

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2

█.

UNITED STATES

\_\_\_\_\_ /

**JANE DOE #1 AND JANE DOE #2'S RESPONSE TO MOTION TO INTERVENE OF**

████████████████████

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as “the victims”), by and through undersigned counsel, to oppose the motion of attorney ██████████ to permissively intervene in this case under Fed. R. Civ. P. 24(b)(1)(b) (doc. #79).

The motion to intervene should be denied. ██████████ appears to be merely the cat’s paw of a possible real party in interest – Jeffrey Epstein. It is of no concern to ██████████ whether or not this Court rules that the Government violated Jane Doe #1 and Jane Doe #2’s rights under the Crime Victims’ Rights Act. Thus ██████████ has not established that he has some kind of “common question of law or fact” sufficient to support his permissive intervention into this case. Accordingly, as with the similar motion for Epstein’s defense attorneys, his motion to intervene in this Crime Victims’ Rights Act case is without merit and should be denied. Alternatively, if the Court elects to permit ██████████ to permissively intervene, legal counsel for Jane Doe #1 and Jane Doe #2 should be allowed to, first, depose ██████████ about his involvement in the Epstein criminal investigation and, second, respond to his baseless motion for Rule 11 sanctions.

## DISCUSSION

### I. ██████████ DOES NOT HAVE A CLAIM OR DEFENSE THAT SHARES SOMETHING IN COMMON WITH THIS CRIME VICTIMS RIGHTS ACT ENFORCEMENT ACTION.

██████████ claims that the Court should grant him permissive intervention under Fed. R. Civ. P. 24(b). The rule grants discretion to the court to allow intervention by a person who has “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b); *accord Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (intervention allowed only where “a claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties.”). A district court’s ruling on such intervention is reviewed only for abuse of discretion. *Stone v. First Union Corp.*, 371 F.3d 1305 (11th Cir. 2004) *see also AT&T Corp. v. Sprint Corp.*, 407 F.3d 560, 561–62 (2nd Cir. 2005) (“[a] denial of permissive intervention has virtually never been reversed” because of the considerable discretion afforded to district courts).

██████████ claims he has an interest in this *Crime Victims Rights Act* case sufficient to support permissive intervention. Curiously, ██████████ is not the first person to try and intervene in the victims’ case. As the Court is aware, three defense attorneys have also filed a separate motion to intervene (doc. #56). All these putative intervenors have one thing in common: they have all defended Jeffrey Epstein or his associates in the sexual abuse litigation brought by girls Epstein sexually abused. This sudden appearance of so many intervenors aligned with Epstein – but not of Jeffrey Epstein himself – strongly suggests that ██████████ and others are being used as

Epstein's cat's paw in an attempt to undercut the victims CVRA lawsuit without Epstein himself becoming involved.

Such litigation-by-surrogate is improper. While Epstein arguably has an interest in the CVRA case (because the victims are seeking to invalidate *his* non-prosecution agreement), a civil defense attorney who has represented Epstein employees simply does not. The "claim and defense" of this CVRA action is the victims' claim that the government violated their CVRA rights and the government's defense that it did not. ██████ has no interest in how that dispute is resolved. Any findings that the Court makes in the course of resolving the victims' CVRA action are not binding on ██████, and he has not documented that he is suffering any tangible harm from them.

In considering whether to allow intervention, a district court can also consider whether adequate representation exists on any issues and whether a putative intervenor will significantly contribute to the litigation. *Department of Fair Employment and Housing v. Lucent Technologies, Inc.*, 2011 WL 1549232, at \*6 (9th Cir. 2011) (citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326(9th Cir.1977)). Here, there is no indication that the Justice Department will do anything other than vigorously defend the non-prosecution agreement that it negotiated. The Court need not allow another third-party to try undercut the victims as well.

██████ attempts to manufacture an interest by alleging that he is entitled to intervene to contest two factual allegations made by the victims that relate to him and seek Rule 11 sanctions for the allegations. But as a non-party, he lacks standing to bootstrap his way into this case via a Rule 11 motion. As the Second Circuit has explained:

Although the language of Rule 11 does not address the issue of who may move for sanctions, the language used in the Advisory Committee Notes indicates that it is the parties who should move for sanctions. The Advisory Committee Notes accompanying the 1983 amendments require that “[a] party seeking sanctions should give notice to the court and the offending party” and make explicit the court's authority to impose sanctions on its own motion “in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties.” Notes of Advisory Committee on Rules-1983 Amendment (emphasis added).

*New York News, Inc. v. Kheel*, 972 F.2d 482, 488 (2d Cir. 1992). If [REDACTED] motion is allowed to succeed, then legions of bystanders will have the ability to intervene in lawsuits through the simple device of claiming an interest in filing a Rule 11 sanctions motion. Thus, the Second Circuit has explained that “we fear that permitting a non-party to move for Rule 11 sanctions might fulfill critics’ concerns that the rule will create unwieldy “ ‘satellite litigation’ ” that will frustrate the rule’s goal of ‘more effective operation of the pleading regimen.’ ” *Id.* (citing 5A Wright & Miller, Federal Practice and Procedure § 1332, at 29 (1990)).

[REDACTED] motion is also untimely. On March 20, 2011, the victims filed their motion for summary judgment – the pleading to which [REDACTED] objects. The government responded on April 7, 2011, and the victims’ replied on May 2, 2011. After all the briefing was completed on the victims’ summary judgment motion, the next day – May 3, 2011 – [REDACTED] filed his motion to intervene. This timing strongly suggests that [REDACTED] deliberately waited to file his motion until briefing on the motion was fully completed. Rule 24(b) requires a “timely” motion for intervention. And it further requires the Court to consider whether the parties will be prejudiced by intervention. [REDACTED] late motion is simply not timely and will prejudice the victims by requiring them to brief ancillary issues.

For all these reasons, the Court should exercise its abundant discretion in this area and deny ██████ motion to permissively intervene.

**II. IN THE ALTERNATIVE, IF ██████ MOTION TO INTERVENE IS GRANTED, THE COURT SHOULD ALLOW THE VICTIMS TO DEPOSE REINHARTD.**

Alternatively, if the Court grants ██████ permissive intervention, the victims should be allowed to depose him. ██████ proposes to intervene as a party-in-interest in this civil case, Case No. 08-807346-Civ-Marra. Of course, in civil cases “liberal civil discovery rules” provide “broad access” to relevant information. *Ross v. Buckeye Cellulose Corp.*, 980 F.2d 648, 661 (11th Cir. 1993). Jane Doe #1 and Jane Doe #2 should be able to avail themselves of those rules to determine whether Epstein used ██████ to improperly obtain information about the criminal investigation of the victims’ sexual abuse or otherwise to inappropriately influence the process.

██████ has also made factual representations in support of his motion, including representations about his lack of involvement in the Epstein case and the supposed inadequate basis for the victims’ allegations. ██████ motion for sanctions (attached to his motion to intervene) alleges, “based on information and belief,” that victims’ counsel “did not speak to any current or former personnel from the Office or the FBI who were familiar with the structure of the West Palm Beach Office or with Movant’s [i.e., ██████] role (or lack thereof) in the Epstein investigation.” Intervenor’s Motion for Sanction at 5. The motion further complained that victims’ counsel “never contacted Movant.” *Id.*

Oddly for one complaining about lack of contact, ██████ never contacted the victims’ counsel about whether they have spoken to current personnel in the U.S. Attorney’s Office about

██████ involvement in the Epstein case. If he had done so, ██████ would have learned that on December 10, 2010, victims counsel met in Miami with the Wilfredo Ferrer, United States Attorney for the Southern District of Florida; Ben Greenburg, First Assistant U.S. Attorney; ██████ Lee, Assistant U.S. Attorney; and A. Marie Villafaña, Assistant U.S. Attorney and line prosecutor on the Epstein matter. Without disclosing any information about the details of that settlement meeting, victims' counsel believe it is appropriate to report that ██████ involvement in the Epstein investigation was discussed.

Moreover, in an effort to facilitate contact on these issues, the same day that ██████ filed his motion to intervene (May 3), victims' counsel (Cassell) sent an e-mail to ██████ requesting an opportunity to talk with him about his role in the Epstein case. The next day (May 4), ██████ sent a letter back refusing to talk about the matter. In view of ██████ refusal to meet voluntarily with the victims' counsel regarding his factual representations, if the Court decides to allow ██████ to intervene, it should also grant the victims the right of a reasonable deposition regarding his involvement in the Epstein case.

#### **POSITION OF THE PARTIES**

The victims wish to clarify the position of the parties. ██████ reports in his motion (based on a discussion with Assistant U.S. Attorney ██████ Lee) that the United States “does not *oppose* the Motion to intervene.” The victims wish to report (likewise based on discussion with AUSA Lee) that the United States does not *support* the motion to intervene. The United States believes that this issue is a fight between the victims and ██████ in which it is simply not involved, so it takes no position on the motion. The United States also believes that it can adequately defend against the victims' assertions without any need for ██████ involvement.

**CONCLUSION**

For all the foregoing reasons, the Court should deny [REDACTED] motion to intervene in this Crime Victims' Rights Act case.

DATED: May 17, 2011

Respectfully Submitted,

s/ Bradley J. Edwards

Bradley J. Edwards

FARMER, JAFFE, WEISSING,

EDWARDS, FISTOS & LEHRMAN, P.L.C.



*and*

Paul G. Cassell

*Pro Hac Vice*

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Attorneys for Jane Doe #1 and Jane Doe #2

**CERTIFICATE OF SERVICE**

The foregoing document was served on May 17, 2011, on the following using the Court's

CM/ECF system:



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