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December 12, 2023

VIA NYSCEF
Hon. Arthur F. Engoron
Supreme Court of the State of New York
New York County
60 Centre Street
New York, New York 10007

Re: *People of the State of New York, et al. v. Donald J. Trump, et al.*,
Index No. 452564/2022 (Sup. Ct. New York County)

Dear Justice Engoron:

This firm represents Defendants Donald Trump, Jr. and Eric Trump in the above-referenced matter. We write this letter on behalf of Defendants President Donald J. Trump ("President 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's (collectively, "Defendants") in support of Defendants' application to exclude the reports and testimony of the New York State Attorney General's ("NYAG") proposed rebuttal witness, Eric Lewis ("Lewis").

The Court must exclude Lewis's reports and testimony because he is unqualified, and his opinions therefore lack merit. The NYAG offers Lewis as a purported "expert" in accounting. However, Lewis received his Ph.D. in engineering from an engineering school[1] and does not even hold a bachelor's degree in accounting, is a teacher not a full professor, is not now nor has he ever been a licensed certified public accountant, has no experience in the practice of accounting[2], has no experience preparing, using or evaluating compilation statements or personal financial statements, has done no research, given any lectures or published any works relative to any of the accounting issues in this case, has published no peer reviewed articles, has no demonstrable citations to any of his published works, and can simply offer nothing of value or with any shred of credibility to the trier of fact.

[1] His Ph.D. in Engineering had purportedly a mere concentration in accounting.

[2] Lewis purports to have participated in an audit as a "staff" member more than 30 years ago.

Lewis, a "professor of practice," is not a tenured or tenure-track faculty member in accounting and holds no distinguishing credentials or practical experience to qualify him as an "accounting" expert. Nonetheless, the NYAG offers him as a purported "expert" to support its flawed theory that President Trump's Statements of Financial Condition ("SOFC") were materially misleading. However, Lewis was unable to articulate what "materiality" standard he applied and readily conceded that he invented his own standard to determine whether the SOFCs properly reported the estimated current value of certain assets. The balance of his opinions is simply not supported by Generally Accepted Accounting Principles ("GAAP").

The Court should therefore exclude Lewis's mere conjecture offered as purported "expert" opinions. Lewis does not possess the requisite level of expertise to render him an expert on matters dealing with GAAP or commercial real estate valuation.[3]

A. Lewis Is Not Qualified to Opine on the Subject Matter of Compilation Engagements, the Preparation of Personal Financial Statements, or on Matters Related to Commercial Real Estate Property Valuations.

Of course, for a witness to be qualified as an expert, the witness must possess the requisite skill, training, education, knowledge, or experience from which it can be assumed that the opinion rendered is reliable. See Schechter v. 3320 Holding LLC, 64 A.D.3d 446 (1st Dep't 2009); Riccio v. NHT Owners, LLC, 79 A.D.3d 998 (2d Dep't 2010); de Hernandez v. Lutheran Medical Center, 46 A.D.3d 517 (2d Dep't 2007).

Here, Lewis lacks the requisite, skill, knowledge, training, and experience to opine on the application of GAAP to personal financial statements, the implications or procedures relating to a compilation engagement, or the valuation of real estate as presented on personal financial statements. Lewis has never performed a compilation and has no practical accounting experience of any kind. Admittedly, Lewis is not a CPA, has never qualified for a CPA exam, and has never taken a CPA exam. See Deposition Transcript of Eric Lewis dated July 11, 2023 ("Tr.") at 9:21–10:5. Notably, Lewis has no experience whatsoever preparing, using, or evaluating a compilation or a personal financial statement and no demonstrable academic experience with the relevant accounting issues, yet he purports to offer "expert opinions" concerning the proper presentation of asset values in the SOFCs. Tr. at 10:10–12.

[3] To the extent that any of Lewis's opinions relate to conduct barred by the statute of limitations, they are irrelevant and should be excluded. The First Department clearly ruled: "claims are time barred" as against (1) all Defendants not subject to the tolling agreement dated August 27, 2021 (the "Tolling Agreement"), "if they accrued – that is, the transactions were completed – before February 6, 2016," and (2) "for defendants bound by" the Tolling Agreement, "if they accrued before July 13, 2014." See NYSCEF Doc. No. 640 at 3. This ruling is law of the case and binding on this Court. See Brodsky v. N.Y. City Campaign Fin. Bd., 107 A.D.3d 544, 545–46 (1st Dep't 2013).

Lewis's questionable academic credentials in the field of accounting demonstrate further his unsuitability as an expert on the matters herein at issue. As noted, he received his Ph.D. in ***engineering*** with some purported "concentration" in accounting. Indeed, he does not even hold a bachelor's degree in accounting. Lewis has no published peer reviewed works, given no lectures and conducted no research of any kind relative to financial reporting, compilations or personal financial statements. Indeed, his most recent published works relate to "Taxpayer Identification Numbers", an issue extraordinarily far removed from anything relevant to this case.

Lewis had essentially no experience with compilation engagements prior to being offered as an "expert" in this case. Lewis had never consulted on compilations, published on topics relating to compilation engagements, or been involved in academic pursuits relating to compilation engagements other than incidental teachings as a "professor of practice." Tr. at 28:3–219:7. Further, Lewis has never meaningfully evaluated personal statements of financial condition nor formally researched or published on that subject, or the subject of financial reporting. Tr. at 221:22–223:19; see also Tr. at 248:22–249:10 (he has never applied the code in a real-world setting and ***could not identify any instance where his interpretation of the accounting standards had been applied in theory or in practice***); Tr. at 90:5–91:7 (testimony that he has never dealt with the real-world implication of these statements); Tr. at 138:13-24, 243:11–244:13 (testimony that he has never applied the accounting code in a non-academic setting and lacks experience applying ASC 274-10-35 in real-world settings).

At best, Lewis has general familiarity with certain general accounting concepts and how those concepts are taught in the classroom. This does not render him qualified to provide expert testimony. Simply put, Lewis lacks any form of experience, qualifications, knowledge and/or real-world understanding regarding complex, personal financial reports or as to how personal financial statements are compiled or the necessary disclosures that accompany such statements. For these reasons, Lewis is unqualified to provide any expert opinion testimony on the application of GAAP to the SOFCs or the applicable standards governing the preparation and presentation of personal financial statements.

Where a purported expert is "generally familiar" with a subject area but otherwise has no training or experience in specifics pertaining to that subject area, that expert lacks the requisite skill, knowledge, training, education, or experience from which it can be assumed that the information is reliable. Lessard v. Caterpillar, Inc., 291 A.D.2d 825, 825 (4th Dep't 2002) (holding that a witness that took several mechanical engineering courses in college, and was "generally familiar" with heavy construction vehicles lacked the necessary qualifications to opine on the defectiveness of a lock on a vehicle because he had no training in the design of those specific vehicles or their individual parts); Beeley v. Spencer, 309 A.D.2d 1303, 1305 (2003) (accident reconstruction specialist lacked qualifications to testify about the functions of brakes); Fortich v. Ky-Miyasaka, 102 A.D.3d 610 (2013) (general surgeon offering testimony regarding plastic surgery procedures outside his field of practice did not possess "sufficient knowledge or expertise

to testify outside his or her specialty"); cf. People v. Morgan, 236 N.Y.S.2d 1014, 1017 (Co. Ct. 1962) (holding that while a patrolman was presumptively qualified to administer a urine alcohol test and ascertain the quantity of alcohol therein, he was not qualified to transpose urine alcohol to blood alcohol content because even if he was a "laboratory technician" he was not a "medical doctor, a pathologist, a biologist, a hematologist, a physiologist, a biochemist, nor a toxicologist, nor had he had any training in any of these fields.")

B. Lewis Relied on His Own Fabricated Materiality Standard That Is Unsupported by GAAP.

An expert's testimony is inadmissible unless it meets a "general acceptance requirement, known as the *Frye* test. The central issue for determination under *Frye* is "'whether the accepted techniques, when properly performed, generate results accepted as reliable within the [relevant] community generally'" Sean R. ex rel. Debra R. v. BMW of N. Am., LLC, 26 N.Y.3d 801, 809 (2016) (quoting People v Wesley, 83 N.Y.2d 417, 422 (1994)); see *Parker v. Mobil Oil Corp.*, 7 N.Y.3d 434, 449 (2006) (stating that expert testimony is "potentially acceptable" only if it "were found to be generally accepted as reliable in the scientific community"). Under *Frye*, expert testimony may be excluded based on the "reliability of novel hypotheses and theories" as well as "methodologies" where the same are not generally accepted in the relevant field. Cornell v. 360 W. 51st St. Realty, LLC, 22 N.Y.3d 762 (2014) (excluding expert testimony where the expert's conclusions were only somewhat supported by relevant literature).

An expert's opinion should be disregarded where no authority or standard is cited to support it. See Cassidy v. Highrise Hoisting & Scaffolding, Inc., 89 A.D.3d 510 (1st Dep't 2011); Hotaling v. City of New York, 55 A.D.3d 396 (1st Dep't 2008), affd 12 N.Y.3d 862 (2009). Lewis admitted that ***he created his own test*** to determine whether statements or omissions in the SOFCs were "material" to its readers. See Tr. at 133:2–6. Lewis could not articulate a definitive test or standard to determine whether a purported related party transaction was sufficiently material to require disclosure in the SOFCs. See Tr. at 133:4–135:2 ("other than to say it's a qualitative judgment considering qualitative and quantitative factors."). Perhaps most troubling, when asked to identify the standard he applied to determine materiality, Lewis admitted his own invented standard was not mandated by the relevant accounting standards.

2 Q. Okay. I just wanted to make
3 sure that that was your test and not
4 anything that's mandated by -- per
5 literature.
6 A. Correct.

Tr. at 176:2–6. Lewis's self-developed mandate is definitionally not supported by GAAP and infects the totality of the opinions that he offers in this matter. In fact, he admits that his opinions are not based on specific standards or methodologies but rather the result of the application of his own personal qualitative judgments. Tr. at 135:3–4. A test that Lewis created himself cannot conceivably be one that is generally acceptable in the field of accounting. Accordingly, Lewis's opinions are inadmissible. See Cornell, 22 N.Y.3d at 762.

C. Lewis's Opinion that GAAP Requires Statements of Financial Condition to Exclude Brand Value is Unsupported.

Lewis, without any basis in relevant accounting literature, concludes in his report that "GAAP does not permit the recording of internally generated intangible assets (i.e., the 'Trump' brand name) on the financial statements." To do so, he relies on inapplicable accounting standards, citing ASC 350-30-25-3, ASC 350-20-05-4A, and ASC 805-20-25-3. However, at his deposition, Lewis was unable to cite to a single interpretive authority to support his opinion that accounting standards governing certain forms of corporate financial statements must be read in "in conjunction" with those independently governing individual personal financial statements. This opinion must be disregarded as no authority or standard is cited by Lewis to support it. See Cassidy, 89 A.D.3d at 510; Hotaling, 55 A.D.3d at 396.

Lewis could not cite to any other instance where he had observed or applied this interpretation of GAAP, nor had he spoken to anyone who applied the code in this fashion. See Tr. at 228:8-14, 243:7-245. Accordingly, Lewis failed to apply GAAP or its interpretive guidance in formulating his opinions concerning brand value by conflating unrelated accounting principles. Lewis should be barred from testifying at trial on these issues.

D. Lewis's Opinion That Cash Held by Vornado Partnership Interests Is Improperly Disclosed is Unsupported.

Lewis, again without foundation, opined in his report that the SOFCs fail to properly disclose cash held in certain operating entities. Lewis asserts the SOFCs "should have presented the estimated current value of [President] Trump's investment in the Vornado partnership interest as one line item[.]" However, nothing in the relevant accounting standards support this supposed mandate.

Indisputably, the SOFCs contained an asset category for cash and cash equivalents that disclosed cash "held by Donald J. Trump personally[] and amounts in operating entities." NYSCEF No. 8 at 5. When confronted at his deposition with these disclosures and asked if he could "point [] to any guidance in GAAP that identifies the need for greater disclosure than that which was provided in the [SOFCs]," Lewis responded: "I don't think I can[.]" Tr. at 69:7–18. Lewis's expert opinions relating to the disclosures surrounding President Trump's cash and cash

equivalents are inadmissible because those opinions are not based on any authority, certainly not generally accepted principles in the field.

E. Lewis's Opinion that Changes in Valuation Methodology in Independent, Annual SOFCs Were Improperly Disclosed is Unsupported.

Lewis, yet again without foundation, opines in his report and rebuttal report that the SOFCs did not properly disclose changes in valuation methodologies used in annually produced standalone SOFCs. However, Lewis does not rely on any generally accepted methodologies nor any practical experience to reach this opinion. Lewis also could not provide an "example where [he] dealt with this exact interpretation of GAAP in a real-world financial statement." Tr. at 90:5-91:7. Lewis speculated in his rebuttal report that an appropriate disclosure would include a "notation of the change, a description of the prior valuation methods and the new valuation methods, and a narration of the facts and circumstances that prompted the change in valuation method" but could not cite to a single authoritative source that supports the mandate he created.

Defendants confronted Lewis at his deposition with evidence that the governing accounting standards permit changes in methodology from year to year when appropriate. See ASC 274-10-35-3 ("methods used to determine the estimated current values of assets . . . shall be followed consistently from period to period unless the facts and circumstances dictate a change"). In response, Lewis admitted that the governing standards did not require the disclosure of the facts and circumstances requiring a change in valuation methods. See Tr. at 89:18-90-4 ("[i]t does not say it."). Additionally, Lewis acknowledged that the SOFCs permit a user "reading [consecutive SOFCs] together to compare them," and "it's certainly possible" that the reader could readily determine that there had been a change in methodology. Tr. at 86:22–87:3. Lewis testified at his deposition that even where ASC 274-10-50-2(d) requires "disclosure of changes in [valuation] methods from one period to the next," "each individual statement disclosed a valuation method" and that "when the valuation method was changed from year to year," "the method was disclosed." Tr. at 83:8–13. Accordingly, Lewis's opinions are not supported by generally accepted accounting principles, are inconsistent with his deposition testimony, and therefore should be excluded.

Defendants respectfully request that the Court exclude Lewis's expert report and rebuttal report in their entirety, as Lewis is not a qualified expert and his opinions are unsupported by governing practice and methodology.

Should the Court have any questions, please feel free to contact me.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

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cc: All Counsel of Record (via NYSCEF)