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Case No. 2024-0184-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

UNITED ATLANTIC VENTURES, LLC, Plaintiff, v. TMTG SUB INC. f/k/a TRUMP MEDIA & TECHNOLOGY GROUP CORP., TRUMP MEDIA & TECHNOLOGY GROUP CORP f/k/a DIGITAL WORLD ACQUISITION CORP., DONALD J. TRUMP, DEVIN G. NUNES, DONALD J. TRUMP, JR., KASHYAP "KASH" PATEL, DANIEL SCAVINO, JR., ERIC SWIDER, W. KYLE GREEN, LINDA MCMAHON, ROBERT LIGHTHIZER, Defendants.	)	C.A. No. 2024-0184-MTZ

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, OR ALTERNATIVELY, TO STAY ON THE BASIS OF TEMPORARY PRESIDENTIAL IMMUNITY

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Plaintiff United Atlantic Ventures, LLC ("UAV" or "Plaintiff"), through its undersigned counsel, hereby opposes President Donald J. Trump ("Trump"), Devin G. Nunes ("Nunes"), Donald J. Trump, Jr. ("Trump, Jr."), Kashyap "Kash" Patel ("Patel"), Daniel Scavino, Jr. ("Scavino"), Eric Swider ("Swider"), Frank J. Andrews ("Andrews"), Edward J. Preble ("Preble"), Jeffrey A. Smith ("Smith"), TMTG Sub Inc. f/k/a Trump Media & Technology Group Corp. ("TMTG Sub"), and Trump Media & Technology Group Corp. f/k/a Digital World Acquisition Corp.'s ("TMTG") (collectively, the "Defendants") motion to dismiss, or alternatively, to stay on the basis of temporary presidential immunity (the "Motion" or "Opening Br.") (D.I. 195).

PRELIMINARY STATEMENT

"[I]n America the law is King. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other." Thomas Paine, *Common Sense* (1776).

By way of the Motion, Defendant Donald J. Trump, and (incredibly) every other Defendant in this case, move this Court for a **four-year** stay of this matter, which relates solely to conduct that occurred between Trump's presidencies, because Trump is currently the President and is supposedly therefore immune from civil liability in this Court. What Trump urges is not and never has been the law, and the Motion should be denied in its entirety.

The Supreme Court has repeatedly held that the President of the United States is not immune from civil liability for "unofficial conduct." *Clinton v. Jones*, 520 U.S. 681, 694 (1997). In reversing a stay granted to then-President Clinton on the basis of presidential immunity, the Supreme Court explained that "immunities are grounded in 'the nature of the function performed, not the identity of the actor who performed it.'" *Id.* at 695 (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). The Supreme Court has "never suggested that the President, or any other official, has an immunity that extends beyond the scope of any action taken in an official capacity." *Clinton,* 520 U.S. at 694. Although *Clinton* is precisely on point, its holding was recently reaffirmed in *Trump v. United States*. 603 U.S. 593, 615 (2024)

("As for a President's unofficial acts, there is no immunity."). These cases are controlling.

Defendants do not claim that Trump's tortious conduct alleged here is "official." Rather, they try to explain away controlling Supreme Court precedent by injecting federalism concerns and reasserting a long-rejected argument that pending civil cases pose too great a distraction on a sitting President. Defendants' federalism argument relies on *dicta* in a footnote in *Clinton* to speculate that the Supremacy Clause somehow provides presidential immunity in civil cases brought in state courts. This argument ignores that (1) the language of the Supremacy Clause squarely contradicts their assertion, and (2) state courts addressing the issue have logically, consistently, and faithfully extended *Clinton* to this exact scenario. *See Zervos v. Trump*, 94 N.Y.S.3d 75 (App. Div. 2019). And Defendants' claim of Presidential distraction was explicitly rejected in *Clinton* and is therefore not subject to reconsideration by this Court.

Given the baselessness of their Motion and the blatantly inconsistent positions the Defendants have taken in different courtrooms across the country, this Court should conclude that the assertion of presidential immunity is simply another attempt to obfuscate and delay this matter. Trump is actively litigating claims as a plaintiff in state and federal court without raising presidential immunity. He should not be permitted to use this (non-existent) immunity as both a sword and a shield. In this

dispute alone, Defendants have filed two forum-shopping cases in Sarasota, Forida, filed two appeals thereof, and made countless motions to avoid litigating UAV's first-filed claims in this honorable Court. Indeed, counsel for the Defendants have already told their (second) judge in Sarasota that this case is "on ice" and that the mere filing of this Motion, "all but guarantee[d] that it [would] remain on ice for a half decade." The timing of this case is a matter for this Court, not Defendants' counsel, to decide. For the reasons that follow, their Motion should be denied in its entirety.

RELEVANT BACKGROUND

A. This Dispute Relates Entirely to Unofficial Conduct Which Occurred While Trump Did Not Hold Office

On January 20, 2017, Defendant Donald J. Trump was elected President. On January 20, 2021, he left office and was succeeded by Joseph R. Biden.

All of the tortious conduct alleged in the operative Third Amended Complaint (the "TAC") (D.I. 142), and the entire dispute between the parties occurred after Trump left office on January 20, 2021, and before the November 5, 2024, presidential election. (*See id*. at ¶ 32.) In fact, the business at the heart of this dispute did not even exist until after Trump left office (*id.* at ¶ 42), and the Services Agreement between and among UAV, Trump, and Trump Media (the "Services Agreement"), which formed the basis for the parties' business relationship was negotiated after Trump left office and executed on February 2, 2021. (*Id*. at ¶ 32.)

On February 28, 2024, UAV initiated litigation regarding its dispute with TMTG by filing a complaint against TMTG Sub (together with TMTG, the "TMTG Parties") prior to its merger with TMTG. (*See* D.I. 1.) That complaint was amended three times, and the operative complaint is now the TAC, which was filed on July 9, 2024. (*See* TAC.) All the tortious conduct alleged therein occurred before its filing. (*Id.*)

Subsequently, on November 5, 2024, Trump was elected President for a second time.

B. Defendants Successfully Oppose Expedition and Obtain a Stay of Discovery in This Court

On March 15, 2024, after two hearings in these proceedings, Vice Chancellor Glasscock issued an order expediting UAV's claims, confirming UAV's 8.6% equity stake in TMTG Sub and ordering that TMTG Sub deliver that equity stake to UAV in advance of the scheduled merger with TMTG. (*See* D.I. 47 (the "March 15 Order") at ¶ 4.)

On April 8, 2024, Defendants moved to stay discovery in Delaware. (D.I. 74.) On April 22, 2024, Defendants moved to vacate the March 15 Order expediting proceedings. (D.I. 102-2; 104.) This Court granted those motions and moved this case off an expedited track. (D.I. 118.) Defendants then repeatedly refused to agree to a briefing schedule until Plaintiff threatened to raise the issue with the Court.[1]

Defendants have taken every opportunity to stay and delay the proceedings in this Court.

C. The TMTG Parties Have Resisted Any and All Stays in the Two Sarasota Proceedings

In stark contrast to their request for a four-year stay of all proceedings in this Court, the TMTG Parties filed suit in Sarasota, Florida, on March 24, 2024, (the "First Sarasota Action") and have since taken every opportunity to oppose UAV's

[1] A true and correct copy of the email correspondence between counsel for TMTG and counsel for UAV regarding a briefing schedule for the Third Amended Complaint, dated August 27, 2024, is attached as Exhibit 1.

efforts to stay proceedings in Sarasota in favor of this first-served Delaware action and have, in fact, proposed extraordinarily aggressive schedules and discovery deadlines.

Over TMTG Sub's objection and after full briefing and a hearing, on June 27, 2024, the judge presiding over the First Sarasota Action stayed that litigation pending resolution of this first-served Delaware action (the "Stay Order").[2] The Stay Order explained that "the Delaware and Florida lawsuits involve substantially similar issues and facts: the relative rights and obligations of UAV and [TMTG Sub] based on their dealings prior to [TMTG Sub's] merger with DWAC." (*Id.* at 5.) Thus began a dazzling array of procedural gymnastics to expeditiously litigate a case in Sarasota which had already been stayed by the initial trial court.

On July 17, 2024, TMTG Sub sought a writ of certiorari of the Stay Order, which Florida's Second District Court of Appeal eventually denied on February 14, 2025.[3] Before doing so, two judges from the three-judge panel of the Second District noted TMTG's apparent "forum shopping" and misrepresentations to the Court:

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[2] A true and correct copy of the Stay Order filed in the First Sarasota Action, dated June 27, 2024, is attached as Exhibit 2.

[3] A true and correct copy of the order denying TMTG Sub's petition for writ of certiorari, dated February 14, 2025, is attached as Exhibit 3.

> JUDGE STEVAN T. NORTHCUTT: Mr. Salario, ***how do you respond to the suggestion that wha-what your, your client did was enter into a stipulation in Del-in the Delaware case to avoid having a TRO and so forth and then turn-then turned around and filed the action here as-as essentially a Forum Shopping?***
> SAMUEL SALARIO: Yeah, I, I've kind of, well, I don't know that that, I hadn't understood it to be framed as Forum Shopping, but I don't—
> JUDGE NORTHCUTT: Well, I don't know who's framed it, but it sure kind of looks like it. So—
> SAMUEL SALARIO: Yea, I don't—
> JUDGE NORTHCUTT: ***Maybe I'm framing it that way.***[4]

While TMTG Sub's *certiorari* petition remained pending, the TMTG Parties demanded that a second judge in Sarasota County, Florida hear a motion to consolidate proceedings of the stayed First Sarasota Action with a separate proceeding in Sarasota (the "Second Sarasota Action").[5] That motion was denied.[6] When they were blocked from consolidating the two proceedings, the TMTG Parties sought leave to amend their claims in the Second Sarasota Action and to add UAV and its two members as defendants by asserting the same claims which had already been stayed in the First Sarasota Action. The judge presiding over the Second

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[4] (Second District Court of Appeal, *Second DCA Remote Oral Argument, Wednesday, December 11, 2024*, YouTube (Dec. 17, 2024), at 2:11:22-57, available at https://www.youtube.com/watch?v=RGk353hJkxg (Oral Argument, *TMTG Sub, Inc., et al. v. United Atlantic Ventures, LLC et al.*, Case No. 24-1642) (emphasis added).)

[5] A true and correct copy of the order denying the motion to consolidate filed in the Second Sarasota Action, dated August 2, 2024, is attached as Exhibit 4.

[6] (*Id.*)

Sarasota Action granted leave to amend the complaint.[7] On September 3, 2024, the TMTG Parties filed the second amended complaint in the Second Sarasota Action.[8] In doing so, they achieved the dubious distinction of causing *three* trial courts to hear this dispute simultaneously.

The TMTG Parties' end around the Stay Order forced UAV to move to stay the Second Sarasota Action. Unsurprisingly, the TMTG Parties opposed. During oral argument, counsel for TMTG repeatedly boasted that this Delaware case "is completely on ice" (Jan. 22, 2025, Second Sarasota Action Hr'g Tr., 49:1-2[9]) and even "guarantee[d] that it will remain on ice for a half decade." (*Id.* at 63:11-12.) To support their position that the Second Sarasota Action should proceed while this action languishes, counsel for TMTG reassured the Court that the mere filing of this request for a stay of proceedings "goes to how long things are going to take in Delaware. They're going nowhere fast. Nowhere soon. The case is on ice." (*Id.* at 59:16-18.) It goes without saying that this statement, made in open court about the

[7] A true and correct copy of the order granting motion for leave to file second amended complaint filed in the Second Sarasota Action, dated August 30, 2024, is attached as Exhibit 5.

[8] A true and correct copy of the second amended complaint (excluding exhibits) filed in the Second Sarasota Action, dated September 3, 2024, is attached as Exhibit 6. As of the filing of this brief, the second amended complaint is the operative complaint in the Second Sarasota Action.

[9] A true and correct excerpted copy of the January 22, 2025, hearing transcript in the Second Sarasota Action is attached as Exhibit 7.

Chancery Court prior to any ruling by this Court, publicly undermines this Court's reputation for the orderly and expeditious adjudication of disputes.

Nevertheless, the misrepresentations were successful. On February 19, 2024, the second Sarasota judge denied UAV's motion to stay the Second Sarasota Action and lifted the effective stay of the claims asserted against UAV and its two members in the Second Sarasota Action.[10] UAV and its members will challenge that ruling in a petition for certiorari in the next 14 days. But for the time being, that proceeding is moving forward. Minutes after the stay was lifted, counsel for the TMTG Parties demanded that UAV produce documents within 48 hours even though the deadline to serve responses and objections to TMTG's discovery requests was still nearly a week away.[11] The TMTG Parties have also proposed an aggressive discovery schedule in the Second Sarasota Action with trial scheduled for October 2025. In the same courthouse, the First Sarasota Action filed by TMTG Sub alleging the same facts remains stayed and that stay has been upheld by the relevant appellate panel.

TMTG's opposition to a stay in Sarasota and request for a prompt trial to take place by October 2025 is diametrically opposed to its request here for a lengthy and categorical stay spanning four years. This latest example of Defendants' duplicity

[10] A true and correct copy of the order denying the motion to stay filed in the Second Sarasota Action, dated February 19, 2025, is attached as Exhibit 8.
[11] A true and correct copy of the email correspondence between counsel for TMTG and counsel for UAV, dated February 19, 2025, is attached as Exhibit 9.

and contradiction before this Court[12] underscores the baselessness of the instant Motion.

[12] This Court has already remarked that TMTG's misrepresentations to this Court was "deeply disappointing" and vowed to "carry that disappointment and distrust with [her] as we proceed in this manner." (Aug. 27, 2024 Hr'g Tr., 10:14-18 (D.I. 169) (the "Aug. 27 Tr.").)

ARGUMENT

I. PRESIDENTIAL IMMUNITY DOES NOT EXTEND TO UNOFFICIAL CONDUCT, AND DEFENDANTS CONCEDE THE CONDUCT ALLEGED IN THE THIRD AMENDED COMPLAINT IS UNOFFICIAL

The Supreme Court has explicitly and repeatedly held that the President of the United States is not immune from civil liability for "unofficial conduct." *Clinton*, 520 U.S. at 694; *Trump v. United States*, 603 U.S. at 639, 642 ("The President enjoys no immunity for his unofficial acts, and not everything the President does is official."); *see also Nixon v. Fitzgerald*, 457 U.S. 731, 753-56 (1982) (expanding the scope of Presidential immunity only to include "acts within the 'outer perimeter' of his official responsibility"). Although certain officials, including the "President, like Members of Congress, judges, prosecutors, or congressional aides" have immunity for conduct "arising out of official acts," the Supreme Court has "never suggested that the President, or any other official, has an immunity that extends beyond the scope of any action taken in an official capacity." *Clinton*, 520 U.S. at 694. This precedent is determinative.

This case only differs from *Clinton* in that it was brought in state, not federal, court. Defendants argue that *dicta* in footnote 13 of *Clinton* makes that distinction meaningful. (Opening Br. at 21-22.) Since *Clinton*, however, the only state appellate court to have addressed this issue followed its guidance and held that the President is not immune for unofficial conduct in state court. *Zervos*, 94 N.Y.S.3d

at 78. As the New York Appellate Division explained, "the Supremacy Clause provides that federal law supersedes state law with which it ***conflicts***, but it does not provide that the President himself is immune from state law that ***does not conflict*** with federal law." *Id.* (denying then-President Trump's motion to dismiss and permitting a defamation claim to proceed against him while he was still in office) (emphasis added). As such, *Zervos* faithfully extended the reasoning of *Clinton* and held that "state courts have concurrent jurisdiction with federal courts over actions against the President based on his purely unofficial acts." *Id.* at 86.

The Supreme Court has also affirmed that the President is subject to state court jurisdiction for unofficial conduct. In *Trump v. Vance*, the Court held that presidential immunity did not bar a subpoena issued to the President by a state court grand jury. 591 U.S. 786, 810 (2020). In rejecting Trump's argument that compliance with a subpoena would categorially impair a President's performance of his Executive functions, the Supreme Court explained: "Just as a 'properly managed' civil suit is generally 'unlikely to occupy any substantial amount of' a President's time or attention, . . . two centuries of experience confirm that a properly tailored criminal subpoena will not normally hamper the performance of the President's constitutional duties." *Id.* at 802 (citing *Clinton,* 520 U.S. at 702).

The tortious conduct by the TMTG Parties, Trump, and the other individual Defendants occurred while Trump did not hold public office and did not involve in

any way Trump's official capacity as President or President-elect of the United States. (*See* TAC.) Indeed, the Services Agreement, which began the parties' business relationship and is now integral to this dispute, was executed on February 2, 2021, after Trump left office in January 2021. (*See id.* at ¶ 32.) The tortious conduct plainly arises out of unofficial conduct, and Defendants do not (because they cannot) plausibly argue otherwise.[13] Defendants also do not (because they cannot) argue that any state law conflicts with federal law here.

Instead, Defendants spin a web of irrelevant arguments that attempt to distinguish Supreme Court decisions, misleadingly cherry-pick language, and are underpinned only by dissenting opinions and nonbinding authorities. As explained in more detail below, the Supreme Court and sister state courts have already rejected these unpersuasive arguments, and this Court must do the same.

A. The Supremacy Clause Does Not Bar a State Court from Exercising Jurisdiction Over a Federal Officer

Defendants lead with the farfetched proposition that state courts cannot exercise jurisdiction over federal officials because the "landmarks-and-monuments principle prohibits state courts from 'control[ling] the conduct' of federal officers in any way." (Opening Br. at 14 (quoting *Johnson v. Maryland*, 254 U.S. 51, 56-57

[13] Defendants make one assertion in their Motion that UAV's allegations concern official conduct. (Opening Br. at 8-9.) But the allegations Defendants cite concern UAV's demand excusal allegations, not the actions taken by Defendants against UAV that underlie UAV's claims.

(1920)).) This is not the law and has not been for approximately 175 years. In *Teal v. Felton*, the Supreme Court considered and rejected the argument that it would be unconstitutional for a state court to exercise its jurisdiction to adjudicate a common law claim against a United States postal worker. 53 U.S. 284, 292-93 (1851). The law is now "settled" that "state courts may entertain actions against federal officers for damages." 17A Wright & Miller, *Federal Practice and Procedure* § 4213 (3d ed. updated 2024); *see also*, *e.g.*, *New York v. De Vecchio*, 468 F. Supp. 2d 448, 462-63, 465 (E.D.N.Y. 2007) (remanding action to state court where federal officer was "simply being charged with outright murders having nothing to do with his federal duties"); Richard S. Arnold, *The Power of State Courts to Enjoin Federal Officers*, 73 Yale L.J. 1385, 1394 (1964).

Every case cited by Defendants in support of their arguments based on the "landmarks-and-monuments" principle (Opening Br. at 13-15) involved the power of state courts to issue writs of habeas or writs of mandamus against federal officers *acting in the course of their official conduct*, making them irrelevant to the question of whether the President is immune from civil liability for the *unofficial* conduct at issue here. *See Tennessee v. Davis*, 100 U.S. 257, 263 (1879) (holding state courts cannot try a federal officer for offenses arising from the execution of his duties); *Trump v. Anderson*, 601 U.S. 100, 111 (2024) (observing state courts cannot issue

writs of habeas corpus against federal officials directing them to release persons in federal custody).[14]

B. The Supremacy Clause Does Not Prohibit a State Court from Exercising Jurisdiction Over the President

Trump's argument that any exercise of jurisdiction over the President is prohibited by the Supremacy Clause[15] has consistently been rejected by other courts and must likewise be rejected here. *Zervos*, 94 N.Y.S.3d at 86; *Vance*, 591 U.S. at 802 ("[A] properly managed civil suit is generally unlikely to occupy any substantial amount of a President's time or attention") (internal citations and quotation marks omitted). Although Defendants' selective citations to piecemeal quotations seek to

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[14] The federal removal statute (of which Trump is well aware because he has utilized it on multiple occasions), confirms that state courts may retain jurisdiction over federal officers. Most notably, 28 U.S.C. § 1442(a) entitles a federal officer sued in state court for official conduct to remove the case to federal court. *See Jefferson Cnty., Ala. v. Acker*, 527 U.S. 423, 430-31 (1999) (describing this statutory right as "exceptional"); *Willingham v. Morgan*, 395 U.S. 402, 406 (1969) (explaining this statutory right and describing it as "absolute"). The Supreme Court would not have repeatedly analyzed the scope of this federal removal statute if it were unconstitutional to bring a suit against a federal official in state court altogether.

[15] Defendants spend multiple pages extolling the presidency's "unique position" (Opening Br. at 16-19) and arguing that the presidency is different than the roles of other federal officials such that any exercise of state court jurisdiction will interfere with the Executive Branch Although they are correct that the Supreme Court has agreed with the President on this point, as in *Clinton*, this does not carry the day. *See Clinton*, 520 U.S. at 699 (accepting "initial premise" of the argument that President has a "unique position in the constitutional scheme" but explaining that "[i]t does not follow, however, that separation-of-powers principles would be violated by allowing this action to proceed.").

suggest otherwise, sister states have already squarely rejected this argument by faithfully applying *Clinton*.

Defendants rely heavily on their own misreading of footnote 13 of *Clinton*, which states: "[b]ecause the Supremacy Clause makes federal law 'the [S]upreme Law of the Land,' Art. VI, cl. 2, any direct control by a state court over the President, who has principal responsibility to ensure that those laws are 'faithfully executed,' Art. II, § 3, may implicate concerns that are quite different from the interbranch separation-of-powers questions addressed here." *Clinton*, 520 U.S. at 691, n.13 (citations omitted). Defendants point to this language in arguing that "*Clinton* thus underscores that state courts cannot exercise compulsory civil jurisdiction and control over the sitting President." (Opening Br. at 22 (citing *Clinton*, 520 U.S. at 699, 703).)

Zervos illustrates the fatal flaws in Trump's immunity argument. In rejecting the argument that Defendants make here, the *Zervos* court explained that "the cases cited [by the *Clinton* Court] in [] footnote [13] suggest only that the Supreme Court was concerned with a state's exercise of control over the President in a way that would interfere with his execution of federal law." 94 N.Y.S.3d at 86 (citations omitted). The *Zervos* court concluded that "[b]y holding that the President can be sued for civil damages based on his purely unofficial acts, *Clinton v. Jones* implicitly rejected the notion that because the President is 'always in function,' he cannot be

subjected to state court litigation." *Id*. The *Zervos* court underscored that "the Supreme Court's decision in *Clinton v. Jones* clearly and unequivocally demonstrates that the presidency and the President are indeed separable. Hence, the Court in *Clinton v. Jones* effectively recognized that the President is presumptively subject to civil liability for conduct that had taken place in his private capacity." *Id.* at 85.

In doing so, the *Zervos* court dismissed the concerns regarding a potential motion for contempt which Trump raises here. As in *Zervos*, Trump does not appeal from an order holding him in contempt and any such fear is hypothetical, *id.* at 87-88, and this Court must reject Trump's manufactured attempt to create a constitutional collision. "Accordingly, where, as here, purely unofficial pre-Presidential conduct is at issue, we find, consistent with *Clinton v. Jones*, that a court does not impede the President's execution of his official duties by the mere exercise of jurisdiction over him." *Id.* at 88.

C. This Court Must Follow *Clinton* and Hold That Civil Litigation Does Not Impose a Constitutionally Impermissible Burden on the President

Grasping at *dicta* from *Clinton,* Defendants argue that history demonstrates that exposing a sitting President to civil litigation in state courts has actually

"divert[ed] the President from his official duties."[16] (Opening Br. at 23-29.) The Supreme Court, however, explicitly found "little support in . . . history" for the argument that civil litigation would "impose an unacceptable burden on the President's time and energy, and thereby impair the effective performance of his office." *Clinton*, 520 U.S. at 702. Defendants, therefore, ask this Court to change the rule set forth in *Clinton* due to *this President's* penchant for litigation—which has involved Trump as both a plaintiff and defendant ranging from complex transactional disputes to torts, including defamation and sexual assault. This Court must reject this proposition.

1. This Court Should Reject Defendants' Invitation to Alter Supreme Court Precedent Based on Trump's Litigious and Felonious Nature

Defendants separately and repetitively assert that civil lawsuits generally divert the President from his official duties. (Opening Br. at 23-29.) It is unclear how the premise of this argument differs from their previous arguments (*see supra* § I.B), but Defendants use it as a springboard to allege that the President has endured a parade of horribles due to civil litigation. Defendants suggest that the *Clinton* court

[16] This new argument directly contradicts Trump's previous assertion that "[s]itting-president immunity" is a "categorical rule against indictment or criminal prosecution." *People v. Trump*, No. 71543-23, 2024 WL 5120702 (N.Y. Sup. Ct., N.Y. Cnty. Dec. 13, 2024). In *People v. Trump*, Trump distinguished the very cases on which he now seeks to rely by arguing "*Clinton* and [*Nixon*], as well as *Zervos*, concerned civil litigation, which involves much less onerous burdens than a criminal prosecution." *Id.*

would have ruled differently if it had realized the distraction that case and subsequent civil litigation would create for the President. (Opening Br. at 25-26.) That premise is faulty for three reasons.

First, Trump asserts that because of *his* heavy use of private litigation and past criminal convictions, the entire Presidency should be treated differently. (*Id.* at 25-29.) The purported "deluge of litigation" (*Id.* at 4) has not affected the Presidency; it has affected Trump. Trump is the first President who is a convicted felon, was twice impeached, and held liable for defaming a woman he sexually assaulted.[17]

The Court should also reject Trump's calculated and selective assertion of presidential immunity. It is black letter law that privileges and immunities cannot be used as a sword and a shield. *See Bd. of Regents of the Univ. of Tex. Sys. v. Boston Sci. Corp.*, 936 F.3d 1365, 1370 (Fed. Cir. 2019) ("Sovereign immunity is a shield;

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[17] *See People v. Trump*, 224 N.Y.S.3d 832 (N.Y. Sup. Ct., N.Y. Cnty. 2024); *see also Research Guides: Federal Impeachment: Donald J. Trump*, Library of Congress, https://guides.loc.gov/federal-impeachment/donald-trump (last visited Mar. 3, 2025) (impeaching Trump for asking President Zelensky of Ukraine to announce two investigations regarding a political opponents; impeaching Trump for inciting an insurrection at the United States Capitol on January 6, 2021); *Carroll v. Trump*, 731 F. Supp. 3d 626, 628 (S.D.N.Y. 2024) (finding Trump liable for defamation after sexually assaulting Plaintiff); *see also Carroll v. Trump*, 88 F.4th 418, 423 (2d Cir. 2023) (affirming trial court's denial of Trump's "motion for summary judgment insofar as it rejected [Trump]'s presidential immunity defense and denied his request for leave to amend his answer to add presidential immunity as a defense"). Through this Motion, he seeks blanket immunity for any civil liability.

it is not meant to be used as a sword."); *Drachman v. BioDelivery Sciences Int'l, Inc.*, No. 2019-0728, 2021 WL 3779539, at *7 (Del. Ch. Aug. 25, 2021) ("Put simply, a party cannot use privilege as both a sword and a shield."). To the extent that any immunity exists (and as set forth above, it does not), it would be unjust and unfair to permit Trump to litigate claims as a plaintiff in Sarasota while avoiding any civil liability, including counterclaims in the same dispute.

In his first term, Trump put himself in the position of plaintiff and defendant in numerous private civil actions unrelated to his duties as President. *See, e.g.*, *Zervos v. Trump*, No. 150522/2017 (N.Y. Sup. Ct., N.Y. Cnty.); *Carroll v. Trump*, No. 160694/2019 (N.Y. Sup. Ct., N.Y. Cnty.); *Galicia v. Trump*, No. 24973/2015E (N.Y. Sup. Ct., Bronx Cnty.); *Jacobus v. Trump*, No. 153252/2016 (N.Y. Sup. Ct., N.Y. Cnty.); *Nwanguma v. Trump*, No. 16 Civ. 247 (W.D. Ky.); *Clifford v. Trump*, No. 18 Civ. 6893 (C.D. Cal.); *Doe v. Trump Corp.*, No. 18 Civ. 9936 (S.D.N.Y.); *Johnson v. Trump*, No. 19 Civ. 0475 (M.D. Fla.). This pattern continues as Trump enters his second term, with Trump actively litigating claims as a plaintiff in state and federal court. *See Trump v. Alexander et al*., No. 2022CA000246 (Fla. Cir. Ct., Okeechobee Cnty.); *Trump v. CBS Broad., Inc*., No. 24-cv-00236) (N.D. Tex.). After Defendants filed this Motion, the President continued to prosecute his defamation claims in Florida state court. *See Alexander*, No. 2022CA000246. If the

Constitution permits Trump to participate in state civil litigation as a plaintiff, it also permits him to participate as a defendant.

Second, this Court cannot reinterpret or revisit the holding in *Clinton* based on alleged recent events. *See Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case . . . the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."). Defendants admit that the "subsequent history" addressed in this sub-section "can only be revisited by the U.S. Supreme Court." (Opening Br. at 28, n.21.) The Supreme Court's holding trumps Defendants' bare allegations.

Finally, the Supreme Court has reaffirmed *Clinton* after the Clinton presidency had ended and with the benefit of hindsight. *See Trump v. United States*, 603 U.S. at 593. If the Supreme Court had felt that civil litigation interfered with Trump's Article II duties during his first term to such a constitutionally impermissible degree, the Court would not have definitively and repeatedly stated in 2014 that "there is no immunity" for "unofficial acts." *Id*. at 593, 616.[18]

[18] The Supreme Court steadfastly and repeatedly noted that "unofficial conduct" is not immune. *See Trump v. United States*, 603 U.S. at 616 ("The separation of powers does not bar a prosecution predicated on the President's unofficial act."); *id.* at 615 ("Although Presidential immunity is required for *official* actions to ensure that the President's decisionmaking is not distorted by the threat of future litigation stemming from those actions, that concern does not support immunity for *unofficial* conduct.") (emphasis in original) (citing *Clinton*, 520 U.S. at 694).

2. Defendants' Argument That State Court Litigation is Different Than Federal Court Litigation Ignores *Clinton* and its Progeny

Defendants assert that state civil litigation makes the President more vulnerable to harassment than federal litigation. (Opening Br. at 30-37.) Defendants advance four points which have been recycled from past unsuccessful petitions to the Supreme Court in *Clinton* and *Vance* and are unpersuasive.

First, Defendants argue that state civil litigation ensnares the President because of "nearly unlimited trial jurisdiction" and the ability for state courts to have relaxed pleading requirements. (Opening Br. at 30.) Of course, they do not (because they cannot) assert that Delaware has relaxed pleading standards or that Plaintiff filed in Chancery Court to avoid federal pleading standards.

Second, Defendants claim that the President will face harassment and local prejudice because more courts and more cases exist at the state level. (Opening Br. at 31.) The *Clinton* Court considered and rejected this argument as well, holding that "[m]ost frivolous and vexatious litigation is terminated at the pleading stage or on summary judgment, with little if any personal involvement by the defendant." 520 U.S. at 708. This is equally true of state civil litigation as it is of federal litigation. Similarly, in both state and federal courts "the availability of sanctions provides a significant deterrent to litigation directed at the President in his unofficial capacity for purposes of political gain or harassment." *Id.* at 708-09.

Third, Defendants assert that the Supreme Court's "confidence in the ability of our federal judges" (Opening Br. at 31) results from their status as unelected officials. (*Id.* at 31-35.) It is difficult to imagine a more insulting argument to this bench than somehow the Framers distrusted appointed state-court judges. Regardless, this State's constitution requires that there be an even partisan political balance on each state court through bare majority restrictions, including the Chancery Court, whose members are appointed by the Governor, and confirmed by the Senate, from a list provided by a judicial nominating commission to twelve-year terms. Del. Const. art. IV, § 3; *see, e.g.*, *Carney v. Adams*, 592 U.S. 53, 55-57 (2020). Such an appointment process insulates this Court from political pressures that at least approximate the protections afforded federal judges by a lifetime appointment.

As to state court litigation more generally, Defendants' conduct undermines their basic premise. Defendants fled this jurisdiction not for the benefit of a federal court, but for Florida state court. If state court judges are somehow untrustworthy, it boggles the mind why Defendants would push to litigate this dispute in a different state court. The Supreme Court also expressly rejected Defendants' arguments in *Vance* when it held that presidential immunity did not prohibit a state court subpoena in a criminal case served on the sitting President. 591 U.S. at 802-03.

Finally, Defendants resort to popular partisan rhetoric by asserting that elected state officials have "weaponize[d]" the state judicial system against the President and make various allegations that suggest state attorney generals have a vendetta against Trump. (Opening Br. at 35-37.) Again, Defendants' argument seems calculated to erode public confidence in this very Court. And in any event, these bare allegations have nothing to do with civil litigation initiated by a private plaintiff and Defendants cite no vexatious litigation which has occurred in this Court.

D. *Trump v. Vance* Confirms That *Clinton* Applies to State Courts

Trump v. Vance, 591 U.S. 786 undoubtedly does not support Defendants' arguments in favor of a sitting President's immunity from state private civil litigation. (*See* Opening Br. at 37-42.) To the contrary, Trump's attorneys in *Vance* attempted similar arguments that the Supremacy Clause and Article II preclude state court jurisdiction over a sitting President. *See* Br. for Petitioner, *Trump v. Vance*, No. 19-635, 2020 WL 528038, at *23-28 (U.S. Jan. 27, 2020) (arguing Supremacy Clause and Article II support broad immunity for President in state criminal cases). The Supreme Court squarely rejected these arguments in holding that a sitting President's personal records, then residing with a third party (his accountants), were not immune from state criminal subpoena power. *Vance*, 591 U.S. at 810-11. The Supreme Court further explained that "[j]ust as a 'properly managed' civil suit is generally 'unlikely to occupy any substantial amount of' a President's time or

attention, two centuries of experience confirm that a properly tailored criminal subpoena will not normally hamper the performance of the President's constitutional duties." *Id*. at 802 (citing *Clinton*, 520 U.S. at 702). Reading *Vance* together with *Clinton*, it is clear that state courts have concurrent jurisdiction over the sitting President.

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Defendants' Supremacy Clause argument is an intentional ploy to distract this Court from their demand that it be the first court to dismiss a civil damages case against the sitting President (or any federal official) for his *unofficial* conduct on the ground that the exercise of jurisdiction would be unconstitutional. This Court should reject Defendants' invitation to set new precedent that would contradict multiple rulings by the Supreme Court.

II. THIS COURT CANNOT DEFER RULING ON THE CONSTITUTIONAL ISSUE SQUARELY BEFORE IT FOR FOUR YEARS

Defendants' argument for a "deferral" asks the Court to avoid ruling on the merits of both their motion to dismiss for presidential immunity and for failure to state a claim, and instead simply defer all merits-based rulings for four years. (Opening Br. at 43.) Defendants do not set out a standard or any precedent "justifying a rule of categorical immunity" for the sitting President because the rule they ask this Court to adopt was squarely rejected in *Clinton*. 520 U.S. at 707.

Instead, they cite to questions Supreme Court Justices asked during oral argument, secondary sources, an outdated and overruled portion of the Delaware State Constitution, and an attack on the dignity of the state court system to argue that this Court should "defer" litigation against the President until he leaves office. (Opening Br. at 43-48.) Practically, this is the exact potential outcome the Supreme Court rejected in *Clinton*, and this Court must do the same.

A. This Court Would be the First to Adopt Such Broad Deference to the President

Defendants claim this Court should defer ruling on the constitutional issue of presidential immunity by recycling three arguments from their Supremacy Clause argument, which all fail for the same reasons set forth in Section I above. It is worth noting, however, that Defendants have squarely put before the Court the constitutional question of whether the Supremacy Clause provides the current President with immunity for civil liability for unofficial conduct. After doing so, they ask *in the very same brief* that this Court defer ruling on the issue. Clearly, this Motion has one goal: to avoid this Court's adjudication of Plaintiff's claims and to put this case "on ice" for as long as possible while TMTG pursues its own claims in Sarasota, Florida.

First, Defendants make implicit threats against the "public standing" and "dignity" of "the Delaware courts" and assert that any decision against Defendants will be characterized as "political." (Opening Br. at 44.) This argument is beneath

the dignity of this Court and counsel who made it. The judiciary's independence has traditionally been respected and protected from attempts to undermine its legitimacy. *See Cleavinger v. Saxner*, 474 U.S. 193, 203 (1985) (explaining the importance of judicial immunity to protect the "independent" role of a "federal or state judge").[19] As Chief Justice Seitz recently remarked, our democracy requires "leaders in the business, in the legal world, to call out and stand up to threats to the independence of the third branch of government."[20] This Court should disregard Defendants' brazen threats to impugn the judiciary's independence. Their disrespect for this Court and the judiciary as a whole is a bigger threat than any public perception that they might try engender.

Second, Defendants raise disingenuous concerns about the ability of the current President to participate in litigation while citing to an outdated version of the Delaware Constitution. (Opening Br. at 45-46.) As the *Clinton* Court explained,

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[19] As Chief Justice Roberts explained in rebuking Trump's similar attempts to diminish the dignity of the judiciary: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for." William Cummings, *US does have 'Obama judge': Trump Responds to Supreme Court Justice John Roberts' Rebuke*, USA Today (last updated Nov. 21, 2018 6:37 PM), https://www.usatoday.com/story/news/politics/2018/11/21/john-roberts-trump-statement/2080266002/.

[20] The Chancery Daily, *Chief Justice Collins J. Seitz, Jr. at PLI*, LinkedIn (Feb. 4, 2024), available at https://www.linkedin.com/pulse/chief-justice-collins-j-seitz-jr-pli-the-chancery-daily-a9qtc/?trackingId=pLE7iDWL%2FMNDqhV%2BAAfyzw%3D%3D.

UAV and the Court could craft a case schedule that is flexible and accommodates the current President's busy schedule. 520 U.S. at 691-92 ("We assume that the testimony of the President, both for discovery and for use at trial, may be taken at the White House at a time that will accommodate his busy schedule, and that, if a trial is held, there would be no necessity for the President to attend in person, though he could elect to do so.").

Defendants then misleadingly assert that the Delaware Constitution supports immunity for the President because it immunized the Governor once upon a time. (Opening Br. at 45-46.) Defendants argue that Delaware's original Constitution "recognized the dangers of litigation against a sitting chief executive" because it exempted the executive-in-chief from the impeachment process. (*Id.*) That may have been true in 1776; but, when Delaware adopted a new Constitution in 1897, which remains in effect today, it expressly rejected the notion that the executive-in-chief is exempt from litigation:

> The *Governor and all other civil officers* under this State shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office . . . .

Del. Const. art. VI, § 2 (emphasis added). Delaware has determined that the executive-in-chief must be held to account for misconduct through civil litigation. Citing an old version of the Constitution should not convince this Court otherwise.

Finally, Defendants could not be further off in asserting that their newfound deferral rule "finds support in the common law traditions of Delaware's sister states." (Opening Br. at 47.) The only appellate state court to rule on the issue definitively held that "state courts have concurrent jurisdiction with federal courts over actions against the President based on his purely unofficial acts." *Zervos*, 94 N.Y.S.3d at 86.[21] Defendants also cannot identify any federal or state statute codifying civil immunity for the sitting President in the more than 25 years since *Clinton* was decided—including Iowa and the 14 other states that moved to submit *amicus* briefing. *See id.* at 86 ("Congress has not passed any law immunizing the President from state court damages lawsuits since *Clinton v. Jones* was decided."); *Clinton*, 520 U.S. at 709 ("If Congress deems it appropriate to afford the President stronger protection, it may respond with appropriate legislation.").

[21] The cases Defendants cite are easily distinguishable because they do not involve unofficial acts taken when the defendant was a private citizen. *See Salzberg v. Sciabacucchi*, 227 A.3d 102, 137 (Del. 2020) (interpreting 8 *Del. C*. § 102 and holding that federal forum provisions in certificates of incorporation are facially valid under a Delaware statute and they do not frustrate litigation of federal Securities Act claims in federal court); *Nottingham Partners v. Dana*, 564 A.2d 1089, 1104 (Del. 1989) (finding the certification of a class action lawsuit does not interfere with a federal court's jurisdiction as the settlement provisions did not release or impact the federal action); *O'Malley v. Boris*, 742 A.2d 845, 848 (Del. 1999) (holding that private citizen's state law claims of breach of fiduciary duty against a brokerage firm and investment group were not preempted by federal law); *W. Coast Power Co. v. S. KS Gas Co.*, 172 A. 414, 415 (Del. Ch. 1934) (determining the United States government has priority rights as a creditor to obtain tax payment from the cash the receiver had in hand).

This Court must decline Defendants' invitation to be the first court or legislature in the country to hold that the executive-in-chief has immunity for civil liability for unofficial actions taken while not in office.

B. Defendants Ask the Court to Defer to a Non-Existent Administrative Body

Defendants conclude by a meek attempt to invoke the doctrine of administrative exhaustion or primary administrative jurisdiction to argue for a four-year deferral. (Opening Br. at 49-51.) These doctrines are not relevant here. Administrative exhaustion "requires that *where a remedy before an administrative agency is provided*, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy." *Levinson v. Delaware Comp. Rating Bureau, Inc*., 616 A.2d 1182, 1187 (Del. 1992) (emphasis added) (considering whether the Superior Court prematurely vacated the Insurance Commissioner's ruling because the administrative process before the Insurance Commissioner was incomplete). Defendants do not offer any other administrative body capable of adjudicating this dispute. Defendants want this Court to simply put this case "on ice for a half decade" and make a mockery out of this Court's jurisdiction. (Ex. 7 at 63:11-12.)

III. DEFENDANTS HAVE FAILED TO ESTABLISH THAT A FOUR-YEAR STAY IS JUSTIFIED

Defendants mischaracterize their request for a ***four-year*** stay as a "modest" request that "would only marginally alter th[e] status quo." (Opening Br. at 51-53.) What they actually seek is a complete cessation of all proceedings against all Defendants in this dispute's proper forum for four years while Trump's namesake entity pursues its affirmative claims (which this Court stated should have been asserted as compulsory counterclaims here) in Sarasota, Florida.[22]

A. A Four-Year Stay Would be Highly Prejudicial to UAV and Reward Defendants' Blatant, Undeterred Forum Shopping Campaign

As a preliminary matter, the stay requested here is for the extent of Trump's time in office—*i.e.*, likely four years. (Opening Br. at 51.) Trump misleadingly has asserted that should his motion be denied, these proceedings will automatically be stayed. (*Id.* at 52.) This Court has already determined that it "intend[s] to issue a ruling on the earlier motion at the same time as the immunity motion ruling, to advance th[e] action as much as possible . . . ." (D.I. 190 at 4.) Further, the Supreme Court's recent denial of Trump's application for a stay of state court criminal sentencing pending appeal undermines their argument that such a stay is automatic.

[22] Indeed, the judge presiding over the First Sarasota Action found that this was the proper forum when it granted the Stay Order. (Ex. 2.) That determination was affirmed by the governing Florida appellate court. Only after serial procedural machinations did Defendants find a judge who was willing to disagree with the Stay Order issued in the same courthouse, and that decision will be appealed.

See Trump v. New York, No. 24A666, 2025 WL 52691, at *1 (U.S. Jan. 9, 2025). Any stay this Court orders does not piggyback off Trump's purported automatic stay and must be analyzed independently.

Although Delaware courts have discretion in granting or denying a stay, this Court must engage in "interest balancing" test that "balances the interests of the plaintiff, and the interests of the defendant, all with an eye toward the efficient and fair administration of justice. Those interests and goals, in turn, usually are informed by a court's responsibility to order the proceedings before it." *Lima USA, Inc. v. Mahfouz*, No. 20C-09-048, 2021 WL 5774394, at *7 (Del. Super. Ct. Aug. 31, 2021) (cleaned up). A stay is only appropriate where it "would not prejudice the non-moving party and where it would spare the moving party 'unnecessary expense or burden.'" *LightLab Imaging, Inc. v. Axsun Techs., Inc*., No. 6517, 2012 WL 1764225, at *1 (Del. Ch. May 10, 2012); *E. Wholesale Fence LLC v. Hudson*, No. 2023-1176, 2024 WL 3757835, at *2 (Del. Ch. Aug. 12, 2024) (quoting *Lima USA, Inc*., 2021 WL 5774394, at *7).

Here, the requested stay is not only unprecedented[23] and prejudicial,[24] it also rewards these Defendants' blatant forum shopping and misrepresentations to multiple courts. For example, Defendants have:

- **Misrepresented to this Court that Defendants did not intend to challenge UAV's right to its Equity Stake**. At two separate hearings, counsel for TMTG conceded that UAV owned the Equity Stake to avoid an evidentiary hearing and potential delay of the scheduled de-SPAC merger.[25] Based on those representations, this Court issued the March 15 Order, which Defendants never challenged.[26] Then, on March 24, 2024, the TMTG Parties

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[23] Defendants cite to no case—and Plaintiff is aware of none that exist—which granted a four-year discretionary stay. In fact, Defendants cannot cite to a single case granting a discretionary stay. *See Abbot v. Vavala*, No. 2021-0409, 2022 WL 453609, at *8 (Del. Ch. Feb. 15, 2022) (holding Chancery Court lacked subject matter jurisdiction over claims asserted); *Unbound P'rs Ltd. P'ship v. Invoy Hldgs. Inc.*, 251 A.3d 1016, 1030 (Del. Super. Ct. 2021) (denying Rule 12(b)(6) motion to dismiss); *Gen. Foods Corp. v. Cryo-Maid, Inc*., 198 A.2d 681, 683-84 (Del. 1964) (setting forth the factors considered in a motion to dismiss on the basis of *forum non conveniens*). They certainly have not provided support for the categorical four-year stay they seek here.

[24] The requested stay is highly prejudicial to UAV because it stalls UAV's claims for a period of four years, thereby increasing the likelihood of lost evidence, while allowing TMTG to avoid the admissions it has made to this Court by pursuing its claims in Sarasota. Trump has been convicted of falsifying business records and a four-year stay would provide ample opportunity for such misconduct in these proceedings. *People v. Trump*, 224 N.Y.S.3d 832 (N.Y. Sup. Ct., N.Y. Cnty. 2024). A four-year stay undoubtedly corresponds to fading memories and a loss of evidence, (*Middlebrook v. State*, 802 A.2d 268, 276-77 (Del. 2002)), and would leave UAV without a remedy. *See In re Columbia Pipeline Grp., Inc. Merger Litig*., 299 A.3d 393, 409 (Del. Ch. 2023) ("[E]quity will not suffer a wrong without a remedy.").

[25] (Mar. 9, 2024 Hr'g Tr., 24:18-25:6, 28:20-21, 31:14-16 (D.I. 89-1); Mar. 15, 2024 Hr'g Tr., 4:19-20 (D.I. 89-2) (the "Mar. 9 Tr.").)

[26] (*See* March 15 Order.)

filed the First Sarasota Action seeking disgorgement of that very Equity Stake.[27]

- **Filed compulsory counterclaims in this action in Sarasota to avoid this Court**. On March 24, Defendants initiated the First Sarasota Action, which should have been filed as compulsory counterclaims in this Court.[28] Defendants have repeatedly and steadfastly delayed this Court from adjudicating Plaintiff's claims. Their motive for avoiding the Chancery Court is clear: they have made factual misrepresentations which undercut the basis for the claims they assert in Sarasota, and they know this Court will hold those statements against them.[29]

- **Unsuccessfully attempted to circumvent a stay of the First Sarasota Action**. On June 27, 2024, the judge presiding over the First Sarasota Action stayed TMTG's claims pending resolution of the Delaware action.[30] The TMTG Parties responded by (1) unsuccessfully seeking a stay of the order, (2) unsuccessfully appealing that stay order, and (3) unsuccessfully attempting to consolidate the First Sarasota Action with the Second Sarasota Action pending before another judge.[31] Defendants cannot use this as a sword and shield.

- **Then eventually, successfully circumvented a stay of the First Sarasota Action**. Finally, Defendants successfully amended their claims in the Second Sarasota Action to add UAV and its members as defendants by appending the stayed claims as new claims in the Second Sarasota Action and adding UAV and its two members as defendants.[32]

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[27] A true and correct copy of the complaint (excluding exhibits) filed in the First Sarasota Action, dated March 24, 2024, is attached as Exhibit 10.

[28] (April 1, 2024 Hr'g Tr. at 6:17-7:2 (D.I. 85) ("I don't understand why these [claims asserted in the Complaint] aren't compulsory counterclaims [in the Delaware Action] . . . I'm a little agog, Mr. Kittila, frankly.").)

[29] (*See* Aug. 27 Tr. at 9:7-11 ("It is not news to the parties that Vice Chancellor Glasscock thought the filing of the Sarasota Action was inconsistent with counsel's representations to him about the effect of the UAV principal's performance on their post-merger stake.").)

[30] (*See* Ex. 2.)

[31] (*See* Ex. 4.)

[32] (*See* Ex. 6.)

- **Misrepresented to the Sarasota Court that this case was "on ice" to successfully avoid a second stay in Sarasota**. The TMTG Parties opposed and won a denial of UAV's request for a stay of the Second Sarasota Action, which includes *substantially the same claims stayed in the First Sarasota Action*.[33] In doing so, TMTG "guarantee[d] that [this case] [would] remain on ice for a half decade" due to this Motion. This Court must now decide whether to put this case on ice.[34]

Given Defendants' rampant abuse of the judicial process, blatant forum shopping, and misrepresentations to the Court, the "efficient and fair administration . . . of justice" undoubtedly militates against the unprecedented and unconstitutional four-year stay Defendants request here. *Lima USA*, 2021 WL 5774394, at *7.

B. Besides Ignoring the Applicable Standard for a Stay, Defendants' Arguments that a Four-Year Stay is Warranted Are Unpersuasive

Ignoring the obvious prejudice to UAV, Defendants make four arguments in favor of a four-year stay, none of which have merit.

First, Defendants argue a stay is warranted because the current President has "disengage[d]" from TMTG and has "sought to extricate himself" from his "web of private business interests." (Opening Br. at 53.) Defendants' assertion (unsupported by any evidence) is dubious at best. After the 2024 election, Trump transferred his TMTG stock to a revocable trust for which his son, and co-defendant in this case, is

[33] (*See* Ex. 8.)
[34] (Ex. 7, 63:11-12.)

the sole trustee.[35] Even if Defendants' assertions are true, Trump's decision to currently extricate himself from private business while serving in public office does nothing to detract from the tortious conduct asserted in the TAC, which all undisputedly occurred while Trump did not hold public office of any kind. (TAC at ¶ 32.) UAV's claims in this case have nothing to do with how TMTG is currently operated; they relate to historical events that occurred after January 21, 2021 and before Trump became President-elect on November 5, 2024. (*Id.* at ¶ 32.)

Second, as noted in Section I.C.1 *supra*, Defendants' argument that this litigation will be too distracting to the current President is disingenuous. (Opening Br. at 53-54.) Trump is actively litigating civil matters in which he is a plaintiff and a defendant and did so during his first term.

Third, Defendants suggest that UAV "will force this Court repeatedly to sit in judgment of [Trump]'s priorities" because it has previously accused Trump of "undue delay" and that the "efforts to raise immunity [are] a 'transparent' and 'strategic' attempt at gamesmanship." (*Id.* at 55.)[36] As other courts have

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[35] *See* TMTG, Statement of Changes in Beneficial Ownership (SEC Form 4) (Dec. 19, 2024); *see also*, Dan Mangan, *Trump transfers all his DJT shares to his revocable trust, new SEC filings show* (last updated Dec. 20, 2024 at 10:31 PM), https://www.cnbc.com/2024/12/20/trump-transfers-all-his-djt-shares-to-his-revocable-trust-sec-filings-show.html.

[36] Bizarrely, Defendants suggest that the offer to take the deposition of Trump (a named defendant and the key witness in this case) at the White House should discredit their motives. But in *Clinton*, the Supreme Court recommended this exact

recognized, delay tactics and the selective advocation of presidential immunity are par for the course for Trump in his myriad litigation activities. For example, in *Carroll* (as here), Trump did not immediately assert presidential immunity. Instead, he waited until it became clear he would be required to participate in discovery for the defamation action Carroll asserted after Trump falsely denied having sexually assaulted her. *Carroll v. Trump*, 687 F. Supp. 3d 394, 396 (S.D.N.Y. 2023). After the Trump-appointed Assistant Attorney General Jeffrey Clark[37] removed the defamation case to federal court, a federal judge granted summary judgment in favor of Carroll. *Id.*[38] Similarly, in *Zervos*, the plaintiff successfully opposed multiple stay requests Trump filed in an effort to delay the action. *Zervos*, 94 N.Y.S.3d 75. Defendants have not conjured these allegations out of thin air—Trump is selectively asserting presidential immunity as a litigation tactic.

Fourth, Defendants argue that there is no need to bring this case to trial within ***the next four years***. (Opening Br. at 56.) They cannot cite a single case that has

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procedure as a means by which a court could manage its docket to respect the demanding nature of the office of the presidency. *Clinton*, 520 U.S. at 691-92.

[37] Jeffrey Clark was later indicted in Georgia state court for Violation of the Georgia Racketeer Influenced and Corrupt Organizations Act and Criminal Attempt to Commit False Statements and Writings. *State v. Trump, et al.*, No. 23SC188947 (Ga. Super. Ct., Fulton Cnty. Aug. 14, 2023).

[38] A federal jury in a separate similar action found that "Mr. Trump had sexually assaulted her and that his October 2022 statement defamed her" and Trump was thus collaterally estopped from continuing to trial for an attempted "do over." *Carroll v. Trump*, No. 20-CV-7311, 2024 WL 97359, at *1 (S.D.N.Y. Jan. 9, 2024).

permitted such a lengthy discretionary stay on any basis. They certainly cannot cite to a case that did so on the basis of presidential immunity because the Supreme Court has held that "the potential burdens on the President" of participating in civil litigation do "not justify[] a rule of categorical immunity" but rather are "appropriate matters" for the trial court to consider and "should inform the conduct of the entire proceeding, including the timing and scope of discovery." *Clinton*, 520 U.S. at 707.

IV. ANY TEMPORARY STAY IS CERTAINLY LIMITED TO TRUMP

No court has extended presidential immunity to unofficial conduct. Defendants, however, ask this Court to go a step further and dismiss or stay claims against *all Defendants—i.e.*, a publicly-traded company, its subsidiary, and their directors. Even if this Court erroneously determined that presidential immunity extended to unofficial conduct, there is zero support for the proposition that presidential immunity should extend to public companies and private individuals affiliated with the President, and this Court must reject Defendants' attempt to insulate not only Trump from civil liability, but his friends, family, colleagues, loyalists, and affiliates, including TMTG and the Trump Organization.

A. This Court Would Violate *Clinton* and Set a Dangerous Precedent Based on Zero Supporting Case Law if it Extended a Stay to All Defendants

Defendants misleadingly assert that *Clinton* supports a stay as to all Defendants because Trump will need to be heavily involved in litigation strategy. (Opening Br. at 57-58.) The only case Defendants cite in support of their argument

is the District Court of Arkansas' decision in *Clinton* granting a stay of trial until President Clinton left office, ***but that decision was reversed***. *See Jones v. Clinton*, 72 F.3d 1354, 1363 (8th Cir. 1996), *aff'd sub nom. Clinton v. Jones*, 520 U.S. 681 (1997) ("[W]e reverse the District Court's order granting Mr. Clinton's motion to stay the trial of this matter for the duration of his presidency.") In *Jones*, the Eighth Circuit remanded the case, "with instructions to lift the stays that the court has entered and to allow Mrs. Jones's suit against Mr. Clinton and Trooper Ferguson to proceed in a manner consistent with this opinion and the Federal Rules of Civil Procedure." *Jones*, 72 F.3d at 1363. That Defendants cite to a portion of the District Court's opinion that was reversed demonstrates the complete lack of support for their argument that a stay should extend to private defendants. It is also deeply misleading.

Defendants' policy argument that the other Defendants will not be able to confer with the President is belied by the realities of the first Trump presidency. (Opening Br. at 58-59.) Plenty of lawsuits proceeded against both Trump and entities affiliated with Trump during his first term. *See, e.g.*, *Galicia v. Trump*, 109 N.Y.S.3d 857 (N.Y. Sup. Ct., Bronx Cnty. 2019) (permitting the deposition of Trump during his first term in connection with claims asserted against the Trump Organization); *Doe v. Trump Corp*., 385 F. Supp. 3d 265 (S.D.N.Y 2019) (denying motion to dismiss state-law claims asserted against Trump, the Trump Corporation,

Donald Trump, Jr., Eric Trump, and Ivanka Trump). Trump can point to no difficulties that he encountered conferring with his co-defendants in those proceedings, and he would similarly face no issues here.

The swath of litigation against Trump and his friends and family also reveals the practical implications of granting a stay as to all Defendants. If this Court accepts Defendants' invitation to stay all proceedings against *all Defendants*, it is setting precedent for Trump, his family, TMTG, the entire Trump Organization, and any other public or private entities with which Trump affiliates himself to be insulated from civil liability for the duration of Trump's presidency. No case in the history of the Republic supports such a result.

B. Defendants Have No Basis to Argue That a Stay Furthers Judicial Economy When They Have Attempted to Circumvent Every Adverse Order

Defendants' judicial economy argument is laughable. (Opening Br. at 59-60.) They have thrown to the wind any consideration of judicial resources by attempting to prosecute their counterclaims in this litigation in two different cases filed in Sarasota, then opposing a stay of those proceedings by any means necessary. In doing so, the TMTG Parties have torridly wasted judicial resources in three different cases regarding the same dispute. The TMTG Parties' *modus operandi* in this dispute is to challenge any adverse judicial decision in a different forum. As set forth in more detail above, Defendants have (1) misrepresented to this Court that

they did not intend to challenge UAV's right to its Equity Stake,[39] then steadfastly challenged this Court's March 15 Order based on those representations and sought disgorgement of the Equity Stake in a different jurisdiction,[40] (2) filed counterclaims to this action in Sarasota to avoid this Court and the repercussions of their previous misrepresentations,[41] (3) successfully circumvented an order staying all proceedings in the First Sarasota Action,[42] and (4) misrepresented to the judge presiding over the Second Sarasota Action that this case was "on ice" to avoid staying those proceedings, while simultaneously seeking a stay here. It is difficult to envision a more blatant disregard for judicial resources.[43]

Now, they ask this Court to perpetuate Defendants' forum shopping and avoidance of the Chancery Court's jurisdiction and stay proceedings as to *all Defendants* for four years. (Opening Br. at 57-60.) Awarding any stay, much less a stay as to all corporate and individual Defendants, offends any notion of judicial economy and fairness. *See Lima USA*, 2021 WL 5774394, at *7.

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[39] (Mar. 9 Tr., 24:18-25:6, 28:20-21, 31:14-16; *see* March 15 Order; *supra* Section III.A. at 31.)
[40] (Ex. 9.)
[41] (Ex. 9; *supra* Section III.A. at 31-32.)
[42] (*Supra* Section III.A. at 32.)
[43] (*Id.*)

C. Joinder Rules Do Not Extend to a Stay

Defendants cite to the joinder rule and assert that the action cannot proceed in Trump's absence because Trump is a necessary party. (Opening Br. at 60.) Even if Trump were a necessary party *and* a stay were erroneously granted as to Trump, Chancery Court Rule 19(b) would not require a stay as to all other Defendants. Instead, Rule 19(b) would require dismissal of all claims only if Trump were dismissed as a Defendant. As set forth above, no court has ever dismissed a civil damages case against the sitting President (or any federal official) for his unofficial conduct on the ground that the exercise of jurisdiction would be unconstitutional. There is, therefore, no basis for dismissing all Defendants regardless of Trump's status as a necessary or indispensable party. *See* Ct. Ch. R. 19(b).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court deny the Motion to Dismiss, or Alternatively, to Stay on the Basis of Temporary Presidential Immunity.

DATED: March 3, 2025

BERGER MCDERMOTT LLP

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