EXPEDITED REVIEW REQUESTED
(Decision & Order Before July 3, 2024)

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

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

Plaintiff-Respondent,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants,

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC), et al.,

Non-Party Appellants.

No. 2023-04925

Supreme Court
New York County
Index No. 452564/2022

NOTICE OF MOTION TO DISMISS DEFENDANTS' INTERLOCUTORY APPEAL OR, IN THE ALTERNATIVE, TO CONSOLIDATE BRIEFING

PLEASE TAKE NOTICE that upon the attached affirmation of Assistant Solicitor General Daniel S. Magy, dated June 7, 2024, and the exhibits thereto, and upon all of the prior pleadings and proceedings had herein, plaintiff People of the State of New York will move this Court at the Appellate Division, First Department Courthouse, 27 Madison Avenue, New York, New York, on June 17, 2024, for an order dismissing defendants' interlocutory appeal on motion for summary judgment[1] or, in the alternative, requiring consolidated briefing in defendants' interlocutory appeal and their appeal from final judgment (Nos. 2024-01134, 2024-01135).

[1] The same decision and order also imposed sanctions on the defendants' counsel, the nonparty appellants before this Court. Plaintiff does not seek to dismiss those separate sanctions appeals currently filed under the same docket number.

Dated: New York, New York
June 7, 2024

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondent

By: _____
Daniel S. Magy
Assistant Solicitor General
Office of the Attorney General
28 Liberty Street
New York, New York 10005
daniel.magy@ag.ny.gov
(212) 416-6073

EXPEDITED REVIEW REQUESTED
(Decision & Order Before July 3, 2024)

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

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

Plaintiff-Respondent,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants,

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC), et al.,

Non-Party Appellants.

No. 2023-04925

Supreme Court
New York County
Index No. 452564/2022

AFFIRMATION IN SUPPORT OF MOTION TO DISMISS DEFENDANTS' INTERLOCUTORY APPEAL OR, IN THE ALTERNATIVE, MOTION TO CONSOLIDATE BRIEFING

DANIEL S. MAGY an attorney duly admitted to practice law in New York, affirms upon penalty of perjury in New York, which may include a fine or imprisonment, that the following is true:

1. I am an Assistant Solicitor General in the Office of Letitia James, Attorney General of the State of New York (OAG), counsel for the plaintiff in this Executive Law § 63(12) enforcement action against defendants—entities operating as the Trump Organization and certain executives of the Trump Organization.

REQUEST FOR EXPEDITED REVIEW

2. OAG seeks expedited consideration of this motion to obtain resolution before **July 3, 2024**, to avoid defendants starting to perfect two separate appeals in an improper manner that would violate black-letter New York law and impose practical burdens on the Court and OAG. In particular, based on recent communica-

tions with defendants, we expect defendants to perfect their appeal from partial summary judgment on July 3, and to perfect their appeal from the final judgment in this case on July 8, in violation of the rule that the interlocutory appeal from the summary-judgment order merges with the appeal from the final judgment. As explained further below, quick resolution of this motion before July 3 will ensure that the parties and the Court can address the final judgment issued by Supreme Court in this action and the interlocutory summary-judgment order that necessarily affected that judgment in a procedurally proper and efficient manner. OAG thus requests that the Court refer this motion to the earliest possible motions panel and expedite its decision.

BACKGROUND

3. On September 26, 2023, Supreme Court, New York County (Engoron, J.) issued an interlocutory order in this action that (i) granted partial summary judgment to OAG and denied summary judgment to defendants and (ii) imposed sanctions against defendants' counsel. (Ex. A (Sept. 2023 Order).) As relevant here, the interlocutory order granted OAG summary judgment on its first cause of action alleging that defendants engaged in repeated and persistent fraud in violation of Executive Law § 63(12). In so ruling, Supreme Court determined several legal issues against defendants, including that OAG's claims were timely. (*See* Ex. A at 17-35.)

4. Defendants filed a notice of an appeal from this interlocutory summary-judgment order on October 4, 2023. (Ex. B (Defs. Notice of Appeal) (the "Interlocutory Summary Judgment Appeal").) Defendants' counsel separately filed their own notices

of appeal from the part of the September 26 Order that imposed sanctions on them. (Ex. C (Counsel Notices of Appeal) (the "Sanctions Appeal").) Both sets of appeals are under the docket number 2023-04925 in this Court. Defendants and their counsel separately sought and received extensions of their time to perfect these appeals—the Interlocutory Summary Judgment Appeal must be perfected by July 3, 2024, and the Sanctions Appeal must be perfected by July 22, 2024.

5. After the interlocutory summary-judgment decision issued, Supreme Court conducted an eleven-week bench trial to adjudicate OAG's remaining causes of action and to decide what equitable relief, if any, to issue to address all of defendants' Executive Law 63(12) violations. Thus, the trial addressed (i) OAG's remaining six causes of action, which alleged that defendants engaged in repeated and persistent illegality in violation of Executive Law § 63(12) and (ii) the appropriate equitable relief to address both defendants' repeated and persistent fraud (of which they were found liable at summary judgment) and any repeated and persistent illegality that the Court determined defendants committed based on the trial evidence.

6. On February 16, 2024, Supreme Court issued a decision and order finding defendants liable for engaging in repeated and persistent illegality and issuing various forms of equitable relief to address defendants' fraud and illegality. Supreme Court issued its final judgment on February 23, 2024, and the judgment was entered the same day. (Ex. D (Feb. 2024 Notice of Entry & Judgment).)

7. Defendants failed to perfect their Interlocutory Summary Judgment Appeal before issuance of final judgment in this action.

8. On February 26, 2024, defendants filed a notice of appeal from the final judgment. That appeal from final judgment is under docket number 2024-01135. *See People v. Trump*, No. 2024-01135 (1st Dep't) (the "Final Judgment Appeal").[1] Defendants obtained a stay of enforcement of the final judgment's disgorgement component and some of its injunctive relief by posting an appeal bond at an amount set by this Court.[2] This Court's stay order requires defendants to perfect the Final Judgment Appeal no later than the deadline for the September 2024 Term, i.e., on July 8, 2024. *See* Order, *People v. Trump*, Nos. 2024-01134, 2024-01135 (1st Dep't Mar. 25, 2024).

REASONS TO EITHER DISMISS THE INTERLOCUTORY SUMMARY JUDGMENT APPEAL OR ORDER DEFENDANTS TO FILE ONE CONSOLIDATED BRIEF

9. After defendants obtained a second extension of time to perfect the Interlocutory Summary Judgment appeal, OAG inquired about defendants' planned course of action. During that telephone conversation and in subsequent email communications, defendants informed OAG that they intend to separately perfect their Interlocutory Summary Judgment Appeal and their Final Judgment Appeal,

---

[1] Defendants separately filed a timely notice of appeal from the February 16 decision and order on which the final judgment is based. *See People v. Trump*, No. 2024-01134 (1st Dep't).

[2] Specifically, the Court stayed enforcement of the disgorgement portion of the judgment conditioned on defendants posting an undertaking in the amount of $175 million, and stayed enforcement of the industry bars that were imposed on certain defendants. *See* Order, *People v. Trump*, Nos. 2024-01134, 2024-01135 (1st Dep't Mar. 25, 2024). The Court otherwise denied defendants' request for a stay, including to the extent it sought a stay of the parts of the judgment extending and enhancing the role of the independent monitor and directing the installation of an independent director of compliance. *Id.*

including by filing two separate records and two sets of appellate briefs. (*See* Ex. E (Email Chain).) This course of action is improper under black-letter New York law and will inflict needless burdens and inefficiencies on the parties and on this Court.

10. Under C.P.L.R. 5501, "[a]n appeal from a final judgment brings up for review . . . any non-final judgment or order which *necessarily affects* the final judgment." C.P.L.R. 5501(a)(1) (emphasis added). The Court of Appeals has held that a nonfinal order necessarily affects a final judgment where the order "necessarily removed [a] legal issue from the case" such that "there was no further opportunity during the litigation to raise the question decided by the prior non-final order." *Siegmund Strauss, Inc. v. East 149th Realty Corp.*, 20 N.Y.3d 37, 43 (2012).

11. Because an appeal from a final judgment brings up for review any nonfinal orders that necessarily affect the judgment, it is well established that "[a] party's right to a direct appeal from an interlocutory order lapses upon the entry of a final judgment." *Kirby v. Turner Const. Co.*, 286 A.D.2d 618, 618 (1st Dep't 2001); *accord Matter of Aho*, 39 N.Y.2d 241, 248 (1976) (holding that "any right of direct appeal from the [interlocutory] order terminated with the entry of the [final] judgment"). Thus, as this Court has explained, "when an appeal is taken from an order and during the pendency of the appeal a final judgment is entered in the same action, the appeal from the order must fall and review may only be had upon appeal from the final judgment." *Chase Manhattan Bank, N.A. v. Roberts & Roberts, Inc.*, 63 A.D.2d 566, 567 (1st Dep't 1978). In other words, once final judgment is entered, a party must raise any arguments relating to an interlocutory order that necessarily

affects the final judgment in an appeal from the final judgment. *See Matter of Aho*, 39 N.Y.2d at 248; *Kirby*, 286 A.D.2d at 618. Following these rules, this Court has routinely dismissed appeals of interlocutory orders after final judgment has issued. *See, e.g.*, *Kirby*, 286 A.D.2d at 618; *Bingham v. Struve*, 245 A.D.2d 154, 154 (1st Dep't 1997).

12. Here, the Court should dismiss the Interlocutory Summary Judgment Appeal because the entry of final judgment terminated defendants' right to separate appellate review of that earlier, interlocutory order. Courts have recognized that an order granting a party partial summary judgment on liability or finally determining certain issues in the case necessarily affects a final judgment issued after trial. *See, e.g.*, *Futterman v. Calce*, 226 A.D.2d 306, 306 (1st Dep't 1996) (holding that defendants' appeal from final judgment after trial determining amount due under mortgage in foreclosure action brought up for review prior order granting plaintiff's motion for partial summary judgment of foreclosure); *Stride Contr. Corp. v. Board of Contract & Supply of City of Yonkers*, 181 A.D.2d 876, 878 (2d Dep't 1992) (holding that an appeal from final judgment following trial on damages also brought up for review prior order granting partial summary judgment on liability). And courts have dismissed appeals from the interlocutory order in such circumstances after entry of final judgment. *See, e.g.*, *Charter Sch. for Applied Techs. v. Board of Educ. for City Sch. Dist. of City of Buffalo*, 105 A.D.3d 1460, 1461 (4th Dep't 2013) (dismissing appeal from order granting plaintiff partial summary judgment on liability "because the right to appeal from the intermediate order terminated upon the entry of the

judgment" following trial on damages); *Corp v. Alexander*, 92 A.D.2d 430, 432 (4th Dep't 1983) (dismissing defendant's appeal from grant of partial summary judgment to plaintiff after appeal from final judgment after trial).[3]

13. The same result follows here. As an initial matter, Supreme Court granted partial summary judgment to OAG on its first cause of action and found that all defendants were liable for violating Executive Law § 63(12) but left nearly all determinations of relief for these violations for trial. (*See* Ex. A. at 32-34.) For that reason alone, the summary-judgment order necessarily affects the final judgment. *See Stride Contracting Corp.*, 181 A.D.2d at 878; *Futterman*, 226 A.D.2d at 306. But the summary-judgment order also necessarily affects the final judgment in another way. Not only did Supreme Court grant summary judgment on liability, but it also finally determined several key legal issues against defendants on the remaining causes of action, including that OAG's claims were timely. (*See* Ex. A at 17-35.) In doing so, the summary judgment order "necessarily removed" those legal issues from the case because defendants were not permitted to relitigate them during the trial. *See Siegmund Strauss*, 20 N.Y.3d at 43.

---

[3] *See also Smith v. Town of Colonie,* 100 A.D.3d 1132, 1133 (3rd Dep't 2012) (dismissing plaintiff's appeal from order granting defendant partial summary judgment and dismissing one of plaintiff's claims because the plaintiff's "right to appeal from that order terminated upon the entry of the final judgment after trial"); *South Carolina Steel Corp. v. Miller*, 194 A.D.2d 782, 783 (2d Dep't 1993) (dismissing defendants' appeal from grant of plaintiff's motion for partial summary judgment and denial of defendants' cross-motion for summary judgment after appeal from final judgment).

14. In that way, the facts here are the opposite of those addressed by the Court of Appeals decision in *Bonczar v. American Multi-Cinema, Inc.*, 38 N.Y.3d 1023 (2022). There, the Court of Appeals held that a nonfinal order *denying* a party summary judgment did not necessarily affect the final judgment because the order denying summary judgment "did not remove any issues from the case," and the parties had "further opportunity to litigate those issues and in fact did so during the jury trial." *Id.* at 1026. Here, by contrast, the summary judgment order *granted* summary judgment to OAG on liability for its first cause of action and thereby removed certain legal issues from the case. (*See* Ex. A at 17-35.) .

15. Because the summary-judgment order in this case necessarily affects the final judgment, Supreme Court's entry of final judgment "terminated" defendants' right to pursue a separate appeal of the interlocutory, summary-judgment decision, *Matter of Aho*, 39 N.Y.2d at 248, and defendants' Interlocutory Summary Judgment Appeal should be dismissed, *see Kirby,* 286 A.D.2d at 618; *Bingham*, 245 A.D.2d at 154; *Chase,* 63 A.D.2d at 567.

16. Importantly, dismissal of the Interlocutory Summary Judgment Appeal will not preclude defendants from raising any of their arguments challenging the summary-judgment decision to this Court. Instead, those arguments simply must be raised in the Final Judgment Appeal. *See Matter of Aho*, 39 N.Y.2d at 248; *Chase Manhattan Bank,* 63 A.D.2d at 567.

17. This motion does not seek to dismiss the separate Sanctions Appeal brought by defendants' counsel, and OAG does not argue that the Court should

dismiss those appeals. Supreme Court's interlocutory order sanctioning *counsel* did not necessarily affect the final judgment against defendants as reversal of that sanctions order would not inescapably lead to vacating the judgment and did not remove a legal issue from the OAG's action against defendants. *See, e.g.*, *Bonczar*, 38 N.Y.3d at 1026. Although this Court in a March 14, 2024 order denied defendants' counsel's motion to sever counsel's sanctions appeal from defendants' summary-judgment appeal, the Court's order did not address whether defendants could continue to appeal from the summary-judgment order after entry of final judgment against them. (*See* OAG's Affirm. in Resp. to Mot. to Sever Appeals at 2 n.1, NYSCEF No. 22 (noting that defendants' forthcoming appeal from final judgment would subsume the pending summary-judgment appeal).)

18. In the alternative, if the Court declines to dismiss the Interlocutory Summary Judgment Appeal, this Court should direct defendants to file a single, consolidated brief in both the Interlocutory Summary Judgment Appeal and the Final Judgment Appeal that addresses all of defendants' summary-judgment and final-judgment arguments in one place. The facts and legal issues underlying the Interlocutory Summary Judgment Appeal and the Final Judgment Appeal overlap in many key respects. In addition, both appeals will be based in large part on the same documentary evidence—financial statements of defendant Donald J. Trump that were given to lenders, insurance companies, and other entities; internal company emails and other documents; and emails and documents of third parties—many of which were submitted as part of the summary-judgment record and submitted as exhibits

at trial. There will therefore be significant duplication between the record for the Interlocutory Summary Judgment Appeal and the record for the Final Judgment Appeal. To permit defendants to file one brief and record in this appeal raising only their summary-judgment arguments and *another* brief and record in the Final Judgment Appeal raising only their final-judgment arguments would therefore be inefficient and result in unnecessary and duplicative briefing for the parties and the Court.

19. Lastly, the Court should refer this motion to the earliest possible motions panel and expedite its decision on the motion. Absent resolution of the motion before the date on which defendants are required to perfect the Interlocutory Summary Judgment Appeal (July 3, 2024), defendants are likely to try to perfect the Interlocutory Summary Judgment Appeal and the Final Judgment Appeal separately, creating a procedural tangle involving unnecessarily duplicative appellate records and briefs that places unnecessary burdens and inefficiencies on OAG and the Court.

20. OAG has sought to resolve this issue with defendants without the Court's intervention but was unable to do so. Specifically, OAG reached out to defendants on May 28, 2024, shortly after their most recent request for additional time to perfect the Interlocutory Summary Judgment Appeal, and then discussed this matter with defendants over the phone on June 3, 2024, and over email. (*See* Ex. E (Email Chain).) During that conversation OAG learned that defendants intended to separately and improperly perfect both the Interlocutory Summary Judgment Appeal and the Final Judgment Appeal.

WHEREFORE, no later than July 3, 2024, this Court should either dismiss defendants' appeal or, in the alternative, require consolidated briefing in this appeal and their appeal from final judgment.

Dated: New York, New York
June 7, 2024

By: _____

Daniel S. Magy
Assistant Attorney General
Office of the Attorney General
28 Liberty Street
New York, New York 10005
daniel.magy@ag.ny.gov
(212) 416-6073

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

----------X

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.

----------X

INDEX NO. 452564/2022

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

MOTION SEQ. NO. 026, 027, 028

DECISION + ORDER ON MOTIONS

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'").

---

[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.

---

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%.

---

[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.

---

[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.

---

[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

---

[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 Clerk shall enter judgment accordingly.

9/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☐ DENIED	☐	GRANTED IN PART	☒	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

EXHIBIT B

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

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

Plaintiff,

v.

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

Defendants.

Index No: 452564/2022

ENGORON, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 026, 027

PLEASE TAKE NOTICE THAT, pursuant to CPLR § 5515, Defendants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (hereinafter collectively referred to as "Appellants") hereby appeal to the Appellate Division, First Department, from the Decision and Order on Motions by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1531 & 1532), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which denied Appellants' Motion for

Summary Judgment, granted in part Plaintiff's Motion for Partial Summary Judgment on its first cause of action, cancelled any certificates filed under and by virtue of GBL § 130 by any of the entity Appellants or any other entity controlled or beneficially owned by the individual Appellants, and directed that the parties recommend the names of no more than three independent receivers to manage the dissolution of the cancelled LLCs within 10 days.

This appeal is taken from each and every part of the Order insofar as Appellants are aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 4, 2023

Respectfully submitted,

HABBA MADAIO & ASSOCIATES, LLP
Michael Madaio
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
Counsel for Donald J. Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Dated: New York, New York
October 4, 2023

Respectfully submitted,

ROBERT & ROBERT PLLC
Clifford S. Robert
Michael Farina
526 RXR Plaza
Uniondale, New York 11556 Phone:
(516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
Counsel for Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, 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

EXHIBIT C

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

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

Plaintiff,

v.

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

Defendants.

Clifford S. Robert, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Clifford S. Robert, Esq. (hereinafter referred to as "Mr. Robert"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Robert is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Non-Party
Clifford S. Robert

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Clifford S. Robert

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

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

Plaintiff,

v.

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

Defendants.

Michael Farina, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Michael Farina, Esq. (hereinafter referred to as "Mr. Farina"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Farina is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Non-Party
Michael Farina

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Michael Farina

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

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

Plaintiff,

v.

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

Defendants.

Robert & Robert PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Robert & Robert PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Robert & Robert PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys Pro Se

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Robert & Robert PLLC

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

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

Plaintiff,

v.

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

Defendants.

Christopher M. Kise, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Christopher M. Kise, Esq. (hereinafter referred to as "Mr. Kise"), hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Kise is aggrieved.

A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Non-Party
Christopher M. Kise

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Christopher M. Kise

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

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

Plaintiff,

v.

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

Defendants.

Continental PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Continental PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Continental PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 23, 2023

Respectfully submitted,

CLIFFORD S. ROBERT
MICHAEL FARINA
ROBERT & ROBERT PLLC
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Facsimile: (516) 832-7080
E-mail: crobert@robertlaw.com
mfarina@robertlaw.com
Attorneys for Non-Party
Continental PLLC

-and-

MICHAEL S. ROSS
LAW OFFICES OF MICHAEL S. ROSS
60 East 42nd Street
New York, New York 10165
Phone: (212) 505-4060
Facsimile: (212) 505-4054
E-mail: michaelross@rosslaw.org
Attorneys for Non-Party
Continental PLLC

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

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

Plaintiff,

v.

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

Defendants.

Michael Madaio, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Michael Madaio, Esq. (hereinafter referred to as "Mr. Madaio") hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Madaio is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 25, 2023

Respectfully submitted,

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Facsimile: (908) 450-1881
E-mail: ahabba@habbalaw.com
mmadaio@habbalaw.com
Attorneys for Non-Party
Michael Madaio

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

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

Plaintiff,

v.

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

Defendants.

Habba Madaio & Associates, LLP,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Habba Madaio & Associates, LLP hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Habba Madaio & Associates, LLP is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 25, 2023

Respectfully submitted,

ALINA HABBA
MICHAEL MADAIO
HABBA MADAIO &
ASSOCIATES LLP
112 West 34th Street,
17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Facsimile: (908) 450-1881
E-mail: ahabba@habbalaw.com
mmadaio@habbalaw.com
Attorneys Pro Se

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

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

Plaintiff,

v.

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

Defendants.

Armen Morian, Esq.,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Armen Morian, Esq. (hereinafter referred to as "Mr. Morian") hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Mr. Morian is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
(212) 787-3300
armenmorian@morianlaw.com
Attorneys for Non-Party
Armen Morian

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

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

Plaintiff,

v.

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

Defendants.

Morian Law PLLC,

Attorney for Defendants.

Index No: 452564/2022

Engoron, J.S.C.

NOTICE OF APPEAL

Motion Seq. No. 028

PLEASE TAKE NOTICE THAT, pursuant to CPLR §§ 5511 and 5515, Morian Law PLLC hereby appeals to the Appellate Division, First Department, from the Decision and Order on Motion by Hon. Arthur F. Engoron, J.S.C., dated September 26, 2023 (NYSCEF Doc. No. 1533), and duly entered in the above-captioned action by the Clerk of the Supreme Court, County of New York on September 27, 2023, and served by Notice of Entry on September 27, 2023, which granted Plaintiff's motion for sanctions.

This appeal is taken from each and every part of the Order insofar as Morian Law PLLC is aggrieved. A copy of the Informational Statement pursuant to 22 NYCRR 1250.3(a) is attached hereto as Exhibit A.

Dated: New York, New York
October 24, 2023

Respectfully submitted,

ARMEN MORIAN
MORIAN LAW PLLC
60 East 42nd Street, Suite 4600
New York, New York 10165
(212) 787-3300
armenmorian@morianlaw.com
Attorneys Pro Se

EXHIBIT D

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

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, -against- DONALD J. TRUMP, *et al.*, Defendants.	Index No. 452564/2022 Hon. Arthur Engoron NOTICE OF ENTRY

PLEASE TAKE NOTICE that annexed as Exhibit A is a true copy of the Judgment dated February 22, 2024 that was entered in the Supreme Court, New York County Clerk's Office on February 23, 2024.

Dated: New York, New York
February 23, 2024

By: */s/ Colleen K. Faherty*
Colleen K. Faherty

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6046
Colleen.Faherty@ag.ny.gov

Attorneys for the People of the State of New York

EXHIBIT A

At an IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the New York County Court House, 60 Centre Street, New York, New York, on the 22 day of February 2024.

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

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

Plaintiff,

-against-

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

Defendants.

Index No. 452564/2022

JUDGMENT

WHEREAS this matter came on for a bench trial before Hon. Arthur F. Engoron, Justice of the Supreme Court of the State of New York, at the courthouse at 60 Centre Street, New York, New York, that began on October 2, 2023, and ended on December 13, 2023, with closing arguments on January 11, 2024; and

WHEREAS this Court rendered a DECISION AND ORDER dated September 26, 2023 (NYSCEF Doc. No. 1531), which determined, inter alia, that defendants Donald J. Trump, Donald Trump, Jr, Eric Trump, Allen Weisselberg, Jeffrey McConney, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings

Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC are liable on the first cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

WHEREAS this Court rendered a DECISION AND ORDER AFTER NON-JURY TRIAL dated February 16, 2024 (NYSCEF Doc. No. 1688) which found, inter alia, that:

(1) 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 on the second, third, fourth, fifth, and seventh causes of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1); and

(2) defendants Allen Weisselberg and Jeffrey McConney are liable on the sixth cause of action alleged in the Verified Complaint dated September 21, 2022 (NYSCEF No. 1),

NOW, on application of Letitia James, Attorney General of the State of New York, counsel for plaintiff the People of the State of New York, whose address is 28 Liberty Street, 16th floor, New York, New York 10005, it is

ADJUDGED, as follows:

1. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, DJT Holdings LLC, whose last known place of business is at 725 5th Ave, New

York, NY 10022, DJT Holdings Managing Member, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Endeavor 12 LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, 401 North Wabash Venture LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and 40 Wall Street LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$168,040,168**, with 9% interest thereon from March 4, 2019 in the amount of $75,286,599.10 amounting to the sum of $243,326,767.10 and that the Plaintiff have execution therefor; X

2. Plaintiff have judgment and do recover from defendants Donald J. Trump who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, and the Trump Old Post Office LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$126,828,600**, with 9% interest thereon from May 11, 2022 in the amount of $20,421,141.98 amounting to the sum of $147,249,741.98 and that the Plaintiff have execution therefor; X

3. Plaintiff have judgment and do recover from defendants Donald J. Trump, who resides at 1100 South Ocean Boulevard, West Palm Beach, Florida 33480, the Donald J. Trump Revocable Trust, whose last known place of business is at 725 5th Ave, New York, NY 10022, the Trump Organization, Inc., whose last known place of business is at 725 5th Ave, New York, NY 10022, and Trump Organization LLC, whose last known place of business is at 725 5th Ave, New York, NY 10022, jointly and severally, the amount of **$60,000,000**, with 9% interest thereon

from June 26, 2023 in the amount of $3,580,273.97 amounting to the sum of $ 63,580,273.97, and that the Plaintiff have execution therefor; X

4. Plaintiff have judgment and do recover from defendant Eric Trump, who resides at 502 Bald Eagle Drive, Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $4,659,175.84 and that the Plaintiff have execution therefor; X

5. Plaintiff have judgment and do recover from defendant Donald Trump, Jr., who resides at 494 Mariner Dr., Jupiter, FL 33477, in the amount of **$4,013,024**, with 9% interest thereon from May 11, 2022 in the amount of $646,151.84 amounting to the sum of $ 4,659,175.84 , and that the Plaintiff have execution therefor; and X

6. Plaintiff have judgment and do recover from defendant Allen Weisselberg, who resides at 6554 Piemonte Dr, Boynton Beach, FL 33472, in the amount of **$1,000,000**, with 9% interest thereon from January 9, 2023 in the amount of $101,095.89 amounting to the sum of $1,101,095.89 and that the Plaintiff have execution therefor; X

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

7. defendants Allen Weisselberg and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are 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;

8. defendants Donald Trump, Allen Weisselberg, and Jeffrey McConney, as of the date of the Court's Decision and Order After Non-Jury Trial, are 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;

4 of 7

9. 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, and 40 Wall Street LLC, as of the date of the Court's Decision and Order After Non-Jury Trial, are enjoined 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;

10. defendants Eric Trump and Donald Trump, Jr., as of the date of the Court's Decision and Order After Non-Jury Trial, are 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;

11. the Court's September 26, 2023 Decision and Order (NYSCEF Doc. No. 1531) is modified as of the date of the Court's Decision and Order After Non-Jury Trial, 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;

12. the Hon. Barbara Jones (ret.) shall continue in her role as Independent Monitor for no less than three years;

13. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, the Independent Monitor shall submit to the Court a proposed order outlining the specific authority that she needs, and the obligations of defendants, in order to effectuate a productive and enhanced monitorship going forward;

14. 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

15. within 30 days of the date of the Court's Decision and Order After Non-Jury Trial, 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.

ADJUDGED that this Judgment shall bear interest from the date of its entry at the statutory rate of 9% per annum.

ORDERED that the Clerk is directed to calculate the interest and enter judgment in accordance with the above in favor of the Plaintiff.

ENTER

Dated: New York, New York
February 22, 2024

Justice of the Supreme Court

HON. ARTHUR F. ENGORON, J.S.C.

FILED
Feb 23 2024
NEW YORK
COUNTY CLERK'S OFFICE

FEB 22 2024

Milton Adair Tingling
Clerk

Judgment Creditor
People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York
28 Liberty St, New York, NY 10005
(212) 416-8222

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

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

Plaintiff,

-against-

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

Defendants.

Index No. 452564/2022

JUDGMENT

Letitia James,
Attorney General of the State of New York
Attorney for Plaintiff
28 Liberty Street, 16th Floor
New York, New York 10005

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Sherief Gaber
Wil Handley
Eric R. Haren
Louis M. Solomon
Stephanie Torre

Of Counsel

EXHIBIT E

From:	Vale, Judith
To:	chris kise; Fan, Dennis; crobert@robertlaw.com; ahabba@habbalaw.com; mfarina@robertlaw.com; Michael Madaio; Christopher Kise; armenmorian@morianlaw.com; John Sauer
Cc:	Magy, Daniel; Coco, Sarah
Subject:	RE: People v. Trump Appeals
Date:	Friday, June 7, 2024 1:48:40 PM

Chris:

Thank you for your email.

We do not view the summary judgment appeal the same way that you do, and *Bonczar* is distinguishable as it dealt with an interlocutory order that reversed a partial grant of SJ and the disputed issues were addressed at trial. Nor does *Bonczar* upend decades of settled precedent.

We will go ahead and file a short motion later today seeking dismissal of the interlocutory SJ appeal or, in the alternative, an order directing that briefing be consolidated. We will request that the First Department resolve the motion promptly.

There is no basis for an extension of defendants' time to perfect either appeal. We were under no obligation to predict earlier defendants' intended course of proceeding in a procedurally improper manner and did not know earlier that you would be doing so. The upshot here is that defendants should be filing one brief and one record from the final judgment appeal raising all relevant issues there, rather than two separate briefs and records at different times--which streamlines matters and requires less work, not more. If you want to seek an oversized brief from the final judgment appeal, we would be happy to discuss that.

Thanks,
Judy

Judith N. Vale
Deputy Solicitor General
28 Liberty St.
New York, NY 10005

From: chris kise <chris@ckise.net>
Sent: Thursday, June 6, 2024 12:41 PM
To: Fan, Dennis <Dennis.Fan@ag.ny.gov>; crobert@robertlaw.com; ahabba@habbalaw.com; mfarina@robertlaw.com; Michael Madaio <mmadaio@habbalaw.com>; Christopher Kise <ckise@continentalpllc.com>; armenmorian@morianlaw.com; John Sauer <john.sauer@james-otis.com>
Cc: Vale, Judith <Judith.Vale@ag.ny.gov>; Magy, Daniel <Daniel.Magy@ag.ny.gov>; Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: Re: People v. Trump Appeals

Dennis:

Many thanks for the follow up.

As an initial matter, Appellants' certainly agree we must and should "ensure

that the First Department has the issues in this case before it in a coherent and procedurally proper way". Needless to say, from our perspective, it is critical that the First Department be able to address the errors in both the MSJ and FJ decisions, and that our ability to challenge the errors in both decisions is fully preserved.

On that point, we respectfully disagree with your interpretation of Matter of Aho, which was revisited by the Court of Appeals in Bonczar v American Multi-Cinema, Inc., 38 NY3d 1023 (2022). In Bonczar, the Court held that the denial of a motion for summary judgment dismissing the complaint did not necessarily affect the final judgment. Under this precedent, the Court of Appeals may conclude that Supreme Court's rejection of Defendants' arguments at the summary judgment stage did not "necessarily affect" a final judgment. Further, to the extent the grant of partial summary judgment for plaintiff (and/or other issues in the MSJ decision) may necessarily affect the final judgment, the Court of Appeals may also conclude that, under Bonczar and other decisions, the proper course is to consider those issues on direct appeal from the MSJ decision. Appellants want to ensure a full and fair review of all the important issues in both decisions. In light of Bonczar, it seems to us that the appropriate procedural course, to ensure that all important errors may be reviewed, is for both appeals to proceed.

This is especially true given our concerns with your proposed solution of dismissing the MSJ appeal with a stipulation about addressing MSJ errors in the final judgment appeal. We know of no provision of the CPLR or rules of the Court of Appeals that would permit the parties to stipulate in the Appellate Division as to preservation of issues for review by the Court of Appeals. Nor would the parties be permitted to stipulate on a matter of the First Department's own jurisdiction to hear the appeal from the summary judgment decision. CPLR § 5501.

As you know, the appellate courts exercise jurisdiction conferred by the New York Constitution, as limited by statute. Ocean Accident & Guarantee Corp., Ltd. v. Otis Elevator Co., 291 N.Y. 254, 255 (1943). It is well-settled that parties to a proceeding cannot stipulate to enlarge appellate jurisdiction or predetermine the scope of the court's review. See In re Shaw, 96 N.Y.2d 7, 13 (2001) ("[T]he parties are without authority to stipulate" to bring non-

appealable issue before Court of Appeals); Amherst & Clarence Ins. Co. v. Cazenovia Tavern, Inc., 59 N.Y.2d 983 (1983) (attorneys for litigants cannot, by agreement between them, "predetermine the scope of our review"); Commissioner of Social Services of City of New York v. Harris, 26 A.D.3d 283, 286 (1st Dep't 2006) ("Nor could the parties stipulate to enlarge our appellate jurisdiction."). See also Porco v. Lifetime Entertainment Services, LLC, 176 A.D.3d 1274, 1275 (3d Dep't 2019) ("[T]he parties cannot create or consent to jurisdiction where it would otherwise not exist."); Gorski v. Phalen, 187 A.D.3d 1670, 1671 (4th Dep't 2020) (reservation of right to challenge order on appeal was "ineffective and unenforceable" because litigants lacked authority to stipulate to enlarge appellate jurisdiction); Dumond v. New York Central Mutual Fire Insurance Co., 166 A.D.3d 1554, 1556 (4th Dep't 2018) (defendant could not use stipulation "as a vehicle to revive its previously dismissed appeal"). Thus, there is no guarantee that a stipulation between us would ensure appellate review of all the claims of error in the MSJ decision.

Likewise, the parties do not have the ability to stipulate as to the size of the briefs in contravention of the rules of the Appellate Division. 22 NYCRR § 1250.9(h). So despite our views (collective or otherwise) we simply cannot avoid application of the word limits without Court approval.

Unfortunately, the AG's delay in raising these issues has now created the problem. As you know, we filed the notice of appeal from the summary judgment decision on October 4, 2023, and the notice of appeal from the final judgment on February 23, 2024. On March 25, 2024, the First Department granted Appellants' motion, *inter alia*, to stay enforcement of the disgorgement penalty conditioned upon Appellants posting an undertaking in the amount of $175 million and perfecting the appeal of the final judgment for the September 2024 Term. In the eight months since Defendants filed notice of appeal from the summary judgment decision, and four months since Defendants filed a notice of appeal from the final judgment, the AG had ample opportunity to raise the issues with Appellants and then bring this matter to the First Department's attention. Instead, the AG is now seeking for the first time to address these issues one month before Appellants' brief is due on the summary judgment decision and less than five weeks before our brief is due on the final judgment appeal. Moreover, you will recall it was the AG that insisted

on the September Term needlessly placing the parties on an expedited calendar. Now, given the First Department's calendar and process, there is no possible way these issues could be briefed, argued and decided before the current briefing deadline.

Therefore, if you intend to file a belated motion on this issue, we request that you to seek with our consent, as part of whatever motion you file, to extend the date to perfect both appeals pending resolution of the issues presented in the motion, with a clear statement that any extension of the deadline to perfect will not affect the stay of execution pending appeal, and that stay will remain in place pending resolution of the appeals. The rules do not permit the parties to stipulate otherwise, where the Court has ordered the appeal be perfected by a certain date or where the appellant has exhausted its extension requests. 22 NYCRR § 1250.9(b). Thus, the Court would have to order that the date to perfect be postponed and the stay of execution be extended. This approach would allow whatever motion you make to be fully briefed and resolved by the First Department prior to either set of briefs being submitted to the Court and thereby "ensure that the First Department has the issues in this case before it in a coherent and procedurally proper way". This places all parties and the Court in the best position to clarify the issues to be decided, the process for presenting those issues for review, and the time required to secure a comprehensive adjudication.

We are available to discuss further if useful.

Thanks.

Best

Chris

From: Fan, Dennis <Dennis.Fan@ag.ny.gov>
Date: Wednesday, June 5, 2024 at 12:32 PM
To: crobert@robertlaw.com <crobert@robertlaw.com>, ahabba@habbalaw.com <ahabba@habbalaw.com>, mfarina@robertlaw.com <mfarina@robertlaw.com>, Michael Madaio <mmadaio@habbalaw.com>, chris kise <chris@ckise.net>, Christopher Kise

<ckise@continentalpllc.com>, armenmorian@morianlaw.com <armenmorian@morianlaw.com>
Cc: Vale, Judith <Judith.Vale@ag.ny.gov>, Magy, Daniel <Daniel.Magy@ag.ny.gov>, Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: RE: People v. Trump Appeals

Hi all:

We wanted to check in to see if you had a view on entering into a stipulation. Please let us know at your earliest convenience. Many thanks.

Dennis

Dennis Fan
(212) 416-8921

From: Fan, Dennis
Sent: Monday, June 3, 2024 5:09 PM
To: crobert@robertlaw.com; ahabba@habbalaw.com; mfarina@robertlaw.com; Michael Madaio <mmadaio@habbalaw.com>; chris kise <chris@ckise.net>; Christopher Kise <ckise@continentalpllc.com>; armenmorian@morianlaw.com
Cc: Vale, Judith <Judith.Vale@ag.ny.gov>; Magy, Daniel <Daniel.Magy@ag.ny.gov>; Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: RE: People v. Trump Appeals

Hi all:

Thanks again for chatting. I wanted to follow up briefly with a few resources, in case it was helpful, and some proposals on how to move forward.

As we mentioned over the phone, we are trying to ensure that the First Department has the issues in this case before it in a coherent and procedurally proper way. I'm attaching the relevant, cautionary, section of Siegel's New York Practice on *Matter of Aho* and subsequent precedents. Our understanding is that a grant of summary judgment necessarily affects the judgment, which means that any appeal from such an interlocutory summary judgment order would be dismissed (I'm attaching two relevant cases). Given New York practice, it would make the most sense for us (and hopefully for you all, too) if any summary judgment issues were litigated together as part of the pending appeal from judgment (i.e., 2024-01134, 2024-01135).

One option, if it helps, is that we would be happy to stipulate to something that memorializes this in the present summary judgment appeal. That is, both OAG and defendants could stipulate to the withdrawal of defendants' summary judgment appeal, but that OAG expressly agrees that all of defendants' challenges to the grant or denial of summary judgment can be raised in the appeal from judgment. That would ensure that the First Department has the merits together in one appeal. We could likewise include language that nothing in the stipulation affects the separate, pending appeals

challenging the sanctions.

The other option would be for OAG to file a motion to dismiss the summary judgment appeal, which we may aim to do as early as the end of this week absent a stipulation. We do not think there would be a real basis to oppose that motion, and motion practice could result in some real inefficiencies (such as having the summary judgment appeal dismissed a month from now, right as briefing as do). But that probably is the only other realistic way of cleaning up the dockets.

We are of course willing to hear about alternatives, and regardless of the approach, we are open to discussing having the briefing word limits expanded so that there is no prejudice from briefing summary judgment and trial issues in the same appeal. Please let us know if it is helpful to chat, however, and we look forward to hearing from you soon.

Best,
Dennis

Dennis Fan
(212) 416-8921

From: chris kise <chris@ckise.net>
Sent: Tuesday, May 28, 2024 5:39 PM
To: Fan, Dennis <Dennis.Fan@ag.ny.gov>
Cc: crobert@robertlaw.com; ahabba@habbalaw.com; mfarina@robertlaw.com; Michael Madaio <mmadaio@habbalaw.com>; Christopher Kise <ckise@continentalpllc.com>; armenmorian@morianlaw.com; Vale, Judith <Judith.Vale@ag.ny.gov>; Magy, Daniel <Daniel.Magy@ag.ny.gov>; Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: Re: People v. Trump Appeals

dennis

thanks for the follow up.
our side can do 300PM eastern monday june 3.
please send invite that has dial in capability as well as internet.
think that is what web-ex is but i am very low tech.

thanks!

best

chris

From: Fan, Dennis <Dennis.Fan@ag.ny.gov>
Date: Tuesday, May 28, 2024 at 5:03 PM
To: chris kise <chris@ckise.net>
Cc: crobert@robertlaw.com <crobert@robertlaw.com>, ahabba@habbalaw.com <ahabba@habbalaw.com>, mfarina@robertlaw.com <mfarina@robertlaw.com>, Michael Madaio <mmadaio@habbalaw.com>, Christopher Kise <ckise@continentalpllc.com>, armenmorian@morianlaw.com <armenmorian@morianlaw.com>, Vale, Judith <Judith.Vale@ag.ny.gov>, Magy, Daniel <Daniel.Magy@ag.ny.gov>, Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: Re: People v. Trump Appeals

Hi Chris:

Monday would work – would your team be free from 3-5pm? If so, I can send around a WebEx call-in link.

Best,
Dennis

Dennis Fan

(212) 416-8921

From: chris kise <chris@ckise.net>
Sent: Tuesday, May 28, 2024 2:51 PM
To: Fan, Dennis <Dennis.Fan@ag.ny.gov>
Cc: crobert@robertlaw.com <crobert@robertlaw.com>; ahabba@habbalaw.com <ahabba@habbalaw.com>; mfarina@robertlaw.com <mfarina@robertlaw.com>; Michael Madaio <mmadaio@habbalaw.com>; Christopher Kise <ckise@continentalpllc.com>; armenmorian@morianlaw.com <armenmorian@morianlaw.com>; Vale, Judith <Judith.Vale@ag.ny.gov>; Magy, Daniel <Daniel.Magy@ag.ny.gov>; Coco, Sarah <Sarah.Coco@ag.ny.gov>
Subject: Re: People v. Trump Appeals

dennis

thanks for reaching out and hope you are likewise well.
i am starting a short trial in the southern district of florida tomorrow.
can we set up a time to talk monday (june 3)?
please let me know.

thanks again.

best

chris

Sent from my iPad

> On May 28, 2024, at 11:54 AM, Fan, Dennis <Dennis.Fan@ag.ny.gov> wrote:
>
> Dear counsel:
>
> We hope your summer is going well. We are reaching out to see if you have a moment this week to chat about some procedure- and scheduling-related aspects of the pending appeals in this case. We thought it could be helpful for us to chat before briefing got underway. Please let us know if there is a good time for you all.
>
> Best,
>
> Dennis
>
> Dennis Fan
>
> Senior Assistant Solicitor General
>
> New York State Office of the Attorney General
>
> (212) 416-8921
>
>