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

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

Plaintiff,

vs.

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

Defendants.

Index No. 452564/2022

Hon. Arthur F. Engoron

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO BRIEFLY STAY TRIAL

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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 (collectively, "Defendants"), by and through their undersigned counsel, respectfully submit this Memorandum of Law in support of Defendants' application for emergency relief by Order to Show Cause for an Order: (a) pursuant to Civil Practice Law and Rules ("CPLR") § 2201, briefly staying the trial of this action, which is scheduled to begin on October 2, 2023, until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment; and (b) awarding such other and further relief as this Court deems just, equitable and proper (the "Application").

INTRODUCTION

The New York Attorney General's (the "NYAG") callous disregard of the Appellate Division, First Department's unequivocal mandate has placed the Court in an extraordinarily untenable position and impeded the ability of the Defendants to prepare adequately for trial. The First Department issued a unanimous modification of this Court's Decision and Order on Defendants' respective Motions to Dismiss the Complaint. Any claim to the contrary, or that the text of the First Department's Decision and Order explaining that modification is *dicta*, is simply frivolous. The Court and the Defendants are entitled to know the issues to be tried by the NYAG ***before*** the trial commences. Moreover, the purpose of an interlocutory appeal to the First Department is to obtain an interlocutory decision which is then implemented on an interlocutory basis ***prior to the commencement of trial***.

Here, unfortunately, the NYAG has created unjustifiable ambiguity, interfered with the orderly pre-trial process, and exposed the Court and the Defendants to the prospect of a needlessly-protracted trial by her refusal to acknowledge the First Department's statute-of-limitations ruling. Indeed, the NYAG's opposition to Defendants' Motion for Summary Judgment makes abundantly clear that the NYAG intends to proceed to trial on time-barred claims and invites the Court to err and ignore the obvious fact that many of her claims ***have already been dismissed*** by the First Department.[1]

On June 27, 2023, the First Department issued an unambiguous mandate, ***judicially modifying*** this Court's Decision and Order on Defendants' respective Motions to Dismiss the Complaint (NYSCEF No. 1) ("Complaint" or "Compl.") and dismissing certain of the NYAG's claims as untimely. *People by James v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023) (Affirmation of Clifford S. Robert (Sept. 5, 2023) ("Robert Aff.") Ex. A.) (the "Appellate Order"). The Appellate Order provides as follows:

> Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered January 9, 2023, which denied defendants' respective motions to dismiss the complaint, **unanimously modified, on the law, to dismiss, as time-barred**, the claims against defendant Ivanka Trump and **the claims against the remaining defendants to the extent they accrued prior to July 2014 (with respect to those defendants subject to the August 2021 tolling agreement) and February 2016 (with respect to those defendants not subject to the August 2021 tolling agreement)**[.]

(Robert Aff. Ex. A at 1 (emphasis added).) This clear directive leaves no doubt certain of the NYAG's claims are in fact dismissed. There is no discretion vested in this Court and the NYAG

[1] The Defendants apologize to the Court for the timing and expedited nature of this filing. To be clear, and anticipating the NYAG's opposition, this application is not interposed for purposes of delay. As the Court is aware from both the recent filings and the conference last week, the Defendants have been working diligently to prepare for trial and seek to proceed as expeditiously as possible. However, the Defendants could not possibly have anticipated that the NYAG would so brazenly disregard the First Department's ruling and, in so doing, jeopardize the pre-trial preparation process and the Court's trial schedule.

is not free to ignore this mandate. The Court and the parties must simply perform the ministerial task of identifying the respective dates of accrual for each of the NYAG's claims (based on the unambiguous definition of same in the Appellate Order), and then applying the bar date. This process will necessarily result in narrowing the claims and issues to be tried, thus providing the Defendants with essential clarity as to the relevant pre-trial filings and the actual issues to be tried, and importantly, lessening the burden on this Court by reducing considerably the number of required trial days.[2]

The First Department also facilitated implementation of its mandate by specifically defining the process for determining the actual accrual date for the various claims:

> Applying the proper statute of limitations and the appropriate tolling, ***claims are time barred if they accrued – that is, the transactions were completed –*** before February 6, 2016 (*see Boesky v Levine*, 193 AD3d 403, 405 [1st Dept 2021]; *Rogal v Wechsler*, 135 AD2d 384, 385 [1st Dept 1987]). For defendants bound by the tolling agreement, claims are untimely if they accrued before July 13, 2014.

(Robert Aff. Ex. A at 3.) The First Department thus (1) determined certain of the NYAG's claims are actually time-barred, and (2) defined unambiguously what "accrued" means.[3] The First Department also held that "[t]he continuing wrong doctrine does not delay or extend these periods." (*Id.* at 3-4 (citing *CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 A.D.3d 12, 19-20 (1st Dep't 2021) and *Henry v Bank of Am.*, 147 A.D.3d 599, 601-602 (1st Dep't 2017)).)

The import of the Appellate Order cannot be overstated. *All ten* transactions involving lending, which give rise to the NYAG's claims against the individual Defendants and the Donald

[2] As the Court will recall from the recent conference, the NYAG's estimate of the number of trial days required to present her case extends the completion date into late December 2023. However, the number of trial days will be reduced substantially once the First Department's mandate is implemented.

[3] The NYAG ignores both the law and fundamental grammatical principles, claiming absurdly that the First Department's specific definition of accrual, viz., the date on which "the transactions were completed," is mere *dicta*.

J. Trump Revocable Trust (the "Trust"), have been dismissed; only *two of the ten* transactions involving lending asserted against the corporate-entity Defendants may proceed to trial. There is simply no dispute that: (i) seven of the ten transactions involving lending were completed *before* July 13, 2014; (ii) one of the transactions involving lending was *never* consummated; and (iii) the two remaining transactions involving lending were completed *before* the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.*, February 6, 2016. Thus, the First Department limited substantially both the number of claims to be adjudicated at trial and the number of parties and counsel required to prepare for and participate in such trial.

Despite the First Department's unequivocal holding, the NYAG still impermissibly relies on continuing-wrong theories to support her desire to recite pre-July 13, 2014, facts in her Partial Motion for Summary Judgment (Robert Aff. Ex. B) (the "NYAG's Partial SJM"). Notably, the NYAG cannot explain how conduct or transactions that pre-date July 13, 2014, remain actionable. In a footnote, the NYAG's explicit disregard of the Appellate Order is evident:

> Plaintiff reserves the right to argue at trial or in response to Defendants' submissions that an earlier cutoff date for timely claims applies based on tolling doctrines not considered by the Appellate Division or this Court and further reserves the right to challenge the First Department's holding at a later stage in this case.

(Robert Aff. Ex. B at 13, n.3.)[4]

Next, the NYAG doubles down on her contempt for the Appellate Order in her opposition to the Defendants' Motion for Summary Judgment, this time deliberately distorting the First

[4] The NYAG simply cannot "reserve[] the right to challenge the First Department's holding at a later stage in this case." *See KTM Partnership-I v. 160 West 86th St. Partners*, 169 A.D.2d 462 (1st Dep't 1991) (*citing Bray v. Cox*, 38 N.Y.2d 350 (1976)) (affirming the principle that parties cannot subsequently "raise issues which were previously adjudicated or could have been previously adjudicated by this court in the interlocutory appeal.")

Department's unequivocal ruling.[5] Worse, the NYAG irresponsibly invites this Court to err by ignoring the First Department's mandate. In so doing, the NYAG throws this action into a state of chaotic uncertainty where neither the Court nor the Defendants know what the operative claims are to be tried, or who the parties are or will be going forward during the trial.

Given these facts and circumstances, including that the parties are presently required to (i) prepare and submit witness and exhibits lists, deposition designations, and proposed facts to be proven at trial; (ii) prepare and submit pre-trial motions on September 22, 2023; (iii) prepare for and attend the final pre-trial conference on September 27, 2023; and (iv) prepare for and attend the trial beginning on October 2, 2023, it is essential that the Court temporarily stay the trial pursuant to CPLR § 2201 so that it can resolve the chaos created by the NYAG's abject refusal to follow the Appellate Order.

A trial of this magnitude should not begin in chaos. The Court and the Defendants are entitled to know the claims and issues to be tried sufficiently in advance to prepare adequately for trial. The Appellate Order is dispositive of many of the NYAG's claims and significantly reduces the scope of issues to be tried, thus shortening the length of the trial. A temporary stay of the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment ensures fair notice and a more efficient trial on only the remaining viable claims.

[5] The Court's August 1 and 17, 2023 Orders (NYSCEF Nos. 646, 739), required the parties to serve (but not file) their respective Motions for Summary Judgment upon all counsel of record via electronic mail, with a courtesy copy delivered to Chambers via electronic mail, pending resolution of any applications filed by non-parties seeking to seal any Confidential Information reproduced, paraphrased, or attached to the parties' respective motions. As the time for any non-parties to file any applications seeking to seal any Confidential Information reproduced, paraphrased, or attached to the NYAG's opposition to Defendants' SJM has yet to expire, Defendants have not attached the opposition papers to this Application. The Court is already in possession of the NYAG's opposition to Defendants' SJM, but Defendants are prepared to provide another copy to the Court upon request.

BACKGROUND

In the interest of brevity and avoiding burdening the Court with duplicative briefing, the Defendants respectfully refer the Court to their Motion for Summary Judgment (Robert Aff. Ex. C) ("Defendants' SJM"), NYAG's Partial SJM (Robert Aff. Ex. B), and the Appellate Order (Robert Aff. Ex. A) for a full recitation of the background facts. Below is a brief summary of the background facts relevant to this Application.

This complex commercial action was commenced on September 21, 2022, by the NYAG following a three-year investigation involving interviews with more than 65 witnesses and the review and analysis of millions of pages of documents. The 200-page Complaint seeks sweeping and punitive relief against sixteen named Defendants including, *inter alia*, the appointment of a Monitor to oversee the Defendants' assets and businesses,[6] barring the Defendants from conducting any real-estate transactions in New York for five years, permanently barring the individual Defendants from serving as an officer or director of any New York corporation and ordering the Defendants to pay $250 million in "disgorgement." The allegations in the Complaint involve more than 200 asset valuations and 11 financial compilations stretching over a decade. (*See* Compl. ¶ 10.)

On November 21, 2022, Defendants moved to dismiss the Complaint. (NYSCEF Nos. 195, 198, 201, 210, 220, 224.) This Court denied all of Defendants' motions. (NYSCEF Nos. 453-58.) Defendants appealed (NYSCEF Nos. 486, 487, 488), and on June 27, 2023 the First Department judicially modified this Court's Order holding that "claims are time barred" as against (1) all Defendants not subject to the tolling agreement dated August 27, 2021 (the "Tolling Agreement")

[6] The Court already granted this relief and the Monitor, Hon. Barbara S. Jones (Ret.), has been in place pursuant to the Court's Orders dated November 14 and November 17, 2022 (NYSCEF Nos. 193, 194).

"if they accrued – that is, the transactions were completed – before February 6, 2016," and (2) "for defendants bound by" the Tolling Agreement, "if they accrued before July 13, 2014." (Robert Aff. Ex. A at 3.) Finding that the allegations against Ivanka Trump did not support any claim that accrued after February 6, 2016, the First Department dismissed Ms. Trump from the suit entirely but left it to this Court to determine "the full range of defendants bound by the tolling agreement." (*Id.* at 4.) Finally, the First Department held that "[t]he continuing wrong doctrine does not delay or extend" the limitations periods. (*Id.* at 3.)

All discovery concluded in the case on July 28, 2023. On July 31, 2023, the NYAG filed a note of issue with the Court confirming that discovery has been "completed" and stating that "[t]he case is ready for trial." (NYSCEF No. 644 at 3.)

The Parties' Summary Judgment Motions

On August 4, 2023, the parties served (but did not file) their respective Motions for Summary Judgment (Robert Aff. Exs. B, C).[7]

Defendants' SJM seeks implementation of the First Department's mandate since (1) certain of the NYAG's causes of action are based on transactions that were completed outside of the applicable limitations period; and (2) the Tolling Agreement does not bind any individual Defendant or the Trust (Robert Aff. Ex. C).

As to (1), Defendants' SJM states *inter alia* as follows:

> The NYAG's causes of action in this lawsuit are based on several financial transactions in which the NYAG alleges that Defendants "utilized the false and misleading Statements of Financial

[7] As noted, the Court's August 1 and 17, 2023 Orders (NYSCEF Nos. 646, 739), required the parties to serve (but not file) their respective Motions for Summary Judgment upon all counsel of record via electronic mail, with a courtesy copy delivered to Chambers via electronic mail, pending resolution of any applications filed by non-parties seeking to seal any Confidential Information reproduced, paraphrased, or attached to the parties' respective motions. On August 30, 2023, the Court issued its Decision and Order on certain non-parties' sealing applications (NYSCEF Nos. 759-64), and the parties filed their respective Motions for Summary Judgment on August 30, 2023 (NYSCEF Nos. 765-1262).

> Condition" to "obtain[] real estate loans and insurance coverage" from various third parties, including lenders, banks, and insurers. (*See generally* NYSCEF No. 1 ¶¶ 559–61.) Many of these transactions fall outside the scope of the statutory period—regardless of the Tolling Agreement's applicability—because there is no dispute that they were completed before July 13, 2014.
>
> …
>
> Summary judgment is also proper for Defendants who are not subject to the Tolling Agreement, to the extent the NYAG's allegations are based on transactions completed by February 6, 2016.

(*Id.* at 23-30.) Defendants' SJM also provides the following visual aid for each transaction, its closing/accrual date, and to which Defendants (if any) claims relative to these lending transactions remain viable under the limitations period pursuant to the Appellate Order:

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG's Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None
GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by the Tolling Agreement
Buffalo Bills Bid	Transaction Never Consummated	None
40 Wall Street Loan	November 2015	Only Defendants Bound by the Tolling Agreement

(*Id*. at 25.)

As to (2), Defendants' SJM states *inter alia* as follows:

> [T]he NYAG's causes of action based on transactions that were completed after July 13, 2014 are timely only as to Defendants whom this Court determines are bound by the Tolling Agreement. The Tolling Agreement, which was entered into between "The

> Trump Organization" and the NYAG, only binds certain Defendant corporate entities.
>
> It is undisputed that, on August 27, 2021, the NYAG and "the Trump Organization" entered into the Tolling Agreement, thereby tolling the limitations period for any Executive Law § 63(12) claim "in connection with statements regarding Donald J. Trump's financial condition, representations regarding the value of assets, and potential underpayment of federal, state, and local taxes." The agreement, signed by Alan Garten, the EVP/Chief Legal Officer of the "Trump Organization," states that "the undersigned representatives of the Parties certifies that he or she is fully authorized . . . to bind such Party to this document." *Id.* The agreement also states that its execution "shall not prejudice any party's position with respect to any other defense, response, or claim" and that its "terms, meaning, and legal effect" should be "interpreted under the laws of New York State." *Id.* New York law and the record in this action demonstrate that the agreement did not bind the unmentioned, non-signatory Defendants—President Trump, Donald Trump Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, (collectively, the "Unnamed Individuals") and/or The Donald J. Trump Revocable Trust ("Trust").

(*Id.* at 30-31 (citation omitted).) Defendants' SJM also provides the following visual aid as to which Defendants are, and which Defendants are not, bound by the Tolling Agreement:

Parties Not Bound by the Tolling Agreement	**Parties Bound by the Tolling Agreement**
• President Trump • Donald J. Trump Jr. • Eric Trump • Ivanka Trump • Allen Weisselberg • Jeffrey McConney • The Donald J. Trump Revocable Trust	• The Trump Organization Inc. • DJT Holdings LLC • DJT Holdings Managing Member LLC • Trump Organization 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

(*Id.* at 31.)

In the NYAG's Partial SJM, the NYAG brazenly ignores the Appellate Order, mentioning it only *twice* in passing in her entire 61-page memorandum of law. (Robert Aff. Ex. B.) The NYAG

continues to base her allegations on lending transactions that were indisputably completed prior to July 13, 2014, ignoring the First Department's mandate. Indeed, the NYAG still relies, inappropriately, on continuing-wrong theories to support her recitation of pre-July 13, 2014, facts in her motion, and fails to articulate any reason why the conduct or transactions that pre-date July 13, 2014, would remain actionable following the Appellate Order. The NYAG also boldly, and incorrectly, states that "the cutoff date for timely claims against all Defendants is at latest July 13, 2014" (Robert Aff. Ex. B at 13, n.3), even though the First Department established that "claims are time barred if they accrued – that is, the transactions were completed – before February 6, 2016" for Defendants who are not bound by the Tolling Agreement. (Robert Aff. Ex. A at 3.)

The NYAG served her Opposition to Defendants' SJM on September 1, 2023. In the NYAG's opposition papers, she continues to distort and ignore the Appellate Order.

LEGAL STANDARD

The Court has broad discretion to grant a stay of proceedings and trial "in a proper case, upon such terms as may be just." CPLR § 2201. The issuance of a stay pursuant to CPLR § 2201 is within the discretion of the trial court and may be granted where the moving party shows "a clear case of hardship or inequity in being required to go forward[.]" *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). The Court has "broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, duplication of proof and potential waste of judicial resources." *215 West 84th St. Owner LLC v. Ozsu*, 209 A.D.3d 401, 401 (1st Dep't 2022). This includes, for example, discretion to stay a trial pending the determination of a dispositive motion. *See Van Duzar v. The Metropolitan Transp. Auth.,* No. 10237/06, 2008 WL 3819721 (Sup. Ct. Queens County Jul. 31, 2008) (granting motion to stay trial pending the determination of dispositive motion).

ARGUMENT

I. GOOD CAUSE EXISTS TO BRIEFLY STAY THE TRIAL.

Defendants seek to briefly stay the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment. This relief will prevent significant hardship and inequity to the Defendants and avoid a massive waste of judicial and party resources.

A. The First Department Has Dismissed Many of the NYAG's Claims.

Given the First Department's unequivocal mandate, which is now law of the case, Defendants' SJM seeks implementation of that Order (1) through dismissal of claims based on transactions completed outside of the applicable limitations period; and (2) a determination that the Tolling Agreement does not bind any individual Defendant or the Trust. Implementation of the First Department's judicial modification will provide essential clarity as to the issues to be tried and significantly reduce such issues to be tried in this action. A temporary stay of the trial pending a decision on Defendants' SJM will thus ensure a more efficient trial on only the viable claims.

In this Court, prior rulings of the First Department constitute the law of the case and are binding. *See Brodsky v. N.Y. City Campaign Fin. Bd.,* 107 A.D.3d 544, 545–46 (1st Dep't 2013) ("[A]n appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court.") (citation omitted). Where, as here, the issue has been judicially determined by the First Department, the decision is binding on the Supreme Court. *See* 28 N.Y. Jur. 2d Courts and Judges § 218 ("State trial courts are bound to follow existing precedent of a higher court even though they may disagree with the higher court's decision.") (collecting cases); *Kenney v. City of New York*, 74 A.D.3d 630, 630-31 (1st Dep't 2010) ("An appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court, as well as on the appellate court . . . [and] operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law[.]")

(collecting cases). Nor can the NYAG "avoid the preclusive effect of the prior rulings just by adding a new legal argument." *Perez v. State*, No.112317, 2011 WL 5528963, at *5 (Ct. Cl. Aug. 5, 2011).

As set forth in Defendants' SJM, regardless of the applicability of the Tolling Agreement there is no dispute that seven of the ten lending transactions alleged in the Complaint (viz., the Seven Springs Loan, the Trump Park Avenue Loan, the Ferry Point Contract, the GSA OPO Bid Selection and Approval, the Doral Loan, the Chicago Loan, and the OPO Contract & Lease) were completed before the earliest cutoff date for timely claims, *i.e.*, before July 13, 2014. Likewise, there is no dispute that one of the ten lending transactions alleged in the Complaint, the Buffalo Bills Bid, was never consummated. Because any claims in the Complaint that were based upon these eight lending transactions "accrued before July 13, 2014" and "[t]he continuing wrong doctrine does not delay or extend" the statute of limitations period, the Appellate Order dismissed these claims.

As for the remaining two lending transactions alleged in the Complaint, the OPO Loan and the 40 Wall Street Loan, there is no dispute that these transactions were completed before the cutoff date for timely claims against those Defendants not subject to the Tolling Agreement, *i.e.*, February 6, 2016, but on or after the cutoff date for timely claims against those Defendants subject to the Tolling Agreement, i.e., July 13, 2014. There is likewise no dispute that the Tolling Agreement was entered into between only the "Trump Organization" and the NYAG, and that it only binds certain corporate Defendants, not the individual Defendants or the Trust.[8]

[8] Indeed, the NYAG has admitted that the "Trump Organization" is the only party bound by the Tolling Agreement, stating in open court that "Donald J. Trump is not a party to the tolling agreement, that tolling agreement *only applies to the Trump Organization*." (Robert Aff. Ex. C at 34 (emphasis added).) The NYAG advanced the same position before the First Department stating that the NYAG "and the Trump Organization entered a six-month tolling agreement, *to which Mr. Trump was not a party*." (*Id.* (emphasis added]).) Communications between the "Trump Organization" and the NYAG surrounding the agreement further confirm that the parties did not intend to bind the

The First Department provided specific guidance as to the applicable limitations periods and its mandate of dismissal must be implemented ***before*** any remaining issues are tried. However, given the NYAG's willful disregard of the Appellate Order a stay of the trial during the pendency of the parties' respective Motions for Summary Judgment is required to avert chaos.

B. Defendants Will Face Significant Hardship and Inequity Absent a Brief Stay of the Trial in this Action.

The First Department's modification must be implemented ***before*** the trial commences, requiring the Court to specify which causes of action remain. The only substantive task remaining in this action is to proceed with the trial on those remaining claims. If a temporary stay of the trial is not granted and Defendants are required to proceed to trial on October 2, 2023, without the Court having implemented the rulings in the Appellate Order, the Defendants will suffer significant hardship and inequity.

As an initial matter, the harm to the individual Defendants and the Trust is real and substantial. As set forth above the effect of the Appellate Order, coupled with the fact that the individual Defendants are not bound by the Tolling Agreement, is that all of the NYAG's claims involving lending transactions against the individual Defendants and the Trust are time-barred and must be dismissed. The hardship and inequity that will be imposed upon certain Defendants by having to participate in a lengthy trial in which they are no longer parties, that is expected to involve over fifty fact and expert witnesses and is currently estimated to span almost three months, is manifest. In addition, the certain Defendants will suffer irreparable damage to their reputations and goodwill should they be required to participate in a high-profile trial in which they will be

individual Defendants, and that the agreement is not binding upon the Trust. (*Id.* at 36.) For these reasons, any claims in the Complaint that are based upon these two transactions and asserted against the individual Defendants and the Trust are time-barred and must be dismissed. The only claims in the Complaint that are arguably not time-barred are those claims that are based upon these two transactions and *asserted against the corporate-entity Defendants*.

accused of wrongdoing despite having a dispositive defense. Courts recognize that a "defendant's reputation and goodwill" suffer "from improvident charges of wrongdoing." *Ross v. Bolton*, 904 F.2d 819, 823 (2d Cir. 1990); see also *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 114 (2d Cir. 1982) (recognizing "the irreparable damage to reputations and goodwill which results from charges of fraud").

The same is true for the corporate-entity Defendants. If the corporate-entity Defendants are required to participate in a trial before the Court implements the mandate in the Appellate Order, those Defendants will have to devote time and resources and incur litigation expense on issues that should be disposed of and should never have been tried. Simply put, implementation of the First Department's mandate will alter significantly the path forward in this case and impact the pre-trial filings and the Defendants preparation for trial. Thus, a brief interim stay is necessary to ensure that Defendants, some of which are required to be discharged from the action pursuant to the Appellate Order, are not required to spend hundreds of hours actively preparing for the October 2, 2023 trial.

Given the grave prejudice that Defendants would suffer in the absence of a temporary stay, any incidental effect of delaying the start of the trial a mere few weeks does not justify denial of Defendants' request for a temporary stay. A temporary stay of the trial also conserves pre-trial resources by avoiding any unnecessary expenditure of Defendants' time, preparation resources, and related trial expenses. The Defendants continue to work diligently and are fully prepared to go to trial once the actual issues to be tried are identified.

CONCLUSION

Although the Court should never have been placed in this unfortunate and untenable position, the only permissible path forward now is to implement the First Department's mandate

and define the issues to be tried. For the foregoing reasons, the Court should grant a brief stay of the trial until a date three weeks after the Court determines the parties' respective Motions for Summary Judgment and implementing the First Department's mandate.

Dated: New York, New York
September 5, 2023

Respectfully submitted,

s/ *Michael Madaio*

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Dated: Uniondale, New York
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Respectfully submitted,

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CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 4,825 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
September 5, 2023

Respectfully submitted,

s/ *Clifford S. Robert*

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