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

THE PEOPLE OF THE STATE OF NEW YORK, - against - DONALD J. TRUMP, Defendant.	Index No. 71543-23 **AFFIRMATION OF TODD BLANCHE IN OPPOSITION TO THE PEOPLE'S MOTIONS *IN LIMINE***

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 Motions *in Limine*.

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 an excerpt of the trial transcript in the matter *People v. Anderson*, Ind. No. 5768/08 (Sup. Ct. N.Y. Cnty.).

4. Attached as Exhibit 2 is a true and accurate copy of the transcript of the October 20, 2022 proceedings in the matter *People v. The Trump Corp.*, Ind. No. 1473/21 (Sup. Ct. N.Y. Cnty.).

5. Attached as Exhibit 3 is a true and accurate copy of the People's January 29, 2024 Production Cover Letter, which includes the People's Supplement Exhibit List.

6. Attached as Exhibit 4 is a true and accurate copy of the Government's December 19, 2019 Opposition to Michael Cohen's Motion for a Sentencing Reduction, ECF No. 58, in the matter *United States v. Cohen*, 18 Cr. 602 (S.D.N.Y.).

7. Attached as Exhibit 5 is a true and accurate copy of the June 16, 2023 Memorandum Endorsed Order denying Michael Cohen's motion for early termination of probation, ECF No. 87, in the matter *United States v. Cohen*, 18 Cr. 602 (S.D.N.Y.).

8. Attached as Exhibit 6 is a true and accurate copy of [redacted], produced by the People in discovery.

9. Attached as Exhibit 7 is a true and accurate copy of [redacted], produced by the People in discovery.

10. Attached as Exhibit 8 is a true and accurate copy of the complaint filed on April 12, 2023, in the matter *Trump v. Cohen*, 23 Civ. 21377 (S.D. Fla.).

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should grant the requested motions *in limine*.

Dated: February 29, 2024
New York, New York

By: /s/ Todd Blanche
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EXHIBIT 1

THE COURT: We're continuing the matter on trial. As soon as everybody is ready please have the jury step in.

(Whereupon, the jury entered the courtroom at 3:30 PM).

THE COURT: Good afternoon, ladies and gentlemen. Thank you again very much. We're ready to continue.

Mr. Cort, please call your next witness.

MR. CORT: The People call William McCann.

WILLIAM MC CANN, having been called on behalf of the People at the trial having been first duly sworn, testified as follows:

COURT OFFICER: In a loud, clear voice state your name, spell your last name and give your county of residence.

THE WITNESS: William J. McCann. M-c-C-a-n-n. Junior. Schenectady County.

THE COURT: Thank you.

DIRECT EXAMINATION

BY: MR. CORT:

Q. Good afternoon, Mr. McCann.

A. Good afternoon.

Q. Where are you employed?

A. I'm employed by the New York State Board of Elections as Special Deputy Counsel for Enforcement.

Q. Where are the offices of the New York State Board of Elections?

A. In Albany.

Q. What is your educational background?

A. Received my undergraduate degree from the University of Albany in 1986. Master of Science in 1987 from the University of Albany and graduated from Albany Law School in 1991.

Q. You are a lawyer admitted to practice?

A. I am, sir.

Q. How long have you been admitted to the bar?

A. Since 1992 in the State of New York.

Q. What legal jobs did you have before working at the New York State Board of Elections?

A. Immediately following law school I went to work for a firm in the county where I grew up and I worked there for a couple of years and went to work for a firm in Sarasota Springs and then was engaged in my own practice.

In 1986 I took a position at the New York State Department of Economic Development and was employed there until the end of September in the year 2000, and then I took a position that I'm currently in with the New York State Board of Elections on October 1st, 2000.

Q. What do you do as Special Deputy Counsel at the New York State Board of Elections?

A. The Enforcement Unit at the New York State Board of Elections is comprised of several subunits. We have an Investigations Audit Unit. There is two counsels, myself and the Deputy Enforcement Counsel and we have a staff of

18 people. The Enforcement Unit at the Board is tasked with enforcing the Election Law and in that capacity we have oversight on campaign finance at the State Board of Elections as well.

Q. What is the New York State Board of Elections?

A. The New York State Board of Elections is an administrative agency for the State of New York that has general oversight of elections in New York State. There is a County Board of Elections, a City Board of Elections. Those elections, when you go to vote and go into a voting machine that process is run by your county Board of Elections, or New York City, the City Board, they have certain ministerial functions. They run the day to day election. The New York State Board of Elections has the overall sight of the counties and the city.

Q. Is the State Board of Elections a state agency?

A. Yes, sir.

Q. And the City Board is a city

agency?
A. Correct.
Q. What is the makeup of the Board of Elections -- New York State Board of Elections.
A. Sure. The New York State Board of Elections is comprised of four commissioners, two from each of the major parties in the State of New York, apparently that would be the democratic party and the republican party.
Q. And is the -- who appoints the Board?
A. They're appointed by the Governor and at the recommendation of the legislative leaders and also party chairman of the state official parties.
Q. How many people are on the board?
A. There are four.
Q. Approximately how many people work at the New York State Board of Elections?
A. Give or take about 60, 65 people.
Q. And what other functions, aside from the Enforcement Unit, does the New York State Board of Elections perform?

A. Sure. We have a variety of units at the State Board of Elections. An Elections Operation Unit which handles the function of elections. They also have responsibility over voting equipment, voting technology and new machines. We also handle, depending on the circumstances, petitions or ballot access. When someone runs for office they need to get on the ballot. Certain portions of that are handled by the State Board of Elections, depending on the petition in question.

We also handle certain aspects of voter registration. We also handle motor voter, aspects of voter registration through administrative agencies. We also handle the National Board of Legislation Act which is tied into that and a variety of other federal aspects of the Election Law administratively.

Q. What law or laws is the New York State Board of Elections charged with enforcing?

A. The Election Law of New York State.

Q. Are you familiar with the New York State Election Law?

A. Yes, I am.

Q. How did you become familiar with the New York State Election Law?

A. I have been employed for the last nine and a half years and by my day to day practice as deputy counsel I have become familiar with the law.

Q. Have you received training in regard to the Election Law?

A. Just in my daily activities and working with the other attorneys.

Q. Have you ever published or written any articles about the New York State Election Law?

A. I participated in a book that is called Ethics in the State Government, It's a Two-way Street. I was one of the attorneys at the State Board of Elections that wrote an article on campaign finance and I also worked with the State Board of Elections in preparation of its campaign

finance handling.

Q. Have you ever lectured on or taught any courses on the New York Election Law?

A. Yes, I have. The New York State Election conducts a series of campaign seminars throughout the state and during my time with the State Board of Elections I conducted a large number of those, over 50. I have been invited to lecture at Albany Law School on the Election Law and campaign finance and I have given continued education classes, which are classes given to fellow attorneys about Election Law.

Q. Have you ever testified in the grand jury before concerning New York State Election Law?

A. Yes.

Q. How many times?

A. Three times.

Q. Have you ever testified in courts and other tribunals concerning the Election Law?

A. Yes.

Q. How many times?
A. Twice.
Q. On the qualifications you just testified about were you qualified as an expert in the New York State Election Law?
A. I was.
Q. How many times?
A. Five times.
Q. Both in the grand jury and before a court?
A. Yes, sir.

MR. CORT: I now move to have Mr. McCann qualified as an expert in the New York State Election Law.

MR. HAFETZ: No objection.

MR. NEWMAN: No objection.

THE COURT: He'll be so deemed. I'll just remind the jury, I'm sure it is obvious, the charges in the indictment are not Election Law violations but obviously the Election Law is part of the background of the issues here and I will permit the witness to testify about the Election Law as it relates to the events of this

case.

Please go ahead.

Q. Are you familiar with Article 14 of the New York State Election Law?

A. Yes.

Q. What is Article 14?

A. Article 14 is that portion of the Election Law that deals specifically with campaign finance.

Q. What is the purpose of Article 14?

A. It encompasses every aspect of campaign finance and goes towards the key purposes of campaign finance which are disclosure.

The public has a right to know the monies that are being raised and spent with regard to an election. The public has the right to know who is making contributions and what monies are being spent on an election. And not only does the public have a right to know that but also candidates in an election have a right to know what their opposition is doing relative to the money in the election. And that goes to the state

interest in --

Q. I'll get into that more later.

Let me ask you, aside from disclosure is there another aspect of Article 14?

A. Sure. There is also contribution limits is another part of campaign finance. The law establishes limits on those who are seeking or holding office.

Q. Does Article 14 set forth certain definitions?

A. It does.

Q. And under the Election Law what is a political committee?

A. A political committee can be one person, but typically it's a group of people that get together to support or oppose a candidate for public office or party office in support or opposition of a ballot proposition, something you go in and read and vote on. It is also a committee established pursuant to the election to represent an official party in the state.

Q. Under the Election Law what is a

contribution?

A. A contribution, generally speaking, is a gift of money or anything of value. It can also be a loan to the extent it is not repaid by Election Day subject to a contribution limit. It could be something of value. So some might understand if you get a cash contribution or a check, if someone gives you a good or a service that has a value, we call that an income contribution.

Q. And does a contribution -- what's roughly the definition of a contribution?

A. It's a gift of money or anything of value made in connection with an election to support or oppose a candidate for office or to a political committee.

Q. What is in connection with?

A. Well, again, contribution would be going to a candidate or a candidate's political committee or some other political committee to help support that candidate's election, or in the case of a party committee, the party's activities.

So, again, it depends

whether you have a candidate or whether you're talking about a political committee and what type of political committee you're talking about.

Q. Under the Election Law what is a contributor?

A. It could be a person or an entity or another political committee that makes a contribution to a candidate or another political committee.

Q. What is a primary election?

A. A primary election is an election where each political party determines who's going to represent that party against all the other parties in the general election.

Q. And what is a general election?

A. A general election is where the representatives of all the parties who are on the ballots face off to determine who will ultimately hold the seat in question.

Q. What is the difference of these two types of elections under the Election Law?

A. Well, again, it's the purpose. One

is what we call the nomination. It is where the party determines who is going to wave the flag to represent that party against the candidate from the other party. So that would be the Primary Election and then so the General Election would be where all the candidates face off against each other, whoever wins that they get to hold the office.

Q. Does the New York State Election Law provide for contribution limits to candidates and political committees?

A. It does.

Q. Are you familiar with the policy purpose behind setting contribution limits in a campaign?

A. I am.

Q. What is the policy purpose behind said contributions?

A. There are several, but the primary one is that the government has an interest in limiting the amount of influence that people have through money on those who are seeking or holding office.

The government interest is

on -- to question or to stop corruption or the appearance of corruption or undue influence on people who are running for office or holding office.

The law establishes a limit on how much can be given to a particular candidate or to a political committee.

Q. Does it also -- is one of their purposes also to make sure no one has too much influence on a specific election?

A. Well, again, the limit applies to all contributors, and there are very few exceptions to that, but essentially if you're looking at a limit it's based on a formula. So depending whether you're talking for a primary election or a general election you determine what the office is and generally that is done geographically.

So, obviously, if you're running for a city counsel seat that is different than someone who is running for Governor. The governor is someone who will represent the whole state and someone for city counsel would be for a political

subdivision or a smaller unit.

The way the formula works is generally you take a nickel times all the active registered voters. In the case of the primary it is enrolled voters. The people in that party you multiply them by a nickel and you come up with a limit.

For the general election it is all the registered voters in a particular jurisdiction. Depending by the size of the office, how large it is, and how many citizens are within the district you would then determine what the size of the contribution was, but at the end of the day one contributor, generally speaking whether it is myself or somebody else here, their limit would be the same as my limit.

Q. And is the purpose to limit a large contributor on an election?

A. Yes. It goes back to the government's interest in limiting the amount of the contribution someone can have seeking office and it places that specific limit so each person can give up

to that amount and no more than that.
Q. What was the limit for the September, 2008 Primary Election contribution for the New York County Surrogate Court?
A. If I remember correctly it was somewhere in the neighborhood of 33 thousand dollars.
Q. Would anything refresh your recollection?
A. You have a document that might show me that.
Q. Does that refresh your recollection?
A. It does.
Q. What was the limit for the September, 2008 Primary Election for Surrogate Court?
A. Depending on the party, starting on the left --
Q. For the democratic party?
A. For the democratic party the individual contribution limit for the primary was 33 thousand 122 dollars.
Q. How was it determined?
A. It's based upon the formula. What you do, you take the number of enrolled

voters in the political party, the active enrolled voters, and you multiply by a nickel and you get a number. Depending on the size of the office if that number adds up less than a thousand you automatically get a thousand, otherwise it is the number that comes out.

Q. Is there any limit as to how much a candidate can contribute to his or her own campaign?

A. No, there is no limit for a candidate.

Q. What is the policy purpose by not having such limits?

A. The government's interest in having a contribution limit is to limit the amount of influence that someone can have on someone that is seeking or holding office.

The government, as was held by the Supreme Court, does not have an interest because you're not looking to stop undue influence on the candidate from their own money, it's their money. So consequently there is no limit on a

candidate's own money in an election.

By way of example, in New York City if Michael Bloomberg, as the Mayor, chooses to spend unlimited resources because it is his money he absolutely can.

Q. What provision of law permits candidates to contribute an unlimited amount to their own campaign?

A. Again, it comes out of a United States Supreme Court decision entitled Buckley versus Valeo, and it also comes specifically out of the Article 14.

Q. Are there other circumstances when limits don't apply?

A. Sure. The contribution limit doesn't apply to a candidate's spouse. There's a slight modification for the limit when you're applying to the family of the candidate and also if you're talking about a party committee or constituted committee --

Q. We're not talking about a party committee.

A. There are exceptions. The idea

being if a political party wants to support its own candidate there is no limit on the amount of money that party can give to the candidate or spend on the candidate.

Generally speaking, the only people who do not have a limit on how much money can be spent or contributed to the campaign are the candidate and the candidate's spouse.

Q. Do the limits apply even if the contributor is a close friend or confidant?

A. Yes.

Q. Who is responsible for insuring that election limits are not exceeded?

A. Well, it depends. If you're talking about the individual -- the candidate or the candidate's committee they have their own set limits so they would be responsible for determining whether or not an individual contributor exceeded the limit. And when it comes to individuals they have their own obligation to determine whether or not they exceeded

a limit that might be applicable to themselves.

Q. Are political committees permitted to obtain loans of money?

A. Yes.

Q. Under the Election Law who is permitted to loan money to political committees?

A. A bank, an entity or a person.

Q. So those loans can come from individuals?

A. Absolutely.

Q. Are there other restrictions on loans made by individuals to candidates or their committees relating to contributions?

A. Yes.

Q. Under the Election Law are loans made by an individual to a political committee or candidate subject to contribution limits and related provisions of the Election Law?

A. They are.

Q. In what way?

A. Well, Article 14 in the definition

of a political contribution specifically references that loans, and references the definition of contributions of loans right to the contribution provisions which is Article 14-114 Sub 6, and what it says is contributions or loans that are made to a candidate or a political committee, to the effect they're not repaid as of the applicable Election Day, are deemed contributions for limit purposes.

So what you would need to do is you would determine as of the applicable election how much money in outstanding loans were owed and then apply the contribution limit. If the amount of the outstanding loan, when added to any actual contributions given, are equal to or less than the contribution limit then there's no problem.

If as of the applicable Election Day the amount of the contributions added to the amount of the outstanding loan exceeds the contribution limit in any way, you now have a violation of the contribution limit for limit

purposes. You'll always owe the money. It doesn't make the loan go away, but it specifically says that contribution can be a loan to the extent provided for in Article 14-114, the provisions about loans, and it says specifically the extent of the loan that is outstanding as of the day of Election is deemed a contribution for these purposes, and it goes so far to say whether it's a loan or even it applies to the cosigner and there are very important reasons for that.

As I mentioned earlier the law sets specific contribution limits on the amount that someone can give or an entity can give to a candidate or to a political committee.

The law specifically ties into the definition of a contribution, the issue of the loan and the amount outstanding as of Election Day, because the idea is you can not circumvent and go around the contribution limits by calling something a loan. If it is a loan as of Election Day to the extent it is over the

limit it's deemed a violation of the limit because you're only entitled to have so much money.

Remember, the purpose is the amount of influence that someone can have on a person seeking or holding office. To say you can just take a loan and have it be above the limit but say that it is not a contribution or not have it subject to the limit would just defeat the whole purpose of having a contribution in the first place, because you can just say it is a loan.

So the law specifically says in Article 14 that the amount of a loan that is outstanding as of the Election Day, to the extent that it is over, is deemed -- that would be a violation. It becomes a contribution for limit purposes.

Q. When you say Election Day, that Election Day could be a Primary Election?

A. Primary Election, General Election, Special Election. It just depends on the election.

Q. What is the penalty for knowingly and willfully accepting an over the limit --

MR. NEWMAN: Objection.

THE COURT: Well, I'm permit that under the Election Law.

Q. Under the Election Law what is the penalty for knowingly and willfully accepting an over contribution for limit purposes?

A. It would be a crime.

Q. Under the Election Law is a candidate himself or herself permitted to loan money to their own campaign?

A. Yes, absolutely.

Q. Is there a limit as to how much an individual candidate can loan to his or her own campaign?

A. No.

Q. What is the consequence if a loan from a candidate is never repaid by his or her own Campaign Committee?

A. Again, the purpose of a contribution limit is to limit the amount of influence that an individual or an

entity can have on someone who is seeking or holding office. Just like the candidate has no restrictions on how much money they can give to their own campaign, it is irrelevant as to how much when it comes to a loan they make to their campaign. To the extent that a loan to a candidate is outstanding at an applicable Election Day it is irrelevant because there is no government interest in the limit. What would happen long term, depending on what the status of the outstanding obligation was, the political committee could determine administerially if it had the outstanding loan it would have to be dealt with one-way or the other, but as far as the limits are concerned it would not have any application.

Q. When you say the government interest is that also here to level the playing field?

A. There is no level playing field issue when it comes to the candidate's own money. The candidate has an unfettered

right to spend his or her money. There is no limit when it comes to a candidate's own money.

Q. Would the failure of the candidate's Political Committee to repay a loan from a candidate be considered an over contribution?

A. No.

Q. Why not?

A. There is no limit to the candidate.

Q. You said that part of the Election Law Section -- Article 14 concerns disclosure provisions?

A. Yes, sir.

Q. Do political committees operating on behalf of candidates, do they have to abide by certain disclosure issues?

A. Yes.

CONTINUED ON NEXT PAGE

Q. Can you describe briefly what that is?

A. Again, as I mentioned in the beginning, campaign finance serves a lot of purposes. Two of the biggest ones are disclosure, that the public has a right to know who is raising or spending money, or what money is being spent in an election. And secondarily, the Government, because of this right, has a right to establish limits.

Disclosures allow two things to occur. Firstly, they allow the public and candidate to see what money is being raised and spent in an election.

And number two, it allows a Board of Elections to determine whether or not there have been, you know, committees and candidates have met the required limits what they are disclosing.

Q. Do you mean abided by the proper limits?

A. Yeah, that is how you would determine through the disclosure.

Q. Where are financial disclosure reports filed?

A. It depends on the office. Generally speaking, for your statewide offices like Government or Lieutenant Governor, Attorney General, those type of offices, for the New York State Legislature and for the State Supreme Court Judge and some party offices, those candidates and political committees are obligated to file their disclosures at the New York State Board of Elections.

For all other offices or local offices, they are obligated to file them with their county Board of Elections, or in the case for a candidate in the office of the City of New York, with the New York City Board of Elections.

And under a modification of the law in 2006, anyone of those local committees, if they raise or spend or expect to raise or spend over a thousand dollars, not only would they file locally, but they would also file at the State Board of Elections.

Q. What about for the 2008 New York County Surrogate's Court race, where would the finance disclosure records be required to be filed?

A. As that office is located in the City of New York, we would deem that a local office first and foremost. They would be obligated to make their disclosures with the New York City Board of Elections.

If the candidate or committee in question raised or spent or expected to raise or spend over a thousand dollars in a particular year, in that election cycle, they would also have to make their filing at the New York State Board of Elections.

Q. What is the first step in the disclosure process?

A. I guess it would depend on whether you are talking about a candidate or a political committee.

Q. Well, let's talk about the registration process.

A. Okay. Well, for a political committee, a political committee before it can raise and spend money, has to register with the appropriate Board of Elections by telling them who the treasurer is going to be, the name of the committee, the candidate to be

supported or opposed, depending on the type of the committee. The depository, meaning where the finances or the bank account for the committee is going to be housed.

It could also have information on other signatories who are authorized to sign checks on behalf of the committee. And before a committee can raise and spend money, it has to file or register with the appropriate Board of Elections.

Q. After the registration process is completed, are there other disclosure reports that are filed?

A. Well, campaign finance disclosures. For each election, there are three disclosure reports that must be filed for a primary election.

There is a 32 day pre-primary, 11 day pre-primary, and 10 day post primary report. And then for the general election, there would be a 32 day pre general, 11 day pre general, and 27 day post general.

Q. Do the exact dates the reports are required to be filed change for every election?

A. What you do is you take the date of the election and you would back up the requisite number of days to determine what the actual day was, but those, those reporting periods are established by statute and regulation.

Q. Does the Board of Elections publish a filing calendar for each election cycle setting forth the date that the disclosure statements have to be filed?

A. It does.

Q. Let me show you what is marked as People's Exhibit 40.

(Handed to witness).

Q. Do you recognize it?

A. I do.

Q. What is it?

A. This is the 2008 filing calendar for campaign financial disclosures.

Q. Is this the filing calendar that controls for the 2008 Surrogate's Court race in New York County?

A. It is.

Q. Is this published by the New York State Board of Elections?

A. It is.

MR. CORT: I now move this into evidence.

MR. HAFETZ: No objection.

MR. NEWMAN: No objection.

THE COURT: It will be so marked as Exhibit 40. We will mark it later.

Q. Can you project that. Cull out the top of the form.

What is the difference between cutoff date and file date?

A. For each report, if you notice on the left, we will take the 32 day pre-primary for instance. That report is due on August 8, 2008 for that particular election.

The law allows for a filer to have in essence four days which to compile all the information to prepare the report so they can file it on the due date.

If you didn't have the cutoff day, what it would mean is a filer would have to assemble all the information up through and including in that case August 8th and file it timely with the Board of Elections, so that is really impractical.

What the law says is that we will give you a four day cutoff period so you have that time to prepare a report and make the filing.

Q. What is a 24 hour notice?

A. Well, 24 hour notice is a disclosure that occurs during a very specific period of time. It is from the cutoff date for an 11 day pre election report up to Election Day. And there is an important purpose for it.

As I mentioned earlier, one of the key principles of campaign finance is to have an informed electorate, the public has a right to know.

So, let's say for instance, I'm a candidate for office, and I'm out in the public opposing a big issue in the town.

Let's say landfills. No one likes landfills, and I publicly say if elected, I oppose the landfill. You might be interested to know if I received a check from the big developer for the landfill.

I'm a smart guy, so if I didn't have 24 hour notice, what I'll do is I'll wait until after the cutoff day for the

11 day pre election report, and then I'll take the contribution and you will not find out until I file my post election report. By that time, the election is over. If I win great, if I lose, so be it.

24 hour notice, what it requires is that for any loan or contribution in excess of a thousand dollars received from the date of the cutoff up to Election Day, you must disclose that within 24 hours. You cannot wait until the post election report to let the electorate or your opposition know.

Q. In general, what kind of information must be disclosed in financial disclosure reports?

A. The simplest way to put it, is any money raised or spent in relation or connection with an election must be disclosed.

Q. Have you ever heard of a person named Nora Anderson?

A. I have.

Q. Do you know whether Anderson authorized a political committee to act on her behalf to fulfill her obligations to make financial disclosures concerning her campaign

for the 2008 New York County surrogate race?

A. I do.

Q. Why would a candidate form a political committee?

A. Under the Election Law and specifically 14 dash 104, the burden to disclose campaign financial disclosures rests first and foremost with the candidate.

The law allows a candidate to, because candidates want to do what candidates do, they want to go out and attend functions and events, you know, rallies, they want to run for the office. They do not really want to spend time doing the books, so to speak. And so, the law allows a candidate to authorize a political committee to take care of the obligation to disclose all the receipts and expenditures for the campaign.

Q. Under the Election Law, if a candidate chooses to have a political committee file disclosure statements, can the candidate raise or spend money themselves?

A. Sure.

Q. How much of the candidate's activity in raising or spending money must be reported

in that case where they have a political committee, but they still decide to raise or spend money themselves?

A. If it -- it can take place in one of two ways. If a candidate authorizes a political committee to act on the candidate's behalf, then the candidate can either raise or have activity outside the committee that the candidate would then disclose.

Or in most instances, the candidate files a specific form that says all of the reporting will be done through my committee, and therefore, I'm not going to do it, it will all be done by my committee. It is a question of what the candidate chose to do.

Q. So, why, if a candidate has authorized a committee, why must that candidate report their own activity in raising or spending money?

A. Well, the candidate, because it is their campaign, they are an agent of their campaign. In essence, the obligations on the candidate to disclose.

If the candidate then says

I'm going to have a committee do it, the candidate is still running for office. The candidate can raise and spend money. Now, what they have told, if they file the requisite form, they have now said all the activity, including my own, will be disclosed by the political committee, they in essence become an agent of the political committee.

Q. Describe what you mean by agent of the political committee?

A. They have obligations to the campaign and political committee under the Election Law. For instance, it spells out specifically how accounting works for a campaign.

So, the law puts specific obligations on candidates and treasurers relative to the finances, and then also spells out what information has to be disclosed and when. And the law also tells how that information gets disclosed and what specifically the obligations are of the candidate and of any agents to the committee to disclose the financial activity of the campaign.

Q. Are you familiar with the name Anderson for Surrogate campaign committee?
A. I am.
Q. In your capacity as an employee of the New York State Board of Elections, do you have access to the official records of the New York State Board of Elections?
A. I do.
Q. How are the disclosure reports filed with the New York State Board of Elections?
A. For the most part, committees and filers file them electronically, although they can file on paper in certain circumstances.
Q. How did the Anderson For Surrogate political committee file its financial disclosure reports?
A. Electronically.
Q. Let me show you what has been marked as People's Exhibit Seven through 15.
(Handed to witness).
Q. I'm handing you up what is in Evidence as Seven through -- actually Seven through 18.
A. Okay.
Q. Have you reviewed those documents

before in my office?

A. I have.

Q. Have you compared them with the documents that are on file with the New York State Board of Elections?

A. I have.

Q. Are these reports that are in front of you, the same or different than the reports that the Anderson For Surrogate committee filed with the New York State Board of Elections?

A. They appear to be the same.

Q. Are there slight differences?

A. Well, these bear the date stamp of the New York City Board of Elections. But in sum and substance of what is reported on these forms, they appear to be the same information that is on file at the New York State Board of Elections.

Q. You can project People's Exhibit Seven please. Before -- you can keep that up. Let me show you People's Exhibit 71 for identification.

(Handed to witness).

Q. Do you recognize it?

A. I do.
Q. Is that an official, a fair and accurate copy of an official record of the state Board of Elections?
A. It is.
MR. CORT: I now move that into evidence.
THE COURT: Any objection?
MR. NEWMAN: No objection.
THE COURT: We will mark it 71 in Evidence when we get a moment.
Q. Let's just project that. If you can highlight the contents of the letter. It says gentlemen, I enclose forms CF 02, CF 03, and CF 16 with respect to my campaign for surrogate of New York County. Very truly yours, Nora S Anderson. Are those the registration statements, registration documents?
A. Correct.
Q. Now let's, if you can project People's Exhibit Seven. You can take a look, you have it in front of you.
A. I do.
Q. What is People's Seven in evidence?

A. This is a form entitled State of New York State Board of Elections committee designation of treasurer and depository known as a CF 02.

Q. What is the purpose of this document?

A. This serves multiple purposes, but it is the form that a committee uses to register.

THE COURT: Just one moment please. Go ahead.

Q. I was asking you the policy purpose and you were about to tell the jury.

A. This is the form that a committee would use to register with the applicable Board of Elections.

Q. On this document, who is listed as treasurer?

A. Janise Dawson.

Q. Under the Election Law, what are the responsibilities of a treasurer?

A. The treasurer is the person who is responsible for maintaining the finance records of the committee and for making the financial disclosures for the committee as

well.

Q. There is, on the bottom of a document, who is listed as a person other than the treasurer authorized to sign checks?

A. Seth Rubenstein.

Q. What is the policy purpose behind requiring the campaign committee to disclose authorized signatories?

A. Well, the only person on the Election Law that is authorized to sign checks on behalf of a committee is the treasurer.

Other individuals can be authorized to sign checks and engage in financial aspects of the campaign, but they have to list, be listed on the CF 02 and sign their name to the form as well.

Q. Take a look at People's Exhibit Eight. If you can take out, cull out the top. What is People's Exhibit Eight?

A. This is a CF 03, a committee statement of authorization or non-authorization by candidates.

Q. What does this document do?

A. This document informs the Board whether or not the committee in question in

the case of a candidate committee has been specifically authorized by that candidate to aid or take part in their election.

Q. Take a look at People's Exhibit Nine.

A. Okay.

Q. When was -- what is the purpose, this is a candidate committee authorization and non-expenditure statement?

A. Correct.

Q. What is it known as CF what?

A. CF 16.

Q. What is the purpose of the CF 16?

A. As I mentioned earlier, the obligation to make campaign financial disclosures rests with a candidate, unless the candidate authorizes a committee to make the disclosures and notifies the Board of Elections of that fact.

This form is the form that a candidate uses to let the Board know that all the financial activity of the campaign will be reported by the committee that is listed.

Q. Can you pull out number two. Where

it says I have made no campaign expenditures relating to my candidacy, nor do I intend to make any such expenditures, except through the following authorized political committee which will file on my behalf, what does that mean?

A. Well again, the obligation is on the candidate. And the candidate under the law is allowed to have a committee fulfill that function.

So, what this means is that the candidate, any activity, any financial activity of the candidate will be disclosed by the committee, and that all the financial activity of the candidate, they are saying I'm going to have that disclosed by my committee.

Q. Take a look at People's -- did the Anderson For Surrogate political committee file disclosure reports with the New York State Board of Elections after filing the previous three registration forms we just discussed?

A. It did.

Q. Taking a look at People's Exhibit 10 in evidence, what is that form?

A. I don't know if I have it.

Q. It is in the binder.

A. I'm sorry. This is a July 2008 periodic report for Anderson For Surrogate.

Q. What time period does this cover?

A. In the instance of Anderson For Surrogate, it would cover the period -- well, the committee registration document which is the CF 02 that I have in front of me is received by the New York City Board of Elections on April 8th, so the July periodic after a political committee registers, it would file any requisite election report, so depending on whether or not it was involved in an election, it would have to file those three election reports, but there are also reports called periodic records and they come in January and July.

Since the July periodic comes before primary and general election report, and since this committee registered before July, this would be the first report that would have all the transactions of the committee from the date of its beginning up to the cutoff date for this report, which would be July 11th.

Q. Let me direct your attention to page two of this report, of the printed report. So, it would be page three of the report, but page two which has a two on the top right-hand side.

A. Okay.

Q. Do you see a 25 thousand dollar contribution made or reported on April 1, 2008 from Seth Rubenstein?

A. I do.

Q. During this, the disclosure period, what was the total amount of contributions that were received, how do we determine that?

A. Well, on electronic report you can go to the summary page and look to see the aggregation of the contributions, or you can do it on a schedule by schedule basis.

Q. So, looking at this on the schedule by schedule basis for individual contributions, what was the total amount and where are you finding it for this period?

A. Schedule A there are four contribution schedules. Schedule A which is the schedule used to report contributions from individuals, partnerships, from the candidate

and the candidate's spouse, also from family members.

On schedule A it has a total of 82,049 dollars, that is on page three of the report on schedule A.

Schedule B which is the schedule used by filer to disclose any corporate contributions which is page four of the document, reflects a total of 87 hundred dollars from corporations.

Schedule C, which is other monetary contributions, reflects 700 dollars.

And so, as far as this report is concerned, you would add up A, B, and C and that would give you the aggregation of the contributions received, and on the summary page it says that is 91 thousand, 449 dollars.

Q. On page one, going back to page one, do you see a contribution, near the middle of the page from -- actually two contributions from Janise Dawson?

A. Correct.

Q. How much is reported?

A. There is one contribution dated June

12th in the amount of 1,100 dollars. And on May 29th in the amount of 5000 dollars.

Q. Let me direct your attention to schedule I which would be on page, on page 11.

A. Okay.

Q. What is schedule I?

A. That is the schedule where you report loans received during the reporting period.

Q. What is reported there?

A. Dated April 18, 2008 from Seth Rubenstein, a loan in the amount of 225 thousand dollars.

Q. Let me show you People's Exhibits 75 and 76 for identification. Let me pass this up to you.

I'll mark monetary contribution 75 and loans received 76.

(Handed to witness).

Q. Do you recognize these?

A. I do.

Q. What are they?

A. They are pages from a New York State Board of Elections campaign finance handbook.

Q. Are those the instructions for how to fill out, are those the instructions?

A. Page 75 is marked, but page 76 from the particular handbook is a set of instructions for schedule A which is schedule use for monetary contributions from individual and partnerships as well as monies received from the candidate, the candidate's spouse.

MR. NEWMAN: Reading from a document not in Evidence.

THE COURT: The questions are asked for foundational purposes. The document is not in Evidence yet. What is your question?

Q. Are those the instructions for how to fill out on the schedule concerning, for 75 contributions, and for 76 loans?

A. Yes.

Q. Are they fair and accurate copies of the actual instructions?

A. Yes.

MR. CORT: I now move those into evidence.

MR. HAFETZ: No objection.

THE COURT: We will mark them 75

and 76 when we get a moment, in evidence.

Q. As to the 225 thousand dollar loan that was made by Seth Rubenstein reported on April 18th. When would, according to New York State Election Law, when would that 225 thousand dollar loan be deemed a contribution for limit purposes?

A. It would be the first election that was applicable.

Q. Which one was it in this case?

A. The primary election.

Q. Was that on September 9th?

A. Yes.

Q. What are you referring to, you are looking at something?

A. The 2008 filing calendar, it has the primary election date listed.

Q. What number in evidence is that?

A. It says People's Exhibit 40 on the bottom.

Q. Let me show you what is in Evidence as People's Exhibit 11 and 12. What are 11 and 12?

A. 11 appears to be the 32 day pre-primary report for Anderson For Surrogate,

and 12 is an amended 32 day pre-primary for Anderson For Surrogate.

Q. So, let me ask you about the amended statement. What did the committee report as its -- the total contributions to the committee during that period, the 32 day pre-primary and where do you find it?

A. That would be on the original report or amended report?

Q. As to the amended?

A. As I mentioned earlier, you can do it on a schedule by schedule basis and add them up, or you can go to the summary page which appears to be page eight, contributions on this copy, it is blurry, I cannot make it out.

Q. Can you look on the summary of receipts on the next page.

A. It appears to be 21 thousand, 185 dollars.

Q. And what were the total, the total expenditures during that period?

A. Sixty-one thousand, 98 dollars and 64 cents.

Q. Is the 225 thousand dollar loan

extended by Seth Rubenstein still outstanding at the time this report was filed?

A. Yes.

Q. How do you know that?

A. One of the schedules is an information schedule. It is schedule N, and this is the schedule where a committee carries forward any outstanding liabilities that were previously reported until such time as they are paid.

Q. That is on page seven of People's Exhibit 12?

A. Correct.

Q. How much is outstanding?

A. 225 thousand dollars.

Q. Taking a look at People's Exhibit 13. What were the total receipts for this filing which was the 11 day pre-primary?

A. Total contributions listed are 107 thousand, 170 dollars.

Q. What were the total expenditures?

A. 62,663 dollars and six cents.

Q. Where are you seeing that?

A. That is on the summary page, page eight.

Q. During this reporting period, does the campaign committee report any contributions from the candidate and where are you finding that?

A. Well, you would look on schedule A, and it is reflecting a contribution dated August 20, 2008 from Nora Anderson in the amount of 100 thousand dollars.

Q. So, other than the contribution to the candidate, the campaign received 7,170 dollars during that time period?

MR. NEWMAN: I object to the form of that question. I think Mr. Cort may want to revisit it as to the way he said it.

THE COURT: You said to the candidate, I'm not sure that is what you meant. But the total contributions were 107 thousand. Of that, 100,000 was from the candidate?

A. Correct.

Q. Thank you. Taking a look at this disclosure report, I'm specifically talking about schedule A where the hundred thousand dollars from -- the hundred thousand dollars is reported from the candidate. Is there any

way for the Board of Elections looking at the report to determine the true source of the money that was reported as being contributed by the candidate?

MR. NEWMAN: Objection to the form of that question.

THE COURT: I'll sustain it to the form of that question.

Q. Does the Board of Elections, does it require the campaign committee to, with the disclosure reports, file, show the -- file the actual checks?

A. Does the Board of Elections require that filers provide copies of the checks for each transaction?

Q. Yes.

A. No.

Q. Was any part of the 225 thousand dollar loan repaid during this time period?

A. No.

Q. You had mentioned 24 hour notice a little earlier in your testimony. Remind the jury when during the primary campaign these notices must be filed?

A. 24 hour notices, which are again for

any contribution or loan received by the filer in excess of a thousand dollars from the cutoff day of the 11 day pre election report up to Election Day, they must be disclosed within 24 hours.

Q. So, People's Exhibit 13 is the 11 day pre-primary?

A. Yes, sir.

Q. So anything, anything over a thousand dollars after the cutoff date for the 11 day pre-primary must be disclosed in a 24 hour notice?

A. Any loan or contribution.

Q. Take a look at People's Exhibit 14 in evidence. What is that?

A. This appears to be a facsimile or a fax to the New York State Board of Elections and to the New York City Board of Elections disclosing a 24 hour notice.

Q. The writer of this letter references Election Law section 14 dash 108 sub two, what is that?

A. 14 dash 108 is a provision of the Election Law that deals with disclosures and certain information that must be filed.

Q. Let me show you what is in evidence as People's Exhibit 15. What is that?

A. This is a 10 day post-primary report for Anderson For Surrogate.

Q. What time period does that cover?

A. This would cover the day after the cutoff date for the 11 day pre-primary up to the cutoff date for the 10 day post-primary.

Q. Take a look at page 11, the summary page.

How much money was contributed to the Anderson For Surrogate committee during this time period?

A. 15 thousand, 530 dollars.

Q. Were any loans reported as having been received during this time period, and I refer you to page seven, schedule I?

A. Dated August 26, 2008 from Nora Anderson, a loan in the amount of 170 thousand dollars.

Q. And the total expenditures during this time period?

A. 293,997 dollars and 35 cents.

Q. Let me show you schedule K which is on page nine. What does that show?

A. Schedule K is the schedule where a filer reports if any liabilities or loans that were outstanding were forgiven. And this reflects one transaction dated September 8, 2008, Seth Rubenstein, a loan in the amount of 5,900 dollars as being forgiven.

Q. Under the Election Law, does the Board of Elections rely on what is reported by the campaign committee to enforce the Election Law?

A. It does.

Q. Can you describe that?

THE COURT: Mr. Cort, I'm going to ask you to pick a good point to stop.

MR. CORT: You know, this probably is not a bad time.

THE COURT: All right. Sir, you may step down, we will need you again.

(Witness exit courtroom).

THE COURT: Counsel, step up a moment.

(Conversation held off the record).

THE COURT: Ladies and gentlemen, again, we all thank you very much for your

attention, for your patience, for your promptness.

We will try to get started tomorrow morning as close to 9:30 as we possibly can and accomplish as much as we can, and remain on our schedule, we are doing pretty well.

I'll remind you that you heard much more of the evidence at this point, but we are not done.

You must continue to keep an opened mind. You must not discuss the case at all amongst yourselves or with anybody else.

You must not speak to any of the participants in the trial at all, even to say hello.

If anyone should attempt to discuss the matter in your presence or to influence you or any other juror in any way, please just report that to a court officer without discussing the matter with anyone else.

You may leave your notebooks, and if you have exhibits, on the chairs.

Have a good evening. Be here by 9:30 tomorrow morning. Thank you very much.

(Jury exits courtroom).

THE COURT: Are there other matters that we need to address for the record?

MR. HAFETZ: Judge, one matter with regard -- you want to do this on the record?

THE COURT: I'm asking if it needs to be on the record?

MR. HAFETZ: It does not.

THE COURT: Would you just step up.

(Conversation held off the record.)

THE COURT: All right, the trial is in recess until tomorrow.

(Whereupon the trial is adjourned to March 24, 2010.)

SUPREME COURT NEW YORK COUNTY
TRIAL TERM PART 51

THE PEOPLE OF THE STATE OF NEW YORK :
INDICTMENT #
5768-08
:
:
AGAINST : CHARGE
: FFI
NORA ANDERSON & SETH RUBENSTEIN, :
Defendants :
: Trial

100 Centre Street
New York, New York
10013
March 24, 2010

B E F O R E:

HONORABLE: MICHAEL OBUS,
JUSTICE OF THE SUPREME COURT

APPEARANCES: (Same as previously noted)

THE COURT: Continuing the matter on trial. Everyone is here except juror number one, who spoke to the clerk this morning and indicated she was so ill she would not be able to be here all day. And I asked the clerk to advise the parties of that.

EXHIBIT 2

SUPREME COURT NEW YORK COUNTY
TRIAL TERM PART 59

THE PEOPLE OF THE STATE OF NEW YORK	INDICTMENT # 1473-21
AGAINST	CHARGE SCHEME TO DEFRAUD, ET AL
THE TRUMP CORPORATION, TRUMP PAYROLL CORPORATION,	
Defendants	Virtual Proceedings

100 Centre Street
New York, New York 10013
October 20, 2022

B E F O R E:

HONORABLE: JUAN MERCHAN,
JUSTICE OF THE SUPREME COURT

APPEARANCES FOR THE PEOPLE:
ALVIN BRAGG, JR. DISTRICT ATTORNEY BY:
SUSAN HOFFINGER, ESQ. ADA
JOSHUA STEINGLASS, ESQ. ADA
GARY FISHMAN, ESQ. AAG.

FOR THE DEFENDANTS, THE TRUMP ORGANIZATIONS:
ALAN S. FUTERFAS, ESQ.
SUSAN NECHELES, ESQ.
MICHAEL VAN DER VEEN, ESQ.

(The following takes place via video conference).

THE COURT: While we wait for Mr. Van Der Veen and Ms. Necheles, let's address Randy's question.

Randy has indicated he's been receiving some inquiries from the press. We have been receiving some in chambers as well, I imagine you have too.

So, the question is -- I did request we have a reporter because I do want to have everything on the record.

The question is do we want to provide a copy of the transcript to the court file, place a copy in the file or how do you want to proceed?

MR. STEINGLASS: Joshua Steinglass among others for the People.

I don't really see much basis to keep the record sealed. However, of course it is up to the Court.

THE COURT: In terms of a sealed record as much as it is a conference, we are not in court, it is not a court proceeding; but if the parties would like to put a copy in the court file I can do that, just let me know.

MS. HOFFINGER: We would not make that request, we would not ask since it's a conference with counsel.

THE COURT: Ms. Necheles, Mr. Futerfas, how do you feel about that?

MR. FUTERFAS: You're on mute Susan.

MS. NECHELES: Sorry, your Honor. I agree. I don't see a basis for keeping it sealed. I don't have an opinion either way whether it should be in the regular file or not.

MR. FUTERFAS: I have no objection either one way or another.

THE COURT: Mr. Van Der Veen, would you like to be heard on this?

MR. VAN DER VEEN: Judge, I don't have a preference one way or another. I am not so familiar with the Court's procedures. We will do whatever the Court wants.

THE COURT: If we were meeting in chambers, we probably would not have a reporter and have the same exact meeting.

I really requested a reporter for our benefit so we can all get a copy of the transcript and look back on it and see what was discussed and agreed on.

So unless somebody voices an objection, we will treat this just as a conference. It is not that I'm sealing the record. Whatever we would discuss in chambers would not have been put in the court file anyway, so let's proceed that way.

Thank you all for making it. I know that the plan for this afternoon has been for me to rule on the various

motions in limine, and I am prepared to rule on most of them; but I did receive an e-mail a short time ago from Mr. Steinglass indicating there was an issue the People wanted to be heard before I ruled on the application to preclude the expert witness.

I imagine hand and hand with that is the interpretation of Penal Law section 2020 and how that would be applied.

So, why don't you go ahead and start, Mr. Steinglass.

MR. STEINGLASS: Thank you, Judge. I appreciate the Court giving me the opportunity to be heard on this matter, because there are so many additional facts, critical facts we need to put on the record concerning the timeliness argument that was set forth in our motion to preclude.

It is really more of a procedural argument than a substantive argument, but it does touch on the substantive argument.

As the Court is aware presumably from my e-mail request, we did not get the defense's expert report until yesterday afternoon, less than three business days before jury selection is scheduled to begin in this case.

That report, which I'm happy to send to the Court for reference, if it is necessary to have this

conversation, contains some 16 pages full of calculations and theories which would frankly require weeks of analysis in consultation with an expert of our own to even begin to understand fully.

None of the extensive calculations in this report or even the source of the documents which they appear to be based -- we all know there are tens of millions of documents that have been provided in this case.

During our appearance in court on September 12th, I made a lengthy record of the history of discovery demands relating to the defense expert's testimony.

I'm certainly not going to rehash all that again, but I spoke of the gamesmanship that was taking place and remind the Court that the defendant's obligation to provide this material arose on October 24, 2021.

During that September 12th appearance, Ms. Necheles made rather unconvincing arguments the plea of Allen Weisselberg in August changed their whole theory of the case, I believe were her words, and would therefore entitle them to re-set the clock on their disclosure requirements, notwithstanding the fact that our theory of the case has not changed since the grand jury.

This Court explicitly and correctly rejected that argument rather clearly, and stated that Allen Weisselberg's guilty plea does not alter the corporate

defendants's requirements under the CPL.

On September 12th, this Court acknowledged the asymmetric discovery problem, but was loath to preclude a defense at that point. Instead, the Court ordered the defense to provide that information by September 19th, and the Court said, and I quote from page 30 of the transcript quote, look, as a courtesy, I'll give you until Monday to provide the names of these experts, to indicate what they will testify to, why their testimony is relevant and to comply in every other way with the law. And I imagine the People will respond and I will rule on that.

The law to which your Honor referred undoubtedly is CPL section 245 20 sub one sub F and sub O, and 245 point 20 sub four, and that law has several requirements. The defendants must provide the expert's current CV, list of publications, and all reports prepared by the expert that pertain to the case; or if no report is prepared, a written summary of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, and a list of the exhibits to be introduced through that expert witness.

On the deadline, September 19th, the following Monday, we got a sketch of what the expert would say in a letter with little or nothing in the way of a summary of the grounds for each opinion. It did list out several

opinions in the way of a summary for the grounds of each opinion.

We did not get an exhibit list for exhibits introduced by Mr. Hoberman until October 7th, and then only after this Court's intervention. We did not get a CV until October 12th.

We still have not got the new COC since the original certificate of compliance was filed in July. And although the due date for all expert related materials was clearly set as September 19th, somehow we find ourselves here less than three business days before the trial is set to begin, we are first getting the bulk of what their expert will testify to.

And it is in the form of 16 pages of calculations without accompanying sourcing or any explanations outside that vague letter originally provided on September 19th. What it really is, is a series of 16 different charts.

This document is categorically different from the original expert letter that was served on the 19th. In so far as the charts in the document contained in that document are highly misleading and they only tell a portion of the story. And frankly, your Honor, since yesterday, we have been barely able to digest their meaning, much less adapt our trial strategy to anticipate and rebut them.

In light of the history of noncompliance with

their disclosure obligations, these reported failures cannot be viewed as anything other than ambush tactics.

With the Court's indulgence, I would like to quote myself from September 12th.

This is what I said: Quote, this is page 23 and 24 of the transcript. This is not a purely procedural matter. If we don't know who their experts are or a summary of the facts and opinions about which each will testify, we cannot adequately prepare for trial nor can we file a motion to preclude since they now withdrawn all substantive expert disclosures.

Should they at some point get around to providing these new expert disclosures, we would have to review them, redraft a motion to preclude, wait for their response, wait for the Court's decision, and then in the unlikely event the Court denies our motion to preclude, we will be in a position of having to scramble to find expert witnesses who might be in a position to controvert the assertions of these 11th hour defense experts.

Forcing us to scramble to do this on the eve of trial is precisely the unfairness that both the statute and this Court sought to avoid.

I went on to say they had almost a year to get their act together, and their failure to do so should not permit them to engage in trial by ambush or I suspect the

true motivation here to delay this trial past November.

Indeed, the Court itself was concerned about this eventuality back on July 8th and warned defense in an e-mail that the remedy for late disclosures by the defense would not be trial delay, but rather sanctions.

And at this point, I must say in no uncertain terms that we have been severely prejudiced by this late disclosure.

We are now two working days from trial. As you might expect, we had drafted voir dire questions, an opening, and lengthy direct examinations of multiple prosecution witnesses; all of which would have to be entirely reimagined if an expert is now permitted to testify as to whatever it is that these calculations in these charts mean. All this during the extremely hectic days between now and Monday.

The whole point of demanding this information back in June was to litigate the expert preclusion issue while there was still time to retain our own expert if we lost.

I don't really need to rehash the merits of the argument to preclude, but I must point out because it is relevant, that it seems this proffered testimony would be of extremely limited probative value even under the defense theory of corporate liability, because they conceded in their response to our motion to preclude that the People

did not have to prove the high managerial agents's actions actually benefitted the companies.

They argue, and we disagree, that we are required to prove that the high managerial agents intended to benefit the company. We disagree with that, but that is their argument.

Either way, all the calculations they seek to bring in through Mr. Hoberman speak, at most, to whether there was an actual benefit to the corporate defendants, not to the subjective intent of the high managerial agents.

Both high managerial agents, Allen Weisselberg and Jeff McConney, will testify at trial and could be examined and cross examined about their intent, even if this Court actually determines that the People have to prove some intent beyond the intent that is set forth in the statute itself beyond the mens rea that the statute itself contemplates.

So, I truly believe this, Judge, that permitting an expert to testify at this point would sanction this defense strategy.

I feel that we have been deliberately sandbagged and this is a situation made know by its utter predictability.

We saw this coming a mile away. We alerted the

Court to the looming issue, but we have been otherwise powerless to prevent it.

Those skeptical of preclusion, appellate courts have routinely upheld preclusion of defense witnesses when late disclosure evinces an endeavor to gain a tactical advantage.

That is exactly what is happening here. And if anyone needs any authority on this point, I'll direct people to U.S. Supreme Court in Taylor versus Illinois, 484 U.S. 400 from 1988 which speaks not only of prejudice to the prosecution, but also about the impact of this type of behavior on the integrity of the judicial process itself.

And I note, there are several cases in New York that cite to and follow Taylor versus Illinois; one of which is People versus Valdez which is 81 A.D third 550 First Department from 2011. It is in the context of an alibi witness, but the holding is no different from what I'm saying. It is based on the same delay tactics.

In short, your Honor; respectfully, this Court should reject the expert testimony both on the substantive ground set forth in a motion to preclude, and in the alternative, on the procedural grounds I just articulated. And I do thank the Court for its indulgence.

THE COURT: Of course. Before I hear from the defendants, can I be furnished with a copy of the documents

so I can print them out and be able to look at them as we speak.

MR. STEINGLASS: I can send them to you right now.

THE COURT: Thank you. Go ahead, Ms. Necheles. Go ahead and get started.

MS. NECHELES: Thank you, your Honor.

Mr. Steinglass has repeatedly argued or called me a person who is engaged in gamesmanship, and I'm playing games here and looking for a tactical advantage here.

I totally reject that. That is not what is going on here.

In fact, I believe that if anyone is engaging in gamesmanship, it is Mr. Steinglass.

I want to set the record clear on what the timing has been on this. Two months before trial, two months before trial, August 18th, the People first get a brand new significant witness who entirely changes the scope of the trial.

I know the People keep saying their theory did not change. Their evidence changed radically, and our defense had to change radically.

Our defense was a joint defense where we were relying on, arguing that Mr. Weisselberg was not guilty of the charges against him, and therefore, the Trump Organization was not guilty.

We were co-defendants and we were going to trial together on that. Mr. Weisselberg adamantly said up to that date I'm not guilty. All of a sudden the story changed; fine. The People are entitled to that. They are entitled to get a new witness.

We did not argue at that point we need a delay. We need more time. We need to readjust our case. We did not ask for any delay there. We went forward and obtained a major new witness.

On August 18th he pled guilty. On August 22nd to September 5th I had a long planned family vacation, and was not able to go out and look for a new expert.

As soon as I came back, within two weeks, 14 days later, we had an expert witness and had provided disclosure of the scope of his testimony to the prosecutors, and we told them exactly what he would testify and the report is no different. It is exactly the scope of what we said he would testify to.

That there was no financial benefit to the company; and in fact, there was harm. And so three and a half weeks later, we gave them the expert's report.

So, they got a new witness on August 18th. To date, we do not have one scrap of paper from the People on what that witness has said; nothing other than the allocution of the defendant. None of the witness's

statements.

We know his lawyer repeatedly met with him, and I assume proffered what his client would say. All of that should have been turned over. I believe, I assume he met with the witness himself. That is gamesmanship. If they are not writing down what the witness is saying, they are deliberately --

THE COURT: I'm not focused so much on --

MS. NECHELES: Your Honor --

THE COURT: Hold on. Move ahead and address the issues raised by Mr. Steinglass, okay.

MS. NECHELES: We have been scrambling. When the Government says they are scrambling, we have been scrambling to their last minute total change of the case, and in doing so, we got a new witness to address the new issues in the case, the new issues for our defense.

As soon as I got this report two days ago, I turned it over during a Jewish holiday. I received this report, and the day after the Jewish holiday I turned the report over to the Government, to the People. So, there has been zero delay in it.

When the People complain they do not know what it is based on, the footnote says it is based on the tax returns of the Trump Organization, of Mr. Weisselberg, and the Government's charts, the things the Government charged

the people claim were not properly reported.

We backed those in, and why did it take three weeks for the expert witness to do it? It just involved putting a lot of information into a computer system.

They have the report now. They know exactly what we were going to be calculating ever since we gave them the disclosure, because we told them at that point that we would be -- the expert would be testifying about and will be giving a report about how this financially harmed the company.

The only financial harm could be when you back out what, you know, do what the People say was the tax fraud, back it out and see what would have happened if it had been reported the way the People say it should have been reported.

I'm shocked the People never did that calculation. Again, I think that was a clear tactical decision by the People, because they knew this would show up, it would harm the company.

So, that is what we did, there is no surprise here, we gave the report.

The People continue to say that there will be 15 witnesses they will be calling at trial. 15 witnesses.

If that is so, we are not getting to the defense case for two months. And, if we are not getting -- so,

they have plenty of time to deal with these calculations and figuring it out.

I have on the witness list the People last gave me, 14 witnesses, which is not counting any of the people they asked for a stipulation on. There are 14 witnesses and they don't even list Allen Weisselberg, their star witness.

So, it is 15 witnesses. I don't really understand this claim they are scrambling for -- the need to be running like this or scrambling. We are scrambling because of their new witness and trying to answer this, and never asked for an adjournment, your Honor.

When the People keep saying we are looking for more time, we are not looking for more time, we are just trying to answer, to put a defense in for the new witness they came up with in August, as is their right. If they have a right to have a new witness, then so do we. We have a right to have a new witness.

THE COURT: Let me ask you a question, Ms. Necheles. What is the relevance of this information contained in these documents, if as you concede, the People do not have to demonstrate there was an actual benefit?

MS. NECHELES: Sometimes the intent of something, you cannot x-ray the people's mind. The courts said the intent is shown by the logical and clear consequences of

what their actions would have been. The logical consequences of these acts are that Allen Weisselberg harmed the Trump Organization.

So, to look into his mind of what did he intend to do, or anyone else intend to do, you can look at what the consequences of what they actually did were.

I think that is the standard instruction that the law gives. You are looking at people's intent. You look at what the consequences of what they did.

THE COURT: I think what you are referring to is kind of the standard definition for motive.

I'm not sure that it applies to what we are talking about here.

There were four separate categories for which you wanted the expert witness it to testify. Respond to each one quickly.

MS. NECHELES: Yes. I'm pulling it up right now. So, the categories -- this would address the first category which was -- your Honor, jumping back a minute.

With respect to the CV, we gave that to the People on the date your Honor ordered it be given, September 19th. It was not labeled CV. It was in an overall document that had the expert's report.

They asked for a document labeled CV. We took the information out of here and put it in a document labeled CV

and sent that to them.

It is the same information. I don't really understand what they are complaining about.

With respect to the four categories. The first was that he would explain how the allegations in the indictment if accepted as true, Mr. Weisselberg's conduct financially harmed the corporate defendant, and the expert's report containing these calculations would be produced as soon as it was prepared.

THE COURT: Stop there for a second. So, you are saying that is relevant because it goes to demonstrate what again?

MS. NECHELES: It goes to demonstrate his -- it is relevant to the issue of the intent. Did Mr. Weisselberg and Jeff McConney intend to benefit the corporation. Was this done on behalf of, in behalf of the corporation or was it done on his own behalf.

THE COURT: You are using a few different terms here. I think that intent -- was it their intent to benefit the corporation, or were they acting in behalf of the corporation are not synonymous.

I do not think you can substitute one term for the other. And in fact, as evidenced by the papers you both submitted and research that we have been doing, it is far from clear what in behalf of, on behalf of means.

I don't think we can very routinely substitute that with the word intent. I think that takes it a lot further even than what any caselaw or treatises say.

MS. NECHELES: Your Honor, I'm not saying it should be substituted. I'm saying for example, when you have a scheme to defraud, the only thing the People need to prove in a scheme to defraud is that the defendants intended to defraud. They had a scheme; but they put in evidence that it actually occurred, and there is no argument that is not relevant, because the fact it actually occurred shows what the scheme, what their intent is.

So, here we are saying the fact you actually hurt the corporation and actually benefitted Allen Weisselberg shows what your intent was.

You did not intend to benefit. It is no different than what the People intend to put into evidence in this case with respect to the scheme to defraud.

They are not just saying -- they are not going to put in evidence only there was only a plan to defraud on taxes or to cheat on taxes. They are going to put in evidence that Allen Weisselberg actually carried out that plan. And that is the same as the intent we want to put in. The same on both sides that you intend, you can prove people's intent because you cannot just look in their mind, you can prove it by showing in part what they did and what

were the consequences. Allen Weisselberg cheated on his tax, that is how they will prove the scheme.

THE COURT: I think the individual charges had their only separate mens rea, right. So, the individual charges may require intent.

I don't know that Penal Law section 2020 says in behalf of. While that may be an additional element, I'll agree with you that may be an additional element, I don't believe that adds the additional mens rea of intent, and I would be hard pressed to find anything that supports that claim.

MS. NECHELES: Sorry, I do not understand. If I can add one thing to what I was saying before.

I think People also intend to put in evidence, first, they had Allen Weisselberg allocute that he did this on behalf of, he was -- because he actually benefitted from it, they had him allocute to that. Second, they intend to put in evidence of payroll taxes that were not paid, and the company --

THE COURT: Ms. Necheles, that is besides the point. That is not the issue we are discussing right now.

MS. NECHELES: I believe it does, because they intend to show the company financially benefitted from the scheme.

So, we want to counter that and say no, the

company was hurt. The payroll tax is being saved by the company is what bases their claim the company benefitted, and this directly addresses that; that the payroll taxes are way outweighed by the harm, the other financial harm to it. In fact -- I think with respect to the intent whether you have to have an intent to benefit, that is what our argument is. That is what in behalf of means.

We cited the case the United States versus Oceanic I. L. L. S. A. B. E. Limited, for the proposition that, exactly that, you had to act within the scope, with intent to benefit the corporation.

THE COURT: All right, let's move on to the second purpose of the expert witness's testimony.

MS. NECHELES: So, the second purpose is he would explain the tax benefit to employers for certain compensation, giving certain compensation in the form of fringe benefits rather than salary.

THE COURT: I am sorry, can you repeat that.

MS. NECHELES: He would explain the tax benefits to an employer or to an employee, I'm sorry, for receiving certain compensation in the form of fringe benefits rather than salary.

THE COURT: Why is that relevant?

MS. NECHELES: So, a big issue here is that a lot of the fringe benefits were given to the employee, and the

People claim those were taxable income.

But even if that is so, even if the employer knew, that for example you give a car. There are reasons employers would do this.

I do not want the jurors just thinking well, if you gave a car to an employee, you must have intended to cheat on their tax, for them to cheat on their taxes; because why else would you give a new car to an employee. So --

THE COURT: The expert witness, this CPA, and I read his CV. What would he say in that scenario? Why would an employer give an employee a car?

MS. NECHELES: A car, you could get a car, and let's say you get a fancy Mercedes, and to pay for it yourself, if you wanted to get it yourself, it would cost you 12 hundred dollars a month, whatever it would cost.

If you get a car from the company and you are using that 50 percent for the corporate company, and 50 percent for yourself, then the only taxable income under the law is the 50 percent you are using it for yourself.

You get this car at a much cheaper price than it would cost -- than it would have cost you otherwise, because the company only is required under the tax law to attribute income to you the portion of the car that you are using for your own behalf.

So, it is a big benefit to employees, that is why employees get cars, because you do it a hundred percent legitimate. It is a big benefit to an individual, they get a car and essentially half it.

THE COURT: Is that what you said happened here, Mr. Steinglass, is that your theory of the case?

MR. STEINGLASS: No, I mean that is a small part of it. But how does that explain how the Trump Corporation is renting Allen Weisselberg an apartment and paying its rent in its entirety and failing to report any of that?

MS. NECHELES: Your Honor, he's jumping to a conclusion.

These are issues that we would be arguing to the jury.

So, I understand his position, but all I'm seeking to do is explain the benefits of -- fringe benefits to employees when they follow the law, so that a conclusion is not wrongly reached by jurors that fringe benefits per se means cheating on taxes.

THE COURT: What is the third reason?

MS. NECHELES: So I -- the third area is standards and practice which applies to accountants. One of the issues in this case is whether Allen Weisselberg and also McConney believed that certain things that they were doing were wrong.

Weisselberg will testify he believed everything he was doing was wrong. We don't accept that. We think he's lying, and we want to show that as we believe McConney and Weisselberg relied on the experts or the accountants, the outside accountants who led them to believe that certain things were done correctly, and so in a part they believed this because the accountants signed off on tax returns knowing, for example, we were using 1099's, we were giving employees 1099's and they repeatedly signed off on tax returns knowing that and --

THE COURT: I'm not sure I understand. It is your position that Mr. Weisselberg actually lied when he allocuted and took responsibility for his actions, and in fact he did not intend to commit any criminal act, he was relying solely on the accountants and he followed their advice, is that what you are saying?

MS. NECHELES: No, your Honor. In part, we believe he lied in part. We believe that as to some of the things he said, he did not know that he was doing something wrong.

As to some of the things we believe he did know. We believe he relied and he lied in part, and that he relied on as to some of the things which were fully disclosed to the accountants.

He and McConney relied on those accountants and

were entitled to rely on them and relied on them in part because they knew an accountant cannot sign off on a tax return if he believed that things are being done illegally on that tax return, things he knows about. That is what we intend to elicit from the expert. That is exactly that.

THE COURT: All right, the fourth.

MR. STEINGLASS: Can I say something about that?

THE COURT: Please.

MR. STEINGLASS: So, let me see if I understand this. They want to introduce an expert to opine about the true intent of Allen Weisselberg and Jeff McConney, notwithstanding their testimony to the contrary, and somehow offering the fact there could be a hypothetical innocent explanation for their conduct.

That does not seem to be the proper scope of expert testimony.

Even if he had somehow interviewed these witnesses, speaking about what these witnesses intended is something the witnesses can do without needing an expert testimony. This is not beyond the ken of the average juror, and that is not the appropriate subject of expert testimony.

MS. NECHELES: To be clear, that is not at all what I said. The expert will not opine on their state of mind at all because he does not know.

Jeff McConney I expect will testify just like he testified in the grand jury. He did not believe any of this was wrong and that he replied on the expert.

What I want the expert to be able to testify is the standards and --

MR. FUTERFAS: Susan, you said the expert, you mean relied on the accountant.

MS. NECHELES: He relied, I'm sorry, on the accountant; he relied on Bender, thank you, Mr. Futerfas.

And the expert would testify as to standards and practice which is what experts are called to testify. He will testify about standards and practice and how an accountant is not allowed to sign a tax return.

So, he will be giving an objective standard that applies in the industry. And then the witness will testify, he will not opine at all on the witness's state of mind, but this will be a predicate, a factual predicate as to we will be questioning both of the witnesses about, McConney and Weisselberg about whether or not they relied, whether they were aware of this standard.

So, we are entitled to put in evidence that this standard exists. This is in fact a standard in the law. That is the third area.

THE COURT: All right, and the fourth area.

MS. NECHELES: The fourth area is that

Mr. Hoberman will go through certain of the records that were produced in discovery by Mazars and show that Mazars in fact knew, was provided with the records which showed the things we are saying that we believe were not incorrect and that McConney would believe were not incorrect, and McConney will say I told, I believe that Mazars knew about this, and that I could rely on them because they did not tell me I was doing something improper.

And the expert will show in the actual records of Mazars they were provided with this information. So McConney's testimony that he provides this information is backed up with documents which show it, and the reason you need an expert for that is these are accounting documents which are kept in forms that are not necessarily clear to a juror or to an ordinary non accountant on the standards.

This evidence is also relevant to show that Weisselberg is lying. Weisselberg said in his allocution that he hid this information from vendor, but in fact it is in the accounting records. That is what we will be seeking to show through the expert.

MR. STEINGLASS: What was and was not sent to Mazars can be established through non expert testimony. McConney will testify, Weisselberg will testify, and whatever else the records are going to come in. They will show what was said.

The jury does not need a defense expert to hypothesize about what somebody reading these documents might be in a position to realize or what not. That is the proper testimony elicited by direct witnesses, not some hypothetical expert offered to offer up pretty much to confuse the jury and leave them to start speculating about documents, what they mean and what people intend when they send them, when that direct testimony will be right in front of the jury.

THE COURT: I want to make sure I'm following you, Ms. Necheles. So, Mr. Weisselberg said that he kept certain information from the accountants, and in fact you believe the accountants had that information, and therefore, Mr. Weisselberg was lying.

Why can't Mr. Weisselberg himself be cross examined on that or the accountants themselves, Mazars. Why can't they be cross examined on that?

MS. NECHELES: Your Honor, Mr. Weisselberg cannot be cross examined on it because he never saw these documents. He does not know these documents.

I'm not talking about the actual 1099 or something like that. I'm talking about entries in the accountant's records. I cannot just show him a record which first won't be in evidence. You know, and it is a Mazar's record, not a Trump Organization record, and ask him do you understand

this, you know. How do I know he even understands that record.

They are accountant work papers which had entries in them. I need either the accountant or the expert can testify.

THE COURT: Why can't you cross examine the accountant?

MS. NECHELES: Interestingly, what I did not hear Mr. Steinglass say is I could cross examine the accountant. He has three accountants on his witness list. I don't know if they are calling them.

I think there is a little bit of gamesmanship going on. I don't know if they are calling him.

THE COURT: Wouldn't it make a little more sense and -- lets say the People do not call the accountants, would it make more sense for you to call the accountants then and have them say no, this information was provided to us, rather than having a third party expert come in and draw conclusions as to what was turned over and what was not turned over?

MS. NECHELES: I might have to call the accountants. I would ask the People actually be directed to tell us who they really intend to call.

I am concerned, they said and they continue to say they are calling these 15 witnesses. If they are not, I

need to subpoena those people and make sure they will be available for trial.

THE COURT: Like you said earlier, there are many, many weeks before that happens. You have plenty of time to subpoena those people.

Let's not get sidetracked. My question is doesn't it make more sense to cross examine the accountants themselves, the ones who presumably had created these entries and who can say whether they received or did not receive certain information?

MS. NECHELES: Your Honor, I would do that, but I don't know what the accountants will say. They refused to speak to me today. So, I don't think as a trial lawyer I should have to rely on a witness who is refusing to speak to me.

I think I should be able to take documents that those witnesses created counting work product and show them to the jurors with expert testimony, just like the People would be able to do if they seize documents in a search and for example, a search of a drug place, they would put them into evidence through an expert who would explain them.

I'm trying to put in records through an expert who can explain those.

THE COURT: Will your expert be able to testify to the source of those documents, who provided that, it was

Weisselberg, it was McConney, it was somebody else.

What exactly falls within the expertise of this individual that permits him to say yes, when Weisselberg said he did not provide this, looking at this clearly he did provide this. What qualifies him to say that?

MS. NECHELES: There is a notation in the work papers. I would have to get either a stipulation or call a witness from Mazars to put these in evidence, records created in the ordinary course of business and kept in the ordinary course of business.

And you can see in there that there are notations, a telephone conversation listing what is discussed in it and listing the various records that were discussed.

THE COURT: It seems to me based on what you are saying now, you probably could cross examine Mr. Weisselberg with that, and the worst thing that could happen is he could say I don't know what you are talking about.

MS. NECHELES: I agree.

THE COURT: I was not done. And then depending on how far you get with Mr. Weisselberg, you can then cross examine the accountants.

Can the expert testify as to what certain notations mean? You know, so and so said this, so and so said that. I mean if you want him to testify, presumably

you want him to testify to the truth of that information. Is he in a position to do that?

MS. NECHELES: Your Honor, I think that he can testify that, you know, this is what accountants do, accountants keep notations, work papers for the kind of work they have done.

This is a notation here of a conversation or it purports to be a conversation. It would have been in evidence as a business record introduced for the truth of it.

So, it says on it that there was a conversation and these are whether they are discussing 1099's which Weisselberg -- and show the various entries and show adjusting entries in the books and records. To make these adjusting entries you would have to look at the cars. Those kind of things that experts and accountants know how to do.

Your Honor, I think the issue is if it is relevant and whether this is the kind of thing that an expert is allowed to testify about.

I do not think the People should be able to tell me how to try my case; whether I should have to get this out on cross or whether I could put an expert in.

It is a record that is admissible and relevant and if this is the type of evidence an expert can testify

about, I think it should be admissible.

THE COURT: I agree the People cannot tell you how to try the case. Part of my job is to make sure that the jury does not get confused. So, I have to insure I only allow into evidence whatever is relevant for the issues in the case.

I'm not saying that it is or is not yet. I have to digest everything that is being said and review the documents sent to me a few minutes ago.

But, as I said a long time ago, this trial is not going to turn into a master class on taxation, and I'm certainly not going to permit the jury to become confused by irrelevant issues.

That is it why I asked you to go through each of the four steps.

In deciding whether to allow your expert to testify or not, I have to look at it within the context of whether the People are being prejudiced by the fact they just received this, what, yesterday, today?

MR. STEINGLASS: Yesterday.

THE COURT: So, you'll recall that on August 18th when you indicated that you might be calling different experts, that your theory of the case had changed. Without weighing in on the persuasiveness of that argument or not, I gave you time, until September 19th, because I know that

courts and appellate courts frown on defendants being precluded from putting on their defense.

I gave you to September 19th. After that I gave you a couple of more extensions to provide everything that you were required to provide to the People.

Now, you turned over yesterday, what at first glance I'm looking at, this is a bunch of spreadsheets, a bunch of calculations, I mean a lot of calculations.

So, I have to determine whether the probative value of it for you exceeds whatever prejudice the People might suffer as a result of permitting this now.

MR. VAN DER VEEN: Judge, if I may. On the issue of prejudice, it seems to me the tardiness of the report I cannot much comment on Judge, but it seems to me the summary charts are really just summaries and calculations of information that the prosecutors had for a very long time, and just looking at the numbers, the data that they have, everything that their expert is using in the summary chart is just information that was given to us by the People.

And the relevance of whether there was harm to the corporation or whether there was a benefit to the corporation is probative to the defenses in the case.

One of the defenses is that these acts should be alter virus in their nature. So, a factor into making a

determination of whether something was or was not inside the scope and the intent of the actor is was there harm to the people they were acting in behalf of or not.

And so, the numbers are known to them. They are being looked at perhaps differently than they want to look at them. But, they are relevant to the defenses that are available to us.

So, for those reasons, I ask the Court when weighing the prejudice, take into consideration it is really just summaries that an expert can do to make it understandable to regular jurors or regular folks like myself.

And so, I think when you weigh that prejudice, it comes out on the side of the defense; and I think when you are looking at whether it is helpful to the jury or not, we do not want it to be a tax class and put everybody to sleep. But, the way that the numbers are looked at and calculated for the various entities and the various parties in the case, would be enormously helpful to summarize it, and of course the Government has themselves sent us very similar charts that they intend to show the jury.

So, for that reason, you know, it is not really a new method of presentation. It is a summary chart that of what they sent us.

And you know, I have been watching the lawyers in

this case interact for a while. I do not feel comfortable with all the procedure stuff.

My argument is to avoid personal attacks and try to be much more on an even basis. I tell you, I think it is important defendants be given an opportunity to talk about the evidence in the light that they see it as well.

So, for that reason Judge, I ask you excuse the tardiness of it and allow it to be admissible.

Thank you for the opportunity.

MR. FUTERFAS: Can I have 30 seconds with your Honor's indulgence.

THE COURT: Please.

MR. FUTERFAS: Thank you, and I'll keep it 30 seconds, maybe less.

One of the issues I see with the report and the first of the four pieces of the report, the in behalf of, we are all wrestling with at this point, what does it mean, is that I think your Honor will see play out that the impression that Mr. Weisselberg will leave on the jury by the People is going to be that this company in fact benefitted.

And I think the nature of their direct examination and the way it will come out, the way it will sound and the way it will be presented will very strongly suggest to the jury that in fact there was a benefit to the company.

And so, on that category, I know there are four categories, I'm just addressing the first one. You know, they will have a mis-impression if that impression is made and settled and that is how that testimony goes, that direct testimony and other testimony, without expert testimony on the subject, this jury may go through this trial thinking well, you know, I guess the company really did benefit at the end of the day, and that is very, very problematic from my perspective.

That is all I want to say, your Honor.

THE COURT: You are touching on something that is important. From day one in this case, if I remember since the day the indictments were unsealed, there has been a lot of commenting on how the corporation benefitted by these acts, and that was not the only time it was mentioned. It was mentioned on many other occasions.

So, if the People decide they want to present evidence to that effect, and they certainly can, I'm always free to revisit my rulings. That is one of the beauties of a trial; it is fluid, it changes, and as we go, I can revisit all of my rulings, and if I feel the jury has been left with a wrong impression, they have been misled in some way, I can always revisit that. But, within that, I still have to determine whether it is relevant or not. Just because the People can show the corporation profited,

again, it comes down to the definition of in behalf of.

A lot of this really turns on that, and I can tell you that I've been working a great deal on that.

MR. FUTERFAS: Thank you, your Honor.

THE COURT: Anything else on this issue anybody wants to bring up? No.

MR. STEINGLASS: No, thank you.

THE COURT: So very quickly, let me go through some of the other motions in limine. And bear with me, I'm reading from some notes.

So, the People had moved to preclude the defense on the issue of selective prosecution, FTI records, and preventing the defense from claiming these are unusual novel or unprecedented charges.

With regard to FTI. If the People are not calling any witnesses from FTI Consulting, or not seeking to introduce any evidence created by FTI Consulting, and if the witnesses they plan on calling have not been influenced by the opinions or work product of FTI Consulting, then the defendants are precluded from producing evidence concerning FTI Consultants and the billing records.

With regard to the unusual novel an unprecedented charges issue. Again, the defendants are precluded from remarking during jury selection and in their opening statements that the charges are novel, unusual, or

unprecedented. But likewise, the People are directed to refrain from suggesting the charges in this case are ordinary, routine, or common place.

Depending on -- of course, that is only during jury selection, opening statements. We don't know what the witnesses are going to say once they are on the witness stand. That could completely open the door or change things.

With regard to how the issue of whether these are unprecedented charges or driven by some sort of bias, the defense is correct, a witness's bias can always be explored. And it can always be exploited. We are going to have to draw a real connection between the Trump Organization or Donald Trump himself and any bias that might exist.

I'm not sure at this point that based soley on the papers that I read, that you have established that connection.

I'll give you the opportunity now, Ms. Necheles, to flesh that out for me a little bit more.

But a witness's perceived bias, hostility, interest for or against any party can be explored. The parties should not, however, suggest in the premise of their questions that the witness was targeted based on his or her political associations or beliefs.

Should the witness produce the notion she believed she was targeted because of her association with a political figure, the parties will then be given latitude to explore that answer. But, I'm directing both parties to not ask loaded questions and loaded phrases such as political vendetta, political agenda, things of that nature and that should not be incorporated into the premise of the questions on cross examination.

Any you question about that?

MR. STEINGLASS: No.

MS. NECHELES: No, your Honor.

MR. FUTERFAS: No.

THE COURT: With regard to voir dire, both parties submitted questions which you had suggested I incorporate into the questionnaire.

I did incorporate some of them and modified other questions as suggested, and I provided those to all of you, and I think you received those on October fourth.

The defense made a Brady demand whereby they moved for all drafts of Allen Weisselberg's plea allocution and all related statements, notes, and documents.

The People responded they were not aware of or they were aware of no Brady material, and acknowledged their continuing disclosure obligations.

If the People have not already provided a copy of

the allocution that Mr. Weisselberg's attorneys edited before Mr. Weisselberg plead, then the People are directed to provide that proposed allocution to the defense.

That aside, the People are again reminded of their ongoing obligations to disclose expeditiously upon its receipt, all information that negates a defendant's guilt, reduces or mitigates defendant's culpability, supports a potential defense, and impeaches the credibility of the prosecution witness.

The defense filed a motion to strike that portion of the caption that reads DBA the Trump Organization, doing business as the Trump Organization, and precluding the People from referring to the Trump Organization as a proxy for the corporate defendants.

The motion to strike the caption itself is denied. However, the parties may refer to the companies on trial collectively as the defendants, the parties are instructed however that they must not refer to the Trump Corporation or the Trump Payroll Corporation as the Trump Organization. They are two separate defendants. I think that the concern expressed by the defendants is valid, and as you all know, they are separately -- the charges against each one has to be proven beyond a reasonable doubt, each and every element of the offenses has to be proved against each one beyond a reasonable doubt.

If a witness were to testify that they worked for the Trump Organization, I ask you to please have the witness clarify when you say the Trump Organization, what do you mean, who do you work for.

At the conclusion of the trial, I will instruct the jury there are two defendants. That their obligation to evaluate the evidence as it applies or fails to apply to each defendant separately. That each instruction on the law must be considered by the jury as referring to each defendant separately.

That the jury must return a separate verdict for each defendant, and that those verdicts may be, but need not be the same. Go ahead.

MR. STEINGLASS: I didn't realize you were not done, I'm sorry.

THE COURT: Go ahead.

MR. STEINGLASS: I was going to say that will be really tricky Judge, because these witnesses routinely describe themselves as working for the Trump Organization; and that the terms are used interchangeably.

We will put in a bunch of documents that Allen Weisselberg signed as CFO of the Trump Organization. So, I completely agree with the portion, I'll follow any portion of it to the best we can, but the portion in which you say you will instruct the jury these are two separate

defendants, consider evidence not against the Trump Organization but against the Trump Payroll Corporation and Trump Corporation, I totally agree with that, and that is not a problem and we have tried to introduce some more precision into our questions, but the notion that the Trump Organization should not be mentioned I think is an impossibility and the exhibits themselves are going to kind of contradict that ruling.

THE COURT: No, no, sorry if I misspoke. The phrase Trump Organization can be used, but it cannot be used as a substitute for identifying the two defendants.

MR. STEINGLASS: I misunderstand.

THE COURT: All right, continuing. Regarding Mr. Weisselberg's allocution. The defendants argue that Mr. Weisselberg's allocution is inadmissible hearsay.

The People concede Mr. Weisselberg's plea allocution is inadmissible, and therefore, that is a non-issue.

Continuing to Mr. McConney's grand jury testimony.

Defendants claim admitting McConney's grand jury testimony violates the confrontation rights.

People argue that Mr. McConney's grand jury testimony is admissible as a party opponent statement that should not be categorically precluded.

Further, the People argue that there is nothing in CPLR section 4549, New York State caselaw, or secondary sources which imposes a categorical rule barring admission of grand jury testimony secured by subpoena, but at the same time there is nothing that permits it.

Lastly, the People argue that McConney testified to matters within the scope of his employment, and admitting this testimony would not improperly bolster him in the trial.

The defense motion to preclude McConney's grand jury testimony is granted.

To the extent, to the extent McConney's grand jury testimony is a prior consistent statement, it is inadmissible.

To the extent it is a prior inconsistent statement, it may be admissible if the requirements of CPL section 635 are satisfied, 60 point 35, okay.

Any questions about that?

MR. STEINGLASS: You referenced a confrontation clause in that, Judge. Does it make any difference to you if McConney testifies and is therefore available for cross examination in terms of whether those grand jury minutes are admissible, because we agree they would run a foul of the confrontation clause in the absence of a meaningful opportunity to cross examine.

But the question is if he does testify and takes the Sixth Amendment out of it, would that testimony be admissible as an admission under the CPLR?

THE COURT: You know, I have to think about that. But, I don't know I would allow it if you have him on the stand already making that admission.

I don't know why you would also have to then bolster that by introducing his grand jury testimony.

MR. STEINGLASS: I can answer that. If he is admitting to what he's saying in the grand jury, sorry, I want to back up for a second.

Mr. McConney is the controller of the Trump Organization, corporation. He is not talking to us. We don't really know what he will say. And so, if he testifies consistently with his grand jury testimony, I don't really see the need to put in his prior grand jury testimony.

However, if he testifies inconsistently with it, then I would rather put it in under the CPLR as I think it is proper than using 6035, because you know if it comes in under 6035, it only comes in for its impeachment value, not for the truth of the matter contained in that.

So, we don't have any intention of putting it in just so we can have him saying the same thing twice.

However, we would like to very much retain the

ability to put in the grand jury minutes if he is wiggling or pulling back or clawing back some of the things that he said in the grand jury, because I believe the grand jury minutes would properly be admissible substantively in that scenario.

THE COURT: We have to see how it plays out. As I'm sure you know, CPLR 4549 is a little tricky, and there is probably going to be a lot of litigation regarding that.

So, I try to stay out of the way of any unnecessary litigation. So we will have to see how it plays out at trial.

MR. STEINGLASS: Fair enough, thank you, Judge.

THE COURT: Now, the defense filed a motion to strike the People's certificate of compliance due to the People's failure to disclose documents sent to and from the New York State Department of Taxation and Finance, and to order the People to provide defendants with the request letters they submitted.

Specifically, defendants moved to preclude the testimony of any Department of Taxation and Finance employee on the grounds that the prosecutor's request letters, two forensic audit reports and two criminal referral letters were disclosed belatedly.

The People claim they inadvertently failed to

produce the forensic audit reports, and promptly produced them July 15, 2022 when they realized the reports were not included in their production.

The People claimed the referral letters are work products and not discoverable, but they nonetheless disclosed them as a courtesy on August 9, 2022.

As with the referral letters, the People provided the request letters to the defendants as well.

The applications for sanctions is denied. Defendants have failed to demonstrate that they were prejudiced by the belated disclosures as is required by CPL Section 245 point 80 subdivision one.

Moreover, no adverse consequence shall result from the filing of a certificate of compliance in good faith pursuant to 245 point 50 subdivision one.

The Court notes the prosecution provided the documents at issue as soon as they realized they were not included in the prior production and provided the additional documents as a courtesy.

Because defendants have failed to demonstrate prejudice, and the People have not provided the referral letters and direct request letters, the motions to strike the certificate of compliance and preclude the testimony is denied.

We now get to the issue of the expert testimony of

Mr. Hoberman, H. O. B. E. R. M. A. N, and together with that, the issue of corporate liability pursuant to Penal Law section 2020. I'll not rule on that at this moment.

In fairness to all of you, the reason I wanted to have this conference today, not tomorrow or not even Monday morning, I know a lot of preparation that goes into it and I want to give you as much time to prepare as possible.

In light of the fact I was just provided with this latest issue, I just cannot possibly rule on it right now.

I'll make every effort to rule on it tomorrow, if possible. I cannot promise I'll be able to do that, okay.

I believe that James Bergamo provided you with the standard pattern jury charges for preliminary instructions.

MR. STEINGLASS: Yes.

THE COURT: My instructions are very similar. I try to follow the pattern jury charges whenever possible. There were a couple of questions I had though.

Again, I want to confirm we are all in agreement after I read the preliminary instructions, I'm going to ask those jurors who believe they cannot be fair or cannot serve for any other reason to raise their hands and at that point we will just excuse those jurors, is that still the case?

MR. STEINGLASS: Yes Judge.

MR. FUTERFAS: Yes.

MS. NECHELES: Your Honor, I think we spoke with our clients about this and our clients ask we not excuse them.

THE COURT: You are breaking up a little.

MS. NECHELES: We spoke with our clients, and our clients asked we not consent to that.

MR. FUTERFAS: If I may, your Honor. I think we want some indication, and I think counsel, new counsel from the payroll company is going to request this.

If a bunch of jurors get up to leave, I think we want some indication from each juror whether they are leaving because of a fairness concern.

It does not have to be a detailed account. I think if your Honor brings 50 people into a room and 25 people get up and say they cannot serve, we want some very brief indication from each juror you cannot serve because of a fairness issue, you cannot be fair, a medical issue, maybe be a work issue.

But we want just some indication from each juror about what bucket their request to be excused falls into, even if it is brief.

THE COURT: That is fine. But instead of doing some sort of a hybrid procedure, I think we will just do it the way I normally do it then and meet with everyone who wants to be excused. Instead of doing it in the courtroom

at the bench, we will do it in the jury room or in the robing room so not everybody can hear what everybody else is saying.

Having said that, the way I normally like to do it is I will ask them why do you believe you should be excused. I'll hear what they have to say.

If what they say clearly makes them unable to serve. For example, I got tickets to Hawaii tomorrow, I cannot change that. I'll just ask are there any objections, and if there are objections, put them on the record. If there is no objection, you can remain silent and I'll indicate for the record there have been no objections.

If the reason they give, you know, is not clear or leaves some wiggle room. For example, somebody says you know, I don't think I can serve because I was once a victim of a crime that prevents me from being fair, I may then ask are there any additional questions. That is my invitation to you, if you want, to ask some follow-up questions.

The only limitation on that is limit your follow-up questions to the specific issue that was raised by the prospective juror so we can keep things moving.

Look, I cannot serve because I have travel plans. We don't want to get into asking them about their political affiliations. They cannot serve, so we will excuse them.

That is how we will do it. It will take longer, that is fine. We will do it however it needs to be done.

MR. VAN DER VEEN: Payroll Corp has no objection to that, thank you.

THE COURT: Great. I've been handed a note that Judge Biben by the time we are done today, needs the names of every lawyer and every paralegal that will actually participate.

I assume that means who will be in the well. And so please, I know you have already done this, I'll ask you to do it again. E-mail me the names of every lawyer and every paralegal who will participate, and I'll pass that along to Judge Biben.

MR. FUTERFAS: Should we send that to Mr. Bergamo or your Honor?

THE COURT: That would be great please. All right, my next question. Let me back up.

I always introduce the parties of course. I see no problem with introducing all four defense counsel and indicating who you represent. Who do you want me to introduce as far as the prosecution?

MR. STEINGLASS: I refer to Susan.

MS. HOFFINGER: Judge, you can introduce the four of us who will be within the well, who will be Joshua Steinglass, myself, Imran Ahmed who is on this call, and

Gary Fishman.

I think that makes sense. There will be the four of us. We have other people on the team, but it will be the four of us seated in court.

THE COURT: Okay.

MR. STEINGLASS: You said something about the names of the paralegals. We are going to have two analysts seated just outside the rail who are going to be running the exhibits.

Do you want us to include them? They are technically outside the well, but will be involved.

THE COURT: You can identify them and indicate they will be outside the well and what they will be doing. That is fine.

MR. STEINGLASS: No problem.

THE COURT: Normally as part of my preliminary instructions, I advise prospective jurors that the fact a defendant does not testify as a witness is not a factor from which any inference unfavorable to the defendant may be drawn, and this has to do with the burden of proof.

This being two corporate defendants, do you still want me to say this and perhaps tailor it so it reads that the fact the defendants do not present any evidence or do not present a case is not a factor from which you may draw any unfavorable inference. How do you want me to handle

that?

MS. NECHELES: We ask your Honor say something along the lines that the corporate defendant may not call a representative to testify, a representative from the corporation or put on any other evidence, it is not a factor you can consider.

THE COURT: Okay.

MR. VAN DER VEEN: Whatever your Honor thinks is fair is fine with the Payroll Corp.

MR. FUTERFAS: We join Ms. Necheles's request.

THE COURT: Thank you. I normally give an instruction regarding police testimony. A police officer's testimony should not be believed solely and simply because they are a police officer. And likewise, they should not be disbelieved solely because they are a police officer.

In this case, I can give a similar instruction, but instead of calling them police officers, I can call them law enforcement officers. Or if this is not relevant to this case, I do not have to give the instructions at all.

MR. STEINGLASS: We are not planning on calling any law enforcement officers, I don't know about defense.

MS. NECHELES: I think that might apply to the witnesses from government agencies; the law enforcement officers, people from the Tax Commission as well as the

People are calling someone from their office, Wei Man Tang I believe is someone from their office.

MR. STEINGLASS: I never heard that charge apply to paralegals in our office. Whatever your Honor decides we can live with.

MS. HOFFINGER: They are not law enforcement, your Honor.

THE COURT: I'm not inclined to give that instruction. Ms. Necheles, my concern would be if I give that instruction that applies to anybody from Taxation, we are kind of elevating their role a little bit more than we want to. I would probably rather not give that instruction. Unless you are insisting on it, I will.

MS. NECHELES: Sorry, maybe -- go ahead, I'm sorry.

THE COURT: I think it cloaks them with additional authority. I don't know if you want to do that.

MR. BRENNAN: I agree for Payroll Corp we don't want.

MS. NECHELES: I defer to Mr. Van Der Veen.

THE COURT: Okay, bear with me. I think that is all I have there.

MR. STEINGLASS: I have a question before we move on, Judge.

You mentioned that there is the -- well, in the

charge that Mr. Bergamo sent us, there is an accessorial liability section.

So, while you are charging that, we would also ask you charge the corporate liability section. I think they should both be charged, but in any event, one should not be charged without the other. It is a little bit misleading in this case.

I'm asking for the standard CJI charge on corporate liability.

THE COURT: You want me to do that as part of the preliminary instructions when the entire panel walks in?

MR. STEINGLASS: Well, you can do it then or before we start taking testimony. Whenever you read the accessorial liability. It is a little unclear. It seems from what Mr. Bergamo sent us, that is something you do at the very beginning.

Basically, my request is whenever you charge them on accessorial liability, I ask you to charge them on corporate liability.

It is fine to do it just before the trial as opposed to when they first walk in the room, whenever your Honor feels.

THE COURT: My only concern with charging them at that point with corporate liability, it is a little confusing, and I do not want to scare jurors away. Already

many jurors feel like they cannot serve if they do not have a law degree.

I don't want to spook them with what can be a little bit confusing. Mr. Futerfas, Mr. Van Der Veen.

MR. FUTERFAS: We have been wrestling and we are working on our own request to charge with respect to particular charges your Honor may want to see. You know, we are all wrestling with it, and I think in the beginning of the trial, to advance a pretty subtle concept, what can be a pretty subtle concept, I do not see the purpose of it.

The jury will be sitting there for two or three weeks of testimony, whatever it will be. They will have a much better idea towards the end, what the case will be about. When your Honor settles on what you want to give, it will make sense to them at that time.

THE COURT: Just to clarify, I feel like it is not a good idea to give it to the entire panel, meaning the 70 or 80 people. Most of them will be excused anyway.

I do think it makes sense to give it before opening statements, because that could frame how the jury would hear the evidence.

At that point I would be inclined to do it then unless there is a strong objection.

MR. FUTERFAS: With respect to this in behalf of

charge which we have been going about in the briefing regarding the expert testimony, obviously the issue came up in the expert testimony about, you know, what we have been talking about today, how is it relevant.

I would just ask your Honor whatever you charge in the beginning of the case, to make it a little more general; because towards the end when we get into the nitty gritty on that charge in particular, there will be a lot of back and forth about exactly what language your Honor will settle on, you want to hear from both sides on that issue.

THE COURT: Yes, I would just give the pattern charge. I would not give any sub definitions or anything like that.

MR. FUTERFAS: Thank you.

MR. STEINGLASS: Perfect.

THE COURT: I expect there will be questions about that at the end of the trial.

MR. FUTERFAS: Thank you.

THE COURT: I think that is all I have. We are here, so we can talk about whatever is on your mind.

MS. NECHELES: Your Honor, one other matter I wanted to raise. I was looking earlier but could not locate it earlier.

Going back to the issue of the People's claim that your Honor ordered us to produce the report by the 19th.

That is incorrect. On October 4th, your Honor sent an e-mail to us and all the parties which said defendants are directed to immediately produce Robert Hoberman's CV and give notice of any documents they wish to introduce through Mr. Hoberman.

Further, defendants are directed to produce any exhibits or reports created by Mr. Hoberman as soon as they are finalized.

That is exactly what we did. We complied one hundred percent with your Honor's order.

MR. STEINGLASS: That is incorrect. Well, you know what, the record of September 12th is very clear.

Your Honor ordered that all of those things be provided by September 19th. When they were not, we complained, and your Honor set further directions. But to say that Ms. Necheles complied with the Court's order on September 12th is not borne out by the record and the record speaks for itself.

THE COURT: That is my recollection as well, Mr. Steinglass. Yes, Mr. Van Der Veen.

MR. VAN DER VEEN: I wanted to go back and address another issue when the Court is ready.

THE COURT: Sure, now is a good time.

MR. VAN DER VEEN: I just wanted to revisit and try to get a little bit finer on the head of the relevance

of the harm or the benefit to the corporation.

You know, I think when you look at the plain language of -- when you look at the plain language of the difference between in and on; whether you are looking at Merriam's dictionary, Webster's dictionary, or looking at Black Laws dictionary, you are trying to analyze Greek and Latin. In benefit does require in the interest for the interest of -- for incurring a benefit, but more importantly, we have been charged with conspiracy.

My client, the Payroll Corp, has been charged with conspiracy with Mr. Weisselberg, and he allocuted to that he conspired with the Payroll Company to do what they did to commit these crimes.

The fact that the Payroll Company both conspired to harm itself is relevant evidence. It is a logical argument, and so if we through cross examination of their witnesses or a recharting of the economics of the case, the numbers, the equation involved in what you calculate, whether there is harm to my client is relevant just to the conspiracy charges themselves.

Aside from the defenses I mentioned earlier about whether it is within the course and scope and ultra virus and other elements of some of the statutes, so I wanted to try to put a finer head on that, Judge.

THE COURT: Okay, I'm not sure I follow that. I

want to make sure I understood what you are saying. If you can run it by me again.

MR. VAN DER VEEN: My client, the Payroll Corp, can't conspire to harm itself. It is nonsensical and it is relevant evidence if I can show that what Mr. Weisselberg did was harmful to my client and not something that my client would conspire to do.

I know he plead that he conspired, but it is not a forgone conclusion. We dispute there was any conspiracy; and the fact what he did harmed us, is relevant evidence to that very point, if that make any sense.

MR. STEINGLASS: Not so much to me, because corporations do not intend anything. Corporations act with their high managerial agents.

So, you cannot conspire with an entity. You can only conspire with the agents of that entity, and those included Allen Weisselberg himself and Jeff McConney. And I fail to see how an expert would shed any light on that.

If there is somehow an argument to be made from the evidence to the jury, I believe that Mr. Van Der Veen is capable of doing that. I do not see how that impacts the question of scope of expert testimony.

MR. VAN DER VEEN: The need to understand and simplify the information so it is understandable, that would be the point of the expert testimony.

But, I'm really taking about more the issue of whether there was a benefit to the company or not and its relevance, and whether there was a harm to the company and its relevance and admissibility.

THE COURT: Are you referring specifically to the charge of conspiracy?

MR. VAN DER VEEN: To the charge of conspiracy, yes. When I read the colloquy which I have done a couple of times, they allege that he conspired with the Payroll Corp.

They did not make any distinction about an employee or manager when they made him allocute on each one of those counts.

THE COURT: What does come to my mind as I hear you speaking of it is that when I keep seeing over and over and over again when I research the corporate issue is that a corporation is a legal myth for purpose of what we are doing here.

The corporation is made up of the individuals. So, I would have to look at your concerns for the charge of conspiracy within -- through that lens.

MR. VAN DER VEEN: But then you see if you are going to say that there are other people that are part of the corporation to which were -- the actions were hidden, they were duped, and shows what he did and that it harmed

as an ultra virus act to his course and scope of his employment. So, on a number of issues they are relevant facts.

MR. STEINGLASS: Sorry to go back and forth. I think that is absolutely and legally irrelevant. Whether there are high managerial agents who were not involved in the conspiracy matters not.

If there is a single high managerial agent who was, that is enough to bind the corporation, which is the point of the corporate liability charge.

It can be 15 different high managerial agents of the same corporation, it only takes one to tango.

MR. VAN DER VEEN: Judge, this is very much the case of the employee stealing from the company and the harm that results and the fact that the higher managers in the company had all of this hidden from them is relevant to the defenses and relevant to the conspiracy.

THE COURT: I think the nuance is where an employee steals from the company, you are absolutely right. But, where an employee steals from the clients of a company, it can change. So, it all goes into that analysis we are still waiting on.

MR. VAN DER VEEN: When it does both, Judge, it is relevant.

THE COURT: Okay.

MS. NECHELES: Can I ask a little bit about the jury selection?

THE COURT: Yes.

MS. NECHELES: I realize on the last court appearance, I was not 100 percent clear on how your Honor does jury selection. Did you say something?

THE COURT: No.

MS. NECHELES: Mr. Van Der Veen, okay. So, your Honor, as I understand it, you'll have the people, the potential jurors stand up and read from the questions that you'll have handed out, the questionnaires you handed out and give the answer or give the answers to those questions. Is that what your Honor is planning on doing?

THE COURT: Yes, lets back up a little bit. We are going to first call for a panel.

We have been given a large courtroom. I don't know if any of you have seen it yet. It sounds like everyone's requests have been granted. I'm glad to see that.

Say we get 80 people in the panel. I've been assured we will get first dibs, so even if other judges are picking or other trials are getting underway, we will get to select first.

The very first thing I do is greet them and give them the preliminary instructions.

Following that, that might take 20, 25 minutes. Following that, I then invite those who wish to be excused to come up and explain why. Let us know why.

That is when we will all go inside to the robing room or the jury room and we will take them one by one. The court reporter is there. I'll ask counsel to be around the table.

I usually do this at the bench, so this will be a little bit different, and I try not to make the person feel too uncomfortable, so I may ask them to take a seat and let us know what is going on.

Again, I'll ask you if I think they should clearly be excused, I'll ask if there are any objections.

If I think that you might have questions, I'll ask are there any follow-up questions. We will lose a lot of people during that stage of the process.

The few that are left, hopefully we will have 18 left. Those are then called into the jury box and it is those jurors who are then handed the questionnaire.

I don't ask them to stand. I tell them they can remain seated and we usually have a microphone. We pass it around so we can all hear them.

Now, my policy is I do not get too involved in jury selection. I do not really ask too many follow-up questions.

Sometimes somebody might say something that just interests me. If someone says something about they have dogs, I like dogs, I might ask them about the dogs and what kind they have. I do not get too involved.

The same goes when you conduct your voir dire. If you feel someone has been vague, ambiguous, a clear record has not been made, don't look for me to make that record. It is up to you to preserve the record.

I may, if I'm unsure where someone stands, I may come in and ask can you give us an assurance that you can be fair and impartial or not give us the assurance, if someone is playing games just to move things along, I might do that.

The reading of the questions can be very quick or short. I find it depends on what the first two jurors do. If they are long-winded, everybody will be long-winded. If they are quick, everybody will be quick.

Each one of you will go. I think we agreed on 30 minutes in the first round, and then we will -- I'll not rush you through your decisions. We will excuse those jurors and go through the challenges.

First I go through challenges for cause with the People, then challenges for cause with defense. Then peremptory challenges for the People, then the defense.

I think because we don't know how long it will

take us to pick this jury, we will bring in whatever jurors we keep, whether one, two, or four. We will swear them in and we will excuse them and tell them to come back on a date certain.

So, in that regard, lets go back. Not including jury selection, how long do we expect this trial to take?

MR. STEINGLASS: Well Judge, I think it depend a lot on stipulations.

We have provided stipulations to counsel a month ago, and that will save the need for probably 10 to 20 witnesses. I made a point of that on September 12th.

Until I have the answer to that, it is impossible to predict. But, with those people aside, of course taking into account the fact I don't know how long the defense will spend on cross examination with our witnesses, I can see somewhere in the 10 day range for our direct case.

THE COURT: So, I would ask defense to employees let the People know first thing Monday whether will you be stipulating or not.

I'm going to rely on that when I tell the prospective jurors how long the trial is going to take.

MS. NECHELES: We expect to stipulate. We will give them stipulations from our side. And we assume if they stipulate to us, we will stipulate to them. I assume it will happen.

With respect to the People stating it will be a 10 day direct or 10 day from both sides?

MR. STEINGLASS: 10 days for the People's case. But, like I said, I don't really know.

When you ask me that, Ms. Necheles, are you asking about your case, how long your case will take or how long you will spend with our witnesses?

MS. NECHELES: I'm asking how long for your witnesses, it will take 10 days on your direct?

MR. STEINGLASS: I thought I was incorporating your cross, but maybe your cross will be longer. It is hard for me to say; it really is, I have no idea.

THE COURT: Go back to scheduling. We spoke about Wednesday, right. We will not meet on Wednesdays because I have my calendar. We will not meet Friday afternoons.

So, we will have Monday, Tuesday, Thursday and Friday morning. We will not meet on November 8th or November 11th; those are holidays. And probably does not matter, on November 3rd we need to stop at four o'clock. Are there any other days I'm forgetting about?

MR. STEINGLASS: Thanksgiving.

THE COURT: We will work that Wednesday but not work the Friday after Thanksgiving. We will not work Wednesday either. It will be Monday and Tuesday that week.

MR. STEINGLASS: Can I ask a question related to this. What time do we start in the morning?

THE COURT: Sorry.

MR. STEINGLASS: I was asking what time do we start in the morning, and what time will the lawyers be able to gain access to the courtroom to do technical stuff?

THE COURT: My goal is to start by 9:30. I would start earlier if I could, but they do not let me. I will confirm you can get into the courtroom by nine or earlier, I'll find out.

MR. STEINGLASS: Thank you, Judge.

MR. VAN DER VEEN: My understanding is the floor is completely locked from noon to one?

THE COURT: During lunch.

MR. VAN DER VEEN: The lawyers as well?

THE COURT: I believe the Court rooms are, not the floor.

MR. STEINGLASS: I believe it is one to two.

THE COURT: Lunch is normally taken one to 2:15. It is difficult to anticipate how long it will be.

We don't know how long cross examination will be. We will know better Monday. I'm inclined to tell the jurors we are looking about four weeks, and of course that does not include deliberations.

MR. STEINGLASS: What about jury selection?

THE COURT: Does not include jury selection.

MS. NECHELES: So that is -- okay, I mean it sounds like three and a half days. The People are estimating their case will be 10 days, so that is like three weeks for the People's case and I guess a week for defense case.

THE COURT: I can estimate longer, we can say five or six weeks.

MS. NECHELES: I'm scared of losing jurors. I am scared both ways. Jurors, by estimating is it too long, if it is really 15 witnesses we are not getting through them in three weeks, so I would ask the People tell us who really are the witnesses so we can have an accurate answer and we can subpoena anyone we need so there is not a delay. I don't want to wait until the end to subpoena people we need.

THE COURT: How about by Monday morning I'll ask both sides to give me a revised list of not only witnesses, but names that might be mentioned from the stand.

The first list I got was pretty long on both sides. If you can send me a revised list because I read that to the prospective jurors.

MR. STEINGLASS: Judge, I'm sorry on this point, I don't think the list of names that might be mentioned has

got any shorter.

It is possible the names of witnesses actually called, we can try to somehow distinguish that.

If you are going to go through the list and screen the jurors, pretty much all the names on the list should be included.

THE COURT: If the list of names that will be mentioned remains the same, that is fine. You don't need a new one.

If you could exchange new witness lists with one another, that would be helpful. I do not need to see that.

MS. NECHELES: I would say I'm happy to do that. I need their list first because that will really govern who will be on my witness list.

MS. HOFFINGER: When will we get your list?

MS. NECHELES: The next day.

MR. VAN DER VEEN: To assist in the process, we will let the prosecution know by noon tomorrow to what we are stipulating to. That way, they will have a little bit of time over the weekend to whittle down their witness list and get it to us Monday.

MR. BRENNAN: To give the Court the assurance on the minor housekeeping issues. With we have all been doing this a long time.

I promise you we are not -- we will stipulate to

anything that is just boilerplate mumbo jumbo. We will all get along. We are all going to cooperate, we will try this case and get through this.

THE COURT: Thank you, Mr. Brennan. Thank you for saying that because I know you have all been doing this for a long time.

I do want to remind you, you have been dealing with me long enough. In the case of Mr. Futerfas, you have been dealing with me the longest. You know I really don't tolerate games of any kind.

I expect everyone to respect one another, treat everyone with courtesy. I treat you that way, I expect to be treated that way as well.

I do ask you please rise whenever you object, and again, the objections should be limited to one word objections.

I may ask for the basis for the objection. At that point you can say hearsay or whatever the basis is.

If I cannot make a ruling, I'll ask you to approach and we can discuss it at the bench and preserve the record, and I can rule intelligently.

Again, it is important to me we treat everyone well from the court officers to the court reporters.

MR. BRENNAN: You have my word, Judge.

THE COURT: Thank you. Some of you may not be

available. Can we, what is the latest you can work until tomorrow, two o'clock, if we needed to have a conference to discuss the expert witness?

MS. NECHELES: Mr. Stern says he can do it from home. I think the latest is around five.

MS. STERN: I have a hard stop around five.

THE COURT: Mr. Steinglass.

MR. STEINGLASS: I'm not that religious.

THE COURT: All right, lets plan on having a conference at three tomorrow.

If for some reason I can tell earlier I'll not be ready, I'll ask James to notify you and let you know it has to happen Monday morning. All right.

MS. HOFFINGER: One last thing.

MR. STEINGLASS: I have a bunch of things to go over. I didn't want to step on your toes.

MR. FUTERFAS: You know, some people, witnesses or whatever, I know the arraignment parts they have cameras in the courtroom. In the arraignment part sometimes after a person is arrested, is your Honor's practice hopefully there will not be cameras in the courtroom during trial. What does your Honor envision?

THE COURT: I don't generally like cameras. I try to keep them out of the courtroom.

I've been contacted and asked if this will be live

streamed, I said no. I'm open to any objections on that. But, I think it affects the entire proceeding and it is best we all do our jobs without the cameras.

MR. FUTERFAS: That is certainly my position and I think the defense position.

THE COURT: Okay.

MR. FUTERFAS: That is all I had Joshua.

MR. STEINGLASS: There are a few more issues we were waiting for a decision from the Court. One has to do with the blurb that both sides submitted a different version of. We want to know if you settled on --

THE COURT: If I didn't, I apologize. I have it here, I can read it to you. I'll read it slowly.

In this case, the People allege that defendants, the Trump Corporation and Trump Payroll Corporation, acting with their high managerial agents, including chief financial officer Allen Weisselberg and or controller Jeff McConney, advised and operated a long term scheme to defraud tax authorities by falling to properly report the compensation, including Allen Weisselberg.

As part of this scheme, the People further allege the defendants failed to report these benefits as income on tax forms they prepared, even though legally required to do so; thereby, enabling Weisselberg to avoid taxes on the income and receive tax refunds to which he was not

entitled.

The defendants have pleaded not guilty and denied these allegations.

MR. STEINGLASS: Thank you. A few -- Judge, there are two additional witnesses that were not on our screening list. Would you rather I e-mail them to you or read them to you now?

THE COURT: If you can send me the revised list, that would be great.

MR. STEINGLASS: Okay. Another issue. Judge, did you issue a decision on the recusal motion?

THE COURT: No, it is in my notes. The recusal motion is denied. There will be a written decision to follow. I'm not sure when that decision will be, I'll get it to you as soon as possible.

MR. STEINGLASS: Thank you. A few more issues. Sorry, I have a list. We anticipate daily requests for exhibits from the press.

Our press office gets them often on cases like this. Our typical practice is to provide evidence only if it has been admitted already, but we are happy to refer such inquires to the Court or Mr. Bergamo if you prefer.

THE COURT: I don't know I ever had that come up before. My concern is that once it is out there in the public domain -- look, I'll instruct the jurors not to read

anything, not to watch the news or anything like that. Once it is out there I hate for the people to start analyzing the evidence before I charge them.

MR. STEINGLASS: I totally agree with that. Honestly, I'm more than happy to say to our press people we will refer them to you.

I'm not sure at the end of the day there will be a basis to prevent them from getting hold of exhibits already introduced into evidence.

If you think there is, that is fine with us. We don't want to try the case in the press.

THE COURT: If they get their hands on it, that is one thing. It is another thing for them to be provided with the evidence.

I think you can direct them to me and say the Judge does not want them taken out. If you have a question call the Judge.

MS. NECHELES: Related to that. I assume anything that goes into evidence, any sort of financial information. Tax returns in evidence of people not parties to this case, there will be other things; social security numbers. Everybody will be redacted, but also information that I would ask that, you know, if it is for people who are not parties or witnesses to this case, that tax returns be redacted with the amounts on them. I do not see why

that would end up in the public domain.

MR. STEINGLASS: No way. There are tens of thousands of pages going into evidence. We plan to redact People's social security numbers and stuff that should not be out there.

If you want to redact 10 thousand pages and send us your redactions, we will take a look at them.

We have given you a list of all exhibits, pre-marked, all the exhibits we intend to introduce.

There is no way we have the manpower to redact everything that falls into the category you just said.

THE COURT: Okay.

MR. STEINGLASS: Speaking of those issues. You know, Judge. I'm sure you are aware there has been an ongoing investigation into the SOFC's, the statement of financial condition that is being conducted by the Office of the Attorney General.

During the course of that litigation, the Trump Organization repeated, you know, periodically gives subpoena compliance to the OAG, and our practice up until now has been to basically produce it right back to the defendants in this case; notwithstanding the fact it is really not relevant to this case because we are not talking about statements of financial condition.

And we raised this with the defense. They have

indicated they want us to keep doing it. I don't know if that continues into the trial.

I don't think we should be obligated to file COC's everytime we give them another huge stack of irrelevant documentation.

What I'm asking for is a hard stop to that, because it really is an unrelated investigation.

MS. NECHELES: Your Honor, our understanding what we said to them, what we were told -- this case has been going on longer than Mr. Steinglass was involved.

Before he was involved, the only thing being produced to us from the statement of financial conditions investigation were things that were produced to the Attorney General's Office, were things that were relevant to our case, because we are only talking about things being produced to the AG's office.

They told us they will produce to us anything relevant to us. Most of what has been produced to the OAG's Office has been not produced to us, even if it came from us in the first place.

That is all we kept saying. If you believe that it is relevant to your case, then you have an obligation to turn it over to us. That obligation continues throughout the case.

So, I'm not saying they have to produce everything

we produce to the OAG's Office to us. But, if they believe it is relevant and they have something at the OAG's case relevant to our case, they have an ongoing obligation to turn it over to us.

That is all I'm saying. Relatedly, your Honor, I would ask with respect to the OAG's case, there were witnesses, people who were going to be witnesses in this case who the District Attorney's Office was ordered to produce their transcript to us; that includes Mr. Bender. These are transcripts from the OAG depositions.

And at the time, the People asked they be required, only be required to produce those with a legend on them that said for attorneys's eyes only. We could not share them with the client until 90 days before this trial, which is what we did, kept them from the client.

That time has long past. We ask they be produced to us now without that legend, because if we are using them to cross examine or use them at trial, or showing them to our clients which we are now entitled to do. We ask they be produced to us without the legend.

THE COURT: That seems reasonable.

MR. STEINGLASS: There are a few things that answer referenced. I want to see if I can clarify. And Mr. Fishman, jump in here if I'm saying something wrong.

Over the course of the investigation historically

when we receive documents from the OAG, we went through them and produced them as far as they are relevant to this case.

As we got closer to this trial, that just became too onerous. We don't have the time to go through the massive productions that the T.O is providing to the OAG.

So, in order to avoid that, we have been of late just giving them back everything that they give us. That is the practice that we were looking to stop.

We continue to not have the ability to start parsing what is relevant and is not, and as a result been producing right back to them everything they given us.

If that is the Court's order, we will keep doing that. But, we have not of late been parsing the things that are relevant or not because we lack the manpower to do that at this point.

THE COURT: I can appreciate that would be time consuming, especially while you're on trial.

I think in an excess of caution, we should continuing doing exactly what you have been doing.

It is time consuming to try to parse through everything. Just to insure nothing falls through the cracks, turn around and give it right back, I think.

MR. STEINGLASS: Okay.

MS. HOFFINGER: Then we don't have to continue to

file COC's, right in that we will produce it back.

THE COURT: Any objection to that?

MS. NECHELES: Your Honor, I'm not asking them to do this. I'm only asking that if anything relevant to the other case that is in the OAG's case, whether it comes from us or from someone else, if they think it is relevant, they should turn it over to us.

I'm not asking them to file COC's or turn irrelevant things over. I don't want irrelevant stuff, it is a waste of my time. I'm asking them to do their job, that is all I am asking. Turn over relevant stuff, don't turn over irrelevant stuff.

If they don't want to look at it, don't get it in their offices. I don't know what to say, we are asking me to let them --

THE COURT: That is not what I'm asking.

MS. NECHELES: Correct.

MR. VAN DER VEEN: We are fine with the status quo, Judge.

THE COURT: Okay, leave the status quo.

MR. STEINGLASS: Sounds good. One more -- well, there is a substantive issue that I need to raise, and that is that --

THE COURT: We didn't address Ms. Necheles's last point regarding producing those documents without the

banner. Can that be done, can you provide that?

MR. STEINGLASS: If Ms. Necheles identifies which documents she wants, a lot of documents have that banner. If she identifies which documents she may want to use, we can reproduce them without the banner. That is labor intensive. We have no objection to lifting the ban.

The ban only applied for 90 days. We certainly don't mind she now feel free to show those exhibits to her client or to show them to the witness on the stand because doing so does not run a foul to the Court's order.

But, if it is absolutely necessary for some reason to produce documents that do not have that water mark, we ask for a list of documents she wants that don't have that water mark. That seems to me very labor intensive.

THE COURT: You can identify the documents or you are free to go ahead and use them with the water mark.

MS. NECHELES: They are different to read with the water mark.

THE COURT: Identify which ones specifically you want. Mr. Steinglass will get them to you.

MS. NECHELES: Thank you.

MR. STEINGLASS: Okay, so another issue. As you know from the e-mails that went back and forth on October 4th, there has been some debate among the parties about whether the reciprocal discovery statute requires the

defense to provide notice of the exhibits they intend to introduce into evidence on cross examination.

They have taken the position that the constitution affords them the opportunity to withhold this information.

We disagree, particularly in a case involving tens of millions of documents. Even if the defense is correct, we should, at a minimum, be provided with physical copies of every document the defense intends to use on cross examination or to show the People's witnesses on cross examination at the beginning of that cross examination along so we can find them and put them in their context and not need two days between the conclusion of the redirect, I mean the conclusion of the cross and the resumption of the redirect. I think at a very minimum, we should have that.

THE COURT: I would ask if you can do that the day the witness is going to take the stand. And while we are on that subject, I would actually make a request.

One thing I hate to do is keep a jury waiting. It drives me crazy, it drives them crazy. So please, if there is anything that needs to be addressed at any given time, bring it to my attention the night before, the morning of, during lunch, but let's not wait until 9:30 or 2:15.

I would like all this sorted out such as what you are referring to now, Mr. Steinglass, so we don't keep the jury waiting.

MS. NECHELES: I didn't hear when your Honor is ordering that we turn the documents over.

THE COURT: I believe he said the day they are going to testify, the day the witness is scheduled to testify.

MS. NECHELES: I would just ask this: Logistically, the difficulties are a couple for that. First of all, I ask that we have a couple of days notice what witness will be called when, so that we are prepared to be able to cross. And then we don't know a lot of times exactly, for example, I have not got one piece of paper what Mr. Weisselberg will testify about.

We are reactive. It is hard for me to say this is what we are going to put in evidence with Weisselberg when we have not heard anything yet, and I have not had specified what documents will be put into evidence with Weisselberg.

So, if the People want that, I would ask -- I understand we should not be wasting time in front of the jury. But, I would ask that the day before they are calling that witness, they give us all the exhibits that they will be using with that witness so I can try to prepare, because if they call a witness and they may give me the exhibits they will use for that witness, how will I give them back exhibits when I'm just seeing their exhibits

for the first time, and I don't know what they are testifying about.

I would ask I get a day or two ahead of time of their exhibits if they want me to give them exhibits when the witness takes the stand, otherwise logistically I don't know how I can do that.

With someone like McConney maybe, although I think there will be a lot of exhibits they are putting in through him. I don't know which ones.

We are trying to get them documents. We have been trying to identify things. But you know really, they are playing things very close to the vest. That makes it very hard for me to -- I know Mr. Steinglass is looking perplexed. I'm surprised he is looking perplexed because he knows he has not given us any Rosario on Weisselberg.

So, you know, they are playing it close to the vest. It makes it hard for us to be so open and tell them everything.

The other thing I would ask is if we do this, I ask they be ordered not to show these exhibits to the witness before cross, because that really is taking away what the constitution allows, which is for us to be able to confront witnesses.

I understand not wanting to waste the jury's time. I'm with the Court on that, but I ask they be

ordered not to disclose our exhibits so that we can confront the witnesses without them being prepared by either, they not be permitted to show it to the witnesses or the witnesses to turn it over.

MR. STEINGLASS: There are things in the application I feel the need to respond to.

So, first of all, let me say that last week we provided a full exhibit list. There may be two or three things we have to add, but we have named it, gave them the file names, we gave them the bate stamp numbers of every single exhibit that we intend to introduce on our case in chief. So, that is why I'm shocked to hear Ms. Necheles say we have been playing it close to the vest.

I don't know what exhibits they are intending to introduce. There is no way we will give them a list of the documents we are going to ask questions about of our witnesses days in advance. We are not asking them to do that either.

The exhibits are fairly self explanatory. There are 155 Trump Organization exhibits. They will come in through the two Trump Organization witnesses.

There is a host of Mazar stamped exhibits. They will come in through the Mazar's witness. There is not a whole lot of guesswork to be done in here.

I don't think that these requests are related.

What I'm trying to say is we don't have the ability, nobody has the ability to pull up at a moment's notice the 20 million documents that only have a bates stamp on it and if she wants to use the particular document and we don't have advanced notice of on cross examination, then we are supposed to try to find it among a sea of 20 million documents.

They will know what documents we will use because the universe of those documents is contained on the exhibit list we provided them.

So, this --

MS. NECHELES: I don't think --

MR. STEINGLASS: Let me finish. Maybe this whole thing can be solved if they did the same thing and any exhibit they intend to use or refer to, they give us an exhibit list of, that would be fine. We can pull those exhibits in advance and be in the same boat they are in, which is advanced knowledge of the universe of exhibits that we might discuss with our witnesses.

MS. NECHELES: We would be given in any case a copy of--

THE COURT: You need to work this out yourselves, I don't think I need to be involved in this. Anything else that requires my attention?

MR. STEINGLASS: One more thing and I'll shut up.

I don't think -- I'm trying to say this in an extremely respectful way.

I don't think I have been clear maybe about this expert issue.

What I'm saying is we cannot start this trial Monday if they will have this expert testify.

I understand Ms. Necheles thinks it is no problem for us to wait, it will be a month before their expert gets on the stand so that is no problem.

We have to pick a jury. We have to open. These things are inextricably interwoven with whatever the scope of this expert testimony is going to be. So, we have objected to this late disclosure. We made a record. I don't want to re-litigate that, but we need an answer.

I understand we will have one tomorrow, I believe your Honor said, which is fine. But, if your Honor is considering granting their ability to introduce expert testimony in this new report, I don't see how we can pick a jury on Monday.

THE COURT: As I indicated previously, if there is a sanction for late disclosure, it will not be to delay the trial date, there will be a sanction.

I think what I will have to determine is what this expert intends to testify to if I allow the expert, and what the exhibits are, and realistically whether that will

preclude the People from putting on a case or you'll put on your case in two or three weeks. Actually, I withdraw that. I'll have to look at it. Again, it will not be to postpone the trial.

MS. NECHELES: To be clear on this, the expert report is based on tax records in their possession, the tax returns of Weisselberg, and the tax returns of the corporation.

We fully intend to give them all of the underlying data that we inputted into computers to create new tax returns. We will be giving those.

MR. STEINGLASS: When?

MS. NECHELES: So that their experts, their people can look. It is not a complicated calculation.

All they did is they backed out the things that the People say were incorrect, and they made them as charges, they backed it out, and they can see it right on there. It is not a complicated calculation.

THE COURT: Ms. Necheles, respectfully, it is not for you to decide whether it is complicated or not.

I'm holding, I don't know how many pages, 20 pages in this exhibit. 16 pages. I don't know where these numbers came from.

How can I, if I'm the prosecution, how can I possibly prepare if I don't know where the numbers came

from.

It is not enough to say they came from the evidence the People gave us. That is not sufficient.

MS. NECHELES: We gave them all the exhibits underlying it. We gave it all to them last week.

We designated, when your Honor told us to do it, we designated all the exhibits that the expert was using to create this. They have all those exhibits and they have a list.

MR. STEINGLASS: Are you saying that every document that led to any number on those charts is contained in the one page of exhibits you sent us last week?

MS. NECHELES: Yes.

MR. STERN: Your Honor, we designated the corporate tax returns, and Allen Weisselberg's tax returns. We also said that we are relying on the People's exhibit list they identified these are going in.

The only thing not specifically designated which is the Trump Corporation tax returns and Allen Weisselberg's. Specifically designated are the People's summary charts. That is the only additional document that was relied on.

All they do is the same thing, take the numbers from the tax returns or W2's and calculate them, there is

no magic to it.

MR. STEINGLASS: I'm happy to send you copies of our summary charts, because they clearly source every item that is used in the creation of those charts.

I still do not understand what they are saying. Is it based on every exhibit that we provided them or which we designated.

MS. NECHELES: To be clear, it is not. We gave them the tax returns we specifically designated. The only other thing it is based on is the People's chart, the allegations the People have what should have been included in Weisselberg's tax, what was improperly deducted.

If Mr. Steinglass wants to call and ask, we can point to exactly what it is. It is a limited number of things, and most, all of which they have, and most of which is their allegation.

They allege these are the things that should have been included. We backed them out of Weisselberg's tax returns to see what would happen.

If we had included a salary as opposed to him taking it not as salary, what would have been the consequences of the company, that is it. That is what the numbers end up being.

It is based on the tax returns as they were filed and the tax returns recalculated based on the People's

allegations.

I'm kind of surprised they never did that themselves. It was an obvious step you do in a case like this.

MS. HOFFINGER: Judge --

MS. NECHELES: They did it for Weisselberg and we are doing it now for the corporation.

THE COURT: Let me hear from Ms. Hoffinger.

MS. HOFFINGER: The charts Ms. Necheles did not disclose, there are treatments of things as capital contributions. It is not correct this is just an easy peasy based on documents, it is not. There are decisions made about how things are treated.

MS. NECHELES: There is --

THE COURT: Wait. Ms. Hoffinger.

MS. HOFFINGER: There --

MS. NECHELES: That is --

THE COURT: Ms. Necheles, please do not interrupt.

MS. HOFFINGER: There are assumptions in here. There are treatments of certain things as capital contributions. It is not accurate to say all it is is slapping a few numbers on charts.

MS. NECHELES: That is just because, and they know this, the payments for tuition are paid by Mr. Trump personally. So, he paid them personally as tuition. And

instead they are treating this as income, as salary from the company, then it has to be a capital contribution for him to the company, and the company deducts it as an expense, that is not a surprise.

That is entirely based on the People's allegations. They say they are putting in evidence Donald Trump's personal general ledgers. That is the allegations. He paid it on the personal tax, so that is where it comes from. I'm not doing anything that is any surprise or is anything that is not based on their allegations.

THE COURT: I am just clarifying this, Ms. Necheles. You are asking me to permit you to introduce these documents and to call an expert witness; the documents which you are turning over to the prosecution on three days notice.

I think that part of my analysis is really going to depend on how complicated I believe these documents are and how difficult it is going to be for the People to figure that out.

If I determine at the end of the day, or on Monday or Tuesday that this was just too much for them to try and get done in three days, that is going to factor into my decision, okay.

So, if there is anything you can do right now

today to get to the People that will assist them in being able to sort this out, it is really in your best interest.

MS. NECHELES: I'll do that, your Honor.

MR. STEINGLASS: Judge, I do not mean to beat a dead horse. Sourcing is only one problem. There is a lot of theory involved in these charts.

I mean, I have been working on this case since January. I stared at these charts for hours last night and I cannot figure them out.

We have been trying to find somebody to explain what this means to us. We have got some of it, but it is not as clear as Ms. Necheles would have it be.

She may have been working with the charts for the last month and retained an expert. We saw them for the first time yesterday. To make this an issue --

MS. NECHELES: Your Honor, I have --

THE COURT: All right, let us stop now. Ms. Necheles, please stop doing that. You do that a lot. You interrupt people a lot. Please do not do that.

We cannot speak over one another. The court reporter cannot take down what anybody is saying if we are all speaking at the same time.

Look, I was an auditor in a past life. I'm telling you I have a hard time with this. And if I got this with three days notice before trial on Monday, I would

have a real hard time with that.

This will factor into my decision whether or not to allow you to call this expert and use these documents.

MS. NECHELES: Your Honor, I just want to make clear again. I received these two days ago. This is totally reactive to the People deciding less than two months ago to call a brand new witness who total changed our trial strategy --

THE COURT: We have gone over this already, we do got need to keep going. It's been said, anything else?

MR. BRENNAN: We are good for the defense.

THE COURT: Get this over to the prosecution whenever you want, but if they cannot figure it out, they will come to me and say we cannot figure it out, we are not ready and I'll make my decision based on that. Thank you.

If you have not done so already, forward the names for Judge Biben.

I, Randy Berkowitz, a senior court reporter in and for the State of New York, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

Randy Berkowitz,
Senior Court Reporter

EXHIBIT 3

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January 29, 2024

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RE: *People v. Donald J. Trump*, Ind. No. 71543-23.

Dear Counsel,

The People write regarding several discovery and pretrial matters.

1. Supplemental Discovery and Certificate of Compliance. We are producing today an additional set of discovery materials for the above-referenced case pursuant to CPL § 245.60. Please find attached to this letter an index that catalogs the materials provided. As set forth in the index, this production consists of compliance and intake from witnesses, and additional publicly-available materials, including public court filings, social media posts, and public reporting. Please note that some of the materials in this production include records that the People previously produced in discovery and that we are supplementing with clearer versions or in a different file format. We are also serving today a Supplemental Certificate of Compliance pursuant to CPL § 245.50(1), which we will file with the Court shortly.

Today's production is available for you to download from a file transfer site that may be accessed at https://newdownload.manhattanda.org. We will provide the username and password to enter this file transfer site in a separate email. Should you encounter any issues accessing the materials, please do not hesitate to reach out for assistance.

With respect to today's supplemental production, please note the following:

- All of the materials provided to you are subject to the protective order issued on May 8, 2023;

- The People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;

- The People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;

- Some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70; and

- Where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps may not be sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of.

2. Supplemental Addendum to the ADF. We are serving today a Supplemental Addendum to the Automatic Discovery Form. The Supplemental Addendum contains updated information at Addendum B, which includes additional custodians for various entities who may be called as a witness; indicates that we may call a summary witness at trial; updates the contact information for a previously-listed individual [redacted]); adds the name of a DANY employee who may be called as a witness [redacted]; and changes the designation for two previously-identified individuals ([redacted] and [redacted]) to indicate that we do not expect to call them as witnesses. The Supplemental Addendum also contains updated information at Addendum C, which changes the designation for one previously-identified individual ([redacted]) to indicate that we do not expect to call him as a witness.

3. Perdue Notice. To the extent required by the recent Court of Appeals decision in *People v. Perdue*, 2023 N.Y. LEXIS 1996, 2023 N.Y. Slip Op. 06404 (Dec. 14, 2023), the People are providing you with the following notice. The People intend to call as a witness the following people who may identify the defendant in court, with whom a previous out-of-court identification procedure has not been conducted: [redacted], and [redacted]. Although the People are providing notice, the defendant and these witnesses were previously known to each other such that there is no risk that any suggestiveness could lead the witness to identify the wrong person.

4. Supplemental Exhibit List. We are identifying additional case-in-chief exhibits on the following supplemental exhibit list, all of which consist of materials we have disclosed to you in discovery. This list supplements the exhibit lists we previously provided to you on August 24, 2023, and January 3, 2024.

1. AM-CONTROL-1 to AM-CONTROL-5
2. AM-NYDA-000001
3. AM-NYDA-000075 to AM-NYDA-000076
4. AM-NYDA-000102
5. AM-NYDA-000108 to AM-NYDA-000109
6. AM-NYDA-000317 to AM-NYDA-000318
7. AM-NYDA-004490 to AM-NYDA-004514
8. AM-NYDA-004635
9. AM-NYDA-004923 to AM-NYDA-004937
10. AM-NYDA-007405
11. AM-NYDA-007413
12. AM-NYDA-007414
13. AM-NYDA-007435
14. AM-NYDA-007510
15. AM-NYDA-007522
16. AM-NYDA-007580 to AM-NYDA-007581
17. AM-NYDA-007651
18. AM-NYDA-007651_1
19. AM-NYDA-007669
20. AM-NYDA-007807
21. AM-NYDA-008066
22. AM-NYDA-008066_1
23. AM-NYDA-008067
24. AM-NYDA-008067_1 to AM-NYDA-008067_5
25. AM-NYDA-008068
26. AM-NYDA-008068_1
27. AM-NYDA-008069
28. AM-NYDA-008069_1 to AM-NYDA-008069_2
29. AM-NYDA-008070
30. AM-NYDA-008070_1 to AM-NYDA-008070_15
31. AM-NYDA-008109
32. AM-NYDA-008109_1 to AM-NYDA-008109_16
33. AM-NYDA-008112
34. AM-NYDA-008112_1
35. AM-NYDA-008310
36. DANY_000124
37. DANY_000148 to DANY_000152
38. DANY_000158 to DANY_000159
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40. DANY_000172 to DANY_000173
41. DANY_000178 to DANY_000179
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43. DANY_000186 to DANY_000187
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56. DANY_136605 to DANY_136834
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97. DANY_8201309 to DANY_8201310
98. DANY_975664 to DANY_975665
99. DANYDJT_00010392 to DANYDJT_00010554
100. DANYDJT00000923
101. DANYDJT00000935 to DANYDJT00000936
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105. DANYDJT00000957
106. DANYDJT00008981 to DANYDJT00009689
107. DANYDJT00009690 to DANYDJT00010391
108. DANYDJT00010555 to DANYDJT00010778
109. DANYDJT00010779 to DANYDJT00011430
110. DANYDJT00128908
111. DANYDJT00136992
112. DANYDJT00158957
113. DANYDJT00161189 to DANYDJT00161192
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130. DANYDJT00211701
131. DANYDJT00211702
132. DANYDJT00211806
133. DANYDJT00211807
134. DANYGJ00060746 to DANYGJ00060779

135. DB_NYAG_012069 to DB_NYAG_012074
136. FRBNYDA2-00000831
137. FRBNYDA2-00000885
138. FRBNYDA2-00000899
139. FRBNYDA2-00000900 to FRBNYDA2-00000902
140. HCH_NY_000055
141. KMD0000572
142. MAZARS_NYAG_00002654
143. TTO_02922545 to TTO_02922546
144. TTO_05369198, TTO_05369699 to TTO_05369719
145. TTO_SDNY_071107 to TTO_SDNY_071108
146. Portions to be designated from Cell Phone 001 and Cell Phone 002, produced on June 15, 2023

In order to avoid the need to call numerous custodians which would unnecessarily lengthen the trial, please let us know whether you will agree to stipulate to authenticity of these exhibits, reserving any defense objections to relevance or admissibility, and subject to the other qualifications noted in the People's correspondence dated January 3, 2024.

We will continue to update you as soon as practicable, subject to the continuing duty to disclose in CPL § 245.60, when we determine any additional exhibits that we intend to introduce at trial.

5. Defense Exhibits. Finally, in our letter dated December 5, 2023, we asked that you disclose your expected exhibit list pursuant to CPL §§ 245.20(4) and 245.20(1)(o). In your response letter dated December 6, 2023, you advised that "the defense has not yet formed an intention to offer any exhibits in its case-in-chief other than the ones the People offered as exhibits in the grand jury and designated as their own trial exhibits." Because CPL § 245.20(1)(o) provides that the exhibit list disclosure must nonetheless be made "as soon as practicable and subject to the continuing duty to disclose in section 245.60," please disclose those case-in-chief exhibits you have identified to date.

Sincerely,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA	:	
-v.-	:	18 Cr. 602 (WHP)
MICHAEL COHEN,	:	
Defendant.	:	

- X

THE GOVERNMENT'S OPPOSITION TO DEFENDANT MICHAEL COHEN'S MOTION FOR A SENTENCING REDUCTION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA	:	
-v.-	:	18 Cr. 602 (WHP)
MICHAEL COHEN,	:	
Defendant.	:	

- X

PRELIMINARY STATEMENT

The United States Attorney's Office for the Southern District of New York (the "Office" or "SDNY") respectfully submits this brief in opposition to defendant Michael Cohen's motion for a reduction in his sentence pursuant to Federal Rule of Criminal Procedure 35(b). As set forth below, the text of Rule 35 makes clear that such a reduction may be granted only upon motion of the Government, whose decision not to file such a motion is entitled to considerable deference and is reviewable only where the defendant has made a threshold showing that it was based on an unconstitutional or irrational motive. Cohen has failed to make such a showing. Cohen has offered no evidence that he provided substantial assistance to this Office in the investigation or prosecution of others. To the contrary, the Office reasonably determined that Cohen did not provide substantial assistance after his sentencing both based on the nature and scope of the information provided and because of substantial concerns about Cohen's credibility as a witness. Moreover, to the extent Cohen seeks to rely on his Congressional testimony and provision of information to state and local law enforcement authorities, none of those activities warrant a sentencing reduction, as the Second Circuit has made clear that, in this context, "substantial assistance" refers to assistance to federal prosecutors. The Court should deny Cohen's motion without a hearing.

FACTUAL BACKGROUND

A. Cohen's Offense Conduct and Pleas

Between 2012 and 2017, Cohen committed what this Court has described as a "veritable smorgasbord of fraudulent conduct." (Transcript of Dec. 12, 2018 Sentencing ("Sent. Tr.") at 34). He evaded income taxes by failing to report more than $4 million in income during tax years 2012 through 2016. (*See* Presentence Investigation Report dated Dec. 4, 2018 ("PSR") at ¶¶ 18-27). He lied to multiple banks to obtain financing on favorable terms. (PSR ¶¶ 28-35). He violated campaign finance laws by carrying out two complex schemes to purchase the rights to stories – each from women who claimed to have had an affair with a Presidential candidate – so as to suppress the stories and thereby prevent them from influencing the Presidential election. (PSR ¶¶ 36-56). And, in 2017, he lied to the United States Congress in sworn testimony. (PSR ¶¶ 62-73).

For this conduct, Cohen ultimately pled guilty to nine separate counts: (i) five counts of tax evasion, in violation of 26 U.S.C. § 7201; (ii) one count of making a false statement to a financial institution, in violation of 18 U.S.C. § 1014; (iii) two counts of making unlawful campaign contributions, in violation of 52 U.S.C. § 30109(d)(1)(A); and (iv) one count of making a false statement to the Congress, in violation of 18 U.S.C. § 1001(a)(2). Cohen pled guilty to the first eight counts on August 21, 2018, pursuant to a plea agreement with the SDNY. He pled guilty to the ninth count on November 29, 2018, pursuant to a plea agreement with the Special Counsel's Office ("SCO"). The cases were consolidated for sentencing.

B. Cohen's Pre-Sentencing Attempts to Cooperate and Cohen's Sentencing

On August 7, 2018, before he had been charged in the SDNY, Cohen met with the SCO at his own request, ostensibly to provide information relevant to their inquiry. (*See* Sentencing

Submission by the Special Counsel's Office, Dec. 7, 2018 ("SCO Sent. Br.") at 3). Cohen lied to the SCO at that meeting, repeating many of the prior false statements he had made to the Congress. (*Id.* at 3). Only after Cohen had been charged by SDNY and pled guilty to eight felony counts did his cooperation with the SCO begin in earnest. (*Id.* at 3-4). Cohen's post-plea, pre-sentencing cooperation with the SCO was set forth in the SCO's submission in advance of sentencing. (*Id.* at 5-7).

Prior to his sentencing, Cohen also made attempts to cooperate with the SDNY. However, as previously set forth in the Government's sentencing memorandum, Cohen sought to provide information only about certain subjects, and repeatedly declined to provide full information about the scope of any additional criminal conduct in which he may have engaged or had knowledge. (*See* Sentencing Submission by SDNY, Dec. 7, 2018 ("SDNY Sent. Br.") at 15-17). Because of Cohen's choice not to fully cooperate, and the SDNY's commensurate inability to fully evaluate his reliability as a witness, the SDNY declined to enter into a cooperation agreement with Cohen or move for a sentencing reduction under U.S.S.G. § 5K1.1. (*Id.*). Nevertheless, the SDNY acknowledged Cohen's provision of information to the SCO, and cited it as a basis for a modest downward variance from the applicable Guidelines range at his sentencing. (*Id.* at 1-2, 17).

Cohen's sentencing submission relied heavily on his provision of information to the SCO and other law enforcement entities. (*See, e.g.*, Sentencing Submission of Michael Cohen, Nov. 30, 2018 ("Cohen Sent. Br.") at 1-5). At sentencing, the Court carefully considered the parties' submissions regarding Cohen's attempts at cooperation. (*See, e.g.*, Sent. Tr. 34-35). The Court made clear that Cohen "should receive some credit for providing assistance to the Special Counsel's Office." (*Id.* at 34). The Court also noted, however, that Cohen had "selected the information he disclosed to the government." (*Id.* at 35). Ultimately, the Court imposed a sentence

of 36 months' imprisonment on the charges in the SDNY case, which represented a downward variance from the applicable Guidelines range of 51 to 63 months' imprisonment. (*Id.* at 5, 36). The Court also imposed a concurrent sentence of two months' imprisonment on the charge in the SCO case. (*Id.* at 36).

C. Cohen's Post-Sentencing Attempts to Cooperate with the SDNY and His Public Statements

Shortly after being sentenced to 36 months' imprisonment, Cohen contacted the Office, through counsel, seeking to proffer in the hope of obtaining a sentencing reduction under Rule 35. Cohen then met with representatives of the Office and FBI agents on two occasions – January 21 and February 7, 2019 – and provided information about various subjects. During those proffers, Cohen made material false statements.

For example, during one post-sentencing proffer with this Office, Cohen denied seeking a position in the incoming Presidential Administration after the 2016 election stating, in substance, that he "did not want to move to Washington D.C." and that he "had no actual interest in being Attorney General or Trump's Chief of Staff." (*See* Ex. 1 (relevant excerpt of FBI-302)).[1] These statements were demonstrably false. Indeed, in a television interview filmed days after the 2016 election, which Cohen had promoted on his own Twitter account, Cohen made clear his desire for a position in the new administration. When the host raised the question of whether Cohen would be named to a position in the new administration and suggested that the President would ask Cohen to serve a role in Washington, Cohen responded: "Oh I certainly hope so. . . . One hundred

[1] Lest there be any doubt as to the accuracy of the FBI's notes of Cohen's proffer statements, Cohen repeated the substance of them on numerous occasions during his subsequent Congressional testimony. *See* Ex. 3 (Excerpts of Transcript of February 27, 2019 Hearing before the House of Representatives, Committee on Oversight and Reform), at 25 ("I did not want to go to the White House."), 57 (same), 126 ("I did not want a role in the new administration. … I got exactly what I wanted."), 145 ("I did not want a role or title in the administration.").

percent." Later, when the host said he looks forward to seeing what Cohen's future holds, Cohen responded: "Hopefully it will be in Washington."[2] Cohen had been even more specific about his wishes in his private communications. For example, on Election Day 2016, Cohen told one friend (Person-1) that he would take her with him to the White House as "Asst to chief of staff," and told another person (Person-2) that being named Chief of Staff "would be nice." (Ex. 2 at 1).[3] On November 12, 2016, Cohen exchanged a series of text messages with another person (Person-3), discussing how Reince Priebus was being considered for the position of Chief of Staff and evaluating whether Cohen "still ha[s] a chance." Then, on the afternoon of November 13, 2016, it was announced that Priebus would in fact be named Chief of Staff. Shortly thereafter, Person-3 sent Cohen a message asking: "You ok?" Cohen responded: "Yes. Disappointed but understand why." (Ex. 2 at 1-2). Moreover, Cohen's desire for the role persisted: In May 2017, while discussing the potential candidates for any opening in the Chief of Staff position with a then-current administration official (Person-4), Cohen floated his own name and asked Person-4 to remind the President of Cohen's loyalty and to "keep my name in range [sic] loop please." (Ex. 2 at 3-5; *see also id.* at 5 (Cohen suggesting in January 2018 that he would be Chief of Staff in "3 to 4 months")).[4]

In late February and early March 2019, while the Office was in the process of evaluating

[2] *See* CNN, Chris Cuomo Interview of Michael Cohen, November 10, 2016, at 8:30 *et seq.*, available at https://www.snappytv.com/tc/3219739.

[3] Exhibit 2 consists of the relevant portions of text message exchanges between Cohen and certain individuals, whose identities have been anonymized to respect their privacy. The messages were recovered from one of Cohen's cell phones pursuant to a search warrant.

[4] Although not necessary to the instant inquiry, these false statements were also material, because, among other things, truthful answers to questions about his efforts to obtain a position within the Administration (and his disappointment at failing to do so) bore directly on Cohen's credibility, potential biases and incentives to provide truthful information.

the information provided by Cohen at his two post-sentencing proffers, Cohen voluntarily testified before several committees of the United States Congress. After that testimony, members of one committee made a criminal referral for perjury, citing apparent contradictions between Cohen's testimony and his guilty pleas and certain filings in the SDNY case.

Moreover, throughout the period of his purported cooperation, Cohen and his surrogates made a litany of public comments about his SDNY case, many of which minimized his acceptable of responsibility for conduct to which he had pled guilty and were inconsistent with his pleas or other undisputed facts. To list just a few examples:

- Cohen repeatedly sought to walk back his own guilty pleas. For example, in a private conversation recorded by the other party, Cohen, referring to his case, claimed that "[t]here is no tax evasion. . . . It's a lie."[5] (*But see* Transcript of August 21, 2018 Guilty Plea ("Plea Tr.") at 21-22).

- The day after his sentencing, Cohen gave a televised interview during which he described his role in one of the campaign finance charges by saying: "I just reviewed the documents."[6] (*But see* Plea Tr. 23).

- In a lawsuit against the Trump Organization seeking indemnification, Cohen claimed that all eight of the charges against him in this case "arose from conduct undertaken by Mr. Cohen in furtherance of and at the behest of the Trump Organization and its principals, directors, and officers." (Dkt. 51, Ex. F to Cohen's Motion, at ¶ 53). Yet leaving the campaign finance offenses aside, the five counts of tax evasion and one count of false statements to a financial institution to which Cohen pled guilty were indisputably related to Cohen's own personal finances and had nothing to do with the Trump Organization. (*See* PSR ¶¶ 18-35).

[5] *See* CNN, Secretly Recorded Audio Surfaces of Cohen Walking Back Plea, *available at* https://www.cnn.com/videos/politics/2019/04/24/michael-cohen-phone-call-plea-deal-audio-vpx.cnn.

[6] *See* ABC News, George Stephanopoulos Interview of Michael Cohen, December 13, 2018, at 7:00 *et seq.*, *available at* https://abcnews.go.com/US/video/michael-cohen-extended-cut-59830461.

Based on the foregoing concerns, the Office declined Cohen's repeated requests for further proffer sessions, informing his counsel on several occasions that the Office believed that Cohen was not a credible witness.

APPLICABLE LAW

The Federal Rules of Criminal Procedure provide that:

> Upon the Government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

Fed. R. Crim. P. 35(b). As the text of Rule 35 makes clear, such a sentencing reduction may be granted only upon a motion by the Government. *See United States v. Scarpa*, 861 F.3d 59, 67 (2d Cir. 2017) ("The '[u]pon the government's motion' language in Rule 35(b) thus 'imposes the condition of a Government motion upon the district court's authority.'" (quoting *Wade v. United States*, 504 U.S. 181, 185 (1993))). The Second Circuit has held that, in this context, "the Government" refers to "the attorney representing the government" – that is, "the prosecutor." *United States v. Difeaux*, 163 F.3d 725, 728 (2d Cir. 1998); *see also United States v. Ming He*, 94 F.3d 782, 789 (2d Cir. 1996) ("The decision to move for a downward departure for substantial assistance rests in the exclusive discretion of federal prosecutors.").[7]

"[W]hether a defendant's cooperation has risen to the level of 'substantial assistance' to the government is self-evidently a question that the prosecution is uniquely fit to resolve." *United States v. Huerta*, 878 F.2d 89, 93 (2d Cir. 1989). Thus, the Government's evaluation of a defendant's cooperation is entitled to "considerable deference" and is subject only to "limited

[7] The Second Circuit has made clear that the provisions of Rule 35, Section 5K1.1 of the Guidelines, and 18 U.S.C. § 3553(e) that relate to sentencing leniency should be construed similarly, given the common language of these provisions. *See, e.g.*, *Scarpa*, 861 F.3d at 67; *United States v. Gangi*, 45 F.3d 28, 30-31 (2d Cir. 1995).

review." *United States v. Knights*, 968 F.2d 1483, 1487-88 (2d Cir. 1992).[8] Although a showing of substantial assistance "is a necessary condition for relief, it is not a sufficient one, because the Government has a power, not a duty, to make a substantial-assistance motion." *Scarpa*, 861 F.3d at 67 (quoting *Wade*, 504 U.S. at 185, 187). In exercising its discretion, the Government may weigh "the cost and benefit that would flow from moving," and "it is not the office of the court to weigh the equities or reassess the facts underlying the government's exercise of its discretion." *Id.* at 68-69 (quotation omitted).

A district court may review a prosecutor's refusal to file a substantial-assistance motion only where it finds that "the refusal was based on an unconstitutional motive" such as "race or religion," or if the refusal "was not rationally related to any legitimate Government end." *Wade*, 504 U.S. at 185-86. Moreover, mere allegations that the defendant provided substantial assistance or of an improper motive "will not entitle a defendant to a remedy or even to discovery or an evidentiary hearing." *Id.* at 186. Rather, the defendant must make a "substantial threshold showing" of an improper motive, *see id.*, at which point the Government would be entitled to rebut such a claim and the district court would have substantial discretion as to whether a hearing is required and what form that hearing might take. *See Knights*, 968 F.2d at 1487.[9]

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[8] This is not a case where the defendant had a cooperation agreement in which the Government promised to make such a motion, which would give rise to "more searching review" to determine whether the Government lived up to its end of the bargain. *See United States v. Brechner*, 99 F.3d 96, 99 (2d Cir. 1996).

[9] Cohen's motion references the First Step Act, appearing to argue that the extent of his requested reduction under Rule 35 is limited, because Cohen may be entitled to certain credits under that Act. (Adler Aff. ¶¶ 18-21). But Cohen is not entitled to any reduction of his sentence, regardless of its scope, under Rule 35. And to the extent that Cohen's motion might be construed as seeking a "modification" of his sentence, under the First Step Act or otherwise, to a designation to home confinement (which he is almost certainly not eligible for at this time), his request for relief must first be directed to the Bureau of Prisons. *See, e.g.*, 18 U.S.C. §§ 3621; 3624(c) *United States v. Urso*, 2019 WL 5423431, at *1 (E.D.N.Y. Oct. 23, 2019); *United States v. Hagler*, 2019 WL

DISCUSSION

A. The SDNY Has Determined That Cohen Has Not Provided Substantial Assistance, and Cohen Has Not Made Any Showing of an Improper Motive for that Determination

Cohen's provision of information to this Office clearly does not rise to the level of "substantial assistance." It has not resulted, either directly or indirectly, in the prosecution of any individuals. It has not led to the discovery of any evidence used in the prosecution of others. And apart from conclusory assertions about the importance of his information, Cohen's various submissions have failed to identify a single way in which Cohen's proffers have actually assisted in the investigation or prosecution of another, as Rule 35 requires. This is not a case, therefore, where the defendant can point to tangible law enforcement results directly stemming from his cooperation to argue that the Government has withheld cooperation credit in bad faith. *See, e.g.*, *Scarpa*, 861 F.3d at 60 (defendant argued that his information led to recovery of a cache of explosives); *Knights*, 968 F.2d at 1485 (defendant testified at trial of co-defendant). Particularly absent such tangible results, as the Second Circuit has made clear, prosecutors, not the defendant or his counsel, are "uniquely fit" to assess the question of whether a defendant's cooperation rises to the level of substantial assistance. *Huerta*, 878 F.2d at 93. On this record, it was not a close call.

Unable to articulate how he has advanced the investigation or prosecution of another, Cohen instead relies on high-level, conclusory assertions of proffered cooperation and further alleges, with no discernable factual basis, that the Department of Justice – from the Attorney General down to the line prosecutors in this Office – has acted in bad faith in withholding

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2393861, at *1 (N.D. Ind. June 4, 2019); *Rizzolo v. Puentes*, 2019 WL 1229772, at *3 (E.D. Cal. Mar. 15, 2019).

cooperation credit. Cohen offers no evidence for these accusations, instead resorting to a scattershot of *ad hominem* attacks and irrelevant political bromides. These extravagant claims of bad faith are exactly the sort of "generalized allegations of improper motive" that will not trigger the right to a remedy "or even to discovery or an evidentiary hearing." *Wade*, 504 U.S. at 186; *see also Knights*, 968 F.2d at 1487.

To be clear, no political or otherwise improper motive played any role in the Office's decision regarding Cohen's cooperation. Rather, as this Office has repeatedly informed Cohen's counsel, this Office determined that Cohen was not able to provide "substantial assistance" in the investigation or prosecution of others because Cohen's own words and actions (and those of his authorized surrogates) had given rise to very substantial concerns about Cohen's credibility as a witness. It bears mention, in this respect, that at the time Cohen began his attempt at post-sentencing cooperation, the Office's concerns about his credibility had not only been directly communicated to him but were already a matter of public record. (*See, e.g.*, SDNY Sent. Br. 27). Cohen had been convicted of lying on his taxes, to banks, and to the Congress; had knowingly rejected the path of traditional cooperation in this District; and had repeatedly sought to minimize his own conduct before his sentencing. Nevertheless, at Cohen's request, and after he was sentenced to 36 months' imprisonment, the Office gave Cohen yet another chance at providing substantial assistance. As was made clear to him at the outset of his post-sentencing efforts at cooperation, Cohen not only had to be able to provide useful information, but he had to take steps to preserve what was left of his credibility so as to be useful as a witness.

Nevertheless, Cohen then made numerous false statements and repeatedly minimized his own conduct in both his post-sentencing proffers with the Office and his public statements, as set forth above. (*See* pp. 4-6, *infra*). The Second Circuit has made clear that false statements by a

defendant during the period of his cooperation – even where swiftly corrected – are "highly relevant to the quality of his cooperation," and that the Government acts well within its ample discretion in determining that such lies can fatally undermine the defendant's utility as a witness. *See, e.g.*, *Brechner*, 99 F.3d at 99-100. Cohen's demonstrable lies to this Office during the period of his attempted cooperation are thus sufficient, standing alone, to confirm this Office's good faith in refusing to utilize him as a cooperating witness.[10]

To be sure, the Government often relies on cooperating defendants with significant criminal histories or prior instances of dishonesty. But in those cases, a necessary precondition to substantial assistance is the defendant's acceptance of responsibility for his crimes and commitment to tell the truth during his cooperation. To the extent Cohen might have been able to provide substantial assistance, those efforts were completely undermined by his inability to be truthful both with this Office and in his public statements. Even after his sentencing, Cohen never made a meaningful effort to engage in serious cooperation but instead engaged in a protracted public relations campaign, in which he sought to cast himself as both victim and hero, aimed at creating the appearance of cooperation. But no amount of public posturing may substitute, under Rule 35, for providing truthful and useful information to the Government.

Given these repeated lies and minimizations, the Office had an entirely appropriate, good faith basis to determine that Cohen could not be used as a witness or relied upon to provide

[10] Moreover, Cohen's lies and minimization continue to this day. In this very motion, Cohen once again attempts to blame his tax evasion on his accountant. (Cohen Aff. ¶ 4). Cohen's counsel's affidavit describes the campaign finance charges to which he pled guilty as "tacked on the back end" of the other charges, and seems to argue that he should not have been liable for these crimes given his lack of an official position in the campaign. (Adler Aff. ¶¶ 5-6, 69). And Cohen's counsel even alleges that Cohen pled guilty only after "the Government reportedly threatened to prosecute his wife" (Adler Aff. ¶ 68), even though this is patently false and contrary to Cohen's sworn allocution (Plea Tr. 20).

substantial assistance in the investigation and prosecution of others.

B. Cohen's Assistance to the Congress and/or State and Local Authorities Is Not a Basis for a Rule 35 Motion

Cohen's motion also suggests in various places that he should be entitled to a sentencing reduction for purported assistance that he provided to the United States Congress and various state and local law enforcement entities. (*See, e.g.*, Davis Aff. ¶ 1; Cohen Aff. ¶¶ 14-16). Even assuming that Cohen had provided "substantial assistance" to one or more such entity, that still would not provide a basis for relief under Rule 35.

As noted above, the text of Rule 35 imposes as a condition of relief a motion by "the Government," and the Second Circuit has held that, in this context, "the Government" refers to "the attorney representing the government" – that is, "the prosecutor." *Difeaux*, 163 F.3d at 728; *see also Ming He*, 94 F.3d at 789 ("The decision to move for a downward departure for substantial assistance rests in the exclusive discretion of federal prosecutors."). In particular, assistance to state or local law enforcement authorities cannot form the basis of a substantial assistance motion. *United States v. Kaye*, 140 F.3d 86, 87-88 (2d Cir. 1998). And Cohen offers no support for the novel legal proposition that Congressional testimony may amount to "substantial assistance in investigating or prosecuting another person," as required by Rule 35. Voluntary Congressional testimony is more closely analogous to the sort of "civic duty" that the Second Circuit has held does not ordinarily justify a sentencing departure. *See United States v. Korman*, 343 F.3d 628, 631 (2d Cir. 2003); *see also United States v. Brisbon*, 184 F. Supp. 2d 1379, 1382 (S.D. Ga. 2002) (making public service announcement does not justify Rule 35 relief); *United States v. Fredericks*, 787 F. Supp. 79, 82 (D. N.J. 1992) (speaking at three seminars does not justify Rule 35 relief).

Moreover, Cohen himself testified to a contrary understanding in his sworn Congressional testimony:

> The Rule 35 motion is in the complete hands of the Southern District of New York. And the way the Rule 35 motion works is, what you're supposed to do, is provide them with information that leads to ongoing investigations. . . . If those investigations become fruitful, then there's a possibility for a Rule 35 motion. And I don't know what the benefit in terms of time would be, **but this Congressional hearing today is not going to be the basis of a Rule 35 motion. I wish it was, but it's not.**

Ex. 3 at 101-02 (emphasis added). Having disavowed, in sworn testimony, any intent or ability to rely on his Congressional testimony to seek a sentencing reduction, it is remarkable for Cohen to now do exactly the opposite.

In sum, Cohen's efforts to assist other entities – whatever the value of those efforts – do not merit relief under Rule 35.[11]

CONCLUSION

For the reasons set forth above, the Office respectfully requests that this Court deny Cohen's motion without a hearing.

Dated: December 19, 2019
New York, New York

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: _____
Thomas McKay
Nicolas Roos
Andrea Griswold
Assistant United States Attorneys

[11] Cohen also briefly highlights his assistance to the Special Counsel's Office between August 2018 and November 2018. (*See, e.g.*, Davis Aff. ¶¶ 3-4). However, as noted above, Cohen was given credit for that assistance at sentencing. (Sent. Tr. 34). To the extent that Cohen is attempting to rely on this, or any other, pre-sentencing cooperation, it is not a basis for a further reduction. *See United States v. Katsman*, 905 F.3d 672, 674 (2d Cir. 2018).

FD-302 (Rev. 5-8-10)

UNCLASSIFIED//FOUO

FEDERAL BUREAU OF INVESTIGATION

Date of entry 03/19/2019

MICHAEL COHEN, date of birth (DOB) [redacted] was interviewed at the US Attorney's Office in the Southern District of New York. Also present were Assistant US Attorneys [redacted] Investigator [redacted], FBI Special Agents [redacted] FBI Intelligence Analyst [redacted] and COHEN's attorneys, Michael Monico and Carly Chocran. COHEN initialed a proffer agreement he had signed in previous proffer sessions. After being advised of the identity of the interviewing Agents and the nature of the interview, COHEN provided the following information:

[redacted]

UNCLASSIFIED//FOUO

Investigation on 02/07/2019 at New York, New York, United States (In Person)

File # [redacted] Date drafted 02/13/2019

by [redacted]

[redacted]

After TRUMP was elected president, COHEN left the TRUMP ORGANIZATION. COHEN did not want to move to Washington DC. [redacted]

[redacted]

[redacted] COHEN had no actual interest in being Attorney General or TRUMP's Chief of Staff.

[redacted]

From	Body	Timestamp: Time
Person-1	I voted for him!	11/8/2016 10:46:01 PM(UTC-5)
Cohen	I vote for you!!!	11/8/2016 10:46:23 PM(UTC-5)
Person-1	And I've spent the last month tracking down a dress for Ivanka😉	11/8/2016 10:46:27 PM(UTC-5)
Person-1	Thanks! I'm gonna need help finding a new job when this election is over!	11/8/2016 10:47:05 PM(UTC-5)
Cohen	You're coming with me to the White House	11/8/2016 10:47:27 PM(UTC-5)
Cohen	Astro chief of staff	11/8/2016 10:47:34 PM(UTC-5)
Cohen	Asst to chief of staff	11/8/2016 10:47:44 PM(UTC-5)
Person-2	Big day. You guys might just pull this off.	11/8/2016 11:04:37 AM(UTC-5)
Cohen	Hoping!!!	11/8/2016 11:12:01 AM(UTC-5)
Person-2	Chief of staff	11/8/2016 11:13:47 AM(UTC-5)
Cohen	That would be nice	11/8/2016 11:14:56 AM(UTC-5)
Person-3	I saw they're considering reince peribus for chief of staff	11/12/2016 12:22:50 PM(UTC-5)

Cohen	He's pushing like a madman	11/12/2016 2:54:37 PM(UTC-5)
Person-3	Do you still have a chance	11/12/2016 2:55:00 PM(UTC-5)
Cohen	So many opportunities	11/12/2016 3:16:12 PM(UTC-5)
Person-3	Like what	11/12/2016 3:16:21 PM(UTC-5)
Cohen	When they come closer I will tell you all of them	11/12/2016 3:16:42 PM(UTC-5)
Person-3	Ok	11/12/2016 3:16:48 PM(UTC-5)
Cohen	How are you	11/12/2016 3:16:55 PM(UTC-5)
Person-3	I'm good	11/12/2016 3:19:32 PM(UTC-5)
Person-3	Are the opportunities in government or no?	11/12/2016 3:19:55 PM(UTC-5)
Cohen	A hybrid	11/12/2016 4:18:22 PM(UTC-5)
Person-3	You ok?	11/13/2016 5:48:26 PM(UTC-5)
Cohen	Yes	11/13/2016 5:49:03 PM(UTC-5)
Person-3	You sure?	11/13/2016 5:49:11 PM(UTC-5)
Cohen	Yes	11/13/2016 5:49:48 PM(UTC-5)
Cohen	Disappointed but understand why	11/13/2016 5:50:01 PM(UTC-5)
Person-3	You can tell me	11/13/2016 5:50:05 PM(UTC-5)
Person-3	Trump shouldn't have spoken to you before the news came out	11/13/2016 5:50:36 PM(UTC-5)
Cohen	He needs an insider to give the presidency validity. To take someone with no political navigations for the role would cause everyone to say it's going to be a banana cabinet	11/13/2016 5:51:43 PM(UTC-5)

Person-4	Cohn or Powell will be Chief of Staff	5/14/2017 2:29:05 PM(UTC-4)
Cohen	Neither	5/14/2017 2:29:15 PM(UTC-4)
Person-4	Who then	5/14/2017 2:29:21 PM(UTC-4)
Cohen	Really?	5/14/2017 2:29:29 PM(UTC-4)
Person-4	If Powell she'd be the first woman	5/14/2017 2:29:41 PM(UTC-4)
Person-4	Not jared	5/14/2017 2:29:43 PM(UTC-4)
Person-4	Too close	5/14/2017 2:29:46 PM(UTC-4)
Cohen	Really?	5/14/2017 2:29:56 PM(UTC-4)
Person-4	Not ivanka	5/14/2017 2:30:00 PM(UTC-4)
Person-4	Too close	5/14/2017 2:30:04 PM(UTC-4)
Cohen	Keep guessing dopey	5/14/2017 2:30:11 PM(UTC-4)
Person-4	Stop!!!!	5/14/2017 2:30:16 PM(UTC-4)
Person-4	You???	5/14/2017 2:30:18 PM(UTC-4)
Cohen	I will give you a hint...yes	5/14/2017 2:30:25 PM(UTC-4)
Person-4	Omg	5/14/2017 2:30:32 PM(UTC-4)
Person-4	Please be true	5/14/2017 2:30:37 PM(UTC-4)
Person-4	Are you serious? You need to	5/14/2017 2:30:58 PM(UTC-4)
Cohen	He needs to ask. I would never	5/14/2017 2:31:10 PM(UTC-4)

Cohen	It's disrespectful	5/14/2017 2:31:17 PM(UTC-4)
Person-4	He needs someone from his old world there. He doesn't trust anyone else	5/14/2017 2:31:33 PM(UTC-4)
Person-4	You would be perfect	5/14/2017 2:31:39 PM(UTC-4)
Cohen	How could he? They are all about themselves and I have always been about him...even to my detriment	5/14/2017 2:32:15 PM(UTC-4)
Person-4	Exactly	5/14/2017 2:32:24 PM(UTC-4)
Cohen	All with not a shred of appreciation from anyone	5/14/2017 2:32:33 PM(UTC-4)
Person-4	Yup	5/14/2017 2:32:37 PM(UTC-4)
Person-4	I'm sorry	5/14/2017 2:32:41 PM(UTC-4)
Person-4	😒	5/14/2017 2:32:43 PM(UTC-4)
Person-4	Very frustrating	5/14/2017 2:32:48 PM(UTC-4)
Cohen	From the start, to the sexist issue, to the coalition, to protection him...all to my detriment and not even a shred of appreciation. And I would do it all again.	5/14/2017 2:33:40 PM(UTC-4)
Person-4	I know you would	5/14/2017 2:34:14 PM(UTC-4)
Cohen	So either I'm an idiot or just a loyal soldier	5/14/2017 2:34:24 PM(UTC-4)
Cohen	It's a 50-50 call	5/14/2017 2:34:36 PM(UTC-4)
Person-4	I feel like I don't even know the kids anymore. No one texts or calls. It's heartbreaking. Exactly. I don't know	5/14/2017 2:34:52 PM(UTC-4)
Cohen	Sad	5/14/2017 2:35:24 PM(UTC-4)
Person-4	Yup	5/14/2017 2:35:28 PM(UTC-4)
Cohen	Lots of articles about a shakeup	5/14/2017 2:37:18 PM(UTC-4)

Cohen	He needs to go back to thebbasics	5/14/2017 2:37:29 PM(UTC-4)
Person-4	Exactly. Which means it's definitely happening. Even faster than most predicted. I said at the 6 month mark he's going to look up from his desk and be like, "Who the hell are all these people? Where's Cohen, where's Larry, where's Rhona?"	5/14/2017 2:38:33 PM(UTC-4)
Person-4	Instead it happened at 5 months	5/14/2017 2:38:42 PM(UTC-4)
Person-4	You can't expect the same private sector success if you don't have the same private sector people	5/14/2017 2:39:04 PM(UTC-4)
Person-4	Basics	5/14/2017 2:39:17 PM(UTC-4)
Cohen	There's no loyalty to him by these swamp rats. I watch it on tv and seriously want to jump in and crack them across the jaw	5/14/2017 2:39:57 PM(UTC-4)
Person-4	Me too	5/14/2017 2:40:06 PM(UTC-4)
Cohen	Well keep my name in range loop please	5/14/2017 2:40:33 PM(UTC-4)
Person-5	When are u chief of staff	1/25/2018 8:50:31 PM(UTC-5)
Cohen	Maybe 3 to 4 months	1/25/2018 8:51:19 PM(UTC-5)

HEARING WITH MICHAEL COHEN, FORMER ATTORNEY TO PRESIDENT DONALD TRUMP

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

FEBRUARY 27, 2019

Serial No. 116–03

Printed for the use of the Committee on Oversight and Reform

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you working for him for 10 days, maybe 10 weeks, maybe even 10 months, but you worked for him for 10 years.

Mr. Cohen, how long did you work in the White House?

Mr. COHEN. I never worked in the White House.

Mr. JORDAN. And that's the point, isn't it, Mr. Cohen?

Mr. COHEN. No, sir.

Mr. JORDAN. Yes, it is.

Mr. COHEN. No, it is not, sir.

Mr. JORDAN. You wanted to work in the White House——

Mr. COHEN. No, sir.

Mr. JORDAN [continuing]. and you didn't get brought to the dance. And now——

Mr. COHEN. Sir, I was extremely proud to be personal attorney to the President of the United States of America. I did not want to go to the White House. I was offered jobs. I can tell you a story of Mr. Trump reaming out Reince Priebus because I had not taken a job where Mr. Trump wanted me to, which is working with Don McGahn at the White House General Counsel's Office.

Mr. JORDAN. Mr. Cohen, you worked for the President for——

Mr. COHEN. Sir, one second. All right. What I said at the time, and I brought a lawyer in who produced a memo as to why I should not go in, because there would be no attorney-client privilege.

Mr. JORDAN. Mr. Cohen——

Mr. COHEN. And in order to handle some of the matters that I talked about in my opening, that it would be best suited for me not to go in and that every President had a personal attorney.

Mr. JORDAN. Mr. Cohen, here's what I see, here's what I see. I see a guy who worked for 10 years and is here trashing the guy he worked for for 10 years, didn't get a job in the White House, and now—and now you are behaving just like everyone else who's got fired or didn't get the job they wanted, like Andy McCabe, like James Comey, same kind of selfish motivation after you don't get the thing you want. That's what I see here today, and I think that's what the American people see.

Mr. COHEN. Mr. Jordan, all I wanted was what I got, to be personal attorney to the President, to enjoy the senior year of my son in high school and waiting for my daughter who is graduating from college to come back to New York. I got exactly what I want.

Chairman CUMMINGS. The gentleman's time has expired.

Mr. JORDAN. Exactly what you want?

Mr. COHEN. What I wanted. That's right.

Mr. JORDAN. You are going to prison.

Mr. COHEN. I received exactly what I wanted.

Chairman CUMMINGS. The gentleman's time has expired.

Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Mr. Cohen, thank you for being here today.

As you likely know, I served as the chair of the Democratic National Committee at the time of the Russian hacks and when Russia weaponized the messages that it had stolen.

But I want to be clear my questions are not about the harm done to any individual by WikiLeaks and the Russians, it is about the possible and likely harm to the United States of America and our

Mr. CLOUD. Couple months from now.
Mr. COHEN. That's the day that I need to surrender——
Mr. CLOUD. Yes, sir, it is.
Mr. COHEN [continuing]. to Federal prison.
Mr. CLOUD. Could you, for the record, state what you've been convicted of.
Mr. COHEN. I've been convicted on five counts of tax evasion. There's one count of misrepresentation of documents to a bank. There's two counts—one dealing with campaign finance for Karen McDougal; one count of campaign finance violation for Stormy Daniels, as well as lying to Congress.
Mr. CLOUD. Thank you. Can you state what your official title with the campaign was?
Mr. COHEN. I did not have a campaign title.
Mr. CLOUD. And your position in the Trump administration?
Mr. COHEN. I did not have one.
Mr. CLOUD. OK. In today's testimony, you said that you were not looking to work in the White House. The Southern District of New York, in their statement, their sentencing memo, says this: "Cohen's criminal violations in the Federal election laws were also stirred, like other crimes, by his own ambition and greed. Cohen privately told friends, colleagues, and including seized text messages, that he expected to be given a prominent role in the new administration. When that did not materialize, Cohen found a way to monetize his relationship and access with the President." So were they lying, or were you lying today?
Mr. COHEN. I'm not saying it's a lie. I'm just saying it's not accurate. I did not want to go to the White House. I retained—and I brought an attorney and I sat with Mr. Trump, with him, for well over an hour explaining the importance of having a personal attorney. And every President has had one, in order to handle matters like the matters I was dealing with, which included, like Summer Zervos——
Mr. CLOUD. I reclaim my time.
Mr. COHEN [continuing]. Stormy Daniels, dealing with Stephanie Clifford——
Mr. CLOUD. I ask unanimous consent to——
Mr. COHEN [continuing]. and other personal matters that needed——
Mr. CLOUD. Excuse me. This is my time. Thank you.
I ask unanimous consent to submit to this memo from the Southern District of New York, New York for the record.
Chairman CUMMINGS. Without objection, so ordered.

that he wanted you to lie. One of the reasons you knew this is, because, quote, "Mr. Trump's personal lawyers reviewed and edited my statement to Congress about the timing of the Moscow tower negotiations before I gave it." So this is a pretty breathtaking claim, and I just want to get to the facts here. Which specific lawyers reviewed and edited your statement to Congress on the Moscow tower negotiations, and did they make any changes to your statement?

Mr. COHEN. There were changes made, additions. Jay Sekulow, for one——

Mr. RASKIN. Were there changes about the timing? The question——

Chairman CUMMINGS. The gentleman's time has expired.

You may answer that question.

Mr. COHEN. There were—there were several changes that were made, including how we were going to handle that message. Which was——

Chairman CUMMINGS. Mr. Groth — were you finished?

Mr. COHEN. Yes. The message, of course, being the length of time that the Trump Tower Moscow project stayed and remained alive.

Mr. RASKIN. That was one of the changes?

Mr. COHEN. Yes.

Chairman CUMMINGS. Mr. Grothman?

Mr. GROTHMAN. Yes, first of all, I'd like to clear up something, just a little something that bothers me. You started off your testimony, and you said, I think in response to some question, that President Trump never expected to win. I just want to clarify that I dealt with several—President Trump several times as he was trying to get Wisconsin. He was always confident. He was working very hard, and this idea that somehow he was just running to raise his profile for some future adventure, at least in my experience, is preposterous. I always find it offensive when anti-Trump people imply that he just did this on a lark and didn't expect to win.

But be that as it may, my first question concerns your relationship with the court. Do you expect—I mean, right now, I think you're sentenced to 3 years, correct?

Mr. COHEN. That's correct.

Mr. GROTHMAN. Do you expect any time, using this testimony, other testimony, after you get done doing whatever you're going to do this week, do you ever expect to go back and ask for any sort of reduction in sentence?

Mr. COHEN. Yes. There are ongoing investigations currently being conducted that have nothing to do with this committee or Congress, that I am assisting in, and it is for the benefit of a Rule 35 motion, yes.

Mr. GROTHMAN. So you expect, and perhaps what you testify here today will affect going back and reducing this, what we think is a relatively light, three-year sentence? You expect to go back and ask for a further reduction?

Mr. COHEN. Based off of my appearance here today?

Mr. GROTHMAN. Well, based upon whatever you do between now and your request for——

Mr. COHEN. The Rule 35 motion is in the complete hands of the Southern District of New York. And the way the Rule 35 motion

works is, what you're supposed to do, is provide them with information that leads to ongoing investigations. I am currently working with them right now on several other issues of investigation that concerns them, that they're looking at. If those investigations become fruitful, then there is a possibility for a Rule 35 motion. And I don't know what the benefit in terms of time would be, but this congressional hearing today is not going to be the basis of a Rule 35 motion. I wish it was, but it's not.

Mr. GROTHMAN. I'd like to yield some time to Congressman Jordan.

Mr. JORDAN. I yield to the gentleman from North Carolina.

Mr. MEADOWS. Mr. Cohen, I'm going to come back to the question I asked before, with regards to your false statement that you submitted to Congress. On here, it was very clear, that it asked for contracts with foreign entities over the last two years. Have you had any foreign contract with foreign entities, whether it's Novartis or the Korean airline or Kazakhstan BTA Bank? Your testimony earlier said that you had contracts with them. In fact, you went into detail——

Mr. COHEN. I believe it talks about lobbying. I did no lobbying. On top of that they are not government——

Mr. MEADOWS. In your testimony — I'm not asking about lobbying, Mr. Cohen.

Mr. COHEN. They are not government agencies. They are privately and——

Mr. MEADOWS. Do you have—do you have foreign contracts——

Mr. COHEN [continuing]. publicly traded companies.

Mr. MEADOWS. Do you have foreign contracts?

Mr. COHEN. I currently have no foreign contracts.

Mr. MEADOWS. Did you have foreign contracts over the last two years?

Mr. COHEN. Foreign contracts?

Mr. MEADOWS. Contracts with foreign entities, did you have contracts?

Mr. COHEN. Yes.

Mr. MEADOWS. Yes?

Mr. COHEN. Yes.

Mr. MEADOWS. Why didn't you put them on the form? It says it's a criminal offense to not put them on this form for the last two years. Why did you not do that?

Mr. COHEN. Because those foreign companies that you're referring to are not government companies.

Mr. MEADOWS. It says nongovernmental, Mr. Cohen. You signed it.

Mr. COHEN. They're talking about me as being nongovernmental.

Mr. MEADOWS. And right. It says foreign agency—It says foreign contracts. Do you want us to read it to you?

Mr. COHEN. I read it and it was reviewed by my counsel, and I am a nongovernment employee. It was not lobbying, and they are not foreign contracts.

Mr. MEADOWS. It has nothing to do with lobbying. It says it's a criminal offense to not list all your foreign contracts. That's what it says.

Mr. HIGGINS. Mr. Chairman, I ask that our primary hearing to introduce the Oversight Committee, the 116th Congress, to the American people, has manifested in the way that it obviously is. This is an attempt to injure our President, lay some sort of soft cornerstone for future impeachment proceedings. This is the full intent of the majority.

I yield my remaining 30 seconds to the ranking member.

Mr. JORDAN. Mr. Cohen, earlier you said the United States Southern District of New York is not accurate in that statement.

Mr. COHEN. I'm sorry. Say that again.

Mr. JORDAN. Earlier you said that the United States Southern District of New York Attorney's Office, that statement is not accurate. You said it's not a lie. You said it's not accurate. Do you stand by that?

Mr. COHEN. Yes, I did not want a role in the new administration.

Mr. JORDAN. So the court's wrong?

Mr. COHEN. Sir, can I finish, please?

Mr. JORDAN. Sure.

Mr. COHEN. I got exactly the role that I wanted. There is no shame in being personal attorney to the President. I got exactly what I wanted. I asked Mr. Trump for that job, and he gave it to me.

Mr. JORDAN. All I'm asking, if I could—and I appreciate it, Mr. Chairman — you're saying that statement from the Southern District of New York attorneys is wrong.

Mr. COHEN. I'm saying I didn't write it, and it's not accurate.

Mr. JORDAN. All right. Thank you.

Chairman CUMMINGS. Mr. Welch.

Mr. WELCH. Thank you.

One of the most significant events in the last Presidential campaign, of course, was the dump of emails stolen from the Democratic National Committee, dumped by WikiLeaks.

Mr. Cohen, during your opening statement, which was at the height of the election, you testified you were actually meeting with Donald Trump in July 2016 when Roger Stone happened to call and tell Mr. Trump that he had just spoken to Julian Assange. Is that correct?

Mr. COHEN. That is correct.

Mr. WELCH. All right. And you said that Mr. Assange told Mr. Trump about an upcoming—quoting your opening statement—quote, "massive dump of emails that would damage Hillary Clinton's campaign."

So I want to ask you about Roger Stone's phone call to the President.

First of all, was that on Speakerphone? Is that what you indicated?

Mr. COHEN. Yes. So Mr. Trump has a black Speakerphone that sits on his desk. He uses it quite often because with all the number of phone calls he gets.

Mr. WELCH. All right. Now, in January of this year, 2019, the New York Times asked President Trump if he ever spoke to Roger Stone about these stolen emails, and President Trump answered, and I quote, "No, I didn't. I never did."

Was that statement by President Trump true?

The chairman suggested you volunteered to come here. You testified that you were asked to come here. Is it correct you were asked to come here, yes or no?

Mr. COHEN. Yes.

Mr. ROY. The combined total of the crimes for which you were sentenced would bring a maximum of 70 years, yes or no?

Mr. COHEN. Yes.

Mr. ROY. Yet you are going to prison for three years, yes or no?

Mr. COHEN. Yes.

Mr. ROY. The prosecutors of the Southern District of New York say: To secure loans, Cohen falsely understated the amount of debt he was carrying and omitted information from his personal financial statements to induce a bank to lend on incomplete information. You told my colleague here today that you did not committee bank fraud.

Not parsing different statutes, which I understand could be only for clarify, are you or are you not guilty of making false statements to a financial institution, yes or no?

Mr. COHEN. Yes, I pled guilty.

Mr. ROY. You said clearly to Mr. Cloud and Mr. Jordan that the Southern District of New York lawyers were being untruthful in characterizing your desire to work in the administration. Do you say again that the lawyers of the Southern District of New York are being untruthful in making that characterization, yes or no?

Mr. COHEN. I'm saying that's not accurate.

Mr. ROY. OK. So you're saying they're being untruthful.

Mr. COHEN. I'm not using the word untruthful, that's yours. I'm saying that that's not accurate. I did not want a role or a title in the administration.

Mr. ROY. I'm sure the lawyers——

Mr. COHEN. I got the title that I wanted.

Mr. ROY. I'm sure the lawyers at the SDNY appreciate that distinction.

Question, you testified today you have never been to Prague and have never been to the Czech Republic. Do you stand behind that statement?

Mr. COHEN. Yes, I do.

Mr. ROY. I offer into the record an article in known conservative news magazine Mother Jones by David Corn in which he says he reviewed his notes from a phone call with Mr. Cohen, and Mr. Cohen said, quote, "I haven't been to Prague in 14 years. I was in Prague for one afternoon 14 years ago," end quote.

Question, you, as my friend Mr. Armstrong rightly inquired, offered to the committee taped information involving clients with the bat of an eye. Do you stand behind that, yes or no?

Mr. COHEN. I'm sorry, I don't understand. You said it so fast.

Mr. ROY. You, as my friend Mr. Armstrong rightly inquired, offered to this committee taped information involving your clients with the bat of an eye. Do you stand behind that offer?

Mr. COHEN. If the chairman asks me, I'll take it under advisement now, and it is not a problem in terms of attorney-client privilege, yes, I will turn it over.

Mr. ROY. You, as my friend Mr. Meadows pointed out, misled this committee even today in a written submission that contra-

EXHIBIT 5

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

June 9, 2023

BY ECF
The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Michael Cohen*, 18 Cr. 602 (JMF)

Dear Judge Furman:

The Government writes in opposition to defendant Michael Cohen's third motion for the early termination of his three-year term of supervised release. The Court should deny Cohen's request for the same reason his last request was denied just six months ago. (Dkt. 83). He has failed to identify any new extraordinary or sufficiently compelling reasons for his request. Accordingly, the motion should be denied.

I. Background

As the Court knows from the parties' prior briefing, *see* Dkt. 82, over a five year period, Cohen committed what Judge Pauley, who presided over Cohen's pleas and sentencing, described as a "veritable smorgasbord of fraudulent conduct." (Dkt. 31 at 34). Cohen evaded income taxes by failing to report more than $4 million in income; he lied to multiple banks to obtain financing; and he violated campaign finance by making execessive political contributions. (Dkt. 23 at ¶¶ 18-56). He also lied to the United States Congress in sworn testimony. (Dkt. 23 at ¶¶ 62-73). Cohen ultimately pled guilty to nine counts in two consolidated cases, and was sentenced to 36 months' imprisonment, to be followed by a three-year term of supervised release. (Dkt. 29).

Cohen began serving his custodial sentence in May 2019. Not long after he sought to reduce his sentence pursuant to Federal Rule of Criminal Procedure 35—an application that Judge Pauley denied. (Dkt. 72 at 2). Judge Pauley also denied Cohen's request for a modification of his sentence based on the COVID-19 pandemic. (*Id.*). The Bureau of Prisons nevertheless transferred Cohen to furlough and then home confinement, such that Cohen only served slightly more than one year of his three-year custodial sentence in a BOP facility, and spent the remaining time in his Park Avenue residence. Cohen's term of supervised release commenced on November 22, 2021, and thus he has just under one and a half years remaining on supervison. Cohen sought early termination of supervised release in July 2022, but the Court denied that application without prejudice as premature. (Dkt. 80). Cohen sought early termination of supervised release again in December 2022, but the Court also denied that application without prejudice, agreeing with the

Government that, on balance, applicable factors including the absence of concrete hardship, the number and nature of Cohen's convictions, and the fact that Cohen served only about a third of his custodial sentence in a BOP facility favored denial. (Dkt. 83). Cohen filed his third motion on May 31, 2023. (Dkt. 84).

II. Applicable Law

A court may, after considering a subset of the factors set forth in 18 U.S.C. § 3553(a), "terminate a term of supervised release and discharge the defendant released . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." 18 U.S.C. § 3583(e)(1). A court may only do so after taking into account a subset of factors set forth in 18 U.S.C. § 3553(a), which "requires the court to consider general punishment issues such as deterrence, public safety, rehabilitation, proportionality, and consistency, when it decides to 'modify, reduce, or enlarge' the term or conditions of supervised release." *United States v. Lussier*, 104 F.3d 32, 35 (2d Cir. 1997).

"Courts do not order early termination of supervised release as a matter of course." *United States v. Stein*, No. 09-CR-377 (RPK), 2020 WL 4059472, at *2 (E.D.N.Y. July 19, 2020). Rather, such relief may "[o]ccasionally" be justified by "new and unforeseen circumstances." *United Lussier*, 104 F.3d 32, 36 (2d Cir. 1997). Such circumstances may include when "exceptionally good behavior by the defendant . . . render[s] a previously imposed term or condition of release either too harsh or inappropriately tailored to serve the general punishment goals of section 3553(a)." *Id.*

However, mere compliance with the terms of supervised release does not constitute exceptionally good behavior, let alone behavior that renders a previously imposed term of supervision too harsh or inappropriate to serve the goals of sentencing. This is because "full compliance" is "what is expected." *United States v. Shellef*, No. 03-CR-0723 (JFB), 2018 WL 3199249, at *2 (E.D.N.Y. Jan. 9, 2018). Thus, "courts in this circuit have routinely declined to terminate supervised release based solely on compliance with the terms of supervision." *Stein*, 2020 WL 4059472, at *2 (collecting cases); *see also United States v. Rusin*, 105 F. Supp. 3d 291, 292 (S.D.N.Y. 2015) ("Early termination is not warranted where a defendant did nothing more than that which he was required to do by law.").

III. Discussion

Most of Cohen's arguments are recycled from his last motion, and none are meritorious. He has not identified any extraordinary circumstances or unforeseen consequences stemming from his supervised release that warrant its early termination. Instead, many of the defendant's arguments are the same ones previously considered and rejected by the Court. There is no reason, six months later, to reconsider that decision. The Court should therefore reject the arguments presented in Cohen's latest letter on the same grounds in accordance with applicable law and precedent.

Starting with the defendant's rose-colored description of his past conduct, his motion restates the incorrect claim that "it is widely understood that Mr. Cohen endeavored to provide

meaningful assistance to the government, at least as far as this term is colloquially understood" and that "he has taken full responsibility for his actions." (Dkt. 84 at 1 & n.1). His conduct proves the contrary. The Government previously delineated many of Cohen's lies that undermined his attempts at cooperation, and pointed to Cohen's repeated attempts to downplay his own conduct after his guilty plea. (*See* Dkt. 58 at 4-6, 10-11). As Judge Pauley found, that submission "makes clear" that "Cohen made material and false statements in his post-sentencing proffer sessions." (Dkt. 72 at 2). After rejecting Cohen's Rule 35 motion in March 2020, Judge Pauley stated that "it's time that Cohen accept the consequences of his criminal convictions for serious crimes." (Dkt. 72 at 2). More recently, just before making his last motion, Cohen falsely wrote in a book he authored that he "did not engage in tax fraud," that the tax charges were "all 100 percent inaccurate," and that he was "threatened" by prosecutors to plead guilty. *See* Michael Cohen, REVENGE 54 (2022). Additionally, in a recent attempt to distance himself from his guilty plea to making false statements to a financial institution about tax medallion liabilities, *see* Dkt. 27 at 8-11, Cohen stated on television, "first and foremost, there was no fraud in the medallions, I don't know even what he's talking about." *See* The Beat with Ari Melber, MSNBC (Mar. 20, 2023), https://shorturl.at/cvDI8. Cohen's recent statements are belied by his under-oath statements when he pled guilty, which included that he was guilty of tax evasion and false statements to banks, and that he had not been threatened or forced to plead guilty. (Dkt. 7). And they are evidence that Cohen has not "taken full responsibility for his actions," as he assets in his motion. Indeed, quite the opposite. As the Government stated previously, while Cohen is free to write and say what he wants, he cannot simultaneously distance himself from his conduct on cable news, while cloaking himself in claims of acceptance of responsibility in court filings.

Cohen then restates the conclusory statement that "continuing supervision is his only remaining hinderance in terms of being able to reassimilate into the community." (Dkt. 84 at 2). Despite references to new hardships Cohen has faced, his motion fails to identify any new extraordinary circumstances or unforeseen consequences that adequately demonstrate how the modest restrictions imposed upon him have presented any significant obstacles. Although Cohen has been granted permission for leisure travel to Italy with future international travel permitted at the discretion of the Probation office, *see* Dkt. 75, he claims now that "the onus of such travel is not a light one." (Dkt. 84 at 3). Cohen bemoans that the travel approval process causes him to be "held up to an hour" upon re-entry to the United States to confirm his authorization for international travel. As a result, he claims, he has turned down invitations to speak oversees. Delays reentering the country are known universally to New Yorkers—not just those under supervision—flying through any of the city's three airports. And courts have repeatedly held the mere inconvenience of the travel-approval process "does not arise to the level of new or unforeseen circumstances that would warrant early termination." *United States v. Gonzales*, No. 94 Cr. 134, 2015 WL 4940607, at *2 (S.D.N.Y. Aug. 3, 2015); *see also Shellef*, 2018 WL 3199249, at *3; *Whittingham v. United States*, No. 12 Cr. 971, 2017 WL 2257347, at *6 (S.D.N.Y. May 22, 2017). Cohen also claims that he is not able to "get to his parents quickly, if they need him," who live in Florida, because of his supervised release terms. (Dkt. 84 at 3). But Cohen has made no claim that travel requests were denied nor that they impeded his ability to travel to Florida quickly.

Cohen refers again to his procedurally dismissed habeas corpus petition, which had sought credit he believes he earned against his custodial sentence. (Dkt. 84 at 2-3 & n. 3). Cohen was not in fact entitled to those credits, as explained in that case. *See Cohen v. United States*, 20 Civ. 10833

(JGK), Dkt. 12 at 12-14. Furthermore, as the Court referenced as a factor favoring denial of Cohen's last motion to terminate supervised release, it bears noting again that he only served approximately one third of his custodial sentence in a BOP facility. Instead, Cohen spent the vast majority of his custodial sentence in home confinement.

Citing a case from the Seventh Circuit, Cohen argues that supervised release is not punishment, but rather is intended to facilitate the completion of the "decompression state" between prison and full release. (Dkt. 84 at 2). But as the Second Circuit has observed, in assessing whether termination of supervised release is appropriate, consideration of not just rehabilitation, but also deterrence, proportionality, and consistency are appropriate. *Lussier*, 104 F.3d at 35. With those purposes in mind, the statutory factors do not favor early termination here. Mere compliance is expected and does not alone warrant early termination of supervision, and several factors continue to weigh against Cohen's request. The nature and circumstances of the offense, the history and characteristics of the offender, and the need for specific deterrence all continue to weigh against Cohen's application. *See* 18 U.S.C. § 3553(a)(1), (a)(2)(B). Cohen's recent efforts to back away from his prior acceptance of responsibility is evidence of the ongoing need for specific deterrence. Moreover, Judge Pauley emphasized general deterrence at sentencing, and "[r]etroactively lightening the defendant's sentence simply because he has complied with his legal obligations would undermine that goal," *Stein*, 2020 WL 4059472, at *2. Cohen has not identified any considerations since his last motion that would tilt the balance in favor of early termination of supervised release here.

Accordingly, because Cohen has failed to provide any fresh or sufficiently compelling reasons for the early termination of his supervision, the motion should be denied.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: _____
Nicolas Roos
Assistant United States Attorney
(212) 637-2421

cc: Counsel of Record (by ECF)

Defendant's motion for early termination is DENIED substantially for the reasons set forth in the Government's letter. Among other things, the statements quoted above from Defendant's book and television appearance suggest that a reduction of Defendant's supervised release term would not serve the purposes incorporated by reference in 18 U.S.C. § 3583(e), including deterrence, rehabilitation, or proportionality. *See, e.g.*, *United States v. Lussier*, 104 F.3d 32, 35 (2d Cir. 1997). The Clerk of Court is directed to docket this in 18-CR-602 and 18-CR-850 and to terminate ECF No. 84 in 18-CR-602.

SO ORDERED.

June 16, 2023

EXHIBIT 6

EXHIBIT 7

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

PRESIDENT DONALD J. TRUMP, Plaintiff, v. MICHAEL D. COHEN, Defendant.	Case No.: **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff President Donald J. Trump, by and through his counsel, as and for causes of action against the Defendant, Michael D. Cohen, alleges as follows:

NATURE OF THE ACTION

1. This is an action arising from Defendant's multiple breaches of fiduciary duty, unjust enrichment, conversion, and breaches of contract by virtue of Defendant's past service as Plaintiff's employee and attorney.
2. Defendant breached his fiduciary duties owed to Plaintiff by virtue of their attorney-client relationship by both revealing Plaintiff's confidences, and spreading falsehoods about Plaintiff, likely to be embarrassing or detrimental, and partook in other misconduct in violation of New York Rules of Professional Conduct, including Rules 1.5, 1.6, 1.9, and 8.4.[1]
3. Defendant breached the contractual terms of the confidentiality agreement he signed as a condition of employment with Plaintiff by both revealing Plaintiff's confidences, and spreading falsehoods about Plaintiff with malicious intent and to wholly self-serving ends.

[1] The ABA Model Rules of Professional Conduct largely parallel, for purposes of the ethical standards referenced in this Complaint, the New York Rules of Professional Conduct.

4. Defendant unlawfully converted Plaintiff's business property when he fraudulently misrepresented a business expenditure, and stated that he was owed an extra $74,000 over the true amount of the expenditure. Defendant was reimbursed based on the fraudulent misrepresentation, and accordingly converted $74,000 from Plaintiff.
5. Defendant committed these breaches through myriad public statements, including the publication of two books, a podcast series, and innumerable mainstream media appearances, as detailed herein. Defendant has engaged in such wrongful conduct over a period of time and, despite being demanded in writing to cease and desist such unacceptable actions, has instead in recent months increased the frequency and hostility of the illicit acts toward Plaintiff. Defendant appears to have become emboldened and repeatedly continues to make wrongful and false statements about Plaintiff through various platforms. Such continuous and escalating improper conduct by Defendant has reached a proverbial crescendo and has left Plaintiff with no alternative but to seek legal redress through this action.
6. Plaintiff has suffered vast reputational harm as a direct result of Defendant's breaches.

THE PARTIES

7. Plaintiff President Donald J. Trump is a private citizen of the United States, and a resident of the state of Florida.
8. Defendant Michael D. Cohen is a natural person over the age of eighteen, and a resident of the state of New York in the County of New York.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as the parties are diverse, and the amount in controversy is greater than seventy-five thousand dollars ($75,000).

10. The Court possesses personal jurisdiction over Defendant pursuant to Florida Statute §48.193(2) on the grounds that Defendant, during the operative period alleged in the Complaint, engaged in substantial and not isolated business activities in Florida, and more specifically in this District, in the context of his representation of, and relationship with, Plaintiff. Upon information and belief, Defendant traveled to Miami, Florida to engage in services for the Plaintiff. In addition, this Court possesses personal jurisdiction over Defendant pursuant to Florida Statute § 48.193(1)(a)(6) on the grounds that Defendant engaged in business activities in Florida in the marketing and selling of the Books (as defined below), the marketing and publication of the Podcast (also defined below), and through additional media appearances and public statements, all of which were accessible and were accessed in this state and which caused injury to Plaintiff within this state while Defendant was engaged in solicitation or service activities within this state and/or products, materials, or things processed, serviced, or manufactured by Defendant were used or consumed within this state in the ordinary course of commerce, trade, or use.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District and also because Defendant is subject to this Court's personal jurisdiction with respect to this action.

STATEMENT OF FACTS

A. Generally

12. Defendant received his law license in New York in or about 1992 and, therefore, was governed by the ethical Rules promulgated by the state of New York.

13. Beginning in or about the fall of 2006, Defendant served as an attorney to Plaintiff, both for Plaintiff personally, and as counsel to Trump Organization LLC ("the Trump Organization").

14. Among other innumerable positive statements made by Defendant about Plaintiff and his role as Plaintiff's attorney, Defendant described his job as "very surreal," claiming he had "been admiring Donald Trump since [] high school."[2] Defendant viewed Plaintiff as a "wonderful man" who would be "an amazing president,"[3] and someone Defendant thought "the world" of as "a businessman" and "a boss."[4]

15. Defendant stated that Plaintiff was "smart," and "the greatest negotiator on the planet,"[5] and described his own role as the one "who protects the President and the family," and strongly stated that he "would take a bullet" for Plaintiff.[6]

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[2] Michael Falcone, *Donald Trump's Political 'Pit Bull': Meet Michael Cohen*, ABC News (Apr. 15, 2022), *available at* https://abcnews.go.com/Politics/donald-trumps-political-pit-bull-meet-michael-cohen/story?id=13386747.

[3] *Michael Cohen: I Will Remain the Personal Attorney to Trump; Omarosa: Hollywood Has No Impact on the Will of the People*, HANNITY (Mar. 20, 2017), *available at* https://www.foxnews.com/transcript/michael-cohen-i-will-remain-the-personal-attorney-to-trump-omarosa-hollywood-has-no-impact-on-the-will-of-the-people.

[4] Falcone, *supra* note 2.

[5] *Michael Cohen: Trump 'Best Negotiator in the History of This World,'* HANNITY (Aug. 4, 2015), *available at* https://grabien.com/file.php?id=53826.

[6] Emily Jane Fox, *Michael Cohen Would Take a Bullet for Donald Trump*, VANITY FAIR (Sep. 6, 2017), *available at* https://www.vanityfair.com/news/2017/09/michael-cohen-interview-donald-trump.

16. Defendant claimed he would "never walk away" because Plaintiff "deserve[d]" Defendant's "loyalty" because "[o]ne man who wants to do so much good with so many detractors against him needs support."[7]

17. Defendant stated that Plaintiff was "an honorable guy,"[8] and that he "never [saw] a situation where Mr. Trump has said something that's not accurate."[9]

18. Defendant claimed that "[t]here's no money in the world that could get me to disclose anything about" the Trump Organization.[10]

19. Defendant resigned as counsel to the Trump Organization on January 20, 2017, when Plaintiff was inaugurated the 45th President of the United States, but Defendant continued to represent Plaintiff personally until in or about June 2018.

20. Starting in 2017, Defendant maintained his representation of Plaintiff as a solo attorney under Michael D. Cohen & Associates P.C., an entity wholly owned by Defendant.[11]

21. Soon thereafter, Defendant set up his own law firm and consulting business (Michael D. Cohen & Associates P.C., and Essential Consultants LLC, respectively), partnering with a major law firm that paid him $500,000 annually, in an attempt to enrich himself to the tune of millions of dollars in lucrative corporate contracts.[12]

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[7] *Id.*

[8] Transcript, *New Day*, CNN (Nov. 24, 2015), *available at* http://www.cnn.com/TRANSCRIPTS/1511/24/nday.04.html.

[9] Transcript, *The Lead With Jake Tapper*, CNN (Nov. 30, 2015), *available at* http://www.cnn.com/TRANSCRIPTS/1511/30/cg.02.html.

[10] Fox, *supra* note 6.

[11] Government's Opposition to Michael Cohen's Motion for a Temporary Restraining Order (ECF Doc. No. 1) at 11, *Cohen v. United States*, No. 1:18-mj-03161-KMW (S.D.N.Y. April 13, 2018) ("Gov't Opposition").

[12] *See, e.g.,* Dan Mangan, N*ovartis Paid Trump Lawyer Michael Cohen $1.2 Million for Advice on Obamacare – Work He Was Unable to Do*, CNBC (May 9, 2018), https://www.cnbc.com/2018/05/09/novartis-paid-trumps-lawyer-michael-cohen-more-than-1-million-for-work-he-was-unable-to-do-company-says.html; Rosaline S. Helderman et al., *Cohen's*

B. **Defendant's Personal and Professional Downfall**

22. On April 9, 2018, the FBI executed warrants to search Defendant's home, office, safety deposit box, electronic devices, and hotel room as authorized upon a finding of probable cause.[13]

23. The warrants reportedly included references to Defendant's father-in-law's loans to a taxi fleet operator in Chicago, worth tens of millions of dollars.[14] Defendant's father-in-law was previously charged with conspiring to defraud the IRS,[15] and pleaded guilty to money-laundering charges in connection with accounting practices related to his New York taxi business.[16]

24. In connection with the federal investigation, Defendant spoke with attorney Robert Costello, who counseled him over the course of "hours, meeting and speaking by phone."[17]

$600,000 Deal With AT&T Specified He Would Advise on Time Warner Merger, Internal Company Records Show, WASH. POST (May 10, 2018), https://www.washingtonpost.com/politics/cohens-600000-deal-with-atandt-specified-he-would-advise-on-time-warner-merger-internal-company-records-show/2018/05/10/cd541ae0-5468-11e8-a551-5b648abe29ef_story.html.

[13] Government's Opposition to Michael Cohen's Motion for a Temporary Restraining Order (ECF Doc. No. 1) at 1, *Cohen v. United States*, Case No. 1:18-mj-03161-KMW (S.D.N.Y. April 13, 2018) ("Gov't Opposition").

[14] *See, e.g.*, Dan Managan, *Father-in-Law of Trump Lawyer Michael Cohen Reportedly Loaned at Least $20 Million to Chicago Cab Mogul Mentioned in FBI Search Warrants for Cohen*, CNBC (Apr. 19, 2018), *available at* https://www.cnbc.com/2018/04/19/father-in-law-of-trump-lawyer-michael-cohen-loaned-millions-to-cab-mogul.html.

[15] *Id.*

[16] Jake Pearson & Stephen Braun, *Trump Personal Attorney Michael Cohen Loaned Millions to Ukraine-Born Cab Mogul*, Assoc. Press (Apr. 27, 2018), available at https://www.jacksonville.com/story/news/2018/04/27/trump-personal-attorney-michael-cohen-loaned-millions-to-ukraine-born-cab-mogul/12385950007/.

[17] Ben Protess, Sean Piccoli & Kate Christobek, *Trump Grand Jury Hears From Lawyer Who Assails Cohen's Credibility*, N.Y. Times (Mar. 20, 2023), available at https://www.nytimes.com/2023/03/20/nyregion/costello-cohen-trump-grand-jury.html. Defendant later waived his attorney-client privilege with Mr. Costello and refused to pay a bill for Mr. Costello's legal services. *Id.*

25. In particular, at Defendant's request, Mr. Costello met with Defendant in April 2018, shortly after the search warrant on Defendant's home was executed.[18]

26. According to Mr. Costello, at that meeting, Defendant was highly distressed, "was in a manic state," was "pacing like a wild tiger in a cage,"[19] appeared "frazzled"[20] "like he hadn't slept in three, four, five days," and even relayed to counsel "that he had contemplated suicide."[21]

27. Defendant told Mr. Costello that Defendant did not know of any criminal wrongdoing by Plaintiff in any matter,[22] even when pressed by Mr. Costello: "I said, 'Michael, these people in the Southern District are not interested in you—You're a bump in the road. Their interest clearly is Donald Trump. So the way out of this is to cooperate if you have something to cooperate, because if it's Donald Trump you're cooperating against, you can get in on a prosecution agreement, which means you're out of this picture at all.' I said, 'It's a lot better than suicide.' And he thought and said, 'I don't have anything against Donald Trump.' And I must have asked him that same question. We were there for two hours, probably seven different ways, just to make sure that he kept on reiterating. And after the first time, where he simply said, 'I don't have anything on Donald Trump,' after that every time his response

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[18] Brooke Singman, *Trump-Manhattan DA Case: Bob Costello Testifies to Grand Jury, Says Michael Cohen Is A 'Serial Liar,'* Fox News (Mar. 20, 2023), *available at* https://www.foxnews.com/politics/trump-manhattan-da-case-bob-costello-testifies-grand-jury-says-michael-cohen-serial-liar.

[19] *Id.*

[20] Caitlin Yilek, *Attorney Seeks to Discredit Michael Cohen in Trump Grand Jury Investigation*, CBS (Mar. 20, 2023), *available at* https://www.cbsnews.com/news/trump-grand-jury-new-york-robert-costello-michael-cohen/.

[21] Singman, *supra* note 18.

[22] Jack Forrest & Zachary Cohen, *Trump's Team Puts Forward Ally in Hopes of Undercutting Cohen Testimony in NY Hush Money Case*, CNN (Mar. 20, 2023), *available at* https://www.cnn.com/2023/03/20/politics/michael-cohen-robert-costello-manhattan-grand-jury/index.html.

was, 'I swear to God, Bob, I don't have anything on Donald Trump.'" Costello also attests to the fact of how Cohen "would suddenly stop in the middle of whatever he was talking about, and turn and point his finger at us and say, 'I want you guys to understand—I will do whatever the F I have to do. I will never spend a day in jail.' He said that at least 10 to 20 times during that two-hour period. It was, it was a bizarre mantra, but it made it clear to us that Michael Cohen was saying, 'I will lie, cheat, steal, shoot someone, I will never spend a day in jail.'"[23]

28. In particular, Defendant told Mr. Costello during the course of the meeting that he had "decided [on] his own . . . to see if he could take care of" certain "negative information" that Stephanie Clifford "wanted to put in a lawsuit against" Plaintiff.[24] According to Mr. Costello, Defendant was clear that the resulting payment was his "idea."[25]

29. Defendant told Mr. Costello that Defendant and Clifford's lawyer "negotiated a nondisclosure agreement for $130,000," and expressly stated that the $130,000 payment did not come from Plaintiff.[26]

30. Instead, Defendant told Mr. Costello that Defendant had taken a loan out for the $130,000 because he "wanted to keep [the payment a] secret," both from his wife and from Plaintiff's wife.[27]

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[23] Sean Hannity, *Defending Trump — March 31st, Hour 2*, OMNY-FM, (Mar. 31, 2023), *available at* https://omny.fm/shows/the-sean-hannity-show/defending-trump-march-31st-hour-2.
[24] *Id.*; Kelly Garrity & Erica Orden, *Former Legal Adviser to Michael Cohen Tries to Discredit Him in Grand Jury Testimony*, Politico (Mar. 21, 2023), *available at* https://www.politico.com/news/2023/03/20/former-attorney-to-michael-cohen-tries-to-discredit-him-in-grand-jury-testimony-00087982.
[25] Protess et al., *supra* note 17.
[26] Singman, *supra* note 18.
[27] *Id.*

31. Mr. Costello's account is consistent with a letter dated two months before the FBI raid, on February 8, 2018, from another attorney representing Defendant in response to a complaint filed with the Federal Election Commission (FEC). That letter plainly states that Defendant "used his own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither The Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed Mr. Cohen or the payment directly or indirectly."[28]

32. Mr. Costello has further completely discredited Defendant's subsequent accounts implicating Plaintiff's involvement in any violation of law surrounding the payment, and on the basis of his interactions with Defendant, calls Defendant a "serial liar,"[29] and a "totally unreliable"[30] individual who "has great difficulty telling the truth."[31]

33. Subsequent to the investigation by law enforcement, Defendant asked for, and Plaintiff repeatedly rejected, Defendant's requests for a presidential pardon.[32]

34. The criminal investigation culminated on August 21, 2018, when Defendant pleaded guilty in the United States District Court for the Southern District of New York to an eight-count

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[28] Letter from McDermott, Will & Emery attorney Stephen M. Ryan to Fed. Election Comm'n Office of Complaints Exam., Re: MUR 7313 (Feb. 8, 2018).

[29] *See* Brooke Singman, *Trump-Manhattan DA Case: Bob Costello Testifies to Grand Jury, Says Michael Cohen Is A 'Serial Liar,'* Fox News (Mar. 20, 2023), *available at* https://www.foxnews.com/politics/trump-manhattan-da-case-bob-costello-testifies-grand-jury-says-michael-cohen-serial-liar.

[30] Yilek, *supra* note 20.

[31] Singman, *supra* note 18.

[32] *See* Protess et al., *supra* note 17; Rebecca Ballhaus, *Cohen Told Lawyer to Seek Trump Pardon*, WALL ST. J. (Mar. 6, 2019), *available at* wsj.com/articles/attorney-says-cohen-directed-his-lawyer-to-seek-trump-pardon-contradicting-testimony-11551931412; *see also* David Greene & Ryan Lucas, *Cohen, Trump and the Pardon That Wasn't*, Nat'l Public Radio (Mar. 7, 2019), *available at* https://www.npr.org/2019/03/07/701081872/cohen-trump-and-the-pardon-that-wasnt.

criminal information brought by the United States Attorney's Office for the Southern District of New York charging violations of tax evasion, making false statements to a financial institution, causing an unlawful corporate contribution, and making an excessive campaign contribution.

35. News reports also indicated that "prosecutors had evidence that also implicated [Defendant's] wife in potential criminal activity," though "[his] wife was never charged."[33]

36. On November 29, 2018, Defendant pleaded guilty to one count of making a false statement to Congress, a charge brought by Special Counsel Robert Mueller III.

37. "[E]ach" of the counts to which Defendant pleaded guilty "involved deception," and in the words of the sentencing judge, Defendant was guilty of a "veritable smorgasbord of fraudulent conduct."[34]

38. In connection with Defendant's consolidated sentencing proceedings, federal prosecutors submitted two scathing sentencing memoranda, each dated December 7, 2018; one from the Special Counsel's Office ("SCO") run by Robert S. Mueller III and another from the U.S. Attorney's Office for the Southern District of New York ("SDNY").

39. The SCO's memorandum focused on Defendant's "deliberate and premeditated" false statements to Congress.[35]

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[33] Rebecca Ballhaus & Michael Rothfeld, *Trump Again Blasts Michael Cohen, the Former Lawyer Who Broke With Him*, WALL ST. J. (Dec. 3, 2018), *available at* https://www.wsj.com/articles/trump-again-blasts-former-lawyer-who-broke-with-him-1543858254.

[34] *Id.*

[35] Gov't Sentencing Mem., *United States v. Cohen*, No. 18-850 (S.D.N.Y. Dec. 7, 2018), ECF No. 15, at 2 (submitted by the SCO).

40. The SDNY's memorandum, meanwhile, acknowledged that any assistance Defendant may have provided arose at least in part out of a "desire for leniency," and does not "reflect a selfless and unprompted about-face."[36]

41. The SDNY noted that Defendant's crimes were "motivated . . . by personal greed," and were effectuated by "repeatedly us[ing] his power and influence for deceptive ends." Indeed, Defendant exhibited "a pattern of deception that permeated his professional life[.]"

42. Each of Defendant's crimes "involve[d] deception, and each were [sic] motivated by personal greed and ambition."

43. Defendant's "desire for even greater wealth and influence precipitated an extensive course of criminal conduct."

44. But even when faced with overwhelming evidence of willful tax evasion, Defendant refused to take ownership of his wrongdoing, blaming his accountant for his failure to report millions of dollars over a period of years from income completely unrelated to his work with Plaintiff or the Trump Organization, including profitable loans and investments from the lease of taxi medallions.[37]

45. The SDNY also released a public statement which stated, in part, that "Michael Cohen is a lawyer who, rather than setting an example of respect for the law, instead chose to break the law, repeatedly over many years, and in a variety of ways. His day of reckoning serves as a reminder that we are a nation of laws, with one set of rules that applies equally to everyone."[38]

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[36] Gov't Sentencing Mem., *United States v. Cohen*, No. 18-850 (S.D.N.Y Dec. 7, 2018), ECF No. 27, at 15 (submitted by the SDNY) [hereinafter SDNY Sentencing Mem.].
[37] *Id.* at 5-6.
[38] Press Release, Dep't of Justice, *Michael Cohen Pleads Guilty in Manhattan Federal Court to Eight Counts, Including Criminal Tax Evasion and Campaign Finance Violations* (Aug. 21, 2018),

46. To this day, Defendant refuses to take responsibility for his actions; he called the SDNY's public statement "100 percent inaccurate and . . . [the] SDNY prosecutors knew it," insisting that "I did not engage in tax fraud" but "had to plead guilty to it in order to protect my wife and family."[39]

47. Defendant repeatedly suggested that his plea agreement was coerced: "[L]ike a man in a hostage video, [Defendant] agreed to the SDNY deal. . . . They put a metaphorical gun to [Defendant's] wife's head and forced [Defendant] to execute a plea deal," to which he allocuted at his plea proceeding like "a well-rehearsed actor" reading a "letter of lies" "to insure full compliance to [the SDNY's] demands."[40]

48. The SDNY concluded that Defendant's conduct constituted an "abuse of both his standing as an attorney and," referring to Plaintiff, "his relationship to a powerful individual," which is "repugnant from anyone, let alone an attorney of the bar."[41]

49. On December 12, 2018, Defendant was sentenced to three years in prison based upon the convictions secured by the SDNY, a two-month concurrent sentence for the conviction secured by the SCO, concurrent three-year terms of supervised release in both cases, and was ordered to pay two fines of $50,000 each, to forfeit $500,000, and to pay $1,393,858 in restitution to the Internal Revenue Service.

50. On February 26, 2019, pursuant to disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department, Defendant was disbarred by a panel of judges sitting on the New York Supreme Court. Indeed, in addressing the

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available at https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax.

[39] MICHAEL COHEN, REVENGE 54 (Melville House Publ'g 2022), *see infra*, note 59.

[40] *Id.* at 91, 97.

[41] SDNY Sentencing Mem., *supra* note 36, at 32.

seriousness of the unlawful conduct engaged in by Defendant, the panel's written decision noted that Defendant's conviction for making false statements to Congress was analogous to a first degree felony conviction under New York law and, therefore, automatic disbarment was appropriate.

51. In or around May 2019, Defendant began serving his sentence at Federal Correction Institution, Otisville ("FCI Otisville") in Orange County, New York.

52. Time and again, Defendant refused to accept responsibility for his actions. In 2020, Defendant moved his sentencing judge for a reduced sentence. The court denied his request, admonishing that, "[t]en months into his prison term, it's time that Cohen accept the consequences of his criminal convictions for serious crimes that had far reaching institutional harms."[42]

C. **Defendant's Continuing Fiduciary Obligations to Plaintiff**

53. Defendant, at all relevant times prior to his disbarment in February 2019, was an attorney licensed to practice law in the state of New York.

54. As a member of the state Bar of New York before his disbarment, Defendant was subject to stringent ethical obligations and professional standards applicable to all lawyers in New York.

55. The obligations and standards imposed against attorneys by the state of New York create a fiduciary relationship between the lawyer and his client; among these fiduciary duties, Defendant undertook fiduciary duties on behalf of his client.

56. For example, New York Rule of Professional Conduct ("NYRPC") 1.6 prohibits an attorney from "reveal[ing] confidential information . . . or us[ing] such information to the

[42] Mem. & Order, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Mar. 24, 2020).

disadvantage of the client or for the advantage of the lawyer" unless circumstances exist which are not relevant here; confidential information consists of all "information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested to be kept confidential."

57. NYRPC Rule 1.5 prohibits an attorney from "charg[ing] or collect[ing] an excessive or illegal fee or expense." Such illegal expenses include fraudulent billings that are "knowingly and intentionally based on false or inaccurate information," including where, for example, "the client has agreed to pay the lawyer's cost of in-house services," and the attorney were to charge the client "more than the actual costs incurred."[43]

58. NYRPC Rule 1.6 prohibits an attorney, as relevant here, from "knowingly reveal[ing] confidential information . . . or us[ing] such information to the disadvantage of a client or for the advantage of the lawyer or a third person" unless the client gives informed consent.

59. NYRPC Rule 1.9 extends an attorney's fiduciary obligations to former clients: as relevant here, "[a] lawyer who has formerly represented a client in a matter" shall not thereafter "(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client[,]" or "(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules[.]"

60. Defendant's fiduciary duties owed to Plaintiff survive the attorney-client relationship and Defendant's disbarment and are still in effect today.

[43] Rule 1.5 (New York State Bar Association Comment [1A]).

D. **Defendant's Duties Under the Confidentiality Agreement**

61. As a material condition of his employment with the Trump Organization, Defendant signed a confidentiality agreement entitled "Employee Agreement of Confidentiality" ("the Confidentiality Agreement").

62. The Confidentiality Agreement requires that during Defendant's "term of . . . employment and at all times thereafter," with exceptions not relevant here, Defendant "agree[d] not to directly or indirectly disseminate, or publish, or cause to be disseminated or published any Confidential Information in any form, including but not limited to any diary, memoir, book, letter, story, speech, photography, interview, article, essay, account, description or depiction of any kind whatsoever, whether fictionalized or not."

63. The Confidentiality Agreement defines "Confidential Information" to include "(i) the personal life or business affairs . . . of Trump; (ii) the personal lives and/or business affairs of members of Trump's family; and/or (iii) the business affairs of [the Trump Organization], or an of its affiliates, officers, directors, or employees."

64. Beginning on or about 2018, after Defendant's representation of Plaintiff had ended, Defendant committed the first of an onslaught of fiduciary and contractual breaches against Plaintiff by making numerous inflammatory and false statements about Plaintiff.

E. **Defendant Seeks Profit and Notoriety By Disparaging Plaintiff Through Books, Podcast, and Other Public Statements**

65. Defendant's most egregious breaches of fiduciary duty and contract arise in connection with the publication of his books and podcast, discussed in further detail herein.

i. *The Books*

66. In mid-to-late 2019, while incarcerated at FCI Otisville, Defendant began working on a manuscript, which would eventually be formulated into his first book, *Disloyal: A Memoir:*

The True Story of the Formal Personal Attorney to President Donald J. Trump ("*Disloyal*").[44]

67. *Disloyal* purports to reveal confidential information about Plaintiff, as defined by the Confidentiality Agreement, and as contemplated by the New York Rules of Professional Conduct.

68. *Disloyal* also provides fictionalized accounts of Defendant's interactions with Plaintiff that are prohibited by the Confidentiality Agreement, and which are intended to be embarrassing or detrimental to Plaintiff, and redound to Plaintiff's disadvantage, in violation of the New York Rules of Professional Conduct.

69. In connection with the publication and promotion of *Disloyal*, Defendant committed a vast number of breaches of fiduciary duty and violations of the Confidentiality Agreement.

70. Defendant was aware that the publication of *Disloyal* would violate the Confidentiality Agreement and his fiduciary duties to Plaintiff, his former client.

71. Defendant never sought or received consent or authorization from Plaintiff regarding the disclosure of confidential information prior to the dissemination and publication of *Disloyal*.

72. In fact, on or about April 20, 2020, Plaintiff submitted a cease-and-desist letter to Defendant's counsel, advising that the release of *Disloyal* would violate Plaintiff's confidentiality rights as required as Plaintiff's former attorney and by the Confidentiality Agreement. Defendant acknowledged receipt of the letter.

73. Defendant's *Disloyal* was published by Skyhorse Publishing, and distributed by Simon and Schuster, beginning on September 8, 2020.

[44] MICHAEL COHEN, DISLOYAL: A MEMOIR (Skyhorse Publ'g 2020).

74. The timing of *Disloyal*'s release, just prior to the November 3, 2020 Presidential Election, suggests that Defendant intended to improperly disclose Plaintiff's confidences when it would be most lucrative to do so—and while *Disloyal* would be sure to have the most damaging reputational effect on Plaintiff.

75. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in *Disloyal*.

76. Despite being advertised as a factual memoir, *Disloyal* is replete with mischaracterizations, falsehoods, and flat-out misrepresentations about Plaintiff.

77. This was by design; indeed, the purpose of Defendant's book was to share a purported non-public insider's account of Plaintiff that would breach both his fiduciary duties and those he assumed under the Confidentiality Agreement: access to "the real real Donald Trump—the man very, very, very few people know."[45]

78. *Disloyal* is fashioned as a "tell-all" recounting of Defendant's decades-long relationship, interactions, and dealings with Plaintiff, wherein Defendant purports to present readers with an "intimate portrait" of Plaintiff.

79. Throughout *Disloyal*, Defendant uses quotation marks to fabricate verbatim conversations, and falsely put words directly in Plaintiff's mouth.

80. These alleged conversations, portrayed by Defendant to have taken place verbatim, date back to 2006, a full 14 years before Defendant began writing *Disloyal* in March 2020.[46]

[45] *Id.* at 7.
[46] *Id.* at 22, 26.

81. *Disloyal*'s forward nods both to the unprecedented breaches of fiduciary duties found therein, and further suggests Defendant's bad faith in publishing the confidential information: "this is a book the President of the United States does not want you to read."[47]

82. By way of example, the following paragraphs contain a non-exhaustive overview of Defendant's countless disclosures of information in violation of his Confidentiality Agreement and his fiduciary duties to Plaintiff.

83. Defendant describes an exchange in which Plaintiff is verbatim described as asking for Defendant's "help" on an "issue" regarding a "rogue board" at Trump World Tower, which Defendant represented solicitation of his "assess[ment] [of] a serious situation" to which he "determine[d] strategy on a critical business matter."[48]

84. Defendant claims that he "research[ed] the issues" on the "rogue board" issue, describes his legal "conclu[sion] that the board had indeed wrongly accused" Plaintiff, "and recorded that conclusion in a three-page memorandum outlining the allegation, the controversial issues and the way to proceed, as I saw it."[49]

85. Defendant describes working on various real-estate and other business matters for Plaintiff in a legal capacity as Plaintiff's "personal attorney," including the Running Horse golf project, Meadowlands development, and Trump Network.[50]

86. Defendant claims to describe verbatim a 2011 conversation he had with Plaintiff regarding the legal and real-estate strategies for acquiring what would become Trump Winery.[51]

[47] *Id.* at 15.
[48] *Id.* at 30-31.
[49] *Id.* at 32.
[50] *Id.* at 99-101.
[51] *Id.* at 148-49.

87. Defendant describes the legal work he did in connection with Trump University, and the Plaintiff's alleged approving reaction.[52]

88. Defendant represents that he stole from Plaintiff by "l[ying]" to inflate expenditures Plaintiff owed to him in an effort to "sneakily up[] my bonus."[53]

89. Defendant represents that "[o]f course" he "cash[ed] in on [his] relationship with" Plaintiff.[54]

90. Defendant likewise intended to disclose confidential information, claiming time and again that he "was dealing with the personal and extremely confidential matters that could make or break" Plaintiff.[55]

91. At bottom, Defendant's account is indeed incredible; he concedes that he must distinguish between "the time [he] lied" and "the time he told the truth" in prior testimony.[56]

92. Defendant repeatedly wrongfully calls Plaintiff racist.[57]

93. Defendant incorrectly declares that Plaintiff "didn't care about American national security."[58]

94. Defendant repeatedly misrepresents that Plaintiff engaged in illegal or unethical conduct as to matters in which Defendant purportedly represented Plaintiff.

95. Defendant's untruthful claims against Plaintiff are simply of a piece with Defendant's other indicia of unreliability, including Defendant's renunciation of all responsibility for the

[52] *Id.* at 167-68.
[53] *Id.* at 316.
[54] *Id.* at 341.
[55] *Id.* at 287-88.
[56] *Id.* at 168.
[57] *Id.* at 106, 272.
[58] *Id.* at 248.

multiple convictions to which he pleaded guilty by claiming that his plea was coerced by federal prosecutors.

96. Defendant went on to publish a second book, *Revenge: How Donald Trump Weaponized the US Department of Justice Against His Critics*, published in 2022 by Melville House Publishing ("*Revenge*"; collectively, "the Books").[59]

97. In *Revenge*, Defendant repeatedly disclaims responsibility for any wrongdoing that resulted in his pleading guilty to multiple felonies; and details how, in his view, he was railroaded by federal prosecutors at Plaintiff's direction.[60]

98. *Revenge* also purports to reveal confidential information about Plaintiff, as defined by the Confidentiality Agreement, and as contemplated by the New York Rules of Professional Conduct.

99. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in *Revenge*.

100. For example, Defendant baldly asserts that Plaintiff "lies" with "frequency and ferocity . . . about damn near everything."[61]

101. Defendant recycles his false attacks on Plaintiff as a racist and bigot,[62] and attacks Plaintiff as corrupt,[63] among other insults.

102. Defendant received significant monetary compensation from his publishers or other third parties in connection with the writing and/or publication of the Books.

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[59] MICHAEL COHEN, REVENGE (Melville House Publ'g 2022).
[60] *See, e.g.*, *id.* at 54 ("While I did not engage in tax fraud, I had to plead guilty to it in order to protect my wife and family."); *id.* at 91 (stating that SDNY "forced me to execute a plea deal"); *id.* at 97 (describing his prepared remarks for the plea allocution as "a letter of lies").
[61] *Id.* at 247.
[62] *See, e.g.*, *id.* at 8, 126.
[63] *Id.* at 60.

103. Defendant's actions were driven by greed and his desire to capitalize on the fame and success of Plaintiff, his former client who became President of the United States, to Plaintiff's embarrassment and detriment, and at Plaintiff's expense.

ii. *The Podcast and Other Public Statements*

104. Beyond publication of the Books, Defendant has also made numerous false public statements about Plaintiff through various forms of traditional media (including television, radio, in print, etc.) as well as via the internet, many of which violate Defendant's fiduciary duties with respect to Plaintiff, and Defendant's contractual obligations regarding Plaintiff.

105. Many such statements were published in Defendant's podcast, entitled *Mea Culpa*, which he launched in September 2020 (the "Podcast").

106. Defendant represents that he "decided . . . to create [the] podcast [] to keep [his] brain active, to be productive, and, maybe most importantly, to get the word out about the nonsense going on. I called it 'Mea Culpa' in an acknowledgement of my wrongdoing"—though the Defendant refuses to accept wrongdoing in connection with the eight federal convictions for which he pleaded guilty.[64]

107. The Podcast is produced by MeidasTouch, an independent political action committee, or "Super PAC," "fueled by anti-Trump donors" which, according to *Rolling Stone*, is focused on "grandiose self-promotion [that] doesn't match reality."[65]

108. Promotional materials advertising Defendant's Podcast clearly state his malicious intent and retributive motive to harm Plaintiff at any cost: Defendant states that he is on "a

[64] *Id.* at 153.
[65] Seth Hettena, *The Trouble with MeidasTouch*, ROLLING STONE (Apr. 8, 2021), *available at* https://www.rollingstone.com/politics/politics-features/meidastouch-2020-campaign-finance-trump-1152482/.

mission to right the wrongs [Defendant] perpetrated," allegedly on behalf of Plaintiff, and "dismantle the Trump legacy" now that Defendant finds himself "imprisoned in his home, [with] his life, reputation and livelihood destroyed."[66]

109. In the more than 250 episodes of the Podcast produced to date, Defendant repeatedly and consistently reveals, or purports to reveal, confidential information gleaned by nature of his prior attorney-client relationship with Plaintiff, as well as information pertaining to Plaintiff's personal and private life.

110. As with the Books, a significant amount of the information revealed on the Podcast is inflammatory, misleading, or outright false.

111. For example, in February 2021, September 2021, January 2022, and April 2022, Defendant hosted Stephanie Clifford on his Podcast, delving into the details of her allegations against Plaintiff and revealing purported client confidences about Defendant's role in that matter, but failing to make plain that Plaintiff relied on Defendant's legal advice, and Plaintiff acted out of a desire to protect his family from the malicious and false claims made by Clifford.[67]

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[66] Home Page, *Mea Culpa*, https://podcasts.apple.com/us/podcast/mea-culpa/id1530639447.

[67] "Stormy Daniels Is Not Afraid," *Mea Culpa* (Feb. 8, 2021), https://podcasts.apple.com/us/podcast/stormy-daniels-is-not-afraid-february-8-2021/id1530639447?i=1000508279909; "Breaking!!! Stormy Daniels Returns to Mea Culpa," *Mea Culpa* (Feb. 17, 2023), https://podcasts.apple.com/us/podcast/breaking-stormy-daniels-returns-to-mea-culpa/id1530639447?i=1000535959714; "World Exclusive Interview!!! Stormy Daniels to Michael Avenatti: F@ck-Off!," *Mea Culpa* (Jan. 26, 2022), https://podcasts.apple.com/us/podcast/world-exclusive-interview-stormy-daniels-to-michael/id1530639447?i=1000581743372; "Blockbuster Stormy Daniels Interview," *Mea Culpa* (Apr. 9, 2022), https://www.youtube.com/watch?v=6rlIEGUenwI.

112. Further, in November 2021, Defendant aired a "Best of *Mea Culpa*: Stormy Daniels" episode.[68]

113. Although he was former counsel to Plaintiff in regards to this matter, Defendant stated, "I should not have gotten involved into it, and then would that have stopped him from maybe being President," adding his own hopes that her pending defamation case (which she lost against the President) would move forward, because "I think it's important."[69]

114. On March 16, 2023, in the days after Defendant's appearances before the Manhattan District Attorney's grand jury regarding its investigation into the payment to Clifford, Defendant released a new episode claiming, "Exclusive!! Stormy Daniels Tells All…" only to re-air his first Interview with her from February 2021, discussing her allegations against Plaintiff,[70] but beginning with his own purported interactions with the grand jury.

115. Defendant has also recently hosted episodes of the Podcast that discuss Defendant's putative legal exposure and falsely implicate confidential information, including with

[68] "Best of Mea Culpa: Stormy Daniels," *Mea Culpa* (Nov. 29, 2021), https://podcasts.apple.com/us/podcast/best-of-mea-culpa-stormy-daniels/id1530639447?i=1000581743326.

[69] "Stormy Daniels Is Not Afraid," *supra* note 66.

[70] "Exclusive!! Story Daniels Tells All.. [sic] Hush Money & Trump's Mushroom Shaped Pecker," *Mea Culpa* (Mar. 16, 2023), https://audioboom.com/posts/8264819-exclusive-stormy-daniels-tells-all-hush-money-trump-s-mushroom-shaped-pecker?playlist_direction=forward.

guests who have historically been hostile towards Plaintiff, Norm Eisen,[71] Elie Honig,[72] and Glenn Kirschner.[73]

116. Defendant has made countless other media appearances wherein he discusses his prior attorney-client relationship with Plaintiff, and purports to disclose privileged details of their prior interactions and dealings.

117. During one such appearance, for example, Defendant discussed that he testified in front of the Manhattan District Attorney's grand jury, and suggested that Plaintiff was, by virtue of Defendant's knowledge of confidential information, criminally exposed.[74]

118. Plaintiff has not authorized any of the public disclosures made by Defendant.

119. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in the Podcast and other media appearances.

120. Defendant's improper, self-serving, and malicious statements about his former client, his family members, and his business constitute repeated and substantial violations of his continuing fiduciary obligations as an attorney.

121. Defendant chose to capitalize on his confidential relationship with Plaintiff to pursue financial gain and repair a reputation shattered by his repeated misrepresentations

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[71] "Breaking!!! Trump Indictment Imminent + A Conversation With Norm Eisen," *Mea Culpa* (Mar. 13, 2023), *available at* https://audioboom.com/posts/8262581-breaking-trump-indictment-imminent-a-conversation-with-norm-eisen.

[72] "HOLY SH!T: J6th Committee Subpoenas Trump + A Conversation With Elie Honig," *Mea Culpa* (Oct. 14, 2022), *available at* https://audioboom.com/posts/8174416-holy-sh-t-j6th-committee-subpoenas-trump-a-conversation-with-elie-honig?playlist_direction=forward.

[73] "Breaking!!! Criminal Charges For Trump Likely + A Conversation With Glenn Kirschner," *Mea Culpa* (Mar. 10, 2023), *avaiable at* https://audioboom.com/posts/8261414-breaking-criminal-charges-for-trump-likely-a-conversation-with-glenn-kirschner.

[74] *See, e.g.*, *Michael Cohen: Stormy Daniels Will Do 'A Fantastic Job' As Possible Witness In Hush Money Probe*, MSNBC (Mar. 16, 2023), *available at* https://www.youtube.com/watch?v=NHJYuzcnE6Q.

and deceptive acts, fueled by his animus toward the Plaintiff and his family members. His actions constitute grave violations of his contractual and fiduciary duties to the Plaintiff, and Defendant must be held accountable.

122. Any further statements or disclosures made by Defendant after the date of this Complaint will likewise constitute a breach of the Confidentiality Agreement and a violation of Defendant's fiduciary duty owed to Plaintiff. As such, Plaintiff expressly incorporates any such statements or disclosure as if pleaded at length herein, and reserves his right to amend the Complaint to supplement Plaintiff's claim for damages to encompass any such additional violations.

123. All conditions precedent to the bringing of this action have occurred, been satisfied, or have otherwise been waived.

124. As a result of the Defendant's wrongful conduct, described herein, and Plaintiff's need to protect and enforce his legal rights, Plaintiff has retained the undersigned attorneys, and is required to pay attorneys' fees in order to prosecute this action.

FIRST CAUSE OF ACTION

(Breaches of fiduciary duties)

125. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

126. At all relevant times, Defendant was in a fiduciary relationship with Plaintiff by virtue of his past representation as Plaintiff's former attorney, and owed Plaintiff all fiduciary duties inherent with the attorney-client relationship.

127. In representing Plaintiff, Defendant was obligated to faithfully comply with his fiduciary duties and the duties imposed upon him by common law and statute, including the New York Rules of Professional Conduct, and in particular Rules 1.5, 1.6, 1.9, and 8.4.

128. Disclosing client confidential communications and disclosing information relating to the representation of a client to the client's disadvantage in violation of Rules 1.6, 1.9, and 8.4 of the New York Rules of Professional Conduct, constitute misconduct.

129. Defendant engaged in misconduct when he breached the fiduciary duty of confidentiality he owed to Plaintiff by disclosing, through publication and release of the Books, production and dissemination of the Podcast, and numerous other media appearances, both confidential information, including attorney-client privileged communications; and falsehoods and misstatements that have damaged Plaintiff's reputation.

130. Defendant engaged in misconduct when he breached the duty of confidentiality owed to Plaintiff specifically by disclosing confidential information, misstatements, and misrepresentations likely to be embarrassing or detrimental to Plaintiff without Plaintiff's consent.

131. Defendant did not obtain Plaintiff's consent or authorization before publishing any confidential information.

132. Defendant knowingly, willfully, and intentionally violated his fiduciary duty of confidentiality to Plaintiff.

133. Defendant derived a significant benefit, to Plaintiff's detriment and at Plaintiff's expense, as a direct result of his breach of fiduciary duty, including, without limitation, realization of substantial monetary gain in the form of compensation, advances, royalties, proceeds and/or profits received for his role in the writing, publication, promotion, and/or sale of the Books.

134. Defendant's breaches directly caused Plaintiff's damages.

135. It is against equity and good conscience for Defendant to retain his ill-gotten gains.

136. Accordingly, Plaintiff is entitled to an award for restitutionary damages in an amount equal to or greater than the total and actual monetary gain received by Defendant in connection with the publication, promotion, and/or sale of the Books.

137. In addition, due to the egregious and deliberate nature of Defendant's wrongdoing, the outrageous and wide-spanning nature of his breach of attorney-client privilege, and his conscious and wanton disregard for Plaintiff's rights as a client and/or former client, Plaintiff is entitled to an award of punitive damages.

138. Plaintiff is further entitled to an award for interest, attorneys' fees, and costs of this action.

SECOND CAUSE OF ACTION

(Breaches of Contract)

139. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

140. Defendant is a party to, obligated under, and bound by the terms of the Confidentiality Agreement.

141. Defendant, at all relevant times, has been bound by the confidentiality and non-disclosure obligations set forth in the Confidentiality Agreement.

142. Defendant materially breached the Confidentiality Agreement by disclosing confidential information, misstatements, and misrepresentations likely to be embarrassing or detrimental to Plaintiff without Plaintiff's consent.

143. Specifically, Defendant committed multiple material breaches of the Confidentiality Agreement by, among other acts, causing the Books to be published and releasing the Podcast, thereby disclosing actual information and/or disclosing misleading,

fabricated, or fictionalized information about Plaintiff, his personal life, his business affairs, and his attorney-client relationship, without prior authorization or consent from Plaintiff.

144. As a direct and proximate result of Defendant's breach of the Confidentiality Agreement, Plaintiff has sustained, and will continue to sustain, significant damages in an amount to be determined at trial, including, but not limited to, actual, compensatory, and incidental damages, plus interests and the costs of this action.

145. Plaintiff is further entitled to attorneys' fees, disbursements, and related costs incurred by Plaintiff in connection with this action pursuant to Section 8 of the Confidentiality Agreement.

THIRD CAUSE OF ACTION

(Breaches of the Implied Covenant of Good Faith and Fair Dealing)

146. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

147. Defendant owed Plaintiff a duty of good faith and fair dealing as implied in the terms of the Confidentiality Agreement.

148. In accordance with this duty, Defendant was obligated to refrain from engaging in any conduct that would destroy or injure Plaintiff's rights to the benefit of the Confidentiality Agreement, including each and every material provision contained therein.

149. Defendant failed to deal with Plaintiff in good faith and instead conducted himself so as to intentionally and maliciously breach his confidentiality and non-disclosure obligations owed to Plaintiff through his unauthorized disclosure of confidential information protected under the Confidentiality Agreement.

150. In doing so, Defendant willfully and/or negligently breached his implied covenant of good faith and fair dealing at the expense of Plaintiff.

151. As a direct and proximate result of Defendant's breaches of the implied covenant of good faith and fair dealing, Plaintiff has sustained significant damages in an amount to be determined at trial in actual and compensatory damages, and is due the disgorgement of any profits, payments, compensation, advances, royalties, and/or other monetary proceeds received by Defendant as a direct or indirect result of the publication of the Books, plus interests and the costs of this action.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

152. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

153. By causing the Books to be published and his other wrongful acts laid out herein, Defendant callously disregarded the fiduciary duties owed to his former client, Plaintiff, and, in addition, intentionally and blatantly breached the clear and unambiguous terms of the Confidentiality Agreement.

154. Defendant's wrongful actions were intentional, calculated, malicious, and motivated by his desire to acquire fame, attention, notoriety, and wealth.

155. Defendant received substantial compensation, proceeds, and/or profits as a direct result of, without limitation, his role in the publication, promotion, and/or sale of the Books, as well as from his production and marketing of the Podcast, all at the expense of Plaintiff.

156. As a result of the foregoing, Defendant was unjustly enriched, at Plaintiff's expense, by virtue of his own wrongful, intentional, and egregious actions.

157. It is against equity and good conscience to permit Defendant to retain such enrichment.

158. Accordingly, Plaintiff is entitled to an award for restitutionary damages in an amount equal to or greater than the total and actual monetary gain received by Defendant in connection with the publication, promotion, and/or sale of the Books.

159. In addition, due to the egregious and deliberate nature of Defendant's wrongdoing, the outrageous and wide-spanning nature of his breach of attorney-client privilege, and his conscious and wanton disregard for Plaintiff's rights as a client and/or former client, Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION

(Conversion)

160. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

161. By his own account, Defendant "lied" about the amount of money he was owed in reimbursement for an expense he made on Plaintiff's behalf, instead "load[ing] up" and "sneakily upping [his] bonus" in order to "counter screw[]" Plaintiff.[75]

162. Defendant admits that the cost of the expenditure was $13,000 but he "lied" and represented that his expenditure was $50,000. Such statement was false, and Defendant made the statement knowingly.

163. In so doing, Defendant intentionally took property (specifically, funds allocated for the particular purpose of reimbursement) belonging to Plaintiff.

[75] DISLOYAL, *supra* note 44, at 315-16.

164. Indeed, Defendant was only authorized to collect the amount of the expenditure, plus such additional money as the Trump Organization officials found sufficient to "gross[] up . . . to make up for taxes" on the original expenditure.

165. Accounting for the "gross[ing] up" process authorized by the Trump Organization to reimburse Defendant, Defendant fraudulently misrepresented the amount owed to him for reimbursement and converted $74,000 in funds to which he was not entitled.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court enter judgment in its favor grating the following relief:

(a) For actual, compensatory, incidental, and punitive damages in an amount to be determined at trial, but expected to substantially exceed Five Hundred Million Dollars ($500,000,000);

(b) For restitution and disgorgement of any profits, payments, compensation, advances, royalties, and/or other monetary proceeds received by Defendant as a direct or indirect result of the publication of the Books, the Podcast, and other ancillary products;

(c) For the $74,000 that was subject to unlawful conversion and made via fraudulent misrepresentation by Defendant, plus interest and other costs and expenses;

(d) For interest, costs, expenses, and attorneys' fees pursuant to statute; and

(e) For such other relief as this Court may deem fair, equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial as to all issues so triable.

Dated: April 12, 2023

Respectfully submitted,

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By: /s/ *Alejandro Brito*
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JS 44 (Rev. 04/21) FLSD Revised 12/02/2022

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

PRESIDENT DONALD J. TRUMP

DEFENDANTS

MICHAEL D. COHEN

(b) County of Residence of First Listed Plaintiff *(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant New York County, New York *(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Alejandro Brito, Esq., Brito, PLLC, 2121 Ponce de Leon Boulevard Suite 650, Coral Gables, FL 33134, Tel 305-614-4071

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☒ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
☐ Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
☐ Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Acts
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act (TCPA)
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☒NO b) Related Cases ☐YES ☒NO

JUDGE: **DOCKET NUMBER:**

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:
Defendant breached his fiduciary duties to Plaintiff by spreading falsehoods about Plaintiff in books, his podcast series and in mainstream media appearances.
LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 500,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE 4/12/2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY : RECEIPT # **AMOUNT** **IFP** **JUDGE** **MAG JUDGE**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

PRESIDENT DONALD J. TRUMP,

Plaintiff(s)

v.

MICHAEL D. COHEN,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

[redacted]

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alejandro Brito, Esq.
Brito, PLLC
2121 Ponce de Leon Boulevard
Suite 650
Coral Gables, FL 33134

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 04/12/2023

Signature of Clerk or Deputy Clerk