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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **SOUTHERN DIVISION**

20
21 JOHN C. EASTMAN

22 Plaintiff,

23 vs.

24 BENNIE G. THOMPSON, *et al.*,

25 Defendants.
26
27
28

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

1 **JOINT STATUS REPORT**

2 Plaintiff hereby submits the following joint status report to the Court:

3
4 **STATUS OF PRODUCTIONS AND CONSOLIDATED PRIVILEGE LOG**

- 5 1. Pursuant to this Court’s order of April 19, 2022 (ECF 328), Plaintiff has
6 assembled a consolidated privilege log which lists the unresolved privilege
7 claims, the Select Committee’s objections, and plaintiff’s brief responses to the
8 objections. The privilege log is ready to be filed with the Court under seal and
9 shared with opposing counsel pursuant to this Court’s previously established
10 procedures.
11
12 2. In preparing the consolidated privilege log, plaintiff has identified documents for
13 which the claim of privilege could be withdrawn in light of this Court’s March 28
14 ruling and other factors.¹ Plaintiff will withdraw privilege claims with respect to
15 approximately 800 documents totaling over 10,000 pages. The documents will be
16 produced to the Select Committee and accordingly are not included on the
17 consolidated privilege log.
18
19 3. As detailed below, the congressional defendants have stated that they wish to
20 “evaluate the remaining privilege claims” in light of plaintiff’s withdrawal of a
21 significant number of such claims and submit a proposal for next steps “no later
22 than May 6.”
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28 ¹ Plaintiff preserves in full his objections to the March 28 order, as stated in the briefs and at oral argument.

1 4. Plaintiff is prepared to submit the privilege log to the Court in its current form at
2 this time. However, in light of the congressional defendants announced intention
3 to evaluate the remaining privilege claims in light of plaintiff disclosures, plaintiff
4 proposes to submit the consolidated privilege log after the congressional
5 defendants have completed their review. This brief delay will hopefully result in
6 a condensed privilege log to submit to the Court.
7
8

9 **REQUEST FOR LIMITED DISCOVERY ON THE CONGRESSIONAL**
10 **DEFENDANTS TO RESOLVE REMAINING CLAIMS**
11

- 12 1. This Court's March 28 opinion ordered one item of privileged material produced
13 to the Select Committee pursuant to the so-called crime/fraud exception to
14 attorney client privilege and work product. As plaintiff argued to this Court at
15 that time, the Select Committee has not denied that it is in possession of evidence
16 which contradicts the factual findings underlying this Court's crime fraud ruling.
17 *See*, ECF 172 (Plaintiff's Motion for Exculpatory Evidence).
18
19 2. In the weeks since the March 28 order, the Select Committee has continued to
20 object to plaintiff's privilege claims on the ground that the materials in question
21 might be susceptible to a crime fraud exception.
22
23 3. At the conclusion of final briefing in this matter, it is expected that the
24 congressional defendants will again ask this Court to find by a preponderance of
25 the evidence that materials for which plaintiff has claimed privilege were used to
26 perpetuate crime or fraud. If this Court is to make such a finding, it is imperative
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-

1 that *all* the material evidence be presented. The vast majority of this evidence is
2 in the Select Committee's possession, inaccessible to Dr. Eastman.

3
4 4. For example, the congressional defendants presented evidence from former
5 Acting Attorney General Jeffrey Rosen that President Trump was told by multiple
6 advisors that material fraud and illegality occurred in the 2020 election. ECF 237
7 at 5 (Congressional Defendants' Response to Plaintiffs Brief in Support of
8 Privilege Claims). Such evidence is directly contrary to this Court's March 28
9 finding that President Trump had been conclusively informed that there was no
10 material fraud or illegality. ECF 260 at 5.

11
12
13 5. The testimony from Mr. Rosen is but one example of important evidence that the
14 Select Committee is withholding from this Court. A fair resolution of this case
15 requires that all such evidence be put before the Court for consideration.

16
17 6. Dr. Eastman therefore requests permission to serve a reasonable number of
18 Requests for Admission, Requests for Documents, and Interrogatories on the
19 congressional defendants.
20

21 7. On April 25, undersigned counsel conferred with counsel for the congressional
22 defendants to attempt to reach agreement on discovery. The congressional
23 defendants object to any discovery.
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1 **REQUEST FOR ADDITIONAL DISCOVERY ON CHAPMAN UNIVERSITY**
2 **TO RESOLVE REMAINING CLAIMS**
3

- 4 1. From the outset of this case, the congressional defendants have argued that Dr.
5 Eastman somehow waived privilege over the materials at issue here through his
6 use of a Chapman University email address.
7
- 8 2. To counter this argument, Dr. Eastman previously requested permission from the
9 Court to conduct limited early discovery on defendant Chapman University. ECF
10 231.
11
- 12 3. The Court's March 28 order did not find any privilege waiver related to Dr.
13 Eastman's use of Chapman email. The Court denied plaintiff's request for
14 discovery as moot. ECF 238.
15
- 16 4. However, in the weeks since this Court's March 28 order, the congressional
17 defendants have continued to raise this objection in response to Dr. Eastman's
18 privilege claims. Undersigned counsel has conferred with counsel for the
19 congressional defendants who did not indicate any intention at the time to
20 abandon this argument. The issue is therefore expected to be put before the Court
21 again during final briefing.
22
- 23 5. Dr. Eastman therefore renews his request, for the reasons stated in ECF 231, to
24 conduct limited discovery on Chapman University.
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1 **PROPOSED BRIEFING SCHEDULE**

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- 3 1. As the Court will recall, resolution of the privilege claims relating only to the
- 4 January 4-7 materials required substantial briefing from both parties.
- 5
- 6 2. The parties are now tasked with briefing the legal issues surrounding almost three
- 7 months' worth of privileged materials, including addressing how this Court's
- 8 March 28 order applies to the subsequent productions. This is a much more
- 9 substantial undertaking than the preliminary round of briefing ordered by the
- 10 Court.
- 11
- 12 3. Dr. Eastman is prepared to serve limited discovery on the congressional
- 13 defendants by close of business on May 3 if permitted by the Court. Dr. Eastman
- 14 requests a period of two weeks following receipt of responses to the discovery to
- 15 file his opening brief.
- 16
- 17 4. If this Court is not inclined to permit time for discovery, Dr. Eastman requests at
- 18 at least two weeks to prepare his opening brief.
- 19
- 20 5. Dr. Eastman requests 10 days to prepare his reply brief. As the Court will recall,
- 21 the congressional defendants raised novel and fact-intensive claims in their
- 22 response to Dr. Eastman's preliminary brief in support of Jan 4-7 privilege
- 23 claims. The reply brief in this case is therefore likely to be a major undertaking.
- 24
- 25 6. Dr. Eastman will defer to the Court on an appropriate time for defendants'
- 26 response.
- 27

28 **POSITION OF THE CONGRESSIONAL DEFENDANTS**

1 1. The congressional defendants have communicated their position to undersigned
2
3 counsel as follows:

4 It is the Select Committee's position that no discovery is
5 warranted in this case. Furthermore, in light of representations
6 made by Plaintiff's counsel and the anticipated withdrawal of a
7 significant number of privilege claims, the Select Committee
8 respectfully requests additional time to review the new
9 documents and evaluate the remaining privilege claims. The
10 Select Committee will file a notice with the Court with a
11 proposal for next steps by no later than May 6.

11 April 29, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing has been served on opposing counsel by em.

By: /s/ Charles Burnham
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