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December 1, 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) – Moens Testimony

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") to alert the Court that Defendants intend to call Lawrence Moens ("Mr. Moens") as a witness. Mr. Moens was properly disclosed as an expert on Defendants' witness list and has provided a detailed report summarizing the subject matter, facts, and opinions about which he will testify. Mr. Moens' testimony is both material and necessary to Defendants' case, as he will provide further evidence that Defendants lacked any intent to defraud or mislead in their valuations.

Mr. Moens possesses the requisite experience, training, and skill to qualify as an expert under CPLR § 3101. Mr. Moens is a licensed real estate broker in the State of Florida and possesses over 40 years of experience in the real estate industry, most specifically in Palm Beach, Florida. Mr. Moens founded Lawrence A. Moens Associates, Inc., in 1982, which specializes in luxury residential properties in Palm Beach, Florida. Lawrence A. Moens Associates, Inc. has successfully closed several billion-dollars' worth of real estate transactions during his successful and storied career. Mr. Moens' firm is recognized as the leading residential broker in Palm Beach and internationally. Mr. Moens' opinions are based on documents he reviewed, as well as his knowledge, training, and experience as a licensed real estate broker. Mr. Moens' expert report containing his qualifications is attached hereto as **Exhibit A**.

As set forth in his June 30, 2023, report, Mr. Moens will render an opinion as to the valuations of the following four properties: (i) 1100 South Ocean Boulevard, Palm Beach, Florida ("Mar-a-Lago"), (ii) 1094 South Ocean Boulevard, Palm Beach, Florida ("1094 South Ocean"), (iii) 124 Woodbridge Road, Palm Beach, Florida ("124 Woodbridge"), and (iv) 1125 South Ocean Boulevard, Palm Beach, Florida ("1125 South Ocean"). Mr. Moens will also testify to whether the valuations listed in President Trump's Statements of Financial Condition from 2011 through 2021 were reasonable. A copy of Mr. Moens' expert rebuttal report is annexed hereto as **Exhibit B**.

Mr. Moens' testimony is based on his personal training and vast experience in the real estate industry. This is alone an acceptable basis for his testimony, and he need not set out any formula or methodology. *See* Guide to NY Evid (GNYE) rule 7.01(1)(a), Opinion of Expert Witness, https://www.nycourts.gov/JUDGES/evidence/7-OPINION/ARTICLE-7-RULES.pdf. *Frye* requires an expert witness to demonstrate that the theory or opinion he is espousing follows generally accepted scientific principles and methodology ***only where such testimony is not based on the witness' personal training and experience.*** Expert testimony based solely on an expert's own personal training and experience is not subject to *Frye*. *See, e.g., People v. Oddone*, 22 N.Y.3d 369, 376 (2013) (holding that an expert opinion based on personal training and experience is not subject to a *Frye* analysis). In *People v. Wernick*, the Court specifically differentiated between testimony subject to *Frye* and expert testimony based on an expert's "own experience[]." 215 A.D.2d 50, 53-54 (2d Dep't 1995) (holding that testimony on relevant literature and the expert's own relevant experiences were not subject to *Frye*), *aff'd*, 89 N.Y.2d 111, 114 (1996).

Moreover, the notion that a licensed real estate broker with more than 40 years of proven and exceptional success at the highest levels of the market cannot opine with sufficient certainty and credibility about the value of a property within his core market is, simply, untenable. This subject matter is unquestionably "beyond the knowledge or understanding, or will dispel misconceptions, of a typical finder of fact." Guide to N.Y. Evid., rule 7.01(1)(a), Opinion of Expert Witness, https://www.nycourts.gov/JUDGES/evidence/7-OPINION/ARTICLE-7-RULES.pdf.

Also, the governing accounting standard for preparation of compilation reports, ASC 274, expressly provides for reliance on the type of information contained in Mr. Moen's opinions. More specifically, ASC 274-10-55-6 provides that "Information that may be used in determining the estimated current values of investments in real estate (including leaseholds) includes any of the following: (a) Sales of similar property in similar circumstances, and (c) appraisals based on estimates of selling prices and selling costs ***obtained from independent real estate agents or brokers*** familiar with similar properties in similar locations. *See* D452 at pp. 9-10. Thus, the governing standards acknowledge, as should this Court, that real estate brokers are a viable, valuable and credible source of information for purposes of determining estimated current value. The Attorney General's contention in its motion *in limine* that Mr. Moens' valuations differ over time is immaterial to his expert testimony at trial. The Court of Appeals has held that "[a]lthough

courts may be faced with the task of deciding which of two dueling valuation models is superior, the resolution of conflicting evidence, even expert evidence, is the bread and butter of trial courts. If trial courts could not resolve such disputes, [] frequently conflicting expert testimony . . . would similarly result in exclusion of reliable and important evidence." *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 340 (2021); *see also Sagarin v. Sagarin*, 251 A.D.2d 396, 396 (2d Dep't 1998) (stating that the "credibility of the valuation experts and the appropriate weight to be accorded to their respective testimony were matters to be resolved by the trial court, sitting as the finder of fact.")

Moreover, the conclusion that Mr. Moens' testimony lacks foundation is patently false. As noted above, Mr. Moens' extensive experience and professional qualifications alone provide sufficient foundation for his expert testimony. *See People v Ratliff*, 165 A.D.3d 845, 846 (2d Dep't 2018) (holding that the "witnesses' testimony concerning their qualifications and experience provided a sufficient foundation for their opinion testimony"), *citing People v Prowse*, 60 A.D.3d 703, 704 (2d Dep't 2009); *Price by Price v. New York City Hous. Auth.*, 92 N.Y.2d 553, 559 (1998) (holding that "an expert may be qualified without specialized academic training through '[l]ong observation and actual experience'"), *quoting Meiselman v Crown Hgts. Hosp.*, 285 N.Y. 389, 398 (1941); *Caprara v Chrysler Corp.*, 52 N.Y.2d 114, 121 (1981), *rearg denied* 52 N.Y.2d 1073 (stating that an expert's competency can be derived just as well "from the real world of everyday use" as from a laboratory). Importantly, "the affirmation of [an] expert [can] sufficiently la[y] a foundation for his opinions" when it "demonstrate[s] that he has the 'requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable.'" *See Zabary v. North Shore Hosp. in Plainview*, 190 A.D.3d 790, 795 (2d Dep't 2021), *quoting M.C. v Huntington Hosp.*, 175 A.D.3d 578, 580, (2d Dep't 2019). Any purported lack of experience is only probative of the weight of Mr. Moens' testimony, not its admissibility. *See Julien v. Physician's Hosp.*, 231 A.D.2d 678, 680 (2d Dep't 1996) (stating that "any lack of experience was 'a factor to be evaluated by the jury, and went to the weight to be given his testimony, and not its admissibility'") quoting *Ariola v Long*, 197 A.D.2d 605 (2d Dep't 1993).

Defendants have a constitutional right to present a complete defense. This right necessarily requires that Defendants be permitted to call witnesses whose testimony is material and favorable to their defense. Thus, not only *can* the Court hear Moens' testimony, it should do so as such testimony is integral to Defendants' presentation of a complete defense to the claims at issue. Indeed, failure to admit this critical expert testimony may alone amount to reversible error. *See e.g., Chanler v. Manocherian*, 151 A.D.2d 432 (1st Dep't 1989) (disallowance of an expert's

testimony and failure to properly apprise the jury of the relevant law constituted a reversible error.) Defendants therefore respectfully submit that Mr. Moens' testimony must and should be admitted.

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record (via NYSCEF)