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, Plaintiff, vs. DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC, Defendants.	Index No. 452564/2022

MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY IVANKA TRUMP'S MOTION TO QUASH SUBPOENAS *AD TESTIFICANDUM* ISSUED BY PLAINTIFF

Non-Party Ivanka Trump ("Ms. Trump") submits this Memorandum of Law in Support of Her Motion to Quash the Trial Subpoenas *Ad Testificandum* ("Subpoenas") issued by Plaintiff, the New York Attorney General ("NYAG" or "Plaintiff"), to Non-Party corporate entities TTT Consulting LLC ("TTT"), Ivanka OPO LLC ("OPO"), and 502 Park Project LLC ("502 Park"), insofar as the NYAG incorrectly asserts that, by virtue of those subpoenas, the NYAG can compel Ms. Trump, who is not a New York resident, to appear at trial in this action.[1]

PRELIMINARY STATEMENT

Trial subpoenas are not a means for parties to get discovery, which they failed to obtain during pretrial proceedings. The NYAG, which never deposed Ms. Trump, is effectively trying to force her back into this case from which she was dismissed by a unanimous decision of the Appellate Division, First Department. Ms. Trump is not a party in this action. Nor is Ms. Trump a New York resident. It is black-letter law that, given those two facts, Ms. Trump is beyond the jurisdiction of this Court.

The NYAG knows this, which is why it has subpoenaed three corporate entities as an end run around its failure to pursue Ms. Trump's deposition when it had the chance. All three subpoenas must be quashed as to Ms. Trump for several reasons.

First, even if the Court were to find that the entities were properly served, Ms. Trump was not properly served, and the NYAG cannot use the entities as an end-around to compel Ms. Trump to testify. Second, this Court lacks jurisdiction over Ms. Trump because she is a non-party who does not reside and has not resided in New York for almost seven years. Third, entities served with subpoenas may designate witnesses of their choosing—even if the subpoenaing party requests a

[1] The undersigned notes that, by express agreement with the NYAG, non-party Ms. Trump's deadline to respond to the Subpoenas is October 20, 2023. *See* Moskowitz Aff. Ex.D.

specific individual. Fourth, even if Ms. Trump were subject to this Court's jurisdiction and was properly served with the subpoenas, neither of which is true, the Court's summary judgment order limited the trial to damages and causes of action for which Ms. Trump's testimony is unnecessary due to being redundant of matters already in the record or immaterial to the issues still in the case.

ARGUMENT

I. The NYAG Failed To Serve The Subpoenas On Ms. Trump Individually

The subpoenas must be quashed as to Ms. Trump because the NYAG did not fulfill any of the requirements for service of the subpoenas on Ms. Trump in her individual capacity. The NYAG did not bother even attempting to do so because it knows Ms. Trump is beyond the Court's jurisdiction.

A trial subpoena must "be served in the same manner as a summons." CPLR 2303(a). Under New York law, there are distinct and separate requirements for personal service upon a corporation and personal service upon a natural person. *Compare* CPLR 308 *with* CPLR 311; *see Pinto v. House*¸ 79 A.D.2d 361, 364 (1st Dep't 1981) (noting the difference); *Stanley Agency, Inc. v. Behind the Bench, Inc*., 885 N.Y.S.2d 713 (Sup. Ct. Kings Cnty. 2009). Service on an LLC "shall be made by delivering a copy personally to . . . any member [or] manager of the limited liability company in this state" or "any other agent [or] person designated by the limited liability company to receive process." *Tetteh v. Infinite Beauty NYC, LLC*, No. 155932/2017, 2017 N.Y. Misc. LEXIS 4536, at *13 (Sup. Ct. N.Y. Cnty. Nov. 17, 2017); CPLR 311-a.

Service upon a natural person "shall be made" by (1) delivering the summons within the state to the person to be served; (2) delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode; or (3) delivering the summons within the state to the agent for service of the person to be served as designated under rule 318. CPLR 308. Service must normally be accomplished by one of those

three methods unless they are shown to be "impracticable," at which point the serving party may resort to a substitute method of service. *Id.*

"Service of a single summons on an officer of a corporation" can only "constitute[ ] proper service on both the corporation and the individual" where that individual "is also an individual defendant." *Stanley Agency, Inc.*, 885 N.Y.S.2d at 713. Further, to be "effective service upon the defendant corporation, as well as upon the defendant corporate officer," the record must "indicate that the manner of service on the defendant corporate officer[ ] was by personal delivery of the process upon such individuals." *Lakeside Concrete Corp. v. Pine Hollow Bldg. Corp.*, 104 A.D.2d 551, 552 (2d Dep't 1984), *aff'd*, 65 N.Y.2d 865 (1985). Thus, "courts have required personal service, even when the individual in question is an officer and codefendant of a corporation which has been served," because "[u]nder N.Y.C.P.L.R § 308(1) [t]he message...is clear: personal delivery to the 'person to be served,' i.e., the defendant, is to be taken literally." *OR.EN. Orobia Eng'g S.R.L. v. Nacht*, No. 97 CIV. 4912 SAS KNF, 1998 WL 730562, at *6 (S.D.N.Y. Oct. 19, 1998) (citations and quotations omitted). Only when a subpoena seeks attendance at trial of a "*party*" or "a person within [a] *party's* control" may the subpoena instead "be served by delivery in accordance with [2103(b)] to the party's attorney of record." CPLR 2303-a (emphases added).

Here, Ms. Trump, a non-party and non-resident of New York, moves to quash three subpoenas purportedly seeking her testimony at trial, which the NYAG served on three separate non-party corporate entities: TTT; OPO; and 502 Park. Moskowitz Aff. Exs.A, B, C. None of these entities has ever been a party to this action. TTT is a Delaware LLC registered to do business in New York.[2] The NYAG claims it served TTT by delivering a subpoena to TTT's registered agent

[2] *See* https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx (showing domestic status in Delaware); https://apps.dos.ny.gov/publicInquiry/EntityDisplay (showing status as foreign LLC registered in New York).

in New York. OPO is a Delaware LLC that is not registered to do business in New York.[3] The NYAG purported to serve OPO by delivering a subpoena to "The Trump Organization" at 725 Fifth Avenue, New York, NY.[4] *See* Moskowitz Aff. Ex.C. 502 Park is the only entity the NYAG served that is a domestic LLC.[5] The NYAG served 502 Park by delivering a subpoena to its registered agent in New York. Moskowitz Aff. Ex.B. Each of these three subpoenas listed Ms. Trump's name only in the "to" line above the LLCs' names and the names and addresses of their registered agents. Moskowitz Aff. Exs.A, B, C. The body of the Subpoenas requested a "personal appearance" "to give testimony" at trial but did not identify any specific employee, officer, or director that the NYAG wanted to appear, nor did the Subpoenas identify any specific subject matter that the NYAG wanted the corporate witness to testify to at trial. *Id.*

Each of these Subpoenas should be quashed for improper service that fails to meet the CPLR's procedural requirements. Although Ms. Trump is a member and manager of TTT and a member and officer of OPO, service upon their registered agents—assuming that OPO has even been served—in no way also constitutes service on Ms. Trump in her individual capacity. *See, e.g., Stanley Agency, Inc.*, 885 N.Y.S.2d at 713. Rather, as an individual non-party, Ms. Trump was entitled to proper, personal service separate from service upon any entity with which she may have some affiliation. *See* CPLR 308. Singular service upon TTT or OPO could only constitute

[3] *See* https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx (showing domestic status in Delaware).

[4] On September 8, 2023, counsel for NYAG emailed the undersigned stating that the NYAG was "in the process of completing service on Ivanka OPO LLC which had its principal place of business at the Trump Organization offices on Fifth Avenue. We can forward that one once we have the affidavit of service." *See* Moskowitz Aff. Ex.D. As an initial matter, the undersigned is unaware of any information showing that OPO has its principal place of business in New York let alone at 725 Fifth Avenue, nor whether the subpoena was ever served on OPO's registered agent. The undersigned did not receive any notice or confirmation that OPO was served with a subpoena until September 29, 2023 via email from counsel for NYAG, Moskowitz Aff. Ex.F; but even that explanation of "service" did not evidence service sufficient under the CPLR. Regardless, the OPO subpoena must be quashed for the reasons set forth in this memorandum, including because it was never served on Ms. Trump in her individual capacity.

[5] *See* https://apps.dos.ny.gov/publicInquiry/EntityDisplay (showing New York domestic status).

service on both the entities *and* Ms. Trump if the NYAG had personally served Ms. Trump as a member of the LLC *and* if she was a party to this action—which she is not, having been dismissed from this action by the First Department. *Stanley Agency, Inc.*, 885 N.Y.S.2d at 713; *Lakeside Concrete Corp.*, 104 A.D.2d at 552; *Port Chester Elec. Co. v. Ronbed Corp*., 28 A.D.2d 1008 (2d Dep't 1967). Nor could the NYAG serve Ms. Trump pursuant to CPLR 2303-a as she is neither a "party" nor "within the [ ] control" of any entity that is a party. CPLR 2303-a; *see Gyani v. Great Neck Med. Grp.*, 936 N.Y.S.2d 534, 535 (Sup. Ct. Nassau Cnty. 2012) ("[W]here a person is a *party* to an action pending in New York, a trial 'subpoena can be personally served upon the parties counsel pursuant to CPLR § 308(5)[.]") (emphasis added).[6]

In sum, Ms. Trump is an individual, non-party, non-resident who was never personally served with process. Thus, the NYAG's Subpoenas must be quashed as to Ms. Trump for defective service of process.

II. The NYAG Lacks Authority To Compel Ms. Trump To Appear at Trial In New York Because She Is A Non-Party And A Non-Resident

Ms. Trump is an individual, nondomiciliary of New York, who does not maintain a place of residence in New York and is not present in the state of New York. Moskowitz Aff. ¶ 3, Ex.D. Thus, this Court lacks general personal jurisdiction over Ms. Trump.

To compel a non-party's compliance with a subpoena, the court must have personal jurisdiction over the non-party. *Amelius v. Grand Imperial LLC*, 64 N.Y.S.3d 855, 865–66 (Sup. Ct. N.Y. Cnty. 2017) ("It is axiomatic that, for a court to have any power over an individual or entity, it must have . . . personal jurisdiction over the individuals or entities involved."); *In re Three*

[6] The undersigned has been unable to substantiate the NYAG's claim of a nexus between 502 Park and Ms. Trump sufficient for the NYAG to have served that entity with a subpoena which purports to require Ms. Trump to testify. The undersigned has asked the NYAG to present such a basis; it has not done so.

Arrows Cap., Ltd., 649 B.R. 143, 150 (Bankr. S.D.N.Y. 2023) (citing *Gucci America, Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014)). "Service of process, no matter how flawlessly executed, cannot by itself vest a court with jurisdiction over a non-domiciliary of New York state." *Genger v. Genger*, 19 N.Y.S.3d 685, 688 (Sup. Ct. N.Y. Cnty. 2015) (citations omitted). Rather, the court's "[a]uthority for personal jurisdiction . . . must first be found in a statute, and then must not violate any due process considerations." *Amelius*, 64 N.Y.S.3d at 865.

Personal jurisdiction may be general or specific. For an individual, general jurisdiction "derives from that individual's presence in the forum State." *Id.* at 866 (citations omitted). Specific jurisdiction may be obtained over a nondomiciliary "who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state." *Polansky v. Gelrod*, 20 A.D.3d 663, 664 (3d Dep't 2005) (citing CPLR 302(a)(1)). An individual may consent to the court's specific jurisdiction, but "[a] party's consent to jurisdiction in one case . . . in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available." *Zhongzhi Hi-Tech Overseas Inv. Ltd. v. Shi*, No. 22-CV-6977 (LAP), 2023 WL 4561812, at *4 (S.D.N.Y. July 17, 2023) (applying New York law). But absent an exception such as consent, a New York court will not obtain specific jurisdiction over a nondomiciliary witness who is "neither a party to the action nor under investigation for potential legal violations." *Amelius*, 64 N.Y.S.3d at 866 n.4. This is because the "longarm provisions of CPLR 302 have no application to [a] nonparty" and "long-arm jurisdiction [is] no basis for [a] court's exercise of subpoena power." *Genger*, 19 N.Y.S.3d at 688 (citations omitted). Thus, "[a] nonparty, nondomiciliary witness is clearly not subject to the subpoena power of the court." *Id.*

The only apparent exception to this rule, which exception is inapplicable here, is that a court may compel the production of an out-of-state *party's employee* witness for trial where a party serves the "trial subpoena *ad testificandum* on a *party* which is the employer of a proposed trial witness." *23/23 Commc'ns Corp., d/b/a Commc'ns Diversified v. Gen. Motors Corp.*, 660 N.Y.S.2d 296, 297–98 (Sup. Ct. N.Y. Cnty. 1997) (citing *Standard Fruit & Steamship Co. v. Waterfront Commn. of N.Y. Harbor,* 43 N.Y.2d 11, 15 (1977) (emphases added)). None of the subpoenaed entities is a party to this action. So, the exception has no bearing here.

The Court cannot exercise specific jurisdiction over Ms. Trump as a party because she was dismissed from this action and is no longer a party in this case. Indeed, Ms. Trump was dismissed from this case after the First Department found that "[t]he allegations against defendant Ivanka Trump do not support any claims that accrued after February 6, 2016. Thus, all claims against her should have been dismissed as untimely." *People v. Trump*, 217 A.D.3d 609, 612 (1st Dep't 2023). Indeed, even the NYAG acknowledges that Ms. Trump "had engaged in conduct that fell altogether outside of the applicable limitations period." NYSCEF 1442 at 25. Thus, there is no basis for the Court to exercise specific jurisdiction over Ms. Trump in this action. And service alone—even if it had been properly executed as to Ms. Trump—cannot establish jurisdiction over her in this case. *Genger*, 19 N.Y.S.3d at 688.

The NYAG likewise cannot compel Ms. Trump's attendance at trial by serving entities it claims she is affiliated with, TTT and OPO, because neither entity is "a party to th[e] action nor under investigation for potential legal violations." *Amelius*, 64 N.Y.S.3d at 848 n.4. Further, the Court cannot exercise general jurisdiction over either of those entities because OPO is a Delaware LLC not even registered to do business in New York, and TTT is also a Delaware LLC and its registration in New York alone is insufficient to establish general jurisdiction, *supra* pp.4–5, *see*

Amelius, 64 N.Y.S.3d at 865. Even if the Court has general jurisdiction over 502 Park, which is not established by any evidentiary record, the NYAG cannot compel Ms. Trump to appear at trial by serving 502 Park because it is not a party to this action. *Supra* 7–8; *see 23/23 Commc'ns Corp.*, 660 N.Y.S.2d at 297–98. Thus, the Court should quash the NYAG's Subpoenas as to Ms. Trump for lack of personal jurisdiction.

III. Even If The Subpoenas Are Valid, Plaintiff Served Them On Corporate Entities That May Designate Their Own Witnesses To Testify On Their Behalf

The NYAG is not permitted to disregard the fundamental right of the entities it subpoenaed from designating their own witnesses. "If a subpoena to testify is served on and is addressed to an entity, that entity may choose the person who will respond." 4A N.Y. Prac., Com. Litig. in N.Y. State Courts § 46:5 (5th ed.); 2A Weinstein, Korn & Miller, New York Civil Practice ¶¶ 2305.04, 2305.05; *see Barone v. A&P,* 260 A.D.2d 417, 417–18 (2d Dep't 1999); *see also* Unif. Civ. Rules For The Supreme Court & The County Court § 202.20-d.

Here, the NYAG served these Subpoenas on and addressed them to TTT, 502 Park, and OPO. These entities have a fundamental right to designate their own witnesses, as discussed immediately above. Thus, even if these subpoenas are procedurally and substantively proper—which they are not—the served entities have the right to designate their own witnesses for trial. Ms. Trump's counsel has already communicated to the NYAG that Defendant Eric Trump could testify on behalf of TTT and OPO if the Court finds the subpoenas valid. Moskowitz Aff. Ex.D.

IV. Alternatively, The Court Should Enter A Protective Order Because The NYAG Seeks Testimony From Ms. Trump, Not The Entities, Without Any Limitations.

Should the Court deny Ms. Trump's motion to quash, Ms. Trump moves in the alternative for a Protective Order pursuant to CPLR 3101(a), which "confers broad discretion upon a court to fashion appropriate remedies" to prevent the abuse of disclosure devices. *See Lipin v. Bender*, 84 N.Y.2d 562, 570 (1994).

Counsel for Ms. Trump asked the NYAG to explain why it needed her testimony. Counsel for the NYAG responded by, in effect, saying there would be no limit to the topics: "On subject matters it would certainly include the option to purchase, licensing revenue and loans from DB on OPO. But given the interlocking nature of those topics with the other issues your client was involved in and her position at the Trump Organization, *I don't think it would represent a significant narrowing of the potential scope of her testimony*." Moskowitz Aff. Ex.D at 10. (emphasis added). In other words, the NYAG admitted what this really is: the issuance of subpoenas to entities as an attempt to force an individual party dismissed from the action into the trial of the action for purposes of seeking unlimited testimony not sought in discovery.

Requiring Ms. Trump, a non-party, nondomiciliary, to appear at trial in New York and provide live testimony without any limitations is unreasonable. The NYAG plans to seek testimony from Ms. Trump on a vast, temporally unlimited, and undefined set of topics that the NYAG has failed to articulate. The NYAG's Subpoenas give no guidance as to what specific information they are seeking or why that information is sought, demand testimony well beyond the end of discovery that the NYAG could have previously obtained, and attempt to impose a heavy, unnecessary, and improper burden on Ms. Trump to fill apparent gaps in the NYAG's case. *See Mestel & Co. v. Smythe Masterson & Judd, Inc*., 215 A.D.2d 329, 329–30 (1st Dep't 1995) ("[P]laintiff improperly utilized the overbroad trial subpoenas as a discovery device and a fishing expedition to secure from defendant Smythe wide-ranging discovery that plaintiff's counsel had neglected to obtain in

pretrial disclosure during the three years preceding trial."). If the Court denies Ms. Trump's motion to quash, it should enter a Protective Order requiring the NYAG to sufficiently limit the scope of testimony to matters pertaining directly to the subpoenaed entities.

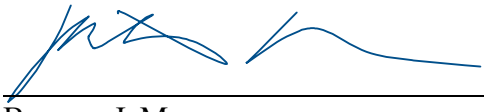
CONCLUSION

Based on the foregoing, the Court should quash the subpoenas as to Ms. Trump.

Respectfully submitted,

Dated: New York, New York
October 19, 2023

TROUTMAN PEPPER HAMILTON SANDERS LLP



BENNET J. MOSKOWITZ
875 Third Avenue
New York, New York 10022
(212) 704-6000

Attorneys for Non-Party Ivanka Trump

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Ivanka Trump's Motion to Quash the Subpoenas *Ad Testificandum* Issued by the Plaintiff complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 3,449 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word-processing program.

By: _____
BENNET J. MOSKOWITZ