

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

FILED
STATE OF ALASKA
THIRD DISTRICT
2022 OCT 25 AM 11:57
CLERK OF THE TRIAL COURT
BY _____
DEPUTY CLERK

1 Savannah Fletcher, AK Bar No. 1811127
2 James J. Davis, Jr., AK Bar No. 9412140
3 Goriune Dudukgian, AK Bar No. 0506051
4 **NORTHERN JUSTICE PROJECT, LLC**
5 406 G Street, Suite 207
6 Anchorage, AK 99501
7 (907) 308-3395 (telephone)
8 (866) 813-8645 (fax)
9 Email: sfletcher@njp-law.com
10 Email: jdavis@njp-law.com
11 Email: gdudukgian@njp-law.com

Attorneys for Plaintiff Randall Kowalke

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

12 RANDALL KOWALKE,)
13)
14 Plaintiff,)
15)
16 vs.)
17)
18 DAVID EASTMAN, STATE OF)
19 ALASKA, DIVISION OF ELECTIONS,)
20 and GAIL FENUMIAI in her official)
capacity as Director of Elections)
Defendant.)

Case No. 3AN-22-07404 CI

12 MOTION TO COMPEL DISCOVERY RESPONSES

I. PRELIMINARY STATEMENT

COMES NOW the plaintiff, Randall Kowalke, by and through counsel, the Northern Justice Project, LLC, and hereby moves this Court, pursuant to Alaska Civil Rule 37(a)(2)(B), for an order compelling defendant David Eastman to expeditiously provide responses to Request for Productions Nos. 3-14 and 16-18 contained in



1 Plaintiff's First Set of Discovery Requests for David Eastman propounded on
2 September 20, 2022. As discussed below, Eastman failed to produce responsive
3 documents to these requests, instead shirking his discovery obligations by asserting
4 patently meritless and unsupported objections.
5

6 Plaintiff further requests an award pursuant to Civil Rule 37(a)(4)(A) of the
7 reasonable attorney's fees incurred in bringing this motion. This Court should make it
8 clear to Eastman that violations of the discovery rules will not be tolerated.
9

10 Pursuant to Rule 37(a)(2)(A), undersigned counsel certifies that the defendant
11 has in good faith conferred or attempted to confer with Eastman's counsel in an effort
12 to obtain the relevant discovery without court action, to no avail.¹
13

14 II. RELEVANT BACKGROUND

15 In this lawsuit, the plaintiff alleges that defendant David Eastman – who is
16 currently serving as the District 10 representative in the Alaska House of
17 Representatives and is seeking election in District 27 – is ineligible for public office
18 under the Disloyalty Clause of the Alaska Constitution, which provides:
19

20 No person who advocates, or who aids or belongs to any party or
21 organization or association which advocates, the overthrow by force or
22 violence of the government of the United States or of the State shall be
23 qualified to hold any public office of trust or profit under this constitution.²

24 This Court has scheduled an expedited trial in this case, which will commence
25 on December 12, 2022. As a result of the expedited trial, all of the standard pre-trial
26

27 ¹ Declaration of Counsel at ¶¶ 3-5.

28 ² Alaska Const., art. XII, § 4.

1 deadlines have been significantly compressed, leaving little time for the parties to
2 conduct pre-trial discovery.

3
4 Plaintiff diligently served Eastman with a set of written discovery requests on
5 September 20, 2022. Plaintiff's First Set of Discovery Requests for David Eastman
6 contained only 7 interrogatories, 19 requests for production of documents, and 16
7 requests for admission,³ far less than what is allowed under the rules of discovery in
8 Alaska.⁴ These discovery requests were also narrowly tailored to the precise issue that
9 is before this Court, i.e., whether Eastman individually, or as a member of Oath
10 Keepers, advocates the overthrow by force or violence of the United States government.

11
12 Eastman served his responses to plaintiff's discovery requests at 11:59 p.m. on
13 October 25, 2022.⁵ Eastman did not produce *any* documents in response to Request for
14 Production Nos. 3-6, 8-14, and 16-18.⁶ Instead, Eastman asserted the same spurious
15 objections for each of these requests (which cross-reference his objections to
16 Interrogatory No. 3):
17

18
19 Objection. This is an unduly burdensome and onerous request as I have
20 likely sent and/or received hundreds of thousands of emails to and from
21 likely tens of thousands of addresses over the past 12 or 13 years. And
22 many are privileged. This burden is especially pronounced as I am a
23 legislator running for reelection with less than a month before the
24 election. Moreover, the burden of this interrogatory outweighs its likely
benefit as the core question before this Court is whether the Oath Keepers
is an organization that advocates the overthrow by force or violence of the

25 ³ See Declaration of Counsel at Ex. 1.

26 ⁴ See, e.g., Alaska R. Civ. P. 33(a) (allowing a party to serve up to 30
interrogatories, including "all discrete subparts").

27 ⁵ See Declaration of Counsel at ¶2.

28 ⁶ See *id.* at Ex. 1, pp. 7-13.

1 United States or the State of Alaska. I am not, nor have I ever been, an
2 officer or leader in Oath Keepers and my communications are therefore
3 irrelevant to the above question. Finally, this interrogatory requests
4 electronically stored information that is not reasonably accessible
5 because, among other things, it is stored in accounts that either are no
6 longer active and/or I no longer have the sign in credentials for.⁷

7 With regard to Request for Production No. 3, Eastman did not produce any
8 responsive documents, seizing on a typo in the request.⁸ Request for Production No. 3
9 asked Eastman to produce “all emails to or from any of the email addresses identified
10 above (in Interrogatory no. 4) sent or received between October 2020—August 2022
11 that contain the words ‘Oath Keepers.’”⁹ While it is true that the request erroneously
12 referred to the wrong interrogatory, the meaning of the request was still crystal clear.
13 Nor, if there was any confusion, did Eastman ever seek clarification of the request.¹⁰
14 Instead, Eastman asserted the following objection: “Objection, there is no
15 ‘Interrogatory no. 4’ above.”¹¹ No other objections were asserted in response to this
16 request.
17

18 Finally, in response to Request for Production No. 7 – which requested email
19 correspondence with “any of the indicted Oath Keepers” – Eastman again referenced
20 his objections to Interrogatory No. 3.¹² Notwithstanding the objections, Eastman did
21 produce a single document (bates numbered DCE000045-DCE000051), which appears
22

23
24 ⁷ *Id.* at p.7.

25 ⁸ *See id.*

26 ⁹ *Id.*

27 ¹⁰ Declaration of Counsel at ¶3.

28 ¹¹ *Id.* at Ex. 1, p.7.

¹² *See id.* at p.9.

1 to be a fundraising communication received from an unidentified individual.¹³

2 Eastman's failure to comply with the discovery rules is now impeding plaintiff's
3 trial preparations and his ability to comply with this Court's pretrial deadlines.¹⁴ For
4 example, Plaintiff's counsel will not be able to effectively question Eastman at his
5 deposition, scheduled for November 4, without the requested documents.¹⁵
6 Furthermore, plaintiff's experts need to review the requested documents in
7 formulating their opinions and writing their reports.¹⁶ Therefore, an expeditious ruling
8 by this Court on this motion to compel is respectfully requested.
9

11 III. LEGAL AUTHORITIES

12 Alaska Civil Rule 26(b) allows for liberal discovery in civil cases:

13 Parties may obtain discovery regarding any matter, not privileged
14 which is relevant to the subject matter involved in the pending action,
15 whether it relates to the claim or defense of the party seeking discovery
16 or to the claim or defense of any other party, including the existence,
17 description, nature, custody, condition and location of any books,
18 documents, or other tangible things and the identity and location of
19 persons having knowledge of any discoverable matter. The information
20 sought need not be admissible at the trial if the information sought
21 appears reasonably calculated to lead to the discovery of admissible
22 evidence.

23 The Alaska Supreme Court "has on numerous occasions expressed the view
24 that Alaska's discovery rules should be given a liberal construction."¹⁷ Thus,

25 ¹³ See *id.* at ¶8 and Ex. 3.

26 ¹⁴ See *id.* at ¶¶ 6-7.

27 ¹⁵ See *id.* at ¶6.

28 ¹⁶ See *id.* at ¶7.

¹⁷ *United Servs. Auto Ass'n v. Werley*, 526 P.2d 28, 31 (Alaska 1974) (citations omitted).

1 "relevance for purposes of discovery is broader than for purposes of trial."¹⁸ "The
2 information sought need not be admissible at the trial if the information sought
3 appears reasonably calculated to lead to the discovery of admissible evidence."¹⁹ This
4 broad scope of discovery allows parties to "narrow the issues, obtain evidence for use
5 at trial, and secure information about where and how such evidence can be obtained."²⁰
6 It also serves "to eliminate surprise at trial and to make it convenient for the parties
7 to find and preserve all available evidence concerning the fact and issues, thereby
8 encouraging the settlement or expeditious trial of litigation."²¹

11 Rule 37 exists to enforce the discovery process and to ensure that a party's case
12 is justly determined upon the merits of the case.²² It authorizes a party to move for an
13 order compelling a response to a discovery request.²³ It further authorizes the court to
14 impose various sanctions on the non-disclosing party.²⁴ At a minimum, if a motion to
15 compel is granted (or the requested discovery is provided after the motion is filed), the
16 court must "require the party or deponent whose conduct necessitated the motion or
17 the party or attorney advising such conduct or both of them to pay to the moving party
18 the reasonable expenses incurred in making the motion, including attorney's
19
20
21

22
23 ¹⁸ *Miller v. Harpster*, 392 P.2d 21, 23 (Alaska 1964).

24 ¹⁹ Alaska R. Civ. P. 26(b).

25 ²⁰ *McKibben v. Mohawk Oil Co., Ltd.*, 667 P.2d 1223, 1231 (Alaska 1983).

26 ²¹ *Hazen v. Municipality of Anchorage*, 718 P.2d 456, 461 (Alaska 1986).

27 ²² *See Ketchikan Cold Storage Co. State*, 491 P.2d 143, 147 (Alaska 1971).

28 ²³ Alaska R. Civ. P. 37(a)(2)(B).

²⁴ Alaska R. Civ. P. 37(a)(4).

1 fees," unless the movant failed to make a good faith effort to obtain discovery without
2 court intervention or the non-disclosing party's response was substantially justified.²⁵
3

4 IV. ARGUMENT

5 As an initial matter, the documents sought in the relevant requests for
6 production are *crucially* relevant in this case of public importance. They seek
7 communications by Eastman – whether by email, text, or on social media platforms –
8 about the Oath Keepers or with the indicted members of the Oath Keepers.²⁶ They also
9 seek communications by Eastman concerning his trip to Washington, D.C. at the same
10 time as the January 6, 2021 insurrection.²⁷ And they seek communications using the
11 specific words “insurrection,” “revolution,” “overthrow,” and “Stop the Steal.”²⁸
12
13

14 These discovery requests are manifestly relevant to the central issues in this
15 case. They are relevant to whether Eastman individually, or the Oath Keepers as an
16 organization, advocates the violent overthrow of the United States government. They
17 are also relevant to whether Eastman personally participated in the January 6
18 insurrection, or was merely in Washington, D.C. for innocent reasons. These discovery
19 requests are further relevant to whether Eastman has been aware of, supported, and/or
20 participated in the Oath Keepers' illegal activities to overthrow the United States
21
22
23
24

25 ²⁵ Alaska R. Civ. P. 37(a)(4)(A).

26 ²⁶ *See* Request for Production Nos. 3, 7, 11.

27 ²⁷ *See* Request for Production Nos. 8-9, 16-17.

28 ²⁸ *See* Request for Production Nos. 4-6, 10, 12-14.

1 government.²⁹

2 On the other hand, Eastman's objections to these discovery requests are wholly
3 meritorious and should be overruled. Eastman first claims that the relevant requests for
4 production are "unduly burdensome and onerous."³⁰ However, it is not sufficient for an
5 objecting party to simply say so; the objector has the burden to show specifically *how* a
6 discovery request "is overly broad, burdensome or oppressive, *by submitting affidavits*
7 *or offering evidence* which reveals the nature of the burden."³¹ Here, Eastman's claim

10
11 ²⁹ In his response to plaintiff's Rule 37 correspondence, Eastman contends that
12 these requests for production are irrelevant because plaintiff's complaint does not
13 allege that Eastman *personally* advocates the overthrow of the United States
14 government. *See* Declaration of Counsel at Ex. 2, p.1. First, Eastman never asserted a
15 relevance objection in his discovery responses, so any such objection has been waived.
16 *See, e.g., Haines v. Comfort Keepers, Inc.*, 393 P.3d 422, 429-30 (Alaska 2017). Second,
17 plaintiff's complaint *does* allege that Eastman has *personally* defended the Oath
18 Keepers' "decisions to hold a revolution and overthrow government." Complaint at ¶22.
19 Third, it is well settled that Rule 26 "contemplates discovery into any matter that bears
20 on or that *reasonably could lead to other matter[s]* that could bear on any issue that is
21 *or may be raised in a case.*" *Anaya v. CBS Broadcasting, Inc.*, 251 F.R.D. 645, 649-50
22 (D.N.M. 2007) (emphasis added, citations omitted). Litigants are entitled to take
23 discovery "to flesh out allegations for which they initially have at least a modicum of
24 objective support." *Dorato v. Smith*, 163 F. Supp. 3d 837, 865 (D.N.M. 2015). Thus,
25 plaintiff should be allowed to take discovery on Eastman's personal conduct that would
26 violate the Disloyalty Clause, based on his undisputed public statements and presence
27 in Washington, D.C. on January 6, 2022. Finally, the discovery requests at issue are
28 also relevant to Eastman's credibility, and thus within the scope of permissible
discovery. *See, e.g., Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal.
1998) (holding that Rule 26 permits discovery relating to the credibility of a witness).

³⁰ Declaration of Counsel at Ex. 1, p. 7.

³¹ *Chubb Integrated Sys. v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 60 (D.D.C. 1984)
(emphasis added); *see also Martin v. Brown*, 151 F.R.D. 580, 593-594 (W.D. Pa.
1993) ("That one may object to interrogatories as being excessively burdensome is not
an excuse for responding with nothing but objections . . ."); *Essex Ins. Co. v. Interstate
Fire & Safety Equipment Co., Inc.*, 263 F.R.D. 72, 73-74 (D. Conn. 2009) (holding that
objecting party must do more than "simply intone the familiar litany that
interrogatories are burdensome, oppressive, or overly broad").

1 that the requests are burdensome is unsupported by any actual evidence and is also
2 implausible. The requests merely require Eastman to perform a simple word search in
3 the relevant email and social media platforms, and he has had more than a month to
4 do so. Further, the assertion that Eastman has used “tens of thousands of addresses”
5 during the period in question is preposterous.³²

7 In any event, the law is settled that where discovery requests are highly
8 relevant, “the fact that answering them will be burdensome and expensive is not in
9 itself a reason for a court’s refusing to order discovery which is otherwise
10 appropriate.”³³ Courts require discovery responses “despite difficult research
11 requirements, if the information sought is particularly crucial to the propounding party
12 and solely within the responding party’s control.”³⁴ That is the case with these requests
13 for production: they are both crucial to plaintiff’s case and seek documents that are
14 solely in Eastman’s control.
15
16
17
18

19 ³² Declaration of Counsel at Ex. 1, p. 7.

20 ³³ *Brown Bear v. Cuna Mut. Group*, 266 F.R.D. 310, 320 (D.S.D. 2009); *see also In*
21 *re Folding Carton Antitrust Litigation*, 83 F.R.D. 260, 265 (N.D. Ill. 1979) (“Because
22 the interrogatories themselves are relevant, the fact that answers to them will be
23 burdensome and expensive is not in itself a reason for refusing to order discovery which
24 is otherwise appropriate.”) (citation and internal quotation marks omitted); *Alexander*
25 *v. Parsons*, 75 F.R.D. 536, 539 (W.D. Mich. 1977) (stating that “the mere fact discovery
26 is burdensome . . . is not a sufficient objection to such discovery, providing the
27 information sought is relevant or may lead to the discovery of admissible
28 evidence”); *Burns v. Imagine Films Entertainment, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y.
1996) (holding that the fact that answering interrogatories will require the objecting
party to expend considerable time, effort, and expense consulting, reviewing, and
analyzing huge volumes of documents and information was an insufficient basis for an
objection).

³⁴ 7 Moore’s Federal Practice – Civil § 33.173[2][b].

1 The rest of Eastman's objections merit only a brief response. He asserts that
2 "many" of the requested documents may be privileged.³⁵ If so, he needs to provide a
3 privilege log that complies with Rule 26(b)(5), so that the plaintiff can determine
4 whether the assertion of any privilege is valid.

5
6 Eastman also asserts that he no longer has reasonable access to the
7 electronically stored information requested in the requests for production, because
8 some of the accounts are no longer active and/or Eastman no longer has the sign in
9 credentials. However, Rule 34 only requires the production of documents in the
10 "possession, custody or control" of a party.³⁶ And the test for "control" is whether the
11 party has the legal right to obtain the requested documents.³⁷ Thus, Eastman's
12 objection is a red herring: If there are responsive documents that are truly no longer in
13 Eastman's "possession, custody or control" within the meaning of Rule 34, then they
14 need not be produced. However, Eastman should identify any such documents so that
15 the plaintiff can subpoena them from the appropriate party.

16
17 Finally, Eastman objected to Request for Production No. 3 solely on the basis
18 of a typo.³⁸ But the intent and meaning of that request are clear and, to the extent
19 Eastman was genuinely confused, he should have asked for clarification. This Court
20 should order a response to Request for Production No. 3.

21
22
23
24
25 ³⁵ Declaration of Counsel at Ex. 1, p.7.

26 ³⁶ *Hart v. Wolff*, 489 P.2d 114, 117 (Alaska 1971).

27 ³⁷ *See, e.g., Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating & Air-*
Conditioning Eng'rs, Inc., 755 F.3d 832, 839 (7th Cir. 2014).

28 ³⁸ Declaration of Counsel at Ex. 1, p.7.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the foregoing reasons, this Court should overrule Eastman's objections and order him to respond forthwith to Request for Productions Nos. 3-14 and 16-18. This Court should further award plaintiff the attorney's fees incurred in bringing this motion.

DATED: October 28, 2022

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiff

By: /s/ Goriune Dudukgian
Goriune Dudukgian, ABA No. 0506051
James J. Davis, Jr., ABA No. 9412140
Savannah Fletcher, AK Bar No. 1811127

CERTIFICATE OF SERVICE

I hereby certify that on 10/20/2022 a true and correct copy of the foregoing document was served via E-MAIL on:

Joseph Miller
Law Offices of Joseph Miller, LLC
Email: info@aklaw.us

Lael Harrison and Thomas Flynn
State of Alaska, Department of Law
lael.harrison@alaska.gov
thomas.flynn@alaska.gov

By: /s/ Goriune Dudukgian

Northern Justice Project, LLC
 A Private Civil Rights Firm
 406 G Street, Suite 207
 Anchorage, AK 99501
 Phone: (907) 308-3395; Fax: (866) 813-8645

James J. Davis, Jr., AK Bar No. 9412140
 Savannah Fletcher, AK Bar No. 1811127
 Goriune Dudukgian, AK Bar No. 0506051
 NORTHERN JUSTICE PROJECT, LLC
 406 G Street, Suite 207
 Anchorage, AK 99501
 (907) 308-3395 (telephone)
 (866) 813-8645 (fax)
 Email: jdavis@njp-law.com
 Email: sfletcher@njp-law.com

FILED in the TRIAL COURTS
 STATE OF ALASKA, THIRD DISTRICT

OCT 28 2022

Clerk of the Trial Courts
 By _____ Deputy

Attorneys for Plaintiff Randall Kowalke

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

RANDALL KOWALKE,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID EASTMAN, STATE OF)
 ALASKA, DIVISION OF ELECTIONS,)
 and GAIL FENUMIAI in her official)
 capacity as Director of Elections)
)
 Defendant.)

Case No. 3AN-22-07404 CI

DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO
 COMPEL AND MOTION FOR EXPEDITED CONSIDERATION

I, GORIUNE DUDUKGIAN, declare under penalty of perjury:

1. I am an attorney with the Northern Justice Project, LLC, counsel for plaintiff Randall Kowalke in the above-captioned case.
2. Attached hereto as Exhibit 1 is defendant David Eastman's responses to Plaintiff's First Set of Discovery Requests for David Eastman, served at 11:59 p.m. on

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (866) 813-8645

October 25, 2022. Prior to serving his response, Eastman never sought clarification of any of the discovery requests.

3. At 8:44 a.m. on October 26, 2022, I emailed Joe Miller, counsel of record for defendant Eastman, along with the other attorneys of record in this case, in accordance with Alaska Civil Rule 37(a)(2)(A), and explained that many of Eastman's discovery responses were deficient. I informed all counsel that an expedited motion to compel would be filed with the Court unless supplemental responses to Request for Production Nos. 3-14 and 16-18 were forthcoming by 9:00 am on October 28, 2022.

4. Counsel for the parties had a previously scheduled teleconference to discuss various pretrial deadlines scheduled for 9:00 a.m. on October 26, 2022. During this teleconference, Mr. Miller and I briefly discussed the issues raised in my Rule 37 correspondence. At the conclusion of the call, Mr. Miller indicated that he would respond in writing to the issues raised in my Rule 37 correspondence.

5. At 9:00 a.m. on October 28, 2022, I received an email response from Mr. Miller to the Rule 37 correspondence. No additional documents were produced. As a result, I informed Mr. Miller (and the other attorneys of record) that plaintiff would be filing an expedited motion to compel. A true and correct copy of the email chain is attached hereto as Exhibit 2.

6. Defendant Eastman's failure to comply with his discovery obligations is now impeding plaintiff's trial preparations and his ability to comply with this Court's pretrial deadlines. Eastman's deposition is currently scheduled for November 4, 2022. Undersigned counsel's ability to effectively question Eastman at his deposition will be

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

frustrated without the requested documents. Furthermore, the notice of deposition was served several weeks ago, on October 6, 2022. Scheduling the deposition was difficult, due to Eastman's and his attorney's busy schedules. It will be even more difficult, if not impossible, to find a new date for the deposition before trial.

7. The expert reports are currently due on November 10, 2022. The plaintiff's experts have informed me that they will need to review the requested documents in formulating their expert opinions in this case and to finish writing their expert reports.

8. Attached hereto as Exhibit 3 is the single document (bates numbered DCE000045-DCE000051) produced in response to Request for Production No. 7.

9. I declare under penalty of perjury under the laws of the United States of America and the State of Alaska that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 28th day of October, 2022.

/s/ Goriune Dudukgian
Goriune Dudukgian, AK Bar No. 0506051

CERTIFICATE OF SERVICE

I hereby certify that on 10/28/2022 a true and correct copy of the foregoing document and accompanying proposed order were served via E-MAIL on:

Joseph Miller
Law Offices of Joseph Miller, LLC
Email: info@aklaw.us

Lael Harrison and Thomas Flynn
State of Alaska, Department of Law
lael.harrison@alaska.gov
thomas.flynn@alaska.gov

By: /s/ Goriune Dudukgian

DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S
MOTION TO COMPEL AND MOTION FOR EXPEDITED CONSIDERATION
Randall Kowalke v. David Eastman, et al., Case No. 3AN-22-07404 CI
Page 3 of 3

EXHIBIT 1

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

James J. Davis, Jr., AK Bar No. 9412140
Savannah Fletcher, AK Bar No. 1811127
NORTHERN JUSTICE PROJECT, LLC
406 G Street, Suite 207
Anchorage, AK 99501
(907) 308-3395 (telephone)
(866) 813-8645 (fax)
Email: jdavis@njp-law.com
Email: sfletcher@njp-law.com

Attorneys for Plaintiff Randall Kowalke

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RANDALL KOWALKE,)
)

Plaintiff,)
)

vs.)
)

DAVID EASTMAN, STATE OF)
ALASKA, DIVISION OF ELECTIONS,)
and GAIL FENUMIAI in her official)
capacity as Director of Elections)
)

Defendant.)
)

Case No. 3AN-22-07404 CI

PLAINTIFF'S FIRST SET OF DISCOVERY REQUESTS FOR DAVID EASTMAN

COMES NOW plaintiff Randall Kowalke, by and through counsel, the Northern Justice Project, LLC, and pursuant to Alaska Civil Rules 33, 34 and 36 hereby propounds the following discovery requests upon defendant David Eastman.

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

Pursuant to Alaska Civil Rule 34, you are requested to produce the documents described herein by mailing the originals or legible copies thereof to the offices of the

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

Northern Justice Project, LLC, 406 G Street, Suite 207, Anchorage, AK 99501, on or before the 30th day after service of these requests.

The documents requested for production include those in your possession, custody, or control, or in the possession, custody, or control of your agents, representatives or attorneys. Each request for production should be responded to separately. However, a document which is responsive to more than one request may, if the relevant portion is marked or indexed, be referred to in a later response.

INSTRUCTIONS FOR INTERROGATORIES

The following interrogatories are propounded pursuant to Alaska Civil Rule 33 and must be answered based upon your entire knowledge from all sources and all information in your possession or otherwise available to you, including information from employees, agents, representatives or consultants and information which is known by each of them. Where the answers are based upon the statements of others and do not represent your personal knowledge, explicitly so indicate, naming the person or persons relied upon.

If you cannot answer the interrogatories below in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying the inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and detailing what efforts you made in attempting to secure the unknown information. An incomplete or evasive answer is a failure to answer.

If any interrogatory may be answered *fully* by a document, the document may

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-8895; Fax: (866) 813-8645

be attached in lieu of an answer if the document is marked to refer to the interrogatory to which it responds.

INSTRUCTIONS FOR REQUESTS FOR ADMISSION

Pursuant to Alaska Civil Rule 36, you are requested to admit or deny the following requests for admission on or before the 30th day after service of these requests. You are required to make reasonable inquiry to determine the answers to these requests for admission. When good faith requires that you qualify your answer or deny only a part of the matter for which an admission is requested, you are required to specify so much of the requested admission as is true and qualify or deny the remainder as appropriate.

ADDITIONAL INSTRUCTIONS AND DEFINITIONS

You are reminded that Alaska Civil Rule 26(e) imposes upon you a duty to supplement any of your responses to the following discovery requests in the event you should subsequently discover that any of your responses are incorrect, incomplete, misleading, or no longer correct. These discovery requests are thus deemed to be continuing until and during the course of trial. Information sought by these discovery requests that is obtained after you serve your answers must be disclosed by supplementary answers.

If your failure or refusal to answer any part or subpart of the following discovery requests is based upon the assertion of any privilege, state the nature of the privilege and the factual basis supporting your assertion of the privilege, and produce with your responses a privilege log, identifying the document or data by date, author,

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

recipient(s), subject matter, and basis for the assertion of privilege.

The use of the singular form of any word includes the plural and vice versa.

As used herein, "person" includes a natural person, firm, association, organization, partnership, business, trust, corporation or public entity; to "identify" a person, whether a natural person or a business entity, means to state his or her or its full name and present or last known business and home telephone number, present or last known business and home address, and present and last known business affiliation.

The term "document" in these discovery requests refer to the original or any "hard copy" of electronically stored data in any medium, and all non-identical copies (whether by interlineations, notations written thereon, indication of copies sent or received, or otherwise) of all writings and recorded materials of any kind that are or have been in your possession, custody, or control. Such writings or recordings include, but are not limited to, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer print-outs, teletypes, telefax, invoices, worksheets, all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures), and any electronic, mechanical, or electric records or representations of any

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

kind (including, without limitation, tapes, cassettes, discs, recordings, and computer memories).

All documents shall be produced in their entirety (without redaction or expurgation), together with all attachments, exhibits, cover letters and the like.

Without limitation, a document is deemed to be or to have been in your "control" if you have or had the right to secure the document or copy thereof from another person or entity having actual physical possession thereof.

DISCOVERY REQUESTS

INTERROGATORY NO. 1: Please describe the actions you took to become a Lifetime Member of the Oath Keepers in 2009.

RESPONSE:

I first visited the Oath Keepers website in 2009 when they first started. Sometime during Oath Keeper's first year, I used the Oath Keepers website to submit a copy of my DD-214 and the approximate date when I had first taken an oath to the U.S. Constitution (1995). I paid \$103 for membership, a shirt, ball cap, and two commemorative patches. I paid \$30 as a renewal donation in 2011 via credit card payment. After my membership had expired and a life membership option had become available, I purchased a life membership for \$1,000 by signing up for recurring monthly credit card payments in 2014.

REQUEST FOR PRODUCTION NO. 1: Please produce any documents confirming your membership in the Oath Keepers, including but not limited to a copy of your "Lifetime Member Certificate."

RESPONSE:

I cannot locate a copy of any "Lifetime Member Certificate." However, I have attached my welcome letter and membership certificate that I first received after making my initial donation to Oath Keepers. See DCE000001-DCE000002 and DCE000049-DCE000051.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

INTERROGATORY NO. 2: Please state the date and amount of any dues paid to the Oath Keepers from 2009 to present.

RESPONSE:

I paid \$30 on or about 1/30/2010, \$30 on or about 1/17/2011, and \$50 per month for 20 months starting on or about 2/28/14.

REQUEST FOR PRODUCTION NO. 2: Please produce every document evidencing any payments made to Oath Keepers from 2009 to present.

RESPONSE:

See DCE000003-DCE000044, financial institution information redacted.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

INTERROGATORY NO. 3: Please share all email addresses you have used in a personal or professional capacity since obtaining a "Lifetime Member Certificate" with the Oath Keepers in 2009.

RESPONSE:

Objection. This is an unduly burdensome and onerous request as I have likely sent and/or received hundreds of thousands of emails to and from likely tens of thousands of addresses over the past 12 or 13 years. And many are privileged. This burden is especially pronounced as I am a legislator running for reelection with less than a month before the election. Moreover, the burden of this interrogatory outweighs its likely benefit as the core question before this Court is whether the Oath Keepers is an organization that advocates the overthrow by force or violence of the United States or the State of Alaska. I am not, nor have I ever been, an officer or leader in Oath Keepers and my communications are therefore irrelevant to the above question. Finally, this interrogatory requests electronically stored information that is not reasonably accessible because, among other things, it is stored in accounts that either are no longer active and/or I no longer have the sign in credentials for.

REQUEST FOR PRODUCTION NO. 3: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 4) sent or received between October 2020 – August 2022 that contain the words "Oath Keepers."

RESPONSE: Objection, there is no "Interrogatory no. 4" "above."

REQUEST FOR PRODUCTION NO. 4: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that contain the word "overthrow."

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 5: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that contain the word “revolution.”

RESPONSE: See my objections to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 6: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that contain the words “Stop the Steal.”

RESPONSE: See my objections to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 7: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that are to or from any of the indicted Oath Keepers, including but not limited to: Stewart Rhodes, Edward Vallejo, Thomas Caldwell, Joseph Hackett, Kenneth Harrelson, Joshua James, Kelly Meggs, Roberto Minuta, David Moerschel, Brian Ulrich, Jessica Watkins, Donovan Crawl, Sandra Parker,

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

Laura Steele, Connie Meggs, William Isaacs, James Beeks, Graydon Young, Caleb Berry, Jason Dolan, or Jonathan Walden.

RESPONSE:

See my objections to Interrogatory No. 3. Without waiving the foregoing objections, please see DCE000045-DCE000051.

REQUEST FOR PRODUCTION NO. 8: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that discuss your travel to Washington, D.C. in January 2021.

RESPONSE:

See my objections to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 9: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that reference the January 6 Capitol attack.

RESPONSE:

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 10: Please produce all emails to or from any of the email addresses identified above (in Interrogatory no. 3) sent or received between October 2020 – August 2022 that contain the word “insurrection.”

RESPONSE:

See my objections to Interrogatory No. 3.

INTERROGATORY NO. 4: Please list all social media accounts you have opened since 2009; this includes, but is not limited to, Facebook, Twitter, YouTube, Truth Social, Wordpress, MySpace, Skype, Google Plus, Instagram, Tumblr, WhatsApp, 4chan, Reddit, LinkedIn, Telegram, Paltalk, or Kik.

RESPONSE:

See my objections to Interrogatory No. 3. I further object to Interrogatory No. 4 on the basis that it is ambiguous. For example, you provide a non-exhaustive list that includes technology services as varied as “Skype” and “Wordpress,” neither of which meet the traditional definition of “social media.” Without waiving the foregoing objections, since 2009 I have opened accounts with GooglePlus, Oath Keepers forum and other forums, Truth Social, Parler, Twitter, Skype, Instagram, LinkedIn, Telegram, and Ning.

REQUEST FOR PRODUCTION NO. 11: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that contain the words “Oath Keepers.”

RESPONSE:

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 12: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that contain the word “overthrow.”

See my objections to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 13: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that contain the word “revolution.”

RESPONSE:

See my objections to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 14: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that contain the words “Stop the Steal.”

RESPONSE:

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 15: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that are to or from any of the indicted Oath Keepers, including but not limited to: Stewart Rhodes, Edward Vallejo, Thomas Caldwell, Joseph Hackett, Kenneth Harrelson, Joshua James, Kelly Meggs, Roberto Minuta, David Moerschel, Brian Ulrich, Jessica Watkins, Donovan Crowl, Sandra Parker, Laura Steele, Connie Meggs, William Isaacs, James Beeks, Graydon Young, Caleb Berry, Jason Dolan, or Jonathan Walden.

RESPONSE:

See my objections to Interrogatory No. 4. Without waiving the foregoing objections, no such messages, comments or posts are known to exist.

REQUEST FOR PRODUCTION NO. 16: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that discuss your travel to Washington, D.C. in January 2021.

RESPONSE:

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 17: Please produce all messages, comments, or posts in the social media identified above (in Interrogatory no. 4) created between October 2020 – August 2022 that reference the January 6 Capitol attack.

RESPONSE:

See my objections to Interrogatory No. 3.

INTERROGATORY NO. 5: Please list all cell phone numbers used by David Eastman between October 2020 – August 2022.

RESPONSE:

My cell phone number during that time frame was 907-355-4759.

REQUEST FOR PRODUCTION NO. 18: Please produce all text messages sent or received by David Eastman's cell phones listed in Interrogatory No. 5 from January 4 – January 7, 2021.

RESPONSE:

See my objections to Interrogatory No. 3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR PRODUCTION NO. 19: Please produce all receipts, tickets, confirmation e-mails, and other documents that document your flight to Washington, D.C. from January 4 – January 7, 2021.

RESPONSE:

See my objections to Interrogatory No. 3. Without waiving the foregoing objections, please see DCE000052-DCE000077.

INTERROGATORY NO. 6: Please state who paid for David Eastman's flight to Washington, D.C. from January 4 – January 7.

RESPONSE:

I paid for my flight to Washington, D.C.

REQUEST FOR ADMISSION NO. 1: Please admit that you are a member of Oath Keepers.

RESPONSE:

Admit that I was a member of the Oath Keepers. I am uncertain of my membership status now.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

REQUEST FOR ADMISSION NO. 2: Please admit that you were a member of Oath Keepers in 2009.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 3: Please admit that you have taken no actions to revoke any membership you may have with Oath Keepers.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 4: Please admit that Oath Keepers advocate the overthrow by force or violence of the government of the United States.

RESPONSE: Deny.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (866) 813-8645

REQUEST FOR ADMISSION NO. 5: Please admit that some leaders of Oath Keepers advocate the overthrow by force or violence of the government of the United States.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 6: Please admit that some officers of Oath Keepers advocate the overthrow by force or violence of the government of the United States.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 7: Please admit that some members of Oath Keepers advocate the overthrow by force or violence of the government of the United States.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 8: Please admit that Oath Keepers advocate for revolution.

RESPONSE: Deny.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (866) 813-8645

REQUEST FOR ADMISSION NO. 9: Please admit that Oath Keepers advocate for insurrection.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 10: Please admit that members of Oath Keepers have been charged with seditious conspiracy.

RESPONSE:

Deny, in as much as Oath Keepers no longer appears to be an organization capable of having active membership. Admit that some individuals who were members of Oath Keepers have been charged with seditious conspiracy.

REQUEST FOR ADMISSION NO. 11: Please admit that leaders of Oath Keepers have been charged with seditious conspiracy.

RESPONSE:

Deny, in as much as Oath Keepers no longer appears to be an active organization capable of membership. Admit that some individuals who were leaders of Oath Keepers have been charged with seditious conspiracy.

REQUEST FOR ADMISSION NO. 12: Please admit that you were accurately quoted in the February 10, 2022 Juneau Empire article titled State rep defends Oath Keepers.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (866) 813-8645

laments 'cancel culture', available at <https://www.juneauempire.com/news/state-rep-defends-oath-keepers-laments-cancel-culture/>.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 13: Please admit that you are the author of all of the articles posted at daveeastman.org.

RESPONSE:

Deny, in as much as "the author" is meant to be to the exclusion of all others. Admit that I at least assisted in writing and/or reviewing all articles posted at daveeastman.org.

INTERROGATORY NO. 7: Unless your response to the prior Request for Admission⁹ (No. 13) is an unqualified admission, please identify any articles at daveeastman.org that you did not author, and provide the name of the author(s) of each such article.

RESPONSE:

The following article is based on a press release that was initially coauthored with Representative Christopher Kurka: <https://daveeastman.org/articles/the-governor-must-honor-his-commitment-and-end-state-funding-of-elective-abortions/>

REQUEST FOR ADMISSION NO. 14: Please admit that you did not pay for your flight to Washington, D.C. in January 2021.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3995; Fax: (866) 813-8645

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 15: Please admit that you do not believe Joe Biden legitimately won the 2020 presidential election.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 16: Please admit that you have personally communicated with members of Oath Keepers.

RESPONSE:

Admit that I have personally talked to people who have self-identified as members of Oath Keepers.

DATED this 20th day of September, 2022

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiff

By: /s/ Savannah Fletcher

James J. Davis, Jr., AK Bar No. 9412140
Savannah Fletcher, AK Bar No. 1811127

CERTIFICATE OF SERVICE

PLAINTIFFS FIRST SET OF DISCOVERY REQUESTS
Randall Kowalke v. David Eastman, et al., Case No. 3AN-22-07404 CI
Page 19 of 20

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3895; Fax: (966) 813-8645

I hereby certify that on this date
a true and correct copy of the
foregoing document was served via
EMAIL at or before 1:10 pm on:

Lael Harrison and Thomas Flynn
State of Alaska, Department of Law
Lael.harrison@alaska.gov
Thomas.flynn@alaska.gov
Courtesy copy emailed to: nomi.saxton@alaska.gov

Joseph Miller
Law Offices of Joseph Miller, LLC
info@aklaw.us
millerlaw@acsalaska.net

s/Savannah Fletcher
Signature

September 20, 2022
Date

EXHIBIT 2

Re: Kowalke v. Eastman -- Rule 37 Correspondence

From: Joe Miller (miller@aklaw.us)
To: gdudukgian@njp-law.com
Cc: sifletcher@njp-law.com; lael.harrison@alaska.gov; thomas.flynn@alaska.gov; jdavis@njp-law.com; millerlaw@accs.alaska.net
Date: Friday, October 28, 2022 at 10:00 AM PDT

Hi Goriune,

It is my understanding that we have responded to everything in your discovery requests addressing Representative Eastman's membership in Oath Keepers. If I am incorrect about that, let me know immediately and I will endeavor to correct any such deficiencies.

As to our objections to your other discovery requests, I further explain and add to our objections as follows:

First, your complaint alleges that Representative Eastman's violation of the Article XII, Section 4, arises exclusively from his membership in the Oath Keepers. Nothing else. There is no allegation anywhere in your Complaint – or, for that matter, any evidence anywhere – that Representative Eastman has ever personally advocated for the overthrow by force or violence the government of the United States or Alaska. And speaking of red herrings, even if you had made such an allegation, violation of the loyalty clause does not require participation, "belong[ing] to [an] organization" suffices, as you've alleged. And you have those relevant documents from the discovery we provided.

Moving from your complaint to the language of the loyalty clause itself, I bring your attention again to its present tense. Article XII, Section IV is a disqualifier for anyone "who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States. . ." Unlike Section 3 of the 14th Amendment, this state constitutional provision is written in the present tense, not past tense. It applies to *current* advocacy, not any that Representative Eastman may have done two years ago.

So your client's transparent effort to comb through potentially tens of thousands of emails in an attempt to find something that can be used politically against him or, for that matter, something incriminating, is rejected. Your discovery requests that extend beyond membership are simply not calculated to lead to the admission of relevant evidence. Rather than "highly relevant," as your email below suggests, your requests as they pertain to information outside of membership, are entirely irrelevant to your claims. To quote the rule (26(b)(1)), they are not "reasonably calculated to lead to the discovery of admissible evidence."

You need to remember that your client, long before this litigation commenced and even well-before his failed complaint to the Division of Elections, publicly maligned Representative Eastman as a "fascist." He wanted Representative Eastman out of office months before he supposedly was disturbed by Representative Eastman's Oath Keepers connection. His motivation is transparently political, as are his improper discovery requests.

I think Mr. Kowalke's fishing expedition for incriminating evidence also bears further discussion. Essentially, your position now appears to be that Representative Eastman is not only a member of the Oath Keepers, a "terror" organization per your experts, you are now going far beyond that by making the extraordinary suggestion that Representative Eastman himself has personally "participated in" insurrection (18 USC § 2384) and/or treason (18 USC § 2383). This is consistent with your client's libelous statement in his DOE complaint that Representative Eastman has "given aid and comfort to participants in the January 6th insurrection against the government of the United States." I'm sure you are aware that treason carries with it the death penalty, insurrection up to ten years imprisonment. Your discovery requests, by your admission below, are calculated to find evidence of such crimes. I know of no such communications and am confident no such communications exist but, in fact, if any were discovered, the Fifth Amendment would be directly implicated. So this is yet another dead end for your client.

But again, your requests fall outside of the claims made in your complaint. And the request for evidence of Representative Eastman's personal participation in treason or insurrection is based upon nothing more than your assertions below. Please understand, "A bare allegation of wrongdoing . . . is not a fair reason for requiring a defendant to undertake financial burdens and risks to further a plaintiff's case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 363 (1978).

Even if Judge McKenna were to reject the above objections, I believe he would find your request overly "burdensome." You've failed to comment on Representative Eastman's current campaign, and that is understandable given your client's past statements on his political motivations against Representative Eastman. But the hotly-contested campaign is absolutely a factor that must be considered in evaluating the discovery burden. Effectively, you contend that Representative Eastman should essentially put his campaign on hold as he combs through thousands upon thousands of emails, likely thousands upon thousands of other digital communications, to find the requested evidence of treason and/or insurrection.

This is not a matter of a simple search. Obviously, any document (RFP 19) that pertains to your search terms would need to be reviewed. And keep in mind your incredibly broad definition of "document": "the original or any 'hard copy' of electronically stored data in any medium, and all non-identical copies (whether by interlineations, notations written thereon, indication of copies sent or received, or otherwise) of all writings and recorded materials of any kind that are or have been in your possession, custody, or control." Also, every solitary social media post made during the years in question would have to be reviewed individually. In an expedited case, of your client's own making, there simply isn't time for this, especially given Representative Eastman's campaign. Disturbingly, given your discovery requests' disconnect from the complaint, it appears their real purpose is election interference.

There may also be an authentication issue that you likely have not considered. Even if Representative Eastman, during the height of his campaign, had the time to spend the hundreds if not thousands of hours necessary to comb through all of his electronic records and the thousands of emails he has used, how do you expect him to authenticate those communications? I don't know about you, but most of us are busy enough that we cannot even authenticate what we had for breakfast last Monday, let alone the past two years of communications.

I should also note that the language of your discovery requests matter. The idea that Representative Eastman should guess as to what you meant is not the way discovery is intended to work. When you ask about a specific numbered interrogatory, you will get a response in kind. I should note, however, that our response to RFP 3 includes the objections stated herein, as well as those stated in response to Interrogatory No. 3. So even had you referred to a different interrogatory number, we still would have objected. Similarly, when you use common terms, such as "used," expect Representative Eastman's responses to construe them as such terms are typically defined. It is not Representative Eastman's job to divine what you intended by your requests.

Even beyond the concerns listed above, including the fact that Article XII, Section 4 requires *present* acts for disqualification, the time frame for the requested communications has little correlation with your allegations. Your complaint makes no allegations that Oath Keepers' advocacy for the overthrow of government by force or violence predated January 6. Nor have your "experts" opined that. But you are asking for communications and documents that extend far before January 6.

Finally, as to social media postings, your client apparently has the time and resources to review all such public postings and I encourage him to do so. And the rules certainly expect that. See Civil Rule 26(b)(2)(A)(i). In fact, as to all electronic communications, whether social media or email, if the Court were to somehow deem them discoverable, it would be far more convenient for you to obtain them by subpoena from the companies holding such data than to have Representative Eastman shut down his campaign at this critical time to comply, if compliance were even possible. See *id.*

In short, you are requesting that Representative Eastman not only shut down his campaign, a campaign that is already damaged by the preliminary injunction that you were granted, and undertake the extraordinary burden of reviewing every statement he has made on the Internet in the last two years, review thousands of emails and create privilege logs, and divulge other information that is wholly irrelevant to your claims.

Again, if we have missed anything regarding Representative Eastman's membership in Oath Keepers, please let me know and I'll endeavor to comply with such request.

Joe Miller
Law Offices of Joseph Miller, LLC
P.O. Box 83440

Fairbanks, AK 99708
 (907) 978-9098 Direct
 (907) 451-8559 Office
 (888) 421-8803 Fax

CONFIDENTIALITY NOTICE: This communication with its contents and any attachments may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act and subject you to liability. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

----- Original Message -----

On Wednesday, October 26th, 2022 at 8:44 AM, Goriune Durdugian <gdurdugian@njp-law.com> wrote:

Joe,

We received and reviewed your responses to Plaintiffs First Set of Discovery Requests for David Eastman. We are sending this email pursuant to Rule 37 in the hopes of avoiding a needless discovery motion.

You objected and failed to produce *any* responsive documents to Request for Production Nos. 3-6, 8-14, and 16-18. In addition, you objected to RFP No. 7 and produced only an incomplete response of a single document.

These discovery requests are *highly* relevant to the central issues in this case, i.e., whether the Oath Keepers organization advocates the violent overthrow of the United States government, and whether Representative Eastman has been aware of and/or participated in the Oath Keepers' illegal activities to overthrow the United States government. Thus, your objections to these discovery requests are manifestly improper.

First, you claim that these requests for production are "unduly burdensome and onerous." To the contrary, they merely require your client to perform a simple word search in the relevant email and social media platforms, and he has already had more than a month to do so. Further, your claim that Representative Eastman has used "tens of thousands of addresses" during the period in question is preposterous. In any event, the law is well settled that where "discovery requests are relevant, the fact that answering them will be burdensome and expensive is not in itself a reason for a court's refusing to order discovery which is otherwise appropriate." *Brown Bear v. Cuna Mut. Group*, 266 F.R.D. 310, 320 (D.S.D. 2009); see also *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 260, 265 (N.D. Ill. 1979) ("Because the interrogatories themselves are relevant, the fact that answers to them will be burdensome and expensive is not in itself a reason for refusing to order discovery which is otherwise appropriate.") (citation and internal quotation marks omitted); *Alexander v. Parsons*, 75 F.R.D. 536, 539 (W.D. Mich. 1977) (stating that "the mere fact discovery is burdensome . . . is not a sufficient objection to such discovery, providing the information sought is relevant or may lead to the discovery of admissible evidence"); *Burns v. Imagine Films Entertainment, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y. 1996) (holding that the fact that answering interrogatories will require the objecting party to expend considerable time, effort, and expense consulting, reviewing, and analyzing huge volumes of documents and information was an insufficient basis for an objection).

Second, you assert that "many" of the requested documents may be privileged. If so, you need to provide a privilege log that complies with Rule 26(b)(5).

Third, you assert that Representative Eastman no longer has reasonable access to the electronically stored information requested in these RFPs, because the accounts are no longer active and/or Representative Eastman no longer has the sign in credentials. As you know, Rule 34 only requires the production

of documents in the "possession or control" of a party, which are terms that have a well-defined meaning. Thus, your objection is a red herring. On the other hand, if Representative Eastman has purposely closed accounts or deleted emails since the filing of this lawsuit, he may be liable for spoliation of evidence.

In short, we intend to file an expedited motion to compel responses to these discovery requests, and will seek an award of attorney's fees and other available sanctions under Rule 37, if complete responses are not received by 9am on Friday, October 28. If you want to meet and confer, we can discuss this during our teleconference at 9am this morning.

Goriune Dudukgian
Northern Justice Project, LLC
406 G Street, Suite 207
Anchorage, AK 99501
Tel: (907) 308-3395
Fax: (866) 813-8645
<https://njp-law.com/>

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

EXHIBIT 3



Oath Keepers and fellow patriots,

As you know, this is the single most important election in our lifetimes, and possibly in American history. We face an open, now obvious insurrection against our Constitution being waged by the American Marxist left; by the Democratic Party which the radical left has captured; by their many Deep State allies; their Muslim Brotherhood led Jihadist allies; their foreign allies such as Communist China; and globalist elites such as George Soros. All of these enemies, both foreign and domestic, are now engaged in an assault on our Republic, intent on its destruction.

GOOD! As iconic Marine General Chesty Puller put it:

**"All right, they're on our left, they're on our right,
they're in front of us, they're behind us.
They can't get away this time."**

It is a GOOD THING that our many enemies are stepping out of the shadows, taking off their masks, and revealing their America hating, totalitarian natures.

Because of this, millions of Americans – including millions of black and Hispanic Americans – can finally see what we've been sounding the alarm about for over a decade, and they are now not just walking away from the Democratic Party, they are RUNNING away as the Democratic Party lurches wildly to the left, truly becoming the American Communist Party. Because of this, President Trump is garnering

DCE000046

record-breaking vote levels from Black and Hispanic Americans, especially among black and Hispanic men.

Those millions of newly red-pilled Americans can finally see that we are in a fight for our nation's survival, a fight for the survival of human liberty and Christianity in the West, and a fight for the survival of human liberty worldwide. As President Ronald Reagan said:

'If we lose freedom here, there is no place to escape to. This is the last stand on earth.'

This election is part of a deeper, ongoing life and death struggle between liberty and a totalitarian nightmare future. It is now our turn to stand in the breach, to take the torch passed to us by generations past, and to defend the light of liberty entrusted into our hands.

The good news is that in an honest election, President Trump wins hands down, in a massive sweep.

The bad news is that the Deep State, the Marxist controlled Democratic Party, and all their allies, are pulling out all the stops in a desperate attempt to steal the election, take power, and destroy this nation once and for all.

We overwhelmed their vote fraud in 2016, but they learned from their mistakes and this time around they will not only commit even more massive vote fraud, they will also refuse to concede a Biden loss, no matter the outcome of the election, and they will seek to foment unprecedented civil unrest and violence nationwide in a "color revolution" uprising designed to cause as much confusion, chaos, and distrust in the outcome as possible, and especially to influence, intimidate, and coerce local and state voting officials, state governors, state Attorney Generals, state legislators, Electoral College electors, state and federal judges, the U.S. Congress, etc, and ultimately even trying to convince the U.S. military to side with them.

They will demand that Trump concede the election immediately after the polls close, and any refusal to do so will be characterized as a "coup." In fact, no matter what happens, the left will label anything other than a Biden victory a "coup" and they will engage in nationwide riots, violence, and strife in the name of "stopping the coup" (a Trump victory).

WHAT TO DO TODAY

Today, Oath Keepers has undercover members watching at polling places nationwide, to guard against fraud, just as we did in 2016. We are also watching for possible leftist violence and intimidation against conservative voters (the clear pattern of leftist violence against Trump supporters makes that a necessity). Today, many Oath Keepers members will also be official poll watchers, right along with other patriotic Americans. We salute you all!

And we encourage all of our members, supporters, and readers to do likewise- assist in your local areas in keeping an eye on the election today and in the days to come,

DCE000047

to keep it as clean and legitimate as we can, in the face of expected widespread fraud by the left, and likely attempts at intimidation and violence by radical leftists.

You must understand that it will likely NOT be all over tonight. The left will drag this out as long as they can, through all of the steps I outlined above. This will likely drag on for weeks, and in all of that, violence and intimidation will be used. Be prepared to defend against that terrorism in your neighborhood, town, county, and state.

However, it is CRITICAL that all who will be watching out for attempted vote fraud and/or intimidation be undercover and NOT in visible Oath Keepers gear and also NOT be open carrying weapons. We urge other patriot groups to do likewise. Go "grey man" today.

The left (including the left dominated mainstream media), is very good at projection – at accusing us of doing what they are in fact doing. They would love nothing better than photos or video of visibly armed, open carry Trump supporters standing outside polling places – or anyone standing around in military uniforms. Even if you are not open carrying, and not wearing military clothing, if you are identifiable as being a member of Oath Keepers, a Three Percenters group, militia, etc., you can expect the media to play that footage over and over as they accuse us of intimidating voters even though we would be there for the exact opposite purpose of protecting people against unlawful violence and intimidation. The core leftist strategy is to accuse Trump and his supporters of suppressing votes and declare his re-election illegitimate. They will certainly do that no matter what we do, but don't make it easier on them by giving them the photo op they want. Don't take the bait.

In 2016, the skilled LEO and military veterans of Oath Keepers went "grey man" undercover at polling places nationwide. That helped to keep down blatant vote fraud, as bad actors could not know if they were under the observation of trained eyes. Our members coordinated closely with local law enforcement, and reported all suspicious activity to them. We also complied carefully with all local and state laws and regulations on activity at or near polling places. We will be doing the same today.

Please support our work by donating what you can (every little bit helps). We have an amazing, broad and deep talent pool made up of incredible military, police, fire, and EMS personnel (both current serving and veterans) who put themselves into harms way FOR FREE as unpaid volunteers, but they can't do what they do so well without your support. You can help provide the fuel for our efforts here:

DONATE

Oath Keepers and patriots, as you stand watch today, you will be under a microscope, so be sure you are in strict compliance with the rules. But be on-guard and wary, as the domestic enemies of our Constitution don't care about clean

DCE000048

elections, truth, fairness, or the right of the people to actually chose their own leaders. They care only for power.

If you are an official poll watcher, stick to your guns whenever anyone attempts to stymie your duty to make sure the rules are followed.

To **BE PREPARED FOR WHATEVER MAY COME** continue to read here:

<https://oathkeepers.org/2020/11/oath-keepers-critical-message-to-patriots-on-election-day-and-after/>

[VISIT US ONLINE](#) | [SEND US AN EMAIL](#) | [JOIN HERE](#)
[SUPPORT OUR MISSION](#)

COPYRIGHT © 2009-2020 OATH KEEPERS · ALL RIGHTS RESERVED | [UNSUBSCRIBE](#)

DCE000049



David Eastman <david.eastman@gmail.com>

Please renew your Oath Keeper membership

Oath Keepers Memberships <memberships@oathkeepers.org>
To: David Eastman <david.eastman@gmail.com>

Wed, Jun 6, 2018 at 12:42 PM

Sorry about that David... I'm not sure why my eyes sometimes miss (Founding Lifetime Member)!?? I guess they are Blurry sometimes. Thanks for everything.

Best Regards,

Rich Melville

Oath Keepers

National Membership Coordinator

From: David Eastman <david.eastman@gmail.com>
Sent: Tuesday, June 5, 2018 9:13 PM
To: Oath Keepers Memberships <memberships@oathkeepers.org>
Subject: Re: Please renew your Oath Keeper membership

How does a life membership expire?

Sent from my iPhone

On Jun 5, 2018, at 6:21 PM, Oath Keepers Memberships <memberships@oathkeepers.org> wrote:

Your Oath Keeper membership has expired. Please renew and help us defend the Constitution.

Please renew your membership here: <https://www.oathkeepers.org/membership-renewals/>

To Upgrade to a Liberty Tree or Lifetime Membership you will have to sign up as a new member, and PLEASE put your old member ID in the notes, so our membership staff gets the start date correct on your new ID <https://www.oathkeepers.org/membership/>

DCE000050

If you have already renewed and paid your membership dues, pardon this e-mail.

With your continued support, know that your membership dues and donations are going to further our mission to defend the Constitution, as we swore an oath to do, and also to help Americans in need.

In addition to our continuous outreach to current serving military and police, Oath Keepers members have been instrumental in defending the life, liberty, and property of Americans across the nation.

We stood guard on rooftops in Ferguson, MO to stop murderous arsonists from burning both occupied apartments and small businesses to the ground. We helped protect a ranching family from the overreaching BLM at Bundy Ranch in 2014 as well as helping to ensure the due process rights of traditional, small-claim miners at the Sugar Pine Mine in Oregon and again in Lincoln, Montana. Oath Keepers stood up in Washington DC when the government shut down the WWII Memorial; we took down the barricades and stood guard to ensure the Memorial stayed open. We then stood guard at military recruiting offices across the nation after the deadly shootings in Chattanooga, Tennessee, as part of our "Operation Defend the Defenders."

On election day 2016 we monitored the polls for voter fraud and any attempted voter intimidation. On Inauguration Day, Jan 20, 2017, we provided volunteer security escorts for Inauguration attendees under threat from Antifa violence, and we also ran an intelligence operation that helped provide evidence to the D.C. Metro PD that was later used in prosecution of the Antifa rioters.

In 2017 our military and police members successfully defended numerous free speech events from Antifa violence across the nation including in Berkeley, CA (twice), Boston, MA, Portland, OR, Dallas, TX, Austin, TX, Phoenix, AZ, etc. Our record against Antifa is impeccable, with win after win. As a result, ACT for America requested our assistance with security at their numerous March Against Sharia events nationwide on June 10. We successfully provided Personal Security Details for speakers under death threat from Islamicist Extremists/terrorists as well as preventing Antifa from shutting down the events.

We also deployed to successfully perform hurricane disaster relief in Louisiana, Texas, Florida, and Puerto Rico.

For 2018 we will be focused on "uniting the American warrior class" by bringing together military, police, fire-fighters, EMTs, Search & Rescue, and veterans, along with patriotic gun owners - that is the warrior class who must come together in each state to defend the Constitution. We will focus on forming unified local and state teams who can serve the nation when called, as part of our Community Preparedness Team(CPT) Program.

DCE000051

Your dues, donations, and participation make it all possible.

We look forward to working with you to defend the Constitution and to restore the Founders Republic. Thank you for your continued support of Oath Keepers!

For the Republic,

Stewart Rhodes

Founder and National President of Oath Keepers

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

RANDALL KOWALKE,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID EASTMAN, STATE OF)
 ALASKA, DIVISION OF ELECTIONS,)
 and GAIL FENUMIAI in her official)
 capacity as Director of Elections)
)
 Defendant.)

Case No. 3AN-22-07404 CI

12

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel Discovery Responses is GRANTED. Defendant David Eastman's objections to Requests for Production Nos. 3-14 and 16-18 are OVERRULED. Defendant Eastman shall produce all responsive documents by _____.

Pursuant to Alaska Civil Rule 37(a)(4)(A), defendant Eastman is HEREBY ORDERED to pay the reasonable expenses, including attorney's fees, incurred by plaintiff Randall Kowalke as a result of having to file the motion to compel. Plaintiff shall present this Court with an accounting of all such expenses within ___ days of the date of this Order, upon which this Court will base its award.

DATED this _____ day of _____, 2022 at Anchorage, Alaska.

NOT USED

Hon. Jack McKenna
Superior Court Judge

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

OCT 23 2022