

In the United States Court of Federal Claims

No. 13-465C
(Filed Under Seal: May 20, 2016)
(Reissued: June 1, 2016)¹

 FAIRHOLME FUNDS, INC., et al., *
 *
 Plaintiffs, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *

ORDER

On January 25, 2016, defendant in the above-captioned case filed a notice with the court claiming that the Second Amended Protective Order had been violated. Def.’s Mot. 1-2. Specifically, defendant argued that the terms of the protective order were violated when an internet blog site that frequently posts reports on the progress of this litigation posted a report that James Parrott, former senior advisor at the National Economic Council, invoked his right under the Fifth Amendment to the United States Constitution in refusing to answer certain questions at his January 20, 2016 deposition. Id. Defendant sought confirmation from the court that the protective order does not prevent Mr. Parrott from denying the allegations or, alternatively, permission from the court to allow Mr. Parrott to address press inquiries regarding the false allegations. Id. at 2.

On January 26, 2016, the court issued an order granting Mr. Parrott permission to correct the false statements. Order 2. The court deferred making a final determination as to whether or not the protective order had been violated until such time as defendant had an opportunity to file its reply to plaintiffs’ response to the notice. Id. Defendant’s reply was filed on February 4, 2016 and therefore the question is ripe for resolution.

In its reply, defendant stated the following:

With respect to the question as to whether a violation of the protective order has occurred, the public disclosure on the

¹ The court provided the parties with an opportunity to advise the court whether or not the order should remain sealed. In a May 31, 2016 joint status report, the parties indicated that the order should be unsealed in its entirety. The order is therefore unsealed with the parties’ consent.

referenced website accurately stated that Mr. Parrott did not answer some of the questions posed at the deposition; however, the website incorrectly reported that Mr. Parrott declined to answer questions based on the constitutional right against self-incrimination, when, in fact, Mr. Parrott was instructed not to answer the questions based on assertions of governmental privileges. It is not clear who provided the website with information about the deposition and what information was provided. The government's information about this incident is only that the website erroneously reported that Mr. Parrott invoked his Fifth Amendment right against self-incrimination. As contemplated by paragraph 16 of the Court's protective order, we promptly reported the available facts to the Court. Although we acknowledge the Court's statement that the information we provided in the Notice is insufficient for the Court to determine that a violation occurred, at this time we have no further details to report. Should further details become available, we will promptly notify the Court.

Def.'s Reply 2. Because defendant failed to identify any additional information regarding the means by which the website acquired information about Mr. Parrott's deposition, the court cannot make a determination as to whether or not the protective order has been violated. Therefore, the remaining portion of defendant's January 25, 2016 motion is **DENIED**.

This order is being filed under seal. The parties shall file, **by no later than Friday, May 27, 2016**, a joint status report advising whether the order should remain sealed.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge