



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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DIVISION OF APPEALS & OPINIONS

November 16, 2023

Honorable Susanna Molina Rojas  
Clerk of the Court  
Supreme Court of New York  
Appellate Division, First Department  
27 Madison Avenue  
New York, NY 10010

Re: *Trump v. Engoron*, No. 2023-05859

Dear Ms. Rojas:

I write on behalf of respondent People of the State of New York, by Letitia James, Attorney General of the State of New York (OAG), in opposition to petitioners' emergency application for an interim stay of four orders by Supreme Court, New York County (Engoron, J.) pending adjudication of their article 78 petition. The first order, issued on October 3, 2023, prohibited all parties in the underlying action from making public statements about members of Supreme Court's staff. Ex. 1 at 270 (Oct. 3, 2023 Tr.).<sup>1</sup> The second and third orders, issued on October 20 and 26, 2023, sanctioned petitioner Donald J. Trump for violating the October 3 order. Exs. 2 (Oct. 20, 2023 Order) & 3 (Oct. 26, 2023 Order). And the fourth order, issued on November 3, 2023, prohibited all counsel from making public statements, in or out of court, about communications (such as conversations or notes) between the judge and his staff. Ex. 4 at 3 (Nov. 3, 2023 Order). The OAG submits this response solely to petitioners' emergency application for an interim stay and is ready to present oral argument on the application.

As a threshold matter, the Court should deny petitioners' application because article 78 by its plain terms cannot be used to challenge a determination that

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<sup>1</sup> Numbered exhibits refer to exhibits to this letter. Exhibits containing trial transcripts have been excerpted for brevity.

“can be adequately reviewed by appeal to a court or to some other body or officer.” C.P.L.R. 7801(1); see *Matter of Rush v. Mordue*, 68 N.Y.2d 348, 354 (1986) (prohibition). Although orders issued sua sponte without notice are not appealable, there is nothing preventing petitioners from filing a motion to vacate the orders and appealing from any denial of that decision. See *Sholes v. Meagher*, 100 N.Y.2d 333, 335-36 (2003) (dismissing appeal from sua sponte sanctions order); *Budwilowitz v. Marc Nichols Assocs.*, 195 A.D.3d 404, 144 (1st Dep’t 2021) (similar). And after final judgment issues, the parties may each appeal from final judgment and challenge interlocutory orders that necessarily affect that judgment, to the extent the parties are aggrieved. See C.P.L.R. 5501(a)(1).

Even if their article 78 petition were proper, petitioners’ arguments are meritless. It is well established that “prohibition is an extraordinary remedy which lies only where a clear legal right to such relief exists, and only when a court ‘acts or threatens to act either without jurisdiction or in excess of its authorized powers.’” *Matter of Neal v. White*, 46 A.D.3d 156, 159 (1st Dep’t 2007) (footnote omitted) (quoting *Matter of Holtzman v. Goldman*, 71 N.Y.2d 564, 569 (1988)). Prohibition is “never available merely to correct or prevent trial errors of substantive law or procedure, however grievous.” *Matter of Neal*, 46 A.D.3d at 159 (quotation marks omitted); see *Matter of Johnson v. Price*, 28 A.D.3d 79, 81 (1st Dep’t 2006).

Here, petitioners cannot establish any right to relief, let alone a clear legal right. The First Amendment does not prohibit courts from restricting speech that threatens the safety of the court’s staff or frustrates the orderly progression of a trial. To the contrary, courts have broad discretion to regulate the conduct of both litigants and their attorneys during ongoing proceedings. See *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966) (“[C]ourts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences.”). As the United States Supreme Court has explained, “[a]lthough litigants do not surrender their First Amendment rights at the courthouse door, those rights may be subordinated to other interests that arise in this setting.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984); see also *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21 (1981) (“In the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors.”). The right to freedom of expression “must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.” *Sheppard*, 384 U.S. at 350-51.

Applying these well-established principles, this Court has recognized that courts may impose “reasonable limitations” on trial participants’ speech “where an important countervailing interest is being served.” *Fischetti v. Scherer*, 44 A.D.3d 89, 93 (1st Dep’t 2007). And the court’s authority to regulate the conduct of the attorneys litigating before it is well-established. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071 (1991) (“It is unquestionable that in the courtroom itself, during a

judicial proceeding, whatever right to ‘free speech’ an attorney has is extremely circumscribed.”). Here, Supreme Court reasonably concluded that exceedingly narrow restrictions on the speech of the parties and their counsel were necessary to “protect the safety of [the court’s staff] and the orderly progression of [the] trial.”<sup>2</sup> Ex. 4 at 2. (Nov. 3, 2023 Order).

These interests are not merely hypothetical or speculative. Supreme Court issued the first gag order only after learning that petitioner Donald J. Trump had made “a disparaging, untrue and personally identifying [social media] post about a member of [the court’s] staff.” Ex. 1 at 270 (Oct. 3, 2023 Tr.). The post included a picture of Supreme Court’s principal law clerk with a U.S. Senator and insinuated that the clerk had a personal relationship with him. *See* Ex. 5. This personally identifying post targeted at a member of the court’s staff was not only posted online, but it was also emailed to millions of other recipients. Ex. 1 at 270 (Oct. 3, 2023 Tr.). The court reasonably determined that such posts put the court’s staff at risk of harassment and harm. As the court later explained, it has been “inundated with hundreds of harassing and threatening phone calls, voicemails, emails, letters, and packages.” Ex. 4 at 2 (Nov. 3, 2023 Order). In light of these harassing and threatening communications, Supreme Court properly concluded that any purported First Amendment rights of the parties “to comment on [the court’s] staff is far and away outweighed by the need to protect them from threats and physical harm.” *Id.*

Supreme Court also reasonably determined that the second gag order was necessary to protecting the fair and orderly progress of the trial, in addition to the safety of court staff. Supreme Court issued the second order only after petitioners’ attorneys repeatedly made “inappropriate remarks about [the court’s] Principal Law Clerk, falsely accusing her of bias against them and of improperly influencing the ongoing bench trial.”<sup>3</sup> Ex. 4 at 2 (Nov. 3, 2023 Order). For example, the attorneys argued that it was improper for the law clerk to sit next to or confer with the judge during the trial, particularly by passing notes. *See, e.g.*, Ex. 6 at 2418-2421 (Oct. 25, 2023 Tr.); Ex. 7 at 3396-3404 (Nov. 2, 2023 Tr.). Supreme Court repeatedly

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<sup>2</sup> Courts in other jurisdictions have also imposed speech restrictions on petitioner Donald J. Trump after Mr. Trump made similar social media posts and statements about individuals involved in the proceedings. *See, e.g.*, Dkt. No. 105 at 3, *United States v. Trump*, No. 23-257 (D.D.C.) (Oct. 17, 2023) (imposing restrictions after concluding that Mr. Trump’s “statements pose sufficiently grave threats to the integrity of these proceedings that cannot be addressed by alternative means”), *appeal pending*, No. 23-3190 (D.C. Cir.).

<sup>3</sup> Supreme Court did not originally impose its first order on the attorneys because it was “operating under the assumption that such a gag order would be unnecessary upon the attorneys, who are officers of the Court.” Ex. 4 at 1 (Nov. 3, 2023 Order).

rejected these arguments, yet petitioners’ attorneys would not refrain from repeating them in a vexatious and highly unprofessional manner. *See, e.g.*, Ex. 6 at 2421 (Oct. 25, 2023 Tr.); Ex. 7 at 3400-3401 (Nov. 2, 2023 Tr.)

The gag orders are also narrowly tailored to safeguarding the important interests of protecting the safety of court staff and preserving the orderly administration of the trial. *See Fischetti*, 44 A.D.3d at 93-94. For example, the first order does not prohibit the parties (or anyone else) from publicly discussing any aspect of the case, commenting about the trial or the court itself, or even making comments about the judge or the Attorney General—broad leeway of which petitioners have taken extensive advantage. *Cf. New York Times Co. v. Rothwax*, 143 A.D.2d 592 (1st Dep’t 1988) (rejecting order that prohibited attorneys from “in any way discuss[ing] this case or any subject aspect thereof” with the press). The only thing that the order prohibits is comments about members of the court’s staff. Similarly, the second order does not prohibit the attorneys from commenting on any aspect of the proceeding other than the court’s communications with its staff—an exceedingly narrow topic that petitioners’ attorneys have already discussed at length on the record. *See* Ex. 4 at 2 (Nov. 3, 2023 Order).

The gag orders were also the least restrictive means available to Supreme Court. Indeed, before it issued the first gag order, Supreme Court had warned that personal attacks on court staff would not be tolerated, but the warning was disregarded. Ex. 1 at 270 (Oct. 3, 2023 Tr.). The first order then warned the parties that any violation of the order would result in sanction. *Id.* at 271. Nonetheless, Mr. Trump violated the order by failing to remove the offending post from his website for 17 days (*see* Ex. 2 at 1 (Oct. 20, 2023 Order)), and by making additional comments about the principal law clerk to the press, including stating that she is “very partisan” (*see* Ex. 3 at 1 (Oct. 26, 2023 Order)). Supreme Court sanctioned Mr. Trump for these actions. Ex. 2 (Oct. 20, 2023 Order); Ex. 3 (Oct. 26, 2023 Order)). And even after the first order and the sanctions, petitioners’ attorneys, despite being officers of the court, still continued to make comments about the court’s principal law clerk. The court therefore issued the second gag order. Ex. 4 at 1 (Nov. 3, 2023 Order).

Petitioners have not identified any countervailing interest that could overcome the court’s strong interests in protecting the safety of its staff and the integrity of the ongoing trial. The court issued the first gag order on the second day of the trial, over six weeks ago, and the second gag order nearly two weeks ago, and petitioners have remained fully able to litigate the case by cross-examining witnesses, calling their own witnesses, and making various legal arguments and objections. Indeed, petitioners have already repeatedly made, on the record, their meritless arguments about Supreme Court’s principal law clerk and purported bias, and Supreme Court has repeatedly rejected those arguments. *See, e.g.*, Ex. 6 at 2418-2421 (Oct. 25, 2023 Tr.); Ex. 7 at 3396-3404 (Nov. 2, 2023 Tr.); Ex. 4 at 2 (Nov. 3, 2023 Order). Just yesterday, petitioners filed a motion in Supreme Court for a mistrial by

raising many of these same arguments again. *See People v. Trump*, No. 452564/2022, NYSCEF No. 1634 (November 15, 2023). There is therefore no merit to petitioners’ contention that they have been prevented from adequately “making a record” of alleged misconduct. (*See* Petition ¶ 6.) Indeed, Supreme Court expressly noted that petitioners have “had ample opportunity to make their record, and they have at length.” Ex. 4 at 2 (Nov. 3, 2023 Order). Petitioners do not have any First Amendment interest in repeatedly making arguments that have already been rejected by the court and have become vexatious and unprofessional. *Cf. Ultracashmere House, Ltd. v. Kenston Warehousing Corp.*, 166 A.D.2d 386, 387 (1st Dep’t 1990) (court has authority to limit vexatious litigation); *see also Gentile*, 501 U.S. at 1071 (“An attorney may not, by speech or other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal.”).

There is also no basis to stay Supreme Court’s sanctions of Mr. Trump for violating its orders. As an initial matter, as petitioners concede, Mr. Trump has already paid the sanctions, so there is nothing for the Court to stay. *See* Petition ¶ 107 & Ex. I. Even if the sanctions had not been paid yet, petitioners cannot show any irreparable harm, as pure monetary injuries are not typically irreparable harm and as the money could be returned following adjudication of the petition. *See Matter of 36th & Second Tenants Assn.*, 243 A.D.2d 321, 321 (1st Dep’t 1997) (a party seeking a stay must “demonstrate irreparable injury”). Petitioners’ arguments against the sanctions also have no merit. Prior to issuing both sanctions, the Court permitted petitioners to argue why sanctions were not warranted. And before issuing the second sanction, Supreme Court held a hearing and permitted Mr. Trump to testify. *See* Ex. 8 at 2021-2026 (Oct. 20, 2023 Tr.); Ex. 6 at 2412-2415 (Oct. 25, 2024 Tr.). Supreme Court’s sanctions did not violate the Judiciary Law or any other rules. And, in any event, it is well established that “[c]ourts have inherent authority to impose remedial fines for failure to obey their orders.” *Baralan Intl. v. Avant Indus.*, 242 A.D.2d 226, 227 (1st Dep’t 1997). Indeed, this Court affirmed a sanction imposed on Mr. Trump for violating a Supreme Court order in a related proceeding earlier this year. *See People v. Trump*, 213 A.D.3d 503, 504 (1st Dep’t 2023).

Lastly, the equities also weigh dispositively against an interim stay here. Petitioners have not identified any urgency requiring the extraordinary relief of an interim stay. To the contrary, they waited weeks to appeal these orders—the first gag order was issued on October 3 and the second one on November 3. Petitioners inordinate delay itself warrants denying their application.

Moreover, as explained, petitioners will not suffer any immediate harm absent a stay because they have already preserved their objections regarding the court communicating with its law clerk and have no need to raise the same objections again. *See* Ex. 4 at 2 (Nov. 3, 2023 Order). The orders are also exceedingly narrow, allowing petitioners to make statements about the court itself, the judge, the trial, the Attorney General, and so on. There is no plausible harm to petitioners or their

counsel from refraining from *again* making comments or objections about the court's staff.

By contrast, an interim stay of the orders could place Supreme Court's staff at risk of harassment or harm. As Supreme Court explained, given the high-profile nature of the trial, comments like those made by Mr. Trump "can, and in some cases already have, lead to serious physical harm, and worse." Ex. 2 at 2 (Oct. 20, 2023 Order). Indeed, Supreme Court has already been "inundated with hundreds of harassing and threatening phone calls, voicemails, emails, letters, and packages." Ex. 4 at 2. (Nov. 3, 2023 Order).

Dated: New York, New York  
November 16, 2023

LETITIA JAMES  
*Attorney General*  
*State of New York*  
Attorney for Respondent

By:   
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# EXHIBIT 1

**In The Matter Of:**  
*People of the State of New York v.*  
*Donald J. Trump, et al*

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*October 3, 2023*

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| <p>D. Bender - Direct by Mr. Wallace Page 267</p> <p>1 through the document, please.</p> <p>2 Mr. Bender, do you recognize this document?</p> <p>3 A The document --</p> <p>4 Q What's that?</p> <p>5 A Repeat the question, please?</p> <p>6 Q Do you recognize this document?</p> <p>7 A Yes, I do.</p> <p>8 Q What is this document?</p> <p>9 A This is the representation letter for the DJT -- the</p> <p>10 compilation of the personal financial statement of Donald J.</p> <p>11 Trump, as of June 30, 2020.</p> <p>12 MR. WALLACE: If we could go to the bottom of</p> <p>13 this document.</p> <p>14 Q Do you recognize the signature on the left hand side</p> <p>15 of the screen?</p> <p>16 A Yes, I do.</p> <p>17 Q Whose signature is that?</p> <p>18 A It's Allen Weisselberg.</p> <p>19 Q And in what capacity is Mr. Weisselberg signing this</p> <p>20 document?</p> <p>21 A Chief Financial Officer and Trustee of the Donald J.</p> <p>22 Trump Revocable Trust.</p> <p>23 Q And do you recognize the signature on the right hand</p> <p>24 side?</p> <p>25 A Yes, I do.</p>   | <p>D. Bender - Direct by Mr. Wallace Page 269</p> <p>1 A No, I did not.</p> <p>2 Q After the time that you disengaged from the Trump</p> <p>3 engagement, did you have any personal contact with Donald J.</p> <p>4 Trump?</p> <p>5 A No, I did not.</p> <p>6 Q Before seeing him in the courtroom the last two days,</p> <p>7 when was the last time you saw Donald J. Trump in person?</p> <p>8 A It was before Covid. It was December, 2019.</p> <p>9 Q And do you remember in what context that was?</p> <p>10 A Yes. Ms. Trump had invited by son to a</p> <p>11 Christmas party for children, to make ornaments, and I had to</p> <p>12 get some papers signed by Mr. and Ms. Trump.</p> <p>13 Q Since that meeting, did you have any conversations</p> <p>14 with Mr. Trump?</p> <p>15 A No, I have not.</p> <p>16 Q Did you have any conversations with Mr. Trump about</p> <p>17 the decision by Mazars to end the engagement with the Trump</p> <p>18 Organization?</p> <p>19 A No, I did not.</p> <p>20 Q Did you have any in-person meetings with Mr. Trump</p> <p>21 about the decision by Mazars to end to the relationship with the</p> <p>22 Trump Organization?</p> <p>23 A No, I did not.</p> <p>24 MR. WALLACE: Your Honor, we reserve our right to</p> <p>25 re-direct; or cross, if they go beyond the scope of his</p> |
| <p>D. Bender - Direct by Mr. Wallace Page 268</p> <p>1 Q Whose signature is that?</p> <p>2 A That's Donald J. Trump, Junior's signature.</p> <p>3 Q And in what capacity is he signing this document?</p> <p>4 A Executive Vice President of the Trump Organization,</p> <p>5 and Trustee of the Donald J. Trump Revocable Trust.</p> <p>6 MR. WALLACE: Your Honor, we would ask that this</p> <p>7 document be entered into evidence?</p> <p>8 THE COURT: Granted. It's in evidence.</p> <p>9 (Whereupon, Plaintiff's Exhibit 855 was received</p> <p>10 in evidence.)</p> <p>11 Q And Mr. Bender, would Mazars have issued the 2020</p> <p>12 Statement of Financial Condition if Mr. Weisselberg and</p> <p>13 Mr. Trump did not offer these representations?</p> <p>14 A No, we would not have.</p> <p>15 Q Would Mazars have issued the 2020 Statement of</p> <p>16 Financial Condition if it knew that any representations</p> <p>17 contained in this letter were false?</p> <p>18 A No, we would not have.</p> <p>19 Q Mr. Bender, did you work on Statements of Financial</p> <p>20 Condition for Mr. Trump in any later years?</p> <p>21 A No, we did not.</p> <p>22 Q Why not?</p> <p>23 A Mazars disengaged from the Trump Organization.</p> <p>24 Q And did you have any involvement in the decision to</p> <p>25 disengage from the Trump engagement?</p> | <p>D. Bender - Direct by Mr. Wallace Page 270</p> <p>1 testimony. We have no more questions at this time, of</p> <p>2 Mr. Bender.</p> <p>3 THE COURT: Mr. Kise, do you want five minutes to</p> <p>4 cross exam?</p> <p>5 MR. KISE: Do we want to -- just, probably better</p> <p>6 to just take our break.</p> <p>7 THE COURT: I thought you would say that. Give</p> <p>8 me one second.</p> <p>9 (Whereupon, there was a pause in the</p> <p>10 proceedings.)</p> <p>11 THE COURT: Okay. We are going to resume at</p> <p>12 2:15. Have a good lunch, everybody.</p> <p>13 (Whereupon, a recess was taken.)</p> <p>14 * * * * *</p> <p>15 THE COURT: Welcome back, everyone.</p> <p>16 This morning, one of the defendants posted, to a</p> <p>17 social media account, a disparaging, untrue and personally</p> <p>18 identifying post about a member of my staff. Although I</p> <p>19 have since order the post deleted, and apparently it was,</p> <p>20 it was also emailed out to millions of other recipients.</p> <p>21 Personal attacks on members of my court staff are</p> <p>22 unacceptable, inappropriate, and I will not tolerate them,</p> <p>23 under any circumstances. Yesterday, off the record, I</p> <p>24 warned counsel of this, and this was disregarded. My</p> <p>25 warning was disregarded.</p>              |

| Proceedings  | Page 271 | D. Bender - Cross by Mr. Suarez   | Page 273 |
|--|----------|---|----------|
| <p>1 Consider this statement a gag order forbidding</p> <p>2 all parties from posting, emailing, or speaking publicly</p> <p>3 about any members of my staff. Any failure to abide by</p> <p>4 this directive will result in serious sanctions. I hope</p> <p>5 I've been very clear.</p> <p>6 Okay. Let's get Mr. Bender back.</p> <p>7 MR. KISE: While we're waiting, Judge, I'll just</p> <p>8 observe, this will be better for me because I don't have to</p> <p>9 stand up and object when there's a document, since it's</p> <p>10 cross examination.</p> <p>11 THE COURT: Are we up to cross?</p> <p>12 MR. SUAREZ: Your Honor, I'll take the</p> <p>13 opportunity to introduce myself. My name is Jesus Suarez.</p> <p>14 Thank you for admitting me, pro hac vice. I practice with</p> <p>15 Mr. Kise, in Florida.</p> <p>16 THE COURT: Of course. I remember the</p> <p>17 application.</p> <p>18 MR. SUAREZ: I don't speak as nicely as he does.</p> <p>19 THE COURT: Well, almost nobody does, so --</p> <p>20 MR. SUAREZ: Is my mike on? Now my mike is on.</p> <p>21 THE COURT: Is he as good in the office as he is</p> <p>22 in court?</p> <p>23 MR. SUAREZ: He is certainly as charming in the</p> <p>24 office as he is in court, but he almost never picks up</p> <p>25 lunch. I don't know what that's about.</p> |          | <p>1 Q And Mr. Bender, preparing the president's Statements</p> <p>2 of Financial Condition, that was a big job; wasn't it,</p> <p>3 Mr. Bender?</p> <p>4 A It wasn't a big job. It was part of my normal</p> <p>5 engagement.</p> <p>6 Q Part of your normal engagement, I see. In 2011 alone,</p> <p>7 the first Statement of Financial Condition that the Attorney</p> <p>8 General had you talk about, the president had over \$258 million</p> <p>9 in cash, Mr. Bender. You don't think that's a significant</p> <p>10 engagement?</p> <p>11 A No, sir.</p> <p>12 Q Okay. The president had a company with a brand value</p> <p>13 of over \$10-, maybe even \$20 billion, Mr. Bender. That, for</p> <p>14 you, wasn't a significant engagement?</p> <p>15 A No, sir.</p> <p>16 Q Okay. Now, is that because you were the in-house</p> <p>17 accountant at the Trump Organization for over 30 years,</p> <p>18 Mr. Bender?</p> <p>19 A I wasn't the in-house accountant.</p> <p>20 Q Okay. So who was?</p> <p>21 A The in-house accountant?</p> <p>22 Q Yes.</p> <p>23 A Mr. McConney, Mr. Weisselberg. They were the in-house</p> <p>24 accountants.</p> <p>25 Q Mr. McConney. Mr. McConney worked with you at Spahr</p> |          |
| D. Bender - Cross by Mr. Suarez  | Page 272 | D. Bender - Cross by Mr. Suarez   | Page 274 |
| <p>1 That was a joke. Mr. Kise picks up lunch.</p> <p>2 MR. KISE: You are forgetting all the dinners.</p> <p>3 THE COURT: They don't laugh at mine, either, so.</p> <p>4 (Whereupon, the witness resumed the witness</p> <p>5 stand.)</p> <p>6 THE COURT: I'll remind the witness, as usual,</p> <p>7 that he is still under oath.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 THE COURT: Counsel, please proceed.</p> <p>10 CROSS EXAMINATION</p> <p>11 BY MR. BENDER:</p> <p>12 Q Mr. Bender, good afternoon.</p> <p>13 A Good afternoon.</p> <p>14 Q We have met before?</p> <p>15 A Good afternoon.</p> <p>16 THE COURT: That's a question. Have you met</p> <p>17 before?</p> <p>18 Q We have met before. We met in April of 2023, when I</p> <p>19 took your deposition on behalf of the defendants. Do you</p> <p>20 recall, sir?</p> <p>21 A Yes, sir.</p> <p>22 Q Okay. Mr. Bender, you have been up here testifying</p> <p>23 for the last day about the Statements of Financial Condition of</p> <p>24 the 45th President of the United States. Is that correct?</p> <p>25 A Yes, sir.</p>  |          | <p>1 Lacher?</p> <p>2 A Yes, he did.</p> <p>3 Q May have been responsible for giving you the name Doc?</p> <p>4 A He wasn't, but he kept it going.</p> <p>5 Q Did they call you Doc because you were good at</p> <p>6 documented transactions? That was the Doc?</p> <p>7 A No.</p> <p>8 Q It's a cute nickname.</p> <p>9 Was Mr. Weisselberg an accountant?</p> <p>10 A He was an accountant.</p> <p>11 Q Mr. Weisselberg is a CPA?</p> <p>12 A No. He is not a CPA.</p> <p>13 Q Mr. McConney is a CPA?</p> <p>14 A No. Mr. McConney is not a CPA.</p> <p>15 Q Okay. So who was the in-house accountant at the Trump</p> <p>16 Organization, Mr. Bender?</p> <p>17 A Mr. Weisselberg, and his team.</p> <p>18 Q All right. You did work for the Trump Organization</p> <p>19 for over 35 years; did you not, Mr. Bender?</p> <p>20 A Excuse me?</p> <p>21 Q You did work for the president and his company, the</p> <p>22 Trump Organization, for over 35 years?</p> <p>23 A Approximately.</p> <p>24 Q Approximately. In fact, you came to work with the</p> <p>25 Trump Organization through a gentlemen named Mr. Mitnick; didn't</p>   |          |

# EXHIBIT 2

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

PRESENT: HON. ARTHUR F. ENGORONPART 37*Justice*

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

INDEX NO. 452564/2022

Plaintiff,

- v -

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, SEVEN SPRINGS LLC,

Defendants.

On October 3, during a break in this trial, defendant Donald Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk. I spoke to defendants, both on and off the record. Off the record, I ordered Donald Trump to remove the post immediately. Approximately 10 minutes later, Donald Trump represented to me that he had taken down the offending post, and that he would not engage in similar behavior going forward. I then, on the record, imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances." I further made clear that "failure to abide by this directive will result in serious sanctions."

Despite this clear order, last night I learned that the subject offending post was never removed from the website "DonaldJTrump.com," and, in fact, had been on that website for the past 17 days. I understand it was removed late last night, but only in response to an email from this Court.

Today, in open Court, counsel for Donald Trump stated that the violation of the gag order was inadvertent and was an "unfortunate part of the process that is built into the campaign structure." Giving defendant the benefit of the doubt, he still violated the gag order. Conners v Pallozzi, 241 AD2d 719, 719 (3d Dept 1997) ("[c]ontrary to defendants' claim on appeal, a finding of civil contempt does not require a showing that such disobedience was willful").

**OTHER ORDER – NON-MOTION**

Further, whether intentional or the result of mere “campaign structure” negligence, the effect of the post on its subject is unmitigated by how or why it remained on Donald Trump’s website for 17 days. Moreover, a defendant may not evade liability for violating a court order by asserting that the violation was a result of the actions of one or more of the defendant’s employees or agents.

In the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse.

Donald Trump has received ample warning from this Court as to the possible repercussions of violating the gag order. He specifically acknowledged that he understood and would abide by it. Accordingly, issuing yet another warning is no longer appropriate; this Court is way beyond the “warning” stage.

Given defendant’s position that the violation was inadvertent, and given that it is a first time violation, this Court will impose a nominal fine, \$5,000, payable to the New York Lawyers’ Fund for Client Protection, within ten (10) days of the date of this order.

Make no mistake: future violations, whether intentional or unintentional, will subject the violator to far more severe sanctions, which may include, but are not limited to, steeper financial penalties, holding Donald Trump in contempt of court, and possibly imprisoning him pursuant to New York Judiciary Law § 753.



ARTHUR F. ENGORN, JSC

DATE: 10/20/2023

Check One:

☐

Case Disposed

☒

Non-Final Disposition

Check if Appropriate:

☐

Other (Specify \_\_\_\_\_)

# **EXHIBIT 3**

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

PRESENT: HON. ARTHUR F. ENGORONPART 37*Justice*

-----X

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

INDEX NO. 452564/2022

Plaintiff,

- v -

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, SEVEN SPRINGS LLC,

Defendants.

-----X

On October 3, on the record, I imposed on all parties to this action a very limited gag order, “forbidding all parties from posting, emailing, or speaking publicly about any members of my staff,” emphasizing, quite clearly, that “personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances” (emphasis added). I further made clear that “failure to abide by this directive will result in serious sanctions.”

Despite this unambiguous order, last week I learned that Donald Trump had failed to abide by it by not removing, for a total of 17 days, from the website of donaldjtrump.com an untrue, disparaging and personally identifying post about my Principal Law Clerk. Counsel for defendant stated in open court that the violation of the gag order was inadvertent. Taking counsel at his word, I imposed a \$5,000 nominal sanction against Donald Trump for the first-time violation of the gag order.

On October 25, during a break order from the trial, Donald Trump made the following statement to a gaggle of reporters outside the courtroom: “This judge is a very partisan judge with a person who’s very partisan sitting alongside him, perhaps even more partisan than he is.” Quite clearly, defendant was referring, once again, to my Principal Law Clerk, who sits alongside me on the bench.

Defendant’s attorneys offered the explanation that Donald Trump was referring to Michael Cohen, who had been sitting on the witness stand. I then conducted a brief hearing, during

**OTHER ORDER – NON-MOTION**

which Donald Trump testified, under oath that he was referring to Michael Cohen. However, as the trier of fact, I find this testimony rings hollow and untrue. The Oxford English Dictionary defines “alongside” as “close to the side of; next to.” Witnesses do not sit “alongside” the judge, they sit in the witness box, separated from the judge by a low wooden barrier. Further, Donald Trump’s past public statements demonstrate him referring to Michael Cohen directly by his name, or by a derogatory name, but in all circumstances, he is unambiguous in making it known he is referring to Michael Cohen.

Moreover, the language Donald Trump used on October 25 mirrors the language he used in public statements to the press on October 2, wherein he inappropriately and unquestionably spoke about my Principal Law Clerk, stating: “this rogue judge is a trump hater, the only one that hates trump more is his associate up there, this person that works with him, and she’s screaming into his ear.”

Using imprecise language as an excuse to create plausible ambiguity about whether defendant violated this Court’s unequivocal gag order is not a defense; the subject of Donald Trump’s public statement to the press was unmistakably clear. As the trier of fact, I find that Donald Trump was referring to my Principal Law Clerk, and that, as such, he has intentionally violated the gag order.

This is the second violation of this Court’s gag order in the less than one month since this trial commenced. Accordingly, this Court imposed a fine of \$10,000 on defendant Donald Trump, to be paid to the New York Lawyers’ Fund for Client Protection, within thirty (30) days of October 25, 2023.

Further, Donald Trump is ordered to post proof of payment, of this fine and the one imposed on October 10, 2023, to NYSCEF within two days of making such payments.



DATE: 10/26/2023

ARTHUR F. ENGoron, JSC

Check One:

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Case Disposed

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Non-Final Disposition

Check if Appropriate:

☐

Other (Specify \_\_\_\_\_)



# EXHIBIT 4

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

PRESENT: HON. ARTHUR F. ENGORONPART 37*Justice*

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

INDEX NO. 452564/2022

Plaintiff,

- v -

SUPPLEMENTAL LIMITED  
GAG ORDER

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, SEVEN SPRINGS LLC,

Defendants.

On October 3, 2023, after Defendant Donald J. Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk, I imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances." I further made clear that "failure to abide by this directive will result in serious sanctions."

On October 20, 2023, upon learning that Donald J. Trump failed to remove the post from one of his campaign websites, donaldjtrump.com, for a total of 17 days, I imposed a fine of \$5,000.00 against Donald J. Trump for violating the gag order. On October 25, 2023, after conducting a brief hearing, I concluded that Donald J. Trump had intentionally violated my gag order by stating to a gaggle of reporters outside the courtroom the following statement in reference to my Principal Law Clerk: "This judge is a very partisan judge with a person who's very partisan sitting alongside him, perhaps even more partisan than he is," and fined him an additional \$10,000.00.

I imposed the gag order only upon the parties, operating under the assumption that such a gag order would be unnecessary upon the attorneys, who are officers of the Court.

Over the past week, defendants' principal attorneys, namely, Christopher Kise (admitted *pro hac vice*) (Continental PLLC), Clifford Robert (Robert & Robert PLLC) and Alina Habba (Habba

**OTHER ORDER – NON-MOTION**

Madaio & Associates LLP), have made, on the record, repeated, inappropriate remarks about my Principal Law Clerk, falsely accusing her of bias against them and of improperly influencing the ongoing bench trial. Defendants' attorneys have made long speeches alleging that it is improper for a judge to consult with a law clerk during ongoing proceedings, and that the passing of notes from a judge to a law clerk, or vice-versa, constitutes an improper "appearance of impropriety" in this case. These arguments have no basis.

Pursuant to 22 NYCRR § 100.3(B)(6)(6)(c): **"A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges"** (emphasis added). This is precisely the role of a Principal Law Clerk in the New York State Courts.

Moreover, ethics advisory opinions have further emphasized that: "The relationship between a judge and his/her law clerk is one of particular trust and confidence. Although a judge and his/her law clerk are of course not 'partners,' the two engage in the kind of professional interchange that might be found between long-time colleagues in a law firm." Advisory Opinion 07-04, available at <https://www.nycourts.gov/ipjudicialethicsopinions/07-04.htm>.

As I have stated on the record, seemingly to no avail, my law clerks are public servants who are performing their jobs in the manner in which I request. This includes providing legal authority and opinions, as well as responding to questions I pose to them. Plainly, defendants are not entitled to the confidential communications amongst me and my court staff, who are hired specifically to aid me in carrying out my adjudicative responsibilities. Nor are they entitled to continue referencing my staff in the record. Defendants' attorneys have had ample opportunity to make their record, and they have at length. Indeed, I will assist them by repeating here that I will continue to consult with my staff, as is my unfettered right, throughout the remainder of the trial. Accordingly, defendants' record is now fully preserved for the duration of the proceedings. Defendants' attorneys may refer back to this blanket statement in their appeal as they deem appropriate. Defendants may reference my staff as is appropriate to ask about scheduling issues or the management of the trial, which is an integral part of their jobs. What they may *not* do is to make any further statements about internal and confidential communications (be it conversations, note passing, or anything similar) between me and my staff.

Defendants' First Amendment arguments in opposition to the imposition are wholly unpersuasive. This gag order is as narrowly tailored as possible to accomplish its purpose, which is to protect the safety of my staff and promote the orderly progression of this trial. As I have made clear, as the Judge in this case and the trier of fact, the gag order does not apply to me. However, I will not tolerate, under any circumstances, remarks about my court staff. The threat of, and actual, violence resulting from heated political rhetoric is well-documented. Since the commencement of this bench trial, my chambers have been inundated with hundreds of harassing and threatening phone calls, voicemails, emails, letters, and packages. The First Amendment right of defendants and their attorneys to comment on my staff is far and away outweighed by the need to protect them from threats and physical harm.

Thus, for the reasons stated herein, I hereby order that all counsel are prohibited from making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me.

Failure to abide by this directive shall result in serious sanctions.

NOV 03 2023 HON. ARTHUR F. ENGORON



DATE: 11/3/2023

ARTHUR F. ENGORON, JSC

Check One:

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Case Disposed

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Non-Final Disposition

Check if Appropriate:

☐

Other (Specify \_\_\_\_\_)

# **EXHIBIT 5**

# Trump Ordered Not to Comment on Judge's Staff in Fraud Case

The former president attacked Justice Arthur F. Engoron's clerk in a social media post that soon disappeared. He was called to account behind closed doors, then chastised in court as the judge issued a limited "gag order."



By Jonah E. Bromwich

Oct. 3, 2023

**Sign up for the Trump on Trial newsletter.** The latest news and analysis on the trials of Donald Trump in New York, Florida, Georgia and Washington, D.C. [Get it sent to your inbox.](#)

The New York judge presiding over Donald J. Trump's civil fraud trial ordered the former president Tuesday not to attack or even comment on court staff after Mr. Trump posted a message to social media targeting the judge's law clerk.

Mr. Trump went after the clerk, Allison Greenfield, shortly before noon on his Truth Social site. His post was a picture of Ms. Greenfield with Senator Chuck Schumer, the Democratic majority leader. Mr. Trump mocked Ms. Greenfield as "Schumer's girlfriend" and said that the case against him should be dismissed.

Mr. Trump posted his message in the midst of a trial in which he is accused by the New York attorney general, Letitia James, of inflating the value of his assets in his annual financial statements to gain favorable treatment from banks and insurance companies.

The post was taken down during a lunch break, shortly after a closed-door meeting between the parties in the room where Mr. Trump is being tried.

After the break, the judge, Arthur F. Engoron, explained what had happened, though he did not name Ms. Greenfield or Mr. Trump, referring to the former president only as a defendant.

"Personal attacks on members of my court staff are unacceptable, inappropriate and I will not tolerate them under any circumstances," the judge said.

Justice Engoron said that his statement should be considered a "gag order" forbidding any posts, emails or public remarks about members of his staff. He added that serious sanctions would follow were he to be disobeyed. He did not elaborate, but experts said that if the former president violates the order, the judge could fine Mr. Trump as much as \$1,000 — or even hold him in jail for up to 30 days, though the chances of that happening are slim.

The former president's social media posts have become an issue in several cases against him. Federal prosecutors who have accused Mr. Trump of seeking to overturn the 2020 election have asked a judge for a gag order, citing his threatening statements. In a criminal case against Mr. Trump in Manhattan that stems from a 2016 hush money payment to a porn star, the judge has restricted Mr. Trump's ability to post about some evidence.

Mr. Trump has spent much of the first two days of his civil fraud trial attacking Justice Engoron and Ms. James, both Democrats. Last year, Ms. James filed the lawsuit that led to the trial, accusing Mr. Trump of "staggering fraud" by inflating the values of his assets.

In a pretrial ruling, Justice Engoron found that the former president was liable for fraud and dissolved the companies he uses to run his New York properties. What remains to be determined at trial is whether the former president and his fellow defendants are liable for other illegal acts and whether there will be further punishment. Ms. James has asked Justice Engoron to fine the defendants \$250 million.

Mr. Trump has called the judge "deranged" and said that he is biased. His attack on Ms. Greenfield, which also included a link to what appeared to be Ms. Greenfield's Instagram account, pushed the idea of Democratic collusion against him, saying that the case should be dismissed immediately.

In a statement, a spokeswoman for Senator Schumer called the post "ridiculous, absurd, and false."

"Senator Schumer does not know Ms. Greenfield," the statement said. "As is well known, Senator Schumer attends countless events in every corner of the state where tens of thousands of constituents take photos with him, just like this one, which was taken at a stop at an annual brunch in Manhattan."

Justice Engoron is known for keeping a lighthearted atmosphere in his courtroom, cracking jokes and making outdated pop culture references. On Tuesday, after news photographers snapped picture after picture of Mr. Trump, Justice Engoron remarked, “Oh, the wages of fame.”

He also gives unusual latitude to Ms. Greenfield, allowing her the occasional direct question to lawyers. The two have a rapport: Justice Engoron makes jokes and quips and Ms. Greenfield keeps the trains running on time

But the judge spoke gravely Tuesday as he explained the terms of his order. He noted that while Mr. Trump had taken down the Truth Social post about Ms. Greenfield, the former president’s campaign had sent out a copy in an email to millions of people.

The trial resumed soon after the judge’s stern warning with the cross-examination of a retired accountant who used to work with Mr. Trump. And Justice Engoron recovered his usual bearing quickly. Soon, he was correcting one of Mr. Trump’s lawyers on the proper pronunciation of triplex, leading many in the courtroom — Ms. James included — to laugh.

As for Mr. Trump, he sat quietly during the afternoon, occasionally making comments to his lawyers as he watched one aggressively question the accountant, Donald Bender.

After court concluded, he did not respond to questions about the judge’s order but said he would return to the trial Wednesday.

Ben Protess contributed reporting.

**Jonah E. Bromwich** covers criminal justice in New York, with a focus on the Manhattan district attorney’s office, state criminal courts in Manhattan and New York City’s jails. More about Jonah E. Bromwich

# **EXHIBIT 6**



**In The Matter Of:**  
*PEOPLE OF THE STATE OF NEW YORK v.*  
*DONALD J. TRUMP, et al.*

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*MICHAEL COHEN*  
*October 25, 2023*

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*NICOLE C. ROBINSON*

| M. COHEN - PLAINTIFF - CROSS(MS. HABBA)  | Page 2370 | M. Cohen - Plaintiff - cross (Habba)   | Page 2372 |
|--|-----------|--|-----------|
| <p>1 now placing them on YouTube and I also have on YouTube</p> <p>2 Michael Cohen Reacts which is I react to the news of the</p> <p>3 day or something that I find interesting in the news."</p> <p>4 And my question was:</p> <p>5 "What do you find interesting in the news, Mr. Cohen?"</p> <p>6 You said, "Everything."</p> <p>7 And I said, "Let's"-- "Now, let's go one by one. Mea</p> <p>8 Culpa is the podcast, correct?"</p> <p>9 You said, "Correct."</p> <p>10 "What do you discuss on Mea Culpa?"</p> <p>11 Your response, "Politics, sometimes cult deprogramming,</p> <p>12 various different issues."</p> <p>13 "Do you discuss any of the defendants in this case on</p> <p>14 Mea Culpa?"</p> <p>15 Your response was, "I do."</p> <p>16 "Who would that be," I asked.</p> <p>17 "Former President Donald Trump."</p> <p>18 And I asked you how frequently just as I'm asking</p> <p>19 you today.</p> <p>20 "How frequently do you discuss former President Donald</p> <p>21 Trump?"</p> <p>22 Your response said, "Every podcast at some point has</p> <p>23 him included in it."</p> <p>24 Do you see that, Mr. Cohen?</p> <p>25 A I do.</p> |           | <p>1 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>2 session. Please be seated and come to order.</p> <p>3 THE COURT: Ms. Habba, before you take -- the</p> <p>4 lectern has nothing do with you, but sometime prior to</p> <p>5 today, I think it was about a week ago -- no, two or three</p> <p>6 weeks ago --</p> <p>7 (Whereupon, there is a pause in the proceedings.)</p> <p>8 THE COURT: Withdrawn. Let's start from scratch.</p> <p>9 Towards the very start of this trial, defendant</p> <p>10 Donald J. Trump posted on his social media account or one of</p> <p>11 them, I think it was Truth Social, defamatory, disparaging,</p> <p>12 completely untrue statements about the law clerk sitting to</p> <p>13 my right. I asked that they be taken down.</p> <p>14 I was told ten minutes later they were taken down;</p> <p>15 turns out they weren't. They remained online and were</p> <p>16 e-mailed to thousands of people. I don't remember exactly</p> <p>17 how many. They were online for I believe it was 17 days.</p> <p>18 At that point when I was alerted to it, I issued a</p> <p>19 limited gag order and told Counsel, the parties, that I was</p> <p>20 forbidding -- this is a quote, "All parties from posting,</p> <p>21 e-mailing or speaking publicly about any members of my</p> <p>22 staff," unquote.</p> <p>23 I am very protective of my staff, as I believe I</p> <p>24 should be. We all know that we are in what I called at some</p> <p>25 point, an overheated environment. I don't want anybody</p> |           |
|  | Page 2371 | M. Cohen - Plaintiff - cross (Habba)   | Page 2373 |
| <p>1 Q Okay. So when I asked you do you discuss President</p> <p>2 Trump every time you are on your podcast or social media, you</p> <p>3 said -- let me just ask the question.</p> <p>4 Do you recall that you said that every podcast at some</p> <p>5 point has included Donald Trump?</p> <p>6 A I said it, yes.</p> <p>7 Q Thank you.</p> <p>8 MS. HABBA: Your Honor, this might be a good</p> <p>9 stopping point.</p> <p>10 THE COURT: Okay. Just to make it simple, let's</p> <p>11 all be back at 11:45.</p> <p>12 (Whereupon, a recess was taken.)</p> <p>13 (Continued on the next page.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |           | <p>1 killed.</p> <p>2 It was just brought to my attention that the</p> <p>3 Associated Press reported, I wasn't there, this is the</p> <p>4 Associated Press, that Mr. Donald J. Trump just stated the</p> <p>5 following to the press outside the courtroom:</p> <p>6 "This judge is a very partisan judge with a person</p> <p>7 who is very partisan sitting alongside him, perhaps even</p> <p>8 much more partisan than he is."</p> <p>9 Now, it's very easy for the public, for anyone to</p> <p>10 know who that person is.</p> <p>11 MS. HABBA: Your Honor, sorry --</p> <p>12 MR. KISE: Let me -- I hate to interrupt.</p> <p>13 THE COURT: No, don't interrupt me. I'll give you</p> <p>14 plenty of time.</p> <p>15 MR. KISE: Okay. I think you're under a</p> <p>16 misapprehension.</p> <p>17 THE COURT: All right. You'll correct me.</p> <p>18 MR. KISE: Fair enough.</p> <p>19 THE COURT: The last time that this gag order was</p> <p>20 violated by the incorrect statement that the post had been</p> <p>21 taken down it was actually copied to another post but that</p> <p>22 wasn't taken down. I accepted the explanation that it was</p> <p>23 inadvertent, I imposed a minimal fine. This recent</p> <p>24 statement, assuming the Associated Press is correct,</p> <p>25 obviously was intentional.</p>   |           |

|  |           |  |           |
|--|-----------|--|-----------|
| M. Cohen - Plaintiff - cross (Habba)   | Page 2374 | M. Cohen - Plaintiff - cross (Habba)   | Page 2376 |
| <p>1 I stated the last time that a -- any future</p> <p>2 violations would be severely punished.</p> <p>3 I will now give Mr. Kise or anyone else who wants</p> <p>4 to a chance to respond. And, again, I'll ask the question</p> <p>5 why should there not be severe sanctions for this blatant,</p> <p>6 dangerous disobeyal of a court order.</p> <p>7 MR. KISE: Your Honor, my understanding of what he</p> <p>8 said and the way I understood it and I believe Mr. Trump</p> <p>9 will tell you I believe he's talking about Michael Cohen</p> <p>10 sitting next to you who is even more partisan -- I mean, his</p> <p>11 whole commentary out there related to Michael Cohen and his</p> <p>12 credibility as a witness and so forth. We're certainly well</p> <p>13 aware of the order, so that's the way I took the statement</p> <p>14 and I believe that's the way it was intended, but I'll -- I</p> <p>15 don't want -- I don't know any other way to say it but that.</p> <p>16 THE COURT: Well, can we ask Mr. Trump to whom he</p> <p>17 was referring?</p> <p>18 MR. KISE: I have asked him. I mean, if you'd like</p> <p>19 to ask him, I have asked and that is exactly what he said</p> <p>20 because he's tired of listening. I don't want to go on a</p> <p>21 speech. He's tired of listening to what he's hearing and</p> <p>22 it's very partisan and you know the rest.</p> <p>23 THE COURT: Sitting alongside of him. The person</p> <p>24 sitting alongside of me the way I would normally interpret</p> <p>25 those words is my principal law clerk. There is a barrier</p> |           | <p>1 MS. HABBA: Thank you.</p> <p>2 (Whereupon, the witness enters the courtroom and</p> <p>3 approaches the witness stand.)</p> <p>4 CONTINUED CROSS EXAMINATION</p> <p>5 BY MS. HABBA:</p> <p>6 Q Mr. Cohen, you didn't speak to anybody during your</p> <p>7 break, your attorney or anybody from the Attorney General's</p> <p>8 Office, did you?</p> <p>9 A I spoke to my attorneys.</p> <p>10 Q Did you speak to them about your testimony?</p> <p>11 A No.</p> <p>12 Q Did you speak to them about this case?</p> <p>13 A No.</p> <p>14 Q Okay. You understand that you're still under oath,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q Okay. Where we left off I was asking you if you made a</p> <p>18 career out of publicly attacking my client, President Trump.</p> <p>19 Do you recall that?</p> <p>20 A I recall it.</p> <p>21 Q And do you make a career out of publicly attacking</p> <p>22 President Trump?</p> <p>23 A No.</p> <p>24 Q Do you admit that Mea Culpa, your podcast, is</p> <p>25 substantially focused on President Trump?</p>   |           |
| M. Cohen - Plaintiff - cross (Habba)   | Page 2375 | M. Cohen - Plaintiff - cross (Habba)   | Page 2377 |
| <p>1 between me and the witness stand. We know from this trial</p> <p>2 and from our lives that language is sometimes precise and</p> <p>3 sometimes not very precise, sometimes ambiguous and not</p> <p>4 clear. Seemed clear to me, but I understand that could be</p> <p>5 interpreted another way. I'll take the whole matter under</p> <p>6 advisement. Let's not spend anymore time on this. Let's</p> <p>7 move ahead with the trial.</p> <p>8 MS. HABBA: Your Honor, are we on the record?</p> <p>9 THE COURT: If we want to be.</p> <p>10 MS. HABBA: I also want to put on the record</p> <p>11 obviously we have a lot of press and media here. They</p> <p>12 couldn't hear past there. It was brought to my attention</p> <p>13 and evidently the feed -- the tech team just informed me the</p> <p>14 feed was also not being circulated, which obviously as you</p> <p>15 know this is a very heavily press-covered matter and given</p> <p>16 that I'm President Trump's lawyer I do think that's</p> <p>17 unfortunate and unfair.</p> <p>18 THE COURT: And, of course, I'm sorry for that, of</p> <p>19 course, and it's very unfortunate.</p> <p>20 THE COURT OFFICER: Is the judge ready for the</p> <p>21 witness?</p> <p>22 THE COURT: Yes.</p> <p>23 THE COURT OFFICER: Witness entering.</p> <p>24 THE COURT: Okay. Let's continue with the cross</p> <p>25 examination of Michael Cohen.</p>  |           | <p>1 A Can you define "substantially?"</p> <p>2 Q Sure. Earlier we read a transcript of your words where</p> <p>3 you say that you speak about President Donald Trump every</p> <p>4 episode of your podcast; is that correct?</p> <p>5 A I said that.</p> <p>6 Q Okay. Do you speak about Donald Trump every day that</p> <p>7 you have a podcast? Does it always mention President Trump?</p> <p>8 A Yes.</p> <p>9 Q Thank you.</p> <p>10 And you authored two books that discuss and are</p> <p>11 primarily focused on President Trump. Isn't that correct?</p> <p>12 A No.</p> <p>13 Q No? Okay.</p> <p>14 MS. FAHERTY: Is that a question?</p> <p>15 Q Mr. Cohen, is this one of your books?</p> <p>16 A Yes.</p> <p>17 Q I'm holding up "Revenge." Do you read that the cover</p> <p>18 says "Donald Trump" on it? Is his name on the cover?</p> <p>19 A It is.</p> <p>20 Q Thank you.</p> <p>21 Did you write another book called "Disloyal?"</p> <p>22 A I did.</p> <p>23 Q Does that also reference Donald J. Trump on the cover?</p> <p>24 A It does.</p> <p>25 Q And it does that because you make money off President</p> |           |

| M. COHEN - PLAINTIFF - CROSS(MS. HABBA)   | Page 2410 | Proceedings  | Page 2412 |
|---|-----------|--|-----------|
| <p>1 Q Okay, Mr. Cohen.</p> <p>2 MS. HABBA: Can we, please, get a readback of my</p> <p>3 original statement, question?</p> <p>4 THE COURT: It wasn't yes or no, but it was</p> <p>5 either/or.</p> <p>6 THE WITNESS: So, please, allow me to answer.</p> <p>7 MR. HABBA: Let me rephrase my question, Your</p> <p>8 Honor.</p> <p>9 THE COURT: Okay.</p> <p>10 THE WITNESS: Can I not answer the question that's</p> <p>11 in front of me?</p> <p>12 MS. HABBA: Withdrawn.</p> <p>13 THE COURT: Her question is withdrawn.</p> <p>14 MS. HABBA: Question is withdrawn. I'm going to</p> <p>15 rephrase my question.</p> <p>16 Q Mr. Cohen, were you being honest in front of the</p> <p>17 Permanent Select Committee when you testified on February 28,</p> <p>18 2019?</p> <p>19 A No.</p> <p>20 Q So you lied under oath in February of 2019? Is that</p> <p>21 your testimony?</p> <p>22 A Yes.</p> <p>23 Q Mr. Cohen, I just have one more question, maybe two.</p> <p>24 Did you ever ask President Trump to pardon you while he</p> <p>25 was in the White House?</p> |           | <p>1 A F T E R N O O N S E S S I O N</p> <p>2 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>3 session. The Honorable Judge Arthur Engoron presiding.</p> <p>4 Make sure all cell phones are on silent. Laptops and cell</p> <p>5 phones will be permitted, but only to members of the press.</p> <p>6 There is absolutely no recording or photography of any kind</p> <p>7 allowed in the courtroom. Now be seated and come to order.</p> <p>8 THE COURT: Well, at least my microphone is working</p> <p>9 this time.</p> <p>10 I want to resume the discussion about what happened</p> <p>11 this morning when Defendant, Donald J. Trump, apparently</p> <p>12 made a statement to the press referring to "the person next</p> <p>13 to me," and I'll pick up where I left off.</p> <p>14 Mr. Kise I believe said on behalf of Defendant</p> <p>15 Trump, I'll call him, that he was referring to Michael Cohen</p> <p>16 when he said what he said about the "partisan democrat,"</p> <p>17 etc.; is that correct?</p> <p>18 MR. KISE: Yes.</p> <p>19 THE COURT: I'm going to hold a hearing right now</p> <p>20 about that.</p> <p>21 MR. KISE: Okay.</p> <p>22 THE COURT: And I'll have as my -- as the first</p> <p>23 witness, Defendant Donald J. Trump.</p> <p>24 Mr. Trump, would you like to be on the witness</p> <p>25 stand to testify? Come on up.</p> |           |
|   | Page 2411 | Proceedings  | Page 2413 |
| <p>1 A No.</p> <p>2 Q He didn't pardon you, did he, Mr. Cohen?</p> <p>3 A No.</p> <p>4 MS. HABBA: Thank you. I'm done.</p> <p>5 THE COURT: Well, we have about eight or nine more</p> <p>6 minutes. Re-direct?</p> <p>7 MR. ROBERT: Your Honor, I have cross-examination.</p> <p>8 THE COURT: Oh, I'm sorry.</p> <p>9 MR. ROBERT: I think it may make sense to take the</p> <p>10 lunch break now, so we can work out the mechanics of the</p> <p>11 microphone and we can start at 2:15.</p> <p>12 MR. KISE: We may be able to streamline it as well.</p> <p>13 MR. ROBERT: Yes. I will be as brief as I can.</p> <p>14 THE COURT: So I'm breaking until 2:15, everybody.</p> <p>15 Thank you.</p> <p>16 (Whereupon, a luncheon recess was taken.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |           | <p>1 THE COURT OFFICER: Please raise your right hand.</p> <p>2 Do you solemnly swear or affirm any testimony you give will</p> <p>3 be the truth, the whole truth and nothing but the truth?</p> <p>4 THE WITNESS: I do.</p> <p>5 THE COURT OFFICER: You may have a seat.</p> <p>6 Please state your name and either home or business</p> <p>7 address on the record.</p> <p>8 THE WITNESS: Donald John Trump, New York, the</p> <p>9 Trump Organization.</p> <p>10 THE COURT: Mr. Trump, did you say out in the</p> <p>11 hallway this morning, "This judge is a very partisan judge</p> <p>12 with a person who is very partisan sitting alongside of him,</p> <p>13 perhaps even much more partisan than he is?"</p> <p>14 THE WITNESS: Yes.</p> <p>15 THE COURT: To whom were you referring when you</p> <p>16 said "the person sitting alongside of him?"</p> <p>17 THE WITNESS: You and Cohen.</p> <p>18 THE COURT: Are you sure that you didn't mean the</p> <p>19 person on the other side of me, my principal law clerk?</p> <p>20 THE WITNESS: Yes, I am sure.</p> <p>21 THE COURT: Have you in the past referred to her,</p> <p>22 my principal law clerk, as partisan, and/or partisan</p> <p>23 Democrat?</p> <p>24 THE WITNESS: Maybe unfair. I think she is very</p> <p>25 biased against us. I think we've made that clear. We put</p>                         |           |

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| <p>1 up the picture and you didn't want that up. I think they</p> <p>2 got it off her website, however, so we didn't necessarily</p> <p>3 agree, but -- and we did take it down, Your Honor, but we</p> <p>4 have so many different sides and I believe -- and I may be</p> <p>5 wrong on this, but I believe it was one of the political</p> <p>6 groups or one of the pacts that had it up or left it up, but</p> <p>7 I didn't knowingly do that.</p> <p>8 THE COURT: Well, I'm more interested right now in</p> <p>9 -- to whom you were referring as you can see and as everyone</p> <p>10 can see, first of all, my principal law clerk is very close</p> <p>11 to me. In fact, Ms. Habba would refer to the notes back and</p> <p>12 forth and even the conversations, but you and I, we can see</p> <p>13 each other and we're close, but not as close clearly and</p> <p>14 there is a barrier between us. So wouldn't that be at best</p> <p>15 somewhat ambiguous as to whom you are referring? Have you</p> <p>16 also -- have you -- I know I'm doing a compound question</p> <p>17 here.</p> <p>18 MR. KISE: I was going to say am I allowed to</p> <p>19 object to the question?</p> <p>20 THE COURT: Sure, it's a hearing.</p> <p>21 Don't you always refer to Michael Cohen as Michael</p> <p>22 Cohen?</p> <p>23 THE WITNESS: No.</p> <p>24 MR. KISE: Many things, even worse than that.</p> <p>25 MS. HABBA: Yes, Your Honor. I can confirm that,</p> |           | <p>1 don't think any of us want to go that you presupposed some</p> <p>2 ill motive on behalf of the only witness. I think that's a</p> <p>3 dangerous place to go, not just for the sanction, but also</p> <p>4 for the whole trial. I do think there is clear separation</p> <p>5 between the two.</p> <p>6 I mean, the President was talking about the witness</p> <p>7 on the stand. I mean, we can all agree we have different</p> <p>8 views about whether it's next to you or next to you with a</p> <p>9 barrier, but he's next to you. I also think that there is</p> <p>10 -- respectfully, I think there is considerable tension</p> <p>11 caused by at least -- and I'll let Mr. Robert speak to this.</p> <p>12 It is unusual in my experience to have a law secretary, a</p> <p>13 law clerk sit on the bench. I will say that. And so I</p> <p>14 think that may have created some of the confusion.</p> <p>15 Ordinarily, in my experience, law clerks are in,</p> <p>16 you know, not sitting right next to the judge on the bench,</p> <p>17 but in the morning where we have a principal witness on the</p> <p>18 stand who has lied, lied, lied and as I said earlier this</p> <p>19 morning, I'm not going to go back into that speech, but that</p> <p>20 was the focal point of the examination today, that was the</p> <p>21 focal point of the animus today, that was the focal point of</p> <p>22 the questions today from the media today, so I just would</p> <p>23 ask you to reconsider.</p> <p>24 I mean, certainly I don't want to have to file,</p> <p>25 frankly, yet another appeal and I just think if you want to,</p>                |           |
| Proceedings  | Page 2415 | Proceedings  | Page 2417 |
| <p>1 much worse.</p> <p>2 THE WITNESS: Much worse.</p> <p>3 THE COURT: Would anybody else like to question the</p> <p>4 witness, either from the defense or the Attorney General?</p> <p>5 MR. KISE: No, Your Honor.</p> <p>6 MS. HABBA: No, Your Honor.</p> <p>7 THE COURT: The witness is excused. I have no</p> <p>8 further questions. Thank you.</p> <p>9 THE WITNESS: Thank you, sir.</p> <p>10 (Whereupon, the witness is excused from the witness</p> <p>11 stand.)</p> <p>12 THE COURT: Thank you.</p> <p>13 As the trier of fact, I find that the witness is</p> <p>14 not credible; that he was referring to my law clerk, who is</p> <p>15 principal law clerk, who is sitting much closer to me, who</p> <p>16 doesn't have a barrier, whom I believe has been accused by</p> <p>17 the defendant of being partisan or Democrat or partisan</p> <p>18 Democrat. I hereby fine you \$10,000, which is on the low</p> <p>19 side, to be paid within 30 days to the Lawyer's Fund for</p> <p>20 Client Protection.</p> <p>21 Would anybody like to say anything else?</p> <p>22 MR. KISE: Your Honor, I would just object to that.</p> <p>23 I mean, there is one witness on the stand, the only witness</p> <p>24 on the stand. There is no evidence to the contrary other</p> <p>25 than in your mind and I don't want to go to a place where I</p>  |           | <p>1 again, warn the defendant about the responsibilities, but I</p> <p>2 just don't think there is any clear record here.</p> <p>3 And in order to impose sanctions generally the</p> <p>4 record needs to be very clear. And see, that's what just</p> <p>5 happened is kind of what is creating the issue is that like</p> <p>6 I'm talking to you and the notes are being passed to you</p> <p>7 about things and I think from a defendant standpoint, not</p> <p>8 from a lawyer standpoint, from a defendant standpoint, that</p> <p>9 creates an appearance that is uncomfortable and I think that</p> <p>10 has created some of the confusion here.</p> <p>11 But the President has testified that that's what he</p> <p>12 said. That's what I told you before. I think that's a fair</p> <p>13 interpretation of what's said and sanctions are not granted</p> <p>14 when there is gray. Sanctions are reserved for situations</p> <p>15 where it's a very clear situation. Last week, you exercised</p> <p>16 your discretion. I didn't object to that discretion in</p> <p>17 terms of what happened with the website. We explained it, I</p> <p>18 gave you as much detail as the Court asked for and we have</p> <p>19 since complied fully. "We" meaning the clients, have since</p> <p>20 complied fully with the order. So I would just ask that we</p> <p>21 don't create that -- another issue here because I think it</p> <p>22 has further ramifications for the overall proceeding,</p> <p>23 respectfully I do.</p> <p>24 THE COURT: Just in response, I'll just say to me,</p> <p>25 totally separate from the trial. I mean, if you wanted to</p> |           |

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| <p>1 have ramifications you can have ramifications, but I don't.</p> <p>2 Mr. Robert?</p> <p>3 MR. ROBERT: So, Your Honor, I will speak from my</p> <p>4 experience in New York State. It is incredibly unusual and,</p> <p>5 quite frankly, in my experience, I've never seen a situation</p> <p>6 where you're literally trying the case to two judges it</p> <p>7 would appear whereas there are notes that are constantly</p> <p>8 being passed, rulings that it would appear that the Court is</p> <p>9 in consultation with the law secretary. I think it started</p> <p>10 out less frequently. Now I would say it's almost with each</p> <p>11 ruling. There is some concern on part of defendants as a</p> <p>12 result of that.</p> <p>13 I agree with Mr. Kise's statement about opposing</p> <p>14 any imposition of sanctions in this case, but I do think</p> <p>15 this is as good a time as any to express the defendant's</p> <p>16 concern about what would appear to be the problem or the</p> <p>17 challenge that we face and that we feel like we're trying</p> <p>18 the case before two judges and sometimes you appear to be</p> <p>19 leaning in one direction and then you'll either receive a</p> <p>20 note or there will be an eye gesture or a roll of the face</p> <p>21 and something changes and it is of significant concern to</p> <p>22 us, not just during examination of witnesses by us,</p> <p>23 examination by the Attorney General, but also in the general</p> <p>24 presentation of our case here. So I just wanted to put that</p> <p>25 on the record, sir.</p>                       |           | <p>1 is happening from the bench is completely inappropriate and</p> <p>2 should stop. Thank you.</p> <p>3 MR. KISE: Can I just say one more thing, Judge?</p> <p>4 THE COURT: Sure.</p> <p>5 MR. KISE: Thank you. I just want to go back to</p> <p>6 where I began because the record on the sanction relates to</p> <p>7 what happened outside. The testimony you received in the</p> <p>8 courtroom and neither of those present a clear picture of</p> <p>9 the supports and award of sanctions. It's clear that it's</p> <p>10 fully subject to interpretation. I think the speaker has to</p> <p>11 be taken at face value as to what he was talking about and</p> <p>12 the entirety of the conversation related to the testimony as</p> <p>13 it usually does when these press conferences occur. They</p> <p>14 usually relate to what just happened in the courtroom and</p> <p>15 what is happening in the courtroom is Michael Cohen. And so</p> <p>16 that's top of line. Whether you and I or anyone else would</p> <p>17 agree "next to you" means next to you on the left or next to</p> <p>18 you on the right, you know, everyone has a different</p> <p>19 interpretation of it and because of that I would say that</p> <p>20 the President's interpretation is a fair interpretation.</p> <p>21 It's what he meant. He's the speaker. There is nothing in</p> <p>22 the record that would refute that, so I just again would</p> <p>23 urge the Court to reconsider the judgment of sanctions</p> <p>24 because there is just not a clear record here.</p> <p>25 If you are concerned about future violations or a</p> |           |
| Proceedings   | Page 2419 | Proceedings   | Page 2421 |
| <p>1 THE COURT: Okay.</p> <p>2 Ms. Habba?</p> <p>3 MS. HABBA: I'd just like to say as I said this</p> <p>4 morning, I'm going to reiterate something. I, myself, was a</p> <p>5 law clerk. I never sat next to the judge. The judge would</p> <p>6 actually never even allow me to come in front unless to</p> <p>7 watch oral argument, but all discussions about the case were</p> <p>8 when we were researching and deciding what the order can be.</p> <p>9 I've never experienced this and I've been practicing law for</p> <p>10 quite sometime now, unfortunately, for my age, but, Your</p> <p>11 Honor, all due respect, I agree with the sentiments.</p> <p>12 I also think that we have to remember that you made</p> <p>13 your decision on this trial before we walked in regarding</p> <p>14 liability and we've been sitting here like he said -- and,</p> <p>15 frankly, I would like to add that I've been sitting here for</p> <p>16 longer than both my cocounsel. I've been doing this with</p> <p>17 you for now a few years from the Special Proceeding and now</p> <p>18 the trial and I have had issues, numerous issues, and if</p> <p>19 we're going to make a complete record with the treatment</p> <p>20 that I've received from Ms. Greenfield from the bench, it is</p> <p>21 inappropriate. I do not like having eyes rolled, I do not</p> <p>22 like being yelled at by law clerks who did not earn the robe</p> <p>23 and I think this is completely inappropriate.</p> <p>24 And, quite honestly, Your Honor, with this</p> <p>25 sanction, it only furthers my belief that the influence that</p> |           | <p>1 violation then that is within your province to direct</p> <p>2 further the defendant or any of us for that matter, but I</p> <p>3 would say this record does not support any sanction and I</p> <p>4 would urge the Court to reconsider.</p> <p>5 THE COURT: Let me address all the comments about</p> <p>6 my consultations, I'll call them. I make the final</p> <p>7 decisions. I value input from both of my law clerks. Every</p> <p>8 judge does things differently. I don't know whether there</p> <p>9 are other judges in this courtroom or city or country have</p> <p>10 their law clerks sit up on the bench. That's how I do</p> <p>11 things and I make the final decisions.</p> <p>12 I guess I can't consult now, you know, and look</p> <p>13 terrible, wouldn't it? So I won't. I am reconsidering.</p> <p>14 I don't think I said this before, but the idea that</p> <p>15 the statement would refer to the witness, you know, there is</p> <p>16 somebody sitting up there alongside of him, that was a</p> <p>17 partisan Democrat whatever, that doesn't make any sense to</p> <p>18 me.</p> <p>19 MR. KISE: I mean, it -- again, in context, it</p> <p>20 certainly does, to me, given the circumstances and given the</p> <p>21 obvious animus, the admitted animus on the witness stand</p> <p>22 that Mr. Cohen has for my client. So, again, in context, I</p> <p>23 just think it has to be taken that way.</p> <p>24 If Your Honor would like to -- I know you want to</p> <p>25 keep the schedule moving. If you want to take it under</p>   |           |

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| <p>1 advisement further and reconsider, I'll just leave that to</p> <p>2 you, but I just would ask that you take time and reconsider</p> <p>3 this. Thank you.</p> <p>4 THE COURT: I've been thinking about it obviously</p> <p>5 for quite a while now.</p> <p>6 Ms. Habba?</p> <p>7 MS. HABBA: The only factual thing I would like to</p> <p>8 add is the questions that have been out and I have obviously</p> <p>9 standing there have been related to Michael Cohen's</p> <p>10 testimony as well as to political matters. That has been</p> <p>11 the scope of their questions.</p> <p>12 Ms. Greenfield was never in the front of mind or</p> <p>13 even asked about. So for what it's worth, Your Honor, I</p> <p>14 have not heard that, nor would he be responding to that. It</p> <p>15 just doesn't make sense.</p> <p>16 THE COURT: I just need a little technical</p> <p>17 assistance. I want to see the exact quote again. I'm</p> <p>18 quoting in part, "with a person who is very partisan sitting</p> <p>19 alongside of him, perhaps even much more partisan than he</p> <p>20 is." I think the three attorneys that just spoke you've</p> <p>21 made my whole point. That's what he's worried about, that</p> <p>22 there is sitting alongside of me who is consulting with me.</p> <p>23 MR. KISE: Respectfully, I disagree with that. The</p> <p>24 person that's sitting next to you this morning is way more</p> <p>25 partisan than -- well, I'm not saying -- I'm going to leave</p> |           | <p>1 THE COURT: Can you hear him in the back?</p> <p>2 Yes, I think so. The mic's picking up.</p> <p>3 MR. ROBERT: And I'll speak louder.</p> <p>4 So the housekeeping item was Defendant's</p> <p>5 Exhibit 953, which was the December 12, 2018 transcript from</p> <p>6 Judge Pauly and the Defendant's Exhibit 961, which was the</p> <p>7 February 28, 2019 deposition transcript. Just want to make</p> <p>8 sure those are in evidence and if not, to move them in now</p> <p>9 just to make things run smoother and quicker this afternoon.</p> <p>10 MS. FAHERTY: I think, Your Honor, I believe you</p> <p>11 admitted 953 over my objection and the transcript for 961 is</p> <p>12 the transcript for 961. I don't have a basis to object</p> <p>13 here.</p> <p>14 THE COURT: They're both in evidence.</p> <p>15 MR. ROBERT: Thank you.</p> <p>16 THE COURT OFFICER: Witness entering.</p> <p>17 (Whereupon, the witness enters the courtroom and</p> <p>18 approaches the witness stand.)</p> <p>19 THE COURT: I'll remind the witness he's still</p> <p>20 under oath.</p> <p>21 Let's proceed with the questioning.</p> <p>22 CROSS EXAMINATION</p> <p>23 BY MR. ROBERT:</p> <p>24 Q Good afternoon, Mr. Cohen.</p> <p>25 A Good afternoon.</p> |           |
| Proceedings  | Page 2423 | M. Cohen - Plaintiff - cross (Robert)  | Page 2425 |
| <p>1 that alone, but the witness is the one that's obviously</p> <p>2 partisan. That's been the whole point of the cross</p> <p>3 examination. That's been the whole point of the morning is</p> <p>4 that he's partisan. He's a liar, he's biased, he makes</p> <p>5 money off of -- again, you know, you heard my speech.</p> <p>6 That's really the focal point.</p> <p>7 THE COURT: I think that -- I would disagree. The</p> <p>8 focal point was he's dishonest, not that he's some sort of</p> <p>9 partisan democrat.</p> <p>10 MR. KISE: Well, that, too. I'll take that.</p> <p>11 THE COURT: I've reconsidered. The ruling stands.</p> <p>12 You're fined \$10,000. Don't do it again or it will be</p> <p>13 worse. Let's get the witness in.</p> <p>14 MR. ROBERT: Your Honor, just a couple of</p> <p>15 housekeeping things as we're waiting for the witness.</p> <p>16 THE COURT: Sure.</p> <p>17 MR. ROBERT: I just want to make sure Defendant's</p> <p>18 Exhibit 953, which is the December 12, 2018 transcript and</p> <p>19 Defendant's Exhibit 961, which was the February 28, 2019</p> <p>20 transcript are in evidence. I don't --</p> <p>21 MR. KISE: Your microphone.</p> <p>22 MR. ROBERT: Can you hear me?</p> <p>23 MS. HABBA: Yes, but we can't hear him and I'm</p> <p>24 sitting right here.</p> <p>25 MR. ROBERT: Is this better? Can you hear he now?</p>   |           | <p>1 Q You took an oath yesterday before you took the stand,</p> <p>2 did you not?</p> <p>3 A I did.</p> <p>4 Q And you promised to tell the truth, did you not?</p> <p>5 A I did.</p> <p>6 Q And you realize that if you don't tell the truth you're</p> <p>7 committing a lie; correct?</p> <p>8 A Correct.</p> <p>9 Q And that's perjury; correct?</p> <p>10 A Correct.</p> <p>11 Q And you remember in times past you've also taken an</p> <p>12 oath when you've testified; correct?</p> <p>13 A Correct.</p> <p>14 Q And you testified this morning that other times that</p> <p>15 you've testified under oath you've testified falsely; correct?</p> <p>16 A Correct.</p> <p>17 Q And one of those times was in the Southern District of</p> <p>18 New York; correct, sir?</p> <p>19 A Correct.</p> <p>20 Q And that's literally if we can see out the window next</p> <p>21 door; correct?</p> <p>22 A If you say so.</p> <p>23 Q Well, it was in the Southern District of New York;</p> <p>24 correct?</p> <p>25 A Yes.</p>  |           |

# **EXHIBIT 7**



**In The Matter Of:**  
*PEOPLE OF THE STATE OF NEW YORK v.*  
*DONALD J. TRUMP, et al.*

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*DONALD TRUMP, JR., ERIC TRUMP*  
*November 2, 2023*

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*NICOLE C. ROBINSON*

| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3394 | E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3396 |
|--|-----------|--|-----------|
| <p>1 THE COURT: If it is irrelevant, do we have to</p> <p>2 excuse the witness?</p> <p>3 MR. ROBERT: I don't believe so.</p> <p>4 MR. AMER: I don't think it is irrelevant.</p> <p>5 MR. ROBERT: If you want to --</p> <p>6 THE COURT: So do you want to explain the</p> <p>7 relevance?</p> <p>8 MR. AMER: Sure. I think it's relevant to this</p> <p>9 witness' recollection or lack of recollection of a phone</p> <p>10 call that's discussing the subject of something he knows is</p> <p>11 an ongoing Attorney General investigation where the call is</p> <p>12 about the very subject of that investigation where he sat</p> <p>13 for an interview under oath and even invoked his right</p> <p>14 against self-incrimination.</p> <p>15 I think it goes to his credibility as to whether or</p> <p>16 not he recalls this -- this Google Meeting call that was</p> <p>17 less than three years ago, Your Honor. So yes, it is</p> <p>18 relevant to his credibility.</p> <p>19 MR. ROBERT: It is absolutely not. Mr. Trump</p> <p>20 availed himself of a constitutional right that he has</p> <p>21 because at that point, it was the appropriate thing to do.</p> <p>22 The Attorney General then noticed him for a deposition in</p> <p>23 this case. He sat literally for seven hours on the nose</p> <p>24 because I remember at seven hours on the nose, we ended it.</p> <p>25 He answered every question. He did not invoke his</p>   |           | <p>1 he was on the call, but he doesn't remember the call. He</p> <p>2 testified about the call. The fact that he testified before</p> <p>3 is established. The fact that he was subpoenaed and</p> <p>4 testified in the special proceeding in the investigation is</p> <p>5 established. So I don't know what else other than</p> <p>6 sensationalizing is the issue here other than either</p> <p>7 invading the attorney-client privilege, getting into</p> <p>8 subsequent remedial measures, or just harassing the witness.</p> <p>9 I'll wait again to get the note that you have from Ms.</p> <p>10 Greenfield. You may have a question for me. Maybe it is</p> <p>11 about dinner.</p> <p>12 MR. AMER: Can I mention one thing, Your Honor?</p> <p>13 THE COURT: In a second.</p> <p>14 MR. AMER: Okay.</p> <p>15 THE COURT: Mr. Kise, all joking aside, and even I</p> <p>16 like to leaven the proceedings, do not refer to my staff</p> <p>17 again. A person sitting alongside of me is my principal law</p> <p>18 clerk. She's a civil servant. She's doing what I ask her</p> <p>19 to do, which is help me process cases and decide them</p> <p>20 correctly.</p> <p>21 Sometimes I think there may be a bit of misogyny</p> <p>22 the fact that you keep referring to my female principal law</p> <p>23 clerk. If there is any further reference to anyone on my</p> <p>24 staff, and I don't have a big staff, I have about three</p> <p>25 people, I will consider expanding the gag order to include</p> |           |
| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3395 | E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3397 |
| <p>1 constitutional right, which he could have, and this line of</p> <p>2 questioning is improper; but it was dealt with just so that</p> <p>3 at the end of the day, the stories would be that the issue</p> <p>4 that Mr. Trump invoked his Fifth Amendment right two years</p> <p>5 ago is what's going to be the news tonight. It is</p> <p>6 completely irrelevant. It's completely prejudicial and this</p> <p>7 line of questioning needs to stop.</p> <p>8 MR. KISE: One other issue --</p> <p>9 THE COURT: I'll let --</p> <p>10 MR. KISE: -- just to Mr. Amer only has to respond</p> <p>11 once. It is funny he's not interested in the witness being</p> <p>12 excused even though we asked three times. Here is the</p> <p>13 thing. So all of these conversations that we're talking</p> <p>14 about center around a privileged communication. We've been</p> <p>15 through this before. Mr. Garten was on the call, so the</p> <p>16 substance of what was discussed would have been privileged</p> <p>17 anyway and they've continued to invade that privilege.</p> <p>18 Second, anything that was done or decided as a</p> <p>19 result of that ruling they did as part of the subsequent</p> <p>20 remedial measures as a result of the investigation. So</p> <p>21 again, none of this should be really coming in at all. Any</p> <p>22 decision that was made as a result of the awareness of an</p> <p>23 investigation would be subsequent remedial measures and it</p> <p>24 shouldn't be admitted at all.</p> <p>25 The witness has said he has no reason to doubt that</p> |           | <p>1 the attorneys including yourself. That being said, why</p> <p>2 don't we just break for the day because it is almost 4:30.</p> <p>3 I promised Mr. Amer --</p> <p>4 MR. KISE: May I respond to that on the record</p> <p>5 briefly?</p> <p>6 THE COURT: Respond to that and then we will get to</p> <p>7 Mr. Amer.</p> <p>8 MR. KISE: Briefly. I just want to be clear. I</p> <p>9 have my own constitutional First Amendment rights. I have</p> <p>10 the right to represent my client in a courtroom. I have the</p> <p>11 right to observe -- make points in the record about</p> <p>12 observations that I make if there is bias in the proceeding</p> <p>13 that my client perceives, I have to advance that. If there</p> <p>14 is reason for that bias, then that's an issue in the</p> <p>15 proceeding.</p> <p>16 I do often feel -- frequently, I do feel like truly</p> <p>17 that I'm fighting two adversaries and I'm not trying to</p> <p>18 impugn anyone. I'm trying to point out as a lawyer and I</p> <p>19 think it is fair comment as a lawyer. I understand what</p> <p>20 your ruling is, but I have to respond to this because this</p> <p>21 is important.</p> <p>22 So I feel like I'm sitting here and I have to</p> <p>23 respond to Mr. Amer or their arguments. I hear what those</p> <p>24 arguments are and I get to see what those arguments are and</p> <p>25 we get to have our engagement, but then there is someone</p>   |           |

| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3398 | E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)   | Page 3400 |
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| <p>1 else who is sending you information on a very, very frequent</p> <p>2 basis. I think yesterday we counted maybe 30 times, 40</p> <p>3 times and so I don't get to understand what this is and</p> <p>4 those -- and I'm not --</p> <p>5 THE COURT: That's right. You don't --</p> <p>6 MR. KISE: I'm not trying to invade it. All I'm</p> <p>7 trying to say is that gives off -- respectfully that gives</p> <p>8 off the appearance of impropriety and I'm entitled to at</p> <p>9 least make a record about that. It is not impugning anyone.</p> <p>10 It does give off the appearance of impropriety particularly</p> <p>11 if it is an individual or individuals that have a different</p> <p>12 view of the case than we do, have a different political</p> <p>13 background or political view than we do. And so those are</p> <p>14 relevant issues for Your Honor's consideration.</p> <p>15 Again, this is why I brought up on the</p> <p>16 constitutional -- I asked you to reconsider the gag order</p> <p>17 on the constitutional basis because I think it raises much</p> <p>18 more serious issues and I don't really want to go there and</p> <p>19 I'm trying not to; but at some level, I have to at least</p> <p>20 have fair comment on what I think is biased. I made my</p> <p>21 record and I understand Your Honor's ruling.</p> <p>22 MS. HABBA: By the way, I'm happy to make the</p> <p>23 record for Mr. Kise, so that none of my team members are</p> <p>24 accused of misogyny. I assure you that's not the issue. I</p> <p>25 have the same, frankly, issues with the person sitting on</p>                                 |           | <p>1 conference happened and then asking him if he remembers it</p> <p>2 and he's going to say, "No, I don't remember it." He's not</p> <p>3 disagreeing with Mr. Birney, but he doesn't remember it.</p> <p>4 We need to move on. We've been here now all day</p> <p>5 and gotten, frankly, not very far because the questions are</p> <p>6 repetitive, asked and answered, asked and answered. He's</p> <p>7 trying to elicit a response that's not accurate and Mr.</p> <p>8 Trump is not going to give him a response that's not</p> <p>9 accurate. He doesn't remember, he doesn't remember. We</p> <p>10 need to move on. We will be here well into next week if we</p> <p>11 do not move on.</p> <p>12 MR. ROBERT: May I simply say that I join in my</p> <p>13 colleagues' comments.</p> <p>14 MR. AMER: Can I make a few points, Your Honor?</p> <p>15 THE COURT: After me.</p> <p>16 MR. AMER: Okay.</p> <p>17 THE COURT: Mr. Kise and the rest of the team, I</p> <p>18 have an absolute right, absolute, unfettered right to get</p> <p>19 advice from my principal law clerk. It actually goes a</p> <p>20 little broader than that, but at the very least from my</p> <p>21 principal law clerk. There is no First Amendment value that</p> <p>22 I can see referring to her particularly when making things</p> <p>23 up and that's not you, that's somebody else. So weighing</p> <p>24 the First Amendment right against the safety of my staff, we</p> <p>25 know what's going on out there in the world, I think your</p>  |           |
| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)  | Page 3399 | E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)   | Page 3401 |
| <p>1 the bench and I've made that clear on the record. And</p> <p>2 frankly, it is not only distracting, but it is insulting.</p> <p>3 Your Honor, I respect your position, but I do feel</p> <p>4 like Mr. Kise that your position is often what you are given</p> <p>5 in notes and we don't have a clue what is going on; but we</p> <p>6 do know that there is a nod of the head by you when those</p> <p>7 notes are received and then decisions are made.</p> <p>8 We have to make a record of it because, frankly,</p> <p>9 it's become part, and as I have said for three years for me</p> <p>10 personally, a part of the record and I'm not going to stand</p> <p>11 by and allow it to happen. I'm not going to let someone</p> <p>12 who's my teammate be called a misogynist because he is</p> <p>13 pointing out something, frankly, that I can do myself. So I</p> <p>14 will make my own record. It is inappropriate.</p> <p>15 And I do have to say one other thing to Mr. Amer on</p> <p>16 the record and again, I'm happy to let Mr. Trump off the</p> <p>17 stand, but I do think it is inappropriate that he's trying</p> <p>18 to use something and make it appear as impeachment evidence</p> <p>19 and it is not. Mr. Trump has been very consistent. He</p> <p>20 doesn't like his answers, so he keeps trying to impeach my</p> <p>21 witness here and all he's doing is showing things that,</p> <p>22 frankly, show that he is consistent.</p> <p>23 He doesn't have a recollection. If he has a</p> <p>24 recollection now, he'll tell you; but by showing him</p> <p>25 somebody else's transcript and telling him that a video</p> |           | <p>1 points are not well-taken about that.</p> <p>2 In terms of the further -- on the merits here,</p> <p>3 some research has shown that subsequent remedial measures is</p> <p>4 only appropriate in personal injury cases. I will refer to</p> <p>5 Rule 4.19. I believe that's of the -- might be out of the</p> <p>6 benchbook, whatever.</p> <p>7 And now, let's let Mr. Amer, who is very anxious to</p> <p>8 talk, have a few words.</p> <p>9 MR. AMER: Number one, I'm entitled to question the</p> <p>10 witness' -- the credibility of the witness' claim that he</p> <p>11 doesn't recall this video conference meeting that took place</p> <p>12 two years ago. I'm entitled to question that. I don't have</p> <p>13 to accept it and I can elicit evidence that puts in doubt</p> <p>14 his claimed lack of recollection.</p> <p>15 Second, as to Ms. Habba's comment, this witness'</p> <p>16 testimony is great and I'm very happy with it, and so this</p> <p>17 is not about not liking his testimony. I think his</p> <p>18 testimony is extremely favorable to our case and I welcome</p> <p>19 it.</p> <p>20 And third, this witness' investigative interview</p> <p>21 and his invocation of his Fifth Amendment right has been in</p> <p>22 the news for years. If you want to Google it, you'll see</p> <p>23 that there are many articles that count the number of times</p> <p>24 he invoked his right against self-incrimination at that</p> <p>25 interview. So this is not about bringing to light something</p> |           |

| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)   | Page 3402 | E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)   | Page 3404 |
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| <p>1 that has, heretofore, never been shared with the public.</p> <p>2 Those are my comments. I would like to continue</p> <p>3 tomorrow morning and I will just use this point to question</p> <p>4 the credibility of a claim that a call two years ago</p> <p>5 involving an ongoing investigation where he sat for an</p> <p>6 interview is simply not something that is plausible and</p> <p>7 that's my right, and the Court can do with it what it will.</p> <p>8 MR. KISE: Your Honor, then, just briefly on your</p> <p>9 initial point, I do disagree, respectfully. I have to on</p> <p>10 behalf of my client comment on what I see going on in the</p> <p>11 courtroom that I think could prejudice or bias the</p> <p>12 proceeding. I don't -- I don't see what is being passed to</p> <p>13 you, so it is not possible for me to know.</p> <p>14 THE COURT: That's right. You don't see it.</p> <p>15 That's -- I'm going to pound the table -- confidential</p> <p>16 communications from my principal law clerk. Absolute right</p> <p>17 to it and you don't have any right to see it or question it.</p> <p>18 MR. KISE: I certainly have a right to question</p> <p>19 what is perceived by my client as bias. I do have that. I</p> <p>20 have to make that record. I do have that. That's just what</p> <p>21 lawyers do. I mean, I have to make the record. I don't</p> <p>22 think, respectfully, there is any security concern. We're</p> <p>23 talking about observations of what's happening in open</p> <p>24 court.</p> <p>25 Everyone in this room can see what I'm seeing, so</p> |           | <p>1 bias. There have been public commentaries about political</p> <p>2 persuasions of people involved in the proceeding. I don't</p> <p>3 know. So I think it is fair for me to at least make the</p> <p>4 record and comment. It's -- this is the real point.</p> <p>5 When they're speaking, notes don't get passed.</p> <p>6 That's really the issue, is that when the Attorney General</p> <p>7 is making arguments, there aren't notes being passed for you</p> <p>8 to consider. They -- 95 percent. So with us, whenever I'm</p> <p>9 speaking or -- yesterday, I saw it the best because I</p> <p>10 stepped out to go to that hearing beforehand. I'm watching</p> <p>11 on the closed circuit TV and there, you can see what's</p> <p>12 happening differently than you can see here.</p> <p>13 And so every time Mr. Suarez was making a point and</p> <p>14 there was a dialog, there would be notes passed to you.</p> <p>15 When the Attorney General was speaking, there would be no</p> <p>16 notes passed to you. So that's the perception of bias.</p> <p>17 Whether it is real or not, I have to make my record. So</p> <p>18 that's all I'm doing. I'm making my record. I'm doing it</p> <p>19 respectfully. I haven't made any comments outside this</p> <p>20 courtroom about anyone and I don't intend to. So all I'm</p> <p>21 doing is just making a record.</p> <p>22 I understand Your Honor's point and I will abide by</p> <p>23 Your Honor's ruling, but you can't keep lawyers from being</p> <p>24 advocates. I think that that's over the line, respectfully.</p> <p>25 THE COURT: I guess it is time to go. Ten o'clock</p> |           |
| E. TRUMP - PLAINTIFF - DIRECT(MR. AMER)   | Page 3403 |   | Page 3405 |
| <p>1 it is not a security issue. I'm not commenting</p> <p>2 inappropriately. I'm directing my comments to you and only</p> <p>3 to you, but I have to make a record if I perceive that there</p> <p>4 is potential bias.</p> <p>5 THE COURT: How do you perceive there is potential</p> <p>6 bias by notes being passed back and forth? Don't you and</p> <p>7 Mr. Robert talk to each other?</p> <p>8 MR. KISE: Of course, we talk to each other and</p> <p>9 we're advocates, so we are -- yes, we are biased, so it is</p> <p>10 the same principle. It's the same principle. Ongoing</p> <p>11 interaction, you can receive advice, of course, from a law</p> <p>12 secretary. I mean, you are a judge, but ongoing interaction</p> <p>13 in the course of the proceeding where it appears as though</p> <p>14 it is almost co-judging taking place, that's the perception</p> <p>15 from out here.</p> <p>16 That may not be what you're doing. I can't tell</p> <p>17 what you're doing, but that's what the perception is, so we</p> <p>18 have to at least make our record to comment on it and again,</p> <p>19 I understand your ruling. No one is trying to impugn</p> <p>20 anyone.</p> <p>21 I'm not a misogynist. I have -- I'm very happily</p> <p>22 married and I have a 17-year-old daughter, so I really have</p> <p>23 no issues there and so I reject that squarely. My point is</p> <p>24 and I think -- look, all I want to say is what I've said,</p> <p>25 which is we have to make our record. We perceive there is</p>  |           | <p>1 tomorrow morning.</p> <p>2 I direct the witness, witness, please don't talk to</p> <p>3 anybody about your testimony, about this case, or anything</p> <p>4 related to it because you'll still be a witness tomorrow.</p> <p>5 Thank you, everyone.</p> <p>6 (Witness excused.)</p> <p>7 (Whereupon, the trial was adjourned to November 3,</p> <p>8 2023 at 10:00 a.m.)</p>   |           |

# **EXHIBIT 8**

**In The Matter Of:**  
*PEOPLE OF THE STATE OF NEW YORK v.*  
*DONALD J. TRUMP, et al*

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*DAVID MCARDLE, RAY FLORES*  
*October 20, 2023*

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*NICOLE C. ROBINSON*

| Page 2019   | PROCEEDINGS Page 2021   |
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| <p>1 SUPREME COURT OF THE STATE OF NEW YORK<br/>2 COUNTY OF NEW YORK : CIVIL TERM : PART 37<br/>3 ----- X<br/>4 PEOPLE OF THE STATE OF NEW YORK, BY<br/>5 LETITIA JAMES, ATTORNEY GENERAL OF<br/>6 THE STATE OF NEW YORK,<br/>7<br/>8 Plaintiff,<br/>9<br/>10 Index No.<br/>11 -against- 452564/2022<br/>12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;<br/>13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;<br/>14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP<br/>15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;<br/>16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;<br/>17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,<br/>18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,<br/>19 LLC.; AND SEVEN SPRINGS, LLC,<br/>20<br/>21 Defendants. ----- X<br/>22 Supreme Courthouse<br/>23 60 Centre Street<br/>24 New York, New York<br/>25 October 20, 2023</p> <p>BEFORE:<br/>HONORABLE ARTHUR F. ENGORON,<br/>Justice, Supreme Court</p> <p>APPEARANCES:<br/>OFFICE OF THE ATTORNEY GENERAL<br/>OF THE STATE OF NEW YORK - LETITIA JAMES<br/>Attorneys for Plaintiff<br/>28 Liberty Street<br/>New York, New York 10005<br/>BY KEVIN WALLACE, ESQ.<br/>COLLEEN K. FAHERTY, ESQ.<br/>ANDREW AMER, ESQ.<br/>ERIC HAREN, ESQ.<br/>LOUIS M. SOLOMON, ESQ.<br/>MARK H. LADOV, ESQ.<br/>SHERIEF GABER, ESQ.<br/>(Appearances continued on the next page.)</p> | <p>1 THE COURT OFFICER: All rise. Part 37 is now in<br/>2 session. The Honorable Judge Arthur Engoron presiding.<br/>3 Make sure all cellphones are on silent. Laptops and<br/>4 cellphones will be permitted, but only to members of the<br/>5 press. There's absolutely no recording or photography of<br/>6 any kind allowed in the courtroom. Now, be seated and come<br/>7 to order.</p> <p>8 THE COURT: On October 3rd, during a break in this<br/>9 trial, defendant Donald Trump posted to his social media<br/>10 account an untrue, disparaging, and personally identifying<br/>11 post about my principal law clerk. I spoke to defendants,<br/>12 both on and off the record.</p> <p>13 Off the record, I ordered Donald Trump to remove<br/>14 the post immediately. Approximately ten minutes later,<br/>15 Donald Trump represented to me that he had taken down the<br/>16 offending post and that he would not engage in similar<br/>17 behavior going forward. I then, on the record, imposed on<br/>18 all parties to this action a very limited gag order,<br/>19 "forbidding all parties from posting, e-mailing or speaking<br/>20 publicly about any members of my staff," emphasizing, quite<br/>21 clearly, that "personal attacks on members of my court staff<br/>22 are unacceptable, inappropriate, and I will not tolerate<br/>23 them under any circumstances."</p> <p>24 I further made clear that "failure to abide by this<br/>25 directive will result in serious sanctions." Despite this</p> |
| Page 2020   | PROCEEDINGS Page 2022   |
| <p>1<br/>2<br/>3 Attorneys for Defendants<br/>4 101 North Monroe Street - Suite 750<br/>5 Tallahassee, Florida 32302<br/>6 BY: CHRISTOPHER M. KISE, ESQ.<br/>7 BY: LAZARO P. FIELDS, ESQ.<br/>8 JESUS M. SUAREZ, ESQ.<br/>9<br/>10 ROBERT &amp; ROBERT, PLLC<br/>11 Attorneys for Defendant<br/>12 526 RXR Plaza<br/>13 Uniondale, New York 11556<br/>14 BY: CLIFFORD S. ROBERT, ESQ.<br/>15<br/>16 HABBA MADAIO &amp; ASSOCIATES, LLP<br/>17 Attorneys for Defendants<br/>18 1430 US Highway - Suite 240<br/>19 Bedminster, New Jersey 07921<br/>20 BY: ALINA HABBA, ESQ.<br/>21<br/>22 MORIAN LAW, PLLC<br/>23 Attorneys for Defendants<br/>24 60 East 42nd Street - Suite 4600<br/>25 New York, New York 10165<br/>BY: ARMEN MORIAN, ESQ.</p> <p>THE TRUMP ORGANIZATION<br/>725 Fifth Avenue<br/>New York, New York 10022<br/>BY: ALAN G. GARTEN, ESQ.</p> <p>NICOLE C. ROBINSON, CSR<br/>JANELLE LONDON, RMR, CRR</p>   | <p>1 clear order, last night I learned that the subject offending<br/>2 post was never removed from the website "DonaldJTrump.com,"<br/>3 and, in fact, had been on that website for the past 17 days.<br/>4 I understand that it was removed late last night, but only<br/>5 in response to an e-mail from this Court.</p> <p>6 In the current overheated climate, incendiary<br/>7 untruths can, and in some cases already has, led to serious<br/>8 physical harm and worse.</p> <p>9 I will now allow defendants an opportunity to<br/>10 explain why this blatant violation of a gag order should not<br/>11 result in serious sanctions including financial penalties<br/>12 holding Donald Trump in contempt and/or possibly imprisoning<br/>13 him.</p> <p>14 Defendants.<br/>15 MR. KISE: Good morning, Your Honor.<br/>16 THE COURT: Good morning.<br/>17 MR. KISE: Let me begin by saying what I am going<br/>18 to tell you is based on my understanding.<br/>19 THE COURT: Sure.<br/>20 MR. KISE: Because as my staff will clearly affirm,<br/>21 I am the least technological person. I don't even have my<br/>22 corporate e-mail on my phone. So based on my understanding,<br/>23 what has happened here is truly inappropriate. So there<br/>24 were no new postings of any kind after October 3rd. The<br/>25 Truth Social post was taken down as of when President Trump</p>  |

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| <p>1 represented in court, absolutely.</p> <p>2 My understanding of what happens, though, with the</p> <p>3 campaign machinery is as follows. So the Truth Social post,</p> <p>4 and I believe this happens with all social posts, they are</p> <p>5 captured and published on the website as what's called an</p> <p>6 ICYMI e-mail, which is an "In Case You Missed It" e-mail,</p> <p>7 which is what the link was that you sent last night.</p> <p>8 The campaign communication team sends out press</p> <p>9 releases as a matter of course as I understand. They are</p> <p>10 just packaged all and I think -- I will get to that in a</p> <p>11 minute. The press releases take the "truths" and they're</p> <p>12 marked [sic] up in Nucleus, that's the web provider Nucleus,</p> <p>13 and then they're teed up as an FYI e-mail that is sent in</p> <p>14 e-mail via Nucleus to the e-mail, the campaign e-mail list.</p> <p>15 THE COURT: Just let me interrupt one second. Do</p> <p>16 we know how many people are on the campaign e-mails?</p> <p>17 MR. KISE: I do not at this moment, but I can find</p> <p>18 that out for the Court. That's a fair question and the</p> <p>19 Court -- I think you noted this at the hearing because you</p> <p>20 stated, and this was based on our conversations I think off</p> <p>21 record, that I have since ordered the post deleted.</p> <p>22 Apparently, it was, but it was also e-mailed out to</p> <p>23 millions of other recipients. I think that's right. I</p> <p>24 could get you the precise number, but as you observed that</p> <p>25 day, that apparently is what happens, is that Truth and then</p> |           | <p>1 post down and it would be removed.</p> <p>2 So this is just part of the, for lack of a better</p> <p>3 word, unfortunate part of the process that is built into the</p> <p>4 campaign structure as I understand it, that all of his Truth</p> <p>5 posts are wrapped up and sent out by Nucleus and then sent</p> <p>6 out in these "In Case You Missed It" e-mails.</p> <p>7 So it is unfortunate. I certainly apologize on</p> <p>8 behalf of my clients and I can get further assurance from</p> <p>9 the tech people as to the number the e-mail went out to and</p> <p>10 re-confirmation that anything we have control over has been</p> <p>11 completely removed and deleted.</p> <p>12 THE COURT: I take issue with one thing you said,</p> <p>13 which I don't know, but when you said that he -- that</p> <p>14 Donald Trump ordered the post removed in my presence, no, he</p> <p>15 didn't. He went outside --</p> <p>16 MR. KISE: Okay. Okay. That's fair. He may not</p> <p>17 have. I don't remember the chain of events. I know that he</p> <p>18 did. I can assure you that he did and his communications, I</p> <p>19 believe, so there was no intention to evade or circumvent or</p> <p>20 ignore the order. I can assure you that. I just know that</p> <p>21 this is a very large machine and this is how it is. One of</p> <p>22 the reasons, frankly, I don't have social media because</p> <p>23 these things get away from you very, very rapidly, quite</p> <p>24 honestly, but that's it. It has been taken down and we</p> <p>25 don't have any other -- there were no subsequent postings,</p> |           |
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| <p>1 it is packaged up by Nucleus and it is just sent out as an</p> <p>2 e-mail. Those e-mails cannot be recalled. The Truth post</p> <p>3 was taken down. Nothing further has been posted on Truth.</p> <p>4 President Trump has not made any statements of any kind</p> <p>5 about court staff, has abided by the order completely; but</p> <p>6 it appears no one also took down the ICYMI, In Case You</p> <p>7 Missed It, link that's in the campaign website in the back</p> <p>8 pages.</p> <p>9 So, again, this is my understanding, so bear with</p> <p>10 me, if you go to the website, there's a link for news and</p> <p>11 then you go to the link for news, that brings up other</p> <p>12 things and then part of that is a whole bunch of these</p> <p>13 ICYMI, In Case You Missed It links. So that link was</p> <p>14 not -- it appears was not taken down from the campaign</p> <p>15 website. The link has now been taken down as you observed</p> <p>16 and there is nothing else out there and I will get further</p> <p>17 confirmation of this, but I had confirmation last night and</p> <p>18 again this morning that we have no control over what is</p> <p>19 being published.</p> <p>20 So truly, this appears to be inadvertent between</p> <p>21 the campaign Nucleus and it is a very large operation. I'm</p> <p>22 not offering that by way of excuse. I'm just explaining the</p> <p>23 circumstances. It is clear that President Trump directed</p> <p>24 that this be done. I mean, he did it in my presence. He</p> <p>25 did it in your presence. He affirmed that he was taking the</p>   |           | <p>1 meaning that since the order was entered, my understanding</p> <p>2 is that there was nothing -- no further comment, no</p> <p>3 further -- it was all part of this process that sent it out</p> <p>4 and left it on the website in the back pages.</p> <p>5 THE COURT: Thank you.</p> <p>6 Mr. Robert, anything to add?</p> <p>7 MR. ROBERT: On behalf of my clients, I join in</p> <p>8 what Mr. Kise said. Thank you, your Honor.</p> <p>9 THE COURT: Plaintiff, anything to -- any</p> <p>10 comments?</p> <p>11 MR. WALLACE: Nothing from the Attorney General,</p> <p>12 Your Honor.</p> <p>13 THE COURT: I'll take this under advisement, but I</p> <p>14 want to make clear that Donald Trump is still responsible</p> <p>15 for the large machine even if it is a large machine.</p> <p>16 All right. We have some scheduling issues. I'm</p> <p>17 turning the microphone over to my principal law clerk.</p> <p>18 MS. GREENFIELD: We received, I know the parties</p> <p>19 are aware, we received a motion that was submitted last</p> <p>20 night by counsel for Ivanka Trump and I wanted to talk</p> <p>21 briefly to the parties about a briefing schedule for that.</p> <p>22 We'd like to obviously escalate that as quickly as possible</p> <p>23 and our intent as for right now is to try to schedule oral</p> <p>24 argument on that on a trial day, but to begin at 9:30 so as</p> <p>25 to not waste witness testimony.</p>  |           |