A.G. Underwood Announces Stipulation Dissolving Trump Foundation Under Judicial Supervision, With AG Review Of Recipient Charities

AG Underwood's Lawsuit Remains Ongoing

NEW YORK – Today, Attorney General Barbara D. Underwood announced that – following a court decision in favor of the Attorney General – the Trump Foundation has **signed a stipulation** agreeing to dissolve under judicial supervision, with review and approval by the Attorney General of proposed recipient charities of the Foundation's remaining assets.

This stipulation follows the **court decision last month** allowing Attorney General Underwood's lawsuit against the Trump Foundation to move forward.

Attorney General Underwood's lawsuit sought the dissolution of the Foundation under judicial supervision and with the oversight of the Attorney General's Charities Bureau. **The lawsuit** – which also seeks millions in restitution and penalties and a bar on President Trump and his three eldest children from serving on the boards of other New York charities – remains ongoing.

Attorney General Underwood released the following statement:

"Our petition detailed a shocking pattern of illegality involving the Trump Foundation – including unlawful coordination with the Trump presidential campaign, repeated and willful self-dealing, and much more. This amounted to the Trump Foundation functioning as little more than a checkbook to serve Mr. Trump's business and political interests.

"Today's stipulation accomplishes a key piece of the relief sought in our lawsuit earlier this year. Under the terms, the Trump Foundation can only dissolve under judicial supervision – and it can only distribute its remaining charitable assets to reputable organizations approved by my office.

"This is an important victory for the rule of law, making clear that there is one set of rules for everyone. We'll continue to move our suit forward to ensure that the Trump Foundation and its directors are held to account for their clear and repeated violations of state and federal law."

The Attorney General filed the stipulation with the court today; it is awaiting the judge's signature.

Attorney General's Press Office: (212) 416-8060

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. 451130/2018 **SO-ORDERED STIPULATION CONCERNING THE DISSOLUTION OF THE DONALD J. TRUMP FOUNDATION**

This Stipulation Concerning the Dissolution of The Donald J. Trump Foundation (the "Stipulation") is entered into by and between Petitioner The People of the State of New York by Barbara D. Underwood, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondent The Donald J. Trump Foundation ("the Foundation"), by its attorney, Alan S. Futerfas. The Attorney General and the Foundation are referred to collectively herein as the "Parties."

WHEREAS, the Attorney General commenced the above-captioned special proceeding against the Foundation by the filing of a verified petition (the "Verified Petition") on June 14, 2018 (the "Special Proceeding");

WHEREAS, in the Fourth, Fifth, and Sixth Causes of Action in the Verified Petition, the Attorney General has asserted claims for the dissolution (the "Dissolution Causes of Action") of the Foundation pursuant to sections 112(a), 1101(2) and 1102(a)(2) of Article 11 of the New York Not-For-Profit Corporation Law ("N-PCL"), and pursuant to section 1109 of the N-PCL, in an action brought by the Attorney General, the "interest of the public is of paramount importance";

WHEREAS, in consideration of the Respondents' agreement to not contest the Dissolution Causes of Action, the Attorney General will permit Respondents to designate, subject to the Attorney General's approval, not-for-profit organizations to receive distributions from the assets remaining after the Foundation is dissolved;

WHEREAS, the Parties have now concluded good faith negotiations and have reached a resolution of Paragraph G of the Petition's Prayer for Relief and desire to implement such agreement in accordance with the terms and conditions of this Stipulation, which the Parties respectfully request be so-ordered by the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties that the Dissolution Causes of Action are resolved as follows:

1. That the Parties agree that the Foundation should be dissolved and agree to the entry of an order pursuant to Section 1109 of N-PCL dissolving the Foundation, annulling its Certificate of Incorporation, and terminating the corporate existence of the Foundation.

2. The dissolution process shall proceed under judicial supervision in accordance with Article 11 of N-PCL.

3. That, within thirty (30) days of when this Stipulation is so ordered by the Court, the Parties shall jointly submit to the Court a list of not-for-profit organizations to receive distributions, in equal amounts, from the assets remaining upon the issuance of a final Order of Dissolution.

4. The Parties agree that the Attorney General may object to the distribution of funds to any organization designated pursuant to Paragraph 3 hereof if information is revealed after this Stipulation is so-ordered, but before a final order of dissolution is entered, that negatively affects the suitability of such organizations to receive distributions of charitable assets in this matter, such determination to be made solely by the Attorney General.

5. Pursuant to N-PCL § 1111, the Foundation will maintain all of its assets as of the execution of this Stipulation.

6. This Stipulation in no way limits or affects any of the other claims in the Verified Petition.

7. This Stipulation in no way limits or affects the rights or remedies of any third party.

8. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation.

9. This Stipulation may be executed in multiple counterparts, each of which shall be deemed a duplicate original. Facsimile signatures shall be deemed originals.

IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on December 11, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: ______________________
Yael Fuchs
Co-Chief Charities Bureau
Enforcement Section
28 Liberty Street
New York, New York 10005
(212) 416-8401

Attorney for Petitioners

LAW OFFICES OF ALAN S. FUTERFAS

By: ______________________
Alan S. Futerfas, Esq.
565 Fifth Avenue, 7 Floor
New York, New York 10017
(212) 684-8400

Attorney for The Donald J. Trump Foundation

SO ORDERED: ______________________
Justice Saliann Scarpulla

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. **VERIFIED PETITION**

Petitioner, the People of the State of New York, by Barbara D. Underwood, Attorney General of the State of New York, as and for her Petition, respectfully alleges:

PRELIMINARY STATEMENT

1. For more than a decade, the Donald J. Trump Foundation has operated in persistent violation of state and federal law governing New York State charities. This pattern of illegal conduct by the Foundation and its board members includes improper and extensive political activity, repeated and willful self-dealing transactions, and failure to follow basic fiduciary obligations or to implement even elementary corporate formalities required by law. The Attorney General therefore brings this special proceeding to dissolve the Foundation for its persistently illegal conduct, enjoin its board members from future service as a director of any not-for-profit authorized by New York law, to obtain restitution and penalties, and to direct the Foundation to cooperate with the Attorney General in the lawful distribution of its remaining assets to qualified charitable entities.

2. In June 2016, the Attorney General began an investigation (the "Investigation") of the Donald J. Trump Foundation (the "Foundation") 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, and other applicable law governing New York State charities. 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 Donald J. Trump ("Mr. Trump") and his personal, political and/or 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 or the Trump Organization. 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 presidential election campaign.

3. As set forth below, the Foundation and its directors and officers violated multiple sections of the N-PCL, the 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, or 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 provisions of the N-PCL, the EPTL, and the Executive Law, but also resulted in the Foundation failing to comply with the terms of its own certificate of incorporation.

4. 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 Article 11 of the

N-PCL and New York Civil Practice Law and Rules ("CPLR") Article 4. In addition, pursuant to the N-PCL, EPTL, Executive Law and CPLR Article 4, the Attorney General seeks an order (i) directing Mr. Trump, Donald J. Trump, Jr., Ivanka Trump, and Eric Trump (together, the "Individual Respondents") to make restitution and pay all penalties resulting from the breach of fiduciary duties and their misuse of charitable assets for the benefit of Mr. Trump and his interests; (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 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 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) directing Mr. Trump to pay an amount up to double the amount of benefits improperly obtained through related party transactions entered into after July 1, 2014; (iv) declaring that the Foundation has conducted its business in a persistently illegal manner and has abused its powers contrary to the public policy of this state; (v) directing the Foundation to cooperate with the Attorney General in the distribution of remaining assets to qualified charities; (vi) restraining the Foundation, except by permission of the court, from exercising any corporate powers; (vii) dissolving the Foundation; and (viii) granting such other and further relief as the Court may deem just and proper.

THE PARTIES

5. 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 New York Executive Law.

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

7. The Foundation's stated 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 Internal Revenue Code." (Certificate of Incorporation, dated February 2, 1987, at Section Second.) In accordance with the N-PCL and the Internal Revenue 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.)

8. Respondent Mr. Trump is the founder of the Foundation, and served as its president from 1987 through January 23, 2017. From 1987 through 2008, Mr. Trump personally donated funds to support the Foundation. Since 2008, however, Mr. Trump has not contributed any personal funds to the Foundation, which instead has been supported by donations from other persons and entities.

9. Respondent Donald Trump Jr. is, and has been since 2006, a member of the Foundation's board of directors (the "Board"). Respondent Eric Trump is, and has been since 2006, a member of the Board. Respondent Ivanka Trump served as a member of the Board from 2006 to January 23, 2017.

JURISDICTION AND APPLICABLE LAW

10. The Attorney General brings this special proceeding on behalf of the People of the State of New York under the EPTL, the N-PCL, and the Executive Law.

11. Pursuant to EPTL § 8.1-4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of property held for charitable purposes.

12. Pursuant to N-PCL § 112(a), the Attorney General is authorized to bring an action or special proceeding: "(1) To annul the corporate existence or dissolve a [not-for-profit] corporation that has acted beyond its capacity or power . . . (5) To dissolve a corporation under article 11 (Judicial dissolution); . . . (7) To enforce any right given under this chapter to members, a director or an officer of a charitable corporation. The attorney-general shall have the same status as such members, director or officer; . . . and (10) To enjoin, void or rescind any related party transaction, seek damages and other appropriate remedies, in law or equity, in addition to any actions pursuant to section 715 (Related party transactions) of this chapter."

13. Pursuant to N-PCL § 515(a), a charitable corporation "shall not ... distribute any part of its income" to the directors or officers of the corporation.

14. Pursuant to EPTL § 8-1.8(a)(2), a private foundation "shall not engage in any act of self-dealing which would result in the taxation of any amount involved with respect to any such act of self-dealing under section 4941 of the [Internal Revenue Code (the "Code")]," and pursuant to EPTL § 8-1.8(a)(5), a private foundation "shall not make any taxable expenditure which would result in the liability of the [private foundation] for any tax imposed on any such taxable expenditures under section 4945 of the [Internal Revenue Code]." Section 4941 imposes an excise tax on acts of self-dealing, and section 4945 of the Code imposes an excise tax on any amount paid to influence the outcome of a specific public election. Under section 406 of the N-PCL, a New York private foundation must include provisions in its certificate of incorporation expressly prohibiting the conduct penalized under sections 4945 and 4941 of the Code.

15. Under Executive Law section 175(2), the Attorney General is authorized to bring a special proceeding against a charitable organization or any other persons acting for it or in its behalf, in relevant part, "for an order awarding restitution and damages and costs … and to seek other relief which the court may deem proper whenever the Attorney General shall have reason to believe that the charitable organization or other person… has violated [Article 7-A]", including by, pursuant to section 175(d), making "a material false statement in an application, registration or statement required to be filed pursuant to this article."

16. Pursuant to N-PCL § 706(d), the Attorney General may bring an action to remove a director for cause and the court may bar a director from future service on the board.

17. Pursuant to N-PCL § 715(f) and EPTL § 8-1.9(c)(4), the Attorney General may bring an action to seek an order requiring a person to account for profits from an improper related party transaction, pay the not-for-profit corporation for the value of the use of any of its assets in such a transaction, return assets lost to the corporation as a result of such a transaction,

and pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

18. Pursuant to N-PCL § 717, directors and officers of a not-for-profit corporation are required to act in good faith and with that degree of diligence, care and skill that an ordinarily prudent person in their position would exercise under similar circumstances. In addition, section 717 requires directors and officers of a not-for-profit corporation to act with undivided loyalty toward the corporation. The directors must meet at least annually for a report of the corporation's assets and liabilities, revenue, and disbursements, pursuant to N-PCL §§ 519, 603(b).

19. Pursuant to N-PCL § 719, directors who vote or concur in the "distribution of the corporation's cash or property to members, directors or officers, other than a distribution permitted under section 515" are jointly and severally liable to the corporation for the injury suffered as a result of their actions.

20. Pursuant to N-PCL § 720(a), the Attorney General is authorized to bring an action to require the directors and officers of a New York not-for-profit corporation to pay restitution resulting from the violation of duties in the management of corporate assets committed to their charge and to set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.

21. Pursuant to N-PCL § 1101(a), the Attorney General is authorized to bring an action to dissolve a corporation that has "exceeded the authority conferred upon it by law, or has . . . carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to public policy of the state has become liable to be dissolved."

22. Pursuant to N-PCL § 112(a)(7) and § 1102(a)(2)(D), the Attorney General is authorized to petition for judicial dissolution of a corporation where the "directors ... in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit or have otherwise acted in an illegal, oppressive or fraudulent manner."

23. Pursuant to N-PCL § 1113, the Attorney General is authorized to seek an injunction pending a dissolution proceeding to, in relevant part, "(1) restrain[] the corporation and its directors and officers from conducting any unauthorized activities and from exercising any corporate powers, except by permission of the court[, and] (2) restrain[] the corporation and its directors and officers from collecting or receiving any debt or other property of the corporation, and from paying out or otherwise transferring or delivering any property of the corporation, except by permission of the court."

24. Venue is properly set in New York County pursuant to N-PCL § 1110 and CPLR § 503 because the Foundation is located in New York County.

FACTUAL BACKGROUND

25. The Attorney General's Investigation found that the Foundation is little more than an empty shell that functions with no oversight by its board of directors. The Foundation, which does not have any employees, delegated its operations to the accounting office of the Trump Corporation, Inc., a management company owned by Mr. Trump and located at 725 Fifth Avenue. The Trump Corporation supplies back office services to the several hundred Trump business entities that make up the Trump Organization. The accounting staff's responsibilities for the Foundation are the same as its responsibilities for the businesses in the Trump Organization.

Insufficient Board Oversight and Lack of Internal Controls

26. 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, from 1999 through the present. The Board has not met since 1999 and does not oversee the activities of the Foundation in any way. 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, any written criteria for the consideration, approval, or monitoring 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.

27. In the absence of a functioning board, Mr. Trump ran the Foundation according to his whim, rather than the law. Mr. Trump, who was the sole signatory on the Foundation's bank accounts, approved all grants and other disbursements from the Foundation. 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.

28. The Board of the Trump Foundation permitted the Trump Organization accounting staff to administer the Foundation's charitable assets without supervision or training and to issue Foundation checks without confirming that the Board had approved the disbursement. The Board also failed to institute any procedures to ensure that the Foundation was the proper source of funds for a particular check request. 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 the proper protocol for issuing the Foundation's checks.

29. 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).

30. The lack of adequate procedures at the Foundation was particularly problematic because various entities throughout the Trump Organization issued requests for payment to the accounting staff and these requests were not always accompanied by an instruction as to which entity in the Trump Organization 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 one made any inquiry into the purpose of the payment.

31. As described more fully below, 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.

32. The Foundation also did not have an investment policy, even though New York law required it to have such a policy by no later than 2010. See NPCL § 552(f). The Board did not discuss how to invest the Foundation's assets, but rather simply left the decision to Mr. McConney and Allen Weisselberg, executive vice president and chief financial officer of the Trump Organization and the treasurer of the Foundation. Although in recent years the average monthly value of the Foundation's assets was over $1 million, the Foundation kept its funds in a money market account, earning negligible interest.

2016 Political Activity/ Related Party Transaction

33. 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 for the Foundation in Des Moines, Iowa on January 28, 2016 (the "Iowa Fundraiser"), and the disbursements of the proceeds from the event.

34. Candidate Trump decided to conduct the Iowa Fundraiser in lieu of participating in a televised debate of the Republican presidential candidates. The events took place less than one week before the February 1, 2016 Iowa caucuses.

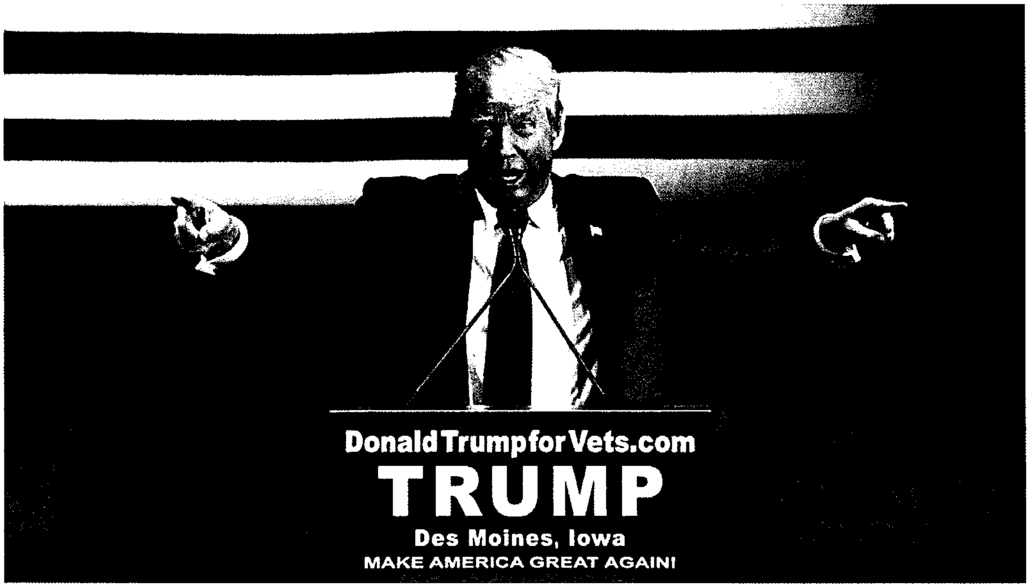
35. In a filing submitted to the Attorney General's Charities Bureau, signed by Mr. Trump as President of the Foundation and dated October 20, 2016, the Foundation asserted that it "held [the Iowa Fundraiser] to raise funds for veterans' organizations . . . [and that it] created a website to allow donors to make charitable contributions online." (2016 Form CHAR410-A, Part G, Line 3(c).) This statement was false because, in reality, the Fundraiser was a Trump Campaign event in which the Foundation participated.

36. 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 billed 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." Brad Parscale, a Campaign consultant who eventually became the Campaign's digital media director (and is now the campaign manager for Mr. Trump's re-election campaign), created the event

website for the Foundation. Mr. Weisselberg assigned Mr. McConney, the Trump Organization's controller and one of two Trump Organization employees who regularly performed tasks for the Foundation, to work with Mr. Parscale on the project. 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." Hope Hicks, then the Campaign's Communication Director, participated in making arrangements for speakers at the event.

37. 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. Mr. McConney understood that he was attending the Fundraiser on behalf of the Foundation. Ivanka Trump, Donald Trump Jr. and Eric Trump all attended the fundraiser.

38. At the televised fundraising event, the podium was decorated with a sign that borrowed the Trump Campaign's themes and slogans. The DonaldTrumpForVets.com website address was displayed on a blue placard with a red border and star pattern that was identical to the design of Campaign signs and billboards, with Mr. Trump's name in capital letters and the Campaign's trademarked slogan, Make America Great Again. A photo of the Iowa Fundraiser published by ABC News is pasted in below:



(https://abcn.ws/2wIXKqw (published by ABC News.))

39. The Fundraiser, which solicited donations from members of the public, including New York residents, reaped approximately $5.6 million in tax free donations. Of that total, $2.823 million was contributed to the Foundation. The remainder was donated directly by private donors to veterans charity groups, without going through the Foundation.

40. Following the Iowa Fundraiser, the Foundation ceded control over the charitable funds it raised to senior Trump Campaign staff, who dictated the manner in which the Foundation would disburse those proceeds, directing the timing, amounts and recipients of the grants.

41. 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 about how you want to distribute the funds collected for the Vets." 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." 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."

42. 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."

43. 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. 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. 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.

44. Mr. Weisselberg's testimony at an examination during the Investigation 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 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.

45. Other email exchanges show the extensive coordination between the Campaign and the Foundation. On January 28, 2018, when the first donation came in to the website, Mr. McConney immediately notified Mr. Lewandowski, Ms. Hicks and other campaign staffers, congratulating Mr. Parscale on his work. On February 16, 2016, Mr. McConney, on behalf of

the Foundation, wrote to Mr. Lewandowski seeking the Campaign's direction 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?"

46. The Investigation obtained additional evidence that the Campaign played the lead role in determining the disposition of the 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." 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. 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."

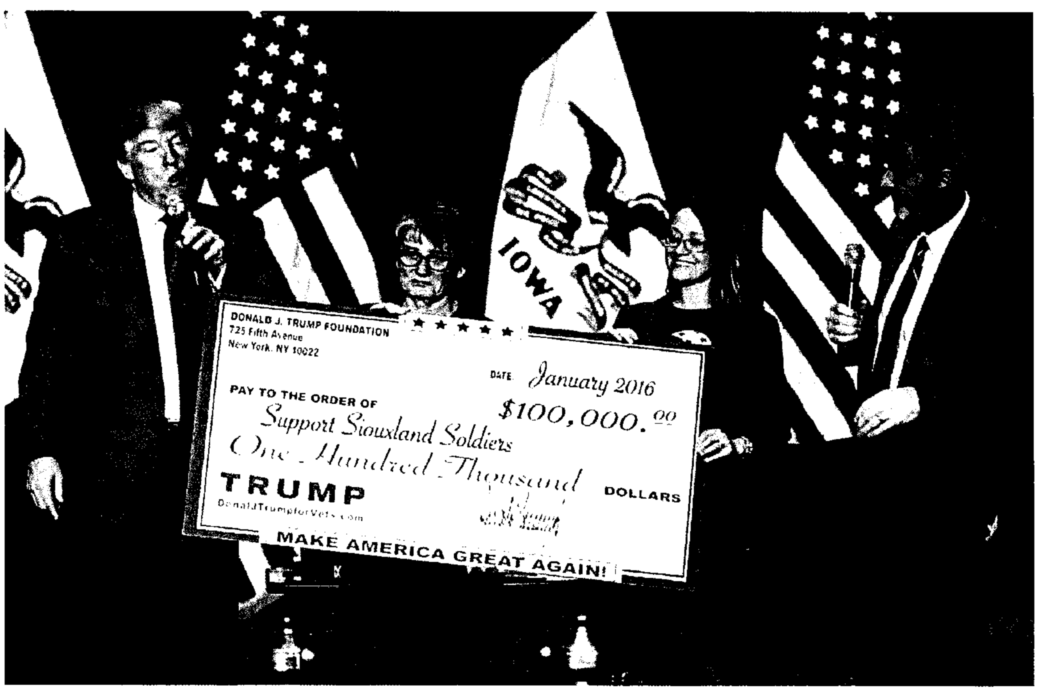
47. On March 22, Mr. Lewandowski wrote to Mr. Weisselberg and Mr. McConney, asking that a check for $100,000 be sent to the Marine Corps Law Enforcement Foundation, noting that the media had been asking whether the Foundation had donated to that group. Mr. Weisselberg assured Mr. Lewandowski that he would draw a check promptly, and a check was in fact sent that day.

48. On May 24, Ms. Burr sent an email to Campaign staff, Mr. McConney, and Mr. Weisselberg, again referring to the 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. That same day, the Foundation issued grants to all but one of the organizations listed in Ms. Burr's email.

49. 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.

50. The enlarged copies of checks he used for the presentations reflected his dual role. The Foundation's name and address were printed on the enlarged presentation checks, along with the Trump Campaign 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 copy of Mr. Trump giving out one of the enlarged checks is pasted in below:



(https://bit.ly/1RKtlWf (AP photo).)

51. On January 30, 2016, two days before the Iowa Caucuses, 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. In giving out the check at this campaign event, Mr. Trump referred to it as "our first disbursement."

52. 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/2GmS41O.) 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. 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." 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." 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. The actual payment was subsequently requested by the Campaign and was issued by the Foundation on February 10, 2016.

53. 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. (*See* photograph in ¶ 50, *supra.)*

54. 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.[1] 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. During the rally, Mr. Trump himself directly drew a connection between his Campaign activities and the distribution of checks by the 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.) 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.[2]

55. 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

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[1] 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). The actual check was written to Central Iowa Shelter & Services, which is the official name of the shelter.

[2] 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.

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.[3] 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.) 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. Nothing." At the press conference, Mr. Trump invited a veteran, Al Baldasaro (a Republican member of the New Hampshire state legislature who worked on the Trump campaign during the primary), to address the reporters. During his speech, Mr. Baldasaro applauded Mr. Trump's fundraising efforts for the veterans charities, and repeated his endorsement of Mr. Trump's candidacy.

56. 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 five months earlier, and uploaded a news report under the headline, "Lewandowski: Trump Campaign Gave Between $5.5 - $6 Million to Veterans Groups."

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[3] One of the organizations receiving a grant in May 2016 from the Foundation was The Mission Continues, an organization founded by the then Republican Governor of Missouri, Eric Greitens. According to news reports, Greitens stepped down from the organization in 2014, but his campaign for governor received donor lists from The Mission Continues in 2015. The Missouri Attorney General announced in April 2018 that Greitens wrongfully procured and used the charity's donor list. https://cnn.it/2JH3R0u.

57. 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[4] – were selected by the Campaign. The Foundation's Board knew of the role played by the Campaign in the Iowa Fundraiser and the distribution of proceeds from it, 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. The only board member giving approval was Mr. Trump, who was its president and the candidate whose Campaign benefitted from the manner in which the grants were disbursed

58. The Foundation's disbursements of funds from the Iowa Fundraiser were related-party transactions. As detailed above, the Foundation ceded control over the grants to the Campaign, making an improper in-kind contribution of no less than $2.823 million (the amount donated to the Foundation) to the Campaign that provided Mr. Trump and the Campaign a means to take credit at campaign rallies, press briefings, and on the Internet, for gifts to veterans charities. The Foundation's grants made Mr. Trump and the Campaign look charitable and increased the candidate's profile to Republican primary voters and among important constituent groups.

59. Mr. Trump had a financial interest in the Campaign and benefitted from the Foundation's in-kind contributions to the Campaign. Mr. Trump exercised control over the Campaign, which existed exclusively for the purpose of electing him to office. Mr. Trump repeatedly touted that he was self-funding his campaign, including on Twitter on the day before the Iowa Fundraiser. According to campaign finance disclosures filed in December 2016, Mr. Trump invested $66 million of his own money, composed of both loans and contributions, in the

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[4] 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.

Campaign before the end of 2016, giving him a substantial financial interest in the Campaign and its transactions with the Foundation. As of the end of January 2016, when the Iowa Fundraiser took place, Mr. Trump had contributed only $250,000 to the Campaign, but had loaned it approximately $17.5 million.

60. Mr. Trump's wrongful use of the Foundation to benefit his Campaign was willful and knowing. Mr. Trump was aware of the prohibition on political activities and the requirement of restrictions on related party transactions. Among other things, he repeatedly signed, under penalties of perjury, IRS Forms 990 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. 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." In addition, in February 2016, while on the campaign trail, Mr. Trump spoke out against the prohibition on charities participating in political campaigns.[5] Mr. Trump was again alerted to the prohibition on political activity no later than March 22, 2016, the date that the initial public reporting of the Foundation's unlawful donation to the political committee for Florida Attorney General Pam Bondi. The very next day, the Foundation filed an IRS Form 4720, signed by Mr. Trump, disclosing the "And Justice for All" transaction detailed below, and Mr. Trump paid federal excise tax for making an impermissible political expenditure and reimbursed the Foundation for that expenditure. Despite his knowledge of the prohibition on

[5] At a Trump event in South Carolina in February 2016, Mr. Trump said, "they're willing to take your tax exemption and tax status away from you if you talk. That happened during Lyndon Johnson's reign and I would put that back so fast . . . . I have so many ministers endorsing me . . . and they're all afraid to get too involved because they don't want to lose their tax exemption . . . . but we're going to get rid of that. . . . [T]hey're afraid to get involved politically . . . . [and] so I think it's very important . . . that we knock out that tax-exempt horrowshow that has taken a lot of their power away." https://bit.ly/2xp743a.

political activity and on using the Foundation's assets for his own benefit, Mr. Trump nevertheless used the Foundation to intervene in the election to assist him in his candidacy for president and to benefit the Campaign (in which he had a substantial financial interest).

The "And Justice for All" Transaction

61. 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.

62. 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. In its list of specific contributions on the 2013 tax return, the Foundation did not disclose its contribution to And Just for All in Tampa, Florida. Instead, it listed a $25,000 contribution to a Kansas-based Section 501(c)(3) organization with a similar name, Justice for All. Contrary to this disclosure, the Foundation never made a contribution to the Kansas-based Justice for All.

63. 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. ECO is a Florida Division of Elections abbreviation for "electioneering communications organization."

64. Mr. Trump initialed a printed copy of the email to indicate his approval for the payment. Ms. Graff gave this printed copy to a Trump Organization accounts payable clerk, Deborah Tarasoff. 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. She cut the Foundation check, dated September 9, 2013, and sent it to Mr. Trump's office for signature. Ms. Tarasoff testified that she did not take any steps to confirm that the Utah organization was the intended recipient of the payment. Ms. Tarasoff and Mr. McConney maintain they do not know who mailed the check.

65. 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.

66. 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. The Foundation did not make a donation to Justice for All.

67. 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. 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.

68. Neither Mr. McConney nor Mr. Weisselberg could not 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. Asked how the error occurred, Mr. Weisselberg said he wished he could recall the answer but could not.

69. 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 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.

70. 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.

71. 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, 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

72. In addition to the Iowa Fundraiser, which directly benefitted Mr. Trump and his presidential campaign, 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"); and

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").

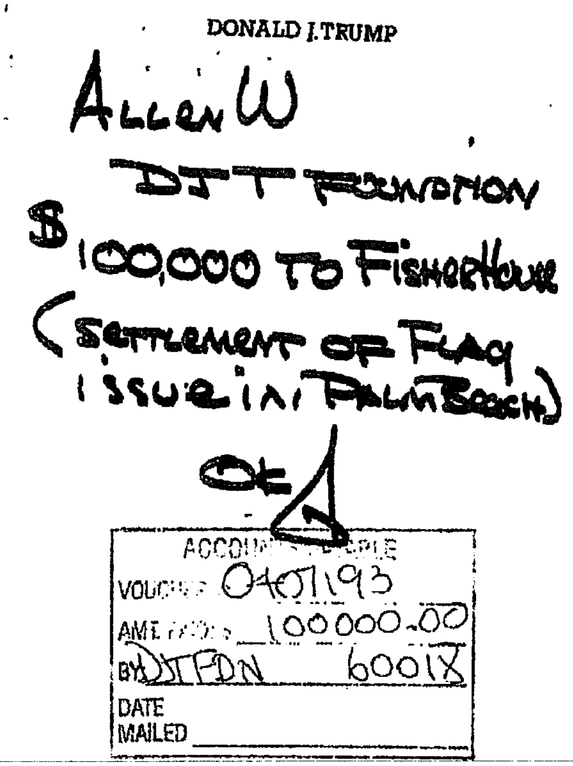
73. The Foundation's Board failed to review or approve any of the above transactions.

2007 Mar-A-Lago Transaction

74. 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.

75. Mar-A-Lago sued the town, arguing that the ordinances were unconstitutional. 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. The parties subsequently agreed that the contribution should be made to the Fisher House Foundation.

76. 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 the following handwritten note he sent:


DONALD J. TRUMP

ALLEN W

DJT FOUNDATION

$100,000 TO FISHER HOUSE

(SETTLEMENT OF FLAG ISSUE IN PALM BEACH)

OK

ACCOU[illegible]

VOUC[illegible] 0407193

AMT [illegible] 100000.00

BY DJTFDN 60018

DATE MAILED

The Trump Organization accounting staff followed Mr. Trump's instruction to use the Foundation's account to satisfy the settlement obligation, even though the Foundation was not involved in the lawsuit in any way.

77. The Investigation found that by directing the Foundation to make payment to Fisher House, Mr. Trump caused the Foundation used 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

78. 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. Promotors 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.

79. 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"). Under the Settlement Agreement, AMC and Florida Team Golf agreed to pay the full 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 golf club would pay directly to the Greenberg Foundation.

80. 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 for the benefit of the Trump Foundation of a lifetime membership in Mr. Trump's golf clubs. The auction was held through a charity auction website. The contract between the auction website and the 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. The auction webpage announced, "Proceeds from this item benefit the Donald J. Trump Foundation." 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.

81. 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, per Mr. Trump's directions.

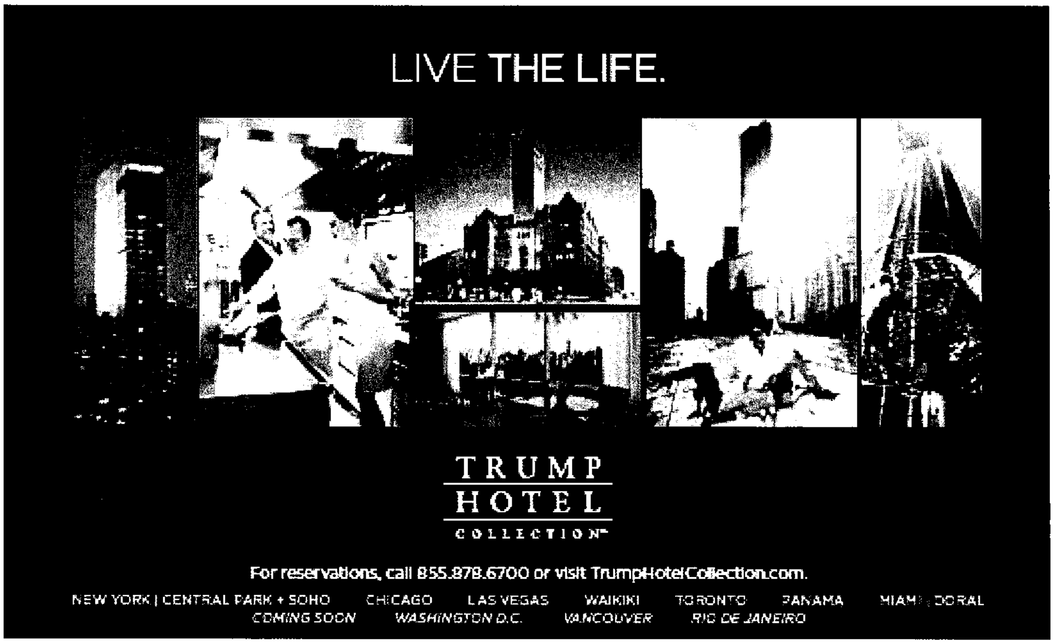
82. The Investigation concluded that the Foundation improperly used the funds it received from the auction, which were advertised as being used to support the Foundation, to satisfy the obligations of the Trump National Golf Club, an organization controlled by Mr. Trump, and, as a result, constituted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

83. After the commencement of the Investigation, 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

84. In 2013, the Foundation paid $5,000 to the DC Preservation League ("DCPL"), a Section 501(c)(3) organization that advocates 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. A copy of the ad from the program promoting Trump Hotels and providing a phone number for reservations, without any mention of the Foundation, is pasted below.



(D.C. Preservation League, Commemorative Program (Feb. 11, 2014) (produced by DC Preservation League as part of this Investigation).)

85. 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.

86. 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

87. 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.

88. 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 plus interest, as determined by an outside appraisal report for the applicable period. On December 19, 2016, the Foundation filed IRS Form 4720 with the IRS and Trump Endeavor 12 LLC paid outstanding excise taxes and interest in the amount of $8.49 and $18.49, due, respectively, for each of 2014 and 2015.

2015 Seven Springs Transaction

89. 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.

90. 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.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duties and Waste – N-PCL §§ 717 & 720
(Against the Individual Respondents)

91. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

92. The Individual Respondents were each directors of the Foundation, and as such, owed fiduciary duties to the Foundation pursuant to N-PCL § 717.

93. The Individual Respondents failed to discharge their duties as directors with the degree of care, skill, prudence, diligence, and undivided loyalty required of them in that, among other things, they (a) failed to hold at least one annual board meeting or to conduct a review the Foundation's assets, liabilities, revenues and disbursements as required by law; (b) failed to provide oversight of the Foundation or control its activities; (c) failed to institute and maintain internal controls; (d) failed to provide management or supervision of Trump Organization accounting staff assigned to the Foundation and permitted the Trump Organization accounting staff to disburse charitable assets entrusted to the Foundation without obtaining Foundation approval; (e) caused and/or allowed the Foundation to misuse charitable assets for the benefit of Mr. Trump and his personal and/or business interests; and (f) in violation of the Foundation's certificate of incorporation and applicable provisions of the Code, caused and/or allowed the Foundation to participate and intervene on behalf of Mr. Trump in his candidacy for public office

in 2016 and to influence the outcome of the election, and separately, on behalf of Pamela Bondi in her political campaign for Florida Attorney General in 2013.

94. Due to the foregoing acts and omissions, the Individual Respondents breached the fiduciary duties they owed to the Foundation, and are thus liable under N-PCL §§ 720(a)(1)(A) and (a)(1)(B) to account for their conduct in the neglect and violation of their duties in the management and disposition of corporate assets, to pay damages resulting from loss and waste of corporate assets, and should be enjoined from serving as an officer, director or trustee, or in any similar capacity, of any not-for-profit charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York.

SECOND CAUSE OF ACTION

Failure to Properly Administer Charitable Assets and Waste – EPTL § 8-1.4 & 8-1.8 (Against Individual Respondents)

95. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

96. As directors of the Foundation, each of the Individual Respondents was a trustee of charitable assets under EPTL § 8-1.4, and, as such, was responsible for the proper administration of charitable assets. The Individual Respondents failed to properly administer the Foundation's charitable assets in that, among other things, they (a) failed to discharge their fiduciary duties to the Foundation with the degree of care, loyalty, and obedience that was required of them; (b) diverted charitable assets for improper or unnecessary purposes by causing and/or permitting the Foundation to wrongfully distribute charitable assets for the benefit of Mr. Trump and his interests; and (c) caused and/or permitted the Foundation to engage in political activity to influence the outcome of specific elections in violation of the Foundation's certificate of incorporation and EPTL § 8-1.8(a)(5).

97. Due to the foregoing acts and omissions the Individual Respondents should each be ordered to account for his or her conduct in the waste of assets and/or negligent failure to act, to pay damages resulting from such waste, and be enjoined from serving 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.

THIRD CAUSE OF ACTION

Wrongful Related-Party Transactions – N-PCL § 715(f) and EPTL § 8-1.9(c) (Against Respondent Mr. Trump)

98. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

99. Respondent Mr. Trump caused the Foundation to enter into transactions in which he had a financial interest without obtaining authorization from the Board for those transactions or a determination by the Board that the transactions were fair, reasonable and in the Foundation's best interest at the time of the transactions. Those transactions included payments to the Fisher House Foundation, the Martin B. Greenberg Foundation, the DC Preservation League, the Unicorn Children's Foundation, and the North American Land Trust. Mr. Trump's conduct was willful and intentional with respect to these transactions in that as president and ultimate decision-maker of the Foundation and owner of entities on whose behalf the Foundation made payments he fully understood and intended the financial benefits he and his businesses would derive from the transactions.

100. The related-party transactions also included in-kind contributions of $2.8 million by the Foundation to the Trump Campaign. With respect to these transactions, Mr. Trump's conduct was willful and intentional in that as president and ultimate decision-maker of the Foundation, and presidential candidate whose election the Foundation's in-kind contributions

sought to influence, he was fully aware of and intended the benefits he would derive from the Foundation's in-kind contributions. Mr. Trump had a financial interest in the Campaign, which he controlled, publicly asserted that he would self-fund the Campaign and, as of the time of the Iowa Fundraiser, had loaned $17.5 million.

101. By the foregoing acts and omissions, Respondent Mr. Trump is liable under N-PCL § 715(f) and EPTL § 8-1.9(c), both in effect since July 1, 2014, to account for profits from related party transactions not already accounted for; to the extent not already paid, pay the Foundation the value of charitable assets used in such transactions; return assets lost to the Foundation as a result of the transactions, to the extent not already returned; pay the Foundation an amount up to double the value of the amount of each benefit improperly bestowed by a transaction occurring after July 1, 2014; and should be enjoined from serving as an officer, director or trustee, or in any similar capacity, of any not-for-profit charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York.

FOURTH CAUSE OF ACTION

Dissolution of the Foundation – N-PCL §§ 112(a), 1101(a)(2)
(Against the Foundation and Respondent Donald J. Trump)

102. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

103. Under N-PCL § 112(a), the Attorney General may bring an action to dissolve a corporation that has acted beyond its capacity or power.

104. Under N-PCL § 1101(2), the Attorney General may bring an action for the dissolution of a charitable corporation when "the corporation has exceeded the authority conferred upon it by law, or . . . has carried on, conducted or transacted its business in a

persistently fraudulent or illegal manner, or by the abuse of its powers contrary to public policy of the state has become liable to be dissolved."

105. N-PCL § 202(a) requires New York non-for-profit corporations to act within the limitations present in their certificates of incorporation.

106. Under Section 501(c)(3) of the Code, the Foundation is prohibited from participating or intervening in any political campaign on behalf of a candidate. This statutory prohibition is absolute. Penalties for violation of this law include excise taxes, pursuant to section 4945 of the Code, for any expenditure paid or incurred by a private foundation to influence the outcome of any specific public election.

107. Sections 406 of the N-PCL and 8-1.8 of the EPTL prohibit private foundations from incurring penalties under section 4945 of the Code for expenditures to influence an election. These same provisions prohibit incurring penalties under section 4941 of the Code for acts of self-dealing. Under section 406 of the N-PCL, New York private foundations must include provisions in their certificates of incorporation expressly prohibiting the conduct penalized under sections 4945 and 4941 of the Code. Accordingly, the Foundation's certificate of incorporation prohibits the Foundation from participating in "any political campaign on behalf of any candidate for public office," or allowing any corporate property to 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."

108. The Foundation exceeded the authority conferred to it in its certificate of incorporation and acted in a persistently illegal manner by repeatedly intervening in Mr. Trump's campaign for president in 2016 by, among other things, making expenditures during the first five months of 2016 that were intended to influence his election for president.

109. N-PCL § 102(5) bars a not-for-profit corporation from permitting its assets, income or profit to inure to the benefit of an officer or director of the corporation. Section 515 (a) of the N-PCL prohibits the distribution of any part of the income of a not-for-profit corporation to the directors or officers of the corporation. The Foundation violated these provisions by distributing its assets for the benefit of the president of the corporation.

110. N-PCL § 519 requires the directors of a New York non-for-profit corporation to hold an annual meeting of the board of directors to receive and review a report of the corporation's assets and liabilities, revenue, and disbursements. The directors of the Foundation failed to comply with this requirement for at least eighteen years, from 1999 through 2017.

111. Under N-PCL § 552(f), a New York not-for-profit corporation must adopt a written policy setting forth guidelines on investments and delegation of management and investment functions. The Foundation failed to adopt a written investment policy and, as a result, violated N-PCL § 552(f).

112. N-PCL § 715-a requires a New York not-for-profit corporation to adopt a conflict of interest policy to ensure that its directors and officers act in the corporation's best interest. The Foundation did not adopt such a policy and, accordingly, the Foundation violated N-PCL § 715-a.

113. Sections 172 and 175 of the Executive Law prohibit the material false statements in any application, registration required to be filed with the Attorney General pursuant to Article 7-A of the Executive Law. The Foundation filed with the Attorney General's Charities Bureau a Form CHAR410-A, Amended Registration Statement for Charitable Organizations, signed by Mr. Trump, which falsely stated that the Iowa Fundraiser was a Foundation event. This statement was false because it failed to disclose the material fact that the Iowa Fundraiser was in fact planned, organized, financed and directed by the Trump Campaign.

114. Section 172 of Article 7-A of the Executive Law requires charitable organizations that solicit donations in New York State to register with the Charities Bureau of the New York State Attorney General's Office. The Trump Foundation engaged in fundraising activities in New York State in connection with the auction on Charitybuzz.com and in connection with Iowa Fundraiser, in violation of the Executive Law, did not register with the Charities Bureau until October 20, 2016, following a Notice of Violation from the Charities Bureau.

115. As a result of the foregoing, the Foundation has acted beyond its capacity by persistently disregarding the limitations in its certificate of incorporation and the law, and it has conducted its business in a persistently illegal manner and abused its powers contrary to the public policy of the State of New York by operating without any oversight or control by a board of directors.

116. Accordingly, the Foundation should be dissolved pursuant to N-PCL § 1101(a)(2) and its remaining assets and future assets, if any, applied to charitable uses consistent with the mission set forth in the Foundation's certificate of incorporation, pursuant to N-PCL §§ 1115(a) and 1008(a)(15).

117. Simultaneous with the filing of this Petition for Dissolution, the Attorney General has notified the Internal Revenue Service and the Federal Election Commission concerning potential violations of the Code and federal election law that may subject the Foundation and its directors and officers to substantial penalties or fines. Pursuant to N-PCL §§ 1115(a) and 1007(c) distributions of corporate assets upon dissolution should be deferred until the complaints to the Internal Revenue Service and Federal Election Commission have been resolved and it is determined if any penalties or fines will be imposed on the Foundation.

FIFTH CAUSE OF ACTION

Dissolution of the Foundation – N-PCL §§ 112(a), 1102(a)(2)
(Against the Foundation)

118. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

119. N-PCL § 112(a)(7) authorizes the Attorney General to maintain an action or special proceeding to enforce rights granted by statute to a director or officer of a charitable corporation. N-PCL § 1102(a)(2) empowers directors and officers to petition the court for judicial dissolution in cases where directors have wasted assets or acted illegally.

120. Dissolution pursuant to N-PCL § 1102(a)(2)(D) is appropriate for the reasons set forth in paragraphs 1 – 114 and for the further reason that the directors of the Foundation wasted corporate assets and otherwise behaved in an illegal manner.

SIXTH CAUSE OF ACTION

Injunction Pending Resolution – N-PCL § 1113
(Against the Foundation)

121. The Attorney General repeats and re-alleges the preceding paragraphs, as though fully set forth herein.

122. N-PCL § 1113 authorizes the Attorney General to seek an injunction pending a dissolution proceeding to, in relevant part, "(1) restrain[] the corporation and its directors and officers from conducting any unauthorized activities and from exercising any corporate powers, except by permission of the court[, and] (2) restrain[] the corporation and its directors and officers from collecting or receiving any debt or other property of the corporation, and from paying out or otherwise transferring or delivering any property of the corporation, except by permission of the court."

123. Such an injunction is appropriate for the reasons set forth above, including, without limitation, that the Individual Respondents breached their duties of care and loyalty to the Foundation, willfully ignored the legal requirements applicable to not-for-profit organizations and caused the Foundation to violate state and federal law. There are no directors remaining who have demonstrated an understanding and respect for not-for-profit law and fiduciary duties. Court supervision is necessary to ensure that charitable assets are appropriately marshalled and distributed.

PRAYER FOR RELIEF

Plaintiff requests judgment against Respondents as follows:

A. Enjoining Mr. Trump from serving as an officer, director, trustee or equivalent position of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York for a period of ten years; and enjoining the remaining directors from serving as officers, directors, trustees or equivalent positions of any not-for-profit or charitable organization incorporated or authorized to conduct business or solicit charitable donations in the State of New York for a period of one year, subject to suspension in the event the remaining directors undergo sufficient training on the fiduciary duties of directors of not-for-profit corporations;

B. Directing Mr. Trump to pay an amount up to double the amount of benefits improperly obtained through self-dealing transactions after July 1, 2014;

C. Directing each Individual Respondent to account for his or her conduct in the failure to perform his or her duties in the management of corporate assets, to make full restitution for waste and misuse of charitable assets, and to pay damages resulting from the breach of fiduciary duties;

D. Declaring that the Foundation has exceeded the authority conferred upon it by law, and has carried on, or conducted, or transacted its business in a persistently fraudulent or illegal manner and has abused its powers contrary to the public policy of this state;

E. Directing the Foundation to cooperate with the Attorney General in the distribution of any remaining assets to qualified charitable entities;

F. Restraining the Foundation and its officers and directors, except by permission of the court, from (i) conducting any unauthorized activities and from exercising any corporate powers; (ii) collecting or receiving any debt or other property of the corporation; or (iii) from paying out or otherwise transferring or delivering any property of the corporation;

G. Dissolving the Foundation, annulling the Certificate of Incorporation of the Foundation, and terminating the corporate existence of the Foundation; and

H. Granting such other and further relief as is just and proper.

Dated: New York, New York
June 13, 2018

BARBARA D. UNDERWOOD
Attorney General of the State of New York
Attorney for Petitioners

By: James B. Sheehan

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YAEL FUCHS, *Co-Chief of the Enforcement Section*
STEVEN SHIFFMAN, *Assistant Attorney General*
PEGGY FARBER, *Assistant Attorney General*

Of Counsel

VERIFICATION

STATE OF NEW YORK }
} ss.:
COUNTY OF NEW YORK }

STEVEN SHIFFMAN, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of the Barbara D. Underwood, Attorney General of the State of New York (the "Attorney General"). I am duly authorized to make this verification.

I have read the foregoing petition and am acquainted with the facts alleged therein based upon the Attorney General's investigation of the transactions upon which the petition is based, the annual filings and other reports made by The Donald J. Trump Foundation with the Charities Bureau of the Attorney General's office, and the investigative materials contained in the files of the Attorney General's office. To my knowledge based on such acquaintance with the facts, the petition is true.

The reason this verification is not made by petitioner is that petitioner is a body politic and the Attorney General is its duly authorized representative.

Steven Shiffman
Assistant Attorney General

NOTARY PUBLIC

Sworn to before me this
13th day of June, 2018

EMILY STERN
NOTARY PUBLIC, State of New York
No. 02ST5055697
Qualified in Kings County
Commission Expires March 30, 2022

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SALIANN SCARPULLA** **PART** **IAS MOTION 39EFM**

Justice

---X

INDEX NO. 451130/2018

MOTION DATE 10/25/2018

MOTION SEQ. NO. 002

THE PEOPLE OF THE STATE OF NEW YORK, BY BARBARA D. UNDERWOOD, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

DONALD TRUMP, DONALD TRUMP, IVANKA TRUMP, ERIC TRUMP, THE DONALD J. TRUMP FOUNDATION,

Respondents.

---X

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 102, 103, 104, 105, 106, 107

were read on this motion to/for DISMISSAL.

This judicial dissolution proceeding was commenced by the Attorney General of the State of New York on behalf of the People of the State of New York ("Petitioner") against The Donald J. Trump Foundation (the "Foundation"), and the Foundation's officers, directors, and board members: Donald J. Trump ("Mr. Trump"), Donald J. Trump Jr.; Ivanka Trump; and Eric F. Trump (collectively, the "Individual Respondents" and together with the Foundation, "Respondents").

The Foundation was incorporated in 1987 in New York as a private not-for-profit corporation as defined under Section 509(a) of the Internal Revenue Code. Its 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 Internal

Revenue Code." Mr. Trump was the founder and president of the Foundation. The remaining Individual Respondents were board members of the Foundation.

In its petition, Petitioner alleges that the Foundation and its board members have transacted business illegally and abusively over a number of years. The allegations focus on Respondents' failure to operate and manage the Foundation in accordance with corporate and statutory rules and their fiduciary obligations, resulting in the misuse of charitable assets and self-dealing. Petitioner also alleges that charitable assets, primarily consisting of money donated by outside sources, were used to promote Mr. Trump's properties, purchase personal items, advance Mr. Trump's presidential election campaign, Donald J. Trump for President, Inc. ("Campaign"), and settle certain personal legal obligations.

Based on the foregoing allegations, Petitioner pleads causes of action for: (1) breach of fiduciary duty and waste under New York's Not-For Profit Corporation Law ("N-PCL") against the Individual Respondents; (2) failure properly to administer Foundation assets and waste under New York's New York Estates, Powers and Trusts Law ("EPTL") against the Individual Respondents; (3) wrongful related party transactions against Mr. Trump as defined in the N-PCL and EPTL; (4) dissolution of the Foundation under the N-PCL §§ 112 and 1101; (5) dissolution of the Foundation under the N-PCL §§ 112 and 1102; and (6) an injunction pending resolution of the proceeding.

Instead of answering the petition, Respondents move to dismiss pursuant to CPLR 3211(a)(5) and (a)(7) arguing that: the court lacks jurisdiction over Mr. Trump; most of the transactions supporting the claims in the petition are barred by the Statute of

Limitations; Mr. Trump's televised fundraiser in Des Moines, Iowa on January 28, 2016 ("Fundraiser") cited in the petition was not a wrongful related party transaction; the Fundraiser and subsequent disbursement of money raised at the Fundraiser did not constitute prohibited political activity; Petitioner has failed sufficiently to allege breach of fiduciary duty and failure properly to administer charitable assets; Petitioner has failed adequately to allege damages; the Petitioner's "pervasive bias" against Respondents disqualifies it from maintaining this proceeding; and there is no basis for the injunctive relief sought.

Discussion

Many of the defenses Respondents allege have broad application and pertain to more than one of Petitioner's causes of action. To the extent possible, I have first addressed these defenses.

Jurisdiction over Mr. Trump

Respondents argue that this proceeding should be dismissed against Mr. Trump because, pursuant to the Supremacy Clause, U.S. Const. art. VI, § 2, a sitting president may not be sued. In opposition, Petitioner argues that, in *Clinton v. Jones*, 520 U.S. 681 (1997), the Supreme Court of the United States specifically rejected Mr. Trump's argument. Petitioner notes that Respondents have failed to cite a single case in which any court has dismissed a civil action against a sitting president on Supremacy Clause grounds, where, as here, the action is based on the president's unofficial acts. In an Amicus Curiae brief submitted in this proceeding, several professors also argue that Mr.

Trump is not immune from civil suit in state court for actions he takes in his unofficial capacity.[1]

In *Clinton v. Jones*, the Supreme Court held that the doctrine of separation of powers does not bar a federal suit (including state law claims) against a sitting president. 520 U.S. 681 (1997). Specifically, the Supreme Court held that the president does not have immunity and is "subject to the laws" for unofficial acts. *Id.* at 695-696 (stating that President Clinton's "effort to construct an immunity from suit for unofficial acts grounded purely in the identity of his office is unsupported by precedent.").

Although the Supreme Court noted that the Supremacy Clause prohibits state courts from exercising "direct control" over federal officers in a way that interferes with their federal responsibilities, this concern is only relevant in cases relating to the execution of federal law. *Id.* at 691 n.13. Here, the allegations raised in the Petition do not involve any action taken by Mr. Trump as president and any potential remedy would not affect Mr. Trump's official federal duties.

Respondents raise three other points in support of their argument that this court lacks jurisdiction over Mr. Trump. First, Respondents argue that state court proceedings should not be permitted against sitting presidents because they can reflect "local prejudice" against "unpopular" federal officials. State courts, however, possess the same ability as federal courts to dismiss vexatious lawsuits. As the Supreme Court stated in

[1] The Amici Curiae authors are law professors Stephen B. Burbank, Richard D. Parker and Lucas A. Powe Jr.

Clinton v. Jones, "the availability of sanctions provides a significant deterrent to litigation directed at the President in his unofficial capacity for purposes of political gain or harassment." 520 U.S. at 708-709 (further positing that "[h]istory indicates that the likelihood that a significant number of such cases will be filed is remote.").

Second, Respondents argue that federal courts are better able to manage cases against a sitting president to avoid interfering with official duties. This argument is meritless. A state court action does not impose any greater burden on a sitting president than a federal court action. State courts are equally capable of "accommodat[ing] the President's needs" and "of giving 'the utmost deference to Presidential responsibilities.'" *Clinton*, 520 U.S. at 709 *citing United States v. Nixon*, 418 U.S. 683, 710-711 (1974); *see also Zervos v. Trump*, 59 Misc.3d 790, 797 (Sup. Ct. N.Y. Co. 2018).

Finally, Respondents argue that federal courts are better suited to address legal issues that arise in cases against federal officials. The dissenting opinion that Respondents cite for this proposition simply noted that federal courts have greater expertise than state courts in applying federal law. *See Preiser v. Rodriguez*, 411 U.S. 475, 514 (1973) (Brennan, J., dissenting). Here, resolution of the petition is governed entirely by New York law, thus a federal court's alleged superior knowledge of federal law is inapposite.

Allowing this action to proceed is entirely consistent with the Supreme Court's holding in *Clinton v. Jones* that the President of the United States is "subject to the laws for his purely private acts." *Clinton*, 520 U.S. at 696. Judge Schecter of the New York Supreme Court reached the same determination and rejected Mr. Trump's jurisdiction-based dismissal arguments in *Zervos*, 59 Misc.3d at 797 (concluding that, "there is absolutely no authority for dismissing or staying a civil action related purely to unofficial conduct because defendant is the President of the United States.").[2]

In accordance with *Clinton v. Jones* and *Zervos v. Trump*, I find that I have jurisdiction over Mr. Trump and deny Respondents' motion to dismiss the petition against him on jurisdictional grounds.

Statute of Limitations

Respondents argue that the transactions in the petition that occurred more than six years before the petition was filed must be excluded as time-barred. Specifically, allegations concerning the 2007 donation of $100,000 to the Fisher House Foundation (the "Fisher House Transaction"), and allegations concerning the February 14, 2012 donation of $158,000 to the Martin B. Greenberg Charitable Foundation (the "Greenberg Transaction") are barred by the six-year statute of limitations.

Respondents further maintain that the transactions that occurred more than three years before the petition was filed must also be excluded because the relief sought for those transactions is primarily monetary damages, and therefore, the three-year statute of limitations bars consideration of those transactions.

[2] Mr. Trump appealed the *Zervos* decision and the First Department held oral argument on the appeal on October 18, 2018. As I noted during the oral argument on this motion, if the First Department reverses the *Zervos* decision, then I must dismiss the petition against Mr. Trump and will likely ask the Attorney General to re-plead against the remaining Respondents.

In response, Petitioner argues that, because most of the relief it seeks is equitable and most of its allegations relate to misconduct that occurred within the six-year time period before the petition was filed, the statute of limitations does not bar consideration of those transactions. It further contends that the allegations relating to misconduct that occurred prior to the six-year period before the petition was filed are not barred because of the continuing wrong doctrine.

Petitioner maintains that, in any event, the statute of limitations on a breach of fiduciary duty claim does not begin to run until the fiduciary has openly repudiated the fiduciary relationship or it has been otherwise terminated, which has only recently occurred with respect to only some of the Individual Respondents. Finally, Petitioner asserts that the claims seeking monetary relief are only related to conduct that occurred within three years of the start of this proceeding, and therefore, are not time barred.

In moving to dismiss an action as barred by the statute of limitations, a moving defendant bears the initial burden of demonstrating that the time within which to commence the cause of action has expired. *Norddeutsche Landesbank Girozentrale v. Tilton,* 149 A.D.3d 152 (1st Dept. 2017). The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or is otherwise inapplicable, or whether plaintiff commenced the action within the limitations period. *See Wilson v Southampton Urgent Med. Care, P.C.,* 112 A.D.3d 499 (1st Dept. 2013).

Pursuant to CPLR 214(2), causes of action alleging a statutory violation have a three-year statute of limitations. Causes of action alleging breach of fiduciary duty are governed by a three-year statute of limitations when only monetary damages are sought, and a six-year statute of limitations when equitable relief is sought. *See Yatter v. William Morris Agency,* 256 A.D.2d 260 (1st Dept. 1998); *Lemle v. Lemle*, 2017 N.Y. Slip. Op. 30811(U) (Sup. Ct. N.Y. Co., April 20, 2017).

In addition, the limitations period for claims arising out of a fiduciary relationship is tolled until the fiduciary has openly repudiated his or her obligation or the relationship has been otherwise terminated. *See Lemle v. Lemle*, 2017 N.Y. Slip. Op. 30811(U) (Sup. Ct. N.Y. Co., April 20, 2017). This toll can apply when a mix of equitable relief and monetary damages are sought and can apply to claims brought by the Attorney General. *See People v. Ben*, 55 A.D.3d 1306 (4th Dept. 2008).

Further, the continuing wrong doctrine "is usually employed where there is a series of continuing wrongs and serves to toll the running of a period of limitations to the date of the commission of the last wrongful act." *Selkirk v. State*, 249 A.D.2d 818, 819 (3d Dept. 1998); *see also Palmeri v. Willkie Farr & Gallagher LLP*, 156 A.D.3d 564 (1st Dept. 2017). The continuing wrong doctrine applies to a variety of types of cases including breach of contract, breach of fiduciary duty, and statutory violations. *See generally King v. 870 Riverside Dr. Hous. Dev. Fund Corp.,* 74 A.D.3d 494 (1st Dept. 2010); *Matter of Janke v. Community School Bd. of Community School Dist. No. 19*, 186 A.D.2d 190 (2d Dept. 1992).

Here, Petitioner's allegations set forth a continuing wrong, *i.e.* Respondents' alleged continuous and pervasive failure to operate and manage the Foundation in accordance with corporate and statutory rules and fiduciary obligations, resulting in the misuse of charitable assets and self-dealing, starting with the Fisher House Transaction and continuing in the years thereafter. Further, Petitioner seeks both monetary and equitable relief, and many of the allegations are within the six-year statute of limitations.

At this pre-answer stage of the proceedings, Respondents have not demonstrated as a matter of law that the transactions set forth in the petition are barred by the statute of limitations. I therefore deny dismissal of any part of the petition on this ground.

Bias

Respondents contend that due to the appearance of impartiality and the evidence of actual bias by the former Attorney General, Eric Schneiderman, and the Attorney General's office as a whole, the petition should be dismissed. They claim that the Attorney General's animus toward and personal attacks on the Respondents tainted the investigation of the Foundation and Petitioner's continued prosecution of the proceeding.

In response, Petitioner argues that this proceeding, which was commenced after Eric Schneiderman left office, is based on a legitimate, thorough investigation by the Charities Bureau that revealed illegal and unethical activity by the Respondents. Petitioner denies that the proceeding was commenced based upon bias or animus.

It is not within the province of the courts to subjectively determine the motivation of a government agency in commencing an enforcement proceeding, or to dismiss the proceeding because of the political disagreements of the parties. Instead, it is my responsibility to review the petition to see if it has legal and factual support, and if it does, to resolve it.

"[C]ourts, as a general rule, should remove a public prosecutor only to protect a defendant from actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence." *Schumer v. Holtzman*, 60 N.Y.2d 46, 55 (1983). After reviewing the allegations set forth in the petition, I find that Respondents have not stated a sufficient evidentiary basis to support an allegation of a demonstrated conflict of interest or a substantial risk of an abuse of confidence, and also have not shown that the investigation presents the "rare situation[ ]" in which "the appearance of impropriety itself is a ground for disqualification." *People v. Adams*, 20 N.Y.3d 608, 612 (2013).

Finally, given the very serious allegations set forth in the petition, I find that there is no basis for finding that animus and bias were the sole motivating factors for initiating the investigation and pursuing this proceeding. *See generally People v. Cain (Michael),* 2017 N.Y. Misc. LEXIS 2469 (N.Y. App. Term., June 22, 2017). For these reasons, I decline to dismiss the proceeding because of the alleged political bias of Petitioner.

Breach of Fiduciary Duty/ Failure to Properly Administer Charitable Assets and Waste (First and Second Causes of Action)

In its first and second causes of action, Petitioner alleges that the Individual Respondents breached their fiduciary duties and failed properly to administer the Foundation's assets by, among other things: failing to ever hold a board meeting or to keep required board minutes; failing to conduct reviews of the Foundations assets, liabilities, revenues and disbursements; failing to oversee the Foundation and its activities; failing to supervise the Trump Organization accounting staff[3]; permitting non-

[3] The petition alleges that the Trump Corporation, Inc. ("Corporation") – a management company owned by Mr. Trump – provides back-office services to the hundreds of business entities that comprise the Trump Organization (the "Organization"), including

Foundation members to disburse Foundation assets without review or approval; permitting Mr. Trump to solicit donations that went directly to the Foundation; and subsequently giving control over the donated funds to the Campaign which, in turn, distributed the funds so as to influence the outcome of Mr. Trump's presidential bid.

The Attorney General is authorized, pursuant to New York Not-For-Profit Corporation Law ("N-PCL") § 720(a), to bring an action against officers and directors:

> (1) To compel the defendant to account for his official conduct in the following cases:
> (A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.
> (B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

Under N-PCL § 717, "[d]irectors and officers shall discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." Section 717 also requires directors and officers of a not-for-profit corporation to act with undivided loyalty toward the corporation. *See also Birnbaum v. Birnbaum*, 73 N.Y.2d 461, 466 (1989) (holding that "it is elemental that a fiduciary owes a duty of undivided and undiluted loyalty to those whose interests the fiduciary is to protect").

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the Foundation. The Foundation allegedly does not have any of its own employees, and its operations are mainly performed by the Corporation's accounting staff. Purportedly, the Corporation was responsible for issuing checks from the Foundation, which it did based solely upon direction from Mr. Trump and without Board approval.

In addition, New York Estates, Powers and Trusts Law ("EPTL") § 8-1.4 empowers the Attorney General to "investigate transactions and relationships of trustees for the purpose of determining whether or not property held for charitable purposes has been and is being properly administered." The First Department has held that the EPTL § 8–1.4 supervisory power over charitable corporations enables the Attorney General "to enjoin [charitable foundations] from soliciting funds improperly." *Abrams v. New York Found. For the Homeless,* 190 A.D.2d 578, 578 (1st Dept. 1993). EPTL 8-1.8(a)(5) provides that "the [Foundation] shall not make any taxable expenditures which would result in the liability of the [Foundation] for any tax imposed on any such taxable expenditures under 4945 of the code."

Here, the Individual Respondents were each directors of the Foundation, and therefore owed fiduciary duties to the Foundation under N-PCL § 717. As directors of the Foundation, the Individual Respondents were also trustees of charitable assets pursuant to EPTL § 8-1.4 and thus were responsible for the proper administration of charitable assets.

As discussed above, Petitioner details numerous alleged acts and omissions by the Individual Respondents that would constitute failure to discharge their fiduciary duties. These allegations, taken together, adequately state a claim for breach of fiduciary duty.

The Individual Respondents do not dispute the bulk of the allegations concerning Foundation oversight which underlie these two causes of action. Respondents do contend, however, that the part of Petitioner's causes of action for breach of fiduciary duty and failure to properly to administer Foundation assets which rely on a claim of waste must be dismissed, because there was no loss or waste of Foundation assets as a matter of law.[4] The Respondents define "waste" – without any caselaw support – as occurring only when a charity's assets are used for non-charitable purposes. Respondents then conclude that because the Foundation's funds were eventually disbursed to charities, there was no waste, and therefore I may not order equitable relief for breach of fiduciary duty/failure properly to administer Foundation assets premised on allegations of wasted assets.

Contrary to Respondents' contention, "[t]he essence of a waste claim is 'the diversion of corporate assets for improper or unnecessary purposes.'" *SantiEsteban v. Crowder*, 92 A.D.3d 544, 546 (1st Dept. 2012) *citing Aronoff v. Albanese*, 85 A.D.2d 3, 5 (2d Dept. 1982); *Schneiderman ex rel. People v. Lower Esopus River Watch, Inc.*, 2013 WL 3014915, at *26, 39 Misc.3d 124(A) (Sup. Ct. Ulster Co. Apr. 8, 2013). Under this definition of waste, the inquiry does not end simply because the ultimate beneficiary of the assets was a charity. Instead, waste may still be found when assets were utilized improperly or unnecessarily in breach of fiduciary duty, even if the ultimate beneficiary of the assets was a charity. For example, in *In the Matter of the Investigation of the Homeland Foundation, Inc., Assurance of Discontinuance ("AOD") No. 15-172*, dated Sept. 1, 2015 (the "Homeland case"), one of the Attorney General's findings was that the

[4] The Individual Respondents' also contend that the part of Petitioner's claim against the Individual Respondents for breach of fiduciary duty/failure properly to administer Foundation assets based on the Fundraiser should be dismissed because the Fundraiser was not a related party transaction and did not constitute political activity. I address that contention below.

trustees breached their fiduciary duties by making grants that were tainted by conflicts of interest, notwithstanding that the grant recipients were charitable organizations.

Petitioner alleges here that the Foundation's funds were disbursed improperly, even though the funds may have ultimately ended up with charitable organizations. Thus, for example, Petitioner claims that the Individual Respondents ceded control over the Foundation's assets to the Campaign and failed to ensure that the assets were properly disbursed, as their fiduciary duties required them to do.

Further, the Petition is replete with allegations of Foundation funds being used for improper purposes, including that: 1) in the case of the Fisher House Transaction and Greenberg Transaction, grants were made to settle the legal obligations of Mr. Trump and his for-profit companies; 2) Mr. Trump instructed the Foundation to convert tax-exempt contributions into campaign funds that were used by the Campaign to make grants aimed at helping Mr. Trump's presidential race; and 3) the Foundation's distributions of the Fundraiser proceeds were directed by the Campaign rather than being based on objective criteria determined by the Individual Respondents.

Respondents also argue that the breach of fiduciary duty/failure properly to administer Foundation assets causes of action must be dismissed because the Foundation suffered no damages. Respondents point out that the Foundation has already been reimbursed for six individual donations, with excise taxes already paid, thus Petitioner's damages claim is moot.[5] First, "voluntary cessation of allegedly illegal conduct does not

[5] Respondents aver that "in an abundance of caution," the Foundation was reimbursed with interest for the following donations: (1) the Fisher House Transaction; (2) the

deprive the tribunal of power to hear and determine the case, *i.e.* does not make the case moot." *United States v. W.T. Grant Co.,* 345 U.S. 629, 632 (1953).

Moreover, Petitioner also requests restitution for the $2.8 million in charitable assets given by the Foundation to the Campaign for distribution, as well as an order pursuant to N-PCL § 715(f) and EPTL § 8-1.9(c), requiring Mr. Trump "to pay a penalty for willful and intentional conduct, in an amount up to double the value of transactions that occurred after July 1, 2014 - the Seven Springs Transaction and the expenditures on behalf of the Trump Campaign." Lastly, in addition to money damages Petitioner also seeks bars on future service by the Individual Respondents and dissolution of the Foundation. Petitioner has therefore adequately pled a demand for damages other than the funds reimbursed to the Foundation, and the breach of fiduciary duty/failure properly to administer Foundation assets causes of action are not moot for lack of damages.

That the Foundation's assets may have ultimately ended up in charitable organizations is a factor to be considered when considering the measure of damages, if any, to be awarded Petitioner, but that alone does not defeat Petitioner's causes of action for breach of fiduciary duty/failure properly to administer the Foundation's assets. At this stage of the litigation, the Petition sufficiently alleges breach of fiduciary duty/failure properly to administer Foundation assets and damages resulting therefrom. For the

Greenberg Transaction; (3) a 2013 DC Preservation League donation; (4) a 2013 "And Justice for All" payment; (5) a 2014 Unicorn Children's Foundation donation; and (6) a 2015 North American Land Trust donation.

foregoing reasons, I deny Respondents' motion to dismiss the first and second causes of action.

Wrongful Related Party Transaction (Third Cause of Action)

In the third cause of action, Petitioner alleges that Mr. Trump caused the Foundation to enter into transactions in which he had a financial interest without obtaining authorization from the Board for the transactions, or a determination by the Board that the transactions were in the Foundation's best interest. Petitioner alleges that Mr. Trump's actions were willful and intentional pursuant to N-PCL § 715(f)(4) and EPTL § 8-1.9(c)(4)(D).

N-PCL § 715 prohibits a private foundation from entering "into any related party transaction unless the transaction is determined by the board . . . to be fair, reasonable and in the corporation's best interest . . . . Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board . . . the material facts concerning such interest." EPTL § 8-1.9 provides an identical prohibition against related party transactions *vis-a-vis* trusts, and the parties do not dispute that both statutes are applicable. *See* EPTL § 8-1.9(c). A related party transaction is defined as "any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant[.]" N-PCL § 102(a)(24); *see also* EPTL § 8-1.9(a)(8).

In the petition, Petitioner's allegations of recent wrongful related party transactions focus most heavily on the Fundraiser. Mr. Trump allegedly held the Fundraiser instead of participating in a televised Republican primary debate. The

Fundraiser occurred four days before the Iowa Republican caucuses. Notably, as of the time of the Fundraiser, Mr. Trump had allegedly loaned the Campaign $17.5 million to self-fund his presidential bid.

Petitioner alleges that contrary to the Foundation's October 20, 2016 Amended Registration Statement for Charitable Organizations submitted to the Attorney General's Charities Bureau[6], the Fundraiser was a Campaign event organized and directed by the Campaign, with administrative assistance from the Foundation. Thus, Campaign staff, not the Foundation, purportedly managed an online ticket page and arranged for speakers to attend the Fundraiser. Trump Organization personnel and the Campaign's consultant allegedly worked together to create a website for the Foundation to receive donations from the Fundraiser, DonaldTrumpForVets.com. The Fundraiser allegedly raised $5.6 million, $2.823 million of which was donated to the Foundation, which was then supposed to be disbursed by the Foundation to charity organizations.[7] The remaining funds were purportedly donated directly by the donors to the charity organizations.

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[6] In response to the form's question asking the date that the Foundation began soliciting contributions in New York State, the Foundation stated that "[o]n January 28, 2016, [the Foundation] held a nationally televised fundraiser in Iowa to raise funds for veterans' organizations. In connection with this fundraiser, the Foundation also created a website to allow donors to make charitable contributions online."

[7] The petition includes a picture of Mr. Trump, purportedly at the Fundraiser. The podium from which Mr. Trump is pictured has a sign on the front of it, which states the following: "DonaldTrumpforVets.com / TRUMP / Des Moines, Iowa / MAKE AMERICA GREAT AGAIN!" "Make America Great Again" is a ubiquitous campaign slogan used by Mr. Trump during his 2016 presidential election campaign.

Petitioner alleges that, although the Foundation received the donations, it did not distribute them. In fact, the Foundation allegedly played no role in distributing the donations. Rather, the Campaign chose the recipient organizations, how much, and when the recipient would receive the funds.[8] Allegedly, the Campaign instructed Trump Organization personnel to issue Foundation checks to the grant recipients. At least one grant check was purportedly sent by a Campaign staff member to a grant recipient.

The Campaign and Mr. Trump presented enlarged versions of Foundation grant checks to recipients at several campaign rallies in Iowa in the days prior to and on the day of the Republican caucuses. When awarding a check at a Campaign rally on January 30, 2016, Mr. Trump allegedly referred to the check as "our first disbursement."[9]

On May 31, 2016, Mr. Trump purportedly hosted a press conference to address reports that the Foundation failed to disburse all funds received from the Fundraiser.

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[8] For example, the petition alleges that, at a January 31, 2016 Campaign rally, Mr. Trump awarded a check to an organization before the Foundation knew that the organization was selected as a grant recipient. Purportedly, the Campaign later requested that the Foundation issue a check, which it did on February 10, 2016.

[9] At a February 1, 2016 Campaign rally, Mr. Trump allegedly stated:

> 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.

During that press conference, Mr. Trump allegedly compared his fundraising efforts on behalf of veterans to those of his political opponent, Hilary Clinton. Mr. Trump also allegedly invited Al Baldasaro – a Republican member of the New Hampshire legislature who previously worked on the Campaign – to speak at this press conference. During his speech, Al Baldasaro allegedly endorsed Mr. Trump's candidacy repeatedly.

Respondents argue that the above-stated allegations (as well as others set forth in the petition) fail to make out a claim that Mr. Trump violated N-PCL § 715 and EPTL § 8-1.9 as a matter of law, and further that Mr. Trump did not willfully violate these statutes as a matter of law. Respondents focus on whether the Fundraiser may be considered a related party transaction and whether Mr. Trump's actions may be considered willful.[10]

<u>The Fundraiser as a Related Party Transaction</u>

Respondents first argue that the Campaign is not a "transaction" within the meaning of N-PCL § 102(a)(24) and EPTL § 8-1.9(a)(8). However, a related party transaction includes "any transaction, agreement or ***any other arrangement***." N-PCL § 102(a)(24) (emphasis added); EPTL § 8-1.9(a)(8) (same). Review of the statutes' legislative history demonstrates that the legislature amended both statutes in 2014 to strengthen New York law and deter self-dealing by encouraging active board

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[10] Respondents also argue that, because the Petition does not adequately allege that Mr. Trump engaged in a wrongful related party transaction, to the extent that the first and second causes of action against the Individual Respondents are based upon the Individual Respondents' failure to prevent Mr. Trump from participating in the related party transaction, those causes of action must be dismissed.

management. *See* Senate Introducer's Mem in Support, Bill Jacket, 2013 A.B. 8072, ch 549 at 11. ("[M]aintaining the public's trust . . . requires that boards provide effective oversight over the charitable funds entrusted to them, and that the Attorney General have the necessary tools to protect charities and donors from fraud and abuse.").

Given the statutes' strong remedial purpose, I interpret "any other arrangement" as including all circumstances in which self-dealing may occur, regardless of whether the circumstances are considered a typical "transaction." This broad, remedial language includes circumstances like those alleged in the petition, where a private individual uses a private charitable foundation to advance the individual's personal interest without payment.

Moreover, the petition does not allege that the Campaign alone is a related party transaction. Instead, the petition alleges that the Campaign exploited its control of Foundation assets by dictating when and to which charities the Foundation distributed donations that it received from the Fundraiser to advance Mr. Trump's presidential bid. I find that such allegations fall within the broad meaning of "any transaction, agreement or any other arrangement[.]" N-PCL § 102(a)(24); EPTL § 8-1.9(a)(8).

Respondents next argue that neither the Foundation nor Mr. Trump is a "participant" in a related party transaction because, according to Respondents, the Foundation was a passive recipient of donated funds and never directly contributed money to the Campaign. However, the petition alleges that the Foundation issued grants at Mr. Trump's and the Campaign's direction without the Foundation's independent oversight, and with the specific intent to advance Mr. Trump's presidential bid. The petition further alleges that this arrangement amounted to an in-kind contribution and is a gift under New York law. Here again, that the donated funds ultimately went to charitable organizations does not, by itself, refute a claim that the Campaign used the Foundation's funds to garner votes for Mr. Trump.

Respondents also argue that Mr. Trump has no "financial interest" in the alleged arrangement because publicity is an incidental nonmonetary benefit. As support, Respondents cite the Internal Revenue Code's definition of self-dealing. *See* 26 USC § 4941. Section 4941(d)(1)(E) of the Internal Revenue Code defines self-dealing, in part, as "any direct or indirect . . . transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation," which excludes incidental or tenuous benefits. *See* 26 CFR 53.4941(d)-2 (f)(2). "Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous." 26 CFR 53.4941(d)-2 (f)(2).

Unlike the incidental public recognition contemplated by 26 CFR 53.4941(d)-2 (f)(2) which raises someone's general profile, here the petition alleges that, by using the Foundation's assets, the Campaign garnered expensive, vote-getting publicity that Mr. Trump would have otherwise paid for himself.[11] The petition thus sufficiently alleges that Mr. Trump's interest in the alleged acts of self-dealing were financial in nature and were substantial.

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[11] Notably, Trump allegedly received publicity for donations from third parties and not as a substantial contributor.

In sum, the petition adequately alleges a related party transaction, sufficient to support the third cause of action against Mr. Trump, and also the first two causes of action to the extent that the Individual Respondents allegedly failed to prevent the alleged related party transaction.

Allegations of Willful and Intentional Conduct

Finally, the parties dispute the meaning of "willful and intentional conduct" in N-PCL § 715(f)(4) and EPTL § 8-1.9(c)(4)(D), which grants the Attorney General authority to seek, "in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained."

Petitioner seeks double damages because Mr. Trump's conduct as to the alleged related party transaction was willful and intentional. Respondents argue that Petitioner may not seek double damages because, under New York law, willful and intentional conduct requires that Respondents were aware that their conduct was unlawful, and Petitioner is unable to establish that Mr. Trump knew his conduct was a prohibited related party transaction.

Petitioner alleges that Mr. Trump signed Foundation checks, which he intentionally presented at Campaign rallies. The petition further alleges that Foundation checks were drawn up at Mr. Trump's and the Campaign's direction. These allegations sufficiently support a claim that Mr. Trump intentionally used Foundation assets for his private interests knowing that it may not be in the Foundation's best interest.

For the foregoing reasons, I find that the petition adequately alleges a cause of action for a wrongful related party transaction.

Judicial Dissolution of the Foundation (Fourth and Fifth Causes of Action)

Respondents argue that judicial dissolution of the Foundation is unwarranted because the Foundation has been attempting to voluntarily dissolve for the past two years. I have been actively encouraging the parties to resolve the dissolution aspect of this proceeding without court intervention, but they have been unable to do so.

Nevertheless, Respondents fail to demonstrate a basis to strike the Petitioner's request for injunctive relief. At this juncture, it would be premature to determine whether the Petitioner will be entitled to judicial dissolution of the Foundation, and the terms of which dissolution will be based. *See generally People v. Merkin*, 26 Misc. 3d 1237(A) (Sup. Ct. N.Y. Co., 2010). I again urge the parties to agree to the terms of dissolution of the Foundation without judicial intervention.

The Fundraiser as Prohibited Political Activity

As an additional basis to support the claims for dissolution, as well as the claims already discussed herein, Petitioner alleges that the Foundation engaged in prohibited political activity. Respondents argue that, to the extent Petitioner's causes of action are based on such allegations, no relief is warranted for failure to allege prohibited political activity in violation of 26 USC § 501(c)(3).

The Foundation is a private foundation, as defined by the Internal Revenue Code, and its Certificate of Incorporation provides that it "shall be organized and operated exclusively for the purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954." Incorporating the language of 26 USC § 501(c)(3), ¶7 of the Foundation's Certificate of Incorporation provides that "[n]o part of the activities of the

[Foundation] shall be carrying on propaganda or otherwise attempting to influence legislation or participating or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office."

The Foundation is similarly prohibited from "mak[ing] any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent Federal tax laws." Certificate of Incorporation ¶8(e); N-PCL § 406(a)(5); EPTL § 8-1.8(a)(5). 26 USC § 4945 defines taxable expenditures, in part, as "any amount paid or incurred by a private foundation to . . . carry on propaganda, or otherwise attempt, to influence legislation . . .," 26 USC 4945(d)(1), or "to influence the outcome of any specific public election." 26 USC 4945(d)(2).

The prohibition on a tax-exempt organization from engaging in prohibited political activity to influence the outcome of an election is virtually the same under 26 USC § 501(c)(3) and 26 USC § 4945.[12] Determining whether an organization engaged in prohibited political activity by "participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office

[12] *Compare* 26 CFR 1.501(c)(3)-1(b)(3)(ii) ("An organization is not organized exclusively for . . . exempt purposes if its articles expressly empower it" to "[d]irectly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office[.]"), *with* 26 CFR 53.4945-3 ("an organization shall be considered to be influencing the outcome of any specific public election if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office").

depends upon all of the facts and circumstances of each case." Rev. Rul. 2007-41, 2007-1 CB 1421 (2007) (hereinafter, "Rev. Rul. 2007-41").

Here, the petition alleges that Mr. Trump and the Campaign had complete control over the Foundation and used the Foundation to advance Mr. Trump's presidential bid. The petition also alleges that the Foundation ceded control and discretion over the donations received from the Fundraiser to the Campaign. *Cf.* Rev Rul 68-489, 1968-2 CB 210 (1968) (organization's distributions to not exempt organizations "did not jeopardize the organization's exemption under section 501(c)(3)" where that organization "retain[ed] control and discretion as to the use of the funds and maintained records establishing that the funds were used for section 501(c)(3) purposes"). All of these services, assets, and resources were allegedly offered exclusively to the Campaign to assist Mr. Trump's candidacy and further his political goals.

Respondents argue that Mr. Trump was acting in his individual capacity – not on behalf of the Foundation – at the Fundraiser and subsequent rallies. Although an organization's leaders may attend political functions in their individual capacity, "for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization." Rev. Rul. 2007-41.[13]

[13] *Cf.* Rev. Rul. 2007-41, Situation 5 (no campaign intervention where minister made statement at press conference and endorses candidate where, although minister did not specify whether he is speaking in his individual or professional capacity, he "did not make the endorsement at an official church function, in an official publication ***or otherwise use the church's assets***") (emphasis added).

The allegations in the petition which purport to quote Mr. Trump at the Fundraiser, rallies, and press conference show that Mr. Trump was acting in both of his capacities as campaign candidate and president of the Foundation. Moreover, considering the allegations of coordination between the Campaign and Foundation, as well as the control and authority that Mr. Trump and the Campaign allegedly wielded over the Foundation, the petition adequately alleges that the political acts by Mr. Trump and the Campaign are attributable to the Foundation.

Injunction Pending Resolution (Sixth Cause of Action)

In the sixth cause of action, Petitioner seeks a preliminary injunction enjoining Individual Respondents from operating the Foundation pending resolution of this proceeding. As stated above, Respondents are trying voluntarily to dissolve the Foundation, thus the sixth cause of action is moot, and I dismiss it.

In accordance with the foregoing, it is hereby

ORDERED that the motion of respondents The Donald J. Trump Foundation, Donald J. Trump, Donald J. Trump Jr., Ivanka Trump, and Eric F. Trump to dismiss the petition is denied except as to the sixth cause of action; and it is further

ORDERED that the sixth cause of action is dismissed; and it is further

ORDERED that the respondents are directed to answer the petition within forty-five (45) days of the date of this order.[14]

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[14] In their moving papers, Respondents request to conduct discovery. Disclosure is available in a special proceeding only by leave of court. *See* CPLR 408. "Among the factors weighed are whether the party seeking disclosure has established that the requested information is material and necessary, whether the request is carefully tailored

This constitutes the decision and order of the court.

11/21/18
DATE

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CHECK ONE:	☐ CASE DISPOSED			☒ NON-FINAL DISPOSITION		
	☐ GRANTED	☒ DENIED		☐ GRANTED IN PART		☐ OTHER
APPLICATION:	☐ SETTLE ORDER			☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN			☐ FIDUCIARY APPOINTMENT		☐ REFERENCE

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to obtain the necessary information and whether undue delay will result from the request[.]" *Suit-Kote Corp. v Rivera*, 137 A.D.3d 1361, 1365 (3d Dept. 2016). Respondents have failed to demonstrate any deficiency in the record that would make discovery necessary, particularly because the purported discovery Respondents seek is within their knowledge and control. Regarding discovery as to the Attorney General's bias, I found irrelevant Respondents' bias argument for dismissal and therefore, discovery on bias is also irrelevant and would only serve to unnecessarily delay the proceeding.