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Via NYSCEF and E-Mail
Hon. Arthur F. Engoron
New York Supreme Court
New York County
Courtroom 418
60 Centre Street
New York, NY 10007

Re: People v. Donald J. Trump, *et al.* – Index No. 452564/2022

Dear Justice Engoron:

The Office of the Attorney General ("OAG"), counsel for Plaintiff in the above-referenced matter, writes in response to the Defendants' letter motion for a directed verdict pursuant to CPLR 4401 (NYSCEF No. 1652) ("Motion"). The Court requested that OAG advise whether Plaintiff intends to submit a substantive response to the Motion, and if so, when (Tr. at 6598:18-24). This letter will be the *only* response by Plaintiff to the Motion, the preparation of which has consumed far more time and effort by OAG than the Motion deserves. For the reasons explained below, the Motion, as with many of the Defendants' courtroom antics and maneuvers during the course of this trial, is nothing more than a political stunt designed to provide Mr. Trump, his co-defendants, and their counsel with sound bites for press conferences, Truth Social posts, and cable news appearances.[1] *See, e.g.*, *Trump v. Clinton*, 640 F. Supp. 3d 1321, 1332 (S.D. Fla. 2022) (sanctioning Donald J. Trump's counsel Alina Habba, Michael Madaio, and Habba Madaio & Associates for the "deliberate use of the judicial system to pursue a political agenda"), *appeal docketed*, No. 22-14099 (11th Cir., Dec. 9, 2022).

Procedurally, the Motion makes zero sense coming after Defendants have already made *five* prior directed verdict motions during the trial, two of which were "denied" (Tr. at 2444:17;

[1] *See* Nov. 9, 2023 Fox & Friends interview with Alina Habba, Esq., available at https://www.foxnews.com/video/6340799808112 (at mark 4:00) (Ms. Habba: "Today is a really important day. We're going to move for a directed verdict saying that they have rested yesterday. You didn't prove the elements of the case, certain this case should be dismissed.").

6432:4) and another of which was "absolutely denied" (Tr. at 2464:4).[2] To grant a motion for a directed verdict under CPLR 4401, a court must find that "there is no rational process by which the fact trier could base a finding in favor of the nonmoving party." *Szczerbiak v. Pilat*, 90 N.Y.2d 553, 556 (1997). In considering such a motion, "the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and *the facts must be considered in a light most favorable to the nonmovant*." *Sweeney v. Bruckner Plaza Assocs.*, 57 A.D.3d 347, 349 (1st Dep't 2008) (quoting *Szczerbiak*) (emphasis added). In denying the Defendants' prior CPLR 4401 motions, the Court necessarily concluded (multiple times) that "the fact trier could base a finding in favor of" the People in light of the evidence in the record as of the date of the denials. *Szczerbiak*, 90 N.Y.2d at 556. It is logically impossible for the Defendants' Motion to have greater merit now based on a *larger* evidentiary record than their prior failed motions had based on the more limited evidentiary records that existed at the time of the Court's prior denials; because the Court determined that the earlier, more limited evidentiary record *could* support a finding in Plaintiff's favor when considered in a light most favorable to the People (as required), *additional* evidence cannot possibly lead to a better outcome for Defendants. Unlike a fine Bordeaux, Defendants' case for a directed verdict does not improve with age.

Substantively, Defendants' Motion is beyond frivolous; Defendants are once again "whistling past the graveyard" (Tr. 2873:2) by relying on arguments the Court has already rejected and making factual assertions that are squarely contradicted by the evidence or have no record support at all. Defendants ignore the Court's instruction to the parties on October 3: "[T]his trial is not an opportunity to relitigate what I have already decided, including my conclusions in the summary judgment decision. That's why we have appeals." Tr. 183:3-6.

With respect to Defendants' argument that the statute of limitations requires the dismissal of claims arising from loan transactions that closed before July 13, 2014, the Court has rejected that position. Tr. 182:11-13 ("Every use of a false financial statement in business starts the statute of limitations running again, no matter when the transaction . . . closed."). Similarly, contrary to Defendants' assertion that Plaintiff has failed to establish the Statements of Financial Condition ("SFCs") contained any material misstatements, the Court has already found that many asset values were *materially* overvalued in many years when holding Defendants liable for fraud under § 63(12). *See, e.g.*, SJ Decision (NYSCEF No. 1531) at 23 (Seven Springs value inflated "by over 400%" in 2014, Trump Park Avenue rent-restricted units inflated by 64%-700% depending on the year).

[2] On October 25, 2023, Defendants made their first motion for a direct verdict, which the Court quickly denied (Tr. 2444:7017). Later that same day Defendants "renew[ed]" their request for a directed verdict, which the Court "[a]bsolutely denied" (Tr. 2463:1-2464:4). On November 9, 2023, after the close of Plaintiff's affirmative case, Defendants made another motion for a directed verdict after lengthy oral argument (Tr. 3851:24-3900:11 (Mr. Kise); 3900:19-3915:15 (Mr. Robert); 3916:3-3917:24 (Ms. Habba)), which the Court has not decided. On November 28, 2023, Defendants renewed their motion for a direct verdict, which the Court took under advisement (Tr. 5442:6-5444:7; 5447:13-18). Finally, on December 8, 2023, Defendants made a fifth motion for a directed verdict, which the Court summarily denied (Tr. 6430:11-6432:4).

Defendants' factual assertions fare no better:

- The only Deutsche Bank witness with authority to approve the loan terms confirmed Deutsche Bank relied on the false and misleading asset values in the SFCs when applying standard haircuts to the SFC asset values, which was confirmed by the plain language of the bank's credit memos. Tr. 1016:3-16 (Haigh); PX-302 at 9, 11.

- Evidence that Defendants inflated asset values with the intent to defraud banks and insurers abounds. To cite just a few examples: (i) Allen Weisselberg intentionally used a figure for the square footage of Mr. Trump's triplex that he knew was triple the actual size of the apartment; (ii) Jeffrey McConney included in his valuations of Seven Springs and Briarcliff future profits from developments that he intentionally did not discount to present value; (iii) Eric Trump provided estimated profits for the developments at Seven Springs and Briarcliff that were inflated well above appraised amounts knowing the information would be used for the SFCs; and (iv) Donald Trump approved vastly inflated values for Mar-a-Lago based on the false premise that the property could be sold as a private residence despite knowing he had deeded away the right to use the property for any purpose other than a social club, a commercial use of the property that resulted in much lower property taxes.

- There is ample evidence of agreements to inflate asset values among and between the Defendants to support the existence of a conspiracy. For example, every year Messrs. Weisselberg and McConney agreed to use the inflated values, Mr. Trump approved using the inflated values for the SFCs from 2011 through 2015, Donald Trump, Jr. and Mr. Weisselberg, as trustees, agreed to use the inflated values for the SFCs from 2016 through 2021, and Donald Trump, Jr. and Eric Trump together reviewed and approved the methods used to inflate the values of certain golf clubs in the 2021 SFC.

Nor does any of the testimony from the most ineffective team of experts that Defendants' money can buy change the analysis. Defendants cite to their experts in contending that "property valuation is necessarily subjective, such that there is not only one true or correct legitimate value for any given property." Motion at 4. So what? The trial was never about whether the assets in the SFCs were valued at their "one true or correct legitimate value," but rather whether Defendants intentionally inflated the estimated current values of assets listed in the SFCs, thereby creating false business records, issuing false financial statements, and committing insurance fraud. As the People will demonstrate in their post-trial brief and closing argument, Defendants did these illegal acts and must now disgorge their ill-gotten gains.

To the extent the Court deems it necessary at all to address Defendants' sixth attempt to obtain a directed verdict, it should summarily deny the Motion.

Respectfully submitted,

/s/ Andrew Amer
Andrew Amer
Special Counsel

cc: Counsel of Record (via NYSCEF)