IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

DONALD J. TRUMP, in his capacity as a Candidate for President of the)
United States,)
Plaintiff,)))
v.)
BRIAN P. KEMP, in his official capacity as Governor of the State of Georgia; BRAD RAFFENSPERGER,) Civil Action No. 1:20-cv-05310-MHC)
in his official capacity as Georgia)
Secretary of State,)
Defendants.)))

RESPONSE TO PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL

Defendants do not object to the voluntary dismissal. Defendants do object to the false grounds articulated in the Notice. Plaintiff Donald J. Trump voluntarily dismissed this litigation contending the dismissal is a result of settlement between the Parties. It is not. There is no "settlement." The demonstrably false characterizations by Plaintiff's counsel are addressed herein in this response.

Plaintiff's counsel inquired on numerous occasions about settling the disputes, including the pending state court matters, between the Parties. Those inquiries were repeatedly rebuffed by Defendants on the grounds that Plaintiff's litigation efforts were frivolous and the certified results of the November 3, 2020, Election were valid. Without notifying Defendants' counsel, Plaintiff and his litigation counsel participated in a phone conference with Defendant Raffensperger on Saturday January 2, 2020. The participation of counsel for Plaintiff in that call appears to be in violation of the Georgia Rules of Professional Conduct Rule 4.2, as Plaintiff's counsel neither notified litigation counsel for Defendant Raffensperger nor sought nor obtained consent to conduct or participate in a conversation with Defendant Raffensperger. This action by Plaintiff's counsel was undertaken despite the fact that the substance of the call concerned not only this action but also two pending state superior court matters and a pending appeal in the Georgia Supreme Court in which Defendant Raffensperger was represented by counsel, all of which was known to Plaintiff's counsel.

After that call, Defendants' counsel told Plaintiff there would be no discussions between the parties until Plaintiff dismissed all of their litigations. *See* Notice Ex. 1. Yesterday evening at 9:36 p.m., Plaintiff's counsel sent a letter to Defendants' counsel stating that they would dismiss their various frivolous complaints pursuant to a "settlement" between the Parties. *See* Notice Ex. 2.

Defendants' counsel responded by email yesterday evening confirming there was absolutely no settlement between the Parties and reiterating that Plaintiff's claims were frivolous. *See* Exhibit A attached hereto. Plaintiff's counsel responded to that email notification that no "settlement" was contemplated nor agreed to by stating his intention to unilaterally dismiss all pending actions against Defendants. *See* Exhibit B attached hereto. Plaintiff's counsel failed to include that response or his reply after that clear statement that this was not pursuant to a settlement but instead a unilateral dismissal in his filed Notice of Voluntary Dismissal. While Defendants are appreciative of this voluntary dismissal and the cessation by Plaintiff of this groundless litigation, as officers of the court it is expected that all matters before the Court will be handled with complete candor. The Defendants make this response to ensure that the actual record of what has transpired is accurately reflected in the docket.

Respectfully submitted this 7th day of January, 2021.

Christopher M. Carr Attorney General Georgia Bar No. 112505 Bryan K. Webb Deputy Attorney General Georgia Bar No. 743580 Russell D. Willard Senior Assistant Attorney General Georgia Bar No. 760280 Charlene S. McGowan Assistant Attorney General Georgia Bar No. 697316 **OFFICE OF THE ATTORNEY** GENERAL Georgia Department of Law 40 Capitol Square SW Atlanta, Georgia, 30334 Telephone: (404) 458-3600 Facsimile: (404) 657-8733

/s/ Christopher S. Anulewicz Christopher S. Anulewicz Georgia Bar No. 020914 canulewicz@balch.com James L. Hollis Georgia Bar No. 930998 jhollis@balch.com Jonathan R. DeLuca Georgia Bar No. 228413 jdeluca@balch.com Patrick N. Silloway Georgia Bar No. 971966 psilloway@balch.com **BALCH & BINGHAM LLP** 30 Ivan Allen Jr. Blvd. N.W., Suite 700 Atlanta, GA 30308 Telephone: (404) 261-6020 Facsimile: (404) 261-3656

Attorneys for Defendants Brian Kemp and Brad Raffensperger

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2021 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send email notifications of such filing the following counsel of record:

Kurt R. Hilbert THE HILBERT LAW FIRM, LLC 205 Norcross Street Roswell, GA 30075 <u>khilbert@hilbertlaw.com</u>

John Charles Eastman 174 W. Lincoln Avenue #620 Anaheim, CA 92805 Jeastman562@gmail.com

/s/ Christopher S. Anulewicz

Christopher S. Anulewicz Georgia Bar No. 020914