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March 22, 2022

VIA NYSCEF

Honorable Arthur F. Engoron
New York State Supreme Court
60 Centre Street, Room 418
New York, NY 10007

Re: People by James v. The Trump Organization, Inc., *et al.*
Supreme Court, New York County, Index No. 451685/2020

Dear Justice Engoron:

We represent respondents The Trump Organization, Inc., DJT Holdings LLC, DJT Holdings Managing Member LLC, and Seven Springs LLC (collectively, "TTO") in the above-captioned special proceeding, and write now in response to the March 18, 2022 letter filed by the Office of Attorney General ("OAG") requesting a conference with the Court.

TTO opposes this request as pre-mature, unwarranted, and without basis in law or fact. Indeed, the salient facts make it clear that any judicial intervention regarding TTO's and/or Haystack's compliance under the Stipulation and Order dated September 2, 2021 (the "Stipulation") is unnecessary at this time. Moreover, there is no legal support for the OAG's request found in the express terms of the Stipulation.

First and foremost, TTO has already informed the OAG on two separate occasions that TTO is on track to meet the April 15, 2022 date requested by the OAG for the completion of TTO's document production. Specifically, on March 11, 2022 and again on March 14, 2022, TTO wrote to the OAG that TTO is nearing completion of its document production and confirmed that this will occur by April 15, 2022, if not sooner (subject to potential clean-up and completion of the privilege logs, claw backs, and privilege downgrades). *See* Docket No. 664. The OAG did not object to this timetable (which meets the exact completion date requested by the OAG in its March 9, 2022 letter to TTO [Docket No. 663]). Nor did the OAG request a meet and confer to discuss this timetable or TTO's prior diligence in honoring its obligations under the Stipulation. Thus,

even from the OAG's letter there currently is no dispute between the OAG and TTO for the Court to resolve.

In its March 18 letter, the OAG disingenuously asserts that TTO was required under the Stipulation to complete its production obligations under the OAG's subpoenas by October 15, 2021. In actual fact, the express terms of the Stipulation do not require that at all. Rather, the Stipulation solely requires TTO to "work diligently to comply with each of the production and other responsibilities described in Exhibit A to this stipulation," which it has done.¹ To date, TTO's total production to the OAG using the protocols agreed to between the OAG and TTO is in excess of 880,000 documents, comprised of more than 5,760,000 pages of information, of which more than 215,000 documents and in excess of 2,017,000 pages were produced **after September 30, 2021**. Since receiving the OAG's subpoenas, TTO has made more than 165 separate and distinct productions to the OAG, most of which occurred after September 30, 2021.

Based on all of the foregoing, the OAG's request that the Court is suddenly needed to micromanage the very tail-end of the discovery process in order to "cut through future back-and-forth discussions" is as puzzling as it is conjectural. The OAG's March 9, 2022 letter to TTO is the first occasion in four months that the OAG communicated any objections or concerns to TTO with respect to the content or pace of its production, which has undeniably been proceeding at an accelerated pace. In that regard, TTO has been transparent about its collection and production efforts, updating the OAG in its comprehensive 23-page September 30, 2021 report and in each of its detailed 28 weekly status reports since the parties signed the Stipulation. TTO also issued 18 weekly progress reports to the OAG between November 1, 2021 and March 9, 2022, ***none of which triggered any "back-and-forth" from the OAG, and all of which were received and kept by the OAG in silence.***

Currently there is also no dispute for the Court to resolve between the OAG and Haystack regarding Haystack's performance of its obligations under paragraphs 1 through 4 of Schedule A to the Stipulation. Haystack is not a party to this special proceeding or to the Stipulation, and thus the OAG's request that Haystack be hauled into court this week is without any legal basis. In its March 16, 2022 email to the OAG, Haystack in any event advised the OAG that Haystack expects to complete the custodial interview process by mid-April. *See* Docket No. 665. We defer to Haystack and/or its counsel regarding the anticipated completion date for the comprehensive report Haystack will be submitting to the parties at the conclusion of its work.

It appears that Haystack has also been working diligently and we are unaware of any "back-and-forth" regarding its work since Haystack issued its first progress report two months ago. On January 17, 2022, Haystack provided its first monthly report to the parties articulating its progress carrying out its responsibilities. The OAG did not object to the form or content of the report, or respond to Haystack or TTO in any other way. On February 18, 2022, Haystack issued its second report, using the same exact format and articulating in the same exact fashion its progress over the trailing month. ***Far from objecting to the report***, Austin Thompson's only response was an email

¹ Although TTO disagreed that there was a reasonable basis for the OAG to trigger paragraph 3, without waiving any of its objections TTO designated Haystack as the independent third-party eDiscovery firm to undertake the limited procedures outlined only in paragraphs 1 through 4 of Exhibit A to the Stipulation.

stating “Thanks John. Was just writing to check!” In actual fact, until Mr. Thompson’s March 9, 2022 letter, the OAG did not communicate to Haystack or TTO any issue with the pace of Haystack’s work or the contents of its reports.

The OAG intentionally creates the false appearance that TTO placed restrictions in its engagement agreement with Haystack, preventing Haystack from providing “more regular, detailed reporting.” In point of fact, TTO engaged Haystack to perform *exactly* the tasks set forth in paragraphs 1 through 4 of Schedule A to the Stipulation, which are the only provisions of the Stipulation the OAG elected to invoke in its November 1, 2021 letter to TTO. *See* Docket No. 519 and also see the December 7, 2021 Project Agreement between TTO and Haystack (Docket No. 664). As Haystack correctly pointed out to the OAG, ***there are no reporting requirements in those four paragraphs of the Stipulation***. Significantly, moreover, in the OAG’s November letter, the OAG requested a detailed report only upon completion of Haystack’s work. *See* Docket No. 519. Nonetheless, in the continued spirit of cooperation and good faith, on January 14, 2022, TTO requested that Haystack deliver to the parties monthly progress reports consistent with the reporting parameters set forth in the Stipulation’s Schedule A, paragraph 6, i.e., “articulating its progress carrying out the responsibilities described herein, and identifying any source of potentially responsive materials to which it has not been provided access.”²

It is anticipated that upon completion of its work, Haystack will issue a detailed report to the OAG and TTO: (i) verifying a log of all devices issued to each TTO custodian listed in Exhibit B to the Stipulation from January 1, 2014 to December 18, 2020, including, for each custodian, the type of device, a unique identifier for the device, the date issued, the date returned (if applicable), and the current location of the device; (ii) identifying all other custodians of hard copy or electronic materials that may be responsive to the OAG subpoenas; and (iii) identifying the likely locations of responsive records. *See* Stipulation, Exhibit A, paragraphs 1-3.

It is black letter law that a stipulation is a contract and subject to the same principles that apply to contract interpretation and enforcement. *Hallock v. State of New York*, 64 N.Y.2d 224, 230 (1984).³ The OAG and TTO entered into a heavily negotiated binding, clear and unambiguous Stipulation which charts the procedural course for TTO’s production of potentially responsive materials and Haystack’s independent evaluation of TTO’s work. The OAG now seeks to repudiate the Stipulation and re-write its terms because the OAG’s “scorched earth” policy of all things related to TTO’s subpoena obligations are taking longer than the OAG’s liking.

² After TTO retained Haystack, the OAG improperly and without any legal basis requested that Haystack provide weekly reports to the OAG and hold weekly status calls with them. TTO objected to the OAG’s request because it lacked support in the Stipulation, was inconsistent with the position the OAG took when it requested the appointment of an eDiscovery firm in its November 1, 2021 letter (Docket No. 519), **and was clearly a pretext for the OAG to control Haystack and micromanage the “independent” review process.**

³ *See e.g., Daibes v. Kahn*, 116 A.D.3d 994, 995 (2d Dep’t 2014) (so-ordered stipulation that defendant would appear for a deposition at one of two locations was a binding contract and thus court improperly granted plaintiff’s motion pursuant to CPLR 3126 to strike defendant’s answer where parties did not specify in the stipulation the date by which the deposition was to be completed).

Given the above, the OAG's request for judicial intervention at this time is pre-mature.

Respectfully submitted,

/s/ Amy D. Carlin

Amy D. Carlin