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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

18 JOHN C. EASTMAN,

19 *Plaintiff,*

20 vs.

21 BENNIE G. THOMPSON, *et al.*

22 *Defendants*

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

**PLAINTIFF’S RULE 60(a) MOTION
FOR CORRECTIONS BASED ON CLER-
ICAL MISTAKES; OVERSIGHTS AND
OMISSIONS**

Judge: Hon. David O. Carter
Magistrate Judge: Hon. Douglas F.
McCormick

Crtrm.: 9D
Trial Date: not set

1 **INTRODUCTION**

2 Dr. John Eastman is on track to turn over all non-protected documents by Mon-
3 day, June 13, 2022, in accordance with this Court’s most recent Order.¹ As he re-
4 views materials for disclosure, Dr. Eastman has encountered several discrepancies
5 in the Court’s order addressing the documents he must disclose. Dr. Eastman seeks
6 correction or clarification of several issues so that he may fully comply with the
7 Court’s decision. In the alternative, Dr. Eastman asks the Court to allow redaction
8 of the names of experts and agents whom he engaged with in emails that he must
9 now produce. In support of this motion, he asserts the following:

10 **ARGUMENT**

11 “The court may correct a clerical mistake or a mistake arising from oversight or
12 omission whenever one is found in a judgment, order, or other part of the record.”
13 Fed. R. Civ. P. 60(a). Due to the rapid pace of this litigation, a few points are
14 bound to slip through the cracks. In order that he may comply with this Court’s or-
15 der while maintaining his duties to protect client confidences, Dr. Eastman seeks
16 clarification on the following oversights or mistakes.

17 **I. The Court Ordered Dr. Eastman to Disclose Client Communications**
18 **that, In Context, Specifically Direct His Legal Work.**

19 The Court Ordered Dr. Eastman to produce three communications directly from
20 Dr. Eastman’s client Donald Trump.² The Court identified these documents as
21 news articles, photos, and a note about the size of President Trump’s Rally. ECF
22 356 at 14. There is an oversight as to the date these documents were sent: Decem-
23 ber 7, 2020. Viewed in this context, President Trump was giving Dr. Eastman di-
24 rection for framing the brief on one of his legal challenges: Motion to Intevene,

25 _____
26 ¹ Dr. Eastman is producing these documents today: 06854; 06855; 20142; 22679; 23532; 23539; 23542;
27 23551; 23552; 23582; 23638; 23998; 24716; 24760; 24762; 24893; 24897; 24905; 24906; 25035; 26075;
28 30038; 30118; 30119; 31209; 31598; 31602; 31628; 31634; 31635; 32071; 32072; 51059; 51291; 52958;
53452; 56980; 57425; 57790; 61666; 61724; 61764; 61767; 61768; 61862; 61868; 62657; 62776; 62841;
62842; 62844; 62858; 62859; 62861; 62863; 62865; 62868.

² 25167; 25170; 25905.

1 *Texas v. Pennsylvania*, No. 22O155 (S.Ct., filed Dec. 9, 2020). The fruits of the
2 client's direction were incorporated into the brief.

3 **II. The Court's Finding that a State Legislator's Request for Legal Ad-**
4 **vice Created Attorney-Client Privilege Applies Equally to the 3**
5 **Other Attorneys on the Email Exchange**

6 The Court found that three documents³ involved a Georgia legislator "making
7 explicit legal inquiries to Dr. Eastman and are therefore for the purpose of legal ad-
8 vice," ECF 356 at 15 n.91, and that a fourth⁴ included a non-privileged discussion
9 about a zoom meeting that had to be produced with the prior privileged discussion
10 redacted. *Id.* at 15 n.92. But the Court later held that the three prior emails in the
11 thread,⁵ which had already been determined to be "for the purpose of legal advice,"
12 had to be disclosed because "there are four other people on the emails whom Dr.
13 Eastman identifies as 'attorneys working for the Trump legal team.'" ECF 356 at
14 18. Dr. Eastman apologizes to the Court for the confusion he seems to have cre-
15 ated, but as the emails themselves reflect, the request for legal advice from the
16 Georgia legislator was addressed to "All" of the 4 attorneys copies on the email,
17 not just Dr. Eastman. For the same reason the Court found them to be attorney-cl-
18 ient privileged with respect to Dr. Eastman, therefore, they are also attorney-client
19 protected with respect to "All" the other attorneys on the email from whom the
20 Georgia legislator was seeking legal advice. That they, like Dr. Eastman, were
21 also part of former President Trump's legal team on other matters does not alter
22 that, in this case, they were asked by the Georgia legislator for legal advice. All
23 four documents are therefore covered by the attorney-client privilege.

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25
26
27 ³ 62674; 62675; 62698.

28 ⁴ 62706.

⁵ 62674; 62675; 62698.

1 **III. It is Unclear What, If Anything, Dr. Eastman Should Redact From**
 2 **certain documents.**

3 The Court held that a portion of one document⁶ “is protected because it contains
 4 two emails seeking legal advice from Dr. Eastman about legislative authority.”
 5 ECF 356 at 16; *see also* n.99 (expressly referencing the emails at 3:06 pm MST
 6 and 4:03 pm MST on January 3, 2021 as protected). It ordered 4 other documents⁷
 7 in that email chain produced. ECF 356 at 16 and n.100. One of those documents,
 8 62861, contains the identical email text that the Court ordered redacted in 62863
 9 (although the time stamp is 3:02 pm instead of 4:03 pm for some reason). Dr.
 10 Eastman seeks clarification on whether that portion of 62861 should also be re-
 11 dacted or, instead, if both documents should be produced in their entirety because
 12 of the Court’s subsequent holding that 62863 should be produced. ECF 356 at 18
 13 n. 119 and 120.

14 **IV. The Court Omitted Certain Documents from Categories That It**
 15 **Held Were Privileged.**

16 The Court found that attachments to one document⁸ (a response to a request for
 17 legal advice) were protected. The Court lists only two of these attachments.⁹ There
 18 was a third.¹⁰ Dr. Eastman requests that the Court correct the order to clarify that
 19 this document is also protected.

20 **V. The Order References Documents That Do Not Exist.**

21 The order references at least one non-existent document: 23450. *See* ECF 356 at
 22 5 n.20 (listing work product documents concerning court filings). Dr. Eastman sus-
 23 pects that the Court meant to say 23550 and requests the Court correct the order to
 24 make it clear that 23550 is protected and need not be produced.

25 _____
⁶ 62863.

26 ⁷ 62844; 62858; 62859; 62861.

27 ⁸ 23582.

28 ⁹ 23584; 23631.

¹⁰ 23591.

1 **VI. The Order Mistakenly Determined that Some Documents Were**
2 **Communications with Legislators.**

3 The Court held that the beginning of an exchange with another lawyer was
4 work product.¹¹ ECF 356 at 6 n.21. The Court ordered the rest of the chain pro-
5 duced, however¹² ECF 356 at 7. The Court described these documents as “advising
6 state legislators or circulating his theories on their authority,” or “coordinat[ing]
7 meetings with state legislators or other third parties to discuss alleged election
8 fraud and certifying electors.” ECF 356 at 7. However, the body of these docu-
9 ments discuss whether a certain state statute is constitutional and the impact pend-
10 ing litigation on that point will have on Dr. Eastman’s legal strategy. Dr. Eastman
11 requests that the Court correct this erroneous characterization of the documents and
12 order that the entire exchange is, like the initial email in the exchange, protected
13 work product.

14 **VII. The Order Omitted the Beginning of An Exchange with One of Dr.**
15 **Eastman’s Agents.**

16 The Court correctly held that a communication with an attorney-advisor was
17 protected work product.¹³ ECF 356 at 6 n.21. The Court, however, omitted crucial
18 parts of the exchange: the advisor’s initial provision of advice and his reply to Dr.
19 Eastman’s response.¹⁴ ECF 356 at 10, 13. The topic discussed in this exchange is
20 part of one of Dr. Eastman’s briefs on behalf of President Trump. *See* Brief in Sup-
21 port of Motion to Intervene, p. 25, *Texas v. Pennsylvania*, No. 22O155 (S.Ct., filed
22 Dec. 9, 2020). Dr. Eastman requests the Court correct this oversight and clarify
23 that this entire exchange is protected work product.

24
25
26 _____
¹¹ 21094.

27 ¹² 21105; 21106; 21111; 21113; 21116; 21117; 21122; 21124; 21126.

28 ¹³ 23898.

¹⁴ 23893 and 24802, respectively.

1 **VIII. Oversights In the Order’s Treatment of Statistical Expert Discus-**
 2 **sions.**

3 The Court found that 24 of Dr. Eastman’s communications with or about statis-
 4 tical experts were protected work product.¹⁵ ECF 356 at 5–6. The Court, however,
 5 claimed that the remaining, quite similar, communications¹⁶ with or about statisti-
 6 cians as “advising state legislators or circulating his theories on their authority”
 7 and ordered production. ECF 356 at 7. This distinction is inaccurate. These docu-
 8 ments are deeply connected to each other and ongoing litigation. For example: the
 9 Court found that 18919 is protected work product because it is a discussion of sta-
 10 tistical analysis in the context of state litigation, but the Court ordered Dr. Eastman
 11 to produce 18920 and 18956—part of that same discussion. The Court found the
 12 latter to have two purposes: litigation and politics. But in the context of *election* lit-
 13 igation, discussion of the political implications of litigation documents are inevita-
 14 ble. Indeed, 16181 references communicating information to the legal team and
 15 19686 is specifically designated as “Attorney Work Product” in the subject line be-
 16 cause it was created so that attorneys would possess certain information for litiga-
 17 tion. Similarly, 19888 is a request from a lawyer for an analysis and it is ordered to
 18 be produced. ECF 356 at 9. But the Court concluded that the response, 19889, is
 19 protected work product. Dr. Eastman asks that the Court Correct this oversight and
 20 direct that the attorney’s original request for statistical analysis is also work prod-
 21 uct.

22 A similar oversight resulted in the Court ordering Dr. Eastman to produce 46
 23 documents¹⁷ about statistical analysis related to perspective litigation involving the

24 ¹⁵ 16022; 16182; 16184; 16285; 16334; 16350; 16561; 17416; 18110; 18406; 18554; 18793; 18796;
 25 18797; 18858; 18863; 18865; 18875; 18887; 18901; 18902; 18919; 19169; 19889.

26 ¹⁶ 16181; 16301; 16349; 16379; 16381; 16458; 18592; 18593; 18813; 18814; 18821; 18822; 18897;
 18920; 18956; 19686; 19888; 20163; 23905; 28479.

27 ¹⁷ 62940; 62944; 62948; 62951; 62955; 62958; 62984; 62987; 62996; 63000; 63054; 63058; 63081;
 28 63084; 63091; 63095; 63103; 63114; 63119; 63125; 63131; 63139; 63146; 63154; 63194; 63407; 63416;
 63425; 63438; 63448; 63449; 63450; 63451; 63479; 63503; 63512; 63515; 63518; 63519; 63520; 63717;
 63919; 63920; 63973; 63974; 63977.

1 Georgia Senate runoff election. ECF 356 at 8. The Court concluded that they
2 would “have been created in substantially similar form” without the prospect of lit-
3 igation. But these documents would not have been created at all without the pro-
4 spect of litigation. As Dr. Eastman stated in his declaration, he requested this anal-
5 ysis because he expected there to be litigation over this election, in which he ex-
6 pected to participate. Decl. of Dr. Eastman ¶ 11. To hold that such preparatory ex-
7 changes are not in anticipation of litigation overlooks the crucial fact that lawyers
8 seek out cases in their area of expertise and an election law expert beginning his
9 analysis of a close election early is the same as the ACLU or a plaintiff’s firm be-
10 ginning its legal research while still searching for a bellwether case. Dr. Eastman
11 respectfully asks the Court to correct this oversight and direct that these 46 docu-
12 ments are protected work product.

13 * * *

14 In the alternative, Dr. Eastman requests that he be permitted to redact the names
15 of his statistical experts who risk political and personal reprisal by their association
16 with these election challenges. This would be similar to the redactions this Court
17 ordered to protect First Amendment interests. ECF 356 at 21–22.

18 CONCLUSION

19 For the foregoing reasons and pursuant to Rule 60(a), Dr. Eastman requests that
20 this Court correct the above mistakes, omissions, and oversights in ECF 356. In the
21 alternative Dr. Eastman requests permission to redact the names of his experts and
22 agents who will face reprisals if the contents of Dr. Eastman’s emails are publicly
23 disclosed.

24
25 June 10, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I have served this filing on all counsel through the Court's ECF system.

Respectfully submitted,

/s/ Charles Burnham

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