

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

ROBERT S. TRUMP,

Plaintiff,

- against -

MARY L. TRUMP and SIMON & SCHUSTER,
INC.,

Defendants.

Index No. 2020-51585

**AFFIDAVIT OF JONATHAN
KARP IN SUPPORT OF SIMON
& SCHUSTER, INC.'S
OPPOSITION TO MOTION
FOR PRELIMINARY
INJUNCTION AND
TEMPORARY RESTRAINING
ORDER**

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

JONATHAN KARP, being duly sworn, deposes and says that:

1. I am the Chief Executive Officer of Simon & Schuster, Inc. ("Simon & Schuster").
2. I make this affidavit in connection with Robert S. Trump's Emergency Application for a Temporary Restraining Order and Motion for a Preliminary Injunction concerning Simon & Schuster's publication of *Too Much and Never Enough: How My Family Created the World's Most Dangerous Man* by Mary L. Trump (the "Book").
3. I have personal knowledge of the facts set forth herein, and I would be competent to testify to these facts if called as a witness.
4. I have more than thirty years of experience in book publishing. Prior to joining Simon & Schuster, I served as editor in chief at Random House and later as publisher and editor

in chief of Twelve, an imprint I founded that was part of the Hachette Book Group. In 2010, I left Twelve to become executive vice president and publisher of Simon & Schuster's adult publishing division. In 2018, I became president of that division. I remained in that position until May of this year, at which point I became Simon & Schuster's CEO. Prior to entering book publishing, I worked as a journalist, including at the *Washington Post*, the *Miami Herald* and the *Providence Journal*.

5. Simon & Schuster is one of the nation's preeminent publishing houses. Over the course of the last two decades, it has published scores of significant works related to national affairs by authors covering the political spectrum. Simon & Schuster is the publisher of such authors as Bob Woodward, Donald Trump, Ivanka Trump, Hillary Clinton, George H.W. Bush, Laura Bush, John McCain, Jimmy Carter, Dick Cheney, Walter Isaacson, David McCullough, Doris Kearns Goodwin, Glenn Beck, and most recently, John Bolton.

6. As is common in book publishing, Simon & Schuster received in May 2019 an unsolicited proposal from Ms. Trump's literary agent proposing the Book. Ms. Trump is the niece of President Donald Trump. The proposal was sent independently to three different imprints of Simon & Schuster: Scribner, Gallery, and Simon & Schuster. Shortly thereafter, on May 9, 2019, I participated in a meeting with Ms. Trump to discuss her proposal and what she envisioned concerning her proposed memoir. Simon & Schuster (through its three imprints) decided to join an auction to acquire the rights to the work, which took place on May 14, 2019. We were interested in publishing Ms. Trump's work because we believed that it would address issues of profound importance to our country, with critical insights concerning the President of the United States, his formative years, and his family's financial dealings (which have been the subject of intense scrutiny by the press). Simon & Schuster was not alone. It is my understanding that about nine

or ten other publishers had received Ms. Trump's proposal, and they also participated in the auction. Simon & Schuster won the auction.

7. After negotiations over several months, on August 29, 2019, Simon & Schuster entered into a publishing agreement with Ms. Trump's entity Compson Enterprises LLC for the services of Mary L. Trump, the Author (the "Agreement"). (Ms. Trump signed an Individual Guarantee concerning the Agreement). As the signatory to the Agreement on behalf of Simon & Schuster, I am very familiar with the contents of the Agreement. In the Agreement, Ms. Trump warrants and represents, in relevant part, that she has the "full power and authority to make this agreement and to grant the rights granted hereunder" and that she "has not previously assigned, transferred or otherwise encumbered [the rights]." Agreement ¶ 37. The Agreement also includes Ms. Trump's representation that these warranties are "true on the date of the execution of this agreement" and "true on the date of the actual publication" of the Book. *Id.* ¶ 44. Further, the Agreement provides that the "Publisher shall be under no obligation to make an independent investigation to determine whether the foregoing warranties and representations are true and correct." *Id.* ¶ 43.

8. Simon & Schuster had (and has) no reason to doubt the accuracy of Ms. Trump's warranties—she expressly warranted that there was no impediment to her ability to tell her own story. This conclusion was underscored in the meeting with Ms. Trump concerning her proposal for the Book. At the meeting, she revealed that she was the primary source for the Pulitzer Prize winning *New York Times* article "Trump Engaged in Suspect Tax Schemes as He Reaped Riches From His Father" that was published on October 2, 2018. *See* Affirmation of Elizabeth A. McNamara in Support of Simon & Schuster, Inc.'s Opposition to Motion for Preliminary

Injunction and Temporary Restraining Order (“McNamara Affirmation”), Exhibit A. Learning that, and knowing that no litigation resulted from the *Times* article, we were entirely confident in Ms. Trump’s ability to tell her story regarding her own family given that over a year before she had worked closely with the *Times* to tell key elements of this story. We did not learn anything about Ms. Trump signing any agreement concerning her ability to speak about her litigation with her family until shortly after press broke concerning Ms. Trump’s Book about two weeks ago, well after the Book had been accepted, put into production, and printing had begun. And we never saw any purported agreement until this action was filed against Ms. Trump and Simon & Schuster.

9. After the execution of the Agreement, the work entered the editorial process. On May 7, 2020, Simon & Schuster formally accepted the delivered work under the terms of the Agreement. The Book then moved into the production process. Once Simon & Schuster formally accepted the manuscript for publication and initiated the publication process, Ms. Trump lost any ability she otherwise may have had to prevent or delay the Book’s publication.

10. Simon & Schuster set July 28, 2020 as the publication date and began the process of readying the Book for publication. That process involves, among other things, printing copies of the book, processing orders, and shipping ordered copies to retailers and wholesalers to be available to customers by the publication date. This process, which occurs on a rolling basis, generally begins anywhere from four to six weeks in advance of the publication date because it takes significant time to get books printed, bound, and shipped. As of today, approximately 75,000 copies have been printed and bound and are ready for publication, thousands of which have already been shipped. This schedule was set far in advance of Plaintiff providing notice of his intention to file a motion for a preliminary injunction and temporary restraining order, and the schedule was in no way changed or expedited as a result of such notice. In addition, Simon & Schuster has

provided, and multiple booksellers have published, key information concerning the contents of the Book. A copy of Amazon's listing and description of the Book is attached as Exhibit N to the McNamara Affirmation.

11. Many revelations from the Book have already been published in a *Daily Beast* article on June 14, 2020, attached as Exhibit B to the McNamara Affirmation. In the *Daily Beast* article, for example, it is reported that Ms. Trump's book will reveal that she "played a critical role helping the New York Times print startling revelations about Trump's taxes" and how President Trump was "involved in 'fraudulent' tax schemes." It also recounts how Ms. Trump was part of a "bitter family court battle over Fred Trump Sr.'s will" that garnered press at the time. And the article reports that the Book will discuss Ms. Trump's father's death from alcoholism and her contention that "Donald and Fred Sr." had "neglected him at critical stages of his addiction."

12. As previously scheduled, on June 25, 2020, Simon & Schuster began shipping copies of the Book to domestic retailers. This includes shipments to retail booksellers large and small, from large national chains and online entities to a host of small, independent booksellers.

13. Simon & Schuster no longer maintains control of the copies of the Book that have been shipped to the large national chains, online retailers, and small independent booksellers referenced in the previous paragraph of this Affidavit. Once Simon & Schuster shipped them in response to a purchase order, title to the physical copies passed to the retailer or wholesaler.

14. I understand that in the Complaint in this action, Mr. Trump does not actually state any cause of action against Simon & Schuster. Instead, it is alleged that Simon & Schuster may somehow be enjoined because it is Ms. Trump's "agent." This contention is belied by the Agreement, which in no way establishes an agency relationship between Simon & Schuster and Ms. Trump, and instead is a standard publishing agreement negotiated at arm's length.

15. In my over 30 years working in book publishing, I am not aware of a book that was ever enjoined and censured from the public for any reason, including those most recently articulated by the federal government in connection with John Bolton's book. Simon & Schuster is one of the preeminent publishing houses in the country with an unparalleled reputation for publishing works of great import to society. Any order granting an injunction would impose substantial and irreparable damage to Simon & Schuster's ability to publish a work addressing issues of national importance to this country and the public's right to read the work. This harm is heightened by the fact that news of the anticipated publication is widespread, which, in turn, is further proof that the public is interested in the newsworthy information in the Book.

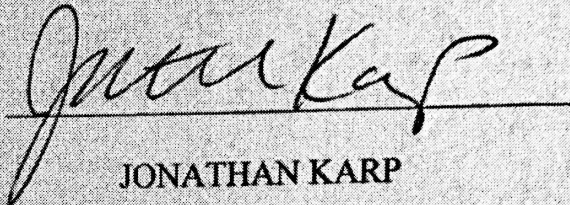
16. To take the unprecedented action of enjoining the publication of this Book, even temporarily, would interfere with Simon & Schuster's constitutionally protected rights and its mission to inform the American public about newsworthy topics. It would also interfere with Simon & Schuster's readers' constitutionally protected rights to receive newsworthy reporting.

17. The author offers a personal and never-before-seen perspective on President Trump (her uncle), President Trump's parents (her grandparents), and his brother (her father). Mary Trump will be providing valuable eyewitness source material for any historians who want to study the Trump presidency and for citizens more generally. Ms. Trump's first-hand experiences are of critical importance for an informed citizenry.

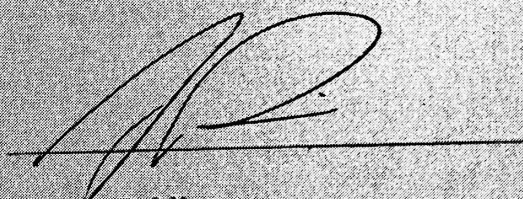
18. An injunction would impose extraordinary economic harm to Simon & Schuster as well. Simon & Schuster has invested considerable resources in editing, printing, shipping, and preparing to publish approximately 75,000 copies of the Book. The Book is

currently number 1 on the Amazon best sellers list. There is no allegation in this action that Simon & Schuster has done anything wrong, violated any agreement, or was even a party to any relevant agreement. Indeed, I understand that no claim is made against Simon & Schuster at all. Whatever the legal ramifications of the purported agreement referenced in Mr. Trump's Complaint may be for Ms. Trump, they are irrelevant to Simon & Schuster's First Amendment right to publish.

19. Under these circumstances, there is nothing that warrants Simon & Schuster to suffer these serious economic and other consequences.


JONATHAN KARP

Sworn to before me this 30
day of June, 2020


Notary Public

Adam I. Rich
Registration No. 02R16393404
Qualified in New York County
Commission expires June 17, 2023