

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p>Plaintiff,</p> <p>v.</p> <p><b>58TH PRESIDENTIAL INAUGURAL COMMITTEE et al.,</b></p> <p>Defendants.</p>	<p>Civil Action No.: 2020 CA 000488 B Judge José M. López Next Event: Dispositive Motions Date: April 8, 2021</p>
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**PLAINTIFF DISTRICT OF COLUMBIA'S OPPOSED MOTION FOR SUMMARY  
JUDGMENT AND COMBINED MEMORANDUM IN SUPPORT**

Dated: March 24, 2021

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## **INTRODUCTION**

This nonprofit enforcement case arises out of improper spending by Defendant 58th Presidential Inaugural Committee (the “PIC”), a nonprofit entity established by former President Trump to put on events around the 2017 Presidential Inauguration. Instead of following its common law and statutory duties to spend the charitable funds it raised in ways that served the public, the PIC wasted more than \$1 million overpaying for event space at Defendant Trump Old Post Office LLC d/b/a Trump International Hotel Washington, D.C. (“Trump Hotel” or “Hotel”). President Trump and his daughter Ivanka Trump were involved in the negotiations leading to the inflated price that the Hotel charged the PIC, and several hundred thousand dollars of these wasted funds paid for a private party for the former President’s children at his Hotel. The PIC also improperly paid off a \$50,000 debt of Defendant Trump Organization LLC (“Trump Organization”) for charges at another hotel. Not only did these payments constitute improper charitable waste, but they also enriched the private interests of former President Trump and his family, who exercised substantial influence over the PIC. The material facts around these improper payments are undisputed, and the District moves pursuant to SCR-Civil 56 for summary judgment on its two Counts for violations of District nonprofit law. As relief on those Counts, the District requests that the Court impose a constructive trust over all misspent funds and return them to a nonprofit dedicated to civic engagement.

### **SUMMARY OF UNDISPUTED MATERIAL FACTS**

The PIC was incorporated as a nonprofit in 2016 exclusively for and bound by a public purpose: “to further the common good and general welfare of the citizens of the United States of America by supporting the activities surrounding the 2017 Presidential inauguration.” Statement of Undisputed Material Facts (“SOF”) at ¶¶6-7. In the days following the election, then-President-elect Donald Trump authorized the creation of the nonprofit and appointed Thomas J. Barrack, Jr., a close personal friend, as the PIC’s Chairman. SOF ¶¶2, 15. Barrack assembled a team to lead the planning

of the Inauguration, including appointing a former official from the Trump Campaign, Rick Gates, as the PIC's Deputy Chairman. SOF ¶16. At the recommendation of the Trump family, Barrack also hired Stephanie Winston Wolkoff to act as one of the PIC's planners, largely because of her extensive experience planning large-scale events. SOF ¶¶21-23.

Mere days following its formation, the PIC toured and notified several venues that they were being considered for hosting an official Inaugural event. SOF ¶26. The list included the expected iconic DC landmarks, such as the National Museum of African American History & Culture, the Library of Congress, the National Archives, the National Building Museum, the Andrew W. Mellon Auditorium, the National Gallery of Art, Union Station, and the Walter E. Washington Convention Center. SOF ¶28. There was also a single hotel on the list: the Trump Hotel. SOF ¶27. Early on, PIC officials understood that the President-elect would expect the PIC to hold at least one event at the Hotel owned by and bearing the Trump name. SOF ¶30.

On December 10, 2016, the Trump Hotel sent the PIC an initial price proposal: \$3.6 million for a full buyout of all event space and minimum food and beverage over eight days, or \$450,000 per day. SOF ¶33. Experienced event planners at the PIC immediately flagged this price as extraordinarily high. SOF ¶¶34-35. Rather than reaching out to either the Hotel's General Manager, Mickael Damelin court, or the Hotel's Director of Sales and Marketing, Patricia Tang, both of whom were responsible for formulating the initial proposal, Gates instead contacted Ivanka Trump to request assistance in securing a lower price. SOF ¶34. In doing so, Gates expressed concern that "the cost itself seems quite high compared to other property buyouts for the week" and expressed worries "about the optics of PIC paying Trump Hotel a high fee." *Id.* Ms. Trump agreed that the price seemed quite high, and subsequently contacted Damelin court and directed him to work with Gates. SOF ¶¶36, 41.

On December 16, 2016, Ms. Wolkoff met with President-elect Trump and Ivanka Trump at Trump Tower to discuss on-going inaugural planning issues. SOF ¶42. Having earlier raised her concerns about the Trump Hotel pricing with Gates, at this meeting Wolkoff raised her concerns about the Trump Hotel's event space pricing directly with the President-elect. SOF ¶¶35, 42-43. The President-elect directed his daughter Ivanka Trump to personally handle the pricing issues for event spaces at the Hotel. SOF ¶43.

That same day, Gates and Damelincourt met at the Trump Hotel (where Gates was staying) to engage in further negotiations. SOF ¶45. This meeting was unusual, as Gates was not directly involved in negotiating contracts on behalf of the PIC for any other venues. SOF ¶46. In fact, this was the first time Gates had ever negotiated a contract for hotel event space. SOF ¶¶46, 55. Going into this meeting, Gates had no idea what a fair market price was, nor did Gates consult with other PIC staff who had more experience with event planning, such as Ms. Wolkoff, prior to meeting with Damelincourt. SOF ¶46. Gates's only goal was to get a "lower price" than the exorbitant \$3.6 million initially offered. SOF ¶51. During this meeting, Gates did not ask (or consider asking) Damelincourt to provide event space free of charge to the PIC, as Gates knew President-elect Trump "was not a big gifter." SOF ¶47. Nor did Gates ask for any discount based on the considerable guest room business the PIC would generate for the Trump Hotel. *Id.*; *see also* SOF ¶¶75-81

During their short meeting on December 16, 2016, Gates and Damelincourt agreed to a final rate for the PIC to pay the Hotel: \$700,000 for use of event space, or \$175,000 per day. SOF ¶48. Gates also agreed to hold at least two events at the hotel: the Leadership Luncheon on January 19 and an Inaugural Celebration on January 20. *Id.* All food and beverage charges would be in addition to this price, so the hotel could expect significant additional revenue on top of the \$700,000 event space charge. SOF ¶¶48, 50. When Gates forwarded these new terms to other senior PIC staff who actually had event planning experience, Ms. Wolkoff again objected that the price was unreasonably

high. SOF ¶52. Wolkoff specifically warned both Gates and Ivanka Trump:

... Please take into consideration that when this is audited it will become public knowledge that locations were also gifted and costs underwritten to lower rental fees. I understand that compared to the original pricing this is great but we should look at the whole context. In my opinion the max rental fee should be \$85,000 per day.

*Id.* Before issuing this warning, Ms. Wolkoff had analyzed the price proposals that the PIC had received for other venues under consideration for official Inaugural events and knew that certain venues, like Union Station and the National Gallery of Art, would be donated for the PIC's use. SOF ¶¶52-53. Ignoring Ms. Wolkoff's objections, Mr. Gates requested that the Trump Hotel proceed with drafting a contract reflecting the negotiated terms. SOF ¶57. At no point did the PIC seek proposals from other venues for the events the PIC intended to hold at the Trump Hotel. SOF ¶58. The PIC and the Trump Hotel finalized the contract on January 10, 2017. SOF ¶63.

Throughout the course of negotiations, both the PIC and the Trump Hotel knew that another nonprofit organization, the Presidential Inaugural Prayer Breakfast ("Prayer Breakfast") had already booked the Hotel's largest event space (the Presidential Ballroom) for half of the day on January 20, 2017 – the same day the PIC was reserving that same space. *See* SOF ¶59. Under its contract with the Trump Hotel, signed on September 9, 2016, the Prayer Breakfast only paid \$5,000 for use of the Ballroom – a small fraction of what the Hotel was charging the PIC for that same space. SOF ¶¶83-84. This much lower price, unlike the price charged to the PIC, reflected the Hotel's pricing guidelines at the time of the signing of the contract. SOF ¶84. When the Trump Hotel's Director of Catering attempted to lower the price the PIC would be charged for January 20, 2017 from \$175,000 to \$105,000 to reflect that the PIC would not have access to all of its contracted space in light of the Prayer Breakfast's competing contract, he was instructed to charge the higher amount. SOF ¶¶59-62.

In addition to overpaying for event space, one of the two events the PIC actually held at the Trump Hotel (the Inaugural Celebration on the evening of January 20, 2017) ended up being a private party for the Trump children and guests of the Trump Hotel. *See* SOF ¶¶67-70. Although originally included as one of the PIC’s official events in the early stages of planning, by early January 2017, senior PIC staff had made the decision to cancel the event as inappropriate because of the private nature of the event. SOF ¶65. When the Trump Hotel learned of the cancellation on January 3, 2017, Damelin court complained to Gates that the Hotel would lose a large amount of revenue if the PIC canceled the event. SOF ¶66. Abandoning his fiduciary duties to the PIC, Gates assured Damelin court that the PIC would hold some event at the Hotel that evening: “If not an actual inaugural event we are looking at some sort of small event for the hotel guests.” SOF ¶67. Within a few days, the event was back on. *See* SOF ¶68. In conveying details about the event to Ivanka Trump on January 11, 2017, Mr. Gates confirmed that the event was intended to be “more for you [Ivanka], Don and Eric.” *Id.* Attendance was by invitation only, and guests were limited to friends and family of the President-elect and guests of the Hotel. SOF ¶69. Incredibly, the final decision to proceed with the event was not even made by the PIC, but by Donald Trump, Jr. *See* SOF ¶70. In total, the PIC spent at least \$288,367.71 in rental and food charges on this private event alone. SOF ¶72.

In a second instance of misuse of the PIC’s nonprofit funds to benefit the Trump family, Gates also conspired with the Trump Organization to arrange for the PIC to pay off an unpaid debt of almost \$50,000 for rooms reserved by the Trump Organization at another hotel. *See* SOF ¶¶106-110. In December 2017, the Trump Organization contracted with the Loews Madison hotel for a block of hotel rooms for use by Trump family and friends during the week of the inauguration. SOF ¶¶95-97. When the Trump Organization failed to pay for some of those unused rooms, the Loews Madison sent the bill to a collection agency. SOF ¶104. In July 2017, Rick Gates became involved and directed the collections’ agency to change the name on the invoice, indicating that the PIC

would provide payment but the invoice “cannot say ‘The Trump Organization’.” SOF ¶¶107. Before arranging for the invoice to be forwarded to the PIC, PIC staff knew nothing about this room block. SOF ¶¶99-103. Despite having no reason to pay for the Trump Organization’s unpaid invoice, the PIC still paid the invoice, thus covering a debt of \$49,358.92 owed by the Trump Organization. SOF ¶¶109-110.

In total, the PIC improperly paid \$1,083,115.86 of its nonprofit funds either to or on behalf of the Trump Defendants. SOF ¶¶88, 109 (combined total of event space, food and beverage, and Loews Madison payments).

### **ARGUMENT**

The undisputed facts confirm that the PIC wasted its nonprofit charitable funds by (i) overpaying for event space at the Trump Hotel that it also used to hold an improper private event for the Trump children and hotel guests, and (ii) paying off a debt of the Trump Organization. These undisputed payments violated District law safeguarding nonprofit charitable funds in two different ways. First, the PIC’s improper payments constituted common law waste of charitable funds. Second, those payments also violated the Nonprofit Corporation Act (“NCA”) because they violated restrictions against private inurement in the PIC’s Articles of Incorporation and IRS regulations prohibiting excess benefit transactions. Because there are no undisputed material facts, the District is entitled to a judgment as a matter of law, pursuant to SCR-Civil 56, on its Count I against all Defendants, and Count II against Defendants PIC and the Trump Organization, that the PIC’s improper payments violated common law and statutory protections over nonprofit funds. The District is also entitled to entry of a constructive trust restoring those misspent funds to a proper charitable purpose.

## **I. The PIC Wasted Its Charitable Funds.**

The public has an interest in ensuring that charitable funds are used for proper public-serving purposes. *Hooker v. Edes Home*, 579 A.2d 608, 612 (D.C. 1990). The Attorney General can sue at common law to enforce this public interest. *Id.*; *see also Family Fed'n for World Peace v. Hyun Jin Moon*, 129 A.3d 234, 244 n.15 (D.C. 2015); *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 905 (D.C. Cir. 2020) (noting that the Attorney General can bring a common law claim to enforce the terms of a charitable trust); *Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum*, 798 A.2d 1068, 1075 n.6 (D.C. 2002) (quoting Restatement (Second) of Trusts ¶ 348 cmt. f). To exercise its common law enforcement authority over the PIC, the District need only demonstrate that the PIC improperly diverted resources given to it to support its charitable purpose. *Id.*

The District of Columbia has followed other jurisdictions in embracing a common law claim of waste of corporate assets applying to nonprofits. “The essence of a waste claim is the diversion of corporate assets for improper and unnecessary purposes.” *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 730 (D.C. 2011); *see also People v. Trump*, 88 N.Y.S 3d 830, 840 (N.Y. Sup. Ct. 2018) (same). District of Columbia law thus gives the Attorney General common law enforcement authority to ensure that a nonprofit charitable corporation “not [] divert the property to other purposes but [instead] apply it to one or more of the charitable purposes for which it is organized.” *Orphan Asylum*, 798 A.2d at 1075 n.6. To succeed on such a claim, the District need only show that PIC diverted its corporate assets for improper and unnecessary purposes. *Daley*, 26 A.3d at 730.

The PIC wasted its nonprofit funds in two ways that are not subject to any real factual or legal dispute. First, in its payments to the Trump Hotel, the PIC paid an exorbitant price for event space when less expensive and even free options were available and in the process used charitable funds to throw a private party for the Trump children and Hotel guests. Second, the PIC engaged in

corporate waste when it paid an invoice for hotel rooms at the Loews Madison reserved by the Trump Organization and used by Trump family friends. Each of these forms of corporate waste enriched the private interests of the Trump family rather than promoting the PIC's public-serving charitable purpose.

A. The PIC wasted its funds overpaying for event space at the Trump Hotel and hosting a private event for the Trump children.

By paying an exorbitant price for event space at the Trump Hotel without considering other available less-expensive options, the PIC failed to spend its funds reasonably and for a charitable purpose. The undisputed facts show that the PIC allowed an individual with no experience in event planning and conflicted loyalties negotiate on its behalf and then accepted a price that clearly exceeded prices for other venues with which the PIC had already contracted or had access to. The undisputed facts also show that the PIC wasted its charitable funds on a private party for the Trump family at their own Hotel.

First, it is not credibly disputed that the PIC paid too much for event space at the Trump Hotel that it could have received elsewhere for free or at a significantly reduced rate. This is unsurprising, given that Rick Gates, who negotiated with the Trump Hotel on behalf of the PIC, admitted at his deposition that he had no prior experience negotiating contracts for hotel event space. SOF ¶¶46, 55. Gates even admitted he entered the negotiations without any idea of what an appropriate price would be, even though the PIC had hired experienced event planners, including Ms. Wolkoff, who understood how to determine an appropriate rental price. SOF ¶46; *see* SOF ¶¶23, 52. Gates' only goal was to get a number lower than the original offer, not to ensure that the PIC reasonably expended its funds based on other available options. *See* SOF ¶51. Contrary to the inexperienced Gates, the individual at the PIC with actual experience organizing events specifically warned both Gates and the Trump family that the PIC was paying the Trump Hotel an unreasonably high rate. SOF ¶52. As Ms. Wolkoff specifically told both Gates and Ivanka Trump: "when this is

audited it will become public knowledge that locations were also gifted and costs underwritten to lower rental fees.” *Id.* In fact, the PIC had access to both free and reduced rate event space at landmark locations. SOF ¶53. The Trump Defendants and the PIC ignored Ms. Wolkoff’s warnings and proceeded with the wasteful contract.<sup>1</sup>

Second, it is undisputed that one of the two events that the PIC paid for at the Trump Hotel was a private event for the Trump children and guests at the family’s Hotel. SOF ¶¶67-70. That this was really a private party for the Trump family and their hotel guests is confirmed by Gates’ admissions to (1) Damelin court that the PIC would do “some sort of small event for the hotel guests” SOF ¶67; and (2) Ivanka Trump that the event was “more for you [Ivanka], Don and Eric.” SOF ¶68. Unlike other PIC events, only individuals on the Friends and Family list and guests of the Trump Hotel could attend, making it undisputed this was an event for just the Trump family. SOF ¶69. This event also only went forward at the final direction of the Trump family and not the PIC. *See* SOF ¶70. It was categorically improper for the PIC to spend almost \$300,000<sup>2</sup> in charitable funds meant to benefit the public on what was a private party for the Trump children and the guests staying at the Hotel their family owned.

In short, it is undisputed that the PIC wasted its nonprofit funds by paying for event space at the Trump Hotel and throwing a private party for the Trump children.

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<sup>1</sup> Defendants’ *post-hoc* attempt, through expert testimony in this case, to claim that the PIC’s payment to the Trump Hotel was reasonable does not create a material dispute. The PIC had a duty to exercise due diligence in real time to ensure that it was expending its funds without waste and for the benefit of its public purpose as opposed to any private purpose or benefit. By failing to consider a full spectrum of available and less expensive options, by using an inexperienced negotiator who was admittedly not seeking to maximize value for the PIC when more appropriately experienced and goaled event planners were already on retention, by ignoring real-time warnings from one such event planner about the extravagant rental costs, and by agreeing to pay for space that another organization was also renting on the same day but paying significantly less, the PIC was derelict in its duty to safeguard its charitable funds.

<sup>2</sup> The PIC paid \$175,000 in rental charges on a pro-rated basis for January 20, 2017 plus an additional \$113,000 in food and beverage charges for the January 20, 2017 Trump Hotel event. SOF ¶72.

B. The PIC wasted its funds paying a private debt of the Trump Organization.

It is also undisputed that the PIC wasted its funds by paying an almost \$50,000 debt of the Trump Organization. In July 2017, the PIC received an unpaid invoice from the Loews Madison Hotel for a hotel room reserved by the Trump Organization in December 2016. SOF ¶106. The point of contact for the contract was Lindsay Santoro, Donald Trump, Jr.'s executive assistant at the Trump Organization at the time. SOF ¶96. None of the senior PIC staff were aware of this contract, including the PIC staff in charge of budget, hotel accommodations, and donations, and the Loews Madison was not one of hotels with which the PIC had contracted. SOF ¶¶99-103. Rather, after a collection agency was unsuccessful in getting the Trump Organization to pay the debt, Rick Gates arranged for the name on the invoice to be changed from the Trump Organization to the PIC and submitted it to the nonprofit for payment. SOF ¶¶105-107. Despite receiving this invoice long after the Inauguration and with no clear understanding of who the rooms were for or why the PIC had been directed to pay for the invoice, the PIC paid \$49,358.92 to cover a debt incurred by the Trump Organization. SOF ¶109.

During discovery, the PIC provided two incredible explanations for why the PIC approved the invoice, neither of which creates a material dispute that this contract was entered into by the Trump Organization and not the PIC. The first explanation was that the PIC paid this invoice to prevent any financial issues for Gentry Beach, the individual who booked the rooms for the Trump Organization. According to Gates, Beach served “on the PIC vice finance committee and it was determined to go ahead and make that payment because we [the PIC] didn’t want the information to hit a collection agency, so we wanted to take care of the issue right away.” (Dep. Tr. of Richard Gates, Ex. E to SOF, 310:21-311:5.) But this explanation does not change the fact that the Trump Organization contracted for these rooms. The second explanation offered by the PIC was that these rooms were part of some donation package for PIC donors. (*Id.* at 313:7-13; 315:10-21.) However,

none of the PIC's donor packages came with pre-paid hotel rooms. (PIC Donor Packages, PIC-DCAG000111099-104, Ex. 201 to SOF.) Moreover, notes from the debt collection agency that had contacted Gates show that the Trump Organization refused to pay the invoice even though the contract had been requested and authorized by a Trump Organization representative, and Gates stepped in and directed that the invoice be addressed to and paid by the PIC to prevent further escalation. (Debt Collector Notes, Ex. 129 to SOF.)<sup>3</sup>

In short, it is undisputed this contract was entered into by the Trump Organization, and the PIC wasted its charitable funds when it paid this debt.

## **II. PIC's Improper Payments Violated the Nonprofit Corporation Act.**

The District's Nonprofit Corporation Act also prohibited the PIC from spending its funds to enrich the private interests of the Trump Entities. The NCA prohibits a nonprofit corporation from "abus[ing] the authority conferred upon it by law." D.C. Code § 29-412.20(a)(1)(B). The PIC abused the authority conferred on it by law in two different ways. First, PIC's Articles of Incorporation contain a specific provision prohibiting private inurement. This standard provision states that "no part of the net income of the [PIC] shall inure to the benefit of or be distributed to its directors, officers, or other private persons, except that the [PIC] shall be authorized and empowered to pay reasonable compensation for services actually rendered." SOF ¶9. As case law addressing the

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<sup>3</sup> Rick Gates offered this second explanation about the rooms being used by PIC donors at his deposition in December 2020. Ex. E to SOF at 313:7-13; 315:10-21.) Donald Trump, Jr.'s deposition testimony from February 2021 (*see* Ex. C to SOF at 128:21-130:11; 135:18-146:15) and documents subsequently produced by the PIC in March 2021 contradict Gates' testimony on this point. (PIC Donor Packages, Ex. 201 to SOF). Unsure of which of the various stories on this point to stick with, in Interrogatory Responses submitted on March 10, 2021, the PIC simply retreated and said the invoice was paid based on Gates' business judgment. (PIC's Response to District's First Set of Interrogatories, Ex. 202 to SOF.) The PIC cannot reasonably argue that its own inconsistent testimony creates a genuine dispute of material fact. "[I]t is well established that a genuine issue of fact is not created where the only issue of fact is to determine which of the two conflicting versions of a party's testimony is correct." *In re Family Dollar FLSA Litigation*, 637 F.3d 508, 512 (4th Cir. 2011) (citing *Erwin v. United States*, 591 F.3d 313, 325 n.7 (4th Cir. 2010)). Nor can inconsistent testimony create a genuine dispute of material fact when it is clearly contradicted by other witness testimony and evidence in the record. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for the purposes of ruling on a motion for summary judgment.")

concept of private inurement universally finds, even one dollar of misspent funds is sufficient to trigger improper private inurement. *Church of Scientology of California v. Commissioner of Internal Revenue*, 823 F.2d 1310, 1316 (9th Cir. 1987) (“The term ‘no part’ is absolute. The organization loses tax exempt status if even a small percentage of income inures to a private individual.”); *Spokane Motorcycle Club v. United States*, 222 F. Supp. 151, 153-54 (E.D. Wash. 1963) (finding that there is no *de minimis* limit to private inurement). Second, as a self-declared 501(c)(4) social welfare organization, the PIC was also required to comply with IRS regulations governing its spending. When it spent money in violation of these restrictions in its articles of incorporation and IRS regulations, the PIC abused the authority conferred on it by law and thereby violated the NCA.

A. PIC’s Payments to the Trump Hotel and the Trump Organization Constituted Improper Private Inurement in Violation of the PIC’s Articles of Incorporation.

For many of the same reasons that the PIC’s contract with the Trump Hotel and payment of the Trump Organization’s debt constituted waste of charitable funds, those payments also constituted improper private inurement that violated the PIC’s legal authority as set out in its Articles of Incorporation. First, as to the payments to the Trump Hotel, there is no real dispute that the Trump Hotel overcharged the PIC for event space that the PIC could not even use the full time because it was double-booked. The Hotel’s charges to the PIC were well in excess of both the Hotel’s own pricing guidelines and the price for which the PIC could have obtained the space elsewhere. *See* SOF ¶¶53, 84. The PIC’s own event planner warned the PIC and Ivanka Trump that the final amount the PIC agreed to pay was well in excess of what the PIC should have paid for event space. SOF ¶52. In a minute of candor at his deposition, Gates admitted that he did not even know what a fair price would be. SOF ¶46. It is also undisputed that one of the events the PIC put on at the Hotel was a private event for the Trump children and Hotel guests, not a public event to support the Inaugural. *See* SOF ¶¶67-70. It cannot be disputed that these payments caused the PIC’s funds to inure improperly to the benefit of the Trump family, through the Trump Defendants. SOF ¶¶12-14, 86.

Second, PIC's payment of a Loews Madison bill for rooms reserved by the Trump Organization for use by the Trump family's friends and acquaintances also constituted straightforward private inurement. PIC did not reserve those rooms or enter into that contract: the Trump Organization did. SOF ¶¶95, 99. PIC did not even find out about these hotel rooms until six months after the Inaugural took place, when the bill was forwarded to the PIC from the Trump campaign after Gates was contacted by a collection's agency. SOF ¶¶99-103, 106. There was no social welfare justification for the PIC paying the private hotel bills of the Trump Organization. Accordingly, in paying the hotel bill at the Loews Madison arranged for by a private entity, PIC engaged in impermissible private inurement to the Trump Organization and its owners. In short, the PIC's payments to the Trump Hotel and its payment of the Trump Organization's debt resulted in improper private inurement in violation of the PIC's Articles of Corporation and the NCA.

**B. PIC Engaged in an Impermissible Excess Benefit Transaction.**

The PIC's contract with the Trump Hotel also exceeded and abused the authority conferred on the PIC by law because it was an excess benefit transaction prohibited by federal tax laws and regulations. The PIC elected to declare itself a Section 501(c)(4) entity, thereby accepting the limitations on its actions set out in IRS regulations. Those regulations prohibit entities like PIC from engaging in excess benefit transactions. Such transactions include those "in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit." 26 U.S.C. § 4958(c)(1)(A). Disqualified persons include an individual "in a position to exercise substantial influence over the affairs of the organization" and any family member of such an individual. *Id.* § 4958(f)(1). Courts have broadly construed such an individual "as any person 'having a personal or private interest in the activities of the organization,' including the

organization's founder and family.” *Airlie Found., Inc. v. United States*, 55 F.3d 684, 1995 WL 310025, at \*3 (D.C. Cir. 1995).

It is undisputed that former President Trump and his family were disqualified persons under applicable federal tax laws. PIC was founded to celebrate the inauguration of Donald Trump, and Trump himself authorized the creation of the PIC and appointed the PIC’s Chairman. SOF ¶¶2, 6-7, 15. Indeed, Trump’s role as founder of the PIC is sufficient to be considered a “disqualified person or ‘insider’ for purposes of the proscription against private inurement. (Owens Rep. at 12) (filed on December 23, 2020). But Trump’s role was not so limited: he and his family also regularly exercised review and control over the events that PIC held, including ultimate control over the price that PIC paid for renting the event space at the Hotel. *See* SOF ¶¶2, 15, 21, 36, 42-43. The District’s expert in this case, a former high-ranking IRS official, concluded that this activity “aptly demonstrates the level of personal involvement by Donald J. Trump and his family members in PIC’s operational decision making.” (Owens Rep. at 15). And all of the revenue from the Hotel flowed also ultimately to the Trump family. SOF ¶86. In overpaying for event space at the Trump Hotel, “PIC permitted its funds to inure to the benefit of Donald J. Trump and the Trump family, as the beneficial owners of the Trump Hotel,” (Owens Rep. at 19), as Trump was a “PIC insider who clearly had significant ability to influence PIC’s decision-making” and such “decisions resulted in the Trump Hotel, and ultimately, its owner, benefiting to a greater degree than otherwise would have occurred.” (Owens Rep. at 20.) Accordingly, PIC’s contract with the Trump Hotel constituted a prohibited excess benefit transaction, in direct contravention of PIC’s status as a 501(c)(4) social welfare corporation. By violating applicable IRS regulations, the PIC violated the NCA by exceeding or abusing its lawful authority, D.C. Code § 29-412.20(a)(1)(B).

### **III. A Constructive Trust For \$1,083,115.86 is Appropriate Here**

Because it is undisputed that the PIC violated the common law and statutory prohibitions

safeguarding nonprofit charitable funds, the Court should impose a constructive trust over (1) the full \$1,033,756.94 the PIC paid to the Trump Hotel for use of event space during the week of Inauguration, and (2) the \$49,358.92 that the PIC paid for the Loews Madison contract entered into by the Trump Organization. Both the common law and the NCA authorize a constructive trust as an equitable remedy when, as here, a charitable nonprofit organization wastes its funds or engages in private inurement transactions. *See Gray v. Gray*, 412 A.2d 1208, 1210-11 (D.C. 1980); D.C. Code § 29-412.20(a) (specifically authorizing a constructive trust). As the Superior Court has held in a prior nonprofit enforcement case, “[a]ny transaction” may establish a basis for imposing a trust and any holder of property may be subject to a duty in equity to convey it to another.” *District of Columbia v. Options Pub. Charter Sch.*, 2013 CA 006644 B, at 8 (D.C. Super. Ct. Jan. 15, 2014) (cleaned up). The Trump Defendants have been unjustly enriched by retaining misspent charitable funds wasted by the PIC. To correct for this misspending of charitable funds, the District respectfully requests that this Court impose a constructive trust over the \$1,083,115.86 in funds paid by the PIC to, or on behalf of, the Trump Defendants. The District requests that those funds subject to a constructive trust be directed to another nonprofit entity dedicated to civic engagement identified by the District.

### **CONCLUSION**

The undisputed facts here show that the PIC wasted its charitable funds in a manner that enriched former President Trump and his family members by overpaying for event space at the Trump Hotel and paying for a private event and by paying a debt on behalf of the Trump Organization. The District therefore respectfully requests that the Court grant summary judgment in its favor and impose a constructive trust for \$1,083,115.86, reflecting the total amount of funds that the PIC improperly paid to the Trump Hotel or on behalf of the Trump Organization.

Dated: March 24, 2021

Respectfully submitted,

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**POINTS AND AUTHORITIES IN SUPPORT**

1. The points and authorities and record cited herein.
2. Super. Ct. Civ. R. 56.

**RULE 12-I STATEMENT**

The undersigned certifies that on March 23, 2021, the District contacted counsel for Defendants 58th Presidential Inaugural Committee, Trump Old Post Office LLC d/b/a Trump International Hotel Washington, D.C., and Trump Organization LLC. Defendants do not consent to the relief sought in the District's Motion.

/s/ Leonor Miranda  
LEONOR MIRANDA  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, Leonor Miranda, certify that on March 24, 2021 a copy of the foregoing Plaintiff District of Columbia's Motion for Summary Judgment was served on all counsel of record via CaseFileXpress.

/s/ Leonor Miranda  
LEONOR MIRANDA  
Assistant Attorney General

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<p><b>DISTRICT OF COLUMBIA,</b></p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p><b>58TH PRESIDENTIAL INAUGURAL COMMITTEE et al.,</b></p> <p style="text-align:center">Defendants.</p>	<p>Civil Action No.: 2020 CA 000488 B</p>
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**ORDER**

Upon consideration of the Motion for Summary Judgment filed by Plaintiff District of Columbia's, Defendants' Oppositions, and the entire record in this case, it is hereby:

**ORDERED** that Plaintiff District of Columbia's Motion for Summary Judgment is **GRANTED;** and it is

**FURTHER ORDERED** that a constructive trust in the amount of \$1,083,115.86 is entered jointly and severally against Defendants Trump Organization LLC and Trump Old Post Office LLC d/b/a Trump International Hotel Washington, D.C.; and it is

**FURTHER ORDERED** that all amounts subject to the constructive trust shall be paid to a nonprofit entity or entities identified by the District.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE JOSÉ M. LÓPEZ  
Superior Court of the District of Columbia

Copies to: all counsel of record