



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
28 LIBERTY STREET
NEW YORK, NY 10005

February 7, 2024

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

RE: *People v. Trump*, et al., No. 452564/2022

Dear Justice Engoron:

On behalf of the Office of the Attorney General (“OAG”), we write in response to the Court’s request for a letter addressing news reports of plea negotiations between Allen Weisselberg and the Manhattan District Attorney’s Office (“DANY”) regarding his potential perjurious testimony during the trial in this action and the investigation that preceded it. At this time, we are not involved in any negotiations and are unaware of what specific trial testimony may be the subject of the plea negotiations or whether Mr. Weisselberg has conceded that he testified falsely. Other attorneys within OAG have been cross-designated to DANY on other matters, including some involving Mr. Weisselberg, and so this response is limited to the knowledge of the attorneys that tried this case before Your Honor.¹

OAG does not, however, believe that this development should result in any delay of a final decision. The Court has already found Defendants liable for violating Executive Law § 63(12). The Court should hold them to account and impose necessary measures to prevent further fraud, including industry bars and the appointment of a monitor with robust oversight, as soon as possible. If additional sanctions are necessary to address any potential perjury, the Court can retain jurisdiction to address those issues. *Cf. Antidote Int’l Films, Inc. v. Bloomsbury Pub., PLC*, Civ. No. 06–6114, 2007 WL 1834839, at *2 (S.D.N.Y. June 26, 2007) (“[B]ecause sanctions would be appropriate in the absence of the jury’s award, the Court will consider reopening this issue if there is any reversal or modification of the jury’s award on appeal, and for that purpose, the Court will retain jurisdiction over this aspect of the case even after the final judgment in this case is entered.”)

Indeed, given the prospective relief sought here, including affirmative injunctions and close oversight by an independent monitor, the Court will be able to further tailor any relief to account for any developments that may arise as the result of the perjury investigation. And if the potential perjury at issue proves to be expansive and calls into question the veracity of testimony

¹ As noted during the preceding investigation, cross-designated attorneys report to, and operate at the direction of, DANY for the purposes of their work on those matters. *See People v. The Trump Organization, Inc.*, No. 451685/2020, NYSCEF No. 645 at ¶¶ 7-8.

from other witnesses and Defendants, then the Court could revisit the judgment on a motion pursuant to CPLR 5015. *See, e.g., Trapp v. American Trading and Production Corp.*, 66 A.D. 2d 515, 516 (1st Dep't 1979).

Further delay in the final resolution of this proceeding pending the outcome of a perjury proceeding is unnecessary for a number of reasons. *First*, the record already demonstrates that exculpatory testimony from Mr. Weisselberg cannot be relied upon. His testimony about his purported lack of involvement in tripling the size of the triplex penthouse apartment was contradicted by contemporaneous documents and the testimony of Kevin Sneddon. NYSCEF No. 1667 ¶¶ 296-297. Likewise, his testimony on other subjects, like his severance agreement or whether or not Patrick Birney reported to him, was simply not credible. *Id.* ¶¶ 305, 294. His prevarications on those subjects are sufficient to invoke *falsus in uno*, regardless of whether they also support a criminal prosecution for perjury. As the Second Circuit has observed, “although it is undoubtedly the case that a good many untruthful statements occur during the course of a civil trial, many such falsehoods essentially are resolved by adverse . . . verdicts, leaving for criminal prosecution those few instances where a witness’s lie is so material to the truth-seeking function of a trial that the prosecutor (sometimes, upon the referral of the trial judge) elects to seek an indictment.” *United States v. Cornielle*, 171 F.3d 748, 751 (2d Cir. 1999). So too here the primary means to resolve any issues arising from Defendants’ reliance on perjurious testimony is a finding of liability and the imposition of relief authorized by the Executive Law. Potential further remedies through the criminal process need not delay that level of resolution.

Second, if Mr. Weisselberg did commit perjury, this Court does not need to await the outcome of a criminal proceeding to resolve the issue. To the contrary, if counsel learns that their client has offered false material evidence, they have an affirmative obligation to take “reasonable remedial measures including, if necessary, disclosure to the tribunal.” Rule 3.3 of the Rules of Professional Conduct (22 NYCRR § 1200.25). If there are facts known to any defense counsel establishing that Mr. Weisselberg committed perjury, such counsel is obligated to disclose those facts, even if privileged and even if it exposes Mr. Weisselberg to prosecution for perjury.² As described in a formal opinion from the Association of the Bar of the City of New York:

Rule 3.3(a)(3) creates a disclosure obligation: “If a lawyer, a lawyer’s client, or a witness called by the lawyer has offered *material* evidence and the lawyer comes to know of its falsity, the lawyer *shall* take reasonable remedial measures, including, if necessary, disclosure to the tribunal.” (Emphasis added.) Rule 3.3(c) makes clear that this obligation trumps a lawyer’s duty of confidentiality. Specifically, Rule 3.3(c) states that the remedial obligation in Rule 3.3(a) applies “even if compliance requires disclosure of information otherwise protected by Rule 1.6.” To “know” of the falsity of proffered

² We note that all Defendants, including Donald Trump, Jr. and Eric Trump, affirmatively relied on the testimony of Mr. Weisselberg through their counsel’s closing arguments and post-trial briefs. *See, e.g.*, NYSCEF Nos. 1663 ¶¶ 355, 368-393; 1665 ¶¶ 18-20, 37. In addition, in response to a request by OAG after the publication of an article by *Forbes* arguing that Mr. Weisselberg had committed perjury, lead counsel for Defendants had searches run for September 2016 to determine if there were unproduced responsive documents. *See* Tab A. While Defendants never produced the results of those searches, if they indicate Mr. Weisselberg gave false testimony, Defendants are obliged to disclose that to the Court.

evidence, the lawyer must have “actual knowledge of the fact in question,” but such knowledge “may be inferred from circumstances.” Rule 1.0(k).

* * * * *

Moreover, unlike in other jurisdictions, Rule 3.3 is the only mandatory exception in New York to the obligation of confidentiality contained in Rule 1.6. As the unique nature of Rule 3.3 suggests, the obligation to take reasonable remedial measures is premised on “the lawyer’s obligation as an officer of the court *to prevent the trier of fact from being misled* by false evidence.” Rule 3.3, cmt. [5] (emphasis added.) This exception to the lawyers’ obligation of confidentiality, which is one of a lawyer’s bedrock obligations, is intended to protect the integrity of the adjudicative process.

* * * * *

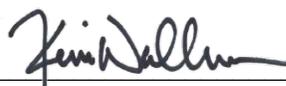
Further, although disclosure may have grave adverse consequences for the client (in some instances including prosecution for perjury), the alternative – for the lawyer to become a willing participant in “deceiving the court [and] thereby subverting the truth-finding process” – is untenable. See Rule 3.3, cmt. [11].

NY Eth. Op. 2013-2, 2013 WL 2997051 at *1-2. Hence any facts demonstrating that Mr. Weisselberg testified falsely must be disclosed to the Court if known to be false by Defendants’ counsel, regardless of any pending perjury investigation or plea negotiations. And that disclosure should occur immediately without the need for any delay of the resolution of this proceeding.

Third, there should be no further delay as a result of this development because there is no fixed period of time for any potential perjury issues to be resolved. Negotiations over a potential plea agreement could go on indefinitely. If Mr. Weisselberg and DANY do not reach agreement, a trial on any potential perjury charges would take even longer. And delaying the final determination in this action to await the outcome of plea negotiations would have the perverse effect of rewarding Defendants if Mr. Weisselberg is indeed guilty of perjury. Defendants would have been able to delay their final judgment – including on a cause of action decided on summary judgment – by relying on perjured testimony.

In sum, the fact that a defendant who lacks credibility and has already been to prison for falsifying business documents may have also perjured himself in this proceeding or the preceding investigation is hardly surprising. If true, he should be held to account fully for his actions. But it should not delay a final decision and judgment imposing remedial measures in this law enforcement proceeding.

Respectfully submitted,



Kevin Wallace
Senior Enforcement Counsel
Division of Economic Justice

TAB A

From: [chris kise](#)
To: [Wallace, Kevin](#)
Cc: ckise@continentalplc.com
Subject: Re: People v. Trump, et al., No. 452564/2022
Date: Wednesday, October 25, 2023 5:32:48 PM

yes haystack has run the searches and is now de-duplicating etc the population so we have at least a starting point.
thanks.
best

From: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Date: Wednesday, October 25, 2023 at 7:34 AM
To: chris kise <chris@ckise.net>
Subject: RE: People v. Trump, et al., No. 452564/2022

Chris –

I wanted to follow-up on this and see if this was something the Defendants were still planning to turn over. If not we can send the Court the expanded letter it requested.

Thanks,

KCW

From: chris kise <chris@ckise.net>
Sent: Thursday, October 19, 2023 8:02 PM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Subject: Re: People v. Trump, et al., No. 452564/2022

thanks for the email.
let's discuss in the morning but i think this can work.

From: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Date: Thursday, October 19, 2023 at 7:01 PM
To: chris kise <chris@ckise.net>
Subject: RE: People v. Trump, et al., No. 452564/2022

Chris –

Dropped the others from this thread. Taking you up on the offer to have Haystack undertake a review, could we agree to have Haystack conduct a sweep of data from September 2016 with the following search terms:

- Forbes
- Ekovich
- NOI
- Trepp
- Niketown
- "40 Wall"
- Triplex
- Penthouse
- "Joel R. Anderson"
- 10,996.39
- "1290 Avenue"
- "555 California"
- "per key"
- "Palos Verdes"
- "residential lots"
- "seven springs"

Both sides could then review the results to determine if there are any unproduced responsive documents and if there are figure out how to proceed from there. (Depending on the volume Defendants could manually pull privileged docs or do an automated pull.)

Happy to discuss this approach tomorrow morning.

KCW

From: chris kise <chris@ckise.net>
Sent: Thursday, October 19, 2023 7:53 AM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Allison R. Greenfield <argreenf@nycourts.gov>
Cc: Hon. Arthur Engoron <aengoron@nycourts.gov>; Garth A. Johnston <GAJOHNST@nycourts.gov>; crobert@robertlaw.com; ahabba@habbalaw.com; barbara.jones@bracewell.com; Kokalas, Tom <thomas.kokalas@bracewell.com>; ckise@continentalpllc.com; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: Re: People v. Trump, et al., No. 452564/2022

Suggest you wait until 10 as nothing will happen between now and then anyway.

And the distraction of potentially needless escalation is something neither of us has time for.

From: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Date: Thursday, October 19, 2023 at 7:37 AM
To: chris kise <chris@ckise.net>, Allison R. Greenfield <argreenf@nycourts.gov>
Cc: Hon. Arthur Engoron <aengoron@nycourts.gov>, Garth A. Johnston <GAJOHNST@nycourts.gov>, crobert@robertlaw.com <crobert@robertlaw.com>, ahabba@habbalaw.com <ahabba@habbalaw.com>, barbara.jones@bracewell.com <barbara.jones@bracewell.com>, Kokalas, Tom <thomas.kokalas@bracewell.com>, ckise@continentalpllc.com <ckise@continentalpllc.com>, Amer, Andrew <Andrew.Amer@ag.ny.gov>, Faherty, Colleen <Colleen.Faherty@ag.ny.gov>, Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: RE: People v. Trump, et al., No. 452564/2022

Baring alternative direction from the Court we will file the letter on NYSCEF at 8:00 am.

From: chris kise <chris@ckise.net>
Sent: Thursday, October 19, 2023 7:08 AM
To: Allison R. Greenfield <argreenf@nycourts.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>
Cc: Hon. Arthur Engoron <aengoron@nycourts.gov>; Garth A. Johnston <GAJOHNST@nycourts.gov>; crobert@robertlaw.com; ahabba@habbalaw.com; barbara.jones@bracewell.com; Kokalas, Tom <thomas.kokalas@bracewell.com>; ckise@continentalpllc.com; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: Re: People v. Trump, et al., No. 452564/2022

[EXTERNAL]

Good morning.

Suggest respectfully we first discuss this at sidebar today before having it develop further.

Thank you.

Respectfully,

Chris Kise

From: Allison R. Greenfield <argreenf@nycourts.gov>
Date: Thursday, October 19, 2023 at 7:06 AM
To: Wallace, Kevin <Kevin.Wallace@ag.ny.gov>

Cc: Hon. Arthur Engoron <aengoron@nycourts.gov>, Garth A. Johnston <GAJOHNST@nycourts.gov>, chris kise <chris@ckise.net>, crobert@robertlaw.com <crobert@robertlaw.com>, ahabba@habbalaw.com <ahabba@habbalaw.com>, barbara.jones@bracewell.com <barbara.jones@bracewell.com>, Kokalas, Tom <thomas.kokalas@bracewell.com>, ckise@continentalpllc.com <ckise@continentalpllc.com>, Amer, Andrew <Andrew.Amer@ag.ny.gov>, Faherty, Colleen <Colleen.Faherty@ag.ny.gov>, Solomon, Louis <Louis.Solomon@ag.ny.gov>
Subject: Re: People v. Trump, et al., No. 452564/2022

Dear Mr. Wallace,

Justice Engoron has directed that you file the attached letter on NYSCEF.

Thank you.

Sent from my iPhone

On Oct 18, 2023, at 7:17 PM, Wallace, Kevin <Kevin.Wallace@ag.ny.gov> wrote:

Your Honor,

Please see the attached letter concerning the sidebar held on Thursday, October 12, 2023.

Respectfully submitted,

KCW

Kevin Wallace

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<2023.10.18.letter.pdf>