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

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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I. PRELIMINARY STATEMENT

On a voluminous summary judgment record, the Court found Donald Trump ("Trump"), his company ("TTO"), and its top executives (including Eric Trump and Donald Trump, Jr.) liable for repeated and persistent fraud under Executive Law §63(12) in preparing and certifying as true Trump's falsely inflated statements of financial condition ("SFCs"). NYSCEF No. 1531 ("SJ Decision") at 32-33. The Court found "that between 2014 and 2021, defendants overvalued the assets . . . between $812 million and $2.2 billion dollars," *id*. at 19, amounts that are material by any standard. The Court left for trial the remaining causes of action alleging illegality under §63(12) by falsifying business records and financial statements, committing insurance fraud, and conspiracy to commit those acts.

Based on the documents and testimony introduced during 44 days of trial, the People have established that defendants: (i) committed the alleged illegal acts with the requisite intent to defraud when they employed numerous deceptive schemes to falsely inflate more than a dozen assets on the SFCs over 11 years; (ii) reaped hundreds of millions of dollars in ill-gotten gains; and (iii) continue to conduct business without meaningful corporate oversight to prevent further fraud on the marketplace.

The conclusion that defendants intended to defraud when preparing and certifying Trump's SFCs is inescapable; the myriad deceptive schemes they employed to inflate asset values and conceal facts were so outrageous that they belie innocent explanation. To cite a few examples:

- reporting as "liquid" assets cash not controlled by Trump;
- valuing non-existent, yet-to-be-developed buildings as if estimated profits from those buildings could be realized immediately without any present-value discount;

- valuing properties with onerous legal restrictions – like rent stabilization and conservation easements – as if they could be sold or developed free and clear of such restrictions;

- disregarding and concealing appraisals in favor of much higher values calculated based on false assumptions, often conflicting with the very assumptions used in the appraisals;

- valuing properties using the listing prices of purportedly comparable properties (instead of sale prices);

- valuing properties based on objectively false assumptions such as grossly inflated square footage and misrepresentations about the quantity of homes approved for development; and

- valuing properties based on assumptions that were contrary to express representations in the SFCs, such as the exclusion of brand value and refundable golf membership deposits being worth $0.

Moreover, direct evidence from multiple witnesses establishes Trump made known his desired target net worth each year prior to assuming public office in 2017, which his CFO and Controller then dutifully set out to hit by reverse-engineering the asset values in the SFC, a practice that continued under the leadership of Eric Trump and Donald Trump, Jr. as co-CEOs of TTO. The trial record also includes copious circumstantial evidence demonstrating defendants repeatedly acted in ways courts typically view as inferring intent: (i) engaging in an overall pattern of fraudulent conduct over the course of many years using similar techniques with a similar nucleus of people; (ii) exercising substantial control of the organization and its day-to-day operations; (iii) repeatedly misrepresenting objective facts in the relevant documents; (iv) actively concealing material facts from counterparties; (v) possessing financial motive based on the benefit to be received from the fraud; (vi) possessing unique knowledge of, and ready access to, the true facts being misrepresented; and (v) dissembling, evading, and prevaricating on the stand.

Defendants failed to present any legally relevant response to the People's proof. It does not matter how many times defendants' counsel recite there was "no reliance" and were "no victims." Plaintiff's claims do not require proof of "reliance," the Court has already ruled multiple times that "the State has an interest in protecting the integrity of the marketplace" (NYSCEF Nos. 1655 at 3, 1531 at 4-5), and the banks *did* lose money "by lending at lower interest rates than they otherwise would have" (NYSCEF No. 1655 at 2-3). In any event, third parties *did* rely on the SFCs. Deutsche Bank ("DB") witnesses, including Nicholas Haigh (the only bank witness with credit authority) testified the bank relied on the asset values reported in the SFCs when applying standard "haircuts," which was confirmed by the plain language of the bank's credit memos. *Id*. at 3 ("Indeed, many of the lenders' calculations used the SFCs as their starting point, to which they often applied a standard 'haircut.'"). Similarly, the insurance underwriters testified they relied on figures in the SFCs, most importantly the inflated cash figure, when conducting their underwriting analyses. Contrary to defendants' repeated assertions, defendants' conduct deprived counterparties of the ability to properly price the risk of doing business with TTO.

Defendants reaped hundreds of millions of dollars in ill-gotten gains through their unlawful conduct. Record evidence, including the substantively unrebutted testimony of Plaintiff's banking expert Michiel McCarty, supports disgorgement of $370 million, plus pre-judgment interest, based on: (i) the interest rate differential between what defendants procured through the fraudulent SFCs and what they would have received through a nonrecourse commercial real estate loan; (ii) the profit they realized from the Old Post Office and Ferry Point deals; and (iii) the "bonuses" paid to employees for participation in defendants' fraudulent schemes.

The People have also conclusively established that TTO continues to operate without necessary corporate governance oversight to protect against future fraud and illegality. Much of

the misconduct occurred on the watch of current co-CEOs Eric Trump and Donald Trump, Jr., who perpetuated the scheme to inflate the SFCs (even during OAG's active investigation) and themselves certified SFCs. On their watch, the company's CFO Allen Weisselberg and Controller Jeffrey McConney confessed to committing multiple acts relating to tax fraud, and a jury convicted the company for that same criminal conduct. After these illegal acts came to light, Eric Trump and Donald Trump, Jr. allowed Weisselberg and McConney to remain on the payroll and rewarded them with lucrative severance packages that restricted their ability to cooperate with law enforcement investigations, rather than immediately terminating their employment. To this day the positions of CFO and Controller remain unfilled.

These acts of corporate malfeasance warrant appointing an independent monitor to closely oversee the company for at least the next five years, and to impose statewide permanent industry bars on Trump, Weisselberg, and McConney, and five-year bars on Eric Trump and Donald Trump, Jr.

II. FINDINGS OF FACT

A. Deceptive Practices to Inflate Asset Values on SFCs[1]

1. Defendants' Role in SFC Preparation

1. As the SFCs represent, Trump was responsible for the preparation and fair presentation of the SFC's from 2011 through 2015,[2] the date covered by the last SFC issued before Trump became President. (*E.g.,* PX-729)

2. To meet that responsibility, Trump directed Weisselberg and McConney to prepare the SFCs and work with TTO's outside accountants at Mazars USA LLP ("Mazars") to compile and publish them. (Tr.3485:02-3486:10, 3491:09-11)

3. Trump told Weisselberg that he "wanted his net worth on the Statement of Financial Condition to go up." (Tr.1409:16-1410:03)

4. To ensure the net worth went up, between 2011 and 2015 Weisselberg and Michael Cohen were tasked by clear implication from Trump to "reverse engineer the various different asset classes" in the SFCs, to "increase those assets in order to achieve the number"—Trump's net worth figure—that he told them to reach. (Tr.2211:06-17, 2215:09-18, 2218:15-18, 2230:05-17)

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[1] This section contains factual findings the Court made on summary judgment (which are law of the case) and additional proposed findings supported by trial evidence. *Delgado v. City of New York*, 144 A.D.3d 46, 47 (1st Dep't 2016) (emphasizing that "when an issue is specifically decided on a motion for summary judgment, that determination is the law of the case").

[2] To the extent any proposed finding or conclusion relates to events occurring before the cutoff date established by the Appellate Division, the limitations period is a bar on claims, not evidence, as the Court has stated repeatedly. Tr.1812:24-25; 1924:2-11 (bank robbery example); *Kent v. Papert Companies, Inc.*, 309 A.D.2d 234, 241 (1st Dep't 2003); NYSCEF No. 1535 (collecting cases). Such events may show a course of conduct, knowledge, intent, or a long-running conspiracy or scheme, or may be relevant to equitable relief to be awarded. *See* Guide to New York Evidence § 4.38, available at https://www.nycourts.gov/JUDGES/evidence/; *People v. Leisner*, 73 N.Y.2d 140, 146-47 (1989).

5. Once Weisselberg and Cohen achieved the numbers Trump tasked them to reach, Weisselberg would obtain Trump's approval and send the SFCs to Mazars for finalization. (Tr.2220:01-18)

6. From 2011 to 2015, Trump had "final review" over each SFC's contents. (Tr.597:10-18, 2230:18-2231:03, 5047:10-21)

7. Trump continues to assert that the preparation of the SFCs was "fine" and, if anything, understated his assets "by a substantial amount." (Tr.3493:01-07, 3495:09-13)

8. Trump would discuss valuations of individual properties with Weisselberg and McConney. (Tr.3495:16-18) In his own view, Trump knew "more about real estate than other people," and "is more of an expert than anybody else." (Tr.3487:01-08)

9. In March 2017—two months after his inauguration—Trump appointed Donald Trump, Jr. and Eric Trump as his agents with power of attorney over banking and real estate transactions, including execution and delivery of certifications for existing loans. (PX-1330; Tr.3433:01-3434:11)

10. Donald Trump, Jr. and Eric Trump have been Executive Vice Presidents at TTO since at least 2011, and since January 2017 they have been acting as co-chief executive officers, running the company together with Weisselberg (until his departure). (Tr. 3164:17-20, 3168:16-25, 3170:12-18, 3286:06-08, 3288:11-22)

11. Donald Trump, Jr. became trustee of the Donald J. Trump Revocable Trust ("Trust") effective January 19, 2017, and has continued in that role since then except between January 19 and July 7 of 2021. (PX-1015, PX-1016; Tr.3184:06-3185:06)

12. From January 2017 through 2021, Weisselberg and Donald Trump Jr., as trustees of the Trust, were responsible for preparation and fair presentation of the SFCs. (*E.g.*, PX-756; Tr.961:19-963:18)

13. In addition, as detailed below, Eric Trump and Donald Trump, Jr. were involved in the valuations of specific properties. In 2021, they took direct control of the SFC preparation: retaining the accounting firm Whitley Penn, interviewing and selecting the firm, signing the engagement letter, supervising McConney and Patrick Birney, participating in a video call update on the SFC, and eventually signing the final representation letter. (*Infra* ¶¶98-99, 110-116)

14. Allen Weisselberg was Chief Financial Officer ("CFO") of TTO from 2011 until he was placed on leave in October 2022 after pleading guilty to 15 counts related to tax fraud. (PX-1751 at 2, PX-3041 ¶710)

15. Prior to Trump assuming public office, Weisselberg reported directly to him. (PX-3041 ¶711)

16. As CFO, Weisselberg was in charge of the corporate accounting department at TTO. (Tr.790:03-07; PX-3041 ¶711-712)

17. Weisselberg was never a CPA and did not know any components of GAAP. (Tr.788:11-19)

18. Weisselberg was trustee of the Trust from January 2017 through January 2021. (Tr.794:08-795:23; PX-769, PX-1016)

19. Weisselberg had a primary role in preparing SFCs, supervising McConney from 2011 until late 2016, and McConney and Birney from late 2016 until at least 2020. (Tr.1229:23-1231:5, 3561:5-17, PX-3041 ¶714)

20. Weisselberg signed SFC engagement and management representation letters for the 2011 through 2015 SFCs as an executive officer of TTO and for the 2016 through 2020 SFCs as an executive officer of TTO and trustee. (PX-3041 ¶716-35; *e.g.,* PX-753, PX-786)

21. Weisselberg understood that in the management representation letters, TTO was making representations to Mazars that Mazars was relying upon, and that Mazars would not release the SFCs without these representations. (Tr.837:11-22; 856:06-17)

22. Notwithstanding his lack of knowledge of GAAP, Weisselberg represented, among other things, that the SFCs were presented in conformity with GAAP and that assets in the SFCs were stated at their Estimated Current Value ("ECV"), even though he was not familiar with the definition of that term. (Tr.839:13-842:12; *e.g.,* PX-706)

23. TTO was obligated to provide to Mazars any relevant information it had, including any information that contradicted the valuations in the SFCs. (Tr.847:19-23)

24. Weisselberg would not have permitted a final draft of the SFC to be issued unless Trump had reviewed it and was satisfied with it. (Tr.900:11-19; PX-3041 at 676)

25. Jeffrey McConney was Controller of TTO from the early 2000s until February 25, 2023. (PX-3041 ¶736; Tr.582:09-12)

26. McConney led the preparation of Trump's SFCs beginning in the 1990s and was primarily responsible for preparing the valuations in the SFCs from at least 2011 until (at the earliest) November 2016, when Birney became involved with preparing the SFC. (PX-3041 ¶737; Tr.583:01-24, 1207:22-1208:10, 1209:16-24)

27. Under Weisselberg's supervision and control, McConney was responsible for selecting valuation methodologies, assembling documentation for each asset based on the

methodology selected, and preparing supporting data spreadsheets containing the valuations from 2011 until (at the earliest) November 2016. (PX-3041 ¶738; Tr.587:16-589:17)

28. During this period, he reviewed the valuation methodologies and valuations with Weisselberg, who gave him approval each year to inform Mazars when the SFC could be finalized and issued. (Tr.581:16-21, 589:06-17, 596:24-597:09)

29. McConney understood that it was the responsibility of Trump and later the trustees to provide outside accountants compiling the SFCs with complete and accurate information in connection with the engagement. (Tr.589:18-592:02)

30. McConney lacked expertise in GAAP, but when working on the SFCs from 2011 to 2021 he understood that the SFCs had to be GAAP compliant unless there was a departure from GAAP specifically noted. (Tr.629:19-630:05)

31. When working on SFCs from 2011 to 2021, McConney understood that regardless of the methodology used to value an asset, the result had to be an amount at which the asset could be exchanged between a buyer and seller, each of whom is well informed and willing and neither of whom is compelled to buy or sell. (PX-3041 ¶31; Tr.630:20-631:04, 6250:08-6250:13)

32. From 2011 until he assigned Birney to assist with the SFCs, McConney provided information to Mazars required for the SFC compilation engagement by sending Mazars the supporting data spreadsheets and backup information. (Tr.592:08-16)

33. When he assigned Birney to work on the SFCs in November 2016, McConney provided no written training materials to him on how to prepare an SFC and no instruction on how to value property using a capitalization rate or how to apply GAAP or ASC 274 – all of which Birney knew nothing about. (Tr.1210:04-1212:07)

34. After November 2016, McConney continued to play a critical role in SFC preparation, reviewing supporting data spreadsheets with Birney and Weisselberg for Weisselberg's approval and continuing to be a decision-maker with Weisselberg on which valuation methodologies to select. (Tr.1212:08-1213:21, 1215:11-15, 1217:10-1218:13, 1223:03-08, 1226:22-25, 1228:17-20)

2. Inflated Assets

a. Vornado Cash

35. Donald Trump and his trustees falsely and misleadingly classified his 30% interest in cash held by the Vornado Partnership Interests ("Vornado Cash") as a liquid/cash asset on his SFCs for 2013-2021 in amounts between $14,221,800 and $93,126,589. (SJ Decision 30)

36. McConney intentionally included Vornado Cash in the cash asset category despite knowing that such cash did not reflect Trump's liquidity and despite being told by Donald Bender that he could not include in this asset category cash Trump did not control. (PX-2587, PX-3401 ¶403; Tr.615:08-620:24, 702:24-704:05)

37. In the cash spreadsheet he provided Mazars each year from 2013-2016, McConney intentionally listed Vornado Cash in a column labeled "Capital One" that included cash amounts for other entities that, unlike Vornado Cash, are controlled by Trump. (PX-2587; Tr.620:25-621:16, 623:17-19, 626:10-15) McConney did so even though Vornado Cash was held in bank accounts at Bank of America, not Capital One, which McConney would have known based on bank statements confirming periodic distributions of Vornado Cash to TTO. (PX-3106; Tr.688:08-690:04)

38. Weisselberg was aware Vornado Cash was included in the cash asset category on the SFCs and that Vornado Cash was not under Trump's control yet approved this valuation methodology. (Tr.939:16-940:12)

39. By at least February 2016, Weisselberg advised Donald Trump, Jr. and Eric Trump that distributions from the Vornado Partnerships were at the general partner's discretion and hence not in the control of Trump or the Trust. (PX-1293; Tr.1381:22-1383:04, 1387:18-1388:17)

40. Mark Hawthorn, Chief Operating Officer of Trump Hotels, conceded that including Vornado Cash in the cash asset category in Trump's SFCs was inaccurate. (Tr.1414:06-07, 1454:19-23) Defendants' own accounting expert, Jason Flemmons, described the inclusion of Vornado Cash in the cash asset category as a "red flag" and a "very glaring issue" that "is not GAAP compliant." (Tr.4390:17-4391:05, 4392:03-04)

b. Triplex Apartment

41. Defendants valued Trump's triplex ("Triplex") by multiplying a price per square foot by the Triplex's purported square footage. (Tr.637:20-24)

42. For 2012 through 2016, defendants used a false figure for the size of the Triplex of 30,000 square feet, or approximately three times the apartment's actual size. (SJ Decision 21-22; PX-3041 ¶37)

43. For 2012 and 2013, McConney calculated the price per square foot based on asking prices for other apartments rather than what he knew was the relevant measure: actual sale prices. Similarly, for 2014 to 2016, he used unreasonably high sale prices of apartments in new, ultra-luxury buildings. (PX-714, PX-1037, PX-1052, PX-3044; Tr.634:11-638:03, 640:21-641:16, 646:06-649:21, 653:07-13, 654:18-657:17)

44. On October 1, 1994, Trump consented to the First Amendment to the Declaration of Trump Tower Condominium ("First Amendment"), which states that the Triplex was only 10,996 square feet. (Tr.808:21-809:08)

45. Prior to February 2012, TTO had documents (including the First Amendment) in its files reflecting the Triplex's actual square footage. (PX-633; Tr.805:24-808:10)

46. In 2012, Weisselberg asked a Trump International Realty ("TIR") employee, Kevin Sneddon, to value the Triplex; Sneddon asked to inspect the apartment or review a floor plan, but Weisselberg refused those requests and told Sneddon that the Triplex was 30,000 square feet, despite Weisselberg having access to documents identifying the true size. (Tr.6618:12-6621:12) Sneddon thereafter provided McConney a valuation using the false 30,000 number from Weisselberg. (PX-1052)

47. On February 22, 2017, Forbes magazine emailed Weisselberg and McConney to question the 30,000 figure TTO used for the Triplex's size because public records showed that it was only 10,996 square feet. (PX-1324)

48. Despite this email, Weisselberg declined to review the First Amendment or otherwise confirm the Triplex's actual size. (Tr.819:09-15)

49. On March 3, 2017, Forbes emailed Alan Garten, TTO's General Counsel, about the Triplex's reported size and specifically referenced the First Amendment. (PX-1345)

50. Garten forwarded the email to Weisselberg, Eric Trump, Donald Trump, Jr. and Amanda Miller, who was responsible for press relations. (PX-1344)

51. Weisselberg spoke with Miller and advised her on the Triplex square footage to "leave it alone." (Tr.821:10-822:07)

52. Four days later, on March 10, 2017, Weisselberg and Donald Trump, Jr. signed the Mazars management representation letter to finalize the 2016 SFC. In the letter, they represented the information provided to Mazars for the 2016 SFC was accurate, and that there were no changes since June 30, 2016, despite being on notice from Forbes that the value of the Triplex was based on a falsely inflated square footage number. (PX-741)

53. For the next year's SFC, when the Triplex's square footage was reduced to the correct figure in a draft supporting data spreadsheet between October 5 and October 6, 2017, Birney, at Weisselberg's direction, added "presidential premiums" to the Triplex and a series of other assets to boost reported asset values to offset the reduction in the Triplex value. (Tr.1288:04-1292:17; PX-1198) Removing those premiums would have lowered the net worth number from the prior year. (Tr.1292:5:1293:24) At Weisselberg's direction, when those premiums (totaling $144.6 million) were removed, Birney increased the reported value of Trump's interest in the Vornado Partnerships by $267.8 million just prior to when the 2017 SFC was finalized, compensating for the eliminated presidential premiums and increasing the net worth figure over the prior year. (Tr.1198:18-1300:07; PX-1212 rows 23-24, 39)

54. To maintain an inflated value for the Triplex despite correcting the square footage, Weisselberg told Birney to use the "most expensive" (in 2017) and "record shattering" (in 2019) penthouse sales when calculating price per square foot. (Tr.1241:08-1247:23; PX-767, PX-2530)

55. Trump testified he personally determined that the Triplex's reported value was too high and directed Weisselberg and McConney to correct it. (Tr.3524:12-22) In actuality, the Triplex's reported size was not reduced until 2017, months after Trump was inaugurated and ceased having any involvement in the preparation of the SFCs.

c. 40 Wall

56. From 2011-2016, McConney and Weisselberg valued 40 Wall based on dividing net operating income ("NOI") by a capitalization rate ("cap rate"). (PX-793 rows 110-133; Tr.659:21-660:20)

57. When valuing 40 Wall from 2011-2016, McConney cherry-picked cap rates from a Cushman & Wakefield ("Cushman") generic market report sent to him by appraiser Doug Larson while ignoring appraisals of the property he assisted Larson in preparing. (PX-3046, PX-3047, PX-3048; Tr.660:25-661:20, 666:01-667:18, 669:02-13, 670:12-16, 671:18-672:07, 674:08-20)

58. In fact, despite his frequent communication with Larson about such appraisals, McConney never asked Larson if the cap rates McConney was selecting from the Cushman generic market reports were appropriate or what cap rates Larson was using for any of the appraisals. (Tr.675:01-13)

59. When valuing 40 Wall for the 2015 SFC, McConney forwarded an excerpt of Larson's 2015 appraisal to Bender. The excerpt included the source for McConney's selected cap rate of 3.04%, which he cherry-picked from the market report based on the sale of 100 Wall. The excerpt omitted the pages showing Larson selected a higher cap rate of 4.25%, which resulted in an appraised value that was $227 million lower than McConney's value. The excluded sections of the appraisal specifically rejected using the 100 Wall cap rate. (PX-118 at 15, 100, 105, PX-868 at 11; Tr.676:03-677:01, 678:05-681:14)

60. In December 2015, when McConney was using the Cushman 2015 appraisal in the valuation, McConney sought to justify to Bender increasing the value above the $540,000,000 appraised value by including additional income for leases signed after the Ladder refinancing, including a Dean & Deluca lease. (PX-3004_Native1 rows 118-120; Tr.690:18-693:18)

61. This double-counted income because the appraisal already included Dean & Deluca rent -- as stated on four pages of the 2015 appraisal McConney omitted from what he sent to Bender. (PX-118 at 115, 117, 136, 137; Tr.695:05-697:24, 700:22-701:01)

62. From 2011-2016, Weisselberg and McConney knew the NOI numbers used to value 40 Wall were falsely inflated.

63. Weisselberg had final approval over 40 Wall budgets. (Tr.1499:12-15) He thus was aware that TTO had budgeted a negative cash flow from 40 Wall for 2011. (Tr.1520:09-1521:16) Weisselberg nevertheless directed Donna Kidder to prepare a document containing a series of aggressive assumptions to generate a $26.2 million NOI to use but concealed from her that this would be used for the SFC. (Tr.1523:10-1526:01, 1529:03-07)

64. 40 Wall never reached a net operating income of $26.2 million, but instead ran a deficit as high as $20.9 million through 2015. (PX-636, PX-652) Trump knew this, but misrepresented to Forbes that the building was going to net $64 million in 2015 after debt service. (Tr.3571:20-3573:07, Tr.3573:03-3579:09) The building is currently under special servicing by the lender. (PX-3380; Tr.4414:14-16, 4703:07-4706:16)

d. Trump Park Avenue

65. When valuing unsold apartments at Trump Park Avenue ("TPA"), McConney used offering plan prices on a spreadsheet maintained by TIR while disregarding lower "current market values" on the same spreadsheet, and intentionally omitted the market values when forwarding the spreadsheet to Mazars. (PX-793 row 166, PX-796; Tr.704:06-707:02, 707:08-708:19)

66. McConney knew rent-stabilized units were among the unsold units he valued at offering plan prices with Weisselberg's approval. (Tr.711:07-712:14)

67. In some years, Weisselberg worked with Michael Cohen to identify "the highest price per square foot for other assets in [the] city" and "use[d] those numbers in order to inflate the value of these apartments," despite knowing the "comparables" used were not similar because they did not have the same restrictions (such as rent stabilization) or similar features. (Tr.2217:05-24)

68. When Birney worked on preparing the SFC, Weisselberg concealed from him appraisals of rent-stabilized units at TPA. (Tr.1282:25-1283:08)

e. Seven Springs

69. When valuing Seven Springs from 2011-2014, McConney failed to discount estimated future profit of $161 million attributable to building and selling seven mansions to account for the time it would take to build and sell the homes, despite understanding the time value of money and the need as a matter of basic accounting principles to discount future cash flows to present value. (Tr.716:03-10, 717:02-05, 717:14-718:11, 719:05-11, 1469:18-25, 2784:20-22)

70. On September 24, 2012, Eric Trump spoke by telephone with McConney and advised him to value the seven-mansion development at $161 million for the 2012 SFC without any discount to present value. (PX-793 rows 679, 683-688; Tr.719:05-720:10, 3290:16-3291:10)

71. On August 20, 2013, and September 12, 2014, Eric Trump advised McConney by telephone to value the seven-mansion development for the 2013 and 2014 SFCs the same as he did for the 2012 SFC. (PX-719 rows 660-673; Tr.713:17-714:18, 719:12-21, 3292:01-10)

72. When he provided McConney the value for the seven-mansion development at Seven Springs in September 2012, Eric Trump was aware his father prepared an annual SFC to evidence to third parties TTO's financial wherewithal and that the value he was providing to McConney would be used for his father's 2012 SFC. (PX-1091; Tr.3307:04-3312:03)

73. When Eric Trump advised McConney to use the same value in 2013 that was used in the 2012 SFC, he was responding to a specific request by McConney for information "to value Seven Springs" on his "dad's annual financial statement." (PX-1075; Tr.3315:05-3316:18, 3339:16-20)

74. Contrary to Eric Trump's sworn testimony that he was "unaware" of his father's SFC and "didn't know anything about it really until this case came into fruition" (Tr.3294:01-11), on multiple occasions from 2013 to 2017, Eric Trump received emails from McConney and Weisselberg specifically referencing Trump's SFC, and in some instances specifically requesting information from him for purposes of preparing the SFC. (PX-1071, PX-1079, PX-1112, PX-1113)

75. When Eric Trump advised McConney in August 2013 to continue to use the undiscounted value of $161 million for the seven-mansion development at Seven Springs, he was aware of an initial estimate of $775,000 per raw lot derived by an appraiser retained by TTO to provide a written appraisal estimating the fair market value of a conservation easement to be placed on the property – an estimate that would have valued the seven-mansion development at roughly $5.5 million. (PX-908, PX-3296; Tr.3342:13-3345:13, 3347:15-25)

76. By September 8, 2014 – just four days before Eric Trump advised McConney to continue using $161 million as the value of the seven-mansion development for the 2014 SFC – David McArdle of Cushman had completed an engagement providing Eric Trump with a verbal estimate of around $2 million per lot and completed home. That estimate that would have valued the seven mansions at $14 million. (PX-169, PX-181; Tr.1996:12-1997:12, 3353:22-3354:17)

77. Beginning with the 2015 SFC, Defendants valued the property based on the value determined by Cushman in an appraisal prepared for purposes of donating a conservation easement. Defendants used the "before" value of $56 million for the SFC value as of June 30, 2015

since the donation was not taken until December 2015, and used the "after" value of $34.5 million for the 2016 SFC. (Tr.723:20-724:10)

78. The Cushman appraisal valued all the property development rights at $21 million–far less than the $161 million defendants used for just the seven-mansion development from 2011-2014. (SJ Decision 22-23; Tr.724:11-725:03)

f. Mar-a-Lago

79. From 2011-2021, defendants valued Mar-a-Lago based on the false premise that the property could be sold as a private residence when years earlier Trump conveyed his rights to develop Mar-a-Lago for any usage other than commercial usage as a club. (SJ Decision 25-27; PX-793 at row 188; Tr.759:05-25, 773:24-775:21)

80. When valuing the commercial property as a private residence, in 2011 and 2012 defendants used asking prices for neighboring homes although they knew actual sales prices were the correct comparison. From 20112015 defendants added a 30% premium because the property was a "completed [commercial] facility." (PX-719 row 234, PX-742 row 233, PX-793 row 216 ; Tr.640:21-641:16, 762:18-763:16, 765:12-22, 888:02-04)

81. McConney valued Mar-a-Lago as if it could be sold as a private residence despite possessing the 2002 Deed of Development Rights between Trump and the National Trust for Historic Preservation, in which Trump conveyed his rights to develop Mar-a-Lago for any usage other than club usage (the "2002 Deed"). (Tr.773:24-775:21) Trump also signed an earlier 1995 Deed of Conservation and Preservation (the "1995 Deed"). (PX-1013; D-360)

82. After signing the 2002 Deed, Trump stated that Mar-a-Lago would "forever be a club." Because of the 2002 Deed, Trump paid significantly lower property taxes on Mar-a-Lago. (PX-1730; Tr.3533:03-3535:25)

83. When Birney worked on the SFC, Weisselberg and McConney concealed from him the 1995 Deed and 2002 Deed. (Tr.1258:01-1259:13)

g. Licensing Deals

84. From 2013-2021, despite representing in the SFCs that real estate licensing deals as an asset category included only "signed arrangements" with "other parties," defendants included in this category purely speculative, unsigned to-be-determined (TBD) deals and intra-company agreements between TTO affiliates. (SJ Decision 31; *E.g.,* PX-729, PX-1518; Tr.1461:04-08, 1465:12-21)

85. McConney noted on a draft 2015 SFC that the valuation of real estate licensing deals included $151 million in forecasted deals that "have not signed yet" because he was concerned about the inconsistency. (Tr.5070:18-5072:17; PX-806 at 25)

86. Despite his concern, McConney did not modify the representation or remove the unsigned deals from the valuations of the licensing deals for the 2015-2018 SFCs. (*Compare* PX-729 *with* PX-773)

87. 88. The licensing fee category also included a group of "incentive fees." (*e.g.* PX-742 row 940) derived from annual spreadsheets prepared by Kidder. As expressly directed by McConney, and regardless of the deal or actual sellout pace, those annual spreadsheets assumed that all revenue would be received within one year; and thus contained undiscounted figures. (PX-774 row 1018; PX-3168, PX-3169, Tr. 1550:15- 1554: 16, 1555:7-1556:15)

h. Golf Clubs

i) No Present Value

88. When valuing certain golf clubs, McConney included future golf club membership sales without discounting the revenue to present value even when it would have taken 30 years to

sell the memberships at the then-current sales pace and despite his understanding of the time value of money. (726:19-728:06, 731:22-25, 733:10-14; PX-788, PX-793)

89. McConney did not discount to present value estimated profit from developing undeveloped land at Briarcliff, TNGC-LA, and Aberdeen; while he claimed he did not know how to perform such a calculation, he never asked Ray Flores or Mark Hawthorn to assist him with such a calculation despite knowing they both knew how to prepare a discounted cash flow analysis. (Tr.716:03-10, 716:19-717:19, 730:10-12, 735:03-736:07, 1487:07-13, 1488:17-1489:10, 2782:16-2784:22)

ii) Brand Premium

90. Starting in 2013, Weisselberg directed McConney to add an undisclosed 30% premium to golf course valuations. (Tr.875:02-24)

91. When including a brand premium in club valuations, McConney was aware that the SFC contained a contradictory disclosure stating 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," language that he specifically reviewed and approved. (SJ Decision 28-29; Tr.747:22-749:08, 5055:02-5059:15; PX-3054)

iii) Fixed Assets

92. In 2012, defendants began valuing certain golf clubs using a fixed-assets approach, and from 2013-2020 valued all golf clubs using the fixed-assets approach. (Tr.749:20-750:04; PX-793, PX-3041 ¶317)

93. Weisselberg was advised in 2013 by someone he described as a "top golf course advisor on buying and selling of courses" that golf courses are valued using multiples of gross revenue, and in fact in 2014 provided advice to that effect in communications with Forbes

magazine. (PX-3116; Tr.878:11-880:09) Nevertheless, Weisselberg approved using the fixed-assets method reflected on the supporting data spreadsheets from 2013-2020.

94. Under the fixed-assets approach, defendants included in the value the purchase price of the club and funds spent on improvements since purchase, without accounting for depreciation or what price the property might obtain from a willing, informed buyer. This approach was completely different from any method used in the marketplace to value golf courses. (SJ Decision 29; Tr. 1354:02-1358:02, 1369:23-1373:07)

95. For Jupiter, Colts Neck, TNGC-DC, TNGC-Charlotte, TNGC-Hudson Valley, and TNGC-Philadelphia it is undisputed that the fixed-assets valuation included the full-face amount of assumed refundable membership deposits. (PX-3041 ¶¶319-330) Although the purchase prices (and thus fixed-asset numbers) were increased by including those liabilities at their full-face value, those same liabilities were then treated as worthless and not subtracted from net worth as liabilities. The SFCs' representation that such liabilities were valued at $0 thus misrepresented and concealed the truth: that the liabilities were fully included in the club purchase price to increase the fixed-asset value while simultaneously valued at $0 as a liability and thus excluded from the SFCs' liability page. (Tr.755:25-756:19, 757:18-758:12)[3]

96. For example, defendants added $41 million in refundable membership deposit liabilities to Jupiter's cash purchase of $5 million to reach a fixed-assets value of approximately

[3] Even defense expert Jason Flemmons could not justify this discrepancy. When asked at deposition whether it was "appropriate under the accounting rules" to count the membership deposits at full-face value when valuing Trump's golf clubs, while counting them at $0 when calculating the clubs' liabilities, Flemmons acknowledged he would "expect the value to be the same and not have different values for the different purposes." (NYSCEF No. 871 at 304:21-306:23)

$46 million before adding the brand premium—a fraud that persisted every year the fixed-assets number was used—without noting any offsetting liability for these membership deposits on SFCs' liability page. (Tr.749:25-754:11; PX-708, PX-3041 ¶¶315-333, PX-3055_Native1) Users were told these liabilities were worthless, when in fact they comprised $41 million (plus a premium) in Jupiter's fixed-assets value.

97. When valuing golf clubs using the fixed-assets approach, McConney was aware through appraisals commissioned by TTO that the fixed-assets approach (a modified form of the "cost" approach) was not used by buyers and sellers of golf courses and therefore did not yield a result that would be an ECV. (1962:04-1963:04, 1968:23-1969:14, 1977:09-24; PX-205 at 24, PX-910 at 17, PX-3194 at 25)

98. Eric Trump signed the engagement letter with Whitley Penn for the 2021 SFC, discussed the preparation of the SFC with Ray Flores in August 2021, and participated in a virtual meeting hosted on Google Meet in October 2021 with Donald Trump, Jr., Birney, Garten, Flores, and McConney to discuss the 2021 SFC. (Tr.1389:21-1391:01, 2758:20- 2759:13; PX-3298B, PX-3300)

99. During the meeting, Birney updated Donald Trump, Jr. and Eric Trump on the 2021 SFC and ensured that they were aware of and agreed to changing the methodology for valuing golf clubs. (Tr.1399:21-1400:13,1405:22-25, 1406:23-1407:04, 5077:04-5084:13; PX-1352 row 272)

iv) Briarcliff

100. Eric Trump retained McArdle in August 2013 to provide an appraisal to estimate the value of developing 71 condominium units on undeveloped land at Briarcliff, which he understood would include a discounted cash flow analysis to reflect the time needed to build and sell the units. (PX-157, PX-3195; Tr.1930:4-19, Tr.3368:18-3371:04)

101. By October 16, 2013, Eric Trump was aware that McArdle had determined the value of the 71-unit development was approximately $45 million. (PX-1465, PX-3201; Tr.3374:20-3375:14) Eric Trump was also aware TTO only had the right to build 31, not 71, units. (Tr. 2695:22-2702:22; PX-3261)

102. Despite retaining McArdle in August 2013 to value the 71 units, Eric Trump advised McConney in a September 25, 2013 call to value the units at over $101 million based on comparable sales in the area, and then failed to advise McConney of the much lower appraised value of around $45 million for the 71 units he received from McArdle in mid-October 2013. (PX-719 rows 277-285; Tr.738:07-740:13)

103. Beginning in November 2015, Eric Trump instructed McConney to leave the value of the 71 units "as is" for the 2015-2018 SFCs at just over $101 million despite being aware of McArdle's value of around $45 million. (PX-742 rows 288-295, PX-758 rows 294-301, PX-843 rows 311-317; Tr.3378:10-23, 3379:16-21)

v) TNGC-LA

104. When valuing the TNGC-LA golf club at $56.6 million and the entire property at just over $140 million for 2015, McConney was aware that Cushman appraised the golf club at $16 million, and the entire property at $82 million, in March 2015. (PX-731_Native, PX-1464 at 5, 158)

vi) Aberdeen

105. Despite receiving permission to develop only 500 homes as year-round private residences, for 2014-2018 McConney valued undeveloped land at Aberdeen on the basis that a total of 2500 year-round private residences could be built and sold immediately. (SJ Decision 27-28; *e.g.*, PX-742_Native rows 565-568, PX-756 at 15, PX-729 at 16, PX-3041 ¶209)

106. Despite receiving a July 2017 appraisal by Ryden LLP valuing the development profit of private homes at Aberdeen at a maximum of £33,296 per home (£18,546,000/557), TTO valued the development of private homes at £83,164 per home from 2017-2018 based on a September 18, 2014, email from a "Registered Valuer for Ryden LLP." (PX-774 rows 588-590, 595, PX-1450 at 11) In 2019, TTO derived a land value of £217,680,973 using 2,035 homes (£106,969 per home) despite only recently receiving approval to reduce development to "550 dwellings, consisting of 500 private residences, 50 leisure/resort units, and zero holiday homes." (SJ Decision 28; PX-843 at row 612) In 2020-2021 TTO disregarded the Ryden appraisal and the approval by deriving a land value of £82,537,613 using 1200 homes (£68,781 per home). (PX-1352 at Row 674, PX-3041 ¶219)

B. Defendants Falsely Certified the SFCs' Accuracy to Mazars and Whitley Penn

107. For each SFC from 2011-2020, defendants were required to sign a representation letter affirming to Mazars the SFC's accuracy. (PX-706, PX-718, PX-728, PX-741, PX-754, PX-772, PX-786, PX-792, PX-841, PX-855) For example, in 2014 the representation letter stated:

We confirm, to the best of our knowledge and belief, the following as of November 7, 2014:

You have provided us with a copy of the Statement that you have compiled. We have read that information.

The data presented in the Statement was provided to you by members of Mr. Trump's accounting department and you have compiled that information in an appropriate manner when preparing the Statement.

The Statement referred to above is fairly presented in conformity with accounting principles generally accepted in the United States of America. A l assets are presented at their estimated current values and all liabilities are presented at their estimated current amounts which have been determined in accordance with guidelines promulgated by the American Institute of Certified Public Accountants except to the extent noted in the Accountants' Compilation Report which was annexed to the Statement.

There are no material transactions that have not been properly recorded in the accounting work papers underlying the Statement other than those exceptions from accounting principles generally accepted in the United States of America that are noted in the Accountants' Compilation Report.

We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities other than those noted in the accounting work papers underlying the Statement.

(PX-718 at 2)

108. In addition, from 2011-2015 the representations letters stated that "We have responded fully and truthfully to all inquiries made to us by you during your compilation." (PX-718)

109. From 2016 forward, the representation letters contained a more detailed representation that:

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

(*E.g.,* PX-741 at 2)

110. For the 2021 SFC, Whitley Penn required a similar representation letter. (PX-1502)

111. TTO signed engagement letters similarly committing to provide complete, accurate information. (PX-791; PX-2300, at 28)

112. Based on deceptive practices identified in the SJ Decision, in Section II.A. above and at trial, those representations were false and misleading.

113. Bender, the Mazars partner responsible for the TTO relationship, testified that without the representation letters, Mazars would not have issued the SFCs. Bender further testified that if Mazars knew that the representations made in the letters were false, it would not have issued the SFCs. (Tr.169:09-176:09, 194:21-195:23, 199:06-23, 204:05-205:07, 208:03-209:24, 241:15-242:01, 254:16-255:25, 258:20-260:14, 262:25-264:05, 268:06-268:18)

114. Indeed, when Mazars learned in May 2021 that defendants generally and Weisselberg specifically had not disclosed appraisals in TTO's possession, it terminated the relationship, save for work on certain tax returns then in progress. (PX-2992; Tr.2115:24-2118:20)

115. When Mazars learned in February 2022 of other misrepresentations identified in public filings by OAG, it terminated all ongoing work and informed TTO that "that the Statements of Financial Condition for Donald J. Trump for the years ending June 30, 2011-June 30, 2020, should no longer be relied upon," and that TTO "should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon." (PX-2994; Tr.2119:16-2121:06, 2128:09-2131:02)

116. The lead partner for Whitley Penn likewise testified that without the representation letter, Whitley Penn would not have issued the 2021 SFC. (Tr.481:04-19)

C. Defendants Used False and Misleading SFCs to Secure and Maintain Financing from Deutsche Bank's Private Wealth Management Division

117. Starting in 2011, Trump and TTO executives Ivanka Trump and Donald Trump, Jr. initiated a relationship with the Private Wealth Management ("PWM") division of DB. (PX-1129, PX-3041 ¶441; Tr.3586:12-18, 3670:05-16, 5573:25-5577:20)

118. PWM loans required recourse in the form of a personal guarantee, in return for which PWM offered lower rates and greater flexibility. (Tr.1003:15-1004:03, 5331:10-5332:09, 5573:25-5577:20; PX-1129)

119. TTO executives and staff understood that PWM loans supported by Trump's personal guarantee offered lower rates and higher proceeds than non-recourse loans that would otherwise be available to fund commercial real estate projects. (PX-1129, PX-3232; Tr.2954:04-2956:23, 2976:18-2977:05, 5573:25-5577:20) As Ivanka Trump remarked after she received a proposed PWM term sheet for Doral, "It doesn't get better than this." (PX-1251, PX-3041 ¶¶463-70; Tr.3700:17-3701:09)

120. To obtain these benefits, defendants provided DB with Trump's false and misleading SFCs, which PWM relied on to underwrite the guaranteed loans made to entities affiliated with TTO, and which PWM required as a condition of maintaining these loans after origination. (Tr.1004:06-1007:03, 1009:21-1010:02, 1022:7-1023:9)

121. Many of the calculations found in the credit memos approving and reviewing these facilities used the SFCs as their starting point, to which DB underwriters often applied a standard "haircut." (NYSCEF No. 1655 at 3; Tr.1040:19-1041:22, 1061:14-1062:09, 5374:11-5375:11; PX-291 at 7-9, PX-293 at 5-7, PX-294 at 14-16, PX-298 at 10-12, PX-300 at 15-17, PX-302 at 9-11, PX-498 at 11-12, PX-519 at 11-13, PX-561 at 9-12, PX-3137 at 11-13)

122. The "haircuts" applied by DB were intended to reflect what assets "might be worth in an adverse market situation" or "if the client's financial position is under stress," (Tr.1041:06-10; NYSCEF No. 1278 ¶86) and, as defendants' expert agreed, to calculate a "liquidation" value that may be 50 to 80 percent less than the ECV provided in a client's personal financial statement. (Tr.1016:3-16, 5328:01-5329:01, 5365:01-5366:16, 6307:14-6309:03)

123. PWM expected all clients, including defendants, to provide truthful and accurate financial information to the bank. (Tr.1009:21-1010:02, 5328:10-5329:01, 5427:13-20, 5579:07-23; see also Tr.5819:01-24)

1. DB Relied on SFCs for Doral Loan Approval and Annual Reviews

124. PWM relied on the SFCs for information to underwrite, approve, and maintain the $125 million loan to purchase the Doral property. (PX-293 at 5-7, PX-3041 ¶¶452-54, 456-66, 476)

125. In November 2011, DB's Commercial Real Estate ("CRE") division offered TTO a $130 million loan at LIBOR +8%, with a LIBOR floor of 2% – a minimum 10% interest rate. (PX-369, NYSCEF No. 501 ¶575)

126. TTO instead agreed to a recourse loan with PWM that carried an initial interest rate of LIBOR +2.25% during a renovation period and LIBOR plus 2% after renovations. (PX-293 at 2) In 2013, the interest rate on the Doral loan was further reduced to LIBOR +1.75% (with a step-up to 2% if the guarantee fell below 10%). (PX-290 at 2)

127. Trump's personal guarantee for the Doral loan required him to certify the truth and accuracy of his SFC and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion. (PX-1303 at 10-13, PX-3041 ¶¶484, 486-489) The bank required annual submission of a compliance certificate and personal financial statement to confirm compliance

with loan covenants; failure to comply with this reporting covenant, or the submission of any false or misleading compliance certificate, was defined in the loan documents as an event of default. (Tr.1022:07-1023:09, 1027:10-1028:16, 1052:04-1054:10, 5337:02-11, 5429:16-5430:10; PX-1303 at 9-10, D-212 at 13, 63-65)

128. To maintain the Doral loan, Trump submitted SFCs to DB and the required certifications for the years 2014-2021 (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump, as his attorney-in-fact). (PX-391, PX-393, PX-394, PX-503, PX-517, PX-518, PX-1386 at 5-6, 101-102, PX-3041 ¶493)

129. In May 2016, McConney sent DB a compliance certificate pertaining to the 2015 SFC, and the following year submitted to DB another compliance certificate pertaining to the 2016 SFC. (PX-3041 ¶¶741-42; PX-344; Tr.1373:8-1375:15)

130. DB relied on these signed certifications and the attached SFCs for its annual reviews of the Doral loan. (PX-290, PX-294, PX-298, PX-300, PX-302, PX-498, PX-519, PX-561, PX-3041 ¶494, PX-3137)

131. The loan remained outstanding until May 2022, when TTO refinanced through Axos Bank and repaid the $125 million of principal outstanding to DB. (Tr. 3623:19-3624:06; PX-3041 ¶495)

2. DB Relied on SFCs for Chicago Loan Approvals and Annual Reviews

132. Dueling proposals to refinance an existing loan on the Chicago property with the CRE and PWM divisions were under discussion within DB in May 2012. (PX-3041 ¶¶438-39, 500-502) CRE proposed a non-recourse loan secured by unsold condo units and priced at LIBOR +8% points, while PWM proposed a recourse loan priced at LIBOR +4%, with the "spread differential . . . based on a full guarantee of Donald Trump." (Tr.1035:11-1039:17; PX-470)

133. CRE also proposed a non-recourse loan secured by the commercial (hotel and retail) property in Chicago which would have carried a higher interest rate along with additional costs and fees compared to a recourse loan. (PX-470 at 3, PX-3242)

134. TTO ultimately agreed to a PWM recourse loan for Chicago that was split into two tranches: a facility of up to $62 million using unsold condos as collateral and bearing an interest rate of LIBOR +3.35% and a facility of up to $45 million using the commercial property as collateral and bearing an interest rate of LIBOR +2.25%. (PX-291 at 2-3)

135. PWM relied on Trump's SFCs for information used to underwrite, approve and maintain loans of up to $107 million that closed on November 9, 2012. (PX-291 at 1-2, 7-9, PX-3041 ¶¶502-509). PWM required the annual submission of Trump's SFC, and the certification that it accurately reflected his financial condition, to monitor for changes in the Guarantor's net worth and liquidity. (PX-367 at 13-14, 23-25, 39-40, 50-52, PX-3041 ¶515; Tr.1022:07-1023:09, 5670:19-5671:25)

136. Trump submitted SFCs to DB and the required certifications for the years 2014-2021 for the Chicago facility (executed either by him personally or, for years 2016 and later, by Donald Trump, Jr. or Eric Trump), either through the execution of an amended guarantee or through the submission of a compliance certificate. (PX-393 at 5-6, PX-502, PX-503, PX-516, PX-518 at 2-3, PX-3041 ¶530)

137. TTO paid off the Chicago facility in October 2023. (Tr.3623:19-3624:06)

3. DB Relied on SFCs for OPO Loan Approval and Annual Reviews

138. In 2013, TTO sought financing offers from CRE and PWM at DB to fund the redevelopment of the Old Post Office ("OPO") in Washington, DC. (PX-322, PX-327, PX-3041 ¶¶543-549)

139. CRE offered loan terms for a facility of up to $140 million with a higher interest rate, as well as costs and fees affiliated with the securitization of the loan. (PX-513)

140. Ultimately TTO and PWM agreed on a fully-guaranteed $170 million loan with interest rates of LIBOR +2% or 1.75% (depending on the period) and covenants including $2.5 billion in net worth, $50 million in unencumbered liquidity, and no additional indebtedness in excess of $500 million. (PX-294 at 1, 8-9, PX-3041 ¶¶549-552)

141. The OPO loan was a construction loan to be disbursed in tranches, and the loan agreement stated that the bank was not obligated to make disbursements unless representations by the borrowing entity and the guarantor (Trump) "shall be true and accurate" on the date of requested Disbursements. (PX-3041 ¶557) The loan agreement further made clear that (except when used to pay interest) that loan funds must be used for costs of renovating the OPO property. (PX-309 at 39-42, 226)

142. PWM relied on Trump's 2011-2013 SFCs for information used to underwrite the $170 million loan to Trump Old Post Office LLC, and this information was reflected in the May 2014 credit memo approving the new lending facility. (PX-294 at 14-16, PX-3041 ¶¶551-552)

143. The OPO loan closed on August 12, 2014 (within the statute of limitations for all defendants). (PX-305, PX-309)

144. As with Doral and Chicago, the OPO loan agreement required that Trump provide his most recent (2013) SFC to the bank as a condition of the loan and that Trump certify to its accuracy. (PX-309 at 48-50)

145. Trump's personal guarantee for OPO also contained various financial representations, including that Trump, as guarantor: (i) certified the truth and accuracy of his personal financial statements; (ii) "has furnished to Lender his Prior Financial Statements" that are

true and correct in all material respects; and (iii) certified that "there has been no material adverse change in any condition, fact, circumstance or event that would make the Prior Financial Statements, reports, certificates or other documents submitted by Guarantor…inaccurate, incomplete or otherwise misleading in any material respect." (PX-305 at 12-14) As with other DB guarantees, the OPO guarantee stated that Trump's representations were made "[i]n order to induce Lender to accept this Guaranty and to enter into the Loan Agreement and the transactions thereunder," and that loan obligations were "conclusively presumed to have been created in reliance" on Trump's guarantee and its representations. (PX-305 at 9)

146. Pursuant to the guarantee, Trump was required to "keep and maintain complete and accurate books and records," and to maintain $50 million in unencumbered liquidity and a minimum net worth of $2.5 billion to be "tested and certified to on an annual basis based upon the SFC delivered to Lender during each year." (PX-305 at 17-18, PX-3041 ¶¶561-563)

147. In connection with the OPO loan, Trump provided DB with his 2014-2021 SFCs, as well as certifications executed either by Trump or by Donald Trump, Jr. (from 2016-2019) or Eric Trump (2021) as attorney-in-fact for Trump. (PX-393, PX-503, PX-515, PX-518 at 6-7, PX-1386 at 2-3, 34-38, 103-104, PX-3041 ¶572)

148. The bank relied on these SFCs and certifications for its annual reviews of the OPO loan between July 2015-July 2021. (PX-298 at 10-11, PX-300 at 15-17, PX-302 at 9-11, PX-498 at 11-12, PX-519 at 11-13, PX-561 at 9-12, PX-3137 at 11-13)

149. Donald Trump Jr. intended the banks to rely on the certifications he signed to satisfy obligations for DB loans. (Tr.3241:13-15, 3250:10-3251:02, 3254:18-20) And while Eric Trump testified that he had "no idea" what DB did with the 2021 certifications he signed and did not know if he intended the bank to rely on it (Tr.3437:17-3438:19), that testimony is not credible; it is not

plausible that when signing and submitting the certifications for the 2021 SFC to DB he did not intend the bank rely on them to satisfy TTO's obligations under the loan.

150. PWM's loan for OPO (like the prior loans for Doral and Chicago) included a "Default Rate" provision that increased the interest rate after an event of default to "the greater of (x) Prime Rate plus four percent (4%) and (y) the interest rate then in effect with respect to the Loan plus four percent (4%)." (PX-1238 at 11, 33; D-212 at 9, 19-20, D-876 at 11, 30)

151. On May 11, 2022, TTO sold the redeveloped OPO property for $375 million, and used $170 million of these proceeds to repay the loan to DB. (PX-3041 ¶¶570-571)

D. Defendants Used False and Misleading SFCs to Secure and Maintain Refinancing from Ladder Capital for the 40 Wall Loan

152. Prior to 2015, 40 Wall was subject to a $160 million mortgage with Capital One Bank. (PX-3041 ¶575)

153. On January 12, 2015, Allen Weisselberg sent a letter to Capital One (after sharing a draft with Eric Trump for review) claiming that "Trump's latest financial statement dated June 30, 2014 shows a valuation of $550,000,000 for the building based upon NOI & CAP rates on that date." (PX-3041 ¶¶576-577) Weisselberg asked Capital One to waive a $5 million principal payment due in November 2015 based on that purported valuation and other factors concerning the property's financials. (*Id.*)

154. By April 2015, after Capital One declined to waive the $5 million payment and lower the loan's 5.71% interest rate, TTO entered discussions with Ladder Capital to refinance the existing loan. (Tr.1821:11-19, 1837:21-1840:06; PX-647, PX-3041 ¶¶580-82)

155. In the application process for the refinancing, TTO provided Ladder a copy of Trump's 2014 SFC. (Tr.1858:21-1861:22, 1873:25-1875:09; PX-654)

156. Ladder relied on Trump's SFC for information about his net worth and liquidity, and Ladder's underwriter incorporated information from Trump's SFC into the memorandum presented to Ladder's Risk and Underwriting Committee ("RUC") for approval. (Tr.1877:12-1878:05, 1878:11-16, 1888:11-1889:02, 1889:17-1891:02; PX-645 at 8-10, 15-16)

157. As a condition of the Ladder loan, and to avoid setting aside ongoing cash reserves, Trump was required to unconditionally guaranty payment of certain obligations of 40 Wall Street LLC (including insurance, tenant improvements, leasing commissions, capital expenditures and ground lease payments). (Tr.1885:19-1886:25; PX-625, PX-645 at 5, 14, PX-3041 ¶¶587-588) Trump's personal guarantee also allowed him to avoid an up-front reserve to cover the tenant improvements, leasing commissions and free rent reserves outstanding at closing. (*Id.*)

158. The personal guarantee executed by Trump required him to maintain a net worth of $160 million and liquid assets of at least $15 million; and to document compliance with those financial covenants by submitting an annual certification and personal financial statement that was "prepared in accordance with GAAP in all material respects (except as disclosed therein)…and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor." (PX-625 at 14-15, PX-3041 ¶597)

159. The 40 Wall loan was subsequently securitized and was serviced by Wells Fargo. (Tr.1784:23-1785:14, 5815:02-5818:19)

160. To comply with 40 Wall loan covenants, TTO in 2017-2019 provided Wells Fargo summaries of Trump's net worth that were derived from the SFCs and certified by Weisselberg as "true, correct and complete and fairly present[ing] the financial condition of Donald J. Trump." (Tr.923:07-929:21, 934:21-935:15; PX-1386 at 39-41, 83-86, 92-94, 155)

161. The loan agreement for 40 Wall included an Interest Rate of 3.665% and Default Rate set at "four percent (4%) above the Interest Rate." (PX-2973 at 12, 137, 141)

E. Defendants Used SFCs to Maintain the Seven Springs Loan

162. McConney provided the 2015 and 2016 SFCs to the bank holding the Seven Springs mortgage as required under a promissory note. (PX-99, PX-100; Tr.598:09-14, 599:18-602:14)

163. On July 9, 2019, Eric Trump, as President of Seven Springs LLC, signed a loan modification in connection with the Seven Springs property restating and reaffirming the representations in all prior loan documents, and signed an agreement as attorney-in-fact reaffirming Trump's obligation as guarantor. (PX-76 at 4-6; Tr.3443:03-16)

F. Defendants Used False and Misleading Financial Information to Secure and Maintain the License Agreement from NYC Parks for Ferry Point

164. In 2010, the City of New York Department of Parks and Recreation ("NYC Parks") issued a Request for Offers ("RFO") for operation and maintenance of a golf course at Ferry Point Park in the Bronx ("Ferry Point"). (PX-3290)

165. NYC Parks was seeking an operator that had experience from an operational standpoint but also "financial wherewithal to ensure that the course is maintained at a high level and also any other capital work that would be necessary." (Tr.2793:15-2794:06)

166. Financial capability of a potential operator was a particular focus of this RFO as NYC Parks had invested $120 million in Ferry Point and "wanted to be sure that whoever we had operating the course had the financial capability to deliver on their obligations including making sure the course was operating and working every day." (Tr.2796:01-10)

167. TTO submitted an offer in March 2010, signed by Weisselberg and copying Trump, that represented the net worth and liquidity of Trump and enclosed a letter from Mazars representing the same. (PX-1331; Tr.2798:04-06)

168. NYC Parks subsequently made a Recommendation for Award on the basis that TTO demonstrated sufficient capability and business integrity to justify the concession. (PX-3291; Tr.2798:19-2799:05)

169. NYC Parks relied on the representations of Trump's net worth and liquidity and considered it important to receive truthful, complete and accurate information. (Tr.2801:19-22)

170. Trump signed the license agreement on February 21, 2012. (D-981 at 103-104)

171. The license agreement required Trump to submit a personal guarantee to NYC Parks for certain capital and operational expenses and financial obligations related to operation of Ferry Point; NYC Parks could, on default of these conditions under the license, seek to enforce the guarantee. (D-981 §6, §3.3(b); PX-3283 at 1-3; Tr.2804:04-19)

172. The guarantee additionally obligated Trump to submit annually a letter from his accountant stating that there has been no material adverse change in his net worth ("No MAC letters") from the financial statements shared with NYC Parks during the RFO process. (PX-3283 §4; Tr.2805:02-07)

173. TTO submitted No MAC letters to NYC Parks in 2011, 2013, 2016, 2017, 2018 and 2021. In each year the letter, written by Mazars, relied on that year's SFC for the representation that there had been no material, adverse change in the Guarantor's net worth. (PX-3282, PX-3284, PX-3285, PX-3286, PX-3280, PX-3281)

174. In 2013, the No MAC letter was sent alongside a request to extend the license agreement that was signed by Trump. (PX-3286)

175. On October 7, 2016, Eric Trump sent a letter to NYC Parks renewing the 2013 request. *See Trump Ferry Point LLC v. Silver*, No. 155933/2021 (N.Y. Cty. Sup. Ct.), NYSCEF No. 51.

176. NYC Parks expected that the No MAC letters would be true, complete and accurate. The submission of false or fraudulent information in the No MAC letters would be a matter of concern for NYC Parks, including potential referral to the New York City Department of Investigations. (Tr.2805:11-2806:03)

177. In June of 2023, TTO assigned the Ferry Point license to Bally's Corporation, with TTO receiving $60 million from the deal. Bally's also agreed to pay an additional $115 million to TTO if it obtains a gaming license for the site. (Tr.2850:22-24; PX-3304, PX-3306)

G. Defendants Used False and Misleading SFCs to Renew Surety Coverage from Zurich

178. From at least 2010-2020, Zurich North America ("Zurich") underwrote a surety bond program (the "Surety Program") for TTO through insurance broker AON Risk Solutions ("AON"). (D-44 at 1-2, PX-3324 at 27:03-27:10)

179. Under the Surety Program, Zurich issued surety bonds on behalf of TTO within specified dollar limits in exchange for a premium calculated based on a rate times the face amount of the bonds. (*See, e.g.*, D-44 at 2, D-49 at 1-2, PX-1561 at 2-3, PX-1552 at 2-3, D-47 at 1-2, D-45 at 1-2, PX-3324 at 32:03-34:06)

180. During the relationship, Zurich required TTO to indemnify any loss should Zurich be required to pay under a bond, which the company met through a General Indemnity Agreement ("GIA") executed by Trump, pursuant to which Trump personally agreed to indemnify Zurich for claims under the Surety Program. (PX-1534 at 1, PX-3324 at 22:19-23:02)

181. Because of the GIA, the Surety Program included an annual requirement that Trump disclose to Zurich's underwriter his personal financial statements. (PX-1548 at 1, PX-3324 at 30:11-31:13, 34:12-35:8)

182. During on-site reviews for the renewal of the program that occurred in late 2018 and early 2020, Zurich's underwriter Claudia Markarian was shown the 2018 and 2019 SFCs, respectively, which listed as assets real estate holdings with valuations that Weisselberg represented to Markarian had been determined each year by a professional appraisal firm. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 36:22-37:15, 49:10-50:10, 63:16-65:04, 72:11-74:12)

183. Markarian considered Weisselberg's representation, which she recorded in her contemporaneous notes, to be favorable and an indication that the valuations were reliable. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 51:10-52:05, 65:15-66:22, 74:13-75:09)

184. Despite Weisselberg's representation, TTO never retained a professional appraisal firm to prepare any of the property valuations for the 2018 and 2019 SFCs. (Tr.952:13-953:02, 955:03-10)

185. Markarian noted in her narrative for each on-site review the amount of cash on hand reflected in the cash asset category, which she considered to be important and material to her underwriting analysis because it indicated Trump's liquidity and represented the funds available to repay Zurich for a loss. (PX-1561 at 1, PX-1552 at 1, PX-3324 at 46:13-47:19, 65:15-66:22, 70:10-71:21, 74:13-75:09, 87:21-89:23)

186. Weisselberg, along with other defendants, falsely inflated the amount of cash in the 2018 and 2019 SFCs by including Vornado Cash. (Tr.617:25-620:24)

187. Weisselberg advised Markarian during her on-site reviews that the "value of properties" did not "vary significantly" from year to year, which she factored into her analysis favorably. (PX-1561 at 2, PX-1552 at 1, PX-3324 at 52:06-54:07, 75:10-76:19)

188. In reality, the values in the SFCs for a number of properties varied significantly over time. (PDX-3)

189. Based on her favorable assessments resulting from these misrepresentations made by Weisselberg during her on-site reviews and the false and misleading information contained in the 2018 and 2019 SFCs, Markarian recommended that the Surety Program be renewed in 2019 and 2020 at the expiring terms, which her manager approved. (PX-3324 at 57:15-59:17, 79:19-82:08)

H. Defendants Used a False and Misleading SFC to Secure Higher Limits from D&O Insurer HCC at Renewal

190. As of December 2016, TTO had in place Directors & Officers ("D&O") liability coverage consisting of a single primary policy providing a limit of $5,000,000 at a premium of $125,000, expiring on February 17, 2017. (PX-596, PX-587 at 2)

191. TTO was looking to rewrite the program on the day of Trump's presidential inauguration with significantly higher limits of $50,000,000. (Tr.2492:01-2493:02, 4887:17-21; PX-587)

192. To obtain that coverage, similar to the process for obtaining surety coverage from Zurich, TTO provided D&O underwriters access to Trump's SFC through a monitored, in-person review at Trump Tower. (PX-588, PX-2985)

193. Weisselberg and other TTO personnel attended the meeting with various potential insurers, including Tokio Marine HCC ("HCC"). (PX-588; Tr.2497:08-2498:08)

194. The HCC underwriter was provided very few financials at the meeting, but did see the balance sheet for year-end 2015, which showed total assets of $6.6 billion and cash of $192 million, both as reported in the 2015 SFC. (PX-729 at 4-5, PX-2985; Tr.2499:22-2500:19)

195. Additionally, in response to specific questioning from the underwriters, TTO personnel represented that there was no material litigation or inquiry from anyone that could potentially lead to a claim under the D&O coverage. (Tr.2500:20-2502:03; PX-2985)

196. Two representations were material to the HCC underwriter's assessment: (i) Trump had $192 million in cash, which he viewed as bearing on the insureds' ability to meet the retention obligation under the HCC policy (Tr.2500:06-19; PX-2985); and (ii) there were no lawsuits or inquiries, which included investigations by law enforcement agencies, that could potentially trigger coverage under the D&O policies. (Tr.2500:20-2502:03)

197. On January 20, 2017, after considering the information conveyed during the January 10 meeting, the HCC underwriter offered terms for a primary $10,000,000 policy with a $2,500,000 retention for a premium of $295,000 subject to certain conditions. (PX-592)

198. Coverage per these terms was bound on January 31, 2017, with effective dates of January 30, 2017 to January 30, 2018. (PX-592)

199. Despite the representation made to underwriters during the January 10 meeting by Weisselberg and the other TTO participants that liquidity/cash was $192 million per the 2015 SFC, nearly $33 million of that amount, or 17%, was Vornado Cash and accordingly did not reflect Trump's liquidity. (PX-3041 ¶403; Tr.615:08-620:24, 702:24-704:05)

200. Despite the representation made to underwriters during the January 10 meeting by Weisselberg and the other TTO participants that there was no material litigation or inquiry that could potentially lead to a claim, there was at the time of the meeting an ongoing investigation by

OAG into the Trump Foundation and Trump family members Donald Trump, Donald Trump, Jr., Ivanka Trump, and Eric Trump, all of whom were at the time directors and officers of TTO and were aware of the investigation. (PX-1001, PX-1002, PX-1003; Tr.2557:16-2558:02)

201. In September 2016, OAG had sent a notice of violation to the Trump Foundation and a letter to TTO outside counsel Sheri Dillon requesting documents, to which Dillon replied on October 7, 2016. (PX-1002, PX-1003)

202. Neither Weisselberg nor any other TTO representative disclosed to the underwriters at the January 10 meeting or at any other time prior to the binding of the D&O policies the existence of OAG's investigation into the Trump Foundation and directors and officers of TTO. (PX-2985; Tr.2500:20-2502:03)

203. Weisselberg and the other TTO representatives understood at the time of the January 10 meeting that OAG's investigation into the Trump Foundation could potentially lead to a claim, and in fact tendered a claim for coverage to their insurers, including HCC, for the enforcement action arising from OAG's investigation into the Trump Foundation by notice dated January 17, 2019 through their broker. NYSCEF Nos. 1220, 1221.

204. Based on this notice of claim and other correspondence exchanged between the insureds and HCC's coverage counsel disputing whether coverage existed for tendered claims, HCC's underwriter determined that the exposure on the risk was significantly higher than previously assessed. (Tr.2507:02-10)

205. As a result, on January 24, 2019, HCC offered to renew the $10,000,000 policy for a substantially increased premium of $1,600,000, more than five times the expiring premium. (PX-2989; Tr.2507:08-14)

206. TTO declined to accept the renewal terms. (Tr.2507:15-17)

I. Defendants' Ill-Gotten Gains

207. Defendants profited substantially from their fraudulent conduct in preparing and submitting the false and misleading SFCs. During the period of 2014-2023, Trump and the entities he controls obtained financial benefits that fell into three main categories: (i) reduced interest on loans from DB and Ladder; (ii) profit on the sale of OPO; and (iii) windfall profits from the Ferry Point license assignment.

208. In addition, Eric Trump and Donald Trump, Jr. obtained benefits in the form of funds available for distribution from the sale of OPO.

209. Finally, Weisselberg and McConney obtained a benefit in the form of severance agreements that rewarded their fraudulent conduct and encouraged them to avoid cooperation with law enforcement.

1. Interest Differential

210. The central benefit from defendants' fraudulent scheme took the form of reduced interest costs on the loans for Doral, Chicago, OPO, and 40 Wall. Within the limitations period, defendants used the fraudulent SFCs to obtain favorable terms on new loans originated for OPO and 40 Wall. Defendants further used the fraudulent SFCs to maintain the loans on those properties as well as the loans on Doral and Chicago.

211. Defendants utilized the fraudulent SFCs to access preferable interest rates available through PWM. Without the use of the fraudulent SFCs, defendants would have been limited to loans based on the underlying commercial real estate. As reflected in the pricing obtained by defendants for commercial real estate loans with no personal guarantee, such loans reflect the true economic risk of the underlying project. (Tr.3047:22-3051:25)

212. Defendants sought financing for Doral, Chicago and OPO from multiple lenders in addition to DB, and in each instance the terms offered for the real estate projects were comparable to the offers from CRE, and substantially more expensive than PWM's recourse loans. (Tr.2954:04-2955:22, 2983:06-2989:15, 2991:10-2996:07, 2999:02-3000:11; PX-3232, PX-3235, PX-3239, PX-3241) For example, TTO understood that rates on Doral could be as high as the "low teens" without Trump's guarantee. (Tr.2954:04-2955:22, 3672:14-3681:13; PX-3232, PX-3243)

213. The improper interest benefit attributable to defendants' fraud is the difference between the interest rates available from PWM and CRE. A reasonable approximation of the improper interest benefit from the use of the fraudulent SFCs is $168,040,168. (Tr.3057:10-3081:18; PDX-4)

214. For the Doral loan, the improper interest benefit is calculated by comparing the offer defendants obtained from CRE of 10% against the terms of the loan obtained from PWM. (Tr.3056:17-3059:15) For the period starting from July 14, 2014 through the payoff of the Doral loan, the total improper interest benefit was $72,908,308. (Tr.3057:10-3059:22, 3080:19-3081:01)

215. For the Chicago loan, the improper interest benefit is calculated by comparing a term sheet from CRE with a rate equivalent to 7.5% against the terms of the loan obtained from PWM. (Tr.3073:13-3074:08) For the period starting from July 14, 2014 through October 27, 2023, the total improper interest benefit was $17,433,359. (Tr.3074:01-11, 3080:19-3081:01)

216. For the OPO loan, the improper interest benefit is calculated by comparing a term sheet from CRE with a rate equivalent to 8% against the terms of the loan obtained from PWM. (Tr.3069:02-3072:09) From loan closing on August 12, 2014 through the payoff of the OPO loan, the total improper interest benefit was $53,423,209. (Tr.3072:09-13)

217. For the 40 Wall loan, the improper interest benefit is calculated by comparing the interest rate on the existing loan with Capital One against the terms of the loan obtained from Ladder to refinance the existing loan. (Tr.3081:02-18) From loan closing in November 2015 through October 27, 2023, the total improper interest benefit was $24,265,291. (Tr.3081:02-18; PDX-4)

2. OPO Profits

218. The interest savings from defendants' use of the fraudulent SFCs also allowed them to preserve capital to invest in other projects. By 2017, after removing $16,500,0000 in cash held by the Vornado Partnerships, Trump would have been in a negative cash position without the $73,811,815 saved through reduced interest payments. (*Supra* II.I.1; PX-3041 ¶398) As shown in the table below, without the interest savings from the use of the fraudulent SFCs, Trump would have been in a negative cash position in every year from 2017-2020.

Statement Year	Amount Included Based On 30% Share In Vornado Property Interests	Total Cash Savings From Interest	Reported Cash	Reported Cash (w/o Fraud)
2014	$24,700,000	$5,217,355	$302,300,000	$272,382,645
2015	$32,700,000	$29,578,191	$192,300,000	$130,021,809
2016	$19,600,000	$51,080,625	$114,400,000	$43,719,375
2017	$16,500,000	$73,811,815	$76,000,000	-$14,311,815
2018	$24,400,000	$93,297,807	$76,200,000	-$41,497,807
2019	$24,700,000	$111,453,030	$87,000,000	-$49,153,030
2020	$28,300,000	$137,087,492	$92,700,000	-$72,687,492
2021	$93,100,000	$162,976,566	$293,800,000	$37,723,434

219. Defendants used this additional capital to invest in a number of projects, including the renovation of Doral and OPO as well as Trump's 2016 presidential campaign. (PX-3137 at 11)

220. The excess capital from the interest savings, along with the proceeds of the $170 million OPO construction loan, financed the renovation and completion of the OPO property. (PX-302 at 16; Tr.3814:05-3816:08, 4106:23-4108:10) These funds were necessary to finance defendants' redevelopment of the OPO building, which defendants sold for substantial profit after

its completion. (PX-3041 ¶¶570-71; Tr.3813:04-3816:08, 3818:06-3819:01, 4106:08-4108:02, 4111:22-4112:02)

221. A reasonable approximation of the total profit for all participants in the OPO transaction is $139,408,146. (PX-1373 at 1; Tr.3626:01-24) This approximation comes from the ultimate sale of the property and does not account for any operational profits that may have been obtained on the property.

222. A reasonable approximation of profit to Trump individually from the OPO transaction is $126,828,600. A reasonable approximation of the profits to Donald Trump Jr. and Eric Trump individually is $4,013,024 each.

3. Ferry Point Profits

223. To maintain its license to operate Ferry Point, TTO submitted No Mac letters to NYC Parks from 2016-2021. (*Supra* II.F)

224. By maintaining the license agreement for Ferry Point, TTO was able to secure a windfall profit by assigning the license to Bally's Corporation. (PX-3304)

225. A reasonable approximation of the current profit from this assignment is $60 million. (Tr.3266:22-3267:17; PX-3304 at 1, PX-3306 at 12) This approximation comes from the ultimate lease assignment and does not account for any operational profits that may have been obtained from the operation of Ferry Point.

226. Defendants have not identified any specific costs that should be offset against this amount.

4. Severance Agreements

227. Weisselberg entered into the Separation Agreement for $2,000,000 that reimbursed him for penalties paid as a result of his criminal convictions. (*Supra* ¶209)

228. McConney also received a severance package structured as four payments totaling $500,000. At the time of his testimony on November 21, 2023, Mr. McConney was still owed one payment of $125,000. (Tr.5075:11-17)

229. These severance agreements allowed TTO to retain control over Weisselberg and McConney during the pendency of this proceeding and other governmental investigations and proceedings. The severance agreements discourage cooperation with OAG or any entity "adverse" to TTO and reflect an improper benefit to Weisselberg and McConney.[4] (Tr.3454:12-3456:15) Through the severance payments, Eric Trump and Donald Trump, Jr. (co-leaders of the company) rewarded Weisselberg and McConney for their criminal conduct and encouraged and condoned the continuation of illegal activity by defendants, including the scheme to inflate the assets of Trump for the benefit of TTO.

J. Failure of Corporate Governance and Internal Controls

230. At the direction of the individual defendants, TTO operated with virtually no serious internal controls and created an "atmosphere conducive to fraud." *People v. Northern Leasing Sys., Inc.* 193 A.D.3d 67, 75 (1st Dep't 2021).

1. Preparation of Fraudulent SFCs was Persistent

231. Defendants' fraudulent and illegal conduct in preparing false SFCs persisted for more than a decade. It persisted even with the transfer of control of the business from Donald Trump to his sons in 2017. (PX-1330)

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[4] McConney implausibly testified that he could not recall if his severance agreement contained a non-disparagement clause. (Tr.5076:03-15) But given testimony from Eric Trump that such language was "standard" and "boilerplate" (Tr.3454:05-3456:08), together with defendants' failure to produce the agreement, the Court should discount McConney's testimony and infer that such language was included in his agreement.

232. When TTO replaced Mazars with Whitley Penn, Eric Trump and Donald Trump, Jr. managed the transition, which did not result in any substantive changes to the process for preparing the SFC. (PX-1497, PX-1498; Tr.454:02-19, 451:13-22) The process, supporting documents and disclosures carried over with only minor changes. (PX-1354, PX-1497, PX-1501, PX-1502)

233. Defendants excluded the only senior executive at the company who was qualified as a CPA, Mark Hawthorn, from participation in preparing the SFCs. (Tr.1487:04-1489:20) Indeed, Hawthorn considered the SFC to be "a very sensitive document" that he "didn't need to be any part of," such that even when he was going to have a conversation with outside auditors from Scotland he did not ask for a copy. (Tr.1436:24-1437:07)

234. The use of fraudulent financial information extended beyond just real estate acquisitions and extended to other commercial transactions, like the effort to purchase the Buffalo Bills. (Tr.2884:17-2892:21)

2. The Company Lacks Effective Leadership

235. Approximately five months after Weisselberg pleaded guilty to 15 counts relating to tax fraud, Eric Trump negotiated, approved, and executed on January 12, 2023 a separation agreement providing Weisselberg with eight equal payments of $250,000, for a total of $2 million, in exchange for Weisselberg's agreement, among other things, "not to verbally or in writing disparage, criticize or denigrate" TTO "or any of its current or former entities, officers, directors, managers, employees, owners or representatives." (PX-1751 at 2; Tr.3451:25-3457:18)

236. Under the leadership of Eric Trump and Donald Trump, Jr., Weisselberg remained at the company for over four months following his guilty plea, until the company finally terminated his employment on December 30, 2022. (PX-1751 at 2)

237. Despite being one of the two executives in charge of TTO, Donald Trump, Jr. claimed he lacked any specific knowledge as to the reason Weisselberg's employment relationship with TTO ended. (Tr.3172:05-08, 3173:07-11)

238. Since Weisselberg left TTO in December 2022, the company has had no CFO, a fact that Donald Trump, Jr. did not know when testifying in this case as he mistakenly believed that Hawthorn was functioning as the CFO. (Tr. 3283:3-18, 3987:13-3988:02, 5245:15-5249:13)

239. Since McConney left the company in February 2023, the company has had no one functioning in the role of Controller. (Tr.5246:12-5247:23)

240. During the period that McConney was Controller and reported to Weisselberg, McConney would, and did, engage in conduct he knew was illegal, including fraud, at Weisselberg's direction because he feared he would probably lose his job if he refused to comply. (Tr.776:01-778:21)

241. Defendants were unable to produce an SFC in 2022 or 2023. (Tr.482:13-483:05; NYSCEF No. 489) Instead, defendants agreed to provide some lenders with lists of assets (without values) and liabilities. (Tr.5282:15-23)

242. During the pendency of this action, the Independent Monitor observed that defendants provided lenders with incomplete information about certain material liabilities. NYSCEF No. 647 at 2.

243. In addition, the Independent Monitor observed that defendants: (i) failed to promptly disclose tax returns as required; (ii) made cash transfers of approximately $40 million without prior disclosure as required; (iii) maintained inconsistent records regarding depreciation of expenses; and (iv) could not immediately explain an intercompany loan concerning the Chicago

property. NYSCEF No. 647, 1641. As a result of these issues, defendants agreed to "enhanced monitoring." *Id*.

244. Trump did not believe that TTO needed to make any changes based on the facts that came out during this action. (Tr.3635:22-3636:15) He was not aware of any changes to the financial reporting system at TTO. (Tr.3639:04-10)

3. TTO Has a History of Criminal Convictions and Regulatory Resolutions

245. This enforcement action is only the latest in a long series of prosecutions against TTO-related entities and senior TTO executives for corporate malfeasance.

246. In August 2013, OAG sued Donald Trump, Trump Organization, Inc., and Trump Organization LLC, among others, for violation of §63(12) in the marketing and operation of an entity doing business as "Trump University." *People v. Trump Entrepreneur Initiative LLC*, Docket No. 451463/2013, Doc. 1 (Sup. Ct. N.Y. Cty.). That litigation was resolved as part of a $25 million class action settlement with Trump University customers. *Id.* at Doc. 336.

247. In June 2018, OAG sued Donald Trump, Donald Trump Jr., Eric Trump, and others for persistent violations of law involving the Donald J. Trump Foundation, including "failure to follow basic fiduciary obligations or implement even elementary corporate formalities required by law." *People v. Trump*, Docket No. 451130/2018, Doc. 1 (Sup. Ct. N.Y. Cty.). That litigation was resolved in November 2019 pursuant to a settlement that included the dissolution of the Foundation and a requirement that Donald Trump, Jr. and Eric Trump attend training on the responsibilities of officers and directors of charitable organizations. *Id*. at Doc. 139.

248. On May 3, 2022, defendants Trump Organization LLC and Trump Old Post Office LLC entered into a settlement agreement with the Office of the Attorney General for the District of Columbia over allegations the 58th Presidential Inaugural Committee paid excessive fees to

OPO to defendants' benefit. (*See* https://oag.dc.gov/sites/default/files/2022-05/Trump-PIC-Consent-Motion-Settlement-Order.pdf)

249. On August 18, 2022, Weisselberg pleaded guilty to 15 criminal counts involving tax fraud, including four counts of Falsifying Business Records. *People v. Weisselberg*, Indictment No. 1473-2021 (Sup. Ct. N.Y. Cty.).

250. Based in part on testimony from Weisselberg, on December 6, 2022, two entities owned by Trump, the Trust and DJT Holdings – the Trump Corporation and Trump Payroll Corp. – were convicted on 17 criminal counts involving tax fraud. Those convictions included seven counts of Falsifying Business Records. *People v. The Trump Corp*., Indictment No. 1473/2021 (Sup. Ct. N.Y. Cty.).

III. CONCLUSIONS OF LAW

A. Plaintiff's Burden of Proof is a Preponderance of the Evidence

251. Where OAG brings an action under §63(12) seeking equitable relief for repeated or persistent illegality in the conduct of business, OAG's burden of proof is a preponderance of the evidence—the usual burden in civil litigation. *Jarrett v. Madifari*, 67 A.D.2d 396, 404 (1st Dep't 1979).

252. Contrary to defendants' suggestions at trial (Tr.3931-3933), the preponderance standard—and not the higher "clear and convincing" standard—applies here even where OAG would establish defendants' civil liability through evidence that defendants engaged in criminal conduct. Whether to apply the "clear and convincing" standard does not depend on the conduct alleged, but on whether there are public policy reasons to require unusual certainty before granting a particular judicial remedy, such as loss of fundamental "personal or liberty rights," as through

denaturalization or involuntary civil commitment. *Matter of Cappoccia*, 59 N.Y.2d 549, 553 (1983).

253. In contrast, the preponderance standard applies where the relief involves a person's property interest, including cases where the government seeks civil forfeiture of property used in the commission of a crime—and the standard may be satisfied even if the underlying criminal charges are dismissed or lead to an acquittal. *Prop. Clerk, New York City Police Dep't v. Ferris*, 77 N.Y.2d 428, 430-31 (1991); *Prop. Clerk, New York City Police Dep't v. Hurlston*, 104 A.D.2d 312, 313 (1st Dep't 1984).[5]

254. Because a person has at most a quasi-property interest in availing themselves of the privilege to engage in a profession, the preponderance standard also applies where, as here, the relief sought is a professional bar or other job-related discipline—even in cases based on allegations of criminal wrongdoing. *See Matter of Seiffert*, 65 N.Y.2d 278, 280-81 (1985); *Matter of Capoccia*, 59 N.Y.2d at 553.

B. Individual Defendants Are Liable Based on Penal Law Violations

255. Illegality under §63(12) covers conduct that violates local, state, or federal law. *People v Ivybrooke Equity Enters., LLC*, 175 A.D.3d 1000, 1001 (4th Dep't 2019); *People v. Telehublink Corp.*, 301 A.D.2d 1006, 1007 (3d Dep't 2003); *Oncor Commc'ns, Inc. v. State*, 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995). The individual defendants violated penal laws

[5] The preponderance standard likewise governs civil claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), notwithstanding that a civil RICO plaintiff must prove a criminal-law violation. *Saleh v. Bear Creek Productions, Inc.*, 1988 WL 391125 (Sup. Ct. N.Y. Cty. Jan. 8, 1988); *Cullen v. Margiotta*, 811 F.2d 698, 731 (2d Cir. 1987) (citing cases) *S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 530 (4th Cir. 2002).

prohibiting falsification of business records, issuing false financial statements, insurance fraud, and conspiracy.

1. Falsifying Business Records

256. Illegality based on falsifying business records (second cause of action) requires the making of a false entry, preventing the making of a true entry, or omitting to make a true entry (despite a duty to do so) in the business records of an enterprise, with intent to defraud. Penal Law ("PL") §175.05; *People v. Kisina*, 14 N.Y.3d 153, 158 (2010); *People v. Reyes*, 69 A.D.3d 537, 538 (1st Dep't 2010). Materiality is not an element of the claim.

257. A "business record" means: "any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity." PL §175.00 (2).

258. An "enterprise" means: "any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity." PL §175.00 (1).

259. A showing of intent to defraud does not require a showing of reliance. *People v. Taylor*, 14 N.Y.3d 727, 729 (2010). Intent to defraud means general intent to defraud, not intent to defraud a particular person. *People v. Dallas*, 46 A.D.3d 489, 491 (1st Dep't 2007).

260. An "intent to defraud" is a conscious aim and objective to defraud. *Taylor*, 14 N.Y.3d at 729. "[I]ntent may be established by the defendant's conduct and the circumstances." *People v. Gordon*, 23 N.Y.3d 643, 650 (2014). "Because intent is an invisible operation of the mind, direct evidence is rarely available (in the absence of an admission) and is unnecessary where there is legally sufficient circumstantial evidence of intent." *People v. Rodriguez*, 17 N.Y.3d 486, 489 (2011) (cleaned up); *People v. Gibson*, 118 A.D.3d 1157, 1158 (3d Dep't 2014).

261. Fraudulent intent can be inferred from facts, including: (i) an "overall pattern" of conduct,[6] (ii) an executive's control of an organization and involvement in its day-to-day operations,[7] (iii) false statements on financial documents,[8] (iv) motive,[9] (v) peculiar knowledge of facts rendering a representation false or misleading, or ready access to such facts,[10] (vi) concealment,[11] and (vii) a defendant's lack of credibility and deception on the stand.[12]

a. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos are Business Records

262. The SFCs and associated supporting data spreadsheets are business records of an enterprise because, among other things, they are writings kept by TTO, Trump, and the Trust for the purpose of evidencing or reflecting their condition and activity. Any draft of any of the

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[6] *People v. Vomvos*, 137 A.D.3d 1172, 1173 (2d Dep't 2016); *People v. Houghtaling*, 14 A.D.3d 879, 881 (3d Dep't 2005) ("overall and protracted pattern"). The existence of a scheme to defraud (and thus intent to defraud) may be inferred from (1) "common techniques, misrepresentations and omissions of material facts" and 2) a "constant nucleus" through which contacts with third parties were "initiated or maintained." *People v. First Meridian Planning Corp.*, 86 N.Y.2d 608, 616-18 (1995). In such a circumstance, the fact that "codefendants played differing roles" at "different times" does "not negate the existence of a single scheme." *Id.* (citation omitted).

[7] *See Pludeman v. Northern Leasing Sys., Inc*., 10 N.Y.3d 486, 492-93 (2008) (citing *Polonetsky v. Better Homes Depot*, 97 N.Y.2d 46, 55 (2001)); *In re AOL Time Warner, Inc.*, 381 F.Supp.2d 192, 220-222 (S.D.N.Y. 2004).

[8] *People v. Garrett,* 39 A.D.3d 431, 432 (1st Dep't 2007); *People v. Johnson,* 39 A.D.3d 338, 339 (1st Dep't 2007).

[9] *China Development Indus. Bank v. Morgan Stanley & Co., Inc*., 86 A.D.3d 435, 436 (1st Dep't 2011); *United States v. MacPherson*, 424 F.3d 183, 185 n. 2 (2d Cir. 2005).

[10] *Selective Ins. Co. of N.Y. v. St. Catherine's Ctr. for Children*, 67 Misc.3d 339, 357 (Sup. Ct. Albany Cty. 2019); *Aldridge v. A.T. Cross Corp*., 284 F.3d 72, 83 (1st Cir. 2002); *SEC v. Egan*, 994 F.Supp.2d 558, 566 (S.D.N.Y. 2014).

[11] *People v. Sala*, 258 A.D.2d 182, 189 (3d Dep't 1999) (attendance at meetings regarding concealment among facts from which knowing participation in fraudulent scheme could be inferred), *aff'd*, 95 N.Y.2d 254 (2000); *Vomvos*, 137 A.D.3d at 1173.

[12] *People v. Credel*, 99 A.D.3d 541, 541-42 (1st Dep't 2012) (incredibility supports intent finding).

foregoing, or any backup to any valuation in any of Trump's SFCs, is also a business record of an enterprise.

263. The SFCs and associated supporting data spreadsheets in the files of the outside accountants – Mazars and Whitley Penn – are business records because they are writings kept by those entities in their work paper files for the purpose of reflecting their work on compilation engagements. *See People v. Kisina*, 14 N.Y.3d 153, 158-59 (2010) (conviction appropriate for falsifying business records of "recipient enterprise") (citing *People v. Bloomfield*, 6 N.Y.3d 165, 170-71 (2006)).

264. The credit memoranda prepared by DB personnel in connection with the Doral, OPO, and Chicago loans are business records because each is kept by DB evidencing or reflecting its activities. (Tr.983:18-984:6, 5452:14-23, 5467:1-19)

265. The RUC memorandum prepared by Ladder personnel in connection with the 40 Wall loan is a business record of Ladder because it is a writing kept by Ladder evidencing or reflecting its activities. (Tr.1878:7-16)

b. The SFCs, Supporting Data Spreadsheets, Related Backup Material, and Bank Credit Memos Contain False Entries

266. Because of the vast web of documents connected to any particular SFC (supporting data spreadsheet, backup documents, numerous drafts, engagement and representation letters, final versions, transmittals to third parties, and business records of third parties incorporating SFC figures) and because of the number of years at issue, the number of false or omitted true entries in business records at issue in this case numbers in the thousands.

267. Any entry in an SFC, associated supporting data spreadsheet, or related backup material containing a false and misleading inflated value for an asset or Trump's net worth or a

false and misleading fact used in the calculation of an asset value is a false entry in a business record. Moreover, any instance in which an entry in an SFC, associated supporting data spreadsheet, or related backup material omits a key true fact is an omitted true entry in a business record.

268. As the Court has found and as demonstrated at trial, the SFCs from 2014-2021 and the associated supporting data spreadsheets contain numerous false entries in the form of false and misleading net worth figures, false and misleading inflated values for assets, and false and misleading facts used in the calculation of asset values with respect to the following assets: cash, the Triplex, 40 Wall, TPA, Seven Springs, Mar-a-Lago, Real Estate Licensing Deals, and the Golf Clubs. (*See* SJ Decision 21-31)

269. The related backup material for the SFCs from 2014-2021 contain numerous false entries in the form of false and misleading facts used in the calculation of asset values with respect to the foregoing assets. (*See* SJ Decision 21-31)

270. Any entry in a lender's credit memo containing a false and misleading inflated value for an asset or Trump's net worth is a false entry in a business record.

271. The DB credit memos for the Doral, OPO, and Chicago loans contain numerous false entries in the form of false and misleading inflated values for Trump's net worth and certain assets. (*See* SJ Decision 31-32)

272. The RUC memorandum prepared by Ladder personnel in connection with the 40 Wall loan contain numerous false entries in the form of false and misleading inflated values for Trump's net worth and certain assets. (*See* SJ Decision 24-25, n.19)

c. Donald Trump Is Liable for Falsification of Business Records

273. The record on summary judgment and at trial demonstrated that Trump (i) caused the creation of the false records identified above, and (ii) acted with the requisite fraudulent intent.

274. Trump also is liable for each act of falsification of business records pertaining to the SFCs committed by McConney and Weisselberg during the period of time he exercised control over their conduct. Under Penal Law §20.00, a person is liable as a principal if he acts with the intent required for a criminal offense and "solicits, requests, commands, importunes, or intentionally aids" another to commit the offense. *People v. Rivera*, 84 N.Y.2d 766, 771 (1995).

i. Creation of False Business Records

275. Trump had full knowledge of and responsibility for the false statements contained in the SFCs. From 2013-2015, each SFC stated that "Donald J. Trump is responsible for the preparation and fair presentation of the financial statement." (PX-3041 ¶9) Trump directed Weisselberg and McConney to prepare the SFCs and had final review and approval of their contents. (*Supra* ¶¶5-7)

276. Trump is a self-proclaimed expert on real estate, knows his properties better than anyone, and agreed with the valuations reached by McConney and Weisselberg. (*Supra* ¶8)

277. Trump, as top corporate executive and the individual responsible for the SFCs, not only approved their contents but omitted to make (or prevented the making of) numerous true entries in the SFCs he approved despite his obligation to do so. Such omitted true entries (for Trump and other individual defendants who reviewed, approved, or certified the SFCs) include disclosures of true facts regarding assets or valuations on the SFCs—such as deed restrictions on Mar-a-Lago, rent-stabilized status of TPA apartments, lack of control over Vornado Cash,

appraised values of assets, or failure to present-value future profit. These examples are not exhaustive but illustrative of omitted true facts present in the voluminous trial record.

ii. Intent

278. The record is replete with evidence of Trump's intent. Most directly, Trump told Weisselberg that he wanted the net worth figure shown on the SFC to go up. (*Supra* ¶3) He caused Weisselberg and Michael Cohen to reverse-engineer specific values. And he continues to insist to this day that the SFCs understate his wealth. (*Supra* ¶¶4, 7)

279. **Overall Pattern:** Trump's certifications of the SFCs in numerous transactions support an inference that he acted with intent to defraud, particularly given the "overall pattern" of his conduct. That Trump—acting through a "constant nucleus" of himself, Weisselberg, McConney, and TTO—repeatedly approved and certified the SFCs, which contain a pattern of the same or similar misrepresentations and omissions over a series of years, confirms his intent. *First Meridian*, 86 N.Y.2d at 616-17.

280. Many of the documents Trump signed expressly stated that he was representing the truth of his financial statements "to induce Lender" to extend credit, and that the underlying loans were "conclusively presumed to have been created in reliance" on Trump's guarantee and representations, confirming Trump knew he was certifying to the truth of his SFCs to induce them to give him loans. (PX-305, at 12-14)

281. **Day-to-Day Control:** Trump, who was TTO's top executive and remains the beneficial owner of all assets in the Trust, was expressly identified as the person responsible for the preparation and fair presentation of the SFCs for certain years and was deeply involved in TTO's business operations until he became President.

282. **Motive:** Trump had a financial motive to defraud that enables an inference that he acted with fraudulent intent. Trump was no mere salaried executive; funds within TTO entities were routinely treated as his own personal cash. Moreover, excess entity cash was swept up to Trump's or his Trust's accounts regularly and subject to weekly reporting to him. (Tr.1500:14-1502:25, 1513:02-1515:07)

283. **Peculiar Knowledge:** Trump was aware of many of the key facts underpinning various fraudulent misstatements in the SFCs. He signed the Mar-a-Lago deed restrictions. He litigated about Vornado Partnership restrictions in his personal capacity in this Court. *Trump v. Cheng*, 9 Misc.3d 1120(A) (Sup. Ct. N.Y. Cty. Sept. 14, 2005). He signed the condominium consent confirming the square footage of his Triplex as 10,996.39 and used the apartment as his primary residence. (PX-633 at 13-15, 20) He would have been aware of rent-stabilization restrictions on unsold units in TPA and the number of homes approved at Aberdeen by the Scottish government. (*E.g.,* Tr.3548:12-3549:15) Trump professed to "know more about real estate than other people" and to be "more expert than anybody else," making it implausible he lacked peculiar knowledge of his own assets. (Tr.3487:1-7)

284. **Deception**: As the Court has already found, Trump is not a credible witness.[13] Over the course of his entire testimony, he was evasive, gave irrelevant speeches, and was incapable of answering questions in a direct and credible manner. (*E.g.* Tr.3493:05-3495:04) ("Mr. Kise, can you control your client. This is not a political rally.")

[13] In imposing sanctions, the Court already concluded Trump was not a credible witness when testifying regarding events that happened only a short time earlier. NYSCEF No. 1598, at 2 ("this testimony rings hollow and untrue").

d. Allen Weisselberg Is Liable for Falsification of Business Records

285. The record on summary judgment and at trial demonstrated that Weisselberg (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

286. Weisselberg also is liable for each act of falsification of business records pertaining to the SFCs committed by McConney. *See* PL §20.00; *Rivera*, 84 N.Y.2d at 771.

i. Creation of False Business Records

287. Weisselberg had centralized control of financial reporting at TTO and had to approve any financial document before it was sent to an outside party. (Tr.1530:14-1531:01) Thus, Weisselberg was in a position to modify any figure or methodology used in any SFC he approved.

288. Weisselberg, as CFO, made or caused numerous false entries to be made in the SFCs he approved.

289. Weisselberg, as CFO, omitted to make numerous true entries in the SFCs he approved despite his obligation to do so.

290. Weisselberg, by approving the SFCs, and by signing associated representation letters to Mazars, caused false entries to be made in the business records of Mazars.

291. Without Weisselberg signing those representation letters, Mazars would not have completed the engagement and issued the SFCs. (Tr.195:17-23)

292. Weisselberg, by approving the SFCs with the knowledge that they would be certified to financial institutions including DB and Ladder, caused false entries to be made in the business records of those institutions.

293. Weisselberg, in his position of direction and control over Birney and McConney, prevented them making true entries in the SFCs and omitted to make true entries in the SFCs.

294. Weisselberg's testimony that Birney did not report to him or to McConney is not credible. (Tr.791:17-792:08) Weisselberg offered Birney a job in Weisselberg's office, and Weisselberg promoted him. (Tr.1202:18-23) Birney reported to Weisselberg, and worked with McConney, on the SFCs. (Tr.1203:13-16, 1212:08-1213:06) Weisselberg was the final decisionmaker on the SFCs for 2016-2019. (Tr.1213:21)

ii. Intent

295. There is ample direct evidence of Weisselberg's fraudulent intent. His intent is evident through his statement to Birney that Trump wanted the net worth figure shown on the SFC to go up, *supra* ¶3, and through his approval, over a decade, of SFCs containing common misrepresentations and omissions. *First Meridian*, 86 N.Y.2d at 616-17.

296. There is also direct evidence of his intent to defraud based on his decision to keep the square footage of the Triplex at 30,000 for calculating the apartment's value in the 2016 SFC despite his knowledge that this figure was triple the actual size. (*Supra* ¶¶47-52).

297. Even before that, Weisselberg told Sneddon in 2012 to use the 30,000 figure for the size of the Triplex while denying his request to inspect the apartment or view the floorplans to verify the size for himself and despite the relevant records (which Weisselberg had ready access to) showing the true size of the Triplex. (*Supra* ¶45) Later in 2017 and 2019, Weisselberg further inflated the price of the Triplex by directing Birney to use "record shattering" comparable sales. (*Supra* ¶¶53,54).

298. The Court can infer Weisselberg's intent to defraud from his misrepresentation to Zurich that the valuations contained in the SFCs were the work of an outside appraiser. The Zurich underwriter's testimony about this misrepresentation was clear and specific and corroborated by her contemporaneous notes. (See *supra* II.G)

299. Other instances of falsification support a finding that Weisselberg acted with intent to defraud. As Birney testified, Weisselberg (or McConney) directed him to exclude management fees as an expense when calculating net operating income used in SFC valuations. (Tr.1327:06-1328:08) Moreover, Weisselberg directed Kidder to prepare cash flow data regarding 40 Wall stating false amounts of management fees when submitting that data to Ladder. (Tr.1506:17-1507:10, 1536:17-1539:20)

300. In valuing the interest in Trump Tower and 1290 Avenue of the Americas in 2018 and 2019, Weisselberg knew that a 4.8% capitalization rate was appropriate (Tr.1310:22-1318:24), but he nevertheless directed Birney to use a 2.67% capitalization rate and record a false, concocted justification in the supporting spreadsheet. (Tr.1323:04-1342:14)

301. To the extent Weisselberg failed to check information he had a duty to monitor, or failed to examine information he represented was compiled appropriately (*e.g.*, PX-706), those facts further show Weisselberg's intent. *Employees' Retirement Sys. of Govt. of the Virgin Is. v Blanford*, 794 F.3d 297, 306 (2d Cir. 2015)

302. **Peculiar Knowledge:** As CFO with centralized control over financial reporting, Weisselberg had peculiar knowledge of and ready access to facts rendering the SFC valuations false or misleading. The sheer pattern of misrepresentation and inflation—year after year—confirms his intent.

303. Weisselberg knew Trump did not control the Vornado Cash but approved its inclusion in the SFC. (*Supra* ¶38). He knew the actual size of the Triplex but directed it be valued at the inflated size. (*Supra* ¶¶46-52) He also knew rent-stabilized apartments were valued as free market (*Supra* ¶65-68), and Mar-a-Lago was valued as a private residence despite being used as a social club per the deed restriction (*Supra* ¶81-83).

304. **Concealment**: Weisselberg concealed key facts from Birney when he became involved in the preparation of the SFC. Weisselberg concealed the 2002 Deed on Mar-a-Lago and the appraisals of the rent-stabilized units at TPA. (*Supra* ¶¶68, 83) Weisselberg concealed from Birney the Vornado partnership agreements. (Tr.1284:19-1285:01) The SFCs themselves conceal a variety of important facts from users, too, as Weisselberg knew.

305. **Motive**: Weisselberg's severance agreement establishes his continued financial motive to offer testimony favorable to TTO—which suggests his lack of credibility that supports an inference of intent to defraud. *See, supra,* at II.I.4. Weisselberg's receipt of periodic payments totaling $2 million is contingent on his continued resistance to cooperate with law enforcement (except when compelled), among other conditions. (PX-1751 at 2-3) Weisselberg's testimony that, despite these provisions, he "didn't give a lot of thought" to them (Tr.1194:21-24) is not credible. His testimony that the $2 million severance figure only coincidentally matches the amount he was required to pay in back taxes, penalties and interest is not credible. (Tr.1193:11-1195:13)

306. **Other similar fraudulent acts.** Weisselberg and McConney worked together to defraud taxpayers. In particular, by Weisselberg's admission, he committed a scheme to defraud and various acts relating to tax fraud. He did so in concert with McConney, who engineered false financial records to aid Weisselberg's tax schemes. These undisputed criminal acts of fraud committed by Weisselberg and McConney together, as the top financial executives at TTO, undercut any argument that they acted with an innocent state of mind. *See In the Matter of the Estate of Brandon*, 55 N.Y.2d 206, 211 (1982) ("Where guilty knowledge or an unlawful intent is in issue, evidence of other similar acts is admissible to negate the existence of an innocent state of mind").

e. Jeffrey McConney Is Liable for Falsification of Business Records

307. The record on summary judgment and at trial demonstrated that McConney (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

i. Creation of Records

308. From 2013-2016, McConney was the primary preparer of the supporting data for the SFCs and for the SFCs from 2017-2021 he supervised Birney in the preparation of the supporting data.

309. He caused the creation of every entry in the SFCs and supporting data for the 2013-2016 SFCs. As a senior financial executive (Controller) he also omitted to make (or prevented the making of) true entries in SFCs from 2013-2021 despite his obligation to do so.

ii. Intent

310. Many of the facts that demonstrate intent by Weisselberg or Trump apply equally to McConney: a yearslong pattern of financial misconduct in preparing the SFCs, a common set of misrepresentations and omissions, peculiar access to facts as a top executive, concealment of facts (such as the 2002 Deed) from Birney, day-to-day involvement with TTO's business, and familiarity with Trump Organization assets. (*See, supra,* at III.B.1)

311. McConney also provided additional evidence of his culpable intent.

312. McConney reviewed the engagement and representation letters prior to Weisselberg signing them and was aware of the obligations therein. (Tr.589:18-594:13, 830:08-13, 835:2-25)

313. McConney lacked knowledge of GAAP when he was a primary person responsible for preparing the SFC in accordance with GAAP. (Tr.629:19-630:05)

314. McConney intentionally valued rent-stabilized units at TPA as if they were free market units, even though he knew TPA had rent regulated units and his own office was responsible for collecting rent on those units. (Tr.4970:7-24, *supra* II.A.2.d)

315. McConney intentionally concealed the current market value column in the backup for TPA that he provided to Mazars, providing only the higher offering price figures he used in his valuations.

316. McConney falsely told Bender that TTO did not have appraisals in its possession when Bender specifically asked for appraisals. (Tr.242:20-246:16)

317. McConney intentionally included Vornado Cash in the cash asset category in the supporting data and the SFCs from 2013-2021 despite knowing it was money that Trump and TTO did not control. (*Supra* II.A.2.a)

318. McConney inflated the value of Mar-a-Lago by ignoring legal restrictions even though they were attached to an appraisal he relied upon as backup for the property's acreage. (Tr.771:17-775:21) McConney did not disclose the existence of the 2002 Deed in the SFCs.

319. McConney, despite being aware of the time value of money, did not discount numerous valuations in the SFCs including future profit to present value. This failure to discount was a blatant means of inflation, a violation of GAAP (Tr. 4413:20-4414:3, 4418:10-20), and assumes a false premise that future revenue is received at the present time, which defendants' own expert conceded was not reasonable. (Tr.5993:10-19)

320. McConney's fraudulent intent is further demonstrated by his assigning to Birney—then a recent college graduate with no training or experience in accounting or valuation—the task of preparing SFC supporting data. That choice enabled the perpetuation of McConney's and Weisselberg's fraudulent conduct. (Tr.583:16-584:12, 589:6-17, 1210:1-1212:7, 1199:14-19)

321. McConney for years in conjunction with Eric Trump valued Seven Springs at $261 million or $291 million based on the false premise that revenue from developable lots was available immediately (*Supra* II.A.2.e). Once that premise became untenable—and TTO obtained an appraisal showing the total value to be only $56 million—McConney concealed the extreme reduction in Seven Springs's value by moving it to a category ("other assets") where the reduction would not be evident. (Tr.720:11-724:1). Simultaneously, McConney increased the value of Trump's already-inflated Triplex—also hidden in the "other assets" category—by $127 million in a further attempt to conceal the reduction in Seven Springs's stated value. (Tr.653:20-659:19).

322. McConney testified that he had very little to do with the SFC after 2016 or 2017. (Tr.583:16-584:12, 748:21-24). That testimony is belied by the record demonstrating his continued involvement and further confirms his intent to defraud. (PX-1361, PX-3297A; Tr.1389:21-1391:12, 5079:01-5084:18, 5102:04-5106:09)

323. McConney included brand value in the golf club valuations even though the SFC stated that "the goodwill attached to the Trump name has significant financial value that has not been reflected in the preparation of this financial statement." (Tr.747:17-749:08) His false trial testimony that Mazars drafted the section on brand value—which he made after this Court found the language to be misleading—further confirms his intent to defraud. (SJ Order at 28-29; Tr.5055:02-5059:15; PX-3054)

324. McConney admitted he was willing to engage in fraud at Weisselberg's direction, and did so on multiple occasions, out of fear of losing his job. (Tr.777:19-778:21)

325. McConney is still owed a severance payment by TTO. Defendants have not produced McConney's severance agreement. The Court can infer from defendants' failure to produce that agreement that it contains provisions similar to those in Weisselberg's severance

agreement (*see, supra,* ¶235), further undermining McConney's credibility. *Reichman v. Warehouse One, Inc*., 173 A.D.2d 250, 252 (1st Dep't 1991).

f. Donald Trump, Jr. and Eric Trump Are Liable for Falsification of Business Records

326. The record on summary judgment and at trial demonstrated that Donald Trump, Jr. and Eric Trump (i) caused the creation of the false business records identified above, and (ii) acted with the requisite fraudulent intent.

327. Donald Trump, Jr., as trustee, and he and Eric Trump, as attorneys-in-fact for their father and the two co-CEOs running TTO from January 2017 forward, caused numerous false entries in SFC-related records covering the period 2016-2021 and omitted to make true entries in those same records.

328. Donald Trump, Jr. and Eric Trump also are liable for each act of falsification of business records pertaining to the SFCs committed by McConney and Weisselberg with respect to the SFCs from 2016-2021 based on their control over the conduct of those employees. PL §20.00; *Rivera*, 84 N.Y.2d at 771. Their intent to defraud is well-established; they intentionally aided McConney and Weisselberg in falsifying business records by, among other actions, reviewing the SFCs, approving their issuance, and certifying their accuracy to one or more financial institutions.

329. Donald Trump, Jr. and Eric Trump had a heightened duty of prudence as attorneys-in-fact for Trump. *See* General Obligations Law §§5-1501(2)(a), 1505(1)(a), 1501(2)(a)(3).

330. Their intent—as with their father's intent—can be inferred from their roles as the top executives at TTO,[14] their direct participation in obtaining and using the SFCs, their involvement in day-to-day business operations of TTO, and for Donald Trump, Jr. his role as trustee pursuant to which he was expressly responsible for the contents of the SFCs from 2016-2021. Functioning as co-CEOs of TTO from January 2017 to present, Donald Trump, Jr. and Eric Trump had intimate knowledge of TTO's business, had ready access to facts and records contradicting the SFCs, and were provided financial updates upon request by Weisselberg and Birney–including for Eric Trump monthly updates from Birney on the financial performance of club properties. (Tr.1202:22-1203:05, 1381:22-1383:13, 1387:18-1388:17, 1418:17-1419:08, 3270:12-3271:3, 3288:17-3289:12, 3446:21-24, 3474:22-3475:02; PX-1293) The common techniques, misrepresentations, and omissions that occurred in the SFCs with their supervision, control, and approval provide ample basis to infer their intent, even if they had "differing roles" with respect to the SFCs "at different times." *First Meridian*, 86 N.Y.2d at 616-17.

331. Donald Trump, Jr. and Eric Trump likewise had motive to defraud, given their personal stake in Trump Old Post Office LLC. (PX-1373) Indeed, they were personally responsible for a portion of the OPO loan that their father had guaranteed—so they had both upside and downside risk in the OPO project. (PX-1314) *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007) ("[M]otive can be a relevant consideration, and personal financial gain may weigh heavily in favor of a scienter inference").

[14] In addition to their role as co-CEOs of TTO, Donald Trump, Jr. and Eric Trump were also President, Director, Executive Vice President, and/or Chairman of various TTO entities beginning in January 2017—confirming their positions of executive responsibility. (PX-1329 at 13-25)

332. Despite being expressly advised by no later than February 2016 that distributions from the Vornado Partnerships were at the general partner's discretion, Donald Trump, Jr. and Eric Trump signed certifications pertaining to numerous SFCs that included Vornado Cash in the cash asset category, and Donald Trump, Jr. also signed representations letters as to some of those same SFCs. (PX-1293; Tr.1381:22-1383:04, 1387:18-1388:17)

333. The testimony of Donald Trump, Jr. and Eric Trump claiming they have no recollection of attending the October 2021 virtual meeting in which Birney and others reviewed the valuation methodologies for the 2021 SFC with them is not credible. Birney's testimony on that score was specific and credible and remains unrebutted: there was a virtual meeting in October 2021 in which Birney presented the 2021 SFC, supporting data, and related summary to Eric Trump and Donald Trump, Jr. (Tr.1389:21-1392:11) Birney testified that "the purpose of the call was to update them on the status of the current year's Statement of Financial Condition." (Tr.1405:22-1407:04)

i. Additional Conclusions of Law Regarding Donald Trump, Jr.'s Intent

334. Donald Trump, Jr., had a heightened duty as trustee—as he acknowledged. (Tr.3195:07-15)

335. During a near-full day of trial, Donald Trump Jr. provided substantial testimony about his extensive knowledge of the business of TTO and the various "buckets" of operations, including development projects, licensing deals, and condominium and building management. (Tr.3988:10-3991:11) He testified that McConney and Weisselberg performed their work on the SFCs "as expected," describing it as "materially correct." (Tr. 3275:23-3276:10)

336. Donald Trump, Jr. signed representation letters to Mazars affirmatively representing the fair presentation of the SFCs from 2016-2020, and he is presumed to have read and understood both those letters and the SFCs to which they related. *Marine Midland Bank, N.A. v. Embassy East, Inc*., 160 A.D.2d 420, 422 (1st Dep't 1990). The SFCs from 2016 to 2021 state that the Trustee(s) are responsible for their contents. (*E.g.*, PX-755)

337. Donald Trump, Jr. signed certifications verifying the accuracy of the SFCs to DB in 2017, 2018, and 2019, causing false entries to be made in the business records of DB, and he is presumed to have read and understood both those certifications and the SFCs to which they related. *Marine Midland*, 160 A.D.2d at 422. While disclaiming responsibility, he nevertheless testified that he "would have sat with the relevant parties," meaning Weisselberg, McConney and Bender, to discuss the SFCs. (Tr.3238:25-3239:15)

338. Donald Trump, Jr.'s intent can be inferred from his intent that a third party would rely on his certifications. (*E.g*., Tr.3241:13-15)

339. Donald Trump, Jr.'s denials of involvement in any valuations for the SFCs only further confirm his intent to deceive. From 2016-2019, the SFCs expressly ascribe numerous asset values to evaluations or assessments done "by the Trustees," of which Donald Trump, Jr. was one of two. (*E.g*., PX-773 at 7-9, PX-842 at 7-9) Assuming Donald Trump, Jr.'s testimony regarding his lack of participation in valuations is accurate, his testimony confirms that he personally attested to false statements *saying he performed valuations* when he *knew that was not true*.

340. Donald Trump, Jr.'s denials of involvement are also not credible because they conflict with Whitley Penn documents confirming his involvement. (E.g., PX-1498 at 3 ("The trustees of the trust, Eric Trump and Donald Trump, Jr., will be the signers on the engagement letters and representation letters as they are charged with governance and will be reviewing the

reports"), PX-1497 at 14 (SFC would be read and reviewed by "upper management . . . and also one of the Trump family members"); Tr.450:25-451:23)

341. Despite denying involvement, Donald Trump, Jr. claimed he met with the accountants and "would have" relied on them before certifying the SFCs. (Tr.3239:02-10) His claim of reliance on accountants is not credible; it is not backed up by any document or testimony indicating that any accountant (Bender or others) assured Donald Trump, Jr. that each (or any) SFC was true and correct. Donald Trump, Jr. provided no specific testimony on that score, and defendants elicited no testimony from any other accountant corroborating that he "would have" sought such assurance.

342. Donald Trump, Jr.'s claims to have relied on counsel are similarly not credible. (Tr.3239:02-10) He produced no evidence identifying any attorney who purportedly provided advice, suggesting he sought such advice, providing any attorney all relevant facts to render such advice, or establishing any attorney provided specific advice that he then actually followed. *United States v. Colasuonno*, 697 F.3d 164, 181 (2d Cir. 2012) (collecting cases).

ii. Additional Conclusions of Law Regarding Eric Trump's Intent

343. Eric Trump, as Executive Vice President, caused McConney and, from 2016 forward, Birney to make numerous false entries in the SFCs for 2012-2018 and the related supporting spreadsheets. For Seven Springs, Eric Trump instructed McConney to use an inflated, undiscounted value for the seven-mansion development from 2012-2014 (*supra*, II.A.2.e) and for Briarcliff he instructed McConney and Birney to use an inflated, undiscounted value for the 71-unit condominium development from 2014-2018 (*supra*, II.A.2.h.iv). He did so despite receiving during this period much lower values from appraisers for developing these properties and being

advised by his counsel Sheri Dillon that the number of units that could be developed as of right at Briarcliff was reduced from 71 to 31 (PX-3261; Tr.2701:12-2702:12).

344. Eric Trump, by engaging Whitley Penn to compile the 2021 SFC, and by supervising and controlling TTO personnel who prepared the underlying data for that SFC, caused false entries to be made in the business records of Whitley Penn. (PX-3298B; PX-2300 at 32; Tr.1389:21-1392:11, 1405:22-1407:4)

345. Eric Trump, by certifying to DB Trump's net worth in 2020 and the accuracy of the 2021 SFC on the Chicago, OPO, and Doral loans, caused false entries to be made in the business records of DB. (*E.g.*, PX-515, PX-516, PX-517, PX-518)

346. Eric Trump's claim that he was unaware of his father's SFCs until after OAG commenced its investigation (*e.g.*, Tr.3294:01-11) is not credible because it directly conflicts with the contemporaneous evidence establishing that on multiple occasions from 2013-2017 he received emails from McConney and Weisselberg specifically referencing Trump's SFC, and in some instances, specifically requesting information from him for purposes of preparing the SFC. (PX-1071, PX-1079, PX-1112, PX-1113) Indeed, when confronted with the contemporaneous evidence, he was forced to admit that "it appears" he *did* know about his father's SFC as of August 2013 after all. (Tr.3315:25-3316:02)

347. As with his sworn deposition testimony where he claimed to have only a very vague memory of McArdle's name (PX-3335), Eric Trump's insistence on the stand that he had only very limited involvement in appraisal work performed by McArdle and did not focus on appraisals (Tr.3380:11-25, 3384:22-3385:20) was not credible as it directly conflicted with numerous contemporaneous emails and calendar invites establishing that he was in frequent communication

with McArdle over an extended period of time on both the Seven Springs and Briarcliff appraisal engagements, even providing McArdle with comps (*supra*, II.A.2.e and II.A.2.h.iv).

348. Eric Trump's claims that he relied on "one of the biggest accounting firms" and "a great legal team" to tell him the 2021 SFC was "perfect" before he signed the certifications for that SFC (Tr.3442:08-19) are not credible; they are not backed up by any document or testimony indicating that any accountant from Whitley Penn assured him that the 2021 SFC was "perfect," much less true and accurate. Nor have defendants produced any evidence identifying any attorney who purportedly provided advice to Eric Trump on the 2021 SFC, suggesting Eric Trump ever sought such advice, indicating that Eric Trump provided any attorney all relevant facts to render such advice, or establishing any attorney provided specific advice to Eric Trump that he execute the certifications. *United States v. Colasuonno*, 697 F.3d 164, 181 (2d Cir. 2012) (collecting cases).

2. Issuing False Financial Statements

349. Illegality based on issuing a false financial statement in violation of PL §175.45 (fourth cause of action) requires, with intent to defraud, the defendant "knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect." PL §175.45(1).

350. Materiality under this statute is judged not by reference to reliance by or materiality to a particular victim, but rather on whether the financial statement "properly reflected the financial condition" of the person to which the statement pertains. *People v. Essner*, 124 Misc.2d 840, 835-36 (Sup. Ct. N.Y. Cty. 1984) (Baer, J.). "[T]here need be no 'victim,' ergo, reliance is neither an element of the crime nor a valid yardstick with which to test the materiality of a false statement." *Id.*

351. The Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law. (SJ Decision 21-31). Indeed, Weisselberg testified to his own understanding that five percent was the threshold for materiality (Tr.810:07-10), and the summary judgment decision establishes defendants inflated assets by amounts far greater than that threshold (and at times several multiples of it). (SJ Decision 21-31)

352. Intent to defraud by Trump, Weisselberg, McConney, Donald Trump, Jr., and Eric Trump is well established. (*See, supra*, at III.B.1.)

353. Trump "made or uttered" the 2014 and 2015 SFCs by reviewing and approving them with Weisselberg and by certifying their accuracy to financial institutions.

354. Weisselberg "made or uttered" the SFCs from 2014-2021 by reviewing supporting data spreadsheets, reviewing SFCs, approving the issuance of the SFCs, signing engagement and representation letters necessary for the SFCs' issuance and by certifying the summaries of net worth based on the SFCs to the lender on the 40 Wall loan.

355. McConney "made or uttered" the SFCs from 2014-2021 by preparing and/or supervising Birney's preparation of supporting data spreadsheets, reviewing SFCs, and reviewing engagement letters and representation letters necessary for the SFCs' issuance. McConney further "made or uttered" the supporting data spreadsheets and SFCs by sending them in their final form to Mazars and/or instructing Birney to do so.

356. Donald Trump, Jr. "made or uttered" the SFCs from 2016-2021 by reviewing SFCs and signing representation letters necessary for the SFCs' issuance, and further "made or uttered" the SFCs from 2016-2019 by certifying their accuracy to DB on the Chicago, OPO and Doral loans.

357. Eric Trump "made or uttered" the SFCs from 2014-2021 by communicating false information to McConney for inclusion in those SFCs from 2014-2018, thereby intentionally aiding McConney in making false SFCs in those years. PL §20.20. He further intentionally aided the making of the false 2021 SFC by signing the engagement letter for that SFC, and "made or uttered" a false financial statement in 2021 by certifying the 2021 SFC to DB on the Chicago, OPO and Doral loans.

3. Committing Insurance Fraud

358. Illegality based on committing insurance fraud in violation of New York Penal Law §176.05 (sixth cause of action) requires knowingly, and with the intent to defraud, presenting or preparing, with knowledge or belief that it will be presented to an insurer, any written statement as part of an insurance application that is known to contain materially false information or to conceal for the purpose of misleading information concerning any material fact. PL §176.05.

359. Weisselberg participated with McConney and, from November 2016 on, Birney in the preparation of false and misleading SFCs, which he then presented to underwriters from Zurich and HCC as part of insurance applications knowing they contained false and misleading material information about Trump's financial condition and concealed material facts concerning TTO's risk profile, all with the requisite intent to defraud within the limitations period. (*See, supra*, II.G-H.)

360. As a result of this conduct, Weisselberg committed insurance fraud within the meaning of New York Penal Law §176.05 based on a preponderance of the evidence within the limitations period.

361. As longtime Controller, McConney was aware of the SFCs' business uses, including their use for insurance, and attended one of the renewal meetings with the Zurich

underwriter. (PX-3324 at 45:07-45:20; Tr.602:12-14) By reviewing and approving the supporting data and SFCs, including the knowingly false assertions regarding Mr. Trump's liquidity, McConney intentionally aided Weisselberg's commission of insurance fraud and so is liable as a principal.[15] PL §20.00.

4. Engaging in Conspiracy

362. Plaintiff's remaining third, fifth, and seventh causes of action under §63(12) for conspiracy to commit the illegal acts enumerated above require an "agreement to cause a specific crime to be committed together with the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy." *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999).

363. Evidence of a conspiracy is often circumstantial and rarely direct. *People v. Flanagan*, 28 N.Y.3d 644, 663 (2017) (noting conspiracy prosecutions "must usually rest upon circumstantial evidence," as defendants "with the education, training and experience of the defendants in this case, do not conduct criminal conspiracies by making written records of their acts") (*quoting People v. Seely*, 253 N.Y. 330, 339 (1930)); *see also Iannelli v. U.S.*, 420 U.S. 770, 777 n. 10 (1975) ("The agreement need not be shown to have been explicit. It can instead be inferred from the facts and circumstances of the case."). A tacit understanding will suffice to show agreement for purposes of a conspiracy conviction. *See United States v. Amiel*, 95 F.3d 135, 144 (2d Cir. 1996) (citing 2 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law §6.4, at 71 (1986)).

[15] The only individual defendants engaging in insurance fraud were Weisselberg and McConney, so counts six and seven do not apply to Trump, Eric Trump, or Donald Trump, Jr.

364. The participants in a conspiracy need not be fully aware of the details of the venture so long as they agree on the "essential nature of the plan." *U.S. v. Stavroulakis*, 952 F.2d 686, 690 (2d Cir. 1992).

365. Evidence sufficient to link a particular defendant to a conspiracy "'need not be overwhelming.'" *U.S. v. Atehortva*, 17 F.3d 546, 550 (2d Cir.1994) (*quoting U.S. v. Rivera*, 971 F.2d 876, 891 (2d Cir.1992)).

366. For the illegal acts alleged in the sixth cause of action (insurance fraud), Weisselberg and McConney agreed to generate false and fraudulent SFCs and committed overt acts to present the SFCs to insurance underwriters when applying for insurance on behalf of all defendants, including during a meeting with Zurich's underwriter they both attended where Weisselberg misrepresented that the SFC values were determined by a professional appraisal firm.

367. For the illegal acts alleged in the second and fourth causes of action, the evidence of an illicit agreement to falsify business records and issue false financial statements is overwhelming. The sheer number of falsifications by multiple individuals is, by itself, proof of an agreement between them. There is direct evidence that Weisselberg worked with McConney to prepare the false SFCs in each year, and that Trump reviewed and approved them prior to the time he became President. There likewise is direct evidence that Weisselberg expressed one motive behind the conspiracy—to fulfill Trump's desire that the net worth shown on the SFC increase each year. Michael Cohen testified as to his similar understanding of Trump's objective based on meetings he attended with Weisselberg and Trump, and Birney corroborated this testimony based on his own understanding from Weisselberg that Trump "wanted his net worth" on the SFC to "go up." (Tr.1409:19-22, 2215:25-2216:11)

368. Eric Trump joined these conspiracies as of 2012 when he first provided inflated figures to McConney for Seven Springs, and he remained part of the conspiracies until at least his certifications of the 2021 SFC.

369. Donald Trump, Jr. joined these conspiracies, at the latest, by 2017 when he was appointed as trustee of the Trust, obtained power of attorney for Trump to sign bank certifications and began signing representation letters and certifications concerning the SFCs. He remained part of the conspiracies until at least when he signed the representation letter pertaining to the 2021 SFC.

370. Only "an overt act by one of the conspirators in furtherance of a conspiracy" need be shown. *Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999); *People v. Ribowsky*, 77 N.Y.2d 284, 293 (1991). Here, there is conclusive evidence of numerous overt acts by Weisselberg, McConney, Trump, Donald Trump, Jr., and Eric Trump in furtherance of the conspiracy to falsify business records and the conspiracy to issue false financial statements. Those overt acts include, but are not limited to, creation and transmission of the supporting data spreadsheets and backup; creation, transmission, and approval of the SFCs; creation of specific false entries in the supporting data spreadsheets and backup; signing of engagement and representation letters; signing of guarantees and compliance certificates; and still more.

C. The Entity Defendants are Liable for Penal Law Violations Through the Acts of the Individual Defendants

371. Each entity defendant is liable for the unlawful acts covered in Counts II through VII of the People's complaint.

372. A corporation is liable for a misdemeanor committed by its agents acting within the scope of their employment and on the corporation's behalf. PL §20.20(c).

373. LLCs are liable for criminal acts committed by their employees and are persons under the Penal Law. *People v. Highgate LTC Management, LLC*, 69 A.D.3d 185, 187 (3d Dep't 2009) (quoting PL § 10.00(7)). *Highgate* articulated the longstanding rule, apart from specific requirements pertaining to corporations in PL §20.20, that business entities such as LLCs may be criminally liable for intentional acts of their agents that are "authorized through the action of [their] officers or which are done with the acquiescence of [their] officers" or are "performed on behalf of the [business entity] if undertaken within the scope of the agents' authority, real or apparent." *Id*. at 188-89 (cleaned up) (quoting *People v. Byrne*, 77 N.Y.2d 460, 465 (1991)); *People v. Harco Construction LLC*, 163 A.D.3d 406, 407 (1st Dep't 2018) (upholding conviction of LLC).

374. The Trust may be liable for the criminal acts of its agents, including (at a minimum) its trustees and those who performed work on their behalf. The First Department in this case held that the Trust is a proper party (since its trustees are parties) rejecting defendants' contrary position. *Trump*, 217 A.D.3d at 612. And, the Trust is, in essence, part of an associated group of business entities and individuals who operate as TTO. *People v. Newspaper and Mail Deliverers' Union of New York and Vic.*, 250 A.D.2d 207, 215 (1st Dep't 1998) (reinstating indictment against unincorporated union); *People v. Feldman*, 791 N.Y.S.2d 361, 375 (Sup. Ct. Kings Cty. 2005) (political party); *People v. Assi*, 14 N.Y.3d 335, 340-41 (2010) (religious congregation is association of individuals, and thus "person," under Penal Law).

375. During his unlawful acts at issue, Trump was the top executive of TTO and thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. Further, until January 2017, Trump was the Trust's sole trustee, a post he resumed in January 2021. (Tr.3474:2-8, 3475:3-15, PX-1720)

376. During his unlawful acts at issue, Weisselberg was CFO of TTO and thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He also was trustee of the Trust beginning in 2017. From January 19, 2017 until the date his employment was terminated in December 2022, Weisselberg was also Vice President, Treasurer, and Secretary of defendants DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, Trump Old Post Office LLC, and 401 North Wabash Venture LLC, and Trump Organization LLC. (PX-1329 at 17, 18, 19, 20, 23) Weisselberg was also Director of the Trump Organization, Inc. (PX-1329 at 13-14) Weisselberg's unlawful actions were undertaken on behalf of TTO and its constituent entities.

377. During his unlawful acts at issue, McConney was Controller of TTO and thus was a high managerial agent of TTO and all of its constituent entities that are defendants in this case. McConney's unlawful actions were undertaken on behalf of TTO and its constituent entities.

378. During his unlawful acts at issue, Donald Trump, Jr. was Executive Vice President of TTO and trustee of the Trust, which holds all or nearly all of TTO's assets. He thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He was also President, Director, Executive Vice President, and/or Chairman of various TTO entities beginning in January 2017. (PX-1329 at 13-25) Donald Trump, Jr.'s unlawful acts were undertaken on behalf of TTO and its constituent entities.

379. During his unlawful acts at issue, Eric Trump was Executive Vice President of TTO and Chairman of the Advisory Board of the Trust, which holds all or nearly all of TTO's assets. He thus was a high managerial agent of TTO and all its constituent entities that are defendants in this case. He was also President, Director, Executive Vice President, and/or Chairman of various

TTO entities beginning in January 2017. (PX-1329 at 13-25) Eric Trump's unlawful acts were undertaken on behalf of TTO and its constituent entities.

IV. RELIEF[16]

A. Broad Injunctive Relief is Appropriate

380. Once liability has been established under §63(12), courts are explicitly authorized to grant a permanent injunction enjoining the conduct at issue. *See State v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 117 (2008); *State v. Princess Prestige*, 42 N.Y.2d 104, 107 (1977); *People v. Gen. Elec. Co.*, 302 A.D.2d 314, 316 (1st Dep't 2003).

381. "It is well settled that once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 524 U.S. 155, 170-71 (2004) (cleaned up).

382. The People may obtain permanent injunctive relief under §63(12) "upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." *People v. Greenberg*, 27 N.Y.3d 490, 496-97 (2016).

383. Courts consider the following factors to assess likelihood of recurrence: "[1] the fact that defendant has been found liable for illegal conduct, [2] the degree of scienter involved, [3] whether the infraction is an isolated occurrence, [4] whether defendant continues to maintain that his past conduct was blameless, and [5] whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated." *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998).

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[16] In addition to the foregoing, the Court should order each Defendant to pay to Plaintiff $2,000 pursuant to CPLR 8303(a)(6).

384. Defendants' unlawful conduct is likely to recur absent an injunction. For more than a decade, defendants manipulated each SFC to inflate Trump's net worth, knowing that: (i) it was going to be sent to banks and other financial institutions; (ii) it needed to demonstrate a net worth above $2.5 billion; (iii) without that manipulation and false certifications, defendants would face potentially tens of millions of dollars more in lending costs; and (iv) those costs would threaten Trump's "incredible" and "sexy" real estate projects. (Tr.4045:07-24) "[T]he commission of past illegal conduct is highly suggestive of the likelihood of future violations." *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975); *City of New York v. Golden Feather Smoke Shop, Inc*., 08-cv-3966, 2009 WL 2612345, at *42 (E.D.N.Y. Aug. 25, 2009) ("long history" of unlawful conduct supports award of injunctive relief).

385. Defendants took steps to actively conceal their fraud as discussed above detailing the evidence of their intent to defraud. (*Supra* III.B.1.)

386. Over the past decade, defendants have been subject to multiple civil and criminal law enforcement proceedings, including multiple criminal convictions for Falsification of Business Records. *Supra* II.J.3; *SEC v. Manor Nursing Center, Inc.*, 458 F. 2d 1082, 1100 (2d Cir. 1972) ("fraudulent past conduct gives rise to an inference of a reasonable expectation of continued violations").

387. Defendants continued their fraudulent scheme during the pendency of these proceedings, despite knowing that both OAG and the New York District Attorney's Office were investigating the inflation of Trump's net worth.

388. Indeed, while the investigation was ongoing, defendants continued their efforts to actively conceal their fraud by, for example, failing to turn over more than one million pages of

documents until their absence was identified by OAG, refusing to sit for testimony absent court order, and not producing an appropriate *Jackson* affidavit until compelled by $110,000 in fines.

389. Even after the Independent Monitor was in place, defendants were still incapable of complying with Court orders, failing to provide advance notice of $40 million in asset transfers among other breaches. (*Supra*, at II.J.2) In short, defendants have proven themselves incapable, time and again, of following the law. *SEC v. D'Onofrio*, 72-cv-3507, 1975 WL 393, at *11 (S.D.N.Y. June 3, 1975) ("'Where no attempt is made to cease or undo the effects of their unlawful activity until the institution of an investigation,' the court may infer a reasonable expectation of continued violation.") (*quoting Manor Nursing*, 458 F.2d at 1101 (cleaned up)).

390. Nor have defendants demonstrated any ability to operate TTO with a functional financial reporting structure that would protect against fraud in the future. For years, the financial reporting and accounting functions were managed by Weisselberg and McConney, neither of whom is a CPA, neither of whom has familiarity with GAAP, and neither of whom demonstrated any commitment to honest and accurate financial reporting.

391. When Weisselberg pleaded guilty to tax fraud and falsifying financial records at TTO, TTO's senior leadership (Eric Trump and Donald Trump, Jr.) did not fire him and conduct an immediate internal investigation as any responsible CEO would have done, but instead provided him a $2 million "bonus" that would cover his criminal fines as long as he did not cooperate with government investigations. And leadership failed to immediately hire a new CFO to clean up after Weisselberg's criminal activities, choosing instead to leave the CFO position vacant to this day.

392. When McConney admitted at the criminal trial to aiding and abetting Weisselberg's criminal activities for fear of being fired, leadership similarly chose not to terminate his employment effective immediately. Rather he was allowed to continue in his position until he

decided on his own to retire, at which point he was given his own severance agreement and bonus. And once again, leadership has chosen to leave the Controller position vacant to this day.

393. And defendants have made it extraordinarily clear, both inside and outside the courtroom, that they consider all of their actions to be blameless.[17] Indeed, defendants have not simply argued in good faith that they are not liable for fraud but have been utterly dismissive of this case and the Court's findings and contemptuous of these proceedings. *SEC v. Mattessich*, 2022 WL 16948236, at *7 (S.D.N.Y. Nov. 15, 2022) ("Defendant continues to deflect blame for his conduct by pursuing arguments that failed at trial"); *Cavanagh*, 155 F.3d at 135 ("Levy displayed a general lack of concern for the seriousness of the charges")

394. An injunction prohibiting defendants from the creation of further false financial entries and financial records is appropriate to protect existing and future counterparties, including lenders, insurance companies and tax authorities.

395. An injunction requiring defendants to implement an appropriate set of internal controls is also appropriate to protect existing and future counterparties, including lenders, insurance companies and tax authorities.

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[17] Compiling all the examples of defendants and their counsel arguing their actions were blameless would exceed the word limit for this submission. But examples can be found at: Tr.3275:09-3276:15, 3365:06-3367:17, 3551:24-3556:08 ("This is a political witch-hunt."), 3626:25-3628:14, 6431:11-64320:03 ("There was no fraud and their complaint has no merit."); Donald Trump, October 24, 2023 ("And there was nothing wrong, they found no discrepancies, there was nothing wrong with financial. This case should be ended immediately, and it should have never started."), Eric Trump, November 3, 2023 ("We have one of the greatest companies anywhere in the world. . . . We haven't done a single thing wrong."), Donald Trump, Jr., November 13, 2023 ("It doesn't matter because it's a witch hunt. It always has been.").

396. An injunction barring defendants from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of five years is appropriate to protect New York lending intuitions and the marketplace.

397. An injunction barring the entity defendants from entering into any New York State commercial real estate acquisitions for a period of five years is appropriate to protect potential counterparties and the marketplace.

B. An Industry Bar Is Appropriate for the Individual Defendants

398. The individual defendants' unlawful conduct is likely to recur absent an injunction. The individual defendants have a demonstrated history of creating and using false financial documents in the real estate industry.

399. The Court has the authority to bar the individual defendants from participating in the real estate industry. *See People v. Fashion Place Associates*, 638 N.Y.S.2d 26, 28 (1st Dep't 1996) (upholding injunction barring defendants from involvement in the sale of real estate securities from or within New York); *People v. Imported Quality Guard Dogs, Inc.*, 930 N.Y.S.2d 906, 908 (2d Dep't 2011) (affirming order permanently enjoining defendant from engaging in the business that gave rise to his wrongful conduct).

400. Lifetime injunctions barring Trump, Weisselberg and McConney from participating in the real estate industry in New York State or from serving as an officer or director of any New York corporation or other legal entity are necessary and appropriate. Trump, Weisselberg and McConney worked together for years to inflate Trump's net worth while concealing the fraud from counterparties. Indeed, the SFCs were never an honest effort to estimate Trump's value from the ground up but existed solely as a device to inflate his net worth and obtain

the benefits from that inflation. Virtually every action they took in preparing those SFCs was part of a fraudulent scheme.

401. For Donald Trump Jr. and Eric Trump, the current co-leaders of the company, a five-year bar on participating in the real estate industry in New York State or serving as an officer or director of any New York corporation or other legal entity is necessary and appropriate. The evidence establishes that Eric Trump was aware of and participated in the fraudulent scheme at least as early as 2012. (*Supra* II.A.2.e) In 2017, Donald Trump, Jr. took over responsibility for the SFC together with Weisselberg. Under their direction, the scheme continued unabated through 2021. And even if the Court were to credit their claims that they had no knowledge of what was contained in the SFCs or how the asset values were calculated, a bar would be appropriate, nevertheless. The two would have falsely certified time and again that they were responsible for the preparation of the statements, familiar with their contents and could assure counterparties that they were fair and accurate. If Donald Trump Jr. and Eric Trump certified as to those facts with no real knowledge of the SFCs, those lies are equally damaging to counterparties.

C. Disgorgement of $370 Million Plus Interest Is Appropriate

402. Disgorgement is "a remedy tethered to a wrongdoer's net unlawful profits" and "has been a mainstay of equity courts." *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020). It is based on the "foundational principle" that "it would be inequitable that a wrongdoer should make a profit out of his own wrong." *Id.* (*quoting Root v. Railway Co.*, 105 U.S. 189, 207 (1882)). Disgorgement entails "awards of prejudgment interest on the ground that these awards deprive the defendants of their ill-gotten gains, prevent unjust enrichment, and accord with the doctrine of fundamental fairness." *Hynes v. Iadarola*, 221 A.D.2d 131, 135 (2d Dep't 1996); *SEC v. First Jersey Secs.*, 101 F.3d 1450, 1476-77 (2d Cir. 1996); C.P.L.R. 5001(a), 5004(a).

403. Disgorgement focuses on the gain to the wrongdoer as opposed to the loss to the victim. *People v. Ernst & Young*, LLP, 980 N.Y.S.2d 456, 457 (1st Dep't 2014). "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*.

404. This Court has determined that disgorgement is available under §63(12) for persistent or repeated violations of law. SJ Decision 7-8.

405. The court "has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." *First Jersey*, 101 F.3d at 1474-75.

406. Courts apply a two-step burden-shifting framework to calculate disgorgement. First, the plaintiff must show "that its calculations reasonably approximated the amount of the defendant's unjust gains." *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 368 (2d Cir. 2011) (cleaned up). The burden then shifts to defendants "to show that those figures were inaccurate." *Id.* "Any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created the uncertainty." *First Jersey*, 101 F.3d at 1475 (cleaned up).

407. The Court should order disgorgement which as of October 27, 2023 totaled $369,948,314, consisting of: (i) $168,040,168 in saved interest on four commercial real estate loans; (ii) $139,408,146 in profit from the sale of OPO; (iii) $60,000,000 in profit from the sale of Ferry Point; and (iv) $2,500,000 in bonuses paid to Weisselberg and McConney.[18] The Court

[18] Insofar as defendants urge that relief is available only for loans or insurance policies issued after the First Department's statute-of-limitations cutoff, OAG respectfully continues to advance those further doctrines toll or extend the limitations period. NYSCEF No. 245, at 36-41; 1AD NYSCEF No. 24. at 46 n.11.

should order Defendants to pay prejudgment interest on those disgorgement amounts at the statutory rate of 9% per annum. (CPLR 5004)

1. Interest Savings

408. Trump and each entity defendant he controls should be jointly and severally liable for disgorgement of the decreased interest costs incurred during the period July 14, 2014 through the present. As OAG's expert Michiel McCarty explained, a conservative estimation of that benefit can be calculated by comparing the interest rate obtained by defendants from PWM with the market rate for the three projects financed by DB as standalone commercial real estate loans. (Tr.3047:22-3048:08, 3051:16-3056:16) The interest benefit on the 40 Wall loan can be calculated by comparing the Ladder loan to the existing Capital One loan. (Tr.3081:02-3982:01) Those interest benefits amount to $168,040,168. (*Supra* II.I.1)

409. Defendants offered no specific rebuttal to these calculations by McCarty. Robert Unell, defendants' banking expert, testified that he disagreed with McCarty's calculation and that it was "unsupported," but offered no independent assessment of what the market rate would be for commercial real estate loans on the subject properties. (Tr.5764:09-5765:13) Indeed, Unell testified that "I do not know exactly what Mr. McCarty did," and that he did not form a view as to what the market rate would be on the DB loans without a guarantee. (Tr.5762:02-5763:16)

410. At trial Unell offered an alternative disgorgement calculation that assumed defendants obtained the same loans through PWM but removed the interest rate improvement based on the guarantee. (Tr.5743:07-5747:25; DD5) Unell's calculations are irrelevant. They fail to remove any benefit defendants obtained through their fraud. The record conclusively demonstrates that defendants engaged in fraud to access the PWM loan terms utilized by Unell. Indeed, defendants continually argued that Trump was "overqualified" for the DB loans and

always had sufficient net worth and liquidity to obtain the loans on the same terms. (Tr.50:20-51:12, 5442:06-5444:06) But that argument is a red herring. To demonstrate Trump's net worth and liquidity, defendants would have had to submit a true and accurate SFC based on ECVs. No such document ever existed. Defendants never prepared a true and accurate SFC that would have satisfied Trump's obligations under the DB loans.[19] More than that, except for Mar-a-Lago, defendants did not even attempt at trial to elicit evidence of the ECVs of the assets listed in the SFCs between 2011-2021.[20] The record plainly demonstrates that access to the DB loans was procured by fraud and therefore disgorgement should be calculated by stripping out that ill-gotten benefit. Notably, without the false representations to Mazars and Whitley Penn there would have been no SFC in any year between 2014-2021, meaning defendants would have been excluded from all of the credit facilities. (*Supra* II.B.)

411. Unell's opinion that Trump's guarantee was worth only 0.25% lacks any credibility. (Tr.5731:19-5733:10, 5743:7-5747:18) Unell's analysis is based on Doral loan terms which permitted defendants to retain a 0.25% interest-rate benefit by retaining a 10% guarantee, rather than allowing Trump's guarantee to step-down completely once Doral's loan-to-value ratio had improved past 35%.[21] (Tr. 5751:11-5752:7) This analysis selectively looks at a single loan term,

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[19] Unell himself admitted "it is not acceptable" for a guarantor to intentionally inflate his assets in representations made to his bankers. (Tr.5819:15-24)

[20] Even then, defendants' expert (whom the Court has found "unpersuasive," *see* SJ Decision 26-27), made it clear that he did not review the valuations in the SFC and was not valuing Mar-a-Lago as an operating club. (Tr.6102:2004, 6105:10-17, 6159:19-6162:13)

[21] Even after the guarantee stepped down, however, it remained a material loan mechanism; for

in only one of the loans, without considering the "unparalleled" benefits of the PWM facilities. (PX-1129, Tr.5576:2-5577:20) TTO executives and employees fully understood that these financial benefits could only be unlocked (particularly for risky redevelopment projects like OPO and Doral) if Trump provided a full personal guarantee of these loans. (*Supra* ¶¶ 118, 119; PX-3041 ¶¶461-470) DB employees similarly and consistently testified to the substantial pricing benefit of guaranteed recourse loans (Tr.1003:15-1004:03, 1035:11-1039:17, 5331 :10-5332:09, 5573:25-5577:20), and Unell's claim to rely on this testimony to support contradictory opinions is remarkably frivolous.

412. The liability for these interest savings should be joint and several among Donald Trump and the entities he owns and controls. *E.g.*, *SEC v. Pentagon Capital Mgmt. PLC*, 725 F.3d 279, 287 (2d Cir. 2013) (joint and several liability appropriate because defendants had collaborated on a common scheme). Joint and several liability is warranted when the misconduct of the company and its top controlling officers are indistinguishable. *First Jersey*, 101 F.3d at 1461; *212 Investment Corp v. Kaplan*, 847 N.Y.S.2d 905, 910 (Sup Ct. N.Y. Cty. 2007). Here, the misconduct at issue was committed by TTO's top personnel. And TTO's corporate accounting department possessed centralized control over cash positions and financial reporting, even to the point that TTO headquarters would wire funds to subsidiaries for the sole purpose of directing them to transmit the

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example, it could be (and was) restored to address cash shortfalls at Trump properties. Debt-Service-Coverage-Ratio ("DSCR") covenants in the Doral and Chicago loan provided that when the DSCR covenant was breached, Trump could cure either by paying additional principal, providing additional cash collateral or by stepping-up the guarantee. (e.g. PX-307:§4.6, PX-303:§2(a), PX-498, Tr.5404:5-5405:22) DB notified Trump personally of DSCR breaches because of the nature of his guarantee even where the guarantee step-down was at 0%. (e.g., PX-520, Tr-5410:15-5411:6) TTO breached these DSCR thresholds numerous times and DB either accepted cash payments from DJT Holdings, LLC or a step-up of the guarantee as a cure. (PX-519)

funds right back to headquarters as a fee. (Tr.1500:14-1515:07, 1530:18-1531:1) Weisselberg described management fees within TTO as being "one pocket to another," a phrase that captures control of TTO entities by Trump and his top corporate personnel and the free flow of funds among TTO entities wherever Trump needed them. (Tr. 1539:19-20)

2. OPO Profit

413. Trump and Trump Old Post Office LLC should be jointly and severally liable for disgorgement of the full profit earned on the sale of OPO. Absent the fraud in loan origination and the increased availability of capital from the fraud on the other loans, Trump would not have had the financial wherewithal to make the project successful. The loan itself was a construction loan—its proceeds were necessary to the construction and renovation of OPO that enabled the 2022 sale. (*Supra* II.C.3) Disgorgement is meant to deny "the ability to *profit from ill-gotten gain*." *Hynes*, 221 A.D.2d at 135 (emphasis added). Thus, when a wrongdoer obtains funds through fraud, and then employs them (even through his own "acumen") to earn a large profit, it is the *whole benefit* that is disgorged. *See SEC v. Teo*, 746 F.3d 90, 106-07 (3d Cir. 2014) (embezzler of $100 who turns it into $500 should disgorge $500) (quoting Restatement (Third) of Restitution § 51(5)). Here, a reasonable approximation of the profit on the OPO sale—derived from ill-gotten loan proceeds—is $139,408,146. (*Supra* II.I.2)

414. Donald Trump Jr. and Eric Trump should be individually liable for their personal profits from the OPO project. A fair approximation of those profits is $4,013,024 each. (*Supra* II.I.2) If recovered, those amounts should be deducted from the disgorgement owing by Donald Trump and Trump Old Post Office LLC attributable to the OPO project.

3. Ferry Point

415. Trump and each entity defendant he controls should be jointly and severally liable for disgorgement of the windfall profits of $60,000,000 attributable to the Ferry Point license transfer. *Quintel Corp., N.V. v. Citibank, N.A.*, 596 F.Supp. 797, 804 (S.D.N.Y. 1984) ("defrauders will be required to disgorge windfall profits"); *Teo*, 746 F.3d at 106-07.

4. Severance

416. Weisselberg should disgorge his severance payments of $2,000,000. McConney should disgorge his severance payments of $500,000. *SEC v. Razmilovic*, 738 F.3d 14, 33 (2d Cir. 2013) ("Razmilovic should disgorge his $5 million severance payment.")

D. The Court Should Appoint a Monitor to Oversee Compliance with the Final Judgment

417. The monitorship by Judge Jones should be extended for at least five years in the final judgment.[22]

418. The Court held in 2022 that "persistent misrepresentations" warranted an independent monitor during this action, and the robust summary-judgment and trial records confirm that a monitor remains the "most prudent" course to prevent "further fraud or illegality." NYSCEF No. 183, at 10.

419. OAG's preliminary-injunction papers detailed the authority and rationale for a monitor,[23] but, in brief, "[t]his Court has broad discretion to appoint a compliance monitor as a

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[22] After review by the Monitor, the Court should determine what additional relief is necessary and how it should be implemented. This would include relief already ordered like the cancellation of certificates issued under General Business Law §130 or other requested relief like the removal of trustees and the preparation of an audited financial statement for Donald Trump.

[23] NYSCEF No. 38 at 17-18; No. 158 at 11-13; No. 159, ¶ 4(g)

form of equitable remedy, and may tailor the appointment to the special needs of the individual case." *CFTC v. Deutsche Bank*, 16-cv-6544, 2016 WL 6135664, at *2 (S.D.N.Y. Oct. 20, 2016) (cleaned up). Monitors "have been found to be appropriate where consensual methods of implementation of remedial orders are 'unreliable' or where a party has proved resistant or intransigent to complying with the remedial purpose of the injunction in question." *U.S. v. Apple*, 992 F.Supp.2d 263, 280 (S.D.N.Y. 2014) (quoting *US v. Yonkers Bd. of Educ.*, 29 F.3d 40, 44 (2d Cir. 1994)); *SEC v. Trabulse*, 526 F.Supp.2d 1008, 1009 (N.D. Cal. 2007).

420. TTO has proven itself profoundly unreliable and intransigent, continuing to prepare fraudulent SFCs even while under investigation. (*Supra* II.J.1) Even during the existing monitorship, defendants have proven that they are still not capable of adhering to Court orders. (*Supra* II.J.2)

V. CONCLUSION

The People respectfully request that the Court conform the pleadings to the evidence pursuant to CPLR 3025(c), find all defendants liable on counts two through five, and find all entity defendants and individual defendants Weisselberg and McConney liable on counts six and seven, and upon such order and the Court's prior SJ Decision, enter final judgment granting disgorgement and other equitable relief described above.

Dated: New York, New York
January 5, 2024

Respectfully submitted,

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CERTIFICATION

With leave of Court granted on December 13, 2023, Plaintiff is filing this Proposed Findings of Fact and Conclusions of Law with an enlarged word count not to exceed 25,000 words. Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court ("Uniform Rules"), I certify that, excluding the caption, table of contents, table of authorities, signature block, paragraph numbers, and this certification, the foregoing Proposed Findings of Fact and Conclusions of Law contains 24,789 words, calculated using Microsoft Word, which complies with the Court's order granting leave to file an oversize submission.

Dated: New York, New York
January 5, 2024

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