

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	CIVIL ACTION NO. 99-5970 (MLC)
	:	
Plaintiff,	:	
	:	ORDER & ORDER TO SHOW CAUSE
v.	:	
	:	
STATE OF NEW JERSEY, et al.,	:	
	:	
Defendants.	:	
_____	:	

IT APPEARING that Kenneth Johnson, Stanley Molnar, and John Villamil ("Movants") (1) are current or former New Jersey state troopers, and (2) have brought separate actions – which are pending in New Jersey Superior Court, Mercer County – alleging claims of employment discrimination, retaliation, and hostile work environment against the State of New Jersey, the Division of State Police of the New Jersey Department of Law & Public Safety ("State Police"), and "individual members of the . . . State Police" ("State Actions") (dkt. entry no. 78, Mov. Br., at 14, & 1st Mov. Cert., at 1-2);¹ and the Movants moving (1) under Federal Rule of Civil Procedure 24(a) to intervene in this closed federal action brought against two of the same defendants, State of New Jersey and State Police, and (2) for a judgment declaring that certain State Police documents ("Documents") – which the Movants obtained

¹ See Johnson v. New Jersey, No. 1265-01; Molnar v. New Jersey, No. 1479-03; Villamil v. New Jersey, No. 1845-03. (1st Mov. Cert., at 1; dkt. entry no. 84, N.J. & State Police Opp. ("N.J. Opp."), at 2.)

from an anonymous source and produced in discovery in the State Actions – should not be confidential under either New Jersey statutory provisions or any confidentiality agreements (“Federal Motion”) (dkt. entry no. 78; see N.J. Opp., at 2-3 (noting Movants counsel asserted in State Action that Documents provided anonymously)); and the Movants appearing to argue that the issue here is:

whether and in what manner Federal Monitoring of the [State Police] will continue and the role of the [New Jersey Attorney General’s Office (“NJAG”)] in defending [and] disciplining the [State Police] may impair or impede the [Movants’] ability to adequately protect their interests both in the State Court litigation and as members of the [State Police]

(Mov. Br., at 14); and the Movants asking the Court to release the Documents (1) from the reach of a confidentiality law, i.e., N.J.S.A. § 45:19-12, and (2) pursuant to New Jersey “common law” (id. at 15-20); but

IT APPEARING that the Documents may “remain protected in the [State Actions] under Consent Protective Orders which have been filed in all three of [those actions]” (N.J. Opp., at 18; see dkt. entry no. 84, N.J. Cert., Exs. A & B, 1-30-06 “Consent Protective Order” issued in Molnar and Villamil State Actions, & 4-21-04 “Consent Order for the Protection of Confidential Information” issued in Johnson State Action); and

IT FURTHER APPEARING that before filing the Federal Motion, the Movants:

filed a motion with the Superior Court in May 2007 [("State Motion")] seeking the release of the [Documents] from confidentiality in order to use them in that pending litigation and to present them to the [State Advisory Committee on Police Standards ("ACPS")] for its consideration

(dkt. entry no. 91, Mov. Reply Br., at 4); and the Movants failing to mention this salient fact in their initial Federal Motion papers, and noting it for the first time in the reply; but the State of New Jersey and State Police so noting the State Motion while the State Motion was still pending (N.J. Opp., at 4); and it appearing that the New Jersey Superior Court:

hear[d] arguments on the release of the [Documents] on July 10[, 2007, and] found that the [Documents] are not confidential pursuant to N.J.S.A. § 45:19-12. Upon request of the [NJAG], however, [the Superior Court] held that the [Documents] are subject to a Confidentiality Agreement that limits access to the [Documents] to the parties and others in close relationship to the parties [("State Court Decision")]. An Order reflecting the findings of the Court in that matter has not yet issued

(Mov. Reply Br., at 1); and it being unclear whether an order has since been issued and, if so, whether the Movants have appealed from it; and it further appearing that the State Police revealed the Documents to the ACPS (id.); and the Movants, despite the findings of the New Jersey Superior Court, still arguing that "based on applicable law as set forth in their initial [Federal Motion] papers, the [Documents] should not be withheld in any manner from public access" (id.); and the parties to this action – all of which have opposed the Federal Motion (N.J. Opp.; dkt.

entry no. 85, U.S. Opp.) – failing to address the aforementioned State Court Decision; and

IT APPEARING to the Court that the issues of the Documents' confidentiality and their release to the public – the issues raised in the Federal Motion – have already been adjudicated by New Jersey Superior Court in the State Court Decision; and the Court further being concerned that the Movants are, in effect, arguing that they have been injured or prejudiced by the State Court Decision itself; and the Court thus intending to order the Movants to show cause why the relief they seek in the Federal Motion is not barred by (1) *res judicata*, (2) collateral estoppel, (3) the entire controversy doctrine, (4) the Full Faith and Credit Act, 28 U.S.C. § 1738, which requires this Court to give the same preclusive effect to a New Jersey state court decision as another New Jersey state court would give, (5) the Rooker-Feldman doctrine, or (6) – if further motion practice concerning, or an appeal from, the State Court Decision is pending – Younger abstention;² and the Movants, in responding to this inquiry, should clarify whether they are arguing that they have been injured or prejudiced by the State Court Decision; and the Movants, in responding to the Court's inquiry, must provide

² It is the duty of the Movants and the parties to familiarize themselves with, and to review the most recent cases issued by the Third Circuit Court of Appeals concerning, these concepts before responding to this inquiry.

copies of the State Court Decision and the resulting order for this Court's review; and the Court further intending to deny the Federal Motion without prejudice until the Court's procedural concerns are addressed; and for good cause appearing;

IT IS THEREFORE on this 6th day of December, 2007
ORDERED that the motion, inter alia, to intervene (dkt. entry no. 78) is **DENIED WITHOUT PREJUDICE**, with leave to move again – if appropriate – when the Court’s order to show cause is resolved; and

IT IS FURTHER ORDERED that the motion to seal (dkt. entry no. 79) is **REFERRED TO THE MAGISTRATE JUDGE** for disposition; and

IT IS FURTHER ORDERED that Kenneth Johnson, Stanley Molnar, and John Villamil shall **SHOW CAUSE** why the relief they seek in the motion, inter alia, to intervene is not barred by (1) res judicata, (2) collateral estoppel, (3) the entire controversy doctrine, (4) the Full Faith and Credit Act, 28 U.S.C. § 1738, (5) the Rooker-Feldman doctrine, or (6) Younger abstention; and

IT IS FURTHER ORDERED that **THE PARTIES AND NON-PARTIES WILL FILE** responses with the Court electronically by 5 P.M. on the following dates:³

January 2, 2008	Response of Kenneth Johnson, Stanley Molnar, and John Villamil
January 14, 2008	Responses of the current parties to this action
January 22, 2008	Reply of Kenneth Johnson, Stanley Molnar, and John Villamil; and

³ The Court will disregard responses that are not filed electronically.

IT IS FURTHER ORDERED that the parties and non-parties will provide the Court with one hard copy of all papers electronically filed; and

IT IS FURTHER ORDERED that **NO ENLARGEMENTS OF TIME WILL BE GRANTED** to respond, even with the consent of all parties and non-parties, barring extraordinary circumstances;⁴ and

IT IS FURTHER ORDERED that if Kenneth Johnson, Stanley Molnar, and John Villamil fail to respond to this order to show cause in the first instance – on or before January 2, 2008 – in the manner directed above, then they will be deemed to have withdrawn the request for the relief at issue here; and

IT IS FURTHER ORDERED that this order to show cause will be decided on **WEDNESDAY, JANUARY 23, 2008**, or soon thereafter, without oral argument pursuant to Federal Rule of Civil Procedure 78, unless the parties and non-parties are notified otherwise by the Court.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge

⁴ Extraordinary circumstances do not include: (1) upcoming legal or religious holidays, (2) the parties, non-parties, or counsel being on vacation when this order to show cause was issued, or upcoming vacation plans, (3) difficulty in registering for electronic filing, (4) difficulty in complying with the electronic filing rules, (5) time to conduct discovery, (6) difficulty with a computer or internet access, or (7) any purported failure to be timely notified of this inquiry. The Court has set the dates to respond accordingly.