IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN
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IN THE MATTER OF THE ESTATE OF JEFFREY E. EPSTEIN,	)	**ST-19-PB-0000080**
Deceased.	)	

REPLY TO GOVERNMENT'S OPPOSITION TO ESTATE'S MOTION FOR ESTABLISHMENT OF A VOLUNTARY CLAIMS RESOLUTION PROGRAM

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the "Estate"), **DARREN K. INDYKE & RICHARD D. KAHN**, and reply to the Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program which the Government of the Virgin Islands ("GVI") sought to file on January 23, 2020 (the "Opposition"). The GVI opposes the Co-Executors' *Expedited* Motion for Establishment of a Voluntary Claims Resolution Program (filed November 14, 2019), the Co-Executors' Request for Ruling on *Expedited* Motion for Establishment of a Voluntary Claims Resolution Program (filed December 4, 2019), and the Co-Executors' Request for *Immediate* Hearing or Conference Regarding *Expedited* Motion for Establishment of a Voluntary Claims Resolution Program (filed December 13, 2019).

I. Introduction

Having waited to file its Opposition for more than two (2) months after the Estate presented its initial motion, the GVI should not be permitted to delay the Court's February 4, 2020 hearing and determination of the Co-Executors' application to establish the Epstein Victims' Compensation Program (the "Program") for the purpose of resolving multiple sexual abuse claims against Jeffrey E. Epstein, deceased. The Opposition betrays the GVI's fundamental

misunderstanding of the purpose, nature, and mechanics of the proposed Program; the Court should therefore give no weight to the GVI's critique.

As explained in the Co-Executors' previous filings in support of the proposed Program, it is in the interest of justice as well as all parties with an interest in the Estate for independent, nationally recognized claims administration experts — individuals who designed and successfully guided mass compensation programs addressing the Catholic Church's sexual abuse scandal, the Pennsylvania State University sexual abuse scandal, the Boeing 737 Max airplane crashes, the General Motors transmission recall, the Volkswagen diesel emissions scandal, the BP Deepwater Horizon oil spill, the Boston Marathon bombing, the September 11th terrorist attacks, and victims of exposure to Agent Orange, DES and asbestos, as well as several other mass torts — to design and implement a mass tort claim-type program to achieve the fair and expedited resolution of sexual abuse claims against the Estate. These include a substantial number of claims set out in lawsuits already filed by numerous claimants in multiple jurisdictions.[1]

Without legal and factual basis, the GVI argues that the proposed Program is coercive, unfair and would subject potential claimants to "re-victimization." (Opposition at 8.) As explained below, nothing could be further from the truth.

II. Procedural Background

On January 15, 2020 – five (5) months after the Estate commenced this probate proceeding – the GVI filed a Complaint in the Superior Court of the Virgin Islands, Case No. ST-20-CV-14 (the "Complaint"), as well as five (5) Criminal Activity Lien Notices pursuant to 14 V.I.C. § 610,

1. There are now twenty-one (21) lawsuits pending against the Estate involving allegations by thirty-two (32) different plaintiffs of Mr. Epstein's sexual abuse, filed in federal and state courts in New York, Florida, and Minnesota.

and a motion to intervene in this proceeding.[2] It is in this context that the GVI seeks leave to file its "Opposition to the Estate's Motion for Establishment of a Voluntary Claims Resolution Program."

III. The GVI Misunderstands the Court's Role in Overseeing the Program

As an initial matter, the GVI complains that the Program "does not secure the Government's substantial and legally protectable interest in the appropriate and supervised distribution of the Estate's assets," professing its concern that the Program and the Program Administrator will not be "subject to the legal constraints imposed by the Virgin Islands Probate Law or the supervision or approval of this Court . . ." (Opposition at 1, 4.) That is incorrect.

Since the inception of this case, the Court has exercised its full authority over the "appropriate and supervised distribution of the Estate's assets," issuing multiple Orders to date and most recently setting a February 4, 2020 hearing for all pending motions. Nor have the Co-Executors asked the Court to abdicate its responsibility to protect creditors, claimants, and beneficiaries of the Estate. To the contrary: as envisioned by the Co-Executors, the Court will continue to exercise its authority by reviewing the Program's proposed design and implementation in detail, including analyzing the Program's foundational documents, hearing testimony from the Program Administrator and Program Designers, and examining the Program's estimated budget. The Co-Executors also anticipate returning to the Court to seek its further approval to move forward once the Program's detailed claims review protocol (the "Protocol") is fully developed with input from all interested parties. (*See Expedited* Motion at 11.) Finally, assuming the Court's approval of the Program, the Co-Executors and Program Administrator will keep the Court

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2. The Estate's response to the GVI's motion to intervene is set forth in a separate memorandum filed in this proceeding.

apprised of the Program's progress, consistent with the privacy interests of claimants, providing regular reports on the number of claimants, the number of awards offered and accepted, and the amount of awards paid. The GVI's professed concern that the Program "as proposed offers no reconciliation or accountability" (Opposition at 9) misunderstands the Court's continuing oversight of the Program and the fact that the Court must ultimately enter a final adjudication of the Estate.

IV. The GVI Misunderstands the *Voluntary* Nature of the Program

The GVI also misunderstands the non-coercive nature of the Program. Far from requiring individuals to participate, it provides a *completely voluntary alternative to litigation* for their claims. There is no danger that claimants will be required to participate in the Program — they are not. Nor is there any merit to the GVI's professed concern that, having participated in the Program, a claimant will be precluded from "receiv[ing] the compensation to which she is fairly and impartially entitled." (Opposition at 7). If any claimant believes that the award offered by the Program Administrator is unfair, she is completely free to reject it and pursue other avenues for relief, including through the courts, without penalty.

The GVI correctly notes that Virgin Islands law "entitles victims of crimes to be treated with dignity and compassion, to be protected from intimidation, to be informed of their legal rights, and to receive reparations for physical or emotional injuries suffered as a result of being a victim of a violent, bodily crime. . ." (Opposition at 3-4.) The Program is expressly designed to satisfy all of these criteria.

First, Program Administrator Jordana Feldman, the former Deputy Special Master and Director of the New York Office of the September 11th Victims Compensation Fund, has publicly

committed that all claimants under the Program will be treated with dignity and compassion.[3] Through the Program, Claimants will have the opportunity to describe their suffering privately and confidentially *if they wish*, as part of the Program's recognition of the need for such treatment.

Second, claimants under the proposed Program will not be subject to intimidation, since their claims will be kept out of the public eye *if they wish* and their testimony will in all cases be heard outside the presence of any Estate representative. If a claimant desires to shield from public scrutiny her claims, her testimony, and her compensatory award, she can elect to do so — it is entirely her choice. That is very different from the obligations of the Co-Executors and the Program Administrator, who are required to maintain the confidentiality of any materials provided by claimants under the Program. To be clear, the Program Administrators and the Co-Executors have the obligation to maintain confidentiality; claimants do not.

Third, claimants will be fully informed of their legal rights. Nearly every claimant who has filed a lawsuit is represented by counsel, including prominent figures in the New York and Florida bars. And, as envisioned by the Program, any claimant who chooses to participate in the Program and does not have counsel *will have independent counsel provided at no cost to her* to explain the award offered and the nature and significance of accepting such an award.

Fourth, the receipt of "reparations for any physical or emotional injuries suffered" by claimants at Mr. Epstein's hands will hardly escape the Program. To the contrary: that is its very purpose.

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3. *See* November 14, 2019 press release, *Administrator Jordana H. Feldman Announces Proposed Establishment of the Epstein Victims' Compensation Program* (the "November 14, 2019 Press Release"), explaining that "[t]his important program will offer victims the opportunity to obtain long-overdue compensation, to be heard and treated with the compassion, dignity and respect they deserve, and to achieve some measure of justice and validation that has eluded them for so many years."

V. The GVI Misunderstands the Mechanics of the Program.

Many of the GVI's criticisms of the Program reveal the GVI's lack of knowledge of the process and proposed mechanics for its administration. As one example, the Opposition states that the Program "fails to specify what constitutes sexual assault and who qualifies as a claimant." (Opposition at 4.) Yet the answers to those questions are straightforward: under the Program as envisioned, the Program Administrator will apply a broad, all-encompassing definition of "sexual assault"; anyone who suffered sexual abuse by Mr. Epstein will qualify for inclusion in the Program.[4]

The GVI also expresses its belief that individuals eligible to participate in the Program may not understand their ability to do so, arguing that "children who were sexually abused by [Mr.] Epstein may mistakenly believe that they consented to his assault, and may not recognize their eligibility for compensation." (Opposition at 4.) Yet thirty-two (32) claimants to date — including several adult claimants who allege their abuse as minors — have shown no lack of such recognition, and plaintiffs' counsel have expressed their intent to file claims on behalf of many more individuals. As envisioned, the Program Administrator would publicly explain (including through a dedicated Internet website) the nature of the Program and the methods for participation for any who wish to explore it; the Co-Executors are also prepared to post public notices in the Virgin Islands announcing the Program. That some adult claimants may ultimately decline to participate in the Program is no reason to scuttle it for all who wish to do so.

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4. As envisioned by the Program, that an individual's claims of sexual abuse (1) may be time-barred under applicable statutes of limitation or (2) have been previously resolved through negotiated settlement will not serve as bars to recovery.

The GVI also mistakenly criticizes the Program for "cover[ing] only those who have already made claims or will make claims immediately following notification of its creation. The Program provides no set-aside for later claimants." (Opposition at 5.) That is wrong: once established, the Program will maintain a several-months-long period of availability for individuals to file their claims. Anyone who misses that "window" will of course remain free to pursue her claims elsewhere, including through the courts or by direct negotiation with the Co-Executors. Claimants will retain all available remedies under the law, whether the Program exists or not.

The GVI also expresses its concern that the Program "will exclude victim/claimants who may be unable to document their claims," since they may not "have access to materials and information that is in some cases [ ] over a decade old." (Opposition at 5-6.) That fundamentally misapprehends the nature of the Program: as envisioned, there is no requirement that claimants present documentation of their sexual abuse. *No one will be turned away from the Program because she lacks contemporaneous documents corroborating her claims of such abuse.* And it would be surprising if legitimate claimants had no documents supporting their claims for serious damages sustained as the result of sexual abuse, including psychiatric or other medical records.

The GVI also offers its suggestion that "[t]he ability of Claimants to fairly make their case is further prejudiced by the invitation to meet with the Program Administrator" in New York, arguing that "[s]uch a request seems designed to prejudice Claimants, many of whom may not have the means to travel to New York." (Opposition at 6.) That is nonsense: under the Program as envisioned, *no in-person meeting with the Program Administrator is required.*[5] And if any

5. *See* November 14, 2019 Press Release ("All claimants will be afforded an opportunity to meet confidentially with the Administrator, *if they so desire*, in order to provide any information that may bear upon the evaluation of their claims"; emphasis supplied.)

individual claimant wishes to speak with the Program Administrator without traveling to New York, there are obvious alternatives to allow that interaction, including conversations by Skype, videoconference, and telephone or, if warranted, visits by the Program Administrator.

The GVI also complains that the Program "contains no assurances that the information submitted by a Claimant cannot later be used against her if she thereafter decides to file suit against the Estate or any other co-defendant. Likewise, the [Program] provides no protection to Claimants who voluntary provide information that may later be used to defend the Estate from claims or provide evidence against the notices." (Opposition at 6.) That misconception stands the Program on its head: as contemplated, the Program will allow claimants to submit any evidence they wish on the express understanding that *their materials will remain confidential from the public* — unless the claimant herself wishes otherwise, this information will not be used for any other purposes, including by the Estate's representatives, and will be destroyed following completion of the Program. Thus, the GVI imagines ghosts that do not exist.[6]

Finally, the GVI argues that "the potential range of compensation available for each claim should be provided in advance," with the Program "disclos[ing] any limits on the amounts of compensation, individually or collectively." (Opposition at 7.) Yet, the Co-Executors have already made clear that there is no "cap" on the aggregate amount of awards under the proposed Program; rather, the Program Administrator will assess each claimant's case on its merits and propose awards commensurate with any harm suffered. As for individual awards, there is no need to provide an upfront "range" — claimants participating in the Program are not required to refrain

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6. Abolishing the Program will not protect claimants in this regard. Quite to the contrary, since in litigation they would be required to provide to the Estate and other defendants a broad range of discovery materials, including all documents on which they intend to rely to support their claims.

from simultaneously commencing or pursuing litigation, and lose nothing (not even time) by their participation. Moreover, if any claimant believes the award ultimately proposed by the Program Administrator is unacceptable, she can reject it without repercussion.

VI. The GVI Misunderstands the Independence of the Program Administrator

The GVI also offers its misguided concern that the proposed Program's design "would be, in part, determined by an undefined group of 'those with an interest in resolution of the Sexual Abuse Claims'" made by Mr. Epstein's victims, and complains that "[t]his group could include any number of individuals and entities . . ." (Opposition at 4.) That is both nonsensical and incorrect: the proposed Program has been designed by nationally recognized and well-respected claims administration experts — Ms. Feldman, Mr. Feinberg, and Ms. Biros. In designing the Program and its Protocol, they solicited input from all known claimants and their counsel, the United States Department of Justice, and the Co-Executors themselves. If the GVI wishes to make constructive suggestions to improve the Program, the Program Administrator and Program Designers will no doubt consider those suggestions as well.

The GVI also asserts without foundation that the Program "presents unavoidable conflicts of interest" between the Co-Executors and the Program Administrator, and urges that the Co-Executors "be expressly precluded from having any role in setting the criteria or the process for or evaluating or approving potential claims." (Opposition at 8-9.) This argument is a "straw man." The Program is crystal-clear: when it comes to the Program Administrator's evaluation and assessment of individual claims under the Program, the Co-Executors have absolutely no ability to dictate or even influence those decisions.[7] While claimants, their counsel, the United States

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7. *See* November 14, 2019 Press Release (explaining that "the Estate will have no authority to modify or reject Ms. Feldman's decisions on any basis or as to any claim.")

Department of Justice, and the Co-Executors all have the ability to express their views on the overall Program criteria, determinations of individual awards will rest in the sound discretion of the Program Administrator applying a Protocol that the Court will have previously reviewed and approved. It is counterproductive for the GVI to suggest that the Co-Executors and other interested parties have no input into the Program's overall design; it would be irresponsible for the Co-Executors not to sign off on the Program, since by law they must do so. What all involved seek through the Program is the fair, timely evaluation of claims and the award of appropriate compensation for injuries suffered. The GVI should not obstruct this.

Finally, the GVI attacks as "unjust" the Program's provision that, in order to accept an award offered by the Program Administrator, a claimant must release any claims she may have against persons or entities arising from or related to Mr. Epstein's conduct. (Opposition at 7-8.) That ill-founded critique misses the mark: just as in litigation, without such a release, the Estate would remain subject to potential claims by third parties, including multiple actions for contribution and indemnification. The resultant lack of finality would not inure to the benefit of the Estate's creditors, claimants, or beneficiaries.[8]

VII. There Are No "Undisclosed Costs" of the Program's Administration

As the Court is aware, since the Program's inception, the Co-Executors have offered to present the engagement letter of the Program Administrator and Program Designers for the Court's review. (*Expedited* Motion at 11.) At the February 4, 2020 hearing, the Co-Executors and the Program Administrator will be prepared to provide additional detailed information concerning the

8. The GVI mistakenly asserts that requiring such a release "further protects these perpetrators from liability and accountability for their criminal acts." (Opposition at 8.) No so: the proposed Program provides for resolution of civil liability claims; it would not in any way impede or prevent criminal prosecution of any persons or entities arising from Mr. Epstein's conduct, nor could it.

projected costs and budget for the proposed Program. The Co-Executors will of course disclose all fees for services rendered by the Program Administrator and Program Designers as they are accounted for by the Estate. There is no mystery here.

Allowing the GVI's late-filed Opposition to torpedo the Program will unfortunately accomplish only one thing: it will divest scores of women of their ability to engage in a voluntary, confidential and non-adversarial alternative to litigation to resolve their claims of sexual abuse by Mr. Epstein. That would be a truly unfortunate result.

Respectfully,

Dated: January 31, 2020

CHRISTOPHER ALLEN KROBLIN, ESQ.
ANDREW W. HEYMANN, ESQ.
WILLIAM L. BLUM, ESQ.
SHARI N. D'ANDRADE, ESQ.
MARJORIE WHALEN, ESQ.
V.I. Bar Nos. 966, 266, 136, 1221 & R2019
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802
Telephone: (340) 779-2564
Facsimile: (888) 316-9269
Email: ckroblin@kellfer.com
aheymann@solblum.com
wblum@solblum.com
sdandrade@kellfer.com
mwhalen@kellfer.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January 2020, I caused a true and exact copy of the foregoing **Reply to Government's Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program** to be served upon:

Via Electronic Mail by Agreement of the Parties:

John H. Benham, Esq.
Law Office of John H. Benham, P.C.
P.O. Box 11720
St. Thomas, VI 00801
john@benhamlawvi.com

Douglas B. Chanco, Esq.
ChancoSchiffer P.C.
3355 Lenox Road, Suite 750
Atlanta, GA 30326
doug@csfirm.com

A. Jeffrey Weiss, Esq.
A.J. Weiss & Associates
6934 Vessup Lane
St. Thomas, VI 00802
jeffweiss@weisslaw-vi.net

Richard P. Bourne-Vanneck, Esq.
Law Offices of Richard Bourne-Vanneck
9800 Buccaneer Mall Suite #9
St. Thomas, VI 00802
richard@rpvblawoffices.com

Sean Foster, Esq.
Marjorie Rawls Roberts, P.C.
P.O. Box 6347
St. Thomas, VI 00804
sean@marjorierobertspc.com

Via First-Class Mail, Postage Prepaid:

Denise N. George, Esq.
Attorney General
Ariel M. Smith, Esq.
Chief, Civil Division
Virgin Islands Department of Justice
34-38 Krondprinsdens Gade
GERS Complex, 2nd Floor
St. Thomas, Virgin Islands 00804

J. Russell B. Pate, Esq.
THE PATE LAW FIRM
P.O. Box 370, Christiansted
St. Croix, USVI 00821