

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

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THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

DONALD J. TRUMP, :

Defendant. :

Indictment No. 71543-23
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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
MOTION OF NON-PARTY NBCUNIVERSAL MEDIA, LLC'S MOTION TO
QUASH DEFENDANT DONALD J. TRUMP'S SUBPOENA *DUCES TECUM***

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: April 1, 2024

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

A handwritten signature in blue ink, appearing to read "Elizabeth A. McNamara", written over a horizontal line.

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