

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA AND
THE STATE OF MARYLAND,

Plaintiffs,

vs.

DONALD J. TRUMP, in his official
capacity as President of the United States of
America,

Defendants.

Case No. 8:17-cv-01596 (PJM)

MOTION FOR LEAVE TO SERVE DOCUMENT PRESERVATION SUBPOENAS

Plaintiffs respectfully move for leave to serve document preservation subpoenas on entities that are not parties to this action. Good cause exists to grant the motion. Although the Court has not yet entered a scheduling order governing discovery, Plaintiffs seek to ensure that relevant documents are preserved while the Court considers the Government's motion to dismiss (Dkt. 21). Plaintiffs do not seek production of documents, or to open discovery in any way; rather, they seek simply to have documents preserved.

Plaintiffs sought Defendant's position on this motion by letter on October 20, 2017. The parties conferred by telephone on October 25, 2017. Defendant does not consent to the motion and intends to file a response.

PROCEDURAL HISTORY

This case was filed on June 12, 2017. Defendant filed a motion to dismiss on September 29, 2017. Dkt. 21. The briefing schedule extends over several more weeks, with argument set for January 25, 2018. Dkts. 29, 34. Under this timetable, more than three months will elapse before

the Court will rule on the motion and be in a position to enter a scheduling order that would typically govern the issuance of preservation subpoenas.

ARGUMENT

Pursuant to Local Rule 104(4), this Court may permit discovery prior to entry of a scheduling order. This Court has applied the “good cause” standard in evaluating such requests. *See Hossfeld v. Gov't Employees Ins. Co.*, 88 F. Supp. 3d 504, 511-12 (D. Md. 2015).

Plaintiffs have alleged that Defendant receives emoluments through certain businesses that he owns or has a financial interest in, including a number of hotels, restaurants, golf clubs, office buildings and condominiums. Complaint at ¶¶ 29-99. Each entity through which Defendant engages in business transactions is the best, if not the only, source of evidence concerning the transactions Plaintiffs have alleged are emoluments.

These entities will thus be important sources of evidence if this case is permitted to proceed. However, because Plaintiffs and Defendant have not resolved whether these entities are “parties” before the Court, and thus subject to broad obligations to preserve evidence, *see* Fed. R. Civ. P. 26, the use of preservation subpoenas is appropriate to prevent the loss of documents through ordinary records retention practices. In analogous circumstances, where PSLRA (15 U.S.C. § 78u-4(b)(3)(B)) imposes by statute a stay of discovery in securities cases until after any motion to dismiss is resolved, courts in this Circuit permit preservation subpoenas to be served when the specific statutory standards of PSLRA are met. *See In re Royal Ahold N.V. Sec. & Erisa Litig.*, 220 F.R.D. 246, 252-53 (D. Md. 2004); *In re Cree, Inc. Sec. Litig.*, 220 F.R.D. 443, 447 (M.D.N.C. 2004); *In re Massey Energy Co. Sec. Litig.*, No. CIV.A. 5:10-0689, 2011 WL 4528509, at *7 (S.D.W. Va. Sept. 28, 2011).

For these reasons, Plaintiffs request that the Court grant the motion. Plaintiffs also request that the Court’s order granting the motion clarify that no document production will be required

prior to the earlier of, (a) entry of a scheduling order opening discovery, or (b) further order of this Court.

A list of the entities Plaintiffs would serve subpoenas on is attached hereto as Exhibit A. A copy of the proposed requests for preservation that would be sent with each subpoena is attached hereto as Exhibit B.

October 25, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2017, I electronically filed the Motion for Leave to Serve Document Preservation Subpoenas with the Clerk of the Court using the CM/ECF filing system. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Stephanie Litos
Stephanie Litos

List of Entities to Receive Preservation Subpoena

1. The Donald J. Trump Revocable Trust
2. DJT Holdings Managing Member LLC
3. DJT Holdings LLC
4. DJT 3 Holdings LLC
5. DTTM Operations LLC
6. DTTM Operations Managing Member Corp.
7. TTTT Venture LLC
8. TTTT Venture Member Corp.
9. Trump Organization LLC
10. The Trump Organization, Inc.
11. Trump Old Post Office LLC
12. Trump Old Post Office Member Corp.
13. OPO Hotel Manager LLC
14. OPO Hotel Manager Member Corp.
15. THC DC Restaurant Hospitality LLC
16. Mar-a-Lago Club LLC
17. Mar-a-Lago Club, Inc.
18. MALC, Inc.
19. T International Realty LLC
20. The Trump Corporation
21. Trump Tower Commercial LLC
22. Trump Tower Managing Member Inc.
23. Tipperary Realty Corporation

LIST OF DOCUMENTS TO BE PRESERVED PURSUANT TO SUBPOENA

DEFINITIONS

1. “All” shall be construed as all, each, any, and every.
2. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all information that might otherwise be construed to be outside their scope.
3. “Business(es)” means any partnership, joint venture, unincorporated association, corporation, firm, estate, trust, or other entity.
4. “Communications” means every manner of disclosure, transfer, or exchange of information, whether orally, written, electronically (including e-mail, voicemail which rolls into email, texts, instant messaging, and/or any other form of electronic correspondence), by Document, mail, personal delivery, face-to-face meeting, or otherwise.
5. “Concerning” means relating to, referring to, describing, evidencing, or constituting, in whole or in part, directly or indirectly, the stated subject matter.
6. “Document(s)” is used in the broadest possible sense as interpreted under the Federal Rules of Civil Procedure and shall include, without limitation, any written, printed, typed, recorded, filmed, punched, transcribed, taped, or other graphic matter of any kind or nature, however produced or reproduced, whether in hard copy, handwritten, printed, electronic, or other form, either in Your possession or custody or under Your control, and shall include, without limitation, originals, file copies, and other copies, no matter how or by whom prepared, and all drafts prepared in connection with any such writings or recordings, whether used or not, regardless of whether the Document still exists, and regardless of who has maintained custody of such Documents.
7. “Donald J. Trump” refers to Donald J. Trump, the individual, and/or any trust or other instrument to which Donald J. Trump has transferred any assets since November 8, 2016 provided that Donald J. Trump remains a future or potential beneficiary of that trust.
8. “Emoluments Clauses” means the language in U.S. Const. art. I, § 9, cl. 8 prohibiting any “Person holding any Office of Profit or Trust” from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State,” absent “the Consent of the Congress” and the language in U.S. Const. art. II, § 1, cl. 7 prohibiting the President from “receiv[ing] within that Period any other Emolument from the United States, or any of them.”
9. “Emoluments Litigation” refers to *Citizens for Responsibility & Ethics in Washington v. Trump*, 17-cv-458 (S.D.N.Y.); *District of Columbia & Maryland v. Trump*, 8:17-cv-01596 (D. Md.); *Blumenthal v. Trump*, 17-cv-1154 (D.D.C.), and any other existing or future lawsuits alleging that President Donald J. Trump has violated the Emoluments Clauses.

10. “Financial Interest” means (i) direct or indirect ownership of a controlling interest and/or (ii) interest in a share of revenue.

11. “Foreign or Domestic Government(s)” means all governments outside of the United States and any federal, state, or local government in the United States, including each government’s present and former agencies, branches, units, divisions, subdivisions, employees, elected and appointed officials, government-controlled business entities, entities in which the government owns a material financial interest, agents, assignees, instrumentalities, and each Person acting or purporting to act on its behalf.

12. To “Identify” means, with respect to Request No. 1, to disclose (i) the name and address of each club member, hotel guest, restaurant guest, lessee, and renter of event space; (ii) the amounts paid by each (and sources of any payments) for hotel rooms, catering, event space, memberships, or other services; and (iii) the period and terms of any such payments; and, with respect to Request No. 11, to disclose (i) the name, place of incorporation, and headquarters address of each Business; (ii) the name of each Business owner and each’s ownership interest by value and percentage; and (iii) each Business’s articles of incorporation, operating agreements, management agreements, and any other documents governing that Business’s operations.

13. “Indirect Payment” means payments that are passed through another entity, such as a management company, condominium association, or other entity from which You receive payments which are a share of the revenue or profits of the pass-through entity.

14. “Person(s)” includes without limitation any natural person, entity, individual or group of individuals, partnership, joint venture, unincorporated association, corporation, firm, estate.

15. “You” and “Your” mean the recipient of these requests and shall include all direct and indirect parents, predecessors in interest, affiliates, subsidiaries, divisions, predecessors, successors, and assignees, the present and former officers, directors, employees, attorneys, agents, and representatives of any of the above, and each Person acting or purporting to act on its behalf.

GENERAL INSTRUCTIONS

1. These Requests shall be deemed continuing in nature so as to require preservation of documents becoming available subsequent to the service of the subpoena.

2. Documents shall be preserved in the manner in which they appear in your files, including with all associated metadata. Documents that were stapled, clipped, or otherwise fastened together in their original condition shall be preserved in such form.

3. Unless otherwise stated, the relevant time period for All requests are for Documents created or originating on or after January 1, 2015.

DOCUMENT CATEGORIES

1. For the period beginning on November 8, 2016, Documents sufficient to Identify All members, hotel and restaurant guests, owners of condominium units, tenants, lessees, and renters of event space at Businesses in which President Donald J. Trump or You have a Financial Interest.
2. For the period beginning on November 8, 2016, All Documents Concerning direct or indirect payments by any Foreign or Domestic Government to Businesses in which President Donald J. Trump or You have a Financial Interest.
3. For the period beginning on November 8, 2016, All Documents Concerning marketing to Foreign or Domestic governments, including members of the diplomatic community.
4. All Documents Concerning the Emoluments Clauses and Emoluments Litigation.
5. For the period beginning on January 1, 2015, All Documents (including Communications) between Donald J. Trump or You and prospective or actual Foreign or Domestic Government customers, clients, or business partners.
6. All Documents Concerning operating leases, permits, licenses, easements, and tax payments or credits to or from Foreign or Domestic Governments applicable beginning January 1, 2015.
7. All Documents Concerning Your finances, including expenses, pricing, revenue, and profits.
8. All Documents Concerning President Donald J. Trump's or Your efforts to seek trademarks in the People's Republic of China.
9. All Documents Concerning management agreements, licensing agreements, or leases providing You a Financial Interest or which provide others a Financial Interest in You, regardless of whether You are manager or managed, licensor or licensee, or lessor or lessee under such agreement.
10. All Documents Concerning agreements entered into beginning on November 8, 2016 to pay President Donald J. Trump or You royalties or other payments for foreign airings of "The Apprentice" and its spinoffs (including "The Celebrity Apprentice" and "The New Celebrity Apprentice") and international versions.
11. Documents sufficient to Identify Businesses in which President Donald J. Trump or You have a Financial Interest.
12. For the period beginning January 1, 2015, Documents sufficient to show Your policies or practices with respect to the storage, location, retention, preservation, destruction,

disposal or identification of Documents responsive to these Requests, and if such policies or practices have changed over time, Documents sufficient to identify each such change.

**ADDITIONAL REQUESTS FOR PRESERVATION OF DOCUMENTS FOR HOTEL,
RESTAURANT, AND/OR FACILITY RENTAL BUSINESSES**

13. All Documents identifying Your hotel, restaurant, and/or facility rental guests and events from January 20, 2017 to the present, including: documents sufficient to show the identity of all hotel guests; the amounts each guest paid for hotel room rentals, catering event space, or other services; the sources of payment for room rentals, catering, event space, or other services; and restaurant reservation logs.

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**[PROPOSED] ORDER ON MOTION FOR LEAVE TO SERVE DOCUMENT
PRESERVATION SUBPOENAS**

This matter has come before the Court on Plaintiffs' Motion for Leave to Serve Document Preservation Subpoenas. Based on the motion, any response thereto, and the entire record herein, good cause is found and the motion is GRANTED. It is hereby

ORDERED that the parties shall be permitted to serve subpoenas on third-parties for the sole purpose of preservation of documents. No document production will be required prior to the earlier of, (a) entry of a scheduling order opening discovery, or (b) further order of this Court.

SO ORDERED this ____ day of _____, 2017.

Hon. Peter J. Messitte