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January 5, 2023

Hon. Arthur Engoron
Supreme Court, New York County
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") writes in response to the email yesterday from Chambers concerning potential sanctions against attorneys from Habba Madaio & Associates LLP, Continental PLLC, and Robert & Robert PLLC, for engaging in frivolous litigation conduct. We set forth OAG's views below for the purpose of assisting the Court in exercising its discretion to order sanctions pursuant to 22 NYCRR 130-1.1.

First, the argument that this official action violates the Equal Protection Clause because of prior public statements by the Attorney General[1] has no good faith legal basis because it is barred by *res judicata* as a result of this Court's decision on February 17, 2022 in OAG's related subpoena enforcement action, which was subsequently upheld by the First Department. *See People of the State of New York v. The Trump Organization, Inc.*, No. 451685/2020, 2022 WL 489625, at *4-6 (Sup. Ct. N.Y. Cnty. Feb. 17, 2022), *aff'd*, 205 A.D.3d 625 (1st Dep't 2022), *appeal dismissed*, 38 N.Y.3d 1053 (2022).

Indeed, as discussed in greater detail in OAG's opposition brief, the Northern District of New York has already determined that such claims are barred by *res judicata* based on the February 17, 2022 order. *See* NYSCEF No. 245 at 7-8; *see also Trump v. James*, Civ. No. 21-1352, 2022 WL 1718951 at *16-19 (N.D.N.Y. May 27, 2022) (holding that *res judicata* barred the action based on the preclusive effect of this Court's February 17, 2022 order because Mr. Trump

[1] As with most of Defendants' arguments, this point is spread across five briefs. The "lead" argument is found in the brief by Mr. Trump and the Trump Organization. *See* NYSCEF No. 197 at 13-21. It is repeated in shorter form in the briefs supporting the four motions filed by other groups of defendants. *See* NYSCEF No. 199 at 21, NYSCEF No. 202 at 20, NYSCEF No. 211 at 20-21, NYSCEF No. 221 at 19-20.

and the Trump Organization already had raised or "could have raised the claims and requested the relief they seek in the federal action" in the subpoena enforcement action).

Likewise, in denying a motion for a preliminary injunction, a federal court in Florida recently found the same claims asserted by Mr. Trump against the Attorney General, based on many of the same public statements, are unlikely to succeed on the merits because they are likely barred by issue preclusion and claim preclusion, although Mr. Trump is represented by different counsel in that case. *Trump v. James*, Civ. No. 22-81780, 2022 WL 17835158, at *4 (S.D. Fla. Dec. 21, 2022) (noting Mr. Trump "alleges almost verbatim many of the same allegations" he made against the Attorney General "in various New York courts" and finding the action "is likely barred"). That court specifically noted the determination by the Northern District that these issues were barred by *res judicata* based on this Court's February 2022 decision. *Id.* at *3 ("In dismissing the complaint, the district court held that *res judicata* barred the action based on the preclusive effect of Justice Engoron's February 2022 Order.").[2]

We note that New York courts have imposed sanctions where a party continues to press claims barred by *res judicata*. *See, e.g., Yan v. Klein*, 35 A.D.3d 729, 729–30 (2d Dep't 2006) ("The plaintiff, following two prior actions, has 'continued to press the same patently meritless claims,' most of which are now barred by the doctrines of *res judicata* and collateral estoppel.")

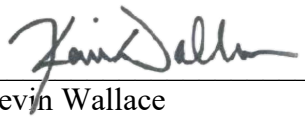
Second, with respect to the arguments that OAG lacks the standing and capacity to sue and that the Mazars disclaimers insulates Defendants from liability, we elected not to rely on the doctrine of law of the case in our opposition. As the Court of Appeals has noted, "the granting of a temporary injunction serves only to hold the matter is *statu quo* until opportunity is afforded to decide upon the merits," and "does not constitute the law of the case or an adjudication on the merits, and the issues must be tried to the same extent as though no temporary injunction had been applied for." *J.A Preston Corp. v. Fabrication Ent.,* 68 N.Y.2d 397 (1986) (*quoting Walker Mem. Baptist Church v. Saunders*, 285 N.Y. 462, 474 (1941)); *see also, e.g., London Paint & Wallpaper Co. v. Kesselman*, 158 A.D.3d 423 (1st Dep't 2018). We have not identified any examples of cases applying the standard in a situation like the one found here: where a party fails in opposing entry of a preliminary injunction and then a few weeks later simply repeats the losing arguments in support of a motion to dismiss. But given the Court of Appeals' unequivocal language, we have not sought to have the rulings from the preliminary injunction order treated as law of the case for purposes of the motion to dismiss.

That being said, the form of the rehashed arguments here appears calculated to delay the proceedings and needlessly divert the parties' and court's resources. Simply noting the earlier arguments in their papers for the stated purpose of preserving appellate rights would have been sufficient. *See, e.g., People v. Finch*, 23 N.Y.3d 408, 413 (2014) ("As a general matter, a lawyer is not required, in order to preserve a point, to repeat an argument that the court has definitively rejected."). In their opening papers, Defendants spread their standing arguments across more than

[2] The Southern District of Florida suggested that Mr. Trump reconsider his opposition to the pending motion to dismiss because the "litigation has all the telltale signs of being both vexatious and frivolous." 2022 WL 17835158 at *4 n. 6.

30 pages in five briefs.[3] The Mazars disclaimer argument covers 15 pages across those same five briefs.[4] All of those arguments simply repeat points that had been extensively briefed and argued, and decided by the Court, a month earlier. At no point did Defendants mention that earlier determination, much less attempt to explain why the Court's reasoning was wrong. In fact, the Court's prior determination was and is correct in all respects. *See, e.g., Stow v. Stow,* 262 A.D.2d 550, 551 (2d Dep't 1999) ("Making claims of colorable merit can constitute frivolous conduct within the meaning of 22 NYCRR 130–1.1 if undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another." (quotation marks omitted)).

Respectfully submitted,



Kevin Wallace
Senior Enforcement Counsel
Division of Economic Justice

[3] The lead argument on standing is found in the brief by Mr. Trump and the Trump Organization. *See* NYSCEF No. 197 at 3-11. It is repeated in shorter form in the other four motions. *See* NYSCEF No. 199 at 19-20, NYSCEF No. 202 at 4-10, NYSCEF No. 211 at 11-12, NYSCEF No. 221 at 5-10. The argument on "capacity" is also found in the brief by Mr. Trump and the Trump Organization. *See* NYSCEF No. 197 at 11-13. It too is then repeated in shorter form in the other four motions. *See* NYSCEF No. 199 at 20-21, NYSCEF No. 202 at 10-12, NYSCEF No. 211 at 12-13, NYSCEF No. 221 at 10-11.

[4] For some reason, the lead argument on the Mazars disclosure is found in the brief by Mr. Weisselberg and Mr. McConney. *See* NYSCEF No. 199 at 13-18. It is repeated in shorter form in the other four motions. *See* NYSCEF No. 197 at 21-22, NYSCEF No. 202 at 19-20, NYSCEF No. 211 at 19-20, NYSCEF No. 221 at 14-16.