SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants-Appellants, IVANKA TRUMP, Defendant.	Appeal Nos: 2024-01134 2024-01135 Sup. Ct. New York County Index No. 452564/2022 (Engoron, J.S.C.)

MEMORANDUM OF LAW IN SUPPORT OF A STAY
PENDING APPEAL PURSUANT TO CPLR 5519(c)

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DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC

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Defendants-Appellants Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, "Appellants"), through their undersigned attorneys, respectfully submit this memorandum of law in support of their motion, brought by order to show cause, pursuant to CPLR § 5519(c) and this Court's inherent discretionary powers for a stay pending appeal of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron"), dated February 16, 2024, duly entered by the Clerk of the Supreme Court of the State of New York, County of New York, on February 16, 2024, and reduced to Judgment on February 23, 2024 (the "Judgment"), (1) finding Appellants liable on the second through seventh[1] causes of action; (2) ordering disgorgement to the Attorney General of the State of New York (the "Attorney General") in the principal sum of $363,894,816.00, exclusive of pre-judgment interest[2]; (3) permanently barring Appellants Allen Weisselberg ("Weisselberg") and Jeffrey McConney ("McConney") from serving in the financial

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[1] Supreme Court found only Allen Weisselberg and Jeffrey McConney liable on the sixth cause of action for insurance fraud.

[2] Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC are jointly and severally liable for disgorgement in the principal sum of $168,040,168.00, with prejudgment interest from March 4, 2019; Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable for disgorgement in the principal sum of $126,828,600.00, with prejudgment interest from May 11, 2022; Appellants President Donald J. Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., and Trump Organization LLC are jointly and severally liable for disgorgement in the principal sum of $60,000,000.00, with prejudgment interest from June 26, 2023; Appellant Eric Trump is liable for disgorgement in the principal sum of $4,013,024.00, with prejudgment interest from May 11, 2022; Appellant Donald Trump, Jr. is liable for disgorgement in the principal sum of $4,013,024.00, with prejudgment interest from May 11, 2022, and Appellant Allen Weisselberg is liable for disgorgement in the principal sum of $1,000,000.00, with prejudgment interest from January 9, 2023.

control function of any New York corporation or similar business entity registered and/or licensed in New York State; (4) barring Appellant President Donald J. Trump ("President Trump"), Weisselberg, and McConney from serving as an officer or director of any New York corporation or other legal entity in New York for three years; (5) barring President Trump and Appellants the Donald J. Trump Revocable Trust (the "Trust"), the Trump Organization, Inc., the Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for three years; (6) barring Appellants Donald Trump, Jr., and Eric Trump from serving as an officer or director of any New York corporation or other legal entity in New York for two years; (7) vacating the Court's September 26, 2023, decision and order cancelling Appellants' and affiliated entities' business certificates[3]; (8) extending and enhancing the monitorship of Hon. Barbara Jones (ret.) ("Judge Jones" or "Monitor") for a period of no less than three years; and (9) installing an Independent Director of Compliance.

PRELIMINARY STATEMENT

Appellants bring this application to stay enforcement of Supreme Court's February 23, 2024, Judgment, wherein Justice Engoron, *inter alia*, imposed against Appellants a disgorgement penalty in the unprecedented and unconstitutional sum of over $450 million, as well as draconian injunctive relief that once again exceeds statutory authority and impedes a global real estate empire in the conduct of lawful business. Supreme Court's staggering $450 million judgment

[3] Supreme Court vacated that directive "without prejudice to renewal upon the recommendation of the Independent Monitor or based on substantial evidence." Affirmation of Clifford Robert ("Robert Aff."), Ex. R at 92.

not only ignores this Court's controlling decision in this very case, but also violates the Excessive Fines and Due Process Clauses of the U.S. and New York Constitutions. The requested stay would continue the monitorship that the Attorney General herself demanded and deemed adequate at the outset of this case to protect her ability to recover any eventual judgment. The monitorship would be coupled with the additional security of a $100 million bond that Appellants plan to post forthwith.

The Court Has Already Ruled on the Statute of Limitations

The Judgment nullifies this Court's holding that the continuing wrong doctrine does not extend the statute of limitations and is in direct conflict with the First Department's July 13, 2014, statute of limitations cutoff. It is undisputed that the vast majority of transactions forming the basis for the "disgorgement" award were completed well prior to July 13, 2014. Thus, just applying the express mandate of this Court reduces the total amount of the Judgment by approximately $350 million. See Point IV(A), *infra*.

The Eighth Amendment Excessive Fines Violation

The Judgment violates the Excessive Fines Clause of the Eighth Amendment and the New York Constitution because there has been no showing whatsoever of any ill-gotten gains in this case. Indeed, the so-called "disgorgement" order is in fact a grossly disproportionate penalty assessment. See Point IV(C), *infra*. Left unchecked, this empowers the Attorney General and future courts to target anyone by intervening in and unwinding complex commercial transactions between sophisticated parties years after those transactions have closed even where, as here, there were never any defaults, late payments, missed payments, or other demonstrable harm. It is undisputed that not one witness testified at trial that Appellants' financial statements were fraudulent or that any of the loan terms or pricing would have been different, multiple witnesses

testified that the loans were fully performed, not one complaint was ever lodged regarding any of the complex loan transactions, and not a single market participant raised any concerns or articulated any real-world impact.[4] To the contrary, the actual bankers involved in the actual transactions at issue testified there were no issues and they were satisfied with their profitable business dealings with Appellants. This untenable Judgment therefore threatens the entire New York business community, as it will render profitable, arms-length transactions between sophisticated commercial parties meaningless and subject to arbitrary, *post hoc* review by the Attorney General and the courts.

Needless Irreparable Injury Will Result

In the absence of a stay, the Judgment would needlessly result in irreparable injury, including, *inter alia*, loss of real estate assets, deprivation of the right to conduct and manage Appellants' lawful businesses, and a violation of the constitutional bar against selective enforcement. See Point II, *infra*. All such irreparable harm is avoided with the implementation of a stay pending appeal providing the Attorney General the very security she demanded.

The sweeping relief imposed by Supreme Court has real consequences. The financial penalty, which will accrue nearly $115,000 *per day* in post-judgment interest, goes light years

[4] Thus, as in People v. Exxon Mobil Corp., here "there [is] no evidence adduced" in the record that the certification of the Statements of Financial Condition ("SFCs") "had any market impact at the time they were" submitted, or that those SFCs had any capacity or tendency to deceive. No. 452044/2018, 65 Misc.3d 1233(A) at *5 (Sup. Ct. N.Y. Cty. 2019). Likewise, in People v. Domino's Pizza Inc., the court declined to extend the Attorney General's police power to disputes over "bilateral business transactions." No. 450627/2016, 2021 N.Y. Slip Op. 30015(U) at *26 (Sup. Ct. N.Y. Cty. 2021). Therein, the court determined that commercial disputes (such as those reflected by the record now before this Court) "should be in the nature of private *contract* litigation . . . not a law enforcement action under a statute designed to address public harm flowing from persistent or repeated fraud and deception." Id. (emphasis in original).

beyond any permissible or constitutional scope of disgorgement.[5] The obvious point of such a facially absurd award is not to deprive Appellants of some purported "ill-gotten gains," but, rather, to impose a half a billion-dollar penalty for engaging in transactions with satisfied counterparties, none of whom claimed any fraud or harm. In recent days, the Attorney General has shamelessly threatened to seize President Trump's property if she is not paid quickly enough, all but confirming that the goal was never to deter "illegal activities" in the State but to "get Trump" in the most public manner possible.[6]

The purported equitable relief Supreme Court ordered, including the removal of the individual Appellants as corporate officers or directors, the vague and overbroad proscription on "applying for loans," and the court's imposition of "joint and several liability" on the disgorgement award, are equally punitive, excessive, and devoid of legal merit.

A Stay Includes Adequate Security for the Attorney General

Indeed, a stay is particularly appropriate here where Appellants do not seek to stay the portion of the Judgment providing that Judge Jones remains in place as an independent monitor and plan to post an undertaking in the amount of $100 million. The presence of a $100 million bond would only augment the security originally deemed sufficient by the Attorney General to

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[5] The Attorney General has publicly flaunted both the amount of the judgment and the accruing interest. See, e.g., Office of the New York State Attorney General, *Attorney General James Wins Landmark Victory in Case Against Donald Trump* (Feb. 16, 2024), available at: https://ag.ny.gov/press-release/2024/attorney-general-james-wins-landmark-victory-case-against-donald-trump; NY AG James (@New York State AG), Twitter (Feb. 16, 2024, 4:20 PM). In addition to tweeting the full amount of the Judgment each day since it was entered, the Attorney General has tweeted "+$114,533.04," denoting the daily interest accrued. NY AG James (@New York State AG), Twitter (Feb. 24, 2024, 1:26 PM); NY AG James (@New York State AG), Twitter (Feb. 25, 2024, 11:06 AM).

[6] Michael R. Sisak, *New York AG says she'll seize Donald Trump's property if he can't pay $454 million civil fraud debt*, AP News (Feb. 22, 2024), available at: https://apnews.com/article/trump-letitia-james-fraud-lawsuit-judgment-verdict-63e643d0fe098cc1ac178c003f21a40d ("If he does not have funds to pay off the judgment, then we will seek judgment enforcement mechanisms in court, and we will ask the judge to seize his assets.").

ensure her ability to collect on any judgment. The security provided by the ongoing oversight of the independent monitor—with or without a bond—cannot be overstated. Indeed, at no time during her tenure has Judge Jones ever identified any financial reporting misconduct, suspicious activity, or any suspected or actual fraud. To the contrary, the Monitor's reports all confirm Appellants have fully cooperated throughout the process in providing information and correcting any purported (and minor) defects. More importantly, during her tenure, there has been no dissipation of assets, and Appellants continue to own substantial real estate assets within New York. Those assets are not going anywhere, nor could they given the oversight of the Monitor and the practical realities of the existence of the very public Judgment. The Attorney General's interests are therefore more than adequately secured as to any judgment affirmed. Further, there is no possible prejudice to the Attorney General because there are no distributions to purported "victims." Any funds paid pursuant to the Judgment would go to the State of New York. No "victim" is waiting on payment to recover any actual loss because the loans at issue were fully performed.

Penalties are Imposed on Non-Parties

Supreme Court further compounds its error by awarding unprecedented disgorgement. Supreme Court's ignorance of corporate realities and the corporate form is nowhere more evident than in the disgorgement awards, where single-purpose entities that entered into discrete loan agreements with respect to one property have been made jointly and severally liable for purported "ill-gotten gains" arising from loan agreements with respect to an entirely *different* entity and property, with *different* employees and managers, in a *different* state. Practically, this would force each individual entity to carry a liability on its individual financial statement for the full amount of disgorgement, even though Supreme Court's decision and order only attributes a

fraction of that sum, if any, to the entity. Likewise, in punishing Appellants—and Trump Ferry Point LLC, an entity that was not even a defendant in the case—for successful investments, Supreme Court conflates distributions from certain sale transactions with actual profits earned from those transactions, thereby overstating, by tens of millions of dollars, the amount of putative disgorgement.

Supreme Court Has Exceeded its Authority

The myriad and irreparable harms flowing from the Judgment arise out of Supreme Court's extraordinary desire to levy the punishment it deems Appellants deserve for daring to defend themselves at trial from the Attorney General's claims. In Supreme Court's estimation, Appellants were obligated to show "contrition and remorse" for their actions *during the trial itself*, notwithstanding the fact that they are *civil defendants* who heretofore had been found liable on only one of the Attorney General's claims. Apparently because Appellants did not grovel and apologize for "the error of their ways" while on the stand, Supreme Court adjudged them unworthy of running their own businesses. Ironically, while Supreme Court recognizes that it is "not constituted to judge morality," that is precisely what the court did when it specifically justified severe punishment for the "venial sin"[7] of "inflating asset values to make more money" by "lack of contrition and remorse." Robert Aff., Ex. R at 87.

Supreme Court has, once again, far exceeded its authority under Executive Law § 63(12) in furtherance of the Attorney General's crusade to punish Appellants for "fraud" that Supreme Court declares "leap[s] off the page" and "shock[s] the conscience." Id. at 77. Put simply, no "equitable" relief as imposed herein can lie where, as here, there is no victim. Nonetheless,

[7] A venial sin in Roman Catholic catechism is recognized as the most minor of offenses: certainly not that which merited such a gross penalty.

unfettered by any legal standard, Supreme Court affirms that "fraud" worthy of the most punitive of sanctions exists simply because the judge "kn[ows] it when he s[ees] it." Id.

There was no evidence from any actual transaction or market participant that Appellants received any "unjust benefit," that any bank lost money, or that any of the loan terms or pricing (the purported foundation of Supreme Court's disgorgement award) would have been any different. Yet, Supreme Court either ignorantly or willfully ignored this evidence, and much more,[8] in a zealous quest to inflict untoward punishment. Supreme Court further conflates pre-judgment interest with punitive sanctions, imposing an additional sum of almost $100 million as a penalty for Appellants' purported "corrupt intent or desire for personal profit," notwithstanding that Appellants paid *millions* in interest to the banks and that those transactions are plainly time-barred under law of the case. Id. at 84.

The Effect on The Marketplace is Significant

Allowing trial courts to ignore the mandates of this Court and impose unlawful and unconstitutional penalties based on time-barred claims undermines public confidence in the judicial system and threatens the rule of law. Moreover, the harms that the Judgment inflicts are exacerbated by the impact the draconian and irrational penalties imposed on Appellants will have on commercial activity in New York.[9] Simply put, what has happened to Appellants can happen

[8] Another example of Supreme Court's lack of understanding and analysis, as well as its willful failure to consider unrebutted evidence, is its absurd valuation of Mar-a-Lago. Supreme Court valued Mar-a-Lago at $18 million when the unrebutted testimony places its value at over $1.2 billion.

[9] Jeb Bush and Joe Lonsdale, *Elon Musk and Donald Trump Cases Imperil the Rule of Law*, WSJ Opinion (Feb. 21, 2024); Madeline Hubbard, *'Shark Tank' investor Kevin O'Leary says he 'will never invest in New York' after Trump ruling*, Just the News (Feb. 20, 2024); Andrew C. McCarthy, *Having Ruled that Trump Inflated Assets, Judge Engoron Is Suddenly Stunned That Assets Appear to Have Been Inflated*, National Review (Feb. 7, 2024);

to any citizen of this State who has the misfortune of dissenting from the Attorney General's politics. To prevent irreparable harm to Appellants and to preserve this Court's jurisdiction, the Judgment must and should be stayed as outlined herein pending appeal.

BACKGROUND

A full recitation of the factual and procedural background relevant to this application is provided in the Affirmation of Clifford S. Robert annexed hereto.

Steven Calabresi, *President Trump's Kafkaesque Civil Trial in New York State*, The Volokh Conspiracy (Feb. 18, 2024); Jay Tucker, *New York's Trump Fraud Findings Refute Judge's Conclusion*, American Thinker (Feb. 22, 2024); Arthur Fergenson, *Stalinist $370M judgment against Trump should be vacated immediately*, Fox News (Feb. 20. 2024); Jonathan Turley, *Democrats weaponized justice system to punish Trump in business case*, N.Y. Post (Feb. 19, 2024); Ed Kozak, *FedSoc Founder: Trump NY Case a Travesty on Par with Killing of Hamilton*, The National Pulse (Feb. 19, 2024); Steven Calabresi, N*ew York's Civil Lawsuit against Trump is Unconstitutional*, Volokh Conspiracy (Jan. 14, 2024), David Zimmerman, *Truckers Vow to Cut Off Deliveries to NYC in Protest of Trump's $355 Million Civil-Fraud Ruling*, National Review (Feb. 18, 2024); Wayne Allen Root, *Wayne Root: Let "The Great New York City Boycott" Begin. Conservatives to New York: "Drop Dead."* Gateway Pundit (Feb. 18, 2024); Sumanti Sen, *Truckers refuse to accept loads from NYC after Donald Trump slapped with a $355M fine in fraud case*, Hindustan Times (Feb. 18, 2024); *U.S. truckers refuse shipment to New York City after Trump banned for NY business in fraud trial*, mint (Feb. 18, 2024); Charles Creitz, *Trump's penalty could cause NY biz exodus to FL, as New York State becomes 'legal banana republic': experts*, Fox News (Feb. 16, 2024); Arkaprovo Roy, *New York City Shipments to Stop after Trump Civil Fraud Verdict? Truck Driver Threatens Boycott in Viral Video*, TimesNowWorld (Feb. 18, 2024); Chris Donaldson, *Truckers talk stopping shipments to NYC in protest of $350M+ Trump fine*, BPR Business & Politics (Feb. 18, 2024); Geeta Pillai, *Truckers Rally in Support of Trump: A Bold Protest Disrupts NYC Supply Chain*, bnn (Feb. 18, 2024); Kelly Rissman, *Truckers for Trump are refusing to drive to New York City after $350m fraud ruling*, Independent (Feb. 18, 2024); Patrick Reilly, *Trump-loving truckers refusing to drive to NYC after his $355 million fraud ruling*, N.Y. Post (Feb. 18, 2024), *Report: Truckers to Deny Loads in NYC to Protest $350 Million Ruling Against Trump*, The Paradise (Feb. 18, 2024); Charlie Nash, *New York Resident Greg Gutfeld Threatens to Move to Florida Over Trump Being Fined for Fraud*, Mediaite (Feb. 21, 2024), Jeffrey Lord, *Truckers Target Trump-Hating New York Judge*, The American Spectator (Feb. 19, 2024); Charlie McCarthy, *MAGA Truckers Say They'll Refuse NYC Loads After Trump Verdict*, Newsmax (Feb. 18, 2024); *Pro-Trump Truckers to Halt Rides in NYC after Ex-President's $355M Fine*, La Voce di New York (Feb. 18, 2024); Genevieve St. Clair, *Truckers Boycott NYC Deliveries After Trump's Civil Fraud Trial Outcome,* Bollyinside (Feb. 17, 2024); Steven Calabresi, *Donald Trump is the Victim of Selective Prosecution*, The Volokh Conspiracy, (Feb. 10, 2024); Michael Reagan, *Mob Rule Law Convicts Trump of Crimeless Crime*, Newsmax (Feb. 20, 2024); Joseph Moreno, *The ruling against Trump is perverse in true New York fashion*, The Spectator World (Feb. 17, 2024).

ARGUMENT

APPELLANTS ARE ENTITLED TO A STAY PENDING APPEAL

A. Legal Standard

This Court has statutory authority and inherent discretion to stay "all proceedings to enforce the judgment or order appealed from pending an appeal." CPLR § 5519; see also Matter of Grisi v. Shainswit, 119 A.D.2d 418, 421 (1st Dep't 1986) (noting that the "granting of stays pending appeal" is "for the most part, a matter of discretion"). A stay pursuant to CPLR § 5519(c) is generally "restricted to the executory directions of the judgment or order appealed from which command a person to do an act." Mintz & Gold LLP v. Zimmerman, 848 N.Y.S.2d 814, 818 (Sup. Ct. N.Y. Cty. 2007), aff'd, 56 A.D.3d 358 (1st Dep't 2008), quoting Matter of Pokoik v. Department of Health Servs. of County of Suffolk, 220 A.D.2d 13, 15 (2d Dep't 1996). Additionally, this Court retains broad inherent authority to grant a general discretionary stay of any proceedings in the underlying action in order to prevent acts or proceedings that will disturb the status quo and tend to defeat or impair appellate jurisdiction. See Tax Equity Now NY LLC v. City of New York, 173 A.D.3d 464, 465 (1st Dep't 2019); Schwartz v. New York City Hous. Auth., 219 A.D.2d 47, 48-49 (2d Dep't 1996); see also Matter of Schneider v. Aulisi, 307 N.Y. 376, 383-384 (1954) (noting a court's inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction).

In exercising its discretion to impose a stay pursuant to CPLR § 5519(c), the Court may consider "'any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.'" Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc., No. 850120/15, 2016 WL 4194195, N.Y. Slip Op. 31509(U), at *4 (Sup. Ct. N.Y.

Cty. 2016), quoting Richard C. Reilly, Prac. Commentaries, McKinney's Cons Laws of NY, CPLR C:5519:4.

POINT I

THE CONTINUED MONITORSHIP AND ANTICIPATED UNDERTAKING ADEQUATELY SECURE ANY JUDGMENT AFFIRMED

A. Appellants Will Continue to Operate Under the Independent Monitorship of Judge Jones

The Attorney General has exactly the safeguards that she demanded at the outset of this case. There is no risk of Appellants secreting or disposing of assets in light of the continued monitorship Supreme Court has imposed. Appellants have been operating under this monitorship since November 2022 and will continue to do so during the pendency of any appeal. While Appellants disagree that "ongoing oversight" is necessary or that there is any evidence of an "atmosphere conducive to fraud," they have worked closely with Judge Jones throughout the monitorship. Robert Aff., Ex. R at 85-87.

The Attorney General initially sought the appointment of a monitor in her October 13, 2022, motion for a preliminary injunction to (1) "ensur[e] [her] ability [] to obtain satisfaction of the large sum [she] will seek as disgorgement at this [sic] conclusion of this action" and (2) "ensure that the Trump Organization does not remove assets from the Court's power during the pendency of this action." Robert Aff., Ex. C at 17, 19. By its order dated November 3, 2022, Supreme Court granted, over Appellants' objection, the Attorney General's application, appointed an independent monitor to oversee Appellants' businesses, and enjoined Appellants from "selling, transferring, or otherwise disposing of any non-cash asset listed on the 2021 Statement of Financial Condition of Donald J. Trump, without first providing 14 days['] written notice to [the Attorney General] and this Court." Id., Ex. D at 11. On November 17, 2022, Supreme Court issued a supplemental monitorship order, directing, *inter alia*, Judge Jones to

monitor "any corporate restructuring, disposition or dissipation of any significant assets." Id., Ex. E at 1. That order also required Judge Jones to immediately report "any unusual and/or suspicious and/or suspected or actual fraudulent activity," and to issue status reports. Id. at 2. The Attorney General therefore received exactly what she asserted was necessary to protect her interests in the event a "large sum" was awarded as disgorgement. There is no valid basis to contend such security is now somehow insufficient to protect those same interests.

In furtherance of Supreme Court's directive, Judge Jones submitted reports dated December 19, 2022, February 3, 2023, April 11, 2023, August 3, 2023, November 29, 2023, and January 26, 2024 (collectively, the "Reports"). See Robert Aff., Ex. F. None of the Reports mention any financial reporting misconduct, suspicious activity, or any suspected or actual fraud. Id. Rather, the Reports make plain that Appellants are cooperating with Judge Jones' requests and complying with Supreme Court's orders.

In her December 19, 2022, report, Judge Jones stated that "[Appellants] are complying with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 441). In her February 3, 2023, report, she again stated that "[Appellants] are continuing to comply with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 489). In her April 11, 2023, report, Judge Jones again stated that Appellants "are continuing to comply with the terms of the Supplemental Order of Appointment." Robert Aff., Exhibit F (NYSCEF Doc. No. 617). In her August 3, 2023, report, Judge Jones again stated that "[b]ased upon the foregoing, and having carefully reviewed the information provided to [her], it appears that [Appellants] continue to cooperate with [her] and the requirements of the Court's Orders." Robert Aff., Exhibit F (NYSCEF Doc. No. 647). In her November 26, 2023, report, Judge Jones again stated that "[Appellants] have agreed to

enhanced monitoring given the matters described in this report. [Appellants] continue to cooperate with me and are *generally in compliance with the Court's orders*, and have committed to ensure that all required information, including tax information and cash transfers, are promptly disclosed to the Monitor." Robert Aff., Ex. F (NYSCEF Doc. No. 1641) (emphasis added).

Supreme Court ultimately asked Judge Jones to summarize her work as monitor, including "an assessment of financial disclosures" made during the monitorship. Robert Aff., Ex. F (NYSCEF Doc. No. 1681). After raising her suggestion of a more robust compliance department and training in accounting procedures, Judge Jones ultimately concluded that:

> It is important to note that the Trump Organization acknowledged the disclosure issues described after I brought them to its attention and has been open to recommendations to improve accuracy and transparency. Indeed, during the Monitorship, the Trump Organization has implemented changes to disclosures or processes, several of which are discussed above. In addition, with respect to the instances where required disclosures were not provided to the Monitor, the Trump Organization submitted the information for review when it was made aware of the omissions.

Id.

In short, in Judge Jones' own words, any time she has raised a concern or discrepancy, Appellants have sought to rectify or clarify it immediately. Based on the language in her own Reports, and her review of thousands of pages of financial data regarding a complex assemblage of more than 400 entities, none of the items identified during her tenure revealed anything at all material or consequential. Moreover, every item identified has been resolved to her full satisfaction.

No sale, transfer, or dissipation of any assets in New York could possibly occur without the Monitor's oversight. Further, as a practical matter, none is possible given the highly public nature of the Judgment. Under the terms of the monitorship, President Trump's major assets, including his significant real estate holdings and trophy properties, simply cannot be summarily

disposed of or secreted out of the jurisdiction.[10] Thus, there is no discernable risk under the circumstances that Appellants will divert assets or take any other steps that would prevent the Attorney General from collecting on any judgment affirmed.

B. Appellants Plan to Post a $100 Million Undertaking

The purpose of an appeal bond is to maintain the status quo during the appeal and to ensure sufficient resources are available to satisfy any judgment affirmed. See Cavanagh v. Hutcheson, 232 A.D. 470, 471 (1st Dep't 1931) (requiring bond as condition of stay pending appeal "so as to protect [respondents] from any change of position on the part of [appellant], until the appeal is determined"). Here, any judgment affirmed by this Court would be adequately secured by the precise oversight the Attorney General sought and has relied on during the pendency of these entire proceedings, augmented by a $100 million undertaking Appellants plan to post forthwith.

CPLR § 5519 provides that service of a notice of appeal "stays all proceedings to enforce the judgment or order appealed from pending the appeal" where "(2) the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed." CPLR § 5519(a)(2).

An appeal bond would include the amount of the underlying judgment—here, more than $460 million—as well as costs and interest during the pendency of the appeal. Robert Aff. ¶ 46. To account for post-judgment interest and appeal cost, a surety will often set the bond amount at

[10] Assets like 40 Wall Street cannot be hypothecated or removed from the jurisdiction in secret.

120% of the judgment or more, *i.e.*, more than $550 million. Id. ¶ 47. The exorbitant and punitive amount of the Judgment coupled with an unlawful and unconstitutional blanket prohibition on lending transactions would make it impossible to secure and post a complete bond. Appellants nonetheless plan to secure and post a bond in the amount of $100 million. Moreover, Appellants' vast ownership interests in New York real estate (not to mention elsewhere) include 40 Wall Street,[11] Trump Tower, Seven Springs, Trump National Golf Club Hudson Valley, Trump National Golf Club Westchester, and Trump Park Avenue. Thus, the ongoing oversight by the Monitor, which has and will continue to preclude any dissipation or transfer of assets, would alone be sufficient to adequately secure any judgment affirmed. Appellants' bond would simply serve as further security. Finally, Appellants discontinued the practice of preparing Statements of Financial Condition ("SFCs") two years ago.

POINT II

APPELLANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY

Under New York law, irreparable injury is that which cannot be compensated by money damages. See Matter of J.O.M. Corp. v. Department of Health of State of N.Y., 173 A.D.2d 153, 154 (1st Dep't 1991), citing DeLury v. City of New York, 48 A.D.2d 595, 599 (1st Dep't 1975); cf. Four Times Sq. Assoc. v. Cigna Invs., 306 A.D.2d 4, 6 (1st Dep't 2003) (reversing denial of preliminary injunction where, *inter alia*, "the threat to [plaintiff's] good will and creditworthiness is sufficient to establish irreparable injury"). Irreparable harm will inhere to Appellants absent a stay pending appeal. As set forth more fully below, Supreme Court's

[11] The ownership interest in 40 Wall Street is likely alone sufficient to satisfy any judgment.

injunctive relief and disgorgement award evince the Court's ignorance of corporate governance and the day-to-day operations of a complex business enterprise.

A. Irreparable Harm Inheres to Appellants from Any Forced Sale of Properties

In the absence of a stay on the terms herein outlined, properties would likely need to be sold to raise capital under exigent circumstances, and there would be no way to recover any property sold following a successful appeal and no means to recover the resulting financial losses from the Attorney General. Thus, Supreme Court and the Attorney General will have succeeded in imposing a punitive and irreversible financial sanction even where Appellants prevail on appeal. Simply put, Appellants would be unable to recover the value of that which was taken by the court and the Attorney General during the pendency of the appeal.

B. Irreparable Harm Inheres to the Entity Appellants if the Judgment is Not Stayed

The Judgment also (1) enjoins the entity Appellants, as well as President Trump, from "applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services" for three years, (2) continues the monitorship for "no less than three years," and (3) mandates the installation of an "Independent Director of Compliance." Robert Aff., Ex. R at 92. Once again, this exceeds Supreme Court's statutory authority, which simply does not permit a blanket prohibition on otherwise lawful conduct.

Supreme Court's order proscribing loan applications is overbroad on its face, to the extent its scope can even be understood. Supreme Court appears unaware of—or unconcerned by—the far-reaching implications of this directive. Supreme Court proscribes loans from institutions "chartered" or "registered" in this State. While there is no statutory requirement of "registration" under the Banking Law, a foreign bank must be "licensed in this State as a prerequisite for transacting business here so as to protect the public interest and the interests of depositors." See

Animalfeeds Int'l Inc. v. Banco Espirito Santo e Commercial de Lisboa, 420 N.Y.S.2d 954, 959 (Sup. Ct. N.Y. Cty. 1979); see also Banking Law § 200.[12] Consequently, as written, Appellants would be prevented from obtaining financing from any bank that does business in this State, regardless of whether it is headquartered or even has an office in this State. Even certain properties with existing loans could not seek re-financing, creating a default scenario resulting in irreparable injury. This prohibition again demonstrates Supreme Court's lack of understanding of commercial realities and partisan bent. Appellants deploy their assets into real estate and other investments to earn a profit, thereby stimulating beneficial economic activity. Here, the Judgment precludes Appellants from using their own lawful assets and the equity in those assets to protect their appellate rights and interferes unlawfully and unconstitutionally with the ability to manage the financial affairs of otherwise lawful businesses. This represents an unconstitutional burden on interstate commerce.

But taking out a loan is not unlawful conduct. Although there were no complaints, no victims, and no evidence of any actual harm, the "unlawful" conduct consisted of the alleged preparation and submission of falsely inflated financial statements to certain sophisticated counterparties. So, any statutory relief is and must be limited to enjoining that conduct and the adoption of ancillary measures (*i.e.*, monitor oversight) to prevent future occurrences. Any legitimate concerns regarding financial information submitted to lenders going forward are alleviated fully by the Monitor's oversight.

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[12] Federal caselaw applying the Banking Law seems to conflate registration and licensure. 7 W. 57th St. Realty Co., LLC v. Citigroup, Inc., 2015 WL 1514539 (S.D.N.Y. 2015), aff'd, 771 F. Appx. 498 (2d Cir. 2019)(unpublished); Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC, 366 F. Supp. 3d 516, 560 (S.D.N.Y. 2018).

Additionally, while the loans at issue before Supreme Court were for tens of millions or hundreds of millions of dollars, the Judgment, by its terms, would ostensibly cover even *de minimis* loans or leases of basic equipment (*i.e.*, copy machines, golf carts, lawn maintenance equipment, etc.), resulting in an inability to operate lawful businesses. Supreme Court's ignorance and imprecision threatens to needlessly grind to a halt Appellants' day-to-day operations for three years. Such relief is not narrowly tailored to enjoining purportedly fraudulent practices, and the harm inflicted on Appellants will be irreparable.

Moreover, as set forth above, Appellants have been under monitorship since November 2022. See Robert Aff., Ex. D at 10. Appellants are now obligated to provide to the Monitor any "financial statement, statement of financial condition, other asset valuation disclosure, or other financial disclosure to a lender, insurer, or other financial institution." Id. Given this pre-clearance requirement and the Monitor's oversight, there is no risk Appellants will submit any purportedly false information to a putative lender.

Finally, Supreme Court's ill-considered finding that a bevy of entities are jointly and severally liable for particular portions of the disgorgement award has serious consequences. Trump Ferry Point LLC, the assignee of the Ferry Point license, is not even a party to this action. Nonetheless, disgorgement in the amount of approximately $60 million was ordered against President Trump, the Trust, Trump Organization LLC, the Trump Organization, Inc., and Trump Old Post Office LLC for "profits" obtained by a non-party. Most egregiously, Supreme Court ordered that President Trump, the Trust, the Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, and 40 Wall Street LLC are *all* jointly and severally liable for more than $240 million of interest-rate differential. Several of

these entities, including Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, and 40 Wall Street LLC, are single-purpose entities created to own a particular piece of property. Each entity has its own independent books and records, employees, and managers. In Supreme Court's view, Trump Old Post Office LLC, which no longer even owns the Old Post Office property in Washington, D.C., would be responsible for the debt of a Delaware or New York LLC created only to own and operate a specific property (*i.e.*, 40 Wall Street or 401 North Wabash), and its balance sheet would necessarily reflect the full amount of that debt. Supreme Court's repeated conflation of discrete entities belies its own misunderstanding of corporate law and effectively functions as reverse veil-piercing. Such impermissible group relief runs afoul of the very purpose of a limited liability company in a complex, well-considered corporate structure such as the Trump Organization. An individual or a discrete corporate entity is simply not liable for profits or "damages" flowing from a transaction to which it was not a party.[13]

C. The Years-Long Bans Supreme Court Has Imposed on the Individual Appellants Will Inflict Serious and Irreparable Harm

Supreme Court has granted the extraordinary and punitive remedies of, *inter alia*, (1) a three-year ban on President Trump "serving as an officer or director of any New York corporation or other legal entity in New York," and (2) a two-year bar on the same activities for Donald Trump, Jr. and Eric Trump. Robert Aff., Ex. R at 91-92; see also Robert Aff., Ex. P ¶¶

[13] Supreme Court also erred in conflating distributions from the proceeds of a sale with actual profits from the transaction. For example, Supreme Court held that "Donald Trump, the Donald J. Trump Revocable Trust, the Trump Organization, Inc., Trump Organization LLC, and the Trump Old Post Office LLC are jointly and severally liable, in the amount of $126,828,600, for the ill-gotten profits Donald Trump netted from the sale of the Old Post Office." Robert Aff., Ex. R at 83. However, even the testimony and exhibit the Attorney General cited for that proposition make clear that that figure was the amount distributed to President Trump and his children after repaying the mortgage and other associated costs and does not represent the actual profit from the transaction. Robert Aff., Ex. P at ¶221, citing NYSCEF Doc. No. 1637 at 3626:1-24 and PX-1373.

400-401.[14] This effectively deprives Appellants of engaging in lawful business activity and forces them to operate without leadership until this appeal is resolved. However, the Appellant businesses simply cannot operate themselves. Directing them to do so, especially in a case without any complainants, victims, or harm, will inevitably result in irreparable injury. Given the length of the appellate process, this Court will be unable to vindicate Appellants' rights with respect to those bans if relief is not stayed now. A stay is necessary to preserve the Court's appellate jurisdiction on this issue. Tax Equity Now NY LLC, 173 A.D.3d at 465.

The relief Supreme Court has imposed, in the context of a civil case, flies in the face of bedrock notions of due process and, as before, far exceeds statutory authorization. Executive Law § 63(12) permits a court to enter an order "enjoining the continuance" of fraudulent or illegal business activity but does not authorize a blanket prohibition on otherwise lawful activity (*i.e.*, the normal operation and management of the Appellant businesses). This case has always centered around a few discrete loan and insurance transactions. Indeed, the "disgorgement" award is tied directly to specific transactions. There was never any allegation nor any evidence at trial that the mere conduct of Appellants' business operations posed some risk of harm. As noted, although there were no complainants, no victims, and no evidence of any actual harm, the "unlawful" conduct consisted of the alleged preparation and submission of falsely inflated financial statements to certain sophisticated counterparties. As such, any statutory relief is and must be limited to enjoining that conduct and the adoption of ancillary measures (*i.e.*, monitor oversight) to prevent future occurrences of that conduct.

[14] Indeed, the Judgment, as written, appears to prevent an individual Appellant from even executing the requisite documentation to appoint his successor or change signatories on company accounts.

D. The Relief Appellants Seek to Stay is Purely Punitive

1. No Harm Inheres to the Attorney General if the Relief is Stayed

Not one witness testified that Appellants' financial statements were fraudulent, not one counterparty or market participant complained, and not one victim was ever identified. Even so, the Attorney General has framed the relief she sought as necessary to the welfare of the People of New York, arguing that it was necessary to "protect existing and future counterparties, including lenders, insurance companies, and tax authorities," as well as "potential counterparties and the marketplace." Robert Aff., Ex. P ¶¶ 394, 397. But there is no record of any harm or injury to anyone, actual or theoretical. Moreover, the record evidence demonstrates that the banks did their own extensive diligence prior to entering into the subject transactions and relied on their own independent valuations. Robert Aff., Ex. Q, Proposed Findings of Fact ("FF") ¶¶ 18-150; id., Proposed Conclusions of Law ("CL") ¶¶ 31-68.

After a three-year investigation, a year-long action with dozens of motions and hundreds of pages of briefing, and a three-month spectacle of a trial, the record evidence demonstrates that there was no harm to anyone, particularly not the sophisticated lenders involved in the relevant transactions. Supreme Court has embraced and endorsed the Attorney General's misguided crusade against the Trump family under the guise of "protect[ing] the integrity of the financial marketplace" and "keep[ing] [Appellants] honest." Robert Aff., Ex. R at 87, 89. Its imposition of injunctive relief is based on nothing more than a purely theoretical "harm that false statements inflict on the marketplace." Id. at 4. There was no evidence whatsoever that the "marketplace" was harmed in any way. Thus, a stay pending appeal cannot possibly harm the Attorney General, and the Monitor's continued oversight eliminates any purported (and unjust) concerns regarding counterparties or some amorphous marketplace.

2. Appellants Have Been Selectively Prosecuted and Punished for Mounting a Defense

The Attorney General, and now Supreme Court, have unquestionably targeted President Trump, the frontrunning candidate for the 2024 presidency. Amid a developing ascent towards the White House, Supreme Court seeks to punish President Trump for his success and his children for mere affiliation. See Robert Aff., Ex. R at 79 (finding that Appellants Donald Trump, Jr. and Eric Trump "intentionally falsified business records" because, *inter alia*, they "served as co-executives" of the Trump Organization from January 2017 onwards).

Despite a disclaimer to the contrary, Supreme Court has plainly appointed itself a judge of morality instead of one of facts and law, justifying the imposition of injunctive relief by concluding that Appellants' "complete lack of contrition and remorse borders on pathological," deeming Appellants' "sin[s]" "venial" rather than "mortal," and rebuking Appellants for failing to "admit[] the error of their ways." Id. at 87. A *mea culpa* would not absolve a party from civil liability, and Supreme Court has not been endowed with divine providence. Appellants were absolutely within their rights to vociferously deny the Attorney General's claims. They cannot be penalized because they mounted a defense, appeared insufficiently contrite, or exercised their right to contest the claims and proceed to trial. Moreover, the burden was on the Attorney General to prove her case, not on Appellants to display adequate contrition, and on Supreme Court to apply the facts to the law rather than invoke moral authority to punish Appellants for their "sin[s]." Id. Supreme Court's rambling screed cannot undergird a grant of absurd, vindictive, and grossly disproportionate relief.

A state's "selective enforcement" of its laws is unconstitutional when a defendant has been disparately punished for his First Amendment activity[15] and/or when state officers proceed against the defendant out of "animus." See Frederick Douglass Found., Inc. v. District of Columbia, 82 F.4th 1122, 1146-1147 (D.C. Cir. 2023). In the former case, selective enforcement violates the First Amendment's free speech clause; in the latter, it violates the Fifth Amendment's equal protection clause. See id. (upholding a "free speech selective enforcement claim" and stating that an "equal protection selective enforcement claim" lies where government's "enforcement decisions were rooted in 'animus'" against a viewpoint).

There can be no doubt that "selective enforcement" has occurred here. The State's use of Executive Law § 63(12) is utterly different from its past uses of that statute. All prior § 63(12) cases have dealt with fraudulent activity threatening harm, typically widespread harm, to consumers or the public.[16] Here, without any precedent, the Attorney General targeted private commercial transactions between sophisticated corporate titans, prosecuting Appellants without any showing that their alleged misconduct had harmed any victims and where the evidence

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[15] The First Amendment precludes application of Executive Law § 63(12) to punish inaccurate or incorrect statements without requiring a showing of prior culpability or subsequent actual harm to specific persons. By targeting inaccuracy, regardless of whether it is material, the Executive Law is dangerously unconstitutional and its overbreadth chills speech. In U.S. v. Alvarez, the Supreme Court emphatically declared that the Constitution "rejects the notion that false speech should be in a general category that is presumptively unprotected." 567 U.S. 709, 722 (2012). A freedom to be wrong is an essential part of the freedom of speech, and a law punishing inaccuracy, including immaterial error, is patently unconstitutional. See id.

[16] See, e.g., State v. Gen. Motors Corp., 547 F.Supp. 703 (S.D.N.Y. 1982) (affecting a vast number of consumers in the automobile industry); People v. Coventry First LLC, 52 A.D.3d 345 (1st Dep't 2008) (schemes used to deprive policy holders of a fair marketplace in which to sell); State v. Amazon.com, Inc., 550 F. Supp. 3d 122 (S.D.N.Y. 2021) (alleging that Amazon failed to protect *thousands* of workers through inadequate disinfection and contract-tracing protocols); People v. General Elec. Co., 302 A.D.2d 314 (1st Dep't 2003) (widespread misrepresentations regarding consumer dishwashers); Matter of People v. Orbitual Publ. Group, Inc., 169 A.D.3d 564 (1st Dep't 2019) (materially misleading consumer solicitations for newspaper and magazine subscriptions); Matter of People v. Applied Card Sys., Inc., 27 A.D.3d 104 (3d Dept 2005) (misleading consumer credit card offers).

established the actual participants were fully satisfied with the transactions. Moreover, the staggering $464 million penalty imposed here is unique in the history of § 63(12) cases.

The Attorney General's public statements further demonstrate her animus against President Trump and her deliberate targeting of President Trump. In her campaign for Attorney General in 2018, James called then-President Trump "*an illegitimate president*."[17] She has repeatedly made plain that she considers him a political danger.[18] She campaigned on the promise that she would "get Trump"—prosecute him—if elected Attorney General,[19] and she has made good on that promise. Accordingly, the unprecedented use of § 63(12) and the unprecedented $464 million fine imposed are unconstitutional acts of selective enforcement.

3. This Court Has Previously Stayed Supreme Court's Overreach and Should Do So Again Here

Supreme Court's overreach, and the necessity of this Court's intervention to stay enforcement of the expansive and wholly improper penalties Supreme Court has awarded, has precedent in this action. In its September 26, 2023, decision and order on summary judgment (the "MSJ Decision"), Supreme Court found that Appellants were liable under Executive Law §

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[17] CNN, *See what New York AG said while running for office about charging Trump* (Oct. 3, 2023), available at https://www.cnn.com/videos/politics/2023/10/03/letitia-james-prosecute-trump-2018-comments-running-office-cnntm-vpx.cnn.

[18] See, e.g., NowThis Impact, *Why Letitia James Wants to Take on Trump as NY's Attorney General – Op-Ed*, YouTube (Sept. 28, 2018), available at https://www.youtube.com/watch?v=D1yj0NKSsuU ("I'm running for attorney general because I will never be afraid to challenge this illegitimate president"); Erin Durkin, *Tish James just sued Trump – but they've been at it for years*, Politico (Sept. 21, 2022), available at https://www.politico.com/news/2022/09/21/james-lawsuit-trump-longstanding-battle-00058128; Max Matza, *Letitia James and Donald Trump's history of clashes*, BBC News (Sept. 27, 2023), available at https://www.bbc.com/news/world-us-canada-63000691.

[19] See, e.g., Allan Smith, *Incoming New York attorney general plans wide-ranging investigations of Trump and family*, NBC News (Dec. 12, 2018), available at https://www.nbcnews.com/politics/donald-trump/incoming-new-york-attorney-general-plans-wide-ranging-investigations-trump-n946706; Jeffery C. Mays, *N.Y.'s New Attorney General Is Targeting Trump. Will Judges See a 'Political Vendetta?'*, New York Times (Dec. 31, 2018), available at https://www.nytimes.com/2018/12/31/nyregion/tish-james-attorney-general-trump.html.

63(12) for the statements made in the SFCs, cancelled the entity Appellants' GBL § 130 certificates, as well as certificates for companies affiliated with any Appellants, and directed that the parties recommend an independent receiver to manage the dissolution of the cancelled LLCs.

Appellants moved for a stay of such relief inasmuch as it was granted in defiance of the law of the case, unauthorized by Executive Law § 63(12), awarded in the absence of actual harm, and, in the case of dissolution, granted *sua sponte* by Supreme Court. This Court agreed a stay of the award was warranted. Now, in tacit recognition of its own error, the Judgment issued by Supreme Court vacates the relief this Court had stayed, citing "serious economic concerns" while defiantly maintaining it did not "order the corporate cancellations cavalierly" and was "expressly allow[ed]" to do so. Robert Aff., Ex. R at 89 n.61.

However, the Judgment fails to cure, and, in fact, compounds, the other myriad errors of the MSJ Decision. Supreme Court's findings of liability on the second through seventh causes of action are predicated in part upon the MSJ Decision's premature and erroneous factual findings.

POINT III

DENYING A STAY IN THIS CASE WOULD VIOLATE DUE PROCESS

As the United States Court of Appeals for the Second Circuit has held, a state's "inflexible requirement [denying] a stay of execution unless a supersedeas bond in the full amount of the judgment is posted can in some circumstances . . . amount[ ] to a confiscation of the judgment debtor's property without due process." Texaco Inc. v. Pennzoil, Co., 784 F.2d 1133, 1154 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1 (1987). This is such a case.

As set forth above, by blocking Appellants from borrowing and otherwise conducting their business, Supreme Court's order would make it impossible for Appellants to post a bond in the full amount of the Judgment. Moreover, the Attorney General has publicly stated her intent

to immediately seize Appellants' real estate assets to satisfy the Judgment. Thus, unless a stay issues, Appellants will suffer "a confiscation of [their] property without due process." Id. At the same time, denying a stay in this case in the absence of a full undertaking will impose an unconstitutional condition on Appellants' right of appeal.

POINT IV

APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL

A. Supreme Court Entered Judgment on Time-Barred Claims

This Court's June 27, 2023, decision alone eliminates seventy-five percent of the "disgorgement" principal and interest award, reducing the total to approximately $113 million and wiping out some approximately $350 million of the approximately $465 million award. See Robert Aff., Ex. X; id., Ex. Q, FF ¶¶ 1-17; id., CL ¶¶ 1-6. Supreme Court has willfully and repeatedly refused to adhere to the clear mandate of this Court, and the resulting chaos and overreach has rippled throughout these proceedings.[20] There was and is simply no basis to award any amounts relative to transactions that were completed well prior to July 13, 2014.

This Court's June 27, 2023, decision "unanimously modified, on the law" Justice Engoron's January 9, 2023, order denying Appellants' and co-defendant Ivanka Trump's motions "***to dismiss, as time-barred,***" claims that accrued prior to July 2014 for Appellants subject to the August 2021 tolling agreement and prior to February 2016 for Appellants not

[20] This Court's decision is law of the case ("LOTC"). LOTC "bind[s] a trial court (and subsequent appellate courts of coordinate jurisdiction) to follow the mandate of an appellate court . . ." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d 40, 48 (1st Dep't 2021); see also, e.g., Applehole v. Wyeth Ayerst Labs., 213 A.D.3d 611, 611 (1st Dep't 2023); Magen David of Union Square v. 3 West 16th Street, LLC, 132 A.D.3d 503, 504 (1st Dep't 2015); People v. Codina, 110 A.D.3d 401, 406 (1st Dep't 2013); Kenney v. City of New York, 74 A.D.3d 630, 630-631 (1st Dep't 2010). "[N]o discretion [is] involved; *the lower court must apply the rule laid down by the appellate court*." Matter of Part 60 RMBS Put-Back Litig., 195 A.D.3d at 48, quoting People v. Evans, 94 N.Y.2d 499, 503 (2000) (quotation marks omitted) (emphasis added).

subject to the tolling agreement. Robert Aff., Ex. I at 1 (emphasis added). This Court's unanimous ruling dismissed as time-barred seven out of ten loan transactions at issue and explicitly rejected application of the continuing wrong doctrine to the facts of this case. Id., Ex. I. Yet, undeterred by the patent absurdity of its position or any modicum of respect for the appellate jurisdiction of this Court, Supreme Court contorted the continuing wrong doctrine and entered judgment on time-barred claims.

The Attorney General's theory until this Court's decision on the motion to dismiss was that Appellants' improper procurement of the loans themselves constituted actionable wrongs under Executive Law § 63(12). Id., Ex. B ¶ 3 (alleging that Appellants submitted purportedly false and misleading financial statements "*to induce banks to lend money to the Trump Organization on more favorable terms than would otherwise have been available to the company*"). Under this theory, the Attorney General argued that subsequent, post-closing certifications simply constituted continuing wrongs extending the applicable limitations period. Supreme Court likewise invoked the continuing wrong doctrine to explain why it believed the Attorney General's claims could be sustained. Id., Ex. H at 5-6.

This Court disagreed, unanimously rejecting the argument that annual certifications themselves could support the timeliness of the Attorney General's claims under the continuing wrong doctrine. Id., Ex. I at 3-4. The Court thus concluded that the Attorney General's claims are time-barred insofar as they are premised on transactions completed outside of the applicable statutory periods: "*The continuing wrong doctrine does not delay or extend these periods* (*see CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 19-20 [1st Dept 2021]; *Henry v Bank of Am.*, 147 AD3d 599, 601-602 [1st Dept 2017])." Id. (emphasis added).

For the avoidance of any doubt as to the intended effect of this paragraph, the Court defined the accrual date for each claim:

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

Id. at 3 (emphasis added).[21]

Nonetheless, in the MSJ Decision, Supreme Court cast aside this binding decision and proclaimed that (1) *this Court had "affirmed" its "dismissal decision,"* (Robert Aff., Ex. L at 4, 8, 11 [emphasis added]), (2) this Court *did not dismiss "any causes of action*," (id. at 3 [emphasis added]), and (3) "any SFC that was submitted after July 13, 2014, falls within the applicable statute of limitations" because each is "a distinct fraudulent act[.]" (id. at 18). This flawed rationale flatly ignores this Court's continuing wrong analysis and demonstrates Supreme Court is willfully ignoring this Court's decision. Supreme Court held in a footnote to the MSJ Decision that People v. Greenberg authorized it to consider time-barred evidence "in evaluating OAG's request for permanent injunctive relief, wherein the Court must determine whether there has been a 'showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances.'" Robert Aff, Ex. L at 22 n.14, quoting 27 N.Y.3d 490, 496-497 (2016).

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[21] The "completion" of a loan transaction is the date when the transaction is actually entered into, and a benefit is conferred, for purposes of the Attorney General's fraud claims. In Boesky v. Levine, this Court found that a cause of action for fraud accrued "when plaintiffs ***entered into*** the allegedly fraudulent transactions." 193 A.D.3d 403, 405 (1st Dept 2021). In Boesky, notwithstanding that the plaintiffs alleged the defendants continued to provide flawed and erroneous advice through 2016, this Court determined that the claim for fraud accrued between 2002 and 2004, when the plaintiffs actually invested in the tax shelters. Id. In Rogal v. Wechsler, this Court similarly held: "The cause of action for fraud accrues and the Statute of Limitations commences to run at the time of the execution of the contract." 135 A.D.2d 384, 385 (1st Dep't 1987). The Court thus found that Supreme Court "erroneously fixed the accrual" of the plaintiffs' fraud claim on the date "when certain misrepresentations allegedly were made." Id. In other words, Rogal expressly forecloses the argument that a fraud claim accrues whenever a misrepresentation is made, no matter its effect.

However, Greenberg, which summarizes the standard for permanent injunctive relief under the Martin Act and Executive Law § 63(12), provides no support for this proposition. See 27 N.Y.3d 490.

In the Judgment, Supreme Court compounds its error, resorting to its refrain that "statutes of limitation bar claims, not evidence" to impermissibly impose hundreds of millions of dollars in draconian penalties based on time-barred claims, without any citation in support. Robert Aff., Ex. R at 4 n.1. A time-barred claim that a defendant cannot be held liable for cannot provide a basis for exorbitant damages and permanent injunctive relief. Supreme Court thus imposes liability on claims it admits are time-barred and, in doing so, nullifies the entire concept of a statutory period.[22]

B. The Disgorgement Award is an Unconstitutional Excessive Fine and Is Impermissibly Punitive

Both the Eighth Amendment of the U.S. Constitution and the Bill of Rights of the New York Constitution prohibit "excessive fines." U.S. CONST. Amend. VIII; N.Y. CONST. Art. I, § 5. A money judgment payable to the State is a "fine" within the meaning of the Excessive Fines Clause if the payment is a "penalty" or "in part . . . punitive" in purpose. County of Nassau v. Canavan, 1 N.Y.3d 134, 139-140 (2003), quoting Austin v. United States, 509 U.S. 602, 609-610 (1993). A fine violates the Excessive Fines Clause if it is "grossly disproportional to the gravity of [the defendant's] offense." United States v. Bajakajian, 524 U.S. 321, 324 (1998); Canavan, 1

[22] For example, the Old Post Office contract was awarded and the Ferry Point license contract was signed in 2012, two years ***before*** the July 13, 2014 statute of limitations cut-off. Moreover, the relevant decisions did not even involve the SFCs challenged by the Attorney General. Robert Aff., Ex. Q ¶¶ 3, 6, 131-150, 585-602. Supreme Court nonetheless awarded disgorgement of the profits of both the Old Post Office sale and the Ferry Point license in the total amount of nearly $220 million.

N.Y.3d at 140. Appellate courts "must review the proportionality determination '*de novo*.'" Cooper Indus. v. Leatherman Tool Group, Inc., 532 U.S. 424, 435 (2001). In addition, the Due Process Clause similarly prohibits "grossly excessive" damages awards. BMW of North Am. Inc., v. Gore, 517 U.S. 559, 568 (1996).

Here, the entirety of Supreme Court's $450 million "disgorgement" order is excessive and unconstitutional. Because there has been no showing that Appellants reaped a single penny in any kind of gain (much less unlawful gain) as a result of their alleged misrepresentations, the $450 million "disgorgement" order is in fact a grossly excessive penalty violating the Excessive Fines Clause and Due Process Clause.

It is well-established under federal law that "disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum [] constitute[s] a penalty assessment." SEC v. Blatt, 583 F.2d 1325, 1335 (5th Cir. 1978); see also, e.g., SEC v. ETS Payphones, Inc., 408 F.3d 727, 735 (11th Cir. 2005); SEC v. MacDonald, 699 F.2d 47, 54 (1st Cir. 1983); Hateley v. SEC, 8 F.3d 653, 656 (9th Cir. 1993) (reversing so-called "disgorgement" exceeding actual gain from fraud); Litton Industries, Inc. v. Lehman Bros. Kuhn Loeb, Inc., 734 F. Supp. 1071, 1076 (S.D.N.Y. 1990) ("Once ill-gotten profits have been disgorged to the SEC, further disgorgement . . . is clearly punitive in its effect and would constitute an impermissible penalty assessment.").

New York law is no different. Disgorgement is an equitable remedy intended to deprive defendants of their "ill-gotten gains" and requires a causal link between the alleged gains and the purported wrongdoing. See J.P. Morgan Sec. Inc. v. Vigilant Ins. Co., 91 A.D.3d 226, 230-233 (1st Dep't 2011), rev'd on other grounds, 21 N.Y.3d 324 (2013); see also People v. Appel, 258 A.D.2d 957, 958 (4th Dep't 1999) (finding that despite the fact that the Attorney General had

met his initial burden of establishing violations of Executive Law § 63(12) and General Business Law § 349, Supreme Court abused its discretion in ordering restitution of the full amount of revenue fees without proof of "what percentage of those revenues is attributable to respondents' deception"). The onus is on the Attorney General to prove that Appellants committed wrongdoing and what, if any, gains can be attributed to that wrongdoing.

Although New York courts have awarded exemplary damages in cases involving high degrees of moral culpability, the Attorney General is "not entitled to punitive damages or treble damages, or both, from respondent," as "Executive Law Section 63(12) does not provide for either of these extraordinary remedies and petitioner is limited to obtaining restitution or compensatory damages" alongside an injunction. See State v. Solil Mgt. Corp., 128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985); see also State v. Hotel Waldorf-Astoria Corp., 67 Misc. 2d 90, 92 (Sup. Ct. N.Y. Cty. 1971). Any award of disgorgement in excess of actual damages caused by Appellants' alleged misconduct is impermissibly punitive. See People v. Direct Revenue, LLC, 19 Misc. 3d 1124(A) at *8 (Sup. Ct. N.Y. Cty. 2008) (finding disgorgement only available "in an amount related to the actual damages caused by the misconduct," since "[d]isgorgement of respondents' profits to the state would effectively constitute punitive damages not authorized by statute" [citations omitted]).

There was never any showing that Appellants profited in any way from any alleged wrongdoing. Supreme Court determined that under Executive Law § 63(12), the State did not have to prove reliance by the banks. See Robert Aff., Ex. R at 2 (distinguishing Executive Law § 63(12) from "common law fraud," which requires proof of reliance and materiality); id. at 75 ("Defendants have argued vociferously throughout the trial that . . . none of the banks or insurance companies relied on any of the alleged misrepresentations. . . . Defendants' argument

is to no avail, as none of plaintiff's causes of action requires that it demonstrate reliance."). But if the banks did not rely on Appellants' (alleged) misrepresentations, then Appellants did not (and could not) profit from them as those alleged misrepresentations did not (and could not) have led to the banks' decision to grant the loans or their determination of the interest rate charged. Indeed, there was no showing that Appellants would not have obtained the loans but for the (alleged) misrepresentations, and there was no showing that Appellants would have received a higher interest rate but for the (alleged) misrepresentations.[23] Thus, the entire $464 million sanction ordered by Supreme Court was not disgorgement at all, but a naked "penalty assessment" dressed up in the clothing of disgorgement. SEC v. Blatt, 583 F.2d at 1335; see also SEC v. ETS Payphones, Inc., 408 F.3d at 735 (rejecting $300 million disgorgement where record did not "establish[] that amount" of ill-gotten gains and instead ordering disgorgement of only $21 million because defendant was shown to have actually received that amount from the fraud); Hately v. SEC, 8 F.3d at 656 (striking so-called disgorgement of monies not actually gained by defendants as result of alleged fraud).

In Gore, the U.S. Supreme Court held that in determining whether a damage award is grossly excessive, courts are to consider: (1) "the degree of reprehensibility of the [conduct];" (2) the "disparity between the harm or potential harm suffered by [plaintiff] and [the] punitive damages award;" and (3) "the difference between this remedy and the civil penalties authorized

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[23] Supreme Court based approximately $170 million (plus interest) of its $464 million order on a calculation of the higher interest rate Appellants supposedly would have been charged had the banks not relied on the personal guaranty document signed by President Trump containing the (alleged) property overvaluations. Robert Aff., Ex. R at 46-47. But no witness ever testified that the banks actually relied on Appellants' property valuations, no document evidenced such reliance, and Supreme Court never actually found as a factual matter that any bank relied on those valuations (because Supreme Court ruled that reliance was not an element of the offense). Thus, there was, in fact, never any showing below that Appellants' alleged misrepresentations actually caused any bank to charge a lower interest rate, an essential prerequisite to sustain any disgorgement judgment.

or imposed in comparable cases." 517 U.S. at 574-575.[24] All three factors demonstrate the so-called "disgorgement" award ordered here is grossly disproportional.

1. No Harm Has Inhered to Any Party

There was no harm to anyone, the parties to the transactions, the public, or the "marketplace." Supreme Court itself concluded that "Donald Trump is not Bernard Madoff," nor did Appellants "commit murder or arson" or "rob a bank at gunpoint." Robert Aff., Ex. A at 87. The transactions at issue were complex, bilateral business transactions between Appellants and their banks, none of which implicated the public market in any way. Supreme Court's half-hearted attempt to rebut this contention is that protecting the "integrity of the financial marketplace" necessarily protects "the public as a whole." Id. at 87. The arms-length transactions in this case do not involve the type of deceptive and fraudulent conduct that § 63(12) was enacted to prevent. Compare Union Square Supply Inc. v. De Blasio, 572 F. Supp. 3d 15, 25 (S.D.N.Y. 2021) ("Union Square Supply's conduct fell squarely into the heartland of what the Rule was enacted to prevent – price gouging with respect to products necessary to protect health during the COVID-19 pandemic."). That truism is inapplicable here. As the Attorney General has conceded, Appellants already "repa[id] hundreds of millions of dollars in debt early," which effectively amounted to "partial disgorgement." See Robert Aff., Ex. B at ¶ 21. The award bears no relationship to any actual loss sustained by the People of this State. See Prince v. City of New York, 108 A.D.3d 114, 120 (1st Dep't 2013); Bajakajian, 524 U.S. at 329. Since an award

[24] See also Canavan, 1 N.Y.3d at 140 (courts are to consider (1) the "seriousness" of the (alleged) offense; (2) the maximum punishment that could have been imposed under statutes prohibiting the conduct at issue; and (3) the "severity of the harm" caused by the defendant's conduct).

of disgorgement must be tied to actual, wrongfully obtained benefits and Appellants already repaid their outstanding debt, Appellants do not possess any "ill-gotten gains" to be disgorged.

2. The Disgorgement Award Is Disproportionate to Even the Alleged Harm and Improperly Compounds Purported Gains

The $168 million interest-rate differential testified to by Michiel McCarty, the Attorney General's purported disgorgement expert, is grossly disproportionate to any alleged harm suffered. Robert Aff., Ex. P ¶¶ 407-42; id., Ex. R at 46-48. No bank witness testified that any approvals, terms, or pricing would have been altered by the alleged misstatements. The absence of such testimony is fatal to any claim for disgorgement, as Mr. McCarty cannot simply presume harm or loss without a factual predicate. Id., Ex. Q, CL ¶¶ 171-194. Rather, testimony made clear that the banks did their own diligence, that they viewed President Trump as a premier client, and based on the bank's own analysis, he had one of the best balance sheets the bank had ever seen. Id., FF ¶¶ 18-150, citing DX-312; id., CL ¶¶ 31-68. For example, Nicholas Haigh, the head of risk management for Deutsche Bank's Private Wealth Management business, confirmed at trial that all decisions were made based on the bank's own analysis. Id., FF ¶¶ 31-74, citing PX-290; PX-291; PX-293; PX-294; PX-298; PX-300; PX302; PX-2960; PX-3137; id., Ex. R at 8-11. Even Supreme Court's lengthy recitation of Mr. Haigh's testimony referenced only the *post hoc* SFCs as a metric for Deutsche Bank to "try and ensure the client was in compliance" with certain loan covenants. Robert Aff., Ex. R at 11.

Supreme Court sidesteps this issue in contending that "materiality under [Executive Law § 63(12)] is judged not by reference to reliance by or materiality to a particular victim" and impermissibly relies on its own finding that "[i]n its summary judgment decision, this Court already found that the SFCs from 2014-2021 were false by material amounts as a matter of law." Id. at 76. This recitation of the MSJ Decision misrepresents its actual holding that "unlike a

standalone cause of action under Executive Law § 63(12), the second through seventh causes of action ***require*** demonstrating some component of intent and materiality." Id., Ex. L at 20 (emphasis added). Supreme Court erroneously recites that materiality is a "great red herring of this case" and that a statement is material if Supreme Court subjectively believes it to be so because "a person can always shout that 'it's immaterial.'" Id., Ex. R at 77. Supreme Court then "confidently declares" its own standard that "any number that is at least 10% off *could* be deemed material, and any number that is at least 50% off *would likely* be deemed material." Id. (emphasis added). Indeed, the Attorney General conspicuously failed to elicit from any witness, including any of the actual bankers involved in the loan transactions, that based on current knowledge the bank would have altered any of the loan terms or pricing. Robert Aff., Ex. Q, FF ¶¶ 18-150. Supreme Court simply ignores this fatal defect and holds, contrary to established law, that materiality under Executive Law § 63(12) does not require reliance, and, even if it did, it is irrelevant because the loans "began life based on numbers in an SFC, which the lenders interpreted in their own unique way." Id., Ex. R. at 75. This absurd construct fully ignores the bank's own analysis and the obvious point that no reliance means no impact (actual or theoretical) on the loan terms or pricing.

Rather than address the impropriety of Mr. McCarty's testimony, the Court analyzed only the mechanics of his calculations, *i.e.*, whether the commercial real-estate group's proposals were the correct comparative metric for the interest-rate differential. Id. at 46-48, 82-84. But as McCarty himself testified, this ***presumes*** the loan terms and pricing would have been altered and ***presumes*** the bank(s) lost money. The only "evidence" that any bank lost money came from Supreme Court's own conclusion. Therefore, Supreme Court's conclusion that the interest rate savings were "the most reasonable approximation" of ill-gotten gains is nothing more than its

own *ipse dixit*. Id. at 82. Likewise, Supreme Court's conclusion that Old Post Office profits must be disgorged because, "[a]s with so many Trump real estate deals, the Old Post Office contract was obtained through the use of false SFCs" is unavailing. Id. at 83. In awarding more than $136 million—without interest—Supreme Court credits the Attorney General's factually incorrect arguments that (1) the interest-rate savings allowed them to invest in the Old Post Office, (2) President Trump would have been in a negative cash position without the interest-rate savings from 2017 to 2020, and (3) the proceeds of the Old Post Office loan were necessary to constructing and renovating the hotel. Id.[25]

3. The Award is Unprecedented

A disgorgement penalty of hundreds of millions of dollars is far beyond that awarded in other cases. While binding caselaw in this state addresses the applicability, rather than the magnitude, of a disgorgement penalty, the Southern District of New York awarded $64.6 million in disgorgement against Martin Shkreli in 2022, a fraction of the award here. FTC v. Shkreli, 581 F. Supp. 3d 579, 591 (S.D.N.Y. 2022). Consequently, any argument that Appellants should have to pay amounts over and above the alleged benefits is unavailing. New York courts have narrowly construed punitive damages and will only award such relief in extraordinary circumstances. The principal award the Attorney General sought and received here, which has somehow inflated over the course of this prosecution from $250 million to $370 million, is punitive on its face.

Worse even, Supreme Court has awarded nearly $100 million in "pre-judgment interest," some of which runs from as early as March 4, 2019, *i.e.*, when the Attorney General initiated her

[25] Supreme Court likewise concludes that President Trump "maintain[ed] the license agreement for Ferry Point [] based on fraudulent financials." Robert Aff., Ex. R at 84.

investigation. See Robert Aff., Ex. A. In doing so, Supreme Court relies on a Second Department case for the proposition that "a defendant's 'corrupt intent or desire for personal profit' is a factor to be weighed in the court's exercise of discretion pursuant to CPLR § 5001." Id., Ex. R at 84, citing Hynes v. Iadarola, 221 A.D.2d 131, 135 (2d Dep't 1996).[26] CPLR § 5001 provides that in an equitable action, pre-judgment interest "shall be computed . . . in the court's discretion" from "the earliest ascertainable date the cause of action existed." In light of "public policy considerations," Supreme Court awarded pre-judgment interest from the date the Attorney General commenced her investigation for the interest-rate differential, the dates of the sales for the OPO and Ferry Point profits, and the date of Weisselberg's separation agreement for his severance payments. Robert Aff., Ex. R at 85. Even assuming, *arguendo*, that this is an equitable action, Appellants have found no case where pre-judgment interest—let alone of this magnitude—has been awarded in an action brought pursuant to Executive Law § 63(12).[27] The sheer size of the penalty and improper, entirely unsupported allusions to corrupt intent and nefarious desire for personal profit make plain that the award, both with and without the pre-judgment interest, is grossly disproportionate and punitive.

Indeed, Supreme Court has trampled Appellants' rights to satisfy a political vendetta. As one national legal observer noted:

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[26] In Hynes, the Second Department reversed Supreme Court's denial of pre-judgment interest on an award in a civil forfeiture action pursuant to CPLR article 13-A regarding the operation of gambling facilities. Article 13-A expressly permits the recovery of "property which constitutes the proceeds of a crime" or "a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime" after a felony conviction. 221 A.D.2d at 134.

[27] The citation to Executive Law § 63(12) in Schneiderman ex rel. People v. Lower Esopus River Watch, Inc. appears to be a typographical error. 39 Misc.3d 1241(A) (Sup. Ct. Ulster Cty. 2013). The two other courts in this state that expressly contemplated pre-judgment interest on an Executive Law § 63(12) claim declined to award it. People v. Allen, 2021 N.Y. Misc. LEXIS 468, at *24 (Sup. Ct. N.Y. Cty. Feb. 4, 2021); State by Abrams v. Lodato, 156 Misc. 2d 440, 444 (Sup. Ct. Dutchess Cty. 1993).

> I stand by my position that New York State has violated Donald Trump's First Amendment freedom of expression rights; his rights under the due process, equal protection, excessive fines, and Bill of Attainder Clauses; and that he has been stripped of the liberty of occupation that is necessary to protect his 'Life, Liberty, and the pursuit of Happiness.' Because New York State's civil fraud verdict interferes with Former President Donald Trump's right to run for President, the U.S. Supreme Court should hear this case as fast as possible.[28]

C. Executive Law § 63(12) Does Not Authorize the Punitive and Overbroad Relief Imposed

Executive Law § 63(12) provides, in relevant part:

> Whenever 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*, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order *enjoining the continuance of such business activity or of any fraudulent or illegal acts,* directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of … section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.

Executive Law § 63(12) does not itself expressly authorize disgorgement.[29] Nor does Executive Law § 63(12) permit purely punitive relief against a business entity whose principal business activities are legal and appropriate simply because certain discrete transactions are determined to

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[28] Steven Calabresi, *Former President Donald Trump's New York State Civil Fraud Verdict*, The Volokh Conspiracy (Feb. 23, 2024), available at: https://reason.com/volokh/2024/02/23/former-president-donald-trumps-new-york-state-civil-fraud-verdict/.

[29] In State by Abrams v. Solil Mgt. Corp., the court concluded that the plaintiff was "not entitled to punitive damages or treble damages, or both…Executive Law § 63 (12) does not provide for either of these extraordinary remedies and [Plaintiff] is limited to obtaining restitution or compensatory damages." 128 Misc. 2d 767, 773 (Sup. Ct. N.Y. Cty. 1985), aff'd, 114 A.D.2d 1057 (1st Dep't 1985) (internal citations omitted); see also State by Lefkowitz v. Hotel Waldorf-Astoria Corp., 67 Misc. 2d 90, 92 (Sup. Ct. N.Y. Cty. 1971) (denying a demand for treble damages because "[t]he Executive Law provides for restitution only"). Likewise, the court in People ex rel. Spitzer v. Direct Revenue, LLC, in a special proceeding brought pursuant to Executive Law § 63(12), General Business Law §§ 349 and 350, Penal Law § 156.20, and New York common law, held that the state was "strictly limited to recovery as specifically authorized by statute." 19 Misc. 3d 1124(A) at *7-8 (Sup. Ct. N.Y. Cty. 2008). To the extent disgorgement was even available, "it may only be granted in an amount related to the actual damages caused by the misconduct," since "[d]isgorgement of respondents' profits to the state would effectively constitute punitive damages not authorized by statute." Id. at *8 (internal citations omitted).

be "fraudulent or illegal." Executive Law § 63(12) was designed to address discrete conduct that is demonstrably and objectively misleading, false, or fraudulent and harmful to the public. See, e.g., People by James v. JUUL Labs, Inc., 212 A.D.3d 414 (1st Dep't 2023); People by James v. Image Plastic Surgery, LLC, 210 A.D.3d 444 (1st Dep't 2022).

In every case where a court has granted a permanent injunction pursuant to Executive Law § 63(12), courts have limited the relief to only enjoining the specific activity from which the fraud arose. See, e.g., People by James v. N. Leasing Sys., Inc., 70 Misc. 3d 256, 279-280 (Sup. Ct. N.Y. Cty. 2020), aff'd, 193 A.D.3d 67 (1st Dep't 2021); Matter of People v. Imported Quality Guard Dogs, Inc., 88 A.D.3d 800, 801-802 (2d Dep't 2011), Matter of People v. Veleanu, 89 A.D.3d 950, 950-951 (2d Dep't 2011), State v. Fashion Place Assocs., 224 A.D.2d 280, 280-281 (1st Dep't 1996). Likewise, in all such cases, the Attorney General alleged the defendants engaged in fraudulent conduct directed at the public that resulted in serious economic and other harm to consumers.

Here, there was no fraudulent enterprise that targeted the public and harmed consumers. Rather, the crux of the Attorney General's case is the purported submission of allegedly inflated SFCs to sophisticated lenders for the purpose of obtaining favorable interest rates on loans. Robert Aff., Ex. R at 1. The statutory relief is therefore limited to enjoining that conduct, which, if any existed, is fully accomplished by imposition of the monitorship.

To make matters worse, the penalty Supreme Court imposed improperly aggregated estimates of "gain" under multiple speculative theories the Attorney General proffered at trial. By way of illustration, Supreme Court punished Appellants for entering into the Old Post Office loan by awarding the sum of both (1) their purported interest-rate savings and (2) their "profits" from the sale of Old Post Office. If Appellants improperly "gained" interest-rate savings, then

the amount of the interest-rate differential alone would serve to make any purportedly aggrieved party whole. To also order disgorgement of "profits" for the sale of the same property is duplicative and, thus, purely punitive.

D. The Disclaimers Negate Any Indicia of Intent to Defraud or Materiality

Finally, Supreme Court also continues to ignore the import of the disclaimers contained in the notes to the SFCs. Specifically, the first note to each SFC advised its user, *inter alia*, that:

> Considerable judgment is necessary to interpret market data and develop the related estimates of current value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.

Robert Aff., Ex. Q, FF ¶ 436. This highest-level warning language for significant GAAP discrepancies appeared in the compilation reports prepared by Mazars for President Trump's SFCs from the year 2011 through 2020. Id. at ¶ 438.

This language informs the user that the statements contain estimated values and discloses the limitations of those estimates in clear, unequivocal language. Appellants' expert witness Eli Bartov described the language as the "equivalent of the [S]urgeon [G]eneral's warning," and President Trump himself explained it as instructing the bank "very strongly, [to] do your own due diligence. Do your own work. Do your own study. Don't take anything from this statement for granted." Id. at ¶¶ 444-446. The Court nonetheless summarily rejected this ***unrebutted testimony***[30] by holding that the "defense" had been "previously rejected . . . by this Court in

[30] Supreme Court was simply not free to disregard unrebutted testimony. See generally Ober v. Rogers-Ober, 287 A.D.2d 282, 283 (1st Dep't 2001) (Saxe, J. dissenting); O'Malley v. Campione, 70 A.D.3d 595, 595 (1st Dep't 2010).

several decisions and orders (subsequently affirmed by the Appellate Division)." Id., Ex. R at 59. There was therefore simply no basis to support this manifest error.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant a stay of enforcement of Supreme Court's Judgment entered on February 23, 2024, pursuant to CPLR § 5519(c) pending appeal, and grant any other such and further relief it may think proper.

Dated: New York, New York
February 28, 2024

Respectfully submitted,

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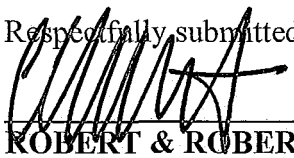
Dated: New York, New York
February 28, 2024

Respectfully submitted,



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