

**HABBA MADAIO & ASSOCIATES LLP**

Alina Habba, Esq.

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)

*Attorneys for Defendant, Donald J. Trump*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Civil Action No.: 1:20-cv-7311-LAK-JLC

**NOTICE OF DEFENDANT'S MOTION  
FOR LEAVE TO AMEND HIS ANSWER  
PURSUANT TO FRCP RULE 15(a)**

**PLEASE TAKE NOTICE** that the defendant, Donald J. Trump ("Defendant"), hereby moves, pursuant to Fed. R. Civ. P. 15(a) and Local Civil Rule 7.1, for an order granting leave for Defendant to amend his Answer. This motion is supported by the annexed memorandum of law, affirmation of Alina Habba, Esq. dated December 1, 2021, any arguments or evidence presented in reply, and all arguments or evidence presented at a hearing or with leave of Court.

Dated: December 1, 2021.  
New York, New York

Respectfully submitted,



Alina Habba, Esq.

**HABBA MADAIO & ASSOCIATES LLP**

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York, 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)

*Attorneys for Defendant, Donald J. Trump*

**HABBA MADAIO & ASSOCIATES LLP**

Alina Habba, Esq.

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)

*Attorneys for Defendant, Donald J. Trump*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Civil Action No.: 1:20-cv-7311-LAK-JLC

**AFFIRMATION OF  
ALINA HABBA, ESQ.**

**ALINA HABBA, ESQ.**, pursuant to 28 U.S.C. § 1746 and Local Civil Rule 1.9, declares as follows:

1. I am the managing partner of the law firm of Habba Madaio & Associates LLP, attorneys of record for Defendant, Donald J. Trump (“Defendant”), and am duly admitted to practice in the District Court for the Southern District of New York and the State of New York. I have reviewed my file, and all matters pertinent to this action, and I am fully familiar with the facts and circumstances surrounding this case.

2. This Affirmation is submitted in support of Defendant’s motion for leave to amend his Answer (“Answer”) pursuant to Fed. R. Civ. P. 15(a), to include an affirmative defense and

counterclaim under New York's newly-amended anti-SLAPP law, codified as New York Civil Rights Law §§ 70-a and 76-a.

3. Attached as **Exhibit 1** to this affirmation is a true and correct copy of Defendant's Answer served upon the plaintiff, E. Jean Carroll, on January 23, 2021.


4. Attached as **Exhibit 2** to this affirmation is a true and correct copy of Defendant's proposed amended answer.

5. Attached as **Exhibit 3** to this affirmation is a true and correct copy of the proposed amendments in redline as compared to Defendant's original answer served on January 23, 2021.

6. Based on the foregoing, Defendant respectfully requests that this Court grant the within motion in its entirety, along with such other and further relief this Court deems necessary.

Respectfully Submitted,

Dated: December 1, 2021.  
New York, New York

  
Alina Habba, Esq.  
**HABBA MADAIO & ASSOCIATES LLP**  
1430 U.S. Highway 206, Suite 240  
Bedminster, New Jersey 07921  
-and-  
270 West 60<sup>th</sup> Street  
New York, New York 10023  
Telephone: (908) 869-1188  
Facsimile: (908) 450-1881  
E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)  
*Attorneys for Defendant, Donald J. Trump*

# **EXHIBIT 1**

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

-----X  
E. JEAN CARROLL,

Index No.: 160694/19

Plaintiff,

-against-

**ANSWER**

DONALD J. TRUMP, in his personal capacity,

Defendant.

-----X

Defendant Donald J. Trump (“President Trump”), subject to and reserving all rights to his immunity, under the Supremacy Clause of the United States Constitution, Article IV, Section II, of a sitting United States President from being sued in state court while serving as President, for his answer to the complaint:

1. Denies the allegations contained in paragraph 1 of the Complaint.
2. Denies the allegations contained in paragraph 2 of the Complaint.
3. Denies the allegations contained in paragraph 3 of the Complaint.
4. Denies the allegations contained in paragraph 4 of the Complaint.
5. Denies the allegations contained in paragraph 5 of the Complaint.
6. Denies the allegations contained in paragraph 6 of the Complaint.
7. Denies the allegations contained in paragraph 7 of the Complaint.
8. Denies the allegations contained in paragraph 8 of the Complaint.
9. Denies the allegations contained in paragraph 9 of the Complaint.
10. Denies the allegations contained in paragraph 10 of the Complaint.
11. Denies the allegations contained in paragraph 11 of the Complaint.
12. Denies the allegations contained in paragraph 12 of the Complaint.

13. Denies the allegations contained in paragraph 13 of the Complaint.
14. Denies the allegations contained in paragraph 14 of the Complaint.
15. Denies the allegations contained in paragraph 15 of the Complaint.
16. Denies the allegations contained in paragraph 16 of the Complaint.
17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.
18. Denies the allegations contained in paragraph 18 of the Complaint.
19. The allegation contained in paragraph 19 of the Complaint asserts a demand for a jury trial for which no response is required.
20. Denies the allegations contained in paragraph 20 of the Complaint.
21. Denies the allegations contained in paragraph 21 of the Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.
23. Denies the allegations contained in paragraph 23 of the Complaint.
24. Denies the allegations contained in paragraph 24 of the Complaint.
25. Denies the allegations contained in paragraph 25 of the Complaint.
26. Denies the allegations contained in paragraph 26 of the Complaint.
27. Denies the allegations contained in paragraph 27 of the Complaint.
28. Denies the allegations contained in paragraph 28 of the Complaint.
29. Denies the allegations contained in paragraph 29 of the Complaint.
30. Denies the allegations contained in paragraph 30 of the Complaint.
31. Denies the allegations contained in paragraph 31 of the Complaint.
32. Denies the allegations contained in paragraph 32 of the Complaint.

33. Denies the allegations contained in paragraph 33 of the Complaint.

34. Denies the allegations contained in paragraph 34 of the Complaint.

35. Denies the allegations contained in paragraph 35 of the Complaint.

36. Denies the allegations contained in paragraph 36 of the Complaint.

37. Denies the allegations contained in paragraph 37 of the Complaint.

38. Denies the allegations contained in paragraph 38 of the Complaint.

39. Denies the allegations contained in paragraph 39 of the Complaint.

40. Denies the allegations contained in paragraph 40 of the Complaint.

41. Denies the allegations contained in paragraph 41 of the Complaint.

42. Denies the allegations contained in paragraph 42 of the Complaint.

43. The allegations contained in paragraph 43 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 43 of the Complaint.

44. Denies the allegations contained in paragraph 44 of the Complaint.

45. Denies the allegations contained in paragraph 45 of the Complaint.

46. Denies the allegations contained in paragraph 46 of the Complaint.

47. Denies the allegations contained in paragraph 47 of the Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Denies the allegations contained in paragraph 49 of the Complaint.

50. Denies the allegations contained in paragraph 50 of the Complaint.

51. Denies the allegations contained in paragraph 51 of the Complaint.

52. Denies the allegations contained in paragraph 52 of the Complaint.



53. Denies the allegations contained in paragraph 53 of the Complaint.

54. Denies the allegations contained in paragraph 54 of the Complaint.

55. Denies the allegations contained in paragraph 55 of the Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. The allegations contained in paragraph 57 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint.

58. The allegations contained in paragraph 58 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. Denies the allegations contained in paragraph 60 of the Complaint.

61. Denies the allegations contained in paragraph 61 of the Complaint.

62. Denies the allegations contained in paragraph 62 of the Complaint.

63. Denies the allegations contained in paragraph 63 of the Complaint.

64. Denies the allegations contained in paragraph 64 of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint.

66. The allegations contained in paragraph 66 of the Complaint can neither be admitted

nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 66 of the Complaint.

67. The allegations contained in paragraph 67 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68. Denies the allegations contained in paragraph 68 of the Complaint.

69. Denies the allegations contained in paragraph 69 of the Complaint.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71. Denies the allegations contained in paragraph 71 of the Complaint.

72. Denies the allegations contained in paragraph 72 of the Complaint.

73. Denies the allegations contained in paragraph 73 of the Complaint.

74. Denies the allegations contained in paragraph 74 of the Complaint.

75. Denies the allegations contained in paragraph 75 of the Complaint.

76. Denies the allegations contained in paragraph 76 of the Complaint.

77. The allegations contained in paragraph 77 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 77 of the Complaint.

78. The allegations contained in paragraph 78 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 78 of the Complaint.

79. Denies the allegations contained in paragraph 79 of the Complaint.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint.

81. Denies the allegations contained in paragraph 81 of the Complaint.

82. Denies the allegations contained in paragraph 82 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

83. The allegations contained in paragraph 83 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 83 of the Complaint.

84. The allegations contained in paragraph 84 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 84 of the Complaint.

85. Denies the allegations contained in paragraph 85 of the Complaint.

86. Denies the allegations contained in paragraph 86 of the Complaint.

87. Denies the allegations contained in paragraph 87 of the Complaint.

88. Denies the allegations contained in paragraph 88 of the Complaint.

89. Denies the allegations contained in paragraph 89 of the Complaint.

90. Denies the allegations contained in paragraph 90 of the Complaint.

91. The allegations contained in paragraph 91 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 91 of the Complaint and respectfully refers the Court to any alleged statements for their full and complete content and context.

92. The allegations contained in paragraph 92 of the Complaint can neither be admitted

nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 92 of the Complaint.

93. Denies the allegations contained in paragraph 93 of the Complaint.

94. Denies the allegations contained in paragraph 94 of the Complaint.

95. Denies the allegations contained in paragraph 95 of the Complaint.

96. Denies the allegations contained in paragraph 96 of the Complaint.

97. The allegations contained in paragraph 97 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 97 of the Complaint and respectfully refers the Court to any alleged statement for its full and complete content and context.

98. The allegations contained in paragraph 98 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 98 of the Complaint.

99. The allegations contained in paragraph 99 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 99 of the Complaint.

100. Denies the allegations contained in paragraph 100 of the Complaint.

101. The allegations contained in paragraph 101 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 101 of the Complaint.

102. The allegations contained in paragraph 102 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 102 of the Complaint.

103. The allegations contained in paragraph 103 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint.

104. The allegations contained in paragraph 104 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint.

105. The allegations contained in paragraph 105 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint.

106. Denies the allegations contained in paragraph 106 of the Complaint.

107. Denies the allegations contained in paragraph 107 of the Complaint.

108. Denies the allegations contained in paragraph 108 of the Complaint.

109. Denies the allegations contained in paragraph 109 of the Complaint.

110. Denies allegations contained in paragraph 110 of the Complaint and respectfully refers the Court to any alleged photographs for their full and accurate depictions.

111. The allegations contained in paragraph 111 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 111 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

112. The allegations contained in paragraph 112 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 112 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

113. Denies the allegations contained in paragraph 113 of the Complaint.

114. Denies the allegations contained in paragraph 114 of the Complaint.

115. Denies the allegations contained in paragraph 115 of the Complaint.

116. Denies the allegations contained in paragraph 116 of the Complaint.

117. Denies the allegations contained in paragraph 117 of the Complaint.

118. Denies the allegations contained in paragraph 118 of the Complaint.

119. Denies the allegations contained in paragraph 119 of the Complaint.

120. Denies the allegations contained in paragraph 120 of the Complaint.

121. Denies the allegations contained in paragraph 121 of the Complaint.

122. Denies the allegations contained in paragraph 122 of the Complaint.

123. The allegations contained in paragraph 123 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 123 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

124. Denies the allegations contained in paragraph 124 of the Complaint

125. The allegations contained in paragraph 125 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 125 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

126. Denies the allegations contained in paragraph 126 of the Complaint.

127. The allegations contained in paragraph 127 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 127 of the Complaint.

128. Denies the allegations contained in paragraph 128 of the Complaint.

129. Denies the allegations contained in paragraph 129 of the Complaint.

130. Denies the allegations contained in paragraph 130 of the Complaint.

131. Denies the allegations contained in paragraph 131 of the Complaint.

132. Denies the allegations contained in paragraph 132 of the Complaint.

133. Denies the allegations contained in paragraph 133 of the Complaint.

134. Denies the allegations contained in paragraph 134 of the Complaint.

135. Denies the allegations contained in paragraph 135 of the Complaint.

136. Denies the allegations contained in paragraph 136 of the Complaint.

#### **FIRST CAUSE OF ACTION**

137. Paragraphs 1 through 136 are realleged.

138. Denies the allegations contained in paragraph 138 of the Complaint.

139. Denies the allegations contained in paragraph 139 of the Complaint.

140. Denies the allegations contained in paragraph 140 of the Complaint.

141. Denies the allegations contained in paragraph 141 of the Complaint.

142. Denies the allegations contained in paragraph 142 of the Complaint.

143. Denies the allegations contained in paragraph 143 of the Complaint.

144. Denies the allegations contained in paragraph 144 of the Complaint.

145. Denies the allegations contained in paragraph 145 of the Complaint.



**DEMAND FOR RELIEF**

146. President Trump denies that plaintiff is entitled to any relief requested in the *ad damnum* clause of the Complaint or any other relief.

**FIRST AFFIRMATIVE DEFENSE**

147. Plaintiff's claim is barred because defendant is immune, under the Supremacy Clause of the United States Constitution, from suit in state court while serving as President of the United States.

**SECOND AFFIRMATIVE DEFENSE**

148. The Complaint fails to state a cause of action.

**THIRD AFFIRMATIVE DEFENSE**

149. The alleged defamatory statements are privileged or protected by one or more immunities, including, but not limited to, under the Constitution of the United States.

**FOURTH AFFIRMATIVE DEFENSE**

150. The alleged defamatory statements are true.

**FIFTH AFFIRMATIVE DEFENSE**

151. Plaintiff's claim is barred because her damages, if any, were caused by acts of third persons, for which defendant is not responsible.

**SIXTH AFFIRMATIVE DEFENSE**

152. Plaintiff is not entitled to punitive damages as a matter of law.

**SEVENTH AFFIRMATIVE DEFENSE**

153. Plaintiff has not sufficiently alleged defamation *per se*.

**EIGHTH AFFIRMATIVE DEFENSE**

154. Plaintiff has failed to plead damages with the required specificity.



**NINTH AFFIRMATIVE DEFENSE**

155. The Court lacks personal jurisdiction over President Trump.

WHEREFORE, defendant Donald J. Trump respectfully demands judgment dismissing the Complaint in its entirety, together with costs, disbursements, and all such other relief as this Court deems just and proper.

Dated: New York, New York  
January 23, 2020

**LARocca HORNik ROSEN  
& GREENBERG LLP**

By: 

Lawrence S. Rosen, Esq.  
Amy D. Carlin, Esq.  
Patrick McPartland, Esq.  
40 Wall Street, 32<sup>nd</sup> Floor  
New York, New York 10005  
T: (212) 530-4822, 4836, 4837  
E: [LROSEN@LHRGB.COM](mailto:LROSEN@LHRGB.COM)  
[ACARLIN@LHRGB.COM](mailto:ACARLIN@LHRGB.COM)  
[PMCPARTLAND@LHRGB.COM](mailto:PMCPARTLAND@LHRGB.COM)

*Attorneys for Donald J. Trump*

To: Roberta Kaplan, Esq.  
Kaplan Hecker & Fink LLP  
350 Fifth Avenue, Suite 7110  
New York, NY 10118

# **EXHIBIT 2**

**HABBA MADAIIO & ASSOCIATES LLP**

Alina Habba, Esq.

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)

*Attorneys for Defendant, Donald J. Trump*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Civil Action No.: 1:20-cv-7311-LAK-JLC

**AMENDED ANSWER**

Defendant, Donald J. Trump (“President Trump”), subject to and reserving all rights to his immunity, under the Supremacy Clause of the United States Constitution, Article IV, Section II, of a sitting United States President from being sued in state court while serving as President, for his answer to the complaint:

1. Denies the allegations contained in paragraph 1 of the Complaint.
2. Denies the allegations contained in paragraph 2 of the Complaint.
3. Denies the allegations contained in paragraph 3 of the Complaint.
4. Denies the allegations contained in paragraph 4 of the Complaint.
5. Denies the allegations contained in paragraph 5 of the Complaint.
6. Denies the allegations contained in paragraph 6 of the Complaint.

7. Denies the allegations contained in paragraph 7 of the Complaint.
8. Denies the allegations contained in paragraph 8 of the Complaint.
9. Denies the allegations contained in paragraph 9 of the Complaint.
10. Denies the allegations contained in paragraph 10 of the Complaint.
11. Denies the allegations contained in paragraph 11 of the Complaint.
12. Denies the allegations contained in paragraph 12 of the Complaint.
13. Denies the allegations contained in paragraph 13 of the Complaint.
14. Denies the allegations contained in paragraph 14 of the Complaint.
15. Denies the allegations contained in paragraph 15 of the Complaint.
16. Denies the allegations contained in paragraph 16 of the Complaint.
17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.
18. Denies the allegations contained in paragraph 18 of the Complaint.
19. The allegation contained in paragraph 19 of the Complaint asserts a demand for a jury trial for which no response is required.
20. Denies the allegations contained in paragraph 20 of the Complaint.
21. Denies the allegations contained in paragraph 21 of the Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.
23. Denies the allegations contained in paragraph 23 of the Complaint.
24. Denies the allegations contained in paragraph 24 of the Complaint.
25. Denies the allegations contained in paragraph 25 of the Complaint.
26. Denies the allegations contained in paragraph 26 of the Complaint.

27. Denies the allegations contained in paragraph 27 of the Complaint.

28. Denies the allegations contained in paragraph 28 of the Complaint.

29. Denies the allegations contained in paragraph 29 of the Complaint.

30. Denies the allegations contained in paragraph 30 of the Complaint.

31. Denies the allegations contained in paragraph 31 of the Complaint.

32. Denies the allegations contained in paragraph 32 of the Complaint.

33. Denies the allegations contained in paragraph 33 of the Complaint.

34. Denies the allegations contained in paragraph 34 of the Complaint.

35. Denies the allegations contained in paragraph 35 of the Complaint.

36. Denies the allegations contained in paragraph 36 of the Complaint.

37. Denies the allegations contained in paragraph 37 of the Complaint.

38. Denies the allegations contained in paragraph 38 of the Complaint.

39. Denies the allegations contained in paragraph 39 of the Complaint.

40. Denies the allegations contained in paragraph 40 of the Complaint.

41. Denies the allegations contained in paragraph 41 of the Complaint.

42. Denies the allegations contained in paragraph 42 of the Complaint.

43. The allegations contained in paragraph 43 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 43 of the Complaint.

44. Denies the allegations contained in paragraph 44 of the Complaint.

45. Denies the allegations contained in paragraph 45 of the Complaint.

46. Denies the allegations contained in paragraph 46 of the Complaint.

47. Denies the allegations contained in paragraph 47 of the Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Denies the allegations contained in paragraph 49 of the Complaint.

50. Denies the allegations contained in paragraph 50 of the Complaint.

51. Denies the allegations contained in paragraph 51 of the Complaint.

52. Denies the allegations contained in paragraph 52 of the Complaint.

53. Denies the allegations contained in paragraph 53 of the Complaint.

54. Denies the allegations contained in paragraph 54 of the Complaint.

55. Denies the allegations contained in paragraph 55 of the Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. The allegations contained in paragraph 57 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint.

58. The allegations contained in paragraph 58 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. Denies the allegations contained in paragraph 60 of the Complaint.

61. Denies the allegations contained in paragraph 61 of the Complaint.

62. Denies the allegations contained in paragraph 62 of the Complaint.

63. Denies the allegations contained in paragraph 63 of the Complaint.

64. Denies the allegations contained in paragraph 64 of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint.

66. The allegations contained in paragraph 66 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 66 of the Complaint.

67. The allegations contained in paragraph 67 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68. Denies the allegations contained in paragraph 68 of the Complaint.

69. Denies the allegations contained in paragraph 69 of the Complaint.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71. Denies the allegations contained in paragraph 71 of the Complaint.

72. Denies the allegations contained in paragraph 72 of the Complaint.

73. Denies the allegations contained in paragraph 73 of the Complaint.

74. Denies the allegations contained in paragraph 74 of the Complaint.

75. Denies the allegations contained in paragraph 75 of the Complaint.

76. Denies the allegations contained in paragraph 76 of the Complaint.

77. The allegations contained in paragraph 77 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 77 of the Complaint.

78. The allegations contained in paragraph 78 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 78 of the Complaint.

79. Denies the allegations contained in paragraph 79 of the Complaint.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint.

81. Denies the allegations contained in paragraph 81 of the Complaint.

82. Denies the allegations contained in paragraph 82 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

83. The allegations contained in paragraph 83 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 83 of the Complaint.

84. The allegations contained in paragraph 84 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 84 of the Complaint.

85. Denies the allegations contained in paragraph 85 of the Complaint.

86. Denies the allegations contained in paragraph 86 of the Complaint.

87. Denies the allegations contained in paragraph 87 of the Complaint.

88. Denies the allegations contained in paragraph 88 of the Complaint.

89. Denies the allegations contained in paragraph 89 of the Complaint.



90. Denies the allegations contained in paragraph 90 of the Complaint.

91. The allegations contained in paragraph 91 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 91 of the Complaint and respectfully refers the Court to any alleged statements for their full and complete content and context.

92. The allegations contained in paragraph 92 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 92 of the Complaint.

93. Denies the allegations contained in paragraph 93 of the Complaint.

94. Denies the allegations contained in paragraph 94 of the Complaint.

95. Denies the allegations contained in paragraph 95 of the Complaint.

96. Denies the allegations contained in paragraph 96 of the Complaint.

97. The allegations contained in paragraph 97 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 97 of the Complaint and respectfully refers the Court to any alleged statement for its full and complete content and context.

98. The allegations contained in paragraph 98 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 98 of the Complaint.

99. The allegations contained in paragraph 99 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 99 of the Complaint.

100. Denies the allegations contained in paragraph 100 of the Complaint.

101. The allegations contained in paragraph 101 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 101 of the Complaint.

102. The allegations contained in paragraph 102 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint.

103. The allegations contained in paragraph 103 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint.

104. The allegations contained in paragraph 104 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint.

105. The allegations contained in paragraph 105 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint.

106. Denies the allegations contained in paragraph 106 of the Complaint.

107. Denies the allegations contained in paragraph 107 of the Complaint.

108. Denies the allegations contained in paragraph 108 of the Complaint.

109. Denies the allegations contained in paragraph 109 of the Complaint.

110. Denies allegations contained in paragraph 110 of the Complaint and respectfully refers the Court to any alleged photographs for their full and accurate depictions.

111. The allegations contained in paragraph 111 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 111 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

112. The allegations contained in paragraph 112 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 112 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

113. Denies the allegations contained in paragraph 113 of the Complaint.

114. Denies the allegations contained in paragraph 114 of the Complaint.

115. Denies the allegations contained in paragraph 115 of the Complaint.

116. Denies the allegations contained in paragraph 116 of the Complaint.

117. Denies the allegations contained in paragraph 117 of the Complaint.

118. Denies the allegations contained in paragraph 118 of the Complaint.

119. Denies the allegations contained in paragraph 119 of the Complaint.

120. Denies the allegations contained in paragraph 120 of the Complaint.

121. Denies the allegations contained in paragraph 121 of the Complaint.

122. Denies the allegations contained in paragraph 122 of the Complaint.

123. The allegations contained in paragraph 123 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 123 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

124. Denies the allegations contained in paragraph 124 of the Complaint

125. The allegations contained in paragraph 125 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 125 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

126. Denies the allegations contained in paragraph 126 of the Complaint.

127. The allegations contained in paragraph 127 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 127 of the Complaint.

128. Denies the allegations contained in paragraph 128 of the Complaint.

129. Denies the allegations contained in paragraph 129 of the Complaint.

130. Denies the allegations contained in paragraph 130 of the Complaint.

131. Denies the allegations contained in paragraph 131 of the Complaint.

132. Denies the allegations contained in paragraph 132 of the Complaint.

133. Denies the allegations contained in paragraph 133 of the Complaint.

134. Denies the allegations contained in paragraph 134 of the Complaint.

135. Denies the allegations contained in paragraph 135 of the Complaint.

136. Denies the allegations contained in paragraph 136 of the Complaint.

**FIRST CAUSE OF ACTION**

137. Paragraphs 1 through 136 are realleged.

138. Denies the allegations contained in paragraph 138 of the Complaint.

139. Denies the allegations contained in paragraph 139 of the Complaint.

140. Denies the allegations contained in paragraph 140 of the Complaint.

141. Denies the allegations contained in paragraph 141 of the Complaint.

142. Denies the allegations contained in paragraph 142 of the Complaint.

143. Denies the allegations contained in paragraph 143 of the Complaint.

144. Denies the allegations contained in paragraph 144 of the Complaint.

145. Denies the allegations contained in paragraph 145 of the Complaint.

**DEMAND FOR RELIEF**

146. President Trump denies that plaintiff is entitled to any relief requested in the *ad damnum* clause of the Complaint or any other relief.

**FIRST AFFIRMATIVE DEFENSE**

147. Plaintiff's claim is barred because defendant is immune, under the Supremacy Clause of the United States Constitution, from suit in state court while serving as President of the United States.

**SECOND AFFIRMATIVE DEFENSE**

148. The Complaint fails to state a cause of action.

**THIRD AFFIRMATIVE DEFENSE**

149. The alleged defamatory statements are privileged or protected by one or more immunities, including, but not limited to, under the Constitution of the United States.

**FOURTH AFFIRMATIVE DEFENSE**

150. The alleged defamatory statements are true.

**FIFTH AFFIRMATIVE DEFENSE**

151. Plaintiff's claim is barred because her damages, if any, were caused by acts of third persons, for which defendant is not responsible.

**SIXTH AFFIRMATIVE DEFENSE**

152. Plaintiff is not entitled to punitive damages as a matter of law.

**SEVENTH AFFIRMATIVE DEFENSE**

153. Plaintiff has not sufficiently alleged defamation *per se*.

**EIGHTH AFFIRMATIVE DEFENSE**

154. Plaintiff has failed to plead damages with the required specificity.

**NINTH AFFIRMATIVE DEFENSE**

155. The Court lacks personal jurisdiction over President Trump.

**TENTH AFFIRMATIVE DEFENSE**

156. Plaintiff's claim is barred by New York's anti-SLAPP laws, NY Civil Rights Law §§ 70-a and 76-a.

**COUNTERCLAIM**

1. Defendant/Counterclaimant, Donald J. Trump (hereinafter "Defendant/Counterclaimant"), repeats and realleges each and every allegation within the preceding paragraphs as if set forth at length herein.

2. Defendant/Counterclaimant makes this counterclaim for damages pursuant to New

York's Strategic Lawsuits Against Public Participation ("anti-SLAPP") under Section 70-a and/or Section 76-a of the New York Civil Rights Laws.

3. On January 20, 2017, Defendant/Counterclaimant was inaugurated as the 45th president of the United States.

4. At or around that time, Plaintiff began drafting a book attacking the character of twenty-one men who she claims negatively impacted her life. Her list included Defendant/Counterclaimant.

5. On June 21, 2019, during the course of Defendant/Counterclaimant's presidency, *New York Magazine* published an excerpt of Plaintiff's then-forthcoming book, in which she falsely alleged that she was sexually assaulted by Defendant/Counterclaimant in the 1990's.

6. The false allegations were published in the midst of Defendant/Counterclaimant's presidency, knowing full well that Defendant/Counterclaimant would need to publicly respond to the false allegations. In fact, this was likely done by design.

7. Upon information and belief, Plaintiff's motivation for asserting her false allegations against Defendant/Counterclaimant was to garner public attention, increase the sales of her book, and tarnish Defendant/Counterclaimant's reputation.

8. By causing the excerpt, and ultimately the book, to be published, Plaintiff knowingly and purposefully catapulted herself into the public sphere by maliciously attacking the character of Defendant/Counterclaimant, a sitting president.

9. In response to the publication of Plaintiff's false allegations, Defendant/Counterclaimant made three public statements, on June 21, 2019, June 22, 2019, and on June 24, 2019, adamantly denying the allegations.

10. Plaintiff's book, *What Do We Need Men For? A Modest Proposal* was subsequently

published on July 2, 2019.

11. On November 4, 2019, Plaintiff commenced and has since continued the instant action against Defendant/Counterclaimant, alleging that the three public statements denying her claim defamed her.

12. Upon information and belief, Plaintiff filed the instant action as retribution for Defendant/Counterclaimant's truthful statements, and for the sole purpose of harassing, punishing, or otherwise maliciously inhibiting his free exercise of speech.

13. This action is based upon "communication in a public place open to the public or a public forum in connection with an issue of public interest" and is further based upon "other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest"

14. This action is "an action involving public petition and participation" as defined in CRL Section 76-a because the defamation claim asserted by Plaintiff is based on communications and statements made "in a place open to the public or a public forum in connection with an issue of public interest" and/or involves "other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest or in furtherance of the exercise of the constitutional right of petition." CRL §76-a(1)(d).

15. This action is not a "purely private matter." CRL §76-a(1)(d).

16. Plaintiff violated New York's anti-SLAPP law by commencing or continuing the instant action, which lacks a substantial basis in law and in fact. See N.Y. Civ. Rights Law § 70-a, 76-a, and N.Y. C.P.L.R. § 3211(g), 3212(h).

17. Defendant/Counterclaimant is entitled to costs and attorney's fees pursuant to CRL §76-a(1)(d) on the basis that Plaintiff knowingly commenced the instant proceeding without a



substantial basis in law and fact and without support by a substantial argument for an extension, modification, or reversal of existing law.

18. Plaintiff asserted her defamation claim even though she knew that Defendant/Counterclaimant's statements were truthful and not defamatory.

19. Regardless, Plaintiff thus initiated and continued the instant litigation for the sole purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting Defendant/Counterclaimant's free exercise of speech, petition, and association rights.

20. Defendant/Counterclaimant is therefore entitled to recover compensatory and punitive damages from Plaintiff under CRL §70-a.

**WHEREFORE**, Defendant/Counterclaimant requests judgment against Plaintiff as follows:

- a. Dismissing the Complaint in its entirety;
- b. An award of all of Defendant/Counterclaimant's attorneys' fees and costs incurred in this action, as provided under CRL §70-a;
- c. An award of compensatory damages, as provided under CRL §70-a, in an amount to be determined at trial;
- d. An award of punitive damages, as provided under CRL §70-a, in an amount to be determined at trial; and
- e. All other and further relief as this Court may deem just and proper.

Dated: New York, New York  
November \_\_\_\_, 2021

**HABBA MADAIO & ASSOCIATES LLP**

By: \_\_\_\_\_

Alina Habba, Esq.  
1430 U.S. Highway 206, Suite 240  
Bedminster, New Jersey 07921  
-and-

270 West 60<sup>th</sup> Street  
New York, New York 10023  
Telephone: (908) 869-1188  
Facsimile: (908) 450-1881  
E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)  
*Attorneys for Defendant, Donald J. Trump*

**To:** Roberta Kaplan, Esq.  
Kaplan Hecker & Fink LLP  
350 Fifth Avenue, Suite 7110  
New York, New York 10118  
*Attorneys for Plaintiff, E. Jean Carroll*

# EXHIBIT 3

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

E. JEAN CARROLL,

Index No.: 160694/19

Plaintiff,

against

ANSWER

DONALD J. TRUMP, in his personal capacity,

Defendant.

HABBA MADAIO & ASSOCIATES LLP

Alina Habba, Esq.,

1430 US Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 W 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: ahabba@habbalaw.com

Attorneys for Defendant, Donald J. Trump

Formatted: Font: Italic

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL,

Civil Action No.: 1:20-cv-7311-LAK-JLC

*Plaintiff,*

*v.*

AMENDED ANSWER

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Defendant, Donald J. Trump ("President Trump"), subject to and reserving all rights to his immunity, under the Supremacy Clause of the United States Constitution, Article IV, Section II,

of a sitting United States President from being sued in state court while serving as President, for his answer to the complaint:

1. Denies the allegations contained in paragraph 1 of the Complaint.
2. Denies the allegations contained in paragraph 2 of the Complaint.
3. Denies the allegations contained in paragraph 3 of the Complaint.
4. Denies the allegations contained in paragraph 4 of the Complaint.
5. Denies the allegations contained in paragraph 5 of the Complaint.
6. Denies the allegations contained in paragraph 6 of the Complaint.
7. Denies the allegations contained in paragraph 7 of the Complaint.
8. Denies the allegations contained in paragraph 8 of the Complaint.
9. Denies the allegations contained in paragraph 9 of the Complaint.
10. Denies the allegations contained in paragraph 10 of the Complaint.
11. Denies the allegations contained in paragraph 11 of the Complaint.
12. Denies the allegations contained in paragraph 12 of the Complaint.
13. Denies the allegations contained in paragraph 13 of the Complaint.
14. Denies the allegations contained in paragraph 14 of the Complaint.
15. Denies the allegations contained in paragraph 15 of the Complaint.
16. Denies the allegations contained in paragraph 16 of the Complaint.
17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.
18. Denies the allegations contained in paragraph 18 of the Complaint.
19. The allegation contained in paragraph 19 of the Complaint asserts a demand for a jury trial for which no response is required.

20. Denies the allegations contained in paragraph 20 of the Complaint.
21. Denies the allegations contained in paragraph 21 of the Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.
23. Denies the allegations contained in paragraph 23 of the Complaint.
24. Denies the allegations contained in paragraph 24 of the Complaint.
25. Denies the allegations contained in paragraph 25 of the Complaint.
26. Denies the allegations contained in paragraph 26 of the Complaint.
27. Denies the allegations contained in paragraph 27 of the Complaint.
28. Denies the allegations contained in paragraph 28 of the Complaint.
29. Denies the allegations contained in paragraph 29 of the Complaint.
30. Denies the allegations contained in paragraph 30 of the Complaint.
31. Denies the allegations contained in paragraph 31 of the Complaint.
32. Denies the allegations contained in paragraph 32 of the Complaint.
33. Denies the allegations contained in paragraph 33 of the Complaint.
34. Denies the allegations contained in paragraph 34 of the Complaint.
35. Denies the allegations contained in paragraph 35 of the Complaint.
36. Denies the allegations contained in paragraph 36 of the Complaint.
37. Denies the allegations contained in paragraph 37 of the Complaint.
38. Denies the allegations contained in paragraph 38 of the Complaint.
39. Denies the allegations contained in paragraph 39 of the Complaint.
40. Denies the allegations contained in paragraph 40 of the Complaint.
41. Denies the allegations contained in paragraph 41 of the Complaint.

42. Denies the allegations contained in paragraph 42 of the Complaint.

43. The allegations contained in paragraph 43 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 43 of the Complaint.

44. Denies the allegations contained in paragraph 44 of the Complaint.

45. Denies the allegations contained in paragraph 45 of the Complaint.

46. Denies the allegations contained in paragraph 46 of the Complaint.

47. Denies the allegations contained in paragraph 47 of the Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Denies the allegations contained in paragraph 49 of the Complaint.

50. Denies the allegations contained in paragraph 50 of the Complaint.

51. Denies the allegations contained in paragraph 51 of the Complaint.

52. Denies the allegations contained in paragraph 52 of the Complaint.

53. Denies the allegations contained in paragraph 53 of the Complaint.

54. Denies the allegations contained in paragraph 54 of the Complaint.

55. Denies the allegations contained in paragraph 55 of the Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. The allegations contained in paragraph 57 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint.

58. The allegations contained in paragraph 58 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. Denies the allegations contained in paragraph 60 of the Complaint.

61. Denies the allegations contained in paragraph 61 of the Complaint.

62. Denies the allegations contained in paragraph 62 of the Complaint.

63. Denies the allegations contained in paragraph 63 of the Complaint.

64. Denies the allegations contained in paragraph 64 of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint.

66. The allegations contained in paragraph 66 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 66 of the Complaint.

67. The allegations contained in paragraph 67 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68. Denies the allegations contained in paragraph 68 of the Complaint.

69. Denies the allegations contained in paragraph 69 of the Complaint.



70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71. Denies the allegations contained in paragraph 71 of the Complaint.

72. Denies the allegations contained in paragraph 72 of the Complaint.

73. Denies the allegations contained in paragraph 73 of the Complaint.

74. Denies the allegations contained in paragraph 74 of the Complaint.

75. Denies the allegations contained in paragraph 75 of the Complaint.

76. Denies the allegations contained in paragraph 76 of the Complaint.

77. The allegations contained in paragraph 77 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 77 of the Complaint.

78. The allegations contained in paragraph 78 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 78 of the Complaint.

79. Denies the allegations contained in paragraph 79 of the Complaint.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint.

81. Denies the allegations contained in paragraph 81 of the Complaint.

82. Denies the allegations contained in paragraph 82 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

83. The allegations contained in paragraph 83 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 83 of the Complaint.

84. The allegations contained in paragraph 84 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 84 of the Complaint.

85. Denies the allegations contained in paragraph 85 of the Complaint.

86. Denies the allegations contained in paragraph 86 of the Complaint.

87. Denies the allegations contained in paragraph 87 of the Complaint.

88. Denies the allegations contained in paragraph 88 of the Complaint.

89. Denies the allegations contained in paragraph 89 of the Complaint.

90. Denies the allegations contained in paragraph 90 of the Complaint.

91. The allegations contained in paragraph 91 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 91 of the Complaint and respectfully refers the Court to any alleged statements for their full and complete content and context.

92. The allegations contained in paragraph 92 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 92 of the Complaint.

93. Denies the allegations contained in paragraph 93 of the Complaint.

94. Denies the allegations contained in paragraph 94 of the Complaint.

95. Denies the allegations contained in paragraph 95 of the Complaint.

96. Denies the allegations contained in paragraph 96 of the Complaint.

97. The allegations contained in paragraph 97 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation

of CPLR 3014. Otherwise, denies the allegations contained in paragraph 97 of the Complaint and respectfully refers the Court to any alleged statement for its full and complete content and context.

98. The allegations contained in paragraph 98 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 98 of the Complaint.

99. The allegations contained in paragraph 99 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 99 of the Complaint.

100. Denies the allegations contained in paragraph 100 of the Complaint.

101. The allegations contained in paragraph 101 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 101 of the Complaint.

102. The allegations contained in paragraph 102 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint.

103. The allegations contained in paragraph 103 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint.

104. The allegations contained in paragraph 104 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in

violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint.

105. The allegations contained in paragraph 105 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint.

106. Denies the allegations contained in paragraph 106 of the Complaint.

107. Denies the allegations contained in paragraph 107 of the Complaint.

108. Denies the allegations contained in paragraph 108 of the Complaint.

109. Denies the allegations contained in paragraph 109 of the Complaint.

110. Denies allegations contained in paragraph 110 of the Complaint and respectfully refers the Court to any alleged photographs for their full and accurate depictions.

111. The allegations contained in paragraph 111 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 111 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

112. The allegations contained in paragraph 112 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 112 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

113. Denies the allegations contained in paragraph 113 of the Complaint.

114. Denies the allegations contained in paragraph 114 of the Complaint.

115. Denies the allegations contained in paragraph 115 of the Complaint.

116. Denies the allegations contained in paragraph 116 of the Complaint.

117. Denies the allegations contained in paragraph 117 of the Complaint.

118. Denies the allegations contained in paragraph 118 of the Complaint.

119. Denies the allegations contained in paragraph 119 of the Complaint.

120. Denies the allegations contained in paragraph 120 of the Complaint.

121. Denies the allegations contained in paragraph 121 of the Complaint.

122. Denies the allegations contained in paragraph 122 of the Complaint.

123. The allegations contained in paragraph 123 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 123 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

124. Denies the allegations contained in paragraph 124 of the Complaint

125. The allegations contained in paragraph 125 of the Complaint can neither be admitted nor denied because of the improper inclusion of a footnote citing to external sources in violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 125 of the Complaint and respectfully refers the Court to any alleged statements for their full and accurate content and context.

126. Denies the allegations contained in paragraph 126 of the Complaint.

127. The allegations contained in paragraph 127 of the Complaint can neither be admitted nor denied because of the improper inclusion of footnotes citing to external sources in

violation of CPLR 3014. Otherwise, denies the allegations contained in paragraph 127 of the Complaint.

- 128. Denies the allegations contained in paragraph 128 of the Complaint.
- 129. Denies the allegations contained in paragraph 129 of the Complaint.
- 130. Denies the allegations contained in paragraph 130 of the Complaint.
- 131. Denies the allegations contained in paragraph 131 of the Complaint.
- 132. Denies the allegations contained in paragraph 132 of the Complaint.
- 133. Denies the allegations contained in paragraph 133 of the Complaint.
- 134. Denies the allegations contained in paragraph 134 of the Complaint.
- 135. Denies the allegations contained in paragraph 135 of the Complaint.
- 136. Denies the allegations contained in paragraph 136 of the Complaint.

**FIRST CAUSE OF ACTION**

- 137. Paragraphs 1 through 136 are realleged.
- 138. Denies the allegations contained in paragraph 138 of the Complaint.
- 139. Denies the allegations contained in paragraph 139 of the Complaint.
- 140. Denies the allegations contained in paragraph 140 of the Complaint.
- 141. Denies the allegations contained in paragraph 141 of the Complaint.
- 142. Denies the allegations contained in paragraph 142 of the Complaint.
- 143. Denies the allegations contained in paragraph 143 of the Complaint.
- 144. Denies the allegations contained in paragraph 144 of the Complaint.
- 145. Denies the allegations contained in paragraph 145 of the Complaint.

**DEMAND FOR RELIEF**

146. President Trump denies that plaintiff is entitled to any relief requested in the *ad damnum* clause of the Complaint or any other relief.

**FIRST AFFIRMATIVE DEFENSE**

147. Plaintiff's claim is barred because defendant is immune, under the Supremacy Clause of the United States Constitution, from suit in state court while serving as President of the United States.

**SECOND AFFIRMATIVE DEFENSE**

148. The Complaint fails to state a cause of action.

**THIRD AFFIRMATIVE DEFENSE**

149. The alleged defamatory statements are privileged or protected by one or more immunities, including, but not limited to, under the Constitution of the United States.

**FOURTH AFFIRMATIVE DEFENSE**

150. The alleged defamatory statements are true.

**FIFTH AFFIRMATIVE DEFENSE**

151. Plaintiff's claim is barred because her damages, if any, were caused by acts of third persons, for which defendant is not responsible.

**SIXTH AFFIRMATIVE DEFENSE**

152. Plaintiff is not entitled to punitive damages as a matter of law.

**SEVENTH AFFIRMATIVE DEFENSE**

153. Plaintiff has not sufficiently alleged defamation *per se*.

**EIGHTH AFFIRMATIVE DEFENSE**

154. Plaintiff has failed to plead damages with the required specificity.

**NINTH AFFIRMATIVE DEFENSE**

155. The Court lacks personal jurisdiction over President Trump.

TENTH AFFIRMATIVE DEFENSE

156. Plaintiff's claim is barred by New York's anti-SLAPP laws. NY Civil Rights Law §§ 70-a and 76-a.

COUNTERCLAIM

1. Defendant/Counterclaimant, Donald J. Trump (hereinafter "Defendant/Counterclaimant"), repeats and realleges each and every allegation within the preceding paragraphs as if set forth at length herein.

2. Defendant/Counterclaimant makes this counterclaim for damages pursuant to New York's Strategic Lawsuits Against Public Participation ("anti-SLAPP") under Section 70-a and/or Section 76-a of the New York Civil Rights Laws.

3. On January 20, 2017, Defendant/Counterclaimant was inaugurated as the 45th president of the United States.

4. At or around that time, Plaintiff began drafting a book attacking the character of twenty-one men who she claims negatively impacted her life. Her list included Defendant/Counterclaimant.

5. On June 21, 2019, during the course of Defendant/Counterclaimant's presidency, New York Magazine published an excerpt of Plaintiff's then-forthcoming book, in which she falsely alleged that she was sexually assaulted by Defendant/Counterclaimant in the 1990's.

6. The false allegations were published in the midst of Defendant/Counterclaimant's presidency, knowing full well that Defendant/Counterclaimant would need to publicly respond to the false allegations. In fact, this was likely done by design.

7. Upon information and belief, Plaintiff's motivation for asserting her false



allegations against Defendant/Counterclaimant was to garner public attention, increase the sales of her book, and tarnish Defendant/Counterclaimant's reputation.

8. By causing the excerpt, and ultimately the book, to be published, Plaintiff knowingly and purposefully catapulted herself into the public sphere by maliciously attacking the character of Defendant/Counterclaimant, a sitting president.

9. In response to the publication of Plaintiff's false allegations, Defendant/Counterclaimant made three public statements, on June 21, 2019, June 22, 2019, and on June 24, 2019, adamantly denying the allegations.

10. Plaintiff's book, *What Do We Need Men For? A Modest Proposal* was subsequently published on July 2, 2019.

11. On November 4, 2019, Plaintiff commenced and has since continued the instant action against Defendant/Counterclaimant, alleging that the three public statements denying her claim defamed her.

12. Upon information and belief, Plaintiff filed the instant action as retribution for Defendant/Counterclaimant's truthful statements, and for the sole purpose of harassing, punishing, or otherwise maliciously inhibiting his free exercise of speech.

13. This action is based upon "communication in a public place open to the public or a public forum in connection with an issue of public interest" and is further based upon "other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest"

14. This action is "an action involving public petition and participation" as defined in CRL Section 76-a because the defamation claim asserted by Plaintiff is based on communications and statements made "in a place open to the public or a public forum in connection with an issue

of public interest” and/or involves “other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest or in furtherance of the exercise of the constitutional right of petition.” CRL §76-a(1)(d).

15. This action is not a “purely private matter.” CRL §76-a(1)(d).

16. Plaintiff violated New York’s anti-SLAPP law by commencing or continuing the instant action, which lacks a substantial basis in law and in fact. See N.Y. Civ. Rights Law § 70-a, 76-a, and N.Y. C.P.L.R. § 3211(g), 3212(h).

17. Defendant/Counterclaimant is entitled to costs and attorney’s fees pursuant to CRL §76-a(1)(d) on the basis that Plaintiff knowingly commenced the instant proceeding without a substantial basis in law and fact and without support by a substantial argument for an extension, modification, or reversal of existing law.

18. Plaintiff asserted her defamation claim even though she knew that Defendant/Counterclaimant’s statements were truthful and not defamatory.

19. Regardless, Plaintiff thus initiated and continued the instant litigation for the sole purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting Defendant/Counterclaimant’s free exercise of speech, petition, and association rights.

20. Defendant/Counterclaimant is therefore entitled to recover compensatory and punitive damages from Plaintiff under CRL §70-a.

**WHEREFORE**, Defendant/Counterclaimant requests judgment against Plaintiff as follows:

- a. Dismissing the Complaint in its entirety;
- b. An award of all of Defendant/Counterclaimant’s attorneys’ fees and costs incurred in this action, as provided under CRL §70-a;

- c. An award of compensatory damages, as provided under CRL §70-a, in an amount to be determined at trial;
- d. An award of punitive damages, as provided under CRL §70-a, in an amount to be determined at trial; and
- e. All other and further relief as this Court may deem just and proper.

Dated: New York, New York  
November , 2021

**HABBA MADAJO & ASSOCIATES LLP**

By:

Alina Habba, Esq.  
1430 US Highway 206, Suite 240  
Bedminster, New Jersey 07921  
-and-  
270 W 60<sup>th</sup> Street  
New York, New York 10023  
Telephone: (908) 869-1188  
Facsimile: (908) 450-1881  
E-mail: ahabba@habbalaw.com  
*Attorneys for Defendant, Donald J. Trump*

Formatted: Line spacing: single

To: Roberta Kaplan, Esq.  
Kaplan Hecker & Fink LLP  
350 Fifth Avenue, Suite 7110  
New York, New York 10118  
*Attorneys for Plaintiff, E. Jean Carroll*

**HABBA MADAIO & ASSOCIATES LLP**

Alina Habba, Esq.

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: ahabba@habbalaw.com

*Attorneys for Defendant, Donald J. Trump*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Civil Action No.: 1:20-cv-7311-LAK-JLC

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR LEAVE  
TO AMEND HIS ANSWER PURSUANT TO FRCP RULE 15(A)**

Alina Habba, Esq.

**HABBA MADAIO & ASSOCIATES LLP**

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

(908) 869-1188

ahabba@habbalaw.com

*Attorneys for Defendant, Donald J. Trump*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT .....	1
PROCEDURAL HISTORY.....	2
ARGUMENT .....	3
THIS COURT MUST GRANT DEFENDANT’S MOTION TO AMEND THE ANSWER TO ASSERT AN ANTI-SLAPP DEFENSE AND COUNTERCLAIM.....	3
I.        THE ANTI-SLAPP AMENDMENT APPLIES RETROACTIVELY TO THIS ACTION .....	3
II.       DEFENDANT MUST BE PERMITTED LEAVE TO AMEND HIS ANSWER ..	6
A.   THERE IS NO BASIS TO DENY THE PROPOSED AMENDMENT .....	6
B.   DEFENDANT HAS DEMONSTRATED COLORABLE GROUNDS FOR RELIEF TO PERMIT THE PROPOSED AMENDMENT.....	7
CONCLUSION.....	10

# TABLE OF AUTHORITIES

## **Cases**

*161 Ludlow Food, LLC v. L.E.S. Dwellers, Inc.*,  
60 Misc. 3d 1221(A) (N.Y. Sup. Ct. 2019), aff’d 176 A.D.3d 434 (1st Dep’t 2019) .....9

*Adelson v. Harris*,  
774 F.3d 803, 809 (2d Cir. 2014) .....4

*CBS, Inc. v. Ahern*,  
108 F.R.D. 14, 18 (S.D.N.Y. 1985).....7

*Coleman v. Grand*,  
523 F. Supp 3d 244, 258 (E.D.N.Y. 2021) .....4, 5

*Foman v. Davis*,  
371 U.S. 178, 182 (1962).....6

*Feirstein v. Nanbar Realty Corp.*,  
963 F.Supp. 254, 261 (S.D.N.Y. 1997) .....6

*Gasperini v. Ctr. for Humanities, Inc.*,  
518 U.S. 415, 427 (1996).....3

*Goldman v Reddington*,  
No. 18-CV-3662 (RPK) (ARL), 2021 WL 4755293, at \*4 (E.D.N.Y., Apr. 21, 2021] .....5

*Harris v. American Accounting Association, et al.*,  
No. 5:20-cv-010507 (MAD) (ATB), 2021 WL 5505515, at \*15 (N.D.N.Y. Nov. 24, 2021) ..5

*John Hancock Mut. v. Amerford Intern.*,  
22 F.3d 458, 462 (2d Cir. 1994) .....6

*Kurland & Associates, PC v. Glassdoor, Inc.*,  
2021 WL 1135187 (N.Y. Sup. Ct. Mar 22, 2021) .....6

<i>La Liberte v. Reid,</i>	
966 F.3d 79, 86 (2d Cir. 2020) .....	4
<i>Luther M. Ragin, Jr. v. The Harry Macklowe Real Estate Co. Inc.,</i>	
126 F.R.D. 475, 478 (S.D.N.Y. 1989) .....	6
<i>Marsh v Sheriff of Cayuga County,</i>	
36 Fed App'x 10, 11 (2d Cir. 2002) .....	6
<i>Massa Construction, Inc. v. Meany,</i>	
No. 126837/2020 (N.Y. Sup. Ct. May 13, 2021) .....	6
<i>Matter of Gleason (Michael Vee, Ltd.),</i>	
96 N.Y.2d 117, 122 (2001) .....	4
<i>Nelson v. HSBC Bank USA,</i>	
87 A.D.3d 995, 998 (2d Dep't 2011) .....	4
<i>Palin v. New York Times Company,</i>	
510 F. Supp.3d 21, 24 (S.D.N.Y. 2020) .....	4, 5, 6
<i>Project Veritas v. New York Times Co.,</i>	
2021 WL 2395290 (N.Y. Sup. Ct. Mar. 18, 2021) .....	5
<i>Ragin v. Harry Macklowe Real Estate Co., Inc.,</i>	
126 F.R.D. 475, 479 (S.D.N.Y. 1989) .....	8
<i>Reus v. ETC Hous. Corp.,</i>	
2021 WL 1837673, at *4 (N.Y. Sup. Ct. May 6, 2021) .....	5
<i>Sackler v Am. Broadcasting Companies, Inc.,</i>	
71 Misc. 3d 693, 698 (N.Y. Sup. Ct. 2021) .....	5
<i>Scheuer v. Rhodes,</i>	
416 U.S. 232, 236 (1974) .....	7, 8

*Sweigert v. Goodman,*

No. 1:18-CV-08653 (VEC) (SDA), 2021 WL 1578097, at \*3 (S.D.N.Y. Apr. 22, 2021) .....5

**Statutes and Cases**

A.B. 5991-A § 4.....	4
CPLR § 3211(g).....	9
CPLR § 3212(h).....	9
CRL § 70-a.....	9
CRL § 76-a(1)(a).....	3, 8
CRL § 76-a(1)(d) .....	3, 8, 9
Fed.R.Civ.P. 12(b)(6).....	7
New York Civil Rights Law §§ 70-a .....	passim
New York Civil Rights Law § 76-a .....	passim
Rule 15(a).....	1



Defendant, Donald J. Trump (“Defendant”), by and through his undersigned attorneys, Habba Madaio & Associates LLP, respectfully submits this memorandum of law in support of his motion to amend his Answer (“Answer”) pursuant to Rule 15(a) of the Federal Rules of Civil Procedure (“FRCP”).

### **PRELIMINARY STATEMENT**

On November 10, 2020, the New York legislature amended the state’s Anti-Strategic Lawsuit Against Public Participation law, codified as New York Civil Rights Law §§ 70-a and 76-a (collectively, the “anti-SLAPP statute”), in an effort to greatly expand its scope and impact. Specifically, the legislature’s purpose for revising the anti-SLAPP statute was to ensure “the utmost protection for the free exercise of speech, petition, and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern.” Sponsor Mem. of Sen. Hoylman (July 22, 2020), <https://www.nysenate.gov/legislation/bills/2019/s52>. In its revised form, the law is broadly intended to deter bad-faith actors from commencing and/or continuing vexatious or malicious lawsuits, particularly those designed to inhibit an individual’s ability to speak freely on matters of public concern. Since that is precisely what has occurred in this instance, Defendant hereby seeks leave to amend his Answer to assert a counterclaim against the plaintiff, E. Jean Carroll (“Plaintiff”) under the revised anti-SLAPP statute.

Although the anti-SLAPP statute was modified after this action was commenced, New York courts have widely held that the legislature’s change was meant to be remedial in nature and, therefore, is to be applied retroactively. Thus, since this action falls well within the expanded scope of anti-SLAPP legislation, and since the amendment is to be liberally granted when “justice so requires,” Defendant must be permitted to amend his Answer accordingly. Plaintiff will not be

prejudiced by the proposed amendment, as there has been no undue delay, bad faith, or dilatory conduct on Defendant's behalf. Therefore, Defendant's motion must be granted in its entirety.

### **PROCEDURAL HISTORY**

On November 4, 2019, Plaintiff commenced the instant action against Defendant with the filing of a complaint (the "Complaint") in the Supreme Court of New York, New York County under Index No. 160694/2019. *See Habba Aff., Ex. A.* In the Complaint, Plaintiff asserts a single cause of action for defamation. *Id.*

On January 23, 2020, prior counsel for Defendant, Kasowitz Benson Torres LLP, served an Answer upon Plaintiff's counsel (the "Answer") putting forth numerous affirmative defenses. *See Habba Aff., Ex. C.*

On September 8, 2020, the United States of America removed the action to this Court upon certification from James G. Touhey, Director, Torts Branch, Civil Division, United States Department of Justice, that Defendant was acting within the scope of his presidential office at the time of the incidents out of which Plaintiff's claims arose. *See Habba Aff., Ex. B.*

On October 27, 2020, this Court denied the United States of America's motion to intervene and substitute itself for Defendant, which Order is currently being reviewed on appeal before the Second Circuit. *See Docket Entry Nos. 32, 45, and 46.*

On November 10, 2020, Governor Andrew Cuomo signed into law New York's revised anti-SLAPP statute, codified as New York Civil Rights Law §§ 70-a and 76-a. Initially enacted in 1992, the anti-SLAPP statute has always been designed to penalize parties who file ill-intentions lawsuits – particularly those meant to discourage public participation or chill the free speech of others – by providing additional safeguards to defendants in these types of actions. Among other things, the 2020 amendment significantly broadened the statute by expanding the definition of an

“action involving public petition and participation” to include any claim based upon: “(1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.” New York Civil Rights Law § 76-a(1)(a). The amendment also clarified that the term “public interest” is meant to be “construed broadly and shall mean any subject other than a purely private matter.” *Id.* 76-a(1)(d).

Defendant now seeks to amend his Answer in accordance with the revised anti-SLAPP statute, as this action now falls squarely within the ambit of the law. Plaintiff has refused to provide consent to Defendant’s request to amend, thereby necessitating the filing of the instant motion.

### **ARGUMENT**

#### **THIS COURT MUST GRANT DEFENDANT’S MOTION TO AMEND THE ANSWER TO ASSERT AN ANTI-SLAPP DEFENSE AND COUNTERCLAIM**

Pursuant to the instant application, Defendant seeks leave to amend his Answer to assert an additional defense and counterclaim under New York’s recently amended anti-SLAPP statute. Given the broad scope of the law – which has been widely held to apply retroactively – and because the amendment is neither futile nor proposed in bad faith and is not otherwise prejudicial to Plaintiff, Defendant’s application must be granted, and the Answer amended accordingly.

#### **I. The Anti-SLAPP Amendment Applies Retroactively to This Action**

At the outset, it is firmly established that the legislature’s November 10, 2020, amendment to the anti-SLAPP statute applies retroactively and, therefore, the instant application is both timely and proper.

It is well-settled that “federal courts sitting in diversity apply state substantive and federal procedural law.” *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996). New York

federal courts have consistently found that the anti-SLAPP statute, a state law, applies on a federal level since it is substantive law, not a procedural one. *See Palin v. New York Times Company*, 510 F. Supp.3d 21, 24 (S.D.N.Y. 2020) (“It is also undisputed [...] that a federal court sitting in diversity must apply §76-a because it is a substantive, rather than a procedural provision.”); *see also Coleman v. Grand*, 523 F. Supp 3d 244, 258 (E.D.N.Y. 2021) (“The anti-SLAPP provision at issue here, § 76-a, applies in federal court because it is ‘manifestly substantive,’ governing the merits of libel claims and increasing defendants’ speech protections.”) (citing *La Liberte v. Reid*, 966 F.3d 79, 86 (2d Cir. 2020); *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (affirming district court’s application of certain substantive provisions of Nevada’s anti-SLAPP law).

Thus, as in *Palin*, “the only question here is whether [the anti-SLAPP statute] should be given retroactive effect to this action, which was filed before the amendments took effect but has not yet gone to trial.” *Id.* Under New York law, statutory amendments are generally “presumed to have prospective application unless the Legislature’s preference for retroactivity is explicitly stated or clearly indicated.” *Matter of Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122 (2001). “So-called remedial legislation, however, should be given retroactive effect in order to effectuate its beneficial purpose.” *Palin*, 510 F. Supp.3d at 24. Remedial statutes are those designed to correct imperfections in prior law, by generally giving relief to the aggrieved party.” *Nelson v. HSBC Bank USA*, 87 A.D.3d 995, 998 (2d Dep’t 2011).

In assessing whether the anti-SLAPP amendment was intended to be remedial, the *Palin* Court noted that the New York legislature “conveyed a sense of urgency by directing that the [anti-SLAPP] amendment was to ‘take effect immediately.’” *Palin*, 510 F. Supp.3d at 28 (citing A.B. 5991-A § 4). The Court also pointed to the legislative history of the statute, which “demonstrates that the amendments to [the anti-SLAPP statute] were intended to correct the narrow scope of New

York’s prior anti-SLAPP law.” *Id.* These factors, taken together, led the Court to affirmatively hold that the anti-SLAPP amendment “is a remedial statute that should be given retroactive effect.” *Id.*

Following the *Palin* decision, numerous federal courts have affirmed its holding and found that the anti-SLAPP amendment is remedial legislation that must be applied retroactively. *See Coleman v. Grand*, 523 F. Supp 3d 244, 258 (E.D.N.Y. 2021) (“Under New York law, these clear legislative expressions of remedial purpose and urgency give the [anti-SLAPP] amendments retroactive effect.”) (citing *Palin*, 510 F.Supp.3d at 27); *Sweigert v. Goodman*, No. 1:18-CV-08653 (VEC) (SDA), 2021 WL 1578097, at \*3 (S.D.N.Y. Apr. 22, 2021) (“[T]he Court grants the Defendant's motion to amend his Answer to add a defense under the New York anti-SLAPP statute.”); *Goldman v Reddington*, No. 18-CV-3662 (RPK) (ARL), 2021 WL 4755293, at \*4 (E.D.N.Y., Apr. 21, 2021), *report and recommendation adopted*, 18-CV-3662 (RPK) (ARL), 2021 WL 4099462 (E.D.N.Y., Sept. 9, 2021) (affirming retroactive application of the anti-SLAPP amendment and permitting the defendant to amend its answer to include anti-SLAPP counterclaim.); *Harris v. American Accounting Association, et al.*, No. 5:20-cv-010507 (MAD) (ATB), 2021 WL 5505515, at \*15 (N.D.N.Y. Nov. 24, 2021) (granting motion to dismiss brought pursuant to CRL § 70-a and awarding costs and attorneys’ fees.). Several state courts have also found that the revision applies retroactively. *See Project Veritas v. New York Times Co.*, 2021 WL 2395290 (N.Y. Sup. Ct. Mar. 18, 2021) (“[T]he court will apply the anti-SLAPP statute retroactively.”); *see also Sackler v Am. Broadcasting Companies, Inc.*, 71 Misc. 3d 693, 698 (N.Y. Sup. Ct. 2021) (“This court finds that the anti-SLAPP amendments are intended to apply retroactively in order to effectuate the remedial and beneficial purpose of the statute.”); *Reus v. ETC Hous. Corp.*, 2021 WL 1837673, at \*4 (N.Y. Sup. Ct. May 6, 202) (“Although the [anti-

SLAPP] [l]aw was amended in November of 2020, the amendments were effective retroactively.”); *Kurland & Associates, PC v. Glassdoor, Inc.*, 2021 WL 1135187 (N.Y. Sup. Ct. Mar 22, 2021); *Massa Construction, Inc. v. Meany*, No. 126837/2020 (N.Y. Sup. Ct. May 13, 2021).

Consistent with the holding set forth in *Palin* and its progeny, it is axiomatic that the anti-SLAPP statute applies retroactively. Therefore, Defendant’s request to amend his Answer to include an anti-SLAPP counterclaim is timely raised and properly before the Court.

## II. Defendant Must Be Permitted Leave to Amend His Answer

### A. There Is No Basis to Deny the Proposed Amendment

Under Rule 15(a) of the Federal Rules of Civil Procedure, a court shall grant leave to amend “freely...when justice so requires.” Leave to amend will be granted absent a showing of undue delay, bad faith, futility, or prejudice to the defendant. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Feirstein v. Nanbar Realty Corp.*, 963 F.Supp. 254, 261 (S.D.N.Y. 1997). Determining whether to grant leave to amend is within the sound discretion of the court. *John Hancock Mut. v. Amerford Intern.*, 22 F.3d 458, 462 (2d Cir. 1994). There is no requirement that a defendant plead all known affirmative defenses at the time of their first answer. “As long as amendment of pleadings does not prejudice plaintiffs, defendants will not be precluded from adding additional defenses about which they had knowledge.” *Luther M. Ragin, Jr. v. The Harry Macklowe Real Estate Co. Inc.*, 126 F.R.D. 475, 478 (S.D.N.Y. 1989). In determining whether an amendment would cause prejudice, courts will consider whether “the assertion of the new claim or defense would (i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; [or] (ii) significantly delay the resolution of the dispute.” Marsh v Sheriff of Cayuga County, 36 Fed App’x 10, 11 (2d Cir. 2002).

The instant application is brought for the purpose of adding a defense and counterclaim pursuant to the recently amended anti-SLAPP statute, which amendment was made while the instant action was pending and, most importantly, after Defendant's Answer was served. *See Habba Aff.*, Ex. 1. Undersigned counsel for Defendant was substituted into this action on or about November 11, 2021, and now, promptly thereafter, undersigned counsel makes the instant application. Since this action is still in its early stage of litigation – as of the date of this motion, discovery has not even started – permitting the proposed amendments to Defendant's Answer will not meaningfully delay this action in any way. *Id.* Moreover, the proposed amendments will not prejudice Plaintiff in the slightest. The anti-SLAPP counterclaim will not broaden the scope of this action, it will only require Plaintiff to prove that the claims she has asserted have a “substantial basis in law.” Plainly stated, there are simply no circumstances present which even remotely suggests any undue delay, bad faith, futility, or prejudice sufficient to warrant the denial of Defendant's application.

As such, pursuant to the rules governing motions to amend pleadings in both state and federal courts, well-established law dictates that Defendant's instant motion to amend must be granted.

**B. Defendant Has Demonstrated Colorable Grounds for Relief to Permit the Proposed Amendment**

While a party seeking to amend its answer need not establish the merit of its proposed new defenses and/or counterclaims, “[i]n deciding whether the movant has a colorable ground for relief to permit an amendment, an inquiry must be made comparable to that required by Fed.R.Civ.P. 12(b)(6).” *CBS, Inc. v. Ahern*, 108 F.R.D. 14, 18 (S.D.N.Y. 1985). In considering a 12(b)(6) motion to dismiss, a court must construe the pleading's allegations in the light most favorable to the pleading party and accept those allegations as true. *See Scheuer v. Rhodes*, 416 U.S. 232, 236



(1974). “Moreover, it must appear beyond doubt that the [moving party] can prove no set of facts supporting his claim that entitles him to relief.” *Ragin v. Harry Macklowe Real Estate Co., Inc.*, 126 F.R.D. 475, 479 (S.D.N.Y. 1989).

In this instance, there is no question that Defendant presents a colorable claim under the anti-SLAPP statute, as the cause of action asserted by Plaintiff is precisely the type that the recent amendment was intended to encompass. Pursuant to the legislature’s November 10, 2020 revision to the law, the scope of the anti-SLAPP statute was broadened to apply to any action based upon: “(1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.” CRL § 76-a(1)(a). Notably, the amendment also clarified that the term “public interest” is meant to be “construed broadly and shall mean any subject *other than a purely private matter*.” *Id.* § 76-a(1)(d) (emphasis added).

The statements at issue here – namely, Defendant’s denials of Plaintiff’s allegations against him – were public statements made by a then-sitting president. The statements were of momentous public interest; even Plaintiff acknowledges in her complaint that she expected her allegations to ignite a “media storm.” *See* Compl. ¶¶ 10-11. Indeed, Plaintiff’s allegations – and Defendant’s denials thereof – garnered an immense amount of public attention and media coverage which remains to this day. Accordingly, the subject matter of this action cannot be construed as being anything other than an “issue of public interest.” CRL § 76-a(1)(a). Surely it cannot possibly be described as a “purely private matter.” *Id.* § 76-a(1)(d). Rather, it is indisputable that the instant action is an “action involving public petition and participation” and, therefore, squarely within the ambit of the anti-SLAPP statute.



Critically, once it is established that an action falls within the ambit of the anti-SLAPP statute, the defendant is entitled to file a motion to dismiss under CPLR § 3211(g) and/or a motion for summary judgment pursuant to CPLR § 3212(h). Under either scenario, the burden shifts away from the defendant and lies solely with the plaintiff, who must “demonstrate that the cause of action has a “substantial basis in law,” CPLR § 3211(g), or a “substantial basis in fact and law,” CPLR § 3212(h). Under these heightened standards, the plaintiff bears a “heavy burden” to make the requisite showing to defeat dismissal. *161 Ludlow Food, LLC v. L.E.S. Dwellers, Inc.*, 60 Misc. 3d 1221(A) (N.Y. Sup. Ct. 2019), *aff’d* 176 A.D.3d 434 (1st Dep’t 2019). In addition, if at any point during litigation the defendant is able to demonstrate that the action was “commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law,” the defendant is entitled to an award of costs and attorneys’ fees. CRL § 70-a.


Given the burden-shifting nature of the anti-SLAPP statute, the multiple avenues for redress, and the stringent standards Plaintiff will need to overcome to establish the viability of her claim, it is evident that Defendant has a colorable claim under the anti-SLAPP statute. Further, Defendant will be severely prejudiced if he is deprived of the opportunity to invoke the heightened standard of the anti-SLAPP claim. It would therefore be inappropriate to deny Defendant’s motion at this early stage of litigation.

**CONCLUSION**

For the foregoing reasons, Defendant, Donald J. Trump, respectfully requests this Court grant its motion to amend his Answer to assert an additional affirmative defense and counterclaim pursuant to Rule 15 of the Federal Rules of Civil Procedure.

Dated: December 1, 2021.  
New York, New York

Respectfully submitted,



Alina Habba, Esq.

HABBA MADAIO & ASSOCIATES LLP  
1430 U.S. Highway 206, Suite 240  
Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street  
New York, New York, 10023  
Telephone: (908) 869-1188  
Facsimile: (908) 450-1881  
E-mail: ahabba@habbalaw.com  
*Attorneys for Defendant, Donald J. Trump*

**HABBA MADAIO & ASSOCIATES LLP**

Alina Habba, Esq.

1430 U.S. Highway 206, Suite 240

Bedminster, New Jersey 07921

-and-

270 West 60<sup>th</sup> Street

New York, New York 10023

Telephone: (908) 869-1188

Facsimile: (908) 450-1881

E-mail: [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)

*Attorneys for Defendant, Donald J. Trump*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP, in his personal capacity,

*Defendant.*

Civil Action No.: 1:20-cv-7311-LAK-JLC

**ORDER GRANTING DEFENDANT'S  
MOTION FOR LEAVE TO AMEND HIS  
ANSWER PURSUANT TO FRCP RULE  
15(a)**

**THIS MATTER** having been brought before the Court by way of a notice of motion brought by Defendant, Donald J. Trump ("Defendant") to amend his answer pursuant to Fed. R. Civ. P. 15(a) and Local Civil Rule 7.1, (the "Motion"), and the Court having reviewed the papers submitted in support of the Motion, any opposition to the Motion, and oral argument, if any, and for good cause shown;

**IT IS HEREBY,**

**ORDERED** that Defendants' Motion is hereby granted in its entirety;

**ORDERED** that Defendant shall be granted leave to file and serve his first Amended Answer ("Amended Answer"), in the proposed form, within fifteen (15) days following the entry of this Order; and it is further

**ORDERED** that Plaintiff's reply to Defendant's Amended Answer shall be filed within fifteen (15) days following service of the Amended Answer;

DATED:

Lewis A. Kaplan, United States District Judge