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January 29, 2024

VIA NYSCEF
Hon. Arthur F. Engoron, J.S.C.
New York State Supreme Court
County of New York
60 Centre Street, Room 418
New York, New York 10007

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

Dear Justice Engoron:

As you are aware, this firm represents Defendants Donald Trump, Jr., and Eric Trump in the above-referenced matter. We write on behalf of all Defendants in response to the letter from the Hon. Barbara S. Jones (Ret.), the court-appointed Monitor (the "Monitor"), filed at 2:49 p.m. on Friday, January 26, 2024 (the "January 26 Report") (NYSCEF No. 1681).

The January 26 Report, issued mere **days** before an expected decision, has only two obvious purposes: (1) ensure the Monitor continues to receive exorbitant fees (in excess of $2.6 million to date); and (2) fill the gaping hole in the Attorney General's case, namely, that there is **no basis to support continued oversight**. The January 26 Report also contains numerous factual inaccuracies (casting serious doubt on the Monitor's competency), fails to reference governing standards of any kind, and is otherwise misleading and disingenuous. Indeed, despite having reviewed thousands of pages of financial data relative to more than 400 entities and having been paid millions for her "oversight", the Monitor points only to minor and immaterial discrepancies and simple math errors (i.e., millions paid so the Monitor can "uncover" seven (7) immaterial disclosure items, three (3) irrelevant inconsistencies and five (5) clerical errors). Moreover, the Monitor issued five prior reports specifically advising the Court of the Defendants' ongoing cooperation and compliance. Yet now, in an obvious, and bad faith, effort to manipulate innocuous accounting items into a narrative favoring her continued receipt of millions in excessive fees, the Monitor rehashes long-resolved issues and ***for the first time*** includes the unabashedly self-serving statement that "my observations suggest misstatements and errors may continue to occur, which could result in incorrect or inaccurate reporting of financial information to third parties." However, the Trump entities cannot legitimately be held to a strict liability standard, wherein immaterial inaccuracies or math errors form the basis for expensive and meaningless ongoing oversight. Further oversight is unwarranted and will only unjustly enrich the Monitor as she engages in some "Javert" like quest against the Defendants.

The Monitor was appointed to report any financial reporting misconduct, suspicious activity or any suspected or actual fraudulent activity (NYSCEF Doc. Nos. 193, 194). The Monitor was ***not*** appointed to identify math errors or otherwise sensationalize minor and inconsequential accounting discrepancies scattered throughout the financial reports of the over 400 companies comprising the Defendants' global enterprise.

Pursuant to her appointment, the Monitor submitted reports dated December 19, 2022, February 3, 2023, April 11, 2023, August 3, 2023, and November 29, 2023 (the "Reports") (NYSCEF Doc. Nos. 441, 489, 617, 647 and 1641). *See* Exhs. A-E. There is ***no mention whatsoever*** in any of the Reports of any misconduct, suspicious activity, or suspected or actual fraud. ***Indeed, the words "misconduct," "suspicious activity," "suspected fraud," or "actual fraud" do not appear in any of the Reports or in the January 26 Report!*** Instead, ignoring both the letter and spirit of her mandate, the January 26 Report just rehashes resolved issues, and demonstrates fully that the only items she has been able to identify in exchange for $2.6 million in fees are a handful of immaterial and irrelevant discrepancies and math errors. The fact the Defendants have been forced to pay millions for a process which reveals there are simply no issues, there is no financial reporting misconduct, and no fraud is truly shocking. That the Monitor seeks to now perpetuate this folly is beyond the pale.

Moreover, until now, each of the five prior Reports expressly recognizes the Defendants' compliance with the Court's directives and expressly appreciates their ongoing cooperation:

- "Defendants are ***complying*** with the terms of the Supplemental Order of Appointment and I ***appreciate*** the parties' ***ongoing cooperation***." (Exh. A at 1) (NYSCEF No. 441).

- "Defendants are ***continuing to comply*** with the terms of the Supplemental Order of Appointment and I ***appreciate*** the parties' ***ongoing cooperation***." (Exh. B at 2) (NYSCEF No. 489).

- "The Defendants are ***continuing to comply*** with the terms of the Supplemental Order of Appointment and I ***appreciate*** the parties' ***ongoing cooperation***." (Exh. C at 1) (NYSCEF No. 617).

- "[T]he Defendants ***continue to cooperate*** with me and the requirements of the Court's Orders. My review of the Defendants' submissions of financial information is ongoing and I ***appreciate*** the ***parties' cooperation***." (Exh. D at 2) (NYSCEF No. 647).

- Defendants ***continue to cooperate*** with me and are generally in compliance with the Court's orders, and have committed to ensure that all required information … are promptly disclosed to the Monitor. My review of the Defendants' submissions of financial information is ongoing and I ***appreciate*** the parties' ***cooperation***." (Exh. E at 3) (NYSCEF No. 1641).

However, as noted, the Monitor now twists immaterial accounting items into a narrative favoring her continued appointment, and thereby the continued receipt of millions of dollars in excessive fees. The January 26 Report rehashes long-resolved issues and items and ***for the first time*** includes the following self-serving language supporting her continued appointment: "my observations suggest misstatements and errors may continue to occur, which could result in incorrect or inaccurate reporting of financial information to third parties." (January 26 Report at 12). This represents an unacceptable level of disingenuity.

Also as noted, the Defendants are simply not legitimately subject to some strict liability standard, wherein any inaccuracies or math errors, no matter how trivial, form the basis for expensive and meaningless ongoing oversight. Indeed, based on the language in her own reports, none of the items identified during the Monitor's tenure, and her review of thousands of pages of financial data regarding a complex assemblage of more than 400 entities, reveals anything at all material or consequential. For example, the largest dollar item identified relates to the payment of taxes (January 26 Report at 6), fully and obviously disclosed in the bank statements, and hardly representative of any efforts at concealment or untoward conduct. The sections in the January 26 Report on "Incomplete Disclosures" and "Inconsistent Disclosures" (January 26 Report at 7-9) list such items as intercompany transactions (which have zero net impact on financial position), budget and depreciation calculation differentials of less than $1 million (and often even far less), and ***internal*** trial balance presentation discrepancies (without mention of any actual impact). Likewise, minor temporal delays in the disclosure of the completed Bally's transaction (January 26 Report at 11) or the full implementation of the Doral Conservation Easement (January 26 Report at 11) provide no evidence of any inappropriate or untoward conduct. Indeed, despite the Monitor's efforts to malign such disclosures, the core facts of these items were provided on a near immediate basis during the course of their consideration. Moreover, as the Reports and the January 26 Report make clear, every item identified has been resolved to the full satisfaction of the Monitor, and she has not and cannot point to even a single instance of controversy or complaint between any of the Defendants and outside third parties.

In sum, the only possible purpose in this post-trial collective of immaterial items is simply to bolster the Monitor's disingenuous and self-interested efforts to frame the Defendants in a false light to sustain her continued appointment. The Monitor's reports merely posit a host of minor discrepancies framed out of context simply to identify something, anything, to justify her exorbitant fees. But where, as here, more than one year of detailed and expensive oversight reveals not a single instance of the alleged misconduct the Monitor was expressly appointed to uncover,

the Monitor serves no demonstrable purpose going forward. Indeed, a review of the Monitor's own findings by Jason Flemmons, a Certified Public Accountant and Certified Fraud Examiner with over 25 years of experience in forensic accounting and fraud detection matters (including more than a decade in the SEC Division of Enforcement) reveals she has not identified ***any*** conduct within her mandate. *See* Affidavit of Jason S. Flemmons, dated January 28, 2024 ("Flemmons Aff.") ¶¶ 6 & 17, a copy of which is annexed hereto as Exh. F ("Based upon my education and experience, my review of the various reports, and the express language contained in those reports, the Monitor did not identify any financial reporting misconduct, suspicious activity, or any suspected or actual fraud."). Moreover, none of the reports reference anything at all material or consequential or any governing standards or violations of such standards. Exh. F, Flemmons Aff. ¶¶ 6, 8 & 9 (Monitor's conclusions "based on subjective determinations devoid of standards or considerations of established frameworks" and "Monitor does not establish that any identified 'deficiencies' were material"). Therefore, and as developed further below, the January 26 Report provides no basis to conclude there is any ongoing fraud or misconduct occurring and simply no basis to justify an ongoing and expensive oversight process.

A. <u>The Purported Incomplete Disclosures</u>

<u>First</u>, the Monitor states that "certain loans still require that Defendants submit financial information fairly representing the financial condition of the guarantor in a manner consistent with the documents previously provided" and that "in 2022, Defendants elected to provide the [Trust's Material Assets and Material Liabilities (the "MAML")], which does not represent the financial condition of the guarantor or other financial information about the listed assets." (January 26 Report at 7). However, as the Court and the Monitor are aware, the Statement of Financial Condition (the "SOFC") is no longer prepared. Instead, the Trump entities prepare the MAML, which includes the material debt of each property. The MAML has been provided by the Trump entities to certain lenders, no lender has raised an objection to receiving the MAML, and each lender has accepted it without incident. This is a non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 7 & 9.

<u>Second</u>, the Monitor states that "[c]ertain loan agreements require the Trump Organization to provide annual and quarterly certifications attesting to the accuracy and completeness of financial information submitted to lenders" and that "the Trump Organization has not consistently provided these certifications." (January 26 Report at 7-8). This statement is both misleading and disingenuous. Indeed, the alleged "defect" here is that a handful of the certifications did not include a manual signature line, an omission of no consequence. Not a single lender raised any issue or requested a manual signature. The Monitor is not entitled to collect millions in fees so she can substitute her judgment for that of the actual lender. This is another non-issue and fails to support continued oversight.

Third, the Monitor refers to certain "intercompany loans" and states that those loans "were not listed as liabilities on the MAML submitted to lenders[,]" but that "the Trump Organization agreed to do so in subsequent versions." (January 26 Report at 8.) Yet the Monitor agreed, as she must, that if such "intercompany loans payable" were included on the MAML as a liability, then the corresponding "intercompany loans receivable" of the counterparty must also be included as an asset. These intercompany assets and liabilities simply cancel themselves out, resulting in zero impact on the overall financial presentation. This is why numerous authorities conclude that intercompany loans such as these are not required to be disclosed on a statement such as the MAML, as supported by Generally Accepted Accounting Principles ("GAAP") promulgated in the Accounting Standards Codification ("ASC") in ASC 810-10-45-1 and 45-10. *See* Exh. F, Flemmons Aff. ¶ 10. Nonetheless, to appease the Monitor, the Trump entities added disclosures to describe the existence of two (2) intercompany balances on the MAML. Furthermore, in footnote 6 of the January 26 Report the Monitor falsely states that, with respect to the springing loan relative to the Trump Chicago Tower, the Trump Organization "indicated that it has determined that this loan never existed." Once again, the Monitor has included a demonstrable falsehood in her report. The Trump entities of course never said the loan did not exist. Rather, they provided a copy of an internal memorandum reflecting simply that "no liabilities or obligations are outstanding" under the loan at that time. *See* Exh. G. The Monitor's deliberate mischaracterization casts further doubt on her competency and veracity. This is yet another non-issue and material misstatement by the Monitor and simply fails to support continued oversight.

Fourth, the Monitor states that "[c]ertain loan agreements require the disclosure of contingent liabilities[,]" that she "observed that contingent liabilities [were] not [] included on the MAML[,]" and that "[u]ntil June 2023, the MAML included a footnote informing the recipient that it 'Does not include contingent liabilities.'" (January 26 Report at 8). The Monitor further states that "[b]eginning in June 2023 after discussion with the Monitorship team and [her] report to the Court, this footnote was changed to read 'Does not include certain material contingent liabilities that exist.'" (*Id*). The Monitor's point here is difficult to understand, as it is undisputed that both before and after June 2023, the MAML clearly stated that it did not include contingent liabilities. The Monitor has not disputed the fact that all of the Trump entities's borrower-level financial statements are in compliance with contingent liability disclosures. This is another non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 12-16.

Fifth, the Monitor states that the "loan agreement for Trump Plaza requires the Trump Organization to provide annual audited financial statements in accordance with GAAP[,]" but that "[t]he 2022 audited financial statement [she] reviewed states it was not prepared in conformity with GAAP with respect to depreciation, rental income, rent expense, bad debts, reserves for losses up to certain insurance deductibles, and debt issuance costs." (January 26 Report at 8). The Monitor goes on to observe that "non GAAP statements appear to have been consistently provided to the lender prior to the Monitorship." (*Id.*) This is simply a *non sequitur* as there is no failure of disclosure. *See* Exh. F, Flemmons Aff. ¶ 11 ("industry standards permit financial statements that

contain GAAP departures to be issued" and the disclosure of the GAAP departures "served to notify users of the specific instances of GAAP non-compliance"). Moreover, the subject statements were prepared by outside auditors, not the Defendants. These annual ***audited*** financial statements for Trump Plaza LLC fully disclose the nature of their preparation in accordance with its business model, and the lender has consistently accepted those audited statements. Again, the Monitor is not entitled to collect millions in fees so she can substitute her judgment for that of the actual lender. This is another non-issue and fails to support continued oversight.

Sixth, the Monitor states that "[c]ertain loan agreements require the Trump Organization to submit annual budgets describing projected performance for the properties[,]" and that [i]n the annual budget prepared for 40 Wall Street for 2023, the estimated annual income and expenses were, in some instances, materially different than the actual results from the prior year." (January 26 Report at 9). This point is simply absurd, as the annual budgets referenced by the Monitor describe "projected performance," (i.e., a future prediction). It is axiomatic that from year-to-year projections of future performance may differ from actual performance. The Monitor appears to believe the Trump entities must be able to predict future events with precision to avoid her costly oversight. This is another non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 12-16.

Seventh, the Monitor states that that "[i]n 2022 and 2023, income statements provided to a finance company for certain golf course properties with fixed assets did not include depreciation or presented depreciation as $0" and that the "Trump Organization … acknowledged that such disclosures could be relevant to the recipient" and "would consider including such information on subsequently prepared internal financial statements." (January 26 Report at 9). This statement is demonstrably false and casts doubt on both the veracity and competency of the Monitor. The Trump entities did not acknowledge that depreciation disclosures were relevant in these income statements. In fact, in an e-mail to the Monitor dated November 21, 2023, the Trump entities stated the exact opposite:

> As mentioned in our meetings with you, ***because depreciation is irrelevant to the recipients*** of these internally prepared property-level statements (e.g. John Deere for golf course equipment), should we have these types of requests in the future, we are considering simply excluding the depreciation line item and renaming the bottom line total as "Net Income before depreciation."

See Exh. H. In addition, the Trump entities informed the Monitor that these income statements are ***internal property-level financial statements***, and that the procedure for recording depreciation was an annual process, not yet completed at the time that these financials were provided to the finance company. The Trump entities also explained to the Monitor that the finance company's main objective is to ascertain available cash flow of the business, and that non-cash charges such

as depreciation were therefore irrelevant. Given that the depreciation line has no impact on the finance company, there is absolutely no issue with sending that company these internal financial statements, which indicated that depreciation was $0. The Trump entities also made it explicitly clear to the Monitor that these internal property-level financial statements were only provided to one party, John Deere Financial, and if the materiality thresholds were in place as of the time of this submission, these items would not have even risen to any threshold for materiality. Indeed, this issue relates to golf course maintenance equipment (i.e., lawn mowers, tractors, etc.). The notion that the Defendants must pay millions to a Monitor so she can review such minutiae is truly untenable. ***It is shameful that the Monitor has charged the Defendants millions in fees to identify such a ridiculous item!*** This is another non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 12-16.

B. <u>The Purported Inconsistent Disclosures</u>

<u>First</u>, the Monitor states that "[e]xpenses related to management fees for 40 Wall Street were inconsistently presented within annual budgets prepared for and submitted to the lender when compared to the management fee recorded in audited financial statements." (January 26 Report at 9). As the Monitor is of course well aware, expenses in a ***projected*** annual budget will of course differ from expenses in the ***actual*** final audited financial statements. As the Monitor also knows, the actual management fees are based upon rent collected during the year, which cannot possibly be predicted with certainty when the annual budgets are prepared. Finally, the dollar amounts relative to this item fall well below the Monitor's own materiality threshold. This is another non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 12-16.

<u>Second</u>, the Monitor states that "[i]n certain documents, the Trump Organization calculates Earnings Before Income Tax, Depreciation and Amortization (EBITDA) differently." (January 26 Report at 9). The "certain documents" to which the Monitor refers are ***internal unaudited management reports*** generated from property-level systems. As the Monitor knows, the "certain documents" she flags are internal and are generally not disseminated outside of the company. The Trump entities also provided the Monitor with a complete reconciliation and explanation of her observations. This is another non-issue and fails to support continued oversight. *See* Exh. F, Flemmons Aff. ¶¶ 12-16.

<u>Third</u>, the Monitor states that "[t]he February and March 2022 monthly unaudited trial balances provided to Bally's prior to the sale of the Trump Organization's right to operate Ferry Point reflected presentation and accounting differences compared to all other months provided to Bally's" and that "[w]hen asked about this issue, the Trump Organization informed [her] that these two trial balances were improperly prepared." (January 26 Report at 9). This statement is false. The Trump entities never informed the Monitor that these trial balances were improperly prepared. Rather, on November 21, 2023, the Trump entities provided the Monitor a complete explanation

of the monthly unaudited trial balances and reiterated the complete irrelevance of these "observations":

> It is important to reiterate, per our prior emails to you, these property-level internal, unaudited monthly operational trial balances were sent to Bally's as a sample solely for the purpose of Bally's gaining insight into the operations of the golf course (cash balances, inventory levels, etc.). They were not meant to be comprehensive or all-inclusive. The fixed assets herein are irrelevant to Bally's, which will record its own asset value based on its purchase price.

See Exh. I. This is another non-issue and fails to support continued oversight.

C. The Purported Errors

First, the Monitor states that "[m]anagement fees were erroneously excluded from the calculation of '(Loss) After Management Fee Expense/Capex/Ti/Leasing/Mortg Payable' in the 2024 Final 40 Wall Street Budget, causing income to be overstated by the amount of the budgeted management fee (approximately $1.16 million)" and that "after [she] identified this discrepancy, the Trump Organization confirmed that there was an error and indicated that it would correct and resubmit the budget to the lender." (January 26 Report at 10). This statement lacks proper context and fails to acknowledge the fact that the amount in question falls well below the Monitor's own materiality threshold. On January 12, 2024, the Monitor inquired about the foregoing management fees. On January 16, 2024, the Trump entities responded as follows.

> The team has rechecked the underlying excel file and noted that the net profit formula is excluding the management fee line, which was not intended. In the preliminary budget submitted on 12/1 you will note that management fees were included in the "disbursements" section. In the 12/27 submission, the same management fee amount was instead presented in its own "management fees" section, and the corresponding formula carrying should have been carried down."

See Exh. J. In other words, this was simply a clerical error caused by cutting and pasting from a Microsoft Excel file. The underlying income and expense line items shown on the schedule were always properly disclosed and correct. Minor clerical errors do not support continued oversight. *See* Exh. F, Flemmons Aff. ¶ 16 ("[Math] errors are not unanticipated in an organization of the size and scope of The Trump Organization, and do not indicate financial reporting misconduct or any fraudulent activity occurred.").

Second, the Monitor states that "[i]n a Chicago Tower 2022 Forecast provided to a prospective lender, the calculated amount of EBITDA (using the values presented in the report) differs from the amount of EBITDA shown on the report" and that she was "informed this error was the result of interest expense being omitted from the printed report, despite this expense being included in the Excel formula calculation of EBITDA, resulting in a difference of $1,538,333." (January 26 Report at 10). The Monitor's characterization of the foregoing as an error is misleading. Indeed, on March 24, 2023, the Trump entities explained to the Monitor that this discrepancy was due to the interest expense line item not printing out on the property-level system-generated internal forecast report. That same day, the Trump entities provided a reconciliation to the Monitor, which clearly demonstrated this fact and that the subtotal in the report was mathematically correct. Again, minor clerical errors do not support continued oversight. *See* Exh. F, Flemmons Aff. ¶ 16 ("[Math] errors are not unanticipated in an organization of the size and scope of The Trump Organization, and do not indicate financial reporting misconduct or any fraudulent activity occurred.").

Third, the Monitor states that "[t]here was an apparent math error in the calculation of 'Operating profit before depreciation and exceptional items' both for the 2022 and 2021 values in the 2022 ***Audited Financial Statements*** for Trump Turnberry" and that "[t]he Trump Organization has not yet responded to [her] request for clarification regarding this error." (January 26 Report at 10). Here again, the Monitor points to an item prepared by outside auditors (BDO) and not the Defendants. Nonetheless, upon receiving this inquiry from the Monitor, the Trump entities forwarded it to the audit team at BDO, the independent accounting firm that grouped these line items on the schedule. Again, the Trump entities did not prepare this schedule and its response to the Monitor was pending clarification from BDO. BDO has since responded and has acknowledged that there was a typographical error in the "administrative expenses" caption of £7,229,491 which should have read £7,360,043, another immaterial difference of £130,552. BDO has advised it will file amended accounts on the entity's behalf, and has prepared an amended accounts draft, which is in the process of being filed with the UK Companies House. BDO has represented to the Trump entities that the only number change in the amended accounts is the administrative expenses caption, as the profit total is already correct. Again, minor clerical errors (here by BDO) do not support continued oversight. *See* Exh. F, Flemmons Aff. ¶ 16 ("[Math] errors are not unanticipated in an organization of the size and scope of The Trump Organization, and do not indicate financial reporting misconduct or any fraudulent activity occurred.").

Fourth, the Monitor states that "[i]n the first quarter 2023 Trump Tower Commercial LLC Quarterly Reporting Cash Flow Statement, the subtotal for 'Repairs and Maintenance' disbursements includes a mathematical error that also impacts the calculation of operating cash flow" and that "[t]he Trump Organization has not yet responded to [her] request for clarification regarding this apparent error." (January 26 Report at 10). This inquiry was only recently received from the Monitor in January 2024, and the Trump entities were in the process of reviewing it before receiving the January 26 Report. In reviewing the first quarter 2023 Trump Tower

Commercial LLC Cash Flow Statement, the "Security Equipment" expense line item (general ledger account #525558 within the repairs and maintenance caption) was $14,821 and $52,671 for the quarter and the trailing 12 months, respectively. The "Security Equipment" expense line item did not print out on the scanned/PDF on this report but has on all other quarterly report filings. As the totals of operating cash flow are already reported as correct and are unaffected, no corrections or resubmissions need to be made. Again, minor clerical errors do not support continued oversight. *See* Exh. F, Flemmons Aff. ¶ 16 ("[Math] errors are not unanticipated in an organization of the size and scope of The Trump Organization, and do not indicate financial reporting misconduct or any fraudulent activity occurred.").

Fifth, the Monitor states that "[i]n the 2022 Doral ***Audited*** Financial Statement, the notes to the financial statements indicate that 'various members of the Trump family' own Trump Endeavor 12, which is incorrect" and that "[t]he Trump Organization acknowledged this was an error but did not provide a revised version to its lender." (January 26 Report at 10). Once again, the Monitor points to an item prepared by outside auditors (Whitley Penn) and not the Defendants. During a June 7, 2023, meeting, the Trump entities explained to the Monitor that these six (6) words included in the footnotes to the 2022 Doral financial statements were a carryover from the financial statement template provided by Whitley Penn, the independent accounting firm which issued an unqualified opinion on these financial statements. The Trump entities also confirmed to the Monitor that the lender, AXOS Bank, already had in its possession the entity's ownership chart and had and has a full understanding of the entity's ownership structure. During the meeting, Mr. Tom Kokalas from Bracewell explicitly stated that there was no need for a revised version to be sent to the lender. Indeed, this matter is so inconsequential the Monitor did not even mention it in her prior reports of August 3, 2023, and November 29, 2023. Again, minor clerical errors here by Whitley Penn do not support continued oversight.

D. The Purported Interactions with the Monitor

First, the Monitor states that "the Trump Organization failed to inform [her] of tax returns that had been filed for certain Trust entities, including in connection with a significant tax benefit associated with a conservation easement at Doral" and that she "was only notified in December 2023 that the easement appraisal and tax filing was finalized in September 2023." (January 26 Report at 11). For clarification, the Monitor asked for the status of the appraisal in her November 9, 2023 request for information, and the Trump entities responded by immediately uploading the appraisal to the Monitor's ShareFile site.

Second, the Monitor states that she "was not informed of cash transfers from the Trust and sent to Donald J. Trump, each exceeding $5 million and totaling more than $40 million, until [her] team conducted a review of Trust account bank statements." (January 26 Report at 11). This statement is misleading. As the Trump entities discussed with the Monitor on November 28, 2023, the requirements set forth in her April 11, 2023, materiality thresholds only required disclosure

with respect to entities falling under the "Restructuring and Loans" category. *See* Exh. K at 3. The Monitor acknowledged this ambiguity and responded by revising the language in the materiality thresholds on December 5, 2023. More importantly, as the Monitor wells knows, the transfers were for the payment of taxes and an appeal bond and were disclosed fully in the bank statements ***provided to the Monitor by the Defendants!*** The Monitor's disingenuity here is therefore appalling.

Third, the Monitor states that "[t]he Trump Organization did not inform [her] of financial disclosures provided to an insurance broker" and that she "learned of these disclosures after reviewing bank statements showing a significant premium payment." (January 26 Report at 11). This statement is false and again calls into question the Monitor's veracity and competence. The Trump entities expressly informed the Monitor that there ***were no financial disclosures of any kind provided to the insurance broker*** (Lockton) in connection with this item. This was affirmed in a December 4, 2023, email to the Monitor, which she acknowledged, specifically stating "No new financial information – not previously shared with you – was provided to Lockton in connection with this transaction or payment." *See* Exh. K.

Fourth, the Monitor states that "the Trump Organization sold its right to operate Ferry Point to Bally's in September 2023" and that "[i]n connection with that transaction, certain financial information was provided to Bally's between June and August 2023[,]" but that she "did not receive this information until August 28, 2023." (January 26 Report at 11). As the Trump entities discussed with the Monitor numerous times, this information was not provided to Bally's to show operating results or make any representations with respect to financial information, which was made explicitly clear to Bally's. Bally's has never operated a golf course in the past, and the Trump entities provided this information simply so that Bally's could see what types of line items go into operating a golf course. Also, all the information was provided in a timely albeit not simultaneous manner. But there is simply no requirement to provide immediate and simultaneous notice of anything and everything that takes place during the course of managing over 400 entities. The Monitor thus here manufactures an unauthorized and unreasonable standard and then points to a purported "violation". This level of disingenuity is truly alarming.

Fifth, the Monitor states that she "was informed of planned dissolutions in April 2023[,]" but since "the Trump Organization was not prepared to effectuate the dissolutions at that time" she requested to be immediately advised of "when the entities were dissolved." (January 26 Report at 11). The Monitor further claims that when she "inquired in December 2023 [she] learned that many, but not all, of the entities had been dissolved in September and October 2023." (*Id.*) The dissolution of an entity is a multi-step process that in the normal course takes months. These entities were dissolved with the approval of the Monitor, and she was notified a few weeks later. Just like all of the other "observations" noted above the Monitor's statement here is a complete misrepresentation of the company's ongoing transparency, cooperation and responsiveness.

As noted above, the Monitor has thus far been paid over $2.6 million in the past 14-months to "uncover" seven (7) immaterial disclosure items, three (3) irrelevant inconsistencies and five (5) clerical errors. Now, after representing that the Defendants were fully cooperative and compliant during this entire time period, the Monitor desperately seeks to justify the continued receipt of millions of dollars in fees going forward. Setting aside her self-serving hyperbole, the Monitor's own findings simply do not support or provide any evidentiary basis for continued oversight. Indeed, the "Monitor did not identify any financial reporting misconduct, suspicious activity, or any suspected or actual fraud", all her conclusions are "based on subjective determinations devoid of standards or considerations of established frameworks", and she "does not establish that any identified 'deficiencies' were material". Exh. F, Flemmons Aff. ¶¶ 6, 8, 9 & 17. Moreover, the Monitor herself acknowledges that the minor issues she has identified could be remediated with "effective processes for review" and "training" (January 26 Report at 12), methods far less expensive and intrusive than continuing ongoing and pointless oversight. The Court therefore must and should end this abusive and costly process.

Should the Court have any questions, please feel free to contact me.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record (by NYSCEF)

EXHIBIT A

BRACEWELL

December 19, 2022

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my first report to the Court.

Since my appointment, I have held in-person and virtual conferences with the parties, with additional conferences scheduled this week. Defendants have begun to provide me with information pertaining to their corporate structure, including specific details of each corporate entity within The Trump Organization. Defendants have also kept me apprised of various financial statements prepared for dissemination to third parties, and have provided me with supporting documentation and materials. In addition, Defendants have alerted me to contemplated corporate transactions implicated by the Supplemental Order of Appointment.

I am reviewing these materials with the assistance of outside accounting professionals whom I have retained. Defendants are complying with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

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Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

EXHIBIT B

BRACEWELL

February 3, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al*., Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my second report to the Court.

Since my last report, dated December 17, 2022, my team and I have held additional conferences with the parties, and Defendants have continued to proactively provide me with information required by the Supplemental Order of Appointment. I have also made a total of 13 written requests—eight since my last report—for additional and clarifying information from Defendants concerning their corporate structure, various corporate transactions implicated by the Supplemental Order of Appointment, and their planned and anticipated dissemination of financial statements to third parties. With respect to financial statements to third parties, I note that, as previously represented to the Court, defendants have not provided a 2022 Statement of Financial Condition to any third parties, and do not intend to do so.

With respect to Defendants' corporate structure, my team and I have spent considerable time reconciling and ensuring the accuracy of the extensive list of entities that fall under the Trump Organization umbrella. That work is ongoing. Further, Defendants informed me at the end of last year that they wished to dissolve certain dormant entities, and part of my work has involved reviewing those entities' business purpose, assets, and past activities. The outside accountants I

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retained have been instrumental in helping to carefully assess issues regarding Trump Organization entities, as well as analyzing other materials provided by Defendants thus far.

Additionally, the Supplemental Order of Appointment requires that Defendants provide me with a sworn statement each month confirming that, except as otherwise disclosed to me, there have been no "planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or . . . any plans for disposing, refinancing, or dissipating any significant Trump Organization assets." While I have no reason to believe that any undisclosed transactions have occurred, I am currently working with Defendants on language for these sworn statements that is acceptable to me and which complies with the Court's order. I expect to have the first monthly sworn statement from Defendants soon.

In sum, Defendants are continuing to comply with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

Should you have any questions, please feel free to contact me.

Sincerely,

/s/ Barbara S. Jones

Hon. Barbara S. Jones (Ret.)

cc: Counsel of record

EXHIBIT C

BRACEWELL

April 11, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al*., Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my third report to the Court.

Since my last report, dated February 3, 2023, my team and I have held additional conferences with the parties and the Court, and Defendants have continued to provide me with information required by the Supplemental Order of Appointment.

Additionally, as I have previously reported, the Supplemental Order of Appointment also requires that Defendants provide me with a sworn statement each month confirming that, except as otherwise disclosed to me, there have been no "planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or . . . any plans for disposing, refinancing, or dissipating any significant Trump Organization assets." To provide further guidance to Defendants regarding compliance with these terms, I have established a Materiality Threshold and Review Protocol that has been accepted by the parties and is being submitted for the Court's review. *See* Attached Materiality Threshold and Review Protocol.

The Defendants are continuing to comply with the terms of the Supplemental Order of Appointment and I appreciate the parties' ongoing cooperation.

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barbara.jones@bracewell.com bracewell.com

Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

EXHIBIT D

BRACEWELL

August 3, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my fourth report to the Court.

Since my last report, my team and I have held additional conferences with the parties and the Court. The parties have provided access to information necessary to effectuate my duties. To date, my team and I have reviewed nine loan agreements with third-party lenders, more than 75 financial disclosures, and several thousand supporting documents related to those disclosures.

Pursuant to the Court's Orders, I have also completed the review of the corporate structure of the Trump Organization, which is comprised of assets held by the Donald J. Trump Revocable Trust (the "Trust"). The Trust acts as a guarantor for certain loans and is comprised of more than 400 distinct entities that, among other things, own or operate commercial and residential real estate, hotels, golf courses and licensing ventures. As part of this analysis, I have reviewed relevant financial information for each entity. I have also approved, at the request of the Trump Organization, the dissolution of 109 entities that were dormant, did not generate revenue, and/or did not own any material assets or real property. In addition, based upon representations made to me by the Defendants, they have kept me apprised of any proposed corporate restructurings or dispositions of significant assets.

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As noted above, since my appointment I have reviewed material financial and accounting information submitted by the Trump Organization. As part of my review, I have made preliminary observations regarding certain current financial disclosures with respect to the Trump Organization's reporting of financial information. Specifically, I have observed that information regarding certain material liabilities provided to lenders —such as intercompany loans between or among Trust entities and Donald J. Trump, certain of the Trust's contingent liabilities, as well as refundable golf club membership deposits—has been incomplete. The Trust also has not consistently provided all required annual and quarterly certifications attesting to the accuracy of certain financial statements.

In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, interim internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses.

The Defendants maintain that its practices related to these items are adequate. However, in the interest of cooperation and transparency, Defendants have agreed to address in future disclosures to lenders the items I have identified and otherwise adjust their practices based upon my observations. The Trump Organization will continue to inform the Monitor regarding the form and substance of these disclosures.

Based upon the foregoing, and having carefully reviewed the information provided to me, it appears that the Defendants continue to cooperate with me and the requirements of the Court's Orders. My review of the Defendants' submissions of financial information is ongoing and I appreciate the parties' cooperation. Should you have any questions, please feel free to contact me.

Sincerely,

Hon. Barbara S. Jones (Ret.)

EXHIBIT E

BRACEWELL

November 29, 2023

BY E-MAIL

Hon. Arthur F. Engoron
Supreme Court of the State of New York
60 Centre Street
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron:

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the "Order of Appointment"). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the "Supplemental Order of Appointment"). *See* Dkt. No. 194. Pursuant to the Supplemental Order of Appointment, I am required to "report the status of the monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order." That is the purpose of this letter, which constitutes my fifth report to the Court.

Since my last report, my team and I have held additional conferences with the parties and the Court. The parties have provided access to information necessary to effectuate my duties. Additionally, between my last report and now, my team and I have reviewed quarterly financial disclosures provided to third parties, tax information, general ledger data, entity trial balances, securities and bank account details for 12 separate accounts maintained by the Donald J. Trump Revocable Trust ("Trust"), and other information. We have also requested and, to the extent available, reviewed specific financial information in connection with the following:

- The sale of the Trump Organization's license to operate Trump Golf Links at Ferry Point;
- The loan payoff for the property owned by 401 North Wabash, LLC (the "Chicago Tower");
- The Conservation Easement tax filing for the Trump National Doral Miami ("Doral"); and

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Partner barbara.jones@bracewell.com bracewell.com

- Trump Media and Technology Group Corporation (Truth Social).

Observations Since Last Report

In my previous report, dated August 3, 2023 ("August Report"), I notified the Court that certain of the Defendants' financial disclosures provided to third parties were either incomplete or inconsistent. *See* Dkt. No. 647. I have since observed that Defendants have taken steps to disclose intercompany loans omitted from prior disclosures, modified footnote disclosures regarding contingent liabilities, and have also provided all recent annual and quarterly certifications attesting to the accuracy of various financial statements, as required by certain loan agreements. The Trump Organization also plans to add a clarifying note to internally prepared financial statements issued to third-parties, stating that results will be reported as net income before depreciation (in instances where depreciation is not otherwise reflected in the financial statement). By taking these steps I believe Defendants have resolved the issues identified in the August Report, subject to ongoing monitoring.

Recent Observations

1. *Tax Reporting and Other Disclosures*

On April 11, 2023, I reported that a Materiality Threshold and Review Protocol (the "Materiality Threshold") had been established to provide the parties with clarity as to their compliance with the terms of the Supplemental Order of Appointment. *See* Dkt. No 617. Among other things, the Materiality Threshold requires Defendants to provide the Monitor with financial information reported to third parties, including select tax returns for certain Trust entities. During this reporting period, relevant tax returns for six Trust entities were not promptly disclosed to the Monitor pursuant to the terms of the Materiality Threshold. Upon my request, Defendants provided the tax returns and acknowledged that their exclusion was an oversight.

2. *Review of Cash Transfers*

The Materiality Threshold also requires that Defendants "provide notice when entities within the Trust make transfers outside of the Trust with an aggregate value in excess of $5 million." As mentioned above, during this reporting period, my team requested and conducted a review of bank statements for 12 bank accounts maintained by the Trust from January 2023 through October 2023. Upon review of these bank statements, we observed three cash transfers exceeding $5 million each, totaling approximately $40 million. These transactions included a cash transfer of $29 million to Donald J. Trump, which I have confirmed was used for tax payments. Based upon Defendants explanations I have also confirmed that the other transfers were for

insurance premiums and to an attorney escrow account.[1] We have discussed with Defendants why these transactions were not previously disclosed and I have now clarified (and Defendants have agreed) that *all* transfers of assets out of the Trust exceeding $5 million must be reported.

3. *Chicago Tower Loan Reporting*

As described above, the loan for the Chicago Tower has been satisfied. However, I have also reviewed information regarding the existence of an intercompany loan related to the property. Defendants are continuing to investigate this issue and any reporting requirements or documentation that may be required. I will report any additional developments on this issue to the Court.

* * *

Defendants have agreed to enhanced monitoring given the matters described in this report. Defendants continue to cooperate with me and are generally in compliance with the Court's orders, and have committed to ensure that all required information, including tax information and cash transfers, are promptly disclosed to the Monitor. My review of the Defendants' submissions of financial information is ongoing and I appreciate the parties' cooperation.

Should you have any questions, please feel free to contact me.

Sincerely,

Barbara S. Jones

Barbara S. Jones

[1] *See Carroll v. Trump*, No. 1:22-cv-10016 (LAK), Dkt. No. 210 (describing cash payment in lieu of supersedeas bond).

EXHIBIT F

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

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

Plaintiff,

vs.

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

Defendants.

Index No. 452564/2022

Hon. Arthur F. Engoron

AFFIDAVIT OF JASON S. FLEMMONS

STATE OF maryland)
) ss.:
COUNTY OF St. Mary's)

JASON S. FLEMMONS, being duly sworn, deposes and says:

1. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

2. I understand that the Honorable Barbara S. Jones (retired) was appointed as the Independent Monitor ("Monitor") by the Honorable Arthur F. Engoron on November 14, 2022 in the above-captioned action. I understand the Monitor was appointed to review financial information produced by The Trump Organization and report any financial reporting misconduct,

suspicious activity or any suspected or actual fraudulent activity.[1] I have been asked by counsel for President Donald J. Trump to review reports issued by the Monitor and to make this affidavit as to conclusions reached by the Monitor that have bearing on accounting, financial reporting and disclosure matters.

3. I am a Senior Managing Director in the Investigations and Accounting Advisory practice of Ankura Consulting Group ("Ankura"), where I specialize in technical accounting, forensic accounting and audit advisory expert matters. Prior to joining Ankura, I was a Senior Managing Director in the Forensic Accounting and Advisory Services practice at FTI Consulting. Before that, I served for 12 years in the Division of Enforcement's Office of Chief Accountant at the Washington, D.C. headquarters of the U.S. Securities and Exchange Commission ("SEC") where I supervised and performed numerous financial and accounting fraud investigations involving SEC registrants and other parties. During my tenure at the SEC, I was employed in four positions of increasing responsibility, ultimately as the Deputy Chief Accountant of the SEC's Division of Enforcement. Prior to joining the SEC, I supervised numerous forensic accounting and accounting advisory engagements as a manager in the Financial Advisory Services practice of PricewaterhouseCoopers LLP. Before that, I worked in the Audit and Business Advisory Services practice of Price Waterhouse LLP, where I performed financial statement audits of both publicly traded and privately held companies in a variety of industries located in the United States and overseas.

4. I have more than 25 years of experience in forensic accounting, and technical accounting and auditing matters, including numerous matters that involve assessing compliance with the accounting and disclosure requirements of Generally Accepted Accounting Principles

[1] NYSCEF Doc. Nos. 193, 194.

("GAAP"). I also have extensive experience performing financial fraud investigations involving corporations and individuals.

5. I have a degree in accounting from the College of William & Mary and am a Certified Public Accountant ("CPA"), a Certified Fraud Examiner ("CFE"), and am Certified in Financial Forensics ("CFF").

6. I have reviewed reports issued to the Court by the Monitor dated December 19, 2022, February 3, 2023, April 11, 2023, August 3, 2023, November 29, 2023, and January 26, 2024. The latter report contained an exhaustive summary of the Monitor's observations and findings that were in part based on the previously issued reports. Based upon my education and experience, my review of the various reports, and the express language contained in those reports, the Monitor did not identify any financial reporting misconduct, suspicious activity, or any suspected or actual fraud. Rather, the Monitor identified a series of what she labeled "deficiencies" or "errors" and did not provide any reference to applicable guidelines or standards of review.

7. For example, certain of the Monitor's findings relate to purported disclosure deficiencies pertaining to lists of Material Assets and Material Liabilities ("MAML") the Donald J. Trump Revocable Trust (the "Trust") provided to lenders on a periodic basis. The MAMLs did not constitute comprehensive statements of financial condition and did not include reported values of properties or assets unlike statements of financial condition prepared under GAAP. Rather, the MAMLs only listed the names and descriptions of properties or assets held by the Trust and related liabilities (bank loans) associated with certain properties. Importantly, the MAMLs were not required to be prepared in accordance with GAAP.

8. I note the findings contained in the Monitor's reports do not refer to, and are not sourced on, any authoritative standards or guidance. Accordingly, the Monitor does not apply an

established framework against which to measure whether disclosures constituted "deficiencies" in the financial information she reviewed. I also note that the Monitor referred to having retained a team of outside accounting professionals to support the Monitor. However, the Monitor reports do not make reference to actual industry standards that provide authoritative guidance to accountants, auditors and fraud examiners on certain topics related to the Monitor's findings. Thus, her findings appear to be based on subjective determinations devoid of standards or considerations of established frameworks.

9. Indeed, the Monitor does not establish that any identified "deficiencies" were material or served (or even could serve) to materially mislead lenders or other recipients of the financial information. Even by analogizing to financial information prepared under U.S. GAAP, items that are immaterial are not required to comply with GAAP.[2] In other words, even if GAAP required a particular accounting treatment or disclosure, it would not be necessary to comply with that GAAP guidance if the relevant item is immaterial. I am not aware that the limited scope and nature of the MAMLs (or any of the other financial reports the Monitor reviewed) were required to apply more rigorous standards than GAAP by requiring the reporting or disclosure of immaterial items. The Monitor's reports do not clearly establish that the findings related to accounting or disclosure topics were material (as defined in GAAP or otherwise).

10. One of the disclosure "deficiencies" raised by the Monitor related to five intercompany loans between President Donald J. Trump and certain trust properties that were not disclosed as liabilities in the financial reports. Under GAAP, intercompany balances are eliminated and not separately reported when preparing consolidated financial statements or

[2] Accounting Standards Codification 105-10-05-6.

combined financial statements for a group of related entities.[3] Here, the MAMLs effectively constituted property listings (and associated bank loan balances) for all properties owned by the Trust and thus were prepared on a combined basis. Accordingly, had the MAMLs disclosed intercompany loan liabilities, a corresponding intercompany loan receivable should be disclosed for the relevant property from which the loan was obtained, resulting in a ***net zero effect*** for The Trump Organization's reported assets and liabilities as a whole. This offsetting effect is precisely the basis for intercompany balances being eliminated and not reported under GAAP. The Monitor does not establish that this "deficiency" was material, and this finding would not even constitute a deficiency under the more stringent requirements of GAAP given the elimination concepts applicable to intercompany balances.

11. Another "deficiency" identified by the Monitor relates to ***audited*** financial statements that were provided to lenders for Trump Plaza. The Monitor appears to take issue with the loan agreement requiring that these financial statements be prepared in accordance with GAAP, but that these financial statements disclosed departures from GAAP related to depreciation, rental income, rent expense, bad debts, reserves for losses up to certain insurance deductibles, and debt issuance costs.[4] The Monitor does not consider the fact that it is widely understood in the U.S. accounting industry that even if GAAP is selected as the convention for financial statement reporting, industry standards permit financial statements that contain GAAP departures to be issued. The fact that the GAAP departures were disclosed served to notify users of the specific instances of GAAP non-compliance and auditing standards issued by the American Institute of Certified Public Accountants ("AICPA") provide different reporting mechanisms for auditors

[3] ASC 810-10-45-1 and 45-10.
[4] January 26, 2024 Monitor Report at 8.

when this occurs (i.e., qualified or adverse audit reports). Moreover, the Monitor did not acknowledge the ***audited*** statements were prepared and certified by ***outside auditors***, not the Trump Organization.

12. I have also reviewed and considered other "deficiencies" identified by the Monitor:

a. Excluding contingent liabilities and depreciation from certain financial reports;

b. Differences between budgeted and actual results of income and expenses for properties;

c. Calculation of Earnings Before Taxes, Interest, Depreciation and Amortization using different methods between certain properties; and

d. Other quantitatively small items described by the Monitor as "errors".

13. Authoritative industry standards specifically provide that accounting and disclosure errors are not synonymous with fraud. GAAP itself defines errors as resulting from "mistakes" or "oversight."[5] Auditing standards issued by the AICPA also state that "Misstatements in the financial statements can arise from either fraud or error. The distinguishing factor between fraud and error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional."[6]

14. Industry guidance applicable to Certified Fraud Examiners issued by the Association of Certified Fraud Examiners ("ACFE") cross reference to the same AICPA standard.[7] The ACFE's Fraud Examiners Manual also states that "Financial statement fraud is the *deliberate misrepresentation* of the financial condition of an enterprise accomplished through the *intentional*

[5] Accounting Standards Codification – Master Glossary: "Error in Previously Issued Financial Statements"

[6] AU-C 240.02.

[7] ACFE Fraud Examiners Manual – Section 1 "Financial Transactions and Fraud Schemes", "What Is Financial Statement Fraud?"

misstatement or omission of amounts or disclosures in the financial statements to *deceive* financial statement users."[8]

15. Additional guidance applicable to CPAs that perform forensic accounting fraud investigations elaborates further on the elements of fraud, including:

a. misrepresentation of a material fact,

b. knowledge that a statement is false,

c. act done with the intent to deceive (referred to as *scienter*),

d. reliance was placed on the false representation,

e. and damage was sustained as a result.[9]

16. The above standards applied by CPAs and CFEs clearly establish that intent to mislead users is a central element of fraud and is distinguishable from an error. The Monitor's reports do not establish that the above "deficiencies" were intentional or whether users were in fact misled, materially or otherwise. In fact, none of the Monitor's various reports make any reference to intentional misreporting. Moreover, none of the items identified by the Monitor were determined to be material, whether based on GAAP or other authoritative standards or guidance. Immaterial discrepancies do not indicate any financial reporting misconduct or any fraudulent activity occurred. Moreover, the mathematical errors the Monitor identified in the January 26 report are labeled as such, mathematical errors. Such errors are not unanticipated in an organization of the size and scope of The Trump Organization, and do not indicate financial reporting misconduct or any fraudulent activity occurred.

[8] Id. [Emphasis in original]
[9] AICPA Forensic and Valuation Services Practice Aid – "Forensic Accounting – Fraud Investigations", 2020 version.

17. Based on my review of the Monitor's findings and my extensive accounting, forensic accounting and fraud examination experience applying the relevant standards applicable to CPAs and CFEs above, there is no evidence that any of the industry-accepted elements of fraud were triggered by the Monitor's findings in any of her reports.

Dated: January 28th, 2024

JASON S. FLEMMONS

ACKNOWLEDGEMENT FOR OUT OF STATE NOTARY

On the 28th day of January in the year 2024, before me, Trudy Lee Wible, Notary Public in and for the State of Maryland, County of St. Mary's, the undersigned personally appeared Jason S. Flemmons, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed same in his capacity, that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Trudy Lee Wible
Notary Public

TRUDY LEE WIBLE
Notary Public - State of Maryland
St Mary's County
My Commission Expires Feb 6, 2025

EXHIBIT G

The Trump Organization

Legal Department

Inter-Office Memorandum

To: File

From: Legal Department

Date: December 4, 2023

Re: Trump International Hotel & Tower Chicago - $48,000,000 Springing Loan from Chicago Unit Acquisition LLC to 401 Mezz Venture LLC

This shall confirm that, as of the date hereof, with respect to the above-referenced loan, no amounts are due or payable, such loan is of no force or effect, and no liabilities or obligations are outstanding.

EXHIBIT H

TRUMP
THE TRUMP ORGANIZATION

Mark Hawthorn <mark.hawthorn@trumphotels.com>

RE: Follow Up Item (Depreciation) -- Confidential Monitor Communication

Mark Hawthorn <mark.hawthorn@trumphotels.com> Tue, Nov 21, 2023 at 4:29 PM
To: "Kokalas, Tom" <thomas.kokalas@bracewell.com>, Adam Rosen <adam.rosen@trumporg.com>, Alan Garten <alan.garten@trumporg.com>
Cc: "Shargel, David" <david.shargel@bracewell.com>, Neil Steinkamp <nsteinkamp@stout.com>, Joel Cohen <JCohen@stout.com>

Tom,

As mentioned in our meetings with you, because depreciation is irrelevant to the recipients of these internally prepared property-level statements (e.g. John Deere for golf course equipment), should we have these types of request in the future, we are considering simply excluding the depreciation line item and renaming the bottom line total as “Net Income before depreciation.” To date we have not had any new requests to provide such information. Happy to discuss on our call next week.

Thanks,

Mark

TRUMP HOTELS

MARK HAWTHORN

Chief Operating Officer

725 5th Avenue, New York, NY 10022

P (212) 715-7262 | C (561) 289-3523

From: Kokalas, Tom [mailto:thomas.kokalas@bracewell.com]
Sent: Tuesday, November 21, 2023 2:15 PM
To: Mark Hawthorn <mark.hawthorn@trumphotels.com>; Adam Rosen <adam.rosen@trumporg.com>; Alan Garten <alan.garten@trumporg.com>
Cc: Shargel, David <david.shargel@bracewell.com>; Neil Steinkamp <nsteinkamp@stout.com>; Joel Cohen <JCohen@stout.com>
Subject: Follow Up Item (Depreciation) -- Confidential Monitor Communication

Dear Mark and Adam,

We have follow up questions regarding depreciation: For internally prepared financial statements shared with third parties, have you determined whether TO will prepare preliminary estimates for depreciation and note that the information is subject to change, or disclose that a depreciation expense has not yet been booked? If possible, can you please provide an example of a recent disclosure reflecting that change?

Thank you,

Tom

TOM KOKALAS

Partner

thomas.kokalas@bracewell.com | download v-card

T: +1.212.508.6136 | F: +1.212.938.3836 | M: +1.646.898.8361

BRACEWELL LLP

31 W. 52nd Street, Suite 1900 | New York, NY | 10019-6118

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EXHIBIT I

TRUMP
THE TRUMP ORGANIZATION

Mark Hawthorn <mark.hawthorn@trumphotels.com>

RE: [EXTERNAL SENDER] RE: Confidential Monitor Request

Mark Hawthorn <mark.hawthorn@trumphotels.com> Tue, Nov 21, 2023 at 4:27 PM
To: "Kokalas, Tom" <thomas.kokalas@bracewell.com>, Adam Rosen <adam.rosen@trumporg.com>
Cc: Alan Garten <alan.garten@trumporg.com>, Joel Cohen <JCohen@stout.com>, Neil Steinkamp <nsteinkamp@stout.com>, "Shargel, David" <david.shargel@bracewell.com>

Tom,

Responses and additional information on the below topics have been uploaded to the Share File site in the same "2023.11.09 Request for Information" folder so you can review in advance of next week's call.

Thanks,

Mark

TRUMP HOTELS

MARK HAWTHORN

Chief Operating Officer

725 5th Avenue, New York, NY 10022

P (212) 715-7262 | C (561) 289-3523

From: Kokalas, Tom [mailto:thomas.kokalas@bracewell.com]
Sent: Monday, November 20, 2023 12:45 PM
To: Adam Rosen <adam.rosen@trumporg.com>
Cc: Alan Garten <alan.garten@trumporg.com>; Joel Cohen <JCohen@stout.com>; Mark Hawthorn <mark.hawthorn@trumphotels.com>; Neil Steinkamp <nsteinkamp@stout.com>; Shargel, David <david.shargel@bracewell.com>
Subject: RE: [EXTERNAL SENDER] RE: Confidential Monitor Request

Sounds good Adam. Will send an updated invite. Thank you, Tom

Trump Organization
Follow-up Responses to 2023.11.09 RFI

3. In the monthly trial balances sent to Bally's, total asset and liability debits and credits typically range from approximately $7 million to $12 million, with one exception: February 2022 trial balances include a balance of total asset and liability debits of$30.1 million, while credits were $30.8 million. Please explain the variation in this balance.

For background, the property's significant fixed assets (i.e. clubhouse development and other improvements) were accounted for in the construction trial balance of Trump Ferry Point LLC. This construction trial balance was never "pushed down" to the property-level trial balance, but rather was always maintained in the accounting firm's workpapers (i.e. Mazars or Whitley Penn), as the accounting firm prepares the annual tax return for the entity.

The annual tax return of the entity is representative of the combined (1) operational trial balance plus the (2) construction trial balance.

The general ledger reports provided to Bally's and you are the (1) operational trial balances from the property-level General Ledger as described above, and only include fixed assets directly purchased at the property-level.

In the months of February 2022 and March 2022, the property controller made an effort to "push down" the construction trial balance assets to the operational trial balance, however this was never completed; and the April 2022 trial balance and thereafter reverted back to the prior methodology. For illustration, note the following example increases in certain fixed asset accounts in February 2022, which reverted back to the prior methodology in April 2022 and after.

		Jan 2022	Feb 2022	April 2022
G/L 17100	Cost – Building	$17,551	$17,719,689	$17,551
G/L 17011	Cost – Land Improvements	$76,522	$ 6,981,764	$76,522

It is important to reiterate, per our prior emails to you, these property-level internal, unaudited monthly operational trial balances were sent to Bally's as a sample solely for the purpose of Bally's gaining insight into the operations of the golf course (cash balances, inventory levels, etc.). They were not meant to be comprehensive or all-inclusive. The fixed assets herein are irrelevant to Bally's, which will record its own asset value based on its purchase price.

EXHIBIT J

TRUMP
THE TRUMP ORGANIZATION

Mark Hawthorn <mark.hawthorn@trumphotels.com>

RE: [EXTERNAL SENDER] RE: Budget Preparation

Mark Hawthorn <mark.hawthorn@trumphotels.com> Tue, Jan 16, 2024 at 4:57 PM
To: "Kokalas, Tom" <thomas.kokalas@bracewell.com>
Cc: Alan Garten <alan.garten@trumporg.com>, Adam Rosen <adam.rosen@trumporg.com>, "Shargel, David" <david.shargel@bracewell.com>, Neil Steinkamp <nsteinkamp@stout.com>, Joel Cohen <JCohen@stout.com>

Tom,

The team has rechecked the underlying excel file and noted that the net profit formula is excluding the management fee line, which was not intended.

In the preliminary budget submitted on 12/1 you will note that management fees were included in the “disbursements” section. In the 12/27 submission, the same management fee amount was instead presented in its own “management fees” section, and the corresponding formula carrying should have been carried down.

The team will send an amended file to the servicer with a cover note, noting that the all of the income and expense amounts remain the same, and the net profit formula has been updated accordingly.

Thanks,

Mark

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HOTELS

MARK HAWTHORN

Chief Operating Officer

725 5th Avenue, New York, NY 10022

P (212) 715-7262 | C (561) 289-3523

From: Kokalas, Tom [mailto:thomas.kokalas@bracewell.com]
Sent: Friday, January 12, 2024 4:29 PM
To: Mark Hawthorn <mark.hawthorn@trumphotels.com>
Cc: Alan Garten <alan.garten@trumporg.com>; Adam Rosen <adam.rosen@trumporg.com>; Shargel, David <david.shargel@bracewell.com>; Neil Steinkamp <nsteinkamp@stout.com>; Joel Cohen <JCohen@stout.com>
Subject: RE: [EXTERNAL SENDER] RE: Budget Preparation

Thank you, Mark. Much appreciated. One follow up: With respect to the Final ("Approved") version, are you able to help us understand how "Net Profit (Loss) After management Fee Expense/CapEx/TI/Leasing/Mortg Payable" is calculated? If possible, can you please provide the native (Excel) version of the budget file. Thank you, Tom

TOM KOKALAS

Partner

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From: Mark Hawthorn <mark.hawthorn@trumphotels.com>
Sent: Friday, January 12, 2024 3:43 PM
To: Kokalas, Tom <thomas.kokalas@bracewell.com>
Cc: Alan Garten <alan.garten@trumporg.com>; Adam Rosen <adam.rosen@trumporg.com>; Shargel, David <david.shargel@bracewell.com>; Neil Steinkamp <nsteinkamp@stout.com>; Joel Cohen <JCohen@stout.com>
Subject: [EXTERNAL SENDER] RE: Budget Preparation

Tom,

Following up on your other question, we can confirm that the 2024 budget preparation for Trump Plaza, TIHT Commercial and 40 Wall Street did contemplate the inclusion of estimated management fees that would be actualized during the year. The reason is simply a process improvement from the team preparing those budgets, as these amounts are the best estimates of what is expected to be actualized in 2024. None of the lenders or servicers has commented to the Company on this topic; nor has asked any follow-up questions since receiving the budgets.

Thanks,

Mark

TRUMP
HOTELS

MARK HAWTHORN

Chief Operating Officer

725 5th Avenue, New York, NY 10022

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From: Mark Hawthorn [mailto:mark.hawthorn@trumphotels.com]
Sent: Friday, January 5, 2024 11:37 AM
To: 'Kokalas, Tom' <thomas.kokalas@bracewell.com>
Cc: Alan Garten <alan.garten@trumporg.com>; Adam Rosen <adam.rosen@trumporg.com>; 'Shargel, David' <david.shargel@bracewell.com>; 'Neil Steinkamp' <nsteinkamp@stout.com>; 'Joel Cohen' <JCohen@stout.com>
Subject: RE: Budget Preparation

Tom,

We will follow up on your first question and come back to you. We can also confirm that the final budget was submitted to Wells Fargo on December 27, 2023. I will send that to you in a next email for expediency.

Thank you for your patience in receiving our next overall update (inclusive of December bank statements and this final budget submission) which we expect to get you next week. If there is anything you need urgently before then please let us know and we will do our best to provide.

Thanks,

Mark

TRUMP
HOTELS

MARK HAWTHORN

Chief Operating Officer

725 5th Avenue, New York, NY 10022

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From: Kokalas, Tom [mailto:thomas.kokalas@bracewell.com]
Sent: Friday, January 5, 2024 11:10 AM
To: Mark Hawthorn <mark.hawthorn@trumphotels.com>
Cc: Alan Garten <alan.garten@trumporg.com>; Adam Rosen <adam.rosen@trumporg.com>; Shargel, David <david.shargel@bracewell.com>; Neil Steinkamp <nsteinkamp@stout.com>; Joel Cohen <JCohen@stout.com>
Subject: Budget Preparation

Mark and Team,

In our review of the annual budgets that were recently provided, we had a few follow-up questions:

- The 2024 budgets for Trump Plaza, TIHT Commercial and 40 Wall Street included management fees consistent with those contained in the annual audited financial statements from recent years. In our review of the budgets that were prepared last year, they either did not include management fees or had a nominal amount compared to actual financial performance.
    - Was there a change in the process or methodology used to consider management fees for these annual budgets? This appears to be a positive improvement in the methodology, but we would like to better understand the reason for the change.

- Based on the email thread submitted by the TO related to the 40 Wall St. budget, a preliminary budget was provided to Wells Fargo on December 1, 2023, with a 30-day extension for delivery of the final budget.
    - Was the final budget submitted to Wells Fargo?

Thank you,

Tom

TOM KOKALAS

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EXHIBIT K

TRUMP
THE TRUMP ORGANIZATION

Mark Hawthorn <mark.hawthorn@trumphotels.com>

FW: Follow Up to Today's Call

Alan Garten <alan.garten@trumporg.com> Mon, Dec 4, 2023 at 2:40 PM
To: "Kokalas, Tom" <thomas.kokalas@bracewell.com>, "Shargel, David" <david.shargel@bracewell.com>, Neil Steinkamp <nsteinkamp@stout.com>, Joel Cohen <JCohen@stout.com>
Cc: Adam Rosen <adam.rosen@trumporg.com>, Mark Hawthorn <mark.hawthorn@trumphotels.com>

Tom – Please see the below responses. Please let us know if you have any additional questions.

Thanks.

Alan

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THE TRUMP ORGANIZATION

Alan Garten

Executive Vice President & Chief Legal Officer

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P (212) 836-3203

From: Alan Garten <alan.garten@trumporg.com>
Sent: Tuesday, November 28, 2023 2:46 PM
To: Kokalas, Tom <thomas.kokalas@bracewell.com>; Shargel, David <david.shargel@bracewell.com>; Neil Steinkamp <nsteinkamp@stout.com>; Joel Cohen <JCohen@stout.com>
Cc: Adam Rosen <adam.rosen@trumporg.com>; Mark Hawthorn <mark.hawthorn@trumphotels.com>
Subject: Follow Up to Today's Call

Tom –

Thanks as always for the call today. So we are on the same page, I wanted to just send a very brief summary of what I understand are the action items that need to be addressed going forward (obviously in addition to all of our existing obligations under the court's orders):

1. Bank Statements – Going forward, we will upload to the ShareFile Site copies of bank statements held by the Trust as we receive them on a monthly basis. [Mark and his team will soon be sharing the November 2023 bank statements with you.]

2. $5.1 Million Payment to Lockton – We will look into this and provide you a better understanding of what this payment was for and whether any new financial information – not previously shared with you – was provided to Lockton in connection with this transaction. [The aforementioned payment was an installment toward the payment of our master insurance policy covering many assets and properties. No new financial information – not previously shared with you – was provided to Lockton in connection with this transaction or payment.]

3. Hawaii Guaranty – Neil asked some questions on our call about one or more guarantees in connection with the Hawaii property. Neil will send us a copy of those documents so we can provide an explanation of what those guarantees entail.

4. Chicago Unit Acquisition Springing Loan – In consultation with our accountants and outside counsel, we will prepare and share with you a memo addressing and resolving the Springing Loan. [Attached is a memo consistent with our discussion.]

5. DWAC/TMTG – As we explained during our call, TMTG sits outside of the structure and control of the trust. Nonetheless, we have reached out to TMTG's counsel to seek responses to your list of questions. We also understand your primary interest to be whether and to what extent any assets of the trust have guaranteed any obligations of TMTG and/or DWAC. [After consulting with TMTG's counsel, we have confirmed that none of the assets of the trust have guaranteed any obligations of TMTG and/or DWAC. If you require any additional information, please let us know.]

6. Materiality Threshold and Review Protocol – Your team will revise the April 11, 2023 memo to clarify that the notice requirements captured under the “Restructuring and Loans” section includes (i) Donald Trump, individually, and is not limited to just entities and properties (as currently drafted); and (ii) involves ALL transfers outside the trust with an aggregate value in excess of $5 million and is not limited to just transactions which involve restructurings and loans (as currently drafted).

I hope this accurately reflects our call. As always, if you have any additional questions or require any other information, we are always available to discuss.

Best,

Alan

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Alan Garten

Executive Vice President & Chief Legal Officer

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Trump Chicago - Memo re Springing Loan (00294252xE65DA) (003).pdf
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