**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**RICHMOND DIVISION**

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| ROY COCKRUM; SCOTT COMER; and ERIC SCHOENBERG,<br><br>Plaintiffs,<br><br>v.<br><br>DONALD J. TRUMP FOR PRESIDENT, INC.,<br><br>Defendant. | Civil Action No. 3:18-cv-484-HEH |

**SECOND JOINT STATEMENT REGARDING DISCOVERY PLANS**

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## INTRODUCTION

Pursuant to this Court's January 30, 2019 Order (ECF No. 84), as well as Rule 26 of the Federal Rules of Civil Procedure, Local Civil Rule 26, this Court's Scheduling Order issued on December 27, 2018 (ECF No. 68) and accompanying Pretrial Schedule A (ECF No. 68-1), and the pretrial conference held on January 24, 2019, counsel for Plaintiffs Roy Cockrum, Scott Comer, and Eric Schoenberg ("Plaintiffs") and counsel for Defendant Donald J. Trump for President, Inc. ("Defendant" or the "Campaign") respectfully submit their respective positions regarding discovery and case schedule for this Court's consideration.

Counsel for the parties initially conferred via telephone pursuant to this Court's December 27, 2018 Scheduling Order on January 2 and 4, 2019 (ECF No. 68) (the "Scheduling Order"), and submitted their First Joint Statement Regarding Disputed Discovery Plans on January 11, 2019. The Court heard argument on Defendant's pending Motion to Dismiss Plaintiffs' operative Amended Complaint on January 24, 2019. The Court also conducted a pretrial conference on January 24, 2019, at which the Court instructed counsel to continue their Rule 26(f) meet and confer conference and submit a joint statement should any disputes remain regarding discovery and case schedule remain. The parties subsequently met and conferred by telephone on January 30 and 31, 2019. The parties submit this report regarding the issues to which they have agreed, and the issues that remain in dispute.

## I. PLAINTIFFS' POSITION ON DISCOVERY

Pursuant to this Court's Order of January 30, 2019, Plaintiffs provide the following information to enable the Court to understand the scope of contemplated discovery in this litigation; to demonstrate that the concerns raised by Defendants with respect to separation of powers and the First Amendment remain dramatically overstated; that discovery, including third

party discovery in this case is well within this Court's case and discovery management capabilities as well as permissible under pertinent case law; and to set forth the alterations to the usual discovery limits that are warranted in light of the complexities of this case.

**A. Scope of Discovery**

As the Court is aware, Plaintiffs have alleged claims pursuant to Section 1985 and state-law torts, and theories of conspiracy and aiding and abetting liability for the Campaign, and the Campaign has in turn asserted many defenses. ECF Nos. 8 (Amended Complaint), 71 (Answer). Plaintiffs intend to use the usual available tools (document requests, third-party document subpoenas, interrogatories, requests for admission, and party and nonparty depositions) to discover information pertinent to the elements of these claims and theories of liability – which includes seeking evidence to support the Defendant's involvement in the alleged publication of offending material and the alleged conspiracy.

1. Party Discovery. Plaintiffs have started the discovery process by serving targeted document requests to the Campaign for documents in its possession or control regarding the core allegations and events alleged in the complaint, including the Campaign's knowledge of and involvement in the DNC Hack, the WikiLeaks publication of the materials stolen in the DNC Hack, and the Campaign's communications or coordination with Russia or WikiLeaks regarding the DNC Hack.[1] ECF No. 75-1.

[1] The Campaign has repeatedly claimed that it is temporally impossible for it have been aware of (or involved in) the "hack." ECF No. 83-1 at pp.2-3 ("from the face of the Complaint: Plaintiffs have not alleged the Campaign's involvement in the hack"); *see also* Jan. 24 Hrg. Trans. Def's counsel, at 6:15-21 ("In fact, if you look at the complaint, Paragraph 86, it says that the hacking occurred in July of 2015 and lasted certainly no later than March of 2016. The first alleged meeting occurred in April of 2016. So it would literally have been physically impossible for us to be aware of their activity prior to it occurring."). That is not true. As detailed in the Complaint, the "hack" is not a single action: the Russians infiltrated the DNC systems, used malware to gain

Plaintiffs' initial document requests also seek basic information regarding the structure of the Campaign and the role and relationship between the Campaign and its employees, officers, directors, and advisors. These requests are designed to obtain information relevant to understanding who was an agent or representative of the Campaign in 2016, and which individuals remain part of the Campaign today. These facts have import for both the scope of discovery and, ultimately, liability. The Campaign has, as of the parties' January 30, 2019 Rule 26(f) conference discussion, taken a narrow view that the Campaign is limited to "current paid employees," and currently, a single "Director." The Campaign expressly confirmed that it does not understand party discovery (including the pending document requests) to include the President, or any other individual either formerly or currently affiliated with the Campaign beyond the Campaign's current paid employees and its one Director.[2] Regardless of the outcome of any dispute over this asserted definition of "party," it is clear that in light of the passage of time since the operative events in 2016, there are a significant number of individuals who were formerly involved in and acted on behalf of the Campaign in 2016 who are not presently in the Campaign, and there are therefore a significant number of non-party witnesses with relevant information.

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access to data, explored the data and tested means for extraction, and then, later executed the exfiltration of particular information, including the e-mails that ultimately were published on WikiLeaks regarding Plaintiffs. ECF No. 8, at ¶¶ 86-88; *United States v. Netyksho*, No. 18-CR-215, ECF No. 1, ¶ 29 (D.D.C. 2018) ("Between . . . May 25, 2016 and June 1, 2016, the Conspirators . . . stole . . . emails from . . . DNC employees."). The communications between the Russians and the Campaign, particularly the discussions between Russian Intermediary Joseph Mifsud and George Papadapolous (and Mr. Papadapolous' discussions with high-ranking campaign officials), began *before* the emails were actually stolen in late May or early June 2016. ECF No. 8, ¶¶ 94-99.

[2] Defendant's narrow definition of "party" as limited to current "paid employees" appears to be inconsistent with the usual Federal Rules pertaining to discovery from corporate entities. Plaintiffs will meet and confer with Defendant in the context of particular discovery requests as appropriate, and raise any disputes for resolution through this Court's normal discovery procedures.

In responding to the Court's request to address the scope of anticipated discovery, Plaintiffs begin with the usual rules for the scope of party and nonparty discovery. Here, the Campaign is a private corporation and there is nothing exceptional about requiring the Campaign, as a defendant, to respond to discovery served within the scope of Rule 26(b)(1), regardless of the extraordinary context of the underlying allegations. Given the Campaign's assertions that party discovery applies only to its current paid employees and lone Director, there can be no claim that party discovery raises any concerns regarding separation of powers.

Indeed, the concerns raised below by the Campaign regarding "burdens on the Executive Branch," by its own admission, do not pertain to discovery to the Campaign as a party in this case. It in no way violates the separation of powers to subject the Campaign to civil discovery. In *Clinton v. Jones*, 520 U.S. 681 (1997), the Supreme Court held that separation of powers was not violated even where a sitting President was directly sued and subjected to discovery and trial about matters that occurred prior to assuming the Presidency. 520 U.S. 681, 703-706, 710 & n.40 (1997). If a trial against the President did not implicate the separation of powers, then it is surely true that requests for production propounded on a private corporate entity do not either, even if that entity supported the candidacy of the President. The Campaign should collect and produce responsive documents in its possession and control like any other party in civil litigation, and any complaints regarding burden arising from the scope particular requests are more properly addressed during the usual discovery dispute mechanisms.

The Campaign's blanket assertions below that document requests to it related to this case invade territory protected by the First Amendment fare no better. *See* ECF No. 77, at 3-4 (Plaintiffs' Opposition to Motion to Stay). None of the requests for communications between individuals affiliated with the campaign and their alleged co-conspirators can possibly raise such

a concern. *Cf. Perry v. Schwarzenegger*, 591 F.3d 1147, 1164-65 (9th Cir. 2010) (noting that party claiming First Amendment privilege had already agreed to disclose external communications). The Campaign appears to be contending that internal communications regarding illegal acts (including the DNC Hack and the publication of materials on WikiLeaks) are somehow protected by the First Amendment – which has absolutely no basis in law (nor does the Campaign provide one).[3] To the extent there are any legitimate claims of privilege, they can be dealt with in the normal course of discovery management.

Notably, the Campaign appears to be arguing two things in tension with each other regarding Plaintiffs' document requests: that they are so burdensome that the Campaign cannot respond or produce a privilege log in the usual amount of time under this Court's rules, and that they have no responsive documents at all. The Campaign provides no basis for not producing the relevant documents it has according to the usual rules, including the obligation to create a privilege log.[4]

[3] The Campaign also attempts to use the First Amendment as a shield from discovery into documents, should they exist, discussing the use of the stolen e-mails for political gain, and pertaining to any quid pro quo providing assistance to Russia. These documents, should they exist, are direct evidence of an unlawful conspiracy to commit illegal acts, and are in no way protected from disclosure by the First Amendment. Moreover, the Campaign's extreme position that the First Amendment protects the *identity* of individuals working for or advising the Campaign is equally specious. For the individuals identified in the Complaint, the affiliation with the Campaign was public knowledge. Indeed the Campaign itself identified many of them in public announcements.

[4] Defendant failed to provide Plaintiffs with any privilege log along with the objections to Plaintiffs' Requests for Production of Documents. Pursuant to the unambiguous language of this Court's orders (ECF No. 68, 68-1), that privilege log was plainly due along with Defendant's objections to the requests on January 29, 2019. Defying this Court's orders, Defendant simply objected to the obligation to provide a log rather than provide one. Defendant did not move this Court for relief from the operative orders or deadlines, even after this Court reiterated on January 25, 2019 that Schedule A remained in effect. ECF No. 81. Defendant has therefore waived privilege for these requests. ECF No. 68-1. Plaintiffs address further below Defendant's general request to move the due date for any privilege log until later.

The Campaign expresses concern that discovery disputes will burden this Court and the appellate courts – as a result no doubt of what counsel for Defendant characterized during the pretrial conference as "trench warfare." But such rhetoric aside, there is no basis for believing that any counsel will not participate in the reasonable resolutions of discovery disputes. If not, this Court is well-equipped to resolve disputes during the usual course of discovery management.[5]

Moreover, discovery from the Campaign does not implicate any concern regarding interference with any existing criminal indictments or prosecutions. Indeed, according to the Campaign's assertions, all of the individuals in Plaintiffs' Complaint alleged to be involved in various conspiracy-related actions on behalf of the Campaign are non-parties.

Finally, the Campaign's discussion of discovery to Plaintiffs below, while facially overbroad, raises nothing that cannot be resolved in the normal course of discovery management.

2. Discovery to Third Parties, Including Individuals Involved in the Campaign in 2016.

Plaintiffs' Complaint identifies a number of individuals known to have participated on behalf of the Campaign in 2016 in discussions or meetings with Russians regarding stolen information and documents stolen in the DNC Hack and/or the use of that material for political gain, including the publication of that material on WikiLeaks. Plaintiffs intend to seek discovery from many of these individuals, beginning with subpoenas duces tecum pursuant to Federal Rule of Procedure 45 for the production of relevant documents. The scope of this non-party discovery under the Federal Rules is governed by the same substantive scope standard as is party discovery. *See* Rule 26(b)(1); Rule 45. Rule 45(a)(4) requires notice to Defendant of any third-party

[5] Neither *Cheney v. U.S. District Court*, 542 U.S. 367 (2004), nor *Perry*, 591 F.3d at 1158, relied upon by the Campaign, stand for the proposition that any discovery dispute involving a political campaign warrants appellate review.

document discovery prior to service of the subpoena. The applicable rules, and the procedures of this and every federal court, also provide for the opportunity for non-parties to challenge and resolve disputes over any such requests in the normal course of litigation.

The document discovery may be sufficient for many of these individuals. Plaintiffs also do anticipate seeking depositions from some individuals named in the Complaint as involved on behalf of the Campaign in various conspiracy-related meetings and communications – hence Plaintiffs' previous request for an upper limit of nonparty depositions in this case of 20, to be discussed further below.

The Campaign in its Motion to Stay, in the Rule 26(f) conferences, and in its arguments here has identified concerns with discovery from certain categories of individuals with information or documents relevant to Plaintiffs' claims: indicted, convicted and incarcerated individuals (including Roger Stone and Paul Manafort); current federal officials; and individuals outside the United States (including individuals in Russia and involved in WikiLeaks). Plaintiffs address each in turn, but as explained below, all of the issues presented by the discovery that may be necessary for this case are well within this Court's ability to manage, and none warrant staying discovery at this time. Moreover, it is important to note that there are a significant number of nonparty witnesses who have information regarding allegations in Plaintiffs' Complaint who do not fall within these three categories and are not subject to any of the Campaign's expressed concerns. For those individuals who possess relevant information, nonparty discovery should proceed without any limitation beyond the usual scope of the Federal and Local Rules.

a. Discovery to Indicted, Convicted or Incarcerated Individuals. Plaintiffs are aware of six individuals who are likely to possess information or documents relevant to Plaintiffs' claims and who have been recently indicted or convicted by federal prosecutors: Roger Stone, George

Papadopoulos, Michael Cohen, Paul Manafort, Lt. Gen. Michael Flynn, and Richard Gates. Plaintiffs believe that the documents of these individuals relevant to this matter may have already been collected in response to subpoenas in other matters and that relevant documents may therefore be under the individuals' control via their counsel. Plaintiffs intend to subpoena relevant documents. While pending criminal prosecutions commonly proceed in parallel to civil litigation, if the Court prefers greater coordination to achieve the proper balance between the rights of civil litigants and the interests of federal prosecutors, the Court could require Plaintiffs to serve their intended Notice of subpoena duces tecum pursuant to Rule 45(a)(4) on counsel for any such individual as well as the appropriate federal prosecutor's office, and allow the nonparties to be heard as needed.

While Plaintiffs in the normal course would seek to also depose these individuals in light of their personal knowledge of relevant information, any considerations surrounding depositions can wait for the resolution of any issues pertaining to the document requests, particularly because it would be inefficient for Plaintiffs to depose these individuals before first receiving and reviewing relevant documents. Should Plaintiffs choose to subpoena any currently incarcerated individual for deposition, Plaintiffs would comply with any and all requirements imposed by the Federal and Local Rules for doing so. Should the Court prefer, it could also order Plaintiffs to comply with Rule 45(a)(4) notice procedures for any deposition subpoenas that include not only notice to Defendant but notice to any counsel for the subpoenaed individual and federal prosecutors, as needed.

b. Discovery to current federal employees and officials. There are only *four* current federal employees or officials identified in the Amended Complaint: Jared Kushner, Kellyanne Conway, Vice President Pence, and President Trump.

With respect to Mr. Kushner (currently a Senior Advisor to the President) and Ms. Conway (currently Counselor to the President) there are no restrictions appropriate or necessary on third-party document or deposition discovery. Defendant's protestations to the contrary, these two individuals are not high-ranking governmental officials for whom the response to document requests or scheduling of a deposition on a non-emergency basis would interfere with the running of the Executive Branch. If the sitting *President* is subject to deposition for pre-office conduct (*Clinton*, 520 U.S. at 704-05), there is no separation of powers argument that protects these federal employees from discovery concerning *pre-office* conduct because they happened to obtain work in the White House. Nor are either of these individuals even subject to this Court's special rules for deposition procedures for high-ranking government officials. Local Rule 45(D). To the extent these individuals have documents and information in their possession relevant to Plaintiffs' claims, that information is discoverable. Obviously in scheduling any such depositions, counsel can work in good faith to accommodate requests regarding time and location.

Based on Plaintiffs' present understanding of the facts, they do not expect to need to seek any discovery from Vice President Pence (who is only named in a single Complaint allegation).

Defendant has expressed repeated concern regarding intended discovery from the President, who may possess information relevant to the allegations in the Complaint. Plaintiffs also do not presently intend to seek discovery from the President. Indeed, Plaintiffs want to prove the elements of their claims, and their conspiracy allegations without ever seeking discovery from (or otherwise burdening) any high-ranking governmental official. However, it is not outside the conceivable universe of events that discovery into the alleged conspiracy, including document and deposition discovery from other individuals, may disclose that relevant information exists exclusively in the President's possession or control. If that circumstance comes to pass, and

Plaintiffs' counsel in their professional judgment determines such information is in the best interests of their clients and this litigation to discover, Plaintiffs will notify the Court to discuss appropriate procedures for determining whether Plaintiffs may seek such information pursuant to Local Rule 45. Although Local Rule 45 pertains only to deposition subpoenas, Plaintiffs would adhere to this requirement for any subpoena duces tecum as well. For all of these reasons, the concerns expressed by Defendant below are premature, and are certainly not reason to halt discovery now from the Campaign itself, or any other individuals. If these circumstances ever come to pass, which well may never happen here, this Court is equipped to manage all relevant concerns.

c. Individuals outside the United States. At this time, Plaintiffs do not believe it would be fruitful to serve discovery on individuals located outside the United States.

3. The Campaign's Proposed Limitations on Scope of Discovery

The Campaign below proposes two substantive restrictions on the scope of discovery in this case, neither of which is warranted.

a. July 22, 2016. The Campaign's proposal to limit any discovery to "documents dated before July 22, 2016" will exclude relevant evidence and thereby unfairly limit plaintiffs' ability to prove their case. This date is the date of Plaintiffs' injury by way of an overt act committed in furtherance of the alleged conspiracy, but that does not mean that Defendant or its co-conspirators stopped generating relevant evidence on that date.

In the first place, conspirators regularly generate evidence of a conspiracy after a conspiracy injures its victims. So the mere fact that plaintiffs were injured on July 22, 2016 does not mean that the conspirators somehow ceased to continue to produce evidence – sometimes even direct evidence – after that date. Only the Campaign at this point knows whether documents

generated after July 22, 2019 contain *direct* evidence of the conspiracy or the overt acts that resulted in Plaintiffs' injuries, including evidence divulging interactions between individuals affiliated with the Campaign, Russia and WikiLeaks. At the risk of stating the obvious, an e-mail generated on July 23, 2016 between the Campaign and an individual acting on behalf of Russia that says: "Thanks for all your help publishing the emails including the ones we helped you choose to target our political opponents, now we'll now do our part of the deal," would be relevant evidence that should be subject to discovery here.

The Campaign's proposed July 22, 2016 cut-off is also based on the false premise that the conspirators' alleged cover-up attempts and parallel conduct after July 22 are not relevant to Plaintiffs' claims of conspiracy. But courts have long recognized that cover-up attempts can be used to prove conspiracy allegations. *E.g.*, *Al Shimari v. CACI Premier Tech., Inc.*, 324 F.Supp.3d 668, 694 (E.D. Va. 2018) (observing that activities to "hide evidence . . . , such as by concealing detainees from Red Cross inspectors, further supports plaintiffs' claim that CACI employees had entered into the alleged conspiracies."). Likewise, long courses of parallel conduct are circumstantial evidence frequently used to prove an illegal conspiracy. *E.g.*, *Starr v. Sony BMG Music Entertainment*, 592 F.3d 314, 321 (2d Cir. 2010). The Campaign's proposed pre-injury limitation would therefore deprive the Plaintiffs of two important pieces of circumstantial evidence.

That leaves only the Campaign's suggestions that post July 22, 2016 discovery to the Campaign is too burdensome. These commonplace objections should be subject to the usual process of meeting and conferring and presenting disputes to this Court to manage, and are no basis for excluding discovery from the outset.

b. Subject-matter restriction. Defendant proposes below an extremely narrow interpretation of the relevant documents to this case, and then announces it has no responsive documents. This is not how discovery proceeds, and Defendant gives this Court no reason to impose such extreme restrictions here.

Defendant essentially asks this Court to limit discovery to communications between the Campaign (which in Defendant's scenario is unreasonably self-limited to "paid" employees, contrary to governing law) and "Russia" (without explaining which individuals would be deemed to be acting on behalf of Russia) prior to July 22, 2016, in which the Campaign and Russia expressly discussed "hacking the DNC's emails or releasing the DNC's emails on WikiLeaks." *See infra, Part II.* This exceedingly narrow scope would exclude any relevant evidence where individuals did not spell out their meaning (including, for example, Donald Trump, Jr.'s email exchange about information and documents in possession of Russia that could help the campaign or his response expressing love for the idea, especially later in the summer, ECF No. 8 ¶101,). Likewise, it would exclude powerful evidence of interactions with intermediaries purporting to engage with the Campaign on Russian's behalf, such as Mr. Papadopoulos' communications with Mr. Mifsud. ECF No. 8 ¶92-97.

Conspiracies, as this Court is well-aware, operate in secret and often must be proven through circumstantial evidence. Here, limiting discovery in this conspiracy case only to direct evidence specifically referencing the overt acts in question would contravene the long-standing principle that an illegal conspiracy can be shown on the basis of circumstantial evidence alone. *See Robertson v. Sea Pines Real Estate Co.*, 679 F.3d 278, 289 (4th Cir. 2012) ("Conspiracies are often tacit or unwritten in an effort to escape detection, thus necessitating resort to circumstantial evidence to suggest that an agreement took place."). It would also ignore that conspirators can

take steps to further obstruct investigators by utilizing code words, *see, e.g.*, *United States v. White*, 519 F. App'x 797, 807 (4th Cir. 2013), encrypted messaging, *see, e.g.*, *United States v. Campa*, 529 F.3d 980, 988, 1003, 1008 (11th Cir. 2008), fronts, *see, e.g.*, *United States v. Tucker*, 537 F. App'x 257, 263 (4th Cir. 2013), and intermediaries, *see, e.g.*, *United States v. Sampler*, 368 F. App'x 362, 367 (4th Cir. 2010). And, as discussed previously at argument and in Plaintiffs' opposition to the motion to dismiss, under well-established tort law, the Campaign can be held liable for the tortious conduct of its co-conspirators even if did not specifically intend for its co-conspirators to engage in tortious conduct. ECF No. 30, at pp. 19-20 & n.20. Defendant's proposed limitation is inappropriate for this reason as well.

**B. Defendants' Request for Stay of Discovery Pending Resolution of the Motion to Dismiss**

As the above discussion demonstrates, discovery should proceed in this case under the available rules and case management tools available to this Court. Just as the recent indictment of Mr. Stone does not alter this Court's analysis with respect to the pending Motion to Dismiss, nor does it alter the calculus that applies to this Court's consideration of the Campaign's request to stay all discovery pending resolution of that motion. [6] In the event the Court does grant the

[6] Plaintiffs did not submit a response to the Supplemental Brief submitted by Defendant regarding the Stone indictment, in light of this Court's order rejecting the filing for purposes of the motion to dismiss. Plaintiffs do wish to point out one inaccurate statement. Defendant's Supplemental Brief inaccurately described the facts alleged in the Stone indictment. Defendant claimed that the indictment supported the contention that there was no Campaign involvement regarding the WikiLeaks ("Organization 1") publication until *after* July 22, 2016 (when the e-mails involving Plaintiffs were published). ECF No. 83-1, at 2 ("In other words, according to the indictment, any purported Campaign involvement not only came after the hack of the DNC networks by Russia, but also came after the release of the DNC emails by WikiLeaks."). But the factual allegations in the indictment directly contradict that characterization:

> 11. *By in or around June and July 2016*, STONE informed senior Trump Campaign officials that he had information indicating Organization 1 had documents (Cont'd)

Defendant's request, in light of the length of time that could pass while the Court considers the legal issues, Plaintiffs respectfully request that the case schedule be extended by the length of any stay so as to eliminate any prejudice to Plaintiffs ability to complete discovery.

Neither of the recent cases brought against President Trump cited by Defendant in support of its request for a stay warrant a stay in this case. First, the plaintiffs in *Nwanguma v. Trump*, 2017 WL 3430514 (W.D. Ky. Aug. 9, 2017), sued President Trump directly, as well as the Campaign, for indirectly inciting violence during a campaign rally. The Court there initially denied the motion to dismiss, but upon reconsideration, reversed its ruling so all that remained was a claim for indirect incitement based on then-candidate Trump's speech. The Court certified that close issue, on which the entire remaining case turned, and stayed discovery until the Sixth Circuit ruled. That case provides no support here, where Plaintiffs have not sued the President, and where the issues pending on the motion to dismiss are neither close nor certification worthy.

Second, Defendant cites a case in which the State of Washington challenged an official policy enactment by the President and sought corresponding discovery: *Washington v. Trump*, 2017 WL 2172020, at *4 (W.D. Wash. May 17, 2017). The issues surrounding discovery into a

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> whose release would be damaging to the Clinton Campaign. The head of Organization 1 was located at all relevant times at the Ecuadorian Embassy in London, United Kingdom.

*U.S. v. Stone*, No. 19-cr-18, ECF No. 1 ¶ 11 (Jan. 24, 2019). The indictment also includes the following allegation, which is in no way limited in time to the period after July 22, 2016:

> 5. During the summer of 2016, STONE spoke to senior Trump Campaign officials about Organization 1 and information it might have had that would be damaging to the Clinton Campaign. STONE was contacted by senior Trump Campaign officials to inquire about future releases by Organization 1.

*Id.* ¶ 5.

President's official policy enactments have no parallel to a case against the Campaign for a pre-election conspiracy, and the decision of that court to stay discovery is thus inapposite.

**C. Other Proposed Discovery Limitations Per Schedule A and Rule 26**

**a. Nonparty Depositions**

In light of the complexity of this conspiracy case, as reflected in the Complaint's allegations (ECF No. 8), and the fact that many individuals previously employed by or affiliated with Defendant Campaign are no longer currently affiliated with the Campaign, Plaintiffs propose an increased limit of twenty non-party, non-expert depositions in this case.

The nature of the conspiracy allegations contribute to a higher than typical number of non-party witnesses in this case (ECF No. 8). The limit of five non-party depositions imposed by Schedule A will prejudice Plaintiffs' ability to pursue discovery well within the scope of the Federal Rules, and Plaintiffs therefore propose this increase.

As discussed above, Plaintiffs intend to comply with all governing rules and law regarding any limitations on the scope of nonparty discovery from: 1) currently incarcerated individuals; and 2) high-ranking government officials.

**b. Interrogatories**

In light of the complexity of this conspiracy case, as reflected in the Complaint's allegations (ECF No. 8), Plaintiffs propose a limit of thirty-five Interrogatories. The use of Interrogatories by the parties will allow this complex case to proceed more efficiently. The limit of twenty-five imposed by Federal Rule of Procedure 33(a)(1) will prejudice Plaintiffs' ability to pursue discovery well within the scope of the Federal Rules, and Plaintiffs therefore propose this increase.

**c. Defendant's proposal with respect to privilege logs**

Defendant asks the Court below to alter its requirement under Schedule A to produce privilege logs along with any objections to discovery requests. ECF No. 68-1; *see infra*, Section II. No such change is warranted here. This Court's standard order ensures the swift and efficient resolution of disputes, as well as ensures no delay in the ultimate production of responsive documents. Defendant's proposal unnecessarily prolongs disputes and delays production in favor of the responding party, and should not be granted.

**D. Other Rule 26(f) Topics**

1. Case and Pretrial Schedule. Plaintiffs' proposed remaining case deadlines and discussion of case schedule are set forth in the final section of this document, alongside Defendant's proposal, for the Court's convenience in comparing dates.

2. Initial Disclosures. Plaintiffs served their initial disclosures on January 16, 2019, consistent with Rule 26(a)(1) and this Court's Scheduling Order and Pretrial Schedule A (ECF No. 68-1) ("Schedule A"). Defendant served its initial disclosures on January 29, 2019. The parties were poised to meet and confer over responses, and that discussion can resume following the February 11, 2019 hearing.

3. Electronically-Stored Information (ESI). The parties have met and conferred regarding discovery of ESI and have agreed to negotiate a protocol governing the production of ESI in this case.

4. Preservation. All parties have represented that they have taken reasonable steps necessary to preserve discoverable information

5. Protective Order. The parties have met and conferred and have agreed to attempt to negotiate a protective order pertaining to confidential discovery information and documents.

That order will encompass procedures and protections for the inadvertent disclosure of privileged information.

6. Service. The parties have agreed to serve all discovery electronically.

7. Location of Depositions. Given the location of many party and nonparty witnesses outside this District, the parties have also agreed that the Local Civil Rules 30 and 45, regarding location and cost of depositions, may be altered by agreement of the parties.

## II. THE CAMPAIGN'S VIEWS AND PROPOSALS

For the reasons given in its motion to dismiss, the Campaign believes that this case can be resolved without any discovery. The Campaign also believes that, in any event, any discovery should not proceed until that motion to dismiss is decided, for the reasons in its motion to stay (scheduled for hearing on February 11, 2019). On the assumption that discovery is necessary, however, the Campaign respectfully submits the following views and proposals on the subjects covered by Rule 26(f) and Schedule A to the Court's December 27, 2018 Order.

### A. Initial Disclosures

Plaintiffs made their initial disclosures to the Campaign on January 16, 2019. The Campaign has objected to the adequacy of Plaintiffs' initial disclosures, because Plaintiffs have declined to provide "a computation of each category of damages" together with "the documents or other evidentiary material … on which each computation is based." Fed. R. Civ. P. 26(a)(1)(A)(iii). The Campaign made its initial disclosures to Plaintiffs on January 29, 2019.

### B. Scope and Timing of Discovery

***Subjects of the Campaign's discovery.*** The Campaign expects that the discovery taken by the Campaign will be relatively manageable and contained. The Campaign anticipates that the discovery it takes in this case, including ESI, will encompass at least the following subjects (without prejudice to its right to take discovery on additional subjects):

(1) Plaintiffs' citizenship, domicile, and status as eligible voters;

(2) Plaintiffs' emails and allegedly private information;

(3) Plaintiffs' political advocacy and donations;

(4) Mr. Comer's alleged emotional distress and its causes; and

(5) Plaintiffs' alleged damages, including any lost wages claimed by Mr. Comer.

***Subjects of Plaintiffs' discovery.*** The Campaign expects that the discovery to be taken by Plaintiffs—as described in Plaintiffs' section of this report—would impose severe burdens on all involved, yet yield comparably few benefits for Plaintiffs.

Start with the burdens. Plaintiffs' discovery would burden the Campaign as a result of its sheer scope. In a filing in the Roger Stone case, Special Counsel Robert Mueller stated that discovery in that *criminal case* would be "both voluminous and complex," because it would encompass "several terabytes of information" and "communications … span[ning] several years." United States' Speedy Trial Motion, *United States v. Stone*, No. 1:19-cr-18, Dkt. 19 (Jan. 31, 2019). The discovery in this *civil case* is likely to be even more voluminous and complex, because the limits on civil discovery are far looser than the limits on criminal discovery.

Plaintiffs' discovery would also burden the Campaign because it would raise—in fact, has already raised—serious First Amendment issues. The right to freedom of association guaranteed by the First Amendment includes the right to keep private—at a bare minimum—"internal campaign communications concerning the formulation of campaign strategy and messages." *Perry v. Schwarzenegger*, 591 F.3d 1147, 1165 n.12 (9th Cir. 2010). Yet in Plaintiffs' very first discovery request, Plaintiffs have already demanded the production of these kinds of documents. For example, Plaintiffs have requested "all documents" relating to the post-release "use, … amplification, promotion or distribution" of the DNC emails—a category that, by definition,

encompasses communications concerning the formulation of campaign strategy and messages regarding the release of the DNC emails. Dkt. 75-1 at 6. So too, they have asked for "all documents from 2016 discussing or relating to … influencing or attempting to influence any party platform" (on the fanciful theory that the Campaign's influence on the Republican platform "assist[ed]" Russia). Dkt. 75-1 at 9. These kinds of communications lie at the core of the First Amendment.

Plaintiffs' discovery would likewise burden the Executive Branch. Indeed, Judge Huvelle predicted that discovery would "set coequal branches of the government onto a collision course." *Cockrum v. Donald J. Trump for President, Inc.*, 319 F. Supp. 3d 158 (D.D.C. 2018). Plaintiffs have vividly confirmed the prescience of that prediction. First, Plaintiffs have already announced their intention to seek discovery from Senior Advisor to the President Jared Kushner and Counselor to the President Kellyanne Conway. *Id.* Contrary to Plaintiffs' description, Mr. Kushner and Ms. Conway are not merely "federal employees" (*id.*); they are the President's close advisors and are thus "high-ranking federal officials" (319 F. Supp. 3d at 189). Discovery requests directed to them would thus burden the operations of the White House, and, therefore, the heart of the executive branch.

Second, Plaintiffs may seek discovery from the President and the Vice President. Plaintiffs state that they "do not *presently* intend to seek discovery from the President" and that "[b]ased on Plaintiffs' *present* understanding of the facts, they do not expect to need to seek any discovery from Vice President Pence." *Supra* Part I-A-6 (emphasis added). Plaintiffs have thus conspicuously left the door open to seeking such discovery later in the case.

Plaintiffs' discovery would also burden the Court. Judge Huvelle predicted that discovery in this case would "draw [the] Court into endless discovery disputes." *Id.* at 189. Plaintiffs' first discovery requests show that this prediction was prescient. These requests have already raised the

following issues, among others: (1) the definition of the "Campaign," (2) whether the requests violate the First Amendment right of association by seeking the identities of the Campaign's advisors, volunteers, and supporters; (3) whether the requests violate the First Amendment right to association by seeking private materials; (4) whether the right to association is a "privilege" subject to the requirement to produce a privilege log in Federal Rule of Civil Procedure 26(b)(5); (5) whether Rule 26(b)(5), if applied to materials protected by the First Amendment, would itself violate the First Amendment; (6) whether presidential transition materials are protected from disclosure by the Constitution; (7) whether presidential transition materials are protected from disclosure by the Presidential Transition Act; (8) whether presidential transition materials are protected from disclosure by an evidentiary privilege; (9) whether Plaintiffs' current requests are (as Judge Huvelle said of their previous requests) "ill-defined" (*Cockrum*, 319 F. Supp. 3d at 188); and (10) whether Plaintiffs' current requests are (as Judge Huvelle said of their previous requests) "overly broad" (*id.*). Plaintiffs' plans to seek discovery from executive officials and people under indictment also raise issues regarding (11) executive privilege and (12) the Fifth Amendment. The Campaign would, of course, attempt to resolve any disputes without involving the Court where possible. Realistically, however, it is probable that discovery would generate a continuous stream of disputes that require judicial intervention.

Finally, Plaintiffs' discovery would likely burden the appellate courts, and possibly even the Supreme Court. The Supreme Court has directed the courts of appeals to "entertain[n] an action in mandamus" where the President, Vice President, and other senior federal officials "are the subjects of … discovery orders." *Cheney v. U.S. District Court*, 542 U.S. 367, 370, 382 (2004). Courts of appeals also "exercise [their] mandamus jurisdiction" to review discovery orders that implicate the "First Amendment privilege." *Perry*, 591 F.3d at 1158. Plaintiffs' discovery in this

case would thus likely burden the resources of the appellate courts, and probably delay progress in litigation until those appellate courts have resolved the disputes.

On the other side of the ledger, discovery is likely to yield few concrete benefits. It is unrealistic to expect that Plaintiffs could obtain discovery from just about any participant in their supposed conspiracy:

- *Russia:* Even assuming that Russia and its agents lie within the Court's subpoena jurisdiction, it is unrealistic to expect that they would cooperate with the Court's orders. Plaintiffs themselves acknowledge that it would not be "fruitful" to seek discovery from Russia. *Supra* Part I-A-3.

- *WikiLeaks*: Even assuming that WikiLeaks and Julian Assange lie within the Court's subpoena jurisdiction, it is, again, unrealistic to expect that they would cooperate with the Court's orders. Plaintiffs describe WikiLeaks as a "non-state hostile intelligence service." (Am. Compl. ¶ 175.) Its founder Julian Assange, a central figure in the alleged conspiracy, currently lives in the Ecuadorian embassy in London. Again, Plaintiffs themselves acknowledge that it would not be "fruitful" to seek discovery from WikiLeaks. *Supra* Part I-A-3.

- *Roger Stone:* Plaintiffs clearly see Mr. Stone as a pivotal figure in the supposed conspiracy: They previously named him as a lawsuit when they brought this lawsuit in the District of Columbia; they refer to him 20 times in the Amended Complaint; their first discovery requests ask the Campaign for documents relating to him; and their discovery plan states that they intend to seek discovery from him. *See Cockrum*, 319 F. Supp. 3d 158; Am. Compl. ¶¶ 28, 42, 182, 183, 193, 194, 195, 196, 197, 198, 199, 200, 201, 249; Dkt. 75-1 at 7–8; *supra* Part I-A-1. Yet, now that Mr. Stone has been indicted, he is unlikely to cooperate in discovery.

- *Paul Manafort:* Plaintiffs likewise appear to consider Mr. Manafort an important figure in the supposed conspiracy, since their Amended Complaint refers to him more than 40 times, and since their discovery plan states that they intend to seek discovery from him. *See, e.g.*, Am. Compl. ¶¶ 28, 42, 103, 114–17, 119–20, 138–40, 152, 182, 211, 217, 231, 250; *supra* Part I-A-1. Yet Mr. Manafort remains the subject of pending criminal proceedings, so he, too, is unlikely to cooperate in discovery.

- *Other individuals:* Plaintiffs are, finally, unlikely to be able to obtain useful information from other individuals, even if they have not been indicted yet. Judge Huvelle explained that Plaintiffs' allegations "dovetail with [Special Counsel Robert Mueller's] ongoing investigations," and that, as a result, Plaintiffs "will be faced with witnesses who will invoke their Fifth Amendment rights." *Cockrum*, 319 F. Supp. 3d at 189.

That means that Plaintiffs will be left trying to piece together a complex international conspiracy, without any discovery from most of the alleged conspirators and key participants. Adding to the difficulty is Plaintiffs' refusal, to date, to state which individuals associated with WikiLeaks or from Russia will be the subjects of discovery.

***Timing of discovery.*** For the reasons stated in the Campaign's motion to dismiss, the Court should postpone all discovery until after the resolution of the pending motion to dismiss. A stay would be consistent with the general principle that the "threshold" requirements of the motion-to-dismiss stage "must be crossed at the outset before a … case should be permitted to go to its inevitably costly and protracted discovery phase." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 558 (2007). It would be consistent with *Cockrum v. Donald J. Trump for President, Inc.*, 319 F. Supp. 3d 158 (D.D.C. 2018), where Plaintiffs did not even ask for merits discovery, and where the court denied jurisdictional discovery, before resolution of the motion to dismiss. A stay would also be consistent with *Nwanguma v. Trump*, 2017 WL 3430514 (W.D. Ky. Aug. 9, 2017), which *denied* the motion to dismiss, but nonetheless stayed discovery against the President and the Campaign pending an interlocutory appeal from that denial. Finally, a stay would be consistent with *Washington v. Trump*, 2017 WL 2172020, at *4 (W.D. Wash. May 17, 2017), which stayed discovery in the recent travel-ban litigation in part because of the burdens that discovery would impose on "White House staff" and "White House officials."

The Court may also wish to consider, as an alternative, postponing all discovery until after the Special Counsel completes his investigation. The Acting Attorney General recently announced that the investigation is drawing to a close. *See, e.g.*, ABC News, *Acting Attorney General Matt Whitaker says special counsel investigation nearly done* (Jan. 28, 2019). Any report issued by the

Special Counsel would help the Court and the parties decide whether the case should proceed at all, and if so, what discovery might be needed.

***Phases of discovery; limitations on discovery.*** If the Court believes that discovery should nonetheless proceed, the Campaign proposes that the Court should impose appropriate limitations on pre-dismissal discovery to ensure that it focuses on the central issues in the case, and does not turn into an opportunity for the Campaign's political opponents to rummage through the Campaign's files.

The first essential limitation on pre-dismissal discovery is that Plaintiffs' discovery requests should be limited to documents that are dated before July 22, 2016 (the date of WikiLeaks' release of Plaintiffs' allegedly private information). Discovery from the period after that date is less likely to be relevant, more likely to be burdensome, and more likely to violate the Campaign's First Amendment rights, than pre-release discovery. It is less likely to be relevant, because any conspiracy that these Plaintiffs have standing to complain about necessarily came to an end when these Plaintiffs' allegedly private information was released. It is more likely to be burdensome, because the DNC emails were a major issue in the presidential election campaign and subject to intense press coverage, and one would expect a significant volume of correspondence within the Campaign about those emails after they became public. Finally, it is more likely to violate the Campaign's First Amendment rights, because any strategic discussions about how to use the emails in the election campaign lie at the core of the First Amendment.

The second essential limitation on pre-dismissal discovery is that Plaintiffs' discovery requests should be limited to documents that reflect communications between the Campaign and Russia or WikiLeaks about hacking the DNC's emails or releasing the DNC's emails on WikiLeaks. This limitation is necessary to ensure that discovery efforts do not turn into a boundless

investigation into the Campaign's affairs, and instead focus on the issue raised by *this* lawsuit: whether the Campaign colluded with Russia and WikiLeaks before July 22, 2016 to release *these three* Plaintiffs' allegedly private information to the public.

To save everyone the time and effort, the Campaign can state now that appropriately limited discovery would not uncover any documents anyway. To be precise: The Campaign represents to the Court that the Campaign has no documents in its possession, custody, or control reflecting communication between the Campaign and Russia or WikiLeaks, occurring before July 22, 2016, about hacking the DNC's emails or releasing the DNC's emails on WikiLeaks. If Plaintiffs wish to propound a formal discovery request requesting such documents, the Campaign would respond that it has no such responsive documents in its possession, custody, or control.

Finally, it is essential that Plaintiffs should not be permitted to conduct any depositions of, or subpoena any documents from, any federal official (including a White House official) until the motion to dismiss is decided. This limitation is vital in light of the Supreme Court's warnings about subjecting "a Government official" to discovery before resolution of a "motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 684–85 (2009). (In requesting this limitation, the Campaign in no way concedes that Plaintiffs are entitled to depose federal officials at any time).

To the extent Plaintiffs insist on conducting pre-dismissal discovery beyond these limitations, their insistence would just validate the Campaign's concerns about transforming discovery in this case into an all-purpose fishing expedition into the Campaign's files, and into a gratuitous burden on important executive officials.

**C. Changes to Limitations on Discovery**

***Privilege Log Timing.*** The Campaign requests that the Court change the deadline for providing a privilege log set out in Pretrial Schedule A. Pretrial Schedule A requires production of

privilege logs within 15 days of the document request. In the unique circumstances of this case, compliance with that timetable is unduly burdensome, for multiple reasons:

- Discovery in this case is likely to be "both voluminous and complex" (*supra* Part II-B). The volume of ESI held by the Campaign, which was a large organization in the run up to the 2016 election, is enormous, and Plaintiffs have made dramatically broad discovery requests. The Campaign cannot determine which documents must be logged for privilege until search terms and date filters are applied, the documents are appropriately sorted, and the documents are reviewed for responsiveness and privilege. Given the Plaintiffs' dramatically overbroad requests, it is simply not feasible or possible for the Campaign to sort through its massive store of ESI, review potentially responsive documents, and produce a privilege log in just over two weeks.

- The parties may, potentially, have to analyze issues of privilege under the laws of multiple jurisdictions, in light of the rule that "state law governs privilege regarding a [state-law] claim" (Fed. R. Evid. 501), and in light of Plaintiffs' claim that the laws of the United States and three different states apply here.

- To the extent the Court concludes that the requirement of a privilege log applies to an assertion of First Amendment rights, the decision to claim privilege requires making a complex judgment about whether the communication satisfies the prerequisites for the privilege.

The Campaign respectfully requests that privilege logs for a particular production of responsive documents instead be due 20 days following that production. That will permit the Campaign sufficient time to log privileged documents and will still allow sufficient time for Plaintiffs to challenge (and the Court to resolve) any issues of privilege. *See also supra* Part II-B (raising the issue whether the privilege-log requirement applies to rights under the First Amendment and other constitutional provisions, as opposed to privileges, such as attorney-client privilege, developed under the Federal Rules).

***Number of Non-Party Depositions.*** The Plaintiffs have sought to increase the number of non-party depositions available per side in this matter from five to 20. But Plaintiffs have not identified what non-parties they will seek to depose, other than to point to the many people identified in their lengthy operative complaint. As noted above, many non-parties mentioned in

Plaintiffs' complaint are, for all practical purposes, not available for discovery. And expanding the number of non-party depositions would enable Plaintiffs to impose even greater discovery burdens on government officials. As a result, the Campaign opposes quadrupling the number of non-party depositions.

***Interrogatories.*** The Campaign disagrees that 35 interrogatories, rather than the 25 interrogatory limit provided for in Rule 33(a)(1), is appropriate. Plaintiffs have not explained, even in general terms, what information they would seek with 35 interrogatories that they cannot seek with 25.

**D. Other Rule 26(f) Topics**

***Electronically Stored Information (ESI).*** The parties have agreed to negotiate a protocol governing the production of ESI in this case.

The Campaign has taken reasonable steps necessary to ensure the preservation of electronically stored information. It has also described these steps to Plaintiffs. To date, Plaintiffs have provided some information regarding their preservation of ESI, but have not disclosed to the Campaign the same information concerning preservation that the Campaign disclosed to Plaintiffs.

***Protective Order***. The parties have agreed to attempt to negotiate a protective order to protect the confidentiality of discovery materials. That order will encompass protections for the inadvertent disclosure of privileged information, in accordance with Federal Rule of Evidence 502.

***Service.*** The parties have agreed to serve all discovery electronically.

***Location of Depositions.*** The parties have agreed that Local Rules 30 and 45, regarding location and cost of depositions, may be altered by agreement of the parties, but the Campaign does not commit, at this time, to waive any provisions of those rules in the future.

***Settlement.*** As discussed at the January 24, 2019 hearing, the parties have met and conferred and do not believe a settlement discussion would be fruitful at this time.

## III. CASE SCHEDULE

For the convenience of the Court, the parties have combined their proposed case schedules into one chart, which follows the parties' statements regarding case scheduling.

### A. Plaintiffs' Statement Regarding Case Schedule

Plaintiffs oppose the Campaign's request made below to extend the trial date set at the pretrial conference (at which they made no such request). However, should the Court grant Defendant's motion to stay discovery in whole or in part, Plaintiffs respectfully agree that the trial date and case schedule should be correspondingly extended, so as to not prejudice Plaintiffs' ability to take discovery and bring this case to trial.

With respect to the proposed competing schedules predicated on the current November 4, 2019 trial date, the parties have been able to agree on certain dates, designated below. With respect to the remaining dates in dispute:

1. Expert discovery. Plaintiffs' proposal provides the parties sufficient time to take expert discovery, and comports with Schedule A's staging of each date by 15 days. Defendant's proposal (which requires Plaintiffs' disclosures more than 60 days in advance of the close of discovery) is neither justified nor provides sufficient time.

2. Daubert motions. Plaintiffs have proposed Daubert motions and oppositions, without replies, to maximize efficiency. Defendant's proposal of filing Daubert motions on the same day as summary judgment is not workable.

3. Pretrial matters.

a. Designation of discovery for use at trial. Plaintiffs' proposal is sufficiently in advance of the pretrial conference to resolve issues. Defendant's proposal of the same date as summary judgment is not workable.

b. Exhibit lists. Plaintiffs' proposal is consistent with Schedule A. Defendant's proposal affords greater time to respond.

**B. Defendant's Statement Regarding Case Schedule**

The Campaign respectfully submits that—in light of the agreed complexity of the case, the wide range of disputed issues, and the high likelihood of interlocutory appellate review—it would likely be infeasible to hold a trial this November, as scheduled. The Campaign respectfully requests that the Court set a new trial date, if necessary, after the Campaign's motion to dismiss is decided.

On the assumption that the trial date of November 4, 2019 remains unchanged, however, the Campaign proposes the following deadlines in advance of those dates.

**C. The Parties' Case Schedule Proposals**

Dates set by the Court at the January 24, 2019 pretrial conference or in the January 25, 2019 Order (Dkt. 81) are denoted by (*), and we have highlighted the remaining dates in dispute.

| Event | Plaintiffs' Proposed Deadline | Defendant's Proposed Deadline |
|---|---|---|
| Expert disclosures on issue by party bearing burden of proof on that issue | July 10, 2019 | May 24, 2019 |
| Expert disclosures on issue by party not bearing burden of proof on that issue | July 25, 2019 | June 24, 2019 |
| Rebuttal expert disclosures by party bearing burden of proof on that issue | August 9, 2019 | July 10, 2019 |
| Close of discovery (agreed) | August 20, 2019 | August 20, 2019 |

| | | |
|---|---|---|
| Motions for summary judgment* | September 4, 2019* | September 4, 2019* |
| Summary judgment oppositions* | September 18, 2019* | September 18, 2019* |
| Summary judgment replies* | September 24, 2019* | September 24, 2019* |
| Summary judgment hearing* | October 3, 2019* | October 3, 2019* |
| *Daubert* motions | September 13, 2019 | September 4, 2019 |
| *Daubert* oppositions | September 23, 2019 | September 18, 2019 |
| *Daubert* replies | None | September 24, 2019 |
| Designation of discovery on issue by party bearing burden of proof | October 7, 2019 | September 4, 2019 |
| Designation of discovery on issue by party not bearing burden of proof | October 14, 2019 | September 16, 2019 |
| Plaintiffs' witness list and exhibit list (agreed) | September 23, 2019 | September 23, 2019 |
| Defendant's witness list and exhibit list | September 27, 2019 | September 30, 2019 |
| Objections to witness list, exhibits, and designated discovery (agreed) | October 7, 2019 | October 7, 2019 |
| Motions *in limine* (agreed) | October 7, 2019 | October 7, 2019 |
| Oppositions to motions *in limine* (agreed) | October 14, 2019 | October 14, 2019 |
| Replies in support of motions *in limine* (agreed) | October 17, 2019 | October 17, 2019 |
| Hearing on motions *in limine* (agreed) | October 23, 2019 (as needed during final pretrial conf.) | October 23, 2019 |
| Meet and confer regarding stipulations (agreed) | October 10, 2019 | October 10, 2019 |
| Submission of stipulations (agreed) | October 21 2019 | October 21, 2019 |
| Submission of joint proposed pretrial order (agreed) | October 21, 2019 | October 21, 2019 |
| Proposed jury instructions and voir dire* | October 21, 2019* | October 21, 2019* |

| | | |
|---|---|---|
| Responses and objections to proposed jury instructions and voir dire (agreed) | October 28, 2019 | October 28, 2019 |
| Final pretrial conference* | October 23, 2019* | October 23, 2019* |
| Trial* | November 4, 2019* | November 4, 2019* |

Respectfully submitted,

Dated: February 6, 2019

By: */s/ Elizabeth C. Burneson*

*Counsel for Plaintiffs*

KELLY J. BUNDY (VA Bar No. 86327)
ELIZABETH C. BURNESON (VA Bar No. 93413)
Hirschler Fleischer, a Professional Corporation
2100 E. Cary Street (23223)
Post Office Box 500
Richmond, VA 23218-0500
Telephone: (804) 771-9505
(804) 771-9528
Facsimile: (804) 644-0957
E-mail: kbundy@hirschlerlaw.com
lburneson@hirschlerlaw.com

BENJAMIN L. BERWICK (MA Bar No. 679207)
(*pro hac vice*)
United to Protect Democracy
10 Ware St.
Cambridge, MA 02138
202-579-4582
Ben.Berwick@protectdemocracy.org

IAN BASSIN (NY Attorney Registration No. 4683439) (*pro hac vice*)
United to Protect Democracy
222 Broadway, 19th Floor
New York, NY 10038
202-579-4582
Ian.Bassin@protectdemocracy.org

JUSTIN FLORENCE (D.C. Bar No. 988953)
(*pro hac vice*)
ANNE TINDALL (D.C. Bar No. 494607)
(*pro hac vice*)

CAMERON KISTLER (D.C. Bar No. 1008922)
(*pro hac vice*)
United to Protect Democracy
2020 Pennsylvania Ave. NW, #163
Washington, DC 20006
202-579-4582
Justin.Florence@protectdemocracy.org
Anne.Tindall@protectdemocracy.org
Cameron.Kistler@protectdemocracy.org

JESSICA MARSDEN (N.C. Bar No. 50855)
(*pro hac vice*)
United to Protect Democracy
510 Meadowmont Village Circle, No. 328
Chapel Hill, NC 27517
202-579-4582
jess.marsden@protectdemocracy.org

STEPHEN P. BERZON (CA State Bar No. 46540)
(*pro hac vice*)
BARBARA J. CHISHOLM (CA State Bar No. 224656)
(*pro hac vice*)
DANIELLE LEONARD (CA State Bar No. 218201)
(*pro hac vice*)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151
sberzon@altber.com
bchisholm@altber.com
dleonard@altber.com

NANCY GERTNER (MA Bar No. 190140)
*pro hac vice*)
Fick & Marx
100 Franklin Street, 7th floor
Boston, MA 02110
(857) 321-8360
ngertner@fickmarx.com

RICHARD PRIMUS (MI Bar No. P70419)
(*pro hac vice*)
The University of Michigan Law School*
625 S. State Street
Ann Arbor, MI 48109
(734) 647-5543

PrimusLaw1859@gmail.com
* For identification purposes.

STEVEN A. HIRSCH (CA State Bar No. 171825)
(*pro hac vice*)
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
(415) 391-5400
shirsch@keker.com

Dated: February 6, 2019

Respectfully submitted,

/s/ Nikki L. McArthur

Jeffrey Baltruzak*
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
jbaltruzak@jonesday.com

Michael A. Carvin*
William D. Coglianese
Nikki L. McArthur (Virginia Bar No. 84174)
Vivek Suri*
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939
macarvin@jonesday.com
wcoglianese@jonesday.com
nmcarthur@jonesday.com
vsuri@jonesday.com

* *Pro hac vice*

*Counsel for Donald J. Trump for President, Inc.*

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