FILED: APPELLATE DIVISION - 1ST DEPT 08/21/2024 10:44 PM 2023-04925
NYSCEF DOC. NO. 167 RECEIVED NYSCEF: 08/21/2024

To be argued by:
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15 minutes requested

Supreme Court of the State of New York
Appellate Division – First Department

Nos. 2023-04925, 2024-01134, 2024-01135

PEOPLE OF THE STATE OF NEW YORK, by Letitia James, Attorney General of the State of New York,

Plaintiff-Respondent,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants,

ROBERT & ROBERT, PLLC, et al.,

Nonparty Appellants.

BRIEF FOR RESPONDENT

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Dated: August 21, 2024

Supreme Court, New York County – Index No. 452564/2022

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Konrad Putzier, *Property Fraud Allegations Snowball as Commercial Real-Estate Values Fall*, Wall St. J., July 8, 2024, https://www.wsj.com/real-estate/property-fraud-allegations-snowball-as-commercial-real-estate-values-fall-492d964c 111

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PRELIMINARY STATEMENT

For years, the Trump Organization and its top executives engaged in a fraudulent and illegal scheme to misleadingly inflate the net worth of defendant Donald J. Trump, as reflected in his personal financial statements, by as much $2.2 billion a year. Each year, defendants used a new misleading Statement in conducting business with lenders, insurers, or others, while falsely representing that the Statement was accurate. Through their misconduct, defendants derived significant economic benefits they otherwise could not have obtained, including over $360 million in illegal profits.

Following an investigation, the New York State Office of the Attorney General (OAG) brought this civil enforcement action under Executive Law § 63(12). At summary judgment, Supreme Court, New York County (Engoron, J.), concluded based on the extensive and undisputed documentary evidence that defendants had engaged in fraud in violation of § 63(12). Following an eleven-week bench trial, Supreme Court issued factual and credibility findings, and concluded that defendants had also engaged in criminal, illegal conduct in violation of § 63(12). Exercising its

equitable discretion, the court ordered as remedies disgorgement of defendants' ill-gotten gains and injunctive relief.

This Court should affirm. Supreme Court's liability determinations are supported by overwhelming evidence that, in each Statement, defendants used a variety of deceptive strategies to vastly misrepresent the values of Mr. Trump's assets. For example, defendants valued Mr. Trump's apartment as if its square-footage was triple its actual size; valued rent regulated apartments as if they were unregulated; valued Mar-a-Lago as if deed restrictions that Mr. Trump signed did not exist; and valued golf properties by secretly including premiums that defendants represented were not included.

On appeal, defendants tellingly ignore almost all their deceptions. Instead, they primarily argue that OAG failed to prove that defendants' counterparties relied on the misrepresentations to their financial detriment. But it is well-established that neither reliance nor victims' losses—which are elements of common-law fraud—is required for § 63(12) fraud or illegality claims where, as here, OAG seeks disgorgement and injunctive relief rather than damages or restitution. Indeed, one of § 63(12)'s core remedial purposes is to protect the honesty and integrity

of commercial marketplaces in New York by *stopping* fraudulent and illegal practices *before* they cause financial losses to market participants or broader harms to the public.

In any event, as Supreme Court correctly found, defendants' counterparties did rely on the misrepresentations and omissions to their detriment. And Supreme Court properly determined that defendants, who were each deeply involved in the misconduct, knew the Statements were misleading and intended to defraud. Indeed, as the court found, defendants' testimony to the contrary was contravened by the documentary record and not credible.

Defendants make numerous additional arguments against liability, none of which has merit. For instance, Supreme Court correctly concluded, consistent with this Court's earlier decision, that defendants violated § 63(12) each time they used a new fraudulent Statement in business. Under traditional accrual principles, OAG's claims are timely as to each such violation after July 2014—the start of the limitations period.

Supreme Court also acted well within its equitable discretion in awarding relief based on defendants' numerous and blatant violations of § 63(12). Supreme Court did not "unwind" any of the business deals

between defendants and their counterparties. The court instead properly ordered defendants to disgorge only the ill-gotten profits of their wrongdoing—a well-established equitable remedy that accords with both the Excessive Fines and Due Process Clauses of the state and federal Constitutions. Supreme Court also properly ordered injunctive relief after considering and weighing, inter alia, the flagrancy of defendants' misconduct, their high degree of scienter, their prior history of wrong-doing, and their refusal to accept any responsibility for their misconduct.

Finally, Supreme Court also properly exercised its discretion in imposing monetary sanctions on defendants' attorneys for raising frivolous arguments at summary judgment.

QUESTIONS PRESENTED

1. Whether Supreme Court correctly concluded at summary judgment that defendants engaged in repeated and persistent fraud in violation of § 63(12).

2. Whether Supreme Court properly concluded after an eleven-week bench trial that defendants engaged in repeated and persistent illegal conduct in violation of § 63(12).

3. Whether Supreme Court appropriately exercised its broad discretion in ordering defendants to disgorge their ill-gotten profits and issuing injunctive relief.

4. Whether Supreme Court appropriately imposed monetary sanctions on defendants' attorneys for raising frivolous arguments.

STATEMENT OF THE CASE

A. Statutory Background

The Legislature enacted Executive Law § 63(12) in 1956, to protect the honesty and integrity of commercial marketplaces in New York by stopping fraudulent and illegal business conduct. *See* Ch. 592, 1956 N.Y. Laws 1336; *People v. Coventry First LLC*, 52 A.D.3d 345, 346 (1st Dep't 2008), *aff'd*, 13 N.Y.3d 108 (2009). To accomplish this public purpose, § 63(12) broadly authorizes the Attorney General to bring civil enforcement proceedings "[w]henever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." Executive Law § 63(12).

Section 63(12) applies to fraudulent or illegal conduct in business, regardless of whether it targets consumers, small businesses, large

corporations, or other individuals or entities. As the Legislature broadly provided, the terms "fraud" and "fraudulent" in the statute "shall include *any* device, scheme or artifice to defraud and *any* deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." *Id.* (emphasis added). The term "repeated" includes "repetition of any separate and distinct fraudulent or illegal act," or misconduct affecting more than one person. *Id*. The term "persistent" includes the "continuance or carrying on of any fraudulent or illegal act or conduct." *Id.* As relevant here, an act is illegal under § 63(12) if it violates another state law, including the Penal Law. *See People v. American Motor Club*, 179 A.D.2d 277, 282-83 (1st Dep't 1992); *Matter of Freedom Discount Corp. v. Korn*, 28 A.D.2d 517, 517 (1st Dep't 1967); *State v. World Interactive Gaming Corp.*, 185 Misc. 2d 852, 861-65 (Sup. Ct. N.Y. County 1999).

The broad sweep of § 63(12) was patterned on the Martin Act, GBL § 352, enacted in 1921 to combat fraud in the securities market. *See* Ch. 629, 1921 N.Y. Laws 1959. Like the Martin Act, § 63(12) is a remedial statute that reaches "well beyond the common law concept of fraud," Dept. of Commerce Recommendation (June 24, 1965), *in* Bill Jacket for

ch. 666 (1965). *See People v. Greenberg*, 27 N.Y.3d 490, 497 (2016). Liability under § 63(12) does not require that market participants relied on the fraud or illegality or suffered losses resulting from it. *See Matter of People v. Trump Entrepreneur Initiative LLC*, 137 A.D.3d 409, 417 (1st Dep't 2016); *People v. Ernst & Young, LLP*, 114 A.D.3d 569, 569-70 (1st Dep't 2014). The statute's broad sweep ensures that the Attorney General can bring enforcement actions to protect market participants and stop misconduct *before* it causes losses. *See* Annual Message of the Governor, 1959 McKinney's N.Y. Session Laws 1690, 1700.

B. Factual Background

The background that follows is taken from the undisputed documentary record developed at summary judgment and the evidentiary record subsequently developed during an eleven-week bench trial, during which forty witnesses testified. Documentary evidence cited herein was both submitted at summary judgment and admitted at trial, unless otherwise noted.

Mr. Trump is the beneficial owner of the entities that do business as the Trump Organization. (A(30).13113, 13081.[1]) The Trump Organization includes the entity defendants and employed the individual defendants as executives, including Donald Trump Jr. and Eric Trump, Allen Weisselberg (the former Chief Financial Officer), and Jeffrey McConney (the former Controller). In conducting business, defendants annually prepared a personal financial statement for Mr. Trump (Statement).

Each Statement purported to fairly and accurately represent Mr. Trump's net worth as of the date of the Statement, based principally on the asserted estimated current values of Mr. Trump's assets minus outstanding liabilities. But instead of providing an accurate representation of Mr. Trump's finances, defendants used varying misrepresentations and omissions to vastly misrepresent the values of Mr. Trump's assets. As a result, defendants inflated Mr. Trump's personal net worth

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[1] The notation "A(#)" refers to the volume number in the 112-volume appendix.

by as much as $2.2 billion a year. (A(1).42, 121-129; *see* A(4).1882 (chart summarizing amount specific assets were inflated on each Statement).)

On more than two dozen separate occasions from at least 2014 until 2021, defendants used one or more of the different false and misleading Statements in their business dealings with lenders, insurers, or others, while representing that the Statements were true and accurate, to reap significant financial benefits.[2] (A(1).54-55, 129-135; *see* A(5).2173-2198 (2014); A(5).2200-2225 (2015); A(5).2227-2251 (2016); A(5).2253-2276 (2017); A(5).2278-2301 (2018); A(5).2303-2326 (2019); A(5).2328-2348 (2020); A(6).2350-2369 (2021).)

1. Defendants used various deceptive strategies to inflate the values of Mr. Trump's assets as reflected in his financial Statements.

The deceptive strategies that defendants used to misleadingly inflate the asset values in each Statement were numerous and differed from year to year. (*See* A(60).26958-26990 (demonstrative slides summa-

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[2] This brief refers to the Statements by year, indicating the year ending in June for which the Statement values Mr. Trump's assets. In some cases, the Statement was completed and submitted the following year.

rizing defendants' deceptive strategies).) As trial testimony showed, defendants used these strategies to reverse engineer the value of Mr. Trump's assets to achieve a net worth that Mr. Trump wanted. (A(66).29545-29546, 29548, 29551, 29559-29560, 29565; *see* A(64).28623-28624.) For example, after reviewing a draft Statement, Mr. Trump might say, "I'm actually not worth four and a half billion dollars. I'm really worth more, like, six." (A(66).29550.) The draft Statement would then be revised to inflate asset valuations to reach Mr. Trump's preferred net worth for the final Statement. Defendants' deceptive strategies fall into four general categories.

False or Inaccurate Information. Defendants used false or inaccurate information to calculate many asset valuations. Each Statement from at least 2014 to 2016 valued Mr. Trump's triplex apartment in Trump Tower as if it were 30,000 square feet. But the apartment was only 10,996 square feet. (A(7).2904; A(29).12833; A(62).27720; A(63).27927-27931, 27941, 27943-27944; A(79).34712-34715.) Valuing the apartment as if it were nearly three times larger than its actual size overstated its value by up to $200 million. (A(1).44; *see* A(4).1882.)

Defendants knew that these Statements misrepresented the size and value of the apartment. Mr. Trump resided in the apartment and had signed a document, in the Trump Organization's files, stating that the apartment was only 10,966 square feet. (A(63).27927-27931.) Moreover, this misrepresentation continued after *Forbes* magazine inquired in early March 2017, whether Mr. Trump had been misrepresenting the apartment's size. Eric Trump, Donald Trump Jr., and Weisselberg were on emails discussing *Forbes*' inquiry. (A(7).2983, 2986; A(63).27941.) Yet after this inquiry, Weisselberg ordered another employee to "leave it alone" and did not inform outside accountants that the value was incorrect before the final 2016 Statement was compiled a few days later. (A(63).27943; *see* A(7).2852; A(5).2228.) When defendants used the correct apartment size for the 2017 Statement, trial evidence showed that they used different strategies to inflate the value of the apartment and other assets to offset the reduction. (A(64).28485-28489, 28495-28497; A(90).40074 (rows 23-24, 39).)

Each Statement from at least 2014 until 2021 also falsely and misleadingly inflated the amount that Mr. Trump personally held in "cash." Specifically, defendants included cash held by the Vornado

partnership ("Vornado cash"), over which Mr. Trump had no control, in the category for his personal cash assets. (A(29).12953-12956; A(62).27698-27704, 27706-27707, 27709; A(63).27794, 27810, 28061-28062; A(64).28668.) Defendants included the Vornado cash despite Weisselberg and McConney having been told by an outside accountant that the "cash" category could not include assets that Mr. Trump did not control. (A(62).27698-27703; A(63).27808-27810.) When asked if he controlled this cash, Mr. Trump admitted, "In the true sense, no." (A(70).31080.) At trial, one of defendants' own experts labeled the inclusion of the Vornado cash in Mr. Trump's personal cash asset category as a "red flag" and "very glaring issue" that contravenes generally accepted accounting principles (GAAP). (A(72).32107-32109.) Similarly, Mark Hawthorn, a Trump Organization executive with CPA training, conceded that defendants had "overstated" Mr. Trump's cash by including the Vornado cash. (A(64).28628, 28668.) This misrepresentation inflated the cash reported in the Statements by $16 to $93 million, depending on the year. (A(1).53; *see* A(4).1882.)

Omissions of Legal Restrictions. Defendants also valued Mr. Trump's assets in disregard of known legal restrictions that diminished their value.

For example, each Statement from at least 2014 to 2018 misleadingly valued certain properties as if many buildings could be developed on them when, in reality, far fewer buildings could be developed. The Statements valued a golf property in Scotland (Aberdeen) as if over 2,500 private residences could be constructed and sold, when defendants had obtained approval from the Scottish government to build only 1,486 accommodations on the property, including only 500 private residences. (A(29).12892-12893; A(70).31100-31103.) This misrepresentation inflated the property's value by $59 to $283 million. (A(1).50-51; *see* A(4).1882.) At trial, Mr. Trump stated that valuing this golf property was "sort of like a painting," where "[y]ou could do what you want to do." (A(70).31108.)

Similarly, evidence at trial showed that the Statements misleadingly valued undeveloped land in Briarcliff, New York as if seventy-one units could be built when defendants had the right to build only thirty-one units—which Eric Trump knew. (A(68).30120-30121; A(69).30893-30894, 30897-30898.) Eric Trump also knew that a professional appraiser, David

McArdle, had repeatedly valued the undeveloped land at Briarcliff at approximately $45 million, which assumed that seventy-one units could be built, for purposes of a potential conservation easement. (A(68).30100-30121; A(100).44318-44319.) He nonetheless instructed McConney to list the land's value as approximately double that amount, $101 million, on the 2015, 2016, 2017, and 2018 Statements. (A(69).30897-30898; A(88).38892 (rows 288-295), 38952 (rows 294-301), 39164 (rows 305-312).) At trial, McArdle testified that Eric Trump "had certain ideas about value," and that McArdle and others had recognized during the easement appraisal process that "anything beyond $45 million would have put some people at risk" and "would not have been credible." (A(66).29232-29233.)

Each Statement from at least 2014 until 2021 also valued Mar-a-Lago based on the false premise that it could be sold as an unrestricted private residence. But, to pay significantly lower taxes on Mar-a-Lago, Mr. Trump had earlier signed a deed agreeing "to *forever extinguish* [his] right to develop or use [Mar-a-Lago] for any purpose other than club use," and granting a preservation easement *in perpetuity* to the National Trust for Historic Preservation that prohibited Mar-a-Lago's use as anything

other than a social club without the National Trust's written approval. (A(11).4732-4735; *see* A(29).12876-12886; A(95).42009; A(63).27865, 27879-27881.) Valuing Mar-a-Lago as an unrestricted private residence rather than as a social club inflated its value on each Statement by approximately $300 to $700 million, depending on the year. (A(1).49; *see* A(4).1882.)

From at least 2014 until 2021, each Statement also valued unsold rent-stabilized apartments in Trump Park Ave. on the false premise that they could be sold without rent-stabilization restrictions. (A(29).12937-12938, 12941-12943; A(63).27815-27818.) Despite knowing that the apartments were rent stabilized, McConney and Weisselberg intentionally valued the unsold apartments using an asking price that assumed that the apartments were unregulated and hid this information from the Trump Organization's outside accountant. (A(63).27814-27815, 27817-27818.) One of defendants' own experts recognized that failing to disclose that rent-stabilized apartments were valued without legal restrictions is "a pretty significant omission." (A(77).34004.) This omission inflated the apartments' value by $10 to $90 million. (A(1).46-47; *see* A(4).1882.)

Methods that Contradicted Specific Representations. Defendants valued certain asset categories in ways that contravened specific representations that they had made in the Statements.

Each Statement from at least 2014 until 2020 falsely represented that the "goodwill attached to the Trump name has significant financial value that *has not been reflected* in the preparation of this financial statement." (*E.g.*, A(5).2178 (emphasis added).) In fact, defendants inflated the values of golf club properties by either 15% or 30% based on the value purportedly associated with Mr. Trump's name. (A(29).13031; A(63).27853-27855, 27997.)

Statements from at least 2014 to 2018 and 2020 to 2021 further misrepresented the value of transactions in which Mr. Trump licensed his name for use on third-party real-estate projects. Each Statement represented that these valuations included only licensing arrangements that "have evolved to the point where signed arrangements with the other parties exist and fees and other compensation which he will earn are reasonably quantifiable." (*E.g.*, A(5).2195.) In fact, defendants secretly included unsigned deals and intra-company agreements between Trump Organization affiliates. (A(29).12962, 12964; A(64).28675, 28679;

A(74).32900-32902 (discussing A(88).39104 (handwritten note of inclusion of "forecasted deals that have not signed yet")).) This misrepresentation inflated the values of these projects by approximately $100 to $200 million. (A(1).54; *see* A(4).1882.)

Disregard of Accounting Methods and Appraisals. Last, the Statements valued Mr. Trump's assets in ways that ignored professional appraisals or significantly departed from accepted methods, without disclosing those appraisals or departures.

For example, to inflate the value of 40 Wall St., evidence at trial showed that defendants (among other things) cherry-picked a figure from a professional appraiser's widely disseminated generic marketing report about properties in the area, while ignoring the different figure, which produced a much lower valuation, that the same professional had used in preparing a bank appraisal of 40 Wall St. itself. (A(62).27743-27744, 27749-27757, 27761-27762; A(98).43226-43230.) Defendants then hid their deception from the outside accountant by forwarding an excerpt of an appraisal that included their cherry-picked figure while omitting other pages showing that the appraiser had used a different figure. (A(62).27759-27764; *see* A(88).39218-39231; A(80).35265, 35350, 35355.)

Defendants also valued properties without disclosing various independent appraisals that valued the properties at hundreds of millions of dollars less. (A(29).12838, 12855-12857 (40 Wall St.), 12902-12906 (Vornado partnership properties), 12937 (Trump Park Ave.); A(63).27796-27807, 27830-27831; A(69).30861-30866.) For example, in the 2014 Statement, defendants valued the Seven Springs property in Bedford, New York at $291 million, when a professional appraiser evaluating a potential conservation easement had told Eric Trump that the property was worth, at most, $64 million. (A(5).2192; A(29).12841; *see* A(63).27823-27826; A(69).30884-30886.) When defendants corrected this overvaluation for the 2015 Statement, they hid the change by placing Seven Springs in the "other assets" category on the Statement, where it was not itemized, while also increasing the purported values of Mr. Trump's triplex apartment and 40 Wall St. (A(29).12843; A(63).27826-27828; A(87).38877 (rows 130, 882, 883).)

Trial evidence also showed that many valuations did not reflect an asset's estimated current value—the amount at which an asset could currently be exchanged between a well-informed and willing buyer and seller (A(17).7574)—even though the Statements expressly provided that

"[a]ssets are stated at their estimated current values." (A(29).12819.) For example, for certain undeveloped properties, defendants valued unbuilt residences as if they had already been built and sold, without applying a discount factor to these assumptions about future profits. (A(64).28682-28684; *see, e.g.*, 27832-27842 (golf-club membership fees); A(65).28791-28796 (fees on real-estate licensing transactions that had not yet occurred); A(63).27819-27826; A(69).30809-30811 (Seven Springs).) As one of defendants' experts acknowledged, failure to discount future profit would be "a red flag" that would raise "a glaring question" as to the Statements' accuracy. (A(72).32089.)

2. Each defendant played a substantial role in preparing the misleading Statements and falsely representing that they were accurate.

Until January 2017, Mr. Trump controlled the Trump Organization and was ultimately responsible for preparing each Statement and representing that it accurately reflected his financial condition. (A(29).13039; A(62).27680; A(66).29564-29565; A(74).32877; *see* A(5).2174; *see, e.g.*, A(20).8681-8682, 8684-8685.) To meet his responsibilities, Mr. Trump directed McConney and Weisselberg to prepare the Statements. (A(29).13049, 13054; A(70).31046-31047, 31052; A(62).27666.)

To do so, McConney prepared a spreadsheet with data purporting to support the asset valuations and assembled documentation for each asset. (A(29).13054; A(62).27670-27672.) Although Weisselberg and McConney understood that the valuations for the Statements needed to comply with GAAP, neither had any expertise in those principles. (A(62).27712-27713; A(63).27910.) During this time, Mr. Trump reviewed and approved each Statement and discussed valuations of individual properties that were listed on the Statements with Weisselberg and McConney. (A(62).27680; A(70).31056; A(74).32877; *see* A(29).13039.)

Starting in January 2017, around the time when Mr. Trump was inaugurated as President, Mr. Trump transferred control of the Trump Organization to Donald Trump Jr., Eric Trump, and Weisselberg. Donald Trump Jr. and Weisselberg were appointed co-trustees of the revocable trust that holds Mr. Trump's assets. (A(29).13040, 13056.) As co-trustees, Donald Trump Jr. and Weisselberg became ultimately responsible for the preparation and accuracy of the Statements. (A(29).13055; A(63).28083-28085; *see, e.g.,* A(5).2279.) For the Statements from 2016 to 2021, Weisselberg and McConney tasked a junior employee, Patrick Birney, with day-to-day responsibility for preparing the valuations for the

Statements, working under their supervision. (A(64).28379-28382.) Birney did not have any training in GAAP. (A(64).28382-28384.)

Around the same time, Donald Trump Jr. and Eric Trump began acting as the Trump Organization's co-chief executives (they have been Executive Vice Presidents since at least 2011). (A(69).30651, 30655, 30657, 30805, 30807.) As co-chief executives, Donald Trump Jr. and Eric Trump ran the Trump Organization together with Weisselberg. (A(69).30655, 30657, 30807.) Mr. Trump also appointed Donald Trump Jr. and Eric Trump as his agents with power of attorney to execute certificates of compliance for existing loans. (A(28).12363-12369; A(29).13039, 13042-13043, 13047-13048; A(69).30757-30758; A(70).30981-30989.) In that role, Donald Trump Jr. and Eric Trump each signed certifications on Mr. Trump's behalf, which were submitted to lenders, representing that the Statements were accurate. (*See, e.g.*, A(20).8693-8694; A(21).9401-9402.)

After the valuations were prepared each year, McConney, and later Birney, forwarded to the Trump Organization's outside accountants the supporting documents and data spreadsheet containing the valuations to be compiled by the accounting firm into a report that would become the

Statement. (*See* A(62).27675.) Unlike in an audit, an accountant preparing a compilation does not take any steps to verify the accuracy of the information sent by the client and does not provide any opinion or assurance about the accuracy of such information. (A(6).2773-2780; A(29).12819-12820; A(61).27123, 27130-27131; A(62).27508-27509, 27521-27522, 27525-27526.) The accountant's role was limited to compiling financial data sent by defendants into a draft Statement, which was then approved by Mr. Trump, or, depending on the year, Donald Trump Jr., Eric Trump, and Weisselberg, as described above.

3. Defendants falsely affirmed the asset valuations' accuracy to accountants.

From 2014 to 2021, in connection with their outside accountants' compiling of each annual Statement, defendants signed letters representing that the asset valuations in that year's Statement were accurate and that defendants had not withheld any relevant information regarding the valuations' completeness and accuracy. But because of the deceptive strategies that defendants used in valuing the properties, defendants' representations to the accountants were false and misleading. (*See* A(63).27969.) Weisselberg signed these letters for each Statement from

2014 to 2020; Donald Trump Jr. also signed the letters for the 2017 to 2020 Statements. (A(7).2845-2873; A(63).27959, 27978.) Donald Trump Jr. signed the letter for the 2021 Statement. (A(7).2875-2876; A(62).27512.)

Employees of the Trump Organization's outside accountants testified that they would not have issued the compiled Statements without defendants' representations, or if they had known that the representations were false or that defendants had failed to provide them with appraisals in their possession. (A(61).27179-27186, 27232-27233, 27289; A(62).27542.) After learning that defendants had provided incomplete and false information, Mazars, the accountant from 2014 to 2020, terminated its relationship with the Trump Organization. Mazars informed the Trump Organization that each Statement from 2011 through 2020, "should no longer be relied upon," and that the Trump Organization "should inform any recipients thereof who are currently relying upon one or more of those documents that those documents should not be relied upon." (A(17).7569-7572; A(66).29449-29455, 29462-29465.)

4. Defendants repeatedly and persistently used the false and misleading Statements in conducting business in New York.

a. Defendants used the false and misleading Statements in conducting business with lenders.

i. Deutsche Bank

Defendants used the various false and misleading Statements on many different occasions in conducting business with Deutsche Bank concerning three loans the bank provided to the Trump Organization: a $125 million loan to develop the Doral golf resort in Miami; a loan of up to $73 million to develop a hotel and condo project in Chicago; and a loan of up to $170 million to redevelop the Old Post Office (OPO) building in Washington, D.C. into a luxury hotel. (*See* A(18).7729; A(20).8730.)

The loans were issued by the bank's Private Wealth Management Division (PWMD), which required Mr. Trump to personally guarantee each loan—meaning he pledged his own personal assets as collateral. Nicholas Haigh, a risk officer and managing director of PWMD, explained that a guaranty was necessary because the Trump Organization sought loans for unusual and risky real estate development projects, which would be difficult to sell in the event of a default. (*See* A(63).28150-28151;

A(70).31255-31256, 31405.) An email from Deutsche Bank's global head of private banking emphasized that a guaranty was non-negotiable for this type of loan, stating that the bank would "need [an] iron clad full recourse" guaranty "under all circumstances" for the Doral loan. (A(76).33486-33487; A(103).45490.)

For each loan, Mr. Trump signed a guaranty representing that he had provided Deutsche Bank with a Statement that was "true and correct in all material respects." He further represented that he submitted the Statement "[i]n order to induce [Deutsche Bank] to accept this Guaranty and to enter into" the loan and that the loan was "conclusively presumed to have been created in reliance" on the guaranty and its representations. (A(18).7817-7819 (Doral); A(20).9009-9010 (Chicago); A.(23).9895-9897 (OPO).) Haigh, the credit officer and only witness at trial who had authority to approve the loans, testified that he reviewed Mr. Trump's Statement when approving the Doral loan, and that his process for approving each loan was the same. (A(63).28153-28154 (Doral), 28190-28192 (Chicago), 28198-28199 (OPO).)

Each guaranty required Mr. Trump to maintain a minimum net worth of $2.5 billion (excluding his purported brand value) and $50

million in cash reserves.[3] Each guaranty also required Mr. Trump to submit a new Statement to Deutsche Bank each year, which the bank would use to test whether Mr. Trump was complying with the net-worth and cash-reserve covenants for that year. Mr. Trump was also required to submit a certificate of compliance certifying that he was complying with the covenants and that the submitted Statement "presents fairly in all material respects" his financial condition for the year. (A(18).7821-7822, 7830-7831 (Doral); A(20).9012-9013, 9022-9023 (Chicago); A(23).9895-9990, 9910-9911 (OPO).) The loan documents included as an event of default both submitting an annual Statement that misrepresented Mr. Trump's financial condition and falsely certifying compliance with the covenants. (*See* A(19).8436; A(20).8635-8636 (Doral); A(21).9325-9326 (Chicago); A(18).7922-7923 (OPO).)

At trial, Haigh testified that Mr. Trump's annual submission of a Statement was required so that the bank could "be sure that the client's

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[3] The Doral and OPO guaranties included the cash reserve provisions for the period during which the property was under renovation (*e.g.*, A(63).28170); the Doral and Chicago loans contained provisions allowing for the amount guaranteed to be reduced when the collateral property reached a certain loan-to-value ratio (A(75).33233-33235).

financial strength is being maintained" and "test its covenants periodically." (A(63).28169; *see also* A(63).28196.) Haigh testified that if Mr. Trump defaulted on any of the covenants, the bank would have various remedies, including "accelerating the loan and ask for repayment." (A(63).28175.) Haigh testified that he assumed that the asset valuations in each Statement were "broadly accurate" (A(63).28156-28157), and other bank employees involved in the loans likewise testified that they expected clients to provide truthful and accurate information to Deutsche Bank (*see, e.g.*, A(75).33314; A(76).33493).

By providing Mr. Trump's personal guaranty and a certified annual Statement to establish compliance with the guaranty, defendants obtained and maintained each year interest rates from PWMD that were far more favorable than they would have otherwise received. For each project, Deutsche Bank's commercial real estate division had offered the Trump Organization a different loan than the PWMD loan defendants accepted. The offered real-estate loans were secured only by the property under development and not by Mr. Trump's personal guarantee. (*See* A(29).12975-12976 (Doral), A(29).12985-12986 (Chicago); A(29).12999-13000 (OPO).) As OAG's expert described, the PWMD loans provided

defendants with interest rates that, over the course of the loans, were generally four to eight percentage points lower than the interest rates offered by the commercial real estate division. (A(101).44461 (demonstrative chart summarizing interest rate comparisons); *see* A(69).30532-30569 (discussing chart); *see also* A(29).12975-12976, A(18).7730, 7781 (Doral); A(29).12985-12986, A(18).7807-7808, A(20).8735 (Chicago); A(29).12999-13000, A(18).7795, A(20).8737 (OPO).)

The OPO loan, the third of the three Deutsche Bank loans, was signed August 12, 2014, within the statute of limitations for all defendants. (A(18).7834.) And for each of the three loans, defendants submitted new false and misleading Statements from November 2014 through 2021, within the statute of limitations for all defendants.

Mr. Trump personally signed the letters submitting the 2014 and 2015 Statements and the accompanying certificates of compliance representing that each Statement "presents fairly in all material respects" his financial condition. (*See* A(20).8681-8682 (2014), 8684-8685 (2015).) After Mr. Trump was elected president in 2016, Donald Trump Jr. and Eric Trump submitted the Statements and certificates on his behalf. Donald Trump Jr. submitted the Statements and certificates through 2019. Eric

Trump submitted the 2020 certificate and the 2021 Statement and certificate.[4] (*See* A(20).8687-8688 (2016); A(20).8690-8691, A(26).11441-11442 (2017); A(20).8693-8694 (2018); A(20).8700-8701, A(21).9398-9399, A(26).11444-11145 (2019); A(20).8703-8704, A(21).9401-9402, A(26).11447-11448 (2020); A(20).8706-8707, A(21).9404-9403, A(26).11450-11451 (2021); *see also* A(29).12983 (Doral), 12993-12994 (Chicago), 13006 (OPO).)

Deutsche Bank used the information in each new Statement to review the loans each year from 2014 to 2021, including to test Mr. Trump's compliance with the covenants. (A(63).28169, 28191-28192; *see also* (A(29).12983.) Haigh testified that these reviews were based on "updated financial information on the guarantor" (i.e., Mr. Trump's Statement) (A(63).28191) and that the bank expected Mr. Trump to inform it of any changes to his financial position (A(63).28197). Each year, Haigh (or another credit officer in later years) recommended reapproval of the loans based on the "financial strength of the guarantor," as demonstrated

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[4] Eric Trump signed and submitted the certificate of compliance for 2020, which did not attach the 2020 Statement but stated that it would be submitted by the end of 2020. (A(26).11447-11448.)

by Mr. Trump's Statements. (*See, e.g.*, A(63).28205.) Mr. Trump and Donald Trump Jr. each testified that they knew that Deutsche Bank would review the Statements to determine whether Mr. Trump was complying with the loan terms. (A(70).31181, 31191; A(69).30760.)

While Deutsche Bank also calculated "adjusted" valuations for certain of Mr. Trump's assets when approving and reviewing the loans, as discussed further below (at 72-76), the bank did not commission its own appraisals or conduct complex valuations. Instead, for most assets, the bank took the valuation provided by defendants and applied an across-the-board standardized deduction (called a "haircut"). The bank was not creating its own estimates of the current values of the assets—as the valuations in the Statements purported to be. Rather, the bank was evaluating whether Mr. Trump would be able to cover the guaranty in a hypothetical "stressed scenario" where "asset values have fallen" from then-current levels. (A(63).28152; *see also* A(63).28163, 28188.)

In 2020, after public reports emerged that defendants had misrepresented the values of Mr. Trump's assets, Deutsche Bank raised concerns with defendants about the "accuracy of certain representations made in" the Statements. (A(19).8435-8437.) The bank requested

information from defendants about apparent discrepancies in the Statements and the accuracy of their valuations. (A(19).8430-8433.) Deutsche Bank warned defendants that the submission of inaccurate financial information is an event of default under the loans and that the "[f]ailure to provide accurate valuations of financial assets may fundamentally impact" the bank's view of defendants' compliance with the loan covenants. (A(19).8435-8437.)

After defendants failed to meaningfully respond, the bank exited its relationship with the Trump Organization. (A(19).8439-8440.) While each of the loans was eventually repaid or refinanced (A(29).12984, 13005-13006; A(70).31185), Haigh testified that the bank's concern was not only whether the loans had been repaid, but also whether it had gotten a fair return on its capital (A(64).28345). As Haigh explained, repayment did not indicate that the bank suffered no loss because "just getting repaid on the principal" of the loan "doesn't address at all whether we got properly recompensed for the risk we were taking." (A(64).28345.)

ii. Other Lenders

Defendants also used the false and misleading Statements to obtain loans from other lenders. On Mr. Trump's behalf, Weisselberg submitted the 2014 Statement to Ladder Capital in an application to refinance an existing $160 million mortgage on 40 Wall St. (A(29).13008-13011; *see* A(87).38741-38767 (Ladder Capital's copy of 2014 Statement); A(66).29161-29164.) Ladder Capital relied on the 2014 Statement in making a loan with an interest rate approximately two percentage points lower than the rate on the prior mortgage. (*See* (A(26).11499-11504.) A memorandum recommending the deal repeatedly referenced Mr. Trump's "reported . . . net worth of nearly $5.8 billion and liquidity in excess of $300 million" (A(26).11506-11508, 11514)—the inflated values in the 2014 Statement (A(5).2176-2177).

As a condition of the loan, Mr. Trump personally guaranteed certain financial obligations and agreed to minimum net-worth and liquidity provisions and to annually submit his personal financial information. (A(26).11503, 11510, 11573-11574.) Trial evidence established that from 2017 to 2019, defendants used the Statements to create and submit to the loan servicer annual summaries of Mr. Trump's net worth,

signed by Weisselberg. (A(63).28045-28057; *see* A(93).41084-41086 (2017), 41137-41139 (2018), 41197-41202 (2019).)

Defendants likewise used the false and misleading Statements and Mr. Trump's personal guaranty to maintain a mortgage on the Seven Springs property. (A(29).12838, 13014-13015.) In 2016 and 2017, McConney submitted false and misleading Statements to the mortgage holder to comply with the guaranty. (A(27).12044 (2016), 11992 (2017).) In 2019, Eric Trump signed a loan modification reaffirming the representations of Mr. Trump's net worth in all prior loan documents and Mr. Trump's obligations as guarantor. (A(27).12093, 12095.)

b. Defendants used the false and misleading Statements in conducting business with insurers.

Defendants also used the false and misleading Statements to secure favorable insurance terms. For several years, Zurich North America underwrote a surety bond program for the Trump Organization. (*See* A(29).13017-13018.) Under the surety agreement, Mr. Trump was required to personally indemnify Zurich for any claims paid under the program and to disclose his Statements to Zurich annually. (A(28).12245; *see also* A(28).12150-12151.)

In reviewing Mr. Trump's 2018 and 2019 Statements, Zurich's underwriter, Claudia Mouradian, wrote in her notes the amount of cash that the Statements claimed Mr. Trump had on hand.[5] (A(28).12158, 12164; A(94).41764.) Mouradian testified that this cash amount was important to her analysis and that she relied on it because Zurich looks to an insured's cash assets for repayment on claims. (A(28).12158.) Mouradian explained that it would have been material to her analysis to know that Mr. Trump did not control approximately $24 million that was included as his cash on the Statements because that would "mean[] that the true amount of cash held by the Trump Organization would be less, less than what is stated." (A(28).12168.)

Mouradian further testified that during her review, Weisselberg told her that professional appraisers determined the real estate valuations in the Statements. (A(28).12158-12159, 12164; *see also* A(28).12203.) Mouradian explained that this representation was material because she might not have relied as much on the valuations if she had known they had not been conducted by professionals. (A(28).12158-12159, 12164-

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[5] By agreement of the parties, Mouradian testified at trial via her recorded deposition video. (A(68).30292.)

12165.) Based on Mouradian's assessment of the Statements, Zurich renewed the Trump Organization's coverage in 2019 and 2020 with the same premium. (A(28).12161, 12166-12167.)

The Trump Organization also used the false and misleading Statements to secure favorable terms for its directors and officers (D&O) insurance. Michael Holl, an underwriter for Tokio Marine HCC who attended a 2017 meeting with Weisselberg, testified that he was told at the meeting that Mr. Trump had $6.6 billion in assets and $192 million in cash, reflecting the inflated numbers in Mr. Trump's 2015 Statement. (A(67).29887-29890; *see* A(28).12297-12298, 12302.) Holl explained that this cash figure was "a meaningful, useful figure" in his analysis. (A(67).29890.) Holl testified that he was also informed that there was no material litigation or inquiry that could lead to a claim under the D&O coverage. (A(28).12302; A(67).29890-29892.) But there was an ongoing investigation by OAG into the Trump Foundation and Trump Organization directors and officers. (A(28).12335-12340, 12345-12346; A(67).29946-29947.) Based on this information, HCC offered the Trump Organization $10 million in D&O coverage with a premium of $295,000, which the Trump Organization accepted. (A(28).12331.)

In January 2019, the Trump Organization submitted a claim to its insurers, including HCC, for D&O coverage for an enforcement action arising out of OAG's investigation of the Trump Foundation. (A(28).12350.) At trial, Holl testified that HCC subsequently concluded that the coverage was "significantly more risky than [its] initial assessments." (A(67).29897.) When the D&O policy expired, HCC offered to renew the policy for a premium of $1.6 million, more than five times the existing premium. (A(28).12358.) The Trump Organization declined. (A(67).29897.)

c. Defendants used the false and misleading Statements in conducting business with the New York City Department of Parks and Recreation.

Trial evidence established that defendants used the false and misleading Statements in conducting business with the New York City Department of Parks and Recreation under an agreement to operate Ferry Point, a golf course in the Bronx. (*See* A(107).47301.) The contract required Mr. Trump to guarantee certain capital and operational expenses (A(100).44363-44365) and to submit letters from his accountant

stating that there had been no material adverse change to his net worth since the contract was awarded in 2011 (A(100).44365-44366).

Between 2016 and 2021, Mazars prepared letters for defendants that relied on the Statements to represent that there had been no material adverse change in Mr. Trump's reported net worth. Weisselberg and either Mr. Trump or Donald Trump Jr. were copied on the letters. (A(100).44376 (2016); A(100).44378 (2017); A(100).44359 (2018); A(100).44360 (2021).) David Cerron, a Parks Department employee, testified that he expected that the letters were "true, complete and accurate," and that if the City had become aware of any misrepresentation, it could have resulted in an investigation. (A(68).30244-30245.) In June 2023, the Trump Organization assigned the Ferry Point operating license to Bally's Corporation for $60 million. (A(101).44540, 44546; *see also* A(1).81, 133 n.51.)

C. Procedural Background

1. This Executive Law § 63(12) action

In September 2022, OAG brought this enforcement action alleging that defendants engaged in fraud and illegality in violation of § 63(12) by repeatedly and persistently using the different false and misleading Statements in business dealings. (A(2).645-659.)

In November 2022, Supreme Court issued a preliminary injunction enjoining defendants from unilaterally disposing of noncash assets and appointing an independent monitor, former federal judge Barbara S. Jones, to oversee compliance with the preliminary injunction and the preparation of annual Statements. *People v. Trump*, 2022 N.Y. Slip Op. 33771(U), at 9-11 (Sup. Ct. N.Y. County 2022).

2. This Court's decision on appeal from Supreme Court's motion-to-dismiss ruling

In January 2023, Supreme Court issued an order denying defendants' motions to dismiss the complaint. *People v. Trump*, 2023 N.Y. Slip Op. 30027(U) (Sup. Ct. N.Y. County 2023).

This Court affirmed the order as modified in June 2023. *People v. Trump*, 217 A.D.3d 609 (1st Dep't 2023). This Court rejected defendants'

arguments about OAG's standing and statutory authority, explaining that, under § 63(12), OAG is not suing on behalf of a private individual but rather is vindicating the State's sovereign interests in combatting fraud and enforcing its laws to protect an honest marketplace. Accordingly, OAG has standing and authority to seek judicial relief and may seek disgorgement without showing losses to victims. *Id.* at 610-11.

This Court also ruled that OAG's claims were governed by § 63(12)'s six-year statute of limitations, *id.* at 611, determining that claims "are time barred if they accrued—that is, the transactions were completed—before February 6, 2016," or "before July 13, 2014," for any defendant bound by a tolling agreement between OAG and the Trump Organization. *Id.* This Court did not decide "the full range of defendants bound by the tolling agreement" or when any claim accrued. *Id.* The Court concluded that one defendant, Ivanka Trump, was not bound by the tolling agreement and dismissed the claims against her as untimely. *Id.*

3. Supreme Court's grant of summary judgment on the § 63(12) fraud claim

In September 2023, Supreme Court denied defendants' motion for summary judgment and granted OAG's motion for partial summary judgment on its § 63(12) fraud claim. (A(1).58.)

First, the court addressed the timeliness issues this Court had left open. The court held that the plain language of the tolling agreement bound each defendant and therefore ruled that the limitations period began on July 13, 2014 for all defendants. (A(1).37-40.) The court also concluded that OAG's claims were timely as to each instance when defendants used a different false and misleading Statement in business after the beginning of the limitations period on July 13, 2014. (A(1).40-41.) The court explained that its ruling accorded with the plain language of § 63(12), judicial precedent, and this Court's ruling at the motion-to-dismiss stage.

Second, Supreme Court determined that there was no genuine dispute of fact that defendants had committed § 63(12) fraud by repeatedly and persistently using the false and misleading Statements in business. The court explained that § 63(12)'s fraud prohibition broadly covers acts that have a capacity or tendency to deceive, and does not require OAG to

establish the elements of common-law fraud. (A(1).41-42.) The court meticulously explained the various deceptive strategies that defendants had used to falsely and misleadingly inflate the values of many different assets listed on the Statements, as established by undisputed documentary evidence. (A(1).44-54.) As the court summarized, defendants built a "fantasy world" of misrepresentations and omissions in which "rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air . . . ; and square footage [is] subjective." (A(1).33.)

Supreme Court also imposed sanctions on defendants' counsel for raising frivolous arguments at summary judgment, including arguments that the court had previously rejected and warned counsel were sanctionable. (A(1).27-34.)

4. Supreme Court's findings and conclusions following a bench trial

Supreme Court then held an eleven-week bench trial to resolve the § 63(12) illegality claims and issues of remedies. During trial, forty witnesses testified, including thirteen expert witnesses. (A(1).68, 107-121.) In February 2024, Supreme Court issued a 92-page post-trial decision. Based on its detailed descriptions of documentary evidence about the value of each of Mr. Trump's significant assets and each witness's testimony, the court made extensive factual findings, credibility determinations, and conclusions of law. (A(1).62-153.)

The court first reiterated its findings about defendants' numerous misrepresentations and defendants' use of the Statements to fraudulently transact business with lenders and others, which had supported the Court's finding of liability for § 63(12) fraud in its summary judgment decision. (A(1).121-129.)

Supreme Court also issued detailed findings regarding defendants' liability on the § 63(12) illegality claims. The court held that defendants' misconduct constituted repeated or persistent illegality because it violated Penal Law prohibitions against falsifying business records and issuing false financial statements. (A(1).138-142.) In reaching this determina-

tion, the court found that defendants' misrepresentations were material. (A(1).137-138.) The court also found that while reliance was not an element of any of OAG's § 63(12) claims, the evidence established that defendants' counterparties relied on defendants' misrepresentations to their detriment. (A(1).136.) The court further found overwhelming evidence of defendants' intent to defraud based on, inter alia, their knowledge of the Statements' material misrepresentations and their lack of credibility at trial. (*See* A(1).86-87, 90, 93, 98, 138-141.) The court found that Weisselberg and McConney had engaged in insurance fraud (A(1).142), and that defendants had conspired to violate the Penal Law prohibitions at issue (A(1).140-142).

Supreme Court issued several forms of equitable relief. The court required defendants to disgorge $464.5 million, which included $363.8 million in ill-gotten profits and $100.7 million in prejudgment interest. (A(1).142-146, 158-160.) The court credited the testimony of OAG's expert, Michiel McCarty, who opined that defendants saved $168 million in interest on their loans by using the false and misleading Statements. (A(1).143-144.) The disgorgement award also included $194 million in profits that defendants obtained from selling two assets—the Old Post

Office lease and the Ferry Point license—that the court found defendants would not have been able to maintain and develop through to profitability without the false and misleading Statements. (A(1).144-145.)

Supreme Court also found based on the trial evidence that defendants are likely to commit future misconduct and issued injunctive relief to prevent it. The court considered several factors, including the overwhelming evidence that defendants engaged in repeated and persistent fraud and illegality over multiple years with a high degree of scienter. (A(1).146; *see* A(1).138-142.) The court also highlighted defendants' refusal to accept any responsibility for their misconduct. (A(1).148.) And the court found that the Trump Organization lacked adequate corporate governance or any internal controls that could prevent fraud. (A(1).146-148.)

Accordingly, Supreme Court: (i) enjoined Mr. Trump and the entity defendants from applying for loans from any financial institution chartered by or registered with the New York State Department of Financial Services for three years; (ii) barred Mr. Trump, Weisselberg, and McConney from serving as corporate officers or directors in New York for three years and barred Donald Trump Jr. and Eric Trump from

doing so for two years; and (iii) permanently prohibited Weisselberg and McConney from serving in financial-management roles in New York. (A(1).150-151.) The court also extended the independent monitor's term for three years and required the Trump Organization to retain an independent director of compliance. (A(1).149-150.)

Defendants appealed and moved for a stay pending appeal. The Court stayed enforcement of the disgorgement order conditioned on defendants posting an $175 million undertaking, and stayed enforcement of the order enjoining certain defendants from applying for loans or serving in certain industry roles in New York. *See* Order, *People v. Trump*, Nos. 2024-01134 (NYSCEF No. 20), 2024-01135 (NYSCEF No. 9) (1st Dep't Mar. 25, 2024). The Court declined to stay enforcement of the orders regarding the independent monitor and compliance director. *Id.*

ARGUMENT

POINT I

SUPREME COURT PROPERLY FOUND DEFENDANTS LIABLE FOR VIOLATIONS OF EXECUTIVE LAW § 63(12)

As Supreme Court correctly determined, the undisputed evidence at summary judgment and the overwhelming evidence at trial established that defendants engaged in repeated and persistent fraud and illegality in violation of § 63(12). Defendants do not meaningfully engage with the extensive summary-judgment or trial records, largely avoiding any substantive discussion of the many different deceptive practices they used to vastly inflate the values of Mr. Trump's assets on each annual Statement. Instead, defendants focus their appeal primarily on meritless legal arguments about the elements of § 63(12). These arguments are contrary to the statute's text and settled precedent and should be rejected.

A. Defendants Engaged in Fraud in Violation of § 63(12) by Preparing, Certifying, and Using in Business the False and Misleading Statements.

1. Executive Law § 63(12) fraud does not require proof of the elements of common-law fraud.

Ignoring § 63(12)'s plain language and well-settled precedent from this Court and the Court of Appeals, defendants argue that OAG did not prove the elements of common-law fraud, such as intent, materiality, reliance, and monetary loss to victims, *see Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578-79 (2018). For example, defendants devote much of their brief to arguments about the "impact" of their misrepresentations on their counterparties (Br. for Defs.-Appellants (Br.) 26-45)—which are arguments about reliance—and whether the counterparties suffered monetary losses because of defendants' misrepresentations (Br. 25, 48-49).

These arguments fail for two reasons. First, OAG is not required to prove the elements of common-law fraud to establish fraud in violation of § 63(12). Second, as explained *infra* at 55-57, 66-88, OAG established materiality at summary judgment in any event and then, at trial, proved materiality, reliance, and intent.

Defendants are wrong on the law. The plain language of § 63(12) broadly defines fraud to encompass "*any* deception, misrepresentation, concealment, suppression, [or] false pretense" that is repeated or persistent in the "carrying on, conducting or transaction of business." As this Court has repeatedly held, the test for § 63(12) fraud "is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *Matter of People v. Northern Leasing Sys., Inc.*, 193 A.D.3d 67, 68 (1st Dep't 2021) (quotation marks omitted). It is well established that this standard does not require OAG to prove the elements of common-law fraud. *See State v. Sonifer Realty Corp.*, 212 A.D.2d 366, 367 (1st Dep't 1995). Where, as here, OAG brings § 63(12) fraud claims seeking disgorgement and injunctive relief in the public interest, the statute does not require the proof of materiality, intent, reliance, or financial losses to victims that would be required to prove a common-law fraud claim. *See id.* (reliance); *People v. General Elec. Co.*, 302 A.D.2d 314, 315 (1st Dep't 2003) (materiality); *People v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep't 2012) (materiality); *Trump Entrepreneur Initiative LLC*, 137 A.D.3d at 417 (reliance, intent); *Ernst & Young*, 114 A.D.3d at 569-70 (losses).

Defendants' argument that the elements of common-law fraud are incorporated into the "capacity or tendency to deceive" standard (Br. 46-49) misconstrues the law. The requirement that the targeted act have a "capacity or tendency to deceive" expands the definition of § 63(12) fraud to reach any "acts characterized as dishonest or misleading." *People v. Apple Health & Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep't 1994); *see Greenberg*, 95 A.D.3d at 482. It does not limit the scope of § 63(12) fraud by engrafting on to the statute the elements of common-law fraud.

That does not mean, however, that "capacity or tendency to deceive" requires mere falsity and nothing more. *Contra* Br. 47. As Supreme Court properly concluded (A(1).41-42), although § 63(12) fraud's standard does not incorporate the common-law concept of materiality—proof that an objectively reasonable person in similar circumstances would attach importance to the misrepresentation, *see Restatement (Second) of Torts* § 538—§ 63(12) fraud also does not prohibit mere trifles or falsity irrelevant to the business being conducted. The targeted business conduct is analyzed based on whether an ordinary person, even the "ignorant, the unthinking, and the credulous" individual, would have been deceived, *General Elec. Co.*, 302 A.D.2d at 314; *see Northern Leasing Sys., Inc.*, 193

A.D.3d at 75, consistent with the Legislature's intent to protect both the public and the integrity of the marketplace. And the statute does not apply to *any* false or misleading conduct but is expressly limited only to repeated or persistent misconduct in the "carrying on, conducting or transaction of business." Executive Law § 63(12).

The cases on which defendants rely (Br. 48) are not to the contrary. They each explicitly recognized that § 63(12) fraud does not require proof of the elements of common-law fraud and focused on whether the particular facts adduced during a trial had proven that the statements or omissions at issue had a capacity or tendency to deceive. *See People v. Domino's Pizza, Inc.*, 2021 N.Y. Slip Op. 30015(U), at *22 (Sup. Ct. N.Y. County 2021); *People v. Exxon Mobil Corp.*, 2019 N.Y. Slip Op. 51990(U) (Sup. Ct. N.Y. County 2019). As discussed below (at 53-60), the evidence here established that defendants' misrepresentations had a capacity or tendency to deceive.

Nor does liability under § 63(12) for fraud *or* illegality require proof that market participants relied on defendants' misstatements or suffered economic losses when OAG seeks injunctive relief and disgorgement of defendants' ill-gotten profits, as is the case here, rather than repayment

of victims' losses. *See Ernst & Young*, 114 A.D.3d at 569-70; *Greenberg*, 27 N.Y.3d at 497. Proof of reliance and loss are not required for § 63(12) liability because, like the Martin Act, § 63(12) is a remedial statute that authorizes the Attorney General to seek equitable relief to *stop* fraud or illegality *before* it causes monetary losses. *See Greenberg*, 27 N.Y.3d at 497. Indeed, although § 63(12) and the Martin Act have been amended to allow the Attorney General to pursue various monetary remedies, including victim restitution, both statutes initially authorized the Attorney General to pursue only injunctive relief. *See* Ch. 553, 1955 N.Y. Laws 1255; Ch. 44, 1970 N.Y. Laws 104; Ch. 539, 1977 N.Y. Laws. A core focus of § 63(12) has thus always been protecting both the integrity of the marketplace and honest market participants from the risks of misconduct—even if those risks have not yet come to pass.

Moreover, the Legislature determined that the Attorney General should have enforcement authority under § 63(12) to protect the public and business markets from fraudulent conduct because the availability of civil claims by private parties was not sufficient. In many circumstances, fraudulent or illegal business conduct occurs even though the counterparty does *not* experience loss and thus may not be able to

establish its own common-law fraud claim. Or the counterparty may have little incentive to pursue a claim because its interests are aligned with those of the defendant rather than the public or because it would be too costly to pursue. Indeed, defendants argue here (Br. 31-33) that Deutsche Bank did not complain about defendants' conduct and generally sought to make money by expanding its business relationship with defendants. That argument misconstrues the record—in fact, the bank conducted a managed exit of the loans at issue after defendants failed to respond to the bank's concerns about potential misrepresentations in the Statements and certifications. In any event, it would pose no bar to § 63(12) liability even if Deutsche Bank had not raised concerns.

Precedent confirms this point. In *People v. First American Corp.*, for example, the Court of Appeals upheld a § 63(12) claim against a real estate appraiser accused of providing inflated property appraisals at the urging of a loan provider. 18 N.Y.3d 173, 176 (2011). The injury OAG sought to prevent was not to the loan provider, which was complicit in the fraud and sought to profit from it, but to the marketplace, which was destabilized by the risky loans. *Id.* And in *Greenberg*, OAG brought a § 63(12) claim against insurance company AIG and its executives, alleging

that they engaged in a fraudulent transaction with another insurer to create a falsely positive impression of AIG's financial condition. 95 A.D.3d at 475. The harm OAG ultimately sought to prevent was not to the counterparty or to AIG's investors, who reached a monetary settlement that resolved their claimed losses. *People v. Greenberg*, 21 N.Y.3d 439, 446-47 (2013). Rather, OAG sought to protect "the citizens of this State and the integrity of the securities marketplace in New York." *Greenberg*, 95 A.D.3d at 481; *see also Ernst & Young*, 114 A.D.3d at 569-70 (OAG could seek disgorgement of auditor's fees notwithstanding absence of "direct losses to consumers or the public"). As these examples demonstrate, requiring proof of reliance and loss for § 63(12) fraud liability would be inconsistent with the legislative intent of the statute.

2. The Statements had a capacity or tendency to deceive.

Supreme Court correctly determined that each Statement from 2014 to 2021 was fraudulent within the meaning of § 63(12) because the Statements had a capacity or tendency to deceive. And the court correctly concluded that even if the common-law element of materiality was required, defendants' fraud was indisputably material.

OAG submitted overwhelming documentary evidence at summary judgment that defendants' misleading asset valuations had a capacity or tendency to deceive. These documents included, inter alia, the loan documents governing the Deutsche Bank and other loans; defendants' submissions and certifications of the Statements; the spreadsheets defendants prepared each year containing the misleading valuation data; legal documents concerning Mr. Trump's assets from the Trump Organization's files; and Trump Organization emails.

As explained *supra* at 9-19, this documentary evidence established that defendants used an array of deceptive strategies and false assumptions to significantly inflate the values of Mr. Trump's assets each year. *First*, defendants valued certain assets using false or inaccurate information, such as tripling the square footage of Mr. Trump's apartment, and listing the Vornado cash, over which Mr. Trump had no control, as his own cash. *Second,* defendants ignored legal restrictions that diminished the value of properties, including the deed restrictions on Mar-a-Lago's use, rent-stabilization restrictions on apartments, and approvals restricting the number of buildings that could be developed. *Third*, defendants used valuation methods that contradicted specific

representations, such as adding secret brand premiums to golf properties despite representing that no brand premium was included and falsely representing hypothetical licensing deals as signed. *Fourth*, defendants valued assets in ways that significantly departed from accepted methods, for example by falsely representing that professional appraisers had provided certain figures and by failing to apply a discount factor when valuing future income.

These deceptive strategies had a capacity or tendency to deceive because they would have been relevant to and likely to mislead an ordinary person involved in the business dealings. *See General Elec. Co.*, 302 A.D.2d at 314. They were not mere "rounding errors or reasonable experts disagreeing," but rather misstatements of hundreds of millions of dollars that were critical to the business dealings at issue. (A(1).41-43.) *See First Am. Corp.*, 18 N.Y.3d at 177 (inflated property values in appraisal reports to allow loans to close); *People v. Allen*, 198 A.D.3d 531, 533 (1st Dep't 2021) ("artificially high valuations" of assets).

Indeed, as Supreme Court recognized (A(1).41-42), defendants' deceptions also satisfied the higher burden of common-law fraud materiality: they would have been important to and likely to deceive a

reasonable lender. *See State v. Rachmani Corp.*, 71 N.Y.2d 718, 726 (1988). As discussed *infra* at 66-81, nearly all the documentary evidence (such as the loan documents and lender reports) that further established materiality at trial was also introduced at summary judgment. Moreover, deposition testimony submitted in support of summary judgment established that sophisticated lenders like Deutsche Bank did consider defendants' misrepresentations significant. Haigh, Deutsche Bank's credit officer, testified that he was "shocked" at the discrepancy between the value of 40 Wall St. represented on the Statement and the appraisals in defendants' possession showing a much lower value. (A(55).24940-24941.) He also testified that had he been aware of defendants' misleading valuations, he "would have had to question whether [the bank] wanted to continue doing new business" with defendants. (A(55).24940-24941.) And when public reports about defendants' misrepresentations emerged in 2020, Deutsche Bank requested information regarding the apparent discrepancies in the Statements and warned defendants that the submission of misleading valuations could result in the loans being placed in default. (A(19).8435-8437.) Deutsche Bank then

exited its relationship with the Trump Organization after defendants failed to respond. (A(19).8439-8440.)

Defendants do not meaningfully dispute that they engaged in most of these deceptions to falsely inflate the values of Mr. Trump's assets. Instead, they rely on speculative and unsupported contentions by experts (Br. 88-95), but Supreme Court correctly determined (A(1).43-54) that these contentions did not raise any genuine disputes of material fact. *See Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544-45 (2002); *Castro v. New York Univ.*, 5 A.D.3d 135, 136 (1st Dep't 2004).

Defendants argue (Br. 90-93) that one of their experts stated that GAAP allows preparers of a personal financial statement to choose between multiple appropriate valuation methods. But that principle is irrelevant here because the fraud did not stem from defendants offering valuations based on alternative appropriate methods. Rather, the fraud resulted from defendants using blatantly false and misleading information, data, and assumptions in valuing Mr. Trump's assets. (*See* A(1).54.)

Defendants also failed to raise any genuine dispute of fact based on another expert's assertion that Mar-a-Lago could be sold as an unrestricted private residence. Br. 91-94. Supreme Court correctly

rejected this contention as unsupported by any evidence and essentially saying that the court "should not believe its own eyes" in reading the deed that Mr. Trump had signed. (A(1).44.) For example, one expert, John Shubin, acknowledged the deed but stated that it did not restrict Mar-a-Lago's use. (*See* A(51).23071-23072.) This statement is contradicted by the deed's plain language, in which Mr. Trump forever extinguished his right to develop or use Mar-a-Lago for any purpose other than a social club, and granted an easement in perpetuity prohibiting use of Mar-a-Lago as anything other than a social club without the National Trust's written approval.[6] (A(1).48-49; *see* A(11).4732-4735.) By doing so, Mr. Trump significantly reduced his property taxes, which were assessed on the basis that Mar-a-Lago was commercial, rather than residential, property. (A(95).42009.)

Defendants err in arguing that Mar-a-Lago could be sold as an unrestricted private residence because Mr. Trump currently lives there. As Shubin acknowledged, a future buyer would have to be an employee

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[6] At trial, Supreme Court excluded Shubin's contentions about the ability to use Mar-a-Lago as a private residence as improper legal opinions that had no evidentiary value. (A(1).118-119.)

of the club to reside at Mar-a-Lago. (A(37).16499-16500.) Nor could a future buyer make any changes to the club property to subdivide it into multiple residences or otherwise render it suitable as residential property without obtaining written permission from the National Trust to deviate from the deed. (A(37).16500.) Shubin acknowledged that these prohibitions would "clearly, have some impact" on the price a buyer would pay. (A(37).16500-16502.) Accordingly, Shubin's testimony raised no genuine dispute as to whether it was misleading for defendants to value Mar-a-Lago as though the deed restrictions did not exist.[7]

There is also no merit to defendants' argument (Br. 90) about their inclusion of a brand premium in certain golf property valuations. As explained *supra* at 16, defendants falsely represented that the valuations did not include a premium for the brand value attached to the Trump name (*e.g.*, A(5).2178), despite secretly inflating the values of golf-club properties by either 15% or 30% based on the brand value purportedly

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[7] Defendants also miss the mark in relying (Br. 91) on Lawrence Moens, who testified that Mar-a-Lago was worth up to $1 billion, without offering any calculations or data. Moens did not account for the deed restrictions (*see* A(51).23043) and claimed that he could "dream up anyone from Elon Musk to Bill Gates . . . Kings, emperors" to buy the property at a high price. (A(49)-22337.) Such speculation does not raise any genuine factual dispute.

associated with the Trump name. (A(29).13031; A(63).27853-27855, 27997.) Defendants point to their expert, Eli Bartov, who asserted, without evidence, that the Statements distinguished between brand value associated with the golf-club properties and the overall brand value of the Trump name. (*See* A(40).17928-17929.) As Supreme Court correctly determined, no such distinction was made in the Statements, which unequivocally said that brand value was not included in the asset valuations. (A(1).51-52.) Deutsche Bank plainly understood that Mr. Trump's reported net worth "does not include any valuation for his brand." (*E.g.*, A(20).8777.)

3. Defendants repeatedly and persistently used the false and misleading Statements in conducting business.

Supreme Court correctly concluded at summary judgment that defendants repeatedly and persistently used the Statements in conducting business in New York, as defendants do not dispute. (A(1).45-46, 48, 54-56.)

Defendants used the Statements in conducting business with Deutsche Bank. For example, in 2014, Mr. Trump submitted the 2013 Statement to Deutsche Bank and represented that it fairly represented

his financial condition to induce the bank to enter into the OPO loan. Then, from 2014 to 2021, Mr. Trump, either personally or through Donald Trump Jr. or Eric Trump, repeatedly submitted a new false and misleading Statement to Deutsche Bank, as required to allow the bank to review the loans, including testing the net-worth and liquidity covenants. Each year, Mr. Trump, Donald Trump Jr., or Eric Trump also submitted certificates of compliance affirming that the Statement accurately reflected Mr. Trump's financial condition. S*upra* at 24-29. Defendants also submitted the Statements to other lenders and to insurers in conducting business with them. S*upra* at 32-36.

4. Each of the individual defendants participated in the fraud.

There was no genuine dispute that each individual defendant participated in the fraud. (A(1).55-56.) *See Northern Leasing Sys., Inc.*, 193 A.D.3d at 76.

Mr. Trump indisputably participated in the fraud. Before 2017, Mr. Trump reviewed and approved each Statement, discussed valuations of individual properties with Weisselberg and McConney, and submitted the Statements to Deutsche Bank while certifying that they accurately

represented his financial condition. And the 2014 and 2015 Statements explicitly provide that "Donald J. Trump is responsible for the preparation and fair presentation" of the Statement. (*E.g.*, A(5).2174.) After Mr. Trump's inauguration, the Statements were submitted on Mr. Trump's behalf through his power of attorney. *Supra* at 28-29.

Donald Trump Jr. and Eric Trump also each indisputably participated in the fraud. They each became co-chief executives of the Trump Organization in 2017. Donald Trump Jr. signed letters to Mazars affirming the fair presentation of the Statements. (A(7).2861-2863.) As a co-trustee of the Trust, Donald Trump Jr. was also responsible for the accuracy of the 2016-2021 Statements. (A(5).2279.) Donald Trump Jr. and Eric Trump each held Mr. Trump's power of attorney, using it to submit Statements on his behalf, along with certificates of compliance representing that the Statements accurately reflected Mr. Trump's financial condition. (Donald Trump Jr. submitted the 2016 to 2019 Statements and certificates to Deutsche Bank; Eric Trump submitted the 2020 certificate and the 2021 Statement and certificate.) Eric Trump also signed a loan modification for Seven Springs in 2019, reaffirming the representations of Mr. Trump's net worth in all prior loan documents.

And he provided false and misleading information for use in multiple valuations in the Statements. *Supra* at 13-14, 18.

Weisselberg and McConney were primarily responsible for creating the misleading valuations in the Statements, including assembling the information that purportedly supported the valuations. They also submitted the Statements to lenders and other business partners, including Seven Springs, Ladder Capital, Wells Fargo, New York City, and insurers Zurich and HCC.[8] *Supra* at 20-21, 32-37.

Supreme Court also properly found the entity defendants liable. (A(1).55-56.) Each entity defendant participated either through the conduct of its officers or trustees (including Mr. Trump, Donald Trump Jr., Eric Trump, Weisselberg, and McConney), or as a borrower on one of the loans. *See, e.g.*, *People v. Highgate LTC Mgt., LLC*, 69 A.D.3d 185, 189 (3d Dep't 2009).

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[8] There is also overwhelming evidence that each defendant knew that the Statements were fraudulent, an additional basis for liability. See *infra* at 82-88.

B. The Trial Evidence Established That Defendants Engaged in Illegal Acts in Violation of § 63(12).

Supreme Court properly concluded based on the evidence adduced at trial that defendants violated § 63(12) by repeatedly and persistently engaging in acts in business that were illegal under four provisions of the Penal Law: issuing false financial statements (Penal Law § 175.45); falsifying business records (Penal Law § 175.05); insurance fraud (Penal Law § 176.05); and conspiracy to do the foregoing (Penal Law § 105.00).

Defendants incorrectly argue that § 63(12) violations must be proved by clear and convincing evidence (Br. 78). OAG need only prove violations of § 63(12) by a preponderance of the evidence. *See, e.g.*, *People v. Allen*, 2021 N.Y. Slip Op. 30334(U), at *11-14 (Sup. Ct. N.Y. County 2021), *aff'd*, 198 A.D.3d 531 (1st Dep't 2021); *People v. Security Elite Group, Inc.*, 2019 N.Y. Slip Op. 33068(U), at *18 (Sup. Ct. N.Y. County 2019). In any event, the evidence here was clear and convincing. *See Matter of Philip*, 50 A.D.3d 81, 83 (1st Dep't 2008) (clear and convincing standard "merely requires that the evidence make the conclusion highly probable" (quotations marks omitted)).

Illegality under § 63(12) incorporates the elements of the underlying illegal conduct that is charged. Accordingly, Supreme Court made

extensive findings of fact to support its liability determination as to these elements, findings which this Court reviews "in a light most favorable to sustain the judgment," affording due deference to the trial court's findings of witness credibility. *Richstone v. Q-Med, Inc.*, 186 A.D.2d 354, 354 (1st Dep't 1992).

1. Defendants illegally issued false financial statements in violation of Penal Law § 175.45.

Supreme Court correctly determined that defendants repeatedly and persistently issued false financial statements because, with intent to defraud, defendants knowingly made or uttered a written instrument which purported to describe the financial condition or ability to pay of some person and which was inaccurate in some material respect.[9] *See* Penal Law § 175.45; *People v. Essner*, 124 Misc. 2d 830, 835 (Sup. Ct. N.Y. County 1984).

[9] The entity defendants are liable for each illegal act of the individual defendants, who acted as agents of the entity defendants within the scope of their employment and on the entity defendants' behalf. *See Highgate LTC Mgt.*, 69 A.D.3d at 188-89; *cf.* Penal Law § 20.20(2)(c).

Defendants prepared and issued written instruments (the Statements) each year from 2014 until 2021 that purported to describe Mr. Trump's financial condition. As explained (at 55-57), the summary judgment record established that the Statements were materially inaccurate because they falsely and misleadingly inflated the values of nearly all of Mr. Trump's asset categories, often by wide margins. The extensive trial record further confirmed that the Statements were false and misleading and that the misstatements were material, as expressly required by Penal Law § 175.45, and that defendants acted with intent to defraud.

a. Defendants' misrepresentations were material.

Supreme Court properly found that defendants' misrepresentations and omissions were material. (A(1).137-138; *see also* A(1).41-42.) Materiality is an objective standard that turns on whether disclosure of the misstated or omitted fact "would have been viewed by a reasonable [business partner] to have significantly altered the *'total mix'* of information made available." *Rachmani Corp.*, 71 N.Y.2d at 726 (quotation marks omitted) (Martin Act); *see Essner*, 124 Misc. 2d at 835 (issuing false financial statements). Although a fact must have significance to the

decision-making process to be material, it "need not be outcome-determinative." *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991); *see Rachmani Corp.*, 71 N.Y.2d at 726.

Defendants improperly conflate materiality with reliance in arguing (Br. 27-45) that their counterparties did not rely solely on the misleading valuations in the Statements. *See United States v. Weaver*, 860 F.3d 90, 96 (2d Cir. 2017). Reliance is a subjective element of common-law fraud that requires a counterparty to show that it actually and justifiably relied on defendant's fraud. *See, e.g.*, *Basis Yield Alpha Fund Master v. Stanley*, 136 A.D.3d 136, 139 (1st Dep't 2015). As discussed, reliance is not required to establish that defendants illegally issued false financial statements or to establish any of the other § 63(12) fraud or illegality claims here. Indeed, under Penal Law § 175.45, "there need be no 'victim,' ergo reliance is neither an element of the crime" of issuing false financial statements "nor a valid yardstick with which to test the materiality of a false statement." *Essner*, 124 Misc. 2d at 835-36.

In any event, Supreme Court correctly found that there was ample evidence here to show *both* that defendants' misrepresentations were

material *and* that defendants' counterparties relied on their misrepresentations. (A(1).136, 138.)

As an initial matter, Supreme Court properly concluded that the sheer number and magnitude of misleadingly inflated asset values demonstrated their materiality. (A(1).138.) Federal courts have used a "five percent numerical threshold [as] a good starting place for assessing the materiality" of a misstatement or omission. *ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 204 (2d Cir. 2009). And Weisselberg testified that an overvaluation of five percent or more would be material. (A(63).27933.)

The amounts by which defendants misleadingly inflated the values of Mr. Trump's assets in each year's Statement went far above this 5% threshold. For example, defendants overstated the value of the triplex by more than $200 million on the 2015 and 2016 Statements, which was nearly two-thirds of its total reported value of $327 million in those years. (*See* A(29).12833-12838; A(4).1882, 1884.) And in each Statement from 2017 to 2021, defendants included the Vornado cash to overstate his total cash by 22% to 32%. (*See* A(64).28660-28661, 28668; A(4).1907; A(29).12953-12955.) *See, e.g.*, *SEC v. Tuzman*, No. 15-cv-7057, 2017 WL

11606728, at *15 (S.D.N.Y. Sept. 29, 2017) (defendant materially misrepresented cash on hand by including cash that defendant could not access as more than 5% of total). Together, the inflated amounts ranged from (at minimum) 17% to 38% of Mr. Trump's reported net worth, depending on the year. (*See* A(4).1882.) Reasonable counterparties evaluating Mr. Trump's financial condition would likely find it significant that so many asset valuations were misleadingly inflated and that many were inflated by such wide margins.

Extensive additional evidence further confirmed that reasonable counterparties would consider the asset valuations to be a significant part of the total mix of information available about Mr. Trump's financial condition. *See Federal Hous. Fin. Agency v. Nomura Holding Am., Inc.,* 104 F. Supp. 3d 441, 534-35 (S.D.N.Y. 2015) (materiality where misleading representations used to assess investments' riskiness), *aff'd*, 873 F.3d 85 (2d Cir. 2017). And although reliance is not required for liability, the same evidence also established that the counterparties here did rely on defendants' misrepresentations because the Statements played a substantial role in their decision-making. *See Curiale v. Peat, Marwick, Mitchell & Co.*, 214 A.D.2d 16, 27 (1st Dep't 1995).

Deutsche Bank. *First*, the guaranties that Mr. Trump signed for each loan, including the OPO guaranty he signed in August 2014, established that the Statements were critical to the loans' initiation. For example, Deutsche Bank required Mr. Trump to represent that he had provided Deutsche Bank with a Statement of his financial condition that was "true and correct *in all material respects*," that he had done so "*to induce* [Deutsche Bank] to accept this Guaranty and to enter into" the loan, and that the loans were "conclusively presumed to have been created *in reliance*" on the guaranty and its representations. (A(23).9895-9897 (OPO) (emphases added); *see* A(18).7817-7819 (Doral); A(20).9009-9010 (Chicago).) Moreover, Haigh, the risk officer ultimately responsible for approving the loans, testified that he in fact reviewed Mr. Trump's Statement in approving the initiation of the Doral loan, and that his approval process for each loan's initiation was the same. (A(63).28153, 28192, 28199.) Ultimately, as Supreme Court correctly concluded (A(1).70, 72), the bank initiated each loan "based upon the financial profile of the guarantor," (A(63).28197; *see, e.g.*, A(20).8743-8746).

Second, the asset values in the Statements were a vital part of the information that Deutsche Bank required, considered, and used (and that

a reasonable lender would require, consider, and use) each year. As the loan documents provided, the bank required Mr. Trump to annually submit a new Statement so that the bank could test his compliance with the net-worth and cash-reserve covenants for that year. (A(18).7821-7822 (Doral); A(20).9012-9013 (Chicago); A(23).9899-9900 (OPO).) Mr. Trump was also required to certify that the Statement "present[ed] fairly in all material respects" Mr. Trump's financial condition for the year. (A(18).7830-7831 (Doral); A(20).9022-9023 (Chicago); A(23).9910-9911 (OPO).) *See United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) (requirement to provide information shows information's materiality).

Moreover, as Supreme Court correctly found (A(1).70), Deutsche Bank did use the asset valuations in the Statements when it conducted its annual covenant test and approval process each year from 2014 to 2021 (*see* A(29).12983). Haigh testified that in conducting the annual process "we're using updated financial information on the guarantor" (A(63).28191) and using "representations from the client that there were no material changes" to his financial position (A(63).28196-28197). Haigh further testified that he assumed that the asset values in the Statements were "broadly accurate." (A(63).28156-28157.) Other bank employees

involved in the loans likewise testified that they expected Mr. Trump to provide truthful and accurate information in the Statements. (*E.g.*, A(75).33314; *see* A(75).33215; A(76).33493.) And Mr. Trump and Donald Trump Jr. each testified that they knew that Deutsche Bank would use the Statements to determine whether Mr. Trump was complying with the loan conditions. (A(70).31181-31184, 31191; A(69).30760.)

Third, when Deutsche Bank learned in 2020 of public reports that defendants had misleadingly inflated the valuations in the Statements, it requested information about the accuracy of the valuations and warned defendants that the submission of misleading valuations could result in the loans being placed in default. *Supra* at 30-31. After defendants failed to meaningfully respond, Deutsche Bank exited its relationship with the Trump Organization. (A(19).8439-8440.)

As the above shows, Deutsche Bank would not have required defendants to submit and certify the Statements, made failure to comply an event of default, reviewed the Statement each year, or taken corrective actions on learning the truth if the Statements were essentially meaningless and irrelevant, as defendants erroneously contend.

Defendants' contrary arguments lack merit. Defendants argue that the Statements had no effect on the loans because Deutsche Bank evaluated and made certain adjustments to defendants' asset valuations. *See* Br. 34-39. But the bank did not create its own appraisals or conduct complex asset valuations. (*See* A(63).28161-28162, 28243.) And there is no evidence that Deutsche Bank discovered any of defendants' misrepresentations—let alone adjusted valuations to account for them. Instead, the bank relied on the misleading information defendants provided, as it was entitled to do. *See DDJ Mgt., LLC v. Rhone Group L.L.C.*, 15 N.Y.3d 147, 156 (2010).

For most assets, the bank lifted the misleading valuations directly from each year's Statement, used them as baselines, and applied a standardized, across-the-board "haircut," typically 50%. (A(63).28188, 28208-28209; *see, e.g.*, A(20).8745-8746, 8946-8947.) Defendants' misleading valuations for these assets were plainly material because Deutsche Bank actively used them in its process each year. If defendants had not used deceptive strategies to inflate these assets' values, then Deutsche Bank would have applied its standardized "haircuts" to the lower, accurate, valuations, resulting in lower adjusted valuations.

In any event, defendants misunderstand the purpose of the adjusted asset values. Deutsche Bank was not creating new current estimated values to replace the ones defendants provided. Instead, using the same standardized haircut process it generally used for commercial real-estate assets backing its loans, the bank was evaluating a hypothetical "stressed scenario" where "asset values have fallen" from then-current levels. (A(63).28152, *see* 28163, 28188; *see, e.g.*, A(20).8744-8745.) Defendants' misleadingly inflated valuations were thus an important part of the mix of information, and the bank relied on them.

Defendants' arguments about four "trophy properties"—Trump Park Ave., 40 Wall St., Niketown, and Trump Tower—also fail. *See* Br. 37-38. The bank did not commission appraisals of these properties.[10] (A(63).28161-28162.) Instead, PWMD consulted with the bank's Valuation Services Group, which gave an "opinion of what the property might be worth *without having done all the due diligence* that they would do around a true appraisal." (A(63).28162 (emphasis added), 28243.) And as with the other assets, the adjustment process largely used the

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[10] In 2013, the bank obtained an appraisal of Trump Tower commissioned by a different lender. (A(20).8716.)

misleading valuations or other misleading inputs that defendants had provided. As Haigh testified, these adjusted values were "not based on due diligence" but presumably on "information provided by the client."[11] (A(63).28246.) Moreover, in later years, the bank's analysis for three of the four trophy assets simply used defendants' valuation and applied a percentage haircut based on the bank's previous adjustment. (A(20).8853 (Trump Park Ave., 40 Wall St., Niketown); *see also* (A(20).8881, 8915, 8946.) In any event, the valuations of these four properties represented only a fraction of the many misleading valuations in the Statements.

Defendants' misrepresentations regarding Mr. Trump's liquidity were also material. Defendants note (Br. 36-37) that bank employees did an in-person review of Mr. Trump's account statements, but no bank employee testified that they discovered defendants' misleading character-

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[11] For example, the bank used a net operating income (NOI) of $26 million to adjust the value of 40 Wall St. (A(18).7734.) That was the same NOI figure defendants used in valuing that property in the Statements (A(88).39062 (row 118)), and Haigh confirmed that the bank "would have no way of knowing what that information was by itself unless it came from the client" (A(63).28158-28160). But that NOI figure was overstated by $20 million, resulting in a significantly overstated adjusted value. (A(95).41915; A(78).34595-34601.)

ization of the Vornado cash as cash Mr. Trump controlled.[12] In any event, the in-person review occurred only during the loan initiation processes in 2011, 2012, and 2014. It did not occur during the annual covenant test and loan reapproval processes from 2015 to 2021 (*see* A(75).33290). The bank's adjustments to Mr. Trump's reported cash amount on the 2015 and 2016 Statements were too small to account for the misleading inclusion of the Vornado cash. (*See* A(20).8777 (2015); A(20).8803 (2016); A(4).1907 (Vornado cash per year).) And each year from 2017 to 2021, the bank used defendants' inflated cash amount—which included the Vornado cash—without making any adjustments. (*See* A(20).8827 (2017); A(20).8852 (2018); A(20).8880 (2019); A(20).8914 (2020); A(20).8944 (2021); A(4).1907 (Vornado cash per year).)

Defendants also err in arguing (Br. 29-33) that the misleading valuations in the Statements were unimportant because Deutsche Bank considered other factors, such as Mr. Trump's prior experience with real-

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[12] It would have been easy for the bank employees to be confused given McConney's concession at trial that his spreadsheet detailing Mr. Trump's cash listed a Capital One bank account for the Vornado cash without disclosing that this bank account was not the same Capital One bank account that was under Mr. Trump's control. (A(62).27704; A(74).32938-32939; *see* A(96).42462.)

estate development or the nature of the real-estate collateral associated with each loan.[13] Materiality is an objective test that does not turn on Deutsche Bank's idiosyncratic goals. *See Federal Hous. Fin. Agency v. Nomura Holding Am., Inc.,* No. 11-cv-6201, 2015 WL 685153, at *6 (S.D.N.Y. Feb. 18, 2015). In any event, there are often many items swirling in the total mix of information. A misrepresentation need only be important in a reasonable recipient's decision-making to be material, as the Statements plainly were, *see Folger Adam Co.*, 938 F.2d at 1533. Reliance—which was not required here—also does not require that the misrepresentation be the exclusive cause of the counterparty's action, just a substantial factor. *Curiale*, 214 A.D.2d at 27. Here, Deutsche Bank plainly did rely on defendants' misrepresentations as a substantial factor

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[13] Defendants also note that the Doral and Chicago loans contained provisions allowing for the amount guaranteed to be reduced or eliminated when the collateral property reached a certain loan-to-value ratio. Br. 33. But the OPO loan contained no such provision, defendants chose to maintain a guaranteed amount on the Doral loan to benefit from a lower interest rate (A(75).33306), and the guaranteed amount was restored for the Chicago loan to cure a breach of the loan agreement (A(75).33307). In any event, Deutsche Bank used the Statement each year to conduct its annual review of all three loans.

in its decision-making. (A(1).48 n.21; *see also* A(64).28345; A(69).30534-30535.)

Lastly, defendants miss the mark in arguing (Br. 27-28) that Deutsche Bank would have offered Mr. Trump the same loan terms without the false and misleading valuations. To show materiality (or reliance), OAG did not need to prove that Deutsche Bank would have made different decisions absent defendants' illegality. *See Folger Adam Co.*, 938 F.2d at 1533; *Curiale*, 214 A.D.2d at 27. In any event, defendants are incorrect because the guaranty and Statements were integral to the loans' terms, including the interest rates. (*See* A(63).28168.) Indeed, the net-worth and liquidity covenants were particularly important here because Mr. Trump was seeking more than $300 million in loans for unusually risky collateral. (*See* A(63).28150-28151; *see, e.g.*, A(70).31255-31256, 31405.) As Deutsche Bank's global head of private banking emphasized for the Doral loan, it was non-negotiable that the bank needed an "iron clad full recourse" guaranty. (A(76).33486-33487; A(103).45490.)

Similarly, there is no merit to defendants' assertion that the bank would have approved the same loan terms if Mr. Trump's Statements had

reported a net worth of only $100 million. Br. 27-28. That $100 million figure is not referring to the terms of the loans here but rather is from testimony stating that individuals were required to have a minimum net worth of at least $100 million merely to qualify for a PWMD loan with commercial real estate as collateral. (A(75).33280.) No reasonable bank would offer more than $300 million in recourse loans on risky collateral with a guaranty backed by only $100 million in net worth.

Other lenders, insurers, and New York City. The Statements were also material to the Trump Organization's agreements with insurers, other lenders, and New York City (*contra* Br. 39-44).

As Supreme Court correctly found (A(1).82, 135), the misleading information in the Statements, and particularly the inflated value reported for Mr. Trump's cash assets, would have been material to reasonable insurers. Zurich's underwriter, Claudia Mouradian, used the Statements in determining whether to renew the Trump Organization's surety bond program in 2019 and 2020, writing in her notes the amount of cash the Statements claimed Mr. Trump had on hand. (A(94).41764.) She testified that this cash figure was important to her analysis and that it would have been material to know that a significant portion of it was

not controlled by Mr. Trump. (A(68).30292; A(28).12168.) HCC's underwriter, Michael Holl, similarly noted the cash figure reported in the Statement and testified that it was "a meaningful, useful figure" in assessing the financial condition of a potential insured. (A(67).29890.)

The false and misleading valuations in the Statements were also material to Ladder Capital's refinancing of the 40 Wall St. mortgage. As Supreme Court observed (A(1).124), the Ladder Capital memorandum evaluating the deal specifically referenced the inflated numbers reported in the 2014 Statement. (A(26).11506-11508, 11514.) And the Ladder Capital deal required Mr. Trump to submit annual summaries of his net worth to support his guaranty. (A(26).11503, 11510, 11573.)

Finally, the misleading valuations in the Statements were also material to the Ferry Point licensing agreement, as Supreme Court correctly found. (A(1).133.) From at least 2016 to 2021, defendants directed Mazars to provide New York City with letters containing information drawn from Mr. Trump's misleading Statements. David Cerron, an employee of the Parks Department, testified that he expected the letters to be "true, complete and accurate," and that any misrepresen-

tation would have been a matter of concern that could have resulted in an investigation. (A(68).30244-30245.)

b. Each defendant acted with an intent to defraud.

The trial evidence also established that each defendant acted with the requisite intent to defraud. Intent to defraud refers to a "defendant's state of mind in acting with a conscious aim and objective to defraud," and does not require that a recipient relied on the false information or was "misled to its detriment." *People v. Taylor*, 14 N.Y.3d 727, 729 (2010). A general intent to defraud any person, rather than a specific person, suffices. *People v. Dallas*, 46 A.D.3d 489, 491 (1st Dep't 2007).

"Because intent is an invisible operation of the mind, direct evidence is" unnecessary, and circumstantial evidence of intent is sufficient. *People v. Rodriguez*, 17 N.Y.3d 486, 489 (2011) (quotation marks and citation omitted). For example, a "defendant's knowledge of the misleading or deceptive nature of the particular business practices employed" supports an inference of intent. *People v. Sala*, 258 A.D.2d 182, 189 (3d Dep't 1999), *aff'd*, 95 N.Y.2d 254 (2000). Intent can also be inferred from an overall pattern of misconduct, *see People v. Vomvos*, 137 A.D.3d 1172, 1173 (2d Dep't 2016), including the repeated submission of misleading

documents, *e.g.*, *Taylor*, 14 N.Y.3d at 729 (retainer statements); *People v. Garrett*, 39 A.D.3d 431, 431-32 (1st Dept. 2007) (tax returns); *People v. Stumbrice*, 194 A.D.2d 931, 932 (3rd Dept. 1993) (certification). And both motive, such as personal financial gain, and a defendant's lack of credibility can show intent. *See People v. Credel*, 99 A.D.3d 541, 541 (1st Dep't 2012) (credibility); *China Dev. Indus. Bank v. Morgan Stanley & Co. Inc.*, 86 A.D.3d 435, 436 (1st Dep't 2011) (motive).

Mr. Trump. Extensive evidence supports Supreme Court's finding that Mr. Trump acted with an intent to defraud. (A(1).139.) Mr. Trump's intent was demonstrated by his overall pattern of conduct, *Vomvos*, 137 A.D.3d at 1173, including his repeated use of the Statements to obtain favorable terms in business deals. His intent was further demonstrated by his substantial participation in the preparation, certification, and submission of the Statements, described *supra* at 19-20, 28-29, 61-62.

The trial evidence further proved that Mr. Trump knew that the Statements contained false and misleading information. *See, e.g.*, *Sala*, 258 A.D.2d at 189; *Taylor*, 14 N.Y.3d at 738-29; *Garrett*, 39 A.D.3d at 432; *Stumbrice*, 194 A.D.2d at 932. Mr. Trump told Weisselberg and others to alter his draft Statements to reflect a higher net worth by inflating his

assets, showing his intent to mislead recipients of the Statements. (*See* A(64).28623.)

Mr. Trump also had knowledge and access to information contradicting the false and misleading assumptions used to inflate the valuations, including, for example, the true size of the triplex apartment in which he resided and his lack of control over his minority stake in Vornado. Mr. Trump also plainly knew about the deed restrictions on Mar-a-Lago because he personally signed the deeds, stating publicly at the time that Mar-a-Lago "will forever be a club," and paid substantially lower taxes on the property as a result. (A(95).42009.) Mr. Trump also knew that Deutsche Bank would use the Statements. *Supra* at 30. And Supreme Court reasonably concluded that Mr. Trump's contrary testimony was not credible, finding that his "refusal to answer the questions directly, or in some cases, at all, severely compromised his credibility." (A(1).98.)

Mr. Trump's intent was further established by his strong financial motive to defraud, which was to use the misrepresentation and omissions to conduct business on terms more favorable to him. *See China Dev. Indus. Bank*, 86 A.D.3d at 436. Evidence at trial established that the funds of entities within the Trump Organization that benefited from

defendants' use of the misleading Statements were treated as Mr. Trump's personal cash and excess funds were swept into Mr. Trump's accounts. (A(65).28756-28757.)

Donald Trump Jr. and Eric Trump. There is ample evidence that Donald Trump Jr. and Eric Trump acted with intent to defraud. As discussed *supra* at 20-21, 28-29, 62-63, both Donald Trump Jr. and Eric Trump substantially participated in the fraud through their roles in reviewing, submitting, and affirming the accuracy of certain Statements, and by acting as co-chief executives starting in January 2017.

Trial evidence further confirmed Donald Trump Jr.'s and Eric Trump's active roles. Donald Trump Jr. testified that he "would have sat with the relevant parties" to discuss preparation of the Statements. (A(69).30757-30758.) Birney, who assisted in preparing the Statements, testified that he met with Donald Trump Jr. and Eric Trump in 2021, to "update them on the status" of the Statement and inform them of changes to golf-course valuation methods. (A(64).28619-28621.) In 2021, the Trump Organization's new outside accountant understood that Donald Trump Jr. would be reviewing the Statements. (A(62).27512.) And

Donald Trump Jr. testified that he understood that Deutsche Bank would rely on his certification. (A(69).30760.)

The intent of Donald Trump Jr. and Eric Trump was further established by their awareness of information contradicting information in the Statements. *See Sala*, 258 A.D.2d at 189. They were both informed that Mr. Trump did not control the Vornado partnership. (A(92).40726-40728 (listing Vornado as "Non-Controlled".) Donald Trump Jr. was aware of the rent-stabilization restrictions on certain Trump Park Ave. apartments that were valued as though they were unrestricted. (A(69).30649.) Eric Trump provided misleading information to McConney for valuing the Briarcliff property (A(69).30893-30897; *see also* A(74).32903-32907), and provided an inflated value for the Seven Springs development that he knew was misleading because he was working with a professional appraiser who had valued the property at hundreds of millions of dollars less (A(29).12838-12845; *see* A(63).27823-27826; A(69).30884-30886).

Donald Trump Jr.'s and Eric Trump's contrary testimony was not credible, as Supreme Court found. (A(1).90, 93.) For example, Eric Trump's credibility "was severely damaged" (A(1).93) when he denied being aware of the Statements prior to this lawsuit, and then admitted

that he knew about them after being confronted with documentary evidence—including an email in which McConney asked Eric Trump for assistance in valuing assets for his "Dads annual financial statement" (A(69).30811-30813) and attaching a portion of McConney's supporting data spreadsheet (A(69).30834-30835 (discussing email at A(89).39641-39642)).

Their intent was also supported by their motive to secure financial gain through their misconduct. *See China Dev. Indus. Bank*, 86 A.D.3d at 436. In addition to their interest in the success of the Trump Organization as co-chief executives, they both had a personal stake in the OPO project (A(93).41007) and were personally responsible for a portion of the OPO loan Mr. Trump guaranteed (A(92).40779).

Weisselberg and McConney. The trial evidence also proved Weisselberg's and McConney's intent to defraud. Weisselberg and McConney were primarily responsible for preparing the false and misleading valuations and they submitted finished Statements to lenders, insurers, or other business partners. *Supra* at 19-22, 32-37, 63.

Weisselberg and McConney knew the Statements were false and misleading. *See Sala*, 258 A.D.2d at 189. Birney testified that

Weisselberg told him that Mr. Trump wanted his net worth on the Statements "to go up." (A(64).28623.) In service of that goal, Weisselberg and McConney refused to correct misrepresentations despite knowing valuations were based on false assumptions and other deceptions. For example, after *Forbes* inquired about the inflated size of the triplex, Weisselberg ordered another employee to "leave it alone." (A(63).27943-27944.) Weisselberg and McConney both knew that Mr. Trump did not control the Vornado cash but continued to include that amount as Mr. Trump's personal cash. (A(62).27698-27703; A(63).28061-28062.) McConney was aware of the Mar-a-Lago deed restrictions and the rent-stabilized status of some Trump Park Ave. apartments but valued those properties as though the restrictions did not exist. (A(63).27881; A(74).32767.)

Weisselberg and McConney also concealed relevant information from others. For example, they concealed from Birney appraisals of the rent-stabilized apartments, Mar-a-Lago's deed restrictions, and the Vornado partnership agreement. (A(64).28430-28431, 28479-28482.) When the Trump Organization's outside accountant requested copies of appraisals of certain properties, McConney falsely told him that they had none. (A(61).27280-27284.)

Finally, Weisselberg and McConney's intent is further supported by their prior commission of fraudulent acts and lack of credibility. (A(1).86-87.) *See Matter of Brandon*, 55 N.Y.2d 206, 211 (1982). Weisselberg testified that he pled guilty to fifteen counts of tax fraud, including several counts of falsification of business records. (A(64).28364-28365.) Despite initially denying it while testifying, McConney admitted that, at Weisselberg's request, he helped Weisselberg commit tax fraud. (A(63).27882-27883.)

2. Defendants falsified business records in violation of Penal Law § 175.05.

Supreme Court also correctly found defendants liable for § 63(12) illegality based on their repeated and persistent falsification of business records in violation of Penal Law § 175.05. (A(1).138-140.) Falsifying business records requires, with intent to defraud, the making of a false entry, removing or preventing the making of or omitting a true entry despite the duty to do so, in the business records of an enterprise. Penal Law § 175.05; *see People v. Kisina*, 14 N.Y.3d 153, 158 (2010). A business record is "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." Penal Law § 175.00(2). Materiality is not a requirement under Penal Law § 175.05.

Here, defendants participated in the creation and use of the Statements. Each Statement, and each underlying data spreadsheet, qualifies as a false business record because it was a writing maintained by the Trump Organization for the purpose of reflecting the Organization's business activities and Mr. Trump's financial condition that contained numerous false and misleading entries. *See* Penal Law § 175.00(2). Defendants also caused third parties to create their own business records that incorporated false and misleading information from the Statements, such as Deutsche Bank's annual reviews (*see, e.g.*, A(20).8880); Ladder Capital's memorandum (*see* A(26).11506-11508, 11514); Zurich's and HCC's notes (*see* A(28).12203, 12302); and Mazars' records of the supporting data, draft Statements, and final Statements (*see, e.g.*, A(87).38813; A(61).27238-27239).

Each individual defendant also acted with intent to defraud in creating and using the false and misleading Statements. *Supra* at 81-88. Defendants' argument (Br. 79) that intent to defraud required proof of reliance or loss is contrary to settled law. *See Taylor*, 14 N.Y.3d at 729.

3. Weisselberg and McConney committed insurance fraud in violation of Penal Law § 176.05.

Extensive trial evidence supports Supreme Court's determination that Weisselberg and McConney violated § 63(12) by repeatedly and persistently committing insurance fraud in violation of Penal Law § 176.05. (A(1).142.) Committing insurance fraud requires, with intent to defraud, knowingly 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. Penal Law § 176.05.

Here, Weisselberg and McConney prepared and reviewed the Statements, knew they were misleading, and used them to obtain favorable insurance terms.[14] Defendants incorrectly argue (Br. 83) that there was insufficient evidence of a *written* statement used in the insurance fraud. Mr. Trump's financial Statements were *written* documents that

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[14] McConney is also liable as a principal for intentionally aiding Weisselberg's fraud. *See* Penal Law § 20.00; *People v. Keschner*, 110 A.D.3d 216, 226 (1st Dep't 2013), *aff'd*, 25 N.Y.3d 704 (2015).

Zurich's underwriter reviewed and from which misleading information was provided to HCC's underwriter. Additional misstatements were made orally to the insurers, such as Weisselberg falsely telling Zurich's underwriter that professional appraisers determined the real-estate valuations in the Statements. These oral misstatements also satisfy the "written statement" element of Penal Law § 176.05 because Weisselberg and McConney knew that the insurers were transcribing the fraudulent information into their written notes during the meetings. *See* Ops. Gen. Counsel N.Y. Ins. Dept. No. 2-24-2003(#1) (Feb. 24, 2003), 2003 WL 24312335.

The misstatements and omissions were material. *Supra* at 68-69, 79-80. And Weisselberg's and McConney's intent to defraud was established (*contra* Br. 82-83) by the fact that they prepared the Statements, knew they were misleading, and nonetheless presented them to Mouradian and Holl to obtain favorable insurance terms. *Supra* at 33-36. That is sufficient to establish liability. *See, e.g.*, *People v. Vergel*, 2006 N.Y. Slip Op. 51729(U), at 4 (Sup. Ct. Bronx County 2006).

4. Defendants engaged in a conspiracy in violation of Penal Law § 105.00.

Conspiracy requires "an agreement to cause a specific crime to be committed" and "the actual commission of an overt act by one of the conspirators in furtherance of the conspiracy."[15] *Matter of Robinson v. Snyder*, 259 A.D.2d 280, 281 (1st Dep't 1999); *see* Penal Law §§ 105.00, 105.20. A "tacit understanding will suffice" and participants "need not be fully aware of the details of the venture so long as they agree on the essential nature of the plan." *United States v. Amiel*, 95 F.3d 135, 144 (2d Cir. 1996) (quotation marks omitted).

Here, ample evidence supports Supreme Court's determination that defendants conspired to issue false financial statements, to falsify business records, and to commit insurance fraud through their tacit agreement to prepare the misleading Statements and submit them to lenders, insurers, and others. (A(1).140-141.) Evidence established that Mr. Trump directed Weisselberg and McConney to prepare the State-

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[15] Defendants erroneously rely on (Br. 83) elements of civil conspiracy, including "the parties' intentional participation in the furtherance of a plan or purpose" and "resulting damage or injury," which do not apply here.

ments, that Mr. Trump expected them to prepare Statements that showed his net worth increasing, and that they worked together to inflate Mr. Trump's net worth. Evidence also established that Donald Trump Jr. and Eric Trump became involved in the conspiracy through their respective roles in the preparation, review, submission, and certification of the Statements and as co-chief executives. While only one overt act is necessary, *see Robinson*, 259 A.D.2d at 281, here each individual defendant committed numerous overt acts in furtherance of the conspiracy.

C. The Purported Disclaimers Do Not Aid Defendants.

Defendants' argument (Br. 26-27, 61-68) that purported disclaimers in the Statements absolved them of § 63(12) liability is meritless. *First*, disclaimers cannot bar claims brought under § 63(12) because "reliance need not be shown in order for the Attorney-General to obtain relief." *See Sonifer Realty Corp.*, 212 A.D.2d at 367 (rejecting disclaimer defense to Martin Act claim). An adequate disclaimer may under certain circumstances preclude a plaintiff from showing justifiable reliance in support of a common-law fraud claim. *E.g.*, *Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 A.D.3d 128, 137 (1st Dep't 2014). But

OAG need not establish justifiable reliance (or any reliance) to prove § 63(12) liability.

Second, as Supreme Court correctly determined (A(1).37), defendants cannot use disclaimers to avoid liability for misrepresentations of facts peculiarly within their knowledge. *See Basis Yield Alpha Fund (Master),* 115 A.D.3d at 137. That doctrine applies "regardless of the level of sophistication of the parties." *TIAA Global Invs., LLC v. One Astoria Sq. LLC*, 127 A.D.3d 75, 87 (1st Dep't 2015). Here, the Trump Organization is a privately held company, which is not required to publicly file financial information. And defendants misrepresented Mr. Trump's financial condition using false data and assumptions internal to the company and thus peculiarly within their knowledge. *Cf. Steinhardt Group v. Citicorp*, 272 A.D.2d 255, 256 (1st Dep't 2000) (rejecting disclaimer defense where defendant used outdated appraisals to value assets despite contrary representations).

Nor was Deutsche Bank required to investigate to uncover defendants' misrepresentations. Even sophisticated counterparties are entitled to rely on representations and are not required to "conduct their own audit or to subject the preparers of the financial statements to

detailed questioning." *DDJ Mgt., LLC*, 15 N.Y.3d at 156. That is particularly true where, as here, the loan documents and annual certificates of compliance contained explicit representations that the Statements accurately represented Mr. Trump's financial condition. *Id.*; *see also IKB Intl. S.A. v. Morgan Stanley*, 142 A.D.3d 447, 450 (1st Dep't 2016).

Third, the disclaimer language was not remotely specific to defendants' misrepresentations and omissions. *See Basis Yield Alpha Fund (Master)*, 115 A.D.3d at 137. Defendants point to the clause providing that the Statements used "various valuation methods" and that "[c]onsiderable judgment is necessary to interpret market data." Br. 26-27. (*See* A(5).2178.) But such boilerplate statements "fall well short of tracking the particular misrepresentations and omissions" here. *See Basis Yield Alpha Fund (Master)*, 115 A.D.3d at 138. Indeed, defendants' misconduct involved numerous falsehoods about the underlying data and methodologies that they used.

Fourth, far from disclaiming liability, the same clause contains a false and misleading representation. It provides that that the Statements contained "estimated current values" of assets and valued properties using appraisals. (*See* A(5).2178.) But the defendants routinely omitted

steps necessary to arrive at estimated current values, such as discounting anticipated income from future residential developments for the time and money it takes to construct and sell residences. *Supra* at 18-19. And the asset valuations they used often departed from independent appraisals in defendants' possession by hundreds of millions of dollars.

D. Defendants' Other Arguments Concerning Liability Are Meritless.

1. OAG's claims are timely.

a. Supreme Court correctly concluded that the statute of limitations started in July 2014 for all defendants.

In its June 2023 decision, this Court held that the applicable six-year statute of limitations began to run on July 13, 2014, for any defendant bound by the August 2021 tolling agreement between the Trump Organization and OAG. *Trump*, 217 A.D.3d at 611. Supreme Court correctly concluded that each defendant is bound by that agreement. (A(1).37-40.) On appeal, defendants contend that the individual defendants and the Trust are not bound by the tolling agreement, conceding that it applies to the other entity defendants. Br. 23.

Tolling agreements are enforced according to their plain terms. *See Multibank, Inc. v. Access Global Capital LLC*, 158 A.D.3d 458, 459 (1st Dep't 2018). A corporate tolling agreement binds the corporation's affiliates, officers, or directors when the agreement makes plain that it applies to them. *Matter of People v. JUUL Labs, Inc.*, 212 A.D.3d 414, 417 (1st Dep't 2023).

Here, the tolling agreement applies to the individual defendants and the Trust. The agreement was signed by the Trump Organization's chief legal officer, who confirmed that he had the authority to sign for, and thus bind, the "Trump Organization." (A(42).19057-19058.) The agreement defined the term "Trump Organization" to include any present or former parent entity or affiliate of the Trump Organization. A(42).19055 n.1.) The definition also includes all officers and directors of the Trump Organization and "any other Persons associated with or acting on behalf of" it. (A(42).19055 n.1.) Each individual defendant and the Trust falls squarely within those definitions (*see* A(1).37-39) and is therefore subject to the agreement.[16]

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[16] In any event, each individual defendant and the Trust was responsible for preparing, submitting, or certifying a false and mislead-

(*continued on the next page*)

This Court's *JUUL* decision disposes of defendants' argument (at 21-22) that they did not personally sign the agreement. As in *JUUL*, the agreement here expressly covered the corporate officers and benefitted them by providing additional time during which OAG pursued its investigation and decided whether and against whom to take legal action. *See* 212 A.D.3d at 417. Indeed, the agreement was in the "mutual benefit and interest" of both OAG and the "Trump Organization" (A(42).19055), including all entities and individuals encompassed within that term. *See Johnson v. Proskauer Rose, LLP*, 2014 N.Y. Slip Op. 30262(U), at 19-20 (Sup. Ct. N.Y. County 2014), *aff'd in relevant part*, 129 A.D.3d 59 (1st Dep't 2015). And as in *JUUL*, the individual defendants never disclaimed the benefits and obligations of the tolling agreement. *See* 212 A.D.3d at 417; *Restatement (Second) of Contracts* § 306.

Defendants incorrectly claim (Br. 22) that Mr. Trump did not have any role at the Trump Organization when the tolling agreement was signed in August 2021. To the contrary, by that time, Mr. Trump's term

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ing Statement after February 6, 2016, the start of the limitations period for any defendant not bound by the tolling agreement. *See Trump*, 217 A.D.3d at 611.

as President had ended, Mr. Trump had returned to a high-level decision-making role at the Trump Organization, and his directives about the Organization's business were followed. (*See* A(69).30660-30661, 30808.)

Defendants' argument that only a trustee could commit the Trust to the tolling agreement (Br. 20-21) is also unavailing. An attorney has the authority to make litigation decisions on behalf of its client, *see Hallock v. State*, 64 N.Y.2d 224, 230 (1984)—such as the decision to enter into a tolling agreement. Here, the Trump Organization's chief legal officer signed the agreement on behalf of the Trump Organization as his client (*see* A(43.)19057-19058), and defendants do not dispute that the Trust is part of the Trump Organization as defined in the agreement. Accordingly, the Trust was his client, and he could and did commit it to the tolling agreement. The statutory provision that defendants rely on (Br. 20-21) is inapposite. It does not preclude a trust's lawyer from making a litigation decision on behalf of a trust. It merely provides a default list of actions a fiduciary can take without violating the fiduciary

law in the absence of a contrary provision in the trust agreement, will, or court order. *See* Estates, Powers and Trusts Law (EPTL) § 11-1.1(b).[17]

b. OAG's § 63(12) claims are timely as to each use of a misleading Statement in business during the limitations period.

Supreme Court also correctly concluded that OAG's claims are timely as to each instance when defendants used a new fraudulent and illegal Statement in business after July 2014, because each such use is a distinct fraudulent or illegal act that occurred within the limitations period and violated § 63(12). (A(1).40-41.)

Defendants do not dispute that several uses of the Statements in business—including to initiate the OPO loan in August 2014, to submit a certified Statement each year to comply with that loan, and to refinance

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[17] As Supreme Court correctly determined (A(1).38-39), judicial estoppel does not apply to OAG's prior statement about the agreement not binding Mr. Trump (*contra* Br. 22) because the doctrine does not apply to legal arguments; Supreme Court did not adopt that position; and defendants did not take action in reliance on that position. In addition, this Court did not decide *JUUL*, which bears directly on the tolling agreement's application to the individual defendants, until after OAG's prior statement was made. *See Herrera v. Wyoming*, 587 U.S. 329, 343 846 (2019).

40 Wall St. in 2015—fall within the limitations period for defendants bound by the tolling agreement. *See* Br. 23. Instead, they argue that OAG's claims are untimely if they relate to a loan initiated before July 2014 (i.e., the Doral and Chicago loans), even when the claims arise from the many distinct instances when defendants used a new fraudulent and illegal Statement after July 2014—i.e., *within the limitations period*. (*See* Br. 17-20.) Defendants' argument is contrary to § 63(12)'s plain language, well-settled precedent, and common sense.

For statutory causes of action, "the statutory language determines the elements of the claim which must exist before the action accrues." *Gaidon v. Guardian Life Ins. Co. of Am.*, 96 N.Y.2d 201, 210 (2001). Here, § 63(12) authorizes OAG to sue "[*w*]*henever* any person shall engage" in repeated or persistent fraud or illegality. Executive Law § 63(12) (emphasis added). And it defines "repeated" and "persistent" as, respectively, "repetition of *any* separate and distinct fraudulent or illegal act" and "continuance or carrying on of *any* fraudulent or illegal act or conduct." *Id.* (emphases added). These broad terms—covering any misconduct, whenever it is done—make clear that claims do not accrue solely at the start of a loan or other business deal, as defendants incorrectly contend.

Rather, a claim accrues each time a defendant violates the statute through fraud or illegality in business, whether at the start, middle, or end of the life of a loan or other business deal. Indeed, the fact that defendants repeatedly and persistently created, certified, and submitted a new Statement each year after July 2014 is a core element giving rise to § 63(12) liability, not a reason to immunize defendants for misconduct within the limitations period.

Courts have applied these principles to both § 63(12) and the Martin Act, on which § 63(12) was based. For example, in *People v. Pharmacia Corp.*, the court held that a timely § 63(12) claim accrued each time the defendant, within the limitations period, caused false and inflated price information to be published, even though the defendant first began publishing the misleading information outside the period. 27 Misc. 3d 368, 374 (Sup. Ct. Albany County 2010). And in *State v. 7040 Colonial Road Associates Co.*, the court held that a timely Martin Act claim accrued each time the defendant, within the limitations period, disseminated a misleading offering plan, even though the offering plan was first disseminated outside of the period. 176 Misc. 2d 367, 373-74 (Sup. Ct. N.Y. County 1998).

Precedent from this Court further confirms that § 63(12) claims are timely where they are based on misrepresentations in business occurring within the limitations period, even if the business deal initially began outside the limitations period. In *Matter of People v. Cohen*, for example, the defendants made repeated, annual misrepresentations to tenants and a state agency relating to the rent-stabilized status of defendants' apartments. *See* 214 A.D.3d 421, 422-23 (1st Dep't 2023); *see* OAG Br. 34, *id.*, Nos. 2020-04602, 2020-04605, 2022 WL 19039982 (1st Dep't Aug. 8, 2022). This Court ruled that OAG's § 63(12) claims were timely as to alleged misrepresentations (and illegal conduct) that occurred within the limitations period (between 2012 and 2018), *Cohen*, 214 A.D.3d at 422—though the defendants had completed construction and submitted the offering plan far earlier (in 2009) outside the limitations period, *see* OAG Br. 10-13, *id.*, 2022 WL 19039982.

Similarly, in *People v. Allen*, this Court affirmed a post-trial judgment concluding that OAG's § 63(12) claims accrued and were timely each time the defendants had made misrepresentations or engaged in other fraudulent conduct within the limitations period (between 2013 and 2019). 198 A.D.3d 531, 532-33 (1st Dep't 2021). The fact that the

underlying investments were made based on memoranda issued far earlier (in 2004 and 2005), outside the limitations period, did not undo the timeliness of OAG's claims pertaining to later misconduct that occurred within the limitations period. *See id.*; *People v. Allen*, 2021 N.Y. Slip Op. 30334(U), at *4 (holding that "a Martin Act violation accrues at the time of the wrongful conduct").

The conclusion that a claim accrued each time defendants submitted a fraudulent Statement is particularly strong here because defendants did not make exactly the same misrepresentations year after year. Instead, they created, certified, and submitted a *new and different* annual Statement each year by, inter alia, changing the number and types of assets with inflated values, the combination of specific deceptive strategies used, and the amounts by which the assets' values were inflated. *Supra* at 9-19. And after receiving each new Statement, Deutsche Bank conducted a new annual review. *Supra* at 25-28.

Accepting defendants' position would result in absurd outcomes. (*See* A(1).40.) Fraud and illegality involving the Statements submitted from late 2014 to 2021 could not have been alleged as § 63(12) violations when the Doral and Chicago loans began, prior to 2014, because these

Statements did not yet exist. And on defendants' theory, those Statements also cannot be charged as § 63(12) violations later. That cannot be the law.

Contrary to defendants' contentions (Br. 18-20), Supreme Court's statute-of-limitations ruling accords with this Court's June 2023 decision. In that decision, this Court stated that OAG's claims "are time barred if they accrued—that is, the transactions were completed—before" July 2014, for any defendants subject to the tolling agreement. *Trump*, 217 A.D.3d at 611. Defendants contend that the Court determined that OAG could assert claims based only on misrepresentations made at the initiation of a loan. But the Court did no such thing. It did not resolve which of defendants' many alleged fraudulent and illegal acts constituted the transacting, carrying on, or conducting of business under § 63(12), or when any such business conduct was completed. *Id.*

Thus, the June 2023 decision in no way rejected treating the submission of each new and different Statement as a separate violation of the statute. And it is implausible that the Court intended the three-word phrase "transactions were completed" to upend basic accrual principles and longstanding precedent. Rather, that language merely

underscores that § 63(12) targets fraudulent and illegal conduct in the "transaction of business," Executive Law § 63(12). A "transaction" is not limited to the initiation of a loan or sale, but rather is an "extremely broad" concept. *In re Enron Creditors Recovery Corp.*, 422 B.R. 423, 436 (S.D.N.Y. 2009), *aff'd*, 651 F.3d 329 (2d Cir. 2011). And § 63(12) is not limited to the initiation of a "transaction" but rather covers any fraud or illegality "in the carrying on, conducting or transaction of business," whenever done.[18]

The Court's dismissal of OAG's claims against Ivanka Trump does not show otherwise. *Contra* Br. 17-18. The Court concluded that, unlike the other individual defendants, Ivanka was not bound by the tolling agreement, *Trump*, 217 A.D.3d at 611, and that she was not alleged to have prepared, reviewed, submitted, or certified any Statement within

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[18] Defendants misplace their reliance (Br. 20 n.6) on several cases that this Court cited, *see Trump*, 217 A.D.3d at 611-12. These cases are common-law fraud cases in which private plaintiffs brought claims targeting only the initiation of a fraudulent contract. *See Boesky v. Levine*, 193 A.D.3d 403, 405 (1st Dep't 2021); *Rogal v. Wechsler*, 135 A.D.2d 384, 385 (1st Dep't 1987). They did not address § 63(12) or its statute of limitations. In contrast, OAG's claims here have never been limited to the initiation of loans; they have always included the many times that defendants prepared, certified, and submitted new false and misleading Statements after July 2014. (*See, e.g.*, A(5).2023-2024; A(112).49117.)

the untolled limitations period. *See* Br. for Ivanka Trump at 23, *People v. Trump*, No. 2023-00717 (1st Dep't Mar. 20, 2023), NYSCEF No. 16.

Defendants also incorrectly argue (Br. 18-20) that Supreme Court's summary-judgment decision applied the continuing-wrong doctrine to "delay or extend" the limitations period. Supreme Court did not do so. In the appeal from Supreme Court's motion-to-dismiss decision, OAG argued that the continuing-wrong doctrine further tolled the limitations period such that OAG could assert claims arising from conduct occurring as early as 2011. *See* Br. for State Resp. at 46-49, Doc. No. 24 (No. 2023-00717). After this Court rejected that argument, Supreme Court held at summary judgment that OAG's claims were timely only as they relate to defendants' use of false and misleading financial documents in business after July 2014, i.e., within the limitations period applicable to defendants subject to the tolling agreement. (A(1).41.) Supreme Court did not conclude that any acts prior to the July 2014 cut-off date were timely; nor did Supreme Court conclude that the limitations period for any

claims was tolled, extended, or otherwise delayed (aside from by the tolling agreement).[19]

2. Application of § 63(12) to defendants' misconduct accords with the separation of powers and furthers the public interest.

There is no merit to any of defendants' additional arguments that § 63(12) is inapplicable here. Application of § 63(12) to defendants' misconduct comports with separation of powers principles under the New York Constitution. In urging otherwise (Br. 54-56), defendants contend that OAG lacks standing and capacity to sue. But this Court already correctly rejected those same arguments in its June 2023 decision, *Trump*, 217 A.D.3d at 610.

As this Court recognized, decades of precedent confirms that OAG has standing and statutory authority to bring § 63(12) claims. *See Trump*, 217 A.D.3d at 610-11; *e.g.*, *State v. Cortelle Corp.*, 38 N.Y.2d 83, 85 (1975);

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[19] Supreme Court's citation to cases discussing the continuing-wrong doctrine (*see* Br. 18-20) is irrelevant because Supreme Court did not extend or delay the limitations period. Instead, it correctly concluded that, under § 63(12)'s plain language, OAG has a timely claim under the statute each time a defendant commits covered misconduct within the limitations period. (A(1).41.)

People v. Credit Suisse Sec. (USA) LLC, 31 N.Y.3d 622, 633 (2018). Defendants ignore this authority and instead rely largely on inapposite cases that predate § 63(12) by decades (*see* Br. 55), just as they did in making the same failed arguments in their motion-to-dismiss appeal, *see* Joint Br. for Defs.-Apps. at 12-13, *People v. Trump*, No. 2023-00717 (1st Dep't March 20, 2023), NYSCEF No. 13. And as in their prior appeal, defendants misplace their reliance on *People v. Grasso*, 54 A.D.3d 180 (2008). In that decision, the Court held that OAG could not maintain an action under a statute expressly enabling OAG to sue on behalf of nonprofit corporations, after the nonprofit at issue had converted into a for-profit enterprise. *Id.* at 190-97. Here, there is no claim that intervening events have rendered § 63(12) inapplicable.

This Court also already recognized in its June 2023 decision that OAG's claims here further § 63(12)'s purpose and the public interest, which disposes of defendants' various arguments to the contrary (*see* Br. 46-52, 54-56). *First*, as this Court explained, the State has a sovereign interest in enforcing its laws, both civil and criminal. *Trump*, 217 A.D.3d at 610. And OAG acts in the public interest when, as here, it exercises civil enforcement authority that the Legislature expressly and exclu-

sively granted to OAG. In such actions, OAG "is representing the People of the State at large," rather than "the interests of a few individuals." *People v. Bunge Corp.*, 25 N.Y.2d 91, 100 (1969).

Second, as Supreme Court correctly concluded (A(1).27-28, 64-65), OAG's § 63(12) claims serve the public interest by protecting the honesty and integrity of the marketplace. Defendants wrongly argue (Br. 50-52) that their misconduct posed no harm. In enacting § 63(12), the Legislature determined that repeated or persistent fraud or illegality in business is inherently harmful because it undermines the public's strong interest in the integrity of marketplaces in this State. *See* Mem. of Exec. Chamber, *in* Bill Jacket for ch. 44 (1970) (§ 63(12) protects "right to an honest market place"); *Coventry First LLC*, 52 A.D.3d at 346. And the Legislature authorized OAG to root out such misconduct to encourage and maintain business activity in this State. As Governor Rockefeller recognized in 1959, fraudulent or illegal business practices cause "incalculable harm" to both the public and "the legitimate businessman who deals with the public with integrity." Annual Message of the Gov., 1959 McKinney's N.Y. Session Laws 1690, 1700.

Indeed, defendants' misconduct here—which misstated business risk by vastly inflating the value of the assets used to guarantee loans, insurance, and other deals—reduces transparency, misallocates risk, and, ultimately, increases the costs and economic risks for those not engaged in fraud and illegality. When borrowers deceive lenders about the true risk of a transaction, the lender does not receive adequate compensation, and the market is destabilized.[20] As Haigh, Deutsche Bank's credit officer, testified, simply because a loan was repaid does not mean that the bank was "properly recompensed for the risk" it undertook in making the loan. (A(64).28345.) OAG's banking expert, Michiel McCarty, similarly explained that a basic principle of capital markets is that lenders charge higher interest rates for riskier transactions to "compensate for the potential for loss." (A(69).30538.) And as explained (*supra* at 5-7), the Legislature authorized OAG to bring § 63(12) actions

[20] *See* Konrad Putzier, *Property Fraud Allegations Snowball as Commercial Real-Estate Values Fall*, Wall St. J., July 8, 2024 (drop in commercial property values exposed trend of developers using "doctored building financials and valuations" to "get bigger loans," who are struggling to make repayments).

to stop business misconduct *before* such risks result in even broader losses.

Finally, for many of the same reasons, defendants err in arguing (Br. 51-52) that § 63(12) applies only to misconduct targeting consumers. To protect the integrity and honesty of business markets, § 63(12) applies regardless of whether misconduct targets consumers or business entities large or small. *See, e.g.*, *Ernst & Young*, 114 A.D.3d at 570; *New York v. Feldman*, 210 F. Supp. 2d 294, 300 (S.D.N.Y. 2002); *People v. Katz*, 2007 N.Y. Slip Op. 51258(U) (Sup. Ct. N.Y. County 2007). Indeed, the statute's plain language, which covers any person conducting or transacting business, makes its expansive scope clear. *Supra* at 5-7.

3. Application of § 63(12) to defendants' misconduct comports with the First Amendment.

The First Amendment is not implicated, let alone violated, by application of § 63(12) to defendants' misconduct. *Contra* Br. 52-54; Br. for Amicus New Civ. Liberties Alliance. Defendants forfeited these arguments by failing to raise them below. *See Fong v. Johnson*, 212 A.D.2d 457, 458 (1st Dep't 1995). In any event, defendants are wrong.

Section 63(12) does not prohibit falsity standing alone. *Supra* at 49-50. Rather, the statute prohibits false statements having the tendency or capacity to deceive and made "in the carrying on, conducting or transaction of business." Executive Law § 63(12). The First Amendment does not bar States from prohibiting "commercial speech that concerns unlawful activity or is misleading." *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 624 (1995); *accord Alexander v. Cahill*, 598 F.3d 79, 91 (2d Cir. 2010). Defendants' submissions of the false and misleading Statements to maintain loans and insurance were undoubtedly commercial speech (if they were speech at all). *See Central Hudson Gas & Elec. Corp. v. Public Serv. Commn of N.Y.*, 447 U.S. 557, 561 (1980). Defendants' reliance on *United States v. Alvarez*, 567 U.S. 709 (2012), is misplaced. *Alvarez* did not involve commercial speech, and the Court expressly recognized that it was not casting doubt on the well-settled rule that misleading commercial speech may be prohibited. *See id.* at 723.

Defendants' other First Amendment arguments are conclusory and meritless. Defendants do not explain why applying § 63(12) to defendants' misconduct would purportedly allow for "arbitrary and standardless enforcement." Br. 54. Although the U.S. Supreme Court has used

that language in invalidating certain criminal statutes as unconstitutionally vague, *see, e.g.*, *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983), § 63(12) is a civil enforcement statute. And defendants do not (and could not) argue that any part of § 63(12) is vague. *See Leib v. Hillsborough County Pub. Transp. Commn*, 558 F.3d 1301, 1310 (11th Cir. 2009) (civil statute "is unconstitutionally vague only if it is so indefinite as really to be no rule or standard at all" (quotation marks omitted)).

Applying § 63(12) here also does not authorize OAG to engage in "targeted or retaliatory enforcement" (Br. 54). This Court has already rejected essentially the same argument, which defendants raised in earlier proceedings to enforce OAG's deposition subpoena. *See Matter of People v. Trump Org., Inc.*, 205 A.D.3d 625, 627 (1st Dep't 2022); *see also Trump v. James*, No. 1:25-1352, 2022 WL 1718951, at *13 (N.D.N.Y. May 27, 2022).

POINT II

SUPREME COURT PROPERLY GRANTED EQUITABLE RELIEF

A. Supreme Court Appropriately Ordered Defendants to Disgorge Their Ill-Gotten Gains.

Section 63(12) authorizes courts to order disgorgement, an equitable remedy that requires wrongdoers to return their "wrongfully obtained profits." *Greenberg*, 27 N.Y.3d at 497-98. Disgorgement does not require a showing of reliance by or losses to victims; the source of the ill-gotten gains is immaterial. *Ernst & Young*, 114 A.D.3d at 569-70.

In addressing issues relating to disgorgement under § 63(12), New York courts often look to federal decisions for guidance. *E.g.*, *Ernst & Young*, 114 A.D.3d at 569-70. These decisions apply a burden-shifting framework in determining the amount of a defendant's ill-gotten gains.

The party seeking disgorgement has the burden to provide "a reasonable approximation of profits causally connected to the violation." *SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013). Establishing a reasonable causal connection does not require proof that defendants would not have obtained the wrongful profits had they complied with the law. *See SEC v. Almagarby*, 92 F.4th 1306, 1321 (11th Cir. 2024) (trial court "did not have to speculate about the profits" defendant might have made had

he complied with the law); *Stutman v. Chem. Bank*, 95 N.Y.2d 24, 30 (2000) (to establish causation for a claim, plaintiffs need not show that "they would not otherwise have entered into the transaction" absent the misrepresentation).

The burden then shifts to defendants to show that their profits were unconnected to their offenses or that they should be calculated differently. *Razmilovic*, 738 F.3d at 31. Any risk of uncertainty about the amount of ill-gotten profit caused by the misconduct falls on the wrongdoer. *SEC v. Fowler*, 6 F.4th 255, 267 (2d Cir. 2021). The decision to order disgorgement, and the calculation of ill-gotten gains, "lie within the discretion of the trial court, which must be given wide latitude." *SEC v. Lorin*, 76 F.3d 458, 462 (2d Cir. 1996) (per curiam) (quotation marks omitted).

Extensive trial evidence, including expert testimony that Supreme Court was entitled to credit, established that $363.8 million reasonably approximated defendants' illicit profits from their wrongdoing, and defendants failed to satisfy their burden to show otherwise. With the addition of prejudgment interest, Supreme Court properly ordered

defendants to disgorge a total of $464 million in ill-gotten gains.[21] (*See* A(1).145-146, 150-160.)

1. Supreme Court reasonably calculated defendants' ill-gotten gains.

a. Interest Rate Savings

Expert testimony from Michiel McCarty, an investment bank CEO with expertise in banking and capital markets (A(69).30518-30529), established that defendants' misconduct caused them to save $168,040,168 in interest payments during the limitations period.

For the three Deutsche Bank loans, McCarty reasonably approximated defendants' ill-gotten interest-rate savings by comparing the difference between: (i) the lower interest rates on defendants' loans from PWMD, which were backed by Mr. Trump's personal guaranty and the misleading Statements; and (ii) the higher interest rates that

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[21] Defendants do not challenge the application of prejudgment interest, which Supreme Court properly awarded to capture the full measure of defendants' ill-gotten gains. *See SEC v. Universal Express, Inc.*, 646 F. Supp. 2d 552, 566 (S.D.N.Y. 2009), *aff'd*, 438 F. App'x 23 (2d Cir. 2011). Prejudgment interest ensures that defendants do not "profit from obtaining the time-value of any unlawful profits earned from the date of the fraud to the date judgment is entered." *SEC v. World Info. Tech., Inc.*, 590 F. Supp. 2d 574, 578 (S.D.N.Y. 2008).

Deutsche Bank's commercial real estate department contemporaneously offered defendants for the same projects, which were not backed by Mr. Trump's personal guaranty or the Statements. *Supra* at 27-28.

For the Doral loan, defendants received an interest rate ranging from 1.8% to 4.1% on their PWMD loan,[22] and were offered a 10% interest rate on a commercial real estate loan. (A(69).30553; *see* A(101).44461.)[23] McCarty opined that the total benefit to the Trump Organization in unpaid interest was $72,908,308, from July 2014 until the loan was refinanced in May 2022. (A(69).30546; *see* A(101).44461.) For the Chicago loan, defendants received an interest rate ranging from 2 to 7.2% on their PWMD loan and were offered a 7.5% interest rate for a commercial real estate loan. (A(101).44461; A(69).30560-30561.) McCarty calculated that the total benefit to the Trump Organization was $17,433,359, from July 2014 until the loan was paid off in October 2023. (A(69).30561; *see* A(101).44461.) For the OPO loan, defendants received an interest rate

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[22] The PWMD loans had variable interest rates tied to the LIBOR rate, a variable rate reflecting the bank's cost of borrowing. (A(63).28165.) McCarty used a flat LIBOR rate to reach a conservative estimate of ill-gotten gains. (A(69).30544.)

[23] The chart on this page was used as a demonstrative exhibit during McCarty's testimony. (*See* A(69).30545-30546.)

from 1.8% to 4.1% for the PWMD loan and were offered an 8% interest rate for a non-guaranteed commercial real estate loan. (A(101).44461; A(69).30558-30559.) McCarty opined that the total benefit to the Trump Organization was $53,423,209, from July 2014 until the property was sold and the loan paid off in May 2022. (A(69).30559.)

For the Ladder Capital loan that refinanced the 40 Wall St. mortgage, McCarty used a similar analysis, comparing the 5.7% rate on the prior mortgage to the 3.6% interest rate defendants received from Ladder Capital. (A(69).30568.) From November 2015 until the date of McCarty's expert opinion in October 2023, the total benefit to the Trump Organization was $24,265,291. (A(69).30568; *see* A(101).44461.)

On appeal, defendants do not challenge McCarty's calculations. Nor do they contend that the amount they saved in interest is an improper way to measure their gains. Instead, defendants argue that there is no causal connection between their false and misleading Statements and the lenders' decisions to offer them more favorable interest rates based on Mr. Trump's personal guaranty, backed by the Statements. *See* Br. 58-59, 61-68. Defendants' argument misconstrues both the facts and the law.

Defendants primarily argue that OAG did not establish a causal connection because the Statements "did not influence any business decision" of the lenders (Br. 58), but that is wrong. As explained in detail (*supra* at 66-80), extensive evidence at trial established both that the misrepresentations in the Statements were material and that the lenders relied on them in deciding to provide more favorable interest rates to defendants than they otherwise would have gotten and to maintain the loans each year with those favorable rates.

Defendants also suggest that there is no causal connection here because they could have obtained "exactly the same deal" in a hypothetical world where the Statements had accurately reflected the asset values. Br. 59. But courts routinely reject attempts to avoid disgorgement based on hypotheticals as to what might have occurred *if* a defendant had complied with the law. *See, e.g.*, *Almagarby*, 92 F.4th at 1321; *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). In establishing causation, the test is not what *might* have happened "had the fraud not been practiced, but whether there was a reasonable probability that the fraud actually accomplished the result it was intended to bring about." *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 212 (2d Cir.

2000) (quotation marks omitted). In any event, the evidence—including the much less favorable interest rates that defendants were contemporaneously offered for commercial real estate loans not backed by Mr. Trump's personal guaranty and the Statements—contradicts defendants' contention that the banks would have offered them the same loan terms without the false and misleading Statements.

Defendants' argument that the purported disclaimers break the causal chain fails. *Supra* at 93-96. As explained above, disclaimers can be relevant to whether a party justifiably relied on a misrepresentation. But that is irrelevant to disgorgement, which is focused on whether the misrepresentations were causally connected to defendants' ill-gotten gains. *See SEC v. Teo*, 746 F.3d 90, 107 (3d Cir. 2014). In any event, OAG proved that Deutsche Bank relied on the Statements. *Supra* at 66-79.

b. Sales of OPO and Ferry Point

Ample evidence also supported Supreme Court's disgorgement award of $194.8 million based on its finding that defendants would not have been able to maintain and profit from two real-estate projects—OPO and Ferry Point—without their use of the false and misleading Statements. (A(1).144-145.)

OPO. The OPO property was a "rundown dilapidated" commercial office building when the Trump Organization won the contract to redevelop it into a luxury hotel (A(71).31754), a project that required a substantial amount of capital. The evidence established that defendants obtained that needed capital using the fraudulent and misleading Statements to initiate the OPO loan and to comply with the loan's net-worth and liquidity covenants each year. *Supra* at 28-30.

Specifically, the OPO loan was a construction loan that made the redevelopment and eventual profitable sale of the property possible. (A(20).8859.) The loan was disbursed in tranches, and the loan agreement stated that the bank was not obligated to make the disbursements unless the Statements submitted for the loan were "true and accurate" as of the date of the disbursement. (A(29).13002.) And as Supreme Court explained, the less favorable loan terms that Deutsche Bank offered defendants for a loan not backed by Mr. Trump's personal guaranty and the Statements would have placed Mr. Trump in "a negative cash position." (A(1).144.) The court thus properly concluded that defendants' use of the fraudulent and illegal Statements allowed Mr. Trump to obtain $126,828,600, and allowed Donald Trump Jr. and Eric Trump to each

obtain $4,013,024, in ill-gotten profits from the sale of that redeveloped property. (A(1).144; *see* A(93).41007.)

Ferry Point. The trial evidence also demonstrated that defendants' misstatements and omissions allowed them to profit from selling the license to operate Ferry Point. As explained *supra* at 36-37, to maintain its agreement with the City to operate Ferry Point, the Trump Organization submitted letters from Mazars between 2016 and 2021, which relied on the false and misleading Statements in representing each year that there had been no material, adverse change to Mr. Trump's reported net worth. (A(100).44376 (2016); A(100).44378 (2017); A(100).44359 (2018); A(100).44360 (2021).) The court found that these misrepresentations permitted defendants to maintain their license for the Ferry Point golf course and to secure a profit when they later sold the license under favorable market conditions. (A(1).133, 145.) The court thus properly disgorged the $60 million in ill-gotten profits from defendants' sale of the Ferry Point lease. (A(101).44557, 44540-44543; A(69).30785-30786.)

There is no merit to defendants' arguments about the disgorgement of their profits from the OPO and Ferry Point sales. Defendants waived

their arguments (Br. 59-61) that Supreme Court improperly calculated defendants' profits from these sales because they failed to raise or develop them below. *See Fong*, 212 A.D.2d at 458. In any event, Supreme Court properly calculated defendants' profits, which need only be a "reasonable approximation." *Fowler*, 6 F.4th at 267 (quotation marks omitted).

First, Supreme Court did not conflate sale proceeds with sale profits (*contra* Br. 60). For OPO, defendants' total *proceeds* from the sale were $375 million. (A(29).13005.) As defendants acknowledge (Br. 60), to determine defendants' *profits* from the sale, Supreme Court deducted $170 million from the total proceeds, which represents the portion of the proceeds that defendants used to repay Deutsche Bank for the outstanding OPO loan amount and other costs. (A(1).131; *see* A(29).13005-13006.) Defendants contend that Supreme Court should have also deducted from the total proceeds an unspecified amount for defendants' "net investment into OPO up to that point." Br. 60. But it was defendants' burden to identify the amount of any legitimate expenses that might be deducted.

See Fowler, 6 F.4th at 267. Defendants failed to do so, both at trial and in this appeal.[24]

Second, defendants incorrectly argue (Br. 59-60) that the amounts earned from these sales represent "income derived from supposed ill-gotten gains" rather than ill-gotten gains themselves. As Supreme Court correctly found, the profits from the sales are directly attributable to the false Statements themselves because without the false Statements, defendants would not have been able develop and eventually sell either property. (A(1).144-145.) Although defendants did not use the false Statements to effectuate the sale, that does not preclude disgorgement of their profits. *See SEC v. Ahmed*, 72 F.4th 379, 404-05 (2d Cir. 2023); *Teo*, 746 F.3d at 106 (if defendant embezzles $100 and invests the money in shares that he later sells for $500, the entire $500 can be disgorged (citation omitted)).

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[24] Defendants' point to testimony stating that they invested $10 million in Ferry Point, which they argue should have been deducted from their profits from that sale. Br. 60-61 (citing A(68).30262). But defendants failed to raise this argument to Supreme Court despite it being their burden to do so, *see Fowler*, 6 F.4th at 267, and therefore waived it, *see Fong*, 212 A.D.2d at 458.

Finally, defendants incorrectly argue (Br. 61) that Supreme Court double-counted their profits from OPO by ordering the disgorgement of both the amount of interest they saved and their sale profits. The interest rate savings and the sale profits were not mutually exclusive theories of recovery. Rather, as Supreme Court correctly explained, they each represent a separate category of ill-gotten profits that was causally connected to defendants' use of the false and misleading Statements. (A(1).143-144.) In other words, defendants use of the Statements allowed them to get *both* the interest-rate savings during the loan *and*, subsequently, the sale profits. Defendants are not entitled to keep either category of ill-gotten gain.

c. Weisselberg's Severance Payment

Supreme Court also appropriately ordered Weisselberg to disgorge his $1 million severance payment because it was "reasonable to infer a causal connection" between the payment and his misconduct. *SEC v. Tourre*, 4 F. Supp. 3d 579, 589 (S.D.N.Y. 2014). The trial evidence established that Weisselberg was a substantial participant in defendants' wrongdoing, and that the severance payment was made in part as a

reward for this misconduct and in exchange for Weisselberg agreeing not to cooperate with OAG's investigation. (A(70).31001-31003.)

Defendants' argument (Br. 69) that the $1 million did not reasonably approximate Weisselberg's ill-gotten gain lacks merit. The severance payment *is* the ill-gotten gain, and Supreme Court ordered Weisselberg to disgorge only the amount of the severance payment he had received. (A(1).145.)

2. Supreme Court appropriately imposed joint and several liability on Mr. Trump and the entity defendants.

There is no merit to defendants' arguments (Br. 84-85) about joint and several liability. Supreme Court did not impose "blanket" joint and several liability on defendants. *Contra* Br. 85. Instead, the court imposed joint and several liability on only Mr. Trump and the entity defendants—which he owns and controls—and only for the amounts that Mr. Trump and those entities saved in interest on their loans and earned from the sales of OPO and Ferry Point. (A(1).152.) The other defendants are not liable for those amounts. Donald Trump Jr. and Eric Trump are liable for only the profits each received from the sale of OPO. Weisselberg is liable

only for the value of his severance payment. And McConney was not ordered to pay any amount. (A(1).152.)

Holding Mr. Trump and the entity defendants jointly and severally liable is consistent with longstanding equity practice because they engaged in concerted wrongdoing for their collective profit. *See Liu v. SEC*, 591 U.S. 71, 91 (2020); *212 Inv. Corp. v. Kaplan*, 2007 N.Y. Slip Op. 51577(U), at 10 (Sup. Ct. N.Y. County 2007). And Mr. Trump is the beneficial owner of the entities and thus stood to gain their profits. *See SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996).

3. The disgorgement award is constitutional.

Defendants err in arguing (Br. 69-78) that the disgorgement award is unconstitutional under the Excessive Fines Clause of the U.S. or New York Constitutions, U.S. Const. amend. VIII; N.Y. Const. art. I, § 5, or the Due Process Clause of the U.S. Constitution, U.S. Const. amend. XIV. Each clause limits a State's ability to *punish* an individual by prohibiting monetary penalties that are "grossly disproportional to the gravity of a

defendant's offense."[25] *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (federal Excessive Fines Clause); *accord County of Nassau v. Canavan*, 1 N.Y.3d 134, 140 (2003) (New York Excessive Fines Clause); *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562 (1996) (federal Due Process Clause). But when disgorgement is properly cabined to depriving wrongdoers of their ill-gotten gains, as it was here, it is not a punishment. In any event, the Court need not decide that issue because properly cabined disgorgement is inherently proportional to the offense even it were considered punishment.

Defendants' constitutional arguments are based on the incorrect premise that disgorgement is always punishment. But the equitable remedy of disgorgement is remedial rather than punitive, restoring the status quo ante by stripping defendants of ill-gotten profits. *See Liu*, 591 U.S. at 79; *Greenberg*, 27 N.Y.3d at 497. As the Court of Appeals has explained, because "disgorgement merely requires the return of wrong-

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[25] There is no meaningful distinction between the Excessive Fines and Due Process Clauses here, where the State obtained disgorgement. The Due Process Clause is typically raised in civil actions between private parties, where the Excessive Fines Clause is inapplicable. *See Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 263-64 (1989).

fully obtained profits," it "does not result in any actual economic penalty." *Greenberg*, 27 N.Y.3d at 497 (quotation marks omitted); *see Ernst & Young*, 114 A.D.3d at 570; *cf. J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 37 N.Y.3d 552, 567-68 (2021). Here, because Supreme Court appropriately limited the disgorgement amount to defendants' ill-gotten gains, it is not punishment.

Defendants misplace their reliance (Br. 71) on *Kokesh v. SEC*, 581 U.S. 455 (2017). In *Kokesh*, the Court interpreted a federal statute of limitations applicable to "penalties" as covering SEC enforcement actions seeking disgorgement. It did not address whether disgorgement is punishment under the federal Constitution. *Id.* at 455 n.3. And the Court emphasized that, unlike traditional equitable disgorgement, SEC disgorgement "sometimes exceeds the profits gained as a result of the violation." *Id.* at 466.

In any event, even if disgorgement should be labeled a punishment, disgorgement that is properly limited to a defendant's ill-gotten gains—as here—is inherently proportional to the offense and thus constitutional. As one court correctly explained, "the disgorgement of illegal profits necessarily corresponds to the loss incurred by the government and

society as a result of the defendant's" offense and therefore proper "disgorgement will always be proportional . . . to the defendant's illegal profit." *SEC v. O'Hagan*, 901 F. Supp. 1461, 1468 (D. Minn. 1995). Accordingly, courts often assume without deciding that disgorgement may be punishment and reject constitutional challenges on the alternative ground that a disgorgement award that deprives the defendant of only ill-gotten gains is inherently not excessive or grossly disproportionate. *See, e.g., U.S. Commodity Futures Trading Commn. v. Escobio*, 833 F. App'x 768, 773 (11th Cir. 2020); *SEC v. Metter*, 706 F. App'x 699, 704 (2d Cir. 2017). The Court should do the same here.

Defendants misplace their reliance (Br. 70-71) on cases about civil or criminal forfeiture—remedies that are different from disgorgement and not at issue here. In any event, courts have found certain forfeitures to constitute punishment under the Excessive Fines Clause, and sometimes to violate that clause, because the forfeitures were not limited in the ways that disgorgement is limited. *See, e.g.*, *Austin v. United States*, 509 U.S. 602, 621 (1993) (civil forfeiture of instrumentality of crime often has "absolutely no correlation to any damages sustained by society or to the cost of enforcing the law" (quotation marks omitted)).

For example, in *United States v. Bajakajian*, 524 U.S. 321 (1998), the Court concluded that a criminal forfeiture was unconstitutionally excessive because the funds were the profits of *legal* activity, *id.* at 338-40, and the defendant's sole crime was failing to report removal of the funds from the country, *id.* at 324. By contrast, courts have concluded that forfeitures that are limited to solely to the profits of *illegal* activity—and are thus more analogous to disgorgement—are either not punishment or are inherently not excessive. *See United States v. Bikundi*, 926 F.3d 761, 795 (D.C. Cir. 2019); *United States v. Sum of $185,336.07 U.S. Currency Seized from Citizen's Bank Acct. L7N01967*, 731 F.3d 189, 194 (2d Cir. 2013).

Here, because defendants have been ordered to disgorge only the profits of their illegal activity, the disgorgement amount is inherently proportional to their wrongdoing and there is thus no reason to apply the largely overlapping factors that courts use to assess monetary penalties under the Excessive Fines or Due Process Clauses. *See, e.g.*, *Canavan*, 1 N.Y.3d at 140 (Excessive Fines Clause); *Sawtelle v. Waddell & Reed*, 304 A.D.2d 103, 109 (1st Dep't 2003) (Due Process Clause). In any event, those factors confirm that the disgorgement here is not excessive.

For example, as to the seriousness of the offense and severity of the harm, defendants did not commit a "mere reporting offense" (Br. 74). Defendants intentionally used false and misleading financial Statements to engage in fraud and illegality on an immense scale. The misconduct lasted for years—though the disgorgement award reflects ill-gotten gains obtained solely after the limitations period began. And defendants created and used financial statements rife with blatant misrepresentations and omissions to maintain loans worth more than half a billion dollars and to generate over $360 million in ill-gotten profits. (*See* A(1).129-133.)

As to the punishment that could have been imposed on defendants, there is no "statutory maximum in the context of a disgorgement award," *Metter*, 706 F. App'x at 703. And the disgorgement amount here is by no means unprecedented, particularly for a large organization that engaged in extensive misconduct through high-level executives. *See, e.g.*, Judgment, *SEC v. American Intl. Group, Inc.*, No. 06-cv-1000 (S.D.N.Y. Feb. 17, 2006), ECF No. 5 ($700 million); *Millennium Partners, L.P. v. Select Ins. Co.*, 24 Misc. 3d 212, 215 (Sup. Ct. N.Y. County) ($148 million), *aff'd*, 68 A.D.3d 420 (1st Dep't 2009).

B. Supreme Court Properly Exercised Its Discretion in Issuing Injunctive Relief.

Supreme Court appropriately exercised its broad discretion in issuing injunctive relief that (1) continued and enhanced the independent monitor's role, including authorizing her to oversee an independent compliance director at the Trump Organization; (2) prohibited Mr. Trump and the Trump Organization from applying for new loans from certain types of New York financial institutions for three years; (3) barred the individual defendants from acting as officers or directors of New York businesses for two or three years (depending on the defendant); and (4) permanently barred Weisselberg and McConney from acting in financial-management roles in New York. (A(1).146-151.)

New York courts may award injunctive relief for violations of § 63(12) "upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances." *Greenberg*, 27 N.Y.3d at 496-97. The circumstances considered include: the defendant's liability and scienter; whether the infraction was recurring or an isolated incident; whether the defendant continues to maintain that the misconduct was blameless; and whether the defendant's occupation places him in a position where future violations could be anticipated. *SEC v. Cavanagh*,

155 F.3d 129, 135 (2d Cir. 1998). The decision to grant injunctive relief "is addressed to the sound judicial discretion of the court." *State v. Princess Prestige Co.*, 42 N.Y.2d 104, 108 (1977).

Here, Supreme Court properly exercised its discretion in concluding that each relevant factor supported injunctive relief. First, defendants' extensive, repeated, and intentional wrongdoing showed that defendants were likely to engage in wrongdoing again. Defendants' fraud and illegality were not isolated occurrences. For each Statement, defendants engaged in multiple deceptive strategies across as many as a dozen different asset valuations. Defendants' numerous deceptions lasted for seven years during the limitations period alone. And each individual defendant acted with a high degree of scienter. *Supra* at 81-88.

The court also carefully weighed defendants' prior fraudulent conduct in New York,[26] and the fact that they continued to refuse to take any responsibility for their misconduct here. *See SEC v. Posner*, 16 F.3d 520, 521-22 (2d Cir. 1994). Mr. Trump denied that the Statements were

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[26] The court identified four times where one or more of the defendants were criminally convicted of, pleaded guilty to, or were charged with and settled claims of corporate wrongdoing, including fraud. (A(1).148-149.)

misleading, called the court's summary-judgment decision "fraudulent," and stated that he did not believe that the Trump Organization needed to make any corporate governance changes. (A(70).31113-31120, 31197.) McConney testified that he was "proud" of his work, had "no problems" with the Statements, and that "everything was justified." (A(74).32871-32873.) Weisselberg asserted that he had "no idea what properties are worth" despite having personally prepared the Statements' valuations and certified the accuracy of many of them. (A(63).28018.) And in testimony that Supreme Court found not credible, Donald Trump Jr. and Eric Trump claimed to be unaware of the Statements or their contents despite overwhelming evidence to the contrary. (*See* A(1).90-95.)

Supreme Court also reasonably concluded that injunctive relief was warranted considering the lack of corporate governance controls at the Trump Organization that could help prevent future fraud. Based on the testimony at trial and the January 2024 report of the Independent Monitor (submitted after the trial), the court concluded that "there are virtually no internal controls in place at the Trump Organization." (A(1).148.) The Trump Organization does not currently have a CFO or a Controller. (A(71).31634-31635; A(75).33100-33104.) And the prior CFO,

Weisselberg, was not terminated until approximately five months after he pleaded guilty to tax fraud, and he was rewarded with a severance agreement promising him $2 million. (A(70).30998-31004.) The monitor found that the Trump Organization lacks both a compliance department and adequate protocols for preparing financial disclosures. Letter from Barbara S. Jones at 12 (Jan. 26, 2024), NYSCEF No. 1681. She also observed that the Trump Organization had failed to inform her of significant financial transactions despite being obligated to do so. (A(1).147.)

Defendants do not dispute any of Supreme Court's findings about their history of prior wrongdoing, their failure to acknowledge any wrongdoing in this case, or the Trump Organization's lack of any adequate controls to prevent fraud. Instead, they raise three arguments, none of which has merit.

First, defendants again argue (Br. 85-86, 88) that none of them committed *any* § 63(12) violations and that Eric Trump's and Donald Trump Jr.'s involvement in the Statements was "extremely limited." But each defendant committed multiple § 63(12) violations, and Eric Trump and Donald Trump Jr. were deeply involved in the misconduct. *Supra* at

20-21, 28-29, 62-63, 84-86. Their refusal to acknowledge their past violations suggests they will be unable or unwilling to avoid more violations in the future.

Second, defendants argue (Br. 86-88) that § 63(12) authorizes courts to enjoin only unlawful acts and therefore Supreme Court improperly enjoined defendants from working in specified industries or obtaining certain loans. This argument is contrary to the statute's plain language, well-established equitable principles, and precedent.

When OAG establishes that a defendant has engaged in repeated or persistent fraud or illegality "in the carrying on, conducting or transaction of business," § 63(12) authorizes courts to enjoin both "the continuance *of such business activity or* of any fraudulent or illegal acts." Executive Law § 63(12) (emphasis added). The statute thus plainly permits courts to enjoin business activity *beyond* fraudulent or illegal acts. Interpreting "such business activity" to refer only to fraud or illegality would improperly render that phrase superfluous. *See Matter of Lemma v. Nassau County Police Officer Indem. Bd.*, 31 N.Y.3d 523, 528 (2018).

Moreover, an action under § 63(12) is not a "run of the mill action" but "one authorized by remedial legislation, brought by the Attorney–

General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation." *Greenberg*, 27 N.Y.3d at 497 (quotation marks omitted). In such equitable actions, the court "has the power to dispose of all matters at issue and grant complete relief," *People v. Lexington Sixty-First Assocs.*, 38 N.Y.2d 588, 599 (1976).

Courts in § 63(12) actions have also routinely issued a wide range of injunctive relief against violators, including enjoining individuals from participating in specific industries or from serving as an officer or director of a New York business. *See People v. Northern Leasing Sys., Inc.*, 70 Misc. 3d 256, 279-80 (Sup. Ct. N.Y. County 2020), *aff'd*, 193 A.D.3d 67 (1st Dep't 2021) (equipment leasing); *State v. Midland Equities of N.Y.*, 117 Misc. 2d 203, 208 (Sup. Ct. N.Y. County 1982) (mortgage foreclosure consultation); *Matter of People v. Imported Quality Guard Dogs, Inc.*, 88 A.D.3d 800, 801-02 (2d Dep't 2011) (dog breeding and training); *see also Federal Trade Commn. v. Shkreli*, No. 22-728, 2024 WL 1026010, at *2-4 (2d Cir. Jan. 23, 2024) (pharmaceutical sales), *pet. for cert. pending*, No. 23-1338 (docketed June 25, 2024). And courts have prohibited defendants who violated other statutes or laws from serving

as officers or directors of corporations. *E.g., Posner*, 16 F.3d at 521-22. The injunctive relief here fits comfortably within these precedents.

Third, defendants incorrectly challenge as vague and overbroad the portion of injunctive relief prohibiting defendants from obtaining loans from banks "chartered by or registered with the New York State Department of Financial Services" (DFS) for three years (A(1).151). *See* Br. 87. This injunction is not vague and does not significantly inhibit defendants' ability to obtain financing. Although the injunction includes New York chartered banks and banks that operate branches in the State—and therefore register with DFS—it does not preclude defendants from working with banks that do not have a branch in New York. Of the more than 4,500 FDIC insured banks in the United States, only 200 have a presence in New York, and many of those are small regional banks.[27] Defendants therefore still have access to many lenders, including their

[27] *See BankFind Suite: Find Institutions by Name & Location*, FDIC, https://banks.data.fdic.gov/bankfind-suite/bankfind (last visited Aug. 21, 2024).

current lender on Doral, Axos Bank (*see* A(70).31184), which has no office or branch in the State and has not registered with DFS.[28]

[28] *See* FDIC, *BankFind Suite: Find Institutions by Name & Location ("Axos Bank")*, https://banks.data.fdic.gov/bankfind-suite/bankfind/details/35546 (last visited Aug. 21, 2024).

POINT III

SUPREME COURT APPROPRIATELY SANCTIONED DEFENDANTS' ATTORNEYS

The Court should affirm Supreme Court's imposition of sanctions on defendants' counsel for raising frivolous arguments in their motion for summary judgment.[29] (A(1).27-34.) Courts have discretion to impose sanctions on attorneys who raise frivolous arguments. Uniform Rules for Trial Courts (22 N.Y.C.R.R.) § 130-1.1(a). As relevant here, an argument is frivolous if "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." *Id.* 130-1.1(c). Trial courts have "wide latitude" in determining appropriate sanctions. *Pickens v. Castro*, 55 A.D.3d 443, 444 (1st Dep't 2008).

Supreme Court appropriately imposed sanctions against counsel for raising multiple frivolous arguments at summary judgment. The

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[29] The sanctions order plainly applies only to the individual attorneys and not to their law firms. *Contra* Counsel Br. 16. The court stated that it was imposing sanctions on "each of the defendant's attorneys who signed their names to the" summary judgment briefs and identified each attorney by name. (A(1).34 & n.7.) The law firms were listed in parentheticals merely to note where each attorney worked.

court's rationale for imposing sanctions was not that counsel made an incorrect or unpersuasive argument. Rather, the court imposed sanctions because several factors, taken together, all showed that the arguments were completely without merit: counsel failed to acknowledge contrary, controlling authority in raising the arguments; the court had already rejected these arguments earlier in the proceedings; this Court had affirmed Supreme Court's decision rejecting several of the arguments (other arguments had not been raised on the prior appeal); the court had already warned counsel that the arguments were sanctionable; and the arguments concerned issues of law that did not depend on the procedural posture in which they were raised. (*See* A(1).31-34.)

For example, at summary judgment, counsel argued that Supreme Court should dismiss OAG's request for disgorgement because § 63(12) categorically does not authorize that form of relief. (A(52).23585-23589.) But counsel failed to mention that this Court had already stated, in defendants' appeal *in this action*, that § 63(12) authorizes OAG to seek "disgorgement and other equitable relief." *Trump*, 217 A.D.3d at 610. Counsel also failed to acknowledge that the Court of Appeals already rejected this same categorical argument in *Greenberg*, where it held that

"disgorgement is an available remedy under the Martin Act *and the Executive Law*" notwithstanding that these statutes do not expressly list disgorgement as a remedy. *See* 27 N.Y.3d at 497-98 (emphasis added).

Counsel cited *Greenberg* in their summary judgment brief (A.(52).23589), but inexplicably claimed that it supported their position rather than acknowledge that it had squarely rejected the same argument they raised. Counsel argued that *Greenberg* supported their position that § 63(12) does not provide for disgorgement by quoting only a portion of a sentence from the case while omitting the directly relevant remainder of that sentence. Specifically, counsel quoted *Greenberg* as stating only that "disgorgement is an available remedy under the Martin Act" (A.(52).23589), while omitting the last four key words from the sentence, "and the Executive Law." *See, e.g.*, *Precision Specialty Metals, Inc. v. United States*, 315 F.3d 1346, 1356 (Fed. Cir. 2003) (imposing sanctions where attorney's "omissions from and excisions of judicial authority mischaracterized what those courts had stated"); *Nachbaur v. American Tr. Ins. Co.*, 300 A.D.2d 74, 76 (1st Dep't 2002) (imposing sanctions where attorney failed to acknowledge adverse controlling authority).

Supreme Court also appropriately found additional support for the sanctions order in the fact that counsel raised several other frivolous arguments at summary judgment. For instance, counsel argued that OAG's claims should be dismissed because OAG lacked standing and capacity to sue under § 63(12). (A(52).23548-23557.) But Supreme Court had already rejected this argument twice, first in granting the preliminary injunction and then again in denying defendants' motions to dismiss.[30] And this Court had affirmed Supreme Court's ruling at the motion-to-dismiss stage, expressly concluding that OAG had both standing and capacity to bring this action. *Trump*, 217 A.D.3d at 610. In their summary judgment motion, counsel did not discuss or attempt to distinguish this Court's decision.[31]

Counsel also argued in defendants' summary judgment motion that purported disclaimers in the Statements precluded OAG's claims (A(52).23568-23570), even though Supreme Court had already rejected

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[30] *See People v. Trump*, 2023 N.Y. Slip Op. 30027(U), at *2 (motion-to-dismiss stage); *People v. Trump*, 2022 N.Y. Slip Op. 33771(U), at *2 (preliminary injunction).

[31] Defendants raise the same argument about standing and capacity to sue *again* in this appeal and *again* fail to address this Court's decision rejecting their position. *Supra* at 108-09.

that argument twice too.[32] And when Supreme Court had rejected these arguments for the second time at the motion-to-dismiss stage, it warned counsel that the arguments were frivolous but declined to award sanctions at that time in the belief that the warning would be sufficient. *People v. Trump*, 2023 N.Y. Slip Op. 30027(U), at 2-3.

Defendants' counsel do not dispute that they were raising previously rejected arguments that the court had warned were frivolous. Instead, counsels' primary argument on appeal is that they had raised those arguments at the preliminary-injunction and motion-to-dismiss stages, and they could appropriately raise them again on the "developed factual record" at summary judgment. Br. for Nonparty Appellants ("Counsel Br.") 20-21. But as Supreme Court correctly explained, counsels' arguments presented legal issues, not factual issues. (A(1).32-33.) The factual record developed during discovery could not (and did not) affect whether disgorgement is available under § 63(12) as a matter of law, or whether OAG had standing and capacity to bring this action. Indeed, counsel did

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[32] The purported disclaimers that were the subject of this twice-rejected argument are different from the purported disclaimers discussed *supra* at 93-96.

not attempt to explain how anything in the factual record could warrant a departure from *Greenberg* (as to disgorgement) or from this Court's decision at the motion-to-dismiss stage (as to disgorgement and standing/ capacity).[33]

To be sure, this Court had not previously addressed counsels' argument about purported disclaimers in the Statements because counsel did not raise it on the prior appeal from the motion-to-dismiss decision. But Supreme Court had unquestionably considered and rejected it, and there is no merit to counsels' contention that their argument at summary judgment was meaningfully different from their prior rejected argument on the motion to dismiss. The disclaimers were in defendants' own documents and attached to OAG's complaint;[34] counsel did not uncover them during discovery. And in defendants' motions to dismiss, counsel argued that, by virtue of the language in the disclaimers, OAG's claims were "barred by documentary evidence." *E.g.*, Defs.' Mem. of Law

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[33] Supreme Court did not ignore an affirmation submitted in opposition to OAG's sanctions motion, as defendants claim. Counsel Br. 3-4, 15. The court addressed the affirmation and explained why it was unpersuasive and improper. (A(1).32-33.)

[34] *E.g.*, Verified Compl., Ex. 8 (Nov. 21, 2022), NYSCEF No. 10.

at 21-22 (Nov. 21, 2022), NYSCEF No. 197. Although Supreme Court already had rejected that argument twice and warned counsel that it was frivolous, counsel then relied on precisely the *same* documentary evidence at summary judgment to make the *same* argument.

Lastly, counsel are mistaken in arguing that that Supreme Court inappropriately considered prior sanctions awarded against Mr. Trump and two of his counsel (Ms. Habba and Mr. Madaio). Counsel Br. 37-39. To the contrary, in assessing sanctions a court is required to consider "the circumstances under which the conduct took place," Uniform Rules § 130-1.1(c), and those circumstances can include a history of misconduct, *see, e.g., Justicebacker Inc. v. Abeles*, 2024 N.Y. Slip Op. 32316(U), at *9-10 (Sup. Ct. N.Y. County 2024). That the prior sanctions were not imposed on *all* of defendants' attorneys did not preclude the court from considering them. In any event, in imposing sanctions the court relied primarily on the multiple frivolous arguments that all counsel made in this case, not their prior conduct.

CONCLUSION

For the foregoing reasons, the final judgment of Supreme Court and the order awarding sanctions against defendants' counsel should be affirmed.

Dated: New York, New York
August 21, 2024

Respectfully submitted,

LETITIA JAMES
Attorney General
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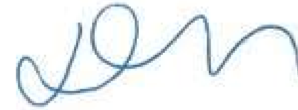
By: 
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PRINTING SPECIFICATIONS STATEMENT

Pursuant to Uniform Practice Rules of the Appellate Division (22 N.Y.C.R.R.) § 1250.8(j), the foregoing brief was prepared on a computer (on a word processor). A proportionally spaced, serif typeface was used, as follows:

Typeface: Century Schoolbook
Point size: 14
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 27,196, as authorized by this Court.