

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the
State of New York,

Petitioner,

Index No. 451685/20

-against-

Motion Seq. No.: 006

THE TRUMP ORGANIZATION, INC.,
DJT HOLDINGS LLC, DJT HOLDINGS MANAGING
MEMBER LLC, SEVEN SPRINGS LLC,
ERIC TRUMP, CHARLES MARTABANO,
MORGAN, LEWIS & BOCKIUS, LLP, and
SHERI DILLON,

**AFFIDAVIT OF
ALAN GARTEN**

Respondents.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Alan Garten, being duly sworn, deposes and says:

1. I am the Executive Vice President and Chief Legal Officer of The Trump Organization, Inc. (“TTO”)¹ and based upon my position I am personally familiar with the facts, pleadings, and prior proceedings had in this matter..

2. TTO has never waived any assertion of attorney-client communication and/or work product privileges with respect to any documents or other materials in respondent Charles Martabano’s possession, custody, or control, including, without limitation, the documents listed on the privilege log that Charles Martabano, Esq. submitted to the Office of the New York State

¹ All references to TTO include respondents DJT Holdings LLC, DJT Holdings Managing Member LLC, and Seven Springs LLC.

Attorney General (the “OAG”) in response to the January 8, 2020 subpoena that the OAG served on him (the “Subpoena”). *NYSCEF Doc. No. 94, Ex. 80; NYSCEF Doc. No. 19, Ex. 5.*²

3. Mr. Martabano, a land-use attorney, previously represented TTO in connection with the potential development of the Seven Springs property from approximately 2011 until about June 2014, when he last provided legal services on the project. *See the Colangelo Affirmation at ¶ 112; NYSCEF Doc. No. 87, Ex. 73.* **Mr. Martabano does not, however, currently represent TTO with respect to the OAG investigation or any other matter.** Instead, TTO is represented in the OAG investigation by the law firm of LaRocca Hornik Rosen & Greenberg LLP, while Mr. Martabano is represented by his own retained counsel, George Calcagnini, Esq.

4. Separate and apart from the Subpoena served by the OAG on Mr. Martabano (which is the subject of this motion), the OAG served subpoenas on TTO. In response to those subpoenas, TTO made its own independent document productions, and also prepared and produced its own privilege logs. Of course, TTO had in its files numerous documents that contained privileged communications with its prior counsel Mr. Martabano (just as Mr. Martabano presumably has these same privileged communications in his files). TTO identified these privileged documents in its own privilege logs, which included at least 123 communications with Mr. Martabano, and produced these logs to the OAG. *See e.g., NYSCEF Doc. No. 69, Ex. 55.* The OAG accepted TTO’s privilege log entries, however, many of these very same privileged documents identified by TTO as privileged are now threatened with disclosure based upon this Court’s decision that Mr. Martabano somehow waived TTO’s privilege.

² Citations to “Ex.” are to the exhibits annexed to the First Affirmation of Matthew Colangelo dated August 21, 2020 (NYSCEF Doc. No. 14) (“Colangelo Affirmation”).

5. The OAG at all times insisted that Mr. Martabano be solely responsible for complying with the Subpoena. Initially, Mr. Martabano, through his counsel George Calcagnini, refused to produce to the OAG records responsive to the Subpoena. *NYSCEF Doc. No. 88, Ex. 74*. Following TTO's intervention, Mr. Martabano agreed to produce responsive documents to the OAG. *NYSCEF Doc. No. 90, Ex. 76*.

6. In keeping with the open dialogue between TTO and the OAG, TTO and its counsel updated the OAG, advising it of Mr. Martabano's willingness to comply with the Subpoena, but alerting the OAG to the fact that Mr. Martabano would not be able to produce the documents until sometime in April. *Id.* The OAG responded, “[w]e’ll work with [Mr. Calcagnini] directly on timing.” (emphasis supplied). *Id.*

7. Nevertheless, as Mr. Martabano's former client and the holder of any attorney-client communications and work product privileges, TTO undertook diligently and in the utmost good faith the work of reviewing Mr. Martabano's documents in order to assert and protect its privileges. *NYSCEF Doc. No. 63, Ex. 49*.

8. In a letter dated May 28, 2020, the OAG demanded that TTO promptly complete its privilege review of Mr. Martabano's records. *NYSCEF Doc. No. 60, Ex. 46*.³

9. On June 2, 2020, TTO updated the OAG, advising Matthew Colangelo that TTO was working diligently and in good faith to complete its review of Mr. Martabano's document production, which had “proved very challenging.” *NYSCEF Doc. No. 175, Ex. 161*. TTO informed the OAG that, notwithstanding the difficulties TTO faced during its review, TTO

³ On April 10, 2020, Mr. Calcagnini delivered Mr. Martabano's records to TTO for its privilege review. *NYSCEF Doc. No. 91, Ex. 77*. However, rather than producing them digitally, Mr. Calcagnini delivered hard copies of the records to TTO's outside counsel's New York City office. *NYSCEF Doc. No. 73, Ex. 59*. Because of the Covid-19 pandemic, the documents could not be accessed for TTO's review until April 24, 2020. *NYSCEF Doc. No. 60, Ex. 46*.

would be making a production of Mr. Martabano's documents to the OAG later that day or the following day. *Id.*

10. In its email response to TTO that same day, the OAG instructed TTO *not* to forward Mr. Martabano's responsive documents directly to the OAG, explaining: "*we would prefer that the subpoena recipients produce all responsive records and any accompanying privilege log identifying documents withheld or redacted, given that they are responsible for compliance with the subpoenas and will presumably be asserting any privileges they agree with.*" *NYSCEF Doc. No. 175, Ex. 161.* (emphasis supplied). The OAG added that "conveying any privilege assertions to counsel so they can comply promptly with the subpoenas will not slow anything down." *Id.*

11. Pursuant to the OAG's instructions, on June 3, 2020, TTO conveyed its privilege assertions to Mr. Calcagnini for his review and consideration. *NYSCEF Doc. No. 63, Ex. 49.* Specifically, TTO provided Mr. Martabano's counsel with a link to documents which TTO did not have any objection to him producing to the OAG, as well as a link to documents that TTO preliminarily believed were protected by privilege. *Id.*

12. Despite the fact that TTO was working diligently and in good faith to expedite the production of Mr. Martabano's documents and the preparation of his privilege log, the OAG leveled a baseless assertion that TTO's privilege review was purportedly delaying the production by Mr. Martabano of Mr. Martabano's documents. *See e.g., NYSCEF Doc. No. 176 at p. 2, Ex. 162, NYSCEF Doc. No. 63, Ex. 49.* In response, on June 12, 2020, I provided the OAG with a detailed description of TTO's efforts, and the difficulties it faced during its review because of the format of Mr. Martabano's document production, explaining:

[O]ver the last several weeks we have made every effort to review Mr. Martabano's files as expeditiously as possible. Unfortunately, Mr. Martabano failed to provide us with copies of his files in their

native form as he should have. Instead, all of Mr. Martabano's files were provided to us as pdf's with virtually none of the metadata. In addition, hundreds of Mr. Martabano's emails were grouped together in large pdf's with the attachments separately grouped together in other large pdf's. As a result, we were forced to spend countless hours attempting to manually separate and divide these pdf's into individual pdf's so that each email was in a separate file. Because they are not our files, however, we had and still have no way of knowing for certain whether they were correctly divided or which attachments correspond to which emails.

Separately, many of the documents Mr. Martabano provided to us contained random bates- stamp numbers, and some had no bates-stamp at all. When we asked Mr. Martabano's counsel why this was so, he was not able to provide any explanation. All of these deficiencies have made a careful review of Mr. Martabano's files difficult to impossible. Further, when we asked Mr. Martabano's counsel if he could re-send us the documents in their native form with the metadata, he refused on the grounds that re-assembling the production would be both costly and burdensome. We then followed up a second time, explaining that your office would likely require that he produce documents in their native form anyway. Mr. Martabano finally agreed on June 8 to allow us to speak with his IT vendor, who vaguely indicated only that he would work on it. We have followed up several times, but have not heard back. All the while, on June 3 we were still able to provide Mr. Martabano's counsel with a link to documents which we had no objection to him producing to you, as well as a link to documents which we preliminarily believed were protected by privilege.

NYSCEF Doc. No. 63, Ex. 49.

13. On June 18, 2020, Mr. Calcagnini produced to the OAG all non-privileged records responsive to the Subpoena as well as a privilege log listing 344 documents, each categorized as attorney-client communications and/or attorney work product. *NYSCEF Doc. No. 93, Ex. 79; NYSCEF Doc. No. 94, Ex. 80.* In a letter dated June 23, 2020, from the OAG to Mr. Calcagnini, the OAG objected to the privilege log asserting generally that it did not contain sufficient document descriptions. *NYSCEF Doc. No. 96, Ex. 82.* Notably, TTO was not copied on the June 23 letter. In fact, from June 30, 2020 through August 18, 2020, the OAG (a) did not

copy TTO on the numerous other letters and emails it exchanged with Mr. Calcagnini, and (b) excluded TTO from multiple “meet and confer” telephone discussions with Mr. Calcagnini, all concerning the OAG’s requested revisions to Mr. Martabano’s privilege log. *NYSCEF Doc. Nos. 95-101, Exs. 81-87.*

14. In the event the Court grants the within motion, TTO will assist Mr. Calcagnini in forthwith completing Mr. Martabano’s revised privilege log by a date certain, to be set by the Court.



ALAN GARTEN

Sworn to before me this
30th day of September, 2020



Notary Public

MARIA ENRIQUEZ
Notary Public, State of New York
Registration #01EN6282871
Qualified In Queens County
Commission Expires May 28, 2021