



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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EXECUTIVE DIVISION

By NYSCEF

May 9, 2022

Hon. Arthur F. Engoron
New York Supreme Court
New York County
60 Centre Street, Room 566
New York, NY 10007

Re: People v. The Trump Organization, Inc.,– No. 451685/2020

Dear Justice Engoron:

This office (“OAG”) represents Petitioner in the above-referenced special proceeding. I write in response to the May 6, 2022 submission from Respondent Donald J. Trump in support of his request that the Court purge the finding of civil contempt against him. The affidavits submitted by Respondent’s counsel leave open two issues and, therefore, are insufficient to purge the finding of contempt.

First, Respondent relies in part on the work performed by HaystackID in order to achieve full compliance with OAG’s December 2021 subpoena. However, HaystackID’s review is not yet complete. According to HaystackID’s May 6, 2022 Report, HaystackID “has approximately 17 boxes . . . from off-site storage that it still needs to examine” for responsive material, which it does not expect to complete until Friday, May 13, 2022. HaystackID May 6, 2022 Report at 3.¹ While Respondent’s counsel states in her most recent affidavit that she “understand[s] that no custodial documents for Respondent were identified” by HaystackID among the documents located in off-site storage based on her “review of HaystackID’s report,” her understanding is necessarily based on HaystackID’s review of that material to date, which is incomplete and will not be finished until May 13 at the earliest. Affidavit of Compliance of Alina Habba, Esq., dated May 6, 2022, at ¶ 24(e)(iii). Because Respondent relies on HaystackID’s review to satisfy his obligations under the subpoena, he cannot purge the contempt finding until that review is complete and HaystackID provides a final report along with the production of any responsive documents.²

¹ A copy of HaystackID’s May 6, 2022 Report was submitted to the Court and counsel by HaystackID via electronic mail.

² OAG will be responding separately to HaystackID’s May 6, 2022 Report to address certain concerns arising therefrom—including to have HaystackID explain what is meant by the report’s statement that, to date, Haystack has not identified any “direct” custodial documents of Mr. Trump in materials located in the Trump Organization’s offices.

Second, putting aside what might turn up from HaystackID’s ongoing search, the affiants testify that no responsive documents exist beyond what has already been produced by the Trump Organization and that the whereabouts of Mr. Trump’s previously-owned phones are unknown.³ But Respondent provides no information concerning his or the Trump Organization’s document and device retention and destruction policies. Mr. Trump merely states that since 2010 “it has been [his] customary practice to delegate document handling and retention responsibilities to [his] executive assistants,” without further elaboration. Trump Aff. at ¶ 7. There is no affidavit from any of his executive assistants or anyone else explaining the relevant document handling and retention policies and practices. As it appears Mr. Trump relied on the Trump Organization and his executive assistants to preserve his documents, he should be required to describe what policies they followed, especially given that testimony provided during OAG’s investigation indicates that the Trump Organization has had in place since at least 2016 a “litigation hold” on the categories of material covered by the subpoena and its IT Department follows a policy of preservation.⁴ Such detailed information about relevant retention and destruction policies is required under *Jackson v. City of New York*, 185 A.D.2d 768 (1st Dep’t 1992) (finding affidavit was deficient because, among other things, it “made no showing as to . . . what efforts, if any, were made to preserve” the subject records or “whether such records were routinely destroyed”).

* * *

For these reasons, Respondent’s request that the Court purge its finding of civil contempt should be denied at this time. Respondent’s compliance with OAG’s subpoena should be reassessed after HaystackID has fully completed its review and production (if any) of responsive materials, including the off-site storage boxes, and Respondent has provided a supplemental *Jackson* affidavit describing the relevant retention and destruction policies for Mr. Trump’s custodial documents and electronic devices.

Respectfully,

/s/ Andrew S. Amer

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cc: Counsel of Record (via NYSCEF)

³ Mr. Trump attests that he no longer possesses three of his previously owned phones and their “current whereabouts” are unknown. Affidavit of Donald J. Trump dated May 6, 2022 (“Trump Aff.”) at ¶ 12. Similarly, Eric Brunnett, Senior Vice President of the Trump Organization’s IT Department, states with respect to these same phones that he “[do[es] not know their whereabouts.” Affidavit of Eric Brunnett dated May 6, 2022 at ¶ 3.

⁴ Mr. Trump and the Trump Organization also were involved in a number of litigations predating 2016, and so presumably were under obligation to institute litigation holds prior to that year.