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

THE PEOPLE OF THE STATE OF NEW YORK, - against - DONALD J. TRUMP, Defendant.	Index No. 71543-23 **PRESIDENT DONALD J. TRUMP'S OPPOSITION TO MOTION TO QUASH THE SUBPOENA TO MARK POMERANTZ**

President Donald J. Trump respectfully submits this memorandum of law in opposition to the People's April 3, 2024 motion to quash President Trump's subpoena *duces tecum* to former Special Assistant District Attorney Mark Pomerantz (the "Motion"). For the reasons set forth below, the Motion should be denied, and Pomerantz should be ordered to produce materials responsive to Requests 1 through 4 of the subpoena pursuant to the Court's Protective Order.

I. RELEVANT FACTS

A. Pomerantz's Role In The Investigation Of President Trump

Mark Pomerantz joined the District Attorney's Office as a Special Assistant District Attorney ("SADA") on February 2, 2021. Mot. Ex. 2 at ¶ 1 ("3/29/24 Pomerantz Aff."). After being sworn in, Pomerantz received a "data dump" from DANY of "case memos and interview notes that detailed a lot of the investigative work that had been done." MARK POMERANTZ, PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT 35 (2023) ("Pomerantz Inside Account"). Pomerantz "dug into the payment of hush money to Stephanie Clifford," and he did so "sitting at home on [his] computer," as he and other members of the District Attorney's Office worked remotely. *Id.* at 33-35, 84; *see also id.* at 26 ("[On February 2, 2021,] I was at home in the suburbs in front of

my desktop computer. . . ."); *id.* at 117 (On April 21, 2021, I was working at home. I was in front of my computer as usual, struggling with documents . . . .").

Shortly after becoming a SADA, Pomerantz began meeting with Michael Cohen via Zoom in an effort to advance DANY's investigation of President Trump. Pomerantz's first interview with Cohen took place on February 18, 2021; the second took place on February 26, 2021. Pomerantz Inside Account at 48. The focus of the interviews was on the facts of this case, including whether Cohen had spoken to President Trump about Clifford's "demand for money as extortion." *Id.* On February 28, 2021, Pomerantz sent a memo to then-District Attorney Cy Vance, Jr. summarizing the status of the investigation, including, *inter alia*, analysis of whether Clifford committed "extortion" and/or "larceny," and whether President Trump was a "victim of blackmail." *Id.* at 57. According to Pomerantz:

> The memo recommended further investigative steps . . . . Step one would be to prove that Trump was, in effect, a blackmail victim. . . . If we established the extortion, we could go on to step two: charging Trump with money laundering . . . . The district attorney raised his eyebrows at the notion that we would be claiming that Donald Trump was a victim of blackmail, but he was intrigued by the idea.

Id.

Even after his colleagues "balked" at the notion, Pomerantz apparently set out "to look for more evidence." Pomerantz Inside Account at 57-58. Pomerantz met with Clifford's lawyer at the time, Keith Davidson, and made a request for information from the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY"). *Id.*[1] Pomerantz also met with Cohen twice

[1] DANY did not acknowledge Pomerantz's March 4, 2021 request to the USAO-SDNY until March 22, 2024, in response to the Court's March 15, 2024 order to provide a timeline of all relevant communications. *Compare* 3/14/24 Notice at 2 *and* 3/18/24 Conroy Aff. at ¶¶ 7-21, *with* 3/22/24 Conroy Aff. at ¶¶ 11-12.

more, on March 10 and March 19, 2021. Yet "[t]he 'zombie' case went back into the grave" by the end of the month, Pomerantz Inside Account at 61, and Pomerantz resigned from the District Attorney's Office in February 2022—close to a year before the grand jury was convened. 3/29/24 Pomerantz Aff. at ¶ 1.

B. Pomerantz's Repeated Failures To Locate And Provide Discoverable Materials

According to the District Attorney's Office, Pomerantz was asked to turn over all case- and investigation-related materials in his possession when he left DANY. 3/18/24 Colangelo Aff. at ¶ 4. DANY sent Pomerantz a second request and preservation notice in March 2022, in connection with the *People v. Trump Corporation* prosecution before Your Honor, *id.* at ¶ 5, and a third request in June 2023, after the grand jury returned an Indictment in this case, *id.* at ¶ 7.

On July 11, 2023, Pomerantz sent DANY an unspecified number of documents, emails, and text messages that he believed "may . . . not have been preserved on the DANY system." Mot. Ex. 2-1 at ¶ 1 ("3/18/24 Pomerantz Aff."). In the course of their "quality control review," before finalizing the next production, DANY identified [redacted]" 3/18/24 Colangelo Aff. at ¶ 9. So, for *a fourth time*, DANY asked Pomerantz to [redacted]. *Id.* Only then did Pomerantz locate [redacted], which reflected [redacted]. *Id.* Specifically, the [redacted] suggest there were [redacted].

DANY produced [redacted] to the defense on July 24, 2023, on a hard drive containing approximately 20,000 pages of discovery. DANY did not alert the defense to their ongoing challenges obtaining discoverable materials from Pomerantz. Rather, on the same day, DANY filed their first certificate of compliance, certifying that, "after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery under CPL § 245.20(1), the People have disclosed and made available to the defendant all known material and information that is subject to discovery . . . ." 7/24/23 Certificate of Compliance.

C. Deficiencies Identified By The Defense Prompting Further Disclosure

In January 2024, during preparation for trial and the submission of motions *in limine*, counsel for President Trump contacted DANY concerning heavy redactions made to communications involving Pomerantz and other members of the investigative team. The communications included materials "identified through [DANY's] review of internal email messages," produced on July 24, 2023, in an "Email Review" folder. In a series of communications with DANY, we expressed concern that many of the heavily redacted communications related to [redacted]. *See* Ex. 1 at 3-8. On January 29, 2024, we explained that "[t]hese communications are significant to our defense and possible cross examination of witnesses," and so we again requested that the People "confirm that the redactions are appropriate and, if not, to produce unredacted versions." *Id.* at 4-5. DANY claimed that all of the redactions fell within two categories—*i.e.*, redactions of attorney work product or redactions of names and other identifying information under the Court's protective order—and that they had specifically "noted" when producing the

communications that they were withholding certain information on work product grounds. *Id.* at 3, 6-7. However, the letter accompanying the July 24, 2023 production stated that, "in some circumstances, we *may* have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced." Ex. 2 at 1 (emphasis added). The production letter made no reference to redactions and did not include a privilege log.

We also raised in our January 2024 communications with DANY that, although one email showed [redacted], we had been unable to locate the corresponding text message in discovery. Ex. 1 at 4. We indicated that "it seems to us that there are responsive text messages [] that have not been produced." *Id.* DANY filed a supplemental certificate of compliance on the same day, certifying that "the People previously disclosed and made available to the defendant all discoverable material and information known to the People at that time, except for items . . . not in the People's actual possession despite good faith efforts and the exercise of due diligence." 1/29/24 Certificate of Compliance at 1. DANY indicated four days later that they were "still following up" on our question concerning the unaccounted-for text message and would get back to us the following week. Ex. 1 at 2.

On the same day, DANY contacted Pomerantz *a fifth time* to request [redacted] 3/18/24 Colangelo Aff. at ¶ 11. Pomerantz thereafter located [redacted], and produced them to DANY via counsel on February 8, 2024. *See id.* ¶ 12. DANY produced the communications the next day and sought to minimize their significance:

> As you will see, the bulk of the attached text messages are purely administrative or otherwise not discoverable. There are also some references to information that was

> previously disclosed, either verbatim or in substance. For example, there are references to calls and meetings where the substance of the call or meeting was memorialized in another document that was previously produced. And there are references to requests for consideration by a potential witness, and discussions of potential promises, rewards and inducements made to a potential witness, that were memorialized elsewhere and previously disclosed. We have not identified any information that differs in nature from information that was previously disclosed.

Ex. 1 at 1.

But the text messages between Pomerantz and Cohen's attorney, spanning more than 13 months, were not "purely administrative," and the substance was not sufficiently memorialized elsewhere in discovery. The communications included discoverable information that was not timely produced concerning DANY's willingness to minimize Cohen's federal felonies and provide Cohen other preferential treatment and benefits:

- On February 22, 2021, Davis informed Pomerantz that [redacted] Ex. 1 at DANYDJT00212834.
- On February 25, 2021, Davis wrote to Pomerantz that [redacted] *Id.* at DANYDJT00212835. In a subsequent message, Davis expressed interest in [redacted] *Id.* at DANYDJT00212849.
- On March 14, 2021, Davis felt comfortable asserting to Pomerantz that [redacted] *Id.* at DANYDJT00212836.
- On March 31, 2021, Pomerantz asked Davis to [redacted]. *Id.* at DANYDJT00212838.
- On April 21, 2021, Pomerantz informed Davis that [redacted]. *Id.* at DANYDJT00212842.
- On July 27, 2021, Davis requested [redacted] Pomerantz agreed [redacted]

[redacted] *Id.* at DANYDJT00212847-48.

- [redacted] *Id.* at DANYDJT00212853.

According to DANY, after producing the above referenced [redacted] and justification to the defense, they also asked Pomerantz *a sixth time*, through counsel, to conduct another search of his phone and confirm that he had no communications with any witness or attorney for a witness related to the subject matter of this case. 3/18/24 Colangelo Aff. at ¶ 14. This included, supposedly, a specific request [redacted]. *Id.* On February 11, 2024, counsel for Pomerantz represented that he had performed such a search and confirmed that he had no other discoverable text messages. *Id.* DANY filed a supplemental certificate of compliance on February 13, 2024, claiming once again that "the People previously disclosed and made available to the defendant all discoverable material and information known to the People at that time, except for items and information . . . not in the People's actual possession . . . ." 2/13/24 Certificate of Compliance at 1.

D. President Trump's Motion For Discovery Sanctions

On March 8, 2024, the defense submitted a pre-motion letter to the Court seeking permission to file a motion for discovery sanctions. As part of that motion, we raised DANY's untimely production of Pomerantz's communications, as well as their efforts to withhold and redact discoverable communications relating to Cohen under the claim of "work product." *See, e.g.*, Mot. to Dismiss and for Adjournment Based on Discovery Violations at 8-13, 16-17, 33-36, 39-41. The Court still has not resolved this and other aspects of the motion that did not relate to President Trump's *Touhy* request to the USAO-SDNY concerning Cohen.

E. Cohen's Attorney Alerts DANY To Undisclosed Communications With Pomerantz

On March 13, 2024, as DANY prepared its response to President Trump's discovery motion, an attorney representing Cohen provided DANY with [redacted]. 3/18/24 Colangelo Aff. at ¶ 15. She also provided DANY with [redacted], which were made public in connection with Freedom of Information Act litigation despite having never been produced in connection with this case. DANY produced the materials to the defense that evening. *See* Ex. 3.

Upon receiving the [redacted] on March 13, 2024, the defense sent a letter to DANY regarding the untimely production of discoverable materials. Ex. 4. We emphasized that their piecemeal productions strongly suggested that DANY had not undertaken a systematic and reliable collection of Pomerantz's communications, including those regarding benefits provided and/or promised to Cohen, a key prosecution witness, despite DANY's repeated certifications regarding the completion of discovery. *Id.* at 1. For example, the newly produced [redacted] contained [redacted]. It is also abundantly clear from [redacted].

DANY apparently contacted Pomerantz *a seventh time*, through counsel the next day, to ask why the text messages provided by Cohen's attorney were not included in his numerous productions since leaving DANY in 2022. *See* 3/18/24 Colangelo Aff. at ¶ 16. Pomerantz's counsel informed DANY on March 16, 2024, that Pomerantz had not located the text messages with Cohen's attorney when he previously searched for them—even after having been asked to specifically look for communications with her. *See id*. at ¶¶ 13, 17. Pomerantz provided DANY a brief affirmation concerning his search on March 18, 2024. Based on his affirmation and those of the prosecution team, it is now abundantly clear that DANY impermissibly relied on Pomerantz to self-disclose discoverable communications on his devices, which he then repeatedly failed to do in a manner consistent with DANY's disclosure obligations and basic diligence expectations for an experienced former prosecutor and attorney.

F. President Trump's Subpoena To Pomerantz For Discoverable Materials

On the evening of March 18, 2024, counsel for President Trump issued a subpoena to Pomerantz. *See* Mot. Ex. 1. The subpoena includes four narrowly tailored requests for communications and documents that are relevant and material to this proceeding:

1. All documents relating to the February 28, 2021 memorandum evaluating, *inter alia*, whether (a) Stephanie Clifford, a/k/a "Stormy Daniels," committed "extortion" and/or "larceny," and (b) whether President Trump was a "victim of blackmail."

2. For the period from February 2, 2021, through March 23, 2022, all documents reflecting communications—including communications using personal (non-DANY) electronic devices or personal (non-DANY) email and electronic messaging accounts—with Michael Cohen, Lanny Davis, Danya Perry, or Jeremy Rosenberg relating to:

    a. Cohen's recollection of certain events and interactions relevant to the case;

    b. Any form of bias or animosity toward President Trump; or

    c. Requests for benefits or other consideration, including requests for submissions to judges presiding over cases in which Cohen was a party or otherwise interested.

3. For the period from February 2, 2021, through March 23, 2022, all documents reflecting communications—including communications using personal (non-DANY) electronic devices or personal (non-DANY) email and electronic messaging accounts—with potential witnesses other than Cohen, or those witnesses' counsel, relating to facts at issue in DANY's investigation of President Trump.

4. For the period from March 23, 2022 through the present, all documents reflecting communications with DANY personnel regarding the collection of materials for purposes of discovery, disclosure, or litigation in this case.

Id.

II. APPLICABLE LAW

The CPL provides that an attorney for a criminal defendant "may issue a subpoena of such court, subscribed by himself, for the attendance in . . . court of any witness whom the defendant is entitled to call in such action or proceeding." CPL § 610.20(3). A subpoena is appropriate where the "evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." CPL § 610.20(4). "The relevant and material facts in a criminal trial are those bearing upon 'the unreliability of either the criminal charge or of a witness upon whose testimony it depends.'" *People v. Kozlowski*, 869 N.Y.S.2d 848, 903 (2008) (quoting *People v. Gissendanner*, 48 N.Y.2d 543, 550 (1979)). "[A]ccess must be afforded . . ., for example, when a request . . . is directed toward revealing specific biases, prejudices or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand." *Gissendanner*, 48 N.Y.2d at 548 (cleaned up). Access must also be afforded to materials that can be used to "attack[] the reliability of the investigation" and argue that it was "shoddy." *Kyles v. Whitley*, 514 U.S. 419, 442 n.13, 446 (1995).

III. DISCUSSION

A. The Subpoena To Pomerantz Was Properly Issued Pursuant To CPL § 610.20(3)

The People claim that President Trump's subpoena to Pomerantz violates CPL § 610.20(3), and should be quashed, because it "fails to include the Court's indorsement despite being directed at a former employee in his capacity as an erstwhile officer or representative of the District Attorney's Office." Mot. at 6. This is wrong. CPL § 610.20(3) provides that "[a]n attorney for a defendant may not issue a subpoena duces tecum of the court directed to *any department, bureau or agency of the state or of a political subdivision thereof*, or to *any officer or representative thereof*, unless the subpoena is indorsed by the court and provides at least three days for the production of the requested materials." *Id.* (emphasis added). Pomerantz is not an officer or representative of DANY or of any other department or bureau of the State. The People cite no case law or statute indicating that he should be treated as one, and the defense is unaware of any such authority. Pomerantz resigned from DANY in February 2022, more than a year before the Indictment was brought in this case. He proceeded then to write and publish a tell-all book concerning his time at DANY—one which District Attorney Bragg and his office have publicly criticized, claimed they had no prior access to, and sought to minimize as an unofficial account of the investigation.[2]

Moreover, the People appear to have relied on the fact that Pomerantz is *not* an employee of DANY in certifying that they produced all discoverable materials in DANY's possession, notwithstanding the untimely seriatim production of certain discoverable [redacted]

[2] *See, e.g.*, Molly-Crane Newman, Manhattan DA Alvin Bragg is appalled by book about his office's Trump probe, N.Y. DAILY NEWS (Feb. 7, 2023, 10:20 p.m.), https://www.nydailynews.com/2023/02/07/manhattan-da-alvin-bragg-is-appalled-by-book-about-his-offices-trump-probe.

[redacted]. *See* 2/13/24 Certificate of Compliance at 2 ("These materials were not in the People's actual possession when the Certificate of Compliance was filed because they were provided to the People on February 8, 2024"). The People should not be permitted to have it both ways. *See* CPL § 245.20(7) (requiring a "presumption in favor of disclosure" when interpreting the discovery required by CPL Article 245); *see also* CPL § 245.20(1) ("The prosecution shall disclose to the defendant . . . all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control . . . .").

B. The Subpoena Seeks Admissible Evidence That is Relevant And Material To The Proceedings

The March 18, 2024 subpoena to Pomerantz properly seeks evidence that is relevant and material to demonstrate witness motives, biases, and hostility toward President Trump, and to attack the integrity of the investigation as authorized by the Supreme Court in *Kyles v. Whitley*, 514 U.S. 419, 447 & n.13 (1995). *See, e.g.*, *Lindsey v. King*, 769 F.2d 1034, 1042 (5th Cir. 1985) (reasoning that evidence "discrediting, in some degree, of the police methods employed in assembling the case against him" should have been disclosed for use at trial).

Request 1 seeks documents relating to a February 28, 2021 memorandum in which Pomerantz posited that Clifford had perpetrated serious crimes against President Trump, such as "extortion" and/or "larceny," and that President Trump could be considered a "victim of blackmail." Request 1 is neither speculative nor a fishing expedition because Pomerantz himself discussed the memorandum in his book. *See* Pomerantz Inside Account at 57.

President Trump is entitled to responsive materials. During the investigation, Pomerantz believed that one of the People's star witnesses had committed serious crimes against President Trump. This theory and the manner in which it was handled at DANY is favorable to the defense

under *Brady* and *Giglio*. For example, the People's decision not to prosecute Clifford despite Pomerantz's memorandum regarding Clifford's criminal exposure supports an inference that the People conferred a benefit on Clifford in exchange for testimony they regard as favorable. Because this benefit is relevant to establish a motive for Clifford to testify in a way the People like, notwithstanding the truth, the memorandum is admissible at trial as extrinsic evidence to support the cross-examination of Clifford. *See* Guide to N.Y. Evid. Rule 6.13; Note to Guide to N.Y. Evid. Rule 6.11 (explaining that "[i]mpeaching evidence is not collateral when . . . independently admissible to impeach the witness, *e.g.* show the witness's bias, [or] hostility . . . ." (citations omitted)); *see also* Note to Guide to N.Y. Evid. Rule 6.13 ("Illustrative examples of partiality recognized by the Court include a witness's bias in favor of the party calling the witness . . . or the witness's interest in the case, personal, financial or other." (citations omitted)). "In criminal proceedings, both the United States Supreme Court and the Court of Appeals have cautioned that the exercise of discretion to limit or exclude evidence of partiality of witnesses testifying against defendants must be exercised in light of the Sixth Amendment's right of confrontation guaranteed to the defendant." Note to Guide to N.Y. Evid. Rule 6.13 (citations omitted).

The People cannot successfully object to Request 1 on the basis that they disagree with President Trump's theories of bias and motive. *See, e.g., United States v. Agurs*, 427 U.S. 97, 108 (1976) ("[B]ecause the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure."); *United States v. Edwards*, 887 F. Supp. 2d 63, 68 (D.D.C. 2012) ("It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder." (cleaned up)); *United States v. Stevens*, 2008 WL 8743218, at *5 n.1

(D.D.C. 2008) ("Obviously, a statement may be exculpatory and subject to disclosure to the defense, even if the government believes the statement is untrue . . . .").

Requests 2 and 3 seek specific categories of statements by witnesses: substantive statements by Cohen regarding his recollection of events that are the subject of his testimony, communications reflecting bias or animosity toward President Trump, and communications regarding benefits for witnesses. For example, the all-too-cozy relationship between Pomerantz, Cohen, and his attorneys reflected in text messages and other materials is core impeachment material with respect to benefits to Cohen from that special treatment and the lack of integrity in the investigation demonstrated by Pomerantz's failure to maintain an arm's-length relationship with another one of the People's star witnesses. Request 4 seeks communications between Pomerantz and DANY regarding evidence collection, which is another category of documents that are relevant to the lack of integrity of the investigation under *Kyles* and its progeny.

While the People have been "diligent," in the sense that they have been forced to request materials from Pomerantz numerous times as additional failures surfaced, their efforts cannot fairly be called "comprehensive." *See, e.g.*, Mot. at 14. Time and again, objective facts have demonstrated that Pomerantz has not complied with their requests, but they did not do more than repeat the same ineffectual request. As another example, Pomerantz claims to have drawn a distinction between materials stored on his personal electronic devices, and materials he believes DANY "retained" or "preserved on a DANY system." Mot. Ex. 2 ¶ 5. Based on the repeated failures of Pomerantz to fully comply with DANY's requests for discoverable materials, an enforceable subpoena from President Trump is necessary.

Specifically, the requests in the subpoena are appropriately directed to Pomerantz in light of his use of a home computer to conduct DANY business, as well as his apparent failure—to this day—to permit careful review of the electronic devices he used during the investigation so that all

discoverable material can be reliably collected and produced. The People are seeking to cloak Pomerantz with the status of a current DANY employee, which he lacks, while Pomerantz has failed to do what is appropriate to ensure CPL Article 245 compliance under the circumstances presented, which is permit a forensic examination of the devices used by Pomerantz during the investigation conducted by a member of the prosecution team without the incentives faced by Pomerantz to hide from public view certain of his communications.

The People were required to disclose *all* of the details of their handling of requests for benefits and favors by Cohen, Clifford, and any other witness. *See* CPL § 245.20(1)(l) (requiring disclosure of, *inter alia*, "requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement"). CPL § 245.20(1)(k) also "contains a listing of information favorable to the defendant that must be disclosed (whether in 'tangible' form or not) drawn from *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny, as well as New York State Rules of Professional Conduct, Rule 3.8(b); and the New York State Unified Court System's Administrative Order of Disclosure." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure).

CPL § 245.20(1)(k) is even broader than *Brady*. *See People v. Hamizane*, 80 Misc. 3d 7, 10-11 (2d Dep't 2023); *see also Pennant*, 73 Misc. 3d at 756 ("Contrary to the People's argument, this obligation is not merely a codification of their *Brady* and *Giglio* obligations, as they existed prior to the enactment of Article 245."). It requires disclosure of, for example, "*All evidence and information*" that "tends" to "mitigate the defendant's culpability as to a charged offense" or "impeach the credibility of a testifying prosecution witness." CPL § 245.20(1)(k)(ii), (iv) (emphasis added). Subsection (1)(k)(iv), in particular, "broadly requires disclosure of *all*

impeachment evidence." *Matter of Jayson C.*, 200 A.D.3d 447 (1st Dep't 2021) (ordering disclosure of all impeachment evidence in juvenile delinquency case (emphasis added)); *see also People v. Rodriguez*, 77 Misc. 3d 23, 25 (1st Dep't 2022) (dismissing information on statutory speedy trial grounds where "[t]he People failed to provide relevant records to defendant, including *underlying* impeachment materials pursuant to CPL 245.20(1)(k)" (emphasis added)). This obligation "goes beyond what *Brady* required." *Hamizane*, 80 Misc. 3d at 11 (citing six cases); *see also People v. Best*, 2022 WL 4231146, at *3 (Crim. Ct. Queens Cnty. Sept. 13, 2022) ("CPL 245.20(1)(k) goes beyond what *Brady* required. For example, this provision jettisons the 'materiality' requirement. Furthermore, 'impeachment evidence and information is not limited to that which is related to the subject matter of the underlying case.'" (cleaned up)); *see also Pennant*, 73 Misc. 3d at 756.

Requests for "all" documents or communications within a particular category are not indicative of general discovery requests or fishing expeditions, *see, e.g.*, Mot. at 7, and they are not unduly burdensome under the circumstances presented, *id*. The Court of Appeals so held in *Kozlowski*, where the challenged subpoena sought "[a]ll memoranda and notes" relating to 19 topics. 11 N.Y.3d at 235; *see also People v. Duran*, 32 Misc.3d 225, 227, 230 (Crim. Ct. Kings Cnty. 2011) (denying motion to quash subpoena seeking "any and all" video surveillance and records); *Ensign Bank, F.S.B. v. Gerald Modell, Inc.*, 163 A.D.2d 149, 149 (1990) (where a discovery request is "specific enough to apprise defendant of the categories of items sought," use of the term "all" is not overbroad or overly burdensome).

Finally, claims of "work product" and other purported privileges are not a basis for quashing this subpoena or withholding from President Trump discovery that is called for by the state and federal constitutions. In addition to the February 2021 memorandum, there is no basis

for withholding from the defense [redacted]. *See* Ex. 5. The draft is plainly "relevant" to Cohen's request for a "reward" in the form of a letter to federal authorities. CPL § 245.20(1)(l). Any privilege-related claim regarding the draft is further eviscerated by the [redacted], *see* Ex. 3 at DANYDJT00215212. There is no valid basis for claiming that it is protected work product.

Neither the People nor Pomerantz should be permitted to withhold materials on this basis. *See United States v. Nobles*, 422 U.S. 225, 239 (1975) ("The privilege derived from the work-product doctrine is not absolute."); *United States v. Armstrong*, 517 U.S. 456, 474-75 (1996) (Breyer, J., concurring) (reasoning that "work-product immunity" under Federal Rules of Criminal Procedure "does not alter the prosecutor's duty to disclose material that is within *Brady*," which is "based on the Constitution"). "For example, where there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve the public's interest in honest, effective government." *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997) (cleaned up). At minimum, Pomerantz should be required to submit any documents that he is seeking to withhold on the basis of the work product doctrine or a privilege to the Court for *in camera* review. *See, e.g.*, *Kozlowski*, 11 N.Y.3d at 244 n.12 ("A trial court may conduct an in camera review of subpoenaed materials to assess an opposing party's privilege claims.").

Accordingly, the subpoena meets the requirements of CPL § 610.20.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the People's motion to quash the subpoena and order Pomerantz to produce responsive materials pursuant to the Court's protective order.

Dated: April 5, 2024
New York, New York

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