

# BRACEWELL

January 26, 2024

## BY E-MAIL

Hon. Arthur F. Engoron  
Supreme Court of the State of New York  
60 Centre Street  
New York, NY 10007

Re: *People v. Donald J. Trump, et al.*, Index No. 452564/2022

Dear Justice Engoron,

On November 14, 2022, I was appointed by the Court in the above-referenced matter as Independent Monitor (the “Order of Appointment”). *See* Dkt. No. 193. On November 17, 2022, the Court supplemented that Order and described certain duties and responsibilities of the Monitor (the “Supplemental Order of Appointment” or “Monitorship Order”). *See* Dkt. No 194. Pursuant to the Supplemental Order of Appointment, I am required to “report the status of the Monitorship to the Court and the parties monthly, or as the Monitor finds necessary, or as this Court shall order.”

The Court has requested a report of the work my team has done over the past 14 months, including an assessment of financial disclosures made by The Trump Organization (“Trump Organization”) during the course of the Monitorship. While certain observations discussed below have been addressed in my prior reports, this report also provides a review and overall assessment of the Defendants’ compliance with the requirements of the Monitorship Order.

## I. Introduction

To date, my team has reviewed more than 3,000 documents related to the Trump Organization’s disclosure of financial information to third parties. These include:

- Financial disclosures to third parties, including lenders and insurers;
- Agreements related to loans and other transactions (leases, sales, etc.);
- Documents related to the Trump Organization structure and entity dissolutions;
- Bank statements provided by the Trump Organization;
- Documents provided to tax authorities;
- Documents related to transactions;

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- License agreements; and
- Select documents exchanged between the parties or submitted during the course of the trial.

More specifically, my team has reviewed over 422 documents related to financial disclosures submitted to third parties, 179 documents related to information provided to taxing authorities, 384 documents related to loan agreements and other transactions, 192 documents related to the dissolution of certain entities, and over 200 bank statements.

While the Trump Organization did not enter into any material loans, make significant purchases of real property, or submit valuations of its properties to lenders during the course of the Monitorship, it submitted numerous financial statements, financial reports, and related information to third parties.

As discussed more fully below, I have identified certain deficiencies in the financial information that I have reviewed, including disclosures that are either incomplete, present results inconsistently, and/or contain errors. In addition, while Defendants have been cooperative, information required to be submitted to me pursuant to the terms of the Monitorship Order and review protocol has, at times, been lacking in completeness and timeliness. I have previously reviewed these items with the Trump Organization, which has often agreed to modify the disclosures or implement processes that improve accuracy, transparency, and the timeliness of their disclosures.

## **II. The Monitor's Duties and Responsibilities**

My duties include “the monitoring of (1) the submission of financial information to any accounting firm compiling a 2022 “Statement of Financial Condition” (“SFC”) for Donald J. Trump; (2) the submission of all financial disclosures to any persons or entities, including, without limitation, lenders, insurers and taxing authorities; and (3) any corporate restructuring, disposition or dissipation of any significant assets.” Monitorship Order at 1.

To comply with the Court's orders, Defendants are required to “provide the Monitor...(1) any financial statement, including any statement of financial condition, other asset valuation disclosure, or other financial disclosure to any persons or entities, including, without limitation, lenders, insurers, other financial institutions, or taxing authorities; and (2) any non-privileged document, book or record, or other information bearing on any of the foregoing, or reasonably necessary to assess the accuracy of any representation, and Defendants shall comply with all reasonable requests by the Monitor for such information.” *Id.* at 1-2.

In addition, Defendants are obligated to provide the Monitor “with a full and accurate description of the corporate structure of the Trump Organization, its subsidiaries, and all other

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affiliates, including all trusts, and of their significant liquid and illiquid assets.” *Id.* at 2. Defendants are also required to provide the Monitor with at least 30 days advance notice of “any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or of any plans for disposing, refinancing, or dissipating any significant Trump Organization assets. In the absence of any such activity, Defendants are also responsible for providing the Monitor with a sworn statement that no such activities have been undertaken.” *Id.*

My duties also include “reporting any unusual and/or suspicious and/or suspected or actual fraudulent activity.” *Id.* Under the Supplemental Order of Appointment, however, my duties “do not include monitoring Defendants’ normal, day-to-day business operations.” *Id.* at 1. Nor do they include conducting proactive independent investigations or validations of the Trump Organization’s operations or accounting functions beyond the Supplemental Order of Appointment’s disclosure obligations. In addition, while I am to receive advance notice of restructuring or sales, my appointment does not require or permit advanced approval of the Trump Organization’s preparation or submission of financial information to third parties. Thus, I am not in a position to conclude whether fraudulent activity occurred.

### **III. The Monitor’s Review Process**

After my appointment, I met with the parties and entered into an approved process and protocol for carrying out my duties under the Monitorship Order, including obtaining and reviewing information subject to my review. Both Plaintiff and Defendants were cooperative in this process. Pursuant to this protocol, the Trump Organization provides me with regular status updates and ad hoc notifications of disclosures and transactions. I also make independent inquiries based upon my review of publicly available information, as well as witness and expert testimony, discovery, and related evidence submitted by the parties.

Once I receive the disclosures and financial information, my team analyzes these materials by comparing them, where applicable, to prior submissions and related information. We then verify, to the extent possible, that the information is accurate and whether it contains inconsistencies, incomplete information, and errors. If any issues or concerns are identified, we make inquiries and request additional information from the Trump Organization. We also hold in-person or virtual meetings for further discussion and elaboration if necessary.

As a result of this process, I have provided the Court with written reports of my findings and observations.<sup>1</sup> As mentioned above, I have also met with the Court to provide periodic updates.

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<sup>1</sup> See Report dated December 19, 2022; Report dated February 3, 2023; report dated April 11, 2023; Report dated August 3, 2023; Report dated November 29, 2023.

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## **IV. The Structure of the Trump Organization**

As noted above, Defendants are required to provide the Monitor with a full and accurate description of the corporate structure of the Trump Organization, its subsidiaries, and all other affiliates, including all trusts, and of their significant liquid and illiquid assets. *Id.* at 2. I was informed that this information had not previously been compiled by the Trump Organization and was not readily available at the outset of the Monitorship.

To obtain a comprehensive understanding of the corporate structure, we requested the following information for each Trump Organization entity: (1) its purpose and function; (2) the ownership structure; (3) whether it maintains a general ledger; (3) revenue information; (4) whether it submits financial information to third parties; (5) whether it has any debt or credit obligations; (6) total assets; (7) whether it files tax returns; and (8) whether it owns real property. In the various iterations of this information provided by Defendants, we identified errors, including missing entities, incomplete data, and inconsistent information about the entities themselves.

Following several requests for information, meetings, and disclosures to address these issues, we have been able to confirm that the Trump Organization was, at the outset of the Monitorship, comprised of 521 distinct business entities, all held within the Donald J. Trump Revocable Trust (the “DJT Revocable Trust” or the “Trust”), a trust formed under the laws of Florida.

Of these 521 entities, 51 were dissolved by the Trump Organization during the Monitorship in late 2022 and early 2023. An additional 55 entities were dissolved in September and October 2023. There are now 415 entities, which generally fall into the following categories:

- Operating entities that generate revenue (excluding for purposes of license and management agreements), such as 40 Wall Street, Trump National Doral Miami, and Trump Tower (70)
- Active entities for purposes other than license, management, or technical services agreements and which do not have a general ledger or file tax returns (5)
- Active entities for purposes other than license, management, or technical services agreements, which have a general ledger or file tax returns (55)
- Entities formed to enter license agreements (71)
- Entities formed to enter into management agreements (11)
- Entities formed to enter into technical services agreements (4)
- Vornado entities (11)
- Fred Trump entities (21)
- Entities that appear dormant or no longer active based on their business purpose (94)
- Other entities (73; 62 of which did not have reported revenue)

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With respect to cash management and flow of funds within the organization, generally, operating entities like commercial properties, resorts, and golf clubs, transfer their income to centralized accounts or entities that hold and distribute the Trust's consolidated cash. Management determines the cash needs of each entity on a going forward basis and distributes funds as necessary.

Based on our review of information, and through ongoing dialogue with the Trump Organization, the Monitor imposed a Materiality Threshold and Review Protocol requiring Defendants to provide specific financial information regarding these entities, as well as any transfers of assets outside the Trust exceeding an aggregate value of \$5 million.

## **V. Financial Reports and Statements Issued to Third Parties**

As described above, my duties also include monitoring financial information submitted by Defendants—including any SFCs—to third parties. The Trump Organization is required to disclose certain financial information to third parties based upon several requirements contained in loan agreements with its lenders.

Four loan agreements in effect during the Monitorship require the submission of financial statements fairly presenting the financial condition and results of the guarantor, Donald J. Trump, who guarantees the loans with both personal and Trust assets.<sup>2</sup> Historically, the Trump Organization chose to submit SFCs to comply with this loan requirement, but elected not to submit SFCs to lenders during the Monitorship.<sup>3</sup>

In lieu of an SFC, beginning in 2022, Defendants instead prepared and submitted a list of the Trust's Material Assets and Material Liabilities ("MAML"). The MAML contains a listing of certain significant properties owned by the Trust and a description of any loans associated with those properties. The MAML does not include estimated values of the properties listed, nor does it include a balance sheet of the guarantor or any representations regarding its financial condition. Further, and with limited exception described below, we are not aware of the Trump Organization having conducted any entity valuations or property appraisals during the Monitorship.

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<sup>2</sup> One of these loans was fully repaid and satisfied during the Monitorship. For the remaining three loans, the applicable provision states: "...Guarantor shall deliver to Lender not later than September 30th of each calendar year, Guarantor's annual financial statements prepared in a form previously provided to Lender by Guarantor from an independent firm of certified public accountants acceptable to Lender... and prepared in accordance with GAAP in all material respects (except as disclosed therein), including a balance sheet, and certified by Guarantor as being true, correct and complete and fairly presenting the financial condition and results of such Guarantor."

<sup>3</sup> We understand this practice began after the litigation was commenced by the Plaintiff.

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It should be noted that, for three loan agreements that require the submission of SFCs, we are not aware of any lender providing notice to the Trump Organization that the substitution of the MAML constituted an event of default or was otherwise improper.<sup>4</sup> For the fourth loan that required the submission of an SFC, which was satisfied during the Monitorship, the Trump Organization did not believe it had an obligation to continue to do so under the terms of its loan.

However, as described in Section VII (1) below, we identified certain disclosure deficiencies with respect to the MAML.

Apart from the SFCs and MAMLs, the Trump Organization's loan reporting requirements also include annual and quarterly financial statements, annual and quarterly certifications, annual budgets, rent rolls, liquidity calculations, and debt service coverage ratio calculations.

In addition, the Trump Organization submits a variety of financial information to other third parties, which we have also reviewed. This includes financial information provided to finance companies, insurance brokers, the United States Office of Government Ethics ("OGE"), and taxing authorities. Disclosures have also been made to transaction counterparties, such as in connection with the Trump Organization's September 2023 sale to Bally's Corporation of its right to operate the golf course known as Trump Golf Links Ferry Point ("Ferry Point").

## **VI. Restructuring and Disposition of Assets**

One of my duties is to monitor any planned or anticipated restructuring of the Trump Organization, its subsidiaries, and all other affiliates, including trusts, or of any plans for disposing, refinancing, or dissipating any significant Trump Organization assets. Provided below is a listing of instances of restructuring or disposition of assets I observed and reported during the Monitorship:

- Defendants provided notice of the dissolution of certain entities. Specifically, through two rounds of dissolutions (late 2022 / early 2023 and September / October 2023) Defendants dissolved 106 entities that no longer had a business purpose and had no material assets or holdings.
- Bank statements I reviewed showed transfers of funds outside the Trust during the course of the Monitorship, and that certain of these transfers have had an aggregate value of more than \$5 million.

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<sup>4</sup> Submission of the MAML is specifically required by other loan agreements for different properties.

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- As briefly mentioned above, in September 2023, the Trump Organization sold its interest in a licensing agreement to operate Ferry Point in the Bronx, New York.
- In addition, in October 2023, the Trump Organization fully paid off its existing loan for the Chicago Tower property, and there is no longer any loan with third party lenders associated with that property.

We have also received information pertaining to estate planning and monitored other assets listed for sale (such as a private home and aircraft), the creation of a new entity, the application for a conservation easement at the Doral property, and the termination of license and management agreements.

## **VII. The Monitor's Observations**

As stated above, my role has been limited to assessing the accuracy of the information provided to me by the Trump Organization. During my review, however, I have identified certain disclosure deficiencies that, from the recipient's perspective, could be considered material inaccuracies in the presentation of financial information.

In general, my observations fall into three categories: (1) incomplete disclosures; (2) inconsistent disclosures; and (3) errors in disclosures. In addition, I am also providing the Court with my observations regarding Defendants' compliance with the terms of the Monitorship Order. Examples of each are provided below.

### **1. Incomplete Disclosures**

I have identified instances where certain disclosures are either incomplete or demonstrate a lack of transparency. For example:

- As described above, certain loans still require that Defendants submit financial information fairly representing the financial condition of the guarantor in a manner consistent with the documents previously provided. Instead, in 2022, Defendants elected to provide the MAML, which does not present the financial condition of the guarantor or other financial information about the listed assets.<sup>5</sup>
- Certain loan agreements require the Trump Organization to provide annual and quarterly certifications attesting to the accuracy and completeness of financial

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<sup>5</sup> The Trump Organization has not yet submitted information to the Monitor regarding what it provided to satisfy the 2023 SFC requirement.

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information submitted to lenders. As described in previous reports, the Trump Organization has not consistently provided these certifications. We identified 10 instances where certifications attesting to the accuracy and completeness of financial information was required by the lender but was either incomplete or not provided in the past 14 months. Since raising this issue, we have observed the Trump Organization submitting these certifications when required.

- We observed five intercompany loans, each totaling more than \$5 million, between and among Donald J. Trump, individually, and certain Trust properties. We also observed intercompany loans listed as liabilities in internally prepared balance sheets provided to a finance company, as liabilities on audited or other financial statements prepared by external accountants, or as listings of assets and liabilities provided to the OGE.<sup>6</sup> These loans do not appear to have documents establishing their terms and conditions and range in amounts between \$9 million to more than \$100 million. Despite their inclusion on these financial statements, the intercompany loans were not listed as liabilities on the MAML submitted to lenders. In June 2023, I asked the Trump Organization to consider including relevant intercompany loans on the MAML, and the Trump Organization agreed to do so in subsequent versions.
- Certain loan agreements require the disclosure of contingent liabilities. We have observed that contingent liabilities have not been included on the MAML. Until June 2023, the MAML included a footnote informing the recipient that it “Does not include contingent liabilities.” Beginning in June 2023, after discussions with the Monitorship team and my report to the Court, this footnote was changed to read “Does not include certain material contingent liabilities that exist.”
- The loan agreement for Trump Plaza requires the Trump Organization to provide annual audited financial statements in accordance with GAAP. The 2022 audited financial statement we reviewed states it was not prepared in conformity with GAAP with respect to depreciation, rental income, rent expense, bad debts, reserves for losses up to certain insurance deductibles, and debt issuance costs. I note, however, that non-GAAP statements appear to have been consistently provided to the lender prior to the Monitorship.

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<sup>6</sup> Of particular note, I discussed the springing loan previously disclosed as being between Donald J. Trump individually and Chicago Unit Acquisition (an entity related to the Trump Chicago Tower) with the Trump Organization several times. When I inquired about this loan, I was informed that there are no loan agreements that memorialize the loan, but that it was a loan that was believed to be between Donald J. Trump, individually, and Chicago Unit Acquisition for \$48 million. However, in recent discussions with the Trump Organization, it indicated that it has determined that this loan never existed – and thus that it would be removed from any upcoming forms submitted to the Office of Government Ethics and would also be removed from subsequent versions of the MAML.



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- Certain loan agreements require the Trump Organization to submit annual budgets describing projected performance for the properties. In the annual budget prepared for 40 Wall Street for 2023, the estimated annual income and expenses were, in some instances, materially different than the actual results from the prior year. My team raised these issues with the Trump Organization, and I have observed that the 2024 budget was more consistent with prior years' actual results.
- In 2022 and 2023, income statements provided to a finance company for certain golf course properties with material fixed assets did not include depreciation or presented depreciation as \$0. In my discussions with the Trump Organization, it acknowledged that such disclosures could be relevant to the recipient and that it would consider including such information on subsequently prepared internal financial statements.

## 2. Inconsistent Disclosures

Some financial disclosures reviewed by the Monitorship team have also been inconsistent. We observed that information contained in certain statements was prepared or presented differently when compared to other disclosures that required the same information. For example:

- Expenses related to management fees for 40 Wall Street were inconsistently presented within annual budgets prepared for and submitted to the lender when compared to the management fee recorded in audited financial statements. For example, management fees in the annual budgets submitted to the lender were stated as \$100,000, whereas the management fees in audited financial statements were more than \$1 million. In the annual budgets I recently reviewed, the Trump Organization addressed this issue by including a reasonable expectation of management fees consistent with prior years.
- In certain documents, the Trump Organization calculates Earnings Before Income Tax, Depreciation and Amortization (EBITDA) differently. For example, in the Trump Turnberry 2021 Financial Statements, EBITDA is calculated as earnings after taxes, but before depreciation. Also, in financial documents related to the Chicago Tower, one document included management fees in EBITDA, and one did not.
- The February and March 2022 monthly unaudited trial balances provided to Bally's prior to the sale of the Trump Organization's right to operate Ferry Point reflected presentation and accounting differences compared to all other months provided to Bally's. When asked about this issue, the Trump Organization informed me that these two trial balances were improperly prepared.

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### 3. Errors

Our review also revealed errors in the Trump Organization's preparation of financial disclosures, including:

- Management fees were erroneously excluded from the calculation of “(Loss) After Management Fee Expense/Capex/Ti/Leasing/Mortg Payable” in the 2024 Final 40 Wall Street Budget, causing income to be overstated by the amount of the budgeted management fee (approximately \$1.16 million). After I identified this discrepancy, the Trump Organization confirmed that there was an error and indicated that it would correct and resubmit the budget to the lender.
- In a Chicago Tower 2022 Forecast provided to a prospective lender, the calculated amount of EBITDA (using the values presented in the report) differs from the amount of EBITDA shown on the report. I was informed this error was the result of interest expense being omitted from the printed report, despite this expense being included in the Excel formula calculation of EBITDA, resulting in a difference of \$1,538,333.
- There was an apparent math error in the calculation of “Operating profit before depreciation and exceptional items” for both the 2022 and 2021 values in the 2022 Audited Financial Statements for Trump Turnberry. For 2022, “Operating profit before depreciation and exceptional items” is reported in the audited financial statement as one value. However, when independently performing a calculation of this amount using the values reported in the financial statement, the result is a different value, resulting in an understatement of £130,552 (the understatement is £82,728 for the values reported for 2021). The Trump Organization has not yet responded to my request for clarification regarding this error.
- In the first quarter 2023 Trump Tower Commercial LLC Quarterly Reporting Cash Flow Statement, the subtotal for “Repairs and Maintenance” disbursements includes a mathematical error that also impacts the calculation of operating cash flow. The result is an overstatement to repairs and maintenance expense and, thus, an understatement to operating cash flow of \$14,821.21. The Trump Organization has not yet responded to my request for clarification regarding this apparent error.
- In the 2022 Doral Audited Financial Statement, the notes to the financial statements indicate that “various members of the Trump family” own Trump Endeavor 12, which is incorrect. Trump Endeavor 12 and its members are owned by the Trust. The Trump Organization acknowledged this was an error but did not provide a revised version to its lender.

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While I recognize that certain of these errors are relatively minor amounts compared to the overall revenues of the organization, the erroneous documents were sent to a third-party lender, finance company or counterparty. In several instances, errors were the result of formulas within spreadsheets that failed to properly calculate or capture relevant information.

#### **4. Interactions with the Monitor**

The Trump Organization has been cooperative in providing information to the Monitor. However, at times, compliance with the requirements of the Monitorship Order and subsequent Materiality Threshold has been lacking in completeness and timeliness. These instances include:

- As described in my prior report, dated November 29, 2023, the Trump Organization failed to inform me of tax returns that had been filed for certain Trust entities, including in connection with a significant tax benefit associated with a conservation easement at Doral. I frequently requested updates regarding that conservation easement. However, I was only notified in December 2023 that the easement appraisal and tax filing was finalized and submitted in September 2023.<sup>7</sup>
- I was not informed of cash transfers from the Trust and sent to Donald J. Trump, each exceeding \$5 million and totaling more than \$40 million, until my team conducted a review of Trust account bank statements.
- The Trump Organization did not inform me of financial disclosures provided to an insurance broker. I learned of these disclosures after reviewing bank statements showing a significant premium payment.
- As mentioned above, the Trump Organization sold its right to operate Ferry Point to Bally's in September 2023. In connection with that transaction, certain financial information was provided to Bally's between June and August 2023. I did not receive this information until August 28, 2023.
- While I was informed of planned dissolutions in April 2023, the Trump Organization was not prepared to effectuate the dissolutions at that time. I requested that the Trump Organization advise me immediately when the entities were dissolved. It was not until I inquired in December 2023 that I learned that many, but not all, of the entities had been dissolved in September and October 2023.

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<sup>7</sup> The conservation easement tax filing filed with the IRS included an appraisal of the property prepared by an external consultant.

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## 5. Observations Regarding Internal Controls Over Financial Reporting

Although I have not conducted a comprehensive compliance assessment, the issues identified above may reflect a lack of adequate internal controls and could be remediated with effective processes for review and validation combined with oversight and training. For example, based on the inconsistencies described above, it does not appear that there are adequate accounting and presentation standards, procedures, or training associated with the preparation of financial disclosures. To the extent adequate standards and procedures do exist, they do not appear to have been followed across the organization.

Similarly, certain issues identified above could reflect a lack of effective governance. It is my understanding that the Trump Organization does not have a formal compliance department. Further, the Trump Organization relies, appropriately, on its external auditors to review financial records in the preparation and disclosure of annual audited or compiled financial statements and tax returns. However, the Trump Organization also issues interim, internally prepared financial statements, budgets, trial balances, and other information to third parties that have not had the benefit of review and validation by external accountants.

## VIII. Conclusion

Following the work my team has completed over the last 14 months, the above sets forth my findings and observations in accordance with my duties under the Monitorship Order. It is important to note that the Trump Organization acknowledged the disclosure issues described after I brought them to its attention and has been open to recommendations to improve accuracy and transparency. Indeed, during the Monitorship, the Trump Organization has implemented changes to disclosures or processes, several of which are discussed above. In addition, with respect to the instances where required disclosures were not provided to the Monitor, the Trump Organization submitted the information for review when it was made aware of the omissions.

Absent steps to address the items above, my observations suggest misstatements and errors may continue to occur, which could result in incorrect or inaccurate reporting of financial information to third parties. The parties continue to cooperate with me under the requirements of the orders. Should you have any questions, please feel free to contact me.

Sincerely,



Hon. Barbara S. Jones (Ret.)