

1 OFFICE OF GENERAL COUNSEL
2 U.S. HOUSE OF REPRESENTATIVES
3 5140 O’Neill House Office Building
4 Washington, D.C. 20515

5 Counsel for the Congressional Defendants

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8 **SOUTHERN DIVISION**

9
10 JOHN C. EASTMAN,

11 Plaintiff,

12 vs.

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

14 Defendants.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

**NOTICE OF MOTION AND MOTION
FOR *IN CAMERA* REVIEW OF
DOCUMENTS HELD IN ABEYANCE**

1
2 **MEMORANDUM**

3 Pursuant to Local Civil Rule 7, Defendants the Honorable Bennie Thompson and
4 the House Select Committee to Investigate the January 6th Attack on the United States
5 Capitol (collectively, “the Select Committee”), by and through their counsel, respectfully
6 move for this Court to conduct an *in camera* review of Plaintiff’s privilege claims with
7 regard to a set of documents previously held in abeyance, and to rule on the validity of
8 those claims.

9 On May 6, 2022, the Select Committee informed this Court (Dkt. 336) that it
10 withdrew its objections to 721 documents, totaling approximately 13,929 pages, on
11 Plaintiff’s consolidated privilege log, and requested *in camera* review of (coincidentally)
12 721 other documents, totaling approximately 2,945 pages. This Court subsequently
13 reviewed *in camera* that set of documents, as further narrowed by Plaintiff’s production
14 of a subset of the documents, and issued an order adjudicating Plaintiff’s privilege claims
15 over those documents (Dkt. 356).

16 In its May 6 Notice (Dkt. 336), the Select Committee informed the Court that it
17 was willing to hold in abeyance its objections to 576 documents, totaling approximately
18 3,236 pages, while reserving the right to request at a later date *in camera* review of the
19 documents held in abeyance.

20 As the Select Committee reaches the final months of its tenure under its current
21 authorizing resolution, it now respectfully seeks such *in camera* review so that it may
22 complete its efforts, including preparation of the final report mandated by its authorizing
23 resolution. *See* H. Res. 503, 117th Cong. § 4(a)(3) (2021).

24 The Select Committee believes that the legal issues underlying Plaintiff’s claims of
25 attorney-client privilege or work product protection have largely, if not entirely, been
26 determined by the Court’s previous Orders (Dkt. 260 and 356). However, should
27 Plaintiff believe that additional briefing is necessary, and should this Court agree, the
28 Select Committee respectfully requests that the Court set an expedited briefing schedule

1 in light of the limited time remaining for the Select Committee to complete its work
2 before January 3, 2023, the date on which the 117th Congress ends. Thus, the Select
3 Committee proposes the following briefing schedule:

4 Monday, September 26, 2022: Plaintiff’s opening brief

5 Monday, October 3, 2022: Select Committee’s response brief

6 Wednesday, October 5, 2022: Plaintiff’s reply brief

7 Pursuant to Local Civil Rule 7-3, counsel for the Select Committee conferred with
8 Plaintiff’s counsel regarding the filing of this motion via email on August 4. Plaintiff’s
9 counsel responded the following day that he would re-review the relevant documents and
10 get back to the Select Committee’s counsel. On Friday, August 26, having received no
11 further response, counsel for the Select Committee informed Plaintiff’s counsel that the
12 Select Committee would file the motion on Monday, August 29. On August 29,
13 Plaintiff’s counsel made a “partial production” consisting of four documents,
14 accompanied by a spreadsheet that listed an additional 212 documents over which
15 Plaintiff continued to assert privilege, all of which were dated December 18, 2020 or
16 earlier. The same day, counsel for the Select Committee (1) asked Plaintiff’s counsel for
17 a further explanation of Plaintiff’s continued privilege claims—specifically, to clarify
18 whether, for documents that Plaintiff described as “part of a chain” the Court has
19 reviewed, the Court has reviewed and ruled on the content of the specific emails
20 referenced—and (2) asked when Plaintiff would report on the 360 remaining abeyance
21 documents. On September 13, in response to a follow-up query, Plaintiff’s counsel
22 essentially answered the first question in the negative and did not address the second
23 question.¹
24

25
26 ¹ Specifically, Plaintiff’s counsel answered the first question as follows: “Some of the
27 documents that remain in abeyance are in the same chain and on the same topic that the
28 Judge has already ruled to be privileged. Other times, earlier parts of the thread that were
specifically included in emails Judge Carter previously ruled for the privilege. And

1 In light of this exchange over the past month or so, it seems clear that further
2 consultation with Plaintiff’s counsel will not result in the Select Committee receiving the
3 material that it seeks in a timely manner. Accordingly, the Select Committee now moves
4 for this Court to review and rule on Plaintiff’s claims of privilege for the remaining 572
5 documents.
6

7 Dated: September 14, 2022

OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES

9 By: /s/ Douglas Letter
10 Douglas Letter

11 Attorney for Congressional Defendants
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 sometimes, the abeyance email was part of a chain to which the Committee had
28 previously withdrawn its objection.”

CERTIFICATE OF SERVICE

WASHINGTON, DISTRICT OF COLUMBIA

I am employed in the aforesaid county, District of Columbia; I am over the age of 18 years and not a party to the within action; my business address is:

OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
5140 O’Neill House Office Building
Washington, D.C. 20515

On September 14, 2022, I served the **DEFENDANTS’ NOTICE** on the interested parties in this action:

Anthony T. Caso
Constitutional Counsel Group
174 W Lincoln Ave #620
Anaheim, CA 92805-2901
atcaso@ccg1776.com

Charles Burnham
Burnham & Gorokhov PLLC
1424 K Street NW, Suite 500
Washington, DC 20005
charles@burnhamgorokhov.com

Attorneys for Plaintiff John C. Eastman

(BY E-MAIL OR ELECTRONIC TRANSMISSION)

The document was served on the following via The United States District Court – Central District’s CM/ECF electronic transfer system which generates a Notice of Electronic Filing upon the parties, the assigned judge, and any registered user in the case:

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 14, 2022 here, at Bethesda, Maryland.

/s/ Douglas Letter
Douglas Letter