

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

MICHAEL D. COHEN,

Plaintiff,

v.

TRUMP ORGANIZATION LLC,

Defendant.

AMENDED COMPLAINT

Index No. 651377/2019

Hon. Joel M. Cohen – IAS Part 3

JURY DEMANDED

Michael D. Cohen (“Mr. Cohen”), by and through undersigned counsel, for his Amended Complaint against Trump Organization LLC (the “Trump Organization” or the “Organization”), respectfully alleges as follows:

NATURE OF THE ACTION

1. This action arises from the Trump Organization’s failure to meet its indemnification obligations to Mr. Cohen under the broad “Right to Indemnification” provision in its written “Operating Agreement of Trump Organization LLC (a New York Limited Liability Company)” (the “Operating Agreement”)—as affirmed in multiple oral communications which also constitute separate indemnification agreements. Under the Operating Agreement and pursuant to the subsequent additional oral agreements with Mr. Cohen and his counsel, the Trump Organization agreed to and was obligated to indemnify Mr. Cohen and to pay attorneys’ fees and costs incurred by Mr. Cohen in connection with various investigations and legal matters arising from his work with and on behalf of the Organization and its principals, directors, and officers. These matters included multiple congressional hearings, Special Counsel Robert S. Mueller III’s investigation, an investigation by the Federal Bureau of Investigation (“FBI”), civil litigation concerning a non-disclosure agreement, and the additional matters identified below. As a result of the Trump Organization’s unfounded refusal to meet its obligations under these indemnification agreements, Mr. Cohen has incurred millions of dollars in unreimbursed

attorneys' fees and costs and continues to incur attorneys' fees and costs in connection with various ongoing investigations and litigations.

2. The Trump Organization's failure, without any reasonable basis, to pay attorneys' fees and costs incurred by Mr. Cohen for legal matters arising from his service to and at the behest of the Organization and its principals, directors, and officers, constitutes a breach of the Trump Organization's indemnification obligations under both its Operating Agreement and its oral agreements with Mr. Cohen and his counsel.

3. As discussed further below, the Operating Agreement provides that any employee of the Organization who becomes subject to any legal proceeding or investigation "by reason of the fact that . . . he . . . was or is . . . [an] employee" of the Organization "shall be indemnified by the [Organization] against . . . reasonable costs and expenses (including, without limitation, attorneys' fees)." This provision constitutes a binding contractual obligation by the Trump Organization to indemnify Mr. Cohen for attorneys' fees and costs incurred in defending the various investigations and litigations arising from his work with and on behalf of the Organization and its principals, directors, and officers.

4. Additionally, the Trump Organization repeatedly affirmed for Mr. Cohen and his counsel that it would indemnify these attorneys' fees and costs by way of oral communications that also constitute separate agreements.

5. First, in July 2017, the Trump Organization orally agreed that it would indemnify Mr. Cohen, as required by its Operating Agreement, when the Organization's general counsel told Mr. Cohen's counsel from the law firm McDermott, Will & Emery ("McDermott") that the Organization would pay for attorneys' fees and costs incurred by Mr. Cohen in responding to various congressional investigations, the investigation of Special Counsel Robert S. Mueller III into Russian interference in the 2016 United States presidential election, and additional legal

matters arising from Mr. Cohen's work for the Organization and its principals and executives. As confirmed by the transmittal letter that accompanied McDermott's first invoice submitted to the Trump Organization for payment, which memorialized an "oral agreement" to indemnify Mr. Cohen, this commitment represented not only an affirmation of the Trump Organization's obligations under the Operating Agreement but a separate agreement to pay fees and costs incurred by Mr. Cohen.

6. Second, in February 2018, the Trump Organization orally affirmed its obligation and agreed to indemnify Mr. Cohen for attorneys' fees and costs incurred in connection with Mr. Cohen's representation and defense in legal matters related to a non-disclosure agreement concerning Stephanie Clifford, known professionally as Stormy Daniels ("Ms. Daniels"), including civil litigation where Mr. Cohen was a defendant based upon certain actions he undertook while employed by the Trump Organization at its behest and at the direction of its executives and officers. This oral commitment constituted another separate agreement to indemnify Mr. Cohen.

7. Third, in April 2018, the Trump Organization orally affirmed its obligation to indemnify Mr. Cohen and agreed to pay attorneys' fees and costs incurred in connection with an investigation by the FBI, including litigation related to the search warrants and raids of Mr. Cohen's home and office by the FBI in April 2018 and a review of certain materials seized by the FBI that the Trump Organization claimed were privileged. This oral affirmation constitutes another agreement to indemnify Mr. Cohen's attorneys' fees and costs consistent with the Organization's separate and independent obligation to indemnify Mr. Cohen under its Operating Agreement.

8. As discussed further below, the Trump Organization would breach its obligations under these agreements by, among other things, failing to indemnify Mr. Cohen for millions of

dollars incurred in the defense of these matters. This included the Trump Organization's failure to pay McDermott's bills on time or in full, as well as the Organization's failure to pay additional attorneys' fees and costs incurred by other law firms in connection with the non-disclosure agreement concerning Ms. Daniels, the FBI investigation, and the additional matters specified below. Each failure to meet its contractual obligations followed the same pattern of conduct by the Trump Organization: the Trump Organization represents to Mr. Cohen and his counsel, consistent with its indemnification obligations in its Operating Agreement, that it would pay for attorneys' fees and costs incurred in representing and defending Mr. Cohen in an investigation, proceeding, or other legal matter; the Trump Organization assures Mr. Cohen that he is "on our team" as part of a "united front" with the Organization and its executives and officers; the Trump Organization fails to fulfill its obligations; and Mr. Cohen is left to deal with the fallout, both financially and with respect to the impact on his defense in multiple high-profile litigations and investigations.

9. By repeatedly failing to honor its indemnification obligations to Mr. Cohen, as required under the Operating Agreement and its separate oral agreements, particularly after it became clear that Mr. Cohen would cooperate in ongoing investigations into his work for the Trump Organization and its principals, directors, and officers, the Trump Organization engaged in a pattern of and practice of egregious conduct and breached the covenant of good faith and fair dealing in the indemnification agreements.

10. When it abandoned its written and oral contractual obligations to Mr. Cohen, the Trump Organization and its surrogates did so in a calculated manner to discredit him and distance themselves from his subsequent testimony regarding his work for the Organization, in the process slandering Mr. Cohen. When Mr. Cohen was "on our team" as part of the "united front" and toed the company line to Congress and others, in the process perjuring himself to protect the Organization, the Organization honored (at least in part) its indemnity obligation to Mr. Cohen,

coordinated its defense efforts with Mr. Cohen and his counsel, and praised Mr. Cohen through its surrogates as an honest man and a good lawyer. When it became apparent, in the months following the April 2018 FBI raids of Mr. Cohen's office and home, that Mr. Cohen would truthfully testify about his knowledge regarding aspects of the Trump Organization's business to Congress and potentially in other forums, the Trump Organization flouted the obligations in its Operating Agreement and separate oral agreements; walked away from the commitments it had made to Mr. Cohen and several law firms engaged to represent and advise Mr. Cohen, leaving their bills unpaid and prejudicing Mr. Cohen's defense in multiple matters; and repeatedly defamed and slandered Mr. Cohen's character and professional reputation in doing so.

THE PARTIES

11. Michael D. Cohen is an individual who resides in New York, New York.

12. Trump Organization LLC is a limited liability company organized under the laws of the State of New York. The Trump Organization's headquarters are located at 725 Fifth Avenue, New York, New York 10022.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to N.Y. C.P.L.R. § 301.

14. Venue is proper in this county pursuant to N.Y. C.P.L.R. §§ 503 and 509.

15. This Court has the power to render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties pursuant to N.Y. C.P.L.R. § 3001.

16. Because the Trump Organization has refused to meet its obligations under its Operating Agreement and under its separate oral agreements with Mr. Cohen and his counsel and has refused to pay Mr. Cohen's attorneys' fees and costs since June 2018, an actual controversy exists between the parties that cannot be resolved absent relief from this Court.

FACTUAL BACKGROUND

I. Mr. Cohen's Work for the Trump Organization

17. In 2007, Mr. Cohen joined the Trump Organization as Executive Vice President and Special Counsel to Donald J. Trump.

18. During his employment with the Trump Organization, Mr. Cohen became known as Mr. Donald J. Trump's ("Mr. Trump") "fixer," often helping Mr. Trump, the Trump Organization, and other affiliated businesses with issues relating to licensing deals and real estate projects. Between approximately September 2015 and June 2016, Mr. Cohen worked on behalf of the Trump Organization on a project to develop a Trump-branded property in Moscow, Russia (the "Trump Moscow Project").

19. On June 16, 2015, Mr. Trump announced his candidacy for the Presidency of the United States.

20. On June 7, 2016, Mr. Trump secured the Republican nomination for President of the United States.

21. In addition to his work for the Trump Organization, Mr. Cohen also advised Mr. Trump's 2016 presidential campaign (the "Trump Campaign"). Mr. Cohen made televised and media appearances on behalf of the Trump Campaign and took on the same "fixer" role on behalf of the Trump Campaign and then-candidate Mr. Trump that he performed for the Trump Organization.

22. In or around August 2016, at the direction and insistence of Mr. Trump, Mr. Cohen arranged an agreement between American Media, Inc. ("American Media"), the parent company of the National Enquirer, and former Playboy model Karen McDougal ("Ms. McDougal") that effectively buried a story of an alleged affair between Ms. McDougal and Mr. Trump (the "McDougal Non-Disclosure Agreement"). Using a practice called "catch and kill,"

Mr. Cohen arranged for American Media to pay \$150,000 to Ms. McDougal for the rights to the story about the alleged affair. Upon information and belief, the McDougal Non-Disclosure Agreement gave American Media the exclusive rights to “any romantic, personal and/or physical relationship McDougal has ever had with any then-married man” and prevented Ms. McDougal from speaking publicly about the alleged affair.

23. In or around October 2016, at the direction of Mr. Trump, Mr. Cohen paid \$130,000 to Ms. Daniels, an adult film actress, in exchange for Ms. Daniels’ agreement not to speak publicly about an alleged affair between Ms. Daniels and then-candidate Mr. Trump (the “Daniels Non-Disclosure Agreement”). Mr. Cohen used funds from a home equity line of credit (“HELOC”) that Mr. Cohen secured with his home through a company he owns, Essential Consultants, LLC.

24. On January 20, 2017, Mr. Trump was inaugurated as the forty-fifth President of the United States. The same day, Mr. Cohen resigned from the Trump Organization to serve as Mr. Trump’s personal attorney.

25. In or around January and February 2017, Mr. Cohen sought reimbursement from the Trump Organization for various expenses he had incurred in connection with his work for the Organization, including legal expenses and the \$130,000 payment that Mr. Cohen made to Ms. Daniels.

26. In or around March 2017, Mr. Cohen joined the Republican National Committee as National Deputy Chairman for finance and, later, Vice Chair for the Northeast region.

II. The Trump Organization’s Operating Agreement

27. The Trump Organization’s operations are governed by an Operating Agreement, which was executed by Mr. Trump. The Operating Agreement includes at paragraph 7.2 a provision titled “Right to Indemnification” which states:

Subject to the limitations and provisions provided in this Article VII and in the LLCL, each person (an “Indemnified Person”) who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative (“Proceeding”), or any appeal in a Proceeding, or any inquiry or investigation that could lead to a Proceeding, by reason of the fact that he is the Member, or he, she or it was or is the legal representative of or a manager, director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of the Company or of the Member, shall be indemnified by the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable costs and expenses (including, without limitation, attorneys’ fees) actually incurred by such Indemnified Person in connection with a Proceeding if (i) such Indemnified Person acted in good faith and in a manner he, she, or it reasonably believed to be in, or not opposed to, the best interest of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his, her or its conduct was unlawful and (ii) the Indemnitee’s conduct did not constitute gross negligence or willful or wanton misconduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he, she, or it reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, that the Indemnified Person had reasonable cause to believe that his, her or its conduct was unlawful.

28. The Operating Agreement also provides at paragraph 7.3 that:

The rights granted under Sections 7.2 shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder and shall be deemed contract rights, and no amendment, modification or repeal of this Article VII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal” and at paragraph 7.4 that “The right to indemnification and the advancement and payment of expenses conferred by this Article VII shall not be exclusive of any other right which a person may have or hereafter acquire under any law (common or statutory), provision of the Articles, agreements, or otherwise.”

29. The Operating Agreement, including the Right to Indemnification provision,

was in effect for the entirety of the time Mr. Cohen was employed by the Trump

Organization and all at all times relevant to Mr. Cohen’s claims for indemnification.

III. Investigations Commence into Russian Interference with the 2016 Presidential Election

30. On January 13, 2017, the United States Senate Select Committee on Intelligence (the “Senate Intelligence Committee”) announced their investigation into alleged interference by the Russian government into the 2016 United States presidential election (the “2016 Election”), including any possible coordination with the Trump Campaign.

31. On January 25, 2017, the United States House Permanent Select Committee on Intelligence (the “House Intelligence Committee”) announced an investigation into alleged interference by the Russian government into the 2016 Election.

32. On or around May 17, 2017, the U.S. Department of Justice Special Counsel’s Office commenced an investigation, led by Special Counsel Robert S. Mueller III (the “Special Counsel”), into potential coordination between the Trump Campaign and the Russian government, potential obstruction of justice by Mr. Trump, and related matters (the “Mueller Investigation”).

33. By the end of May 2017, Mr. Cohen had emerged as a person of interest in the congressional investigations and the Mueller Investigation (together, the “Investigations”). Mr. Cohen retained counsel, McDermott, to represent him in connection with the Investigations. Mr. Cohen retained McDermott on the recommendation of an attorney for Mr. Trump, Jay Sekulow, and with the support of Mr. Trump and members of the Trump Organization.

34. Mr. Trump and members of the Trump Organization encouraged Mr. Cohen to cooperate with the Investigations.

35. On or around May 31, 2017, the House Intelligence Committee issued a subpoena to Mr. Cohen as part of its investigation into alleged interference by the Russian government into the 2016 Election.

IV. The July 2017 Affirmation and Separate Agreement by the Trump Organization to Indemnify Mr. Cohen

36. The Trump Organization and its counsel were well aware of the Investigations and other legal challenges Mr. Cohen was facing beginning in 2017.

37. In or around July 2017, the Trump Organization affirmed its contractual obligation under the Operating Agreement to indemnify Mr. Cohen and entered into a separate and supplementary agreement to pay for Mr. Cohen attorneys' fees and costs in connection with his representation and defense in the Investigations and other matters.

38. More specifically, the Trump Organization, through its General Counsel, Alan G. Garten, entered into an oral agreement with Mr. Cohen through his counsel, Stephen M. Ryan, to timely pay Mr. Cohen's attorneys' fees and costs in connection with the Investigations, as well as other matters related to Mr. Cohen's work with and on behalf of the Organization and its principals, directors, and officers that began after July 2017.¹ The consideration for this agreement included Mr. Cohen's participation in the Investigations, as well as his prior and continued work with and/or on behalf of the Trump Organization and its principals, directors, and officers.

39. This separate agreement was unnecessary, given Mr. Cohen's right under the indemnification provision of the Operating Agreement to be indemnified for attorneys' fees and costs in connection with these matters. Nevertheless, the oral agreement of the Trump Organization's general counsel, made to Mr. Cohen through his counsel, further affirmed Mr. Cohen's right to have his counsel's bills paid by the Trump Organization.

¹ On August 28, 2019, the Court ruled that, based on the record before the Court at that time, the Trump Organization's oral agreement to indemnify Mr. Cohen is not enforceable "with respect to legal proceedings and investigations that began after the agreement was reached" in July 2017, but held that "Cohen is entitled to discovery to determine [if] there is sufficient evidence to support enforceability of an agreement to pay legal fees with respect to [post-July 2017 proceedings]." Since the record now reflects that this oral agreement supplements the Trump Organization's indemnification obligations under its written Operating Agreement, there is now sufficient evidence to support enforceability of an agreement to pay Mr. Cohen's legal fees with respect to post-July 2017 proceedings.

40. Mr. Cohen reasonably relied upon the Trump Organization's agreements to pay for his attorneys' fees and costs, and based on these agreements, engaged counsel to represent him in the Investigations and other matters. In reasonable reliance upon the Trump Organization's agreements to pay for his attorneys' fees and costs, Mr. Cohen incurred attorneys' fees and costs in connection with the Investigations and the other matters identified below.

41. The Trump Organization and McDermott worked collaboratively in coordinating efforts and funding Mr. Cohen's defense under these indemnification agreements.

42. The Trump Organization initially honored these indemnification agreements. On October 25, 2017, the Trump Organization paid \$137,460.00 to McDermott. This amount reflected half of McDermott's unpaid invoices at the time, with the Trump Organization promising at that time that the other half would be paid the following day by the Trump Campaign.

43. In the fall of 2017, the Mueller Investigation and related congressional hearings relating to the involvement of the Russian government in the 2016 Election intensified. Between August and December 2017, the following events resulted in increased scrutiny upon Mr. Trump and Mr. Cohen:

- a. On August 28, 2017, Mr. Cohen's legal team sent a letter to the House Intelligence Committee and the Senate Intelligence Committee regarding the Trump Moscow Project;
- b. On September 7, 2017, Donald Trump, Jr. testified before the United States Senate Committee on the Judiciary (the "Senate Judiciary Committee");
- c. On September 19, 2017, Mr. Cohen provided a statement to the Senate Intelligence Committee regarding the Trump Moscow Project;
- d. On September 26, 2017, Roger Stone, a Republican party strategist and confidant of Mr. Trump, testified before the House Intelligence Committee;

- e. On October 5, 2017, George Papadopoulos, a former campaign adviser to Mr. Trump, pled guilty to making false statements to FBI agents relating to contacts he had with agents of the Russian government while working for the Trump Campaign;
- f. On October 25, 2017, Mr. Cohen testified before the Senate Intelligence Committee regarding, among other things, the Trump Moscow Project;
- g. On October 30, 2017, Paul Manafort, former chairman of the Trump Campaign, and Rick Gates, also an adviser to the Trump Campaign, were indicted by a federal grand jury on 12 counts, including conspiracy against the United States;
- h. On November 2, 2017, Carter Page, a former adviser to the Trump Campaign, testified before the House Intelligence Committee;
- i. On November 14, 2017, Attorney General Jeff Sessions testified before the United States House Committee on the Judiciary (the “House Judiciary Committee”);
- j. On December 1, 2017, Retired Lt. General Michael Flynn pled guilty to lying to the FBI about conversations he had with the Russian ambassador; and
- k. On December 6, 2017, Donald Trump, Jr. testified before the House Intelligence Committee.

44. Following these events, and notwithstanding Mr. Cohen’s alleged involvement in and knowledge of these events and the issues addressed therein, the Trump Organization continued to reconfirm its commitment to indemnify Mr. Cohen through the payment of McDermott’s invoices for Mr. Cohen’s legal expenses. For instance, in December 2017, with multiple overdue invoices from McDermott pending, the Trump Organization confirmed that it

would continue to indemnify Mr. Cohen and pay his attorneys' fees and expenses in connection with the Investigations, including the outstanding amounts owed to McDermott. This affirmation followed a direct appeal to Trump Organization executives Donald Trump, Jr. and Eric Trump by Mr. Cohen regarding the Organization's repeated delays in paying his attorneys' fees and expenses.

45. The Trump Organization continued to pay all or part of McDermott's invoices for fees and costs incurred in representing Mr. Cohen through at least May of 2018. The Trump Organization also continued to represent to Mr. Cohen, at least through June 2018, that it would continue to indemnify Mr. Cohen and pay his attorneys' fees and costs in connection with the Investigations. The Trump Organization secured the payment of over \$1.7 million of Mr. Cohen's attorneys' fees and costs incurred in connection with the Investigations and other matters, through direct payments, obtaining funding from the Trump Campaign, and/or securing credits from McDermott.

V. Mr. Cohen Faces Additional Legal Challenges in 2018

46. Throughout 2018, Mr. Cohen became the subject of additional investigations and legal actions stemming from his work for the Trump Organization. In February, 2018, Ms. Daniels' attorney alleged that Mr. Cohen had breached the Daniels Non-Disclosure Agreement and on March 6, 2018, Ms. Daniels filed a lawsuit against Mr. Trump and Mr. Cohen in California seeking to invalidate the Daniels Non-Disclosure Agreement. On March 26, 2018, Ms. Daniels amended her lawsuit to allege that Mr. Cohen defamed Ms. Daniels through public statements that Mr. Cohen made in or around February 2018.

47. On or around March 20, 2018, Ms. McDougal filed a lawsuit against American Media seeking to invalidate the McDougal Non-Disclosure Agreement.

48. On April 5, 2018, when asked if he had any knowledge of the \$130,000 payment made to Ms. Daniels, Mr. Trump stated, “You’ll have to ask Michael Cohen. Michael is my attorney. You’ll have to ask Michael.”

49. On April 9, 2018, in connection with a federal investigation of Mr. Cohen’s business dealings (the “FBI Investigation”), the FBI raided Mr. Cohen’s Rockefeller Center law office, his personal residence, and a Park Avenue hotel room, seizing business records, emails, documents, tape recordings, and electronic devices.

50. On June 13, 2018, Ms. Daniels filed a new lawsuit in California state court against her former attorney, Keith Davidson, and Mr. Cohen, alleging that Mr. Cohen and Mr. Davidson “colluded” and “acted in concert” to “manipulate” Ms. Daniels and benefit Mr. Trump.

VI. The Additional Affirmations and Separate Agreements to Indemnify Mr. Cohen’s Attorneys’ Fees and Costs

51. In or around February 2018, the Trump Organization once again affirmed its agreement to indemnify Mr. Cohen pursuant to the Operating Agreement and separately agreed to pay for his attorneys’ fees and costs, this time specifically in connection with Mr. Cohen’s representation and defense in matters related to the Daniels Non-Disclosure Agreement.

52. More specifically, after Ms. Daniels’ attorney alleged that Mr. Cohen had breached the Daniels Non-Disclosure Agreement, the Trump Organization, through its members and officers, entered into an oral agreement with Mr. Cohen to timely pay Mr. Cohen’s attorneys’ fees and costs in connection with legal matters arising out of the Daniels Non-Disclosure Agreement, which would later include a lawsuit seeking to invalidate the Daniels Non-Disclosure Agreement filed against Mr. Trump and Mr. Cohen in California. The consideration for this agreement included Mr. Cohen’s participation in such legal matters. In reliance on this agreement, Mr. Cohen retained Brent Blakely of the Blakely Law Group to represent him in matters arising from the Daniels Non-Disclosure Agreement. Following the filing of Ms. Daniels’ California lawsuit, the

Trump Organization's attorney in that lawsuit, Charles Harder, confirmed for Mr. Blakely that the Trump Organization would pay Mr. Cohen's attorneys' fees and costs in connection with that lawsuit and any other legal matters related to the Daniels Non-Disclosure Agreement.

53. This separate agreement was unnecessary, given Mr. Cohen's right under the indemnification provision of the Operating Agreement to be indemnified for attorneys' fees and costs in connection with the matters related to the Daniels Non-Disclosure Agreement. Nevertheless, this separate oral agreement and affirmation of its indemnity obligation by the Trump Organization, made to Mr. Cohen and his counsel at the Blakely Law Group, further confirmed Mr. Cohen's right to have his counsel's bills paid for by the Trump Organization.

54. In or around April 2018, the Trump Organization yet again confirmed its obligation to indemnify Mr. Cohen and entered a separate agreement to pay for his attorneys' fees and costs, in this instance specifically in connection with Mr. Cohen's representation and defense in the FBI Investigation, in which Mr. Cohen was, at that time, represented by McDermott.

55. Shortly after the FBI raid of Mr. Cohen's office and home, the Trump Organization, through its in-house and outside counsel, entered into an oral agreement with Mr. Cohen, through his counsel, Stephen M. Ryan, to timely pay Mr. Cohen's attorneys' fees and costs in connection with any legal matters related to the FBI Investigation. The consideration for this agreement included Mr. Cohen's participation in the FBI Investigation (including in connection with a review of certain materials seized by the FBI that the Trump Organization claimed were privileged). Shortly after entering that oral agreement, the Trump Organization provided McDermott with a \$250,000 retainer for its representation of Mr. Cohen in the FBI Investigation.

56. This separate agreement was unnecessary, given Mr. Cohen's right under the indemnification provision of the Operating Agreement to be indemnified for attorneys' fees and costs in connection with the FBI Investigation. Nevertheless, this separate oral agreement and affirmation of its indemnity obligation by the Trump Organization, made to Mr. Cohen and his counsel at McDermott, further confirmed Mr. Cohen's right to have his counsel's bills paid for by the Trump Organization.

57. Mr. Cohen reasonably relied upon these separate indemnification agreements and affirmations of the mandatory indemnity obligations under the Operating Agreement by the Trump Organization and in reasonable reliance upon those agreements incurred attorneys' fees and costs in connection with the Daniels Non-Disclosure Agreement and the FBI Investigation.

VII. Mr. Cohen Decides to Cooperate in the Investigations and the Trump Organization Abandons its Contractual Commitment to Mr. Cohen in Response

58. Initially, following the April 2018 FBI raid on Mr. Cohen, Mr. Trump continued to support Mr. Cohen publicly. On April 9, 2018, after learning about the FBI raid, Mr. Trump stated, "So, I just heard that they[, the FBI,] broke into the office of one of my personal attorneys, a good man, and it's a disgraceful situation. It's a total witch hunt. I've been saying it for a long time. . . . It's an attack on our country in a true sense. It's an attack on what we all stand for."

59. On April 21, 2018, Mr. Trump tweeted: "The New York Times and a third rate reporter named Maggie Haberman, known as a Crooked H flunkie who I don't speak to and have nothing to do with, are going out of their way to destroy Michael Cohen and his relationship with me in the hope that he will 'flip.' They use . . . non-existent 'sources' and a drunk/drugged up loser who hates Michael, a fine person with a wonderful family. Michael is a businessman for his own account/lawyer who I have always liked & respected. Most people will flip if the Government lets them out of trouble, even if . . . it means lying or making up stories. Sorry, I don't see Michael doing that despite the horrible Witch Hunt and the dishonest media!"

60. On April 26, 2018, in a call-in interview with the FOX News television program “Fox & Friends,” Mr. Trump stated that Mr. Cohen was a “good person” and “great guy” who handled “a percentage of my overall legal work. . . . He represents me – like with this crazy Stormy Daniels deal he represented me. And, you know, from what I see he did absolutely nothing wrong. . . . I hope he’s in great shape.”

61. On May 6, 2018, Rudy Giuliani, also one of Mr. Trump’s personal attorneys, appeared in an interview on the ABC News television program “This Week with George Stephanopoulos.” In the interview, Mr. Stephanopoulos asked Mr. Giuliani, “Are you concerned at all that Michael Cohen’s going to cooperate with prosecutors?” Mr. Giuliani responded, “No. I expect that he is going to cooperate with them. I don’t think they’ll be happy with it because he doesn’t have any incriminating evidence about the president or himself. The man is an honest, honorable lawyer.”

62. On June 2018, Mr. Cohen began telling friends and family that he was willing to cooperate with the Special Counsel and federal prosecutors. The expectation that Mr. Cohen would cooperate with the Special Counsel, following the departure of McDermott as his counsel, was widely reported that month.

63. As Mr. Cohen’s anticipated cooperation with the Special Counsel became known, Mr. Trump publicly distanced himself from Mr. Cohen, stating on June 15, 2018, “I haven’t spoken to Michael in a long time. . . . [H]e’s not my lawyer anymore.”

64. On July 26, 2018, in an interview with CNN, Mr. Trump’s attorney, Rudy Giuliani, who had described Mr. Cohen as “an honest, honorable lawyer” two months earlier, changed course, alleging “He has lied all his life” and describing Mr. Cohen as a “pathological liar.”

65. On December 16, 2018, Mr. Trump tweeted, “Remember, Michael Cohen only became a ‘Rat’ after the FBI did something which was absolutely unthinkable & unheard of until the Witch Hunt was illegally started. They BROKE INTO AN ATTORNEY’S OFFICE!”

VIII. The Trump Organization Refuses to Honor its Agreements to Pay Mr. Cohen’s Legal Fees and Costs

66. In or around June 2018, the Trump Organization ceased to pay McDermott’s invoices, without notice or justification.

67. As a result of the Trump Organization’s wrongful refusal to pay McDermott’s invoices under the indemnification agreements, McDermott ultimately withdrew from its representation of Mr. Cohen. McDermott’s withdrawal prejudiced Mr. Cohen’s ability to respond to the Mueller Investigation, the FBI Investigation, and the other Investigations. The Trump Organization’s wrongful refusal to pay McDermott in full violated its Operating Agreement, as well as its oral affirmations and agreements.

68. Further, the Trump Organization failed to pay the Blakely Law Group’s invoices related to Ms. Daniel’s California lawsuit and other legal matters arising from the Daniels Non-Disclosure Agreement, without notice or justification, despite its obligations under its Operating Agreement, as well as its oral affirmation and agreement to pay those specific fees and costs. The Blakely Law Group’s fees incurred in connection with the Daniels Non-Disclosure agreement totaled \$299,275.38. Despite its obligation and commitment to indemnify Mr. Cohen for these amounts, prior to Mr. Cohen filing this lawsuit the Trump Organization refused to pay the Blakely Law Group anything for its work on behalf of Mr. Cohen in the Stormy Daniels matters. Only after the Trump Organization notified the Court of its intention to move for summary judgment in this action did the Trump Organization pay any portion of the Blakely Law Group’s outstanding fees, when it paid half of those fees in June 2020.

69. In addition, following McDermott's withdrawal, Mr. Cohen had to retain additional counsel in connection with the Investigations and lawsuits against him listed below arising from his work on behalf of the Trump Organization and its principals, directors, and officers. These counsel included Petrillo Klein & Boxer LLP; Davis Goldberg & Galper PLLC; and Monico & Spevack.

70. Between June 2018 and the present, Mr. Cohen has incurred and continues to incur legal fees and costs in connection with his representation and defense in the following matters:

Matter	Case Number	Description
House Permanent Select Committee on Intelligence	N/A	Subpoena by House Permanent Select Committee on Intelligence re connections between the Trump Organization and Russia.
Senate Select Committee on Intelligence	N/A	Testimony before the Senate Select Committee on Intelligence re connections between the Trump Organization and Russia.
Senate Committee on the Judiciary	N/A	Preparation for potential testimony; response to document requests re connections between the Trump Organization and Russia.
House Committee on Oversight and Reform	N/A	Preparation for testimony re connections between the Trump Organization and Russia.
<i>Stephanie Clifford v. Donald J. Trump, et al.</i>	2:2018-cv-02217	Stormy Daniels lawsuit against Mr. Cohen re defamation in connection with his payment of Ms. Daniels on President Trump's behalf (Certificate of Interested Parties re Michael Cohen filed 3/26/2018).
In the Matter of Search Warrants Executed on April 9, 2018	1:2018-mj-03161	Motion for temporary restraining order to prevent federal prosecutors from reviewing evidence obtained by FBI during raid of Mr. Cohen's home and office (which the Trump Organization claimed was privileged).

<i>Stephanie Clifford v. Keith Davidson, et al.</i>	SC 129384 (Los Angeles Super. Ct.) 2:2018-cv-05052 (C.D. Cal.)	Stormy Daniels lawsuit against her former attorney, Keith Davidson, and Mr. Cohen re collusion arising from Mr. Cohen's payment to Ms. Daniels on President Trump's behalf.
<i>Underwood v. Trump</i>	451130/2018 (N.Y. Sup. Ct., N.Y. Cnty.)	Subpoena issued on 8/22/2018 by N.Y. Attorney General in case against the Donald J. Trump Charitable Foundation, Mr. Trump, and others re violation of state charity laws.
Special Counsel Robert S. Mueller III's Investigation	N/A	Various meetings with Special Counsel Robert S. Mueller III's team re Mr. Trump/the Trump Organization's Russia ties and potential collusion.

(collectively, these matters constitute the "Matters").

71. Each of these Matters falls within the scope of indemnity provided under Section 7.2 of the Operating Agreement, Mr. Cohen was an "Indemnified Person" under the Operating Agreement, and the Trump Organization is required to indemnify Mr. Cohen, including for his attorneys' fees and expenses, for all of these Matters under the Operating Agreement (as well as under the additional oral indemnification agreements).

72. As of May 8, 2020, unreimbursed attorneys' fees and costs incurred on behalf of Mr. Cohen in connection with the Matters subject to his indemnification agreements with the Trump Organization totaled millions of dollars. Attorneys' fees and costs subject to the Trump Organization's indemnification agreements continue to accrue.

IX. Mr. Cohen Suffers Substantial Additional Harm Due To Defendant's Conduct

73. On August 7, 2018, Mr. Cohen met with the Special Counsel's team for the first time to provide information in connection with the Mueller Investigation. Between August and November 2018, Mr. Cohen provided more than 70 hours of testimony to the Special Counsel in connection with the Mueller Investigation.

74. On August 21, 2018, Mr. Cohen pled guilty to eight criminal charges, including campaign finance violations, tax evasion, and making false statements to a bank. Certain of these charges arose from conduct undertaken by Mr. Cohen in furtherance of and at the behest of the Trump Organization and its principals, directors, and officers.

75. On November 29, 2018, Mr. Cohen pled guilty to the additional charge of lying to Congress about the Trump Moscow Project.

76. Mr. Cohen was sentenced on December 12, 2018 for the charges he pled guilty to on August 21. In addition to his prison sentence, Mr. Cohen was ordered to pay fines and other amounts that arose from conduct undertaken by Mr. Cohen in furtherance of and at the behest of the Trump Organization and its principals, directors, and officers.

77. On January 25, 2019, Mr. Cohen wrote to the Trump Organization and requested that the organization reimburse him for all outstanding amounts owed pursuant to the indemnification agreements, and otherwise. Mr. Cohen's correspondence requested a response from the Trump Organization by February 8, 2019.

78. The Trump Organization never responded to Mr. Cohen's January 25 request or paid any of the amounts outstanding and owed.

FIRST CAUSE OF ACTION
(Breach of Contract)

79. Mr. Cohen incorporates by reference the preceding paragraphs, as though fully restated herein.

80. Under the terms of its Operating Agreement, the Trump Organization had a written obligation to indemnify Mr. Cohen for each of the Matters, including for this attorneys' fees and costs. Separately, and in addition, Mr. Cohen and the Trump Organization established three separate oral agreements under which the Trump Organization agreed to indemnify Mr. Cohen and to pay attorneys' fees and costs incurred by Mr. Cohen in connection with,

respectively, (1) the Matters, (2) the FBI Investigation, and (3) the Daniels Non-Disclosure Agreement.

81. Mr. Cohen performed his obligations under the indemnification agreements, including by participating in the legal proceeding at issue.

82. Mr. Cohen has incurred and continues to incur legal fees and costs in connection with his defense in the Matters.

83. The Trump Organization has refused to pay any of Mr. Cohen's attorneys' fees or costs since May 2018. As of May 8, 2020, the amount of Mr. Cohen's unpaid legal fees and costs in connection with the Matters totaled millions of dollars. All of these amounts were subject to the Trump Organization's indemnification agreements. The Trump Organization's repeated failure to pay law firm bills was a breach of its obligations.

84. By failing to pay Mr. Cohen's attorneys' fees and costs incurred in connection with the Matters, the Trump Organization has breached the indemnification agreements.

85. As a direct, foreseeable, and proximate result of the Trump Organization's breach of the indemnification agreements, Mr. Cohen has suffered damages, including, without limitation, incidental, actual, consequential, and compensatory damages. Additionally, as a result of the Trump Organization's egregious pattern and practice of repeatedly breaching indemnification agreements with Mr. Cohen, Mr. Cohen is entitled to punitive damages. Mr. Cohen is entitled to recover these damages from the Trump Organization, as well as such other appropriate damages and relief permitted by law, all in an amount to be determined at trial.

SECOND CAUSE OF ACTION**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

86. Mr. Cohen incorporates the preceding paragraphs by reference, as though fully restated herein.

87. The Operating Agreement and the separate oral indemnification agreements are valid and enforceable agreements under New York law.

88. As valid contracts between the parties, the indemnification agreements impose on each party a duty of good faith and fair dealing in their performance and enforcement.

89. After it became clear that Mr. Cohen would cooperate in the Investigations, the Trump Organization took steps to thwart Mr. Cohen's ability to receive amounts he was entitled to under the indemnification agreements and thereby breached its duty of good faith and fair dealing in its performance of the indemnification agreements. In addition, the Trump Organization and its surrogates slandered and defamed Mr. Cohen personally and professionally concurrently with breaching the Operating Agreement and the oral indemnification agreements. The Defendant sought to distance itself from Mr. Cohen, disparage Mr. Cohen's reputation, and hinder his defense in the Matters by refusing to pay for his counsel in contravention of its obligations and after several of Mr. Cohen's lawyers threatened to and ultimately did terminate their representation due to non-payment.

90. The Matters were high-profile, complex, and with the highest possible stakes. The Matters required sophisticated and capable counsel to protect Mr. Cohen's interests. The Trump Organization's cessation of funding Mr. Cohen's defense in the Matters, without lawful justification, resulting in the resignation of certain of Mr. Cohen's attorneys while he was in the midst of congressional scrutiny and the subject of the FBI Investigation, was undertaken with malice and indifference to its obligations, and was morally reprehensible.

91. The Trump Organization's failure to pay Mr. Cohen's attorneys' fees and costs in connection with the Matters has destroyed Mr. Cohen's right to receive the fruits of the written and oral agreements that required the Defendant to indemnify Mr. Cohen.

92. As a direct, foreseeable, and proximate result of the Trump Organization's breach of its duty of good faith and fair dealing, Mr. Cohen suffered damages, including, without limitation, incidental, actual, consequential, and compensatory damages. Additionally, as a result of the Trump Organization's egregious pattern and practice of repeatedly failing to honor indemnification agreements with Mr. Cohen, Mr. Cohen is entitled to punitive damages. Mr. Cohen is entitled to recover these damages from the Trump Organization, as well as such other appropriate damages and relief permitted by law, all in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Declaratory Judgment)

93. Mr. Cohen incorporates the preceding paragraphs by reference, as though fully restated herein.

94. In light of the parties' dispute about the scope of any duty that the Trump Organization has to indemnify Mr. Cohen and pay his attorneys' fees and costs in connection with the Matters, an actual controversy exists between the parties that cannot be resolved absent relief from this Court.

95. Accordingly, Mr. Cohen seeks a declaratory judgment setting forth the scope of the parties' respective rights and obligations under the indemnification agreements, including declarations that: (a) the Trump Organization is obligated to indemnify Mr. Cohen and to pay reasonable attorneys' fees and costs incurred by Mr. Cohen in connection with the Matters to date under the indemnification agreements; and (b) the Trump Organization is liable for all attorneys' fees and costs that Mr. Cohen may incur in the future in connection with the Matters under the indemnification agreements.

FOURTH CAUSE OF ACTION
(Promissory Estoppel)

96. Mr. Cohen incorporates the preceding paragraphs by reference, as though fully restated herein.

97. The Trump Organization clearly and unambiguously promised to indemnify Mr. Cohen and, separately, to pay for his attorneys' fees and costs in connection with Mr. Cohen's representation and defense in the Matters.

98. Mr. Cohen reasonably relied upon the Trump Organization's promises, and based on these promises engaged counsel and incurred attorneys' fees and costs in connection with the Matters.

99. As a result of his reasonable reliance upon the Trump Organization's promises and failure to fulfill those promises to indemnify Mr. Cohen and, separately, to pay for his attorneys' fees and costs in connection with Mr. Cohen's representation and defense in the Matters, Mr. Cohen's defense in the Matters was prejudiced and Mr. Cohen has incurred attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Mr. Cohen respectfully demands judgment against the Trump Organization as follows:

- a) On the First Cause of Action, awarding Mr. Cohen incidental, actual, consequential, and compensatory damages under the indemnification agreements, as well as such other appropriate damages and relief permitted by law, including punitive damages, all in an amount to be determined at trial;

- b) On the Second Cause of Action, awarding Mr. Cohen actual, consequential, and compensatory damages for breach of the implied covenant of good faith and fair dealing under the indemnification agreements, as well as such other appropriate damages and relief permitted by law, including punitive damages, all in an amount to be determined at trial;
- c) On the Third Cause of Action, adjudging, decreeing, and declaring pursuant to N.Y. C.P.L.R. § 3001:
- i. the scope of the parties' respective rights and obligations under the indemnification agreements, any applicable corporate governance document, and/or any other basis;
 - ii. as a matter of fact and law, that the Trump Organization is obligated to pay attorneys' fees and costs incurred or that may be incurred by Mr. Cohen in connection with the Matters;
- d) On the Fourth Cause of Action, awarding Mr. Cohen equitable, incidental, actual, consequential, and compensatory damages, as well as such other appropriate damages and relief permitted by law and in equity, all in an amount to be determined at trial;
- e) On each of Mr. Cohen's four counts, awarding Mr. Cohen pre-judgment interest, post-judgment interest, together with an award of fees incurred in this case (including attorneys' fees), expenses, disbursements, and costs arising from this action; and
- f) Granting Mr. Cohen such other relief as the Court deems just and proper.

Dated: September 11, 2020
New York, New York

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