

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

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES,  
Attorney General of the State of New York,

Petitioner,

-against-

THE TRUMP ORGANIZATION, INC.; DJT HOLDINGS LLC; DJT HOLDINGS MANAGING MEMBER LLC; SEVEN SPRINGS LLC; ERIC TRUMP; CHARLES MARTABANO; MORGAN, LEWIS & BOCKIUS, LLP; and SHERI DILLON,

Respondents.

Index No. \_\_\_\_\_

Motion Sequence \_\_\_\_\_

**FIRST AFFIRMATION OF MATTHEW COLANGELO IN SUPPORT OF THE OFFICE OF THE ATTORNEY GENERAL’S ORDER TO SHOW CAUSE TO COMPEL COMPLIANCE WITH INVESTIGATORY SUBPOENAS**

**(REDACTED)**

MATTHEW COLANGELO, an attorney duly admitted to practice before the Courts of this State, does hereby state the following pursuant to penalty of perjury:

1. I am an attorney in the Office of New York State Attorney General who appears on behalf of the People of the State of New York in this special proceeding.

2. I am familiar with the facts and circumstances set forth in this Affirmation, which are based upon my personal knowledge, the investigative materials obtained during the course of this investigation, and information contained in the files of the Office of the Attorney General (“OAG”).

3. I submit this Affirmation in support of OAG's application by Order to Show Cause seeking to compel compliance with the investigatory subpoenas for documents and testimony issued to Respondents. *See* Ex. 1; Ex. 2; Ex. 4; Ex. 5; Ex. 6; Ex. 7; Ex. 8; Ex. 9.<sup>1</sup>

4. The subpoenas were issued by the Attorney General to Respondents in connection with an investigation of the Trump Organization and Donald J. Trump.

5. In response to the subpoenas, Respondents have produced certain responsive documents and witnesses for examination by OAG. However, as set forth below, Respondents have withheld numerous responsive documents from production and have instructed witnesses not to answer numerous questions during sworn testimony on the basis of assertions of attorney-client privilege, work-product protection, and other claims. In addition, Respondent Eric Trump has refused entirely to comply with the subpoena for his testimony.

6. As set forth below and in the accompanying Verified Petition, Second Affirmation of Matthew Colangelo dated August 21, 2020, and Memorandum of Law, OAG has endeavored to resolve the issue of Respondents' compliance with the subpoenas through extensive and good-faith discussions, and has been unable to reach a resolution.

7. OAG now seeks an order pursuant to C.P.L.R. 2308(b) to enforce its subpoenas without further delay.

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<sup>1</sup> Citations to "Ex. \_\_\_" are to true copies of the referenced documents as annexed to this Affirmation. Certain exhibits to this Affirmation have been excerpted in order to avoid presenting the Court with extraneous material. As set out in the separate Memorandum of Law in Support of the Attorney General's Motion to File *In Camera* and Under Seal, OAG has sought the Court's leave to file these exhibits under seal to permit Respondents an opportunity to argue that any exhibit contains confidential, proprietary, or trade secret information or that public disclosure is otherwise unwarranted.

## INTRODUCTION

8. OAG is currently investigating whether the Trump Organization and Donald J. Trump (Mr. Trump) improperly inflated the value of Mr. Trump's assets on annual financial statements in order to secure loans and obtain economic and tax benefits.

9. In the course of this investigation (and as relevant to this special proceeding), OAG subpoenaed documents and testimony from Respondents seeking information concerning whether the Trump Organization and its agents improperly inflated the value of Mr. Trump's assets on annual financial statements. OAG also subpoenaed documents and testimony from Respondents seeking information concerning whether the Trump Organization and its agents improperly inflated, or caused to be improperly inflated, the value of the Seven Springs Estate (a parcel of real property in Westchester County, New York, as described further below).

## THE RESPONDENTS

10. Approximately 500 separate entities collectively do business as The Trump Organization. Respondent The Trump Organization, Inc. is a New York corporation. According to required disclosures, from May 1, 1981 to January 19, 2017, Mr. Trump was Director, President, and Chairman of the Trump Organization, Inc. From at least July 15, 2015 until May 16, 2016, Mr. Trump was the sole owner of The Trump Organization, Inc. Ex. 10 at A19; Ex.11 at A19. As of 2017, the Trump Organization, Inc. was wholly owned by DJT Holdings Managing Member LLC. Ex. 12 at 10, A18.

11. Respondent DJT Holdings LLC is a Delaware limited liability company with a principal place of business in New York, NY. This Respondent is named as a subpoena recipient and component of the Trump Organization.<sup>2</sup>

12. Respondent DJT Holdings Managing Member LLC is a Delaware limited liability company registered to do business in New York County, NY. This Respondent is named as a subpoena recipient and component of the Trump Organization.

13. Respondent Seven Springs LLC is a New York limited liability company that is part of the Trump Organization. From December 1995 to January 19, 2017, Mr. Trump was President of Seven Springs LLC. Seven Springs LLC is 99.9% owned by DJT Holdings LLC, an entity wholly owned by Mr. Trump, and 0.1% owned by Bedford Hills Corp., which was wholly owned by Mr. Trump until at least May 16, 2016, and is now wholly owned by DJT Holdings LLC. Ex. 10 at A4; Ex.11 at A2, A4; Ex. 12 at 4, A2; Ex. 13 at 00027709.12.2019.

14. Respondent Eric Trump is Executive Vice President of the Trump Organization, President of Seven Springs LLC, and Chairman of the Advisory Board of the Donald J. Trump Revocable Trust (“DJT Revocable Trust”). Ex. 14 [REDACTED]; Ex. 16; Ex. 17.

15. The DJT Revocable Trust was created on April 7, 2014 and amended by Second Amendment to the Trust dated January 17, 2017. Ex. 14. The purpose of the trust is to hold assets for the exclusive benefit of Donald J. Trump. Ex. 15 at 105:16-106:03.

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<sup>2</sup> The OAG subpoena to the Trump Organization defined the respondent to mean, in part, “‘The Trump Organization, Inc.’; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect.” Ex. 1, ¶ 1.

16. Respondent Charles Martabano is an attorney licensed to practice in New York, handling primarily transactional matters and land use matters. Mr. Martabano maintains a law office located at 9 Mekeel Street, in Katonah, New York. Ex. 18 at 5:13-16.

17. Respondent Morgan, Lewis & Bockius LLP (“Morgan Lewis”) is a Pennsylvania limited liability partnership law firm with a place of business at 101 Park Avenue, New York, New York 10178.

18. Respondent Sheri Dillon is a partner at Morgan Lewis with a business address at 1111 Pennsylvania Avenue NW, Washington, DC 20004.

### **THE ATTORNEY GENERAL’S INVESTIGATION**

#### **I. The Attorney General’s investigative authority under Executive Law § 63(12).**

19. As set forth in greater detail in the accompanying Memorandum of Law, the Attorney General has broad statutory authority under the Executive Law to investigate and enforce civil prohibitions on fraudulent or illegal business conduct.

20. Executive Law § 63(12) allows the Attorney General to bring a proceeding “[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.”

21. The Attorney General has broad authority to issue subpoenas and take sworn testimony to determine whether a proceeding should be brought. The Attorney General is “authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.” Executive Law § 63(12).

22. A sufficient factual basis for a subpoena under § 63(12) exists as long as there is a “reasonable relation to the subject-matter under investigation and to the public purpose to be

achieved.” *Matter of La Belle Creole Int’l, S.A. v. Attorney-General of the State of N.Y.*, 10 N.Y.2d 192, 196 (1961).

## II. Factual background regarding the Attorney General’s investigation.

23. OAG opened this civil investigation in March 2019, after Michael Cohen, a former senior executive of the Trump Organization, produced to Congress copies of Donald J. Trump’s financial statements for 2011, 2012, and 2013. *See* H. Hrg. 116-03 (Feb. 27, 2019), at 38.

24. Mr. Cohen testified that these statements inflated the values of Mr. Trump’s assets to obtain favorable terms for loans and insurance coverage, while also deflating the value of other assets to reduce real estate taxes. *See id.* at 13, 19, 38-39, 160.

25. Following that testimony, OAG began an investigation and determined that Mr. Trump’s financial statements were, in fact, provided to financial institutions. OAG also began to investigate whether such statements contained inflated values and were used in a way that would establish a violation of law.

26. OAG has issued a number of subpoenas and has taken on-the-record testimony seeking information material to valuations of the assets identified on Mr. Trump’s financial statements and to the use of those statements.

27. The factual background necessary to present this motion to compel is set out in the following paragraphs. Additional information regarding the factual basis for the OAG’s investigation regarding these and related matters is more fully set out in the Second Affirmation of Matthew Colangelo dated August 21, 2020, filed *in camera* to protect the confidentiality of this ongoing investigation.

**A. Mr. Trump’s annual financial statements.**

28. Since at least 2004, Mr. Trump and the Trump Organization have prepared an annual “Statement of Financial Condition of Donald J. Trump” similar to the documents Mr. Cohen produced to Congress. *E.g.*, Ex. 19. These statements contain Mr. Trump’s assertions of net worth, based principally on asserted values of particular assets minus outstanding debt.

29. These financial statements were compiled by accounting firm Mazars USA LLP (Mazars). The statements relied upon supporting data and documentation prepared by the Trump Organization that Mazars compiled into financial-statement format. *E.g.*, Ex. 20 [REDACTED]

[REDACTED]

30. Mr. Trump’s financial statements were submitted to financial institutions [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. Seven Springs property valuation and conservation easement.**

31. One of the assets included in Mr. Trump’s Statements of Financial Condition is a property known as the Seven Springs Estate. *E.g.*, Ex. 24 [REDACTED]

32. Seven Springs is a parcel of real property that consists of approximately 212 acres within the towns of Bedford, New Castle, and North Castle in Westchester County, New York.

Ex. 25 [REDACTED]. The property was purchased in December 1995 for \$7.5 million by Seven Springs LLC, which is part of the Trump Organization. Ex. 25 [REDACTED]

Ex. 26.

33. Between approximately 1996 and 2014, Mr. Trump made various efforts to develop Seven Springs as a golf course, or to subdivide it for residential development. Ex. 27 at 4-6. After these efforts failed or ceased, Mr. Trump decided to grant a conservation easement on Seven Springs, and thus take an apparent income tax deduction based on the lost development value of the property as a result of the easement. Ex. 25 [REDACTED]; Ex. 29 [REDACTED]

34. To comply with legal requirements regarding substantiation of the easement's value, the Trump Organization (via Seven Springs LLC) retained an appraisal firm to document the value of the easement. Ex. 30.

35. On June 1, 2015, Eric Trump on behalf of Seven Springs LLC, "c/o The Trump Organization," engaged Cushman & Wakefield, Inc. ("Cushman"), an appraiser and commercial real estate services company, "[t]o document the value of a conservation easement placed on a parcel of land for Federal and State income tax purposes." Ex. 30 [REDACTED]. The engagement letter states that the appraisal "is intended only for" that use, *see id.*; and federal tax filings indicate that this appraisal was used for that purpose. Ex. 29 [REDACTED]

36. On December 11, 2015, Mr. Trump executed an agreement whereby Seven Springs LLC granted a conservation easement over approximately 158 acres of its property to the North American Land Trust (NALT). Ex. 25 [REDACTED]

37. On March 15, 2016, Cushman issued a written appraisal that valued the property as of December 1, 2015. Ex. 25 [REDACTED]

38. The March 2016 appraisal determined that Seven Springs was worth \$56.5 million as of December 1, 2015, before placement of the easement, and further concluded that the easement’s value was \$21.1 million. Ex. 25 [REDACTED]

39. Seven Springs LLC likewise identified the “appraised fair market value” of the conservation easement as \$21.1 million on tax forms submitted to the IRS for tax year 2015 reporting the claimed value of donated property for income tax purposes. Ex. 29 [REDACTED]  
[REDACTED] Ex. 31; Ex. 32;  
Ex. 33.

**C. 40 Wall Street.**

40. 40 Wall Street is an office building located on Wall Street in New York, NY. The Trump Organization owns a “ground lease” pertaining to the property; that is, it holds a leasehold interest in the land and buildings on the land, but pays rent (known as ground rent) to the fee owner. Ex. 34 [REDACTED]

41. The Trump Organization entered into a note and mortgage in connection with 40 Wall Street in 2005 with North Fork Bank, which subsequently merged into Capital One. Ex. 35 [REDACTED]

42. In 2010, that note and mortgage were modified to have a total principal loan amount of \$160 million, \$20 million of which was personally guaranteed by Mr. Trump. Ex. 41 [REDACTED]; Ex. 35.

43. Loan documents required Mr. Trump [REDACTED]  
[REDACTED]  
[REDACTED]

44. In approximately July 2015, the Trump Organization refinanced the \$160 million loan on 40 Wall Street pursuant to a note and mortgage with Ladder Capital Finance, which was

subsequently securitized pursuant to an agreement between Ladder Capital and Wells Fargo. Ex. 36.

**D. Trump International Hotel and Tower Chicago.**

45. A property located in Chicago, Illinois known as the Trump International Hotel and Tower Chicago is part of the Trump Organization's business portfolio. Ex. 37.

46. In connection with the acquisition and development of the property, 401 North Wabash Venture LLC (401 North Wabash), the entity that owned the property, obtained loans secured by mortgages on the property; and 401 Mezz Venture LLC (401 Mezz) which owned all of the equity interest in 401 North Wabash, obtained a loan from Fortress Credit Corporation (Fortress) secured by a pledge of the shares of 401 North Wabash (the Mezzanine Loan). Ex. 38

47. In or about July 2010, Fortress and 401 Mezz agreed to restate the Mezzanine Loan to reduce the outstanding principal and interest. Ex. 38 [REDACTED]

When there is a reduction in the amount of an outstanding debt, there may be a taxable event for the borrower. *See, e.g.*, 26 U.S.C. § 61(a)(11) (“gross income” includes “[i]ncome from discharge of indebtedness”).

48. Here, 401 Mezz deferred recognizing as income the amount of the debt forgiven by Fortress. Ex. 38 [REDACTED]

49. In or about March 2012, Fortress agreed to accept a discounted prepayment of the Mezzanine Loan. Ex. 38 [REDACTED]. At the time, the amount of the outstanding debt, including interest and fees, was approximately \$150 million and Fortress accepted \$48 million in full satisfaction of the debt, forgiving more than \$100 million. *Id.*

**E. Trump National Golf Club – Los Angeles.**

50. The Trump Organization's business portfolio includes a golf course and clubhouse in Los Angeles County, California, known as the Trump National Golf Club – Los Angeles ("Trump Golf LA"). On December 26, 2014, Mr. Trump executed an agreement whereby two Trump Organization entities, VH Property Corp. and VHPS LLC, granted a conservation easement over 11.54 acres of its property to the Palos Verdes Peninsula Land Conservancy. Ex. 39.

51. On March 4, 2015, Cushman issued a written appraisal that valued the property as of December 26, 2014. Ex. 40.

52. The appraisal determined that the Trump Organization's holdings were worth \$107 million before placement of the easement, and further concluded that the easement's value was \$25 million. Ex. 40 [REDACTED]

**F. Further factual foundation for the Attorney General's investigation.**

53. The factual basis for OAG's investigation is more fully described for the Court in the Second Affirmation of Matthew Colangelo dated August 21, 2020, filed *in camera* to protect the confidentiality of this ongoing investigation. *Michaelis v. Graziano*, 5 N.Y.3d 317, 323 (2005); *Am. Dental Coop., Inc. v. Attorney-General*, 127 A.D.2d 274, 280 (1st Dep't 1987).

**RESPONDENTS' ASSERTIONS OF PRIVILEGE**

54. In the course of this investigation, the Attorney General has served subpoenas *duces tecum* and subpoenas *ad testificandum* on a number of individuals and entities. As relevant to this special proceeding, the parties' responses to those subpoenas are set out below.

**I. The Trump Organization.****A. OAG's subpoenas to the Trump Organization.**

55. As relevant to this application, OAG served subpoenas *duces tecum* on the Trump Organization and Seven Springs LLC on December 27, 2019. Ex. 1; Ex. 2.

56. OAG's subpoena to the Trump Organization sought records related to Mr. Trump's Statements of Financial Condition, and both subpoenas sought records related to the development potential and easement donation over Seven Springs. Ex. 1; Ex. 2.

57. Based on information produced by the Trump Organization in response to those subpoenas, as well as on other information in OAG's possession, OAG then sought testimonial evidence from several Trump Organization employees.

58. As relevant here, OAG served a subpoena *ad testificandum* on Allen Weisselberg on March 18, 2020. Ex. 3. Mr. Weisselberg's sworn testimony was taken on July 16 and July 17, 2020, but his examination has not been concluded and thus remains open. Ex. 15; Ex. 42.

59. OAG served a subpoena *ad testificandum* on Eric Trump on May 26, 2020. Ex. 4.

**B. The Trump Organization's responses and assertions of privilege in connection with the December 27, 2019 subpoenas *duces tecum*.****1. The Trump Organization is withholding dozens of responsive records on unsupportable claims of privilege after months of negotiation.**

60. Following OAG's service of the subpoenas *duces tecum* in December 2019, the parties have engaged in extensive good-faith discussions to facilitate the Trump Organization's compliance with the subpoenas, and subsequently to attempt to resolve OAG's concerns regarding the Trump Organization's responses to those subpoenas. In the course of those discussions, the parties' disagreements have narrowed to a subset of disputed issues as to which the parties are now at impasse, as described below.

61. The parties initially conferred on January 8 and January 10, 2020, to discuss the Trump Organization's objections to the subpoenas and identify ways to narrow OAG's requests to facilitate the Trump Organization's compliance (without prejudice to OAG's right to seek full compliance with each request as described in the subpoena). Ex. 43. Among other steps, the parties agreed on Trump Organization employees whose records would be reviewed for responsive documents, including Eric Trump. *Id.*

62. By late February 2020, the Trump Organization had produced only 117 documents and had not begun any electronic search or review of documents. At the Trump Organization's request, OAG wrote on February 26, 2020, to identify priority search terms and custodians for rolling production of responsive records. Ex. 44.

63. The Trump Organization produced two privilege logs on May 7, 2020, identifying a number of records withheld from production on a claim of privilege. Ex. 45.

64. By letter dated May 28, 2020, OAG memorialized its concerns with the withholdings identified on the May 7 privilege logs. Ex. 46.

65. On May 29, 2020, the Trump Organization produced a third privilege log. Ex. 47.

66. By letter dated June 10, 2020, OAG again memorialized its concerns with the Trump Organization's subpoena compliance, including with the withholdings identified on the first and second privilege logs. Ex. 48.

67. On June 12, 2020, the Trump Organization produced several documents that had previously been withheld, and also produced amendments to the first and second privilege logs (to identify the withdrawal of certain claims of privilege). Ex. 49.

68. The parties held a telephonic meet-and-confer on July 2, 2020, to discuss these and other subpoena compliance issues. Ex. 50. That meet-and-confer did not resolve the parties' disagreements over the records identified as withheld on the first and second privilege logs.

69. On July 10, 2020, OAG memorialized its continued concerns with the Trump Organization's privilege assertions over documents identified on the first and second privilege logs. Ex. 50.

70. The Trump Organization responded on July 24, 2020, reasserting all of its privilege assertions. Ex. 51.

71. On July 29, 2020, OAG wrote the Trump Organization setting out OAG's conclusion that the parties were at impasse with regard to certain of the documents identified on the first and second privilege logs. Ex. 52.

72. The Trump Organization submitted final revised privilege logs on August 7, 2020, withdrawing the assertions of privilege as to nine documents the parties had previously discussed, and reasserting the remaining privileges. Ex. 53. The Trump Organization also produced final amendments to the first privilege log and second privilege log. Ex. 54; Ex. 55.

73. As reflected on those privilege logs and memorialized in the parties' correspondence, the following assertions of privilege are in dispute.

74. First, the Trump Organization is withholding dozens of records related to the Seven Springs property.

75. The Trump Organization is withholding approximately forty responsive communications as "Attorney Client Communication," "Attorney Work Product," or "Attorney Client Communication and/or Work Product" despite being copied to a third party—Ralph Mastromonaco, an engineer retained by the Trump Organization to perform engineering services

in connection with the Seven Springs property (as identified in ¶¶ 232-233 below). *See* Ex. 55 (documents identified at NYAGREV00049607, 00049608, 00049609, 00049610, 00049786, 00049790, 00049793, 00049795, 00049797, 00049802, 00049853, 00049854, 00049856, 00049859, 00049866, 00049868, 00049869, 00049875, 00049877, 00049880, 00049883, 00049884, 00049885, 00049897, 00049913, 00049917, 00049935, 00049936, 00049937, 00049938, 00049941, 00049944, 00049946, 00049948, 00049949, 00049950, 00049954, 00049955, 00049961, and 00049962).

76. The Trump Organization is redacting portions of an email with the subject line “Seven Springs ‘To Do’”, that appear to relate to the Trump Organization’s engagements of Cushman & Wakefield for appraisal services at two properties: Seven Springs, and Trump National Golf Club Westchester (Briarcliff). Ex. 55 (document identified at NYAGREV00018236, withheld as attorney-client communication, described as relating to “the potential engagement of a consultant”); *see* Ex. 56 (redacted document as produced at TTO\_018383).

77. The Trump Organization is also redacting portions of an email from Eric Trump dated May 30, 2012, with the subject line “RE: Seven Springs,” that Eric Trump states will provide “a better context” for the documents attached to the email. Ex. 54 (document identified at NYAGREV00102079, described as relating to “Seven Springs development project”); Ex. 16 (redacted document as produced at TTO\_022846). The email is withheld on attorney-client privilege grounds, but is copied to a third party (Donald Bender, the Trump Organization’s accountant at Mazars). Ex. 54 (NYAGREV00102079); Ex. 16.

78. Second, the Trump Organization is withholding several records related to Trump Golf LA.

79. The Trump Organization is withholding an email concerning payment in connection with the Trump Golf LA conservation easement. Ex. 54 (document identified as NYAGREV00106651). The email includes outside counsel Sheri Dillon, and in justifying this withholding, the Trump Organization's counsel explained that the easement was "a transaction which Ms. Dillon was primarily responsible for handling." Ex. 51. The email is withheld on attorney-client privilege grounds, but is copied to a third party (Donald Bender). Ex. 54 (NYAGREV00106651).

80. Mr. Bender testified that he was not engaged to assist outside counsel and the Trump Organization understand each other on financial matters. Ex. 28 at 180:17-21, 182:2-15.

81. The Trump Organization is withholding four communications between Trump Organization employees Jeff McConney and Heidi Mitchell with the designation "Privileged Communication," on a claim that these communications reflect Trump Organization employees responding to a request from counsel for information relating to an easement donation. Ex. 54 (NYAGREV00105537, 00105546, 00113009, 00113084); Ex. 57 (redacted document as produced at TTO\_022946). Ms. Mitchell described the request to Mr. McConney as "coming from Jill Martin and the team she is working with . . . I believe it is Cushman & Wakefield." Ex. 57. Cushman & Wakefield was engaged the week before, on November 3, 2014, to "document the value of a conservation easement placed over a parcel of land located on the Trump National Golf Club Los Angeles for Federal and State income tax purposes." Ex. 52.

82. Third, the Trump Organization is withholding a document described as an email from Mr. McConney to in-house counsel regarding the "Guarantor Statement of Financial Condition" for 40 Wall Street. Ex. 54 (NYAGREV00100293). This email is dated June 5, 2015.

*Id.*

83. The Trump Organization has advised OAG that the communication is from “Mr. McConney to one of the Trump Organization’s in-house attorneys concerning compliance with certain financial reporting obligations set forth in a loan agreement.” Ex. 51.

**2. The Trump Organization is refusing to produce documents showing that a loan forgiveness was recognized as income.**

84. In the course of its investigation, the Attorney General has sought to confirm that the amounts forgiven by Fortress in connection with the loan on the Trump International Hotel and Tower Chicago were ultimately recognized as income (or an explanation as to why the Trump Organization is not required to do so). Ex. 59; Ex. 60; Ex. 61; Ex. 62.

85. OAG first requested this confirmation on or around April 7, 2020. Ex. 59.

86. In response to OAG’s requests, and when the documents produced by the Trump Organization failed to confirm that the amounts forgiven by Fortress were ultimately recognized as income, counsel for the Trump Organization represented that “Allen Weisselberg will testify under oath that in connection with the applicable 2012 tax return, Trump recognized as income the amount of the debt that was forgiven by Fortress in connection with the 2012 Transaction.” Ex. 62.

87. At his Executive Law § 63(12) examination on July 16, 2020, Mr. Weisselberg testified that while he believed from conversations with others that the amount of the debt that was forgiven was recognized as income, he had no first-hand knowledge of this fact, had not reviewed the relevant documents to confirm that this understanding was true, could not identify any return on which the forgiveness was treated as income, and instead was relying solely upon his recollection of conversations he had with the Trump Organization’s accountants concerning the tax treatment of the amount of the debt that was forgiven. Ex. 15 at 233:19-236:17; *see also id.* at 188:20-189:9, 219:10-220:08, 223:02-224:10.

88. Because the witness testified that he has no first-hand knowledge of the tax treatment of the Chicago loan forgiveness, OAG advised the Trump Organization on July 23, 2020, that his testimony was not sufficient to address the question OAG first raised on April 7. Ex. 63. OAG therefore reiterated the request that the Trump Organization provide information sufficient to confirm that the amount of the debt that was forgiven in connection with the 2012 Fortress transaction was recognized as income by the appropriate Trump entity. *Id.*

89. OAG followed up on this inquiry on July 29, 2020 and August 7, 2020. Ex. 52; Ex. 64.

90. The Trump Organization responded to these inquiries on August 10. Ex. 65. The Trump Organization did not agree to produce any documents, and instead noted that a different witness (Mr. Bender) “should similarly be able to confirm that the aforementioned debt forgiveness was recognized as income on the applicable tax return.” Ex. 65.

91. On August 13, 2020, OAG responded to note that despite the Trump Organization’s prior representations, “Mr. Weisselberg did not have first-hand knowledge of the tax treatment of that transaction and could not identify any return on which the forgiveness was treated as income.” Ex. 66. OAG further explained that “[w]e have worked with you to try to find a way to get this information in a way that you prefer, and accommodated your request that we discuss the issue with Mr. Weisselberg. But we cannot accept your statements regarding what Mr. Bender’s testimony might be when documents exist that could close out this longstanding and simple question.” *Id.*

92. The Trump Organization responded further by re-producing the document produced in April that OAG had already advised did not resolve this question, *see* Ex. 58; Ex.

60; Ex. 61; and by further asserting that “we are not aware of any other documents responsive to your request.” Ex. 58. As noted, the Trump Organization had already represented that “in connection with the applicable 2012 tax return, Trump recognized as income the amount of the debt that was forgiven by Fortress in connection with the 2012 Transaction,” *see supra* ¶ 86 (quoting Ex. 62)—a representation that in fact identifies additional documents responsive to OAG’s request that have never been produced.

93. To date, the Trump Organization has not produced responsive information to this request, which OAG first raised on or about April 7, 2020.

**3. The Trump Organization has refused to produce documents to show how the \$21.1 million donation of the Seven Springs conservation easement was reflected on applicable tax returns.**

94. As noted, OAG has identified evidence in the course of this investigation that Seven Springs LLC claimed the \$21.1 million value of the conservation easement on tax forms submitted to the IRS for tax year 2015. *See supra* ¶ 39.

95. During Mr. Weisselberg’s examination, OAG asked a series of questions to determine how that \$21.1 million donation was reflected on the federal, state, and city tax returns for the entities and individuals that owned Seven Springs LLC, including DJT Holdings LLC, Bedford Hills Corp, and Mr. Trump. Ex. 15 at 188:13-189:09; Ex. 42 at 430:15-431:11, 432:21-441:20, 443:14-446:06. Mr. Weisselberg was unable to answer those questions. Ex. 15 at 188:13-189:09; Ex. 42 at 430:15-431:11, 432:21-441:20, 443:14-446:06.

96. Following Mr. Weisselberg’s examination, and in light of his inability to confirm the tax treatment of the \$21.1 million donation, OAG requested on July 29, 2020, that the Trump Organization produce documents “sufficient to confirm how the \$21.1 million donation of the conservation easement over a portion of the Seven Springs property was reflected on the federal,

state, and city returns for DJT Holdings LLC, Bedford Hills Corp, Mr. Trump, and other entities (if applicable) in tax year 2015 and any other applicable year.” Ex. 52.

97. OAG followed up on this request on August 6, August 7, and August 13. Ex. 65; Ex. 66.

98. The Trump Organization responded by noting: “Please see IRS Form 8283, as well as the Cushman appraisal, both of which reflect the \$21.1 million donation of the Seven Springs conservation easement.” Ex. 65. OAG explained that “[t]hese responses do not resolve our requests,” because “the Seven Springs LLC 8283 does not suffice to confirm how the Seven Springs donation was treated on Mr. Trump’s or other relevant taxpayers’ federal, state, and city returns.” Ex. 66.

**C. The Trump Organization’s responses to the subpoena for testimony from Allen Weisselberg.**

99. On March 18, 2020, this Office issued a subpoena *ad testificandum* to Allen Weisselberg, Chief Financial Officer for the Trump Organization. Ex. 3.

100. Mr. Weisselberg’s sworn testimony was taken on July 16 and July 17, 2020. Ex. 15; Ex. 42.

101. In the course of that examination, OAG asked Mr. Weisselberg if he had testified in the past before a federal grand jury (which has been reported publicly, and which Mr. Weisselberg himself is free to disclose). Ex. 42 at 540:10-543:19.

102. Counsel for Mr. Weisselberg asked for an opportunity to confer with other attorneys before Mr. Weisselberg answered any questions regarding the substance of any federal grand jury testimony, and the parties agreed to adjourn further questions on that matter to a subsequent examination date, so that counsel could have an opportunity to confer and advise Mr. Weisselberg appropriately. Ex. 42 at 540:10-543:19.

103. The examination proceeded as to other topics before concluding for the day. Ex. 42 at 562:18-563:8.

104. Subsequently, after conferring further with separate counsel for Mr. Weisselberg, OAG advised on July 31, 2020, that it did not intend to seek a court order compelling Mr. Weisselberg to answer any questions regarding the substance of any grand jury testimony, and would agree not to inquire into that topic during the continuation of Mr. Weisselberg's Executive Law § 63(12) examination. Ex. 67.

105. On August 20, 2020, Mr. Weisselberg agreed through counsel to appear for the conclusion of his § 63(12) examination.

**D. The Trump Organization's responses to the subpoena for testimony from Eric Trump.**

106. On May 26, 2020, OAG served a subpoena for Eric Trump's testimony pursuant to Executive Law § 63(12). Ex. 4.

107. By agreement with the Trump Organization's counsel, Eric Trump's examination was scheduled for July 22, and was subsequently confirmed for that date. Ex. 68; *see also* Ex. 163; Ex. 48 at 3.

108. Less than two days before Eric Trump's examination, on July 20, 2020, counsel for the Trump Organization wrote OAG to advise that the Trump Organization had unilaterally decided not to produce Eric Trump on July 22 as scheduled. Ex. 69. Asserting in *ipse dixit* fashion that questions OAG had posed to Mr. Weisselberg the prior week were "beyond the scope of [OAG's] civil inquiry," the Trump Organization requested confirmation that OAG was conducting a civil investigation, and adjourned Eric Trump's attendance at his scheduled examination "until these issues have been resolved." Ex. 69.

109. OAG responded the next day, on July 21, and informed the Trump Organization that “[t]his Office does not currently have an open criminal investigation into these matters,” that “we have not coordinated with another criminal law enforcement agency on matters related to this investigation,” and that “if at any point we become aware of information that prompts this Office to open a criminal investigation or referral, we will advise counsel and proceed accordingly.” Ex. 70.

110. OAG also requested Eric Trump’s prompt availability for a rescheduled examination to be scheduled within the next week. Ex. 70.

111. Despite receiving these assurances, counsel for the Trump Organization refused to comply with the subpoena to Eric Trump. Instead, on July 27, 2020, the Trump Organization advised that “we cannot allow the requested interview to go forward . . . pursuant to those rights afforded to every individual under the Constitution.” Ex. 71 (describing the subpoena as a “request to interview our client”).

## **II. Charles Martabano.**

### **A. OAG’s subpoenas to Mr. Martabano.**

112. Charles Martabano is a land-use attorney who worked with the Trump Organization in connection with the potential development of the Seven Springs property beginning in or around 2011. Ex. 18 at 14:13-15:21, 19:6-20:21.

113. Based on information developed in the course of its investigation, OAG determined that Mr. Martabano would likely possess non-privileged information relevant to OAG’s inquiry, including because Mr. Martabano frequently communicated on these matters with third parties (including local government agencies, engineering firms, and others). *E.g.*, Ex. 72.

114. As described further below, OAG accordingly served subpoenas for both documents and testimony from Mr. Martabano to aid OAG's investigation. A description of Mr. Martabano's responses and assertions of privilege in connection with these subpoenas follows.

**B. Mr. Martabano's responses and assertions of privilege in connection with the January 8, 2020 subpoena *duces tecum*.**

115. The Attorney General served a subpoena *duces tecum* on Charles Martabano on January 8, 2020. Ex. 5.

116. Through counsel, Mr. Martabano initially refused to review or produce records responsive to the January 8 subpoena. Mr. Martabano's counsel asserted in January 21 and February 7 correspondence that OAG had no authority to subpoena records from Mr. Martabano, that Mr. Martabano would decline to produce records on Fifth Amendment grounds, and that OAG should withdraw its subpoena. Ex. 73; Ex. 74.

117. After further correspondence and several meet-and-confer discussions with counsel to both Mr. Martabano and the Trump Organization, Mr. Martabano agreed on March 2 that he would review and produce responsive records. Ex. 75; Ex. 74; Ex. 76.

118. Mr. Martabano's counsel provided records to the Trump Organization for its privilege review on or about April 9. Ex. 77.

119. Citing circumstances related to the ongoing coronavirus pandemic, other logistical difficulties, and the press of work, counsel for the Trump Organization completed its privilege review on June 3 or a later date (counsel for Mr. Martabano and the Trump Organization differ on the date the Trump Organization completed its privilege review). Ex. 78.

120. Mr. Martabano then produced non-privileged records and a privilege log to OAG on June 18. Ex. 79; Ex. 80.

121. On June 19, Mr. Martabano's counsel represented that "our privilege review is complete," and that "[a]ll documents in Mr. Martabano's possession responsive to the subpoena duces tecum that are not listed on the privilege log have been produced." Ex. 81.

122. Mr. Martabano's June 18 privilege log contained 344 entries for documents withheld in whole or in part. Ex. 80.

123. Of the 344 documents listed on Mr. Martabano's privilege log, 268 identify the withheld documents only by a document ID number and statement of the claimed privilege (*i.e.*, "Attorney Client Privilege," "Attorney Client Communications," and/or "Attorney Work Product"), with no other information regarding the subject, author, recipients, or subject-matter summary of the document, and no further explanation of the basis for the withholding. Ex. 80 at rows 52-53, 65-66, 80-81, 85-88, 90-347.

124. The remaining 76 documents listed on the privilege log are identified only with basic bibliographic information regarding the date, sender, and recipients of the document, as well as the same conclusory indication of the claimed privilege identified above—again with no further explanation of the basis for the withholding. Ex. 80 at rows 4-51, 54-64, 67-79, 82-84, 89.

125. On June 23, 2020, OAG called Mr. Martabano's counsel to discuss the deficiencies in the privilege log. Counsel refused to discuss the privilege log by telephone and requested a letter identifying OAG's concerns. Ex. 82.

126. OAG memorialized its concerns by letter that same day, and requested production of a corrected privilege log. Ex. 82. In particular, OAG advised Mr. Martabano's counsel that the June 18 privilege log was both insufficient to justify the assertions of privilege and was too cursory to permit any reasonable discussion between the parties of those privilege claims. *Id.*

127. On June 30, 2020, OAG wrote again to Mr. Martabano's counsel to request a response to the June 23 letter. Ex. 83.

128. On July 1, Mr. Martabano's counsel responded to OAG's June 23 letter about the privilege log by (i) unilaterally cancelling Mr. Martabano's § 63(12) examination (which had been scheduled for July 7 by agreement of the parties, *see infra* ¶ 138); (ii) asserting that Mr. Martabano would not comply with the separate subpoena for his testimony until the parties' disagreements regarding the privilege log were resolved; (iii) demanding that OAG pay the costs associated with any review necessary for Mr. Martabano's counsel to cure the deficiencies in the privilege log; and (iv) asserting that "if your office is not willing to assume those costs, then you will have to accept in writing the privilege log in its present form." Ex. 84.

129. Mr. Martabano's counsel also indicated that preparing a more detailed privilege log presented burdensome and unresolved technological issues. Ex. 84; *see also* Ex. 85.

130. On July 2, OAG advised Mr. Martabano's counsel that no cost-shifting provision applied and reiterated our request for an appropriately detailed privilege log. Ex. 86.

131. The parties corresponded further regarding the privilege log on July 6, July 8, July 13, July 14, July 22, July 30, August 4, August 6, and August 18. Ex. 85; Ex. 87; Ex. 88; Ex. 89.

132. In particular, OAG's July 22 letter advised that in light of the numerous exchanges to date regarding Mr. Martabano's deficient privilege log, OAG believed reasonable efforts to reach a voluntary resolution of these disagreements had been exhausted. Ex. 87.

133. As of the date of this filing, Mr. Martabano has not cured his deficient privilege log or provided a date by which he will do so.

134. Mr. Martabano made a corrected production of records on August 3 (which he re-produced in usable format on August 6), to address concerns OAG had previously communicated regarding the format of the June 18 document production. Ex. 89.

135. In making this corrected production, Mr. Martabano's counsel represented on August 6 that "[i]t is quite possible that many of these documents that are being sent to you now are duplicative of documents previously sent to you." Ex. 89. Based on OAG's review to date, OAG believes this production is duplicative of Mr. Martabano's initial June 18 production.

136. Mr. Martabano made a subsequent corrected production of records on August 18, 2020. Ex. 165. Mr. Martabano's counsel explained that "[t]he documents may well be a repetition of previously produced documents, but were located using different means of searching the files." *Id.* The August 18 production was not accompanied by a privilege log; did not represent a withdrawal of all privilege assertions identified on Mr. Martabano's previous privilege log; and Mr. Martabano's counsel did not have a date by which a supplemental or corrected privilege log would be produced. Ex. 166.

**C. Mr. Martabano's responses and assertions of privilege in connection with the June 15, 2020 subpoena *ad testificandum*.**

137. The Attorney General served a subpoena *ad testificandum* on Mr. Martabano on June 15, 2020. Ex. 6.

138. Mr. Martabano initially agreed to provide testimony on July 7, but then refused to appear on that date, citing the parties' disagreement regarding the adequacy of Mr. Martabano's privilege log. Ex. 84.

139. Mr. Martabano subsequently agreed to appear on July 21, and his testimony was taken on that date. Ex. 18.

140. During the July 21 examination, Mr. Martabano's counsel directed Mr. Martabano not to answer any and all questions concerning all communications with representatives of the Trump Organization, including Eric Trump, even where those communications included third parties or did not relate to legal advice. *E.g.*, Ex. 18 at 58:13-25, 96:7-24, 97:2-98:7, 125:4-23, 126:9-127:19, 129:14-131:2, 147:18-149:23, 150:10-25, 151:3-152:3, 152:14-153:3, 177:18-178:16.

141. Specifically, Mr. Martabano's counsel objected to and directed Mr. Martabano not to respond to *any* questions concerning Mr. Martabano's conversations with Eric Trump or any other individual at the Trump Organization, even after being asked to limit objections to communications that concerned or related to legal advice. Ex. 18 at 58:13-25, 96:7-24, 97:2-98:7, 125:4-23, 126:9-127:19, 149:4-23, 152:14-153:3.

142. Mr. Martabano's counsel also objected to and directed Mr. Martabano not to respond to any questions concerning communications about documents he sent to or received from representatives of the Trump Organization, even where those documents were also communicated to or shared with third parties. Ex. 18 at 129:14-131:2, 147:18-149:3, 150:10-25, 151:3-152:3, 177:18-178:16.

143. Many of these communications were with Ralph Mastromonaco, an engineer retained by the Trump Organization to perform engineering services (as identified in ¶¶ 232-233 below). Counsel objected to questions about all documents showing communications between Mr. Martabano and Mr. Mastromonaco, stating: “[t]o the extent that Ralph Mastromonaco is on there, he is clearly a member of the legal team assisting in the things that [Mr. Martabano] was doing.” Ex. 18 at 130:2-8.

144. Counsel also objected to and directed Mr. Martabano not to respond to any questions related to communications he sent to or received from third parties merely because representatives of the Trump Organization may have been copied on the communications. Ex. 18 at 129:14-131:2, 147:18-149:3, 150:10-25, 151:3-152:3, 177:18-178:16.

145. Counsel also directed Mr. Martabano not to answer questions that counsel characterized as calling for “opinion” or “expert” testimony, including questions relating to a Town of Bedford resolution that Mr. Martabano drafted, discussed, and negotiated with an adverse party (the Bedford town planner). Ex. 18 at 59:6-60:9, 75:21-76:14, 171:8-175:18.

146. In addition, in the course of his examination, Mr. Martabano testified that he reviewed documents in preparation for his testimony that refreshed his recollection as to matters OAG inquired about, and that had not been produced to OAG. Ex. 18 at 67:5-21.

147. Specifically, Mr. Martabano testified that he reviewed records prior to his testimony. Ex. 18 at 67:5-7. When asked whether he reviewed “any documents that were not produced to the Attorney General’s Office,” he answered: “I reviewed documents that I believe are part of the privilege, yes.” Ex. 18 at 67:8-12.

148. Mr. Martabano was then asked: “Did any of those documents that were withheld based on privilege refresh your recollection of any of the events relating to the Seven Springs project or property?” Ex. 18 at 67:13-17. Mr. Martabano answered, in pertinent part: “virtually anything that I looked at would refresh my recollection, to be honest. This happened a long time ago.” Ex. 18 at 67:18-21.

149. In response to this questioning, OAG requested “the production of all documents reviewed by this witness that refreshed his recollection to assist or aid in his testimony today.” Ex. 18 at 67:22-68:3-4.

150. Mr. Martabano's counsel rejected this request, stating: "It is not going to be produced." Ex. 18 at 68:3-4.

151. During Mr. Martabano's examination, his counsel claimed for the first time that a joint defense agreement has existed between Mr. Martabano and the Trump Organization, and that the Trump Organization consulted with Mr. Martabano on numerous occasions before his testimony. Ex. 18 at 64:21:65:11, 65:15-66:16, 76:16-20.

152. OAG requested that Mr. Martabano's counsel disclose any information about the claimed joint defense agreement. Ex. 18 at 63:12-67:4, 75:21-77:5.

153. By letter the following day, July 22, OAG memorialized its concerns regarding the objections that Mr. Martbano's counsel lodged during Mr. Martabano's testimony. Ex. 87. OAG further requested that those objections be withdrawn. *Id.*

154. By response dated July 30, Mr. Martabano's counsel refused to withdraw any of the objections asserted during Mr. Martabano's testimony. Ex. 88.

### **III. Morgan, Lewis & Bockius LLP.**

#### **A. OAG's subpoenas to Morgan Lewis and Sheri Dillon.**

155. In the course of this investigation, after having come to the belief that Morgan Lewis would be in the possession of non-privileged information relevant to OAG's investigation, OAG served subpoenas *duces tecum* on Morgan Lewis and Vinson & Elkins, LLP ("Vinson") on December 19, 2019. Ex. 7; Ex. 8.

156. Based on information produced by the Morgan Lewis in response to those subpoenas, as well as on other information in OAG's possession, OAG then sought testimonial evidence from several Morgan Lewis personnel.

157. As relevant here, OAG served a subpoena *ad testificandum* on Morgan Lewis partner Sheri Dillon on June 15, 2020. Ex 9. Ms. Dillon's sworn testimony was taken on August 11, 2020. Ex. 90.

**B. Morgan Lewis's responses and assertions of privilege to the subpoenas for documents.**

158. At the outset of its discussions with the firms, OAG explained that it had subpoenaed the firms because it believed that each had responsive, non-privileged material, including records related to work performed for a business purpose and over which any claim of privilege has been waived.

159. The firms agreed to review responsive records for non-privileged materials related to their work for the Trump Organization on potential and actual conservation easement donations. Ex. 91; Ex. 92.

160. Vinson and Morgan Lewis agreed that Vinson would provide documents in its possession to Morgan Lewis, which Morgan Lewis would then review and (where no privilege was identified) produce to OAG. Ex. 92.

161. Since January 2020, Morgan Lewis has produced about 2,900 Morgan Lewis documents and 1,250 Vinson documents in response to the subpoenas.

162. Morgan Lewis initially withheld numerous documents under boilerplate claims of privilege, but subsequently agreed to re-produce privilege logs with more specific descriptions of the records being withheld. Ex. 93 at 1-4; Ex. 94 at 4.

163. After correspondence and meet-and-confer discussions that included the Trump Organization, Morgan Lewis and the Trump Organization later agreed to produce all communications involving third parties they had withheld from productions made before July. Ex. 95; Ex. 96; Ex. 97.

164. As reflected on the privilege logs and discussed extensively among the parties, Morgan Lewis has withheld responsive records on attorney-client privilege or work product grounds that OAG believes relate to work performed for business, not legal, purposes. Ex. 93 at 3-4; Ex. 95 at 2; Ex. 98 at 2-3.

165. In particular, except for communications involving third parties, Morgan Lewis has refused to produce substantive communications about any topic between Sheri Dillon and key employees of the Trump Organization, including Eric Trump.

166. Similarly, Morgan Lewis has refused to produce what the firm refers to as its (or Vinson's) "purely internal files." Ex. 94 at 2-4; Ex. 99 at 3-4.

167. All told, Morgan Lewis is withholding or has redacted over 3,000 documents relating to its and Vinson's work on the Seven Springs conservation easement and the Trump Golf LA under attorney-client, work product, or other assertions. *See* Exs. 100–116.

168. The withheld records include approximately 24 documents withheld or redacted under a "settlement privilege" that purportedly relate to a settlement negotiated with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

169. The withheld records include records relating to the business decision of *whether* to make an easement donation—including preliminary valuations performed by Cushman appraisers. These include drafts, comments on, or edits to materials that are required under Treasury regulations to be produced by the appraisers and communications shared within the firms or with the Trump Organization about such materials. *E.g.*, Ex. 112 at entries 86-93.

170. The withheld records also include records reflecting advice on topics like compliance with Treasury regulations, zoning, development approvals, or environmental impact review where privilege or work-product protections have been waived by disclosure to Cushman, the IRS, OAG, or other third parties—and a broader set of records whose privilege or work-product protections the Trump Organization waived by disclosure of any legal advice regarding the conservation easements.

171. In discussions and correspondence, OAG has demanded that the Trump Organization withdraw these privilege assertions and that Morgan Lewis produce the documents. Ex. 93 at 1; Ex. 95 at 2. The documents have not been produced.

172. Ms. Dillon and her associates “facilitated” or, according to the Trump Organization’s own characterization of their role, “quarterback[ed]” projects establishing the value of potential easement donations, considering them, and then fulfilling the requirements to make the donations tax deductible. Ex. 117; Ex. 90 at 51:11-14. This work involved coordinating communications and deliverables between ecologists, appraisers, engineers, and the Trump Organization to ensure that each party provided any information related to evaluating the potential value of such a donation, deciding if a donation would yield economic benefit, and then producing the necessary components for a tax-deductible easement donation. Ex. 90 at 139:2-8; Ex. 118; Ex. 119; Ex. 120.

173. On behalf of the Trump Organization, Ms. Dillon obtained multiple valuations of each property before the easement donations. Ex. 121; Ex. 122; Ex. 123; Ex. 124; Ex. 125; Ex. 126 at 334:17-19.

174. The evidence shows that the Trump Organization, with Ms. Dillon, used these preliminary valuations to consider the business decision of whether donating an easement was

sufficiently economically beneficial—not legal issues like whether an easement could be donated in compliance with the tax code. For instance, in describing the decision not to make the Trump Golf LA easement donation in 2012 after a low preliminary valuation, Ms. Dillon explained she and her client had delayed the planned transaction: “Given the weak market in 2012, we put the project on hold while looking for a more fulsome market recovery.” Ex. 123 [REDACTED]

175. Ms. Dillon claimed in testimony that, to explain why she obtained a “preliminary valuation” before a client decided to donate a conservation easement, she would have to disclose “how I go about providing . . . legal advice.” Ex. 90 at 147:10-18; *see also* 84:4-12.

176. But the Cushman appraiser who performed a preliminary valuation for Seven Springs testified specifically that he was asked to provide a “preliminary range of values” as a “preliminary factfinding decision-making tool” for the Trump Organization: “This was just information that we were trying to develop for them to make a business decision.” Ex. 126 at 337:3-338:6, 453:5-6.

177. In addition, the Morgan Lewis associate who worked on the Seven Springs easement donation testified that the Cushman appraisers provided preliminary valuations so that the Trump Organization could make a “business decision.” Ex. 127 at 75:18-76:09.

178. In the course of Cushman’s work on the Seven Springs appraisal, Eric Trump emailed Ms. Dillon to identify two comparable properties for Ms. Dillon and argued that the properties should alter Cushman’s preliminary valuation of the Seven Springs property. Ex. 128. Ms. Dillon appears to have forwarded that email to Cushman while editing only the subject line to say “comps from Eric.” *Id.* This email shows that the three were discussing the business question of Seven Springs’ valuation. *Id.*

179. Other communications between Morgan Lewis and the Cushman appraisers addressed economic assumptions and valuation decisions central to the work the Cushman appraisers were required to perform. Ex. 129; Ex. 130; Ex. 131; Ex. 132.

180. For example, Ms. Dillon asked Cushman to “give some thought to whether a year is needed for approvals / permitting of lots, given the prior approvals. In addition, I recall Dave was using 2.5% inflation rate. Perhaps the absorption might also be reviewed.” Ex. 129.

181. Morgan Lewis also conveyed to Cushman that “[w]e would like you to consider whether this higher average lot size might have an impact on the value per lot used in the sellout analysis.” Ex. 130 [REDACTED]

182. Morgan Lewis also communicated that “We aren’t sure if we previously had provided to you the fact that the Bedford subdivision area already has preliminary approvals; as a result, we understand from our client that final approvals would likely take another that 3-6 months, as opposed to one year. We would like you to consider whether this fact results in 6 or so lots being sold earlier in the sellout analysis.” Ex. 130 [REDACTED]

183. In response to a valuation from Cushman in a draft of the Seven Springs appraisal, Ms. Dillon conveyed to Cushman in a December 2015 phone call that “the client blew up at her”; and for that reason, Dillon began “trying to convince [Cushman] to restore the \$2,100,000 [valuation for each development lot], begin sales during year 1, and anything else that would push it up.” Ex. 131.

184. Cushman resisted some of Morgan Lewis’s repeated comments about appraisal-related factors, including (among other issues) the timing of expected lot sales, writing at one point: “We’ve been over these issues and there is no point in dredging them up again. It’s time to agree to disagree and move on.” Ex. 132 [REDACTED]

185. In another set of communications, after NALT told Morgan Lewis that the definition of “market value” contained in the final March 15, 2016 appraisal was wrong, Morgan Lewis asked Cushman to correct the issue. Ex. 127 at 231:17-23. Cushman provided a revised draft in April, with the date updated to reflect the date of the revision. At Ms. Dillon’s instruction, a Morgan Lewis lawyer then asked one of the Cushman appraisers in a voicemail to backdate the appraisal to March 15. Ex. 133; Ex. 127 at 232:7-24. The appraiser refused, citing her obligations under appraisers’ professional standards. Ex. 134.

186. Morgan Lewis’s privilege logs broadly claim “work product” protection without specifying which withholdings relate to attorney work product under C.P.L.R. 3101(c) and which relate to trial preparation materials under C.P.L.R. 3101(d)(2), but the firm has made clear in correspondence with OAG that it is withholding documents on both grounds. Ex. 99 at 3-4.

187. The Morgan Lewis associate working with Ms. Dillon on the Seven Springs project testified that his sole purpose was to ensure that the work satisfied the legal requirements for deductibility. Ex. 127 at 35:23-36:9, 37:16-22.

188. In at least one example, Morgan Lewis prepared tables and other materials to be slotted into the Cushman appraisal—“work product” that, under the Treasury regulations, is uniquely that of the appraiser. Ex. 135.

189. During his testimony before OAG, the Morgan Lewis associate testified at least nine times that documents he reviewed in preparation for his testimony refreshed his recollection. Ex. 127 at 13:17-23, 34:10-14, 40:7-11, 43:18-22, 46:22-47:2, 48:2-6, 83:11-14, 222:12-19, 231:17-23.

190. Based on this testimony, OAG requested that Morgan Lewis produce the documents that refreshed the Morgan Lewis associate’s recollection, or log them if Morgan Lewis believed a specific claim of privilege applied. Ex. 136.

191. Morgan Lewis refused to produce the documents that refreshed the Morgan Lewis associate’s recollection. Ex. 137.

192. On instruction from the Trump Organization, Morgan Lewis has declined to produce approximately 24 records concerning “settlement-related documents” it insists are “protected from disclosure under New York Civil Practice Laws and Rules 3101(a).” These documents relate to an apparent settlement the Trump Organization reached [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

193. In correspondence and in meet-and-confer discussions, OAG has explained its view that C.P.L.R. 3101(a) does not apply in the context of a law-enforcement subpoena issued under Executive Law § 63(12). Ex. 93 at 5; Ex. 98 at 5-6.

194. The Trump Organization and Morgan Lewis have nonetheless insisted that OAG provide a proffer that these “settlement-related documents” are material and necessary to its investigation. Ex. 138; Ex. 139.

195. Despite the purported confidentiality of these records, Cushman produced—after the Trump Organization’s review of Cushman’s documents and withdrawal of all privilege claims—certain of the documents that Morgan Lewis appears to be withholding; these documents involve [REDACTED]

[REDACTED]

196. Morgan Lewis has informed OAG that it was withholding (but has not yet logged) communications involving an engineer who provided the estimates underlying the Trump Golf LA appraisal. Ex. 139.

197. As the Cushman appraiser responsible for the valuation of the Trump Golf LA easement donation explained to Ms. Dillon in an email discussing engineering difficulties at the property, “[h]igher costs of development decrease the value of the property.” Ex. 141.

**C. Ms. Dillon’s responses and assertions of privilege to the subpoena for testimony.**

198. As noted above, OAG served a subpoena *ad testificandum* on Morgan Lewis partner Sheri Dillon on June 15, 2020. Ex. 9. Ms. Dillon’s sworn testimony was taken on August 11, 2020. Ex. 90.

199. At Ms. Dillon’s examination, counsel objected and directed the witness not to answer many of OAG’s questions on numerous grounds.

200. Counsel asserted a “settlement privilege” and objected to questions about [REDACTED]

[REDACTED]

201. Counsel asserted attorney-client privilege and work product protection in connection with Ms. Dillon’s communications regarding business advice. *E.g.*, Ex. 90 at 38:22-39:13, 84:4-22; 147:10-148:03.

202. Counsel asserted attorney-client privilege and work product protection in connection with matters where Morgan Lewis’s communications have already been disclosed to OAG and other parties. *E.g.*, Ex. 90 at 219:08-12, 256:21-258:11.

203. Counsel objected and directed the witness not to answer questions about the identity of the Trump Organization employee who, as Ms. Dillon told Cushman, had informed Dillon that “final [Town of Bedford] approvals would take another 3 to 6 months.” Ex. 90 at 192:24-193:06, 258:09-11, 271:03-13.

204. Counsel objected to questions regarding basic facts necessary to determine whether an attorney-client privilege or work-product protection applied at all. Ex. 90 at 38:22-39:13, 84:4-22, 86:19-24, 145:22-148:03.

205. Ms. Dillon did not provide any non-privileged reason why counsel would need a preliminary valuation of the Seven Springs property to provide legal advice. Ex. 90 at 84:4-12, 145:22-148:03.

206. Ms. Dillon testified that “Morgan Lewis’s role was to help the client evaluate a potential easement donation and then to help them execute and make sure that it would be to fully satisfy the law in perpetuity as well as satisfy the treasury regulation. As well as the case law interpreting the treasury regulation.” Ex. 90 at 145:22-146:05. Asked to explain why Morgan Lewis would need preliminary valuations to comply with case law and the Treasury regulations, Ms. Dillon testified that she believed this implicated “work product” and “how I go about providing that legal advice.” Ex. 90 at 147:10-18; *see also* 84:4-12. Her counsel instructed her not to answer the question. *Id.* at 147:23-148:03.

207. The Morgan Lewis associate testified that the “sole purpose” of his work was to ensure that the easement donation complied with Treasury regulations. Ex. 127 at 35:23-36:9.

208. Ms. Dillon claimed that her work was performed in anticipation of litigation because, among other reasons, “the client was under continuous audit.” Ex. 90 at 127:18-21.

209. After OAG asked for an explanation of how she performed any work differently because of this “continuous audit,” Ms. Dillon took an instruction not to answer on the ground that the question called for privileged information. Ex. 90 at 149:16-23. The witness further refused to discuss this purported continuous audit, taking an instruction not to answer a question related to the audit of the Seven Springs transaction on work-product and privilege grounds. *Id.* at 273:2-274:14.

210. Given these objections, and their interference with valid lines of questioning by OAG, OAG told Ms. Dillon and counsel that OAG would circumscribe its questioning unless these objections were narrowed, and offered counsel an opportunity to confer on record. Ex. 90 at 105:11-107:02.

211. OAG and Ms. Dillon’s counsel were unable to reach an agreement regarding counsel’s objections, and OAG proceeded to question Ms. Dillon on areas that did not fall within counsel’s overbroad privilege assertions. Ex. 90 at 107:03-109:04.

#### **IV. Additional subpoenas issued in the course of this investigation.**

212. In the course of this investigation, OAG has issued a number of additional subpoenas and has taken on-the-record testimony from a number of fact witnesses.

##### **A. Subpoenas for documents and testimony from Cushman & Wakefield.**

213. As relevant to this application, the Attorney General served subpoenas for documents and testimony on Cushman.

214. The Attorney General served an initial subpoena *duces tecum* on Cushman on June 25, 2019. Ex. 143. Based on information produced by Cushman in response to that subpoena, as well as on other information in OAG’s possession, the Attorney General served a second subpoena *duces tecum* on Cushman on August 15, 2019. Ex. 144.

215. Based on certain records produced by Cushman, as well as on other information in OAG's possession, the Attorney General then sought testimonial evidence from several Cushman employees.

216. The Attorney General served a subpoena *ad testificandum* on [REDACTED] on September 13, 2019. Ex. 145. [REDACTED] sworn testimony was taken on October 4, 2019.

217. The Attorney General served a subpoena *ad testificandum* on [REDACTED] on October 7, 2019. Ex. 146. [REDACTED] sworn testimony was taken on October 31, 2019.

218. The Attorney General served a subpoena *ad testificandum* on [REDACTED] on October 16, 2019. Ex. 147. [REDACTED] sworn testimony was taken on November 12, 2019; November 13, 2019; and January 31, 2020.

219. Cushman advised OAG that it notified the Trump Organization of these subpoenas shortly after Cushman received them from OAG.

220. On September 27, 2019, counsel for the Trump Organization contacted OAG by email and stated: "Trump has privilege objections in connection with the subpoenas served on Cushman & Wakefield. We would appreciate the opportunity to meet, and work through these issues with you." Ex. 148.

221. On October 2, 2019, OAG and counsel for the Trump Organization met in person to address the Trump Organization's privilege objections. At the October 2 conference, counsel for the Trump Organization asserted that a *Kovel* relationship applied to all Cushman engagements involving Seven Springs.

222. The Trump Organization further asserted that this claim of privilege extended to communications between Cushman and Sheri Dillon or members of her law firm; between Cushman and Eric Trump or other officers or employees of the Trump Organization; between

Cushman and all other third parties regarding Seven Springs; and exclusively internal to Cushman if related in any way to any Seven Springs project. OAG did not agree that the Trump Organization's assertions of privilege applied.

223. Among other representations, the Trump Organization claimed this easement was a "project that Sheri Dillon was quarterbacking." Ex. 149. In the Trump Organization's view, all but the final appraisal and a single tax form were shielded by *Kovel*. Ex. 150.

224. Between October 2, 2019 and December 4, 2019, the parties conducted extensive and lengthy negotiations regarding the Trump Organization's privilege claims in connection with the Cushman subpoenas. Those negotiations are memorialized in detail in a December 4, 2019 letter from OAG to the Trump Organization that explained the basis for OAG's continued position that no privilege applied to the communications. *See* Ex. 151. The December 4 letter asked that the Trump Organization "withdraw all privilege assertions over Cushman communications by no later than December 9 to avoid the need for judicial intervention." *Id.* at 4-5.

225. Following OAG's December 4 letter, OAG and the Trump Organization held two telephonic meet-and-confer discussions; on those calls, OAG agreed to extend until December 10 the deadline for receiving the Trump Organization's final position regarding privilege.

226. The parties held another meet-and-confer discussion by telephone on December 10, 2019. Following that call, the Trump Organization wrote on December 10 to memorialize its final privilege position, which stated that the Trump Organization was withdrawing certain privilege claims but "continues to assert privilege over all (i) otherwise privileged communications between Sheri Dillon (and other lawyers in her firm) and [Cushman] and (ii) internal communication at [Cushman] in furtherance of [(i)]." Ex. 152.

227. OAG responded that day to acknowledge that the parties continued to “disagree regarding whether any information responsive to OAG’s subpoenas may be withheld on any claim of privilege, which the parties’ extensive and good-faith meet-and-confer efforts have not resolved.” Ex. 153.

228. Having reached impasse, on December 17, 2019, OAG advised the Trump Organization that “[t]he Attorney General will seek judicial intervention today to compel Cushman & Wakefield’s compliance with six investigatory subpoenas we have served on Cushman.” Ex. 154.

229. That day, and shortly before OAG commenced a proceeding in court, the Trump Organization withdrew all privilege claims it had previously asserted regarding all Cushman documents and testimony. Ex. 155.

230. Specifically, the Trump Organization agreed that: “The Trump Organization withdraws all assertions of privilege with regard to any documents or testimony from Cushman in response to the subpoenas issued by [OAG] in connection with this investigation. [OAG] understand[s] that [the Trump Organization is] not withdrawing assertions of privilege that have arisen or may arise in connection with other persons or entities unrelated to Cushman. With this withdrawal, the Trump Organization does not intend a subject matter waiver. [OAG] take[s] no position at this time on that issue.” Ex. 155.

**B. Subpoenas for documents and testimony from Ralph Mastromonaco.**

231. As relevant to this application, the Attorney General served subpoenas for documents and testimony on Ralph Mastromonaco on December 5, 2019. Ex. 156; Ex. 157.

232. Mr. Mastromonaco is a New York State licensed engineer who currently practices under the title Ralph G. Mastromonaco, P.E. Ex. 158 at 8:21-9:06.

233. Mr. Mastromonaco performed engineering services in connection with the Seven Springs development plan, including drafting subdivision maps and submitting documents to the town engineer of the Town of Bedford, New York. Ex. 158 at 15:05-23, 33:14-34:20. Mr. Mastromonaco also attended meetings of the Town of Bedford's Planning Board in support of applications for various approvals submitted by Seven Springs LLC. *Id.* at 107:06-13.

234. On December 10, 2019, this Office contacted the Trump Organization to confirm that the Trump Organization did not assert any privilege in connection with the subpoenas served on Mr. Mastromonaco. Ex. 159.

235. Specifically, OAG wrote that in light of Trump Organization's earlier withdrawal of any claim of privilege regarding a different engineer who also worked on the Seven Springs project, "[o]n the same reasoning and in light of your new privilege instructions, we assumed you do not assert any privilege regarding any communications with Ralph Mastromonaco or Ralph G. Mastromonaco, P.E., who also performed engineering work related to Seven Springs. Please confirm that this understanding is correct." Ex. 159.

236. On December 13, 2019, when the Trump Organization did not respond to the December 10 communication, OAG wrote that although we believed no claim of privilege had been asserted in connection with any communications with Mr. Mastromonaco, "[w]e have nonetheless extended you an opportunity to assert a privilege if your clients believe one exists. If we do not hear from you by the close of business today that your clients do assert a privilege, we will conclude that your clients assert no privilege as to these communications and will treat them as non-privileged." Ex. 160.

237. On December 16, 2019, the Trump Organization stated: “Per your request, we are confirming that Trump is not asserting privilege regarding communications between Cushman Ralph Mastromonaco or Ralph G. Mastromonaco, P.E.” Ex. 160.

238. By response that same day, OAG clarified that our request “was not limited to communications between [Mr. Mastromonaco] and Cushman. As you were specifically referring to our request we assume the limitation in your response was inadvertent, and we further assume that you are not asserting any privilege with respect to his work concerning Seven Springs. If this is not accurate, please advise.” Ex. 160.

239. The Trump Organization did not respond in writing to that message.

240. On December 17, 2019, during a telephone call to discuss OAG’s then-imminent motion to compel compliance with the Cushman subpoenas (*see supra* ¶¶ 228-230), counsel for the Trump Organization confirmed to OAG that the Trump Organization was asserting no privilege at all as to Mr. Mastromonaco.

241. Mr. Mastromonaco complied with OAG’s subpoenas, producing responsive documents and providing sworn testimony on January 9, 2020. Ex. 158.

242. On May 7, 2020, the Trump Organization produced to OAG its first and second privilege logs in connection with the subpoenas for documents OAG had issued to Trump Organization and Seven Springs LLC. Ex. 45. These privilege logs disclosed that the Trump Organization was withholding certain communications with Mr. Mastromonaco from production on various claims of privilege. Ex. 54 (first log as amended); Ex. 55 (second log as amended).

243. On May 28, 2020, OAG advised the Trump Organization that its privilege assertions as to communications involving Mr. Mastromonaco were unsupportable based on, among other reasons, the Trump Organization’s earlier representations that no privilege was

being asserted. Ex. 46 at 5 n.1 (“As to all communications involving Mr. Mastromonaco, those documents are independently required to be produced based on your earlier representation on December 17, 2019—in connection with the subpoena *duces tecum* and subpoena *ad testificandum* that we served on Mr. Mastromonaco on December 5, 2019—that your clients were asserting no privileges in connection with Mr. Mastromonaco’s work as an engineer on the Seven Springs project.”).

244. On May 29, 2020, the Trump Organization produced a third privilege log in connection with its rolling document review and production. Ex. 47. This privilege log identified additional communications with Mr. Mastromonaco that the Trump Organization was withholding on claims of privilege. Ex. 161.

245. OAG advised the Trump Organization on June 3, 2020, that these withholdings were also improper, based again on (among other reasons) the Trump Organization’s representations in December 2019 that they were not asserting privilege over communications with Mr. Mastromonaco. Ex. 161.

246. In subsequent communications, the Trump Organization withdrew the privilege assertions identified on the May 29, 2020 privilege log as to that subset of communications with Mr. Mastromonaco, while disagreeing with OAG’s understanding of the parties’ prior discussions, and asserting that the production of that subset of records was “without waiving any rights, remedies or defenses.” Ex. 162.<sup>3</sup>

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<sup>3</sup> As reflected in the email at Ex. 162, the Trump Organization has withdrawn its privilege claim over Mr. Mastromonaco’s communications that related to his work at Seven Springs and that involved Trump Organization employees Josh Seidner and Hal Goldman, but the Trump Organization still selectively maintains that other communications involving Mr. Mastromonaco’s work on Seven Springs are otherwise privileged.

247. The parties held a telephonic meet-and-confer on July 2, 2020, and discussed among other issues the Trump Organization's claims of privilege as to communications with Mr. Mastromonaco. That meet-and-confer did not resolve the parties' disagreements.

248. OAG wrote the Trump Organization on July 10, 2020, noting the parties' continued disagreement regarding the claims of privilege over communications with Mr. Mastromonaco. Ex. 50 (“[W]e specifically advised you of [the December 5, 2019 subpoenas to Mr. Mastromonaco] and requested your position on privileges so we could resolve (and contest, if necessary) any privilege claims in advance of Mr. Mastromonaco’s examination. You did not provide any privilege instructions . . .”).

249. The Trump Organization responded on July 24, 2020, to “expressly reserve all privilege objections with respect to any and all documents and testimony involving Mastromonaco (with the exception of communications solely between Mastromonaco and Cushman and no other party).” Ex. 51.

250. On August 7, 2020, the Trump Organization produced revised versions of the May 7 privilege logs. Ex. 53. The revised privilege logs continue to assert privilege claims over communications with Mr. Mastromonaco. Ex. 54; Ex. 55.

**EXPEDITED RESOLUTION OF THIS APPLICATION IS APPROPRIATE**

251. As set forth in the accompanying Memorandum of Law, Respondents' assertions of privilege based on the attorney-client privilege or work-product protection are not supportable on the law or the facts.

252. Expedited briefing and resolution of OAG's application to compel is necessary to prevent further unnecessary delay and interference with OAG's investigation.

253. As noted above, Respondents continue to withhold or redact thousands of responsive, non-privileged documents. These documents are responsive to the Attorney General's subpoenas and may be used to question witnesses or to seek other and further documents from Respondents and others.

254. As noted above, Respondents have objected to testimony—or refused entirely to produce witnesses—regarding topics that are important to furthering OAG's investigation.

255. The Trump Organization's assertions of privilege have unnecessarily slowed and otherwise impeded OAG's investigation.

256. For these reasons, OAG asks for expedited briefing and resolution of this application.

257. No prior application for the relief sought herein has been made in this or any other Court.

### **REQUEST FOR ADDITIONAL PAGES**

258. Whereas Petitioner has filed this application seeking relief as to multiple Respondents and involving multiple factual and legal issues;

259. Whereas Petitioner has brought its claims for relief in one application, *in toto*, to promote efficiency in its application for judicial intervention and to avoid excessively burdening the courts with multiple related applications;

260. Wherefore, Petitioner respectfully requests leave of this Court to file a Memorandum of Law not to exceed 60 pages to seek relief and other appropriate remedies in support of its motion to compel.

### **CONCLUSION**

261. WHEREFORE, Petitioner respectfully requests that the Court grant the Verified Petition in all respects.

Dated: New York, New York  
August 21, 2020

A handwritten signature in black ink, appearing to read 'Matthew Colangelo', written in a cursive style.

/s/ Matthew Colangelo

Matthew Colangelo