IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA

vs. Case Nos.: 2006-CF9454-AXX &
2008-928 CF-AXX

JEFFREY EPSTEIN

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**PALM BEACH POST'S MOTION TO INTERVENE AND PETITION FOR ACCESS**

Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post (the "Post") moves to intervene in this action for the limited purpose of seeking access to documents filed under seal. The documents relate directly to the Defendant's guilty plea and sentence. Thus, the sealed documents go to the heart of the disposition of this case. But in requesting that Judge Pucillo seal these documents, the parties failed to comply with Florida's strict procedural and substantive requirements for sealing judicial records. In addition, continued sealing of these documents is pointless, because these documents have been discussed repeatedly in open court records. For all of these reasons, the documents must be unsealed. As grounds for this Motion, the Post states:

1. The Post is a daily newspaper that has covered this matter and related proceedings. In an effort to inform its readers concerning these matters, the Post relies upon (among other things) law enforcement records and judicial records.

2. As a member of the news media, the Post has a right to intervene in criminal proceedings for the limited purpose of seeking access to proceedings and records. See Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla. 1988) (news media have standing to challenge any closure order); Miami Herald Publ'g Co. v. Lewis, 426 So. 2d 1, 7 (Fla. 1982) (news media must be given an opportunity to be heard on question of closure).

3. The particular documents under seal in this case are a non-prosecution agreement that was docketed on July 2, 2008, and an addendum docketed on August 25, 2008. Together, these documents apparently restrict any federal prosecution of the Defendant for offenses related to the conduct to which he pleaded guilty in this case. Judge Pucillo accepted the agreement for filing during a bench conference on June 30, 2008. The agreement, Judge Pucillo found, was "a significant inducement in accepting this plea." Such agreements and related documents typically are public record. See Oregonian Publishing Co. v. United States District Court, 920 F.2d 1462, 1465 (9th Cir. 1990) ("plea agreements have typically been open to the public"); United States v. Kooistra, 796 F.3d 1390, 1390-91 (11th Cir. 1986) (documents relating to defendant's change of plea and sentencing could be sealed only upon finding of a compelling interest that justified denial of public access).

4. The Florida Constitution provides that judicial branch records generally must be open for public inspection. See Art. I, § 24(a), Fla. Const. Closure of such records is allowed only under narrow circumstances, such as to "prevent a serious and imminent threat to the fair, impartial and orderly administration of justice," or to protect a compelling governmental interest. See Fla. R. Jud. Admin. 2.420(c)(9)(A). Additionally, closure must be effective and no broader than necessary to accomplish the desired purpose, and is lawful only if no less restrictive measures will accomplish that purpose. See Fla. R. Jud. Admin. 2. 420(c)(9)(B) & (C); Lewis, 426 So. 2d at 3.

5. In this case, the non-prosecution agreement and, later, the addendum were sealed without any of the requisite findings. Rather, it appears from the record, the documents were sealed merely because the Defendant's counsel represented to Judge Pucillo that the non-prosecution agreement "is a confidential document." See Plea Conference Transcript page 38

(June 30, 2008). Such a representation falls well short of demonstrating a compelling interest, a genuine necessity, narrow tailoring, and that no less restrictive measures will suffice. Consequently, the sealing was improper and ought to be set aside.

6. In addition, at this time good cause exists for unsealing the documents because of their public significance. Since the Defendant pleaded guilty to soliciting a minor for prostitution, he has been named in at least 12 civil lawsuits that – like the charges in this case – allege he brought and paid teenage girls to come his home for sex and/or "massages."[1] At least 11 cases are pending. In another lawsuit, one of the Defendant's accusers has alleged that federal prosecutors failed to consult with her regarding the disposition of possible charges against the Defendant.[2] State prosecutors also have been criticized: The Palm Beach Police Chief has faulted the State Attorney's handing of these cases as "highly unusual" and called for the State Attorney's disqualification. Consequently, this case – and particularly the Defendant's agreements with prosecutors – are of considerable public interest and concern.

7. The Defendant's non-prosecution agreement with federal prosecutors also was important to Judge Pucillo. As she noted in the June 2008 plea conference, "I would view [the non-prosecution agreement] as a significant inducement in accepting this plea." See Plea Conference Transcript page 39. Florida law recognizes a strong public right of access to documents a court considers in connection with sentencing. See Sarasota Herald Tribune, Div.

[1] See, e.g., Doe v. Epstein, Case No. 08-80069 (S.D. Fla. 2008); Doe No. 2 v. Epstein, Case No. 08-80119 (S.D. Fla. 2008); Doe No. 3. v. Epstein, Case No. 08-80232 (S.D. Fla. 2008); Doe No. 4. v. Epstein, Case No. 08-80380 (S.D. Fla. 2008); Doe No. 5 v. Epstein, Case No. 08-80381 (S.D. Fla. 2008); [redacted] v. Epstein, Case No. 08-80811 (S.D. Fla. 2008); Doe v. Epstein, Case No. 08-80893 (S.D. Fla. 2008); Doe No. 7 v. Epstein, Case No. 08-80993 (S.D. Fla. 2008); Doe No. 6 v. Epstein, Case No. 08-80994 (S.D. Fla. 2008); Doe II v. Epstein, Case No. 09-80469 (S.D. Fla. 2009); Doe No. 101 v. Epstein, Case No. 09-80591 (S.D. Fla. 2009); Doe No. 102 v. Epstein, Case No. 09-80656 (S.D. Fla. 2009); Doe No. 8 v. Epstein, Case No. 09-80802 (S.D. Fla. 2009).

[2] See In re: Jane Doe, Case No. 08-80736 (S.D. Fla. 2008).

of the New York Times Co. v. Holtzendorf, 507 So. 2d 667, 668 (Fla. 2d DCA 1987) ("While a judge may impose whatever legal sentence he chooses, if such sentence is based on a tangible proceeding or document, it is within the public domain unless otherwise privileged."). In this case, no interest justifies continued sealing of these "significant" documents that Judge Pucillo considered in accepting the plea and sentencing the Defendant. The lack of any such compelling interest – as well as the parties' failure to comply with the standards for sealing documents initially – provide good cause for unsealing the documents at this time.

8. Finally, continued closure of these documents is pointless, because many portions of the sealed documents already have been made public. For example, court papers quoting excerpts of the agreement have been made public in related federal proceedings.[3] As the Florida Supreme Court has noted, "there would be little justification for closing a pretrial hearing in order to prevent only the disclosure of details which had already been publicized." Lewis, 426 So. 2d at 8. Similarly, in this case, to the extent that information already has been made public, continued closure is pointless and, therefore, unconstitutional.

9. The Post has no objection to the redaction of victims' names (if any) that appear in the sealed documents. In addition, insofar as the Defendant or State Attorney seek continued closure, the Post requests that the Court inspect the documents in camera in order to assess whether, in fact, continued closure is proper.



[3] See, e.g., "Defendants Jeffrey Epstein and Sarah Kellen's Motion for Stay," [redacted] v. Epstein, Case No. 08-80811 (S.D. Fla. July 25, 2008) (filed publicly Jan. 7, 2009).

WHEREFORE, the Post respectfully requests that this Court unseal the non-prosecution agreement and addendum and grant the Post such other relief as the Court deems proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: **R. Alexander Acosta**, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401 (fax: 561-820-8777); **Michael McAuliffe, Esq.**, and **Judith Stevenson Arco, Esq.**, State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401 (fax: 561-355-7351); **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 (fax: 561-835-8691); and **Bradley J. Edwards, Esq. and William J. Berger, Esq.**, Rothstein Rosenfeldt Adler, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394 (fax: 954-527-8663) on this 1st day of June, 2009.

Attorney