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PART 59 MAR 25 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

PART 59 MAR 25 2024

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THE PEOPLE OF THE STATE OF NEW YORK, :
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 :
-against- :
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DONALD J. TRUMP, :
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 :
 :
Defendant. :
----- X

Ind. No. 71543-23

**NON-PARTY NBCUNIVERSAL MEDIA, LLC'S NOTICE OF MOTION TO QUASH
DEFENDANT DONALD J. TRUMP'S SUBPOENA DUCES TECUM**

PLEASE TAKE NOTICE that upon the affirmation of Alexandra M. Settelmayer dated March 20, 2024, and the exhibits thereto, the memorandum of law submitted herewith, and upon all pleadings and proceedings heretofore had herein, non-party NBCUniversal Media, LLC ("NBCU") will move this Court, Part 59 thereof, at the courthouse at 100 Center Street, New York, New York, 10013, on a date and time to be set by the Court, for an order, pursuant to CPL § 610.20(4), quashing the subpoena dated March 12, 2024 served on NBCU by Defendant Donald J. Trump, and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, shall be served on the undersigned as directed by the Court.

Dated: March 20, 2024

Respectfully submitted,

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59**

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THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.
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Ind. No. 71543-23

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF
NON-PARTY NBCUNIVERSAL MEDIA, LLC'S MOTION TO QUASH
DEFENDANT DONALD J. TRUMP'S SUBPOENA *DUCES TECUM***

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PRELIMINARY STATEMENT

Defendant Donald J. Trump’s subpoena *duces tecum* issued to NBCUniversal Media, LLC (“NBCU”)—seeking editorial, financial, and other sensitive materials pertaining to the documentary film *Stormy*—should be quashed on multiple grounds. The subpoena presents nearly identical issues to those considered by this Court in quashing three separate subpoenas previously issued by Defendant Trump related to editorial documents associated with independent publications. First, on December 18, 2023, this Court quashed requests contained in a third-party subpoena directed towards Michael Cohen—a witness in this prosecution—seeking editorial and commercial documents in connection with two books that he authored. Next, on March 1, 2024, this Court quashed two third-party subpoenas seeking nearly identical documents from Mr. Cohen’s book publishers, Melville House Publishing and SkyHorse Publishing, Inc. In both decisions, this Court held that Defendant Trump’s discovery requests were improper because they pertained to irrelevant materials and sought “nothing more than general discovery” or impeachment evidence. Affirmation of Alexandra M. Settelmayer dated March 20, 2024 (“Settelmayer Aff.”), Ex. A (“December 18 Order”), at 11; Ex. B (“March 1 Order”), at 6. Despite these definitive rulings, Defendant Trump has now issued yet another impermissibly broad subpoena seeking irrelevant material, this one related to NBCU’s documentary *Stormy* concerning Stephanie Clifford (A/K/A Stormy Daniels) that aired on NBCU’s Peacock channel (the “Documentary”).

Defendant Trump’s sweeping subpoena—asking for “all” documents concerning the Documentary and 18 separate topics—is overbroad and unduly burdensome. The subpoena is “no more than an attempt to conduct a ‘fishing expedition’ into confidential records” in hopes of obtaining information to undermine Ms. Clifford’s credibility as a witness. *People v. Gissendanner*, 48 N.Y.2d 543, 547 (1979). But a subpoena *duces tecum* may not be used in an

attempt to uncover impeachment material, *Constantine v. Leto*, 157 A.D.2d 376, 378 (3d Dep’t 1990), *aff’d*, 77 N.Y.2d 975 (1991), and the subpoena should be quashed for this reason alone.

Defendant Trump’s subpoena seeking unpublished editorial materials related to the Documentary independently fails since it violates New York’s qualified privilege for unpublished newsgathering materials. *See* N.Y. Civ. Rights Law § 79-h. New York’s privilege against compelled disclosure reflects the State’s steadfast commitment to defending publishers, like NBCU, against unwarranted intrusion from litigants or parties who want to rifle through their files in search of evidence to support their cases or defenses. Because the unpublished materials sought by Defendant Trump are irrelevant to the merits of his defense and could only serve (at best) as fodder for impeaching Ms. Clifford, the shield law independently bars enforcement of the subpoena.

FACTUAL BACKGROUND

The Prosecution. On April 4, 2023, Donald J. Trump (“Defendant Trump”) was arraigned before this Court on an indictment charging him with 34 counts of Falsifying Business Records in the First Degree, in violation of N.Y. Penal Law § 175.10. The charges arise from Defendant Trump’s alleged efforts to conceal an illegal scheme to influence the 2016 presidential election. As part of this scheme, as alleged by the People, Defendant requested Michael Cohen, an attorney who worked for Defendant’s company, pay \$130,000 to an adult film actress, Stormy Daniels, shortly before the election to prevent her from publicizing an alleged sexual encounter with Defendant. The People allege that Defendant then reimbursed Mr. Cohen for the illegal payment through a series of monthly checks and caused business records associated with the repayments to be falsified to disguise his alleged criminal conduct. *Settelmayer Aff.*, Ex. C, at 3.

This Court’s Prior Decisions. In its December 18 Order, this Court addressed a subpoena *duces tecum* issued by the Defendant to Michael Cohen (the “Cohen Subpoena”)—which

contained nine separate requests for documents—and motions to quash filed by the People and Mr. Cohen. The Court quashed “in its entirety” two requests of particular relevance here, which sought “all draft manuscripts for the books *Disloyal* and *Revenge*” and Mr. Cohen’s “contract with the publisher for the books” and “documents sufficient to show the compensation [Mr. Cohen] received from the books” and “from the podcast *Mea Culpa*.” In quashing the requests, this Court held that there was “no reasonable likelihood that the information sought is relevant or material to the proceedings” and that the requests sought “nothing more than general discovery.” December 18 Order at 11.

Following this Order, Defendant Trump issued two additional subpoenas seeking essentially the same materials previously sought from Mr. Cohen: one subpoena to Skyhorse Publishing (publisher of Mr. Cohen’s memoir *Disloyal*) and another subpoena to Melville House Publishing (publisher of Mr. Cohen’s book *Revenge*). In a March 1, 2024 Order, this Court quashed both subpoenas in their entirety finding that the “same reasoning” from its December 18 Order applies and that “in the context of this criminal proceeding” the request(s) seek “nothing more than general discovery.” March 1 Order at 6. Further, the Court observed that a “subpoena may not be used to fish for impeachment material” and ruled that “[b]ased on the language in Defendant’s subpoenas it is clear that what Defendant seeks is a trove of documents that he hopes will contain impeachment material or material that goes to Cohen’s biases and credibility for purposes of cross examination.” *Id.* at 7. As a result, this Court quashed both subpoenas finding they did not meet the standard set forth by N.Y. Crim. Proc. Law § 610.20(4). *Id.*

NBCU Subpoena. NBCU premiered the Documentary *Stormy* at the South by Southwest Conference on March 8, 2024, and released the film on its streaming service, Peacock, on March

18, 2024.¹ Settelmayr Aff. ¶ 2. The Documentary chronicles Ms. Clifford's life before and following the revelations that she purportedly received "hush money" payments from Defendant Trump in exchange for her silence about their alleged affair. Ms. Clifford is scheduled to appear as a witness for the prosecution at the upcoming trial of Defendant Trump.

On March 12, 2024, only days after this Court's March 1 Order, Defendant Trump served yet another subpoena, this one directed to NBCU (the "NBCU Subpoena"), seeking a broad swath of documents relating to the Documentary. The NBCU Subpoena specifically seeks "all Documents" related to the Documentary and one or more of the following topics:

- a. The premiere of the Documentary;
- b. The release date of the Documentary;
- c. Editing of the Documentary;
- d. Promotion of the Documentary;
- e. Marketing of the Documentary;
- f. Any form of compensation to Stephanie Clifford relating to the Documentary;
- g. Any rights to the Documentary maintained by Stephanie Clifford;
- h. Agreements between Stephanie Clifford and NBCUniversal or any of its affiliates;
- i. The February 16, 2024 grand jury subpoena issued by the Manhattan District Attorney's Office;
- j. District Attorney Alvin Bragg;
- k. Susan Hoffinger;
- l. Rebecca Mangold;

¹ On February 16, 2024, the District Attorney's Office issued a subpoena *duces tecum* to NBCU specifically and only seeking a copy of the Documentary. Settelmayr Aff., Ex. D. NBCU produced the final Documentary, as it premiered and aired, to the People and understand that Defendant also received a copy of the Documentary. Settelmayr Aff. ¶ 6.

- m. Nicole Blumberg;
- n. Joshua Steinglass;
- o. Matthew Colangelo;
- p. The trial in *People v. Trump*, Indictment Number 71543-23, involving charges filed by the Manhattan District Attorney's Office;
- q. Michael Cohen; and
- r. Donald J. Trump

Settlemayer Aff., Ex. E. By stipulation of the parties, the return date for the NBCU Subpoena was extended up to and including March 25, 2024. Settlemayer Aff. ¶ 8.

For the following reasons, the NBCU Subpoena should be quashed.

I. THE NBCU SUBPOENA IS OVERBROAD, NOT NARROWLY TAILORED, AND IS BEING USED FOR THE PURPOSE OF IMPROPER GENERAL DISCOVERY

The NBCU Subpoena is impermissibly broad and is being inappropriately used for the purpose of general discovery. It should be quashed in its entirety. As an initial matter, Defendant Trump has failed to meet his burden of establishing that the evidence sought is “reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome.” *See* N.Y. Crim. Proc. Law § 610.20(4); *see also People v. Kozlowski*, 11 N.Y.3d 223, 242–43 (2008). A subpoena may not be used in “an attempt to conduct a ‘fishing expedition’” for the general “purpose of discovery or to ascertain the existence of evidence.” *Gissendanner*, 48 N.Y.2d at 547, 551; *Decrosta v. State Police Lab’y*, 182 A.D.2d 930, 931 (3d Dep’t 1992) (same); March 1 Order at 4. Instead, “[t]he proper purpose of a subpoena *duces tecum* is to compel the production of *specific documents* that are relevant and material to facts at issue in a pending judicial proceeding.” December 18 Order at 5 (citing *Kozlowski*, 11 N.Y.3d at 242) (emphasis added). In particular, courts will enforce subpoenas where the evidence sought “is relevant and material to the determination of guilt or innocence, and not sought solely in the speculative hope of finding

possible impeachment of witness' general credibility.” *Id.* at 6 (citing *People v. Duran*, 32 Misc. 3d 225, 229 (Crim. Ct. Kings Cnty. 2011)). While a subpoena may be used to identify “specific biases, prejudices or ulterior motives,” the issuing party must establish “some factual predicate which would make it reasonably likely that the [records sought] will bear such fruit and that the quest for its contents is not merely a desperate grasping at a straw.” March 1 Order at 6 (citing *Gissendanner*, 48 N.Y.2d at 548). “[A] subpoena is properly quashed when the party issuing the subpoena fails ‘to demonstrate any theory of relevancy and materiality, but instead merely desires the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information will enable them to impeach the witness.’” *Id.* at 4 (alterations omitted) (quoting *Gissendanner*, 48 N.Y.2d at 548–49).

The NBCU Subpoena—which fails to identify any specific documents—is precisely the sort of impermissible generalized discovery that this Court has already determined should be quashed. Defendant Trump has not, and cannot, offer any explanation as to why the evidence requested is material to his criminal prosecution. Indeed, none of the requests contained in the NBCU Subpoena are permissible under the standard described above. Defendant Trump seeks four sweeping categories of documents that are in no way limited to the subject matter of the prosecution. *First*, the NBCU Subpoena seeks editorial material related to the Documentary. Specifically, the Subpoena calls for the production of all documents related to the editing, promotion or release of the Documentary, as well as any newsgathering or production materials related to such broad topics as “Donald J. Trump” or “Michael Cohen.” *See* NBCU Subpoena (Requests c, q, r). These requests are overbroad and unduly burdensome on their face. *See Gissendanner*, 48 N.Y.2d at 549 (holding that a subpoena may not be used as an “unrestrained foray” into “unspecified information”). Moreover, Defendant has failed to establish how these

documents would be material to this criminal prosecution beyond searching for information that could undermine Ms. Clifford's credibility as a witness. As was the case with the Cohen Subpoena, "there is no reasonable likelihood that the information sought is relevant or material to these proceedings." December 18 Order at 11 (quashing the Cohen Subpoena's requests for editorial materials related to his two books). To this end, Defendant appears to have served the NBCU Subpoena to impermissibly "fish for impeaching material." *Constantine*, 157 A.D.2d at 378. Finally, the Documentary was publicly released on March 18, 2024 and Defendant Trump has a copy. If Defendant Trump believes the Documentary contains any information relevant to his defense, he is free to seek its admission and to use it at trial.

Second, Defendant Trump seeks commercial materials related to the Documentary. The NBCU Subpoena calls for the production of "[a]ny form of compensation to Stephanie Clifford relating to the Documentary," "[a]ny rights to the Documentary maintained by Stephanie Clifford," and "[a]greements between Stephanie Clifford and NBCUniversal or any of its affiliates." NBCU Subpoena (Requests f, g, h). These requests seek "nothing more than general discovery" that could not possibly have any materiality to the criminal claims at issue in this proceeding. December 18 Order at 11. The clear purpose of these requests is to determine whether and, if so, how much, Ms. Clifford was compensated in connection with the Documentary for the ultimate purpose of undermining her credibility as a witness and for impeachment purposes. These requests are patently improper and should be quashed consistent with applicable law, including the Court's previous findings. *Id.* (quashing the Cohen Subpoena's requests for contracts between Mr. Cohen and his two book publishers).

Third, Defendant Trump seeks materials related to the promotion of the Documentary. The NBCU Subpoena calls for the production of all documents related to the premiere, release date,

promotion, and marketing of the Documentary. *See* NBCU Subpoena (Requests a, b, d, e). Once again, these documents have absolutely no relevance to this criminal prosecution. Defendant Trump's sole objective is to fish for impeachment material, which is inappropriate as a matter of law. *Gissendanner*, 48 N.Y.2d at 548–49; *Constantine*, 157 A.D.2d at 378.

Fourth and finally, Defendant Trump has included a bizarre request for documents pertaining to members of Manhattan District Attorney's Office and their actions during the course of Defendant Trump's criminal prosecution. The NBCU Subpoena calls for the production of all documents pertaining to the Documentary and the criminal trial, District Attorney Alvin Bragg, ADAs Susan Hoffinger, Rebecca Mangold, Nicole Blumberg, Joshua Steinglass, or Matthew Colangelo. NBCU Subpoena (Requests j–p). Additionally, Defendant Trump has requested all documents related to the Documentary and “[t]he February 16, 2024 grand jury subpoena issued by the Manhattan District Attorney's Office.” NBCU Subpoena (Request i). These overbroad requests have no bearing on the determination on whether Defendant is guilty or innocent and are, therefore, squarely improper.

Ultimately, none of the requests in the NBCU Subpoena are permissible under the requisite legal standard and the prior Orders of this Court concerning similar subpoenas directed at third party publishers. This Court has consistently rejected Defendant Trump's attempt to embark on an impermissible fishing expedition and the same reasoning applies here. The NBCU Subpoena suffers from the same overbreadth and burden issues and should likewise be quashed in its entirety.

II. THE NEW YORK REPORTERS' PRIVILEGE BARS ENFORCEMENT OF THE NBCU SUBPOENA

Separate and apart from overbreadth and undue burden, the NBCU Subpoena's requests for unpublished and editorial material should be quashed because they violate the New York Reporters' Shield statute.

Codified in Section 79-h of the Civil Rights Law, the reporters' privilege traces its origins back to the New York Constitution's free press provision (N.Y. Const. art. I, § 8), which provides "the broadest possible protection to . . . 'the sensitive role of gathering and disseminating news of public events.'" *In re ABC*, 189 Misc. 2d 805, 808 (Sup. Ct. N.Y. Cnty. 2001) (citation omitted). The law exists to prevent the harm caused by unjustified uses of subpoenas to extract evidence from publishers because, as courts have noted, "[t]he practical burdens on time and resources, as well as the consequent diversion of journalistic effort and disruption of newsgathering activity, would be particularly inimical to vigor of a free press." *O'Neill v. Oakgrove Constr., Inc.*, 71 N.Y.2d 521, 527 (1988). To guard against this chilling of legitimate journalistic and publishing activity, "New York public policy as embodied in the Constitution and our current statutory scheme provides a mantle of protection for those who gather and report the news . . . that has been recognized as the strongest in the nation." *Holmes v. Winter*, 22 N.Y.3d 300, 310 (2013).

It is "clear in the plain language of the Shield Law . . . that the statute is applicable to criminal as well as civil cases." *People v. Santiago*, 2007 N.Y. Misc. LEXIS 7757, at *5 (Sup. Ct. Kings Cnty. Oct. 4, 2007). As one court noted, the interest in "preventing intrusion into the editorial process and avoiding the possibility of self-censorship created by compelled disclosure of sources and unpublished notes does not change because a case is civil or criminal." *People v. Iannaccone*, 112 Misc. 2d 1057, 1059 (Sup. Ct. N.Y. Cnty. 1982) (citation omitted). Even in the most serious criminal cases, therefore, courts do not hesitate to quash impermissible subpoenas seeking to compel publishers to testify. *See, e.g., Santiago*, 2007 N.Y. Misc. LEXIS 7757, at *9–22 (quashing subpoena seeking outtakes from jail house interview with accused murderer); *In re ABC*, 189 Misc. 2d at 808 (quashing criminal defendant's subpoena seeking unpublished newsgathering materials); *Iannaccone*, 112 Misc. 2d at 1063 (same).

As a threshold matter, the shield law unequivocally applies to media organizations like NBCU. The protections of the statute broadly apply to anyone “who, for gain or livelihood, is engaged in gathering, preparing, writing [or] editing . . . news intended for” a “professional medium” that “has as one of its regular functions the processing and researching of news intended for dissemination to the public.” N.Y. Civ. Rights Law § 79-h(a)(6). “News,” in turn, is defined to include “written . . . information or communication concerning local, national or worldwide events or other matters of public concern or public interest or affecting the public welfare.” *Id.* at § 79-h(a)(8). NBCU easily passes this test in its capacity as the publisher of a feature-length documentary about Ms. Clifford, the adult film star who purportedly received the potentially illegal hush money payments from Defendant Trump at issue in this criminal prosecution. *Settelmayer Aff.* ¶ 2; *see also In re Home Box Off. Inc. (Laster)*, 64 Misc. 3d 566, 571 (Sup. Ct. N.Y. Cnty. 2019) (quashing subpoena seeking materials from broadcaster of documentary series about Florida Youth detention centers co-produced by and featuring Dwayne “The Rock” Johnson); *People v. Hendrix*, 12 Misc. 3d 447, 449 (Sup. Ct. Kings Cnty. 2006) (applying the shield law to an “independent production company that produces documentaries used by various cable television stations”); *In re Murray Energy Corp. v. Reorg Research, Inc.*, 152 A.D.3d 445, 446–47 (1st Dep’t 2017) (applying shield law to publisher of “real-time information about debt-distressed companies via daily emails” and placing weight on the “publication’s independence and editorial control”).

Under the New York Shield Law, compelled disclosure of unpublished non-confidential newsgathering material—including editorial materials—is permitted only in rare cases where the party seeking discovery makes “a clear and specific showing” that the information sought: “(i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party’s claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative

source.” N.Y. Civ. Rights Law § 79-h(c). Courts apply these factors stringently and permit “disclosure of non-confidential material only as a last resort.” *In re ABC*, 189 Misc. 2d at 808; *see also O’Neill*, 71 N.Y.2d at 526 (“[A]ttempts to obtain evidence by subjecting the press to discovery as a nonparty would be widespread if not restricted.”). In practice, “failure to satisfy even one prong of this test will defeat the ... application to overcome the [Shield Law’s] protection.” *Santiago*, 2007 N.Y. Misc. LEXIS 7757, at *8.

The NBCU Subpoena expressly demands unpublished newsgathering materials in the form of “all Documents” that relate to the editing, premiere, promotion, marketing, and release of the Documentary. NBCU Subpoena (Requests a–e). Additionally, the open-ended requests for “all documents relating to” Mr. Cohen and Donald J. Trump made in connection with the Documentary also encompass privileged materials. *Id.* (Requests q, r). In order to overcome the qualified privilege, Defendant Trump must establish that the information he seeks is both “highly material and relevant” and “critical or necessary” to his defense. In order to shoulder this “very heavy burden” Defendant Trump must provide “clear and specific proof that the claim for which the information is to be used virtually rises or falls with the admission of the proffered evidence. The test is not merely that the material be helpful or probative, but whether or not the defense of this action may be presented without it.” *In re ABC*, 189 Misc. 2d at 808 (citations and internal quotation marks omitted). Defendant Trump cannot possibly make the necessary showing because there is “no reasonable likelihood that the information sought is relevant or material to these proceedings.” *See* March 1 Order at 6.

Defendant Trump, however, has offered no justification whatsoever for demanding editorial communications or other information from NBCU. Nor has Defendant Trump offered any explanation as to why this discovery would be material in any way to his guilt or innocence in

this proceeding. NBCU is left to speculate that Defendant believes that he can use these materials to impeach Ms. Clifford's forthcoming testimony. But the law is clear that "impeachment material is not 'critical or necessary' to the maintenance of a defense of a claim." *Santiago*, 2007 N.Y. Misc. LEXIS 7757, at *16; *see also In re ABC*, 189 Misc. 2d at 808 ("[W]hen the Legislature speaks of unpublished news being critical or necessary to the proof of a claim or defense, it does not have in mind general and ordinary impeachment materials or matters which might arguably bear on the assessment of credibility of witnesses."). Ultimately, Defendant has failed to meet the burden imposed by New York's Shield Law and for this independent reason the NBCU Subpoena should be quashed.

III. IN THE ALTERNATIVE, THE COURT SHOULD ORDER THAT ANY MATERIAL DEFENDANT OBTAINS THROUGH THE SUBPOENA SHALL BE SUBJECT TO A PROTECTIVE ORDER

In the alternative, NBCU requests that any compelled disclosure of its records be subject to a suitable protective order pursuant to CPL § 245.70 and the Court's inherent authority governing Defendant Trump's use and disclosure of any material he obtains during the course of this criminal prosecution. As this Court previously held, good cause supported a protective order "to reduce the potential for further witness intimidation and harassment on the part of Defendant." December 18 Order at 12. The editorial and financial information sought is highly sensitive and, to the extent this Court does not quash the NBCU Subpoena in its entirety, any material disclosed should, at a bare minimum, be subject to the restrictions on use and disclosure imposed by the Court's May 8, 2023 Protective Order.

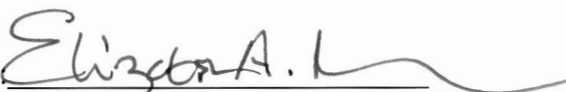
CONCLUSION

For the foregoing reasons, NBCU respectfully requests that its motion to quash the NBCU Subpoena be granted.

Dated: New York, New York
March 20, 2024

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
MOTION OF NON-PARTY NBCUNIVERSAL MEDIA, LLC'S MOTION TO
QUASH DEFENDANT DONALD J. TRUMP'S SUBPOENA *DUCES TECUM*

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Defendant Donald J. Trump's Opposition to the NBCUniversal Media, LLC's ("NBCU") motion to quash his subpoena *duces tecum* (the "NBCU Subpoena") is based on misrepresentations of the facts and the law. Most egregiously, he claims—without any factual basis—that NBCU colluded with key witness Stephanie Clifford (A/K/A Stormy Daniels) concerning both the content and timing of the release of the documentary *Stormy* (the "Documentary"). Specifically, Defendant Trump asserts that NBCU affirmatively aided Ms. Clifford's alleged efforts to "monetize [her] anticipated trial testimony, and to cause as much prejudice to President Trump as possible, by planning to release the documentary just one week prior to the scheduled start of jury selection." Defendant Trump's Opposition to the Motion to Quash the Subpoena to NBCUniversal ("Opp.") at 4. As set forth in the attached Affirmation of Erica Forstadt dated April 1, 2024 ("Forstadt Aff."), this is patently false—Ms. Clifford had no right to approve the content of the Documentary or the timing of its release. Defendant Trump's fabrication cannot serve as a justification for Defendant Trump's "fishing expedition" into NBCU's confidential records. *People v. Gissendanner*, 48 N.Y.2d 543, 547 (1979). For these reasons, and those set forth in NBCU's moving papers, the Subpoena should be quashed.

I. THE NBCU SUBPOENA IS BEING USED FOR THE PURPOSE OF IMPROPER GENERAL DISCOVERY

Much of Defendant Trump's Opposition is dedicated to misleading the Court as to the Documentary and Ms. Clifford's involvement in its production and release. He creates this false narrative in an attempt to differentiate the NBCU Subpoena from the subpoenas he issued to another key witness, Michael Cohen, and Mr. Cohen's book publishers Melville House Publishing and Skyhorse Publishing, which sought nearly identical information for the same intended purpose, and were quashed by this Court. Defendant Trump falsely argues (1) that NBCU coordinated with Ms. Clifford about when to release the Documentary in order to prejudice him

during jury selection and his criminal trial; (2) Ms. Clifford was motivated to release the Documentary near the trial for her own financial benefit; and (3) Ms. Clifford misled the prosecutors when she stated that she could not provide details about the ultimate contents of the Documentary. Opp. at 3, 4.

Each of these “facts” is false. Ms. Clifford had no input into, or approval over, when the Documentary became public. Forstadt Aff., ¶ 2. The timing of the Documentary’s release was strictly determined by NBCU, which holds an exclusive license to distribute the Documentary in the United States that was entered into in September 2023. *Id.* ¶ 2, 4. Nor did Ms. Clifford review or approve the final Documentary (and therefore misrepresented this fact to the prosecutors). To the contrary, Ms. Clifford executed a release explicitly waiving her approval of her appearance in the Documentary. *Id.* ¶ 3. These false and intentionally manufactured contentions cannot serve as the “factual predicate” for identifying “specific biases, prejudices or ulterior motives” to justify the NBCU Subpoena. *Gissendanner*, 48 N.Y.2d at 548.

Even if these wholesale fabrications were true, which they are not, Defendant Trump’s reliance on bias is a mere pretext to obtain general discovery. Defendant Trump hardly needs a trove of documents from NBCU to argue Ms. Clifford has a “bias” when he already has ample access to evidence to make this argument in the established record in this case. This prosecution turns on Defendant Trump’s alleged payment of “hush” money to Ms. Clifford in order to keep their alleged affair quiet (and that those payments were unlawfully concealed). The Defendant can argue this evidences Ms. Clifford’s desire to “profit” from her purported affair with Defendant Trump and he does not need evidence from NBCU to make that argument. Further, as Defendant Trump himself acknowledges, Ms. Clifford authored a book on their relationship (like Mr. Cohen)

and the prosecutors have already disclosed any monies Ms. Clifford received in connection with the Documentary.

In short, the Subpoena is nothing more than a fishing expedition with a vain hope to uncover further evidence to use to impeach Ms. Clifford. Defendant Trump's reliance on *Davis v. Alaska* is misplaced. 415 U.S. 308 (1974). In *Davis*, the Supreme Court found a Sixth Amendment violation where a defendant had been precluded from establishing an eyewitness' status as a juvenile delinquent probationer who had a desire to curry favor with the prosecution. *Id* at 320; *Gissendanner*, 48 N.Y.2d at 548–49 (citing same). Here, Defendant Trump is not in any way precluded from arguing that Ms. Clifford's allegations concerning him are financially motivated. He does not need the documents called for in this sweeping Subpoena to make that argument. Defendant Trump advanced these same arguments in support of the subpoenas he issued to Michael Cohen and his book publishers. The Court rejected those arguments then and should do the same here. For this reason alone, the NBCU Subpoena should be quashed.

II. THE NEW YORK REPORTERS' PRIVILEGE BARS ENFORCEMENT OF THE NBCU SUBPOENA

The NBCU Subpoena unquestionably violates New York's qualified privilege for unpublished newsgathering materials, *see* N.Y. Civ. Rights Law § 79-h, and President Trump cannot shoulder his "very heavy burden" to overcome the privilege as a matter of law. *In re ABC*, 189 Misc. 2d 805, 808 (Sup. Ct. N.Y. Cnty. 2001). President Trump proffers a flurry of arguments as to why the privilege does not exist or is overcome. He contends that certain documents do not implicate unpublished newsgathering material, but his request for "all documents" related to the editing, premiere, promotion, marketing, and release of the Documentary necessarily implicate the newsgathering process, including unaired footage and newsgathering materials from sources like journalist Denver Nicks. Similarly, Defendant Trump argues that NBCU somehow waived the

privilege when it communicated with Ms. Clifford—the very subject of the Documentary. But these are nothing more than routine newsgathering practices and materials that are quintessentially protected by the privilege. *See e.g., In re Home Box Off. Inc. (Laster)*, 64 Misc. 3d 566, 571 (Sup. Ct. N.Y. Cnty. 2019) (quashing subpoena seeking materials from broadcaster of documentary series about Florida Youth detention centers co-produced by and featuring Dwayne “The Rock” Johnson); *People v. Hendrix*, 12 Misc. 3d 447, 449 (Sup. Ct. Kings Cnty. 2006) (applying the shield law to an “independent production company that produces documentaries used by various cable television stations”).

Ultimately, Defendant Trump has failed to make “a clear and specific showing” that the information sought is “critical or necessary to the maintenance of a party’s claim.” N.Y. Civ. Rights Law § 79-h(c). His defense does not “rise or fall” on newsgathering evidence surrounding the Documentary. *In re ABC*, 189 Misc. 2d at 808 (“The test is not merely that the material be helpful or probative, but whether or not the defense of this action may be presented without it.”). For this independent reason, the NBCU subpoena should be quashed. Alternatively, as recognized by the Court of Appeals, the Court should first conduct its own *in camera* inspection of any records deemed relevant. *Gissendanner*, 48 N.Y.2d at 547. This, however, is an alternative that need not be reached by the Court, since the NBCU Subpoena should be quashed for the two independent reasons articulated above.

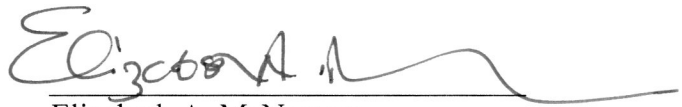
CONCLUSION

For the foregoing reasons, NBCU respectfully requests that its motion to quash the NBCU Subpoena be granted.

Dated: April 1, 2024

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

A handwritten signature in black ink, appearing to read 'Elizabeth A. McNamara', with a long horizontal flourish extending to the right.

Elizabeth A. McNamara
Alexandra M. Settelmayer

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Attorneys for NBCUniversal Media, LLC

PART 59 APR 04 2024

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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THE PEOPLE OF THE STATE OF NEW YORK, :
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 : Index No. 71543-23
-against- :
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DONALD J. TRUMP, :
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Defendant. :
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AFFIRMATION OF ERICA FORSTADT

Erica Forstadt affirms the following under penalties of perjury:

1. I am Senior Vice President of Production and Development at NBCUniversal Media, LLC (“NBCU”). I have personal knowledge of the facts set forth in this affirmation.
2. On September 14, 2023, Peacock Media Productions LLC (“Peacock”), a subsidiary of NBCU, entered into a licensing agreement with independent, third-party production companies Jade Quartz LLC and Bauer Bros. Produce Company, LLC for the documentary *Stormy* (the “Documentary”). The licensing agreement granted Peacock exclusive distribution rights of the Documentary within the United States. Stephanie Clifford (A/K/A Stormy Daniels), who is the subject of the Documentary, had no input into, or approval over, the distribution of the Documentary, including the timing of its premiere or release to the general public on NBCU’s Peacock channel.
3. On June 16, 2023, Ms. Clifford executed an appearance release with the Documentary’s production company, Bauer Bros. Produce Company, LLC. Through this appearance release, Ms. Clifford waived any right of “inspection or approval” of her appearance

or the use of her appearance in the Documentary. Ms. Clifford had no approval over the content included in the Documentary.

4. The Documentary premiered at the South by Southwest Conference on March 8, 2024 and aired on NBCU's Peacock streaming service on March 18, 2024. NBCU made the sole decision to submit the Documentary to the South by Southwest Conference and the Conference determined the date of its festival. The Documentary as aired and as was shown at the South by Southwest Conference is the same final version that was produced to the District Attorney and the Defendant in this case.

I affirm this 1st day of April, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

A handwritten signature in black ink, appearing to read "Erica Forstadt", is written over a horizontal line.

Erica Forstadt

PART 59 APR 04 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK, :
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: :
-against- :
: :
DONALD J. TRUMP, :
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Defendant. :
----- X

Ind. No. 71543-23

AFFIRMATION OF SERVICE

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms that I served true and correct copies of (i) the Reply Memorandum of Law in Further Support of Non-Party NBCUniversal Media, LLC's Motion to Quash Defendant Donald J. Trump's Subpoena Duces Tecum; and (ii) the Affirmation of Erica Forstadt by email on April 1, 2024 to counsel for Defendant Donald Trump, Todd Blanche at todd.blanche@blanchelaw.com, Emil Bove at emil.bove@blanchelaw.com, Susan Necheles at srn@necheleslaw.com, and Gedalia Stern at gstern@necheleslaw.com, and to counsel for the People, Susan Hoffinger at HoffingerS@dany.nyc.gov, Joshua Steinglass at STEINGLASSJ@dany.nyc.gov, Christopher Conroy at CONROYC@dany.nyc.gov, Rebecca Mangold at MangoldR@dany.nyc.gov, and Katherine Ellis at EllisK@dany.nyc.gov.

Dated: April 3, 2024
New York, New York


ELIZABETH A. MCNAMARA