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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

29 UNITED STATES,
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31 Plaintiff,
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33 vs.
34 ROBERT HUNTER BIDEN,
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36 Defendant.

Case No. 2:23-CR-00599-MCS-1

Hon. Mark C. Scarsi

**DEFENDANT’S RESPONSE TO
ORDER TO SHOW CAUSE RE:
MOTION TO DISMISS FOR LACK
OF JURISDICTION (ECF NO. 133)**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On July 18, 2024, Defendant Hunter Biden filed a motion to dismiss the
4 indictment for lack of jurisdiction (hereafter “Motion”) based on recent legal
5 developments. D.E. 133. On July 24, 2024, before the government filed its opposition
6 to the Motion, the Court *sua sponte* issued an order for “Mr. Biden’s counsel to show
7 cause why sanctions should not be imposed for making false statements in the motion.”
8 D.E. 138 at 2. The allegedly false statements are the references in Mr. Biden’s motion
9 to “charges” not being brought by Special Counsel Weiss prior to his appointment as
10 Special Counsel. Specifically, the Court takes issue with the following three statements
11 in Mr. Biden’s motion:

- 12 • As U.S. Attorney he had years to bring whatever charges he believed were
13 merited, but he brought no charges until after he received the Special
14 Counsel title that he sought. D.E. 133 at 5.
- 15 • That is true of Special Counsel Weiss who brought no charges in this
16 investigation with his U.S. Attorney position but, as Special Counsel,
17 initiated legal proceedings on both sides of the country against Mr. Biden
18 in Delaware and California, as well as in Nevada and California against
19 Alexander Smirnov. *Id.* at 6.
- 20 • Again, Mr. Weiss did not seek a delegation of authority under Section 510;
21 he sought Special Counsel status before bringing any charges. *Id.* at 7.

22 Defense counsel, perhaps inartfully, intended this use of the word “charges” to
23 refer to the current charges brought by indictment against Mr. Biden, not the lack of
24 any charges at all. Here, context matters. Defense counsel has never tried to mislead
25 the Court about the fact that Mr. Weiss, as the U.S. Attorney in Delaware, brought
26 charges by way of two now-dismissed Informations that were initially docketed in
27 Delaware for the purposes of facilitating a resolution through a plea agreement and
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1 diversion agreement. In fact, the opposite is reflected in the record in this matter which
2 is replete with instances in which defense counsel specifically referenced those
3 Informations in Delaware. In addition, counsel even previously requested that the
4 Court take *judicial notice* of those charges – a request that the Court granted. However,
5 because an issue with the use of the word “charges” in the Motion has now been raised
6 by the Court, the defense will amend its Motion to substitute the word “indictments” in
7 the place of “charges” in the three sentences identified above on pages 5 through 7 of
8 the Motion. Nevertheless, there is no basis on which to sanction Mr. Biden’s counsel
9 for the use of that one word, which was not misleading in the context in which the two
10 prior Informations had been repeatedly addressed with the Court.

11 ARGUMENT

12 In the order to show cause, the Court refers to an earlier motion wherein “Mr.
13 Biden’s counsel recognized that U.S. Attorney Weiss brought criminal charges against
14 Mr. Biden prior to his Special Counsel appointment.” D.E. 138 at 3 (citing D.E. 25).
15 That is just one of many of defense counsel’s references to the charges brought by
16 Weiss by way of information that were initially docketed in Delaware to facilitate a
17 resolution through a plea agreement and diversion agreement. *See, e.g.*, D.E. 25 at 2
18 (advising the Court that “Mr. Biden and the prosecution resolved the Information with
19 a gun charge on July 26, 2023 through a Diversion Agreement, . . . [and t]he Delaware
20 court granted the prosecution’s motion to dismiss the gun charge Information on
21 October 11, 2023, due to a subsequent Delaware felony gun Indictment.”); *id.* (“The
22 misdemeanor tax charges in Delaware preexisted the Diversion Agreement and could
23 have been prosecuted there under the Plea Agreement, but the prosecution motion to
24 dismiss the tax Information was granted on August 17, 2023.”); *id.* at 3 (“If Mr. Biden
25 complied with his obligations under the Diversion Agreement, the prosecution would
26 not bring new charges against Mr. Biden for his past conduct and proceedings on the
27 Information would not be pursued.”); *id.* at 4 (“On July 26, 2023, the same day the
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1 parties signed the Diversion Agreement, Mr. Biden also entered into a Plea Agreement
2 with the prosecution to resolve the Information with the misdemeanor tax charges.”);
3 D.E. 27 at 3 (“DOJ then leapt from a two-count misdemeanor Information to a nine-
4 count Indictment with felonies”); *id.* at 16 (“The prosecution could have brought these
5 charges years ago and then agreed not to multiple times, only to pull the deal, deny it
6 was made, and pile on felony indictments.”); D.E. 48-2 at 1 (providing a detailed
7 chronology of events including that on June 20, 2023, “Counsel for Biden and U.S.
8 Attorney’s Office in Delaware agree to a resolution of two tax misdemeanors and one
9 diverted gun charge, and two Informations are filed on the docket in Delaware”); *id.* at
10 2 (on August 9, 2023, “DOJ notifies Biden’s counsel that it intends to move to dismiss
11 the tax information without prejudice and pursue charges in another district where
12 venue lies”); *id.* (on August 11, 2023, “DOJ moves to dismiss the criminal tax
13 Information without prejudice against Biden, so that tax charges can be brought in
14 another district”). Mr. Weiss, however, decided to abandon the plea agreement and
15 diversion agreement and, therefore, had those Informations (tied only to a possible
16 agreed-upon resolution) dismissed.

17 Moreover, Mr. Biden even previously requested that the Court take *judicial*
18 *notice* of the misdemeanor tax Information filed on June 20, 2023, and the felony
19 firearm Information filed on June 20, 2023, in the District of Delaware (in order to
20 contrast these two Informations with the instant charges). *See* D.E. 53 at 5, 7 & D.E.
21 53-1. And the Court granted Mr. Biden’s request and took judicial notice of the two
22 Informations. *See* D.E. 67 at 80 n.60. Given the numerous references by defense
23 counsel to the Informations that were previously filed and dismissed, plainly there was
24 not an attempt by defense counsel to mislead the Court that no such Informations were
25 filed.

26 As further evidence that Mr. Biden’s counsel did not intend to mislead the Court,
27 attached to Mr. Biden’s Motion was an exhibit containing an October 27, 2023 article
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1 in *Politico* which referenced the previous charges brought by Weiss in Delaware. *See*
2 D.E. 133-2 at 3 (“Weiss charged Biden with gun crimes last month in Delaware, and
3 he has indicated in court documents that he may soon file tax charges in California.
4 But so far, no tax charges have been brought.”) (emphasis added).

5 Having disclosed the previously filed and dismissed Informations, Mr. Biden’s
6 Motion was addressing the pending Indictment that was filed by the Special Counsel.
7 Indeed, it is the fact that the Indictment was filed by an unauthorized Special Counsel—
8 as opposed to any action that Mr. Weiss took in his capacity as the U.S. Attorney in
9 Delaware—that is the whole basis for that Motion.¹

10 For the sake of clarity, the defense will amend its Motion to substitute the word
11 “indictments” in the place of “charges” in the three sentences identified above on pages
12 5 through 7 of the motion. However, even without this amendment, with the
13 explanation provided in this response, there should be no basis on which to sanction
14 Mr. Biden’s counsel.

15 As the U.S. Supreme Court has explained, “[b]ecause of their very potency,
16 inherent powers must be exercised with restraint and discretion.” *Chambers v. NASCO,*
17 *Inc.*, 501 U.S. 32, 44 (1991). In order for sanctions to be justified, there must be a
18 finding that a party acted “in bad faith, vexatiously, wantonly, or for oppressive
19 reasons.” *Id.* at 45-46. In contrast to using a single word that counsel thought (perhaps
20 wrongly but innocently) conveyed the record accurately, cases state that sanctions are
21 barred if the sanctionable conduct amounts to only recklessness and nothing more. *Fink*
22 *v. Gomez*, 239 F.3d 989, 994-95 (9th Cir. 2001). *See also* C.D. Cal. R. 83-7 (permitting
23 sanctions if the Court finds that the conduct was “willful, grossly negligent, or
24 reckless”). Again, in context of the entire record in this case, there was no “bad faith,”

25 _____
26 ¹ Mr. Biden’s Motion does not concern any action that Mr. Weiss took in his capacity
27 as the U.S. Attorney for the District of Delaware. It is a motion to this Court to dismiss
28 an Indictment filed in this California court by Mr. Weiss in his capacity as Special
Counsel—an Indictment Mr. Weiss would not otherwise be authorized to file in his
capacity as a U.S. Attorney on the other side of the country.

1 “willful” or “wanton” conduct, or even “reckless” or “grossly negligent” action.
2 Consequently, it would be inappropriate to impose sanctions on defense counsel.

3 The cases cited by the Court do not support the imposition of sanctions in this
4 case. In *Smith v. Frank*, 923 F.2d 139, 142 (9th Cir. 1991), the Ninth Circuit held that
5 sanctions were *not* warranted for Plaintiff's error in exceeding the page limitation in
6 violation of the local rules. Given the context, the use of the word “charges” versus
7 “indictment” is not a more serious offense. And in *Ready Transportation, Inc. v. AAR*
8 *Manufacturing, Inc.*, 627 F.3d 402, 403 (9th Cir. 2010), the Ninth Circuit held that the
9 district court had jurisdiction pursuant to its inherent powers to strike an improperly
10 filed confidential settlement agreement from the public docket. The Ninth Circuit's
11 decision turned solely on the scope of the inherent power, and not the exercise thereof.
12 *See id.* at 404. It therefore declined to direct the district court to act one way or another
13 on the notion to strike and remanded for the district court's exercise of its sound
14 discretion in consideration of the circumstances surrounding the filing of the
15 confidential settlement agreement. *Id.* at 405. *Compare Monster Energy Co. v. Vital*
16 *Pharms., Inc.*, No. EDCV 18-1882-JGB (SHKx), 2023 WL 9419597, at *7 (C.D. Cal.
17 Dec. 14, 2023) (denying plaintiff's motion for sanctions based on defendants'
18 submission of a declaration containing an unauthorized signature and false and
19 misleading statements because Defendants' actions did not rise to the level of bad faith).

20 Here, given the context that prior to the Motion being filed, the Court had been
21 made aware by Mr. Biden's counsel on numerous occasions that “charges” by way of
22 information had been brought against Mr. Biden in Delaware, defense counsel clearly
23 did not intend to make false statements or mislead the Court. Moreover, the imposition
24 of sanctions against a criminal defendant's counsel this close to pre-trial and trial
25 proceedings based on a single word would chill the vigorous defense of Mr. Biden and
26 have the improper effect of dissuading defense counsel from raising appropriate issues.
27 In addition, just the filing of the Court's order to show cause accusing Mr. Biden's
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1 counsel of making false statements to the tribunal has been widely publicized. *See*,
2 *e.g.*, Priscilla DeGregory and Josh Christenson, *Judge threatens sanctions against*
3 *Hunter Biden’s lawyers for ‘lying’ in court papers*, NEW YORK POST (Jul. 25, 2024),
4 *available at* [https://nypost.com/2024/07/25/us-news/judge-threatens-sanctions-against-](https://nypost.com/2024/07/25/us-news/judge-threatens-sanctions-against-hunter-bidens-lawyers-for-lying/)
5 [hunter-bidens-lawyers-for-lying/](https://nypost.com/2024/07/25/us-news/judge-threatens-sanctions-against-hunter-bidens-lawyers-for-lying/); Alanna Durkin Richer, *Judge threatens to sanction*
6 *Hunter Biden’s legal team over ‘false statements in a court filing*, A.P. NEWS (Jul. 25, 2024),
7 *available at* [https://apnews.com/article/hunter-biden-tax-case-special-counsel-](https://apnews.com/article/hunter-biden-tax-case-special-counsel-99b85ad3de045dea631d1fd1a6b48fb8)
8 [99b85ad3de045dea631d1fd1a6b48fb8](https://apnews.com/article/hunter-biden-tax-case-special-counsel-99b85ad3de045dea631d1fd1a6b48fb8); Marshall Cohen, *Judge rebukes Hunter*
9 *Biden’s lawyers for ‘false statements’ in their bid to toss tax indictment*, CNN (Jul. 25,
10 2024), *available at* [https://edition.cnn.com/2024/07/25/politics/hunter-biden-lawyers-](https://edition.cnn.com/2024/07/25/politics/hunter-biden-lawyers-tax-indictment/index.html)
11 [tax-indictment/index.html](https://edition.cnn.com/2024/07/25/politics/hunter-biden-lawyers-tax-indictment/index.html). That filing and an imposition of sanctions against Mr.
12 Biden’s counsel on the basis of a properly-intentioned description of the proceedings
13 to date could easily taint the jury pool and deprive Mr. Biden of a fair trial.

14 CONCLUSION

15 The Court should not impose sanctions against the defense.

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17 Dated: July 28, 2024

Respectfully submitted,

18
19 */s/ Mark J. Geragos*

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2024, I filed the foregoing Defendant’s Response to Order to Show Cause Re: Motion to Dismiss for Lack of Jurisdiction (ECF No. 133) with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ Mark Geragos
Mark Geragos

Counsel for Robert Hunter Biden