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February 7, 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:

We write in response to Your Honor's email of February 5, 2024, requesting that counsel, "submit, as officers of the court, a letter detailing anything [we] know about," a New York Times article concerning Allen Weisselberg.[1] *See* "*Trump's Former Finance Chief in Negotiations to Plead Guilty to Perjury*," William K. Rashbaum, Jonah E. Bromwich, Ben Protess, *The New York Times*, February 1, 2024 (the "Article").[2]

The Article speculates about purported plea negotiations involving Mr. Weisselberg and the New York County District Attorney's Office regarding unspecified allegations of perjury. The Article simply does not provide any principled basis for the Court to reopen the record or question the veracity of Mr. Weisselberg's testimony in this case. Indeed, we respectfully submit that the Court's request for comment on this speculative media account is unprecedented, inappropriate and troubling.

First, after more than three years of investigation, millions of pages of documents produced in discovery, countless depositions, and a three-month trial, the record in this case is closed. The only evidence that the Court can consider in rendering its decision is that adduced during the trial. *See e.g.*, *People v. Dukes*, 284 A.D. 2d 236 (1st Dep't 2001) *leave denied* 97 N.Y.2d 681 (2001); *see also*, *People v. Lendof-Gonzalez*, 36 N.Y.3d 87, 95-96 (2020); *People v. Giles*, 24 N.Y.3d 1066, 1068 (2014). To the extent the Attorney General had any concerns regarding the veracity of the testimony of Mr. Weisselberg – who was called to testify by the Attorney General solely as

[1] We understand that counsel for Defendants Mr. Weisselberg and Jeffrey McConney will be filing a separate letter in response to the Court's February 5, 2024 email.

[2] Available at https://www.nytimes.com/2024/02/01/nyregion/weisselberg-perjury-trump-fraud.html#:~:text=Allen%20H.%20Weisselberg%2C%20a%20longtime,knowledge%20of%20the%20matter%20said.

part of her case – the time to raise those concerns was *prior* to the close of evidence and are now waived.

Second, the Court lacks the legal authority under New York law to take judicial notice of news stories:

> "A court may only apply judicial notice to matters of common and general knowledge, well established and authoritatively settled, not doubtful or uncertain. The test is whether sufficient notoriety attaches to the fact to make it proper to assume its existence without proof" (*Carter v. Metro N. Assocs.*, 255 AD2d 251, 251, 680 NYS2d 239 [1998] [internal quotation marks omitted]; *see Prince, Richardson on Evidence § 2-201* [Farrell 11th ed])."

Walker v. City of New York, 46 A.D.3d 278, 282 (1st Dep't 2007). In addition, the Court certainly "should not be encouraging sloppy practice by taking judicial notice of factual matters that a party unaccountably fails to supply before the nisi prius court." *Id.* at 282-283. A New York Times article ineluctably does not satisfy the test for judicial notice and cannot be considered by the Court.

Third, consideration by the factfinder of matters outside the record, especially speculative news accounts, is simply improper and calls into question the impartiality of the Court. Where, as here, the Court functions as factfinder, the apparent willingness to not just review but even consider reliance on unsubstantiated news reports in rendering its decision raises significant concerns.

Fourth, the application of *falsus in uno* to Mr. Weisselberg's testimony at trial based on a news story is especially troubling in this case. As the Court is well aware, the Attorney General's witness, Michael Cohen, admitted to having perjured himself before the late Judge William H. Pauley, III (S.D.N.Y.) and, in fact, perjured himself in the immediate view and presence of this Court! Thus, it is inconceivable that the Court would not apply *falsus in uno* to Mr. Cohen's testimony, while musing on its applicability based on a speculative news story.

Finally, Defendants' counsel are well aware of their ethical responsibilities pursuant to the New York Rules of Professional Conduct. The Court's directive that as "officers of the court" counsel detail "anything … known about [this matter]" that would not violate counsel's professional ethics or obligations is simply another way of expressing the principle that New York lawyers are subject to New York's attorney ethics rules. Consistent with their ethical responsibilities, Defendants' counsel will not make any statements concerning rumors of any kind involving Mr. Weisselberg.

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

Respectfully submitted,

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Clifford S. Robert

CLIFFORD S. ROBERT

cc: All Counsel of Record (by NYSCEF)