

FILED

March 29, 2021

ST-2019-PB-00080

TAMARA CHARLES

CLERK OF THE COURT

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 |) | PROBATE NO. ST-19-PB-80 |
| JEFFREY E. EPSTEIN, |) | |
| |) | ACTION FOR TESTATE |
| Deceased. |) | ADMINISTRATION |
| |) | |

CO-EXECUTORS' RESPONSE TO GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS' NOTICE OF APPEAL & PETITION FOR REVIEW OF
MAGISTRATE JUDGE'S ORDERS

Pursuant to V.I. Super. Ct. R. 322(b)(5), the Co-Executors of the Estate of Jeffrey E. Epstein, **DARREN K. INDYKE** and **RICHARD D. KAHN**, hereby respond to the Government of the United States Virgin Islands' ("Government") Notice of Appeal & Petition for Review of Magistrate Judge's Orders, filed March 17, 2021 ("Petition").¹

CO-EXECUTORS' POSITION STATEMENT

The Government's Petition is too little, too late. Judge Hermon-Percell properly denied the Government's Motion to Intervene in these probate proceedings *over thirteen (13) months ago*, a fact that the Government inexplicably fails to tell the Court in its Petition. The Government also neglects to inform the Court that the factual basis for its Emergency Motion to Freeze All Estate Assets and Cash on Hand (the "Emergency Motion") is no longer accurate. That motion is thus moot.

1. The Government Lost its Motion to Intervene Over Thirteen (13) Months Ago.

The Government filed its Motion to Intervene on January 23, 2020, relying on V.I. Civ. P. Rule 24. As explained in the Co-Executors' January 31, 2020 opposition to that Motion, Rule 24

¹ While the Government cites V.I. Supr. Ct. R. 322.1(b) in support of its Petition, that Rule has been repealed.

is inapplicable to these probate proceedings, which are instead governed by Title 15 of the Virgin Islands Code and the Virgin Islands Rules for Probate and Fiduciary Proceedings.² On February 4, 2020, the Magistrate Judge expressly denied the Motion to Intervene from the bench:

THE COURT: “[B]efore me I have a motion from the People, the Government to intervene as a claimant intervenor in the matter and ***I'm going to deny that — the Motion to Intervene.*** You're here as a claimant. And I'm assuming that you will file your formal creditors claim.”

(Official Transcript of Proceedings at 98:8-14, attached as **Exhibit B**) (emphasis supplied).

There was no uncertainty about the Magistrate Judge's February 4, 2020 ruling, and no excuse for the Government to delay any appeal from it. Rather, the Government elected not to do so. It strains credulity to now believe that the Government was unaware of that ruling and had to await the Magistrate Judge's Order dated February 26, 2021 to realize that the Court denied its Motion to Intervene more than one (1) year earlier.³

Even if the Court ignored the Government's extraordinary delay in filing its Petition, its application lacks merit. As the Magistrate Judge noted on February 4, 2020, the Government — a civil litigant against the Estate in the CICO lawsuit entitled *Gov't U.S. Virgin Islands v. Estate of Jeffrey Epstein, et al.*, No. ST-2020-CV-14⁴ — is in no different position than those asserting claims against the Estate. The Magistrate Judge explained that situation to the Government:

“ASSISTANT ATTORNEY GENERAL ARIEL SMITH: I just have one procedural question, Your Honor. To the extent that you've denied the Government's Motion to Intervene, how would we file any response to — cause

2. The Co-Executors' Opposition to Motion to Intervene is attached as **Exhibit A**.
3. The Magistrate Judge's Order expressly notes “the Court's denial of said Motion [to Intervene] at the February 4, 2020 hearing.” *See* February 26, 2021 Order at fn. 1.
4. Contrary to the Government's representation (Petition at 2 fn. 2), the Court has not granted the Government leave to file its Second Amended Complaint in the CICO action.

we decided to file the Motion To Intervene in order to be able to file the opposition⁵ which has not been formally filed. It was just filed as an attachment.

THE COURT: *You come in as claimant, right, so you would be presented before the Court."*

Exh. B (February 4, 2020 Hrg. Tr.) at 100: 8-19 (emphasis supplied). Despite Judge Hermon-Percell's direction, the Government never filed a claim in these probate proceedings.⁶ As the Magistrate Judge made clear, filing a claim is a prerequisite to pursuing relief in a probate proceeding.

For the reasons detailed by the Co-Executors in their opposition to the Motion to Intervene, the Government is required in these probate proceedings to proceed pursuant to the Probate Division's rules, just as any other claimant would.

2. The Government's Emergency Motion is Moot.

The Government filed its Emergency Motion on February 3, 2021 based on its contention that the Estate had breached its commitment to fund the EVCP. However, the EVCP is once again fully funded and has been operating as it had since its implementation.⁷ The Government's application is therefore moot.

ADDITIONAL ISSUES PRESENTED FOR REVIEW

1. Whether the Government's more-than-thirteen (13) months' delay in appealing from the Magistrate Judge's denial of its Motion to Intervene renders its Petition untimely.

5. See Government's Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program, filed January 20, 2020, in which the Government — alone among all others appearing in these probate proceedings — opposed the Co-Executors' effort to establish the Epstein Victims' Compensation Program ("EVCP"), a widely-heralded alternative dispute resolution process to compensate those claiming sexual abuse by Mr. Epstein. The Magistrate Judge ultimately approved the EVCP by Order dated June 2, 2020.

6. The Government's assertions that it acts "as a claimant" and "has a claim against the Estate" (Petition at 3) are belied by its refusal to file such a claim.

7. See March 12, 2021 EVCP Press Release ("Epstein Victims' Compensation Program to Resume Issuance of Compensation Offers"), attached as **Exhibit C**.

2. Whether the Government's failure to file a claim in these probate proceedings provides an additional ground for the Magistrate Judge's ruling that the Government lacked standing to assert its now-moot Emergency Motion to Immediately Freeze All Estate Assets and Cash on Hand.

Respectfully,

Dated: March 29, 2021

/s/ Christopher Allen Kroblin

CHRISTOPHER ALLEN KROBLIN, ESQ.
SHARI N. D'ANDRADE, ESQ.
MARJORIE WHALEN, ESQ.
V.I. Bar Nos. 966, 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
sdandrade@kellfer.com
mwhalen@kellfer.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the Position Statement contained in the foregoing Co-
Executors' Response to Government of the United States Virgin Islands' Notice of Appeal and
Petition for Review of Magistrate Judge's Orders complies with the word-count requirements of
V.I. Super. Ct. R. 322(b)(5) (780 words) and that a true and correct copy of this Response was
served via the electronic filing system to:

John H. Benham, Esq.
Law Office of John H. Benham, P.C.
john@benhamlawvi.com

Douglas B. Chanco, Esq.
Chanco Schiffer P.C.
doug@csfirm.com

Richard Bourne-Vanneck, Esq.
Law Offices of Richard P. Bourne-Vanneck, Esq.
richard@rpbvlawoffices.com

Kevin F. D'Amour, Esq.
Esq. Gaylin Vogel, Esq.
Law Offices of Kevin F. D'Amour, P.C.
kevin.damour@comcast.net
gaylin.vogel@comcast.net

Melody D. Westfall, Esq.
Westfall Law PLLC
mwestfall@westfalllaw.com

Denise N. George, Esq.
Ariel M. Smith, Esq.
Carol Thomas-Jacobs, Esq.
Virgin Islands Department of Justice
denise.george@doj.vi.gov
ariel.smith@doj.vi.gov
carol.jacobs@doj.vi.gov

A. Jeffrey Weiss, Esq.
A.J. Weiss & Associates
jeffweiss@weisslaw-vi.net

Sean Foster, Esq.
Marjorie Rawls Roberts, P.C.
sean@marjorierobertspc.com

John K. Dema, Esq.
Law Offices of John K. Dema
jdema@demalaw.com

Rosalie Simmonds Ballentine,
Rosalie Simmonds Ballentine, P.C.
roselaw@viaccess.net

Sigrid Stone McCawley, Esq.
David Boies, Esq.
Joshua I. Schiller, Esq.
Boies Schiller Flexner LLP
smmcawley@bsflp.com
dboies@bsflp.com
jschiller@bsflp.com

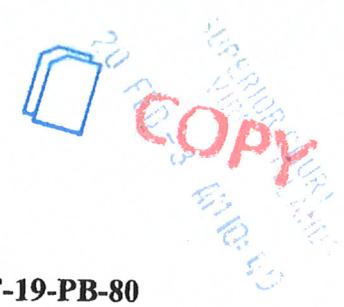
J. Russell B. Pate, Esq.
The Pate Law Firm
pate@sunlawvi.com

/s/ Christopher Allen Kroblin

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IN THE MATTER OF THE ESTATE OF)
 JEFFREY E. EPSTEIN,) PROBATE NO. ST-19-PB-80
)
 Deceased.) ACTION FOR TESTATE
) ADMINISTRATION

OPPOSITION TO

GOVERNMENT'S MOTION TO INTERVENE (CORRECTED BRIEF)¹

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the "Estate"), DARREN K. INDYKE AND RICHARD D. KAHN, by and through KELLERHALS FERGUSON KROBLIN PLLC, and hereby oppose the Motion to Intervene filed by the Government of the Virgin Islands (the "GVI"). Because the GVI's Motion to Intervene is flawed both substantively and procedurally, the Court should deny that application.

I. The Proposed Intervention Serves No Proper Purpose

The GVI asserts that its intervention in this probate proceeding is, in part, required "to ensure that the administration of the Estate conforms to the laws of the Virgin Islands." (Motion to Intervene at 1.) That is nonsense: under Virgin Islands law, it is the Court's charge — not the GVI's — to oversee the proper administration of estates and ensure their compliance with Virgin Islands law.

The Superior Court has original jurisdiction "to supervise and administer estates and fiduciary relations." 4 V.I.C. § 76(a).

"[T]he Superior Court 'has jurisdiction and the power to administer justice in all matters relating to the affairs of decedents, ... to try and determine all questions, legal or equitable, arising between any or all of the parties to any

¹ This Corrected Brief in Opposition is filed in place of the Opposition to the Government's Motion to Intervene, filed in this Court on behalf of the Co-Executors on Friday, January 31, 2020.

Exhibit A

proceeding, ... as to any and all matters necessary to be determined in order to make a full, equitable, and complete disposition of the matter by such order or decree as justice requires.' 15 V.I.C. § 161. The court is unrestricted in its power to dispose of such cases 'as justice requires' and is explicitly authorized to grant letters of administration, direct and control an executor or administrator's conduct, distribute assets, and order the sale of the deceased person's property. *Id.*"

Ottley v. Estate of Bell, 61 V.I. 480, 489-90 (V.I. 2014). The GVI offers no explanation for why it believes the Court is not up to that task.

Nor does the GVI explain why it waited *more than five (5) months* to seek to intervene in this proceeding, which the Co-Executors commenced on August 15, 2019. That the GVI decided two (2) weeks ago to commence civil claims and file criminal activity liens against the Estate is a self-created emergency: the GVI has long known that Mr. Epstein (and now the Estate) owns substantial real property in the Virgin Islands.

The GVI also purports to find a "potential conflict of interest" in the Co-Executors' administration of the Estate, in particular in proposing to hire independent, nationally recognized claims administration experts to design and implement the proposed Epstein Victims' Compensation Program (the "Program"). (Motion to Intervene at 1.)² That purported conflict does not exist. "The mere existence of a possible adverse interest, without more, is not sufficient grounds for complaint in the Virgin Islands." *In re Estate of Vose*, 317 F.2d 281, 282, n.4 (3d Cir. 1963) (internal citations omitted). Here, the Co-Executors do not have an interest adverse to the Estate which would prevent them from faithfully administering their fiduciary duties. Nor is there any allegation of neglect or dereliction of their fiduciary duties. Indeed, there is absolutely no evidence that the Co-Executors' manner and conduct in executing their office has run afoul of the

2. The GVI's baseless attack on the Program is dealt with separately in the Estate's Reply to the GVI's Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program, filed Friday, January 31, 2020.

standard of care required of an executor. There is, and can be, no allegation that the Co-Executors have been unfaithful to their trust.

It cannot be a “conflict of interest” for the Co-Executors to have known Mr. Epstein during his lifetime — if that were the case, no one could ever appoint a friend or trusted colleague as executor of his or her estate. Nor can Messrs. Indyke’s and Kahn’s past and present involvement in “various Epstein business entities” constitute a disqualifying conflict of interest. (Motion to Intervene at 6.) That some of those entities “are alleged to share liability in [Mr.] Epstein’s civil and criminal violations in the Virgin Islands and elsewhere” (*id.* at 6-7) is nothing more than an unsupported, unproven allegation — none of those business entities have ever been criminally charged, and none have ever been found liable for Mr. Epstein’s alleged conduct.

II. The Virgin Islands Code and the Probate Rules Govern, Not Rule 24

The GVI bottoms its purported right to intervene on Rule 24 of the Virgin Islands Rules of Civil Procedure (“Rule 24”). (Motion to Intervene at 1, 3, 4, 7.) That is a false bottom: it is the Virgin Islands Code and the Virgin Islands Rules for Probate and Fiduciary Proceedings (the “Probate Rules”) that set forth the specific steps a purported claimant must take to bring a claim against an estate and participate in a probate proceeding. *Rule 24 has no application to this proceeding.*

The exclusive procedure for pursuing a claim against an estate is set forth in Chapter 23 of Title 15 of the Virgin Islands Code and the Probate Rules, entitled “Claims and Charge Against the Estate.” *See* 15 V.I.C §§ 391-430. The Probate Rules also include provisions governing a claimant’s participation in a probate proceeding. To the extent the GVI has a claim against the Estate, it must follow these mandatory claims procedures to make that claim and participate in these proceedings.

The Virgin Islands Code and the Probate Rules also provide the only procedure for a creditor to present its claim against the Estate. Thus, a creditor must follow the process outlined in 15 V.I.C. § 606(b) in order to properly file a complaint against an estate. *See Ottley, supra*, 61 V.I. at 493. The language of Section 606(b) is absolute: it forbids a creditor from commencing an action against an estate until it has first presented its claim to the executors, and they have considered and disallowed that claim. *See Oat v. Sewer Enters.*, 46 V.I. 286, 290 (D.V.I. 2004). While all claimants, including the GVI, may file claims with the Estate, they are subject to the jurisdiction of the Court in this probate proceeding. *See* 15 V.I.C. §§ 391 and 392.³

III. The GVI Failed to Follow the Applicable Claims Procedure

Under Virgin Islands law, one who seeks to assert a claim against an estate must first present its claim to the appointed executor or administrator of that estate. *See* 15 V.I.C. § 391 (requiring “[e]very executor or administrator” to publish in a local newspaper and to post a notice “requir[ing] all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of the notice, to the executor or administrator, at a place within this territory therein specified.”). The claimant must conform to the requirements set forth in Title 15, including verification of its claim by affidavit of the claimant or someone with personal knowledge of the relevant facts. *See* 15 V.I.C. § 393 (“Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant, or someone on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no

3. The GVI does not address how Rule 24 could apply to this probate matter, which is of course governed by the Probate Rules. *See* V.I. R. PROB. 1 (providing that “[t]hese Virgin Islands Rules for Probate and Fiduciary Proceedings shall apply in probate, guardianship, trust and other fiduciary proceedings.”). While Rule 1 of the Probate Rules permits the Court to adapt the Virgin Islands Rules of Civil Procedure “as appropriate” when “no procedural provision is included [in the Probate Rules],” here there are express procedural provisions in the Probate Rules that govern claims and the participation of claimants in probate proceedings.

payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant.”).

If and when such a claim is presented to an executor, the executor is then required to examine the claim, consider it, and then either accept or reject it. 15 V.I.C. § 394 (“When a claim is presented to the executor or administrator, as prescribed in section 393 of this title, if he is satisfied that the claim thus presented is just, he shall indorse upon it the words ‘Examined and approved’, with the date thereof, and sign the same officially, and shall pay such claim in due course of administration. If he is not so satisfied he shall indorse thereon the words ‘Examined and rejected’, with the date thereof, and sign the same officially.”).

Here, the GVI failed to follow the claims procedure required by Virgin Islands law to bring a claim against the Estate. Rather than present its claim to the Co-Executors and call on them to review and consider it, GVI instead filed a civil action seeking damages and other relief. That is improper. If the GVI wishes to formally appear in these proceedings, it must (like any other creditor) follow the claims procedure set forth in 15 V.I.C. §§ 391-394: the GVI must present a verified claim, supported by documentation, to the Co-Executors. Pursuant to the statutory scheme, the Co-Executors are then required to assess the GVI’s claim and either reject or accept it. Only then would the GVI have standing to participate in this probate proceeding like all other claimants. However, the Virgin Islands Legislature has mandated that an action may be commenced against an executor only after the expiration of twelve (12) months from the date letters testamentary are granted by this Court. *Ottley, supra*, 61 V.I. at 491 (quoting 15 V.I.C. § 606(a)). These “mandatory” rules apply to all claimants, including the GVI. A claimant is not permitted to bypass the probate process enacted by the Legislature, which was designed precisely for this purpose -- to relieve the executors from defending the estate’s rights in both a civil action

and through probate proceedings simultaneously. *See Ottley, supra*, 61 V.I. at 494. This process also ensures that a claimant will not serve the executor with a summons, in an attempt to gain priority over estate assets to the detriment of other creditors who properly follow the probate process.

IV. Even if Rule 24 Were Applicable – It is Not – the Contingent Nature of the GVI's Claim Requires the Court to Deny Intervention

On January 15, 2020, the GVI filed a civil forfeiture action against the Estate in derogation of the applicable statutory requirements set forth in the Virgin Islands Code and Probate Rules. Even assuming the GVI's complaint had not been filed in contravention of these mandatory claims rules, the GVI would merely have a contingent claim — *i.e.*, one that is entirely dependent on its success in that separate action. “[C]ourts in this circuit that have been confronted with the issue have consistently held that intervention pursuant to Rule 24(a)(2) is inappropriate where the proposed intervenor's interest is contingent upon prevailing on a tort claim in a separate action.”

Gen. Star Indem. Co. v. Virgin Is. Port Auth, 224 F.R.D. 372, 375-376 (D.V.I. 2004) (“Proposed Intervenors cannot deny that any interest they have or may have in this matter is purely contingent upon a favorable judgment in their underlying suit The Court finds that such a contingent interest is insufficient to sustain intervention of right”). Here, even assuming for the sake of argument that Rule 24 is applicable, the Government's contingent interest in a possible favorable judgment in another suit is not an interest significant enough to authorize its intervention.

V. Conclusion

How and when a creditor may present a claim and participate in a probate proceeding is governed by Title 15 of the Virgin Islands Code and the Probate Rules. If the GVI has a claim against the Estate as alleged in its Motion to Intervene, it must follow the claims procedure set forth in 15 V.I.C. §§ 391-394 and the Probate Rules. The rule under which the GVI seeks to

intervene in this proceeding, Rule 24 of the Virgin Islands Rules of Civil Procedure, does not apply to this probate proceeding. Because the GVI has not satisfied the requisites for its participation in this probate proceeding, the Court should deny the GVI's Motion to Intervene.

Respectfully,


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

Dated: February 3, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February 2020, I caused a true and exact copy of the foregoing **Opposition to Government's Motion to Intervene (Corrected Brief)** 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

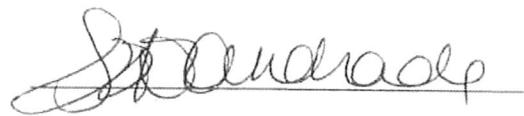
Via First-Class Mail, Postage Prepaid:

Denise N. George, Esq.
Attorney General
Ariel M. Smith, Esq.
Chief, Civil Division
Virgin Islands Department of Justice
34-38 Kronprinsdens 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

Kevin F. D'Amour, Esq.
Gaylin Vogel Esq.
Kevin F. D' Amour, P.C.
5143 Palm Passage, Suite 18b & 19b
St. Thomas, V.I. 00802

John K. Dema, Esq.
Law Offices of John K. Dema
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008



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TAMARA CHARLES

CLERK OF THE COURT

EDIATE RELEASE

2021

CONTACT

Jeff Solnet

Press@EpsteinVCP.com

Epstein Victims' Compensation Program to Resume Issuance of Compensation Offers

New York, NY - Today, the Epstein Victims' Compensation Program (the "Program") and its independent Administrator, Jordana ("Jordy") H. Feldman, announced that the Program will resume the issuance of compensation determination offers, effective immediately.

On February 4, 2021, Ms. Feldman announced the temporary suspension of compensation determination offers due to uncertainty about the liquidity of Estate assets to fund the Program. This week, the Estate notified Ms. Feldman that it had completed the sales of Jeffrey Epstein's New York City and Palm Beach residences, and transferred approximately \$10,000,000 to the Program to satisfy the outstanding amount of the last replenishment request. The Estate also provided assurances to Ms. Feldman, the Probate Court of the U.S. Virgin Islands (where Mr. Epstein's estate is being probated), and others that additional funds from the sales of these properties will be made available to the Program to satisfy future replenishment requests and pay eligible claims. With these developments, the Administrator has determined that there is sufficient certainty that eligible claims can be timely and fully paid and has lifted the suspension.

"I am pleased to report that the Program can now resume full operations after this unfortunate and unexpected month-long delay," said **Ms. Feldman**. "We have continued to process claims and hold meetings with claimants in anticipation of the resolution of the Estate's liquidity issue, and will begin issuing compensation offers immediately. I am eager to continue the important work of this Program, and remain deeply committed to ensuring that all eligible claimants receive the compensation and validation they deserve."

To date, the Program has received over 175 claims, far exceeding expectations, and has paid out over \$67 million to eligible claimants. Although the deadline to register new claims has passed, those already found eligible to participate in the Program have through March 25, 2021 to file their claims.

Launched on June 25, 2020, the Program is a voluntary, non-adversarial, confidential claims resolution program that was established to provide fair and expeditious compensation to victims and resolve their sexual abuse claims against Jeffrey Epstein and the Epstein Estate. The Program was designed by nationally recognized independent claims administration experts Ms. Feldman, Kenneth R. Feinberg and Camille S. Biros with input from victims' attorneys, the Attorney General of the Virgin Islands, the Epstein Estate and other interested parties. The Program operates independently of the Epstein Estate.

For information about the Program, visit <https://www.epsteinvcp.com>.

Exhibit C