

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

Defendants.

Index No. 452564/2022

AFFIRMATION OF COLLEEN K. FAHERTY IN SUPPORT OF PLAINTIFF’S ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND APPOINTMENT OF A MONITOR

COLLEEN K. FAHERTY, an attorney duly admitted to practice before the Courts of this State, does hereby state the following pursuant to penalty of perjury:

1. I am an attorney in the Office of New York State Attorney General (“OAG”) who appears on behalf of the People of the State of New York in this proceeding.

2. I submit this Affirmation in support of OAG’s application by Order to Show Cause seeking a preliminary injunction and the appointment of an independent monitor to oversee the submission of certain financial information to accountants, lenders, and insurers by Defendants the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, and DJT Holdings Managing Member LLC (collectively, the “Trump Organization”).

3. I am familiar with the facts and circumstances set forth herein, which are based upon my personal knowledge and an examination of records and documents in OAG's files.

4. OAG filed a verified complaint and exhibits in this action on September 21, 2022. NYSCEF No. 1 (the "Complaint"). As set forth in that filing, Donald J. Trump, other individuals, and various Trump Organization entities engaged in a pattern or practice of fraudulently inflating asset values on Mr. Trump's annual statements of financial condition ("Statements") covering at least the years 2011 through 2021. Those Statements—which incorporated numerous individual instances of fraudulent or misleading conduct, each year—were certified as true by Mr. Trump or the trustee of his revocable trust and used to obtain favorable loan and insurance terms. Mr. Trump and other Defendants have previously had the opportunity to dispute similar allegations in related proceedings, through verified submissions or evidentiary showings, but have failed to do so. *See, e.g., People v. Trump Organization, et al.*, N.Y. County Index No. 451685/2020 (the "Special Proceeding"), NYSCEF No. 647 (Un-Verified Answer of Donald J. Trump), NYSCEF No. 649 (Un-Verified Answer of Donald Trump, Jr.).

5. The Complaint alleges in specific detail how Mr. Trump and certain other Defendants employed deceptive strategies as part of the overall scheme to fraudulently and falsely inflate Mr. Trump's assets to comply with Mr. Trump's instruction to increase his net worth. *See* Complaint at ¶ 15a-h. The Complaint further explains how Mr. Trump's Statements were submitted to banks for the purpose of obtaining and maintaining favorable terms on loans totaling more than \$450 million over at least an 11-year period. *Id.* ¶¶ 559-646. The Complaint details how the Statements, along with other false representations, were used to obtain beneficial terms on policies from insurers. *Id.* ¶¶ 676-714. In connection with loans issued by Deutsche Bank beginning in 2012 which remained outstanding through 2022, Mr. Trump and the Trump

Organization submitted the Statements to support various covenants required to maintain the loans. Mr. Trump certified the truthfulness and accuracy of the 2011 Statement as a precondition to lending for the initial Deutsche Bank loan in 2012 and then he or a trustee of his revocable trust did the same for each subsequent Statement every year thereafter, until the loan was refinanced. *Id.* ¶ 595.

6. OAG is entitled to the relief sought in the order to show cause because the record establishes both a likelihood of success on the merits and that the balance of equities tips in OAG's favor.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

7. OAG is likely to succeed on the merits. The verified allegations in the Complaint establish a continuous, integrated scheme to inflate Mr. Trump's net worth to obtain financial benefits to which the Trump Organization would not otherwise be entitled. The existence of that scheme is further demonstrated by the record established by OAG in its investigation of the Trump Organization. Indeed, there are a number of demonstrable facts that cannot be disputed that establish that the Statements were false and misleading.

A. Resignation of the Trump Organization's Accounting Firm

8. Shortly after many of the deceptive valuation practices used by the Trump Organization to falsely inflate Mr. Trump's net worth came to light in OAG's public filings, the accounting firm responsible for compiling the Statements, Mazars USA LLP ("Mazars"), concluded that it had to end its long-term business relationship with Mr. Trump and the Trump Organization and withdraw the 2011 to 2020 Statements. *See* Ex. 1 at -81.¹ In a letter to the

¹ The transcript excerpts attached as exhibits hereto are true and correct copies of excerpted pages from the transcripts of examinations conducted during OAG's investigation as maintained in OAG's files. The remaining documents attached as exhibits hereto are true and correct copies, or relevant excerpts, of materials obtained during OAG's investigation as maintained in OAG's files.

Trump Organization dated February 9, 2022, Mazars explained that it had “come to this conclusion based, in part, upon the filings made by the New York Attorney General on January 18, 2022, [Mazars’s] own investigation, and information received from internal and external sources,” and advised “that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011—June 30, 2020, should no longer be relied upon.” *Id.* Mazars further instructed the Trump Organization to “inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon.” *Id.*

9. Mr. Trump’s lead accountant testified that his firm was misled repeatedly in connection with the compilation engagement by the Trump Organization’s concealment of information pertinent to the Statements. The accountant testified that, in one instance, he was “shocked” and “hurt” by the Trump Organization’s conduct, and that he was concerned the Statements from 2011 to 2020 incorporated substantial misstatements. Ex. 2.

B. Mr. Trump and Other Senior Executives Invoked the Fifth Amendment

10. At the beginning of his sworn testimony on August 10, 2022, Mr. Trump read a prepared statement that eventually invoked his Fifth Amendment privilege against self-incrimination. Ex. 3 at 10-20. Mr. Trump would proceed to invoke the Fifth Amendment more than 400 times during the interview.

11. When asked if he had an ongoing agreement from at least 2005 through the present with Mr. Weisselberg, Mr. McConney, and others to prepare the Statement in a manner that included intentional overvaluations, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 80-81.

12. When asked if he had an ongoing agreement from at least 2005 to the present with Mr. Weisselberg, Mr. McConney and others to prepare the Statement in a manner that included

false and misleading valuation statements, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 81.

13. When asked if he approved each Statement from 2011 through 2021, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *See id.* at 109 (2020), 112-13 (2021).

14. When asked if he knew that each Statement from 2011 through 2021 contained false and misleading valuations and statements, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *See id.* at 111 (2020), 114 (2021).

15. When asked if Mr. Weisselberg, Mr. McConney and others worked at his direction and followed his instructions to inflate the asset valuations in the Statements from 2011 through 2021, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *See id.* at 111-112 (2020), 114-15 (2021).

16. When asked if he was able to obtain favorable interest rates on loans from Deutsche Bank for Doral, Chicago and the Old Post Office through the use of inflated Statements, Mr. Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 153-54.

17. At the beginning of his sworn testimony on October 5, 2020, Eric Trump read a prepared statement that eventually invoked his Fifth Amendment privilege against self-incrimination. Ex. 4 at 31-42. Eric Trump would proceed to invoke his Fifth Amendment privilege more than 500 times.

18. When asked if he assisted Mr. McConney and Mr. Weisselberg in the preparation of the Statements, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 250-52.

19. When asked if he had a role in approving the Statements, either before or after 2017, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 253-56.

20. When asked questions about his role in the valuation of the Seven Springs estate on the Statements, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 256-58.

21. When asked questions about the valuation of the Briarcliff golf club on the 2014 and 2015 Statements of Financial Condition, Eric Trump invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 303-07.

22. After testifying for two days before OAG, at the start of his third day of sworn testimony, Allen Weisselberg invoked his Fifth Amendment privilege against self-incrimination and declined to testify. Ex. 5 at 583-84. Mr. Weisselberg proceeded to invoke the Fifth Amendment more than 500 times.

23. When asked if he reviewed each Statement from 2011 through 2015, with Mr. Trump, Mr. Weisselberg invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 647-50 (2015).

24. When asked if Mr. Trump directed him to make any changes to the Statements from 2011 through 2015, Mr. Weisselberg invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 650-51 (2015).

25. When asked if he reviewed Statements starting in 2016 with Mr. Trump and his son Donald Trump, Jr., a trustee of the Donald J. Trump Revokable Trust, Mr. Weisselberg invoked his Fifth Amendment privilege against self-incrimination and refused to answer. Ex. 5 at 709-10 (2018).

26. When asked if he knew that financial institutions including Deutsche Bank would rely upon the Statements for each year from 2011 through 2018, Mr. Weisselberg invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 651-54 (2015).

27. When asked if the representation letters to Mazars were accurate, Mr. Weisselberg invoked his Fifth Amendment privilege against self-incrimination and refused to answer. *Id.* at 654-58 (2015).

C. Donald Trump, Jr. Denies Responsibility for the Statements Under Oath

28. Although he did not assert the Fifth Amendment, Donald Trump, Jr. disclaimed all responsibility for the Statements and their contents in sworn testimony. *See, e.g.* Ex. 6 at 116.

29. Donald Trump, Jr. and Allen Weisselberg were the sole trustees for the Donald J. Trump Revocable Trust starting in 2017. Ex. 7. Mr. Weisselberg was removed as a trustee in July 2021, after having been indicted by the New York District Attorney on charges including tax fraud and falsification of business records. Mr. Weisselberg pleaded guilty to those charges on August 18, 2022. Complaint at 2 n.2. According to Donald Trump, Jr., no additional trustees were appointed. Ex. 6 at 63-64, 186-92.

30. Despite his role as a trustee, Donald Trump, Jr. had no specific recollection *at all* of the Statements, prepared and certified by the Trustees. *See, id.* at 116, 120-27, 129-131.

31. Donald Trump, Jr. testified that he has no understanding how the Statement is compiled each year. Donald Trump, Jr. testified that he was aware of an accounting firm being involved but otherwise had no knowledge of the process or mechanics of the Statements' preparation. *Id.* at 210-215, 217-223.

32. A trustee of the Donald J. Trump Revocable Trust was responsible for certifying that the information submitted to Mazars in support of the Statement was true and correct. *See, e.g.*, Ex. 8. As a trustee, Donald Trump, Jr. signed a representation letter to Mazars each year attesting to the accuracy of the information provided. *See, e.g.*, Ex. 9. Despite these responsibilities and certifications, Donald Trump, Jr. did not know the contents of representation letters sent to Mazars and seemed perplexed about the nature of the engagement that his accounting firm would need such a letter. *See* Ex. 6 at 262-84.

33. Donald Trump, Jr. was aware loan covenants with Deutsche Bank required the submission of a certified Statement, but claimed he was unaware of any details or specifics. *Id.* at 225-30. Instead, Donald Trump Jr. testified that he deferred to assurances given to him by others that he could sign such certifications. *Id.* at 230-32.

34. Donald Trump, Jr. acknowledged that he was responsible for certifying to Deutsche Bank that his father met loan covenants, but he performed no diligence to confirm the accuracy of those representations in the Statements. *Id.* at 207-10.

35. Donald Trump, Jr. testified that his only familiarity with GAAP was “probably [because of] Accounting 101 in Wharton,” and that apart from knowing that they “are generally accepted,” he could not identify any other knowledge he has about GAAP. *Id.* at 41. Donald Trump, Jr. testified that he has no knowledge that any of the work he has performed was required to be GAAP compliant. *Id.* at 42 This despite the express representation in the Statements that they were prepared in accordance with GAAP. *See, e.g.*, NYSCEF No. 14 at 1.

D. Fraudulent Inflation of Individual Properties

36. **Trump Tower Triplex**– For Mr. Trump’s triplex apartment in Trump Tower, the Trump Organization valued the apartment in the 2012 through 2016 Statements on the knowingly false assumption that the apartment was 30,000 square feet, when the apartment was

only 10,996 square feet. Complaint ¶267; Ex. 10; NYSCEF Nos. 17-21. Tripling the size of the apartment for valuation purposes was intentional and deliberate fraud, not an honest mistake; documents demonstrating the true size of Mr. Trump’s triplex (most notably the condominium offering plan and associated amendments for Trump Tower) were easily accessible inside the Trump Organization, were signed by Mr. Trump, and were sent to Mr. Weisselberg in 2012. Complaint ¶269; Ex. 10; Ex. 11. Moreover, Mr. Weisselberg – along with Donald Trump, Jr. and Eric Trump – was on an email chain in March 2017, in which Forbes Magazine highlighted the apartment’s correct size; the email specifically alerted those Trump Organization personnel that Mr. Trump had told Forbes his apartment was approximately 33,000 square feet, but Forbes had looked at property records and concluded it was less than one third that size. Complaint ¶ 285-86; Ex. 12. Despite being apprised of those specific facts, Mr. Weisselberg and Donald Trump, Jr. only days later represented to Mazars that the 2016 Statement was accurate despite incorporating the fraudulently inflated number. Complaint ¶ 288; Ex. 13. Mr. Weisselberg admitted that the inflation overstated the apartment’s value by “give or take” \$200 million. Complaint ¶ 291; Ex. 14 at 507.

37. The Triplex was only included in a catch-all category entitled “other assets” that omitted essentially all details about its value; accordingly, no itemized value was provided, and no recipient of the Statements would have known the inputs used to generate the value. Complaint ¶ 268.

38. **40 Wall Street** – For this commercial building in which the Trump Organization had a long-term leasehold interest, the Trump Organization ignored bank-ordered appraisals that came up with starkly different—and much lower—values, and in some cases withheld those appraisals from its own accounting firm.

39. A bank-ordered appraisal by Cushman & Wakefield, Inc. (“Cushman”) performed in 2010 valued the Trump Organization’s interest at \$200 million as of August 1, 2010. Complaint ¶122; Ex. 16. Cushman performed similar appraisals in 2011 and 2012, reaching valuations in that same range. Complaint ¶122; Ex. 17; Ex. 18. The Trump Organization had the 2010 appraisal in its possession when it prepared the 2011 Statement. Complaint ¶124; Ex. 19. In addition, Defendant Allen Weisselberg was aware that an appraisal of 40 Wall Street from the 2010 to 2012 time period had valued the property in the \$200 million range prior to finalizing and issuing the 2012 Statement. But he, along with Mr. Trump, nevertheless assigned the property a value that was approximately 260% of the appraised value (\$524.7 million in 2011, \$527.2 million in 2012, and \$530.7 million in 2013). NYSCEF Nos. 16-18; Ex. 20 at 134-138.

40. In 2015, another lender, Ladder Capital obtained an appraisal valuing the building at \$540 million. Complaint ¶ 132; Ex. 21. After learning of that valuation, the Trump Organization increased the value on the 2015 Statement to \$735 million. NYSCEF No. 20. To do so, the Trump Organization purported to rely on the very same appraiser who prepared the figure nearly \$200 million lower. Complaint ¶ 133; NYSCEF No. 20. Mr. Trump’s own accountant has testified that the conduct that generated this valuation was misleading to the firm where he works. Ex. 2 at 666-68, 673-74.

41. **Trump Park Avenue, Mar-a-Lago, and Aberdeen** – The Trump Organization valuations ignored legal restrictions on development rights and marketability for properties including: Trump Park Avenue in midtown Manhattan, Mar-a-Lago in Palm Beach, Florida, and the golf course in Aberdeen, Scotland.

42. At Trump Park Avenue, an appraisal was performed in 2010 in connection with a \$23 million loan from Investors Bank. Complaint ¶85; Ex. 22 at -080, -197-198. As the appraisal

identified, the collateral included 12 residential units that were rent stabilized. Complaint ¶85; Ex. 22 at -197-198. The appraisal valued the 12 rent-stabilized units at \$750,000 total, noting that the rent-stabilized units “cannot be marketed as individual units” for sale because the “current tenants cannot be forced to leave.” Complaint ¶85; Ex. 22 at -197-198. The Trump Organization was well aware of the rent-stabilized nature of many units at the property. Indeed, Donald Trump, Jr. testified that the rent stabilized apartments were the bane of his existence. Complaint ¶85; Ex. 6 at 79-80. Notwithstanding this 2010 appraisal, and the Trump Organization’s knowledge that numerous units at the property were rent-stabilized, Mr. Trump’s Statements of Financial Condition in 2011 and 2012 valued the rent stabilized units at nearly \$50 million on the false premise that the units could be sold without restriction. Complaint ¶87; Ex. 22 at -197-198; Ex. 23; Ex. 24. The Statements continued to overvalue the rent stabilized apartments year after year, repeatedly ignoring facts known to them regarding the rent stabilized nature of those units. Complaint ¶89; Ex. 2 at 675-682; NYSCEF Nos. 5-15.

43. Mr. Trump’s Mar-a-Lago club in Palm Beach, Florida is subject to a host of restrictions. Mr. Trump signed a Deed of Conservation and Preservation in 1995 giving up his rights to use the property for any purpose other than a social club. Complaint ¶366-368; Ex. 25 at -19, -26-27. Several years later, in 2002, Mr. Trump signed a deed of development rights conveying to the National Trust for Historic Preservation “any and all of their rights to develop the Property for any usage other than club usage.” Complaint ¶372-73; Ex. 26. Despite these legal restrictions—known to Mr. Trump and his agents—the Statements during the period 2011 to 2021 valued the property between \$347 million and \$739 million based on the false and misleading premise that it was an unrestricted residential plot of land that could be sold and used as a private home. Complaint ¶375; NYSCEF Nos. 16-26. None of the Statements discloses any

of the limitations on Mr. Trump's rights to the Mar-a-Lago property; to the contrary, by lumping the property in with a series of golf clubs, and by not ascribing any specific method of valuation to any properties in that category, the Statements omit all crucial detail regarding how Mar-a-Lago was valued.

44. For Aberdeen, from 2014 to 2018, the Trump Organization valued the club on the false assumption that 2,500 homes could be built on the property and sold at approximately £83,000 per home. Complaint ¶413, 420; NYSCEF Nos. 19-23. But as reported in the Statements themselves, the Trump Organization "received outline planning permission in December 2008 for . . . a residential village consisting of 950 holiday homes and 500 single family residences and 36 golf villas." Complaint ¶416; NYSCEF Nos. 8-12. This is a total of 1,486 homes, not 2,500 homes. Moreover, in deriving the value, the Trump Organization assumed all of the homes would have the same value. Complaint ¶417; NYSCEF Nos. 19-23. However, 950 of the homes were to be "holiday homes" and 36 were to be "golf villas"; such properties—under the terms governing Trump Aberdeen—would be rental properties that could be rented for no more than twelve weeks a year, a restriction that would significantly lower their value. Complaint ¶417; Ex. 27 at -57. Finally, many of the valuations for Aberdeen did not include a discounted cash flow analysis to compute the present value of the future income expected from developing and selling the homes, and instead assumed the impossible – that the homes could be planned, built, and sold instantaneously. Complaint ¶419; NYSCEF Nos. 19-23. Even in later years, when the Trump Organization did adopt such an approach, the number of homes used in the valuations far outstripped (in one case by approximately fourfold) the numbers identified in (i) appraisals commissioned by the Trump Organization, (ii) planning submissions by the Trump Organization,

and (iii) planning approvals granted by foreign authorities. Complaint ¶¶423-26; Exs. 28-29; Ex. 30 at -017; Exs. 31-34.

45. **Trump Organization Golf Clubs** - For many of Mr. Trump's golf clubs from 2013 to 2020, the Trump Organization tacked on to the value an arbitrary premium of either 30% or 15% of the asset's purported "fixed asset" value (depending on the year), on the basis that the property was a completed club operated under the "Trump" brand. Complaint ¶¶361; NYSCEF Nos. 18-25. The company engaged in this deceptive practice even though the Statements disclaimed that any of the valuations included a brand premium and despite a prohibition under GAAP of including internally-generated intangible brand premiums. Complaint ¶¶361; NYSCEF Nos. 7-14.

46. Additionally, the Trump Organization derived the vast majority of golf club values based on a fixed-assets approach, i.e., basing the valuation in large part on an accounting "book value" meant purportedly to reflect the money spent to acquire and maintain them. Complaint ¶¶361; Ex. 35 at 64; NYSCEF Nos. 17-26. But not only is book value "not ordinarily an accurate reflection of the market value of an asset," *In re Roblin Industries*, 78 F.3 30, 36 (2d Cir. 1996), it also is contrary to industry custom and practice to use fixed assets to value an operating business. Mr. Trump himself was well aware of this and acknowledged as much to the IRS in 2012. Ex. 36 at -153, -156; Exs. 37-38. Mr. Trump's attorney argued on his behalf that the income producing capacity of the golf course – i.e., an income-based approach – was the relevant metric for a potential purchaser. Complaint ¶¶401; Ex. 36 at -153, -156; Exs. 37-38. ("The price at which a golf course will trade depends on the revenues that it can produce."). And, the Trump Organization had in its possession, and in fact commissioned appraisals that rejected the use of a "cost approach" as simply not what a prospective purchase of a golf club would consider.

Complaint ¶403; Ex. 39 at -347; Ex. 40 at -433-434; Ex. 41 at -217-218; Ex. 42 at -3066.

Moreover, the Trump Organization was fully aware about how to appropriately value golf courses and was advised by an expert that an income-based approach was the relevant metric for the valuation of a golf course. Complaint ¶404; Exs. 43-44.

47. Mr. Trump valued membership deposit liabilities at full face value to increase golf club valuations despite the Statements saying those liabilities were “at zero.” NYSCEF No. 7, at -046, -048; NYSCEF No. 8, at -726, -728; *see also* Compl. ¶ 15.d (describing impact on Jupiter valuation). The mechanism involved (1) inflating the purchase price by including those assumed liabilities at their full face value (Exs. 45, 48), (2) using the inflated price for purposes of the club’s balance sheet (Exs. 47, 50); and (3) using those inflated figures to calculate market value, effectively including the liabilities to boost Mr. Trump’s asset value but not subtracting them as liabilities (NYSCEF No. 18, at -651, 656; NYSCEF No. 19, at -684, -688).

48. The Trump Organization’s descriptions of these valuations were false and misleading. The club valuations were lumped together, with no Statement recipient being provided information sufficient to determine the valuation assigned to a particular club or the method of reaching that valuation.

49. **Cash** – From 2013 through 2021, Mr. Trump’s Statements falsely represented his holdings of cash, cash equivalents and marketable securities by, among other things, including in his “cash” sums held by partnerships in which Mr. Trump had only a minority stake and that he did not control. Complaint ¶74; Exs. 54-61. In some years these funds accounted for almost one-third of the cash reported (for example, \$24 million of the \$76 million total in 2018, and \$93 million of the \$293 total in 2021). Complaint ¶75; Ex. 58; NYSCEF Nos. 12, 15. Under the governing partnership agreements, the General Partner (not Mr. Trump) has “full control over

the management, operation and activities of, and dealings with, the Partnership Assets and the Partnership's properties, business and affairs," and "the Limited Partners [Mr. Trump] shall not take part in the management of the business or affairs of the Partnership or control the Partnership business." Complaint ¶¶69; Ex, 62 at -338-339, -363. The partnership agreements provide for cash distributions in an amount, if any, that is "determined by the General Partner in its sole discretion." *Id.*

E. Deutsche Bank "Managed Exit"

50. In 2020 when Deutsche Bank learned of alleged misrepresentations in the Statements from an action by OAG to enforce investigative subpoenas, it asked the Trump Organization a series of questions about those Statements. The Trump Organization failed to respond.

Specifically, on October 29, 2020, Deutsche Bank wrote to Donald Trump, Jr.:

Deutsche Bank Trust Company Americas ("DBTCA") has recently become aware of certain public factual allegations concerning the accuracy of financial information and representations submitted to DBTCA in connection with various loan facilities extended to affiliates of the Trump Organization and subject to the personal financial guaranty of Donald J. Trump. These allegations have been raised, among other places, in public court filings by the Office of the New York Attorney General ("OAG"), as well as in public reporting by the *New York Times* related to certain tax return information reportedly obtained by that organization.

The factual allegations appear to directly relate to the accuracy of certain Statements of Financial Condition submitted to DBTCA in Donald J. Trump's capacity as guarantor to the relevant loan facilities. The allegations pertain to, among other things, the value and other attributes of certain assets referenced in such Statements of Financial Condition, including but not limited to the Mansion at Seven Springs and the Trump National Golf Club in Los Angeles.

Ex. 63.

51. The bank asked a series of specific questions about the easement donations and an article in the New York Times discussing an inquiry by the IRS into a \$72.9 million tax refund claimed in 2009. Ex. 63.

52. The Trump Organization offered no response until December 7, 2020, when Alan Garten, Chief Legal Officer, emailed Deutsche Bank to say that the letter had only just come to the company's attention. Ex. 64 at -33.

53. Deutsche Bank wrote back on December 14, 2020, requesting a response and providing additional detail:

As you know, Donald J. Trump is required under the terms of his loan guaranties to provide annual financial statements to Deutsche Bank and to ensure that those statements "are true and correct in all material respects." See, e.g., Old Post Office ("OPO") Guaranty Agreement, § 9(ix). This information is used by the Bank to assess the borrowers' and Mr. Trump's compliance with loan and guaranty covenants, as non-compliance with such covenants may result in an event of default. See, e.g., OPO Loan Agreement, § 7.1(b). Failure to provide accurate valuations of financial assets may fundamentally impact the Bank's view of borrowers' and Mr. Trump's compliance with such covenants. Additionally, Mr. Trump must submit annually a signed certificate certifying, among other things, his compliance with covenants relating to his net worth, debt, and unencumbered liquid assets, and further certifying that his Statement of Financial Condition "presents fairly in all material aspects" his financial condition. See, e.g., Old Post Office Guaranty Agreement, Section 11(i)(D). The loan agreements and guaranties provide that an event of default occurs when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false or misleading in any material respect at the time made or intended to be effective." See, e.g., OPO Loan Agreement, § 7.1(d).

Id.

54. On December 16, 2020, Mr. Garten said he hoped to respond "within the next few days." *Id.* Deutsche Bank wrote back on January 8, 2020 asking for a response. *Id.* Ultimately, none was forthcoming.

55. As a result of the Trump Organization's failure to respond, Deutsche Bank decided to exit its relationship with the company. Ex. 65. Given the then-outstanding loans totaling hundreds of millions of dollars, that exit would take some time, as each facility had an expiration a few years away.

F. Refusal to Allow Insurance Company Retention of Statements

56. As discussed in the Complaint, the Trump Organization provided false and misleading financial disclosures to insurers.

57. For example, the Trump Organization submitted Mr. Trump's Statements to insurers by allowing underwriters only to review (but not retain) a copy of the Statements at the Trump Organization's offices. One of those insurers was Zurich North American ("Zurich").

58. From 2007 through 2021, Zurich underwrote a surety bond program (the "Surety Program") for the Trump Organization. Over the course of the Surety Program, based on the financial disclosures made by the Trump Organization, Zurich agreed to increasingly more favorable terms—periodically increasing the limits and decreasing the rate. Ex. 15 at 39, 100-101; Ex. 46; Ex. 49.

59. From inception, the Trump Organization met Zurich's indemnification requirement through an indemnity agreement executed by Donald J. Trump, pursuant to which he personally agreed to indemnify Zurich for claims under the Surety Program and to disclose to Zurich's underwriter his personal financial statements. This annual financial disclosure requirement permitted Zurich to ensure that the indemnification from Mr. Trump was sufficient to support the continued renewal of the Surety Program. Ex. 15 at 98-99, 100-101, 179-180.

60. The Trump Organization obtained Zurich's approval to renew the Surety Program on at least two occasions through intentional misrepresentations concerning Mr. Trump's Statements. During the on-site review that occurred on November 20, 2018 for the 2019 renewal, Zurich's underwriter was shown the 2018 Statement. The Statement listed as assets the Trump Organization's real estate holdings with valuations that Allen Weisselberg represented to Zurich's underwriter were determined each year by a professional appraisal firm "such as Cushman" "using cap rates and NOI as factors." Ex. 51 at 60-72; Ex. 52. Zurich's underwriter

considered the valuations to be reliable based on Weisselberg's representation that they were prepared by a professional appraisal firm and recorded such information in her underwriting file, which factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program for 2019 on the existing terms, which it did. *Id.*

61. During the on-site review for the next renewal, the Trump Organization disclosed to Zurich's underwriter Mr. Trump's 2019 Statement. Weisselberg again represented to Zurich's underwriter that the valuations for the real estate holdings listed in the Statements were derived annually by a professional appraisal firm. Again, Zurich's underwriter considered the valuations to be reliable based on Weisselberg's representation that they were prepared by a professional appraisal firm, which factored favorably into her analysis leading to her recommendation that Zurich renew the Surety Program in 2020 on the existing terms, which it did. Ex. 51 at 84-91; Ex. 53.

62. Weisselberg's representations to Zurich's underwriter that the valuations listed in Mr. Trump's Statements were prepared annually by professional appraisal firms were false. As discussed in detail the Complaint, the Trump Organization did not retain any professional appraisal firm to prepare any of the valuations used for the Statements; instead, the valuations were prepared by Trump Organization personnel, contrary to what Zurich's underwriter was expressly told and believed, and in almost all instances in a false and misleading manner. Complaint at ¶11; Ex. 51 at 84-91; Ex. 53.

63. Had Weisselberg told Zurich's underwriter the truth about how the valuations for the Statements she reviewed had actually been prepared, she would have accorded them less weight and it would have negatively impacted her underwriting analysis. Moreover, had Zurich's underwriter discovered during the renewal process that Weisselberg had misrepresented to her

how the valuations were prepared, it would have caused her to doubt the veracity of the rest of the information disclosed by the Trump Organization during the renewal and would have called into serious question whether Zurich should continue its insurance relationship with the Trump Organization, or renew on terms less favorable to the Trump Organization. Ex. 51 at 94-98.

64. For purposes of renewing its directors and officers (“D&O”) liability coverage, similar to the process described above with Zurich for the Surety Program, the Trump Organization provided underwriters no more than fleeting access to Mr. Trump’s Statements, through a monitored in-person review at Trump Tower. At no point during such financial reviews were the underwriters informed about the false and misleading valuations contained within the Statement. Ex. 66.

65. One such review took place during a renewal meeting held at the Trump Organization’s offices on January 10, 2017 between Trump Organization personnel (including Weisselberg) and various underwriters, including the underwriter for Tokio Marine HCC (“HCC”). Ex. 67.

66. In response to specific questioning from the underwriters at this meeting, the Trump Organization personnel represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. The HCC underwriter relied on this representation in concluding that there were no investigations by law enforcement agencies that could potentially trigger coverage under the D&O policies. Ex. 69 at 119-120; Ex. 66; Ex. 68.

67. Despite this representation made to underwriters by the Trump Organization personnel during the January 10 meeting, there was at the time of the meeting an ongoing investigation by OAG into the Trump Foundation and Trump family members Donald J. Trump,

Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of the Trump Organization.

68. The Trump Organization personnel in attendance at the January 10 meeting withheld this information despite their understanding and belief that the OAG investigation could potentially lead to a claim under the D&O coverage, as evidenced by the notice of claim the Trump Organization submitted to the D&O insurers through AON on January 17, 2019 seeking coverage in connection with OAG's enforcement action resulting from the investigation. Ex. 70.

II. BALANCE OF THE EQUITIES

69. The balance of the equities tips significantly in favor of OAG, which is attempting through its requested relief to protect the public interest and stop a fraud that has persisted for more than a decade.

70. *First*, there can be no doubt that the fraud has persisted and likely is ongoing. The persistent misstatement of asset values continued from at least 2011 through the preparation of the 2021 Statement, which was completed on October 29, 2021. NYSCEF No. 17. To cite just a few examples of the continued fraud and deception in the 2021 Statement:

- for Mar-a-Lago, the valuation still ignores the agreements Mr. Trump signed restricting the property's use to a social club and values the property as "if sold to an individual" for use as a private residence. (NYSCEF No. 26, at pdf page 8);
- for many golf clubs, the valuation still incorporates a fixed-assets approach (*id.* at pdf pages 11 (Briarcliff), 15 (Philadelphia), 16 (Hudson Valley), 17 (LA), 20 (Turnberry), 21 (Aberdeen)); and

- for many properties, the valuation in the 2021 Statement still fails to include a discounted cash flow analysis to value future income (*id.* at pdf pages 11 (Briarcliff), 17 (LA), 30 (Vegas)).

71. The Trump Organization continues to have financial disclosure obligations on existing as well as new loans. In particular, the Trump Organization has obligations that will require the company to submit to lenders Mr. Trump's Statement of Financial Condition as of June 30, 2022, which is likely to be issued soon. Relatedly, the Trump Organization also has obligations on other new loans to provide banks with information regarding Mr. Trump's assets, though not in the same form as the Statement of Financial Condition. For example, two new loans require "a schedule of material real estate assets and material related liabilities, including material contingent liabilities, and a calculation of Liquidity." Ex. 71 at -264.

72. *Second*, the Trump Organization has shown that it will not change its behavior even when presented with accurate, countervailing information, or when its deceptive practices are uncovered by a government investigation.

73. For example, even when confronted with the true facts regarding Mr. Trump's triplex, Mr. Weisselberg opted to "leave" it "alone" and within days falsely certify a financial statement contrary to those true facts. Ex. 72. Similarly, the Trump Organization repeatedly commissioned or otherwise obtained valuation work using legitimate methods—but then disregarded it when preparing numbers for the Statements. *See, e.g.*, Compl. ¶¶ 11; 85, 99; 115; 132-133; 326-330, 347; 403; *supra* at ¶¶ 38-40, 42, 46

74. For example, in March 2020, as part of its investigation, OAG conducted a lengthy examination of Mr. McConney regarding issues with the valuation approaches taken in the Statements. Similarly, in July and September 2020, OAG interviewed Mr. Weisselberg and

asked him about the strategies used to inflate valuations on numerous properties. *See, e.g.*, Ex. 14 at 507. Indeed, by the start of October 2021, OAG had taken 14 days of testimony from 9 employees at the Trump Organization.

75. Nevertheless, the Trump Organization continued to engage in fraudulent conduct by inflating asset valuations even on the 2021 Statement issued on October 29, 2021. NYSCEF No. 15. *See infra* ¶ 70.

76. The Trump Organization also began to pay off loans early, specifically those with personal guarantees that required the submission – and certification – of annual Statements. Complaint ¶ 21, 743. When negotiating new loans, the Trump Organization sought to avoid the submission of the Statements or even a calculation of net worth, and instead submitted a list of real estate assets and liabilities without a representation as to value. Ex. 73.

77. *Third*, on January 24, 2022, OAG filed its Supplemental Verified Petition in the subpoena enforcement action, which contained detailed allegations concerning many of the fraudulent valuations and deceptive schemes that are the focus of this action. *See* Special Proceeding, NYSCEF No. 630. Yet, Mr. Trump soon thereafter publicly indicated that he is unlikely to change his practices. For example, in a press release on February 15, 2022, Mr. Trump publicly dismissed the evidentiary record in the Special Proceeding and minimized Mazars' withdrawal from the relationship. Ex. 74.

78. In the course of doing so, Mr. Trump extolled the virtues of the Statements and their “disclaimer.” He insisted that the Trump Organization has “fantastic assets that are unique, extremely valuable,” “the best real estate and other assets anywhere in the world” that are “in many cases, far more valuable than what was listed in” the Statements. Ex. 74. Moreover, using his 2014 Statement as an example, he asserted that the asset values do not include “estimated

brand value,” which he professed would increase his net worth to “approximately \$8 to \$9 billion,” *id.*, even though the valuations for many of his golf clubs for 2013 through 2020 did include a 30% or 15% premium for brand value, *see supra* at ¶45.

79. Additionally, Mr. Trump appeared for several interviews after the filing of this action. Mr. Trump insisted alternatively that (i) he made no misrepresentations to banks, but, in any event, (ii) he had warned the banks that his Statements were unreliable. In an appearance on 77 WABC radio, Mr. Trump said that he made no misrepresentations to banks. Ex. 75. And in another interview, Mr. Trump stated that there was a “very big” “very powerful” disclaimer accompanying his Statements when submitted to lenders that told them the valuations were “done by management” and warned them to “be careful because it may not be accurate . . . may be way off” and to “make sure that you . . . get your own appraisers.” Ex. 76.

80. *Finally*, the injunction and monitor will ensure that there are no significant changes to the Trump Organization’s structure, or disposition of assets during the pendency of this action without notice to OAG and the Court. The Trump Organization has already sold one of the key assets that was the focus of OAG’s investigation – the Old Post Office hotel in D.C. – and refinanced another key loan, Doral.

81. Beyond that, however, the Trump Organization may be taking steps to reorganize its business outside of New York. The same day that OAG commenced this action, the Trump Organization registered with the New York Department of State a foreign limited liability company under the name “The Trump Organization II LLC,” which was formed less than a week earlier in Delaware. Ex. 77.

82. OAG raised concerns about this new entity in an email to counsel for the Trump Organization on September 30, 2022. Specifically, OAG cited “concerns about whether the

Trump Organization is taking steps to avoid the jurisdiction of the court or make it difficult to obtain relief against the corporate entities.” Ex. 78.

83. OAG indicated that if it could “obtain some assurance that there will be no change to the status quo ante over the coming months (or that we will at least have reasonable advance notice of asset transfers) we may be able to agree to a briefing schedule that begins in 60 days if it is accompanied with a pretrial schedule that will allow for a trial in mid-October 2023.” *Id.*

84. Counsel for the Trump Organization did not respond to the proposal on a trial date and initially declined to offer any form of assurance about future conduct. *Id.*

85. Yesterday, counsel offered to “provide ‘assurance’ and/or ‘reasonable advance notice’ to address any of your purported concerns regarding the activities of the Defendants,” but made no concrete proposals for how to implement those assurances or enforce them. *Id.*

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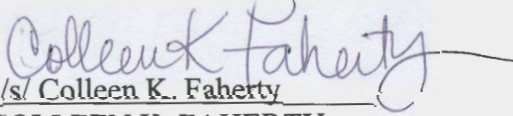
86. Even with the proposed preliminary injunction and independent monitor in place, this case should still proceed quickly to final resolution. To that end, the order to show cause seeks two additional forms of relief to accelerate this proceeding.

87. *First*, OAG respectfully requests that the hearing on the order to show cause also serve as a preliminary conference to set a trial date in early October 2023. That timeframe is consistent with other recent complex enforcement proceedings brought by OAG. For example, *People v. ExxonMobil*, N.Y. County Index No. 452044/2018, was a complex securities fraud and § 63(12) case that involved the operations of a global company with a market cap of almost \$300 billion, \$1.6 billion in alleged damages, and witnesses in multiple countries and yet proceeded to trial one year after the filing of the complaint. NYSCEF No. 45; *see also People v. Allen*, N.Y. County Index No. 452378/2019, NYSCEF No. 94, 399 (trial initially scheduled six months after filing, trial held 13 months after filing due to delays from COVID-19).

88. *Second*, counsel for Donald J. Trump and Eric Trump have not yet agreed to accept service of the summons and Complaint. Service of Mr. Trump personally is impracticable given the security measures taken for his protection as the former President of the United States. *See, e.g., Hollow v. Hollow*, 193 Misc. 2d 691, 695-96 (Sup. Ct. Oswego Cnty. 2002) (allowing email service where personal service was “impracticable” because defendant was residing in a heavily guarded compound in Saudi Arabia). Given that these defendants are aware of and have commented on the action and have had appearances by counsel on the docket, OAG respectfully requests that the Court direct that service by email on counsel and NYSCEF of all papers in this proceeding constitute service under C.P.L.R. 308(5). *See, e.g., Wimbledon Financing Master Fund, Ltd. v. Laslop*, 169 A.D.3d 550, 551 (1st Dep’t 2019).

89. I affirm that no prior application has been made for the relief sought by this motion. *See* C.P.L.R. 2217(b).

Dated: New York, New York
October 13, 2022


/s/ Colleen K. Faherty
COLLEEN K. FAHERTY

Word Count: 6,965