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February 21, 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 on behalf of all Defendants in response to the Attorney General's improper, unilateral submission of a proposed Judgment to the Clerk of the Court on February 20, 2024, at 5:21 p.m. (the "Proposed Judgment") (NYSCEF No. 1690), which incredibly states that it is "**on motion** of Letitia James, Attorney General of the State of New York," but fails to provide any notice whatsoever, thereby depriving Defendants of the opportunity to be heard before judgment is entered. As set forth below, Defendants respectfully request that the Court set a return date for the Proposed Judgment that affords Defendants sufficient time to submit a proposed counter-judgment.

As the Court of Appeals explained in *Funk v. Barry*, 89 N.Y.2d 364, 367 (1996), the appropriate procedural mechanism for submitting a judgment to the Clerk of the Court "for more complicated dispositions, such as orders involving restraints or contemplating a set of follow-up procedures" is a directive to "settle order." "Because the decision ordinarily entails more complicated relief, the instruction contemplates notice to the opponent so that both parties may either agree on a draft or prepare counter proposals to be settled before the court (*id*; see, 22 NYCRR 202.48[c]; see also Siegel, N.Y. Prac. § 250, at 376–377 [2d ed.])." *Id*.

The Court's Decision and Order After Non-Jury Trial, dated February 16, 2024 (NYSCEF No. 1688) (the "February 16 Decision") directed the Clerk of the Court to "enter judgment." Notwithstanding, the Attorney General has now taken it upon herself to submit a proposed judgment to the Clerk of the Court ***without notice*** to the Defendants and ***without conferring*** with Defendants' counsel, clearly hoping that the Clerk will issue the Proposed Judgment ***before*** Defendants even have a chance to review it, let alone submit a proposed counter-judgment. This conduct not only violates the February 16 Decision, but it is clearly designed and intended to prejudice the Defendants.

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Given the Attorney General's submission of the Proposed Order, and the fact that the February 16 Decision "entails more complicated relief," including "restraints" and "follow-up procedures" (*see id.*), Defendants submit that the appropriate procedural mechanism for submitting a judgment to the Clerk of the Court is a directive to "settle order." Defendants therefore request that the Court set a return date for the Proposed Judgment that affords Defendants sufficient time to submit a proposed counter-judgment. To deprive Defendants of the opportunity to submit a proposed counter-judgment would be contrary to fundamental fairness and due process.

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