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November 18, 2021

Re: *Project Veritas v. The New York Times Company, Maggie
Astor, Tiffany Hsu, and John Does 1-5* (Index No.
63921/2020)

Dear Justices Lefkowitz and Wood:

We write on behalf of Defendant The New York Times Company (“The Times”) in the above-captioned action to inform the Court that we are in receipt of Plaintiff’s Motion for an Order to Show Cause (NYSCEF # 164-68). Plaintiff’s Motion and proposed Order to Show Cause seek the extraordinary remedy of a prior restraint—“the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559 (1976). As the United States Supreme Court recognized nearly 100 years ago, the “chief purpose of the [First Amendment] guaranty [is] to prevent previous restraints upon publication.” *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931). Prior restraints bear a “heavy presumption against . . . constitutional validity,” “may be imposed only in the most exceptional cases,” and can only be issued “upon a showing on the record that such expression will immediately and irreparably create public injury.” *Porco v. Lifetime Entertainment Services, LLC*, 116 A.D.3d 1264, 1266 (3d Dep’t 2014) (internal citations and quotation marks omitted) (reversing order enjoining the broadcast of a movie claimed to violate NY Civil Rights Law Sections 50/51 and finding the order to be an unconstitutional prior restraint).

Plaintiff's proposed Order to Show Cause requests, among other things, that the Court enter an order directing The Times to "refrain from further disseminating or publishing" information that Project Veritas asserts, without evidence, that The Times obtained improperly. Such an order is, on its face, the paradigmatic example of an unconstitutional prior restraint. *See, e.g., Alexander v. United States*, 509 U.S. 544, 550 (1993) ("Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints."); *Organization for a Better Austin v. Keefe*, 402 U. S. 415 (1971) (vacating order "enjoining petitioners from distributing leaflets anywhere in the town of Westchester, Illinois" as impermissible prior restraint); *Vance v. Universal Amusement Co.*, 445 U. S. 308, 311, 317 (1980) (per curiam) (striking down, on prior restraint grounds, Texas statute that authorized courts, upon a showing that obscene films had been shown in the past, to issue an injunction prohibiting future exhibition of films that had not yet been found to be obscene); *Porco*, 116 A.D.3d at 1266.

Before the imposition of such a draconian and disfavored restriction, The Times should have the opportunity to be heard. The Times therefore respectfully requests that the Court hold in abeyance Plaintiff's request to enter an Order to Show Cause in order to permit The Times to file a response in opposition to Plaintiff's request no later than November 24, 2021. As our forthcoming opposition will make clear, Plaintiff's request is factually and legally deficient. The request lacks merit and seeks relief that the Court cannot and must not grant.

Respectfully submitted,

/s/ Joel Kurtzberg
Joel Kurtzberg

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VIA NYSCEF

Cc: All counsel of record (*via NYSCEF*)