

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
BARBARA D. UNDERWOOD, Attorney General of the
State of New York,

Petitioner,

-against-

DONALD J. TRUMP, DONALD J. TRUMP JR.,
IVANKA TRUMP, ERIC F. TRUMP, and THE
DONALD J. TRUMP FOUNDATION,

Respondents.

Index No.

**AFFIRMATION OF
AAG STEVEN SHIFFMAN
IN SUPPORT OF THE
VERIFIED PETITION**

STEVEN SHIFFMAN, an attorney duly admitted to practice before the Courts of this State, hereby affirms the following under the penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General in the Charities Bureau (the “Charities Bureau”) of the New York State Attorney General’s Office.

2. I am familiar with the facts and circumstances of this proceeding. The facts set forth in this Affirmation are based upon my personal knowledge, the investigative materials obtained during the course of the investigation of the Donald J. Trump Foundation, Inc. (the “Foundation”) by the Charities Bureau (“Charities Bureau”) of the Office of the Attorney General (the “Attorney General”) and upon the information contained in the files of the Charities Bureau. I submit this affirmation in support of the Verified Petition of the People of the State of New York (the “People”). (A copy of the Verified Petition is annexed hereto as Ex. 1.)

INTRODUCTION

3. The Attorney General brings this special proceeding against Donald J. Trump (“Mr. Trump”), Donald J. Trump Jr., Ivanka Trump, and Eric F. Trump (together, the “Individual Respondents”), and the Foundation (collectively, the “Respondents”), pursuant to the New York Not-for-Profit Corporation Law (“N-PCL”), the New York Estates, Powers and Trusts Law

("EPTL"), the New York Executive Law ("Executive Law"), and New York Civil Practice Law and Rules ("CPLR") Article 4, to dissolve the Foundation for its persistently illegal conduct, and to obtain restitution, damages, and injunctive relief.

4. In June 2016, the Attorney General began an investigation (the "Investigation") of the Foundation pursuant to the N-PCL, the EPTL, and the Executive Law. The Investigation found that the Foundation operated without any oversight by a functioning board of directors. Decisions concerning the administration of the charitable assets entrusted to the care of the Foundation were made without adequate consideration or oversight and resulted in the misuse of charitable assets for the benefit of Mr. Trump and his personal, political and business interests. In sum, the Investigation revealed that the Foundation was little more than a checkbook for payments to not-for-profits from Mr. Trump and entities he controlled. This resulted in multiple violations of state and federal law because payments were made using Foundation money regardless of the purpose of the payment. Mr. Trump used charitable assets to pay off the legal obligations of entities he controlled, to promote Trump hotels, to purchase personal items, and to support his campaign for President.

5. As set forth below and in the Verified Petition, the Foundation and its directors violated multiple sections of the N-PCL, EPTL and the Executive Law, including provisions that prohibit foundations from making false statements in filings with the Attorney General, engaging in self-dealing, wasting charitable assets, and violating the Internal Revenue Code by, among other things, making expenditures to influence the outcome of an election. The Foundation's directors failed to meet basic fiduciary duties and abdicated all responsibility for ensuring that the Foundation's assets were used in compliance with the law. The violations that resulted were significant and not only ran afoul of the applicable law, but also resulted in the Foundation failing to comply with the terms of its own certificate of incorporation.

6. As a result of these persistent violations of law by the Respondents, the Attorney General brings this special proceeding to dissolve the Foundation pursuant to N-PCL Article 11

and CPLR Article 4. In addition, the Attorney General seeks an order: (i) finding that the Individual Respondents breached their fiduciary duties to the Foundation; (ii) enjoining Mr. Trump from future service as an officer, director or trustee, or in any other capacity as a fiduciary of any not-for-profit or charitable organization incorporated or authorized to conduct business in the State of New York, or which solicits charitable donations in the State of New York for a period of ten years and enjoining the remaining Individual Respondents from such service for a period of one year, subject to suspension in the event the remaining Individual Respondents undergo adequate training on the fiduciary duties of directors of not-for-profit corporations; (iii) requiring the Individual Respondents to make restitution and pay all damages resulting from their violation of duties in the management of the Foundation's assets and their misuse of its charitable assets for the benefit of Mr. Trump and his interests; (iv) requiring Mr. Trump to pay an amount equal to double the amount of benefits improperly obtained through related party transactions entered into after July 1, 2014; and (v) granting such other and further relief as the Court may deem just and proper.

THE ATTORNEY GENERAL'S INVESTIGATION

7. The Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their officers and directors, in accordance with the N-PCL, the EPTL, and the Executive Law. This oversight activity is primarily the responsibility of the Attorney General's Charities Bureau, which has an office in New York County. Among its duties, the Charities Bureau conducts investigations to determine if the directors and officers of charitable organizations have complied with their fiduciary duties to safeguard charitable assets. The Charities Bureau also maintains a registry of organizations that includes copies of an organization's certificate of incorporation, its by-laws and the annual reports that it must file with the Charities Bureau. The annual report is called a CHAR 500 and, as set forth in 13 N.Y.C.R.R. § 91.5(c)(3)(a), each CHAR 500 must include a copy of the organization's annual filing with the Internal Revenue Service, such as a Form 990-PF. The Form 990-PF provides

detailed information about a not-for-profit organization's finances and management, including details on the organization's directors, the grants it made, as well as information on the principal donors (donor information for private foundations such as the Foundation is public; donor information for public charities is not).

8. Through the course of the Investigation, the Charities Bureau requested the production of documents from the Foundation and related entities, including the Trump Corporation and other organizations controlled by Mr. Trump. The Charities Bureau also subpoenaed and reviewed documents from third parties, including parties receiving grants from the Foundation. In addition, the Charities Bureau conducted examinations under oath of several witnesses, including the Foundation's treasurer and employees of the Trump Corporation, Inc. ("Trump Corporation") that performed services for the Foundation as part of their job responsibilities.

THE RESPONDENTS

9. Respondent Foundation is a New York not-for-profit corporation incorporated in New York in 1987. Its principal place of business is 725 Fifth Avenue, New York, New York. The Foundation is recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code (the "Code") and is classified as a private foundation under Section 509(a) of the Code. In its most recent Form 990-PF, reporting as of December 31, 2016, the Foundation reported approximately \$1 million in assets.

10. The Foundation's mission is to "receive and maintain a fund . . . to [be] use[d] . . . exclusively for charitable, religious, scientific, literary or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under section 501(c)(3) of the [Code]." (Certificate of Incorporation, dated Feb. 2, 1987, at Section Second; a true and correct copy of the Certificate of Incorporation, as amended and filed with the Attorney General's office, is attached hereto as Ex. 2.) In accordance with the N-PCL and the Code, the Foundation's certificate of incorporation provides that "[n]o part of the property . . . of the

corporation shall be diverted in any manner directly or indirectly or otherwise inure to the benefit of any member, trustee, director or officer of the corporation or any private individual.” (*Id.* at Section Sixth.) The certificate of incorporation further provides that “[n]o part of the activities of the corporation shall be . . . participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.” (*Id.* at Section Seventh.) Mr. Trump signed the certificate of incorporation, affirming, under penalties of perjury, that the statements contained in it were true. (*Id.* at 6.)

11. Respondent Mr. Trump is the Foundation’s founder and served as its president from 1987 through January 2017. (*See id.*; 2016 CHAR 500, a true and correct copy of which is attached hereto as Ex. 3,¹ at Form 990-PF, Statement 8.) From 1987 through 2008, Mr. Trump personally donated funds to support the Foundation. (*See* Schedules of donors attached to the Foundation’s Form 990s from 1987 to 2016, true and correct copies of which are attached hereto as Ex. 4.) Since then Mr. Trump has not contributed any of his personal funds to the Foundation, which instead has been supported by donations from other persons and entities. (*See id.*)

12. Respondent Donald Trump Jr. is, and has been since 2006, a member of the Foundation’s board of directors (the “Board”). (*See* 2006 CHAR 500, a true and correct copy of which is attached hereto as Ex. 5, at Form 990-PF, Statement 3.) Respondent Eric Trump is, and has been since 2006, a member of the Board. (*See id.*) Respondent Ivanka Trump served as a member of the Board from 2006 to January 23, 2017. (*See id.*)

FACTUAL BACKGROUND

13. The Investigation found that the Foundation is little more than an empty shell that functions with no oversight by a board of directors. As the Foundation’s treasurer described the Foundation: “it was a very simple operation . . . an occasional request for a contribution would be made and a check would be issued. That was really the extent of the operation. There wasn’t

¹ Account information and other confidential information has been redacted from the exhibits.

much more than that.” (Transcript of the Examination under Oath of Allen Weisselberg on Oct. 4, 2017, relevant excerpts of which are attached hereto as Ex. 6, at 13.)

14. The Foundation, which does not have any employees, delegated its operations to the accounting staff of the Trump Corporation, a management company owned by Mr. Trump. (Transcript of the Examination under Oath of Jeffrey McConney on Aug. 10, 2017, relevant excerpts of which are attached hereto as Ex. 7, at 29-32, 52.) The Trump Corporation supplies back office services to the several hundred business entities controlled by Mr. Trump that make up the Trump Organization. (*Id.* at 30-31.) The accounting staff’s responsibilities for the Foundation are the same as its responsibilities for the other businesses in the Trump Organization. (*See id.*)

Insufficient Board Oversight and Lack of Internal Controls

15. The Foundation’s Board existed in name only. Board members failed to exercise their fiduciary duty to provide oversight and control of the organization for at least nineteen years. The Board has not met since 1999 and has not overseen the activities of the Foundation in any way. (*See* Dec. 7, 2016 emails from Eric Sitarchuk, true and correct copies of which are attached hereto as Ex. 8; Ex. 6 at 23-24; Ex. 7 at 38, 49, 80-82.) The Board has not set policy or determined the direction, operations or acts of the Foundation. It has not promulgated, and the Foundation does not have, written criteria for the consideration or approval of grants, or protocols for assuring compliance with the organization’s governing documents and charitable mission. In fact, the Board has played no role in approving the grants that the Foundation has made and failed to obtain annual reports concerning the activities and operations of the Foundation as required by N-PCL § 519. (Ex. 7 at 49.)

16. Mr. Trump, who was the sole signatory on the Foundation’s bank accounts, approved all Foundation grants and disbursements. (Ex. 7 at 32-34.) Accounting staff for the Trump Organization had responsibility for issuing checks from the Foundation, and issued the checks based solely on Mr. Trump’s approval before presenting the checks to Mr. Trump for

signature. (Ex. 7 at 65-66, 75, 116, 181; Transcript of the Examination under Oath of Deborah Tarasoff on Sept. 13, 2017, relevant excerpts of which are attached hereto as Ex. 9, at 27-28.)

17. The Board permitted the Trump Organization accounting staff to administer the Foundation's charitable assets without adequate supervision or training and to issue Foundation checks without confirming that the Board had approved the disbursement. (*See* Ex. 7 at 33-36, 66, 69-70, 77-78, 80-82, 116; Ex. 9 at 28.) The Board also failed to institute any procedures to ensure that the Foundation was the proper source of funds for a particular check request. (*See id.*) Jeffrey McConney, controller and vice president of the Trump Organization, whose responsibilities included supervising the issuance of checks for the Foundation, does not recall ever receiving instructions from Mr. Trump or any of the directors on the Board on whether this was the proper protocol for issuing the Foundation's checks. (Ex. 7 at 80-82.)

18. The Foundation also failed to adopt a conflict of interest policy, even though New York law since July 2014 requires the Foundation to adopt such a policy. See N-PCL § 715-A; EPTL § 8-1.9(d).

19. The lack of adequate procedures at the Foundation was particularly problematic because check requests to the accounting staff were not always accompanied by an instruction as to which entity should make a payment. In such circumstances, the sole criteria that the accounting staff used to determine whether to issue a check from the Foundation, rather than another entity in the Trump Organization or Mr. Trump personally, was the tax-exempt status of the intended recipient; no inquiry into the purpose of the payment was made. (Ex. 6 at 53-56; Ex. 7 at 70-71, 77-82.) As described more fully below, Mr. Trump exploited this practice. Because of the lack of oversight and direction, Mr. Trump was able to use the Foundation's charitable assets to satisfy the obligations of, or otherwise benefit, himself and other entities in which he had an interest.

20. The Foundation also did not have an investment policy (Ex. 6 at 63), even though it was required to have such a policy by no later than 2010. NPCL § 552(f). The Board did not

discuss how to invest the Foundation's assets, but rather left the decision to Mr. McConney and Allen Weisselberg, chief financial officer of the Trump Organization and treasurer of the Foundation. (*Id.* at 63-68; Ex. 7 at 39-41.) In fact, although in recent years the average monthly value of the Foundation's assets was over \$1 million, the Foundation simply kept its funds in a money market account, earning negligible interest. (Ex. 6 at 63-68; *see, e.g.*, Ex. 3 at Pt. I, l. 3, Pt. II, ll. 1-2 (showing return of \$1,407 on approximately \$1 million in assets).)

2016 Political Activity

21. The Investigation found that, in 2016, the Board knowingly permitted the Foundation to be coopted by Mr. Trump's presidential campaign, and thereby violated its certificate of incorporation and state and federal law by engaging in political activity and prohibited related party transactions. Donald J. Trump for President, Inc. (the "Campaign"), Mr. Trump's political committee, extensively directed and coordinated the Foundation's activities in connection with a nationally televised charity fundraiser held in Iowa on January 28, 2016 (the "Iowa Fundraiser"), and the disbursement of the proceeds from the event. Candidate Trump decided to conduct the Fundraiser in lieu of participating in a televised debate of the Republican presidential candidates immediately before the February 1, 2016 Iowa caucuses.

22. In a filing submitted to the Charities Bureau, signed by Mr. Trump, the Foundation asserted that it "held [the Iowa Fundraiser] to raise funds for veterans' organizations . . . [and that it] created a website to allow donors to make charitable contributions online." (2016 Form CHAR410-A, a true and correct copy of which is attached hereto as Ex. 10, Part G, Line 3(c).)

23. The Investigation revealed that the Iowa Fundraiser was planned, organized, financed, and directed by the Campaign, with administrative assistance from the Foundation. The event was known as the "Donald J. Trump Special Event for Veterans," and the website through which the public could get tickets for the event listed a Campaign staffer – the Iowa Deputy State Director for Donald J. Trump for President, Inc. – as the event "Organizer." (*See* <https://bit.ly/2Jkgkav> at "view details".) Brad Parscale, a Campaign consultant who eventually

became the Campaign's digital media director, created the event website for the Foundation. (Ex. 7 at 134-35; *see* <https://bit.ly/2H0u9su>² (FEC disclosures showing Campaign payments to Mr. Parscale and his company).) Mr. Weisselberg assigned Mr. McConney, one of two Trump Organization employees who regularly performed tasks for the Foundation, to work with Mr. Parscale on the project. (Ex. 6 at 35-37, 39-40.) The website that Mr. Parscale and Mr. McConney set up for the Iowa Fundraiser, DonaldTrumpForVets.com, featured the name of the Foundation at the top of the home page and informed visitors that "the Donald J. Trump Foundation is a 501(c)(3) nonprofit organization." (*See* <https://bit.ly/1nr4D64> (current site); <https://bit.ly/2GZSA9m> (archived site).) Hope Hicks, then the Campaign's Communication Director, participated in making arrangements for speakers at the event. (*See* Jan. 29, 2016 email from Donald Trump Jr., a true and correct copy of which is attached hereto as Ex. 11, at 3-6.)

24. On the day of the Iowa Fundraiser, January 28, 2016, Mr. Weisselberg and Mr. McConney flew to Des Moines, Iowa, to be present with the Foundation's checkbook at the Fundraiser in case Foundation grants were to be disbursed that night. (Ex. 7 at 128-31; Ex. 6 at 29-32.) Mr. McConney understood that he was attending the Fundraiser on behalf of the Foundation. (Ex. 7 at 133; *see* Ex. 6 at 29-32.) Ivanka Trump, Donald Trump Jr. and Eric Trump all attended the fundraiser. (Ex. 7 at 130-31; *see, e.g.*, Jan. 28, 2016 email from Eric Trump, a true and correct copy of which is annexed hereto as Ex. 12.)

25. At the televised fundraising event, the podium was decorated with a sign that borrowed Campaign themes and slogans. The DonaldTrumpForVets.com website address was displayed on a blue placard with a red border and star pattern that was nearly identical to the design of Campaign signs and billboards, with Mr. Trump's name in capital letters and his Campaign's trademarked slogan, "Make America Great Again." (A true and correct copy of a photo from the Iowa Fundraiser published by ABC News downloaded from <https://abcn.ws/2wLXXqw>, is attached hereto as Ex. 13.)

² The cites beginning with "https://" are shortened links to internet sites and are case sensitive.

26. The Fundraiser, which solicited donations from the public, including New York residents, reaped approximately \$5.6 million in tax-free donations. (List of donations from Veterans Fundraiser, a true and correct copy of which is attached hereto as Ex. 14; Ex. 7 at 137-40.) Of that total, \$2.823 million was contributed to the Foundation. (Ex. 14.) The remainder was donated directly by private donors to veterans charity groups, without going through the Foundation. (*Id.*)

27. Following the Iowa Fundraiser, the Foundation ceded control over the charitable funds it raised to senior Campaign staff, who dictated the manner in which the Foundation would disburse those proceeds, directing the timing, amounts and recipients of the grants. (*See, e.g.*, Ex. 6 at 46-47, 121-22.)

28. For example, in an email on January 29, 2016, Mr. Weisselberg wrote to Corey Lewandowski, then Mr. Trump's campaign manager, to say "we should start thinking how you want to distribute the funds collected for the Vets." (Jan. 29, 2016 email from Mr. Weisselberg, a true and correct copy of which is attached hereto as Ex. 15, at 3.) Mr. Lewandowski replied, "I think we should get the total collected and then put out a press release that we distributed the \$\$ to each of the groups." (*Id.* at 2.) Mr. Weisselberg then asked Mr. Lewandowski how much would be given to each group, and Mr. Lewandowski replied that "[n]ot all will be given equal amounts." (*Id.*)

29. A few minutes after this exchange, Mr. Lewandowski directed the Foundation to make grants in Iowa right before the February 1, 2016 Iowa caucuses, the first nominating contest of the 2016 presidential election cycle. Mr. Lewandowski emailed Mr. Weisselberg, to ask, "Is there any way we can make some disbursements [from the proceeds of the fundraiser] this week while in Iowa? Specifically on Saturday." (Ex. 15, at 1; Ex. 6 at 127-28.) Mr. Lewandowski also emailed Mr. McConney that same day, attaching a Word document listing the veterans organizations purportedly approved by Mr. Trump to receive grants from the Foundation. (Jan. 29, 2016 email from Mr. Lewandowski, a true and correct copy of which,

along with the metadata from the attached Word file, is attached hereto as Ex. 16, at 1; Ex. 7 at 152.) Metadata from the Word document file shows that it was created by Lisa Maciejowski Gambuzza, a member of the Campaign staff and that Stuart Jolly, one of the Campaign's political directors, edited the list and sent it on to Mr. Lewandowski. (See Ex. 16; <https://bit.ly/2JcjEaK>.) When a problem arose with making a grant before the Iowa caucuses to one of the charities that had been originally selected, the Campaign quickly secured a replacement Iowa veterans charity to appear at a campaign rally and receive a grant from the proceeds of the Iowa Fundraiser. (See Jan. 29, 2016 email from Mr. Lewandowski, a true and correct copy of which is attached hereto as Ex. 17, at 1-2.)

30. Mr. Weisselberg's testimony confirms that he used the Foundation's charitable assets to satisfy the Campaign's requirements:

- Q: So **Mr. Lewandowski wanted some checks when he was in Iowa?**
A: Based on what I'm reading here, yes. [Referring to his email exchange in Ex. 15 with Corey Lewandowski]
Q: They were in Iowa campaigning for the primary that was going to be held on February 1st; correct?
A: I don't know. **I had nothing to do with the political side of anything. I just wanted to get checks prepared. Whenever they wanted them, I wanted to be ready to have those checks for them, whatever date it may have been. It didn't matter what day of the week it was.**

(Ex. 6 at 133-34 (emphasis added).)

31. Other email exchanges show the extensive coordination between the Campaign and the Foundation. When the first donation came in, Mr. McConney immediately notified Mr. Lewandowski, Ms. Hicks and other campaign staffers, congratulating Mr. Parscale on his work. (Jan. 28, 2016 email from Ms. Hicks, a true and correct copy of which is attached hereto as Ex. 18.)

32. On February 16, 2016, Mr. McConney, on behalf of the Foundation, wrote to Mr. Lewandowski seeking the Campaign's guidance on distributing Fundraiser proceeds still in the Foundation's account, and on maintaining the website: "Do you have a list of which veterans charities you want these funds sent to and how much for each charity?? . . . Lastly, how much

longer do you want to keep the TrumpForVets website up and running?" (Feb. 16, 2016 email from Mr. McConney, a true and correct copy of which is attached hereto as Ex. 19, at 1; Ex. 6 at 150.)

33. The investigation obtained additional evidence that the Campaign played the lead role in determining the disposition of the Iowa Fundraiser proceeds. For example, Campbell Burr, assistant to the Campaign manager, sent a series of emails to Mr. McConney and Mr. Lewandowski, among others, with subject headings such as "Vet Donations" and "Updated Vet Donations List." (Mar. 7, 2016 email from Mr. McConney, a true and correct copy of which is attached hereto as Ex. 20, at 3-7; Ex. 6 at 159-60.) Ms. Burr addressed the recipients as "Team" and provided an "updated list of checks that have been sent to the veterans groups." In that email, she also noted that several of the donations on the list were "going out today," reflecting the control held by the Campaign staff over the disbursements. (Ex. 20, at 3.) Mr. Weisselberg admitted in testimony that he understood that Ms. Burr was assisting Mr. Lewandowski in making "sure these funds got to where they had to get to." (Ex. 6 at 164.)

34. On March 22, Mr. Lewandowski wrote to Mr. Weisselberg and Mr. McConney, asking that a check for \$100,000 be sent to the Marine Corps Law Enforcement Foundation, noting that the media had been asking whether the Foundation had donated to that group. (Mar. 22, 2016 email from Mr. Lewandowski, a true and correct copy of which is attached hereto as Ex. 21, at 1; Ex. 6 at 148) Mr. Weisselberg assured Mr. Lewandowski that he would draw a check promptly (*id.*) and a check was in fact issued that day. (List of Contributions by the Foundation to Veterans, along with copies of the checks, true and correct copies of which are attached hereto as Ex. 22; Ex. 7 at 140-41; Mar. 22, 2016 email from Mr. McConney, a true and correct copy of which is attached hereto as Ex. 23, at 1.)

35. On May 24, Ms. Burr sent an email to Campaign staff, Mr. McConney, and Mr. Weisselberg, again referring to the recipient group as "Team," attaching a Word document with a new list of recipient organizations. Metadata from the file shows that Jo Ann Poly Calvo, a

member of the Campaign staff, edited the final draft. (May 24, 2016 email from Ms. Burr, a true and correct copy of which, along with a print-out of the metadata for the attachment, is attached hereto as Ex. 24; <https://bit.ly/2L4FTfT> (showing Ms. Calvo's role.) That same day, the Foundation issued grants to all but one of the organizations listed in Ms. Burr's email. (Ex. 22.)

36. The Investigation further revealed that the Foundation permitted the Campaign to exhibit and award enlarged presentation copies of supposed Foundation checks to grant recipients at campaign rallies for the political benefit of Mr. Trump and to support the Campaign. Mr. Trump held several campaign rallies in Iowa in the days leading to and including the date of the Iowa caucuses, February 1, 2016. During those campaign appearances, Mr. Trump personally distributed the presentation copies of Foundation checks to Iowa veterans groups. The enlarged copies of checks he used for the presentations reflected his dual role as Foundation president and presidential candidate. The Foundation's name and address were printed on the enlarged presentation checks, along with the Trump Campaign's slogan, "Make America Great Again!," Mr. Trump's name in large letters, with a smaller reference to the DonaldTrumpForVets.com website and Mr. Trump's signature. (A true and correct copy of Mr. Trump giving out one of the enlarged checks taken by the AP and downloaded from <https://dmreg.co/2rJ1fs3>, at 2, is attached hereto as Ex. 25.)

37. On January 30, 2016, at a campaign event in Davenport, Iowa, the Campaign staged the disbursement of a presentation check for \$100,000 to the Puppy Jake Foundation, a veterans charity. Video of the event shows Mr. Trump presenting an enlarged copy of the check to the recipient foundation and receiving a round of applause from the audience for doing so. (<https://bit.ly/2wI0Hrg>.) In giving out the check at this campaign event, Mr. Trump referred to it as "our first disbursement." (*Id.*)

38. The pattern repeated itself the next day, January 31, 2016, when, at a campaign rally in Council Bluffs, Iowa, Mr. Trump gave out an enlarged presentation copy of a supposed \$100,000 check to Partners for Patriots, a veterans charity located in Iowa.

(<https://cs.pn/2GmS4lO>.) At the rally, Jerry Falwell, Jr., in endorsing Mr. Trump's candidacy, touted Mr. Trump, stating, "I mean, how often do you see a presidential candidate giving money away instead of taking it. I think that is wonderful." (*Id.*, starting at 9:55.) Mr. Falwell went on, "we have got a group here today that is going to receive the second disbursement of that six million dollars that was raised the other night. If that group would come on the stage now, it's called Partners for Patriots." (*Id.*) After handing over the presentation check, Mr. Trump emphasized his own role in distributing the proceeds from the fundraiser, stating: "So with a hundred thousand you can do a lot, right? . . . This is such an honor, it is so great." (*Id.*) At the time that he gave out that copy to Partners for Patriots, no check had been issued and, in fact, the Foundation was unaware that the Campaign had selected Partners for Patriots to receive the funds. (Feb. 8, 2016 email from Mr. Lewandowski, a true and correct copy of which is attached hereto as Ex. 26.) The actual payment was subsequently requested by the Campaign and was issued by the Foundation on February 10, 2016. (Ex. 22.) That same day, Mr. Trump presented another grant at a campaign rally in Sioux City, Iowa. At the Sioux City rally, Mr. Trump disbursed a Foundation grant of \$100,000 to Support Siouxland Soldiers, again presenting an enlarged promotional version of a Foundation check emblazoned with his campaign slogan. (Ex. 25 at 2.)

39. On February 1, 2016, the day of the Iowa caucuses, Mr. Trump awarded another enlarged presentation copy of a \$100,000 check to the Mulberry Street Veterans Shelter at a campaign rally in Cedar Rapids, Iowa. The actual check was issued on January 29, 2016 (but was not delivered until later in February because the representatives from the organization could not attend the rally).³ (Ex. 22.) Video news footage showing the Fed Ex envelope in which the check was delivered confirms that the check was sent by Mr. Lewandowski from his address at the Campaign, not by the Foundation. ([https:// bit.ly/2IkFM35](https://bit.ly/2IkFM35).) During the rally, Mr. Trump himself drew a connection between his Campaign activities and the distribution of checks by his

³ The check was written to Central Iowa Shelter & Services, which is the official name of the shelter.

Foundation and the impact that the Iowa Fundraiser and the distribution of proceeds from it had on his political polling numbers, stating:

In lieu of the [Republican presidential primary] debate, I said let's have a rally for the veterans. . . . At that rally, we raised in one hour six million dollars. . . . So what we did, we raised this money, and we are giving it out, and we just gave out a check for a hundred thousand dollars a little while ago, and we are giving out another check, and they can bring it up and we are going to deliver it right here. . . . We have so many of these checks. They are all over the place. We are giving them out. This was in lieu, and, by the way, the poll numbers just came down from New Hampshire, I went through the roof. I think they respect the fact that I, that we stand up for our rights So, congratulations to Mulberry Street.

(<https://bit.ly/2GhzaN2> at approximately 42:55.) That same day, Mr. Trump also presented a \$100,000 check to Americans For Independent Living (also known as Americans for Equal Living) at a campaign rally in Waterloo, Iowa.⁴ (<https://bit.ly/2xoA4bg>.)

40. After the Iowa caucuses, Mr. Trump continued to use the Foundation's disbursements to veterans groups to advance his political goals. On May 31, 2016, after press reports concerning the Foundation's failure to disburse all of the charitable funds it had received during the Iowa Fundraiser, the charitable giving of the Foundation again became the centerpiece to a Campaign political event at which Mr. Trump promoted his candidacy by announcing the grants the Foundation made to veterans groups from the proceeds of the Iowa Fundraiser. And, as at the Iowa events, the Campaign's slogan was prominently displayed in connection with the announcement of the Foundation's charitable giving. Mr. Trump reminded the press corps that he had raised millions of dollars for veterans at the Iowa event and again took credit personally for giving out the funds, stating, after reading out the names of each charity receiving a donation from the proceeds of the Iowa Fundraiser, "nobody gave this kind of money – so I gave \$5,600,000." (<https://bit.ly/2ImPa64> at 3:42, 11:04.) Mr. Trump also challenged the press to compare his efforts to those of his political opponent: "When I raise money for the veterans, and it's a massive amount of money, find out how much Hillary Clinton's given to the veterans.

⁴ The presentation copy of the check shows Americans for Independent Living as the payee, but the actual check was made out to Americans for Equal Living and was dated February 2, 2016.

Nothing.” (*Id.* at 14:00.) At the rally, Mr. Trump invited a veteran, Al Baldasaro (a Republican member of the New Hampshire state legislature who worked on the Trump campaign), to address the reporters. (*Id.*, beginning at 18:40) During his speech, Mr. Baldasaro applauded Mr. Trump’s fundraising efforts for the veterans charities, and repeated his endorsement of Mr. Trump’s candidacy. (*Id.*) On or about the same day, the Campaign posted on its website a chart identifying the recipients of the charitable, tax-free, grants given from the proceeds of the Fundraiser in Iowa months earlier, (<https://bit.ly/2J0IyuD>), as well as a news report under the headline, “Lewandowski: Trump Campaign Gave Between \$5.5 - \$6 Million to Veterans Groups.” (<https://bit.ly/2jWu67Q>.)

41. All of the grants issued by the Foundation from the proceeds of the Iowa Fundraiser – which did not include any funds donated by Mr. Trump personally (*see* Ex. 4 at 73 (2016 Sch. B))⁵ – were selected by the Campaign, with no one from the Foundation giving approval except Mr. Trump, who was its president and the candidate whose Campaign benefitted from the manner in which the grants were disbursed. The rest of the Foundation’s Board – Ivanka Trump, Eric Trump and Donald Trump Jr. – knew of the role played by the Campaign in the Iowa Fundraiser and the distribution of proceeds from it (*See* Ex. 11 at 1; Ex. 12; Feb. 1, 2016 email from Mr. McConney, a true and correct copy of which is attached hereto as Ex. 27; Ex. 7 at 130-31), but nevertheless: (a) failed to meet to discuss the Foundation’s involvement in the Fundraiser or any of the campaign events at which the proceeds from it were disbursed; and (b) failed to approve the grants that were made from the proceeds.

42. Mr. Trump repeatedly touted that he was self-funding his campaign, including on Twitter on the day before the Iowa Fundraiser. (<https://bit.ly/2jWYkYr>.) According to campaign finance disclosures filed in December 2016 with the Federal Election Commission, Mr. Trump invested \$66 million of his own money, composed of both loans and contributions, in the Campaign before the end of 2016. (<https://bit.ly/2Ik3a0r>.) At the time of the Iowa Fundraiser,

⁵ Mr. Trump did eventually contribute to veterans groups as he promised in connection with the Iowa Fundraiser, but he did not do so through the Foundation.

Mr. Trump had contributed only \$250,000 to the Campaign but had loaned it had approximately \$17.5 million. (<https://bit.ly/2IZiRqj>.) As a result, Mr. Trump had a substantial financial interest in the committee and the Foundation's transactions with it.

43. Mr. Trump was aware of the prohibition on political activities and the restrictions on related party transactions. Among other things, he repeatedly signed, under penalties of perjury, CHAR 500s in which he attested that the Foundation did not engage in transactions with interested parties, and that the Foundation did not carry out political activity. (*See, e.g.*, 2013 CHAR 500, a true and correct copy of which is attached hereto as Ex. 28, at 990-PF Part VII-A, VII-B 5a(2); ¶ 44, *infra*.) Mr. Trump also signed, again under penalty of perjury, the Foundation's certificate of incorporation, in which he certified that the Foundation would not use its assets for the benefit of its directors or officers and that it would not intervene in "any political campaign on behalf of any candidate." (Ex. 2 at Sixth, Seventh and signature page.) In addition, no later than February 2016, Mr. Trump was advocating the repeal of the Johnson Amendment, a 1954 amendment of the Code banning political activity by tax-exempt organizations. (*See* <https://bit.ly/2a00T1e>; <https://bit.ly/2xp743a>.) Further, Mr. Trump was on notice regarding the prohibition on political activity no later than March 23, 2016, the date the Foundation filed an IRS Form 4720, signed by Mr. Trump, disclosing the "And Justice for All" transaction detailed below, with respect to which Mr. Trump paid federal excise tax for making an impermissible political expenditure and reimbursed the Foundation for that expenditure. (*See* ¶ 53, *infra*, and 2015 Form 4720, a true and correct copy of which is annexed hereto as Ex. 29.)

The "And Justice for All" Transaction

44. On September 9, 2013, the Foundation issued a check in the amount of \$25,000 to "And Justice for All," a political organization located at 610 S. Boulevard, Tampa, Florida, established under Section 527 of the Internal Revenue Code to support the re-election of Pam Bondi to the position of Florida Attorney General. Private foundations such as the Foundation are prohibited under the Code from making political contributions.

45. The Foundation represented on its 2013 IRS tax return that it did not contribute to a Section 527 political organization and did not participate in any political campaign. (Ex. 28 at 990-PF Part VII-A, VII-B 5a(2) and Part XVII.) In its list of contributions made on the 2013 tax return, the Foundation did not disclose its contribution to And Just for All in Florida. Instead, it listed a \$25,000 contribution to a Kansas-based Section 501(c)(3) organization with a similar name, Justice for All. (*Id.* Part XV.) The Trump Foundation never made a contribution to the Kansas-based Justice for All.

46. On August 28, 2013, Deborah Aleksander, a Bondi campaign fundraiser with an @pambondi.com email address, emailed Rhona Graff, Mr. Trump's executive assistant, to thank Mr. Trump for his commitment of \$25,000 to an "ECO" named And Justice for All, and to provide the organization's federal tax identification number. (Accounts Payable file for the And Justice for All payment, a true and correct copy of which is attached hereto as Ex. 30, at 2; Ex. 9 at 52-54.) "ECO" is a Florida Division of Elections abbreviation for an "electioneering communications organization."

47. Ms. Graff gave a printed copy of the email, which Mr. Trump initialed to indicate his approval for payment, to a Trump Organization accounts payable clerk, Deborah Tarasoff. (Ex. 9 at 52-56; Ex. 30, at 3.) Ms. Tarasoff, who maintained that she assumed And Justice for All was a charitable organization, testified that she looked in an IRS publication of tax-exempt organizations she kept in her office, and found an organization with the same name, which the IRS showed as located in Salt Lake City, Utah. (Ex. 9 at 56, 60; Ex. 30 at 5.) She cut the Foundation check, dated September 9, 2013, and sent it to Mr. Trump's office for his signature. Ms. Tarasoff testified that she did not take any steps to confirm that the Utah organization was the intended recipient of the payment. (Ex. 9 at 60.) Ms. Tarasoff and Mr. McConney maintain they do not know who mailed the check. (Ex. 7 at 96; *see* Ex. 9 at 47.)

48. Given Ms. Aleksander's email to Ms. Graff, Mr. Trump knew or should have known that the Foundation was making a political contribution because he was aware the

contribution was to support Ms. Bondi's re-election campaign and he personally signed the Foundation check.

49. In disclosing grant recipients to the IRS, the Foundation did not list on its Form 990-PF either the actual unlawful recipient of the \$25,000 check or the Utah-based group assumed by Ms. Tarasoff to be the recipient, but, rather, a *third* unrelated group with a similar name, Justice for All, which the form presented as located at 113 N. Martinson St., Wichita, Kansas, 67203. (Ex. 28 at 18.) The Foundation did not make a donation to Justice for All.

50. The Foundation has no credible explanation for the false reporting of grant recipients to the IRS and the State of New York. Mr. McConney testified that the IRS Form 990-PF was prepared by the Foundation's accountants, Weisermazars LLP, and that the accountants relied on the information in the Foundation's general ledger and bank statements. (Ex. 7 at 47-48, 127-28.) But the general ledger and bank statements do not show a disbursement to Justice for All at 113 N. Martinson St., Wichita, Kansas. They show the disbursement to And Justice for All, with no address given. (True and correct copies of the relevant pages of the Trump Foundation general ledger and bank statements are attached hereto as Ex. 31; Ex. 7 at 44-47.)

51. Neither Mr. McConney nor Mr. Weisselberg could explain why Weisermazars LLP entered an organization and address not supplied by the Foundation. Mr. McConney said he might have had a conversation with the accounting firm about it, but did not know the reason the mistake happened. (Ex. 7 at 126.) Asked how the error occurred, Mr. Weisselberg said he wished he could answer but could not. (Ex. 6 at 108-09.)

52. Although the Foundation asserts that its \$25,000 contribution to Ms. Bondi's campaign was an inadvertent mistake by the Trump Organization's accounting staff (Ex. 29 at 12-13), it was, at a minimum, a result of the Foundation's lack of adequate controls and inadequate supervision of and training of staff performing services.

53. Section 4955 of the Code imposes an excise tax on political expenditures by Section 501(c)(3) organizations. Under Section 6652 of the Code, a tax-exempt organization that,

without reasonable cause, fails to include any of the information required on a Form 990 tax return, or fails to provide the correct information, is liable for civil penalties.

54. On March 22, 2016, the Washington Post reported that a government watchdog group, Citizens for Responsibility and Ethics in Washington (“CREW”), had the day before filed a complaint with the IRS about the “And Justice for All” contribution and the inaccurate IRS filing. The following day, March 23, 2016, the Foundation filed an IRS Form 4720, signed by Mr. Trump, disclosing the transaction (Ex. 29) and Mr. Trump paid the federal excise tax, \$2,500, by personal check. Mr. Trump also reimbursed \$25,000 to the Foundation.

Additional Self-Dealing/Related Party Transactions

55. The Foundation entered into the following prohibited self-dealing transactions that directly benefitted Mr. Trump or entities that he controlled:

- A. On September 11, 2007, the Foundation made a \$100,000 payment to the Fisher House Foundation, a charitable organization, to settle legal claims against Mar-A-Lago, LLC, LC (“Mar-A-Lago”) by the City of Palm Beach (the “Mar-A-Lago Transaction”);
- B. On February 14, 2012, the Foundation made a \$158,000 payment to the Martin B. Greenberg Foundation, a charitable organization, to settle legal claims against The Trump National Golf Club and other defendants by Martin B. Greenberg (the “Trump National Transaction”);
- C. On November 5, 2013, the Foundation made a \$5,000 payment to the DC Preservation League, a charitable organization, for promotional space featuring Trump International Hotels in charity event programs (the “Trump Hotels Transaction”);
- D. On March 20, 2014, the Foundation made a \$10,000 payment to the Unicorn Children’s Foundation, a charitable organization, for a painting of Mr. Trump purchased at an auction for that charity, (the “Trump Painting Transaction”);
- E. On December 14, 2015, the Foundation made a \$32,000 payment to the North American Land Trust, a charitable organization that preserves natural resources, in connection with a pledge by Seven Springs, LLC to fund the management of a conservation easement (the “Seven Springs Transaction”); and
- F. As detailed above, at the direction of the Campaign and in close coordination with it, the Foundation issued grants totaling \$2,823,418 from the proceeds of the January 28, 2016 Veterans fundraiser in a manner designed to assist Mr. Trump’s presidential election bid.

The Foundation’s Board failed to review or approve these transactions.

2007 Mar-A-Lago Transaction

56. Mar-A-Lago is a private club in Palm Beach, Florida, of which Mr. Trump is the 99.99% owner, located in a district zoned residential. In August 2006, the Town of Palm Beach issued a citation to Mar-A-Lago for violation of several ordinances related to the height and location of flagpoles on residential properties, as well as for failure to seek a building permit or certificate of appropriateness for installing the flagpole.

57. Mar-A-Lago sued the town, arguing that the ordinances were unconstitutional. *Mar-A-Lago, L.L.C. v. Town of Palm Beach*, No. 9:07-cv-80050-CIV-DTKH (S.D. Fla.). On April 17, 2007, the parties settled the lawsuit under terms that required Mr. Trump to contribute \$100,000 to charities agreed to by the parties. (Joint Motion to Approve Settlement Agreement, Docket No. 52, a true and correct copy of which is attached hereto as Ex. 32, ¶ 5.) The parties subsequently agreed that the contribution should be made to the Fisher House Foundation.

58. Mr. Trump personally directed his accounting staff to draw the \$100,000 payment from the assets of the Foundation, not his personal accounts or the accounts of Mar-A-Lago in a handwritten note to Mr. Weisselberg. (A true and correct copy of Mr. Trump's note is attached hereto as Ex. 33; Ex. 7 at 173-78.) The Trump Organization accounting staff followed Mr. Trump's instruction to use the Foundation's account to satisfy the settlement obligation (Ex. 7 at 176-77), even though the Foundation was not involved in the lawsuit in any way.

59. The Investigation found that by directing the Foundation to make payment to Fisher House, Mr. Trump improperly caused the Foundation use its charitable assets to benefit another organization that he controlled, which constituted improper self-dealing. After the OAG commenced the Investigation, on March 17, 2017, Mr. Trump reimbursed the Foundation \$100,000, plus interest in the amount of \$8,763.41, for this transaction.

2012 Trump National Transaction

60. In 2012, Martin B. Greenberg sued the Trump National Golf Club, Alonzo Mourning Charities Inc. ("AMC"), Florida Team Golf and Celebrity International ("Florida Team Golf"), and Hole in One International, an insurer. The Trump National Golf Club is 99%

owned by DJT Holdings, LLC, which is, directly and indirectly, owned by Mr. Trump.

Promoters of a fundraising golf tournament held at the Trump National Golf Club to benefit AMC, promised golfers a chance to win \$1 million by shooting a hole in one at the thirteenth hole. Mr. Greenberg shot a hole in one at the thirteenth hole, but, according to his complaint, the insurer determined that Mr. Greenberg's shot was not made from a minimum distance of 150 yards and declined to pay the claim.

61. The parties settled the lawsuit on February 13, 2012 for \$775,000 (the "Settlement Amount"). The settlement consisted of two concurrent agreements: one among Mr. Greenberg, the Trump National Golf Club, AMC and Florida Team Golf (the "Settlement Agreement"), and the other between AMC and the Trump National Golf Club (the "AMC-TNGC Agreement"). (True and correct copies of the Settlement Agreement and the AMC-TNGC Agreement are attached hereto as Ex. 34 and Ex. 35, respectively.) Under the Settlement Agreement, AMC and Florida Team Golf agreed to pay the Settlement Amount to the Martin B. Greenberg Charitable Foundation (the "Greenberg Foundation"). Under the AMC-TNGC Agreement, the Trump National Golf Club agreed to pay \$158,000 toward the Settlement Amount, which the Trump National Golf Club would pay directly to the Greenberg Foundation. (Ex. 35 at ¶ 2.)

62. The Foundation, not the Trump National Golf Club or Mr. Trump, paid \$158,000 to the Greenberg Foundation. The Trump Organization raised the \$158,000 payment through an auction on a charity auction website of a lifetime membership in Mr. Trump's golf clubs for the benefit of the Trump Foundation. The contract between the auction website and the Trump Foundation, dated December 1, 2011, and signed by then-attorney for Mr. Trump Michael Cohen on behalf of the Foundation, identified the Foundation as the beneficiary of the auction. (A true and correct copy of the auction contract is attached hereto as Ex. 36.) The auction webpage announced, "Proceeds from this item benefit the Donald J. Trump Foundation." (A true and correct copy of the webpage advertising the auction is attached hereto as Ex. 37.) This statement

was false because Mr. Trump intended that the proceeds would be used to satisfy the Trump National Golf Club's obligations under the AMC-TNGC Agreement.

63. An individual made a winning bid on December 19, 2011. After deducting a 15% service fee, the auction website delivered \$157,250 to the Trump Foundation on January 9, 2012, and on February 14, 2012, the Trump Foundation paid \$158,000 to the Greenberg Foundation. (2012 CHAR 500, a true and correct copy of which is attached hereto as Ex. 38, at 20.) Mr. Trump directed that the wire be sent. (Ex. 7 at 158-59.)

64. The Investigation concluded that the Foundation improperly used the funds it received from the auction website, which were advertised as being used to support the Foundation, to satisfy the obligations of the Trump National Golf Club, an organization controlled by Mr. Trump, and, as a result, constituted improper self-dealing.

65. On March 17, 2017, the Trump National Golf Club contributed \$158,000 plus interest in the amount of \$3,593.08, to the Foundation to reimburse it for its expenditure.

2013 Trump Hotels Transaction

66. In 2013, the Foundation paid \$5,000 to the DC Preservation League ("DCPL"), a Section 501(c)(3) organization that advocates for historic preservation in Washington, D.C. The payment entitled the Foundation to a half-page ad in the 2014 commemorative program for DCPL's annual gala. The Foundation did not use the space in the program to advertise itself. Rather, the Trump Organization used the space to promote The Trump Hotel Collection, without any mention of the Foundation. (See D.C. Preservation League, Commemorative Program (Feb. 11, 2014), produced by DC Preservation League, true and correct copies of relevant excerpts from the program are attached hereto as Ex. 39, at 3.)

67. The Investigation concluded that the \$5,000 payment was made for the benefit of Trump International Hotel Management LLC, an organization controlled by the directors of the Foundation and constituted improper self-dealing.

68. After the commencement of the Investigation, on December 9, 2016, Trump International Hotel Management LLC contributed \$5,084.62 to the Foundation to reimburse it for the contribution to DCPL plus interest. On December 19, 2016, the Foundation filed IRS Form 4720 with the IRS reporting the transaction and The Trump International Hotel Management LLC paid excise taxes and interest in the total amount of \$502.33, \$505.12, and \$506.88 due, respectively, for each of 2013, 2014 and 2015.

2014 Trump Painting Transaction

69. On March 20, 2014, Mr. Trump caused the Foundation to pay \$10,000 for the winning bid on a painting of Mr. Trump at a charity auction for the Unicorn Children's Foundation, a Section 501(c)(3) organization. The Trump Organization used the painting as décor at Trump National Doral Miami, an entity owned by Trump Endeavor 12 LLC, which is owned by Mr. Trump. The Investigation concluded that the payment of \$10,000 was used to benefit an organization controlled by the director of the Foundation and constituted improper self-dealing.

70. After the commencement of the Investigation, on November 17, 2016, Trump Endeavor 12 LLC returned the painting to the Foundation and paid \$182.82 to compensate the Foundation for the fair rental value of the painting, as determined by an appraiser, plus interest. On December 19, 2016, the Foundation filed IRS 2014 Form 4720 and Amended 2015 Form 4720 with the IRS and Trump Endeavor 12 LLC paid outstanding excise taxes and interest in the amount of \$8.49 and \$18.48, due, respectively, for each of 2014 and 2015. (True and correct copies of 2014 Form 4720 and Amended 2015 Form 4720 are attached hereto as Ex. 40 and Ex. 41, respectively.)

2015 Seven Springs Transaction

71. In 2015, the Foundation paid \$32,000 to the North American Land Trust ("NALT") to satisfy a \$32,000 pledge by Seven Springs LLC ("Seven Springs"). NALT is a land preservation organization that preserves natural resources. Seven Springs, which is owned by

DJT Holdings LLC, an entity owned by Mr. Trump, holds a property of over 200 acres in Westchester County used for recreation by the Trump family. Seven Springs had donated a 156-acre easement to NALT and the \$32,000 gift was to satisfy a pledge by Seven Springs to the fund NALT maintains for managing the easements it acquires. As the Foundation admitted in a tax filing, the contribution should have been made by Seven Springs, not the Foundation. (Ex. 41, Amended 2015 Form 4720, Sch. A at 5.)

72. After the commencement of the Investigation, on November 17, 2016, Seven Springs LLC corrected the transaction by reimbursing \$32,000 to the Foundation, and, on December 9, 2016, paying \$288.38 to the Foundation as the applicable interest on the amount contributed. In addition, on December 19, 2016, Seven Springs LLC filed IRS Form 4720 and paid excise taxes of \$3,213.19.

* * *

73. No prior application for the relief sought herein has been made.

CONCLUSION

WHEREFORE, it is respectfully requested that the Court grant the Verified Petition in all respects.

Dated: New York, New York
June 13, 2018


STEVEN SHIFFMAN