UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2, **CASE NO.: 08-CV-80119-MARRA/JOHNSON**

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

JANE DOE NO. 3, **CASE NO.: 08-CV-80232-MARRA/JOHNSON**

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.
_ _____/

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

[redacted],

Plaintiff,

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-80811-CIV-MARRA/JOHNSON

JANE DOE,

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.
_____/

CASE NO.: 08-80893-CIV-MARRA/JOHNSON

DOE II,

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.
_____/

CASE NO.: 09-80469-CIV-MARRA-JOHNSON

JANE DOE NO. 101, **CASE NO.: 09-80591-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.
_____/

JANE DOE NO. 102, **CASE NO.: 09-80656-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S RESPONSE TO *PLAINTIFFS JANE DOE NOS. 101 AND 102'S MOTION FOR LEAVE TO FILE UNDER SEAL RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STAY OR, IN THE ALTERNATIVE, TO UNSEAL THE NONPROSECUTION AGREEMENT* (dated 5/29/09, [DE 128]

Defendant, JEFFREY EPSTEIN, ("EPSTEIN"), by and through his undersigned attorneys responds to the Plaintiffs' Jane Doe No. 101 and Jane Doe No. 102 ("Plaintiffs") Motion For Leave To File Under Seal Response In Opposition To Defendant's Motion To Stay Or, In The Alternative, To Unseal The Nonprosecution Agreement, and states:

1. This Court has already entered orders preserving the confidentiality of the Non-Prosecution Agreement ("NPA") and denying prior attempts to have the document unsealed. See Court's Orders, attached hereto as **Exhibit A** and **Exhibit B**, respectively, entered in In Re: Jane Does 1 and 2, Petitioners, Case No. 08-80736-CIV-MARRA/JOHNSON, **A.** *Order To Compel Production And Protective Order*, [DE 26], dated August 21, 2008, and **B.** *Order* [DE 36], dated February 12, 2009, on Petitioners' Motion To Unseal Non-Prosecution Agreement [DE 28]. Both of these Orders are clear that the terms of the NPA are to remain confidential and remain

protected from being disclosed to third parties. The NPA is an agreement between the United States Attorney's Office and EPSTEIN. Plaintiffs' motion presents nothing in support of this Court modifying its prior orders.

2. Significantly, even the United States Attorney's Office (USAO), along with Defendant, has strongly opposed making the NPA public. Attached as **Exhibit C** hereto is Respondent United States of America's *Opposition To Victims' Motion To Unseal Non-Prosecution Agreement*, dated October 8, 2008, [DE 29], also filed in In Re: Jane Does 1 and 2, Petitioners, Case No. 08-80736-CIV-MARRA/JOHNSON. In opposing the petitioners' attempts to make public the terms of the NPA, the United States in the Response, **Exhibit C**, stated:

> Since the Agreement (NPA) has not been filed under seal with this Court, the legal authority cited by petitoners regarding sealing of documents, United States v. Ochoa-Vasque, 428 F.3d 1015 (11th Cir. 2005), is inapposite. The parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined the Agreement should remain confidential. They were free to do so, and violated no law in making such an agreement. Since the Agreement has become relevant to the instant lawsuit, petitioners have been given access to it, upon the condition that it not be disclosed further. Petitioners have no legal right to disclose the Agreement to third parties, or standing to challenge the confidentiality provision.

After the United States' response, **Exhibit C**, this Court entered its Order, **Exhibit B**, agreeing with the United States' position and maintaining the confidentiality of the NPA in accordance with its prior Order, **Exhibit A**. The "victims" who were provided a copy of the NPA were and are required to maintain the NPA's confidentiality and not disclose the terms to third parties.

3. Other parties in the consolidated cases have been able to file their responses without a similar request being made. Defendant believes that these Plaintiffs can fully respond without the need to file under seal; and reference provisions generally. However if the Court is

inclined to grant this Order, then in order to continue to protect the confidentiality of the NPA and to comply with the Court's prior Orders, **Exhibit A** and **Exhibit B**, Defendant would agree to allow Plaintiff to file under seal her response and reference only those portions (identified herein) of the NPA which are potentially relevant to the issues arising under claims brought pursuant to 18 U.S.C. §2255 and thus, that may have impact on Defendant's motion for stay and Plaintiff's response thereto. Specifically, the only portions relevant for this Court to make a decision on Defendant's motion and Plaintiffs' response are paragraphs 7, 8, 9, and10 of the NPA, and paragraphs 7A, 7B, and 7C of the Addendum To The NPA.

WHEREFORE, Defendant requests that this Court enter an Order denying any attempts by Plaintiffs to unseal or make public or to disclose to third parties the terms of the NPA, and to deny Plaintiffs move to file their response under seal; or if the Court is inclined to grant the motion, to allow Plaintiff to file her response to the motion to stay and only the specified portions of the NPA and Addendum thereto under seal.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 10th day of June, 2009

Respectfully submitted,

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Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80993-MARRA-JOHNSON

JANE DOE NO. 7

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S FIRST AMENDED ANSWER & AFFIRMATIVE DEFENSES TO PLAINTIFF'S (FIRST) AMENDED COMPLAINT

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, files his Answer to Plaintiff's Amended Complaint [DE 19] and states:

1. Without knowledge and deny.

2. As to the allegations in paragraphs 2, Defendant asserts his Fifth Amendment privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* –

"... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

3. As to the allegations in paragraph 3, deny.

4. As to the allegations in paragraph 4, deny.

5. As to the allegations in paragraph 5, without knowledge and deny.

6. As to the allegations in paragraphs 6, Defendant asserts his Fifth Amendment privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

7. As to the allegations in paragraphs 7 through 15 of Plaintiff's Second Amended Complaint, Defendant exercises his Fifth Amendment Privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

8. In response to the allegations of paragraph 16, Defendant realleges and adopts his responses to paragraphs 1 through 15 of the Second Amended Complaint set forth in paragraphs 1 through 7 above herein.

9. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 17 through 22 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination

Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

10. In response to the allegations of paragraph 23, Defendant realleges and adopts his responses to paragraphs 1 through 15 of the Second Amended Complaint set forth in paragraphs 1 through 7 above herein.

11. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 24 through 28 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d

§1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

12. In response to the allegations of paragraph 29, Defendant realleges and adopts his responses to paragraphs 1 through 15 of the Second Amended Complaint set forth in paragraphs 1 through 7 above herein.

13. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 30 through 35 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-

incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

WHEREFORE, Defendant requests that this Court deny the relief sought by Plaintiff.

Affirmative Defenses

1. As to all counts, Plaintiff actually consented to and was a willing participant in the acts alleged, and therefore, her claims are barred, or her damages are required to be reduced accordingly.

2. As to all counts alleged, Plaintiff actually consented to and participated in conduct similar and/or identical to the acts alleged with other persons which were the sole or contributing cause of Plaintiff's alleged damages.

3. As to all counts, Plaintiff impliedly consented to the acts alleged by not objecting and by going to Defendant's home with other females and/or by bringing other females to Defendant's home for which Plaintiff received money, and therefore, her claims are barred, or her damages are required to be reduced accordingly.

4. As to all counts, Defendant reasonably believed or was told that the Plaintiff had attained the age of 18 years old at the time of the alleged acts.

5. As to all counts, Plaintiff's claims are barred as she said she was 18 years or older at the time.

6. As to all counts, Plaintiff's alleged damages were caused in whole or part by events and/or circumstances completely unrelated to the incident(s) alleged in the complaint.

7. Plaintiff's claims are barred by the applicable statute of limitations.

8. As to Plaintiff's claims for punitive damages in Count I – "Sexual Assault & Battery," and Count II – "Intentional Infliction of Emotional Distress," such claims are subject to the limitations as set forth in §768.72, et seq., Florida Statutes.

9. As to Plaintiff's claims for punitive damages in Count I – "Sexual Assault & Battery," and Count II – "Intentional Infliction of Emotional Distress," such claims are subject to the constitutional limitations and guideposts as set forth in BMW of North America v. Gore, 116 S.Ct 1589 (1996); Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007); State Farm v. Campbell, 123 S.Ct 1513 (2003); Engle v. Ligget Group, Inc., 945 So.2d 1246 (Fla. 2006). The Due Process Clause of the Fourteenth Amendment of the United States Constitution and Florida's Constitution, Art. I, §§2 and 9, prohibit the imposition of grossly excessive or arbitrary punishments

10. As to Plaintiff's claims for punitive damages in Count I – "Sexual Assault & Battery," and Count II – "Intentional Infliction of Emotional Distress," the determination of whether or not Defendant is liable for punitive damages is required to be bifurcated from a determination of the amount to be imposed.

11. Plaintiff has failed to state a cause of action for sexual assault and/or battery under Count I.

12. As to Count III, Plaintiff has failed to plead a cause of action as she does not and can not show a violation of a predicate act under 18 U.S.C. §2255 (2005).

13. As to Count III, the version of 18 U.S.C. §2255 in effect at the time of the alleged conduct applies, and, thus, the presumptive minimum damages amount should Plaintiff prove the elements of such claim is $50,000, and not subject to any multiplier.

14. As to Count III, application of the amended version of 18 U.S.C. §2255, effective July 27, 2006, would be in violation of the legal axiom against retroactive application of an amended statute, and also in violation of such constitutional principles, including but not limited to, the "Ex Post Facto" Clause, U.S. Const. Article I, §9, cl. 3, §10, cl. 1, and procedural and substantive due process, U.S. Const. 14th Amend., 5th Amend. The statute in effect during the time of the alleged conduct applies.

15. As to Count III, application of the amended version of 18 U.S.C. §2255, effective July 27, 2006, is prohibited pursuant to the vagueness doctrine and the Rule of Lenity. A criminal statute is required to give " 'fair warning ... in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' " United States v. Lanier, 520 U.S. 259, 265, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997) (quoting McBoyle v. United States, 283 U.S. 25, 27, 51 S.Ct. 340, 75 L.Ed. 816 (1931)) (omission in original). The "three related manifestations of the fair warning requirement" are: (1) the vagueness doctrine bars enforcement of a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application; (2) the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered; (3) due process bars courts from

applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.

16. The applicable version of 18 U.S.C. §2255 creates a cause of action on behalf of a "minor." Plaintiff had attained the age of majority at the time of filing this action, and accordingly, her cause of action is barred.

17. Because Plaintiff has no claim under 18 U.S.C. §2255, this Court is without subject matter jurisdiction as to all claims asserted.

18. Application of the 18 U.S.C. §2255, as amended, effective July 27, 2006, is in violation of the constitutional principles of due process, the "Ex Post Facto" clause, and the Rule of Lenity, in that in amending the term "minor" to "person" as to those who may bring a cause of action impermissibly and unconstitutionally broadened the scope of persons able to bring a §2255 claim.

19. 18 U.S.C. §2255 violates the Equal Protection Clause of the 14th Amendment under the U.S. Constitution, and thus Plaintiff's claim thereunder is barred.

20. 18 U.S.C. §2255 violates the constitutional guarantees of procedural and substantive due process. Procedural due process guarantees that a person will not be deprived of life, liberty or property without notice and opportunity to be heard. Substantive due process protects fundamental rights. Accordingly, Plaintiff's cause of action thereunder is barred.

WHEREFORE Defendant requests that this Court deny the relief sought by Plaintiff.

Robert D. Critton, Jr.
Attorney for Defendant Epstein

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 10th day of June, 2009:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80232-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

JANE DOE NO. 5,

CASE NO.: 08-CV-80381-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

[redacted],

CASE NO.: 08-80811-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE,

CASE NO.: 08-80893-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

DOE II, **CASE NO.: 09-80469-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

JANE DOE NO. 101, **CASE NO.: 09-80591-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE NO. 102, **CASE NO.: 09-80656-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

DEFENDANT, JEFFREY EPSTEIN'S REPLY TO JANE DOE NO. 101 AND JANE DOE NO. 102'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL AND IDENTIFY JANE DOE NUMBERS 101 AND 102 IN THIRD PARTY SUBPOENAS FOR PURPOSES OF DISCOVERY

Defendant, Jeffrey Epstein, ("Mr. Epstein"), by and through his undersigned attorneys, hereby files his Reply To Jane Doe No. 101 And Jane Doe No. 102's Response In Opposition To Motion To Compel and Identify Jane Doe Numbers 101 and 102 in Third Party Subpoenas For Purposes of Discovery:

1. Plaintiffs' Response in Opposition is set forth in DE 124. Plaintiffs' response is drafted in a calculated effort to continue to argue issues relating to 18 U.S.C. 2255 rather than deal solely with the issue of identification of the Plaintiffs. Obviously, Plaintiffs' identification takes a second seat to Plaintiffs' attempt to continue to argue issues that are or may be set forth in their opposition to Epstein's motion to dismiss, which largely deals with issues surrounding 18 U.S.C. 2255. See Defendant's Motion to Identify Jane Doe 101 [DE 16].

2. In their response, Plaintiffs seem to forget that they brought this lawsuit against Epstein. Plaintiffs claim they will suffer physical injury, pain and suffering, emotional distress, psychological and psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, medical and psychological expenses, loss on income, loss of the capacity to earn income in the future, and loss of the capacity to enjoy life. See e.g., ¶¶28, Comp., DE 1; see also ¶¶36, 40, 44, 48, 52, 56, 61, 65, and 69, Comp., DE 1. Jane Doe 101 and 102 came to Defendant's home on a number of occasions. Jane Doe 101 brought her friend, [redacted] (referenced by name in a number of actions) to experience this same "trauma" – it does not make sense. Jane Doe 101 had issues associated with law enforcement involving drugs, battery, fleeing police; Jane Doe 102 claims to have been raped by two (2) individuals in 1998; pre any involvement with Epstein. This type of information is relevant, and Defendant is entitled

to fully explore it. As such, Plaintiffs' have placed their past and medical history as well as education, social, work, interpersonal, recreational legal, criminal and other aspects of their past and current lives at issue in light of the allegations they allege in their respective complaints. Despite Plaintiffs contention and effort to mislead this court, Epstein does not wish to publicize Plaintiffs' names in an effort to embarrass them. On the contrary, Epstein wishes to defend the claims made against him and dispute the damages Plaintiffs' claim by conducting discovery. Again, Plaintiffs allege substantial economic and non-economic personal injury damages. If this Court prevents Epstein from serving Third-Party Subpoenas identifying Plaintiffs, Epstein will be denied his due process rights by Plaintiffs in that he will be prevented from conducting broad, open and liberal discovery. The undersigned must serve subpoenas on medical doctors to obtain medical information related to Plaintiffs' alleged psychological and physical damages and or other third parties such as employees for other damages as same goes to the heart of Epstein's defenses and Plaintiffs' damages. Plaintiffs' intent is to have Epstein try this case without having obtained relevant and meaningful discovery. Plaintiff's proposal will chill Defendant's ability to fully and fairly access and obtain discovery. See *infra*.

3. Plaintiffs' counsel are competent trial attorneys well versed in many areas of the law, including that of personal injury. Despite the foregoing, Plaintiff's counsel, in some highlighted effort to resolve the discovery issues Plaintiffs have intentionally created in an effort to chill discovery, offers to provide only the documents that Plaintiffs' counsel obtains from third parties through its own selective procedures, and only after Plaintiffs' counsel has been able to cull through same.

4. It is hard to believe that any competent law firm responsible to his/her client would ever allow an opposing party to request records and provide those records to the requesting firm only after the opposing firm had an opportunity to review and filter through same. Plaintiffs, in this case, seek thousands if not millions in damages, including physical and emotional/mental and personal injury type, and Epstein must and is entitled to conduct his own discovery thereon. No valid discovery objections or exemptions exist preventing necessary and reasonable discovery. To hold otherwise prevents Mr. Epstein from preparing and defending this matter and denies to him his right to fully and fairly defend these cases.

5. Plaintiffs cite a host of cases for the proposition that anonymity should be granted when, for instance, a fear of retaliation or ostracism exists. Inconsistent with the cases Plaintiffs cite, not once do they state that Plaintiffs will be embarrassed, ostracized, or psychologically and emotionally unable to proceed with the action. Even so, embarrassment alone is not enough. See Response to Motion to Proceed Anonymously. In determining whether to allow a party to proceed with litigation anonymously, a court must consider whether the identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties. Doe. No. 2 v. Kolko, 242 F.R.D. 193, 195-98 (E.D.N.Y. 2006), *citing*, Fed.Rules Civ.Proc.Rule 10(a), 28 U.S.C.A. Further, Plaintiffs cite cases wherein a psychologist opined that plaintiff suffered or will suffer sever emotional distress. Id. Here, no such affidavit has been provided and/or submitted to this court to justify Plaintiff's requests to proceed anonymously. Good cause must also be shown in order to proceed anonymously. Good cause for a protective order, which Plaintiffs have not filed here, is established upon a showing that disclosure will work a clearly defined and serious injury to the party seeking closure; the injury

must be shown with specificity. See Doe v. Evans, 202 F.R.D. 173, 176 (E.D. P.A. 2001). Thus, Plaintiffs have not met their burden of persuasion. Id. Plaintiffs fail to show good cause in that they have not clearly defined what injury they will sustain if not permitted to proceed anonymously; they have only offered speculation. Such a failure is fatal to their request to proceed anonymously. See *infra*.

6. In Kolko, a case cited by the Defendants, the court specifically found that proceeding anonymously (i.e., in the style of the case only) would not inhibit discovery. Here, preventing Epstein from identifying Plaintiffs' in subpoenas and other type discovery overwhelmingly inhibits discovery. See Doe v. Evans, 202 F.R.D. at 176 (E.D. P.A. 2001) (denying protective order where alleged sexual assault victim did not demonstrate a serious specific injury and allowing Defendants to identify Plaintiff in discovery because holding otherwise would "chill defendants ability to conduct discovery"). Plaintiffs obviously cannot cite one case preventing open and broad discovery or preventing the identification of Plaintiffs in third-party subpoenas or in other discovery. While Plaintiffs cite to each of above cases, it is misleading for Plaintiffs to suggest the case did not allow for the service of third party subpoenas with the correct names.

7. Next, Plaintiffs' cite a host of criminal cases and statutes which this court has an obligation to distinguish when attempting to in artfully apply same in the civil context. For instance, while Fla. Stat. §794.024 and §794.026 appear to prevent the disclosure of the identity of a sexual assault victim, Fla. Stat. §794.024 only applies to public employees (and to investigations and state prosecutions related to claims of rape) and §794.026 only applies if disclosure is being done "with a reckless disregard for the highly offensive nature of the

publication." Rather, disclosure is being requested in order to properly litigate and defend this matter. Further, §794.026 does not (emphasis added) prevent the disclosure of the name of a sexual assault victim - it only allows for civil remedy as a result thereof assuming one meets the criteria to recover (i.e., disclosure with a reckless disregard for the highly offensive nature of the publication). Again, Epstein agreed to enter into a confidentiality agreement and, if required by this court, to redact full names from any document filed with the Court.

8. Next, the language of Fla. Stat. §92.56 makes it clear that the statute only applies criminal proceedings brought by the State of Florida, not civil proceedings. As set forth by the Office of Attorney General, Fla. Stat. §92.56 and Fla. Stat. §794.024 "were created by the Crime Victims Protection Act." See 2003 WL 22971082 (Fla. A.G.). Even though Fla. Stat. §92.56 only applies to criminal proceedings, subsection (2) thereof allows for the accused to apply for an order of disclosure to prepare a defense in a criminal proceeding.

9. In addition, Plaintiffs cite to Fed.R.Evid. 412. The Advisory Committee Notes to Rule 412, Fed.R.Evid, makes clear that the procedures to determine admissibility of an alleged victim's/plaintiff's sexual conduct or activity in civil cases does not apply to discovery of such information. Rather, discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Rule 412, entitled "Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition," provides in relevant part -

> (a) Evidence generally inadmissible.--The following evidence is not admissible in any civil ... proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
>
> (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions.—

* * * * *

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) **Procedure to determine admissibility**.--

(1) A party intending to offer evidence under subdivision (b) must—

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

In confirming that Rule 412 does not control the discoverability of such information, the

Advisory Committee Notes (1994 Amendments) state -

The procedures set forth in subdivision (c) do not apply to discovery of a victim's past sexual conduct or predisposition in civil cases, which will be continued to be governed by Fed. R. Civ. P. 26. In order not to undermine the rationale of Rule 412, however, courts should enter appropriate orders pursuant to Fed. R. Civ. P. 26 (c) to protect the victim against unwarranted inquiries and to ensure confidentiality. Courts should presumptively issue protective orders barring discovery unless **the party seeking discovery makes a showing that the evidence sought to be discovered would be relevant under the facts and theories of the particular case, and cannot be obtained except through discovery.** In an action for sexual harassment, for instance, while some evidence of the alleged victim's sexual behavior and/or predisposition in the workplace may perhaps be relevant, non-work place conduct will

usually be irrelevant. *Cf. Burns v. McGregor Electronic Industries, Inc.*, 989 F.2d 959, 962-63 (8th Cir. 1993) (posing for a nude magazine outside work hours is irrelevant to issue of unwelcomeness of sexual advances at work). **Confidentiality orders should be presumptively granted as well.**

(**Emphasis** added).

In accordance with Rule 412 and Rule 26, Epstein seeks discovery of Plaintiffs' physical, emotional and psychological history. We are not at the admissibility phase, which Rule 412 addresses. We are at the discovery phase, and identification of the Plaintiffs is required in order to properly litigate and defend the claims against Epstein. Defendant has no other means of obtaining any information about the Plaintiffs' without being permitted to identify Plaintiffs in third party subpoenas and in discovery. Counsel for [redacted]. recognized this conundrum and agreed to identifying [redacted]. and other attorneys in the state court cases and in one of the federal matters have agreed to serve subpoenas with full indentifying information as long as the documents do not disclose the name in the court file. See **Exhibit "A".**

WHEREFORE, Defendant, Mr. Epstein, requests this court allow it to identify Plaintiffs in the style of this case and that Defendant be permitted to identify Plaintiffs in discovery and for such other and further relief as this court deems just and proper.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 9 day of June, 2009.

Respectfully submitted,

By: _____
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Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON

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FACSIMILE COVER SHEET

TO: [redacted] Esq.

FAX NUMBER: [redacted]

FROM: Bradley J. Edwards, Esq. –**Susan Stirling** [redacted]

DATE: June 5, 2009

RE: [redacted] v. Epstein
Our File No. 09-22784

MESSAGE: **Marie, as you probably know, t he Palm Beach Post filed a separate Motion to unseal the NPA. We noticed that the Post did not notice you personally, so I have enclosed a courtesy copy of that Motion and Notice. I hope this finds you well.**
***Please have your assistant let Susan know that you got this fax. I understand you are in a new office.**

 # OF PAGES 11 (including cover sheet)

IF YOU DO NOT RECEIVE THE DESIGNATED NUMBER OF PAGES, OR IF YOU EXPERIENCE ANY PROBLEM WITH THE TRANSMISSION OF THIS DOCUMENT, PLEASE CALL OUR FAX OPERATOR AT [redacted].

Reply To: Las Olas City Centre • 401 East Las Olas Boulevard • Suite 1650 • Fort Lauderdale, Florida 33301 Telephone: [redacted] • Fax: (954)527-8663
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& | BRALOW

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facsimile transmittal

To:	R. Alexander Acosta, Esq.	Fax:	[redacted]
	Judith Stevenson Arco, Esq.		[redacted]
	Michael McAuliffe, Esq.		
	Jack Alan Goldberger, Esq.		[redacted]
	Bradley J. Edwards, Esq.		[redacted]
	William J. Berger, Esq.		
From:	Deanna K. Shullman, Esq.	Date:	06/04/2009
Re:	State v. J. Epstein	Pages:	6
Cc:	Marilyn Judicial Assistant to Judge Colbath		[redacted]

Urgent ☐ For review ☐ Please comment ☐ Please reply ☐ Please recycle ☐

Please see attached Motion to Intervene and Petition for Access

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

STATE OF FLORIDA

Plaintiff,

vs.

Case Nos.: 2006-CF9454-AXX &
2008-9381CF-AXX

JEFFREY EPSTEIN

Defendant.
_____/

NOTICE OF HEARING

PLEASE TAKE NOTICE that Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post will call up for hearing its Motion to Intervene and Petition for Access before the Honorable Jeffrey Colbath, Palm Beach County Courthouse, 205 N. Dixie Hwy., Room 11F, West Palm Beach on June 10, 2009 at 10:40 a.m. or as soon thereafter as counsel may be heard.

Time reserved: 10 Minutes

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman
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James B. Lake
Florida Bar No.: [redacted]
400 North Ashley Drive, Suite 1100
P.O. Box 2602 (33601)
Tampa, FL 33602
Telephone: [redacted]
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Attorneys for The Palm Beach Post

State v. Epstein
Case No. 2006-CF9454 & 2008-9381CF
Notice of Hearing on Palm Beach Post's Motion to Intervene

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ☑ U.S. Mail; ☑ Facsimile; ☐ Overnight Delivery to R. Alexander Acosta, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401; Judith Stevenson Arco, Esq., State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401; William J. Berger, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Ste. 1650, Fort Lauderdale, FL 33394; Bradley J. Edwards, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Ste. 1650, Fort Lauderdale, FL 3394; Jack Alan Goldberger, Esq., Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 on this 4th day of June, 2009.

Attorney

cc: Judicial Assistant (Via Fax and U.S. Mail)

Esquire Court Reporting

THOMAS | LOCICERO
& | BRALOW

400 N. Ashley Drive • Suite 1100 • Tampa, FL 33602
[redacted] (Phone) • [redacted] (Fax)
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	Judith Stevenson Arco, Esq.		[redacted]
	Michael McAuliffe, Esq.		
	Jack Alan Goldberger, Esq.		[redacted]
	Bradley J. Edwards, Esq.		[redacted]
	William J. Berger, Esq.		
From:	Deanna K. Shullman, Esq.	Date:	06/01/2009
Re:	State v. J. Epstein	Pages:	6

Urgent ☐	For review ☐	Please comment ☐	Please reply ☐	Please recycle ☐

Please see attached Motion to Intervene and Petition for Access

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Reply To Tampa

June 1, 2009

VIA FEDERAL EXPRESS OVERNIGHT MAIL

The Honorable Jeffrey Colbath
Fifteenth Judicial Circuit-Palm Beach
Palm Beach County Courthouse
Main Judicial Complex
205 N. Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re:

Dear Judge Colbath:

Enclosed is a courtesy copy of non-party Palm Beach Newspapers, Inc. d/b/a The Palm Beach Post's (the "Post") Motion to Intervene and Petition for Access to certain court records in this case. It is our understanding that Bradley Edwards and William Berger of Rothstein Rosenfeldt Adler have filed a similar motion on behalf of a non-party known as [redacted] and that [redacted] motion is set for hearing on June 10, 2009. The Post requests an opportunity to be heard on the issue of access to these records at that time.

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions or comments.

Sincerely,

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman

Deanna K. Shullman

cc: Counsel of Record

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 &
2008-9381CF-AXX

JEFFREY EPSTEIN

_____/

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 [redacted] Motion for Stay," [redacted] 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,

THOMAS, LOCICERO & BRALOW PL

Fla Bar #

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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:); **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:); **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 (fax:); 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:) on this 1st day of June, 2009.

Attorney

H

United States Court of Appeals,
Eleventh Circuit.
UNITED STATES of America, Plaintiff-Appellant,
v.
Leon J. WOOD, III, **Defendant**-Appellee.
No. 85-3261.

Jan. 21, 1986.

In prosecution for violations of the Racketeer Influenced and Corrupt Organizations Act, the United States District Court for the Middle District of Florida, Hodges, Chief Judge, dismissed indictment against **defendant**, concluding that **nonprosecution agreement** entered into by the Government and **defendant** barred prosecution, and the Government appealed. The Court of Appeals held that **defendant's** failure to disclose his part in possible drug deal amounted to a substantial **breach** of **agreement** nullifying Government's promise not to prosecute **defendant**, even though **defendant** was acquitted on drug charges arising out of incident in question.

Reversed and remanded.

West Headnotes

Criminal Law 110 ⚖42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Fact that alleged drug deal was not under investigation and that the Government **did** not specifically inquire about incident **did** not justify **defendant's** failure to disclose his knowledge of drug deal, where **defendant** admitted that he understood that he was required pursuant to reprosecution **agreement** with Government to fully disclose all information he possessed concerning drug activities, and thus, **defendant's** failure to disclose his part in such incident amounted to a substantial **breach** of **agreement** nullifying Government's promise not to prosecute **defendant**, even though **defendant** was acquitted on charges arising out of alleged drug deal.
* John M. Fitzgibbons, Asst. U.S. Atty., Tampa, Fla., for plaintiff-appellant.

Frank Regano, Tampa, Fla., for **defendant**- appellee.

Appeal from the United States District Court for the Middle District of Florida.

Before HILL and HENDERSON, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM:

This is an appeal from the government's unsuccessful attempt to prosecute Leon J. Wood, III for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) and (d). The United States District Court for the Middle District of Florida, adopting the magistrate's report and recommendation, dismissed the indictment against Wood, concluding that a **non-prosecution agreement** entered into by the government and Wood barred the prosecution. We reverse.

On May 20, 1983, while Wood was incarcerated at Florida's Lake Butler Correctional Facility for narcotics violations, he entered into a covenant with the government in which the government agreed not to prosecute Wood if he consented to

***930** fully and truthfully disclose to law enforcement everything that he knows concerning offers to, or the actual bribery of any public official concerning any matter, about any other matter, includ-

ing drug importation and drug distribution conspiracies now under investigation, and about any other matter as to which the Government may inquire and shall not at any time willfully fail to disclose any fact material to any such inquiry or matter.

The agreement also provided that if Wood "should fail in any way to fulfill completely each and every one of his obligations, then the Government will be free from its obligations to Mr. Wood."

Between May and December 1983, the FBI interviewed Wood on numerous occasions asking him about various matters relating to bribery attempts and drug trafficking. On January 12, 1984, Wood was arrested on narcotics charges for activities which allegedly took place in the Jacksonville area. He was subsequently acquitted by a jury of those charges. In April, 1984, government agents informed Wood that he had breached the immunity agreement. After the parties met unsuccessfully to work out their differences, the government indicted Wood in the case currently pending before this court.

An evidentiary hearing was held before a United States Magistrate on August 22, 1984. Subsequently, in a written report and recommendation, the magistrate concluded that the government failed to establish a "substantial breach of the specific terms of the agreement" and that Wood was entitled to "specific enforcement of the agreement." Magistrate's Report and Recommendation at 6. The district court adopted the report on March 7, 1985 and subsequently dismissed the indictment.

On appeal, the government first contends that the district court improperly applied a substantial compliance standard to Wood's obligations under the agreement instead of a strict compliance criterion. Second, it maintains that the district court's finding that Wood substantially complied with the contract is clearly erroneous. Because we agree with the latter argument, we need not decide whether the district court erred by adopting a substantial compliance rule.

The government alleges that on numerous occasions Wood withheld information pertaining to bribery attempts or drug transactions until he was confronted with independent facts establishing that he actually had knowledge of the relevant incidents. For example, United States Attorney Joseph Magri testified at the hearing before the magistrate that the government learned that Wood had sold cocaine to John Tamargo but Wood did not admit to the sale until after Magri challenged this denial with facts derived from another source. Supplemental Record on Appeal, Vol. III at 209, 212. Also, the government contends that Wood initially told them that he had paid $50,000.00 to Angelo Bedami to have him bribe state officials in the Hillsborough County Sheriff's Office but that he asked for a return of the money. Subsequently, the government discovered that Wood had again furnished the money to Bedami and when they confronted him with that fact, he admitted that he **did** give the money to Bedami on a second occasion. Supplemental Record on Appeal, Vol. III at 135. The government urges that these incidents, along with numerous others, [FN1] demonstrate a **breach** of the **agreement**.

> FN1. Wood admitted at the hearing that he initially **did** not tell the government about the involvement of David Grimes in drug transactions because Grimes was "like a brother to him." Wood **did** tell the government about Grimes' drug activities in subsequent interviews. *See* Appendix to Appellant's Brief at 193.

In response, Wood simply claims that he eventually **cured** all of these alleged violations and that the district court's finding that he **did** not **breach** the **agreement** because of the corrections should be sustained. Even if we were to agree with this explanation, we must overturn the district court's decision because Wood **breached** the **agreement** by not disclosing the drug activities***931** leading up to his arrest in Jacksonville.

Wood admitted at the hearing before the magistrate that he attempted to set up a drug deal with Robert

Grogan in Jacksonville. Supp. Record on Appeal, Vol. II at 28, 34. He was arrested for these activities and subsequently acquitted by a jury. He testified at his trial that he was acting as a quasi-law enforcement officer attempting to set up Grogan and that he never intended to actually consummate the drug transaction. He reaffirmed this position in the hearing before the magistrate. *Id.* at 36. He also admitted that he did not tell the government about these efforts. He testified as follows before the magistrate:

Q. You were engaged in an undercover operation on your own; is that your testimony?

A. Yes, sir, I was.

Q. And you had knowledge that other individuals were attempting to commit a crime involving a large amount of narcotics; isn't that correct?

A. They were talking about it, yes, sir.

Q. And you did not reveal that information to Agent Wooldrige?

A. No, sir....

Id.

Wood defends his failure to inform the government about the Jacksonville drug scheme on the ground that he was never asked about it. He stated that he was only asked about drug activities in the Tampa Bay area and not in Jacksonville. Assuming the truth of that testimony, it is nonetheless clear that Wood breached the agreement by intentionally withholding the information. Wood described his obligations under the agreement:

My understanding was that I would give information, tell them everything I knew about bribe attempts or drug importation and trafficking that was then under investigation *or that I had knowledge of* and in return I would not be prosecuted in any way by the federal government. (emphasis added).

Id. at 10.

In light of this concession, Wood's explanation for his failure to tell the government about the drug activities in Jacksonville does not satisfy the requirements of his contract. He admitted that he knew about a possible drug deal and yet failed to disclose that information to the government purportedly because they did not specifically mention Jacksonville in their inquiry.[FN2] Under his own interpretation of his duties under the contract, however, he had a continuing obligation to reveal that information regardless of whether he was specifically asked about it. In our view, this failure to disclose the Jacksonville drug activities, standing alone, constitutes a substantial breach of the contract.

> FN2. Wood also testified that he didn't tell the government about his dealings in Jacksonville because he wanted to acquire all the information at one time and then "put everything in their lap for them." Otherwise he was afraid that the government "would have blown the whole case for me." Supp. Record on Appeal, Vol. II at 40. This reason **does** not excuse Woods' clear **breach** of the contract in light of the fact that he never came forward and told the government about the Jacksonville activities.

The district court held that Wood's failure to tell the government agents of his Jacksonville activities **did** not amount to a substantial **breach** of the contract because the "matter was not under investigation at the time of the **agreement**, the Government **did** not make specific inquiry concerning the matter [and] the incidental references to possible police corruption has [sic] been fully disclosed by Mr. Wood both at trial and thereafter. Mr. Wood was acquitted by a jury that must have found his testimony credible in arriving at its conclusion." Record Excerpts at 110. The fact that the Jacksonville episode may not have been under investigation and that the government may not have made specific inquiry about

it does not justify Wood's failure to disclose his knowledge of the drug scheme in light of his admission that he understood that he was required to fully disclose all information that he possessed concerning ***932** drug activities.[FN3] Furthermore, his acquittal on charges arising out of this course of conduct is irrelevant to the issues here because Wood has admitted that he had knowledge of people attempting to engage in illegal drug pursuits. It is simply not germane that a jury believed Wood when he testified that his participation in those transactions was for a lawful purpose.

> FN3. Wood's version of his obligations is consistent with the wording of the agreement and the government's understanding of the agreement.

We hold that Wood's failure to disclose his part in the Jacksonville drug undertaking amounted to a substantial breach of the contract and the district court's finding to the contrary is clearly erroneous. Therefore, under the terms of the agreement, Wood's failure to comply with his obligations nullifies the government's promise not to prosecute him and the government is entitled to have the indictment reinstated.[FN4]

> FN4. Wood argues that it would be unfair to allow the government to use statements that he made after the time that the government considered the contract **breached**. This issue, however, relates to the admissibility of those statements not to the question of whether Wood violated the **agreement**. We express no opinion as to the admissibility of any statements made by Wood either before or after the **breach** of the contract.

REVERSED and REMANDED.

C.A.11 (Fla.),1986.
U.S. v. Wood
780 F.2d 929

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United States Court of Appeals,
Fifth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Raymond CASTANEDA, Defendant-Appellant.
No. 97-40307.

Dec. 9, 1998.

Defendant was convicted in the United States District Court for the Southern District of Texas, Filemon B. Vela, J., of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. Defendant appealed. The Court of Appeals, Wiener, Circuit Judge, held that government failed to prove that defendant materially breached nonprosecution agreement providing defendant with transactional immunity.

Reversed, sentence vacated, and remanded.

West Headnotes

[1] Criminal Law ⚿42.5(1)
110k42.5(1) Most Cited Cases
(Formerly 110k42)

[1] Criminal Law ⚿42.5(3)
110k42.5(3) Most Cited Cases
(Formerly 110k42)
Nonprosecution agreements, like plea bargains, are contractual in nature, and are therefore interpreted in accordance with general principles of contract law, under which if a defendant lives up to his end of the bargain, the government is bound to perform its promises, but if a defendant materially breaches his commitments under the agreement, the government can be released from its reciprocal obliga- tions.

[2] Constitutional Law ⚿4526
92k4526 Most Cited Cases
(Formerly 92k257.5)
When the government believes that a defendant has breached the terms of a nonprosecution agreement and wishes to be relieved of performing its part of the bargain, due process prevents the government from making this determination and nullifying the agreement unilaterally. U.S.C.A. Const.Amend. 5.

[3] Criminal Law ⚿42.5(3)
110k42.5(3) Most Cited Cases
(Formerly 110k42)

[3] Criminal Law ⚿42.7(2)
110k42.7(2) Most Cited Cases
(Formerly 110k42)
When the government believes that a defendant has breached the terms of a nonprosecution agreement and wishes to be relieved of performing its part of the bargain, the government must prove to the court by a preponderance of the evidence that (1) the defendant breached the agreement, and (2) the breach is sufficiently material to warrant rescission.

[4] Criminal Law ⚿42.7(3)
110k42.7(3) Most Cited Cases
(Formerly 110k42)
If the pleadings show no factual dispute, the court may determine defendant's breach of terms of nonprosecution agreement as a matter of law.

[5] Criminal Law ⚿1139
110k1139 Most Cited Cases
Where district court issued no factual findings, appellate court would review defendant's claim of breach of a nonprosecution agreement de novo.

[6] Criminal Law ⚿42.5(3)
110k42.5(3) Most Cited Cases
(Formerly 110k42)
Government failed to prove that defendant materially breached nonprosecution agreement providing defendant with transactional immunity regarding his role in setting up "clients" with investigator in county attorney's office who would arrange to have criminal charges reduced or disappear, and thus government could not rescind agreement, although

defendant omitted some information, where defendant provided volumes of both direct and indirect leads, and government failed to show that omissions were intentional or prejudicial to government. U.S.C.A. Const.Amend. 5.

[7] Criminal Law ⇐42.5(3)
110k42.5(3) Most Cited Cases
(Formerly 110k42)
In determining the materiality of a breach in the context of nonprosecution agreements, if a party's nonperformance is innocent, does not thwart the purpose of the bargain, and is wholly dwarfed by that party's performance, the breaching party has substantially performed under the contract, and the non-breaching party is not entitled to rescission.
***833** Michael R. Dreeben, Jonathan Goldman Cedarbaum, Jessie Acker Allen, U.S. Dept. of Justice, Washington, DC, Paula Camille Offenhauser, Asst. U.S. Atty., Houston, TX, for Plaintiff-Appellee.

Lawrence Irwin Zinn, San Antonio, TX, for Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas.

Before WISDOM, WIENER and DENNIS, Circuit Judges.

WIENER, Circuit Judge:

In this direct criminal appeal, defendant-appellant Raymond Castaneda challenges his conviction of RICO conspiracy under 18 U.S.C. § 1962(d), alleging errors at both the indictment and trial stages of his case. Concluding that the district court erred in failing to dismiss Castaneda's indictment on the basis ***834** of the government's unwarranted revocation of its transactional immunity agreement, we reverse Castaneda's conviction, vacate his sentence, and remand for entry of a judgment of acquittal.

I
FACTS AND PROCEEDINGS

Castaneda owned an auto repair shop and towing service in Brownsville, Texas. From 1990 to 1994, William Weaver worked as an investigator in the Cameron County Attorney's Office in Brownsville. During these years, Castaneda and Weaver conspired to solicit bribes from individuals accused of driving while intoxicated (DWI) in exchange for getting the charges dismissed or sentences reduced. Castaneda's role in this conspiracy was that of middleman, referring "clients" to Weaver, arranging meetings, receiving payments, and suggesting strategies for accomplishing fixes. Weaver's role on the other hand was that of principal, making the necessary arrangements within the County Attorney's Office to have the charges reduced or disappear.

Suspecting corruption, the FBI began an investigation of the County Attorney's Office. As part of this activity, Special Agent Jose Louis Cisneros sought Castaneda's cooperation. This, in turn, led AUSA Mervyn Milton Mosbacker and Castaneda to enter into an informal, written proffer agreement on January 24, 1995, pursuant to which Castaneda was granted *use* immunity. [FN1] Sometime later, AUSA Mosbacker and Castaneda entered into another agreement [FN2]-- this one oral--in which Castaneda was granted *transactional* immunity in exchange for his obligation to "tell everything he knew" about Weaver's criminal activity. [FN3]

> FN1. According to the terms of this agreement, Castaneda was granted "use" but not "derivative use" immunity. In other words, the government promised not to use any of the information or statements provided by Castaneda directly against him in any criminal proceeding, but reserved its right to pursue investigative leads derived from Castaneda's statements and use this "derivative" evidence against him.
>
> FN2. Although there is some question as to whether AUSA Mosbacker had the authority to grant Castaneda transactional immunity, for the purposes of this appeal, the government does not dispute the existence of a valid agreement.

FN3. Pursuant to this agreement, Castaneda also agreed to provide information about the illegal activities of Alex Perez, the Sheriff of Cameron County.

On January 24, 1995 and again on November 17, 1995, Castaneda was questioned by Agent Cisneros and AUSA Mosbacker. In those interviews, Castaneda acknowledged that he had participated as Weaver's intermediary in several acts of bribery and extortion connected to the "fixing" of criminal prosecutions brought by the County Attorney's Office. Castaneda identified a number of individuals who had knowledge of, or had been involved in, the scheme. These included (1) Jose Luis Reyes, [FN4] (2) Julio Gonzalez, [FN5] (3) Jeff Lewis, [FN6] (4) Chuy Hinojosa, [FN7] (5) Guadalupe Barajas, [FN8] (6) Federico Morales, [FN9] (7) ***835** Alejandro Cano, [FN10] and (8) Mario Meliton Garcia. [FN11]

FN4. Castaneda told the government that, in addition to Reyes's involvement in drug trafficking, he often paid large sums of cash to Sheriff Perez (presumably as political contributions). On many of these occasions, admitted Castaneda, he served as the conduit between Reyes and Perez.

FN5. Castaneda told the government that he was approached by Julio Gonzalez in 1992 for assistance in getting his DWI case reduced. Gonzalez gave Castaneda $1,000 to pass on to Weaver as payment for the fix. Castaneda acknowledged keeping approximately $100 for himself.

FN6. Castaneda advised the government that Gonzalez approached him on another occasion for assistance in getting dismissed a DWI for Jeff Lewis. Castaneda was unsure if Weaver had ultimately been successful in fixing the case.

FN7. Castaneda told the government that an individual known as "Chuy" Hinojosa had approached Weaver and given him an unknown amount of money. When Weaver was unable to fix the case, Hinojosa's money was returned.

FN8. Castaneda told the government that Barajas--who was on probation and afraid she would fail a urine test--paid Weaver $6,000 to have the test fixed.

FN9. Castaneda told the investigators that Morales was arrested for DWI and possession of a firearm and that he paid Weaver $1,000 to get the case dismissed. Castaneda admitted that, although he did not receive any money directly from this transaction, Weaver paid him $1,000 on a separate occasion to "keep [him] happy."

FN10. Castaneda told the government that Cano paid Weaver $15,000 to fix a cocaine possession charge. When Weaver was unable to get the case dismissed or reduced, the money was returned to Cano's family.

FN11. Castaneda informed the agents that Meliton Garcia paid Weaver $500 to get an assault charge dismissed or reduced. Out of that money, Castaneda admitted to having kept $50.

On October 22, 1996--almost one year after the November, 1995 interview with Castaneda, and at the end of the grand jury's deliberations--the government wrote to Castaneda advising that, because he had "failed to provide ... relevant and material information concerning criminal activities of which he was well aware," he had violated the transactional immunity agreement, so the government was revoking its promise not to prosecute. The very next day, a grand jury returned a seven-count indictment [FN12] against Castaneda and Weaver. [FN13]

FN12. Count One alleged a pattern of racketeering activity through predicate acts of bribery and extortion--the taking of pay-

ments for fixing DWI and marijuana possession prosecutions--in violation of 18 U.S.C. § 1962(c) (RICO). Count Two alleged a conspiracy to engage in the same pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d). Counts Three through Six alleged specific acts of extortion involving both defendants, in violation of 18 U.S.C. §§ 1951 and 1952 (Hobbs Act). Count Seven concerned an act of extortion involving only Weaver.

FN13. Weaver pled guilty to the RICO substantive count, and his sentence was reduced to approximately 17 months. The reduction of Weaver's sentence was contingent on his willingness to testify truthfully against Castaneda at trial.

Castaneda filed two motions to dismiss the indictment, in one of which he argued that the government had breached its agreement not to prosecute. [FN14] After an evidentiary hearing, the district court denied Castaneda's motion without reasons.

FN14. In his other motion, Castaneda sought to have the indictment dismissed on the ground that the government had breached its proffer agreement by using his immunized testimony in the grand jury proceeding. The district court denied this motion but we do not reach it.

Thereafter, Castaneda was convicted by a jury of RICO conspiracy. [FN15] The district court entered judgment in accordance with the jury's verdict, and sentenced Castaneda to 33 months in prison, to be followed by a three year period of supervised release, and a fine of $7,500.00. Castaneda appeals his conviction. [FN16]

FN15. The jury acquitted Castaneda of the RICO substantive count and the four Hobbs Act counts. The count on which Castaneda was convicted identified as predicate acts five DWI cases that he and Weaver conspired to fix. Named as the bribe-payors/extortion victims in these cases are Julio Gonzalez (a participant in two transactions--his own and that involving Maurice Middleton), Meliton Garcia, Rafael Gonzalez and Sammy Snodgrass (a participant in the transaction involving Jeff Lewis). Predicate Act Six--referring to the dismissal of a marijuana charge for Silverio Garza-- pertained only to Weaver.

FN16. On appeal, Castaneda asserts four distinct errors that allegedly warrant the reversal of his conviction. Because we conclude that the government breached its transactional immunity agreement and that the district court erred in failing to dismiss Castaneda's indictment on this ground, we do not reach Castaneda's other three assignments of error.

II
ANALYSIS

Castaneda argues that the district court should have granted his motion to dismiss the indictment because the government breached its oral agreement not to prosecute. Implicit in this claim is the charge that the government failed to show by a preponderance of the evidence that Castaneda materially breached the immunity agreement, without which the government could not repudiate the contract and prosecute him. We agree.

[1][2][3][4][5] Nonprosecution agreements, like plea bargains, are contractual in nature, and are therefore interpreted in accordance with general principles of contract law. [FN17] Under these principles, if a defendant lives up to his end of the bargain, the government is bound ***836** to perform its promises. [FN18] If a defendant "materially breaches" his commitments under the agreement, however, the government can be released from its reciprocal obligations. [FN19] When the government believes that a defendant has breached the terms of a nonprosecution agreement and wishes to

be relieved of performing its part of the bargain--here, refraining from prosecuting the defendant--due process prevents the government from making this determination and nullifying the agreement unilaterally. [FN20] Instead, the government must prove to the court by a preponderance [FN21] of the evidence that (1) the defendant breached the agreement, and (2) the breach is sufficiently material to warrant rescission. [FN22] If the pleadings show no factual dispute, however, the court may determine breach as a matter of law. [FN23] Because the district court issued no factual findings in this case, we review Castaneda's claim of breach of a nonprosecution agreement *de novo.* [FN24]

FN17. *United States v. Moulder,* 141 F.3d 568, 571 (5th Cir.1998); *United States v. Ballis,* 28 F.3d 1399, 1409 (5th Cir.1994); *United States v. Fitch,* 964 F.2d 571, 574 (6th Cir.1992); *United States v. Brown,* 801 F.2d 352, 354 (8th Cir.1986).

FN18. *United States v. Tilley,* 964 F.2d 66, 70 (1st Cir.1992)

FN19. *Ballis,* 28 F.3d at 1409; *Tilley,* 964 F.2d at 70; *United States v. Crawford,* 20 F.3d 933, 935 (8th Cir.1994).
According to Castaneda, the government's sole remedy for his alleged breach would be prosecution for perjury, not rescission of the agreement. Castaneda claims that the government is limited to the remedies stated in the agreement. Because the oral agreement did not specifically contemplate prosecution for immunized crimes in the event he failed to provide full and truthful information, argues Castaneda, the government may not revoke its grant of transactional immunity. In support of this proposition, Castaneda cites *United States v. Fitch,* 964 F.2d 571, 575 (6th Cir.1992).

FN20. *United States v. Verrusio,* 803 F.2d 885, 888 (7th Cir.1986); ***United States v. Tarrant,* 730 F.Supp. 30, 32** 1990).

FN21. *United States v. Price,* 95 F.3d 364, 367 (5th Cir.1996) (stating that, in determining whether government's actions have breached terms of plea agreement, defendant bears burden of demonstrating underlying facts that establish breach by preponderance of evidence); *United States v. Wittie,* 25 F.3d 250, 262 (5th Cir.1994), *aff'd,* 515 U.S. 389, 115 S.Ct. 2199, 132 L.Ed.2d 351 (1995) (same); *Tilley,* 964 F.2d at 71 (holding that before government may revoke agreement, it must show by a preponderance of evidence that the defendant has committed a substantial breach); *United States v. Packwood,* 848 F.2d 1009, 1011 (9th Cir.1988) (same).
We recognize, however, that not all courts have adopted this standard. *See, e.g., United States v. Gonzalez-Sanchez,* 825 F.2d 572, 578 (1st Cir.1987) (holding that government bears the burden of demonstrating by adequate evidence that there has been a substantial breach by defendant); *State v. Rivest* 106 Wis.2d 406, 316 N.W.2d 395, 398-99 (Wis.1982) (adopting a beyond a reasonable doubt standard); *United States v. Skalsky,* 616 F.Supp. 676, 681 (D.N.J.1985) (requiring proof of material breach by clear and convincing evidence).

FN22. *See Packwood,* 848 F.2d at 1011; ***Tarrant,* 730 F.Supp. at 32.**

FN23. *Packwood,* 848 F.2d at 1011; *United States v. Calabrese,* 645 F.2d 1379, 1390 (10th Cir.1981).

FN24. *Moulder,* 141 F.3d at 571; *Price,* 95 F.3d at 367; *United States v. Laday,* 56 F.3d 24, 26 (5th Cir.1995); *Wittie,* 25 F.3d at 262; *United States v. Valencia,* 985 F.2d 758, 760 (5th Cir.1993).
The government argues that the appropri-

ate standard of review is clear error. *See United States v. Gibson,* 48 F.3d 876, 878 (5th Cir.1995); *Ballis,* 28 F.3d at 1409. We agree that this is the appropriate standard for reviewing a district court's findings as to the underlying facts that constitute breach. In the absence of such factual findings, however, we must conduct a de novo review of every aspect of Castaneda's purported breach.

[6] In the instant case, the government promised not to prosecute Castaneda for his role in the bribery scheme in exchange for his full and truthful disclosure of information implicating Weaver. After dealing with Castaneda for more than a year, the government rescinded this agreement at the eleventh hour, and Castaneda was indicted by the grand jury one day later. At a pretrial hearing on Castaneda's motion to dismiss his indictment, [FN25] the government presented evidence purporting to show that Castaneda had ***837** breached his end of the bargain by failing to reveal "relevant and material information ... of which he was well aware." [FN26] Because of these alleged omissions, contended the government, it was entitled to rescind the agreement and be relieved of its obligation not to prosecute. Castaneda countered that he gave the government considerable, accurate, and incriminating information about Weaver, and that any omissions Castaneda made were essentially inadvertent or duplicative and thus did not amount to a material breach of the agreement. [FN27] In so many words, he argued substantial performance.

FN25. The government did not seek a judicial determination of breach until after Castaneda had been indicted, and Castaneda does not contend that a hearing had to have been held prior to this time. For the purposes of this opinion, therefore, we do not pass on the issue of when, during the progress of a criminal investigation, a judicial determination of breach is required to comport with due process. *See Verrusio,* 803 F.2d at 888- 89 (discussing whether defendant's indictment constituted a deprivation of his interest in the enforcement of a plea agreement, and whether he was entitled to a preindictment hearing to determine whether he had breached his obligations under that agreement).

FN26. All of the evidence presented at the pretrial hearing pertained to Castaneda's omission of information about illegal activities involving Weaver. It appears that the government introduced evidence in camera regarding Castaneda's alleged omissions about activities involving Sheriff Alex Perez. It is not clear whether the court took this evidence into account when determining Castaneda's breach, and this evidence is not in the record on appeal. Although the government maintains its position that Castaneda breached the nonprosecution agreement with regards to both Weaver and Perez, the government has failed to cite any specific omissions involving Perez and has failed to see to it that its in camera inculpatory evidence is included in the record on appeal.

FN27. Castaneda's lawyer--Ernesto Gamez, Jr.--wrote a letter to AUSA Mosbacker, dated December 12, 1996, in which he argued that Castaneda's inadvertent omission of some names does not amount to a lie. Forgetfulness, argued Gamez, is not the same as noncompliance. Furthermore, Gamez contended, the government "either already possessed [the omitted names] or acquired this additional information from [Castaneda's] statements." In the letter, Gamez noted that he had spoken with Agent Cisneros on several occasions, and that he had been led to believe that the government was fully satisfied with the information provided by Castaneda. Gamez also claimed that Agent Cisneros had

agreed to contact him in the event the government needed additional information.

There is no clear Fifth Circuit law on the issue of what constitutes a "material breach" of a nonprosecution agreement. [FN28] In the context of general contract law, however, we have recognized that a breach is not material unless the non-breaching party is deprived of the benefit of the bargain. [FN29] The less the non-breaching party is deprived of the expected benefits, the less material the breach. [FN30]

FN28. For some of the circumstances in which courts have allowed the government to rescind plea agreements, see *Ballis,* 28 F.3d at 1409 (withholding of information, untruthful testimony, and inducement of plea agreement by fraud); *Hentz v. Hargett,* 71 F.3d 1169, 1172-75 (5th Cir.1996) (informing prosecutor of intent to change testimony is circumstance amounting to anticipatory repudiation which justifies revocation of agreement); ***Tarrant,* 730 F.Supp. at 32-33** (refusing to cooperate by failing to meet with government representatives, failing to testify before grand jury and fleeing jurisdiction to avoid cooperation); *United States v. Donahey,* 529 F.2d 831, 832 (5th Cir.1976) (providing evasive, misleading answers, answers which could not be verified, and refusing to answer questions).

FN29. *Hanson Prod. Co. v. Americas Ins. Co.,* 108 F.3d 627, 630 (5th Cir.1997) (relying on *Hernandez v. Gulf Group Lloyds,* 875 S.W.2d 691, 692-92 (Tex.1994) in holding that, where an insurer is not prejudiced by a breach, the breach is not material, the insurer has not been deprived of the benefit of the bargain, and it should not be relieved of its obligation to provide coverage).
The "benefit of the bargain" standard has been adopted, at least in part, by the Eighth Circuit in determining breach of an immunity agreement. In *United States v. Crawford,* 20 F.3d 933 (8th Cir.1994), the court relied on the following three factors--borrowed from the Restatement of Contracts--to guide their determination: (1) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (2) the likelihood that the party failing to perform will cure his failure; and (3) the extent to which the behavior of the party failing to perform comports with standards of good faith and fair dealing. *Id.* at 935. The other considerations listed in the Restatement as significant in determining the materiality of a breach include (1) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; and (2) the extent to which the party failing to perform or to offer to perform will suffer forfeiture. *Restatement (Second) of Contracts* § 241 (1981).
In *United States v. Fitch,* the Sixth Circuit adopted a somewhat more rigorous standard, holding that the government must prove a "bad faith, intentional, substantial omission" on the part of the defendant before it can be released from its obligations. 964 F.2d at 574 (adopting the standard set forth in *United States v. Castelbuono,* 643 F.Supp. 965, 971 (E.D.N.Y.1986)).

FN30. *Hernandez v. Gulf Group Lloyds,* 875 S.W.2d 691, 693 (Tex.1994).

[7] Courts within this Circuit have clarified the concept of material breach by comparing it with the converse concept of substantial***838** performance. [FN31] Using this approach, if a party's "nonperformance ... is innocent, does not thwart the purpose of the bargain, and is wholly dwarfed by that party's performance," the breaching party has substantially performed under the contract, and the non-breaching party is not entitled to rescission.

162 F.3d 832
162 F.3d 832
(Cite as: 162 F.3d 832)

[FN32] We think that this approach is equally applicable in determining the materiality of a breach in the context of nonprosecution agreements. [FN33] Given the government's burden of proof, our de novo application of this test demonstrates that the relatively insignificant omissions by Castaneda did nothing to frustrate the government's prosecution of Weaver. Moreover, these omissions pale by comparison to the plethora of information delivered by Castaneda.

> FN31. *See White Hawk Ranch, Inc. v. Hopkins,* No. CIV.A.91-CV29-DD, 1998 WL 94830, at *3 (N.D.Miss. Feb.12, 1998). *See also* 2 E. Allan Farnsworth, *Farnsworth on Contracts* § 8.16 at 442 (2d ed. 1990) (recognizing that substantial performance is performance without a material breach, and a material breach results in performance that is not substantial).
>
> FN32. *White Hawk Ranch,* No. CIV.A.91-CV29-DD, 1998 WL 94830, at * 3.
>
> FN33. The government cites *United States v. Gerant,* 995 F.2d 505, 509 (4th Cir.1993) in support of its argument that Castaneda's breach of the agreement should not be overlooked simply because he furnished the government with some useful information. In *Gerant,* however, the court concluded that the defendant's breach of the nonprosecution agreement had "seriously impaired ongoing drug investigations and prosecutions," thereby entitling the government to rescission of the agreement. *Id.* In other words, the government had been prejudiced by the defendant's breach. Moreover, the court was careful to point out that there may be cases "where the extent of information and cooperation provided by a defendant who has trivially breached a nonprosecution agreement is so great that the court is persuaded that the defendant substantially complied with the agreement." *Id.* at 509 n. 4. Thus, while the Fourth Circuit rejected the defendant's substantial compliance argument under the particular facts of the case, *Gerant* does not stand for a per se rejection of this argument.

The government argues that Castaneda committed a material breach of the agreement by failing to reveal Weaver's involvement in the dismissal of DWIs for Meliton Garcia, Maurice Middleton and Rafael Gonzalez, as well as the dismissal of a gun charge for Jose Galvan. [FN34] Although it is clear that Castaneda omitted some information during his interviews with the government, it is anything but clear that, when viewed in the context of what the government already knew or learned derivatively from other sources, these omissions rise to the level of a material breach, even collectively.

> FN34. Agent Cisneros testified at the pretrial hearing that the government knew about the cases of Meliton Garcia, Maurice Middleton and Rafael Gonzalez *before* interviewing either Castaneda or Weaver. The government conducted interviews with Weaver on February 27, 1995, March 22, 1995, May 31, 1995 and January 29, 1996.

Castaneda provided the government with substantial, detailed accounts of bribery involving Weaver and seven other individuals--Julio Gonzalez, Jeff Lewis, Chuy Hinojosa, Guadalupe Barajas, Federico Morales, Alejandro Cano, and Meliton Garcia. Weaver's illegal activities with three of these individuals eventually formed the basis for predicate racketeering acts and Hobbs Act counts in the indictment. [FN35]

> FN35. The indictment listed, as RICO predicate acts, instances of bribery and extortion involving Julio Gonzalez (Act One--for dismissal of his own DWI charge), Meliton Garcia (Act Two--albeit for the dismissal of his DWI charge rather than his assault charge), and Jeff Lewis (Act Five--

through Sammy Snodgrass for dismissal of Lewis's DWI). Illegal activities with these same individuals formed the basis of Counts Three, Four, and Six--Hobbs Act violations.

Even the government's examples of omissions cut both ways. With regard to Meliton Garcia, Castaneda did provide the government with information about the dismissal of an assault charge; he merely failed to mention the dismissal of a DWI charge as well. Thus, Castaneda led the government to the right source, even if his tip was not complete.

Likewise, although Castaneda did not disclose information about Weaver's dismissal of Maurice Middleton's DWI, [FN36] Castaneda did provide accurate information about his own involvement as a go-between for Weaver and Julio Gonzalez--and, thereafter, Gonzalez confessed to the government that he had contacted Castaneda for help getting DWIs ***839** dismissed both for himself and Middleton, as well as for Jeff Lewis. Thus, Castaneda did indirectly that about which the government faults him for not doing directly.

FN36. Maurice Middleton was named in predicate Act Three of the indictment.

Finally, with regard to Rafael Gonzalez [FN37], Agent Cisneros and AUSA Mosbacker were inconsistent about the extent of information Castaneda provided. In the pretrial motion hearing, Agent Cisneros repeatedly testified that Castaneda had discussed Rafael's DWI, only to recant this assertion on further questioning. AUSA Mosbacker admitted that he thought Castaneda had discussed illegalities in which Weaver and Rafael were involved, but maintained that Castaneda did not mention the DWI. Even if Castaneda failed to reveal any direct information about Rafael, though, it is undisputed that he did provide substantial information about Jose Reyes--a source intimately connected with Rafael Gonzalez. Thus, it appears that the only Weaver-related individual about whom Castaneda failed entirely to provide information was Jose Galvan--for dismissal of a gun charge that did not serve as the basis for any count in the indictment. [FN38]

FN37. Rafael Gonzalez was named in predicate Act Four and Count Five.

FN38. In addition, it appears that Castaneda did not provide any information about an alleged DWI dismissal for an individual named Perez (first name unknown). When asked during the pretrial hearing to list the omissions constituting Castaneda's breach, however, AUSA Mosbacker did not mention this transaction. Neither is the Perez omission mentioned in the government's brief to this Court.
We note that, in addition to dismissals of charges against Julio Gonzalez, Meliton Garcia, Maurice Middleton, Rafael Gonzalez, and Jeff Lewis, the indictment identified as a predicate act for the substantive RICO count the dismissal of a marijuana charge for Silverio Garza (Act Six). This same transaction formed the basis of Count Seven. Castaneda was not named in Act Six or Count Seven, however, and the government does not assert that he had any knowledge of this transaction.

Having reviewed the briefs of the parties, heard oral argument, and thoroughly reviewed the record, we are now satisfied that, despite Castaneda's relatively insignificant omissions, the government got the benefit of its bargain and has failed to carry its burden of proving a material breach by Castaneda. The government granted Castaneda transactional immunity with the intention of receiving in return leads and information pertinent to its investigation of Weaver and corruption in the Cameron County Attorney's Office. Castaneda provided both direct and indirect leads, and volumes of such information as well. In fact, Castaneda gave the government significant quantities of detailed information about Weaver's involvement in at least seven illegal trans-

actions conducted through the County Attorney's Office. [FN39] Although it appears that Castaneda's performance was not perfect--that he did not literally "tell everything he knew," as he was technically required to do under the agreement--the government has failed to show that these omissions were intentional or, more importantly, that the government was prejudiced. Much of the relatively little that Castaneda omitted was already known to the government before interrogating Castaneda, or was discovered from other sources. When viewed in light of the overwhelming quantity of information he furnished about numerous individuals and incidents involving Weaver, much that Castaneda omitted must be classified either as cumulative or surplusage. In the absence of proof of substantial or intentional omissions by Castaneda constituting prejudice to the government, the district court erred in permitting the government to revoke the nonprosecution agreement with Castaneda and prosecute him in this case.

> FN39. Including dismissals for Julio Gonzalez, Jeff Lewis, Chuy Hinojosa, Guadalupe Barajas, Federico Morales, Alejandro Cano, and Meliton Garcia. The information that Castaneda provided regarding Jose Reyes was *directly* pertinent to the illegal activities of Sheriff Perez but not Weaver.

III
CONCLUSION

It ill behooves government agents and prosecutors to enter into agreements of transactional immunity with mid-level co-conspirators, milk them of substantial leads and information that literally make the government's case against the "big fish" while coincidentally giving the government a lay-down ***840** winning hand against the cooperating co-conspirator; then, at the last moment, rely on some technical or relatively minor deficiency in performance to pull the rug from under the cooperating informant by claiming a breach and proceed to prosecute him in a slam-dunk case based largely on his own revelations. Yet, this is precisely what we perceive to have happened here, and due process cannot abide such behavior. For the reasons explained above, we conclude that the district court erred in failing to grant Castaneda's motion to dismiss the indictment, which was obtained in violation of a transactional immunity agreement, that the government failed to prove was materially breached. Castaneda's conviction of RICO conspiracy is reversed, the sentence imposed in accordance with that conviction is vacated, and the case is remanded to the district court for entry of a judgment of acquittal.

REVERSED; sentence VACATED; and REMANDED with instructions.

162 F.3d 832

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Westlaw Delivery Summary Report for ATKINSON,KAREN

Your Search:	non-prosecution agreement breached by defendant, do have to give time to cure breach
Date/Time of Request:	Monday, June 8, 2009 15:08 Central
Client Identifier:	DOJ
Database:	ALLFEDS
Citation Text:	780 F.2d 929
Lines:	203
Documents:	1
Images:	0

H

United States District Court,
N.D. Texas,
Dallas Division.

UNITED STATES of America
v.
Sean Christian TARRANT, Jon Lance Jordan, Christopher Barry Greer, Michael Lewis Lawrence, Daniel Alvis Wood.
Crim. A. No. 3-89-293-H.

Jan. 16, 1990.

Defendant who allegedly **breached nonprosecution agreement** moved to dismiss indictment or to suppress statements. The District Court, Sanders, Chief Judge, held that: (1) **defendant**, who refused to cooperate by failing to meet with Government representatives, failing to testify before grand jury, and eventually fleeing Texas to avoid cooperation altogether, substantially and materially **breached** pretrial proffer **agreement**, and (2) **defendant's** substantial material **breach** of **agreement** permitted Government to indict **defendant** on charges that were subject to **agreement**, even if indictment were issued as a result of statements **defendant** made under **agreement**.

Motion denied.

See also, 732 F.Supp. 56.

West Headnotes

[1] Criminal Law 110 ⚿42.5(1)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(1) k. In General. Most Cited Cases
(Formerly 110k42)
Pretrial **agreements**, like plea bargains, are contractual in nature.

[2] Criminal Law 110 ⚿42.5(1)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(1) k. In General. Most Cited Cases
(Formerly 110k42)
Although principles of contract law generally apply to pretrial **agreements**, constitutional ramifications of **agreements** require judicial supervision to safeguard **defendant's** rights.

[3] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)

Criminal Law 110 ⚿42.7(2)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.7 Enforcement of Grant of Immunity
110k42.7(2) k. Evidence. Most Cited Cases
(Formerly 110k42)
When Government believes that **defendant** has **breached** terms of pretrial **agreement** and wishes to rescind its part of bargain, Government may not make determination unilaterally, but must prove to

court by preponderance of evidence that **defendant** materially **breached agreement**.

[4] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Defendant, who refused to cooperate by failing to meet with government representatives, failing to testify before grand jury, and eventually fleeing Texas to avoid cooperation altogether, substantially and materially **breached** pretrial proffer **agreement**, despite **defendant's** attempts to characterize his actions as "inarticulate way of withdrawing from an **agreement** about which he had regrets.".

[5] Criminal Law 110 ⚿42.5(1)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(1) k. In General. Most Cited Cases
(Formerly 110k42)

Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases
Plea and **nonprosecution agreements** must be interpreted according to objective standards.

[6] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Where **nonprosecution agreement** confers immunity for **defendant**, parties must look to and are governed by **agreement** for the remedies arising from **breach**.

[7] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Where cooperation **agreement** so provides, Government may use **defendant's** statements against him in event of **defendant's breach**.

[8] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Defendant's substantial material **breach** of **nonprosecution agreement** by failing to testify before grand jury and eventually fleeing jurisdiction permitted Government to indict **defendant** on charges that were subject to **nonprosecution agreement**, even if indictment was issued as a result of statements **defendant** made; Government was not limited to holding **defendant** in contempt for failure to testify as would have been case had **defendant**

been granted statutory immunity. 18 U.S.C.A. §§ 6002, 6003; U.S.C.A. Const.Amend. 5.

[9] Criminal Law 110 ⚿408

110 Criminal Law
110XVII Evidence
110XVII(L) Admissions
110k405 Admissions by Accused
110k408 k. Negotiations for Compromise. Most Cited Cases
Rule prohibiting admission of statement made in course of plea discussions if no plea occurs or plea is withdrawn applies only to statements leading up to agreement and not those made after agreement. Fed.Rules Cr.Proc.Rule 11(e)(6), 18 U.S.C.A.
***31** James P. Turner, Acting Asst. Atty. Gen., Civ. Rights Div., U.S. Dept. of Justice, Barry Kowalski & Suzanne Drouet, Attys., Crim. Section, Washington, D.C., for U.S.

Craig Jett, Dallas, Tex., for defendant Wood.

MEMORANDUM OPINION AND ORDER

SANDERS, Chief Judge.

Before the Court is Defendant Wood's Motion to Dismiss Indictment or To Suppress Statements of Defendant, filed December 15, 1989; and the Government's Response, filed January 2, 1990. Defendant Wood moves the Court to dismiss the indictment against him or in the alternative to exclude from evidence (1) certain statements made by him to law enforcement authorities and (2) any evidence derived therefrom.

I. FACTS

Following his conviction for criminal mischief in state court, Defendant Wood was sentenced to imprisonment for ten years. Soon thereafter, Wood and his attorney met with representatives of both the federal and state government. After some discussion, the parties reached a deal whereby Wood agreed to cooperate with the federal and state authorities in their investigation of racist criminal activity in the Dallas area in exchange for (1) a promise that Wood would not be prosecuted further and (2) a grant of protection for Wood and his family. The parties memorialized the **agreement** in a three-page, single-spaced letter which included handwritten modifications and a typed addendum (hereinafter the "Proffer **Agreement**" or " **non-prosecution agreement**").

Section TWO of the Proffer **Agreement** clearly states that Wood could be prosecuted for perjury, false statement, or obstruction of justice in the event he gave false, misleading, or incomplete information. Section THREE specifically informed the **Defendant** that failure to perform *any* of his obligations under the **agreement** would release the government to prosecute him for any crime and permit the government to use evidence against him from any source, "including [his] own admissions." [FN1] In an addendum to the **agreement**, it is reemphasized that Wood would not be prosecuted "except as set forth in TWO and THREE."

FN1. The **agreement** states:

> TWO: You will at all **times give** complete, truthful and accurate information and testimony and must not commit any further violation of state or federal law whatsoever. Nothing in this **agreement** shall be construed to protect you in any way from prosecution or perjury, false statement or false declaration, in violation of 18 U.S.C. §§ 1001, 1621, or 1623, or obstruction of justice, in violation of 18 U.S.C. §§ 1503, 1505, and 1510 in the event it is determined that you have intentionally given false, misleading or incomplete information. Nor does this agreement protect you from criminal prosecution for any other criminal offense committed by you after the date of this agreement or any criminal offense committed by you which resul-

> ted in the serious bodily injury or death of another.
>
> THREE: It is also understood that, if it is determined that you have intentionally given false, misleading or incomplete information or violated any other term of this agreement, then:
>
> (1) You will be subject to prosecution for any criminal violations of which the United States or the State of Texas may have knowledge from any source whatsoever, including your own admissions; and
>
> (2) All statements made by you to the United States and/or any other law enforcement officials, and all testimony given by you, and all leads from such statements or testimony, will be admissible in evidence against you. It is the intent of this agreement that you waive any and all rights which you may have under the United States Constitution, any statute or any Federal rule to seek suppression of these statements in the event that you violate any of the terms of this agreement.

After signing the Proffer Agreement on February 16, 1989,[FN2] Defendant spent several days providing information to the government. Several weeks later, however,***32** Wood decided that he no longer wished to cooperate and attempted to avoid giving any further information to law enforcement authorities.[FN3] Sometime after his release from incarceration, Wood left Texas to avoid giving testimony before a federal grand jury to which he had been subpoenaed to testify.[FN4]

> FN2. The Court finds that Defendant voluntarily and knowingly entered into this agreement, having discussed it with his own counsel, having negotiated modifications to the agreement, and having counsel present at the time of execution. *See* Defendant's Motion at 2, 8; Government's Response at 3, 9-10.
>
> FN3. *See* Affidavit of Special Agent Robert Blecksmith, attachment B to the Government's Response. Among other things, Wood:
>
> (1) failed on more than one occasion to meet a police detective, as promised, to accept service of a grand jury subpoena (Blecksmith Aff.¶¶ 3, 4);
>
> (2) failed to meet government attorneys, as promised, on the day prior to his scheduled grand jury appearance (Blecksmith Aff.¶¶ 5, 6);
>
> (3) failed to appear for his scheduled grand jury appearance on May 3, 1989 (Blecksmith Aff. ¶ 7);
>
> (4) attempted to avoid service of a further subpoena on May 16, 1989 (Blecksmith Aff. ¶ 9);
>
> (5) failed to appear for the rescheduled grand jury appearance on May 25, 1989 (Blecksmith Aff. ¶ 11);
>
> (6) was convicted of violating 18 U.S.C. § 1074, unlawful flight to avoid prosecution, for leaving Texas; in the factual resume accompanying his plea of guilty, which plea Defendant made before this very Court, Defendant specifically admitted leaving Texas to avoid testifying before the federal Grand Jury. *See* Factual Resume filed September 7, 1989 in *United States v. Wood,* CR3 89-211-H.
>
> FN4. *See supra* n. 3.

Wood moves the Court to dismiss the present indictment against him in the belief that the government impermissibly used the statements he

provided under the Proffer Agreement as evidence to support his indictment. Alternatively, the Defendant moves to suppress any statements, oral or written, that he made to law enforcement officials pursuant to the agreement and any evidence derived therefrom. The government responds asserting that the agreement permits the use of Wood's statements and urging the Court to deny Defendant's motion in total.

II. DISCUSSION

A. *Breach of the Proffer Agreement.*

[1][2][3] Pretrial agreements, like plea bargains, are contractual in nature. *United States v. Fulbright,* 804 F.2d 847, 852 (5th Cir.1986). Although principles of contract law generally apply to such agreements, the constitutional ramifications of these agreements require judicial supervision in order to safeguard a defendant's rights. *United States v. Calabrese,* 645 F.2d 1379, 1390 (10th Cir.1981), *cert. denied,* 454 U.S. 831, 102 S.Ct. 127, 70 L.Ed.2d 108 (1982). When the government believes that a defendant has breached the terms of a proffer agreement and then wishes to rescind its part of the bargain, the government may not make this determination unilaterally. Instead, the government must prove to the court by a preponderance of the evidence that the defendant materially breached the agreement. *United States v. Packwood,* 848 F.2d 1009, 1011 (9th Cir.1988); *United States v. Verrusio,* 803 F.2d 885, 891 (7th Cir.1986).[FN5] Where the facts are not in dispute, the court may determine breach as a matter of law. *Calabrese, supra,* 645 F.2d at 1390.

> FN5. Courts are not unanimous about the precise level of the government's burden of persuasion on the issue of breach. *See, e.g., United States v. Gonzalez-Sanchez,* 825 F.2d 572, 578 (1st Cir.), (burden of proof by "adequate evidence"), *cert. denied,* 484 U.S. 989, 108 S.Ct. 510, 98 L.Ed.2d 508 (1987); *United States v. Skalsky,* 616 F.Supp. 676, 681 (D.N.J.1985) (proof by clear and convincing evidence), *aff'd,* 857 F.2d 172 (3d Cir.1988). However, this Court is in agreement with the Seventh and Ninth Circuits that adequate protection for a defendant's rights is provided for by the preponderance standard, since the government must still establish beyond a reasonable doubt that the defendant did in fact commit the offense so charged. *See Packwood, supra,* 848 F.2d at 1109; *Verrusio, supra,* 803 F.2d at 890-91.

[4] It is uncontroverted that the Defendant breached the agreement by a failure to meet his obligations required thereunder. Although Wood characterizes his actions as an "inarticulate way of withdrawing from an agreement about which he had regrets," this phraseology does not conceal the fact that Defendant does not actually contest the government's evidence of breach (*e.g.,* failure to cooperate by meeting with government representatives, failure to appear before grand jury). Indeed, ***33** the Defendant has admitted to perhaps the most egregious asserted breach-that he fled Texas to avoid testifying, an admission of which the Court takes judicial notice. *See supra* n. 3. Because Wood refused to cooperate by failing to meet with government representatives, failing to testify before the grand jury, and eventually fleeing the jurisdiction to avoid cooperation altogether, the Court holds as matter of law that Wood has substantially and materially **breached** the Proffer **Agreement**. *See United States v. Donahey,* 529 F.2d 831, 832 (5th Cir.) (per curiam) (**defendant breached** cooperation **agreement** by giving evasive and misleading answers and refusing to answer certain questions), *cert. denied,* 429 U.S. 828, 97 S.Ct. 85, 50 L.Ed.2d 91 (1976); *United States v. Reardon,* 787 F.2d 512, 516 (10th Cir.1986) (**defendant breached agreement** by failing to provide full accounting of his own activities); *United States v. Irvine,* 756 F.2d 708, 710-11 (9th Cir.1985) (**defendant breached** cooperation **agreement** by soliciting bribe even

though **agreement** only required **defendant** to be truthful; **defendant's** acts subverted "overriding purpose" of **agreement**).

B. *The Government's Remedy.*

[5][6][7] Plea and **non-prosecution agreements** must be interpreted according to objective standards. *Johnson v. Beto,* 466 F.2d 478, 480 (5th Cir.1972) (per curiam). Where a **non-prosecution agreement** confers immunity for a **defendant**, the parties must look to and are governed by the **agreement** for their remedies arising from a **breach**. *United States v. Castelbuono,* 643 F.Supp. 965, 969 (E.D.N.Y.1986). Thus, where a cooperation **agreement** so provides, the government may use the **defendant's** statements against him in the event of a **defendant's breach**. *Irvine, supra,* 756 F.2d at 712; *United States v. Doe,* 671 F.Supp. 205, 208 (E.D.N.Y.1987); *Castelbuono,* 643 F.Supp. at 969; *United States v. Skalsky,* 616 F.Supp. 676, 680 (D.N.J.1985), *aff'd,* 857 F.2d 172 (3d Cir.1988).

[8] Wood argues that the government has adequate remedies other than using his statements to prosecute him, and that use of his statements would allow the government to have the benefit of the bargain while depriving Wood of the same. Specifically, the Defendant contends that the appropriate remedy is to hold him in contempt for failure to testify before the grand jury under a grant of immunity, as would be the case had the Defendant been granted "statutory immunity" pursuant to 18 U.S.C. §§ 6002-6003.

18 U.S.C. §§ 6002 and 6003 set forth a procedure whereby, upon request of the United States Attorney, a court may order the testimony of an individual who asserts his or her fifth amendment privilege. However, the statute provides that no testimony or other information compelled under the order, or any information directly or indirectly derived therefrom, may be used against the individual in any criminal case, with this exception: where a defendant, granted statutory immunity, testifies untruthfully or refuses to testify the statute limits the government's remedy to a prosecution for perjury or contempt. The reason for this is clear: since the witness is compelled to testify over his or her fifth amendment privilege, the statute is constitutional "only if the immunity granted is equal to the constitutional protection it supplants." *Irvine,* 756 F.2d at 712.

Unlike statements given by a defendant pursuant to statutory immunity, however, those given by Wood under the Proffer Agreement were made *voluntarily* in exchange for a promise of nonprosecution. Wood's fifth amendment rights are not implicated in this situation.[FN6] As the government points out, it was only willing to take Mr. Wood's statements and promise not to prosecute him under the conditions that the statements were made voluntarily and that Wood acknowledged that a breach of the ***34** agreement's terms would result in a waiver of any rights to suppress the statements. The government was at all times prepared to give the Defendant the benefit of the bargain and continued to make attempts to get him to fulfill the agreement.[FN7]

FN6. *See Irvine,* 756 F.2d at 712:

> [The defendant] testified pursuant to an agreement entered into freely on his own initiative and for his own purposes. [He] was free to agree to conditions that could not have been imposed upon him had he chosen to claim his Fifth Amendment privilege.

FN7. *See supra* n. 3.

Thus, Defendant's complaint that the government is "having its cake and eating it too" is specious. As the Court stated in *Irvine,*"[t]here is no issue of compelled self-incrimination in this case. [The defendant] was not required to testify." *Irvine,* 756 F.2d at 712. He did testify, freely and voluntarily, and his failure to continue testifying before the grand jury and his ultimate refusal to cooperate should not limit the government's remedies to those

provided for in a grant of statutory immunity.[FN8]

> FN8. Furthermore, should the government be deprived of using Wood's statements, then Wood and other defendants might attempt to manipulate investigations and prosecutions without fear of any consequences. As the *Castelbuono* court noted, this would
>
> > result in a bad public policy.... If this Court held that the Government was limited to a prosection for perjury or false statement in those cases where defendants in bad faith did not fully comply with their obligations, the Government would be reluctant ever to enter into a cooperation agreement and a useful investigative tool would be lost. Defendants facing the possibility of extensive criminal charges would be eager to enter into cooperation agreements knowing that if they were poorly drafted ... and did not specify with particularity the consequences related to every possible breach, it might be possible in bad faith not to comply with the demands of the agreement and still limit one's exposure to a charge of perjury. *Also, a defendant could make no false statement at all, simply refuse to cooperate or cooperate in a very limited way, thereby selectively immunizing himself and face little, if any, penalty. The Court will not encourage such absurd results.*
>
> *Castelbuono,* 643 F.Supp. at 969-70 (emphasis added).

Instead, the remedial provisions contained in the Proffer **Agreement** govern the consequences resulting from Wood's **breach**, and they should be given effect.[FN9] As one court noted, proffer **agreements**"cannot be unilaterally broken with impunity or without consequence." *Reardon, supra,* 787 F.2d at 516 (citing *Calabrese,* 645 F.2d at 1390). Having failed to perform his obligations, the Proffer **Agreement** provides that the **Defendant** is no longer entitled to the government's promise of **non-prosecution** or the promise that his statements would not be used against him.[FN10] *See Castelbuono,* 643 F.Supp. at 969. Thus, the **Defendant's** indictment was wholly proper even if it was issued as a result of statements he made under the **agreement** and his request that these statements be suppressed must be denied.[FN11]

> FN9. *See supra* p. 33.
>
> FN10. *See supra* n. 2.
>
> FN11. **Defendant's** reliance on *United States v. Brown,* 801 F.2d 352 (8th Cir.1986), is misplaced. In *Brown,* the Eighth Circuit determined that the **defendant** had **breached** a cooperation **agreement**, thus permitting the government to prosecute him for the criminal conduct forming the basis of the **agreement**. The court also ruled that the government could not use any information, directly or indirectly, that was obtained under the plea **agreement** including the **defendant's** admissions. Although the court **did** not explicitly say so, this result was dictated by the fact that the **agreement** specifically prohibited the use of these statements except in a prosecution for perjury or false statement. *Id.* at 353. Again, *the remedies available upon the occurrence of a* ***breach*** *were prescribed by the* ***agreement*** *itself;* like Sections TWO and THREE of Wood's proffer **agreement**, the "non-use" provision in the *Brown* case was a post-**breach** remedial provision but in that case limited the government's remedies.

C. *Fed.R.Crim.P. 11(e)(6).*

[9] Federal Rule of Criminal Procedure 11(e)(6) offers no help to the **Defendant**. This rule prohibits

admission of "any statement made in the course of plea discussions with an attorney for the government which **do** not result in a plea of guilty or which result in a plea of guilty later withdrawn." Rule 11(e)(6), however, applies only to those statements leading up to the **agreement** and not those made subsequent to it. *United States v. Stirling,* 571 F.2d 708, 731-32 (2d Cir.) (purpose of the rule is to facilitate free and fearless negotiations to encourage pleas; policy not served by ruling inadmissible testimony given after ***35** agreement reached), *cert. denied,* 439 U.S. 824, 99 S.Ct. 93, 58 L.Ed.2d 116 (1978); *see also United States v. Davis,* 617 F.2d 677, 685 (D.C.Cir.1979) (ruling post-agreement statements inadmissible would permit defendant to "renounce the agreement and return to the status quo ante whenever he chose, even though the Government has no parallel power to rescind the compromise unilaterally"; holding that drafters of Rule 11(e)(6) could not have contemplated such a res- ult).

Since the Defendant and the government attorneys negotiated, modified, and signed the Proffer Agreement prior to Wood's making of the statements and notes sought to be suppressed, these statements were not made in the course of plea discussions. Consequently, *Fed.R.Crim.P.* 11(e)(6) does not protect them from evidentiary use.

III. CONCLUSION

For the reasons stated above, no hearing is necessary to resolve Defendant Wood's Motion to Dismiss Indictment or to Suppress Statements. The undisputed facts and arguments before the Court dictate that Defendant's Motion be, and it is hereby, DENIED.

SO ORDERED.

N.D.Tex.,1990.
U.S. v. Tarrant
730 F.Supp. 30

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908 F.Supp. 1265
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United States District Court,
S.D. New York.

UNITED STATES of America,
v.
Steven HOFFENBERG, Defendant.
No. 94 Cr. 0273 (RWS).

Dec. 18, 1995.

After government terminated cooperation agreement with defendant due to defendant's untruthfulness, defendant moved to enforce agreement. The District Court, Sweet, J., held that: (1) defendant breached agreement, and (2) government did not act in bad faith in refusing to move for downward departure after learning of defendant's untruthfulness.

Motion denied.

West Headnotes

[1] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases
Party who materially breaches cooperative or plea agreement may not claim its benefits.

[2] Criminal Law 110 ⚿1615

110 Criminal Law
110XXX Post-Conviction Relief
110XXX(C) Proceedings
110XXX(C)2 Affidavits and Evidence
110k1615 k. Degree of Proof. Most Cited Cases
(Formerly 110k997.15(6), 110k997.15(2))
At postconviction hearing, government has burden to prove breach of plea agreement by preponderance of evidence; such standard is consistent with standard of proof courts have required to resolve other postconviction disputes, such as disputed sentencing issues.

[3] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases
Where defendant has promised to disclose truthfully all information about which government inquires, any false statement, misleading statement, or omission concerning defendant's activity for area about which government has inquired, is material breach of plea agreement.

[4] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases
Even though government did not specifically ask about defendant's involvement with collections agencies, defendant breached terms of plea agreement, which obligated him to truthfully disclose all information concerning matters about which the government inquired, to inform government of any new business ventures, and to refrain from committing further crimes, where he lied about his involvement in the operation of a collections agency and about the independence of its president, and he failed to disclose his involvement in a second collections agency.

[5] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Opportunity to **cure** doctrine **does** not apply to cooperation **agreements**, as that doctrine operates only in civil contexts.

[6] Criminal Law 110 ⚿42.5(3)

110 Criminal Law
110II Defenses in General
110k42 Immunity to One Furnishing Information or Evidence
110k42.5 **Agreements** Granting Immunity
110k42.5(3) k. Performance and **Breach**. Most Cited Cases
(Formerly 110k42)
Before terminating cooperation **agreement** due to **breach**, government was only required to give **defendant** opportunity to confront allegations that he had **breached agreement** and provide innocent explanation.

[7] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation **Agreement** or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
When cooperation **agreement** allows for a substantial assistance motion contingent upon the government's evaluation of **defendant's** cooperation, government has wide discretion in determining whether to make such a motion. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[8] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Where government declines to make a substantial assistance motion pursuant to cooperation agreement, district court may review decision only to determine whether government based its decision on impermissible criteria, such as race or religion, or whether government acted in bad faith. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[9] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases

Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Government may not refuse to make a substantial assistance motion by relying on facts which it knew at time it entered into agreement; such decision would amount to fraudulently inducing defendant's plea with promise that government already knew it would not keep. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[10] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases

Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Where government enters into cooperation agreement in good faith, believing defendant's representations, and government subsequently learns that defendant has lied and breached terms of agreement, government's dissatisfaction with defendant's performance, and a refusal to make a substantial assistance motion, are justified. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[11] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)

Sentencing and Punishment 350H ⚿989

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)3 Hearing
350Hk989 k. Necessity for Hearing. Most Cited Cases
(Formerly 110k1316)
When defendant claims that government has acted in bad faith in refusing to move for downward departure, as agreed upon in cooperation agreement, government may then rebut allegation, explaining its reason for refusing to so move; defendant must then make some showing of bad faith to trigger hearing on issue. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[12] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Despite some early knowledge of defendant's breach of cooperation agreement, government did not act in bad faith in finally terminating agreement and in refusing to move for downward departure from Sentencing Guidelines, since defendant's failure to comply with agreement, by repeatedly correcting and changing his story and helping suborn perjury, made his information not entirely useful. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[13] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Claim that defendant merely provided substantial assistance to government pursuant to cooperation agreement will not entitle defendant to remedy for government's failure to move for downward departure. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[14] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
In evaluating degree of defendant's cooperation under plea agreement, it is proper for government to consider defendant's truthfulness; defendant must be honest if he hopes to achieve benefit of provision for motion for downward departure of sentencing. U.S.S.G. § 5K1.1, 18 U.S.C.A.

[15] Criminal Law 110 ⚿273.1(2)

110 Criminal Law
110XV Pleas
110k272 Plea of Guilty
110k273.1 Voluntary Character
110k273.1(2) k. Representations, Promises, or Coercion; Plea Bargaining. Most Cited Cases
Under cooperation agreement, government may permit defendant to cure his dishonesty, but it is not required to do so and need not do so continuously.

[16] Sentencing and Punishment 350H ⚿947

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(H) Proceedings
350HIV(H)1 In General
350Hk947 k. Effect of Cooperation Agreement or Other Promise or Representation. Most Cited Cases
(Formerly 110k1306)
Even if defendant's untruths are not central to cooperation agreement with government, if lies are deemed material to evaluation of truthfulness, government, absent unconstitutional or bad faith motivation, is free not to move for downward departure of sentencing. U.S.S.G. § 5K1.1, 18 U.S.C.A.
***1266** Mary Jo White, United States Attorney for Southern District of New York, New York City, for United States of America; Amy E. Millard, Jonathan Rosenberg, Assistant U.S. Attorney of counsel.

Hoffman & Pollok New York City, for defendant; Jeffrey Hoffman, Susan C. Wolfe, of counsel.

SWEET, District Judge.

The defendant Steven Hoffenberg ("Hoffenberg") has moved under the unusual circumstances described below to enforce the Cooperational Plea Agreement of September 23, 1993 (the "Agreement") between Hoffenberg and the United States Attorneys for the Southern District of New York and the Northern District of Illinois (the "Government").

Upon the hearing on contested facts, the prior proceedings and the facts and conclusions set forth below, the motion is denied.

The Issues

This proceeding sets the framework for the final resolution of the responsibility of Hoffenberg for the massive frauds at his company, Towers Financial Corporation ("Towers") in the early 90's which resulted in more than $400 million in losses. While other cases involving the fraud remain open, Hoffenberg's sentence upon his criminal liability may well turn upon the applicability of the Section 5K1.1(a)(1)-(5) exception to the Sentencing Guidelines which he has sought to enforce in this proceeding.

This determination must resolve the following issues: (1) the applicable standard and procedures for the enforcement of cooperation agreements, (2) the factual findings as to the conduct of Hoffenberg and the Government, (3) the effect of any partial ***1267** performance by the Government, and (4) the propriety of the Government's refusal to comply with the Agreement. It is anticipated that with these determinations in hand the Government and Hoffenberg will proceed to a sentencing hearing.

Prior Proceedings

The prior proceedings have been described in prior opinions of this Court familiarity with which is assumed. *See United States v. Hoffenberg,* 859 F.Supp. 698 (S.D.N.Y.1994) (the "July Opinion"), *United States v. Hoffenberg,* 1995 WL 10840 (S.D.N.Y. Jan. 12, 1994). Some restatement is required in the interest of continuity.

Sometime prior to 1991, Hoffenberg and a number of corporate entities with which he was associated, including Towers, and others, came under investigation by the Securities & Exchange Commission ("SEC"). The SEC filed an action in this District against Hoffenberg and others on February 8, 1993, and on February 17, 1993, Hoffenberg and certain other defendants agreed to a preliminary injunction issued by the Honorable Whitman Knapp (the "Consent Order") which, among other things, enjoined Hoffenberg and "each of his controlled, related, or affiliated entities ... to hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any funds, or other properties." It also allowed for "ordinary living and business expenses...."

In 1993 the United States Attorney for the Southern District of New York began a criminal investigation against Hoffenberg and others for conspiracy to obstruct the SEC's investigation during 1991 and 1992, and for various other criminal violations of the securities laws.

In March 1993 Hoffenberg, through counsel, initiated a number of meetings which culminated in an oral understanding. Pursuant to that understanding, Hoffenberg agreed to talk to representatives of the United States Attorney's Office for the Southern District of New York and the Northern District of Illinois, the FBI, and the SEC (collectively, the "Government"). In return, the Government agreed to grant Hoffenberg limited immunity for each of his proffers or debriefings.

On September 24, 1993, Hoffenberg and the Government entered into the Agreement dated September 23, 1993.

On January 27, 1994, and on February 14, 1994, the Government confronted Hoffenberg with allegations that he had violated his obligations under the Agreement. On February 17 he was advised that the Agreement had been terminated, and he was arrested.

On April 19, 1994 he was indicted in the Northern District of Illinois on fraud charges. On April 20, 1994 he was indicted in the Southern District of New York and charged with the four counts contemplated in the Agreement, as well as six additional counts alleging substantive securities fraud violations in connection with the sale of notes and bonds of Towers; additional violations of the mail fraud statute, and obstruction of justice by disobeying an order of the United States District Court for the Southern District of New York.

Hoffenberg moved to enforce the Agreement and by opinion dated July 21, 1994 (the "July Opinion"), *see United States v. Hoffenberg,* 859 F.Supp. 698 (S.D.N.Y.1994), his motion was denied as premature. He then moved to reargue his earlier motion and to suppress the statements which he had made in reliance upon the Agreement, which motion was denied by an opinion rendered on January 11, 1995 (the "January Opinion").

After the filing of the Indictment against him, the Government continued to permit him to plead to the charges as had been set forth in the Agreement and on April 20, 1995, Hoffenberg entered a guilty plea to four counts: (i) conspiracy to violate the securities laws by fraudulently selling securities; (ii) mail fraud, (iii) conspiracy to obstruct justice; and (iv) tax evasion.

The Government continued also its previously stated refusal to file a motion to advise the sentencing judge of Hoffenberg's cooperation and to request sentencing in the light of the factors set forth

in Section 5K1.1(a)(1)-(5) of the Sentencing Guidelines (the "5K1 Letter"). The parties in a pretrial conference*1268 agreed upon the necessity of a hearing to resolve the factual contentions. From June 5 to June 14, 1995, the parties submitted evidence by way of testimony and exhibits. Post hearing briefs were filed. On September 12, 1995 final argument was heard. A final submission was made to the Court on December 1, 1995 and the issues were considered fully submitted at that time.

Facts

The Background and the Agreement

Sometime in 1991 Hoffenberg and a number of corporate entities with which he was associated, including Towers, came under investigation by the SEC for securities fraud arising out of the affairs of Towers. On February 8, 1993, the SEC filed an action in this District. *See SEC v. Towers Financial Corporation, et al.*, 93 Civ. 0744, 1993 WL 276935 (1993) (WK) (the "SEC Action"). As it related directly to Hoffenberg, the complaint alleged that he violated the anti-fraud provisions of the securities laws by false and misleading statements to investors who had purchased $215 million in promissory notes issued by Towers. The SEC also charged Hoffenberg with failing to register the offerings of promissory notes with the SEC, and selling his Towers common stock while in possession of inside information that the stock was worthless.

In early 1993, the United States Attorney for the Southern District of New York commenced the criminal investigation against Hoffenberg and others for conspiracy to obstruct the SEC's investigation during 1991 and 1992 and for various other criminal violations of the securities laws. An investigation was also commenced in the Northern District of Illinois with respect to a scheme to defraud the Illinois Department of Insurance and two Illinois insurance companies acquired by Towers.

In March 1993, Hoffenberg and the Government agreed that Hoffenberg would talk to representatives of the United States Attorney's Office for the Southern District of New York and Northern District of Illinois, the FBI and the SEC and receive limited immunity for these proffers. On at least 22 separate occasions, Hoffenberg and his counsel met with representatives of the Government who were interested in the subject matter of Hoffenberg's debriefings.

On September 24, 1993, the parties entered into the Agreement, dated September 23, which provided that Hoffenberg would be charged with the four felony counts in a Southern District Information. It was further agreed that Hoffenberg would plead guilty to and be sentenced in this District on an information filed in the Northern District of Illinois, charging him with one count of mail fraud.

The Agreement also provided in relevant part as follows:

If Steven Hoffenberg fully complies with the understandings specified in this Agreement, he will not be further prosecuted by the Offices for any crimes related to his participation in: (i) the fraudulent sale of unregistered debt securities, namely, promissory notes and bonds, of Towers Financial Corporation ("Towers") from in or about 1986 through in or about February 1993; (ii) making illegal payments to representatives of pension funds to induce the purchase of Towers' securities, from in or about 1989 to in or about February, 1993; (iii) making illegal payments to representatives of a foreign country in order to secure a loan to Towers from that country's bank, from in or about 1989 to in or about February 1993; (iv) obstructing the Securities and Exchange Commission's investigation of the fraudulent sale of Towers' securities from in or about 1988 to in or about September 1993; (v) a scheme to illegally convert to Towers' use monies collected by Towers as collection agent for its clients, from in or about 1980 to in or about April 1993; (vi) the failure to report on his Individual U.S. Income Tax Returns for the calendar years 1987 through 1991 income Steven Hoffenberg obtained by having cor-

porate entities controlled by him pay his personal expenses; and (vii) a scheme to defraud, misappropriate, and misuse the funds and assets of two Chicago insurance companies, from in or about October 1987 to in or about 1992. In addition, if Steven Hoffenberg fully complies with the understandings specified in ***1269** this agreement, no testimony or other information given by him (or any other information directly or indirectly derived from such testimony or other information) will be used against him in any prosecution for criminal tax violations not described above. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

The understandings are that Steven Hoffenberg shall *truthfully disclose* all information with respect to the activities of himself and others concerning all matters about which the Offices inquire of him, *shall cooperate fully* with the Offices, the Securities and Exchange Commission, the Federal Bureau of Investigation, the Internal Revenue Service, the United States Postal Inspection Service and any other law enforcement agency so designated by the Offices, shall attend all meetings at which his presence is requested with respect to the matters about which the Offices inquire of him, and further, shall truthfully testify before the grand jury and/or at any trial or other court proceeding with respect to any matters about which the Offices may request his testimony. Any assistance Steven Hoffenberg may provide to federal criminal investigators shall be pursuant to the specific instructions and control of the Offices and those investigators. This obligation of truthful disclosure includes an obligation upon Steven Hoffenberg to provide to the Offices, upon request, any document, record or other tangible evidence relating to matters about which the Offices or any designated law enforcement agency inquires of him.

* * * * * *

It is further understood that the sentence to be imposed upon Steven Hoffenberg is within the sole discretion of the sentencing judge. The Offices cannot and do not make any promise or representation as to what sentence Steven Hoffenberg will receive, nor will they recommend any specific sentence to the sentencing judge. However, the Offices will inform the sentencing judge and the Probation Department of: (i) this Agreement; (ii) the nature and extent of Steven Hoffenberg's activities with respect to this case; and (iii) the full nature and extent of Steven Hoffenberg's cooperation with the Offices and the date when such cooperation commenced. In addition, if it is determined by the Offices that Steven Hoffenberg has provided substantial assistance in an investigation or prosecution, and if Steven Hoffenberg has otherwise complied with the terms of this Agreement, the Offices will file a motion, pursuant to Section 5K1.1 of the Sentencing guidelines, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Steven Hoffenberg in light of the factors set forth in Section 5K1.1(a)(1)-(5).

* * * * * *

It is further understood that Steven Hoffenberg must at all times give *complete, truthful, and accurate information* and testimony and must not commit any further crimes whatsoever. Should Steven Hoffenberg commit any further crimes or should it be determined that he has *given false, incomplete, or misleading testimony or information,* or should he otherwise violate any provisions of this Agreement, Steven Hoffenberg shall thereafter be subject to prosecution for any federal criminal violation of which the Offices have knowledge, including, but not limited to, perjury and obstruction of justice. (emphasis added).

The Cooperation

During the period from March 1993 to February 1994 Hoffenberg responded to all inquiries put to him by the Government concerning the affairs of Towers. He was interrogated principally by Assistant United States Attorney Daniel A. Nardello

("Nardello") who was responsible for the criminal investigation surrounding the affairs of Towers. He also testified before the grand jury on January 13 and 14, 1994 and at the Government's direction engaged in recorded conversation.

The Government does not contend that Hoffenberg failed to perform the agreement by refusing to give information with respect ***1270** to Towers or to perform requested acts. However, during the latter quarter of 1993 and the early part of 1994, agents of the SEC advised the United States Attorney's Office that Hoffenberg was not complying with the Consent Order of February 17, 1993, but rather that he made statements and representations which were false in connection with ongoing matters involving the Consent Order and thereby violated the Agreement.

The Representations

Throughout 1993 the Government remained concerned about Hoffenberg's compliance with the Consent Order entered in the SEC Action which had required Hoffenberg to provide an accounting of all his assets. Of particular concern was Hoffenberg's involvement with Diversified Credit Corporation ("DCC"), another collections corporation which Hoffenberg set up prior to the termination of his relationship with Towers. DCC was to do business in a manner similar to that conducted by Towers. A second area of concern relating to the Consent Order related to certain payments made to Hoffenberg and finally his relationship to Stratford Credit Corporation ("Stratford") which was started in December 1993.

a. *DCC*

Following his termination from Towers, Hoffenberg represented that his involvement in DCC was limited to "sales consultant," that he was only involved in DCC's sales in its New York office and had no involvement in DCC's collections or operations which were conducted in its Long Island office, nor any real influence over DCC's independent president, Lawrence Lowy ("Lowy").

These representations were significant. In a collection business, such as had been conducted by DCC or its predecessor Towers, the operations side controlled the money collected on behalf of clients. According to the SEC and the Government, certain of the fraudulent activity at Towers centered around the failure of operations employees, at the direction of Hoffenberg and his co-conspirators, to remit funds to Towers' clients. By the representation of separation from the collections side of DCC, Hoffenberg gave assurances that (1) he would not defraud DCC collections clients as he had done at Towers, and (2) DCC would not be used as a vehicle to violate the Consent Order.

In June 1993, Hoffenberg told Nardello that he was not receiving any money from DCC. At a proffer session on August 25, 1993, Nardello again confronted Hoffenberg with concerns that his role at DCC was greater than he had revealed. As of August 25, 1993, the SEC had provided Nardello with a list of questions and allegations to use in confronting Hoffenberg on the issue of whether DCC fell within the Consent Order with respect to assets. In addition, on August 25, 1993, the SEC faxed to Nardello a summary of allegations concerning the issue of Hoffenberg's control of DCC. That summary included allegations (1) that Hoffenberg provided funding for DCC, a fact that Hoffenberg had already told the Government, and (2) that Hoffenberg made decisions at DCC. The allegations about Hoffenberg's decision-making at DCC came from an officer of DCC who worked in the Midwest who stated that (1) he and Hughes reported to Hoffenberg, (2) at a meeting on Hoffenberg's boat, Hoffenberg said he owned DCC and had put his money into it, and (3) Hoffenberg represented himself to DCC's clients as the decision-maker.

At that proffer session on August 25, 1993, when Nardello confronted Hoffenberg with his concerns that Hoffenberg's role was greater than he had revealed, Hoffenberg admitted that DCC had been

paying for his chauffeur, his maids, and his boat captain, but denied any greater involvement in the company than what he had already revealed. He insisted that he was not involved in collections or operations. Hoffenberg stated at this meeting that he held preferred, non-voting stock in DCC and therefore could not make the financial decisions. He acknowledged his desire to protect his substantial investment and his hope that, if DCC were successful, he could ultimately reach an agreement with the SEC allowing him to earn money from DCC. Nardello told Hoffenberg that his use of DCC to pay his expenses constituted a violation of the Consent Order, that it would have to be disclosed to the SEC, and that it would have to "stop ***1271** immediately." Hoffenberg's admission that he had violated the Consent Order with specific payments supported the Government's view that Hoffenberg then understood his obligations under the Agreement. Nardello agreed to execute the Agreement with Hoffenberg one month later after obtaining Hoffenberg's assurances that he understood his obligations under the Agreement, that he would thereafter walk the straight and narrow, and that he had disclosed all his bad acts.

Hoffenberg maintained throughout his meetings with Nardello that Lowy was "running" DCC, that Lowy was independent, and that Hoffenberg could not influence Lowy's decisions. When DCC went out of business in or about January 1994, Hoffenberg stated that Lowy had "run it into the ground." Hoffenberg stated that when he had met with Lowy in connection with the latter's testimony he had done so only to refresh Lowy's recollection.

On January 27, 1994, when confronted with information indicating his representations relating to DCC were false, Hoffenberg told Nardello that his attorneys at Anderson, Kill, Olick & Oshinsky ("Anderson Kill") had built a figurative "Chinese Wall" between him and Lowy at the Long Island office to ensure that Hoffenberg would remain uninvolved with collections.

b. *Stratford*

Nardello was concerned about the potential impact of any new business venture on Hoffenberg's utility as a witness and cooperator. His compliance with the Consent order, as the Government saw it, required that any new business venture had to be cleared with the SEC in order to ensure that such venture did not violate the Consent Order and that Hoffenberg was not positioning himself to revert to the criminal practices he had purported to leave behind. Consequently, Nardello instructed Hoffenberg that he notify the Government of any contemplated business venture. In October 1993, Nardello gave this specific instruction and Hoffenberg agreed.

In December 1993, as DCC became insolvent, Hoffenberg started a new collections company, Stratford Credit Corporation. Hoffenberg did not advise Nardello that he had started Stratford.

On December 22, 1993 Nardello asked Hoffenberg what businesses in which he was participating or had an interest. Hoffenberg stated Her New York and Haley Capital and omitted any mention of Stratford.

When questioned point blank about Stratford, Hoffenberg stated that he had been "approached by others" to join Stratford, which he characterized as an ongoing business, formed by some ex-Towers employees, and that nothing had come of it. Nardello instructed Hoffenberg not to take any further action in Stratford until the matter could be considered further.

The Falsity of the Representations

Throughout 1993 the SEC had continued its investigation into Hoffenberg's compliance with the Consent Order. At the same time the United States Attorney's Office continued its investigation into the affairs of Towers. Meanwhile, Towers had filed a petition in bankruptcy, a Trustee had been appointed, and he too conducted hearings related to Towers' assets. As a consequence of these investig-

ations, the misrepresentations of Hoffenberg were discovered.

a. *DCC*

In May 1993, Hoffenberg was advised by one of his counsel, Martin Brecker of Anderson Kill that in order to avoid the terms of the Consent Order with respect to DCC, Hoffenberg needed to establish that, notwithstanding the legalities, Hoffenberg did not, in fact, control DCC. Further, in order to avoid losing DCC to the Towers Trustee in bankruptcy, Hoffenberg needed to show that he was not using DCC for his own benefit to the detriment of DCC.

Hoffenberg instructed employees at the Long Island office to tell the public that he was just a consultant and that his only office was in New York. However, Hoffenberg closely supervised DCC's collections activities at the Long Island office. Regina Loveless ("Loveless") was an employee in the Long Island office from March 1993 through ***1272** the middle of October 1993. She testified that beginning in May and continuing until she left DCC, Hoffenberg was actively involved in the supervision of the office's collections activities. According to Loveless, although Lowy was running the Long Island office while Towers was still in business, beginning in May 1993, it seemed "like there was a higher management above Larry and Brian [Lowy]."

During his first meeting with Loveless, Hoffenberg discussed with her "strategy and tactics" for the accounts assigned to her, instructed her to be more aggressive with debtors and to refer more cases to litigation, and to obtain the litigation fees from the DCC creditors, and directed her to provide him with a weekly status report on all cases referred to the legal department. In June 1993, Hoffenberg installed his longtime confidante Michael Rosoff as the head of the DCC legal department. Hoffenberg told Loveless that whenever she needed to discuss a collections matter and could not reach Rosoff, she should call Hoffenberg. But for any settlement over $50,000, Hoffenberg instructed Loveless to confer with him, whether or not Rosoff was available. Hoffenberg also instructed Loveless not to discuss settlements with clients.

From May 1993 until her departure in October 1993, Loveless spoke with Hoffenberg over the telephone about her cases three to four times per month. Hoffenberg also visited the Long Island office once or twice per week for several hours a visit. During those visits, Hoffenberg regularly met with John Hannon, the manager of the collections staff, and would conduct detailed debriefings of Hannon regarding the status of collections. If any large collection matter was pending, Hoffenberg would go directly to the collector assigned to the account and obtain detailed information. During his visits, Hoffenberg would walk around the office asking collectors "how much did you collect for me today?"

Beginning in May 1993, the same time that Hoffenberg became involved with operations at the Long Island office, Loveless was instructed at least once a month by Sidney Friedfertieg, the manager of customer service, "not to tell the clients about any payments we received." Friedfertieg told Loveless to lie to clients inquiring about their money by telling them that "the computer was down." When Loveless asked why she should conduct business this way, Friedfertieg responded that it was what Hoffenberg wanted. In addition, Hoffenberg was present when Lowy instructed Loveless not to insert in DCC's computer records DCC's collection of more than $100,000 for Loew's Hotel Corporation.

According to Lowy, soon after Hoffenberg was discharged by the Towers bankruptcy Trustee in April 1993, and continuing until the fall of 1993,

He [Hoffenberg] wanted to know the amount of collections everyday, he wanted to know what the deposits were everyday. He came out usually once or twice a week at that time and took payroll registers and sometimes the registers in the checkbook to see what was being deposited.

Lowy further testified that in approximately August 1993, Hoffenberg replaced him as head of the Long Island office with Charles Chugerman ("Chugerman"), an associate of Hoffenberg at Towers. Thereafter, Chugerman supervised Loveless's accounts, and told Loveless that she should call Hoffenberg on any matter whenever she could not reach Chugerman or Rosoff.

Martin Brecker never mentioned to Hoffenberg the term "Chinese Wall."

Lowy was not independent but was dominated by Hoffenberg. Lowy had worked for Hoffenberg for years and owed essentially his entire career to Hoffenberg.

Hoffenberg controlled Lowy's activities at DCC from small management decisions, such as changing the name of Frederick Lawrence Associates to DCC, to hiring employees.

In April 1993, Hoffenberg "basically took over the company," according to Lowy, and thereafter Lowy reported to him on nearly every detail of DCC's business. When a group of Towers employees indicated that they did not want to work at DCC if it meant working for Lowy, Hoffenberg assured them that they would be working for him. Beginning in May 1993, the ultimate authority to ***1273** whom DCC collectors in the Long Island office were supposed to report was Hoffenberg, not Lowy. When Lowy complained to Hoffenberg about the burgeoning payroll in the spring of 1993, Hoffenberg rebuffed him by saying it was his company. When Hoffenberg needed employees for Her New York, he took them from DCC. When Hoffenberg felt it appropriate to oust Lowy as a supervisor in the Long Island office, he did so, and installed Chugerman.

Lowy retained Alan Fraade for DCC's corporate work. Fraade had a longstanding relationship with Hoffenberg and was described as Hoffenberg's "house counsel" at Towers. Hoffenberg selected and discharged lawyers to defend Lowy's deposition before the SEC. When Lowy spoke with Frank Wohl about the nature of his representation of Lowy, Hoffenberg instructed Lowy never to speak with a lawyer outside his presence, and discharged Wohl. Lowy accepted Brecker's representation, who had been selected by Hoffenberg, notwithstanding his knowledge that Brecker had a preexisting relationship with Hoffenberg, and that if a conflict arose, Brecker would represent Hoffenberg. Thereafter, Hoffenberg frequently discussed with Brecker the status of Brecker's representation of Lowy, including whether Lowy should refuse to testify based on his Fifth Amendment privilege. Hoffenberg also involved his long-time associate and counsel Michael Rosoff into Lowy's representation.

Hoffenberg also extracted money from DCC in ways not revealed to Nardello. Hoffenberg obtained blank checks from DCC, which he used for his own personal benefit, which was not disclosed until January 27, 1994, when he was again confronted by Nardello and told that the Government was contemplating the repudiation of the Agreement. Hoffenberg also arranged for DCC to pay certain of his personal American Express bills. Additionally, Hoffenberg obtained free labor at DCC's expense by using several employees on DCC's payroll to do the work of his publication, Her New York. This information was admitted by Hoffenberg at his February 14, 1994 session.

Hoffenberg had met with Lowy in May 1993 and knew that meeting with a witness to influence his future testimony was criminal conduct. Hoffenberg knew that Lowy's truthful testimony regarding their activities at DCC would be harmful to his litigation position and therefore told Lowy what to say.

In the spring of 1993, before Lowy had any relationship with the Government, Lowy told Loveless that he had an illicit agreement with Hoffenberg to mischaracterize Hoffenberg's status at DCC. Lowy stated, in substance, that because Hoffenberg had taken care of him in the past, Lowy would now take care of Hoffenberg by characterizing him to the

public as just a DCC consultant.

Lowy and Joseph Hughes ("Hughes") testified falsely before the Towers' Trustee in bankruptcy. Each, at Hoffenberg's behest, minimized the appearance of Hoffenberg's control of, and role in, DCC. At his SEC deposition on May 26, Lowy testified as to Hoffenberg's role as a sales consultant. Lowy testified on September 28 before the bankruptcy trustee that Frederick Lawrence Associates was a successful business doing "several million dollars a year in gross sales" before it became DCC, that Hoffenberg had no control over the disposition of Diversified Holding's funds, that those funds were solely within Lowy's control, that Lowy ran DCC, and that Lowy had no substantive discussion with Hoffenberg about his deposition testimony.

Hughes testified that Lowy ran the New York office of DCC, that Hoffenberg did not have an office at DCC, and that Hughes had not spoken to Hoffenberg about his deposition.

Hughes and Lowy had previously made false statements and covered up for Hoffenberg. During the 1980's, when Hoffenberg's business, Westwood Paper and Hardware, was in bankruptcy, Lowy obeyed Hoffenberg's instructions to destroy the company's books and records. In 1992, when Towers was in litigation with Dunn & Bradstreet, Hughes followed Hoffenberg's and Rosoff's instructions to perjure himself in deposition testimony and affidavits.

***1274** Hughes testified that Hoffenberg influenced his testimony and that during early 1994, Hoffenberg and Rosoff arranged for him and two others to sign affidavits falsely characterizing the respective roles of Hoffenberg and Lowy at DCC and that in the period from April to July 1993 he met with Hoffenberg and gave false testimony in a deposition before the trustee in Bankruptcy, at Hoffenberg's behest regarding the management of DCC, including the party line that he (Hoffenberg) was merely a consultant, and that his January 4, 1994 affidavit was prepared by Rosoff and that the affidavit was false. On January 5, 1994, Hughes swore to a false affidavit which characterized his activities at DCC in sales as being supervised by Lowy and later by Chugerman.

Hughes testified in this proceeding that he had in fact reported to Hoffenberg, contrary to his affidavit of January 4, 1994 which he had signed at Hoffenberg's request

b. *Stratford*

By November 1993, Chugerman had closed the DCC sales offices and terminated much of the sales force. Notwithstanding, remittances were not being made to the DCC clients, which resulted in a state investigation and indictment to which Lowy pled guilty. He also pled guilty under a cooperation agreement to charges of obstructing the SEC and bankruptcy investigation.

Both Lowy and Hughes demonstrated a willingness to falsify testimony but their testimony concerning Hoffenberg's influence on their testimony is confirmed by Loveless and by Hoffenberg's admission that he met with Lowy before the latter testified. On this issue the balance of credibility tilts in favor of Lowy and Hughes.

Hoffenberg started Stratford in early December 1993 without first notifying the Government. In approximately November 1993, one month after Hoffenberg had signed the Agreement, Hoffenberg called Hughes into a meeting with Rosoff and stated that he was starting a new collections business. Hoffenberg further indicated his desire to move quickly with this new collections business by asking Rosoff "[w]here is it faster to incorporate, New York or Delaware?" Hoffenberg selected Hughes as president. When Hughes declined the appointment, Hoffenberg stated, "[y]eah, I guess you're right, you have too much baggage."

Hoffenberg then selected Steven Dryfus ("Dryfus") to run the new company. Dryfus had previously

worked for Hoffenberg at Towers and was now working for Hoffenberg at Haley Capital, which was located in the Trump Tower. In late December 1993, Hoffenberg took Dryfus into the hallway where he could not be overheard and asked Dryfus to be the executive of his new collections company. That company, which Hoffenberg had by then incorporated, was Stratford. Hoffenberg made Dryfus president of Stratford, and Gene Sherman ("Sherman"), Hoffenberg's uncle, vice-president. At DCC, Sherman had blank checks available for Hoffenberg and put up the money to start Her New York and had made payments on Hoffenberg's apartment and boat mortgage. Stratford started operations in late December 1993 by taking on a few collections claims.

Hoffenberg instructed Dryfus in early January 1994 to mischaracterize Hoffenberg's participation in Stratford as minimal. Hoffenberg preferred the appearance of having "no role" in Stratford, but because Hoffenberg was physically present in Stratford's office every day, he took on the title of consultant, as he had at DCC. As Dryfus put it, "that was the spin. He was not a principal with the firm, but he was working as a consultant." In accordance with Hoffenberg's instructions, Dryfus told a Wall Street Journal reporter in January 1994 that he, not Hoffenberg, was running Stratford. Hoffenberg instructed Dryfus to tell counsel that Hoffenberg was just a consultant and that Dryfus was in business with members of Hoffenberg's family. Dryfus followed Hoffenberg's instructions.

In January and February 1994, Hoffenberg spoke with Dryfus "every day" about Stratford's business. He kept track of how much money Stratford was collecting, performed weekly audits of the company, supervised the collectors, and kept apprised of, and signed off on the company's business ***1275** development. Hoffenberg funded the business by infusing approximately $50,000 in cash during late January and early February. Dryfus testified that all of this occurred before the Government's February 17, 1994 announcement of the termination of Hoffenberg's cooperation.

Hoffenberg's infusion of cash into Stratford in January and February 1994 further violated the Consent Order and Nardello's instructions. The business was operated by avoiding the use of checks and resorting to cash deliveries.

Dryfus testified that Hoffenberg gave him $24,000 in cash from an accordion folder, that he and Hoffenberg counted the money in a storage room after the other employees left for the day, and that Dryfus then took the money home and at Hoffenberg's direction, used it to pay Stratford's bills.

Approximately three to five days later, Hoffenberg gave Dryfus a sealed, unaddressed, Federal Express package containing $26,000 in cash. Dryfus also used these funds to pay Stratford's bills, including Hoffenberg's $250 per month parking expenses.

In his affidavit of November 28, 1994, in this proceeding, Hoffenberg admitted that he "disregarded [Nardello's] instructions to avoid any involvement with that business." He related how difficult it was for him, even months after he signed the Agreement, to break the habit of conducting business dishonestly.

The Performance of the Agreement

As set forth above, there is no evidence in this record that Hoffenberg failed to perform his agreement with respect to the affairs of Towers. It is his failure to perform the Agreement with respect to his own affairs in 1993 that is at issue.

The Government also acted in conformity with the Agreement throughout 1993 from September 24 when the Agreement was entered into until December 22, there were no inquiries to Hoffenberg concerning DCC or Stratford.

However, the SEC had continued its investigation which produced certain of the facts set forth above which were confirmed by Lowy, Hughes and Dry-

fus. Lowy's cooperation began in November, and he was interviewed by an Assistant United States Attorney on December 22. Hughes recounted his recollection of events to James Nauwens, an investigator of the United States Attorney's Office on December 27, 1993.

Nardello was on vacation and upon his return on January 10, 1994, he arranged to have Hoffenberg testify before the grand jury on January 14, 1994. He did not obtain Nauwens' information nor learn of Lowy's cooperation until after Hoffenberg's grand jury appearance.

The Government thus called upon Hoffenberg to perform the Agreement with knowledge in its possession that Hoffenberg had lied about DCC and Stratford and after it had procured statements from Hughes and Lowy on the subject. When Nardello learned of Lowy's and Hughes' cooperation, he challenged Hoffenberg on January 24, and Hoffenberg conceded certain of the information relating to his involvement in Stratford and sought to " **cure**" his conduct. Nardello met with Hoffenberg again on January 27 and February 14, and recommended that the **Agreement** be terminated. Hoffenberg was arrested on February 17.

Discussion

The Government in Refusing to Perform the Agreement Acted in Good Faith

[1] A party who materially **breaches** a cooperation or plea **agreement** may not claim its benefits. *United States v. Merritt,* 988 F.2d 1298, 1313 (2d Cir.), *cert. denied* 508 U.S. 961, 113 S.Ct. 2933, 124 L.Ed.2d 683 (1993); *United States v. Tilley,* 964 F.2d 66, 70 (1st Cir.1992) (if defendant fails to fulfill his or her promises, the Government is released from its obligations under the agreement); *United States v. Gonzalez-Sanchez,* 825 F.2d 572, 578 (1st Cir.), *cert. denied,* 484 U.S. 989, 108 S.Ct. 510, 98 L.Ed.2d 508 (1987).

[2] At post-conviction hearings, the Government has the burden to prove breach of a plea agreement by a preponderance of the evidence. *United States v. Verrusio,* 803 F.2d 885, 894 (7th Cir.1986) (Government "must prove that the defendant breached the ***1276** plea bargain by a preponderance of the evidence"); *United States v. Tilley,* 964 F.2d at 71. Such a standard is consistent with the standard of proof courts have required to resolve other post-conviction disputes, such as disputed sentencing issues. *United States v. Guerra,* 888 F.2d 247, 251 (2d Cir.1989), *cert. denied,* 494 U.S. 1090, 110 S.Ct. 1833, 108 L.Ed.2d 961 (1990); *see United States v. Merritt,* 988 F.2d at 1313.

Hoffenberg suggests that *United States v. Leonard,* 50 F.3d 1152, 1158 (2d Cir.1995), suggests a higher standard of proof. In *Leonard,* the Second Circuit instructed that "the district court should consider any evidence with a significant degree of probative value, and should rest its finding on evidence that provides a basis for [appellate] review." *Leonard,* 50 F.3d at 1157. A requirement that evidence have a significant degree of probative value is not equivalent to the enunciation of an enhanced standard of proof. It is similar to the requirement described by the Guidelines for resolution of disputed sentencing issues, clearly governed by a preponderance of the evidence standard. Guidelines, § 6A1.3. ("[T]he court may consider relevant evidence without regard to its admissibility ... provided that the information has sufficient indicia of reliability to support its probable accuracy.").

Hoffenberg has also cited *United States v. Martin,* 25 F.3d 211, 217 (4th Cir.1994). There, at the time of sentence, the Government announced that it would make a motion, pursuant to Fed.R.Crim.P. 35(b) within the year because the defendant had cooperated fully before sentence, but it was hoped that he would provide additional cooperation following sentence. Technically, there was no mechanism for the Court to provide post-sentencing relief for the pre-sentencing cooperation. The Court of Appeals held that the Government's failure to make the motion at sentencing resulted in a

deprivation of the defendant's due process rights, and remanded for resentencing. In *Martin,* there were no disputed issues, leaving nothing to be resolved in any hearing. It is undisputed that *Martin* reiterated the Circuit's position that the burden of proving a breach is on the party that alleges the breach.

[3] Courts have generally looked to the terms of the agreement itself and to the parties' anticipated benefits to determine whether a material breach has occurred. *See, e.g., United States v. Crawford,* 20 F.3d 933, 934-35 (8th Cir.1994); *United States v. Tilley,* 964 F.2d at 71; *United States v. Wood,* 780 F.2d 929, 931 (11th Cir.1986), *cert. denied,* 479 U.S. 824, 107 S.Ct. 97, 93 L.Ed.2d 48 (1986). Where, as here, a defendant has promised to disclose truthfully all information about which the Government inquires, any false statement, misleading statement, or omission concerning the defendant's activity or an area about which the Government has inquired, is a material breach of the agreement.

[4] By the terms of the Agreement, Hoffenberg was obligated to "truthfully disclose all information with respect to the activities of himself and others concerning all matters about which the Offices inquire of him" to "cooperate fully with the Offices, the Securities and Exchange Commission ..." and that Hoffenberg "must at all **times give** complete, truthful, and accurate information" and "must not commit any further crimes." Authorities dealing with similar **breaches** include *United States v. Crawford,* 20 F.3d at 934-35 (in **non-prosecution agreement**, **defendant** agreed to provide complete and truthful cooperation; Government justified in holding **defendant** in **breach** where Government dubious about **defendant's** reliability after he implicated co-**defendant** in interview with agents, but admitted sole responsibility for crime in conversations with others); *United States v. Gerant,* 995 F.2d 505, 507-08 (4th Cir.1993). When **defendant** agreed to cooperate fully and provided substantial information about drug operations, **defendant breached agreement** by lying about his role in two deals, amount of money he earned, and status as Government informant); *United States v. Tilley,* 964 F.2d at 71 (**defendant** agreed to testify fully, honestly, truthfully and completely; **defendant breached agreement** by false testimony as to his additional involvement in drug deal); *United States v. Britt,* 917 F.2d 353, 355-56, 360-61 (8th Cir.1990) (**defendant** agreed to fully and completely cooperate with the United States and, * over the course of a year, had several debriefings, recorded phone conversations, participated in controlled buy; **defendant breached agreement** by not disclosing the full extent of his drug dealing), *cert. denied,* 498 U.S. 1090, 111 S.Ct. 971, 112 L.Ed.2d 1057 (1991); *United States v. Gonzalez-Sanchez,* 825 F.2d at 579; *United States v. Wood,* 780 F.2d at 931; *United States v. Patrick,* 823 F.Supp. 583 (N.D.Ill.1993). *See also United States v. Hon,* 17 F.3d 21, 24-26 (2d Cir.1994) (upholding Government's refusal to file 5K1 letter for cooperator who delayed his testimony, thereby breaching his obligation to "fully cooperate").

As found above, from the beginning of his proffer sessions in April 1993 through his final meeting on February 14, 1994, Hoffenberg lied to the Government about his involvement in the operation of DCC, about Lowy's "independence" as president of the company, and failed to disclose his involvement in Stratford.

According to Hoffenberg, because the Government did not focus his attention on DCC until meetings in late January 1994, his failure to describe accurately his role at DCC was not a breach. Before he entered into the Agreement, however, Hoffenberg had been fully and pointedly questioned specifically about DCC, his role in the company, and whether he was receiving any payments from the company. Although the Government relied on his representations, Hoffenberg misled the Government when questioned.

Hoffenberg argues that whether or not he "controlled" DCC is a legal question, not a factual

one, and therefore his assertion cannot be a lie or a breach of the Agreement. However, Hoffenberg misled the Government about specific facts relevant to his role at DCC. Each misleading statement, omission, and lie was itself a breach, apart from his general assertion that he did not "control" DCC.

That the Government did not specifically ask about DCC at additional meetings prior to January 1994 is no excuse for Hoffenberg's failure to provide the information, and correct the prior misleading statements he had already made. *See United States v. Wood,* 780 F.2d at 930 (defendant's failure to disclose information about a drug deal in Jacksonville, although only questioned about drug dealing in Tampa, was a material breach of the obligation to truthfully disclose all information about drug dealing).

When confronted by Nardello on December 22, 1993, Hoffenberg acknowledged that he had lied to the Government about even contemplating participation in Stratford. Although this caused concern, the Government, in its discretion, did not end the Agreement based on that lie alone. What followed, and what the Government later learned, was that Hoffenberg misled the Government about his interest and participation in Stratford, the cash payments to Stratford, and, of course, that he had violated his promise to Nardello pursuant to the **Agreement** not to get involved in Stratford.

[5] Hoffenberg argues, however, that he **cured** this **breach** by admitting his lies. Although the "opportunity to **cure**" doctrine applies comfortably to contracts for the delivery of goods, it **does** not apply to cooperation **agreements**. As the Second Circuit has stated, "[c]omparing a criminal **defendant** to a merchant in the marketplace is an inappropriate analogy that we have rejected." *Innes v. Dalsheim,* 864 F.2d 974, 978 (2d Cir.1988), *cert. denied,* 493 U.S. 809, 110 S.Ct. 50, 107 L.Ed.2d 19 (1989). *See United States v. Khan,* 920 F.2d 1100, 1105 (2d Cir.1990) ("We recognize, of course, that criminal sentencing proceedings are not the same as civil contract disputes."), *cert. denied,* 499 U.S. 969, 111 S.Ct. 1606, 113 L.Ed.2d 669 (1991). While the differences between contracts in the civil and criminal contexts often focus on the "meticulous standards [which must be] ... met by the prosecutors ...," *U.S. v. Mozer,* 828 F.Supp. 208, 215-216 (S.D.N.Y.1993) (citations omitted), the differences apply to the defendants as well. The very purpose of a cooperation agreement is to obtain full and truthful information from a cooperator on each and every topic about which the Government inquires. While the Government gave Hoffenberg opportunities to be truthful, it was not incumbent on the Government to continue to extend to Hoffenberg such an opportunity. ***1278** When the Government determined in February that Hoffenberg had not been truthful, as required in the **Agreement**, it was within its right to declare the **breach**.

[6] Although Hoffenberg could not " **cure**" the fact that he lied to and misled the Government in violation of the **Agreement**, he was given ample opportunity to confront the allegations and provide an innocent explanation. Such an opportunity is all that is required. In *United States v. Crawford,* 20 F.3d at 936, for example, a **defendant** told the Government one version of a fraud, implicating a co-**defendant**, and told others that he was solely responsible. It was sufficient that he was asked for names of people who could corroborate the version of events he had given.

Hoffenberg was given numerous opportunities to show the Government that he had not breached the Agreement. Rather than terminate the Agreement once the Government had serious concerns, the Government met with Hoffenberg on January 27 and February 14, 1994, to enable Hoffenberg to address the issues and to assert an innocent explanation for the allegations. With respect to Stratford, Hoffenberg admitted that he had lied to and misled the Government and intentionally violated the Agreement with Nardello.

On the issue of cure, this case can be distinguished from that in *United States v. Brechner,* 93 Cr. 626,

Memorandum of Decision and Order, October 19, 1995 (E.D.N.Y.). In *Brechner,* a defendant subjected to a similar truthfulness obligation was asked in a debriefing session whether or not he had received unreported cash from several individuals. The defendant, Brechner, said that he had not. Brechner's lawyer apparently asked to speak to Brechner, and after doing that, Brechner admitted that he had received such payments. After "coming clean," the Government "advised Brechner that he was giving him a 'fresh start' and expected him to answer questions concerning unreported cash truthfully...." The Court found that after this statement, the government asked another hours' worth of questions and that Brechner made full and truthful disclosures of the subject schemes. When five months later the Government refused to move for a downward departure, the Court found that this was done in bad faith.

In this case, no such promises were made to Hoffenberg at or after the February 14 session. The Government informed Hoffenberg three days later on February 17 that it was not going to move for a downward departure. The Government had not promised that it would go forward with the 5K1 term of the Agreement, nor is there any indication that it used these sessions to get additional information, thus behaving as thought the Agreement was in full force. In fact, there is no indication that the Government is attempting to use affirmatively any of the information gained in those sessions against Hoffenberg. The sessions confirmed suspected lies that he had told earlier and as a result the Government is choosing not to make a 5K1 motion on his behalf.

The Agreement Allows the Government to Consider Truthfulness When it Determines Whether to Make a 5K1 Motion

[7] When a cooperation agreement allows for a substantial assistance motion contingent upon the Government's evaluation of a defendant's cooperation, the Government has wide discretion in determining whether to make such a motion. *United States v. Hon,* 17 F.3d at 25; *see United States v. Khan,* 920 F.2d at 1105 ("where a contract is conditioned on the satisfaction of the obligor, the condition is not met 'if the obligor is honestly, even though unreasonably, dissatisfied' "); *United States v. Knights,* 968 F.2d 1483, 1486 (2d Cir.1992) (Government's performance in cooperation agreement is conditioned on its satisfaction with the defendant's efforts).

[8] Where the Government declines to make a substantial assistance motion pursuant to a cooperation agreement, the district court may review the decision only to determine whether the Government based its decision on impermissible criteria, such as race or religion, or whether the Government acted in bad faith. *United States v. Kaye,* 65 F.3d 240, 243 (2d Cir.1995); *United States v. Hon,* 17 F.3d at 25; ***1279***United States v. Knights,* 968 F.2d at 1487; *United States v. Agu,* 949 F.2d 63, 67 (2d Cir.1991), *cert. denied,* 504 U.S. 942, 112 S.Ct. 2279, 119 L.Ed.2d 205 (1992); *see United States v. Khan,* 920 F.2d at 1104 ("the prosecutor's discretion is generally the sole determinant of whether the defendant's conduct warrants making the motion"); *United States v. Rexach,* 896 F.2d 710, 714 (2d Cir.) (prosecutorial discretion limited only by subjective good faith standard), *cert. denied,* 498 U.S. 969, 111 S.Ct. 433, 112 L.Ed.2d 417 (1990).

[9][10] The Government may not refuse to make a substantial assistance motion by relying on facts which it knew at the time it entered into the agreement. Such a decision would amount to fraudulently inducing a defendant's plea with a promise that the Government already knew it would not keep. *See United States v. Knights,* 968 F.2d at 1488; *United States v. Leonard,* 50 F.3d at 1158. However, where as here, the Government enters into an agreement in good faith, believing the defendant's representations, and the Government subsequently learns that the defendant has lied and breached the terms of the agreement, the Government's dissatisfaction with the defendant's perform-

ance is justified.

[11] When a defendant claims that the Government has acted in bad faith in refusing to move for downward departure, the Government may then rebut the allegation, explaining its reasons for refusing to so move. *United States v. Knights,* 968 F.2d at 1487. A defendant must then make some showing of bad faith to trigger a hearing on the issue. After a full-blown hearing in this case, Hoffenberg has failed to establish any bad faith on the part of the Government.

[12] The clause of the Agreement regarding the 5K1 states that:

In addition, if it is determined by the Offices that Steven Hoffenberg has provided substantial assistance in an investigation or prosecution, *and if Steven Hoffenberg has otherwise complied with the terms of this Agreement,* the Offices will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Steven Hoffenberg in light of the factors set forth in Section 5K1.1(a)(1)-(5). (emphasis added).

The Government was obligated to move for a departure if Hoffenberg provided substantial assistance and if he "otherwise complied with the terms of [the] Agreement." The Court of Appeals has stated that parties to a plea Agreement could establish terms of the Agreement which were other than standard and to which they would be bound. *See United States v. Rexach,* 896 F.2d 710, 714 (2d Cir.1990) ("... a defendant might negotiate an agreement which, by its terms, would define a different standard for evaluation. Should such a cooperation agreement specify ... [a more stringent standard], then we would, of course, employ [that standard].") In this case the filing of the 5K1 motion was contingent on both substantial assistance and compliance with the terms of the Agreement. The parties were bound to the term as it was written. Hoffenberg did not otherwise comply with all the terms of the Agreement. The Agreement, quoted above, required truthfulness. Hoffenberg was not truthful.

[13][14] Even if the Court were to consider the "substantial cooperation" clause in isolation of the rest of the conditions, there has not been a showing of bad faith.[FN1] It would not be enough for Hoffenberg to prove his substantial assistance, since "a claim that a defendant merely provided substantial assistance will not entitle a defendant to a remedy...." *Wade v. U.S.,* 504 U.S. 181, 186, 112 S.Ct. 1840, 1844, 118 L.Ed.2d 524 (1992). It is reasonable and appropriate for the Government to consider Hoffenberg's truthfulness in evaluating his assistance. It is significant that Hoffenberg repeatedly corrected and changed his story and helped suborn perjury. It was not bad faith to believe that the information Hoffenberg provided was not entirely useful. *See, e.g., United States v. Knights,* 968 F.2d 1483, 1488 (2d Cir.1992).

> FN1. In evaluating the Government's 5K1 motion, the Court is instructed by the Guidelines to consider the "truthfulness, completeness and reliability" of any information or testimony provided, *See* Guidelines § 5K1.1(a)(2).

***1280** The Court of Appeals' admonition in *Knights,* is not relevant in this case. In *Knights,* the Court of Appeals reminded us that while the Government "has wide latitude in evaluating a defendant's cooperation, [t]hat latitude ... does not permit it to ignore a defendant's efforts at cooperation simply because the defendant is providing information that the government does not want to hear." *Id.* In this case it is the veracity of the cooperation and not the content of the cooperation that is at issue.

The Agreement was vitiated only after the Government determined, after a thorough investigation, that Hoffenberg was lying about DCC, as well as about Stratford, that he encouraged the perjury of Hughes and Lowy, and only after Hoffenberg was given ample opportunity to provide an innocent ex-

planation. Hoffenberg cannot now claim that the Government acted in bad faith by accepting and believing his false portrayal of his role at DCC, and entering the Agreement in reliance on that.

Because Nardello called Hoffenberg to testify in the grand jury on January 14, 1994, at a time when there were problems with Hoffenberg's cooperation and when the Government knew of his misrepresentations, Hoffenberg claims that Nardello improperly "sandbagged" Hoffenberg, and thus, acted in bad faith. As Nardello testified, it had been his intention for Hoffenberg to testify in the grand jury since the signing of the Agreement. In fact, in November 1993, Hoffenberg testified before the grand jury in the Northern District of Illinois.

As of January 14, 1994, no decision had been made to terminate Hoffenberg's cooperation agreement. Indeed, the Government did not begin to seriously consider terminating the Agreement until January 18, 1994, when Hoffenberg admitted that he had disregarded Nardello's specific instructions of December 22, 1993, regarding Stratford. As of the grand jury testimony on January 14, 1994, the only breach of which Nardello had personal knowledge was Hoffenberg's failure to mention Stratford when asked about businesses he might be considering entering into at the December 22, 1993 meeting.

Hoffenberg places great emphasis on the fact that both Lowy and Hughes had already met with a Government investigator prior to January 14, 1994, and had made allegations that Hoffenberg suborned perjury. Nardello, however, did not meet with Lowy until January 24, 1994, and with Hughes until January 25, 1994. In large part what Nardello knew when is irrelevant to the determination of good faith on the issue of whether or not the Government must make the substantial assistance, 5K1 motion. The Government has not vitiated the other portions of the plea agreement. It has simply notified Hoffenberg that no 5K1 letter will be forthcoming.

[15][16] In the end, it is proper for the Government to consider the truthfulness of a defendant in evaluating the degree of his cooperation. When a cooperator enters into an agreement with the government which includes a provision for a 5K1 motion, that defendant must be honest if he hopes to achieve the benefit of the bargain. The government may permit a defendant to cure his dishonesty, but it is not required to do so and certainly need not do so continuously. Even if the untruths are not central to the cooperation, if the lies are deemed material to the evaluation of the truthfulness, the Government, absent unconstitutional or bad faith motivation, is free not to move for the departure. Hoffenberg's repeated deceptions rendered him untrustworthy as a cooperator. The Government is justified in its actions. There has been no showing of bad faith.

Conclusion

For the reasons described above, Hoffenberg's motion for specific performance of the Agreement is denied.

It is so ordered.

S.D.N.Y.,1995.
U.S. v. Hoffenberg
908 F.Supp. 1265

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Citation Text:	730 F.Supp. 30
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Documents:	1
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2, **CASE NO: 08-CV-80119-MARRA/JOHNSON**

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

JANE DOE NO. 3, **CASE NO: 08-CV-80232-MARRA/JOHNSON**

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

JANE DOE NO. 4, **CASE NO: 08-CV-80380-MARRA/JOHNSON**

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 6.

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 08-CV-80994-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 08-CV-80993-MARRA/JOHNSON

CASE NO: 08-CV-80119-MARRA/JOHNSON

CASE NO: 08-CV-80811-MARRA/JOHNSON

[redacted],

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

JANE DOE, **CASE NO. 08-CV-80893-CIV-MARRA/JOHNSON**

Plaintiff,

Vs.

JEFFREY EPSTEIN, et al.

Defendant.

_____/

DOE II, **CASE NO: 09-CV-80469-MARRA/JOHNSON**

Plaintiff

vs.

JEFFREY EPSTEIN, et al.

Defendants.

_____/

CASE NO: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 101,

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 09-CV-80591-MARRA/JOHNSON

JANE DOE NO. 102,

Plaintiff

vs.

JEFFREY EPSTEIN,

Defendant

_____/

CASE NO: 09-CV-80656-MARRA/JOHNSON

RESPONSE IN OPPOSITION TO EPSTEIN'S MOTION TO STRIKE CASE FROM CURRENT TRIAL DOCKET

COMES NOW plaintiff Jane Doe, by and through her undersigned counsel, to file this response in opposition to defendant Jeffrey Epstein's motion to strike her trial date from the current trial docket. Epstein argues that a few discovery disputes require striking the trial date. But these disputes can be resolved before the discovery deadline expires – particularly given that there are nearly four months remaining until the discovery cutoff. Moreover, Jane Doe will be gravely harmed by any delay in this matter because it will give Epstein the opportunity to finish hiding his assets.

Background

Defendant Epstein has filed a boilerplate motion to strike Jane Doe's trial date – and numerous other consolidated cases involving similar allegations of his sexual abuse of minors – for an unspecified period of time, delaying what is currently set as a February 22, 2010, trial date until some later and unspecified date. On May 28, 2009, the court granted the motion to strike the trial date as to plaintiffs Jane Does 2-7 – who had agreed to the delay for their own reasons. The court set a new trial date of June 1, 2010, for these cases. The court, however, reserved ruling on the motion to continue Jane Doe's case (and one other plaintiff, [redacted]).

In recounting the procedural history of this case, Epstein does not disclose that in *this* particular case, *he* has been the one responsible for numerous delays. Indeed, a quick review of the docket sheet shows the following requests for extensions by defendant Epstein:

DE 10 (defendant's motion for extension of time to respond to complaint) (10/1/08)

DE21 (defendant's motion for extension of time to file motions to compel) (3/4/09)

DE39 (defendant's motion extension of time to file reply as to response to opposition to motion to stay) (4/22/09)

DE41 (defendant's motion for extension of time to file reply as to response in opposition to motion to compel tax records) (4/27/09)

DE42 (defendant's motion for extension of time to file reply as to response in opposition to motion to compel on first interrogatories) (4/27/09)

DE44 (defendant's motion for extension of time to file response as to motion to strike reference to non-prosecution agreement) (4/29/09)

DE52 (defendant's motion for extension to time to file response as to amended complaint) (5/05/09)

DE60 (motion for extension of time to file response to plaintiff's first amended complaint) (5/18/09)

It should be noted that Jane Doe, as a matter of civility, has not objected to a single one of these requests for an extension from defendant Epstein. In none of these conferences regarding these requests for extension did defense counsel indicate that he was concerned that the trial date might need to be continued because of any delay in this case.

Jane Doe has yet to request a single extension of time for any reason.

It may also be relevant to note that Epstein has "taken the Fifth" with regard to essentially all discovery that Jane Doe has propounded to him in this case.

Epstein Has Failed to Provide any "Exceptional Circumstances" to Continue the Trial Date

This court, of course, has discretion to continue the trial date. The rules of this court, however, make clear that "[a] continue of any trial . . . will be granted only on *exceptional circumstances.*" Local Rule 7.6 (emphasis added). All defendant Epstein has shown is a few, run of the mill, discovery disputes – that have arisen *months* in advance of the discovery deadline. (The deadline in this case is October 1, 2009 – roughly four months away.) At the very least, any motion to continue is premature.

Defendant Epstein has failed to provide any good reason for delaying trial in Jane Doe's case. Most of his pleading focuses on discovery disputes that have arisen with regard to Jane Does 2-7 or [redacted]. These disputes have absolutely no bearing on whether *Jane Doe's* case can be ready for trial by February 22, 2010.

In an effort to provide some sort of "good cause" for rescheduling the trial date, Epstein's defense counsel has provided an affidavit asserting generally that it will not be possible to complete discovery in a timely fashion in this case. That same affidavit, however, acknowledges that some of the discovery disputes that have arisen in other cases have not arisen in this case. In particular, the affidavit spends a great deal of time explaining how an objection to disclosing the true names of the plaintiffs in other cases has (allegedly) made it impossible for Epstein to serve subpoenas and thus obtain meaningful discovery about other plaintiffs. *See* Affidavit of Michael J. Pike at 4-5, Exhibit 1 to Epstein's Motion to Strike Cases from Current Trial Docket. The affidavit concedes, however, that this objection does not apply to Jane Doe's case. *See id.* at 5 ("As stated in the motion to strike, Brad Edwards [counsel for Jane Doe] has agreed to such a procedure relative to third party subpoenas.").

In addition, Jane Doe will be gravely prejudiced if a delay of any sort is sanctioned in this case. As the court is well aware, this case involves serious allegations of sexual abuse of minor. Each passing day with the matter unresolved adds to the psychological stress that Jane Doe must bear. This is not the kind of case that where additional time should be allowed to pass. In general, "The compensation and remedy due a civil plaintiff should not be delayed." *Gordon v. FDIC*, 427 F.2d 578,

580 (D.C. Cir. 1970). Given the sexual abuse allegations at stake here, that general admonition applies with even greater force.

Moreover, Jane Doe will be gravely prejudiced if Epstein is allowed to postpone trial in this matter. As explained at greater length in Jane Doe's soon to be filed Memorandum in Support of Motion for Injunction Restraining Fraudulent Transfer of Assets, good cause exists for believing defendant Epstein is currently moving his assets overseas in an attempt to defeat the satisfaction of any judgment that Jane Doe might obtain in this case. In addition, it is possible that by delaying the trial until June 2010, Epstein might be able to escape the supervision of the Florida courts entirely. Epstein is currently in jail and will serve a one-year term of community control (house arrest) following his release. Conveniently enough for Epstein, it appears that this term of community control will expire at around the time of his proposed new trial date.

For all these reasons, the Court should deny the motion to strike Jane Doe's currently-established trial date.

Dated: June 8, 2009.

Respectfully Submitted,

s/ Bradley J. Edwards
Bradley J. Edwards
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CASE NO: 08-CV-80119-MARRA/JOHNSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties wo hare not authorized to receive electronically filed Notices of Electronic Filing.

s/ Bradley J. Edwards
Bradley J. Edwards

CASE NO: 08-CV-80119-MARRA/JOHNSON

SERVICE LIST
Jane Doe v. Jeffrey Epstein
United States District Court, Southern District of Florida

Jack Alan Goldberger, Esq.
[redacted]

Robert D. Critton, Esq.
[redacted]

Isidro Manual Garcia
[redacted]

Jack Patrick Hill
[redacted]

Katherine Warthen Ezell
[redacted]

Michael James Pike
[redacted]

Paul G. Cassell
[redacted]

Richard Horace Willits
[redacted]

Robert C. Josefsberg
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Adam D. Horowitz
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Stuart S. Mermelstein
[redacted]

William J. Berger
[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-CIV-MARRA/JOHNSON

[redacted]..,

Plaintiff,

vs.

JEFFREY EPSTEIN and [redacted],

Defendants.
_____/

PLAINTIFF, [redacted].'S, MOTION FOR PROTECTIVE ORDER REGARDING TREATMENT RECORDS FROM PARENT-CHILD CENTER, INC. AND DR. SERGE THYS AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, [redacted]., by and through her undersigned attorneys, hereby files her Motion For Protective Order Regarding Treatment Records From Parent-Child Center, Inc. and Dr. Serge Thys and Incorporated Memorandum of Law, and in support there of states as follows:

1. This is an action to recover money damages against Defendant, JEFFREY EPSTEIN, for acts of sexual abuse and prostitution committed upon the then-minor, [redacted].

2. Plaintiff has plead thirty separate counts against EPSTEIN for separate incidences of abuse committed by EPSTEIN against Plaintiff pursuant to 18 U.S.C. §2255. 18 U.S.C. §2255, entitled "Civil remedy for personal injuries", creates a private right of action for minor children who were the victims of certain enumerated sex offenses. 18 U.S.C. §2255 also creates a statutory floor for the amount of damages a

victim can recover for a violation of same. Plaintiff has also alleged a single count of Sexual Battery against EPSTEIN.

3. There presently exists between the Plaintiff and EPSTEIN a disagreement as to whether the statutory damage floor established in 18 U.S.C. §2255 is recoverable for each commission of an enumerated sex offenses listed in 18 U.S.C. §2255, or whether the statutory damage floor can only be enforced once, regardless of how many times a defendant perpetrates an enumerated sex offense against a minor victim.

4. This disagreement between the parties is properly the subject of Defendant's *Motion to Dismiss First Amended Complaint For Failure to State a Cause of Action, and Motion For More Definite Statement; Motion to Strike, and Supporting Memorandum of Law* (D.E. 47) which is currently pending before this Court.

5. In the event that the Court rules that Plaintiff can recover the statutory damage floor established in 18 U.S.C. §2255 for each proven incident of abuse committed by EPSTEIN upon her, Plaintiff intends to rely exclusively on the statutory damages, rather than those damages which are available at common law. (See D.E. 113). If however, the Court rules that the statutory floor applies only one time, regardless of the number of times EPSTEIN committed an enumerated sexual offense against her, Plaintiff will be pursuing all damages available to her at both common law and by statute.

6. Given Plaintiff's intent to rely exclusively on the statutory damages available to her under 18 U.S.C. §2255 as outline above, Plaintiff will not be presenting

any evidence of the extent of her physical, emotional, or pecuniary injuries, beyond evidence that she was the victim of sexual contact to which she was legally incapable of consenting by virtue of her age (including, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy, and loss of the capacity to enjoy life). Accordingly, any testimony and/or discovery regarding those types of damages would not be relevant to any material issue pending in this case.

7. Presently pending before the Court is Defendant *EPSTEIN's Motion to Compel Plaintiff C.M.A. to Respond to Defendant's First Request to Produce and Answer Defendant's First Set of Interrogatories, and to Overrule Objections, and For an Award of Defendant's Reasonable Expenses* (D.E. 54). EPSTEIN is seeking from Plaintiff the production of certain treatment records of hers from the Parent-Child Center, Inc. and Dr. Serge Thys, a psychiatrist.

8. Neither the treatment records from the Parent-Child Center, Inc. nor Dr. Serge Thys will have any relevance whatsoever in the event that Plaintiff pursues only those statutory damages available to her under 18 U.S.C. §2255. To the contrary, the production of these confidential and private treatment records would only serve to further humiliate, embarrass, and victimize [redacted].

9. Furthermore, [redacted].'s treatment records from the Parent-Child Center, Inc. and Dr. Serge Thys are protected by the psychotherapist-patient privilege pursuant to the Supreme Court's decision in Jaffee [redacted]. Redmond, 518 U.S. 1, 116 S.Ct. 1923

(1996)("All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists. We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy.") Ordinarily, a plaintiff does not place her mental condition in controversy merely by requesting damages for mental anguish or "garden variety" emotional distress. In order to place a party's mental condition in controversy the party must allege a specific mental or psychiatric disorder or intend to offer expert testimony to support their claim of emotional distress. Turner v Imperial Stores, 161 F.R.D. 89 (S.D.Cal. 1995). The evidence sought is also protected under the substantive privacy rights recognized in Florida Statute §§90.503 and 90.5035.

10. Accordingly, Plaintiff respectfully moves for the entry of a protective order pursuant to Fed. R. Civ. Pro. 26(c) regarding Plaintiff's treatment records from the Parent-Child Center, Inc. and Dr. Serge Thys. More particularly, Plaintiff requests the entry of an order precluding the discovery of those records until such time as the Court rules on the issue regarding whether the statutory damage floor as contained in 18 U.S.C. §2255 applies to each proven commission of an enumerated sexual offense by EPSTEIN against [redacted]. Should the Court rule that 18 U.S.C. §2255 provides a per incident damage floor, the treatment records would have absolutely no relevance whatsoever. In the event that the Court rules that the damage floor applies only once, the parties can then further brief the Court as to whether [redacted] has placed her mental

condition "in controversy" such that it operates as a waiver of the psychotherapist-patient privilege.

WHEREFORE, Plaintiff, [redacted]., respectfully requests that this Court enter a protective order preventing the discovery of Plaintiff's treatment records from the Parent-Child Center, Inc. and Dr. Serge Thys until such time as the Court decides whether the statutory damages pursuant to 18 U.S.C. §2255 are available to a victim of an enumerated sexual offense on a per incident basis.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for the movant conferred via telephone with counsel for the Defendant and counsel for the Defendant is not in agreement with Plaintiff's Motion For Protective Order Regarding Treatment Records From Parent-Child Center, Inc. and Dr. Serge Thys and Incorporated Memorandum of Law.

s/ Jack P. Hill

[redacted]A. vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Motion for Protective Order

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 2009, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system, which will send a notice of electronic filing to all counsel of record on the attached service list.

/s/Jack P. Hill
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Jack P. Hill
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[redacted]A. vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Motion for Protective Order

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-CIV-MARRA/JOHNSON

[redacted],

Plaintiff,

vs.

JEFFREY EPSTEIN and [redacted]

Defendants.
_____/

ORDER ON PLAINTIFF, C.M.A'S MOTION FOR PROTECTIVE ORDER REGARDING TREATMENT RECORDS FROM PARENT-CHILD CENTER, INC. AND DR. SERGE THYS AND INCORPORATED MEMORANDUM OF LAW

This matter came before the Court upon the Plaintiff's Motion For Protective Order Regarding Treatment Records From Parent-Child Center, Inc. and Dr. Serge Thys and Incorporated Memorandum of Law. Having considered the motion, it is hereby ORDERED and ADJUDGED that:

Plaintiff's Motion for Protective Order is hereby GRANTED.

DONE AND ORDERED this _____ day of June, 2009.

_____
KENNETH A. MARRA
United States District Judge

Copies to all Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2, CASE NO.: 08-CV-80119-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 3, CASE NO.: 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 4, CASE NO.: 08-CV-80380-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 5, CASE NO.: 08-CV-80381-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 6, CASE NO.: 08-CV-80994-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 7, CASE NO.: 08- CV-80993-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

[redacted], CASE NO.: 08- CV-80811 -MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE, CASE NO.: 08- CV-80893-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN, et al.,

Defendant.
_____/

DOE II, CASE NO.: 08-CV- 80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN et al.,

Defendant.
_____/

JANE DOE NO. 101, CASE NO.: 08- CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 102, CASE NO.: 08- CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

PLAINTIFFS JANE DOES 2-7'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL AND/OR IDENTIFY PLAINTIFFS IN THE STYLE OF THIS CASE AND MOTION TO IDENTIFY JANE DOE IN THIRD-PARTY SUBPOENAS FOR PURPOSES OF DISCOVERY, OR ALTERNATIVELY, MOTION TO DISMISS "SUA SPONTE", WITH INCORPORATED MEMORANDUM OF LAW

Plaintiffs, JANE DOES 2-7, hereby serve their Response to Defendant's Motion to Compel and/or Identify Plaintiffs in the Style of this Case and Motion to Identify Jane Doe in Third-Party Subpoenas for Purposes of Discovery, or Alternatively, Motion to Dismiss "Sua Sponte", With Incorporated Memorandum of Law, and state as follows:

1. The lawsuits filed by JANE DOES 2-7 involve private, intimate facts pertaining to their own childhood sexual abuse and exploitation by Defendant Jeffrey Epstein.

2. Jane Does 2-7 filed their suits under a pseudonym[1] to prevent public disclosure of the private, highly sensitive and intimate facts pertaining to their sexual assaults, and the public association of their identities with Defendant Epstein and these assaults.

3. Dr. Gilbert Kliman,[2] a well-known forensic psychiatrist with an expertise in the field of child trauma, has met with and evaluated each of Jane Does 2-7 and opined that public disclosure of their real names would create a substantial risk to them of further psychological harm. See Exhibit "A", Declaration of Gilbert Kliman, M.D.

4. Dr. Kliman opines as follows:

> Releasing names of the plaintiffs to the public will reenact experiences of powerlessness and helplessness in the face of a boundary violation. Repetition and reenactment represent central features of Criterion B in the DSM-IV-TR diagnosis of posttraumatic stress disorder trauma. In effect, release of their identity and public intrusion into their personal life represents a reenactment of the shame of sexual traumatization. Repetition and reenactment are central pathologies that afflict sexual trauma survivors.
>
> Victims of sexual abuse often rely upon some form of dissociation, splitting or denial, as a defensive means to manage overwhelming affects associated with the sexual trauma. Each of the plaintiff girls has employed some variation of this defense, both during the massages and then subsequently following disclosure of the abuse. Primitive, maladaptive responses of this nature will become additionally reinforced as a result of public disclosure.
>
> Another aspect of the plaintiffs' experience, which is recognized by DSM-IV-TR, is that the trauma was associated with human design factors (such as cruel intention to do harm, rape, torture). Trauma of this origin has a tendency to produce more "severe or long lasting" posttraumatic stress disorder than natural events (DSM IV TR p. 464). A policy of deliberate revelation of the names of the victims would reinforce the sense of design, pattern and policy of human intentions.
>
> It is my opinion, with a reasonably high degree of medical certainty that the defense motion to allow public disclosure of the plaintiffs' identity is clinically

---

[1] Defendant and his counsel are aware of the real names of Jane Does 2-7.

[2] A copy of the curriculum vitae of Dr. Gilbert Kliman is attached hereto as Exhibit "B".

> and ethically a wrongful plan. The act of revealing their identity against their wishes places the plaintiffs at risk, in the best of circumstances, of suffering an aggravation of existing diagnostic concerns. It is more probable than not that releasing personal identities will foster an exacerbation and magnification of symptoms lending to increased risk of revictimization and retraumatization.

See Exhibit "A", ¶¶ 13-15, 21

5. Given the private nature of the allegations in this lawsuit and the serious risk of harm to the mental health of Jane Does 2-7 if a public disclosure of their identities were required, Jane Does 2-7 should be permitted to continue using a pseudonym in this lawsuit.

6. Notably, in one of the cases consolidated for purposes of discovery, *Jane Doe v. Jeffrey Epstein*, Case No. 08-80893, this Court recognized the harm likely to result from public disclosure of the victims' identities in these cases, and allowed the Plaintiff in that case to "proceed in this action under the pseudonym 'Jane Doe' ", by Order dated October 6, 2008.

7. Jeffrey Epstein sets forth no facts to support his bare contention that Jane Does 2-7 use of a pseudonym in these proceedings interferes with his "constitutional due process right." See Motion to Compel, p. 3. Defendant and his counsel know the identities of these Plaintiffs.

8. Defendant also requests the Court's permission to use the real names of Jane Does 2-7 in various third-party subpoenas for discovery purposes. Defendant does not identify any of the entities or persons to whom he intends to send subpoenas. An order granting the relief requested without limitations would essentially nullify Jane Does 2-7's right to proceed anonymously. Jane Does 2-7 therefore object to the issuance of third-party subpoenas, and submit that Defendant can obtain the discovery he seeks by alternative means that will preserve the confidentiality of the Jane Does 2-7's identities.

9. If this Court were to permit third party subpoenas or records custodian depositions using the existing captions and identifying Jane Does 2-7 in the body of the

subpoena by their names, due to publicity surrounding the Defendant's crimes, then Jane Does 2-7 would effectively be revealed as abuse victims in these cases against Defendant Epstein. Any subpoenas or notices to third parties therefore should not disclose the type of action or the Defendant's identity. There are alternatives which would preserve Jane Does 2-7's anonymity and be more efficient and cost-effective at the same time. For instance, Defendant can obtain records from various non-party sources through Plaintiffs' counsel, who can certify that they have obtained the records through authorizations signed by Jane Does 2-7. Another means to obtain non-party records concerning Plaintiffs is the appointment of a special master, who would verify authenticity and completeness of the records.

10. Finally, Jeffrey Epstein's request that this Court order a "sua sponte" dismissal is illogical. *Sua sponte* means "[w]ithout prompting or suggestion; on its own motion." Black's Law Dictionary 1437 (7th ed.1999). Thus, the definition of *sua sponte* does not fit these circumstances, because the Court is being prompted by Epstein's Motion. *Velchez v. Carnival Corp.*, 331 F.3d 1207 (11th Cir. 2003). In any event, there is no basis or authority to support a dismissal of these cases.

WHEREFORE, Plaintiffs Jane Does 2-7 respectfully request that (i) this Court deny Defendant's Motion to Compel and/or Identify Plaintiffs in the Style of this Case and Motion to Identify Jane Doe in Third-Party Subpoenas for Purposes of Discovery, or Alternatively, Motion to Dismiss "Sua Sponte", in its entirety; (ii) Plaintiffs Jane Does 2-7 be permitted to continue using their pseudonyms in this litigation; (iii) this Court order that records from non-parties relating to Jane Does 2-7, including medical and employment records, only be obtained through Plaintiffs' counsel by means of signed authorizations that do not include the caption or identify Epstein as the party seeking records, or alternatively, appoint a special master to obtain the

records, who would verify authenticity and completeness of the records; and (iv) all other relief this Court deems just and appropriate.

MEMORANDUM OF LAW

I. PLAINTIFFS JANE DOES 2-7 SHOULD BE PERMITTED TO PROCEED ANONYMOUSLY IN THIS CASE DUE TO THE SENSITIVE, PRIVATE NATURE OF THE UNDERLYING FACTS AND THE RISK OF PSYCHOLOGICAL HARM TO THE PLAINTIFFS

Federal courts permit a party to proceed under a pseudonym when special circumstances warrant anonymity. *See, e.g., Roe v. Aware Woman Ctr. for Choice, Inc.,* 253 F.3d 678, 685-87 (11th Cir.2001); *Does I thru XXIII v. Advanced Textile Corp.,* 214 F.3d 1058, 1068-69 (9th Cir.2000); *James v. Jacobson,* 6 F.3d 233, 238-39 (4th Cir.1993); [redacted] *v. New York Blood Center,* 213 F.R.D. 108, 110-12 (E.D.N.Y.2003); *Javier v. Garcia-Botello,* 211 F.R.D. 194, 196 (W.D.N.Y.2002); *Doe v. Smith,* 105 F.Supp.2d 40, 43-44 (E.D.N.Y.1999); *Doe v. United Servs. Life Ins. Co.,* 123 F.R.D. 437, 439 (S.D.N.Y.1988). Sexual assault victims are a paradigmatic example of those entitled to a grant of anonymity. *See Doe No. 2 v. Kolko,* 242 F.R.D. 193 (E.D. N.Y. 2006)*; Doe v. Blue Cross & Blue Shield United of Wisc.,* 112 F.3d 869, 872 (7th Cir.1997) ("fictitious names are allowed when necessary to protect the privacy of ... rape victims, and other particularly vulnerable parties or witnesses"); *see also Doe v. City of Chicago,* 360 F.3d 667, 669 (7th Cir. 2004).

The decision whether to allow a plaintiff to proceed anonymously is within the court's discretion. *See Aware Woman Ctr.,* 253 F.3d at 684; *Javier,* 211 F.R.D. at 195; [redacted], 213 F.R.D. at 110. As set forth above, this Court exercised its direction in one of the consolidated cases, *Jane Doe v. Jeffrey Epstein*, Case No. 08-80893, to allow a plaintiff to proceed under the pseudonym "Jane Doe" in an Order dated October 6, 2008.

Courts will permit a party to proceed under a pseudonym where "the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Does I Thru XXIII*, 214 F.3d at 1068; *see Javier,* 211 F.R.D. at 195; *EW,* 213 F.R.D. at 111; As set forth herein, the balancing test in this case weighs in favor of permitted plaintiff to continue to proceed anonymously:

> In undertaking this balance, courts have considered such facts as (1) whether the plaintiff is suing the government or a private person; (2) whether the plaintiff would be compelled to disclose intimate information; (3) whether plaintiff would be compelled to his or her intention in engage in illegal conduct, thereby risking criminal prosecution; (4) whether the plaintiff would risk injury if identified; (5) whether the party defending against a suit brought under a pseudonym would thereby be prejudiced; (6) the ages of the parties whose identity is to be suppressed; (7) the extent to which the identity of the litigant has been kept confidential; (8) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and (9) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system.

Doe v. Del Rio, 241 F.R.D. 154, 157 (S.D. N.Y. 2006)

The public has a strong interest in protecting the identities of sexual assault victims so that other victims will not be deterred from reporting such crimes. *See Doe v. Evans,* 202 F.R.D. 173, 176 (E.D.Pa.2001) (granting anonymity to sexual assault victim); *Doe No. 2 v. Kolko,* 242 F.R.D. 193 (E.D. N.Y. 2006). That is particularly true in these consolidated cases where there are numerous victims with similar claims. Although these cases have gained considerable media attention, there appears to be little public interest in knowing the specific identity of each of the victims.

With regard to the second factor, courts have granted anonymity to protect against disclosure of a wide range of issues involving matters of the utmost intimacy, including sexual

assault. *See, e.g., Aware Woman Ctr.,* 253 F.3d at 685 (abortion); [redacted], 213 F.R.D. at 111 (infection with hepatitis B)*; Doe v. Evans,* 202 F.R.D. 173, 176 (E.D.Pa.2001) (sexual assault victim); *Smith,* 105 F.Supp.2d at 42 (sexual assault victim); *WGA v. Priority Pharmacy, Inc.,* 184 F.R.D. 616, 617 (E.D.Mo.1999) (status as AIDS patient); *Doe v. United Servs. Life Ins. Co.,* 123 F.R.D. 437, 439 (S.D.N.Y.1988) (sexual orientation); *see also Blue Cross,* 112 F.3d at 872 (recognizing rape victims as entitled to anonymity). It cannot be reasonably denied that a person's sexual history – especially during their childhood – is an intimate fact. When the childhood sexual history includes criminal sexual contact by an adult, the facts are even more intimate and personal. In the electronic age in which we live, these concerns are heightened. As federal courts have recognized in this context, it is now possible to "determine whether a given individual is a party to a lawsuit in federal court anywhere in the country by the simplest of computer searches, to access the docket sheet of any such case electronically, and ... that entire case files will be accessible over the Internet." *Doe v. City of New York,* 201 F.R.D. 100, 102 (S.D.N.Y.2001) (denying anonymity where any injury was purely reputational and case did not involve private or intimate matter); *see* [redacted], 213 F.R.D. at 112-13.

As Dr. Kliman explains in his Declaration, disclosure of Jane Does 2-7's identities will place these Plaintiffs "at-risk of having their personal lives scrutinized by friends, extended family, spouses, children, fellow students, employers and fellow employees, the media and general public. This type of exposure humiliates many victims and represents another betrayal of trust. Public exposure places the plaintiff's at further risk of stigmatization, shame and retraumatization." See Exhibit "A" at ¶ 3. Dr. Kliman also finds it of no consequence that some of the plaintiffs are now legally adults in that "[d]ue to traumatization the plaintiffs are arrested in their development, and even those who are now legally adult are arrested in part to adolescent

aspects of psychology." Id. at ¶ 4

The policy of protecting victims of sexual misconduct from undue embarrassment and disclosure of their private affairs is firmly established in Fed.R.Evid. 412. The protections of Rule 412 are designed to "encourage victims of sexual misconduct to institute and participate in legal proceedings against alleged offenders." (Committee Notes to 1994 Amendment). Likewise, many states in this country, including Florida and New York, have similarly enacted laws to protect the anonymity of sexual assault victims. *See* Fla. Stat. §§794.024, 794.026 (2008); *N.Y. Civil Rights Law § 50-b* (McKinney 2009). In 1994, the Florida Legislature passed The Crime Victims Protections Act. The legislative stated purpose for the Act was "to protect the identity of victims of sexual crimes." Fla. AGO, 2003-56, 2003 WL 22971082 (Dec. 15, 2003). Under §794.024, Florida Statutes, court records that identify the name and/or address of a victim of a sexual crime are presumed to be confidential and exempt from public access. *Id.* Similarly, upon approving New York's rape shield law, then Governor Mario Cuomo stated, "sexual assault victims have unfortunately had to endure a terrible invasion of their physical privacy. They have a right to expect that this violation will not be compounded by a further invasion of their privacy." *1991 McKinney's Sessions Laws of N.Y., at 2211-2212 (quoted in Deborah S. v. Diorio, 153 Misc.2d 708, 583 N.Y.S.2d 872 (N.Y.City Civ.Ct.1992)); see also Coker v. Georgia, 433 U.S. 584, 597, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977)* ("Short of homicide, [rape] is the ultimate violation of self").

As to the fourth factor of risk injury, Dr. Kliman has evaluated Jane Does 2-7, and has concluded that the childhood sexual abuse at issue has caused features of post-traumatic stress disorder (PTSD), including shame, guilt, helplessness, and powerlessness. See Exhibit "A" at ¶¶ 4-7. Dr. Kliman further states, "it is more probable than not that releasing personal identities

will foster an exacerbation and magnification of symptoms lending to increased risk of revictimization and retraumatization." Id. at ¶ 21. Thus, this is not a case analogous to those cited by defendant in which the plaintiffs were merely at risk of "personal embarrassment." Instead, there is a genuine and immediate risk of psychological harm.

None of the cases cited by Defendant where courts denied a plaintiff's request for anonymity involved victims of childhood sexual assault or evidence of emotional or psychological harm that would result from disclosure of the plaintiff's identity. *See Doe v. Hartz,* 52 F.Supp.2d 1027 (N.D.Iowa 1999); *Doe v. Shakur,* 164 F.R.D. 359 (E.D.N.Y.1996); *Doe v. Bell Atlantic Bus. Sys. Servs.,* 162 F.R.D. 418 (D.Mass.1995); *Doe v. Univ. of Rhode Island,* 28 Fed.R.Serv.3d 366, 1993 WL 667341 (D.R.I. Dec. 28, 1993).

As to the factor of prejudice, the Defendant does not identify how his ability to conduct discovery or impeach Jane Does 2-7's credibility has been or will be impaired if these Plaintiffs are permitted to proceed under a pseudonym. *See* [redacted], 213 F.R.D. at 112, *Smith,* 105 F.Supp.2d at 44-45. Other than the need to make redactions and take measures not to disclose these Plaintiffs' identities, Defendant will not be hampered or inconvenienced merely by Plaintiffs' anonymity in court papers. As set forth above, Defendant already knows their true identities. *See Aware Woman Center,* 253 F.3d at 687 (no prejudice where plaintiff offered to disclose her name to defendant); [redacted], 213 F.R.D. at 112; *Smith,* 105 F.Supp.2d at 44-45.

II. DEFENDANT SHOULD NOT BE PERMITTED TO USE THE REAL NAMES OF JANE DOES 2-7 IN THIRD-PARTY SUBPEONAS EXCEPT FOR THOSE ISSUED TO PERSONS WHOM PLAINTIFFS HAVE ALREADY DISCLOSED THEIR SEXUAL ABUSE

As for the use of Jane Does 2-7's real names in subpoenas issued to non-parties, a party may obtain discovery of any non-privileged matter that is relevant to a claim or defense of any party. Fed.R.Civ.P. 26(b)(1). However, a district court may limit discovery "for good cause

shown" by making "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including that the discovery not be had or that it be had only by a method other than that selected by the party seeking discovery. Fed.R.Civ.P. 26(c). Jane Does 2-7 have articulated a specific and substantial harm from disclosure of their identities.

If this Court were to permit Defendant to issue third-party subpoenas containing Jane Doe 2-7's real names, the identity of the Defendant, and/or facts pertaining to the nature of the case to whomever Defendant wants, it would be akin to requiring these Plaintiffs to use their real name in the pleadings. Instead, Jane Does 2-7 propose to voluntarily execute authorizations (which would not contain the case names or the identity of the Defendant) to allow Defendant to obtain education, employment, and medical records to be used for purposes of this litigation only.[3] Alternatively, Defendant can obtain the records through a special master, who would verify authenticity and completeness of the records. Either of these approaches would not only place Jane Does 2-7 at less risk of psychological harm, but would also be more cost-effective and efficient.

CONCLUSION

Based on the foregoing, Plaintiffs Jane Does 2-7 respectfully request that Defendant's Motion to Compel and/or Identify Plaintiffs in the Style of this Case and Motion to Identify Jane Doe in Third-Party Subpoenas for Purposes of Discovery, or Alternatively, Motion to Dismiss "Sua Sponte" be denied in its entirety, and that Plaintiffs Jane Does 2-7 be permitted to continue using their pseudonyms in this litigation. Additionally, to avoid public disclosure of the Plaintiff's identities in non-party records discovery, Plaintiffs Jane Does 2-7 request that such

[3] Defendant and Plaintiff have previously agreed that education records can be obtained in this

discovery be obtained either through Plaintiffs' counsel by means of written authorizations, or by the appointment of a special master.

Dated: June 8, 2009

Respectfully submitted,

By: s/ Adam D. Horowitz
Stuart S. Mermelstein (FL Bar No. [redacted]
[redacted]
Adam D. Horowitz (FL Bar No. [redacted])
[redacted]
MERMELSTEIN & HOROWITZ, P.A.
Attorneys for Plaintiffs Jane Doe Nos. 2-7
18205 Biscayne Blvd., Suite 2218
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Tel: [redacted]
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manner in lieu of subpoenas.

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Adam D. Horowitz

SERVICE LIST
DOE vs. JEFFREY EPSTEIN
United States District Court, Southern District of Florida

Jack Alan Goldberger, Esq.
[redacted]

Robert D. Critton, Esq.
[redacted]

Bradley James Edwards
[redacted]

Isidro Manuel Garcia
[redacted]

Jack Patrick Hill
[redacted]

Katherine Warthen Ezell
[redacted]

Michael James Pike
[redacted]

Paul G. Cassell
[redacted]

Richard Horace Willits
[redacted]

Robert C. Josefsberg
[redacted]

/s/ Adam D. Horowitz

professional publications include books and peer-reviewed medical journal articles on mass disasters, most recently concerning the Attack on America.

He was extensively interviewed in 1997 by CBS Dallas TV regarding psychiatric testimony concerning eleven altar boys, testimony which had resulted in a record-making jury verdict against the Archdiocese of Dallas. In April, 1998, Dr. Kliman was interviewed by Channel Four anchorwoman, Linda Yee, concerning his Salvation Army project providing the Cornerstone form of psychoanalytic psychotherapy for homeless preschoolers and toddlers,. The Cornerstone project itself was viewed on the Channel II Five O'Clock News. KGO TV interviewed Dr. Kliman concerning a forensic testimony, with a focus on a Stanford football player who had allegedly become a child molester. During the Lewinsky-Clinton matter, Kliman was interviewed by Channel 12/20 concerning psychoanalytic views of leaders having exceptional sexual access to partners and the risk of a position of power overcoming the judgments of such leaders. During 2001 following the World Trade Building terrorism, Dr. Kliman was interviewed by Channel II News and appeared on five occasions thereafter through 2003 concerning the Afghanistan and Iraq wars. In May 2003, he was discussant with U.N. Secretary General Olaru Otonu, featured on Dhubai Business TV concerning the plight of children in war.

In 2004, together with the International Psychoanalytic Association, Dr. Kliman helped organize, establish and supervise a therapeutic preschool project in Buenos Aires. "Cornerstone Argentina" is now in its second year of treating severely disturbed and impoverished preschoolers, with his continuing collaboration.

Following the hurricane disasters of 2005 he collaborated with Mercy Corps and the Children's Psychological Health Center to produce a mental health resource. The result, "My Katrina and Rita Story", a guided activity resource of families who had to deal with the hurricanes. Mercy Corps is distributing copies to 20,000 families.

In 2005, RE DISTURBED PRESCHOOLERS Dr. Kliman helped organize, establish and supervise a therapeutic project in Piedmont California, at the nonprofit Ann Martin Center.

In 2007, RE HOMELESS CHILDREN: Dr. Kliman helped establish a Reflective Network Therapy service for homeless preschoolers in Seattle. He provided four days of training in that method for the Family Service Center of King County (located in Seattle), and created an organizational link between The Family Services Center and The Children's Psychological Health Center, Inc. of San Francisco in order to continue serving homeless children in Seattle.

In 2008, Dr. Kliman activated the Reflective Network Therapy services for preschoolers in Seattle. He supervises there in person and by phone and video.

In 2008, RE DISASTER SERVICES: Following the Sichuan Earthquake Disaster of May 12, 2008, Dr. Kliman established a link between Children's Psychological Health Center, Inc., Mercy Corps, and The China America Psychoanalytic Alliance. He created mental health resources (see Publications) which were licensed for mass distribution in China by Mercy Corps.

In 2008, Dr. Kliman helped found a new non-profit organization called Teach with Africa and is a member of its Board of Directors.

Foundation, The Dreyfus Foundation, The Seth Sprague Foundation, The Gralnick Foundation, The Harris Foundation, U.S. Trust, and The Scheuer Family Foundation.

Most recent grants:

1996-2002: Support from The Office of Education, Division of Special Education, San Mateo County, California.

1996 The Windholz Foundation, San Francisco, for video documentation of an experimental project concerning treatment of disturbed and traumatized preschool patients in a public education special education division.

1999 Morris Stulsaft Foundation for video-recording facility to document treatment in The Cornerstone Therapeutic School.

1999-2001 The Cadence Corporation - for early childhood treatment services

2000-2001 The Harris Foundation for Cornerstone Therapeutic School.

2000 Funding and Recognition by the State of California: In 2001, The Department of Education, Division of Special Education, certified the Cornerstone Therapeutic School as a nonpublic special education school, allowing public entities to fund the school by contracts with Unified School Districts.

2001 The San Francisco Day Care Corporation – for Cornerstone Therapeutic School.

2001 The Sophie Murvis Foundation for Training of Teachers and Therapists in the Cornerstone Method.

2002, 2003. The Five Bridges Foundation for development of The Cornerstone Therapeutic Preschool 2003.

2005 The Sophie Murvis Foundation grant for Training of Teachers and Therapists in the Cornerstone Method.

2005 Mercy Corps for creation of "My Personal Story about Hurricanes Katrina and Rita"

2008 Mercy Corps for creation of "My Sichuan Earthquake Story"

JANUSZ KORCZAK INTERNATIONAL LITERARY PRIZE:

First place, International Literary Prize including an award of one thousand dollars, for "World's Best Book Concerning the Well-Being of Children"—Awarded to Gilbert Kliman, M.D. and Albert Rosenfeld, co-authors of Responsible Parenthood, published by Holt, Rinehart and Winston, New York, 1980

PUBLISHED PAPERS AND BOOKS:

23. "Mourning, Memory, and Reconstruction: The Analysis of a Four-Year-Old Maternally Bereaved Girl at Age Sixteen Months" (With Thomas Lopez, Ph.D.), in *The Psychoanalytic Study of the Child,* Volume 34, The New York Times Press, New York, 1979.
24. "Facilitation of Mourning During Childhood," in Gerber, I., Wiener, A., Kutscher, A., et al., *Perspectives on Bereavement,* MSS Information Corporation, New York, 1979.
25. "The Cornerstone Treatment of a Preschool Boy from an Extremely Impoverished Environment" (with Thomas Lopez, Ph.D.), *The Psychoanalytic Study of the Child,* Vol. 35, The New York Times Press, New York, 1980.
26. *Responsible Parenthood: The Child's Psyche Through the Six-Year Pregnancy,* Holt, Rinehart, and Winston, New York, 1980.
27. "Death: Some Implications in Child Development and Child Analysis," in *Advances in Thanatology,* Vol. 4, No. 2, Arno Press, New York, 1980.
28. "Children in Foster Care: A Preventive Service and Research Program for a High Risk Population" (with M. Harris Schaeffer, Murray J. Friedman, and Bernard G. Pasquariella). *The Journal of Preventive Psychiatry,* Volume I: 1, 1981.
29. Editorial(s). *The Journal of Preventive Psychiatry.* Volume I, 1981-1982, Volume II, 1983-4, Volume III, 1985-7, Volume IV, in press.
30. *Preventive Mental Health Services for Children Entering Foster Family Care: An Assessment* (with M. Harris Schaeffer, and M. Friedman). The Center for Preventive Psychiatry, White Plains, New York, 1982.
31. "Summary of Two Psychoanalytically Based Service and Research Projects: Preventive Treatments for Foster Children" with M. Harris Schaeffer, Ph.D. *J. of Preventive Psychiatry,* Vol. II, No. 1, 1983.
32. "Three New Areas in Litigation on behalf of Children," in *Child Psychiatry and the Law,* Diane Schekty, Editor, Volume 2, Bruner/Mazel, New York, 1985.
33. *Preventive Psychiatry: Early Intervention and Situational Crisis Management,* co-editor, with S.C. Klagsbrun, M.D., E.J. Clark, Ph.D., others. The Charles Press, Philadelphia, 1989.
34. *My Earthquake Story: A Guided Workbook for Children, Parents and Teachers,* with Harriet Wolfe, M.D. and Edward Oklan, M.D. Psychological Trauma Center Press, Kentfield, CA. October, 1989.
35. "Facilitation of Mourning During Childhood," chapter in *Preventive Psychiatry: Early Intervention and Situational Crisis Management.* (Eds) S. Klagsbrun, G. Kliman, E. Clark, A. Kutscher, R. DeBellis, C. Lambert. The Charles Press, Philadelphia, 1989.
36. "Toward Preventive Intervention in Early Childhood Object Loss," chapter in Noshpitz, H. and Coddington, D. (Eds) *Stressors and Clinical Techniques in Child Psychiatry.* Charles Thomas, NY, 1990.
37. "Brief Report: Loss of Parental Services—A Guide to Categorization." *J. Preventive Psychiatry and Allied Disciplines* 4:1, 1990. Human Sciences Press, NYC.
38. "A Methodologic Breakthrough: The Saga of Delivering Effective Primary Preventive Psychotherapy to Groups of Foster Children." *J. Preventive Psychiatry and Allied Disciplines* 4:1, 1990. Human Sciences Press, NYC.
39. "The Rise of Adolf Hitler and Other Genocidal Leaders—Psychoanalytic and Historical Symposium (Summary)," *J. Preventive Psychiatry and Allied Disciplines* 4:1,1990. Human Sciences Press, NYC.

57. "My Hurricane Story" A Guided Activity Workbook to help Children Cope. The Children's Psychological Health Center. Sept 21, 2008

WORKS IN PROGRESS: available in Draft:

IQ Rise among Preschoolers with Pervasive Developmental Disorders.

Child Psychoanalytic Contributions to Civil Justice System, submitted by invitation, to Psychoanalytic Inquiry

Books in Draft:

1. Reflective Network Therapy: Early Childhood Psychotherapy in the Classroom

2. A Unifying New Theory of Posttraumatic Stress Disorder

PRESENTATIONS:

01. "Specific Traumas: Selective Review of Literature," presented at the Ernst Kris Study Group, New York Psychoanalytic Institute, New York, 1965.
02. "Psychoanalysis of a Four-Year-Old in a Preschool Group," presented at the American Psychoanalytic Association, Atlantic City, New Jersey, May, 1966
03. "Covert Suicidal Impulses in Maternally Deprived Children" (with Harriet Lubin, M.S.W.), presented at the American Association of Psychiatric Services for Children, Boston, Massachusetts, November, 1969.
04. Children's Reactions to National Events: The 1968 Federal Elections," presented at the American Orthopsychiatric Association, Washington, D.C., 1969.
05. "Facilitation of Mourning During Childhood," presented at the Chicago Psychoanalytic Institute, May 1973.
06. "Preventive Approaches to Preschool Psychiatric Disorders: Some Assessments," presented at the Academy of Child Psychiatry, Washington, D.C., October, 1973.
07. "Biological Drive Derivative Cycles in Preschool Patients," presented at the New York Psychoanalytic Institute Research Seminar, 1974.
08. "Children in National Disasters," presented at the International Association for Child Psychiatry, Philadelphia, Pennsylvania, 1974.
09. "Childhood Mourning: Some Social Aspects," presented at Yeshiva University, New York, October, 1974.
10. "The Center for Preventive Psychiatry's Interventions with Bereaved Children," presented at the second annual conference on "The Impact of Bereavement and Grief on the Family," Yeshiva University, October 15, 1975.
11. "Death: Implication for Psychoanalytic Theory and Practice," presented at The Association for Psychoanalytic Medicine, New York, 1977.
12. "A Psychoanalytic View of an Ancient Mass Disaster: The Mayan Exodus," The Center for Preventive Psychiatry, 1977.

33. Seminar on "New Areas in Forensic Psychiatry," at the Robert Cartwright law firm, San Francisco, 1986. VIDEOTAPE AVAILABLE
34. "Children's Reactions to the Challenger Shuttle Disaster," on 20/20 (Television Broadcast), 1986. VIDEOTAPE AVAILABLE
35. The Fathering of Adolf Hitler," Grand Rounds, McAuley Neuropsychiatric Institute, St. Mary's Hospital, San Francisco, 1986.
36. "Child Sexual Abuse: Psychoanalytic and Forensic Approaches," Children's Hospital, San Francisco, 1986. VIDEOTAPE AVAILABLE
37. "Preventive Psychiatry for Children," Training Seminar at McAuley Neuropsychiatric Institute, St. Mary's Hospital, San Francisco, 1987. VIDEOTAPE AVAILABLE
38. "Multi-Victim Child Sexual Abuse," San Francisco Psychoanalytic Institute Extension Division, October 1987. VIDEOTAPE AVAILABLE
39. "Children in Foster Families: Advances in Preventive Psychiatry," Continuing Education Program for Psychiatrists, U.C. Davis, 1988.
40. "The Mothering of Adolf Hitler," Grand Rounds. McAuley Neuropsychiatric Institute, St. Mary's Hospital, San Francisco, Dec. 1988.
41. "Adolf Hitler's Mothering: A Child Psychoanalytic View," Westchester Psychoanalytic Society, New York Hospital, January, 1989.
42. "The Personal Life History Book: Preventive Psychotherapy for Children in Chaos." Department of Child Psychiatry, Harlem Hospital, New York, NY, January, 1989.
43. Chairman: Symposium April 20-21, 1989. The Rise of Adolf Hitler and Other Genocidal Leaders. Interdisciplinary Unit for Study of Mass Violence and Genocide. St. Mary's Hospital Department of Psychiatry, San Francisco.
44. "The Mothering of Adolf Hitler," Symposium above. VIDEOTAPE AVAILABLE
45. "The Fathering of Adolf Hitler," Symposium above. VIDEOTAPE AVAILABLE
46. Public Media: Following the October 17th earthquake, Dr. Kliman and his Psychological Trauma Center associates appeared on KRON-TV, KFAS, KQED and public service radio network to offer advice and respond to call-in questions regarding earthquake stress and trauma. His *Earthquake Story* guided workbook (see above) was distributed as a public service by San Francisco Community Mental Health Services and the Oakland Bureau of Education to 11,000 teachers in Oakland and San Francisco.
47. Marin Psychoanalytic Society: (April 1990) "Simultaneous child and couple therapy: emergence and interpretation of congruent unconscious themes."
48. University of California College of Medicine, Department of Psychiatry, Irvine. (June 1990) "Prevention of Psychopathology among Children: Systematic Projects with Foster Children."
49. Preventive Interventions with Traumatized Children," Grand Rounds California Pacific Hospital Department of Psychiatry, October 20, 1992. VIDEOTAPE AVAILABLE.
50. Altered Interpersonal Schemas After Life Threatening Childhood Trauma," Center for Study of Consciousness, UCSF, October 1992.
51. Alterations of Pre-Traumatic Memory and Post Traumatic Schemas," Child Analysis Colloquium, San Francisco Psychoanalytic Institute, November 1992.
52. Toward A New Theory of Post Traumatic Stress Disorder," Control Mastery Group, San Francisco Psychoanalytic Institute, December 1992.
53. Severe Psychological Trauma in Very Young Children," Grand Rounds at the Menninger-San Mateo County Hospital Psychiatric Residency Program, March 23, 1993.
54. Psychological Crises Among Preschoolers," Department of Health, City of San Francisco, April 1993.
55. Child Analysis Colloquium," San Francisco Psychoanalytic Institute, May 1993.

79. "Operational Confirmation of a Psychoanalytic Hypothesis: Detecting and Interfering with The Repetition Compulsion," Cleveland Psychoanalytic Institute and Anni Katan Center for Child Development, October 28, 1995.
80. The Personal Life History Book Method: Reducing Transfers Among Foster Family Homes," The Center for Preventive Psychiatry, White Plains, NY, October 30, 1995.
81. "A New Theory of Posttraumatic Stress Disorder," Grand Rounds, Baylor University School of Medicine, Houston, November 8, 1995.
82. "Raising IQ's in a Therapeutic Nursery: The Cornerstone Method. How it works as illustrated by video clips of the therapist and patients in the classroom," The Houston Psychoanalytic Institute and Stedman West Child Development Center, Houston, TX, November 8, 1995.
83. "The Difficult Client: Accredited Continuing Legal Education seminar for California Attorneys." The Psychological Trauma Center, The Psychological Trauma Center, 1996.
84. "Catastrophic injuries and psychological trauma: Accredited Continuing Legal Education seminar for California Attorneys." The Psychological Trauma Center, 1996.
85. "Why Small Clients Get Large Awards: Proving and Disproving Psychological Injuries in Childhood. Accredited Continuing Legal Education seminar for California Attorneys." 1996
86. "A New Public Health Approach in Public Special Education: Presentation to The San Mateo Board of Education," San Mateo, CA. April 17, 1996.
87. A new model for special education of preschoolers: The Cornerstone Method -- for synergy between early childhood education and psychotherapy. California State Dept. Education, Division of Special Education September 1996, Red Lion Hotel, Orange County Airport, CA.
88. "Synergy Between Special Education and Psychotherapy in the Classroom: Special Education Learning Program Administrators," San Mateo, CA. October 10, 1996.
89. "The Role of Psychoanalyst as Forensic Expert in Catastrophic Psychological Trauma Cases." American Psychoanalytic Association, Winter Meeting, Waldorf Astoria, NY. December 1996
90. "Controlled Assessment of a Psychoanalytically Derived Psychotherapy." American Psychoanalytic Association, Winter Meeting, Waldorf Astoria, NY December 1996.
91. "Child Psychotherapy Course: Several preschool patients with different diagnosis, treated in a preschool therapeutic nursery, showing response to interpretations, with discussions of the role of teacher, parents and medications." San Francisco Psychoanalytic Institute, March 4, 11, 18, 1997
92. "Synergy between Psychotherapy and early childhood special education" SELPA Administrators, April 17, 1997
93. "Analyst in the Nursery: The Cornerstone Method," San Francisco Psychoanalytic Institute, May 21, 1997
94. "Psychological Trauma Among Preschoolers," San Francisco Psychoanalytic Institute, May 15, 1997
95. ACT for Mental Health, April 17, 1997
96. "New Theory of Posttraumatic Stress Disorder," Fifth European Conference on Traumatic Stress, European Society for Traumatic Stress Studies, July 1, 1997.
97. The Cornerstone Method: Intensive Preschool Psychotherapy in Public School Special Education Classes. California State Federation/Council for Exceptional Children 48th Annual Conference & Special Education Fall Conference, San Francisco, CA, October 21-24, 1998.
98. Research and treatment with highly traumatized preschoolers. Wright Institute, Berkeley, Feb. 4, 2002.

110. Presentations of video-taped child treatment sessions: The Child Analysis Study Group of the San Francisco Psychoanalytic Institute, six occasions 2001-2002.
111. New Theory and New Treatments of Children. Northern California Society of Mental Health Professionals. Feb 8, 2002.
112. Treatment of Children in their Real Life Spaces. Ann Martin Center, Berkeley, CA February 2, 2002.
113. Treatment of children in community school settings. Workshop on Community Child Psychiatry. American Academy of Child and Adolescent Psychiatry. October 2002.
114. Treatment of preschoolers in real life space – The Cornerstone Method. A two day training workshop for the L.A. County Dept. of Mental Health. October 2002.
115. The Cornerstone Method. The American Psychoanalytic Association, Workshop on Early Childhood. January 2003, New York.
116. Treatment of Three Autistic Preschoolers: The American Psychoanalytic Association. June, 2003. Boston.
117. The Personal Life History Book: A Preventive Therapy for Foster Children. A day-long workshop at Counseling4Kids, Los Angeles, September 2003.
118. A new method of treatment of autistic preschoolers. The Chinatown Child Development Center, San Francisco, December 4, 2003.
119. Results of the Cornerstone Method: Pervasive Developmental Disorder with eight month to 37 year followup. The M.I.N.D. Institute, U.C. Davis, December 19, 2003.
120. Procedures for preventing and reducing psychopathology among foster children. Joint Committee of AACAP and Child Welfare League, November 2003, with Marilyn Benoit, M.D.
121. The Role of Child Psychiatrists in Prevention of Child Abuse: Forensic Child Psychiatry as a Societal Influence. Mensa Society, January 2004.
122. Psychoanalysis Confronts Autism. The L.A. and SoCal Psychoanalytic Institutes, February 22, 2004.
123. Child Psychiatric Testimony and the Leading Edge of Social Change. American College of Forensic Psychiatry, March 28, 2004
124. The Cornerstone Method of Treating Autism. American Psychoanalytic Association, Boston, Mass., January 2005.
125. An evidence based method for in-classroom treatment of disturbed preschoolers. Child Welfare League of America. New Orleans, May 2005.
126. Two evidence-based methods for treating foster children. International Psychoanalytic Association, Rio de Janeiro, Brazil, July 2005.
127. A novel evidence-based method for treatment of Asperger's Disorder. Lorman Educational Seminars, Redding, CA. November 18, 2005
128. "Applications of The Cornerstone Method to Children with Autism Spectrum Disorders" American Psychoanalytic Association, New York, New York. January 18, 2006
129. "Applying The Cornerstone Method in Public Schools" Philadelphia Board of Education April 28,06 DVD FORMAT AVAILABLE
130. "Crises Intervention Techniques Within Schools: What you Need to Know When Large or Small Scale Disasters Strike" Lorman Educational Seminar, Sacramento, CA Oct. 6, 2006
131. "Saying Goodbye: Termination in Psychotherapy" 53rd Annual Meeting of The American Academy of Child and Adolescent Psychiatry, San Diego, Ca October 28, 2006
132. Lawrence LE, Viron M, Johnson JE, Hudkins A, Samples G, Kliman G: A school-based mental health recovery effort. Poster session presentation at the 58th Institute on Psychiatric Services Annual Meeting, New York, NY, October 5-8, 2006.

Member, Joint Committee on Foster Care: Academy of Child and Adolescent Psychiatry and the Child Welfare Association.

PROFESSIONAL COMMENDATIONS:

A letter of commendation regarding clinical work in the classroom within a public school system:

December 3, 2001

To Whom It May Concern:

This is to report that the San Mateo County Office of Education, Special Education programs, has benefited from the services of The Children's Psychological Health Center, specifically its Cornerstone Therapeutic School Project.

We have worked together for the past six years. Under the leadership of Gilbert Kliman, M.D., the Center has trained members of our teaching and school psychology staff to carry out a mental health service on our premises. We now have a collaborative project in its sixth year for our special education preschool children with Pervasive Developmental Disorders (PDD) and for those with Serious Emotional Disorders (SED) which interfere with their education. As an alternative to sending children to a private nonpublic special education school for extremely intensive mental health services at significant cost, this project has created and provides just such intensive service within a public preschool special class program at 65 Tower Road, San Mateo.

To my knowledge, among the 30 children served so far under the collaborative project, we are seeing cognitive, social and human gains which have decreased the gap between these children and their typically developing peers. Several families and children are thriving with less intensive special education service or returned to regular education class. Not only has the family and child suffering been reduced, the burden to taxpayers is also reduced. The children have been able to remain in the community, and some who were functioning as severely autistic and retarded now appear to be developing within a somewhat normal range. We are pleased with the quality of special education services our County provides for preschoolers with PDD or SED. We are also gratified with the research results provided by The Children's Psychological Health Center.

We recommend the Cornerstone project to other school systems, so that they consider it an important opportunity should they be able to collaborate similarly with The Children's Psychological Health Center. At California's common cost of $15,000 to $40,000 or more a year, for a special education child who needs full time special education services and auxiliary intensive help, the savings for even one child's 12-year career of intensive services in special education can be substantial. The savings from one of the successes we have seen may equal the costs of the entire Cornerstone project with the 30 children helped so far.

to rescue himself. The foster father's partner was negligent, Dr. Kliman opined. The judge agreed and awarded the child compensation for psychological damages.

Does vs. Archdiocese of Los Angeles. Dr. Kliman was the lead psychiatric witness. The case settled after six days of his deposition testimony.

Does vs. Salesian Order Western Region. Dr. Kliman was the lead psychiatric witness. The case settled after nine days of his deposition testimony and two days of trial.

Does v South Dakota School for the Deaf. Multiple boys were molested by an older student. The state school administration was allegedly negligent and major psychological damages were claimed. Dr. Kliman served as the principal plaintiffs' expert on administrative liability issues and psychological damages. The case settled with major compensation for the plaintiffs during the time of jury deliberations.

CHILD PSYCHIATRIC EXPERT TESTIMONY:

Dr. Kliman helped set legal precedents for the inclusion of psychiatric testimony in matters concerning wrongful death of a parent and loss of parental services, in both New York State and California. He has testified in over 275 cases including over 100 trials. A Federal Rule 26 list is available on request and on www.expertchildpsychiatry.com. His courtroom and deposition testimony experience includes cases of institutional negligence of children leading to psychological trauma, negligent foster care, loss of parental services due to wrongful deaths, psychological trauma as part of personal injury of adults and children, childhood molestation, sexual harassment, termination of parental rights, and disputed custody. Since 2000 about 30% of his forensic work has been requested by defense, about 70% by plaintiffs, with the defense tasks increasing markedly in recent years.

Dr. Kliman's evaluations and testimony regarding 16 children negligently cared for and abused at The Kiwanis' OK Boys' Ranch, Olympia, WA, helped lead to settlements and awards, totalling $25,000,000. Responding to disclosures in that case, many improvements have occurred in the publicly funded and licensed institutional care of children throughout the State of Washington, according to newspaper accounts.

Dr. Kliman's evaluations and opinions, together with that of The Children's Psychological Trauma Center team led by Robert Wynne MFCC, led to record-making $8,000,000 loss of parental and other services compensation for 17 bereaved subsistence-economy Alaskan Inupiat Native Americans (Smith vs. Ryan Airlines, Anchorage, 1997).

Principal expert regarding institutional negligence and psychological damages in Does vs. Rudolph Kos and the Diocese of Dallas, Dallas 1997. The Catholic Church of Dallas was held liable for institutional negligence, testimony concerning the need for major psychiatric treatment planning was accepted by the jury, and $119,000,000--including punitive damages against the Church--was awarded to the 11 plaintiffs, by unanimous decision.

Archive of Videotaped Seminars and Events:

– Gilbert Kliman, M.D., Medical Director

THE CHILDREN'S PSYCHOLOGICAL TRAUMA CENTER

(A division of the Children's Psychological Health Center, Inc.)

Archive of Videotaped Seminars and Events:

CONTINUING LEGAL EDUCATION TAPES:

California MCLE credit is available to attorneys for study of these tapes. Unless otherwise indicated, Gilbert Kliman, M.D. was the sole or principal speaker. Contact Edith Lee at [redacted] for MCLE credit fulfillment associated with study of these tapes.

01. *True and False Allegations of Sexual Molestations*, 1987. 1.5 hrs.
02. *Loss of Parental Services*, May 6th 1992 Elina Wayrynen and Gilbert Kliman, M.D. 2.0 hrs.
03. *Abuse in Institutions*, August 1st 1995, 2.0 hrs.
04. *Catastrophic Accidents with Lifetime Psychological Damage*, December 5th 1995 2.5 hrs.
05. *Evaluating Psychological Trauma in Catastrophic Accidents (Grosvenor Hotel, San Francisco) 1996*, 2.5 hrs.
06. *Loss of Parental Services (Holiday Inn)*, January 9th 1996, 2.5 hrs.
07. *Loss of Parental Services,* May 12th 1993 1.5 hrs.
08. *True and False Allegations of Sexual Abuse*, June 7th 1993, 1.5 hrs.
09. *Catastrophic Psychological Traumas in Childhood*, February 1994, 2.5 hrs.
10. *The Difficult Client*, February 27th 1996, 2.5 hrs.
11. *The Difficult Client (at Wells Fargo),* February 6th 1996, 2.5 hrs.
12. *Evaluating the Validity of Recovered Memories: Perspective of a Forensic Expert*, February 29th 1996, 1.0 hr.
13. How *Small Clients Get Large Awards*, Psychological Trauma in early childhood produces life time consequences in some cases. Defense and plaintiff considerations. 2.5 hrs.
14. *Giving Powerful Voices to Children in Court: I*, March 20th 1998. Windle Turley, Esq. With Gilbert Kliman, M.D., 2.5 hrs.
15. *Giving Powerful Voices to Children in Court II,* May 8th 1998, John Connelly, Jr. with Gilbert Kliman, M.D., 2.5 hrs.

The Children's Psychological Health Center

Archive of Videotaped Seminars and Events:

– Gilbert Kliman, M.D., Medical Director

CLINICAL AND SCIENTIFIC TAPES:

STARRED (*) TAPES BELOW ARE A PRECIOUS ARCHIVE OF INFORMATION ABOUT PROBLEMS AND TREATMENT OF SEVERELY STRESSED CHILDREN. THEY ARE NOT FOR SALE OR COMMERCIAL DISTRIBUTION. THEY MAY BE STUDIED AT CPHC ON-SITE WITH ASSISTANCE OF OUR STAFF BY QUALIFIED RESEARCHERS, CLINICIANS, SPECIAL EDUCATION TEACHERS, ADMINISTRATORS OF NONPROFIT CLINICAL ORGANIZATIONS AND SCHOOLS FOR CHILDREN, SCIENTISTS AND STUDENTS OF RELEVANT DISCIPLINES BY APPOINTMENT AT CPTC HEADQUARTERS. CREDENTIALS, REFERENCES AND CONFIDENTIALITY AGREEMENT ARE REQUIRED COLLABORATIVE RESEARCH ARRANGEMENTS CAN BE CONTRACTED FOR WITH CONFIDENTIALITY AGREEMENTS AND LONG TERM USE OF THE TAPES.

*1. *Childhood Post Traumatic Stress Disorder (California Pacific Hospital Grand Rounds), 1992*

*2. *New Theory of Post Traumatic Stress Disorder*, Gilbert Kliman, M.D. December 4th 1992, International Association of Child and Adolescent Psychiatry and Allied Disciplines, Fairmont Hotel, San Francisco.

*3. *Severe Psychological Trauma in very Young Children*, March 23d 1993

*4. *Post Traumatic Stress Disorder: Child & Adult*, September 27th 1993

5. *Cost Effectiveness: Mental Health Services for Foster Children*, September 28th 1993

6. *Preventive Child Psychiatry , Mc Auley St Mary's*, October 16th 1993,

*7. *New Theory of Post-Traumatic Stress Disorder, for Int. Association of Child and Adolescent Psychiatry*, July 25th 1994

*8. *Cornerstone Method Conference, Wells Fargo*, January 30th 1996

*9. *Cornerstone Conference: Control - Mastery* Group, San Francisco Psychoanalytic Institute. February 9th 1996

Francisco and Seattle, private therapeutic preschool in San Francisco, and Cornerstone Argentina

24. Thirty four year follow-up of a Cornerstone Treated autistic child, now recovered. Presented at The San Francisco Psychoanalytic Institute, Child Analysis Study Group, 2001. Permission for public viewing granted by the patient. Excerpts may be viewed on www.childrenspsychological.org or the entire video obtained from [redacted]

*25 Orientation of the Family Services Center of King County. Four days in December, 2007, in Seattle. Six DVD's.

Scientific and Educational Video Archives under Dr. Kliman's supervision:

With parental permission, The Children's Psychological Health Center, under Dr. Kliman's leadership, is collecting unedited treatment documents of a special method of treatment in a real life space, called "The Cornerstone therapeutic preschool method." Now totaling over 200 video archive hours, eight different California therapists working with various educator teams have recorded their Cornerstone therapeutic preschool method work. Beginning in 1995, this archive started with Gilbert Kliman, M.D. working for a year as daily in-classroom therapist in a public special education school. He was assisted by Leanne Runyan and Gail Hernandez as the teachers at the San Mateo Early Childhood Education Center, a preschool special education facility of The County of San Mateo. A second team under his supervision included work at The San Francisco Unified School District (Vanessa Vigilante and Esther Kronenberg). Third and fourth teams were at The Salvation Army Gateway Shelter (Vanessa Vigilante as therapist and Lynda Byrd as teacher, Deanna Reardon as therapist and Lynda Byrd as teacher). A fourth was at The Cadence Cornerstone Site at Mt. Pleasant School, San Jose (Karita Hummer, therapist and Kathy Krall, teacher). Fifth team therapy was provided by Jane Christmas. The sixth team therapists was Dr. Miquela Diaz Hope, the seventh Molly Franklin, MFT. All have been extensively videotaped carrying out the method. An eighth team was assembled in late 2002, when Linda Hirshfeld Ph.D. joined as Fellow in Cornerstone Therapy. In 2001 Mike McDonald, Ed.D. became Special Education Director of Cornerstone School. All the treatments are have been under principal supervision of Dr. Kliman with additional supervision by Mali Mann, M.D., Myrna Frankel, Ed.D., and Jan Baeuerlen, M.D. Linda Hirshfeld, Ph.D. of the Ann Martin Center is conducting the archival work for her Cornerstone Services.

A professional researcher/ training confidentiality agreement is required to study this archive.

Rothstein Rosenfeldt Adler
Attorneys at Law

FACSIMILE COVER SHEET

TO: [redacted] Esq.

FAX NUMBER: [redacted]

FROM: Bradley J. Edwards, Esq. and William J. Berger, Esq.

DATE: June 4, 2009

RE: State of Florida v. Jeffrey Epstein
Our File No. 09-22784

MESSAGE: [redacted] **as you probably know, the Palm Beach Post filed a separate Motion to unseal the NPA. We noticed that the Post did not notice you personally, so I have enclosed a courtesy copy of that Motion and Notice. I hope this finds you well.**

 # OF PAGES 11 (including cover sheet)

THOMAS | LOCICERO
& | BRALOW

400 N. Ashley Drive•Suite 1100•Tampa, FL 33602
[redacted] (Phone)• [redacted] (Fax)
Toll Free: [redacted]

facsimile transmittal

To:	**R. Alexander Acosta, Esq.**	Fax:	[redacted]
	Judith Stevenson Arco, Esq.		[redacted]
	Michael McAuliffe, Esq.		
	Jack Alan Goldberger, Esq.		[redacted]
	Bradley J. Edwards, Esq.		[redacted]
	William J. Berger, Esq.		
From:	**Deanna K. Shullman, Esq.**	Date:	**06/04/2009**
Re:	**State [redacted]. J. Epstein**	Pages:	**6**
Cc:	**Marilyn Judicial Assistant to Judge Colbath**		[redacted]

Urgent ☐	For review ☐	Please comment ☐	Please reply ☐	Please recycle ☐

Please see attached Motion to Intervene and Petition for Access

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

STATE OF FLORIDA

Plaintiff,

vs.

Case Nos.: 2006-CF9454-AXX &
2008-9381CF-AXX

JEFFREY EPSTEIN

Defendant.
_____/

NOTICE OF HEARING

PLEASE TAKE NOTICE that Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post will call up for hearing its Motion to Intervene and Petition for Access before the Honorable Jeffrey Colbath, Palm Beach County Courthouse, 205 N. Dixie Hwy., Room 11F, West Palm Beach on June 10, 2009 at 10:40 a.m. or as soon thereafter as counsel may be heard.

Time reserved: 10 Minutes

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman
Florida Bar No.: [redacted]
James B. Lake
Florida Bar No.: [redacted]
400 North Ashley Drive, Suite 1100
P.O. Box 2602 (33601)
Tampa, FL 33602
Telephone: [redacted]
Facsimile: [redacted]

Attorneys for The Palm Beach Post

State v. Epstein
Case No. 2006-CF9454 & 2008-9381CF
Notice of Hearing on Palm Beach Post's Motion to Intervene

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ☑ U.S. Mail; ☑ Facsimile; ☐ Overnight Delivery to R. Alexander Acosta, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401; Judith Stevenson Arco, Esq., State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401; William J. Berger, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Ste. 1650, Fort Lauderdale, FL 33394; Bradley J. Edwards, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Ste. 1650, Fort Lauderdale, FL 3394; Jack Alan Goldberger, Esq., Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 on this 4th day of June, 2009.

Attorney

cc: Judicial Assistant (Via Fax and U.S. Mail)

Esquire Court Reporting

THOMAS | LOCICERO
& | BRALOW

400 N. Ashley Drive • Suite 1100 • Tampa, FL 33602
813-984-3060 (Phone) • [redacted] (Fax)
Toll Free: [redacted]

facsimile transmittal

To:	R. Alexander Acosta, Esq.	Fax:	[redacted]
	Judith Stevenson Arco, Esq.		[redacted]
	Michael McAuliffe, Esq.		
	Jack Alan Goldberger, Esq.		[redacted]
	Bradley J. Edwards, Esq.		[redacted]
	William J. Berger, Esq.		
From:	Deanna K. Shullman, Esq.	Date:	06/01/2009
Re:	State v. J. Epstein	Pages:	6

Urgent ☐	For review ☐	Please comment ☐	Please reply ☐	Please recycle ☐

Please see attached Motion to Intervene and Petition for Access

THOMAS | LOCICERO & BRALOW

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Deanna K. Shullman
Direct Dial: [redacted]
Deanna.Shullman@tlolawfirm.com

Reply To Tampa

June 1, 2009

VIA FEDERAL EXPRESS OVERNIGHT MAIL

The Honorable Jeffrey Colbath
Fifteenth Judicial Circuit-Palm Beach
Palm Beach County Courthouse
Main Judicial Complex
205 N. Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re:

Dear Judge Colbath:

Enclosed is a courtesy copy of non-party Palm Beach Newspapers, Inc. d/b/a The Palm Beach Post's (the "Post") Motion to Intervene and Petition for Access to certain court records in this case. It is our understanding that Bradley Edwards and William Berger of Rothstein Rosenfeldt Adler have filed a similar motion on behalf of a non-party known as [redacted]," and that [redacted] motion is set for hearing on June 10, 2009. The Post requests an opportunity to be heard on the issue of access to these records at that time.

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions or comments.

Sincerely,

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman

Deanna K. Shullman

cc: Counsel of Record

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 &
2008-9381CF-AXX

JEFFREY EPSTEIN

_____/

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.

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[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 [redacted] 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,

THOMAS, LOCICERO & BRALOW PL

Fla Bar #

Deanna K. Shullman
Florida Bar No.:
James B. Lake
Florida Bar No.:
101 N.E. Third Avenue, Suite 1500
Fort Lauderdale, FL 33301
Telephone:
Facsimile:

Attorneys for The Palm Beach Post

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:); **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:); **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 (fax:); 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:) on this 1st day of June, 2009.

Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: _____

18 U.S.C. § 371
18 U.S.C. § 1591(a)(1)
18 U.S.C. § 1591(a)(2)
18 U.S.C. § 2422(b)
18 U.S.C. § 2423(e)
18 U.S.C. § 2423(d)
18 U.S.C. § 2423(b)

UNITED STATES OF AMERICA

vs.

JEFFREY EPSTEIN,
[redacted],
[redacted] a/k/a "[redacted]"
and [redacted],

Defendants.
_____/

INDICTMENT

The Grand Jury charges that:

BACKGROUND

At all times relevant to this Indictment:

1. Defendant JEFFREY EPSTEIN employed defendants [redacted], [redacted], a/k/a "[redacted]," and [redacted] to perform, among other things, services as personal assistants.

2. Defendants JEFFREY EPSTEIN and [redacted] paid [redacted]., H.R., and A.F. to perform, among other things, recruiting services.

3. Defendant JEFFREY EPSTEIN owned a property located at 358 El Brillo Way, Palm Beach, Florida, in the Southern District of Florida (hereinafter referred to as "358 El Brillo Way").

4. Defendant JEFFREY EPSTEIN was the principal owner of JEGE, INC., a Delaware corporation. JEGE, INC.'s sole business activities related to the operation and ownership of a Boeing 727-31 aircraft bearing tail number N908JE.

5. Defendant JEFFREY EPSTEIN served as president, sole director, and sole shareholder of JEGE, INC., and had the power to direct all of its operations.

6. Defendant JEFFREY EPSTEIN was the principal owner of Hyperion Air, Inc., a Delaware corporation. Hyperion Air, Inc.'s sole business activities related to the operation and ownership of a Gulfstream G-1159B aircraft bearing tail number N909JE.

7. Defendant JEFFREY EPSTEIN served as president, sole director, and sole shareholder of Hyperion Air, Inc., and had the power to direct all of its operations.

8. Pursuant to Florida Statutes Section 794.05, a "person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree." For purposes of "this section, 'sexual activity' means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose." Florida Statutes Section 794.021 states

that "ignorance of the age [of the victim] is no defense," and that neither "misrepresentation of age by [the victim] nor a bona fide belief that such person is over the specified age [shall] be a defense."

9. Pursuant to Florida Statutes Sections 800.04(5)(a) and 800.04(5)(c)(2), an adult "who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation," which is a felony of the second degree if the victim is 12 years of age or older but less than 16 years of age.

10. Pursuant to Florida Statutes Sections 800.04(6)(a) and 800.04(6)(b), an adult "who [i]ntentionally touches a person under 16 years of age in a lewd or lascivious manner or [s]olicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct," which is a felony of the second degree.

11. Pursuant to Florida Statutes Sections 800.04(7)(a) and 800.04(7)(c), an adult "who: (1) [i]ntentionally masturbates; (2) [i]ntentionally exposes the genitals in a lewd or lascivious manner; or (3) [i]ntentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to . . . the simulation of any act involving sexual activity in the presence of a victim who is less than

16 years of age, commits lewd or lascivious exhibition," which is a felony of the second degree.

12. Pursuant to Florida Statutes Section 800.04(2), "[n]either the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by [Section 800.04]."

13. Pursuant to Florida Statutes Section 800.04(3), "[t]he perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under [Section 800.04]."

14. Pursuant to Florida Statutes Section 800.02, a "person who commits any unnatural and lascivious act with another person commits a misdemeanor of the second degree."

15. Defendant JEFFREY EPSTEIN was over the age of 24 and did not have any medical license.

16. During the period of her involvement with the Defendants, Jane Doe #4 attended Wellington High School and [redacted] in Palm Beach County.

17. During the period of her involvement with the Defendants, Jane Doe #5 attended Wellington High School in Palm Beach County.

18. During the period of their involvement with the Defendants, Jane Does # 6, 8, and 12 attended [redacted] in Palm Beach County.

19. During the period of her involvement with the Defendants, Jane Doe #7 attended [redacted] in Palm Beach County.

20. During the periods of their involvement with the Defendants, Jane Does # 9, 14, 15, 16, 17, 18, and 19 attended [redacted] in Palm Beach County.

21. During the period of her involvement with the Defendants, Jane Doe #10 attended [redacted] in Palm Beach County.

22. During the period of her involvement with the Defendants, Jane Doe #11 attended [redacted] in Palm Beach County.

23. During the period of her involvement with the Defendants, Jane Doe #13 attended [redacted] in Palm Beach County.

COUNT 1
(Conspiracy: 18 U.S.C. § 371)

24. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

25. From at least as early as 2001, the exact date being unknown to the Grand Jury, through in or around October 2005, in Palm Beach County, in the Southern District of Florida, and elsewhere, the Defendants,

JEFFREY EPSTEIN,
[redacted], a/k/a "[redacted]"
and
[redacted],

did knowingly and willfully combine, conspire, confederate, and agree with each other and with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, and entice individuals who had not attained the age of 18 years to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b).

Purpose and Object of the Conspiracy

26. It was the purpose and object of the conspiracy to procure females under the age of 18 to travel to 358 El Brillo Way so that JEFFREY EPSTEIN could, in exchange for money, engage in lewd conduct with those minor females in order to satisfy JEFFREY EPSTEIN's prurient interests.

Manner and Means

27. The manner and means by which the Defendants and other participants sought to accomplish the purpose and object of the conspiracy included the following:

(a) It was part of the conspiracy that Defendants [redacted], [redacted], a/k/a "[redacted]," [redacted], and other participants would contact minor females via the use of cellular and other telephones to

arrange appointments for minor females to travel to 358 El Brillo Way to allow Defendant JEFFREY EPSTEIN to engage in lewd conduct with them.

(b) It was further a part of the conspiracy that Defendants JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," [redacted], and other participants would make payments to, or cause payments to be made to, minor females in exchange for engaging in lewd conduct.

(c) It was further a part of the conspiracy that Defendants JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and other participants would ask females to recruit other minor females to engage in lewd conduct with Defendant JEFFREY EPSTEIN.

(d) It was further a part of the conspiracy that Defendants JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and other participants would make payments to, or cause payments to be made to, the recruiters for bringing additional minor females to 358 El Brillo Way to engage in lewd conduct with Defendant JEFFREY EPSTEIN.

(e) It was further a part of the conspiracy that Defendant JEFFREY EPSTEIN would pay minor females to engage in lewd conduct with Defendant [redacted] to satisfy Defendant JEFFREY EPSTEIN's prurient interests.

Overt Acts

28. In furtherance of this conspiracy and to effect the objects thereof, there was committed, by at least one of the co-conspirators herein, at least one of the following overt acts, among others, in the Southern District of Florida, and elsewhere:

Jane Does #1 and #2

(1) In or around the beginning of 2001, Defendant JEFFREY EPSTEIN engaged in sexual activity with Jane Doe #1, who was then a seventeen-year-old girl, in the presence of Jane Doe #2, who was then a fourteen-year-old girl.

(2) In or around 2001, Defendant [redacted] led Jane Doe #2 from the kitchen of 358 El Brillo Way upstairs to Defendant JEFFREY EPSTEIN's bedroom at 358 El Brillo Way.

(3) In or around 2001, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #2, who was then a fourteen-year-old girl.

(4) In or around 2001, Defendant JEFFREY EPSTEIN asked Jane Doe #2, who was then a fourteen-years-old girl, to pinch his nipples while he masturbated.

(5) In or around 2001, Defendant JEFFREY EPSTEIN made a payment of $300 to Jane Doe #2.

(6) In or around 2001, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #2 to make an appointment for Jane Doe #2 to travel to 358 El Brillo Way.

(7) In or around 2001, JEFFREY EPSTEIN engaged in sexual intercourse with an unidentified female in the presence of Jane Doe #2, who was then a fourteen-year-old girl.

(8) In or around 2001, Defendant JEFFREY EPSTEIN paid $300 to Jane Doe #2, who was then a fourteen-year-old girl, for allowing an unidentified female to perform oral sex on Jane Doe #2 in EPSTEIN's presence.

(9) On or about March 11, 2003, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from Jane Doe #2.

(10) In or around 2003, Defendant JEFFREY EPSTEIN asked Jane Doe #2 if she had any younger friends who would be interested in engaging in similar sexual activities with him.

(11) In or around 2003, Defendant [redacted] took nude photographs of Jane Doe #2, who was then a sixteen-year-old girl.

(12) In or around 2003, Defendant [redacted] made a payment of $500 to Jane Doe #2 in exchange for posing for nude photographs.

(13) In or around 2003, Defendant [redacted] told Jane Doe #2 that Defendant JEFFREY EPSTEIN had asked [redacted] to take nude photographs of Jane Doe #2.

(14) In or around 2003, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #2, who was then a sixteen-year-old girl.

(15) In or around 2003, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #2, who was then a sixteen-year-old girl.

(16) In or around 2003, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #2 to make an appointment for Jane Doe #2 to travel to 358 El Brillo Way.

(17) On or about April 23, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #2.

(18) On or about May 2, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #2.

Jane Doe #3

(19) In or around 2003, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #3, who was then a fifteen-year-old girl.

(20) In or around 2003, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #3.

(21) On or about October 26, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #3.

(22) On or about October 30, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #3.

(23) In or around 2004, Defendant JEFFREY EPSTEIN directed Jane Doe #3, who was then a sixteen- or seventeen-year-old girl, to straddle an adult female and to touch the adult female's breasts.

(24) In or around 2004, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of an adult female in the presence of Jane Doe #3, who was then a sixteen- or seventeen-year-old girl.

(25) In or around 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #3.

(26) In or around 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #3 to rub his nipples.

(27) In or around 2004, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of Jane Doe #3, who was then a sixteen- or seventeen-year-old girl.

(28) In or around 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #3 to recruit additional females to come to 358 El Brillo Way.

(29) On or about November 8, 2004, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from Jane Doe #3 that read: "I have a female for him."

(30) On or about January 14, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #3.

(31) On or about January 29, 2005, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from Jane Doe #3 that read: "I have a female for him."

Jane Does #4, #5, and #6

(32) In or around the first half of 2004, Defendant [redacted] led Jane Doe #4 and Jane Doe #5 to Defendant JEFFREY EPSTEIN's bedroom at 358 El Brillo Way.

(33) In or around the first half of 2004, Defendant JEFFREY EPSTEIN learned that Jane Doe #4 was seventeen years old when he asked Jane Doe #4 about her age, and Jane Doe #4 responded with her true age.

(34) In or around the first half of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #4, who was then a seventeen-year-old-girl, and Jane Doe #5, who was then a seventeen-year-old girl.

(35) In or around the first half of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #4, who was then a seventeen-year-old girl, to play with his nipples.

(36) In or around the first half of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #4, who was then a seventeen-year-old girl, to remove her clothing.

(37) In or around the first half of 2004, Defendant JEFFREY EPSTEIN stroked the vagina of Jane Doe #4, who was then a seventeen-year-old girl.

(38) In or around the first half of 2004, Defendant JEFFREY EPSTEIN paid $200 to Jane Doe #4.

(39) In or around the first half of 2004, Defendant JEFFREY EPSTEIN paid $200 to Jane Doe #5.

(40) In or around the first half of 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #6 what high school she attended.

(41) In or around the first half of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #4 to leave so that Jane Doe #6 could massage him alone.

(42) In or around the first half of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #6, who was then a sixteen-year-old girl.

(43) In or around the first half of 2004, Defendant JEFFREY EPSTEIN digitally penetrated Jane Doe #6, who was then a sixteen-year-old girl.

(44) In or around the first half of 2004, Defendant JEFFREY EPSTEIN placed a large vibrating massager on the vagina of Jane Doe #6, who was then a sixteen-year-old girl.

(45) In or around the first half of 2004, Defendant JEFFREY EPSTEIN caused a payment of $200 to be made to Jane Doe #6.

Jane Does #7 and #8

(46) In or around July 2004, Defendant JEFFREY EPSTEIN led [redacted]., who was then a fifteen-year-old girl, and Jane Doe #7, who was then a sixteen-year-old girl, from the kitchen of 358 El Brillo Way upstairs to Defendant JEFFREY EPSTEIN's bedroom.

(47) On or about July 4, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #7.

(48) On or about July 5, 2004, Defendant [redacted] placed a telephone call to a telephone used by [redacted].

(49) In or around July 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #8, who was then a seventeen-year-old girl.

(50) In or around July 2004, Defendant JEFFREY EPSTEIN stroked the vagina of Jane Doe #8, who was then a seventeen-year-old girl.

(51) In or around July 2004, Defendant JEFFREY EPSTEIN paid approximately $200 to Jane Doe #8.

(52) In or around July 2004, Defendant JEFFREY EPSTEIN paid $200 to [redacted]. for recruiting Jane Doe #8 to travel to 358 El Brillo Way.

(53) In or around July 2004, Defendant [redacted] told Jane Doe #8 that Defendant JEFFREY EPSTEIN would pay Jane Doe #8 if she returned with a friend.

(54) On or about July 15, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #7.

(55) On or about July 15, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #8.

(56) On or about July 15, 2004, Defendant [redacted] placed a telephone call to a telephone used by [redacted].

(57) On or about July 16, 2004, Defendant [redacted] placed one or more telephone calls to a telephone used by Jane Doe #7.

(58) On or about July 16, 2004, Defendant [redacted] placed a telephone call to a telephone used by [redacted].

(59) On or about July 17, 2004, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from [redacted]. that read: "Me & [Jane Doe #7] can come tomorrow any time or [redacted].] alone".

(60) In or around July 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #7, who was then a sixteen-year-old girl.

(61) In or around July 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #7, who was then a sixteen-year-old girl, to rub his nipples.

(62) In or around July 2004, Defendant JEFFREY EPSTEIN stroked the vagina of Jane Doe #7, who was then a sixteen-year-old girl.

(63) In or around July 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #7.

(64) In or around July 2004, Defendant JEFFREY EPSTEIN told Jane Doe #7 that if she reported to anyone what had occurred at Defendant JEFFREY EPSTEIN's home, bad things could happen to her.

(65) On or about July 24, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #8.

Jane Does #9 and #10

(66) On or about July 15, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #9.

(67) On or about July 16, 2004, Defendant [redacted] caused Jane Doe #9 to make a telephone call to a telephone used by Jane Doe #10.

(68) On or about July 17, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #9.

(69) On or about July 18, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #9.

(70) On or about July 22, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #9.

(71) In or around July 2004, Defendant JEFFREY EPSTEIN fondled the breasts of Jane Doe #9, who was then a seventeen-year-old girl.

(72) In or around July 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #9, who was then a seventeen-year-old girl.

(73) In or around July 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #9.

(74) On or about July 22, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #10.

(75) In or around the last half of 2004, Defendants JEFFREY EPSTEIN and [redacted] engaged in oral sex and sexual intercourse in the presence of Jane Doe #9, who was then a seventeen-year-old girl.

(76) In or around the last half of 2004, Defendant JEFFREY EPSTEIN forcibly inserted his penis into the vagina of Jane Doe #9, who was then a seventeen-year-old girl.

(77) In or around the last half of 2004, Defendant JEFFREY EPSTEIN made a payment of $300 to Jane Doe #9.

(78) In or around the last half of 2004, Defendant JEFFREY EPSTEIN rubbed the vagina of Jane Doe #10, who was then a seventeen-year-old girl.

(79) In or around the last half of 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #10.

(80) On or about November 28, 2004, Defendant JEFFREY EPSTEIN arranged for one of his employees to provide an envelope filled with cash to Jane Doe #9.

(81) On or about December 4, 2004, Defendant [redacted] provided a written message to Defendant JEFFREY EPSTEIN regarding Jane Does # 9 and 10, stating: "[Jane Doe #10] would like to work @ 4:00 pm if possible. [[Jane Doe #9] is scheduled for 5:00 today.] the movie is @ 7:30".

(82) On or about December 29, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #9.

(83) On or about December 30, 2004, Defendants JEFFREY EPSTEIN and [redacted] caused the purchase of Broadway tickets as an eighteenth birthday gift for Jane Doe #9.

(84) In or around the last half of 2004 or January 2005, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #10, who was then a seventeen-year-old girl.

(85) In or around the last half of 2004 or January 2005, Defendant JEFFREY EPSTEIN fondled the breasts of Jane Doe #10, who was then a seventeen-year-old girl.

(86) On or about January 14, 2005, Defendant [redacted] placed one or more telephone calls to a telephone used by Jane Doe #10.

(87) On or about January 27, 2005, Defendant [redacted], a/k/a "[redacted]," placed one or more telephone calls to a telephone used by Jane Doe #10.

(88) On or about January 28, 2005, Defendant [redacted] placed one or more telephone calls to a telephone used by Jane Doe #10.

(89) On or about February 1, 2005, Defendant [redacted] placed one or more telephone calls to a telephone used by Jane Doe #10.

(90) In or around February 2005, Defendant JEFFREY EPSTEIN caused a payment of $200 to be made to Jane Doe #9 for recruiting Jane Doe #16 to travel to 358 El Brillo Way.

Jane Doe #11

(91) In or around the summer of 2004, Defendant [redacted] led Jane Doe #11 and [redacted]. from the kitchen of 358 El Brillo Way upstairs to Defendant JEFFREY EPSTEIN's master bedroom suite.

(92) In or around the summer of 2004, Defendant JEFFREY EPSTEIN paid $200 to [redacted]. for bringing Jane Doe #11 to 358 El Brillo Way.

(93) In or around the summer of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #11, who was then a fifteen- or sixteen-year-old girl.

(94) In or around the summer of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #11 to rub his chest and pinch his nipples while he masturbated.

(95) In or around the summer of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #11 to write her telephone number on a notepad in his master bedroom suite.

(96) In or around the summer of 2004, Defendant JEFFREY EPSTEIN learned Jane Doe #11's true age when he asked Jane Doe #11 how old she was and she responded truthfully.

(97) In or around the summer of 2004, Defendant JEFFREY EPSTEIN told Jane Doe #11 that he did not care how old she was and that he did not like girls older than eighteen.

(98) In or around the second half of 2004, Defendant JEFFREY EPSTEIN placed a vibrating massager on the vagina of Jane Doe #11, who was then a sixteen-year-old girl.

(99) In or around the second half of 2004, Defendant JEFFREY EPSTEIN digitally penetrated the vagina of Jane Doe #11, who was then a sixteen-year-old girl.

(100) On or about August 6, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(101) On or about August 18, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(102) On or about October 29, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(103) On or about November 5, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(104) On or about February 14, 2005, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from Jane Doe #11 that read: "Please! Call her back".

(105) On or about February 14, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(106) On or about February 21, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(107) On or about March 29, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #11.

(108) In or around the second half of 2005 or the first quarter of 2006, Defendant JEFFREY EPSTEIN offered to pay $400 to Jane Doe #11, who was then a sixteen-year-old girl, if she would engage in oral sex, or $500 or more if she would engage in sexual intercourse.

(109) In or around the second half of 2005, Defendant JEFFREY EPSTEIN offered to pay $100 to Jane Doe #11 if she would bring other girls to 358 El Brillo Way.

Jane Does #12 and #13

(110) On or about August 2, 2004, Defendant JEFFREY EPSTEIN reviewed a written telephone message prepared by one of his employees regarding a telephone call received from [redacted]. and Jane Doe #12 that stated: "They are available all weekend and maybe [Jane Doe #13] too".

(111) On or about August 21, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #13.

(112) In or around the last half of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #12, who was then a seventeen-year-old girl.

(113) In or around the last half of 2004, Defendant JEFFREY EPSTEIN digitally penetrated Jane Doe #12, who was then a seventeen-year-old girl.

(114) In or around the last half of 2004, Defendant JEFFREY EPSTEIN attempted to place a massaging device on the vagina of Jane Doe #12, who was then a seventeen-year-old girl.

(115) In or around the last half of 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #12.

(116) In or around the last half of 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #12, who was then a seventeen-year-old girl, about her age.

(117) In or around the last half of 2004, Defendant JEFFREY EPSTEIN told Jane Doe #12 that he would take her to Los Angeles when she turned eighteen.

(118) In or around the last half of 2004, Defendants JEFFREY EPSTEIN and [redacted] caused Jane Doe #12 to recruit Jane Doe #13 to travel to 358 El Brillo Way.

(119) In or around the last half of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #13, who was then a seventeen-year-old girl.

(120) In or around the end of 2004, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of Jane Doe #13, who was then a seventeen-year-old girl.

(121) In or around the last half of 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #13.

(122) In or around the last half of 2004, Defendant JEFFREY EPSTEIN digitally penetrated Jane Doe #13, who was then a seventeen-year-old girl.

(123) In or around the last half of 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #13, who was then a seventeen-year-old girl, about her age.

(124) In or around the last half of 2004, Defendant JEFFREY EPSTEIN told Jane Doe #13 that he wanted to take her to Paris but he could not because Jane Doe #13 was not yet eighteen years old.

(125) In or around the last half of 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #13 to bring her friends to his home, especially "girls who looked like [Jane Doe #13]."

Jane Doe #14

(126) In or around the last half of 2004, Defendant [redacted] led Jane Doe #14 from the kitchen of 358 El Brillo Way upstairs to Defendant JEFFREY EPSTEIN's bedroom at 358 El Brillo Way.

(127) In or around the last half of 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #14 to provide her telephone number.

(128) In or around the last half of 2004, Defendant JEFFREY EPSTEIN instructed Jane Doe #14, who was then a seventeen-year-old girl, to pinch his nipples.

(129) In or around the last half of 2004, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #14, who was then a seventeen-year old girl.

(130) In or around the last half of 2004, Defendant JEFFREY EPSTEIN made a payment of $300 to Jane Doe #14.

(131) In or around the end of 2004 and the beginning of 2005, Defendant JEFFREY EPSTEIN digitally penetrated Jane Doe #14, who was then a seventeen-year-old girl.

(132) In or around the end of 2004 and the beginning of 2005, Defendant JEFFREY EPSTEIN asked Jane Doe #14, who was then a seventeen-year-old girl, whether she had any plans for her eighteenth birthday and acknowledged that she had not yet turned eighteen.

(133) On or about December 23, 2004, Defendant JEFFREY EPSTEIN caused a Western Union wire transfer order to be sent to Jane Doe #14.

(134) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of Jane Doe #14, who was then a seventeen-year-old girl.

(135) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN engaged in sexual intercourse with Jane Doe #14, who was then a seventeen-year-old girl.

(136) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN performed oral sex on Jane Doe #14, who was then a seventeen-year-old girl.

(137) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN made a payment of $600 to Jane Doe #14.

(138) On or about January 8, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #14.

(139) On or about January 9, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #14.

(140) On or about January 26, 2005, Defendant [redacted], a/k/a "[redacted]," reviewed a written telephone message prepared by one of Defendant JEFFREY EPSTEIN's employees regarding a call received from Jane Doe #14 that read: "She is confirming for 5:30".

(141) On or about January 26, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #14.

(142) On or about February 1, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #14.

(143) On or about March 1, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #14.

(144) On or about March 21, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #14.

(145) On or about March 29, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #14.

Jane Doe #15

(146) On or about December 6, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(147) On or about December 14, 2004, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(148) In or around the first half of 2005, Defendant [redacted] led Jane Doe #15 from the kitchen of 358 El Brillo Way upstairs to Defendant JEFFREY EPSTEIN's bedroom at 358 El Brillo Way.

(149) In or around the first half of 2005, Defendant JEFFREY EPSTEIN instructed Jane Doe #15, who was then a seventeen-year-old girl, to pinch his nipples while he masturbated.

(150) In or around the first half of 2005, Defendant JEFFREY EPSTEIN fondled the breasts of Jane Doe #15.

(151) In or around the first half of 2005, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #15.

(152) On or about January 7, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #15.

(153) On or about February 4, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(154) On or about February 10, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(155) On or about February 21, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(156) On or about February 24, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(157) On or about March 17, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(158) On or about March 30, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(159) On or about March 31, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #15.

(160) On or about March 31, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #15.

(161) On or about April 1, 2005, Defendant JEFFREY EPSTEIN reviewed a note prepared by one of his employees that read: "10:30 [Jane Doe #15]/[Jane Doe #10] on Fri around 2'Oclock".

(162) In or around June 2005, Defendant JEFFREY EPSTEIN provided Jane Doe #15 with a gift of Victoria's Secret lingerie for her eighteenth birthday.

Jane Does #16 & #17

(163) In or around February 2005, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #16, who was then a seventeen-year-old girl.

(164) In or around the first quarter of 2005, Defendants JEFFREY EPSTEIN and [redacted] caused Jane Doe #16 to place a telephone call to Jane Doe #17 to ask her to travel to 358 El Brillo Way.

(165) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN caused a payment to be made to Jane Doe #16 for recruiting Jane Doe #17 to travel to 358 El Brillo Way.

(166) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #17, who was then a sixteen-year-old girl.

(167) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN instructed Jane Doe #17, who was then a sixteen-year-old girl, to remove all of her clothing.

(168) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of Jane Doe #17, who was then a sixteen-year-old girl.

(169) In or around the first quarter of 2005, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #17, who was then a sixteen-year-old girl.

(170) In or around the first nine months of 2005, Defendant JEFFREY EPSTEIN placed a massaging device on the vagina of Jane Doe #16, who was then a seventeen-year-old girl.

(171) In or around the first nine months of 2005, Defendant JEFFREY EPSTEIN asked Jane Doe #16, who was then a seventeen-year-old girl, how old she was, and she responded that she was seventeen years old.

(172) In or around the first nine months of 2005, Defendant JEFFREY EPSTEIN engaged in sexual activity with Defendant [redacted] in the presence of Jane Doe #16, who was then a seventeen-year-old girl.

(173) In or around the first nine months of 2005, Defendant JEFFREY EPSTEIN asked Jane Doe #16, who was then a seventeen-year-old girl, to touch the breast of Defendant [redacted].

(174) On or about April 11, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #16.

(175) On or about April 11, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(176) On or about April 11, 2005, Defendant [redacted] left a message for Defendant JEFFREY EPSTEIN stating: "[Jane Doe #16] can work tomorrow at 4pm."

(177) On or about May 19, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(178) On or about June 30, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(179) On or about July 2, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(180) On or about July 22, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(181) On or about August 18, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(182) On or about August 19, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #16.

(183) On or about August 21, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(184) On or about September 3, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #16.

(185) On or about September 18, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(186) On or about September 19, 2005, Defendant [redacted] sent a text message to a telephone used by Jane Doe #16.

(187) On or about September 29, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(188) On or about September 30, 2005, Defendant [redacted], a/k/a "[redacted]," placed a telephone call to a telephone used by Jane Doe #16.

(189) On or about October 1, 2005, Defendant [redacted] left a telephone message for Defendant JEFFREY EPSTEIN stating: "[Jane Doe #15] confirmed at 11 AM and [Jane Doe #16] – 4PM".

(190) On or about October 2, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(191) On or about October 3, 2005, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #16.

(192) On or about October 3, 2005, Defendant [redacted] left a telephone message for Defendant JEFFREY EPSTEIN stating: "[Jane Doe #16] will be ½ hour late".

(193) In or around the first week of October, 2005, Defendant JEFFREY EPSTEIN engaged in sexual intercourse with Jane Doe #16, who was then a seventeen-year-old girl.

(194) In or around the first week of October, 2005, Defendant JEFFREY EPSTEIN made a payment of $350.00 to Jane Doe #16, who was then a seventeen-year-old girl.

(195) In or around the first week of October, 2005, Defendant JEFFREY EPSTEIN provided a gift of Victoria's Secret lingerie to Jane Doe #16 for her eighteenth birthday.

Jane Does #18 and #19

(196) In or around the last half of 2003, Jane Doe #18 was approached by A.F. and was asked whether she would be willing to provide a massage to Defendant JEFFREY EPSTEIN in exchange for $200.

(197) In or around the last half of 2003, Defendant JEFFREY EPSTEIN asked Jane Doe #18 to provide her telephone number.

(198) On or around August 27, 2003, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #18.

(199) In or around the last half of 2003, Defendant JEFFREY EPSTEIN masturbated in the presence of Jane Doe #18, who was then a seventeen-year-old-girl.

(200) On or around November 16, 2003, Defendant [redacted] placed a telephone call to a telephone used by Jane Doe #18.

(201) In or around the last half of 2003, Defendant JEFFREY EPSTEIN digitally penetrated Jane Doe #18, who was then a seventeen-year-old-girl.

(202) In or around the last half of 2003, Defendant JEFFREY EPSTEIN asked Jane Doe #18 to recruit other females to travel to 358 El Brillo Way.

(203) On or about March 5, 2004, Defendant JEFFREY EPSTEIN asked Jane Doe #19, who was then a seventeen-year-old girl, to leave when she refused to remove her shirt.

(204) On or about March 5, 2004, Defendant JEFFREY EPSTEIN verbally reprimanded Jane Doe #18 for bringing Jane Doe #19 to 358 El Brillo Way when she was not willing to undress for him.

The Defendants' Travel

(205) On or about July 16, 2004, Defendants JEFFREY EPSTEIN, [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Hyperion Air, Inc.

(206) On or about August 6, 2004, Defendants JEFFREY EPSTEIN and [redacted] traveled from the U.S. Virgin Islands to Palm Beach County, Florida aboard the Boeing 727 aircraft owned by JEGE, INC.

(207) On or about August 19, 2004, Defendants JEFFREY EPSTEIN and [redacted] traveled from Van Nuys, California to Palm Beach County, Florida aboard the Boeing 727 aircraft owned by JEGE, INC.

(208) On or about October 29, 2004, Defendants JEFFREY EPSTEIN and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Hyperion Air, Inc.

(209) On or about February 21, 2005, Defendants JEFFREY EPSTEIN, [redacted], and [redacted] traveled from the U.S. Virgin Islands to Palm Beach County, Florida, aboard the Boeing 727 aircraft owned by JEGE, INC.

(210) On or about March 31, 2005, Defendant JEFFREY EPSTEIN traveled from New York, New York to Palm Beach County, Florida, aboard the Boeing 727 aircraft owned by JEGE, INC.

(211) On or about September 18, 2005, Defendants JEFFREY EPSTEIN, [redacted], and [redacted], a/k/a "[redacted]," traveled from Westchester County, New York to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Hyperion Air, Inc.

([redacted]) On or about September 29, 2005, Defendants JEFFREY EPSTEIN, [redacted], a/k/a "[redacted]," and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Hyperion Air, Inc.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2 THROUGH 11
(Sex Trafficking: 18 U.S.C. § 1591(a)(1))

29. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

30. On or about the dates enumerated as to each count listed below, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the Defendants listed below did knowingly, in and affecting interstate and foreign commerce, recruit, entice, provide, and obtain by any means a person, that is, the person in each count listed below, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1):

Count	Dates	Minor Involved	Defendants
2	2001 - 2004	Jane Doe #2	JEFFREY EPSTEIN [redacted]
3	January 2004 through July 2004	Jane Doe #4	JEFFREY EPSTEIN [redacted]

Count	Dates	Minor Involved	Defendants
4	July 2004 through December 29, 2004	Jane Doe #9	JEFFREY EPSTEIN [redacted]
5	July 2004 through January 31, 2005	Jane Doe #10	JEFFREY EPSTEIN [redacted]
6	Mid-2004 through March 2005	Jane Doe #11	JEFFREY EPSTEIN [redacted]
7	Mid-2004 through April 22, 2005	Jane Doe #12	JEFFREY EPSTEIN [redacted]
8	August 2004 through May 27, 2005	Jane Doe #13	JEFFREY EPSTEIN [redacted]
9	November 2004 through March 2005	Jane Doe #14	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"
10	December 2004 through June 5, 2005	Jane Doe #15	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"
11	February 2005 through first week of October 2005	Jane Doe #16	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]" [redacted]

All in violation of Title 18, United States Code, Sections 1591(a)(1) and 2.

COUNT 12
(Sex Trafficking: 18 U.S.C. § 1591(a)(2))

31. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

32. From at least as early as in or about 2001 through in or about October 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

[redacted], a/k/a "[redacted]"
and
[redacted],

did knowingly benefit, financially or by receiving anything of value, from participation in a venture, as defined in 18 U.S.C. § 1591(c)(3), which had engaged in an act described in violation of 18 U.S.C. § 1591(a)(1), that is, the recruiting, enticing, providing, and obtaining by any means a person, in or affecting interstate commerce, knowing that the person or persons had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(2), 1591(b)(2), and 2.

COUNT 13
(Enticement of a Minor: 18 U.S.C. § 2422(b))

33. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

34. From in or around the spring of 2003 through on or about October 2, 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #3, who was a person who had not attained the age of 18 years, to engage in prostitution and in a sexual activity for which a person can be charged with a criminal offense, that is violations of Florida Statutes Sections 800.04(5)(a), 800.04(6)(a), and 800.04(7)(a); in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 14
(Enticement of a Minor: 18 U.S.C. § 2422(b))

35. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

36. In or around July 2004, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #7, who was a person who had not attained the age of

18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 15
(Enticement of a Minor: 18 U.S.C. § 2422(b))

37. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

38. From in or around July 2004 through in or around October 2004, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #8, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 16
(Enticement of a Minor: 18 U.S.C. § 2422(b))

39. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

40. From in or around July 2004 through on or around December 29, 2004, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #9, who was a person who had not attained the age of 18 years, to engage in prostitution and in a sexual activity for which a person can be charged with a criminal offense, that is a violation of Florida Statutes Section 794.05; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 17
(Enticement of a Minor: 18 U.S.C. § 2422(b))

41. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

42. From in or around July 2004 through on or about January 31, 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #10, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 18
(Enticement of a Minor: 18 U.S.C. § 2422(b))

43. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

44. From in or around the middle of 2004 through in or about March 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #11, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 19
(Enticement of a Minor: 18 U.S.C. § 2422(b))

45. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

46. From in or around the middle of 2004 through on or about April 22, 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #12, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 20
(Enticement of a Minor: 18 U.S.C. § 2422(b))

47. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

48. From in or around August 2004 through on or about May 27, 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #13, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 21
(Enticement of a Minor: 18 U.S.C. § 2422(b))

49. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

50. From in or around November 2004 through in or around March 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN,
[redacted],
and [redacted], a/k/a "[redacted]",

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #14, who was a person who had not attained the age of 18 years, to engage in prostitution and in a sexual activity for which a person can be charged with a criminal offense, that is a violation of Florida Statutes Section 794.05; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 22
(Enticement of a Minor: 18 U.S.C. § 2422(b))

51. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

52. From in or around December 2004 through on or about June 5, 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN,
[redacted], and
[redacted], a/k/a "[redacted]",

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #15, who was a person who had not attained the age

of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 23
(Enticement of a Minor: 18 U.S.C. § 2422(b))

53. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

54. From in or around February 2005 through in or around the first week of October 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN,
[redacted], a/k/a "[redacted]," and [redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce or entice Jane Doe #16, who was a person who had not attained the age of 18 years, to engage in prostitution and in a sexual activity for which a person can be charged with a criminal offense, that is a violation of Florida Statutes Section 794.05; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 24
(Enticement of a Minor: 18 U.S.C. § 2422(b))

55. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

56. From in or around February 2005 through in or around April 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN,
[redacted], and
[redacted], a/k/a "[redacted]",

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #17, who was a person who had not attained the age of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 25
(Enticement of a Minor: 18 U.S.C. § 2422(b))

57. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

58. From in or around August 2003 through in or around February 2004, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JEFFREY EPSTEIN,
and
[redacted],

did use a facility or means of interstate commerce, that is, the telephone, to knowingly persuade, induce and entice Jane Doe #18, who was a person who had not attained the age

of 18 years, to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2.

COUNT 26
(Conspiracy to Travel: 18 U.S.C. § 2423(e))

59. Paragraphs 1 through 23 of this indictment are re-alleged and incorporated by reference as fully set for the herein.

60. From at least as early as 2001 through in or around October 2005, the exact dates being unknown to the Grand Jury, the Defendants,

JEFFREY EPSTEIN,
[redacted], a/k/a "[redacted]"
and
[redacted],

did knowingly and willfully conspire with each other and with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with another person, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e).

COUNT 27
(Facilitation of Unlawful Travel of Another: 18 U.S.C. § 2423(d))

61. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

62. From at least as early as in or about 2001 through in or around October 2005, the exact dates being unknown to the Grand Jury, in Palm Beach County, in the Southern District of Florida, and elsewhere, the Defendant,

[redacted],

did, for the purpose of commercial advantage or private financial gain, arrange and facilitate the travel of a person, that is Defendant Jeffrey Epstein, knowing that such person was traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f); in violation of Title 18, United States Code, Section 2423(d).

COUNTS 28 THROUGH 35
(Travel to Engage in Illicit Sexual Conduct: 18 U.S.C. § 2423(b))

63. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

64. On or about the dates enumerated as to each count listed below, from a place outside the Southern District of Florida to a place inside the Southern District of Florida, the Defendants listed below traveled in interstate commerce for the purpose of engaging in illicit sexual conduct as defined in 18 U.S.C. § 2423(f), with a person under 18 years of age, that is, the person(s) listed in each count below:

Count	Date	Minor(s) Involved	Defendants
28	7/16/2004	Jane Doe #7 Jane Doe #8 Jane Doe #9 Jane Doe #10	JEFFREY EPSTEIN [redacted]
29	8/6/04	Jane Doe #9 Jane Doe #11	JEFFREY EPSTEIN [redacted]
30	8/19/04	Jane Doe #9 Jane Doe #10 Jane Doe #11	JEFFREY EPSTEIN [redacted]

Count	Date	Minor(s) Involved	Defendants
31	10/29/04	Jane Doe #10 Jane Doe #11 Jane Doe #13	JEFFREY EPSTEIN [redacted]
32	2/21/05	Jane Doe #11 Jane Doe #14 Jane Doe #15	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"
33	3/31/2005	Jane Doe #11 Jane Doe #14 Jane Doe #15 Jane Doe #16	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"
34	9/18/2005	Jane Doe #16	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"
35	9/29/05	Jane Doe #16	JEFFREY EPSTEIN [redacted] a/k/a "[redacted]"

All in violation of Title 18, United States Code, Sections 2423(b) and 2.

FORFEITURE 1

Upon conviction of the violation alleged in Count 1 of this indictment, the defendants, JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and [redacted], shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

Pursuant to Title 28, United States Code, Section 2461; Title 18, United States Code, Section 981(a)(1)(C); and Title 21, United States Code, Section 853.

If the property described above as being subject to forfeiture, as a result of any act or omission of the defendants, JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and [redacted],

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

All pursuant to Title 28, United States Code, Section 2461; Title 18, United States Code, Section 981(a)(1)(C); and Title 21, United States Code, Section 853.

FORFEITURE 2

Upon conviction of any of the violations alleged in Counts 13-35 of this indictment, the defendants, JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and [redacted], shall forfeit to the United States any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such

offense; and any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, including but not limited to the following:

a. A parcel of land located at 358 El Brillo Way, Palm Beach, Florida 33480, including all buildings, improvements, fixtures, attachments, and easements found therein or thereon, and more particularly described as:

> Being all of Lot 40 and the West 24.3 feet of Lot 39, El Bravo Park, as recorded in Plat Book 9, Page 9, in the records of Palm Beach County, Florida and
>
> BEING that portion lying West of Lot 40, El Bravo Park, in Section 27, Township 43 South, Range 43 East, as recorded in Plat Book 9, Page 9, Public Records of Palm Beach County, Florida, being bounded on the West by the West side of an existing concrete seawall and the northerly extension thereof as shown on the Adair & Brady, Inc., drawing IS-1298, dated March 25, 1981, and bounded on the East by the shoreline as shown on the plat of El Bravo Park, and bounded on the North and South by the Westerly extensions of the North and South lines respectively of Lot 40, containing 0.07 acres, more or less.

Pursuant to Title 18, United States Code, Section 2253.

If any of the forfeitable property described in the forfeiture section of this indictment, as a result of any act or omission of the defendants JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and [redacted],

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 2253(o), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

Pursuant to Title 18, United States Code, Section 2253.

FORFEITURE 3

Upon conviction of any of the violations alleged in Counts 2-12 of this indictment, the defendants, JEFFREY EPSTEIN, [redacted], [redacted], a/k/a "[redacted]," and [redacted], shall forfeit to the United States any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation, including but not limited to the following:

a. A parcel of land located at 358 El Brillo Way, Palm Beach, Florida 33480, including all buildings, improvements, fixtures, attachments, and easements found therein or thereon, and more particularly described as:

> Being all of Lot 40 and the West 24.3 feet of Lot 39, El Bravo Park, as recorded in Plat Book 9, Page 9, in the records of Palm Beach County, Florida and
>
> BEING that portion lying West of Lot 40, El Bravo Park, in Section 27, Township 43 South, Range 43 East, as recorded in Plat Book 9, Page 9, Public Records of Palm Beach County, Florida, being bounded on the West by the

West side of an existing concrete seawall and the northerly extension thereof as shown on the Adair & Brady, Inc., drawing IS-1298, dated March 25, 1981, and bounded on the East by the shoreline as shown on the plat of El Bravo Park, and bounded on the North and South by the Westerly extensions of the North and South lines respectively of Lot 40, containing 0.07 acres, more or less.

Pursuant to Title 18, United States Code, Section 1594(b).

A TRUE BILL.

_____

FOREPERSON

_____

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

_____

[redacted]
ASSISTANT UNITED STATES ATTORNEY

INDICTMENT SUMMARY

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
1	2001 - October 2005	EPSTEIN [redacted]	Jane Does 1-19	**18 U.S.C. §§ 371 and 2** Conspiracy to use a facility or means of interstate commerce to persuade, induce, or entice minors to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense
2	2001 - 2004	EPSTEIN [redacted]	Jane Doe #2 (Carolyn A.)	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
3	January 2004 - July 2004	EPSTEIN [redacted]	Jane Doe #4	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
4	July 2004 - December 29, 2004	EPSTEIN [redacted]	Jane Doe #9	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
5	July 2004 - January 31, 2005	EPSTEIN [redacted]	Jane Doe #10	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
6	Mid-2004 - April 22, 2005	EPSTEIN [redacted]	Jane Doe #12	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
7	Mid-2004 - April 22, 2005	EPSTEIN [redacted]	Jane Doe #12	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
8	August 2004 - May 27, 2005	EPSTEIN [redacted]	Jane Doe #13	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
9	November 2004 - March 2005	EPSTEIN [redacted]	Jane Doe #14	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
10	December 2004 - June 5, 2005	EPSTEIN [redacted]	Jane Doe #15	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
11	February 2005 - October 2005	EPSTEIN [redacted]	Jane Doe #16	**18 U.S.C. §§ 1591(a)(1) and 2** Knowingly, in or affecting interstate or foreign commerce, recruiting, enticing, providing, and obtaining by any means a person, knowing that the person was a minor and would be caused to engage in a commercial sex act.
12	2001 - October 2005	[redacted]	Jane Does 1-19	**18 U.S.C. § 1591(a)(2)** Benefitting, financially or by receiving any thing of value, from participation in a venture which had engaged in the recruiting, enticing, providing, or obtaining by any means a person, knowing that the person or persons had not attained the age of 18 years and would be caused to engage in a commercial sex act

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
13	Spring 2003 - October 2, 2005	EPSTEIN [redacted]	Jane Doe #3	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
14	July 2004	EPSTEIN [redacted]	Jane Doe #7	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
15	July 2004 to October 2004	EPSTEIN [redacted]	Jane Doe #8	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
16	July 2004 - December 29, 2004	EPSTEIN [redacted]	Jane Doe #9	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
17	July 2004 - January 31, 2005	EPSTEIN [redacted]	Jane Doe #10	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
18	Mid-2004 - March 2005	EPSTEIN [redacted]	Jane Doe #11	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
19	Mid-2004 - April 22, 2005	EPSTEIN [redacted]	Jane Doe #12	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
20	August 2004 - May 27, 2005	EPSTEIN [redacted]	Jane Doe #13	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
21	November 2004 - March 2005	EPSTEIN [redacted]	Jane Doe #14	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
22	December 2004 - June 5, 2005	EPSTEIN [redacted]	Jane Doe #15	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
23	February 2005 - October 2005	EPSTEIN [redacted]	Jane Doe #16	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
24	February 2005 - April 2005	EPSTEIN [redacted]	Jane Doe #17	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
25	August 2003 - February 2004	EPSTEIN [redacted]	Jane Doe #18	**18 U.S.C. §§ 2422(b) and 2** Using a facility or means of interstate commerce to knowingly persuade, induce, or entice a person who had not attained the age of 18 years to engage in prostitution or sexual activity for which any person can be charged with a criminal offense
26	2001 - October 2005	EPSTEIN [redacted]	Jane Does 1-19	**18 U.S.C. § 2423(e)** Conspiracy to travel in interstate commerce for the purpose of engaging in illicit sexual conduct
27	2001 - October 2005	[redacted]	Jane Does 1-19	**18 U.S.C. § 2423(d)** For the purpose of commercial advantage or private financial gain, arranging or facilitating the travel of a person knowing that the person was traveling in interstate commerce for the purpose of engaging in illicit sexual conduct
28	July 16, 2004	EPSTEIN [redacted]	Jane Doe #7 Jane Doe #8 Jane Doe #9 Jane Doe #10	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor
29	August 6, 2004	EPSTEIN [redacted]	Jane Doe #9 (Fayth P.) Jane Doe #11 (Alexandra H.)	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
30	August 19, 2004	EPSTEIN [redacted]	Jane Doe #9 (Alexandra H.) Jane Doe #10 (Britany B.) Jane Doe #11	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor
31	October 29, 2004	EPSTEIN [redacted]	Jane Doe #10 (Britany B.) Jane Doe #11 Jane Doe #13 (Dainya N.)	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor
32	February 21, 2005	EPSTEIN [redacted]	Jane Doe #11 (Vanessa Z.) Jane Doe #14 (Felicia E.) Jane Doe #15	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor
33	March 31, 2005	EPSTEIN [redacted]	Jane Doe #11 (Saige G.) Jane Doe #14 (Vanessa Z.) Jane Doe #15 (Fayth P.) Jane Doe #16	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor
34	September 18, 2005	EPSTEIN [redacted]	Jane Doe #16 (Ashley D.)	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor

CT	DATE(S)	DEFENDANT(S)	VICTIM(S)	STATUTES/CHARGE
35	September 29, 2005	EPSTEIN [redacted]	Jane Doe #16 (Ashley D.)	**18 U.S.C. §§ 2423(b) and 2** Traveling in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor

[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2, CASE NO.: 08-CV-80119-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 3, CASE NO.: 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 4, CASE NO.: 08-CV-80380-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 5, CASE NO.: 08-CV-80381-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 6,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 08-CV-80994-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 08-CV-80993-MARRA/JOHNSON

[redacted].,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 08-CV-80811-MARRA/JOHNSON

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 08-CV-80893-MARRA/JOHNSON

DOE II, CASE NO.: 09-CV-80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 101, CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 102, CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT, JEFFREY EPSTEIN'S MOTION TO STRIKE CASES FROM CURRENT TRIAL DOCKET AND MOTION TO CONTINUE CASE AND/OR ALTERNATIVE MOTION TO MODIFY TRIAL AND SCHEDULING ORDER DEADLINES

The Plaintiff, [redacted]., by and through undersigned counsel, files this Response to Defendant, Jeffrey Epstein's Motion to Strike Cases From Current Trial Docket And Motion to Continue Case And/Or Alternative Motion to Modify Trial and Scheduling Order (D.E. 104), and further states as follows:

1. Defendant EPSTEIN seeks to have this case (and others that are presently pending) stricken from the trial docket, or continued for at least an additional three months or have the existing pretrial deadlines extended. In light of Plaintiff's filing of her *Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255* (D.E. 113) on June 5, 2009, Plaintiff agrees to a modification of the pretrial schedule as outlined in Defendant EPSTEIN's *Motion to Strike* (D.E. 104); to wit, extending discovery for an additional three months from the currently set deadline of August 28, 2009, extending the current deadline of October 15, 2009 by two months to file substantive pretrial motions, extending the current deadline of December 21, 2009 by one month to mediate this matter, and extending the deadline of June 29, 2009 by one month to exchange expert witness reports.[1]

2. EPSTEIN's requests to have this case stricken from the trial docket, or in the alternative, continued for three months, however, are not warranted under the circumstances and would unreasonably and unnecessarily delay the resolution of this case. The filing of the instant motion marks the third different way EPSTEIN has sought to delay the trial on this matter. First, it was Defendant's Motion for Stay (D.E. 33), which was denied by the Court on December 17, 2008. Next, it was Defendant's second Motion for Stay (D.E. 51), which is presently pending before the Court. Third, and unfortunately, probably not the last, is Defendant's latest attempt to delay the trial of this case.

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[1] With regards to the last requested modification of the pretrial order, EPSTEIN requests "an additional month to complete the remaining deadlines under each of the Court's Trial Orders." Given that each of the other deadlines not specifically listed above are to take place 15 days or less from the calendar call date of February 19, 2010 (which is 3 days from the trial date of February 22, 2010), the only logical deadline EPSTEIN could be referring to is the expert witness report exchange.

3. In order to justify his latest attempt to delay the trial of this case, EPSTEIN argues that Plaintiff's conduct has prevented him from "conducting any meaningful discovery, including the taking of [redacted]'s supervisors, co-workers, acquaintances, friends, and other third parties."(D.E. 104, pg. 7). The sworn affidavit by counsel for Defendant, Michael Pike, Esq. repeats the same allegation ("As a result, the undersigned has not had an opportunity to depose any individuals that may have information about the allegations made by Plaintiffs."(D.E. 042-2, paragraph 4).

4, Defendant's Motion and affidavit are simply not supported by the history of this case. First, this case was filed in state court on February 21, 2008. Defendant EPSTEIN was served with a summons and complaint on July 2, 2008. For reasons that are known only to himself and his counsel in this case, EPSTEIN waited a full six months before propounding any discovery of any kind upon Plaintiff. EPSTEIN filed his first set of interrogatories on January 16, 2009, and his first set of requests to produce on January 16, 2009. EPSTEIN's choice to wait a half a year before engaging in formal discovery is not the Plaintiff's fault, nor can he now be allowed to argue that the current trial setting is unworkable because of his failures.

5. Second, Plaintiff provided answers to Defendant's first set of interrogatories on February 18, 2009 (Attached as Exhibit "1"). Plaintiff's answers to interrogatories identifies thirty six (36) people, other than herself and EPSTEIN, who have or may have knowledge regarding the subject matter of the instant law suit. This list of individuals includes Plaintiff's relatives, mental health providers, a former boyfriend, her friends, other victims of EPSTEIN, members of law enforcement who investigated EPSTEIN, and former employees and/or associates of EPSTEIN. Armed

with the identities of these crucial fact witnesses for almost the last four (4) months, EPSTEIN had not set a single one of them for deposition as of the time he filed the instant motion. Defendant's claims that he has been absolutely prevented from engaging in any discovery as a result of Plaintiff's "delay tactics" are absolutely belied by the fact that he actually has much of the information he complains Plaintiff is concealing from him, but has chosen to do nothing with it over the last four months.

6. Plaintiff also filed on February 2, 2009 her Initial Disclosure which likewise identified multiple individuals who had or may have knowledge regarding the subject matter of the instant suit (Attached as Exhibit "2"). Defendant failed to set any of those indentified individuals for deposition either.

7. Once again, Defendant cannot bury his head in the sand by failing to take available discovery and then turn around and complain that he cannot get ready for trial scheduled in February of 2010.

8. Third, EPSTEIN inappropriately characterizes Plaintiff's assertions of the protections afforded to her under the applicable rules of procedure and case law with respect to unreasonably invasive and irrelevant discovery propounded by EPSTEIN as an attempt to conceal evidence from EPSTEIN and delay the discovery of same. Defendant's allegations in this regard are flat out wrong. Plaintiff, just like EPSTEIN, has certain rights and privileges with respect to the scope of permissible discovery. Plaintiff has every right to avail herself of the protections available to her under the rules of discovery without fear of claims from EPSTEIN that she is concealing or delaying anything. Indeed, it is ironic that EPSTEIN takes issue with a litigant invoking the protections available to her with regards to inappropriate and unreasonable discovery

when he himself has failed to respond to any discovery propounded to him by Plaintiff, but instead has invoked his 5th Amendment privilege.

9. Fourth, in the event that the Court rules that Plaintiff can recover the statutory damage floor established in 18 U.S.C. §2255 for each proven incident of abuse committed by EPSTEIN upon her, the discovery which EPSTEIN presently seeks will not be relevant or material in any way given Plaintiff's Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255.

10. Defendant asserts as justification for continuing this case what can fairly be characterized as routine and ordinary discovery disputes. Nothing contained in either his motion or supporting affidavit rises to the level of "exceptional circumstances" required by Local Rule 7.6 to continue a trial setting. Any issues related to discovery can certainly be cured by extending the trial deadlines as proposed by EPSTEIN. Delaying the trial of this case is simply not necessary nor justified.

WHEREFORE, in light of the foregoing, the Plaintiff respectfully requests this Court enter an order denying Defendant, Jeffrey Epstein's Motion to Strike Cases From Current Trial Docket And Motion to Continue Case And/Or Alternative Motion to Modify Trial and Scheduling Order.

Respectfully submitted,

/s/Jack P. Hill
JACK SCAROLA
Florida Bar No. [redacted]
JACK P. HILL
Florida Bar No.: [redacted]
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Phone:
Fax: [redacted]
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8th, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified above via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/Jack P. Hill
JACK SCAROLA
Florida Bar No. [redacted]
JACK P. HILL
Florida Bar No.: [redacted]
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
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Attorneys for Plaintiff

COUNSEL LIST

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2290 10th Avenue North
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Lake Worth, FL 33461
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250 South Australian Avenue
Suite 1400
West Palm Beach, FL 33401
Phone: [redacted]
Fax:

#281849/clw

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-CIV-
MARRA/JOHNSON

[redacted],

Plaintiff(s),

vs.

JEFFREY EPSTEIN and [redacted],

Defendant(s).
_____/

NOTICE OF SERVING
ANSWERS TO INTERROGATORIES

COMES NOW the Plaintiff, [redacted], by and through undersigned counsel, and hereby files this Notice with the Court that Answers to Interrogatories propounded by the Defendant, JEFFREY EPSTEIN, on January 16, 2009, have been furnished to the attorney for the Defendant.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 18th day of February, 2009, to: See attached list of counsel.

JACK SCAROLA
Florida Bar No. [redacted]
JACK P. HILL
Florida Bar No.: [redacted]
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Phone: [redacted]
Fax:
Attorney for Plaintiff(s)

[redacted] vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Answers to Defendant's First Interrogatories

ANSWERS TO INTERROGATORIES

1. What is the name and address of all persons answering or assisting in answering these interrogatories, and, if applicable, the person's official position or relationship with the party to whom the interrogatories are directed?

ANSWER

[redacted]
c/o her attorneys:
Jack Scarola, Esq. and Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

With the assistance of her counsel, Searcy Denney Scarola Barnhart & Shipley, P.A. and Richard Willits, P.A.

2. List the names, business addresses, telephone and cell phone numbers, dates of employment, immediate supervisor (name and address) and rates of pay regarding all employers, including self-employment, for whom you have worked in the past 10 years; this includes listing all sources of income you have received. Answer this question by year, i.e. 1998-2009.

ANSWER

Objection. Irrelevant, immaterial and not reasonably calculated to lead to discovery of admissible evidence.

3. List all former names and when you were known by those names. State all addresses where you have lived for the past 10 years, the dates you lived at each address, your Social Security number, your date of birth, and, if you are or have ever been married, the name of your spouse or spouses. List any children by name, date of birth and the father's name and address. List the names and address of your parents and any brother or sister.

ANSWER

Nickname- [redacted]

[redacted] vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Answers to Defendant's First Interrogatories

[redacted]

I have never been married.

Children: [redacted]

Parents: [redacted]

Siblings: [redacted]

4. Have you ever been convicted of a crime, other than any juvenile adjudication, which under the law under which you were convicted was punishable by death or imprisonment in excess of 1 year, or that involved dishonesty or a false statement regardless of the punishment? If so, state as to each conviction the specific crime and the date and place of conviction.

ANSWER

No

5. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a) filed in this action, or any fact underlying the subject matter of this action).

ANSWER

1. [redacted].
c/o her attorneys:

Jack Scarola, Esq. and Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Richard Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North, Suite 404
Lake Worth, FL 33461
Tel: [redacted]

Subject matter: Plaintiff.

2. Jeffrey Epstein
c/o his attorneys:

Robert Critton, Esquire
Burman Critton Luttier & Coleman LLP

515 North Flagler Drive, Suite 400
West Palm Beach, FL 33414
Tel: [redacted]

Jack A. Goldberger, Esquire
Atterbury, Goldberger & Weiss, P.A.
250 Australian Avenue South
West Palm Beach, FL 33401
Tel: [redacted]

Bruce E. Reinhart, Esquire
Bruce E. Reinhart, P.A.
250 South Australian Avenue
Suite 1400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Defendant

3. [redacted]'s mother, [redacted]
c/o [redacted]'s attorneys:

Jack Scarola, Esq. and Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Richard Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North, Suite 404
Lake Worth, FL 33461
Tel: [redacted]

Subject matter: [redacted]'s involvement with Epstein.

4. [redacted]
(Address unknown)

Subject matter: Defendant.

5. **Jane Doe (Case No.: 1:93-cv-01109-KAM)**
c/o her attorney:

Theodore Leopold, Esquire
Leopold, Kuvin, P.A.
2925 P.G.A. Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Tel: [redacted]

Subject matter: Victim of Epstein.

6. **Jane Doe (Case No.: 502008CA020614)**
c/o her attorney:

Isidro M. Garcia, Esquire
The Law Office of Brad Edwards & Associates, LLC
2028 Harrison Street, Suite 202
Hollywood, FL 33020
Tel: [redacted]

Subject matter: Victim of Epstein.

7. **Jane Doe #2 (Case No.: 9:08-cv-80119-KAM)**
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

8. **Jane Doe #3 (Case No.: 9:08-cv-80232-KAM)**
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

9. **Jane Doe #5 (Case No.: 9:08-cv-80381-KAM)**
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

10. **Jane Doe #4 (Case No.: 9:08-cv-80380-KAM)**
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

11. **Jane Doe (Case No.: 9:08-cv-80804-KAM)**
c/o her attorney:

Theodore Leopold, Esquire
Leopold, Kuvin, P.A.
2925 P.G.A. Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Tel: [redacted]

Subject matter: Victim of Epstein.

12. **Jane Doe #7 (Case No.: 9:08-cv-80993-KAM)**
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.

18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

13. [redacted] (Case No.: 502008CA025129XXXXMB AI
c/o her attorneys:

Jack Scarola, Esquire
Jack P. Hill, Esquire
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Subject matter: Victim of Epstein.

14. Jose Alessi
(Address unknown at this time)

Subject matter: Jeffrey Epstein's Butler.

15. [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

16. [redacted]
Palm Beach County Prosecutors Office
401 North Dixie Highway
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Prosecutor.

17. Detective [redacted], lead investigator

Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

18. [redacted]

Subject matter: Former boyfriend of a victim of Epstein.

19. **Sgt. [redacted]**
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

20. [redacted]

21. **[redacted], supervisor**
Sanitation Bureau of the Town of Palm Beach
3101 N.W. 16th Terrace
Pompano Beach, FL 33064
Tel: (877) 46-WASTE

Subject matter: The incident which is the subject matter of this lawsuit. Discovery is ongoing.

22. **Major [redacted]**
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406
[redacted]

Subject matter: Investigator.

23. [redacted] friend of [redacted]
(Address will be provided upon receipt)

Subject matter: Victim and friend of [redacted].

24. Ghislane Maxwell c/o Ghislane Corp.
3580 Brillo Way
Palm Beach, FL 33480

Subject matter: Associate of Epstein.

25. [redacted]
Parent Child Center
West Palm Beach, FL

Subject matter: Counselor at Parent Child Center.

26. Detective [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

27. Chief Michael Reiter
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

28. [redacted]
(Address unknown at this time)

Subject matter: Associate of Epstein who facilitated introductions with various victims.

29. **Alfredo Rodriguez**
(Address unknown at this time)

Subject matter: Employee of Epstein.

30. **Detective [redacted]**
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator

31. **[redacted], Esquire**
First Assistant U.S. Attorney
U.S. Dept. of Justice
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Federal prosecutor.

32. **[redacted]**
Federal Bureau of Investigation
505 South Flagler Drive, Suite 500
West Palm Beach, FL 33401

Subject matter: Investigator.

33. **Dr. Thys**
Address will be provided upon receipt
West Palm Beach

Subject matter: [redacted]'s physician.

34. **[redacted]**
Assistant U.S. Attorney
U.S. Dept. of Justice
500 South Australian Avenue

Suite 400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Federal prosecutor.

35. **[redacted]**
(Address will be provided upon receipt)

Subject matter: Friend of [redacted] mother.

36. **[redacted]**
(Address will be provided upon receipt)

Subject matter: Friend of [redacted]'s mother

37. **[redacted]**
(Address will be provided upon receipt)

Subject matter: Potential victim and friend of [redacted].

38. **[redacted]**
(Address unknown at this time)

Subject matter: Associate of Epstein who may have been involved in encounters between Epstein and [redacted].

6. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to interrogatory no. 5 may have.

ANSWER

Please see answer to Interrogatory #5

7. Were you suffering from physical infirmity, disability, disease, sickness, or psychiatric/psychological condition at the time of the incident(s) described in the complaint? If so, what was the nature of the infirmity, disability, or sickness?

ANSWER

School behavioral problems, received counseling prior to the incident.

8. Did you consume any alcoholic beverages or take any drugs or medications within 12 hours before the time of each incident(s) described in the complaint? If so, state the type and amount of alcoholic beverages, drugs, or medication which were consumed, and when (dates) and where you consumed them.

ANSWER

1. **On one occasion I had taken "Morning Glory" and "Angel Trumpets". I do not recall the date.**
2. **On another occasion I used cocaine powder. I do not recall the date.**

9. Describe each injury (physical, emotional, mental) for which you are claiming damages in this case, specifying the part of your body that was injured, the nature of the injury and as to any injuries you contend are permanent, the effects on you that you claim are permanent.

ANSWER

[redacted]

10. Please state each item of damage that you claim, and include in your answer: the count to which the item of damages relates; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

ANSWER

I am claiming compensation for mental anguish, mental pain, psychic trauma, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. § 2255.

Discovery is ongoing.

11. List the names and business addresses of each physician (including psychiatrist, psychologist, chiropractor or medical provider) who has treated or examined you,

and each medical facility where you have received any treatment or examination for the injuries for which you seek damages in this case; and state as to each the date of treatment or examination and the injury or condition for which you were examined or treated.

ANSWER

Dr. Serge Thys (Psychiatrist) Date: I do not recall the date. I would defer to the Doctor's records.
2151 45th Street
West Palm Beach, FL. 33407

[redacted] (Counselor/Therapist) Date: Since high school. Ongoing.
Parent Child Center
2001 W. Blue Heron Boulevard

12. List the names and business addresses of all other physicians, medical facilities, rehab facilities (drug, alcohol or psychiatric) or other health care providers including psychiatrist, psychologist, mental health counselor and chiropractors by whom or at which you have been examined or treated in the past 10 years; and state as to each the dates of examination or treatment and the condition or injury for which you were examined or treated.

ANSWER

[redacted]

[redacted]

13. State the name and address of every person known to you, your agents, or your attorneys, who has knowledge about, or possession, custody, or control of, any model, plat, map, drawing, motion picture, video tape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what item such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

ANSWER

The FBI has photos taken of me at Jeffrey Epstein's home by [redacted]
Jeffrey Epstein had a photo taken of me at his home by [redacted]

14. Please state if you (or parents or guardian on your behalf) have ever been a party, either plaintiff or defendant, in a lawsuit other than the present matter, and, if so, state whether you were plaintiff or defendant, the nature of the action, and the date and court in which such suit was filed.

ANSWER

No

15. List all dates you allege you were at Mr. Epstein's home in Florida, include date, time arrived and left, the name(s) of anyone who went with you to the home when you were there, the time spent with Mr. Epstein and the name(s) and address of any individuals who were present in the home with Mr. Epstein and you.

ANSWER

From May or June of 2002 to August of 2003 I went to Mr. Epstein's home on average 2 times a week. There were weeks when I would go 4 times a week. All my visit dates were maintained by Jeffrey Epstein and his staff in a phone message book kept on a table by the phone in the kitchen.

Discovery is ongoing.

16. State in detail how you came to be at Mr. Epstein's home on each occasion, i.e. did someone bring you or ask you if you would or wanted to go; if so, state the name and address of that individual and what he/she told you and the purpose of your visit.

ANSWER

I was introduced to Jeffrey Epstein by my friend [redacted] in 2002. I was to give Jeffrey Epstein a massage. I continued to provide massages up until August of 2003. I was transported to Jeffrey Epstein's house by Yellow Cab, provided by Jeffrey Epstein, [redacted].

[redacted]
(Address will be provided upon receipt)

17. State the amount of monies (or anything else of value, including gifts) you claim were given or paid to you by Mr. Epstein (or someone paid/gave you on his behalf and that person's name, address and phone number) by year from 2000-2006.

ANSWER

$200-$300 for a massage session at an average of 2 sessions a week from May or June of 2002 to August 2003.
$500 for a photo taken by [redacted] at Jeffrey Epstein's house
Paid for taxi cabs
Concert tickets-Incubus, delivered by two girls at the concert
Clothes and lingerie sent by FedEx
Book-Massage for Dummies
CD
Flowers
Express gift card

18. List separately the names, addresses and phone numbers of all males, excluding Mr. Epstein, with whom you have had sexual activity since age 10 (by year) up through your current age. Describe the nature of sexual activity, the date(s) and whether you received money or other consideration from the person.

ANSWER

Objection. Relevance and overbroad.

19. List separately the names, addresses and phone numbers of all males, excluding your claims against Mr. Epstein, whom you have claimed (formally or informally) committed sexual assault or battery on you since age 10 (by year) up through your current age. Describe the nature of sexual assault or battery, the date(s) and whether you received money or other consideration from the person.

ANSWER

None.

20. State the names, addresses and phone numbers of all males, excluding your claims against Mr. Epstein, whom you have claimed (formally or informally) committed lewd or lascivious conduct to you since age 10 (by year) up through your current age. Describe the lewd or lascivious conduct, the date and whether you received money or other consideration from the person.

ANSWER

None

21. State the names, addresses and phone numbers of all males, excluding your claims against Mr. Epstein, whom you have claimed (formally or informally) committed lewd or lascivious exhibition to you since age 10 (by year) up through your current age. Describe the lewd or lascivious exhibition, the date and whether you received money or other consideration from the person

ANSWER

None

22. List in detail all discussions/interviews which you had with any representative

from FBI, U.S. Attorneys' Office, State Attorneys' Office (Palm Beach County), Palm Beach Sheriff's Office and Palm Beach Police Department regarding your meetings with Mr. Epstein. Include dates, who was present, the details of what was discussed, whether a court reporter was present and whether a taped statement was taken or whether you provided a written statement.

ANSWER

I was interviewed by the FBI and a State Attorney, they have my statement.

23. State the names, addresses, ages, phone numbers and dates of all females whom you claim were brought by you to Mr. Epstein's home to give him a massage or for any other reason. As to each female, state the amount of money you claim you were paid to bring each female.

ANSWER

[redacted] Age: 22
West Palm Beach, FL.
I was paid $100.00

24. Please list each time you were interviewed by any state or federal law enforcement agent or prosecutor, who was present, whether notes were taken, and what you recall saying to them.

ANSWER

I do not recall who interviewed me. This information would be available in the FBI and Prosecutors office. They took notes and I was not provided with a copy of those notes.

25. Please describe any statements made to you by any federal or state law enforcement agent or prosecutor regarding the availability of civil remedies against Mr. Epstein and regarding whether there would be any benefit from your voluntary cooperation with law enforcement.

ANSWER

None

C.M.A. vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Answers to Defendant's First Interrogatories

[redacted]

Signature of Answering Party

STATE OF Florida)

COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 17 day of February, 2009 by [redacted] who is personally known to me or who has produced _____ (type of identification) as identification and who did/did not take an oath.

Notary Public
State of Florida at Large
My Commission expires:
Commission No:

[redacted] vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Answers to Defendant's First Interrogatories

COUNSEL LIST

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Lake Worth, FL 33461
Phone: [redacted]
Fax: [redacted]
Attorneys for Party

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80811-CIV-MARRA/JOHNSON

[redacted],

Plaintiff(s),

vs.

JEFFREY EPSTEIN and [redacted]

Defendant(s).

_____/

PLAINTIFF'S INITIAL DISCLOSURE

COMES NOW the Plaintiff, [redacted], by and through her undersigned attorneys, and hereby files her Initial Disclosure in compliance with the Joint Discovery Plan/Scheduling Report dated August 18, 2008, as follows:

(A) Name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claim or defenses, unless solely for impeachment, identifying the subjects of the information:

1. [redacted]
c/o her attorneys:

Jack Scarola, Esq. and Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Richard Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North, Suite 404
Lake Worth, FL 33461
Tel: [redacted]

Subject matter: Plaintiff.

2. Jeffrey Epstein
c/o his attorneys:

Robert Critton, Esquire
Burman Critton Luttier & Coleman LLP
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33414
Tel: [redacted]

Jack A. Goldberger, Esquire
Atterbury, Goldberger & Weiss, P.A.
250 Australian Avenue South
West Palm Beach, FL 33401
Tel: [redacted]

Bruce E. Reinhart, Esquire
Bruce E. Reinhart, P.A.
250 South Australian Avenue
Suite 1400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Defendant

3. [redacted]
c/o [redacted]'s attorneys:

Jack Scarola, Esq. and Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Richard Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North, Suite 404
Lake Worth, FL 33461
Tel: [redacted]

Subject matter: [redacted]'s involvement with Epstein.

4. [redacted]
(Address unknown)

Subject matter: Defendant.

5. Jane Doe (Case No.: 1:93-cv-01109-KAM)
c/o her attorney:

Theodore Leopold, Esquire
Leopold, Kuvin, P.A.
2925 P.G.A. Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Tel: [redacted]

Subject matter: Victim of Epstein.

6. Jane Doe (Case No.: 502008CA020614)
c/o her attorney:

Isidro M. Garcia, Esquire
The Law Office of Brad Edwards & Associates, LLC
2028 Harrison Street, Suite 202
Hollywood, FL 33020
Tel: [redacted]

Subject matter: Victim of Epstein.

7. Jane Doe #2 (Case No.: 9:08-cv-80119-KAM)
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

8. Jane Doe #3 (Case No.: 9:08-cv-80232-KAM)
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

9. Jane Doe #5 (Case No.: 9:08-cv-80381-KAM)
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

10. Jane Doe #4 (Case No.: 9:08-cv-80380-KAM)
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

11. Jane Doe (Case No.: 9:08-cv-80804-KAM)
c/o her attorney:

Theodore Leopold, Esquire
Leopold, Kuvin, P.A.
2925 P.G.A. Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Tel: [redacted]

Subject matter: Victim of Epstein.

12. Jane Doe #7 (Case No.: 9:08-cv-80993-KAM)
c/o her attorney:

Jeffrey M. Herman, Esquire
Herman & Mermelstein, P.A.
18205 Biscayne Boulevard, Suite 2218
Miami, FL 33160
Tel: [redacted]

Subject matter: Victim of Epstein.

13. [redacted] (Case No.: 502008CA025129XXXXMB AI
c/o her attorneys:

Jack Scarola, Esquire
Jack P. Hill, Esquire
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Tel: [redacted]

Subject matter: Victim of Epstein.

14. Jose Alessi
(Address unknown at this time)

Subject matter: Jeffrey Epstein's Butler.

15. [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

16. [redacted]
Palm Beach County Prosecutors Office
401 North Dixie Highway
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Prosecutor.

17. Detective [redacted], lead investigator
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

18. [redacted]FL 33411-1228

Subject matter: Former boyfriend of a victim of Epstein.

19. Sgt. [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

20. [redacted]

Subject matter: Plaintiff's former boyfriend.

21. [redacted], supervisor
Sanitation Bureau of the Town of Palm Beach
3101 N.W. 16th Terrace
Pompano Beach, FL 33064
Tel: (877) 46-WASTE

Subject matter: The incident which is the subject matter of this lawsuit. Discovery is ongoing.

22. Major [redacted]
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406
[redacted]

Subject matter: Investigator.

23. Amanda, friend of [redacted]
(Address will be provided upon receipt)

Subject matter: Victim and friend of [redacted].

24. Ghislane Maxwell c/o Ghislane Corp.
3580 Brillo Way
Palm Beach, FL 33480

Subject matter: Associate of Epstein.

25. [redacted]
Parent Child Center
West Palm Beach, FL

Subject matter: Counselor at Parent Child Center.

26. Detective [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

27. Chief Michael Reiter
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator.

28. [redacted]
(Address unknown at this time)

Subject matter: Associate of Epstein who facilitated introductions with various victims.

29. Alfredo Rodriguez
(Address unknown at this time)

Subject matter: Employee of Epstein.

30. Detective [redacted]
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
Tel: [redacted]

Subject matter: Investigator

31. [redacted], Esquire
First Assistant U.S. Attorney
U.S. Dept. of Justice
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Federal prosecutor.

32. [redacted]
Federal Bureau of Investigation
505 South Flagler Drive, Suite 500
West Palm Beach, FL 33401

Subject matter: Investigator.

33. Dr. Thys
Address will be provided upon receipt
West Palm Beach

Subject matter: [redacted]'s physician.

34. [redacted]
Assistant U.S. Attorney
U.S. Dept. of Justice
500 South Australian Avenue
Suite 400
West Palm Beach, FL 33401
Tel: [redacted]

Subject matter: Federal prosecutor.

35. [redacted]
(Address will be provided upon receipt)

Subject matter: Friend of C.M.A's mother.

36. [redacted]
(Address will be provided upon receipt)

Subject matter: Friend of [redacted].'s mother

37. [redacted]
(Address will be provided upon receipt)

Subject matter: Potential victim and friend of [redacted].

38. [redacted]
(Address unknown at this time)

Subject matter: Associate of Epstein who may have been involved in encounters between Epstein and [redacted].

(B) A copy of, or description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody or control of the party and that the disclosing party may use to support its claim or defenses, unless solely for impeachment:

Plt. No.	Def. No.	Description of Exhibit	Counsel	Objection	Marked in Evid	Marked for Ident.
	1	Visitation Log				
	2	Any deposition in any other case involving molestation allegations against Jeffrey Epstein				
	3	U.S. Department of Justice's complete file, records and evidence				
	4	Federal Bureau of Investigation's complete file, records and evidence				
	5	Palm Beach County Sheriff's Office's complete file, records and evidence				
	6	Palm Beach County Prosecutor's complete file, records and evidence				
	7	Palm Beach Police Department's complete file, records and evidence				
	8	Palm Beach Police Department Probable Cause Affidavits				

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

All damages recoverable for personal injury under Florida law including the following:

suffered bodily injury;

pain and suffering;

disability;

disfigurement;

mental anguish;

loss of the capacity for the enjoyment of life; and

Medical and nursing care and treatment.

The economic damages have not yet been calculated. The noneconomic damages are for the jury's determination.

Statutory damages pursuant to 18 USCA §2255.

Punitive damages.

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment." Fed.R.Civ.P.26(a):

Plaintiff is unaware of any applicable insurance policies. Discovery is ongoing.

[redacted]. vs. Epstein, et al.
Case No.: 08-CV-80811-CIV-MARRA/JOHNSON
Plaintiff's Initial Disclosure
Page 11 of 12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this 2nd day of February, 2009.

Jack Scarola
Florida Bar No.: [redacted]
[redacted]
Jack P. Hill
Florida Bar No.: [redacted]
[redacted]
Searcy Denney Scarola Barnhart & Shipley, P.A.
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West Palm Beach, Florida 33409
Phone: [redacted]
Fax:
Attorneys for Plaintiff

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Phone: [redacted]
Fax:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-cv-80119-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80232-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

[redacted], **CASE NO.: 08-80811-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE, **CASE NO.: 08-80893-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

DOE II, **CASE NO.: 09-80469-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

JANE DOE NO. 101, **CASE NO.: 09-80591-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE NO. 102, **CASE NO.: 09-80656-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

NOTICE OF SUPPLEMENTAL AUTHORITY IN CONNECTION WITH DEFENDANT'S VARIOUS MOTIONS TO COMPEL AND REPLIES THERETO

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, hereby gives notice of his intent to rely on the following case as supplemental authority in connection with the above referenced Motions to Compel and Replies thereto:

1. Doe v. Evans, 202 F.R.D. 173, 176 (E.D. P.A. 2001) (denying protective order where alleged sexual assault victim did not demonstrate a serious specific injury and allowing Defendants to identify Plaintiff in discovery because holding otherwise would "chill defendants ability to conduct discovery").

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 5 day of June, 2009

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. [redacted]
MICHAEL J. PIKE, ESQ.
Florida Bar [redacted]
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
[redacted] Phone
Fax
(Counsel for Defendant Jeffrey Epstein)

Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON

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Mermelstein & Horowitz, P.A.
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Counsel for Plaintiffs
In related Cases Nos. 08-80069, 08-80119, 08-80232, 08-80380, 08-80381, 08-80993, 08-80994

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Fax: [redacted]
Counsel for Plaintiff in Related Case No. 08-80811
[redacted]

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West Palm Beach, FL 33409
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Fax: [redacted]
Counsel for Plaintiff, [redacted].

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Counsel for Plaintiff in Related Case No. 08-80893

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Nos. 09-80591 and 09-80656

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Counsel for Defendant Jeffrey Epstein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 08-cv-80119-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80232-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

[redacted], **CASE NO.: 08-80811-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE, **CASE NO.: 08-80893-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

DOE II, **CASE NO.: 09-80469-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____/

JANE DOE NO. 101, **CASE NO.: 09-80591-CIV-MARRA-JOHNSON**

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____/

JANE DOE NO. 102, **CASE NO.: 09-80656-CIV-MARRA/JOHNSON**

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____/

NOTICE OF SUPPLEMENTAL AUTHORITY IN CONNECTION WITH DEFENDANT'S VARIOUS MOTIONS TO COMPEL AND REPLIES THERETO

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, hereby gives notice of his intent to rely on the following case as supplemental authority in connection with the above referenced Motions to Compel and Replies thereto:

1. Doe v. Evans, 202 F.R.D. 173, 176 (E.D. P.A. 2001) (denying protective order where alleged sexual assault victim did not demonstrate a serious specific injury and allowing Defendants to identify Plaintiff in discovery because holding otherwise would "chill defendants ability to conduct discovery").

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 5 day of June, 2009

Respectfully submitted,

By: _____
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Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON

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