

LAW OFFICES
ROBERT & ROBERT PLLC

526 RXR PLAZA
UNIONDALE, NEW YORK 11566
(516) 832-7000
FACSIMILE (516) 832-7000

ONE GRAND CENTRAL PLACE
60 EAST 42ND STREET, SUITE 4600
NEW YORK, NEW YORK 10165*
(212) 858-9270

*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

January 24, 2024

VIA NYSCEF

Hon. Arthur F. Engoron, J.S.C.
New York State Supreme Court
County of New York
60 Centre Street, Room 418
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:

As you are aware, this firm represents Defendants Donald Trump, Jr., and Eric Trump in the above-referenced matter. We write on behalf of all Defendants in response to the Attorney General's correspondence and submission of supplemental authority filed on January 23, 2024. NYSCEF No. 1677.

The Attorney General's brazen attempt to compare this case to that of Martin Shkreli fully demonstrates her willingness to wield the power of her office recklessly in her crusade to destroy the front-running candidate for President of the United States. Indeed, this latest salvo reveals her desperation and obvious frustration with President Donald J. Trump's ("President Trump") ongoing ascent towards the White House. Left unchecked, the Attorney General's conduct will cause irreparable damage to the legal system and the New York business community. The Court must and should therefore reject the Attorney General's reliance on the *Shkreli* case as both misplaced and irresponsible.

As the record evidence established, ***not one witness, not one complaint, and not one victim*** supports the Attorney General's manufactured claims of "fraud" against President Trump. The Attorney General nevertheless cites *Shkreli* in support of her request for imposition of a lifetime ban on President Trump's conduct of lawful business in New York made ***without the testimony of one witness, one complainant, and/or one victim who established any "fraud" ever took place!*** Unlike in *Shkreli*, ***not one witness***: (1) testified there was any fraud; (2) identified any material misstatement in President Trump's financials; (3) said he/she was deceived by any misrepresentation; (4) testified that the loan terms/pricing would have been any different; and /or (5) established any risk to the marketplace. The only "evidence" cited by the Attorney General in support of her claim the "banks [lost] money" was a quote not from anyone participating in the

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transactions or from any market participant, but rather from Your Honor. *See* NYSCEF No. 1667 at 3 (citing NYSCEF No. 1655 at 2-3).

Also unlike in *Shkreli*, the actual witnesses in this case established there was in fact no fraud as President Trump's net worth exceeded that reported in his financials and he was a highly sought-after "whale" of a client who was overqualified for the Private Wealth loan terms and who formed a highly profitable relationship with the banks. *See* Tr. 5326:11-5327:2, 5329:18-5331:18, 5487:24-5488:9, 5392:13-5396:4, 5568:8-5570:4; DX-62; DX-66; DX-291.¹ The Attorney General's attempt to compare this case to *Shkreli* is therefore beyond baseless.

Indeed, in stark contrast, the Federal Trade Commission ("FTC") case against Shkreli involved numerous ***actual witnesses, actual complaints, and actual (and demonstrable) victims!*** The FTC, along with Attorneys General in seven states (New York, California, Illinois, North Carolina, Ohio, Pennsylvania and Virginia), sought redress for drug patients fleeced by Shkreli's monopolistic scheme. *Fed. Trade Comm'n v. Shkreli*, 581 F. Supp. 3d 579 (S.D.N.Y. 2022). Based on the testimony of actual aggrieved victims, the Court found Shkreli launched a pharmaceutical company, Vyera, with an express and intentional plan to: (1) purchase the life-saving drug Daraprim; (2) immediately raise the list price (from \$17.60 to \$750 per tablet - **4000%!**); and (3) create a web of market restrictions to box out all generic competition. *See id.* at 598-602. Indeed, the testimony of actual complainants proved generic producers would have entered the market but for Shkreli's anticompetitive conduct. *Id.* at 609-18. Those witnesses proved Shkreli's conduct caused actual harm to the marketplace and to desperately ill consumers victimized by the scheme. Even worse, the evidence established Shkreli orchestrated and directed much of this scheme ***from a prison cell!***² *Id.* at 638. Shkreli's conduct forced chronically ill patients to purchase a life-saving drug at abusively and monopolistically inflated prices. The monetary award was entered to compensate "***victims***" of Shkreli's anticompetitive scheme. *See id.* at 640. The lifetime ban from the pharmaceutical industry was entered to prevent Shkreli from ever again menacing a fragile populace and extorting money from those in need of life-saving medical treatment. *Id.* at 639-40.

The absurdity of the Attorney General's latest effort would be almost comical but for the sobering future consequences of her shameless abuse of power. Citing the wholly inapposite *Shkreli* case, the Attorney General asks this Court to approve a baseless *post hoc* intervention into unquestionably successful and highly profitable business transactions between sophisticated

¹ Citations to "Tr." refer to the trial transcript, and citations to "DX" refer to Defendants' exhibits.

² In yet another obvious distinction from the Attorney General's case against President Trump, Shkreli had already been convicted, by a ***jury, beyond a reasonable doubt***, based on testimony from ***actual witnesses and demonstrable victims***, of securities fraud. *See USA v. Shkreli*, 1:15-cr-00637-KAM, ECF 305 (E.D.N.Y. Aug. 4, 2017) (jury verdict); *see also Shkreli*, 581 F. Supp. 3d at 593, n. 9. In that case, Shkreli had also engaged in an abusive scheme using his company Retrophin to purchase essential drugs and thereafter manipulate the pricing of those drugs by creating a monopoly which extracted maximum profits. Shkreli was then imprisoned but that did not prevent him from carrying out his inhumane plot to victimize patients in desperate need of a life-saving drug. *Shkreli*, 581 F. Supp. 3d at 638.

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corporate titans.³ Such shocking and tyrannical interference in the free markets for political gain places every New York business transaction at risk. This Court cannot and should not expose the legal system and the New York business community to such irreparable harm. The Attorney General is simply not allowed under Executive Law § 63(12) to scream “fraud” and impose the corporate death penalty without even bothering to bring forward ***one witness, one complaint or one victim!***

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

Respectfully submitted,

ROBERT & ROBERT PLLC

Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record (by NYSCEF)

³ During closing argument, the Attorney General also advanced another frivolous comparison with Bernard Madoff. Madoff plead guilty to 11 counts of securities fraud and related offenses. Judge Chin in the Southern District of New York stated at sentencing that “none of the other financial fraud cases in the district were ‘comparable . . . in terms of the scope, duration and enormity of the fraud, and the degree of the betrayal.’” *United States v. Madoff*, 1:09-cr-00213-DC, ECF 230 at 1-2 (S.D.N.Y. June 4, 2020) (internal citation omitted). Madoff’s “brazen” fraud reached ***thousands of victims*** that “were told their monies were being invested in stocks when they were not.” *Id.* at 2. Madoff ***fabricated millions of pages of account statements***, containing false trades and account balances that did not exist. *Id.* at 2. The estimates of loss caused by Madoff’s financial crimes were as high as \$65 billion. *Id.* at 2-3. Madoff repeatedly lied to government entities, charities, academic institutions, labor unions, employee benefit plans, pension funds, large institutions, and individuals. *Id.* at 2-3. ***Individual investors*** (including a grieving widow, whose late husband invested his life savings with Madoff, that was forced to sell her home and unable to make good on a promise to pay for her granddaughter’s college) ***made important life decisions relying on Madoff’s advice and false paperwork***, such as when to retire, how to care for elderly family, whether to buy or sell assets, and how to save for their children’s college. *Id.* at 3-4. ***Hundreds of victims wrote to Judge Chin*** attesting to the devastating impact on their lives due to the loss of their life savings, ***some investors even committed suicide*** after discovering the fraud. *Id.* at 4. Madoff used his firm’s business accounts, containing deceived investors’ funds, to pay for personal expenses, including yachts, his share in a private plane, country club memberships, and real estate; and also made millions of dollars in payments to his wife, employees, friends, and family. *Id.* at 4-5. In this case, ***not one witness, not one complaint and not one victim*** supports the Attorney General’s manufactured claims. The Madoff comparison thus further reveals the lengths to which the Attorney General will go in her brazen and baseless pursuit of a political opponent. Such willingness to abuse power should strike fear in every money center bank and every Wall Street institution.