

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date: 5/2/2022

Case # 2022-01812

Title The People of the State of New York, by Letitia James

Index/Indict/Docket # 451685/2020

of

Matter v. The Trump Organization, et al.

Appeal Order Judgment of by Respondent from Decree

Supreme Surrogate's Family

County New York

Court entered on April 26, 2022

Name of Judge Hon. Arthur Engoron, J.S.C.

Notice of Appeal filed on April 27, 2022

If from administrative determination, state agency

Nature of action or proceeding Article 4 Special Proceeding (Exec. Law 63(12))

Provisions of order judgment decree appealed from The appeal is taken from each and every part of the Decision and Order.

This application by appellant respondent is for The appeal is taken from each and every part of the Decision and Order.

If applying for a stay, state reason why requested a stay of the Decision and Order appealed from, pending appeal, including a stay of the portion of Order imposing a \$10,000 daily fine, and an interim stay pending the resolution of the motion to stay.

Has any undertaking been posted No If "yes", state amount and type

Has application been made to court below for this relief No If "yes", state Disposition
Has there been any prior application here in this court No If "yes", state dates and nature

Has adversary been advised of this application Yes Does he/she consent No

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DISPOSITION

Justice

Date

Motion Date _____ Opposition _____ Reply _____

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY. _____

Court Attorney

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Petitioner/Respondent,

v.

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;
IVANKA TRUMP; DONALD J. TRUMP JR.,

Respondents,

- and-

DONALD J. TRUMP,

Respondent/Appellant.

Appellate Division Docket No.:
2022-01812

Lower Court Index No.:
451685/2020

(New York County)

**NOTICE OF MOTION FOR STAY
PENDING APPEAL AND
INTERIM RELIEF**

Interim Relief Requested

PLEASE TAKE NOTICE that pursuant to 22 NYCRR § 1250.4(b)(1), CPLR § 5519(c), and the inherent authority of the Court; and upon the enclosed Summary Statement on Application for Expedited and/or Interim Relief, the attached Memorandum of Law, Affirmation of Alina Habba, Esq. dated May 2, 2022, the exhibits attached thereto, and upon all prior papers and proceedings herein, Respondent-Appellant, Donald J. Trump (“Appellant”), by and through the undersigned counsel, will hereby move the Supreme Court of the State of New York, Appellate Division, First Department, 27 Madison Avenue, New York, New York, on May 2, 2022 at 4:00 p.m., or soon thereafter as counsel may be heard, for an order: (i) staying enforcement of the Order of the Hon. Arthur Engoron, J.S.C. dated April 26, 2022 (the “Order”), including staying the accrual of the \$10,000 daily fine imposed upon Appellant, pending a determination of Appellant’s

appeal; (ii) granting interim relief and staying the Order pending a determination of the instant Motion to Stay; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: May 2, 2022



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Supreme Court of the State of New York
Appellate Division: First Department

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

Petitioner/Respondent,

-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; IVANKA
TRUMP; DONALD J. TRUMP JR.,

Respondents,

-and-

DONALD J. TRUMP,

Respondent/Appellant.

**MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENT/APPELLANT'S MOTION TO STAY PENDING APPEAL**

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PRELIMINARY STATEMENT

The lower court's imposition of a fine in the amount of \$10,000 per day against the respondent-appellant, Donald J. Trump ("Appellant"), is not only unwarranted, it is also patently improper and impermissible by law. More importantly, this exorbitant fine is wholly unjustified. Appellant has, at all relevant times, been fully compliant with the Office of the Attorney General's (the "OAG") subpoena. He did exactly what was required of him: Appellant (and his representatives on his behalf) performed a diligent, thorough and comprehensive search for all of the documents and items called for in the subpoena and provided complete and accurate responses to the OAG. Appellant has even gone above and beyond the OAG's initial demands by amending his response—in good faith and in acquiescence to the lower court's request—with an additional 34 pages of Affidavits setting forth detailed descriptions of the searches performed. Simply put, Appellant has made extraordinary efforts to comply with the OAG's subpoena which not only satisfy but far exceed his obligations by law.

Given these circumstances, it is unconscionable and indefensible for Appellant to be held in contempt in any manner, much less at the inordinate expense of \$10,000 *per day*. Therefore, for the reasons set forth herein, Appellant will be severely prejudiced and irreparably harmed absent a stay pending appeal in the instant matter.

FACTUAL BACKGROUND

On or about December 1, 2020, the OAG issued a subpoena *duces tecum* (the “Subpoena”) to Appellant seeking the production of certain documents in connection with the OAG’s ongoing investigation. *See generally* the Affirmation of Alina Habba, Esq. (“Habba Aff”), Exhibit 2.

The Subpoena contains eight individual demands which seek disclosure of communications and documents that mainly relate to the business dealings of the Trump Organization LLC (the “Trump Organization”). The Subpoena also contained a set of instructions which outline the manner in which Appellant was required to respond. Notably, with regard to which particular documents Appellant was required to produce, the Subpoena stated as follows:

The Subpoena calls for all responsive documents or information in your possession, custody or control. This includes, without limitation, documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or persons from whom you could request documents or information. If documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody. Additionally, you need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you.

Id. at 3-4. Under the “General Definitions and Rules of Constructions” contained in the Subpoena, the term “Person” is defined as “any natural person or Entity.” *Id.* at 2.

On January 3, 2022, Appellant, along with several other respondents in the Underlying Action, filed a motion to quash in the underlying action, *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The Trump Organization, Inc., et al.* (the “Underlying Action”), seeking to quash the testimonial portions of the OAG’s subpoena.

On January 18, 2022, the OAG filed an opposition and cross-motion to compel Appellant to produce documents in accordance with the Subpoena.

On February 17, 2022, the lower court denied Appellant’s motion and ordered, among other things, that Appellant “comply in full, within 14 days of the date of this order, with the portion of the Office of the Attorney General’s Subpoena seeking documents and information,” (the “Prior Order”). *See generally* Habba Aff., Ex. 1.

On February 28, 2022, Appellant and several other respondents in the Underlying Action proceeded to appeal the Prior Order to the First Department. On March 3, 2022, the parties agreed and stipulated that Appellant would respond to the documents portion of the Subpoena on or before March 31, 2022. *See generally* Habba Aff., Ex. 3.

On March 31, 2022, Appellant fully complied with the Subpoena by serving a subpoena response (the “Response”) to the OAG. *See generally* Habba Aff., Ex. 4. After a dutiful search, it had been determined that Appellant simply did not have

any additional requested documents in his possession other than the thousands already produced by the Trump Organization, which he was not obligated to produce. In full compliance with the Subpoena, Appellant identified the Trump Organization as the “person” in possession of the requested documents and directed the OAG to refer to document production that had previously been provided by the Trump Organization. Appellant also included an Affidavit of Compliance signed by his counsel, which was practically identical in all respects to the form affidavit provided by the OAG. *See generally* Habba Aff., Ex. 2.

On April 7, 2022, without notice or warning to Appellant’s counsel, the OAG filed an Order to Show Cause (the “OTSC”), seeking to hold Appellant in contempt and the imposition of a daily fine of \$10,000.00 until the alleged contempt is purged. *See generally* Habba Aff., Ex. 5.

During the length of time between Appellant’s submission and the filing of this motion, the OAG made no effort to communicate with Appellant’s counsel to resolve this issue in good faith. *See generally* Habba Aff., Ex. 6.

On April 7, 2022, Letitia James, the Attorney General of New York, released the following statement to comport with the filing of its contempt motion, stating:

“The judge’s order was crystal clear: Donald J. Trump must comply with our subpoena and turn over relevant documents to my office. Instead of obeying a court order, [he] is trying to evade it. We are seeking the court’s immediate intervention because no one is above the law.”

See generally Habba Aff., Ex. 7.

Shortly thereafter, on April 7, 2022, in an effort to resolve the apparent issue without unnecessary judicial intervention, Appellant’s counsel reached out to the OAG to schedule a phone conference to address the OAG’s contentions that Appellant did not comply with the Subpoena. While expressly stating that Appellant’s submission was in full compliance, Appellant’s counsel offered to amend the responses to the extent necessary to satisfy the OAG. *See* Habba Aff., Ex. 6.

The OAG responded by way of email on April 11, 2022, in which OAG counsel refused to confer on the issue, stating that he both disagrees with Appellant’s counsel’s position and that “further discussions without the Court do not make sense.” *Id.* In a follow-up attempt to address the OAG’s concerns, Appellant’s counsel sent a second email on April 12, 2022, responding that “While we maintain that the subpoena response was fully compliant, we remain open to amending it in a mutually agreeable manner. Therefore, we would like to have a conference call to try to resolve this issue.” *Id.* The OAG waited another two days before responding to this recent email, stating in part that “From OAG’s perspective, no useful purpose would be served by having a conference call among counsel to discuss our competing positions. If you wish to take steps to cure the deficiencies, we have

identified with your client’s March 31 response, we would certainly welcome that.”

Id.

On April 19, 2022, Appellant filed an opposition the OTSC arguing, among other things, that: (i) Appellant had fully complied with the Subpoena; (ii) the OAG had failed to make the requisite showing of prejudice; (iii) the proposed fine, in the amount of \$10,000 per day, was palpably improper and impermissible by law; and (iv) the OAG failed to satisfy the ‘meet and confer’ requirements prior to filing to OTSC. *See Habba Aff.*, Ex. 8.

On April 22, 2022, the OAG filed its reply brief in further support of the OTSC. *See Habba Aff.*, Ex. 9.

On April 26, 2022, the lower court entered Decision and Order (the “Order”) granting the OAG’s relief, which held Appellant in contempt and imposed a sanction of \$10,000 per day until Appellant “purges such contempt to the satisfaction of this Court.” *See Habba Aff.*, Ex. 1.

On April 27, 2022, the Appellant filed a Notice of Appeal through NYSCEF, appealing each and every part of the Court’s April 26, 2022 Order. *See Habba Aff.*, Ex. 1.

On the same day, in a good-faith effort to satisfy the Court’s Order, Appellant’s counsel submitted a letter enclosing three additional/supplemental documents, including: (i) two Affidavits of Compliance of counsel; (ii) an Affidavit

of Appellant; and (iii) a list of all individuals who participated in and/or oversaw the search efforts or assisted in the preparation of the Response. In total, these documents are 34 pages in length and detailed the thorough search undertaken by Appellant and his representatives in response to the Subpoena. *See Habba Aff., Ex. 10.*

On April 29, 2022, the OAG submitted a letter to the Court claiming that the three affidavits submitted were not sufficient to purge the finding of contempt. *See Habba Aff., Ex. 11.*

On the same day, the lower court scheduled a virtual conference to determine whether Appellant's revised Affidavits purged the contempt to the Court's satisfaction. Upon the conclusion of the conference, the Court entered an Order denying Appellant's request to purge his contempt, without prejudice. *See Habba Aff., Ex. 12.*

ARGUMENT

A stay of enforcement of the Order pending resolution of this appeal, including a tolling of the improperly assessed fine in the amount of \$10,000 per day, is warranted in the present scenario.

CPLR § 5519(c) authorizes this Court to “stay all proceedings to enforce the judgment or order appealed from pending an appeal.” CPLR 5519(c). The grant of a stay pending appeal under CPLR § 5519(c) is a matter within the Court's

discretion. *See, e.g., 64 B Venture v. Am. Realty Co.*, 179 A.D.2d 374, 375-76 (1st Dep’t 1992); *Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep’t 1986).

“For a discretionary stay, a court may consider any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.” *Tax Equity Now NY LLC v. City of New York*, 2018 N.Y. Slip Op 32378(U) (Sup. Ct. N.Y. Cnty. Nov. 30, 2018), *aff’d*, 173 A.D.3d 464 (1st Dep’t 2019). Among other things, in determining whether to grant a stay, courts have considered whether the appeal has merit and whether any prejudice will result from granting or denying a stay. *See, e.g., Herbert v. City of New York*, 126 A.D.2d 404, 406-07 (1st Dep’t 1987); *Russell v. N.Y.C. Hous. Auth.*, 160 Misc.2d 237, 239 (Sup. Ct. Bronx Cty. 1992). Courts will also typically look towards a balancing of the equities between the parties. *See, e.g., Seitzman v. Hudson Riv. Assoc.*, 126 A.D.2d 211 (1st Dep’t 1987).

As outlined below, each of these factors weigh heavily in Appellant’s favor in the instant scenario. Therefore, a stay of enforcement of the Order is warranted.

I. Appellant Will Be Severely Prejudiced Absent a Stay Because the \$10,000 Daily Fine is Patently Improper

This Court has the “inherent power to grant a stay of acts or proceedings, which, although not commanded or forbidden by the order appealed from, will disturb the status quo and tend to defeat or impair [the Court’s] appellate jurisdiction.” *Schwartz v. N.Y.C. Hous. Auth.*, 219 A.D.2d 47, 48 (1st Dep’t 1996).

Here, significant prejudice would result to Appellant if a stay is not granted because the lower court vastly exceeded its statutory authority under Judiciary Law § 773 by imposing a daily fine in the impermissible and exorbitant amount of \$10,000 per day. “The primary purpose of civil contempt is remedial,” and is designed “to compensate the injured private party or to coerce compliance with the court’s mandate or both.” *Palmitesta v. Palmitesta*, 166 A.D.3d 782, 782-83 (2d Dep’t 2018). A court generally lacks authority to impose a sanction for civil contempt other than specified by the statute. *Weissman v. Weissman*, 131 A.D.3d 529, 530 (2d Dep’t 2015); *see* 21 N.Y. Jur. 2d Contempt § 137.

The OAG’s motion for contempt was brought pursuant to Judiciary Law §§ 753 and 773. Judiciary Law § 753 provides that a court may “punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced” for “disobedience to a lawful mandate of the court.” N.Y. Jud. Law § 753(A)(1). Judiciary Law § 773, entitled “Amount of Fine,” sets forth the applicable limitations a court has in imposing a fine under Judiciary Law § 753.

Judiciary Law § 773 states, in pertinent part:

Where it is not shown that such an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant’s costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner.

Jud. Law § 773 (emphasis added). “By its unambiguous terms [Jud. Law § 773] distinguishes between the amount of the fine assessable in two separate types of civil contempt cases, one where actual damage has resulted from the defendants’ contemptuous acts and one where there may be prejudice to a complainant’s rights but ‘it is not shown that such an actual loss or injury has been caused.’” *State v. Unique Ideas, Inc.*, 44 N.Y.2d 345, 349 (1978) (citing Jud. Law § 773). “[W]here no such actual loss has been shown, the court may only impose a fine which does not exceed the complainant’s costs and expenses, plus an additional \$250.” *Berkowitz v. Astro Moving and Stor., Co., Inc.*, 240 A.D.2d 450, 452 (2d Dep’t 1997).

Critically, actual injury cannot be speculative – it must be established as an “actual, provable loss” supported by documentary evidence. *State v Unique Ideas, Inc.*, 44 N.Y.2d 345, 350 (1978). The imposition of fines without such proof is merely “extortion beyond the requirements of just compensation or indemnity.” *Id.* Indeed, courts have consistently affirmed that, absent proof of pecuniary, ascertainable loss, Jud. Law § 773 does not permit the imposition of a fine in excess of \$250 plus costs and expenses. *See, e.g., Page v. Cheung On Mansion, Inc.*, 138 A.D.2d 324, 325 (1st Dep’t 1988) (“[S]ince no actual damages were shown because of defendant Cheung’s conduct, only a fine not exceeding \$250 could be imposed.”); *Hardwood Dimension & Mouldings, Inc. v. Consol. Edison Co. of New York, Inc.*,

77 A.D.2d 644, 645 (2d Dep't 1980) ("Recovery under section 773 of the Judiciary Law is statutory and must be limited to those actual losses which were the direct result of defendants' contemptuous actions."); *Ross v. La Cagnina*, 68 Misc. 497, 498 (App. Term 1910) ("A fine for "loss or injury" to a person can only be imposed upon proof of such loss and assessment of damages, and cannot be arbitrarily imposed without regard to the legal loss or indemnity required.").

Based on the foregoing, the lower court clearly erred in imposing a fine in the amount of \$10,000 per day. Contrary to the lower court's contention, it does not have "wide discretion" to assert a fine in any amount and for any duration of time simply because it believes it to be "reasonable." Quite the opposite, the lower court is duly constrained by the requirements of Jud. Law § 773 and controlling case law, which both unequivocally confirm that a movant must make a showing of "actual loss or injury" to justify the imposition of a fine in excess of \$250. *See e.g., Page, supra.*; Jud. Law § 773. Yet, in the underlying motion, the OAG failed to submit *any* proofs that it had sustained *any* actual loss or injury. *See generally* Habba Aff., Ex. 5 and Ex. 9. No evidence or affidavit was submitted to substantiate such a claim. In fact, the OAG didn't even attempt to claim that it had sustained an "actual loss or injury" – it simply did not mention this statutory element at all. *Id.* Rather, the OAG merely contended that it believed its proposed \$10,000 per day fine to be a "sum sufficient to coerce [Appellant's] compliance[.]" Habba Aff., Ex. 5 at 19. The lower

court, in turn, granted this request on the finding that the OAG's unsubstantiated number was "reasonable," despite such a finding being entirely contradictory to Jud. Law § 773 and controlling case law. *Habba Aff.*, Ex. 1 at 3. Plainly stated, it is well established that these types of speculative fines, wholly unsupported by documentary proofs as to "actual injury or loss" sustained, are not permitted to be in excess of \$250 under Jud. Law § 773.

Moreover, a daily fine is simply not an appropriate remedy under Jud. Law § 773. As such, the Appellate Division has consistently rejected orders imposing these types of fines. *See, e.g., Page*, 138 A.D.2d at 325 ("It was erroneous to conclude that said section permitted a daily fine of \$250.") (citing *Gabrelian v. Gabrelian*, 108 A.D.2d 445, 447 (2d Dep't 1985)); *Bing v. Sun Wei Ass'n, Inc.*, 205 A.D.2d 355, 355–56 (1st Dep't 1994 (finding it an error to impose a \$200 per day fine because "the maximum fine allowable . . . for civil contempt the complainant's actual loss")); *Ferrante v. Stanford*, 172 A.D.3d 31, 39 (2d Dep't 2019) (reversing fine "in the amount of \$ 500 per day" because the maximum fine was either actual damages or \$250 plus costs and expenses).

Therefore, the lower court's decision to impose a daily fine in the amount of \$10,000 per day, without a showing of actual loss or injury, was patently improper.

II. The Appeal is Meritorious

Appellant has a significant likelihood of success on the merits since the lower court's decision to find Appellant in civil contempt was flawed in several significant respects.

To sustain a finding of civil contempt, the movant must establish that: (1) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) the movant was prejudiced by the offending conduct. *See McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983). “A party seeking to hold another party in civil contempt has the burden of proving the contemptuous conduct by clear and convincing evidence.” *Gray v. Giarrizzo*, 47 A.D.3d 765, 766 (2d Dep't 2008) (citing *Rupp-Elmasri v. Elmasri*, 305 A.D.2d 394, 395 (2003)); *see also Cassarino v. Cassarino*, 149 A.D.3d 689 (2d Dep't 2017) (“[A] motion to punish a party for civil contempt is addressed to the sound discretion of the Court, and the movant bears the burden of proving the contempt by clear and convincing evidence.”).

In finding Appellant in civil contempt, the lower court misconstrued the relevant facts and blatantly misapplied the controlling law. Contrary to the lower court's finding, Appellant fully complied with the Subpoena. Further, even if there were some minor technical deficiencies with his response, the OAG has not suffered any prejudices since it is in possession of all of the requested documents and

Appellant has, at all relevant times, made good faith efforts to otherwise revise the Response accordingly. Finally, the Order is so vague and ambiguous that it is unenforceable on its face.

A. The Lower Court’s Finding of Non-Compliance was Made in Error

The lower court’s finding that Appellant “willfully disobeyed” the Order is entirely misplaced – the Order directed Appellant to “fully comply” with the Subpoena, which is precisely what he did.

The party moving for civil contempt arising out of noncompliance with a subpoena *duces tecum* bears the burden of establishing, by clear and convincing evidence, that the subpoena has been violated and that “the party from whom the documents were sought had the ability to produce them.” *Yalkowsky v. Yalkowsky*, 93 A.D.2d 834, 835 (1983); *see also Gray v. Giarrizzo*, 47 A.D.3d 765, 766 (2008). To hold a party in civil contempt, “the court must expressly find that the person’s actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceeding.” *Clinton Corner v. Lavergne*, 279 A.D.2d 339, 341 (1st Dep’t 2001).

The lower court seemingly took issue with the lack of documents produced by Appellant in the Response. At first glance, the absence of responsive documents may give the appearance of non-compliance; however, the simple fact is there were no responsive documents that Appellant was obligated to produce.

The Subpoena contained a set of instructions which delineated which Appellant was—and was not—required to produce. Instruction C2 of the Subpoena stated as follows:

If documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody. Additionally, you need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you.

Habba Aff., Ex. 2 at 3-4. Per this instruction, Appellant was not obligated to reproduce any of the millions of documents that had already been produced by the Trump Organization. And given that the Subpoena called for the production of almost exclusively business-oriented documents, it is not surprising that all of the documents were in the possession, custody and/or control of the Trump Organization and not in Appellant's personal possession. This is particularly true since Appellant "famously does not use email or a computer" and has spent five years away from the Trump Organization while he was campaigning and, subsequently, serving as President of the United States. See Habba Aff., Ex. 8 at 8. Due to these circumstances, after a full, comprehensive and diligent search, Appellant simply did not have any documents in his possession, custody or control that he was otherwise obligated to produce per the instructions of the Subpoena.

In the Order, the lower court also pointed to two other purported deficiencies with the Response: (1) the objections raised therein; and (2) the affidavit of compliance attached thereto. *See generally* Habba Aff., Ex. 1. As for the objections, these were merely raised to preserve Appellant’s rights and were immaterial to the answers provided in the Response. Further, to the extent the objections were improper, Appellant cured this defect by expressly waiving all of his objections in his amended response. Therefore, the objections are moot at this point.

As for the sufficiency of the Affidavit of Compliance, the initial Affidavit of Compliance submitted by Appellant was nearly identical to the form provided by the OAG. The instructions to the Subpoena expressly state: “A copy of the Affidavit of Compliance provided herewith shall be completed and executed . . . and you shall submit such executed Affidavit(s) of Compliance with your response to this Subpoena.” Habba Aff., Ex. 2 at 6. The fact that the OAG now contends that their own language is insufficient is disingenuous, misleading, and non-sensical. Appellant followed the instructions of the Subpoena as stated and submitted an Affidavit of Compliance that wholly comported to the template form provided.

Nonetheless, to the extent Appellant’s initial Affidavit of Compliance was deficient, this issue has since been cured. On April 27, 2022, in response to the Order, Appellant submitted three additional/supplemental documents: (i) two Affidavits of Compliance of counsel; (ii) an Affidavit of Appellant; and (iii) a list of

all individuals who participated in and/or oversaw the search efforts or assisted in the preparation of the Response. In total, these documents are thirty-four (34) pages in length. The Affidavits of Compliance—completed by the two handling attorneys who oversaw the search efforts—provide extensive, detailed descriptions of the diligent searches performed in furtherance of the Response. Together with the Affidavit of Appellant—wherein he certifies that none of the requested documents are in his possession and, to the extent they exist, they are in the possession, custody or control of the Trump Organization—these documents are more than sufficient to satisfy Appellant’s compliance obligations under *Jackson v. City of New York*, 185 A.D.2d 768 (1st Dep’t 1992), the standard cited by the lower court. *Metro. Bridge & Scaffolds Corp. v New York City Hous. Auth.*, 168 A.D.3d 569, 572-73 (1st Dep’t 2019). (“The affidavit that [defendant] submitted with the requisite certification that it made a good faith effort to search for the documents specified in the order was sufficient [and] no further certification is necessary.”) (citing *Jackson, supra*); *Trade Expo Inc. v. Sterling Bancorp*, 171 A.D.3d 634, 635 (1st Dep’t 2019) (“Defendant’s affidavits pursuant to *Jackson* . . . adequately set forth their good faith efforts to comply with discovery with averments, inter alia, that (i) defendants' personnel had conducted a thorough search for requested documents in all areas where said documents and/or information were likely to be found; (ii) no documents were knowingly disposed of by defendants so as to undermine plaintiffs' right to full

discovery; and (iii) defendants did have some policies in place for keeping and maintaining files, but evidently the policies were not universal or particularly detailed, and somewhat left to the discretion of the file creator to determine what records were most pertinent for business purposes.”). At the very least, the three Affidavits clearly establish that Appellant is not “willfully disobey[ing]” the Order to such a degree that he may continue to be held in civil contempt. *See Cherico, Stix & Assocs. v Abramson*, 235 A.D.2d 515 (2d Dep’t 1997) (finding that lower court erroneously held plaintiff in contempt, despite its failure to fully comply with court’s prior disclosure order, since defendant failed to show that modest additional delay in compliance impeded or prejudiced his rights.).

Further, the lower court erred in finding that Appellant “willfully disobeyed” the Order. The records clearly establishes that Appellant made significant efforts to comply, in good faith, with the terms of the Subpoena. Even if there were some minor deficiencies in the manner in which Appellant responded to the Subpoena, any such error would have been the result of mere inadvertence, mistake, or misunderstanding. *See El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 17 (2d Dep’t 2013) (finding of civil contempt may not “be founded upon an inadvertent or mistaken failure to comply with a court order.”). Therefore, there was no willful non-compliance by Appellant. To the contrary, Appellant has made clear at all relevant times that he stands ready to amend, revise and/or supplement the Response as

necessary to satisfy the OAG and/or the lower court, there is no conceivable basis for him to be held in contempt.

B. The OAG’s Rights Have Not Been Prejudiced

“The element of prejudice to a party’s rights is essential to civil contempt, which aims to vindicate the rights of a private party to litigation.” *U.S. Bank Nat’l Ass’n v. Sirota*, 189 A.D.3d 927, 930 (2d Dep’t 2020) (internal quotation marks omitted). Indeed, there can be no finding of civil contempt absent clear and convincing evidence of prejudice to a party to the litigation. *Penavic v. Penavic*, 109 A.D.3d 648, 650 (2d Dep’t 2013). To satisfy this element, a court must “expressly find that the person’s actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceeding.” *Clinton Corner H.D.F.C. v. Lavergne*, 279 A.D.2d 339, 341 (1st Dep’t 2001) (internal quotation marks omitted).

In the underlying motion papers, the OAG failed to put forth any legitimate justification as to how Appellant’s supposed ‘non-compliance’ caused the OAG to sustain prejudice in any meaningful way. Assuming *arguendo* that the Response was not entirely comporting to the requirement of the Subpoena, the OAG has not been harmed in any way – it is *already in possession* of the documents it seeks. See *Troiano v. Ilaria*, 205 A.D.2d 752, 752 (1994) (affirming denial of contempt where party seeking contempt order failed to demonstrate alleged infractions prejudiced

that party's rights); *Chambers v. Old Stone Hill Rd*, 66 A.D.3d 944, 946 (2009) (affirming denial of motions for contempt where movants failed to demonstrate any harms resulting from alleged violations).

Further, the circumstances surrounding the filing and prosecution of the OAG's contempt motion cut sharply against the proposition that it has sustained any prejudice at all. Appellant's counsel has made numerous attempts to comply in good faith with the Subpoena and to address any perceived 'deficiencies' the OAG may have issue with.

Immediately after the filing of the OAG's contempt motion—which was filed without warning or notice to Appellant—Appellant's counsel reached out numerous times to the OAG to attempt to address and hopefully resolve any issues in the Response. *See generally* Habba Aff., Ex. 6. However, the OAG rebuffed these good faith attempts to meet and confer. *Id.* Instead, the OAG refused to have any discussions at all and insisted on moving forward without making the slightest effort to avoid unnecessary court intervention. *Id.* Appellant's counsel also made clear in their opposition papers, and again at oral argument, that they were willing and ready to amend, revise and/or supplement the Response to the extent necessary to satisfy the OAG and/or the lower court. Finally, as detailed above, Appellant recently provided a significant supplement to the Response which included thirty-four (34) pages of additional document comprised of: (i) two Affidavits of Compliance from

Appellant’s counsel; (ii) an Affidavit from Appellant himself; and (iii) a list of all individuals who assisted in search efforts and/or in preparation of the Response. In spite of these significant efforts by Appellant to resolve this issue, the OAG has failed to reciprocate Appellant’s good-faith efforts in any meaningful way.

Appellant’s continuing attempts to address the underlying issues—and the OAG’s utter refusal to do the same—sharply cuts against the proposition that the OAG has sustained any prejudice. Indeed, while Appellant has continually volunteered to modify, amend or supplement the Response, the OAG’s demands have only grown increasingly unreasonable and burdensome. As such, any hypothetical harm that the OAG has suffered is merely the result of its unwillingness to deal with Appellant in good faith.

C. The Order is Too Vague and Ambiguous to be Enforceable

It is blackletter law that an order is not enforceable if it is too vague or ambiguous to provide adequate direction or instruction. *See, e.g., Trabanco v. City of New York*, 81 A.D.3d 490, 492 (1st Dep’t 2011) (noting that disclosure directive must be “sufficiently specific to be enforceable.”); *Quick v. ABS Realty Corp*, 13 A.D.3d 1021 (3d Dep’t 2004) (where an order “contains ambiguous and vague language, a finding of civil contempt is not tenable”). This is particularly true in the context of a motion for contempt, where the contemnor must take specific steps to comply with the terms of an order otherwise face severe consequences. In this type

of scenario, “[a]ny ambiguity in the court’s mandate should be resolved in favor of the would-be contemnor.” *Chung v. Maxam Properties, LLC*, 52 A.D.3d 423 (1st Dep’t 2008) (finding that court order was “not clear and unequivocal enough to warrant contempt finding . . . [a]ny ambiguity in the court’s mandate should be resolved in favor of the would-be contemnor.”).

Here, both relevant orders—the Prior Order and the Order—are so vague that neither can be enforced against Respondent, certainly not to the extent that he be perpetually held in a state of contempt. The Prior Order merely stated that Appellant was required to “fully comply” with the Subpoena. As set forth in detail above, that is precisely what Appellant did. If anything, the fact that the OAG and the lower court seem to have a different interpretation of what the Subpoena called for in terms of document production tends to show that the instructions of the Subpoena were, at best, vague and ambiguous. Thus, given that the instructions of the Subpoena *expressly permitted* Appellant to rely upon the Trump Organization’s prior productions and provided a *form affidavit* to be executed, he cannot be held in contempt for his reasonable reliance on these directions. Indeed, this “ambiguity in the court’s mandate should be resolved in favor of” Appellant. *Id.*

As for the Order, it similarly lacks the requisite particularity to be enforceable. Even assuming *arguendo* that the lower court was correct in finding that Appellant had failed to comply with the Prior Order, the Order fails to identify any of the steps

that Appellant needs to take to cure the purported errors. Rather, the Order merely states that Appellant will be held in contempt “until he purges such contempt to the satisfaction of the Court.” Habba Aff., Ex. 1 at 3. This type of undefined, indefinite decree is not “sufficiently specific to be enforceable.” *Trabanco*, 81 A.D.3d at 492. The overbroad nature of the Order is especially apparent given that Appellant *did* attempt to comply with the Order—withdrawing all of his objections and providing 34 pages of additional, supplemental compliance affidavits, as per the lower court’s request—and the lower court *still* considered Appellant to be non-compliant. In short, the lower court has failed to clearly delineate what Appellant needs to do to purge his contempt “to the satisfaction of [the lower court].” Therefore, the Order is unenforceable on its face.

III. Balancing of the Equities Weights Heavily in Favor of Appellant

“The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief.” *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432 (1st Dep’t 2016).

In the instant case, Appellant will be severely prejudiced absent a stay pending appeal. Without a stay, Appellant will be forced to incur a daily fine in the amount of \$10,000 per day – an amount that is exorbitantly high, grossly inappropriate to the purported wrongdoing, and, most importantly, wholly inconsistent with the court’s authority under Jud. Law § 773. Given the length of time it will take for this appeal

to be concluded, the daily fine will almost certainly grow to an amount in the *millions* of dollars while Appellant awaits an adjudication on the merits. Given this extraordinarily high cost affiliated with seeing through this appeal, Appellant would effectively have no choice but to abandon it. This exact circumstance—where “absent a stay pending appeal . . . the appeal will be rendered moot—is the “quintessential form of prejudice.” *In re Country Squire Assoc. of Carle Place, L.P.*, 203 B.R. 182, 183 (B.A.P. 2d Cir. 1996) (internal citation and quotation marks omitted).

Conversely, a stay would not result in any prejudice to the OAG. A stay would have no effect on the OAG’s ability to prosecute the underlying action or move forward with its investigation. It would solely prevent the accrual of the overly excessive daily fine – a fine which is payable to the court, not the OAG. Simply put, the OAG would lose nothing if the stay were to be granted. This is especially true since it is already in possession of all of the documents it seeks, as they have been previously produced by the Trump Organization, and Appellant remains ready and willing to amend the Response to the extent necessary.

Based on the foregoing, a balancing of the equities weighs heavily in favor of Appellant.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Court issue an order granting (i) a stay of the Order, including a stay of the accrual of the \$10,000 daily fine against Appellant, pending a determination on the instant appeal; and (ii) such other further relief as the Court deems just and proper.

Dated: May 2, 2022
 New York, New York



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Attorneys for Respondent/Appellant,

Donald J. Trump,

PRINTING SPECIFICATIONS STATEMENT


PURSUANT TO 22 NYCRR § 1250.8(j)

The foregoing brief was prepared on a computer. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
Point size: 14
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules, regulations, etc., is 5,899.

Dated: May 2, 2022
New York, New York



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*Attorneys for Respondent/Appellant,
Donald J. Trump,*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION; FIRST DEPARTMENT

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

Petitioner/Respondent,

v.

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;
IVANKA TRUMP; DONALD J. TRUMP JR.,

Respondents,

- and-

DONALD J. TRUMP,

Respondent/Appellant.

Appellate Div. Case No.: 2022-01812

Orig. Ind. No. 451685/2020

**AFFIRMATION IN SUPPORT OF
APPELLANT'S MOTION TO
STAY PENDING APPEAL AND
INTERIM RELIEF**

Alina Habba, Esq., an attorney duly admitted to practice before the Courts of the State of New York and this Court, hereby states the following under penalty of perjury and pursuant to CPLR § 2106:

1. I am the managing partner of Habba Madaio & Associates LLP, attorneys for respondent-appellant, Donald J. Trump ("Appellant"), and am fully familiar with the facts and circumstances set forth below.

2. In accordance with 22 NYCRR 130-1.1, I affirm that no frivolous contentions are raised herein.

3. Pursuant to the instant application, Appellant seeks a stay pending appeal of the Order of the Decision and Order of the Hon. Arthur Engoron, J.S.C. dated April 26, 2022 including interim relief in the form of a temporary stay and tolling of the daily fine—in the amount of

\$10,000 per day—pending this Court’s decision on his motion to stay the enforcement of a judgment pending appeal pursuant to CPLR § 5519, which will be subsequently filed by Appellant

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Notice of Appeal filed through NYSCEF on April 27, 2022 in this matter, which includes a copy of the Decision and Order of the Hon. Arthur Engoron, J.S.C dated April 26, 2022 and entered with notice of entry on April 27, 2022.

5. Attached hereto as **Exhibit 2** is a true and correct copy of the Office of the Attorney General’s (OAG) Subpoena dated December 1, 2021.

6. Attached hereto as **Exhibit 3** is a true and correct copy of the Stipulation and Order dated March 3, 2022.

7. Attached hereto as **Exhibit 4** is a true and correct copy of Appellant’s response to the OAG’s subpoena dated March 31, 2022.

8. Attached hereto as **Exhibit 5** is a true and correct copy of the Order to Show Cause filed by the OAG on April 7, 2022 (the “OTSC”), seeking to hold Appellant in contempt, along with the accompanying memorandum of law.

9. Attached hereto as **Exhibit 6** is a true and correct copy of the correspondence between OAG and Appellant’s counsel with respect to the OAG’s contempt motion.

10. Attached hereto as **Exhibit 7** is a true and correct copy of the press statement released by Letitia James in connection with the OAG’s contempt motion dated April 7, 2022.

11. Attached hereto as **Exhibit 8** is a true and correct copy of Appellant’s opposition to the OAG’s contempt motion dated April 7, 2022.

12. Attached hereto as **Exhibit 9** is a true and correct copy of the OAG’s reply brief in further support of the OTSC.

13. Attached hereto as **Exhibit 10** is a true and correct copy of the letter submitted to the lower court on April 27, 2022, which enclosed affidavits from Appellant’s counsel, Alina Habba and Michael T. Madaio, along with an affidavit from Appellant himself concerning the search efforts in response to the Subpoena.

14. Attached hereto as **Exhibit 11** is a true and correct copy of the letter submitted by the OAG in response to Appellant’s supplemental submission.

15. Attached hereto as **Exhibit 12** is a true and correct copy of Hon. Arthur Engoron, J.S.C Order dated April 29, 2022, which denied Appellant’s request to purge his contempt, without prejudice.

16. In accordance with 22 NYCRR 1250.4(b)(1)(iii), the names, addresses, telephone numbers and email addresses of the attorneys and counsel for all parties in support of and in opposition to the motion or proceeding are as follows: (i) counsel for Appellant: Alina Habba, Esq. Habba Madaio & Associates LLP, 112 West 34th St, 17th & 18th Floors, New York, New York 10120; and (ii) Counsel for petitioner-respondent, People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG”), is Eric Del Pozo, Esq. and Judith Vale, Esq., Office of the Attorney General, Solicitor General’s Office, 28 Liberty Street, New York, New York 10005.

17. In accordance with 22 NYCRR 1250.4(b)(2), reasonable notice has been provided to the OAG regarding the day and time, and the location where, the instant application will be presented and the relief (including interim relief) being requested.

18. Specifically, on May 2, 2022 at approximately 6:31am, an attorney with my office, Michael T. Madaio, sent an e-mail to the OAG’s appellate counsel, Eric Del Pozo and Judith Vale, and trial counsel, Kevin Wallace, Andrew Amer, and Colleen Faherty, advising them that the

instant motion would be filed at approximately 2pm, in-person, on May 2, 2022. After receiving a response from the OAG, a follow-up e-mail was sent by Mr. Madaio at approximately 9:34am clarifying that the instant motion would be filed via NYSCEF. It is not currently known whether the OAG opposes the requested interim relief. Attached hereto as **Exhibit 13** is a true and correct copy of the relevant e-mail correspondences dated May 2, 2022.

19. Appellant has not previously requested the relief sought herein in this or any other Court.

Dated: New York, New York
May 3, 2022


Alina Habba, Esq.
HABBA MADAIO & ASSOCIATES LLP

EXHIBIT 1

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,

Index No.: 451685/2020

Petitioner,

-against-


NOTICE OF APPEAL

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.

PLEASE TAKE NOTICE, that Respondent, Donald J. Trump (“Respondent”), hereby appeals to the Appellate Division of the Supreme Court, First Judicial Department from each and every part of the Decision and Order of the Honorable Arthur F. Engoron, J.S.C., dated April 26, 2022, and entered in the Office of New York County Clerk on April 27, 2022, which granted Petitioner’s Motion to hold Respondent in civil contempt. A copy of the Decision and Order served with the Notice of Entry dated April 27, 2022 (NYSCEF No.: 759) is attached hereto.

Dated: April 27, 2022
 New York, New York


 Alina Habba, Esq.
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 E-mail: ahabba@habbalaw.com
 Attorneys for Respondent, Donald J. Trump

To: All counsel of record (via NYSCEF)

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

| | | |
|---|--|---|
| Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended. | | For Court of Original Instance |
| <p>THE PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK</p> <p style="text-align: center;">- against -</p> <p>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.,</p> | | Date Notice of Appeal Filed |
| Case Type | | For Appellate Division |
| <input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration | <input type="checkbox"/> CPLR article 78 Proceeding <input checked="" type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding | <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 |
| Nature of Suit: Check up to three of the following categories which best reflect the nature of the case. | | |
| <input type="checkbox"/> Administrative Review | <input checked="" type="checkbox"/> Business Relationships | <input type="checkbox"/> Commercial |
| <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Domestic Relations | <input type="checkbox"/> Contracts |
| <input type="checkbox"/> Family Court | <input type="checkbox"/> Mortgage Foreclosure | <input type="checkbox"/> Election Law |
| <input type="checkbox"/> Real Property (other than foreclosure) | <input type="checkbox"/> Statutory | <input checked="" type="checkbox"/> Miscellaneous |
| | | <input type="checkbox"/> Taxation |
| | | <input type="checkbox"/> Prisoner Discipline & Parole |
| | | <input type="checkbox"/> Torts |

Informational Statement - Civil

| Appeal | |
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| Paper Appealed From (Check one only): | If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper. |
| <input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree | <input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment |
| <input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment | <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify): |
| Court: Supreme Court | County: New York |
| Dated: 04/26/2022 | Entered: 4/27/2022 |
| Judge (name in full): Arthur Engoron, J.S.C. | Index No.: 451685/2020 |
| Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final | Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury |
| Prior Unperfected Appeal and Related Case Information | |
| Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. 2022-00814 Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case: | |
| Original Proceeding | |
| Commenced by: <input checked="" type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus | Date Filed: 04/07/2022 |
| Statute authorizing commencement of proceeding in the Appellate Division: | |
| Proceeding Transferred Pursuant to CPLR 7804(g) | |
| Court: Choose Court | County: Choose County |
| Judge (name in full): | Order of Transfer Date: |
| CPLR 5704 Review of Ex Parte Order: | |
| Court: Choose Court | County: Choose County |
| Judge (name in full): | Dated: |
| Description of Appeal, Proceeding or Application and Statement of Issues | |
| Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. The Supreme Court entered an Order holding Respondent Donald J. Trump in civil contempt for purportedly violating the February 17, 2022 Order and imposed a fine of \$10,000.00 per day until Respondent fully complies with the OAG's subpoena dated December 2, 2021. | |

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

- (1) Whether the OAG satisfied its burden of demonstrated by clear and convincing evidence that Respondent failed to comply with a lawful court order where Respondent both proffered a timely response to the Subpoena in accordance with the instructions set forth in the Subpoena;
- (2) Whether the OAG demonstrated that it was prejudiced by Respondent's response, despite failing to demonstrate by clear and convincing evidence that Respondent's conduct was calculated to defeat, impair, impede, or prejudice the OAG's rights or remedies, particularly in light of the fact that Respondent remained willing to amend at all times.
- (3) Whether the OAG's contempt motion was procedurally defective due to the OAG's failure to comply with NY CLS Unif. Rules, Civil Cts § 202.20-f by refusing to engage in good-faith discussions with Respondent prior to the filing of its motion; and
- (4) Whether the imposition of the \$10,000 daily fine serves any purpose as either a compensatory or coercive remedy, especially where the OAG failed to demonstrate any ascertainable loss stemming from Respondent's conduct.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

| No. | Party Name | Original Status | Appellate Division Status |
|-----|--|-----------------|---------------------------|
| 1 | Donald J. Trump | Respondent | Appellant |
| 2 | PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York | Petitioner | Respondent |
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Habba Madaio & Associates LLP (representing Donald J. Trump)

Address: 112 West 34th Street, 17th & 18th Floors

City: New York State: NY Zip: 10120 Telephone No: (908) 869-1188

E-mail Address: ahabba@habbalaw.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: Letitia James, as Attorney General for the State of New York

Address: 28 Liberty Street

City: New York State: NY Zip: 10005 Telephone No: (212) 416-6046

E-mail Address: Kevin.Wallace@ag.ny.gov; Colleen.Faherty@ag.ny.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

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E-mail Address:

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Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Informational Statement - Civil

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,

Index No.: 451685/2020

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;
MAZARS USA LLC; DONALD J. TRUMP;
DONALD TRUMP, JR.; and IVANKA
TRUMP,

Respondents.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of the Order and Decision of
Honorable Arthur F. Engoron, J.S.C. dated April 26, 2022 that was entered in the office of the
Clerk of the Supreme Court, New York County, on April 26, 2022.

Dated: April 27, 2022
New York, New York



Alina Habba Esq.
HABBA MADAIO & ASSOCIATES, LLP
1430 U.S. Highway 206, Suite 240
Bedminster, New Jersey 07921
-and-
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Fax: (908)-450-1881
Email: ahabba@habbalaw.com
Attorneys for Respondent, Donald J. Trump

To: All counsel of record (via NYSCEF)

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

PRESENT: HON. ARTHUR ENGORON PART 37

Justice

-----X

THE PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Petitioner,

INDEX NO. 451685/2020

MOTION DATE 04/08/2022

MOTION SEQ. NO. 009

- v -

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.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 668, 669, 670, 671, 672, 673, 674, 675, 695, 696, 720, 721, 722, 723, 724, 725, 726, 744

were read on this motion for CONTEMPT.

Upon the foregoing documents, it is hereby ordered that petitioner's motion to hold respondent Donald J. Trump in contempt of court is granted.

Background

In this special proceeding, familiarity with which the Court will assume, petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (hereinafter, "OAG") seeks to hold respondent Donald J. Trump in contempt of court for failing to comply with this Court's February 17, 2022 Decision and Order compelling him to produce certain documents.

On December 2, 2021, OAG served a subpoena on Donald J. Trump that sought, inter alia¹, documents and evidence, to be produced by December 17, 2021. Mr. Trump subsequently moved to quash such subpoena, which this Court denied on February 17, 2022. Said Decision and Order directed Mr. Trump to "comply in full, within 14 days of the date of this order, with that portion of the [OAG's] subpoena seeking documents and information." NYSCEF Doc. No. 654.

¹ OAG also served a subpoena for Donald J. Trump's testimony, which this Court compelled on February 17, 2022, and is currently on appeal before the Appellate Division, First Department.

OAG and Mr. Trump subsequently entered into a stipulation, which this Court so-ordered, to extend the document production deadline from March 3, 2022 to March 31, 2022. The stipulation states that “Respondent Donald J. Trump shall comply in full with that portion of the OAG subpoena seeking documents and information by March 31, 2022.” NYSCEF Doc. No. 660.

Instead of producing the documents called for in the subpoena, on March 31, 2022, Mr. Trump produced 16 pages of boilerplate objections and a four-page affirmation by counsel that states, summarily, that Mr. Trump was unable to locate any responsive documents in his custody. The affirmation fails to identify what search methods were employed, where they were employed, by whom they were employed, and when such searches took place.

OAG has moved to hold Mr. Trump in contempt and asks this Court to impose a sanction of \$10,000 per day until Mr. Trump complies in full with OAG’s subpoena.

Discussion

Judiciary Law § 753(A)(1) provides, in pertinent part, that: “[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:... for disobedience to a lawful mandate of the court.”

Additionally, CPLR 5104 provides that “[a]ny interlocutory or final judgment or order, or any part thereof, not enforceable under either article fifty-two or section 5102 may be enforced by serving a certified copy of the judgment or upon the party or other person required thereby or by law to obey it and, if he refuses or wilfully neglects to obey it, by punishing him for a contempt of the court.”

Mr. Trump waived the right to raise boilerplate objections to the subpoena by not timely bringing such challenges in his motion to quash. “A motion to quash or vacate, of course, is the proper and exclusive vehicle to challenge the validity of a subpoena.” Brunswick Hosp. Ctr., Inc. v Hynes, 52 NY2d 333, 339 (1981) (further finding that “[a]ny other rule would open the door to never-ending challenges to the validity of subpoenas, perhaps even years after initial issuance and compliance”). Accordingly, it was wholly improper for Mr. Trump to raise boilerplate objections to the subpoena after failing to raise such objections in his motion to quash. Furthermore, having stipulated to produce all the documents by March 31, 2022, Mr. Trump may no longer challenge the validity of the subpoena.

Furthermore, the “compliance affirmation” submitted by counsel for Mr. Trump is woefully inadequate, both under the terms of the subpoena and under controlling New York case law, which require an affiant conducting a search for records to attest to the “who,” “what,” “where,” “when,” and “how” the search was conducted. Jackson v City of New York, 185 AD2d 768, 770 (1st Dep’t 1992) (holding that “[h]ere, after years of delay, the affidavit presented by the [defendant] made no showing as to where the subject records were likely to be kept, what efforts, if any, were made to preserve them, whether such records were routinely destroyed, or whether a search had been conducted in every location where the records were likely to be found”).

For example, Mr. Trump has not refuted, with admissible evidence, OAG's detailed assertions that he failed to search numerous file cabinets in various locations. NYSCEF Doc. No. 744.

In short, the affidavit provided the Court with no basis to find that the search had been a thorough one or that it had been conducted in a good faith effort to provide these necessary records to plaintiff. Not only did Mr. Trump fail to submit an affidavit himself, which this Court believes would have been the best practice, as he is the most obvious person to affirm where any responsive documents in his possession, custody, and control would be located, but the attorney affirmation submitted on behalf of Mr. Trump contained only conclusory statements, rather than details of a diligent search.

Accordingly, Mr. Trump has willfully disobeyed a lawful order of this Court.

In order to find that contempt has occurred in given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. It must appear, with reasonable certainty, that the order has been disobeyed. Moreover, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Finally, prejudice to the right of a party to the litigation must be demonstrated.

McCormick v Axelrod, 59 NY2d 574, 583 (1983) (internal citations omitted).

OAG, the people's representative, correctly states that any delay causes prejudice to "the rights or remedies of the State acting in the public interest." State v Stallings, 183 AD2d 574, 575 (1st Dep't 1992) (affirming motion for contempt brought on behalf of State). Moreover, each day that passes without compliance further prejudices OAG, as the statutes of limitations continue to run and may result in OAG being unable to pursue certain causes of action that it otherwise would.

Accordingly, OAG has satisfied its burden of demonstrating that Mr. Trump willfully disobeyed a lawful court order of which he had knowledge, prejudicing OAG. The purpose of civil contempt is not to punish, but, rather, to coerce and/or to compensate. OAG seeks to fine Mr. Trump \$10,000 per day until he satisfies his obligations, which this Court, which has wide discretion in such matters, finds to be reasonable.

Thus, Donald J. Trump is in contempt of Court and must pay a fine of \$10,000 per day, from the date of this Decision and Order, until he purges such contempt to the satisfaction of this Court.

4/26/2022
DATE


ARTHUR ENGORON, J.S.C.

| | | |
|-----------------------|---|---|
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART |
| | <input type="checkbox"/> DENIED | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | <input type="checkbox"/> REFERENCE |

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,

Index No.: 451685/2020

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;
MAZARS USA LLC; DONALD J. TRUMP;
DONALD TRUMP, JR.; and IVANKA TRUMP,

Respondents.

**AFFIRMATION OF
SERVICE**

ALINA HABBA affirms:

1. I am not a party to the within action, am over eighteen (18) years of age and reside in Bedminster, New Jersey.

2. On the 27th day of April 2022, through the New York State Courts Electronic Filing System, I filed with the Court and served electronically the Notice of Entry on the Petitioner, Letitia James as Attorney General of the State of New York. I served an additional copy of the above via email to:

Colleen Faherty
The Office of the Attorney
General of the State of New
York
Colleen.Faherty.ag.ny.gov

Kevin Wallace
The Office of the Attorney
General of the State of New
York
Kevin.Wallace@ag.ny.gov

Dated: April 27, 2022
New York, New York


Alina Habba, Esq.
HABBA MADAIO & ASSOCIATES LLP

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;
 MAZARS USA LLC; DONALD J. TRUMP;
 DONALD TRUMP, JR.; and IVANKA TRUMP,

Respondents.

Index No.: 451685/2020

**AFFIRMATION OF
 SERVICE**

ALINA HABBA affirms:

1. I am not a party to the within action, am over eighteen (18) years of age and reside in Bedminster, New Jersey.

2. On the 27th day of April 2022, through the New York State Courts Electronic Filing System, I filed with the Court and served electronically the Notice of Appeal on the Petitioner, Letitia James as Attorney General of the State of New York. I served an additional copy of the above via email to:

Colleen Faherty
 The Office of the Attorney
 General of the State of New
 York
 Colleen.Faherty.ag.ny.gov

Kevin Wallace
 The Office of the Attorney
 General of the State of New
 York
 Kevin.Wallace@ag.ny.gov

Dated: April 27, 2022
 New York, New York


 Alina Habba, Esq.
 HABBA MADAIO & ASSOCIATES LLP

EXHIBIT 2



STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM AND AD TESTIFICANDUM**THE PEOPLE OF THE STATE OF NEW YORK****GREETINGS**

TO: Donald J. Trump
c/o Fischetti & Malgieri
Ronald P. Fischetti
565 5th Ave., 7th fl.
New York, NY 10017

YOU ARE HEREBY COMMANDED, under Executive Law § 63(12) and § 2302(a) of the New York Civil Practice Law and Rules ("CPLR"), to deliver and turn over to Letitia James, the Attorney General of the State of New York, or a designated Assistant Attorney General, on **the 17th day of December 2021, by 10:00 a.m.**, or any agreed upon adjourned date or time, at 28 Liberty Street, New York, New York 10005, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

PLEASE TAKE FURTHER NOTICE that you are hereby required to appear and testify on **the 7th day of January, 2022 at 10:00 a.m.** at the New York State Department of Law, 28 Liberty Street, New York, NY 10005 as to what you know regarding the subject of an inquiry by LETITIA JAMES, Attorney General of the State of New York, pursuant to New York State Executive Law Section 63(12), to determine whether an action or proceeding should be instituted with respect to repeated violations of the Executive Law.

PLEASE TAKE FURTHER NOTICE that under the provisions of Article 23 of the CPLR, you are bound by this subpoena to produce the documents requested on the date specified, and then to appear and testify on the date specified and any adjourned date. Pursuant to CPLR Section 2308(b)(1), your failure to do so subjects you to, in addition to any other lawful punishment, costs, penalties and damages sustained by the State of New York as a result of your failure to so comply.

PLEASE TAKE FURTHER NOTICE that the Attorney General deems the documents and information requested by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 1st day of December, 2021.

By: _____

Kevin Wallace
Senior Enforcement Counsel
28 Liberty St., 21st Floor
New York, New York 10005
(212) 416-6376

By: _____

Colleen K. Faherty
Assistant Attorney General
28 Liberty St., 18th Floor
New York, New York 10005
(212) 416-6046

SCHEDULE

A. General Definitions and Rules of Construction

1. “All” means each and every.
2. “Any” means any and all.
3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.
4. “Communication” means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.
5. “Concerning” means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
6. “Custodian” means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.
7. “Data Dictionary” means documentation of the organization and structure of the databases or data sets that is sufficient to allow their reasonable use by the New York Office of the Attorney General, including, for each table of information: (a) the size including the total number of records and file size (compressed and uncompressed) of the table; (b) a general description; (c) a list of field names; (d) a definition for each field as it is used by the Company; (e) definitions of all codes and acronyms that appear as field values; (f) the format (including variable type and length), total record counts, null value counts, and total unique record counts of each field; (g) the fields that are primary keys for the purpose of identifying a unique observation; and (h) the fields that are foreign keys for the purpose of joining tables.
8. “Document” is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (“e-mail”), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, code (e.g., C/C++/C#, SQL, JavaScript,), algorithms, code repositories (e.g. GitHub), commit messages, audit logs, data or databases (e.g., Oracle, postgres or other SQL or non-SQL systems), plans, manuals,

- policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.
9. “Employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
 10. “Entity” means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.
 11. “Identify” or “Identity,” as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document’s production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document’s Custodian, and identification of each Person You believe to have received a copy of the Document.
 12. “Identify” or “Identity,” as applied to any Entity, means the provision in writing of such Entity’s legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.
 13. “Identify” or “Identity,” as applied to any natural person, means and includes the provision in writing of the natural person’s name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).
 14. “Person” means any natural person, or any Entity.
 15. “Sent” or “received” as used herein means, in addition to their usual meanings,

the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.

16. "Subpoena" means this subpoena and any schedules or attachments thereto.
17. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

B. Particular Definitions

1. "Respondent," "You," "Your" or "Mr. Trump" means "Donald J. Trump."
2. The "Trump Organization" means "The Trump Organization, Inc."; DJT Holdings LLC; DJT Holdings Managing Member LLC; and any predecessors, successors, present or former parents, subsidiaries, and affiliates, whether direct or indirect; and all directors, officers, partners, employees, agents, contractors, consultants, representatives, and attorneys of the foregoing, and any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing.
3. The "Statements of Financial Condition" means the independent accountants' compilation reports prepared or compiled by Mazars regarding the financial condition of Donald J. Trump from at least 2010 through present.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of your obligations under law to preserve documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish your aforementioned preservation obligations. Nor shall you act, in reliance upon any such agreement or otherwise, in any manner inconsistent with your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall you act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
2. Possession, Custody, and Control. The Subpoena calls for all responsive documents or information in your possession, custody or control. This includes, without limitation, documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or persons from whom you could request documents or information.

- If documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody. Additionally, you need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you.
3. Documents No Longer in Your Possession. If any document requested herein was formerly in your possession, custody or control but is no longer available, or no longer exists, you shall submit a statement in writing under oath that: (a) describes in detail the nature of such document and its contents; (b) Identifies the person(s) who prepared such document and its contents; (c) identifies all persons who have seen or had possession of such Document; (d) specifies the date(s) on which such document was prepared, transmitted or received; (e) specifies the date(s) on which such document became unavailable; (f) specifies the reason why such document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the identity of the person(s) requesting and performing such destruction or transfer; and (g) identifies all persons with knowledge of any portion of the contents of the document.
 4. No Documents Responsive to Subpoena Requests. If there are no documents responsive to any particular Subpoena request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.
 5. Format of Production. You shall produce documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General. Productions in electronic format shall meet the specifications set out in Attachments 1 and 2.
 6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, *.csv and/or *.xls formats) for review. If it is not possible to export data in this format, you must make the database available to the undersigned for meaningful inspection and review of the information.
 7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any document or other material indicating filing or other organization. Such

- production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no document. Likewise, all documents that are physically attached to each other in your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.
8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Office of the Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves you of your obligation to fully respond to these requests for documents or information.
 9. Document Numbering. All documents responsive to this Subpoena, shall be numbered in the lower right corner of each page of such document, without disrupting or altering the form, sequence, organization or other order or layout in which such documents were maintained before production. Such number shall comprise a prefix containing the producing person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
 10. Privilege Placeholders. For each document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, you shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the document withheld, in the sequential place(s) originally occupied by the document before it was removed from the production.
 11. Privilege. If you withhold or redact any document responsive to this subpoena on ground of privilege or other legal doctrine, you shall submit with the documents produced a statement in writing under oath, stating: (a) the document control number(s) of the document withheld or redacted; (b) the type of document; (c) the date of the document; (d) the author(s) and recipient(s) of the document; (e) the general subject matter of the document; and (f) the legal ground for withholding or redacting the document. If the legal ground for withholding or redacting the document is attorney-client privilege, you shall indicate the name of the attorney(s) whose legal advice is sought or provided in the document.
 12. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, you shall provide a written statement under oath from the person(s) who gave such instructions that details the specific content of the instructions and any person(s) to whom the instructions were given.

13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, you shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such document is responsive; (c) the identity of the custodian(s) of each such document; and (d) the document control number(s) of each such document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each document's custodian, as well as information identifying the particular document requests and/or information to which each document is responsive.
14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and you shall submit such executed Affidavit(s) of Compliance with your response to this Subpoena.
15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, you shall identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.
16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the documents and information requested. Documents located or created, and information learned, acquired or created, at any time after your response is due shall be promptly produced at the place specified in this Subpoena.
17. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and you shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
18. Time Period. Unless otherwise specified, the time period covered by this Subpoena shall be from January 1, 2010 to today.

D. Documents to be Produced

1. All documents and communications concerning any Statement of Financial Condition.
2. All documents and communications concerning any valuation of any asset whose value is identified or incorporated into any Statement of Financial Condition.
3. All documents reviewed, used, or relied on in the preparation of the Statements of Financial Condition, and all communications relating to any of the foregoing.
4. All documents and communications concerning any financing or debt related to Trump International Hotel and Tower Chicago or Chicago Unit Acquisition LLC.
5. All documents and communications concerning the donation or potential donation of a conservation or preservation easement by You.
6. All documents and communications concerning any planned or potential development or alteration of the Seven Springs Estate.
7. All documents and communications with Forbes Magazine concerning you; the Trump Organization; any other affiliated representative of the Trump Organization; or any asset owned by you or the Trump Organization.
8. All documents relating to your financial condition or that of the Trump Organization reviewed, used, shared, or relied on in obtaining or renewing insurance coverage for you and/or the Trump Organization, including without limitation all Statements of Financial Condition disclosed to insurance underwriters or insurance brokers, and all communications relating to any of the foregoing.

ATTACHMENT 1
Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. **Concordance Production Components.** A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.
 - A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.
 - B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition (“OCR”) text where extracted text is not available.
 - C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format (“TIF”), with page-level Bates number endorsements.
 - D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.
 - E. ***Native Files.*** Native format versions of non-printable or non-print friendly produced documents.
2. **Production Folder Structure.** The production must be organized according to the following standard folder structure:
 - data\ (contains production load files)
 - images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
 - native_files\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
 - text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...
3. **De-Duplication.** You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.

4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR'd. The resulting electronic files should be pursued in Concordance format pursuant to these instructions. You must contact the Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.
5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Assistant Attorney General whose telephone number appears on the subpoena. Structured data is data that has a defined length and format and includes, but is not limited to, relational databases, graphical databases, JSON files, or xml/html pages.
 - A. Relational Databases
 1. Database tables should be provided in CSV or other delimited machine-readable, non-proprietary format, with each table in a separate data file. The preferred delimiter is a vertical bar "|". If after speaking with the Assistant Attorney General and it is determined that the data cannot be exported from a proprietary database, then the data can be produced in the proprietary format so long as the Office of the Attorney General is given sufficient access to that data.
 2. Each database must have an accompanying Data Dictionary.
 3. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the Data Dictionary.
 4. Records must contain clear, unique identifiers, and the Data Dictionary must include explanations of how the files and records relate to one another.
 5. Each data file must also have an accompanying summary file that provides total row counts for the entire dataset and total row counts.
 - B. Compression
 1. If Documents are provided in a compressed archive, only standard lossless compression methods (e.g., gzip, bzip2, and ZIP) shall be used. Media files should be provided in their original file format, with metadata preserved and no additional lossy encoding applied.

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. After consultation with the Assistant Attorney General, Documents may also be produced over a secure file transfer protocol (FTP), a pre-approved cloud-based platform (e.g. Amazon Web Services S3 bucket), or the Attorney General's cloud platform OAGCloud. All production media must be protected with a strong, randomly-generated password containing at least 16 alphanumeric characters and encrypted using Advanced Encryption Standard with 256-bit key length (AES-256). Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately from the media.

7. Production File Requirements.
 - A. **Metadata Load File**
 - Required file format:
 - ASCII or UTF-8
 - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
 - Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - **Note:** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the “parent” document and ending with the last Bates number (ENDDOC) assigned to the last “child” in the document family.
 - Date and Time metadata must be provided in separate columns.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. *Extracted or OCR Text Files*

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. *Single-Page Image Files (Petrified Page Images)*

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. *Opticon Load File*

- Required file format:
 - ASCII
 - Windows formatted CR + LF end of line characters
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension

- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.
 - RELATIVE PATH – the filepath to each single-page image file on the production media.
 - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are “Y” or blank.
 - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
 - BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
 - PAGE COUNT – this value is optional and may be left blank.
- **Example:**
ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
ABC00002,,IMAGES\0001\ABC00002.tif,,,,
ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non-print friendly documents (including but not limited to spreadsheets, audio files, video files and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document’s password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

ATTACHMENT 2
Required Fields for Metadata Load File

| FIELD NAME | FIELD DESCRIPTION | FIELD VALUE EXAMPLE¹ |
|-------------------|---|--|
| DOCID | Unique document reference (can be used for de-duplication). | ABC0001 or ###.#####.### |
| BEGDOC | Bates number assigned to the first page of the document. | ABC0001 |
| ENDDOC | Bates number assigned to the last page of the document. | ABC0002 |
| BEGATTACH | Bates number assigned to the first page of the parent document in a document family (<i>i.e.</i> , should be the same as BEGDOC of the parent document, or PARENTDOC). | ABC0001 |
| ENDATTACH | Bates number assigned to the last page of the last child document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child document). | ABC0008 |
| ATTACHRANGE | Bates range of entire document family. | ABC0001 - ABC0008 |
| PARENTDOC | BEGDOC of parent document. | ABC0001 |
| CHILDDOCS | List of BEGDOCs of all child documents, delimited by ";" when field has multiple values. | ABC0002; ABC0003; ABC0004... |
| DOCREQ | List of particular Requests for Documents to be Produced in the subpoena | 1; 2; 3 . . . |
| INTERROG | List of particular [Requests for Information] [interrogatories] in the subpoena | 1; 2; 3 . . . |
| COMMENTS | Additional document comments, such as passwords for encrypted files. | |

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

| | | |
|------------|---|---|
| NATIVEFILE | Relative file path of the native file on the production media. | .\Native_File\Folder\...\BEGDOC.ext |
| SOURCE | For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered. | Company Name, Department Name, Location, Box Number... |
| CUSTODIAN | Owner of the document or file. | Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name... |
| FROM | Sender of the email. | Firstname Lastname < FLastname @domain > |
| TO | All to: members or recipients, delimited by ";" when field has multiple values. | Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ... |
| CC | All cc: members, delimited by ";" when field has multiple values. | Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ... |
| BCC | All bcc: members, delimited by ";" when field has multiple values | Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ... |
| SUBJECT | Subject line of the email. | |
| DATERCVD | Date that an email was received. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |
| TIMERCVD | Time that an email was received. | hh:mm:ss AM/PM or hh:mm:ss |
| DATESENT | Date that an email was sent. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |

| | | |
|--------------|--|--|
| TIMESENT | Time that an email was sent. | hh:mm:ss AM/PM or hh:mm:ss |
| CALBEGDATE | Date that a meeting begins. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |
| CALBEGTIME | Time that a meeting begins. | hh:mm:ss AM/PM or hh:mm:ss |
| CALENDDATE | Date that a meeting ends. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |
| CALENDTIME | Time that a meeting ends. | hh:mm:ss AM/PM or hh:mm:ss |
| CALENDAR DUR | Duration of a meeting in hours. | 0.75, 1.5... |
| ATTACHMENTS | List of filenames of all attachments, delimited by ";" when field has multiple values. | AttachmentFileName.; AttachmentFileName.doc x; AttachmentFileName.pdf; ... |
| NUMATTACH | Number of attachments. | 1, 2, 3, 4... |
| RECORDTYPE | General type of record. | IMAGE; LOOSE E- MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E- MAIL ATTACHMENT; E-DOC ATTACHMENT |
| FOLDERLOC | Original folder path of the produced document. | Drive:\Folder\...\...\ |
| FILENAME | Original filename of the produced document. | Filename.ext |
| DOCEXT | Original file extension. | html, xls, pdf |
| DOCTYPE | Name of the program that created the produced document. | Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect... |
| TITLE | Document title (if entered). | |
| AUTHOR | Name of the document author. | Firstname Lastname; Lastname, First Name; FLastname |
| REVISION | Number of revisions to a document. | 18 |

| | | |
|-------------|---|--|
| DATECREATED | Date that a document was created. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |
| TIMECREATED | Time that a document was created. | hh:mm:ss AM/PM or hh:mm:ss |
| DATEMOD | Date that a document was last modified. | mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd |
| TIMEMOD | Time that a document was last modified. | hh:mm:ss AM/PM or hh:mm:ss |
| FILESIZE | Original file size in bytes. | 128, 512, 1024... |
| PGCOUNT | Number of pages per document. | 1, 2, 10, 100... |
| IMPORTANCE | Email priority level if set. | Low, Normal, High |
| TIFFSTATUS | Generated by the Law Pre-discovery production tool (leave blank if inapplicable). | Y, C, E, W, N, P |
| DUPSTATUS | Generated by the Law Pre-discovery production tool (leave blank if inapplicable). | P |
| MD5HASH | MD5 hash value computed from native file (a/k/a file fingerprint). | BC1C5CA6C1945179FE E144F25F51087B |
| SHA1HASH | SHA1 hash value | B68F4F57223CA7DA358 4BAD7ECF111B8044F86 31 |
| MSGINDEX | Email message ID | |

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____ }
County of _____ }

I, _____, being duly sworn, state as follows:

1. I am employed by Respondent in the position of _____
_____;
2. Respondent’s productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20_____ (the “Subpoena”) were prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;
4. Respondent’s productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the Subpoena have been withheld from Respondent’s production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;
6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;
7. The Documents contained in Respondent’s productions and responses to the Subpoena are authentic, genuine and what they purport to be;
8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person’s knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

- 9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature of Affiant

Date

Printed Name of Affiant

* * *

Subscribed and sworn to before me this _____ day of _____, 20__.

_____, Notary Public

My commission expires: _____

EXHIBIT 3

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

**STIPULATION AND
ORDER**

WHEREAS, on February 17, 2022 the Court entered a Decision and Order on Motion (Dkt. 654, the "Order"), directing Respondents Donald J. Trump, Donald Trump, Jr. and Ivanka Trump (the "Trump Parties") to appear for testimony within 21 days of the Order;

WHEREAS, the Order directed Donald J. Trump to comply in full with that portion of the Office of Attorney General's ("OAG") subpoena seeking documents and information within 14 days of the Order;

WHEREAS, the Trump Parties filed a Notice of Appeal on February 28, 2022 (the "Appeal");

WHEREAS, the parties have agreed to an accelerated briefing schedule before the Supreme Court of the State of New York, Appellate Division, First Judicial Department (the "First Department").

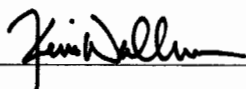
THEREFORE IT IS HEREBY STIPULATED AND AGREED that:

1. Respondent Donald J. Trump shall comply in full with that portion of the OAG subpoena seeking documents and information by March 31, 2022;
2. Respondents Donald J. Trump, Donald Trump, Jr., and Ivanka Trump shall appear for testimony within 14 days of a decision by the First Department on the Appeal affirming the terms of the Order, absent a stay issued by the First Department or the New York Court of Appeals.

Dated: New York, New York
March 3, 2022

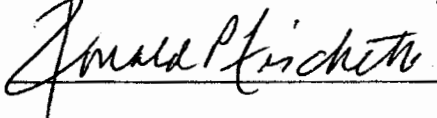
STIPULATED AND AGREED:

LETITIA JAMES
Attorney General of the State of New York

By:  _____
Kevin C. Wallace
28 Liberty Street
New York, NY 10005

Counsel for the People of the State of New York

FISCHETTI & MALGIERI LLP

By: 

Ronald P. Fischetti, Esq.
565 5th Avenue, 7th Floor
New York, New York 10017

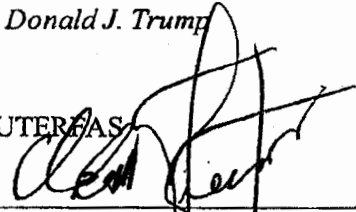
HABBA MADAILO & ASSOCIATES LLP

By: 

Alina Habba, Esq.
112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Counsel for Donald J. Trump


ALAN S. FUTERFAS

By: 

Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017

Counsel for Ivanka Trump and Donald Trump, Jr.

SO ORDERED:

 3/3/2022

Hon. Arthur Engoron, J.S.C.

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

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WHEREAS, the Order directed Donald J. Trump to comply in full with that portion of the Office of Attorney General's ("OAG") subpoena seeking documents and information within 14 days of the Order;

WHEREAS, the Trump Parties filed a Notice of Appeal on February 28, 2022 (the "Appeal");

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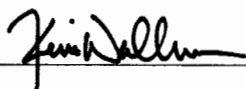
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Dated: New York, New York
March 3, 2022

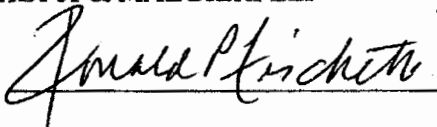
STIPULATED AND AGREED:

LETITIA JAMES
Attorney General of the State of New York

By: 
Kevin C. Wallace
28 Liberty Street
New York, NY 10005

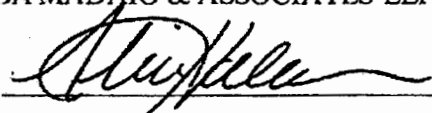
Counsel for the People of the State of New York

FISCHETTI & MALGIERI LLP

By: 

Ronald P. Fischetti, Esq.
565 5th Avenue, 7th Floor
New York, New York 10017

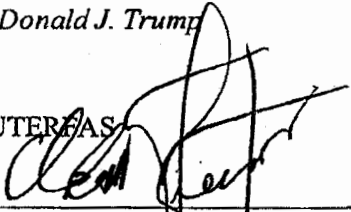
HABBA MADAJO & ASSOCIATES LLP

By: 

Alina Habba, Esq.
112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Counsel for Donald J. Trump


ALAN S. FUTERFAS

By: 

Alan S. Futerfas
565 Fifth Ave., 7th Floor
New York, NY 10017

Counsel for Ivanka Trump and Donald Trump, Jr.

SO ORDERED:

 3/3/2022

Hon. Arthur Engoron, J.S.C.

EXHIBIT 4

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,

v.

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.: No.: 451685/2020

**RESPONDENT DONALD J.
TRUMP'S RESPONSE AND
OBJECTIONS TO PETITIONER'S
SUBPOENA DUCES TECUM**

TO: Kevin Wallace, Esq.
Colleen K. Faherty, Esq.
28 Liberty St., 18th Floor
New York, New York 10005

PLEASE TAKE NOTICE that the respondent, Donald J. Trump ("Respondent"), by and through his attorneys, Habba Madaio & Associates LLP, hereby responds and objects to the *Subpoena Duces Tecum* dated December 1, 2021 (the "Subpoena") propounded by the petitioner, The People of The State of New York, by Letitia James, Attorney General of the State of New York ("Petitioner"), as follows:

GENERAL OBJECTIONS

In addition to the objections separately set forth in response to specific requests contained in the Subpoena (collectively, the "Requests"), responses are provided subject to the following general objections (the "General Objections") to which reference is hereby made with respect to each response, whether or not specifically referred to therein.

1. Respondent objects to the Requests to the extent that they seek the disclosure of protected information, documents and/or communications, including but not limited to: (i) information and/or communications protected by the attorney-client privilege; (ii) information and/or communications protected under the work product doctrine; (iii) information and/or communications protected by the joint defense or common interest privilege; (iv) information and/or communications protected by Presidential executive privilege; and (v) information and/or communications that are otherwise privileged, protected or immune from such discovery. In responding, Respondent will not interpret the Requests or any individual request to call for the production of such privileged or protected materials and shall not waive the right of Respondent to object to the use of any such documents or information contained therein in this action or in any other proceeding. The inadvertent disclosure of any information subject to any privilege(s) or protection(s) in response to the Requests shall not be deemed a waiver of those privileges or protections. Respondent reserves the right to claw back any such privileged or protected information without waiver of privilege or any other applicable protection.

2. Respondent objects to the Requests to the extent that they are (i) vague and ambiguous; (ii) overly broad or unduly burdensome, (iii) seek documents that are not relevant to any claim or defense of any party or to the subject matter involved in this action or is not reasonably calculated to lead to the discovery of admissible evidence; (iv) seek documents that are already in the possession, custody, or control of Petitioner; or (v) seeks documents that are equally available, or more available, to Petitioner through party discovery or other means, including because they are in the public domain.

3. Respondent objects to the Requests to the extent that they purport to impose obligations beyond those required by the CPLR or the Rules of this Court. To the extent that

responses are required to the Requests, Respondent will respond in accordance with the CPLR and the Rules of this Court.

4. By responding to any request for production, Respondent does not concede the materiality or relevance of the subject to which the request for production refers, nor does Respondent accept the characterizations made by the requests for production. Respondent's answers and responses are made subject to non-waiver of any objections with regard to any of the documents produced hereto or referenced herein, whether in this matter or in any subsequent action or proceeding, including those based upon the competency, relevancy, materiality, privilege, or admissibility of the documents produced hereto or referenced herein.

5. Respondent objects to the Requests to the extent that they request documents that are outside the possession, custody, and control of Respondent.

6. Respondent objects to Petitioner's definition of "Trump Organization" as so overbroad, vague and ambiguous as to be unintelligible.

7. Respondent objects to Petitioner's definition of "Documents" as so overbroad, vague and ambiguous as to be unintelligible.

8. Respondent objects to Petitioner's definition of "Communications" as so overbroad, vague and ambiguous as to be unintelligible.

9. Respondent objects to Petitioner's definition of "Employee" as so overbroad, vague and ambiguous as to be unintelligible.

10. Respondent objects to Petitioner's definition of "Entity" as so overbroad, vague and ambiguous as to be unintelligible.

11. Respondent objects to the Requests to the extent they are unreasonably cumulative and duplicative and seeks information available from other sources, including the Petitioner and

the Trump Organization.

12. Respondent objects to the Requests to the extent they seek information that has previously been produced in this proceeding. For instance, Petitioner has already received an immense amount of documents and communications from the Trump Organization in response to various subpoenas issued by Petitioner to the Trump Organization. Pursuant to search terms and date range(s) agreed upon by Petitioner and the Trump Organization during numerous “meet and confers,” to the best of his knowledge and belief Respondent has already produced to Petitioner all responsive non-privileged documents and communications in his possession, custody and/or control that were located through reasonably diligent searches. Accordingly, each and every Request is propounded merely to harass, burden, annoy and oppress Respondent.

13. Respondent objects to the Requests to the extent that they are unlimited in scope, subject or time.

14. Respondent objects to the Requests to the extent that they seek “all” information on a topic or identification of “all” persons concerning a particular topic as overbroad, unduly burdensome, oppressive, harassing, and/or not reasonably calculated to lead to the discovery of admissible evidence. Respondent will produce responsive, non-privileged information that it can locate after a reasonably diligent search and based on the information available to it as of the date of these responses.

15. Respondent objects to each Request as overbroad as to time to the extent that Petitioner seeks information outside of the relevant statute of limitations period for the subject matter of this proceeding.

16. Respondent objects to the Requests to the extent they impose or seek to draw legal conclusions, assume the existence of facts or circumstances which do not or did not exist, and seek

information or documents containing the opinions, mental impressions, or theories of counsel.

17. The failure of Respondent to make a specific objection to a particular request is not, and shall not be construed as, an admission of knowledge of the information or existence of the information sought therein.

18. The responses herein are provided with the understanding that they will not be construed as an admission of any definition contained within the Requests as either factually correct or legally binding against Respondent.

19. These responses and objections shall be for the purposes of this proceeding only and shall be subject to such pertinent admissibility objections as may be interposed in subsequent proceedings or responses.

20. Respondent reserves the right to supplement and/or amend the objections and/or responses to these requests for production should responsive documents not previously produced be located.

OBJECTIONS AND RESPONSES TO SUBPOENA DUCES TECUM

1. All documents and communications concerning any Statement of Financial Condition.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, and does not adequately describe which documents and communications are requested or sought with reasonable particularity. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to

the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent's possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner's possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in any applicable responses, Respondent refers to the documents and communications that have been previously produced by the Trump Organization to Petitioner and, to the extent applicable, those documents and communications that will be produced by the Trump Organization to Petitioner in response to any pending request or subpoena (collectively, the "TTO Productions") and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, said documents and communications

may be used as if those documents were produced by Respondent.

2. All documents and communications concerning any valuation of any asset whose value is identified or incorporated into any Statement of Financial Condition.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, does not adequately describe which documents and communications are requested or sought with reasonable particularity, and the terminology “any valuation” and “any asset” are so overbroad, vague and ambiguous as to be unintelligible. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent’s possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner’s possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other

applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

3. All documents reviewed, used, or relied on in the preparation of the Statements of Financial Condition, and all communications relating to any of the foregoing.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, and does not adequately describe which documents and communications are requested or sought with reasonable particularity. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent's possession, custody and control, documents and communications that have previously been produced in this litigation, documents and

communications already in Petitioner's possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

4. All documents and communications concerning any financing or debt related to Trump International Hotel and Tower Chicago or Chicago Unit Acquisition LLC.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, and does not adequately describe which documents and communications are requested or sought with reasonable particularity. Respondent further objects to this request to the extent that it seeks documents and communications protected

by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent's possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner's possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

5. All documents and communications concerning the donation or potential donation of a conservation or preservation easement by You.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, and does not adequately describe which documents and communications are requested or sought with reasonable particularity. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent's possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner's possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility

of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

6. All documents and communications concerning any planned or potential development or alteration of the Seven Springs Estate.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, does not adequately describe which documents and communications are requested or sought with reasonable particularity, and the terminology “potential” and “alteration” are so overbroad, vague and ambiguous as to be unintelligible. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent’s possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner’s possession, custody or control, and documents and

communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

7. All documents and communications with Forbes Magazine concerning you; the Trump Organization; any other affiliated representative of the Trump Organization; or any asset owned by you or the Trump Organization.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, does not adequately describe which documents and communications are requested or sought with reasonable particularity, and the terminology “any asset” is so overbroad, vague and ambiguous as to be unintelligible. Respondent further objects to this

request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent's possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner's possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications

may be used as if those documents were produced by Respondent.

8. All documents relating to your financial condition or that of the Trump Organization reviewed, used, shared, or relied on in obtaining or renewing insurance coverage for you and/or the Trump Organization, including without limitation all Statements of Financial Condition disclosed to insurance underwriters or insurance brokers, and all communications relating to any of the foregoing.

RESPONSE:

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, does not adequately describe which documents and communications are requested or sought with reasonable particularity, and the terminology “financial condition” is so overbroad, vague and ambiguous as to be unintelligible. Respondent further objects to this request to the extent that it seeks documents and communications protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or immunity. Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever. Respondent further objects to this request to the extent it seeks documents and communications outside of Respondent’s possession, custody and control, documents and communications that have previously been produced in this litigation, documents and communications already in Petitioner’s possession, custody or control, and documents and communications that are equally available to Petitioner.

Subject to and without waiving the foregoing specific objections and the General Objections, Respondent states that he has no documents or communications in his possession

or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly, without waiving any privilege, defense, or other applicable protection asserted herein and without conceding as to the breadth, burdensomeness, ownership, competency, relevancy, materiality, privilege, or admissibility of the documents and communications produced nor accepting the characterizations made by Petitioner in any request propounded upon the Trump Organization, and incorporating all objections, defenses and privileges asserted by the Trump Organization in the TTO Productions, Respondent refers to the documents and communications in the TTO Productions and stipulates that, to the extent any documents or communications contained in the TTO Productions are responsive to this request, those documents and communications may be used as if those documents were produced by Respondent.

HABBA MADAIO & ASSOCIATES LLP



Michael T. Madaio Esq.
1430 U.S. Highway 206, Suite 240
Bedminster, NJ 07921

-and-

112 West 34th Street, 17th & 18th Floors
New York, NY 10120

Phone: (908) 869-1188

Fax: (908)869-1189

Email: mmadaio@habbalaw.com

Attorneys for Respondent, Donald J. Trump

Dated: March 31, 2022

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,

v.

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.: No.: 451685/2020

AFFIDVAIT OF COMPLIANCE
WITH SUBPOENA

MICHAEL T. MADAIO, ESQ., an attorney duly admitted to practice in the Courts of
this State, hereby affirms as follows:

1. My office has been retained by respondent, Donald J. Trump (“Respondent”), in
connection with the above referenced matter and is responsible for, among other things, collecting
and reviewing documents responsive to subpoenas issued to Respondent.

2. I submit this affirmation in compliance with the *Subpoena Duces Tecum* dated
December 1, 2021 (the “Subpoena”), attached hereto as Exhibit A, and in connection with
Respondent’s Response and Objections to the Subpoena (the “Response”).

3. I have personally made or caused others to make a diligent search of all of
Respondent’s relevant records for materials sought by the Subpoena, in accordance with the
instructions and definitions set forth in the Subpoena.

4. Respondent’s productions and responses to the Subpoena are complete and correct

to the best of my knowledge and belief.

5. No documents or information responsive to the Subpoena have been withheld from Respondent's production and response, except as specifically identified in the Response in accordance with the instructions of the Subpoena.

6. To the extent applicable, all responsive documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions of the Subpoena.

7. To the extent applicable, the documents contained in Respondent's productions and responses to the Subpoena are authentic, genuine and what they purport to be.

8. With respect to request no. 1, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 1 in the Response.

9. With respect to request no. 2, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 2 in the Response.

10. With respect to request no. 3, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the

extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 3 in the Response.

11. With respect to request no. 4, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 4 in the Response.

12. With respect to request no. 5, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 5 in the Response.

13. With respect to request no. 6, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 6 in the Response.

14. With respect to request no. 7, Respondent was unable to locate any responsive

documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 7 in the Response.

15. With respect to request no. 8, Respondent was unable to locate any responsive documents that are in his possession or custody and, to the best of his knowledge and belief, to the extent any such responsive documents exist they are in the possession, custody or control of the Trump Organization; therefore, in accordance with the instructions of the Subpoena, Respondent refers to documents that have been and/or will be produced by the Trump Organization as set forth at length in his answer to request no. 8 in the Response.

Dated: March 31, 2022


Michael T. Madaio, Esq.
HABBA MADAIO & ASSOCIATES LLP

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
COUNTY OF SOMERSET)

On this 31st day of March in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared Michael T. Madaio personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.


Notary Public

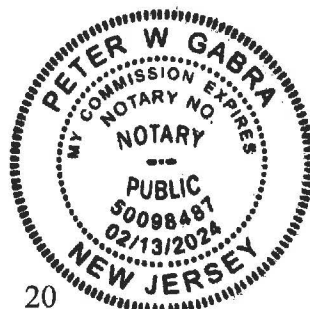


EXHIBIT 5

WARNING!
**YOUR FAILURE TO APPEAR
IN COURT MAY RESULT IN
YOUR IMMEDIATE ARREST
AND IMPRISONMENT FOR
CONTEMPT OF COURT**

NOTICE!
**THE PURPOSE OF THIS
HEARING IS TO PUNISH YOU
FOR CONTEMPT OF COURT
AND SUCH PUNISHMENT MAY
CONSIST OF A FINE OR IM-
PRISONMENT, OR BOTH
ACCORDING TO LAW**

At _____
of the Supreme Court of the State of New
York, 60 Centre Street, New York, NY
on the ____ day of April, 2022

SUPREME COURT OF THE STATE 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

Motion Sequence No. 09

**[PROPOSED] ORDER TO SHOW
CAUSE – MOTION FOR CIVIL
CONTEMPT**

Upon the annexed affirmation of Colleen K. Faherty, dated April 7, 2022 and all papers,
and sufficient cause appearing therefor,

LET the Respondent Donald J. Trump show cause before this Court, before the Honorable Justice Engoron at the Supreme Court, New York County, motion submission part at 60 Centre Street, New York, New York, Room 130, on the ___ day of April, 2022, at 9:30 a.m. why an order should not be entered:

1. holding Respondent Donald J. Trump in civil contempt for violating the Court's February 17, 2022 Order requiring him to comply in full with that portion of Petitioner's subpoena seeking documents and information because such failure did defeat, impair, impede and prejudice the rights of Petitioner, OAG, as described in the annexed Affirmation of Colleen K. Faherty and accompanying papers;
2. assessing a daily fine against Mr. Trump of \$10,000 or an amount deemed by the Court to be otherwise sufficient to coerce his compliance with the Court's February 17, 2022 Order;
3. compensating Petitioner for Mr. Trump's disobedience in the form of an award of costs and fees in connection with filing this motion;
4. permitting Petitioner to file under seal and in redacted form certain sensitive information concerning third-party law enforcement information contained in Petitioner's memorandum of law in support of its motion for civil contempt; and
5. granting such other and further relief as the Court may deem just and proper.

SUFFICIENT CAUSE BEING ALLEGED THEREFOR, let service of a copy of this Order, and the papers upon which it was granted, be made upon Respondents:

by filing the papers on NYSCEF by _____, 2022, with additional copy by email to Respondent Donald J. Trump's counsel, Fischetti & Malgieri, LLC, by Ronald P. Fischetti, Esq.

at RPFischetti@gmail.com, and Habba Maddaio & Associates, LLP, by Alina Habba, Esq. at ahabba@habbalaw.com, on or before _____;

and it is further

ORDERED that any opposition papers shall be served on Petitioner by filing on NYSCEF and by email copy to Petitioner’s counsel, by Kevin Wallace at Kevin.Wallace@ag.ny.gov on _____, two business days before the date set forth above for the hearing on Petitioner’s motion to compel; and

ORDERED that any reply papers shall be served on Respondent by filing on NYSCEF and by email copy to Respondent Donald J. Trump’s counsel at RPFischetti@gmail.com and ahabba@habbalaw.com on _____, one business day before the date set forth above for the hearing on Petitioner’s motion to compel.

Dated: _____, 2022
New York, New York

ENTER:

JUSTICE OF THE SUPREME COURT

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 CIVIL
CONTEMPT MOTION AGAINST RESPONDENT DONALD J. TRUMP**

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PRELIMINARY STATEMENT

After full briefing and argument, Respondent Donald J. Trump was ordered to comply with a lawful subpoena issued by the Office of the Attorney General (“OAG”) seeking his testimony and relevant documents in connection with OAG’s ongoing investigation. This Court held (once again) that OAG’s investigation pursuant to New York Executive Law § 63(12) “was lawful” and that the subpoena issued to Mr. Trump was valid and enforceable. NYSCEF No. 654 (the “February 2022 Order”). In clear terms, this Court ordered Mr. Trump, among other things, “to comply in full . . . with that portion of the [OAG’s] subpoena seeking documents and information” by March 3, 2022, *id.* at 8, a date that was extended to March 31, 2022 because of OAG’s willingness to accommodate Mr. Trump’s request for additional time and the Court’s approval.¹

But rather than “comply in full” with the Court’s unambiguous directive by producing all responsive documents by March 31, Mr. Trump did not comply at all. Instead, he served a “Response” on OAG raising objections to each of the eight document requests in the subpoena based on grounds such as overbreadth, burden, and lack of particularity. Mr. Trump further asserted, subject to his objections, that he would *not* produce *any* documents responsive to OAG’s subpoena because his counsel (based on search efforts that have not been divulged) could not find any such documents and because of his counsel’s “information and belief” that if any such documents exist, the Trump Organization has them and OAG will just have to wait until the Trump Organization completes its production to get them.

This Court’s order was not an opening bid for a negotiation or an invitation for a new

¹ Although Respondent appealed this Court’s order compelling his compliance with OAG’s subpoena, he did not seek to defer the date for his full compliance with that portion of OAG’s subpoena seeking relevant documents pending the outcome of his appeal.

round of challenges to the subpoena. It was, rather, a court order entered after full briefing and argument during which Mr. Trump could have, but did not, raise any of the purported objections or assertions he has now raised. Under settled law, a party is not permitted to delay proceedings through seriatim submissions to challenge an investigative subpoena, so the ship has long since sailed on Mr. Trump's ability to raise any such objections. In any event, Respondent was ordered by the Court to "comply in full" with the document demands in OAG's subpoena by March 31. Mr. Trump's purported "Response" violates the Court's order; it is not full compliance, or any degree of compliance, but simply more delay and obfuscation. Mr. Trump should now be held in civil contempt and fined in an amount sufficient to coerce his compliance with the Court's order and compensate OAG for its fees and costs associated with this motion.

PROCEDURAL HISTORY

A. OAG's Subpoena and Related Motion Practice²

On November 1, 2021, OAG contacted counsel for the Trump Organization about obtaining sworn testimony from, *inter alia*, Donald J. Trump. After multiple communications on the issue, on December 2, 2021, Mr. Trump's counsel accepted service from OAG of a subpoena *duces tecum* and *ad testificandum* on his behalf. The subpoena sought documents and evidence to be produced by December 17, 2021 and Mr. Trump's testimony on January 7, 2022. *See* Affirmation of Colleen K. Faherty, dated April 7, 2022 ("Faherty Aff."), at ¶ 8. During scheduling discussions, Mr. Trump's counsel agreed that documents would be produced in advance of any scheduled testimony. *Id.* at ¶ 9.

² A thorough recitation of the facts and circumstances surrounding OAG's demands for the custodial documents of Donald J. Trump is detailed in the Supplemental Verified Petition (NYSCEF No. 630) ("Supp. Pet.") filed in this Special Proceeding and is incorporated herein. *See* Supp. Pet. ¶¶ 321-336, 346-351.

Subsequently, on December 9, counsel informed OAG that Mr. Trump intended to move to quash OAG's subpoena, and after extensive discussions, Mr. Trump (together with Ivanka Trump and Donald Trump, Jr.) stipulated to intervene in this action and all counsel agreed to a briefing schedule for the motion to quash and OAG's cross-motion to compel, which this Court approved on January 3, 2022. NYSCEF No. 318; Faherty Aff. at ¶ 11. Pursuant to the briefing schedule, Mr. Trump and his co-respondents moved on January 3, 2022 to quash OAG's subpoenas in their entirety. NYSCEF No. 321. Mr. Trump's arguments in support of the motion focused exclusively on defeating OAG's attempt to obtain his sworn testimony and raised no challenge to that portion of the subpoena seeking documents. NYSCEF No. 354. Subsequently, OAG cross-moved to compel compliance with its subpoenas, NYSCEF No. 357, and filed a 116-page Supplemental Verified Petition, NYSCEF No. 630, which included the procedural background on OAG's attempts to secure Mr. Trump's custodial documents.

The parties completed briefing on February 15, 2022, with additional papers filed on February 16. NYSCEF No. 650. Those additional papers involved two important matters. First, OAG noted that Mr. Trump (and the other respondents) had failed to properly answer OAG's Supplemental Verified Petition, both because their answers denied knowledge about subjects known to them and were not verified as required under C.P.L.R. 3020(a).³ The Respondents contended in response that verification was not required because, among other things, "an unverified answer is permitted as to allegations for which a witness has a fifth amendment privilege." NYSCEF No. 652, at 2. Second, OAG provided the Court with Mr. Trump's press release concerning certain information related to Mazars, the accounting firm responsible for

³ Indeed, as an example of the deficiencies inherent in his answer to the supplemental verified petition, Mr. Trump denied "knowledge or information" concerning OAG's allegation that "to date, Mr. Trump has made no production of documents" See NYSCEF No. 647 at ¶ 347.

compiling Mr. Trump's Statements of Financial Condition, which notably included material described as taken from the June 30, 2014 Statement of Financial Condition, and relayed purported "conversations with" Mazars about its "decision to withdraw." NYSCEF No. 651.⁴

B. The Court's February 2022 Order

On February 17, 2022, this Court held arguments on the parties' motions and issued an order that same day denying Mr. Trump's motion to quash, granting OAG's cross-motion to compel, and ordering Mr. Trump to "comply in full, within 14 days of the date of this order [by March 3, 2022], with that portion of the Office of the Attorney General's subpoena seeking documents and information," in addition to appearing for testimony within 21 days of the Order. February 2022 Order at 8; Faherty Aff. at ¶ 13.

Respondents then appealed to the First Department. The parties agreed, with the Court's approval, to adjourn the dates for the ordered examinations of Mr. Trump and his co-respondents until after the First Department decides the appeal. But there was no similar deferral of that portion of the February 2022 Order requiring Mr. Trump to produce documents. Faherty Aff. at ¶ 15. Indeed, Mr. Trump's counsel confirmed on March 1 that they "were not appealing on documents." *Id.*

During further discussions on March 1, counsel informed OAG that Mr. Trump would be unlikely to comply with the court-ordered deadline of March 3 to produce documents because of the potential locations they needed to search, which included Trump Tower and Mar-a-Lago. *Id.* at ¶ 16. Accordingly, counsel sought an extension of Mr. Trump's document production deadline, requesting to align the deadline with whenever the Trump Organization completed its

⁴ Mr. Trump's press release confirming his possession of at least one of his Statements of Financial Condition undermines the assertion by his counsel that he possesses no documents responsive to OAG's subpoena.

document production. OAG refused to grant such a lengthy extension—referring to the extensive procedural history and problems already litigated with the Trump Organization over its production, *see, infra*, at 6-7—and instead agreed to extend Mr. Trump’s production deadline to March 31, which Mr. Trump’s counsel agreed was acceptable and the Court approved. Faherty Aff. at ¶¶ 17, 20, Ex. A; NYSCEF No. 660.

C. Mr. Trump’s Failure to Comply with the February 2022 Order

Rather than “comply in full” with OAG’s subpoena relating to documents on March 31, Mr. Trump served on OAG instead a document entitled “Respondent Donald J. Trump’s Response and Objections to Petitioner’s Subpoena Duces Tecum,” which included his attorney’s “Affidavit [sic] of Compliance with Subpoena” (together, the “Response”). Faherty Aff. ¶ 21, Ex. B. In the Response, Mr. Trump raised 16 “general” objections and the following identical set of boilerplate “specific” objections (in addition to assertions of “applicable privilege or immunity”):

Respondent objects to this request because it is grossly overbroad, unintelligible, unduly burdensome, and does not adequately describe which documents and communications are requested or sought with reasonable particularity. . . . Respondent further objects to this request as overbroad as to time to the extent that it seeks documents and communications outside of the relevant statute of limitations period and is completely unbounded by any time limitations whatsoever.

Id., Ex. B at 1-4 (for General Objections) and 5-16 (for Specific Objections). Mr. Trump’s response to each document demand further asserted, “[s]ubject to and without waiving” his specific and general objections, that “he has no documents or communications in his possession or custody that are responsive” to each document demand, and to the extent such documents exist they “are in the possession, custody or control of the Trump Organization.” *Id.* at 5-16.

The Response omits any reference to documents in the *control* of Mr. Trump –referring only to those in his “possession or custody” – despite the instruction in the subpoena calling for all responsive documents in his “possession, custody or control.” See NYSCEF No. 361 at Instruction C2 (“The Subpoena calls for all responsive documents or information in your possession, custody *or control*.”) (emphasis added). If a document was in the control of Mr. Trump but not his possession or custody, he was obligated to “*promptly* identify the person with possession or custody.” *Id.* (emphasis added). Moreover, Mr. Trump’s Response does not specifically identify the potentially responsive documents or information in the Trump Organization’s custody or control, and in any event did not lead to the production of all responsive material by the March 31 deadline.⁵

Also included as part of the Response was an affidavit from Mr. Trump’s attorney attesting in a vague and conclusory manner that he “personally made or caused others to make a diligent search of all of [Mr. Trump’s] relevant records for materials sought by the Subpoena,” and that for each document demand he “was unable to locate any responsive documents that are in [Mr. Trump’s] possession or custody.” Faherty Aff., Ex. B at 17 (¶ 3), 18-20 (¶¶ 8-15). Counsel further attested that, “to the best of his knowledge and belief” – without disclosing the basis for such knowledge and belief – to the extent any such responsive documents exist they are with the Trump Organization, and therefore Mr. Trump “refers to documents that have been and/or will be produced by the Trump Organization” for each demand. *Id.* at 18-20 (¶¶ 8-15).

⁵ Mr. Trump was obligated to produce, by the March 31 deadline, any responsive custodial document in his possession, custody or control and any responsive custodial document in the possession, custody, or control of the Trump Organization if it had not been produced to OAG already.

D. The Trump Organization's Production Deficiencies

As this Court is aware, the Trump Organization and OAG stipulated on September 2, 2021, to certain terms concerning the company's ongoing subpoena responses, as well as the potential need to "retain at [the Trump Organization's] expense, an independent third-party e-discovery firm ... to oversee the identification, collection, and review of electronically stored information ... responsive to OAG's subpoenas." NYSCEF No. 314. The Trump Organization subsequently complied with OAG's demand to retain a third-party eDiscovery firm, which the parties agreed would be HaystackID. Faherty Aff. at ¶ 5.

On March 18, 2022, however, based on the Trump Organization's conduct in significantly restricting the ability of HaystackID to communicate with OAG concerning its progress, OAG sought the Court's intervention to enforce the remaining terms of the September 2, 2021 order and ensure full compliance with the remaining document productions owed by the Trump Organization under OAG's subpoenas. NYSCEF No. 661. After a lengthy hearing on March 28, 2022, this Court ordered HaystackID to provide detailed weekly reports and complete its obligations by April 22, 2022, and ordered the Trump Organization to provide a detailed report by April 20, 2022 and comply in full with all aspects of OAG's subpoenas by April 29, including the complete production of all documents by April 15, 2022. NYSCEF No. 667; Faherty Aff. at ¶ 7. Notably, in the Trump Organization's most recent status report concerning its subpoena response, the company identified as the only ongoing effort to find responsive material a search of the General Counsel's mobile phone. Faherty Aff. at ¶ 26, Ex. C. That means the Trump Organization is not presently searching any of Mr. Trump's custodial files or devices, and has no intention of doing so between now and April 15, 2022. Moreover, HaystackID submitted a status report on April 4 stating that they made a request to Donald J. Trump for written

interview responses on March 30, 2022, but have not received any response.⁶ Faherty Aff. ¶ 27. Nor has HaystackID received any response from Mr. Trump's longtime executive assistant, Rhona Graff, a likely source of knowledge concerning Mr. Trump's custodial documents. *Id.*

ARGUMENT

I. THE COURT SHOULD FIND RESPONDENT DONALD J. TRUMP IN CIVIL CONTEMPT FOR VIOLATING THE COURT'S FEBRUARY 2022 ORDER

After a court has granted a motion to compel compliance with an administrative subpoena, "further disobedience is a violation of the order" and may be the subject of a contempt proceeding. Siegel, N.Y. Prac. § 385 (6th ed.) (citing *Dias v. Consolidated Edison Co. of New York, Inc.*, 116 A.D.2d 453, 454 (1st Dep't 1986)). An application for civil contempt may be commenced "by an order of such court or judge requiring the accused to show cause before it, or him, at a time and place therein specified, why the accused should not be punished for the alleged offense." N.Y. Judiciary Law § 756.

The statutory basis for civil contempt in New York is straightforward. Judiciary Law § 753 provides, in relevant part, that "[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced" including "any" disobedience to a lawful mandate of the court. N.Y. Judiciary Law § 753(A)(3). The objective of civil contempt is not to punish the contemnor but either to compensate the injured party or to coerce compliance with a court's mandate (or both). *Dep't of Envtl. Prot. of City of New York v. Dep't of Envtl. Conservation of State of N.Y.*, 70 N.Y.2d 233, 239 (1987). "[C]ivil contempt seeks 'the vindication of a private

⁶ HaystackID provided a copy of its report to the parties and the Court via electronic mail on April 4, 2022.

right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss or interference with that right.” *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 34 (2015) (quoting *McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983)). There is no willfulness requirement for civil contempt. *McCormick*, 59 N.Y.2d at 583.

A party must establish the following four elements to support a finding of civil contempt: (1) there was a lawful court order in effect clearly expressing an unequivocal mandate; (2) it must appear, with reasonable certainty, that the party to be held in contempt has disobeyed the order; (3) the party to be held in contempt had knowledge of the order, although it is not necessary that the party actually be served with the order; and (4) the moving party must demonstrate that its rights have been prejudiced. *See El-Dehdan*, 26 N.Y.3d at 29 (citing *McCormick*, 59 N.Y.2d at 583); *McCain v. Dinkins*, 84 N.Y.2d 216, 226 (1994).

As a party to this proceeding, Mr. Trump obviously had knowledge of the February 2022 Order, so the third element is clearly met. For the reasons articulated below, the remaining three elements are satisfied as well, and accordingly, the Court should find Mr. Trump in contempt, and may do so without a hearing. *Sexter v. Kimmelman, Sexter, Warmflash & Leitner*, 277 A.D.2d 186, 187 (1st Dep’t 2000).

A. The Court’s February 2022 Order Unequivocally Required Mr. Trump To “Comply In Full” By Producing All Documents Responsive To OAG’s Subpoena By March 31, 2022

With respect to the first factor, the existence of a lawful order is beyond dispute. On January 4, 2022, Mr. Trump filed a motion to quash OAG’s subpoena seeking his documents and testimony. OAG subsequently cross-moved to compel compliance with the same subpoena on January 18, 2022. After complete briefing and argument, this Court denied the motion to quash, granted the cross-motion to compel, and ordered Mr. Trump to “comply in full” with OAG’s

subpoena. February 2022 Order at 8. Although the parties, with the Court’s approval, agreed to adjourn compliance with that portion of the ruling concerning testimony until after the First Department rules on Mr. Trump’s appeal, there was no such adjournment of the court-imposed deadline for Mr. Trump to “comply in full” with the document demands in the subpoena. Indeed, as part of the negotiated stipulation to address the timing of the parties’ appellate briefing, Mr. Trump—without raising any further objections or concerns to OAG regarding document production—agreed that he would comply in full with that portion of OAG’s subpoena seeking documents by March 31. NYSCEF No. 660.

Accordingly, “a lawful order of the court, clearly expressing an unequivocal mandate, was in effect.” *McCormick*, 59 N.Y.2d at 583.

B. Mr. Trump’s March 31 Response Violates The February 2022 Order

Mr. Trump’s March 31 Response was legally improper and completely ineffectual for the purpose of complying with OAG’s subpoena for three reasons.

First, a party is not permitted to respond to a 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. N.Y. Co. 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). In the circumstances presented here, long after the subpoena’s return date had passed, and long after this Court denied the motion to quash, Mr. Trump had no further right to contest the subpoena.

Second, Mr. Trump waived any right to object to the enumerated document demands in the subpoena, putting aside the procedural impropriety of his Response, by failing to raise any objections the specific demands in his previously-filed motion to quash. *See e.g., Holloway v. Cha Cha Laundry, Inc.*, 97 A.D.2d 385, 385–86, 467 N.Y.S.2d 834, 835 (1st Dep’t 1983); *Kimmel v. State*, 261 A.D.2d 843, 844, 690 N.Y.S.2d 383, 384 (4th Dep’t 1999); *also, Exxon Mobil Corp. v. Healey*, 28 F.4th 383 (2d Cir. 2022) (applying analogous Massachusetts law). He cannot take a second bite at the apple by attempting to raise objections anew after losing his motion to quash. *Cf. Sigety v. Abrams*, 632 F.2d 969, 977 (2d Cir. 1980) (holding that party’s “duty under the subpoena duces tecum” could not be discharged by offering unreasonable sworn testimony).

Third, advising OAG that it must await the completion of the Trump Organization’s production to obtain any of Mr. Trump’s responsive documents that may exist does not “comply in full” with the February 2022 Order and flies in the face of the parties’ negotiated understanding that Mr. Trump would independently produce his responsive documents *before* the Trump Organization completed its production. Faherty Aff. at ¶ 17. Mr. Trump cannot delegate to the Trump Organization his obligation to comply with the Court’s directive to produce responsive documents.⁷ And his attempt to do so is particularly contumacious here for two reasons: (i) OAG expressly rejected—as Mr. Trump well knew—Mr. Trump’s request to

⁷ Although the subpoena states that Mr. Trump does not need to produce documents already provided to OAG by the Trump Organization if he will stipulate that the documents may be used as if produced by him, that does not excuse his failure to produce documents: (a) of which he is the custodian that the Trump Organization has not yet produced; or (b) that he otherwise has in his possession, custody or control that has not been identified with sufficient specificity for OAG to locate within the Trump Organization productions. Indeed, Mr. Trump plays fast and loose with his obligation by referencing documents in his “custody and possession” while omitting the word “control,” but the Court’s order makes no such distinction. He must produce all responsive documents in his custody, possession or “control.” NYSCEF No. 361 at Instruction C2.

align the date of his production with the date for the completion of the Trump Organization's production because of OAG's pressing need for Mr. Trump's documents⁸ (Faherty Aff. at ¶ 17); and (ii) as the Court is well aware from the recent status conference, there are numerous problems with the Trump Organization's production, all of which resulted in the Court ordering the Trump Organization and HaystackID to file detailed reports on the progress of the Trump Organization's production. *See, supra*, at 7-8. Accordingly, assurances from Mr. Trump's counsel (without any apparent basis) that all responsive documents supposedly in Mr. Trump's control are in the possession of the Trump Organization and will be included in the Trump Organization's future productions is cold comfort, and certainly no substitute for Mr. Trump's own compliance with OAG's subpoena as compelled by the February 2022 Order.

Moreover, notwithstanding the asserted "diligent search of [Mr. Trump's] relevant records" purportedly made by his counsel, Faherty Aff. ¶ 21, Ex. B at 17 (¶ 3), it appears that many categories of documents that should logically be in Mr. Trump's custody, control, or possession have not been searched for or produced by him, or for that matter produced by the Trump Organization. As the Court is aware, the recent report from HaystackID reflects that Mr. Trump has not yet responded to a request from that firm "for written responses"—suggesting that, despite having been appointed months ago, HaystackID has received no information from Mr. Trump concerning his records and has not personally interviewed him, nor has HaystackID received any response on behalf of Mr. Trump's longtime executive assistant.⁹ Mr. Trump was

⁸ That set of circumstances suggests that, when OAG and the Court did not agree to Mr. Trump's desired approach, he took it upon himself to pursue the path that expressly had been rejected by "refer[ring OAG] to the documents and communications that have been" or "will be" produced by the Trump Organization. *See, supra*, at 6; *see also*, Faherty Aff. Ex. B.

⁹ HaystackID Report, Apr. 4, 2022, at 9-10 (categorizing "actual and potential custodians not yet

the chief executive—and remains the beneficial owner through a trust he can revoke at any time—of a large amalgam of real estate and other assets subject to this investigation, and he appears highly likely to have been in possession, custody or control of numerous documents bearing on the matters under investigation. These include, but are not limited to, the following categories:

- **The statements of financial condition and related documents, including documents bearing on Mr. Trump’s review, approval, or consideration of those statements (Responsive to Subpoena Request Nos. 1, 3, 8).** Mr. Trump’s statements of financial condition were, until 2017, styled as statements of Mr. Trump himself and purported to be Mr. Trump’s responsibility; indeed, he personally certified the accuracy of the statements to financial institutions. Evidence indicates that Mr. Trump maintained personal files and used Post-It Notes—which, obviously, stick on top of documents—to communicate with his subordinates. Supp Pet., ¶ 347. Evidence also indicates Mr. Trump reviewed and approved the statements of financial condition. Supp. Pet. ¶348 n55. OAG is entitled to all evidence concerning Mr. Trump’s involvement in the preparation, review, approval, and certification of these financial statements. The fact that Mr. Trump can, for purposes of a press release, acquire one such statement within 24 hours of OAG’s submission (*see* NYSCEF No. 651) strongly suggests that Mr. Trump has ready access to and control over documents concerning those statements—whether at a property in New York, Florida, or at any other location, or with any of his many agents.
- **Documents, notes, or similar materials containing Mr. Trump’s handwriting that relate to valuation of the assets reflected on Mr. Trump’s statements of financial condition (Responsive to Subpoena Request Nos. 2, 7).** As the Court is aware, several variables may bear on a property’s valuation—including its net income, its square footage, any legal restrictions or agreements bearing on the ability to develop the property, and other factors. Evidence indicates Mr. Trump had a hands-on management style and received reports regarding his properties’ financial performance. Supp. Pet. ¶ 103 (Mr. Trump on several occasions discussed membership and revenue strategy for Briarcliff golf club); *id.* at ¶ 341 n44, (memo addressed to Mr. Trump entitled “Re: 2015 Corporate Operating Financial Summary”). Given Mr. Trump’s purported meticulous involvement and focus on his business enterprise, it seems incredible that now virtually no documents exist reflecting his personal receipt and review of information regarding his assets that would bear on their valuation and could be compared against information

interviewed” into categories including “Pending Response,” and identifying “Donald J. Trump” as having been sent a request for written responses on March 30, 2022 that remains unanswered), 11 (noting “HaystackID attempted to contact [Rhona Graff’s] counsel several times but has received no response whatsoever.”).

used for purposes of his Statement of Financial Condition. And if such documents were created but no longer exist, that destruction must be documented and attested to.

- **Tax-related materials, including audit-related documents and communications (Responsive to Subpoena Request Nos. 2, 4, 5).** Documents produced by the Trump Organization reflect that [REDACTED]

[REDACTED] Moreover, Mr. Trump must produce all documents related to the IRS audits of his taxes. Based on evidence collected to date, as well as Mr. Trump's own admission, he has been under "continuous audit" for some time. *See, e.g.,* <https://www.cnbc.com/video/2018/11/07/trump-my-taxes-are-under-continuous-audit.html>. Information in OAG's possession indicates that Mr. Trump had prior negotiations with the IRS during the subpoena time period about other valuation-related matters, and valuations and allocations otherwise can play a significant role in assessing tax liability. In addition, although OAG has received Mr. Trump's personal income tax returns from 2011 to 2018, other tax returns from 2010 to the date of service (December 1, 2021) have not been produced. NYSCEF No. 361 at 6.

- **Insurance Related Documents (Responsive to Subpoena Request Nos. 2, 8).** Mr. Trump and the Trump Organization submitted his statement of financial condition to insurers and their insurance broker. *See* Supp Pet. ¶¶178-190. Additionally, Mr. Trump has insurance policies on his personal residences and other assets listed in the statement of financial condition. It is likely that Mr. Trump retains responsive policy related materials (such as copies of policies and broker correspondence).

This list is not intended to be exhaustive because OAG does not know precisely which documents are still in Mr. Trump's possession or where he maintains all of his business-related records.¹⁰ OAG does not know whether he kept such records in different locations, whether he destroyed any records (such as by discarding Post-It Notes), or whether he had a practice of not maintaining (or instructing subordinates not to maintain) records concerning certain decisions,

¹⁰ OAG does not know if Mr. Trump ever used a cell phone or other mobile device to communicate about Trump Organization business. No device belonging to Mr. Trump is identified in the April 4 HaystackID Report, indicating no search or collection of Mr. Trump's mobile devices has been conducted. However, that said, Mr. Trump has been a prolific Twitter user, which has been associated with his personal cell phone, and which at one point, prior to his inauguration, drew public speculation about security concerns. *See, e.g.,* <https://bgr.com/politics/donald-trump-phone-samsung-galaxy-s3/>.

such as review or approval of financial statements. But Mr. Trump is in a position to know those things and it is his burden in response to this Court's order to identify responsive materials and produce them. Additionally, it is Mr. Trump's burden to identify with specificity which materials produced by the Trump Organization are also in his files and attest for each document that the version he has is an identical copy and does not contain additional information such as handwritten or Post-It Notes. NYSCEF No. 361.

Finally, to the extent Mr. Trump or somebody at his direction ensured that responsive records, including those concerning certain decisions respecting his statements of financial condition, would not be preserved, he was required on March 31 by the Court's order to explain the nature and extent of that records purge. The subpoena—which Mr. Trump has been ordered by this Court to fully comply with—expressly and clearly requires him to identify any document “formerly in [his] possession, custody or control [that] is no longer available,” and for such documents to identify a series of facts, including when the document became unavailable and “whether it was misplaced, lost, destroyed or transferred; and if such document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer. . . .” *Id.* at Instruction 3. Mr. Trump has failed to comply with that instruction—just as he has failed to comply with the Court's production order.

The deficient affidavit from Mr. Trump's counsel further highlights his discovery compliance failures. First, it fails to include any details concerning the “diligent search” conducted for responsive records, including which records were sought, what locations were searched, or what individuals worked with counsel or at his direction to conduct such a search. Faherty Aff. at Ex. B. The Trump Organization's General Counsel, Alan Garten, testified that file cabinets were maintained at the company's offices on behalf of Mr. Trump, Mr. Trump's

assistants maintained documents on his behalf, and Mr. Trump used Post-It Notes to communicate with employees. *See* Supp. Pet. NYSCEF No. 630 at ¶ 326. Furthermore, counsel indicated that there were multiple locations that needed to be searched in order to comply with OAG’s subpoena, including Trump Tower and Mar-a-Lago.¹¹ Faherty Aff. at ¶ 16. Mr. Trump’s counsel’s affidavit reflects no effort to identify documents at any of these locations.

Finally, Mr. Trump’s Response fails to identify where in the Trump Organization’s productions any such responsive records are located—nowhere does Mr. Trump or his counsel identify such documents by Bates number or otherwise describe where such documents can be found in the Trump Organization’s voluminous productions to date. Nor is it evident on what basis Mr. Trump’s counsel is able to aver “on knowledge and belief” that any responsive documents are with the Trump Organization and either “have been” produced “and/or will be produced by the Trump Organization” on some future date. *Id.*, Ex. B at 18-20 (¶¶ 8-15). Indeed, the Trump Organization’s latest weekly update on its production suggests there is no effort underway by the Trump Organization to search for Mr. Trump’s custodial documents; and the latest update by HaystackID confirms that Mr. Trump has failed to respond to written interview questions about his custodial files and that his longtime executive assistant is unresponsive through her counsel. *Id.*, Ex. C; ¶ 27; Haystack Report at 10 (“HaystackID made a request to [Donald J. Trump] for written interview responses on March 30, 2022. HaystackID is awaiting return of the written interview responses.”), 11 (“HaystackID attempted to contact [Rhona Graff’s] counsel several times but has received no response whatsoever.”). As the Court will recall, the Trump Organization’s counsel recently stated that productions were nearly complete,

¹¹ Press statements by the National Archives indicate that Mr. Trump has stored at least some personal documents at Mar-a-Lago. *See* <https://www.archives.gov/press/press-releases/2022/nr22-001>.

saving a single cellular phone and certain “clean up” activities [referenced in the Court’s recent order], such as “downgrades”—with no articulation about Mr. Trump’s custodial documents except a more general refrain that what does not exist cannot be produced.

Taking together the deficiencies in counsel’s affidavit concerning his search efforts and the lack of any discernable basis for counsel’s “knowledge and belief” that the Trump Organization has produced or will produce in the future any of Mr. Trump’s documents responsive to the subpoena, the Court should hold that Mr. Trump’s Response utterly fails to “comply in full” with the February 2022 Order. *See Sigety*, 632 F.2d at 977 (holding that party’s “duty under the subpoena duces tecum” could not be discharged by offering unreasonable sworn testimony).

C. OAG’s Rights Have Been Prejudiced By Respondent’s Disobedience

The final element of civil contempt is prejudice. Where a motion for civil contempt is brought by the State, prejudice may be to “the rights or remedies of the State acting in the public interest.” *State v. Stallings*, 183 A.D.2d 574, 575 (1st Dep’t 1992); *see State v. Unique Ideas, Inc.*, 44 N.Y.2d 345, 349 & n.* (1978) (holding that civil contempt award should compensate victims who were prejudiced by violation of injunction obtained as part of consent judgment in consumer fraud suit brought by OAG).

OAG has had to litigate over the enforcement of the subpoena served on Mr. Trump for months based on Mr. Trump’s dilatory conduct—which forced OAG to move to compel; forced OAG to oppose a motion to quash; and forced OAG to sift through voluminous productions that fail to identify documents from Mr. Trump’s custodial files or provide any information about what locations were searched or when. The Court already noted that there is “copious evidence of possible financial fraud” concerning financial statements that purport to be Mr. Trump’s

responsibility and that he certified to personally. February 2022 Order at 8. OAG’s investigation into that matter cannot further be stymied by Mr. Trump’s attempts to avoid responding to lawful process seeking documents in his possession, custody or control, with which the Court has already ordered him to “comply in full.”

II. THE COURT HAS THE AUTHORITY TO IMPOSE A SUITABLE REMEDY OF FINES AND COSTS TO COERCE COMPLIANCE AND COMPENSATE OAG

Section 5104 of the CPLR and § 753(A) of the New York Judiciary Law generally provide that a court may punish a party who violates a court order for civil contempt. Judiciary Law § 753(A) gives this Court the “power to punish, by fine and imprisonment, or either” any “disobedience to a lawful mandate of the court.” N.Y. Judiciary Law § 753(A)(3). “If an actual loss or injury has been caused to a party to an action ... a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court.” N.Y. Judiciary Law § 773.

In addition to this codified contempt power, “it has long been recognized that courts have the inherent power to enforce respect for and compliance with their judgments and mandates by punishment for contempt, which power is not dependent upon any statute.” *Gabrelian v. Gabrelian*, 108 A.D.2d 445, 450 (2d Dep’t 1985), *appeal dismissed*, 66 N.Y.2d 741 (1985), *abrogated in part on other grounds by Matter of A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1 (1986). Accordingly, a court “invoking its power to punish for civil contempt may, if necessary, look beyond the specific provisions of [the Judiciary Law] and resort to its inherent common law contempt power.” *Id.*, 108 A.D.2d at 451.

As the First Department recognized in *Alvarez v. Snyder*, citing with approval to *Gabrelian*:

The general principle that courts inherently may do that which is necessary to ensure the integrity of the proceedings over which they preside has been long recognized in New York. Inherent power, by its nature, does not derive from express statutory authority, but is governed by the need to reasonably enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. Inherent power is a recognized adjunct to judicial power when a Judge must discharge a responsibility, but lacks guidance from explicit legislative or decisional authority. Especially in such “gray area situations”, the exercise of inherent authority derives from common-law tradition as a means “to fill the gaps of express law and to respond to problems . . . so that the adjudicative process can function.

264 A.D.2d 27, 35 (1st Dep’t 2000) (cleaned up); *see also Arroyo v. Board of Educ. of City of New York*, 110 A.D.3d 17, 23 (2d Dep’t 2013) (noting that court’s inherent powers recognized in *Alvarez* should be effectively implemented to preserve a “level playing field for all litigants”) (Rivera, J.P., concurring).

Here, OAG requests that the Court impose an appropriate remedy for Mr. Trump’s contemptuous conduct consisting of: (i) a daily fine on Mr. Trump until he produces all responsive documents in the amount of \$10,000 per day, a sum sufficient to coerce his compliance with the Court’s February 2022 Order; and (ii) an award to OAG of its fees and costs associated with filing this contempt motion, to be determined based on OAG’s further submission of a costs affidavit. *See Pala Asets Holdings Ltd v. Rolta, LLC*, No. 652798/2018, 2021 WL 6051428, *9 (Sup. Ct. N.Y. Co. Dec. 21, 2021) (imposing civil contempt fine of \$10,000 per day on corporate executive to compel compliance with court’s order); *Arm Internet Inv. I Ltd. v. C Media Ltd.*, No. 655844/2016, 2022 WL 228035, at *4 (N.Y. Sup. Ct. Jan. 26, 2022) (“the most effective way to encourage defendants to comply with the Stipulation of Settlement and this court’s prior orders is to issue a prospective per diem fine until the contempt is purged.”); *Int’l Bus. Machines Corp. v. United States*, 493 F.2d 112, 115 (2d Cir. 1973) (“In regard to the amount of the coercive fine it was proper for the court to take into account the

contemnor's resources and ability to pay."); *In re Johns-Manville Corp.*, 26 B.R. 919, 923 (Bankr. S.D.N.Y. 1983) ("in punishing for civil contempt, a court is empowered to impose a sanction sufficient to coerce the respondents into complying.").

CONCLUSION

Based on the foregoing, OAG respectfully requests that the Court grant OAG's motion to: (i) hold Respondent Donald J. Trump in civil contempt for violating the Court's February 2022 Order requiring him to comply in full with that portion of OAG's subpoena seeking documents and information; (ii) assess a daily fine against Mr. Trump of \$10,000 or an amount deemed by the Court to be otherwise sufficient to coerce his compliance with the Court's February 2022 Order; (iii) compensate OAG for Mr. Trump's disobedience in the form of an award of OAG's costs and fees in connection with filing this motion; and (iv) award such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
April 7, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Andrew Amer

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
Wil Handley
Eric R. Haren
Louis M. Solomon
Austin Thompson
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Attorney for the People of the State of New York

EXHIBIT 6

From: [Amer, Andrew](#)
To: [Michael Madaio](#)
Cc: [Alina Habba, Esq.](#); [Wallace, Kevin](#); [Faherty, Colleen](#)
Subject: RE: People v. Trump Organization, et al - Subpoena Response/OTSC
Date: Thursday, April 14, 2022 10:23:58 AM
Attachments: image001.png

Michael,

As you know, we accommodated your client's request to extend the deadline for production under the February 17, 2022 order from March 3 to March 31 based on our understanding that additional time was required to search for responsive documents – despite having had the subpoena since December 2021 – but we expressly declined your request to push the date further to align with the deadline for the Trump Organization's production. On March 31, your office produced zero documents and instead asserted a raft of objections to the subpoena and referred us to the Trump Organization's incomplete production. You contend that response complied with the Court's order. Our moving papers explain in detail why we strongly disagree with that position. From OAG's perspective, no useful purpose would be served by having a conference call among counsel to discuss our competing positions. If you wish to take steps to cure the deficiencies we have identified with your client's March 31 response, we would certainly welcome that.

Regards,

Andrew Amer | Special Counsel

New York State Office of the Attorney General
Executive Division
28 Liberty Street
New York, NY 10005
Tel: (212) 416-6127
Email: Andrew.Amer@ag.ny.gov

From: Michael Madaio <mmadaio@habbalaw.com>
Sent: Tuesday, April 12, 2022 5:06 PM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>; Amer, Andrew <Andrew.Amer@ag.ny.gov>
Subject: RE: People v. Trump Organization, et al - Subpoena Response/OTSC

Kevin,

To be clear, we are not asking for an adjournment or extension of the OTSC deadlines so there is no risk of delaying the proceedings. Rather, to your point, we are hoping to expediate this process and avoid unnecessary court intervention to the extent possible. While we maintain that the subpoena response was fully compliant, we remain open to amending it in a mutually-agreeable manner.

Therefore, we would like to have a conference call to try to resolve this issue.

Thanks,

MICHAEL T. MADAIO, Esq.

Admitted to Practice in NJ, NY & PA



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From: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Sent: Monday, April 11, 2022 4:00 PM
To: Michael Madaio <mmadaio@habbalaw.com>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>; Amer, Andrew <Andrew.Amer@ag.ny.gov>
Subject: RE: People v. Trump Organization, et al - Subpoena Response/OTSC

Michael –

Confirming receipt of your note. We obviously disagree that we have misread or misconstrued anything. Given the extensive history of negotiation and repeated court intervention, we do not think your proposed meeting serves any purpose except to delay the overdue resolution of these document issues. We first raised the issue of the subpoena for Mr. Trump back in early November. It has been outstanding since the first of December. That is on top of more than two years of back-and-forth with the Trump Organization over documents. At this point further discussions without the Court do not make sense.

Best regards,

KCW

From: Michael Madaio <mmadaio@habbalaw.com>
Sent: Thursday, April 7, 2022 7:21 PM

To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>
Subject: People v. Trump Organization, et al - Subpoena Response/OTSC

[EXTERNAL]

Kevin and Colleen,

I am writing with regard to the Order to Show Cause filed by your office today. Frankly, I was taken aback by the filing since our response was in full compliance with the OAG's subpoena. After reviewing the OAG's papers, it is evident that your office has misread and misconstrued the contents of our response. All of our answers were made in accordance with the instructions provided with the subpoena. Any issue that your office had with the response could have been dealt with through a simple courtesy call to our firm.

While we stand by the completeness of our response, in the interest of avoiding needless motion practice, we would be willing to schedule a call to discuss the concerns you have raised. It is our understanding that your office frequently reaches out to co-counsel, Larry Rosen, whenever such issues arise. We are happy to provide clarity as to our answers and, to the extent necessary, to amend our client's responses accordingly. We do, however, contest any and all assertions that our production is not responsive to your office's subpoena.

Regards,

MICHAEL T. MADAIO, Esq.

Admitted to Practice in NJ, NY & PA



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EXHIBIT 7

Attorney General James Files Motion to Hold Donald J. Trump in Contempt for Failure to Comply with Judge's Order


AG James Seeks \$10,000 Fine Per Day Until Trump Complies With Order to Turn Over Documents

NEW YORK – New York Attorney General Letitia James today took legal action to hold Donald J. Trump in contempt for his refusal to comply with a court order to produce documents in response to a subpoena served on him by the Office of the Attorney General (OAG) as part of its ongoing investigation into his financial dealings. The [motion for contempt](#), filed in New York County State Supreme Court, seeks to impose a \$10,000 fine on Mr. Trump for every day that he continues to violate the court's order to produce these documents.

“The judge's order was crystal clear: Donald J. Trump must comply with our subpoena and turn over relevant documents to my office,” said **Attorney General James**. “Instead of obeying a court order, Mr. Trump is trying to evade it. We are seeking the court's immediate intervention because no one is above the law.”

In [February 2022](#), the Honorable Arthur Engoron rejected Mr. Trump's challenge to OAG's subpoena and ruled that he was required to “comply in full” by producing a range of documents to OAG as part of its investigation into his and the Trump Organization's financial dealings. Mr. Trump was initially ordered to produce those documents by March 3, 2022, but OAG agreed to accommodate his request for additional time and extended the date to March 31, 2022. Mr. Trump agreed to this timeline and never sought to challenge this aspect of the order on appeal. However, on March 31, 2022, Mr. Trump raised a new round of objections to the document requests in the subpoena and stated that he would not produce any documents responsive to OAG's subpoena, in direct violation of the judge's order. Under settled law, a party is not permitted to delay proceedings at this advanced juncture in the legal process to challenge an investigative subpoena, so Mr. Trump does not have the ability to raise these baseless objections at this time.

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EXHIBIT 8

SUPREME COURT 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

**RESPONDENT DONALD J. TRUMP'S MEMORANDUM OF LAW IN
OPPOSITION TO THE ATTORNEY GENERAL'S CIVIL CONTEMPT MOTION
AGAINST RESPONDENT DONALD J. TRUMP**

Alina Habba, Esq.
HABBA MADAIO & ASSOCIATES, LLP
1430 U.S. Highway 206, Suite 240
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-and-

112 West 34th Street, 17th & 18th Floors
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Email: ahabba@habbalaw.com

Attorneys for Respondent, Donald J. Trump

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Respondent, Donald J. Trump (“Respondent”), submits this memorandum of law in opposition to the Office of the Attorney General’s (the “OAG”) civil contempt motion against Respondent for failing to comply with the Court’s February 17, 2022 Order (the “Order”) requiring that Respondent “comply in full” with the OAG’s December 1, 2021 subpoena (the “Subpoena”).

INTRODUCTION

As demonstrated below, the imposition of sanctions for civil contempt is a drastic remedy that is warranted only in the most egregious of circumstances. The present scenario cannot conceivably qualify since Respondent thoroughly complied with this Court’s Order.

On December 1, 2021, the OAG issued the Subpoena to Respondent, individually, requesting that he produce a variety of documents relating to the OAG’s ongoing investigation.

The Subpoena, however, expressly noted that Respondent:

“need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you.”

Affirmation of Alina Habba, Esq. dated April 19, 2022 (“Habba Aff.”), Ex. A at Instruction C2 (emphasis added).

After conducting a diligent search and review, Respondent’s counsel determined that Respondent was not in possession of any documents responsive to the Subpoena and that all potentially responsive documents were in the possession, custody or control of the Trump Organization. Consistent with the foregoing, on March 31, 2022, Respondent’s counsel served a response (the “Response”) to the Subpoena stating that, as for each demand, that he “has no documents or communications in his possession or custody that are responsive to this request and...refers to the documents and communications that have been previously produced by the Trump Organization to [the OAG] and...stipulates that, to the extent any documents or

communications contained in the [Trump Organization] Productions are responsive to this request, said documents and communications may be used as if those documents were produced by Respondent” – just as the Subpoena expressly authorized. In other words, Respondent complied with the exact language of the Subpoena.

Notwithstanding Respondent’s compliance, on April 7, 2022, the OAG, seemingly in an effort to turn this matter into a public spectacle, proceeded to file the instant motion without warning and not surprisingly, simultaneously issued a press release denouncing Respondent’s supposed ‘disobedience’ of the court order. In its motion, the OAG fails to explain how Respondent’s response was insufficient in any way. The OAG’s position is particularly confounding since the Response strictly adhered to the OAG’s *own instructions*. Indeed, the purported ‘deficiencies’ raised by the OAG are precisely what was called for in the Subpoena, often matching the OAG’s language word-for-word.

Further, the OAG has failed to explain how Respondent’s supposed non-compliance has caused it to sustain any prejudice whatsoever. The OAG claims that it has been forced to incur unnecessary litigation expenses by virtue of Respondent’s actions, but this could not be further from the truth. In defiance of well-established court rules, the OAG filed the instant application without making any effort to resolve the underlying issues or even so much as reach out to Respondent’s counsel. While the OAG was publicly putting out a barrage of press statements about the instant motion, OAG counsel was privately rebuffing numerous attempts by Respondent’s counsel to engage in good-faith discussions to address the issues at hand – going so far as to refuse Respondent’s counsel’s request for a simple phone call. Given the OAG’s recalcitrant behavior, it is fair to question the OAG’s motive in bringing the instant application, which appears to be little more than a contrived publicity stunt.

COUNTER-STATEMENT OF FACTS

On or about December 2, 2021, the OAG served the Subpoena upon Respondent. The Subpoena contains eight individual demands which seek disclosure of communications and documents that mainly relate to the Trump Organization's business dealings. The Subpoena also contains a set of instructions which outline the manner in which Respondent was required to respond. Notably, with regard to which particular documents Respondent was required to produce, the Subpoena qualifies:

If documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody. Additionally, you need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you.

Habba Aff., Ex. A at Instruction C2 (emphasis added). The instructions define the term "Person" as "any natural person or Entity." *Id.* at Instruction A14. Further, when identifying entities, the Subpoena directs Respondent to simply provide the entity's legal name. *Id.* at Instruction A12

The OAG was well apprised by Respondent that the documents sought would not likely be in his personal possession since the OAG's demands largely relate to the business affairs of the Trump Organization. On December 3, 2021, counsel for Respondent, Ron Fischetti, Esq., informed the OAG that "I believe the documents you are seeking are in the possession of the Trump Organization and not in the possession of my client." *See generally* Habba Aff., Ex. B.

On January 3, 2022, Respondents, Donald J. Trump, Ivanka Trump, and Donald Trump Jr., filed a motion to quash the OAG's subpoena, and the OAG filed a cross-motion to compel. On February 17, 2022, as stated in the Order, this Court denied Respondent's motion and ordered, among other things, that Respondent "comply in full, within 14 days of the date of this order, with

the portion of the Office of the Attorney General’s Subpoena seeking documents and information.” Habba Aff. at ¶5.

On February 28, 2022, Respondents proceeded to appeal the Order to the First Department. The parties agreed and stipulated that Respondent would respond to the document requests contained in the Subpoena on or before March 31, 2022. *See generally* Habba Aff., Ex. C.

Indeed, Respondent fully complied with the Subpoena by serving the Response. *See generally* Habba Aff., Ex. D. After a dutiful search, it was determined that Respondent simply did not have any of the requested documents in his personal possession or custody. To the extent any such documents were in his “control,” said documents were in the possession, custody or control of the Trump Organization. In full compliance with the Subpoena, Respondent identified the Trump Organization as the “person” in possession of the requested documents and directed the OAG to refer to document production provided by the Trump Organization.

Seven days after Respondent proffered his response to the Subpoena, the OAG filed the instant motion seeking to hold Respondent in civil contempt. During the length of time between Respondent’s submission of the Response and the filing of this motion, the OAG did not make a single attempt to reach out to the Respondent to resolve this issue in good faith. Instead, the OAG launched a ‘full-press’ attack on Respondent, and Letitia James, the Attorney General of New York, released the following statement to comport with the filing of its contempt motion, stating:

“The judge’s order was crystal clear: Donald J. Trump must comply with our subpoena and turn over relevant documents to my office. Instead of obeying a court order, Respondent is trying to evade it. We are seeking the court’s immediate intervention because no one is above the law.¹”

¹ <https://ag.ny.gov/press-release/2022/at-the-Trump-Organization-Attorney-General-James-files-motion-to-hold-donald-j-trump-contempt-failure-comply>

Shortly thereafter, on April 7, 2022, in an attempt to resolve the outstanding issues without judicial intervention, Respondent's counsel reached out to the OAG to schedule a phone conference to address the OAG's contentions that Respondent did not comply with the Subpoena. While expressly stating that the Response is in full compliance, Respondent's counsel offered to amend the responses to the extent necessary to satisfy the OAG. *See generally* Habba Aff., Ex.E.

The OAG did not respond to Respondent's counsel's e-mail until April 11, 2022, in which OAG counsel refused to engage in even a simple phone call, stating that he disagrees with Respondent counsel's position and that "further discussions without the Court do not make sense." *Id.* In a follow-up attempt to address the OAG's concerns, Respondent's counsel sent a second email on April 12, 2022, responding that "While we maintain that the subpoena response was fully compliant, we remain open to amending it in a mutually-agreeable manner. Therefore, we would like to have a conference call to try to resolve this issue." *Id.* The OAG waited another two days before responding to this recent email, stating, in pertinent part, that "[f]rom OAG's perspective, no useful purpose would be served by having a conference call among counsel to discuss our competing positions." *Id.*

ARGUMENT

I. THE OAG HAS FAILED TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT A FINDING OF CIVIL CONTEMPT IS WARRANTED.

Judiciary Law § 753 provides that a court may "punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced" for "disobedience to a lawful mandate of the court." N.Y. Jud. Law § 753(A)(1). "The primary purpose of civil contempt is remedial," and is designed "to compensate the injured private

party or to coerce compliance with the court’s mandate or both.” *Palmitesta v. Palmitesta*, 166 A.D.3d 782, 782-83 (2d Dep’t 2018).

To sustain a finding of civil contempt, the movant must establish that: (1) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) the movant was prejudiced by the offending conduct. *See McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983). “A party seeking to hold another party in civil contempt has the burden of proving the contemptuous conduct by clear and convincing evidence.” *Gray v. Giarrizzo*, 47 A.D.3d 765, 766 (2d Dep’t 2008) (citing *Rupp-Elmasri v. Elmasri*, 305 A.D.2d 394, 395 (2003)); *see also Cassarino v. Cassarino*, 149 A.D.3d 689 (2d Dep’t 2017) (“[A] motion to punish a party for civil contempt is addressed to the sound discretion of the Court, and the movant bears the burden of proving the contempt by clear and convincing evidence.”). Every contempt application must be decided on the basis of its own unique facts and circumstances. *Banks v. Stanford*, 159 A.D.3d 134, 146 (2d Dep’t 2018).

Respondent readily concedes that the Order is lawful in its mandate to compel Respondent’s to respond to the Subpoena, and that he had knowledge of the Order. Indeed, it was in adherence to this Court’s directive that Respondent provided a thoroughly sufficient response to the Subpoena. Thus, for the reasons articulated below, the OAG has not—and cannot—show that the Response is in any way deficient nor that it caused the OAG to sustain even the slightest bit of prejudice.

A. Respondent Fully Complied with the Subpoena.

The OAG’s claim that Respondent “did not comply at all” with the Subpoena is verifiably false. Pet. Mem. at Respondent provided a full and dutiful response, based on a diligent search of Respondent’s records, which strictly adhered to the subpoena instructions provided by the OAG.

The party moving for civil contempt arising out of noncompliance with a subpoena *duces tecum* bears the burden of establishing, by clear and convincing evidence, that the subpoena has been violated and that “the party from whom the documents were sought had the ability to produce them.” *Yalkowsky v. Yalkowsky*, 93 A.D.2d 834, 835 (1983); *see also Gray v. Giarrizzo*, 47 A.D.3d 765, 766 (2008). To hold a party in civil contempt, “the court must expressly find that the person’s actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceeding.” *Clinton Corner v. Lavergne*, 279 A.D.2d 339, 341 (1st Dep’t 2001).

Pursuant to the Order, the Court directed Respondent to “comply in full” with the OAG’s subpoena *duces tecum*. As outlined below, that is precisely what Respondent did.

i. After a Diligent Search, Respondent Had No Responsive Documents Other Than Those in Possession, Custody or Control of the Trump Organization.

The OAG’s main gripe with Respondent’s subpoena response seems to be the lack of documents that were independently produced. While this result may be to the OAG’s dissatisfaction, the fact is that a diligent search was performed and found that Respondent is not in possession of any of the requested documents. Further, as was expressly stated in the Subpoena’s instructions, Respondent was not obligated to produce documents in the possession, custody or control of the Trump Organization.

Respondents’ counsel, in coordination with Respondent and numerous aides, representatives, co-counsel, and others with knowledge of the whereabouts of Respondent’s communications and documents, performed a diligent and comprehensive search for the requested items. The search failed to identify a single document in the possession or custody of Respondent that was responsive to the OAG’s requests, at least none that were required to be separately produced by Respondent.

Given the contents of the Subpoena, the lack of responsive documents comes as no surprise. The Subpoena lists eight individual documents demands which seek disclosure of communications and documents that are almost exclusively business-oriented, relating to topics such as corporate financial statements, property asset valuations, project financing, etc. In other words, it seeks disclosure of the corporate records of the Trump Organization or, at the very least, documents that would be housed in its corporate offices. These are not documents that would be in Respondent's physical possession or custody. Moreover, as the OAG is keenly aware, Respondent "famously does not use email or a computer," meaning that the documents are likewise not in his digital possession or custody. *See* Pet. Amended Verified Petition ¶ 347 (NYSCEF Doc. No. 630). Further, as this Court may take judicial notice, Respondent left the Trump Organization in early 2017 to serve as President of the United States for the subsequent four years.

Based on the foregoing, Respondent did not have any responsive documents or communications in his personal possession or custody. To the extent any such documents were in his "control"—a term not defined in the subpoena instructions—those documents were in the possession and custody of the Trump Organization. The Subpoena dictates how Respondent is required to respond in this precise scenario. Specifically, Instruction C2 states as follows:

"If documents or information responsive to a request in this Subpoena are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody. Additionally, you need not produce documents in the possession, custody or control of the Trump Organization, if such documents have previously been produced to this Office during the course of this investigation and you stipulate that the Trump Organization-produced documents can be used as if those documents were produced by you."

See Habba Aff., Ex. A at Instruction C2.

Read as a whole, the above provision plainly instructs that Respondent was not required to produce any documents that are in the "possession, custody or control of the Trump Organization,"

as long as those documents had already been produced to the OAG. *Id.* This provision is critical since the Trump Organization has independently produced a vast number of documents to the OAG throughout the course of the subject investigation. Thus, in accordance with Instruction C2, Respondent directed the OAG to the documents produced by the Trump Organization, to the extent applicable. The Response, which strictly adhered to Instruction C2—nearly matching the language word-for-word—stated as follows:

“...Respondent states that he has no documents or communications in his possession or custody that are responsive to this request and, to the extent any such documents or communications exist, said responsive documents are in the possession, custody or control of the Trump Organization. Accordingly... Respondent refers to the documents and communications that have been previously produced by the Trump Organization to Petitioner and, to the extent applicable, those documents and communications that will be produced by the Trump Organization to Petitioner in response to any pending request or subpoena...and stipulates that, to the extent any documents or communications contained in the [Trump Organizations] Productions are responsive to this request, said documents and communications may be used as if those documents were produced by Respondent.”

Habba Aff., Ex. D at 6-7.

Despite feigning surprise and outrage in its motion papers, the OAG was fully aware that Respondent was unlikely to be producing any responsive documents but, rather, would permissibly rely upon the Trump Organization’s productions. On December 3, 2021, a mere two days after the OAG effected service of its subpoena, counsel for Respondent, Ron Fischetti had a conversation with the OAG, which he confirmed in a follow-up e-mail stating “I believe the documents you are seeking are in the possession of the Trump Organization and not in the possession of my client.” Habba Aff., Ex. B. The OAG even acknowledges in its motion papers that Respondent does not use email, nor does he use a computer or any similar device for work purposes.

The OAG also takes issue with the purported lack of specificity in Respondent’s response, complaining that the “Response does not specifically identify the potentially responsive documents

or information in the Trump Organization's custody or control[.]" Pet. Mem. at 6. The OAG similarly declares that the Response "omits any reference to documents in the *control* of [Respondent] – referring only to those in his "possession or custody" – despite the instruction in the Subpoena calling for all responsive documents in his "possession, custody or control. Habba Aff., Ex. A at 3. Yet, in putting forth these arguments, the OAG again fails to pay heed to its own directives.

With regard to documents in Respondent's "control," but not his "possession or custody," Instruction C2 dictates: "[i]f documents are in your control, but not in your possession or custody, you shall promptly identify the person with possession or custody." This is exactly what Respondent did. He stated that there were no responsive documents in his "possession or custody, and to the extent there were any in his "control" he identified the Trump Organization as the "person" with custody of the responsive documents. Instruction A14 specifically denotes that a "person" includes "any natural person, or any Entity," such as the Trump Organization. *See* Habba Aff., Ex. A at Instruction A14. Read in conjunction with the remaining portion of Instruction C2, which excepts Respondent from producing documents that have been already been produced by the Trump Organization, he was under no obligation to produce documents in his "control," only to identify the Trump Organization as the entity in possession of them. *Id.*

As for Respondent's purported failure to delineate which particular documents he was relying upon in the Trump Organization's productions, there is simply no requirement in the instructions for him to do so.² Nor would such a requirement be reasonable. It would be unduly

² In its motion papers, the OAG disingenuously claims that Respondent should have identified the documents in accordance with Instruction C3, entitled "Documents No Longer in Your Possession," which calls for specific identification of any document that was "formerly in [Respondent's] possession, custody or control but is no longer available, or no longer exists." Pet.

burdensome—even impossible—for Respondent to determine which of the *millions* of documents produced by the Trump Organization documents should be construed as being in his “control” – a term which is not even defined in the subpoena instructions. This is especially true considering the grossly overbroad nature of the OAG’s demands, which include requests like “[a]ll documents and communications concerning *any* valuation of *any* asset whose value is identified or incorporated into *any* Statement of Financial Condition.” *See* Habba Aff., Ex. A at Demand D2 (emphasis added). These corporate records belong to the Trump Organization, not to Respondent, and he was expressly allowed to rely upon the company’s productions to the OAG.

Therefore, Respondent’s response was in full compliance with the OAG’s subpoena.

ii. The OAG’s Remaining Complaints are Without Merit

Despite the OAG’s insistence to the contrary, none of the remaining issues raised by the OAG even remotely render the Response non-compliant with the Subpoena. Rather, the supposed “deficiencies” identified by the OAG are mere nitpicks as to the formatting, style and/or makeup of the Response that are wholly immaterial to its substance.

First, the OAG disingenuously argues that the “Affidavit of Compliance” (the “Affidavit”) submitted with Respondent’s response is somehow defective. This contention is simply non-sensical. The Affidavit was nearly identical to the form provided by the OAG and comported in form and substance in every conceivable way. That the OAG takes issue with the Affidavit is perplexing. For example, the OAG takes aim at the representation in the Affidavit that the affiant “personally made or caused others to make a diligent search of all of Respondent’s relevant records for materials sought by the Subpoena.” Yet, the form affidavit provided by the OAG includes a

Mem. at 15. Contrary to the OAG’s assertion, this provision is inapplicable since the documents produced by the Trump Organization to the OAG are still available and/or in existence.

nearly indistinguishable line which states that “I made or *caused to be made* a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena[.]” (emphasis added). *See* Habba Aff., Ex. D at 17. Similarly, the OAG complains of Respondent’s use of the phrase “to the best of my knowledge and belief,” despite the fact that this language is taken word-for-word from the template form. *Id.* at 17-18 (“Respondent’s productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief.”); *compare to* Subpoena, template affidavit at 10 (“Respondent’s productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief.”). The OAG’s apparent dissatisfaction with *its own language* does not make Respondent’s response any less sufficient.

Second, the OAG claims that Respondent has refused to comply with HaystackID’s request for written responses “despite having been appointed months ago.” The OAG’s position is misleading and incorrect. HaystackID only sent request for written responses from Respondent on March 30, 2022. Habba Aff. at ¶8. Respondent submitted his response mere days later on April 8, 2022. Habba Aff. at ¶9. This issue is therefore moot and, more importantly, consistent with Respondent’s good faith efforts to comply with HaystackID’s search efforts.

Third, the OAG contends that the Response improperly raises objections to the breadth, scope, and burdensomeness of the requests in the Subpoena. The OAG argues that, since Respondent did not raise these objections in a motion to quash, they were thereby waived. This position is neither supported by case law nor common practice. It is well settled that a recipient of a non-judicial subpoena is “not required to initiate a motion to quash” to raise objections; rather, the recipient “may properly raise his objections when the official issuing the office subpoena first seeks judicial sanction for noncompliance.” *Friedman v. Hi-Li Manor*, 42 N.Y.2d 408, 413 (1977) (citations omitted). Further, it is well settled that recipient of “non-judicial subpoena *duces tecum*

may always challenge the subpoena in court on the ground it calls for irrelevant or immaterial documents or subjects the witness to harassment. *Myerson*, 33 N.Y.2d at 256 (citations omitted).

Here, Respondent was well within his rights to set forth his various objections to the breadth, scope and particularity of the demands contained in the Subpoena. In its moving papers, the OAG conveniently omits that Respondent had properly raised these objections in his Answer, which was filed on February 14, 2022. *See* NYSCEF Doc. No 647. In particular, Respondent's Seventh Affirmative Defense stated:

The subject subpoenas and subsequent requests for documents, information and testimony made by Petitioner are objectionable in that, among other things, they call for irrelevant and immaterial records, are overly broad and unduly burdensome, and do not state the documents sought with reasonable particularity.

Id. at 54. Accordingly, these objections were preserved by Respondent and properly asserted in his Response. Regardless, the objections are immaterial since Respondent did indeed proffer a full and complete answer to each of the OAG's document demands. Thus, even if the objections were not properly asserted, Respondent complied in good faith all the same.

Based on the foregoing, the OAG's contention that Respondent's response is deficient in any material way is wholly without merit.

B. *The OAG Is Unable to Show That Its Rights Have Been Prejudiced*

Even assuming *arguendo* that Respondent willfully violated the Order—which he did not—the OAG has not shown that its rights have been prejudiced in any way.

There can be no finding of civil contempt absent clear and convincing evidence of prejudice to a party to the litigation. *Penavic v. Penavic*, 109 A.D.3d 648, 650 (2d Dep't 2013). To satisfy the prejudice element, the moving party must prove the accused conduct “was calculated to, or actually did, defeat, impair, impede, or prejudice [the moving party's] rights or remedies.” *Olson v. Olson*, 177 A.D.3d 567 (1st Dep't 2019); *see also Powell v. Clauss*, 93 A.D.2d 883 (2d Dep't

1983) (“[A]n adjudication of civil contempt is not warranted because there is no finding that defendant's actions were calculated to or actually did defeat, impair or prejudice the rights and remedies of the plaintiff.”); *El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 11 (2d Dep’t 2013) (“The element of prejudice to a party's rights is essential to civil contempt, which aims to vindicate the rights of a private party to litigation.”). Contempt is a drastic remedy which should not be granted absent clear right to relief. *Pinto v. Pinto*, 501 N.Y.S.2d 835 (1st Dep’t 1986).

Here, the OAG has not shown that it sustained any prejudice stemming from Respondent’s purported failure to comply with the Subpoena, nor can it since the Response was in full compliance with the instructions of the Subpoena. Even to the extent the OAG is able to show that there was some minor deviation, any such ‘deficiency’ would have been immaterial and certainly does not rise to the level of civil contempt. Indeed, the OAG has failed to explain how the Response, even if not wholly comporting to its directives, has compromised its rights in any meaningful way as is required to establish contempt. *See Troiano v. Ilaria*, 205 A.D.2d 752, 752 (1994) (affirming denial of contempt where party seeking contempt order failed to demonstrate alleged infractions prejudiced that party’s rights); *Chambers v. Old Stone Hill Rd*, 66 A.D.3d 944, 946 (2009) (affirming denial of motions for contempt where movants failed to demonstrate any harms resulting from alleged violations).

The OAG singularly relies on the fact that it engaged in litigation to compel Respondent’s response to the Subpoena in support of its contention that it was somehow prejudiced by Respondent’s conduct. However, it is well established that counsel fees are recoverable only if all the requirements, including prejudice, are separately established. *See Mundell v. N.Y.S. Dep’t of Transp.*, 185 A.D.3d 1470 (4th Dep’t 2020) (Finding that petitioner was not entitled to counsel fees where it failed to demonstrate prejudice by clear and convincing evidence). Every litigant

incurs counsel fees when bringing a contempt motion; this basis, on its own, is not sufficient to establish prejudice. As such, the OAG's paltry submission that it engaged in litigation does not demonstrate that its rights have been prejudice by Respondent's alleged non-compliance. Absent independent proof of prejudice, there can be no contempt. *See City of Poughkeepsie v. Hetey*, 121 A.D.2d 496 (2d Dep't 1986) (affirming denial of contempt motion absent proof of prejudice (actual or intended)).

Further, if either party bears responsibility for unnecessarily involving the Court in this issue, it is the OAG. Rather than make a good-faith effort to resolve its perceived issues with the Response and allow Respondent an opportunity to cure any alleged deficiencies, the OAG instead opted to prematurely file the instant application without so much as notifying Respondents' counsel. Even worse, subsequent to filing, the OAG has continually rebuffed Respondent's counsel's numerous attempts to engage in good-faith discussions to resolve the apparent issues with the Response. To date, the OAG still will not even so much as have a phone call with Respondents' counsel to discuss these issues. While Respondent maintains that the Response is fully compliant, as set forth above, he is willing to make mutually agreeable revisions to the extent that it will avoid unnecessary motion practice and court intervention. This position has been clearly communicated to the OAG. Thus, the OAG's position that it has been prejudiced is dumbfounding. It claims that it is being forced to incur unnecessary litigation costs while simultaneously contravening well established 'meet and confer' rules that are designed to prevent unnecessary litigation. The OAG's failure in this regard is a fatal defect in its contempt application – it cannot prove prejudice since any superfluous litigation costs have been self-imposed.

Further, as stated above, and conceded by the OAG, the Trump Organization has independently produced a significant number of documents in response to OAG's numerous

document demands. Respondent is not obligated to produce any of these documents, nor are there any additional documents that are being withheld. In other words, the OAG is *already in possession* of all of the documents it seeks in its document demands. Given these circumstances, the OAG's rights have not been prejudiced in the slightest. *See U.S. Bank Nat'l Ass'n v. Sirota*, 189 A.D.3d 927 (2d Dep't) (holding that denial of the borrowers' requests to impose civil contempt on the lender for its delay in releasing insurance proceeds to the borrowers was proper as the lender had released the proceeds months before the contempt request).

Therefore, given that the OAG has failed to demonstrate that it has suffered "actual loss or injury" as a result of Respondent's conduct, this contempt motion must be denied as the relief it seeks is punitive in nature, not compensatory.

II. THE INSTANT MOTION IS PROCEDURALLY DEFECTIVE DUE TO OAG'S FAILURE TO COMPLY WITH SECTION 202.20(f)

The OAG's inexplicable refusal to engage in good-faith discussions with Respondent's counsel prior to filing the instant application is not only damning proof as to the lack of prejudice it sustained, it is also a violation of court rules that renders this application procedurally improper.

Uniform Civil Rules for the Supreme Court and the County Court Section 202.20-f(b) (effective February 1, 2021) states, in pertinent part:

- (a) To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.
- (b) Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure. Such consultation must take place by an in-person or telephonic conference.

NY CLS Unif. Rules, Civil Cts § 202.20-f. The Rule also requires that any discovery motion be accompanied by an affirmation from counsel attesting to having conducted such in-person or telephonic conference, and detailing when the conference took place, who participated, and the

length of time of the conference. The Rule further provides that the “failure of counsel to comply with this rule may result in the denial of a discovery motion, without prejudice to renewal once the provisions of this rule have been complied with, or in such motion being held in abeyance until the informal resolution procedures of the court are conducted.” *Id.*

Courts are particularly disinclined to hold a party in contempt in connection with a routine discovery dispute. *See Lopez v. NYC Transit Authority*, 925 N.Y.S.2d 84 (1st Dep’t 2011) (finding that the Transit Authority’s decision to file a contempt motion as opposed to first availing itself of other remedies was “wholly inexplicable and equally meritless.”); *see also Oak Beach v. Babylon Beacon*, 62 N.Y.2d 158, 166–167 (1984) (holding that “a court must resort to other more general provisions of the law in the rare instances where it may be necessary to hold a person in contempt for failure to make disclosure in a civil case.”).

Since becoming effective little over a year ago, New York courts have consistently held that a party’s failure to comply with Uniform Rule 202.20-f mandates the denial of any related discovery motion. *See Taylor v. Ultimate Class Limousine*, 2021 N.Y. Misc. LEXIS 5203 (Sup. Ct. Bronx Cty. 2021); *Velazquez v. Campuzano*, 2021 N.Y. Misc. LEXIS 4173 (Sup. Ct. Bronx Cty. 2021). In fact, discovery motions that fail to comply with Uniform Rule 202.20-f are routinely denied even if the movant has previously issued various good faith letters. *See Muhammed v. Palarchie*, 2021 N.Y. Misc. LEXIS 4550 (Sup. Ct. Bronx Cty. 2021).

Here, the OAG never attempted to schedule a conference, either telephonically or otherwise, to discuss any perceived deficiency with Respondent’s subpoena response. There is nothing contained the OAG’s motion regarding any compliance with the terms of Uniform Rule 202.20- f or even any efforts of counsel to comply with the rule. Indeed, the OAG repeatedly refused to engage in so much as a phone-call even after the motion was filed, when Respondent’s

counsel made numerous attempts to resolve the discovery dispute without judicial intervention. Clearly, Respondent's counsel was, and is, ready, willing, and able to fully discuss the matter with the OAG to correct any perceived deficiencies. Instead of engaging in good faith discussions to resolve the outstanding issues, the OAG proceeded to issue a self-gratifying press release that was solely aimed to publicly excoriate Respondent. To date, the OAG remains steadfast in its refusal to discuss this disclosure dispute with Respondents' counsel.

As such, the OAG has failed to meet the 'meet and confer' requirements of NY CLS Unif. Rules, Civil Cts § 202.20-f. It has additionally failed to demonstrate that "any further attempt to resolve the dispute nonjudicially would have been futile." *Jackson v. Hunter Roberts Constr. Group*, 139 A.D.3d 429 (1st Dep't 2016). Therefore, the OAG's motion is inherently defective for failing to comply with failing to abide by the court rules and should be rejected for this reason alone.

III. THE IMPOSITION OF FINES IS NOT WARRANTED, AND TO THE EXTENT IT IS, THE AMOUNT SOUGHT BY THE OAG IS OVERLY EXCESSIVE AND EXCEEDS THIS COURT'S STATUTORY AUTHORITY.

Finally, in addition to the OAG's application completely lacking merit and being procedurally defective, the OAG's request for a daily fine of \$10,000 is a grossly excessive amount that is not statutorily authorized and would not serve civil contempt's understood purpose of compensating the wronged party for damages suffered as the result of a violation of a clear and unambiguous order.

A. The Proposed Fine Has No Foundation as a Compensatory Remedy.

While criminal contempt is used to punish those who wrongfully rebel against judicial authority and is employed "to protect the integrity and dignity of the judicial process and to compel respect for its mandates," civil contempt penalties are invoked "not to punish but, rather, to

compensate the injured private party or to coerce compliance with the court's mandate.” See *Department of Housing Preservation v. Deka Realty Corp.*, 208 A.D.2d 37, 42 (2d Dep’t 1994); see also Judiciary Law § 750.

The OAG has proffered no reasoning or logic to justify a \$10,000 per-day fine, nor explained whether the amount sought is remedial or relates to any loss that OAG has suffered as the result of Respondent’s purportedly contemptuous conduct. In its motion, the OAG merely recites boilerplate case law to fortify its position, with no accompanying evidence of any ascertainable loss. See Pet. Mem. at 19. As the OAG has failed to prove actual loss, this Court may “only impose a fine which does not exceed the complainant's costs and expenses, plus an additional \$ 250.” See N.Y. Jud. Law § 773; *Berkowitz v. Astro Moving & Storage*, 240 A.D.2d 450, 452 (2d Dep’t 1997) (Parties in contempt for failure to timely comply with ordered inspection in Article 78 proceeding were entitled to modification of fine that included damages, attorney fees, and costs where opposing party failed to prove actual loss resulting from such delay; thus, under CLS Jud § 773, court was limited to imposing fine for costs and expenses of opposing motion to renew, plus additional \$250.); *Barclays Bank v. Hughes*, 306 A.D.2d 406, 407-08 (2d Dep’t 2003) (where wife was held in contempt by lower court for failing to comply with subpoena served in effort to collect on judgment obtained against husband, contempt order was modified by reducing fine from amount of judgment to statutory fine of \$ 250); *Weissman v Weissman*, 131 A.D.3d 529, (finding that the statutory maximum of a \$250 fine per occurrence was proper as Defendant failed to make a showing of any actual damages); *Vider v Vider*, 85 A.D.3d at 908 (“Where no actual damages are shown, the amount of a fine for a civil contempt cannot exceed \$250.”).

The OAG is only able to point to a single case where a daily fine of \$10,000 was deemed appropriate. That matter, *Pala Assets Holdings Ltd v. Rolta, LLC*, is wholly distinguishable from

the facts at hand. In *Rolta*, a judgment debtor was ordered to turn over all cash on hand, as well as shares and membership interests to satisfy an outstanding \$200 million judgment. *Pala Assets Holdings Ltd v. Rolta, LLC*, 2021 NY Slip Op 32790(U) at 17-18 (Sup. Ct.). Upon the judgment debtor's failure to do so, the court held the judgment debtor in contempt and imposed a fine of \$10,000 per day until it complied. The moving party in that matter was successfully able to prove an ascertainable loss of at least \$200 million, which justified the imposition of a \$10,000 daily fine. The court found the \$10,000 remedy to be reasonable in that unique scenario due to the immense size of the judgment. *Id.* at 17-18. (“the court adopts plaintiffs' more reasonable proposal to fine Pulusani \$10,000 per day. In the court's view, this lesser amount is sufficient to coerce defendants' compliance, taking into consideration the \$200 million judgment and defendants' resources.”). The present facts are entirely different. Not only is the OAG unable to show that Respondent violated this Court's Order, but it has also failed to show that it has sustained any ascertainable loss. The OAG has not provided an accompanying affidavit stating a pecuniary loss, and the only possible expense incurred by the OAG would be its counsel fees, which, as described above, simply does not meet the requisite standard.

In short, the OAG's request for a fine in the amount of \$10,000 per day exceeds all relevant statutory authority and is wholly unjustified by case law.

B. The Proposed Fine Has No Foundation as a Coercive Remedy.

The OAG's requested fine similarly fails to serve the alternate purpose of coercing Respondent's further compliance with the Order. A coercive fine may be imposed in a civil contempt proceeding, if at all, “only if the contemnor is given an opportunity to purge” the contempt by rectifying the violation of the court order. *See, e.g., Ruesch v. Ruesch*, 106 A.D.3d

976, 977 (2d Dep't 2013); *NYC Transit Auth. v. Transport Workers*, 35 A.D.3d 73, 86 (2d Dep't 2006).

As evidenced by the record, Respondent complied with the Subpoena and proffered responses prior to the stipulated deadline of March 31, 2022. The OAG is now seeking documents that Respondent simply does not have in his possession, a fact that OAG was well aware of before proceeding with the filing of the within application. As a matter of practicality, Respondent has no way to avoid the draconian daily fine because he does not possess the documents sought. *See, e.g., Probert v. Probert*, 67 A.D.3d 806, 808 (2d Dep't 2009) (“the [lower court] improvidently exercised its discretion in affording the [defendant] the opportunity to purge his contempt by payment of the sum of \$50,000, as the record did not establish that the [defendant] had the ability to pay that amount.”).

The overly excessive amount of the fine suggested is yet another fundamental deficiency in the OAG's application. The Court of Appeals has held that “in selecting contempt sanctions, a court is obliged to use the “least possible power adequate to the end proposed.” *McCain v. Dinkins*, 84 N.Y.2d 216, 229 (1994). It bears repeating that the OAG rebuffed Respondent's repeated attempts to reach out to the OAG to discuss the outstanding issues between the issues. Instead of filing this punitive motion, the OAG could have very well reached out to the Court to schedule a conference to address the OAG's claims. The OAG elected not to choose these alternative remedies and instead chose to immediately move for contempt.

CONCLUSION

For the foregoing reasons, the OAG's contempt motion fails on all levels. It is utterly bereft of merit, not statutorily authorized, and procedurally improper. Respondent complied in full and in good faith with the OAG's subpoena and the OAG has not been prejudiced in any way. Therefore, the instant motion must be denied in its entirety.

Dated: April 19, 2022
New York, New York



Alina Habba, Esq.
HABBA MADAIO & ASSOCIATES, LLP

EXHIBIT 9

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;
DONALD TRUMP, JR.; and
CUSHMAN & WAKEFIELD, INC.,

Respondents.

Index No. 451685/2020

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE
ATTORNEY GENERAL'S CIVIL CONTEMPT MOTION AGAINST
RESPONDENT DONALD J. TRUMP**

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PRELIMINARY STATEMENT

The Court's February 2022 Order directed Mr. Trump in the clearest of terms to "comply in full" with OAG's subpoena.¹ Instead, Mr. Trump served a "Response" that raised a number of boilerplate objections, provided answers subject to those objections, attested to searches that were also subject to the objections and described in the vaguest of terms, produced zero documents, and erroneously disavowed any obligation to produce responsive documents in the possession, custody, or control of the Trump Organization, even though, as the Court is well aware, the Trump Organization's production has been plagued by its own delays and compliance problems that have required this Court's ongoing intervention.

The Court should put an end to Mr. Trump's intransigence and subterfuge. The Court has already held that OAG is entitled to Mr. Trump's evidence. *See* February 2022 Order at 8. Mr. Trump should be held in civil contempt for his blatant failure to obey the Court's February 2022 Order and coerced to comply in full through the imposition of an appropriate fine. Full compliance means: (i) responding to each document demand without objection; (ii) conducting searches of all relevant physical locations, with details of the who, what, when, where, and how of each search (NYSCEF 361, Instruction No. 12); (iii) conducting searches of all electronic devices and other electronically stored repositories using technology-assisted review in consultation with OAG, including searches of Mr. Trump's mobile devices already identified (*id.*, Instruction No. 8); (iv) producing all responsive documents and information in the form maintained, with the exception of the paltry 10 custodial documents of Mr. Trump *already produced* by the Trump Organization (*id.*, Instruction Nos. 2 and 7); (v) identifying any

¹The defined terms used in this reply brief are the same as those used in Petitioner's moving brief, NYSCEF 670.

responsive documents that have been destroyed or are no longer available with details on how and why they were not maintained (*id.*, Instruction No. 3); and (vi) producing a standard privilege log for any documents being withheld on grounds of privilege (*id.*, Instruction No. 11).

ARGUMENT

I. RESPONDENT'S MARCH 31 "RESPONSE" VIOLATED THE COURT'S ORDER DIRECTING HIM TO "COMPLY IN FULL" WITH OAG'S SUBPOENA

A. Mr. Trump's Objections Are Improper

In response to this Court's February 2022 Order rejecting his motion to quash and directing him to "comply in full" with OAG's subpoena, Mr. Trump raised for the first time a raft of boilerplate objections to each of the eight document demands in the subpoena. Doubling down on this procedural gamesmanship, Mr. Trump insists that he was "well within his rights" to raise objections to the document demands at this stage of proceedings – after filing and losing a motion to quash (in which he raised *no* objections to the document demands) and after negotiating a four week extension beyond the two weeks provided in the Court's February 2022 Order for his document production. *See* Respondent Donald J. Trump's Memorandum of Law in Opposition to the Attorney General's Civil Contempt Motion Against Respondent Donald J. Trump, NYSCEF 720 ("Resp. Opp."), at 13.

Mr. Trump had no right to assert *any* objections to OAG's subpoena on the March 31 deadline because he had already lost his motion to quash, which was "the proper *and exclusive* vehicle to challenge the validity" of OAG's subpoena. *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. N.Y. Co. 2009); *People v. Doe*, 170 Misc.2d 454, 456 (Sup.Ct. Monroe Co.1996)). Moreover, having failed to raise any objections to the document demands in his motion, Mr. Trump waived his right to object at any later point in time.

See e.g., *Holloway v. Cha Cha Laundry, Inc.*, 97 A.D.2d 385, 385–86, 467 N.Y.S.2d 834, 835 (1st Dep’t 1983); *Kimmel v. State*, 261 A.D.2d 843, 844, 690 N.Y.S.2d 383, 384 (4th Dep’t 1999); see also, *Exxon Mobil Corp. v. Healey*, 28 F.4th 383 (2d Cir. 2022) (applying analogous Massachusetts law).

Mr. Trump ignores this precedent and relies instead on *Friedman v. Hi-Li Manor*, 42 N.Y.2d 408 (1977), for the proposition that a subpoena recipient may raise objections to a subpoena for the first time in response to a contempt motion. Resp. Opp. at 12. *Friedman* says no such thing. In *Friedman*, the issue was whether a “recipient of an office subpoena who desires to challenge its validity should be required to initiate a motion to quash rather than to await the institution of proceedings to compel compliance and then for the first time raise objection.” 42 N.Y.2d at 413. The court declined to adopt a rule that would force the recipient to file a motion to quash, holding that “the recipient may properly raise his objections when the official” first moves to compel compliance. *Id.* Nothing in *Friedman* supports Mr. Trump’s position that, after a court has ruled on cross-motions to quash and compel and ordered compliance, the subpoena recipient may then raise objections to the subpoena for the first time. Indeed, in *Friedman* the court held the objections were “timely made” because they were raised *during* the parties’ motion practice to enforce the subpoenas. *Id.*

Mr. Trump’s reliance on *Myerson v. Lentini Bros. Moving and Storage Co., Inc.*, 33 N.Y.2d 250 (1973), is similarly misplaced. That case stands for the unremarkable proposition that a subpoena recipient may “always challenge the subpoena in court,” *id* at 256 – which Mr. Trump did and lost – not that the recipient may “always challenge” a subpoena even after the court rejects his initial challenge brought by way of a proper motion.

Nor is there any merit to Mr. Trump's argument that he preserved his right to object to OAG's subpoena through an affirmative defense in his answer. Resp. Opp. at 13. The cross-motions before the Court were the "exclusive vehicle[s]" for Mr. Trump to raise objections to the document demands in the subpoena. *Brunswick Hosp.*, 52 N.Y.2d at 339. If that were not the case, as Mr. Trump's argues, then every subpoena recipient would receive two bites at the apple to challenge a subpoena – once when raising objections in a motion to quash and a second time based on different objections asserted in his answer. No case supports that nonsensical result.

Finally, Mr. Trump contends that "the objections are immaterial" because he provided a "full and complete answer" to each document demand. Resp. Opp. at 13. He did not. The answer he provided to each of the eight demands was expressly "[s]ubject to and without waiving" the numerous specific and general objections he raised and "incorporate[ed] all objections." *See, e.g., Faherty Aff., Ex. B* at 5 (response to Request No. 1). As a result, his answer to each demand that nothing responsive exists is hollow. For example, Mr. Trump objects to each request as "grossly overbroad" and "unduly burdensome." His "nothing exists" answer is subject to those objections, but he does not state in what manner he narrowed the requests to make them, in his view, less "overbroad" and less "unduly burdensome." Similarly, Mr. Trump objects to each request as "unintelligible." Assuming that is in fact the case, how did he interpret the supposedly "unintelligible" demands in order to search for responsive documents and then assert that no responsive material exists? Because his "nothing exists" answers are all subject to his improper objections, they are patently insufficient.

Mr. Trump was not entitled to raise any objections to OAG's subpoena when directed to "comply in full" by March 31, and by doing so he violated the February 2022 Order.

B. Mr. Trump Cannot Pass Off His Compliance Obligation To The Trump Organization

Ignoring the improper objections he has asserted, to which all of his answers are subject, Mr. Trump contends that he has complied in full with the February 2022 Order because his counsel found no responsive documents “that were required to be separately produced by Respondent.” Resp. Opp. at 7. But Mr. Trump’s view of what he was required to “separately produce[.]” is far too limited and without any basis; he claims that he was not obligated to separately produce responsive documents in his possession or custody that “have been previously produced” or “will be produced” by the Trump Organization. *See, e.g., Faherty Aff., Ex. B* at 6 (response to Request No. 1); *see also id.* at 18, ¶ 8 (declining to provide responsive documents to the extent they are in the possession, custody, and control of the Trump Organization and “have been and/or will be produced by the Trump Organization”). In other words, Mr. Trump claims he “was not obligated to produce documents in the possession, custody or control of the Trump Organization.” Resp. Opp. at 7.

Contrary to Mr. Trump’s contention, Instruction No. 2 of OAG’s subpoena does not support this limitation on his production obligation. The instruction provides that Mr. Trump need not produce only those responsive documents that “have previously been produced” by the Trump Organization - past tense. NYSCEF 361 at 3 (Section C.2.).² By reading into the instruction the words “or will be produced,” Mr. Trump has improperly and materially expanded the category of documents excused from production pursuant to this instruction. His disingenuous reading of the instruction results in a glaring and material omission in his Response, and is particularly egregious given that (a) the Court ordered Mr. Trump to produce

² NYSCEF 361 is the signed version of OAG’s December 2021 subpoena. The version of the subpoena that is attached as Exhibit A to the Habba Affidavit is unsigned.

all of his responsive documents independent, and in advance, of the completion of the Trump Organization's production, and (b) OAG refused to agree to extend the date for Mr. Trump's production to align with the Trump Organization's production deadline. Faherty Aff. at ¶¶ 17, 20.

Moreover, Mr. Trump's attempt to shift a significant portion of his production burden to the Trump Organization based on what he believes the company may produce in the future is further problematic given the compliance issues plaguing the Trump Organization's production to date; those issues have led to the need to appoint an independent third-party eDiscovery monitor and ongoing Court intervention through multiple orders, including one entered by the Court as recently as March 28, 2022. NYSCEF 667. OAG's subpoena directed to and served upon Mr. Trump individually places on him a non-transferable obligation to search for and produce responsive documents in his possession, custody, or control, which includes all responsive material that may also be in the possession, custody, or control of the Trump Organization.³

Pursuant to the plain language of OAG's subpoena and the February 2022 Order, Mr. Trump was required to produce on March 31 all responsive documents in his possession,

³ Respondent complains that the term "control" is not defined in the subpoena instructions, Resp. Opp. at 8, but he is wrong. Instruction No. 2 states that documents or information in "your possession, custody, or control" "includes, without limitation, documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries *or persons from whom you could request documents or information.*" NYSCEF 361 at 3 (Instruction No. 2) (emphasis added). In any event, quibbling over what the word "control" means in the context of a document demand is ridiculous. Every litigator understands full well what "possession, custody, or control" means in a document demand, or at least should. *See, e.g. Commw. of the N. Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 63 (2013) ("Indeed, various courts have interpreted 'possession, custody or control' to allow for discovery from parties that had practical ability to request from, or influence, another party with the desired discovery documents. As such, courts have interpreted 'possession, custody or control' to mean constructive possession.").

custody, or control to the extent not *already produced* by the Trump Organization – a carve-out that excuses from his production a mere 10 documents produced to date by the company from Mr. Trump’s custodial files. *See* LaRocca Hornik Rosen & Greenberg LLP letter dated April 20, 2022 (“TTO April 20 Letter”), at 15 (noting that the Trump Organization “collected and produced 10 non-privileged ‘direct’ custodial documents of Donald J. Trump to the OAG”).⁴ By refusing to produce responsive documents that he believes the Trump Organization may produce in the future, Mr. Trump failed to “comply in full” with OAG’s subpoena and violated the February 2022 Order.

Moreover, putting aside the impropriety of Mr. Trump’s effort to shift his own production obligations onto the Trump Organization, his counsel’s assurances (without any apparent basis) that any responsive material in Mr. Trump’s “control” will be part of the Trump Organization’s production is undermined by the recent status report OAG has received from the independent third-party e-Discovery monitor overseeing the Trump Organization production efforts, HaystackID. According to HaystackID’s April 18, 2022 report, there is no ongoing effort to search for responsive material from Mr. Trump’s electronic devices; the HaystackID report identifies two mobile phones for Mr. Trump, but indicates it is “Unknown” whether the devices have been collected for discovery.⁵ HaystackID April 18, 2022 Report, Ex. C at lines 63-64.⁶

The report also indicates that Mr. Trump’s longtime executive assistant, Rhona Graff, has a

⁴ A copy of this letter was provided to the Court by counsel for the Trump Organization by electronic mail on April 20, 2022.

⁵ The TTO April 20 Letter mentions only Mr. Trump’s “TTO-issued mobile phone” but makes no mention of the two personal mobile devices identified by HaystackID. TTO April 20 Letter at 15.

⁶ HaystackID provided a copy of this report to the parties and the Court via electronic mail on April 18, 2022.

laptop and desktop computer located at Trump Tower, but neither one has been collected for discovery, so they have not been searched either. *Id.* at lines 221-22.

C. Counsel's Affidavit Certifying To The Search For Responsive Documents Is Legally Insufficient

The affidavit submitted by Mr. Trump's counsel, Michael Madaio, certifying to the "search" that uncovered zero responsive documents is grossly deficient. Mr. Madaio does not attest that he personally conducted the search, but rather that it was conducted either by him or "others," which means he may have had no personal involvement in the search at all. Faherty Aff., Ex. B at 17 (¶ 3). He does not identify the "others," nor does he provide any details at all about where or how the searches were conducted, despite the clear instruction in OAG's subpoena to do so:

You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, you shall provide a written statement under oath from the person(s) who gave such instructions that *details the specific content of the instructions and any person(s) to whom the instructions were given.*

NYSCEF 361 at 5 (Instruction No. 12) (emphasis added). Even in the absence of this instruction, controlling precedent requires far more specificity in the certifying attorney's affidavit than Mr. Madaio provided:

When the response to a discovery request is, in effect, that there are no responsive documents within the party's custody, possession, or control, that party must provide a detailed statement, under oath, by someone with direct knowledge of the facts setting forth the past and present status of the relevant documents; where they were kept; what efforts, if any, were made to preserve them; the circumstances surrounding their disappearance or destruction; and the means and methods used to conduct a search for them. *In short, the affidavit submitted must provide the court with a basis to find that the search conducted was a thorough one or that it was conducted in a good faith effort to provide the necessary records to the plaintiff.*

WMC Mortg. Corp. v. Vandermulen, 32 Misc. 3d 1206(A), 2011 WL 2586411, at * 4 (Sup. Ct. Suffolk Co. June 29, 2011) (emphasis added) (cleaned up) (citing *Jackson v. City of New York*, 185 A.D.2d 768, 770 (1st Dep’t 1992) and *Tower Ins. Co. of New York v. Headley*, No. 102578/2008, 2009 WL 2578547 (Sup. Ct. New York Co. August 11, 2009). The “bald and conclusory assertions” by Mr. Madaio that a “diligent search” was conducted that uncovered no responsive documents in Mr. Trump’s possession or custody (even putting aside the exclusion of documents within his “control”) is “clearly insufficient.” *Vandermulen*, 2011 WL 2586411, at *4.

It is also obvious that the purported “diligent search” conducted either by Mr. Madaio or unidentified “others” was woefully incomplete based on Mr. Trump’s erroneous interpretation of Instruction No. 2. In his affidavit, Mr. Madaio attests that a “diligent search” was made “of all of Respondent’s relevant records for materials sought by the Subpoena, *in accordance with the instructions* and definitions set forth in the Subpoena.” *Id.* (emphasis added). Mr. Trump incorrectly construes Instruction No. 2 to relieve him of any obligation to produce responsive material that is in the possession, custody, or control of the Trump Organization. Based on the careful wording of Mr. Madaio’s affidavit, it is readily apparent that there was no search conducted for any responsive material in Mr. Trump’s “control” that was also within the possession, custody, or control of the Trump Organization based on Mr. Trump’s erroneous belief that he had no obligation to separately produce such documents. At a minimum, that means there was no independent search by Mr. Trump’s counsel of the following: (i) Mr. Trump’s “chron” files; (ii) Mr. Trump’s hard copy calendars; (iii) the files located in cabinets outside Mr. Trump’s office; (iv) the storage room by Mr. Trump’s office; (v) the Executive Office storage closet; (vi) the file cabinets located on the 25th and 26th floors; and (vii) files

maintained in off-site storage. *See* TTO April 20 Letter at 15. Nor did Mr. Trump’s counsel conduct an independent search of tens of thousands of custodial documents belonging to Mr. Trump’s longtime executive assistant Rhona Graff, or any of the following locations “likely to house responsive information in her possessions, custody, and/or control”: (i) Ms. Graff’s emails; (ii) the drives from Ms. Graff’s desktop; (iii) Ms. Graff’s hard copy paper files; (iv) Ms. Graff’s electronically stored calendar entries; or (v) Ms. Graff’s emails that were automatically backed up from her cell phone to her desktop’s local C drive. *Id.* at 11.

* * *

Mr. Trump’s Response on March 31 was the antithesis of full compliance with OAG’s subpoena – it was just more of the same obstinate, dilatory tactics Mr. Trump has employed for the past six months in an effort to deprive OAG of his evidence. Enough is enough.

II. OAG HAS SUFFERED SUBSTANTIAL PREJUDICE AS A RESULT OF MR. TRUMP’S CONTINUED REFUSAL TO COMPLY WITH OAG’S SUBPOENA

OAG began the process of seeking testimony and documents from Mr. Trump individually on November 1, 2021. After communications throughout the month of November, counsel for Mr. Trump accepted service of the subpoena on December 2, 2021, at which point production of documents was due on December 17, 2021. *Faherty Aff.* at ¶¶ 8-9. Counsel then informed OAG that Mr. Trump would move to quash the subpoena instead of complying. After full briefing on the parties’ cross-motions to quash and compel, the Court issued its February 2022 Order requiring Mr. Trump’s compliance in full with OAG’s document demands within two weeks, a deadline that was extended by another four weeks to accommodate Mr. Trump’s request for additional time purportedly based on counsel’s need to search for documents at Trump Tower and Mar-a-Lago. *Id.* at ¶ 16. Ultimately, the March 31 deadline for the production of Mr. Trump’s responsive documents was reached after six months of effort by OAG through

emails, phone calls, letters, motion practice, and Court intervention. Despite all of these efforts, OAG has still not obtained any evidence from Mr. Trump in response to the subpoena. There can be no serious dispute that, as a direct result of Mr. Trump's ongoing contumacious conduct, the rights of OAG, acting in the public interest, have been clearly and significantly prejudiced.⁷ *See State v. Stallings*, 183 A.D.2d 574, 575 (1st Dep't 1992).

In its moving papers, OAG identified several categories of documents and information that it believes Mr. Trump should have produced but has not. *Faherety Aff.* at ¶ 25. Identifying these categories required OAG to sift through voluminous productions from the Trump Organization and others, which were littered with extraneous material and failed to provide any information about what locations and devices connected to Mr. Trump were searched, when they were searched, and whether or not any previously existing documents were destroyed. The status report submitted on April 20, 2022 by the Trump Organization leaves several open questions concerning these categories (which OAG will separately address with the Court in the context of its continuing compliance dispute with the Trump Organization), and Mr. Madaio's affidavit confirms he made no independent search for responsive documents relating to any of these categories among the material in the possession, custody, or control of the Trump Organization. *See, supra*, at Point I.B-C.

Accordingly, Mr. Trump's conduct continues to stymie OAG's months-long endeavor to obtain the full universe of Mr. Trump's relevant custodial documents to OAG's substantial prejudice and in flagrant violation of the Court's February 2022 Order.

⁷ Respondent's contention that OAG's sole claim of prejudice is litigation costs, *Resp. Opp.* at 14, is simply incorrect.

III. THIS IS NOT A DISCOVERY MOTION, SO SECTION 202.20-f DOES NOT APPLY

Respondent's contention that OAG was required to comply with Section 202.20-f of the Court's Uniform Civil Rules is a head-scratcher. That rule, which requires parties to meet and confer in good faith, applies to discovery disputes not contempt motions. *See* 22 NYCRR 202.20-f(a) ("To the maximum extent possible, *discovery disputes* should be resolved through informal procedures, such as conferences, as opposed to motion practice.") (emphasis supplied). Here, the parties conferred in good faith before filing their cross-motions to quash and compel with respect to OAG's subpoena. Mr. Trump's violation of the Court's order resulting from that motion practice does not trigger anew any further obligation to confer. Mr. Trump's argument that OAG was required to engage in more negotiations after he failed to comply in full with OAG's subpoena on March 31 renders the February 2022 Order merely the starting point for another round of posturing; it is simply more of the same delay tactic he has employed since OAG first sought his evidence back in November 2021.

Moreover, none of the cases cited by Respondent supports the proposition that Section 202.20-f is relevant here. *Lopez v. New York City Transit Authority*, 925 N.Y.S.2d 84 (1st Dep't 2011), involved an unsuccessful contempt motion in personal injury action where the "[p]laintiff demonstrated a good faith effort to comply with the preliminary conference order," the order was "not unequivocal[]," and the defendant failed to show prejudice as a result of plaintiff's conduct. *Id.* at 85. This case could not be more different, including the fact that this is a special proceeding to enforce an administrative subpoena rather than a plenary action where remedies under C.P.L.R. 3126 for disobeying court orders are readily available. The decision in *Oak Beach v. Babylon*, 62 N.Y.2d 158 (1984), is similarly inapposite. That case involved the issue of whether New York's co-called Shield Law protected a journalist who refused to comply with a

court order requiring disclosure of his source from the imposition of remedies available in a plenary action under C.P.L.R. 3126; there was no dispute that the Shield Law protected the journalist from being held in contempt. *Id.* at 166-67. Respondent's remaining three cases, by his own description, involve discovery motions, Resp. Opp. at 17, so they have nothing to do with a motion brought for civil contempt.

CONCLUSION

OAG respectfully requests that the Court grant OAG's motion to: (i) hold Respondent Donald J. Trump in civil contempt for violating the Court's February 2022 Order requiring him to comply in full with that portion of OAG's subpoena seeking documents and information; (ii) assess a daily fine against Mr. Trump of \$10,000 or an amount otherwise sufficient to coerce his compliance with the Court's February 2022 Order; (iii) compensate OAG for Mr. Trump's disobedience in the form of an award of OAG's costs and fees in connection with filing this motion; and (iv) award such other and further relief the Court deems necessary and appropriate.

Dated: New York, New York
April 22, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Andrew Amer

Kevin C. Wallace
Andrew Amer
Colleen K. Faherty
Alex Finkelstein
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Word Count: 4,072

EXHIBIT 10

April 27, 2022

Via E-MAIL: aengoron@nycourts.gov
Hon. Arthur F. Engoron, J.S.C.
Supreme Court of the State of New York
60 Centre Street, Room 519
New York, NY 10007

Re: *People v. Trump, et. al.*
Docket No.: 451685/2020

Dear Judge Engoron,

As you are aware, my office represents the respondent, Donald J. Trump, with regard to the above-referenced matter. We write in accordance with the Decision and Order dated April 26, 2022 (the "Order") (NYSCEF No. 758), which directed respondent, Donald J. Trump ("Respondent") to comply with the Office of the Attorney General's ("OAG") subpoena and provide affidavits evidencing that a detailed search to locate and produce responsive documents.

Without waiving any rights to contest the validity of the above-referenced Order on appeal, enclosed herein, please find the following:


- (i) The Affidavit of Compliance of Alina Habba, Esq.;
- (ii) The Affidavit of Compliance of Michael T. Madaio, Esq.; and
- (iii) The Affidavit of Donald J. Trump and a Certificate of Conformity.

In accordance and compliance with the Order, it is respectfully requested that this Court purge the finding of civil contempt.

We thank the Court for its attention to this matter.

Dated: April 27, 2022
New York, New York

Respectfully submitted,

By: 
Alina Habba, Esq.
For HABBA MADAIO & ASSOCIATES LLP

Encl.
cc: Kevin Wallace (kevin.wallace@ag.ny.gov)
Colleen Faherty (colleen.faherty@ag.ny.gov)

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,

v.

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, DONALD
TRUMP, JR., and CUSHMAN AND
WAKEFIELD, INC.,

Respondents.

Index No.: 451685/2020

AFFIDAVIT OF COMPLIANCE
WITH SUBPOENA

I, Alina Habba, Esq., being duly sworn, state as follows:

1. My office represents the respondent, Donald J. Trump (“Respondent”), in connection with the above-referenced action and is responsible for preparing and assembling Respondent’s production and response to the *Subpoena Duces Tecum* dated December 1, 2021 (the “Subpoena”). My office also represents the respondent, The Trump Organization, Inc. (the “Trump Organization”) in this action.
2. I submit this affirmation in compliance with Instruction C14 of the Subpoena.
3. Respondent previously submitted a Response and Objections to the Subpoena dated March 31, 2022 (the “Response”). Consistent with the Court’s Order dated April 26, 2022, Respondent hereby withdraws all objections raised in the Response.
4. Respondent’s productions and responses to the Subpoena are complete and correct

to the best of my knowledge and belief.

5. No documents or information responsive to the Subpoena have been withheld from Respondent's production and response.

6. Attached as Schedule A is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

7. As described herein, I made or caused to be made a diligent, complete and comprehensive search for all documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena.

8. A detailed description of my search efforts is set forth below.

Overview of Search Efforts

9. Commencing in January 2022, I personally reviewed portions of Respondent's chron files as to whether they contained any documents responsive to the Subpoena. Collectively, my firm performed a full, complete, and diligent search of the chron files. After the search, it was determined that any documents in the chron files that are responsive to the Subpoena had already been produced to the OAG.

10. I had numerous in-person meetings, phone calls, and communications with co-counsel for the Trump Organization, LaRocca Hornik Rosen & Greenberg LLP ("TTO Co-Counsel"), the Trump Organization legal team (the "TTO Legal Dept."), including its General Counsel, for the purpose of assessing and verifying the extent of the searches performed in relation

to the Trump Organization's prior document productions.

11. I reviewed each individual demand contained in the Subpoena with TTO Co-Counsel as to whether any responsive documents pertaining to Respondent had been previously produced by the Trump Organization to the OAG.

12. I personally reviewed the weekly status reports provided by TTO Co-Counsel to the OAG.

13. I personally reviewed the prior subpoenas served upon the Trump Organization by the OAG.

14. Based upon the foregoing, it is my understanding that the following searches were previously performed in response to prior Subpoenas issued by the OAG (collectively, the "Prior Searches:

a. Physical Files Located in Trump Tower:

i. On or about January 24, 2020, a search was conducted of the physical files located in the file cabinets of the Trump Organization's corporate offices at Trump Tower located on the 25th and 26th floors. Any documents responsive to those searches were produced to the OAG by the Trump Organization. Any non-privileged materials identified were produced to the OAG.

ii. On or about July 19, 2021, a search was conducted of Respondent's physical files located in Trump Tower, including his chron, hard-copy calendars (located in the storage room by his office), and the cabinets outside his office maintained by Rhona Graff and his other executive assistants. Any documents responsive to those searches were produced to the OAG by the Trump Organization.

b. Hard Copy Files of Executive Assistants:

- i. On or about November 12, 2021, a search was conducted of the hard copy/paper files maintained by Respondent's executive assistants Jessica Macchia, Chelsea Frommer, Holly Lorenzo, Kelly Malley, Katie Murphy, Kelli Rose, Thuy Colayco, Cammie Artusa, and Meredith McIver located in file cabinets by executives' desks and the Executive Office Storage Closet. The files were thereafter reviewed by the Trump Organization's General Counsel for non-privileged responsive materials and, to the extent applicable, it was determined that there were no responsive documents to be produced to the OAG.
- ii. On or about November 23, 2021, a search was conducted of the hard copy/paper files maintained by the executive assistants Randi Gleason, Lauren Kelly (Pleszewicz), Casey Kennedy, and Jacqueline Fini at Trump Tower. No responsive documents were found.

c. Off-Site Documents

- i. On or about November 23, 2021, a search was conducted of the off-site storage log.
- ii. In mid-January, 2020, a search was conducted of the inventories of files stored off-site to locate any potentially responsive documents. The files that were identified as potentially responsive were shipped from the off-site storage facility to the Trump Organization's corporate offices at Trump Tower, where they were received on or about January 15, 2020. The files were thereafter reviewed by the Trump Organization's General Counsel and

all non-privileged documents that were located were produced to the OAG.

15. Throughout the course of my search efforts, I had many conversations with Respondent concerning the Subpoena and locations likely to hold responsive documents. The contents of those conversations are covered by attorney-client privilege but assisted in guiding my search for responsive documents.

16. Based on these privileged communications and review of relevant documents, I determined that there are no additional responsive documents at his personal residences or personal offices in Trump National Golf Club Bedminster or Mar-a-Lago that have not already been produced to the OAG.

17. Additionally, on March 17, 2022, I met with Respondent in-person at Mar-a-Lago and reviewed the Subpoena with him to verify whether he had any responsive documents in his possession, custody or control.

18. On April 8, 2022, Mr. Madaio and I conducted a telephone interview with Respondent, as per Haystack ID's request. After completion, the completed HaystackID interview forms were submitted to HaystackID.

Demand No. 1

19. With respect to Demand No. 1, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 1 and/or cross-checking whether any documents responsive to Demand No. 1 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served

upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

20. I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 1 and verifying whether potentially responsive documents had previously been produced to the OAG.

21. In addition, Demand No. 1 of the Subpoena calls for “all documents and communications concerning any Statement of Financial Condition.” I cross-checked the search terms used by the Trump Organization in connection with its searches in response to the 2019 Subpoena, which included the term “Statement of Financial Condition”; therefore, the documents responsive to Demand No. 1 of the Subpoena would have been produced to the OAG in connection with the Prior Searches.

22. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control responsive to Demand No. 1.

23. Based on the foregoing, together with my firm’s collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 1, other than those documents that had already been produced by the Trump Organization.

Demand No. 2

24. Demand No. 2 calls for “[a]ll documents and communications concerning any valuation of any asset whose value is identified or incorporated into any Statement of Financial Condition.” This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

25. With respect to Demand No. 2, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 2 and/or cross-checking whether any documents responsive to Demand No. 2 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

26. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 2 and verifying whether potentially responsive documents had previously been produced to the OAG.

27. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 2.

28. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 2, other than those documents that had already been produced by the Trump Organization.

Demand No. 3

29. Demand No. 3 calls for "[a]ll documents reviewed, used, or relied on in the preparation of the Statements of Financial Condition, and all communications relating to any of the foregoing." This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches

encompassed the items responsive to this demand.

30. With respect to Demand No. 3, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 3 and/or cross-checking whether any documents responsive to Demand No. 3 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

31. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 3 and verifying whether potentially responsive documents had previously been produced to the OAG.

32. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 3.

33. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 3, other than those documents that had already been produced by the Trump Organization.

Demand No. 4

34. Demand No. 4 calls for "[a]ll documents and communications concerning any financing or debt related to Trump International Hotel and Tower Chicago or Chicago Unit Acquisition LLC." This identical demand was set forth in a subpoena dated December 27, 2019

that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

35. With respect to Demand No. 4, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 4 and/or cross-checking whether any documents responsive to Demand No. 4 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

36. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 4 and verifying whether potentially responsive documents had previously been produced to the OAG.

37. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 4

38. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 4, other than those documents that had already been produced by the Trump Organization.

Demand No. 5

39. Demand No. 5 calls for "[a]ll documents and communications concerning the donation or potential donation of a conservation or preservation easement by [Respondent]." This

identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

40. With respect to Demand No. 5, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 5 and/or cross-checking whether any documents responsive to Demand No. 5 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

41. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 5 and verifying whether potentially responsive documents had previously been produced to the OAG.

42. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 5.

43. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 5, other than those documents that had already been produced by the Trump Organization.

Demand No. 6

44. Demand No. 6 calls for "[a]ll documents and communications concerning any

planned or potential development or alteration of the Seven Springs Estate.” This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

45. With respect to Demand No. 6, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 6 and/or cross-checking whether any documents responsive to Demand No. 6 had been previously produced by the Trump Organization to the OAG: (i) Respondent’s chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

46. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 6 and verifying whether potentially responsive documents had previously been produced to the OAG.

47. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 6.

48. Based on the foregoing, together with my firm’s collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 6, other than those documents that had already been produced by the Trump Organization.

Demand No. 7

49. With respect to Demand No. 7, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 7 and/or cross-checking whether any documents responsive to Demand No. 7 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

50. In addition, I had numerous discussions with TTO Co-Counsel and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 7 and verifying whether potentially responsive documents had previously been produced to the OAG.

51. I personally interviewed Respondent as to whether he had any responsive documents in his possession, custody or control with respect to Demand No. 7.

52. Further, with respect to item 7 of the Subpoena, which calls for "all documents and communications with Forbes Magazine..." I confirmed that all communications and documents with Forbes Magazine had been produced to the OAG through August 14, 2021.

53. To supplement this search, on March 16, 2022, Mr. Madaio coordinated with the Trump Organization's IT team to commence a search for any responsive documents to Demand No. 7 (regarding Forbes Magazine) for the time period from January 1, 2021 through March 16, 2022. Search parameters included the term "forbes" and communications with "forbes.com" e-

mail addresses, and the e-mail addresses of ten Trump Organization individuals were searched, including Alan Garten, Eric Trump, Donald Trump, Jr., Allen Weisselberg, Amanda Miller, Kim Benza, Jeffrey McCooney, Patrick Birney, Ray Flores and Deborah Tarasoff.

54. The search returned 1,386 documents and/or communications. Three employees of my firm, in coordination with HaystackID, reviewed these items as to whether they were responsive to Subpoena demand no. 7. After a full, complete and diligent search, it was determined that none of the documents were responsive.

55. Additionally, I searched the chron files and did not find any documents responsive to the Subpoena which had not already been produced.

56. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 7, other than those documents that had already been produced by the Trump Organization.

Demand No. 8

57. With respect to Demand No. 8, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 8 and/or cross-checking whether any documents responsive to Demand No. 8 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; and (v) weekly status reports provided by TTO Co-Counsel to the OAG.

58. I personally interviewed Respondent as to whether he had any responsive

documents in his possession, custody or control with respect to Demand No. 8.

59. Based on privileged communications with Respondent and communications with the Trump Legal Dept., I confirmed that insurance procurement, both personal and business-related were coordinated through the Trump Organization.

60. Based on relevant search terms and the parameters of the Trump Organization's prior searches, together with my firm's collective search efforts, I determined that Respondent was not in possession of any documents responsive to Demand No. 8, other than those documents that had already been produced by the Trump Organization.

Stipulation

61. On behalf of Respondent, I hereby stipulate that the Trump Organization-produced documents can be used as if those documents were produced by Respondent because they were under Respondent's "control," in that they were documents in the possession of a company owned or controlled by a Respondent or a Trust owned by him, to the extent allowable by law. In so stipulating, Respondent does not waive any objections to such documents or the introduction of those documents in evidence that he would otherwise have if he had produced those documents solely because they were in the custody or control of a company owned or controlled by him or a Trust owned by him.


Alina Habba


4/27/2022

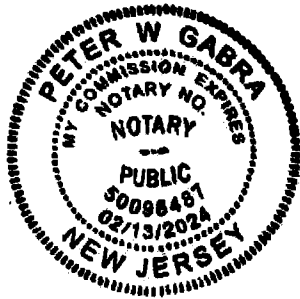
Date

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
COUNTY OF SOMERSET)

On this 27th day of April in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared Alina Habba personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.


Notary Public



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,

v.

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, DONALD
TRUMP, JR., and CUSHMAN AND
WAKEFIELD, INC.,

Respondents.

Index No.: No.: 451685/2020

AFFIDAVIT OF COMPLIANCE
WITH SUBPOENA

I, Michael T. Madaio, Esq., being duly sworn, state as follows:

1. My office represents the respondent, Donald J. Trump (“Respondent”), in connection with the above referenced action and is responsible for preparing and assembling Respondent’s production and response to the *Subpoena Duces Tecum* dated December 1, 2021 (the “Subpoena”). My office also represents the respondent, The Trump Organization, Inc. (the “Trump Organization”) in this action.
2. I submit this affirmation in compliance with Instruction C14 of the Subpoena.
3. Respondent previously submitted a Response and Objections to the Subpoena dated March 31, 2022 (the “Response”). Consistent with the Court’s Order dated April 26, 2022, Respondent hereby withdraws all objections raised in the Response.
4. Respondent’s productions and responses to the Subpoena are complete and correct

to the best of my knowledge and belief.

5. No documents or information responsive to the Subpoena have been withheld from Respondent's production and response.

6. Attached as Schedule A is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

7. As described herein, I made or caused to be made a diligent, complete and comprehensive search for all documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena.

8. A detailed description of my search efforts is set forth below.

Overview of Search Efforts

9. Commencing in January 2022, I personally reviewed portions of Respondent's chron files as to whether they contained any documents responsive to the Subpoena. Collectively, my firm performed a full, complete, and diligent search of the chron files. After the search, it was determined that any documents in the chron files that are responsive to the Subpoena had already been produced to the OAG.

10. I had numerous phone calls and communications with prior counsel for Respondent, Van der Veen, O'Neill, Hartshorn, and Levin ("Prior Counsel"), concerning their search efforts that had been undertaken in connection with the Subpoena.

11. Prior Counsel confirmed that their office had interviewed all of Respondent's

executive assistants as to whether they had any documents or communications responsive to the Subpoena and that no such responsive documents were identified.

12. Prior Counsel further informed that their office conducted a search of Respondent's chron files and produced to the DANY all documents from the chron file that was not purely political. The Trump Organization then caused all of those documents to be produced to the OAG on February 9, 2022.

13. I also had numerous phone calls and communications with co-counsel for Respondent, Fischetti & Malgieri LLP ("Co-Counsel"), concerning their office's search efforts undertaken in connection with the Subpoena.

14. Co-Counsel confirmed that he personally reviewed the Subpoena with Respondent over the telephone as to whether he was in possession, custody or control of any responsive documents to the Subpoena.

15. Further, I had numerous phone calls and communications with co-counsel for the Trump Organization, LaRocca Hornik Rosen & Greenberg LLP ("TTO Co-Counsel"), the Trump Organization legal team (the "TTO Legal Dept."), including its General Counsel, for the purpose of assessing and verifying the extent of the searches performed in relation to the Trump Organization's prior document productions.

16. I reviewed each individual demand contained in the Subpoena with TTO Co-Counsel as to whether any responsive documents pertaining to Respondent had been previously produced by the Trump Organization to the OAG.

17. Further, I also personally reviewed attorney work product provided by TTO Co-Counsel which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG, which I personally cross-checked for responsive

documents as to each individual demand of the Subpoena.

18. I personally reviewed the weekly status reports provided by TTO Co-Counsel to the OAG.

19. I personally reviewed the prior subpoenas served upon the Trump Organization by the OAG.

20. I personally reviewed relevant portions of the Trump Organization's prior document productions to the OAG.

21. Based upon the foregoing, it is my understanding that the following searches were previously performed in response to prior Subpoenas issued by the OAG (collectively, the "Prior Searches"):

Physical Files Located in Trump Tower:

- i. On or about January 24, 2020, a search was conducted of the physical files located in the file cabinets of the Trump Organization's corporate offices at Trump Tower located on the 25th and 26th floors. Any documents responsive to those searches were produced to the OAG by the Trump Organization. Any non-privileged materials identified were produced to the OAG.
- ii. On or about July 19, 2021, a search was conducted of Respondent's physical files located in Trump Tower, including his chron, hard-copy calendars (located in the storage room by his office), and the cabinets outside his office maintained by Rhona Graff and his other executive assistants. Any documents responsive to those searches were produced to the OAG by the Trump Organization;

b. Hard Copy Files of Executive Assistants.

- i. On or about November 12, 2021, a search was conducted of the hard copy/paper files maintained by Respondent's executive assistants Jessica Macchia, Chelsea Frommer, Holly Lorenzo, Kelly Malley, Katie Murphy, Kelli Rose, Thuy Colayco, Cammie Artusa, and Meredith McIver located in file cabinets by executives' desks and the Executive Office Storage Closet. The files were thereafter reviewed by the Trump Organization's General Counsel for non-privileged responsive materials and, to the extent applicable and it was determined that there were no responsive documents to be produced to the OAG.
- ii. On or about November 23, 2021, a search was conducted of the hard copy/paper files maintained by the executive assistants Randi Gleason, Lauren Kelly (Pleszewicz), Casey Kennedy, and Jacqueline Fini at Trump Tower. No responsive documents were found;

c. Off-Site Documents

- i. On or about November 23, 2021, a search was conducted of the off-site storage log.
- ii. In mid-January, 2020, a search was conducted of the inventories of files stored off-site to locate any potentially responsive documents. The files that were identified as potentially responsive were shipped from the off-site storage facility to the Trump Organization's corporate offices at Trump Tower, where they were received on or about January 15, 2020. The files were thereafter reviewed by the Trump Organization's General Counsel and

all non-privileged documents that were located were produced to the OAG.

22. From January 2022 through March 2022, I personally reviewed portions of Respondent's chron files and as to whether they contained any documents responsive to the Subpoena. In addition, two other attorneys and two paralegals with my firm also searched the chron files for responsive documents. Collectively, my office performed a full, complete, and diligent search of the chron files and it was determined that all documents in the chron files that are responsive to the Subpoena had previously been produced to the OAG.

23. On April 8, 2022, Ms. Habba and I conducted a telephone interview with Respondent, as per Haystack ID's request. After completion, the completed HaystackID interview forms were submitted to HaystackID.

Demand No. 1

24. With respect to Demand No. 1, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 1 and/or cross-checking whether any documents responsive to Demand No. 1 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

25. I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the

Prior Searches, identifying documents potentially responsive to Demand No. 1 and verifying whether potentially responsive documents had previously been produced to the OAG.

26. In addition, Demand No. 1 of the Subpoena calls for “all documents and communications concerning any Statement of Financial Condition.” I cross-checked the search terms used by the Trump Organization in connection with its searches in response to the 2019 Subpoena, which included the term “Statement of Financial Condition”; therefore, the documents responsive to Demand No. 1 of the Subpoena would have been produced to the OAG in connection with the Prior Searches.

27. Based on the foregoing, together with my firm’s collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 1, other than those documents that had already been produced by the Trump Organization.

Demand No. 2

28. Demand No. 2 calls for “[a]ll documents and communications concerning any valuation of any asset whose value is identified or incorporated into any Statement of Financial Condition.” This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

29. With respect to Demand No. 2, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 2 and/or cross-checking whether any documents responsive to Demand No. 2 had been previously produced by the Trump Organization to the OAG: (i) Respondent’s chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to

the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

30. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 2 and verifying that all potentially responsive documents had previously been produced to the OAG.

31. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 2, other than those documents that had already been produced by the Trump Organization.

Demand No. 3

32. Demand No. 3 calls for "[a]ll documents reviewed, used, or relied on in the preparation of the Statements of Financial Condition, and all communications relating to any of the foregoing." This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

33. With respect to Demand No. 3, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 3 and/or cross-checking whether any documents responsive to Demand No. 3 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized,

organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

34. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 3 and verifying that all potentially responsive documents had previously been produced to the OAG.

35. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 3, other than those documents that had already been produced by the Trump Organization.

Demand No. 4

36. Demand No. 4 calls for "[a]ll documents and communications concerning any financing or debt related to Trump International Hotel and Tower Chicago or Chicago Unit Acquisition LLC." This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

37. With respect to Demand No. 4, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 4 and/or cross-checking whether any documents responsive to Demand No. 4 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii)

attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

38. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 4 and verifying that all potentially responsive documents had previously been produced to the OAG.

39. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 4, other than those documents that had already been produced by the Trump Organization.

Demand No. 5

40. Demand No. 5 calls for "[a]ll documents and communications concerning the donation or potential donation of a conservation or preservation easement by [Respondent]." This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

41. With respect to Demand No. 5, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 5 and/or cross-checking whether any documents responsive to Demand No. 5 had been

previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

42. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 4 and verifying that all potentially responsive documents had previously been produced to the OAG.

43. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 5, other than those documents that had already been produced by the Trump Organization.

Demand No. 6

44. Demand No. 6 calls for "[a]ll documents and communications concerning any planned or potential development or alteration of the Seven Springs Estate." This identical demand was set forth in a subpoena dated December 27, 2019 that was previously served upon the Trump Organization by the OAG; therefore, the Prior Searches encompassed the items responsive to this demand.

45. With respect to Demand No. 6, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand

No. 6 and/or cross-checking whether any documents responsive to Demand No. 6 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

46. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, Co-Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 6 and verifying that all potentially responsive documents had previously been produced to the OAG.

47. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 6, other than those documents that had already been produced by the Trump Organization.

Demand No. 7

48. With respect to Demand No. 7, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 7 and/or cross-checking whether any documents responsive to Demand No. 7 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to

the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

49. In addition, I had numerous discussions with TTO Co-Counsel, Prior Counsel, and the TTO Legal Dept. for the purpose of reviewing the documents produced in connection with the Prior Searches, identifying documents potentially responsive to Demand No. 7 and verifying whether potentially responsive documents had previously been produced to the OAG.

50. Further, with respect to item 7 of the Subpoena, which calls for "all documents and communications with Forbes Magazine...", I confirmed that all communications and documents with Forbes Magazine had been produced to the OAG through August 14, 2021.

51. To supplement this search, on March 16, 2022, I coordinated with the Trump Organization's IT team to commence a search for any responsive documents to Demand No. 7 (regarding Forbes Magazine) for the time period from January 1, 2021 through March 16, 2022. Search parameters included the term "forbes" and communications with "forbes.com" e-mail addresses, and the e-mail addresses of ten Trump Organization individuals were searched, including Alan Garten, Eric Trump, Donald Trump, Jr., Allen Weisselberg, Amanda Miller, Kim Benza, Jeffrey McCooney, Patrick Birney, Ray Flores and Deborah Tarasoff.

52. The search returned 1,386 documents and/or communications. Three employees of my firm, in coordination with HaystackID, reviewed these items as to whether they were responsive to Subpoena demand no. 7. After a full, complete and diligent search, it was determined that none of the documents were responsive.

53. Additionally, I searched the chron files and did not find any documents responsive

to the Subpoena which had not already been produced.

54. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 7, other than those documents that had already been produced by the Trump Organization.

Demand No. 8


55. With respect to Demand No. 8, I personally reviewed and analyzed the following files, logs and/or documents for the purpose of searching for documents responsive to Demand No. 8 and/or cross-checking whether any documents responsive to Demand No. 8 had been previously produced by the Trump Organization to the OAG: (i) Respondent's chron files; (ii) attorney work product provided by TTO Co-Counsel and the TTO Legal Dept. which summarized, organized and identified with particularity the documents produced by the Trump Organization to the OAG; (iii) relevant search terms utilized in the Prior Searches; (iv) prior subpoenas served upon the Trump Organization by the OAG; (v) relevant portions of the Trump Organization's prior document productions to the OAG; and (vi) weekly status reports provided by TTO Co-Counsel to the OAG.

56. Based on the foregoing, together with my firm's collective search efforts, I determined that Respondent was not in any possession of any documents responsive to Demand No. 8, other than those documents that had already been produced by the Trump Organization.

Stipulation

57. On behalf of Respondent, I hereby stipulate that the Trump Organization-produced documents can be used as if those documents were produced by Respondent because they were under Respondent's "control," in that they were documents in the possession of a company owned or controlled by a Respondent or a Trust owned by him, to the extent allowable by law. In so

stipulating, Respondent does not waive any objections to such documents or the introduction of those documents in evidence that he would otherwise have if he had produced those documents solely because they were in the custody or control of a company owned or controlled by him or a Trust owned by him.



Michael T. Madajo

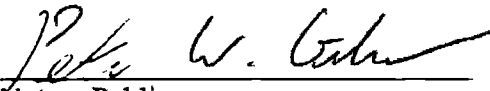
4/27/2022

Date

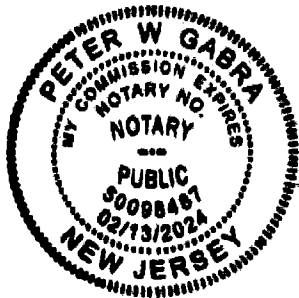
ACKNOWLEDGMENT

STATE OF NEW JERSEY)
COUNTY OF SOMERSET)

On this 27th day of April in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared Alina Habba personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.



Notary Public



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,

v.

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.

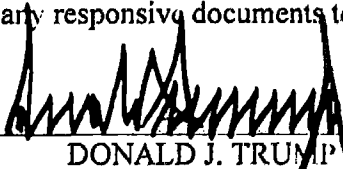
Index No. 451685/2020

AFFIDAVIT

I, Donald J. Trump, being duly sworn, state as follows:

1. To the best of my knowledge, (i) I do not have any of the documents requested in the subpoena dated December 1, 2021 in my personal possession; and (ii) if there are any documents responsive to the subpoena I believe they would be in the possession or custody of the Trump Organization.

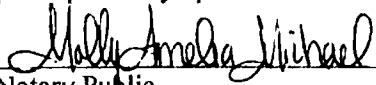
2. At all relevant times, I have authorized, and continue to authorize, the release of any responsive documents to the Office of the Attorney General.

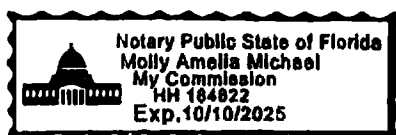

DONALD J. TRUMP

4/27/2022
DATE

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

On this 27 day of April in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared Donald J. Trump personally known to be or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.


Notary Public



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;
MAZARS USA LLC; DONALD J. TRUMP;
DONALD TRUMP, JR.; and IVANKA TRUMP,

Respondents.

Index No.: 451685/2020

**CERTIFICATE OF
CONFORMITY**

ALINA HABBA, ESQ., an attorney duly admitted and licensed to practice law before the
Courts of the State of New York, certifies the following under penalties of perjury:

1. I am the managing partner of Habba, Madaio & Associates, LLP, counsel of record
for respondent, Donald J. Trump in the above-reference matter. I am an attorney duly admitted to
practice in the State of New York.

2. I make this declaration pursuant to CPLR § 2309(c) to certify that, based upon my
review, the attached Affidavit of Donald J. Trump was sworn to before Molly Amelia Michael, a
Notary Public in the State of Florida, in a manner prescribed by the laws of Florida, and that it
duly conforms with all such laws and is in all respects valid and effective in Florida.

Dated: April 27, 2022
New York, New York


Alina Habba, Esq.
HABBA MADAIO & ASSOCIATES LLP

SCHEDULE A

List of Persons Who Supervised/Participated in Subpoena Compliance

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- 6. Michael T. van der Veen, Esq.**
Van der Veen, O'Neill, Hartshorn, and Levin.
1219 Spruce Street
Philadelphia, PA 19107
Telephone: (215) 546-1000

EXHIBIT 11



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE DIVISION

By Electronic Mail

April 29, 2022

Hon. Arthur F. Engoron
New York Supreme Court
New York County
60 Centre Street, Room 566
New York, NY 10007

Re: People v. Trump, et al.– No. 451685/2020

Dear Justice Engoron:

This office (“OAG”) represents Petitioner in the above-referenced special proceeding. I write in response to the recent submission of three affidavits from Respondent Donald J. Trump in support of his request that the Court purge the finding of civil contempt against him. Although the affidavits provide some additional information about Respondent’s efforts to comply with the Court’s February 17, 2022 order and OAG’s December 2021 subpoena, they are insufficient to purge the finding of contempt. Rather, the Court should not purge the finding of contempt until the following are done:

1. All of Mr. Trump’s hard copy custodial files located in Trump Tower and off-site storage are searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
2. All of the hard copy files of Mr. Trump’s executive assistants are searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
3. All electronic devices (including computers and mobile phones) issued by the Trump Organization to Mr. Trump’s executive assistants and all of Mr. Trump’s mobile phones are collected, imaged, and searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
4. For each of Mr. Trump’s properties where he maintains a “private residence” and/or “personal office” that contains any hard copy files, all such files are searched and all responsive documents are produced.

More specifically, the Court should deny Respondent’s request to purge the finding of civil contempt for the four reasons set forth below.

First, with respect to the hard copy custodial files of Mr. Trump that are located in Trump Tower and off-site storage,¹ Respondent relies exclusively on a number of prior searches conducted by others with respect to these materials (with the exception of the “chron” files).² *See* Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21. These prior searches, conducted by individuals who are not identified, took place between January 2020 and November 2021 – before OAG issued the December 2021 subpoena to Mr. Trump – based on earlier subpoenas issued to the Trump Organization (“TTO Subpoenas”). *See* Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21. Mr. Trump’s reliance on these prior searches to satisfy his independent obligation under the December 2021 subpoena is insufficient because: (i) the December 2021 subpoena seeks additional material in Demands 7 and 8 that was not requested in the prior TTO Subpoenas (and therefore would not have been part of the search);³ and (ii) the Trump Organization production has been plagued with compliance issues resulting in the need for the retention of the independent e-Discovery monitor HaystackID and repeated Court intervention (NYSCEF Nos. 314, 667). As a result of these production problems, OAG and the Trump Organization have agreed that HaystackID will collect and independently review all of this material and produce documents responsive to both the TTO Subpoenas and the December 2021 subpoena, a process which HaystackID expects to conclude by May 6, 2022 for all material except possibly what exists in off-site storage. OAG will consider HaystackID’s review and production of this material to satisfy Mr. Trump’s independent production obligation under the December 2021 subpoena with respect to this category when completed.⁴

¹ This material consists of the following: (i) Mr. Trump’s “chron” files; (ii) Mr. Trump’s hard copy calendars; (iii) the files located in cabinets outside Mr. Trump’s office; (iv) the storage room by Mr. Trump’s office; (v) the Executive Office storage closet; (vi) the file cabinets located on the 25th and 26th floors; and (vii) files maintained in off-site storage. *See* LaRocca Hornik Rosen & Greenberg LLP letter dated April 20, 2022 (“TTO April 20 Letter”) at 15.

² Mr. Trump’s counsel did not review any of his custodial files located in Trump Tower or off-site storage with the single exception of the “chron” files. Habba Aff. ¶ 9; Madaio Aff. at ¶9. Instead, counsel reviewed “attorney work product provided by” counsel for the Trump Organization, a list of the search terms used in the prior searches, the prior OAG subpoenas issued to the Trump Organization, and weekly status reports provided to OAG by the Trump Organization’s counsel. Habba Aff. at ¶¶ 19, 24, 5, 30, 35, 40, 45, 49, 57; Madaio Aff. at ¶¶ 24, 29, 33, 37, 41, 45, 48, 55. Counsel’s review of this other material is without any legal relevance; it does not serve as a proxy for reviewing the hard copy documents themselves.

³ Ms. Habba’s efforts described at paragraphs 52 and 53 of her affidavit to account for any missing documents from prior searches that would be responsive to Demands 7 and 8 were ineffectual. She provides no information on how she “confirmed that all communications and documents with Forbes Magazine” and those involving “insurance procurement” have been produced. Nor was the “supplement[al]” search she had the Trump Organization’s IT team perform using search terms adequate to cover hard copy documents.

⁴ If the HaystackID review confirms that the Trump Organization has indeed produced “all documents from the chron file that was [sic] not purely political,” it would resolve the immediate

Second, Respondent has failed to meet his obligations under the December 2021 subpoena with respect to the hard copy files of his numerous executive assistants, which are within his control.⁵ As to these files, Mr. Madaio attests that he received confirmation that Mr. Trump’s prior counsel “had interviewed all of Respondent’s executive assistants as to whether they had any documents or communications responsive to the Subpoena and that no such responsive documents were identified.” Madaio Aff. at ¶11. This is patently insufficient. The subpoena requests eight categories of documents over the period from January 1, 2010 through December 1, 2021. NYSCEF 361 at Instruction No. 18. Simply asking Mr. Trump’s executive assistants if they can recall from memory whether there are any documents in their files that would be responsive to the subpoena is no substitute for collecting and reviewing their files. Nor is it sufficient for Mr. Trump to rely on prior searches of the assistants’ hard copy files that were conducted as part of the Trump Organization’s production and pre-date the issuance of the December 2021 subpoena (Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21) for the same reasons that the prior searches do not satisfy Mr. Trump’s obligations with respect to his own custodial files. Respondent’s counsel needs to collect and review the hard copy files of Mr. Trump’s executive assistants and produce any responsive material in order to comply with the Court’s February 2022 order. As with Mr. Trump’s custodial files, OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.

Third, Respondent’s submission does not recount any efforts to collect and review electronic devices used by Mr. Trump and his many executive assistants, all of which are likely to contain responsive material. This includes all of the office computers used by his assistants (including Rhona Graf’s laptop and desktop computer at Trump Tower) and all of Mr. Trump’s mobile phones, whether issued to him by the Trump Organization or held by him personally.⁶ HaystackID April 18, 2022 Report, Ex. C at lines 63-64, 221-22. These devices need to be collected, imaged, and searched using appropriate search term filters, predictive coding, or other forms of technology-assisted review as necessary, in consultation with OAG (*see* NYSCEF 361, Instruction No. 8). OAG would consider collection, review, and production by HaystackID of responsive material from the relevant electronic devices to be satisfactory for this category.

production issues but would likely indicate that responsive documents had not been preserved. It is simply not plausible that Mr. Trump authored only three documents dealing with the value of his assets and his wealth. To that end, Mr. Trump and his counsel need to also comply with the Instruction No. 3 of OAG’s subpoena concerning “Documents No Longer in Your Possession.”

⁵ Respondent has stipulated that “documents in the possession of a company owned or controlled by [him] or a Trust owned by him” are under his “control,” which would include the files of his executive assistants. Habba Aff. at ¶ 61.

⁶ The HaystackID report identifies two “flip” phones that belong to Mr. Trump, but given Mr. Trump’s reported use of a smart phone, he apparently has, or must have had in the past, one or more other phones that he obtained for personal use. *See, e.g.*, <https://www.nytimes.com/2017/01/25/us/politics/president-trump-white-house.html?ref=politics>.

Fourth, with respect to potentially responsive documents located at Mr. Trump’s personal residences and personal offices, Respondent’s submission is insufficient. Ms. Habba states that based on privileged conversations she had with Mr. Trump, she “determined that there are no additional responsive documents” at Trump National Golf Club Bedminster or Mar-a-Lago. Habba Aff. at ¶ 16. As with the earlier affidavit from Mr. Madaio, Ms. Habba’s affidavit “provide[s] the Court with no basis to find that the search had been a thorough one or that it had been conducted in a good faith effort to provide” responsive documents. NYSCEF 758 at 3. As an initial matter, why is the response limited to Bedminster and Mar-a-Lago? Ms. Habba should identify each of Mr. Trump’s properties where he maintains a “private residence” and/or “personal office” and describe in detail the efforts undertaken to search files maintained at each such location for responsive documents, including where and how files are maintained, and when and who conducted the search. Ms. Habba’s statement that she met with Mr. Trump to verify “whether” he had any responsive documents, Habba Aff. at ¶17, without any further elaboration on what efforts she undertook after having that conversation, is insufficient – especially given that counsel had previously sought additional time to “go look at Mar-a-Lago,” not just speak with Mr. Trump. NYSCEF No. 671 at ¶ 16. Finally, Mr. Trump’s two-paragraph affidavit adds no useful information to the mix. Mr. Trump merely states off the top of his head, with no hint that he conducted any type of search, that he has no documents in response to the December 2021 subpoena in his “personal possession.” Trump Aff. at ¶ 1. It is unclear whether “personal possession” means on his person or something more, but regardless it is insufficient absent any indication that he or someone at his direction conducted a search and without sufficient detail about any search to enable the Court to find the search was thorough and done in a good faith effort to find responsive documents.

* * *

For these reasons, Respondent’s request that the Court purge its finding of civil contempt should be denied at this time.

Respectfully,

/s/ Andrew S. Amer

Andrew S. Amer

Special Counsel

Andrew.Amer@ag.ny.gov

(212) 416-6127

cc: Counsel of Record (via NYSCEF)

EXHIBIT 12

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

PRESENT: HON. ARTHUR ENGORON

PART 37

Justice

-----X

THE PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

INDEX NO. 451685/2020

Petitioner,

OPINION AND ORDER

- v -

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, DONALD TRUMP JR., and CUSHMAN AND WAKEFIELD, INC.,

Respondents.

-----X

Following a virtual conference held on April 29, 2022, at the request of respondent Donald J. Trump, this Court hereby denies, without prejudice, Mr. Trump’s request to purge his contempt.

On Monday, April 25, 2022, this Court held Mr. Trump in contempt of court for failure to supply documents, or sufficient affidavits of diligent searches, to petitioner, the Office of the Attorney General (“OAG”), in response to its subpoena issued to Mr. Trump on December 2, 2021.

On April 27, 2022, Mr. Trump’s counsel emailed this Court two affirmations from counsel and one affidavit from Mr. Trump himself, in an attempt to purge the contempt. NYSCEF Doc. No. 765. On April 29, 2022, OAG submitted a letter response stating that it did not believe Mr. Trump had sufficiently complied with the subpoena such that his contempt should be purged. NYSCEF Doc. No. 766. At the request of Mr. Trump, this Court held a virtual conference to discuss the submissions.

This Court finds that Mr. Trump has not yet purged his contempt. The affirmations submitted by counsel for Mr. Trump are insufficient in that they fail to specify who searched for each respective request, at what time, where, and using what search protocols; it is not sufficient simply to attach a list of people who participated in the searches. Moreover, the affirmations submitted by counsel also fail to affirm that the subject electronic devices were imaged and searched and with what search terms.

Furthermore, Mr. Trump’s personal affidavit is completely devoid of any useful detail. Notably, it fails to state where he kept his files, how his files were stored in the regular course of business, who had access to such files, what, if any, the retention policy was for such files, and,

OTHER ORDER – NON-MOTION

importantly, where he believes such files are currently located. It similarly fails to state if he turned over his personal electronic devices for imaging and searching. Thus, this Court now hereby orders Mr. Trump to submit a detailed “Jackson affidavit,” swearing to the aforesaid details in order to purge his contempt. See Jackson v City of New York, 185 AD2d 768, 770 (1st Dep’t 1992).

Moreover, counsel’s claim that her conversations with respondent about the locations of the subpoena are covered by attorney-client privilege is without merit, as the mere identification of responsive documents does not involve “render[ing] legal advice or services to the client.” Spectrum Sys. Intl. Corp. v Chemical Bank, 78 NY2d 371, 379 (1991).

Finally, the Court rejects Mr. Trump’s assertions that OAG is not suffering any prejudice as a result of Mr. Trump’s failure to comply. As this Court has previously noted, each day that passes without compliance further prejudices OAG, as the statutes of limitations continue to run and may result in OAG being unable to pursue certain causes of action that it otherwise would. Furthermore, any delay causes prejudice to “the rights or remedies of the State acting in the public interest.” State v Stallings, 183 AD2d 574, 575 (1st Dep’t 1992) (affirming motion for contempt brought on behalf of State).

Thus, Mr. Trump’s request to purge his contempt is denied, without prejudice.



ARTHUR ENGORON, JSC

DATE: 4/29/2022

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)

EXHIBIT 13

From: [Del Pozo, Eric](#)
To: [Michael Madaio](#); [Wallace, Kevin](#); [Amer, Andrew](#); [Faherty, Colleen](#); [Vale, Judith](#)
Cc: [Alina Habba, Esq.](#); [Peter Gabra](#)
Subject: RE: Notice of Intention to file Motion to Stay Pending Appeal w/Interim Relief (People v. Trump; 4/26/22 Order)
Date: Monday, May 2, 2022 9:54:18 AM
Attachments: image001.png

Thanks for the update. Please email the appellate case number when you have it.

Eric

From: Michael Madaio <mmadaio@habbalaw.com>
Sent: Monday, May 2, 2022 9:34 AM
To: Del Pozo, Eric <Eric.DelPozo1@ag.ny.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Vale, Judith <Judith.Vale@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>; Peter Gabra <pgabra@habbalaw.com>
Subject: RE: Notice of Intention to file Motion to Stay Pending Appeal w/Interim Relief (People v. Trump; 4/26/22 Order)

Eric,

After discussion with the First Department, we've been advised that an in-person appearance is not necessary so we'll instead be filing via NYSCEF. The motion will be filed within the next couple hours, we'll provide a copy to all counsel herein via e-mail shortly thereafter.

Regards,

MICHAEL T. MADAIO, ESQ.

Admitted to Practice in NJ, NY & PA



HABBA MADAIO
& Associates LLP

1430 US Highway 206, Suite 240

Bedminster, New Jersey 07921

Telephone: 908-869-1188

Facsimile: 908-450-1881

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Associates LLP for any loss or damage arising in any way from its use.

From: Del Pozo, Eric <Eric.DelPozo1@ag.ny.gov>
Sent: Monday, May 2, 2022 8:21 AM
To: Michael Madaio <mmadaio@habbalaw.com>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Vale, Judith <Judith.Vale@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>; Peter Gabra <pgabra@habbalaw.com>
Subject: Re: Notice of Intention to file Motion to Stay Pending Appeal w/Interim Relief (People v. Trump; 4/26/22 Order)

Thank you, Michael. Can you email an advance copy of the motion papers, unless you plan to e-file them on the First Department docket shortly? And 2pm today ought to be fine for the appearance, but I'll let you know this morning in the event we need to push it back a bit.

Eric

From: Michael Madaio <mmadaio@habbalaw.com>
Sent: Monday, May 2, 2022 6:31:54 AM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Del Pozo, Eric <Eric.DelPozo1@ag.ny.gov>; Vale, Judith <Judith.Vale@ag.ny.gov>
Cc: Alina Habba, Esq. <ahabba@habbalaw.com>; Peter Gabra <pgabra@habbalaw.com>
Subject: Notice of Intention to file Motion to Stay Pending Appeal w/Interim Relief (People v. Trump; 4/26/22 Order)

[EXTERNAL]

Counsel,

I'm reaching out to advise that today we plan on filing a Motion to Stay which includes a request for Interim Relief pursuant to 22 NYCRR 1250.4(b). We'll be seeking to stay enforcement of Judge Engoron's Order dated 4/26/22, including a stay on the accrual of the \$10,000/day daily fine, and an interim stay pending resolution of the motion.

We plan on filing the motion in-person at the First Department (27 Madison Ave) this afternoon. It will likely be after 2pm, beyond that we are flexible on timing and can coordinate if you are planning on sending someone to appear on the OAG's behalf.

Feel free to contact me to discuss. Thanks.

Regards,

MICHAEL T. MADAIO, ESQ.

Admitted to Practice in NJ, NY & PA



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