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October 6, 2023

Honorable Susanna Molina Rojas
Clerk of the Court
Supreme Court of New York
Appellate Division, First Department
27 Madison Avenue
New York, NY 10010

Re: *People v. Trump*, No. 2023-04925

Dear Ms. Rojas:

I write on behalf of plaintiff-respondent People of the State of New York, Letitia James, Attorney General of the State of New York (OAG), in opposition to defendants-appellants' emergency application for an interim stay of both (i) a highly public, ongoing trial in this Executive Law § 63(12) enforcement action that began this past Monday, October 2, 2023, and (ii) injunctive relief issued in a September 26, 2023 Order of Supreme Court, New York County (Engoron, J.), while this Court adjudicates defendants' underlying motion for a full stay pending appeal from that order. Among other things, the September 26 Order denied defendants' motion for summary judgment on OAG's § 63(12) fraud and illegality claims, granted in part OAG's partial motion for summary judgment on its fraud claim, and set forth the remaining issues (the illegality claims and remedial issues) that are the subject of the trial. Ex. A, Sept. 26 Order.[1] OAG submits this response solely to defendants' emergency application for an interim stay and is ready to present oral argument on that application for interim relief. OAG plans to file a separate response to defendants' underlying motion for a full stay pending appeal, addressing that distinct request for relief, under a schedule set by the Court.

[1] Lettered exhibits refer to exhibits attached to Clifford Robert's affirmation in support of defendants' motion. Numbered exhibits refer to exhibits to this letter.

Significantly, this Court denied defendants' prior motion for a stay of trial just *eight days ago*, a motion they made before the start of trial in a separate C.P.L.R. article 78 proceeding filed in this Court. *See* Ex. J, Order, *Trump v. Engoron*, No. 2023-04580 (1st Dep't Sept. 28, 2023). But defendants then stipulated to discontinue their article 78 proceeding yesterday and now seek to use this interlocutory appeal to obtain a second bite at disrupting the trial—despite the Court having already denied that relief.

A stay is a drastic remedy in all cases, but defendants cannot come close to demonstrating that the equities or the merits favor the truly extraordinary relief of upending an ongoing trial midstream, particularly when this trial requires extensive court planning and resources for security; special arrangements to provide access to the public and press; and extensive preparation by not just counsel but also witnesses who have already arranged their schedules to be available to testify. *See Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990); *Pirraglia v. Jofsen, Inc.*, 148 A.D.3d 648, 649 (1st Dep't 2017). There is also no need for defendants to burden the Court with a request for an interim stay of the injunctive relief contained in the September 26 Order, when OAG has informed defendants of its willingness to discuss staying enforcement of portions of that relief pending trial and entry of final judgment, provided that the trial continues to move forward. Finally, as OAG is prepared to discuss at oral argument, defendants are unlikely to prevail on the merits of their appeal.

A. This Court Should Not Upend a Highly Public, Ongoing Trial to Which Supreme Court, Witnesses, and Parties Have Already Committed Extensive Time And Resources.

In their current application for an interim stay, defendants seek to sow chaos by disrupting an ongoing trial that has now been going for a week. Yet defendants fail to point to *any* purported irreparable harm from proceeding with a trial that has already begun (*see* Memo. of Law in Supp. of a Stay Pending Appeal (Memo.) at 10). Rather, all of their purported harms stem from the injunctive relief issued in the September 26 Order (*see* Memo. at 6-11), which OAG has already offered to discuss and which provide no basis for upending trial. An interim stay of trial pending the Court's adjudication of defendants' underlying stay motion would severely undermine the fair and orderly administration of justice, both in this action and in other actions against defendant Donald J. Trump that are pending in other federal and state courts within and without the State. Multiple equitable factors each weigh decisively against upending the ongoing trial.

First, this Court already rejected defendants' prior request to stay trial eight days ago. Defendants are now rehashing the same arguments that this Court already rejected. But defendants are not entitled to a second bite at the apple, and this Court's prior decision denying a stay of trial should end the matter.

Second, defendants delay also weighs dispositively against the extraordinary relief of upending a trial that has *already started*. As it had represented it would do, Supreme Court issued its summary-judgment ruling on September 26, before the trial was scheduled to begin on October 2—thereby making sure that the parties understood the scope of issues to be tried. But defendants failed to file their notice of appeal and seek relief before trial began. Indeed, they waited until trial began to even file a notice of appeal. And they waited until nearly a week of trial had elapsed—including the completion of opening statements and testimony by multiple witnesses—before asking this Court to stay the trial pending this interlocutory appeal. And tellingly, they waited until after Mr. Trump decided to stop attending the trial. Defendants have thus sought to interrupt trial midcourse in a highly disruptive manner, and this Court should deny an interim stay on that basis alone.

Third, an interim stay of an ongoing trial would derail the tremendous work and resources that Supreme Court, the Office of Court Administration, the parties, and dozens of witnesses have already committed to the trial. Arranging for this trial to happen as scheduled has required significant public resources, such as special security arrangements outside and inside the courthouse, many additional security and other court personnel to conduct those security arrangements, and special arrangements to ensure access for the press and public (such as use of the ceremonial courtroom, with a closed-circuit video feed to at least one additional overflow room). These arrangements are in place and staying trial now would be highly disruptive.

Witnesses have also arranged their schedules and preparations in reliance on attending trial in the upcoming days and weeks. Indeed, one witness is testifying this morning and may need to continue that testimony. Another witness will soon be out of the country for three months and needs to testify before then. And other witnesses have already prepared to testify next week. Abruptly halting trial now and forcing witnesses to try to rearrange their schedules would impose substantial and unnecessary hardships on them. Moreover, OAG has devoted enormous time and resources to prepare for trial. Disrupting trial midcourse would waste public resources and prejudice OAG's ability to marshal witnesses to fully present its case.

Fourth, even a short disruption of this ongoing trial would likely create a cascade of delays in not only this case but also other litigation involving Mr. Trump. Mr. Trump is a defendant in several other matters heading to trial between January and May 2024, including:

- a January 15, 2024 civil trial in *Carroll v. Trump*, No. 20-cv-7311 (S.D.N.Y. June 15, 2023), ECF No. 170;

- a March 4, 2024 criminal trial in *United States v. Trump*, No. 23-cr-257 (D.D.C. Aug. 28, 2023), ECF No. 39;

- a March 25, 2024 criminal trial in *People v. Trump*, Ind. No. 71543-23 (Sup. Ct. N.Y. County); and

- a May 20, 2024 criminal trial in *United States v. Trump*, No. 23-cr-80101 (M.D. Fla. July 21, 2023), ECF No. 83.

If the trial here is delayed at all, there is a significant risk that defendants will request further delays of trial based on the deadlines in these other cases. Indeed, defendants already appear to be attempting to play one court against the other. They previously sought to delay the trial in this proceeding in a manner that would directly conflict with the trial schedule in a different action against Mr. Trump that is pending in federal court. *See* Ex. 1, Letter from Roberta A. Kaplan to Hon. Arthur F. Engoron (Mar. 8, 2023). And Mr. Trump sought and then obtained an order rescheduling his deposition in yet another action based on his need to attend trial in this proceeding. *See Trump v. Cohen*, No. 23-cv-21377 (S.D. Fla. Sept. 29, 2023), ECF No. 75.

Fifth, defendants will suffer no irreparable harm from continuing with a trial that they have already prepared for and that has already begun. It is settled that "'[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.'" *Founders Ins. Co. Ltd. v. Everest Natl. Ins. Co.*, 41 A.D.3d 350, 351 (1st Dep't 2007) (quoting *Federal Trade Comm'n v. Standard Oil Co.*, 449 U.S. 232, 244 (1980)). And to the extent defendants complain that Supreme Court's September 26 Order was issued shortly before trial started (*see* Memo. at 10), that resulted from a summary-judgment schedule that defendants themselves requested and that defendants represented "will not result in a delay of the trial." Ex. 2, Letter from Clifford S. Robert to Hon. Arthur F. Engoron (June 2, 2023). Indeed, the summary-judgment motions were previously scheduled to be submitted a month before and argued over three weeks before the October 2 start date, but defendants requested to delay that schedule over OAG's objection. *See id.*

Finally, any interim stay of the ongoing trial would be inequitable when defendants' arguments on appeal do not obviate the need for trial. A stay of proceedings is "appropriate only where the decision in one [action] will determine all of the questions in the other." *Eisner v. Goldberger*, 28 A.D.3d 354, 354 (1st Dep't 2006) (quotation marks omitted). For instance, defendants focus on various statute-of-limitations issues (Memo. at 21-22, 24-34), such as when OAG's claims accrued and which defendants are bound by a corporate tolling agreement. But even under defendants' (incorrect) arguments, various entity defendants are indisputably bound by the tolling agreement and at least some of OAG's claims against them are indisputably timely. *See* Sept. 26 Order at 14; *see also* Memo. at 32-34. A trial is thus needed no matter the outcome of this Court's review of those statute-of-limitations issues, and there are no equitable reasons for halting the trial. Rather, disrupting an ongoing trial would "only promote delay, not efficiency," and is altogether unwarranted. *Mt. McKinley Ins. Co. v. Corning, Inc.*, 33 A.D.3d 51, 59 (1st Dep't 2006); *see Otto v. Otto*,

110 A.D.3d 620, 621 (1st Dep't 2013) (finding "no basis for a stay of the action" where a decision "will not determine all of the questions" in the action).

B. This Court Should Not Stay the Injunctive Relief Granted in Supreme Court's September 26 Order.

This Court should also deny defendants' application for an interim stay of the injunctive relief issued in Supreme Court's September 26 Order. To be clear, any stay of the September 26 Order would only stay "proceedings to enforce the judgment or order appeal from pending the appeal." C.P.L.R. 5519(c). A stay would not "extend to matters that are the 'sequelae' of granting or denying relief" on summary judgment, such as the parties' obligation to proceed with trial. *See Tax Equity Now NY LLC v. City of New York,* 173 A.D.3d 464, 465 (1st Dep't 2019).

Here, the September 26 Order's injunctive relief principally directs the parties to begin the process of dissolving various Trump Organization entities. An interim stay of that injunctive relief is unwarranted because, as OAG has communicated to defendants, OAG has been and continues to be willing to discuss with defendants a stay of enforcement of portions of the injunctive relief pending completion of trial and entry of final judgment, so long as the trial moves forward as scheduled and the already existing independent monitor continues to serve. *See* Ex. 3, Email Chain (Oct. 5, 2023). Defendants have not yet agreed to engage in those discussions, however. There should be no resort to the emergency powers of this Court when the parties have not even had an opportunity to determine if they can reach an agreement. And an agreement that stays certain of the injunctive relief while proceeding to final judgment would permit the fair and orderly resolution of this action by both avoiding the chaos of upending an ongoing trial and permitting this Court to review all aspects of this significant matter in a single appellate proceeding on a full record following final judgment. *See* C.P.L.R. 5501(a)(1).

Even without an agreement on this front, there is no reason for an interim stay of the injunctive relief, especially because OAG has been willing to accommodate certain of defendants' concerns with the injunctive relief. The September 26 Order, after finding liability on OAG's § 63(12) fraud claim, entered injunctive relief canceling the General Business Law § 130 certificates of certain Trump Organization entities. Supreme Court has subsequently supplemented the order to permit defendants to provide additional information on which entities would be affected. *See* Sept. 26 Order; Ex. Q, Oct. 5 Order at 2. The September 26 Order further starts a dissolution process that involves first recommending and appointing an independent receiver, and the deadline for recommending a receiver has been extended to October 26. *See* Sept. 26 Order at 35; Oct. 4 Order at 2. But these steps are preparatory and do not impose any immediate financial consequences. Indeed, no Trump Organization entities have yet been placed into receivership. Rather, Supreme Court will need to consider the parties' recommendations for an independent receiver and select an independent receiver, all before it determines the scope of the receivership. As in other actions that

resulted in receivers, that further relief involves a process during which defendants will have opportunities to raise objections in the ordinary course of litigation leading up to a final order of receivership that defendants may then challenge on appeal. *E.g.*, Ex. 4, Final Order Appointing Receiver, *People v. Allen*, No. 452378/2019 (Sup. Ct. N.Y. County June 2, 2022).

C. Defendants Are Also Unlikely to Succeed on the Merits of Their Interlocutory Appeal, Which Will Be Overtaken by a Final Judgment in Any Event.

Last, defendants are not likely to succeed on their appeal of the September 26 Order. OAG received defendants' papers only this morning, and will be prepared to discuss the underlying lack of merit to their appeal during any oral argument on the interim stay request and in their opposition to defendants' motion for a stay. But to provide a brief overview, Supreme Court properly found that defendants repeatedly and misleadingly inflated the value of numerous assets listed in Mr. Trump's statements of financial condition, and used those misleading statements in the course of business in New York. As Supreme Court observed, defendants' misleading strategies included, but were not limited to, valuing properties as if "rent regulated apartments are worth the same as unregulated apartments; restricted land is worth the same as unrestricted land; restrictions can evaporate into thin air;" and square footage is subjective. Sept. 26 Order at 10; *see id.* at 19-32; Ex. 5, OAG's Summ. J. Presentation at 10-49 (Sept. 22, 2023). These misstatements falsely and misleadingly inflated Mr. Trump's net worth by "between $812 million and $2.2 billion" each year. Sept. 26 Order at 19. Defendants' arguments on summary judgment largely reiterated arguments that the Court of Appeals and this Court have already rejected. *See id.* at 4-8. And though defendants now focus on timeliness issues (Memo at 21-22, 24-34), defendants' statute-of-limitations and accrual arguments fail for the reasons explained by Supreme Court and by OAG in its opposition to defendants' first motion for a stay of trial in the article 78 proceeding. *See id.* at 14-18; OAG Article 78 Affirm. As Supreme Court and OAG have explained, by its plain terms, Executive Law § 63(12) claims accrue with each instance of repeated or persistent fraudulent or illegal acts in the carrying on, conducting, or transaction of business in New York. Here, a § 63(12) claim accrued anew each time defendants prepared, certified as true, and submitted one of the many different misleading statements to lenders or insurance companies, or made other misleading representations in the course of business.

* * *

In sum, there is no basis for this Court to grant defendants' application for an interim stay of a highly public, ongoing trial, eight days after the Court just denied a stay of trial and one week into that trial. With respect to defendants' application for an interim stay of injunctive relief contained in Supreme Court's September 26 Order, there is no basis to resort to this Court's emergency powers when OAG has offered to discuss potential resolutions that would obviate the need to burden this Court.

Dated: New York, New York
October 6, 2023

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By: _____
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