To Be Argued By:
Robert J. Giuffra, Jr.
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Court of Appeals

STATE OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff-Respondent-Appellant,

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, SEVEN SPRINGS LLC,

Defendants-Appellants-Respondents.

BRIEF FOR DEFENDANTS-APPELLANTS-RESPONDENTS PRESIDENT DONALD J. TRUMP, 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

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DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, Appellants-Respondents attach their Disclosure Statement as Attachment A to this brief.

STATEMENT OF RELATED LITIGATION

Pursuant to New York Court of Appeals Rule of Practice 500.13(a), Appellants-Respondents state that they are aware of the following related litigation as of the date of filing of this brief:

- *People* v. *President Donald J. Trump et al.*, Case No. 2024-05379, Appellate Division, First Department. Defendants seek review of Justice Arthur F. Engoron's denial of their post-trial motion for his recusal based on his prohibited communications about the case with a third party. Defendants have moved to extend the time to perfect that appeal until after this Court's resolution of this appeal. That motion remains pending.

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PRELIMINARY STATEMENT

This action represents an "unprecedented use" of Executive Law § 63(12). A49444 (Higgitt, J., concurring in part and dissenting in part). For nearly 70 years, the Attorney General (NYAG) has invoked Section 63(12) only to combat "persistent fraud or illegality" resulting in widespread consumer deception and harm.[1] Those elements are not present here. Instead, in bringing this legally and factually baseless case, NYAG weaponized Section 63(12) against President Trump, his family, and his businesses (Defendants), to purportedly protect the interests of four ultrasophisticated lenders and insurance companies. In NYAG's telling, those lenders and insurers were supposedly "defrauded" when they entered into a handful of bespoke, mutually agreed-upon transactions with the Trump Organization.

This Court should put an end to this politically motivated action. None of the four lenders or insurers ever complained—before, during, or after trial—that they were even injured, let alone *defrauded*, in any of their transactions with the Trump Organization. The Trump Organization paid all

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[1] *See, e.g.*, *People* v. *Applied Card Sys., Inc.*, 27 A.D.3d 104 (3d Dep't 2005) (misleading direct mail offering of credit cards to low-income consumers); *People* v. *Orbital Pub. Grp.*, *Inc.*, 169 A.D.3d 564 (1st Dep't 2019) (misleading solicitations for newspaper subscriptions to elderly consumers).

principal, interest, and premiums in full and on time or ahead of schedule, and the counterparties made well over $100 million in profits. Far from being injured, the biggest lender Deutsche Bank considered its relationship with President Trump to be one of its "top five" "in terms of revenue" and "profitability," and wanted to "continue to grow the relationship in all asset categories." A33415.

Even worse, NYAG relied on a deeply flawed theory of fraud. The Trump Organization provided the four counterparties with Statements of Financial Condition (SFCs) estimating Donald J. Trump's personal net worth. These SFCs contained "estimates" of the value of his unique real-estate assets, such as Mar-a-Lago and Trump Tower. *E.g.*, A2015. In support of its theory that some of those "estimates" were "fraudulently" overinflated, NYAG relied on outdated appraisals, tax assessments, and other information that she incorrectly claimed could establish objectively accurate values for each property. NYAG then asserted that the SFCs' higher estimates could only be explained as fraud. But no piece of real estate, let alone unique properties such as Mar-a-Lago or Trump Tower, has a single "objective" value. President Trump's SFCs repeatedly stated as much in multiple warnings and disclaimers, including that the SFCs' estimates were "not necessarily indicative of the amounts that could be realized upon" a sale tomorrow. *E.g.*, A2105 (2011 SFC).

Since her 2018 campaign for office, the Attorney General has, in her own words, had her "eyes on Trump Tower." A49544 (Friedman, J., concurring in part and dissenting in part). She campaigned on the promise of "going into the office of Attorney General every day" and "suing" President Trump. *Id.* (quoting Attorney General James). She even directly vowed "to investigate President Trump and his business transactions and that of his family as well." *Id.* (same). To fulfill that promise, just two months after taking office, NYAG launched this action targeting President Trump, his sons and daughter, and the other Defendants. The 11-week trial of this case was a media spectacle during the 2024 presidential campaign.

On a motion for summary judgment by NYAG, Supreme Court (Arthur F. Engoron, J.) wrongly accepted her meritless valuation theory wholesale, even though Defendants had submitted testimony and reports from 12 experts in accounting, finance, and commercial real estate, and NYAG proffered zero. Supreme Court addressed (and rejected) the opinions of just two of Defendants' experts and studiously ignored the uncontradicted opinions of the other ten. Without citing any contrary evidence, the court then found that "real property valuations are to be judged objectively, not subjectively," and that Defendants' valuations were, as a matter of law, "fraudulently inflat[ed]" or "overvalued." A42, A46.

That key finding by Supreme Court was demonstrably wrong and completely without record support. As Defendants' experts all testified, without contradiction, estimates of property values are highly *subjective*, and can change dramatically across years based on economic conditions or the interest of even a single potential purchaser. Take the Old Post Office Hotel in Washington, D.C., which the Trump Organization won a bid to develop in 2012. Two years later, President Trump's 2014 SFC estimated the value of his interest in that property at $10.5 million. A2192. By 2020, after the hotel was open and operating, the SFC's valuation had increased to $91.1 million. A2345. Yet President Trump sold his interest only two years later for *$375 million*, more than 35 times the valuation in his 2014 SFC. A131. The same was true for the 40 Wall Street property. Cushman & Wakefield valued that asset at $220 million in 2012, but then at $540 million just three years later. A47. Such wide swings are common in the real-estate business, particularly for "trophy" properties such as those built and bought by President Trump. That basic fact would have been obvious to the Commercial Division, where a case of this complexity belonged, and where Supreme Court erroneously refused to transfer it.

Following a bench trial, Supreme Court further erred by agreeing with NYAG that Defendants' use of SFCs had also violated a number of other New York laws: criminal insurance fraud, criminal prohibitions on false statements and falsified business records, and criminal conspiracy. Tellingly, NYAG's key trial witness was not a real-estate industry or commercial-lending expert who contradicted anything Defendants' experts said; NYAG put on no such expert.

Instead, NYAG's star witness was former Trump Organization lawyer Michael Cohen. On direct examination, Cohen claimed that President Trump had told him to inflate certain valuation estimates. But he then admitted on cross-examination that no such conversation had ever taken place. A29807; *see* A2442-A2443. Supreme Court credited Cohen's initial false claim, despite acknowledging that Cohen had recently "pleaded guilty to perjury" and other false-statement offenses. A104. What Supreme Court did not address, because it was not public at the time, was that Cohen felt "compelled and coerced" by NYAG to "deliver what they were seeking." Michael Cohen, *When Politics Blind Justice* (Jan. 26, 2026) (Cohen Substack).[2] As Cohen has

[2] https://therealmichaelcohen.substack.com/p/when-politics-blind-justice.

recently publicly explained, he "only provide[d] information and testimony that would" help "secure a judgment . . . against President Trump." Cohen Substack.

After rendering its defective merits ruling, Supreme Court compounded its errors by issuing extreme injunctive and monetary relief. The court's injunction included a multi-year ban on President Trump and his sons, Donald Jr. and Eric, from "serving as an officer or director of *any* New York corporation or *other legal entity* in New York." A153 (emphasis added). Supreme Court's extraordinary disgorgement award required payment to the State of $464 million in supposedly ill-gotten gains, *plus* post-judgment interest.

On appeal, the First Department rightly recognized that Supreme Court's decisions cannot stand. All five Justices agreed to vacate the court's $464 million disgorgement award in its entirety, because it was an excessive fine that violated the Eighth Amendment of the U.S. Constitution. On the injunction (and underlying finding of liability), although Justice Moulton and Presiding Justice Renwick voted to affirm, the other three Justices disagreed. Justice Friedman voted to reverse in full, concluding that NYAG had completely failed to make her case. Justices Higgitt and Rosado would have vacated Supreme Court's orders and remanded for a new trial. In their view, Supreme Court had violated "well-known fundamental summary judgment principles"—it had "resolved, rather than identified, questions of material fact," and "appl[ied] its own interpretive standard to the evidence without" engaging the "multi-pronged analyses" offered by Defendants' many experts. A49465. That basic error, they concluded, "so permeated the [subsequent] trial that a new trial is warranted." A49494.

Nevertheless, Justices Higgitt and Rosado voted to affirm Supreme Court's finding of liability and injunctive relief solely to avoid an unbreakable deadlock and to send the case to this Court. A49441. That puts Defendants in the unusual posture of appealing a 3-2 decision in their favor. This Court should now overturn Supreme Court's erroneous finding of liability on all causes of action, set aside its sweeping injunction, and put an end to this legally deficient case.

First, Section 63(12) does not grant NYAG a roving license to pursue claims purportedly on behalf of ultrasophisticated lenders and insurers that never expressed any concern about President Trump's SFCs, and did not suffer any injury whatsoever. NYAG's power under Section 63(12) is limited by the *parens patriae* doctrine, which authorizes her to sue only "to protect a public interest, like the safety, health, or welfare of [New York's] citizens." *People* v. *Grasso*, 11 N.Y.3d 64, 69 & n.4 (2008). NYAG must therefore "prove [i] a quasi-sovereign interest distinct from that of a particular party and [ii] injury to a *substantial segment* of the state's population." *Id.* (emphasis added). Neither statutory showing was made below. The four lenders and insurers that were supposedly "defrauded" were fully capable of claiming fraud, but none did. There was no evidence or testimony by any counterparty suggesting that it felt wronged or injured. And even if any of these financial institutions had been harmed (they were not), that still would not constitute the kind of "injury to a substantial segment" of New Yorkers required to sustain a *parens patriae* action.

Second, and at the crux of this case, NYAG cannot show that President Trump's SFCs were fraudulent because those documents lacked any "capacity or tendency" to deceive their recipients, as required to make out a claim under Executive Law § 63(12). *People* v. *General Elec. Co.*, 302 A.D.2d 314, 314 (1st Dep't 2003). Again, each of President Trump's SFCs included numerous warnings that the values reflected his own subjective estimates about each asset's actual worth, and industry participants know that the valuation of one-of-a-kind properties like Mar-a-Lago is a highly subjective process.

Consistent with that industry practice, the four lenders and insurers here all testified that they did not take the SFCs' valuation estimates at face value or rely on them in their commercial decisionmaking. Instead, they independently came to their own subjective opinions about President Trump's net worth and liquidity. Their rigorous analyses produced conservative estimates—some of which were actually lower than NYAG and Supreme Court's supposedly "objective" valuations. With those estimates in hand, each of the four counterparties determined that extending credit or insurance coverage was a good business decision. In hindsight, they were correct. Defendants never came close to defaulting or breach, and their counterparties ultimately earned more than $100 million in profits from these transactions—the opposite of being defrauded.

Third, Supreme Court misapplied Section 63(12)'s six-year statute of limitations. Three of the seven supposedly "fraudulent" transactions at issue here were loan agreements that closed before mid-2014 and, thus, were outside the six-year limitations period. It is black-letter law that any Section 63(12) claim based on those time-barred transactions could not be considered in this case. But Supreme Court repeatedly relied on those time-barred transactions in wrongly finding liability, ruling on evidentiary objections, and fashioning its unwarranted injunctive relief. As Justice Higgitt correctly explained, Supreme Court's reliance on time-barred allegations was a "foundational[]" error independently requiring vacatur of its flawed judgment. A49517.

Fourth, this case is a clear example of unconstitutional selective enforcement, the remedy for which is dismissal. It is undisputed that NYAG has never before used Section 63(12) to challenge allegedly fraudulent real-estate valuations provided in arm's-length commercial negotiations—let alone where the allegedly defrauded financial institutions were not injured and never complained. Both the U.S. and New York Constitutions prohibit "uneven enforcement" against defendants who were "selected for some reason apart from effective regulation." *303 W. 42nd St. Corp.* v. *Klein*, 46 N.Y.2d 686, 695 (1979). The reason here was pure politics, as Attorney General James's own statements make clear.

Fifth, this Court should set aside Supreme Court's excessive and overbroad injunction. Supreme Court enjoined President Trump and his sons Donald Jr. and Eric from serving as officers or directors "of any New York corporation or other legal entity" for a period of three and two years, respectively, and prohibited President Trump and various Trump Organization entities from applying for any loans from any financial institution with a branch in this State for three years. This relief goes far beyond Supreme Court's Section 63(12) power to enjoin Defendants from continuing to engage in the allegedly "fraudulent or illegal acts," even broadly construed, forming the basis of this case. Indeed, NYAG has been unable to unearth a single prior example of an injunction as sweeping as this one.

* * *

This unprecedented and legally unsound case is about far more than President Trump. No Attorney General has ever used Section 63(12) to police transactions among one New York business and a handful of ultrasophisticated counterparties with no broader impact on New Yorkers. Worse still, the theory of liability adopted by Supreme Court converts into "fraud" unremarkable, proper conduct that no industry participant would consider deceptive—including the firms that were allegedly defrauded here, which actually profited handsomely. If left on the books, the mistaken legal rulings below threaten New York's position as the Nation's financial capital, as well as the State's commercial real-estate industry.

QUESTIONS PRESENTED

1. Whether Supreme Court erred in holding that NYAG has standing to bring her claims under Executive Law § 63(12) based on bespoke,

mutually agreed-upon transactions between Defendants and four ultrasophisticated counterparties with no broader impact on New Yorkers.

Answer: Yes.

2. Whether Supreme Court erred in finding that Defendants committed "persistent fraud or illegality" under Executive Law § 63(12) in light of uncontroverted record evidence demonstrating that the SFCs had no capacity or tendency to deceive their ultrasophisticated recipients.

Answer: Yes.

3. Whether Supreme Court improperly relied on Defendants' use of SFCs in connection with time-barred transactions.

Answer: Yes.

4. Whether NYAG violated the U.S. and New York Constitutions by selectively prosecuting Defendants based on their protected political activity.

Answer: Yes.

5. Whether Supreme Court's award of unprecedented injunctive relief, not supported by the record below, should be set aside.

Answer: Yes.

STATEMENT OF JURISDICTION

On August 26, 2025, Defendants filed their notice of appeal from the First Department's judgment. On October 1, 2025, at the Court's direction, Defendants and NYAG made written submissions addressing the Court's subject matter jurisdiction over both this appeal and NYAG's cross-appeal. On January 12, 2026, the Court terminated its jurisdictional inquiry, but stated that its decision did not "preclude [it] from addressing any jurisdictional concerns in the future."

As explained in Defendants' October 1, 2025 jurisdictional submission, this Court has jurisdiction over Defendants' appeal under N.Y. C.P.L.R. 5601(a). Three Justices of the First Department (Higgitt, Rosado, and Friedman, JJ.) held that Defendants were correct on several questions of law, and recognized that their conclusions compelled vacatur or reversal of Supreme Court's finding of liability and injunction. Solely because their views left the court deadlocked and without a majority for any one disposition, Justices Higgitt and Rosado voted to affirm the judgment on liability, "with great reluctance and with acknowledgment of the incongruity of the act," in order to provide "the option of further review of this matter by the Court of

Appeals." A49441-A49442. Those two "incongru[ous]" votes were "dissents" within the meaning of C.P.L.R. 5601(a).

Defendants also have the right to appeal under N.Y. C.P.L.R. 5601(b)(1). In affirming Supreme Court's finding of liability, the First Department necessarily held that NYAG was not selectively enforcing Section 63(12) so as to punish Defendants' protected political activity, in violation of the U.S. and New York Constitutions. That decision was incorrect.

If the Court finds that Defendants do not have an appeal as of right (which they do), Defendants respectfully seek leave under C.P.L.R. 5602(a)(1)(i). The First Department's decision constitutes a final order under C.P.L.R. 5611 and Defendants' application for leave would be timely under C.P.L.R. 5514(a). This Court has granted leave in similar—indeed, less compelling—circumstances. *See Board of Educ. of Monroe-Woodbury Cent. Sch. Dist.* v. *Wieder*, 72 N.Y.2d 174 (1988); *Matter of Shannon B.*, 70 N.Y.2d 458 (1987). As stated by Justices Higgitt and Rosado, the First Department's fractured and admittedly "incongruous" opinions, spanning well over 300 pages, only underscore the need for "further review of this matter by [this] Court." A49441-A49442.

STATEMENT OF THE CASE

A. Factual Background

1. President Trump founded the Trump Organization and served as its Chairman and President until January 19, 2017. A95. The Trump Organization is a group of corporate entities that do business collectively and own unique properties around the world. Defendants include the President, his sons Donald Trump, Jr. and Eric Trump, former Trump Organization executives Allen Weisselberg and Jeffrey McConney, and entities within the Trump Organization.

As detailed below, between 2011 and 2021, Defendants entered into commercial transactions with four highly sophisticated counterparties. Deutsche Bank provided three loans in connection with the refinancing or development of various commercial properties: $125 million for the Doral Golf Resort and Spa in Miami, which closed in June 2012; $130 million for the Trump Chicago hotel, which closed in November 2012; and $170 million for the Old Post Office Hotel in Washington, D.C., which closed in August 2014. Ladder Capital Finance LLC provided a loan in connection with refinancing Defendants' $160 million mortgage for a Manhattan building known as 40 Wall Street, which closed in November 2015. A49344. Finally, Defendants entered into and renewed several insurance contracts between 2007 and 2021, one with Zurich North America and the other with Tokio Marine HCC. A49345.[3]

Each of these transactions proved profitable for all lenders and insurance companies. All principal, interest, and premiums were paid back fully and on time. No counterparty ever complained to NYAG—or anyone else—that it had been defrauded or deceived. None suffered any injury, and none ever filed any action against Defendants. In fact, these counterparties celebrated the chance to do business with President Trump, his family, and his company.

2. In entering these bespoke transactions, Defendants provided Statements of Financial Condition (SFCs) listing President Trump's personal assets and liabilities. The lenders required those SFCs because each secured President Trump's personal guarantee. A62.

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[3] NYAG also initially challenged Defendants' 2012 license agreement with New York City to operate and manage a golf course and related facilities at Ferry Point in the Bronx. A81. Defendants later sold that license in 2023. Any Section 63(12) claim based on the 2012 transaction is "deemed abandoned by NYAG." A49421 (Moulton, J.). As Justice Moulton explained, NYAG did not oppose Defendants' motion for summary judgment regarding that transaction. All five First Department Justices also agreed that any claim based on the Ferry Point license is time-barred. *See* A49420-A49421 (Moulton, J.); A49495, A49516 (Higgitt, J.); A49611 (Friedman, J.).

The 2011 to 2021 SFCs provided yearly value estimates for a number of unique commercial properties, including Trump Tower; 40 Wall Street; Trump Park Avenue; the Trump World Tower at United Nations Plaza; 100 Central Park South; the Old Post Office Hotel; The Trump Palace; The Trump International Hotel and Tower; and the Mansion at Seven Springs in Bedford, New York. *E.g.*, A2126 (2012 SFC). The SFCs also included a line item for "Club facilities and related real estate" all over the world, *id.*, including the Mar-a-Lago Club in Palm Beach, Florida; Trump National Golf Clubs in New York, New Jersey, California, Philadelphia, Washington D.C., North Carolina, and Miami; and the Trump International Golf Club in Aberdeen, Scotland. From 2011 to 2021, the SFCs estimated a total net worth for then-developer Donald Trump of between $4.2 billion and $6.1 billion.

Each of the 11 at-issue SFCs explained that the listed asset values were "estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals." *E.g.*, A2105 (2011 SFC); *see* A2099-A2369 (2011 through 2020 SFCs). Each SFC also expressly put recipients on notice that:

- "[c]onsiderable judgment is necessary to interpret market data and develop the related estimates of current value";

- the "estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets"; and
- the "use of different market assumptions and/or estimation methodologies may have a material effect on the estimate[s]."

E.g., A2105 (2011 SFC).

Each SFC also included a cover letter from the accounting firm that prepared it. Defendants used the same firm, Mazars, for decades. Each cover letter explained that the SFCs were "compilations," *not* audited financial statements. *E.g.*, A2101. Compilations are the form of financial statement that involves the least review or analysis by the preparing accountant; unlike an audited statement, a compiler "does not contemplate performing inquiry" or "analytical procedures" and "will not express an opinion or provide any assurance regarding the financial statements." A49343 (Moulton, J., concurring) (citing American Institute of Certified Public Accountants). As required by those accounting standards, the compilation letters in each SFC cautioned that the accountants had "not audited or reviewed" the SFC. *E.g.*, A2101.

The compilation letters also explained that the "accompanying" SFC contained "pervasive[]" "departures from" generally accepted accounting principles (GAAP), as is not uncommon for compilations. *E.g.*, A2101-A2102. The cover letters then detailed those GAAP departures. As a result, each letter cautioned that a user applying more demanding standards might "reach different conclusions about the financial condition of Donald J. Trump." *E.g.*, A2102 (2011 SFC).

Those accountant warnings reflected the inherent difficulty of ascertaining an "objective" value for President Trump's unique real-estate properties with few, if any, market comparators. The warnings also put Defendants' four deeply experienced counterparties on notice that they should not take the SFCs' specific dollar estimates as "necessarily indicative of the amounts that could be realized" upon a sale. A2105.

As several experts opined below, without rebuttal, that statement reflected standard practice in the real-estate industry. SFCs are "not designed to show the value of [the] reporting entity." A17918 (report of accounting and valuation expert Dr. Eli Bartov). Rather, they provide the user with "a roadmap to do its own independent analysis" of the preparer's assets. A18277 (testimony of banking expert Robert Unell). For that reason, and consistent with the SFCs' warnings, sophisticated "lenders are trained not to rely" on the valuations stated in an SFC, A23604 (Unell testimony), but instead "try to independently determine what we think the assets are worth . . . [n]ot what necessarily a client will tell us their assets are worth," A20045 (testimony of Deutsche Bank executive Tom Sullivan).

3. The SFCs played that limited role in the arm's-length commercial negotiations here. Consider the Deutsche Bank loans: as executive David Williams testified at trial, Deutsche Bank recognized that ascertaining "an individual's net worth" is a "largely subjective" analysis that requires "the use of estimates," which vary depending on what assets make up the individual's wealth and the methodologies used for valuing those assets. A33214. Thus, Deutsche Bank treats "a difference of opinion in asset values between the client and the bank" as not "a disqualifying factor to extend credit." A33215. Deutsche Bank instead conducts its own rigorous independent assessment of a "ultra-high-net-worth individual's provided financial statements." A33262.

As part of its independent analysis, Deutsche Bank performed a "conservative" independent estimate of every category of wealth reported in President Trump's SFCs. It internally adjusted his estimated net worth down to "only" $2.4 billion—a 50% haircut from the SFCs' bottom-line figure. A33216, A33269 (Williams testimony). That level of divergence was "not unusual or atypical" for an ultra-high-net-worth individual like President

Trump. A33271 (same). After doing that independent analysis, Deutsche Bank determined that President Trump had "among the strongest personal balance sheets we have seen and totally unlike any of our major [real-estate] developer clients," "with huge asset base and diversified [cash flow]." A45485 (internal Deutsche Bank email).

Nor did the estimates in President Trump's SFCs carry weight in Deutsche Bank's credit analysis. Mr. Williams testified that even if President Trump's net worth had been far less than the bank's own very conservative 2012 estimate of roughly $2.5 billion—in fact, if President Trump's net worth had been *$100 million*—he would have qualified for the same interest rate on the 2012 and 2014 non-recourse loans at issue, between 2.0 and 2.5 percent. A33282. Deutsche Bank was in fact thrilled to develop its broader relationship with President Trump so that it could "cross sell" the bank's other services to both him and his "family." A33432 (testimony of relationship manager Rosemary Vrablic). Bank employees even referred to their pursuit of the account as "whale hunting," underscoring how much Deutsche Bank valued building its relationship with President Trump and his family. A33401 (same).

Beyond that broader goal of obtaining President Trump and his company's business, Deutsche Bank concluded that President Trump's profile was uniformly "positive" across the 19 different factors the bank considered. A28332 (testimony of bank executive Nicholas Haigh). For example, in evaluating President Trump's creditworthiness, bank employees cited his "expertise in successfully running world-class assets," and observed that his track record made such "asset purchase[s] and repositioning a realistic and high[ly] probable success story." A45485. Bank executives were confident that under President Trump's "vision," the Old Post Office Hotel in particular would "become the most elite hospitality establishment in Washington, D.C." A28236. They also put weight on President Trump's heavy investment of his own personal funds on all the projects financed by the loans, providing "an increased level of comfort." A33260-A33261 (Williams testimony).

The same was true for Ladder Capital and the two insurers that were allegedly defrauded according to NYAG's flawed theory. In keeping with industry practice, these counterparties did not place any weight on or even pay much attention to the value estimates in the SFCs. *See infra*, pp. 80-82. Nor did any of them complain to the Trump Organization, NYAG, or anyone else about their transactions with Defendants. Again, all of the loans were paid back in full and on time or even early, and netted Defendants' ultrasophisticated counterparties well over $100 million in interest and premiums. *See* A21533-A21534. No reasonable observer or investigator could describe these transactions as fraudulent.

B. NYAG's Complaint

1. Since her 2018 campaign, Attorney General James has been a self-declared political opponent of President Trump. On the campaign trail, James "repeatedly vow[ed]" that, if elected as chief law-enforcement officer, "*her top priority*, upon being sworn in, would be to bring down President Trump and his real estate empire" "through any available avenues of legal process." A49527, A49542 (Friedman, J.) (emphasis added) (collecting James's statements). For example, James promised voters "a review of Trump-related real estate transactions"; claimed that she "look[ed] forward to going into the office of Attorney General every day" and "suing" President Trump; and pledged to "use every area of the law to investigate President Trump and his business transactions and that of his family as well." A49544-A49545.

Attorney General James followed through on her "get Trump" campaign promises by opening the investigation that led to this action "only two months after she took office" in January 2019. A49527 (Friedman, J.). She filed this case almost four years later on September 21, 2022, which was more than seven years after the closing of the Deutsche Bank and Ladder Capital transactions, and just as President Trump was planning another presidential campaign.

2. The complaint alleged seven causes of action under Executive Law § 63(12). A645-A659. That statute authorizes NYAG to bring an action "in the name of the people of the State of New York" for either (i) "repeated fraudulent" acts or "persistent fraud" (often referred to as a "standalone" Section 63(12) claim); or (ii) repeated or persistent "illegality," which requires showing violations of other New York statutes.

NYAG's first cause of action was a standalone Section 63(12) claim for "persistent fraud." NYAG's second through seventh causes of action were Section 63(12) "illegality" claims alleging separate violations, including falsification of business records under Penal Law § 175.05; issuing a false financial statement under Penal Law § 175.45; insurance fraud under Penal Law § 176.05; and conspiracy to commit the same under Penal Law § 105.00. A645-A659; A49598. These illegality claims were entirely premised on the same alleged conduct as the standalone "persistent fraud" claim.

Between 2011 and 2021, President Trump provided annual SFCs to the sophisticated parties mentioned above as part of the process of obtaining the loans (which were in large part proactively offered by the lenders) as well as the insurance policies. NYAG wrongly alleges that these SFCs contained a number of fraudulently or illegally overstated estimates of the value of certain properties, as follows:

- **40 Wall Street**. The 2011 to 2015 SFCs estimated the value of 40 Wall Street at between $525 million (in 2011) and $735 million (in 2015).

  NYAG claimed that these valuations were somehow "fraudulent" because Defendants had also received appraisals of $200-$220 million (in 2011 and 2012) and $540 million (in 2015).

- **Mar-a-Lago**. The 2011 to 2021 SFCs' total estimated value for "Club facilities and related real estate" was based in part on an estimate (not itself disclosed in the SFC) for Mar-a-Lago of between $426 million (in 2011) and $612 million (in 2021).

  NYAG claimed this estimate was "fraudulent" because annual municipal property tax assessments (which have no necessary relationship to value) for Mar-a-Lago were $18 million to $27.6 million, and because the SFCs' higher estimates assumed, allegedly falsely, that a buyer would be permitted to use the property as a residence, as President Trump has long done.

- **Seven Springs**. The 2011 to 2014 SFCs estimated the value of Seven Springs, a 212-acre parcel of land in Bedford, New York (in

Westchester County), at between $261 million (in 2011) and $291 million (in 2012-2014).

> NYAG alleged that this estimate was "fraudulent" because an outside appraisal from the year 2000, 11 years before the earliest at-issue SFC, had estimated the property's value at $25 million.

- **Trump Park Avenue**. The 2011 to 2021 SFCs estimated the value of Trump Park Avenue at between $90 million (in 2021) and $346 million (in 2013).

> This valuation was allegedly "fraudulent" because Defendants received an appraisal of $72.5 million in 2010, and because the SFCs' higher estimate assumed that 12 rent-stabilized units then occupied by renters could all be sold for market price.

- **Aberdeen, Scotland**. The 2014 to 2021 SFCs' total estimated value for "Club facilities and related real estate" was based in part on an estimate (not itself disclosed in the SFC) for the golf property in Aberdeen, of between $135 million (in 2021) and $435 million (in 2014).

> NYAG claimed that this estimate was allegedly "fraudulent" because the valuation estimates assumed that 2,500 private residences could be constructed on the property, when Defendants had thus far obtained approval to build fewer than 1,500.

- **Trump Tower**. The 2012 through 2016 SFCs' estimates for the total value of Trump Tower, at between $501 million (in 2012) and $880 million (in 2015), were based just in part on an estimate (not itself disclosed in the SFC) for President Trump's Triplex condominium apartment of between $80 million and $327 million.

  This was supposedly "fraudulent" because Defendants had estimated the value by incorrectly assuming the Triplex was 30,000 square feet, rather than 10,996 square feet. Defendants corrected that inadvertent error after being made aware of it in *2017*, five years before NYAG brought this action.

See A478-A594 (complaint); A1826-A1842 (NYAG's summary judgment motion); A1890; A2156; A2353.

All of these allegations rest on NYAG's disregard of the same basic and undisputed fact: Projecting the current and future values of unique properties is an inherently "subjective" and "difficult" process. A49489-A49490 (Higgitt, J.). As unrebutted expert testimony established, such estimates are necessarily "subject to significant variability." A49489. It is perfectly appropriate for a real-estate owner to estimate value "based on planned courses of action" for the property, even if those plans are years from fruition and even if they strike some as over-optimistic. A34315 (Dr. Bartov testimony).

In the complaint, NYAG alleged two other supposedly "fraudulent" statements in the SFCs. But she misunderstood both. *First*, NYAG asserted that the SFCs improperly relied on the brand value associated with President Trump's name as part of the overall value estimate for certain properties, while also claiming that the "goodwill attached to the Trump name . . . had not been reflected" in the SFCs. *See* A448-A458. *Second*, according to NYAG, the SFCs falsely claimed that certain cash holdings were under President Trump's control, when in reality the cash belonged to his real-estate partnership with Vornado Realty Trust, in which President Trump had a 30% stake.

These allegations ignored what the SFCs actually said. First, the SFCs in fact disclosed that the "value of Donald J. Trump's worldwide reputation" *had* been accounted for "to the extent it ha[d] become associated with properties either operative or under development." *E.g.*, A2119 (2011 SFC). Second, as explained below, the way that the SFCs treated the Vornado partnership cash was both (i) clearly laid out in the detailed supporting spreadsheets provided to SFC recipients, and (ii) a labeling issue that did not increase President Trump's net worth.

NYAG's complaint demanded hundreds of millions of dollars in disgorgement of supposedly ill-gotten gains based on the difference between the interest rates that the Defendants actually paid on the at-issue loans and what NYAG speculated they would have paid had the SFCs been "accurate."[4] NYAG also sought to cancel the business certificates of the Defendant entities, preventing them from operating in New York and thus hurting the State's consumers and business community. NYAG requested sweeping and draconian injunctive relief, including the appointment of an independent monitor at the Trump Organization; an order barring President Trump and the Trump Organization from entering into any New York commercial real-estate acquisitions for five years; and an order permanently barring both President Trump and his three older children from ever serving as an officer or director of any New York corporation. *See* A458-A459.

C. Pre-Trial Proceedings

1. Less than a month after filing the complaint, NYAG moved for a preliminary injunction, asking Supreme Court to prohibit the sale or transfer of certain assets, and to appoint an independent monitor to oversee

[4] NYAG did not seek disgorgement on the basis of the Zurich and Tokio Marine HCC insurance contracts. *See* A49174-A49175.

Defendants' businesses. On November 3, 2022, Supreme Court granted the requested preliminary relief, finding that NYAG was likely to succeed on the merits.

Justice Engoron also denied Defendants' request to transfer the case to the Commercial Division, where Section 63(12) cases are usually assigned and where a case of this complexity certainly belonged. *People* v. *Trump*, Index No. 452564/2022, NYSCEF Doc. No. 181 at 1-2 (Sup. Ct. N.Y. Cnty. Nov. 2, 2022). Under New York's Uniform Rules, cases that "principal[ly] involve" alleged "fraud" in "business dealings," "commercial banks and other financial institutions," or "transactions involving commercial real property" "*will be heard* in the Commercial Division." 22 N.Y.C.R.R. §§ 202.70(a), (b) (emphasis added). Justice Engoron nevertheless denied a transfer by invoking "judicial economy," noting that he had presided over an earlier, pre-complaint proceeding to adjudicate disputes over NYAG's subpoenas. NYSCEF Doc. No. 181 at 2.

2. Defendants filed motions to dismiss the complaint. Those motions argued, among other key points, that NYAG's claims were time-barred. Supreme Court wrongly rejected that argument and denied the motion. *People* v. *Trump*, 2023 WL 128271 (N.Y. Sup. Ct. Jan. 6, 2023).

Defendants appealed as of right. *See* N.Y. C.P.L.R. 5701(a). In a unanimous decision, the First Department dismissed as time-barred "the claims against defendant Ivanka Trump and the claims against the remaining defendants to the extent they accrued prior to July 2014." *People* v. *Trump*, 217 A.D.3d 609, 610 (1st Dep't 2023). The court reasoned that, accounting for appropriate tolling, NYAG's "claims [were] time barred if they accrued—that is, the transactions were completed" before that cutoff. *Id.* at 611. The court also held that the "continuing wrong doctrine does not delay or extend these periods." *Id.* at 612.

3. Defendants moved for summary judgment on all counts. NYAG cross-moved for partial summary judgment only on its first cause of action: the standalone "persistent fraud" Section 63(12) claim.

Effectively disregarding the First Department's ruling, Supreme Court first concluded that *all* of NYAG's claims were timely under the statute of limitations, even though three of the transactions challenged by NYAG had closed in 2012 or early 2014, prior to the July 13, 2014, limitations cutoff. A40. Supreme Court claimed without any basis that, although those transactions had closed, they "were not 'completed'" "while the defendants were still obligated to, and did, annually submit current SFCs to comply with the terms of the loan agreements." A40.

Supreme Court then granted NYAG's motion for partial summary judgment on liability on her "persistent fraud" Section 63(12) claim. Although Defendants had submitted substantial expert evidence in opposition to NYAG's claims, and NYAG had put in none, Supreme Court erroneously rejected the opinions of two of Defendants' experts out of hand and ignored the other ten altogether. Supreme Court then made a number of factual findings directly contrary to that expert testimony. Critically, the court somehow found that "real property valuations are to be judged objectively, not subjectively," A42, despite "defendants' unrebutted evidence of the subjectivity of valuations and the acceptability of multiple valuation methodologies other than appraisals." A49465 (Higgitt, J.). For example, Supreme Court held that in 2011, the only objectively reasonable value to place on Mar-a-Lago would have been $18 million—an absurd figure drawn from that year's municipal tax assessment. The only expert to testify about Mar-a-Lago's value at trial estimated it at close to, or over, $1 billion. *See infra*, p. 70.

Supreme Court thus fully accepted each and every one of NYAG's flawed legal and factual theories, and erroneously held that all of the valuation estimates at issue were indeed "fraudulent." The court declared that, to prevail, NYAG "need[ed] only prove: (1) the SFCs were false and misleading; and (2) the defendants repeatedly or persistently used the SFCs to transact business." A43.

Supreme Court then denied Defendants' motion for summary judgment on the remaining Section 63(12) "illegality" claims. All parties agreed that those claims required NYAG to establish intent and materiality as additional elements. On both, Supreme Court perceived "disputed issues of fact." A43. Supreme Court thus held that the remaining illegality causes of action required a trial. A43.

Having granted summary judgment to NYAG on her standalone "persistent fraud" claim, Supreme Court then granted NYAG's request to "cancel[] [Defendants' business] certificates," and suggested, shockingly, that it might "order[]" the entity Defendants "to dissolve." A57. The court also kept in place its earlier appointment of an independent monitor "to oversee compliance, financial reporting, valuations, and disclosures." A57. Remarkably, Supreme Court also imposed sanctions on Defendants' counsel for what it called "repetitive, frivolous motion practice" and "continued reliance on bogus arguments." A33-A34. One of those supposedly "bogus" arguments was Defendants' contention that NYAG lacks standing to bring this action under Section 63(12)—a conclusion Justice Friedman later adopted on appeal.

D. Trial

Supreme Court conducted a bench trial that began on October 2, 2023, and ended with closing arguments on January 11, 2024—in the middle of the presidential primaries in which President Trump was a candidate. At the trial's conclusion, Supreme Court again sided with NYAG across the board, finding all Defendants liable on all remaining "illegality" Section 63(12) claims. A152. Supreme Court did not revisit its pre-trial (and erroneous) finding that the SFCs contained "fraudulent" valuation estimates, and NYAG did not present at trial any expert testimony pertinent to whether the SFCs were "fraudulent" (which they were not).

Supreme Court incorrectly concluded that the supposedly deceptive statements were material, and that all Defendants had possessed the required "intent to defraud" under the relevant penal statutes. A139. Supreme Court thus erroneously found that all Defendants were guilty of falsifying business records, Penal Law § 175.05, issuing false financial statements, Penal Law § 175.45, and conspiring to commit those same offenses under Penal Law

§ 105.00. A139. Supreme Court also held that Trump Organization executives Weisselberg and McConney had engaged in insurance fraud under Penal Law § 176.05. A139.

In wrongly ruling that all Defendants had intent to defraud, Supreme Court found "important" and "credible" the testimony of Michael Cohen, who, during direct examination, claimed that President Trump "tasked" him and Allen Weisselberg to intentionally "inflate the assets" on the SFCs "to achieve the number" President Trump had predetermined. A103-A104; *see* A29544-A29545 (trial testimony).

Cohen's testimony was rife with "seeming contradictions," as Supreme Court itself recognized. A104. Critically, on cross-examination, Cohen reversed himself and admitted that President Trump in fact "never directed [him] to inflate the numbers," A29808-A29809, and that his earlier sworn statements otherwise—both on direct examination and in earlier Congressional testimony—were "a mistake." A29807; *see* A2442-A2443. Supreme Court still found Cohen "credible" despite his "having pleaded guilty to perjury." A104. Supreme Court ignored Cohen's other confessed crimes, including willful tax evasion and making a false statement to a bank. Supreme Court did not and could not have addressed or scrutinized Cohen's 2026 public statements that he felt "pressured and coerced" by NYAG's office "to only provide information and testimony that would satisfy the government's desire to build the cases against and secure a judgment . . . against President Trump." Cohen Substack, *supra*.

Having found liability in error, Supreme Court then entered both a sweeping permanent injunction and an extraordinary disgorgement award of $464 million. The injunction (i) barred President Trump and the corporate Defendants from applying for loans from any financial institution chartered or registered in New York, for three years; (ii) barred President Trump, Weisselberg, and McConney from serving as corporate officers or directors of any New York corporation or other legal entity for three years; (iii) barred Donald Trump, Jr. and Eric Trump from serving as corporate officers or directors of any New York corporation or other legal entity for two years; (iv) permanently prohibited Weisselberg and McConney from serving in financial management roles in New York; and (v) extended the court-appointed independent monitor's term for three years. A152-A153. After finding that "cancellation of the business licenses [was] no longer necessary," Supreme Court ruled that the "restructuring and potential dissolution of any LLCs [would] be subject to individual review" by the monitor in conjunction with the new director of compliance. A150.

Supreme Court also ordered a staggering $464,567,230.62 in disgorgement—just shy of $364 million in supposedly ill-gotten gains plus roughly $100 million in pre-judgment interest. A158-A160. Nearly all of the award was to be paid jointly and severally by President Trump, the Trump Organization, Inc., and other entity Defendants. Supreme Court ordered Donald Trump, Jr. and Eric Trump to each pay just over $4 million in disgorgement, plus pre-judgment interest to the State. A160.

Supreme Court derived its $464 million in disgorgement through the following legally defective process, which Defendants will address in detail in opposing NYAG's cross-appeal. *First*, Supreme Court found that Defendants had unlawfully "profited by paying lower interest rates on" the at-issue loans than "the interest rates they would have paid under non-recourse loans simultaneously offered to them" by Deutsche Bank and Ladder Capital. A143. Those supposed profits from paying lower interest rates amounted to $168,040,168 across the Doral loan, Old Post Office loan, Chicago loan, and 40 Wall Street loan. A143-A144.

Second, Supreme Court ordered that *all* of the $134 million in profits that Defendants made from their 2022 sale of the Old Post Office Hotel were ill-gotten gains because Defendants supposedly would not have been able to redevelop that property and then sell it at a profit without the 2012 loan from Deutsche Bank in question. A144 ("[N]o false SFCs, no deal."). In doing so, Supreme Court ignored that disgorging those "profits" amounted to double counting of ill-gotten gains on the Old Post Office loan, as the court had already disgorged the interest-rate savings supposedly involved. *See* A49421 (Moulton, J.); A49495 (Higgitt, J.); A49614 (Friedman, J.). Supreme Court employed the same flawed approach in ordering disgorgement of the entire $60 million sale price for the Ferry Point license, which Defendants sold to Bally's Corporation in 2023. A145. Supreme Court did not even try to determine how much of that full sale price was actual profit. A145.

On February 23, 2024, Supreme Court entered judgment. Accounting for post-judgment interest of 9% per annum, C.P.L.R. 5004(a), as of the date of filing of this brief, the value of Supreme Court's disgorgement award would be as high as $550 million and climbing.

E. Appeal

In a fractured set of opinions, the First Department partially upheld and partially overturned Supreme Court. The common thread was that Supreme Court had committed numerous errors and that this Court's review is necessary. All five Justices agreed to "vacate the disgorgement awards in their entirety." A49303. All five Justices also unanimously agreed to vacate Supreme Court's order of sanctions against Defendants' counsel. A49303.

The rest of the First Department's decision was divided. The Justices nominally voted 4-1 to affirm Supreme Court's findings on liability, and thus upheld all the equitable and injunctive relief it had issued. *See* A49336 (Moulton, J.); A49441 (Higgitt, J.). But, in fact, the vote was 3-2 to overturn Supreme Court on all of these questions as well. Justice Moulton and Presiding Justice Renwick voted to affirm. Justice Friedman voted to reverse in full. In the middle were Justices Higgitt and Rosado, who explained that, in their view, the appropriate course was to vacate Supreme Court's orders and remand for a new trial. A49424 (Higgitt, J.).

Yet Justices Higgitt and Rosado nevertheless "join[ed] the decretal" affirming Supreme Court's award of injunctive relief despite believing that the appropriate outcome was to vacate. They explained that they cast those votes "with great reluctance and with acknowledgement of the incongruity of the act." A49441. But they also emphasized "the core point of agreement among the members of this panel: that the judgment, as entered by Supreme Court, cannot stand." A49441-A49442.

In addition to casting bottom-line votes that cannot logically be squared with the judgment below, the three opinions in the First Department adopted varied and cross-cutting positions on the legal issues in this case. This brief addresses each Justice's approach to those issues within the discussion below.

ARGUMENT

A 3-2 majority of the First Department correctly agreed with Defendants that Supreme Court's judgment of liability on all causes of action and its sweeping injunction must be set aside, and the case dismissed or remanded for a new trial. For five independent reasons, the majority was right.

First, at the threshold, NYAG lacks standing to sue under Section 63(12) because at most, only four ultrasophisticated lenders and insurers suffered any theoretical injury from Defendants' alleged conduct. None ever voiced even the slightest complaint about the challenged transactions, on which they earned over $100 million in interest and premiums.

Second, as explained below, the record overwhelmingly establishes that President Trump's SFCs were not "fraudulent" under Section 63(12) because they lacked the capacity or tendency to deceive the four deeply experienced financial institutions to which they were provided. The unrebutted evidence showed that commercial lenders and insurers place little weight on a non-audited SFC's inherently subjective value estimates for unique real-estate properties. Instead, they rely on an SFC's listing of assets merely as a starting point for their own independent assessments of those properties. That is what all four of Defendants' counterparties did here, according to their own executives' trial testimony. President Trump's SFCs also made crystal clear that the asset valuation estimates were "not necessarily indicative of the amounts that could be realized" by a sale, but reflected the value "as determined by Mr. Trump" using "various valuation methods." *E.g.*, A2105. Importantly, even ignoring both industry practices and the SFCs' multiple disclaimers, none of the statements in President Trump's SFCs was actually false or deceptive to begin with, as shown below.

Third, as Justice Higgitt explained, Supreme Court's liability analysis was corrupted by its heavy reliance on supposedly fraudulent transactions plainly outside the statute of limitations. That obvious error requires at least vacatur and a new trial.

Fourth, this case must be dismissed in light of NYAG's undeniable motive to selectively target a political foe.

Fifth, Supreme Court's extreme injunction prohibiting Defendants from engaging in perfectly lawful actions was well beyond that court's authority.

I. NYAG LACKED THE AUTHORITY TO BRING THESE UNPRECEDENTED CLAIMS UNDER SECTION 63(12).

At the threshold, NYAG must establish that she has standing to bring this Section 63(12) action. She failed to do so. As Justice Friedman correctly recognized below, NYAG has no standing to use that statute to step into the shoes of private, ultrasophisticated parties that are fully capable of litigating their own disputes, and that have never complained about or suffered any harm from the highly profitable transactions at issue. In claiming otherwise, NYAG tries to grab the unprecedented power to bring a Section 63(12) suit if she alone perceives any dishonesty in any commercial transaction involving the most sophisticated parties. NYAG has concededly never asserted such authority in Section 63(12)'s 70-year existence. Such improper rewriting of this statute would create an ever-present threat of government lawsuits hanging over every business transaction, which could be devastating for the State's economy.

A. NYAG Has Not Shown A Distinct Quasi-Sovereign Interest Or Harm To A Substantial Segment Of New York's Population.

By its terms, Section 63(12) authorizes NYAG to sue "in the name of the people of the state of New York" to combat "repeated fraudulent or illegal acts." N.Y. Exec. Law § 63(12). Under settled New York law, "like all other parties to actions," NYAG "must show an interest in the subject-matter of the litigation to entitle [her] to prosecute a suit and demand relief." *People* v. *Lowe*, 117 N.Y. 175, 191 (1889). When, as here, a statute empowers "the state to commence an action to protect a public interest, like the safety, health or welfare of its citizens," the State must satisfy the requirements of the *parens patriae* doctrine. *Grasso*, 11 N.Y.3d at 69 n.4; *see People* v. *Seneci*, 817 F.2d 1015, 1016 (2d Cir. 1987) (State was suing "as *parens patriae*" when commencing an action under Section 63(12)). Thus, NYAG "must prove [i] a quasi-sovereign interest *distinct from that of a particular party* and [ii] injury to a *substantial segment* of the state's population." *Grasso*, 11 N.Y.3d at 69 n.4 (emphasis added). NYAG could not establish either in this case.

1. It is black-letter law that "stepping in to represent the interests of particular citizens" does not qualify as a "'quasi-sovereign' interest." *Alfred*

L. Snapp & Son, Inc. v. *Puerto Rico, ex rel., Barez*, 458 U.S. 592, 600-601 (1982); *see Seneci*, 817 F.2d at 1017 ("The state cannot merely litigate as a volunteer the personal claims of its competent citizens."). After all, "[t]he attorney-general, in an action brought by [her], represents the whole people and a public interest," not "mere individuals and private rights." *People* v. *Brooklyn, F. & C.I. Ry. Co.*, 89 N.Y. 75, 76 (1882). Thus, to bring a Section 63(12) action, NYAG must identify an interest "*distinct* from that of a particular party." *Grasso*, 11 N.Y.3d at 69 n.4 (emphasis added).

This action would eliminate that fundamental constraint on NYAG's Section 63(12) authority. NYAG claims that Defendants, who are all either individuals or part of a privately held real-estate enterprise, "defrauded" four ultrasophisticated financial institutions in private, mutually agreed-upon commercial transactions. NYAG lacks standing to "litigate as a volunteer" the "personal claims" of Defendants' more than "competent" counterparties. *Seneci*, 817 F.2d at 1017.

This Court's decision in *People* v. *Ingersoll*, 58 N.Y. 1, 30 (1874), is instructive. There, the Court held that the State cannot sue on behalf of "corporation[s] with full power to acquire and hold property, create debts, levy taxes and sue and be sued," because those private parties can "car[e] for themselves" without "nursing" from the State. *Id.* The same is true here. The purportedly victimized entities "were fully capable, without the Attorney General's assistance, of monitoring their own interests and seeking redress for any violations of their own rights." A49529 (Friedman, J.). They did not because they were not injured. NYAG has no quasi-sovereign interest in repackaging and then litigating claims that those ultrasophisticated parties elected not to pursue. *Ingersoll* was decided more than a century ago, but there is a reason this Court has not had a more recent occasion to apply it—NYAG has admittedly never pursued a Section 63(12) action as far beyond the bounds of the statute as this one.

2. Beyond asserting a legitimate quasi-sovereign interest, NYAG must also "prove . . . [an] injury to a substantial segment of the state's population." *Grasso*, 11 N.Y.3d at 69 n.4. To satisfy this requirement, "more must be alleged than injury to an identifiable group of individual residents." *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607. NYAG must show that the direct or "indirect effects of the injury rang[ed] beyond [that] identifiable group." *People* v. *Niagara-Wheatfield Cent. Sch. Dist.*, 119 F.4th 270, 280 (2d Cir. 2024) (internal quotation marks and citation omitted).

NYAG also failed to make that required showing. The harms that NYAG implausibly asserts here are confined to a clearly "identifiable group," *Niagara-Wheatfield Cent. Sch. Dist.*, 119 F.4th at 280—just Deutsche Bank, Ladder Capital, Zurich North America, and Tokio Marine HCC. And those four parties have never complained, even to this day, about the challenged transactions.

B. The First Department's Contrary Conclusion Was Based On Several Flawed Premises.

Four Justices of the First Department concluded, for different reasons, that NYAG has standing to bring this case under Section 63(12). *See* A49317 (Moulton, J.); A49444 (Higgitt, J.). The two opinions on that subject both rest on flawed premises.

1. Justices Higgitt and Rosado suggested that NYAG need not allege or establish any distinct, widespread public injury to sue under Section 63(12). *See* A49444 (Higgitt, J.) (arguing that Section 63(12) "does not attempt to define how widespread the effects of an actor's conduct must be" for NYAG to sue). Justice Moulton and Presiding Justice Renwick correctly disagreed on that point, agreeing instead with Justice Friedman that "the Attorney General must demonstrate a public nexus before invoking her broad powers under Executive Law § 63(12)." A49317.

Justice Higgitt's approach cannot be squared with this Court's precedents or the text of Section 63(12). As this Court has explained, "a general rule running through our whole system of jurisprudence" is "that no person shall bring a suit, or even be a party to one, unless he has some interest therein." *Lowe*, 117 N.Y. at 191. This rule applies equally to "actions commenced by the People." *Id.* Thus, even when a statute authorizes NYAG to sue on behalf of New Yorkers, the statute does not confer "absolute discretion" to "intrude into a mere private quarrel," especially when, as here, "private suitors had ample and convenient remedies" to "enforce [their] rights" and "redress [any] wrongs." *Id.* at 193, 195. "The people of this State have no general power to invoke the action of the courts of justice, by suits in their name of sovereignty for the redress of civil wrongs, sustained by some citizens at the hands of others." *People* v. *Albany & Susquehanna R.R. Co.*, 57 N.Y. 161, 167 (1874).

Section 63(12) does not upend this foundational rule of law. In authorizing NYAG to sue "in the name of the people," N.Y. Exec. Law § 63(12), the statute does not arm her with "absolute discretion," *Lowe*, 117 N.Y. at 195, or confer any "greater authority to intervene in the litigation of controversies between individuals and corporations than any other indifferent party," *People* v. *O'Brien*, 111 N.Y. 1, 33 (1888). To the contrary, the first paragraph of the statute, Section 63(1), empowers NYAG only to "[p]rosecute and defend all actions and proceedings *in which the state is interested*." N.Y. Exec. Law § 63(1) (emphasis added). The statute thus incorporates the settled rule that, to sue, NYAG must establish that "the public interests require an action to be brought." *Lowe*, 117 N.Y. at 194. Any other interpretation of Section 63(12) would invite "grave and doubtful constitutional questions about the authority of the Legislature, consistent with separation of powers, to grant standing to the Attorney General to prosecute an action . . . to redress an alleged wrong that was not perpetrated directly against the State." *People* v. *Grasso*, 54 A.D.3d 180, 200 (1st Dep't 2008) (internal quotation marks omitted).

2. Four Justices below also erred in concluding that NYAG satisfied the injury requirement by claiming to vindicate the public "interest of securing an honest marketplace in which to conduct business." A49323 (Moulton, J.) ("interest in securing a marketplace that adheres to standards of fairness"); *see* A49445 (Higgitt, J.) ("maintenance and protection of the honesty . . . and the integrity . . . of the marketplace"). But virtually *any* "private quarrel," *Lowe*, 117 N.Y. at 175, can be shoehorned into this overbroad "integrity of the marketplace" theory. If NYAG can establish standing merely by invoking an

amorphous interest in "honesty," then she can step into the shoes of any private party in any private dispute. That would upend the manifest purpose of Section 63(12) and give NYAG an unlimited and dangerous power.

This extraordinary case bears no resemblance to any of the earlier Section 63(12) suits on which NYAG and the four Justices below relied. In *People* v. *Applied Card Systems, Inc.*, NYAG invoked Section 63(12) to sue a bank that actively solicited tens of thousands of individual consumers (not four financial institutions) in the subprime credit market to apply for credit cards, even though the customers generally would not qualify for credit. 11 N.Y.3d 105, 109 (2008). Similarly, in *People* v. *Coventry First LLC*, NYAG used Section 63(12) to target life-settlement providers who engaged in bid-rigging, surreptitiously paying life-settlement brokers to convince more than a thousand unsuspecting clients to accept the providers' paltry offers. 13 N.Y.3d 108, 112 (2009). The use of Section 63(12) in those contexts was unremarkable: there was obvious, ongoing harm to a large group of New Yorkers whom NYAG could reasonably conclude either could not or would not protect their own interests. The Legislature enacted Section 63(12) to "safeguard" "the vast multitude"—"the ignorant, the unthinking and the credulous." *Guggenheimer* v. *Ginzburg*, 43 N.Y.2d 268, 273 (1977). The four lenders and insurance companies here are anything but "ignorant," "unthinking," or "credulous."

Further, the small number of transactions in this case did not harm inexperienced consumers, foster an anticompetitive market, or have "any effect whatsoever on any person or entity not a party to them." A49535 (Friedman, J.). On the contrary, Defendants' highly capable counterparties collectively made over $100 million from the transactions at issue. Even the Justices who accepted NYAG's flawed standing argument agreed that this enforcement action presents "an unprecedented use of the statutory power" conferred by Section 63(12). A49444 (Higgitt, J.).

In sum, Section 63(12) is not an open-ended license for NYAG to parachute into any and all commercial transactions in search of potential misdeeds, real or imagined. If she can bring a Section 63(12) "fraud" suit based solely on arm's-length commercial transactions, where the supposedly "defrauded" parties were sophisticated firms that have never voiced a single complaint and in fact earned significant profits, then no commercial transaction in this State is beyond her reach. NYAG can target any deal, no matter how satisfied the parties, whenever she alone perceives a whiff of "dishonesty." That would undermine New York's position as the world's financial capital, and is not the regime that the Legislature enacted in Section 63(12).

II. NYAG DID NOT CARRY HER BURDEN TO ESTABLISH THAT DEFENDANTS VIOLATED SECTION 63(12).

A. Having Alleged Fraud, NYAG Was Required To Prove Her Claims By "Clear And Convincing" Evidence.

Supreme Court evaluated NYAG's claims under a preponderance-of-the-evidence standard. Four Justices of the First Department agreed that preponderance was the proper standard. *See* A49334 (Moulton, J.); A49452-A49456 (Higgitt, J.). Justice Friedman, however, concluded that NYAG should have been "required to prove her claims under section 63(12) by clear and convincing evidence." A49526. Justice Friedman was correct: Supreme Court applied the wrong standard. Its judgment should therefore be vacated. *See People* v. *Romualdo*, 37 N.Y.3d 1091, 1094 (2021) (applying wrong standard of proof is reversible error).

The clear-and-convincing standard was required in this case because NYAG claimed that Defendants engaged in "repeated *fraudulent* acts or otherwise demonstrate[d] persistent *fraud* or illegality," N.Y. Exec. Law § 63(12) (emphasis added). In New York, it is settled that "[f]raud must be proved by clear and convincing evidence." *Ferreyra* v. *Arroyo*, 35 N.Y.3d 127, 128 (2020); *see Gaidon* v. *Guardian Life Ins. Co. of Am.*, 94 N.Y.2d 330, 349-350 (1999) (same). As courts have explained, that heightened standard is needed when a "government-initiated proceeding[]" "threaten[s] the individual involved with . . . stigma." *People* v. *Wyatt*, 89 A.D.3d 112, 127 (2d Dep't 2011); *see Addington* v. *Texas*, 441 U.S. 418, 424 (1979) (same).

NYAG alleged that Defendants committed "persistent and repeated business *fraud*" by "engag[ing] in numerous acts of *fraud* and misrepresentation" over at least a decade. A448-A450 (emphasis added). Indeed, NYAG described her trial court victory as having found Defendants liable for "lying, cheating, and staggering fraud." Press Release, *Attorney General James Wins Landmark Victory in Case Against Donald Trump* (Feb. 16, 2024).[5]

In fact, this case does not just "involv[e] allegations of fraud or some other quasi-criminal wrongdoing," *Addington*, 441 U.S. at 424—it involves claims of actual "criminal wrongdoing." NYAG's Section 63(12) "illegality" claims are based on predicate *crimes* under the New York Penal Law—falsification of business records under Penal Law § 175.05; the issuance of a

[5] https://ag.ny.gov/press-release/2024/attorney-general-james-wins-landmark-victory-case-against-donald-trump.

false financial statement under Penal Law § 175.45; the commission of insurance fraud under Penal Law § 176.05; and conspiracy to commit the same under Penal Law § 105.00. That NYAG sought a disgorgement remedy so plainly excessive that it constituted an unconstitutionally punitive and excessive fine confirms the essentially criminal nature of this action. That disgorgement did "not provide recompense to any victims," A49418 (Moulton, J.), but was instead "clearly designed to punish" Defendants, A49615 (Friedman, J.).

Justice Higgitt distinguished Section 63(12) from common-law fraud on the ground that "the primary purpose and function of the statute and the Attorney General's action is to obtain injunctive relief." A49454. But the form of relief does not diminish the "stigma" of being labeled a persistent fraudster in a successful Section 63(12) case. *Wyatt*, 89 A.D.3d at 127. More fundamentally, it is wrong to characterize the "primary purpose" of this lawsuit as "obtain[ing] injunctive relief"—NYAG sought, and Supreme Court awarded, a monetary penalty approaching half a billion dollars. At a minimum, NYAG should have been required to meet the higher standard of clear-and-convincing evidence if she wanted, in Justice Moulton's words, "to compound [her] victory" in obtaining injunctive relief "with a massive punitive fine."

A49419. Supreme Court's failure to hold NYAG to that standard requires reversal.

B. Under Any Standard Of Proof, Defendants Did Not Commit "Repeated Fraudulent Acts" Or Engage In "Persistent Fraud."

Start with NYAG's first cause of action and its lead claim throughout: the "standalone" claim based on allegations of "repeated fraudulent" acts or "persistent fraud" in business. Supreme Court erroneously granted NYAG summary judgment on that claim, concluding that President Trump's SFCs "clearly contain[ed] fraudulent valuations that defendants used in business, satisfying [NYAG's] burden to establish liability as a matter of law." A44. Supreme Court did not revisit that mistaken determination during its later bench trial. A66.

On appeal, the First Department split three ways. No Justice agreed with Supreme Court's reasoning. As Justice Moulton explained, Supreme Court's analysis was "sometimes conclusory and insufficiently rigorous." A49399. Justice Moulton and Presiding Justice Renwick nevertheless voted to affirm after performing their own independent review of the summary-judgment record. A49372. Justices Higgitt and Rosado, on the other hand, would have vacated. In their view, Supreme Court had improperly "resolved

. . . questions of material fact" by erroneously rejecting Defendants' expert evidence and instead "applying its own interpretive standard" to the "valuation of the various assets listed in the SFCs." A49465. Justice Friedman agreed, A49563, but would have gone further and reversed because "the Attorney General simply failed to prove her case," A49523.

Justice Friedman was correct: NYAG did not carry her burden to prove liability on NYAG's standalone "persistent fraud" cause of action. As all parties have agreed, "the test for fraud" under Section 63(12) "is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *General Elec.*, 302 A.D.2d at 314. Here, the "targeted act[s]" were Defendants' submission of SFCs in arm's-length commercial negotiations with ultrasophisticated counterparties, which themselves sought to do business with Defendants. As a matter of law, the SFCs lacked any "capacity or tendency to deceive" or "create[] an atmosphere conducive to fraud." *General Elec.*, 302 A.D.2d at 314. At a minimum, there is a genuine dispute of fact on that question for the reasons that Justices Higgitt and Rosado explained at length below, requiring, at the very least, a remand for a new trial. *See* A49462-A49497.

1. Ultrasophisticated lenders and insurers do not accept at face value the kinds of estimates at issue here.

Notably, all five Justices of the First Department correctly recognized, contrary to Supreme Court, that the SFCs' "capacity or tendency to deceive, or create[] an atmosphere conducive to fraud," should be "viewed in the context of [the] commercially sophisticated counterparties" that received those SFCs. A49348 (Moulton, J.); *see* A49474 (Higgitt, J.); A49559 (Friedman, J.). The legal question is whether the valuation estimates in the SFCs had the "capacity to mislead reasonable commercial lenders and insurers acting reasonably under the circumstances," as informed by "relevant industry standards and practices of conduct." A49477 (Higgitt, J.) (citations omitted). All five Justices thus correctly rejected the theory pressed by NYAG and erroneously accepted by Supreme Court: that the allegedly "deceptive nature of the SFCs must be viewed . . . from the lens of an ordinary person." A49347 (Moulton, J.). The possibility that an ordinary person might hypothetically be deceived by an SFC is irrelevant. Such a person does not participate in the nine- or ten-figure real-estate markets in which the SFCs were intended to be used.

NYAG has no choice but to insist on "the lens of an ordinary person" because her case falls apart otherwise. The "record establishes that it is the universal practice among sophisticated recipients of SFCs to treat such a document" as only "the starting point for the user's independent investigation and analysis of the value of the preparer's assets," *not* to view them as "objective, professionally verified" assessments "to be taken at face value." A49561, A49568 (Friedman, J.). As the unrebutted trial testimony showed, "lenders" to high-net-worth individuals "are trained not to rely" on the specific value estimates in an SFC. A18255 (Unell testimony). They do not even consider it "unusual or atypical" for their own independent estimates to be *half the amount* stated in an SFC. A33271 (testimony of Deutsche Bank executive David Williams) (emphasis added). In short, as Justice Higgitt recognized, reasonable lenders and insurers expect and understand that SFCs will generally "fail to do the very thing" that a layperson might "think they were intended to do: accurately reflect the individual's assets and liabilities." A49480.

The legal rules that govern sophisticated commercial actors reflect these settled market practices. "New York law imposes an affirmative duty on sophisticated investors to protect themselves from misrepresentations . . . by investigating the details of the transactions" at issue. *Global Mins. & Metals Corp.* v. *Holme*, 35 A.D.3d 93, 100 (1st Dep't 2006). This Court stated the rule "more than a century ago" and has frequently applied it "in recent years where the plaintiff is a sophisticated business person or entity that claims to have been taken in." *DDJ Mgt., LLC* v. *Rhone Grp. L.L.C.*, 15 N.Y.3d 147, 154 (2010). Such actors "must make use of" "the means available to [them] of knowing . . . the truth or the real quality of the subject of [a] representation." *Id.* (citation omitted); *see* A49570-A49571 (Friedman, J.) (collecting additional cases).

This long-settled law applies with particular force to the valuation estimates challenged here. For one thing, nearly all of the disputed figures were "subjective estimates of the unliquidated, inchoate values of unique properties" such as Mar-a-Lago and Trump Park Avenue. A49573 (Friedman, J.). As the uncontradicted expert evidence showed, and as all five Justices below agreed, such valuations "inherently possess[] a wide measure of variability, partially due to the particular expertise of the individual evaluator and the uniqueness of the type and market of property, such that even substantial differences" among possible estimates is not evidence of deception. A49466 (Higgitt, J.); *see* A49372 (Moulton, J.); A49562-A49563 (Friedman, J.). The First Department was thus unanimous that "Supreme Court [had] erred by reasoning that 'real property valuations are to be judged objectively, not subjectively.'" A49372 (Moulton, J.).

As the unrebutted testimony below demonstrated, lenders also understand that such trophy properties are at times prone to optimistic value estimates in personal financial statements. As a Deutsche Bank executive testified, "very wealthy clients . . . typically have a much higher view on what [their] assets are worth than the bank may have," "especially when you get into real estate or fine art." A20042 (Sullivan testimony); *see* A32362 (testimony of real-estate expert Dr. Steven Laposa) ("It is my experience, that the owners, investors, developers are much more optimistic."). That is why "a bank comes up with [its] own assessment in terms of what they think these assets are worth," "away from what the client represents" the value to be. A32362 (Sullivan testimony); *see* A20042 (same) ("The bank takes a very conservative view when they underwrite a transaction and we try to make it independent of what the client is representing."). Indeed, that is precisely what happened here, as shown below. *See infra*, pp. 76-82.

In sum, applying the appropriate "industry standards and practices of conduct," an SFC's estimated values for the unique properties here lack any "tendency or capacity to deceive the reasonable commercial lender in the ultra-high-net-worth lending market." A49477-A49478 (Higgitt, J.). A lender "acting reasonably under the circumstances," *id.* (citation omitted), places very little stock in the client's own "view on what [his] assets are worth," A20042 (Sullivan testimony). Instead, lenders take an SFC's list of assets as "provid[ing] a roadmap to do their own analysis" and "form their own opinions," A33570 (Unell testimony)—that is, "independently determine what [they] think the assets are worth" based on their "own assessment," A20045 (Sullivan testimony).

2. The SFCs here expressly cautioned that the relevant asset values were subjective estimates that might vary widely from other assessments.

The specific contents of President Trump's SFCs confirm that they had no capacity to deceive their recipients. Each SFC expressly advised counterparties in "clear and specific language" that they should treat the value estimates in line with the industry practice just described. A49478 (Higgitt, J.). Beyond those warnings, NYAG did not carry her burden to establish that any specific valuation estimates or statements rose to the level of "fraud." She certainly has not shown the absence of any genuine issue of material fact, as Justices Higgitt and Rosado concluded.

a. Each SFC contained the following warnings and disclaimers at the outset, under the heading "Basis of Presentation":

> Assets are stated at their estimated current values . . . using various valuation methods. Such valuation methods include, but are not limited to . . . estimates of current values as determined by Mr. Trump in conjunction with his associates and, in some instances, outside professionals. *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* . . . . The use of different market assumptions and/or estimation methodologies *may have a material effect on the estimated current value accounts*.

E.g., A2105 (2011 SFC) (emphasis added).

Dr. Bartov, a leading NYU accounting professor, testified that banks and lenders understand such cautionary statements to "double down" on standard industry practice and "provide another warning to the user that, again, they should not rely on the raw data that is produced in this statement." A34297. "[R]ather," "they have to do their own analysis," "develop their own valuation model, their own assumptions, and come up with their own values." A34297. No trial witness or evidence contradicted that testimony. Indeed, as a matter of law, sophisticated parties are "charged with knowledge of" this sort of "risk disclosure[] and warning," and therefore cannot sue over any misstatements they later claim to discover. *HSH Nordbank AG* v. *UBS AG*, 95 A.D.3d 185, 201 (1st Dep't 2012).

Each SFC was also prefaced by a letter from the compiling accountants. *E.g.*, A2101-A2102 (2011 SFC). That letter again advised that the enclosed SFC contained departures from "accounting principles generally accepted in the United States," which the letter characterized as "significan[t] and pervasive[]," A2102. As a result, the accountants warned, a user applying more stringent valuation standards might "reach different conclusions about the financial condition of Donald J. Trump." A2102. As Justices Higgitt and Rosado recognized below, these letters further "indicated" that disputable assumptions or estimates were potentially present in the SFCs. A49476.

b. Beyond the SFCs' repeated warnings, the specific figures in the SFCs attacked by NYAG do not support a finding of "persistent" or "repeated" "fraud." In fact, many of the estimated values in the SFCs turned out to be very conservative—for example, the estimates for the Old Post Office Hotel. As explained property-by-property below, Supreme Court's summary-judgment findings of deliberate deception reflected a consistent refusal and failure to analyze the SFCs' statements "in their appropriate context," an error that then "fatally infected the subsequent trial." A49465, A49480

(Higgitt, J.). That context includes the industry expectations and the multiple warnings just discussed. It also includes the "flexible concept of Estimated Current Value" that applies under the applicable accounting standard—ASC 274—for personal financial statements, *see* A23681 (Dr. Bartov report), which Supreme Court entirely ignored.

40 Wall Street. Supreme Court first wrongly held that certain SFCs "valued 40 Wall Street between $525 million and $796 million" notwithstanding several private "appraisals ranging between $200 million [in 2011] and $540 million [in 2015]." A49340 (Moulton, J.). A real-estate developer does not commit fraud by taking a more bullish view of a property's value compared to other estimates. The huge difference between even NYAG's supposedly "objective" appraisals (issued four years apart) of $200 million and $540 million alone proves the point. As Justice Higgitt explained, citing the undisputed expert testimony, "appraisals are subjective, at every level and within every component," "may differ depending on the intended audience," and "are subject to significant variability." A49489-A49490 (Higgitt, J.); *see, e.g.*, A22882 (Laposa report stating the same); A33902 (testimony of real-estate expert Frederick Chin stating the same). That inherent subjectivity is magnified for assets that are "unique," or where there is not "sufficient data to render a market analysis reliable"—indeed, any "attempt to 'appraise' such an asset" may well be, "if not futile, inherently suspect." A49490 (Higgitt, J.).

ASC 274 did not require the SFCs to adopt the value estimate provided by outside appraisers or even disclose the existence of such appraisals. A17933-A17934 (Dr. Bartov rebuttal report). As Dr. Bartov explained at trial, "the fact that some people" "come up with different values than what is in the [SFC]" is not "evidence that anything is wrong with the valuation in the [SFC]. It just means that these people have [a] different opinion." A34291. Nor was there anything in the SFCs that implied the absence of contrary valuations. The SFCs stated that the estimated value of 40 Wall Street was "based" in part on "an evaluation made by Mr. Trump in conjunction with his associates," making clear the subjectivity involved. *E.g.*, A2155 (2013 SFC).

In grounding their incorrect claims on the existence of lower appraisals for 40 Wall Street and other unique properties, Supreme Court and NYAG insisted that valuing a property at "more than 200%" or "more than 300%" of the figure provided by an outside appraiser is necessarily and inherently fraudulent. *E.g.*, A52. But the record makes clear that much larger disparities are common in commercial real estate. For example, President Trump's 2014 SFC valued his leasehold interest in the Old Post Office property at just

$10.5 million. A2192. The 2020 SFC then valued it at $91.1 million. A2345. But in 2022, President Trump sold that interest for $375 million, A131—a more than 3500% increase compared to 2014. Likewise, President Trump's 2020 SFC valued his license to operate the Ferry Point golf course at $10.3 million, A2732, but in 2023, President Trump sold that license to Bally's for $60 million, *plus* an additional $115 million if Bally's obtains a gaming license, A133. In Justice Higgitt's words, such large "fluctuation[s]" in both estimates and bona fide sales are a "fundamental aspect of the real estate market," as "[D]efendants' experts discussed." A49491. Supreme Court and NYAG had no answer.

Seven Springs. The same unrebutted evidence undermines NYAG's meritless claim that Defendants committed fraud by valuing Seven Springs, "a 212-acre parcel of land in Westchester, between $261 million and $291 million between 2011 and 2021, despite a 2000 appraisal" putting the value at "only $25 million." A49340 (Moulton, J.). The 2000 appraisal on which NYAG relied was "many years out of date" in an expensive and growing area. A49491 (Higgitt, J.); *see* A18867-A18871 (testimony of Frederick Chin, explaining other factors contributing to the difference). In any event, again, the mere existence of one lower appraisal does not, standing alone, establish fraud. The

SFCs were clear that the estimated values were "as determined by Mr. Trump in conjunction with his associates." *E.g.*, A2105, A2117 (2011 SFC).[6]

Trump Park Avenue. This evidence likewise demonstrates the error in NYAG's claim that the SFCs' valuation of Trump Park Avenue at "between $90 million and $350 million between 2011 and 2021, despite a [2010] appraisal of only $72.5 million." A49339 (Moulton, J.).

Beyond pointing to the 2010 appraisal, Supreme Court also wrongly claimed that the SFCs' estimates were fraudulent because they assumed that a small number of rent-stabilized, occupied apartments could be freely sold at market rates. *See* A49339 (Moulton, J.). There were 12 such rent-stabilized units in September 2011. A6601.

Here too, however, according to uncontroverted expert evidence, such disparity in valuation methodologies is part of accepted industry practice. ASC 274 allows an SFC to value an asset using a "unique" and "not intuitive" "definition of value"—"Estimated Current Value," or ECV. A34288 (Dr. Bartov testimony). That name can confuse a layperson, because a

[6] This evidence also disposes of Supreme Court's incorrect suggestion (not discussed by the First Department) that the SFCs' valuations of Trump National Golf Club LA were fraudulent because Defendants were aware of more conservative appraisals. *See* A128.

property's ECV need not be based on "the value of the transaction that would happen *currently*," but instead can be derived from the asset's anticipated value "someday" in the future, "when you complete all your plans." A34318 (same); *see* A34315 (same) (explaining that ASC 274 permits valuation "based on planned courses of action"); A45222 (ASC guidance). The "Current" refers only to adjusting that "someday" projection to net present value, on the back end.

Dr. Bartov provided an example at trial: Suppose a parcel of land was purchased for $1 million today with the intent of building a hotel that could be sold for $50 million (after deducting the cost of the improvements) in several years. Today, ECV would allow the preparer to value that land at $50 million, discounted to present value. A34318. Thus, under the governing accounting standards for SFCs, it was entirely proper to value Trump Park Avenue "based on the assumption" that Defendants "would be able to free [certain] apartments from rent stabilization" on the "long view during which vacancy decontrol would" kick in. A17938 (Dr. Bartov rebuttal report). Nor was that assumption outlandish—in fact, six of the 12 rent-stabilized units became deregulated as renters vacated between 2013 and 2019. A7159. Supreme Court plainly erred in its valuation of Trump Park Avenue.

Aberdeen. Supreme Court erroneously found that certain SFCs' estimates of the Aberdeen golf property in Scotland were fraudulent because the estimates assumed that "over 2,500 private residences could be constructed and sold, when defendants obtained approval to develop less than 1,500." A49341 (Moulton, J.). But again, ASC 274 allows an SFC preparer to value an asset "based on planned courses of action." A34315. It was "completely consistent" with the applicable accounting principles for Defendants to value Aberdeen using a "forecast based upon" President Trump's "business plan and belief that he could convince the local authorities to approve a development of that magnitude." A17936 (Dr. Bartov affidavit).[7]

Mar-a-Lago. Supreme Court's treatment of Mar-a-Lago may be its most glaring error. The court found that the SFCs' estimated annual values for Mar-a-Lago (in Palm Beach, Florida) of between \$426 million and \$612 million were "overvaluations" of "at least 2,300%" compared to municipal tax assessments of between \$18 million and \$27.6 million. A49 (emphasis omitted).

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[7] The same goes for Supreme Court's mistaken suggestion (referenced briefly by Justice Moulton, A49407) that some SFCs improperly valued undeveloped land in Briarcliff, New York, by assuming that 71 condominium units could be built when, at the time, the Trump Organization had permission to build only 31 units. *See* A127.

Supreme Court's reliance on a tax assessment was a particularly obvious mistake. Such assessments are often not even value-focused appraisals. Indeed, they have "no correlation to market value" and thus "offer minimal value to appraisers." A18880-A18881 (Chin affidavit) (quoting Mark R. Ratterman, Appraisal Institute, *Residential Property Appraisal* 41-42 (2020)). Lawrence Moens, a prominent Palm Beach real-estate broker, testified that the SFCs' estimates were if anything "conservative." Based on his experience marketing prominent real estate for decades, Mr. Moens would have valued Mar-a-Lago at between $655 million and $1.04 billion from 2011 to 2021. A23035, A23043. As he explained, Mar-a-Lago sits on over 17 acres of oceanfront and lakefront land, with a historic mansion, several pools, a ballroom, and many other valuable features, making it one of the most desirable properties in the world. A23041-A23043. No reasonable person could possibly think that the property is worth only $18 million.

Supreme Court also claimed that the SFCs' valuations ignored the impact of certain deed or plan restrictions governing the use of Mar-a-Lago, that supposedly "preclude[] the use of the property for anything other than a social club," and thus bar its use as a "residential property." A49340-A49341 (Moulton, J.). But NYAG's and Supreme Court's misreadings of those documents implausibly imply that President Trump and his family have been unlawfully living at Mar-a-Lago for years. As Defendants' expert John Shubin explained, "based on [his] experience as an attorney specializing in land use and zoning matters for over thirty years," none of the restrictions pointed to by NYAG prevents Mar-a-Lago from "be[ing] used as an exclusive private residence," "and title to the [p]roperty and its residential use rights are freely transferable by the Owner." A23071; *see* A49586-A49591 (Friedman, J.).

Supreme Court studiously ignored Shubin's expert analysis without any explanation. Again, NYAG presented no expert offering a different view of Florida law or of the relevant documents. Below, Justice Moulton contended that Shubin's testimony was an "improper attempt to usurp the court's function as the sole determiner of issues of law." A49382. But the question here is *fraud*—whether, as Justice Moulton himself phrased it, NYAG can establish that Defendants lacked any "reasonable, good-faith basis" to value Mar-a-Lago as they did. A49373. NYAG was not able to do so. The fact that Supreme Court disagreed with a Florida real-estate lawyer about Florida law obviously does not establish fraud. At a minimum, it created a material issue of fact that should have precluded summary judgment. Even if the Shubin report were not in the record, President Trump's longstanding residence at

Mar-a-Lago alone would have supplied a good-faith basis for his assuming that the use of the property as a residence was perfectly legal.

Reliance on Trump Brand. Supreme Court erroneously found that Defendants "inflated the values of golf club properties between 15% to 30% based on the value purportedly associated with the Trump brand name, even though the SFCs provided that 'goodwill attached to the Trump name . . . had not been reflected in [the SFCs'] preparation.'" A49341 (Moulton, J.). That was a total misreading of the SFCs. As Justices Higgitt and Friedman explained, the SFCs in fact made clear that the "value of Donald J. Trump's worldwide reputation" *had* been included in valuation figures "to the extent it ha[d] become associated with properties either operative or under development." A49492 (Higgitt, J.) (quoting the SFCs); *e.g.*, A2119 (2011 SFC); *see also* A49597 (Friedman, J.). Supreme Court erred here by simply misreading the documents.

Vornado Cash. Supreme Court also mistakenly faulted the SFCs for including certain cash holdings of a real-estate partnership, known as Vornado, within the total amount of President Trump's assets described as "cash and cash equivalents" or "cash and marketable securities." Specifically, the SFCs included within that bucket 30% of the cash held by Vornado, matching precisely President Trump's 30% stake in the partnership. *See* A32105-A32106 (testimony of accounting expert Jason Flemmons).

Supreme Court incorrectly found that this way of presenting the data was fraudulent because President Trump, as only a minority holder of Vornado, could not directly control that 30% of its cash. But this finding also ignored what the SFCs actually said: that the "cash" reported included "amounts held by Donald J. Trump personally, *and amounts in operating entities*." *E.g.*, A2106 (2011 SFC) (emphasis added). As multiple experts explained, that statement "specifically identified that the cash was not all held by" President Trump. A17448 (Flemmons rebuttal report); *see* A17941 (Dr. Bartov affidavit). NYAG considered that presentation deceptive because a "GAAP-compliant financial statement" "as a general matter" will include as "cash" only "liquid currency or demand deposits." A473. But the compilation letter included with each SFC disclosed that GAAP departure: that the SFCs "state[d] certain cash positions separately from their related operating entity." *E.g.*, A2124; *see* A49598 (Friedman, J.).

The record confirms that the SFCs' treatment of the Vornado cash was not a "deliberately . . . misleading[] statement" or "manipulation" sufficient to find "fraud" under Section 63(12). *See* A49449 (Higgitt, J.). Defendants' outside accountants compiled the SFCs "based on information given to them by the Trump Organization." A49342 (Moulton, J.). That documentation included "detailed supporting schedules" identifying "the sources of cash," including the 30% from the Vornado partnership. A17448-A17450 (Flemmons rebuttal report); *see* A32104-A32106 (Flemmons testimony discussing "more-detailed spreadsheet . . . provided to Mazars"). Defendants also allowed counterparties to verify President Trump's liquidity by inspecting his bank and brokerage statements, as Deutsche Bank did, *see* A14594 (2011 report). Moreover, placing the Vornado cash under the SFCs' "cash" line item did not "increase the value of President Trump's net worth," which (according to NYAG) was the underlying motive for all the alleged misstatements, *see* A49404 (Moulton, J.). Rather, as Defendants' expert explained, the cash would have been "reported as an asset elsewhere on the" SFC—namely, "in the value of the partnership interest." A17941 (Dr. Bartov affidavit).

Triplex Square Footage. Finally, Supreme Court erroneously found that Defendants inflated the total value of Trump Tower in SFCs between 2012 and 2016 by overestimating the market value of President Trump's Triplex condominium apartment, assuming a square footage of 30,000 when the actual size was 10,996 square feet. A49340 (Moulton, J.). But as Justice

Friedman explained, there is "no evidence tending to show that . . . the excessive square footage number was anything other than an unintentional error." A49609. After learning of the mistake *in 2017* (before NYAG's investigation even commenced), Defendants undisputedly used the correct square footage when estimating Trump Tower's total value in all future annual SFCs, showing the opposite of any intent to defraud. *See, e.g.*, A2600 (2017 SFC supporting spreadsheet). There was no evidence that any of the lenders or insurers that received annual SFCs after 2017 gave any credence to the change in the Trump Tower valuation.

Such inadvertent conduct cannot possibly form the basis of a claim requiring "repeated fraudulent" acts or "persistent fraud . . . in the carrying on, conducting or transaction of business." N.Y. Exec. Law § 63(12). Nor can it support Supreme Court's award of final injunctive relief, which requires "a reasonable likelihood of a continuing violation" of that statute. *People* v. *Greenberg*, 27 N.Y.3d 490, 496-497 (2016). Indeed, it is telling that this quickly corrected square-footage error is the only "truly, objectively 'wrong'" statement that NYAG has identified. A49473 (Higgitt, J.).

3. The ultrasophisticated lenders and insurers here did not place importance on the specific valuation estimates contained in the SFCs.

Finally, the record confirms that the four savvy and well-established lenders and insurers here "did not require absolute accuracy" or expect as much from the SFCs. A49476 (Higgitt, J.). As Justice Friedman explained, "the record establishes that . . . [Defendants'] counterparties" "entered into the transactions based on their independent valuations" of President Trump's assets. A49576.

Certain Justices below disputed whether a standalone "persistent fraud" claim under Section 63(12) requires NYAG to prove that the SFCs' alleged inaccuracies were material, and that the lenders and insurers here relied on them,[8] but that question is academic. Even if materiality and reliance are not formal elements of a standalone Section 63(12) claim, both questions are highly "relevant to determining the tendency or capacity of the" SFCs to deceive in the first place. A49448 (Higgitt, J.). As Justice Higgitt explained, "the true tendency of an act or statement to deceive should take into account the nature of the parties and the nature of the market and circumstances

[8] *See* A49348 (Moulton, J.); A49467 (Higgitt, J.); A49574, A49582 (Friedman, J.).

under which the representations are made," as evidence of "the utility of the information in the *commercial* lending and *commercial* insurance settings." A49474. Here, the fact that the SFCs were "not relied upon by President Trump's counterparties, and . . . did not impact the subject transactions, confirms" that the "SFCs were not conducive to fraud in the professional context in which they were used." A49574 (Friedman, J.). That is yet another nail in the coffin for NYAG's theory.

Deutsche Bank. Between 2012 and 2014, Deutsche Bank provided three loans: the Doral loan, the Trump Chicago loan, and the Old Post Office loan. Before extending these loans, Deutsche Bank conducted an independent and detailed assessment of President Trump's net worth. The results were "reasonably expected adjustments" that came in at roughly half the SFCs' top-line net-worth estimate. A33267 (Williams testimony); *see* A28234-A28250 (Haigh testimony detailing adjustments).

Underscoring its sophistication and familiarity with the real-estate market, Deutsche Bank arrived at its independent estimate using a variety of methods. It sometimes relied on independent appraisals, for example in valuing the Doral resort. *See* A33427 (Vrablic testimony), A45483 (internal email), A45491 (internal email). For other "trophy" properties, including

Trump Tower, 40 Wall Street, and Trump Park Avenue, Deutsche Bank's lending team consulted the "Deutsche Bank Valuation Services Group," which had "substantial experience valuing real estate assets" and offered "Deutsche Bank's opinion of what the value of those assets might be." A28240-A28243 (Haigh testimony). For other assets—such as the club facilities and properties under development, which the Deutsche Bank team considered particularly "hard to value"—the bank used "ball-parked" rough adjustments of between 35% and 75% haircuts. A28246-A28248 (Haigh testimony). Deutsche Bank also verified President Trump's liquidity by having a "lending team" "review[] bank and brokerage statements" in 2011 and in 2013. A28236 (Haigh testimony), A33263-A33264 (Vrablic testimony).

This detailed evidence from the alleged principal "victim" of Defendants' alleged fraud makes abundantly clear that Deutsche Bank (along with the other banks and insurance companies) "*expected* President Trump, like any other high-net-worth customer, to provide valuations based on optimistic assumptions about future contingencies." A49579 (Friedman, J.). Deutsche Bank knew that its clients "largely rely[] on the use of estimates" in providing asset values and "account[ed] for that" in its credit analysis. A33215-A33216 (Williams testimony). Indeed, the bank viewed the resulting 50% downward revision of President Trump's estimated net worth—a difference of just under $2 billion compared to President Trump's SFCs at the time, *see* A2104—as "not unusual or atypical" for the industry. A33271 (Williams testimony).

This unrebutted testimony also establishes that the SFCs' specific value estimates did not matter much to Deutsche Bank. Even if President Trump's 2011-2014 SFCs had said exactly what NYAG claims they should have, his net worth would never have dipped below $3 billion, *see* A1882, which is $500 million *more* than what Deutsche Bank itself estimated that figure to be. Yet Deutsche Bank was still happy to make the three loans, to accept President Trump's guarantee, and to earn tens of millions in interest. The bank considered President Trump to have one of "the strongest personal balance sheets we have seen." A45485 (internal Deutsche Bank email). He was "well in excess" of the bank's thresholds for issuing recourse loans at the interest rates they offered Defendants (2.0 to 2.5 percent), which were (i) a net worth of at least $100 million and (ii) "investable assets" (liquidity) of "10 million." A33280-A33283; *see* A33212-A33213, A33217 (Williams testimony). Again, Deutsche Bank independently estimated President Trump's net worth at roughly $2.4 billion and concluded that he had access to "135 million in unencumbered liquidity." A28249-A28250 (Haigh testimony). That was 10 to 20 times the thresholds required by Deutsche Bank for its preferential rates.

Ladder Capital. The same in-depth process played out with Ladder Capital's loan for 40 Wall Street. Ladder Capital reviewed President Trump's personal income tax returns and 40 Wall Street's rent roll, operating statements, and ground lease, A11500-A11558 (underwriting committee memo), and separately obtained an independent appraisal of 40 Wall Street from Cushman & Wakefield. A29170 (testimony of Ladder Capital loan officer); A4117 (appraisal). President Trump's "net worth statement" was not "a key factor" in the company's decisionmaking. A29165 (loan officer testimony). Rather, "loan liquidity [was] what [it was] really paying attention to." A29177-A29178 (same). Ladder Capital found that President Trump indeed had "a lot of liquidity." A29177-A29178 (same). And under the at-issue loan agreement, he was required only to "maintain a net worth equal to at least $160 million and a liquidity of at least $15 million." A19166. Both figures are miles below the supposedly (but not actually) "accurate" numbers offered by NYAG, under which President Trump's net worth was never less than $3 billion and his cash on hand never less than $51 million. A1882, A1907.

Insurance Policies. There was also no evidence that the SFCs had an impact on the transactions with Zurich or Tokio Marine HCC. Zurich considered the value of hard assets "not very significant," instead focusing on liquidity. A44957, A44999 (testimony of Zurich underwriter). Zurich agreed that all parties were pleased with the surety bond program given "substantial liquidity within the company to cover any bond need." A44964, A44987 (same). Moreover, Zurich did not even rely on the SFCs in some years, instead looking to media publications to support its transactions, and Zurich continued supporting the surety bond program even after NYAG's allegations became public, *see* A45004-A45005 (same). Similarly, HCC reviewed "very few financials" and was primarily interested in assessing bankruptcy risk. *See* A29884-A29885, A29889-A29890 (testimony of HCC underwriter). HCC also focused on reported liquidity, which, again, far exceeded the premium and total coverage limit. *See* A29884, A29890, A29896 (same). There is no evidence the SFCs had any impact on HCC's transactions with Defendants.[9]

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[9] NYAG's motion for summary judgment also briefly discussed an $8 million mortgage on the Seven Springs property, which originally closed in 2000 and was extended in 2014 and 2019. *See* A13014-A13017. Supreme Court made no specific findings about those transactions. At any rate, the bank employee who evaluated the loan application testified that he "rel[ied] on [an] old appraisal of $30 million," not the much higher estimate in the SFCs, in

C. Defendants Did Not Commit "Repeated Illegal Acts" Or Engage In "Persistent Illegality" Under Section 63(12).

NYAG's remaining causes of action were Section 63(12) "illegality" claims that required her to prove separate violations of law—namely, falsification of business records under Penal Law § 175.05; issuing a false financial statement under Penal Law § 175.45; insurance fraud under Penal Law § 176.05; and conspiracy to commit these offenses under Penal Law § 105.00. A649-A659. NYAG failed on these counts as well.

Supreme Court wrongly denied Defendants' motion for summary judgment on the illegality claims, reasoning that NYAG had identified "disputed issues of fact as to whether defendants violated these statutes, intentionally and materially." A43. But after trial, Supreme Court erroneously granted judgment to NYAG, finding that she had established intent and materiality, and that Defendants had thus committed the predicate offenses. A137-A142. Supreme Court's incorrect factual and legal determinations did not differ in any meaningful respect from the reasoning in its earlier summary-judgment decision.

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deciding to recommend the mortgage. A22021. And even on NYAG's view, President Trump had enough cash to cover the $8 million mortgage 40 times over. *See* A1907.

On these Section 63(12) illegality claims, too, the First Department split. Justice Moulton and Presiding Justice Renwick would have affirmed Supreme Court's finding of liability. Justice Friedman would have reversed. Justices Higgitt and Rosado would have vacated and remanded for a new trial, reasoning that Supreme Court's flawed analysis of the standalone "persistent fraud" claim at summary judgment "infected the trial and judgment, requiring reversal of both decisions and vacatur of the judgment." A49428-A49429.

Justice Friedman was again correct that Supreme Court's liability findings should be reversed. At a minimum, a new trial should be ordered.

First, as demonstrated in the preceding section, NYAG did not carry her burden to demonstrate any materially false statement (Penal Law § 175.05 and Penal Law § 175.45) or statement "contain[ing] materially false information" (Penal Law § 176.05).[10] As Justice Friedman explained, "the valuations in the SFCs . . . simply were not false, even if disputable, in the

[10] The only objective inaccuracy that NYAG has identified is Defendants' use of incorrect square footage when valuing the Triplex. Even that error did not result in any false statement, because no SFC actually provided the Triplex's square footage; instead, the square footage was an erroneous factor in the SFCs' overall subjective valuation of Trump Tower. Regardless, because NYAG has not shown that the square-footage mistake was anything more than an inadvertent error that was promptly corrected, she has not established the "intent to defraud" that is required for each of the illegality counts.

professional context in which they were used." A49599. That point alone requires judgment for Defendants on all Section 63(12) "illegality" counts.

Second, NYAG did not establish that any of the statements in the SFCs were material, as required under Penal Law § 175.45 (requiring "inaccura[cy] in some material respect") and Penal Law § 176.05 (requiring "materially false information"). In evaluating materiality, an alleged misstatement "must be assigned its appropriate importance, or lack thereof, in light of all available information, and in context, considering the realities of motivation and goal within the relevant sphere." A49460 (Higgitt, J.). As shown above, the lenders and insurers here were ultrasophisticated parties who, consistent with standard industry practice, did not take the figures in the SFCs at face value, to the extent they reviewed them at all. Moreover, even on NYAG's competing views of what those valuations should have been, President Trump's net worth was always above $3 billion, 30 times "the minimum net worth required to qualify for the favorable terms" in the at-issue transactions. A49580 (Friedman, J.); *see* A1882 (chart from NYAG's motion for summary judgment). The only conclusion is that the SFCs' specific figures and statements were not material to the four lenders and insurers here.

Third, NYAG failed to prove "intent to defraud," as required for all of the predicate offenses. The key pillar of NYAG's assertion that Defendants acted with intent to defraud was Michael Cohen's highly questionable say-so. "Without Cohen's testimony . . . the Attorney General's case that President Trump had fraudulent intent with regard to the SFCs falls apart." A49607 (Friedman, J.).[11] But on cross-examination, Cohen admitted that President Trump never actually directed him to inflate any of the SFCs' estimates. A29808-A29809. Such unreliable testimony from a convicted perjurer—testimony that Cohen quickly retracted—could not rationally support Supreme Court's finding of purposeful intent to deceive. That was true even before Cohen's recent statement that he "felt compelled and coerced to deliver" only testimony "that would help" Attorney General James "go after President Trump." Cohen Substack, *supra*. Supreme Court's intent-to-defraud findings rested, and therefore should fall, on Cohen's contradictory statements.

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[11] The only evidence supposedly corroborating Cohen's testimony was a statement by Trump Organization employee Patrick Birney, who stated that "Weisselberg told him that President Trump wanted to see his net worth in the SFCs go up." A49405 (Moulton, J.). But that statement was inadmissible (indeed, double) hearsay, as Justice Moulton recognized. A49405.

III. SUPREME COURT IMPERMISSIBLY RELIED ON TRANSACTIONS OUTSIDE THE STATUTE OF LIMITATIONS.

The trial court also misapplied the governing six-year limitations period to NYAG's allegations. As Justices Higgitt, Rosado, and Friedman concluded below, NYAG's claims "are time-barred to the extent they are based on the issuance of SFCs pursuant to transactions that closed before July 13, 2014"—six years prior to the filing of this action plus applicable tolling. A49610 (Friedman, J.); *see* A49499 (Higgitt, J.). Several of the transactions on which Supreme Court relied for its liability decision closed before that date. Indeed, in direct contradiction of the First Department's earlier ruling, Supreme Court also considered those time-barred SFCs both "in calculating damages" and in "awarding injunctive relief." A49516 (Higgitt, J.). As Justice Higgitt concluded, that was a "foundational[]" error that infected every aspect of Supreme Court's judgment and therefore requires vacatur. A49517.[12]

1. That conclusion follows from two straightforward premises. *First*, from the start of this case, NYAG's core theory has been that Defendants

[12] As Justices Higgitt, Rosado, and Friedman also observed, the required "exclusion of untimely transactions" also "significantly reduces Supreme Court's disgorgement award" by several hundred million dollars. A49515 (Higgitt, J.); A49611 (Friedman, J.). Defendants will address that point in their brief in opposition to NYAG's cross-appeal on disgorgement.

"used the [SFCs] to induce counterparties to provide funding [that is, loans] or insurance on favorable terms." A473 (complaint). NYAG's theory underpinned Supreme Court's post-trial opinion, which examined how Defendants had used the SFCs to "solicit" and enter into loan agreements, win government contracts, and "acquir[e] insurance coverage." *See* A129-A135.

Second, it is well-settled that a "cause of action for fraud in the inducement of a contract (and therefore the commencement of the running of the Statute of Limitations) accrues *at the time of the execution of the contract*." *Ply*Gem of Laurel, Inc.* v. *Lee*, 91 A.D.2d 513, 513 (1st Dep't 1982) (emphasis added); *Boesky* v. *Levine*, 193 A.D.3d 403, 405 (1st Dep't 2021) (collecting cases). The same is true for claims "based on constructive fraud" or "negligent misrepresentation"—they "accrue[] on the date of the commission of the purported" conduct, and thus "run from *the date of the closing* . . . since that is the date on which the plaintiff relied upon the alleged misrepresentation." *Fandy Corp.* v. *Lung-Fong Chen*, 262 A.D.2d 352, 353 (2d Dep't 1999) (emphasis added).

Following that established law, the First Department correctly held—in its earlier opinion on Defendants' motions to dismiss—that NYAG's "claims are time barred if . . . the transactions" at issue in those claims "were completed" "before July 13, 2014." *Trump*, 217 A.D.3d at 611. As required by the caselaw cited above, by "completion," the court could only have meant "the closing date of the transaction." A49513 (Higgitt, J.); *see* A49610 (Friedman, J.). NYAG's claims in this action are thus time-barred insofar as they are based on the use of SFCs in connection with loans that *closed* before July 13, 2014. That rules out the Doral and Chicago loans from Deutsche Bank, *see* A49515 (Higgitt, J.), as well as the Ferry Point contract, *see supra*, p. 17 n.3.

Because those transactions were off-limits, vacatur is required. As Justice Higgitt explained, Supreme Court's reliance on time-barred transactions was "not harmless," but rather permeated its entire analysis. A49517. It "not only informed [Supreme Court's] findings" at summary judgment, "but also dictated the scope of the evidence and arguments entertained at, and likely influenced the recovery granted after, the trial." A49498 (Higgitt, J.). The error thus requires at minimum setting aside Supreme Court's orders and remanding for a new trial.

2. NYAG and Justice Moulton offered essentially the same erroneous defense of Supreme Court's reliance on time-barred transactions. Both observed that the challenged loan transactions required Defendants to submit annual SFCs after closing, including within the limitations period.

According to NYAG, because those post-closing SFC submissions were themselves allegedly "fraudulent or illegal acts" under Section 63(12) (they were not), NYAG's claims based on the loan agreements did not "accrue solely at the start of a loan," but rather accrued and re-accrued throughout the "life of [the] loan." Corrected Brief for Respondent at 101-102, *People* v. *Trump*, No. 2023-04925 (1st Dep't Aug. 21, 2024). Supreme Court took the same position. *See* A40-A41.

That was incorrect. The fact that Defendants submitted a post-closing SFC under the terms of a loan agreement would at most give rise to a *new*, *separate* claim under Section 63(12). But that cannot "serve to *revive* claims" that were already time-barred when NYAG filed this action. A49610 (Friedman, J.) (emphasis added). That is hornbook law: even in a circumstance in which new "actions continue[] to accrue each day" based on new alleged wrongdoing, claims based on old wrongdoing "also bec[o]me continuously barred each day." *Jensen* v. *General Elec. Co.*, 82 N.Y.2d 77, 87 (1993). Put another way, even where the plaintiff has alleged a "series of continuing wrongs," that will "save" claims "only to the extent of wrongs committed within the applicable statute of limitations." *Henry* v. *Bank of Am.*, 147 A.D.3d 599, 601 (1st Dep't 2017). Supreme Court therefore could not rely on *post*-July 2014 SFCs to justify its focus on transactions that closed before July 2014.

At points, both Supreme Court and Justice Moulton appeared to suggest that NYAG could have built her case *solely* on Defendants' post-closing uses of SFCs, because each "use of a separate and distinct fraudulent or illegal SFC" is an independent violation of Section 63(12). *See* A49397 (Moulton, J.). But NYAG made no effort to prove such a case, and Supreme Court did not limit its analysis in that way. Instead, in discussing the Doral and Chicago loans, Supreme Court focused entirely on the use and impact of the SFCs during the parties' negotiations for the loans, which took place long before July 2014. *See* A130 (discussing Defendants' "soliciting terms" for the Doral loan and their "seeking to finance Trump Chicago").

Supreme Court's only reference to post-closing SFCs was its observation that Defendants' failure to provide them "*could have* triggered a default." A130 (emphasis added). But as Justice Higgitt explained, NYAG did not develop any evidence on that point: "there was no indication that defendants were ever in danger of being found in default." A49508. Even if President Trump's SFCs from 2014 onward had estimated his net worth and liquidity at the amounts NYAG claims would have been "true," his net worth and liquidity would never have fallen below the contractual minimums for the Doral and Chicago loans. *See* A1882. Critically, even those minimums quickly "burned off" as the loans were paid down. As of 2015, the minimums were entirely eliminated (for Chicago) and greatly reduced (for Doral). *See* A28314, A28319-A28321 (Haigh testimony).

Thus, even if NYAG "might otherwise have been able" to "obtain . . . relief on the basis of" "post-closing SFCs," "she did not" even make the "attempt." A49508 (Higgitt, J.); *see* A49611 (Friedman, J.) (same). Instead, NYAG and Supreme Court relied on the post-closing SFCs only to try and bring time-barred transactions back into the case. That clear contravention of basic principles compels, at the very least, vacatur and remand.

IV. NYAG SELECTIVELY AND UNCONSTITUTIONALLY BROUGHT THIS CASE IN RETALIATION FOR PROTECTED POLITICAL ACTIVITY.

The U.S. and the New York Constitutions prohibit States "from wielding their power selectively to punish or suppress speech." *National Rifle Ass'n of Am.* v. *Vullo*, 602 U.S. 175, 198 (2024); *see Bower Assocs.* v. *Town of Pleasant Valley*, 2 N.Y.3d 617, 631 (2004). Government officials may not "subject[] an individual to retaliatory actions . . . for speaking out," *Hartman* v. *Moore*, 547 U.S. 250, 256 (2006), including by "applying or enforcing an admittedly valid law" to punish protected speech. *Klein*, 46 N.Y.2d at 686, 693, 698 (citing *Yick Wo* v. *Hopkins*, 118 U.S. 356, 373-374 (1886)).

To establish a violation of either Constitution, the defendant must show (i) that "the law was not applied to others similarly situated," and (ii) that "the selective application of the law was deliberately based upon an impermissible" consideration, including retaliation for constitutionally protected activity. *Klein*, 46 N.Y.2d at 693; *see Nieves* v. *Bartlett*, 587 U.S. 391, 406-407 (2019). Both factors are clearly present here. Because "conscious discrimination" "stand[s] out as the only reasonable explanation for the pattern of enforcement" in this case, Supreme Court should not have "len[t] itself to adjudicate the merits," but instead was required to dismiss. *Klein*, 46 N.Y.2d at 694-695; *see Mt. Healthy City Sch. Dist. Bd. of Educ.* v. *Doyle*, 429 U.S. 274, 287 (1977).

A. NYAG Has Never Enforced Section 63(12) In Circumstances Like These.

To begin, there is no doubt that NYAG "typically exercise[s] [her] discretion not to" bring Section 63(12) actions to police sophisticated parties and transactions like those challenged here. *Nieves*, 587 U.S. at 406. Three of the five Justices below agreed that this case presents "an unprecedented use of the [AG's] statutory power," A49443-A49444 (Higgitt, J.) ("agree[ing] with

Justice Friedman" on that score), and the other two did not dispute the point. As shown by a near-150 case survey of Section 63(12) actions by the Associated Press, this case is the first ever in which NYAG has threatened to shut down a New York business "without a showing of obvious victims and major losses." A49551 (Friedman, J.).

The lack of comparable Section 63(12) actions is telling, because "the conduct at issue is not novel" in the slightest. *Gonzalez* v. *Trevino*, 602 U.S. 653, 658 (2024). As noted, many of the estimates in President Trump's SFCs were in fact conservative, not inflated. But even on NYAG's mistaken view, the undisputed record evidence demonstrated that potential high-net-worth borrowers "frequently" provide "real estate values" that are "'overstated' or 'optimistic[]'," A49476 (Higgitt, J.); *see* A49552 (Friedman, J.) (same). That is why, again, it is industry standard that recipients of such estimates place little stock in them. Yet until now, NYAG has never used Section 63(12) to go after participants in real-estate transactions for providing valuation estimates that NYAG alone believes were somehow too high.

B. NYAG's Selective Enforcement Can Only Be Explained By Political Hostility To President Trump.

That extraordinarily "unequal hand" in enforcement gives rise to a "strong inference of illicit motive" that NYAG cannot rebut. *Klein*, 46 N.Y.2d at 695. NYAG has never explained why she chose to bring this suit despite never receiving a single complaint from any party involved in any of the at-issue transactions, and despite the total "absence of any discernable effect on the public," A49540 (Friedman, J.). After 70 years of non-enforcement of Section 63(12) in cases of alleged fraud involving sophisticated parties that suffered no injury, NYAG suddenly asserted that her intervention was needed to ensure an "honest marketplace" and to seek hundreds of millions of dollars of fines and a sweeping and unprecedented injunction.

It is self-evident that NYAG pursued this anomalous action "for some reason apart from effective regulation." *Klein*, 46 N.Y.2d at 695. She brought it to punish a once and future president of the opposing party for his political conduct and speech—matters "at the core of what the First Amendment is designed to protect." *Morse* v. *Frederick*, 551 U.S. 393, 403 (2007) (internal quotation marks and citation omitted). Remarkably, as shown above (at 24), Attorney General James all but admitted that her motive was to punish political speech, promising both during *and* after her campaigns to use her office "to investigate President Trump and his business transactions and that of his family as well." A49545 (Friedman, J.) (quoting Attorney General James).

Justice Moulton notably agreed with Justice Friedman's criticism of James's "pointed statements" while "running for the top law enforcement position in statewide government," and all but acknowledged that they created an "appearance of bias" against President Trump and his family. A49305, A49326. Justice Moulton, however, concluded that this bias did not drive NYAG's actions here because she "was confronted by Michael Cohen's Congressional testimony" "soon after her election," and it would have been "a derogation of duty" to ignore what Cohen had said. A49326. Supreme Court relied on the same flawed reasoning. *See People* v. *The Trump Org., Inc.*, 2022 WL 489625, at *5 (N.Y. Sup. Ct. Feb. 17, 2022).

That defense fails. As shown above, Cohen was as unreliable as witnesses come. Moreover, his accusations, which he himself contradicted at trial, could be levied against virtually "every real estate developer on Earth," A49552 (Friedman, J.). Again, NYAG has never before brought suit under Section 63(12) for this kind of alleged "fraud" against any other participant in the real-estate industry, let alone sued for hundreds of millions of dollars and the state-sanctioned destruction of his businesses. The question in a selective-enforcement case is not whether the "party raising the unequal protection claim may . . . have been guilty of violating the law," *Klein*, 46 N.Y.2d at 694—

it is whether the government has acted with the "impermissible motive" of "intent to inhibit or punish the exercise of constitutional rights," *Bower*, 2 N.Y.3d at 631. That is exactly what happened here.

V. SUPREME COURT'S AWARD OF INJUNCTIVE RELIEF WAS PLAINLY OVERBROAD AND SHOULD BE SET ASIDE.

Finally, this Court should overturn Supreme Court's extraordinary and draconian injunction. *See State by Abrams* v. *Ford Motor Co.*, 74 N.Y.2d 495, 502 (1989) (recognizing this Court's power to review legality of injunctive relief issued under Section 63(12)).

Supreme Court barred 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 a period of three years"; did the same for Eric Trump and Donald Trump, Jr. for a period of two years; prohibited President Trump and the entity Defendants "from applying for loans from any financial institution chartered by or registered with the New York Department of Financial Services for a period of three years"; and permanently barred Weisselberg and McConney from "serving in the financial control function of any New York corporation or similar business entity." A152-A153. This extraordinary relief far exceeded the limits on Supreme Court's authority because it prohibited all manner of lawful conduct unconnected to Defendants' alleged "fraud or illegality."

Under Section 63(12), after finding "persistent fraud or illegality in the carrying on, conducting or transaction of business" (which did not exist here), a court may "enjoin[] the continuance of such business activity or of any fraudulent or illegal acts." N.Y. Exec. Law § 63(12). As New York appellate courts have unanimously held, that language "limits what may be enjoined to the business activity" at issue "or the fraudulent or illegal acts." *State by Abrams* v. *Magley*, 105 A.D.2d 208, 210 (3d Dep't 1984) (upholding refusal to enjoin eviction proceedings because they "in and of themselves are neither fraudulent nor illegal"); *see People* v. *Ashil Hyde Park, LLC*, 298 A.D.2d 393, 395 (2d Dep't 2002) (vacating injunction prohibiting participation at condominium board meetings because those acts were "in and of themselves, neither illegal nor fraudulent").

That limitation reflects cardinal background principles. In general, a "court of equity has an obligation to go no further than absolutely necessary to protect" against the alleged violation of law, and the "injunction must be framed as narrowly as possible." *See Antinelli* v. *Toner*, 74 A.D.2d 996, 997 (4th Dep't 1980). When it comes to injunctions affecting a party's "livelihood," the "courts of New York are very hesitant to enjoin a party from engaging in legitimate business" activity. *Riedman Corp.* v. *Gallager*, 21 Misc. 3d 1112(A), at *3 (N.Y. Sup. Ct. 2006), *aff'd*, 48 A.D.3d 1188 (4th Dep't 2008); *see, e.g.*, *Neva-Wet Corp. of Am.* v. *Never Wet Processing Corp.*, 277 N.Y. 163, 169 (1938) ("[T]he equity power . . . should not be exercised to interfere with . . . general business competition, but only to restrain fraud and imposture.")

Supreme Court exceeded these constraints. It enjoined all of the individual Defendants from "serving as an officer or director of *any* New York corporation or *other legal entity* in New York." A152-A153 (emphasis added). That restriction apparently covers broad swathes of lawful conduct that would have zero possible nexus to this case. Supreme Court's injunction also prohibits certain Defendants from even "*applying* for loans from *any*" institution with just a single branch in New York, A151 (emphasis added), which is effectively a ban on doing business with most of the banks in this country. That restriction, too, has no connection to NYAG's allegations in this case; it may even prevent ordinary day-to-day financing for basic equipment such as golf carts or copy machines.

Supreme Court also never explained how its relief complied with the obligation to frame its injunction "as narrowly as possible." *Antinelli*, 74 A.D.2d at 997. After all, the court had already decided to order Defendants to continue submitting to an outside monitor. A149. Supreme Court never stated why its sweeping industry bans and loan restrictions were needed on top of a monitorship. *See* A150-A151. Nor did Supreme Court explain why a narrower injunction more closely related to NYAG's allegations would not have been sufficient.

Indeed, as far as Defendants are aware, the officer-and-director bans imposed by Supreme Court are utterly unprecedented. NYAG has not identified a single case imposing a remotely similar restriction. The only case she has ever cited that involved *any* sort of officer-and-director ban was a federal case, *SEC* v. *Posner*, 16 F.3d 520 (2d Cir. 1994). But the bar there applied only to working for *public* companies, which made sense in light of the defendants' prior history of "securities law violations" that had harmed "public investors." *Id.* at 521-522. That is miles away from Supreme Court's blanket prohibition on Defendants' ability to serve as an officer or director for any kind of corporation or other entity.

CONCLUSION

For the foregoing reasons, Supreme Court erred as a matter of law by finding liability and awarding injunctive relief against all Defendants. To the extent the First Department affirmed Supreme Court, this Court should reverse its judgment.

Respectfully submitted,

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APRIL 8, 2026

WORD COUNT CERTIFICATION

Pursuant to Rule 500.13(c)(1) of the Rules of Practice of the Court of Appeals of the State of New York, and the Court's March 26, 2026 order granting Defendants' request to file a brief of 20,000 words, I hereby certify that the total word count for all printed text in the body of the brief, exclusive of the material omitted under Rule 500.13(c)(3), is 19,893 words.

Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.

ATTACHMENT A

Rule § 500.1(f) Disclosure Statement

Entity[1]	Organized under Laws of:	Direct Parent	Indirect Parent	Subsidiaries[2]
Donald J. Trump Revocable Trust dated April 7, 2014[3]	Florida	N/A	N/A	• DJT Holdings LLC • DJT Holdings Managing Member LLC • 40 Wall Development Associates LLC

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1 All entities identified on this disclosure statement are affiliates of one another.

2 Subsidiaries listed include only direct subsidiaries.

3 This trust owns hundreds of non-public entities unrelated to this litigation. Because a trust is not generally a corporation or "entity" for the purposes of the laws of New York, those entities belonging to this trust and not otherwise relevant to this litigation are omitted from being listed as affiliates. *See Reich* v. *Bankers Life & Cas. Co. of New York*, 99 A.D.2d 457, 458, 471 N.Y.S.2d 287, 288 (1st Dept. 1984) ("[A] trust is not technically a legal entity.")

Entity[1]	Organized under Laws of:	Direct Parent	Indirect Parent	Subsidiaries[2]
40 Wall Street LLC	New York	• 40 Wall Development Associates LLC[4] • 40 Wall Street Member Corp.	• Donald J. Trump Revocable Trust dated April 7, 2014 • DJT Holdings Managing Member LLC • Parc Consulting, Inc.	N/A

[4] 40 Wall Street Commercial LLC, organized under the laws of Delaware, is an additional subsidiary of this entity.

Entity[1]	Organized under Laws of:	Direct Parent	Indirect Parent	Subsidiaries[2]
401 North Wabash Venture LLC	Delaware	• 401 Mezz Venture LLC[5]	• Donald J. Trump Revocable Trust dated April 7, 2014 • Trump Chicago Member LLC • TIHT Chicago Member Acquisition LLC • Trump Chicago Managing Member LLC • DJT Holdings LLC • DJT Holdings Managing Member LLC	• Trump Commercial Chicago LLC • Trump Payroll Chicago LLC

5 Trump Chicago Retail LLC, organized under the laws of Delaware, is an additional subsidiary of this entity.

Entity[1]	Organized under Laws of:	Direct Parent	Indirect Parent	Subsidiaries[2]
DJT Holdings LLC	Delaware	• DJT Hold-ings Managing Member LLC • Donald J. Trump Revocable Trust dated April 7, 2014	N/A	• Trump Organization LLC
DJT Holdings Managing Member LLC	Delaware	• Donald J. Trump Revocable Trust dated April 7, 2014	N/A	• DJT Holdings LLC • Trump Endeavor 12 Manager Corp. • The Trump Organization, Inc. • Parc Consulting, Inc.

Entity[1]	Organized under Laws of:	Direct Parent	Indirect Parent	Subsidiaries[2]
Seven Springs LLC	New York	• Bedford Hills Corp. • DJT Holdings LLC	• Donald J. Trump Revocable Trust dated April 7, 2014 • DJT Holdings LLC • DJT Holdings Managing Member LLC	N/A
The Trump Organization, Inc.	New York	• DJT Holdings Managing Member LLC	• Donald J. Trump Revocable Trust dated April 7, 2014	N/A

Entity[1]	**Organized under Laws of:**	**Direct Parent**	**Indirect Parent**	**Subsidiaries[2]**
Trump Endeavor 12 LLC (d/b/a Doral Golf Club and Resort Miami; Trump Doral; Trump National Doral Golf Club Hotel Spa; and Trump National Doral)	Delaware	• Trump Endeavor 12 Manager Corp. • DJT Holdings LLC	• Donald J. Trump Revocable Trust dated April 7, 2014 • DJT Holdings Managing Member LLC	N/A

Trump Old Post Office LLC	Delaware	• DJT Holdings LLC • Trump Old Post Office Member Corp. • Ivanka OPO LLC • Don OPO LLC • Eric OPO LLC	• Donald J. Trump Revocable Trust dated April 7, 2014 • DJT Holdings Managing Member LLC • Ivanka OPO LLC • Don OPO LLC • Eric OPO LLC • Ivanka Trump Revocable Trust dated August 13, 2010 • The Donald J. Trump, Jr. Revocable Trust dated October 5, 2015 • The Eric F. Trump Revocable Trust – 2015 dated June 5, 2015	N/A

Entity[1]	**Organized under Laws of:**	**Direct Parent**	**Indirect Parent**	**Subsidiaries**[2]
Trump Organization LLC	New York	• DJT Holdings LLC	• Donald J. Trump Revocable Trust dated April 7, 2014 • DJT Holdings Managing Member LLC	N/A