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

**CONGRESSIONAL DEFENDANTS’
RESPONSE BRIEF REGARDING
PLAINTIFF’S PRIVILEGE
ASSERTIONS AS TO DOCUMENTS
HELD IN ABEYANCE**

1 Congressional Defendants respectfully ask the Court to conduct an *in camera*
2 inspection of the remaining 562 documents to determine: (1) the validity of Dr.
3 Eastman’s privilege assertions, (2) whether Dr. Eastman has waived any applicable
4 privileges, and (3) whether Congressional Defendants’ compelling need and/or the crime-
5 fraud exception overcome any applicable privileges.
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8 This Court is already familiar with both the facts and procedural history of this
9 case. *See* ECF No. 164-1; ECF No. 350. This Court has likewise already addressed and
10 resolved the outstanding legal issues relating to prior document tranches. *See, e.g.*, ECF
11 No. 356; ECF No. 260. Congressional Defendants do not believe the remaining
12 documents raise any factual or legal issues requiring additional briefing.¹
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15 In his most recent privilege log, Dr. Eastman continues to offer conclusory
16 descriptions insufficient to allow Congressional Defendants to accurately assess the
17 validity of his privilege assertions. *See* ECF No. 369 (repeatedly noting “potential
18 litigation” without further specification, among other issues); *see also* ECF No. 260 at 21
19 (“Dr. Eastman’s description in the privilege log is conclusory, describing the sender
20 merely as his ‘co-counsel.’”); *id.* at 26 (“Although Dr. Eastman’s privilege log describes
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25 ¹ Congressional Defendants stand on the objections made to Dr. Eastman’s privilege
26 assertions in the briefings addressing the first two document tranches. We do not,
27 however, ask this Court to revisit the legal issues on which it has previously ruled. We
28 ask only that this Court review the remaining documents in accordance with its prior
orders.

1 some of these documents as ‘comm with counsel and expert re fact evidence,’ he does
2 not specify any particular litigation.”).

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4 Additionally, *in camera* review is necessary because Dr. Eastman’s prior
5 representations have proven consistently unreliable. As just one example, this Court
6 previously addressed a photograph (Chapman025905, attached as Ex. A) that Dr.
7 Eastman had described as a “handwritten note re issues for anticipated litigation,” but
8 which turned out to be a photograph of a Trump campaign rally with a handwritten note
9 stating: “TIMES 50 SUCH EVENTS – NO WAY THIS LOSES.” Ex. A; *see* ECF No.
10 356 at 14 (“Although Dr. Eastman’s privilege log claims that the photo is President
11 Trump’s ‘handwritten note re issues for anticipated litigation,’ the note simply celebrates
12 the size of President Trump’s campaign rallies.”). It was not until August 29, when
13 Congressional Defendants indicated their intent to litigate Dr. Eastman’s remaining
14 privilege assertions, that Dr. Eastman finally produced the email to which this
15 photograph was attached—seven months into the litigation and almost three months after
16 this Court had ruled on the photograph itself. Dr. Eastman had previously described that
17 email (Chapman025904, attached as Ex. B) to the Court and to Congressional
18 Defendants as “Comm with client re note for anticipated litigation.” ECF No. 142; ECF
19 No. 143.² In reality, the email is merely a one-line note from Molly Michael, then-

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27 ² Congressional Defendants are unable to determine whether this privilege log
28 corresponds to ECF No. 142 or to No. 143, because Dr. Eastman filed multiple privilege
logs on that date and the logs are sealed on PACER.

1 President Trump’s assistant, stating: “The President wanted you to see this photo –
2 attached with caption[.]” Ex. B.
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4 Other documents produced to the Select Committee on the eve of this Court’s
5 review, after months of meritless privilege assertions, further underscore the unreliable
6 nature of Dr. Eastman’s privilege descriptions. For example, Dr. Eastman previously
7 described Chapman059766 (attached as Ex. C) and Chapman059767 (attached as Ex. D)
8 as “Comm with co-counsel re Reply ISO Cert Petition.” ECF No. 298. But the
9 documents—when finally produced—actually consist of email exchanges regarding
10 travel plans and stays at Trump International hotels. *See* Ex. D (“A shame you are not in
11 DC and could contribute to violation of the emoluments clause.”); *id.* (“I[’]m stay[i]ng at
12 Trump Int [i]n DC from Jan 3 to at [l]east the 8th. Do[i]ng my part to curry favor w[i]th
13 the Pres[i]dent by [li]n[i]ng h[i]s (empty) pockets! [emoji].”).³
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17 As these examples illustrate, Dr. Eastman’s representations regarding the nature or
18 content of the remaining 562 documents are unreliable. Congressional Defendants
19 therefore ask that the Court review these documents *in camera* to determine the validity
20 of Dr. Eastman’s privilege assertions and the applicability of the limitations and
21 exceptions considered in this Court’s prior orders, including waiver, compelling need,
22 and crime-fraud.
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27 ³ The copies of Chapman059766 and Chapman059767 that Congressional Defendants
28 received from Dr. Eastman seem to be missing the letters I and L where they should
appear in emails from Kenneth Chesebro and in the email headers.

1 Dated: October 3, 2022

2 OFFICE OF GENERAL COUNSEL
3 U.S. HOUSE OF REPRESENTATIVES

4 By: /s/ Douglas Letter
5 Douglas Letter

6 Attorney for Congressional Defendants
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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:

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On October 3, 2022, I served the **DEFENDANTS’ RESPONSE BRIEF** on the interested parties in this action:

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(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 October 3, 2022 here, at Bethesda, Maryland.

/s/ Douglas N. Letter