



ORDERED in the Southern District of Florida on April 19, 2018.


Raymond B. Ray, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**
www.flsb.uscourts.gov
Fort Lauderdale Division

In re:

ROTHSTEIN ROSENFELDT ADLER, PA,

Case No. 09-34791-BKC-RBR

Debtor.

Chapter 11

**ORDER TO SHOW CAUSE
WHY FOWLER WHITE AND JEFFREY EPSTEIN SHOULD NOT BE HELD IN CONTEMPT
AND SCHEDULING EVIDENTIARY SHOW CAUSE HEARING**

THIS MATTER came before the Court for a hearing on April 13, 2018, upon the *Motion for Issuance of an Order to Show Cause Why Fowler White and Jeffrey Epstein Should Not be Held in Contempt of Court, to Permit Discovery, to Assess Sanctions and Costs, and for Other Appropriate Relief* [D.E. 6326] (the "Motion for Order to Show Cause"), the Responses [D.E. 6351, 6355], and the Reply [D.E. 6358] thereto. Interested Party Bradley Edwards filed a notice of joinder [D.E. 6325], and sexual assault victims, L.M., E.W., and Jane Doe, filed a Motion to Intervene [D.E. 6344] and a Motion for Joinder [D.E. 6345], which were granted at the April 13th Hearing. [D.E. 6360, 6364]. After having considered the pleadings, court file, argument of the parties, and being otherwise duly advised in the premises, the Court finds as follows.

I. ALLEGATIONS

Farmer, Jaffe, Weissing, Edwards, Fixtos & Lehrman, P.L. (“Farmer Jaffe”) filed the Motion for Order to Show Cause [D.E. 6326] alleging that the attorneys at the law firm of Fowler White Burnett, P.A. (“Fowler White”) violated this Court’s *Agreed Order Cancelling Hearing on Motion for Relief from Amended Order [D.E. 1068] and to Compel Jeffrey Epstein to Pay for the Production of All Documents in Response to his Requests filed by Interested Party Farmer, Jafe, Weissing, Edwards, Fistos & Lehrman, P.L.* [D.E. 1194] (the “Agreed Order”). The Agreed Order [D.E. 1194] stated that:

Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White’s copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards, or his client.

In summary, Farmer Jaffe has alleged that Fowler White and Jeffrey Epstein violated the Agreed Order [D.E. 1194] because Fowler White allegedly retained a copy of the “subject documents” and passed these documents on to Mr. Epstein and his current counsel, Scott Link and Kara Rockenbach. [D.E. 6326 at 6-11]. The Court incorporates by reference the allegations made by Farmer Jaffe in the Motion for Order to Show Cause. *Id.* The Court finds that the allegations satisfy the requirements of a prima facie case to sustain an order to show cause.

II. LEGAL STANDARD

The Court will hold an evidentiary Show Cause Hearing to consider civil contempt. *Green Point Credit, LLC v. McLean (In re McLean)*, 794 F.3d 1313, 1323 (11th Cir. 2015). The Court shall provide the requisite due process protections by issuing this “show-cause order providing notice and a hearing in which the alleged contemnor, who may be represented by counsel, can introduce evidence rebutting the allegation of contempt and testify on its own behalf.” *Id.* at 1324 (citing *Mercer v. Mitchell*, 908 F.2d 763, 767 (11th Cir. 1990)). The Court will refrain from considering criminal contempt, punitive sanctions, or incarceration because of the requisite due process protections, i.e. a possible jury trial. *Id.* at 1324 (citing *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787, 798-99, 107 S. Ct. 2124 (1987)).

To provide clarity for the parties, the Court will consider civil contempt and potential sanctions under the following legal standard. Although the Court possesses the inherent power to enforce its orders, the Court recognizes that the inherent powers should be used sparingly and will instead rely upon the statutory contempt power provided in 11 U.S.C. § 105(a). *Green Point Credit, LLC v. McLean (In re McLean)*, 794 F.3d 1313, 1319 (11th Cir. 2015) (citing *Jove Eng'g, Inc. v. IRS*, 92 F.3d 1539, 1554 (11th Cir. 1996)); *Gowdy v. Mitchell (In re Ocean Warrior, Inc.)*, 835 F.3d 1310, 1316-17 (11th Cir. 2016). Section 105(a) of the U.S. Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The Court has jurisdiction here because the Court retained jurisdiction in the Agreed Order [D.E. 1194], and this alleged discovery violation is a core proceeding. *See* 28 U.S.C. § 157 (“Core proceedings include, but are not limited to (A) matters concerning the administration of the estate”); *In re Ocean Warrior, Inc.*, 835 F.3d at 1318 (quoting *In re Skinner*, 917 F.2d 444 (10th Cir. 1990)) (“[c]ivil contempt proceedings arising out of core matters are themselves core matters.”).

To prevail in a civil contempt proceeding, the movant must establish by “‘clear and convincing’ proof that the underlying order was violated.” *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) (citing *Newman v. Graddick*, 740 F.2d 1513, 1525 (11th Cir. 1984); *Piambino v. Bestline Prods., Inc.*, 645 F. Supp. 1210, 1213 (S.D. Fla. 1986)). “However, once the moving party makes a prima facie showing that the court order was violated, the burden of production shifts to the alleged contemnor to show a ‘present inability to comply that goes ‘beyond a mere assertion of inability.’” *Id.* (quoting *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 984 (11th Cir. 1986)). The Court will not consider the “subjective beliefs or intent of the alleged contemnors in complying with the order,” but the Court will consider substantial compliance made in good faith. *Id.* (citing *Jim Walter Res., Inc. v. Int'l Union, etc.*, 609 F.2d 165, 168 (5th Cir. 1980);

Newman, 740 F.2d at 1524).

If, after notice and an evidentiary hearing, the Court makes a finding of civil contempt, the Court will consider imposing “compensatory sanctions for actual damages” incurred. *In re McLean*, 794 F.3d at 1326. These compensatory sanctions must serve “either or both of two purposes: to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.” *Id.* at 1323 (quoting *FTC v. Leshin*, 719 F.3d 1227, 1231 (11th Cir. 2013)). These compensatory sanctions may include, but are not limited to, professional fees or, considering the sensitive nature of the allegations, damages for emotional distress.¹ *See id.* at 1325-26.

Accordingly, it is

ORDERED as follows:

1. The Motion for Order to Show Cause [D.E. 6326] is **GRANTED**.
2. Mr. Jeffrey Epstein and a representative of Fowler White are **DIRECTED** to appear on **August 23 and 24, 2018 at 10:00 A.M.** in Courtroom 308, 299 East Broward Boulevard, Fort Lauderdale, Florida, 33301 and **SHOW CAUSE** as to why they should not be held in contempt of court. This Show Cause Hearing shall be evidentiary in nature. Failure to appear shall result in either Fowler White or Jeffrey Epstein being held in contempt of Court and other such action as the Court deems necessary.
3. Farmer Jaffe, Mr. Bradley Edwards, L.M., E.W., and Jane Doe are **DIRECTED** to file a summary of their damages with the Court.
4. Depositions. Movants may take the depositions of Mr. Jeffrey Epstein, any representative(s) of Fowler White with knowledge of the chain of custody of the discovery documents, and a representative Link & Rockenbach, P.A.. All depositions shall be conducted in person and in

¹ “To recover damages for emotional distress, ‘a plaintiff must (1) suffer significant emotional distress, (2) clearly establish the significant emotional distress, and (3) demonstrate a causal connection between the significant emotional distress and the violation of the [order].’” *In re McLean*, 794 F.3d at 1325-26 (quoting *Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1271 (11th Cir. 2014)).

the Southern District of Florida. The subject matter of the depositions shall be limited to the allegations of federal civil contempt regarding the alleged discovery violations of the Agreed Order [D.E. 1194]. If the parties find that additional depositions are necessary, the party seeking to take the deposition shall file a motion with the Court in a timely manner so as not to delay the Show Cause Hearing.

5. Exhibits. The parties are to exchange their respective exhibit binders, which they wish to present to the Court at the Show Cause Hearing, no later than seven (7) days prior to the Show Cause Hearing.
 - a. Pursuant to this order, the parties shall submit to the Court's chambers, located in room 306, 299 East Broward Blvd., Fort Lauderdale, Florida, no later than two (2) business days before the Show Cause Hearing date² exhibit binders containing:
 - i. A set of pre-marked exhibits intended to be offered as evidence at the hearing including the sworn declarations set out hereinafter. Movant(s)'s exhibits shall be marked numerically, and Respondent(s)' exhibits shall be marked alphabetically. Exhibits shall be bound in a notebook or folder with tabs marking each exhibit, and shall be accompanied by an Exhibit Register in the form conforming to Local Form 49. Sufficient copies must be provided so that a set is available for each party, the witnesses, and the judge, as required by Local Rule 9070.
 - ii. Opening Statement. Any written opening statement the party wishes the Court to read before the Show Cause Hearing begins. Oral opening statements normally will not be permitted at hearing.

² It is wise to contact the Court's staff prior to delivering the documents to assure that someone will be present to accept the exhibit binders.

- iii. **Summaries.** Any summaries intended to be submitted into evidence must be prepared and submitted as pursuant to Rule 1006 of the Federal Rules of Evidence.
- iv. **Sworn Declarations.** Unless otherwise ordered, the direct testimony of each witness, except adverse, hostile or rebuttal witnesses, shall be presented by sworn declarations consisting of a succinct written statement of the direct testimony which that witness would be prepared to give if questions were propounded in the usual fashion at the Show Cause Hearing. Each statement of fact shall be separate, sequentially numbered and shall contain only facts which are relevant and material to the contested issue before the Court, avoiding redundancies, hearsay, and other obviously objectionable statements. The statement shall be signed under penalty of perjury by the declarant. A sample statement can be found at Local Form 63B. Such statements may be referenced as the witness' "sworn declaration of fact."
 - 1. The original sworn declarations shall be marked as exhibits and incorporated in the Exhibit Register.
 - 2. Objections to any portions of the statements may be raised at the time the sworn declaration of each respective witness is offered to the Court. The witness shall then be sworn and asked if the statement correctly reflects the testimony that would be given if the witness was asked the appropriate questions. Assuming an affirmative answer, opposing counsel may then cross-examine the witness. At the conclusion of cross-examination, the party whose witness is on the stand may conduct oral redirect examination in the usual manner.

- b. The parties shall confer on the admissibility of the exhibits prior to the Show Cause Hearing, and shall announce on the record the exhibits they agree are admitted into evidence, objected to, or withdrawn.
 - c. Written objections to the use of deposition transcripts or admissibility of exhibits other than the sworn declarations shall be filed not later than two (2) days prior to the Show Cause Hearing. The objection must (i) identify the exhibit, (ii) state the grounds for the objection, and (iii) provide citations to case law and other authority in support of the objection. If no written objections are timely filed they are deemed waived unless excused by the Court for good cause.
6. Final Argument. At the conclusion of the Show Cause Hearing, in lieu of final argument, the Court may request that each party submit (a) a written closing statement with supporting legal argument or (b) a proposed memorandum opinion with findings of fact and conclusions of law with a separate proposed final judgment, in word processing format, to the Court's electronic mailbox, RBR_Chambers@flsb.uscourts.gov.
7. Settlement. If the proceeding is settled, Plaintiff's counsel shall upload to the Court an Agreed Stipulation or Agreed Final Judgment approved by both parties prior to the time the Show Cause Hearing is to begin, otherwise all counsel shall be prepared to go forward with the Show Cause Hearing. *In addition, Plaintiff's counsel is instructed to immediately inform the Courtroom Deputy, Ms. Edy Gomez at Edy_Gomez@flsb.uscourts.gov, of any settlement, so Ms. Gomez may use the day for other matters.* If a judgment or stipulation is not submitted to the Court, all counsel shall be prepared to go forward with the Show Cause Hearing. If the proceeding is removed from the calendar based upon the announcement of a settlement, the proceeding will not be reset, if the parties fail to consummate the settlement. In that event, the Court will only consider a motion to enforce the settlement.

8. Sanctions. Failure to comply with any provision of this order or prior Court Orders may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or striking of claims.

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The Clerk shall provide copies to:

Jack Scarola, Esq.

[Attorney Scarola is directed to serve a conformed copy of this Order on all interested parties immediately upon receipt hereof and to file a certificate of service.]