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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

10
11 JOHN C. EASTMAN,
c/o Burnham & Gorokhov, PLLC
12 1424 K Street NW, Suite 500
Washington, D.C. 20005,

13 Plaintiff,

14 v.

15 BENNIE G. THOMPSON, in his
16 official capacity as Chairman of the
House Select Committee to Investigate
17 the January 6 Attack on the United
States Capitol; Rayburn House Office
18 Building, 2466, Washington, DC 20515

19 SELECT COMMITTEE TO
20 INVESTIGATE THE JANUARY 6TH
ATTACK ON THE UNITED STATES
CAPITOL

21 CHAPMAN UNIVERSITY, 1
22 University Dr. Orange, CA 92866,

23 Defendants.
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Case No. 8:22-cv-00099-DOC-DFM

**DEFENDANT CHAPMAN
UNIVERSITY’S RESPONSE TO
PLAINTIFF’S APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Date: January 24, 2022
Time: 2:00 p.m.

Judge: Hon. David O. Carter
Magistrate Judge: Hon. Douglas F.
McCormick
Crtrm.: 9D
Trial Date: not set

1 Defendant Chapman University (“Chapman” or “the University”) files this
2 response to Plaintiff John C. Eastman’s application for a temporary restraining order
3 (“TRO”) enjoining Chapman from producing documents and communications
4 (together, “Documents”) in response to the Subpoena to Produce Documents
5 (“Subpoena”) issued January 18, 2022 on Chapman by the House Select Committee
6 to Investigate the January 6th Attack on the United States Capitol (“Select
7 Committee”).

8 **I. INTRODUCTION**

9 Chapman neither supports nor opposes the TRO application. The dispute
10 over the legitimacy and appropriate scope of the Select Committee’s Subpoena is
11 between Eastman and the Select Committee. Chapman takes no position on the
12 legitimacy of the Select Committee or its Subpoena.

13 Chapman is an interested party in that it is the custodian of Documents
14 Eastman sent, received or created during the period of his employment with
15 Chapman covered by the Subpoena (November 3, 2020 to January 20, 2021).

16 With respect to the privilege issues asserted by Eastman, as explained below,
17 any legal work done by Eastman using Chapman’s resources that supported a
18 political campaign or candidate for elective office was unauthorized and contrary to
19 Chapman’s policies. As such, any such work was not performed on behalf of the
20 University and it therefore has no interest in determining whether responsive
21 Documents related to such work are subject to the attorney-client privilege or
22 attorney work product doctrine. Eastman is best suited to evaluate those documents
23 for potential privilege. For this reason, Chapman had offered (unsuccessfully) to
24 comply with the Select Committee’s request for the Documents by producing them
25 to Eastman, so he could identify privileged Documents and provide the Select
26 Committee with a privilege log.

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1 **II. FACTS**

2 The Subpoena is limited in scope to Documents “that are related in any way
3 to the 2020 election or the January 6, 2021 Joint Session of Congress.” Chapman
4 has identified responsive Documents and was prepared to produce them to the Select
5 Committee prior to receiving this Court’s January 20, 2022 Order enjoining the
6 production of the Documents. (Docket No. 12.)

7 Chapman is a qualified 501(c)(3) tax exempt not-for-profit institution of
8 higher education. (Declaration of Janine P. DuMontelle, filed herewith, at ¶ 3
9 [“DuMontelle ¶ __”].) IRS rules governing 501(c)(3) organizations strictly prohibit
10 the use of the organization’s resources, including its computer network, in a political
11 campaign or on behalf of a candidate. IRS guidance states: “Under the Internal
12 Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from
13 directly or indirectly participating in, or intervening in, any political campaign on
14 behalf of (or in opposition to) any candidate for elective public office.”¹

15 Consistent with these IRS rules, Chapman’s website contains the following
16 statement: “As a 501(c)(3) non-profit organization (Internal Revenue Service Code),
17 Chapman is ... organized and operated exclusively for exempt purposes set forth in
18 section 501(c)(3), and none of its earnings may inure to any private shareholder or
19 individual. In addition, it may not be an action organization, i.e., it may not attempt
20 to influence legislation as a substantial part of its activities and it may not participate
21 in any campaign activity for or against political candidates.”² (DuMontelle ¶ 3.)

22 During Eastman’s employment, Chapman maintained a Computer and
23 Acceptable Use Policy, which stated, in pertinent part:

24 Although Chapman University does not make a practice of monitoring
25 e-mail, the University reserves the right to retrieve the contents of

26 ¹ [https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-](https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations)
27 [of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations.](https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations)

28 ² [https://www.chapman.edu/about/our-family/leadership/evp-coo/governance.aspx.](https://www.chapman.edu/about/our-family/leadership/evp-coo/governance.aspx)

1 University-owned computers or e-mail messages for legitimate reasons,
2 such as to find lost messages, to comply with investigations of wrongful
3 acts, to respond to subpoenas, or to recover from system failure.

4 Except as authorized, in writing or by e-mail, by the University, users
5 are not to use Chapman Information Resources for compensated
6 outside work, the benefit of organizations not related to the University
7 (except in connection with scholarly, creative or community service
8 activities), or commercial or personal advertising.³

8 (DuMontelle ¶ 5.)

9 Whenever Dr. Eastman logged on to Chapman’s network, he received the
10 following “splash screen” message:

11 **System for authorized users only**

12 Use of this computer system constitutes your consent that your
13 activities on, or information you store in, any part of the system is
14 subject to monitoring and recording by Chapman University or its
15 agents, consistent with the Computer and Acceptable Use Policy
16 without further notice. You are responsible for being familiar with the
17 University policies related to the use of this computer system. If
18 monitoring of the system reveals a violation of University policy,
19 appropriate action will be taken. Any evidence of criminal activity
20 will be provided to law enforcement.

18 (DuMontelle ¶ 6.)

20 **III. RESPONSE TO THE TRO APPLICATION**

21 Based on the IRS rules and Chapman’s policies, any work done by Eastman
22 for clients that directly or indirectly supported any political campaign on behalf of
23 (or in opposition to) any candidate for elective public office was an unauthorized
24 and an improper use of Chapman’s resources (e.g., its computer network).

25 Accordingly, Chapman has informed Eastman (through his counsel) that it is not
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27 ³ The full policy is available here: [https://www.chapman.edu/campus-](https://www.chapman.edu/campus-services/information-systems/policies-and-procedures/acceptable-use-policy.aspx)
28 [services/information-systems/policies-and-procedures/acceptable-use-policy.aspx](https://www.chapman.edu/campus-services/information-systems/policies-and-procedures/acceptable-use-policy.aspx).

1 required to, nor does it have any interest in, withholding documents that are not
2 related to legitimate and permissible University activities.

3 Further, it is Eastman, not Chapman, that is best suited to identify Documents
4 that are responsive to the Subpoena that may fall under an attorney-client privilege
5 between Eastman and any clients he represented, or be protected by the attorney
6 work product doctrine. This is a potentially substantial task, as Chapman has
7 identified nearly 19,000 items as potentially responsive to the Subpoena.
8 (DuMontelle ¶ 8.) Chapman understands that in discussions that occurred for many
9 weeks prior to the issuance of the Subpoena on January 18, 2022, Eastman and the
10 Select Committee considered whether Chapman could produce the documents
11 sought by the Select Committee to Eastman so he could identify privileged
12 information and provide the Select Committee with a privilege log. Apparently, this
13 process was not agreed to, and this resulted in the issuance of the Subpoena on
14 January 18, 2022.

15 Chapman’s only interest in this dispute is to comply with the obligations
16 imposed on it by the Select Committee’s Subpoena. Chapman will await a final
17 order of this Court defining its obligations with respect to the Subpoena.

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Dated: January 21, 2022

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By: /s/ Fred M. Plevin
FRED M. PLEVIN
Attorneys for Defendant Chapman
University