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

| | |
|---|---|
| PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,<br><br>Plaintiff,<br><br>vs.<br><br>DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,<br><br>Defendants. | Index No. 452564/2022 |

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

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## Cases

**Statutes**

**Rules**



**Treastises**

Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively "Defendants") submit this Memorandum of Law in Support of Non-Party Ivanka Trump's ("Ms. Trump") Motion to Quash the Trial Subpoenas *Ad Testificandum* ("Subpoenas") (NYSCEF 1565) issued by Plaintiff, the New York Attorney General ("NYAG" or "Plaintiff"), to Non-Party corporate entities TTT Consulting LLC ("TTT"), Ivanka OPO LLC ("OPO"), and 502 Park Project LLC ("502 Park"), which should be quashed under CPLR 2304 for the reasons stated in Ms. Trump's Memorandum of Law In Support of Her Motion to Quash the Trial Subpoenas (NYSCEF 1566) and the additional reasons stated herein.

## PRELIMINARY STATEMENT

The NYAG has not articulated why it needs trial testimony from the specific entities it subpoenaed, let alone via a non-party, non-domiciliary designee of the NYAG's choosing. Nor can Defendants discern a valid reason for trial testimony from these specific entities even after weeks of trial and years of pretrial proceedings.

As an initial matter, the NYAG simply seeks herein to continue to harass and burden President Trump's daughter long after the First Department mandated she be dismissed from the case. As the First Department recognized, Ms. Trump should never have been named in this action. Indeed, the First Department found that the NYAG's allegations did not support *any* timely claims against Ms. Trump. Frustrated with this result, the NYAG seeks to use facially invalid subpoenas to and drag Ms. Trump back into the case in the middle of trial. Moreover, while the NYAG had nearly one year, including several months after the First Department decision, to depose Ms.

Trump, or to seek a *de bene esse* deposition, she made no attempt to do so. Now, the NYAG screams "fire" in a crowded theater, insisting Ms. Trump's testimony is somehow essential to the case in media res. The NYAG's argument is belied by her dilatory tactics. There is simply no defensible reason why she has waited until *after* she certified her case was trial-ready, and *after* trial commenced, to secure testimony she now claims her case depends upon. Having ignored this purportedly essential testimony during the entire course of the case, the NYAG nonetheless attempts to conjure up a way to needlessly haul Ms. Trump into a highly publicized trial for the obvious purpose of harassment of both Ms. Trump and her father. The law simply does not countenance such bad faith and gamesmanship.

In any event, the NYAG has not presented to the Court any legal authority that provides a Court in this State can require a non-party individual who is not a New York domiciliary to appear live at trial in New York as the representative of a non-party entity, because there is no authority. Indeed, the opposite is true—not even the Court itself could issue a valid subpoena to Ms. Trump because it has no jurisdiction over her. *See* N.Y. Jud. L. §2-B ("A court of record has power to issue a subpoena requiring the attendance of a person *found in the state* to testify in a cause pending in that court, subject, however, to the limitations prescribed by law with respect to the portion of the state in which the process of the local court of record may be served.") (emphasis added). The NYAG could have sought Ms. Trump's testimony when she was still a party to the case, or, at minimum, before the NYAG certified that all discovery proceedings were complete and that the case was ready for trial. The NYAG failed to do so. She cannot now be given special dispensation to ignore both jurisdictional requirements and procedural rules to cure her pre-trial failings under the guise of improperly served subpoenas addressed to non-party entities.

## ARGUMENT

As an initial matter, Defendants agree that the Subpoenas should be quashed for the reasons Ms. Trump put forth in her motion, *see* NYSCEF 1566, all of which are valid. Defendants will not fully reiterate those points here. Specifically, it is plain for the reasons stated in Ms. Trump's motion that the NYAG failed to properly serve the Subpoenas individually on Ms. Trump as required by the CPLR and that the NYAG lacks the authority to compel Ms. Trump to appear at trial because New York courts do not have personal jurisdiction over her as she is not a party, not under the control of a party, and not domiciled in New York. *See* NYSCEF 1566. Defendants will, however, briefly elaborate on these points in response to the NYAG's attempt to refute to Ms. Trump's well-reasoned arguments. *See* P's Mem. of L. In Opp. to Ivanka Trump's Mot. to Quash at 2, Index No. 452564/2022 (Oct. 25, 2023) ("Opp."). Defendants write separately to further emphasize that the Non-Party Entities are fully entitled—and have offered—to designate their own witness to testify on their behalf at trial and to explain that these Subpoenas should be quashed for the independent reasons that they seek information from entities wholly irrelevant to the remaining issues at trial and are impermissibly overbroad. At bottom, the NYAG has failed to explain why it is necessary to compel testimony from these non-party corporate entities, and the Defendants, as parties to this case, can discern no legitimate explanation for NYAG doing so.

### I. THE NYAG LACKS THE AUTHORITY TO COMPEL MS. TRUMP'S ATTENDANCE AT TRIAL BECAUSE THIS COURT DOES NOT HAVE JURISDICTION OVER MS. TRUMP AND THE NYAG FAILED TO PROPERLY SERVE MS. TRUMP.

In her opposition, Plaintiff attempts to muddy the waters surrounding her clear failure to properly serve Ms. Trump or establish jurisdiction over her. *See* Opp. at 2. But the NYAG's spaghetti on the wall arguments all fail.

First, as set forth more fully in Ms. Trump's motion, service upon a limited liability company's registered agent does not constitute service on Ms. Trump in her personal capacity, and service under CPLR 2303-a is not permitted because Ms. Trump is incontestably not a party to this action in the light of the First Department's decision. *Id.* "A nonparty, nondomiciliary witness is clearly not subject to the subpoena power of the court." *Genger v. Genger*, 50 Misc. 3d 361, 365 (Sup. Ct. N.Y. Cty. 2015); *see also* N.Y. Jud. L. §2-B.

The NYAG's principal rejoinder is that Ms. Trump is "subject to this Court's jurisdiction" by virtue of her involvement in the ongoing special proceeding and did not contest personal jurisdiction when she *was* a party. Neither those contentions nor the NYAG's absurd argument that Ms. Trump "avail[s] herself of New York for professional and social activities" confers jurisdiction. *See Zhongzhi Hi-Tech Overseas Investment Ltd. v. Shi*, 2023 WL 4561812, at * 4 (S.D.N.Y. July 17, 2023) ("A party's consent to jurisdiction in one case [ ] extends to that case alone.").[1]. This Court has already entertained the NYAG's attempts to engage in mid-trial discovery to purportedly cure defects in the production process, notwithstanding that (1) the NYAG filed note of issue in July certifying that all disclosure was complete and that the case was ready for trial and (2) well-established, blackletter law prohibits any post-note discovery proceedings absent unusual or unanticipated circumstances. *See* 22 N.Y.C.R.R. § 202.21; *Melcher v. City of New York*, 38 A.D.3d 376, 377 (1st Dep't 2007) (plaintiff "waived her right to further disclosure when she filed her note of issue and certificate of readiness, which stated both that disclosure was complete and that there were no outstanding disclosure requests"). This Court should not countenance the NYAG's attempt to ignore bedrock principles of jurisdiction and, yet

[1] The First Department in *Coutts Bank (Switzerland) v. Anatian*, cited by the NYAG, expressly stated that "actively litigating a related Federal action" was "not determinative." 275 A.D.2d 609 (1st Dep't 2000).

again, the rulings of an appellate tribunal. The Court is not empowered now to re-open a door that the First Department has closed by hauling Ms. Trump in to testify, with no limitations on the substance of her testimony, upon the truism that Defendants can make evidentiary objections at trial and the expectation that this Court is capable of separating the wheat from the chaff.

Second, the NYAG claims that serving the Subpoenas on the three non-party entities in New York constituted effective service on Ms. Trump because she was "properly served personally at her actual place of business, namely the address of Trump Tower, 725 5th Avenue, New York, NY." Opp. at 4. Not so. Under CPLR 308(2), a natural person may be personally served at his or her "actual place of business," but that phrase has a specific legal meaning. New York law is explicitly clear that "[a] person's 'actual place of business' should be *where that person is regularly physically present* and regularly transacts business." 2 N.Y. Civ. Prac.: CPLR P 308.09 (2023) (emphasis added); *Selmani v. City of New York*, 100 A.D.3d 861 (2d Dep't 2012) ("A person's 'actual place of business' must be where the person is physically present with regularity, and that person must be shown to regularly transact business at that location.") (citations omitted). There is simply zero evidence in the record that Ms. Trump is regularly physically present at any of the locations where these Subpoenas were served: Trump Tower, 725 5th Avenue, New York, NY; 80 State Street, Albany, NY 12207; or 28 Liberty Street, New York, NY. Thus, even if Ms. Trump does *regularly* transact business at those locations—which there likewise is no evidence of—service at those locations simply cannot constitute proper personal service on Ms. Trump as an individual because she is not regularly physically present at any of them. *See* 2 N.Y. Civ. Prac.: CPLR P 308.09 (2023); *Selmani*, 100 A.D.3d at 861; *Balendran v. North Shore Med. Grp., P.C.*, 251 A.D.2d 522 (2d Dep't 1998).

Third, the NYAG mistakenly relies on *Standard Fruit & S. S. Co. v. Waterfront Commission* for the proposition that "entities doing business in New York may be required to produce their out-of-state personnel in judicial proceedings in this State." 43 N.Y.2d 11 (1977); Opp. at 4. But *Standard Fruit* involved very different circumstances. In that matter, the subpoenas were issued to an entity, Standard Fruit, through whom the Waterfront Commission of New York Harbor truly sought to obtain information relating to the entity. *Standard Fruit,* 43 N.Y.2d at 16. Standard Fruit then produced a witness who was unable to testify regarding the relevant facts. *Id.* And it was only then, that the court ordered Standard Fruit to produce a more knowledgeable witness. *Id.* And, even then, it did not require a specific individual, but instead gave Standard Fruit the option of producing two different individuals. *Id.* As discussed below, *infra* Part.II–III, the NYAG does not truly seek information from these non-party entities and she has made no showing that Eric Trump, the non-parties' designated witness, is not sufficiently knowledgeable to testify on the entites' behalf in this case.

Moreover, *Standard Fruit* has since been further clarified by this Court in *Amelius v. Grand Imperial LLC*, 64 N.Y.S.3d 855 (Sup. Ct. N.Y. Cnty. 2017). In *Amelius*, the Court explained that New York City's attempt to rely on *Standard Fruit* "for the proposition that a lesser standard of jurisdiction is required for subpoenas" was misplaced; instead, it explained it was necessary to distinguish "subpoenas issued in the context of investigations into whether the foreign corporations were, themselves, engaged in illegal conduct" and where a movant is "neither a party to this action nor under investigation for potential legal violations." 64 N.Y.S.3d at 866 n.4. Here, none of the entities the NYAG served the Subpoenas on are parties to this action nor are they "under investigation for potential legal violations." *Id.* Thus, Standard Fruit, has no application to the circumstances here and in no way shows that service on the non-party entities was effective service

on Ms. Trump or that service somehow requires the entities to compel Ms. Trump's attendance as a witness on their behalf.

Fourth, retreating, the NYAG argues that Ms. Trump somehow waived any objection to personal jurisdiction, but this is without merit. *See* Opp. at 8. The NYAG attempts to use the First Department's decision in *Coutts Bank (Switzerland) Ltd. v. Anatian*, 275 A.D.2d 609 (1st Dep't 2000) to argue that Ms. Trump should be subject to jurisdiction in this matter because she "did not contest" jurisdiction in the NYAG's investigatory action. Opp. at 8. But the movant in *Coutts* was very differently situated than Ms. Trump. In *Coutts*, the movant was a judgment-debtor who had fled the jurisdiction immediately after the judgment was entered and had initiated a parallel action against the judgment-creditor in New York. Ms. Trump, on the other hand, is not a plaintiff (or counterclaimant) in New York, left New York years before this action was commenced, and is not a judgment-debtor who fled the state to avoid jurisdiction. Indeed, the most important factor in *Coutts* was that it was "not disputed that the court has obtained and continues to exercise personal jurisdiction over the judgment-debtor." 275 A.D.2d at 611. Indeed, the *Coutts* Court specifically distinguished cases where a a movant was involuntarily involved in an action as a defendant, stating: "The judgment-debtor, citing *Rockwood Natl. Corp. v Peat, Marwick, Mitchell & Co.* (63 A.D.2d 978), argues that CPLR 303 does not apply to actions commenced in the Federal courts of this State. In *Rockwood*, however, the party sought to be served had not commenced the parallel Federal action but had been joined as a defendant and CPLR 303 obviously had no application." 275 A.D.2d at 613. Thus, *Coutts* has no applicability to Ms. Trump's circumstances in this case and in no way shows that she somehow waived her well-made personal jurisdiction arguments.

Fifth, the NYAG's argument that Ms. Trump consented to this Court's jurisdiction through her participation in the special proceedings, Opp. at 8, is likewise without merit. First, the NYAG

again entirely misrepresents the First Department's decision in *Coutts Bank*. There, the court explicitly held that due to the "unique circumstances presented" by the case, including a "court order" for issuance of the relevant subpoena, the court was affirming the trial court's decision to deny a motion to quash a subpoena on a judgment debtor in post-judgment proceedings. 275 A.D.2d at 609. The First Department noted that the subpoenaed party was "actively litigating a related Federal action in the United States District Court located within" New York, but clearly stated that such fact was "*not determinative*" of its decision. *Id.* (emphasis added). The case is also highly distinguishable. These are not post-judgment proceedings, and Ms. Trump is not a judgment debtor. The NYAG has not cited a single case suggesting that consent in one case constitutes consent in another. Moreover, the NYAG represents that the special proceedings are "ongoing," Opp. at 8. But if it is enough for the NYAG to assert those proceedings are "ongoing" to establish personal jurisdiction in this case, the NYAG could continue to make that assertion indefinitely and maintain personal jurisdiction over all participants. That is not and cannot be the law. *See Zhongzhi Hi-Tech Overseas Inv. Ltd. v. Shi*, 2023 WL 4561812, at *4 (applying New York law) ("[A] party's consent to jurisdiction in one case [ ] extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available.") (citations omitted).

## II. THE NYAG CANNOT COMPEL MS. TRUMP'S ATTENDANCE AT TRIAL BECAUSE NON-PARTY ENTITIES ARE ENTITLED TO DESIGNATE THEIR OWN WITNESSES—AND HAVE DONE SO HERE.

New York law is clear that subpoenaed entities have the right to designate witnesses of their own choosing to testify on the entities' behalf. *See, e.g., Barone v. A&P,* 260 A.D.2d 417, 417–18 (2d Dep't 1999); 4A N.Y. Prac., Com. Litig. in N.Y. State Courts § 46:5 (5th ed.); 2A

Weinstein, Korn & Miller, New York Civil Practice ¶¶ 2305.04, 2305.05; *see also* Unif. Civ. Rules For The Supreme Court & The County Court § 202.20-d. Any motion seeking to compel the subpoenaed entity to produce a witness different from the one it designates should be denied so long as the entity's witness is "knowledgeable" and able to "testif[y] with respect to the underlying incident." *Barone*, 260 A.D.2d at 417–18. Accordingly, it is the plaintiff's duty to show that a subpoenaed entity's designated witness has "insufficient knowledge or [is] otherwise inadequate and that [its own] proposed witness[ ] possesse[s] information which [i]s material and necessary to the prosecution of the case." *Id.*; *Gasparre v. Northern Westchester Hosp. Ctr. Found., Inc.,* No. 55435/11, 2013 N.Y. Misc. LEXIS 4779 at *5 (N.Y. Sup. Ct. Westchester Cnty. Mar. 4, 2013).

Here, the NYAG served the Subpoenas on the three non-party entities, TTT, 502 Park, and OPO, each of which has the right to designate a witness of its own choosing to testify on its behalf. TTT and OPO have done precisely that.[2] *See* NYSCEF 1566 at Ex.D. On September 22, counsel for Ms. Trump communicated to the NYAG that "Eric Trump is a manager of TTT Consulting LLC and an officer of OPO Hotel Manager Member Corp." who "will testify on behalf of TTT Consulting LLC and Ivanka OPO LLC." NYSCEF 1566 at Ex.D. The NYAG's response is that she is "not seeking a corporate representative" and, without support, that Eric Trump simply is "not an adequate substitute" for her real target, Ms. Trump. NYSCEF 1566 at Ex.D. This is not an adequate explanation to warrant casting aside the entities' chosen witness and harassing a non-party.

[2] Defendants note that 502 Park Project LLC has not designated a witness to testify on its behalf for the reasons stated in Ms. Trump's motion, namely that neither Ms. Trump, 502 Park, or the NYAG have been able to substantiate any claim of a sufficient nexus between Ms. Trump and that entity. *See* NYSCEF 1566 at 5–6, Ex.D.

For one, the NYAG's unsubstantiated statement that Eric Trump is "not an adequate substitute" does nothing to explain how he is not "knowledgeable" and able to "testif[y] with respect to the underlying incident," *Barone*, 260 A.D.2d at 417–18, and that assertion belies the NYAG's own past statements. Indeed, when bringing this action, ***the NYAG herself alleged*** that Eric Trump was "responsible for all aspects of management and operation of the Trump Organization, including new project acquisition, development and construction," and that he "took over management of the Trump Organization from Mr. Trump in 2017." NYSCEF 1. Given same, it is baffling for the NYAG to now claim that Eric Trump is somehow incapable of testifying about the matters herein at issue. Moreover, this Court should not permit the NYAG to force live testimony from Ms. Trump, a non-party non-domiciliary, until the NYAG has first examined Eric Trump and determined whether he is capable of testifying on the entities' behalf, thereby making sure it is absolutely necessary to seek Ms. Trump's attendance at trial—especially given the serious jurisdictional concerns noted in Ms. Trump's motion. *See* NYSCEF 1566.

The NYAG's half-hearted attempt at explaining why her own proposed corporate designee, Ms. Trump, "possesse[s] information which [i]s material and necessary to the prosecution of the case," *Barone*, 260 A.D.2d at 417–18, is similarly inadequate. According to the NYAG, Ms. Trump's testimony, specifically, is necessary because she has "substantial knowledge from her time as an officer of TTT and Ivanka OPO that is related to the transactions, licensing agreements, and loans at the heart of this case." NYSCEF 1566 at Ex.D. But this assertion simply is not true and utterly contradicts the record. Ms. Trump is no longer a party to this action, and "all claims against her [were] dismissed as untimely." *People v. Trump*, 217 A.D.3d 609, 612 (1st Dep't 2023). As the NYAG herself has now recognized, regarding "*all the loans*" at issue in this action, Ms. Trump "engaged in conduct that fell altogether outside of the applicable limitations period" and

has "not prepared, submitted, or certified any of the SFCs at issue[.]" NYSCEF 1442 at 25 (emphasis added). Ms. Trump cannot therefore possibly "possess[ ] information which [i]s *material and necessary* to the prosecution of the case." *Barone*, 260 A.D.2d at 417–18 (emphasis added). Thus, even if the NYAG had adequately explained why Eric Trump does not possess sufficient knowledge to testify on the entities' behalf—which she has not—the record and the NYAG's own filings show that Ms. Trump's testimony on behalf of these non-party entities is neither material nor necessary to the NYAG's prosecution of the remaining issues at trial.

The NYAG, yet again evincing its disregard for lawful orders of the First Department, now claims that "[a]lthough the Appellate Division dismissed claims against Ms. Trump on statute of limitations grounds, this Court has repeatedly noted that the statute of limitations applies against *claims* and not evidence, and therefore has no bearing on the enforcement of this trial subpoena." (emphasis in original). Thus, by the NYAG's token, Ms. Trump's dismissal from this action is a mere formality because any "evidence" it wishes to introduce, regardless of whether it bears upon a claim within the statute of limitations, may be introduced. Further, according to the NYAG's unsupported and self-serving assertions, Ms. Trump is "financially and professional intertwined" with the Trump Organization. But the First Department unequivocally concluded that Ms. Trump was "no longer within the agreement's definition of the 'Trump Organization' by the time the tolling agreement was executed." NYSCEF 641.

## III. THE NYAG'S SUBPOENAS ARE OVERLY BROAD AND SEEK INFORMATION IRRELEVANT TO THE REMAINING ISSUES AT TRIAL.

In addition to being procedurally defective on service and jurisdictional grounds, *see* NYSCEF 1566, the Subpoenas should be quashed for the independent reason that they are substantively improper. *See Brunswick Hosp. Ctr., Inc. v. Hynes*, 52 N.Y.2d 333, 339 (1981) ("A

motion to quash . . . is the proper and exclusive vehicle to challenge the validity of a subpoena or the jurisdiction of the issuing authority.") (citations omitted).

A motion to quash should be granted "where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry." *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 331–32 (1988) (internal quotations and citations omitted). When issuing a trial subpoena, "the subpoenaing party must first sufficiently state the circumstances or reasons underlying the subpoena (either on the face of the subpoena itself or in a notice accompanying it)." *Kapon v. Koch*, 23 N.Y.3d 32, 34 (2014) (citations omitted). Only if this requirement is met, does it fall to the challenger to "establish either that the discovery sought is 'utterly irrelevant' to the action or that the 'futility of the process to uncover anything legitimate is inevitable or obvious.'" *Id.* (citation omitted). If the challenger meets this burden, "the subpoenaing party must then establish that the discovery sought is 'material and necessary' to the prosecution or defense of an action, i.e., that it is relevant." *Id.* (citation omitted). Thus, a trial subpoena may not be issued for *any* reason, and "by necessity courts have imposed limitations on the use of subpoena power." *Matter of Terry D.*, 81 N.Y.2d 1042, 1044 (1993) (internal quotations and citations omitted).

Accordingly, a trial subpoena "cannot be overbroad," *Gallen v. AERCO Intl. Inc.*, No. 190343/15, 2017 N.Y. Misc. LEXIS 3708, at *6 (Sup. Ct. N.Y. Cnty. Sept. 28, 2017), nor can a party use a trial subpoena "as a fishing expedition to obtain materials that could have been obtained in pretrial disclosure," *W. 16th Realty Co. v. Ali*, 676 N.Y.S.2d 401, 402 (Civ. Ct. 1998) (citation omitted); *see Mestel & Co. v. Smythe Masterson & Judd, Inc.*, 215 A.D.2d 329, 329–30 (1st Dep't 1995). New York courts have not hesitated to quash trial subpoenas where the information sought would be irrelevant, immaterial, and remote or where the subpoenas constitute bad faith or

harassment. *See, e.g., id.; Capacity Grp. of NY, LLC v. Duni*, 186 A.D.3d 1482, 1483 (2d Dep't 2020); *People v. Fleschner*, 69 A.D.2d 827, 827–28 (2d Dep't 1979); *New York City Asbestos Litigation*, No. 190109/2015, 2017 WL 1739701, at *2 (N.Y. Sup. Ct. N.Y. Cnty. May 04, 2017); *Occidential Chem. Corp. v. Flacke*, 453 N.Y.S.2d 185 (Sup. Ct. Albany Cnty. 1982). Overall, the Court must balance the involved parties' competing interests before exercising its discretion to determine the appropriateness, reasonableness, and the terms and conditions of any particular discovery demand. *See Wander v. St. John's Univ.*, 67 A.D.3d 904, 905 (2d Dep't 2009).

Here, all of these considerations strongly weigh in favor of quashing the NYAG's Subpoenas for multiple reasons.

First, the Subpoenas seek information that is "utterly irrelevant [ ] to the remaining issues in this action." *Islip Theaters, LLC v. Landmark Plaza Properties Corp*., 183 A.D.3d 875, 876 (2d Dep't 2020). The matters at issue in this trial relate to liability determinations on the second through seventh causes of action along with the NYAG's purported disgorgement claim and other claims for relief. NYSCEF 1532. Ms. Trump is no longer a party to this action and none of the entities the NYAG served the Subpoenas upon have ever been parties to this action, nor are any of them otherwise under investigation. *See* NSCEF 1566. The NYAG's repeated *ipse dixits* that Ms. Trump "was a key participant in many of the events at issue" and "indisputably has personal knowledge of facts relevant to the claims against the remaining individual and entity Defendants" do not change those facts. Thus, neither Ms. Trump nor these non-party entities "possess any testimony that would be relevant to the [remaining] issues that ha[ve] been identified for trial." *Keawsri v. Ramen-Ya Inc., No. 17-CV-2406 (LJL)*, 2022 WL 2162981, at *3 (S.D.N.Y. May 5, 2022).

The NYAG's use of trial Subpoenas at this late stage without "identifying any relevant testimony, smacks of bad faith," especially in light of the NYAG's failure to explain why "such testimony could not be presented by deposition." *Id.* After all, Ms. Trump was subject to lengthy investigation and discovery in this matter. During that time, the NYAG never sought deposition testimony from Ms. Trump or these non-party entities the NYAG now subpoenas, which deposition testimony the NYAG could have sought to use at trial, *see* CPLR 3117. Thus, the NYAG does not and cannot "contend that [she] ha[s] not taken, or had the opportunity to take, depositions of the persons in question." *Keawsri*, 2022 WL 2162981, at *3. In sum, the NYAG has failed to meet her burden of identifying any potential testimony from these specific non-party entities that would be relevant to the remaining issues at trial, nor can Defendants, as parties to this action, discern any reason why these entities should be compelled to testify. Accordingly, the Subpoenas should be quashed for seeking "utterly irrelevant" information, *Kapon*, 23 N.Y.3d at 34, that could have been sought during the investigation and discovery periods underlying this action, *see Bour v. 259 Bleeker LLC*, 104 A.D.3d 454 (1st Dep't 2013); *New York City Asbestos Litigation*, 2017 WL 1739701, at *2.

Second, even if the Subpoenas sought any relevant testimony—which they do not—they are impermissibly overbroad in scope. Trial is not an opportunity to conduct additional discovery or to take a deposition. The NYAG cannot possibly justify prolonging an already protracted trial in order to seek long-ignored discovery. The Subpoenas themselves do not identify any specific information, topics, or even general subject matter that the NYAG wishes the non-party entities to testify to at trial. Indeed, the NYAG has expressly declined to limit the scope of the Subpoenas in its discussions with counsel for Ms. Trump. *See* NYSCEF 1566 Ex.D. Such an unlimited subpoena constitutes improper use of "trial subpoenas as a discovery device and a fishing expedition to

secure from [Ms. Trump and the non-party entities] wide-ranging discovery that plaintiff's counsel had neglected to obtain in pretrial disclosure during the three years preceding trial." *Mestel & Co.,* 215 A.D.2d at 329–30. That the Court has discretion regarding the "scope of any direct, cross, and re-direct examination" does not mean it should permit an unbounded and untimely fishing expedition designed to fix the NYAG's errors in a discovery process the NYAG certified was satisfactory and complete. The NYAG's refusal to temporally limit these Subpoenas' scope or to articulate any defined set of topics or information about which she wishes these non-party entities to testify is unreasonable and reveals the NYAG's subpoenas for what they really are. The subpoenas are simply a baseless effort to harass the Trump family by forcing Ms. Trump, despite her dismissal from this action and absence from this State, back into this case by appearing at trial and providing live testimony without limitation. Indeed, at best, the subpoenas are a misguided hail-mary attempt to have non-parties fill gaps in the NYAG's case that should have been filled in discovery. Either way, the NYAG's request is impermissibly overbroad, and the Subpoenas must be quashed. *See Gallen*, 2017 N.Y. Misc. LEXIS 3708, at *6; *W. 16th Realty Co.*, 676 N.Y.S.2d at 402; *Mestel & Co.*, 215 A.D.2d at 329–30; *Bour*, 104 A.D.3d at 454.

## CONCLUSION

The Court should quash the improper trial subpoenas issued by the NYAG to TTT Consulting LLC, Ivanka OPO LLC, and 502 Park Project LLC.

Dated: New York, New York
October 26, 2023

s/ *Michael Madaio*

MICHAEL MADAIO
**HABBA MADAIO & ASSOCIATES, LLP**
112 West 34th Street, 17th & 18th Floors
New York, New York 10120
Phone: (908) 869-1188
Email: mmadaio@habbalaw.com
*Counsel for Donald J. 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 LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*

-and-

CHRISTOPHER M. KISE
(*Admitted Pro Hac Vice*)
JESUS M. SUAREZ
(*Admitted Pro Hac Vice*)
LAZARO P. FIELDS
(*Admitted Pro Hac Vice*)
**CONTINENTAL PLLC**
101 North Monroe Street, Suite 750
Tallahassee, Florida 32301
Phone: (850) 332-0702
Email: ckise@continentalpllc.com
jsuarez@continentalpllc.com
lfields@continentalpllc.com
*Counsel for The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401*

Dated: Uniondale, New York
October 26, 2023

s/ *Clifford S. Robert*

CLIFFORD S. ROBERT
MICHAEL FARINA
**ROBERT & ROBERT PLLC**
526 RXR Plaza
Uniondale, New York 11556
Phone: (516) 832-7000
Email: crobert@robertlaw.com
mfarina@robertlaw.com
*Counsel for Donald Trump, Jr., and Eric Trump*

*North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*

-and-

ARMEN MORIAN
**MORIAN LAW PLLC**
60 East 42nd Street, Suite 4600
New York, New York 10165
Phone: (212) 787-3300
Email: armenmorian@morianlaw.com
*Counsel for Donald J. Trump, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*

**CERTIFICATION**

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Memorandum of Law contains 4,941 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: Uniondale, New York
October 26, 2023

Respectfully submitted,

*Clifford S. Robert*

CLIFFORD S. ROBERT
MICHAEL FARINA
**ROBERT & ROBERT PLLC**
526 RXR Plaza
Uniondale, New York 11556
(516) 832-7000
*Counsel for Donald Trump, Jr. and Eric Trump*