Attachment 1

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

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

Defendants.

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INDEX NO. 452564/2022

Decision and Order
After Non-Jury Trial

Arthur F. Engoron, Justice

After presiding over a non-jury trial that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024, this Court makes the following findings of fact and conclusions of law and issues this Decision and Order:

SUMMARY

Donald Trump and entities he controls own many valuable properties, including office buildings, hotels, and golf courses. Acquiring and developing such properties required huge amounts of cash. Accordingly, the entities borrowed from banks and other lenders. The lenders required personal guarantees from Donald Trump, which were based on statements of financial condition compiled by accountants that Donald Trump engaged. The accountants created these "compilations" based on data submitted by the Trump entities. In order to borrow more and at lower rates, defendants submitted blatantly false financial data to the accountants, resulting in fraudulent financial statements. When confronted at trial with the statements, defendants' fact and expert witnesses simply denied reality, and defendants failed to accept responsibility or to impose internal controls to prevent future recurrences. As detailed herein, this Court now finds defendants liable, continues the appointment of an Independent Monitor, orders the installation of an Independent Director of Compliance, and limits defendants' right to conduct business in New York for a few years.

INTRODUCTION

In this civil action, plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, seeks monetary penalties and injunctive relief against Donald John Trump ("Donald Trump") (the former president of the United States); Donald Trump, Jr. ("Donald Trump, Jr." or "Trump, Jr.") and Eric Trump (two of his sons); Allen Weisselberg and Jeffrey McConney (two former employees of defendant The Trump Organization, Inc.); and various real estate holding entities. Plaintiff essentially alleges (1) that the individual defendants violated New York Executive Law § 63(12) by submitting false financial statements to banks and insurance companies to obtain better rates on loans and insurance coverage; and (2) that the holding entities are liable for the individual defendants' misdeeds. Defendants (1) allege that the statements were completely or substantially correct; and (2) crow that the borrowers paid back all loans fully and on time.

Common Law Fraud

The instant action is not a garden-variety common law fraud case. Common law fraud (also known as "misrepresentation") has five elements: (1) A material statement; (2) falsity; (3) knowledge of the falsity ("scienter"); (4) justifiable reliance; and (5) damages. See, e.g., Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership, 12 NY3d 236, 242 (2009) ("[T]he elements of common law fraud" are "a false representation . . . in relation to a material fact; scienter; reliance; and injury."). Alleging the elements is easy; proving them is difficult. Is the statement one of fact or opinion? Material according to what standard? Knowledge demonstrated how? Justifiable subjectively or objectively? In mid-twentieth century New York, to judge by contemporary press reports and judicial opinions, fraudsters were having a field day.

Executive Law Section 63(12)

Along came Executive Law § 63(12), which began life as Laws of 1956, Chapter 592, "An act to amend the executive law, in relation to cancellation of registration of doing business under an assumed name or as partners for repeated fraudulent or illegal acts." Jacob Javits, then the Attorney General of the State of New York (the position that Attorney General James now occupies), pushed for the bill, as did the Better Business Bureau of New York City. See Senate Bill Jacket, February 21, 1956. State Comptroller Arthur Levitt asked, "Why not grant the Attorney General authority to enjoin anyone from continuing in a business activity if such person has been guilty of frequent fraudulent dealings." The preponderance of the evidence standard, the one used in almost all civil cases would apply. Comptroller Levitt noted: "In a suit for an injunction, there is no need to prove the charge beyond a reasonable doubt, as in a criminal case—a mere preponderance of evidence would be sufficient." Id.

In the subsequent six decades, the State has toughened the statute. In Laws of 1965, Chapter 666, the definitions of the words "fraud" and "fraudulent" were expanded to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, false pretence [sic], false promise or unconscionable contractual provisions." The statute casts a wide net.

"The general grant of power to the Attorney General under section 63(12) has traditionally been his most potent." 3 Fordham Urb. L. J. 491, 502 (1975).

Executive Law § 63(12) now reads as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply… for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

The Financial Marketplace

This Court takes judicial notice that New York State, particularly New York City, is the financial capital of the country and one of the financial capitals of the world. The City's fabled Wall Street is synonymous with capital formation, investing, trading, lending, and borrowing. In a summary judgment Decision and Order dated September 26, 2023, NYSCEF Doc. 1531, the Court addressed the State's judicially recognized interest in an honest marketplace:

> "In varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." People v Grasso, 11 NY3d 64, 69 at n 4 (2008); People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SDNY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal

> for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness …").

Timely and total repayment of loans does not extinguish the harm that false statements inflict on the marketplace. Indeed, the common excuse that "everybody does it" is all the more reason to strive for honesty and transparency and to be vigilant in enforcing the rules. Here, despite the false financial statements, it is undisputed that defendants have made all required payments on time; the next group of lenders to receive bogus statements might not be so lucky. New York means business in combating business fraud.

Procedural Background

This action follows an extensive investigation conducted by plaintiff, the Office of the Attorney General of the State of New York ("OAG"). In 2020, OAG commenced a special proceeding to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling, in part, compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020.

OAG filed the instant complaint on September 21, 2022. On November 3, 2022, in response to a motion by OAG, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of Donald Trump. NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194. To date, Judge Jones has delivered six reports to this Court, dated December 19, 2022, February 3, 2023, April 11, 2023, August 2, 2023, November 29, 2023, and January 26, 2024. NYSCEF Doc. Nos. 441, 489, 617, 647, 1641, 1681.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. No. 453. Defendants appealed, resulting in a June 27, 2023 Order, wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that in this case the "continuing wrong doctrine does not delay or extend [the statute of limitations]";[1] (2) finding that claims are timely against defendants subject to a tolling agreement[2] if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint

[1] As this Court explained *ad nauseum* at trial, statutes of limitation bar claims, not evidence.

[2] The Trump Organization's Chief Legal Officer, Alan Garten, originally entered into a tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. This Court previously found, pursuant to the terms of the agreement, that it binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries.

as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not bound by the tolling agreement, as she was not an employee of the Trump Organization at the time Garten entered into the agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Complaint

The Complaint asserts seven causes of action. The first cause of action is of a type known as a "stand-alone § 63(12) claim." Consistent with the wording of the statute, plaintiff need only prove that defendants used false statements in business.

The second through seventh causes of action require plaintiff to prove that defendants intended to violate a provision of the Penal Law. The second cause of action, pursuant to New York Penal Law § 175.10, requires plaintiff to prove that defendants intended to falsify business records. The third cause of action requires plaintiff to prove that defendants intended to conspire to falsify business records. The fourth cause of action, pursuant to New York Penal Law § 175.45, requires plaintiff to prove that defendants intended to issue a false financial statement. The fifth cause of action requires plaintiff to prove that defendants intended to conspire to issue a false financial statement. The sixth cause of action, pursuant to New York Penal Law § 176.05, requires plaintiff to prove that defendants intended to engage in insurance fraud. The seventh cause of action requires plaintiff to prove that defendants intended to conspire to engage in insurance fraud.

Summary Judgment

In a 35-page Decision and Order, dated September 26, 2023, this Court granted plaintiff summary judgment only on liability and only on the first cause of action. Simply put, the Court found that plaintiff had capacity and standing to sue; that non-party disclaimers and party "worthless clauses" do not insulate defendants' material misrepresentations; that intent, scienter, and reliance are not elements of a stand-alone § 63(12) claim; that disgorgement of profits is an available remedy; and that the subject financial statements materially misrepresented the value of the Trump Tower Triplex, The Seven Springs Estate, certain apartments in Trump Park Avenue, 40 Wall Street, Mar-a-Lago, and a golf course in Aberdeen, Scotland. NYSCEF Doc. 1531.

This Court also held that the tolling agreement the parties entered into bound all defendants, such that the applicable statute of limitations allowed claims accruing on or after July 13, 2014. This Court also ordered the cancellation of defendants' business certificates filed under and by virtue of GBL § 130. The Appellate Division stayed the cancellation of the certificates pending the final disposition of defendants' appeal of the summary judgment rulings.

The Trial

The eleven-week trial of this action addressed whether defendants are liable pursuant to the second through seventh causes of action and what monetary penalties and/or injunctive relief this

Court should impose. Plaintiff is seeking "disgorgement" of "ill-gotten gains," and to limit defendants' abilities to conduct business in New York.

Constitutional provisions guaranteeing a jury trial, such as the Seventh Amendment to the United States Constitution, apply only to cases "at common law," so-called "legal" cases. The phrase "at common law" is used in contradistinction to cases that are "equitable" in nature. Whether a case is "legal" or "equitable" depends on the relief that plaintiff sought. Here, plaintiff seeks disgorgement and injunctions, each of which are forms of equitable relief. Thus, there was no right to a jury,[3] and the case was "tried to the Court;" the Court being the sole factfinder and the sole "judge of credibility."

This Court listened carefully to every witness, every question, every answer. Witnesses testified from the witness stand, approximately a yard from the Court, who was thus able to observe expressions, demeanor, and body language. The Court has also considered the simple touchstones of self-interest and other motives, common sense, and overall veracity.

[3] In any event, neither party applied nor moved for a jury trial.

FINDINGS OF FACT

This Court heard testimony from 40 witnesses over 43 days[4] and makes the following findings of fact:

The Non-Party Witnesses

Donald Bender

Donald Bender is an accountant who worked for Mazars USA LLP ("Mazars"), an accounting firm, for approximately 41 years. From approximately 2011-2021, Bender spent approximately half of his time working on engagements for Donald Trump and the Trump Organization, and between 2-4% of his time working on Donald Trump's SFCs. Trial Transcript ("TT") 106-107.

Donald Trump engaged Mazars to create SFC "compilations," comprised of accounting data that defendants sent to Mazars; Mazars simply "compiled" that data into SFC format. "Audits" are the highest level of review of accounting data; "reviews" subject the data to medium-level scrutiny; "compilations" require the least scrutiny of the data. The accountant does not test or audit the raw numbers and thus cannot, and does not, assure the accuracy of the statement. TT 113. Mazars compiled Donald Trump's SFCs from 2011 through 2020.

Bender received all his information for the compilations from Jeffrey McConney or a member of his team, such as Patrick Birney. TT 114-116, 221-222, 387.

Mazars would not have issued the SFCs if Allen Weisselberg had not represented that the information in the SFCs was in conformity with Generally Accepted Accounting Principles ("GAAP") or if Mazars had learned that any of the representations in the letter were not true. TT 199, 254-255, 263-269.

Bender made absolutely clear that under the terms of the engagement for compilation services, the client was responsible for ensuring that assets were stated at their "estimated current values," and that Weisselberg was responsible for determining which GAAP departures were identified and disclosed. TT 237-238, 319-320. The engagement letters, signed by a combination of Weisselberg, Donald Trump, and Donald Trump, Jr., confirmed this by unambiguously acknowledging that Donald Trump, through his trustees, was responsible for the preparation and fair presentation of the personal financial information in accordance with GAAP. See, e.g., PX 741.

Bender later learned that the Trump Organization had withheld records, such as appraisals, that Mazars had requested while preparing the compilations, leading Mazars to conclude that the Trump Organization had falsely represented that it had complied fully and truthfully with all inquiries from Mazars. Mazars subsequently terminated its relationship with the Trump Organization. TT 242-243; PX 2992, 2994. Bender stated that it was not until he was interviewed by the Manhattan District Attorney's Office, in spring 2021, that he learned that the Trump Organization had withheld appraisals from Mazars. TT 536-538. Bender made clear that

[4] Indeed, the trial transcript spans 6,758 pages, excluding closing arguments.

Mazars would not have issued the SFCs if it had known that it had not been provided with all appraisals. TT 251.

Camron Harris

Camron Harris is an audit partner at Whitley Penn, an accounting firm that compiled Donald Trump's SFC for 2021. TT 442. His testimony buttressed Donald Bender's that compilers simply use the numbers provided by the client; they do not check them. TT 447-448; PX-1497.

Harris's contemporaneous notes, taken during or shortly after a meeting with Jeffrey McConney and Mark Hawthorn of the Trump Organization, state:

> Patrick [Birney] explained that he is the primary preparer of the valuations. Patrick obtained all of the necessary information for the valuations from external and internal sources. He worked with other team members to pull this information together, such as Ray Flores. Ray Flores performs the first review of Patrick's spreadsheet and financial statements. Prior to issuance of the SOFC, an individual from upper management of the Trump Organization, and also one of the Trump family members, will read and review the financial statements.

TT 450-451. Harris also indicated that the Trump Organization designated McConney as the "individual with suitable skills, knowledge and experience to oversee [Whitley Penn's] preparation of your financial statements," as the Whitley Penn compilation engagement agreement required. TT 459-464; PX-2300. Harris stressed the "fundamental" importance of the client's obligations, particularly during a compilation engagement, emphasizing that "[u]nder a compilation, we are not doing anything, you know, to verify the accuracy of that information, so that responsibility and accountability follows within the client to be doing those things so that the information is correct, because we didn't do anything to verify that it is correct." TT 464-465.

Harris further made clear that Whitley Penn would not have issued the 2021 SFC without a signed representation letter from the client, indicating that it acknowledged its responsibility for providing a fair presentation of values in accordance with GAAP. TT 480-481.

Nicholas Haigh

Nicholas Haigh worked as a risk officer and managing director of Deutsche Bank's Private Wealth Management Division from 2008 to 2018. TT 980.

The Private Wealth Management Division serviced high net worth individuals and provided various products to them, including credit products. As the risk officer, Haigh's job was to examine the client's credit exposure and determine whether a client's credit request fit within the bank's desired risk profile. TT 982.

When a client wanted a loan or other "credit facility" from the Private Wealth Management Division, a relationship manager would interface with the client and then speak with a lending officer at the bank. The lending officer would document the terms of a proposed loan in a credit memorandum that would be sent to Haigh and his team for final approval. TT 986-987. If the credit risk management team was comfortable with the terms and information contained in the credit memorandum, they would approve and sign off on the proposal. TT 989. Haigh was the most senior credit officer to sign off on the Deutsche Bank loans to the Trump Organization entities. TT 992.

In 2011, the risk management team approved the terms of a credit facility to the "Trump Family"[5] "based on the financial strength of the guarantor," emphasizing that "[t]he financial profile of the guarantor includes on an adjusted basis, 135 million in encumbered liquidity, 2.4 billion in net worth and approximately 48 million in adjusted recurring net cash flow." The risk management team noted that "[a]lthough facility is being extended to [a special purpose vehicle] for the purposes of financing the purchase of the resort, the credit exposure is being recommended primarily based on the financial profile of the guarantor," further emphasizing the "[f]ull and unconditional guarantee of DJT which eliminates any shortfall associated with operating and liquidating Collateral." PX 293; TT 1001.

Haigh made clear that:

> The wealth management business at Deutsche Bank would not make loans secured just on collateral without a strong financial guarantee or personal guarantee from a financially strong person. Given that this was unusual collateral as a golf resort and spa, we would not really want to have to foreclose on that collateral and so we would most likely look to the guarantor to remedy any default – payment default on the loan.

TT 1003-1004.

In deciding to approve the credit facility, Haigh relied on Donald Trump's 2011 SFC and assumed that the representations of value of the assets and liabilities were "broadly accurate." TT 1009-1010; PX 330. The Deutsche Bank Credit Report's "Financial Analysis" is based on numbers provided by the "family office" (here, the Trump Organization) and contains the same numbers represented in the SFC. PX 293; TT 1010-1013.

Before approving the credit facility, the Private Wealth Management Division consulted Deutsche Bank's Valuation Services Group about market conditions to arrive at a conservative estimate of the value of the commercial real estate should a need arise to liquidate during "bad market conditions." TT 1013-1016. In so doing, the Valuation Services Group applied a 50%

[5] The funds from this "Trump Family" credit facility would later be used to purchase Doral under the entity Trump Endeavor 12 LLC.

"haircut" to the valuations presented by the client, which Haigh affirmed was the "standardized number for commercial real assets."[6] TT 1016, 1041.

Haigh affirmed that the Private Wealth Management Division would not have done business with Donald Trump without a personal guarantee, and that the personal guarantee was the reason for favorable pricing on the loan and the large size of the loan itself. TT 1017, 1020-1021, 1032.

The Doral loan was conditioned on certain continuing covenants. One such covenant required Donald Trump to maintain a minimum net worth of $2.5 billion, excluding any value related to his brand. PX 293; TT 1024. As the "ultimate signer" of the credit risk management team, Haigh determined the required amount of Donald Trump's minimum net worth "in order to make sure that the bank would be fully protected under adverse market conditions." TT 1025-1026. In the event of a default of any of the covenants, Haigh stated the bank would have "various remedies … which it can pursue like waiving the breach, which it might do for an inconsequential breach; negotiating some variation of the terms of the loan; or potentially accelerating the loan and ask for repayment." TT 1028.

The covenant obligated Donald Trump to provide an annual financial statement. Haigh stressed that the annual SFCs were required because "[t]he bank wants to be sure that the client's financial strength is being maintained and also the bank wants to be able to test its covenants periodically," and that "[t]he bank would use the financial information that [the client] provided to test itself to try and ensure that the client is in compliance with those covenants." TT 1022-1023.

In 2012, the Trump Organization, under the entity 401 North Wabash Venture LLC, sought another loan from Deutsche Bank's private wealth division for a new project in Chicago ("Trump Chicago"). PX 291; TT 1028-1029. The credit memorandum indicates that the beneficial owner of the borrower was "Donald J. Trump." PX 291. Like the previous credit facility, the Chicago facility was conditioned on a full and unconditional guarantee provided by Donald Trump; the Deutsche Bank risk team specifically noted "[a]lthough facilities are secured by the collateral, given its unique nature, the credit exposure is being recommended based on the financial profile of the guarantor." PX 291; TT 1030-1033. Similar to the previous credit facility review, the risk management team utilized Deutsche Bank's Valuation Services Group to estimate the value of the liquidation of the commercial assets in bad market conditions and applied a standard 50% haircut to the valuations represented by the client.[7] TT 1033.

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[6] Haigh also confirmed that in addition to the 50% standard "haircut" applied to most commercial real estate assets, the risk management team applied a 75% haircut to Seven Springs as "properties under development or not yet developed potentially have a large range of outcomes of their value." TT 1040-1041; PX 293.

[7] Beyond the 50% standard "haircut," the credit risk management team adjusted another value that had been provided by the client. Upon discovering that Trump Tower had recently been refinanced, but not by Deutsche Bank, the financing entity had commissioned an appraisal that was made available to Deutsche Bank. Upon realizing that the independent appraised value was less than the number reported by the client, the credit risk management team confirmed that they were "adjusting the property value to reflect the recent appraisal and new debt." PX 291; TT 1034-1035.

While he was seeking the loan from the Private Wealth Management Division and waiting to see if it would be approved, Donald Trump was simultaneously exploring a loan from Deutsche Bank's Commercial Investment Bank Division, which maintained a commercial real estate lending group. PX 470; TT 1036-1038. The dueling proposals resulted in an internal Deutsche Bank memo, as Haigh explained, reflecting that "[t]wo business divisions at Deutsche Bank were making proposals on the same potential loan and … we wanted to be sure that they made sense with regard to each other so the bank didn't look foolish in front of the client with two completely different sets of term sheets that bore no relation to each other." PX 470; TT 1036-1038. The memo indicated that for Trump Chicago, the Commercial Investment Bank Division would be willing to provide a loan on a non-recourse basis (i.e., no personal guarantee) at LIBOR plus 8%, and that the private wealth division would be willing to provide a loan on a full recourse basis (with an unconditional personal guarantee) at LIBOR plus 4%. PX 470; TT 1036-1038.

In 2014, the Trump Organization sought several more approvals from Deutsche Bank: (1) a loan for the Washington, D.C. "Old Post Office" project; (2) the renewal of an existing Trump Endeavor 12, LLC credit facility for Doral; and (3) an increase in the Trump Chicago credit facility. PX 294; TT 1041-1045. The approval process for these three discrete items was the same as the previous approval processes, except that a higher level of authority was needed to approve the transactions within the credit risk management team. TT 1045. Like the previous credit facilities, approval required Donald Trump, as guarantor, to maintain a minimum net worth of $2.5 billion, as "[t]he bank wanted to be sure that in an adverse market scenario the client would always have enough financial resources to be able to pay off our loan." TT 1048-1049. Like the previous credit facilities, the credit risk management team noted that "[a]lthough all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor." PX 294; TT 1050. Haigh noted that the Private Wealth Management Division did not normally extend loans that involved substantial reconstruction on its collateral, here, the Old Post Office, so the loan was approved in reliance Donald Trump's personal guarantee. TT 1050-1051. Once again, as a required covenant, Donald Trump was obligated to provide certifications and annual statements of financial condition so that the bank could test his required covenants at any time. TT 1049.

Rosemary Vrablic

Rosemary Vrablic worked at Deutsche Bank in the Private Wealth Management Division and was the chief relationship manager for the Trump Organization. TT 994, 5484-5486. Vrablic explained that her job was to be "an intermediary between the customer and/or prospect and the credit and lending parts of the bank." TT 5486. Vrablic served as the client intermediary for the bank for all three of the loans that Deutsche Bank's Private Wealth Management Division extended to Donald Trump. TT 5486-5487.

Jared Kushner, Ivanka Trump's husband, introduced Vrablic to Donald Trump in 2011. TT 5486, 5498-5499, 5511-5512. Vrablic testified that one goal of her job was to initiate a broad-based relationship with Donald Trump. TT 5499. Ivanka Trump was Vrablic's main liaison for the subject credit facilities. TT 5504.

Vrablic was not a part of the credit risk analysis team, and she had no input or authority on whether credit was ultimately extended. TT 5578. She was not involved in the bank's annual review of Donald Trump's SFCs. TT 5554, 5578-5579.

Vrablic confirmed, and emails corroborate, that when considering whether to extend the Doral loan, the head of the global asset management group wrote: "I support the transaction, but we need iron clad full recourse under all circumstances," indicating that an iron-clad personal guarantee was a non-negotiable term of the loan. DX 313; TT 5519-5521, 5572-5573. Vrabalic further confirmed that each of the Trump family members she dealt with, including Donald Trump, Donald Trump, Jr., and Ivanka Trump, fully understood the recourse requirement to obtain a loan from the Private Wealth Management Division. TT 5574-5777; PX 1129.

Vrablic expected Donald Trump to submit accurate financial information to the bank. TT 5579.

Doug Larson

Doug Larson is a valuation advisor and certified New York real estate appraiser who currently works at Newmark. Prior to working at Newmark, he worked at Cushman & Wakefield for almost 25 years. TT 1558-1559.

In 2015, while at Cushman & Wakefield, Larson appraised 40 Wall Street for Ladder Capital as part of its due diligence. TT 1560-1570; PX 118.

Larson testified clearly and credibly that although his name is cited as the source to justify a 2.940 capitalization (or "cap") rate[8] on Niketown, a property in which Donald Trump owned two long-term leases on 57th Street, Larson never had a specific conversation with Jeffrey McConney in which he advised him that such a cap rate would be appropriate; nor was he aware that he was listed as a source for such a cap rate. TT 1572-1575; See, e.g., PX 758. Larson further said that he would not have advised McConney to select that cap rate, as "it's not how we would value [it] in our practice." TT 1583. Larson stated that McConney was incorrect in stating that he consulted with Larson when valuing Trump Tower. TT 1581.

Upon learning that his name had been repeatedly used to justify cap rates that he had not recommended, Larson said it was "inappropriate and inaccurate … I should have been told and, you know, an appraisal should have been ordered." TT 1587.

Larson further took issue with his name being used to justify a cap rate on the property controlled by a Vornado partnership interest. In 2012, Larson appraised the property at 1290 Avenue of the Americas at $2 billion with a cap rate of 4.5 percent. PX 1824; TT 1588-1589. Notwithstanding, in the following SFC's supporting data, McConney cites Larson as the source for using a 3.12 percent cap rate, even though he never worked with McConney to pick a cap rate

[8] A capitalization rate is calculated by dividing a property's net operating income by the current market value. This ratio, expressed as a percentage, is an estimation of an investor's return on real estate. The higher the cap rate, the lower the value. Cap rates have an extraordinarily large effect on the value of a property.

to value that property, and that he would not have, as valuing minority interests is a specialized area beyond his expertise. TT 1589-1595.

In a 2015 appraisal of 40 Wall Street, Larson included the value of a Dean & Deluca lease that yielded annual rent of $1.4 million, and he applied a 4.25 percent cap rate, for a total valuation of $540 million. Notwithstanding, the 2015 SFC backup data double-counted the Dean & Deluca lease. McConney also chose a much lower cap rate than that on the appraisal and listed the total value of 40 Wall Street at over $735 million, citing Larson as the source. Larson repeatedly confirmed that he was not a source for that number, that the number was nearly $200 million more than his own appraisal, and that he did not work with McConney or anyone else at the Trump Organization to determine the cap rate used to generate the $735 million value.[9] PX 118,729; TT 1601-1606.

Jack Weisselberg

Since 2008, Jack Weisselberg has worked at Ladder Capital as a "loan originator," which includes finding new business and maintaining the client relationship throughout the life of a loan. TT 1770-1773; 1779.

When originating a loan for the Trump Organization, Jack Weisselberg primarily communicated with Allen Weisselberg (his father), Jeffrey McConney, and Donna Kidder. TT 1790-1791. Jack Weisselberg understood that the Trump Organization had concerns about its financial information becoming public because of a potential Ladder Capital loan (stating in an email to his supervisor that Donald Trump is "nervous about Gucci's rent becoming public knowledge, as he tends to embellish from time to time"). PX 650; TT 1811-1816.

In spring 2015, Allen Weisselberg began inquiring about the possibility of refinancing a loan on 40 Wall Street that was serviced by Capital One Bank. In January 2015, Allen Weisselberg wrote to Capital One asking it to waive an upcoming required $5 million principal payment. After Capital One declined to waive the payment, Allen Weisselberg contacted Jack Weisselberg about Ladder Capital refinancing the loan. TT 1820-1826. In the application process, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later required that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital

[9] In a theatrical attempt to halt the testimony of Doug Larson, defendants tried to impeach him with a 2014 email showing that McConney had asked for his advice on whether the fact that a ground lease had a far-off expiration would affect the cap rate in any way. Defendants then suggested that Larson had committed perjury and should be removed from the stand to consult with counsel. As an initial matter, the Court does not find Larson's testimony to be contradictory. The fact that McConney sent one email in 2014 that generically discussed the effect of lease expirations on cap rates does not in any way give defendants cart blanche to cite Larson as an omnibus form of counsel that immunizes all the future manufactured valuations that comprised the SFCs. Further, defendants do not cite to this email in the supporting data for the SFCs, they cite to a series of telephone calls that, by Doug Larson's account, never even took place. Moreover, the assertions of defendants' counsel, Christopher Kise, that Larson's testimony amounted to such blatant perjury he should be immediately removed from the stand to consult with counsel about his Fifth Amendment rights is belied by the record and seemed like nothing more than a performance for a non-existent jury. PX 109; TT 1696-1712; 1754-1767.

incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886.

In 2017, the Trump Organization approached Ladder Capital about a short-term loan on its property on Central Park South, which was then unencumbered, for the purpose of funding a $25 million settlement arising out of litigation by OAG against Trump University. People v Trump Entrepreneur Initiative LLC, Docket No. 451463/2013, Doc. 1 (Sup Ct, NY County). Jack Weisselberg testified that he understood that the loan was necessary because "they had recourse obligations to another lender [Deutsche Bank] that limited the amount of cash they could access." In approving the loan, Ladder Capital helped Donald Trump avoid triggering a default on his outstanding Deutsche Bank's lending covenants. TT 1817-1820.

David McArdle

David McArdle was, and still is, the senior managing director of Cushman & Wakefield and a professional appraiser. TT 1909-1910.

In summer 2013, attorney Sheri Dillon, on behalf of the Trump Organization, retained McArdle to appraise portions of the Trump National Golf Course in Westchester County, New York. Even though Sheri Dillon and her law firm retained Cushman & Wakefield, McArdle stated "[i]t was widely understood that [the] intended users of this document would also be the Trump Organization, Donald J. Trump, [and] Eric Trump." TT 1919-1926; px 157. The engagement was focused on the valuation of 71 potential attached units within the confines of the Trump National Golf Club in Briarcliff ("Briarcliff"). TT 1926. McArdle was retained because the Trump Organization was "contemplating a donation, conservation easement donation, and they were looking for my input on valuation of this 71-unit project." TT 1928. In performing this work, Eric Trump was McArdle's primary point of contact at the Trump Organization. TT 1926-1939, 1952.

In fall 2013, McArdle told Eric Trump and Sheri Dillon that the highest supportable value for a potential conservation easement of the 71-units was $45 million. PX 1465; TT 1944-1945. McArdle explained that although "Eric had certain ideas of value" that were "a little more lofty and above $45 million," the "team of Sheri, Bob and myself clearly recognized that we were sort of at the end here and anything beyond $45 million would have put some people at risk," and "[i]t would not have been credible." TT 1944-1945. In response, Eric Trump told McArdle to "hold off" sending a written appraisal. PX 3201; TT 1946-1948.

In February 2014, McArdle was again retained for a similar engagement; this time he was tasked with valuing the same 71-units and, also, determining if a potential conservation easement would have any effect on the adjacent 18-hole golf club known as Trump National Golf Club

Westchester, which included an already-built town home owned by Eric Trump on the perimeter of the property. TT 1949-1950. In April 2014, McArdle provided a written appraisal to Sheri Dillon that valued the 71-unit plot at $43.3 million. PX 3194; TT 1958-1963.

In June 2014, Eric Trump again retained McArdle to appraise the same plot of land and changed the scope of the engagement to consider more IRS tax guidelines. Despite the change in scope, McArdle once again valued the 71-unit plot at $43.3 million. PX 132, 3217; TT 1963-1972.

In July 2014, Sheri Dillon, on behalf of the Trump Organization, engaged Cushman & Wakefield to appraise land on the Seven Springs property in Westchester, New York. PX 131; TT 1980-1982. Once again, Eric Trump served as the primary point of contact for McArdle, including providing him with proposed comparables. TT 1983-1986. McArdle understood this to be a verbal assignment (meaning the client did not want to receive a written appraisal), but McArdle was obligated to build a work file as he "certainly couldn't keep everything in [his] head." TT 1988-1989. McArdle concluded that the valuation ranged from $36-50 million before discounting to present value, and $29.5 million when discounting was applied. TT 1990-1994. McArdle communicated these results verbally to Eric Trump in August 2014, before closing out the engagement at Sheri Dillon's request in October 2014. PX 3206, 911, 185; TT 1995-1997.

In June 2015, Eric Trump once again retained Cushman & Wakefield to appraise Seven Springs. This time, McArdle was unavailable, so he referred the assignment to a colleague, Tim Barnes. PX 104; TT 2001-2002.

McArdle, whom the Court found credible, stated that Eric Trump's testimony that he was not involved in the appraisal work on the Seven Springs property did not conform to McArdle's recollection of events. TT 2005.

William Kelly

William Kelly is the general counsel of Mazars, a role he assumed in 2018. TT 2111, 2115. Kelly participated in the decision to terminate Mazars' relationship with the Trump Organization in spring 2021. TT 2115-2116. Kelly said that the decision to terminate the relationship was based upon what Mazars "had come to learn about Allen Weisselberg," stating:

> Allen Weisselberg was the CFO of the Trump Organization. He was our main contact at the Trump Organization for the providing –for them providing us financial information. If his representations to us about the accuracy and truthfulness of the financial records that he's providing to us as the outside accountants is compromised, if we can no longer rely on him as CFO, then we can no longer perform our engagements. The engagements we were preparing at the time were preparing tax returns for the corporate entities and Donald Trump individually, as well as doing the statements of financial condition. Both of those engagements require that we rely upon the representations of management, in this case, Allen Weisselberg, the

> CFO. If we are no longer allowed or no longer reasonably allowed to rely on his management, we can no longer do those engagements.

TT 2116-2117; PX 2992. Kelly, on behalf of Mazars, followed up with a letter to the Trump Organization dated February 9, 2022, in which he stated, as here pertinent:

> We write to advise that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011-June 30, 2020, should no longer be relied upon and you should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon.
>
> We have come to this conclusion based, in part, upon the filings made by the New York Attorney General on January 18, 2022, our own investigation, and information received from internal and external sources. While we have not concluded that the various financial statements, as a whole, contain material discrepancies, based upon the totality of the circumstances, we believe our advice to you to no longer rely upon those financial statements is appropriate.

PX 2994; TT 2119-2128. Kelly further emphasized that when Mazars was issuing the SFCs for Donald Trump, Mazars was performing a compilation, which is the lowest level of scrutiny of financial statement preparation, and which relies on the representations and information provided by the client. TT 2128-2131, 2149.

Michael Holl

Michael Holl is an employee of HCC Global ("HCC"), an international specialty insurance group. From 2015-2018, Holl served as an underwriter. TT 2487-2490. In December 2016, Holl was contacted by a broker at AON NY on behalf of the Trump Organization, indicating that the company was seeking additional Director & Officer ("D&O") coverage. TT 2491-2492.

Holl confirmed that to underwrite the account he would need to look at the "financials for those companies to understand what their financial situation is," as it is relevant to assessing the risk. TT 2494. Holl elaborated that "[i]t's relevant because you're trying to find out if they're a successful company and if they're profitable and if they are in debt that they can't manage and what their overall financial health is," and "[i]f they are a bankruptcy risk, there is significant increase in the likelihood of a D&O claim if a company goes bankrupt." TT 2494-2495.

On January 10, 2017, Holl attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained. PX 2985; TT 2498-2499. Holl's contemporaneous email reads: "Saw very few financials but did see the balance sheet for year ends 2015. They assured me that the

one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email also reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communication that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502.

Holl deemed these representations relevant when HCC ultimately decided to extend coverage. TT 2502.

Sheri Dillon

Sheri Dillon is a tax lawyer who provided business and legal advice to the Trump Organization from 2005 through 2020. TT 2527. Throughout her various engagements from 2011-2020, Dillon interfaced with Donald Trump, Donald Trump, Jr. Eric Trump, Ivanka Trump, Patrick Birney, and Jill Martin. TT 2532-2534.

Contrary to the representations made to Holl about no pending litigation or claims, as early as June 2016 Dillon was aware of claims made against the Trump Organization that could trigger liability, and she had discussed such claims with Donald Trump, Jeffrey McConney, and Allen Weisselberg. TT 2540-2555.

Part of her work for the Trump Organization was advising it about potential conservation easements. TT 2531. Dillon explained that a conservation easement is essentially a "negative covenant" in which someone who owns property agrees, in a recorded deed that runs in perpetuity with the land, not to do something, in exchange for a tax deduction that is "equal to the value of the easement." TT 4123-4126.

Dillon recalls working on potential conservation easements at Trump National Golf Club LA ("TNGCLA"), Briarcliff, and Seven Springs. As part of her engagements, Dillon would retain appraisers from Cushman & Wakefield. She explained that obtaining a qualified appraisal to value the potential conservation easement is an essential part of the process, as only a qualified appraisal could determine the value of the tax deduction that could be taken. TT 4127-4128. She clarified that qualified appraisers were tasked with determining the "highest and best use" of a property if it were developed. TT 4141-4142.

When working on a potential conservation easement for TNGCLA, Dillon retained Brian Curry, of Cushman & Wakefield, who valued the driving range on the property at between $27-28 million in 2014. PX 944; TT 2578-2580. On March 12, 2015, Cushman & Wakefield sent an appraisal of the TNGCLA driving range portion of the property that valued it at $25 million as of December 26, 2014; the appraisal also valued the entire TNGCLA property, before any potential conservation easement, at $107 million. PX 1464; TT 2598-2603. Although Dillon could not recall exactly with whom at the Trump Organization she shared this valuation, she knows it

would have gone to McConney, as he "would have needed it." TT 2608-2611. Further, email communications demonstrate ongoing discussions between Dillon, Weisselberg, and Trump, Jr. about the potential conservation easement on TNGCLA. PX 1412; TT 4142-4146. Notwithstanding, the 2015 supporting data and accompanying SFC valued TNGCLA at over $140 million. PX 731; TT 2611-2623.

In 2013, Dillon engaged Cushman & Wakefield, on behalf of the Trump Organization, to explore the potential benefits of donating a conservation easement over parts of the Trump National Golf Club located in Briarcliff. PX 157; TT 2626-2628. In so doing, Cushman & Wakefield was tasked with determining the value of 71 hypothetical residential units that could be built on the property. TT 2628; PX 3261. On October 1, 2013, David McArdle emailed Dillon and her colleague, indicating that McArdle was ready to move forward with a written appraisal report on Briarcliff. PX 3197. On October 16, 2013, Dillon emailed McArdle, as here pertinent:

> I spoke to Eric and he is aware that the more supportable value at this point is around $45M… I further explained that we needed to reconcile the comp sales approach with the [discounted cash flow], and in so doing, you and your team arrived at a value of around $45M, which remains quite substantial. I also noted that in the event the claimed value was too far off as ultimately determined by the IRS or a Court, a taxpayer could be subject to [a] valuation misstatement penalty, and we wanted to ensure that there would be no argument that a valuation misstatement occurred. Eric was pleased with the number.

PX 1465. Later that same day, Eric Trump emailed McArdle and Sheri Dillon, instructing McArdle to finish the appraisal "but hold off sending the appraisal until further notice." PX 3201.

In February 2014, Dillon's firm once again engaged Cushman & Wakefield to appraise Briarcliff. PX 158. In April 2014, Cushman & Wakefield submitted a written appraisal to Dillon, valuing the hypothetical 71-unit development at Briarcliff at $43.3 million. PX 3194; TT 2687.

Dillon confirmed that it would have been her practice to share the values with her client along the way. TT 2687. Notwithstanding, beginning in November 2015, Eric Trump instructed McConney to leave the value of the 71 units at just over $101 million. PX 742, 758, 843. TT 3378-3379. He continued to do this for the 2016, 2017, and 2018 SFCs.

By at least June 2014, Dillon became aware that the Trump Organization's rights to build units at Briarcliff had been reduced from 71 units to 31 units. PX 3261; TT 2701-2702. Notwithstanding, the supporting data for every SFC from 2015-2021 values Briarcliff as if it had the right to build 71 units, and, indeed, explicitly states: "Sale of 71 Mid-Rise units approved." PX 731, 742, 758, 774, 843, 857, 1501.

In October 2012, Dillon, on behalf of the Trump Organization, engaged appraiser Robert Heffernan "to provide a written appraisal… estimating the fair market value of a conservation easement placed on the Client's property located in the town of New Castle, New York (the 'Seven Springs Estate') for federal income tax purposes." PX 908; TT 2703-2704. Email correspondence from Heffernan to Dillon demonstrates that as of December 18, 2012, Dillon was aware that Heffernan valued the potential Seven Springs conservation easement over seven mansion lots at $775,000 per raw lot, an estimate that would have valued the entire seven-mansion development at approximately $5.5 million. PX 3296; TT 2707-2708.

Notwithstanding, the SFC backup data for 2013 demonstrates that on August 20, 2013, Eric Trump advised McConney to value the seven-mansion undeveloped plots on the SFC at a staggering $161 million. PX 708.

By September 8, 2014, McArdle completed another verbal estimate of the value of the seven-mansion development at Seven Springs, this time valuing it at $14 million. PX 169, 181. Notwithstanding, the SFC backup data for 2014 demonstrates that on September 12, 2014, Eric Trump again advised McConney to value the seven-mansion undeveloped plots on the SFC at $161 million. PX 719.

In June 2015, Eric Trump re-engaged Cushman & Wakefield to perform yet another appraisal on the potential Seven Springs conservation easement, this time asking it to value not just the seven-mansion undeveloped lots, but the entire Seven Springs property encompassed by three towns. PX 104; TT 2723. PX 195; TT 2724-2725. On November 6, 2015, Timothy Barnes of Cushman & Wakefield emailed Dillon its appraisal, which valued the entire Seven Springs property at $56.6 million, and the 7-mansion undeveloped lots at $23.5 million. PX 195; TT 2725-2726. As was her customary practice, Dillon informed her client of the appraisal. TT 2727.

David Cerron

David Cerron is the assistant commissioner for business development and special events at the New York City Department of Parks and Recreation ("NYC Parks"). TT 2786-2787.

In February 2010, NYC Parks published a Request for Offers ("RFO") for operation and maintenance of a golf course at Ferry Point Park in the Bronx ("Ferry Point"). PX 3290. Cerron confirmed that NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. Cerron explained that NYC Parks had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars stating that according to Donald Trump's 2009 SFC, which

Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to the RFO. TT 2796. NYC Parks ultimately awarded the contract to the Trump Organization. In doing so, it highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. Cerron testified that NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

Donald Trump signed the license agreement with NYC Parks on February 21, 2012. DX 981. The agreement required him to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit an annual letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. Cerron confirmed that NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks and could lead to a referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation. The Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtained a gaming license for the site. TT 2850; PX 3304, 3306.

Claudia Markarian

Claudia Markarian, previously Claudia Mouradian, was an underwriter at Zurich Insurance from 2010-2020. PX 3324 at 7-10. During the period from late 2017 through 2020, she worked on the Trump Organization account as an underwriter for the commercial surety program. PX 3324 at 8, 18. Markarian worked with the insurance brokerage firm AON during her time working on the Trump Organization account. PX 3324 at 18.

Markarian recalled that when reviewing the Trump financials for her underwriting responsibilities, she was prohibited from retaining a copy of any financials, and she was only permitted to view them at Trump Tower with Allen Weisselberg or Jeffrey McConney, or both,

in the room at all times. Markarian testified that this was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59.

During these on-site reviews at the Trump Organization, which occurred in late 2018 and early 2020, Markarian was shown the 2018 and 2019 SFCs, respectively, which listed as assets real estate holdings with valuations that Allen Weisselberg represented to Markarian had been determined each year by an outside professional appraisal firm. PX 1561, 1552, 3324 at 25-32. Markarian considered Weisselberg's representation, which she recorded in her contemporaneous notes, to be favorable and an indication that the valuations were reliable. PX 1561, 1552, 3324 at 51-75. Notwithstanding Weisselberg's explicit representation to Markarian, the Trump Organization never retained a professional appraisal firm to prepare any of the property valuations for the 2018 and 2019 SFCs. TT 952-955.

Markarian's contemporaneous memorandum for each on-site review reflected the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52.

Markarian testified that she "relied on what [Weisselberg] said" about the valuations being determined by professional appraisers when she made her recommendation that the surety program be renewed in 2019 and 2020. PX 3324 at 32-34. She further relied on Weisselberg's representation that the Trump Organization real estate assets do not fluctuate much in value regardless of economic cycles,[10] and on the values in the 2018 and 2019 SFCs when making her recommendation to renew the programs. PX 3324 at 33-52. Markarian testified that at the time, she had no reason to doubt that Weisselberg was being truthful and honest in his representations and that she accepted at face value his representations about the values contained in the SFCs. PX 3324 at 28-53.

When presented with Weisselberg's testimony that confirmed that the Trump Organization did not engage any professional appraisers to perform valuations of the properties in the SFCs, Markarian testified that Weisselberg's misrepresentations would have been "material" to her analysis, as "without the third party it – it means that there's –it could possibly be less reliance on the numbers that are presented to me." PX 3324 at 52-54. Markarian further testified that Weisselberg's misrepresentations about the cash on hand, and specifically misrepresenting Donald Trump's partnership interest in Vornado as cash available to him, would also have been "material" in her analysis to approve the renewals. PX 3324 at 54-56.

Markarian stated that because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about its financial condition, other than to rely on the financial documents that the client provides to them. PX 3324 at 57. She explained that because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account").

[10] Despite Weisselberg's repeated representations to Markarian, in reality the values in the SFCs for a number of properties varied significantly over time. PDX 3.

David Williams

David Williams has worked at Deutsche Bank for the past 17 years. TT 5324. He is currently a senior lender and team leader in the Private Wealth Management Division. TT 5324.

Williams testified that, generally, a payment default is more material than a covenant default, as it "speaks definitively to the repayment of the loan." TT 5337. Williams stated that he was not aware of any payment defaults on any of Donald Trump's loans with Deutsche Bank. TT 5339.

Williams corroborated the testimony of Nicholas Haigh that Deutsche Bank would apply a standard 50% haircut to the values of assets supplied by a client on an SFC, testifying that "it is – it is after we have made what I would say are generally our standard adjustments that we apply to really any given high-net-worth individual or ultra-high-net-worth individual's provided financial statements." TT 5374-5375, 5382-5384.

Williams confirmed that the numbers to which Deutsche Bank applied its standard haircut in evaluating the credit risk of the Trump loans came from Donald Trump's SFCs. PX 498; TT 5400-5403.

Williams testified that Donald Trump agreed to continue a guarantee requirement "in order to keep a more favorable pricing on the loans." TT 5406-5407, 5417-5419; PX 498.

In summer 2019, Deutsche Bank sent three different letters to Donald Trump, indicating that he was not in compliance with his Debt Service Coverage Ratio covenants under the Trump Chicago, Doral, and Old Post Office loans. PX 520, 521, 522. Williams confirmed that these notices were sent to Donald Trump because the covenant breaches could implicate the personal guarantee. TT 5410-5415. Williams testified that there were two more breaches of the Old Post Office and Trump Chicago loans in 2020. TT 5419-5420. Williams went on to detail that all three loans breached their debt service coverage requirements in 2021, resulting in Deutsche Bank commissioning appraisals on all three properties. TT 5424-5425; PX 561.

Williams confirmed that in July 2021, Deutsche Bank determined to "exit" the client relationship with Donald Trump, stating "we would be opting not to renew or extend that credit facility, and we would advise the client with some advance notice of that." TT 5425-5427; PX 561.

Williams further corroborated that as a lending officer, he would expect a client to provide truthful and accurate information to the bank, and that Donald Trump's net worth and personal guarantee were significant factors in Deutsche Bank's determining whether to underwrite a loan. TT 5427-5428. Williams additionally confirmed his previous deposition testimony, in which he stated that had he determined that Donald Trump's net worth fell below $2.5 billion at any time, he would have recommended that the private wealth division declare an "event of default." TT 5429-5430.

Emily Pereless

Emily Pereless, formerly Emily Schroder, worked at Deutsche Bank from 2007 through 2015. TT 5448-5449. For a time, she worked as an analyst in the lending group of the Private Wealth Management Division. TT 5449-5451.

Pereless confirmed that, at the request of the client, she went to Trump Tower to review Donald Trump's financial statements. TT 5454-5455. She testified that in preparing a credit risk memorandum for a potential credit facility, the credit risk team would consult with Deutsche Bank's Valuation Services Group about market conditions. TT 5455-5456. Pereless confirmed that her responsibility as a lender was to analyze the information provided and compile a report. TT 5459, 5463-5464, 5467.

The Individual Defendant Witnesses

Jeffrey McConney

Jeffrey McConney was Controller of the Trump Organization from the early 2000s until February 25, 2023. TT 581-582; PX 3041 at ¶ 736. At the time of his testimony, McConney was still awaiting receipt of $125,000 of the $500,000 severance package the Trump Organization promised him. TT 582.

McConney reported directly to Allen Weisselberg, the Chief Financial Officer ("CFO"), and to Donald Trump. TT 4910-4911.

McConney took over responsibility for preparing the valuations for Donald Trump's SFCs sometime in the 1990s and had primary responsibility for preparing the valuations and supporting data between 2011 and 2017. TT 583. Beginning in 2016, McConney began receiving assistance from Patrick Birney, who took over primary responsibility for preparing the valuations used in the SFCs after 2017. TT 583-584.

McConney created and maintained annual spreadsheets referred to as "Jeff's Supporting Data" (or "supporting data" or "supporting spreadsheets") that contained the itemized valuations that became the aggregate numbers reported on the SFCs. Each annual version of Jeff's Supporting Data[11] contained two years' worth of information—the current year and the prior year—and included the valuation methodology and valuations for each of the assets used in the SFCs. TT 588. When McConney had primary responsibility for maintaining Jeff's Supporting Data, all decisions about valuation would be made by him, in consultation with Allen Weisselberg. When Patrick Birney first came on board, decisions were made by McConney, Weisselberg, and Birney. Once Birney took over primary responsibility for maintaining Jeff's Supporting Data, Birney and Weisselberg made the initial valuation decisions. TT 589.

[11] The employees of the Trump Organization continued to refer to the annual spreadsheets as "Jeff's Supporting Data" even after McConney turned over responsibility for maintaining and updating the spreadsheets to Patrick Birney. TT 588, 1204, 1254, 1285, 1465.

McConney understood that it was Donald Trump's or his trustees' responsibility to make sure that all financial records and related information were provided to Mazars. TT 590-591. McConney further understood that Donald Trump had engaged Mazars to perform a compilation, which differs significantly from a review or an audit. McConney acknowledged that the preparation of the compilation does not contemplate that the accountants would inquire, perform analytical procedures, assess fraud risk, or test accounting records. TT 592-594. He confirmed that Donald Trump would get final review for each financial statement after McConney and his team prepared it and Weisselberg approved it. TT 596-597, 5047.

McConney's emails and contemporaneous notes indicate that Eric Trump and Donald Trump, Jr. had final review of the SFCs after Donald Trump assumed the presidency of the United States, TT 5079-5084; PX 1361.

McConney testified that he never hid any information from Donald Bender. TT 4915. However, this is belied by the documentary evidence and the testimony of Bender, which conclusively establish that Mazars did, in fact, inquire about appraisals, and that McConney falsely told them that there were none. TT 242-247, 4915, 4930; NYSCEF Doc. No. 1262 at 243.

McConney testified that nearly all the disclaimer and valuation disclosure language that appeared in the SFCs was written by Mazars. However, he was then confronted with his handwritten notes to the draft SFC language that demonstrated that he, himself, marked-up and made changes to the majority of the language and forwarded those changes to Mazars to incorporate. TT 4928-4937, 5055-5059; PX 729, 3054. When confronted with this evidence, McConney conceded that "[m]y memory was incorrect" on direct examination and that he "frequently made changes." TT 5059-5071.

McConney was aware that Donald Trump had no right to withdraw funds from his interest in Vornado Partnerships, and yet he listed the interest on the SFCs from 2013 to 2021 as if it were cash immediately available to Donald Trump. TT 617-626, 5019.

McConney knew that the SFCs had to be GAAP compliant. TT 629-630. He admitted pre-trial that it was "undisputed" that GAAP defines "estimated current value" as "the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." PX 3041 at ¶ 31. After some equivocation, and baseless objections by counsel,[12] McConney confirmed this at trial. TT 627-631.

During the period of 2012-2016, the Trump Organization hired Cushman & Wakefield to appraise 40 Wall Street, as required under the terms of another lending agreement. Doug Larson, of Cushman & Wakefield, was the primary contact on this project, and McConney was the Trump Organization's conduit for all 40 Wall Street appraisals. TT 668-669. As part of these

[12] Counsel for defendants, Christopher Kise, inexplicably tried to assert that McConney was not bound by his clear admission of "undisputed" in his response to OAG's Statement of Material Facts pursuant to 22 NYCRR 202.8-g. However, as the admission was affirmative and unequivocal, counsel's argument is without merit.

appraisals, Larson included cap rate calculations that he viewed as appropriate for the specifics of the property. On the valuations for the SFCs for the corresponding subject years, McConney selected cap rates that were lower than those that Doug Larson selected.[13] The supporting spreadsheets for the same time period credit Doug Larson as the source for the chosen cap rates, notwithstanding that the rates were much lower than those that appeared in Larson's appraisals. When questioned about the difference, McConney admitted that when choosing the lower cap rate, he relied on a generic marketing report that Cushman & Wakefield emailed a large customer base that was derived from data not specific, or even closely related, to 40 Wall Street. TT 660-681, 4995, 5101-5102. McConney further admitted that he made no attempt to adjust the numbers to reflect more accurately the value of 40 Wall Street when he was selecting cap rates. TT 681-682.

When questioned about his working relationship with Doug Larson and his knowledge of these appraisals, McConney's credibility was severely impaired, as he obfuscated and equivocated at length before finally conceding that between 2012 and 2016, when he was preparing the valuations for the SFCs, he was simultaneously acting as the conduit for Doug Larson for information needed for formal appraisals of 40 Wall Street. TT 668-674. He further admitted that despite his knowledge of these Cushman & Wakefield appraisals, he never sought to use any of these values for 40 Wall Street in the SFCs. TT 674-675.

When valuing Trump Park Avenue on the SFCs, McConney knowingly valued rent-regulated apartments using an anticipated selling price that assumed not only that the apartments were unrestricted, but that they had already been renovated, thus failing to discount future value to present value. TT 4946-4953, 5097-5099.

Although he testified that he knew "very little" about conservation easements, McConney said that he would select a value for the conservation easement based on "an appraisal done specifically for the conservation easement that had a before donation and after donation value." TT 5000-5001. However, the SFCs from 2012-2014 demonstrate that McConney ignored several Seven Springs appraisals commissioned by the Trump Organization that valued the potential seven-mansion development at between $5.5 million and $21 million and instead valued the seven-mansion development at $161 million, citing Eric Trump as the source. PX 1075.

McConney testified that for every SFC, Donald Trump valued Mar-a-Lago as if it were a private residence and not a social club, despite knowing that "Mar-a-Lago is a social club." When asked the reason for his doing so, he testified: "I don't remember off the top of my head." TT 5018-5022.

McConney's credibility was further compromised when he was questioned about his testimony in the recent criminal trial of the Trump Organization brought by the District Attorney of New York. Initially, when questioned by OAG, McConney denied that Allen Weisselberg ever asked

[13] Cap rates have an extraordinary effect on the value of a property, and the higher the cap rate, the lower the value. In a single year, McConney selected a cap rate of 3.04% that resulted in a $227 million dollar increase in the value of a property as compared to the appraisal's cap rate of 4.25%. TT 660-664, 678-679.

him to commit fraud on behalf of the Trump Organization. However, when confronted with his sworn testimony from the criminal trial, McConney admitted that Weisselberg did, on more than one occasion, ask McConney to assist him in committing tax fraud. TT 776-778. He further conceded, after initially denying, that even though he knew these activities were illegal at the time he was performing them, he continued to assist Weisselberg in committing fraud, as he was afraid that if he refused Weisselberg's requests he would lose his job. TT 776-778.

Plaintiff questioned McConney about his "Separation Agreement" with the Trump Organization, pursuant to which was to receive $500,000, to be paid in installments, the last of which remains outstanding. TT 5075. Plaintiff questioned him as to whether his agreement includes the same covenant found in Weisselberg's separation agreement that prohibits voluntary cooperation with governmental investigations or any entity "adverse" to the Trump Organization. TT 5075-5076. McConney testified that he could not recall if his agreement contained that covenant, further straining his credibility, as it seems implausible that McConney would not remember such a requirement, given the many investigations in which the Trump Organization has been engaged since McConney signed the agreement.

When asked how he feels today about the work he did on Donald Trump's SFCs, McConney replied: "I feel great. I have no problems with the work I did on this." TT 5041.

Allen Weisselberg

Allen Weisselberg was the CFO of the Trump Organization from 2002 until he was placed on leave in October 2022, after pleading guilty to 15 criminal counts of tax fraud and falsification of business records at the Trump Organization. TT 790; PX 1751, 3041. In that same vein, his testimony in this trial was intentionally evasive, with large gaps of "I don't remember." He conceded that his Separation Agreement, on which he is still apparently awaiting four payments, prohibits him from voluntarily cooperating with any entity "adverse" to the Trump Organization or its former or current employees. PX 1751. That alone renders his testimony highly unreliable. The Trump Organization keeps Weisselberg on a short leash, and it shows.

As CFO, Weisselberg oversaw the Trump Organization's accounting department, although he was not a certified public accountant ("CPA") and did not know any components of GAAP. TT 788-790, 864. Before Donald Trump assumed public office in 2017, Weisselberg reported directly to him. TT 790. McConney reported directly to Weisselberg from the time McConney was hired until the time Weisselberg left the Trump Organization. TT 791.

After Donald Trump assumed the presidency, Weisselberg's reporting structure was "more informal"; he dealt "mostly with Eric Trump," and "periodically" with Donald Trump, Jr. TT 790. From January 2017 through 2021, Weisselberg and Donald Trump, Jr. were the trustees of the Donald J. Trump Revocable Trust and were responsible for the preparation and fair presentation of its SFCs. TT 794-795, 961-963; PX 756, 769, 1016.

From 2011 until at least 2020, Weisselberg had a primary role in preparing the valuations for the SFCs, supervising McConney from 2011 until late 2016, and Birney and McConney from late 2015 until at least 2020. TT 1228-1231, 3561; PX 3041 at ¶ 714.

Each year from 2011 to 2020, Weisselberg signed SFC engagement and management representation letters (the "Management Representation Letters") as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). PX 3041 at ¶ 716-735, PX 753, PX 786.

The Management Representation Letters to Mazars stated, as here pertinent, that the Trump Organization and Donald Trump undertook the following responsibilities:

> (a) the preparation and fair presentation of the financial statements in accordance with the accounting principles generally accepted in the United States of America.
> (b) designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial statements.
> (c) preventing and detecting fraud.
> (d) identifying and ensuring that the company complies with the laws and regulations applicable to its activities.
> (e) the selection and application of accounting principles.
> (f) making all financial records and related information available to [Mazars] and for the accuracy and completeness of that information.

See, e.g., PX-791. When Weisselberg signed the Management Representation Letters, he understood their contents, that Mazars was relying on those representations, and that Mazars would not have issued the SFCs without having secured those representations. TT 835-837, 969. Weisselberg further admitted that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict or be inconsistent with the values represented in the SFCs. TT 846-847.

Notwithstanding his lack of knowledge of GAAP and his not knowing what the term "estimated current value" means, each year, Weisselberg represented to Mazars that the SFCs were presented in conformity with GAAP and that assets in the SFCs were stated at their estimated current value. TT 839-842. 940; see, e.g., PX 706.

Weisselberg provided dozens of certifications to lending institutions affirming the truth and accuracy of the SFCs, knowing that if he failed to do so, Donald Trump would be in breach of his various loan covenants. TT 923-935.

Between 2011 and when Donald Trump became president, before finalizing each SFC and its valuations, Weisselberg would give them to Donald Trump for final review and changes. TT 898. Weisselberg would not have permitted a final draft of the SFC to be issued to Mazars unless Trump had reviewed and was satisfied with it. PX 3041 at ¶ 676; TT 900.

Once Donald Trump assumed the presidency, Weisselberg would give the SFCs to Eric Trump or Donald Trump, Jr. for final review. TT 899.

Weisselberg testified that "I certainly am not one to value a property. I have no idea what properties are worth." TT 896. Yet, Weisselberg also testified that he knew that the selling price, not the asking or offering price, is the relevant number in selecting comparable properties. TT 887-888.

Weisselberg had final approval over the 40 Wall Street budgets and was, thus, aware that in 2011, the Trump Organization had a negative cash flow from 40 Wall Street. TT 1499, 1520-1521. He nonetheless directed Donna Kidder, a Trump employee who worked in accounting, to prepare a document containing a series of implausible assumptions to generate a $26.2 million net operating income.[14] Weisselberg concealed from Kidder that these assumptions would be used for the SFC's valuations. TT 1523-1526, 1529.

Weisselberg confirmed that insurance company representatives could only review financial information at Trump Tower and were not permitted to make copies or take anything with them. TT 1187.

On January 9, 2023, Weisselberg entered into a "Separation Agreement and General Release" with the Trump Organization wherein the Trump Organization promised him a total of $2 million dollars in installment payments as long as he performed his obligations under the agreement. Section 3(d) of the separation agreement provided that:

> [E]xcept for acts or testimony directly compelled by subpoena or other lawful process issued by a court of competent jurisdiction, he will not: (1) communicate with, provide information to, or otherwise cooperate in any way with any other person or entity, including his counsel or other agents, having or claiming to have any adverse claims against the Company or any person or entity released by this Agreement, with regard to the adverse claim; or (2) take any action to induce encourage, instigate, aid, abet or otherwise cause any other person or entity to bring or file a complaint, charge, lawsuit or other proceeding of any kind against the Company or any person or entity released by this Agreement.[15]

PX 1751; TT 796-798. Weisselberg affirmed that he understood that under the terms of the separation agreement, he was not permitted to cooperate voluntarily with any law enforcement agency adverse to the Trump Organization, including the Attorney General's Office. TT 1193-1195.

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[14] As discussed *infra*, 40 Wall Street never reached a net operating income of $26.2 million, but, instead, ran a deficit as high as -$20.9 million through 2015. PX 636, 652.

[15] Although not before this Court, such provision would almost certainly be unenforceable as against public policy, to the extent that it restricts full and truthful cooperation with legal investigations and actions. Denson v Donald J. Trump for President, Inc., 530 F Supp 3d 412, 437 (SDNY 2021) (Trump campaign's non-disclosure and non-disparagement provisions are invalid and unenforceable as against public policy).

Donald Trump, Jr.

Donald Trump, Jr. started his employment at the Trump Organization in 2001. TT 3160, 3976. Early in his tenure, he worked as a project manager at Trump Park Avenue, where he did a "[l]ittle bit of everything; design, construction, overseeing some of the banking relationships we had, anything and everything." TT 3161-3162. Trump, Jr. affirmed that, at the time, he knew about the impact of rent stabilization laws on development at Trump Park Avenue, and he was aware of the limitations imposed by that law. TT 3162. Trump, Jr. also served as project manager for Trump Chicago, working on "everything from design, architecture, sales and marketing, finance, construction… [y]ou name it." TT 3162-3163.

Since at least 2011, Trump, Jr. has served as an executive vice-president of the Trump Organization, reporting to his father, until Donald Trump assumed the presidency in January 2017. TT 3164, 3167. After that, Trump, Jr. and Eric Trump served as co-chief executive officers of the Trump Organization and, collectively, with Allen Weisselberg, had "ultimate authority over decisions made at the Trump Organization." TT 3164-3170. TT 3286-3288. In addition to their role as co-CEOs of the Trump Organization, beginning in January 2017, Trump, Jr. and Eric Trump were also presidents, directors, executive vice presidents, and/or chairmen of various Trump Organization entities. PX 1329 at 13-25.

Also in January 2017, Trump, Jr. and Weisselberg became trustees of the Donald J. Trump Revocable Trust, which Trump, Jr. understood to be "the trust that governed all of my father's assets[,] especially while he was president." TT 3170, 3179, PX 769. When examined about his knowledge of Allen Weisselberg's departure from the Trump Organization, Trump, Jr. testified that Weisselberg was terminated from his role as trustee because of his criminal indictment, but that he was not terminated from his employment at the helm of the Trump Organization for that reason. TT 3170-3172. Trump, Jr. then testified that he does not know the details of how or why Weisselberg ended his employment relationship with the Trump Organization, which this Court finds entirely unbelievable. TT 3172-3173.

On January 20, 2021, Donald Trump re-appointed himself as a trustee of the Donald J. Trump Revocable Trust and removed Trump, Jr., while leaving Weisselberg as a "business trustee." PX 1016; TT 3185-3186. After Weisselberg was terminated from his role as trustee in June of 2021, Trump, Jr. was re-appointed trustee on July 7, 2021. Apparently,[16] Trump, Jr. remains the sole trustee of the Donald J. Trump Revocable Trust. TT 3181-3185, 3190-3191; PX 1015, 1016.

In early 2016, at the request of "one of the three children" (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business, in anticipation of taking over. PX 1293; TT 1181-1186. Trump, Jr. and Eric Trump were continuously kept apprised of the operating financials by Weisselberg. TT 3270-3273; PX 1454.

In January 2017, Trump, Jr., along with Eric Trump, took over responsibility for running the Trump Organization. TT 3982-3983.

[16] When asked if he was aware if his father, Donald Trump, is serving as a current trustee of the Donald J. Trump Revocable Trust, Trump, Jr. testified "I don't recall." TT 3191.

In March 2017, Trump, Jr. and Eric Trump were given power of attorney over certain of their father's real estate and banking relationships. PX 1330; TT 3174-3177. The power of attorney explicitly states "[t]he authority granted hereunder is solely with respect to the execution and delivery of certifications and similar documentation (including, without limitation, compliance certificates) in connection with existing financings in which Donald J. Trump is guarantor." PX 1330; TT 3177-3178, 3433-3434.

Trump, Jr. stated that his father had no role in decision-making at the Trump Organization between January 20, 2017 and January 20, 2021, but that he resumed "some" decision-making after January 20, 2021, choosing certain activities in which to get involved. TT 3173-3174, 3984.

From January 2017 through 2021, Trump, Jr. and Weisselberg, as trustees of the Donald J. Trump Revocable Trust, were responsible for the preparation and fair presentation of the SFCs. See, e.g., PX 756; TT 961-963. Trump, Jr. acknowledged that as a trustee, he was subject to fiduciary responsibilities.

In his capacity as trustee, Trump, Jr. certified that he was "responsible for the accompanying statement of financial condition … and the related notes to the financial statement in accordance with accounting principles generally accepted in the United States of America." See, e.g., PX 756. He did this every year from 2017 to 2021 despite having no knowledge of the requirements of GAAP, never having been employed in a position that required him to apply GAAP, and never having received any training on applying GAAP. TT 3155-3156. In his capacity as trustee, Trump, Jr. also certified that the values of assets contained in the SFCs were "estimated current values." See, e.g., PX 756.

On March 3, 2017, Alan Garten, chief legal officer for the Trump Organization, forwarded Trump, Jr. an email from Forbes that, *inter alia*, questioned the claimed size of Donald Trump's Trump Tower Triplex and cited that property records indicated it was only 10,996 square feet. PX 1344. Trump, Jr. acknowledged receiving the email, and he responded that same day with: "Insane amount of stuff there." PX 1344. Notwithstanding, four days later, on March 10, 2017, Trump, Jr., along with Weisselberg, signed a Management Representation Letter to Mazars in which they represented the value of the Triplex based on the false assumption that it was 30,000 square feet. PX 741; TT 3231-3234. Trump, Jr. testified that he could not recall if he did any fact checking or "anything" in response to the Forbes inquiry, despite specifically affirming the following representations in the Management Representation Letter:

> (2) We have made available to you all financial records and related data, and any additional information you requested from us for the purpose of the compilation. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation.
>
> …

(4) We acknowledge and have fulfilled our responsibility for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the personal financial statement that is free from material misstatement, whether due to fraud or error.

(5) We acknowledge our responsibility for designing, implementing, and maintaining internal control to prevent and detect fraud.

(6) We have no knowledge of any allegations of fraud, or suspected fraud, affecting us that could have a material effect on the personal financial statement.

PX 741; TT 3231-3234. When asked on whom he relied to assure himself that making the representations in the Management Representation Letter was appropriate, Trump, Jr. testified: "I don't recall who I relied on." TT 3236. Yet, when he signed the certifications, Trump, Jr. "intended for the bank to rely upon [them]." TT 3241, 3250.

Trump, Jr. signed certifications verifying the accuracy of the SFCs submitted to Deutsche Bank in 2017, 2018 and 2019. See, e.g., PX 1386, 393; TT 3238-3239. While disclaiming responsibility for the SFCs contents, Trump, Jr. testified that he "would have sat with the relevant parties," which he identified as Weisselberg, McConney, and Bender, to discuss the SFCs. TT 3238-3241.

Trump, Jr. also certified to Mazars that there were no significant changes in Donald Trump's net worth in 2017 and 2018, upon which Mazars relied in issuing the No MAC letters to NYC Parks to fulfill Donald Trump's obligations under the Ferry Point contract. PX 3280, 3285. In 2023, Trump, Jr. approved the sale and assignment of the Ferry Point contract to Bally's for $60 million, with an additional $115 million to be paid to the Trump Organization should Bally's obtain a gaming license for the site. PX 3304, 3305, 3306; TT 3261-3268.

Despite disclaiming responsibility for or knowledge of the SFCs contents, Trump, Jr. still insisted that the SFCs were "materially accurate." TT 3275-3276.

Trump, Jr. mistakenly testified that Mark Hawthorn is the current chief financial officer ("CFO") of the Trump Organization, claiming that he replaced Allen Weisselberg. TT 3282-3283, 3987. However, the CFO position has remained unfilled since Allen Weisselberg departed the Trump Organization. TT 5245-5248.

Eric Trump

Eric Trump joined the Trump Organization right after college in 2006. TT 3285. From the time he became an executive vice president in 2014, until Donald Trump assumed the presidency in January 2017, the hierarchy of the Trump Organization was like a pyramid, with Donald Trump at the top. TT 3286. During this period, Eric Trump reported directly to his father. TT 3287.

In early 2016, at the request of "one of the three children" [17] (referring to Donald Trump's three adult children), Patrick Birney created and distributed to Eric Trump, Ivanka Trump, and Donald Trump, Jr. a "Trump Organization Operating Financial Summary 2015" to keep them informed of the performance of the business. PX 1293; TT 1181-1186. Allen Weisselberg affirmed that he was directed to advise Eric, Ivanka, and Trump, Jr. of the performance of the business "as Mr. Trump had now become president," "[t]hey wanted to be knowledgeable about the running of the business… [s]o [in] 2016, he was in the process of running for president and they wanted to get up to speed on how the business was operating." TT 1185-1186.

Beginning in January 2017, Eric Trump, Trump, Jr. and Weisselberg ran the day-to-day operations of the Trump Organization. TT 3288. Eric Trump confirmed that beginning in January 2017, he did not report to anyone, although he confirmed that post-presidency, he resumed following his father's directives. TT 3289.

Eric Trump became involved in the Seven Springs project in 2012. TT 3289-3290. He testified that "I never had anything to do with the Statement of Financial Condition." TT 3292. However, McConney's supporting spreadsheets from 2012-2014 indicate that he relied on Eric Trump for the valuations of Seven Springs, which were inflated to $161 million for the undeveloped seven mansions, far more than the $21 million appraised value, of which Eric Trump was aware. PX 793, 708, 719.

Eric Trump's credibility was severely damaged when he repeatedly denied knowing that his father ever even compiled an SFC that valued his assets and showed his net worth "until this case came into fruition." Upon being confronted with copious documentary evidence conclusively demonstrating otherwise, he finally conceded that, at least as early as August 20, 2013, he knew about his father's SFCs (begrudgingly acknowledging: "It appears that way, yes"). TT 3292-3294, 3300-3304, 3307-3316, 3319-3336; PX 1071, 1079, 1112, 1113, 1075, 3333, 1091, 1265, 3332.

Moreover, emails indicate that contrary to Eric Trump's testimony, McConney relied on Eric Trump for the $161 million valuation of the undeveloped seven-mansion plot at Seven Springs, from 2012-2014. PX 1075. In particular, an August 20, 2013 email from Jeff McConney to Eric Trump, with the subject "Seven Springs," reads: "Hi Eric, I'm working on your Dads [sic] annual financial statement. I need to value Seven Springs. Attached please find how we valued it last year. Can you let me know when you have time to talk about this year's valuation? Thanks Jeff." PX 1075.

When the documentary evidence against him became overwhelming, Eric Trump reversed his previous testimony:

> Q. It is correct that when you received this e-mail in August of 2013, you understood that your father had an annual

[17] After much obfuscation on the stand, initially testifying that he could not recall who asked Birney to put together the 2015 operating financial summary, Weisselberg ultimately conceded that it was "one of the three children" but could not "recall which child it was." TT 1184-1185.

> financial statement and you understood that Mr. McConney was asking you for information specifically to assist him in working on the notes to the annual financial statement; isn't that correct?
>
> A. Yes.

TT 3325, 3339.

Although Eric Trump advised McConney in August 2013 to continue to use the $161 million value for the proposed seven-mansion development at Seven Springs, emails demonstrate that Eric Trump was aware of a valuation by a professional appraiser, engaged by the Trump Organization, who valued the hypothetical development at approximately $5.5 million. PX 908, 3296; TT 3342-3349.

By September 8, 2014, a mere four days before Eric Trump advised McConney to continue using $161 million as the value for the seven-mansion development in the 2014 SFC, David McArdle of Cushman & Wakefield had completed an appraisal for the property and delivered a verbal estimate to Eric Trump of $14 million. PX 169, 181, 3331; TT 3349-3354.

Eric Trump's testimony that he had very limited involvement in the appraisal work that McArdle performed on Seven Springs and Briarcliff was shown to be false when he was confronted with the ample contemporaneous documentary evidence demonstrating otherwise. PX 133, 1074, 3206, 3327, 3207, 3189, 3190, 3328, 3195, 3196, 3204, 3202, 3201; TT 3360-3364, 3367-3381, 3383-3385, 3427-3432. He unconvincingly tried to distance himself from this evidence, asserting that he was not focused on it because, "I am a construction guy." TT 3385.

Despite retaining McArdle in August 2013 to value the proposed 71-units at Briarcliff, and receiving a professional appraised value of $45 million, Eric Trump directed McConney to value the proposed units at over $101 million in the 2014-2018 SFCs. PX 719, 742, 758, 843; TT 3378-3379.

In 2020, Eric Trump, as attorney-in-fact for his father, signed three certifications based on the SFCs and sent to Deutsche Bank to satisfy obligations for the Trump Chicago, Doral, and Old Post Office loans. PX 518. TT 3434-3438. In 2021, again as attorney-in-fact for his father, Eric Trump signed two certifications based on that year's SFC, and sent them to Deutsche Bank to satisfy obligations under the Doral and Old Post Office loans. PX 517; TT 3438-3442.

When questioned about his knowledge and involvement in valuing Mar-a-Lago, Eric Trump adamantly maintained that it was appropriate to value Mar-a-Lago as a private residence, even though it was being taxed as a commercial club and the deed prohibited, in perpetuity, use of it as anything other than a social club. TT 3445-3451; PX 1013.

When confronted with Patrick Birney's testimony that Eric Trump and Trump, Jr. participated in a video conference call in fall 2021 to discuss the preparation of the 2021 SFC, Eric Trump acknowledged that he would have "no reason to doubt Pat." TT 3385-3391.

Eric Trump, on behalf of the Trump Organization, signed Allen Weisselberg's separation agreement, in which, in exchange for $2 million in installment payments, Allen Weisselberg agreed, *inter alia*, not to disparage or criticize the Trump Organization or its current or former employees, and not to cooperate voluntarily with law enforcement or anyone with adverse legal claims to the Trump Organization unless compelled to by a court. PX 1751; TT 3451-3457. Eric Trump took responsibility for negotiating the terms of the separation agreement. TT 3457.

Donald Trump

Donald Trump is the beneficial owner of the collection of companies branded as "the Trump Organization." TT 3472. From May 1, 1981 through January 19, 2017, he was its Director, President, and Chairman. TT 3472.

He is also the sole beneficiary of the Donald J. Trump Revocable Trust, under which all Trump Organization assets are held. TT 3472. After he assumed the presidency in 2017, Donald Trump appointed Donald Trump, Jr. and Allen Weisselberg as the trustees of the trust. TT 3474. When he left the White House in 2021, Donald Trump re-appointed himself as the sole trustee of the trust, stating that "I figured that I would be back in the business world for a little while… So, I figured that I would be back in business, I might as well be the Trustee." TT 3475. However, on July 7, 2021, Donald Trump once again removed himself as trustee, stating that "I think we were at a position where I was gaining more and more confidence in my family in terms of business." PX 1720; TT 3475-3476. He re-appointed Trump, Jr. and Weisselberg as trustees. TT 3476-3477.

Donald Trump testified that Weisselberg and McConney were responsible for maintaining complete and accurate books and records of the Trump Organization. TT 3617. Donald Trump confirmed that Weisselberg and McConney prepared the supporting data on which the SFCs were based before coming to him for final review. TT 3491. Donald Trump acknowledged that he reviewed the SFCs each year from 2011 to 2017 before they became final, further adding that "I would see them. And I would maybe, on occasion, have some suggestions." TT 3478, 3513. He recalled that on specific occasions Weisselberg and McConney asked his opinion about the valuations of 40 Wall Street, Seven Springs, and his limited partnership with Vornado. TT 3495-3496; 3519-3522; PX 3344.

Donald Trump also acknowledged that, as he certified to Mazars in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements. PX 730; TT 3481-3482, 3564-3568. He understood that Deutsche Bank would rely on his certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630.

Donald Trump insisted that the values within the SFCs were not only not fraudulently inflated, as this Court has already found, but that, if anything, they were deflated, as the following exchange with OAG demonstrates:

Q. In light of your expertise in real estate, do you recall ever thinking that the values were off in your Statements of Financial Condition?

A. Yeah, on occasion.

Q. What were some of those occasions?

A. Both high and low; both high and low.

Q. Which occasions do you recall?

A. I thought that Mar-a-Lago was very underestimated, but I didn't do anything about it. I just left it be. It didn't matter, I didn't care, because the numbers you are talking about here is, you know, they are very big numbers, very, very big. Far bigger – the values are far bigger than what is on the financial statement. I thought Mar-a-Lago was underestimated. I thought 40 Wall Street was very underestimated because that building has tremendous value. I thought that there were numerous other things. I thought Doral was very underestimated. I thought it was considerably more valuable. Not necessarily [its] golf courses, but it is right in the middle of Miami, right next to the airport. I would say you could build thousands of units and hotels on the site. So you don't look at it as a golf course. It is a great golf course, very successful, four of them, four courses. One was sold. It was five. One was sold that was a little disconnected, and [I] sold it. But I thought Doral was very underestimated.

…

Q. [I]f anything, do you think the statement undervalued your assets; is that correct?

A. Yes, by a lot. The financial statements.

TT 3487-3488, 3495.

When asked about his limited partnership interest in Vornado, and specifically, whether he had control over the assets, Donald Trump equivocated several times, extolling the virtues of his limited partnership, before ultimately conceding: "In the true sense, no." TT 3518-3519.

When examined about the valuation of Mar-a-Lago, Donald Trump did not recall having any specific conversations with Weisselberg or McConney about valuing it as a private residence, although he conceded that it was valued on the SFCs as if it could be sold as a private residence.

TT 3527-3530. When confronted with the 2002 deed[18] in which he signed away, in perpetuity, the right to use or develop Mar-a-Lago as anything other than as a social club, in exchange for a conservation easement tax benefit, he offered that "when you say, 'intend,' intend doesn't mean we will do it." PX 1730; TT 3533-3535.

Nonetheless, Donald Trump insisted that he believed Mar-a-Lago is worth "between a billion and a billion five" today, which would require not only valuing it as a private residence, which the deed prohibits,[19] but as more than the most expensive private residence listed in the country by approximately 400%.[20] TT 3530.

When questioned about Aberdeen, and whether he was aware that the SFCs for 2014-2018 valued the property as if the Trump Organization could build 2500 year-round private residences (when in fact, they had received permission to build only 500), Donald Trump testified: "I don't know, but it could very well be. It's sort of like a painting. You could do pretty much what you want to do. The land is there. You could do what you want to do. So you could do either one of them, actually." TT 3539-3547. When confronted with evidence that, in 2014, the Trump Organization had submitted a statement to UK regulators stating that the Trump Organization did not intend to develop the Aberdeen property any further because of Donald Trump's opposition to wind farms, Trump testified: "At some point that will be developed into a magnificent job. I just don't want to do it now." TT 3547-3549.

Notwithstanding the foregoing, the 2014-2018 SFCs valued Aberdeen not only as if Donald Trump had permission to develop 2500 private year-round residences, which he did not, but also as if those residences had already been built, and the SFCs and supporting data failed to account for any development costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

When questioned about whether he had ever inflated the value of 40 Wall Street, Donald Trump was confronted with a Forbes article, including a published audio recording, dated September 21, 2022, that reported that Trump had told Forbes in 2015 that 40 Wall Street was 72 stories tall, when in fact, it is only 63, resulting in an overvaluation of $50 million. The article also reported that Donald Trump told Forbes that 40 Wall Street had a net operating income of $64 million in 2015, when in fact, the building ran a deficit[21] of more than $8.7 million for the 12-month period ending on March 31, 2015. TT 3568-3576; PX 652, 636. When asked if he was misquoted in the Forbes article, Donald Trump replied "I don't know. I don't know what I said." TT 3571.

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[18] See further discussion of Mar-a-Lago *infra*.

[19] A fact of which he is well aware, having signed the deed himself.

[20] According to a CNBC report, as of January 7, 2022, the most expensive private family residence listing in the United States was $295 million, for a newly developed 105,000 square foot mega-mansion in Los Angeles, California. https://www.cnbc.com/2022/01/07/most-expensive-home-in-america-lists-for-295-million-may-head-to-auction.html.

[21] 40 Wall Street also ran net operating deficits in 2013 and 2012 ranging from -$7.3 million to -$20.9 million. TT 3577-3579.

When asked if he still approved of the work that McConney and Weisselberg did in preparing the SFCs from 2011-2017, Donald Trump testified: "As far as I know I do. You haven't shown me anything that would change my mind." TT 3551.

Donald Trump stated he was not involved in the preparation of the 2021 SFC, and that it would have been prepared by Weisselberg, McConney, Trump, Jr., and Eric Trump. TT 3523.

Donald Trump was aware that receiving loans from the Deutsche Bank Private Wealth Management Division required him: to provide a personal guarantee; to maintain a minimum net worth of $2.5 billion; to maintain unencumbered liquidity of $50 million at all times; and to submit annual SFCs to Deutsche Bank, so that Deutsche Bank could test his compliance with the loan covenants. TT 3586-3601, 3604-3614; PX 426, 312, 307, 1844, 309, 394, 503.

When Donald Trump sold the Old Post Office hotel, he paid off the Deutsche Bank loan, and the following profits were distributed: $126,828,600 to Donald Trump; $4,013,024 to Eric Trump; $4,013,024 to Donald Trump, Jr., and $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

When questioned about Weisselberg's guilty plea to tax fraud in connection with his employment at the Trump Organization, Donald Trump challenged that Weisselberg had committed any wrongdoing (to which Weisselberg admitted), saying "I mean is there something wrong… I mean IBM executives get apartments that are compensated by IBM. And lots of other companies do. But people that work for me can't be so compensated? I don't know, I don't think that's a big thing. Is it?"[22] TT 3632-3634.

Overall, Donald Trump rarely responded to the questions asked, and he frequently interjected long, irrelevant speeches on issues far beyond the scope of the trial. His refusal to answer the questions directly, or in some cases, at all, severely compromised his credibility.

The Party Witnesses

Donna Kidder

Donna Kidder joined the Trump Organization in 2007 as a senior accountant and currently serves as Assistant Controller. TT 1491-1492. Since at least 2008, she has overseen preparing spreadsheets illustrating the cash positions of each Trump Organization entity for the purpose of enabling Allen Weisselberg to provide Donald Trump with weekly updates.[23] TT 1513-1515.

From 2011-2021, Kidder also prepared, in consultation with Weisselberg and Matthew Calamari (another Trump Organization employee), budget projections for 40 Wall Street and Trump Tower that were then incorporated into financial statements sent to third parties. TT 1520-1524;

[22] The record does not reflect whether IBM executives pay taxes on their perks.

[23] Kidder confirmed that the practice was the same after Donald Trump became president, except the reports did not go directly to Donald Trump. TT 1514.

1529-1533. Weisselberg directed Kidder to assume certain things when preparing the budget projections, such as presupposing that any vacant space remaining in a property would be fully leased by the end of the year and omitting management fees from affiliated entities (falsely claiming that "payment[s] to an affiliated company" did not have to be included in costs). TT 1524-1525, 1536-1539.

Weisselberg reviewed and approved any financial document that went to an outside party. TT 1530-1533.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that Donald Trump would receive through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of how many deals were finalized or the pace at which offers were being received. TT 1550-1556; PX 774, PX 3168.

Patrick Birney

Patrick Birney is a current employee of the Trump Organization. He started there in 2015 as a senior financial analyst, and in the eight years since, he has held the titles of Associate, Assistant Vice President of Financial Operations, and Vice President of Financial Operations, the title he currently holds. TT 1198-1199. Patrick Birney is neither a CPA nor a licensed appraiser, and he has received no training in applying GAAP or Accounting Standards Codification 274 ("ASC-274"). TT 1199; 1211.

Before joining the Trump Organization, Birney worked at AON, an insurance broker, in claim management, where he serviced the Trump Organization insurance accounts. TT 1199-1201. While at AON, he liaised with who people referred to as the "Team of Four" that was comprised of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen, who were responsible for overseeing the Trump Organization's insurance program. TT 1200-1201.

From in or around November 2016 through 2021, Birney prepared the initial valuations for Donald Trump's SFCs. TT 1207-1208, 5305. Birney maintained Jeff's Supporting Data, which referred to the spreadsheets that supported the numbers on Donald Trump's SFCs. He also maintained the "backup," which referred to "anything that was used to" support the information on Jeff's Supporting Data. TT 1204, 1207-1209.

When Birney took over for Jeffrey McConney in preparing and maintaining Jeff's Supporting Data, he would show his draft to and ask questions of Weisselberg, and Weisselberg would review them, answer the questions, and adjust whatever he deemed appropriate. TT 1212, 1213; 1220-1228.

When Birney took over primary responsibility for preparing and maintaining the SFCs' supporting data, McConney still selected cap rates, appropriate comparables, and valuation methods. TT 1220-1228.

When valuing Trump Tower for the 2018 and 2019 SFCs, Weisselberg instructed Birney to remove the management fees from the net operating expenses, even though they were an expense, and to apply a 2.67 cap rate, despite Birney's raising concerns with Weisselberg that he might not be able to support such a low cap rate. TT 1310-1318, 1332-1342.

Birney confirmed that the only reason the Trump Tower Triplex's square footage on the supporting spreadsheets was updated to reflect accurately the size was in response to the Forbes article. TT 5592-5593. To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Between 2017 and 2019, Weisselberg told Birney that Donald Trump wanted to see his net worth on his SFCs increase. TT 1409-1410.

Birney stated that the process of preparing the 2020 supporting data for the SFC was different than it had been for the years 2016-2019 in that "there was more input from more people," specifically identifying Ray Flores, Adam Rosen, and Alan Garten. TT 1229-1231. The process for preparing the 2021 SFC was similar to that of 2020, with the exception that Weisselberg was not involved and McConney was "barely involved." TT 1233.

Mark Hawthorn

In 2016, the Trump Organization hired Mark Hawthorn, a CPA, as the Chief Accounting Officer for Trump Hotels. Currently, he is the Chief Operating Officer of Trump Hotels. TT 1414-1416, 1421. The role of Chief Executive Officer of Trump Hotels has remained vacant since its last CEO departed in May 2022. TT 1417. Hawthorn currently reports directly to Eric Trump, who has overseen the hotel division since at least 2016, and whom Hawthorn understood to be the chief decision-maker at the company. TT 1417-1421, 5128-5129. Hawthorn oversees accounting and finance for the hotels' properties, and he frequently interacted with Allen Weisselberg, Jeffrey McConney, Donna Kidder, and Patrick Birney, who collectively oversaw the separate corporate accounting group. TT 1419-1421.

Hawthorn conceded that including the Vornado partnership interest in the cash asset category of Donald Trumps' SFCs was inaccurate. TT 1414-1454.

Hawthorn affirmed that the requirements of GAAP must still be followed when performing a compilation. TT 5279. Although Hawthorn was the only CPA with knowledge of GAAP in the Trump Organization senior management, and, thus, the only one qualified to calculate correctly the present value of future cash flows to estimated current values, neither Weisselberg, nor McConney, nor Birney ever once asked for Hawthorn's assistance in preparing the SFCs. TT 1487-1489, 5139.

When Weisselberg left the Trump Organization, Hawthorn took over part of his responsibilities in the corporate accounting department, although he never participated in preparing the supporting data for any of Donald Trump's SFCs. TT 5244-5245.

On September 8, 2022, the Trump Organization, by Adam Rosen, requested that Deutsche Bank forego the requirement that Donald Trump submit his annual SFC on his outstanding loan, and, instead, accept a "one-page spreadsheet that shows his material assets and liabilities but does not show any valuations of real estate." PX 563; TT 5259-5265. On September 23, 2022, Deutsche Bank rejected that request, making it clear that, "[th]e modified financial reporting you have proposed is not acceptable to Deutsche Bank," and further quoting the covenant of the loan that requires submission of an SFC. PX 563. Hawthorn testified that, notwithstanding this correspondence, it was the Trump Organization's position that Deutsche Bank did not require the submission of further SFCs, notwithstanding that the Trump Organization continued to seek an extension from Deutsche Bank of Donald Trump's time to submit an SFC. TT 5263-5270; PX 562. Hawthorn ultimately conceded that he was not suggesting "that there was ever a point in the life of this loan where the guarantor ceased to have an obligation to submit a compliance certificate attaching Mr. Trump's Statement of Financial Condition." TT 5272.

Hawthorn confirmed that "the company no longer prepares a Statement of Financial Condition," again insisting it is not required by any lenders. TT 5282-5284.

Raymond Flores

Raymond Flores joined the Trump Organization in 2012 as an analyst on the acquisitions and development team. In 2014 he was promoted to associate, and in 2016 he was promoted to vice-president, where he began negotiating financial agreements and managing properties. TT 2038-2039. From 2016 until he left the Trump Organization in March 2022, he reported to Donald Trump, Jr. and Eric Trump. TT 2040-2041.

While vice president, Flores interacted weekly with Allen Weisselberg, explaining that Weisselberg would reach out to him for information about certain properties that Flores had a role in managing and overseeing, including the Old Post Office in Washington D.C., the Doral golf resort, and the Chicago hotel. TT 2042. During that time, McConney would also ask for information about the properties that Flores oversaw. TT 2042-2043.

Beginning in 2020, and at the direction of Alan Garten, chief legal officer, Flores helped prepare the supporting valuations and data for the SFCs. Garten also asked him to review the statements and the underlying assumptions that went into the valuations. TT 2043-2046. In preparing the 2020 supporting data, Flores worked with Garten, Adam Rosen, Weisselberg, McConney, and Patrick Birney. TT 2046.

When asked about specific actions, meetings, discussions, phone calls, methodologies, and valuations that went into preparing the supporting data, Flores consistently and repeatedly testified that he "did not recall." TT 2060-2063; 2075-2082, 2085-2089, 2750-2751.

What Flores did not recall is memorialized in emails and voicemails. Flores repeatedly denied any recollection of performing a cash flow analysis of Niketown in 2020 and denied any recollection of McConney asking him to come up with additional reasoning to justify using a four percent cap rate on Niketown in the 2020 valuations. He was then confronted with a

voicemail message that McConney left for him on Christmas Eve of 2020, asking Flores to come up with additional reasoning to justify using the four percent cap rate on Niketown. When presented with the voicemail, Flores still claimed not to remember any such events. TT 2748-2756.

Similarly, he denied recalling having worked on the 2021 SFC supporting data. He was then confronted with a voicemail message that he left for Patrick Birney on August 2, 2021, stating that Eric Trump had asked Flores to reach out to Birney about preparing the 2021 SFC data. TT 2756-2759. Again, Flores claimed this voicemail did not refresh his recollection on whether he was involved in preparing the 2021 SFC. TT 2759.

Flores was also a conduit with a firm, Marvin F. Poer & Company ("Poer"), that handled property tax assessment appeals in Florida for the Trump Organization. TT 2762; PX 3211. In 2020, the property appraiser determined the market value of Doral to be $78 million, a fact of which, emails reveal, Flores was acutely aware. PX 3209, PX 3211. Notwithstanding, the supporting data for the 2020 and 2021 SFCs value Doral at $345 million and $297 million, respectively. PX 857, 1501. Flores denied any recollection of this, despite the emails that demonstrate his active participation. TT 2772-2773.

In 2020, the Trump Organization hired Poer to file an appeal of the 2020 tax assessment of Mar-a-Lago, claiming that the assessed, taxed value of $26.6 million was too high. PX 3170, 3214, 3041 at ¶ 199. As part of the appeal, the Trump Organization explicitly stated that the property was commercial, and not residential. PX 3170. Two months after filing the appeal, the Trump Organization withdrew it, stating that it agreed with the $26.6 million determination of value. PX 3170. 3214; TT 2774- 2777. Flores conceded that that "determination was based on Mar-a-Lago being categorized as a commercial property." TT 2776-2777.

When presented with additional emails and documents found in Flores' possession that unquestionably reveal that he absolutely understood that Mar-a-Lago was exclusively a commercial, not residential, property, Flores continued to deny any recollection, stating "[t]hat's what the email says. I don't recall." TT 2777-2781; PX 1382. Notwithstanding, every SFC from 2011-2021 valued Mar-a-Lago not only as if it could be sold as a private residence, but also as if there were no deed restrictions burdening it; the SFCs' values for that decade range from $405 million to $739 million. PX 788, 793, 708, 719, 731, 742, 758, 774, 843, 857, 1501.

Overall, Flores was not a credible witness, and the Court finds it highly unlikely that none of the documentary evidence with which Flores was confronted revived his recollection as to his participation in any of the aforementioned activities.

Michael Cohen

Michael Cohen joined the Trump Organization in 2007 as executive vice president and special counsel to Donald Trump.[24] TT 2191, 2195-2197. During his entire tenure at the Trump Organization, Cohen reported directly to Donald Trump. TT 2197.

[24] The Court lists Michael Cohen as a "party witness," as he was a Trump Organization employee at all relevant times. However, the Court is mindful that Mr. Cohen is now adverse to defendants.

In 2018, Cohen pleaded guilty, in the federal district court for the Southern District of New York, to several counts of tax evasion, one count of misrepresentation to a financial institution, two counts of violating campaign finance laws, and one count of misrepresentation to Congress. Cohen cooperated with the government and was sentenced to 36 months of incarceration. TT 2184-2188.

Beginning in 2012, Donald Trump asked Cohen to assist in preparing the SFCs and their supporting valuations. TT 2208-2209, 2213. Specifically, Cohen affirmed: "I was tasked by Mr. Trump to increase the total assets based upon a number that he arbitrarily selected[,] and my responsibility[,] along with Allen Weisselberg predominantly[,] was to reverse engineer[25] the various different asset classes, increase those assets in order to achieve the number that Mr. Trump had tasked us." TT 2210-2211.

The "reverse engineering" conversations took place in meetings amongst Donald Trump, Weisselberg, and Cohen. Cohen testified that Donald Trump would intentionally give indirect instructions (i.e., "He would look at the total assets and he would say, 'I'm actually not worth four and a half billion dollars. I'm really worth more, like, six."), which Cohen and Weisselberg understood as a directive to inflate the assets until the desired value was achieved. TT 2215-2287, 2460-2461.[26]

As part of this reverse engineering scheme, Cohen said they would look at numbers being achieved elsewhere, find the highest price per square foot achieved in New York City, and apply that price per square foot to Trump assets, even though the Trump properties were neither comparable nor similar. TT 2216-2217.

Cohen described the process of arbitrarily adding values to the asset categories on the SFC categories as follows:

> I would sit down with Allen [Weisselberg] and we would make the changes. That document would then be photocopied that had all of the changes at which point in time Allen and I would return to Mr. Trump to demonstrate that we achieved or [were] close to the number that he was seeking and I had no use for that document any longer.

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[25] To reverse engineer, in this context, means to start with the desired result and end with the necessary numbers to achieve that result.

[26] Cohen elaborated that Donald Trump "did not specifically state 'Michael, go inflate the numbers,'" specifically testifying that "Donald Trump speaks like a mob boss and what he does is he tells you what he wants without specifically telling you. So[,] when he said to me 'I'm worth more than five billion. I'm actually worth maybe six, maybe seven, could be eight,' we understood what he wanted." TT 2460-2461.

TT 2218-2219. Cohen said that each reverse engineering process would take several days, and that Weisselberg relied on McConney to assist him in adding value to the numbers on the supporting data for the SFCs. TT 2220-2221, 2230. Cohen further made clear that Donald Trump had to approve the final numbers before they went to Mazars to be used in the compilations. TT 2220.

Cohen specifically recalled working to reverse engineer the values of Trump Tower, Trump Park Avenue, Trump World Tower United Nations, 100 Central Park South, Seven Springs, and the Miss Universe Pageant. TT 2226-2227, 2340-2341.

Cohen was also a member of the "Team of Four" that was tasked with acquiring insurance on behalf of the Trump Organization. TT 2234-2239; PX 3119. When meeting with insurance representatives or brokers for the purpose of acquiring coverage, Weisselberg would permit the representatives only to view the SFCs at Trump Tower; they were not permitted to make copies or to keep the original. TT 2240. Cohen also described Donald Trump's participation in the meetings with the insurance representatives, detailing an orchestrated routine wherein Donald Trump would intentionally come into the meetings three quarters of the way through to boast that he is richer than the insurance companies and should consider going self-insured, in an attempt to garner a lower premium from the insurance representatives. TT 2245, 2248-2249; PX 3166.

Michael Cohen was an important witness on behalf of the plaintiff, although hardly the linchpin that defendants have attempted to portray him to be. His testimony was significantly compromised by his having pleaded guilty to perjury and by some seeming contradictions in what he said at trial. However, carefully parsed, he testified that although Donald Trump did not expressly direct him to reverse engineer financial statements, he ordered him to do so indirectly, in his "mob voice." Although the animosity between the witness and the defendant is palpable, providing Cohen with an incentive to lie, the Court found his testimony credible, based on the relaxed manner in which he testified, the general plausibility of his statements, and, most importantly, the way his testimony was corroborated by other trial evidence. A less-forgiving factfinder might have concluded differently, might not have believed a single word of a convicted perjurer. This factfinder does not believe that pleading guilty to perjury means that you can never tell the truth. Michael Cohen told the truth.

David Orowitz

David Orowitz joined the Trump Organization in 2008 as a vice president of acquisition and development and worked his way up to senior vice-president of acquisition and development before leaving the Trump Organization in 2016. He was hired by Donald Trump, Jr. and promoted by "the Trump kids," referring to Eric Trump, Donald Trump, Jr, and Ivanka Trump. TT 2941-2942. Throughout his tenure at the Trump Organization, he reported to Eric Trump, Trump, Jr., and Ivanka Trump. TT 2942.

Allen Weisselberg directed Orowitz to provide valuation information to Forbes, with the objective of "persuad[ing] Forbes that some of the assets were worth more than what [Forbes]

originally were [sic] discussing valuing them at," so that Donald Trump would be "represented higher on the listing" of the world's richest people. TT 2944-2945.

Emails to the Trump Organization (Weisselberg, Ivanka Trump, and Orowitz) and Orowitz's testimony confirm that the Trump Organization sought financing for Doral, Trump Chicago, and the Old Post Office from multiple lenders besides Deutsche Bank's Private Wealth Management Division, and in each instance the terms offered by the commercial real estate arm of the banks were less favorable than the terms offered by Deutsche Bank Private Wealth Management, which required a personal guarantee from Donald Trump. PX 3232, 3233, 3235, 3239, 3241, 3243; TT 2976-2981, 2984-3005. For example, the Trump Organization understood that rates on Doral could be as high as the "low teens" without Donald Trump's personal guarantee. TT 2954-2955, 3672-3681.

Ivanka Trump

Ivanka Trump began working for the Trump Organization in 2006 and continued working there until 2017, when she left to work in her father's presidential administration. TT 3662.

She testified that she has not performed work for the Trump Organization since 2017, although she received payments from TTT Consulting after 2017, and she received a share of the profits upon the sale of the Old Post Office in 2022. TT 3666; PX 1373.

In 2011, Ivanka Trump was seeking financing for the Trump Organization to fund the Doral project. TT 3670-3692; PX 1266, 3232, 3243, 3247, 1289, 1433, 1067. Her husband, Jared Kushner, introduced her to Rosemary Vrablic, who worked in the Private Wealth Management Division of Deutsche Bank. TT 3670; PX 315.

Following an introductory meeting in fall 2011, in December, Vrablic emailed Ivanka Trump a proposed "Summary of Terms" for the Doral loan. PX 319, 315, 1129. Vrablic's proposal made clear that any lending from the Private Wealth Management Division would require a personal guarantee. PX 319. The initial summary of terms proposed that Donald Trump maintain a minimum net worth of $3.0 billion; this was subsequently negotiated down to $2.5 billion in the final loan agreement. PX 319, 320. Despite being presented with ample emails and other documentary evidence demonstrating the critical role she played in the negotiation, Ms. Trump professed to have no memory of any of the events of the loan negotiation or the agreed upon terms.[27] TT 3694-3707, 3710-3711; PX 3226, 332, 320.

[27] In an email dated December 15, 2011, Ivanka Trump forwarded the initial proposed terms received from Rosemary Vrablic to Allen Weisselberg, Jason Greenblatt, and David Orowitz, with the notation: "It doesn't get better than this. lets [sic] discuss asap." Greenblatt immediately responded to Ms. Trump's email and expressed his reservations about entering into any loan that required a personal guarantee from Donald Trump. In a reply email later that day Ivanka Trump wrote: "That we have known from day one. We wanted to get a great rate and the only way to get proceeds/term and principle where we want them is to guarantee the deal." PX 3226.

In February 2016, Ivanka Trump contacted Vrablic about an additional unsecured loan on behalf of Donald Trump. PX 355, 352. Vrablic responded that, having run the request by the credit risk management team, an unsecured loan would not be possible, explaining "we do not have any large unsecured amounts such as this request in the entire [private banking] portfolio." PX 355. Ivanka Trump, on behalf of the Trump Organization, implored Vrablic to have Deutsche Bank make an exception, to which Vrablic responded in April of 2016: "we are disappointed that the bank couldn't make an exception in this case." PX 558. Ivanka Trump again denied any recollection of these events, although she conceded she had no reason to believe that she did not send or receive the emails with which she was confronted. TT 3712-3717.

Ivanka Trump was presented with emails that demonstrated that in 2012 she actively participated in trying to secure a loan for the Chicago project. PX 3236, 3239, 477, 365, 3242. When confronted with these emails, Ms. Trump denied any recollection of their contents. TT 3724-3734.

Emails exchanged between Deutsche Bank and the Trump Organization demonstrate that in 2012, Deutsche Bank offered dueling proposals to refinance an existing loan on the property: (1) a non-recourse loan from the commercial real estate group, secured only by the real estate, priced at LIBOR + 8 points; and (2) a recourse loan from the Private Wealth Management Division, with a full personal guarantee from Donald Trump, priced at LIBOR + 4 points. PX 470.

Emails and other documentary evidence similarly show Ivanka Trump's active involvement in securing the bid for the Old Post Office and negotiating the terms thereof. PX 1288, 1429, 1431, 1302, 327, 1333. She consistently denied recalling the contents of documentary evidence that confirmed that she actively participated in events, even after she was confronted with the evidence. TT 3734-3738, 3747-3760, 3777-3782. In 2022, Ms. Trump received a profit payout of $4,013,024 from the sale of the Old Post Office. PX 1373; TT 3790-1391.

On direct examination by plaintiff, Ivanka Trump had no recollection of any of the events that gave rise to this action; no number of emails or documents with her signature served to refresh her recollection. Notably, on cross-examination by defendants' counsel, Ms. Trump suddenly and vividly recalled details of the projects and her interactions with Vrablic. TT 3801-3810. For example, after testifying on direct examination that she could not recall any of the details of her father's personal guarantee of the Old Post Office loan, on cross-examination, she suddenly recalled: "There was a step down of the guarant[ee], if I recall, once the property was operational." TT 3761-3763, 3777-3782, 3810-3811.

Ivanka Trump was a thoughtful, articulate, and poised witness, but the Court found her inconsistent recall, depending on whether she was questioned by OAG or the defense, suspect. In any event, what Ms. Trump cannot recall is memorialized in contemporaneous emails and documents; in the absence of her memory, the documents speak for themselves.

Kevin Sneddon

Trump International Realty employed Kevin Sneddon from 2011-2012 as the managing director of its brokerage office. TT 6602. He recalled Allen Weisselberg asking him to assess the value

of Donald Trump's Triplex apartment. PX 1052; TT 6619-6620. In response to the request, Sneddon asked Weisselberg if he could see the Triplex, to which Weisselberg responded that that was "not possible." TT 6620. Sneddon then asked if Weisselberg could send him a floorplan or specs of the Triplex to evaluate, to which Weisselberg also said "no." TT 6620. Sneddon then asked Weisselberg what size the Triplex was, to which Weisselberg responded "around 30,000 square feet." TT 6620. Sneddon then used the 30,000 square foot number in ascertaining a value for the Triplex. TT 6620-6623.

The Expert Witnesses

Michiel McCarty

Michiel McCarty testified as an expert witness for plaintiff on banking and capital markets.[28] He is the chairman and CEO of an investment bank called MM Dillon & Company, where he works on debt, convertible, and equity transactions, and mergers and acquisitions. TT 3031-3032. He has worked in the banking industry since 1975, holds an MBA from the Wharton School with a concentration in capital markets, and has worked on financing engagements and underwriting projects for Fannie Mae, the Marriot Corporation, AT&T, and the late Queen Elizabeth II. TT 3032-3040.

He has been qualified as an expert witness more than a dozen times in adequacy of equity and terms and conditions of debt, structure of debt, knowledge of participants who bought debt, and generally in capital markets. TT 3037-3039.

In performing his expert review, McCarty conducted an analysis of the risk differentials of the various loans and loan proposals at issue in this action. In so doing, he "looked at the internal documents by Deutsche Bank of analyzing first the credit level of the guarantor versus the credit level of the collateral, then the project itself without a guarantee" for the Doral, Old Post Office, and Trump Chicago loans. TT 3051-3054.

In calculating the interest rate differentials for the perceived credit risks with and without a personal guarantee on the Doral loan, McCarty took the competing loan proposal terms that Deutsche Bank's commercial real estate group had offered (which was LIBOR + 8% with a floor of LIBOR + 2%, or 10%) and compared them to the terms extended by Deutsche Bank's Private Wealth Management Division that were contingent upon a personal guarantee from Donald Trump (which was between 1.8% and 4.1%, depending on whether it was pre- or post-renovation). PX 1780; TT 3066-3067, 3132-3136. He also analyzed the Old Post Office and Trump Chicago Loan using the same method, comparing the terms offered by the Private Wealth Management Division, which were contingent on a personal guarantee and relied on his SFCs, with those offered by the commercial real estate group for a non-recourse loan. PX 1786, 1780, 3302; TT 3068-3074.

[28] McCarty charged $950 per hour for his expert review, and, at the time he testified, he had received a little under $400,000 in total for his time. TT 3085-3086. The list of documents that McCarty reviewed is extensive and can be found in his expert report at Appendix B. PX 1780 at 50.

McCarty further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan based on a fraudulent SFC than the interest rate with a non-recourse loan, and he compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing, with the terms extended by Ladder Capital.

McCarty's calculations determined that Donald Trump improperly saved the following amounts on interest as a result of the banks relying on Donald Trump's fraudulent SFCs and personal guarantee: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan. PX 3302.

McCarty thoughtfully and logically explained why, contrary to defendants' assertions, using the default penalty rate would have been inappropriate, and, in any event, McCarty calculated the differential using the default penalty rate and determined it would be larger than the numbers he calculated in his report. PX 3077-3078. In fact, McCarty used conservative measures; by way of example, even though interest rates were rising in 2017, 2018, and 2019, McCarty used a standard flat 10% interest rate, resulting in significantly lower interest rate differentials than had he calculated using the floating market interest rate. TT 3057-3058. He similarly conservatively calculated his numbers using simple, not compound interest, which does not consider the time value of money. TT 3082.

The method McCarty used to determine the amount of money defendants saved by borrowing with full recourse, such as from Deutsche Bank's Private Wealth Management Division, as opposed to borrowing non-recourse, such as from Deutsche Bank's Commercial Real Estate Division, is simple in theory, although a little tricky in application. This Court reviewed McCarty's numbers and performed calculations to confirm his method and accuracy: four examples should suffice:

(1) In 2020 the Doral loan was $125,000,000. Applying the non-recourse rate of 10% (or .01) results in an interest payment of $12,500,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $2,418,500. Subtracting the latter from the former yields a saving of $10,081,500, as seen on PX3302, page 4.

(2) Also in 2020, the Old Post Office loan was $170,000,000. Applying the non-recourse rate of 8% (or .08) results in an interest payment of $13,600,000. Applying the recourse rate of 1.9348% (or .019348) results in an interest payment of $3,289,160. Subtracting the latter from the former yields a saving of $10,310,840, as seen on PX3302, page 4.

(3) In 2019 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (or .07500) results in an interest payment of $3,375,000. Applying the recourse rate of 4.4116% (or .044116) results in an interest payment of $1,985,220. Subtracting the latter from the former yields a saving of $1,389,780, which is $13 more than the amount McCarty used, $1,389,767, presumably because of a rounding differential, and in any event de minimis.

(4) In 2018 the Trump Chicago loan was $45,000,000. Applying the non-recourse rate of 7.5% (.07500) again results in an interest payment of $3,375,000. Applying the recourse rate of 4.0464% (or .040464) results in an interest payment $1,820,880. Subtracting the latter from the former yields a saving of $1,554,110, which is $19 less than the amount McCarty used, $1,554,129, presumably because of a rounding differential, in any event de minimis, and largely cancelled out by the $13 lower amount McCarty used for Chicago, 2019.

McCarty calculated that defendants saved $72,908,308 on the Doral loan, $53,423,209 on the Old Post Office loan, $17,443,359 on the Trump Chicago loan, and $24,265,291 on the 40 Wall Street loan, for a grand total of $168,040,167, one dollar less than McCarty's $168,040,168, presumably because of a rounding differential (or user error by a non-accountant, and in any case de minimis).

Defendants do not accept McCarty's methodology, which this Court finds to be air-tight, but they do not challenge his calculations, which this Court finds to be correct. The expert defendants called to the stand to challenge McCarty's methodology, Robert Unell, left McCarty unscathed.

Steven Witkoff

Steven Witkoff was offered by defendants as an expert in the field of real estate development.[29] TT 4189. Witkoff has been a "good friend" of Donald Trump's for more than 20 years. TT 4191.

Witkoff conceded that he is neither an appraiser nor an accounting expert, nor is he familiar with what "estimated current value" is under GAAP. He did not review any of Donald Trump's SFCs, which are the primary subjects of this case, nor did he review any of the operative legal documents for the properties upon which he attempted to opine. Accordingly, his testimony was irrelevant to the issues before the Court. TT 4196-4197, 4228-4233.

Jason Flemmons

Defendants offered Jason Flemmons, a CPA, as an expert in the field of accounting.[30] TT 4238, 4252. He testified that ASC-274 is the accounting standard that governs the preparation of SFCs, and that the measure of value for an asset or liability under ASC-274 is "estimated current value." TT 4254-4255. Flemmons spent considerable time detailing the "methods" of valuation that ASC-274 permits. TT 4257-4264. The crux of Flemmons's testimony was that so long as

[29] This was the first time Steven Witkoff had been deemed an expert witness. TT 4427. He is a personal friend of Donald Trump, who did not compensate him for his testimony. TT 4191.

[30] Flemmons was compensated at the rate of $925 per hour but could not recall or estimate how many hours he had billed defendants for his work. TT 4529-4530.

defendants selected one of the permissible methods under ASC-274, then any numbers may be inputted into such methodology, regardless of their accuracy or relationship to reality.[31] TT 4264-4268, 4273-4277.

The Court examined Flemmons on this issue, resulting in the following exchange:

> Q. You were asked 20 or 30 times, was the method used for determining the estimated current value of the project at issue consistent with the requirements of ASC-274. I think your answers were always yes. My question is: Were you saying that the method listed on the statement was one of the methods that ASC 274 allows? Or were you saying that the actual computations using that method were correct?
>
> A. Your Honor, I am not opining as to the ultimate valuation itself. I am not a valuation expert. But I am an expert on the methods permitted by ASC-274. So my testimony is really limited to, again, its methods that are clear from the documents that were being used, and not necessarily to the numbers that were attached to them.
>
> Q. Right. And so if the statement says we are using the capitalization rate method or the fixed asset method, your answers are just meaning that, yes, that's one of the methods you can use, correct?
>
> A. That's correct.

TT 4364-4365. Accordingly, Flemmons's testimony is of no evidentiary value, as the plaintiff has not alleged that defendants used an impermissible method, but that they have inputted and used patently false data with a permissible method.

Mr. Flemmons also, inexplicably, acknowledged that future income had to be discounted to present value on a financial statement, and that not to do so would be a "red flag," while at the same time stating that there were no GAAP departures, even though defendants failed to discount future income to present value. TT 4371-4373, 4375, 4434-4436, 4441-4443.

Although he opined that Mazars should have followed up on items in the SFCs, he adamantly stated that asking for any appraisals when creating a compilation would have been

[31] For example, Flemmons testified that it would be "appropriate" for the Trump Organization to use a methodology that valued selling Mar-a-Lago to a private individual to be used as a private residence, despite the deed restrictions that Donald Trump signed that prevent him from doing so in perpetuity. TT 4351-4352; PX 1013.

highly unusual."[32] TT 4291-4292, 4303-4307, 4325-4328, 4376, 4377, 4381-4382, 4408, 4476-4481.

Flemmons was reluctant to acknowledge that an asset controlled by a third party cannot be considered "cash," while also acknowledging that it was a "red flag," before ultimately conceding: "I think the fundamental recording or reporting of partnership cash would not be consistent with GAAP." TT 4373-4374, 4385-4392, 4446-4452.

Steven Collins

Defendants offered Steven Collins as an expert witness in "contract procurement."[33] TT 4539-4542. Collins testified, essentially, that he reviewed the documents used in the Trump Organization's bid and award of the Old Post Office, and he opined that no one factor was determinative in the General Services Administration's selection of the Trump Organization. TT 4548-4569.

Steven Laposa

Defendants offered Steven Laposa as an expert witness in "real estate research."[34] TT 4596-4599.

Laposa formed no opinion as to whether any of the valuations at issue in this case were accurate, and, prior to this assignment, he had no experience preparing or reviewing personal financial statements. TT 4600, 4633, 4684-4685. He further conceded that he had no knowledge of the types of valuations or methods that Donald Trump used to value the assets on his SFCs. TT 4709-4712.

His testimony was limited to general methods by which one can appraise property, and that different appraisers might disagree about the value of the same property. TT 4603-4625. He opined that lenders generally prefer a more conservative approach to an appraisal than developers do. TT 4611-4613.

[32] In any event, there is documentary evidence, previously submitted to the Court on the parties' summary judgment motions, conclusively establishing that Mazars did, in fact, inquire about appraisals, and were told there were none. NYSCEF Doc. No. 1262 at 243.

[33] Collins billed at the rate of $925 per hour and testified that he billed somewhere between 40 to 60 hours. TT 4543-4544.

[34] Laposa billed at the rate of $850 per hour for his work on the case and estimated that he billed approximately 325 hours. TT 4596.

Gary Giulietti

Defendants offered Gary Giulietti as an expert in "surety underwriting and surety brokering."[35] He has an ongoing personal and professional relationship with Donald Trump. TT 4723. Having met him in the late 90s, Giulietti plays golf and lunches with Donald Trump and is a member of "a bunch of his clubs." TT 4723. Additionally, sometime between 2017-2018, Giulietti became the Trump Organization's insurance broker, and he remains its broker to this day. TT 4723-4724.

In its over 20 years on the bench, this Court has never encountered an expert witness who not only was a close personal friend of a party, but also had a personal financial interest in the outcome of the case for which he is being offered as an expert.[36]

Giulietti opined that an insurance company like Zurich would pay no credence to an SFC compilation provided by a client, and that the main element that an insurance company would weigh is the client's liquidity. TT 4738-4741.

Giulietti also opined that, in his experience, any insurance company would have offered Donald Trump an "accommodation," which he explained would "provide a product with minimal [to] no underwriting," describing Zurich's underwriting program as based on "airballs and witchcraft." TT 4743-4744, 4768-4770.

However, Giulietti's testimony not only is belied by the testimony and contemporaneous notes of the Zurich underwriter, Claudia Markarian, it is also completely inconsistent with the expert report of another defense expert, David Miller, who opined that "Zurich made a competent business decision to underwrite the Trump Organization's business as an exception to their normal guidelines based on reasonable risk factors, such as the sufficient liquidity of the Trump Organization to indemnify Zurich should a loss take place." NYSCEF Doc. No. 1434; TT 4770-4772; PX 1561, 1552.

Giulietti also testified that the Trump Organization had filed very few claims, despite being presented with evidence demonstrating that the Trump Organization tendered numerous claims. TT 4775-4778; PX 603.

[35] Despite having never been qualified as an expert witness before, when examined about his qualifications, Giulietti boasted that "I don't think there are four people in America that have my qualifications to do what I do." TT 4728-4729.

[36] Giulietti had not billed directly for his trial testimony but clarified that "this would be included in our overall relationship year over year." TT 4726. In 2022, Giulietti's company earned $1.2 million in commissions from the Trump Organization account. TT 4761-4762.

David Miller

David Miller was offered by the defense as an expert in "commerce insurance and surety underwriting."[37] TT 4806.

Miller opined that, based on his review of the Zurich underwriting memoranda, he did not believe Zurich would have been concerned with Donald Trump's assets. TT 4807-4810. He further testified: "My perception was there was not a lot of technical underwriting that took place, um, because it was done as what I would perceive – what I would call a business decision. They wanted to write the business to keep the relationship between Aon and Zurich in place." TT 4815. He opined that "accommodations" are "probably too common" in the insurance industry, and that "very often surety is written as an accommodation to other lines of business." TT 4817-4818. He further explained: "An accommodation generally means that you've already made the decision to write it, or you are going to write it, because of the situation that you are being asked to do. So, in general, it probably loosens or eliminates the underwriting standards, because you already know you are going to do it, so you just do it." TT 4821. When asked if there was anything that required an insurer to make an accommodation, Miller stated "[p]ressure from the broker" to try and develop more business. TT 4821.

However, on cross-examination, Miller was confronted with his previous deposition testimony, in which he affirmed that based on his review of the credit memoranda, Zurich employed "normal underwriting guidelines that included sufficient liquidity as a reasonable risk factor," and Miller confirmed that he believed that that was still the case. TT 4872-4873.

Moreover, on cross-examination, Miller conceded that in forming his expert opinion, he did not consider any of the information Zurich underwriter Claudia Markarian recorded in her contemporaneous notes of her meetings at the Trump Organization in 2018 and 2019, which are the basis of plaintiff's causes of action for insurance fraud. TT 4865-4867, 4874-4880. He further conceded that he had no reason not to accept Markarian's testimony as true. TT 4881-4884; PX 3224.

Robert Unell

Defendants offered Robert Unell as a witness in "commercial real estate finance and banking."[38] TT 5627-5629. To prepare for his testimony, Unell reviewed the Deutsche Bank loans on Trump Chicago, the Old Post Office and Doral, as well as the Ladder Capital loan on 40 Wall Street. TT 5629. Unell did not perform any valuation work on any of the assets found in the SFCs. TT 5820.

[37] This is the first time Miller had been qualified as an expert. TT 4806. He was compensated at the rate of $350 per hour and has spent approximately 90-100 hours on this engagement. TT 4868.

[38] Mr. Unell was compensated at a rate of between $900-950 per hour, but he could not recall with any specificity how many hours he had billed, estimating "a couple hundred probably." TT 5631. Upon cross-examination, Unell stated he had previously worked on engagements for the Trump Organization, including a potential conservation easement valuation on Doral. TT 5756.

Unell opined that Deutsche Bank and Ladder Capital would have conducted their own analysis into Donald Trump's assets and liabilities based on the contents of the SFCs. TT 5635-5639.

Unell opined that any misstatements in Donald Trump's SFCs were immaterial, and even stated that the inflation of the Triplex (which resulted in an overvaluation of approximately $200 million) was immaterial and did not cause the SFCs to be unfairly or inaccurately presented, a statement which severely diminished his credibility before the Court. TT 5672-5673, 5819.

Unell opined that, based on his review of the Deutsche Bank credit risk memoranda, the covenants that required Donald Trump to maintain a minimum net worth and level of liquidity were not significant for the bank. However, he then conceded that the bank "relied upon – their knowledge and their information to set the net worth covenant… [and] the net worth covenant was determined by the guarantor submitted statements," seemingly contradicting his initial opinion of non-reliance. TT 5673-5676.

Unell also opined that a breach of a covenant would not "really raise the eyebrows of the lending institution." TT 5678-5679.

Unell disagreed with the mathematical calculations McCarty used to determine the interest rate differential between the Private Wealth Management Division loan and the commercial real estate group loan terms. McCarty used, as an assumption for the commercial real estate group interest rate, a term sheet Deutsche Bank's commercial real estate group offered to Donald Trump at the same time at which he secured the loan from the Private Wealth Management Division. Notwithstanding, Unell said there was no support for McCarty's use of that number, disregarding entirely the term sheet that the commercial real estate group offered Donald Trump for a non-recourse loan. TT 5682-5684.

Unell further contradicted himself by stating:

> It is nearly impossible to place an exact interest rate on this looking back in time, because none of us have worked for Deutsche Bank. And the best indication as to what this rate would be, would be Deutsche Bank, because Deutsche Bank is the evaluator of risk. They are the evaluator of materiality. And they are the ultimate user and the one where this matters. And it is their sole determination, based on this analysis, as to how they want to price the loan.

TT 5686-5687. Unell appears to be opining that the term sheets that Deutsche Bank's commercial real estate group offered Donald Trump would be the best indicator of how the loan would have been priced without a personal guarantee, contradicting Unell's prior opinion that McCarty's utilization of the Deutsche Bank term sheets in his analysis was improper.

Unell additionally opined that the interest rates McCarty used to calculate the rate differential for a non-recourse loan with Ladder Capital were not commensurate with what the market was at that time. TT 5712-5713. However, he offered absolutely no evidentiary basis for that opinion,

and he offered no independent assessment for what the market rate would have been for a non-recourse commercial real estate loan on the subject property at that time. TT 5758-5761.

Notwithstanding this lack of foundation for his opinion, Unell offered up his own calculations of the interest rate differentials on the subject properties and opined that Donald Trump received the following savings: (1) $2,458,048 on the Doral loan; (2) $2,567,000 on the Old Post Office loan; (3) $1,015,632 on the Chicago loan;[39] and (4) $2,966,000 on the 40 Wall Street Loan. TT 5743-5748. However, on cross-examination, Unell clarified that his "hypothetical lost interest" rate differentials did not actually calculate the difference between a fully guaranteed loan and a non-recourse loan, he merely assumed a 25 basis point reduction as the guarantee may have been reduced over the course of the loan, and he assumed, without evidentiary support, that the "guarant[ee] was worth 25 basis points." TT 5758-5761. When further examined about this opinion, Unell stated, in a conclusory fashion, that the "guarant[ee] to them was valuable for 25 basis points for the engagement of a warm body of a billionaire to stand behind the loan in his equity infusion and capital there." TT 5761. However, this statement is belied by the documentary evidence originating from Deutsche Bank, as well as the testimony of former and current Deutsche Bank employees. Unell testified that he did not form a view "as to what the market interest rate would be for a commercial real estate loan on these four properties with no guarant[ee] at the time they were originated," stating again that the "only person… that is able to do that is Deutsche Bank." TT 5762-5763 5775, 5812, 5815.

Unell additionally offered: "The only group that can speculate or actually state what the interest rate would be is Deutsche Bank, because they are the ones that were the users of the documents, the ones that entered into the loan agreement and the ones that offered the terms to the defendants." TT 5763. This statement once again contradicts Unell's prior opinion that it was inappropriate for McCarty to rely on the term sheets Deutsche Bank's commercial real estate group offered to Donald Trump for non-recourse loans on the subject properties. By Unell's own admission, the term sheet (or "offered terms") are the best evidence of what interest rate Deutsche Bank would have offered for a non-recourse loan. PX 369, 3232, 3243.

Unell then undercut his own calculations in the following exchange with the Court:

> Q. Let me jump in. Are you testifying that with your experience, your expertise, your knowledge of the facts in this case, you could not possibly estimate what Deutsche Bank would have charged as an interest rate in any particular situation, because it is all up to them?
>
> A. Yes. I can give you a range and give historical [sic] as to what has been out there and show illustrative examples of it, but at the end of the day as referenced in the Deutsche Bank documents, all of their risk rating, all of the pricing is

[39] At trial, Unell failed to opine particularly on the Trump Chicago loan, and defendants failed to submit to the Court the demonstrative exhibit to which he referred during trial. However, as Unell testified that he believed the total hypothetical interest savings on all four loans was $9,006,603, the Court deduces that his specific calculation for the Chicago loan interest rate deferential is $1,015,632. TT 5743-5747.

proprietary. None of us have that information. None of us have that ability. None of us understand the total relationship value. We can try to do our best to understand it based off of the testimony that has been provided, as well as the documents. But the only person that has the ability to determine the risk and the interest rate and the overall relationship value, is the lender.

….

Q. So let me clarify one thing. Well, let me ask then, so are you saying that actually the commercial real estate loan, no guarant[ee], issued by the Commercial Real Estate group at Deutsche Bank or some other Commercial Real Estate division, would have priced even closer to the private wealth loans than your hypothetical here with the 25 basis points added?

A. That's not correct.

Q. So what are you saying? I don't understand what you are saying.

A. What I am trying to say is that 10 percent is unfounded.

Q. And you said, I think it would be closer to the numbers reflected here, even more than the 25 basis points?

A. Absolutely. And that's reflected in the loan documents.

Q. So, sir, do you have an opinion, one way or the other, as to what the market rate would be for a commercial real estate loan with no personal guarant[ee] for these four properties?

A. It would be in the range of where I have it here.

Q. So close to the private wealth amounts?

A. Yes. As illustrated in the loan documents.

TT 5763-5766.

Unell's testimony is not only inconsistent, but the Deutsche Bank documents, testimony from former and current employees, and Trump Organization emails conclusively demonstrate that Donald Trump, in fact, did seek non-recourse loans from the Private Wealth Management Division and was told, adamantly, that no exceptions could be made for him and a full "iron clad" personal guarantee was required for him to receive the preferential terms of the Private

Wealth Management group. TT 1003-1004, 1035, 1039, 5331-5332, 5572-5577, 5770-5773; PX 1251, 369, 3232, 3243.

Unell testified that it was inappropriate for McCarty to rely on the Deutsche Bank term sheets because they were non-binding and Deutsche Bank's commercial real estate group did not yet have a detailed understanding of the properties. However, on cross-examination he was confronted with emails between Deutsche Bank and the Trump Organization indicating that Deutsche Bank had, in fact, conducted due diligence on the properties[40] and considered itself to be "very familiar" with them. PX 3111, TT 5804-5806.

On the whole, the Court was unable to ascribe any reliability to Unell's "expert" opinions, finding them unresearched, unsupported, inconsistent, and contradicted by ample other documentary and testimonial evidence.

Frederick Chin

Frederick Chin is a certified appraiser and was offered by defendants as an expert in "real estate valuations," "real estate market analysis," and "real estate operations."[41] TT 5905-5906. Chin did not render any opinions of value as to the assets contained in the SFCs. TT 6041.

Chin opined on the difference between "as is" and "as if" values, explaining: "'As is' generally connotates to [sic] a condition that exists at the time, a specific date, generally often times referred to as market value. 'As if' is a condition that will be expected to be—expected to be completed or expected to be received either kind of a hypothetical condition that might exist in the future." TT 5912. Chin opined that the many of the valuations that appeared in Donald Trump's SFCs contained "as if" valuations. TT 5913. He further opined that professional appraisers generally use "as is" valuations, while developers are generally focused on future performance and use "as if" valuations. TT 5914. Chin also stated that he "occasionally" would come across a request for a professional "as if" appraisal, but that in those instances, the governing standards mandate that the appraisal be clearly identified and labeled as "as if." TT 5917-5919.

Chin affirmed that "as if" appraisals must still make accurate assumptions; in particular, he affirmed that land use restrictions that encumber a property, or any sort of restriction that limited possible uses, would negatively affect the value of the property. TT 5949-5050. He conceded that any assumptions incorporated into "highest and best use" must be legally permissible and physically possible, and that a developer's "as if" value cannot be based on something that is legally impermissible or physically impossible. TT 6001-6002. He also agreed that there needs

[40] For example, a November 17, 2011 email from the Deutsche Bank commercial real estate group to Ivanka Trump reads: "Ivanka, Thank you for providing us with the investment memo and projections for the Doral Golf Resort and Spa in Miami, Florida. We, at Deutsche Bank, are very familiar with the asset, as we have financed this loan several times over the years for previous ownership." PX 3111 (emphasis added).

[41] Mr. Chin bills $850 per hour and has billed "probably a thousand" hours on this engagement, for a total of approximately $850,000. TT 5912.

to "be a reasonable, factual basis for the developer's perspective of value that he puts in a Statement of Financial Condition." TT 6006.

When examined about his experience with rent-restricted apartments in New York City, Chin affirmed that the owner of a rent-stabilized unit wanting to value the unit as if it could be sold on the open market "would need to include in the value calculation the cost to remove the legal restriction," which could include expensive "buy-outs" to the rent-stabilized tenants, and potential profit-sharing losses. TT 6007-6011. Chin further conceded that it would be a "significant omission" in an SFC if the owner of 20 apartments in a New York City building, of which 10 are rent-regulated, valued the apartments as if they were all free market without disclosing that half of them were subject to rent regulation. TT 6012. When cross-examined about Donald Trump's 2013 SFC, Chin admitted that the SFC failed to disclose that any of the units at Trump Park Avenue were rent stabilized, notwithstanding that they were being valued at their offering plan prices, which itself is erroneous. TT 6015-6016; PX 707

Chin opined that the identity of the property owner would not affect either "as is" or "as if" appraisal values. TT 5966.

Chin identified different types of appraisals, such as "market value" and "liquidation value" and clarified that the "intended purpose of an appraisal can affect the outcome." TT 5945-5946. He testified that lender-ordered appraisers generally calculate "market value." TT 5946.

However, Chin is not an expert in accounting and stated that he would "rely on the experts and people designated in [his] firm that dealt with accounting matters." TT 5902-5905, 5971. The SFCs represent that they are providing assets and liabilities at their "estimated current value," not their future "as if" value. See, e.g., PX 756. Chin even conceded that, when reviewing the SFCs in preparation for this case, he understood that the SFCs were representing to the reader that the assets contained in the statement were being presented at their estimated current value. TT 5978. Moreover, Chin testified that Donald Trump "clearly" used "as if" values in his SFCs from 2011-2014 that "presumed a situation that didn't exist." TT 5966-5967. He further stated that he did not believe that the valuation method employed by McConney in valuing Seven Springs on the SFCs was reasonable. TT 5992-5993.

Chin further opined: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And it may make a development less feasible." TT 5929.

John Shubin

John Shubin is a lawyer called by the defense as an expert in "land use planning, entitlement, and zoning."[42] TT 6043, 6048.

[42] Mr. Shubin had never been qualified as an expert witness before. He was compensated between $1,395 and $1,595 per hour and has billed approximately 80-100 hours for his work on this engagement. He also had two colleagues assisting him who billed between $735 and $935 per hour and have billed approximately 100-110 hours. TT 6086-6088.

On direct examination, Shubin attempted to offer a host of legal conclusions about the deed restrictions that encumber Mar-a-Lago, plaintiff's objections to which this Court sustained, as it is exclusively the Court's province to interpret and apply the law. TT 6051-6075, 6084-6085. Accordingly, there was no evidentiary value to Mr. Shubin's testimony.

Lawrence Moens

Lawrence Moens is a licensed real estate broker and was offered by the defense as a witness in "residential real estate in Palm Beach."[43] TT 6092, 6099-6106.

The Court had already questioned the credibility of Moens based on the affidavit he submitted with defendants' motion for summary judgment, in which he opined, that "[i]f Mar-a-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." NYSCEF Doc. No. 1435 at 29. As this Court noted in its September 26, 2023 Decision and Order, Moens failed to identify at what price he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property was worth $1.51 billion).

At trial, Moens testified that he met Donald Trump in the late 1980s, they have remained cordial, and Moens has been a member of Mar-a-Lago since 1995. TT 6108-6109, 6160-6161.

Moens opined about the values he believed he could sell Mar-a-Lago for from the years 2011-2021. TT 6115-6126. When asked about his method for generating those values, he testified that he did not use any specific equations, that his method was not "re-creatable," and that the only way to understand his valuation method was to "go inside [his] head." TT 6157-6158. However, to be admissible, expert testimony must have some objective basis and must be subject to objective scrutiny. Wilson v Corestaff Servs. L.P., 28 Misc 3d 425, 427 (Sup Ct, Kings County 2010) ("New York courts permit expert testimony if it is based on … principles, procedures or theory only after the principles, procedures or theories have gained general acceptance in the relevant… field, proffered by a qualified expert and on a topic beyond the ken of the average [fact-finder]").

Moreover, Moens affirmed that each of these valuations was premised upon the assumption that Mar-a-Lago could be sold as a private residence, although he conceded that he was aware that Mar-a-Lago was being taxed as a private club. TT 6160.

[43] Mr. Moens had never been qualified as an expert witness before. Moens was not examined about his compensation for his work on this case.

Eli Bartov

Eli Bartov is a tenured professor at New York University, whom defendants offered as an expert in "financial accounting, credit analysis, and valuation."[44] TT 6181, 6206-6215.

Professor Bartov did not assess the valuations of any of the assets on Donald Trump's SFCs. TT 6445. Yet, as this Court previously noted when denying defendants' motion for a directed verdict, Bartov's overarching point was that the subject statements of financial condition were accurate in every respect and that they were "100 percent consistent with GAAP." TT 6537. As this Court discussed in excruciating detail in its September 26, 2023 Decision and Order, the SFCs contained numerous significant errors. By doggedly attempting to justify every misstatement, Professor Bartov lost all credibility in the eyes of the Court.[45]

Indeed, Bartov insisted that the misrepresentation of the Triplex, resulting in a $200 million overvaluation, was not intentional[46] or material (leading the Court to wonder in what universe is $200 million immaterial). TT 6348-6356.

Bartov opined that "GAAP is not designed to give you the true economic value of an asset." TT 6240. However, it is undisputed that the SFCs required, and Donald Trump represented, that the assets be presented at their estimated current value and be GAAP compliant, so Bartov's statement is of no consequence.

Bartov further attempted to opine on the disclaimer and "worthless clauses," previously rejected as a defense by this Court in several decisions and orders (subsequently affirmed by the Appellate Division), repeatedly referring to the clauses as "[j]ust like when you have the Surgeon General warning on the box of cigarettes, this warnings [sic] is not Phillip Morris. This warning is for the smokers." TT 6252-6256, 6259-6262, 6265-6267.

Eric Lewis

Eric Lewis, a professor at Cornell University, was called by the plaintiff as a rebuttal expert witness in the field of accounting.[47] TT 6637, 6668-6671.

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[44] Professor Bartov bills at the rate of $1,350 per hour and has billed approximately 650 hours in this engagement. TT 6443.

[45] As the Court previously observed, Dr. Bartov suffered essentially the same fate testifying before the Hon. Barry Ostrager in People v Exxon Mobil Corp., 65 Misc 3d 1233(A) (Sup Ct, NY County 2019) ("the Court rejects Dr Bartov's expert testimony as unpersuasive and, in the case of his testimony about the Mobile Bay facility, finds Dr. Bartov's testimony to be flatly contradicted by the weight of the evidence").

[46] However, it is well-settled law that experts may not testify as to intent. People v Kincey, 168 AD2d 231, 232 (1st Dept 1990) ("It was highly improper and prejudicial to allow [defendant's expert witness] to testify concerning the defendant's intent").

[47] Lewis was compensated for his work on this engagement in the amount of $150,000. TT 6730.

Professor Lewis disputed the testimony of Jason Flemmons, stating that, contrary to what Flemmons opined, it is not sufficient under GAAP merely to select a permissible method of valuation under ASC-274 if the assumptions and numbers used to arrive at a value are false, notwithstanding the propriety of the method. TT 6695-6697. He further testified that Flemmons was incorrect in stating that the responsibility for ensuring that the methods of valuation are GAAP compliant lies with the accountants performing the compilation, citing industry standards that clearly demonstrate that the ultimate responsibility for determining GAAP compliant methods and estimated current values, as the SFC requires and represents, lies with the issuer of the statement, here, Donald Trump. TT 6697-6706.

He testified that under industry standards, accountants performing a compilation engagement are not responsible for finding GAAP departures, as compilations offer the lowest level of scrutiny and assurance. TT 6709-6710. He convincingly demonstrated that, according to the operative standards, an accountant creating a compilation will not verify the accuracy of the supporting information. TT 6715-6716.

Lewis further corroborated that each of the permissible methods of valuation in ASC-274 requires that the valuation be discounted to present value, and failure to do so would be a GAAP departure for which the issuer would be responsible. TT 6711. Lewis further identified several valuations in the SFCs that had not been discounted to present value and for which there was no disclosure of the failure to do so in the SFCs. TT 6711-6714, 6719-6725, 6727-6728.

Specific Assets on the SFCs

The Triplex

On October 1, 1994, Donald Trump consented to the "First Amendment to the Declaration of Trump Tower Condominium" ("First Amendment") which documented that the Triplex at Trump Tower, in which Donald Trump resided for decades, was 10,996 square feet. PX 633.

Since at least 2012, copies of the First Amendment showing the square footage of the Triplex were in Allen Weisselberg's email inbox (multiple times over) and in the physical filing cabinet immediately outside his office. PX 633; TT 805-809.

Since at least as early as 2012, Jeffrey McConney was valuing Donald Trump's Triplex apartment, in which he resided, as if it were 30,000 square feet, not 10,996 square feet, resulting in an annual overvaluation of between $114-207 million dollars. PX 1052; NYSCEF Doc. No. 1531 at 21.

In 2012, Weisselberg asked Trump International Realty employee Kevin Sneddon to value the Triplex. Sneddon asked to inspect the apartment or review the floorplan, and Weisselberg told him that both requests were "not possible" and advised Sneddon that the Triplex was 30,000 square feet. TT 6618-6621. Sneddon thereafter provided McConney a valuation using the incorrect 30,000 number from Weisselberg. PX 1052.

On February 22, 2017, Dan Alexander from Forbes emailed Weisselberg and McConney with data indicating that Forbes believed the Triplex to be 10,996 square feet. PX 1324. On March 3, 2017, Noack Kirsch from Forbes emailed Alan Garten with many questions about Donald Trump's assets, one of which reads: "President Trump has told Forbes in the past that his penthouse occupies 33,000 square feet, comprising the entirety of 66-68 of Trump Tower. Property records (notably the latest amended condo declaration, dated October 11, 1994) [sic]. Is the 1994 declaration accurate and up-to-date? It shows President Trump's apartment is 10,996.39 square feet." PX 1345.

Alan Garten then forwarded the email chain to Weisselberg, Eric Trump, Donald Trump, Jr., and Amanda Miller (who was responsible for press relations). PX 1344. This resulted in a conversation between Miller and Weisselberg and culminated in Miller sending an email to Garten on March 6, 2017, stating that "I spoke to Allen W. re: [Trump World Tower] + [Trump Tower] – we are going to leave these alone." PX 1345; TT 821-823.

Notwithstanding the size of the Triplex being brought to his attention, on March 10, 2017, a mere four days after telling Miller to "leave it alone," Weisselberg certified to Mazars the accuracy and truthfulness of the 2016 SFC, which included valuing the Triplex as if it were 30,000 square feet. PX 741. Indeed, Weisselberg "[was] comfortable certifying that nothing occurred subsequent to the date of the statement that would require adjustment." TT 831.

Despite this email, Weisselberg declined to review the First Amendment or take any other steps to confirm the actual size of the Triplex. TT 819.

When examined about how this violated the Trump Organization's responsibilities under the Management Representation Letters to Mazars, Weisselberg said he was not obligated to adjust the SFCs to reflect that change because he didn't think it was "material." TT 854-859.

It was not until Forbes made the issue public, by publishing an article in May of 2017 indicating that Donald Trump had been misrepresenting the size of his Triplex,[48] that the Trump Organization "began to do our investigation, as to, you know, what the number really was at that point." TT 833-834. Weisselberg admitted that "it was only after this article was published and the information became public that the Trump Organization corrected the square footage for Mr. Trump's triplex." TT 834.

When asked about his understanding of the events that led to the change in the square footage used in the 2017 SFC, Birney stated that he was never informed about the actual square footage of the Triplex before issuing the 2016 SFC, and that it was not until Forbes published the article revealing the true square footage that they adjusted the 30,000 square foot basis upon which they had been relying since at least 2012. TT 1234-1238.

[48] PX 1605, Peterson-Withorn, Chase. "Donald Trump Has Been Lying About The Size of His Penthouse." Forbes, May 3, 2017.

In an effort to cover up the decrease in the reported value of the Triplex, Allen Weisselberg instructed Birney to draft a version of the SFC that added a 35% "ex-president premium" to the value of the Triplex, although the idea was ultimately scrapped.[49] TT 1288-1290; 1298-1299.

To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" and "record shattering" penthouse sales when calculating price per square foot. TT 1241-1247; PX 767, 2530.

Donald Trump testified that he personally determined that the Triplex's reported value was too high and directed Weisselberg and McConney to correct it. TT 3524. In reality, the Triplex's reported size was not corrected until 2017, months after Trump was inaugurated as president and ceased having any involvement in the preparation of the SFCs.

40 Wall Street

From 2011-2016, Jeffrey McConney and Allen Weisselberg valued 40 Wall Street based on dividing net operating income by a capitalization rate. During this same time, when valuing 40 Wall Street, McConney would "cherry-pick" cap rates from a generic marketing report Cushman & Wakefield emailed to its large customer base that was based on data not specific, or even closely related, to 40 Wall Street, and wholly ignored the appraisals of 40 Wall Street that Doug Larson had prepared. TT 660-681, 4995, 5101-5102; PX 3046, 3047, 3048. McConney did not adjust the cap rates from the generic marketing email to more accurately reflect the specifications of 40 Wall Street. TT 681-682. When valuing 40 Wall Street for the 2015 SFC, McConney forwarded an excerpt of Larson's 2015 appraisal to Donald Bender, but intentionally omitted the pages of the appraisal that show that Larson selected a cap rate of 4.25%, which resulted in an appraised value that was $227 million lower than using McConney's selected cap rate of 3.04%. PX 118, 868; TT 676-681.

In 2015, McConney began incorporating Larson's appraisal of 40 Wall Street in his SFC valuations. However, he manipulated the data—increasing the appraised value to account for income from a Dean & Deluca lease, even though the original appraisal had already explicitly incorporated the Dean & Deluca lease into its valuation, resulting in an overvaluation of $120 million. PX 3004, 868; TT 690-701.

McConney also omitted the pages of Larson's appraisal that valued the Dean & Deluca lease when sending excerpts of it to Donald Bender at Mazars. PX 118; TT 695-701.

Weisselberg had final approval over 40 Wall Street budgets, and was, thus, aware that the Trump Organization had budgeted a negative cash flow for 40 Wall Street for 2011. TT 1499, 1520-1521. Notwithstanding, he directed Donna Kidder to prepare a document containing a series of

[49] Indeed, there was such an effort to conceal the loss in value from the accurately reported Triplex that in a draft version of the 2017 SFC, dated October 10, 2017, Birney had added a 15-25% premiums to many of Donald Trump's properties, calling them "premium for presidential personal residence"; "premium for presidential property"; "premium for presidential winter residence"; and "premium for presidential summer residence." In total these various versions of "presidential premiums" amounted to an extra $144,680,601 for the year. PX 1290; TT 1290-1292.

implausible assumptions to generate a $26.2 million net operating income to be used for the SFCs. TT 1523-1526, 1529. However, 40 Wall Street never reached a net operating income of $26.2 million; instead, it ran a deficit as high as -$20.9 million through 2015. PX 636, 652. Donald Trump was aware of this, but he misrepresented to Forbes that the building was going to net $64 million in 2015.[50] TT 3571-3579.

Weisselberg also directed Kidder to prepare cash flow data for 40 Wall Street that stated false amounts of management fees when submitting that data to Ladder Capital. TT 1506-1507, 1536-1539.

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. PX 3041 at ¶¶ 576-577. After Capital One declined to do so, Allen Weisselberg contacted his son, Jack Weisselberg, and inquired about Ladder Capital refinancing the loan. TT 1820-1826; PX 647, 3041 at ¶¶ 580-82. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC. TT 1858-1861, 1873-1876; PX 654. Ladder Capital relied on the SFC for the information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether to approve the loan. TT 1878-1891; PX 654. As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required to guarantee unconditionally payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. This personal guarantee, executed by Donald Trump, required that he maintain a net worth of $160 million and liquid assets of at least $15 million, and to document compliance with those financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX-3041 at ¶ 597.

The Ladder Capital loan on 40 Wall Street was subsequently securitized and serviced by Wells Fargo. TT 1784-1885, 5815-5818. To comply with the 40 Wall Street loan covenants, from 2017 through 2019, the Trump Organization provided Wells Fargo summaries of Donald Trump's net worth that were derived from the SFCs and certified by Allen Weisselberg as "true, correct and complete and fairly present[s] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

Vornado

Donald Trump has a 30% limited partnership interest in non-party Vornado Realty Trust ("Vornado"), which owns office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street. Neither Donald Trump nor the Trump Organization could access his interest in any of the assets in the partnership without

[50] 40 Wall Street is currently under "special servicing" by the lender. PX 3380; Tr.4414, 4703-4706. A special servicer assumes servicing responsibility for defaulted loans or loans that are at the risk of default.

Vornado's consent. TT 940. Yet, every year Donald Trump's interest in the Vornado partnership was included in the "cash" portion of his SFC, falsely indicating that it was at his disposal, and that it was liquid, when it clearly and contractually was not. TT 940.

One year, Donald Bender advised McConney that McConney needed to remove cash that belonged to the Trump Foundation from the SFC's "cash" assets because it was controlled by the Trump Foundation and not by Donald Trump. McConney removed it from the SFC, understanding that it was not appropriate to include it because Donald Trump did not control those assets. TT 703-704. Notwithstanding, McConney intentionally continued to include the Vornado interest as "cash" on the SFCs, even though he was aware that Donald Trump could not control the assets. PX 2587, PX 3401 at ¶ 403; TT 688-690.

Allen Weisselberg was aware that the Vornado interest was included in the cash asset category on the SFCs, and that the Vornado assets were not under Donald Trump's control. He nonetheless approved reporting it as cash. TT 939-940.

By at least February 2016, Weisselberg advised Donald Trump, Donald Trump, Jr., and Eric Trump that the distributions from the Vornado limited partnership were not in the control of Donald Trump or the Donald J. Trump Revocable Trust. PX 1293; TT 1381-1388. Still, Trump, Jr. and Eric Trump continued to sign certifications that included the Vornado interest in the "cash" category. PX 1293; TT 1381-1383, 1387-1388.

Mark Hawthorn, chief operating officer of Trump Hotels, conceded that including the Vornado interest in the cash asset category in Trumps SFCs was improper. TT 1414-1454. Defendants' own accounting expert, Jason Flemmons, also conceded that the inclusion of the Vornado interest in the cash asset category was a "red flag," a "very glaring issue," and "not GAAP compliant." TT 4390-4392.

When Birney took over preparing and maintaining the SFCs' supporting data, no one ever provided him with a summary of the partnership agreement, let alone the agreement itself, demonstrating that Donald Trump was a limited partner without control over the assets. TT 1283-1285.

When preparing the 2017 SFC in which Donald Trump's value of the Triplex had been corrected to account for its actual size, Birney added $267.8 million dollars to the value of 1290 Avenue of the Americas. Birney said that they were able to achieve this increase in valuation from 2016 to 2017 by "increasing the EBITDA [Earnings Before Interest, Taxes, Depreciation, and Amortization] by free rent and reduction of the straight line rent." TT 1298-1300; PX 1212.

When preparing the supporting data for the 2018 SFC, on May 30, 2018, Birney emailed a representative from Cushman & Wakefield seeking confirmation "that 1290 Ave of Americas could probably be estimated at a mid 4 cap rate at stabilization, low 4 if there is upside." PX 3027. Michael Papagianopoulos, of Cushman & Wakefield, responded that "[w]hile I cannot opine on 1290AoA, as I do not know the actual financials, current market environment for Class A [Midtown] properties is mid 4s for stabilized and below that for proprieties with upside." PX 3027. McConney was copied on this email chain and the entire email chain was forwarded to

Weisselberg. PX 1159; TT 1317-1318. Notwithstanding, on the 2018 SFC, a 2.67 cap rate was used. The notes in the supporting data state: "6/30/2018—based on information provided by Michael Papagianopoulos of Cushman & Wakefield which reflects a cap rate of 2.67% for a comparable office building." PX 774; TT 1318-1325.

Trump Park Avenue

When valuing unsold units in Trump Park Avenue for Donald Trump's SFCs, McConney used offering plan prices from an internal Trump International Realty spreadsheet, while wholly disregarding "current market values" listed on the exact same spreadsheet. Moreover, McConney "intentionally removed" the current market values column from the spreadsheet before forwarding it to Donald Bender at Mazars, despite McConney's knowledge and representation that he understood that the SFCs had to reflect the estimated current value. PX-793; TT 629-631, 706-708.

McConney was aware that as of September 2011, there were 12 rent stabilized apartments at Trump Park Avenue. PX 3041; TT 709-711. Despite this knowledge, McConney, in consultation with Allen Weisselberg, intentionally valued the rent stabilized apartments not just as if they were unregulated, but at an aspirational offering price, resulting in overvaluations of as much as 700%. TT 711-712; NYSCEF Doc. No. 1531 at 23.

When Patrick Birney helped prepare the SFCs supporting data, neither Weisselberg nor McConney ever informed him of this gross overvaluation, or of any appraisals of the rent-stabilized units at Trump Park Avenue. TT 1282-1283.

Seven Springs

From 2011-2014, when valuing a plot of land upon which seven mansions could be built in Bedford, McConney relied on valuations provided by Eric Trump, who advised McConney to value the seven-mansion development at $161 million on the 2012 SFC. This valuation assumed a host of future events that had not—and as hindsight has shown, would not—occur, including that the Trump Organization had received legal permission to develop the lots, that the mansions were already built and available for sale, and that there would be no construction or development costs associated with building the mansions. PX 719; TT 713-718. Eric Trump further advised McConney to use these values again in 2013 and 2014. TT 713-720; PX 719, 793, 1075. Eric Trump was aware that the values he was providing would be used on his father's SFCs. PX 1075; TT 3315-3316, 3339.

Upon realizing that building the seven mansions would be neither feasible nor profitable, the Trump Organization, through outside counsel Sheri Dillon, commissioned an appraisal from Cushman & Wakefield to determine the value of the development rights for the plot of land upon which the Trump Organization had previously considered building the seven mansions.

In August 2013, Eric Trump advised McConney to continue to use the undiscounted value of $161 million for the seven-mansion development, despite having received an initial estimate of approximately $5.5 million from Cushman & Wakefield. PX 908, 3296; TT 3342-3347.

On September 8, 2014, David McArdle, of Cushman & Wakefield, advised Eric Trump verbally that he had appraised the seven-mansion development at $14 million. Notwithstanding, a mere four days later, Eric Trump advised McConney to continue using the $161 million value. PX 169, 181; TT 1996-1997, 3353-3354.

Briarcliff

In August 2013, Eric Trump retained David McArdle of Cushman & Wakefield to appraise the value of developing 71 condominium units on undeveloped land in Briarcliff, New York. PX 157, 3197; TT 1930, 3368-3371.

Despite having retained Cushman & Wakefield to value the 71 units, in a September 25, 2013 phone call Eric Trump advised McConney to value the 71 units at over $101 million, based on comparable sales in the area. PX 719; TT 738-745. Less than one month later, by October 16, 2013, Eric Trump was aware that McArdle had determined the value of the 71-unit development to be $45 million. PX 1465, 3201; TT 3374-3375. Notwithstanding that the 2014 SFC had not yet been submitted, Eric Trump failed to advise McConney that the appraised value was less than half of what he had reported the value to be. TT 738-744. Each year from 2015 to 2018, Eric Trump advised McConney to leave the $101 million as is, despite his knowledge of the much lower $45 million appraisal. TT 744-747.

Moreover, by October 16, 2013, Eric Trump was aware that the Trump Organization only had the right to build 31, not 71, units. PX 3261; TT 2695-2702. Notwithstanding, the SFCs for 2013-2018 continued to reflect that the Trump Organization had the right to build 71 units. PX 742, 758, 774; TT 2701-2702.

Mar-a-Lago

In 1995, Donald Trump signed a "Deed of Conservation and Preservation" in which he gave up the right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed").

In 2002, Donald Trump granted a conservation easement to the National Trust for Historic Preservation and signed a deed in which, in addition to conveying the rights to develop or use Mar-a-Lago for any purpose other than a social club, the Deed further *"limits changes to the Property including, without limitation*, the division or subdivision of the Property for any purpose, including use as single family homes, *the interior renovation of the mansion, which may be necessary and desirable for the sale of the property as a single family residential estate*, the construction of new buildings and the obstruction of open vistas." NYSCEF Doc. No. 1531 at 25-26 (emphasis added).

In exchange for executing the 2002 Deed, in which he gave away, in perpetuity, the right to develop or use the property as a single-family residence, Donald Trump paid significantly lower property taxes on Mar-a-Lago. PX 1730; TT 3533-3535.

McConney had in his possession, since at least 2011, a copy of the 2002 Deed, restricting the use of Mar-a-Lago as a single-family residence. TT 773-775; PX 1013; DX 360. McConney was also aware, when he prepared the SFCs supporting data, that the entire basis of the valuations of Mar-a-Lago rested on the premise that it could be sold as a private residence to an individual. Each and every year, he valued Mar-a-Lago as if it could be sold as a single-family residence, notwithstanding the deeded prohibitions against such use in perpetuity. TT 759, 775.

Further, when Patrick Birney took over for McConney in preparing the valuations for the SFCs, Weisselberg and McConney both concealed from Birney the 1995 and 2002 deeds. TT 1258-1259. When valuing Mar-a-Lago on the SFCs from 2016-2021, McConney and Weisselberg selected comparables for Birney to use that were exclusively for private residences. TT 1248-1256, 1268-1282; see, e.g., PX 3026.

There is no legal gray area surrounding the permanent nature of the deed restrictions. PX 1013.

Accordingly, there can be no mistake that Donald Trump's valuation of Mar-a-Lago from 2011-2021 was fraudulent.

TNGC-LA

McConney was aware that Cushman and Wakefield had appraised the property known as Trump National Golf Club LA ("TNGCLA") and valued the golf club portion at $16 million and the entire property at just over $82 million as of March 2015. Notwithstanding, in the 2015 SFC, McConney valued the golf club at $56.6 million and the entire property at just over $140 million. PX 1464, 731.

Aberdeen

Aberdeen is the name of a golf course and adjacent land that the Trump Organization owns in Aberdeen, Scotland. The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

Despite receiving permission to develop only 500 homes as year-round private residences on the non-golf course property, the 2014-2018 SFCs valued Aberdeen not only as if permission existed to develop 2500 private year-round residences, which it did not, but also as if those residences had already been built. The valuations also fail to account for any development (i.e., construction) costs associated with making the hypothetical residences a reality. PX 719, 731, 742, 758, 774.

Despite receiving a July 2017 appraisal by Ryden LLP valuing the development profit of private homes at Aberdeen at a maximum of £33,296 per home, from 2017-2018 the Trump Organization valued the development of private homes at £83,164 per home, allegedly based on a September 18, 2014 email from an unidentified "Registered Valuer for Ryden LLP," which more than doubles the actual appraisal amount. PX 774, 1450.

In 2019, the Trump Organization began valuing each home at £106,969, more than triple the last appraised value, and the SFCs supporting data represented that the Trump Organization had permission to build 2035 private residences, when it still only had permission for 500. PX 843.

In 2020 and 2021, the Trump Organization valued each home at £68,781 and represented that it had permission to build 1200 private residences, when it still only had permission for 500. PX 1352, PX 3041 at ¶ 219.

Licensing Deals

From 2013-2021, despite representing explicitly in the SFCs that the "real estate licensing deals" asset category included only "signed agreements" with "other parties," the SFCs incorporated into this category wholly speculative, unsigned, and intra-company agreements between Trump Organization entities and affiliates. PX 729; TT 1461, 1465; NYSCEF Doc. 1531.

Jeffrey McConney tasked Kidder with preparing an annual report that projected the amount of fees that would be received through licensing deals. TT 1550-1551; PX 3169. Kidder's projections were then provided to Mazars and incorporated into the SFCs. TT 1551-1556. However, Kidder's projections, as directed by McConney and Weisselberg, contained undiscounted figures, as it assumed that all revenue would be received within one year regardless of the number of deals in place or the pace at which deals were being signed. TT 1550-1556; PX 774, PX 3168.

On a draft 2015 SFC, McConney noted that the valuation of real estate licensing deals included $151 million in forecasted deals that "have not signed yet" because he was concerned about the inconsistency. Despite this concern, McConney did nothing to modify the representations or remove the unsigned deals from the valuations of the licenses for the 2015-2018 SFCs. TT 5070-5072; PX 806, 729, 733.

Fraud in Business

Deutsche Bank

The evidence adduced at trial makes clear that Deutsche Bank relied on the SFCs for the information to underwrite, approve, and maintain the credit facilities on Doral, Trump Chicago, and the Old Post Office. PX 293, PX 3041 at ¶¶ 452-54, 456-466, 476.

The record is also clear that Donald Trump would not have received the credit facilities from the Private Wealth Management Division, and the favorable interest rates that came with that, had he not executed an unconditional, "ironclad," personal guarantee. Moreover, the Private Wealth Management Division was willing to accept the personal guarantees based upon false SFCs.

Doral

At the same time the Trump Organization was soliciting terms from Deutsche Bank's Private Wealth Management Division for the Doral loan, it was shopping for loans from other commercial real estate lenders, including Deutsche Bank's own commercial real estate group. In November 2011, Deutsche Bank's commercial real estate group offered the Trump Organization a $130 million loan at LIBOR + 8%, with a LIBOR floor of 2 – a minimum 10% interest rate. PX 369; NYSCEF No. 501 at ¶ 575. Instead, Donald Trump agreed to a full-recourse loan (i.e., with an unconditional personal guarantee) with the much more favorable terms of an initial interest rate of LIBOR + 2.25% during a renovation period and LIBOR + 2% after renovations. PX 293.

Donald Trump's personal guarantee for the Doral loan required him to certify the truth and accuracy of his SFC and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion. PX 1303, 3041 at ¶¶ 484, 486-489; TT 5429-5430. The guarantee further required him to submit an annual compliance certificate and an updated SFC to confirm his compliance with the loan covenants, the failure of which could have triggered a default. TT 1022-1023, 1027-1028, 1052-1054, 5337; PX 1303; DX 212.

Trump Chicago

When seeking to finance Trump Chicago, the Trump Organization again sought dueling proposals from both the Private Wealth Management Division, which required an unconditional personal guarantee, and the commercial real estate group, which did not. PX 3041 at ¶¶ 439, 500-502.

The commercial real estate group proposed two non-recourse loan options: the first was secured only by unsold condo units and priced at LIBOR + 8%; the second would have carried a higher interest rate along with additional costs and fees but would be secured only by the commercial (hotel and retail) property. The Private Wealth Management Division proposed a recourse loan priced at LIBOR + 4%, with the "spread differential . . . based on a full guarantee of Donald Trump." TT 1035-1039; PX 470.

Donald Trump ultimately agreed to a loan from the Private Wealth Management Division that was split into two tranches: (1) a facility of up to $62 million using unsold condos as collateral and bearing an interest rate of LIBOR + 3.35%; and (2) a facility of up to $45 million using the commercial property as collateral and bearing an interest rate of LIBOR + 2.25%. PX 470, 3242, 291. As with all lending from the Private Wealth Management Division, the loan was conditioned upon a personal guarantee from Donald Trump.

Old Post Office

In 2013, Donald Trump once again sought dueling financing offers from both the commercial real estate group and the Private Wealth Management Division to finance the redevelopment of the Old Post Office in Washington, D.C. PX 322, 327, 3041 at ¶¶ 543-549. Donald Trump once again elected to choose the lower interest rate option and higher credit facility that the Private Wealth Management Division was offering, which required a personal guarantee and submission

of annuals SFCs, over the higher interest non-recourse loan that the commercial real estate group was offering. PX 513, 294, 3041 at ¶¶ 549-552.

As with the Doral and Trump Chicago credit facilities, the Old Post Office loan agreement required Donald Trump to provide his most recent SFC to the bank and to certify its accuracy. PX 309.

The Old Post Office guarantee explicitly stated that Trump's representations were made "[i]n order to induce Lender to accept this Guarant[ee] and to enter into the Loan Agreement and the transactions thereunder," and that loan obligations were "conclusively presumed to have been created in reliance" on Trump's guarantee and its representations. PX 305. This was confirmed by the testimony of former and current Deutsche Bank employees Nicholas Haigh and David Williams.

Pursuant to the personal guarantee, Donald Trump was required to "keep and maintain complete and accurate books and records," and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the SFC delivered to Lender during each year." PX 305, PX 3041 at ¶¶ 561-563.

Pursuant to his loan obligations, Donald Trump provided Deutsche Bank with his 2014-2021 SFCs, as well as certifications that were executed either by Donald Trump, or by Donald Trump, Jr. or Eric Trump as attorneys-in-fact for Donald Trump. PX 393, 503, 515, 518, 1386, 3041 at ¶ 572. Deutsche Bank relied on these SFCs and certifications for its annual review of Donald Trump's financial covenants. PX 298, 300, 302, 498, 519, 561, 3137.

Donald Trump testified that he knew Deutsche Bank would rely on these certifications to determine if he was complying with his loan covenants. TT 3620-3623, 3630. Donald Trump, Jr. testified he when he signed the certifications, he "intended for the bank to rely upon [them]." TT 3241, 3250. Although Eric Trump testified that he had "no idea" if he intended the banks to rely upon his certifications, the Court finds that testimony not credible, as Eric Trump was aware that the certifications were required for the loans. Moreover, his inconsistent memory at trial renders his testimony that he has "no idea" even less plausible.

On May 11, 2022, Donald Trump sold the redeveloped Old Post Office for $375 million, and used $170 million of those proceeds to repay the Deutsche Bank loan. PX 3041 at ¶¶ 570-571. By selling the Old Post Office, Donald Trump and his adult children netted the following respective profits: (1) $126,828,600 to Donald Trump; (2) $4,013,024 to Eric Trump; (2) $4,013,024 to Donald Trump, Jr., and (4) $4,013,024 to Ivanka Trump. PX 1373, TT 3624-3626.

Ladder Capital/Wells Fargo

Prior to 2015, 40 Wall Street was subject to a $160 million mortgage with Capital One Bank. PX 3041 at ¶ 575. In January of 2015, Allen Weisselberg wrote to Capital One asking it to waive a required upcoming $5 million principal payment. After Capital One declined to waive the required payment, Allen Weisselberg contacted his son, Jack Weisselberg, about Ladder

Capital refinancing the loan. TT 1820-1826. In the application process for the refinancing, the Trump Organization provided Ladder Capital with a paper copy of the 2014 SFC, although later requiring that it be returned to the company. TT 1858-1861, 1873-1876. Ladder Capital relied on the SFC for information about Donald Trump's net worth and liquidity, and Ladder Capital incorporated the information from the SFC into its risk memorandum when determining whether it would approve the loan. TT 1878-1891.

As a condition of the Ladder Capital loan on 40 Wall Street, and to avoid setting aside ongoing cash reserves as a condition of the loan, Donald Trump was required unconditionally to guarantee payment of certain obligations of 40 Wall Street LLC, including insurance, tenant improvements, leasing commissions, capital expenditures, and ground lease payments. PX 625, 645; TT 1884-1886. The personal guarantee executed by Donald Trump required him to document compliance with his financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein) … and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." PX 625, PX 3041 at ¶ 597.

The 40 Wall Street loan was subsequently securitized and serviced by Wells Fargo. TT 1784-1785, 5815-5818. To comply with the 40 Wall loan covenants, in 2017-2019, Donald Trump submitted to Wells Fargo summaries of his net worth that were derived from the SFCs, and certified by Weisselberg as "true, correct, and complete and fairly present[ing] the financial condition of Donald J. Trump." TT 923-929, 934-935; PX 1386.

As discussed *supra*, the SFCs Donald Trump submitted to Wells Fargo as part of his obligations were none of these things—they were not GAAP compliant and were not "correct," "complete," or "fairly present[ed]".

Ferry Point

In February of 2010, NYC Parks published an RFO for operation and maintenance of a golf course at Ferry Point Park in the Bronx. PX 3290. NYC Parks was seeking an "entity that ha[d] the financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." TT 2793-2794. NYC Parks was particularly focused on the financial capability of a potential operator, as it had already invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." TT 2794-2796. The RFO further stated that all offers had to include "financial statements and other supporting documentation of the Responder's financial worth." PX 3290.

In March 2010, the Trump Organization submitted an offer in response to the RFO; the offer included a letter from Mazars that indicated that according to Donald Trump's 2009 SFC, which Mazars had compiled, Donald Trump represented that his net worth was in excess of $3 billion and that he had over $200 million in cash reserves. PX 1331; TT 2796-2797.

NYC Parks received four offers in response to this RFO, ultimately awarding the contract to the Trump Organization. In so doing, NYC Parks highlighted that "Trump has provided Parks with documentation from WeiserMazars LLP, Certified Public Accountants, stating that Donald J. Trump, the president of Trump, has a substantial net worth and cash position. As set forth in Exhibit V to the concession agreement, there is also a personal guarantee from Donald J. Trump regarding payment obligations and the completion of capital improvements." PX 3291; TT 2298-2800. The award further emphasized that "Trump will be subject to auditing by Parks, the NYC Comptroller and Parks-authorized auditors." PX 3291. NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to "receive truthful, accurate and complete information from offerors." TT 2801-2802.

On February 21, 2012, Donald Trump signed the license agreement with NYC Parks. DX 981. The license agreement required Donald Trump to submit a personal guarantee to NYC Parks for financial obligations arising out of the operation of Ferry Point. DX 981; PX 3283. The guarantee additionally obligated Trump to submit annually a letter from his accountant stating that there had been no material adverse change in his net worth from the financial statements shared with NYC Parks during the RFO process (the "No MAC letters"). PX 3283; TT 2804-2805.

The Trump Organization submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021, and in each letter, Mazars relied on that year's SFC for the representation that there had been no material, adverse change in Donald Trump's net worth. PX 3282, 3284, 3285, 3286, 3280, 3281. NYC Parks expected that the No MAC letters would be true, complete and accurate, and that the submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks, including potential referral to the New York City Department of Investigations. TT 2805-2806, 2812-2816.

In June 2023, the Trump Organization assigned the Ferry Point license to Bally's Corporation; the Trump Organization received $60 million from the deal, and Bally's agreed to pay an additional $115 million to the Trump Organization if Bally's obtains a gaming license[51] for the site. TT 2850, 3266-3267; PX 3304, 3306. Accordingly, by maintaining the license agreement for Ferry Point by submitting false SFCs, and which was initially awarded based on false SFCs, the Trump Organization was able to secure a windfall profit by selling the license. PX 3304.

Zurich Insurance

Surety Insurance

Acquiring insurance coverage for the Trump Organization was handled by a self-titled "Team of Four" that consisted of Allen Weisselberg, Ron Lieberman, Matthew Calamari, and Michael Cohen. TT 943-944, 1201. The Team of Four decided coverage and interfaced with insurance broker AON. TT 946.

[51] After Donald Trump was awarded the license in 2012, but before he assigned it to Bally's in 2023, the State of New York amended its constitution to permit gaming (i.e., gambling) licenses for up to seven commercial casinos in the state, other than those operated by Native Americans.

When Zurich representatives responsible for underwriting asked to review the financials, they were prohibited from retaining a copy of any documents for review but were permitted only to view them at Trump Tower with Allen Weisselberg and/or Jeffrey McConney in the room at all times, which was a "rare requirement by a customer." PX 3324 at 17-18, 24-25, 58-59. Weisselberg was physically present at every meeting with the sureties or their representatives, wherein members of the Team of Four would describe how the assets were valued. TT 953-954.

When questioned whether the insurance representative asked him if there had been appraisals of any of the assets identified on the SFC, Weisselberg stated "not that I can remember." TT 948. This is directly contradicted by the testimony of Zurich representative Claudia Markarian, whose testimony and contemporaneous notes taken during the meetings indicate that Weisselberg represented to her, and she relied on, his assurances that the valuations of the real estate assets in the SFCs were based on professional outside appraisals. PX 3324 at 25-34.

In Court, Weisselberg maintained that despite having appraisals of properties on the SFCs in the Trump Organization's possession, he did not feel they had to be disclosed to the insurance representatives because the Trump Organization had not commissioned the appraisals on their property; rather, the lenders had. TT 954-959. However, this is simply not what he represented to Zurich. PX 3324 at 25-34.

Markarian's contemporaneous memoranda for each on-site review reflect the amount of cash on hand, which she considered to have "great bearing" on her analysis because it indicated Donald Trump's liquidity and represented the funds available to repay Zurich for a loss. PX 1561, 1552, 3324 at 30, 51-52. However, the amount of cash on hand was intentionally and materially misrepresented, as the SFC included Donald Trump's interest in the Vornado partnership as cash, notwithstanding that those assets were not liquid or within Donald Trump's control. TT 617-620.

Because the Trump Organization is a private company, not a publicly traded company, there is very little that underwriters can do to learn about the financial condition of the company other than to rely on the financial statements that the client provides to them. PX 3324 at 57. Markarian credibly testified that, because of that, "it's important to know that our customers are being truthful to us. If they're not giving us true information or accurate information, that greatly impacts our underwriting decisions." PX 3324 at 56-57 (further testifying that "if we find out that there's – that they're being untruthful, it will impact our underwriting of the account"). Markarian had no reason to doubt that Weisselberg was being truthful and honest in his representations, and she accepted at face value, and relied upon, his representations about the values contained in the SFCs. PX 3324 at 28-53.

Zurich relied on false representations by Weisselberg and McConney, and the intentionally false and misleading information in the SFCs about the amount of cash on hand, when determining to underwrite policies for the Trump Organization. PX 1561, 1552, 3324 at 28-57.

D&O Insurance

As of December 2016, the Trump Organization had a D&O liability policy in place that offered coverage consisting of a single primary policy with a limit of $5 million at an annual premium of $125,000; the policy was to expire on February 17, 2017. PX 596, 587.

In December 2016, the Trump Organization contacted several insurance brokers, including HCC, as the Trump Organization was looking to rewrite the program on the day of Donald Trump's inauguration, with significantly higher limits, to wit, $50 million. TT 2492-2493, 4887; PX 587.

Similar to Zurich's representatives, HCC representatives were told they could review the financials only while being monitored at Trump Tower and could not retain copies for their own records. PX 588, 2985. On January 10, 2017, Michael Holl, of HCC, attended a meeting at the Trump Organization with Allen Weisselberg and other Trump Organization employees for the purpose of reviewing the Trump Organization's financials as part of the insurance company's due diligence. PX 588; TT 2496-2498, 2516. On the way home from the meeting, Holl drafted an email to his supervisors memorializing the information he obtained in the meeting. PX 2985; TT 2498-2499. His contemporaneous email reads: "Saw very few financials but did see the balance sheet for year-end 2015. They assured me that the one being put together is better. They have total assets of 6.6 BB. Cash of $192 mm. Total debt of $519 mm. No single debt larger than $160mm." PX 2985. Holl testified that the $192 million in cash was a meaningful number for him, as it "was a measure of liquidity for the company." TT 2500.

Holl's contemporaneous email further reads: "No material litigation or communication from anyone." PX 2985. Holl understood this to be a representation from the Trump Organization that there was no pending litigation or notices or communications that could lead to litigation and implicate the D&O policy, which he viewed in a positive light. TT 2500-2502. However, this representation was false, as, at the time of the meeting, there was an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization and were aware of the investigation. PX 1001, PX 1002, PX 1003; TT 2557-2558. Neither Weisselberg nor any other Trump Organization representative disclosed to the underwriters at the January 10 meeting, or at any other time prior to the binding of the D&O policies, the existence of OAG's investigation into the Trump Foundation and directors and officers of the Trump Organization, despite understanding at the time that OAG's investigation into the Trump Foundation could potentially lead to a claim. In fact, they tendered a claim for coverage to their insurers, including HCC, for the enforcement action arising from OAG's investigation into the Trump Foundation, by notice dated January 17, 2019. NYSCEF Nos. 1220, 1221; PX 2985; TT 2500-2502. When HCC ultimately became aware of the claims, its underwriter determined that the exposure on the risk was significantly higher than it had been priced at and offered a renewal policy at more than five times the expiring premium. TT 2507; PX 2989.

HCC further relied on the false representation that Donald Trump had $192 million cash on hand (as it improperly included Vornado "cash"), as was reflected in the 2015 SFC, which was material in HCC's analysis of whether to write the policy. TT 2494-2495, 2502.

CONCLUSIONS OF LAW

Burden of Proof

An action brought by the Attorney General seeking equitable relief for repeated or ongoing fraud in conducting business is subject to a "preponderance of the evidence" standard, as is customary in civil litigation. Jarrett v Madifari, 67 AD2d 396, 404 (1st Dept 1979). As noted, *supra*, this is supported by the legislative history of Executive Law § 63(12), wherein the legislators expressly contemplated and intended for a preponderance of the evidence standard to apply. Moreover, defendants have provided no legal authority for their contention that the higher "clear and convincing" standard does, or should, apply. A clear and convincing standard applies only when a case involves the denial of, addresses, or adjudicates fundamental "personal or liberty rights"[52] not at issue in this action. Matter of Capoccia, 59 NY2d 549, 552 (1983).

Defenses Asserted

Reliance

Defendants have argued vociferously throughout the trial that there can be no fraud as, they assert, that none of the banks or insurance companies relied on any of the alleged misrepresentations. The proponents of this theory posit that lenders demand complex statements of financial condition but then ignore them.

Defendants' argument is to no avail, as none of plaintiff's causes of action requires that it demonstrate reliance. Instead, plaintiff must merely show that defendants intended to commit the fraud. Reliance is not a requisite element of either Executive Law § 63(12) or of any of the alleged Penal Law violations. See, e.g., People v Essner, 124 Misc 2d 830, 834 (Sup Ct, NY County 1984) ("Reliance then is not an element of [Penal Law § 175.45 - Falsifying Business Records], and documents subpoenaed to prove or disprove reliance by the banks are immaterial").

However, the Court notes that, although not required, there is ample documentary and testimonial evidence that the banks, insurance companies, and the City of New York did, in fact, rely on defendants to be truthful and accurate in their financial submissions. The testimony in this case makes abundantly clear that most, if not all, loans began life based on numbers on an SFC, which the lenders interpreted in their own unique way. The testimony confirmed, rather than refuted, the overriding importance of SFCs in lending decisions.[53]

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[52] The Court of Appeals has identified instances that would amount to loss of "personal or liberty rights," such as denaturalization, loss of paternity rights, and involuntary civil commitment. Matter of Capoccia, 59 NY2d 549, 552 (1983). A case arising out of alleged fraud in the business place does not come within that category.

[53] To take one of innumerable examples, Robert Unell testified that Deutsche Bank and Ladder Capital would have analyzed Donald Trump's net worth based on the contents of the SFCs. Indeed, witness after witness testified that the SFCs were important to them, and/or were the starting point of their analysis.

Blame the Accountants

The crux of the defense at trial was that defendants relied on their accountants, mainly Mazars, but sometimes Whitley Penn, to make sure that the SFCs were accurate, and that responsibility for any misrepresentations lies with the accountants, not defendants. Donald Trump, Jr. and Eric Trump testified several times that they would have relied on their accountants to find any errors in the SFCs' supporting data.

As an initial matter, the Court notes that neither Mazars, nor Whitley Penn, nor Donald Bender, is a defendant in this action, nor did defendants ever attempt to implead them as third party defendants. More significantly, however, this defense is wholly undercut by the overwhelming evidence adduced at trial demonstrating that Mazars and Whitley Penn relied on the Trump Organization, not vice versa, to be truthful and accurate, and they had a right to do so.

Each year from 2011-2020, Weisselberg signed SFC Management Representation Letters as an executive officer of the Trump Organization (and for the 2016-2020 SFCs, also as a trustee of the Donald J. Trump Revocable Trust). Weisselberg understood that Mazars was relying on what was in the Management Representation Letters, and that Mazars would not have issued the SFCs without having secured these representations. Weisselberg further knew that he was obligated to advise Mazars of the existence of any information in the Trump Organization's possession that would contradict the values represented in the SFCs. The whole situation could hardly have been otherwise, as only defendants had the information, and the accountants were not performing audits.

Donald Trump himself acknowledged that, as was certified to in the Management Representation Letters, he was responsible for the preparation and fair presentation of financial statements.

There is overwhelming evidence from both interested and non-interested witnesses, corroborated by documentary evidence, that the buck for being truthful in the supporting data valuations stopped with the Trump Organization, not the accountants. Moreover, the Trump Organization intentionally engaged their accountants to perform compilations, as opposed to reviews or audits, which provided the lowest level of scrutiny and rely on the representations and information provided by the client; compilation engagements make clear that the accountants will not inquire, assess fraud risk, or test the accounting records.

Materiality

In its summary judgment decision, this Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law. NYSCEF Doc. 1531

Indeed, materiality under this statute is judged not by reference to reliance by or materiality to a particular victim, but rather on whether the financial statement "properly reflected the financial condition" of the person to which the statement pertains. People v Essner, 124 Misc 2d 830, 835 (Sup Ct, NY County 1984) ("there need be no 'victim,' ergo, reliance is neither an element of the crime nor a valid yardstick with which to test the materiality of a false statement").

Materiality has been one of the great red herrings of this case all along. Faced with clear evidence of a misstatement, a person can always shout that "it's immaterial." Absolute perfection, including with numbers, exists only in heaven. If fraud is insignificant, then, like most things in life, it just does not matter. As an ancient maxim has it, *de minimis non curat lex*, the law is not concerned with trifles. Neither is this Court.

But that is not what we have here. Whether viewed in relative (percentage) or absolute (numerical) terms, objectively (the governing standard) or subjectively (how the lenders viewed them), defendants' misstatements were material. United States Supreme Court Justice Potter Stewart famously, or infamously, declared that he could not define pornography, but that he knew it when he saw it. Jacobellis v State of Ohio, 378 US 184, 197 (1964). The frauds found here leap off the page and shock the conscience.

Wisely, courts have refused to define "material" in a "one size fits all" fashion. At trial, this Court attempted to get the experts to go where Courts have dared not tread. Not surprisingly, a firm definition could not be found. But in the present context, this Court confidently declares that any number that is at least 10% off could be deemed "material," and any number that is at least 50% off would likely be deemed material. These numbers are probably conservative given that here, such deviations from truth represent hundreds of millions of dollars, and in the case of Mar-a-Lago, possibly a billion dollars or more.

Different Appraisers, Different Appraisals

Yet another great red herring in this case has been that different appraisers can legitimately and in good faith appraise the same property at different amounts. True enough, as appraising is an art as well as a science. However, the science part cannot be fraudulent. When two appraisals rely on starkly different assumptions, that is not evidence of a difference of opinion, that is evidence of deceit.

Second Cause of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, and Donald Trump, Jr. are each liable under the second cause for action for repeatedly and persistently falsifying business records, thus violating Executive Law § 63(12) and New York Penal Law § 175.05.

Penal Law § 175.00 defines a "business record" as "any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity." Clearly, each of the SFCs and supporting spreadsheets that were submitted to lenders and insurers qualifies as a business record, as each constituted a writing kept by the Trump Organization for the purpose of evidencing or reflecting its activities. Additionally, the individual defendants' actions in furnishing false information and values to third parties caused third parties, such as Deutsche Bank, to create their own business records that contain fraudulent information, such as the credit memoranda created by Deutsche Bank and Ladder Capital.

As detailed in the Findings of Fact, there is overwhelming evidence that each of these defendants made or participated in making a false statement in the business records of an enterprise, the Trump Organization, with the intent to defraud.

Donald Trump was aware of many of the key facts underpinning various material fraudulent misstatements in the SFCs: he was aware of having deeded away the right to use Mar-a-Lago as anything other than a social club, and notwithstanding, continued to value it as if it could be used as a single family residence; he was aware that the Triplex apartment in which he, a real estate mogul and self-identified expert, resided for decades was not 30,000 square feet, but actually 10,996 square feet; he was aware that he did not control the Vornado partnership interest even though he represented it as "cash"; he was aware that he had permission to build only 500 private residences in Aberdeen, notwithstanding that he represented that he had permission for 2500; and he was aware that 40 Wall Street was operating at a deficit despite proclaiming that it was running a net operating income of $64 million. As Eric Trump testified, Donald Trump sat at the top of the pyramid of the Trump Organization until 2017. Donald Trump professed to "know more about real estate than other people" and to be "more expert than anybody else." TT 3487. He repeatedly falsified business records with the intent to defraud. See People v Gordon, 23 NY3d 643, 650 (2014) ("Intent may be established by the defendant's conduct and the circumstances"); People v Rodriguez, 17 NY3d 486, 489 ("Because intent is an 'invisible operation of the mind' direct evidence is rarely available (in the absence of an admission) and it is unnecessary when there is legally sufficient circumstantial evidence of intent," "noting that 'intent can also be 'inferred from the defendant's conduct and the surrounding circumstances'") (internal citations omitted).

There is overwhelming evidence that Allen Weissberg intentionally falsified hundreds of business records during his tenure as CEO of the Trump Organization. Weisselberg understood that his assignment from Donald Trump was to have his reported assets increase every year irrespective of their actual values. The examples of Weisselberg's intent to falsify business records are too numerous to itemize, but include, and are not limited to: concealing the square footage of the Triplex to inflate its value by $200 million; misrepresenting to insurance representatives that the real estate valuations found in the SFCs were prepared by outside appraisers; directing Donna Kidder to prepare a budget for 40 Wall Street that showed a positive net operating income, notwithstanding that 40 Wall Street was running repeated deficits; valuing the Vornado partnership interest as cash, despite knowing that Donald Trump had no control over it; directing Birney to remove management fees as expenses when calculating net operating income; and certifying to banks and other third parties that all of the valuations in the SFCs were GAAP compliant and presented at fair and accurate estimated current values, which they were not.

There is ample evidence that Jeffrey McConney intentionally falsified business records. Not only was McConney responsible for the preparation of the valuations contained in the SFCs from 2014 through 2017, he also continued to overvalue certain properties from 2017 until he left the Trump Organization. In particular, examples of McConney's fraudulent conduct include, but are not limited to: knowingly and intentionally valuing the apartments at Trump Park Avenue based on an offering price that failed to reflect that the apartments were rent-restricted; intentionally

including the Vornado partnership interest as cash despite knowing Donald Trump did not control it; failing to discount to present value; valuing undeveloped properties as if they were already built and ready to be sold; intentionally lying to Donald Bender and representing that the Trump Organization had no appraisals of their real property in its possession, when it did; intentionally and knowingly valuing Mar-a-Lago as if it could be sold as a single family residence despite the deed restrictions that require it to be a social club in perpetuity.

There is also sufficient evidence that Donald Trump, Jr. and Eric Trump intentionally falsified business records. They served as attorneys-in-fact for Donald Trump and were under a heightened duty of prudence. See General Obligations Law §§ 5-1501(2)(a), 1505(1)(a), 1501(2)(a)(3). They also served as co-executives running the company from January 2017 to today, in which they had intimate knowledge of the Trump Organization's business, assets, and were provided with financial updates upon request by Weisselberg and Patrick Birney. Both Trump, Jr. and Eric Trump also continued to represent Donald Trump's Vornado limited partnership interest as cash, despite having been expressly advised that it was not under the Trump Organization's control.

Additionally, Eric Trump intentionally provided McConney with knowingly false and inflated valuations for Seven Springs, despite having commissioned appraisals that valued Seven Springs at a fraction of Eric Trump's number.

Moreover, Trump, Jr., as a trustee of the Donald J. Trump Revocable Trust, signed Management Representation Letters to Mazars affirming the accuracy of the supporting data and signed certifications to banks and insurance companies verifying the accuracy of the false SFCs' contents.

Accordingly, the law presumes that Donald Trump, Jr. read and understood the contents of his representations. Marine Midland Bank, N.A. v Embassy E., Inc., 160 AD2d 420, 422 (1st Dept 1990) ("It is no defense that respondents did not read the note or the guarantees, for the law presumes that one who is capable of reading has read the document which he has executed and he is conclusively bound by the terms contained therein") (internal citations omitted). Trump, Jr.'s intent can also be inferred from his acknowledgment that third parties would rely on his certifications.

Third Cause of Action

Plaintiff's third cause of action is for conspiracy to falsify business records.

> 'The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy.' The essence of the offense is an agreement to cause a specific crime to be omitted together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy … 'Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other

> conspirators to establish the offense of conspiracy… and that act may be the object crime.

Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999). Moreover, "[i]n prosecutions for the crime of conspiracy[,] the People's case must usually rest upon circumstantial evidence." People v Connolly, 253 NY 330, 339 (1930) ("[d]efendants, with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts").

For the reasons detailed in the second cause of action, there is ample evidence that each of the defendants conspired to falsify business records. This includes not only the individual defendants, but also the corporate defendants, as Penal Law § 20.20(c) makes clear that a corporation is liable for a misdemeanor committed by its agents "acting within the scope of [their] employment and on behalf of the corporation." Moreover, this applies to LLCs as well as corporations. People v Highgate LTC Mgmt., LLC, 69 AD3d 185, 189 (3rd Dept 2009) (just as corporations are liable for acts committed by their agents in the scope of their employment under Penal Law § 20.20(c), LLCs are similarly liable as "individuals" under Penal Law § 20.20(c)); People v Harco Constr. LLC, 163 AD3d 406, 407 (1st Dept 2018) (upholding conviction of LLC).

Similarly, the Donald J. Trump Revocable Trust is also liable for the criminal acts of its agents, including its trustees and those who performed work on their behalf. The trust is part of an associated group of business entities and individuals who operate as "the Trump Organization," and the trust holds all of the assets of the Trump Organization. People v Newspaper and Mail Deliverers' Union of New York and Vic., 250 AD2d 207, 215 (1st Dept 1998) (reinstating indictment against unincorporated union). People v Feldman, 791 NYS2d 361, 375 (Sup Ct, Kings County 2005) (political party is a "person"); People v Assi, 14 NY3d 335, 340-41 (2010) (religious congregation is association of individuals, and thus "person," under Penal Law). Moreover, the First Department, in a previous appeal arising out of this case, rejected defendants' argument that the trust cannot be held liable and could not be a proper party.

Fourth and Fifth Causes of Action

Defendants Donald Trump, Allen Weisselberg, Jeffrey McConney, Eric Trump, Donald Trump, Jr., and all of the entity defendants are liable under the fourth cause for action for repeatedly and persistently issuing false financial statements, thus violating Executive Law § 63(12) and New York Penal Law § 175.45. All defendants are liable under the fifth cause of action for conspiracy to submit false financial statements.

As detailed in the Findings of Fact, there is ample evidence that each of the individual defendants, with the intent to defraud, "knowingly ma[de] or utter[ed] a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect." PL § 175.45(1). There is even more evidence that each of the defendants participated in a conspiracy to submit false financial statements.

Sixth Cause of Action

Defendants Allen Weisselberg and Jeffrey McConney are each liable under the sixth cause for action for repeatedly and persistently committing insurance fraud in violation of Executive Law § 63(12) and New York Penal Law § 176.05.

To establish liability under this cause of action, plaintiff must establish that Weisselberg and McConney knowingly, and with the intent to defraud, presented or prepared, with knowledge or belief that it will be presented to an insurer, any written instrument as part of an insurance application that is known to contain materially false information or to conceal, for the purpose of misleading, information concerning any material fact. PL § 176.05.

As discussed in the Findings of Fact, both Weisselberg and McConney participated in the insurance meetings in which they made false representations to the insurance representatives about Donald Trump's SFCs, including misrepresenting the value of his cash assets, representing to the insurance companies that the real estate asset valuations in the SFCs came from outside appraisals, and lying about the existence of potential claims against the Trump Organization. Each of these actions caused the insurance application to contain materially false information for the purpose of misleading the insurer.

Seventh Cause of Action

All defendants are liable under the seventh cause of action, for conspiracy to commit insurance fraud. Although only Allen Weisselberg and Jeffrey McConney performed the overt acts of the insurance fraud, all defendants are liable for the conspiracy, as only "an overt act by one of the conspirators in furtherance of a conspiracy" need be shown. Robinson v Snyder, 259 AD2d 280, 281 (1st Dept 1999).

For the reasons detailed *supra*, each of the defendants participated in aiding and abetting the conspiracy to commit insurance fraud by their individual acts in falsifying business records and valuations, causing materially fraudulent SFCs to be intentionally submitted to insurance companies.

DISGORGEMENT OF ILL-GOTTEN GAINS

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct

> losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014) (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also People v Amazon.com, Inc., 550 F Supp 3d 122, 130 (SDNY 2021) ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief," and finding "the Attorney General can seek disgorgement of profits on the State's behalf"). Indeed, the last sentence of Executive Law § 63(12) clearly contemplates disgorgement ("all monies recovered or obtained under this subdivision").

The Personal Guarantee Interest Rate Differential

Having prevailed on its causes of action demonstrating intentional, repeated, and persistent fraud by defendants, plaintiff is entitled to disgorgement of defendants' "ill-gotten gains." Disgorgement is "the equitable remedy that deprives wrongdoers of their net profits from unlawful activity." Liu v Sec. & Exch. Comm'n, 140 S Ct 1936, 1937 (2020) (further stating that "it would be inequitable that a wrongdoer should make a profit out of his own wrong").

Plaintiff's expert, Michiel McCarty, testified reliably and convincingly that defendants profited by paying lower interest rates on loans from Deutsche Bank's Private Wealth Management Division, based on fraudulent SFCs, than the interest rates they would have paid under non-recourse loans simultaneously offered to them. He further testified that defendants profited by paying a lower interest rate on the 40 Wall Street Ladder Capital loan, based on a fraudulent SFC, than the interest rate on a non-recourse loan, and compared the terms of the then-existing Capital One non-recourse loan that 40 Wall Street was subject to before refinancing with Ladder Capital.

McCarty calculated the differences between interest rates and determined the following ill-gotten interest savings, which this Court hereby adopts as the most reasonable approximation of the ill-gotten interest rate savings upon which evidence was presented at trial: (1) $72,908,308 from 2014-2022 on the Doral loan; (2) $53,423,209 from 2015-2022 on the Old Post Office loan; (3) $17,443,359 from 2014-2022 on the Chicago loan; and (4) $24,265,291 from 2015-2022 on the 40 Wall Street loan.

In total, defendants' fraud saved them approximately $168,040,168 in interest, which shall be imposed, jointly and severally, among Donald Trump and the defendant entities that he owns and controls, as the misconduct at issue was committed by the Trump Organization's top management. SEC v Pentagon Cap. Mgmt. PLC, 725 F3d 279, 287 (2d Cir 2013) (joint and several liability appropriate because defendants had collaborated on a common scheme); S.E.C. v First Jersey Sec., Inc., 101 F 3d 1450, 1476 (2d Cir 1996) (joint and several liability is warranted when the misconduct of the company and its top controlling officers are indistinguishable); S.E.C. v Hughes Cap. Corp., 917 F Supp 1080, 1089 (DNJ 1996), aff'd, 124 F3d 449 (3d Cir 1997) (joint and several liability appropriate where defendants were "knowing

participants who acted closely and collectively" when their activities were "inextricably interwoven with that of the corporation") (internal citations omitted).

Old Post Office Profit

As with so many Trump real estate deals, the Old Post Office contract was obtained through the use of false SFCs (no false SFCs, no deal). Thus, the net profits received on its sale were ill-gotten gains, subject to disgorgement, which is meant to deny defendants "the ability to profit from ill-gotten gain." Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996).

Plaintiff has also argued that without the ill-gotten savings on interest rates, defendants would not even have been able to invest in the Old Post Office and/or other projects. To that end, plaintiff asserts that the interest rate savings from defendants' use of the fraudulent SFCs also allowed them to preserve capital to invest in other projects that they would not have been able to otherwise.[54] Plaintiff asserts that by 2017, after deducting the $16,500,0000 Vornado partnership interest, fraudulently labeled as cash, Trump would have been in a negative cash position (without the $73,811,815 saved through reduced interest payments). Plaintiff further asserts that without the interest savings from the use of the fraudulent SFCs, Donald Trump would have been in a negative cash position in every year from 2017-2020 (which would have violated his loan covenants).

Plaintiff also argues that the Old Post Office loan itself was a construction loan, and its proceeds were necessary to the construction and renovation of the hotel, which enabled the 2022 sale and resulting profits.

Of the three theories advanced by plaintiff, the first is by far the strongest; but all three, viewed collectively, support disgorgement of the profits defendants received from the sale of the Old Post Office as ill-gotten gains.

Accordingly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable, in the amount of $126,828,600, for the ill-gotten profits Donald Trump netted from the sale of the Old Post Office.

Eric Trump is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

Donald Trump, Jr. is liable, in the amount of $4,013,024, for the profit distribution he individually received from the sale of the Old Post Office.

[54] Indeed, as defendants' own expert, Frederick Chin, testified: "Interest rates have a large bearing on several aspects that effect an owner or developer. It is a cost of capital. Certainly, when cost or capital are higher, interest rates increase. The obligations increase. And, it may make a development less feasible." TT 5929.

Ferry Point Profit

Similarly, Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for disgorgement of the windfall profits of $60 million attributable to selling Ferry Point to Bally's. By maintaining the license agreement for Ferry Point, based on fraudulent financials, Donald Trump was able to secure a windfall profit by selling the license to Bally's Corporation. Quintel Corp., N.V. v Citibank, N.A., 596 F Supp 797, 804 (SDNY 1984) ("defrauders will be required to disgorge windfall profits").

Allen Weisselberg's Severance Payments

There is substantial evidence that Allen Weisselberg's $2 million separation agreement was negotiated to compensate him for his continued non-cooperation with any entities with any legal interests "adverse" to defendants. Moreover, as Weisselberg was a critical player in nearly every instance of fraud, it would be inequitable to allow him to profit from his actions by covering up defendants' misdeeds.

Accordingly, Allen Weisselberg is liable for the money he has received from this separation agreement as ill-gotten gains. S.E.C. v Razmilovic, 738 F 3d 14, 33 (2d Cir 2013) ("The court also reasonably ruled that Razmilovic should disgorge his $5 million severance payment"). Although he was promised $2 million in total, at the time of his testimony, he had received only $1 million. PX 1751. Accordingly, Allen Weisselberg must disgorge the $1 million he has already received as ill-gotten gains.

Pre-Judgment Interest

Public policy favors awarding interest in equity actions. 5 Weinstein–Korn–Miller, NY Civ Prac ¶ 5001.06, at 50–24.

CPLR 5001(b) directs that:

> Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. Where such damages were incurred at various time, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.

"Further, a defendant's 'corrupt intent or desire for personal profit' is a factor to be weighed in the court's exercise of discretion pursuant to CPLR 5001. Hynes v Iadarola, 221 AD2d 131, 135 (2d Dept 1996) (further holding equitable relief favors granting prejudgment interest as "the awards of prejudgment interest on the ground that these awards 'deprive the defendants of their ill-gotten gains prevent unjust enrichment and accord with the doctrine of fundamental fairness'") (internal citations omitted).

Weighing these public policy considerations, the Court directs that pre-judgment interest, per CPLR 5004(a),[55] shall run from the following dates: (1) March 4, 2019, the date the Attorney General commenced its investigation, for all disgorgement of ill-gotten interest savings on the Doral, Trump Chicago, Old Post Office, and 40 Wall Street loans; (2) June 26, 2023, the date of the sale of the Ferry Point lease, for all ill-gotten profits obtained from the sale; (3) May 11, 2022, the date of the sale of the Old Post Office, for all ill-gotten profits obtained from the sale; and (4) January 9, 2023, the date that Allen Weisselberg entered into his Separation Agreement, for all ill-gotten payments to Weisselberg designed to ensure his continued loyalty to the Trump Organization and his non-cooperation with law enforcement.

INJUNCTIVE RELIEF

"[T]he Attorney General may obtain permanent injunctive relief under … Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating, "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

An Attorney General who has demonstrated "repeated illegal or fraudulent acts" may obtain injunctive relief pursuant to Executive Law § 63(12). State v Princess Prestige Co., 42 NY2d 104, 106 (1977); People v Gen. Elec. Co., 302 AD2d 314, 315 (1st Dept 2003).

When determining whether injunctive relief is appropriate, courts are instructed to consider the following facts:

> [T]he fact that the defendant has been found liable for illegal conduct; the degree of scienter involved; whether the infraction is an "isolated occurrence"; whether defendant continues to maintain that his past conduct was blameless; and whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated.

S.E.C. v Cavanagh, 155 F3d 129, 135 (2d Cir 1998). Consideration of each of these factors weighs heavily towards granting injunctive relief.

Necessity of Ongoing Oversight

Defendants' Conduct Since OAG Commenced its Investigation

In a Decision and Order dated November 14, 2022, this Court granted a motion by plaintiff for a preliminary injunction and, among other things, appointed the Hon. Barbara Jones (ret.) as an

[55] CPLR 5004(a) provides, as here pertinent: "Interest shall be at the rate of nine percent per annum, except where otherwise provided by statute."

Independent Monitor tasked with overseeing the Trump Organization's financial disclosures to any third parties and any transfer or other dissipation of assets.[56] The Court also directed Judge Jones to provide regular updates to the Court summarizing her findings and observations. To date, she has provided six reports, the last of which was dated January 26, 2024, after the conclusion of the trial.

In her final report, Judge Jones made the followings findings and observations: (1) beginning in 2022, defendants elected no longer to submit SFCs, instead crafting their own list of "the Trust's Material Assets and Material Liabilities, which does not include estimated current values of the properties contained therein and does not include a balance sheet of the guarantor or any representations regarding his financial condition, notwithstanding the loan covenants that still require it;[57] (2) during the course of her monitorship, defendants transferred significant funds[58] outside of the Trust without notifying the monitor, as they were obligated to do; (3) during the course of her monitorship, defendants have submitted disclosures to third parties that fail to include significant liabilities;[59] (4) the defendants are no longer representing that any disclosures are GAAP compliant, despite certain continuing obligations to do so; (5) annual budgets of projected performance were submitted to third parties that were materially different from the actual budgets of the prior year and which excluded or significantly reduced actual management fees as liabilities; (6) the internal accounting structure of the Trump Organization continues to be plagued by math and/or reporting errors; and (7) there are no adequate internal controls over financial reporting in place at the Trump Organization to ensure that there will not continue to be misstatements and errors going forward. NYSCEF Doc. No. 1681.

Further, the Court notes that top leadership roles at the Trump Organization, particularly the CFO and Controller, remain vacant. Approximately five months after Weisselberg pleaded guilty to having committed 15 counts of tax fraud at the Trump Organization, Eric Trump

[56] The Court did not appoint Judge Jones randomly or arbitrarily or by happenstance. Rather, she was the only one of the three candidates that both sides proposed for the position of independent monitor. However, after she issued her scathing January 26, 2024 report, quite critical of defendants' financial practices, defendants changed their tune. Overnight, a universally respected former judge with a stellar resume, nominated by defendants themselves, joined the ranks of all those people and institutions being unfair to defendants and out to get them.

[57] As detailed by Judge Jones, over the past 14 months she has identified ten instances where the lender required defendants to submit certifications attesting to the accuracy and completeness of financial information, but which defendants failed to submit.

[58] So as not to interfere with the day-to-day business operations, the monitor and defendants agreed upon a $5 million threshold; accordingly, defendants were obligated to inform the monitor of any transfer of assets of $5 million or more. Defendants transferred approximately $40 million without disclosing it to the monitor.

[59] The January 26, 2024 report details that the Trump Organization is omitting certain liabilities on their disclosures, including, but not limited to, intra-company loans. At first blush, these loans may not seem to matter, because the money is all kept "in house." However, the failure to report these transfers distorts the balance sheet for the transferor and the transferee.

negotiated, approved, and executed his separation agreement.[60] The role of CFO has remained vacant ever since, a fact that Donald Trump, Jr. did not know at trial, mistakenly believing that Mark Hawthorn was the new CFO. Similarly, the role of Controller has remained vacant since McConney left the Trump Organization in February 2023.

Thus, the Trump Organization does not have the ability to operate with a functional financial reporting structure that would protect against fraud in the future. The fact that there are virtually no internal controls in place at the Trump Organization, "creates an atmosphere conducive to fraud." People v Northern Leasing Sys., Inc., 193 AD3d 67, 75 (1st Dept 2021).

Moreover, the fact that the Trump Organization has refused to prepare SFCs, even though various loan covenants obligate them to do so, ever since the monitor was appointed, leads the Court to conclude that the Trump Organization cannot, or will not, prepare an accurate SFC that is GAAP compliant and that values assets at their estimated current values. That the Trump Organization has taken to manufacturing its own version of its assets, one that fails to include any valuations, is a telling admission that it simply cannot, or will not, prepare an SFC without committing fraud.

Refusal to Admit Error

The English poet Alexander Pope (1688-1744) first declared, "To err is human, to forgive is divine." Defendants apparently are of a different mind. After some four years of investigation and litigation, the only error ("inadvertent," of course) that they acknowledge is the tripling of the size of the Trump Tower Penthouse, which cannot be gainsaid. Their complete lack of contrition and remorse borders on pathological. They are accused only of inflating asset values to make more money. The documents prove this over and over again. This is a venial sin, not a mortal sin. Defendants did not commit murder or arson. They did not rob a bank at gunpoint. Donald Trump is not Bernard Madoff. Yet, defendants are incapable of admitting the error of their ways. Instead, they adopt a "See no evil, hear no evil, speak no evil" posture that the evidence belies.

This Court is not constituted to judge morality; it is constituted to find facts and apply the law. In this particular case, in applying the law to the facts, the Court intends to protect the integrity of the financial marketplace and, thus, the public as a whole. Defendants' refusal to admit error—indeed, to continue it, according to the Independent Monitor—constrains this Court to conclude that they will engage in it going forward unless judicially restrained.

Indeed, Donald Trump testified that, even today, he does not believe the Trump Organization needed to make any changes based on the facts that came out during this trial.

Trump Organization's History of Corporate Malfeasance

In considering the need for ongoing injunctive relief, this Court is mindful that this action is not the first time the Trump Organization or its related entities has been found to have engaged in

[60] Thus, even after Weisselberg pleaded guilty to committing fraud at the Trump Organization, Eric Trump and Donald Trump, Jr. left Weisselberg in his critical role as CFO for an additional five months.

corporate malfeasance. Of course, the more evidence there is of defendants' ongoing propensity to engage in fraud, the more need there is for the Court to impose stricter injunctive relief. This is not defendants' first rodeo.

In August 2013, OAG sued Donald Trump, the Trump Organization, and affiliated entities doing business as "Trump University" for fraud in the marketing and operation of "Trump University." People v Trump Entrepreneur Initiative LLC, Sup Ct, NY County, Index No. 451463/2013. That litigation was resolved as part of a class action settlement in which Donald Trump and the Trump Organization agreed to pay $25 million to Trump University clients. Id. at NYSCEF Doc. 336.

In June 2018, OAG sued Donald Trump, Donald Trump, Jr., Eric Trump, and others for persistent violations of law arising out of the Donald J. Trump Foundation, including "failure to follow basic fiduciary obligations or implement even elementary corporate formalities required by law." People v Trump, Sup Ct, NY County, Index No. 451130/2018. That litigation was resolved in November 2019 pursuant to a settlement that included the dissolution of the Foundation and a requirement that Donald Trump, Jr. and Eric Trump attend training on the responsibilities of officers and directors of charitable organizations. Id. at NYSCEF Doc. 139.

On May 3, 2022, the Trump Organization and the Trump Old Post Office LLC entered into a settlement agreement with the Office of the Attorney General for the District of Columbia arising out of allegations that the 58th Presidential Inaugural Committee paid excessive fees to the Old Post Office LLC that accrued to defendants' benefit. See https://oag.dc.gov/sites/default/files/2022-05/Trump-PIC-Consent-Motion-Settlement-Order.pdf.

And finally, as previously noted, on August 18, 2022, Weisselberg pleaded guilty to 15 criminal counts of tax fraud, including four counts of Falsifying Business Records, while at the Trump Organization. People v Weisselberg, Indictment No. 1473-2021 (Sup Ct, NY County). In that same case, the Trump Organization, the Donald J. Trump Revocable Trust and DJT Holdings LLC were convicted of 17 criminal counts arising out of tax fraud, including seven counts of Falsifying Business Records. People v The Trump Corp., Sup Ct, NY County, Indictment No. 1473/2021.

Accordingly, this Court finds that defendants are likely to continue their fraudulent ways unless the Court grants significant injunctive relief.

Continuation of Judge Jones as Independent Monitor

The Court hereby concludes and orders that Judge Jones shall continue in her role as Independent Monitor for a period of no less than three years. However, Judge Jones's role and duties shall be enhanced from those operative during the preliminary injunction, as her observations over the past 14 months indicate that still more oversight is required.

In particular, the Trump Organization shall be required to obtain prior approval—not, as things are now, subsequent review—from Judge Jones before submitting any financial disclosure to a third party, so that such disclosure may be reviewed beforehand for material misrepresentations.

Within 30 days of this Decision and Order, Judge Jones shall submit a proposed order to the Court outlining the specific authority she believes that she needs to keep defendants honest, and the obligations of defendants, to effectuate a productive and enhanced monitorship going forward.

Appointment of an Independent Director of Compliance

In addition to the continued monitorship, the Court hereby orders that an Independent Director of Compliance be installed at the Trump Organization, who shall be responsible for ensuring good financial and accounting practices, shall establish internal written protocols for financial reporting, and shall also approve any financial disclosures to third parties in advance of submission.

The Independent Director of Compliance shall report directly to Judge Jones, and the Trump Organization shall pay such person reasonable compensation.

Within 30 days of this Decision and Order, Judge Jones shall submit to the Court a proposed order including, without limitation, a list of proposed persons who may fulfil this role, and the specifics of the role itself.

Prior Cancellation of Business Licenses

In its September 26, 2023, Decision and Order granting partial summary judgment to OAG, this Court ordered the cancellation of defendants' business licenses. The Appellate Division, First Department has stayed this relief pending the final disposition on appeal.

However, as going forward there will be two-tiered oversight, an Independent Monitor and an Independent Director of Compliance, of the major activities that could lead to fraud, cancellation of the business licenses is no longer necessary.[61] Accordingly, this Court hereby modifies its September 26, 2023, Decision and Order solely to the extent of removing the language ordering the LLCs cancellation en masse. The restructuring and potential dissolution of any LLCs shall be subject to individual review by the Court appointed Independent Director of Compliance in consultation with Judge Jones.

Industry Bans

The Attorney General asks, and the Court has the authority, temporarily or permanently, to enjoin certain defendants from participating in certain business activities as a result of their persistent fraud. See People v Fashion Place Assoc., 224 AD2d 280 (1st Dept 1996) (upholding injunction barring defendants from involvement in the sale of real estate securities from or within

[61] This Court did not order the corporate cancellations cavalierly. Although Executive Law § 63(12) expressly allows a Court to do this, doing so could implicate serious economic concerns.

New York); People v Imported Quality Guard Dogs, Inc., 930 NYS2d 906, 908 (2d Dept 2011) (affirming order permanently enjoining defendant from engaging in the business that gave rise to his wrongful conduct).

The evidence is overwhelming that Allen Weisselberg and Jeffrey McConney cannot be entrusted with controlling the finances of any business. Accordingly, this Court hereby permanently enjoins Allen Weisselberg and Jeffrey McConney from serving in the financial control function of any New York corporation or similar business entity operating in New York State.

The Court hereby enjoins Donald Trump, Allen Weisselberg, and Jeffrey McConney from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years.

The Court hereby enjoins Donald Trump and the Trump Organization and its affiliates from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for a period of three years.

The Court hereby enjoins Eric Trump and Donald Trump, Jr. from serving as an officer or director of any New York corporation or other legal entity for a period of two years.

CONCLUSION AND ORDER

For the reasons stated herein, it is hereby

ORDERED that defendants Donald Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable under the second, third, fourth, fifth, and seventh causes of action; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are liable under the sixth cause of action; and it is further

ORDERED that defendants Donald Trump, 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, are jointly and severally liable to plaintiff in the amount of $168,040,168, with pre-judgment interest from March 4, 2019; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable to plaintiff in the amount of $126,828,600, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendants Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable to plaintiff in the amount of $60,000,000, with pre-judgment interest from June 26, 2023; and it is further

ORDERED that defendant Eric Trump is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Donald Trump, Jr. is liable to plaintiff in the amount of $4,013,024, with pre-judgment interest from May 11, 2022; and it is further

ORDERED that defendant Allen Weisselberg is liable to plaintiff in the amount of $1,000,000, with pre-judgment interest from January 9, 2023; and it is further

ORDERED that defendants Allen Weisselberg and Jeffrey McConney are hereby permanently enjoined from serving in the financial control function of any New York corporation or similar business entity registered and/or licensed in New York State; and it is further

ORDERED that defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of three years; and it is further

ORDERED that defendants Donald Trump, 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, are hereby enjoined from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of three years; and it is further

ORDERED that defendants Eric Trump and Donald Trump, Jr., are hereby enjoined from serving as an officer or director of any New York corporation or other legal entity in New York for a period of two years; and it is further

ORDERED that this Court's September 26, 2023, Decision and Order is hereby modified solely to the extent of vacating the directive to cancel defendants' business certificates, without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence; and it is further

ORDERED that the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones (ret.) shall submit to the Court a proposed order outlining the specify authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward; and it is further

ORDERED that an Independent Director of Compliance shall be installed at the Trump Organization, at defendants' expense, to ensure compliance with financial reporting obligations and to establish internal written accounting and financial reporting protocols; and it is further

ORDERED that within 30 days of the date of this Decision and Order, the Hon. Barbara Jones shall submit to this Court a list of persons who she recommends be appointed the Trump Organization's Independent Director of Compliance; and it is further

ORDERED that the Clerk hereby enter judgment accordingly.

DATE: 2/16/2024

ARTHUR F. ENGORON, JSC

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

Attachment 2

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

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

Defendants.

INDEX NO. 452564/2022

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On October 3, on the record, I imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances" (emphasis added). I further made clear that "failure to abide by this directive will result in serious sanctions."

Despite this unambiguous order, last week I learned that Donald Trump had failed to abide by it by not removing, for a total of 17 days, from the website of donaldjtrump.com an untrue, disparaging and personally identifying post about my Principal Law Clerk. Counsel for defendant stated in open court that the violation of the gag order was inadvertent. Taking counsel at his word, I imposed a $5,000 nominal sanction against Donald Trump for the first-time violation of the gag order.

On October 25, during a break order from the trial, Donald Trump made the following statement to a gaggle of reporters outside the courtroom: "This judge is a very partisan judge with a person who's very partisan sitting alongside him, perhaps even more partisan than he is." Quite clearly, defendant was referring, once again, to my Principal Law Clerk, who sits alongside me on the bench.

Defendant's attorneys offered the explanation that Donald Trump was referring to Michael Cohen, who had been sitting on the witness stand. I then conducted a brief hearing, during

which Donald Trump testified, under oath that he was referring to Michael Cohen. However, as the trier of fact, I find this testimony rings hollow and untrue. The Oxford English Dictionary defines "alongside" as "close to the side of; next to." Witnesses do not sit "alongside" the judge, they sit in the witness box, separated from the judge by a low wooden barrier. Further, Donald Trump's past public statements demonstrate him referring to Michael Cohen directly by his name, or by a derogatory name, but in all circumstances, he is unambiguous in making it known he is referring to Michael Cohen.

Moreover, the language Donald Trump used on October 25 mirrors the language he used in public statements to the press on October 2, wherein he inappropriately and unquestionably spoke about my Principal Law Clerk, stating: "this rogue judge is a trump hater, the only one that hates trump more is his associate up there, this person that works with him, and she's screaming into his ear."

Using imprecise language as an excuse to create plausible ambiguity about whether defendant violated this Court's unequivocal gag order is not a defense; the subject of Donald Trump's public statement to the press was unmistakably clear. As the trier of fact, I find that Donald Trump was referring to my Principal Law Clerk, and that, as such, he has intentionally violated the gag order.

This is the second violation of this Court's gag order in the less than one month since this trial commenced. Accordingly, this Court imposed a fine of $10,000 on defendant Donald Trump, to be paid to the New York Lawyers' Fund for Client Protection, within thirty (30) days of October 25, 2023.

Further, Donald Trump is ordered to post proof of payment, of this fine and the one imposed on October 10, 2023, to NYSCEF within two days of making such payments.

DATE: 10/26/2023 **ARTHUR F. ENGORON, JSC**

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

Attachment 3

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

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

Defendants.

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INDEX NO. 452564/2022

On October 3, during a break in this trial, defendant Donald Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk. I spoke to defendants, both on and off the record. Off the record, I ordered Donald Trump to remove the post immediately. Approximately 10 minutes later, Donald Trump represented to me that he had taken down the offending post, and that he would not engage in similar behavior going forward. I then, on the record, imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances." I further made clear that "failure to abide by this directive will result in serious sanctions."

Despite this clear order, last night I learned that the subject offending post was never removed from the website "DonaldJTrump.com," and, in fact, had been on that website for the past 17 days. I understand it was removed late last night, but only in response to an email from this Court.

Today, in open Court, counsel for Donald Trump stated that the violation of the gag order was inadvertent and was an "unfortunate part of the process that is built into the campaign structure." Giving defendant the benefit of the doubt, he still violated the gag order. Conners v Pallozzi, 241 AD2d 719, 719 (3d Dept 1997) ("[c]ontrary to defendants' claim on appeal, a finding of civil contempt does not require a showing that such disobedience was willful").

OTHER ORDER – NON-MOTION

Further, whether intentional or the result of mere "campaign structure" negligence, the effect of the post on its subject is unmitigated by how or why it remained on Donald Trump's website for 17 days. Moreover, a defendant may not evade liability for violating a court order by asserting that the violation was a result of the actions of one or more of the defendant's employees or agents.

In the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse.

Donald Trump has received ample warning from this Court as to the possible repercussions of violating the gag order. He specifically acknowledged that he understood and would abide by it. Accordingly, issuing yet another warning is no longer appropriate; this Court is way beyond the "warning" stage.

Given defendant's position that the violation was inadvertent, and given that it is a first time violation, this Court will impose a nominal fine, $5,000, payable to the New York Lawyers' Fund for Client Protection, within ten (10) days of the date of this order.

Make no mistake: future violations, whether intentional or unintentional, will subject the violator to far more severe sanctions, which may include, but are not limited to, steeper financial penalties, holding Donald Trump in contempt of court, and possibly imprisoning him pursuant to New York Judiciary Law § 753.

DATE: 10/20/2023 **ARTHUR F. ENGORON, JSC**

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

Attachment 4

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

INDEX NO. 452564/2022

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

MOTION DATES 08/30/2023, 08/30/2023, 09/05/2023

Plaintiff,

MOTION SEQ. NO. 026, 027, 028

- v -

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

DECISION + ORDER ON MOTIONS

Defendants.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 026) 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1292, 1293, 1294, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415,

1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1442, 1443, 1444, 1445, 1446, 1447

were read on this motion for PARTIAL SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 027) 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1474

were read on this motion for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 028) 1263, 1264, 1265, 1276, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473

were read on this motion for SANCTIONS

Upon the foregoing documents, it is hereby ordered that defendants' motion for summary judgment is denied, plaintiff's motion for partial summary judgment is granted in part, and plaintiff's motion for sanctions is granted in part, all as detailed herein.

This action arises out of a years-long investigation that plaintiff, the Office of the Attorney General of the State of New York ("OAG"), conducted into certain business practices that defendants engaged in from 2011 through 2021. OAG alleges that the individual and entity defendants committed repeated and persistent fraud by preparing, certifying, and submitting to lenders and insurers false and misleading financial statements, thus violating New York Executive Law § 63(12).

Procedural Background

In 2020, OAG commenced a special proceeding seeking to enforce a series of subpoenas against various named defendants and other persons and entities. This Court presided over that proceeding and issued several orders compelling compliance with OAG's subpoenas. See People v The Trump Org., Sup Ct, NY County, Index No. 541685/2020. During that proceeding, OAG and the Trump Organization entered into an agreement, which, broadly speaking, tolled the statute of limitations from November 5, 2020, through May 31, 2022. NYSCEF Doc. No. 1260.

On November 3, 2022, this Court found preliminarily that defendants had a propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition ("SFCs") on behalf of defendant Donald J. Trump ("Donald Trump"). NYSCEF Doc. No. 183. Accordingly, the Court granted a preliminary injunction against any further fraud and appointed the Hon. Barbara S. Jones (ret.) as an independent monitor to oversee defendants' financial statements and significant asset transfers. NYSCEF Doc. Nos. 193 and 194.

Defendants moved to dismiss the complaint. In a Decision and Order dated January 6, 2023, this Court denied the motion. NYSCEF Doc. Nos. 453. Defendants appealed, resulting in a January 6, 2023 Order wherein the Appellate Division, First Department modified this Court's order to the extent of: (1) declaring that the "continuing wrong doctrine does not delay or extend [the statute of limitations]"; (2) finding that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and timely against defendants not subject to the tolling agreement if they accrued after February 6, 2016; and (3) dismissing the complaint as against defendant Ivanka Trump on statute of limitations grounds, finding that she was not an employee of the Trump Organization at the time at which the parties entered into the tolling agreement. People v Trump, 217 AD3d 609 (1st Dept 2023).

The Appellate Division declined to dismiss *any* other defendants or *any* causes of action.

Discovery ended on July 28, 2023, and OAG filed a note of issue shortly thereafter. NYSCEF Doc. No. 644. OAG now moves for partial summary judgment on its first cause of action, for fraud under Executive Law § 63(12). NYSCEF Doc. No. 765. Separately, plaintiff now moves, pursuant to 22 NYCRR 130-1.1, to sanction defendants for frivolous motion practice. NYSCEF Doc. No. 1263. Defendants also move for summary judgment, seeking to dismiss the complaint in its entirety. NYSCEF Doc. No. 834.

Executive Law § 63(12)

Executive Law § 63(12) provides, as here pertinent, as follows:

> Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CAUSES OF ACTION

Arguments Defendants Raise Again

Standing and Capacity to Sue

Defendants' arguments that OAG has neither capacity nor standing to sue under Executive Law § 63(12), and that the disclaimers of non-party accountants Mazars insulate defendants, invoke the time-loop in the film "Groundhog Day." This Court emphatically rejected these arguments in its preliminary injunction decision and in its dismissal decision, and the First Department affirmed both. Defendants' contention that a different procedural posture mandates a reconsideration, or *a fortiori*, a reversal, is pure sophistry[1].

As this Court and others have made abundantly clear, "[i]t is not disputed that the Attorney General is empowered to sue for violations of [Executive Law § 63(12)]." People v Greenberg, 21 NY3d 439, 446 (2013) (finding Executive Law § 63(12) to be broadly worded anti-fraud device); People v Ford Motor Co., 74 NY2d 495, 502 (1989) ("Executive Law § 63(12) is the procedural route by which the Attorney-General may apply to Supreme Court for an order enjoining repeated illegal or fraudulent acts").

Parens Patriae and Consumer Ambit

Defendants repeat the erroneous argument that the complaint must be dismissed because OAG cannot demonstrate the requirements of a *parens patriae* action, which is one in the public interest. "*Parens patriae* is a common-law standing doctrine that permits the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens." People v Grasso, 11 NY3d 64, 72 at n 4 (2008). Invocation of such doctrine, or its requirements, is not necessary where, as here, the New York legislature has specifically empowered the Attorney General to bring such an action pursuant to Executive Law § 63(12). People v Credit Suisse Sec. (USA) LLC, 31 NY3d 622, 633 (2018) ("it is undisputed that Executive Law § 63(12) gives the Attorney General standing to redress liabilities recognized elsewhere in the law, expanding the scope of available remedies"); People v Trump Entrepreneur Initiative LLC, 137 AD3d 409, 417 (1st Dept 2016) ("[E]ven apart from prevailing authority, the language of the statute itself appears to authorize a cause of action; like similar statutes that authorize causes of action, § 63(12) defines the fraudulent conduct that it prohibits, authorizes the Attorney General to commence an action or proceeding to foreclose that conduct, and specifies the relief, including equitable relief, that the Attorney General may seek").

In any event, even if compliance with the requirements of the *parens patriae* doctrine is necessary, which it is not, OAG has easily satisfied those requirements, as it is well-settled that "[i]n varying contexts, courts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace." Grasso at 69 n 4; People v Coventry First LLC, 52 AD3d 345, 346 (1st Dept 2008) ("the claim pursuant to Executive Law § 63(12) constituted proper exercises

[1] Indeed, the Court made this crystal clear in its January 6, 2023 order when it found: "Here, the issues of capacity and standing, are pure issues of law and do not depend on a trial of disputed issues of fact. Simply put, who the instant parties are and what the law says, which determine capacity and standing, are not disputed issues of fact that need to be tried." NYSCEF Doc. No. 453 at 4.

of the State's regulation of businesses within its borders in the interest of securing an honest marketplace"); People v Amazon.com, Inc., 550 F Supp 3d 122, 130-131 (SD NY 2021) ("[T]he State's statutory interest under § 63(12) encompasses the prevention of either 'fraudulent or illegal' business activities. Misconduct that is illegal for reasons other than fraud still implicates the government's interests in guaranteeing a marketplace that adheres to standards of fairness...").

Defendants' rehashed argument that OAG's complaint must be dismissed because it is not designed to protect consumers is unavailing. New York v Feldman, 210 F Supp 2d 294, 299-300 (SD NY 2002) ("[D]efendants' claim that section 63(12) is limited to consumer protection actions is simply incorrect. The New York Attorney General has repeatedly used section 63(12) to secure relief for persons who are not consumers in cases that are not consumer protection actions").

Defendants cite to the trial court decision People v Domino's Pizza, Inc., NY Slip Op 30015(U) (Sup Ct, NY County 2021), which is not binding on this Court, as authority for the proposition that any relief sought here should come in the form of private contract litigation, not "a law enforcement action under a statute designed to address public harm." NYSCEF Doc. No. 835 at 39. However, Domino's is wholly distinguishable from the instant case. There, the Court found that "OAG did not establish that Domino's representations to franchisees... were false, deceptive, or misleading. Accordingly, the Court concludes that OAG has not established that Domino's engaged in conduct that 'tends to deceive or creates an atmosphere conducive to fraud.'" Domino's at 26[2]. Here, as discussed *infra*, OAG demonstrates that defendants repeatedly submitted fraudulent financial documents to obtain financial benefits which otherwise they would not have received.

Defendants glaringly misrepresent the requirements of an Executive Law § 63(12) cause of action. Citing to People v Northern Leasing Sys., Inc., 70 Misc 3d 256, 267 (Sup Ct, NY County 2021), defendants assert that OAG must show "the practice is one likely to mislead a reasonable consumer acting reasonably under the circumstances." NYSCEF Doc. No. 835 at 42. However, the word "consumer" does not appear anywhere in the referenced decision, and defendants' characterization of its holding is inaccurate[3]. Northern Leasing confirms that the "test for fraud under Executive Law § 63(12) is whether an act tends to deceive or creates an environment conducive to fraud." Northern Leasing at 267 (further holding "Executive Law § 63(12) expands fraud to encompass new liability, while including non-statutory fraud claims" and finding that "[a] claim under Executive Law § 63(12) is the exercise of 'the State's regulation of businesses within its borders in the interest of securing an honest marketplace'").

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[2] As the failure to demonstrate false misrepresentations foreclosed the possibility of liability on that issue in Domino's, any commentary about the statute's requirements was pure *dicta*.

[3] Although "consumer" does appear in the First Department's affirmance of Northern Leasing, it does not advance defendants' proposition that Executive Law § 63(12) actions be consumer oriented; it simply reaffirms that "the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." 193 AD3d 67 (1st Dept 2021). The fact that Northern Leasing challenged actions targeted at consumers does not mean that Executive Law § 63(12) is restricted to such actions.

Non-Party Disclaimers

Defendants, yet again, argue that OAG's complaint must be dismissed because the SFCs contain language, provided by non-party accountants Mazars, that indicate that they have not audited or reviewed the accompanying financial statements and therefore cannot express an opinion as to whether the financial statements comply with Generally Accepted Accounting Principles ("GAAP"). However, as this Court already ruled, these non-party disclaimers do not insulate defendants from liability, as they plainly state that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statement." NYSCEF Doc. No. 183.

As this Court explained in its November 3, 2022 Decision and Order: "[t]he law is abundantly clear that" using a disclaimer as a defense to a justifiable reliance claim requires proof that: "(1) the disclaimer is made sufficiently specific to the particular type of fact misrepresented or undisclosed; and (2) the alleged misrepresentations or omissions did not concern facts peculiarly within the [defendant's] knowledge." Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc., 115 AD3d 128, 137 (1st Dept 2014) ("a [plaintiff] may not be precluded from claiming reliance on misrepresentation of facts peculiarly within the [defendant's] knowledge"); People v Bull Inv. Grp., Inc., 46 AD2d 25, 29 (3d Dept 1974) ("It has been stated that '[t]he rule is clear that where one party to a transaction has superior knowledge, or means of knowledge not open to both parties alike, he is under a legal obligation to speak and his silence constitutes fraud"). As the SFCs did not particularize the type of fact misrepresented or undisclosed and were unquestionably based on information peculiarly within defendants' knowledge, defendants may not rely on such purported disclaimers as a defense.

In sum, the Mazars disclaimers put the onus for accuracy squarely on defendants' shoulders.

Scienter and "Participation" Requirements

Defendants erroneously claim that Fletcher v Dakota, Inc, 99 AD3d 43, 49 (1st Dept 2012), stands for the proposition that the purported "participation element [of a cause of action under Executive Law § 63(12)] is satisfied where the defendant 'directed, controlled, or ratified the decision that led to plaintiff's injury.'" However, Fletcher is not an Executive Law § 63(12) action, it was brought as a corporate tort; accordingly, is not relevant here.[4] Executive Law § 63(12) is much more than a mere codification of common law fraud.

Defendants also incorrectly rely on Abrahami v UPC Const. Co., 224 AD2d 231, 233 (1st Dept 1996), for the proposition that "[m]erely providing copies of purportedly false financial statements is insufficient." NYSCEF Doc. No. 835 at 55. However, as Abrahami was not brought pursuant to Executive Law § 63(12), its analysis regarding "intent to deceive" is irrelevant. Unlike the situation in Abrahami, where an action is brought pursuant to Executive

[4] In fact, had defendants not cut off the beginning of the sentence they cited, it would be evident on its face that such case is legally irrelevant, as the full sentence reads: "A leading treatise on corporations states that a director may be held individually liable to third parties for a corporate tort if he either participated in the tort or else 'directed, controlled, approved or ratified the decision that led to the plaintiff's injury.'" Fletcher at 49.

Law § 63(12), "good faith or lack of fraudulent intent is not in issue." People v Interstate Tractor Trailer Training, Inc., 66 Misc 2d 678, 682 (Sup Ct, NY County 1971) (holding liability under Executive Law § 63(12) does not require demonstrating an "intent to defraud"); Trump Entrepreneur Initiative at 417 ("fraud under section 63(12) may be established without proof of scienter or reliance"); Bull Inv. Grp. at 27 ("[i]t is well-settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary").

Disgorgement of Profits

In flagrant disregard of prior orders of this Court *and* the First Department, defendants repeat the untenable notion that "disgorgement is unavailable as a matter of law" in Executive Law § 63(12) actions. NYSCEF Doc. No. 835 at 70. This is patently false, as defendants are, or certainly should be, aware that the Appellate Division, First Department made it clear *in this very case* that "[w]e have already held that the failure to allege losses does not require dismissal of a claim for disgorgement under Executive Law § 63(12)." Trump, 217 AD3d at 610.

Defendants nonetheless rely on the trial court decision in People v Direct Revenue, LLC, 19 Misc 3d 1124(A) (Sup Ct, NY County 2008), for the proposition that Executive Law § 63(12) "do[es] no[t] authorize the general disgorgement of profits received from sources other than the public." NYSCEF Doc. No. 835 at 71-72. However, defendants' neglect to mention that Direct Revenue was superseded, and essentially overruled, in 2016 by the New York Court of Appeals in People v Greenberg, which unequivocally held that "disgorgement is an available remedy under the Martin Act and the Executive Law." People v Greenberg, 27 NY3d 490, 497 (2016).

Also fatally flawed is defendants' reliance on People v Frink Am., Inc., 2 AD3d 1379, 1380 (4th Dept 2003), as it relies on the outdated proposition that Executive Law § 63(12) "does not create any new causes of action" and thus, the remedy of disgorgement is unavailable. NYSCEF Doc. No. 835 at 73-74. However, in Trump Entrepreneur Initiative, in which at least three of the instant defendants were parties, the First Department unambiguously declared that "the Attorney General is, in fact, authorized to bring a cause of action for fraud under Executive Law § 63(12)." Trump Entrepreneur Initiative at 418; see also People v Pharmacia Corp., 27 Misc 3d 368, 373 (Sup Ct, NY County 2010) (holding "Executive Law § 63(12) applies to fraudulent conduct actionable at common law, as well as to conduct for which liability arises solely from the statute").

Defendants incorrectly posit that, under People v Ernst & Young, LLP, 114 AD3d 569 (1st Dept 2014), disgorgement is available under the Martin Act but not under Executive Law § 63(12). NYSCEF Doc. No. 836 at 73. This is simply untrue. In Ernst & Young, the First Department specifically held that disgorgement was an available and potentially "crucial" remedy in an Executive Law § 63(12) action. Ernst & Young at 570.

Defendants correctly assert that "the record is devoid of any evidence of default, breach, late payment, or any complaint of harm" and argue that as none of the recipients of the subject SFCs ever lodged a complaint with OAG or otherwise claimed damages, disgorgement of profits would be inappropriate. NYSCEF Doc. No. 835 at 40.

However, that is completely irrelevant. As the Ernst & Young Court noted:

> [W]here, as here, there is a claim based on fraudulent activity, disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution. Disgorgement is distinct from the remedy of restitution because it focuses on the gain to the wrongdoer as opposed to the loss to the victim. Thus, disgorgement aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct. Accordingly, the remedy of disgorgement does not require a showing or allegation of direct losses to consumers or the public; the source of the ill-gotten gains is "immaterial."

Id. (disgorgement is not impermissible penalty "since the wrongdoer who is deprived of an illicit gain is ideally left in the position he would have been had there been no misconduct") (internal citations omitted); see also Amazon.com at 130 ("Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief", and finding "the Attorney General can seek disgorgement of profits on the State's behalf").

Sanctionable Conduct for Frivolous Motion Practice

In response to both OAG's request for a preliminary injunction and to defendants' motions to dismiss, this Court rejected every one of the aforementioned arguments. In rejecting such arguments for the second time, this Court cautioned that "sophisticated counsel should have known better." [5] NYSCEF Doc. No. 453 at 5. However, the Court declined to impose sanctions, believing it had "made its point." Id.

Apparently, the point was not received.

One would not know from reading defendants' papers that this Court has already *twice* ruled against these arguments, called them frivolous, and *twice* been affirmed by the First Department.

"In its discretion, a court may award costs and financial sanctions against an attorney or party resulting from frivolous conduct." Kamen v Diaz-Kamen, 40 AD3d 937, 937 (2d Dept 2007). See Yan v Klein, 35 AD3d 729, 729–30 (2d Dept 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of res judicata and collateral estoppel").

Defendants' conduct in reiterating these frivolous arguments is egregious. We are way beyond the point of "sophisticated counsel should have known better"; we are at the point of intentional and blatant disregard of controlling authority and law of the case. This Court emphatically rejected these arguments, as did the First Department. Defendants' repetition of them here is indefensible.

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5 The Court even went so far as to caution that the "arguments were borderline frivolous even the first time defendants made them." NYSCEF Doc. No. 453 at 3.

Pursuant to New York Administrative Code § 130-1.1, "[t]he Court, as appropriate, may make such an award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." The provision further states that:

> For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

22 NYCRR 130-1.1(c). Defendants' inscrutable persistence in re-presenting these arguments clearly satisfies the first of these three possible criteria.

When considering imposing sanctions "[a]mong the factors [the court] is directed to consider is whether the conduct was continued when it became apparent, or should have become apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel." Levy v Carol Mgmt. Corp., 260 AD2d 27, 34 (1st Dept 1999) (further finding that sanctions both "punish past conduct" and "they are goal oriented, in that they are useful in deterring future frivolous conduct").

In its January 6, 2023 Decision and Order, this Court warned defendants that their "reiteration of [these previously rejected arguments] scattered across five different motions to dismis[s] was frivolous." NYSCEF Doc. No. 453 at 3.

In a last-ditch attempt to stave off sanctions, defendants have submitted an affirmation by the Hon. Leonard B. Austin (ret.), who had a supremely distinguished judicial career, culminating in 12 years on the Appellate Division, Second Department. NYSCEF Doc. No. 1449. Justice Austin presents what is essentially a primer on the interplay between motions to dismiss and motions for summary judgment, and every point of law is valid.

However, it is wholly invalid as a reason for this Court to deny sanctions. First, legal arguments are for counsel to make, not for experts to submit. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). Neither defendants nor Justice Austin has sought permission to file an amicus brief. In their own submissions, defendants have expounded on the law of capacity, standing, disclaimers, motions to dismiss, motions for summary judgment, and sanctions. The heft and prestige of a legal lion adds nothing.

More importantly, the subject affirmation utterly fails to fit the specific facts of this case into the general principles it enunciates. In many situations, discovery, and a complete record, and the reversal of the burden of proof, will turn the tide, requiring that a valid complaint be dismissed because there is no evidence to support it. But standing and capacity are legal questions, not factual issues. Crucially, while defendants have, by their own account, conducted extensive discovery and have created a complete record, they fail to point to a single fact that discovery has uncovered, let alone a single fact in the record, that changes the calculus of their denied and doomed capacity and standing arguments.

Capacity and standing are not esoteric concepts. Infants, legally declared incompetents, and persons under certain legal disabilities are not allowed to sue. The New York Attorney General is none of the above. If my sibling or neighbor is harmed, I do not have standing to sue for his or her injury. Citizens may not sue to prevent governmental actions unless they may suffer some personal harm. Executive Law § 63(12) was promulgated to give the Attorney General standing to sue on behalf of the people of New York to prevent or deter the precise type of fraud here at issue. Arguments to the contrary are risible.

Defendants' arguments that the factual record developed in discovery changed the landscape under which standing should be viewed is legally preposterous. The best that defendants could muster at oral argument was to contend (incorrectly) that plaintiff cannot sue because the subject transactions were between private entities, and nobody lost money. However, that is purely an argument on the merits, not an argument on standing. Taken to its logical extreme, absolutely any time a defendant denies liability, it could move to dismiss on the ground of lack of standing.

Exacerbating defendants' obstreperous conduct is their continued reliance on bogus arguments, in papers and oral argument. In defendants' world: rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air; a disclaimer by one party casting responsibility on another party exonerates the other party's lies; the Attorney General of the State of New York does not have capacity to sue or standing to sue (never mind all those cases where the Attorney General has sued successfully) under a statute expressly designed to provide that right; all illegal acts are untimely if they stem from one untimely act; and square footage subjective.

That is a fantasy world, not the real world.

There is also a larger context to the sanctions issue. Several defendants are no strangers to sanctions and why courts are sometimes constrained to issue them. In the investigatory special proceeding this Court found Donald Trump in contempt of Court and sanctioned him $10,000 per day for failing to comply with his discovery obligations. This Court lifted the contempt after 11 days. The First Department affirmed the contempt and the fines. People v Trump, 213 AD3d 503, 504 (1st Dept 2023) ("[T]he financial sanction to compel compliance was a proper exercise of the court's discretionary power and was not excessive or otherwise improper, under the particular circumstances").

In Donald J. Trump v Hillary R. Clinton, 22-14102-CV-DMM, ("Order on Motion for Indicative Ruling") (filed September 15, 2023) (SD FL), Judge Donald M. Middlebrooks denied what in

New York legal parlance would be called "a motion to reargue," pursuant to which Donald Trump asked Judge Middlebrooks to vacate sanctions imposed on him and his legal team totaling close to one million dollars. Judge Middlebrooks wrote, on the first page thereof, that "Movants acted in bad faith in bringing this lawsuit and that this case exemplifies Mr. Trump's history of abusing the judicial process.[6]" Id.

Unfortunately, sanctions are the only way to impress upon defendants' attorneys the consequences of engaging in repetitive, frivolous motion practice after this Court, affirmed by the Appellate Division, expressly warned them against doing so. Boye v Rubin & Bailin, LLP, 152 AD3d 1, 11 (1st Dept 2017) ("sanctions serve to deter future frivolous conduct" and their "goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics").

It is of no consequence whether the arguments were made at the direction of the clients or *sua sponte* by the attorneys; counsel are "ethically obligated to withdraw any baseless and false claims, if not upon [their] own review of the record, certainly by the time [the] Supreme Court advised [them] of this fact." Boye at 11 (upholding sanctions against attorneys because "counsel continued to... pursue claims which were completely without merit in law or fact."); see also Nachbaur v Am. Transit Ins. Co., 300 AD2d 74, 75 (1st Dept 2002) (motion court properly sanctioned attorneys for "repetitive and meritless motions"); Leventritt v Eckstein, 206 AD2d 313, 314 (1st Dept 1994) (affirming sanctions imposed on attorney for "repeated pattern of frivolous conduct"); William Stockler & Co. v Heller, 189 AD2d 601, 603 (1st Dept 1993) (affirming sanctions against attorney upon finding "there was no factual or legal basis for defendant's original cross motion, or for the reargument motion, that both motions were 'totally frivolous' and were submitted 'just really to delay'"). Counsel should be the first line of defense against frivolous litigation.

Accordingly, this Court grants OAG's motion for sanctions, in part, to the extent of sanctioning each of defendants' attorneys who signed their names to the instant legal briefs[7], in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Order.

Arguments Defendants Raise for the First Time

Summary Judgment Standard

To prevail on its motion for summary judgment on all causes of action, defendants must first "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient

[6] One factor Judge Middlebrooks considered was Donald Trump's "disregard for legal principles and precedent." Id. at 14. In short, Donald Trump, and his lawyers, are not sanctions neophytes. This is not their first rodeo.

[7] The following attorneys signed their names to defendants' instant briefs and are, accordingly, sanctioned $7,500 each: Michael Madaio, Esq. (Habba Madaio & Associates, LLP); Clifford S. Robert, Esq. (Robert & Robert PLLC); Michael Farina Esq. (Robert & Robert PLLC); Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC); and Armen Morian (Morian Law PLLC).

evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). "Failure [of the movant] to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." Id. If the defendants make out their prima facie showing, the burden then shifts to plaintiff to offer evidence sufficient to rebut that showing by identifying disputed issues of fact that should go before a trier of fact.

Defendants strenuously argue throughout their briefs that OAG has not met her burden sufficient to defeat defendants' motion for summary judgment. However, defendants misstate the black letter law applicable to summary judgment, citing to City Dental Servs., P.C. v New York Cent. Mut., 34 Misc 3d 127(A) (App Term 2d, 11th, 13th Jud Dists 2011) for the flatly wrong proposition that "in order to defeat summary judgment on these claims of predicate illegality, the NYAG must, with respect to each predicate illegality attached, 'establish[] each element of its cause with respect to those causes of action.'" NYSCEF Doc. No. 835 at 62.

Not only does City Dental not stand for that proposition (it merely found that under the circumstances of that case, plaintiff's evidence failed to meet her burden on summary judgment), but the law is well-settled that "to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact," not make out its own case. Zuckerman v City of New York, 49 NY2d 557, 562 (1980). While OAG must establish each and every element of its cause(s) of action in order to *prevail* on its own motion for summary judgment, in order to defeat defendants' motion for summary judgment (provided defendants are able to demonstrate a prima facie case) "an opposing party must 'show facts sufficient to require a trial of any issue of fact.'" Guzman v Strab Const. Corp., 228 AD2d 645, 646 (2d Dept 1996) ("evidentiary facts derived from the documents submitted [in opposition to summary judgment motion] are sufficient to present a triable issue of fact").

The "Worthless Clause"

Defendants rely on what they call a "worthless clause" set forth in the SFCs under the section entitled "Basis of Presentation" that reads, as here pertinent, as follows:

> Assets are stated at their estimated current values and liabilities at their estimated current amounts using various valuation methods. Such valuation methods include, but are not limited to, the use of appraisals, capitalization of anticipated earnings, recent sales and offers, and estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. 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 amount 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.

NYSCEF Doc. Nos. 769 at 7; 770 at 7; 771 at 7; 772 at 7; 773 at 7.

In his sworn deposition, Donald Trump spent a lot of time invoking this clause: "Well, they call it a 'disclaimer.' They call it 'worthless clause' too, because it makes the statement 'worthless.'" NYSCEF Doc. No. 859 at 67. Donald Trump goes on to say that "I have a clause in there that says, don't believe the statement, go out and do your own work. This statement is 'worthless.' It means nothing." Id. at 68. Furthermore, Donald Trump implies that he did not consider it important to review the SFCs for accuracy because of the existence of this purported "worthless clause":

> OAG: Does this refresh your recollection of the process whereby you would get final review of the Statement of Financial Condition?
>
> DJT: Yeah, I think generally. It's interesting. I would say as years went by, I got less and less and then once I became President, I would – if I saw it at all, I'd see it, you know, after it was already done.
>
> OAG: So in the period –
>
> DJT: Again, you know, I hate to be boring and tell you this. When you have the worthless clause on a piece of paper and the first – literally the first page you're reading about how this is a worthless statement from the standpoint of your using it as a bank or whatever –whoever may be using it, you tend not to get overly excited about it. I think it had very little impact, if any impact on the banks.
>
> ....
>
> OAG: So am I understanding that you didn't particularly care about what was in the Statement of Financial Condition?
>
> DJT: I didn't get involved in it very much. I felt it was a meaningless document, other than it was almost a list of my properties, with good faith effort of people trying to put some value down. It was a good faith effort.

Id. at 107-108. Defendants further submit the affidavit and deposition transcript of Robert Unell, who purports to be an expert in commercial real estate, for the proposition that because of "the worthless clause" in the SFC, "no lender relies on these for what it is." NYSCEF Doc. Nos. 1030 at 183-184; 1031.

However, defendants' reliance on these "worthless" disclaimers is worthless. The clause does not use the words "worthless" or "useless" or "ignore" or "disregard" or any similar words. It does not say, "the values herein are what I think the properties will be worth in ten or more years." Indeed, the quoted language uses the word "current" no less than five times, and the word "future" zero times.

Additionally, as discussed *supra*, a defendant may not rely on a disclaimer for misrepresentation of facts peculiarly within the defendant's knowledge. Basis Yield Alpha Fund at 136. Here, as the valuations of the subject properties are, obviously, peculiarly within defendants' knowledge, their reliance on them is to no avail.

Furthermore, "[t]his 'special facts doctrine' applies *regardless of the level of sophistication of the parties*." TIAA Glob. Invs. LLC v One Astoria Square LLC, 127 AD3d 75, 87 (1st Dept 2015) (emphasis added) (holding disclaimer does not bar liability for fraud where facts were peculiarly within disclaiming party's knowledge).

Thus, the "worthless clause" does not say what defendants say it says, does not rise to the level of an enforceable disclaimer, and cannot be used to insulate fraud as to facts peculiarly within defendants' knowledge, even vis-à-vis sophisticated recipients.

The Tolling Agreement

The First Department has declared that claims are timely against defendants subject to the tolling agreement if they accrued after July 13, 2014, and claims against defendants not subject to the tolling agreement are timely if they accrued after February 6, 2016. Trump, 217 AD3d at 611. Defendants concede that the tolling agreement binds each of the LLC-defendants and the Trump Organization. However, they argue that each of the individual defendants and the Donald J. Trump Revocable Trust (the "DJT Revocable Trust") are not bound by the agreement.

Alan Garten, the Trump Organization's Chief Legal Officer, originally entered into the tolling agreement on behalf of "the Trump Organization" on August 27, 2021; the agreement was extended one time by an amendment dated May 3, 2022. NYSCEF Doc. No. 1260. It tolls the statute of limitations for the period from November 5, 2020, through May 31, 2022. Id. at 2. The agreement contains a footnote to the entity "the Trump Organization" that reads as follows:

> As noted in the December 7, 2019 subpoena issued in this investigation to the Trump Organization, the "Trump Organization" as used herein includes The Trump Organization, Inc; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.

Id. at 4 n 1.

Thus, the tolling agreement at issue here binds "all directors [and] officers" and "present or former parents" of the Trump Organization and its affiliates and subsidiaries. Id. It is undisputed that at the time the tolling agreement was executed, each individual defendant, Donald J. Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney,

were all directors and/or officers of the Trump Organization. NYSCEF Doc. No. 1293 at ¶¶ 673, 680, 696, 710, 736.

Defendants argue that the non-signatory defendants are not bound by the agreement, citing Highland Crusader Offshore Partners, L.P. v Targeted Delivery Techs. Holdings, Ltd., 184 AD3d 116, 121 (1st Dept 2020), for the "general principal that only the parties to a contract are bound by its terms." NYSCEF Doc. No. 835 at 27. However, defendants fail to quote the following sentence, which provides that "[a] non-signatory may be bound by a contract under certain limited circumstances." Highland at 122. See also Oberon Sec., LLC v Titanic Ent. Holdings LLC, 198 AD3d 602, 603 (1st Dept 2021) (non-signatory companies bound by agreement with language defining signatory to include "all subsidiaries, affiliates, [and] successors").

In People v JUUL Labs, Inc., 212 AD3d 414, 417 (1st Dept 2023), in a case involving nearly identical language in a corporate tolling agreement[8], the First Department recently held that non-signatory corporate affiliates, officers, and directors were bound by the agreement. Similarly, here all the individual defendants are bound by the instant tolling agreement's terms and may be held liable for any claims that accrued after July 13, 2014.

Defendants argue that OAG is judicially estopped from asserting that the agreement binds the individual defendants based on statements OAG's counsel made during oral argument in the investigatory special proceeding. NYSCEF Doc. No. 1292 at 26. Specifically, on April 25, 2022, while seeking to hold Donald Trump in contempt for failing to comply with court orders, OAG's counsel stated: "[t]here is hard prejudice because Donald Trump is not a party to the tolling agreement, that tolling agreement only applies to the Trump Organization." NYSCEF Doc. No. 1041 at 59.

For judicial estoppel to be applicable: "First, the party against whom the estoppel is asserted must have argued an inconsistent position in a prior proceeding; and second, the prior inconsistent position must have been adopted by the court in some manner." Bates v Long Island R. Co., 997 F2d 1028, 1038 (2d Cir 1993).

Defendants are correct that the first prong is satisfied, in that the statements OAG's counsel made during oral argument are inconsistent with the position OAG is now taking. However, defendants cannot demonstrate that this Court adopted the prior position. Indeed, this Court did not need to, and did not, consider the tolling agreement when it issued its April 26, 2022 Decision and Order finding Donald Trump in contempt. See Ghatani v AGH Realty, LLC, 181 AD3d 909, 911 (2d Dept 2020) ("For the doctrine [of judicial estoppel] to apply, there must be a final determination endorsing the party's inconsistent position in the prior proceeding").

This Court has not addressed the tolling agreement until now. Accordingly, defendants cannot demonstrate that this Court adopted OAG's prior inconsistent position.

[8] The substantially similar tolling agreement at issue in Juul can be found under Index No. 452168/2019, NYSCEF Doc. No. 176.

Moreover, "[t]he party asserting estoppel must show with respect to himself: '(1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position.'" BWA Corp. v Alltrans Exp. U.S.A., Inc., 112 AD2d 850, 853 (1st Dept 1985). Here, none of the defendants claim that they changed their positions or courses of conduct in reliance upon the statement of OAG's counsel during oral argument.

Finally, while judicial estoppel may be applied to prohibit inconsistent changes in factual positions, courts have declined to extend the doctrine to changes in legal positions. Seneca Nation of Indians v New York, 26 F Supp 2d 555, 565 (WD NY 1998), affd, 178 F3d 95 (2d Cir 1999) (finding "[t]here is no legal authority" for "broadening of the doctrine" to "include seemingly inconsistent legal positions"). Who physically signed the agreement is a question of fact; whom it binds is a question of law.

Defendants' argument that the DJT Revocable Trust is not bound by the tolling agreement falls flat. In his deposition, Donald Trump affirmed under oath that the assets of the Trump Organization are held in the DJT Revocable Trust, for which he is the sole donor and beneficiary. NYSCEF Doc. No. 859 at 21. Donald Trump also affirmed that at the time the trust was formed, he was the sole trustee and remained the sole trustee until 2017, when defendants Allen Weisselberg and Donald Trump, Jr. became the sole trustees. Id. at 20-24.

As every beneficiary, donor, and trustee of the DJT Revocable Trust is a defendant bound by the tolling agreement, and as the trust is unquestionably a "parent" of the Trump Organization, so too does the tolling agreement bind the DJT Revocable Trust. See People v Leasing Expenses Co. LLC, 199 AD3d 521, 522 (1st Dept 2021) ("It may likewise be inferred that the trustees had knowledge of the activities of the businesses they controlled through the trust mechanism. Hence, under Executive Law § 63(12), the family trusts and trustees may likewise be held liable for the fraud"); see e.g., Kurzman v Graham, 12 Misc 3d 586, 590 (Sup Ct, NY County 2006) ("courts will not allow the owner of assets to evade creditors by placing the property in a trust while retaining a right to revoke the trust").

Defendants cite to New York Estates, Powers and Trust Law § 11-1.1(b)(17) for the proposition that only a trustee may bind a trust to an agreement. However, § 11-1.1(b)(17) does not state this; rather, it states:

> (b) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized:
>
> ...
>
> (17) To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust.

This provision simply says what a fiduciary is permitted to do in the absence of a contrary provision. It does nothing to advance defendants' argument that *only* a trustee may bind a trust,

particularly since defendants fail to cite to any provision of the DJT Revocable Trust restricting who can bind it, as § 11-1.1(b)(17) anticipates.

Moreover, Korn v Korn, 206 AD3d 529, 530 (1st Dept 2022), upon which defendants inexplicably rely, is irrelevant to the instant analysis, as that case involved an examination by the court as to whether a fiduciary had a right or duty to negotiate on behalf of an estate pursuant to § 11-1.1(b)(13), not pursuant to § 11-1.1(b)(17), to which defendants cite.

Finally, "the Attorney General should not be limited, in [her] duty to protect the public interest, by an... agreement [s]he did not join." People v Coventry First LLC, 13 NY3d 108, 114 (2009) (holding Attorney General not bound by arbitration agreement when pursuing Executive Law § 63(12) claim and finding "[s]uch an arrangement between private parties cannot alter the Attorney General's statutory role or the remedies that [s]he is empowered to seek").

The tolling agreement was a mutually beneficial and common arrangement pursuant to which OAG agreed to hold off suing, and Alan Garten, on behalf of the Trump Organization, agreed to toll the statute of limitations. All defendants received the benefit of the bargain; OAG held off suing. OAG is entitled to its benefit of the bargain, the tolling of the statute of limitations, for the limited agreed-upon time, as against anyone it could have sued for the matters at issue at the time at which the agreement was executed. OAG clearly did not intend to permit defendants' principals to evade the tolling agreement based on a technicality contrary to the spirit of the agreement and controlling caselaw.

Statute of Limitations

As a general rule, statutes of limitation start running when a claim accrues, that is, when it can be sued upon. In arguing that OAG's causes of action are untimely, defendants incorrectly assert that the statute of limitations starts running on the date the parties entered into the subject agreements, or when the loans closed. However, the First Department did not use the word "closed," it used the word "completed." Trump, 217 AD3d at 611. Obviously, the transactions were not "completed" while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements.

Defendants further assert that any continuing documentation provided after the agreements were entered into, or when the loans closed, is of no consequence if the proceeds were distributed prior to July 2014. NYSCEF Doc. No. 835 at 18. This argument is unavailing. As OAG asserts, each submission of an SFC after July 13, 2014, constituted a separate fraudulent act. Indeed, each submission of a financial document to a third-party lender or insurer would "requir[e] a separate exercise of judgment and authority," triggering a new claim. Yin Shin Leung Charitable Found. v Seng, 177 AD3d 463, 464 (1st Dept 2019) (finding continuous series of wrongs each of which gave rise to its own claim).

Defendants mistakenly assert that if a loan agreement was entered into and its proceeds were dispersed prior to the applicable statute of limitations, then a claim arising out of submitting any subsequent contractually required financial documentation is also untimely, irrespective of when that documentation is submitted. Defendants would have this Court apply a bizarre, invented, inverted form of the "relation back" doctrine, pursuant to which if one aspect of fraudulent

business conduct falls outside the statute of limitations, then all subsequent aspects of fraudulent conduct also fall outside the statute, no matter how inextricably intertwined.

Of course, this is contrary to controlling case law, which holds that a cause of action accrues at the time "when one misrepresents a material fact." Graubard Mollen Dannett & Horowitz v Moskovitz, 86 NY2d 112, 12 (1995). Moreover, even the plain language of Executive Law § 63(12) states: "[t]he term 'repeated' as used herein shall include repetition of any *separate and distinct fraudulent or illegal act*" (emphasis added). Clearly, the submission of each separate fraudulent SFC is a distinct fraudulent act.

OAG is not challenging the loans, the closings, or the disbursements; it is challenging defendants' submissions of financial documents containing false and misleading information. Thus, any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations. CW Capital Cobalt VR Ltd. v CW Capital Invs., LLC, 195 AD3d 12, 19-20 (1st Dept 2021) (each instance of wrongful conduct a "separate, actionable wrong" giving "rise to a new claim").

Materiality

It is settled that a standalone cause of action under Executive Law § 63(12) does not require a demonstration of materiality but merely that an "act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." People v Gen. Elec. Co., 302 AD2d 314, 314-315 (1st Dept 2003) (holding that, unlike GBL § 349, plaintiff need not prove "the challenged act or practice 'was misleading in a material way'").

Although the Domino's court found that "evidence regarding falsity, materiality, reliance and causation plainly is *relevant* to determining whether the Attorney General has established that the challenged conduct has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud" (Domino's at 11), every Appellate Division and the New York Court of Appeals now hold that materiality and scienter are not requirements for liability under § 63(12).

However, as discussed *infra*, although materiality is required under the second through seventh causes of action, it is not required under a standalone cause of action under Executive Law § 63(12), the OAG's first cause of action.

Defendants argue that the SFCs were not materially misleading, claiming, *inter alia* that: (1) "[t]here is no such thing as objective value"; (2) "a substantial difference between valuation in the SOFCs and appraisal, per se, is not evidence of inflated values"; (3) there is nothing improper about using "fixed assets" valuations as opposed to using the current market valuation approach; and (4) it was proper to include "internally developed intangibles, such as the brand premium used in the valuation of President Trump's golf clubs, in personal financial statements." NYSCEF Doc No. 1292 at 20-23.

Thus, defendants essentially argue that value is inherently subjective; that because internal brand valuations are in the eye of the beholder (here, Donald Trump), they cannot be overvalued. Defendants argue that "[n]o bank or underwriter would have reasonably been materially misled by the alleged misstatements or omissions in the SOFCs and other information the Defendants

made available to their counterparties because no sophisticated counterparty would have considered the SOFCs and other information provided by the Defendants alone as material to extend credit or set an interest rate, or issue an insurance policy or price a risk, without doing their own due diligence." NYSCEF Doc. No. 835 at 45.

Defendants also argue: "[i]t follows that if the user [of the SFCs] is in possession of the correct information, then the financial statements are not materially misstated." Id. at 39. Defendants' stance is, practically speaking, that they may submit false SFCs so long as the recipients know, from their own due diligence, that the information is false.

Accepting defendants' premise would require ignoring decades of controlling authority holding that financial statements and real property valuations are to be judged objectively, not subjectively. FMC Corp. v Unmack, 92 NY2d 179, 191 (1998) ("*objectively* reasonable conclusion, drawn by a competent and experience appraiser, was based on credible evidence" that demonstrated "property was overvalued") (emphasis added); Assured Guar. Mun. Corp. v DLJ Mortg. Cap. Inc., 44 Misc 3d 1206(A) (Sup Ct, NY County 2014) ("Credit Suisse is reading this as a subjective standard, dependent on Assured's expectations. Credit Suisse is wrong. It is well settled that this is an objective standard").

Moreover, courts have long found that "generally, it is the 'market value' which provides the most reliable valuation for assessment purposes." Great Atl. & Pac. Tea Co. v Kiernan, 42 NY2d 236, 239 (1977); Consol. Edison Co. of New York v City of New York, 33 AD3d 915, 916 (2d Dept 2007) ("the standard for assessment remains market value"), affd 8 NY3d 591. Beauty may be in the eye of the beholder, but value is in the eye of the marketplace.

Further, defendants' assertion that the discrepancies between their valuations and the OAG's are immaterial is nonsense. What OAG has established, in many cases by clear, indisputable documentary evidence (as discussed *infra*), is not a matter of rounding errors or reasonable experts disagreeing. OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27-38.51%; this amounts to a discrepancy of between $812 million and $2.2 billion dollars. NYSCEF Doc. No. 766 at 70. Even in the world of high finance, this Court cannot endorse a proposition that finds a misstatement of at least $812 million dollars to be "immaterial." Defendants have failed to identify any authority for the notion that discrepancies of the magnitude demonstrated here could be considered immaterial.

The Second through Seventh Causes of Action

The Second, Third, Fourth, Fifth, Sixth, and Seventh causes of action allege violations of Executive Law § 63(12) based on underlying violations of the New York Penal Law prohibiting falsification of business records, issuance of false financial statements, and insurance fraud.

Liability under New York Penal Law § 175.05 (falsifying business records in the second degree) requires that a person "[m]akes or causes a false entry in the business records of an enterprise."

Liability under New York Penal Law § 175.45 (issuing a false financial statement) requires that a person "represents in writing that a written instrument purporting to describe a person's financial

condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas [that person] knows it is materially inaccurate in that respect."

Liability under New York Penal Law § 176.05 (insurance fraud) requires that a person submitted an application for insurance either: (1) knowing that it "contain[ed] materially false information concerning any fact material thereto"; or (2) "conceal[ed], for the purpose of misleading, information concerning any fact material thereto."

Accordingly, unlike a standalone cause of action under Executive Law § 63(12), the second through seventh causes of action require demonstrating some component of intent and materiality. People v Alamo Rent A Car, Inc., 174 Misc 2d 501, 505 (Sup Ct, NY County 1997) ("As in all other situations requiring *mens rea*, however, petitioners may prove, by reference to facts and circumstances surrounding the case, that respondents knew that their conduct was unlawful. Moreover, petitioners need not prove respondents acted with an 'evil motive, bad purpose or corrupt design'") (internal citations omitted).

OAG has demonstrated that there remain, at the very least, disputed issues of fact as to whether defendants violated these statutes, intentionally and materially. Thus, there are issues of fact as to causes of action two through seven that require a trial.

The Court has considered defendants' remaining arguments and finds them to be unavailing and/or non-dispositive.

Accordingly, defendants' motion for summary judgment dismissing every cause of action is denied in its entirety.

OAG'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FIRST CAUSE OF ACTION

Summary Judgment Burden on Standalone Executive Law § 63(12) Cause of Action

OAG moves for partial summary judgment, seeking to hold defendants liable under OAG's first cause of action, for fraud under Executive Law § 63(12).

As this Court has noted *ad nauseum*, Executive Law § 63(12) "authorizes the Attorney General to bring a special proceeding against any person or business that engages in repeated or persistent fraudulent or illegal conduct, while broadly construing the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud." People v Apple Health & Sports Club, Ltd., Inc., 206 AD2d 266-267 (1st Dept 1994).

As OAG's first cause of action, the only one upon which it moves for summary judgment, alleges a standalone violation of Executive Law § 63(12), OAG need only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business.

This instant action is essentially a "documents case." As detailed *infra,* the documents here clearly contain fraudulent valuations that defendants used in business, satisfying OAG's burden to establish liability as a matter of law against defendants. Defendants' respond that: the documents do not say what they say; that there is no such thing as "objective" value; and that, essentially, the Court should not believe its own eyes.[9]

The defenses Donald Trump attempts to articulate in his sworn deposition are wholly without basis in law or fact. He claims that if the values of the property have gone up in the years since the SFCs were submitted, then the numbers were not inflated at that time (i.e.; "But you take the 2014 statement, if something is much more valuable now – or, I guess, we'll have to pick a date which was a little short of now. But if something is much more valuable now, then the number that I have down here is a low number"). NYSCEF Doc. No. 1363 at 69-75). He also seems to imply that the numbers cannot be inflated because he could find a "buyer from Saudi Arabia" to pay any price he suggests.[10] Id. at 30-33, 60-62, 79-80.

The Trump Tower Triplex

This Court takes judicial notice that the Trump Tower apartment in which Donald Trump resided for decades (the "Triplex") is 10,996 square feet. NYSCEF Doc. No. 816 at 2. Between 2012-2016, Donald Trump submitted SFCs falsely claiming that the Triplex was 30,000 square feet, resulting in an overvaluation of between $114-207 million dollars. NYSCEF Doc. Nos. 782 at Rows 833-834, 1028, 783 at Rows 799-800, 1199, 784 at Rows 843-844, 785 at Rows 882-883, 789 at Row 913, 817. The misrepresentation continued even after defendants received written notification from *Forbes* that Donald Trump had been overestimating the square footage of the Triplex by a factor of three.[11]

In opposition, defendants absurdly suggest that "the calculation of square footage is a subjective process that could lead to differing results or opinions based on the method employed to conduct the calculation.[12]" NYSCEF Doc. No. 1293 at 20. Well yes, perhaps, if the area is rounded or oddly shaped, it is possible measurements of square footage could come to slightly differing results due to user error. Good-faith measurements could vary by as much as 10-20%, not 200%.

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[9] As Chico Marx, playing Chicolini, says to Margaret Dumont, playing Mrs. Gloria Teasdale, in "Duck Soup," "well, who ya gonna believe, me or your own eyes?"

[10] This statement may suggest influence buying more than savvy investing.

[11] Three days after receiving a written inquiry from *Forbes*, Trump Organization Vice President, Amanda Miller, sent an email to Trump Organization Executive Vice President and Chief Legal Officer, Alan Garten, indicating that she "spoke to Allen W[eisselberg] re: [Trump World Tower and Trump Tower] – we are going to leave those alone." NYSCEF Doc. No. 821. Although OAG need not show intent to deceive under a standalone § 63(12) cause of action, this directive to continue to use a grossly inflated number despite clear knowledge it is false demonstrates the repetitive and ongoing nature of defendants' propensity to engage in fraud.

[12] Despite this assertion in their motion papers, counsel for defendants, Christopher Kise, Esq. conceded during oral argument held on September 22, 2023, that square footage is, in fact, an objective number.

A discrepancy of this order of magnitude, by a real estate developer sizing up his own living space of decades, can only be considered fraud.[13]

OAG unquestionably satisfies its two-prong burden of demonstrating the SFCs from 2012-2016 calculated the value of the Triplex based on a false and misleading square footage, and that some of the defendants repeatedly and persistently used the SFCs to transact business.

Seven Springs Estate

Defendant Seven Springs LLC owns over 200 acres of contiguous land in the towns of Bedford, New Castle and North Castle in Westchester County, New York.

In 2000, non-party the Royal Bank of Pennsylvania appraised the "as is" market value of Seven Springs to be $25 million if converted to residential development. NYSCEF Doc. No. 825. In 2006, the same bank performed a new appraisal, which showed Seven Springs had an "as is" market value of $30 million. NYSCEF Doc. No. 826.

In 2012, Seven Springs LLC received another appraisal that estimated a six-lot subdivision on the New Castle portion of the property to have a fair market value of approximately $700,000 per-lot. NYSCEF Doc. No. 829 at 203-206.

In July 2014, because the Trump Organization was considering donating a conservation easement, it retained Cushman & Wakefield to provide a "range of value" of the Seven Springs property. NYSCEF Doc. Nos. 830, 831. Cushman & Wakefield's appraiser, David McArdle, analyzed the sale of eight lots in Bedford, six lots in New Castle, and ten lots in North Castle and determined the fair market value for all 24 lots was approximately $30 million. NYSCEF Doc. No. 831, 832.

Notwithstanding receiving market values from professional appraisals in 2000, 2006, 2012, and 2014 valuing Seven Springs at or below $30 million, Donald Trump's 2011 SFC reported the value to be $261 million, and his 2012, 2013 and 2014 SFCs reported the value to be $291 million.[14] NYSCEF Doc. Nos. 769, 770, 771, 772.

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[13] In fact, OAG demonstrates that as of 2012, no apartment sold in New York City had ever approached the price at which defendants valued the Triplex, noting that the highest overall sale at that time was $88 million for a Central Park West penthouse. The SFCs valued the Triplex at a staggering $180,000,000-$327,000,000 for the years 2012-2016. NYSCEF Doc. No. 1 at ¶276.

[14] The statutes of limitations have run for all claims that accrued before July 13, 2014. However, although not actionable by themselves, evidence of fraud that predates July 13, 2014, may still be used as evidence in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been "a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d 490, 496-97 (2016) (detailing standard for permanent injunctive relief under Executive Law 63(12) and "reject[ing] defendants' arguments that the Attorney General must show irreparable harm in order to obtain a permanent injunction").

In early 2016, Cushman & Wakefield performed another appraisal of Seven Springs, which included the planned development, and determined that as of December 1, 2015, the entire parcel was worth $56.6 million. NYSCEF Doc. Nos. 824 at 9; 875; 876.

Even giving defendants the benefit of the $56.6 million figure as of December 1, 2015, the value submitted on Donald Trump's 2014 SFC was inflated by over 400%. Accordingly, OAG has demonstrated liability for the false 2014 SFC for fraudulently inflating the value of Seven Springs.

Trump Park Avenue

Trump Park Avenue is a residential building included as an asset on Donald Trump's SFCs for the years 2011-2021. NYSCEF Doc. Nos. 769-779. In 2011, 12 of the unsold residential condominium units were subject to New York City's rent regulation laws. NYSCEF Doc. No. 948 at 3. By 2014, nine units remained subject to rent restrictions. NYSCEF Doc. No. 966. By 2020, six units remained subject to rent restrictions. NYSCEF Doc. No. 971.

A 2010 appraisal performed by the Oxford Group valued the 12 rent-stabilized units at $750,000 total, or $62,500 per unit. NYSCEF Doc. No. 952. A 2020 appraisal performed by Newmark Knight Frank valued the six units that remained subject to stabilization at $22,800,090 total, or $3,800,315 per unit. NYSCEF Doc. No. 972.

Notwithstanding, for the years 2014-2021, the Trump Organization submitted SFCs that valued these rent-restricted units as if they were unencumbered, inflating the value of each unit between as much 700% (in 2014) and 64% (in 2021). NYSCEF Doc. Nos. 772-779.

In an unsuccessful attempt to rebut OAG's prima facie demonstration, defendants proffer that the units are not overvalued because "the rent-stabilized units have the potential at some point in the future to be converted into unencumbered (by rent stabilization) units."[15] NYSCEF Doc. No. 1292 at 57. They further concede that "[t]his is the assumption the owner made when assessing potential asset pricing or value." Id.

[15] As every New Yorker knows, rent regulated units may be passed on from one generation to the next in perpetuity.

However, the SFCs are required to state "current" values, not "someday, maybe" values. At the time defendants provided the subject SFCs to third parties they unquestionably falsely inflated the value of the units based on a false premise that they were unrestricted.[16]

40 Wall Street

The Trump Organization, through defendant 40 Wall Street LLC, owns a ground lease at 40 Wall Street and pays ground rent to the landowner.

In 2010, Cushman & Wakefield appraised the Trump Organization's interest in 40 Wall Street at $200 million. NYSCEF Doc. Nos. 878-79. Cushman & Wakefield appraised again in 2011 and 2012, reaching valuations of between $200 and $220 million. NYSCEF Doc. Nos. 881-82. The Trump Organization possessed and was familiar with these appraisals. NYSCEF Doc. Nos. 817 at 135-138; 883.

Despite these appraisals, the 2011 and 2012 SFCs valued the Trump Organization's interest in the property at $524.7 million and $527.2 million, respectively, an overvaluation of more than $300 million each year.[17] NYSCEF Doc. Nos. 769, 770.

In 2015, Cushman & Wakefield once again appraised the property, and valued it at $540 million.[18] NYSCEF Doc. No. 887. Notwithstanding this appraised value, the 2015 SFC listed the value of 40 Wall Street at $735.4 million.[19] NYSCEF Doc. No. 773.

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[16] Mazars accountant Donald Bender testified that when he asked Jeffrey McConney, "Do you have any other appraisals?", Jeffrey McConney stated "I have nothing else," demonstrating an intent to conceal or mislead the accountants. NYSCEF Doc. No. 1262 at 243.

Further, Patrick Birney, a Trump Organization employee working directly under Jeffrey McConney, conceded that the Trump Organization maintained a spreadsheet for day-to-day operations on the Trump Park Avenue offering plan that included both the offering plan prices *and* the current market values, but that the Trump Organization concealed its own actual market estimates from Mazars by omitting the market value column in its spreadsheet and providing Mazars with only the offering plan prices. NYSCEF Doc. No. 946.

[17] Although any liability arising out of the submission of the 2011 and 2012 SFCs is time barred; as previously discussed, these submissions may be considered as evidence in support of OAG's request for injunctive relief.

[18] OAG plausibly asserts that this $540 million is also inflated; however, for purposes of this motion, OAG does not dispute the number, and argues that, even if the Court were to accept defendants' number as accurate, the 2015 SFC was still materially false, as it stated the value as nearly $200 million more than the $540 million appraisal. NYSCEF Doc. No. 766 at n 7.

[19] An email exchange dated August 4, 2014, between Allen Weisselberg and his son, Jack Weisselberg, a Ladder Capital employee, discusses the 2015 $540 million Cushman & Wakefield appraisal. NYSCEF Doc. No. 888. Notwithstanding direct knowledge of it, the 2015 SFC valued 40 Wall Street at nearly $200 million more. NYSCEF Doc. No. 773.

Defendants assert that overvaluations of two hundred million dollars are immaterial, as the "NYAG has produced no evidence to suggest… that Ladder Capital would have been uncomfortable allowing President Trump to guarantee the 40 Wall Street Loan if his net worth was only $1.9 billion, as the NYAG contends." NYSCEF Doc. No. 835 at 48. They further emphasize that "Ladder Capital has received in excess of $40 million in interest and 40 Wall Street LLC has never defaulted under the Loan."[20] Id.

Defendants' argument misses the mark. As has been explained to defendants many times, in many legal proceedings, and in painstaking detail, "where, as here, there is a claim based on fraudulent activity [under Executive Law 63(12)], disgorgement may be available as an equitable remedy, *notwithstanding the absence of loss to individuals or independent claims for restitution.*" Ernst & Young at 569 (emphasis added). Accordingly, it is not significant that the banks made money (or did not lose money)[21], or that they would have done business with the Trump Organization notwithstanding. The law is clear that the only requirements for liability to attach under a standalone Executive Law § 63(12) cause of action are (1) a finding that the SFCs were false and misleading; and (2) that defendants repeatedly or persistently used the SFCs to conduct business.

Accordingly, OAG has demonstrated liability for the false valuation of 40 Wall Street in the 2015 SFC.

Mar-a-Lago

Donald Trump purchased Mar-a-Lago in 1985. In 1993, he sought, and obtained, permission from the Town of Palm Beach to turn the property into a social club (NYSCEF Doc. No. 900), and on August 10, 1993, he entered into a "Declaration of Use Agreement" by which he agreed "the use of Land shall be for a private social club" and that "[a]ny additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Landmarks Preservation Commission of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under the foregoing governmental authorities." NYSCEF Doc. No. 915.

In 1995, Donald Trump signed a "Deed of Conservation and Preservation Easement" in which he gave up his right to use Mar-a-Lago for any purpose other than as a social club (the "1995 Deed"). NYSCEF Doc. No. 901. In 2002, Donald Trump signed a "Deed of Development Rights." NYSCEF Doc. No. 902. As part of granting a conversation easement to the National

[20] The defendant borrowers did not default on any loans; but we only know that with hindsight. Markets are volatile, and borrowers come in all shapes and sizes. The next borrower, or the one after that, might default, and if its SFCs are false, the lender might unfairly be left holding the bag. This will distort the lending marketplace and deprive other potential borrowers of the opportunity to obtain loans and create wealth.

[21] The subject loans made the banks lots of money; but the fraudulent SFCs cost the banks lots of money. The less collateral for a loan, the riskier it is, and a first principal of loan accounting is that as risk rises, so do interest rates. Thus, accurate SFCs would have allowed the lenders to make even more money than they did.

Trust for Historic Preservation, Donald Trump agreed that "Trump intend[s] to forever extinguish [his] right to develop or use the Property for any purpose other than club use" (the "2002 Deed"). The 2002 Deed also specifically "limits changes to the Property including, without limitation, the division or subdivision of the Property for any purpose, including use as single family homes, the interior renovation of the mansion, which may be necessary and desirable for the sale of the Property as a single family residential estate, the construction of new buildings and the obstruction of open vistas." Id. In exchange for granting the easement, Mar-a-Lago was taxed at a significantly lower rate (the club rate) than it otherwise would have been (the private home rate). NYSCEF Doc. No. 903.

From 2011-2021, the Palm Beach County Assessor appraised the market value of Mar-a-Lago at between $18 million and $27.6 million. NYSCEF Doc. No. 905.

Notwithstanding, the SFCs' values do not reflect these land use restrictions. Donald Trump's SFCs for 2011-2021 value Mar-a-Lago at between $426,529,614 million and $612,110,496, an overvaluation of *at least 2,300%*, compared to the assessor's appraisal. NYSCEF Doc. Nos. 769-779.

In an attempt to rebut the OAG's demonstration, defendants rely on the opinion affidavit of Lawrence Moens, who they purport is "the most accomplished and knowledgeable ultra-high net worth real estate broker in Palm Beach, Florida."[22] Moens claims that "the SOFC were and are appropriate and indeed *conservative*." NYSCEF Doc. No. 1292 at 35-36 (emphasis added). The Moens' affidavit states in a conclusory fashion that because he believes "this unique property offers to an elite purchaser the unparalleled opportunity to own an exclusive and extensive family compound in the most desirable sections of Palm Beach... the valuations in the SOFC were reasonable and below my estimate for the market value of the property each year." NYSCEF Doc. No. 1435. Moreover, Moens opines that "[i]f Mar-A-Lago was available for sale, I am confident that in short order, I would be in a position to produce a ready, willing and able buyer who would have interest in securing the property for their personal use as a residence, or even, their own club." Id. at 29. Critically, Moens does not opine *at what price* he is "confident" he could find a buyer (although he opines separately, without relying on any objective evidence, that he believes that as of 2023 the property is worth $1.51 *billion*[23]).

It is well-settled that: "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment." Diaz v New York Downtown Hosp., 99 NY2d 542, 544 (2002); see also Gardner v Ethier, 173 AD2d 1002, 1003-4 (3d Dept 1991) ("the expert

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[22] At oral argument, his domain of expertise was enlarged to nationwide status.

[23] In his sworn deposition, when asked "[w]ho were the dozen or so [qualified] buyers that you were referencing in your report, Lawrence Moens replied: "I could dream up anyone from Elon Musk to Bill Gates and everyone in between. Kings, emperors, heads of state. But with net worths in the multiple billions. I don't know how many people in the world have a net worth of more than $10 billion, but I think it's quite a number. There are a lot." NYSCEF Doc. No. 1428 at 184-185. Obviously, this Court cannot consider an "expert affidavit" that is based on unexplained and unsubstantiated "dream[s]."

affidavit is also inadmissible because it is conclusory and the views are apparently based to a great extent on hearsay statements from unspecified witnesses as well as upon speculations on the part of the expert"). Accordingly, defendants' reliance on the Moens affidavit is unpersuasive and certainly insufficient to rebut OAG's prima face case.

Defendants further imply that they may ignore the plain language of the 2002 Deed restrictions because they would likely be able to use the Florida judicial system to get out of their contractual requirements; they further assert that because they may successfully breach their contract in the future, they were not required to consider the restrictions of the 2002 Deed when valuing the property. NYSCEF Doc. 1292 at 48-51. This argument is wholly without merit. At the time in which the defendants submitted the SFCs, the restrictions were in effect, and any valuations represented to third-parties must have incorporated those restrictions; failure to do so is fraud. Assets values that disregard applicable legal restrictions are by definition materially false and misleading.

Accordingly, OAG has demonstrated liability for the false valuation of Mar-a-Lago as appears in the SFCs from 2014-2021.

Aberdeen

The Trump Organization owns a golf course located in Aberdeen, Scotland ("Aberdeen"). The value assigned to Aberdeen was comprised of two parts: a value for the golf course and a value for the development of the non-golf course property, the latter of which is the focus here. Developing any of the non-golf course property required that the local Scottish authorities approve any proposed plans.

From 2011-2014, Donald Trump's SFC reported that he had "received outline planning permission [from local Scottish authorities] in December 2008 for... a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." NYSCEF Doc. Nos. 769-776.

The Trump Organization had "outline planning permission" to build a total of 1,486 homes. Notwithstanding, the 2014-2018 SFCs valuations of Aberdeen assumed the Trump Organization had received approval to build 2,500 homes, despite never having received such approval. NYSCEF Doc. Nos. 772-776, 907.

Additionally, the approval of the 950 holiday homes and 36 golf villas came with severe restrictions on their use: they could be used solely as rental properties and could be rented for no more than 12 weeks in any calendar year. NYSCEF Doc. No. 908 at 13. The Trump Organization submitted financial documentation to the local Scottish authorities representing that these short-term rentals would not be profitable and therefore would not add any value to Aberdeen. NYSCEF Doc. Nos. 909 at 36, 910 at 7. Consequently, the only profitable development of Aberdeen would have been the 500 single family residences. In July 2017, non-party Ryden LLP, acting on behalf of the Trump Organization, prepared a development appraisal for Aberdeen wherein it assessed the profit from developing 557 homes and estimated profits in the range of £16,525,000-£18,546,000. NYSCEF Doc. No. 1231 at 10.

In May 2018, the Trump Organization applied to the Aberdeen City Council to reduce the scope of the development project to 550 dwellings, consisting of 500 private residences, 50 leisure/resorts units, and zero holiday homes (having determined they were not profitable). NYSCEF Doc. No. 911. In September 2019, the Aberdeen City Council approved the proposal for a reduction in the proposed development, but restricted the 50 leisure/resort units, as they had the holiday homes, to be "occupied on a holiday letting or fractional ownership basis only and for no other purposes whatsoever including use as a permanent residential unit… ." NYSCEF Doc. No. 907 at 7.

Notwithstanding, the 2019 SFC, finalized a month after the latest approval, derived a value based on the assumption that 2,035 private residential homes could be developed. Adjusting the values to reflect the permissible 500 private residences reduces the value of the Aberdeen undeveloped property as reflected in the 2019 SFC by £164,196,704. NYSCEF Doc. No. 777 at 16, 789 at Cells G561-619, 912.

Although defendants wholly fail to address Aberdeen in any of their three memos of law, in their response to OAG's statement of material facts, they state that "Defendants dispute the veracity of the appraisal because President Trump, as a land developer, took optimistic views of potential future value which is not contemplated in the appraisal, thereby undervaluing Trump Aberdeen." NYSCEF Doc. No. 1293 at 82-83. For all the reasons discussed *supra*, this defense fails.

Accordingly, OAG has demonstrated liability for the false valuation of Aberdeen as appears in the SFCs from 2014-2019.

US Golf Clubs

Donald Trump owns or leases a number of golf clubs across the United States and abroad that are included as assets on his SFCs. NYSCEF Doc. Nos. 769-779. The value for these golf clubs is provided in the aggregate in the SFCs, although supporting accounting spreadsheets evidence the breakdown of the values assigned to each club. NYSCEF Doc. Nos. 781-791.

The "Trump Brand Premium"

The evidence indicates that for the years 2013-2020, the SFCs relied on values that included a 15% or 30% "premium" based on the "Trump brand" for the following seven golf clubs: Trump National Golf Course ("TNGC") Jupiter, TNGC LA, TNGC Colts Neck, TNGC Philadelphia, TNGC DC, TNGC Charlotte, and TNGC Hudson Valley. NYSCEF Doc. Nos. 783-790. However, the SFCs for those years (and, indeed, all the years before this Court), also contained express language stating: "The goodwill attached to the Trump name has significant value that has *not* been reflected in the preparation of this financial statement." NYSCEF Doc. Nos. 769-779 (emphasis added). Accordingly, the SFCs "double dip," both purporting not to include a brand premium while simultaneously including one of 15% or 30%.

In opposition, defendants submit the affidavit of Eli Bartov, an accounting professor at New York University, who distinguishes between overall brand value and brand value ascribed to individual golf courses. His point, ensconced in numerous lines of academic jargon, seems to be that defendants said that they were eschewing the former and opting only for the latter. NYSCEF Doc. No. 1378 at 14-15. This is a red herring and factually incorrect. The SFCs

clearly state that they do not include a brand value for *any* of the properties included in the SFCs; indeed, the SFCs emphatically declare that "[t]he goodwill attached to the Trump name has significant financial value *that has not been reflected in the preparation of this financial statement.*" NYSCEF Doc. Nos. 769-779 (emphasis added). Perhaps Donald Trump could have ascribed a brand value to golf courses that he viewed as "special," but he was obligated to disclose those exceptions when he represented that the SFCs did not reflect his brand value.

TNGC Briarcliff and TNGC LA

The valuations of TNGC Briarcliff and TNGC LA were each comprised of a value for the golf course and a value for the undeveloped land. As the Trump Organization was considering donating a conservation easement over both properties, they had both properties appraised.

An April 2014 appraisal valued the golf club portion of TNGC Briarcliff at $16,500,000; later that same year, Donald Trump valued the golf club portion of TNGC Briarcliff at $73,430,217, *an inflation of more than 300%*, in his SFC. NYSCEF Doc. Nos. 923 at 147; 785 at Row 257. A 2015 appraisal valued the golf club portion of TNGC LA at $16,000,000 as of December 26, 2014; the 2015 SFC valued the golf club portion of TNGC LA at $56,615,895, *an inflation of more than 200%*. NYSCEF Doc. Nos. 924 at 151; 785 at Row 386.

In an attempt to rebut this strong showing of fraud, defendants argue that they were not obligated to use market value, but, instead, were permitted to use the "fixed assets" approach to valuation, pursuant to which defendants may "value" a property by aggregating the money spent to acquire and maintain a property. NYSCEF Doc. No. 1292. They further rely on the Bartov affidavit, which states, in wholly conclusory fashion that: "[t]he assertion that 'Using fixed assets approach does not present the golf clubs at their estimated current value because the approach ignores market conditions and the behavior of informed buyers and sellers' is unsubstantiated and false." NYSCEF Doc. No. 1378 at 29.

Bartov is incorrect. Each of the corresponding SFCs include representations that "[a]ssets are stated at their estimated current values..." NYSCEF Doc. Nos. 769-779.[24] Accordingly, it is false and misleading to use a fixed-assets evaluation, which is completely different. The price for which you purchase property is not necessarily the price for which you can sell it. The latter, not the former, matters to lenders who want adequate collateral.

The Membership Liabilities

As part of the purchase of several of the golf club properties, Donald Trump agreed to assume the obligation to pay back refundable non-interest-bearing long-term membership deposits. However, notwithstanding that these liabilities must be satisfied in the future, the SFCs from 2012-2021 value them at $0. NYSCEF Doc. Nos. 769-779. This is false; they are a liability in the millions of dollars.

[24] In their response to OAG's statement of material facts, defendants concede that "GAAP defines Estimated Current Value as 'the amount at which the item could be exchanged between a buyer and seller, each of whom is well informed and willing, and neither of whom is compelled to buy or sell." NYSCEF Doc No. 1293 at 17.

However, the SFCs all state: "The fact that Mr. Trump will have the use of these funds for that period without cost and that the source of repayment will most likely be a replacement membership has led him to value this liability at zero." See e.g., NYCSCEF Doc. No. 772.

Although it was false to report the membership liabilities as $0, it was not, under the circumstances, *misleading*, as the SFCs state that the reason for so doing. Accordingly, OAG cannot prevail on liability as a result of the failure to report the membership liabilities.

Yet, as discussed *supra*, OAG has demonstrated liability for submitting fraudulent SFCs in 2014-2020 that falsely value the aforementioned US Golf Clubs based on undisclosed brand premiums and failure to report "current" values.

Vornado Partnership Properties

Donald Trump has a 30% limited partnership interest with non-party Vornado Realty Trust in entities that own office buildings in New York City (at 1290 Avenue of the Americas, hereinafter "1290 AOA") and San Francisco at 555 California Street.

Cash/Liquid Classification

Donald Trump's 30% limited partnership stake does not permit him to use or withdraw funds held by the partnerships. NYSCEF Doc. Nos. 916, 917. Notwithstanding, Donald Trump and his trustees classified his 30% interest in the Vornado partnership as a liquid/cash asset on his SFCs for the years 2013-2021. NYSCEF Doc. No. 771-779. This was even though it is "undisputed" by defendants that Donald Trump does not have "the right to use or withdraw [these] funds." NYSCEF Doc. No. 1293 at ¶387-388.

Defendants assert that "[e]ven if the cash held in the partnership was misclassified and should have been reported elsewhere on the SOFCs as an asset (e.g., in the value of the partnership interest), it would not have inflated the total value of cash or President Trump's net worth reported on the SOFCs." NYSCEF Doc No. 1292 at 39.

This argument does not hold any water. Put simply, it was false and misleading for defendants to indicate that it had access to between $14,221,800 and $93,126,589 in liquid assets, sometimes nearly a third of the total cash it claimed, when in fact those assets were completely illiquid. NYSCEF Doc. No. 1293 ¶ 403.

The Appraisals

Cushman & Wakefield appraised the value of 1290 AOA at $2 billion as of November 1, 2012, and $2.3 billion as of November 1, 2016. NYSCEF Doc. No. 919 at 5-6.

However, Donald Trump's 2014 SFC calculated his 30% share based on a purported value of $3,078,338,462; his 2015 SFC was based on a purported value of $2,985,819,936; and his 2016 SFC was based on a purported value of $3,055,000,000. NYSCEF Doc. Nos. 784 at Rows 709-715, 785 at Rows 748-755, 785 at Rows 779-784. This resulted in overvaluations of Donald Trump's 30% interest in 1290 AOA of between $205-$233 million dollars for those years.

CBRE appraised 1290 AOA and determined its value at $2 billion as of October 7, 2021. NYSCEF Doc. No. 947. Nonetheless, the 2021 SFC was calculated based upon a purported value of $2,574,813,800, an overvaluation of Donald Trump's 30% share by $172 million dollars. NYSCEF Doc. No. 791 at Row 918.

The instant motions do not task this Court with determining which appraisals are the most accurate, which would present issues of fact.[25] Rather, time and time again, the Court is not comparing one appraisal to another; it is comparing an independent professional appraisal to a pie-in-the-sky dream of concocted potential.

Accordingly, OAG has demonstrated liability for submitting fraudulent SFCs overvaluing Donald Trump's interest in the Vornado partnership in 2014-2016 and 2021.

Licensing Deals

Each of Donald Trump's SFCs from 2011-2021 has an asset category entitled "Real Estate Licensing Deals," which the SFC represents is value derived from "associations with others for the purpose of developing and managing properties" and the "cash flow that is expected to be derived... from these associations as their potential is realized." NYSCEF Doc. Nos. 769-779. The SFCs further state that "[i]n preparing [these] assessment[s], Mr. Trump and his management considered only situations which have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." Id.

Despite this express language, the SFCs from 2014-2018 and 2020-2021 include valuations of intra-organization deals, all between entities under the Trump Organization umbrella, in this category of assets. NYSCEF Doc. Nos. 1014, 1018, 1019, 1021, 1023, 1024, 1062, 1063, 1064. It was flatly false and misleading to include values of deals between Trump Organization entities while expressly representing in the SFCs that such assets included only valuations derived from "association with others." Improperly including these intra-organization deals resulted in an overvaluation of up to $224 million in 2014, $110 million in 2015, $120 million in 2016, $113 million in 2017, $115 million in 2018, $97 million in 2020, and $106 million in 2021. Id.

OAG has demonstrated liability for the false and misleading valuation of intra-company licensing deals on the SFCs from 2014-2018 and 2020-2021.

The Other Loans

OAG has established that defendants submitted false SFCs after July 13, 2014, pursuant to their other loan commitments. Defendants submitted SFCs to Deutsche Bank as part of their contractual obligations arising out of three different loans: (1) a Chicago Loan, undertaken by 401 North Wabash Venture LLC; (2) a Doral Loan, undertaken by Trump Endeavor LLC; and (3) an Old Post Office Loan, undertaken by Trump Old Post Office LLC. Defendants certified the accuracy of these SFCs to Deutsche Bank for the years 2014-2019 and 2021[26] as part of their

[25] Nor is this Court asked to determine Donald Trump's total wealth.

[26] The gap for 2020 may have been due to the COVID-19 pandemic.

contractual obligations. NYSCEF Doc. Nos. 1097, 1098, 1099, 1100, 1102, 1104, 1106, 1124, 1126, 1155, 1156, 1157.

The Individual Defendants

OAG has demonstrated liability on behalf of all the named individual defendants: (1) **Donald Trump**, as each and every SFC was issued on behalf of "Donald J. Trump"; (2) **Donald Trump, Jr.**, who, along with Allen Weisselberg, certified the accuracy of the SFCs for 2016-2020, and who singlehandedly certified the accuracy of the 2021 SFC (NYSCEF Docs. No. 808-813); (3) **Eric Trump**, who is the listed source for the Seven Springs valuation in 2014,[27] and who signed several guarantor compliance certificates in 2020 and 2021 for Donald J. Trump (NYSCEF Doc. No. 802); (4) **Allen Weisselberg**, who certified the accuracy of the SFCs from 2014-2021 (NYSCEF Doc. Nos. 806-812); (5) and **Jeffrey McConney**, who led the process of preparing all the SFCs since the 1990s[28] (NYSCEF Doc. No. 822 at 52-68).

The Entity Defendants

It is settled law that "[a] parent corporation will not be held liable for the torts or obligations of a subsidiary *unless it can be shown that the parent exercised complete dominion and control over the subsidiary*." Potash v Port Auth. of New York & New Jersey, 279 AD2d 562, 562 (2d Dept 2001) (emphasis added). Here, it is undisputed that Donald Trump, through one corporate form or another, exercised complete control over the umbrella of entities operating in furtherance of, or on behalf of, "the Trump Organization."

Defendants do not dispute that DJT Holdings LLC and DJT Holdings Managing Member LLC are entities that sit at the top of the Trump Organization's organizational chart and together own many of the Trump-affiliated entities that comprise the Trump Organization. DJT Holdings Managing Member LLC owns 100% of the Trump Organization and DJT Holdings LLC owns 100% of the Trump Organization LLC. NYSCEF Doc. Nos. 4, 819 at ¶1.

Accordingly, OAG has established liability on behalf of all the named entity defendants: (1) **The Trump Organization Inc., the Trump Organization LLC, DJT Holdings LLC**, and **DJT Holdings Managing Member LLC**, as each participated in the preparation, submission and certification of the SFCs after July 13, 2014 through the acts of the individual defendants as described *supra*; (2) the **DJT Revocable Trust**, as both Donald Trump Jr. and Allen Weisselberg certified the accuracy of the 2016-2019 SFCs in their capacities as "Trustee, the Donald J. Trump Revocable Trust dated April 7, 2014, as amended" (NYSCEF Doc. No. 808); (3) **Trump Endeavor LLC**, which was the borrower on the Doral Loan, for which SFCs were submitted after July 13, 2014; (4) **401 North Wabash Venture LLC**, which was the borrower on a loan for "Trump Chicago," under which SFCs were required to be (and were) submitted

[27] Eric Trump also reaffirmed the SFCs accuracy on July 9, 2019. NYSCEF Doc. Nos. 782 at Row 679, 783 at Rows 638-40, 784 at Row 660, 1183.

[28] Jeffrey McConney acknowledged his personal role in preparing supporting data for Donald Trump's SFCs beginning in 2011, testifying that: "I assemble the documentation" and that he would send both supporting data spreadsheets and backup documentation to the accountants. He further conceded that the supporting data spreadsheets were referred to as "Jeff's supporting data" or "Jeff's supporting schedule." NYSCEF Doc. No. 822 at 40, 67-68, 212, 294.

after July 13, 2014; (5) **Trump Old Post Office LLC**, as it was the borrower on the "Old Post Office" loan, under which SFCs were required to be (and were) submitted after July 13, 2014; and **Seven Springs LLC**, the borrowing entity (as described *supra*) under which SFCs were required to be (and were) submitted after July 13, 2014.

Injunctive Relief

OAG has prevailed on liability on its first cause of action pursuant to Executive Law § 63(12) as against all defendants: Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; the DJT Revocable Trust; the Trump Organization Inc; the Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member LLC; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC.

If liability is established under Executive Law § 63(12), the statute itself provides that the attorney general may obtain "an order enjoining the continuance of such business activity or of any fraudulent or illegal acts… and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law…."

"[T]he Attorney General may obtain permanent injunctive relief under… Executive Law § 63(12) upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." People v Greenberg, 27 NY3d at 496-97 (further stating "[t]his is not a 'run of the mill' action for an injunction, but rather one authorized by remedial legislation, brought by the Attorney-General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation") (internal citations omitted).

Having found, at the commencement of the action, that OAG had preliminarily demonstrated defendants' "propensity to engage in persistent fraud," this Court appointed the Hon. Barbara S. Jones (ret.) as an independent monitor "to ensure there is no further fraud or illegality that violates § 63(12) pending the final disposition of this action." NYSCEF Doc. No. 194. On August 3, 2023, Judge Jones reported as follows:

> [S]ince 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.

NYSCEF Doc. No. 647. Even with a preliminary injunction in place, and with an independent monitor overseeing their compliance, defendants have continued to disseminate false and misleading information while conducting business. This ongoing flouting of this Court's prior order, combined with the persistent nature of the false SFCs year after year, have demonstrated the necessity of canceling the certificates filed under GBL § 130, as the statute provides. People v Northern Leasing, 70 Misc 3d 256, 279-80 (Sup Ct, NY County 2020) (denying a trial on the petition and ordering the LLC respondents to dissolve upon a finding of persistent fraud under Executive Law § 63(12)).

Having prevailed on liability on a standalone Executive Law § 63(12) cause of action, the Attorney General is entitled to the first two prayers for relief sought in her complaint: (1) canceling any certificate filed under and by virtue of the provisions of New York General Business Law § 130 for all the entity defendants found liable, as well as any other entity controlled or beneficially owned by the individual defendants found liable herein, which and who participated in or benefitted from the foregoing fraudulent schemes; and (2) appointing an independent monitor to oversee compliance, financial reporting, valuations, and disclosures to lenders, insurers, and tax authorities at the Trump Organization. NYSCEF Doc. No. 1 at 213.

Remaining Issues to be Determined at Trial

Anything presented in the parties' moving papers that this Court has not ruled upon in this Decision and Order, including determinations on liability for the second through seventh causes of action, the amount of disgorgement of profits to which OAG is entitled, and determinations on the third through ninth prayers for relief sought by OAG in its complaint, presents disputed issues of fact that shall proceed to trial.

Conclusion

For the reasons stated herein, it is hereby

ORDERED that defendants' motion for summary judgment is denied; and it is further

ORDERED that plaintiff's motion for sanctions is granted in part, to the extent of sanctioning Michael Madaio, Esq. (Habba Madaio & Associates, LLP), Clifford S. Robert, Esq. (Robert & Robert PLLC), Michael Farina Esq. (Robert & Robert PLLC), Christopher M. Kise, Esq., (admitted *pro hac vice*) (Continental PLLC), and Armen Morian (Morian Law PLLC) in the amount of $7,500 each, to be paid to the Lawyer's Fund for Client Protection of the State of New York no later than 30 days from the date of this Decision and Order; and it is further

ORDERED that plaintiff's motion for partial summary judgment on its first cause of action is granted in part, to the extent of finding defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, the DJT Revocable Trust, the Trump Organization Inc, the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC to be liable as a matter of law for persistent violations of Executive Law § 63(12); and it is further

ORDERED that any certificates filed under and by virtue of GBL § 130 by any of the entity defendants or by any other entity controlled or beneficially owned by Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, and Jeffrey McConney are canceled; and it is further

ORDERED that within 10 days of the date of this order, the parties are directed to recommend the names of no more than three potential independent receivers to manage the dissolution of the canceled LLCs; and it is further

ORDERED that the Hon. Barbara S. Jones (ret.) shall continue to serve as an independent monitor of the Trump Organization until further Court order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

Attachment 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

E. JEAN CARROLL,

Plaintiff,

-against- 20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

----------x

VERDICT FORM

Did Ms. Carroll prove, by a preponderance of the evidence, that

1. Ms. Carroll suffered more than nominal damages as a result of Mr. Trump's publication of the June 21 and June 22, 2019 statements?

YES X NO ____

If "Yes," insert the dollar amount for any compensatory damages you award *other than for the reputation repair program.* If "No," write "$1."

$ 7.3 m

If "Yes," insert the dollar amount for any compensatory damages you award *for the reputation repair program only.* If "No," leave blank.

$ 11m

[Continue to Question 2, whether you answered "Yes" or "No."]

2. In making the June 21, 2019 statement, Mr. Trump acted maliciously, out of hatred, ill will, or spite, vindictively, or in wanton, reckless, or willful disregard of Ms. Carroll's rights?

YES X NO ____

[Continue to Question 3, regardless of whether you answered "Yes" or "No."]

3. In making the June 22, 2019 statement, Mr. Trump acted maliciously, out of hatred, ill will, or spite, vindictively, or in wanton, reckless, or willful disregard of Ms. Carroll's rights?

YES X NO ____

If you answered "Yes" to either Question 2 or Question 3 (or both), how much, if any, should Mr. Trump pay to Ms. Carroll in punitive damages?

$ 65m

[Please write your juror number (not your seat number or name) in the space provided below, fill in the date, and inform the officer that you have reached a verdict.]

Dated: January 26, 2024

Juror numbers:

66
23
28
56
6
34
21
10
82

Court Ex A
1/25/24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIRCULATION DRAFT

----------x

E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

----------x

VERDICT FORM

Did Ms. Carroll prove, by a preponderance of the evidence, that

1. Ms. Carroll suffered more than nominal damages as a result of Mr. Trump's publication of the June 21, 2019 statement?

YES _____ NO _____

If "Yes," insert the dollar amount for any compensatory damages you award *other than for the reputation repair program*. If "No," write "$1."

$_____

If "Yes," insert the dollar amount for any compensatory damages you award *for the reputation repair program only*. If "No," leave blank.

$_____

[Continue to Question 2, whether you answered "Yes" or "No."]

2. Ms. Carroll suffered more than nominal damages as a result of Mr. Trump's publication of the June 22, 2019 statement?

YES _____ NO _____

If "Yes," insert the dollar amount for any compensatory damages you award *other than for the reputation repair program*. If "No," write "$1."

$_____

If "Yes," insert the dollar amount for any compensatory damages you award *for the reputation repair program only*. If "No," leave blank.

$_____

[Continue to Question 3, whether you answered "Yes" or "No."]

3. In making the June 21, 2019 statement, Mr. Trump acted maliciously, out of hatred, ill will, or spite, vindictively, or in wanton, reckless, or willful disregard of Ms. Carroll's rights?

YES _____ NO ____

[Continue to Question 4, regardless of whether you answered "Yes" or "No."]

4. In making the June 22, 2019 statement, Mr. Trump acted maliciously, out of hatred, ill will, or spite, vindictively, or in wanton, reckless, or willful disregard of Ms. Carroll's rights?

YES _____ NO ____

If you answered "Yes" to either Question 3 or Question 4 (or both), how much, if any, should Mr. Trump pay to Ms. Carroll in punitive damages?

$_____

[Please write your juror number (not you seat number or name) in the space provided below, fill in the date, and inform the officer that you have reached a verdict.]

Dated: _____, 2024

Juror numbers:

_____	_____
_____	_____
_____	_____
_____	_____
_____	

Court Ex. D
1/25/24 mn

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIRCULATION DRAFT

- x

E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

- x

JURY INSTRUCTIONS

Table of Contents

I. INTRODUCTION

Members of the jury, we have reached that point in the trial where you are about to begin your function as jurors. My instructions to you will be in four parts.

First, I will describe the verdict form that you will use to address the factual questions that you are to decide and the law to be applied in doing so. Second, I will instruct you about the trial process, including the burden of proof. Third, I will give you instructions concerning your evaluation of the evidence. The fourth and final section of these instructions will relate to your deliberations.

II. THE LAW AND THE VERDICT FORM

Your verdict in this case will be in the form of answers to "Yes" or "No" questions and questions that ask you to provide, if applicable, dollar amounts. I ask my staff to distribute the verdict form to you now so it may help you to follow the instructions that I am about to give you.

A. The Nature of the Case

You of course know that the plaintiff in this case, E. Jean Carroll, is suing the defendant, Donald Trump, for money damages for injuries she claims to have suffered as a result of defamatory statements that Mr. Trump made about her. In the mid-1990s, Ms. Carroll encountered Mr. Trump at the Bergdorf Goodman department store in Manhattan, where he sexually assaulted her. Ms. Carroll's account of being sexually assaulted by Mr. Trump first was published on June 21, 2019. On June 21 and June 22, 2019, Mr. Trump made the defamatory statements at issue in this case, where he publicly denied knowing Ms. Carroll, denied sexually assaulting her, and accused her of making up the assault for ulterior and improper purposes.

As I instructed you at the outset of this trial, you are *not* to decide whether Mr. Trump

in fact sexually assaulted Ms. Carroll or whether Mr. Trump's June 2019 statements about her were defamatory. There have been prior proceedings relating to these events, including a previous jury trial. And the jury in that case — as well as other proceedings in this Court — already found Mr. Trump liable for sexually assaulting Ms. Carroll and for defaming her in his June 2019 statements. Specifically, the following facts pertinent to this dispute already have been decided:

First, Mr. Trump sexually abused Ms. Carroll by forcibly inserting his fingers into her vagina without her consent.

Second, Ms. Carroll did not make up her claim of forcible sexual abuse by Mr. Trump. Mr. Trump's June 21 and 22, 2019 statements were false.

Third, Mr. Trump knew when he made his June 21 and 22, 2019 statements that they were false, had serious doubts as to the truth of those statements, or made those statements with a high degree of awareness that they probably were false.

Fourth, Mr. Trump's June 21 and 22, 2019 statements were defamatory. In other words, his false statements tended to disparage Ms. Carroll in the way of her business, office, profession, or trade, or they tended to expose her to hatred, contempt, or aversion, or they tended to induce an evil or an unsavory opinion of her in the minds of a substantial number of people in the community.

For your purposes, you must accept these points as true no matter what else you may have heard in this trial. What remains for you to decide are two very limited issues relating to the damages Mr. Trump owes Ms. Carroll for defaming her in his June 2019 statements. To be clear: you will *not* be determining any damages that Ms. Carroll suffered by reason of the forcible sexual assault itself. That already has been done. Your focus will be entirely on damages issues resulting from Mr. Trump's publication of the June 21 and June 22 defamatory statements.

First, you must decide whether Ms. Carroll sustained more than nominal damages by

reason of Mr. Trump's June 21 and June 22, 2019 statements and, if she did, the amount of money damages that Mr. Trump must pay Ms. Carroll to compensate her for the injury she suffered as a result of each of those statements. These are called compensatory damages.

Second, you must decide whether Mr. Trump should be required to pay Ms. Carroll punitive damages as well and, if so, how much he should be required to pay. Punitive damages are intended to punish a defendant and to deter future defamatory statements.

I now will discuss these remaining damages issues in turn, with reference to the verdict form that you will be using to decide this case.

B. The Verdict Form

1. Questions 1 and 2: Compensatory Damages for June 21 and June 22, 2019 Statements

A person who has been defamed is entitled to fair and just compensation for the injury to her reputation and for any humiliation and mental anguish in her public and private lives that was caused by the defamatory statement in question. Questions 1 and 2 deal with such damages for Mr. Trump's June 21 and June 22, 2019 statements, PX 1 and PX 2, respectively.

For each statement, you will award an amount that, in the exercise of your good judgment and common sense, you decide is fair and just compensation for the injury to Ms. Carroll's reputation and the humiliation and mental anguish in her public and private lives which you decide was caused by Mr. Trump's statement. In fixing that amount, you should consider Ms. Carroll's standing in the community, the nature of Mr. Trump's statement made about Ms. Carroll, the extent to which the statement was circulated, the tendency of the statement to injure a person such as Ms. Carroll, and all of the other facts and circumstances in the case. Compensatory damages cannot be

proved with mathematical accuracy. Fair compensation may vary, ranging from one dollar, if you decide that there was no injury, to a substantial sum if you decide that the injury was substantial.

[N.Y. Pattern Jury Instr. Civil 3:29 (modified); *Ferri v. Berkowitz*, 561 F. App'x 64, 65 (2d Cir. 2014).]

You may award compensatory damages only for those injuries that you find Ms. Carroll has proven by a preponderance of the evidence. Compensatory damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial and only on that evidence.

[*Lewis v. City of New York*, 689 F. Supp 2d 417, 429 (E.D.N.Y. 2010)].

Further, you may not award compensatory damages more than once for the same injury. For example, where a plaintiff prevails on two claims and establishes that he or she is entitled to $100 in total compensatory damages for one injury, the plaintiff is not entitled to $100 in compensatory damages on each claim. Of course, where different injuries are attributed to the separate claims, a plaintiff is entitled to be compensated fully for all of the injuries.

During her opening statement, Mr. Trump's attorney asserted that Ms. Carroll had a duty to mitigate or minimize any damage that she suffered as a consequence of Mr. Trump's statements at issue in this case. That statement was incorrect. A person who is defamed has no duty to mitigate or minimize any harm caused to that person by the defamation. A person who defames a plaintiff is liable to the plaintiff for all damages caused to the plaintiff by the defamation.

[*E.g.*, *Den Norske Ameriekalinije Actiesselskabet v. Sun Printing and Publishing Ass'n*, 226 N.Y. 1, 8-9 (1919); *Kane v. SDM Enterprises, Inc.*, 125 A.D.3d 939, 940 (2d Dep't 2015).]

Question 1 pertains to compensatory damages for Mr. Trump's June 21, 2019 statement, and it has two parts. The first part asks you whether Ms. Carroll has proved by a

preponderance of the evidence that she suffered more than just nominal damages from Mr. Trump's June 21, 2019 statement — meaning that she was injured by that statement in any of the respects that I just described to an extent warranting damages of more than $1. That is the "Yes" or "No" question. If the answer is "Yes," you then will fill in the amount you award for all defamation damages attributable to the June 21 statement, *excluding* the reputation repair program that was discussed during Professor Humphreys's testimony. And then, you will fill in the amount of damages, if any, that you award for the reputation repair program for the June 21, 2019 statement.

On the other hand, if your answer to the first part of Question 1 is "No" — that is, if you determine that Ms. Carroll has not proved by a preponderance of the evidence that she suffered more than nominal damages as a result of Mr. Trump's June 21, 2019 statement — then you will write down $1 on the second line, and you will leave the third line blank.

Regardless of your answer to Question 1, you will go on to Question 2. Question 2 is the same as Question 1, but it relates to the June 22, 2019 statement instead of the June 21 statement. My instructions on answering Question 1 apply to Question 2 as well.

Regardless of your answer to Question 2, you will go on to Question 3.

2. Questions 3 and 4: Punitive Damages for June 21 and June 22, 2019 Statements

In addition to seeking compensatory damages, which I covered while discussing Questions 1 and 2, Ms. Carroll asks also that you award punitive damages.

Punitive damages may be awarded for defamation to punish a defendant who has acted maliciously and to deter him and others from doing the same. A statement is made maliciously for purposes of Questions 3 and 4 if it is made:

(a) with deliberate intent to injure; or

(b) out of hatred, ill will, or spite; or

(c) in willful, wanton, or reckless disregard of another's rights.

[*Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 174 (2d Cir. 2000).]

Question 3 pertains to Mr. Trump's malice with respect to the June 21, 2019 statement. Question 4 pertains to Mr. Trump's malice with respect to the June 22, 2019 statement. If you answer "Yes" to either Question 3 or Question 4, or both — that is, if you find that Ms. Carroll has proved by a preponderance of the evidence that Mr. Trump acted maliciously, as I have just defined that term for you, in making the June 21 or June 22, 2019 statement about Ms. Carroll — you will write down an amount, if any, that you find Mr. Trump should pay to Ms. Carroll in punitive damages. If you answer "No" to both Question 3 and Question 4 — that is, if you find that Ms. Carroll has not proved by a preponderance of the evidence that Mr. Trump's June 21 and June 22, 2019 statements were made maliciously — you may not award punitive damages.

[*Greenbaum v. Svenska Handelsbanken*, N.Y., 979 F. Supp. 973, 976 (S.D.N.Y. 1997), *on reconsideration sub nom. Greenbaum v. Handlesbanken*, 26 F. Supp. 2d 649 (S.D.N.Y. 1998); *Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 184 (2d Cir. 2000); *Corrigan v. Bobbs-Merrill Co.*, 228 N.Y. 58, 66, 126 N.E. 260, 263 (1920)].

In arriving at your decision as to the amount of punitive damages to award, should you decide to award any, you should consider:

I. Your view of the nature and reprehensibility, if any, of what Mr. Trump did. That would include the character of the wrongdoing and Mr. Trump's awareness of what harm the conduct caused or was likely to cause. In considering the amount of punitive damages to award, you should weigh this

factor heavily.

II. Any actual and potential harm you conclude was caused or threatened by Mr. Trump's conduct.

III. Mr. Trump's financial condition and the impact that any punitive damages you may award will have on him.

IV. The amount, if any, you consider necessary to deter Mr. Trump from continuing to defame Ms. Carroll and to punish his misbehavior. In that regard, punitive damages may be considered expressive of the community attitude towards one who willfully and wantonly causes hurt or injury to another.

In arriving at your decision, you may consider additionally the relevant circumstances of the making of the June 21 and June 22, 2019 statements, provided that they are not too remote. This includes any subsequent statements that Mr. Trump has made about Ms. Carroll that are in evidence, as well as any other circumstances that indicate the existence of any ill will or hostility between the parties. For Questions 3 and 4, you may take Mr. Trump's other statements into consideration when determining whether he spoke maliciously when he made the June 21 and 22, 2019 statements, as well as in determining the amount of punitive damages, if any, that you decide to award insofar as any previous or subsequent conduct by Mr. Trump, in your view, bears on the size of an award necessary to deter him from continuing to defame Ms. Carroll.

[*Herbert v. Lando*, 441 U.S. 153, 164 n.12 (1979); *Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 184 (2d Cir. 2000); *Gertz v. Robert Welch*, Inc., 418 U.S. 323, 350 (1974); *Toomey v. Farley*, 2 N.Y.2d 71, 83, 138 N.E.2d 221, 228 (1956)].

The amount of punitive damages that you award, if any, must be both reasonable and

proportionate to the actual and potential harm suffered by the plaintiff, and to the compensatory damages, if any, you awarded the plaintiff.

Regardless of your answer to Question 3, you will go on to Question 4. The instructions I gave you on Question 3 apply also to Question 4. Once you have answered Question 4, you will return your verdict in the manner I will describe to you later.

III. TRIAL PROCESS

I have described to you the law to be applied to the facts and put to you the questions that require answers in order to resolve the claims in this case. Now I will instruct you about the trial process, beginning with the burden of proof.

A. Burden of Proof

Ms. Carroll bears the burden of proving her damages by a preponderance of the evidence. As I told you at the outset, proof beyond a reasonable doubt, which is the proper standard of proof in a criminal trial, does not apply to a civil case such as this, and you should put it out of your mind.

To establish something by a preponderance of the evidence means to prove that the contention of the party with the burden of proof on that question is more likely true than not true. In other words, a "preponderance" of the evidence means that the party with the burden of proof on a particular question has demonstrated that the odds of that party being right is more than 50-50, even if only by a very tiny amount. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a

preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of which party may have called them, and all the relevant exhibits received in evidence, regardless of which party may have produced them.

If, after considering all of the evidence, you find the evidence of both parties to be exactly in balance — in other words, that the chances of the plaintiffs' contention or the defendants' contention being correct with respect to any question I have put to you are exactly equal — then Ms. Carroll will have failed to sustain her burden of proof on that question, and you must find for the defendant on that issue. On the other hand, if Ms. Carroll has persuaded you on a particular question that her contention is more likely correct than the chances that her opponent is right, even if only by a little, then you must find for her on that particular question.

[Sand, 4 Modern Federal Jury Instructions-Civil P 73.01 (2023); *Waran v. Christie's Inc.*, 315 F. Supp. 3d 713, 718 (S.D.N.Y. 2018)].

B. Role of the Jury

You are the sole and exclusive judges of the facts. I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision ought to be or as to who should prevail here.

You are expressly to understand that the Court expresses no opinion as to any of the issues before you or as to how you should decide them.

C. Role of the Court

Now, as I have told you, is my duty to instruct you as to the law, and it is your duty to accept these instructions of law and apply them to the facts as you determine them.

You are to draw no inferences from the fact that I may have asked questions of some of the witnesses and made comments to counsel about the manner in which they made their presentations. I did that to bring out the evidence more quickly, to save time, and to ensure the proper conduct of the trial. I did not intend to suggest any view concerning the credibility of any witness or as to which side should prevail here, and you must not take my comments or questions as having done so. Nor should you consider the fact that I took notes and from time to time made entries on my computer. Whatever I may have noted, or any use by me of the computer, may have had nothing to do with what you are concerned with. You are to decide the case fairly and impartially based solely on the evidence and these instructions.

IV. EVALUATION OF EVIDENCE

A. What Is and Is Not Evidence

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, and any stipulations between counsel.

What is not evidence, however, is questions, arguments, and objections by lawyers. Nor is any witness testimony that I struck or told you to disregard to be considered in any way.

In deciding this case, I remind you that you are obliged to consider only the evidence you have seen and heard in this courtroom. Anything that you may have learned elsewhere that could conceivably have a bearing on this case must be disregarded.

B. Evidence of Deleted Messages

You have heard some evidence and argument during trial concerning whether Ms.

Carroll deleted some e-mails or tweets containing death threats from her computer, as well as some mention by defense counsel that she was issued a subpoena in this case. The questions of whether there was any impropriety in Ms. Carroll's actions and, if so, what if anything should be done about it are questions entirely for the Court, not the jury.

To the extent you find it to be relevant, however, you are entitled to consider exactly what materials Ms. Carroll disposed of, when she did so, and what bearing, if any, her actions have on the questions of damages before you. I do instruct you, however, that Ms. Carroll had no obligation to preserve anything before she anticipated litigation.

[Fed. R. Civ. P. 37(e); *Rossbach v. Montefiore Med. Ctr.*, 81 F.4th 124, 138 (2d Cir. 2023); *Europe v. Equinox Holdings, Inc.*, 592 F. Supp. 3d 167, 174 (S.D.N.Y. 2022).]

C. Direct and Circumstantial Evidence

Now that I have covered the instructions for certain specific evidence, I will give you instructions with respect to the evidence more generally. There are two types of evidence which you properly may use in reaching your verdict.

One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses — something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

The other kind of evidence is circumstantial evidence. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict must be based on a preponderance of *all* the evidence presented.

[D. Deposition Testimony

Some of the testimony before you is in the form of videotaped depositions that were received in evidence. A deposition is simply a procedure where, prior to trial, the attorneys may question a witness or an adversary party under oath before a court stenographer. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness if given live at trial.]

E. Demonstratives

There were times during the course of the trial where counsel for each side had marked and showed to you visual aids called demonstratives. They were shown to you to help you understand the evidence as it came in. They are not themselves evidence, and they were used only as a manner of convenience, so you should consider them accordingly.

[*Cerveceria Modelo de Mexico, S. De R.L. de C.V. v. CB Brand Strategies, LLC*,No. 21-CV-1317 (S.D.N.Y 2023)].

F. Witness Credibility

You have had the opportunity to observe the witnesses. It is up to you to decide how believable each witness was in his or her testimony in this case, subject to the fact that you are required to accept as true that (1) Mr. Trump sexually abused Ms. Carroll; (2) his June 21 and 22, 2019 statements were false; (3) Mr. Trump knew they were false or made them with a high degree of awareness that they probably were false; and (4) his June 21 and 22, 2019 statements defamed Ms. Carroll. You are the sole judges of the credibility of each witness and of the importance of each

witness's testimony. In deciding the weight to give to the testimony of a witness, you should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life.

Your decision whether or not to believe a witness may depend on how that witness impressed you. You watched each witness testify. Everything a witness said or did on the witness stand [or in the deposition excerpts that you saw] counts in your determination. Did the witness appear to be frank, forthright, and candid? Or did the witness answer questions on direct examination in a responsive and forthcoming manner but answer questions on cross-examination evasively or unresponsively? You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of the witness's memory, the reasonableness and probability of the witness's testimony, and its consistency or lack of consistency and its corroboration or lack of corroboration with other credible testimony.

In evaluating a witness's credibility, you should use your common sense, your good judgment, and your own life experience. Further, you are to perform the duty of evaluating witnesses without bias or prejudice as to any party, and you are to perform that duty with an attitude of complete fairness and impartiality.

Finally, should you, in the course of your deliberations, conclude that any witness has intentionally testified falsely as to a material fact during the trial, you are at liberty to disregard all of his or her testimony on the principle that one who testifies falsely as to one material fact may also testify falsely to other facts. But credibility is not necessarily an all or nothing proposition. You may accept so much of any witness's testimony as you believe to be true and accurate and reject only such parts, if any, that you conclude are false or inaccurate.

G. Expert Witness

You also have heard over the course of this trial from an expert witness, specifically Professor Humphreys. An expert witness is a person who, by education and experience, has become expert in some art, science, profession, or calling. Under the rules of evidence, expert witnesses may state their opinions as to matters in which they profess to be an expert and may also state the reasons for their opinions. The purpose of expert testimony is to assist you in understanding the evidence and in reaching an independent decision.

In weighing an expert's testimony, you may consider the expert's qualifications, his or her opinions, the bases for the expert's opinions, and all of the other considerations I just described to you in evaluating a witness's credibility. You may give the expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not accept the expert witness's testimony just because she is an expert. Even with an expert witness, you should use your common sense, your good judgment, and your own life experience.

You may give the expert's testimony as much weight, if any, as you think it deserves in light of all the evidence. You also may reject the testimony of an expert witness in whole or in part if you conclude the reasons given in support of an opinion are unsound or if you for other reasons do not believe the expert witness.

H. Avoidance of Outside Influence

As you know, this case has attracted a great deal of media attention. Until a verdict is released and you are discharged, you must continue to insulate yourself from all information about this case, except what has come to you in this courtroom. That means no reading, watching, or

listening to media coverage or commentary about the case or comments from anyone else, including your friends and loved ones. You are to be sealed from other information. And if anything happens that results in some exposure to some outside source, you are obligated to report it to the Court.

V. DELIBERATION OF THE JURY

A. Duty to Deliberate / Unanimous Verdict

You now will retire to decide the issues submitted for your consideration. It is your duty as jurors to consult with one another and to deliberate with the goal of reaching an agreement. Each of you must decide for yourself the answers to the questions I have posed, but you should do so only after considering the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is mistaken. Your answers to each question must be unanimous, but you are not required to give up your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

B. Notes

Let me remind you, members of the jury, that any notes you may have taken during the trial are for your personal use only. You each may consult your own notes during deliberations, but any notes you may have taken are not to be relied upon during deliberations as a substitute for the collective memory of the jury panel. Your notes should be used as memory aids but should not

be given precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

Again, each of you must make your own decision about the proper answer to each question based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

C. Citations

During your deliberations, you will have access to a printed copy of the instructions I am now reading to you. You will see that the printed copy of the instructions contains a number of legal citations, which appear in brackets. Those citations were included to aid the lawyers and me, and you are to ignore them in your deliberations. I have instructed you on the principles of law applicable to this case, and you must apply them in the manner that I have explained them to you. I will describe in a moment what you should do if you require a further explanation of any of my instructions.

D. All Jurors Required for Deliberation

You are not to discuss the case until all jurors are present. Four or five jurors together is only a gathering of individuals. Only when *all* jurors are present do you constitute a jury, and only then may you deliberate.

E. Selection of Foreperson

When you retire, you must elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

The foreperson will send out any notes and, when the jury has reached a verdict, he or she will notify the Officer that the jury has reached a verdict.

F. Verdict Form

As you have seen, the verdict form that each of you has consists of questions concerning the important issues in this case. As I have explained, your answer to one question will determine whether and how you answer a subsequent question, and the verdict form indicates how you should proceed through the form. It is important to follow these instructions, because you should answer every question except where the verdict form indicates otherwise. Further, please do not add anything that is not called for by the verdict form.

G. Return of Verdict

After a unanimous decision has been reached, you will record your answers on one copy of the verdict form. The foreperson will fill in the form. Then each juror will write his or her juror number — no names, please! — at the bottom of it and advise the Officer that a verdict has been reached. Do not give the verdict form to the Officer. The foreperson should place it in an envelope and bring it with him or her when you return to the courtroom.

I stress that each of you should be in agreement with the verdict that is announced in court. Once your verdict is announced by the foreperson in open court and/or officially recorded, it

ordinarily cannot be revoked.

H. Communications Between Court and Jury

If during your deliberations you want me to discuss further some of the instructions on the law that I have given you, the foreperson should send out a note through the Officer in a sealed envelope asking for anything you may wish to hear again.

If you wish to have testimony read to you, it can be done, but I ask you to do so only when you have exhausted your collective recollection and are certain that you need it. If you do need to have testimony read, then I ask you to state precisely in your note what you want.

We will be sending the exhibits into the jury room with you.

If you communicate with the Court before reaching a verdict, you must never indicate to the Court how you are divided unless I specifically ask for it.

I. Juror Oath

You are reminded that you took an oath to render judgment impartially and fairly, without prejudice, sympathy, or fear, based solely upon the evidence in the case and the applicable law. And I want to elaborate for a moment upon your role under that oath.

First of all, you must accept as true the facts I have explained to you that were decided in a previous lawsuit. You may not properly question these. In all other respects, you as jurors are the judges of the facts.

I remind you that nothing I have said or done should be taken by you as indicating any view on my part as to what your conclusion should be about the facts — about what, if any,

damages Ms. Carroll is entitled to. But in determining Ms. Carroll's damages — that is, in reaching your decision as to the facts — it is your sworn duty to follow all of the rules of law as I have explained them to you. You may not disregard or question any rule I have stated to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I have explained it to you, regardless of the consequences. And that applies to all of the law I have given you.

[Tenth Circuit Criminal Pattern Jury Instructions § 1.04 (2021) (modified)].

Folks, jury service is a duty of citizenship; it is also a privilege. The jury system is *the* bedrock of our justice system — indeed, the right to a trial by jury is enshrined in two separate amendments to our Constitution. Everything we have done here these past two weeks has been to enable you to decide this case fairly.

The jury embodies what is perhaps the most fundamental idea of our nation — that "We the People" created it and "We the People" govern it. Indeed, the Constitution begins:

> "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

"We the People." You, ladies and gentlemen of the jury — you stand in for all of "the People." And to you is committed a vital role in our constitutional system.

Your role dates back to the earliest days of our nation. The Constitution vests the judicial power of the United States in one supreme court and in those other courts that Congress sees

fit to establish. This is one of those courts. This court in fact has been functioning since 1789. It was the very first U.S. court to hold session under our then-new constitution. It did so even before the first session of the United States Supreme Court. And as jurors, you are part of this Court.

Since those earliest days in our nation's history — through wars, through economic depressions, through pandemics — jurors like you have been asked to decide cases. And your role is just the same as the role of the countless jurors before you. You will be entirely fair and impartial to both parties. You will decide the case only on the evidence before you. You will decide the case on the basis of my instructions on the law. This is an important task – doing justice fairly and impartially. I am confident that you will fulfill your duty with the utmost care.

J. Exceptions

Members of the jury, I ask you to remain seated for a moment while I confer with the attorneys.

Court Ex. C. ID/Adm

Andrew Mohan

From: Andrew Mohan
Sent: Thursday, January 25, 2024 10:40 PM
To: 'Roberta Kaplan'; 'Shawn G. Crowley'; 'ahabba@habbalaw.com'; 'mmadaio@habbalaw.com'; 'Joshua Matz'; 'Matthew Craig'; 'Trevor Morrison'
Subject: Regarding the Charge in Carroll v. Trump 20-cv-7311(LAK)

Importance: High

Good Evening Counsel, Judge Kaplan has asked me to relay that the Court has adopted, in words or in substance, the plaintiff's proposed charges with respect to whether the jury may offset against Ms. Carroll's damages any purported benefit she received and with respect to whether Ms. Carroll consented to or assumed the risk of Mr. Trump's defamatory statements. As to the latter, it intends to charge as requested by the plaintiff in Dkt 275, Exhibit A. It has adopted also plaintiff's request to change the verdict form to combine the questions of compensatory damages with respect to the two statements at issue and has made corresponding changes in the charge.

Andrew Mohan
Courtroom Deputy to Judge Kaplan

Court Ex D
1/26/24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

----------x

JURY INSTRUCTIONS

Table of Contents

I. INTRODUCTION

Members of the jury, we have reached that point in the trial where you are about to begin your function as jurors. My instructions to you will be in four parts.

First, I will describe the verdict form that you will use to address the factual questions that you are to decide and the law to be applied in doing so. Second, I will instruct you about the trial process, including the burden of proof. Third, I will give you instructions concerning your evaluation of the evidence. The fourth and final section of these instructions will relate to your deliberations.

II. THE LAW AND THE VERDICT FORM

Your verdict in this case will be in the form of answers to "Yes" or "No" questions and questions that ask you to provide, if applicable, dollar amounts. I ask my staff to distribute the verdict form to you now so it may help you to follow the instructions that I am about to give you.

A. The Nature of the Case

You of course know that the plaintiff in this case, E. Jean Carroll, is suing the defendant, Donald Trump, for money damages for injuries she claims to have suffered as a result of defamatory statements that Mr. Trump made about her. In the mid-1990s, Ms. Carroll encountered Mr. Trump at the Bergdorf Goodman department store in Manhattan, where he sexually assaulted her. Ms. Carroll's account of being sexually assaulted by Mr. Trump first was published on June 21, 2019. On June 21 and June 22, 2019, Mr. Trump made the defamatory statements at issue in this case, where he publicly denied knowing Ms. Carroll, denied sexually assaulting her, and accused her of making up the assault for ulterior and improper purposes.

As I instructed you at the outset of this trial, you are *not* to decide whether Mr. Trump

in fact sexually assaulted Ms. Carroll or whether Mr. Trump's June 2019 statements about her were defamatory. There have been prior proceedings relating to these events, including a previous jury trial. And the jury in that case — as well as other proceedings in this Court — already found Mr. Trump liable for sexually assaulting Ms. Carroll and for defaming her in his June 2019 statements. Specifically, the following facts pertinent to this dispute already have been decided:

First, Mr. Trump sexually abused Ms. Carroll by forcibly inserting his fingers into her vagina without her consent.

Second, Ms. Carroll did not make up her claim of forcible sexual abuse by Mr. Trump. Mr. Trump's June 21 and 22, 2019 statements were false.

Third, Mr. Trump knew when he made his June 21 and 22, 2019 statements that they were false, had serious doubts as to the truth of those statements, or made those statements with a high degree of awareness that they probably were false.

Fourth, Mr. Trump's June 21 and 22, 2019 statements were defamatory. In other words, his false statements tended to disparage Ms. Carroll in the way of her business, office, profession, or trade, or they tended to expose her to hatred, contempt, or aversion, or they tended to induce an evil or an unsavory opinion of her in the minds of a substantial number of people in the community.

For your purposes, you must accept these points as true no matter what else you may have heard in this trial. What remains for you to decide are two very limited issues relating to the damages Mr. Trump owes Ms. Carroll for defaming her in his June 2019 statements. To be clear: you will *not* be determining any damages that Ms. Carroll suffered by reason of the forcible sexual assault itself. That already has been done. Your focus will be entirely on damages issues resulting from Mr. Trump's publication of the June 21 and June 22, 2019 defamatory statements.

First, you must decide whether Ms. Carroll sustained more than nominal damages by

reason of Mr. Trump's June 21 and June 22, 2019 statements and, if she did, the amount of money damages that Mr. Trump must pay Ms. Carroll to compensate her for the injury she suffered as a result of those statements. These are called compensatory damages.

Second, you must decide whether Mr. Trump should be required to pay Ms. Carroll punitive damages as well and, if so, how much he should be required to pay. Punitive damages are intended to punish a defendant and to deter future defamatory statements.

I now will discuss these remaining damages issues in turn, with reference to the verdict form that you will be using to decide this case.

B. The Verdict Form

1. Question 1: Compensatory Damages for June 21 and June 22, 2019 Statements

A person who has been defamed is entitled to fair and just compensation for the injury to her reputation and for any humiliation and mental anguish in her public and private lives that was caused by the defamatory statement in question. Question 1 deals with such damages for Mr. Trump's June 21 and June 22, 2019 statements, PX 1 and PX 2, respectively.

For this question, you will award an amount that, in the exercise of your good judgment and common sense, you decide is fair and just compensation for the injury to Ms. Carroll's reputation and the humiliation and mental anguish in her public and private lives which you decide was caused by Mr. Trump's June 21 and 22, 2019 statements. In fixing that amount, you should consider Ms. Carroll's standing in the community, the nature of Mr. Trump's statement made about Ms. Carroll, the extent to which the statement was circulated, the tendency of the statement to injure a person such as Ms. Carroll, and all of the other facts and circumstances in the case. Compensatory

damages cannot be proved with mathematical accuracy. Fair compensation may vary, ranging from one dollar, if you decide that there was no injury, to a substantial sum if you decide that the injury was substantial.

[N.Y. Pattern Jury Instr. Civil 3:29 (modified); *Ferri v. Berkowitz*, 561 F. App'x 64, 65 (2d Cir. 2014).]

It is Ms. Carroll's burden to prove the nature and extent of her damages and to prove that the damages were caused by Mr. Trump's actions. You may award compensatory damages only for those injuries that you find Ms. Carroll has proven by a preponderance of the evidence. Compensatory damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial and only on that evidence.

[*Lewis v. City of New York*, 689 F. Supp 2d 417, 429 (E.D.N.Y. 2010)].

Further, you may not award compensatory damages more than once for the same injury. For example, where a plaintiff prevails on two claims and establishes that he or she is entitled to $100 in total compensatory damages for one injury, the plaintiff is not entitled to $100 in compensatory damages on each claim. Of course, where different injuries are attributed to the separate claims, a plaintiff is entitled to be compensated fully for all of the injuries.

During her opening statement, Mr. Trump's attorney asserted that Ms. Carroll had a duty to mitigate or minimize any damage that she suffered as a consequence of Mr. Trump's statements at issue in this case. That statement was incorrect. A person who is defamed has no duty to mitigate or minimize any harm caused to that person by the defamation. A person who defames a plaintiff is liable to the plaintiff for all damages caused to the plaintiff by the defamation.

[*E.g.*, *Den Norske Ameriekalinije Actiesselskabet v. Sun Printing and Publishing Ass'n*, 226 N.Y. 1, 8-9 (1919); *Kane v. SDM Enterprises, Inc.*, 125 A.D.3d 939, 940 (2d Dep't 2015).]

In addition, the harm, if any, that Mr. Trump caused to Ms. Carroll's reputation by his defamatory statements is not mitigated, reduced, or offset by any benefit to her reputation that Mr. Trump may claim that his defamatory statements or Ms. Carroll's allegations against him caused in some parts of the community. You are not to consider any such reputational benefits, if any, in deciding on a damages award in this case.

Question 1 pertains to compensatory damages for Mr. Trump's June 21 and June 22, 2019 statements, and it has two parts. The first part asks you whether Ms. Carroll has proved by a preponderance of the evidence that she suffered more than just nominal damages from Mr. Trump's June 21 and 22, 2019 statements — meaning that she was injured by those statements in any of the respects that I just described to an extent warranting damages of more than $1. That is the "Yes" or "No" question. If the answer is "Yes," you then will fill in the amount you award for all defamation damages attributable to the June 21 and June 22 statements, *excluding* the reputation repair program that was discussed during Professor Humphreys's testimony. And then, you will fill in the amount of damages, if any, that you award for the reputation repair program for the June 21 and June 22, 2019 statements.

On the other hand, if your answer to the first part of Question 1 is "No" — that is, if you determine that Ms. Carroll has not proved by a preponderance of the evidence that she suffered more than nominal damages as a result of Mr. Trump's June 21 and June 22, 2019 statements — then you will write down $1 on the second line, and you will leave the third line blank.

Regardless of your answer to Question 1, you will go on to Question 2.

2. Questions 2 and 3: Punitive Damages for June 21 and June 22, 2019 Statements

In addition to seeking compensatory damages, which I covered while discussing Question 1, Ms. Carroll asks also that you award punitive damages.

Punitive damages may be awarded for defamation to punish a defendant who has acted maliciously and to deter him and others from doing the same. A statement is made maliciously for purposes of Questions 2 and 3 if it is made:

(a) with deliberate intent to injure; or

(b) out of hatred, ill will, or spite; or

(c) in willful, wanton, or reckless disregard of another's rights.

[*Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 174 (2d Cir. 2000).]

Question 2 pertains to Mr. Trump's malice, if any, with respect to the June 21, 2019 statement. Question 3 pertains to Mr. Trump's malice, if any, with respect to the June 22, 2019 statement. If you answer "Yes" to either Question 2 or Question 3, or both — that is, if you find that Ms. Carroll has proved by a preponderance of the evidence that Mr. Trump acted maliciously, as I have just defined that term for you, in making the June 21 or June 22, 2019 statements about Ms. Carroll — you will write down an amount, if any, that you find Mr. Trump should pay to Ms. Carroll in punitive damages. If you answer "No" to both Question 2 and Question 3 — that is, if you find that Ms. Carroll has not proved by a preponderance of the evidence that Mr. Trump's June 21 and June 22, 2019 statements were made maliciously — you may not award punitive damages.

[*Greenbaum v. Svenska Handelsbanken*, N.Y., 979 F. Supp. 973, 976 (S.D.N.Y. 1997), *on reconsideration sub nom. Greenbaum v. Handlesbanken*, 26 F. Supp. 2d 649 (S.D.N.Y. 1998); *Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 184 (2d Cir. 2000); *Corrigan v. Bobbs-Merrill Co.*, 228 N.Y. 58, 66, 126 N.E. 260, 263 (1920)].

In arriving at your decision as to the amount of punitive damages to award, should you decide to award any, you should consider:

I. Your view of the nature and reprehensibility, if any, of what Mr. Trump did. That would include the character of the wrongdoing and Mr. Trump's awareness of what harm the conduct caused or was likely to cause. In considering the amount of punitive damages to award, you should weigh this factor heavily.

II. Any actual and potential harm you conclude was caused or threatened by Mr. Trump's conduct.

III. Mr. Trump's financial condition and the impact that any punitive damages you may award will have on him.

IV. The amount, if any, you consider necessary to deter Mr. Trump from continuing to defame Ms. Carroll and to punish his misbehavior. In that regard, punitive damages may be considered expressive of the community attitude towards one who willfully and wantonly causes hurt or injury to another.

In arriving at your decision, you may consider additionally the relevant circumstances of the making of the June 21 and June 22, 2019 statements, provided that they are not too remote. This includes any subsequent statements Mr. Trump has made about Ms. Carroll, as well as any other circumstances, that are in evidence and that indicate the existence of any ill will or hostility between the parties. For Questions 2 and 3, you may take Mr. Trump's other statements into consideration when determining whether he spoke maliciously when he made the June 21 and 22, 2019 statements,

as well as in determining the amount of punitive damages, if any, that you decide to award insofar as any previous or subsequent conduct by Mr. Trump, in your view, bears on the size of an award necessary to deter him from making defamatory statements about Ms. Carroll in the future.

[*Herbert v. Lando*, 441 U.S. 153, 164 n.12 (1979); *Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 184 (2d Cir. 2000); *Gertz v. Robert Welch*, Inc., 418 U.S. 323, 350 (1974); *Toomey v. Farley*, 2 N.Y.2d 71, 83, 138 N.E.2d 221, 228 (1956)].

The amount of punitive damages that you award, if any, must be both reasonable and proportionate to the actual and potential harm suffered by the plaintiff, and to the compensatory damages, if any, you awarded the plaintiff.

Regardless of your answer to Question 2, you will go on to Question 3. The instructions I gave you on Question 2 apply also to Question 3. Once you have answered Question 3, you will return your verdict in the manner I will describe to you later.

III. TRIAL PROCESS

I have described to you the law to be applied to the facts and put to you the questions that require answers in order to resolve the claims in this case. Now I will instruct you about the trial process, beginning with the burden of proof.

A. Burden of Proof

Ms. Carroll bears the burden of proving her damages by a preponderance of the evidence. As I told you at the outset, proof beyond a reasonable doubt, which is the proper standard of proof in a criminal trial, does not apply to a civil case such as this, and you should put it out of your mind.

To establish something by a preponderance of the evidence means to prove that the contention of the party with the burden of proof on that question is more likely true than not true. In other words, a "preponderance" of the evidence means that the party with the burden of proof on a particular question has demonstrated that the odds of that party being right are more than 50-50, even if only by a very tiny amount. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of which party may have called them, and all the relevant exhibits received in evidence, regardless of which party may have produced them.

If, after considering all of the evidence, you find the evidence of both parties to be exactly in balance — in other words, that the chances of the plaintiff's contention or the defendant's contention being correct with respect to any question I have put to you are exactly equal — then Ms. Carroll will have failed to sustain her burden of proof on that question, and you must find for the defendant on that issue. On the other hand, if Ms. Carroll has persuaded you on a particular question that her contention is more likely correct than the chances that her opponent is right, even if only by a little, then you must find for her on that particular question.

[Sand, 4 Modern Federal Jury Instructions-Civil P 73.01 (2023); *Waran v. Christie's Inc.*, 315 F. Supp. 3d 713, 718 (S.D.N.Y. 2018)].

B. Role of the Jury

You are the sole and exclusive judges of the facts. I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision ought to be or as to who should prevail here.

You are to understand that the Court expresses no opinion as to how you should decide any of the issues before you.

C. Role of the Court

Now, as I have told you, it is my duty to instruct you as to the law, and it is your duty to accept these instructions of law and apply them to the facts as you determine them.

You are to draw no inferences from the fact that I may have asked questions of some of the witnesses and made comments to counsel about the manner in which they made their presentations. I did that to bring out the evidence more quickly, to save time, and to ensure the proper conduct of the trial. I did not intend to suggest any view concerning the credibility of any witness or as to which side should prevail here, and you must not take my comments or questions as having done so. Nor should you consider the fact that I took notes and from time to time made entries on my computer. Whatever I may have noted, or any use by me of the computer, may have had nothing to do with what you are concerned with. You are to decide the case fairly and impartially based solely on the evidence and these instructions.

IV. EVALUATION OF EVIDENCE

A. What Is and Is Not Evidence

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, and any stipulations between counsel.

What is not evidence, however, are questions, arguments, and objections by lawyers. Nor is any witness testimony that I struck or told you to disregard to be considered in any way.

In deciding this case, I remind you that you are obliged to consider only the evidence you have seen and heard in this courtroom. Anything that you may have learned elsewhere that could conceivably have a bearing on this case must be disregarded.

B. Evidence of Deleted Messages

You have heard some evidence and argument during trial concerning whether Ms. Carroll deleted some e-mails or tweets containing death threats from her computer, as well as some mention by defense counsel that she was issued a subpoena in this case. The question of whether Ms. Carroll's conduct implicated any legal duty is entirely for the Court, not for the jury. I do instruct you, however, that Ms. Carroll had no legal obligation to preserve anything before she reasonably anticipated litigation. Beyond that, whether her conduct implicated any legal duty is not your concern. You are entitled to consider exactly what materials, if any, Ms. Carroll disposed of, why and when she did so, and whether those materials and her testimony affect the question of damages before you.

[Fed. R. Civ. P. 37(e); *Rossbach v. Montefiore Med. Ctr.*, 81 F.4th 124, 138 (2d Cir. 2023); *Europe v. Equinox Holdings, Inc.*, 592 F. Supp. 3d 167, 174 (S.D.N.Y. 2022).]

C. Consent or Assumption of the Risk

You may have heard argument or evidence suggesting that Ms. Carroll — by revealing in June 2019 that Mr. Trump had sexually assaulted her — assumed the risk that he would respond with defamatory statements, consented to such statements, or authorized Mr. Trump to make such statements as a form of self-defense. I instruct you, as a matter of law, that Ms. Carroll did not consent to Mr. Trump's defamatory statements, or otherwise grant him lawful permission to defame

her, by publicly stating in June 2019 that he had not sexually assaulted her. As I have instructed you, it has already been established that Mr. Trump's statements were false and defamatory, and the only questions for you concern what harm, if any, Mr. Trump's statements caused Ms. Carroll, and, if they did cause her harm, what damages Mr. Trump must pay.

D. Direct and Circumstantial Evidence

Now that I have covered the instructions for certain specific evidence, I will give you instructions with respect to the evidence more generally. There are two types of evidence which you properly may use in reaching your verdict.

One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses — something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

The other kind of evidence is circumstantial evidence. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict must be based on a preponderance of *all* the evidence presented.

E. Deposition Testimony

Some of the testimony before you is in the form of videotaped depositions that were received in evidence. A deposition is simply a procedure where, prior to trial, the attorneys may question a witness or an adversary party under oath before a court stenographer. You may consider

the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness if given live at trial.

F. Demonstratives

There were times during the course of the trial where counsel for each side had marked and showed to you visual aids called demonstratives. They were shown to you to help you understand the evidence as it came in. They are not themselves evidence, and they were used only as a manner of convenience, so you should consider them accordingly.

[*Cerveceria Modelo de Mexico, S. De R.L. de C.V. v. CB Brand Strategies, LLC*,No. 21-CV-1317 (S.D.N.Y 2023)].

G. Witness Credibility

You have had the opportunity to observe the witnesses. It is up to you to decide how believable each witness was in his or her testimony in this case, subject to the fact that you are required to accept as true that (1) Mr. Trump sexually abused Ms. Carroll; (2) his June 21 and 22, 2019 statements were false; (3) Mr. Trump knew they were false or made them with a high degree of awareness that they probably were false; and (4) his June 21 and 22, 2019 statements defamed Ms. Carroll. You are the sole judges of the credibility of each witness and of the importance of each witness's testimony. In deciding the weight to give to the testimony of a witness, you should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life.

Your decision whether or not to believe a witness may depend on how that witness impressed you. You watched each witness testify. Everything a witness said or did on the witness

stand or in the deposition excerpts that you saw counts in your determination. Did the witness appear to be frank, forthright, and candid? Or did the witness answer questions on direct examination in a responsive and forthcoming manner but answer questions on cross-examination evasively or unresponsively? You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of the witness's memory, the reasonableness and probability of the witness's testimony, and its consistency or lack of consistency and its corroboration or lack of corroboration with other credible testimony.

In evaluating a witness's credibility, you should use your common sense, your good judgment, and your own life experience. Further, you are to perform the duty of evaluating witnesses without bias or prejudice as to any party, and you are to perform that duty with an attitude of complete fairness and impartiality.

Finally, should you, in the course of your deliberations, conclude that any witness has intentionally testified falsely as to a material fact during the trial, you are at liberty to disregard all of his or her testimony on the principle that one who testifies falsely as to one material fact may also testify falsely to other facts. But credibility is not necessarily an all or nothing proposition. You may accept so much of any witness's testimony as you believe to be true and accurate and reject only such parts, if any, that you conclude are false or inaccurate.

H. Expert Witness

You also have heard over the course of this trial from an expert witness, specifically Professor Humphreys. An expert witness is a person who, by education and experience, has become expert in some art, science, profession, or calling. Under the rules of evidence, expert witnesses may

state their opinions as to matters in which they profess to be an expert and may also state the reasons for their opinions. The purpose of expert testimony is to assist you in understanding the evidence and in reaching an independent decision.

In weighing the expert's testimony, you may consider the expert's qualifications, her opinions, the bases for the expert's opinions, and all of the other considerations I just described to you in evaluating a witness's credibility. You may give the expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not accept the expert witness's testimony just because she is an expert. Even with an expert witness, you should use your common sense, your good judgment, and your own life experience.

You may give the expert's testimony as much weight, if any, as you think it deserves in light of all the evidence. You also may reject the testimony of an expert witness in whole or in part if you conclude the reasons given in support of an opinion are unsound or if you for other reasons do not believe the expert witness.

I. Avoidance of Outside Influence

As you know, this case has attracted a great deal of media attention. Until a verdict is released and you are discharged, you must continue to insulate yourself from all information about this case, except what has come to you in this courtroom. That means no reading, watching, or listening to media coverage or commentary about the case or comments from anyone else, including your friends and loved ones. You are to be sealed from other information. And if anything happens that results in some exposure to some outside source, you are obligated to report it to the Court.

V. DELIBERATION OF THE JURY

A. Duty to Deliberate / Unanimous Verdict

You now will retire to decide the issues submitted for your consideration. It is your duty as jurors to consult with one another and to deliberate with the goal of reaching an agreement. Each of you must decide for yourself the answers to the questions I have posed, but you should do so only after considering the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is mistaken. Your answers to each question must be unanimous, but you are not required to give up your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

B. Notes

Let me remind you, members of the jury, that any notes you may have taken during the trial are for your personal use only. You each may consult your own notes during deliberations, but any notes you may have taken are not to be relied upon during deliberations as a substitute for the collective memory of the jury panel. Your notes should be used as memory aids but should not be given precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

Again, each of you must make your own decision about the proper answer to each question based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

C. Citations

During your deliberations, you will have access to a printed copy of the instructions I am now reading to you. You will see that the printed copy of the instructions contains a number of legal citations, which appear in brackets. Those citations were included to aid the lawyers and me, and you are to ignore them in your deliberations. I have instructed you on the principles of law applicable to this case, and you must apply them in the manner that I have explained them to you. I will describe in a moment what you should do if you require a further explanation of any of my instructions.

D. All Jurors Required for Deliberation

You are not to discuss the case until all jurors are present. Four or five jurors together is only a gathering of individuals. Only when *all* jurors are present do you constitute a jury, and only then may you deliberate.

E. Selection of Foreperson

When you retire, you must elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

The foreperson will send out any notes and, when the jury has reached a verdict, he or she will notify the Officer that the jury has reached a verdict.

F. Verdict Form

As you have seen, the verdict form that each of you has consists of questions concerning the important issues in this case. As I have explained, your answer to one question will determine whether and how you answer a subsequent question, and the verdict form indicates how you should proceed through the form. It is important to follow these instructions, because you should answer every question except where the verdict form indicates otherwise. Further, please do not add anything that is not called for by the verdict form.

G. Return of Verdict

After a unanimous decision has been reached, you will record your answers on one copy of the verdict form. The foreperson will fill in the form. Then each juror will write his or her juror number — no names, please! — at the bottom of it and advise the Officer that a verdict has been reached. Do not give the verdict form to the Officer. The foreperson should place it in an envelope and bring it with him or her when you return to the courtroom.

I stress that each of you should be in agreement with the verdict that is announced in court. Once your verdict is announced by the foreperson in open court and/or officially recorded, it ordinarily cannot be revoked.

H. Communications Between Court and Jury

If during your deliberations you want me to discuss further some of the instructions on the law that I have given you, the foreperson should send out a note through the Officer in a sealed envelope asking for anything you may wish to hear again.

If you wish to have testimony read to you, it can be done, but I ask you to do so only when you have exhausted your collective recollection and are certain that you need it. If you do need to have testimony read, then I ask you to state precisely in your note what you want.

We will be sending the exhibits into the jury room with you.

If you communicate with the Court before reaching a verdict, you must never indicate to the Court how you are divided unless I specifically ask for it.

I. Juror Oath

You are reminded that you took an oath to render judgment impartially and fairly, without prejudice, sympathy, or fear, based solely upon the evidence in the case and the applicable law. And I want to elaborate for a moment upon your role under that oath.

First of all, you must accept as true the facts I have explained to you that were decided in a previous lawsuit. You may not properly question these. In all other respects, you as jurors are the judges of the facts.

I remind you that nothing I have said or done should be taken by you as indicating any view on my part as to what your conclusion should be about the facts — about what, if any, damages Ms. Carroll is entitled to. But in determining Ms. Carroll's damages — that is, in reaching your decision as to the facts — it is your sworn duty to follow all of the rules of law as I have

explained them to you. You may not disregard or question any rule I have stated to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I have explained it to you, regardless of the consequences. And that applies to all of the law I have given you.

[Tenth Circuit Criminal Pattern Jury Instructions § 1.04 (2021) (modified)].

Folks, jury service is a duty of citizenship; it is also a privilege. The jury system is *the* bedrock of our justice system — indeed, the right to a trial by jury is enshrined in two separate amendments to our Constitution. Everything we have done here these past two weeks has been to enable you to decide this case fairly.

The jury embodies what is perhaps the most fundamental idea of our nation — that "We the People" created it and "We the People" govern it. Indeed, the Constitution begins:

> "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

"We the People." You, ladies and gentlemen of the jury — you stand in for all of "the People." And to you is committed a vital role in our constitutional system.

Your role dates back to the earliest days of our nation. The Constitution vests the judicial power of the United States in one supreme court and in those other courts that Congress sees fit to establish. This is one of those courts. This court in fact has been functioning since 1789. It was the very first U.S. court to hold session under our then-new constitution. It did so even before

the first session of the United States Supreme Court. And as jurors, you are part of this Court.

Since those earliest days in our nation's history — through wars, through economic depressions, through pandemics — jurors like you have been asked to decide cases. And your role is just the same as the role of the countless jurors before you. You will be entirely fair and impartial to both parties. You will decide the case only on the evidence before you. You will decide the case on the basis of my instructions on the law. This is an important task – doing justice fairly and impartially. I am confident that you will fulfill your duty with the utmost care.

J. Exceptions

Members of the jury, I ask you to remain seated for a moment while I confer with the attorneys.

Attachment 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

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MEMORANDUM OPINION

Appearances:

Roberta Kaplan
Joshua Matz
Shawn Crowley
Matthew Craig
Trevor Morrison
Michael Ferrara
KAPLAN HECKER & FINK LLP
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Attorneys for Defendant

LEWIS A. KAPLAN, *District Judge.*

This is a defamation case against Donald Trump brought by writer E. Jean Carroll for certain allegedly defamatory statements he made while he was president in 2019 in response to Ms.

Carroll's public accusation that he sexually assaulted ("raped") her in the mid 1990s. In a closely related second case known as *Carroll II*, Ms. Carroll brought two other claims against Mr. Trump.[1] The first was a sexual battery claim pursuant to the Adult Survivors Act ("ASA"), a new law enacted by New York in 2022 that created a one-year period within which persons who were sexually assaulted as adults could sue their alleged assaulters even if their claims otherwise would have been untimely. The second was a defamation claim for a statement published by Mr. Trump on social media in 2022. In that statement, like in his 2019 statements, Mr. Trump denied Ms. Carroll's accusation, stated that he did not know her, and claimed that she fabricated her accusation for ulterior and improper purposes.

Carroll II was tried in this Court in April and May 2023. The jury unanimously determined that Mr. Trump "sexually abused" Ms. Carroll as that term is defined in the New York

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1 The Court assumes familiarity with its prior decisions in this case ("*Carroll I*") and in *Carroll II*, which detail the facts and procedural histories of both cases. *E.g.*, Dkt 32, *Carroll v. Trump*, 498 F. Supp. 3d 422 (S.D.N.Y. 2020), *rev'd in part, vacated in part*, 49 F.4th 759 (2d Cir. 2022); Dkt 73, *Carroll v. Trump*, 590 F. Supp. 3d 575; Dkt 96, *Carroll v. Trump*, 2022 WL 6897075; Dkt 145, *Carroll v. Trump*, No. 20-CV-7311 (LAK), 2023 WL 2441795 (S.D.N.Y. Mar. 10, 2023); Dkt 173, *Carroll v. Trump*, 2023 WL 4393067; Dkt 200, *Carroll v. Trump*, No. 20-CV-7311 (LAK), 2023 WL 5017230, (S.D.N.Y. Aug. 7, 2023); Dkt 208, *Carroll v. Trump*, No. 20-CV-7311 (LAK), 2023 WL 5312894, (S.D.N.Y. Aug. 18, 2023); Doc. No. 22-cv-10016 (*Carroll II*), Dkt 38, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 185507 (S.D.N.Y. Jan. 13, 2023); *Carroll II*, Dkt 56, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 2006312 (S.D.N.Y. Feb, 15, 2023); *Carroll II*, Dkt 92, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 3000562 (S.D.N.Y. Mar. 20, 2023); *Carroll II*, Dkt 95, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 2652636 (S.D.N.Y. Mar. 27, 2023); *Carroll II*, Dkt 96, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 2669790 (S.D.N.Y. Mar. 28, 2023), *Carroll II*, Dkt 212, *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 4612082, (S.D.N.Y. July 19, 2023).

Unless otherwise indicated, Dkt references are to the docket in this case.

Penal Law.[2] It found also that he defamed her in his 2022 statement. In doing so, it found by a preponderance of the evidence that his statement was *defamatory* – that it tended to disparage Ms. Carroll in the way of her profession and/or exposed her to contempt or an evil or unsavory opinion in the minds of a substantial number of people in the community. It found also by clear and convincing evidence that his statement was *false* (not substantially true) and made with *actual malice* (knowing that the statement was false or with reckless disregard to its truth or falsity). It awarded Ms. Carroll $5 million in damages: $2.02 million in compensatory and punitive damages for her battery claim, and $2.98 million in compensatory and punitive damages for her defamation claim.

The matter now is before the Court on the parties' competing motions with respect to the issue preclusive (or "collateral estoppel") effect of the jury's verdict in *Carroll II* in this action. Ms. Carroll argues also that she is entitled to summary judgment on each liability element of her defamation claim in *Carroll I*. She accordingly contends that the trial in this case need address only the issue of damages. Mr. Trump disputes the issue preclusive effect of the *Carroll II* jury's findings on liability. He contends instead that the verdict in *Carroll II* requires that any compensatory damages that might be awarded to Ms. Carroll in this case must be limited by the compensatory

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[2] For the reasons discussed in the Court's recent decisions, "based on all of the evidence at trial and the jury's verdict as a whole, the jury's finding that Mr. Trump 'sexually abused' Ms. Carroll implicitly determined that he forcibly penetrated her digitally – in other words, that Mr. Trump in fact did 'rape' Ms. Carroll as that term commonly is used and understood in contexts outside of the New York Penal Law." *Carroll*, 2023 WL 5017230, at *1. *See also id.*, 2023 WL 4612082, at *20. In the alternative, the Court found, pursuant to Federal Rule of Civil Procedure 49, that "Mr. Trump forcibly digitally penetrated Ms. Carroll's vagina." *Id.*, 2023 WL 4612082, at *19 n.70.

damages the jury awarded in *Carroll II*.[3] For the reasons discussed below, Ms. Carroll's motion for partial summary judgment is granted. The trial in this case shall be limited to the issue of damages only. Mr. Trump's motion is denied.

Facts

Mr. Trump's 2019 Statements

Ms. Carroll's accusation that Mr. Trump sexually assaulted ("raped") her first became public on June 21, 2019, when *New York* magazine published on the Internet an excerpt from Ms. Carroll's then-forthcoming book in which she described the incident with Mr. Trump. In the ensuing hours and days, Mr. Trump issued three statements that are the subjects of this case:

Statement One – June 21, 2019

> "Regarding the 'story' by E. Jean Carroll, claiming she once encountered me at Bergdorf Goodman 23 years ago. I've never met this person in my life. She is trying to sell a new book – that should indicate her motivation. It should be sold in the fiction section.
>
> Shame on those who make up false stories of assault to try to get publicity for themselves, or sell a book, or carry out a political agenda – like Julie Swetnick who

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3 Mr. Trump moved also to preclude Ms. Carroll "from arguing that her defamatory statement was not false" in relation to his previously filed counterclaim alleging that Ms. Carroll defamed him in her interview statements following the *Carroll II* verdict. Dkt 194 (Def. Mem.) at 3. On August 7, 2023, this Court dismissed Mr. Trump's counterclaim. Dkt 200. Accordingly, Mr. Trump's application with respect to his previously filed counterclaim is denied on the ground that it is moot.

falsely accused Justice Brett Kavanaugh. It's just as bad for people to believe it, particularly when there is zero evidence. Worse still for a dying publication to try to prop itself up by peddling fake news – it's an epidemic.

Ms. Carroll & New York Magazine: No pictures? No surveillance? No video? No reports? No sales attendants around I would like to thank Bergdorf Goodman for confirming that they have no video footage of any such incident, because it never happened.

False accusations diminish the severity of real assault. All should condemn false accusations and any actual assault in the strongest possible terms.

If anyone has information that the Democratic Party is working with Ms. Carroll or New York Magazine, please notify us as soon as possible. The world should know what's really going on. It is a disgrace and people should pay dearly for such false accusations."[4]

Statement Two – June 22, 2019

"[Reporter]: [Y]ou had said earlier that you never met E. Jean Carroll. There was a photograph of you and her in the late 1980's —

[Trump]: I have no idea who this woman is. This is a woman who has also accused other men of things, as you know. It is a totally false accusation. I think she was married – as I read; I have no idea who she is – but she was married to a,

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[4] Dkt 157-1 (Pl. Amend. Cpt.) at 15-16, ¶ 83.

actually, nice guy, Johnson – a newscaster.

[Reporter]: You were in a photograph with her.

[Trump]: Standing with coat on in a line – give me a break – with my back to the camera. I have no idea who she is. What she did is – it's terrible, what's going on. So it's a total false accusation and I don't know anything about her. And she's made this charge against others.

And, you know, people have to be careful because they're playing with very dangerous territory. And when they do that – and it's happening more and more. When you look at what happened to Justice Kavanaugh and you look at what's happening to others, you can't do that for the sake of publicity.

New York Magazine is a failing magazine. It's ready to go out of business, from what I hear. They'll do anything they can. But this was about many men, and I was one of the many men that she wrote about. It's a totally false accusation. I have absolutely no idea who she is. There's some picture where we're shaking hands. It looks like at some kind of event. I have my coat on. I have my wife standing next to me. And I didn't know her husband, but he was a newscaster. But I have no idea who she is – none whatsoever.

It's a false accusation and it's a disgrace that a magazine like New York – which is one of the reasons it's failing. People don't read it anymore, so they're trying to get readership by using me. It's not good.

You know, there were cases that the mainstream media didn't pick up. And I don't know if you've seen them. And they were put on Fox. But there were

numerous cases where women were paid money to say bad things about me. You can't do that. You can't do that. And those women did wrong things – that women were actually paid money to say bad things about me.

But here's a case, it's an absolute disgrace that she's allowed to do that."[5]

Statement Three – June 24, 2019

"I'll say it with great respect: Number one, she's not my type. Number two, it never happened. It never happened, OK?"[6]

Mr. Trump's 2022 Statement

On October 12, 2022, Mr. Trump published the following statement, which was the subject of Ms. Carroll's defamation claim in *Carroll II,* on Truth Social, his social media platform:

"This 'Ms. Bergdorf Goodman case' is a complete con job[.] . . . She completely made up a story that I met her at the doors of this crowded New York

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5 *Id.* at 18, ¶ 92.

6 *Id.* at 20, ¶ 98.

Mr. Trump contends that the jury in *Carroll II* did not consider the portion of his statement that Ms. Carroll is not his type. Ms. Carroll counters that she "has never argued that this portion of [Mr.] Trump's June 24, 2019 statement is false or defamatory" and instead contends that this portion "is relevant because it reveals [Mr.] Trump's mental state and malicious intent." Dkt 213 (Pl. Second Reply Mem.) at 4, n. 2. That leaves only the second portion of Mr. Trump's June 24, 2019 statement, "[I]t never happened. It never happened, OK?". Given that neither party adequately has addressed whether or not summary judgment should be granted or denied as to that allegedly defamatory portion of the June 24, 2019 statement, the Court does not now decide the issue.

> City Department Store and, within minutes, 'swooned' her. It is a Hoax and a lie[.] . . . She has no idea what day, what week, what month, what year, or what decade this so-called 'event' supposedly took place. The reason she doesn't know is because it never happened, and she doesn't want to get caught up with details or facts that can be proven wrong. If you watch Anderson Cooper's interview with her, where she was promoting a really crummy book, you will see that it is a complete Scam. She changed her story from beginning to end, after the commercial break, to suit the purposes of CNN and Andy Cooper. . . . In the meantime, and for the record, E. Jean Carroll is not telling the truth, is a woman who I had nothing to do with, didn't know, and would have no interest in knowing her if I ever had the chance."[7]

The Jury's Findings in Carroll II

As this Court previously has set forth, the jury in *Carroll II* made the following explicit findings reflected in its special verdict form, which consisted of factual questions going to liability and damages on both of Ms. Carroll's claims. With respect to Ms. Carroll's sexual battery claim, the jury found by a preponderance of the evidence that:

- "Mr. Trump sexually abused Ms. Carroll.
- Mr. Trump injured her in doing so.
- Mr. Trump's conduct was willfully or wantonly negligent, reckless, or done with a conscious disregard of the rights of Ms. Carroll, or was so reckless as

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[7] *Carroll II*, 22cv10016, Dkt 1 (Cpt.) 18, ¶ 92.

to amount to such disregard.

- Ms. Carroll was entitled to compensatory and punitive damages on the sexual battery claim of $2.02 million ($2 million in compensatory damages and $20,000 in punitive damages)."[8]

With respect to her defamation claim, the jury found by clear and convincing evidence that:

- "Mr. Trump's October 12, 2022 statement was . . . false (*i.e.*, not substantially true).
- Mr. Trump made that statement with actual malice – that is, that when he made the statement, Mr. Trump knew that it was false, had serious doubts as to its truth, or had a high degree of awareness that the statement probably was false."[9]

It found also by a preponderance of the evidence that:

- "Mr. Trump's October 12, 2022 statement was defamatory [(*i.e.*, that the statement tended to disparage Ms. Carroll in the way of her profession and/or exposed her to contempt or an evil or unsavory opinion in the minds of a substantial number of people in the community)] . . . .
- Ms. Carroll was injured as a result of Mr. Trump's publication of the October 12, 2022 statement.
- Mr. Trump acted maliciously, out of hatred, ill will, spite or wanton, reckless,

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8 *Carroll*, 2023 WL 4612082, at *16 (footnote, internal quotation marks, and emphases omitted).

9 *Id.* at *16-17 (footnote, internal quotation marks, and emphases omitted).

or willful disregard of the rights of another.

- Ms. Carroll was entitled to $2.98 million in compensatory and punitive damages on the defamation claim relating to the October 12, 2022 statement ($1.7 million in compensatory damages for the reputation repair program only, $1 million in compensatory damages for damages other than the reputation repair program, and $280,000 in punitive damages)."[10]

Discussion

Legal Standard

The parties' motions concern the standards governing issue preclusion ("collateral estoppel") as well as summary judgment. In this case, New York law governs the issue preclusive effect of the jury's verdict in *Carroll II*.[11] Under New York law, "[c]ollateral estoppel comes into

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[10] *Id.* (footnotes, internal quotation marks, and emphases omitted).

The "reputation repair program" refers to the efforts to repair the harm to Ms. Carroll's reputation caused by Mr. Trump's 2022 statement based on the testimony of Ms. Carroll's expert, Professor Ashlee Humphreys.

[11] *E.g.*, *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001); *Plymouth Venture Partners, II, L.P. v. GTR Source, LLC*, 988 F.3d 634, 642 (2d Cir.), *certified question accepted*, 36 N.Y.3d 1077, *and certified question answered*, 37 N.Y.3d 591 (2021).

Mr. Trump has appealed the *Carroll II* judgment and claims that he "will be vigorously contesting the jury's verdict before the [Second Circuit]." Dkt 206 (Def. First Opp. Mem.) at 3. He concedes, however, that under New York law "the 'pendency of an appeal does not prevent the use of the challenged judgment as the basis of collateral estoppel[.]'" *Id.* (quoting *Anonymous v. Dobbs Ferry Union Free Sch. Dist.*, 19 A.D.3d 522, 522 (2d Dept. 2005)). His assertion that he "reserves all rights to seek to vacate any preclusive effect that the *Carroll II* judgment may be granted in the instant action" should the Circuit decide in his favor in his appeal is of no relevance or import to this decision. *Id.*

play when four conditions are fulfilled: '(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits.'"[12]

The standards governing summary judgment are well settled:

> "Summary judgment may be granted only where there is no genuine issue as to any material fact and the moving party . . . is entitled to a judgment as a matter of law. . . . In ruling on a motion for summary judgment, a court must resolve all ambiguities and draw all factual inferences in favor of the nonmoving party. . . . To grant the motion, the court must determine that there is no genuine issue of material fact to be tried."[13]

A party may be entitled to summary judgment based upon the application of facts established by reason of collateral estoppel.[14]

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12 *Conason v. Megan Holding, LLC*, 25 N.Y.3d 1, 17 (2015) (quoting *Alamo v. McDaniel*, 44 A.D.3d 149, 153, (1st Dept.2007)).

Ms. Carroll points out that "New York courts are divided on whether there is an additional, fifth requirement: namely, that the specific issue must also be decisive of the present action to have preclusive effect." Dkt 190 (Pl. Mem.) at 11. As Mr. Trump does not rely on any contention that any of the findings in *Carroll II* should be denied issue preclusive effect because it was not decisive, there is no need to address this question.

13 *McClellan v. Smith*, 439 F.3d 137, 144 (2d Cir. 2006) (citations omitted).

14 *E.g.*, *SEC v. Lorin*, No. 90-CV-7461 (PNL), 1993 WL 77372, at *1 (S.D.N.Y. Mar. 15, 1993), *aff'd*, 14 F.3d 591 (2d Cir. 1993) ("The SEC is entitled to summary judgment by reason of collateral estoppel as to those facts alleged by the SEC in its complaint that were necessarily found to have been established by the jury in its return of a verdict of guilty on the five counts of the criminal indictment against [the defendant]."); *Carney v. Illarramendi*,

Mr. Trump's 2019 Statements Were Defamatory

To prevail on her defamation claim, Ms. Carroll bears the burden of proving by a preponderance of the evidence that Mr. Trump's 2019 statements (1) were published to a third party, (2) were of and concerning Ms. Carroll, and (3) were likely to be understood as defamatory by the ordinary person.[15] In addition, she must prove by clear and convincing evidence that Mr. Trump's statements were (4) false, and (5) published with actual malice, "that is, [with] either knowledge of falsity or reckless disregard of the truth."[16]

The jury in *Carroll II* found that Mr. Trump defamed Ms. Carroll in his 2022 statement. In doing so, it determined – in accordance with the Court's instructions – that Mr. Trump's 2022 statement "tend[ed] to disparage a person in the way of that person's business or office or profession or trade" or that "it tend[ed] to expose someone to hatred or contempt or aversion or to induce an evil or an unsavory opinion of that person in the minds of a substantial number of people in the community, even though it may impute no moral turpitude to the person."[17]

As Ms. Carroll contends, "the content of the June 2019 statements and the October

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No. 3:12-CV-00165 (SRU), 2018 WL 1472510, at *10 (D. Conn. Mar. 26, 2018), *aff'd*, 768 F. App'x 88 (2d Cir. 2019) ("Because the material facts are established by operation of collateral estoppel, all that remains is to determine whether the receiver is entitled to judgment as a matter of law.").

15 *E.g.*, *Celle v. Filipino Rep. Enterprises Inc.*, 209 F.3d 163, 176 (2d Cir. 2000).

Mr. Trump does not dispute the first two liability elements, that his 2019 statements were published to a third party and that they were of and concerning Ms. Carroll. Summary judgment therefore is granted in favor of Ms. Carroll with respect to those two elements.

16 *Church of Scientology Int'l v. Behar*, 238 F.3d 168, 173 (2d Cir. 2001).

17 *Carroll II*, 22cv10016, Dkt 201 (Trial Tr.) at 1429:17-23 (emphasis added).

2022 statements are 'substantially the same.'"[18] In each of his first two 2019 statements, Mr. Trump claimed that Ms. Carroll lied about him sexually assaulting her for improper and ulterior purposes.[19] He asserted also in those statements a variation of his claim in his 2022 statement that "E. Jean Carroll is . . . a woman who I had nothing to do with, [and] didn't know . . . ."[20] Accordingly, given that the substantive content of Mr. Trump's 2022 statement, which the jury in *Carroll II* found to be defamatory, is identical to the substantive content of Mr. Trump's 2019 statements, the jury's finding in *Carroll II* is controlling in this case.

Mr. Trump contends that "the substance of the June 2019 statements differs in several significant respects from the October 2022 statement."[21] He argues first that "the October 2022 statement does not contain any allegation that Plaintiff fabricated the allegations in order to promote

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18 Dkt 190 (Pl. Mem.) at 16 (quoting *Napoli v. Breaking Media, Inc.*, 187 A.D.3d 1026, 1028 (2d Dept. 2020)).

19 *E.g.*., *Carroll II*, 22cv10016, Dkt 1 (Cpt.) 18, ¶ 92 ("She [(Ms. Carroll)] completely made up a story[.] . . . It is a Hoax and a lie[.] . . . If you watch Anderson Cooper's interview with her, where she was promoting a really crummy book, you will see that it is a complete Scam. She changed her story from beginning to end, after the commercial break, to suit the purposes of CNN and Andy Cooper."); Dkt 157-1 (Pl. Amend. Cpt.) at 16, ¶ 83 ("She is trying to sell a new book – that should indicate her motivation. . . . Shame on those who make up false stories of assault to try to get publicity for themselves, or sell a book, or carry out a political agenda."); *Id.* at 18, ¶ 92 ("It is a totally false accusation. . . . When you look at what happened to Justice Kavanaugh and you look at what's happening to others, you can't do that for the sake of publicity.").

20 *E.g.*, Dkt 157-1 (Pl. Amend. Cpt.) at 16, ¶ 83 ("I've never met this person [(Ms. Carroll)] in my life."); *Id.* at 18, ¶ 92 ("I have no idea who this woman is.").

21 Dkt 211 (Def. Second Opp. Mem.) at 12.

her book."[22] Second, he points to the fact that "the statement made no mention of Plaintiff furthering a political agenda, nor did it assert that she was receiving funding from outside sources to further her claims."[23] These points, however, undermine rather than support Mr. Trump's position.

If the jury in *Carroll II*, as Mr. Trump argues, did not determine that his 2022 statement was defamatory because it accused Ms. Carroll of fabricating her sexual assault allegation to promote her book and/or for political purposes, then by Mr. Trump's own logic, the jury must have determined that his statement was defamatory on the ground that it accused Ms. Carroll of lying about the sexual assault. That issue is common to and decisive of the defamatory nature of Mr. Trump's 2019 statements. The possibility that Mr. Trump's 2019 statements were more egregiously defamatory than his 2022 statement (an issue that the Court need not resolve here) does not diminish the issue preclusive effect of the jury's finding in *Carroll II*. The question is whether Mr. Trump defamed Ms. Carroll in his 2019 statements, not whether he defamed her in those statements to an extent *greater* than he did in his 2022 statement.

In any event, Mr. Trump does not address *at all* Ms. Carroll's alternative argument that she is "entitled to summary judgment because no reasonable juror could find that [Mr.] Trump's June 2019 statements lacked defamatory meaning: he accused [Ms.] Carroll of fabricating a sexual assault allegation in order to make money, advance political goals, and achieve other plainly improper purposes."[24] She contends that "[s]uch statements, especially when issued by the sitting

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22 *Id.*

23 *Id.*

24 Dkt 190 (Pl. Mem.) at 17.

President and broadcast widely, would inevitably tend to expose [Ms.] Carroll to hatred and contempt or to induce an unsavory opinion of her in the minds of a substantial number of people in the community."[25] In the absence of any opposition by Mr. Trump, let alone any showing of the existence of a genuine issue of material fact with respect to the defamatory meaning of his 2019 statements, the Court agrees that Ms. Carroll is entitled to summary judgment on this element regardless of any issue preclusive effect of the verdict in *Carroll II*.[26]

Mr. Trump's 2019 Statements Were False

The jury's verdict in *Carroll II* plainly established that Mr. Trump's 2019 statements were false (not substantially true). In *Carroll II*, the truth or falsity of Mr. Trump's 2022 statement – which, as set forth above, accused Ms. Carroll of lying about Mr. Trump sexually assaulting her for improper and ulterior purposes – depended upon whether Mr. Trump sexually assaulted Ms. Carroll. The jury answered that question in the affirmative twice. First, it found by a preponderance of the evidence that Mr. Trump sexually abused Ms. Carroll. Second, it determined by clear and convincing evidence that Mr. Trump's 2022 statement was false. As this Court instructed the jury:

"[W]hether Mr. Trump's [2022] statement is false or true depends *largely or*

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25 *Id.*

26 *See Curry v. Roman*, 217 A.D.2d 314, 318-19 (4th Dept. 1995) ("Once the court concludes that the statements are reasonably susceptible of a defamatory connotation, it becomes a jury function, if the words are susceptible of several different meanings, to determine whether that was the sense in which the words were likely to be understood by the ordinary and average reader or listener . . . . If the words, however, are unambiguous and admit but one meaning, the court should resolve the issue . . . . We conclude that the words used by defendants, which accused plaintiffs of specific criminal conduct . . . , were clear and unambiguous, and were defamatory as a matter of law.") (citations omitted).

> *entirely* on whether you find that Mr. Trump raped or sexually abused or forcibly touched or otherwise sexually attacked Ms. Carroll."[27]

Pursuant to the presumption that the jury followed the Court's instructions, its finding that Mr. Trump's 2022 statement was false necessarily implies that it determined by clear and convincing evidence that Ms. Carroll did not fabricate her sexual assault accusation.

Mr. Trump's 2019 statements raise this identical issue. "The core of Ms. Carroll's defamation claim [in this case] is that Mr. Trump *lied in accusing her of fabricating her sexual assault allegation against him in order to increase sales of her book and for other improper purposes* and that he thus caused Ms. Carroll professional and reputational harm as well as emotional pain and suffering."[28] The truth or falsity of Mr. Trump's 2019 statements therefore depends – like the truth or falsity of his 2022 statement – on whether Ms. Carroll lied about Mr. Trump sexually assaulting her. The jury's finding that she did not therefore is binding in this case and precludes Mr. Trump from contesting the falsity of his 2019 statements.[29]

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27 *Carroll II*, 22cv10016, Dkt 201 (Trial Tr.) at 1431:2-6 (emphasis added).

28 *Carroll*, 2023 WL 4393067, at *4 (emphasis added).

29 In theory, it is possible that the jury in *Carroll II* could have determined that Mr. Trump's 2022 statement was false because Ms. Carroll did not possess any nefarious purpose, without regard to whether she lied about the assault. Mr. Trump does not make this argument. In fact, he repeatedly contends the opposite. *E.g.*, Dkt 206 (Def. First Opp. Mem.) at 5 ("The only question that the jury considered on the issue of falsity was whether it believed that the sexual assault occurred."); Dkt 211 (Def. Second Opp. Mem.) at 13-14 ("[I]n the context of the October 2022 statement, the jury was singularly tasked with determining whether the sexual assault occurred[.]"); ("[T]he jury was specifically tasked to consider whether the sexual assault occurred[.]");("At bottom, the only true question the *Carroll II* jury was tasked with finding is whether it believed that the sexual assault occurred."). Moreover, crediting this theoretical possibility would require assuming that (1) the jury did not follow the Court's instruction that is stated above, and (2) the jury found

Mr. Trump's contrary arguments are all unpersuasive. He contends that "the jury was not asked to – and in fact did not – consider whether the October 2022 statement was made pursuant to a 'nefarious purpose' to [Ms. Carroll's] sexual assault allegations, nor whether [Mr. Trump] lied when he claimed that he did not know [Ms. Carroll]."[30] His argument defies common sense and mischaracterizes Ms. Carroll's defamation claim. Of course, the jury's finding that the sexual assault occurred necessarily implies that Ms. Carroll did not lie about it for a nefarious or any other purpose and that Mr. Trump met and knew her.[31] In any event, Ms. Carroll did not sue Mr. Trump simply for stating that he did not know her. His statement that he did not know her is a subcomponent of the core of Ms. Carroll's defamation claim, which, as stated above, is that Mr. Trump defamed her in this case and in *Carroll II* by accusing her of concocting a sexual assault allegation for improper

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that the statement was not substantially true *solely* because it was convinced that Ms. Carroll did not lie – if she did – "to suit the purposes of CNN and Andy Cooper" "where she was promoting a really crummy book." *Carroll II*, 22cv10016, Dkt 1 (Cpt.) 18, ¶ 92. There is no support for either proposition. In any event, Mr. Trump does not dispute, and implicitly concedes by his repeated assertions, that the jury in *Carroll II* found by clear and convincing evidence that his 2022 statement was false because it determined that Ms. Carroll did not fabricate her sexual assault accusation.

30 Dkt 206 (Def. First Opp. Mem.) at 5.

31 Mr. Trump argues also that "a finding that [he] lied when he asserted that [Ms. Carroll] may have been motivated for financial or political purposes was clearly not essential to the ultimate judgment, given that the jury had not been instructed as such, nor were these assertions even contained in the October 12[, 2022] Statement." Dkt 211 (Def. Second Opp. Mem.) at 14. For the reasons discussed above, his argument is inapposite. Even assuming for the sake of argument that Mr. Trump's 2022 statement did not include those specific assertions, the jury's determination in *Carroll II* that Ms. Carroll did not fabricate her sexual assault accusation necessarily subsumes any assertion that she did so for any reason.

Mr. Trump's other argument, that the jury's finding that he sexually abused Ms. Carroll cannot be afforded preclusive effect because that finding was made by a preponderance of the evidence rather than by clear and convincing evidence, similarly is irrelevant. Neither the Court nor Ms. Carroll rely on the jury's sexual abuse finding to determine that the verdict in *Carroll II* establishes the falsity of Mr. Trump's 2019 statements.

purposes. There accordingly is no merit to Mr. Trump's arguments with respect to the falsity of his 2019 statements.

Mr. Trump's 2019 Statements Were Made With Actual Malice

The verdict in *Carroll II* established also that Mr. Trump's 2019 statements were made with actual malice. "To show actual malice, a plaintiff must prove that the defendant either knew his statements were false or acted with reckless disregard as to whether they were false."[32] A defendant acted with reckless disregard if he or she was "entertaining serious doubts as to the truth of the statement or having a high degree of awareness that the statement is probably false."[33] In *Carroll II*, the jury found by clear and convincing evidence that Mr. Trump made the 2022 statement with actual malice. In other words, it determined – as this Court instructed the jury – that:

> "Mr. Trump, when he made his October 12[, 2022] statement, *knew that it was false, had serious doubts as to its truth, or had a high degree of awareness that the statement probably was false*."[34]

To be more specific, the jury found that Mr. Trump knew that his statement that Ms. Carroll lied about him sexually assaulting her for improper and ulterior purposes was false or that he acted with reckless disregard to whether it was false.

Whether Mr. Trump made the 2019 statements with actual malice raises the same

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32 *Conti v. Doe*, 535 F. Supp. 3d 257, 279 (S.D.N.Y. 2021).

33 *Id.*

34 *Carroll II*, 22cv10016, Dkt 201 (Trial Tr.) at 1431:25-1432:3 (emphasis added).

issue. Accordingly, as Ms. Carroll argues, "[n]o reasonable person could believe that [Mr.] Trump acted with actual malice in October 2022, but lacked it in June 2019."[35] "To do so, [a reasonable person] would have to believe that [Mr.] Trump willfully lied (or doubted the truth of his own statement) in October 2022, but somehow did not willfully lie (or doubt his own statements) in June 2019, even though the statements were substantively identical, even though [Mr.] Trump's attacks on [Ms.] Carroll never wavered and never varied, and even though [Mr.] Trump (by his own admission) made absolutely no effort in this time period to investigate the issue or to discover any new information about the truth of [Ms.] Carroll's underlying allegations."[36]

Alternatively, even if the jury's finding in *Carroll II* that Mr. Trump made his 2022 statement with actual malice was not issue preclusive in this case, Ms. Carroll nonetheless has satisfied her burden on summary judgment. As discussed above, the jury's finding that Mr. Trump's 2022 statement was false is controlling in this case. And that is significant with respect to actual malice because, as Ms. Carroll argues, given that Mr. Trump's "2022 statement concerned his own personal conduct and knowledge, no reasonable juror could find that [Mr.] Trump's October 2022 statement was false, but also conclude that Trump was unaware of the relevant facts in June 2019."[37] Moreover, as Ms. Carroll points out:

> "The record makes clear that [Mr.] Trump's conduct in 2019 reflected gross and willful disregard for the truth. As [Mr.] Trump testified, he never read [Ms.]

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35 Dkt 190 (Pl. Mem.) at 20.

36 *Id.*

37 *Id.* at 21.

> Carroll's book or the excerpt of it published in *New York* Magazine, . . . he never contacted Bergdorf's despite representing otherwise in his public statements, . . . [Mr.] Trump had absolutely no personal knowledge as to [Ms.] Carroll's financial circumstances, the details of [Ms.] Carroll's book deal, or her political affiliation or party registration, . . . nor did he remember anyone contacting him with such information despite asking for people do to so in his June 21[, 2019] statement, . . . [Mr.] Trump took no steps to investigate [Ms.] Carroll's account, nor did he direct anyone in the White House or the administration to do so, . . . and [Mr.] Trump did not consult with any other White House or administration official (apart from his wife and daughter) in making the June 2019 statements . . . ."[38]

Mr. Trump does not point to any genuine issue of material fact with respect to whether he knew that his 2019 statements were false or acted with reckless disregard to their truth or falsity.[39] Indeed, he has not contended – either here or in *Carroll II* – that he would not have acted with actual malice even if his denial that the alleged incident ever occurred was proven false. He instead argues that "the record does not establish . . . that [Mr. Trump] published the June 2019

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38 *Id.* at 21-22 (citations omitted).

39 In his response to Ms. Carroll's Rule 56.1 Statement of Facts, Mr. Trump disputes some of the facts recited by Ms. Carroll that are reproduced above. For example, he contends that "the cited deposition testimony of Defendant can support only that he could not recall each and every person he may have spoken with about Plaintiff's allegations" and that "the cited deposition testimony of Defendant can support only that he could not [*sic*] whether a member of his team performed research as it relates to Plaintiff's claims." Dkt 212 (Def. Response to Pl. 56.1 Statement) at 6, ¶ 14, 7, ¶ 17. Based upon this record and in these circumstances, these disagreements do not constitute genuine issues of material fact. Even accepting Mr. Trump's versions of these facts, Ms. Carroll has satisfied her burden on summary judgment with respect to actual malice.

statements with actual malice" because (1) "the jury in *Carroll II* was specifically precluded from considering the statements made in June 2019," and (2) there is not "any actual solidarity" between the 2019 statements and the 2022 statement because the 2022 statement "does not contain a single reference to [Ms. Carroll's] potential political motivations, nor does it directly state that [Ms. Carroll] made her allegations to advance her book sales."[40]

Both arguments are unpersuasive. Although he is correct that the Court instructed the jury in *Carroll II* not to consider the 2019 statements, that point does not change the fact that the jury considered and decided issues that are common to both cases – including whether Mr. Trump falsely accused Ms. Carroll of fabricating her sexual assault charge and, if that were so, that he did it with knowledge that his accusation was false and the he knew it was false or acted with reckless disregard as to its truth. And his second argument is irrelevant to actual malice. It again misses the common sense point. If he knew his statements concerning Ms. Carroll were false (or had a high degree of awareness of probable falsity) – as the jury in *Carroll II* found – he of course knew that she did not lie for political or any other reasons. The jury's verdict in *Carroll II*, as well as (and alternatively) the undisputed facts, establish that Mr. Trump's 2019 statements were made with actual malice.

The Carroll II Verdict Does Not Warrant a Reduction Of Any Damages In Carroll I

Mr. Trump contends that any damages award Ms. Carroll might receive in this case "must be limited in accordance with the judgment of *Carroll II*."[41] As noted above, the jury in

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40 Dkt 211 (Def. Second Opp.) at 17.

41 Dkt 194 (Def. Mem.) at 7.

Carroll II awarded Ms. Carroll $2.7 million in compensatory damages for her defamation claim – $1.7 million for the reputation repair program based on Professor Humphreys's testimony, and $1 million for damages other than the reputation repair program. Professor Humphreys submitted an expert report in this case as well, in which she calculated that "the minimum appropriate corrective campaign . . . would cost at least $10 million."[42] Ms. Carroll alleges also – as she did in *Carroll II* with respect to Mr. Trump's 2022 statement – that his 2019 statements caused her professional harm as well as emotional pain and suffering.

Mr. Trump first argues that any compensatory damages in this case other than those in relation to the reputation repair program "cannot exceed the one million dollar award in *Carroll II*" because in *Carroll II*, he argues that Ms. Carroll "explained that the damage she suffered as a result of the October 12, 2022 statement was identical to – potentially even greater than – the harm she incurred as a result of the June 2019 statements."[43] He relies on Ms. Carroll's testimony at trial in *Carroll II* that the messages she received after Mr. Trump's 2022 statement were "*equally disparaging and hurtful*" to those she received after his 2019 statements, "but these [(post-2022 messages)] particularly hurt because [she] thought [she] had made it through and there they are again."[44] He contends that Ms. Carroll's "testimony that the impact of the October 2022 statement

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42 Dkt 157-1 (Pl. Amend. Cpt.) at 29 ¶ 147. *See also* Dkt 204 (Pl. Opp. Mem.) at 2 ("In her expert report, Professor Humphreys designed a program to remedy the negative impressions associated with [Mr.] Trump's June 2019 statements; she estimated that the cost of such a reputation repair program would fall between $3,333,058.72 and $20,998,861.18, depending upon factors she described, with a conservative, middle range between $9,999,176.17 and $12,599,316.71.").

43 Dkt 194 (Def. Mem.) at 7-8.

44 *Carroll II*, 22cv10016, Dkt 189 (Trial Tr.) at 329:5-7 (emphasis added).

was 'equally disparaging and hurtful' as that of the June 2019 statements" is controlling in this case because it satisfies the four elements of issue preclusion.[45] There is no merit to Mr. Trump's argument.

As an initial matter, issue preclusion is available only with respect to determinations by the Court or jury of issues necessary to support the judgment. It has nothing to do with testimonial statements by parties. Mr. Trump's contention thus mixes apples with oranges.

In any case, his argument misinterprets the jury's findings on damages in *Carroll II*. This Court instructed the jury that, with respect to compensatory damages other than the reputation repair program, it should:

> "[A]ward an amount that, in the exercise of your good judgment and common sense, you decide is fair and just compensation for the injury to the plaintiff's reputation and the humiliation and mental anguish in her public and private life which you decide was caused by the defendant's [2022] statement. In fixing that amount, if you fix one, you should consider the plaintiff's standing in the community, the nature of Mr. Trump's statement made about Ms. Carroll, the extent to which the statement was circulated, the tendency of the statement to injure a person such as Ms. Carroll, and all of the other facts and circumstances in the case."[46]

At no point was the jury instructed to determine whether the harm Ms. Carroll suffered as a result of Mr. Trump's 2022 statement was equal to the harm she allegedly suffered as a result of his 2019

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45 Dkt 209 (Def. Reply Mem.) at 2.

46 *Carroll II*, 22cv10016, Dkt 201 (Trial Tr.) at 1433:1-11.

statements. Nor is there any permissible inference from the jury's $1 million award in *Carroll II* that it implicitly determined Ms. Carroll could not be accorded more for the alleged harm she suffered from Mr. Trump's 2019 statements simply based on Ms. Carroll's "equally disparaging and hurtful" testimony. Indeed, as Mr. Trump acknowledges, the Court explicitly instructed the jury that "the question of whether there was any adverse effect by virtue of the 2019 statements and, if there was, how much adverse effect is not at issue in this case. It is not for you to determine."[47] Given that the issue Mr. Trump seeks to "carr[y] over" from the *Carroll II* trial to this action was never actually decided, there is no basis to prospectively cap any damages award Ms. Carroll might receive other than for the reputation repair program at $1 million.[48]

Nor is there any merit to Mr. Trump's second argument, *i.e.*, that any award Ms. Carroll might receive in relation to the reputational repair program must be reduced by $1.7 million to avoid double recovery. Mr. Trump contends that "[g]iven that the two programs are identical in their design and function, there will be a complete overlap in their remedial effect on [Ms. Carroll's] reputation."[49] His argument ignores the fact that even if Professor Humphreys "utilized the same methodologies and criteria" to determine the reputation repair programs in *Carroll I* and *Carroll II*, those proposed programs – and the ultimate calculations Professor Humphreys reaches – are different in both cases.[50] In any event, Mr. Trump fails to demonstrate how the jury in *Carroll II* decided the

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47 *Id.*, Dkt 197 at 1158:3-6.

48 Dkt 209 (Def. Reply Mem.) at 2.

49 Dkt 194 (Def. Mem.) at 15.

50 *Id.* at 14.

monetary value, if any, to accord to Professor Humphreys' reputational repair program with respect to Mr. Trump's 2019 statements. For the reasons stated above, it of course did not do so. I have considered Mr. Trump's other arguments and found them all unpersuasive.[51]

Conclusion

For the foregoing reasons, Ms. Carroll's motion for partial summary judgment (Dkt 189) is granted except with respect to Mr. Trump's June 24, 2019 statement. Mr. Trump's motion with respect to the issue preclusive effect of the *Carroll II* verdict in this action (Dkt 193) is denied.

SO ORDERED.

Dated: September 6, 2023

Lewis A. Kaplan
United States District Judge

51 In a footnote, Ms. Carroll "contend[s] that it would be appropriate for the Court to consider drawing on its inherent authority to issue an order to show cause why [Mr.] Trump's counsel should not be required to pay our attorneys' fees in connection with responding to his motion" "[g]iven the manifest frivolity of [Mr.] Trump's legal arguments." Dkt 204 (Pl. Opp. Mem.) at 9 n.2. The Court declines to do so in this instance.

Attachment 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL,

Plaintiff,

-against-

22-cv-10016 (LAK)

DONALD J. TRUMP,

Defendant.

VERDICT FORM

Battery

Did Ms. Carroll prove, by a preponderance of the evidence, that

1. Mr. Trump raped Ms. Carroll?

YES ____ NO ✓

[If you answered "Yes," skip to Question 4. If you answered "No," continue to Question 2.]

2. Mr. Trump sexually abused Ms. Carroll?

YES ✓ NO ____

[If you answered "Yes," skip to Question 4. If you answered "No," continue to Question 3.]

3. Mr. Trump forcibly touched Ms. Carroll?

YES ____ NO ____

[If you answered "Yes," continue to Question 4. If you answered "No," skip to Question 6.]

4. Ms. Carroll was injured as a result of Mr. Trump's conduct?

YES ✓ NO ____

If "Yes," insert a dollar amount that would fairly and adequately compensate her for that injury or those injuries.

$ 2,000,000 — (2 million)

If "No," insert $1.

$ _____

[Continue to Question 5, whether you answered "Yes" or "No."]

5. Mr. Trump's conduct was willfully or wantonly negligent, reckless, or done with a conscious disregard of the rights of Ms. Carroll, or was so reckless as to amount to such disregard?

YES ✓ NO ____

If "Yes," how much, if any, should Mr. Trump pay to Ms. Carroll in punitive damages?

$ 20,000 – (twenty thousand)

[Continue to Question 6, whether you answered "Yes" or "No."]

Defamation

Did Ms. Carroll prove, by a preponderance of the evidence, that

6. Mr. Trump's statement was defamatory?

YES ✓ NO ____

[If you answered "Yes," continue to Question 7. If you answered "No," stop here and return your verdict.]

Did Ms. Carroll prove, by clear and convincing evidence, that

7. Mr. Trump's statement was false?

YES ✓ NO ____

[If you answered "Yes," continue to Question 8. If you answered "No," stop here and return your verdict.]

8. Mr. Trump made the statement with actual malice?

YES ✓ NO ____

[If you answered "Yes," continue to Question 9. If you answered "No," stop here and return your verdict.]

Did Ms. Carroll prove, by a preponderance of the evidence, that

9. Ms. Carroll was injured as a result of Mr. Trump's publication of the October 12, 2022 statement?

YES ✓ NO ____

If "Yes," insert a dollar amount for any damages other than the reputation repair program.

$ 1,500,000. – (1 million)

If "Yes," insert a dollar amount for any damages for the reputation repair program only.

$ 1,700,000. – (1.7 million)

If "No," insert $1.

$ ____

[Continue to Question 10, whether you answered "Yes" or "No."]

10. In making the statement, Mr. Trump acted maliciously, out of hatred, ill will, spite or wanton, reckless, or willful disregard of the rights of another?

YES ✓ NO ____

If "Yes," how much, if any, should Mr. Trump pay to Ms. Carroll in punitive damages?

$ 280,000. – (two hundred eighty thousand)

[Please write your juror number (not you seat number or name) in the space provided below, fill in the date, and inform the officer that you have reached a verdict.]

Dated: 5/9, 2023

Juror numbers:

10

37

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Attachment 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-14102-CV-MIDDLEBROOKS

DONALD J. TRUMP,

Plaintiff,

v.

HILLARY R. CLINTON, et al.,

Defendants.
_____/

ORDER ON SANCTIONS

This case should never have been brought. Its inadequacy as a legal claim was evident from the start. No reasonable lawyer would have filed it. Intended for a political purpose, none of the counts of the amended complaint stated a cognizable legal claim.

Thirty-one individuals and entities were needlessly harmed in order to dishonestly advance a political narrative. A continuing pattern of misuse of the courts by Mr. Trump and his lawyers undermines the rule of law, portrays judges as partisans, and diverts resources from those who have suffered actual legal harm.

I previously granted Defendant Charles Dolan's motion for sanctions, brought pursuant to Federal Rule of Civil Procedure 11. (DE 284). Now before me is a motion seeking sanctions brought by eighteen other Defendants. Upon consideration of the Motion (DE 280), Response (DE 285) and Reply (DE 287), for the reasons that follow and also for those stated in my previous Order, sanctions are awarded.

I. BACKGROUND

Plaintiff initiated this lawsuit on March 24, 2022, alleging that "the Defendants, blinded by political ambition, orchestrated a malicious conspiracy to disseminate patently false and injurious

information about Donald J. Trump and his campaign, all in the hope of destroying his life, his political career, and rigging the 2016 Presidential Election in favor of Hillary Clinton." (DE 1 ¶ 9).

The next day, Alina Habba, Mr. Trump's lead counsel told Fox News' Sean Hannity:

> You can't make this up. You literally cannot make a story like this up . . . and President Trump is just not going to take it anymore. If you are going to make up lies, if you are going to try to take him down, he is going to fight you back. And that is what this is, this is the beginning of all that.[1]

She then explained on Newsmax:

> What the real goal [of the suit] is, is democracy, is continuing to make sure that our elections, continuing to make sure our justice system is not obstructed by political enemies. That cannot happen. And that's exactly what happened. They obstructed justice. They continued the false narrative . . . This grand scheme, that you could not make up, to take down an opponent. That is un-American.[2]

On April 20, 2022, less than a month after the Complaint was filed, Hillary Clinton moved for dismissal with prejudice. Her motion identified substantial and fundamental factual and legal flaws. Each of the other Defendants followed suit, pointing to specific problems with the claims against them. The problems in the Complaint were obvious from the start. They were identified by the Defendants not once but twice, and Mr. Trump persisted anyway.

Despite this briefing and the promise "to cure any deficiencies," Plaintiff's counsel filed the Amended Complaint on June 21, 2022. (DE 177). The Amended Complaint failed to cure any of the defects. *See* DE 267, Order of Dismissal (September 8, 2022). Instead, Plaintiff added eighty new pages of largely irrelevant allegations that did nothing to salvage the legal sufficiency

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[1] Fox News, *Trump Sues Clinton, Steele for 'False Narrative' About Russian Collusion* (March 25, 2022), https://www.foxnews.com/video/6301845469001.

[2] Newsmax, *Trump Suing Hillary Clinton Over Russia Hoax*, Habba Madaio & Associates LLP – News (March 31, 2022), https://habbalaw.com/news/trump-suing-hillary-clinton-over-russia-hoax.

of his claims. (DE 267 at 64). The Amended Complaint is 193 pages in length, with 819 numbered paragraphs, and contains 14 counts, names 31 defendants, 10 John Does described as fictitious and unknown persons, and 10 ABC Corporations identified as fictitious and unknown entities.

On July 14, 2022, the United States moved pursuant to the Westfall Act, 28 U.S.C. § 2679 (d)(i), to substitute itself as Defendant for James Comey, Andrew McCabe, Peter Strzok, Lisa Page, and Kevin Clinesmith. (DE 224). On July 21, 2022, I granted the motion to substitute. (DE 234).

On September 8, 2022, I dismissed the case with prejudice as to all Defendants except for the United States.[3] I issued a detailed and lengthy Order, which I incorporate by reference here. (DE 267). I found that fatal substantive defects which had been clearly laid out in the first round of briefing, precluded the Plaintiff from proceeding under any of the theories presented. I found that the Amended Complaint was a quintessential shotgun pleading, that its claims were foreclosed by existing precedent, and its factual allegations were undermined and contradicted by the public reports and filings upon which it purported to rely. I reserved jurisdiction to adjudicate issues pertaining to sanctions.

Undeterred by my Order and two rounds of briefing by multiple defendants, Ms. Habba continued to advance Plaintiff's claims. In a September 10, 2022, interview with Sean Hannity, the host asked her "Why isn't [Hillary Clinton] being held accountable for what she did?" Ms. Habba's response reiterated misrepresentations on which this lawsuit was based:

> Because when you have a Clinton judge as we did here, Judge Middlebrooks who I had asked to recuse himself but insisted that he didn't need to, he was going to be impartial, and then proceeds to write a 65-page scathing order where he basically ignored every factual basis which was backed up by indictments, by investigations,

[3] The United States' Motion to Dismiss under Federal Rule 12(b)(i) was granted and the Amended Complaint as to it was dismissed without prejudice.

> the Mueller report, et cetera, et cetera, et cetera, not to mention Durham, and all the testimony we heard there, we get dismissed. Not only do we get dismissed, he says that this is not the proper place for recourse for Donald Trump. He has no legal ramifications. Where what [sic] is the proper place for him? Because the FBI won't help when you can do anything, obstruct justice, blatantly lie to the FBI, Sussmann's out, he gets acquitted, where do you go? That's the concern for me, where do you get that -- that recourse?[4]

She also indicated that, while Mr. Trump doubted the suit would succeed, she nevertheless "fought" to pursue it:

> You know, I have to share with you a story, Sean, that I have not shared with anybody. The recourse that I have at this point is obviously to appeal this to the 11th Circuit as Gregg said. But when I brought this case and we were assigned you know, this judge and we went through the recusal process, we lost five magistrates, including Reinhart [sic] who's dealing with the boxes as we know. The former president looked at me and he told me, you know what Alina. You're not going to win. You can't win, just get rid of it, don't do the case. And I said, no, we have to fight. It's not right what happened. And you know, he was right, and it's a sad day for me personally because I fought him on [it] and I should have listened, but I don't want to lose hope in our system. I don't. So, you know I'm deciding whether we're going to appeal it.[5]

Defendants now move to recover attorneys' fees and costs under Fed. R. Civ. P. 11, 28 U.S.C. § 1927, the Defend Trade Secrets Act, and/or this Court's inherent power. (DE 280 at 1). In Part II, I find that a sanction under this Court's inherent power is appropriate. I do so by examining Plaintiff's (and his lawyers') conduct throughout this litigation. In Part III, I look to Plaintiff's conduct in other cases. And in Part IV, I determine the reasonableness of Defendants' attorneys' fees and costs.

[4] Transcript from FOX: Hannity WLNR 28709447, Sept. 10, 2022.

[5] *Id*.

II. ANALYSIS OF LITIGATION CONDUCT IN THIS CASE

"'[T]ampering with the administration of justice . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public.'" *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (citation omitted). A court's inherent power includes the ability to assess attorneys' fees and costs against the client, the attorney or both when either has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id*. at 45-46.

The "inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." *Chambers*, 501 U.S. at 46. "[I]f in the informed discretion of the Court, neither the statute nor the Rules are up to the task," the Court may safely rely on its inherent power "to sanction bad faith conduct in the course of litigation." *Id.* at 50; *see also Peer v. Lewis*, 606 F.3d 1306, 1314 (11th Cir 2010).

"The key to unlocking a court's inherent power is a finding of bad faith." *Barnes v. Dalton*, 158 F.3d 1212, 1214 (11th Cir. 1998) (citations omitted).

"The inherent-powers standard is a subjective bad faith standard." *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017). However, absent direct evidence of subjective bad faith, this standard can also be met if an attorney's conduct is "tantamount to bad faith," meaning the "attorney's conduct is so egregious that it could only be committed in bad faith." *Id.* at 1224–25 (citing *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980)). An attorney's conduct is "tantamount to bad faith" if he "recklessly raises a frivolous argument." *Id.* at 1225 (quoting *Barnes*, 158 F.3d at 1214). "Recklessness alone does not satisfy the inherent powers standard," but "recklessness plus a frivolous argument suffice." *Id*.

The inherent power "is both broader and narrower than other means of imposing sanctions." *Peer*, 606 F.3d at 1314 (quoting *Chambers*, 501 U.S. at 46). It is broader in the sense

that while other sanction mechanisms only reach certain individuals or conduct, the inherent power extends to the full range of litigation abuses. *Id*.

In my informed discretion, I find that Rule 11, 28 U.S.C. § 1927, and the Defend Trade Secrets Act are not "up to the task" of confronting the litigation abuse involved here. Rule 11 is backward looking, limited to pleading and motion abuse, and experience has shown it to be ineffective at deterrence. *See* Fed. R. Civ. P. 11, Advisory Committee Notes. Section 1927 "only applies to unnecessary filings after the lawsuit has begun." *Macort v. Prem Inc.*, 208 F. App'x 781, 786 (11th Cir. 2006). And the Defend Trade Secrets Act may only provide limited relief. The purpose of the inherent power to sanction a party is to vindicate judicial authority without resorting to contempt of court and to make the non-violating party whole. *See Chambers*, 501 U.S. at 45-46*; see also Purchasing Power, LLC*, 851 F.3d at 1223.

Here, we are confronted with a lawsuit that should never have been filed, which was completely frivolous, both factually and legally, and which was brought in bad faith for an improper purpose. Mr. Trump is a prolific and sophisticated litigant who is repeatedly using the courts to seek revenge on political adversaries. He is the mastermind of strategic abuse of the judicial process, and he cannot be seen as a litigant blindly following the advice of a lawyer. He knew full well the impact of his actions. *See Byrne*, 261 F.3d at 1121. As such, I find that sanctions should be imposed upon Mr. Trump and his lead counsel, Ms. Habba.

A. <u>The Case Was Initiated By A Shotgun Pleading Designed To Serve A Political Purpose.</u>

The deliberate use of a shotgun pleading is an abusive litigation tactic which amounts to obstruction of justice. *See Davis v. Coca Cola Bottling Co. Consol.*, 516 F.3d 955, 982 n.66 (11th Cir. 2008), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). This case involved three categories of shotgun pleadings condemned by the Eleventh Circuit: (1) a

complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint; (2) a complaint that is replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action; and (3) a complaint that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against. *See Barmapov v. Amulal*, 986 F.3d 1321, 1324 (11th Cir. 2021); *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015).

I find that the pleadings here were abusive litigation tactics. The Complaint and Amended Complaint were drafted to advance a political narrative; not to address legal harm caused by any Defendant.

The 819 paragraphs of the 186-page Amended Complaint are filled with immaterial, conclusory facts not connected to any particular cause of action. Consider the incendiary charge that Mr. Comey, the Director of the FBI, conspired with Ms. Clinton to maliciously prosecute him. Leaving aside the fact that Mr. Trump was never prosecuted, examine the allegations in the Amended Complaint pertaining to Mr. Comey. The first mention of Mr. Comey, other than identifying him as a party, was in paragraph 349: "Therefore, senior FBI officials Comey, McCabe, Page, Strzok, the DNC and Clinton orchestrated a plan to falsely accuse Flynn of colluding with Russia to protect the potential dissemination of the intimate details of their plot." The next few paragraphs pertain to the FBI's investigation of Michael Flynn, Mr. Trump's former security advisor, who was subsequently fired for lying to the Vice President and the FBI. (¶ 383). The Amended Complaint alleges that Mr. Comey "scrambled to reopen" the investigation into Mr. Flynn (¶ 356), met with Mr. McCabe to discuss the investigation (¶ 359), and decided not to notify

the incoming Trump administration of the investigation of Flynn (¶¶ 360-63). Next, the Amended Complaint cites a letter from the Director of National Intelligence, John Ratcliff, to Senator Lindsey Graham:

> Ratcliff's letter stated that Clinton and her campaign conceived the false Russia collision [sic] story to protect Clinton's presidential bid, which was at the time, in trouble because of revelations about her illegally using a private email server to handle classified information. Ratcliff confirmed in the letter that Obama, Comey and Strzok knew about it.

(Amended Complaint at ¶ 369).[6]

The Amended Complaint continues with allegations about a meeting between Mr. Comey, President Obama, Vice President Biden, and Sally Yates (then a national security advisor) where President Obama directed Mr. Comey to investigate Mr. Flynn and not inform Mr. Trump. (*Id.* ¶¶ 372-377). The Amended Complaint alleges that Mr. Flynn was interviewed by the FBI, and that subsequently Acting Attorney General Yates informed Mr. Trump's White House Counsel Don McGahn that Mr. Flynn misled Vice President Pence and other administration officials about the nature of his conversations with the Russian Ambassador. (*Id.* ¶ 379). The Amended Complaint then concludes: "Ultimately, the Defendants, including Comey, McCabe, Strzok, and Page, were successful in causing Flynn to be ousted as National Security Advisor." (*Id.* ¶ 384).

The Amended Complaint then turns to the FBI's Crossfire Hurricane investigation and four

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[6] This provocative allegation stirred my curiosity, so I looked up the Ratcliff letter. The allegation in the Amended Complaint fails to mention that the information came from a Russian intelligence analysis and that Mr. Ratcliffe commented: "The IC (intelligence community) does not know the accuracy of this allegation or the extent to which the Russian intelligence analysis may reflect exaggeration or fabrication." Letter from John Ratcliff, Dir. of Nat'l Intel., to Sen. Lindsey Graham, U.S. Senate (Sept. 29, 2020) https://www.judiciary.senate.gov/press/rep/releases/chairman-graham-releases-information-from-dni-ratcliffe-on-fbis-handling-of-crossfire-hurricane. Mr. Trump's lawyers saw no professional impediment or irony in relying upon Russian intelligence as the good faith basis for their allegation.

court-approved FISA applications targeting Carter Page. (*Id.* ¶¶ 385-90). The Amended Complaint alleges:

> The FISA applications were reviewed by numerous FBI agents, FBI attorneys, and National Security Division (NSD) attorneys and, as required by law, was ultimately certified by the FBI Director James Comey and approved by then Deputy Attorney General Sally Yates.

(*Id.* ¶ 391).

From there, the Amended Complaint states: "In fact, no probable cause existed and there was no truth to any of the allegations against Carter Page, Donald J. Trump, or the Trump campaign." (*Id.* ¶ 392).

The Amended Complaint then discusses the FISA warrant application and Mr. Comey's approval of those warrants and alleges: "Mr. Comey was aware, or should have been aware, that there was no evidentiary basis for the FISA application, and that the Steele Dossier was not a credible source." (*Id.* ¶¶ 292-407).

The next mention of Mr. Comey states that on May 8, 2017, he was fired from his position as Director of the FBI. The Amended Complaint then alleges that Mr. Comey "had documented several of his interactions with Mr. Trump in a series of memos," and that after leaving the FBI, Mr. Comey shared those memos with a friend who he directed to leak to a New York Times reporter. (*Id.* ¶¶ 449-52).

The Amended Complaint continues:

> 453. The outcome that Comey desired – per his own admission to Congress – was to "prompt" the appointment of a special counsel to investigate Donald J. Trump's alleged conspiracy with the Russian government.
>
> 454. The IG's report noted that Comey had "set a dangerous example" by "releas[ing] sensitive information" to "create public pressure for official action."

> 455. Comey was successful in getting the special master [sic] appointed, due to his unlawful leaking of information, even though Comey didn't have enough evidence to pursue it in his own official capacity.
>
> 456. In May 2017, Robert Mueller was appointed as Special Counsel to "oversee the previously-confirmed FBI investigation of Russian government efforts to influence the 2016 Presidential Election and related matters."[7]

This is what the Plaintiff's lawyers considered to be the short and plain statement of the claim that Mr. Comey maliciously prosecuted Mr. Trump and conspired with Ms. Clinton to do so. These allegations, about investigating Mr. Flynn, signing FISA warrant applications pertaining to Mr. Page, or leaking information about his interactions with Mr. Trump, do not allege that Mr. Comey initiated an investigation of Mr. Trump, much less a prosecution. And the implausible claim that Mr. Comey conspired with Ms. Clinton, given the impact of his announcements on her 2016 campaign, not only lacks substance but is categorically absurd.

The Amended Complaint is a hodgepodge of disconnected, often immaterial events, followed by an implausible conclusion. This is a deliberate attempt to harass; to tell a story without regard to facts.

In order to understand the scope of this abuse, multiply the above discussion by thirty-one defendants and their lawyers, forced to try to analyze and defend against the sprawling Complaints.

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[7] In a footnote to paragraph 456, the Amended Complaint cites to the Justice Department announcement of the appointment of the Special Counsel. That statement by Deputy Attorney Rosenstein, also sued by Mr. Trump, reads in part as follows: "'My decision is not a finding that crimes have been committed or that any prosecution is warranted. I have made no such determination. What I have determined is that based upon the unique circumstances, the public interest requires me to place this investigation under the authority of a person who exercises a degree of independence from the normal chain of command.'" *See* Press Release, Office of Public Affairs, Appointment of Special Counsel, U.S. Dep't of Just., (May 17, 2017) https://www.justice.gov/opa/pr/appointment-special-counsel.

I sifted through the thread of allegations against each defendant only to find they added up to no cognizable claim. And the pleadings were drafted in a way to disguise that fact.

In three instances the Eleventh Circuit has found shotgun pleadings, less problematic than the pleadings here, as a basis for sanctions. *See Jackson v. bank of Am., N.A.,* 898 F.3d 1348 (11th Cir. 2018); *Byrne v. Nezhat,* 261 F.3d 1075 (11th Cir. 2001); *Pelleteir v. Zweifel,* 921 F.2d 1465 (11th Cir. 1991).

In *Jackson,* the court described the case as an "abuse of process" effectuated "by filing a multi-count, incomprehensible complaint that flouted the Federal Rules of Civil Procedure and this Circuit's well-established precedent." *Jackson*, 898 F.3d at 1348. "By attempting to prosecute an incomprehensible pleading to judgment, the Plaintiffs obstructed the due administration of justice in the District Court." *Id.*

The facts in *Jackson* are similar, although less egregious than here. The complaint in *Jackson* alleged fourteen causes of action and contained 109 paragraphs of allegations and each of the claims incorporated all previous allegations. The Defendants filed a motion for more definite statement identifying the complaint as a shotgun pleading. The Plaintiff did not oppose the motion but sought leave to file an amended complaint. The amended complaint "swelled to twenty-three pages and 123 paragraphs, made minor changes to a number of factual allegations, added two new counts, and listed one or more Defendants in parentheses under the heading of each count . . . . " *Id.* at 1348. The Court of Appeals stated: "[h]ere, after being put on notice by Defendants of the specific defects in their complaint, the Jacksons filed an amended complaint afflicted with the same defects . . . . " *Id.* Stating that "[t]olerating such behavior constitutes toleration of obstruction of justice," the Court affirmed the trial judge's order dismissing the amended complaint and instructed plaintiff's counsel to show cause why he should not be ordered to pay double costs and

expenses, including attorney's fees and costs incurred in defending the appeal pursuant to Rule 38 of the Federal Rules of Appellate Procedure. *Id.* at 1357-59. The Court pointed out that the defendants had identified the deficiency and the Eleventh Circuit's precedent in their motion. "If [plaintiffs' counsel] was not aware of the precedent when he filed the [plaintiffs'] initial complaint, Defendants' motion told him all he needed to know." *Id.* at 1359. Nevertheless "he stood fast, brazenly filing a facsimile of his initial pleading." *Id.*

Similarly here, Defendant Neustar identified the shotgun pleading deficiency and the Eleventh Circuit's precedent as one of its grounds for dismissal of Mr. Trump's initial Complaint. (DE 160 at 7-8, n.8). The Defendants' joint Motion to Dismiss the Amended Complaint did likewise. (DE 226 at 46-47). The Plaintiff refused to acknowledge this clear precedent. Instead, he added 80 new pages, and new defendants (including his former Deputy Attorney General and a California Congressman) in order to rehash old grievances from the 2016 election.

The other two Eleventh Circuit opinions analyze the use of shotgun pleadings to support a frivolous RICO claim. In both, the Court found the tactic deserving of sanctions. In *Pelletier*, the Court of Appeals reversed the denial of a Rule 11 sanctions motion in a civil RICO case. *Pelletier*, 921 F.2d at 1465.[8] Analyzing in detail the amended complaint in that case, the Court of Appeals concluded that the plaintiff failed to establish any of the required predicate acts, to show any continuing relationship or pattern of acts, or any injury flowing from those acts. *Id.* at 1496-1500.

[8] *Pelletier* and *Byrne* were abrogated on other grounds by *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 661 (2008) (holding "plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations."). I do not rely on *Pelletier* and *Byrne* as they relate to mail fraud. *See Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358, 1360 (11th Cir. 2018) (citing *Pelletier* and *Byrne* as good law for purposes of sanctions resulting from improper pleading). A more detailed analysis of why Mr. Trump lacked standing to bring his RICO claim is set forth in my Order granting Defendants' Motion to Dismiss. (DE 267 at 42-43).

Concluding that each of the counts in the amended complaint were objectively frivolous when filed, the Court of Appeals found it apparent that the case was brought to harass the defendants:

> Our conclusion is buttressed by the manner in which [plaintiff] pled his case in the district court and briefed it on appeal . . . . [These] are quintessential "shotgun" pleadings, replete with factual allegations that could not possibly be material to any of the causes of action they assert. Each count incorporates all of these factual allegations and states, further, that it is based on the conduct in the complaint attributable to [defendant] and "those acting in concert with him." Anyone schooled in the law who read these complaints, however, would know that many of the facts alleged could not possibly be material to all of the counts.

Pelletier, 921 F.2d at 1518. The appellate court found the amended complaint was conclusory, baseless and without any merit. In deciding that the claim was prosecuted in bad faith, the court rejected the thought that it might have been the "product of incompetent lawyering, and thus excusable, rather than" a tool of harassment, because the plaintiff was skilled in the law and had been warned he was likely to run afoul of Rule 11. *Id.* at 1519. The Court concluded:

> We think that imposing sanctions in this case would serve the dual purpose of deterring the filing of frivolous claims and defenses while not chilling attorneys' legitimate enthusiasm and creativity in advancing legal and factual theories. At a time when the federal courts -- which are a scarce dispute resolution resource, indeed -- are straining under the pressure of an ever-increasing caseload, we simply cannot tolerate this type of litigation. Particularly with regard to civil RICO claims, plaintiffs must *stop and think* before filing them.

Id. at 1522 (emphasis in original).[9]

In *Byrne*, the court affirmed a $400,000 sanction against counsel, under Rule 11, Section 1927, and the court's inherent powers, finding that the expansion of a simple "garden variety

[9] In *Pelletier*, the Court not only reversed the district court's denial of Rule 11 sanctions and remanded for a determination of an appropriate amount, but also determined that the appeal was frivolous on the merits and awarded double costs and reasonable attorney's fees pursuant to Rule 38 of the Federal Rules of Appellate Procedure.

medical malpractice" case to include RICO and other baseless claims was frivolous from the outset and doomed to fail. *Byrne*, 261 F.3d at 1115.

Identifying the complaint and amended complaint in *Byrne* as shotgun pleadings, *id.* at 1106, 1129, the Court of Appeals emphasized the harm presented by the tactic and the authority of Article III courts to control the practice through inherent powers:

> Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard . . . . Although obstruction of justice is typically discussed in the context of criminal contempt, the concept informs the rules of law—both substantive and procedural—that have been devised to protect the courts and litigants (and therefore the public) from abusive litigation tactics, like shotgun pleadings. If use of an abusive tactic is deliberate and actually impedes the orderly litigation of the case, to-wit: obstructs justice, the perpetrator could be cited for criminal contempt.

Byrne, 261 F.3d at 1131-32, 1130 n.110 (citations omitted).

In *Byrne,* the Court pointed out that plaintiffs file shotgun pleadings and frivolous claims to extort settlement of unmeritorious claims. Here, although his complaint asked for damages in excess of twenty-four million dollars, treble damages under RICO, and attorneys' fees and costs, I do not think Mr. Trump or his lawyers actually thought the Defendants would ever agree to settle. This suit was filed for equally improper purposes—to harass and punish, for fundraising, and to advance a political agenda.

B. <u>The Pleadings Contained Factual Allegations That Were Knowingly False Or Made With Reckless Disregard For The Truth.</u>

The Plaintiff consistently misrepresented and cherry-picked portions of public reports and filings to support a false factual narrative. Often the report or filing actually contradicted his allegations. It happened too often to be accidental; its purpose was political, not legal. Factual allegations were made without any evidentiary support in circumstances where falsity is evident.

Examples include:

The Mueller Report. A section of the Amended Complaint is titled "A String of Federal Investigations Clear Donald J. Trump and Uncover the Defendant's Illicit Conspiracy." (Amended Complaint ¶100). After a two-year investigation, the Special Counsel "found no evidence that Donald Trump or his campaign ever colluded with the Russian Government." (*Id.* ¶460). The Amended Complaint further alleges that Special Counsel Mueller "went on to exonerate Donald J. Trump and his campaign with his finding that there was no evidence of collusion with Russia." (*Id.* at ¶7). While perhaps acceptable as a cable news talking point, that allegation is neither an accurate nor fair reading of the Mueller Report.[10]

First, the Mueller Report stated that "[i]n evaluating whether evidence about collective action constituted a crime, we applied the framework of conspiracy, not the concept of 'collusion.'" *Mueller* Report Volume I at 8. Second, in determining whether the conduct "amounted to a violation of federal criminal law" the question was "whether admissible evidence would probably be sufficient to obtain and sustain a conviction." *Mueller Report* Volume I at 8. Third, the Report found:

> [W]hile the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign, the evidence was not sufficient to support criminal charges . . . . [T]he investigation established that several individuals affiliated with the Trump Campaign lied to the [Special Counsel's Office], and to Congress about their interactions with Russian-affiliated individuals and related matters.

Mueller Report at 9. Fourth, with respect to obstruction of justice, the Report states: "While this

[10] 1 Robert S. Mueller, III, U.S. Dep't of Just., Report on the Investigation into Russian Interference in the 2016 Presidential Election (2019); 2 Robert S. Mueller, III, U.S. Dep't of Just., Report on the Investigation into Russian Interference in the 2016 Presidential Election (2019).

report does not conclude that the President committed a crime, it also does not exonerate him." Mueller Report Volume II at 2; (DE 147-1).

Crossfire Hurricane Investigation. A core aspect of the Plaintiff's claim is his contention that Ms. Clinton, Mr. Comey, and others were responsible for the Crossfire Hurricane Investigation. The Complaint and Amended Complaint copiously cite to the IG Report to support these allegations. But the IG Report found that the FBI opened the investigation "for an authorized purpose" and "with adequate factual predication" that had nothing to do with the Defendants or the Steele Dossier. (DE 143-1 at 347).

Charles Dolan Allegations. As set forth in my Order granting Rule 11 sanctions (DE 284), the Plaintiff alleged that Mr. Dolan was a former Chairman of the DNC (Amended Complaint ¶ 96), a senior Clinton Campaign Official (*id.* ¶ 4), and "an individual with intimate ties to the Clinton Campaign and one of its close associates" (DE 177 ¶ 96). In fact, as Mr. Dolan's lawyer told Plaintiff's counsel, he was none of those things. It made no difference. Despite an affidavit from Mr. Dolan saying he lived in Virginia, and the fact that service upon him occurred there, the Amended Complaint claimed he lived in New York. The Plaintiff's lawyers' excuse: There are a lot of Dolans—some of them live in New York. (DE 270 at 10).

The Complaint and Amended Complaint allege that Mr. Dolan was responsible for allegations in the Steele Dossier concerning salacious activity by Mr. Trump in Moscow. Mr. Dolan's lawyers' warnings that this was untrue went unheeded. In defending against sanctions, the Plaintiff's lawyers pointed to the Danchenko Indictment.[11] However, the Danchenko Indictment does not support Plaintiff's claims, rather it contradicts and undermines them.

[11] *United States v. Danchenko*, No. 1:21-cr-00245-AJT, (E.D. Va. Nov. 3, 2021) (hereinafter "Danchenko Indictment").

Criminal Indictments. The Complaint and Amended Complaint rely substantially on the Sussmann,[12] Danchenko, and Clinesmith[13] Indictments. The Plaintiff alleges that "these 'speaking' indictments not only implicate many of the Defendants named herein but also provide a great deal of insight into the inner workings of the Defendants' conspiratorial enterprise. Based on the facts that have already been uncovered throughout the course of Durham's investigation, it seems all but certain that additional indictments are forthcoming." (Amended Complaint ¶ 8).

The Indictments themselves are not relevant. An untried indictment is not evidence of the conduct alleged. *See United States v. Machado,* 886 F.3d 1070 (11th Cir. 2018). A criminal indictment should be no more than the starting point for a lawyer's good faith pre-filing investigation. The danger of overreliance has been demonstrated here, in light of the acquittals of Mr. Sussmann and Mr. Danchenko. That is not to say an indictment has no significance -- a grand jury has issued it with the assistance of a lawyer for the government. But a plaintiff's good faith pre-filing inquiry cannot simply ignore the facts in an indictment that contradict and undermine his allegations while touting those he likes.

The Sussmann Indictment charged Mr. Sussmann with falsely telling the FBI's General Counsel that he was not acting on behalf of a client when he conveyed allegations about email communications between the Trump Organization and a bank affiliated with the Russian government. But the Plaintiff relied on the Indictment to support his allegations of theft of trade secrets, violations of the Computer Fraud and Abuse Act, and violations of the Stored Communications Act in Counts I, VII, VIII, and IX. (DE 177 at 119, 163, 166, 170).

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[12] *United States v. Sussmann*, No. 1:21-cr-00582-CRC, (D.D.C. Sept. 16, 2021) (Hereinafter "Sussmann Indictment").

[13] *United States v. Clinesmith*, No. 1:20-cr-00165-JEB, (D.D.C. Aug. 14, 2020) (Hereinafter "Clinesmith Indictment").

As the Order of Dismissal points out, there are legal deficiencies in these claims. But the Sussmann Indictment also warned the Trump lawyers of factual problems. It specified that the communications involved "purported DNS data reflecting apparent DNS lookups between Russian Bank-1 and an email domain, 'mail l.trump-email.com.'" (Sussmann Indictment ¶ 16). DNS data is meant to be public and as part of the infrastructure for the internet, accessible to any entity. The Indictment further advises that the FBI determined "that the email server at issue was not owned or operated by the Trump Organization, but rather had been administered by a mass marketing email company that sent advertisements for Trump hotels and hundreds of other clients." (Sussmann Indictment ¶ 7). The Sussmann Indictment does not support and instead contradicts the conclusory trade secret and unauthorized access allegations set forth in Plaintiff's Amended Complaint.

And as noted above, the Danchenko Indictment contains allegations that, if true, were fatal to the Plaintiff's conspiracy claims. The Danchenko Indictment states that, according to Mr. Dolan, "individuals affiliated with the Clinton Campaign did not direct and were not aware of" Mr. Dolan's meetings and activities with Mr. Danchenko and other Russian nationals. (Danchenko Indictment ¶ 36). Further, it alleges that according to Mr. Dolan, he was unaware of the specifics of Mr. Danchenko's project against Trump or that Mr. Danchenko's reporting would be provided to the FBI. (*Id.* ¶ 52). In responding to Mr. Dolan's sanctions motion, the lawyers claimed their allegations were "directly sourced" from the Danchenko Indictment. (DE 270 at 10). That is plainly untrue.

Twitter Suspension. To support his damages claim, Plaintiff alleged that he was "banned from different social media platforms, including Twitter" as a result of "the misinformation campaign waged by Hillary Clinton." (Amended Complaint ¶ 524 n.277). However, Twitter

suspended Mr. Trump on January 8, 2021—two days after the January 6th attack on the Capitol—because it determined Mr. Trump's tweets posed "the risk of further incitement of violence."[14]

Moreover, in a lawsuit Mr. Trump filed against Twitter, attempting to show state action, he alleges that "Democrat legislators" pressured Twitter to censor him and that he was banned for exercising his right of free speech. *Trump et al. v. Twitter et al.,* No. 3:21-CV-08378 (N.D. Cal. July 7, 2021) (DE 1 ¶¶ 6, 48).

The assertion that the Twitter ban was caused by misinformation by Ms. Clinton five years earlier is plainly false.

C. <u>The Plaintiff's Legal Theories Were Frivolous, Foreclosed By Existing Precedent.</u>

The Plaintiff recklessly advanced claims foreclosed by existing precedent that the most basic legal research would have revealed. It was not that the Complaint and Amended Complaint were inadequate in any respect, they were inadequate in nearly every respect, even after the deficiencies had been identified in the multiple motions to dismiss. The Eleventh Circuit has squarely held that to knowingly advance frivolous claims constitutes bad faith meriting sanctions under a court's inherent powers. *Peer*, 606 F.3d at 1316 (reversing district court's failure to award sanctions under inherent powers based upon Circuit Court's finding that lawyer "knowingly pursued a frivolous claim, and thus acted in bad faith.").

I will not detail all of the failings of the Amended Complaint here. Most are identified in the Order of Dismissal. I concluded that fundamental substantive defects precluded the Plaintiff from proceeding under any of the theories he advanced.

In arguing against the imposition of sanctions, the Plaintiff attempts to defend his legal

[14] Twitter Inc., *Permanent Suspension of @realDonaldTrump*, Twitter Blog (Jan 8, 2021), https://blog.twitter.com/en_us/topics/company/2020/suspension.

positions. For instance, he contends that while novel, his assertion that the RICO statute of limitations should be tolled because of the former President's duties is a compelling argument for an extension of existing law. (DE 284 at 4). But *Clinton v. Jones,* 520 U.S. 681 (1997), does not leave room for that argument. *See Trump v. Vance,* 140 S. Ct. 2412 (2020) (holding that President is "neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need"); *Trump v. United States*, No. 22-13005, 2022 WL 17352069 (11th Cir. 2022) (holding district court lacks equitable jurisdiction to block government investigation of former President). That is especially true here where Mr. Trump, in his personal capacity, found time during his presidency to file other civil actions. *See, e.g., Trump v Mazars USA*, *LLP,* 140 S. Ct. (2019); *Trump v Deutsche Bank AG*, 943 F.3d 627 (2d Cir. 2019); *Trump v Comm. on Ways & Means,* 391 F. Supp. 3d 93, 95 (D.D.C. 2019).

The argument that the statute of limitations should be extended because of the tolling provision of the Clayton Act is likewise frivolous. Even were it to be applicable to RICO, none of the government proceedings identified by the Plaintiff—the Sussmann and Danchenko Indictments, or the FEC proceeding—bear any relation to RICO. And in addition to the statute of limitations, Plaintiff's RICO claim failed at every step of the substantive RICO analysis.

The Plaintiff does not even *attempt* to respond with respect to most of the legal failings of his claims. To reiterate a few:

- The malicious prosecution claim without a prosecution;
- The theory of personal jurisdiction based on an allegation that defendants "knew that Florida is a state in the United States which was an important one;"
- The trade secret claim without a trade secret or ownership;
- The Computer Fraud and Abuse claim foreclosed by *Van Buren v United States,* 141 S. Ct. 1648 (2021); and

- Obstruction of justice untethered to any official proceeding.

Despite its 193 pages, the Amended Complaint did not come close to stating a legal claim. That was never its intended purpose.

III. A PATTERN OF ABUSE OF THE COURTS.

I have explained why the totality of the problems with the Complaint, Amended Complaint, and the arguments and statements of Plaintiff's counsel show that this lawsuit was filed and prosecuted in bad faith. But this case is part of Mr. Trump's pattern of misusing the courts to serve political purposes. Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct that impairs their ability to carry out Article III functions. *Procop v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986); *see also Martin-Trigona v. Shaw*, 986 F. 2d 1384, 1388 (11th Cir. 1993) (affirming dismissal because lawsuit filed on behalf of vexatious litigant); *O'Neal v. Allstate Indem. Ins. Co. Inc.*, No. 20-14712, 2021 WL 4852222, at *6 (11th Cir. Oct. 19, 2021).

Thus, while a litigant's conduct in other cases would normally not be relevant, when the court is faced with a sanctions motion against a repeat offender, undeterred by admonitions, it has the authority to consider that litigant's outside conduct. *See Johnson v. 27th Ave. Caraf, Inc.*, 9 F.4th 1300, 1313-14 (11th Cir. 2021) (finding district court had "inherent power to investigate the scope and extent" of litigant's misconduct that "threaten[ed] the integrity of the court."); *O'Neal*, 2021 WL 4852222, at *5 (rejecting a plaintiff's sanctions appeal, in part, because "the district court [] conducted a comprehensive examination of Plaintiff's litigation history, cited dozens of Plaintiff's past cases, concluded that only two had merit, and provided examples of past cases where Plaintiff followed an abusive strategy similar to that employed in this case . . . . ").

A. Trump v. Pulitzer Board

On November 15, 2021, on behalf of Mr. Trump, Ms. Habba demanded the Pulitzer Prize Board "take immediate steps to strip the New York Times and the Washington Post of the 2018 Pulitzer Prize for National Reporting."[15] By correspondence styled "Demand Letter, Notice of Potential Litigation and Non-Spoliation of Evidence," she threatened "prompt legal action" should the prize not be withdrawn.

Then, on May 27, 2022, Mr. Trump wrote stating: "I again call on you to rescind the Prize you awarded on blatantly fake, derogatory and defamatory news. If you choose not to do so, we will see you in court."[16]

On October 13, 2022, Weber, Crabb, & Wein, P.A., another law firm representing Mr. Trump, wrote again threatening suit, claiming that in refusing to rescind the award "the Board and its members acted not only with reckless disregard for the truth, but with authentic animosity and malice toward President Trump and the desire to cause him true harm [sic]." As such, according to these lawyers, "the members of the Board are individually liable" for damages, including punitive damages for defamation.[17]

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[15] Demand Letter from Alina Habba, Lawyer for Former President Donald J. Trump, to Bud Kliment, Interim Administrator, The Pulitzer Prizes (Nov. 15, 2021), https://www.documentcloud.org/documents/21112616-habba-and-trump-demand-letters-to-pulitzer-prizes-board.

[16] Letter from Donald J. Trump, to Ms. Marjorie Miller, Administrator, The Pulitzer Prize (May 27, 2022). For copy of letter see Katie Robertson, *Pulitzer Board Rejects Trump Request to Toss Out Wins for Russia Coverage*, N.Y. Times (July 18, 2022), https://www.nytimes.com/2022/07/18/business/media/pulitzer-prizes-trump.html.

[17] Letter from R. Quincy Bird and Jeremy D. Bailie, Lawyers for Donald J. Trump, to Marjorie Miller, Administrator, The Pulitzer Prize Board (Oct. 13, 2022) https://cdn.nucleusfiles.com/bf/bf8ec68a-f0b8-400d-a74b-e6c480f89c07/pulitzer-prize-board-letter-final.pdf.

A little over a week later, Mr. Trump, at a rally in Robstown, Texas, held on October 22, 2022, announced: "Within the next two weeks we're suing the Pulitzer organization to have those prizes taken back."[18]

On December 13, 2022, Mr. Trump followed up on his threat by filing a lawsuit in a state court in Okeechobee, Florida, a location with no apparent connection to Mr. Trump or any of the defendants. *Trump v. Members of the Pulitzer Prize Board et al.,* No. 22-CA-000246, (Fla. 19th Cir. Ct. Dec. 13, 2022) (hereinafter "*Trump v. Pulitzer*") (DE 1). He sued, individually, nineteen members of the Pulitzer Prize Board alleging defamation by implication."[19] The complaint, 29 pages, 145 paragraphs, similar to the Amended Complaint at issue here, misrepresents the findings of the Mueller Report and the origins of the Operation Crossfire investigation. The alleged defamatory statement reads:

> A. Statement from the Pulitzer Prize Board. The Pulitzer Prize Board has an established formal process by which complaints against winning entries are carefully reviewed. In the last three years, the Pulitzer Board has received inquiries, including from former President Donald Trump about submissions from the New York Times and the Washington Post on Russian interference in the U.S. elections and its connections to the Trump campaign – submissions that jointly won the 2018 National Reporting Prize.
>
> These inquires prompted the Pulitzer Board to commission two independent reviews of the work submitted by those organizations to our National Reporting competition. Both reviews were

[18] *See* Julia Shapero, *Trump doubles down on threats to sue Pulitzer board at Texas rally*, The Hill (Oct. 22, 2022, 11:06 PM), https://thehill.com/blogs/blog-briefingroom/3699833-trump-doubles-down-on-threats-to-sue-pulitzer-board-at-texas-rally/.

[19] Defamation by implication is "the concept that literally true statements can be defamatory where they create a false impression." *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). (citations omitted). The Florida Supreme Court explained that "if the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts, he may be held responsible for the defamatory implication, unless it qualifies as an opinion, even though the particular facts are correct." *Id.* at 1108.

> conducted by individuals with no connection to each other. The separate reviews converged in their conclusions: that no passages or headlines, contentions or assertions in any of the winning submissions were discredited by facts that emerged subsequent to the [2018 Pulitzer Prizes in National Reporting Stand] conferral of the prizes.

(*Trump v. Pulitzer*, DE 1 ¶ 117).

It has been said that journalism is the first draft of history.[20] The 2018 Pulitzer Award for National Reporting honored the staffs of the New York Times and the Washington Post "[f]or deeply sourced, relentlessly reported coverage in the public interest that dramatically furthered the nation's understanding of Russian interference in the 2016 presidential election and its connection to the Trump campaign, the President-elect's transition team and his eventual administration."[21] The effort by Mr. Trump and his lawyers to use the courts to bully journalists as part of a dishonest and futile attempt to rewrite history is a shameless attack on a freedom essential to democracy. *See Mills v Alabama*, 384 U.S. 214, 218-19 (1966) ("[T]he press serves . . . as a powerful antidote to any abuses of power by government officials and a constitutionally chosen means for keeping officials elected by the people responsible to all of the people who they were selected to serve.").

B. <u>Trump v. New York Attorney General</u>

In March 2019, the New York Office of the Attorney General ("OAG") headed by Attorney General Letitia James ("AG James"), began investigating Mr. Trump and his New York business.[22]

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[20] While first use of the phrase is debated, it is often attributed to Philip Graham, the former president and publisher of the Washington Post from a speech he gave to Newsweek reporters in 1963: "So let us today drudge on about our inescapably impossible task of providing every week a first rough draft of history that will never be completed . . . . " Katherine Graham, *Personal History* (1998).

[21] *Staffs of The New York Times and The Washington Post*, The Pulitzer Prizes, https://www.pulitzer.org/winners/staffs-new-york-times-and-washington-post.

[22] The following procedural history and underlying facts are taken from filings in the case which

(James AC ¶ 64). The OAG initiated its investigation following Congressional testimony by Michael Cohen, "a former senior executive of the Trump Organization and Special Counsel to Mr. Trump," wherein he produced copies of Plaintiff's financial statements that allegedly *inflated* the value of his assets to obtain favorable loans and insurance coverage, while the Trump Organization simultaneously *deflated* the value of those same assets to reduce its tax burden. (*Trump v. James*, DE 9 at 8-9). According to Mr. Trump, the Cohen testimony was a pretext to justify the OAG Investigation, and he points to various public statements by AG James as support for his theory that the OAG is "nothing more than a weapon in [AG James's] arsenal to wage war on [Mr. Trump]." (James AC ¶¶ 67, 76).

On August 24, 2020, the OAG commenced a special proceeding in the New York Supreme Court, New York County, to enforce subpoenas served during the Investigation.[23] (James AC ¶ 75). On February 17, 2022, Justice Engoron, the state-court Justice presiding over the special proceeding, denied a motion to quash filed by Mr. Trump and granted the OAG's motion to compel ("February 2022 Order"). *See People of the State of New York v. The Trump Organization, Inc.*, No. 451G85/2020, 2022 WL 489625 (Sup. Ct. N.Y. Cnty. Feb. 17, 2022). Justice Engoron rejected the Trump Respondents'[24] argument that the OAG Investigation was based on "personal animus" and that it amounted to selective prosecution. *See id.* at *5-6.

Justice Engoron's Order has been affirmed by the state-appellate courts in New York. On May 26, 2022, the February 2022 Order was unanimously affirmed by the New York Appellate

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subsequently ended up before me: *Donald J. Trump v. Letitia James*, No. 22-81780-CV-DMM (S.D. Fla.) (hereinafter "*Trump v. James*"). The amended complaint in that case is at Docket Entry 19 and is hereafter referred to as "James AC."

[23] The special proceeding is styled, *People v. The Trump Organization*, Index No. 451685/2020.

[24] Donald J. Trump, Ivanka Trump, and Donald Trump, Jr.

Division's First Department. *People by James v. Trump Org., Inc.*, 205 A.D.3d 625 (1st Dep't 2022) (affirming finding that the OAG Investigation was "lawfully initiated" and not selective prosecution). On June 14, 2022, in a two-sentence order, the New York Court of Appeals—New York's highest court—dismissed Mr. Trump's appeal. *People by James v. Trump Org., Inc.*, 38 N.Y.3d 1053 (2022) (holding that "no substantial constitutional question is directly involved.").

Simultaneously, in December 2021, Mr. Trump and the Trump Organization LLC sued AG James under 42 U.S.C. § 1983 in the United States District Court for the Northern District of New York. *Trump v. James*, No. 21-cv-1352, 2022 WL 1718951 at *1 (N.D.N.Y. May 27, 2022). Mr. Trump alleged that the OAG's investigation infringed on various of his constitutional rights. As summarized by Judge Sannes, Mr. Trump (and the Organization) asserted that AG James:

> (1) violated their Fourteenth Amendment due process rights by commencing "investigations against Plaintiffs in bad faith and without a legally sufficient basis," (2) violated their First Amendment rights by seeking to stifle Plaintiffs' free speech and retaliate against Plaintiffs based upon Mr. Trump's political views, (3) violated their Fourth Amendment rights by issuing subpoenas without any "justifiable legal or factual basis," and (4) abused process to advance her own political career and injure Mr. Trump personally and politically.

Id. at *4. Judge Sannes granted AG James's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) on the grounds of *Younger* Abstention, *id*. at *14, and stated that, in the alternative, the case would be dismissed under Rule 12(b)(6) because of *res judicata*, *id*. at *19. The Court also noted: "Plaintiffs' assertions that [AG James] conducted a 'baseless fishing expedition' and 'knowingly advanced claims that were unwarranted under existing law,' are wholly unsupported." *Id*. at *12 n.13 (citation omitted). Mr. Trump has appealed to the Second Circuit. (*Trump v. James* DE 9 at 11).

On September 21, 2022, following its Investigation, the OAG commenced an enforcement

action pursuant to New York Law §63(12) ("Enforcement Action"). (*Id*. at 12). On November 14, 2022, following a granting of the OAG's motion for preliminary injunction, Justice Engoron appointed the Honorable Barbara Jones, a retired federal judge, to serve as monitor of the Trump Organization. (*Trump v. James*, DE 9-1 at 2). Mr. Trump appealed to the New York Appellate Division's First Department, where it remains pending. (*Trump v. James*, DE 9 at 13).

Then, on November 2, 2022, Mr. Trump filed a lawsuit against AG James in a Florida state court, the Circuit Court of the Fifteenth Judicial Circuit for Palm Beach County, Florida. (*Trump v. James*, DE 1-1 at 11). The following day, he posted the following on Truth Social:

> Statement by Donald J. Trump, 45th President of the United States of America
>
> A puppet judge of the New York Attorney General and other sworn enemies of President Trump and the Republican Party has just issued a ruling never before seen anywhere in America. It is Communism come to our shores.
>
> Businesses will be fleeing New York, which they already are, for other states and other countries. Today's ridiculous ruling by a politically-motivated, hand-picked judge makes it even more vital for courts in both New York and Florida to do the right thing and stop this inquisition.
>
> We have to fight back against radical tyranny and save our Country![25]

On November 14, 2022, Plaintiff filed an Amended Complaint and an Emergency Motion for Temporary Injunction. (*Trump v. James*, DE 19; DE 1-1 at 113). Plaintiff brought three counts against Defendant, "individually." Count I is brought under 42 U.S.C. § 1983 for various constitutional violations. (James AC at 26). Count II alleges violations of Plaintiff's rights to

[25] @realDonaldTrump, Truth Social (Nov. 2, 2022, 5:51 PM), https://truthsocial.com/@realDonaldTrump/posts/109282083674316908.

privacy and property under Florida law. (*Id*. at 31). Count III alleges violations of Plaintiff's rights as grantor and beneficiary of the Trust. (*Id*. at 35). In his Emergency Motion, Plaintiff requested a temporary injunction against Defendant, "either personally, through an agent or through any other persons acting in active concert or participation with her, from requesting, demanding, possessing or disclosing the 2020 or 2022 amendments" of Plaintiff's Trust. (*Trump v. James*, DE 1-1 at 113).

On November 16, 2022, Defendant removed the case to this Court, where it is now pending before me. (*Trump v. James*, DE 1). The James AC copies verbatim substantial portions of the dismissed New York federal action. It begins with provocative rhetoric, all too familiar:

> Extraordinary wrongdoing requires extraordinary relief. As set forth below, James has repeatedly abused her position as Attorney General for the State of New York to pursue a vendetta against President Trump, a resident of Palm Beach County, Florida, with the stated goal of destroying him personally, financially, and politically. Suffice it to say that these actions are contrary to both the Constitutions and the laws of New York and Florida and the United States Constitution.

(James AC ¶ 1).

On December 21, 2022, I denied the Emergency Motion for Temporary Injunction finding that none of the prerequisites for an injunction were met. (*Trump v. James*, DE 14). I found that Plaintiff's attempt to sidestep rulings by the New York courts by suing AG James individually rather than in her official capacity was plainly frivolous. (*Id*. at 6). I found there was no likelihood of success on the merits, no irreparable harm, and to "impede a civil Enforcement Action by the New York Attorney General would be unprecedented and contrary to the interests of the people of New York." (*Id*. at 8). I urged Mr. Trump and his lawyers to reconsider their opposition to AG James's Motion to Dismiss because "[t]his litigation has all the telltale signs of being both vexatious and frivolous." (*Id*. at n.6).

C. Trump v. Twitter

On July 7, 2021, Mr. Trump, Linda Cuadros, and the American Conservative Union, individually and on behalf of the class, sued Twitter, Inc. and Jack Dorsey. The complaint was filed in U.S. District Court in the Southern District of Florida. *Donald J. Trump et al. v. Twitter, Inc. et al.*, No. 21-CV-22441 (S.D. Fla.) (hereinafter "*Trump v. Twitter*").[26] The case was subsequently transferred to the Northern District of California pursuant to Twitter's forum selection clause. (*Trump v. Twitter*, DE 87).

Shortly after announcing the lawsuits, Mr. Trump started sending "breaking news alert" text messages directly to his followers including a link[27] that asked them to donate to his Save America PAC:

> President Trump is filing a LAWSUIT against Facebook and Twitter for UNFAIR CENSORSHIP! *For the NEXT HOUR we've activated a 5X-IMPACT on ALL GIFTS!* **Please contribute IMMEDIATELY to INCREASE your impact by 500% and to get your name on the Donor List President Trump sees!**[28]

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[26] That same day, Mr. Trump also sued YouTube, LLC; Sundar Pichai, the chief executive officer of Google LLC and Alphabet Inc.; Facebook, Inc.; and its chief executive officer, Mark Zuckerberg. *See Trump et al. v. YouTube, LLC,. et al.*, No. 21-CV-22445 (S.D. Fla.) (hereinafter "*Trump v. YouTube*"); *Trump et al. v. Facebook, Inc. et al.*, No. 21-CV-22440 (S.D. Fla.) (hereinafter "*Trump v. Facebook*"). Both of these cases were transferred to the Northern District of California.

[27] The text message read, "Pres Trump: I am SUING Facebook & Twitter for UNCONSTITUTIONAL CENSORSHIP. For a short time, 5X-IMPACT on all gifts! Donate NOW: bit.ly/3hiWKi5." The link in the text message brought recipients to a dynamic website prompting them with the above request for donations. While the website has since changed, it has been documented in other places. *See, e.g.*, Jake Lahut, *Trump announces lawsuits against Facebook and Twitter, immediately starts fundraising off it*, Business Insider (July 7, 2021, 12:54 PM), https://www.businessinsider.com/trump-facebook-twitter-lawsuit-fundraising-immediately-2021-7.

[28] Lahut, *supra* note 26 (showing a Tweet from Twitter User @NYTnickc including screenshots of the text message and donation website) (emphasis in original).

Mr. Trump's primary claim in all three of the cases is that the defendants censored his speech in violation of the First Amendment to the United States Constitution. *See Trump v. Twitter*, DE 1; *Trump v. YouTube*, DE 1; *Trump v. Facebook*, DE 1. A problem with his argument is that Twitter, Facebook, and YouTube are private companies, and the First Amendment applies only to governmental abridgements of speech. *See Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019) ("[T]he Free Speech Clause prohibits only *governmental* abridgment of speech. The free-speech clause does not prohibit *private* abridgment of speech.") (emphasis in original). Mr. Trump's only viable course of action was to allege that the companies were so dominated by governmental authorities as to be considered "state actors."

With respect to Twitter, aspects of Mr. Trump's argument bear directly on the claims made against Ms. Clinton and the Defendants here. Recall that in this case, Mr. Trump's lawyers point to the suspension of his Twitter account as the only example of economic injury that he suffered and blame the suspension on disinformation by Ms. Clinton; never mind that Twitter closed Mr. Trump's account after the Jan 6th attack on the Capitol because of "the risk of further incitement of violence." (*Trump v. Twitter*, DE 21 ¶114).

But in the Twitter litigation, the Trump lawyers claim that it was Democratic members of Congress, Vice President Harris, and First Lady Michelle Obama, that "coerced" Twitter to censor Mr. Trump. (*Id.* ¶¶ 48-61).

The District Court for the Northern District of California dismissed the case in its entirety finding that "the amended complaint does not plausibly allege that Twitter acted as a government entity when it closed plaintiffs' accounts." *Trump v. Twitter Inc.*, No. 21-cv-08378-JD 2022 WL 1443233, at *7 (N.D. Cal. May 6, 2022). Appeal of the dismissal is currently pending in the Ninth Circuit. *See Trump v. Twitter, Inc.*, *et al.*, 22-cv-15961 (9th Cir.).

D. Trump v. CNN

On October 16, 2019, Charles Harder, as "litigation counsel for President Donald J. Trump and Donald J. Trump for President, Inc." advised CNN that "my clients intend to file legal action against you to seek compensatory damages, treble damages, punitive damages, injunctive relief, reimbursement of legal costs, and all other available legal and equitable remedies to the maximum extent permitted by law."[29] Claiming violation of the Lanham Act because of "misrepresentations to the public, to your advertisers, and others," the letter claimed "[n]ever in the history of this country has a President been the subject of such a sustained barrage of unfair, unfounded, unethical and unlawful attacks . . . . " *Id*.

On March 6, 2020, represented by Mr. Harder, Donald J. Trump for President, Inc. sued CNN for libel based upon an article by a contributor entitled "Soliciting dirt on your opponents from a foreign government is a crime. Mueller should have charged Trump campaign officials with it."[30] *Donald J. Trump for President, Inc. v. CNN Broad., Inc.*, 20-CV-01045-MLB (N.D. Ga. Mar. 6, 2020) (hereinafter "*Trump v. CNN*") (DE 1). The district court found the complaint did not adequately plead actual malice and dismissed it with leave to amend no later than November 30, 2020. *Trump v. CNN*, 500 F. Supp. 3d 1349, 1358 (N.D. Ga. Nov. 11, 2020).

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[29] Demand Letter from Charles J. Harder, Lawyer for Donald J. Trump, to Jeff Zucker, President and CEO of CNN, and David Vigilante, Executive Vice President and General Counsel of CNN (Oct. 16, 2019). For copy of letter see @michaelglassner, Twitter (Oct. 18, 2019 12:04 PM), https://twitter.com/michaelglassner/status/1185225081141772290?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1185225081141772290%7Ctwgr%5E3343fa879f8ca95c6fc5c5a9f5c9ac5e765d8097%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.foxnews.com%2Fmedia%2Ftrump-legal-team-threatens-cnn-with-lawsuit-over-unfair-unfounded-unethical-and-unlawful-coverage (posting copy of letter).

[30] Larry Noble, *Soliciting dirt on your opponents from a foreign government is a crime. Mueller should have charged Trump campaign officials with it*, CNN (June 13, 2019 at 3:37 PM), https://www.cnn.com/2019/06/13/opinions/mueller-report-trump-russia-opinion-noble/index.html.

Plaintiff's counsel subsequently advised that an amended complaint would not be filed, so on December 31, 2020, the case was dismissed without prejudice for failure to comply with the Court's order. (*Trump v CNN*, DE 38).

Mr. Trump then began fundraising for another lawsuit against CNN, issuing the following appeal:

> I'm calling on my best and most dedicated supporters to add their names to stand with me in my impending lawsuit against fake news CNN . . . Add your name immediately to show your support for my upcoming lawsuit against fake news CNN.[31]

On October 3, 2022, Mr. Trump sued CNN for Defamation Per Se (Count I) and Defamation (Count II). *Trump v. Cable News Network, Inc.*, No. 22-CV-61842-AHS (S.D. Fla. Oct. 3, 2022) (hereinafter "*Trump v CNN* II"), DE 1 at 19, 24. While claiming to meet the "actual malice" standard of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), Mr. Trump's lawyers argue it "does not—and should not—apply where the defendant is not publishing statements to foster debate, critical thinking, or [the] 'unfettered interchange of ideas' but rather seeks to participate in the political arena by offering propaganda." (*Trump v CNN* II, DE 1 ¶ 65 n.42).

Less than 24 hours later, a fundraising email from Mr. Trump proclaimed: "I am suing the Corrupt News Network (CNN) for DEFAMING and SLANDERING my name." Supporters were encouraged to contribute $5 or more.[32]

To be clear, the sanction in this case is not imposed against Mr. Trump for the Pulitzer, Twitter, or CNN litigation. Those cases are before other judges who will make their own

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[31] Marco Margaritoff, *Trump Begs Supporters For Donations Toward 'Upcoming' CNN Lawsuit*, Yahoo News (August 6, 2022), https://news.yahoo.com/trump-begs-supporters-donations-toward-164711363.html.

[32] *See* Erik Larsen, *Trump Uses CNN Lawsuit to Raise Money*, Bloomberg (Oct. 4, 2022), https://money.yahoo.com/trump-uses-cnn-lawsuit-raise-143932468.html.

determinations. And a decision in Mr. Trump's Florida lawsuit against the New York Attorney General, a case now pending before me, is premature.

However, this widespread and persistent conduct points to the need for deterrence in this case and helps explain why Rule 11, Section 1927, and the Defend Trade Secrets Act are not up to the task. This is purposeful conduct, some of which occurs beyond the pleadings and even outside of the courtroom. "[I]t is a wrong against the institutions set up to protect and safeguard the public." *Chambers*, 501 U.S. at 44. Mr. Trump's deliberate use of a frivolous lawsuit for an improper purpose constitutes bad faith. And the behavior is not unique, but part of a plan, or at least a playbook. The telltale signs:

- Provocative and boastful rhetoric;
- A political narrative carried over from rallies;
- Attacks on political opponents and the news media;
- Disregard for legal principles and precedent; and
- Fundraising and payments to lawyers from political action committees.[33]

And when a ruling is adverse, accusations of bias on the part of judges—often while the litigation is ongoing.

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[33] Mr. Trump's Save America PAC has spent $9.7 million in legal bills since 2021 according to a Washington Post review of FEC Filings. Devin Barrett, Josh Dawsey, and Isaac Stanley-Becker, *Trump's committee paying for lawyers of key Mar-a-Lago witnesses*, The Washington Post (Dec. 5, 2022, 5:52 PM), https://www.washingtonpost.com/national-security/2022/12/05/trump-witnesses-legal-bills-pac/. Over $2 million has reportedly been paid to Ms. Habba. Steven Lubet, *Cassidy Hutchinson transcript reveals new low for Trump World*, The Hill (Dec 28, 2022, 8:00 AM), https://thehill.com/opinion/judiciary/3789257-cassidy-hutchinson-transcript-reveals-new-low-for-trump-world/. Ms. Habba, in addition to her role as a lawyer, has become a senior advisor for Mr. Trump's new MAGA, political action committee. According to a MAGA Inc. spokesperson, "whether it's on legal matters or political issues, she is more than capable to represent President Trump in a variety of venues." Ryan King, *Trump Attorney Alina Habba joins MAGA Inc.*, Washington Examiner (Oct. 26, 2022, 9:55 AM), https://www.washingtonexaminer.com/politics/trump-attorney-alina-habba-joins-maga-inc.

But "[l]egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper." *Bridges v. California*, 314 U.S. 252, 270 (1940). Frivolous lawsuits should not be used as a vehicle for fundraising or fodder for rallies or social media. Mr. Trump is using the courts as a stage set for political theater and grievance. This behavior interferes with the ability of the judiciary to perform its constitutional duty.

IV. CONSEQUENCES

Having determined that sanctions are appropriate under inherent authority, I must now determine what those sanctions should be. I find that an award of Defendants' attorneys' fees and costs is a fair and just sanction given Plaintiff's and his counsel's actions in this case. *See Chambers*, 501 U.S. at 56-58. What follows, then, is an analysis of what amount of fees and costs is reasonable. *See Bynum v. Am. Airlines, Inc.*, 166 Fed. Appx. 730, 736 (5th Cir. 2006) (remanding imposition of sanctions for proof of incurred fees and expenses to determine reasonableness).

A. Defendants' Fee Application And Plaintiff's Objections

Before analyzing the reasonableness of Defendants' fee request, I will briefly explain what materials I considered in reaching my conclusions. A fee applicant bears the burden of providing an adequate application, but the opposing party must raise clear objections for a court to rule on them. *See Am. Civ. Liberties Union of Georgia v. Barnes*, 168 F.3d 423, 428 (11th Cir. 1999) ("'objections and proof from fee opponents' concerning hours that should be excluded must be specific and 'reasonably precise.'") (citation omitted).

Defendants request **$1,058,283.50** in fees and costs. *See generally* Defendants' Joint Motion for Sanctions (DE 280-2) (hereinafter "Application"). The Application is a 304-page document filed in support of Defendants' fee request. *See id*. The Application contains eleven

exhibits in support of the requested fees for each set of lawyers/law firms representing (some jointly) the Defendants in this case. Each exhibit contains (1) a declaration attesting to the authenticity of the hours and rates billed, with a corresponding summary of fees based on stages of the case; (2) background information on each timekeeper that describes professional experience and credentials; and (3) time entries.

In response, Plaintiff filed largely indecipherable objections. (DE 285-1) (hereinafter "Objections"); (DE 297) (hereinafter "Corrected Objections"). I will highlight just a few of these issues. First, Plaintiff's Objections relied on an unsigned draft of the Application. *Compare* Objections at 241 (stating on Mr. Tyrrell's signature line, "draft for circulation") *with* Application at 255 (containing Mr. Tyrrell's signature). This was significant not just because it was unsigned, but because some of the calculations changed from the draft to the final Application. *Compare* Objections at 273 (Ms. Lett's declaration stating total fees under Chart C as $5,650) *with* Application at 285 (Ms. Lett's declaration stating total fees under Chart C as $9,375). In an effort to clarify the record, I *sua sponte* ordered Plaintiff to file corrected objections. (DE 292).

Plaintiff's Corrected Objections were equally unhelpful. First, Plaintiff still relies on certain draft portions of the Application. *Compare* Corrected Objections at 307 (Ms. Lett's declaration stating in all caps and yellow highlighted text "DATE" and "FILL IN RESULT OF CONFERRAL") *with* Application at 285 (Ms. Lett's declaration stating the date and result of conferral). As a result, many of the same numerical discrepancies remained. *See, e.g., id*. Second, there are multiple miscalculations. For instance, in raising line-by-line objections to Defendant Joffe's attorneys' fees, Plaintiff failed to multiply the hourly rate by the number of hours billed, making the total amount objected to uncertain. (*See* Corrected Objections at 302). I doubt that this was intentional because nowhere else in the Corrected Objections does this appear to happen.

(*See, e.g., id.* at 268). In another example, in calculating the total fees incurred by Defendant DNC, Plaintiff failed to include the $15,632.50 incurred in the third stage of the case. (*See id*. at 93) (concluding total fees incurred $170,192, rather than $185,824.50).

These errors, taken as a whole, render the entire document unreliable. I considered whether to offer Plaintiff yet another opportunity to cure his objections. Without a motion, however, I did not find it to be a fair exercise of this Court's discretion. In almost every area of law, a party waives an objection for failing to properly raise it. So too here. Thus, to the extent that Plaintiff's objections were not clearly identifiable, I did not consider them.

B. Reasonableness Of Fees

Of the total request for fees and costs ($1,058,283.50), $14,292.39 are costs incurred for electronic legal research and $600 in *pro hac vice* filing fees. Plaintiff does not object to either.[34] (*See generally* Corrected Objections at 33-35). Filing fees are taxable costs under 28 U.S.C. § 1920. However, consistent with the finding of other courts in this Circuit and other circuit courts, costs incurred for electronic legal research are considered a component of attorneys' fees rather than costs under 28 U.S.C. § 1920. *Springer v. Convergy's Corp.*, 2006 WL 8439203 at *2 (M.D. Fla. July 7, 2006). I find the award of $14,292.39 for electronic legal research reasonable given Plaintiff's lack of objection and the sprawling nature of his claims, which while frivolous, were numerous enough to necessitate substantial legal research.

"[T]he starting point in any determination for an objective estimate of the value of a

[34] Plaintiff appears to object, without explanation, to Defendant Danchenko's costs incurred for electronic legal research ($6,389) as "vague." (Corrected Objections at 244). This is nonsensical and likely a mistake. "Vague," as used by Plaintiff everywhere else in his Corrected Objections refers to vague *time entries* (more on this below). Nowhere else does Plaintiff raise a "vague" objection for costs incurred for electronic legal research, which are typically barebones receipts. (*See, e.g., id*. at 301). I will overrule this objection as I can discern no basis for it.

lawyer's services is to multiply hours reasonably expended by a reasonable hourly rate." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). "The product of these two figures is the lodestar and there is a 'strong presumption' that the lodestar is the reasonable sum the attorneys deserve." *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008) (citation omitted). In determining the lodestar, "the court is to consider the 12 factors enumerated in *Johnson v. Georgia Hwy. Exp., Inc.*, 488 F.2d 714 (5th Cir. 1974)."[35] *Id*. at 1350. "After the lodestar is determined . . . the court must next consider the necessity of an adjustment for results obtained." *Norman*, 836 F.2d at 1302. And finally, "'[t]he court . . . is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses as to value.'" *Id*. at 1303 (citation omitted).

1. Reasonable Hourly Rate

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman*, 836 F.2d at 1302. The "relevant legal community" is generally "'the place where the case is

[35] As summarized in *Bivins*, the 12 factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Bivins, 548 F.3d at 1350 n.2.

filed.'" *Barnes*, 168 F.3d 437. "More typically, the fee applicant asks for rates approximating the highest charged in the community, whereas the fee opponent generally submits evidence of the lowest rate charged in any part of the community." *Norman*, 836 F.2d at 1300. That is not the case here.

Almost all of Defendants' attorneys seek substantially discounted rates, ranging from 28% to 66% less than the rates actually billed. (*See, e.g.,* Application at 102). On a sliding scale based on experience, Defendants' attorneys seek rates ranging from $255-800 for lawyers and $120-150 for paralegals. Plaintiff objects to the total amount as "unreasonable or excessive," but he limits those objections to purported deficiencies in "billing judgment" (more on this below). Nowhere in his response in opposition or dozens of pages of line-by-line objections does Plaintiff challenge the *rate* charged by Defendants' attorneys.

Defendant Joffe's attorneys (and paralegal) are the only ones not to have discounted their rates. Defendant Joffe's lead attorney, Mr. Tyrrell, seeks his "ordinary non-local rates," on the grounds that he qualifies for an exception applicable to attorneys with "extensive prior experience with a particular factual situation." (*Id*. at 252 n.1); *see also Barnes*, 168 F.3d at 438 (stating that non-local rates *may* be acceptable if attorney had "extensive prior experience with a particular factual situation," but refusing to apply that exception where no obvious savings or efficiencies resulted). While Plaintiff does not object, I refuse to apply the *Barnes* exception where it is not obvious that Defendant Joffe's attorneys provided any significant gains in efficiencies. *Compare* (Application at 283) (Defendant Orbis Business Intelligence Ltd.'s attorneys, who raised a successful personal jurisdiction challenge, seeking fees for about 90 hours) *with* (*id*. at 251) (Defendant Joffe's attorneys, who also raised a successful personal jurisdiction challenge, seeking fees for about 208 hours). Moreover, Mr. Tyrell's declaration (Application at 251) speaks to *his*

purported prior knowledge, not that of Defendant Joffe's other attorneys and paralegal who also seek their non-local rates. Accordingly, in considering the *Johnson* factors, the discounted rate of the other attorneys in this case, and my own experience, I will discount Defendant Joffe's attorneys' and paralegal's fees. *See* Appendix A at 5.

I find the rest of the rates charged by Defendants' attorneys reasonable. *See generally* Appendix A. In reaching this conclusion, I considered my own experience, the *Johnson* factors, and what reasonably comparable attorneys in a similar case in this legal community might be expected to charge. Plaintiff's lack of objection further supports the reasonableness of the rates. Given that there are dozens of attorneys, I will refrain from explaining my reasoning for each and every one of them—although I have considered them all. In reference to the *Johnson* factors, I considered the complexity of the allegations leveled by Plaintiff and the skill it required to succinctly respond to each allegation with well-reasoned arguments. In my view, this case required excellent lawyering to defend against the overwhelming number of convoluted allegations and frivolous claims raised by Plaintiff. Indeed, these lawyers are some of the best in the country, and accordingly charge top dollar (as evidenced by the rates actually paid by Defendants). In their ranks are litigators that have argued, and won, several cases before the U.S. Supreme Court; served in positions of great significance in government; graduated from and taught at prestigious law schools; clerked for federal district courts, circuit courts, and the U.S. Supreme Court; and obtained victories for their clients to the tune of billions of dollars. (*See, e.g.,* Application at 9, 53, 56, 105, 209).

Having set reasonable rates for the lawyers involved (*See generally* Appendix A), I now move on to evaluating the time they spent on their work in this case.

2. Hours Reasonably Expended

In determining the number of hours "reasonably expended," the Supreme Court requires fee applicants to exercise "billing judgment." *Hensley*, 461 U.S. at 434 (citations and quotations omitted). Therefore, attorneys "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Id*. "This must necessarily mean that the hours excluded are those that would be unreasonable to bill to a client and therefore to one's adversary *irrespective of the skill, reputation or experience of counsel*." *Norman*, 836 F.2d at 1301 (emphasis in original). "Redundant hours generally occur where more than one attorney represents a client," but in such cases attorneys may still be compensated "if they are not unreasonably doing the same work." *Id*. at 1302.

Where—as is the case here—"fee documentation is voluminous . . . an hour-by-hour review is simply impractical and a waste of judicial resources." *Loranger v. Stierheim*, 10 F.3d 776, 783 (11th Cir. 1994); *see also Fox v. Vice*, 563 U.S. 826, 838 (2011) (explaining that "trial courts . . . should not, become green-eyeshade accountants. The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time. And appellate courts must give substantial deference to these determinations, in light of 'the district court's superior understanding of the litigation.'"). Notwithstanding, I am mindful of this Court's obligation to "produce an order on attorneys' fees that allows for 'meaningful review.'" *Barnes*, 168 F.3d at 428.

Here, the fee documentation is certainly voluminous. *See, e.g., Padurjan v. Aventura Limousine & Transp. Serv., Inc.*, 441 Fed. Appx. 684, 687 (11th Cir. 2011) ("The more than $200,000 [the movant] seeks in attorneys' fees is indication enough that this case is voluminous.").

Defendants' Application seeks over a million dollars in fees, is 304-pages long, and includes hundreds of time entries by dozens of lawyers.

In response, Plaintiff raised line-by-line objections by way of tables at the end of each exhibit. (*See generally* Corrected Objections). The tables, while not descriptive in any meaningful way, do identify objected to entries under the following categories: block billing, duplicative, excessive, vague, and clerical. Accordingly, I will balance the aforementioned competing directives—not to attempt "auditing perfection" yet still allow for "meaningful review"—by analyzing a mostly random selection[36] of Plaintiff's "billing judgment" objections under each of his categories. The entries excerpted below serve as a representative sample of the entries that I examined and the reasoning applied therein.

C. Objections

1. Block Billing

Plaintiff's objections to block billing are largely overblown. It is true that lawyers should avoid block billing (*i.e.*, billing for several tasks in the same time entry) to, at least in this context, allow a court to ascertain the number of hours reasonably expended per task. The degree of block billing identified by Plaintiff simply does not rise to a level that merits an across-the-board cut of hours. However, I am inclined to cut back in individual cases if the block billing spanned several hours and included numerous tasks. *See, e.g., Barnes*, 168 F.3d at 429 ("The records often lump together all the tasks performed by an attorney on a given day without breaking out the time spent on each task.").

By way of example, Plaintiff objects to the following entries for block billing:

[36] For "block billing" and "excessive," I focused primarily on entries with unusually high amounts charged. The logic being that such entries were more likely to yield examples of improper block billing or excessive billing.

1) Review & revise defendants' draft reply brief; review Trump's opposition brief; emails re: draft reply brief.

(Application at 122) (8/10/2022, 3.9 hours, $2,145).

2) Review Trump amended complaint; review previous motions practice; review draft portion of motion to dismiss Trump amended complaint; discussion with A. Eisen re: draft motion to dismiss.

(*Id*. at 241) (6/28/2022, 5 hours, $3,500).

3) April 2022: Confer and strategize via email and telephone with counsel regarding case, initial appearances, local rules, and complaint; review complaint; review draft motion to dismiss; draft and file pro hac motions; review and file response to motion to expedite.

(*Id*. at 21) (4/1/2022, 15 hours, $9,375).

The first two examples do not merit a reduction in hours. The second tows the line, but I find that even if the timekeeper had entered those times separately, five hours would nonetheless be reasonable. This same reasoning applies to the first example *and* to all of the other objections for block billing that I looked at. The third, however, is the sort of block billing that requires a reduction in hours because it is impossible for the Court to accurately divvy up the time per task in a reasonable manner. The timekeeper for this entry is Attorney Markus. A closer look at his time entries revealed a similar pattern. I note however that as local counsel, his role was not as susceptible to itemized billing and his total hours were not substantial. But I will cut his hours by 15%. *See* Appendix A at 2.

2. Duplicative

Plaintiff's objections for "duplicative" time entries are not presented in a way that allows this Court to properly review and analyze them. Plaintiff's table simply points out entries that he believes are "duplicative" but does not say *what it duplicates*. Instead, Plaintiff leaves it up to the Court to piece together a cogent series of objections. I refuse to do so. But even when I reviewed

the relevant time entries with an eye for duplicative billing, I did not find any unreasonable billing that merits a cut in hours.

3. Excessive

Plaintiff objects to, among others, the following time entries as "excessive":

1) Review draft DNC motion to dismiss brief and share with RAK for final review

(Application at 76) (5/6/2022, 2.3 hours, $1,610).

2) Reviewing amended complaint; reviewing, editing draft brief.

(*Id*. at 24) (7/7/2022, 5.5 hours, $3,850).

3) Review & revise motion to dismiss brief re: Trump lawsuit; emails to & from I. Garcez, A. Lopez re: same

(*Id*. at 118) (5/4/2022, 2.9 hours, $1,595).

Plaintiff's objections are unconvincing. It is no surprise that these lawyers, when responding to such an egregious example of shotgun pleadings and subsequent opposition, had to spend numerous hours thoroughly analyzing the allegations and crafting exhaustive responses. I find these time entries, and others like it, reasonable.

4. Vague

"[T]he general subject matter of the time expenditures ought to be set out with sufficient particularity so that the district court can assess the time claimed for each activity." *Norman*, 836 F.2d at 1303. Notwithstanding, the court can rely on "its own knowledge and experience . . . and may form an independent judgment" when determining the reasonableness of fees. *Id*. Plaintiff objects to the following time entries as "vague":

1) Review complaint and continue revisions to [redacted].

(Application at 65) (4/6/2022, 4.5 hours, $3,150).

2) Research [redacted].

(*Id*. at 79) (5/18/2022, 1.7 hours, $637.50).

3) Miscellaneous communications, including with client and other counsel, regarding status of matter, ongoing coordination, and related matters; review and analyze materials re: same.

(*Id*. at 275) (7/19/2022, 1.4 hours, $1,435.50).[37]

The first and third time entries provide sufficient detail to overcome an objection for being vague. The same is true for almost all other time entries viewed under this category. Only the second time entry rises to the level of being vague. The timekeeper for the second entry is Attorney Turner. A closer look at her time entries revealed a similar pattern. While I find Attorney Turner's total hours to be relatively low, I will cut her hours by 15% to account for the handful of vague entries. *See* Appendix A at 2.

5. Clerical

Consistent with the idea that, "the hours excluded are those that would be unreasonable to bill to a client and therefore to one's adversary *irrespective of the skill, reputation or experience of counsel*," *Norman*, 836 F.2d at 1301 (emphasis in original), lawyers should not (in the interest of reducing fees) bill their clients for clerical work that a non-lawyer could just as well do.

It appears that Plaintiff's only objections under the category of "clerical" (totaling $390) is for work done by Ms. Dietrich, a "Senior Case Manager," a role akin to a paralegal. (Corrected Objections at 33-35; 56; 92). Ms. Dietrich's hourly rate is $150, a reasonable rate for paralegals. (Application at 58). Billing a client for clerical work done by a non-lawyer related to its case is completely reasonable and expected.

[37] This is Mr. Tyrell's non-local rate. For the reasons explained above, I am reducing it to $700. *See* Appendix A at 5.

D. Adjustment Of The Lodestar

The lodestar in this case is **$937,989.39**. *See* Appendix A at 1. Having determined the lodestar, the Court must next "consider the necessity of an adjustment for results obtained." *Norman*, 836 F.2d at 1302. The Parties have not argued for an adjustment, and I do not find one to be necessary.

Relatedly, however, I find that *apportionment* of the lodestar is necessary. The amount of fees awarded in this case, while reasonable, is substantial. As such, joint and several liability (a presumption under Rule 11, but not here) would be inappropriate. *Cf. Fowler v. Ritz-Carlton Hotel Co., LLC*, No. 3:10-CV-884-J-34JRK, 2016 WL 11468583, at *7 (M.D. Fla. Aug. 2, 2016) (apportioning fee based on ability to pay). The parties that bear the brunt of the responsibility for the sanctionable conduct—Plaintiff and his lead attorney—should be jointly and severally liable for the sanction. The Rule 11 sanctions that I imposed on the other lawyers in this case (*See* DE 284) is sufficient. *See Gallop v. Cheney*, 667 F.3d 226, 231 (2d Cir. 2012)*, as amended* (Feb. 3, 2012) (vacating sanctions against local counsel due to level of involvement).

Accordingly, Plaintiff Donald J. Trump and Plaintiff's lead attorney—Alina Habba, and Habba Madaio & Associates—are jointly and severally liable for the total amount.

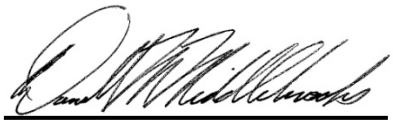
IV. CONCLUSION

For the forgoing reasons, and having carefully considered the record, the written submissions of the Parties, and applicable law, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendants' Joint Motion for Sanctions (DE 280) is **GRANTED.**

2. Plaintiff Donald J. Trump and Plaintiff's lead attorney—Alina Habba and Habba Madaio & Associates—are jointly and severally liable for **$937,989.39**.[38]

SIGNED in chambers at West Palm Beach, Florida this 19th day of January, 2023.



Donald M. Middlebrooks
United States District Judge

cc: counsel of record

[38] "[S]anctions must never be hollow gestures: their bite must be real." *Martin v. Automobile Lamborghini Exclusive, Inc.*, 307 F. 3d 1332, 1336 (11th Cir. 2002). But for the bite to be real it must be an amount a person can pay. *Id.* I believe the monetary sanctions imposed here are well within Plaintiff and Plaintiff's lawyer ability to pay, and therefore I have not thought it necessary to conduct an intrusive inquiry into their finances. However, should Plaintiff or Plaintiff's lawyer (and law firm) believe that the amount would seriously jeopardize their financial status, *see, e.g., Baker v Alderman*, 158 F. 3d 516 (11th Cir. 1998), that individual or firm should file within ten (10) days of this Order, under seal, a verified statement of net worth which includes assets and liabilities. In the event of such a filing, the obligation of that individual or law firm will be tolled until further order of the Court.

Appendix A

Summary Chart

Chart	Defendants	Fees and Costs
1	Hillary R. Clinton	$171,631.06
2	HFACC, Inc. and John Podesta	$20,349.00
3	DNC, DNC Services Corporation, Congresswoman Debbie Wasserman Shultz	$179,685.44
4	Robert Mook	$70,207.08
5	Fusion GPS, Glenn Simpson, and Peter Fritsch	$55,820.00
6	Bruce and Nellie Ohr	$59,310.00
7	Igor Danchenko	$23,749.00
8	Neustar, Inc.	$134,143.50
9	Neustar Security Services	$53,547.98
10	Rodney Joffe	$119,496.33
11	Orbis Business Intelligence Ltd.	$50,050.00
Total		**$937,989.39**

Chart 1: Hillary R. Clinton's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
David E. Kendall	$700	89.8	$62,860.00
Katherine M. Turner	$700	35.6	$24,920.00
Michael J. Mestitz	$450	116.8	$52,560.00
David Oscar Markus	$625	43.35	$27,093.75
Total			**$167,433.75**

Electronic Legal Research: **$4197.31**

TOTAL: **$171,631.06**

Chart 2: HFACC, Inc. and John Podesta's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Robert P. Trout	$700	16.2	$11,340.00
Paola Pinto	$450	18.1	$8,145.00
Sarah Wilson (paralegal)	$120	1.9	$228.00
Natalie Henriquez (paralegal)	$120	5.3	$636.00
Total			**$20,349.00**

TOTAL: **$20,349.00**

Chart 3: DNC, DNC Services Corporation, Congresswoman Debbie Wasserman Shultz's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Roberta Kaplan	$700	24.3	$17,010.00
Shawn Crowley	$700	35.9	$25,130.00
Joshua Matz	$700	42.8	$29,960.00
Maximillian Feldman	$450	99	$44,550.00
Anna Collins Peterson	$375	98.1	$36,787.50
Maggie Turner	$375	40.89	$15,333.75
James Blum	$375	2.3	$862.50

Kelsey Dietrich (paralegal)	$150	14	$2,100.00
Gerald Greenberg	$525	9.5	$4,987.50
Christopher Sundby	$262.50	3	$ 787.50
Total			**$177,508.75**

Electronic Legal Research: **$2,176.69**

TOTAL: **$179,685.44**

Chart 4: Robert Mook's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Andrew J. Ceresney	$700	2.2	$1,540.00
Wendy B. Reilly	$550	58.2	$32,010.00
Isabela Garcez	$450	46.8	$21,060.00
Alexa Busser Lopez	$375	40	$15,000.00
Total			**$69,610.00**

Electronic Legal Research: **$597.08**

TOTAL: **$70,207.08**

Chart 5: Fusion GPS, Glenn Simpson, and Peter Fritsch's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Joshua A. Levy	$700	0.5	$350.00
Rachel Clattenburg	$600	47.1	$28,260.00
Kevin P. Crenny	$300	71.8	$21,540.00
E. Andrew Sharp	$300	2.5	$750.00
Adam S. Fels	$600	8.2	$4,920.00
Total			**$55,820.00**

TOTAL: **$55,820**

Chart 6: Bruce and Nellie Ohr's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Joshua Berman	$800	6.7	$5,360.00
Benjamin Peacock	$500	98.5	$49,250.00
Adam Fels	$500	8.4	$4,200.00
Victoria Pantin (paralegal)	$125	0.8	$ 100.00
Total			**$58,910.00**

Pro hac vice fees: **$400**

TOTAL: **$59,310**

Chart 7: Igor Danchenko's Attorney's Fees

Timekeeper	Hourly Rate	Hours	Fees
Franklin Monsour Jr.	$700	24.8	$17,360.00
Total			**$17,360.00**

Electronic Legal Research: **$6,389**

TOTAL: **$23,749**

Chart 8: Neustar, Inc.'s Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Samantha L. Southall	$560	128.9	$72,184.00
Jennifer Olmedo-Rodriguez	$560	28	$15,680.00
Patrick Doran	$475	23.4	$11,115.00
Anna Sanders	$255	137.9	$35,164.50
Total			**$134,143.50**

TOTAL: **$134,143.50**

Chart 9: Neustar Security Services' Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
John M. McNichols	$700	39.8	$27,860.00
Kathryn E. Garza	$300	43.2	$12,960.00
Allison S. Eisen	$300	21.5	$6,450.00
James E. Gillenwater	$700	8.5	$5,950.00
Total			**$53,220.00**

Electronic Legal Research: **$327.98**

TOTAL: **$53,547.98**

Chart 10: Rodney Joffe's Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Steven A. Tyrrell	$700	77.5	$54,250.00
Edward Soto	$700	1.5	$1,050.00
Brian Liegel	$600	49.9	$29,940.00
Leah Saiontz	$450	72.2	$32,490.00
Ann Merlin (paralegal)	$130	7.4	$962.00
Total			**$118,692.00**

Electronic Legal Research: **$604.33**
Pro hac vice fees: **$200**

TOTAL: **$119,496.33**

Chart 11: Orbis Business Intelligence Ltd.'s Attorneys' Fees

Timekeeper	Hourly Rate	Hours	Fees
Enjoliqué A. Lett	$700	35.5	$24,850.00
Akiesha G. Sainvil	$450	56	$25,200.00
Total			**$50,050.00**

TOTAL: **$50,050**

Attachment 9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 39EFM

----------X

THE PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

DONALD TRUMP, DONALD TRUMP, IVANKA TRUMP, ERIC TRUMP, THE DONALD J. TRUMP FOUNDATION,

Respondents.

----------X

INDEX NO. 451130/2018

MOTION DATE 10/18/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON PETITION

HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 62, 111, 112, 116, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137

were read on this petition to/for JUDGMENT - DECLARATORY.

This judicial dissolution proceeding was commenced by the Attorney General of the State of New York on behalf of the People of the State of New York ("Attorney General") against The Donald J. Trump Foundation (the "Foundation"), and the Foundation's officers, directors, and board members: Donald J. Trump ("Mr. Trump"); Donald J. Trump Jr.; Ivanka Trump; and Eric F. Trump (collectively, "Individual Respondents" and without Mr. Trump, "Stipulating Respondents"). The petition alleges causes of action for: (1) breach of fiduciary duty and waste under New York's Not-for-Profit Corporation Law ("N-PCL") against the Individual Respondents; (2) failure properly to administer Foundation assets and waste under New York's Estates, Powers

and Trusts Law ("EPTL") against the Individual Respondents; (3) wrongful related party transactions against Mr. Trump as defined in the N-PCL and EPTL; (4) dissolution of the Foundation under the N-PCL §§ 112 and 1101; (5) dissolution of the Foundation under the N-PCL §§ 112 and 1102; and (6) an injunction pending resolution of this proceeding.

On August 31, 2018, respondents moved to dismiss the petition in its entirety. In a decision and order dated November 21, 2018, I sustained the first five causes of action, dismissed the sixth cause of action for an injunction, and directed respondents to answer the petition.

Thereafter, at my urging, the parties set out to consensually resolve this proceeding. Over the course of the next several months, the Attorney General and the Individual Respondents reached a resolution of most of the Attorney General's claims.

Thus, by stipulation and order dated December 19, 2018, the Attorney General and the Foundation agreed to dissolve the Foundation under judicial supervision pursuant to N-PCL Article 11, annul its certificate of incorporation, and terminate its corporate existence ("Dissolution Stipulation"). Pursuant to the Dissolution Stipulation, the parties jointly submitted a list of not-for-profit organizations ("Approved Recipients") to me which they proposed would receive distributions from the Foundation's remaining liquid assets upon the issuance of a final order of dissolution. I approved the list as a broad-based and thoughtful final distribution of the Foundation's remaining assets. [1]

[1] The Approved Recipients are: Army Emergency Relief; Children's Aid Society; City Meals-on-Wheels; Give an Hour; Martha's Table; United Negro College Fund; United Way of Capital Area; and US Holocaust Memorial Museum.

The Attorney General and the Foundation entered into a subsequent stipulation dated October 1, 2019, whereby these parties agreed: (1) on the procedure for the equal distribution of the Foundation's remaining liquid assets – $1,782,910.92 – to the Approved Recipients ("Distribution Stipulation"); and (2) to waive N-PCL §1104(b)'s publication requirements.

The Attorney General and the Stipulating Respondents entered into a third stipulation dated October 1, 2019 ("Board Training Stipulation"), whereby the Stipulating Respondents certified that they had each completed an in-person, interactive board training session pertaining to charitable organizations and the fiduciary responsibilities of those organizations' directors and officers. In turn, the Attorney General agreed to dismiss the Stipulating Respondents from this proceeding with prejudice.

On October 1, 2019, the Attorney General entered into a stipulation of final settlement ("Final Stipulation") with the Foundation and Mr. Trump. In the Final Stipulation, Mr. Trump agreed to reimburse $11,525 to the Foundation for the Foundation's payment of auction items at a charitable benefit, and to pay any additional amount that may be owed in connection with this proceeding, which amount is to be determined by me as set forth in more detail below.

The Final Stipulation also recited requirements with which Mr. Trump must comply, should he wish to serve as an officer or director of a new or pre-existing charitable organization in New York.[2] Additionally, the Final Stipulation resolved

[2] As per the Final Stipulation, if Mr. Trump opts to serve as an officer or director of a

damages for alleged waste resulting from improper uses of Foundation assets, except for those arising out of the allegedly improper use of the Foundation and distribution of the $2,823,000 received by the Foundation ("Funds") from Mr. Trump's televised fundraiser in Des Moines, Iowa on January 28, 2016 ("Fundraiser").

I commend the Attorney General and the attorneys for the Individual Respondents for their consensual resolution of the bulk of this proceeding. As New York's Chief Judge Janet DiFiore stated in her 2019 State of Our Judiciary Address, "[t]he time is right to provide litigants and lawyers with a broader range of options to resolve disputes without the high monetary and emotional costs of conventional litigation." Those words are borne out in this proceeding. Without sacrificing zealous representation of their

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pre-existing New York charitable organization, he may only do so if the organization: "(i) engages counsel with expertise in New York not-for-profit law to advise the organization and its officers and directors on compliance with all applicable laws, regulations, and accepted practices; (ii) engages the services of an accounting firm to monitor and audit the charity's grants and expenses annually; (iii) has a majority of the board members that are independent, i.e., they have no familial or business relationship with Mr. Trump or any entity owned by Mr. Trump or his relatives, as defined in N-PCL section 102(a)(22) (referred to herein as "family members"); and (iv) agrees not to engage in any related party transactions as defined in N-PCL section 102(a)(24) with Mr. Trump, his family members or any entity owned or controlled by Mr. Trump or his family members (a 'Trump Entity') and agrees to otherwise comply with N-PCL section 715." The same requirements must be met if Mr. Trump decides to form a new charitable organization and serve as its officer or director. Further, the Final Stipulation provides that should Mr. Trump serve as an officer or director of a new charitable organization, he must also meet the following additional requirements: (i) the newly formed organization will provide the Attorney General with annual reports for five years; (ii) the newly formed charitable organization will enact specific corporate governance procedures; and (iii) Mr. Trump will maintain a working familiarity with the applicable New York rules and laws governing charitable organizations and their officers and directors, for as long as he holds either position.

clients, the Attorney General and the attorneys for the Individual Respondents were able to directly negotiate the Dissolution Stipulation, Distribution Stipulation, Board Training Stipulation, and Final Stipulation without extensive court intervention.

The sole remaining issue – which the parties agreed would be determined by me – is the amount of any additional payment owed by Mr. Trump arising out of the allegedly improper use of the Foundation and distribution of the Funds received by the Foundation from Mr. Trump's Fundraiser. Upon my determination of any additional amount to be paid by Mr. Trump, the parties agreed to withdraw and discontinue with prejudice the remaining causes of action not previously dismissed.

As a director of the Foundation, Mr. Trump owed fiduciary duties to the Foundation, pursuant to N-PCL § 717; he was a trustee of the Foundation's charitable assets and was thereby responsible for the proper administration of these assets, pursuant to EPTL § 8-1.4. A review of the record, including the factual admissions in the Final Stipulation, establishes that Mr. Trump breached his fiduciary duty to the Foundation and that waste occurred to the Foundation.[3]

Mr. Trump's fiduciary duty breaches included allowing his campaign to orchestrate the Fundraiser, allowing his campaign, instead of the Foundation, to direct

[3] For example, the Final Stipulation states that Mr. Trump's campaign, rather than the Foundation: (1) "planned" and "organized" the Fundraiser; and (2) "directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans."

distribution of the Funds, and using the Fundraiser and distribution of the Funds to further Mr. Trump's political campaign.

The Attorney General has argued that I should award damages for waste of the entire $2,823,000 that was donated directly to the Foundation at the Fundraiser. In opposition, Mr. Trump notes that the Foundation ultimately disbursed all of the Funds to charitable organizations and that he has sought to resolve consensually this proceeding.

As stated above, I find that the $2,823,000 raised at the Fundraiser was used for Mr. Trump's political campaign and disbursed by Mr. Trump's campaign staff, rather than by the Foundation, in violation of N-PCL §§ 717 and 720 and EPTL §§ 8-1.4 and 8-1.8. However, taking into consideration that the Funds did ultimately reach their intended destinations, *i.e.,* charitable organizations supporting veterans, I award damages on the breach of fiduciary duty/waste claim against Mr. Trump in the amount of $2,000,000, without interest, rather than the entire $2,823,000 sought by the Attorney General. Further, because the parties have agreed to dissolve the Foundation, I direct Mr. Trump to pay the $2,000,000, which would have gone to the Foundation if it were still in existence, on a *pro rata* basis to the Approved Recipients.

Finally, the Attorney General seeks an order requiring Mr. Trump to pay a statutory penalty of twice the amount of general damages. "Punitive damages are not to compensate the injured party but rather to punish the tortfeasor and to deter this wrongdoer and others similarly situated from indulging in the same conduct in the future." *Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 489 (2007) (citations omitted).

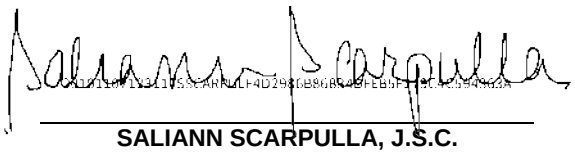
Here, Mr. Trump has stipulated to a number of proactive conditions so that the conduct which engendered this petition should not occur in the future. For this reason, I decline to award penalty damages.

In accordance with the foregoing, it is hereby

ORDERED that judgment is awarded on the petition's first and second causes of action for breach of fiduciary duty to the extent described above;[4] and it is further

ORDERED that the petitioner is directed to settle judgment on notice.

This constitutes the decision and order of the Court.



11/7/19
DATE

SALIANN SCARPULLA, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:	X	SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

[4] The petition's remaining causes of action are either moot or have been settled pursuant to the Final Stipulation.

Attachment 10

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

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

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

SO ORDERED STIPULATION OF FINAL SETTLEMENT

This Stipulation of Final Settlement ("Stipulation") is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General" or "OAG"), and Respondents Donald J. Trump ("Mr. Trump") and the Donald J. Trump Foundation (the "Foundation") by their attorneys, Alan S. Futerfas and Marc L. Mukasey. The Attorney General, Donald J. Trump and the Foundation are referred to collectively herein as the "Parties." Mr. Trump and the Foundation shall be collectively referred to herein as the "Remaining Respondents."

WHEREAS, the Attorney General commenced the above-captioned special proceeding against Respondents by the filing of a verified petition (the "Verified Petition") on June 14, 2018 (the "Special Proceeding");

WHEREAS, the Verified Petition alleges that Respondents engaged in improper political activity and self-dealing transactions, and failed to follow certain required obligations and corporate formalities;

WHEREAS, pursuant to the New York Not-for-Profit Corporation Law ("N-PCL") Section 717, directors and officers of a not-for-profit corporation are required to act in good faith and with that degree of diligence, care and skill that an ordinarily prudent person in their position would exercise under similar circumstances. In addition, Section 717 requires directors and officers of a not-for-profit corporation to act with undivided loyalty toward the corporation, and that directors must meet at least annually for a report of the corporation's assets and liabilities, revenue, and disbursements, pursuant to N-PCL §§ 519, 603(b);

WHEREAS, pursuant to the New York Estates, Powers, and Trust Law ("EPTL") Section 8-1.8(a)(2), a private foundation "shall not engage in any act of self-dealing which would result in the taxation of any amount involved with respect to any such act of self-dealing under section 4941 of the [Internal Revenue Code] (the "IRC" or the "Code")], and pursuant to EPTL Section 8-1.8(a)(5), a private foundation "shall not make any taxable expenditure which would result in the liability of the [private foundation] for any tax imposed on any such taxable expenditures under section 4945 of the [Code];"

WHEREAS, IRC Section 4941 imposes an excise tax on acts of self-dealing, and IRC Section 4945 imposes an excise tax on any amount paid to influence the outcome of a specific public election, and that under Section 406 of the N-PCL, a New York private foundation must include provisions in its certificate of incorporation expressly prohibiting the conduct penalized under Sections 4945 and 4941 of the Code;

WHEREAS, pursuant to Executive Law Section 175(2), N-PCL Sections 706(d), 715(f), 720(a), and EPTL Section 8-1.9(c)(4), the Attorney General may, among other actions, bring a special proceeding against a charitable organization or any other persons acting for it; bring an action to remove a director for cause or bar a director from future service on the board; seek an order requiring a person to account for profits from an improper related party transaction or pay the

not-for-profit corporation for the value of the use of any of its assets in such a transaction; return assets lost to the corporation as a result of such a transaction; or pay restitution resulting from the violation of duties in the management of corporate assets committed to their charge and to set aside an unlawful conveyance, assignment or transfer of corporate assets;

WHEREAS, the Verified Petition alleges that in 2016, the Foundation engaged in political activity and related party transactions with Donald J. Trump for President, Inc. (the "Campaign"), a federally registered principal campaign committee, insofar as it alleges that the Campaign directed the Foundation's activities in connection with a nationally televised fundraiser for veterans held in Des Moines, Iowa, on January 28, 2016 (the "Iowa Fundraiser"), and the subsequent disbursements of proceeds from the event; and

WHEREAS, the Parties agree to the following factual stipulations:

1. The Foundation is a private New York not-for-profit, 501(c)(3) corporation incorporated in 1987;
2. Respondent Mr. Trump is the founder of the Foundation and served as its president from 1987 through November 13, 2018;
3. The Foundation's Board of Directors did not meet from 1999 through November 2018, and did not provide oversight, set policy or approve the direction, operations or acts of the Foundation; did not promulgate written criteria for the consideration, approval, or monitoring of grants, or protocols for assuring compliance with the organization's governing documents and charitable mission; and did not adopt a conflict of interest policy after July 2014, when such policy was required;
4. The omissions identified in Paragraph 3 above contributed to the Foundation's participation in the events and transactions described in Paragraphs 5-16 below;

5. **The Iowa Fundraiser and the Distribution of Its Proceeds (2016).** On January 26, 2016, Mr. Trump, then a candidate in the primary elections for the Republican party nomination for president of the United States, announced that he would conduct the Iowa Fundraiser on January 28, 2016, in lieu of participating in a televised debate featuring other Republican presidential candidates. The Iowa Fundraiser was presented as the "Donald J. Trump Special Event for Veterans." The website for the Iowa Fundraiser, DonaldTrumpForVets.com, was developed by Campaign personnel and, with the agreement of the Foundation, featured the name of the Foundation at the top of the home page and informed visitors that "the Donald J. Trump Foundation is a 501(c)(3) nonprofit organization";
6. The Campaign planned, organized, and paid for the Iowa Fundraiser, with administrative assistance from the Foundation; and the Campaign directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans;
7. The Iowa Fundraiser raised approximately $5.6 million in donations for veterans' groups, of which $2.823 million was contributed to the Foundation; the balance was contributed by donors directly to various veterans' groups. At Campaign events in Iowa on January 30, January 31, and February 1, 2016, Mr. Trump personally displayed presentation copies of Foundation checks to Iowa veterans' groups. On May 31, 2016, at a Campaign press conference, Mr. Trump announced the grants the Foundation made to veterans' groups with the proceeds of the Iowa Fundraiser and, on or about the same day, the Campaign posted on its website a chart identifying the grant recipients;
8. **The Mar-a-Lago Settlement/ Fisher House Donation (2007).** In 2007, Mar-a-Lago, a

private club in Palm Beach, Florida owned by a company controlled by Mr. Trump, received a town citation accusing the club of violating a local ordinance by flying a large American flag on its property. In response, Mar-A-Lago filed suit challenging the constitutionality of the ordinance. The parties settled the litigation on April 17, 2007. The terms of the settlement agreement provided that Mr. Trump would contribute $100,000 to charities agreed to between the parties relating either to veterans, the American flag or the local VA Hospital. In September 2007, Mr. Trump caused the Foundation to donate $100,000 to the Fisher House Foundation, a section 501(c)(3) charitable organization that assists military families and wounded soldiers. On March 10, 2017, Mr. Trump reimbursed the Foundation $100,000 plus interest of $8,763.41;

9. **The Trump National Golf Club Lawsuit/ Alonzo Mourning Charities Event (2012).** In 2011, the Alonzo Mourning Charities ("AMC"), a section 501(c)(3) charitable organization run by former NBA player Alonzo Mourning that provides advocacy and educational services to disadvantaged children in South Florida, held a charity golf tournament on the property of the Trump National Golf Course in Briarcliff, New York ("TNGC"). As part of the event, golfers were given the opportunity to win $1 million if they hit a "Hole in One" at the par 3, 13th hole. In advance of the event, AMC obtained what is known as "Hole in One" insurance to underwrite and guarantee the payment. Martin B. Greenberg made a "Hole in One." When the insurer who had issued the policy refused to pay out because of an alleged flaw in the set-up of the 13th hole on the course, Greenberg filed suit against the insurer, TNGC, AMC and others;

10. As part of a settlement, AMC agreed to make a $775,000 contribution to Mr. Greenberg's charitable foundation. Pursuant to an agreement between AMC and TNGC, TNGC, which was owned by a company controlled by Mr. Trump, agreed

to donate to AMC two lifetime TNGC golf memberships together with the proceeds from the sale of a third lifetime TNGC membership. Between 2012 and 2013, AMC auctioned the two lifetime memberships for a total of $304,499. On December 19, 2011, the Foundation auctioned a third membership through an online auction for $185,000. On January 9, 2012, after deducting a 15% service fee for the auctioneer site, $157,250 was transferred to the Foundation and donated to Mr. Greenberg's foundation to satisfy TNGC's remaining obligations under its agreement with AMC. On March 17, 2017, TNGC contributed $158,000 plus $3,593.08 in interest back to the Foundation;

11. **The "And Justice for All" Transaction (2013).** In 2013, Mr. Trump sent an instruction to donate $25,000 to Pamela Bondi's political campaign fund called "And Justice for All." The request was received by an accounts payable clerk. A clerk testified that she confused the political campaign with a Utah-based 501(c)(3) organization by the same name, and another administrative clerk sent the check to Pam Bondi's re-election campaign address in Florida on September 9, 2013;

12. The Foundation states that when it filed its 2013 IRS Form 990-PF with the Charities Bureau as part of its annual New York State filing obligation, it was not aware of the issue and, accordingly, did not disclose the contribution to Ms. Bondi's re-election campaign. Further, the Foundation's outside accountants stated that they mistakenly identified the contribution on the Foundation's Form 990-PF tax return as being made to "Justice for All," a 501(c)(3) organization located in Kansas;

13. On or about March 23, 2016, the Foundation filed an IRS Form 4720 reporting the transaction and Mr. Trump paid the excise tax due under the Code and reimbursed $25,000 to the Foundation;

14. **The Trump International Hotel Advertisement/DC Preservation League Donation (2013).** In 2013, the Foundation contributed $5,000 to the DC Preservation League ("DCPL"), a section 501(c)(3) organization that works to protect historic buildings in Washington, D.C. The contribution entitled the Foundation to run an ad in the hard copy program for a DCPL fundraising event and a promotion for The Trump International Hotel in Washington, D.C. was placed in the event's program. On December 9, 2016, Trump Hotels contributed $5,084.62, plus interest, to the Foundation to reimburse it for the contribution to DCPL. On December 19, 2016, the Foundation filed an IRS Form 4720 reporting the transaction. Further, Trump International Hotel Management LLC paid excise taxes and interest due under the Code in the amounts of $502.33, $505.12, and $506.88, respectively, for each of the 2013, 2014 and 2015 tax years;

15. **The Trump Portrait/ Unicorn Children's Foundation Donation (2014).** On March 1, 2014, the Unicorn Children's Foundation, a section 501(c)(3) organization that provides support to children and young adults with developmental, communication and learning disorders, held its 14th Annual Gala at the Mar-a-Lago Club in Palm Beach, Florida. Mr. Trump attended the event. A painting of Mr. Trump was donated as an auction item and Mr. Trump bid $10,000. Mr. Trump caused the Foundation to donate $10,000 to the Unicorn Children's Foundation. After the auction, hotel staff at the Trump Hotel in Doral, Florida placed the painting in a storage room and later hung it in the hotel. In November 2016, Doral Hotel staff removed the painting from the hotel and returned it to the Foundation. On November 17, 2016, the Doral Hotel paid $185.82, plus interest, to the

Foundation as compensation for the fair rental value of the painting. On December 19, 2016, the Foundation filed an IRS Form 4720 reporting the transaction, and the Trump entity that owns the Doral Hotel paid excise taxes and interest in the amount of $8.49 and $18.48, respectively, for each of 2014 and 2015. On May 15, 2019, as part of the resolution of this Special Proceeding, one of the Individual Respondents reimbursed the Foundation for the $10,000 that the Foundation paid for the painting;

16. **The Seven Springs Transaction/ 2015 NALT Donation** (2015).

In 2015, the Foundation donated $32,000 to the North American Land Trust ("NALT"), a section 501(c)(3) organization, to satisfy a $32,000 pledge by Seven Springs LLC ("Seven Springs"), an entity owned by Mr. Trump at the time that holds title to his estate in Westchester County, New York. The NALT is a land preservation organization that undertakes projects to preserve natural resources. Seven Springs pledged to donate $32,000 to a stewardship fund that NALT maintains to manage properties that it acquires. The $32,000 payment was made from the Foundation. On November 17, 2016, the Foundation self-reported the Seven Springs LLC transaction to the NYAG and reimbursed $32,000 to the Foundation. On December 9, 2016, Seven Springs paid $228.38 to the Foundation as the applicable interest on the amount contributed. On December 19, 2016, Seven Springs LLC filed IRS Form 4720 and paid excise taxes of $3,213.19;

17. **The Notices to Admit**. On or about July 11, 2018 and November 14, 2018, respectively, the Attorney General served its First and Second Notices to Admit on Respondents;

18. On or about September 7, 2018 and December 17, 2018, respectively, Respondents served their objections and responses to the First and Second Notices to Admit (the

"Responses");

19. Pursuant to the Responses, the Foundation acknowledged that it had not followed certain important corporate governance procedures by, among other things: (i) not holding regular meetings of its board of directors; (ii) not having written policies for the consideration or approval of grants; (iii) not having a written policy regarding conflicts of interest; (iv) not having a written investment policy; and (v) not having a written whistleblower policy;

WHEREAS, on December 19, 2018, the Attorney General and the Foundation stipulated to dissolve the Foundation pursuant to Article 11 of the New York Not-for-Profit Corporation Law (the "Dissolution Stipulation"; Exhibit A hereto);

WHEREAS, on October 1, 2019, the Attorney General and the Foundation stipulated to disburse the Foundation's remaining $1,782,910.92, in equal amounts, to eight agreed upon not- for-profit organizations (the "Distribution Stipulation"; Exhibit B hereto) as demanded in the Petition;

WHEREAS, on October 1, 2019, the Attorney General and Respondents Donald J. Trump Jr., Ivanka Trump and Eric Trump entered into a stipulation discontinuing this Special Proceeding with prejudice against those Individual Respondents following their agreement to take and completion of certain board training (Exhibit C hereto);

WHEREAS, pursuant to the Distribution Stipulation, the Foundation will Distribute the sum of $1,782,910.92 to each of Army Emergency Relief, Children's Aid, Citymeals-on-Wheels, Give an Hour, Martha's Table, United Negro College Fund, United Way of National Capital Area and the U.S. Holocaust Memorial Museum (together, the "Approved Recipients");

WHEREAS, without admitting or denying any of the OAG's factual findings, except

those stipulated to herein, the Remaining Respondents, while neither admitting nor denying any alleged violation of law, have nonetheless cooperated and continue to cooperate with the OAG in fashioning appropriate and meaningful steps to address the OAG's concerns; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through the undersigned counsel, as follows:

1. That simultaneous with the execution of this Stipulation, Mr. Trump will make a payment of $11,525 to the Foundation relating to the Foundation's payment for the purchase of two auction items at a Susan G. Komen charitable benefit.

2. That the amount of any additional payment owed by Mr. Trump in connection with the facts described herein shall be submitted to the Court for a decision based on the applicable law. Excluding this issue to be determined by the Court, all other claims shall be resolved as set forth herein.

3. That, within 15 days of receipt thereof, the Foundation shall disburse all of its remaining funds, in equal amounts, to the Approved Recipients.

4. Charitable Organizations:

a) In the event Mr. Trump decides to serve as an officer or director of a pre-existing charitable organization operating or soliciting donations in the State of New York, he will do so only if the charitable organization: (i) engages counsel with expertise in New York not-for-profit law to advise the organization and its officers and directors on compliance with all applicable laws, regulations and accepted practices; (ii) engages the services of an accounting firm to monitor and audit the charity's grants and expenses annually; (iii) has a majority of board members that are independent, i.e., they have no familial or business relationship with Mr. Trump or any entity owned by Mr. Trump or his relatives, as defined in N-PCL

section 102(a)(22) (referred to herein as "family members"); and (iv) agrees not to engage in any related party transactions as defined in N-PCL section 102(a)(24) with Mr. Trump, his family members or any entity owned or controlled by Mr. Trump or his family members (a "Trump Entity") and agrees to otherwise comply with N-PCL section 715.[1]

b) In the event Mr. Trump decides to form a new charitable organization and serve as an officer or director thereof operating or soliciting donations in the State of New York, he shall ensure that such new charitable organization shall comply with all provisions and requirements of paragraph 4(a) above. In addition, such new charitable organization shall provide Annual Reports to the Attorney General for a period of 5 years. Such Annual Reports shall:

i. Identify the professional advisors referenced in paragraph 4(a) and specify the number of hours each professional advisor spent on the work of the charitable organization;

ii. Identify all board members, specifying whether each is an independent board member within the meaning of paragraph 4(a)(iii), and if not, describing the board member's relationship with Mr. Trump, his family members or any Trump Entity;

[1] Nothing herein shall prohibit Mr. Trump or any Trump Entity from providing services or the use of property to any charitable organization that he joins as a director or officer pursuant to Paragraph 4 if such services or use of property are donated for use without compensation of any kind, and no Trump Entity receives any remuneration, directly or indirectly, in connection with any such donation. In the event that such services or use of property are provided to any such charitable organization, an independent auditor, i.e., a certified public accountant performing no other services for Mr. Trump or any Trump Entity, shall certify in a statement to be provided to the Attorney General within 60 days after the fiscal year in which the donation was made that: (i) all costs associated with the event were donated by Mr. Trump and/or a Trump Entity; and (ii) that the value of the donation reported is a fair representation of the actual costs.

iii. Identify the individual(s) within the charitable organization charged with ensuring compliance;

iv. Identify and provide copies of all policies and procedures adopted by the charitable organization in order to insure compliance with N-PCL sections 712-a (Audit oversight), 715 (Related party transactions), 715-a (Conflict of interest policy), 715-b (Whistleblower policy), and 716 (Loans to officers and directors);

v. Identify and provide a copy of all policies and procedures related to financial internal controls;

vi. Include any board meeting minutes and resolutions related to the compliance with the policies and procedures referenced in paragraph 3(b); and include any submissions – e.g. conflict of interest disclosures, whistleblower complaints – received by the corporation in connection with policies outlined in subsection (iv) above;

vii. Certify compliance with this Stipulation and be provided to the Attorney General no later than 60 days following the end of the organization's fiscal year.

c) In addition to providing Annual Reports, such new charitable organization shall adopt bylaws or otherwise pass resolutions effecting the following:

i. That at each meeting of the board of directors, the presence of one-half of the total number of directors shall constitute a quorum for the transaction of business;

ii. That a board secretary shall take notes and prepare minutes of each meeting of the board of directors, and that the organization shall maintain an

archive of all board minutes;

iii. That the board shall be empowered to specifically require that more than one officer or director is required to sign and execute the corporation's checks;

iv. That the officers of the organization shall be elected annually by a majority vote of the board at the board's annual meeting;

d) Mr. Trump shall ensure that, for as long as he is an officer or director of a not-for profit organization operating in the State of New York, he will maintain a current, working familiarity with the rules and practices governing New York based not-for-profit charitable organizations and their officers and directors.

5. That the publication requirements of N-PCL section 1104(b) shall be waived based on the representations and warranties made by the Foundation in paragraphs 1and 2 of the Distribution Stipulation.

6. That an Order of Judgment of Dissolution in the form of Exhibit D shall be submitted to the Court dissolving the Foundation.

7. That the Attorney General's Verified Petition raises significant issues with respect to the Foundation's board governance and certain of the Foundation's transactions, and related matters, including its involvement in the Campaign's Iowa Fundraiser and other related events that occurred from January through May 2016.

8. This Stipulation is not intended for use by any third party in any other proceeding and is not intended, and shall not be construed, as an admission of liability by the Respondents.

9. Upon the decision by the Court with respect to any additional amount to be paid pursuant to Paragraph 2 of this Stipulation, all remaining Causes of Action in the above-

captioned proceeding as against any of the Respondents that have not been previously dismissed, shall be withdrawn and discontinued with prejudice and without costs or attorneys' fees to either party stated herein as against the other.

10. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation and to make the representations and warranties contained herein.

11. This Stipulation may be executed in multiple counterparts, and facsimile or electronic signatures shall be deemed to be originals.

12. This Court shall retain jurisdiction over this matter for all purposes after the date of entry of this Order.

13. If this Court determines that either of the Remaining Respondents have breached this Stipulation, such party shall pay to the OAG the costs of such determination and the costs of enforcement.

[*remainder of this page intentionally left blank*]

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on October 1, 2019.

LETITIA JAMES
Attorney General of the State of New York

By: _____
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York 10005
Tel. (212) 416-8401

Attorney for Petitioners

THE LAW OFFICES OF ALAN S. FUTERFAS

By: _____
Alan S. Futerfas, Esq.
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

MUKASEY FRENCHMAN & SKLAROFF LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
Tel. (347) 527-3940

Attorneys for Respondents

SO ORDERED: _____
Hon. Saliann Scarpulla, J.S.C.

Dated: November 7, 2019

EXHIBIT A

EXECUTION VERSION

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

THE PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York,

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

SO-ORDERED STIPULATION CONCERNING THE DISSOLUTION OF THE DONALD J. TRUMP FOUNDATION

This Stipulation Concerning the Dissolution of The Donald J. Trump Foundation (the "Stipulation") is entered into by and between Petitioner The People of the State of New York by Barbara D. Underwood, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondent The Donald J. Trump Foundation ("the Foundation"), by its attorney, Alan S. Futerfas. The Attorney General and the Foundation are referred to collectively herein as the "Parties."

WHEREAS, the Attorney General commenced the above-captioned special proceeding against the Foundation by the filing of a verified petition (the "Verified Petition") on June 14, 2018 (the "Special Proceeding");

WHEREAS, in the Fourth, Fifth, and Sixth Causes of Action in the Verified Petition, the Attorney General has asserted claims for the dissolution (the "Dissolution Causes of Action") of the Foundation pursuant to sections 112(a), 1101(2) and 1102(a)(2) of Article 11 of the New York Not-For-Profit Corporation Law ("N-PCL"), and pursuant to section 1109 of the N-PCL, in an action brought by the Attorney General, the "interest of the public is of paramount importance";

EXECUTION VERSION

WHEREAS, in consideration of the Respondents' agreement to not contest the Dissolution Causes of Action, the Attorney General will permit Respondents to designate, subject to the Attorney General's approval, not-for-profit organizations to receive distributions from the assets remaining after the Foundation is dissolved;

WHEREAS, the Parties have now concluded good faith negotiations and have reached a resolution of Paragraph G of the Petition's Prayer for Relief and desire to implement such agreement in accordance with the terms and conditions of this Stipulation, which the Parties respectfully request be so-ordered by the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties that the Dissolution Causes of Action are resolved as follows:

1. That the Parties agree that the Foundation should be dissolved and agree to the entry of an order pursuant to Section 1109 of N-PCL dissolving the Foundation, annulling its Certificate of Incorporation, and terminating the corporate existence of the Foundation.

2. The dissolution process shall proceed under judicial supervision in accordance with Article 11 of N-PCL.

3. That, within thirty (30) days of when this Stipulation is so ordered by the Court, the Parties shall jointly submit to the Court a list of not-for-profit organizations to receive distributions, in equal amounts, from the assets remaining upon the issuance of a final Order of Dissolution.

4. The Parties agree that the Attorney General may object to the distribution of funds to any organization designated pursuant to Paragraph 3 hereof if information is revealed after this Stipulation is so-ordered, but before a final order of dissolution is entered, that negatively affects the suitability of such organizations to receive distributions of charitable assets in this matter, such determination to be made solely by the Attorney General.

EXECUTION VERSION

5. Pursuant to N-PCL § 1111, the Foundation will maintain all of its assets as of the execution of this Stipulation.

6. This Stipulation in no way limits or affects any of the other claims in the Verified Petition.

7. This Stipulation in no way limits or affects the rights or remedies of any third party.

8. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation.

9. This Stipulation may be executed in multiple counterparts, each of which shall be deemed a duplicate original. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on December 11, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: _____
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York 10005
(212) 416-8401

Attorney for Petitioners

LAW OFFICES OF ALAN S. FUTERFAS

By: _____
Alan S. Futerfas, Esq.
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

Attorney for The Donald J. Trump Foundation

SO ORDERED: _____
Justice Saliann Scarpulla

DATED: 12/19/2018

EXHIBIT B

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

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

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

SO-ORDERED STIPULATION CONCERNING DISTRIBUTION OF FUNDS

This Stipulation Concerning Distribution of Funds is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondent the Donald J. Trump Foundation ("the Foundation"), by its attorneys, Alan S. Futerfas and Marc Mukasey. The Attorney General and the Foundation are referred to collectively herein as the "Parties."

WHEREAS, the Court in the above-captioned special proceeding so-ordered a Stipulation Concerning Dissolution of the Donald J. Trump Foundation on December 19, 2018 (the "Dissolution Stipulation"), under which the Parties agreed that the Foundation will be dissolved pursuant to Article 11 of the New York Not-for-Profit Corporation Law ("N-PCL");

WHEREAS, pursuant to the Dissolution Stipulation, the assets of the Foundation remaining upon the issuance of a final Order of Dissolution are to be distributed to not-for-profit organizations jointly agreed upon by the Parties;

WHEREAS, the Foundation has provided the Attorney General with a certification from an independent certified public accountant (the "Accountant's Certification"), attached hereto as Exhibit 1, specifying the liquid net assets currently remaining in the Foundation, i.e., the Foundation's liquid assets less any liabilities (the "Distributable Assets"); and

WHEREAS, pursuant to the process set forth in the Dissolution Stipulation and consistent with N-PCL §§ 1109(c) and 1002-a(c)(1), the Parties have jointly submitted to the Court, and the Court has approved, a list of not-for-profit organizations, attached hereto as Exhibit 2, to receive distributions, in equal amounts, from the Foundation's remaining assets upon its dissolution (the "Approved Recipients") and desire to implement such agreement in accordance with the terms and conditions of this Stipulation, which the Parties respectfully request be so-ordered by the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through the undersigned counsel, as follows:

1. That the Foundation represents and warranties that, to the best of its knowledge (i) the Accountant's Certification accurately reflects its assets and liabilities, (ii) the Foundation has no creditors and (iii) no party, other than the Petitioner, has asserted, or threatened to assert, claims against the Foundation;

2. That the publication requirements of N-PCL § 1104(b) shall be waived based on the representations and warranties made by the Foundation in paragraph 1 hereto;

3. The Foundation shall, as part of the dissolution process, disburse the Distributable Assets, in equal amounts, to the Approved Recipients within 15 days after this Stipulation has been so ordered;

4. This Stipulation shall have no effect on any of the claims in the above-captioned special proceeding still pending before the Court;

5. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation;

6. This Stipulation may be executed in multiple counterparts, each of which shall be deemed a duplicate original. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on October 1, 2019.

LETITIA JAMES
Attorney General of the State of New York

By: _____
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York 10005
(212) 416-8401

Attorney for Petitioners

By: _____
Alan S. Futerfas, Esq.
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

Mukasey Frenchman & Sklaroff LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
(347) 527-3940

Attorneys for the Donald J. Trump Foundation

SO ORDERED: _____
Justice Saliann Scarpulla

EXHIBIT 1

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

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

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and the DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

AFFIDAVIT

Hon. Saliann Scarpulla, J.S.C.
IAS Part 39

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM J. KELLY, being duly sworn, deposes and says:

1. I am the General Counsel for Mazars USA LLP. I am an attorney duly licensed to practice law in the State of New York. I make this affidavit upon personal knowledge and upon the information stated herein.

2. I understand the Court has requested information from Mazars USA as part of the ongoing action entitled the *People of the State of New York v. Donald J. Trump, et al.*, bearing index number 451130/2018.

3. Mazars USA LLP has served as auditors of The Donald J. Trump Foundation (the "Foundation") for several years, including December 31, 2017. The Mazars USA partner responsible for the audit engagement has since retired and is no longer involved in performing any work for the Trump Foundation. However, I have spoken to him on several occasions specifically about the information set forth in the audited financial statements. His understanding is consistent with what is stated herein.

4. As set forth in the Foundation's financial statements as of December 31, 2017, which were audited by Mazars USA, the liabilities of the Foundation as of December 31, 2017, totaled $250. We have no knowledge of any additional liabilities incurred since the date of our report. However, it seems reasonable to speculate that since the date of the financial statements there may have been additional immaterial expenses or liabilities incurred in the ordinary course of business.

5. Mazars USA personnel have obtained a copy of the account balances in the Foundation's bank accounts at Capital One as of May 16, 2019. I have personally reviewed that document. Those balances provided by Capital One indicate that the Foundation has $1,748,146.47 in a money market account and $34,764.45 in an operating account for a total cash on hand as of May 16, 2019, of $1,782,910.92. Neither I nor anyone at Mazars USA know of any other information that would reduce this amount (such as outstanding checks or other pending payments). Similarly, neither I nor anyone at Mazars USA knows of any other bank accounts associated with the Foundation. Please note that because this is the current bank balance as reported by Capital One outside of the audited period, it was not audited as part of the audit referenced previously. However, it is believed to be true and correct.

6. Mazars USA personnel have consulted with Foundation personnel and reviewed the books and records of the Foundation and other available sources to identify all tangible assets purchased by the Foundation using Foundation funds and have identified two categories of such items, (1) a portrait of Donald J. Trump for which the Foundation paid $10,000, and (2) Tim Tebow sports memorabilia, specifically, a Denver Broncos helmet signed by Tim Tebow and a Tim Tebow Broncos jersey for which the Foundation paid $12,000. Neither I nor anyone at Mazars knows of any other tangible assets purchased with Foundation funds that are in

the possession of the Foundation, or in the possession of persons or entities affiliated with the Foundation.

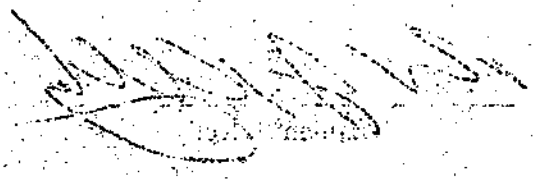
William J. Kelly

Sworn to before me this
9th day of July 2019

Deborah A. Holihan
Notary Public

DEBORAH A. HOLIHAN
Notary Public, State of New York
No. 01HO6130254
Qualified in Nassau County
Commission Expires July 11, 2021

00042230-4



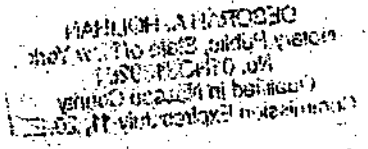


EXHIBIT 2

EXHIBIT 2

1. Army Emergency Relief, EIN 53-0196552
2. Children's Aid Society, EIN 13-5562191
3. City Meals-on-Wheels, EIN 13-3634381
4. Give an Hour, EIN 61-1493378
5. Martha's Table, EIN 52-1186071
6. United Negro College Fund, EIN 13-1624241
7. United Way of National Capital Area, EIN 53-0234290
8. US Holocaust Memorial Museum, EIN 52-1309391

EXHIBIT C

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

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

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

SO-ORDERED STIPULATION

This Stipulation (the "Stipulation") is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondents Donald J. Trump, Jr., Ivanka Trump and Eric F. Trump (collectively, the "Stipulating Respondents"), by their attorneys, Alan S. Futerfas and Marc L. Mukasey. The Attorney General and the Stipulating Respondents are referred to collectively herein as the "Parties."

WHEREAS, the Attorney General commenced the above-captioned special proceeding by the filing of a verified petition (the "Verified Petition") on June 14, 2018;

WHEREAS, pursuant to Section 8-1.4 of the Estates, Powers and Trust Law and Section 112 of the Not-for-Profit Corporation law, the Attorney General may institute proceedings to obtain equitable relief, including bars on service as a fiduciary, to secure the proper administration of charitable organizations;

WHEREAS, in the Verified Petition's First and Second Causes of Action, the Attorney General asserted various claims against the Stipulating Respondents and, among other things, sought equitable relief including a fiduciary bar that could be lifted in the event the Stipulating Respondents completed certain board training;

WHEREAS, the Stipulating Respondents have completed an in-person interactive training session, conducted by a former Bureau Chief of the New York State Attorney General's Charities Bureau, that provided instruction on the statutes applicable to charitable organizations and the fiduciary responsibilities of their directors and officers (the "Board Training Program");

WHEREAS, the Parties have now concluded good faith negotiations and have reached a resolution of the Verified Petition's claims against the Stipulating Respondents and desire to implement such agreement in accordance with the terms and conditions of this Stipulation, which the Parties respectfully request be so-ordered by the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties as follows:

1. Each of the Stipulating Respondents has certified in writing that he or she completed the Board Training Program and has provided such certification to the Attorney General.

2. The Attorney General's agreement to dismiss the Verified Petition's claims against the Stipulating Respondents with prejudice is based on the Stipulating Respondents' successful completion of the Board Training Program.

3. The Stipulating Respondents recognize that the Verified Petition raises important concerns with respect to the Foundation's governance and certain of the Foundation's transactions.

4. The Verified Petition together with all claims therein and parts thereof is hereby dismissed as against the Stipulating Respondents with prejudice.

5. This Stipulation in no way limits or affects any of the claims or relief sought against any other respondents.

6. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation.

7. This Stipulation may be executed in multiple counterparts, each of which shall be deemed a duplicate original. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on October 1, 2019.

LETITIA JAMES
Attorney General of the State of New York

By: _____
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York
10005 (212) 416-8401

Attorney for Petitioners

LAW OFFICES OF ALAN S. FUTERFAS

By: _____
Alan S. Futerfas
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

MUKASEY FRENCHMAN & SKLAROFF LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
(347) 527-3940

Attorneys for Respondents Donald J. Trump, Jr., Ivanka Trump, and Eric F. Trump

SO ORDERED: _____
Justice Saliann Scarpulla

EXHIBIT D

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

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

Petitioner,

- against -

DONALD J. TRUMP, DONALD J. TRUMP, JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

Hon. Saliann Scarpulla, Justice

ORDER AND JUDGMENT OF DISSOLUTION

UPON reading the Verified Petition in the above-captioned action, filed on June 14, 2018 (the "Verified Petition"), seeking, among other things, the judicial dissolution of the Donald J. Trump Foundation (the "Foundation"), a not-for-profit corporation organized and existing under New York law and incorporated in 1987; and

UPON reading the attached So-Ordered Stipulation Concerning the Dissolution of the Donald J. Trump Foundation, signed by the parties on December 11, 2018, and so-ordered by the Court on December 19, 2018 (the "Dissolution Stipulation"), in which the Foundation and the Attorney General of the State of New York (the "OAG") agreed to dissolve the Foundation in accordance with Article 11 of the Not-for-Profit Corporation Law ("N-PCL") and further "agree[d] to the entry of an order pursuant to Section 1109 of the N-PCL dissolving the Foundation, annulling its Certificate of Incorporation, and terminating" its corporate existence;

UPON reading the attached the So-Ordered Stipulation of Final Settlement, signed by the parties on October 1, 2019, and so-ordered by the Court on November 7, 2019 (the "Final Stipulation") pursuant to which the OAG and the Foundation agreed that "the publication requirements of N-PCL § 1104(b) shall be waived based on the representations and warranties made by the Foundation" in the Final Stipulation; it is hereby:

ORDERED and ADJUDGED that, in accordance with the above-referenced stipulations, the Foundation shall be dissolved pursuant to Article 11 of the N-PCL; and it is further

ORDERED and ADJUDGED, pursuant to N-PCL Sections 1006 and 1115 that the Foundation and all those acting on its behalf, shall cease all activities on behalf of the Foundation except for the purpose of winding up its affairs in accordance with this Order; and it is further

ORDERED and ADJUDGED that the OAG shall transmit certified copies of this Order and Judgment of Dissolution to the Department of State; to the clerk of New York County, the county in which the office of the Foundation was last located; and to the parties herein; and it is further

ORDERED and ADJUDGED that upon filing by the Department of State of the State of New York, the Foundation shall be dissolved; and it is further

ORDERED and ADJUDGED that this Court shall retain jurisdiction over this matter for all purposes after the date of entry of this Order and Judgment.

Order and Judgment signed this _____ day of _____, 2019.

ENTER:

Honorable Saliann Scarpulla
Justice of the Supreme Court
New York County

Attachment 11

EXECUTION VERSION

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

THE PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York,

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR., IVANKA TRUMP, ERIC F. TRUMP, and THE DONALD J. TRUMP FOUNDATION,

Respondents.

Index No. 451130/2018

SO-ORDERED STIPULATION CONCERNING THE DISSOLUTION OF THE DONALD J. TRUMP FOUNDATION

This Stipulation Concerning the Dissolution of The Donald J. Trump Foundation (the "Stipulation") is entered into by and between Petitioner The People of the State of New York by Barbara D. Underwood, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondent The Donald J. Trump Foundation ("the Foundation"), by its attorney, Alan S. Futerfas. The Attorney General and the Foundation are referred to collectively herein as the "Parties."

WHEREAS, the Attorney General commenced the above-captioned special proceeding against the Foundation by the filing of a verified petition (the "Verified Petition") on June 14, 2018 (the "Special Proceeding");

WHEREAS, in the Fourth, Fifth, and Sixth Causes of Action in the Verified Petition, the Attorney General has asserted claims for the dissolution (the "Dissolution Causes of Action") of the Foundation pursuant to sections 112(a), 1101(2) and 1102(a)(2) of Article 11 of the New York Not-For-Profit Corporation Law ("N-PCL"), and pursuant to section 1109 of the N-PCL, in an action brought by the Attorney General, the "interest of the public is of paramount importance";

EXECUTION VERSION

WHEREAS, in consideration of the Respondents' agreement to not contest the Dissolution Causes of Action, the Attorney General will permit Respondents to designate, subject to the Attorney General's approval, not-for-profit organizations to receive distributions from the assets remaining after the Foundation is dissolved;

WHEREAS, the Parties have now concluded good faith negotiations and have reached a resolution of Paragraph G of the Petition's Prayer for Relief and desire to implement such agreement in accordance with the terms and conditions of this Stipulation, which the Parties respectfully request be so-ordered by the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties that the Dissolution Causes of Action are resolved as follows:

1. That the Parties agree that the Foundation should be dissolved and agree to the entry of an order pursuant to Section 1109 of N-PCL dissolving the Foundation, annulling its Certificate of Incorporation, and terminating the corporate existence of the Foundation.

2. The dissolution process shall proceed under judicial supervision in accordance with Article 11 of N-PCL.

3. That, within thirty (30) days of when this Stipulation is so ordered by the Court, the Parties shall jointly submit to the Court a list of not-for-profit organizations to receive distributions, in equal amounts, from the assets remaining upon the issuance of a final Order of Dissolution.

4. The Parties agree that the Attorney General may object to the distribution of funds to any organization designated pursuant to Paragraph 3 hereof if information is revealed after this Stipulation is so-ordered, but before a final order of dissolution is entered, that negatively affects the suitability of such organizations to receive distributions of charitable assets in this matter, such determination to be made solely by the Attorney General.

EXECUTION VERSION

5. Pursuant to N-PCL § 1111, the Foundation will maintain all of its assets as of the execution of this Stipulation.

6. This Stipulation in no way limits or affects any of the other claims in the Verified Petition.

7. This Stipulation in no way limits or affects the rights or remedies of any third party.

8. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation.

9. This Stipulation may be executed in multiple counterparts, each of which shall be deemed a duplicate original. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on December 11, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: _____
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York 10005
(212) 416-8401

Attorney for Petitioners

LAW OFFICES OF ALAN S. FUTERFAS

By: _____
Alan S. Futerfas, Esq.
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

Attorney for The Donald J. Trump Foundation

SO ORDERED: _____
Justice Saliann Scarpulla

DATED: 12/19/2018