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September 25, 2022

By Email

Honorable Raymond J. Dearie
Senior United States District Judge
Eastern District of New York
[REDACTED]

Dear Judge Dearie:

Through undersigned counsel, President Donald J. Trump provides his position on the Amended Case Management plan [Dkt. 112], and objections pursuant to Fed. R. Civ. P. 53(f).

I. Verifications

To help find facts, the appointing order authorized a declaration or affidavit by a *Government official* regarding the accuracy of the Detailed Property Inventory [ECF 39-1] as to whether it represents a full and accurate accounting of the property seized from Mar-a-Lago. Appointing Order ¶ 2(a). The Appointing Order contemplated no corresponding declaration or affidavit by Plaintiff, and because the Special Master’s case management plan exceeds the grant of authority from the District Court on this issue, Plaintiff must object. Additionally, the Plaintiff currently has no means of accessing the documents bearing classification markings, which would be necessary to complete any such certification by September 30, the currently proposed date of completion.

II. Review

The appointing order provides that the Special Master “review all of the materials seized” during the search of the Plaintiff’s residence. [ECF 91 at 1]. The appointing order also provides that that Plaintiff’s counsel, after review of the seized materials, shall allocate them to one of four categories, as follows:

- (1) Personal items and documents not claimed to be privileged;
- (2) Personal documents claimed to be privileged;
- (3) Presidential Records not claimed to be privileged; and
- (4) Presidential Records claimed to be privileged.



Because the amended case management plan goes beyond that grant of authority, and suggests an allocation into one of six different categories, Plaintiff must object. Consistent with the appointment order [ECF 91], Plaintiff's counsel intends to allocate documents into the four categories identified authorized by the district court. However, as the appointment order also authorizes you to make recommendations regarding executive privilege (ECF 91 at 2b.) we will also provide assertions and bases for that privilege as well, but we see no basis for segmenting that particular privilege as described in Paragraph II c and d of the Amended Plan.

III. Motions

Plaintiff reserves all rights under the law and applicable rules regarding the legal and equitable relief available for the search of his home and seizure of his property. By initiating this action, Plaintiff does not waive any rights available to any citizen under the law.

As noted in our proposed agenda in advance of the status conference (ECF 97 at 2) we reiterate our view that "Judge Cannon was aware of the likelihood of eventual Rule 41(g) litigation and established a process by which the Special Master would evaluate any such claims before reporting and recommending to the Court...we are concerned that the [Amended] Plan directs the Plaintiff to address whether Rule 41(g) litigation should be litigated under Case No. 9:22-MJ-08332-BER." The District Court's decision to exercise jurisdictional authority over matters surrounding the Mar-a-Lago search warrant was a hotly contested component of the litigation to date, as was the establishment of a Special Master review. There is no indication in the appointment order that the District Court is contemplating a carve out of related litigation for a merits determination by the issuing magistrate for the warrant in question. In the absence of a clear directive from the District Court on this issue, we respectfully suggest the briefing requirement be withdrawn from your final Plan.

Thank you for the opportunity to address our concerns to the Amended Plan, and we look forward to an expeditious review of the seized materials.

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Trusty', is written over a printed name and address block.

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