UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACK and RENEE BEAM,

Plaintiffs,

Civil Action No. 07-cv-1227
Honorable Rebecca R. Pallmeyer

vs.

MICHAEL B. MUKASEY, UNITED STATES ATTORNEY GENERAL, in his official capacity; FEDERAL ELECTION COMMISSION CHAIRMAN DAVID M. MASON, in his official capacity; UNKNOWN AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, in their individual and official capacities,

Defendants.
_____/

PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTIONS TO DISMISS

On March 7, 2008, this Court dismissed Plaintiffs' First Amended Complaint for lack of subject matter jurisdiction. Specifically, the Court concluded that Plaintiffs failed to allege that the government "actually did seize their financial records." (Docket No. 90, Opinion and Order, pg. 7). The Court further pointed out that Plaintiffs' "assumption that the government must have obtained their bank records is not enough to establish an injury in fact. And without any affirmative allegation that the Beams themselves suffered an injury in fact, Plaintiffs lack standing." *Id.* at 8. Along with its dismissal, the Court granted Plaintiffs leave "if they can cure the deficiencies identified here, to file a Second Amended Complaint on or before March 28, 2008." *Id.* at 22.

On March 24, 2008, Plaintiffs filed their Second Amended Complaint alleging that they have been the victims of a politically motivated investigation by the Justice Department in retaliation for their political activities. In Count I of their Second Amended Complaint, Plaintiffs specifically

allege that "federal agents of the Justice Department and/or FBI had, in fact, obtained their financial records by engaging in acts and/or omissions that violate the Right to Financial Privacy Act." (Docket No. 91, Second Amended Complaint, pg. 4, ¶ 16).

After illegally obtaining their financial records in violation of federal law, Plaintiffs allege, the Justice Department transmitted the records to the Federal Election Commission ("FEC"). Defendant FEC, then headed by Bush appointee Michael Toner, began a politically motivated investigation of Plaintiffs for demonstrably false and frivolous allegations of federal campaign finance violations.

In Count II of their Second Amended Complaint, Plaintiffs assert that Defendants' actions were "carried out to instill fear and retaliation for Plaintiffs' exercise of their political activities and support for Democratic candidates and without serving any legitimate law enforcement purpose." *Id.* at 5, ¶ 24.

Both Defendants have now filed motions to dismiss Plaintiffs' Second Amended Complaint under for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) and failing to state a claim under Fed. R. Civ. P. 12(b)(6). For the following reasons, Defendants' motions should be denied.

DISCUSSION AND ANALYSIS

This case began after Alberto Gonzales personally authorized nearly 100 federal agents to conduct an unprecedented nighttime raid of the Michigan law firm of Fieger, Fieger, Kenney, & Johnson as well as the homes of all of the Fieger firm employees and associates. During the raid, federal agents seized about 87,000 pages of documents from the Fieger law firm. Plaintiff Jack Beam serves as *of counsel* to the Fieger law firm. The ostensible reason for this unprecedented raid

was alleged campaign finance disputes that involved approximately $125,000 of contributions to the John Edwards 2004 presidential campaign.

During the course of its investigation, Plaintiffs Jack and Renee Beam discovered that the Justice Department had secretly raided their bank accounts in order to spy on their political activities. By a conservative estimate, it appears that the Justice Department similarly raided more than 100 peoples' financial institutions in order to spy on their political activities.[1] So how did the Justice Department manage to secretly obtain hundreds of bank records without a trace of a warrant, subpoena, or other document? The answer is starting to unravel.

Recently, Plaintiffs obtained one of the grand jury subpoenas issued by the Justice Department during its investigation to gather bank records (**Exhibit A**). On the face of the subpoena, the prosecutor illegally included a "gag order" threatening the recipient (i.e., the financial institution) if it lawfully disclosed the existence of the subpoena. Specifically, the subpoena contains the following language:

> **Any such disclosure [of this subpoena] could impede the investigation being conducted and thereby interfere with the enforcement of law.**[2]

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[1] Eventually, the Justice Department indicted Mr. Fieger and his law partner Mr. Johnson in a ten count felony indictment. On June 2, 2008, a jury acquitted Mr. Fieger and Mr. Johnson of all charges. After the verdict, many of the jurors expressed their wonderment at why the criminal case was ever charged in the first place.

[2] By directing such explicit threats to the recipient of the subpoena, the Justice Department violated 18 U.S.C. § 1503 which criminalizes those who "corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impede, the due administration of justice." And because the Justice Department illegally gagged the financial institution in violation of the First Amendment, the Department also violated 18 U.S.C. § 241 which prohibits conspiring to "injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . . .

In short, the Justice Department was sending out grand jury subpoenas and threatening financial institutions to keep secret the very existence of the subpoena. Such a practice is not only improper (i.e., abuse of court process) and possibly criminal, but it is also a violation of the Right to Financial Privacy Act ("RFPA") in which congress expressly set forth the manner in which the government could seal the existence of a grand jury subpoena.

Under the RFPA, the government may seal the *existence* of a grand jury subpoena by obtaining a court issued gag-order which would effectively gag a financial institution from revealing to its customers whether the government had accessed their account. 12 U.S.C. §§ 3413(i) and 3409. In their most recent motion to dismiss, the Justice Department asserts, in complete contradiction to §§ 3413(i) and 3409, that the RFPA does not apply to grand jury subpoenas. Not only is this untrue, but the Justice Department's assertion is wholly contradicted by its actions.

Specifically, § 3413(i) provides that:

> Nothing in this title [] shall apply to any subpoena or court order issued in connection with proceedings before a grand jury, *except* that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3409).

So, while it is true that most of the substantive provisions of the RFPA do not apply to grand jury subpoenas, the government must still follow the statutory procedures outlined in § 3409 if it wishes to seal the *existence* of a grand jury subpoena served on a financial institution.

The following example best illustrates the operation of §§ 3413(i) and 3409. The government is investigating a bank robbery of a prominent Chicago bank. There is an ongoing grand

jury investigation and the government wishes to obtain surveillance video from the bank. The government serves on the financial institution a grand jury subpoena. The mere existence of that subpoena is not a secret. The financial institution is free to disclose the *existence* of the grand jury subpoena. If the government wishes to seal the existence of the subpoena, it may do so by obtaining a gag order under § 3409. If the government does not obtain the gag order, the bank is not precluded from disclosing the existence of the subpoena.

In this case, the Justice Department could not meet the requirements for a gag order under the RFPA so instead it simply threatened the banks with obstruction of justice if they lawfully disclosed the existence of the grand jury subpoenas. That worked well enough until too many people were asking questions about how the Justice Department obtained their bank records. In response to this lawsuit (and several other similar suits), the Justice Department suddenly changed its practice of including threatening language on the face of the grand jury subpoenas and instead put similar provisions in a cover letter to the bank.

In April 2007, federal agents issued a grand jury subpoena for Plaintiffs' bank records (**Exhibit B**). The grand jury subpoena sent to Plaintiffs' financial institution was accompanied by a cover letter containing the following language:

> The government requests that your institution not provide any information about this grand jury subpoena to any third party – including the affected accountholder(s) – for a period of 90 days. Federal law permits but does not require you to comply with this request for nondisclosure. See 12 U.S.C. § 3413(i). However any disclosure to third parties could impede the investigation being conducted and thereby interfere with the enforcement of federal criminal law.

Essentially, the Justice Department obtained Plaintiffs' bank records by doing an end-run around the RFPA. Because federal agents could not get a gag order under the RFPA, they sent a grand jury subpoena to Plaintiffs' financial institution and told the bank to keep quiet or they could be charged with impeding or interfering with "the enforcement of federal criminal law." Translation: give us the records and keep quiet or you will be charged with obstruction of justice.

Now, in its motion to dismiss, the Justice Department claims that "Plaintiffs cannot state a claim under the RFPA because it does not apply to grand jury investigations." (Docket No. 96-2, AG Motion to Dismiss, pg. 8). If the RFPA doesn't apply to grand jury investigations as the Justice Department now claims in its motion to dismiss, then why did agents of the Justice Department cite § 3413(i) as a basis to gag Plaintiffs' financial institution?[3] This fact alone demonstrates that Defendant Justice Department knew the requirements of the RFPA and circled around the law.

The Justice Department also claims in its motion to dismiss that "provisions in other statutes make it a crime for financial institutions to disclose grand jury subpoenas to customers in certain circumstances. *See, e.g.*, 18 U.S.C. § 1510(b)(2)[]." (Docket No. 96-2, pg. 9 n.4). This is also not exactly accurate. Section 1510 provides that the secrecy requirements apply *only* to a grand jury subpoena for records relating to the following categories of criminal investigations:

- receipt of commissions or gifts for procuring loans
- theft, embezzlement, or misapplication by bank officer or employee
- banking crimes committed by lending, credit and insurance institutions employees
- influencing FDIC transactions with false entries, etc.

[3] The Court should note that the Justice Department continuously invents new arguments to justify its abuse of court process and unlawful means of obtaining the bank records in question. During the grand jury proceedings and criminal trial of Mr. Fieger, the prosecutors came up with several interpretations of the law and argued that the RFPA doesn't apply, but now we see that they were specifically citing the recipients of the grand jury subpoenas to the RFPA as a reason to keep secret the government's misconduct.

- making false loan and credit applications
- bank fraud
- laundering of monetary instruments
- engaging in monetary transactions in property derived from specified unlawful activity

18 U.S.C. § 1510(b)(3)(B)(i),(ii). The government's alleged claims against Plaintiffs have nothing to do with any of the crimes enumerated in § 1510; therefore, the government's vague claims to secrecy should be flatly rejected.

If the government's investigation does not involve suspected violations of the aforementioned crimes, then its grand jury subpoena for records is not secret unless the government obtains a gag order under 12 U.S.C. §§ 3413(i) & 3409. Indeed, the fact that 12 U.S.C. §§ 3413(i) & 3409 specifically address the manner in which the government may seal a grand jury subpoena served on a financial institution further demonstrates that the government's interpretation of 18 U.S.C. § 1510 is flawed. For instance, if the government's assertion were true that *all* grand jury subpoenas served on financial institutions were secret under § 1510, then 12 U.S.C. § 3413(i) would be rendered superfluous because there would never be a need to seal such a subpoena. *See, e.g., Arkansas Best Corp. v. Comm'r Internal Revenue Serv.*, 485 U.S. 212, 218 (an interpretation of statutory provision that renders another superfluous cannot be correct).

In this case, the Justice Department's cover letter to Plaintiffs' financial institution confirms its knowledge of the gag order provisions of the RFPA. The Justice Department violated the RFPA by doing an end-run around the law. They couldn't satisfy the requirements of obtaining a gag order and so they simply threatened the banks to do as they demanded and keep the subpoenas secret from the account holder. The Justice Department does not have a license to violate the law, or to bypass

the letter and spirit of the statute. Congress passed the RFPA to protect the privacy interests of individuals like Plaintiffs from unwarranted governmental intrusion into their financial records.

Congress also provided Plaintiffs with a statutory cause of action against "[A]ny agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title . . ." 12 U.S.C. § 3417(a). Contrary to Defendants' contentions, Plaintiffs have demonstrated an injury by virtue of Defendants' violation of the RFPA which provides Plaintiffs with a statutory cause of action against the "agency or department of the United States" responsible for the violation. In this case, it is clear that Plaintiffs rights under the RFPA were violated by the Justice Department.

In their Second Amended Complaint, Plaintiffs also allege that Defendant FEC also violated their rights under the RFPA. Without discovery, it is unclear how the FEC obtained Plaintiffs' bank records. However, given that the FEC sent Plaintiffs a letter containing a factual basis of their investigation, it is clear that the FEC obtained, in some fashion, Plaintiffs' financial records. Plaintiffs have a statutory cause of action against the FEC and should be allowed discovery on this claim.

Defendants also contend that Plaintiffs claims are barred by sovereign immunity. The Right to Financial Privacy Act (RFPA) provides a statutory cause of action for violation of the Act and expressly provides for actual and punitive damages against "[a]ny ***agency or department*** of the United States . . ." 12 U.S.C. § 3417(a)(emphasis added). Thus, § 3417 constitutes a waiver of sovereign immunity as to Plaintiffs' claims against both the DOJ and FEC arising under the RFPA.

To the extent that Plaintiffs claim that federal agents violated their constitutional rights to engage in free speech, Defendants' reliance on sovereign immunity also fails. A suit in which a

plaintiff alleges that a federal officer has acted in violation of the Constitution or statutory authority generally is not deemed to be a suit against the sovereign. *Dugan v. Rank*, 372 U.S. 609, 621-22 (1963); *Ogden v. United States*, 758 F.2d 1168, 1177 n.5 (7th Cir. 1985). As the Seventh Circuit has aptly pointed out, an action seeking monetary relief from individual federal officials for a constitutional violation may be brought as a *Bivens* action "to avoid the sovereign immunity that would block an action against the United States." *Sterling v. United States*, 85 F.3d 1225, 1228-29 (7th Cir. 1996).[4]

In sum, Plaintiffs were protected by the RFPA, and congress provided Plaintiffs with a statutory cause of action for punitive damages for violating Plaintiffs' rights under the Act. As such, Plaintiffs have suffered a cognizable injury sufficient to stand before this Court seeking the relief provided by law.

In Count II of their Second Amended Complaint, Plaintiffs allege that they are victims of an improper, politically motivated conspiracy and investigation by Defendants in retaliation for their political activities. Defendants contend that Plaintiffs have failed to state a claim and that their retaliation claims are unripe. The Court should reject both of Defendants' arguments.

The standard which determines the sufficiency of factual allegations of the existence of a civil conspiracy are governed by the "short and plain statement" rule set forth in Fed. R. Civ. P. 8(a). *See, e.g., In re, Crazie Eddie Securities Litigation*, 747 F. Supp. 850, 863 (E.D. N.Y. 1990); *see also Quinones v. Szorc*, 771 F.2d 289, 291 (7th Cir. 1985). When pleading a civil conspiracy – just as

[4] In *Bivens,* the Supreme Court held that a plaintiff could recover money damages for violations of the Fourth Amendment committed by federal agents. 403 U.S. at 397; *see also Bagola v. Kindt*, 131 F.3d 632, 637 (7th Cir. 1997). Courts have also recognized that a *Bivens* remedy extends beyond Fourth Amendment violations and encompasses other constitutional rights. *Butz v. Economou*, 438 U.S. 478 (1978).

every other civil action – the "plaintiff need not 'plead his evidence' in stating a claim in conspiracy or otherwise go into unnecessary detail (internal citations omitted)." *Williams v. AMF, Inc.*, 512 F. Supp. 1048 (S.D. Ohio 1981). Indeed, pleading and proving the existence of a conspiracy is one of the more difficult of all possible undertakings in litigation because a conspiracy, by its very nature, is a secret and clandestine enterprise.

As the Supreme Court has admonished: "in . . . cases, where the proof is largely in the hands of the alleged conspirators . . . dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly (internal quotation marks omitted)." *Hospital Building Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 746 (1976). The allegations of Plaintiffs' complaint falls well within the guidelines for pleading a civil conspiracy. Accordingly, this Court should reject Defendant FEC's argument that Plaintiffs have failed to sufficiently state a conspiracy claim.

Plaintiffs' complaint further alleges that the government's acts were carried out in retaliation for their support of the John Edwards campaign with the intent to chill the exercise of their constitutional rights. And contrary to the government's assertion, Plaintiffs are not asking the Court to "recognize an entirely new cause of action[.]" (Docket No. 96-2, pg. 11). There is nothing novel about a constitutional claim against government officials for retaliation or vindictive prosecution.

In *Chicago Reader v. Sheahan*, 141 F. Supp.2d 1142 (N.D. Ill. 2001), Judge Moran aptly set forth the elements of a retaliation claim as follows:

> (1) that the plaintiff was engaged in a constitutionally protected activity; (2) that the defendant's adverse action caused the plaintiff to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the adverse action was motivated at least in part as a response to the exercise of the plaintiff's constitutional rights.

(citing *Block v. Ribar*, 156 F.3d 673, 678 (6th Cir. 1998)).

In this case, Plaintiffs Jack and Renee Beam exercised their most sacred right of political speech by providing financial support to the John Edwards 2004 Presidential campaign. Shortly thereafter, federal agents raided Plaintiffs' bank accounts in violation of the law. After obtaining Plaintiffs' bank records and other private financial records, former FEC Chairman Michael Toner sent Plaintiffs a letter threatening a frivolous and demonstrably false civil enforcement action based on Plaintiffs political activities. Based on these facts, Plaintiffs allege in their complaint that:

> Defendants acts or omissions of illegally obtaining Plaintiffs' private banking records was carried out to instill fear and retaliation for Plaintiffs' exercise of their political activities and support for Democratic candidates and without serving any legitimate law enforcement purpose.

(Second Amended Complaint, pg. 5, ¶ 24).

The factual basis for Plaintiffs claims against Defendant Mukasey for declaratory and injunctive relief are set forth in paragraph 25 of Plaintiffs' Second Amended Complaint. Specifically, Plaintiffs allege that:

> Defendants have engaged in a systemic pattern, custom, practice, and official policy of retaliating against Plaintiffs for no legitimate or valid reason but instead based on their political support of past and present Democratic candidates for political office.

Contrary to Defendants' arguments, the allegations of Plaintiffs' Second Amended Complaint state a cognizable claim arising under the constitution. In short, Plaintiffs' allege that Defendants' actions were motivated to chill the exercise of their constitutional rights and without any legitimate law enforcement purpose.

In Count III of their complaint, Plaintiffs allege that Defendants violated their rights under the Fifth Amendment to be free from selective and vindictive prosecution. In paragraph 31 of their complaint, Plaintiffs allege that:

> with respect to Plaintiffs Jack and Renee Beam, Defendants, for reasons of personal and political animosity, acted with discriminatory purpose and intent by selectively and vindictively targeting Jack and Renee Beam with frivolous and demonstrably false claims of campaign finance violations.
>
> Specifically, in September 2006, Defendant Toner accused Jack and Renee Beam of making a contribution "in the name of another" in violation of 2 U.S.C. § 441f. Defendant Toner also claimed, without any basis in fact, that Jack and/or Renee Beam have never before contributed to a political campaign when, in fact, both Jack and Renee Beam have been politically active and have contributed to many federal candidates over the years.
>
> The purpose of Defendant Toner's letter was not to serve any legitimate governmental purpose but rather was designed to threaten, intimidate, and chill the exercise of Plaintiffs' First Amendment rights.

(Second Amended Complaint, pg. 6-7, ¶¶ 31-33).

The government's assertion that Jack and Renee Beam cannot present their federal claims unless and until they are indicted is simply absurd. So the government can harass, threaten, intimidate, retaliate, and conspire against American citizens for exercising their free speech and those victimized by such acts cannot complain about it unless and until they are indicted? Such an assertion violates the core protections of the United States Constitution and should not be circumvented by resorting to such disingenuous formalities.

The Court should also conclude that the issues presented herein are ripe for judicial decision. For example, in this Court's Opinion dated March 7, 2008, the Court held that "[b]ecause the

Attorney General and FEC have not yet made decisions about whether or how to enforce applicable laws, the court cannot assess the impact of any agency misconduct on the Beams." This is no longer an issue because the five year statute of limitations for criminal charges has now expired as to Plaintiffs contributions in question.

As this Court noted in its Opinion, "[t]he question before the court is whether to intervene in an ongoing federal criminal investigation . . ." (Docket No. 90, Opinion and Order, pg. 12-13). Given that the statute of limitations has run, there is no obstacle to the Court's exercise of jurisdiction over Plaintiffs' claims that Defendants violated their rights under the RFPA and the constitution.

The Court should also reject the government's contention that Plaintiffs have suffered no injury because they were never indicted. The Attorney General is essentially asking the Court to hold, for the first time ever, that the Justice Department can violate peoples' constitutional rights and harass American citizens without any legitimate basis so long as they don't charge them with a crime. That is not the rule. Plaintiffs have been injured by the Justice Department's violation of the RFPA and by engaging in acts designed to chill Plaintiffs' First Amendment rights. Those injuries serve as the basis for Plaintiffs' standing to bring this suit and are not erased simply because the Justice Department did not charge Plaintiffs with a crime.

As set forth herein, Plaintiffs have stated cognizable claims under the RFPA and the constitution sufficient to invoke the jurisdiction of this Court. For these reasons, Plaintiffs

respectfully request that this Honorable Court deny Defendants' motions to dismiss and allow Plaintiffs to proceed with their federal claims.

Respectfully submitted,

FIEGER, FIEGER, KENNEY, JOHNSON
& GIROUX, P.C.

/s/ Michael R. Dezsi
MICHAEL R. DEZSI (P64530)
Attorney for Plaintiffs
19390 W. Ten Mile Road
Southfield, MI 48075
(248) 355-5555
m.dezsi@fiegerlaw.com

Dated: July 1, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 1, 2008 she electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Eric J. Beane at eric.bean@usdoj.gov
Linda A. Wawzenski at linda.wawzenski@usdoj.gov
Tamra L. Ulrich at tamara.ulrich@usdoj.gov
Attorneys for United States Attorney General Alberto Gonzales

Benjamin A. Streeter, III at bstreeter@fec.gov
Colleen T. Sealander at csealander@fec.gov
Attorneys for Robert Lenhard/Federal Election Commission

s/ Julie A. Nardone
JULIE A. NARDONE

Exhibit A

United States District Court
Eastern District of Michigan

Subpoena to Testify Before A Grand Jury

TO:

Custodian of Records,
PAYCHEX, INC.
911 Panorama Trail South
Rochester, NY 14625

05-1-190-1

SUBPOENA FOR
☐ ATTENDANCE
☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below:

PLACE:	COURTROOM:
Federal Building & U.S. Courthouse 231 W. Lafayette Street Detroit, Michigan 48226	Room 1056
	DATE AND TIME: June 21, 2005 8:30 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or objects(s):

SEE ATTACHMENT.

Pursuant to an official criminal investigation being conducted by this agency, you are requested not to disclose the existence of this subpoena. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the court.

DATE:	THIS SUBPOENA IS ISSUED ON APPLICATION OF THE UNITED STATES OF AMERICA
May 18, 2005	
UNITED STATES DISTRICT COURT DAVID J. WEAVER, CLERK OF COURT	NAME, ADDRESS AND TELEPHONE NUMBER OF ASSISTANT UNITED STATES ATTORNEY: CHRISTOPHER L. VARNER, AUSA United States Attorneys Office 211 W. Fort, Room 2001 Detroit, MI 48226 (313)226-9684

RETURN OF SERVICE (1)

RECEIVED BY SERVER	DATE 5/23/2005	PLACE Detroit, MI
SERVED	DATE 5/23/2005	PLACE Detroit, MI

SERVED ON (PRINT NAME): Tami Panton

SERVED BY (PRINT NAME): Jeffrey D. Rees	TITLE: Special Agent

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service fees is true and correct.

Executed on 5/23/2005 (*Date*) Jeffrey D Rees (*Signature of Server*)

477 Michigan Ave, Detroit, MI
Address of Server

ADDITIONAL INFORMATION

Faxed to 585/383-3441 and original mailed.

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28USC 1825, Rule 17(b) Federal rules of Criminal Procedure)".

ATTACHMENT FOR GRAND JURY SUBPOENA 05-1-190-1

Issued To: **PAYCHEX, INC.**
911 Panorama Trail South
Rochester, NY 14625

Any and all records pertaining to Fieger, Fieger, Kenney & Johnson whether held jointly or severally or as trustee or fiduciary as well as custodian, executor or guardian as well as any other entity in which Fieger, Fieger, Kenney & Johnson may have a financial interest for the time period 1/1/2003 to the present.

These records include all accounts in which Fieger, Fieger, Kenney & Johnson has signatory authority and/or the right of withdrawal, and also include but are not limited to records pertaining to the issuance of routine payroll checks, transfers of money in amounts exceeding $2000, all records pertaining to the issuance of bonus payments in any amount, and all records pertaining to the issuance of all other payments that are not routine pay for hours worked.

Exhibit B

U.S. Department of Justice

United States Attorney
Eastern District of Michigan

TEL (313) 226-9730

FAX (313) 226-3413

211 W. Fort Street
Suite 2001
Detroit, Michigan 48226

April 24, 2007

MERRILL LYNCH/BANK ONE COLUMBUS, N.A.
Attn: *Custodian of Records*

Re: Grand Jury Subpoena No. 06-2-1-135

Dear Custodian of Records:

Your institution has been served with a grand jury subpoena in connection with a criminal investigation being supervised by this office. The government is required by federal law to reimburse financial institutions for the costs they incur in producing certain financial records to the government. See 12 U.S.C. § 3415; 12 C.F.R. § 219.3. However, federal law authorizes reimbursement only for the production of documents and other materials that relate to the accounts of individuals and the accounts of partnerships of five or fewer individuals. See 12 U.S.C. § 3401(4), (5); 12 C.F.R. § 219.2. Thus, *we cannot reimburse you for the production of documents or other materials that relate to the accounts of corporations, large partnerships (six or more partners), associations, trusts, unions, government agencies, or other legal entities.*

Reimbursement is limited to costs that are both directly incurred and reasonably necessary to provide the requested financial records, which must be broken down into the following three categories:

1. Search and Processing Costs. Search and processing costs include the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs must be billed at the following rates:

clerical/technical employee	$2.75/quarter hour
manager/supervisory employee	$4.25/quarter hour

2. Reproduction Costs. Reproduction costs must be billed at the following rates:

photocopies	$0.25/page
paper copies of microfiche	$0.25/frame
duplicate microfiche	$0.50/microfiche
computer diskette	$5.00

Copies of photographs, films, computer tapes, and other materials not listed above must be billed at actual cost.

3. Transportation Costs. Transportation costs are the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested financial records and to convey such records to the grand jury or the appropriate federal law enforcement agency.

To receive reimbursement for reimbursable costs, you must complete Section B of Form OBD-211 (which is enclosed) and type in your mailing address on line 4 of Section A. Then mail the form to me.

The government requests that your institution not provide any infor-mation about this grand jury subpoena to any third party — including the affected accountholder(s) — for a period of 90 days. Federal law permits but does not require you to comply with this request for nondisclosure. See 12 U.S.C. § 3413(i). However, any disclosure to third parties could impede the investigation being conducted and thereby interfere with the enforcement of federal criminal law.

Your cooperation in this matter is appreciated. If you have any questions, feel free to call me.

Sincerely yours,

STEPHEN J. MURPHY
United States Attorney

Lynn A. Helland /G

LYNN A. HELLAND
Assistant United States Attorney

Enclosure

United States District Court
Eastern District of Michigan

Subpoena to Testify Before A Grand Jury

TO: Custodian of Records,
MERRILL LYNCH/BANK ONE COLUMBUS, NA

06-2-1-135

SUBPOENA FOR
☐ ATTENDANCE
☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below:

PLACE:	COURTROOM:
Federal Building & U.S. Courthouse 231 W. Lafayette Street Detroit, Michigan 48226	Room 1056
	DATE AND TIME: May 30, 2007 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or objects(s):

SEE ATTACHMENT.

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the court.

DATE:	THIS SUBPOENA IS ISSUED ON APPLICATION OF THE UNITED STATES OF AMERICA
April 24, 2007	
UNITED STATES DISTRICT COURT DAVID J. WEAVER, CLERK OF COURT	NAME, ADDRESS AND TELEPHONE NUMBER OF ASSISTANT UNITED STATES ATTORNEY: LYNN HELLAND, AUSA United States Attorneys Office 211 W. Fort, Room 2001 Detroit, MI 48226 (313)226-9730

ML-208-0003

AO110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

RETURN OF SERVICE (1)

	DATE	PLACE
RECEIVED BY SERVER	4/27/07	Detroit, MI
SERVED	5/4/07	Detroit, MI

SERVED ON (PRINT NAME): By mail

SERVED BY (PRINT NAME)	TITLE
Jeff Rees	SA

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 5/4/07 (DATE)

[signature] (SIGNATURE OF SERVER)

477 Michigan Ave (ADDRESS OF SERVER)

Detroit, MI

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c). Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

ATTACHMENT

TO: Custodian of Records
Merrill Lynch/Bank One Columbus N.A.

I. ITEMS TO BE PROVIDED

For the time period December 2002 through and including April 2003, provide the following items for the following bank accounts:

A. For the following accounts: Any and all bank accounts held by Jack Beam and Renee E Beam, jointly or individually, including but not limited to accounts 041152099272 and 041141462490.

B. Provide the following items:
   i. Account opening documents and signature cards;
   ii. Monthly account summary statements;
   iii. Copies of deposit items (front and back) for all items of $1000 or more;
   iv. Copies of all withdrawal items of $1000 or more;
   v. Copies of any and all records of the purchase of any cashier's checks, managers checks or money orders, including records of the source of funds to purchase such checks or orders; and
   vi. Copies of any and all records of wire transfers into or out of the account and the sources of such funds, including wiring instructions provided.

II. CONTACT PERSONS & DELIVERY OF ITEMS

Contact Persons

If you have questions about this subpoena, please direct your inquiries to the following:

Jeffrey Rees
Special Agent
Federal Bureau of Investigation
477 Michigan Avenue, Room 2600
Detroit, MI 48226
313-965-2323-Tel.

M. Kendall Day, Trial Attorney
Public Integrity Section, Criminal Division
U.S. Dept. of Justice
1400 New York Ave., NW Suite 12100
Washington, DC 20005
202-353-2248 - Tel.
202-514-3003 - Fax.
m.kendall.day@usdoj.gov

Delivery of Responsive Items

A witness from your office does not have to attend the grand jury to comply with this subpoena, provided that all documents/records responsive to this subpoena are produced on or before the subpoena's due date. Documents/records produced should be delivered to Christopher Varner or Jeffrey Rees at the addresses listed above.

Attached is a "Certificate of Authenticity of Records of a Regularly Conducted Activity," and a "Waiver of Grand Jury Appearance and Physical Evidence Receipt." Please complete these documents and return them with the responsive documents.