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Attorney General Letitia James
Office of the New York State Attorney General
The Capitol
Albany, NY 12224

Re: *People by and through James v. Donald J. Trump, et al.*, Nos. 2023-04925, 2024-01134, 2024-01135 (App. Div. 1st Dep't)

Dear Attorney General James:

In furtherance of our conversations with your office, we write to request that you completely dismiss the above-referenced case against President Donald J. Trump, his family, and his businesses, and stipulate to vacate the Judgment and dismiss all claims with prejudice.

In the aftermath of his historic election victory, President Trump has called for our Nation's partisan strife to end, and for the contending factions to join forces for the greater good of the country. This call for unity extends to the legal onslaught against him and his family that permeated the most recent election cycle. This case, like the many others against President Trump, is a flashpoint of national partisan division. As counsel for President Trump in this appeal—and now as his nominee for Solicitor General of the United States—I have had the opportunity to experience this partisan division personally, and I strongly believe that it is necessary for the health of our Republic for the strife and lawfare to end. You now have the singular opportunity to help cure this division.

Other Democratic officials and prosecutors are abandoning their discredited lawsuits against President Trump. For example, just yesterday, the Special Counsel's office moved to voluntarily dismiss its criminal case against President Trump in the U.S. District Court for the District of Columbia. Government's Motion To Dismiss, *United States v. Trump*, Doc. 281, Case No. 1:23-cv-00257 (D.D.C. Nov. 25, 2024). The district court granted that motion and dismissed that case the same day. *Id.* Doc. 283. The Special Counsel's office also moved to voluntarily dismiss its criminal case against President Trump that is on appeal in the U.S. Court of Appeals for the Eleventh Circuit. Motion To Dismiss the Appeal as to Donald J. Trump, *United States v. Trump, et al.*, Case No. 24-23411-J (11th Cir. Nov. 25, 2024). Today, the Eleventh Circuit granted that motion and dismissed the case against President Trump. *Id.* Doc. 81-2, at 2. Similarly, the District Attorney's Office of New York County consented to postpone all pending deadlines in its

criminal case against President Trump,[1] and on November 22, 2024, the trial judge adjourned sentencing indefinitely while granting President Trump leave to file a new motion to dismiss.[2]

This case warrants the same treatment. As detailed in our appellate briefing, this action exceeds the New York Attorney General's authority under Executive Law § 63(12). Stipulating to the vacatur of the judgment and the dismissal of the case would restore the NYAG's power to its more legitimate scope.

First, in this case, the statute of limitations bars claims and liability. The Supreme Court evaded that problem only by disregarding the Appellate Division's clear instruction that "[t]he continuing wrong doctrine does not delay or extend" the limitation period. *People v. Trump*, 217 A.D.3d 609, 611 (1st Dep't 2023). Ignoring that direct, binding instruction, the Supreme Court erroneously and disrespectfully applied the continuing-wrong doctrine to resuscitate long-defunct claims. This led to an indefensible judgment that directly violates the statute of limitations. The case should be dismissed on that basis alone.

Moreover, the case involves no victims, no complaints, no misstatements, no causation, and no injuries or losses. Instead, President Trump provided clear and unambiguous disclaimers to sophisticated commercial parties who made decisions based on their own due diligence. Every loan and insurance payment was made in full, and either on time or early. President Trump's business partners were delighted with these transactions. They benefited enormously, making over $100 million in profits. The actual participants to the transactions described President Trump and his business as "tremendous," "vision[ary]," "sensational," "superb," "a highly probable success story," and as creating "a long and satisfactory relationship."

No evidence supports any finding that the alleged "misstatements" were in fact misstatements, or that they had any "capacity or tendency to deceive," as required to establish a § 63(12) violation. In fact, the opposite is true. The evidence definitively demonstrates that the defendants' counterparties were not deceived, that they performed their own due diligence and eagerly sought, and embraced, the highly profitable business transactions, and that the challenged statements did not affect the terms of any transaction. As noted above, they were paid back in full, on time or early.

Worse still, the chilling effect generated by this case is crushing to businesses across New York, who are being forced to flee to friendlier States where such standardless enforcement and excessive punishment are not found. Indeed, as many of our supporting *amici* emphasize, this case continues to deter investment and cause capital to leave New York in droves.

Moreover, the Supreme Court's valuation decisions are indefensible. The unrebutted expert testimony in this case demonstrates that President Trump's Statements were consistent with

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[1] *See, e.g.*, Zach Schonfeld et al., *Judge Delays Trump Immunity Decision in NY Hush Money Case,* THE HILL (Nov. 12, 2024), *at* https://thehill.com/regulation/court-battles/4985765-trump-immunity-hush-money/.

[2] *See, e.g.*, Brooke Singman, *New York judge grants Trump request to file motion to dismiss charges, cancels sentencing indefinitely*, FOX NEWS (Nov. 22, 2024), *at* https://www.foxnews.com/politics/new-york-judge-grants-trump-request-file-motion-dismiss-case-cancels-sentencing-indefinitely.

Generally Accepted Accounting Principles (GAAP). GAAP explicitly *permits* the wrongly alleged "misleading" estimates in this case, as attested by the defendants' expert witness from the prestigious NYU Stern School of Management, who highly praised the Statements. By contrast, the Supreme Court failed to cite GAAP or any other objective standards to support its erroneous findings—relying instead on wholly subjective standards such as "I know it when I see it." As a result, the Judgment sends shock waves through the marketplace by incorrectly deeming *GAAP-compliant* disclosures to be supposedly "fraudulent," based on a single judge's utterly subjective and incorrect determinations.

The valuation decisions are not only subjective—they are also wildly inaccurate. The Supreme Court shockingly valued Mar-a-Lago at $18 million to $27.6 million, disregarding unrebutted expert testimony that it is worth over $1.2 billion. In fact, recent disclosures demonstrate that Mar-a-Lago—which is *debt-free*—generated $56.9 million in revenue in the last year alone, and $52.3 million the year before.[3] Furthermore, when tested in the marketplace, other assets' sale prices dramatically *exceeded* the Statements' estimated values. The Old Post Office sold for about $400 million after being estimated at $130 million, and Ferry Point sold for $60 million, with a potential escalation to $175 million, after being estimated at $22.5 million on President Trump's financial statements.

President Trump is one of the most successful developers in the history of New York. He rebuilt the New York skyline, created thousands of jobs, rescued and rejuvenated historic Wollman Rink, developed the $3 billion West Side Railyards from 59th to 72nd Street in Manhattan, was deeply involved in developing the Jacob Javits Convention Center, and is singularly responsible for many other successes. This lawsuit against him "vindicates no public purpose." *People ex rel. Spitzer v. Grasso*, 54 A.D.3d 180, 196 (1st Dep't 2008).

Furthermore, President Trump will soon take office as the 47th President of the United States. Thus, the continued pendency of this lawsuit raises "grave and doubtful constitutional questions," *id.* at 197, and greatly disserves the national interest. Twenty-four years ago, President Clinton's Department of Justice emphasized the hazards of allowing criminal enforcement actions to remain pending against a sitting President of the United States. *See* 24 U.S. Op. O.L.C. 222 (2000), 2000 WL 33711291. President Clinton's attorneys reasoned that "the President is the symbolic head of the Nation. To wound him by a criminal proceeding is to hamstring the operation of the whole governmental apparatus, both in foreign and domestic affairs." *Id.* at *7. The federal Special Counsel's office relied on this opinion yesterday in voluntarily dismissing the criminal case against President Trump. Government's Motion To Dismiss, *United States v. Trump*, Doc. 281, *supra*, at 2-5. The same concerns arise from a civil fraud enforcement action, like this one, where six of the seven causes of action are based on alleged violations of criminal law. Indeed, it would be "perilous" to permit such an action to remain pending against a sitting President, because doing so "would risk imposing ... burdens that would make it impossible for a President to effectively carry out his constitutional duties." *Id.* at 4.

Likewise, the Supremacy Clause prevents state prosecutors from proceeding against the sitting President in any way. "[S]tates have no power ... to retard, impede, burden, or in any

[3] Giulia Carbonaro, *Donald Trump Gets Financial Boost From Mar-a-Lago, Disclosures Show*, NEWSWEEK (Aug. 16, 2024), *at* https://www.newsweek.com/donald-trump-gets-financial-boost-mar-lago-disclosures-1940194.

manner control, the operations" of the federal government. *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 436 (1819). As the U.S. Supreme Court reaffirmed in 2020, "the Constitution guarantees 'the entire independence of the General Government from any control by the respective States.'" *Trump v. Vance*, 591 U.S. 786, 800 (2020) (quoting *Farmers and Mechanics Sav. Bank of Minneapolis v. Minnesota*, 232 U.S. 516, 521 (1914)). "It follows that States also lack the power to impede the President's execution of those laws." *Id.* at 801. Under this principle, "[t]he Supremacy Clause prohibits state judges and prosecutors from interfering with a President's official duties." *Id.* at 806.

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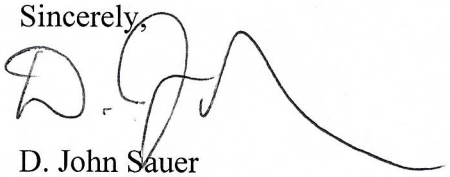
In his Farewell Address, President George Washington warned against "[t]he alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities." *Washington's Farewell Address* 13 (1796), *at* https://www.senate.gov/artandhistory/history/resources/pdf/Washingtons_Farewell_Address.pdf. Such factional division and strife, President Washington warned, ultimately leads to the "ruins of public liberty." *Id.* at 13-14. As a modern statesman and icon of the Democratic party, President John F. Kennedy, stated:

> The time has come for intellectuals and politicians alike to put aside those horrible weapons of modern internecine warfare, the barbed thrust, the acid pen, and, most sinister of all, the rhetorical blast. Let us not emphasize all on which we differ but all we have in common. Let us consider not what we fear separately but what we share together.

Remarks of Senator John F. Kennedy at Harvard University, Cambridge, Massachusetts, June 14, 1956, *at* https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/harvard-university-19560614. President Kennedy's vision of unity applies here.

On October 3, 1863—the time of our Nation's greatest division—President Abraham Lincoln issued his Thanksgiving Proclamation, establishing the national holiday that we celebrate this week. *See* President Abraham Lincoln, *Thanksgiving Proclamation* (Oct. 3, 1863).[4] President Lincoln called for the American people to set aside their bitter divisions so that the blessings of liberty could be "solemnly, reverently, and gratefully acknowledged as with one heart and one voice by the whole American people." *Id.* He urged all Americans to "fervently implore the interposition of the Almighty hand to heal the wounds of the nation, and to restore it, as soon as may be consistent with the Divine purposes, to the full enjoyment of peace, harmony, tranquility, and union." *Id.* Invoking the same spirit of unity, we request that you stipulate to the vacatur of the Judgment and dismissal of this case with prejudice.

Sincerely,



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[4] *Available at* https://obamawhitehouse.archives.gov/sites/default/files/docs/transcript_for_abraham_lincoln_thanksgiving_proclamation_1863.pdf.