. Assumptions and methods underlying appraisals are subjective, as is the "process of collecting all the data that is necessary to eventually determine an estimate appraised value." 4601: 6-11.

500. The purpose of the valuation or appraisal could lead similarly experienced professionals to disagree. 4610:9-14.

501. For instance, lender-ordered appraisals tend to be "conservative" because lenders are always looking at the downside. 4610:23-4612:19. In lender-ordered appraisals, appraisers often use more conservative tactics like using low rent growth rates when the market may be dictating a higher rate. 4612:3-16.

502. Lenders do not have the same valuation timeline as developers when estimating future value of a property because they are focused on a near-term exit strategy. 1736:1-7.

503. Larson, Plaintiff's own appraisal witness, conceded that, when seeking appraisals, lenders are seeking to know what their worst-case scenario looks like if they need to liquidate the property in the event of default. Further, Larson conceded lenders do not have the same view as President Trump regarding what a property could be worth in the future. 1735:22-1736:7.

504. Similarly experienced appraisers can disagree about the value of the same property at the same moment in time because of the multitude of subjectivities such as training, education, bias, knowledge of the market, purpose of the appraisal or valuation, and outlook on the market. 4608:9-23. Larson, Plaintiff's own appraisal witness, agreed with this when he agreed that two equally qualified appraisers could appraise the courthouse he was sitting in based on the same data at two different figures. 1630: 4-8.

505. Disagreement among appraisals does not necessarily indicate that one of the valuations is inaccurate and it is very common to have appraisers and non-appraisers disagree about the value of real property. 4609:1-12,4613:23-4614:9. This is so, because appraisal "is an art not a science." 1629:25-1630:3. Two equally qualified appraisers could appraise the same property at the same moment in time based on the same data at different values because one appraiser may give more weight to some subjective factors the other appraiser might give less weight to. 1630:4-12.

506. Appraisers exercise judgment in determining property value. 4621:23-4622:6. Choosing capitalization and discount rates, which were both used in determining various of the property values in the SFC and the appraisals discussed in trial, are "pure example[s] of subjectivity." 4657:4-16.

507. Plaintiff's view that appraisal values are "true" values and the allegation the values are inflated is flawed because, unless explicitly stated in the appraisal, appraisals do not account for investment value and therefore only account for market value. 4630:16-4632:10.

508. Appraisers conduct investment value appraisals for real estate developers. 1621:16-19.

509. Investment value appraisals are based on future assumptions and the investment value differs from market value. 1621:20-1622:2.

510. Valuation professionals regularly encounter disparate property values for the same property, including differences in value in the hundreds of millions of dollars. 4635:2-11. In situations like that, a valuation professional is not surprised by the disparate figures because the professional must determine what subjectivities each appraiser relied on. 4636:1-22.

511. The process of valuing properties is further complicated with "trophy properties" because trophy properties are unique in the marketplace and attract a limited pool of high-net-worth investors. 4665:22-4666:22. Valuing trophy properties requires looking at comparables for similar property around the world, rather than in the subject property's immediate vicinity. 4670:18.

512. As an example of the highly subjective nature of property valuations and appraisals, with respect to 40 Wall Street, Laposa was not surprised the appraised values had gone from $260 million to $540 million in less than three years but was confident it was due to rent growths. 4650:12-16, 4654:22-23.

513. Larson, the appraiser in the 2011 and 2012 40 Wall Street appraisals used a very conservative 3% rent growth figure to forecast rent growth in 2012, which, in part, led to an undervaluing of 40 Wall Street by approximately $114 million based on the actual net operating income data in 2015. 1685:2-6. This conservative approach is supported by the fact Dr. Laposa had never seen a 3% rent growth rate in his over 30 years of experience. 4641:22-4642:3.

514. Laposa's credible testimony was not rebutted; rather, it was corroborated by Plaintiff's own appraisal witness, Douglas Larson and Defendants' other witnesses like Chin and Witkoff.

b. Steven Witkoff Testified that Developers Often View Property Differently than Appraisers

515. Expert witness Steven Witkoff ("Witkoff") is a developer and founder of the Witkoff Group, a holding and management company that owns and develops real estate in different sectors of the real estate market. 4171:11, 4173:22-4174:1, 4175:3-6.

516. Witkoff was deemed an expert in real-estate development. 4189:17-18.

517. None of Witkoff's testimony was rebutted.

518. Real-estate developers consider various factors when valuing property. 4186:24-4187:8.

519. Real-estate developers assess the value that can be derived from the use of a property; in other words, they look at the "return on investment." 4191:21-4192:2.

520. Developers also consider the different opportunities in developing the property, such as turning a parking lot into a hotel, thus influencing the value of the property. 4192:3-17.

521. In this forward-looking perspective, developers consider the direction of the market and rent growth. 4196:14-18.

522. When valuing a building, for example, developers take into account the rent roll, cash flow, vacancy, tax forecasts, the office leasing market and the alternatives to leasing, whether the property can be converted to a different use, and potential exit strategies. 4196:11-18, 4198:6-24, 4222:9-4223:1. Potential uses for a property can include "[a]nything within the real estate spectrum." 4222:22.

523. In determining the value of 40 Wall Street, a developer would also consider cash flow, vacancy, other uses and location. 4223:5-20. Location is an especially critical factor in determining the use of the property as 40 Wall Street is "Main and Main for downtown" and downtown rental prices "are probably the equivalent of almost anywhere in New York today." 4223:14–19.

524. While Defendants would need the ground lessor's consent to convert 40 Wall Street to a condominium, ground lessors are typically passive. 4225:5-10. The requirement for ground lessor consent to convert 40 Wall Street is a constraint "[b]ut certainly not something that couldn't be overcome" and their decisions will be focused on strengthening the financial cash flow of the property. 4225:3-10.

525. Although appraisals are one of many factors that developers use to guide their valuations of a property, they are merely "guide post[s]," as there are "plenty of examples of appraisers not getting it right" because "[t]hey don't know the market well enough or what is trending in the marketplace." 4193:9–22, 4195:16–4196:3.

526. Witkoff's testimony is corroborated by Chin, Larson, and Laposa.

527. The Court finds Witkoff's testimony was credible.

c. Fredrick Chin Testified that there is a Distinction between "As If" and "As Is" Valuations in Appraisals

528. Fredrick Chin ("Chin") was deemed an expert in real-estate market analysis, real-estate valuation, and real-estate operations. 5905:19-5906:16.

529. Chin has over 40 years of experience as a real-estate professional and holds, *inter alia*, MAI and CRE designations. 5898:25-5899:16.

530. Chin's testimony was not rebutted and was instead corroborated by the testimony of Laposa, Witkoff, and Larson's testimony on cross-examination.

531. Appraisal information either lags or is incongruent with the market. 5911:2-21.

532. Appraisals are based on historical transactions that occurred in a different market environment. 5911:2-11.

533. The type of and intended purpose of the appraisal can affect the bottom-line valuation. 5945:18-25. Market value, including information related to recent sales and other economic indicators, is commonly used for lender-ordered appraisals, because it provides the lender with information about what the collateral is worth in case of default. 5946:9-5948:6.

534. "As is" valuation connotes a condition at a specific date, often referred to as the market value, while "as if" valuation is akin to investment value, based on a condition to be completed. 5912:15-5915:2, 5919:24-5928:16.

535. Appraisals commonly refer to the "as is" value. Appraisers' value conclusions are based on historical information, and appraisers interpret projected income, occupancy, and market direction. 5914:6-8, 5915:13-19.

536. Developers, on the other hand, are focused on future performance and the evolution of the markets and properties. New projects utilize an "as if," or prospective, appraisal. 5916:13-22, 5917:19-5918:7, 5932:8-5933:10, 5934:15-23.

537. In determining "as if" value, developers consider the potential to build on the property, restrictions and encumbrances, demand, the market cycle, underutilization of the property, cost of capital, and interest rates. 5927:18-5930:5, 5934:24-5935:23, 5949:9-5950:16. A developer's market experience or expertise concerning the profitability of a property will affect the "as if" value. 5930:10-5932:3.

538. A buyer would also pay a premium to own and control a collection of real estate assets owned and operated under one umbrella--this is commonly referred to as "Enterprise Value." 5938:12-5944:25.

539. Here, there were differences of perspective of whether "as is" or "as if" valuations would apply, as the SFCs contained many "as if" valuations and NYAG used "as is" valuations. 5913:12-5914:2.

540. The 2011 and 2012 appraisals of 40 Wall Street reflected an extremely conservative "as is" value of the property, driven by flawed market rental rate assumptions, an inappropriate terminal capitalization rate, inconsistent per square foot results compared to market data, and a discounted cash flow analysis. 5951:14-5965:3; PX-1573.

541. Using the highest cap rate is relatively uncommon, and suggesting positive market trends without adjusting the cap rate is improper. 5956:15-5957:2, 5960:2-20.

542. Cushman's 2015 appraisal of 40 Wall Street, valuing it at $540 million, more appropriately evaluated the property in the context of market rental rates, market conditions, and actual property performance. 5961:16-21, 6019:24-6020:19; PX-118.

543. Although a 2015 Morningstar report valued 40 Wall Street at $261.5 million, it incorrectly applied cap rate to net cash flow instead of net operating income, the cap rate applied was too high, and the price per square foot was too low. 5961:22-5965:3, 6020:20-6021:5; PX-3186 at 40.

544. As to Seven Springs, the 2011 to 2014 SFCs reflected an "as if" valuation of that property, because there were plans to develop the property. 5983:5-22, 5965:4-5967:11.

545. The 2015 appraisal of Seven Springs was based on its "as is" value. 5998:19-5999:8; DX-1016.

546. As to Trump Park Avenue, which included rent-stabilized apartments, a 2010 appraisal conducted by the Oxford Group failed to consider the property's ultimate highest and best use, to sell the individual condominium units unencumbered by rent-stabilization. 5967:12-5968:24, 5994:17-5996:18, 6006:17-6007:17.

547. ECV, as used in ASC-274, offers significant latitude in terms of how real estate or assets could be valued. 6038:21-6039:6.

548. Chin's testimony is corroborated by Laposa, Witkoff, and Larson.

549. The Court finds Chin's testimony was credible.

d. Lawrence Moens Testified About the Uniqueness and Value of Mar-A-Lago Based on His Extensive Experience in the Palm Beach Real-Estate Market

550. Expert witness Lawrence Moens ("Moens") is a licensed real-estate broker. 6092:9-10.

551. Moens has 45 years of experience in Palm Beach real estate and has opined on the value of property in Palm Beach "thousands of time[s]." 6098:1-6, 6096:1-5.

552. There is simply no one in the Palm Beach, Florida real-estate market that has sold as much real-estate as Moens. 6094:8-11.

553. Even McArdle of Cushman & Wakefield testified that it is appropriate to rely on real estate brokers when valuing property, especially because real estate brokers have an appreciation for the local values of the land. 1986:9-16, 2029:7-19.

554. In fact, out of the twelve properties in Palm Beach that have sold for over $100,000,000 over the last few years, Moens sold ten of the twelve properties. 6094:12-24.

555. Moens was deemed an expert in the value of residential Palm Beach real estate. 6106:6-8.

556. None of Moens' testimony was rebutted.

557. Mar-a-Lago is an exceptionally unique and important property that is in a league of its own. 6111:1-14, 6115:2-10. Not only is Mar-a-Lago intracoastal, "It's on the Ocean, and it's connected by a tunnel underneath the road so that it's contiguous, so you have access to both the Ocean and the Intracoastal by way of the underground tunnel, which is rare in Palm Beach." 6111:10-14.

558. The parcel of land that Mar-a-Lago sits on is approximately 17.6 acres and the home is approximately 76,000 square feet. 6111:15-23.

559. Moens valued Mar-a-Lago between 2011 and 2021. 6109:5-6112:7; 6133:5-6135:1.[2]

[2] Moens also valued 1094 South Ocean Boulevard, 124 Woodbridge and 1125 South Ocean Boulevard, which abut Mar-a-Lago and are owned by President Trump, using the same method. 6141:15-6142:17; Demonstrative Exhibit DD6-2-4.

560. In performing his valuations, Moens considered various factors, including market conditions, comparable sales, the size and location of the property, and the quality of construction, considering, for example, the hand-painted tiles, the carved stone outside, the gold gilded ceilings, the hand carved cherubs on the doors. 6106:18-6108:9, 6116:4-12, 6133:5-13, 6134:7-6135:1, 6135:21-6136:10.

561. The assessment in taxable value has nothing to do with a property's selling price. 6108:1-4. This is consistent with Flemmons testimony that simply because the tax assessed value is $18 million would not preclude an ECV of $800 - $900 million derived from a different method. 4272:10 – 4274: His valuations for Mar-a-Lago during that time ranged from $655 million to $1.041 billion without memberships and $705 million to $1.215 billion with club memberships. 6121:21-6126:9. Below are Moens' valuations for 2011 through 2021:

Year	**Moens Value Without Membership**	**Moens Value With Membership**
2011	$655,000,000	$705,000,000
2012	$675,000,000	$725,000,000
2013	$660,000,000	$697,500,000
2014	$685,000,000	$735,000,000
2015	$720,000,000	$770,000,000
2016	$760,000,000	$835,000,000
2017	$790,000,000	$890,000,000
2018	$825,000,000	$950,000,000
2019	$865,000,000	$990,000,000
2020	$950,000,000	$1,075,000,000
2021	$1,040,000,000	$1,215,000,000

562. It would cost between $7,000 and $9,000 dollars per square foot to recreate Mar-a-Lago, due to the exceptional design and craftsmanship, including the inlaid stone and gilding. 6140:10-17.

563. Moens' valuations for 1094 South Ocean Boulevard during that time ranged from $9.7 million to $13.9 million without memberships and $9.8 million to $14.3 million with club memberships. 6142:10-6145:7.

564. Moens' valuations for 124 Woodbridge Road during that time ranged from $4.8 million to $7.9 million without memberships and $4.9 million to $8.3 million with club memberships. 6146:4-6148:7.

565. Moens' valuations for 1125 South Ocean Boulevard from 2017 through 2021 ranged from $19.2 million to $42.5 million without memberships and $19.4 million to $42.8 million with club memberships. 6151:1-6152:20.

566. The Court finds Moens' testimony was credible.

e. John Shubin Concluded that There is No Prohibition on Mar-A-Lago Being Used as a Single-Family Residence

567. Expert witness John Shubin ("Shubin") graduated from Harvard College in 1983, received a J.D. from the University of Miami in 1988, and is admitted to practice law in the State of Florida. 6043:9-17.

568. Shubin was deemed an expert in land-use planning, entitlement, and zoning. 6048:9-11.

569. None of Shubin's testimony was rebutted.

570. Shubin identified a variety of documents relating to Mar-a-Lago, including a title report and conducted a public records search for Palm Beach, and opined that all such documents must be considered in any analysis of permitted uses for Mar-a-Lago. 6050:15-6051:13.

571. Although Shubin was precluded from testifying as to his conclusions, his report was introduced as an exhibit to the trial record. 6072:21-6074:11; DX-1079.

572. At trial, Shubin took the Court through the documents that conclusively established that there is no prohibition on Mar-a-Lago being used as a single-family residence. DX-478, DX359, DX-360, PX-1013, DX-427, DX-429, DX484. These documents are briefly discussed below.

573. Shubin testified that the document entitled, The Mar-a-Lago Club: A Special Exception Use and Preservation Plan, which includes the materials that accompanied an application for a special exception to use Mar-a-Lago as a private club, is significant because it "identifies what uses occurred on the property and it's a commitment as to what uses will occur on the property . . . ." 6060:24-6061:3, 6061:16-21; DX-478.

574. Shubin read into the record excerpts of this document concerning the historical use of Mar-a-Lago, which includes entertaining, opening to the public, and using it as a private residence. 6062:8-6062:10; DX-478.

575. Mar-a-Lago is currently being used as a social club and as President Trump's residence. 6061:4-11.

576. Shubin also read into the record the relevant provisions of the Declaration of Use Agreement by The Town of Palm Beach, The Mar-a-Lago Club, Inc., and Donald J. Trump, dated August 10, 1993. 6062:11-6065:8, DX-359. Shubin testified that this document "reflects the intention of the parties to the agreement to agree to certain conditions related to the use of Mar-a-Lago in connection with the approval of the special exception application." 6062:14-24.

577. In reviewing the Deed of Conservation and Preservation Easement from Donald J. Trump to the National Trust for Historic Preservation, dated March 26, 1995 ("Preservation

Easement"), Shubin testified that this document is a commitment by President Trump to "preserve and conserve and to restore and agree to restore certain specific features of the Mar-a-Lago property." 6066:12-17; DX-360. Shubin further testified that this document "describes the circumstances under which future uses can occur on the property, alterations to the property can occur, essentially what can and cannot occur and what is the process for seeking an amendment to those conditions that are part [of] the preservation easement." 6068:7-13, DX-360.

578. Shubin also read into the record provisions from the Deed of Development Rights, recorded on October 17, 2002. 6068:14-10, PX-01013

579. Shubin read into the record the relevant provisions of the Rules of The Mar-a-Lago Club. 6075:10-6076:20, DX-427.

580. Shubin was also shown the Minutes of the Town Council meeting, held on February 9, 2021, which address various complaints by neighbors of Mar-a-Lago that President Trump is not permitted to reside there. 6077:2-11, DX-484.

581. Shubin then read into the record parts of John C. Randolph Esq.'s letter to the Mayor and Town Council of the Town of Palm Beach in response to the allegations of President Trump's inability to reside at Mar-a-Lago discussing how the matter of President Trumps entitlement to reside at Mar-a-Lago is actually a matter of whether he is a "bonafide employee of the club." 6078:4-6082:8, DX-429.

582. John C. Randolph Esq. attached to his letter a letter from John Marion Esq., on behalf of President Trump and The Mar-a-Lago Club, which states in relevant part:

> President Trump is the President of Mar-a-Lago Club, LLC (the legal owner of MAL), and as a corporate officer oversees the property. He is therefore a bona fide employee within the express terms of the Town's Zoning Code. As such, separate and apart from all of the other reasons outlined above, under the Town's own Zoning Code he is clearly entitled to reside there.

DX-429.

583. Shubin testified that the Town of Palm Beach took no action at the meeting with respect to President Trump residing at the property. Shubin further testified that they "simply chose not to agree with the position of the neighbors," and thus, "there has been no action taken against Mar-a-Lago subsequent to that meeting." 6083:6-19. Therefore, the evidence has established that the Town of Palm Beach is not prohibiting the use of Mar-a-Lago as a single-family residence.

584. The Court finds Shubin's testimony was credible.

f. Steven Collins Testified that GSA Adhered to Federal Regulations in Guidance in Awarding the OPO BSA

585. Steven Collins ("Collins") holds a Bachelor of Science in Civil Engineering from Northeastern University and is the Senior Managing Director in the Construction Disputes & Advisory group for Ankura Consulting Group LLC. 4531:13-16, 4533:25-4534:6.

586. He was deemed an expert in government contract procurement. 4541:23-4542:1.

587. In determining whether GSA complied with the procurement process in awarding TTO the OPO Contract and Lease, Collins reviewed the request for proposal ("RFP") for the OPO and TTO's Proposal in Response to the RFP. 4543:9-20; 4545:2-20, 4546:5-9; PX-1164.

588. The RFP stated that GSA followed the standards set forth in 48 Code of Federal Regulations ("CFR") 9.104-1. 4546:19-4547:19.

589. For the first factor, 15% of the total score, GSA asks the developer to demonstrate its experience, and that of its team, in relevant work. 4548:20-22, 4549:12-16.

590. For the second factor, 35% of the total score, GSA asks the developer to provide both a narrative plan and illustrations of its intended use for the project, including open space usage, elevations of the building, access, egress, how it will incorporate the historical factors of

the building for its intended use, the conceptual narrative, and written dialogue. 4548:20-21, 4550:3-8, 4550:18-21.

591. For the third factor, 15% of the total score, GSA asks the developer to provide its audited or GAAP-compliant financial statements. 4548:14-15, 4549:25-4550:2-22, 4556:15-17, 4551:20-23.

592. The fourth factor, 35% of the total score, GSA asks the developer how much it would pay. 4548:20-22, 4552:2-19.

593. In its July 2011 response to the RFP, TTO indicated that the financial statements submitted would include departures from GAAP. 4554:25-4555:7.

594. In September 2011, GSA asked TTO questions about the GAAP departures, and in December 2011, TTO answered those questions. 4557:4-8.

595. GSA's Source Selection Evaluation Board was assembled to review the proposals received for the OPO and select a preferred developer. 4559:6-4560:11, 4561:15-4562:9, 4562:17-4563:1.

596. In its Report and Recommendation, the Board addressed TTO's past experience as a qualified developer, particularly in the hospitality space; the scale of the projects, including large complex hotels; its experience with historical renovations and rehabilitations; and its strong financial offer to the government, among other elements. 4563:4-11, DX-431.

597. The Board ranked the Trump proposal as number two among the submitted proposals, scoring it as follows: factor one, 84/100; factor two, 92/100; factor three, 91/100; factor four, 97/100. 4564:9-16.

598. Under factor three, the Board noted its prior concerns regarding the financial statements' departures from GAAP and a lack of audited financial statements. 4566:11-23. This

establishes the Board was informed, of and understood fully, the limitations and scope of the financial statements submitted.

599. Under factor four, the Board noted that TTO offered a strong financial offer that was tiered, with a minimum based on percentage of annual revenue, and a potential upside based on percentage of profit. 4567:1-13.

600. Collins opined that GSA adhered to the FAR guidance and 48 CFR 109.9104-1 in awarding the OPO to TTO. 4567:19-4568:14.

601. Collins opined that there was no one factor was determinative of TTO being selected as the preferred developer. 4568:15-4569:9.

602. Collins's testimony was not rebutted by the testimony of any other witness.

603. The Court finds Collins's testimony was credible.

6. Fact Witnesses Called by NYAG Further Demonstrate that Defendants Had No Intent to Defraud.

a. Donald Bender Was Provided with the Access and Information Needed to Complete the SFCs

604. Donald Bender ("Bender") graduated with a Bachelor of Arts from Queens College in 1979 and is a CPA licensed by New York State. 104:6-11. Before his retirement, Bender was a partner at Mazars USA ("Mazars"). 104:11-18.

605. Bender worked with McConney, and Mazars did accounting work for DJT Holdings, LLC, DJT Holdings Managing Member, LLC, Trump Endeavor 12, LLC, 401 North Wabash Venture, LLC, Trump Old Post Office, LLC, 40 Wall Street, LLC, and Seven Springs, LLC. 108:15–112:18. Mazars was paid millions of dollars in fees. 2166:21-22.

606. Bender did "a little bit of everything" and "[w]hatever needed to be" done for TTO, including compiling the SFCs. 105:1-106:12.

607. Bender knew neither McConney nor Weisselberg is a CPA, and Bender was intimately familiar with the TTO's books and records. 316:19–317:25.

608. Bender stated that Mazars compiled but "did not prepare the statement." 113:2-12.

609. The SFCs were prepared in accordance with ASC-274. 285:17-20.

610. A private company is not required to follow GAAP. 314:3-315:5.

611. Without GAAP exceptions, the financial statements would be presented in a different format. 216:3-25.

612. Bender would ensure the numbers in the backup data and the numbers in the SFCs were consistent and would ask questions about the supporting data if anything bothered him or did not make sense. 116:16-117:8.

613. While TTO was responsible for making sure the statements complied with GAAP, determining the departures, and crafting the language, Bender informed TTO on multiple occasions that they needed to identify certain practices as GAAP exceptions and brought certain errors to their attention. 120:14-121:21, 129:2-131:14, 140:12-142:4, 162:23-24.

614. Mazars would also sometimes check the math on the SFCs. 156:13-23, 158:1-17.

615. Mazars also may have adjusted or revised the notes, but any changes were approved by TTO. 168:1-7.

616. Mazars relied on and used the AICPA audit guide for personal financial statements to the extent relevant. 510:2-12. However, Bender confirmed that the FASB Accounting Standards Codification replaced the AICPA audit guide in 2009. 573:5-574:11.

617. Section 2.03 of the AICPA guide states that "[a]t a minimum, however, the accountant should obtain an understanding of the methods by which the individual determined

estimated current values of significant assets, and the estimated current amounts of significant liabilities, and consider whether the methods are appropriate, in light of the nature of each asset or liability." 511:1-11.

618. There is no one generally accepted way to determine ECV. 367:7-10 "[M]ateriality is not a concept" in compilations, and he understood that "[m]aterial means important, big." 173:4-22.

619. The valuation methodology for assets was both disclosed to Bender and contained in the Jeff Supporting Data. 383:25-383:6, 386:3-387:15.

620. Bender did not notice that any SFCs failed to disclose the methods used to determine ECV with respect to the assets listed on the SFCs. 400:5-11.

621. Bender confirmed that every time he went to TTO to have a discussion about a GAAP concern, they complied with his suggestion. 551:14-552:4.

622. Bender looked at how the largest assets were valued in the SFCs and did not have a problem with the methods used. 568:10-569:19.

623. Weisselberg affirmatively consulted Bender regarding certain GAAP exceptions, suggesting that other disclosures be referenced as departures, which were resolved to Mazars' satisfaction. 324:14-19.

624. Bender missed the change in square footage of the triplex. 333:3-334:10.

625. Mazars did not perform any procedures to determine if valuation for Trump Tower was appropriate. 238:3-16

626. Prior to 2020, Bender could not recall disagreeing with the methods used to determine ECV other than the property at 57th Street, which was subsequently revised to his satisfaction. 393:9-21.

627. Bender did not determine that any assets were presented at inappropriate value for the 2011 to 2020 SFCs and did not notice a failure to disclose the methods used to determine ECV in any year. 394:7-25 – 400:1-14; 410:5-25 – 411:1-23.

628. In his opinion, the SFCs did not fail to disclose the methods used or the estimated amount of loans or liabilities or present inappropriate values for Trump Tower, Niketown, 40 Wall Street, Trump Park Avenue, club facilities, Trump Palace, Trump Parc, Trump Parc East, Trump International Hotel, Seven Springs, partnerships and joint ventures, Trump International Hotel Law Vegas, Miss Universe, or any other asset. 426:16-439:25.

629. While Bender ultimately realized he was missing certain appraisals, he also admitted that he had intimate knowledge of and full access to TTO and should have noticed any errors. 303:6-17.

630. It was not until the Zoom meeting Bender had with the Manhattan District Attorney's Office that he had any concern about the work he had done for TTO. 571:7-11.

631. Bender's demeanor was not forthcoming, as he appeared to be attempting to minimize the level of his involvement as the primary outside CPA for TTO and the only CPA involved in any way in the SFC process.

632. The Court finds Donald Bender's testimony was credible in part.

633. Donald Bender's testimony was contradicted in part by McConney, Weisselberg, Sherri Dillon ("Dillon"), William Kelly, and Jason Flemmons.

634. William Kelly, General Counsel of Mazars, confirmed that Mazars had obligations to read and understand the supporting data provided in connection with preparing the compilation of a SFC; understand the basis of valuation for each asset listed in the SFC; confirm that the valuation method is consistent with the definition of estimated current value; and confirm that the notes to a SFC are consistent to the supporting data. 2150:4-20.

635. Dillon testified that she would keep Bender apprised of the steps she took on appraisals and conservation easements since he "would have needed to have been aware of the conservation easement throughout the process." 4146:20-24.

636. Dillon testified that she kept Bender apprised as he "was responsible for tax returns, preparing the returns. And we would be, around this time, watching the revenues, expenses, and, you know, basically the overall income position in order to turn up – predict the tax positions by the end of the year," and "Bender was the one most familiar with where the tax position stood." 4156:7-4157:5.

637. Dillon also testified that she kept Bender apprised of the Seven Springs appraisal. 4159:20-4160:3. He would therefore have knowledge of the valuation discrepancies relative to Seven Springs.

b. Plaintiff's Own Appraisal Witness, Douglas Larson, Knowingly Provided Comparables, Capitalization Rates, and Other Information to McConney, Which McConney Used in Compiling the SFCs

638. Larson works at Newmark as an executive vice president and professional appraiser. 1558:18-1559:2. Prior to Newmark, he worked at Cushman & Wakefield. 1559:19-1560:8.

639. Larson is a certified New York real estate appraiser and specializes in office and retail. 1559:3-8.

640. Because anyone can do their own non-appraisal valuation of property, nothing prohibited President Trump from valuing his own properties. 1609:7-1610:22. Further, there is nothing illegal or unethical about valuing property without doing an appraisal. 1613:9-12.

641. Different similarly situated appraisers relying on their independent judgment could arrive at different conclusions based on the same data, as the appraisers may weigh the subjective factors, including growth rates for incomes and expenses, sales comparables, changes in cap rates, selection of markets, selection of discount rates, determining the highest and best use of the property, and real estate cycles, differently. 1628:1-1630:14, 1658:18-1660:9, 1728:10-25.

642. An assessed value is completely different from an appraised value for a property, and the fact that an appraised value is eight times greater than an assessed value does not indicate an attempt to mislead. 1636–1637, 1733:17-1734:1.

643. Larson agreed that naming rights have value in appraising a property. 1739:24-1740:1.

644. Different market assumptions and/or estimation methodologies can materially affect valuation. 1742:24-1743:25.

645. Clients can have input on an ultimate appraisal value. 1681:11-22.

646. Larson worked on appraisal reports prepared by Cushman & Wakefield for Capital One Bank for 40 Wall Street dated November 1, 2011, and November 1, 2012. 1599:5-23-1600:25; 1625:22-1626:18.

647. Larson and his colleagues inspected the property and reviewed market trends, market statistics, surveys, and data collected from public resources in discussion with other real-estate professionals in prior appraisals. 1563:8-1564:3.

648. The engagement letter listed two valuation approaches, the income capitalization approach and the sales comparison approach. 1564:7-12

649. Larson had previously appraised properties owned by TTO for lenders but had never appraised properties for TTO as the client. 1569:24-1570:16.

650. McConney's name was provided as the property contact for 40 Wall Street. 1572:18-1573:4.

651. To value a property based on the income approach, a net operating income needs to be calculated and the capitalization rate is applied and produces a value. 1565:5-11.

652. In the 2012 40 Wall Street appraisal, Larson employed a conservative approach when he used a 6% capitalization rate when the average based on the comparables he selected was 5.81%. PX-1435; 1665:6-16.

653. A similarly situated, reasonable appraiser could have arrived at a different, more favorable, capitalization rate from 2011 to 2012 for the appraisal of 40 Wall Street. 1655:14-1655:25.

654. Larson worked on an appraisal report prepared by Cushman & Wakefield for Ladder Capital for 40 Wall Street, dated June 1, 2015. 1560:9-1561:21.

655. The capitalization rate Larson used in 2015 was 4.25%, which was lower than the 6% capitalization rate he used in 2012. 1668:14-20; PX-118.

656. Larson claimed the appraisals completed for 2012 and 2015 for 40 Wall Street are both correct despite the fact that they differ by $280 million. 1729:1-1731:25. This establishes that valuation differences of hundreds of millions of dollars are not alone indicia of fraud or misstatement.

657. Larson agreed that it was an "assumption" that he was one of the outside professionals referenced in the Statement of Financial Condition, as he is not referenced by name. 1708:21-1709:15.

658. Larson agreed that the truest value for a property is what it can sell at, and it does not surprise him that an asset would sell for higher than its appraised value. 1737:1-1738:13.

659. The 2011, 2012, and 2015 40 Wall Street appraisals contained language restricting their use to the lender client the appraisals were prepared for. 1626:8-18; 1667:14-17; PX-118; PX-1435; PX-1573. TTO was not authorized to use or rely on the 2011, 2012, and 2015 40 Wall Street appraisals.

660. Because the 2011, 2012, and 2015 40 Wall Street appraisals were prepared for the benefit of lenders and contained explicit language restricting the appraisals' use, TTO could not use or rely on the appraisals. 1666:9-18, 1627:1-4, 1622:3-6; PX-118, PX-1435, PX-1573.

661. In 2012, Larson appraised 1290 Avenue of the Americas for Deutsche Bank. PX-1824; 1714:18-1715:1. The appraisal continued the same language limiting the appraisal's use to solely Deutsche Bank. 1715:23-1716:14.

662. Larson routinely sent out e-mail blasts to a wide variety of real-estate professionals for marketing purposes, including reports on recent sales data. 1570:17-1572:17.

663. McConney, who Larson knew was a recipient of his e-mail blasts, would call him periodically to talk about sales and market conditions. 1685:15-22.

664. Larson knew McConney was seeking market information. For instance, he gave McConney Robert Farwell's name so that he could obtain capitalization rates for the San Francisco property. 1725:7-1726:11.

665. On August 5, 2013, Larson sent an email to McConney with a market report in response to McConney's request for information, which included a chart of office comparables. 1578:6-1580:1, 1685:15-20, 1686:5-10.

666. Larson then sent spreadsheets of sales to McConney. 1686:12-25.

667. McConney sent Larson emails on September 15 and 16, 2014, requesting market information for completing "his [McConney's] valuations." 1688:3-1689:6.

668. On direct examination, Larson was asked whether he worked with McConney in 2013 to determine the cap rate that he used to value TTO property, to which Larson responded he did not. 1689:11-16.

669. On cross-examination, Larson admitted he knew the information he provided to McConney in 2013 contained capitalization rates, which Larson knew McConney was using to value TTO properties. 1698:22-1700:3; PX-3184.

670. While Larson claimed he was not aware that McConney was citing him or his information as a valuation source, Larson knew he was providing market information to McConney so that McConney could use it to compile his valuations. 1580:15-1581:4, 1689:3-10; 1713:21-1714:17.

671. He also knew that McConney was using his (Larson's) capitalization rates to value TTO properties because McConney discussed valuations in his email. 1699:3-18; 1699:23-1700:3; 1701:2-13.

672. As another example, Larson confirmed that he provided information to McConney for the valuation of 40 Wall Street in 2014 and that the information cited is "most likely" from discussions he had with McConney and the market information he was sending McConney. 1702:1-25; 1703:1-7.

673. In a meeting with members of NYAG's office to prepare for his testimony, Larson was not shown the emails between him and McConney where McConney told him he needs information to prepare his (McConney's) valuations. 1720:12-1723:7.

674. The valuations in the supporting spreadsheets were McConney's valuations, not Larson's, although they were based on information knowingly provided by Larson, and McConney's valuations did not need to rely on the same data that Larson would have used. 1700:22-1701:13.

675. The Court finds Larson's testimony on direct examination related to his knowledge of whether he worked with McConney to assist McConney in valuing TTO properties was not credible. There is irrefutable evidence that Larson was aware of Mcconney's valuations and was complicit in providing McConney information to assist McConney in arriving at his (McConney's) valuations. PX-3184.

676. The Court finds Larson's testimony on cross-examination was credible and corroborated by the testimony of Laposa, Chin, and Witkoff.

c. Mark Hawthorn Testified About TTO's Reliance on Mazars and Compliance with the Independent Monitor

677. Mark Hawthorn ("Hawthorn") is currently employed at TTO as the Chief Operating Officer overseeing the operations aspect of Trump Hotels. 1414:5-7; 1417:9-11. Hawthorn is the most senior executive within the hotel division and reports directly to Eric Trump since the prior CEO, Eric Danzinger, left. 1417:16-18,1417:24-1418:4.

678. Hawthorn has a bachelor's and master's degree in accounting and is a CPA. 1414:11-16.

679. Hawthorn was not involved in preparing the SFCs. 5139:18-23

680. Hawthorn only became aware of the SFCs in 2021, and his personal involvement was very limited. 1426:11-23. He was made aware one of the statements in connection with the audits of SLC Turnberry Limited and Trump International Golf Links Scotland Limited. 1427:4-8. Although Hawthorn spoke to Patrick Birney to obtain information related to the audits, he never obtained a copy of the SFC and never requested a copy either. 1435:8–1437:1.

681. Hawthorn worked with Mazars and Whitley Penn on compilation statements for the hotel entities and was responsible for "oversight" of the reports. 1423:22-1424:7, 1425:6-10, 5153:18-23, 5155:16-24. Hawthorn was only directly involved in the financial statements for the hotel properties, not the commercial properties. 5156:25–5157:21.

682. Hawthorn "relied heavily on Mazars to understand what the current pronouncements are in accounting . . . [to] make sure that we are properly disclosing required disclosures that we[']re ensuring that we are properly recording entries appropriately and in accordance with the latest standards," since he is not a practicing CPA. 5144:18–5145:3.

683. Hawthorn would give Mazars the information "they would require to put together the compilation or for their audit, which would be the underlying financial statements of the entity, and any supporting backup, or schedules, or detail that they required so that they could conduct audit testing" and gave Mazars everything they asked for. 5145:9-18, 5154:6-13, 5156:2-7

684. Hawthorn testified that he prepared the compliance certificate for the borrowers under the DB loans. 5198:9-19; 5200:6-16; 5203:4-9; 5221:19-5222:5. In preparing the certificates, Hawthorn reviewed the 2018 issued financial statements and computed the DSCR. 5200:22-5201:10. He would "advise [Donald J. Trump Jr.] that the work had been completed,

that we were comfortable with it being submitted, and we would present it to [him] for signature." 5203:12-15.

685. After the guaranty was extinguished in 2014, there was no requirement to submit guarantor financials on the Chicago Loan. 5213:13-23.

686. However, TTO still submitted compliance certificates and SFCs under the Chicago Loan for 2016, 2018, and 2019. 5257:8–17, 5258:16–22, 5259:7–14.

687. In 2020, TTO increased the stepdown basis from zero to 10%, which reinstituted the net worth requirement of $250 million and obligation to provide guarantor financials for the Chicago Loan. 5206:2-16. There was no obligation to submit guarantor financials between July 2021, when the stepdown went back to 0%, and October 2023, when the loan was repaid in full. 5209:2-5214:12.

688. In 2015, a 10% step-down was put in place on the Doral Loan, requiring a guarantee of $12.5 million. 5218:17-19. The Doral loan was repaid in May 2022. 5219:14–15.

689. Pursuant to the terms of that loan, Trump Endeavor 12 submitted SFCs and DSCR calculations until the loan was paid off in 2022. 5218:16-5221:1. Hawthorn presented those financials to Donald J. Trump Jr. for signature. 5221:25-5222:5.

690. The OPO Loan followed a similar procedure. 5224:20-5225:19.

691. TTO no longer prepares SFCs for President Trump, as it is no longer required by any lender or constituency. 5141:20–5142:2.

692. Hawthorn first became involved with the Monitor, Judge Jones, in November 2022. 5230:6–8.

693. He has significant involvement with the Monitor and works with her regularly. 5230:2–5.

694. There is a "very cooperative, transparent, regular partnership," where Hawthorn meets regularly with Judge Jones and her team, and there is a data room to send the Monitor information. 5232:14–21, 5233:14–20

695. It has been a very thorough and detailed process, and TTO has been "transparent and open and happy to assist them in whatever information they need." 5233:21–5234:5.

696. Hawthorn is not aware of any request the Monitor has made with which the company has not complied. 5235:13–16. He also is not aware of any finding of fraud or impropriety by the Monitor. 5235:17–5236:10; DX-1073.

697. Regarding the Monitor's August 3, 2023, finding that reporting on intercompany loans was incomplete, Hawthorn explained that the company did not list an intercompany loan to the Trust because lenders are not concerned about intercompany loans, and it would also have to be listed as a liability. 5282:15–5284:20; DX-1057. However, as a compromise, TTO made a footnote on the schedule identifying the intercompany loan. 5284:6-11.

698. Regarding refundable golf membership deposits, Hawthorn explained that they were not disclosed because if included in liabilities, there is actually a greater asset value associated with them. 5285:14–5288:20. If one member leaves, a new member joins at a higher value, particularly on clubs where there are waiting lists. 5285:14–5288:20. In any event, the company said it would add a footnote on the topic. 5288:12-20.

699. Regarding annual and quarterly certifications, Hawthorn explained that while certain loans say that the financials should be accompanied by a signed certification, financials have historically been submitted without a manual signature. 5289:1–20; DX-1057. The company again agreed that going forward, they would add a signature line and have someone physically sign the statement. 5289:20-23.

700. Finally, regarding inconsistent reporting of depreciation expenses, Hawthorn explained that when the financial statements were prepared, the depreciation expenses were not yet finalized, and they are immaterial to the receiving party because it is a non-cash change. 5290:14–5292:19; DX-1057.

701. Defendants complied with Judge Jones, and to Hawthorn's knowledge, she has not uncovered any fraud or anything improper. 5235:13-5236:10, 5282:5-5284:20, 5288:15-20.

702. Hawthorn's testimony was not rebutted by the testimony of any other witness.

703. Hawthorn's testimony was credible.

d. Kevin Sneddon's Testimony About the Triplex is not Credible

704. Kevin Sneddon ("Sneddon") holds real-estate brokers' licenses in New York and Connecticut. 6601:8-19.

705. Sneddon worked for Trump International Realty from late winter 2011 through late winter 2012 as a managing director, where he brokered real estate on behalf of TTO and oversaw eight to ten salespersons. 6602:8-6603:4.

706. Sneddon was aware that President Trump had a penthouse apartment in Trump Tower. 6603:5-6604:25.

707. Sneddon did not recall sending McConney an email advising him that the Triplex was 30,000 square feet. 6606:15-6607:13, 6616:3.

708. On September 19, 2012, Sneddon sent an email to Cathy Kaye, his direct supervisor, with a CC to Jeff McConney stating "I already valued DJT's Triplex for Allen [Weisselberg] our 75MM [million] Triplex listing is in 240 RSB, period. Total Square footage is 14.5K including main residence, guest residence, and staff residence, period. As is 5K plus per foot." 6617:4-6619:19.

709. Sneddon was purportedly asked by Weisselberg over the phone if he could give him "a rough, market value of the Triplex." 6619:20-6620:9.

710. Weisselberg was purportedly calling for valuation input on "sponsored units" in various buildings. 6621:3-7.

711. On September 20, 2012, Sneddon sent an email to Jeff McConney and Cathy Kaye under the same subject line, stating that "at 30,000 square feet, DJT's Triplex is worth between 4k to 6k per foot or 120 million to 180 million." 6622:13-6623:19; PX-1052. Thus, Sneddon's email contained the 30,000 square foot number.

712. Sneddon did not know McConney when he worked at TTO. 6624:7-6625:1.

713. In fact, Ms. Faherty, in a pre-interview conversation with Sneddon, explained to him who McConney was. 6626:1-6.

714. Sneddon had not heard of an SFC until that conversation. 6626:7-18.

715. Ms. Faherty told Sneddon that it was important to the case that Sneddon say he was not the person who came up with the 30,000 square foot number. 6627:13-16.

716. Sneddon's testimony was contradicted by McConney, who stated that "Kevin Sneddon sent me an e-mail that the triplex was 30,000 square feet," and that McConney "would rely on him" because he was a broker and he "figured [Sneddon] knew the property a lot better than [McConney] did." 5003:8-16.

717. Moreover, Sneddon's testimony is contradicted by his own email which includes the 30,000 square foot number. PX-1052.

718. Finally, Sneddon is an experienced real estate broker and would have superior market knowledge. 6601:8-6602:7.

719. The Court therefore finds Sneddon's testimony was not credible.

VI. The Record Evidence Does Not Demonstrate that NYAG Is Entitled to Disgorgement

720. Michiel McCarty ("McCarty") has worked in banking since 1975 and currently serves as the CEO and chairman of MM Dillon & Company. 3032:2-13.

721. He has testified at trial approximately 14 to 15 times on "capital markets issues" but had never dealt with compilation statements prior to this engagement. 3037:23-3038:6.

722. McCarty has never worked in a PWM group. 3084:5-8. He could not recall reviewing with the DB or Ladder Capital credit policies prior to this retention and could not recall how long he spent reviewing those policies. 3084:16-3085:22, 3089:10-3090:6.

723. McCarty was retained to consider the economic impact of the allegedly false and misleading statements. 3045:2-4. McCarty was paid $950 per hour for a total of approximately $350,000 to $400,000. 3085:23-3086:18.

724. There is no evidence in the record that the terms or pricing of any of the subject loans would have been different based on the purported misstatements alleged by Plaintiff. Not a single witness from any bank (or anywhere else) testified to this at trial.

725. McCarty received the documents he ultimately reviewed from NYAG. 3092:10-13. He did not interview anyone from DB, Mazars, Ladder Capital, or TTO. 3093:16-24. McCarty also assumed the conclusions of the valuation and accounting experts. 3048:21-25.

726. McCarty's associates provided him with documents he requested from NYAG's production. 3090:25-3092:2. He became familiar with loan and guaranty documents only for the economic terms he needed to analyze. 3100:9-19. His associates also assisted him in conducting the research and analysis underlying his opinions. 3088:25-3089:9.

727. McCarty supplemented his expert disclosure in response to the September 26, 2023, summary judgment decision. 3045:10-3048:12. His basis for stating that the SFCs were misstated came from that decision. 3048:9-13.

728. McCarty estimated the interest rate differential based on credit ratings. 3051:18-3052:7. Generally, as the probability of default increases, the interest rate increases. 3051:18-22.

729. If the probability of default is near zero, the loan would have an AA credit rating. 3052:7-10. If the probability of default is five percent, the loan would have a BB credit rating. 3052:9-10.

730. The Doral, OPO, and Chicago Loans have an A-grade or better credit rating and a risk premium of almost zero with their respective guaranties. 3054:7-11.

731. The CRE group prepared reports proposing to finance the Doral, OPO, and Chicago Loans without personal guaranties. 3056:12-16.

732. McCarty concluded without any factual support in the record that the Doral, OPO, and Chicago Loans would have a non-investment BB rating without their respective guaranties. 3054:14-3055:1, 3056:12-16.

733. The actual interest rate for the Doral Loan ranged from 1.8318% and 4.1616% between 2014 and 2021. 3057:1-9; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:12.

734. The collateral for the Doral Loan was a first mortgage lien and first priority security interest in the Doral property. 3103:6-15; PX-293. No other property was pledged as collateral. 3101:2-3103:14, 3106:7-9.

735. The personal guaranty on the Doral Loan was reduced to 10% by August 3, 2015. 3106:10-22. At that time, the interest rate stepped up to LIBOR plus two percent or prime minus 25 basis points and would step up 25 basis points if the guaranty was eliminated entirely. 3107:11-3108:4; PX-290.

736. McCarty nonetheless estimated the adjusted interest rate for the Doral Loan at 10% based on the CRE proposal for the project. 3057:7-17; PX-3302.

737. The actual interest rate for the OPO Loan ranged from 1.8318% and 4.1616% between 2015 and 2021. 3069:2-5; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:8.

738. McCarty nonetheless estimated the adjusted interest rate for the OPO Loan at 8% based on the CRE proposal, with adjustments for increased equity, syndication, and a lockbox. 3069:6-3071:9; PX-3302.

739. The collateral for the OPO Loan was a first mortgage lien on the borrower's leasehold interest in the property and improvements thereto; security interests in and assignments of the borrower's interest in permits, licenses, leases, contracts, agreements, operating agreements, and receivables; and borrower's interest in customary ancillary collateral relating to the property. 3113:2-18; PX-294. No other property was pledged as collateral. 3113:22-25.

740. The actual interest rate for the Chicago Loan ranged from 2.0818% and 4.4116% between 2014 and 2021. 3073:22-25; PX-3302. These rates would have applied even if President Trump's net worth was only $100 million. 5394:17–5395:8.

741. McCarty analyzed only the B facility relating to the hotel condominium complex because the A facility was retired early. 3073:13-18.

742. McCarty estimated the adjusted interest rate for the Chicago Loan at 7.5% based on the CRE proposal. 3074:1-8; PX-3302.

743. The B facility had collateral of a mortgage lien and first priority security interest in the commercial component of the property. 3109:11-3110:7; PX-291. No other property was pledged as collateral for the B facility of the Chicago Loan. 3111:23-3112:1.

744. The personal guaranty on the Chicago Loan was extinguished by July 20, 2015. 3112:2-4. Thus, there was no, even theoretical, possibility of any breach.

745. The actual interest rate for the 40 Wall Loan was 3.6650%. 3081:8-18; PX-3302.

746. McCarty estimated the adjusted interest rate for the 40 Wall Loan at 5.7% on the assumption that Ladder Capital would not have agreed to re-finance and the existing facility with Capital One would have been extended. 3081:11-18; PX-3302.

747. The 40 Wall Loan did not have a guaranty. 3081:22-3082:1.

748. The collateral for the 40 Wall Loan was the building that sits on top of 40 Wall Street and associated leasehold interests. 3116:5-11; DX-552. No other property was pledged as collateral. 3116:13-3117:1.

749. The guaranty for the 40 Wall Loan required that the guarantor maintain a net worth of at least $160 million and a liquidity of at least $15 million. 3117:19-22. That covenant was not violated. 3118:1-5.

750. Banks have historically been very willing to lend to high-net worth individuals at low interest rates because they get repaid. 3055:21-24.

751. Here, DB was repaid in full on the Doral, OPO, and Chicago Loans. 3083:6-15.

752. McCarty did not consider relevant material and unrebutted testimony from Williams that (1) President Trump was in the top tier of verifiable net worth; (2) the PWM group

used a pricing grid from which it would depart downward based on a competitive business case and from which it never departed upward, and (3) the pricing grid would remain ***unchanged*** if the guarantor's net worth was $1 billion rather than $2.5 billion. 3120:16-20, 3121:21-25; 3123:13-17; 3124:15-19; 3125:9-25; DX-205.

753. McCarty did not consider relevant or material testimony from Tom Sullivan that (1) DB was not misled in any aspect of any credit decision it made based on information contained in the SFCs, (2) DB developed its own independent view of President Trump's financial condition, (3) its decision-making was based on what DB was comfortable with, and (4) a $1 billion net worth would be sufficient to obtain a PWM Group loan. 3129:17-21, 3130:3-17, 3131:5-10.

754. McCarty either did not consider, or disregarded, that Haigh testified he reviewed the 2011 SFC and recalls (a) low debt, (b) good liquidity, (c) significant real estate holdings, and (d) the values were estimates and determined by management, not audited. 1007:4-9; 1008:2-6.

755. McCarty could not be certain that the CRE Group would have provided loans on the terms set forth in their reports. 3134:16-3137:19.

756. McCarty did not consider additional financing sources, borrowing against another asset, pledging another asset as collateral, or choosing to forego the loan entirely. 3137:22-3141:5.

757. McCarty did not consider that President Trump had sufficient liquid assets to self-finance the Doral and Chicago loans. 6313:6-10; PX-787 at 4; PX-815 at 5.

758. His analysis also did not consider President Trump's obligation to maintain deposits and assets under management at DB or the amount of those assets. 3143:5-12. The CRE Group does not require assets under management. 3144:16-19.

759. The ability to develop relationships with ultra-high-net worth individuals like President Trump is an objective of the PWM Group. 3145:10-13. The co-chairman of DB expressed interest in developing a relationship with President Trump and his companies, and the PWM Group specifically marketed to him. 3145:18-3146:7.

760. McCarty's basis for his interest rate differentials was that President Trump would not have been extended a loan from the PWM Group had the SFCs reflected different valuations. 3059:16-22. But this conclusion is contradicted by all of the unrebutted factual evidence.

761. No testimony was elicited from any current or former employee of DB or Ladder Capital that they would not have extended the loans to President Trump or lent at a different interest rate had the SFCs reflected different valuations. 3060:2-7, 3060:21-25.

762. The interest rates were set as of closing, other than LIBOR-related fluctuations. 2871:14-2872:7. Any subsequent submission of an SFC would have no effect on interest rates. Id.

763. NYAG adduced no factual evidence from any witness that the gains were ill-gotten.

764. McCarty cannot substitute his judgment for that of the decision-makers, i.e., the DB and Ladder Capital employees underwriting and approving the loans.

765. The unrebutted testimony of Unell, Bartov, Williams, Haigh, and Vrablic conflicts with McCarty's assumptions and therefore provides no factual support for his opinions. McCarty's opinions are speculation.

766. According to Unell, the best indication of the interest rate is the one employed by DB. 5686:13-5687:13.

767. Unell testified that he could not find any support for McCarty's approach, which included an extremely high commercial real estate interest rate and improper assumptions that President Trump would provide no guaranty and have no other financing options. Instead, he relied solely on a non-binding term sheet for a deal with different terms, where a lender may issue a non-binding term sheet with obtuse rates. 5680:12-5686:5, 5689:2-5692:10, 5686:13-17, 5688:15-5689:1, 5733:11-13, 5764:12-5765:24.

768. Unell also testified that the rates utilized by McCarty for the OPO, Doral, and Chicago Loans were not indicative of actual terms available in the market at the time. 5690:19-5692:10. McCarty failed to account for other factors that impact pricing, including the LTV ratio. 5724:17-5725:1, 5726:14-5733:20, 5737:23-5738:4.

769. Unell also testified that the interest rate for the 40 Wall Loan was not commensurate with the market, and McCarty likewise failed to consider the $160 million net-worth requirement, LTV, occupancy rate, and payoff to another bank's loan. 5701:20-5702:10, 5714:2-5716:13

770. McCarty's testimony must be disregarded in its entirety.

VII. The Record Evidence Does Not Establish the Existence of a Conspiracy

771. Although President Trump testified that he directed Weisselberg and McConney to lower the valuation of the triplex, no record evidence was adduced to support the claim that President Trump directed any TTO employees to overstate the value of the relevant assets in SFCs.

772. Weisselberg testified that the meeting with Michael Cohen and President Trump regarding the SFCs did not occur. 867:4-869:2. There is no record evidence to support Cohen's uncorroborated claims as to his involvement in the SFC preparation process.

773. Testimony from Michael Cohen, who NYAG considered the linchpin of her case, must be disregarded, as he admitted to perjury on the stand. 2288: 9-18.

774. Cohen was also impeached with previous testimony that said he wasn't directed by President Trump to inflate the SFCs. 2407:24-2410:19.

775. Cohen's uncorroborated testimony that President Trump "speaks like a mob boss" and "tells you what he wants without specifically telling you" does not support a finding of conspiracy. 2461:13-24.

Dated: New York, New York
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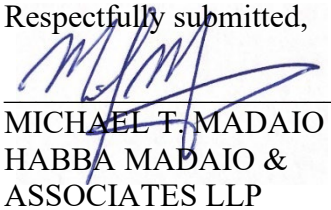
Respectfully submitted,



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