



FEDERAL ELECTION COMMISSION
Washington, DC 20463

TO: The Commission

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SUBJECT: PMUR 611/MUR 7425 (Donald J. Trump Foundation, *et al.*) – Supplemental Submissions

I. Summary

The Office of the General Counsel circulated the First General Counsel's Report ("FGCR") to the Commission in PMUR 611/MUR 7425 (Donald J. Trump Foundation, *et al.*) on May 31, 2019. The two matters stem from an investigation into the Donald J. Trump Foundation ("Foundation") conducted by the New York State Attorney General's Office ("NYAG"). The FGCR recommended that the Commission find reason to believe that Donald J. Trump, Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer ("Trump Committee"), and the Foundation violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending soft money in connection with a fundraiser Trump held shortly before the Iowa caucuses during the 2016 election cycle ("Fundraiser"). It further recommended that the Commission take no action at this time as to whether the remaining respondents violated 52 U.S.C. § 30125(e). Finally, the FGCR recommended finding no reason to believe that Trump and the Foundation violated the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with a \$25,000 donation to And Justice for All from 2013.

Subsequent to the circulation of the FGCR, the NYAG reached a settlement with Trump and the Foundation in which Trump and the Foundation stipulated to certain facts relevant to

these matters.¹ The Court also issued a Decision & Order that “so ordered” the settlement and determined that Trump owed \$2 million in damages for breaches of fiduciary duty and waste as a result of the Fundraiser.² Based on the settlement and Decision & Order, the Complainant in MUR 7425, Campaign Legal Center, submitted a Supplemental Complaint (“Supplement”) on November 25, 2019, and the Trump Committee submitted a supplemental response (“Supplemental Response”) on January 13, 2020.³ On January 31, 2020, we received a response from the Foundation stating that, as of December 24, 2019, the Foundation “has been dissolved and is no longer an entity registered in New York State.”⁴

This memorandum provides an update to the Commission regarding the terms of the settlement agreement, the findings of the Decision & Order, and an analysis of this new information and the parties’ arguments from their supplemental submissions. Because the additional information available to the Commission subsequent to the circulation of the FGCR is consistent with our analysis in that report, these submissions do not change the recommendations contained in the First General Counsel’s Report, except we recommend that the Commission direct the Office of General Counsel to revise the Factual and Legal Analysis circulated on May 31, 2019.

II. Settlement Agreement between the NYAG and the Trump Foundation

The settlement between the NYAG, Trump, and the Foundation occurred in stages over a number of months. On December 19, 2018, the parties agreed to dissolve the Foundation under judicial supervision and jointly submitted to the Court a proposed list of not-for-profit organizations to receive distributions from the Foundation’s remaining assets upon the issuance of a final order of dissolution.⁵ On October 1, 2019, the parties entered into several stipulations,

¹ Stipulation of Final Settlement, *People v. Trump, et al.*, No. 451130/2018, Doc. No. 139 (N.Y. Sup. Ct. N.Y. Cty. Nov. 7, 2019) (“Stipulation”) (the parties signed the documents on October 1, 2019). The Stipulation is included herein as Attachment 1. Donald J. Trump, Jr., Ivanka Trump, and Eric Trump, respondents in both PMUR 611 and MUR 7425, are also parties to the Stipulation.

² *People v. Trump*, 66 Misc. 3d 200, 112 N.Y.S. 3d 467 (N.Y. Sup. Ct. 2019) (“Decision & Order”). The Decision & Order is included herein as Attachment 2.

³ Supp. Compl. (Nov. 25, 2019); Trump Committee Supp. Resp. (Jan. 13, 2020).

⁴ Foundation Resp. at 1 (Jan. 31, 2020).

⁵ The organizations are Army Emergency Relief, Children’s Aid Society, City Meals-on-Wheels, Give an Hour, Martha’s Table, United Negro College Fund, United Way of Capital Area, and US Holocaust Memorial Museum. *See* Decision & Order at 2 n. 1.

which they submitted to the Court for approval.⁶ The parties stipulated to several facts relating to the allegations in these matters, including the following:

- On January 26, 2016, Mr. Trump, then a candidate in the primary elections for the Republican party nomination for president of the United States, announced that he would conduct the Iowa Fundraiser on January 28, 2016, in lieu of participating in a televised debate featuring other Republican presidential candidates. The Iowa Fundraiser was presented as the “Donald J. Trump Special Event for Veterans.” The website for the Iowa Fundraiser, DonaldTrumpForVets.com, was developed by Campaign personnel and, with the agreement of the Foundation, 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;”
- The Campaign planned, organized, and paid for the Iowa Fundraiser, with administrative assistance from the Foundation; and the Campaign directed the timing, amounts, and recipients of the Foundation’s grants to charitable organizations supporting military veterans;
- The Iowa Fundraiser raised approximately \$5.6 million in donations for veterans’ groups, of which \$2.823 million was contributed to the Foundation; the balance was contributed by donors directly to various veterans’ groups. At Campaign events in Iowa on January 30, January 31, and February 1, 2016, Mr. Trump personally displayed presentation copies of Foundation checks to Iowa veterans’ groups. On May 31, 2016, at a Campaign press conference, Mr. Trump announced the grants the Foundation made to veterans’ groups with the proceeds of the Iowa Fundraiser, and on or about the same day, the Campaign posted on its website a chart identifying the grant recipients.⁷

⁶ See generally Stipulation. The Stipulation states that it “is not intended for use by any third party in any other proceeding and is not intended, and shall not be construed, as an admission of liability by the Respondents.” *Id.* at 13.

⁷ *Id.* ¶¶ 5-7. The parties also stipulated that “Trump was the founder of the Foundation and served as its president from 1987 through November 13, 2018,” and that the board of directors of the Foundation failed to “provide oversight, set policy or approve the direction, operation or acts of the Foundation.” *Id.* ¶¶ 2-3. To resolve the case, the parties agreed that: (1) the Foundation’s remaining liquid assets of \$1,782,910.92 would be divided evenly between eight agreed upon, judicially approved, non-profit organizations; (2) Respondents Donald J. Trump Jr., Ivanka Trump, and Eric Trump certified that they had each completed a training session pertaining to the fiduciary responsibilities relevant to charitable organizations, and New York agreed to dismiss them with prejudice at that time; (3) Donald Trump agreed to reimburse the Foundation for \$11,525 in connection with auction items at a charitable benefit not relevant to this matter; (4) Donald Trump further agreed to a number of requirements should he wish to serve as an officer or director of a New York charitable organization, including *inter alia*, the hiring of counsel and an accounting firm; and (5) the Court would decide the amount of any additional payment arising out of the Foundation’s fundraiser at issue in this MUR. *Id.* at 10-13.

While the parties agreed on the majority of issues, the Court was to determine the final compensation owed as a result of violations of New York State charity law with respect to the Fundraiser.⁸ On November 7, 2019, the Court issued a Decision & Order approving the parties' settlement and determining that Trump breached his fiduciary duty and that waste occurred to the Foundation by "allowing his campaign to orchestrate the Fundraiser, allowing his campaign, instead of the Foundation, to direct distribution of the Funds, and using the Fundraiser and distribution of the Funds to further Mr. Trump's political campaign."⁹ The Court found that "the \$2,823,000 raised at the Fundraiser was used for Mr. Trump's political campaign and disbursed by Mr. Trump's campaign staff, rather than by the Foundation" in violation of state non-profit corporation and charitable trust law.¹⁰ Quoting from the parties' stipulations, the Court found that "Trump's campaign, rather than the Foundation: (1) 'planned' and 'organized' the Fundraiser; and (2) 'directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans.'"¹¹

The Court awarded damages against Trump personally in the amount of \$2,000,000. New York had requested that the Court impose damages in the amount of the full \$2,823,000 raised at the fundraiser.¹² The Court reduced the damages from the amount sought by the NYAG because "the funds did ultimately reach their intended destinations, *i.e.*, charitable organizations supporting veterans"¹³ The Court declined to award punitive damages.

III. Supplemental Complaint and Responses

The Supplement submitted by the Campaign Legal Center argues that the Court's findings and the parties' stipulations in the New York State litigation demonstrate that Trump, the Trump Committee, and the Foundation violated the soft money prohibitions of the Act. Specifically, the Supplement argues that it is now undisputed that the "Fundraiser was 'orchestrate[d]' by the Trump campaign, 'planned, organized, and paid for' by the campaign, and used 'to further Trump's political campaign'" and that these undisputed facts establish that Trump and the Foundation solicited and received soft money in connection with an election to federal office in violation of 52 U.S.C. § 30125(e)(1).¹⁴ The Supplement argues that these same

⁸ Decision & Order, 66 Misc. 3d at 202.

⁹ *Id.* at 203.

¹⁰ *Id.* at 204.

¹¹ *Id.* at 204 n.3.

¹² *Id.* at 204 (ordering damages to be paid *pro rata* to the eight judicially-approved recipients of the Foundation's remaining liquid assets).

¹³ *Id.*

¹⁴ Supp. Compl. at 2-3 (quoting Decision & Order, 66 Misc. 3d at 204).

undisputed facts further establish that the Trump Campaign directed and spent soft money in connection with a federal election in violation of 52 U.S.C. § 30125(e)(1).¹⁵

In Response, the Trump Committee does not dispute that the Fundraiser was subject to the Act’s soft money restrictions and that the event was paid for by the campaign, but instead reiterates the argument from its original Response that Trump and his agents are permitted, under 52 U.S.C. § 30125(e)(4)(A), to make solicitations of donations to charities that do not have a principal purpose of engaging in certain federal election activity (the “Charitable Exclusion”).¹⁶ The Trump Campaign relies on the court’s finding that “the Funds deposited [(with the Trump Foundation)] did ultimately reach their intended destinations, i.e., charitable organizations supporting veterans” to support its argument that the Act intended to permit exactly the type of solicitations represented by the Fundraiser.¹⁷

The Commission also received a response from the Trump Foundation informing the Commission that it was dissolved on December 24, 2019.¹⁸ The Trump Foundation did not make any additional assertions or arguments and did not join in the Trump Committee’s response. Trump did not submit a response.

IV. Analysis

The information that has become available subsequent to the circulation of the FGCR — the Stipulation, Decision & Order, Supplement, and Supplemental Responses — is consistent with and reinforces the analysis and recommendations in the FGCR.

Under the Act and Commission regulations, federal candidates and officeholders; agents of federal candidates and officeholders; and entities directly or indirectly established, financed, maintained, or controlled (“EFMC’d”) by, or acting on behalf of, federal candidates or officeholders cannot solicit, receive, direct, transfer, or spend funds in connection with an election for federal office, including funds for any federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹⁹

As a threshold issue, the FGCR concluded that the Fundraiser, which the Committee described as a “campaign event” in its initial response to the Complaint, and the distribution of

¹⁵ *Id.* at 3.

¹⁶ Trump Committee Supp. Resp. at 1-2.

¹⁷ *Id.* at 2.

¹⁸ Trump Foundation Resp. at 1.

¹⁹ *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

donations raised through the Fundraiser, were in connection with an election for federal office.²⁰ The Decision & Order further reinforces the conclusion that the Fundraiser was in connection with a federal election by holding that Trump “allow[ed] his campaign to orchestrate the Fundraiser . . . direct distribution of the Funds, and us[ed] the Fundraiser and distribution of the Funds to further Mr. Trump’s political campaign.”²¹ In further support of its conclusion that this activity establishes Trump’s breach of his fiduciary duty to the Foundation, the Decision & Order quotes the parties’ Stipulation that Trump’s campaign “dictated the timing, amounts, and recipients of the Foundation’s grants to charitable organizations supporting military veterans.”²² The Court’s findings that the Trump Committee planned the Fundraiser and directed the distribution of the proceeds of the Fundraiser to benefit Trump’s campaign reinforce the FGCR’s conclusion that the events were in connection with an election to federal office.

Next, the FGCR concluded that Trump EFMC’d the Foundation while he was a federal candidate.²³ The Decision & Order’s conclusion that Trump, as a director of the Foundation, and trustee of its assets who was responsible for the Foundation’s proper administration, breached his fiduciary duty to the Foundation by allowing his campaign to plan, organize, and distribute the funds raised through the Fundraiser and that he was personally liable for \$2 million in damages, is similarly consistent with the FGCR’s analysis that Trump EFMC’d the Foundation.²⁴

Third, the FGCR concluded that Trump, the Trump Committee, and the Foundation solicited, received directed, transferred or spent non-federal funds by, *inter alia*, soliciting non-federal donations at the Fundraiser, receiving \$1.2 million from four checks, and directing the Foundation’s distribution of the proceeds of the Fundraiser.²⁵ The Decision & Order reinforces this conclusion by finding that Trump “allow[ed] his campaign, instead of the Foundation, to direct distribution of the Funds”²⁶ and that Trump’s campaign, rather than the Foundation, “directed the timing, amounts and recipients of the Foundation’s grants to charitable organizations supporting military veterans.”²⁷ While the Court used the word “direct” on two separate occasions, the Court’s findings also indicate that Trump solicited funds to the

²⁰ See FGCR at 15-18.

²¹ Decision & Order, 66 Misc. 3d at 204.

²² *Id.* at 204 n.3.

²³ See FGCR at 18-22.

²⁴ Decision & Order, 66 Misc. 3d at 204.

²⁵ See FGCR at 22-28.

²⁶ Decision & Order, 66 Misc. 3d at 204.

²⁷ *Id.* at 204 n.3.

Foundation and that the Foundation received those funds.²⁸ Although the Decision & Order does not directly address whether the funds raised through the Fundraiser exceeded the Act's contribution limits and source prohibitions, the information from the NYAG that formed the basis of the referral to the Commission indicates that at least some of the individual donations were well in excess of the \$2,700 contribution limit.²⁹

The Trump Committee's Supplemental Response does not dispute the Decision & Order's conclusions, but instead reiterates the argument set forth in its initial Response that the activity falls within the Charitable Exclusion.³⁰ However, as explained in the FGCR, the Trump Committee's activities did not fall within the scope of the Charitable Exclusion for several reasons. First, the Commission previously concluded in Advisory Opinion 2003-12 (Flake) that the Charitable Exclusion did not apply to nonprofit organizations EFMC'd by a candidate.³¹ Thus, as explained in the FGCR, Trump's solicitation of funds to the Foundation, regardless of their further disposition, is not entitled to the Charitable Exclusion; the Court's finding that the Trump Committee directed "the Foundation's grants" to "further Mr. Trump's political campaign"³² supports the FGCR's analysis that at least some of the funds were received by the Foundation rather than charitable organizations not EFMC'd by Trump. In addition, as explained in the FGCR, even if the Commission were to accept the Trump Committee's argument, the Charitable Exclusion is limited to "solicitations" and would not apply to the Foundation's receiving or directing of non-federal funds that both the FGCR and the Decision & Order detail.³³

Finally, the dissolution of the Trump Foundation on December 24, 2019, does not warrant a change to the FGCR's reason to believe recommendations. In prior matters, the

²⁸ *Id.* at 203 (noting that the Foundation "received" funds and that Trump allowed his campaign to orchestrate the Fundraiser).

²⁹ *See* FGCR at 23 (analyzing information from the NYAG that indicates that the Foundation received four checks for \$1.2 million in addition to \$1.6 million in online donations from unknown sources and in unknown amounts).

³⁰ *See* 52 U.S.C. § 30125(e)(4)(A) (describing general solicitations that do not "specify how the funds will or should be spent"); 11 C.F.R. § 300.65(a); *see also* FGCR at 25-28.

³¹ *See* FGCR at 26 (citing Advisory Op. 2003-12 (Flake)).

³² Decision & Order, 66 Misc. 3d at 204.

³³ *See* FGCR at 28.

Commission has considered possible enforcement action against entities that dissolved after the activity at issue in the enforcement action.³⁴

V. Conclusion

In sum, the information available to the Commission subsequent to the circulation of the FGCR supports the recommendations in the FGCR that the Commission should find reason to believe that Donald J. Trump, Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer, and the Donald J. Trump Foundation violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending soft money in connection with the Fundraiser. An investigation would still be necessary to determine the extent to which the funds solicited directly to the veteran's organizations exceeded the Act's source and amount limitations, an issue that was not addressed in the settlement.

VI. Recommendations

1. Approve recommendations 1, 2, 3, 4, 6, and 7 in the First General Counsel's Report in PMUR 611/MUR 7425 circulated on May 31, 2019; and
2. Direct the Office of General Counsel to revise the Factual and Legal Analysis circulated on May 31, 2019.

Attachments:

1. Stipulation
2. Decision & Order

³⁴ See, e.g., Certification at 2, MUR 7465 (Freedom Vote, Inc.) (July 30, 2019) (open matter) (finding reason to believe after Freedom Vote, Inc. dissolved); First Gen. Counsel's Rpt. at 7 n.4, MUR 6790 (Coakley for Senate) (termination of a committee does not prevent the Commission from considering possible enforcement action); First Gen. Counsel's Rpt. at 1 n.1, MUR 7336 (Mulvaney for Congress) (same).

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

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, 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 OF FINAL
SETTLEMENT**

This Stipulation of Final Settlement ("Stipulation") is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General" or "OAG"), and Respondents Donald J. Trump ("Mr. Trump") and the Donald J. Trump Foundation (the "Foundation") by their attorneys, Alan S. Futerfas and Marc L. Mukasey. The Attorney General, Donald J. Trump and the Foundation are referred to collectively herein as the "Parties." Mr. Trump and the Foundation shall be collectively referred to herein as the "Remaining Respondents."

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

WHEREAS, the Verified Petition alleges that Respondents engaged in improper political activity and self-dealing transactions, and failed to follow certain required obligations and corporate formalities;

WHEREAS, pursuant to the New York Not-for-Profit Corporation Law ("N-PCL") Section 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, and that 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);

WHEREAS, pursuant to the New York Estates, Powers, and Trust Law ("EPTL") Section 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 "IRC" or the "Code")], and pursuant to EPTL Section 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 [Code];"

WHEREAS, IRC Section 4941 imposes an excise tax on acts of self-dealing, and IRC Section 4945 imposes an excise tax on any amount paid to influence the outcome of a specific public election, and that 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;

WHEREAS, pursuant to Executive Law Section 175(2), N-PCL Sections 706(d), 715(f), 720(a), and EPTL Section 8-1.9(c)(4), the Attorney General may, among other actions, bring a special proceeding against a charitable organization or any other persons acting for it; bring an action to remove a director for cause or bar a director from future service on the board; seek an order requiring a person to account for profits from an improper related party transaction or 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; or 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;

WHEREAS, the Verified Petition alleges that in 2016, the Foundation engaged in political activity and related party transactions with Donald J. Trump for President, Inc. (the "Campaign"), a federally registered principal campaign committee, insofar as it alleges that the Campaign directed the Foundation's activities in connection with a nationally televised fundraiser for veterans held in Des Moines, Iowa, on January 28, 2016 (the "Iowa Fundraiser"), and the subsequent disbursements of proceeds from the event; and

WHEREAS, the Parties agree to the following factual stipulations:

1. The Foundation is a private New York not-for-profit, 501(c)(3) corporation incorporated in 1987;
2. Respondent Mr. Trump is the founder of the Foundation and served as its president from 1987 through November 13, 2018;
3. The Foundation's Board of Directors did not meet from 1999 through November 2018, and did not provide oversight, set policy or approve the direction, operations or acts of the Foundation; did not promulgate written criteria for the consideration, approval, or monitoring of grants, or protocols for assuring compliance with the organization's governing documents and charitable mission; and did not adopt a conflict of interest policy after July 2014, when such policy was required;
4. The omissions identified in Paragraph 3 above contributed to the Foundation's participation in the events and transactions described in Paragraphs 5-16 below;

5. **The Iowa Fundraiser and the Distribution of Its Proceeds (2016).** On January 26, 2016, Mr. Trump, then a candidate in the primary elections for the Republican party nomination for president of the United States, announced that he would conduct the Iowa Fundraiser on January 28, 2016, in lieu of participating in a televised debate featuring other Republican presidential candidates. The Iowa Fundraiser was presented as the "Donald J. Trump Special Event for Veterans." The website for the Iowa Fundraiser, DonaldTrumpForVets.com, was developed by Campaign personnel and, with the agreement of the Foundation, 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";
6. The Campaign planned, organized, and paid for the Iowa Fundraiser, with administrative assistance from the Foundation; and the Campaign directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans;
7. The Iowa Fundraiser raised approximately \$5.6 million in donations for veterans' groups, of which \$2.823 million was contributed to the Foundation; the balance was contributed by donors directly to various veterans' groups. At Campaign events in Iowa on January 30, January 31, and February 1, 2016, Mr. Trump personally displayed presentation copies of Foundation checks to Iowa veterans' groups. On May 31, 2016, at a Campaign press conference, Mr. Trump announced the grants the Foundation made to veterans' groups with the proceeds of the Iowa Fundraiser and, on or about the same day, the Campaign posted on its website a chart identifying the grant recipients;
8. **The Mar-a-Lago Settlement/ Fisher House Donation (2007).** In 2007, Mar-a-Lago, a

private club in Palm Beach, Florida owned by a company controlled by Mr. Trump, received a town citation accusing the club of violating a local ordinance by flying a large American flag on its property. In response, Mar-A-Lago filed suit challenging the constitutionality of the ordinance. The parties settled the litigation on April 17, 2007.

The terms of the settlement agreement provided that Mr. Trump would contribute \$100,000 to charities agreed to between the parties relating either to veterans, the American flag or the local VA Hospital. In September 2007, Mr. Trump caused the Foundation to donate \$100,000 to the Fisher House Foundation, a section 501(c)(3) charitable organization that assists military families and wounded soldiers. On March 10, 2017, Mr. Trump reimbursed the Foundation \$100,000 plus interest of \$8,763.41;

9. **The Trump National Golf Club Lawsuit/ Alonzo Mourning Charities Event**

(2012). In 2011, the Alonzo Mourning Charities ("AMC"), a section 501(c)(3) charitable organization run by former NBA player Alonzo Mourning that provides advocacy and educational services to disadvantaged children in South Florida, held a charity golf tournament on the property of the Trump National Golf Course in Briarcliff, New York ("TNGC"). As part of the event, golfers were given the opportunity to win \$1 million if they hit a "Hole in One" at the par 3, 13th hole. In advance of the event, AMC obtained what is known as "Hole in One" insurance to underwrite and guarantee the payment. Martin B. Greenberg made a "Hole in One." When the insurer who had issued the policy refused to pay out because of an alleged flaw in the set-up of the 13th hole on the course, Greenberg filed suit against the insurer, TNGC, AMC and others;

10. As part of a settlement, AMC agreed to make a \$775,000 contribution to Mr.

Greenberg's charitable foundation. Pursuant to an agreement between AMC and TNGC, TNGC, which was owned by a company controlled by Mr. Trump, agreed

- to donate to AMC two lifetime TNGC golf memberships together with the proceeds from the sale of a third lifetime TNGC membership. Between 2012 and 2013, AMC auctioned the two lifetime memberships for a total of \$304,499. On December 19, 2011, the Foundation auctioned a third membership through an online auction for \$185,000. On January 9, 2012, after deducting a 15% service fee for the auctioneer site, \$157,250 was transferred to the Foundation and donated to Mr. Greenberg's foundation to satisfy TNGC's remaining obligations under its agreement with AMC. On March 17, 2017, TNGC contributed \$158,000 plus \$3,593.08 in interest back to the Foundation;
11. The "And Justice for All" Transaction (2013). In 2013, Mr. Trump sent an instruction to donate \$25,000 to Pamela Bondi's political campaign fund called "And Justice for All." The request was received by an accounts payable clerk. A clerk testified that she confused the political campaign with a Utah-based 501(c)(3) organization by the same name, and another administrative clerk sent the check to Pam Bondi's re-election campaign address in Florida on September 9, 2013;
12. The Foundation states that when it filed its 2013 IRS Form 990-PF with the Charities Bureau as part of its annual New York State filing obligation, it was not aware of the issue and, accordingly, did not disclose the contribution to Ms. Bondi's re-election campaign. Further, the Foundation's outside accountants stated that they mistakenly identified the contribution on the Foundation's Form 990-PF tax return as being made to "Justice for All," a 501(c)(3) organization located in Kansas;
13. On or about March 23, 2016, the Foundation filed an IRS Form 4720 reporting the transaction and Mr. Trump paid the excise tax due under the Code and reimbursed \$25,000 to the Foundation;

14. The Trump International Hotel Advertisement/DC Preservation League

Donation (2013). In 2013, the Foundation contributed \$5,000 to the DC Preservation League ("DCPL"), a section 501(c)(3) organization that works to protect historic buildings in Washington, D.C. The contribution entitled the Foundation to run an ad in the hard copy program for a DCPL fundraising event and a promotion for The Trump International Hotel in Washington, D.C. was placed in the event's program. On December 9, 2016, Trump Hotels contributed \$5,084.62, plus interest, to the Foundation to reimburse it for the contribution to DCPL. On December 19, 2016, the Foundation filed an IRS Form 4720 reporting the transaction. Further, Trump International Hotel Management LLC paid excise taxes and interest due under the Code in the amounts of \$502.33, \$505.12, and \$506.88, respectively, for each of the 2013, 2014 and 2015 tax years;

15. The Trump Portrait/ Unicorn Children's Foundation Donation (2014).

On March 1, 2014, the Unicorn Children's Foundation, a section 501(c)(3) organization that provides support to children and young adults with developmental, communication and learning disorders, held its 14th Annual Gala at the Mar-a-Lago Club in Palm Beach, Florida. Mr. Trump attended the event. A painting of Mr. Trump was donated as an auction item and Mr. Trump bid \$10,000. Mr. Trump caused the Foundation to donate \$10,000 to the Unicorn Children's Foundation. After the auction, hotel staff at the Trump Hotel in Doral, Florida placed the painting in a storage room and later hung it in the hotel. In November 2016, Doral Hotel staff removed the painting from the hotel and returned it to the Foundation. On November 17, 2016, the Doral Hotel paid \$185.82, plus interest, to the

Foundation as compensation for the fair rental value of the painting. On December 19, 2016, the Foundation filed an IRS Form 4720 reporting the transaction, and the Trump entity that owns the Doral Hotel paid excise taxes and interest in the amount of \$8.49 and \$18.48, respectively, for each of 2014 and 2015. On May 15, 2019, as part of the resolution of this Special Proceeding, one of the Individual Respondents reimbursed the Foundation for the \$10,000 that the Foundation paid for the painting;

16. The Seven Springs Transaction/ 2015 NALT Donation (2015).

In 2015, the Foundation donated \$32,000 to the North American Land Trust ("NALT"), a section 501(c)(3) organization, to satisfy a \$32,000 pledge by Seven Springs LLC ("Seven Springs"), an entity owned by Mr. Trump at the time that holds title to his estate in Westchester County, New York. The NALT is a land preservation organization that undertakes projects to preserve natural resources. Seven Springs pledged to donate \$32,000 to a stewardship fund that NALT maintains to manage properties that it acquires. The \$32,000 payment was made from the Foundation. On November 17, 2016, the Foundation self-reported the Seven Springs LLC transaction to the NYAG and reimbursed \$32,000 to the Foundation. On December 9, 2016, Seven Springs paid \$228.38 to the Foundation as the applicable interest on the amount contributed. On December 19, 2016, Seven Springs LLC filed IRS Form 4720 and paid excise taxes of \$3,213.19;

17. The Notices to Admit. On or about July 11, 2018 and November 14, 2018, respectively, the Attorney General served its First and Second Notices to Admit on Respondents;

18. On or about September 7, 2018 and December 17, 2018, respectively, Respondents served their objections and responses to the First and Second Notices to Admit (the

“Responses”);

19. Pursuant to the Responses, the Foundation acknowledged that it had not followed certain important corporate governance procedures by, among other things: (i) not holding regular meetings of its board of directors; (ii) not having written policies for the consideration or approval of grants; (iii) not having a written policy regarding conflicts of interest; (iv) not having a written investment policy; and (v) not having a written whistleblower policy;

WHEREAS, on December 19, 2018, the Attorney General and the Foundation stipulated to dissolve the Foundation pursuant to Article 11 of the New York Not-for-Profit Corporation Law (the “Dissolution Stipulation”; Exhibit A hereto);

WHEREAS, on October 1, 2019, the Attorney General and the Foundation stipulated to disburse the Foundation’s remaining \$1,782,910.92, in equal amounts, to eight agreed upon not- for-profit organizations (the “Distribution Stipulation”; Exhibit B hereto) as demanded in the Petition;

WHEREAS, on October 1, 2019, the Attorney General and Respondents Donald J. Trump Jr., Ivanka Trump and Eric Trump entered into a stipulation discontinuing this Special Proceeding with prejudice against those Individual Respondents following their agreement to take and completion of certain board training (Exhibit C hereto);

WHEREAS, pursuant to the Distribution Stipulation, the Foundation will Distribute the sum of \$1,782,910.92 to each of Army Emergency Relief, Children’s Aid, Citymeals-on-Wheels, Give an Hour, Martha’s Table, United Negro College Fund, United Way of National Capital Area and the U.S. Holocaust Memorial Museum (together, the “Approved Recipients”);

WHEREAS, without admitting or denying any of the OAG’s factual findings, except

those stipulated to herein, the Remaining Respondents, while neither admitting nor denying any alleged violation of law, have nonetheless cooperated and continue to cooperate with the OAG in fashioning appropriate and meaningful steps to address the OAG's concerns; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through the undersigned counsel, as follows:

1. That simultaneous with the execution of this Stipulation, Mr. Trump will make a payment of \$11,525 to the Foundation relating to the Foundation's payment for the purchase of two auction items at a Susan G. Komen charitable benefit.

2. That the amount of any additional payment owed by Mr. Trump in connection with the facts described herein shall be submitted to the Court for a decision based on the applicable law. Excluding this issue to be determined by the Court, all other claims shall be resolved as set forth herein.

3. That, within 15 days of receipt thereof, the Foundation shall disburse all of its remaining funds, in equal amounts, to the Approved Recipients.

4. Charitable Organizations:

- a) In the event Mr. Trump decides to serve as an officer or director of a pre-existing charitable organization operating or soliciting donations in the State of New York, he will do so only if the charitable organization: (i) engages counsel with expertise in New York not-for-profit law to advise the organization and its officers and directors on compliance with all applicable laws, regulations and accepted practices; (ii) engages the services of an accounting firm to monitor and audit the charity's grants and expenses annually; (iii) has a majority of board members that are independent, i.e., they have no familial or business relationship with Mr. Trump or any entity owned by Mr. Trump or his relatives, as defined in N-PCL

section 102(a)(22) (referred to herein as "family members"); and (iv) agrees not to engage in any related party transactions as defined in N-PCL section 102(a)(24) with Mr. Trump, his family members or any entity owned or controlled by Mr. Trump or his family members (a "Trump Entity") and agrees to otherwise comply with N-PCL section 715.¹

- b) In the event Mr. Trump decides to form a new charitable organization and serve as an officer or director thereof operating or soliciting donations in the State of New York, he shall ensure that such new charitable organization shall comply with all provisions and requirements of paragraph 4(a) above. In addition, such new charitable organization shall provide Annual Reports to the Attorney General for a period of 5 years. Such Annual Reports shall:
- i. Identify the professional advisors referenced in paragraph 4(a) and specify the number of hours each professional advisor spent on the work of the charitable organization;
 - ii. Identify all board members, specifying whether each is an independent board member within the meaning of paragraph 4(a)(iii), and if not, describing the board member's relationship with Mr. Trump, his family members or any Trump Entity;

¹ Nothing herein shall prohibit Mr. Trump or any Trump Entity from providing services or the use of property to any charitable organization that he joins as a director or officer pursuant to Paragraph 4 if such services or use of property are donated for use without compensation of any kind, and no Trump Entity receives any remuneration, directly or indirectly, in connection with any such donation. In the event that such services or use of property are provided to any such charitable organization, an independent auditor, i.e., a certified public accountant performing no other services for Mr. Trump or any Trump Entity, shall certify in a statement to be provided to the Attorney General within 60 days after the fiscal year in which the donation was made that: (i) all costs associated with the event were donated by Mr. Trump and/or a Trump Entity; and (ii) that the value of the donation reported is a fair representation of the actual costs.

- iii. Identify the individual(s) within the charitable organization charged with ensuring compliance;
 - iv. Identify and provide copies of all policies and procedures adopted by the charitable organization in order to insure compliance with N-PCL sections 712-a (Audit oversight), 715 (Related party transactions), 715-a (Conflict of interest policy), 715-b (Whistleblower policy), and 716 (Loans to officers and directors);
 - v. Identify and provide a copy of all policies and procedures related to financial internal controls;
 - vi. Include any board meeting minutes and resolutions related to the compliance with the policies and procedures referenced in paragraph 3(b); and include any submissions – e.g. conflict of interest disclosures, whistleblower complaints – received by the corporation in connection with policies outlined in subsection (iv) above;
 - vii. Certify compliance with this Stipulation and be provided to the Attorney General no later than 60 days following the end of the organization's fiscal year.
- c) In addition to providing Annual Reports, such new charitable organization shall adopt bylaws or otherwise pass resolutions effecting the following:
- i. That at each meeting of the board of directors, the presence of one-half of the total number of directors shall constitute a quorum for the transaction of business;
 - ii. That a board secretary shall take notes and prepare minutes of each meeting of the board of directors, and that the organization shall maintain an

archive of all board minutes;

iii. That the board shall be empowered to specifically require that more than one officer or director is required to sign and execute the corporation's checks;

iv. That the officers of the organization shall be elected annually by a majority vote of the board at the board's annual meeting;

d) Mr. Trump shall ensure that, for as long as he is an officer or director of a not-for profit organization operating in the State of New York, he will maintain a current, working familiarity with the rules and practices governing New York based not-for-profit charitable organizations and their officers and directors.

5. That the publication requirements of N-PCL section 1104(b) shall be waived based on the representations and warranties made by the Foundation in paragraphs 1 and 2 of the Distribution Stipulation.

6. That an Order of Judgment of Dissolution in the form of Exhibit D shall be submitted to the Court dissolving the Foundation.

7. That the Attorney General's Verified Petition raises significant issues with respect to the Foundation's board governance and certain of the Foundation's transactions, and related matters, including its involvement in the Campaign's Iowa Fundraiser and other related events that occurred from January through May 2016.

8. This Stipulation is not intended for use by any third party in any other proceeding and is not intended, and shall not be construed, as an admission of liability by the Respondents.

9. Upon the decision by the Court with respect to any additional amount to be paid pursuant to Paragraph 2 of this Stipulation, all remaining Causes of Action in the above-

captioned proceeding as against any of the Respondents that have not been previously dismissed, shall be withdrawn and discontinued with prejudice and without costs or attorneys' fees to either party stated herein as against the other.

10. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation and to make the representations and warranties contained herein.

11. This Stipulation may be executed in multiple counterparts, and facsimile or electronic signatures shall be deemed to be originals.

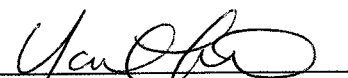
12. This Court shall retain jurisdiction over this matter for all purposes after the date of entry of this Order.

13. If this Court determines that either of the Remaining Respondents have breached this Stipulation, such party shall pay to the OAG the costs of such determination and the costs of enforcement.

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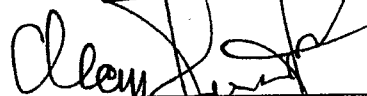
IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto
on October 1, 2019.

LETITIA JAMES
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
Tel. (212) 416-8401

Attorney for Petitioners

THE LAW OFFICES OF ALAN S. FUTERFAS

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

MUKASEY FRENCHMAN & SKLAROFF LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
Tel. (347) 527-3940

Attorneys for Respondents

SO ORDERED: 

Hon. Saliann Scarpulla, J.S.C.

Dated: November 7, 2019

EXHIBIT A

EXECUTION VERSION

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";

00011205-3

Page 1 of 3

EXECUTION VERSION

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.

NYSCEF DOC. NO. 139

RECEIVED INDEX NO. 451130/2018

NYSCEF DOC. NO. 113

RECEIVED NYSCEF: 12/19/2018

EXECUTION VERSION

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, 7th Floor
New York, New York 10017
(212) 684-8400

*Attorney for The Donald J. Trump
Foundation*

SO ORDERED: 

Justice Saliann Scarpulla

DATE: 12/19/2018

00011205-3

Page 3 of 3

EXHIBIT B

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

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, 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
DISTRIBUTION OF FUNDS**

This Stipulation Concerning Distribution of Funds is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondent the Donald J. Trump Foundation ("the Foundation"), by its attorneys, Alan S. Futerfas and Marc Mukasey. The Attorney General and the Foundation are referred to collectively herein as the "Parties."

WHEREAS, the Court in the above-captioned special proceeding so-ordered a Stipulation Concerning Dissolution of the Donald J. Trump Foundation on December 19, 2018 (the "Dissolution Stipulation"), under which the Parties agreed that the Foundation will be dissolved pursuant to Article 11 of the New York Not-for-Profit Corporation Law ("N-PCL");

WHEREAS, pursuant to the Dissolution Stipulation, the assets of the Foundation remaining upon the issuance of a final Order of Dissolution are to be distributed to not-for-profit organizations jointly agreed upon by the Parties;

WHEREAS, the Foundation has provided the Attorney General with a certification from an independent certified public accountant (the "Accountant's Certification"), attached hereto as Exhibit 1, specifying the liquid net assets currently remaining in the Foundation, i.e., the Foundation's liquid assets less any liabilities (the "Distributable Assets"); and


WHEREAS, pursuant to the process set forth in the Dissolution Stipulation and consistent with N-PCL §§ 1109(c) and 1002-a(c)(1), the Parties have jointly submitted to the Court, and the Court has approved, a list of not-for-profit organizations, attached hereto as Exhibit 2, to receive distributions, in equal amounts, from the Foundation's remaining assets upon its dissolution (the "Approved Recipients") 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, through the undersigned counsel, as follows:

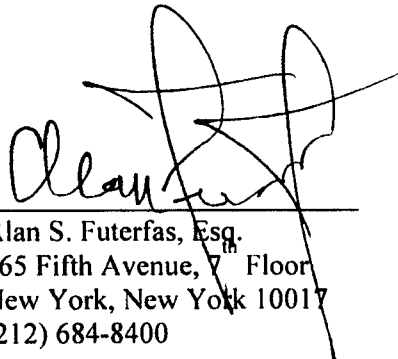
1. That the Foundation represents and warrants that, to the best of its knowledge (i) the Accountant's Certification accurately reflects its assets and liabilities, (ii) the Foundation has no creditors and (iii) no party, other than the Petitioner, has asserted, or threatened to assert, claims against the Foundation;
2. That the publication requirements of N-PCL § 1104(b) shall be waived based on the representations and warranties made by the Foundation in paragraph 1 hereto;
3. The Foundation shall, as part of the dissolution process, disburse the Distributable Assets, in equal amounts, to the Approved Recipients within 15 days after this Stipulation has been so ordered;
4. This Stipulation shall have no effect on any of the claims in the above-captioned special proceeding still pending before the Court;
5. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation;
6. 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 October 1, 2019.

LETITIA JAMES
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

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

Mukasey Frenchman & Sklaroff LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
(347) 527-3940

*Attorneys for the Donald J. Trump
Foundation*

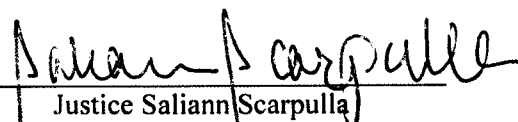
SO ORDERED: 
Justice Saliann Scarpulla

EXHIBIT 1

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

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, 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

AFFIDAVIT

Hon. Saliann Scarpulla, J.S.C.
IAS Part 39

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

WILLIAM J. KELLY, being duly sworn, deposes and says:

1. I am the General Counsel for Mazars USA LLP. I am an attorney duly licensed to practice law in the State of New York. I make this affidavit upon personal knowledge and upon the information stated herein.
2. I understand the Court has requested information from Mazars USA as part of the ongoing action entitled the *People of the State of New York v. Donald J. Trump, et al.*, bearing index number 451130/2018.
3. Mazars USA LLP has served as auditors of The Donald J. Trump Foundation (the "Foundation") for several years, including December 31, 2017. The Mazars USA partner responsible for the audit engagement has since retired and is no longer involved in performing any work for the Trump Foundation. However, I have spoken to him on several occasions specifically about the information set forth in the audited financial statements. His understanding is consistent with what is stated herein.

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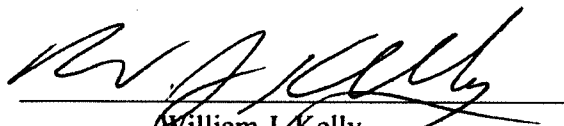
4. As set forth in the Foundation's financial statements as of December 31, 2017, which were audited by Mazars USA, the liabilities of the Foundation as of December 31, 2017, totaled \$250. We have no knowledge of any additional liabilities incurred since the date of our report. However, it seems reasonable to speculate that since the date of the financial statements there may have been additional immaterial expenses or liabilities incurred in the ordinary course of business.

5. Mazars USA personnel have obtained a copy of the account balances in the Foundation's bank accounts at Capital One as of May 16, 2019. I have personally reviewed that document. Those balances provided by Capital One indicate that the Foundation has \$1,748,146.47 in a money market account and \$34,764.45 in an operating account for a total cash on hand as of May 16, 2019, of \$1,782,910.92. Neither I nor anyone at Mazars USA know of any other information that would reduce this amount (such as outstanding checks or other pending payments). Similarly, neither I nor anyone at Mazars USA knows of any other bank accounts associated with the Foundation. Please note that because this is the current bank balance as reported by Capital One outside of the audited period, it was not audited as part of the audit referenced previously. However, it is believed to be true and correct.

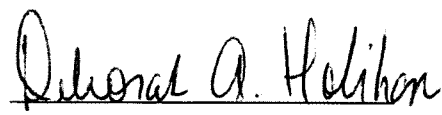
6. Mazars USA personnel have consulted with Foundation personnel and reviewed the books and records of the Foundation and other available sources to identify all tangible assets purchased by the Foundation using Foundation funds and have identified two categories of such items, (1) a portrait of Donald J. Trump for which the Foundation paid \$10,000, and (2) Tim Tebow sports memorabilia, specifically, a Denver Broncos helmet signed by Tim Tebow and a Tim Tebow Broncos jersey for which the Foundation paid \$12,000. Neither I nor anyone at Mazars knows of any other tangible assets purchased with Foundation funds that are in

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the possession of the Foundation, or in the possession of persons or entities affiliated with the Foundation.


William J. Kelly

Sworn to before me this
9th day of July 2019


Notary Public

DEBORAH A. HOLIHAN
Notary Public, State of New York
No. 01HO8130254
Qualified in Nassau County
Commission Expires July 11, 2021

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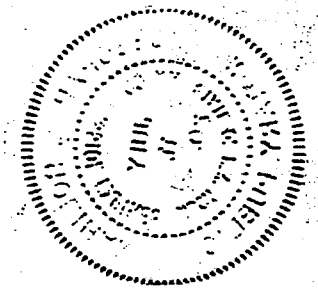


EXHIBIT 2

EXHIBIT 2

1. Army Emergency Relief, EIN 53-0196552
2. Children's Aid Society, EIN 13-5562191
3. City Meals-on-Wheels, EIN 13-3634381
4. Give an Hour, EIN 61-1493378
5. Martha's Table, EIN 52-1186071
6. United Negro College Fund, EIN 13-1624241
7. United Way of National Capital Area, EIN 53-0234290
8. US Holocaust Memorial Museum, EIN 52-1309391

EXHIBIT C

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

**THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, 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

This Stipulation (the "Stipulation") is entered into by and between Petitioner the People of the State of New York by Letitia James, Attorney General of the State of New York ("Petitioner," or "Attorney General") and Respondents Donald J. Trump, Jr., Ivanka Trump and Eric F. Trump (collectively, the "Stipulating Respondents"), by their attorneys, Alan S. Futerfas and Marc L. Mukasey. The Attorney General and the Stipulating Respondents are referred to collectively herein as the "Parties."

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

WHEREAS, pursuant to Section 8-1.4 of the Estates, Powers and Trust Law and Section 112 of the Not-for-Profit Corporation law, the Attorney General may institute proceedings to obtain equitable relief, including bars on service as a fiduciary, to secure the proper administration of charitable organizations;

WHEREAS, in the Verified Petition's First and Second Causes of Action, the Attorney General asserted various claims against the Stipulating Respondents and, among other things, sought equitable relief including a fiduciary bar that could be lifted in the event the Stipulating Respondents completed certain board training;

WHEREAS, the Stipulating Respondents have completed an in-person interactive training session, conducted by a former Bureau Chief of the New York State Attorney General's Charities Bureau, that provided instruction on the statutes applicable to charitable organizations and the fiduciary responsibilities of their directors and officers (the "Board Training Program");

WHEREAS, the Parties have now concluded good faith negotiations and have reached a resolution of the Verified Petition's claims against the Stipulating Respondents 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 as follows:

1. Each of the Stipulating Respondents has certified in writing that he or she completed the Board Training Program and has provided such certification to the Attorney General.

2. The Attorney General's agreement to dismiss the Verified Petition's claims against the Stipulating Respondents with prejudice is based on the Stipulating Respondents' successful completion of the Board Training Program.

3. The Stipulating Respondents recognize that the Verified Petition raises important concerns with respect to the Foundation's governance and certain of the Foundation's transactions.

4. The Verified Petition together with all claims therein and parts thereof is hereby dismissed as against the Stipulating Respondents with prejudice.


5. This Stipulation in no way limits or affects any of the claims or relief sought against any other respondents.

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

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

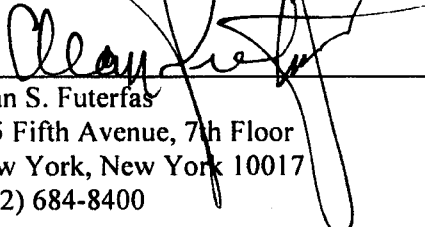
IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto
on October 1, 2019.

LETITIA JAMES
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
565 Fifth Avenue, 7th Floor
New York, New York 10017
(212) 684-8400

MUKASEY FRENCHMAN & SKLAROFF LLP

By: _____
Marc L. Mukasey, Esq.
2 Grand Central Tower
140 East 45th Street, 17th Floor
New York, New York 10017
(347) 527-3940

*Attorneys for Respondents Donald J. Trump, Jr.,
Ivanka Trump, and Eric F. Trump*

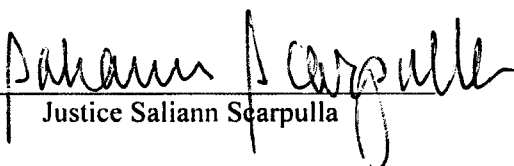
SO ORDERED: 
Justice Saliann Scarpulla

EXHIBIT D

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

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, 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

Hon. Saliann Scarpulla, Justice

ORDER AND
JUDGMENT OF DISSOLUTION

UPON reading the Verified Petition in the above-captioned action, filed on June 14, 2018 (the "Verified Petition"), seeking, among other things, the judicial dissolution of the Donald J. Trump Foundation (the "Foundation"), a not-for-profit corporation organized and existing under New York law and incorporated in 1987; and

UPON reading the attached So-Ordered Stipulation Concerning the Dissolution of the Donald J. Trump Foundation, signed by the parties on December 11, 2018, and so-ordered by the Court on December 19, 2018 (the "Dissolution Stipulation"), in which the Foundation and the Attorney General of the State of New York (the "OAG") agreed to dissolve the Foundation in accordance with Article 11 of the Not-for-Profit Corporation Law ("N-PCL") and further "agree[d] to the entry of an order pursuant to Section 1109 of the N-PCL dissolving the Foundation, annulling its Certificate of Incorporation, and terminating" its corporate existence;

UPON reading the attached the So-Ordered Stipulation of Final Settlement, signed by the parties on October 1, 2019, and so-ordered by the Court on November 7, 2019 (the "Final Stipulation") pursuant to which the OAG and the Foundation agreed that "the publication requirements of N-PCL § 1104(b) shall be waived based on the representations and warranties made by the Foundation" in the Final Stipulation; it is hereby:

ORDERED and ADJUDGED that, in accordance with the above-referenced stipulations, the Foundation shall be dissolved pursuant to Article 11 of the N-PCL; and it is further

ORDERED and ADJUDGED, pursuant to N-PCL Sections 1006 and 1115 that the Foundation and all those acting on its behalf, shall cease all activities on behalf of the Foundation except for the purpose of winding up its affairs in accordance with this Order; and it is further

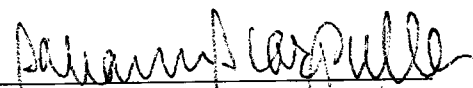
ORDERED and ADJUDGED that the OAG shall transmit certified copies of this Order and Judgment of Dissolution to the Department of State; to the clerk of New York County, the county in which the office of the Foundation was last located; and to the parties herein; and it is further

ORDERED and ADJUDGED that upon filing by the Department of State of the State of New York, the Foundation shall be dissolved; and it is further

ORDERED and ADJUDGED that this Court shall retain jurisdiction over this matter for all purposes after the date of entry of this Order and Judgment.

Order and Judgment signed this _____ day of _____, 2019.

ENTER:

A handwritten signature in black ink, appearing to read "Saliann Scarpulla", written over a horizontal line.

Honorable Saliann Scarpulla
Justice of the Supreme Court
New York County

66 Misc.3d 200, 112 N.Y.S.3d
467, 2019 N.Y. Slip Op. 29336

****1** In the Matter of The People of the State
of New York, by Letitia James, Attorney
General of the State of New York, Petitioner,

v

Donald Trump et al., Respondents.

Supreme Court, New York County
451130/2018
November 7, 2019

CITE TITLE AS: Matter of People v Trump

HEADNOTES

Charities

Judicial Dissolution of Not-For-Profit Corporation

Breach of Fiduciary Duty—Waste Damages

(1) In a judicial dissolution proceeding of a charitable foundation in the name of respondent director, who breached his fiduciary duty to the foundation by allowing his political campaign to orchestrate a fundraiser, direct distribution of foundation funds obtained from that fundraiser, and use the fundraiser and the distribution of funds to further the campaign, such that waste to the foundation occurred, respondent was ordered to pay a portion of the funds alleged to have been improperly used and distributed to approved charitable recipients. Taking into consideration that the funds did ultimately reach their intended destinations, i.e., charitable organizations supporting veterans, \$2,000,000 in waste damages were awarded rather than the entire \$2,823,000 raised at the fundraiser.

Charities

Judicial Dissolution of Not-For-Profit Corporation

Breach of Fiduciary Duty—Punitive Damages

(2) In a judicial dissolution proceeding of a charitable foundation in the name of respondent director, punitive damages were not awarded for respondent's breach of his fiduciary duty to the foundation by allowing his political campaign to orchestrate a fundraiser, direct distribution of foundation funds obtained from that fundraiser, and use

the fundraiser and the distribution of funds to further the campaign, such that waste to the foundation occurred, where respondent stipulated to a number of proactive conditions so the conduct would not occur again in the future.

RESEARCH REFERENCES

[Am Jur 2d Charities §§ 162, 168](#); [Am Jur 2d Corporations §§ 34, 2335, 2337](#).

[Carmody-Wait 2d Actions and Proceedings by and Against Corporations, Their Officers, Directors, and Shareholders §§ 121:496, 121:515](#).

[NY Jur 2d Business Relationships §§ 28, 1364–1366](#); [NY Jur 2d Charities §§ 70, 71, 76, 79, 82](#).

ANNOTATION REFERENCE

See ALR Index under Charities and Charitable Contributions; Dissolution or Liquidation; Nonprofit Organizations.

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***201** Query: judicial /2 dissolution & stipulation & breach! /4 fiduciary & charitable

APPEARANCES OF COUNSEL

Letitia James, Attorney General, New York City (*Yael Fuchs* of counsel), for petitioner.

Law Offices of Alan S. Futerfas, New York City (*Alan S. Futerfas* of counsel), and *Mukasey Frenchman & Sklaroff LLP*, New York City (*Marc L. Mukasey* of counsel), for respondents.

OPINION OF THE COURT

Saliann Scarpulla, J.

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 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, individual respondents and without Mr. Trump,

****2** stipulating respondents). The petition alleges causes of action for (1) breach of fiduciary duty and waste under the Not-For-Profit Corporation Law against the individual respondents; (2) failure properly to administer Foundation assets and waste under the Estates, Powers and Trusts Law 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 [N-PCL 112](#) and [1101](#); (5) dissolution of the Foundation under [N-PCL 112](#) and [1102](#); and (6) an injunction pending resolution of this proceeding.

On August 31, 2018, respondents moved to dismiss the petition in its entirety. In a decision and order dated November 21, 2018, I sustained the first five causes of action, dismissed the sixth cause of action for an injunction, and directed respondents to answer the petition.

Thereafter, at my urging, the parties set out to consensually resolve this proceeding. Over the course of the next several months, the Attorney General and the individual respondents reached a resolution of most of the Attorney General's claims.

Thus, by stipulation and order dated December 19, 2018, the Attorney General and the Foundation agreed to dissolve the Foundation under judicial supervision pursuant to N-PCL article 11, annul its certificate of incorporation, and terminate its corporate existence (dissolution stipulation). Pursuant to ***202** the dissolution stipulation, the parties jointly submitted a list of not-for-profit organizations (approved recipients) to me which they proposed would receive distributions from the Foundation's remaining liquid assets upon the issuance of a final order of dissolution. I approved the list as a broad-based and thoughtful final distribution of the Foundation's remaining assets.¹

The Attorney General and the Foundation entered into a subsequent stipulation dated October 1, 2019, whereby these parties agreed: (1) on the procedure for the equal distribution of the Foundation's remaining liquid assets—\$1,782,910.92—to the approved recipients (distribution stipulation); and (2) to waive [N-PCL 1104 \(b\)](#)'s publication requirements.

The Attorney General and the stipulating respondents entered into a third stipulation dated October 1, 2019 (board training stipulation), whereby the stipulating respondents certified that they had each completed an in-person, interactive board training session pertaining to charitable organizations and the fiduciary responsibilities of those organizations' directors and


officers. In turn, the Attorney General agreed to dismiss the stipulating respondents from this proceeding with prejudice.


On October 1, 2019, the Attorney General entered into a stipulation of final settlement (final stipulation) with the Foundation and Mr. Trump. In the final stipulation, Mr. Trump agreed to reimburse \$11,525 to the Foundation for the Foundation's payment of auction items at a charitable benefit, and to pay any additional amount that may be owed in connection with this proceeding, which amount is to be determined by me as set forth in more detail below.

The final stipulation also recited requirements with which Mr. Trump must comply, should he wish to serve as an officer or director of a new or preexisting charitable organization ****3** in New York.² Additionally, the final stipulation resolved damages for alleged waste resulting from improper uses of Foundation ***203** assets, except for those arising out of the allegedly improper use of the Foundation and distribution of the \$2,823,000 received by the Foundation (funds) from Mr. Trump's televised fundraiser in Des Moines, Iowa on January 28, 2016 (fundraiser).

I commend the Attorney General and the attorneys for the individual respondents for their consensual resolution of the bulk of this proceeding. As New York's Chief Judge Janet DiFiore stated in her 2019 State of Our Judiciary Address, “[t]he time is right to provide litigants and lawyers with a broader range of options to resolve disputes without the high monetary and emotional costs of conventional litigation.” Those words are borne out in this proceeding. Without sacrificing zealous representation of their clients, the Attorney General and the attorneys for the individual respondents were able to directly negotiate the dissolution stipulation, distribution stipulation, board training stipulation, and final stipulation without extensive court intervention.



The sole remaining issue—which the parties agreed would be determined by me—is the amount of any additional payment owed by Mr. Trump arising out of the allegedly improper use of the Foundation and distribution of the funds received by the Foundation from Mr. Trump's fundraiser. Upon my determination of any additional amount to be paid by Mr. Trump, ***204** the parties agreed to withdraw and discontinue with prejudice the remaining causes of action not previously dismissed.

As a director of the Foundation, Mr. Trump owed fiduciary duties to the Foundation, pursuant to  [N-PCL 717](#); he was a


trustee of the Foundation's charitable assets and was thereby responsible for the proper administration of these assets, pursuant to  [EPTL 8-1.4](#). A review of the record, including the factual admissions in the final stipulation, establishes that Mr. Trump ****4** breached his fiduciary duty to the Foundation and that waste occurred to the Foundation.³

Mr. Trump's fiduciary duty breaches included allowing his campaign to orchestrate the fundraiser, allowing his campaign, instead of the Foundation, to direct distribution of the funds, and using the fundraiser and distribution of the funds to further Mr. Trump's political campaign.

The Attorney General has argued that I should award damages for waste of the entire \$2,823,000 that was donated directly to the Foundation at the fundraiser. In opposition, Mr. Trump notes that the Foundation ultimately disbursed all of the funds to charitable organizations and that he has sought to resolve consensually this proceeding.

(1) As stated above, I find that the \$2,823,000 raised at the fundraiser was used for Mr. Trump's political campaign and disbursed by Mr. Trump's campaign staff, rather than by the Foundation, in violation of  [N-PCL 717](#) and [720](#) and  [EPTL 8-1.4](#) and [8-1.8](#). However, taking into consideration that the funds did ultimately reach their intended destinations, i.e., charitable organizations supporting veterans, I award damages on the breach of fiduciary duty/waste claim against

Mr. Trump in the amount of \$2,000,000, without interest, rather than the entire \$2,823,000 sought by the Attorney General. Further, because the parties have agreed to dissolve the Foundation, I direct Mr. Trump to pay the \$2,000,000, which would have gone to the Foundation if it were still in existence, on a pro rata basis to the approved recipients.

Finally, the Attorney General seeks an order requiring Mr. Trump to pay a statutory penalty of twice the amount of general damages. "Punitive damages are not to compensate the injured party but rather to punish the tortfeasor and to deter ***205** this wrongdoer and others similarly situated from indulging in the same conduct in the future." ( [Ross v Louise Wise Servs., Inc.](#), 8 NY3d 478, 489 [2007] [citations omitted].)

(2) Here, Mr. Trump has stipulated to a number of proactive conditions so that the conduct which engendered this petition should not occur in the future. For this reason, I decline to award penalty damages.

In accordance with the foregoing, it is hereby ordered that judgment is awarded on the petition's first and second causes of action for breach of fiduciary duty to the extent described above;⁴ and it is further ordered that the petitioner is directed to settle judgment on notice.

Copr. (C) 2020, Secretary of State, State of New York

Footnotes

- 1 The approved recipients are: Army Emergency Relief; Children's Aid Society; City Meals-on-Wheels; Give an Hour; Martha's Table; United Negro College Fund; United Way of Capital Area; and US Holocaust Memorial Museum.
- 2 As per the final stipulation, if Mr. Trump opts to serve as an officer or director of a preexisting New York charitable organization, he may only do so if the organization:
 - "(i) engages counsel with expertise in New York not-for-profit law to advise the organization and its officers and directors on compliance with all applicable laws, regulations, and accepted practices; (ii) engages the services of an accounting firm to monitor and audit the charity's grants and expenses annually; (iii) has a majority of the board members that are independent, i.e., they have no familial or business relationship with Mr. Trump or any entity owned by Mr. Trump or his relatives, as defined in [N-PCL section 102 \(a\) \(22\)](#) (referred to herein as 'family members'); and (iv) agrees not to engage in any related party transactions as defined in [N-PCL section 102 \(a\) \(24\)](#) with Mr. Trump, his family members or any entity owned or controlled by Mr. Trump or his family members (a 'Trump Entity') and agrees to otherwise comply with [N-PCL section 715](#)."

The same requirements must be met if Mr. Trump decides to form a new charitable organization and serve as its officer or director. Further, the final stipulation provides that should Mr. Trump serve as an officer or director of a new charitable organization, he must also meet the following additional requirements: (i) the newly formed organization will provide the Attorney General with annual reports for five years; (ii) the newly formed charitable organization will enact specific corporate governance procedures; and (iii) Mr. Trump will maintain a working familiarity with the applicable New York rules and laws governing charitable organizations and their officers and directors, for as long as he holds either position.

- 3 For example, the final stipulation states that Mr. Trump's campaign, rather than the Foundation: (1) "planned" and "organized" the fundraiser; and (2) "directed the timing, amounts, and recipients of the Foundation's grants to charitable organizations supporting military veterans."
- 4 The petition's remaining causes of action are either moot or have been settled pursuant to the final stipulation.

End of Document

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