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

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| THE PEOPLE OF THE STATE OF NEW YORK,<br><br>- against -<br><br>DONALD J. TRUMP,<br><br>Defendant. | Index No. 71543-23<br><br>**AFFIRMATION OF TODD BLANCHE IN SUPPORT OF PRESIDENT DONALD J. TRUMP'S MOTION FOR LEAVE TO REARGUE HIS OPPOSITION TO THE MOTIONS TO QUASH THE COHEN SUBPOENA** |

Todd Blanche, a partner at the law firm Blanche Law PLLC, duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I represent President Donald J. Trump in this matter and submit this affirmation and the accompanying memorandum of law in support of President Trump's Motion for Leave to Reargue His Opposition to the Motions to Quash the Cohen Subpoena.

2. This affirmation is submitted upon my personal knowledge or upon information and belief, the source of which is my communications with prosecutors and with other counsel, my review of documents in the case file, a review of the available discovery, and an independent investigation into the facts of this case.

3. Attached as Exhibit 1 is a true and accurate copy of the January 31, 2023 grand jury subpoena issued to [redacted].

4. I incorporate by reference all factual statements made in the accompanying memorandum of law.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should reconsider its prior rulings and compel Michael Cohen to comply with the narrowed Requests 1, 4, and 6 of the Cohen Subpoena.

Dated: January 17, 2024
New York, New York

By: /s/ Todd Blanche
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**PRESIDENT DONALD J. TRUMP'S MOTION FOR LEAVE TO REARGUE HIS OPPOSITION TO THE MOTIONS TO QUASH THE COHEN SUBPOENA**

## INTRODUCTION

President Donald J. Trump respectfully submits this memorandum of law in support of his motion for leave to reargue his opposition to the People's and Michael Cohen's motions to quash the subpoena issued to Michael Cohen.

President Trump served a trial subpoena on Michael Cohen on October 17, 2023, pursuant to CPL 610.20(3) (the "Cohen Subpoena"). The People moved to quash the Cohen Subpoena on November 9, 2023 (the "People's Mot."), and Michael Cohen subsequently moved to quash the subpoena on November 17, 2023 (the "Cohen Mot.") (collectively, the "Motions to Quash"). President Trump filed his opposition on November 30, 2023, and the Court issued a Decision and Order on December 18, 2023, granting in part and denying in part the Motions to Quash.

President Trump now respectfully moves to reargue his opposition to the Motions to Quash.[1] In particular, President Trump seeks to reargue or renew his opposition to the Motions to Quash Requests 1, 4, and 6 of the Cohen Subpoena, as narrowed herein.[2]

## APPLICABLE LAW

Supreme Court Justices, sitting at criminal term, have the authority to hear motions to reargue or renew. *See People v. Godbold*, 117 A.D.3d 565 (1st Dep't 2014) (finding discretion to entertain motion for renewal); *People v. Harrington*, 193 A.D.2d 756, 756 (2d Dep't 1993) ("We find that the decision to grant reargument was within the sound discretion of the hearing court."). While the source of this authority is disputed, it is clear that courts have "authority to review their

[1] In the alternative, and to the extent that the Court believes the defense has introduced any new facts in this motion, President Trump moves to renew his opposition to the Motions to Quash.

[2] Although we believe that the Court was wrong to quash any parts of the Subpoena, President Trump only seeks the Court's enforcement of Requests 1, 4, and 6, as narrowed.

own decisions." *People v. Zhagnay*, 2023 WL 3472327, *1 (Queens Cnty. Crim. Ct. May 16, 2023).

In criminal cases, parties are likely not, strictly speaking, bound by the strictures of CPLR 2221. *Accord People v. Benitez*, 2022 WL 1447544, *2 n.1 (Suffolk Cnty. Dist. Ct. May 6, 2022), *rev'd on other grounds*, 2023 WL 8794870, *2 (App. T. Dec. 7, 2023) ("Thus, courts have held that 'reargument' is available, regardless of the applicability of CPLR 2221 to criminal proceedings." (citations omitted)). However, in an abundance of caution and because criminal term courts sometimes look to CPLR 2221 in ruling on motions for reconsideration, President Trump nevertheless makes this motion within 30 days of the Court's Decision and Order on December 18, 2023, in compliance with CPLR 2221(d)(3).

## I. Motion to Reargue Request 1

First, President Trump seeks to reargue his opposition to the Motions to Quash Request 1, as narrowed and clarified herein.

Request 1 originally sought:

> For the period January 1, 2017, to the present, all communications, or documents memorializing or otherwise referencing such communications, between you and current or former prosecutors or other staff of: the Manhattan District Attorney's Office, including former ADA Mark Pomerantz and Detective Jeremy Rosenberg; the U.S. Attorney's Office for the Southern District of New York; the Federal Bureau of Investigation; and the New York Attorney General's Office; regarding or relating to Donald J. Trump, Melania Trump, the Trump Organization, Stephanie Clifford, or alleged "catch-and-kill" or hush money payment schemes.

As narrowed, Request 1 now seeks:

> For the period April 1, 2018, to March 1, 2019, all communications, or records memorializing or otherwise referencing such communications, between you (or attorneys acting on your behalf) and prosecutors or other staff of the U.S. Attorney's Office for the Southern District of New York or the Federal Bureau of Investigation regarding or relating to Donald J. Trump or alleged "catch and kill" or hush money payment schemes involving Donald J. Trump.

Mr. Cohen has—for years—demonstrated personal hostility and bias against President Trump. *See* Opp. at 8-9. He has repeatedly and consistently demonstrated a willingness to lie to prosecutors and law enforcement. *Id.* at 10. And, more recently, he has demonstrated a willingness to lie to the courts. *See, e.g.*, Gov't Opp'n, *United States v. Cohen*, 18-cr-602 (S.D.N.Y Dec. 4, 2023), ECF No. 90 ("During his October 2023 state court testimony, Cohen testified that he was not guilty of tax evasion and had lied to Judge Pauley during his guilty plea, doubling down on similar statements Cohen had made on television and in his book."); *see also* Order to Show Cause, *United States v. Cohen*, 18-cr-602 (S.D.N.Y Dec. 12, 2023), ECF No. 96 (ordering counsel for Mr. Cohen to submit a declaration explaining how a motion for early termination of Mr. Cohen's supervised release came to cite cases that do not exist); Letter Response, *United States v. Cohen*, 18-cr-602 (S.D.N.Y Jan. 3, 2024), ECF No. 105 (explaining that Mr. Cohen provided the citations to counsel after indicating that it would be researched by his other counsel in this matter). Given this record, it is clear that Mr. Cohen's statements to and other communications with prosecutors and law enforcement are relevant and material, as they are highly probative of the veracity of his testimony concerning the allegations in this case.

Despite this, the Court ruled on December 18, 2023, that Request 1, as originally tailored, was overbroad and unduly burdensome.[3] In particular, Your Honor noted that it covered seven years of records and sought all communications with current and former employees of four different law enforcement agencies. Decision at 7. However, as narrowed, Request 1 now seeks only communications between Mr. Cohen (or attorneys acting on his behalf) and federal

[3] The Court did find that President Trump sufficiently explained the relevance and materiality of Request 1 as it pertained to Detective Jeremey Rosenberg and directed Mr. Cohen to comply with that portion of the request within 21 days.

prosecutors and law enforcement (*i.e.*, the prosecution team) in *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. 2018), the federal case in which he was investigated and charged with crimes involving allegations that overlap with this case. *See* Information ¶¶ 24-44, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y.). Further, this request is narrowed to a 11-month period, which roughly corresponds with the federal investigation and post-sentencing meetings between Mr. Cohen and federal prosecutors in the Southern District. *See, e.g.*, Matt Apuzzo, *F.B.I. Raids Office of Trump's Longtime Lawyer Michael Cohen; Trump Calls It 'Disgraceful*,' NEW YORK TIMES (Apr. 9, 2018), https://www.nytimes.com/2018/04/09/us/politics/fbi-raids-office-of-trumps-longtime-lawyer-michael-cohen.html#:~:text=WASHINGTON%20%E2%80%94%20The%20F.B.I.,Mr. (describing FBI raids of Mr. Cohen's offices on April 9, 2018); Gov't Opp'n at 2-6, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Dec. 19, 2019), ECF No. 58 (describing Mr. Cohen's pre-sentencing and post-sentencing "attempts to cooperate with the SDNY," including outreach from Mr. Cohen's counsel and meetings on January 21 and February 7, 2019, during which Mr. Cohen "made material false statements").

To be clear, the People have provided a small set of documents obtained from the prosecution team in the Southern District—a grand total of 34 files, only five of which appear to relate to [redacted]. Specifically, these reflect [redacted]. To the extent that Mr. Cohen has in his custody or control any records relating to [redacted] or other communications with the prosecution team in the Southern District of New York concerning President Trump or alleged "catch and kill"

or hush money payment schemes relating to President Trump, he should be ordered to produce them. That information is highly relevant and material to the unreliability of facts, circumstances, and Mr. Cohen's anticipated testimony in the People's case against President Trump. Further, Request 1 is not unduly burdensome, as Mr. Cohen is likely to have retained responsive information as he continues to litigate the terms of his sentence in the federal case. *See, e.g.*, Letter Motion, *United States v. Cohen*, 18-cr-602 (S.D.N.Y Nov. 29, 2023), ECF No. 88 (seeking termination of federal sentence based on his "cooperation" with federal and New York authorities).

## II. Motion to Reargue Request 4

Second**,** President Trump seeks to reargue that the Court should enforce Request 4, at least as narrowed below.

Request 4 originally sought:

> For the period January 1, 2015 to the present, documents sufficient to identify all clients that have retained you (*i.e.*, in your individual capacity or as a member of any firm), or Michael D. Cohen & Associates, PC, or Essential Consultants LLC, including payments you received, and documents sufficient to demonstrate whether you entered into retainer agreements with each client, including copies of all retainer agreements between you and any client

Both the People and Mr. Cohen moved to quash this request, and the Court quashed it in its entirety. The Court provided two reasons for its decision. First, the Court said the request was "overbroad and unduly burdensome," in that it "seeks nine years of documents and information which have no bearing on the truth or falsity of the allegation contained in the indictment." Decision at 9. Second, the Court held that the request was improper "because it calls for the production of material that may very well be protected by the attorney-client privilege," and that Mr. Cohen could be in violation of his ethical obligations were he to produce those documents. *Id.*

As the Court's reasoning "misapprehends" controlling law, we seek to reargue this decision. We do so, however, only as to a narrowed version of this Request, limited to the period of January 1, 2017, to December 31, 2018. This narrowed period roughly corresponds with Mr. Cohen's departure from the Trump Organization in January 2017 and his ceasing the practice of law due to his prosecution in *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y.).

First, the requested documents, particularly as narrowed above, are both relevant and material to a crucial issue in this case: the People's allegations that payments made by President Trump to Mr. Cohen in 2017 were not rendered pursuant to a retainer agreement. While it is true that this request relates to Mr. Cohen's retention and related agreement with clients, including those other than President Trump and the Trump Organization, this request does bear on the truth or falsity of the People's allegations. In fact, the People are well versed in the relevance of this request. The People issued a grand jury subpoena to [redacted] in January 2023 seeking [redacted]. *See* January 31, 2023 Grand Jury Subpoena, attached as Ex. 1. It should go without saying that, if the People's request was relevant to prove President Trump's guilt, then President Trump should be permitted seek comparable evidence that is relevant to prove his innocence.

Further, the Court's prior, alternative, ruling that the requested documents "may very well be protected by the attorney-client privilege" was incorrect and we respectfully ask the Court to reconsider it. "[I]t has long been the law in New York that the terms of retainer agreements are not privileged." *Regan v. Hecht & Steckman, P.C.*, 2002 N.Y. Misc. LEXIS 2053, *5 (Sup. Ct. Suffolk Cnty. Feb. 22, 2002); *see also Oppenheimer v. Oscar Shoes, Inc.*, 111 A.D.2d 28, 29 (1st Dep't 1985) (holding that "the terms of legal retainers are not protected by privilege"); *People v. Belge*, 59 A.D.2d 307, 308 (4th Dep't 1977) ("The terms of an attorney's retainer agreement are

not privileged."); *Gottwald v. Sebert*, 2017 N.Y. Misc. LEXIS 13942, *3 (Sup. Ct. N.Y. Cnty. Mar. 10, 2017) ("Retainer agreements are not privileged."); *SEC v. Ryan*, 747 F. Supp. 2d 355, 368 (N.D.N.Y. 2010) (holding that "retainer agreements, fee arrangements, client identities, and escrow deposits are not protected communications, under the attorney-client privilege"); *Hayden v. Int'l Bus. Machines Corp.*, 2023 WL 4622914, at *4 (S.D.N.Y. July 14, 2023) ("[A] long and unbroken line of cases in this Circuit have established that in the absence of special circumstances client identity and fee arrangements do not fall within the attorney-client privilege because they are not the kinds of disclosures that would not have been made absent the privilege and their disclosure does not incapacitate the attorney from rendering legal advice." (cleaned up)). Similarly, "fee statements" are not privileged, so long as they do "not contain detailed accounts of the legal services rendered." *Eisic Trading Corp. v. Somerset Marine*, 212 A.D.2d 451, 451 (1st Dep't 1995); *accord Priest v. Hennessy*, 51 N.Y.2d 62, 69 (1980) ("The fee arrangements between attorney and client do not ordinarily constitute a confidential communication and, thus, are not privileged in the usual case.").

Mr. Cohen's reliance on *In re Jacqueline F.*, 47 N.Y.2d 215 (1979), to assert that "the identities of his other clients, and his retainer agreements with them, *may* be protected by the attorney-client privilege," *see* Cohen Mot. at 13 (emphasis added), is plainly wrong.[4] As an initial matter, *In re Jacqueline F.* does not so much as mention retainer agreement. Rather, the recited that the "rule in New York is not so broad as to state categorically that the privilege never attaches to a client's identity." *In re Jacqueline F.*, 47 N.Y.2d at 220. Even so, "the identity of a client and

[4] To their credit, the People did not claim that the requested records are or "may" be privileged. In fact, as mentioned above, the People themselves previously served a grand jury subpoena that demanded [redacted]. *See* Ex. 1.

information about fees paid by the client are not generally protected under the privilege." *In re Nassau County Grand Jury (Doe Law Firm)*, 4 N.Y.3d 665, 679 (2005) (internal quotation marks omitted); *see also D'Alessio v. Gilberg*, 205 A.D.2d 8, 10 (2d Dep't 1994) ("Thus it has generally been held that the client's name, in and of itself, is not privileged, as it is considered to be neither confidential nor a communication"). Only when disclosing the client's identity will necessarily reveal *the nature of the privileged communications with the attorney* is the client's identity generally privileged. *See, e.g., Gilberg*, 205 A.D.2d at 10-13. Here, however, Mr. Cohen has not argued that revealing the identities of *all* his clients would reveal the nature of their privileged communications "inconsistent with the trust and duty assumed by an attorney." *Id.*[5] At any rate, the identities of many of Mr. Cohen's clients have already been publicly disclosed and, in some cases, have even been acknowledged by the clients themselves.[6] There is thus no basis for claiming

[5] To the extent that Mr. Cohen believes this is true as to one or more of his clients' identities, he can assert privilege specifically as to that client's identity, as opposed to claiming that revealing *any* client's identity "may" violate the attorney client privilege.

[6] *See, e.g.*, Hadas Gold, *AT&T confirms it paid Michael Cohen for consulting on Time Warner deal*, CNNMONEY (May 10, 2018), https://money.cnn.com/2018/05/10/media/att-michael-cohen/index.html ("On Tuesday AT&T confirmed that it had paid Cohen's company Essential Consultants for 'insights into understanding' the new administration."); Shawn Boburg and Aaron C. Davis, *South Korean firm paid Michael Cohen $150,000 as it sought contract from U.S. government*, THE WASHINGTON POST (May 9, 2018), https://www.washingtonpost.com/investigations/south-korean-firm-paid-michael-cohen-150000-as-it-sought-contract-from-us-government/2018/05/09/0ae31788-53b7-11e8-abd8-265bd07a9859_story.html (Korea Aerospace Industries acknowledging that it had a contract with Cohen's Essential Consulting); Rebecca Davis O'Brien, Drew FitzGerald, Michael Rothfeld and Rebecca Ballhaus, *Trump Lawyer Received $500,000 From Firm Linked to Russian Oligarch*, *Wall Street Journal* (May 8, 2018), https://www.wsj.com/articles/at-t-paid-trump-lawyer-for-insights-on-administration-1525821278 ("Essential Consultants received payments in 2017 from an investment-management firm called Columbus Nova, that company confirmed Tuesday."); John Miller, *Novartis calls $1.2 million deal with Trump lawyer's firm a 'mistake'*, REUTERS (May 9, 2018), https://www.reuters.com/article/idUSKBN1IA0TB/ ("Novartis confirmed it had a $1.2 million (885,543.5 pounds) contract with the firm of Michael Cohen").

that identifying his clients and providing their retainer agreements, if any exist, would conflict with the attorney client privilege.[7]

For these reasons, the Court should grant this motion to reargue and compel Michael Cohen to comply with narrowed Request 4.

## III. Motion to Reargue Request 6

Third, President Trump seeks to reargue that the Court should enforce Request 6, as narrowed below.

Request 6 originally sought:

> For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income calculations or deductions from income, all communications with accountants, and all accountant work papers

Again, both the People and Mr. Cohen sought to quash this request and the Court granted their motions in full. President Trump now seeks to reargue that ruling, with Request 6 narrowed to:

> Documents sufficient to show how the entire $420,000 payment was treated—whether as taxable income or as non-taxable reimbursement—by you on your personal tax returns.

The Court previously held that, even limited to how "Mr. Cohen treated the alleged $420,000 payment for tax purposes," the requested documents are "immaterial to the question of Defendant's intent to defraud . . . because Defendant's intent is separate and apart from whether

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[7] It is also not clear that Mr. Cohen's relationship with many of these other clients were such as to give rise to an attorney-client relationship, as opposed to a business or lobbying relationship. This is a further reason the Court should require Mr. Cohen to assert privilege, if any, as to individual clients and documents, and not allow him to assert generally that Request 4 "may" conflict with the privilege generally.

his intended result actually came to fruition." Decision at 10. However, that ruling was made in error, as it "misapprehended" the law as to what evidence is relevant to prove, or disprove, a defendant's intent. Narrowed Request 6 is indeed "relevant and material," *Gissendanner*, 48 N.Y.2d at 548, to the charges in this case. The felony charge of falsifying business records requires the People to prove that the falsification was done with the "intent to commit another crime or to aid or conceal the commission thereof," P.L. § 175.10, and one of the alleged other crimes the People have identified is the falsification of Mr. Cohen's tax returns.[8] Therefore, documents sufficient to show how Mr. Cohen actually treated the $420,000 on his tax returns are relevant to the jury's determination of President Trump's intent.

The People argue that "establishing that a defendant intended to commit or conceal another crime does not require proof that the crime was in fact committed." People's Mot. at 17. But this argument conflates what elements the People are "require[d]" to prove with what evidence is relevant to the jury's determination of whether the People have proven those elements. As to evidence that is appropriate for a jury's consideration, "the well-established rul[e]" is that "evidence is relevant if it has *any* tendency in reason to prove any material fact and that all relevant evidence is admissible at trial unless admission violates some exclusionary rule." *People v. Alvino*, 71 N.Y.2d 233, 241 (1987) (internal quotation marks omitted; emphasis added); *see also People v. Kyser*, 183 A.D.2d 238, 242 (4th Dep't 1992) ("Evidence is relevant if it has any tendency in reason to prove any material fact. Put another way, evidence is relevant when it logically renders

[8] We expect that Mr. Cohen will testify at trial, as he did in the grand jury, that [redacted]. President Trump is entitled to argue and demonstrate at trial, however, that his story is a lie and there was never any intent by anyone to falsify Mr. Cohen's tax returns.

the existence of a material fact more likely or probable than it would be without the evidence." (cleaned up)).

Furthermore, the fact that the evidence we seek to obtain (and admit into evidence)—the submission of Mr. Cohen's tax returns—occurred subsequent to the *actus reus* charged in this case (the alleged falsification of the business records) is of no moment. "Prior, subsequent or contemporaneous crimes or acts" can be "introduced to indicate intent." *People v. Charles*, 137 Misc. 2d 111, 114 (Sup. Ct. Kings Cnty, 1987). For example, "if evidence of subsequent crimes or acts would tend to show that the defendant had the requisite intent, then such evidence" may be admissible. *Id.; see also People v. Ingram*, 71 N.Y.2d 474, 480-81 (1988) (holding that a "defendant's intent or state of mind" can be "established by proving prior similar crimes," as well as "similar subsequent crimes").

*Kyser* is also instructive on this point. There, the defendant was charged with witness tampering for various statements he made to the witness, which required the People "to prove that defendant, knowing that Wright was going to be called as a witness . . . wrongfully compelled or attempted to compel Wright to avoid testifying or to give false testimony by means of instilling in him a fear that the actor will cause physical injury to such person or another person." *Kyser*, 183 A.D.2d at 243. In order to prove the "defendant's intent and guilty knowledge regarding the tampering counts," the Appellate Division held that "evidence of the four subsequent violent acts perpetrated against Wright was" properly admitted. *Id.* That is because the "fact that the particular acts threatened actually did occur in the manner threatened provided proof that defendant's statements were not merely those of a disinterested party passing along neighborhood gossip, but were those of a person who intended to intimidate the witness by instilling fear in him that harm would come to him and his family unless he changed his testimony or agreed not to testify at all."

*Id.* In other words, subsequent acts,[9] although not an element of the offense, are admissible to prove whether the defendant previously acted with the requisite criminal intent. The same is true here, albeit in reverse. President Trump seeks Mr. Cohen's tax returns (or other supporting documentation) to prove that he did not, in fact, mischaracterize these payments on his personal tax returns.

Finally, discovery in this case demonstrates that the People met or spoke with Mr. Cohen or his attorneys dozens of times during the investigation. He also provided the People with virtually whatever documents or information they requested, including [redacted]. Thus, the People's failure to obtain his tax returns for the relevant period—even though the People have alleged that President Trump intended their falsification—appears to indicate that the People believe these documents will harm their case. The People's calculation should not preclude the defense from obtaining exculpatory documents. The Court should therefore allow the defense to subpoena these limited records from Mr. Cohen.

For these reasons, the Court should grant this motion to reargue and compel compliance with narrowed Request 6.

## CONCLUSION

For the foregoing reasons, President Trump respectfully submits that the Court should reconsider its prior rulings and compel Michael Cohen to comply with the narrowed Requests 1, 4, and 6 of the Cohen Subpoena.

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[9] Notably, *Kyser* held this to be true even where the subsequent acts were not committed by the defendant himself. *See* 183 A.D.2d at 242 (noting that "here, [the] defendant is not accused of having committed the violent, criminal or immoral acts").

Dated: January 17, 2024
New York, New York

By: /s/ Todd Blanche

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*Attorneys for President Donald J. Trump*

# EXHIBIT 1

**DISTRICT ATTORNEY**
OF THE
**COUNTY OF NEW YORK**
**ONE HOGAN PLACE**
**New York, N. Y. 10013**
**(212) 335-9000**

**ALVIN L. BRAGG, JR.**
DISTRICT ATTORNEY

January 31, 2023

**VIA EMAIL**
[redacted]
Attn: Custodian of Records
725 Fifth Avenue
New York, NY 10022

**Re: Investigation Number** [redacted]
**Return Date: February 15, 2023**

To Whom It May Concern:

Enclosed please find a subpoena seeking records relating to the above-referenced investigation. These records are needed on or before **February 15, 2023**. In lieu of appearing personally with the requested materials, you may send them electronically to paralegal [redacted] (if less than 10 MB), or provide [redacted] with a link to a file transfer site. Alternatively, you may mail or deliver the responsive materials to the New York County District Attorney's Office, 80 Centre Street, New York, NY 10013. Please mark the records [redacted], for the attention of Assistant District Attorney Catherine McCaw.

You are requested not to disclose the existence of this subpoena until otherwise notified, Such disclosure would impede the investigation being conducted and interfere with law enforcement. Your attention to this matter is greatly appreciated.

To the extent you withhold or redact any documents responsive to this subpoena on a claim of privilege or other protection, please provide a log on or before **February 28, 2023** setting forth as to each withheld or redacted document the legal basis for the claim of privilege or protection, the type of document, its general subject matter, date, author, sender, and recipient where applicable, and such other information as is sufficient to determine the claim of privilege or protection.

If you have any problems or questions concerning the subpoena or the manner of delivery, please contact me at the number below.

Sincerely,

**Catherine McCaw**
Assistant District Attorney
[redacted]

Enclosures

# SUBPOENA

**(Duces Tecum)**

FOR A WITNESS TO ATTEND THE

# GRAND JURY

In the Name of the People of the State of New York

**To: Custodian of Records**
[redacted]

**YOU ARE COMMANDED** to appear before the **GRAND JURY** of the County of New York, at Grand Jury Room 464 of 80 Centre Street, of the New York State Supreme Court, in the Borough of Manhattan of the City, County and State of New York, on **February 15, 2023** at **2:00 p.m.** of the same day, as a witness in a criminal proceeding:

**Investigation into the Business and Affairs of John Doe ([redacted]),**

and you are directed to bring with you and produce at the time and place aforesaid, the following items in your custody:

**SEE EXHIBIT A – ATTACHED**

YOU ARE REQUESTED not to disclose the existence of this subpoena until otherwise notified. Such disclosure would impede the investigation being conducted and interfere with law enforcement.

IF YOU FAIL TO ATTEND AND PRODUCE SAID ITEMS, you may be adjudged guilty of a Criminal Contempt of Court, and liable to a fine of one thousand dollars and imprisonment for one year.

Dated in the County of New York,
January 31, 2023

ALVIN L. BRAGG, JR.
**District Attorney, New York County**

By: _____

**Catherine McCaw**
Assistant District Attorney
[redacted]

**Note**: In lieu of appearing personally with the requested documents, you may e-mail, fax, mail or deliver them to the New York County District Attorney's Office, 80 Centre Street, New York, NY 10013, to the attention of Paralegal [redacted], or email them to [redacted]

*Investigation Number* [redacted]

**EXHIBIT A TO SUBPOENA TO [redacted]**
**DATED JANUARY 31, 2023**
**RETURNABLE FEBRUARY 15, 2023**

ITEMS TO BE PRODUCED are those in the actual and constructive possession of [redacted], its related entities, agents, officers, employees and officials over which it has control, including without limitation its subsidiaries:

1. [redacted]

2. [redacted]; and

3. [redacted]

4. [redacted]:

[redacted];

[redacted]

5. [redacted].

## DEFINITIONS AND INSTRUCTIONS

As used herein, unless otherwise indicated, the following terms shall have the meanings set forth below:

A. The terms "relate," "reference," "concern," "reflect," "include," and "including without limitation," in whatever tense used, shall be construed as is necessary in each case to make the request to produce inclusive rather than exclusive, and are intended to convey, as appropriate in context, the concepts of comprising, respecting, referring to, embodying, evidencing, connected with, commenting on, concerning, responding to, showing, refuting, describing, analyzing, reflecting, presenting, and consisting of, constituting, mentioning, defining, involving, explaining, or pertaining to in any way, expressly or impliedly, to the matter called for.

B. The words "and," "or," "any" and "all" shall be construed as is necessary in each case to make each request to produce inclusive rather than exclusive.

C. Terms in the plural include the singular and terms in the singular include the plural. Terms in the male include the female and terms in the female include the male. Neutral gender terms include all.

D. "Document" includes without limitation, any written, printed, typed, photocopied, photographic, recorded or otherwise created or reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof, in the form maintained, having access to, constructively possessed, physically possessed, and controlled. This definition includes copies or duplicates of documents contemporaneously or subsequently created that have any non-conforming notes or other markings, and drafts, preliminary versions, and revisions of such. It includes, without limitation, correspondence, memoranda, notes, records, letters, envelopes, telegrams, faxes, messages, emails, voice mails, instant messenger services, studies, analyses, contracts, agreements, working papers, summaries, work papers, calendars, diaries, reports. It includes, without limitation, internal and external communications of any type. It includes without limitation documents in physical, electronic, audio, digital, video existence, and all data compilations from which the data sought can be obtained, including electronic and computer as well as by means of other storage systems, in the form maintained and in usable form.