

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

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

Petitioner,

-against-

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

Respondents.

Index No. 451685/2020

**MEMORANDUM OF LAW IN SUPPORT OF THE ATTORNEY GENERAL'S  
MOTION TO COMPEL**

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### PRELIMINARY STATEMENT

Cushman & Wakefield, Inc. (“Cushman”), a publicly traded, global real-estate firm, has refused to comply with two lawful subpoenas issued by the Office of the Attorney General (“OAG”). Those subpoenas arise out of OAG’s investigation of the Trump Organization in which this Court has issued numerous rulings (including many related to Cushman) and over which this Court retains continuing jurisdiction. This application pursuant to C.P.L.R. 2308 seeks to compel Cushman’s compliance with these subpoenas.

As this Court is aware, Cushman appraisals of three properties are of central relevance to OAG’s ongoing investigation: (i) an appraisal of the Seven Springs Estate prepared in connection with the donation of a conservation easement on that property to obtain a tax benefit; (ii) an appraisal of the Trump National Golf Club – Los Angeles (“Trump Golf LA”) prepared in connection with the donation of a conservation easement on that property to obtain a tax benefit; and (iii) multiple appraisals and other valuations of the office building located at 40 Wall Street. The first subpoena with which Cushman has refused to comply was issued on September 30, 2021 and seeks information and documents concerning Cushman’s relationship with the Trump Organization. The second subpoena, issued on February 16, 2022, sought additional appraisals from five Cushman appraisers who prepared the reports at issue. For the 40 Wall Street appraisers, the requested reports were limited to those in the Downtown Manhattan Office market. For the easement donation appraisers, the requested reports were limited to appraisals that contained similar subdivision sell-out analyses.

Cushman has no basis to refuse to comply with the subpoenas at issue here. Documents concerning Cushman’s relationship with the Trump Organization are plainly relevant and the requests are reasonable in scope. As for the September 30, 2021 subpoena, Cushman specifically requested portions of that subpoena on the grounds that certain documents requested by OAG

were not within the scope of prior subpoenas. Cushman made a number of productions in response to the September 30, 2021 subpoena—but then belatedly issued objections and formally declined to respond in full last week (long after the subpoena’s return date) and only after reaching an impasse with OAG over the February 16, 2022 subpoena. As for the February 16, 2022 subpoena, examining the work of five specific Cushman appraisers on similar projects is relevant to assessing the reasonableness of those same appraisers’ work in connection with Trump Organization properties. For example, one would be able to examine, with respect to certain choices affecting valuation, whether the appraisers took similar or different valuation approaches depending on the type of client, identity of the client, or other circumstances of the transaction. In addition to the relevance to potential violations of law by the Trump Organization, OAG has an independent investigatory interest in determining whether any representations made by Cushman and its appraisers were unlawful.

Cushman cannot plausibly establish that the subpoenaed materials bear no “reasonable relation to the subject-matter under investigation and to the public purpose to be achieved,” or that they seek material that is “utterly irrelevant to any proper inquiry” or where the futility of the process “to uncover anything legitimate is inevitable or obvious.” *Matter of La Belle Creole Int’l, S.A. v. Attorney-General of the State of N.Y.*, 10 N.Y.2d 192, 196 (1961); *see also Libre by Nexus v. Underwood*, 181 A.D.3d 488 (1st Dep’t 2020). The Court should therefore issue an order directing Cushman to comply in full with both subpoenas.

### FACTUAL BACKGROUND

The Court is familiar with OAG’s investigation, which is described in detail in the prior filings in this proceeding, as well as the Court’s prior rulings and the extensive factual record considered therewith. *See* Second Supplemental Verified Petition against Respondent Cushman & Wakefield (“Cushman Pet.”), Apr. 8, 2022, at ¶ 2. Those prior filings include the Verified

Petition, dated August 21, 2020 (Dkt. 181) (“Original Petition”) and the Supplemental Verified Petition, dated January 18, 2022 (Dkt. 630) (the “Supplemental Petition”) seeking to compel evidence from Donald J. Trump, Donald Trump, Jr. and Ivanka Trump.

#### A. Cushman and Its Role

Cushman “is a leading global commercial real estate services firm.” *See* Cushman, Annual Report (2020), at 4.<sup>1</sup> Cushman purports to have “an iconic brand and approximately 50,000 employees.” *Id.* Further, Cushman “operate[s] from over 400 offices in 60 countries, managing over 4.1 billion square feet of commercial real estate space.” *Id.* Cushman “is focused on meeting the increasing demands of [its] clients through a comprehensive offering of services including Property, facilities and project management, Leasing, Capital markets, Valuation and other services.” *Id.* “In 2020, 2019, and 2018, [Cushman] generated revenues of \$7.8 billion, \$8.8 billion, and \$8.2 billion, respectively, and service line fee revenue of \$5.5 billion, \$6.4 billion and \$6.0 billion, respectively.” *Id.* Cushman has also stated that, “[i]n 2021, the firm had revenue of \$9.4 billion across core services of property, facilities and project management, leasing, capital markets, and valuation and other services.”<sup>2</sup> Cushman purports to have a “market-leading presence in the five boroughs of New York City.”<sup>3</sup>

Of particular relevance to this motion, Cushman provided valuation services on three properties for transactions involving the Trump Organization. First, Cushman issued multiple appraisals of the property located at 40 Wall Street in downtown Manhattan. Cushman issued

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<sup>1</sup> Available at [https://s22.q4cdn.com/673663790/files/doc\\_financials/2020/ar/CWK-2020-Annual-Report-\(1\).pdf](https://s22.q4cdn.com/673663790/files/doc_financials/2020/ar/CWK-2020-Annual-Report-(1).pdf).

<sup>2</sup> Available at <https://ir.cushmanwakefield.com/home/default.aspx>.

<sup>3</sup> Available at <https://www.cushmanwakefield.com/en/united-states/offices/downtown-manhattan>.



three appraisals to Capital One Bank in 2010, 2011 and 2012 in connection with a \$160 million mortgage on the property. Cushman Pet. ¶ 22. Cushman prepared another appraisal for Ladder Capital Finance LLC (“Ladder Capital”) in June 2015, in connection with a \$160 million refinancing of the loan on 40 Wall Street. That appraisal was incorporated into the underwriting of the loan and was reported to securities investors as part of two transactions securitizing portions of the loan into commercial mortgage-backed securities (“CMBS”). Cushman Pet. ¶ 22.

Second, Cushman prepared two valuations of the Seven Springs Estate for the Trump Organization. The first valuation was conducted in July 2014 pursuant to a written valuation engagement; the result was conveyed orally to the client. Cushman Pet. ¶ 23. The second valuation was an appraisal issued in March 2016, valuing Seven Springs as of December 1, 2015. *Id.* That appraisal was submitted to the Internal Revenue Service to obtain a tax benefit from a conservation easement donation on the Seven Springs property. *Id.*

Third, Cushman prepared an appraisal of the Trump Golf LA property in December 2014. Cushman Pet. ¶ 24. That appraisal was submitted to the Internal Revenue Service to obtain a tax benefit from a conservation easement donation on the Trump Golf LA property. *Id.*

In addition to those three properties, Cushman has regularly appraised other buildings owned by the Trump Organization, including Trump Tower on Fifth Avenue, Trump International Hotel and Tower on Central Park West, Trump National Golf Club – Westchester in Briarcliff Manor, New York, Trump National Doral in Miami, Trump International Hotel and Tower in Chicago, Trump Las Vegas, and Trump National Golf Club – Bedminster in Bedminster, New Jersey. Cushman Pet. ¶ 25. Cushman has also provided brokerage services to the Trump Organization for 40 Wall Street and Trump Tower. Cushman Pet. ¶ 26. Finally, Cushman regularly provided employees at the Trump Organization with generic information

about real estate markets in which the company operated. That information was cited as support for many valuations included in the Statements of Financial Condition (“SOFC”) for Donald J. Trump. Cushman Pet. ¶ 27. On January 13, 2021, Cushman disclosed that “Cushman & Wakefield has made the decision to no longer do business with the Trump Organization.” Cushman Pet. ¶ 34.

Further factual background of the OAG’s investigation as it relates to this motion is more fully set out in the Affirmation of Austin Thompson, dated April 8, 2022 (“Thompson Aff.”), filed *in camera* to protect the confidentiality of this ongoing investigation. *See Michaelis v. Graziano*, 5 N.Y.3d 317, 323 (2005); *Am. Dental Coop., Inc. v. Attorney-General*, 127 A.D.2d 274, 280 (1st Dep’t 1987).

#### **B. OAG Subpoenas**

As a result of Cushman’s work with the Trump Organization, OAG served two subpoenas on Cushman in June and August of 2019. Cushman Pet. ¶ 29. Investigative developments led OAG in September 2021 to ask Cushman to produce documents concerning a former employee who had worked on leasing space at 40 Wall Street and subsequently left the company to join the Trump Organization. Cushman Pet. ¶ 35. Cushman took the position that such documents were not covered by the earlier subpoenas issued by OAG. In an email dated September 21, 2021, counsel for Cushman stated: “we would ask that your office issue a new subpoena to Cushman and specify the materials sought. We think this will help to expedite the process and will check with our client to confirm whether we can accept service.” Cushman Pet. ¶ 36.

On September 30, 2021, OAG issued the requested additional subpoena to Cushman pursuant to both Executive Law § 63(12) and the Martin Act (General Business Law § 352)

seeking documents and written responses to requests for information (the “September 2021 Subpoena”). Cushman Pet. ¶ 37. The September 2021 Subpoena sought all documents concerning the decision to stop doing business with the Trump Organization. Cushman Pet. ¶ 39. The September 2021 Subpoena further called for information concerning the work performed by Cushman for the Trump Organization and the revenue derived from that work. Cushman Pet. ¶ 38. To avoid a prolonged dispute over what documents were covered by the subpoena, OAG clearly delineated 11 specific requests. Cushman Pet. ¶ 39.

Cushman began producing documents responsive to some of the requests in the September 2021 Subpoena. Between October 8, 2021 and December 23, 2021, Cushman produced approximately 45,000 responsive documents. Cushman Pet. ¶ 40. That production did not include entire categories of information and documents. For example, Cushman provided no documents concerning its own highly publicized decision to cease doing business with the Trump Organization, no documents concerning the policies and procedures governing the work performed for the Trump Organization, and no information concerning the brokerage work performed with respect to 40 Wall Street and Trump Tower. Cushman Pet. ¶ 41.

Based on information provided by Cushman and others, OAG issued another subpoena on February 16, 2022 (the “February 2022 Subpoena”). Cushman Pet. ¶ 42. The February 2022 Subpoena sought copies of a limited set of additional appraisal reports prepared by the Cushman appraisers involved in the appraisals for 40 Wall Street, Seven Springs, and Trump Golf LA. Cushman Pet. ¶ 43. Requests 1, 2 and 3 of the February 2022 Subpoena sought final appraisals prepared, supervised, or signed by the three individuals who signed the 2015 40 Wall Street appraisal. Cushman Pet. ¶ 44. The request was limited to appraisals prepared during the period January 1, 2012 to December 31, 2015 in the Downtown Office Market of Manhattan (the

geographic market for 40 Wall Street). *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Request 5 of the February 2022 Subpoena sought final appraisals prepared, supervised or signed by one of the two appraisers who signed the Seven Springs appraisal. Cushman Pet. ¶ 46. The request was limited to appraisals containing a subdivision sell-out analysis prepared during the period January 1, 2012 to December 31, 2017. *Id.* These appraisals would allow an assessment of whether the assumptions contained in the Seven Springs appraisal were consistent with the assumptions and other valuations prepared by the appraiser in connection with other similar appraisals. *Id.*

Request 6 of the February 2022 Subpoena sought final appraisals prepared, supervised or signed by one of the two appraisers who signed the Trump Golf LA appraisal. Cushman Pet. ¶ 48. The request was limited to subdivision sell-out appraisals prepared during the period January 1, 2012 to December 31, 2017. *Id.* These appraisals would allow an assessment of whether the assumptions contained in the Trump Golf LA appraisal were consistent with the other valuations prepared by the appraiser in connection with other similar appraisals. *Id.*

After multiple letters, emails and telephone conferences between OAG and Cushman, OAG agreed to accept an initial production of documents in response to Requests 1-3 and 5-6 that would have amounted to roughly 400 documents in total. Cushman Pet. ¶ 45, 47, 49, 50-56. And while Cushman did agree to make a production responsive to Request 4 in the February 2022 Subpoena, on March 23, 2022 counsel informed OAG that Cushman would not respond to

the other requests. Cushman Pet. ¶ 55-56. By letter dated March 28, 2022, Cushman then raised a host of objections to the September 2021 Subpoena and indicated that “its response to the non-objectionable portions of OAG’s [September 2021] Subpoena is complete.” Cushman Pet. ¶ 57.

### ARGUMENT

The matters required to be produced under the September 2021 and February 2022 Subpoenas are of plain, direct and obvious relevance to OAG’s ongoing investigation. Cushman has no basis to defy those lawfully issued subpoenas. Cushman’s burden—to show that those matters are utterly irrelevant to any proper inquiry, or that it is inevitable that their production will not lead to anything relevant to a proper inquiry—is an impossible one, given the presentation in these motion papers and the copious record with which the Court already is familiar. This application to compel should be granted.

#### A. Legal Standard

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

The statute defines “fraud” broadly to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contract provisions.” Executive Law § 63(12). The terms “fraud” and “fraudulent” are “given a wide meaning so as to embrace all deceitful practices contrary to the plain rules of common honesty, including all acts, even though not originating in any actual evil design to perpetrate fraud or injury upon others, which do tend to deceive or mislead.” *People ex rel. Cuomo v. Greenberg*, 95 A.D.3d 474, 483 (1st Dep’t 2012).

A violation of any state or local law or regulation constitutes “illegality” within the meaning of § 63(12). *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 107 (3d Dep’t 2005)

(violations of General Business Law §§ 349 and 350; violations of debt collection laws), *aff'd on other grounds*, 11 N.Y.3d 105 (2008). Similarly, “[i]t long has been recognized that the statute affords the Attorney General broad authority to enforce federal as well as state law, unless state action in the area of federal concern has been precluded utterly or federal courts have exclusive jurisdiction of the matter.” *Oncor Commc’ns, Inc. v. State*, 165 Misc. 2d 262, 267 (Sup. Ct. Albany Cty. 1995), *aff’d*, 218 A.D.2d 60 (3d Dep’t 1996).

As for whether the conduct at issue is “repeated” or “persistent,” the “term ‘repeated’ as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.” Executive Law § 63(12) (emphasis added); *see also State of New York v. Wolowitz*, 96 A.D.2d 47, 61 (2d Dep’t 1983) (recognizing that § 63(12) allows “the Attorney-General to bring a proceeding when the respondent was guilty of only one act of alleged misconduct, providing it affected more than one person”). And, “[t]he term ‘persistent fraud’ or ‘illegality’ as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct.” Executive Law § 63(12).

A sufficient factual basis for a subpoena under § 63(12) exists if there is a “reasonable relation to the subject-matter under investigation and to the public purpose to be achieved.” *La Belle Creole*, 10 N.Y.2d at 196. The Attorney General has broad authority under the statute to issue subpoenas and take sworn testimony to determine whether a proceeding should be brought. *Id.* (“[T]he attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.”). A similar standard governs subpoenas issued pursuant to the Martin Act, a statute that relates to purchases and sales of securities and empowers OAG to obtain by subpoena any information it “deem[s] relevant or material to the inquiry.” General Business Law (“G.B.L.”) § 352. The Attorney

General is presumed to be acting in good faith when issuing a subpoena. *Am. Dental Coop., Inc. v. Attorney-General*, 127 A.D.2d 274, 280 (1st Dep’t 1987). Thus, a subpoena issued will not be quashed unless it seeks material “utterly irrelevant to any proper inquiry” or where the futility of the process “to uncover anything legitimate is inevitable or obvious.” *La Belle Creole*, 10 N.Y.2d at 196; *see also Hogan v. Cuomo*, 67 A.D.3d 1144, 1145 (3d Dep’t 2009) (“The information forming the factual basis need not be sufficient to establish fraud or illegality, or even provide probable cause, as long as the futility of the process is not inevitable or obvious.”).

The Martin Act empowers the Attorney General to investigate securities fraud, “either upon complaint or otherwise.” G.B.L. § 352(1). Under the Martin Act, the Attorney General can conduct investigations by examining witnesses and “requir[ing] the production of any books or papers which he deems relevant or material to the inquiry.” *Id.* § 352(2). Courts have repeatedly recognized the broad investigatory authority of the Attorney General under the Martin Act. *Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgt. Inc.*, 18 N.Y.3d 341, 349-50 (2011) (“[T]he Attorney-General [has] broad regulatory and remedial powers to prevent fraudulent securities practices by investigating and intervening at the first indication of possible securities fraud on the public[.]”); *Greenthal v. Lefkowitz*, 342 N.Y.S.2d 10 415, 417 (1st Dep’t 1973), *aff’d*, 32 N.Y.2d 457 (1973) (recognizing that the Martin Act grants the Attorney General “exceedingly broad” power and “wide discretion in determining when an inquiry is warranted”); *Gardner v. Lefkowitz*, 97 Misc. 2d 806, 811-12 (Sup. Ct., N.Y. County 1978) (“[T]he power of the Attorney-General under article 23-A of the General Business Law . . . is exceedingly broad and grants a wide discretion to the Attorney-General in determining whether an inquiry is warranted[.]”).

It is the burden of the party resisting a subpoena to show that the Attorney General has not cleared the minimal bar necessary to enforce her subpoenas. *See Hogan*, 67 A.D.3d at 1145; *Abrams v. Thruway Food Mkt. & Shopping Center, Inc.*, 147 A.D.2d 143, 148 (2d Dep't 1989).

**B. Documents Sought in the February 2022 Subpoena are Relevant to the Investigation of the Trump Organization**

The Court has already (repeatedly) held that the Seven Springs appraisal and the Trump Golf LA appraisals are lawful subjects of inquiry. *See* Dkt. 254, 654. The issues presented to the Court regarding those appraisals include the consideration (or lack thereof) of planning restrictions known to the client, the consideration of any approval requirements, the timeline for any subdivision sell-out, and the costs and revenues included in any discounted cash flow analysis. *See* Dkt. 630 ¶¶ 191-294. It is plainly germane to an inquiry into choices related to key appraisal variables whether the same appraisers made similar or different choices for other clients in comparable circumstances. *People ex rel. Cuomo v. First Am. Corp.*, 18 N.Y.3d 173, 177 (2011).

OAG is similarly entitled to the narrow universe of appraisals prepared by the appraisers who performed appraisal work with respect to 40 Wall Street. Those appraisers prepared appraisals of 40 Wall Street for Capital One Bank in 2010, 2011, and 2012 for a traditional commercial mortgage loan held by Capital One Bank—and then later for Ladder Capital Finance, a loan originator that enabled the Trump Organization to obtain a securitized, refinanced mortgage loan in 2015. *Cushman Pet.* ¶ 22. The 2015 appraisal, which was incorporated into the public disclosures accompanying two different CMBS offerings, differs in key respects from the earlier appraisals by the same appraisers.

██

██



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

OAG is entitled to probe whether the approaches taken with respect to those matters were comparable to, or different from, other similar appraisals.

Moreover, as discussed below in connection with the September 2021 Subpoena, appraisers of 40 Wall Street were repeatedly referenced as sources for generic market data used by the Trump Organization to create Mr. Trump’s SOFC or otherwise invoked to support the validity of those statements [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Documents Sought in the September 2021 Subpoena are Relevant to the Investigation of the Trump Organization**

The September requests are similarly well founded and appropriate in scope. Even if Cushman’s business relationship with the Trump Organization was limited to the three property

<sup>4</sup> [REDACTED]

appraisals which are described above (*supra* at p. 3-4), the requests seeking to understand the full scope of Cushman’s business relationship with the Trump Organization would be amply justified. OAG is entitled to investigate what may be relevant context for each of these appraisals, including: what was specifically requested by the client, whether assumptions in the appraisals came from the client or the appraiser; the appraisers’ knowledge of any goals of the business transaction to which the appraisal would relate; whether the appraisers were pushed by the client in any respect; and whether Cushman’s other substantial business with the Trump Organization in any way impacted the appraisals prepared or other valuation-related information provided, or compromised Cushman’s objectivity.<sup>5</sup>

This activity, and Cushman’s own understanding of the relationship, are necessary context to understanding the origins of the appraisals described above. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The documents and information called for in the September Requests will assist OAG in resolving these questions.

**D. OAG Has Independent Authority to Investigate Cushman’s Appraisal Practices**

Separate and apart from the impact on the investigation into the Trump Organization, OAG also has an independent interest in determining whether each of the individual appraisals identified above complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”) or are otherwise misleading. New York law incorporates the requirements of USPAP and OAG “has authority to insist that companies . . . who perform real estate appraisal services for New York customers do so in accordance with USPAP standards, and free of deceptive business practices.” *People ex rel. Cuomo v. First American Corp.*, 24 Misc.3d 672, 682 (Sup. Ct. N.Y. Cty. 2009) ), *aff’d*, 76 A.D.3d 68, 83-84 (1st Dep’t 2010), *aff’d*, 18 N.Y.3d 173, 184 (2011).

As outlined in the Thompson Affirmation, OAG is investigating [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**E. None of the Objections Cited by Cushman Have Merit**

As a threshold matter, a party is not permitted to respond to a government subpoena by merely serving objections on the subpoena issuer. “A motion to quash or vacate ... is the proper *and exclusive* vehicle to challenge the validity of a subpoena or the jurisdiction of the issuing

authority. *Brunswick Hosp. Cen., Inc. v. Hynes*, 52 N.Y.2d 333, 339 (1981) (emphasis added); *see also Cuomo v. Dreamland Amusements, Inc.*, 22 Misc. 3d 1107(A), 880 N.Y.S.2d 223 (Sup. Ct. 2009) ); *People v. Doe*, 170 Misc.2d 454, 456 (Sup.Ct. Monroe Co.1996)). Moreover, “[s]uch a motion must be made promptly, generally *before the return date of the subpoena.*” *Brunswick Hosp.*, 52 N.Y.2d at 339 (emphasis added). OAG informed Cushman of this fact on March 2, 2022, writing that “sending a letter with objections and a refusal to produce documents on the date of compliance for a lawfully issued subpoena constitutes non-compliance. Indeed, neither advice of counsel nor hardship excuse an obligation to respond to a subpoena. *See, e.g. People v. Forsyth*, 109 Misc.2d 234, 236 (Sup. Ct. N.Y. Cty. 1981) (Upholding misdemeanor conviction for failure to comply with Martin Act subpoena without reasonable cause.)” Cushman Pet., Ex. 609at 1.

And even if Cushman’s objections were procedurally proper, they are unavailing. Over several months of letters, emails and conferences, Cushman failed to identify meaningful objections to any of the subpoenas issued by OAG. Some initial objections, like a claim that as the issuer of a regulatory subpoena OAG was obligated to pay for the “extensive and material costs associated with C&W’s production, including production costs and attorney’s fees,” have fallen by the wayside.<sup>7</sup> Cushman Petition at ¶ 32. Other objections, however, continue to form the basis of Cushman’s refusal to comply with the lawfully issued subpoenas from September and February. Focusing on those laid out in Cushman’s February 23, 2022 letter concerning the

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<sup>7</sup> Likewise, Cushman objected to the use of the term “Downtown Office Market” as defined by reference to the use of that term in the 40 Wall Street appraisal and insisted on a more “precise definition.” This despite the fact that Cushman is clearly aware of what constitutes the “Downtown Office Market” and publishes quarterly reports and other marketing materials on the status of that market. Cushman Pet., Ex. 609 at 3.



February 2022 Subpoena and the March 28, 2022 letter concerning the September 2021 Subpoena, OAG responds as follows:

**1. Overbreadth and Burden.** Cushman claims that the subpoenas are overly broad and unduly burdensome because they “seek information irrelevant and immaterial to the Trump Investigation,” “are not properly limited in time or scope,” are not properly limited to “potentially relevant properties,” and so on. As demonstrated above and in the Thompson Affirmation, the requests are reasonably related to matters under investigation by OAG. Other objections seem to be based on an intentionally obtuse reading of the subpoenas. For example, it is difficult to credit the idea that Cushman truly believes that Requests 10 and 11 of the September 2021 Subpoena are asking them to “collect PST files from each and every person it has employed since 2010 and search all such data to identify any additional potentially responsive communication.” Cushman Pet., Ex. 611. Indeed, OAG has already accepted Cushman’s representations that it either has produced all responsive documents, and in the case of Request 11, could not identify any additional responsive documents.

But—even if they were accepted as true—the burdens asserted by Cushman would not be excessive. Given the immense resources available to Cushman and its professed ability to manage data, the targeted requests contained in the subpoena impose minimal burdens.<sup>8</sup> And, in any event, a “subpoena is not rendered invalid merely because it requires production of a substantial number of documents. Relevancy, and not quantity, is the test of the validity of a

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<sup>8</sup> Cushman even offers customers a Global Data Advisory Center “with experts across the spectrum of advisory services focused specifically on the data center market for seamless delivery. We average more than 20 years’ experience in the data center market across the [multiple] disciplines.” (<https://www.cushmanwakefield.com/en/united-states/industries/data-centers>)

subpoena.” *Am. Dental Coop*, 127 A.D.2d at 282-83; *see also In re Evergreen Assn., Inc. v. Schneiderman*, 153 A.D.3d 87, 99 (2d Dep’t 2017) (“[T]he fact that the subpoena requires production of a substantial number of documents does not render it invalid, overbroad, or unduly burdensome.”).

**2. Confidentiality.** Cushman claims that the subpoenas implicate “confidentiality obligations owed by Cushman (or its affiliated entities) to third parties without any apparent justification, relevance or rational limitation.” Cushman Pet., Ex. 608 at 5; *see also* Cushman Pet., Ex. 611 at 6. Contractual obligations between Cushman and its clients cannot thwart OAG’s investigative subpoenas. The contractual obligations Cushman has identified to OAG merely require notice to a client before production—they do not purport to preclude production altogether. But even a contractual confidentiality obligation (as opposed to a notice obligation, as exists here) cannot thwart an investigative subpoena; otherwise, parties would be able to obstruct investigations by crafting contractual gag orders. *People v. McQueen*, 67 Misc. 3d 1206(A), 125 N.Y.S.3d 838 (N.Y. Sup. Ct. 2020); *see also Fomby-Denson v. Department of the Army*, 247 F.3d 1366, 1376-77 (Fed. Cir. 2001); *Quinio v. Aala*, 344 F. Supp. 3d 464, 475 (E.D.N.Y. 2018); *Cosby v. American Media, Inc.*, 197 F. Supp. 3d 735, 741 (E.D. Pa. 2016). It follows that a mere notice obligation cannot enable a party to thwart production because of the purported burden of undertaking the notice it has bound itself to deliver. Indeed, USPAP expressly permits production in response to law enforcement subpoena. . *See United States v. 2,091,712 Acres of Land*, No. 09 Civ. 088, 2010 WL 3363031 (E.D.N.C. Aug. 24, 2010) (“The documents sought by the Government are not privilege[d] or protected. The law does not afford an evidentiary privilege to professional appraisers. Moreover, the USPAP rules themselves explicitly

contemplate the production of such documents to ‘third parties as may be authorized by due process of law.’”).

**3. Harassment.** Cushman objects that various aspects of the subpoenas constitute “harassment.” Cushman Pet., Ex. 608 at 4; *see also* Cushman Pet., Ex. 611 at 4. For example, Cushman argues that Requests 7 and 8 in the September 2021 Subpoena seeking documents concerning the decision to no longer do business with the Trump Organization are an “unfettered attempt to rifle through C&W’s records and generally pry into C&W’s corporate affairs.”

Those objections are nonsense. Where, as here, OAG issues an investigatory subpoena on a sufficient factual basis, it is not engaged in harassment. *Amos Post, Inc. v. Abrams*, 70 A.D.2d 750, 751 (3d Dep’t 1979). As set forth above, Cushman is a major global real estate firm with a significant relationship with a commercial organization; that organization, as Cushman came to learn, and as the Court well knows, is under investigation for engaging in fraudulent or misleading conduct in connection with appraisals and financial statements. The basis for the Cushman’s decision to terminate the relationship—and the context of the relationship itself—plainly is an appropriate subject of inquiry. The obvious relevance of that decision, and the pertinence of Cushman’s relationship with the Trump Organization more broadly, bely any assertion that the subpoenas at issue are meant to harass Cushman; indeed, other firms also have received repeated subpoenas for relevant material in this investigation. *N.Y. Republican State Comm. v. N. Y. State Comm’n on Gov’t Integrity*, 525 N.Y.S.2d 527, 532 (Sup. Ct. N.Y. Cty. 1988) (rejecting claim that subpoena constituted “harassment” where requests issued to five other recipients).

**4. Certificate of Compliance.** Cushman objects to the instruction in both subpoenas calling for a certificate of compliance, arguing that a “subpoena duces tecum may require

production of documents, it may not require the responding party to create documents, complete affidavits, or take any other action.” Cushman Pet., Ex. 611 at 6. The objection is absurd. First, the Martin Act does allow the Attorney General to require parties “to file . . . a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate, and for that purpose may prescribe forms upon which such statements shall be made.” GBL § 352(1). Second, and even more obviously, a certificate of compliance is both permissible under and consistent with the CPLR. For example, CPLR §3122-a, directs that productions “shall be accompanied by a certification, sworn in the form of an affidavit and subscribed by the custodian or other qualified witness charged with responsibility of maintaining the records.”

### **CONCLUSION**

Based on the foregoing, OAG respectfully requests that the Court grant OAG’s motion to: (i) compel compliance with the September 2021 and February 2022 subpoenas; (ii) order production pursuant to the subpoenas to be complete within two weeks of this Court’s order; and (iii) award such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York  
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Respectfully submitted,

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