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STATE BAR COURT

REVIEW DEPARTMENT

In the Matter of:

Case No. SBC-23-O-30029

JOHN CHARLES EASTMAN,
No. 193726,

**STATE BAR'S OPENING BRIEF ON
REVIEW**

An Attorney of the State Bar.

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1 **I. INTRODUCTION**

2

3 After 34 days of trial testimony, receipt of voluminous documentary evidence, and

4 extensive briefing by the parties, the hearing judge issued a thorough and well-reasoned Decision

5 finding John Charles Eastman (Eastman) culpable of 10 counts of misconduct: (1) one count of

6 failing to support the Constitution and laws of the United States by conspiring with Donald

7 Trump (Trump) to obstruct the electoral count on January 6, 2021, in violation of 18 U.S.C §

8 371; and (2) nine counts of making multiple misrepresentations to various entities, individuals,

9 and the public, including (a) to courts (the United States Supreme Court and a United States

10 District Court); (b) to Vice President Michael Pence (Pence) and his counsel Greg Jacob (Jacob);

11 and (c) to countless Americans who watched, heard, or read Eastman’s false statements on the

12 Bannon’s War Room podcast streamed on January 2, 2021, at the “Stop the Steal” rally on

13 January 6, 2021, and in published form in his January 18, 2021, article “Setting the Record

14 Straight.”

15 The hearing judge recommended that Eastman be disbarred for his dishonest acts in

16 advancing “the false narrative that widespread fraud had tainted the election, and that Vice

17 President Pence possessed the power to contravene the constitutional electoral process” with the

18 intent “to foment loss of public confidence in the integrity of the 2020 election and persuade

19 Vice President Pence to refuse to count or delay the counting of electoral votes on January 6.”

20 (Decision, p. 124.) The hearing judge found that most of Eastman’s misconduct “occurred

21 squarely within the course and scope of Eastman’s representation of President Trump and

22 culminated with a shared plan to obstruct the lawful function of the government,” namely, to

23 prevent the January 6, 2021, Joint Session of Congress from certifying the election’s outcome.

24 (*Ibid.*) The hearing judge concluded that given “the serious and extensive nature of Eastman’s

25

26

1 unethical actions, the most severe available professional sanction is warranted to protect the
2 public and preserve the public confidence in the legal system.” (*Ibid.*)

3 The State Bar agrees with the hearing judge’s findings of culpability and disbarment
4 recommendation, but appeals on three grounds.

5 First, the hearing judge’s findings in Counts 5 and 7 describe Eastman’s
6 misrepresentations in various places as intentional, grossly negligent, and reckless. The State Bar
7 maintains that all of Eastman’s misrepresentations were intentional and designed to aid in the
8 conspiracy to interfere with the 2020 election results.

9 Second, the State Bar seeks culpability on Count 11, which charged Eastman with
10 committing acts of moral turpitude, dishonesty, and corruption based on his statements at the
11 January 6 “Stop the Steal” rally. The hearing judge agreed that Eastman’s statements at the rally
12 were “false and deceptive” but dismissed Count 11 based on its finding that there was “no
13 evidence that Eastman’s statements contributed to the assault on the Capitol.” (Decision, pp.
14 108-109.) In making this finding, the hearing judge failed to recognize Eastman’s statements at
15 the rally for what they were—a final effort in furtherance of Eastman and Trump’s conspiracy to
16 obstruct the electoral vote count, directed at using the crowd to accomplish this goal.

17 By January 6, 2021, Eastman had been working with Trump for months to promote a
18 series of false claims intended to stop the counting of electoral votes that would result in
19 Trump’s opponent being certified as the winner of the election. Unsuccessful in court, Eastman
20 and Trump sought to convince Vice President Pence that he had unilateral authority to stop the
21 electoral vote count. Rebuffed by Pence, on January 6, Eastman stood on a stage at the Ellipse,
22 less than a mile from the Capitol, where Pence would oversee and certify the electoral vote count
23 that day.

24 Speaking in front of a crowd that had been summoned by Trump and his associates to
25 take action to “stop the steal,” Eastman, who was touted to the crowd as a respected
26

1 constitutional scholar, repeated a series of false and debunked claims to provide a sham veneer of
2 legality to the action being urged on the crowd—to do what was necessary to persuade Vice
3 President Pence to stop the electoral count. Eastman’s false statements followed a call by Rudy
4 Giuliani to “have trial by combat” and preceded Trump’s encouragement to the crowd to march
5 down Pennsylvania Avenue and “fight like hell” to save the country. To what could have been
6 no one’s surprise, the crowd heeded the call to action and marched to the Capitol. Denied entry,
7 and fueled by the misguided belief, buttressed by Eastman’s false claims, that they were acting in
8 furtherance of the law, they stormed the Capitol, gained entry, caused elected representatives to
9 be evacuated, and disrupted the electoral vote count.

10 Given Eastman and Trump’s prior efforts to obstruct the electoral vote count; Eastman’s
11 prior knowledge of the possibility of civil unrest during a disputed election; Eastman’s
12 prominent speaking role at the rally; the tone, tenor, and false and inflammatory nature of the
13 statements made by Eastman, Giuliani, and Trump to a crowd that had been gathered to “Stop
14 the Steal” and “Save America”; and the timing and proximity of the rally to the riot—Eastman’s
15 false and deceptive statements at the rally clearly contributed directly to the crowd’s actions at
16 the Capitol. As a result, they constituted conduct involving moral turpitude, dishonesty, and
17 corruption as charged in count 11, and Eastman should be found culpable on that charge.

18 Third, the State Bar challenges the hearing judge’s decision not to assign aggravation for
19 significant harm. (Decision, p. 117.) As discussed above, Eastman’s conduct, including his
20 statements at the “Stop the Steal” rally, directly contributed to the January 6 assault on the
21 Capitol, and Eastman should receive aggravation for the significant harm caused by this assault.
22 This is not the only significant harm that provides a basis for aggravation. In his capacity as
23 Trump’s lawyer, Eastman repeatedly promulgated the false narrative that widespread fraud had
24 tainted the election, with the intent to foment a loss of public confidence in the integrity of the
25 2020 election. In doing so, Eastman caused unprecedented and immeasurable harm to the public,

1 the legal profession, state election officials and election offices, and our system of democracy.
2 This harm also warrants aggravation.

3 For all these reasons, the State Bar requests that this court find culpability on count 11
4 and apply aggravation for significant harm, both of which further mandate upholding the hearing
5 judge's already well-supported determination that disbarment is necessary to protect the public
6 and preserve public confidence in the legal system.

7 **II. RELEVANT PROCEDURAL HISTORY**

8 On January 26, 2023, the State Bar filed a Notice of Disciplinary Charges (NDC) that
9 alleged 11 counts of misconduct. Eastman answered the NDC on February 15, 2023 (Answer).
10 On June 12, 2023, the parties filed a Stipulation to Undisputed Facts (Stipulation). Following a
11 34-day in-person trial and post-trial briefing, the hearing judge issued a Decision on March 27,
12 2024, finding Eastman culpable of 10 of 11 counts. After weighing aggravation and mitigation,
13 the judge recommended disbarment.¹ Both parties seek review.

14 **III. STATEMENT OF FACTS²**

15 **A. Candidate Trump and His Campaign Hire Eastman**

16 Eastman's attorney-client relationship with Trump and the Trump Campaign began in
17 early September 2020. (Stip., p. 2, ¶ 2.) In August 2020, Trump asked attorney Cleta Mitchell to
18 organize an Election Integrity Working Group, to begin preparing for post-election litigation
19 related to the upcoming presidential election. (RT I-82:5-11, Ex. 2, p. 11, ¶ 25.) On September 3,
20

21
22 ¹ The State Bar incorporates and adopts the procedural history set forth in the Decision, pp. 2-4.

23 ² The State Bar generally agrees with and adopts and incorporates the hearing judge's findings of
24 fact on pp. 4-75 of the Decision and recites portions of it here with citations to the record. The
25 State Bar notes in two footnotes minor deviations from the hearing judge's facts that do not
26 affect findings in this case. (See fns. 11 and 12.) The State Bar also cites to additional facts in the
record that support its appeal.

2020, Eastman joined the group and began conducting legal research and collaborating with the group on “the myriad number of factual and legal issues we anticipated might arise following the election.” (Ex. 2, p. 11, ¶ 26.)³

In October 2020, Eastman prepared for the election by participating in an exercise through the Claremont Institute that involved “roleplaying” various scenarios of how the 2020 election could play out. (RT XXX-168:19-170:6, Ex. 295.) The report of the exercise noted that in 2020 there was “an increased chance of urban unrest,” and that “confusion” as to who won the election “may lead to post-election violence unlike that seen in more than 150 years.” (Ex. 295, p. 1.) A scenario the group “simulated in detail” involved an election with “an ambiguous result” which resulted in “a struggle right to the Jan. 6 joint session of Congress.” (Ex. 295, p. 2.) This scenario culminated in a “massive and violent Antifa demonstration in D.C.” after Trump was declared the winner that resulted in life-threatening injuries to a member of Congress.⁴ (Ex. 295, p. 9.)

³ Eastman was licensed to practice law in California on December 15, 1997. (Stip., p. 2, ¶ 1.) In addition to a J.D. from the University of Chicago Law School, he has a PhD in government from Claremont Graduate School. (RT XXVI-210:24-211:9; Ex. 6, p. 101.) After graduating from law school in 1995, he clerked for U.S. Court of Appeals Justice Michael Luttig and then U.S. Supreme Court Justice Clarence Thomas. (RT XXVI-211:16-18, Ex. 6, p. 101.) From 1997 to 1999, he practiced appellate law with the firm Kirkland and Ellis. (RT XXVI-212:24-213:1.) In 1999, he became an associate professor at Chapman University Law School, and then a full professor from 2002 to 2021. (RT XXVI-216:4-10.) From 2007 to 2010, he served as dean of the Chapman Law School. (*Id.*) From 2020 to 2021, Eastman was a visiting scholar at the University of Colorado Boulder. (Ex. 6, P. 101.) On January 11, 2021, Eastman emailed Rudy Giuliani (Giuliani), asking to be on Trump’s pardon list. (Ex. 62.) Eastman made the request because “a number of people at the University of Colorado were suggesting that my speech caused the riots at the Capitol.” (RT XI-106:14-107:3.) Eastman’s employment with both universities ended in 2021. (Ex. 6, p. 101.)

⁴ The exercise expected riots and protests from liberals and saw “left-wing street violence as a near-certainty.” (Ex. 295, p. 4.) At trial, Eastman testified that the group only contemplated violent demonstrations against Trump winning. (RT XXX-174:15-175:4.)

1 On December 6, 2020, Eastman received an engagement letter for legal services from
2 Trump’s re-election campaign committee (“Trump Campaign”). (Stip., p. 2; Ex. 1, p. 1.) The
3 engagement letter was between Eastman and Trump, in his capacity as a presidential candidate,
4 and the Trump Campaign and defined the scope of legal services as follows: “[Eastman] agrees
5 to represent [Trump and the Trump Campaign], as its interests may appear, in connection with
6 the 2020 presidential general election, including potential litigation matters and matters related to
7 the Electoral College.” (Ex. 1, p. 1.)

8 **B. Eastman’s Participation in Failed Litigative Efforts to Overturn the Election**
9 **Results**

10 Trump and his supporters filed approximately 60 actions in state and federal courts in
11 seven states, challenging the manner in which the elections were conducted and the resultant
12 outcome. All of the cases were unsuccessful, and no court ever found credible evidence of
13 fraud.⁵ In the course of representing Trump and the campaign, Eastman participated in multiple
14 election challenges that disputed the results of the election, including actions in Georgia,
15 Wisconsin, Pennsylvania, and the U.S. Supreme Court. (Ex. 2, pp. 11-12.)

16 **1. *Texas v. Pennsylvania***

17 On December 7, 2020, the State of Texas filed a Motion for Leave to File a Bill of
18 Complaint in the U.S. Supreme Court (“Texas Motion”), seeking an injunction to prevent the
19 electoral votes of Pennsylvania, Georgia, Michigan, and Wisconsin (“Defendant States”) from

20 ⁵ See Exs. 207-219, 220-229, 232-235, 237-242, 245-256, 260-263, and 270-291; RT XVIII-
21 46:16-23. By early January 2021, Eastman knew the Trump campaign’s claims of fraud or
22 illegality affecting the outcome of the election were without merit or untimely and had no
23 remaining prospect of success in any judicial forum. The U.S. Supreme Court denied expedited
24 consideration and certiorari in all post-election litigation in which it was sought, and as Eastman
25 himself stated on January 3, “the Supreme Court has signaled unmistakably that it will not do
26 anything” about the campaign’s claims of illegality and fraud. (Ex. 4, p. 6.) The State Bar
27 summarized the significant court cases that addressed claims of fraud and illegality in the 2020
28 election, including improper conduct by election officials, in the Appendix to its Pretrial
Statement, filed on June 5, 2023.

1 being counted. (Ex. 260, pp. 46-47.) Eastman was involved in drafting the motion. (RT I-112:22-
2 23; IV-33:13-22; XXXI-44:19-25; Ex. 381, p. 1.) The Texas Motion contained 127 paragraphs of
3 factual allegations regarding the 2020 election, generally claiming that there had been “rampant
4 lawlessness” in the Defendant States, which had created a “massive opportunity for fraud.” (Ex.
5 260, pp. 11, 20.)

6 On December 9, 2020, Eastman filed a Motion to Intervene and Bill of Complaint in
7 Intervention on Trump’s behalf (Motion to Intervene) with the U.S. Supreme Court. (Ex. 262.) It
8 joined in the Texas Motion, specifically incorporating by reference the allegations in the Texas
9 Motion. (Ex. 262, pp. 13, 16, ¶ 8; RT 176:4-177:1.)⁶

10 Eastman began the Motion to Intervene by acknowledging that claims of election fraud
11 were causing deep divisions in the nation and causing people to believe it had been stolen:

12 [e]lection officials in key swing states, for apparently partisan advantage, failed to
13 conduct their state elections in compliance with state election law, in direct violation of
14 the plenary power that Article II of the U.S. Constitution confers on the Legislatures of
15 the States. Indeed, a recent poll by the reputable Rasmussen polling firm indicates that
16 47% of all Americans (including 75% of Republicans and 30% of Democrats), believe
17 that it is “likely” or “very likely” the election was stolen from the current incumbent
18 President. (Ex. 262, p. 8, citation omitted.)

19 Eastman cited the fact that Trump won “18 of the country’s so-called ‘bellwether’
20 counties”⁷ and other observations about the election to support his claim that “[t]hese things just
21 don’t normally happen, and a large percentage of the American people know that something is
22 deeply amiss.” (Ex. 262, pp. 8-9.)

23 ⁶ Many of the allegations in the Texas Motion were false, and Eastman intentionally sought to
24 mislead the Supreme Court. (Decision, pp. 81-87.)

25 ⁷ Bellwether counties have no special prognostic value, and as Dr. Justin Grimmer explained, “it
26 is neither surprising nor suspicious that Biden won just one of 19 bellwethers in 2020.” (Ex. 174,
27 p. 2.)

1 Eastman expanded on a claim in the Texas Motion that the Georgia Secretary of State
2 had weakened the requirements for signature verification of absentee ballots in March 2020,
3 causing a significant decline in the rejection rate for signature issues, thereby benefitting Biden
4 because Democrats were more likely to vote by absentee ballot. (Ex. 262, pp. 15-16.) He
5 claimed that the overall decline from 2016 to 2020 in rejection of absentee ballots was due to
6 fewer rejections based on signature issues. (Answer, p. 64:9-15.)

7 Eastman's claim that the signature rejection rate in Georgia declined significantly from
8 2016 to 2020 was false. While Eastman was correct that the overall rejection rate of absentee
9 ballots in Georgia declined from 2016 to 2020, he assumed, without evidence, that a significant
10 portion of that decline was related to rejections for signature issues. Had Eastman or his
11 "experts" looked at the information publicly available in 2020 regarding the reasons for ballot
12 rejections, they would have learned that the decline in rejected absentee ballots was not primarily
13 due to signature issues; rather, about 90 percent of this decline was due to a decrease in the
14 percentage of ballots arriving after the deadline and a decrease in the percentage of ballots
15 rejected due to issues with the oath envelope. (RT XXXI-226:1-227:13. See also V-190:4-193:6-
16 18 ["the change in the rate of ballots being rejected for signature-related issues is quite small."].)
17 Despite making this claim repeatedly throughout December 2020 and January 2021, and during
18 the State Bar proceedings (Answer, p. 64:9-15.), neither Eastman nor any of his experts looked at
19 the rejection reasons in the absentee voter history file to determine if the claim was correct. (RT
20 X-80:15-82:9) ⁸

21 Eastman continued to repeat many of the false claims in the Texas Motion long after they
22 had been debunked by state officials, such as a claim that in Pennsylvania, 58,221 mail-in ballots

23
24 ⁸ Eastman was apparently unaware that the absentee voter history file contained the reason a
25 ballot was rejected before Grimmer explained at trial that this information was available to the
26 public. When asked if he knew this prior to Grimmer explaining it, he stated "I don't recall
whether I knew that at the time." (RT X-82:3-9.)

1 had been returned “on or BEFORE the Mailed Date,” which Texas had characterized as
2 “nonsensical.” (Ex. 260, p. 25, ¶ 57, 58.) At trial, Eastman cited this as evidence that fraud had
3 occurred in Pennsylvania, testifying that 58,221 ballots were “returned before the mail date,
4 which, of course, is not possible.” (RT XXIX-52:11-19.) To support this claim, Eastman cited a
5 December 4, 2020 letter from Pennsylvania Representative Francis Ryan to Congressman Scott
6 Perry. (Answer, p. 63:5-7; RT XXIX-50:15-52:19; Ex. 1155.) Ryan’s letter, however, did not say
7 “returned before the mail date” but instead claimed the ballots were returned “on or BEFORE the
8 Mailed Date.” (Ex. 1155, p. 5.) Dr. Justin Grimmer⁹ rebutted Eastman’s claim, explaining that
9 99.6 percent of those ballots were returned *on* the mail date, not before. (RT XXXI-232:21-
10 233:19.) Furthermore, Grimmer explained that returning a ballot on the mail date is not
11 suspicious or indicative of fraud, because voters in Pennsylvania were allowed to vote “early in-
12 person,” using the same ballots as mail-in ballots, and when they voted early in-person, the “mail
13 date” in their voter record would be the date they received and returned their ballot in-person.
14 (RT XXXI-233:20-237:7; Ex. 129, pp. 1-2.) The Pennsylvania Department of State had
15 explained this in a public statement on December 16, 2020:

16 as Rep. Ryan should know, Act 77 authorized eligible Pennsylvania voters to vote early
17 in person (by mail ballot) at their county election offices, and over 100,000 Pennsylvania
18 voters availed themselves of this option. Most of these voters would be shown as having
19 been approved and provided their ballot on the same date they cast it at their county
20 election office. Far from an anomaly, the data Rep. Ryan cites is an obvious result of the
21 legislation he himself supported.

22 (Ex. 129, p. 2.)

23 ⁹ Dr. Grimmer is a tenured Stanford University professor in the Political Science Department,
24 and a testifying expert for the State Bar in this case. The court accepted him as an expert based
25 on “his educational experience as a Harvard University Department of Government graduate
26 with master’s and PhD degrees in political science; graduate coursework in American politics,
political methodology and statistics; scholarly and peer-reviewed publications regarding
statistical methods, statistical theory, election administration, congressional elections and claims
of voter fraud.” (Decision, p. 18, fn. 27.)

1 Eastman assumed, incorrectly, that all ballots with a “mail date” in the voter records went
2 through the mail, although he never asked an expert or contacted the Pennsylvania Department
3 of State to confirm if that was correct.¹⁰ (RT XXX-224:3-226:2.) In fact, “mail date” is a field in
4 a data file that refers to the date that a mailing label is printed, but that label is printed when
5 people voted early and returned the ballot in-person, and those people would have a “mail date”
6 in their file, even though their ballot did not go through the mail. (RT XXXI-233:25-234:8,
7 235:3-237:7, 239:3-6.)

8 The Texas Motion also claimed that the Pennsylvania Secretary of State had violated
9 state election law by sending an email to local election officials urging them to allow political
10 parties to contact voters and cure defective mail-in ballots prior to the election, and that this
11 “blatantly illegal” practice was “only followed in Democrat majority counties.” (Ex. 260, p. 23-
12 24, ¶ 50-52.) At trial, Eastman testified that “we had evidence at the time that Democrat officials
13 had been given advance warning that election officials in some of the large cities were going to
14 not comply with state election law regarding pre-canvassing of absentee and mail-in votes.” (RT
15 I-178:1-5. See also Answer, p. 11:1-5; 62:18-21.) Eastman, however, never produced evidence
16 that Democratic officials received information that was not provided to all officials, or that any
17 of the information provided to officials before the election violated the law.

18 The basis for Eastman’s claim is an email that Jonathan Marks, the Deputy Secretary for
19 Elections and Commissions at the Pennsylvania Department of State, sent to county election
20 directors the night before the election, on November 2, 2020, at 8:38 p.m., stating that during the
21 pre-canvass of ballots, county boards of elections can provide information to political parties
22 about which voters had their absentee and mail-in ballots rejected. (Ex. 1030; RT III-153:20-
23

24 ¹⁰ Eastman claimed at trial that the Department of State confirmed that all ballots with a mail
25 date went through the mail in a footnote in a January 15, 2021 letter to Representative Seth
26 Grove. (Ex. 132, p. 2, fn. 1.) The footnote does not state that all ballots with a mail date were
mailed nor does it contradict Grimmer’s testimony. (RT XXXI-240:2-241:24.)

1 156:20.) Marks testified that he sent the email to all the county election directors. (RT III-
2 153:20-154:2, 156:14-157:5.) Eastman claimed that “Four or five hours before that
3 announcement was e-mailed around, Democrat party officials in Philadelphia were advertising
4 for employees to help with the ballot-curing effort on the next day,” which he believes is
5 circumstantial evidence that the officials had advance notice of the guidance. (RT I-178:10-18.)
6 Eastman produced no evidence, however, that anyone, Democrat or otherwise, was given
7 advance notice of Marks’ November 2 email, that there was anything illegal or improper in
8 Marks’ guidance, or that any county violated state law by opening and counting mail-in or
9 absentee ballots during the pre-canvassing period or disclosing the vote totals prior to 8:00 p.m.
10 on election day. (RT III-174:25-175:9, 150:24-153:6.)

11 Eastman knew, when he filed the Motion to Intervene, that there was no actual evidence
12 of outcome-determinative fraud in any of the Defendant States. On November 29, 2020, he
13 stated to Cleta Mitchell that he could not imagine a legislature taking action to certify an
14 alternate slate of Trump electors “absent pretty compelling evidence of fraud. The statistical
15 analyses that have been done might get you there, but it would be nice to have actually hard
16 documented evidence of the fraud in the areas to which the analyses pointed.” (Ex.
17 39.) Furthermore, as the hearing judge found, federal courts had already considered and
18 dismissed the claims in the Texas Motion of outcome-determinative irregularities affecting the
19 2020 presidential election.¹¹ (Decision, pp. 81-87.)

21 ¹¹ Grimmer rebutted other claims in the Texas Motion, including a claim that in Wayne County,
22 Michigan, 174,384 absentee ballots were counted without a registration number, and therefore
23 were not tied to a registered voter. (Ex. 260, p. 35, ¶ 97.) Grimmer explained that this claim was
24 likely due to a misunderstanding of how absentee vote counting boards reported their results. In
25 explaining the misunderstanding, the hearing judge stated that the spreadsheet reporting the
26 results from the absentee vote counting boards “reflected that there were *no* absentee ballots”
27 associated with the counting board. (Decision, p. 72, emphasis in original.) In fact, the
28 spreadsheet reported no registered voters associated with the absentee vote counting board.
Grimmer explained that in Wayne County, absentee vote counting boards were set up to count

1 The Supreme Court disagreed with Texas and, on December 11, 2020, denied leave to
2 file the Bill of Complaint and dismissed all other pending motions, without addressing the
3 allegations or merits of the Texas Motion, (Exs. 356, 1376.)

4 **2. Trump v. Raffensperger**

5 On December 4, 2020, the Trump Campaign filed a challenge to the elections results in
6 Georgia in Fulton County Superior Court, in *Trump v. Raffensperger*. (Ex. 1048.) Eastman was
7 not counsel of record but provided legal advice on the matter. (Ex. 2, p. 12.) In the complaint,
8 Trump alleged that there was “substantial doubt regarding the results” of the Georgia election
9 “[d]ue to significant systemic misconduct, fraud, and other irregularities occurring during the
10 election process.” (Ex. 1048, p. 4.) Trump subsequently dismissed *Trump v. Raffensperger* on
11 January 7, 2021, after the parties reached a publicly filed settlement agreement. (Ex. 275.) While
12 the case was pending, Eastman used the evidence that Trump had presented in *Trump v.*
13 *Raffensperger* to challenge the Georgia election results in District Court in the related action
14 *Trump v. Kemp*.

15 **3. Trump v. Kemp**

16 On December 31, 2020, Eastman and attorney Kurt Hilbert filed a Verified Complaint for
17 Emergency Injunction and Declaratory Relief on behalf of Trump (Verified Complaint) in the
18 United States District Court, Northern District of Georgia, in *Trump v. Kemp*, Case No. 20-CV-
19 5310. (Ex. 270.) Eastman was co-counsel for Trump. (Ex. 270, p. 30.) Eastman sought a
20 temporary restraining order and preliminary and permanent injunction directing defendants
21 Governor Kemp and Secretary of State Raffensperger to de-certify the Georgia election results.
22

23 the absentee votes for collections of precincts. When the data was reported, the precincts only
24 reported their in-person votes, with no absentee votes reported. Separately, the absentee vote
25 counting boards only reported the absentee vote totals, which were linked to certain precincts.
26 Because absentee vote counting boards are not precincts, and therefore don't have registered
voters within them, the number of registered voters in the absentee vote counting board totals
was listed as zero. (RT XXXII-67:5-70:3.)

1 (Ex. 270, pp. 28-29.) In seeking to de-certify the Georgia election results, Eastman was
2 attempting to disenfranchise the 2,473,633 Georgia citizens who had voted for Biden, after two
3 recounts had confirmed the accuracy of the election result in Georgia. (Exs. 11, 86, 87, 88.)

4 The Verified Complaint incorporated *Trump v. Raffensperger* in its entirety, and alleged
5 that Georgia election officials had allowed unqualified voters to register and vote, thus allowing
6 “more than 11,779 ‘illegal’ votes to be counted,” sufficient to change the outcome or place the
7 outcome in doubt. (Ex. 270, pp. 5-6.) Supporting this alleged total of illegal votes were, among
8 others, claims that “as many as 2,560” felons had voted, “as many as 10,315” votes were cast by
9 people who were deceased before the election, and that “at least 2,047”¹² voters had been
10 underage when they registered to vote. (Ex. 1048, pp. 556, 570.) The allegations in the complaint
11 were supported by declarations that had been submitted in *Raffensperger* by Bryan Geels,
12 Matthew Braynard, and Mark Davis. (Ex. 270, p. 13; RT V-23:19-24:11.)

13 Eastman did not take any steps to assess the qualifications of the “experts” in *Trump v.*
14 *Raffensperger*, beyond reading their declarations and attached resumes, because he considered
15

16 ¹² The claim that 2,047 voters were underage when they voted was based on a declaration by
17 Bryan Geels. In the *Raffensperger* case, Geels had submitted a declaration stating that 66,247
18 voters were underage when they voted. (Ex. 1048, pp. 554, 565.) He changed his estimate to
19 2,047 one month later in the *Kemp* case, without explanation for the change. (RT I-91:12-23; Ex.
20 1049, pp. 6, 37, 54). Eastman testified that Geels misstated the number of underage registrants as
21 66,247 because he transposed columns in a spreadsheet. (RT I-87:5-12; V-67:14-19; XXVII-
22 101:18-102:14.) In late 2022 or early 2023, Geels adjusted the number again to 778, explaining
23 that he had previously calculated 2,047 because he used the Date Added field to determine when
24 a voter registered, but he arrived at a lower number by using the Registration Date field. (Ex.
25 1271, p. 4; RT V-73:1-9.) In the Decision, at p. 34, the hearing judge attributed both errors to
26 Geels using the wrong data field, but the first error of 66,247 was due to a spreadsheet error
(according to Eastman), and the second error of 2,047 was due to Geels using the wrong data
field.

23 On December 3, 2020, Eastman told a subcommittee of the Georgia State Legislature that they
24 should decertify Georgia’s Biden electors because, among other reasons, “more than 66,000
25 underage individuals to cast ballots, which were then counted.” (Ex. 1178, pp. 5-6.) Eastman’s
26 claims were subsequently included in the Chairman’s December 17, 2020 report to the Georgia
Legislature, which stated that “Professor Eastman” had reported violations of law “such as
counting the votes of approximately 66,000 underage individuals.” (Ex. 1050, p. 10.)

1 vetting the experts to be Hilbert’s job. (RT V-46:20-47:3, 26:6-11, 28:16-20, 50:24-51:5.) Many
2 of the claims in *Trump v. Kemp* were based on the declaration of Geels, a CPA whose affidavit
3 reflected no expertise in statistics, election administration, or political science. (Ex. 1048, pp.
4 549-550.) Eastman decided that Geels’ declaration “looked credible,” despite not showing it to
5 anyone with relevant expertise or taking any meaningful steps to assess its reliability. (RT I-
6 88:19-24, 90:20-91:2, 99:20-101:6.)

7 When Eastman filed *Trump v. Kemp*, he was on notice that the declarations used in
8 *Trump v. Raffensperger* were unreliable because the defendants in *Trump v. Raffensperger* had
9 submitted declarations from political scientists and experts in election data who explained the
10 problems and errors in the Geels, Braynard, and Davis analyses. Eastman testified that he read at
11 least one of these declarations, by defense expert Charles Stewart, dated December 14, 2020,
12 before he filed the *Trump v. Kemp* complaint.¹³ (RT I-102:7-21; V-24:16-20, 64:4-14.)

13 Stewart had experience with political science and the scientific study of elections.¹⁴
14 Stewart explained that all of the Trump experts lacked training and professional experience in
15 database matching and election administration, and appeared to be unaware of election science
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18 ¹³ Eastman testified that “it’s likely” he also read the declaration by Chris Harvey, the Georgia
19 Elections Director, in December 2020, which identified additional problems with the Geels and
20 Braynard analysis. (RT V-52:2-53:1, Ex. 97.) Eastman did not recall reviewing the declaration
21 of Michael McDonald, Professor of Political Science at the University of Florida, or the
22 declaration of Stephen Ansolabehere, Professor of Government at Harvard University and former
23 Professor of Political Science at MIT. These declarations identified additional problems with
24 Braynard’s analysis. (Ex. 203 [McDonald declaration]; Ex. 205, pp. 8-34 [Ansolabehere
25 declaration]; RT V-44:17-20; 45:8-11; 50:8-15.)

26 ¹⁴ Stewart is a Professor of Political Science at MIT, teaching graduate and undergraduate classes
27 on elections and research methodology. He is also the founding director of the MIT Election
28 Data and Science Lab which is “devoted to impartial, scientific analysis of elections and election
administration” in the United States. (*Id.* at p. 2.) Stewart has authored numerous peer-reviewed
publications and books on election administration and election science. (Ex. 202, p. 1, 2.)

1 literature and the inherent limitations in their analyses. (Ex. 202, pp. 3-4 [summary], pp. 4-15
2 [critique of Braynard], pp. 15-28 [critique of Geels], pp. 28-29 [critique of Davis].)

3 Eastman presented the claims to the District Court, and continued to repeat the claims in
4 public, despite knowing that the analysis in the complaint was unreliable. At trial, Eastman
5 testified that because Geels and Braynard acknowledged there might be some false positives in
6 their calculations, and prefaced their numbers with “up to” and “as many as,” they had already
7 addressed Stewart’s criticisms, and therefore his critique did not cause Eastman to question their
8 reliability. (RT I-106:22-107:3; V-39:1-8, 59:24-60:1; XXXI-73:23-25.) Stewart, however, also
9 noted that Geels and Braynard used unreliable data and methods, appeared to misunderstand
10 Georgia election law, and drew conclusions that were unsupported from their data. (See, e.g., Ex.
11 202, pp. 11-12, 16-19.) As Stewart also explained, Geels’ statement that there “may” be false
12 positives was highly misleading: “it is incorrect to say there *may* be false positives. There are
13 *guaranteed* to be false positives—so many, in fact, that they most likely explain the empirical
14 finding entirely.” (Ex. 2020, p. 21, italics in original). Grimmer agreed, explaining that when
15 Geels said “up to 10,315” votes were cast by deceased voters, Geels had only determined that the
16 number was somewhere between zero and 10,315. Without explaining his accuracy rate, zero
17 and 10,315 were equally plausible, and it was misleading for Geels to suggest that his maximum
18 number was more likely than zero. (RT XXXII-86:8-87:6.)

19 In fact, Geels’ numbers were wildly inaccurate. While Geels claimed that “up to 2,560”
20 felons had voted, the Georgia Secretary of State compared data from the Department of
21 Corrections and to the list of people who voted in the election and determined that there were 74
22 potential felon voters who warranted further investigation, to determine if they voted while still
23 under felony sentence. (Ex. 94, p. 9.) The Secretary of State determined that only four voters (all
24 of whom turned 18 prior to the November 3 election) requested a ballot prior to turning 18, not
25 2,047 as Geels claimed in *Trump v. Kemp* (or 66,247 as he claimed in *Trump v. Raffensperger*);
26

1 that two votes had been recorded for potentially deceased individuals, not 10,000; that zero
2 individuals voted who were not listed in the State’s records as having been registered to vote, not
3 2,423; that up to 74 potential felons voted, not 2,500; and that many of the addresses alleged to
4 be PO boxes were just apartments. (Ex. 94, p. 9; Ex. 99, pp. 5-6.)

5 Eastman also claimed in *Trump v. Kemp* that at the State Farm Arena in Fulton County,
6 election officials falsely told observers that counting was stopped for the evening, and when the
7 observers left, the officials “proceeded to remove suitcases full of ballots from under a table
8 where they had been hidden, and processed those ballots without open viewing by the public in
9 violation of [state law.].” (Ex. 270, pp. 10-11.) Eastman has repeated this claim in various public
10 settings, often adding an allegation that officials used the opportunity to count ballots “multiple
11 times,” and he continued to make this claim in public interviews through June 2023. (Answer,
12 pp. 61, 70; Ex. 382, p. 6.) Georgia’s hand recount, however, confirmed that machines had not
13 scanned any ballots multiple times, because as Gabriel Sterling of the Secretary of State’s office
14 explained, “If somebody took a stack of ballots and scanned them multiple times, you would
15 have a lot of votes with no corresponding ballots.”¹⁵ (Ex. 99, p. 5.) The Secretary of State also
16 determined that the observers at State Farm were not asked to leave, but left when they saw other

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19 ¹⁵ Jonathan Brater, Director of the Michigan Bureau of Elections, explained that it is common to
20 rescan a stack of ballots after they get stuck in the machine, but when ballots are rescanned, they
21 are only counted once, after the last successful scan. (RT VI-168:3-14; RT VI-172:14-173:7.) If
a witness at State Farm saw a stack of ballots scanned twice, that is not evidence that the ballots
were counted more than once.

22 At trial, Eastman claimed that 16,000 ballots were mysteriously found just prior to the recount,
23 implying that those ballots covered for ballots that were scanned multiple times, but he had no
24 direct evidence to that effect. (RT V-97:13-100:3.) Eastman said that his witness Garland
25 Favorito would provide that evidence, but later acknowledged that the “identically sequenced
26 ballots” that Favorito claimed to have found could not be linked to State Farm Arena. (RT V-
102:7-104:2; V-95:11-15; V-101:18-102:2; V-103:1-8.) Favorito was unable to identify any
specific fraudulent votes in the 2020 election. (RT XVI-144:5-145:25.) He claimed his
organization could not identify fraudulent votes because they have been prevented from looking
at the ballots by “a corrupt ruling from a lower court judge.” (RT XVI-145:22-25.)

workers depart, and there was no evidence that ballots were improperly handled or that fraudulent ballots were counted. (Ex. 98, p. 3; Ex. 99, pp. 3-4.)

Eastman presented these allegations to the District Court despite acknowledging to his co-counsel, in a December 31, 2020 email, that some of the evidence cited in the *Trump v. Raffensperger* complaint was inaccurate: “Here’s the issue. The complaint incorporates by reference the state court challenge [*Trump v. Raffensperger*]. Although the President signed a verification for that back on December 1, he has since been made aware *that some of the allegations (and evidence proffered by experts) has been inaccurate*. For him to sign a new verification with that knowledge (and incorporated by reference) would not be accurate.” (Ex. 51, italics added.) Instead of correcting the false allegations, Eastman and Hilbert agreed to insert a footnote in the Verified Complaint disclaiming personal knowledge of the facts and figures therein. (Ex. 270, p. 6, fn. 4.)

On January 5, 2021, the District Court refused to decertify the election and denied Trump’s motion for injunctive relief, finding that Trump did not show a likelihood of success on the merits of the claims and that:

to interfere with the result of an election that has already concluded and has been audited and certified on multiple occasions would be unprecedented and harm the public in countless ways. Granting injunctive relief here would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise of [sic] millions of Georgia voters.

(Ex. 271, pp. 27-28, internal citations omitted.)

C. The States at Issue Determine that Biden Won the Election and Certify the Biden Electors Only

As Eastman’s own expert Professor John Yoo testified, President Biden “won the election fair and square.” (RT XVIII-115:2.) Multiple audits and recounts were conducted before the electoral count on January 6, including full hand recounts in Antrim County, Michigan, and Georgia, and recounts in Arizona’s and Wisconsin’s most populous counties—focal points for

1 Trump’s and Eastman’s conspiracy theories—further confirmed the results. (Ex. 76 [Arizona];
2 Exs. 88-89, 92-93 [Georgia]; Exs. 109-110 [Michigan]; Exs. 137, 148, and 291, p. 5
3 [Wisconsin].) Trump-appointed federal officials confirmed the election was the most secure in
4 American history and that its outcome had not been affected by fraud. (Exs. 165, p. 453 [January
5 6 Report], 186, 201.)

6 Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania, and Wisconsin—the
7 key states in former President Trump’s and Eastman’s January 6 strategy— uniformly confirmed
8 Biden’s election, and their governors submitted Certificates of Ascertainment declaring that
9 Biden had won the popular vote in their state and certifying the Biden Electors. (Exs. 10-17.) No
10 state legislature, in any of the seven states, took any action to challenge the governor’s
11 Certificate of Ascertainment or submit an alternate slate of Trump electors. (See Section III(D)
12 (6)(a), *infra*.)

13 **D. Eastman’s and Trump’s Failed Efforts to Convince Pence to Act Unilaterally**

14 **1. Eastman’s Dual Slate of Electors Theory**

15 A central part of Eastman’s strategy to stop the electoral count on January 6, as laid out in
16 his memos discussed below, was his claim that the existence of “dual slates” of electors from
17 seven states justified Pence unilaterally rejecting the Biden slates from those states or delaying
18 the count. (Ex. 46 [“The fact that we have multiple slates of electors demonstrates the
19 uncertainty of either. That should be enough.”].) Eastman worked hard to encourage alternate
20 slates of Trump electors in the seven contested states to meet and vote on December 14, 2020,
21 and then to transmit those non-certified slates to Pence and the Archivist of the United States.
22 Eastman also sent multiple emails to Trump attorneys and allies emphasizing the urgency and
23 importance of transmitting slates of Trump electors in the seven states before the December 14
24 electoral college. (Exs. 40, 42, 44, 45; RT X:164:19-169:6.)

1 Eastman knew that the slates submitted by the Trump electors on December 14, 2020,
2 were not certified by any official or legislative body and had no legal authority. On
3 December 19, Eastman wrote an email confirming this: “not a one [Legislature] has
4 acted...unless those electors get a certification from their State Legislators, they will be dead
5 on arrival in Congress.” (Ex. 380; p. 2, RT XXX-118:2-12; Ex. 061 [Jan. 11 email
6 confirming Trump slates were not certified “so they had no authority”].) Eastman knew that
7 the fabricated “dual slates” did not generate a real dispute for Pence (or anyone else) to
8 resolve on January 6. At trial, Eastman’s expert Yoo agreed that the Trump Campaign’s
9 dispute over the 2020 presidential electors was “a made-up dispute, rather than a real one,” it
10 was “obvious” that there was no real dispute over the electoral slates, and Pence was on
11 “unassailable” grounds for not overturning the electoral results of the 2020 election. (RT
12 XVIII-58:24-62:3, 49:16-23, 66:20-25.)

13 **2. Eastman’s Initial Two-Page Memo Detailing January 6 Strategies**

14 For decades, Eastman believed that only Congress had authority to resolve disputes over
15 electoral votes. In 2000, because of his expertise on the structural provisions in the Constitution,
16 Eastman was asked to testify before the Florida Legislature in connection with the *Bush v. Gore*
17 litigation, where he explained that when a state submits one certified slate of electors in a
18 presidential election, those electoral votes “must be counted by Congress unless both the House
19 and the Senate meeting separately concurrently reject that return.” (Ex. 25, p. 2; (RT XXVI-
20 227:24-228:14.) He further testified that *Congress* has “the power to be the ultimate judge” over
21 electoral disputes and that problems of how to count multiple returns submitted to Congress arise
22 “only if the two houses of Congress are not able to agree.” (RT IX 27:7-20; Ex. 25, pp. 2-3.)

23 Eastman continued to hold this view for the next 20 years, through October 2020, when
24 he stated the same in an email to a colleague:
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1 The 12th Amendment only says that the President of the Senate opens the ballots in the
2 joint session and then, in the passive voice, that the votes shall then be counted. 3 USC §
3 12 says merely that he is the presiding officer, and then it spells out specific procedures,
4 presumptions, and default rules for which slates will be counted. *Nowhere does it suggest*
5 *that the President of the Senate gets to make the determination on his own.* [3 USC] § 15
6 doesn't, either. " (Ex. 38, p. 2, italics added; see also RT IX-24:9-25:24.)

7 Despite believing for over 20 years that the President of the Senate has no authority to
8 resolve electoral disputes, after Trump lost the election, Eastman changed course and took the
9 position that the President of the Senate is the sole decider.¹⁶ On December 23, 2020, Eastman
10 sent a two-page legal memorandum to Boris Epshteyn and Kenneth Chesebro, attorneys and
11 strategic advisors to President Trump and the Trump Campaign (two-page memo) advocating for
12 Pence to unilaterally declare the electoral votes invalid. (Stip. p. 2, ¶ 3; Ex. 6, p. 26; RT X-69:8-
13 12, IX-19:4-9.) The two-page memo outlined Eastman's strategy and plan for Pence to declare
14 Trump the winner of the election on January 6. (Ex. 3.) Eastman began the memo by stating
15 falsely that "7 states have transmitted dual slates of electors to the President of the Senate." (Ex.
16 3, p. 1, referring to Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico, and
17 Wisconsin, Exs. 18-26.). Eastman claimed in the memo that under the Twelfth Amendment, as

17 ¹⁶ At trial, Eastman claimed that he changed his mind in November and December 2020, shortly
18 after Trump lost the 2020 presidential election, after reading Yoo's October 19, 2020 article in
19 the American Mind, "What Happens if No One Wins?" (RT XXIII 155:6-8, 161:20-23; Ex.
20 1017), and then doing "a significant amount of additional research." (RT IX-25:18-21; XI-
21 117:21-119:5.) The hearing judge did not find this credible (Decision, p. 45, fn. 54) and the
22 hearing judge's credibility finding is entitled to great weight. (*McKnight v. State Bar* (1991) 53
23 Cal.3d 1025, 1032.) Not only did Eastman's complete reversal of his long-held view come when
24 Trump lost the election and Pence was the only remaining option to override the voters,
25 governors, and courts, but there is no historical evidence to support it, and none of the law
26 review articles identified by Eastman support his view. (See *infra*, section III(D)(4).)
27 Furthermore, Eastman kept no notes of the "research" that he did during this time period and
28 could not give a rough estimate as to how much time he spent on the research. (RT XI-119:6-21;
XI-122:9-123:3; XXX-127:15-129:5; XXVII 152:17-153:19.) His lack of any notes or records of
the research is telling, given the extensive notes he kept during this time period of his theories of
election fraud (Ex. 1055.)

1 President of the Senate, Pence could unilaterally resolve “disputed” or “contested” electoral
2 votes. Eastman proposed that on January 6, Pence declare that due to the “ongoing disputes” in
3 the Seven States, none of their electors would be counted. According to Eastman’s calculation,
4 without those votes, Trump would have 232 electors and Biden would only have 222, so “Pence
5 then gavels Trump as re-elected” (Ex. 3, p. 2.) After the inevitable objections from Democrats,
6 Pence could declare that no candidate has the required majority, sending the matter to the House
7 for a vote, and Trump would win under this scenario as well because Republicans controlled a
8 majority in the House. (*Ibid.*) Notably, Eastman advised that Pence should not ask for
9 permission from members of the Joint Session of Congress or from a court before taking this
10 course of action, because “the Constitution assigns this power to the Vice President as the
11 ultimate arbiter.” (*Ibid.*)

12 Eastman’s insistence that Pence should “act without asking permission” further shows
13 that he knew the plan was illegal. On December 22, 2020, attorney Larry Joseph consulted
14 Eastman about filing a lawsuit in D.C. federal court to test the theory of vice presidential power
15 that Eastman advanced.¹⁷ (Ex. 47.) Eastman’s reaction was swift and unequivocal. He instructed
16 Joseph to hold off because a loss would “completely tank the January 6 strategy” and put “the
17 odds at winning in either D.D.C. or CADC closer to zero, and the risk of getting a court ruling
18 that Pence has no authority to reject the Biden-certified ballots very high.” (Ex. 47, p. 4.)
19 Consistent with that view, on December 23, Eastman wrote to Epshteyn warning that “hearings
20 on the constitutionality of the ECA could invite [unwanted] counter-views” and that it would be
21 better for Pence “just to act boldly and be challenged.”¹⁸ (Ex. 46; RT X-169:13-170:9.)

22 _____
23 ¹⁷ Joseph’s proposed suit would have asked the Court to declare that the ECA was
24 unconstitutional and that the Vice President had “exclusive authority and sole discretion” to
determine which electoral votes should count. (Ex. 258, p. 4.)

25 ¹⁸ When Joseph filed suit in Texas on December 29, Eastman emailed a colleague to express
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1 course of action Pence should take regarding the electoral vote count. (Ex. 4.) The memo
2 included a sample list of illegal conduct by election officials in Georgia, Pennsylvania,
3 Wisconsin, Michigan, Arizona, and Nevada, and a proposed course of action and strategy for
4 Pence to, one way or another, declare Trump the winner of the election. Eastman concluded the
5 memo with the following:

6 **BOLD, Certainly. But this Election was Stolen by a strategic Democrat plan to**
7 **systematically flout existing election laws for partisan advantage; we’re no longer**
8 **playing by Queensbury Rules, therefore.”** (Ex. 4, pp. 3, 5, bold in original.)

9 Eastman recommended that Pence, among other things, unilaterally decide the validity of certain
10 elector votes; declare the time restrictions in the Electoral Count Act of 1887 (ECA) “void”; and
11 unilaterally adjourn the Joint Session. He further claimed that Pence could violate various ECA
12 provisions because the Act was “likely unconstitutional” and directed that “[t]he main thing here
13 is that VP Pence should exercise his 12th Amendment authority without asking for permission—
14 either from a vote of the joint session or from the Court.” (Ex. 4, pp. 3, 5.)

15 In both of the memos, Eastman falsely stated:

16 There is very solid legal authority and historical precedent, for the view that the President
17 of the Senate does the counting, including the resolution of disputed electoral votes (as
18 Adams and Jefferson did while Vice President, regarding their own election as President),
19 and all the Members of Congress can do is watch.

20 (Ex. 4, p. 3.)

21 Eastman knew that no vice president in American history had ever unilaterally rejected a single
22 slate of electors, or ever claimed or suggested that they had that power. (RT VII-147:14-21,
23 69:17-23; Ex. 179.) His “solid legal authority” consisted of four law review articles. (RT
24 IX:159:8-161:7.) Only one of the articles contemplated a vice president unilaterally rejecting a
25 single slate of electors over the objection of Congress, rejecting the idea as “so far-fetched to
26 [be] beyond the stretch of imagination” and having “no chance” of success. (Ex. 1019, pp. 11, 22
27 fn. 46.)

1 a) *Historical Precedent*

2 (1) 1797 and 1801 electoral counts (Adams v. Jefferson)

3 In the 1797 electoral count, Adams, who was vice president, counted the electoral votes
4 that determined him to be the next president. Prior to the count, there had been rumors of a
5 problem with the procedures by which Vermont had appointed its electors, but no one in
6 Congress raised any objection to counting the votes from Vermont. (RT II-65:12-20; VII-100:23-
7 101:3.) In 1801, Jefferson also counted the votes that determined him to be the next president.
8 There was a technical issue with Georgia’s electoral certificates, in that the votes were not listed
9 in the correct format, but there was no doubt that Georgia had voted for Jefferson, and no one in
10 Congress objected to Jefferson counting the votes. (RT VII-101:4-11.)

11 These electoral counts were the only historical evidence that Eastman cited in his memos,
12 but neither involved a vice president rejecting electors or asserting the authority to do so because
13 there was no dispute who won the votes in Vermont and Georgia, no member of Congress
14 objected, and no one suggested that there was any federal power to exclude those slates,
15 especially on grounds that the state itself had already considered and rejected. (RT X-91:3-24; II-
16 65:1-5, 66:22-67:2.) Eastman’s expert, Yoo, agreed with the State Bar’s expert, Matthew
17 Seligman, that neither electoral count was relevant precedent for the situation Pence faced on
18 January 6, and that any suggestion otherwise rested on speculation or conjecture. (RT XVIII-
19 68:13-70:6, 71:3-16, 72:13-19, 82:12-18, 83:15-23, 92:5-7 [Yoo Testimony]; Ex. 1358, p. 73
20 [Yoo article]; RT VII-98:16-99:5, 101:12-17, 102:13-21 [Seligman Testimony]; Ex. 179 at 40
21 [Seligman Expert Report]; RT XXXI 111:24-112:4 [Eastman Testimony].) And even Eastman
22 conceded at trial that this precedent was “weak” for the course of action he recommended,
23 because there was no dispute as to who had actually won the votes at issue in Vermont in 1797
24 and Georgia in 1801. (RT X-91:3-24; II-65:1-5, 66:22-67:2. [Eastman agreed with Jacob that
25
26

1 neither the 1797 nor 1801 counts represented a vice president rejecting electors or asserting
2 authority to do so].)

3 (2) 1961 electoral count (Kennedy v. Nixon)

4 Following the 1960 election, Hawaii initially certified Nixon the winner, but by January
5 6, after a court-ordered recount, both the state court and governor certified Kennedy as the
6 winner and forwarded a new certificate of ascertainment so finding. (Stip., p. 5:7-12.) There is no
7 record that anyone disputed that the post-recount certificate should be counted, and Nixon (then-
8 Vice President) did not purport to make a final decision as to which of the certificates to count.
9 Rather, he “suggest[ed]” that the Kennedy votes should be counted, and explicitly asked the joint
10 session if there was an objection to counting them. (Stip., p. 5:21-24.)²⁰ Seligman explained that
11 “[i]t is absolutely clear that [Nixon] was not asserting any authority over Congress.” (RT VII-
12 121:19-122:7.) Yoo and Jacob agreed. (RT XIII-140:25-141:22; II 58:19-59:2.) Eastman did not
13 reference the 1961 electoral count in his memos, but like the 1797 and 1801 counts, he discussed
14 it with Jacob on January 5 and conceded then that it does not show a vice president rejecting
15 electoral votes or claiming authority to do so. (RT X-91:8-11; II-67:13-18.)

16
17 (3) 1789, 1817, 1821, 1837, 1857

18 Eastman later identified five additional electoral counts that he claimed supported his
19 strategy: 1789, 1817, 1821, 1837, 1857. (Answer, p. 36:12-23; RT IX-184:12-186:2.)
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21
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23 ²⁰ Nixon remarked at the close of the Joint Session on the peaceful transition of power: “I do not
24 think we could have a more striking and eloquent example of the stability of our constitutional
25 system and of the proud tradition of the American people of developing, respecting, and
26 honoring institutions of self-government. In our campaigns, no matter how hard fought they may
be, no matter how close the election may turn out to be, those who lose accept the verdict, and
support those who win.” (Ex. 1012, p. 5/center column [1961 Congressional Record].)

1 **1789.** The election of 1788–1789 was the first election in the United States; George
2 Washington was elected President and members of the first Congress were selected. Washington
3 was the only presidential candidate, and the Electoral College elected him unanimously. (Ex.
4 179, p. 28.) In the 1789 count, electoral votes were counted pursuant to a resolution providing
5 that the first Congress should “appoint a President of the Senate, for the sole Purpose of
6 receiving, opening and counting the Votes for President.” (Ex. 179 at 27; Ex. 6, p. 7.) At most,
7 that resolution suggests that some of the Constitutional drafters thought that the President of the
8 Senate *counted* votes. (Ex. 179, pp. 26-29.) Eastman acknowledged there was no dispute about
9 which votes to count in 1789, as it was an uncontested election. (RT X-58:11-13.)

10 **1817, 1821, and 1837.** In all three elections, electoral votes were received from states—
11 Indiana, Missouri, and Michigan—that had not been admitted to the union at the time the votes
12 were cast, but that were or were soon to be admitted when the votes were counted in the Joint
13 Session. Yoo agreed with Seligman that none of these counts show the President of the Senate
14 exercising any decision-making power. (RT XVIII 88:7-14, 90:6-10, 90:13-16, 138:18-20 [Yoo
15 testimony “we don’t try to claim that one should draw real significance from these events”]; Ex.
16 1358, pp. 80-82; VII 89:16-24 [Seligman testimony]; Ex. 179, pp. 60-68).)

17 **1857.** In this election, the Wisconsin electors met and cast their ballots one day late due
18 to a snowstorm. Despite not mentioning it in his memos or discussing it with Jacob in January
19 2021, Eastman claimed that the 1857 count provided “a very clear precedent in support of the
20 position I took.” (RT XXIX-82:23-25, 91:22-23.) He asserted that during the 1857 electoral vote
21 count, it was the President of the Senate, Senator James Mason,²¹ who “determined to count”
22 disputed votes from Wisconsin and “resolved that dispute, in other words.” (RT XXIX 83:10-16,
23 84:2-7, 91:6-8.) Historical records show that, at the Joint Session where the votes were counted,
24

25 ²¹ Because Vice President William King died in office, the President of the Senate was the
26 President pro tempore, Senator James Mason of Virginia. (Ex. 179, p. 71, fn. 222.)

1 Mason indicated that the *tellers*, rather than Mason, were counting and verifying the votes, and
2 the tellers themselves announced and counted Wisconsin’s vote. (Ex. 179, pp. 68-73; RT VII-
3 113:1-18; Ex. 1356, p. 2/left hand column.)²²

4 When individual members of Congress objected to Mason’s decision to declare a vote
5 total that included the Wisconsin votes, he ruled those objections out of order, because the
6 congressional joint resolution governing the count required him to declare the count as reported
7 to him by the tellers, subject only to being overridden by Congress. (Ex. 1356, p. 2/center
8 column; Ex. 180 p. 298.)²³ When some Senators accused Mason of resolving the dispute, he
9 three times expressly denied having done so, stressing that vote validity was an issue for
10 Congress, not the President of the Senate, stating that he “did not undertake to decide whether
11 the vote of the State of Wisconsin was a good vote or a bad vote,” and “did no more than recite
12 the fact which was reported to him by the tellers ... Whether it was a good vote or a bad vote, he
13 did not undertake to decide.” (Ex. 179, pp. 72-73.)²⁴ Eastman agrees that Mason denied
14 resolving the dispute, but nonetheless claims that Mason did resolve it. (RT XXIX-91:5-16.)

15 **The Federal Convention.** On the 23rd day of trial, for the first time, Eastman identified
16 the records of the 1787 Federal convention as the “most important[]” supporting evidence. (RT
17 XXIII 161:9-11, 214:12-18.) Although he testified that he reviewed these records in late 2020, he
18 did not discuss this evidence in his memos, in his communications with Jacob, or in his
19

20 ²² “The Presiding Officer considers that the duty of counting the vote has devolved on the tellers
21 under the concurrent order of the two Houses; and he considers, further, that the tellers should
22 determine for themselves in what way the votes are verified to them, and read as much as they
may think proper to the two Houses assembled.” (Ex. 1356, p. 2/left hand column.)

23 ²³ “The Presiding Officer has made no such decision...The Chair considers that, under the law
24 and the concurrent order of the two Houses, nothing can be done here but to count the votes by
tellers, and to declare the vote thus counted.” (Ex. 1356. p. 2/center column)

25 ²⁴ Eastman did not include the portions of the Congressional record that contained these
26 statements by Mason in his Exhibit 1356, but acknowledged at trial that Mason made these
statements. (RT XXX-218:21-220:20.)

American Mind article (Ex. 31). Yoo testified that there was “no evidence in the historical record [of the Federal Convention] of how electoral disputes were to be resolved.” (Ex. 1358, p. 51.) There was no debate in the Federal Convention regarding the President of the Senates role in the electoral count, nor in the state ratifying conventions or the press. (Ex. 179, p. 25.)

b) *Law review articles*

Ackerman-Fontana (2004) (Ex. 1212.) This article examines the electoral counts in 1797 and 1801 and contemplates why Adams sat down for a moment during the count in 1797, and why Jefferson did not mention a technical issue with Georgia’s elector certificate in 1801. Yoo called the analysis “conjecture” and “speculation,” and noted that “other interpretations seem equally (if not more) plausible.” (Ex. 1358, pp. 73-74; RT XVIII-69:21-70:1, 82:12-18.) Ackerman and Fontana concluded that the ECA governs modern electoral counts, rejecting arguments that it is unconstitutional, and stated that their theory of the events in 1801 would only be relevant in one narrow set of circumstances not covered by the ECA—if two rival sets of electoral votes each ratified by a state executive were submitted to the joint session—which was not the case in January 2021. (Ex. 1212, pp. 92-93; RT XVIII-108:17-109:4.)

Kesavan (2002) (Ex. 1014.) The author argues in this article that the ECA is possibly unconstitutional, but he still explicitly rejects any role for the President of the Senate, concluding “the President of the Senate participates no more in the counting function than she participates in trial of impeachment—in neither case does the Vice President have a vote.” (Ex. 1014 at 58.) Kesavan concludes, “[t]he best interpretation as a matter of text and the better interpretation as a matter of history is that the counting function is vested in the Senate and House of Representatives.” (Ex. 1014, p. 58.) Yoo agreed. (RT XVIII-104:16-105:7.)

Foley (2019) (Ex. 1019.) Foley explicitly disavows Eastman’s theory that a vice president can ignore the ECA and reject the only slate of electors certified by a state government, over the objection of both Houses of Congress because it is “so far-fetched to [be] beyond the

stretch of imagination” and has “no chance.” (Ex. 1019, pp. 11 and 22 fn. 46.) Indeed, Foley asserts that if a state submits only one set of electoral votes (as occurred in 2020), it “must count.” (Ex. 1019, p. 22.) Eastman conceded Foley does not claim the President of the Senate has exclusive constitutional authority to determine which votes to count. (RT IX 175:20-23.)

Colvin-Foley (2010) (Ex. 1020.) Eastman conceded that the article does not consider the legality of a vice president unilaterally excluding a single set of electoral votes from a state. He argued that the article only supported the scheme by “inference.” (RT IX-177:7-21.)

Yoo-Delahuntz (2020) (Ex. 1017.) In addition to the four law review articles, Eastman testified that he read Yoo and Delahuntz’s article in the American Mind, “What Happens If No One Wins?” prior to writing the memos.²⁵ The article was not printed in an academic publication, and it did not have citations, footnotes, or supporting sources. (RT II-121:1-19.)

5. ***Eastman and Trump’s January 4, 2021 Oval Office Meeting***

On January 4, 2021, Eastman attended a meeting at the Oval Office with Trump, Pence, Jacob,²⁶ and Pence’s Chief of Staff Marc Short to discuss Pence’s legal authority to advance the January 6 strategy. (Stip. ¶ 6; RT II-48:21-23; X-86:2-7) The meeting was scheduled at Trump’s request and during the meeting, Trump asked Eastman to provide legal advice regarding the constitutionality of Pence rejecting certain elector votes. (RT X-86:8-87:16)

Prior to the meeting, in October and November 2020, Jacob had conducted extensive research about the Vice President’s role on January 6. He had read the text of the Constitution

²⁵ Eastman claimed that Yoo’s article “triggered” his about-face on the vice president’s authority. (RT XXIII 155:6-8, 161:20-23) Though Yoo had been his friend for nearly 30 years, Eastman did not even try to discuss the article or the legal or historical support underlying the brief opinion piece with him. (RT XXX 199:2-14.) At trial, Eastman dismissed the idea, claiming he “didn’t see any need” for a discussion. (RT XXX-200:21-204:1.) Yoo, however, volunteered that it “seem[ed] weird,” given their relationship. (RT XVIII-110:6-111:23).

²⁶ In addition to serving as Pence’s counsel, at the time, Jacob was also the President’s Deputy Assistant. (RT II-41:21-23.)

1 and the 12th Amendment, the ECA of 1887 and its legislative history, all of the law review
2 articles concerning the ECA and its operation, and all of the historical records of all the electoral
3 counts back to the founding. (RT II-41:24-43:11.) Based on that research, which Jacob
4 memorialized in a December 8 memo, his “unequivocal conclusion” was that Pence had neither
5 the authority to reject electoral votes from any state nor to delay their counting, as the contested
6 states had each provided a single set of executive-certified slate of electors and no state
7 legislature had challenged them. (RT II-43:12-44:14, 45:2-46:14; Ex. 1091.) Pence sought and
8 obtained the advice of Eastman’s constitutional expert Yoo as well on the issue, and Yoo advised
9 Pence that he did not have authority to reject any electoral votes. (RT XVIII-53:9-55:5.)

10 At the January 4 meeting, Eastman told Pence there were two legally viable arguments
11 about vice presidential authority with respect to January 6:

12 One was that the vice president had unilateral authority to determine the validity of
13 electoral vote certificates. The other would be that, as presiding officer of the proceeding,
14 that he had the authority to suspend the proceeding and send the electoral vote certificates
15 back to state legislatures for them to determine who had legitimately won the vote in that
16 state. (RT II-49:18-50:5.)

17 Eastman acknowledged that his proposal violated multiple ECA provisions, and that were
18 Pence to act under his proposal, he would be sued for violating the ECA in the District Court for
19 the District of Columbia, which had just rejected the argument that the ECA is unconstitutional
20 in the *Wisconsin Voters Alliance* case. (Ex. 71, pp. 1-3.) He further acknowledged that no
21 Republican-controlled legislative majority in any of the disputed states had expressed an
22 intention to designate an alternate slate of electors. (Ex. 71, p. 3; RT II-81:1-12.) Nonetheless,
23 according to Eastman, he told the January 4 group that it was an “open question” whether Pence
24 had the power to unilaterally reject the votes of any state when there was only one set of certified
25 electors from that state. (RT X-86:18-25.) Eastman suggested that even if Pence had that power,
26 that he should refrain from exercising it, since the state legislatures had not provided an
27 alternative certified elector slate. (RT X-87:1-3.) Eastman stated that Pence had unilateral

1 authority to determine the validity of the electoral vote certificates, but proposed that Pence
2 exercise the option to “delay” the electoral count for a “10-day audit,” rather than to reject
3 certain electoral votes. (RT II-50:6-15; X-86:13-16; Ex. 71, p. 3.)

4 The meeting ended with Trump requesting, and Pence agreeing, that Jacob would meet
5 with Eastman again the next day to continue discussing the issue. (RT II-55:13-20.) However,
6 Pence and Jacob thought that Trump and Eastman were no longer pressuring Pence to reject
7 electoral votes, and that they would discuss the delay option the next day. (RT II-56:3-20.)

8 **6. *Events of January 5, 2021***

9 On January 5, 2021, at 8:06 a.m., Trump tweeted, “The Vice President has the power to
10 reject fraudulently chosen electors.” (Ex. 297.)

11 Shortly before 9:00 a.m., Jacob sent Pence a memo Jacob had prepared the night before,
12 which outlined and analyzed Eastman’s January 6 proposals that had been discussed during the
13 January 4 meeting. (Ex. 071; RT II-80:4-23.) In the memo, Jacob summarized Eastman’s
14 proposals as asking Pence to “skip opening and reading the electoral certificates for any state for
15 which an alternate but uncertified slate of electors has been submitted”; to open and read certain
16 electoral certificates at the end of the Joint Session rather than reading the certificates for those
17 states in alphabetical order; and to refrain from counting the electoral certificates for these states
18 until their state legislature determines whether to certify a competing slate of electors. (Ex. 071,
19 p. 1.) Jacob outlined how each proposed step violated the ECA and was also in conflict with
20 *Wisconsin Voters Alliance*. Jacob noted that *Wisconsin Voters Alliance* held that “[p]laintiffs’
21 theory that [the ECA is] unconstitutional and that the Court should instead require state
22 legislatures themselves to certify every Presidential election lies somewhere between a willful
23 misreading of the Constitution and fantasy.” (Ex. 254, p. 6; Ex. 71, p. 3.)

1 a) *Eastman’s Meeting with Jacob and Short*

2 Eastman appeared for oral arguments in *Trump v. Kemp* over Zoom, and then met with
3 Jacob and Short again around 11:00 a.m. (RT II-55:21-56:2; Ex. 271, p. 1 fn. 1.). This time,
4 according to Jacob, Eastman, echoing Trump’s tweet, asked Pence to *reject* electors from five to
5 seven states. (RT II-55:22-56:9, 57:2-4, 76:20-81:3; XXV-19:18-20; XXVIII 14:2-5.) Although
6 publicly, Eastman has strenuously denied making this request (see, e.g., Ex. 31, p. 1, 6.), under
7 oath he was less forceful, stating, “I have no recollection of making that request, and given
8 where we ended on January 4th, I can’t imagine that I would have done so.” (RT XXV-35:1-4.)
9 Contemporaneous records of the events corroborate Jacob’s account; Jacob’s handwritten notes
10 from the meeting state: “John Eastman meeting 1/5/21 . . . Requesting VP reject,” and emails the
11 next day between Jacob and Eastman acknowledge that the “most aggressive position,” which
12 was to reject the electors, had been raised and not “retreated to” until the night of January 5. (Ex.
13 65, p. 1; Ex. 68, p. 1; RT II-76:20-77:11.)

14 During the January 5 meeting, Jacob and Eastman discussed Eastman’s claimed legal and
15 historical support for his proposal. (RT II-57:8-58:22.) They talked about the law review articles
16 Eastman cited, including articles by Laurence Tribe and Bruce Ackerman, and details of the
17 1796, 1800, and 1960 elections and related historical documents, including the Congressional
18 Record, letters, and newspaper accounts.²⁷ (RT II-57:14-67:24.) In Jacob’s view, the historical
19 record did not support Eastman’s recommendation. (RT II-58:23-59:2.) Ultimately, Eastman
20 agreed with Jacob “that there had been no actual instances of departure from [ECA] procedures
21 during the entire 130 years that the [ECA] had been in effect.” (RT II 61:12-15; RT X 90:13-17.)
22 Eastman further conceded that the Adams (1797), Jefferson (1801), and Nixon (1961) examples
23 he had been citing “did not represent examples of vice presidents rejecting electoral vote

24 _____
25 ²⁷ Jacob testified: “Any law review article that he raised I had already read. Every historical
26 incident we talked about I knew the details of at least as well or, in many instances, better than
he did.” (RT II-79:13-16.)

1 certificates or claiming that they had any authority to do so, or claiming that they had any
2 authority to make any kind of substantive decision about electoral vote certificates.” (RT II-
3 67:13-18; RT X-91:8-11.) Finally, they agreed that if Pence were to unilaterally reject electors
4 from multiple states, they would lose any resulting Supreme Court challenge 9-0. (RT II-72:3-8;
5 RT X-92:15-25.)

6 When it became clear to Eastman that the “reject” option was not gaining traction,
7 Eastman retreated to his proposal to “send it back to the states.” (RT II-72:18-21, 73:4-6, 91:11-
8 18; Ex. 68.) But because Jacob had reviewed statements from state legislators and Republican
9 leaders “indicating that the people had spoken, and that they did not intend to take any action at
10 the state level to try to cause there to be a different result than the result that had already been
11 certified in that state”—he believed that “[i]n addition to it not being legally warranted, there was
12 no reason to believe that the states were interested in that.”²⁸ (RT II-73:1-25.)

13 Eastman knew it too, because he had been directly involved in efforts to persuade state
14 legislatures to formally request such a delay.²⁹ Indeed, at trial, Eastman admitted he knew that
15 there was never a majority of state legislators from any state requesting a delay, stating “I’ve
16 never asserted that there was a majority that had signed these letters in any of the states.” (RT
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18
19

20 ²⁸ (See also RT III-93:3-18 [Richer re AZ]; RT III-134:17-18 [Marks re PA]; RT IX-53:8-55:4
21 [Eastman acknowledges no New Mexico legislator had called into question the certificate signed
22 by the governor]; and RT VIII-94:1-5 [Seligman explains individual state legislators have “no
23 authority to do anything at all”].)

24 ²⁹ In addition to his December 3 testimony to the Georgia Senate (see *supra*, fn. 12.), Eastman
25 made other presentations to large groups of legislators, in furtherance of his client Trump, to
26 advise them of their authority to select different electors. (Ex. 2, p. 12, ¶ 30.) On January 2, he
27 joined Trump and other Trump allies as a featured speaker at a national briefing for several
28 hundred legislators to solicit legislators’ signatures on the January 5 letter to Pence demanding
he delay certification. (Exs. 55, 1284.) On January 3, Eastman participated in a similar call with
state legislative leaders from the seven states, which discussed the importance of stopping the
count on January 6. (Ex. 8, p. 5.)

1 XXX-104:2-4.)³⁰ And he admitted he was aware of statements by state leaders disavowing any
2 intention of calling state legislatures back into session to overturn the will of the voters. (See e.g.,
3 RT XXX-109:11-110:8, 111:6-11 [acknowledging he knew Michigan Republican Senate
4 Majority Leader Mike Shirkey stated that the Michigan legislature was not going to certify
5 different electors “sometime in December” and that Republican leaders in the Michigan
6 legislature were not inclined to take up the issue]; RT XXX-114:7-115:5 [acknowledging
7 Wisconsin legislative leaders did not want to conduct hearings or certify different electors].)

8 b) *Eastman’s Subsequent Discussions with Trump and Jacob*

9 After their meeting, Jacob had two more calls with Eastman on January 5—one with
10 Trump and another without—in which Eastman acknowledged that “as of [Jan. 4], no
11 Republican-controlled legislative majority in any disputed state has expressed an intention to
12 designate an alternate slate of electors” though Eastman claimed they were still working to
13 persuade legislators to change their positions. (RT II-74:1-11, 80:24-81:17, 82:5-83:2; Ex. 071.)
14 Later that night, at 9:32 p.m., Eastman emailed Jacob proclaiming, “Major new development
15 attached. This is huge, as it now looks like PA legislature will vote to recertify its electors if Vice
16 President Pence implements the plan we discussed.” (Ex. 66; RT II-86:1-2.) Jacob was not
17 swayed, because, as Eastman also knew, “there was not a majority of the Senate or the House
18 sufficient to...warrant that conclusion....[and] no matter what a letter from the Pennsylvania
19 legislature said...The vice president’s authorities are what the vice president’s authorities are.”
20 (RT II 74:22-75:14; XXX-104:2-4; Ex. 379.)

21 According to the White House Call Log, at 9:54 p.m., Eastman and Trump spoke on the
22 phone for four minutes. (Ex. 386, p. 3.) Just *two minutes later*, at 10:00 p.m., Trump tweeted:

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24
25 ³⁰ (See Ex. 379 [reflecting that the percentage of legislators from the 7 States who signed the
26 letters seeking delay was *far* from a majority: 28% in AZ, 6% in GA, 15% in MI, 0% in NV, 0%
in NM, 17% in PA, and 11% in WI].)

1 If Vice President @Mike_Pence comes through for us, we will win the Presidency.
2 Many States want to decertify the mistake they made in certifying incorrect & even
3 fraudulent numbers in a process NOT approved by their State Legislatures (which it must
4 be). Mike can send it back! (Ex. 298.)

5 At trial, Eastman agreed that Trump’s tweet was consistent with his advice. (RT XXX-
6 162:5-8, 163:1.) He also knew, as demonstrated above, that no legislature was planning to certify
7 a slate of Trump electors and that Pence did not have authority to send it back.

8 Neither Jacob nor Pence believed that the allegations of voting irregularities Eastman was
9 advancing gave Pence the right to unilaterally reject electors from any states or that there was
10 evidence of fraud in any state that could have affected the outcome of the election. (RT II 84:20-
11 25, 85:1-4.) Moreover, they did not believe that the proposal to delay the proceedings—which
12 Eastman acknowledged to Jacob had the same basis under the 12th Amendment— could be
13 implemented without violating multiple provisions of the ECA. (RT II-53:16-54:6, 92:19-25,
14 165:16-166:5.)³¹ As Jacob explained, both the reject option and the delay option were based on
15 the same legal theory: “The underlying legal theory is the same, and the reason that the
16 underlying legal theory is the same is that the procedural request to suspend the proceedings for
17 10 days and send it back to the states violates all those provisions of the ECA that are cited in my
18 memo of January 5th.” (RT II-93:4-9.) Thus, Pence drafted a “Dear Colleague” letter to be sent
19 to his colleagues in Congress before the electoral vote count on January 6, explaining: “my oath
20 to support and defend the Constitution constrains me from claiming unilateral authority to
21 determine which electoral votes should be counted and which should not” and further explaining
22 that, objections validly made under the ECA would be “given proper consideration.” (Ex. 64; RT
23 II-84:5-12.) The White House Presidential Call Log shows that from 11:23 to 11:37 p.m. and
24 then from 11:39 to 11:50 p.m., President Trump spoke with Giuliani. (Ex. 386, p. 5.)

25 ³¹ Eastman agreed, testifying “whether the vice president had the authority to even order delay
26 turned on the vice president’s authority under the 12th Amendment.” (RT XXIV-185:20-22.)

1 c) *Eastman's Discussions with Ramsland and Oltmann*

2 Also on the evening of January 5, 2021, Eastman attended a reception with a large group
3 of people at the Willard Hotel related to the rally planned the next day. (RT XI-93:22-94:4.) At
4 the reception, Eastman spoke to Joe Oltmann and Russell Ramsland about Dominion voting
5 machines. Eastman spoke “principally” with Oltmann, with Ramsland “part of the conversation
6 at various points.” (RT XI-95:8-13.)

7 Oltmann gave Eastman a one-page “voting system diagram” that purported to identify
8 “points of vulnerability” with Dominion voting machines. (Ex. 1217; RT XI-91:4-92:9.)
9 Eastman had never met Ramsland or Oltmann before. (RT IV-49:25-50:6.) Eastman did not ask
10 Oltmann what he did for a living, what educational background he had, or what professional
11 experience he had that was relevant to his analysis. (RT XI-88:18-89:11, 95:18-25.) Eastman
12 did not ask Oltmann any questions to determine Oltmann’s expertise with voting machines or the
13 reliability of his chart. (RT XI-92:17-93:1.) Oltmann did not give Eastman any research or data
14 to support the diagram. (RT XI-93:10-19.)

15 Eastman was vaguely aware of Ramsland, insofar as he had heard that the state of Texas
16 had relied on Ramsland in making a decision not to purchase certain voting machines, but he did
17 not recall how he knew that. (RT XI-55:1-25.) Eastman knew Ramsland was responsible for a
18 forensic audit report in Antrim County, Michigan (Ex. 1047), although Eastman acknowledged
19 at trial that some of Ramsland’s “rhetoric [in the report] went beyond what could be proved.”
20 (RT XXVIII-18:22-24; XXVII-221:4-13.) He did not do any research on Ramsland or Oltmann,
21 prior to his speech on January 6. (RT XI-55:8-12, 99:11-20.) Eastman did not make any attempt
22 to get information from Dominion regarding claims that their machines were vulnerable to
23 manipulation. (RT XI-59:17-20.)

24 At trial, Eastman claimed that he discussed the diagram with several people at the
25 Willard Hotel who told him it was credible, but he could not recall who he spoke to about it,
26

1 other than “one had been a former technical analyst with one of the federal government agencies.
2 Another was currently working for a national laboratory with levels of expertise, and I just don't
3 recall their names.” (RT XI-93:10-94:12.) None of the people he spoke to about the diagram
4 gave him any documentation or research to support it; Eastman told the court: “Other than this
5 chart, your Honor, I don't think we had time for that.” (RT XI-94:22-95:6.)

6 Eastman claimed that he believed the Oltmann diagram was credible in part because
7 Oltmann and Ramsland made two predictions about what would unfold during the Georgia
8 Senate runoff election that night, and Eastman saw confirmation of their predictions. The first
9 prediction was that as the percentage of ballots reported got close to 100 percent, the percentage
10 of ballots reported would remain constant while additional ballots kept getting counted. (RT
11 XXVIII-30:21-31:7.) “[T]he only way that happens is if you're increasing the denominator at the
12 same time or same rate as you're increasing the numerator.”³² (RT XXVIII-32:24-33:1, 30:21-
13 31:7; RT XI-97:25-98:7.) Eastman claimed that as he watched news reports of the election
14 results from the hotel, in the late evening, he saw this predicted phenomenon in the percentage of
15 votes counted come true: the total number of ballots that remain outstanding “kind of locked in at
16 about 95-percent,” and additional ballots kept getting counted, but “the 95-percent number didn't
17 move. So that confirmed their first prediction.” (RT XXVIII-32:16-24.)

18 The second thing that Oltmann and Ramsland predicted is that “the counting or the
19 reporting of the counting would shut down,” because the unidentified perpetrators of fraud who
20 were “drawing ballots in from the suspense folders” needed time to “tag voters in the voter rolls
21 who had not voted, so that if there was an audit after the fact, the number of ballots would match
22 the number of voters that were recorded as having voted.” (RT XXVIII-31:8-16.)

23
24
25 ³² In this fraction, which reflects the percentage of votes counted and reported, the number of
26 ballots that have been reported is the numerator, and the estimated total number of ballots that
have been cast is the denominator. (RT XXVIII-32:16-33:1; Answer, p. 41:17-19.)

1 Grimmer explained that neither of these predictions, in fact, had come true. As an initial
2 matter, the prediction was not a reliable indication of fraud because the total number of votes
3 cast, reflected in the denominator, is an estimate, which is adjusted over the course of the night
4 as Edison and other reporting agencies like the Associated Press get more information. (RT V-
5 167:2-14). Eastman did not know on January 5 that the denominator was an estimate that
6 changes over the course of the evening; he learned that several months later.³³ (RT XI-98:8-18.)

7 Specific to January 5, Grimmer used the actual vote estimate data to show that the
8 estimated vote total reached the correct number and stopped changing when approximately 83
9 percent of the votes in the runoff had been counted. (Ex. 391; RT XXXI-251:12-258:17, 257:14-
10 16.) Therefore, the estimated vote count was not increasing when the vote share was at 95
11 percent or higher. (RT XXXI-259:25-260:7; XXXII-14:3-15:6.) Furthermore, the prediction that
12 the numerator and denominator were being increased at the same rate while the percentage of
13 ballots remained constant is not “logically coherent” from a mathematical perspective, because if
14 the numerator and the denominator increase at the same rate, the share of votes counted is
15 necessarily increasing. (RT XXXI-246:15-247:4; XXXII-15:7-3.)

16 Regarding their second prediction, Grimmer explained that gaps in the reporting of vote
17 totals on January 5 did not indicate that counting had stopped. Gaps in reporting vote totals later
18 in the evening are common, particularly when large counties are using centralized locations to
19 count their ballots. (RT XXXI-260:20-261:15.) Eastman did not contact Dominion to get their
20 response to the allegations made by Ramsland and Oltmann, nor did he contact any election
21 officials regarding the Dominion voting machines or the reliability of the election in their state.

22
23
24 ³³ Even after learning that the vote total is an estimate, Eastman continued to believe that the
25 numbers indicated fraud, because a statistician told Eastman “if that’s an estimate, they were
26 really bad at math.” (RT XI-36:3-8.) The statistician, Eric Quinell, asked Eastman not to reveal
his identify. (RT XI-37:2-9.) At the time of trial, Eastman did not know how accurate Edison
estimates typically are at calculating total votes on election night. (RT XI-99:4-6.)

(RT XI-59:17-20 [Dominion]; RT X-121:22-122:2 [New Mexico]; RT X-125:9-17 [Nevada]; X-153:1-7 [Wisconsin]; RT X-130:19-131:8 [Pennsylvania].)

Moreover, Eastman was aware when he spoke on January 6 that on November 12, 2020, the Cybersecurity and Infrastructure Security Agency (CISA) stated “[t]he November 3rd election was the most secure in American history,” notwithstanding the “many unfounded claims and opportunities for misinformation about the process of our elections.” (Ex. 201; RT X-123:7-124:5.) Furthermore, the Election Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees, which are bipartisan groups, had prepared a November 16, 2020 statement by 59 computer scientists and election security experts which stated there was no credible evidence that supports claims that the 2020 election outcome in any state was altered through technical compromise. (Ex. 187.) Eastman rejected these claims and found the CISA statement to be “rather implausible, given what we knew.” (RT X-156:18-157:20, 123:18-124:5.)

E. The January 6 “Stop the Steal” Rally at the Ellipse

At 8:17 a.m., President Trump tweeted that “States want to correct their votes All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage.” (Ex. 299, p. 1.) At approximately 10:45 a.m., Eastman and Giuliani spoke to a crowd on the National Mall Ellipse at a televised “Save America” rally, better known as the “Stop the Steal” rally. (RT XXVIII-13:7-12; Ex. 165, p. 485; Ex. 30; Answer, p. 101:21.) Eastman estimated that there were between 250,000 and 500,000 people in attendance. (RT XXVIII-73;11-14; Answer, p. 39:1-3.) At Trump's urging, the crowd had gathered to hear Trump and others speak and to protest the results of the 2020 presidential election. (Ex. 165, p. 485.)

1. Giuliani's Introduction

Before he spoke, Eastman was introduced to the crowd by Giuliani, who stated, “[E]very single thing that has been outlined as the plan for today is perfectly legal. I have Professor

1 Eastman here with me to say a few words about that. He's one of the preeminent constitutional
2 scholars in the United States." (Ex. 30, p. 1.) Giuliani told the crowd that the ECA was of
3 "questionable constitutionality"; that Pence could "do what a president called Jefferson did"—
4 "cast it aside" and "can send it" back to the legislatures to give them five to 10 days to find proof
5 that the 2020 election was stolen. Giuliani stated "over the next 10 days, we get to see the
6 machines that are crooked. The ballots that were fraudulent." He exclaimed: "let's have trial by
7 combat," noting that both he and the President were willing to stake their reputations "on the fact
8 we're gonna find criminality there." (*Id.*, at p. 1.)

9 **2. Eastman's Speech**

10 Giuliani asked Eastman to explain how "they" cheated in the January 5 Senate run-off
11 and the November 3 presidential elections. Eastman picked-up where Giuliani left off, alleging
12 illegalities, election fraud, and fraud involving Dominion voting machines and demanding that
13 Pence unilaterally delay the 1:00 p.m. electoral count to allow state legislatures to investigate
14 these issues:

15 Look, we've got petitions pending before the Supreme Court that identify it, chapter and
16 verse, the number of times state election officials ignored or violated the state law in
17 order to put Vice President Biden over the finish line. *We know there was fraud.*
18 Traditional fraud that occurred. *We know that dead people voted.* But, we now know
because we caught it live last time in real time how the machines contributed to that
fraud.

19 And, let me, as simply as I can, explain it. . . . They put those ballots in a secret folder in
20 the machines. Sitting there waiting until they know how many they need. And then, the
21 machine, after the close of polls, we now know whose [sic] voted and we know who
hasn't. And, I can now, in that machine, match those unvoted ballots with an unvoted
voter and put them together in the machine.

22 And, how do we know that happened last night [January 5, 2021] in real time? You saw
23 when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the
24 votes didn't stop. What happened, and you don't see this on Fox or any of the other
25 stations, but the data shows that the denominator, how many ballots remain to be
counted. How else do you figure out the percentage that you have? How many remain to
be counted? That number started moving up. That means they were unloading the ballots

1 from that secret folder, matching them to the unvoted voter, and voila. We have enough
2 votes to barely get over the finish line.

3 We saw it happen in real time last night, and it happened on November 3rd, as well. *And,*
4 *all we are demanding of Vice President Pence is this afternoon at 1:00, he let the*
5 *legislators of the state look into this so we get to the bottom of it,* and the American
6 people know whether we have control of the direction of our government or not. We no
7 longer live in a self-governing Republic if we can't get the answer to this question.

8 This is bigger than President Trump. It is the very essence of our Republican form of
9 government, and it has to be done. *And, anybody that is not willing to stand up to do it*
10 *does not deserve to be in the office. It is that simple.*

11 (Ex. 30, pp. 2-3, italics added.)

12 Although Eastman testified that he gave no consideration to the effect that his statements
13 would have on the crowd,³⁴ he was aware through the modeling exercise he had participated in
14 that violence was a likely scenario in a disputed outcome. (See Section III(A) above.)

15 At trial, when asked whether he believed his statements implied there had been fraud
16 related to electronic voting, Eastman acknowledged, in a misleading understatement, "[i]t's quite
17 possible it implied that." (RT XXXI-84:22-25.)

18 3. *Trump's Speech*

19 President Trump was the last speaker during the "Stop the Steal" rally. He complimented
20 Giuliani, saying he had done a "great job" and "he's got guts." (Ex. 322, p. 3.) Trump thanked
21 Eastman for a "fantastic job," and told the crowd that Eastman "is one of the most brilliant
22 lawyers in the country and he looked at this and he said, what an absolute disgrace that this could
23 be happening to our Constitution." (Ex. 322, p. 3.) Stating that "[w]e will never give up. We will
24 never concede," Trump spoke for almost an hour about election fraud, "overwhelming evidence
25 about a fake election," and how he had won the 2020 presidential election by a "landslide." (Ex.
26 322, p. 2.) During his speech, Trump repeatedly told the crowd that Pence could stop the election

34 (RT XXXI-85:18-22 [Q: Did you give any consideration to the effect that your statements
would have on the crowd? A: I did not. I think I've testified earlier I was asked at the last minute
to speak, and I spoke a lot less than three minutes"].

1 from being stolen because Pence could unilaterally reject the electoral votes and send them back
2 to the states to re-certify their votes:

3 “And he [Eastman] looked at Mike Pence, and I hope Mike is going to do the right thing.
4 I hope so. I hope so, because if Mike Pence does the right thing, we win the election. All
5 he has to do, all—this is—this is from the number one or certainly one of the top
6 Constitutional lawyers [Eastman] in our country. He [Pence] has the absolute right to do
7 it. . . . States want to revote.” (Ex. 322, p. 3.)

8 “The states got defrauded.... Now they want to recertify. They want it back. All Vice
9 President Pence has to do is send it back to the states to recertify, and we become
10 president. . . . I just spoke to Mike. I said, Mike, that doesn’t take courage. What takes
11 courage is to do nothing. That takes courage, and then we’re stuck with a president who
12 lost the election by a lot. . . . We’re just not going to let that happen.” (*Ibid.*)

13 “And Mike Pence is going to have to come through for us, and if he doesn’t, that will be
14 a sad day for our country, because you’re sworn to uphold our Constitution. Now it is up
15 to Congress to confront this egregious assault on our democracy, and after this, we’re
16 going to walk down, and I’ll be there with you.” (*Id.* at p. 6.)

17 “And they want to recertify their votes. They want to recertify, but the only way that can
18 happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.”
19 (*Id.* at p. 14.) [The crowd chanting, “Send it back!”] (*Id.* at p. 14.).

20 “And Mike Pence, I hope you’re going to stand up for the good of our Constitution and
21 for the good of our country, and if you’re not, I’m going to be very disappointed in you, I
22 will tell you right now.” (*Id.* at p. 18.)

23 “When you catch somebody in a fraud, you’re allowed to go by very different rules. So, I
24 hope Mike has the courage to do what he has to do.” (*Id.* at p. 22.)

25 Trump ended his speech at approximately 1:10 p.m., shortly after the Joint Session had
26 begun at 1:00 p.m. (Ex. 165, p. 487.) He concluded by encouraging his supporters to march
27 down Pennsylvania Avenue to the Capitol and by urging them to “fight like hell” to save the
28 country. (Ex. 322, p. 25.)

A few minutes before Pence gave the Joint Session of Congress into order at 1:00
p.m., he released a public letter to Congress (“Dear Colleague” Letter) that he had been working
on for days with his staff, which stated in pertinent part:

Dear Colleague:

Today, for the 59th time in our Nation's history, Congress will convene in Joint Session to count the electoral votes for President of the United States. Under our Constitution, it will be my duty as Vice President and as President of the Senate to serve as the presiding officer.

After an election with significant allegations of voting irregularities and numerous instances of officials setting aside state election law, I share the concerns of millions of Americans about the integrity of this election. . . . [¶]

During the 130 years since the Electoral Count Act was passed, Congress has, without exception, used these formal procedures to count the electoral votes every four years. . . . Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally. Others believe that electoral votes should never be challenged in a Joint Session of Congress.

After a careful study of our Constitution, our laws, and our history, I believe neither view is correct. [¶]. . . [¶]

[I]t is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not.

(Ex. 64, pp. 2-3; Ex. 165, p. 487.)

F. The January 6 Assault On The Capitol

Shortly after Trump concluded his remarks at 1:10 p.m., members of the crowd, including militia groups and people armed with weapons, marched to the Capitol. (Ex. 165, p. 31.)

1. Trump's Tweet and Pence's Evacuation

At 1:46 p.m., a congressman from Arizona objected to counting the votes from Arizona, and Pence directed the House and Senate to withdraw from the Joint Session to separately debate and vote on the objection. (Ex. 165, p. 490.) As Pence presided over the Senate debate of the votes from Arizona shortly after 2:00 p.m., rioters broke through the security barriers and entered the Capitol Building around 2:10 p.m. (RT II-86: 8-87:12; Ex. 165, p. 491.) Greg Jacob was one of the three people in the Capitol building closest to the first breach point. (RT II-86:12-14.)

1 Around 2:10 p.m., he heard a loud “boom boom boom,” and a window 35-40 feet away from
2 Jacob shattered. (RT II-86:19-87:12.) He later learned that one of the rioters outside had stolen a
3 police riot shield and used it to break through the window. (RT II-87:1-7.) Within a few
4 minutes, Jacobs was ushered onto the floor of the Senate, along with the military aide who had
5 Pence’s nuclear football. (RT II-86:1-7, 88:20-21.) The Secret Service evacuated Pence from the
6 Senate floor at 2:12 p.m. (Ex. 165, p. 491.) At 2:20 p.m., the rioters breached the Senate
7 Chamber. (Ex. 165, p. 492.)

8 At 2:24 p.m., Trump tweeted:

9 Mike Pence didn’t have the courage to do what should have been done to protect our
10 Country and our Constitution, giving States a chance to certify a corrected set of facts,
11 not the fraudulent or inaccurate ones which they were asked to previously certify. USA
demands the truth! (Ex. 300.)

12 The Metropolitan Police deployed approximately 800 officers, but they were
13 overwhelmed when rioters surged forward immediately after Trump’s 2:24 p.m. tweet, and the
14 rioters broke through the line of police in several locations. (Ex. 165, p. 32.) The Department of
15 Justice and the Department of Homeland Security deployed additional agents to assist, but law
16 enforcement was unable to control the riot. (Ex. 165, p. 32.)

17 At 2:25 p.m., the Secret Service rushed Pence, his family, and his senior staff through
18 hallways and tunnels to a secure location, where they remained for the next four and a half hours.
19 (Ex. 165, p. 492.) The mob of rioters had come within 40 feet of Pence as he was evacuated. (Ex.
20 165, p. 492.) The Joint Session of Congress was interrupted. Eventually the Capitol was secured,
21 and the electoral count resumed at shortly after 8:00 p.m. (RT II-90:1-18; Ex. 165, p. 493.)

22 2. *Jacob’s Observations of Rioters*

23 Jacob observed that the rioters were angry and “demanding that action be taken”
24 “because they believed that there was a momentous decision that was going to decide who was
25 going to be president of the United States to be made in that building that day.” (RT II-97:20-
26

24.) Jacob understood the motivations of rioters based on their own statements, emails and tweets, video footage of the rioters shouting, “Hang Mike Pence,” footage of the conversations that they were having outside the Capitol and inside the Capitol, and the evidence presented in criminal trials of those individuals. (RT II-157:16-158:17, 159:24-160:8.) The “numerous statements by the rioters themselves, as well as video footage of their chants, I think, lead inexorably to the conclusion that they were operating under the heartfelt belief that the vice president did have authorities to take significant actions in President Trump's favor that day, which the vice president simply did not have.”³⁵ (RT II-158:11-17.)

3. *Eastman’s Continued Efforts to Delay the Electoral Vote Count*

During the morning of January 6 and the violent attack on the Capitol, Jacob and Eastman continued to argue about Pence’s unilateral authority to delay the electoral count. At 10:44 a.m., Jacob responded to Eastman’s email the night before by asking whether Eastman’s proposal was constitutional in light of the procedures set forth in the ECA for addressing objections to electoral votes. (Ex. 66, p. 1.) Eastman dismissed concerns about violating the ECA, responding at 1:33 p.m.: “I’m sorry Greg, but this is small-minded. You’re sticking with minor procedural statutes while the Constitution is being shredded.” (Ex. 66, p. 1.)

After receiving Eastman’s email, Jacob, who was attending the Joint Session, began typing a response. While typing, he heard the window shatter as the rioters breached the Capitol. (RT II-86:25-87:7.) After being ushered by the police to the Senate floor, he quickly finished the email and sent it at 2:14 p.m.:

³⁵ The January 6 Committee reached the same conclusion, finding that “It is no mystery why the mob turned on Vice President Pence” on January 6: “President Trump told his supporters that the election was stolen, and that Vice President Pence had the power, but lacked the courage, to fix it.” (Ex. 165, p. 455.) The Committee further found “Of course, that was President Trump’s and John Eastman’s plan all along – to convince people that the election had been stolen, and that Vice President Pence could take action to change the outcome during the joint session on January 6th.” (Ex. 165, p. 493.)

1 John, very respectfully, I just don't in the end believe that there is a single Justice on the
2 United States Supreme Court, or a single judge on any of our Courts of Appeals, who is
3 as "broad minded" as you when it comes to the irrelevance of statutes enacted by the
4 United States Congress, and followed without exception for more than 130 years...there
5 is no reasonable argument that the Constitution directs or empowers the Vice President to
6 set a procedure followed for 130 years before it has even been resorted to... I understand
7 your argument that several state legislatures were out of session. But the role for state
8 legislatures has for our entire history ended at the time that electoral certificates are
9 submitted to Congress. Congress has debated submissions, including competing
10 submissions. It has never once referred them out to state legislatures to decide.

11 I respect your heart here. I share your concerns about what Democrats will do once in
12 power. I want election integrity fixed. But I have run down every legal trail placed before
13 me to its conclusion, and I respectfully conclude that as a legal framework, it is a results
14 oriented position that you would never support if attempted by the opposition, and
15 essentially entirely made up.

16 And thanks to your bullshit, we are now under siege. (Ex. 68.)³⁶

17 At 2:25 p.m., as he was watching the angry mob storm the Capitol on television from the
18 Willard hotel,³⁷ Eastman wrote back, continuing with the false stolen election narrative:

19 You think you can't adjourn the session because the ECA says no adjournment,
20 while the compelling evidence that the election was stolen continues to build and
21 is already overwhelming. The "siege" is because YOU and your boss did not do
22 what was necessary to allow this to be aired in a public way so the American
23 people can see for themselves what happened. (Ex. 69, p. 3.)

24 At 3:05 p.m., Jacob wrote back, admonishing Eastman:

25 it was gravely, gravely irresponsible for you to entice the President with an academic
26 theory that had no legal viability, and that you well know we would lose before any judge
27 who heard and decided the case. And if the courts declined to hear it, I suppose it could
28 only be decided in the streets. The knowing amplification of that theory through
numerous surrogates, whipping large numbers of people into a frenzy over something
with no chance of ever attaining legal force through actual process of law, has led us to
where we are. (Ex. 69, p. 3.)

36 (See also RT II-86:1-7 [explaining email sent at 2:14 p.m. EST].)

37 (RT XXIX-69:2-9 [Eastman returned to the Willard after his speech and gathered in the
Giuliani suite to watch the Joint Session].)

1 Eastman and Jacob continued to exchange emails for several hours. At 6:09 p.m.,
2 Eastman sent Jacob an email continuing to advocate for adjournment and criticizing Pence's
3 Dear Colleague letter regarding his unilateral authority to accept or reject electoral votes as
4 addressing "the most aggressive position that was discussed and rejected." (Ex. 69, p. 2.)
5 Eastman noted:

6 *we* had given a much more limited option, merely to adjourn to allow state legislatures to
7 continue their work. I remain of the view not only would that have been the most prudent
8 course as it would have allowed for the opportunity for this thing to be heard out, but also
9 had a fair chance of being approved (or at least not enjoined) by the Courts. Alas." (Ex.
69, p. 2, italics added.)

10 At 9:44 p.m., after the electoral count resumed, Eastman again emailed Jacob, stating that
11 the ECA had been violated that evening by the Senate and House when they debated the Arizona
12 objections longer than the two-hour time period permitted under 3 U.S.C. §17, and that Pence
13 had allowed debate after the question had been voted upon. Eastman continued to push for
14 adjournment, citing the purported ECA violations:

15 I implore you to consider one more relatively minor violation and adjourn for 10 days to
16 allow the legislatures to finish their investigations, as well as to allow a full forensic audit
of the massive amount of illegal activity that has occurred here." (Ex. 69, p. 2.)

17 **G. Eastman's January 18 American Mind Article**

18 Neither Jacob's January 6 admonitions to Eastman nor witnessing the attack on the
19 Capitol led Eastman to moderate his public commentary about the election. Instead, on January
20 18, just before inauguration day, he published an article in the American Mind in which he
21 falsely claimed that Trump never asked Pence to reject the electors, but only asked Pence to
22 "pause the proceedings long enough to give the couple of states whose legislators had asked for
23 more time" to assess whether illegal conduct by election officials was sufficient to warrant
24 revoking the certification of Biden electors and replacing it with "a new one that accurately
25 reflected the state's vote." (Ex. 31, pp. 2, 7.)

1 After acknowledging that “a large portion of the American citizenry” believed that illegal
2 conduct by partisan officials had “thrown the election,” Eastman continued to spread conspiracy
3 theories about the election that he knew to be false and misleading: (Ex. 31, pp. 9-10.)

- 4 • He claimed that votes were “electronically flipped” from Trump to Biden in
5 Antrim County, Michigan, but Eastman knew that state officials investigated and
6 determined it was “simply human error,” not the result of any deliberate or
7 fraudulent action, and the error did not result in any votes counted improperly for
8 Biden.³⁸ (RT X-112:15-23, 119:15-120:23)
- 9 • He repeated his claims about Fulton County election workers and “suitcases of
10 ballots pulled from under the table after election observers had been sent home for
11 the night,” falsely implying that election workers had participated in fraud. (Ex.
12 031, p. 9.)
- 13 • He claimed that election officials in Dane County, Wisconsin engaged in an
14 illegal ballot harvesting scheme called “Democracy in the Park.” In fact, as
15 Eastman knew, this claim had already been rejected by the Wisconsin Supreme
16 Court on December 14, which concluded, in relevant part, “[s]triking these ballots
17 would disenfranchise voters who did nothing wrong when they dropped off their
18 ballots where their local election officials told them they could.” (See Ex. 291
19 [*Trump v. Biden*], p. 18 ¶¶ 27-28, p. 32 ¶¶ 57-58 (Hagedorn concurrence).)
- 20 • He claimed that more absentee votes were cast than had been requested in Wayne
21 County, Michigan. At trial, he testified he didn’t know the source of that claim or
22 whether it was true. (RT XI-110:18-111:8.) Jonathan Brater, Director of the
23 Michigan Bureau of Elections, testified that there was no evidence of absentee
24 ballot fraud in Wayne County, or anywhere in Michigan. (RT VI-169:5-22, 180:4-
25 21.)

26 The filing of disciplinary charges in this matter did not dissuade Eastman from
27 continuing to make these claims. During an interview filmed in April or May 2023, during the
28 course of the State Bar proceedings, Eastman continued to claim Fulton County election workers
engaged in fraud, stating: “So, down in Georgia, we have this infamous video that captured what

³⁸ On November 6, 2020, the Michigan Secretary of State issued a release confirming that
“erroneous reporting of unofficial results from Antrim County was a result of accidental error on
the part of the Antrim County Clerk. The equipment and software did not malfunction, and all
ballots were properly tabulated.” (Ex. 100, p. 1.) On December 17, 2020, the Secretary of State
issued a press release stating that a hand audit of all votes cast for president in Antrim County
further confirmed that the “voting machines accurately tabulated the votes cast for president in
Antrim County[.]” (Ex. 109.)

1 appears to be a fraud... So, I don't think they knew that...they were being recorded on this. And
2 what it appears from the video is that they ran multiple ballots through the machines multiple
3 times." (Ex. 382, p. 6; RT XXXI-10:19-11:7.)

4 **H. The Harm Caused by the Unsubstantiated Claims of Election Fraud**

5 **1. Threats and Harassment of Election Workers**

6 Sambo Dul was the State Elections Director in the Arizona Secretary of State's office
7 from January 2019 to August 2021, when she became general counsel and senior election policy
8 advisor for the Secretary of State. (RT VIII-4:10-16, 32:7-12.) Dul explained that the Arizona
9 Secretary of State's Office was "inundated" with "threatening and harassing messages" by
10 telephone and email, regarding claims of fraud related to the 2020 election. (RT XXXII-124:20-
11 24.) The messages came in "almost daily," and there were multiple periods of time when the
12 office had to turn their phone lines off and route calls directly to voicemail due to the "volume of
13 harassing and threatening calls that were coming in." (RT XXXII-124:20-125: 6.) On multiple
14 days, the office instructed staff to work remotely due to concerns for their safety. (RT XXXII-
15 125:7-9.) Election workers in Arizona were threatened with violence, "simply for having done
16 their job." (RT XXXII-130:9-15.) Callers demanded that her office decertify the election,
17 recount ballots, retest the voting machines, and take other actions to address alleged fraud in the
18 election. (RT XXXII-128:24-129:10.)

19 In addition to receiving threats herself, Dul was "doxed" in retaliation for her work on the
20 election: her home address and phone number were posted on the internet, with a photo of her
21 and a photo of her house. (RT XXXII-125:10-14, 128:13-19.) Due to the harassment and release
22 of her home address, police increased patrols in her neighborhood and assigned an officer to
23 watch her house. (RT XXXII-125:15-18.) The Arizona Department of Public Safety advised Dul
24 to stop parking in the outdoor lot used by her office, because they believed it was dangerous for
25
26

1 her to walk from the parking lot into the office building, and she began parking in the basement.
2 (RT XXXII-125:19-126:5, 128:20-23.)

3 Stephen Richer, the Republican-elected Maricopa County Recorder in Arizona, received
4 threats and harassment as well. Despite his strong support for the Trump campaign, which
5 included making phone calls, distributing flyers, and going door to door for the campaign,
6 Richer's public stance that the election had not been stolen led to threats against him and his
7 family: "I've of course received death threats, harassing emails and social media messages (so
8 too has my wife, who isn't even political), and I've had people bang their fists and shoes
9 (seriously) on my car windshield while I sat inside." (Ex. 323, pp. 5, 9.)

10 Jonathan Marks, the Deputy Secretary for Elections and Commissions at the
11 Pennsylvania Department of State, oversees election administration in the state. (RT III-97:6-14.)
12 Marks testified that there was "quite a bit of misinformation" regarding the election in
13 Pennsylvania, before and after election day. (RT XXXII-193:5-10.) Because of the
14 misinformation, people called and emailed the office of the Secretary for Elections and
15 Commissions, threatening the staff and the Secretary with harm. (RT XXXII-195:4-13.) Callers
16 told the staff they were being watched. (RT XXXII-197:23-198:6.) The threats and harassment
17 continued for weeks after the election, and ultimately caused the Department of State to change
18 security measures. (RT XXXII-195:14-16, 197:23-198:6.) New protocols included locking
19 offices that were previously open to the public and requiring visitors to ring a bell and wait for
20 permission to enter. (RT XXXII-202:2-25.) They had to separate their "public-facing services
21 from the election services because of the various threats to our election staff," and these changes
22 have limited the public's access to employees at the Department of State. (RT XXXII-202:6-8,
23 12-25.)

24 Julian Rollow, the Communications Director for the Michigan Department of State and
25 the Secretary of State's office during the 2020 presidential election (RT X-4:13-20), explained
26

1 that the Michigan Department of State put out numerous press releases between November 2020
2 and January 2021 to combat misinformation about the election, and that this misinformation led
3 to threats on Department of State staff and county clerks across the state. (RT X-23:5-13.)

4 After the 2020 election, the Nevada legislature passed a bipartisan bill which made it a
5 felony to harass or intimidate election workers with the intent to interfere with the conduct of an
6 election, or to retaliate against them for their work on elections. (RT IV-171:20-172:5; see also
7 Nevada Revised Statutes § 293.705; 2023 NV S.B. 406 (NS) [Nevada Senate Bill 406].)

8 The threats to and harassment of election workers have resulted in high staff turnover in
9 these offices. Mark Wlaschin, the Deputy Secretary of State for Elections in Nevada (RT IV-
10 96:5-9), testified that many people at the Department of Elections quit due to the misinformation
11 about the 2020 election:

12 [I]n Nevada, very similar to other places across the country, there was an exodus of
13 election officials in 2020, and really following the 2020 election cycle. . . [M]any of our
14 counties had 100-percent turnover with the clerks, their staff, IT support staff, and others
15 that were targeted because of the mis- and disinformation.

(RT IV-174:2-17.)

16 Dul testified that the same thing happened in Arizona: there was significant state-wide turnover
17 among election staff due to the “really toxic environment that [] surrounds elections now, and
18 the increased pressure and stress on election workers.” (RT XXXII 126:6-12.)

19 **2. Public Loss of Confidence in the Election Process**

20 Dul testified that misinformation about the integrity and accuracy of the 2020 election
21 has caused members of the public in Arizona “to lose confidence in the integrity of our process,
22 and to not trust the results and to not trust the election officials that were tasked with
23 implementing elections, with counting the ballots, with declaring the results.” (RT XXXII-131:4-
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10.) She further explained that “losing public confidence in those processes damages our democracy.”³⁹ (RT XXXII-131:11-12.)

Marks also testified that misinformation about the election caused many people in Pennsylvania to lose faith in the democratic process. (RT XXXII-198:14-199:2.) One citizen told the Department of State that she was “so concerned over the massive election fraud” that “We understand now we can NEVER VOTE AGAIN until this is corrected.” (Ex. 403, p. 6.) Marks was particularly concerned “because of the misinformation that people were going to become discouraged and not exercise their constitutional right to vote as a result of that.” (RT XXXII-198:23-199:2.)

In Nevada, Wlaschin continues to devote significant time to combatting misinformation about the security of elections. “[W]e continue to receive questions and concerns. I continue to meet people for coffee, to try to explain the process. It is now widespread and assumed that there were irregularities in elections across our country.” (RT IV-174:23-175:1.) “[I]t’s a steep uphill climb to regain confidence from voters, because, in many cases, they are just convinced that the 2020 election cycle had widespread fraud that simply wasn’t there.” (RT IV-175:20-24.)

Rollow testified that the Michigan Department of State issued a press release on January 5, 2021, the day before the electoral count in Congress, to address “previously debunked false claims of election fraud.” (Ex. 111, p. 1.) It did so because it was “worried about the potential for violence, the potential that, as faith in American democracy would erode, that there would be people who would call for and carry out violence because they either didn’t think they had another option or didn’t—or believed wrongly that they were being misled.” (RT X-29:3-12.)

³⁹ Jacob expressed a similar view that the actions of Trump and Eastman had damaged American democracy: “The law is not a plaything for Presidents or judges to use to remake the world in their preferred image. Our Constitution and our laws form the strong edifice within which our heartfelt policy disagreements are to be debated and decided. When our elected and appointed leaders break, twist, and fail to enforce our laws in order to achieve their partisan ends, or to accomplish frustrated policy objectives they consider existentially important, *they are breaking America.*” (Ex. 63, p. 2, emphasis added.)

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1 **IV. ARGUMENT**

2 **A. All Of Eastman’s Misrepresentations Were Intentional**

3 The hearing judge held Eastman culpable on counts 5 and 7 of the NDC, and in doing so
4 made alternative findings, describing Eastman’s misrepresentations that underlie these counts at
5 various times as intentional, reckless, and grossly negligent.

6 With respect to count 5, for example, the hearing judge found the relevant statements
7 made by Eastman during the January 2 Bannon War Room broadcast (that there was “massive
8 evidence;” that the election was “illegally conducted;” and that there was outcome determinative
9 evidence of “absentee fraud”) were made with gross negligence “without conducting any
10 meaningful investigation or verification of the information he was relying upon.” (Decision, p.
11 96.) Later, the hearing judge found Eastman “knew he lacked a factual basis for making any
12 claims of outcome-determinative fraud, and he *recklessly* made these false claims during the
13 Bannon’s War Room interview. (Decision, p. 98, emphasis added.) At another point, the hearing
14 judge found that:
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17 Eastman’s false statement regarding absentee voter fraud were significant and material as
18 they were *intended* to sow doubt about the legitimacy of the 2020 presidential election.
19 He urged Bannon’s audience to exert pressure on their legislators to invalidate former
20 Vice President Biden’s victory due to alleged uncertainties surrounding the election
21 outcome—uncertainties that he assisted with creating. Eastman *aimed to instill doubt*
22 about the election, prompting listeners to advocate for certifying Trump’s electors over
23 Biden’s as part of his strategy to delay the electoral count. (Decision, p. 97, emphasis
24 added.)

25 Similarly, the hearing judge made alternative findings with respect to Count 7, where
26 Eastman was charged with misrepresenting during his January 6 comments at the rally at the
27 Ellipse that “Dominion electronic voting machines had fraudulently manipulated the election
28 results during the November 3, 2020, presidential election and during the January 5, 2021, run-

1 off election in Georgia for its two Senate seats.” Initially, the hearing judge found that Eastman
2 “willfully violated section 6106 by making intentionally false statements on January 6, 2021, at
3 the Save America rally at the Ellipse.” (Decision, p. 102.) The court then found in the alternative
4 that, “even if Eastman’s false representations were not intentional,” they were “at a minimum”
5 grossly negligent. (*Id.*, at pp. 102, 103.)

6 Culpability for misrepresentations may be established if the false statements were made
7 intentionally, recklessly, or with gross negligence. The evidence makes clear that the hearing
8 judge was correct in finding that Eastman’s misrepresentations were all intentional. Eastman was
9 aware at the time he made the misrepresentations that they were false, and his entire course of
10 action was designed to spread misinformation and aid in the conspiracy to interfere with the
11 2020 election.
12

13 **B. By Making False Statements that Contributed to the January 6 Assault on**
14 **the Capitol, Eastman Engaged in Acts of Moral Turpitude, Dishonesty, and**
15 **Corruption, as Charged In Count 11 of the NDC**

16 Count 11 of the NDC alleges that in his January 6 speech to the crowd gathered at the
17 Ellipse, Eastman, speaking from his position of authority as a professor and purported
18 “preeminent constitutional scholar” made false and misleading claims of election fraud that
19 “contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate
20 Pence and prevent the electoral count from proceeding, when such harm was foreseeable, and
21 thereby committed an act of moral turpitude, dishonesty, and corruption, in willful violation of
22 Business and Professions Code section 6106.” (NDC p. 33, ¶¶ 80-81.) The hearing judge found,
23 correctly, that during his speech Eastman made several false and misleading claims of election
24 fraud. (Decision, pp. 108-09.) The hearing judge, however, found no evidence that Eastman’s
25 statements contributed to the assault on the Capitol. (*Id.*, pp. 109-10.) This was error. The
26

1 hearing judge failed to take into account the broader context of Eastman’s speech at the Ellipse,
2 which was made in furtherance of the conspiracy between Eastman, Trump, and others to
3 pressure Pence to, without legal or factual support, reject the swing state electoral votes or delay
4 the electoral count.⁴⁰ When this context is considered, there is more than sufficient evidence that
5 Eastman’s false and misleading claims of election fraud contributed to the assault on the Capitol.

6 By January 6, Trump and Eastman were out of options and out of time. Courts had
7 resoundingly rejected their claims of election fraud and illegalities, state legislatures had
8 indicated they had no intention of certifying alternative slates of electors, and Pence had rebuffed
9 their unfounded efforts to persuade him that he had legal authority to take unilateral action to
10 reject electoral votes or delay their counting. When they took the stage at the Ellipse, less than a
11 mile from the Capitol at which Pence would be overseeing the electoral vote count that day, they
12 turned to the crowd to accomplish what they had been unable to by other means—the disruption
13 of the vote count.

14 Speaking in front of a crowd of up to 500,000 people that had been gathered by Trump
15 and his associates to take action to “stop the steal,” Eastman, who was touted to the crowd as a
16 respected constitutional scholar, joined Giuliani and Trump in feeding the crowd lies about a
17 stolen election in an effort to have the crowd take matters into their own hands. Using Eastman’s
18 law credentials to cloak their baseless claims with an aura of legitimacy, they told the crowd it
19 was perfectly legal for Pence to postpone the certification of the vote for Biden, send the slates
20

21 ⁴⁰ Count 1 of the NDC charged Eastman with failing to support the Constitution and the laws of
22 the United States, in violation of Business and Professions Code section 6068 subdivision (a) by
23 dishonestly conspiring with Trump and others to obstruct the Joint Session of Congress on
24 January 6, 2021, in violation of 18 U.S.C. § 371. (NDC, pp. 15-16, ¶ 32.) The hearing judge
25 found Eastman culpable on this basis, concluding that “the evidence clearly and convincingly
26 proves that Eastman and President Trump entered into an agreement to obstruct the Joint Session
of Congress by unlawfully having Vice President Pence reject or delay the counting of electoral
votes on January 6, 2021” (Decision, pp. 111-14.) Count 11 of the NDC incorporated by
reference the factual allegations in count one that established the conspiracy. (NDC, p. 33, ¶ 79
[incorporating the allegations in ¶¶ 8-31].)

1 back to the states, and save the country from a stolen election. Building on each other’s false and
2 inflammatory statements, they riled the crowd up and told them to go to the Capitol—Trump
3 telling them he would even accompany them. To what could have been no one’s surprise, the
4 crowd heeded this call to action and marched to the Capitol. Denied entry, and fueled by the
5 misguided belief, buttressed by Eastman’s false claims, that they were acting in furtherance of
6 the law, they stormed the Capitol, gained entry, caused elected representatives to fear for their
7 lives, and disrupted the electoral vote count.

8 Eastman’s false statements in his speech on the Ellipse contributed directly to the
9 crowd’s actions at the Capitol and the resulting disruption of the electoral vote count. As a result,
10 they constituted conduct involving moral turpitude, dishonesty, and corruption as charged in
11 Count 11. Eastman should be held culpable on that count.

12 1. ***Eastman and Trump Sought to Convince the Crowd that Pence Could***
13 ***Stop the Electoral Count***

14 Trump started January 6 by tweeting, at 8:17 a.m., “States want to correct their votes
15 All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a
16 time for extreme courage.” (Ex. 299, p. 1.) Later that morning, at Trump’s urging, a crowd of
17 250,000 to 500,000 people came to the National Mall on January 6 to attend a rally to “Stop the
18 Steal” and “Save America.” (RT XI-49:4-7; XXVIII-13:7-12; Ex. 165, p. 485.) Before they
19 spoke to this crowd, Eastman and Trump knew that no court had accepted their false claims of
20 election fraud, that no state legislature had asked Pence to delay the electoral count, and that
21 there was no majority of legislators in any state that had indicated they would certify an alternate
22 slate of Trump electors. (Ex. 71, p. 3; RT II-81:1-12; XXX-102:22-103:5.)⁴¹ Nonetheless,

23 _____
24 ⁴¹A few minutes before the Joint Session of Congress started at 1:00 p.m., Pence released a
25 public letter to Congress stating that he did not have legal authority to unilaterally reject electoral
26 votes. (Ex. 64, pp. 2-3; Ex. 165, p. 487.) Eastman knew before Pence released the letter that
27 Pence was not going to violate the ECA that day, because as discussed in section III(D)(6),
28

1 Eastman, Trump, and Giuliani would repeatedly tell the rally crowd that there had been election
2 fraud, that the states had asked Pence to delay the electoral count, and that Pence could delay it.

3 At approximately 10:45 a.m., Eastman and Giuliani took the stage and spoke to the
4 crowd. (Ex. 30; Answer, p.101:21.) Giuliani told the crowd that “every single thing that has been
5 outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a
6 few words about that. He’s one of the preeminent constitutional scholars in the United States.”
7 (Ex. 30, p. 1.) Eastman was standing next to Giuliani the entire time that Giuliani spoke. (Ex. 30
8 [see video].)

9 Giuliani told the crowd that Pence could “do what a president called Jefferson did when
10 he was Vice President. He can decide on the validity of these crooked ballots or he can send it
11 back to the legislatures, give them five to 10 days to finally finish the work. We now have letters
12 from five legislatures begging us to do that.” (Ex. 30, p. 1.) Giuliani exclaimed “let’s have trial
13 by combat,” (Ex. 30, p. 1), and said he had “conclusive proof” that “crooked dominion
14 machines” were used to steal the election from Trump. (Ex. 30, p. 2.) Giuliani then asked
15 Eastman to explain “how they cheated.” (Ex. 30, p. 2.)

16 Eastman picked-up where Giuliani left off and made multiple false and misleading
17 statements with the intent to cause the crowd and television audience⁴² to believe the election
18 had been stolen. He told the crowd: “We know there was fraud. Traditional fraud that occurred.
19 We know that dead people voted.” (Ex. 30, pp. 2-3.) He made this claim when he knew that there
20 was no state with an outcome-determinative number of deceased voters.⁴³ (RT XI-49:14-25,
21 50:7-11.) He went on to claim that Dominion voting machines were used to steal the Georgia
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23 Eastman had discussed the issue at length with Jacob the day before.

24 ⁴² Eastman was aware that television cameras were present when he spoke. (RT XI-49:8-13.)

25 ⁴³ At trial, Eastman claimed that when he made the statement to the crowd, he was not implying
26 that votes by deceased people had affected the outcome of the election. (RT XI-49:14-19.)

Senate election on January 5 and the presidential election on November 3, explaining that fraudulent ballots were stored in a “secret folder” in the machines and then added to the count to steal the election. (Ex. 30, p. 3.) Eastman had never seen any proof, however, that electronic votes had been fraudulently flipped in any election. (RT XI-32:4-33:19.) He knew that CISA had stated that “[t]he November 3rd election was the most secure in American history” (Ex. 201. RT X-123:7-124:5), and his only basis for telling the crowd that votes had been manipulated was the conversation he had with Oltmann and Ramsland the night before. (RT XI-31:9-32:3.)

After falsely claiming he had evidence that the election had been stolen, Eastman turned to what he was asking the crowd to do, that is, demand that Pence delay the counting of the electoral votes:

And, all we are demanding of Vice President Pence is this afternoon at 1:00, he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government or not. We no longer live in a self-governing Republic if we can’t get the answer to this question.

This is bigger than President Trump. It is the very essence of our Republican form of government, and it has to be done. And, anybody that is not willing to stand up to do it does not deserve to be in the office. It is that simple. (Ex. 30, p. 3.)

At approximately 1:00 p.m., Trump spoke to the crowd. He thanked Eastman for a “fantastic job” and told the crowd that Eastman “is one of the most brilliant lawyers in the country and he looked at this and he said, what an absolute disgrace that this could be happening to our Constitution.” (Ex. 322.) Stating: “We will never give up. We will never concede”—Trump spoke for almost an hour about election fraud; “overwhelming evidence about a fake election;” and how he had won the 2020 presidential election by a “landslide.” (Ex. 322, p. 2.) He repeatedly told the crowd that states wanted to recertify different electors and that Pence could stop the election from being stolen by rejecting certain electoral votes and delaying the count to give states time to change their votes. (Ex. 222, p. 6.) Trump ended his speech at approximately 1:10 p.m., shortly after the Joint Session had begun at 1:00 p.m. (Ex. 165, p. 487,

490.) He concluded by encouraging his supporters to march down Pennsylvania Avenue to the Capitol and telling them to “fight like hell” to save the country. (Ex. 322, p. 25.)

2. ***Eastman Was Well Aware of the Potential for Violence***

When Eastman made his statements at the Ellipse, he was aware both of the deep divisions in the country over the election and the resulting risk of unrest and violence. Eastman had told the Supreme Court on December 9 that the nation was “deeply divided in ways that it arguably has not been seen since the election of 1860,” and “nearly half of the country believes the election was stolen.” (Ex. 262, p. 8.) In October 2020, he had participated in an exercise through the Claremont Institute that involved “roleplaying” various scenarios of how the 2020 election could play out. (RT XXX-168:19-170:6.) The report of the exercise noted that in 2020 there was “an increased chance of urban unrest,” and that “confusion” as to who won the election “may lead to post-election violence unlike that seen in more than 150 years.” (Ex. 295, p. 1.) Of the various ways the election could play out, the scenario that the group “simulated in detail” involved an election with “an ambiguous result” which resulted in “a struggle right to the Jan. 6 joint session of Congress.” (Ex. 295, p. 2.) This scenario culminated in a “massive and violent Antifa demonstration in D.C.” after Trump was declared the winner that resulted in life-threatening injuries to a member of Congress.⁴⁴ (Ex. 295, p. 9.) With this knowledge, and speaking after Giuliani’s call for “trial by combat,” when Eastman told a crowd of up to half a million people that the election had been stolen, and the only way to save the country was to get Pence to stop the electoral count that afternoon, he had to know that the crowd might resort to violence to accomplish what he, Giuliani, and Trump were asking of them.

⁴⁴ This exercise modelled *Trump* winning, not Biden, and expected riots and protests from liberals and saw “left-wing street violence as a near-certainty.” (Ex. 295, p. 4.) At trial, Eastman claimed that the group only contemplated violent demonstrations in the scenario with Trump winning. (RT XXX-174:15-175:4.) Although the alternative scenario unfolded, with Biden winning, given the deep divisions in the country that Eastman himself likened to 1860 (the Civil War Era), Eastman was aware of the chance for violence on both sides.

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1 stop it from being stolen because Eastman falsely told them that Pence had authority that he did
2 not have. Their state of mind was evident from the fact that they broke into the Capitol to stop
3 the Joint Session of Congress and the chants of “Hang Mike Pence!” that echoed through the
4 halls of the building.⁴⁵ (Ex. 165, p. 455.) In fact, Pence had no authority to do anything that day
5 other than count the votes, but Eastman had devised a radical and false idea that Pence could stop
6 the election from being stolen, and he sold it to the crowd that had gathered to “Stop the Steal.”
7 After he explained Giuliani’s “conclusive proof” that the election had been stolen, he assured the
8 crowd as a lawyer and Constitutional expert that the plan for the day was legal, and told them it
9 was essential for them to act: “This is bigger than President Trump. It is the very essence of our
10 Republican form of government, and it has to be done.” (Ex. 30, p. 3.)

11 Eastman’s total disregard for the known possibility of violence that day is further
12 established by his dismissive attitude toward the violence after the attack. As discussed in
13 Section III(F)(3), he continued to pressure Jacob to advise Pence to violate the ECA and delay
14 the count after he watched the assault on the Capitol on television from the Willard Hotel. Weeks
15 later, he continued to tell Americans that the election had been stolen, repeating baseless claims
16 of fraud in his January 18 American Mind article. (See *supra*, section III(G).) Eastman has never
17 denounced the January 6th Capitol attack or accepted any responsibility for the events that day.

19 ⁴⁵ Jacob explained at trial that the motivations of rioters was clear from their own statements,
20 emails and tweets, video footage of the rioters shouting, “Hang Mike Pence”; footage of the
21 conversations that they were having outside the Capitol and inside the Capitol; and the evidence
22 presented in criminal trials of those individuals. (RT II-157:16-158:17; II-159:24-160:8.) The
23 “numerous statements by the rioters themselves, as well as video footage of their chants, I think,
24 lead inexorably to the conclusion that they were operating under the heartfelt belief that the vice
25 president did have authorities to take significant actions in President Trump’s favor that day,
26 which the vice president simply did not have.” (RT II-158:11-17.) The January 6 Committee
reached the same conclusion: “It is no mystery why the mob turned on Vice President Pence” on
January 6: “President Trump told his supporters that the election was stolen, and that Vice
President Pence had the power, but lacked the courage, to fix it.” (Ex. 165, p. 455.) The
Committee further found “Of course, that was President Trump’s and John Eastman’s plan all
along—to convince people that the election had been stolen, and that Vice President Pence could
take action to change the outcome during the joint session on January 6th.” (Ex. 165, p. 493.)

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1 Eastman had compared the political landscape of the 2020 election and divisions in the country
2 to the Civil War era (Ex. 262, pp. 8-9), and he participated in pre-election roleplaying that
3 anticipated “post-election violence unlike that seen in more than 150 years.” (Ex. 295, p. 1.)
4 And, in an interview in 2023, Eastman stated “We should not avoid taking the necessary right
5 step to ensure the rightful outcome of the election because of fear of violence by a mob.” (Ex.
6 384, pp. 7-8.)⁵⁰

7 On January 11, 2021, Eastman emailed Giuliani, asking to be on Trump’s pardon list.
8 (Ex. 62.) He made the request because “a number of people at the University of Colorado
9 [where he was a visiting professor] were suggesting that my speech caused the riots at the
10 Capitol,” and “I thought that being on a pardon list would avoid having to deal with that issue.”
11 (RT XI-106:14-107:3.) Clearly, Eastman himself was concerned with the criminal consequences
12 of his role in the Capitol attack.

13 5. *The First Amendment is No Defense*

14 The hearing judge rejected Eastman’s arguments that his statements, including those at
15 the Ellipse on January 6, are protected under the First Amendment and so cannot be used as
16 grounds for professional disciplinary action. (Decision pp. 75-81.) The State Bar agrees with
17 the hearing judge and adopts her reasoning, which applies to the allegations in Count 11. In
18 particular, as the hearing judge recognized, Eastman’s statements at the Ellipse were not
19 protected by the First Amendment for three reasons.

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23 democratic institutions. (See *In the Matter of Giuliani* (N.Y. 2021) 197 A.D. 3d 1, 25–26;
24 Margaret Tarkington, *The Role of Attorney Speech and Advocacy in the Subversion and*
Protection of Constitutional Governance, 69 Wash. U. J.L. & Pol’y 287, 330–331 (2022).

25 ⁵⁰ While Eastman was talking about unrest if the election outcome was reversed in Trump’s
26 favor, this shows Eastman was aware of and unconcerned with possible violence, so long as he
got what he believed was the right outcome, i.e., Trump staying in power. (Ex. 384, p. 8.)

1 First, the First Amendment does not protect speech integral to unlawful conduct. (*United*
2 *States v. Hansen* (2023) 599 U.S. 762, 783; *United States v. Alvarez* (2012) 567 U.S. 709, 717.)
3 Thus, the First Amendment does not protect statements, such as Eastman’s statements at the
4 Ellipse, made in furtherance of a criminal conspiracy to obstruct Congress’s counting of electoral
5 votes.

6 Second, the First Amendment does not protect false statements made knowingly or with
7 reckless disregard of the truth. (*Garrison v State of Louisiana* (1964) 379 U.S. 64, 75; *In the*
8 *Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781, 784). Thus, the
9 First Amendment does not protect Eastman’s statements at the Ellipse making claims of election
10 fraud that he knew or recklessly disregarded were false.

11 Finally, speech by an attorney acting in their representative capacity as an attorney may
12 be restricted if the restriction satisfies a balancing test that weighs “the State’s interest in the
13 regulation of a specialized profession against a lawyer’s First Amendment interest in the kind of
14 speech at issue.” (*Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1073.) Violations of
15 section 6106, which is what is charged in count 11, even if based on out-of-court attorney
16 speech, have been held to satisfy *Gentile*’s balancing test. (See *Canatella v. Stovitz* (N.D. Cal.
17 2005) 365 F.Supp.2d 1064, 1072-1073, 1076-1077.)⁵¹

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22 ⁵¹ The hearing judge suggested in a footnote that count 11 charged Eastman with inciting
23 lawlessness. (Decision p. 80, n. 91.) To overcome First Amendment protections, criminal
24 incitement charges generally require evidence that the defendant specifically intended the
25 lawless action. (See *Counterman v. Colorado* (2023) 600 U.S. 66, 81.) Count 11 charges a
26 violation of section 6106, not criminal incitement, and so this standard has no application. Even
if it did, as discussed in the text above, the evidence supports an inference that Eastman intended
to have the crowd at the Ellipse obstruct the electoral count by any means necessary, including
possible violence.

1 **C. Eastman Caused Unprecedented Harm That Should Be Assigned The**
2 **Utmost Aggravating Weight (Std. 1.5(J))**

3 Eastman’s misconduct, both on its own and in conjunction with the conduct of his co-
4 conspirators, contributed to the January 6 assault on the Capitol. This alone warrants the utmost
5 aggravation for harm. But the Capitol attack is not the only basis for harm. Both before and
6 after January 6, Eastman also used his law license in grave and injurious ways that sowed
7 unwarranted seeds of doubt in the very foundations of the electoral process that is the backbone
8 of our democracy. As a result, he has caused harm to election officials who endured backlash,
9 threats, and harassment, unprecedented staff turnover, additional audits, new security measures,
10 and a general erosion of trust in election integrity, all for no good reason. He also caused harm to
11 the legal profession by demeaning the rule of law and public confidence that practitioners will
12 faithfully carry out their oath and duty to uphold the laws. For these reasons as well, Eastman
13 should receive the utmost aggravation for harm.

14 The hearing judge acknowledged “that there has been significant harm to the general
15 public as evidenced by ongoing distrust in some of our democratic institutions and the electoral
16 process,” but did not find any of it attributable to Eastman and declined to assign harm in
17 aggravation. (Decision, pp. 116-117.) This was incorrect. The hearing judge’s flawed analysis
18 failed to consider the totality of Eastman’s acts, individually and in concert with Trump. As the
19 hearing judge found, Trump and Eastman conspired “to obstruct a lawful function of the United
20 States government; specifically, by conspiring to disrupt the electoral count on January 6, 2021,
21 in violation of 18 U.S.C § 371.” (Decision, pp. 111-114.) Eastman as a co-conspirator is
22 responsible for the natural and foreseeable consequences of all othe co-conspirators in
23 furtherance of the conspiracy. (See e.g., 9th Circuit Model Crim. Jury Instructions 11.2 and 11.6
24 (2022); *Pinkerton v. United States* (1946) 328 U.S. 640, 647-648; *United States v. Alvarez-*
25 *Valenzuela* (9th Cir. 2000) 231 F.3d 1198, 1202; *United States v. Henry* (9th Cir. 2021) 984 F.3d

1343, 1355-1356.) Moreover, Eastman personally engaged in many acts that link directly to significant harm.

1. ***Eastman’s Conduct Contributed to the January 6 Assault on the Capitol***

The hearing judge declined to impose aggravation for harm based on the January 6 assault on the Capitol, concluding, as it had in dismissing count 11, that there was no evidence that his “statements or actions, such as his speech on January 6, contributed to the attack on the Capitol.” (Decision p. 116.) This is incorrect. As discussed above with respect to count 11, Eastman’s false and misleading statements at the Ellipse on January 6 directly contributed to the attack on the Capitol by helping to convince the crowd that fraud had occurred in the election and that Pence had legal authority to correct that fraud by stopping the electoral count. Eastman also bore responsibility for the statements of his co-conspirators made in furtherance of the criminal conspiracy to obstruct the electoral count. (See e.g., 9th Circuit Model Crim. Jury Instructions 11.2 and 11.6 (2022); *Pinkerton, supra*, 328 U.S. at pp. 647-648; *U.S. v. Alvarez-Valenzuela, supra*, 231 F.3d at p. 1202; *U.S. v. Henry, supra*, 984 F.3d at pp. 1355-1356 [all recognizing that a conspirator is responsible for reasonably foreseeable actions taken by their co-conspirators in furtherance of the conspiracy].) These statements included Giuliani exclaiming “let’s have trial by combat” (Ex. 30, p. 1) and Trump encouraging the crowd to march down Pennsylvania Avenue to the Capitol and “fight like hell” to save the country. (Ex. 322, p. 25.) The harm from the January 6 assault on the Capitol as to which Eastman was a contributing cause is on its own so substantial that it justifies the highest aggravation.

2. ***Eastman’s Conduct Caused Significant Harm to the Public, State Election Officials, Election Workers, and the Institutions They Serve***

Eastman’s misconduct in sowing unwarranted doubt about the election process and results started long before his January 6 statements at the Ellipse. For weeks, Eastman had been telling the public that there was “massive evidence of fraud,” “more than enough to have affected

1 the outcome of the election.” (Ex. 28, p. 2.) In discussing these misrepresentations, as made by
2 Eastman during the Bannon War Room podcast – the hearing judge found that they:

3 ...were significant and material, as they intended to sow doubt about the legitimacy
4 of the 2020 presidential election. He urged Bannon’s audience to exert pressure on
5 their legislators to invalidate former Vice President Biden’s victory due to alleged
6 uncertainties surrounding the election outcome—uncertainties that he assisted with
7 creating. Eastman aimed to instill doubt about the election, prompting listeners to
8 advocate for certifying Trump’s electors over Biden’s as part of his strategy to delay
9 the electoral count. (Decision, pp. 96-97.)

10 The hearing judge also emphasized the repetition of Eastman’s lies as demonstrating his intent to
11 sow doubt among the public regarding the validity of the 2020 election results. (Decision, p.
12 106.)

13 Eastman had also repeatedly blamed this fraud on election officials and workers. Among
14 other claims, he accused election workers at the State Farm Arena of fraudulently counting
15 ballots multiple times (Answer, p. 70:13-15); he accused election officials in Philadelphia and
16 Allegheny Counties of illegally giving Democratic party officials advance notice of defective
17 ballots (Answer, p. 62:19-21); and he accused Wisconsin election officials of a variety of
18 “illegality and fraud in the conduct of the election.” (Answer, pp. 3-8.)

19 The harm from this course of conduct was not limited to the January 6 assault on the
20 Capitol. Documents and testimony from multiple state election officials in this case show the
21 harm that false claims of election fraud and a stolen election caused to them and to the
22 institutions they serve. (See *supra*, section III(H).) The hearing judge declined to find
23 aggravation based on this harm, concluding that any connection between Eastman’s actions and
24 the harm was speculative, and citing as support *Calvert v. State Bar* (1991) 54 Cal. 3d 765, 784-
25 785—a case where the Supreme Court reversed a finding of aggravation for client harm because
26 a *third party* caused the harm, not the attorney in question. *Calvert* is readily distinguishable
27 because it is clear that Eastman did cause harm with his disinformation campaign, Eastman spent
28

1 months seeking to undermine the election process and its results, repeatedly casting election
2 officials and workers as the villains who had allowed election fraud to occur. Given this
3 extended course of conduct, Eastman must be held accountable for the harms that naturally and
4 predictably flowed from it.

5 Eastman's conduct also significantly harmed the public by sowing unwarranted doubt in
6 this Country's democratic and electoral processes. By peddling false claims of election fraud to
7 the nation, and giving them unwarranted weight through his role as candidate-Trump's attorney
8 and a preeminent scholar on the issue—he bears responsibility for the lies he spread and the
9 harm they caused.

10 The harm to the Country, the proper functioning of a free society, and the legal
11 profession is unprecedented, immeasurable, and multifaceted and does not include the physical
12 harm caused by the riots. The significant harm that flowed from Eastman's peddling of false
13 claims of election fraud has been well summarized by a New York court discussing the impact of
14 Giuliani's lies about a stolen election. (*Matter of Giuliani, supra*, 197 A.D.3d 1, at p. 25.) That
15 court's observations apply equally here.

16 The seriousness of [Giuliani's] uncontroverted misconduct cannot be overstated. This
17 country is being torn apart by continued attacks on the legitimacy of the 2020 election
18 and of our current president.... [Footnote Omitted.] The hallmark of our democracy is
19 predicated on free and fair elections. False statements intended to foment a loss of
20 confidence in our elections and resulting loss of confidence in government generally
21 damage the proper functioning of a free society. When those false statements are made by
22 an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to
23 our bar and damages the profession's role as a crucial source of reliable information
24 [Citation omitted]. It tarnishes the reputation of the entire legal profession and its
25 mandate to act as a trusted and essential part of the machinery of justice (*Ohralik v. Ohio*
26 *State Bar Assn*, 436 U.S. at 447, 98 S.Ct. 1912.). Where, as here, the false statements are
27 being made by [Giuliani], acting with the authority of being an attorney, and using his
28 large megaphone, the harm is magnified. One only has to look at the ongoing present
public discord over the 2020 election, which erupted into violence, insurrection and death
on January 6, 2021 at the U.S. Capitol, to understand the extent of the damage that can be
done when the public is misled by false information about the elections. The AGC
contends that [Giuliani's] misconduct directly inflamed tensions that bubbled over into

1 the events of January 6, 2021 in this nation's Capitol. [Giuliani's] response is that no
2 causal nexus can be shown between his conduct and those events. We need not decide
any issue of "causal nexus" to understand that the falsehoods themselves cause harm.
[Footnote Omitted.]

3 Further support for this conclusion is found in the testimony in this case. Jonathan Marks
4 testified that misinformation about the election caused many people in Pennsylvania to lose faith
5 in the democratic process, and Mark Wlaschin testified that it is now widespread and assumed
6 that there were irregularities in elections across our country. (RT XXXII-198:14-199:2; RT IV-
7 17423-175:1.)

8 State Bar disciplinary case law further supports a finding that Eastman's conduct caused
9 significant harm to the public, the legal profession, and the administration of justice as a result of
10 the public's significant loss of confidence in the democratic and electoral process. For example,
11 in *In re Rivas* (1989) 49 Cal.3d 794, 801, an attorney was disbarred for filing five official
12 documents on three occasions over a one-month time-period in a single ballot campaign, which
13 he knew contained false residency information while attempting to qualify as a judicial
14 candidate. The court found harm for aggravation because the attorney's submission of falsified
15 election documents inflicted substantial harm on the public and the administration of justice. (*Id.*
16 at p. 801.) As the court explained:

17 Through use of these false documents, he exposed voters to an unqualified candidate and
18 presumably drew votes away from candidates legitimately on the ballot. While the record
19 does not reflect whether petitioner's candidacy actually affected the election's outcome,
his conduct seriously undermines public confidence in the integrity of the legal
profession and the election process.

20 Similarly, in *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80,
21 89, the court found significant harm to the public and to the administration of justice where
22 attorney Loftus harassed a juror:

23
24 Loftus's actions demonstrate contempt for his ethical responsibilities and further
alienate jurors, many of whom are already unwilling to participate in jury service.
25 (See *Lind v. Medevac, Inc.*, supra, 219 Cal.App.3d at p. 521.) Given the importance
26

1 of the jury system, it is paramount that attorneys interact with jurors in the most
2 professional and ethical manner. (*Loftus, supra*, at p. 89.)

3 Here, over an extended period of time, Eastman repeatedly peddled false claims of
4 election fraud with the intent of undermining the public's confidence in the election system and
5 the results of the 2020 presidential election. The direct result of this was, as Eastman intended, a
6 significant loss of public confidence in the democratic and electoral process. Several other courts
7 have already recognized the significant harm to our democracy caused by Eastman and other
8 Trump attorneys who conspired to spread false claims about the 2020 presidential election and
9 disrupt the Joint Session of Congress. (See e.g., *Eastman v. Thompson* (C.D. Cal. 2022) 594 F.
10 Supp. 3d 1156, 1198 (C.D. Cal. 2022), appeal dismissed, No. 22-56013, 2022 WL 18492376
11 (9th Cir. Nov. 7, 2022), cert. denied, No. 22-1138, 2023 WL 6379015 (U.S. Oct. 2, 2023); *In re*
12 *Giuliani, supra*, 197 A.D.3d 1, at p. 25; see also *United States v. Klein, supra*, (D.D.C. 2021) 539
13 F.Supp.3d at p.153.) This court similarly should recognize that the public harm that resulted
14 directly from Eastman's false claims about the 2020 presidential election is significant and
15 warrants the utmost aggravation.

16 **V. EASTMAN SHOULD BE DISBARRED.**

17 This hearing judge's disbarment recommendation is fully supported even absent a finding
18 of culpability on count 11 and without aggravation for harm. As a result, this Court should
19 affirm the recommendation even if it rejects some or all of the State Bar's arguments above.
20 Culpability on count 11 and aggravation for harm, or either alone, however, provide additional
21 support for the disbarment recommendation.

22 Eastman's misconduct was exceptionally serious, including repeated acts of dishonesty
23 and conspiracy to obstruct government operations by blocking the counting of electoral votes in
24 furtherance of a plan to steal the election for his client, Trump. Standard 2.11 of the disciplinary
25 standards states:

1 Disbarment or actual suspension is the presumed sanction for an act of moral turpitude,
2 dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or
3 concealment of a material fact. The degree of sanction depends on the magnitude of the
4 misconduct; the extent to which the misconduct harmed or misled the victim, which may
5 include the adjudicator; the impact on the administration of justice, if any; and the extent
6 to which the misconduct related to the practice of law.

7 Given the magnitude of Eastman’s misconduct, and its impact on both the integrity and high
8 standards of the profession, as well as on public confidence in the profession, even absent
9 culpability on count 11 or aggravation for harm, disbarment is appropriate and necessary. (See *In*
10 *re Basinger* (1988) 45 Cal. 3d 1348, 1360–1361.) Culpability on count 11, aggravation for harm,
11 or both, however, make even more clear the need for disbarment.

12 There is no published case exactly like this one, but the State Bar refers this Court to the
13 following cases for guidance, though they involve far less egregious misconduct and
14 aggravation:

- 15 • *In re Rivas, supra*, 49 Cal.3d 794 [attorney disbarred for committing five separate acts of
16 deceit in an attempt to become a judge. The Court held that “[s]uch dishonesty—
17 particularly because it was aimed at ascending to the judiciary—raised serious questions
18 concerning his professional trustworthiness and judgment ... Through use of these false
19 documents, he exposed voters to an unqualified candidate and presumably drew votes
20 away from candidates legitimately on the ballot. While the record did not reflect whether
21 petitioner’s candidacy actually affected the election’s outcome, his conduct seriously
22 undermines public confidence in the integrity of the legal profession and the election
23 process.” (*Id.* at pp. 800-801.)
- 24 • *In re Lamb* (1989) 49 Cal.3d 239 [attorney disbarred for impersonating her husband to
25 take the bar exam. Her “deceitful acts were of exceptional gravity. It undermined the
26 integrity of the State Bar’s admission system, on which public confidence in the
27 competence of attorneys is founded...” (*Id.* at pp. 245-246.) The court found that given
28 the seriousness of her misconduct only the most compelling mitigation could prevent
disbarment.
- *Segretti v. State Bar* (1976) 15 Cal.3d 878 [two-year actual suspension for conspiracy to
violate and violation of 18 U.S.C. § 612 (publication or distribution of political
statements), when the attorney committed acts of deceit designed to subvert the electoral
process. Segretti had significant mitigation, including he was only 30 years old at the
time of the misconduct and thought he was acting under “the umbrella of the White
House.” The court emphasized that Segretti’s misconduct “was not committed in his
capacity as an attorney” and he recognized the wrongfulness of his acts, expressed regret,
and cooperated with the investigating agencies. (*Id.* at p. 888).

- *In re Glass* (2014) 58 Cal. 4th 500, 524: “Manifest dishonesty ... provide[s] a reasonable basis for the conclusion that ... [an] attorney cannot be relied upon to fulfill the moral obligations incumbent upon members of the legal profession.”

As in these cases, Eastman’s conduct requires disbarment.

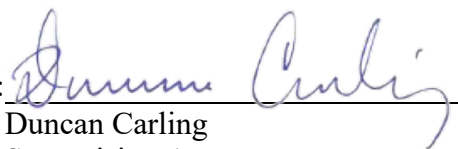
VI. CONCLUSION

For all the reasons set forth above, this court should uphold the hearing judge’s findings of culpability on counts 1 through 10 of the NDC; find Eastman culpable as well on count 11 of the NDC; find aggravation for significant harm; and affirm the hearing judge’s recommendation of disbarment.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: September 13, 2024

By: 
Duncan Carling
Supervising Attorney

DECLARATION OF SERVICE

CASE NUMBER(s): **SBC-23-O-30029**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, max.carranza@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STATE BAR'S OPENING BRIEF ON REVIEW

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Person Served	Business Address	Electronic Address	Courtesy Copy via email to:
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: September 13, 2024

SIGNED: 

Max Carranza
Declarant