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ST-2020-CV-00014

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS,

PLAINTIFF,

V.

DARREN K. INDYKE, in his individual capacity
and in his capacity as the EXECUTOR FOR THE
ESTATE OF JEFFREY E. EPSTEIN and
ADMINISTRATOR OF THE 1953 TRUST;
RICHARD D. KAHN, in his individual capacity and
in his capacity as the EXECUTOR FOR THE
ESTATE OF JEFFREY E. EPSTEIN, and
ADMINISTRATOR OF THE 1953 TRUST;
ESTATE OF JEFFREY E. EPSTEIN; THE 1953
TRUST; PLAN D, LLC; GREAT ST. JIM, LLC;
NAUTILUS, INC.; HYPERION AIR, LLC; POPLAR,
Inc.; SOUTHERN TRUST COMPANY, INC.;
CYPRESS, INC.; MAPLE, INC.; LAUREL, INC.;
AND JOHN AND JANE DOES,

DEFENDANTS.

Case No.: ST-20-CV-14
COMPLEX

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS'
EMERGENCY MOTION FOR LIFTING OF STAY AND TO
TAKE DISCOVERY OF DEFENDANTS INDYKE AND KAHN

The Government of the United States Virgin Islands (“Government”) hereby moves for a lifting of the stay entered in the Court’s Orders of March 28 and July 7, 2022 and to take discovery of Defendants Darren K. Indyke and Richard D. Kahn regarding their transfer of Estate assets in an effort to shield Estate assets from claims and to personally enrich themselves. Taking discovery of Defendants Indyke and Kahn is critical for the Government to make a full and fair record on

Defendants' pending Motion to Vacate the T14 VIC § 610 Criminal Activity Liens, which this Court has set for hearing.

ARGUMENT

Although the Government maintains its position that the propriety of its criminal activity liens on property owned by the Estate of Jeffrey E. Epstein ("Epstein Estate") for the pendency of this action is established as a matter of law by 14 V.I.C. § 610, to protect the assets from dissipation, Defendants raise fact-based arguments in support of their motion to vacate the criminal activity liens, that the Government would like the opportunity to refute. *See* Reply Supp. Epstein Estate's Mot. Vacate Criminal Activity Lien Notices at 16 ("[T]he Attorney General continues to withhold funds that the Co-Executors require for the administration of the Estate."). Despite raising fact-based arguments, and despite the clear admonition of V.I. R. Civ. P. 26(d)(4) that their formerly pending motion to dismiss did not stay discovery, Defendants have refused to provide discovery throughout these proceedings. *See, e.g.*, Motion for Protective Order to Forbid or Stay Deposition Pursuant to Rule 30(b)(6) at 1 (The Government's Deposition Demand is premature.); *id.* at 7 ("Because the Government's CICO claims are deficient as a matter of law, the deposition of Southern Trust Company may never be needed."). As a result, the Government is deprived of critical information pertaining to Defendants' argument that lien-protected property value is needed for *legitimate* Estate administration, which is in serious doubt because of evidence (summarized below) from third parties showing that Defendants Indyke and Kahn have conflicting interests as Co-Executors and as individual Defendants who the Government alleges are key participants in the Epstein Enterprise. Their depositions and other discovery documents and information are necessary for the Government to have a fair opportunity to make a full record on Defendants' pending motion.

The Government's criminal activity liens ensure the preservation of assets or value with which a Defendant, here the Epstein Estate, can satisfy a judgment under the Criminally Influenced and Corrupt Organizations (CICO) Act. *See* 14 V.I.C. §§ 610(h)-(i) (ensuring preservation of property and/or its value). This is why the liens may be released only by the Attorney General and only "upon such terms and conditions as [she] may determine," 14 V.I.C. § 610(r), so long as this action is pending. 14 V.I.C. § 610(s)-(u).¹ The Government now seeks discovery to develop its record that the liens are not only authorized but necessary – contrary to the Estate's contention – and that releasing the liens would damage the Government by freeing the Co-Executors to further dissipate assets. The Court cannot assess this fact-laden argument, and the Government would be prejudiced, without discovery and a full factual record on the Estate and the individual and personal interests of its Co-Executors in their administrative and personal capacities.

The Government's concerns regarding asset preservation are anything but abstract. The Estate's value alone has plummeted over 75% in two years. In addition, the Co-Executors have refused to disclose the documents or principals in trusts related to Jeffrey Epstein despite repeated requests in discovery and in correspondence, pursuant to the Attorney General's authority under CICO. *See* 14 V.I.C. § 610(k).

Defendants Indyke's and Kahn's dual roles as both Co-Executors of the Epstein Estate and central players in the Epstein Enterprise's criminal activity only underscores the Government's concerns and brings into question their ability to lawfully, fairly and objectively execute the Estate and trust assets and accounts that are outside of the Estate. A surprisingly abrupt end to the Court ordered mediation further demonstrates Indyke and Kahn's proclivity to protect their personal

¹ Lifting the Government's Criminal Activity Liens is improper for the reasons articulated in the Government's Opposition to Epstein Estate's Motion to Vacate Criminal Activity Lien Notices.

interests at all costs. Given the Mediator's acknowledgment that efforts to reach a resolution are not moving forward, a continued stay no longer serves its intended purpose of facilitating resolution.

The Government alleges, based on substantial evidence, that Indyke and Kahn were both deeply involved in the financial activities of the Epstein-owned entities, including defrauding the Government of \$80.5 million in unearned tax benefits through Defendant Southern Trust Company. *See* 2d Amend. Compl. ¶ 76. The Government also alleges, based on substantial evidence from the investigation, that Indyke and Kahn directed, approved, enabled, and justified millions of dollars in payments that fueled the Epstein Enterprise's sex trafficking, including their direct involvement in payments to women who were forced to have sex with Epstein and/or recruited others to be victimized, and facilitating and maintaining forced marriages between sex trafficking victims to obtain immigration status for foreign victims so Epstein could continue to abuse them. *See id.* at ¶¶ 77-78.

The Government's review of financial records also reveals that Defendants Indyke and Kahn failed to clearly disclose several million dollars in loans that Epstein made to them, which ought to be reflected (and collected) as assets of the Estate. In all, they received almost \$37 million in payments from Epstein in nine years, apparently far more than could reasonably be attributed to the rates of their professional services.

Moreover, the Government discovered that substantial funds kept secret from the Government were transferred for the benefit of the Co-Executors in an apparent effort to enrich themselves and shelter these assets from recovery. The Government's review of records obtained from third parties reveal that in September 2020, several months after the Government filed this action, the Epstein-created 2013 Butterfly Trust—which received a wire transfer of over \$13

million in April 2020—transferred money to three newly created trusts. Indyke, Kahn, and their spouses were the ultimate beneficiaries for two of the three trusts. The investment advisor for the 2013 Butterfly Trust in written disclosures to financial institutions explained that the decision “to decant the assets of the 2013 Trust was based in large measure on the fact that the assets . . . would be insulated from claims and demands of the beneficiaries of, and third-party claimants against, of the other new trusts,” which would include the Government’s claims. *See* Ex. A (Source of Wealth Memorandum for the 2013 Butterfly Trust).

The information obtained by the Government provides good cause for discovery of Defendants Indyke and Kahn on the handling of assets subject to the Government’s liens before the hearing on the Defendants’ motion to vacate the criminal activity liens. The Government learned of their conduct and conveyances without the Estate’s cooperation, pertaining to a subset of assets and transactions of which it was aware. The Government has not had the ability to conduct any discovery of these Defendants about their handling of other Estate assets, which has been put at issue by the Motion filed by the Estate and set to be decided by this Court.

CONCLUSION

For all of the reasons set forth, and in the interest of fairness and justice, the Government’s Emergency Motion for Lifting of Stay and to Take Discovery of Defendants Indyke and Kahn should be granted.

Respectfully submitted,

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Dated: July 22, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document complies with the page or word limitations set forth in Rule 6-1(e) and that on July 22, 2022, I caused a true and correct copy of the foregoing Emergency Motion for Lifting of Stay and to Take Discovery of Defendants Indyke and Kahn to be served via the Virgin Islands Judiciary Electronic Filing System upon:

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