

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 08-80736-CIV-MARRA/JOHNSON

JANE DOE 1 AND JANE DOE 2,

Plaintiffs

v.

UNITED STATES OF AMERICA,

Defendant

**REPLY TO JANE DOE #1 AND JANE DOE #2'S RESPONSE TO
MOTION OF JEFFREY EPSTEIN FOR LIMITED INTERVENTION**

In their Response, plaintiffs first contend that Mr. Epstein's limited motion to intervene is not timely because they first filed their discovery requests more than a year and a half ago. Response at 3-4. That date is wholly irrelevant for purposes of evaluating the timeliness of Mr. Epstein's motion, as there has been no prior litigation whatsoever on the specific question, raised by the request for limited intervention, of whether particularly identified documents are protected from disclosure to plaintiffs by the grand jury secrecy provision of Fed. R. Crim. P. 6(e). The applicability of the Rule 6(e) disclosure prohibition has not "been the subject of litigation for nearly two years." Response at 2. It has not been the subject of litigation *at all*. Plaintiffs state that they did not object to Mr. Epstein's prospective motion to intervene at the remedy stage because "the issue had not yet been subject to any litigation." Response at 2. The same is true, however, with respect to this limited motion to intervene.

Contrary to plaintiffs' argument, Response at 4, Epstein did not wait long at all to file his motion to intervene. On the contrary, he filed it on July 26, 2013, only one week after the government filed its privilege log on July 19, 2013, which alerted him to the issue, as well as to the extent to which his privacy interests in the confidentiality of secret grand jury proceedings were at issue. *See* Motion at 2-3.¹

Plaintiffs contend that they would be prejudiced if Mr. Epstein were allowed to intervene with respect to the Rule 6(e) issues. Response at 4. First, they contend that they would be prejudiced because they "would be forced to file a response to additional pleadings." *Id.* That intervention as of right would cause another party to have to do more work on a new issue has never been thought to be grounds for denying a motion to intervene. In any event, the Court's June 19, 2013, order permits only one pleading on the issue for each party, so there would be only a single additional pleading. Second, plaintiffs contend that permitting Mr. Epstein to intervene will "presumably" cause additional delay. *Id.* It will not; in his motion to intervene, Mr. Epstein expressly committed himself to comply with the filing schedule established in the Court's June 19, 2013, order or any further order of the Court. It will not, therefore, disrupt the Court's schedule to permit Mr. Epstein to intervene and present his legal and factual arguments within whatever page limitations² and filing deadlines are imposed by the Court.

¹ *Smith v. Marsh*, 194 F.3d 1045 (9th Cir. 1999), on which plaintiffs rely, Response at 3, is wholly inapposite. In that case, the prospective intervenors sought to intervene as full parties to the action after the case had been ongoing for a substantial time and numerous substantive issues had already been litigated.

² On August 1, 2013, plaintiffs filed a Motion for Ordinary Briefing Schedule and Ordinary Page limits to Respond to Government Privilege Assertions, in which they asked that the Court expand the 7-page limit imposed by the Court's June 19, 2013, order, to the ordinary 20-page limit. Doc. 218.

Plaintiffs also contend that Mr. Epstein has failed to establish that he has an interest in the confidentiality of the grand jury materials at issue. Response at 4-5. On the contrary, he has plainly done so, as even a facial review of the government's privilege log would demonstrate. The grand jury secrecy provision exists for the very purpose of protecting persons who were, as Mr. Epstein was, the subject/target of a grand jury investigation but were not ultimately the subject of a criminal indictment. *See* Motion at 3-4. Rule 6(e) gives Mr. Epstein a cognizable interest in opposing the release of *any* information pertaining to matters which occurred before the grand juries which conducted the criminal investigation of him.³ Indeed, the very reason that plaintiffs want the information is that the grand jury was conducting an investigation of Mr. Epstein. To the extent that any grand jury materials do not relate to the grand jury investigation of Mr. Epstein, they are entirely irrelevant to plaintiffs' case. Specific entries in the government's privilege log also bear out Mr. Epstein's interest in the matter, as they specifically refer to Mr. Epstein, companies and accounts owned by him that were the subjects of grand jury subpoenas, his travels, phone calls, and meetings, witness testimony as to his alleged conduct, and a wide array of additional materials that have historically been protected from disclosure by Rule 6(e).⁴ Contrary to plaintiffs' argument, Mr. Epstein has a very real and demonstrable interest in preventing disclosure of grand jury materials.

³ Plaintiffs scoff at Mr. Epstein's asserting the Rule 6(e) disclosure prohibition as to "File folder 'PNY Technologies Compact Flash SW,'" Response at 4, but they neglect to add the remainder of the entry: "containing copies of a sealed search warrant application, warrant, and supporting documents." Privilege Log (Doc. 212-1) at 1. PNY is a company which manufactures flash drives, among other products. *See* www.pny.com. This particular flash drive contains materials relating to a search warrant, the validity of which has never been litigated, apparently directed against the property or computers of Mr. Epstein, in which he plainly has an interest.

⁴ *See, e.g.*, Privilege Log (DE212-1) at 2 (documents responsive to grand jury subpoena served on JP Morgan Chase); 3 ("Epstein corporate records," "JEJE & Hyperion"); 4 ("indictment preparation binder," "witness/victim" interviews, flight manifests); 5 ("Summary of Sexual Activity," chart entitled "Brought to Epstein's house," "summary of evidence related to one

CONCLUSION

For all the foregoing reasons, and the reasons set forth in Mr. Epstein's Motion to intervene, that motion should be granted.

victim/witness"); 6 ("PBPD Investigative File," "file folder bearing name of victim/witness containing meta-analysis chart showing telephone calls, travel, and grand jury materials relevant to possible charges," Jet Blue records); 7 ("Lawsuits Involving Epstein Corp's," "Message Pads"); 8 ("Police Reports & PC Affidavit," witness interview and grand jury transcript, "meta-analysis chart and 302's of victim witnesses used in preparing indictment package," documents responsive to grand jury subpoena served on Bear Stearns); 9 (two listings of "File folder bearing name of victim/witness containing meta-analysis of all phone, travel, and grand jury data related to that victim witness for indictment preparation"); 10 ("File Folder entitled "Jane Doe #4 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation," "Epstein/Kellen cell phone records," "File Folder entitled "Jane Doe #12 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation"); 11 (indictment package, flight logs); 12 ("chart prepared at direction of AUSA, containing victim names, identifying information, summary of activity, and other information relevant to indictment," "most recent indictment," "File Folder entitled Jane Doe #5 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation," same as to Jane Doe #4); 13 ("File Folder entitled "Jane Doe #6 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation," same as to Jane Does #7 and #8); 14 ("File Folder entitled "Jane Doe #9 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation," same as to Jane Does #1, #2, #12 and #13); 15 ("File Folder entitled "Jane Doe #3 containing meta-analysis of all phone, travel, and grand jury data related to that victim/witness for indictment preparation"); 17 ("original proposed indictment"); 18 ("draft indictments," "signed indictment," overt acts list for indictment preparation); 19 ("Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas," "Affidavit of Roy Black, Esq. in Support of Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas," "United States' Response to Motion of Jeffrey Epstein to Intervene and to Quash Grand Jury Subpoenas," Declaration of Joseph Recarey (in support of United States' response)," "Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash Subpoenas"); 20 ("Ex Parte Declaration Number Two in Support of United States' Response to Motion to Quash Subpoenas," "Supplement to Ex Parte Declaration Number One in Support of United States' Response to Motion to Quash," indictment preparation materials); 21 ("complete indictment package," "indictment preparation binder"); 23 ("complete indictment package").

We certify that on August 9, 2013, this motion was filed using the CM/ECF system.

Respectfully submitted,

**BLACK, SREBNICK, KORNSPAN
& STUMPF, P.A.**

201 South Biscayne Boulevard
Suite 1300
Miami, Florida 33131
Telephone (305) 371-6421
Fax (305) 358-2006

By: /s/

ROY BLACK, ESQ.

Florida Bar No. 126088

rblack@royblack.com

JACKIE PERCZEK, ESQ.

Florida Bar No. 042201

jperczeck@royblack.com

MARTIN G. WEINBERG, P.C.

20 Park Plaza

Suite 1000

Boston, MA 02116

Office: (617) 227-3700

Fax: (617) 338-9538

By: /s/

MARTIN G. WEINBERG, ESQ.

Massachusetts Bar No. 519480

owlmgw@att.net